
RIGHTS OF A BIGAMOUS WIFE UNDER THE HINDU LAW

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ABSTRACT

This article primarily addresses the Second Wife under Hindu Law, who has several challenges in living a good life and, in particular, in raising the children born of such empty marriages. Such a lady is not qualified to maintain; if a woman is not self-sufficient, how will she live her life and meet her own needs? In this journal article, I explored religious union and whether a second marriage is a lawful marriage, as well as the legal rights that a second wife can use and sue a guy who has cheated on her. This article discusses Bigamy in length, including case laws and extraordinary characteristics. This article also discusses rights and maintenance, on which politicians should enact legislation so that victims of such invalid marriage can heal and prosper.

CHAPTER-I

1.2 INTRODUCTION:

'Bigamy' is defined as a second marriage while the first marriage is in existence. In layman's terms, bigamy occurs when an individual marries for the 2nd time while his previous marriage is in subsistence¹. Bigamy is considered an offence under Indian marriage laws if the first husband or wife is still alive. In the scenario where even the husband or wife is still living, the remarriage performed by an individual is not lawful and has no legal effect, i.e. it is referred to as a void marriage².

Wedding is an ancient custom that dates back to the Vedic period and has evolved in a positive way with numerous adjustments. If the first marriage is for subsistence, the second marriage is invalid ab initio. The legislation on such connections makes it very plain that if the first marriage is in subsistence and the first wedding is officially recognised, i.e., all of the ritual that defines a marriage legally legitimate with completing saptapadi is a lawful marriage. If an individual has a second marriage, he or she is committing bigamy, which is a punishable crime. Women were not permitted to marry again when their first spouse was still living in ancient times. However, there was no restriction on men, therefore some states established laws prohibiting bigamy weddings, and subsequently monogamy marriages were instituted among Hindu³.

Despite the fact that bigamy is a punishable offence in India, it is nonetheless widely practised. Bigamy has been practised in India since time immemorial. Previously, monarchs might marry more than one woman at the same time for personal reasons. This practise was initiated by monarchs and rulers in order to extend their territory. The position of bigamy in India is undoubtedly stated in the law, but the practise is still quite popular, and so the disparity between the law and social practise results in second wives not receiving enough protection.

Section 494 of the Indian Penal Code makes bigamy illegal in India. The legislation specifies that whomever marries another person during the lifetime of an existing spouse, such marriage shall be considered void because it occurred within the lifespan of such spouse or partner and

¹ Riddhi Goyal, *Rights of the second wife in India*, (2021).

² Sneha Mahawar, *An examination of bigamy under the Hindu Marriage Act, 1955*, (2020).

³ Sanya K, *Rights of the second wife in India*, (2019).

should be penalised for such infraction. If an individual marries often during the lifetime of his first wife, he or she should be penalised with jail for up to 7 years, as well as a penalty⁴.

1.3 RESEARCH METHODOLOGY:

There are two types of research methodologies, i.e., the doctrine and non- doctrine analysis of research. The doctrine methodology of research refers to searching legal prepositions, i.e., the case law or law on a particular issue. The non-doctrine methodology refers to the research that utilises techniques taken from different orders to produce practical information that answers research questions. It can be an issue, strategy or a change of the current law. In this particular topic which is rights of a bigamous wife under the Hindu Law requires doctrinal method to find the related articles and the to know the rights and laws which were implemented under the Hindu Marriage Act, 1955.

1.4 RESEARCH OBJECTIVES:

- To understand the Marriage under Hindu Law and the legal marriage.
- To elaborate the under special circumstances.
- To analyse the Concept of Bigamy and its penalty in India.
- To know the Legal rights of the second wife.

1.5 RESEARCH QUESTIONS

- What is Marriage under Hindu law and legal marriage?
- What are the special circumstances?
- What are the Concept of Bigamy and the penalty of it in India?
- What are the legal rights for the second wife?

⁴ Apoorva Begani, *rights of second wife under Hindu Law*, (2020).

1.6 LITERATURE REVIEW:

“Bigamy and Hindu Marriage: A socio-legal study” by Vijendra Kumar,

In this study, This research is an effort to evaluate the connection in marriage and the nature of marriage in order to determine the privileges of the relevant persons in such partnerships. In such cases, efforts are also made to recommend remedial actions against the perpetrator. Marriage in modern culture is without a question, an individual connection, a private matter of the partners, but it is also a social unit with complicated social components. Wedding has been regarded as a cultural, religious, and social institution among Hindus from its origin for a wide variety of different, devotional, and ethical reasons. However, the inconspicuous importance of separation legislation is a strategy to demolish all that is wonderful in Hindu society⁵.

