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Bigamy in India: Analysis of Sarla Mudgal Case

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Marriage from generation is considered a pious relationship between two people. Moreover, in India, the relationship formed is not just between two people but two families. With the formation of relation, a lot of trust, faith, and hope are involved. Therefore, it is necessary and obligatory to remain truthful to this institution. With time many things have changed, people have become more practical and somewhere down the line, this practical approach has deteriorated the institution of marriage. Bigamy, as a practice, prevailed even in ancient India, but back then there was no legislation to stop it, rather, it was considered a symbol of pride and honour. In the current scenario, Bigamy is totally illegal in India and provisions to punish have been established, if anyone is found practicing it. There might arise doubts that why is it illegal now. In the article, we will deal with what is bigamy, traces of how it has emerged, and subsequent developments. We will also look at the laws made by different religions since it is a personal family matter. At last, we will deal with the emerging issue of Live-in relationships and bigamy practices.

Keywords: *bigamy, marriage, relationship.*

INTRODUCTION

The word bigamy originated from the Greek language, it traces its meaning from "Bi" which means "two" and "gamos" meaning "marrying". In simple words, it is the state of being married to two people at the same time. In places and cultures, where monogamy is practised, the

exercise or trend of marrying two people at the same time, without the death of the first spouse and still legally being married to them, is illegal and banned.[1]

Bigamy has been defined in both IPC, 1860, and the Hindu marriage act, 1955[2]. In IPC, it has been defined under section 494,[3] and it states that "Marrying again during lifetime of husband or wife is void, and the person committing it shall be punished with imprisonment of at least 7 years and shall also be liable to fine". Bigamy is strictly prohibited to be practised in any scenario, but IPC also states some exceptions to this provision: -

- The marriage has been defined as void by a court of competent jurisdiction.
- If the spouse without giving any information about his whereabouts and without any connection has been absent for a space of seven years, then performing bigamy or having another marriage is not a crime.

Under section 5 of the Hindu Marriage Act, 1955,[4] the condition which is necessary before contracting into a marital relationship is that both partners should not have a living spouse. Further, under section 17,[5] punishment is prescribed for bigamy. Most nations prohibit the performance of Bigamy under any circumstances, and this itself is a testimony to the fact that the social side of this practice is quite evil, the cons outweigh the pros way too much. Though there are countries that state that taking approval from the previous spouse holds some power and would be legal then, most countries hold no legitimacy.

ORIGIN OF BIGAMY

A practice that is condemned by most countries and communities would have had plenty of reasons for its emergence, and most of it must have been unjust and cruel. Bigamy prevails as a social evil for centuries on Indian soil, it was legally justified till the time IPC, 1860 came into the picture. Earlier, people used to have two wives for various reasons such as to show their

[1] Noah Webster, *Merriam-Webster's Collegiate Dictionary* (11th edn)
[2] Hindi Marriage Act 1955
[3] Indian Penal Code 1860, s 494
[4] Hindu Marriage Act 1955, s 5
[5] Hindu Marriage Act 1955, s 17

prowess as a man, cater more resources, have a more male child born to their family for continuing the lineage, etc.

In the ancient era, even the Manusmriti, which was considered the Hindu jurisprudence source, prescribed bigamous marriages, in cases, where the wife was barren, ill, or vicious. The laws were so evil, that they stigmatized women who were barren and advocated considering the second wife superior as she can reproduce. This social dogma was one of the major reasons for the existence of bigamy, women were considered nothing but mere objects and reproduction machinery, therefore if she was unable to perform this very task, her existence was reduced to the level of nothingness. With the development and change in society, during the British era, it was considered a consent-based task, which meant that men could marry a second time, only by taking consent from their first wife. In the year, with the introduction of the Indian Penal Code, in 1860, Bigamy was criminalized and in 1955, the Hindu Marriage act also made it an offence for Hindus, Jains, and Buddhists.

SOCIO-LEGAL ANALYSIS OF THE SARLA MUDGAL CASE

One of the most landmark judgments given on the pretext of bigamy was in the Sarla Mudgal case. The uniform civil code in terms of laws was brought to light with the help of this case. Being a woman was tormenting in earlier days, it came with the fear of being abandoned anytime her husband feels the urge to get another woman. This pathetic situation of women was because of a lack of education, awareness, and mere treatment of them as an object. To justify the second marriage, men used to convert to a religion that permitted having more than one wife. Before jumping onto the facts of this case, let's discuss the socio-legal condition of women who underwent such a situation.

