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## **BIGAMY: AN INDIAN LEGAL CONUNDRUM**

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### **ABSTRACT**

Bigamy, an ancient practice of having multiple spouses is considered a crime in India, with a few exceptions. India being home to 6 major religions of the world, strives to balance secularism on the one hand, and Personal Laws of each religion on the other. Though outlawed by most religions, there are many different approaches to prevent or deal with bigamy among the numerous Personal Laws. In the absence of a common matrimonial law for people belonging to diverse religions, the legal position on bigamy and its effect on marriages is a complex conundrum deserving a detailed analysis. Bigamy, as a criminal offense, is still prevalent in India and has many social and legal complications associated with it. This warrants a clear exposition of the anti-bigamy law as it stands today and the need for reform in the interest of public order and human rights.

**Keywords:** bigamy, polygamy, Section 494-495 of Indian Penal Code, 1860, Section 17 of Hindu Marriage Act, 1955, Uniform Civil Code, personal laws on bigamy, Sarla Mudgal Vs Union of India, and other judgments

## INTRODUCTION

Originating in the 14<sup>th</sup> century, bigamy is derived from the Latin bi meaning “two” and Greek gamia meaning “marriage”<sup>1</sup>. It is an offence defined in law as- “the crime of marrying someone while still legally married to someone else”<sup>2</sup>. Polygamy is the offense of having several and specifically more than two spouses at one time<sup>3</sup>. Bigamy committed by a man is called “Polygyny” while “Polyandry” is bigamy committed by a woman.

A Study<sup>4</sup> based on the NFHS-5 data demonstrates that the pervasiveness of polygynous marriages in India has shown a declining trend from 2005-06 at 1.9% to 1.4% in 2019-2020. Based on religion, the data shows that cases are most common among Muslims at 1.9%, followed by others at 1.6% and Hindus at 1.3%. The data reveals that the practice of polygynous marriage was higher among the poor, illiterate, uneducated, and rural older women. The Survey finds that the practice is more common in north-eastern and southern. Among caste groups, polygynous marriages were most prevalent among the Scheduled Tribes compared to other groups.

## LEGAL PROVISIONS ON BIGAMY

In India, bigamy is a criminal offense with certain exceptions. Different religions have differing provisions regarding Bigamy, the position of each is elaborated later. Being home to 6 major religions of the world, including Hinduism, Buddhism, Sikhism, Jainism, Christianity and Islam, and Zoroastrian, matrimonial disputes in India are governed by the personal laws of each religion. With increasing rates of inter-faith marriages and conversions among married couples, confusion on the application of the law is on the rise.

The Indian Law on bigamy has evolved tremendously from ancient times through British Rule and finally post-independence. While we inherited the anti-bigamy provisions in the Indian Penal Code (the IPC) from the British legislators, most Personal Laws from before the independence era have been amended. Bigamy is a crime in India and bigamous marriages are

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<sup>1</sup>Merriam-Webster Dictionary, bigamy, <https://www.merriam-webster.com/dictionary/bigamy#:~:text=law%20%3A%20the%20act%20of%20entering,was%20accused%20of%20bigamy>, (last visited May 25<sup>th</sup>, 2023).

<sup>2</sup> Ibid.

<sup>3</sup> Merriam-Webster Dictionary, polygamy, <https://www.merriam-webster.com/dictionary/polygamy> (last visited May 26<sup>th</sup>, 2023).

<sup>4</sup> Harihar Sahoo, R. Nagarajan and Chaitali Mandal, Polygyny in India: Levels and Differentials, IIPS Research Brief, Pg 2, 2022.

generally outlawed with a few exceptions. This research shall divide the laws on bigamy into 2 categories, Criminal Law and Civil Law for the sake of convenience.

The declining, yet continuing prevalence of this practice among the population in India, aided and abetted by the discord among the Personal Laws of each religion, deserves a clear and concise exposition.

## **I. CRIMINAL LAW**

### **INDIAN PENAL CODE, 1860**

Bigamy is a crime in India and the main provisions penalizing bigamy are specified in Chapter XX titled- Offences relating to marriages, under Sections 494<sup>5</sup> and 495<sup>6</sup> of the Indian Penal Code (IPC). Dealing with what would and would not constitute bigamy, Section 494<sup>7</sup> of IPC reads as follows-

“Section 494. Marrying again during the life-time of husband or wife.

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception: This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is

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<sup>5</sup> Pen. Code, § 494.

<sup>6</sup> Pen. Code, § 495.

<sup>7</sup> Pen. Code, § 494.

contracted of the real state of facts so far as the same are within his or her knowledge.”

And, dealing with cases where bigamy is committed along with concealment of earlier marriage to the spouse from subsequent marriage, Section 495<sup>8</sup> of the IPC reads as follows-

“Section 495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

Whoever commits the offense defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

#### **NATURE OF OFFENCE:**

The offense under Section 494<sup>9</sup> is non-cognizable, bailable, and compoundable with the permission of the Court before which the case is pending trial and is triable by a Magistrate of the first class. However, only in Andhra Pradesh, this offense is cognizable and non-bailable as per the State Amendment.

