



Bigamy: A Socio-Legal Problem and Its Remedies

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Abstract:

*Women constitute almost fifty percent of the world's population. As per as their social status is concerned, they are not treated as equal to men in all places. As far as the statues of women with special to reference to Indian society we feel that a large number of the Indian women are still facing the problem of illiteracy. The woman belongs to village areas are specially affected with this problem and they are facing a major socio-legal problem which is concerned with **bigamy**. So the education to women is the most powerful instrument of changing their position. From the days when a Hindu could marry as many wives as he would like to and a Muslim can even now marry at a time four wives, the society in recognition of the respectable position of the women has reached a stage where monogamy is the order of the day.*

Bigamy is defined under section 494 I.P.C. as whoever, being married, marries again where such later marriage is void by reason of its taking place during the Subsistence of the earlier marriage, commits bigamy and shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine. The object of enacting this section is to punish persons who defiance of the law applicable to them in matters of marriage and divorce. Etc. takes a second spouse during the existence of the first.

It is a harsh fact that many prosecutions relating to bigamy fail because of the lack of proof of the solemnization of second marriage with requisite ceremonies. It is submitted that with respect to the ceremonial validity of marriage a uniform law should be made applicable to members of all communities. In other words, a statute under the title "Ceremonies of Marriage Act" should be passed.

Keywords: *Bigamy, Ceremonies of Marriage Act, Education, Equality, Iddat, Indian Society*

1. Introduction

Women constitute almost fifty percent of the world's population. As per as their social status is concerned, they are not treated as equal to men in all places. Empowering may be understood as enabling people, especially women to acquire an possess power resources, in order to make decision on their own or resist decision that are made by others that effect them. A person may said to be powerful when he / she have control over a large portion of power resources in society. The extent of possession of various resources such as personal wealth, such as land skill, education, information, knowledge, social statues, and position held leadership capabilities of mobilization.

From the days when a Hindu could marry as many wives as he would like to and a Muslim can even now marry at a time four wives, the society in recognition of the respectable position of the women has reached a stage where monogamy is the order of the day. Polygamy is statutorily

barred in the case of Hindus and a recent decision of the Supreme Court would make it economically impossible for a Muslim to marry more than one wife.

Equality of sex or eschewing sex discrimination needs tightening up of law which prohibits second marriage in the time of the first time spouse. There is a lacuna in section 494 which prohibits bigamy. Wherever a man is charged for having contracted a second marriage within the life time of the first wife, the defense is that his first marriage was void. Once the first marriage is consummated, the defense that first marriage was void must be statutorily barred. To do gender justice, this is the next inevitable step.

As far as the status of women with special reference to Indian society we feel that a large number of the Indian women are still facing the problem of illiteracy. The women belonging to village areas are specially affected with this problem and they are facing a major socio-legal problem which is concerned with **bigamy**. So the education of women is the most powerful instrument of changing their position. Women's education is extremely important intrinsically as it is their human right and required for the flourishing of many of their capacities. It is however, noticeable that most programmes for education of girls and women in India have reinforced gender roles specially motherhood in curriculum as well as impact evaluation. The huge study of nearly 94 percent of India's population done by Dreze and others looks at female literacy and its negative and statistically significant impact on child mortality.

Bigamy is defined under section 494 I.P.C. as whoever, being married, marries again where such later marriage is void by reason of its taking place during the subsistence of the earlier marriage, commits bigamy and shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

The above section punishes the offence known to English law as bigamy. It makes the offence of bigamy punishable both as regards a person, having a wife living, marrying another and as regards wife, having her husband living remarrying in any cases in which such remarriage would be void by reason of its taking place during the life of such wife or husband. The person whom the woman has remarried cannot be punished under this section. He can only be charged with abetment of that offence.

The object of enacting this section is to punish persons who in defiance of the law applicable to them in matters of marriage and divorce, etc. take a second spouse during the existence of the first.

The Special Marriage Act, 1954 also prohibits bigamy. A bigamous marriage is a void marriage under the Special Marriage Act. Section 43 & 44 Special Marriage Act deals with penalty for contracting a second marriage during the life time of his or her spouse.

The position of law has since changed and now by reason of section 44, the Special Marriage Act, 1954 when one having his marriage solemnized under the Special Marriage Act, 1954 contracts a second marriage, such marriage is void and renders the author of the marriage punishable under section 494 or section 49 I.P.C., as the case may be. The marriages solemnized under the repeated Special Marriage Act, 1972 are deemed to be solemnized under the Act of 1954.