There was a plethora of reasons that men used to justify this piteous practice of bigamy. Ours was a patriarchal society, where bearing a male child was considered essential, women who couldn't give the male child to their husband were looked down upon, and this gave rise to one of the most prominent reasons for bigamy taking place, for having a male child and continuing the lineage. This convention was prevalent and it not only disregarded the pious nature of

marriage but also the sanctity of the woman. Another reason highlighted the worst condition women were treated in society, they were considered a burden to their parents, therefore, to get rid of them as soon as possible, they were married to men way older than them and were left to rot. The laws came much later into the picture, because it was so well deep-rooted in our culture, that it was never considered unethical and all the logic was put together to determine their righteous nature of them.

The Sarla Mudgal case was a landmark judgment on grounds of both uniform civil code and bigamy laws. India as a country is extremely diverse and the constitution also guarantees rights and freedom for all religions to prosper and practice without any hurdle, but sometimes, instead of becoming a blessing, it turns out to be a curse in the society. It happens when people in the name of religion start doing unethical and immoral activities. This is what happened in the Sarla Mudgal case. Bigamy is a punishable offence under Indian Penal Code, but it is permitted to practice in some tribes and communities where their law says so. Therefore, earlier people who married twice or wanted to marry twice simply converted to Islam. This became a matter of utmost concern and the issue was scrutinized and all the ambiguities were clarified about the issue.

Facts about the case

There were four petitions filed under Article 32[6] in the supreme court. All of these were heard together.

- Sarla Mudgal was the first petitioner who was the president of a registered society called Kalyani, an NPO, which was working for the welfare of women who were left behind by their husbands or widows and for needy families.
- Second petitioner was Meena Matur, who married Jitendra Mathur and had three children. She discovered that her husband had married another woman by converting to Islam. The woman he married also converted to Islam, her name was Sunita Narula alias Fathima.

[6] Constitution of India 1950, art 32

- Ironically, the third petition has been filed by Sunita Narula alias Fathima herself, because Jitendra Mathur claimed to convert back to Hinduism and sustain his first marriage, she too had a child out of this wedlock.
- Geeta Rani and Sushmita Ghosh also filed a writ petition in the Supreme Court of India, in both instances their husbands had converted to Islam to have another marriage.

These are just speckles on the radar, there would have been a plethora of cases on the same lining, but these women dared to stand up for their rights, and their bravery led to this landmark judgment which resulted in the betterment of the condition of women. The main question that was raised seeing the pattern of men converting to Islam and having another marriage, was whether is it justifiable for Hindu men to convert to Islam and solemnize another marriage. Whether it is considered a crime or not under section 494 of IPC? The respondents, in this case, had only one claim which they all reiterated that "once we have converted to Islam, we can have up to four wives and we are not subjected to section 494 of IPC and Hindu marriage act, 1955.

In the judgment, it was held that marriage guarantees certain rights to both individuals as well as duties. In case of dissolving the marriage at the wants of one party, section 13 of the Hindu Marriage act, must be followed. The practice of adopting another religion and marrying would destroy the very essence of marriage as an institution. The basic idea behind this decision was that, if it continues to take place, then marriage as an institution would fail and it will no longer justify its sanctity. The court also considered that conversion to Islam and remarrying would in no way dissolve the first marriage of anyone. The court also emphasized the need for a uniform civil code in the Indian legal system to stop people from trespassing on the law and order in the name of professing and practising their religion and culture.

POSITION OF BIGAMY UNDER DIFFERENT PERSONAL LAWS IN INDIA

Hindu Marriage Act, 1955 - As per section 17 of this act, if a person who is considered a Hindu by religion, marries another person, in the life existence of his/her first spouse being alive, that person has committed the offence of Bigamy and is liable for punishment prescribed under

section 495 of Indian Penal Code.[7] The Hindu Marriage Act, of 1955, covers Hindu, Buddhist, Jain, and Sikh communities.

Muslim women (protection of rights on divorce) Act, 1986 - This act came in the year 1986 by Rajiv Gandhi's government to overturn the Shah Bano case's decision. Unlike other religions' acts, there is no provision for Bigamy in this act. A Muslim man, by virtue, has the right to marry twice, thrice, or four times, in his lifetime, the only condition is that he needs to treat all his wives with respect, and dignity and in an equal manner. Only, in case he fails to fulfill this condition, he is liable. This poses a lot of threats to women's dignity and hampers their self-respect.

Parsi Marriage and Divorce Act, 1936 - Section 5 of this act clearly states that a Parsi man or woman cannot remarry during the lifetime of his/her spouse or without taking divorce lawfully. If bigamy is committed, then the second marriage would be considered null and void. The person committing it is also punishable under sections 494 and 495 of IPC.