The offense under Section 495<sup>10</sup> is non-cognizable, bailable, non-compoundable, and is triable by a Magistrate of the first class, except Andhra Pradesh post-State Amendment, where it is cognizable and non-bailable.

#### **ESSENTIALS TO PROVE BIGAMY**

From Sections 494<sup>11</sup> and 495<sup>12</sup> of the IPC and judicial pronouncements including the Sarla Mudgal case<sup>13</sup>, the essential ingredients for proving bigamy are as follows:

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<sup>8</sup> Pen. Code, § 495.

<sup>9</sup> Pen. Code, § 494.

<sup>10</sup> Pen. Code, § 495.

<sup>11</sup> Pen. Code, § 494.

<sup>12</sup> Pen. Code, § 495.

<sup>13</sup> Sarla Mudgal & Ors. v. Union of India & Ors., (1995) AIR SC 1531 (India).

### **A. Spouse of First Marriage is Alive:**

Section 494 of IPC<sup>14</sup> uses the words “Marrying again during the **lifetime** of husband or wife”, signifying that the spouse of the accused from the first marriage must be alive during the subsequent marriage. Hence, any widower or widow marrying again, post the death of their spouse shall not be guilty of bigamy under this Section. Furthermore, as per the Exception to this Section, when a spouse has been continually absent for seven years and has not been heard of as alive by the other, the other spouse shall not be guilty of bigamy on remarrying, provided they have informed the subsequent spouse about these facts to the extent of their knowledge. Section 494 of IPC<sup>15</sup> read with Section 108<sup>16</sup> of the Evidence Act imposes the burden on the person claiming to be alive, to prove their spouse’s knowledge of their survival or continued existence. These concepts as stated above are carried over to Section 495 of IPC as well.

### **B. Subsequent marriage is solemnised during the existence of the First Marriage:**

The most important ingredient for the establishment of bigamy is the existence or subsistence of the first marriage during the solemnisation of the subsequent marriage. This flows from the object to prohibit bigamy which is specifically marrying without dissolving the earlier marriage. The exception to Section 494<sup>17</sup> exempts cases where the first marriage has been declared void by a court of competent jurisdiction. This signifies that the subsequent marriage contracted by a party, after obtaining a decree of divorce, nullity, or dissolution of the first marriage, shall not be termed a bigamous marriage. For a claim of bigamy to lie, the complainant must prove that the first marriage was still subsisting in the eyes of the law at the time of solemnisation of the second marriage. If the complainant fails to prove this, the second marriage will not be treated as bigamy and the party remarrying shall not attract punishment under IPC. These aspects are carried over into Section 495.

Furthermore, some personal laws including the Hindu Marriage Act<sup>18</sup>, Special Marriage Act<sup>19</sup>,

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<sup>14</sup> Pen. Code, § 494.

<sup>15</sup> Ibid.

<sup>16</sup> Indian Evidence Act, § 108, No. 1, Acts of Parliament, 1872 (India).

<sup>17</sup> Pen. Code, § 494.

<sup>18</sup> Hindu Marriage Act, § 15, No. 25, Acts of Parliament, 1955 (India).

<sup>19</sup> Special Marriage Act, § 30, No. 43, Acts of Parliament, 1954 (India).

Parsi Law<sup>20</sup>, and Christian Law<sup>21</sup> provide for an additional waiting period even after the divorce, nullity, or dissolution decree is obtained, only after the expiry of which either party may marry again. This is to provide scope for an appeal, which may overturn the previous judgment declaring the end of the former marriage. On the expiry of such period or the decision of appeal, if any is presented, the dissolution of the former marriage becomes final, it shall be open to either party to legally marry again without attracting the bigamy-related provisions. Pending this waiting period or decision in appeal if any, any marriage which is undertaken by either party, may expose said party to liability for bigamy. Muslim Law requires a Muslim woman after divorce to wait till the expiry of the period of *idda*, during which marrying again is prohibited. This, however, is to establish paternity of the children. Under Sunni Law, such a marriage would be irregular, and under Shia Law, it would be considered wholly void.

Hence, the second marriage during the subsistence of the 1<sup>st</sup> marriage or during the waiting period as provided under the above-mentioned Laws may be declared a bigamous marriage if other ingredients are proven to exist.

### **C. Second marriage is void due to subsistence of first according to the law applicable:**

This ingredient requires that the law governing the marriage of the person remarrying must have a provision barring bigamy. Hence, personal law or civil secular law dealing with marriages and divorces must be read with Sections 494<sup>22</sup> and 495<sup>23</sup> of the IPC. For example, whether a Hindu male has committed bigamy or not, shall be determined based on the Hindu Law. Some personal laws and customary practices permit limited bigamy in India. Muslims in India and some Tribals under Hindu Law are exempted from liability for bigamy. Hence, their subsequent marriage during the lifetime of a spouse shall not attract punishment for bigamy. These aspects are dealt with in greater detail hereunder in the respective personal law and the secular law subheadings.

### **D. Both first and second marriages are valid independently:**

It is pertinent to note that the Complainant must prove the validity of the first marriage, that

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<sup>20</sup> Parsi Marriage and Divorce Act, § 48, No. 3, Acts of Parliament, 1936 (India).

<sup>21</sup> Divorce Act, § 57, No. 4, Acts of Parliament, 1869 (India).

