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Offence of Bigamy and Proof of Solemnization of Second Marriage: Legal Paradox and Judicial Rigidity

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Abstract

This research paper undertakes a critical examination of the offence of bigamy under Indian law, analysing its statutory framework, doctrinal foundations, evidentiary complexities, and judicial interpretation. It explores the paradox that arises from the tension between the legislative objective of protecting monogamous marital fidelity through criminal sanctions and the stringent evidentiary standards that often shield offenders due to rigid judicial interpretation. The study evaluates relevant statutory provisions, evolving case law, constitutional principles, gender justice concerns, and comparative perspectives. The article particularly focuses on the statutory requirement of proving the solemnization of the second marriage and demonstrates how judicial insistence on strict proof of essential ceremonies has created a legal paradox. While the law seeks to deter bigamy and safeguard the rights and dignity of the aggrieved spouse, rigid evidentiary standards frequently frustrate successful prosecution, thereby undermining the very purpose of criminalising bigamy. The paper argues for a nuanced doctrinal and procedural recalibration that balances the foundational principles of criminal jurisprudence with the demands of substantive justice in matrimonial law.

Keywords: Bigamy, second marriage, Evidence Act, marital validity, judicial rigidity, gender justice, statutory interpretation.

Introduction

Marriage in Indian society is not merely a civil contract but a sacrament deeply rooted in religious, social, and moral values. Particularly within Hindu jurisprudence, marriage has traditionally been regarded as a *sanskara*-a sacred and indissoluble union-rather than a contractual arrangement. Even under secular legislation such as the Special Marriage Act, marriage carries profound civil consequences and legal sanctity. The enforcement of monogamy among Hindus, Christians, Parsis, and persons married under civil law is statutorily mandated under the Hindu Marriage Act, the Indian Christian Marriage Act, and the Parsi Marriage and Divorce Act.

Bigamy, therefore, has been treated not merely as a matrimonial wrong but as a criminal offence. Under Section 494 of the Indian Penal Code (IPC), marrying again during the lifetime of a spouse is punishable with imprisonment up to seven years and fine. With the enactment of the Bharatiya Nyaya Sanhita (BNS), the offence of bigamy has been retained under Section 82 BNS, 2023, substantially preserving the ingredients of former Section 494 IPC. The provision continues to criminalize a second marriage contracted during the subsistence of the first valid marriage, unless such marriage is declared void or dissolved by a competent court.

The Essential Ingredients of the Offence, as Consistently Interpreted by Courts, Include

- i). Existence of a valid first marriage
- ii). Subsistence of the first marriage at the time of the alleged second marriage
- iii). Solemnization of the second marriage
- iv). Absence of lawful divorce or annulment
- v). Intention to contract the second marriage.

While these elements appear straightforward, the real legal controversy arises in proving the *solemnization* of the second marriage.

The Legal Paradox

This insistence on strict proof of solemnization has created a legal paradox. The legislature criminalizes bigamy to protect marital sanctity and prevent injustice-particularly to women-yet judicial interpretation makes conviction extremely difficult unless direct and specific evidence of ceremonies is produced.

The Paradox Lies in the Following Tension

- **Legislative Intent:** Protect monogamy and deter second marriages.

- **Judicial Standard:** Require strict proof of ceremonies beyond reasonable doubt.
- **Practical Reality:** Second marriages are often performed privately, without documentation or independent witnesses.

As a result, even when there is clear evidence of a second conjugal relationship-such as cohabitation, birth of children, joint property, or public acknowledgment-courts often acquit the accused for lack of proof of essential rites.

Concept and Statutory Framework of Bigamy under Indian Law

Meaning of Bigamy

Bigamy refers to the act of marrying another person during the subsistence of a valid first marriage. It is distinguished from polygamy, which is permitted under certain personal laws (notably Muslim law). Under Indian criminal jurisprudence, bigamy is an offence only where the personal law governing the parties mandates monogamy.

Bigamy under the Indian Penal Code

Sections 494 and 495 of the Indian Penal Code, 1860 (IPC) govern the offence of bigamy.

Section 494 IPC penalizes any person who marries again during the lifetime of his or her spouse, provided the first marriage is valid and subsisting.

Section 495 IPC is an aggravated form of the offence, where the second marriage is contracted by concealing the fact of the first marriage from the person with whom the second marriage is solemnized.

The Essential Ingredients of Section 494 IPC are:

- Existence of a valid first marriage.
- The first spouse must be alive at the time of the second marriage.
- The second marriage must be solemnized.
- The second marriage must be void by reason of the subsistence of the first marriage.