Christian Divorce Act, 1896 - There is not a specific guideline laid down in this act regarding Bigamy. But at the time of registration of marriage, section 60[8] of this act states that none of the parties to this marriage should have been in an existing marriage, and if a person gives a fall oath or declaration, then he/she is punishable under section 193 of the Indian Penal Code[9]. This provision explains that under this act, more than one marriage is considered to be illegal.

Special Marriage Act, 1954 - In section 44, it states, "Every person whose marriage is solemnized under this act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code, 1860".

[7] Indian Penal Code 1860, s 495
[8] Christian Divorce Act 1896, s 60
[9] Indian Penal Code 1860, s 193

CAN LIVE-IN RELATIONSHIPS BE GRANTED THE STATUS OF BIGAMY?

Live-in relationships can simply define as a cohabiting relationship where two individuals live together under the same roof, performing all the functions of a married couple.

Malimath committee report, 2003 – the report had a certain recommendation for changes in CrPc, 1873, under the category of "offences against women", one of them was the change of the definition of "wife" in section 125 of CrPc[10]. With this commendation, the changes were made and now the term wife under CrPc includes women who are subject to live-in relationships, and with this status being granted now if the man she is cohabiting with abandons her only on his own accord, the women have legal rights and remedies same as the wife would have. This theory develops from the assumption that cohabiting for a certain period ultimately creates a presumption of wedlock.

The protection of women from Domestic Violence Act, 2005[11] – provision relating to the protection of women from domestic violence under this act, is now extended to women who are a part of live-in relationships. Court felt that marriage and the live-in relationship fall within the same ambit and line of thought. This decision makes the line between marriage and a live-in relationship extremely blurry.

The question of a live-in relationship being given the status of bigamy remains unanswered; it can be understood very easily though. As per the essentials of bigamy, there is a provision that states that for Bigamy to persist, the second marriage should be legally solemnized, and in case it is not then no remedy can be provided. Here comes the role of a live-in relationship. For instance, if we consider the following situation, A married person B and had a child out of wedlock, due to a certain situation, B left A and starts living with C in a Live-in relationship. To get a remedy under section 494 of IPC, A went to court but she could not get it because there was no marriage solemnized between B and C. In such a scenario, either A had to continue her life like this or get a divorce.

[10] Code of Criminal Procedure 1873, s 125
[11] Domestic Violence Act 2005

If you ask any independent person, they would suggest getting out of such a relationship, but plenty of women in India face economical and societal pressure and for them, it becomes impossible to get out of such a relationship because if they try to get a divorce, society will stigmatize them with the notion of "her being wrong" and since she cannot claim the remedy due to lack of an essential ingredient, she cannot follow that path.

There should be a simple understanding of the fact that if legislation can grant "wife" status to women living in live-in relationships, rights, and duties as a married couple, then why the remedy cannot be provided in case of bigamy being committed in form of a live-in relationship? This loophole causes innumerable amounts of trouble to women and society at large. There have been many cases in legal history where injustice has prevailed due to this loophole-

- **Bahurao Shankar Lokhande case**
- **Ram Singh v R Susila Bai and Anr**
- **Priya Bala Ghosh v Suresh Chandra Ghosh**

OTHER RELEVANT CASE LAWS

Lily Thomas v Union of India and Ors. - Sushmita Ghosh filed a petition before the Supreme Court, which is the apex court in India, about her husband asking for a divorce and converting to Islam religion for marrying Ms. Vinita Gupta. The court gave the decision that since the sole reason for conversion into Islam was for marrying Ms. Vinita Gupta, therefore the conversion was malicious and fraudulent in nature. Hence, it was laid down that the second marriage is null and void.

Radhika Sameena v SHO Habeeb Nagar Police Station - It was held that a Muslim man cannot perform a second marriage if he has married under the Special Marriage Act, of 1954. He would be liable under section 494 of the Indian Penal Code.

Pyla Mutyalamma@Satyavathi v Pyla Suri Demudu & Anr - In prima facie of any case, it can be inferred that the second wife does not have any claim for maintenance as she is not entitled

to it, since the marriage is null and void, but in this case, it was held that even the second wife is entitled to claim it and cannot be refused on the ground if the validity of the marriage.

CONCLUSION

Bigamy is indeed a criminal offence in India, but yet there are so many loopholes to it, which still exist in our society. Seeing the development with subsequent cases, it can be apprehended that the current problem which persists, i.e., a live-in relationship used as a medium for performing bigamy will soon be eradicated with appropriate legislation in place. Another problem of different personal law has already been addressed in many cases, but Muslim women face a high risk of being the subject of this crime, therefore as a law student, I believe bringing Uniform Civil Code would be the only solution to curb this problem.