<sup>22</sup> Pen. Code, § 494.

<sup>23</sup> Pen. Code, § 495.

the Accused married again during the existence of the first marriage, and the validity of the second marriage. If the first marriage is not valid in the eyes of the law, due to the reasons declared under the relevant personal law, the subsequent marriage cannot be termed as a bigamous marriage and the accused would not be held liable for bigamy. For instance, Sections 5<sup>24</sup>, 7<sup>25</sup>, and 11<sup>26</sup> of the Hindu Marriage Act read together, provide for pre-requisites of valid marriages, in the absence of which the marriage is void or voidable. In the event, the conditions mentioned in those sections are not met, the marriage would be invalid and no bigamy would have been committed, if either party married again. Similarly, for it to be termed bigamy, the subsequent marriage must also be valid on its own merits. If the solemnisation of such marriage is incomplete or necessary ceremonies are not performed as required by the law governing them, this would not be a valid marriage, and hence no bigamy is committed thereby.

## II. CIVIL LAW

Apart from Criminal Law, Civil Law also contains anti-bigamy provisions in India. Hence, not only is bigamy a crime, but civil law nullifies the bigamous marriage, protects the spouse, and includes bigamy as a ground for divorce also. In India, marriage, inheritance, and succession matters are determined by the personal laws of the parties involved. To provide for couples of inter-faith and/or differing citizenships, the Parliament passed some secular laws like the Special Marriage Act<sup>27</sup> which are also against Bigamy. Most religions in India have anti-bigamy provisions, with some levels of modifications or differences. They deserve a detailed study as given below.

### A. SECULAR LAW

#### **SPECIAL MARRIAGE ACT, 1954<sup>28</sup>:**

The Special Marriage Act under Section 4(a)<sup>29</sup> provides that “neither party has a spouse living” as one of the conditions for solemnisation of special marriages. Section 43 of the Act<sup>30</sup> states that every person already married under any law and who solemnises another marriage under

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<sup>24</sup> Hindu Marriage Act, § 5, No. 25, Acts of Parliament, 1955 (India).

<sup>25</sup> Hindu Marriage Act, § 7, No. 25, Acts of Parliament, 1955 (India).

<sup>26</sup> Hindu Marriage Act, § 11, No. 25, Acts of Parliament, 1955 (India).

<sup>27</sup> The Special Marriage Act, No. 43, Acts of Parliament, 1954 (India).

<sup>28</sup> Ibid.

<sup>29</sup> The Special Marriage Act, § 4(a), No. 43, Acts of Parliament, 1954 (India).

<sup>30</sup> The Special Marriage Act, § 43, No. 43, Acts of Parliament, 1954 (India).

this Act shall be deemed to have committed bigamy under the IPC and such subsequent marriage shall be void. Section 44<sup>31</sup> on the other hand declares any person already married under this Act and who contracts another marriage during the lifetime, under any law- to be bigamy under the IPC and such subsequent marriage to be void. Hence, the anti-bigamy provisions of this Act apply irrespective of the religion professed by either party provided either the first or subsequent marriage is solemnised under this Act. In both the cases of *Anwar Ahmed v. State of U.P.*<sup>32</sup> and *Radhika Sameena v. S.H.O., Habeeb Nagar Police Station, Hyderabad*<sup>33</sup>, a Muslim man who entered a second marriage under this Act was held liable for bigamy, even though he was otherwise exempted under Islamic Law. In *Anwar Ahmed v. State of U.P.*<sup>34</sup>, J. S.I. Jafri of the Allahabad High Court observed:

“Notwithstanding the fact that the personal law permits a Muslim male to contract four marriages, if a second marriage is contracted under the Special Marriage Act, 1954 vis-à-vis the fact that he has a legally wedded wife who has been married to him under the Mohammedan law, s. 494 has to claw at the erring male... Mohammedan law does not take preference over Special Marriage Act, 1954”<sup>35</sup>.

However, one of the drawbacks of this Act, as pointed out by the Law Commission Report<sup>36</sup> regarding bigamy is that there is a lack of clarity on the application of Section 44<sup>37</sup> on any pre-existing marriage solemnised as per customary rites which may be subsequently registered under Section 15<sup>38</sup> of this Act. However, the report rationalizes that the subsequent registration (under the Act) of a religious or customary marriage, converts the marriage into a civil marriage which implies the application of all the provisions of the Act including those related to bigamy.

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<sup>31</sup> The Special Marriage Act, § 44, No. 43, Acts of Parliament, 1954 (India).

<sup>32</sup> *Anwar Ahmed v. State of U.P.*, 1991 Cr LJ 717 (India).

<sup>33</sup> *Radhika Sameena v. S.H.O., Habeeb Nagar Police Station, Hyderabad*, (1997) Cr LJ 1655 (India).

<sup>34</sup> *Anwar Ahmed v. State of U.P.*, (1991) Cr LJ 717 (India).

<sup>35</sup> Ratanlal & Dhirajlal, *The Indian Penal Code*, 1001 (33<sup>rd</sup> ed., 2010).

<sup>36</sup> Law Commission of India, *Preventing Bigamy via conversion to Islam- A Proposal for giving Statutory Effect to Supreme Court Rulings*, 17-18, para 3, No. 227, 2009.