So, in case of **Sepholi Chatterjee vs. Kamala Banerjee**,¹ is no longer a good law, after the enforcement of the Special Marriage Act, 1954 such remarriage after the solemnization of a prior

marriage or after solemnization by reason of the deeming the life time of former spouse is void ab-initio as also punishable. Therefore, to constitute an offence of bigamy and to be liable for punishment the following points must be proved against a spouse namely:

1. That the spouse has contracted a marriage previous to that which is alleged to be bigamous.
2. that the first marriage is valid (i.e. that it was not void under section 24 for any other reason specified in clauses (a), (b), (d) of sec. 4 or that the marriage was not void under section 24 (i) (ii) or that the other spouse has not disappeared in such circumstances as to raise the presumption of death.)
3. That the other spouse of the first marriage was still alive.
4. That the spouse accused of having committed bigamy actually went through a marriage, a second time.

This act also provides following defenses to the person accused of bigamy.

- (a) A valid and good defense is that the first marriage has been dissolved under section 27 or 28 of this Act;
- (b) that the first marriage is void under section 24 of this act or that the other spouse was impotent at the time of the marriage and there after the marriage had been avoided under section 25 of the act or that the other spouses had not been heard of for a continuous period of seven years or more in such circumstance as to raise a presumption of death.
- (c) That the person accused of bigamy honestly and reasonably believed the spouse to be dead.

The cardinal principle that a person is presumed to be innocent until he is proved to be guilty equally applies to cases of bigamy with same rigor and strictness, as it applies to other criminal cases and therefore, the burden of proof is on the prosecution to prove all the ingredients of the offence. On non-proof of essential ceremonies of second marriage conviction for bigamy is unjustified. Admission of second marriage by the accused is not evidence of it for the purposes of proving marriage in adultery or bigamy.

It is important to note that the offence of bigamy is generally committed by man because in many respects man is powerful than woman. Our society is still man dominated society. If our law permits the practice of bigamy then this act will be disregarding and humiliating for woman and such acts must not be tolerated in modern civilized society.

In this offence, women are always more sufferer than man because most women in our country are not aware of the provisions of the various statutes which govern the personal life of the people. Monogamy has been statutorily introduced only in the fifties among the Hindus, many woman belonging to this community still do not know whether they have any legal remedies available against the husband who contracts a second marriage while the first wife is living. Suffice is to say at this stage that the second wife does not get any legal status and the husband becomes liable to be hauled up for the commission of the offence, on the complaint of the wife.

Thus, if a married man induces a girl to marry him, he is really committing a fraud on her, as she, in effect becomes his concubine. The delinquent person can be awarded punishment up to 10 years with fine in such cases.

In order to attract the provisions of this section, it is necessary for a woman to prove that she has contracted a valid marriage under the personal law to which both parties belong and that the

marriage was subsisting at the time when the second marriage was contracted by the husband. In this connection the supreme court in “**Boloram B’aruti V. Mt Sajya Baruti**”² that there must be at the time of second ceremony of marriage a previously subsisting valid marriage and that the second marriage with proper ceremonies in due forms in fact took place. The Supreme Court also observed if the proper ceremonies were not gone through, it is not marriage in the eyes of law. Divorce dissolves a valid marriage; hence divorced persons are entitled to remarry.

- **Marriage during Iddat**

There are some unique features of Muslim personal law such as marriage during Iddat and option of puberty, these features provide protection to Muslim woman in some circumstances e.g. under Muslim law a woman, on termination of her marriage either by death or divorce is required to observe Iddat before contracting second marriage but if she marriage second time before completing her Iddat she will not be guilty of bigamy.³ In a Bombay sessions case it was held that a Mohammedan woman marrying again during the lifetime of a husband who had divorced her but within the period of Iddat was not guilty of bigamy⁴.

A second marriage contracted by the wife during the period of her Iddat is not void by reason of its taking place during the life of first husband but by reason of a special doctrine of the Mohammedan law with which the penal code had nothing to do.

