International Journal of Advance Research in Science and Engineering
Volume No. 13, Issue No. 02, February 2024
www.ijarse.com
IJARSE
ISSN 2319 - 8354

THE ROLE OF LEGISLATION IN ADDRESSING OFFENSES RELATED TO BIGAMY, FOCUSING ON THE LAWS OF INDIA

Prof. (Dr.) Anil Kumar Jeph

Department of law

Government P.G. Law College, Alwar Rajasthan

Email-akj071967@gmail.com

ABSTRACT

Bigamy is the practice of entering into a marriage with one person while continuing to be legally married to another. Bigamy can be defined in two ways: polygyny, or marrying more than one girl, and polyandry, or a woman marrying more than one man. A quarrelsome Indian group claims that other sects' enjoyment of their right to marry is restricted because of their bigottism and Protestantism. The contentious issue pertains to personal religion law and the requirement for a coherent and standard Civil Code in order to align with India's secularism and religious liberty ideals. Polyandry is strictly forbidden in Islam, whereas limited polygyny is permitted. Most nations consider bigamy to be illegal, and when it does happen, it's common for neither the first nor the second partner to know about the other. The approval of a former partner has no bearing on whether a second marriage is lawful or not in nations where bigamy laws are in place. The study examines the issue of bigamy, which is limited to religious groups in India under the bigamy statute. After doing an analysis, I have come to the conclusion that Indian law, which forbids marriage between Christians, Hindus, and Parsis but allows polygamy among Muslims, is constitutional and does not contravene Articles 13, 14, and 15 of the Indian Constitution.

Keyword: *Bigamy, Civil Code, Christians, Hindus, Parsis, Indian Constitution*

1. INTRODUCTION

The practice of getting married to someone else while still legally married to someone else is known as bigamy. It is noteworthy that under numerous legal frameworks, an individual cannot wed someone to whom they are already lawfully wed. In these cases, the second marriage is deemed void ab initio, meaning it is null and void from the start.

It can cause problems with inheritance, privileges, and financial stability in a society where a man or woman is allowed to have more than one spouse at the same time. Envy or resentment can lead to internal problems inside the family, which makes it difficult for such homes to prosper in the community. As a result, everyone in Hindu society has an obligation to uphold monogamy for the benefit of their lawfully wedded spouse and their legitimate offspring.

Bigamy is prohibited by Hindu law, as is well-known, and anyone caught marrying someone else while already lawfully married to their spouse may be subject to legal repercussions should their spouse make a complaint. Bigamy is the term used to describe the practice of having several marriages; it is also referred to as polyandry for women and polygamy for men. One type of polygamy is bigamy. Males in India are permitted to practice polygamy under Muslim law, meaning they are not penalised for having more than four wives. However, if a Muslim woman marries again while still married to her first husband, she may face consequences for polyandry. While polyandry was an uncommon practice carried out by a small number of communities in accordance with their norms, bigamy was once practiced by people from a wide range of religious and social backgrounds. Bigamy declined in popularity over time and is no longer seen as the ideal type of marriage. Bigamy was prevalent in several societal groups in the Indian subcontinent in the past and the Middle Ages, but it has since become less popular. These days, most people consider it to be immoral and morally incorrect.

1.1 ESSENTIAL FACTORS TO CONSTITUTE BIGAMY

An important component in deciding whether an act is bigamy is whether or not there has been a previous marriage. Bigamy is regarded as both a legal offense and a crime against the institution of marriage if it can be demonstrated beyond a reasonable doubt that one or both of the parties to the marriage under consideration had previously entered into a valid marriage that was still going strong at the time of the second marriage, and if the husband or wife from the first marriage is still alive[1].

The second marriage would be regarded as void if the previous marriage had been lawfully recognized. Nonetheless, the second marriage would not be considered bigamy if the previous marriage had been deemed invalid by the law[2].

The second marriage must have been legally recognized in and of itself, having completed all the rites required by Hindu law for marriage rituals, in order for the second marriage to be considered bigamy. Bigamy does not result from a second marriage that is not recognized by the law as there was never a second marriage in the first place.

In addition, it is crucial that the first spouse from the first marriage be living and still the legally wedded partner of the person getting married again at the time of the second marriage[3].

1.2 EFFECTS OF BIGAMY ON THE RIGHTS OF WOMEN

Because of the patriarchal nature of society, bigamy has an adverse effect on women that is disproportionate. Regrettably, bigamy persists in numerous communities, where it is sometimes regarded as a privilege and entitlement for men. However, in a charitable setting, polyandry is viewed as a woman's commitment to grant several partners access to her genitalia rather than as a benefit.