<sup>37</sup> The Special Marriage Act, § 44, No. 43, Acts of Parliament, 1954 (India).

<sup>38</sup> The Special Marriage Act, § 15, No. 43, Acts of Parliament, 1954 (India).



**FOREIGN MARRIAGE ACT, 1969<sup>39</sup>:**

This Act governs the matters arising out of the marriage between 2 Indians or between an Indian and a foreigner and contains anti-bigamy provisions. This Act has an equivalent provision under Section 4(a)<sup>40</sup> requiring “neither party to have a spouse living” at the time of the subsequent marriage. Sections 19(1) and (2)<sup>41</sup> declare the solemnisation of another marriage within or without India, during the subsistence of a marriage already solemnised or deemed to be so under this Act, as bigamy under the IPC and void. This Act too applies to all cases irrespective of the religion of the parties concerned.

**Effect of apostasy on marriage:**

Marriage subject to Special Marriage Act or Foreign Marriage Act shall remain valid irrespective of any one spouse converting to another religion. Under these circumstances, neither spouse may contract another marriage under any law without legally dissolving the earlier marriage, and the spouse of the Apostate is allowed to seek divorce on the grounds of a change of religion, as is similarly available under personal laws.

**B. PERSONAL LAWS****HINDU LAW:**

It must be pointed out that since ancient times in India, the practice of unrestricted bigamy by the Hindu male was legally permitted and practiced, which the later Muslim rulers and British did not reform for the larger part. The rare example of monogamy replacing bigamy can be seen in the Brahmosamajis<sup>42</sup> having an act to that effect for Bengal alone, passed in 1872. The unrestricted permitted polygyny was considered a danger to society. Hence, the Hindu Marriage Act<sup>43</sup> (HMA) was enacted which ended and abolished bigamy for Hindus, Buddhists, Sikhs, and Jains. However, as per Section 2(2)<sup>44</sup> of the HMA, the provisions of the Act shall

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<sup>39</sup>The Foreign Marriage Act, No. 33, Acts of Parliament, 1969 (India).

<sup>40</sup> The Foreign Marriage Act, § 4(a), No. 33, Acts of Parliament, 1969 (India).

<sup>41</sup> The Foreign Marriage Act, § 19(1) and (2), No. 33, Acts of Parliament, 1969 (India).

<sup>42</sup> Law Commission of India, Preventing Bigamy via conversion to Islam- A Proposal for giving Statutory Effect to Supreme Court Rulings, 23, para 2, No. 227, 2009.

<sup>43</sup> Hindu Marriage Act, No. 25, Acts of Parliament, 1955 (India).

<sup>44</sup> Hindu Marriage Act, § 4, No. 25, Acts of Parliament, 1955 (India).

not apply to Scheduled Tribes within the meaning of Article 366(25)<sup>45</sup> of the Constitution, unless specifically notified by the Government to the contrary.

Section 5(i)<sup>46</sup> of the HMA, specifies that “neither party having a spouse living at the time of the marriage” as a pre-requisite condition for a valid marriage. Section 5(i) read together with Sections 11<sup>47</sup> and 17<sup>48</sup> of the HMA implies that any marriage solemnized by any Hindu during the lifetime of their Hindu spouse shall be null and void and that such a person shall be liable under the IPC for bigamy.

### **Effect of Apostacy:**

Conversion of religion by either spouse is considered a ground for divorce open to the spouse of the apostate, under Section 13(1)(ii)<sup>49</sup> of HMA. Nothing in this act states that the conversion of one spouse to another religion automatically dissolves the marriage solemnized under the HMA. This was upheld by Supreme Court in the Sarla Mudgal case<sup>50</sup> as explained later.

### **CHRISTIAN AND PARSI LAW:**

Though the Christian religion is against bigamy, the Indian Christian Marriage Act<sup>51</sup> does not explicitly refer to cases of bigamy to be penalized under IPC. It however, requires the issuance of a notice of the intention of marriage and declaration of marital status by the parties to the marriage under Sections 12<sup>52</sup> and 17<sup>53</sup>, post compliance of which a Certificate of no impediments is issued under Section 18<sup>54</sup>. Section 60<sup>55</sup> mentions that a marriage of a native Christian can be certified without such compliances, provided “neither of the persons intending to be married has a wife or husband still living”. Section 4<sup>56</sup> read with Section 66<sup>57</sup> of the Act imply that any incomplete procedures or intentionally false oath, declaration, or notice given

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<sup>45</sup> India Const. art. 366, cl. 25.

<sup>46</sup> Hindu Marriage Act, § 5(i), No. 25, Acts of Parliament, 1955 (India).

<sup>47</sup> Hindu Marriage Act, § 11, No. 25, Acts of Parliament, 1955 (India).

<sup>48</sup> Hindu Marriage Act, § 17, No. 25, Acts of Parliament, 1955 (India).

<sup>49</sup> Hindu Marriage Act, § 13(1)(ii), No. 25, Acts of Parliament, 1955 (India).

<sup>50</sup> Sarla Mudgal & Ors. v. Union of India & Ors., (1995) AIR SC 1531 (India).

<sup>51</sup> Indian Christian Marriage Act, No. 5, Acts of Parliament, 1872 (India).