- **Option of Puberty**

As stated above another feature of Muslim Personal Law is option of puberty, when a child is given in marriage by any person other than the father or grandfather he or she has the option of either ratifying it or repudiating it on attaining puberty provided it was not consummated. If the girl on attaining puberty contracts second marriage thereby repudiating the first, she will not be guilty of offence mentioned under this section. In a case, where the first marriage of a minor girl had never been consummated and she repudiated that marriage on attaining puberty within the period allowed by law, to the knowledge of her husband, it was held that the option of puberty was validly exercised and the first marriage could not be deemed to subsist at the time of her second marriage for the purposes of this section. Moreover, under the Muslim law the second marriage could not be “void” by reason of its taking place during the life of the previous husband but would be of the nature of – “shubbat – uk- akd” (Nikah) under Muslim law.⁵

2. Having a Husband or Wife Alive

For the application of section 494, it must be established that at the time of second marriage, the previous valid marriage must be subsisting that is both the partners to marriage must be alive.

An interesting case on the point is **Gopal Lal Vs. State of Rajasthan**⁶ in this case the Supreme Court held that the second marriage through void as per section 17 of the Hindu Marriage Act, still it would attract section 494 I.P.C. Where a spouse contract a second marriage while the first marriage is still subsisting, the spouse would be guilty of bigamy under section 494 IPC if it is proved the second marriage was a valid one in the sense that the necessary ceremonies required by law or by custom have been actually performed.

In **P. Satyanarayana Vs. P. Mallaiah**⁷ case the wife respondent filed a written complaint before the police under section 494 of the Indian Penal Code which after investigation was put in court for trial appellant as well as his alleged as second wife, the second appellant charge was laid against him in entering up on plea against the charge, the husband appellant stated true I have not committed any crime, I have married after ten years of (sick) my wife deserted and want

away. His plea was sought to be read as if he had admitted having married the second time. The learned trial magistrate decided that there was no legal evidence to prove the factum of marriage on the basis of the tests laid down by this court in *Bhaurao Shankar Lokhand Vs. State of Maharashtra*, *Kanwal Ram Vs. H.P. Admn* and *Priya Bala Ghosh vs. Suresh Chandra Ghose*. He thus acquitted the appellant. Respondent wife filed a revision in High Court to set aside the order of acquittal mainly on the ground that there was an admission of the first appellant in response to the charge laid against him. The High Court therefore, ordered a retrial.

Supreme Court allowed this appeal, set aside the impugned order of the High Court while enhancing the maintenance payable to the respondent / wife and her child. The maintenance proceedings pending in the subordinate Court shall now be decided in line with the order made here in before.

Section 17 of the Hindu Marriage Act has to be read in harmony and conjunction with section 494 IPC. Therefore, merely because the second marriage is void under section 17 of the Hindu Marriage Act it cannot be said that section 494 will not be attracted. Thus the combined effect of section 17 of the Hindu Marriage Act and section 494 is that when a person contracts a second marriage after the coming into force of the said Act, while the first marriage is subsisting, he commits the offence of bigamy.

The Supreme Court further held "bigamy" is a very serious offence as such the accused was sentenced to two years 'rigorous imprisonment with a fine of Rs. 2000.

Conviction under 494 cannot be sustained in absence of evidence regarding performance of essential ceremonies at the time of second marriage and existence of custom in community. In this connection the findings of the Supreme Court in **Lingari Ofulamma Vs. Venkata Reddy**⁸ are also to be noticed. In this case, where there was absolutely no evidence to prove that any of the two essential ceremonies i.e. Datta Homma and Saptapadi had been performed at the time of second marriage and the existence of the custom in the community to put the yarn thread instead of 'Mangal Sutra' was neither mentioned in the complaint nor proved in the evidence, the conviction under section 494 could not be sustained.

In **Laxmi Devi Vs Satyanarayan**⁹ the respondent was charged for an offence under section 494 and section 109 of IPC. It was held that prosecution has not proved through proper witness 'Saptapadi' to establish the factum of second marriage of accused so the high court found that it was not a fit case for grant of leave of appeal.

In the light of section 5 of Hindu Marriage Act the Supreme Court stated in this case that the Home and Saptapadi are the essential rites for marriage according to the law governing the parties and that there is no evidence that these two essential ceremonies have been performed when the respondent started to have married his second wife Sandhya Rani.

Similarly, in another case of **Priya Bala Ghosh Vs. Sureshchandra Ghosh**¹⁰. The Supreme Court observed that second marriage must be celebrated with due ceremonies to attract section 17 of the Hindu Marriage Act. In this offence admission of accused is not considered as proof for the valid marriage but ceremonies to be proved.