The remedies available to women in situations of bigamy are restricted by the Hindu Marriage Act. The Supreme Court held in ***Priya Bala Ghosh*** ***v.*** ***Suresh Chandra Ghosh***[4] that the claimant, who is usually the first

[1] Aggarwal, Nomita, Women and Law in India, First published 2002, New century Publication , Delhi
[2] Kant, Anjani, Women and the Law, First edition 1997, A.P.H. Publishing corporation , New Delhi.
[3] Asha Krishnakumar & T.K. Rajalakshmi, Child Brides of India, Frontline, Jul. 2-15, 2005, available athttp://www.hinduonnet.com/fline/fl2214/stories/20050715006200400.htm.

wife, bears the burden of proving the second marriage. In this particular instance, the wife received no compensation and the husband was found not guilty.

But as was already noted, second marriages frequently take place in secret, thus it's usually unrealistic to expect the first wife to produce documentation of the marriage. The Supreme Court's position frequently harms women and ignores the facts of a pluralistic society.

The rights of the second wife in bigamy cases are not sufficiently addressed under the Hindu Marriage Act. Due to the impossibility to prove the validity of the second marriage, courts have generally ignored the rights of the second wife in bigamy proceedings. The second wife might not be eligible for any support until the husband and second wife have had sexual intercourse for a long time.

Even if the court's response to these situations has changed over time, legal loopholes still cause suffering for women. The second wife in ***Kulwant Kaur v. Prem Nath***[5] was given temporary relief while the courts decided whether the marriage was lawful. Even so, judges continue to treat bigamy cases unevenly, and whether or not to grant the second wife relief is mostly up to the judge's judgment.

When rendering rulings, judges might not always take the socioeconomic reality into account. The Hindu Adoption and Marriage Act must be amended to include a clause that guarantees maintenance or remedy for women who have suffered as a result of these marriages in order to address this problem. A reform in the way judges handle bigamy cases requires changes to both procedural and substantive legislation.

2. OBJECTIVES OF THE STUDY

1. To study The Punishment Given Under Ipc For Bigamy
2. To Study The Laws Addressing Offenses Related To Bigamy

3. RESEARCH METHODOLOGY

The topic must be studied theoretically for the current research project. The theoretical paper will address court rulings about the bases for Bigamy-Related Offenses. The study will involve a thorough investigation using books, journals, case laws, and libraries. The analysis of divorce law under the heading of "Offenses Related To Bigamy" is the focus of the entire study. The research used in the study is doctrinal in nature. The Honourable Supreme Court of India and other High Courts of India's rulings serve as secondary sources for the doctrinal study, which is conducted with the assistance of primary materials such as Acts, legislations, bye laws, and ordinances.

4. ANALYSIS AND DISCUSSION

Section 493 and 496 both require the accused to have deceived the woman into thinking she was legally married to him when in fact she was not. This is the fundamental feature of both paragraphs. The terms "deceit" and "dishonestly" and "fraudulent intention" are used in s. 493 and s. 496, respectively. In essence, both passages indicate that the male deceives the woman into thinking she is legally married to him, even though he is well

[4] [1965] 2 S.C.R. 837)
[5] AIR 1979 SC 848

aware that this is untrue. When the couple got married, there should have been deception and fraud. Mad LJ(Cr) 604 in KAN Subrahmanyam v. J Ramalakshmi (1971).

Mens rea is therefore a necessary component of an offense under this section. The two sections are similar in several ways; however, section 493 seems to require the male to lie, and cohabitation or sexual activity must follow from that deceit. Section 496 does not need deception, cohabitation, or sexual relations as a prerequisite for the offense; rather, it requires a dishonest or fraudulent exploitation of the marriage ceremony. In the second scenario, either a male or a woman could commit the crime; in the first scenario, only a guy could.

4.1 CLASSIFICATION OF OFFENCE

Penalties: seven years in prison and a fineNon-cognizable, bailable, triable by a first-class magistrate, and compoundable by the spouse of the individual in question with the consent of the court.

4.2 LAWS ADDRESSING OFFENSES RELATED TO BIGAMY

The clause considers that the offender's spouse, if applicable, must be alive and that the offender must get married in any situation where the marriage is null and void due to the fact that it occurred during the spouse's lifetime.

A clause that indicates that the provision does not apply to anyone whose marriage to such a husband or wife has been ruled void by a court of competent jurisdiction is appended to the section. Additionally, it does not apply to anyone who marries while their former spouse is still alive if, at the time of the subsequent marriage, the former spouse has been continuously absent from the person for seven years and has not been heard from as an alive person during that time. However, the person planning the subsequent marriage must disclose to the other person before the marriage is consummated the true status of the facts as far as they are aware of.