<sup>52</sup> Indian Christian Marriage Act, § 12, No. 5, Acts of Parliament, 1872 (India).

<sup>53</sup> Indian Christian Marriage Act, § 17, No. 5, Acts of Parliament, 1872 (India).

<sup>54</sup> Indian Christian Marriage Act, § 18, No. 5, Acts of Parliament, 1872 (India).

<sup>55</sup> Indian Christian Marriage Act, § 60, No. 5, Acts of Parliament, 1872 (India).

<sup>56</sup> Indian Christian Marriage Act, § 4, No. 5, Acts of Parliament, 1872 (India).

<sup>57</sup> Indian Christian Marriage Act, § 66, No. 5, Acts of Parliament, 1872 (India).

for entering the second marriage, shall be void and such person is liable under Section 193<sup>58</sup> of the IPC. A serious drawback of this Act is the lack of explicit applicability of the bigamy provisions of IPC.

Parsis are specifically prohibited from practicing bigamy under Section 4<sup>59</sup> of the Parsi Marriage and Divorce Act, which states that no Parsi (Converted person included) shall contract a marriage under the Act or any other law in the lifetime of their spouse, whether Parsi or not except after lawful divorce, nullity or dissolution of that marriage has occurred. Further, it states that such a marriage would be void. Section 5<sup>60</sup> of the Act states that whoever, being a Parsi contracts such a marriage, without a decree of divorce, nullity, or Dissolution, shall be subject to provisions of IPC on bigamy.

### **Effect of Apostacy:**

For Christians, the conversion of either spouse does not have any effect on the marriage, and bigamy provisions are still attracted.

It is pertinent to mention here that the Parsi Act is potentially the most inclusive of all possibilities of bigamy and covers even converts and non-Parsis, which are not contemplated in most other Personal Laws.

### **MUSLIM LAW:**

Unlimited and unrestricted polygyny was practiced amongst Muslims before the advent of the Prophet. For the sake of improvement of the status of women, Islamic law was amended to allow only limited polygamy by Muslim men and only on the condition of equal treatment or justice to co-wives. The Qur'an and other texts in India have been interpreted to allow Muslim men to have up to 4 wives. However, as per the Supreme Court in the Sarla Mudgal case<sup>61</sup>, this is not the correct interpretation of Islamic Law, and the current form of bigamy practiced by Muslim men of abandoning their first wife is not contemplated by Islamic Law. The Court cited a verse from Quran that advises men against polygamy since the capacity to do equal justice to co-wives is not possible even in the best scenario. However, Muslim women are not

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<sup>58</sup> Pen. Code. § 193.

<sup>59</sup> The Parsi Marriage and Divorce Act, § 4, No. 3, Acts of Parliament, 1936.

<sup>60</sup> The Parsi Marriage and Divorce Act, § 5, No. 3, Acts of Parliament, 1936.

<sup>61</sup> Sarla Mudgal & Ors. v. Union of India & Ors., (1995) AIR SC 1531 (India).

permitted to indulge in bigamy, and in the event of divorce, they are required to wait for 3 months or the idda period to be completed before marrying again. The Dissolution of Muslim Marriages Act under Section 2(viii)(f) allows Muslim wives to sue for divorce on the grounds of unequal treatment of wives by the husband.

It is pertinent to mention that many Islamic nations have either completely banned bigamy or restricted the practice. However, the same is not possible in India due to the potential of communal hatred flaring up. Till Muslim law continues to permit bigamy, the potential of misuse by non-Muslims converting to Islam only to evade the provisions on bigamy under their respective personal law and IPC, shall remain if not increase.

### **Effect of apostasy:**

Renunciation of Islam or conversion to any other religion by a Muslim wife under Islam, does not automatically dissolve the marriage<sup>62</sup>. Anyone who marries again post such a conversion shall be liable for bigamy. The exception to this rule is that, if the marriage was contracted by a female converted to Islam who later reverts to their original faith, the marriage would be automatically dissolved and hence, no bigamy would be committed.

## **CHALLENGES IN THE IMPLEMENTATION OF LAW**

### **A. SOLEMNISATION OF MARRIAGE:**

A major point of confusion arose out of the concept of ceremonies as specified in Section 7<sup>63</sup> of HMA on whether proof of the completion of Saptapadi was necessary to prove bigamy. Since being prohibited, the bigamous marriage is generally solemnised in secrecy or in the absence of complete rituals to avoid penal liability for bigamy. To this point the Andhra Pradesh High Court in Padullapath Mutyala v. Subbalakshmi<sup>64</sup> held in 1962, that courts must not insist on conclusive proof of completion of ceremonies and that due to the misuse of such provision, an amendment is necessary. However, this position was overturned by the Supreme Court in Bhaurao v. State of Maharashtra<sup>65</sup> stating that if the ceremonies necessary as per

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<sup>62</sup> Dissolution of Muslim Marriages Act, § 4, No. 8, Acts of Parliament, 1939.

<sup>63</sup> Hindu Marriage Act, § 7, No. 25, Acts of Parliament, 1955 (India).

<sup>64</sup> Padullapath Mutyala v. Subbalakshmi, (1962) AIR AP HC 311 (India).

