

**BURNISHED LAW JOURNAL****State of Christian Bigamy in India**

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**Abstract –**

Bigamy is a punishable offense in India. It is a ground for dissolution of marriage and bigamous marriages are void per se. This is done through a plethora of personal and secular religious laws. These laws are supposed to be uniform in their operation and applicability but it is not the case. Bigamy is not prohibited statutorily under Christian Law due to inept drafting of the Christian Marriage Act. The consequences of this runs severe for the Christian marriages in India and the same has been discussed in the paper.

*"Whosoever commits sin transgresses also the law: for sin is the transgression of the law"*

Marriage is one of the central festivities of the Indian social system. The state of marriages in India largely depicts the health as well as the cultures of our society. It illustrates the types of rights and obligations men and women are accorded and to a large extent determines their relationships with each other and the rest of the world. Marriage is considered a sacrosanct union however; it is not free of complications. It is plagued by maladies which have to be corrected in due time otherwise it might affect a marriage's health. These maladies might even lead to the breakage of its foundations.

One of such maladies is bigamy. Bigamy is the act of marrying again while one's spouse is yet alive. It is largely considered immoral and is a malady that needs correction as well as deterrence from re-occurrence. This is achieved by putting legal sanctions in the form of marriage and matrimonial causes laws.

The Indian society is an essentially pluralistic society at the very core, consisting of a plethora of different races, religions, faiths and cultures and it is hard for one general marriage and matrimonial causes law to govern all the citizens of India and hence India has a set of secular as well as personal laws in place governing different religions and sects to safeguard this basic institution against bigamy. Along with codified personal laws, India has in her arsenal, Sections 494 and 495 of Indian Penal Code guarding the institution of marriage against bigamy.

These sections are supposed to be applicable evenly to all marriages across all religions, them being secular laws but it is not so. The paper seeks to bring out these variable consequences of a seemingly uniform law by taking up the example of Christian marriages and their association with Section 494 and 495 of IPC.

## 1. MARRIAGE AND MATRIMONIAL CAUSES LAWS

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In India, marriage and its dissolution in every religious community are governed by a set of secular as well as personal laws. These laws should be general, rational, universally applicable should have a deterrent effect upon the subjects it seeks to bind. In India, marriage and divorce for the Hindus are governed by The Hindu Marriage Act, 1955 and as for the Christians; marriage is governed by the Indian Christian Marriage Act of 1872 and its dissolution is looked after by the Indian Divorce Act of 1869.

Bigamy is an expressly mentioned crime under the Indian Penal Code and is dealt with by Sections 494 and 495. They read as follows:

**“494. Marrying again during lifetime 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.”

**“495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.**—Whoever commits the offence 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.”

Bigamy renders a Hindu marriage void. Moreover, it is also a crime under the Hindu religious doctrine as well as The Hindu Marriage Act, 1955. Section 17 of the act deals with it. It reads as follows:

**“17. Punishment of Bigamy-** Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of Sections 494 shall apply accordingly.”

This Section provides the legal provisions for bigamy and connects it to Section 494 of IPC for ascertaining the amount and the nature of punishment to be awarded for this crime hence bigamy under Hindu personal law begins as a matrimonial fault and eventually ends up as a penal

offence under IPC. Similarly, The Special Marriage Act of 1954 under Section 44 also makes bigamy a punishable offence.

However, as far as The Christian Marriage Act of 1872 and the Divorce Act of 1869 is considered, there is a lack of any such clear and express provision relating to punishment and ‘void-ness’ of bigamous marriages. This has a very serious implication of this, especially for the Indian context. There is a difference in the way bigamy is conceived in English and Indian legal system. Under English Law, as soon as a man marries a second wife during the subsistence of the first marriage, it is termed as bigamy while under the Indian law, every man who marries a second wife during the subsistence of the first marriage is not liable to be punished and is punished only when the second marriage is void by the reason of its taking place during the subsistence of the first marriage.