Stated differently, two situations do not apply to this section. Initially, it doesn't apply to someone whose marriage to that husband or wife, whichever the situation, has been ruled void by an appropriate court. Second, it does not apply to someone who marries while their spouse—if applicable—is still living as long as they have been consistently absent from them for at least seven years and have not been in contact with them throughout that period.

Muslim guys are not covered under this section. However, this does hold true for Muslim women. It does, however, apply to all Hindus whose marriages were formally consummated after the Hindu Marriage Act, 1955 came into effect, as per section 17. By virtue of Act XV of 1872, it applies to Christians; by virtue of Act III of 1936, it applies to Parsis; and by virtue of the Special Marriage Act of 1954, it applies to everyone whose marriage has been formally celebrated.

It is evident that proof of the accused's prior marriage's validity and continuation is required in order to find them guilty under this provision. Obviously, entering into a second marriage would not place the accused under the jurisdiction of this section if the first marriage was unlawful and hence never took place.

The phrase "whoever marries," which refers to everyone who marries legally or whose marriage is deemed lawful, makes this abundantly evident. In legal terms, a marriage does not exist if it is not deemed lawful. The claim of bigamy against the accused must be unsuccessful in cases where the prerequisites for a lawful marriage—such as "homa" and "saptapadi" in the case of Hindus—have not been met. In these cases, the second marriage is invalid.

It is not sufficient for an accused person to only acknowledge their second marriage; it is necessary to prove that all the requirements for a legally recognized marriage were met. The existence of a second marriage cannot be shown by simply registering a marriage at the caste organization, where this practice is common. Furthermore, a marriage certificate issued in accordance with Section 16 of the Special Marriage Act of 1954 is not evidence of marital status.

There could be no question about the validity of the first marriage if the complainant produced oral evidence that "saptapadi" and "kusundika" (applying vermilon where the bride parts her hair) had been followed in relation to the first marriage, along with certain documentary evidence in the form of letters from the husband to his wife and from the husband's father to the wife's mother.

However, it was not required to investigate the second marriage's aspect for bigamy reasons if the previous marriage's validity could not be proven by proof. According to the Kerala High Court, the accused should be given the benefit of the doubt if it can be shown that, at the time of his second marriage, he honestly and genuinely believed that the first marriage had ended due to a divorce decree between the parties, which had made it clear that the parties were living apart and could not cohabitate, and that they had decided to end their marriage and be free to get married again.

It was decided that the lower court's decision to relieve the physically weak wife of her husband's sex demands and allow him to have another wife at her request—without awarding a divorce—was subject to being overturned because it was deemed to be incorrect.

The Supreme Court has ruled that if it can be demonstrated that a spouse who enters into a second marriage while their first is still going strong is guilty of bigamy under section 494 of the Indian Penal Code, provided that the second marriage was lawful in the sense that all legal and customary ceremonies were truly performed.

Since the provisions of section 17 of the Hindu Marriage Act would be the only reason the second marriage would become void, the voidness of the marriage under section 17 of the Hindu Marriage Act, 1955 is in fact one of the necessary parts of section 494 of the Code.

One of the things that section 17 of the Hindu Marriage Act considers is that the second marriage has to follow the legal rites. If the marriage is null and void, the only legal ramifications that would follow would be civil ones. It is necessary to read section 494 of the Code in connection with section 17 of the Hindu Marriage Act.

Thus, it cannot be stated that the accused would not be guilty under section 494 of the Code just because the second marriage, even if it were consummated with all necessary rituals, turns out to be void according to section 17 of the Hindu Marriage Act, 1955.

The complainant's death does not automatically end the proceedings under section 494, and the court may choose to let the case to be continued by another individual. A second marriage consummated prior to the Hidnu Marriage Act, 1955 is exempt from section 494 of the Code's penalties.

According to the Arya Samaj custom, which states that three and a half rounds of sacred fire are sufficient to consummate a marriage, it was asserted in Urmila v. State that the accused had a second marriage. There was no Saptapadi ceremony. The Supreme Court ruled that bigamy was not punishable because the marriage was not consummated.

The Supreme Court of India ruled in Sarla Mudgal v. Union of India that the word "void" in section 494 has been interpreted broadly. In the sense employed by section 494, a marriage that violates the law would be null

and void. Only the grounds listed in the Hindu Marriage Act, 1955, may be used to terminate a Hindu marriage that was formally ordained. Neither of the spouses may enter into a second marriage until the Hindu marriage is dissolved in accordance with the Act. Under the Act, converting to Islam and getting married again would not automatically end a Hindu marriage.

Therefore, under section 494, a Hindu husband's second marriage after converting to Islam would be null and void and in violation of the Act.