<sup>65</sup> Bhaurao v. State of Maharashtra, (1965) AIR SC 1564.

customs are not completely performed, then the second marriage would not be considered a marriage in the eyes of the law, due to which no bigamy would be committed.

## **B. DELIBERATE CONVERSIONS TO ISLAM**

In India, our laws on aspects uniformly prohibit bigamy for Hindus, Christians, Parsis, and Jews while Muslim Law permits polygyny to a limited extent. Misusing this difference in the Personal Laws, it has become a common practice for non-Muslim men<sup>66</sup> to convert for the sole purpose of remarrying without incidental culpability under the IPC. Post solemnization of a second marriage, many even revert to their original faith, having never truly converted to Islam. It has been rationalized by the Law Commission Report<sup>67</sup> that such conversion to remarry without any true belief in the Islam religion is repugnant to the Islamic religion and Law itself. Further, the report quoted the Prophet's rule for judging conversions based on the underlying intention which motivated such conversion. Moreover, Islamic Law in India is interpreted to allow up to four marriages on the condition that the husband can provide equal treatment and affection to the wife. Hence, a non-Muslim converting with the motivation to dupe or desert his first wife, with no genuine affiliation with or belief in the Islamic faith, is repugnant and contradictory to Islamic Law.

The Law Commission Report<sup>68</sup> threw the spotlight on the cases of a prominent politician and army physician who had converted to Islam to remarry and had committed bigamy. It mentioned that there are many unnoticed instances of non-Muslim men converting to Islam for the sole purpose of evading the Law, duping their first wives, and making a mockery of the Constitutional right to freedom of conscience. To curb this practice and misuse, mostly by non-Muslim men, the Supreme Court has taken up the role of a protector and shielded the wives – first and second, from the legal complications emanating from bigamy.

## **C. NO COMPULSORY REGISTRATION**

In India, it is not compulsory to register marriages under Hindu Law. This is a glaring problem that needs to be rectified especially considering the difficulty to prove bigamy if the marriage

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<sup>66</sup> Law Commission of India, Preventing Bigamy via conversion to Islam- A Proposal for giving Statutory Effect to Supreme Court Rulings, Page 33, para 1, No. 227, 2009.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

(first or subsequent) itself is not registered. In *Seema v. Ashwani Kumar*<sup>69</sup>, the Supreme Court stated that compulsory registration of marriages can prevent or check bigamy. This has been reiterated by the Law Commission Report<sup>70</sup> which recommends mandating compulsory registration of marriages vide amendment of Registration of Births and Deaths Act, 1969 and personal laws to that extent, penalizing the non-registration of marriages, to avoid bigamous marriages within and outside the scope of the religion based Personal Laws.

#### **D. LIVE IN RELATIONSHIPS**

The trend of increasing acceptance of live-in relationships in India<sup>71</sup>, in the absence of an equal rate of increase in awareness of legal positions and rights in such arrangements, is disturbing. However, it is pertinent to note that maybe, the acceptance and prevalence of Live-in Relationships is possibly the cause for the declining trend seen in the cases of bigamous marriages as revealed by the study<sup>72</sup> based on the National Family Health Survey-5<sup>73</sup> survey data. Cases of incomplete or defective performance of marriages may be considered as a live-in relationship, which may despite increased acceptance, lead to adversity for the women in such relations concerning inheritance, succession, pension, insurance, and other benefits.

### **EFFECT OF BIGAMY**

#### **A. ON THE 1<sup>ST</sup> MARRIAGE**

As mentioned earlier, under IPC provisions and personal laws, legally bigamy has no impact on the first marriage. The first marriage continues to exist and remains valid. It is, however, a ground on which the first spouse may sue the bigamous party under the laws applicable to them. However, the implications of bigamy on the family and social ties are immeasurable. Generally, Indian society shuns bigamists except for certain communities where it is a justified practice on specific grounds.

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<sup>69</sup> *Seema v. Ashwani Kumar & ors.*, (2006) 2 SCC 578 (India).

<sup>70</sup> Law Commission of India, Compulsory Registration of Marriages, 34- 38, No. 270, 2017.

<sup>71</sup> The New Indian Express, <https://www.newindianexpress.com/lifestyle/2018/may/20/more-than-80-per-cent-indians-support-live-in-relationship-1817174.html>, (last visited May 26th, 2023).

<sup>72</sup> Harihar Sahoo, R. Nagarajan and Chaitali Mandal, Polygyny in India: Levels and Differentials, IIPS Research Brief, Pg. 1, 2022.

<sup>73</sup> Ministry of Health & Family Welfare, National Family Health Survey (NFHS-5) 2019-21, 2022.

## B. ON THE SUBSEQUENT MARRIAGE

As seen above, under Criminal and Civil Law, bigamous marriages are void and are not even considered to exist in the eyes of the law. This has implications for the rights of the second “spouse” and child arising out of bigamy.