Hence it goes up for inference that Section 494 of IPC does not automatically make every marriage contracted during the subsistence of a prior marriage void and punishable and makes it punishable only if it is “void by reason of it taking place during the life of such husband or wife”. The law of marriages and matrimonial causes governing the person concerned ascertains this ‘void-ness’ This effectively means that section 494 and section 495 of IPC can’t be used to punish a person unless a marriage act has express provisions to declare the second marriage as void. And because The Christian Marriage Act, 1872 does not talk about the void-ness of such contracted marriage, Section 494 and 495 can’t be used as to punish such conduct without being at the whims of the court’s judgment. Further this also means that if a Christian man tries to commit bigamy, he won’t be covered even under Section 511 of IPC which hands out punishment for attempting to commit offences punishable with imprisonment for life or other imprisonments under IPC. Though bigamy is not allowed in Christian marriages, a lack of codified statutory vigor makes its implementation difficult as compared to other religions.

## **2. BIBLE ON POLYGAMY**

“Let each man have his own wife and each woman have her own husband.”

There have been many debates whether the character of the Christian marriage is monogamous or a polygamous as per the bible but as far as the majority opinion goes, a polygamous union is prohibited in Christianity and is considered a sin. It is often associated with negative connotations like incest, adultery and immorality. It is believed that God instituted marriage as an element of sanctity rather than just a contract and as an essentially monogamous union. This is evident from the fact that God just created one man -Adam and one wife – Eve.

*"And Adam said this is now bone of my bones, and flesh of my flesh: she shall be called Woman, because she was taken out of man. Therefore, shall a man leave his father and his mother, and shall cleave to his wife: and they shall be one flesh"*

It is also argued that the concept of marriage in Christianity is seen as ‘as a union for life of one man with one woman and hence is monogamous.

### 3. LEGISLATIVE HISTORY

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The Christian Marriage act was introduced in 1872 and has been subjected to various amendments and revisions since. But none of them has been able to affect the inclusion of provisions of bigamy into the act. In the incipient stages of codified laws for Hindus, Parsis, Sikhs, Buddhists and Jains, bigamy was made a crime by engrafting and incorporating section 494 and 495 of IPC into their respective personal law codes. The government then proceeded towards the apparent ‘loophole’ in the Christian Marriage Act in order to bring the law of marriage and matrimonial causes in respect to Christians in tune with the law of the land. This subject was referred to the Law Commission to work upon along with public inputs requested from dignitaries of Churches, Christian Associations and members of the Christian community. The Law Commission incorporated all these opinions and finally The Christian Marriage and Matrimonial Causes Bill, 1962 was introduced in the parliament containing express provisions to prevent bigamy but this bill lapsed in 1967 due to political turmoil. The Supreme Court and the High Courts have multiple times called upon the legislatures to effect changes in the law, subsequently, a draft was again prepared by the Ministry of Law in 2000 but it also failed to revamp the act. As a result, the Act till date is silent upon the question of void-ness of second marriage and bigamy under Christianity still goes unpunished, at least statutorily.

### 4.. PRECEDENTS

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The same can be explained through a very decisive case. In the case of *Saldanha vs. Saldanha*<sup>1</sup>, all the parties to the suit were Roman Catholics. Appellant 1, Peter Phillip Saldanha married Respondent, Anne Grace Saldanha on 14<sup>th</sup> June, 1928. Their marriage was solemnized by the marriage registrar at Bombay. After a while Peter married another woman named Olive De Souza (Appellant no. 2) in the Church of the Sacred Heart, Igatpuri. On finding out that Peter was already married, Olivia, his second wife filed a complaint of bigamy against Peter under Section 495 of IPC in the Sessions Court, Igatpuri but Peter was acquitted thereof as it was held by the court that his first marriage was not consummated. After this, Anne Grace appealed against Peter and Olive for a declaration that she (Anne) was the lawfully wedded wife of Peter and that the marriage of Peter and Olivia was invalid and prayed for an order of restitution of

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<sup>1</sup> Saldanha v. Saldanha A.I.R. 1930 Bombay 105.

conjugal society. Her appeal was granted but Peter and Olive appealed against it contending that the earlier marriage between Peter and Anne was forbidden by the personal law applicable to the parties to the marriage on the grounds that Canon Law of Roman Catholics does not recognize the marriage solemnized before the Marriage registrar and is well covered under the ambit of Section 88 of the Christian Marriage Act, 1872 which reads as:

“Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.”

