BLOGS

Learn in a Minute: Is Bigamy allowed in India?

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Introduction

In a country as diverse as India, the rules around marriage can be quite complex. One question that often comes up is whether it's legal to be married to more than one person at the same time—known as bigamy. It's important to understand what the law says about this. We'll look at the different laws and court decisions that shape the rules around bigamy in India, and how these rules apply to different religious and cultural practices. This post will help clarify whether bigamy is allowed in India and what the legal consequences are for those who practice it.

Legal Framework on Bigamy in India

Hindu Marriage Act, 1955: Under Section 17 of the Hindu Marriage Act, 1955, bigamy is considered an offenCe. If a person, who is already married and whose spouse is alive, contracts a second marriage, that marriage is void. No legal rights or obligations arise from such a void marriage. For instance, the second spouse does not have any legal claim to the property, maintenance, or other marital rights. The person can be prosecuted under Sections 494 and 495 of the Indian Penal Code (IPC), 1860.

Section 494: Marrying Again During Lifetime of a Husband or Wife

Section 494 of the Indian Penal Code (IPC) addresses the act of marrying another person while the original spouse is still living and the marriage is still legally valid.

The section applies if:

- The first marriage is legally valid.
- The first spouse is alive.
- There is no legal dissolution (divorce) or annulment of the first marriage.

The second marriage is considered null and void but the burden of proof is on the prosecution to prove that the first marriage was valid and subsisting at the time of the second marriage. If the

first spouse has been absent and not heard of for seven years, the person may not be charged under this section (as per legal provisions on presumption of death).

Section 495: Concealment of Former Marriage from the Person with Whom Subsequent Marriage is Contracted

Section 495 of the IPC pertains to the concealment of an existing marriage from the person with whom the subsequent marriage is contracted.

The section applies if:

- The individual marries another person while having a living spouse.
- The fact of the existing marriage is concealed from the new spouse.

In this case, the aggrieved party (second spouse) or any other interested party can initiate criminal proceedings.

Landmark Cases on Bigamy

Sarla Mudgal v. Union of India

The Sarla Mudgal case revolves around issues of bigamy, conversion to Islam, and the conflict between personal laws in India. The petitioners were women who sought the intervention of the Supreme Court in cases where their husbands had converted to Islam to marry again without dissolving the first marriage, effectively circumventing the provisions of the Hindu Marriage Act, 1955.

The Supreme Court held that:

1. Bigamy under Section 494 of IPC: The court ruled that if a man solemnizes a second marriage without dissolving the first one by converting to Islam, it would be considered bigamy under Section 494 of the IPC. The second marriage, despite the conversion, would be void.
2. Validity of Conversion: The conversion to Islam with the intent to remarry without dissolving the first marriage is not valid. The court emphasized that conversion should be genuine and not a means to escape personal laws applicable to the first marriage.
3. Uniform Civil Code: The judgment highlighted the need for a Uniform Civil Code (UCC) in India to address such issues arising from conflicts between different personal laws. The court reiterated the directive principles of state policy under Article 44 of the Indian Constitution,

urging the state to implement a UCC to ensure uniformity in marriage and succession laws.

Lily Thomas v. Union of India

The Lily Thomas case addressed similar issues to those in the Sarla Mudgal case, specifically the practice of individuals converting to Islam to enter into a second marriage without dissolving their first marriage. The petitioners sought clarification and enforcement regarding the applicability of bigamy laws in such situations.

The court reaffirmed the principles laid down in the Sarla Mudgal case. It stated that a person who converts to Islam and marries again without dissolving the first marriage would be committing bigamy under Section 494 of the IPC. The second marriage, despite the conversion, would be considered void.

The judgment stressed the importance of respecting the sanctity of marriage and the legal framework governing marital relationships. It reiterated that the law does not permit escaping legal obligations and restrictions through dishonest means such as fraudulent conversion.

Priya Bala Ghosh v. Suresh Chandra Ghosh

The primary issue in this case was whether the second marriage contracted by the respondent during the subsistence of his first marriage constituted bigamy under the IPC. The Supreme Court held that for a conviction under Section 494 of the IPC, it is imperative to prove that the second marriage was duly solemnized according to the essential ceremonies required by the personal law applicable to the parties.

In this case, the court found that there was insufficient evidence to prove that the second marriage was solemnized with the necessary religious rites and ceremonies as required under Hindu law.

The court emphasized that merely proving cohabitation or social acceptance as husband and wife is not sufficient to establish a valid marriage under the Hindu Marriage Act. The prosecution must provide conclusive evidence of the performance of essential ceremonies to constitute a valid marriage.

Conclusion

Bigamy is considered a serious offense in India, with comprehensive legal provisions aimed at preventing and penalizing the practice. Despite the legal framework, bigamy can lead to significant social stigma and personal repercussions, affecting the lives of those involved. Courts have played a critical role in interpreting and enforcing bigamy laws, as seen in landmark cases like Sarla Mudgal v. Union of India and Lily Thomas v. Union of India, which reinforced the illegality of converting to another religion for the purpose of contracting a second marriage. It is believed that implementing a Uniform Civil Code would bring significant changes to the legal framework governing bigamy in India.

Also Read: Uniform Civil Code in India