“The Hindu Marriage Act, 1955”

This article talks about the The Hindu Marriage Act of 1955 utterly destroyed the primary qualities of Hindu marriage, namely promiscuity and incessant of getting married. The Act establishes (a) monogamous and the legal system for all Hindus, and (b) separation for all Hindus. It stipulates that no other partner to a Hindu marriage shall have a spousal living in the region of the marriage: bigamy has been become a legal violation, and section 404 of the Indian Penal Code was already extended to Hindus⁶.

“Anti Bigamy Bill in Maharashtra”

The Maharashtra legislative quickly enacted the Anti-Bigamy Bill in December 1995, which still requires the president's signature. The bill's primary goal seems to be to punish Muslim males but instead to safeguard females of all faiths⁷.

“Hindu Men, Monogamy and Uniform Civil Code”

The Hindu Marriage Act of 1955 changed Hindu marriage from such an old and Vedic 'Sankara' or sacramental to a contemporary and irreversible agreement. It has also established the principle of monogamy for the first time. Nevertheless, no effort was took to fill several gaps

⁵ Vijendra Kumar, *Bigamy and Hindu Marriage: A socio-legal study*, (2017).

⁶ P. Diwan, *The Hindu Marriage Act, 1955*, (2008).

⁷ Geetanjali Gangoli, *Anti Bigamy Bill in Maharashtra*, (1996).

in the act, which allow a Hindu man to avoid both in the illegal implications of a bigamous marriage and the monetary duty to the second wife⁸.

“Essentials of Valid Hindu Marriage Under Hindu Marriage Act 1955”

This study is mostly concerned with Hindu marriage and lawful marriage. It begins with the fundamentals and ideals of Hindu law in India. Legal marriage is only legitimate if it occurs with the fulfilment of the valid fundamentals underneath the Hindu Marriage Act, 1955, which vary by faith. The article discusses the factors that will decide whether one wedding is lawful or invalid⁹.

“Role of legislations in offence relating to Bigamy-A study based on laws in India”

Bigamy is the action of entering into a wedding through one person while remaining officially married to other person. Bigamy can be defined in two ways: whenever a man get marries more than one girl (polygyny), and when a woman married over than one man (polyandry). A group of the confrontational Indian claims that its freedom to marriage has been restricted, claiming that some sects have enjoyed this privilege owing to their Protestants and bigottism¹⁰.

CHAPTER- II

2.1 According to the Hindu Marriage Act of 1955,

As per Section 11 of the Hindu Marriage Act of 1955, The second wife who has been betrayed on by her partner probably suffers since community does not support such ladies. There is a societal stigma linked to women who are second wives, and such relationships have no legal justification in our community. There is no acknowledgment for second wives, but owing to court perception, such woman may be entitled to support. The rights to which a second wife is qualified are largely determined by the judgement of courts¹¹.

2.2 MARRIAGE UNDER HINDU LAW:

⁸ Flavia Agnes. *Hindu Men, Monogamy and Uniform Civil Code*, 30(50), (1995).

⁹ Uthara A Nair, *Essentials of Valid Hindu Marriage Under Hindu Marriage Act 1955*, (2021).

¹⁰ Ms. Bhavna, *Role of legislations in offence relating to Bigamy-A study based on laws in India*, Vol 6, (2019).

¹¹ Hindu Marriage Act of 1955, §11, 1955,(India).

As per **Section 5** of the Hindu Marriage Act, any 2 Hindus by birth or conversions might marry if they fulfil the required requirements, that are as follows:

Therefore, according to Section 17 of the "Hindu Marriage Act"¹², any individual who also is designated a Hindu under Section 1 and marry during the life of the first husband/wife is punishable underneath the IPC¹³.

Ranganath Parmeshwar v. Kulkarni and others found that "if H and W were residing as married couple, then except in the lack of facts to that regard, a reasonable prejudice that the marriage between them was genuine would exist¹⁴."