The court in this case dismissed the appeal of Peter and Anne regarding the invalidity of Peter’s first marriage and observed that,

“Had it been the intention of the legislature that the forms prescribed should not apply to Roman Catholics or indeed to any class of Christians whose personal law could be said to insist on a particular ceremony, it would have said it in plain words and would have been simpler and more natural to exclude such persons altogether from the operation of the act. Roman Catholics are not expressly excluded from the Part V of the Act (relating to the marriages solemnized by, or in the presence of, a marriage registrar) or Section 88”

In furtherance of their argument, the judges also held that since both Peter and Anne out of their own free will went through the ceremony which the law provided as one of the methods of solemnizing their marriage, and whatever condition they may have contemplated in their minds before actual consummation took place, the fact remains that they were legally and unequivocally married from the moment the ceremony was completed. It was also held that Roman Catholics were not compelled to marry before a Registrar, they were merely permitted to do so and this was not an interference with the free exercise by them of their religion. As for the appeal, they dismissed the appeal with costs to be paid by Peter Saldanha and the previous judgment which recognized Anne to be the lawfully wedded wife of Peter and held the marriage of Olive and Peter void and illegal prevailed. Restitution of conjugal rights as between Peter and Anne was ordered but no punishment was awarded to Peter Saldanha for bigamy as the subsequent appeal by Anne could not be filed under Section 494 or 495 of IPC.

In India multiplicity of customs and practices of religious communities often leads to chaotic and slowed down judicial processes as the judges always have to operate amongst the conflicts between the personal laws, customs, morality, public sentiments and the secular law regarding the issue. This sometimes might even lead to conflicting judgments delivered for similar cases.

It was very evident in the immediate case. The Sessions court in a casual manner, without much inquiry held Peter’s first marriage as essentially void and invalid as against his personal laws, thus not holding him liable under section 495 of IPC.

It is very well observable that the objective of enacting Section 494 of the Indian Penal Code is to punish the people who defy the law and take a second wife during the subsistence of their first marriage. If such people are let off the hook by merely declaring the second marriage void and null and not awarding the punishment due to some 'defect' or 'shortcoming' in the current law, not only the purpose of such matrimonial laws will be defeated but it might also serve as an encouragement to people act the way Peter did. The fact can't be overlooked that the true essence of section 494 which is to punish bigamous behavior was lost somewhere in this ruling. There was neither any mention of bigamy in the whole judgment nor was Peter punished for his wrongful conduct. The Sessions court failed to interpret the case in a less positivistic manner and keep the true essence of the legislation and Section 494 and 495 in mind while deciding the case. The courts here needed to be less positivistic in the approach they follow in cases like these where express provisions are missing from the statutes. It becomes important for the courts to look to it that the purpose of the enactment of the legislature stays at the top and should be interpreted liberally in a fashion that would prevent the mischief from being committed and would also provide with suitable remedies in case of such breaches.

Sadly, this happens to be an observable pattern across the cases as the act doesn't provide any specific relief or the judges don't find the conduct bigamous even when it clearly appears to be so.

In a similar Christian bigamy case that of *Gnansoundari vs. Nallathambi*<sup>2</sup> the judges were forced to acquit the offender as there was no clear mention of bigamy being a punishable offence under the act, and hence section 494 of IPC could not be evoked. The judges in this case observed:

"With regard to the accused I am quite clear that he should have been convicted of an offence under Section 494 of the Indian Penal Code however, I cannot myself convict the accused. I can only order a retrial but in the circumstances, it does not seem to me necessary or desirable that the first accused should be put on his trial again, and I understand that a retrial of the case is not desired by the petitioner. All that is desired is that the principle should be established that in the circumstances of this case the offence of bigamy was committed. If, however, a retrial is not directed, the only alternative is to dismiss the petition."