Another important point in respect to the offence of 'bigamy' is that good faith and mistake of law are no defense to a charge of bigamy. It is no defense in law to an indictment for bigamy that the accused, at the time of the alleged bigamous marriage, believed in good faith and on

reasonable ground, that he had been divorced from the bond of his first marriage, if in fact he had not been divorced.¹¹

• **Effect of Conversion**

Difficulties have arisen when married persons have changed their religion and then married another person a second time. The following rules can however be deduced from decided cases.

➤ **Conversion from Hinduism**

An apostate from Hinduism is not absolved from all civil obligations, the matrimonial bond remains in existence. Hindu law does not recognize polygamous marriages therefore, if a Hindu woman who has a living Hindu husband marries either a Muslim or Christian even after embracing Islam or Christianity commits bigamy.¹²

In the case of **Lily Thomas Vs. Union of India**¹³ the Supreme Court decided that in the past several years, it has become very common amongst the Hindu males who cannot get divorced from their first wife, they convert to Muslim religion solemnly for the purpose of marriage. This practice is invariably adopted by those earning husbands who embrace Islam for the purpose of a second marriage but again become reconvert so as to retain their rights in the properties etc. and continue their service and all other business in their old name and religion.

Recently, in **Sarla Madgal V Union of India**¹⁴ after considering a number of decisions on the point, the Supreme Court held that the second marriage of a Hindu husband after embracing Islam is violative of justice, equity & good conscience; such marriage would also be void and attract the provision of section 494 I.P.C.

➤ **Conversion from Islam**

When a person apostates from Islam, his marriage comes to an end the wife would not be guilty of bigamy if she goes through a second marriage. However, now under section 2 of the Dissolution of Muslim Marriage Act, 1939, renunciation of Islam does not by itself operate to dissolve her marriage, after conversion she would be required to obtain a decree for dissolution of her marriage on any one of the grounds mentioned in section 2 of the Act in a **Case of Karan Singh**¹⁵ it was held that if the wife is a Mohammedan, and her husband changes the religion, the marriage tie is dissolved and the wife will not be guilty of bigamy if she marries again. The personal law of the Muslim prevails in this case.

➤ **Conversion from Christianity**

If a Hindu embraced Christianity and married a Christian woman according to the rites of Roman Catholic religion and subsequently he converts to Hinduism and marries with a Hindu girl while his Christian wife is still living he will not be guilty of bigamy¹⁶. If an Indian Christian domiciled in India marries an Indian Christian woman domiciled in India and subsequently embraces Islam, his second marriage with a Muslim woman shall be legal.¹⁷

➤ **Conversion after Marriage under Special Marriage Act**

Where marriage is solemnized under the Special Marriage Act and both husband and wife subsequently become converted to Islam, the marriage, not being one in the Mohammedan sense, cannot be dissolved in the Mohammedan manner. It can only be dissolved under the provisions of the Indian Divorce Act. The same principle applies even when one of the parties alone becomes a convert to Islam.¹⁸

Where a Muslim man marries under the Special Marriage Act, the restitution of conjugal rights, judicial separation, nullity and divorce must be in accordance with the Special Marriage Act. If such a person again contracts a second marriage, he shall be deemed to have committed an offence under this section.

3. Abetment of the offence of 'Bigamy'

Abetting the offence of bigamy is punishable by the aid of sections 109 and 114 I.P.C. Defined in section 107 IPC, abetment involves instigating a person to do a thing, engaging in conspiracy or intentionally aiding by an Act or illegal omission the doing of a thing. Instigation may involve willful misrepresentation or willful concealment of material facts which the abettor is found to disclose. There may be vitiating circumstances. But aiding involves only doing of anything to facilitate the commission.

In **Manju Ram Kalita vs. State of Assam**¹⁹ case which is related to section – 498-A, 494 IPC regarding bigamy and cruelty on account of dowry demand. The court below arrived at a concurrent finding of fact regarding the factum of second marriage- Therefore finding of fact on issue of bigamy is not interfered with conviction under section 494 is maintained. In the case none of the witnesses deposed that there was continuous physical or mental torture after period 1993-1997. Therefore conviction under section 498-A is set aside.

In **Paresh Chaturdas Patel vs. State of Gujarat**²⁰ case is related to section 406, 498-A, 504, 506(2) in this case the complaint has made allegation is regard to bigamy marriage and it was also alleged that the complaint is the legally wedded wife of the petitioner and since the marriage is existence, the petitioner has remarried with other women. But the marriage was performed as accordance to the law and solemnized. So the husband cannot be held to have committed the offence under section 494 of IPC. So the court decided that it would be a fruitless exercise the continue proceeding against the petitioner.