2.3 "LEGAL MARRIAGE"

Section 7 of the **Hindu Marriage Act, 1955** indicates so when any two Hindus solemnise their wedding after executing customary religious rites such as Prevalent, or the 7 steps that the newlywed and wife walk together before holy fire. When the seventh step is taken, a marriage is full and permanent¹⁵.

Section 13 of the **Hindu Marriage Act ,1955** states that any Hindu person can solemnise a second marriage if either of the partner has engaged in voluntary sexual intercourse with anybody but his or her spouse,

1. when the plaintiff is mistreated, or
2. When either partner has abandoned the plaintiff for a period of at least of not below 2 years.

When one of the spouses converts to some other faith and ceases to be a Hindu. When one of the spouses suffers from a mental condition or is mentally ill on a regular or irregular basis¹⁶.

As per **Section 13** of the **Hindu Marriage Act, 1955**, which discusses divorce, the foregoing conditions clearly speak for the reasons of separation, and the woman has given extra

¹² Hindu Marriage Act of 1955, §17, 1955,(India).

¹³ Hindu Marriage Act of 1955, §5, 1955,(India).

¹⁴ Ranganath Parmeshwar v. Kulkarni and ors.

¹⁵ Hindu Marriage Act of 1955, §7, 1955,(India).

¹⁶ Hindu Marriage Act of 1955, §17, 1955,(India).

exceptions, namely, the spouse has indeed been guilty of sexual assault, adultery, or obscenity¹⁷.

2.4 Under Special Circumstances

In case any man underhandedly initiates any ladies and gives her a conviction that she is legally hitched to him, with an aim to live together or to have sex with such lady. Here, such man will be rebuffed under Section 493 of Indian Penal Code with detainment of by the same token depiction for a term which might stretch out to 10 years and will likewise be at risk to fine. Thus, this marriage will be considered as a Mock Tr Invalid Marriage. In the above case, "Any Man" can take care of business whether wedded or unmarried. If a wedded man initiates a lady and wed her to give a conviction that the marriage is legal and to live together or have sex with him in that conviction then a lady can record a case under Section 493 of Indian Penal Code¹⁸.

- If such wedding service is going through insincerely or with a false aim and such man has information that this marriage isn't legitimate, then, at that point, he will be rebuffed with detainment of one or the other depiction for a term which might stretch out to seven years and will likewise be responsible to fine.

Essential Ingredients:

- Duplicity or deceitful Intention
- Causing of deception

2.5 "BIGAMY":

It was a popular activity in Vedic Period. A monarch marries multiple ladies in order to strengthen his relationship with other leaders and increase their realm. India is a big nation with many diverse faiths, castes, and beliefs. Various religions have their own set of rules that they follow. The Indian Penal Code prohibits bigamy, however it does not qualify as an offence until and until the personal law allows people to have polygamy marriages. If personal law

¹⁷ Hindu Marriage Act of 1955, §13, 1955,(India).

¹⁸ Indian Penal Code, 1860, §493, 1860,(India).

stipulates for the consequence of Bigamy or unlawful Bigamy, an individual can be found to be guilty of Bigamy¹⁹.

Bigamy is stated in **Section 494** of the **Indian Penal Code**, which stipulates that whomever marries another individual, if the previous husband is still alive, commits bigamy. As a result, such a wedding is invalid and thus should be penalised for such a crime²⁰.

In India, the status and situation of the second wife are as follows:

This is an undeniable reality that the word "second wife" has a societal connotation. In the viewpoint of Hindu culture, the second wife is not treated the same way as the first wife. Although it is not assigned any beneficial interpersonal significance, it also lacks any legal standing. Woman in second marriages are deceived on and do not have much security under Indian law. Second wives do not have official status. Nonetheless, victims of bigamy still can seek support from the courts²¹.

“Bigamy Penalty in India”

Bigamy is a non-criminal offence in India. If the act is committed under Section 494 of the IPC, it is courageous and brave and upsides and downsides if the Court grants consent. Bigamy is punishable by imprisonment for a maximum of seven years, a fine, or both in some situations. If the individual accused with bigamy has performed the second marriage while hiding the fact of the prior marriage, he faces up to ten years in jail, a fine, or both. Such an offence under Section 495 is not binding²².