This blithe pattern is also seen in the case that of Mrs. *Marthamma vs. Munuswamy*<sup>3</sup> whereby a man, a native convert to Christianity relapsed into Hinduism & married a Hindu woman during the subsistence of his marriage with a Christian girl when he was a Christian. The Court in this case casually took the example of how the wise king Solomon who had seven hundred wives &

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<sup>2</sup> Gnansoundari v. Nallathambi A.I.R. 1945 Madras 516.

<sup>3</sup> Mrs. Marthamma v. Munuswamy A.I.R. 1951 Madras 888.

three hundred concubines was never referred to with disapproval even once in the New Testament and concluded that,

“a profession of Christianity does not 'ipso facto' impose any such obligation to monogamy and even if it does, that obligation goes when that religion is abandoned for another religion for purposes, holy or unholy, & he gets the rights of the new religion he embraces”

As for the case, they observed the following: -

“No doubt, as respondent has left the petitioner in a miserable predicament by the act of the first accused in deserting her & her son & marrying another woman. But this hardship has existed in all polygamous marriages by lusty fellows preferring a younger woman, & is nothing to go by in criminal cases; & equal hardship will be caused to the second wife of the first accused, if the marriage with her is declared illegal. Anyway, sending the first accused to jail in this bigamy case cannot be of much relief to the petnr. in her hardship or difficult situation and hence the petition is dismissed ”

But the courts have not always remained this narrow in their approach and there is a change seen in the way courts are handling such cases starting from the case that of *Patience Williams vs. Ashok*<sup>4</sup>, the facts were similar to the previous cases. A Christian man married again while the subsistence of his previous marriage. The judges subjected his conduct to the essentials to prove bigamy and found out his conduct to be indeed bigamous but punishment couldn't be awarded as the complaint was not filed under Section 494. It needs to be appreciated that this was one of the first instances where the Courts started interpreting more liberally the matrimonial codes for Christians. In all these cases bigamy was committed and even proved in some places and this cannot be taken lightly by the court. Bigamy is a big threat to the basic institution of the society and must be saved at all costs. The peace and welfare of the society depend on cordial marriage relationships and hence the state is invariably involved in such issues. It is the state's duty to prevent such misconduct and punish them as and when they take place to provide a deterrent effect to possible wrongdoers. It is also a well observable pattern that across these cases, had there been efficient and express provisions, the parties would not have been able to escape the punishment they were liable for.

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<sup>4</sup> Patience Williams v. Ashok A.I.R. 1985 Madhya Pradesh 223.

## 5. CONCLUSION

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The Christian Marriage Act, as well as, The Indian Divorce Act have been amended and revised time and again but sadly none of the amendments has succeeded in effecting the second marriage for Christians void and punishable under the Act. The Indian Government also tried their bit but had they not abandoned the 1962 bill, provisions to forbid and punish bigamy would have been in place along with other provisions relating to marriage and matrimonial causes for Christians. And even though the act was enacted after IPC i.e. after 1860, nothing was drawn from IPC pertaining to bigamous conduct. It's hard to say whether these acts were politically motivated or were simply the result of administrative lacuna nevertheless, the result was that the Christian men who commit bigamy couldn't be held liable statutorily under section 494 and section 495 of IPC.

In India, the laws of marriage and divorce were the domains of religions initially but with the codification of the laws, it now lies in the domain of the State and Judiciary. They need to make sure that these laws are uniformly applicable and keep pace with the changing society. Marriage and Divorce are the subjects of Concurrent list so it also rests upon the Parliament and the State Legislatures to team up with Judiciary to introduce reforms and make sure that it is not just at the whims of the parties to take advantages of loopholes in the law to remarry in absence of express provisions and leave the other parties to the case in want of justice. These loopholes even fall foul of Article 44 of the Indian Constitution which endeavors to secure the citizens a uniform civil code throughout the territory of India. The concept of equity easily comes into question when laws of the land are not applied equally and equitably on all religions just because one of them doesn't have express provisions to do so. The amendment to Indian Christian Marriage Act has been long-standing and now it is time to revamp it and incorporate Bigamy prevention and punishment provisions like they have been done for Hindus and Parsis.