BNS, 2023 and Continuity of Doctrine

The Bharatiya Nyaya Sanhita, which replaced the IPC, has retained the offence of bigamy under Section 82 BNS without substantially altering its ingredients. Consequently, the judicial precedents interpreting Section 494 IPC continue to hold persuasive value for interpreting Section 82 BNS.

Unless legislative clarification is introduced-such as permitting rebuttable presumptions of marriage based on long cohabitation or public acknowledgment-the evidentiary challenges identified in earlier jurisprudence are likely to persist under the new criminal code as well.

Object vs Interpretation

The object of Section 82 of BNS (Section 494 IPC) is to:

- Prevent marital fraud
- Protect the rights and dignity of the first spouse
- Uphold monogamy

However, judicial insistence on strict proof of solemnization often defeats this purpose.

Reality vs Ritual

- In contemporary society:
- Many second marriages are performed secretly
- Ceremonies are deliberately diluted or symbolic

- Parties avoid formal rituals to escape legal consequences

Bigamy under Personal Laws

The offence of bigamy in India operates within the broader matrix of personal laws governing marriage and divorce. While criminal liability is now codified under Section 82 of the Bharatiya Nyaya Sanhita (formerly Section 494 IPC), the validity of marriage and the concept of monogamy derive primarily from personal law statutes. A careful examination of these statutes demonstrates that statutory monogamy is firmly entrenched across most non-Muslim personal laws in India.

1. Hindu Law

Under Section 5(i) of the Hindu Marriage Act (HMA), a valid Hindu marriage can be solemnized only if “neither party has a spouse living at the time of the marriage.” Violation of this condition renders the subsequent marriage void under Section 11 HMA.

Further, Section 17 HMA explicitly provides that any marriage between two Hindus solemnized after the commencement of the Act is void if either party had a spouse living at the time of such marriage, and that the provisions of Sections 494 and 495 of the former Indian Penal Code (now Section 82 BNS) shall apply accordingly.

Thus, Hindu law adopts a dual mechanism:

- **Civil Consequence:** Second marriage is void ab initio.
- **Criminal Consequence:** Offence of bigamy punishable under criminal law.

The Supreme Court has repeatedly upheld this statutory mandate. In *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635, the Court condemned attempts by Hindu men to convert to Islam solely to contract a second marriage without dissolving the first, holding such marriages void and punishable for bigamy. The Court emphasized that statutory monogamy cannot be circumvented through religious conversion.

2. Christian Law

Christian marriages in India are governed by the Indian Christian Marriage Act, while divorce is regulated under the Divorce Act, 1869. Although the Marriage Act primarily governs solemnization, monogamy is implicit and reinforced through criminal sanctions under Section 82 BNS (formerly Section 494 IPC).

Thus, a Christian who contracts a second marriage during the subsistence of the first valid marriage incurs criminal liability, and such marriage is void in law.

3. Parsi Law

Section 5 of the Parsi Marriage and Divorce Act declares that no Parsi shall contract a marriage if his or her spouse is living and the marriage has not been lawfully dissolved. A marriage contracted in contravention of this provision is void and punishable under criminal law.

Parsi law, therefore, expressly embeds statutory monogamy and reinforces it through penal consequences.

4. Special Marriage Act, 1954

The Special Marriage Act (SMA) provides a secular framework for civil marriages irrespective of religion. Section 4(a) mandates that neither party should have a spouse living at the time of marriage. Section 44 SMA penalizes bigamy by attracting criminal liability under the penal code.

The SMA thus strengthens the legislative commitment to monogamy in civil marriages and integrates personal law compliance with criminal sanctions.

Position under Muslim Personal Law

It must be noted that classical Muslim personal law permits polygyny up to four wives, subject to conditions of equality and justice. Consequently, bigamy as a criminal offence does not ordinarily apply to Muslim men marrying within the limits permitted by their personal law. However, fraudulent or irregular marriages may attract other legal consequences.

Judicial Interpretation of Solemnization

Indian courts have adopted a strict view that proof of solemnization of the second marriage is a sine qua non for conviction under Section 494 IPC. This has led to a paradoxical situation where the existence of a long-standing second relationship, acknowledgment by society, and even children born out of such union may not suffice to establish bigamy.

Burden and Standard of Proof in Bigamy Cases

Bigamy being a criminal offence, the burden of proof lies squarely on the prosecution. The standard required is proof beyond reasonable doubt.