2.6 “LEGAL PROTECTION FOR THE SECOND WIFE”

There seem to be no provision for the second spouse. The second wife has no legal rights because of second marriage is regarded null and invalid. However, she has many options for suing her husband, which are as follows:

¹⁹ Apoorva Begani, *rights of second wife under Hindu Law*, (2020).

²⁰ Indian Penal Code, 1860, §494, 1860, (India).

²¹ Vijendra Kumar, *Bigamy and Hindu Marriage: A socio-legal study*, (2017).

²² Sneha Mahawar, *an examination of bigamy under the Hindu Marriage Act, 1955*, (2020).

- **Cheating:**

Woman can suit for cheating under **Section 495** of the '**Indian Penal Code**', which stipulates that whomever commits the offence of marrying someone without revealing the fact of his/her second wife is punished by imprisonment for up to 10 years' imprisonment. A second wife may submit a petition for infidelity and bigamy, and the state can order the marriage to be dissolved²³.

- **Property Rights of the Second Wife**

As per customary, the second marriage is void, unless such marriage falls within the exceptions set out in section 494 of the Indian Penal Code. The second wife has no rights that the first wife normally has. But lawmakers should enlighten these laws because there is social stigma on these women and they face many problems. Society does not support these women. Their own families do not treat them well. They do not support them and therefore feel powerless in such circumstances. There must be some sort of law that clearly states second wives' property rights so that she may live a healthy life and thrive. The legislation must define any specific share of his property of men, whether ancestral or identity, to the second wife so that she has a shelter and may spend her life with the bare essentials²⁴.

- **Maintenance of Second Wife**

There is no mechanism in the Hindu Marriage Act for a second wife to receive sustenance unless its second marriage falls under the exemption provided in Section 494 of the Indian Penal Code. The second wife must be paid maintenance because, as I previously indicated, community does not accept such females and does not allow them to live quietly. A number of females suffer from mental health issues and attempt suicide cause they are unable to cope with the pressures that society places on them. The court has to interpret the laws and allow the maintenance of the second wife, even if the marriage is void with a few exceptions.

In *Rajesh Bai v. Shantabai*, that "a woman whose marriage is void by the existence of another wife is entitled to alimony under this Section Act", 1956 (HAMA) ". According to this, the

²³ Indian Penal Code, 1860, §495, 1860, (India).

²⁴ Sneha Mahawar, *an examination of bigamy under the Hindu Marriage Act, 1955*, (2020).

High Court of Madras, in *Mani Bai v Jayantilal Dahyabhai*, "claims that under Section 18 HAMA the second wife can claim separate residence and maintenance under this law"²⁵ .

- **Property rights of children from void marriage**

When the marriage is void and the children were born from that marriage, it is very difficult to support those children. The legality of such children is lacking. The second wife has no right to receive support from a void marriage. Hence, Article 16 of the Hindu Marriage Law states that any child born from a void marriage is legitimate, then the child has the right to have equal shares in the property of his / her mother / father. As a result, Section 16 of the Hindu Marriage Act provides that if a child is born from a relationship or marriage, the child is entitled to equal shares in the property of their mother/father. This clause also applies to children born as a result of a live-in relationship. Children who are born from a void marriage have the same rights as children born from the first wife in self-acquired assets of their mother's/property or father's. A kid born from an invalid marriage, on the other hand, cannot receive ancient joint family holdings ²⁶.

2.7 CONCLUSION:

India is a large and varied country. The number of crimes perpetrated, particularly in marriage, is rising on a daily basis. A legislation or text does not specify the rights of a second wife. It is an opportune time to increase liberties and consider the women who suffer greatly in such relationships. Presently women are suffering greatly as a result of such fake or unethical marriages. Such weddings are invalid in India, and such ladies have no legal standing to sue the individual with whom the wedding is conducted. There is no support for second wives, although their children can inherit self-acquired property from their mothers or father's estate. They are unable to inherit the joint country estate. Legislators must consider it and get some legal protection to the ladies of such empty marriages. With the societal shame linked to second wife and the gaps in the legislation for their security, these woman are not being properly cared for. These women suffer for millennia with the terrible sorrow of being deceived on in a marriage and having no legal rights to defend them. It is critical that legislators investigate their

²⁵ Apoorva Begani, *rights of second wife under Hindu Law*, (2020).

²⁶ Hindu Marriage Act of 1955, §16, 1955,(India).

rights and enact tangible legislation to protect these women from the practise of bigamy in India.

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