A breach of the law's mandatory provisions is null and void, and as this instance satisfies all four requirements of section 494 of the Code, the apostate spouse would be guilty of the offense.

According to the ruling in ***S. Radhika Sameena v. SHO, Habeebnagar Police Station***[6], Hyderabad[7], a Muslim man who got married under the Special Marriage Act, 1954 and then got married again under Muslim law could face bigamy charges under section 494 of the Code.

The Supreme Court ruled in ***Lily Thomas v. Union of India***[8] that the 1995 ruling in ***Sarla Mudgal v. Union of India***[9], which found a Hindu husband guilty of violating section 494 of the Indian Penal Code for entering into a second marriage after converting to Islam, did not constitute a new offense and did not require prospective application.

The right to life and personal liberty provided by Article 21 and Article 26 are not violated, and as a result, the review petition alleging a violation of Article 20(1) is denied. It cannot be claimed that a Muslim convert male's second marriage has become illegal based only on a court ruling.

It is acknowledged that the court does not enact new laws; rather, it merely interprets those that already exist. As a result, the court's rulings cannot be prospective from the date of the judgment. The legislation mandated by the legislature is referred to as the procedure established by law under Article 21. Sarla Mudgal has not amended the process or enacted any new legislation pertaining to the prosecution of those who are sought to be prosecuted under section 494.

Therefore, arguing that a convert has the right to practice bigamy despite the fact that his marriage has continued under the law to which he belonged before conversion would be an injustice to Islamic law. There was no discussion of the legal status of second wives or unmarried children.

There had been no directive from the Supreme Court to codify the common civil law.

Since his conversion does not automatically dissolve his first marriage, he would still be in violation of section 17 of the Hindu Marriage Act, 1955 as well as section 494 of the Indian Penal Code.

According to Mohammedan law, a child given in marriage by someone other than their father or grandfather has the right, upon reaching puberty, to either ratify or repudiate the marriage (khyar-ul-bulugh). It makes no difference if the kid is a boy or a girl.

Before reaching puberty, a Mohammedan girl whose father had passed away was offered in marriage by her mother to a man. The marriage was not consummated, and the man was incarcerated due to a crime he had

[6] 1997CRILJ1655, I(1997)DMC132
[7] 1997CRILJ1655, I(1997)DMC132
[8] Lily Thomas vs Union Of India 2000 (2) ALD Cri 686, 2000 (1) ALT Cri 363, 2001 (1) BLJR 499, 2000 CriLJ 2433, II (2000) DMC 1 SC, JT 2000 (5) SC 617
[9] AIR 1995 SUPREME COURT 1531

committed. When the girl reached adolescence, she wed a different man. Both this man and she were found not guilty of bigamy or aiding and abetting bigamy.

Either an explicit or implicit repudiation can be made; marrying a different guy after reaching puberty is an implicit repudiation. However, the Kerala High Court ruled that a Mohammedan woman's unilateral "faskh" rejection of marriage had no legal standing and that her getting married again would be bigamy. According to the ruling of the Calcutta High Court, a Mohammedan woman who marries again while still in her "iddat" is not liable under section 494 of the Code. When one of the partners in a Mohammedan marriage left Islam, the marriage ended right away.

5. CONCLUSION

This article examines the shortcomings of Hinduism's bigamy laws and emphasizes how common bigamous unions are still in India. Even though bigamous Hindu marriages are illegal, the current legal framework has not been able to effectively address this problem. Due to the strict and unyielding interpretation of these prohibitions by the courts, a reform in the legal system is necessary to stop the practice of bigamy. The judicial system's approach frequently falls short of providing sufficient protection for women's rights and unintentionally strengthens society's patriarchal framework by enabling wrongdoers to take advantage of legal loopholes.

The courts ought to take a more tolerant stance on what constitutes a lawful marriage in order to defend women's rights. Even while the second marriage may not follow all the traditional traditions of a lawful union, it is nevertheless important to take into account the husband's intention to get remarried. The aggrieved party, who is frequently the wife in bigamy cases, is at a disadvantage due to the existing interpretation of the courts and the loopholes and flaws in the legislation. As a result, it is crucial to change the law as needed to better reflect societal reality.

Bigamy still exists in societies where it is accepted by law. For example, bigamy is prohibited by Muslim personal law, but it is penalized under Hindu, Parsi, and Christian personal laws. It is necessary to close these legal loopholes. Furthermore, the rights and obligations of people in live-in relationships are not covered by the bigamy legislation. Because of this, married males who live in together frequently have the upper hand while their partners have few other options. In spite of these obstacles, bigamy has been far less common in recent years, and there is optimism for improved legal reform and enforcement in the future.

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