The Prosecution Must Establish

- i). Validity of the first marriage.
- ii). Performance of essential ceremonies of the second marriage.

In practice, this has proved to be an onerous burden, especially when the second marriage is conducted secretly to avoid legal consequences.

Judicial Rigidity: Landmark Case Laws

Indian courts have repeatedly emphasized that for conviction under Section 494 IPC (now Section 82 BNS), it is not sufficient to show that the accused lived with another person as husband and wife. The prosecution must establish that the second marriage was performed with essential ceremonies required under the applicable personal law.

In *Bhaurao Shankar Lokhande v. State of Maharashtra*, AIR 1965 SC 1564, the Supreme Court held that the expression “whoever marries” in Section 494 IPC means “whoever marries validly or whoever goes through a form of marriage known to law.” The Court ruled that unless the essential ceremonies (such as *saptapadi* in a Hindu marriage, where applicable) are proved to have been performed, the marriage cannot be said to be solemnized in the eye of law.

Similarly, in *Kanwal Ram v. Himachal Pradesh Administration*, AIR 1966 SC 614, the Court observed that admission of marriage by the accused is not sufficient evidence of a valid marriage for the purpose of Section 494 IPC. Strict proof of performance of essential ceremonies is indispensable.

The position was reaffirmed in *Priya Bala Ghosh v. Suresh Chandra Ghosh*, (1971) 1 SCC 864, where the Supreme Court set aside a conviction because the prosecution failed to prove that the essential rites of the second marriage were performed, even though the relationship was socially acknowledged.

In *Santi Deb Berma v. Kanchan Prava Devi*, (1991) 2 SCC 616, the Court again emphasized that proof of ceremonies is mandatory and cannot be presumed merely from cohabitation or social reputation

Presumption of Marriage and Its Non-Application

Courts readily apply presumption of marriage under Sec. 112 of BNS, 2023 (Section 114 of the Evidence Act, 1872) in civil matters where long cohabitation exists. However, in criminal cases of bigamy, such presumptions are rejected.

Comparative Judicial Approaches: A Missed Opportunity

In civil matters, courts have been more liberal, recognizing marriages based on long cohabitation and social recognition. However, in criminal prosecutions for bigamy, this liberal approach is conspicuously absent.

The contradiction between civil and criminal standards highlights inconsistency in judicial reasoning.

Need for a Presumption-Based Approach

There is a growing argument that courts should:

Allow presumptions under Section 112 of BNS, 2023 (Sec. 114 of the Indian Evidence Act, 1872).

Accept circumstantial evidence, admissions, photographs, and social recognition as proof of marriage.

Such an approach would not dilute criminal jurisprudence but would align it with social realities.

Role of Marriage Registration

Mandatory registration of marriages, as suggested in *Seema v. Ashwani Kumar* (2006), can significantly reduce evidentiary challenges. However, lack of uniform implementation continues to perpetuate ambiguity.

Law Commission and Reform Proposals

The Law Commission of India has, on several occasions, highlighted the difficulties in prosecuting bigamy cases and suggested reforms. However, no substantial legislative amendment has been made to relax the evidentiary burden.

Judicial Activism vs. Judicial Restraint

While judicial restraint aims to protect the accused from wrongful conviction, excessive rigidity undermines substantive justice. Courts must strike a balance between: Safeguarding criminal law principles, and preventing misuse of legal loopholes.

Conclusion

The offence of bigamy occupies a complex intersection of criminal law, personal law, and social justice. While the statutory intent is clear, judicial insistence on strict proof of solemnization has created a legal paradox that often defeats justice.

The offence of bigamy stands at the intersection of criminal law, personal law, and social justice. While the judiciary’s insistence on strict proof of solemnization stems from the criminal law principle of proof beyond reasonable doubt, such rigidity has created a legal paradox where the guilty often escape punishment. The law, as it stands, prioritizes ritual over reality and form over substance. In doing so, it undermines the very object of criminalising bigamy. A progressive interpretation-aligned with constitutional values of equality, dignity, and justice-is imperative. Until legislative or judicial reforms address this imbalance, the offence of bigamy will continue to remain a paper tiger, offering symbolic protection without effective remedy. In a society where second marriages are deliberately concealed, expecting direct evidence of ceremonies is unrealistic. The law must evolve to recognize circumstantial evidence and social realities without compromising fairness.

A more purposive interpretation, supported by legislative reform and mandatory marriage registration, is the need of the hour. Only then can the law on bigamy truly serve its purpose-protecting the sanctity of marriage and ensuring justice for the aggrieved spouse.

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