1. On the rights to maintenance of second wife: Since the second marriage is not a marriage under the law, technically the second wife is not entitled to be maintained under Personal Law. However, under Section 125 of Cr. P.C.<sup>74</sup>, in *Pyla Mutyalamma v Pyla Suri Demudu*<sup>75</sup>, the Supreme Court held that the second wife shall also be entitled to maintenance when deserted by the husband even if the marriage is not a valid one. The strength of proof of marriage required under the Section 125<sup>76</sup> is lesser than that asked under personal law. The Court also observed that law shall presume the existence of a marriage till the contrary is proven where the parties have cohabited for long years as husband and wife.
2. On rights to succession of second wife/spouse and child: Generally, under Hindu law, the second wife has no share in the property of the husband but the children born out of such bigamous marriage are entitled to a share since Section 16(3) of HMA<sup>77</sup> does not restrict the rights of illegitimate children. This position has been reiterated by the Supreme Court in *Revanasiddappa v. Mallikarjun*<sup>78</sup> (still pending final decision).

## MEASURES NEEDED TO PREVENT BIGAMY

### A. LAW COMMISSION REPORT<sup>79</sup>

In the wake of the Supreme Court judgments of *Sarla Mudgal*<sup>80</sup> and *Lily Thomas*<sup>81</sup>, the Law

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<sup>74</sup> Code Crim. Proc. § 125.

<sup>75</sup> *Pyla Mutyalamma @ Satyavathi v Pyla Suri Demudu & Anr*, (2012) Cr LJ 660 (India).

<sup>76</sup> Code Crim. Proc. § 125.

<sup>77</sup> Hindu Marriage Act, § 16(3), No. 25, Acts of Parliament, 1955 (India).

<sup>78</sup> *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1.

<sup>79</sup> Law Commission of India, Preventing Bigamy via conversion to Islam- A Proposal for giving Statutory Effect to Supreme Court Rulings, 40-42, No. 227, 2009.

<sup>80</sup> *Sarla Mudgal & Ors. v. Union of India & Ors.*, (1995) AIR SC 1531 (India).

<sup>81</sup> *Lily Thomas, Etc. Etc v. Union of India & Ors.*, (2000) AIR SC 1650 (India).

Commission recommended the insertion of additional provisions in personal laws to prevent their misuse for evading liability for bigamy, namely:

1. Insertion of Section 17-A in the Hindu Marriage Act, 1955 to prohibit any person married under this Act from marrying again even after changing their religion unless the first marriage is dissolved or declared null and void, and if such marriage is contracted, it shall be null and void and attract liability under Sections 494<sup>82</sup> and 495<sup>83</sup> of the IPC.
2. Similar provisions as above be inserted in Christian Marriage Act 1872<sup>84</sup>, the Parsi Marriage and Divorce Act<sup>85</sup>, and the Dissolution of Muslim Marriages Act 1939 (the DMMA)<sup>86</sup>.
3. Deletion of Proviso to Section 4 of the DMMA<sup>87</sup> which states that the Section does not apply to a married woman originally married to a non-Muslim if she reverts to her original faith.
4. Insertion of the provision in the Special Marriage Act, 1954<sup>88</sup> stating that if an existing marriage, by whatever law it is governed, becomes inter-religious due to a change of religion by either party, it will henceforth be governed by the provisions of the Special Marriage Act including its anti-bigamy provisions.
5. Making Bigamy under Sections 494<sup>89</sup> and 495<sup>90</sup> of IPC cognizable through amendment of the Code of Criminal Procedure of 1973.

It is humbly submitted that these provisions must be materialized at the earliest for the sake of justice and equity.

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<sup>82</sup> Pen. Code. § 494.

<sup>83</sup> Pen. Code. § 495.

<sup>84</sup> Indian Christian Marriage Act, No. 5, Acts of Parliament, 1872 (India).

<sup>85</sup> Parsi Marriage and Divorce Act, No. 3, Acts of Parliament, 1936 (India).

<sup>86</sup> Dissolution of Muslim Marriages Act, No. 8, Acts of Parliament, 1939.

<sup>87</sup> Dissolution of Muslim Marriages Act, § 4, No. 8, Acts of Parliament, 1939.

<sup>88</sup> Special Marriage Act, No. 43, Acts of Parliament, 1954 (India).

<sup>89</sup> Pen. Code. § 494.

<sup>90</sup> Pen. Code. § 495.



**B. COMPULSORY REGISTRATION OF MARRIAGES.****C. CUSTOMARY PRACTICES REMOVED FROM HMA-  
STREAMLINED**

It is humbly submitted that, generally bigamous marriages are purposely performed secretly or in a token manner, which may not be considered as a perfectly valid marriage in the eyes of law to evade liability. In such circumstances, imposing the added burden on the first wife or husband to prove the validity of the second or subsequent marriage is harsh. Moreover, not every bride or groom is aware of all the necessary rituals required to be performed and such a provision is being misused by miscreants to evade the law.

**D. ALL TRIBALS BE NOTIFIED FOR PURPOSES OF HMA**

All Scheduled Tribes must be notified by the Government of India to include them within the ambit of the HMA<sup>91</sup> and make all the bigamy-related provisions applicable to them. This is especially important due to the high prevalence rate of polygyny amongst the tribal population in India<sup>92</sup>.

**E. CONVERT IT TO A COGNIZABLE OFFENSE**

Excepting Andhra Pradesh which passed a State Amendment to IPC<sup>93</sup> to make offenses under Section 494 and 495 cognizable offenses, they continue to be non-cognizable in the rest of India.