4. Suggestion for Reform

It is a harse fact that many prosecutions relating to bigamy fail because of the lack of proof of the solemnization of second marriage with requisite ceremonies. It is submitted that with respect to the ceremonial validity of marriage a uniform law should be made applicable to members of all communities. In other words, a statute under the title "Ceremonies of Marriage Act" should be passed. The statute may provide for the following ceremonies of marriage.

- (a) In the presence of relatives or friends and an acquaintances (where total No. should not be less than five) the bride and bridegroom should exchange garlands and rings and with skirts of their mantles tied together they should seek blessings from the elders present there and great friends and acquaintances.
- (b) A civil ceremony of marriage on the lines of the special marriage Act, 1954 with simple procedure formalities should be made available to all and facilities for solemnization in civil form should be made available at all levels.
- (c) Marriage may be solemnized at any place where the bridge and bridegroom want it to be solemnized on payment fee of rupees eleven to the marriage officer. The parties should also provide free transport to the marriage officer. Each party should say to other in the presence of the marriage officer and witnesses. I 'A' take the 'c' to be my lawful wife (or husband)" upon this the marriage will become complete and binding on the parties.
- (d) Registration of all marriage performed in any form should be compulsory. All revenue officers from the collector to the Patwari, all the local self government bodies, such as Municipal Corporations, Municipal Boards, town area committees, Village Panchayats and

all Magistrates (of any rank, judicial as well as executive) should be authorized to keep a marriage register and should be required to enter a certificate of marriage therein, such certificate should be signed by spouses and their witness and countersigned by the marriage officer.

- (e) All marriages performed in a state should be published in the official gazette of the State Government, for which a fee may be charged from the parties at the time of marriage.
- (f) Education of also brings about reduction in equalities and also act as means to improve their statues within the family. In order to encourage education of women at all levels and dilute gender bias in the provision and acquaintance of education, schools, colleges, and even universities were established exclusively for women in the state.
- (g) The Mother Teresa women university has been established for the development of women studies and to encourage higher education among women and their social mobility.
- (h) To bring more girl children, specially from marginalized BPL families in to the main stream of education, government has been providing a package of concessions in the form of free supply of books, uniform, boarding and lodging, clothing for hostilities, mid day meals, scholarships, free bicycles and so on.

However, it is correct to say that Bigamy is a very serious offence and the attitude of various courts is not lenient. In most of the cases the Supreme Court and High courts awarded severe punishments to the accused. It is really surprising that why such a provision has been allowed to remain the offence non-cognizable since it virtually affects our social system. Where it is difficult for a woman or her relatives to file a complaint against the husband. Therefore, it is necessary for the woman to take recourse to law to seek remedies and to enforce their rights.

It is always advisable for every woman to get the marriage registered which has been solemnized under the customary law because adducing evidence in such cases creates difficulties for the wife and her near relatives, particularly where her fall from the grace creates emotional and financial problems.

References

1. AIR 1972 All 531
2. AIR 1986, SC-107
3. Abdul Ghami V Azizul Hug (1911) 39 Cal 409
4. Sabiya (1907) 9 Bom. LRJ 207
5. Muhammad Bakash (1950) 51 CR. L.J. 169
6. A.I.R. 1979, S.C 713
7. AIR 1996, SCC 122
8. 1979 SCC (3) 80
9. AIR 1994, SCC545
10. A.I.R. 1971 SC 1153
11. Thomas Wheat (1921) 2 K.B. 119
12. Badansha Routhar v Fatima Bai, 26 MCJ 260
13. AIR 2000, SC-1650
14. A. I.R. 1995 SC 1531: 1995 Cri LJ 2926
15. Karan Singh AIR 1953 All 333
16. Marthamma V Maruswamy, A (1951) 52 Cri. L J 1085 (Mad)
17. J.J.C. Dutta V. A.C.Sen AIR1939 Cal. 417
18. Andal Vasdyanathan v.Abdul Allam Vaidya (1947) Mad 175
19. 2009, TLPRE-0-788

20. 2009, GLH- 1-233
21. A.N.Saha : Marriage and Divorce
22. Asaf A.A. Fyzee: Outlines of Mohammadan Law
23. J.P.Atray: Crimes against women