**F. LAWS ON CONVERSION AND HUMAN RIGHTS FOR WOMEN**

The Supreme Court in *Sarla Mudgal Case*<sup>94</sup> suggested the enactment of a comprehensive law called the Conversion of Religion Act, with the object to curb the abuse of religion and prohibit every citizen, irrespective of their religion but who converts, from marrying again until he has divorced his first wife. The Court in this case<sup>95</sup> also recommended the Government to entrust the Law Commission to examine in consultation with the Minorities Commission, the matter

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<sup>91</sup> Hindu Marriage Act, § 2(2), No. 25, Acts of Parliament, 1955 (India).

<sup>92</sup> Harihar Sahoo, R. Nagarajan and Chaitali Mandal, *Polygyny in India: Levels and Differentials*, IIPS Research Brief, Pg. 3, 2022.

<sup>93</sup> State Amendment- Andhra Pradesh, No. 2, Act of Andhra Pradesh, 1992 (India).

<sup>94</sup> *Sarla Mudgal & Ors. v. Union of India & Ors.*, (1995) AIR SC 1531 (India).

<sup>95</sup> *Ibid*.

of rationalization and harmonization of personal laws of minorities to bring them at par with the modern ideology of human rights for women.

### G. UNIFORM CIVIL CODE (THE UCC)

Imposing a duty on the State under Article 44<sup>96</sup> of the Constitution, to secure for the citizens a uniform civil code throughout the territory of India, the framers envisioned for India a uniform law governing personal and family matters. The debate on whether the UCC should be part of the Directive Principles of State Policy or Fundamental Rights raged on in the Constituent Assembly, finally deciding in favour of the DPSP. However, it is generally argued that the Constitutional guarantee of Freedom of Religion under Article 25<sup>97</sup> on the right to practice, profess and propagate religion runs counter to the Right to Equality, under Article 14<sup>98</sup>. Considering the cases of many men duping women, in India it is becoming a case of exploitation of law against the human rights of women more than one of Freedom of Religion. Every woman has the right to be treated equally in law and such practices are derogatory to the position of women in our society and must be completely prevented. Women, belonging to any religion have a right to be treated equally among themselves and with dignity as it flows from reading Article 14<sup>99</sup> with Article 21<sup>100</sup>. Loopholes in the law of any kind must be avoided for the sake of improving the position of deserted and abandoned first wives and socially shunned second wives.

Despite the codification of the Hindu law in the 1950s, many provisions were not uniformly followed in all of India, with Tribals being left out<sup>101</sup> and many provisions provided for the accommodation of contradicting customs. Even the Shariat Act of 1937<sup>102</sup> was not uniform since it did not originally apply to Jammu and Kashmir and even now does not apply to sects of Muslims whose customary laws were differing from the Islamic Law practiced and followed by the rest of the Muslims in India. The demand for UCC by the Supreme Court is traced back to its 1985 judgment in *Mohd. Ahmed Khan vs Shah Bano Begum*<sup>103</sup> while declaring CrPC to

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<sup>96</sup> India Const. art 44.

<sup>97</sup> India Const. art 25.

<sup>98</sup> India Const. art 14.

<sup>99</sup> Ibid.

<sup>100</sup> India Const. art 21.

<sup>101</sup> Hindu Marriage Act, § 2(2), No. 25, Acts of Parliament, 1955 (India).

<sup>102</sup> The Muslim Personal Law (Shariat) Application Act, No. 26, Act of Parliament, 1937 (India).

<sup>103</sup> *Mohd. Ahmed Khan vs Shah Bano Begum*, (1985) 2 SCC 556.

be secular and applicable to Muslims as well.

In the *Sarla Mudgal* case<sup>104</sup>, the Supreme Court observed that the desirability of a uniform code can hardly be doubted in the light of many Hindus converting to Islam solely to escape liability for bigamy. The Court drew attention to the practice in many Islamic countries like Syria, Tunisia, Morocco, Pakistan, Iran, and others where polygamy is either totally prohibited or severely restricted. The Hon'ble Court aptly held that "Freedom of religion is our culture, religious practices which are violative of human rights, dignity, suffocating other civil and material freedoms, are not out of autonomy but an oppression". Hence, the Court held that- "Therefore, a unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity, beginning with the rationalization of laws of minorities and harmonizing it with the rest of the country's laws."

## CONCLUSION

In the light of landmark positions taken by the judiciary as mentioned above and because of the continued prevalence of these practices, it is the humble opinion of the researcher to enact a uniform civil code. This would remove the confusion and vacuum created by differing Personal laws. Everybody in India, irrespective of their religion, deserves a life of dignity and this long-lasting social evil must be eradicated from the face of the earth, finally. The debate on the Right to Religious Freedom cannot come at the cost of the Right to Life and Liberty, to Equality. The misuse of religious freedoms in India to convert, to circumvent the law is blatant ridicule upon ridicule being imposed on the unsuspecting. A liberal interpretation of the law for holding the bigamists liable and compassion for the duped is necessary. Education and awareness of the law on bigamy and rights among women and men in rural India must be spread to bring about a revolutionary level of improvement in the trend in society.

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<sup>104</sup> *Sarla Mudgal & Ors. v. Union of India & Ors.*, (1995) AIR SC 1531 (India).