

DE JURE NEXUS LAW JOURNAL

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CASE ANALYSIS: S. NAGALINGAM v. SIVAGAMI

INTRODUCTION

Case Name: S. Nagalingam v. Sivagami (Respondent: Sivagami, Appellant: S. Nagalingam)

Citation: (2001) 7 SCC 487

Date of the judgment: 31/08/2001

Deciding court: Supreme Court of India (SC)

Bench: Division Bench- D.P. Mohapatra, K.G. Balakrishnan (Judgment was delivered by K.G. Balakrishnan)

LAWS/ LEGISLATIONS APPLICABLE

Hindu Marriage Act, 1955¹

Indian Penal Code, 1860²

¹ Hindu Marriage Act, 1955, No. 25, Acts of the Parliament, 1955.

² The Indian Penal Code, 1860, No. 45, Acts of the Parliament, 1860.



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FACTS

S. Nagalingam, the appellant and Sivagami, the respondent, were married to each other on 6th September 1970. Three children were created from the marriage. Sivagami alleged that her husband, S. Nagalingam maltreated as well as tortured her on various occasions as a result of which she left his home and went to live with her parents. During this period, she got to know that her husband married another woman named Kasturi on 18th July, 1984. The ceremonies were carried out in a hall at Thiruthani. Sivagami, then filed a criminal complaint before the Metropolitan Magistrate against her husband and six others. All accused were acquitted by the trial court.

Aggrieved, she filed a Criminal Appeal NO. 67 of 1992 before the High Court of Madras. The High Court on 1st November, 1996 upheld the acquittal of six other people who were claimed guilty along with her husband. But as regards with, S. Nagalingam, the High court sent the matter back to the Trial Court and permitted the complainant to produce evidence that the marriage was solemnized.

Upon that, the priest who was alleged to have performed the ceremonies was taken into custody and cross-examined. The Metropolitan Magistrate acquitted the accused in a judgment dated 4th March 1999. Unsatisfied by the same, Sivagami filed a Criminal Appeal No. 486 of 1999 before the High Court of Madras. The court held the appellant guilty of the offence of Bigamy under Section 494 of IPC.

S. Nagalingam then challenged the judgment of the High Court of Madras before the Hon'ble Supreme Court of India.

ISSUE INVOLVED

The major issue dealt by the court in the case of S. Nagalingam v. Sivagami was,

Whether the marriage entered into on 18th July, 1984 by S. Nagalingam, the appellant with the second accused Kasturi a valid marriage as per the Hindu Marriage Act so as to constitute the offence of bigamy under Section 494 of Indian Penal Code as per Section 17 of the Hindu Marriage Act.

CONTENTIONS MADE ON BEHALF OF BOTH THE PARTIES

The counsel on behalf of the appellant has raised the contention that “saptapadi” which is an essential of a Hindu marriage was not performed and so the marriage was not a valid one.

The respondent on the other hand contented that the ceremony of “saptapadi” was not essential as per Section 7-A of the Hindu Marriage Act and that the second marriage was solemnized according to the customs and norms applicable to both the parties. The same was confirmed with the cross examination with the priest.

DECISION

There is a state amendment in the Hindu Marriage Act, 1955. Section 7-A has been added by virtue of the Tamil Nadu State Amendment Act, 1967. Section 7-A applies to all or any marriage solemnized between two Hindus in the presence of friends, relatives and other people. The main purpose for the inclusion of this provision is that a marriage can be valid even if it is solemnized in the absence of a priest. In other words, the presence of a priest is not necessary for a marriage to be termed valid.

Sub-section (2)(a) of Section 7-A explicitly mentions that this provision will be applicable to all marriages solemnized after the commencement of Hindu Marriage (Tamil Nadu Amendment) Act, 1967 and such marriage would be considered good and valid in law, notwithstanding anything contained in Section 7.

Parties can enter into a marriage in the presence of friends and other relatives. Both the parties marriage should declare in the language understood by the other parties that he/she accepts the other party as his/her husband or wife, as the case may be. The only requirement for such marriage is that the parties should either exchange garlands or rings or they can tie a thali to each other. Any of these ceremonies will be sufficient to declare a marriage as valid.

According to the evidence given by the priest (in this case referred to as PW 3) the accused and the second wife, both are residents of Tamil Nadu. The marriage took place in Tamil Nadu itself (Thiruthani Temple). PW 3 also claimed that the bridegroom tied the “thirumangalam” around the neck of the bride and they exchanged garlands three times. According to PW 3, bride’s father, in the witness of “agnidevi” stated that he was giving his daughter to “kanniyathan” and the same was accepted by the bridegroom’s father. The marriage was solemnized according to the customs applicable to the parties and so according to the evidence the marriage was a valid one as per the provisions of Section 7-A of the Hindu Marriage Act.

Under such cases, the provisions inserted by the state are applicable and, in this case, a valid marriage was solemnized under Section 7-A of the Act. Moreover, “Saptapadi” is an essential ceremony only when it is applicable as per the norms and customs of the parties. In other words, only if the practice is applicable to them, it will be considered an essential/crucial ceremony.

In this case, the personal laws applicable to the accused does not provide for “Saptapadi” as an essential ceremony because Section 7-A is applicable to the parties. Hence, the court held that there a valid marriage between the accused and the second wife on 18th July, 1984. Therefore, it was held that the offence of Bigamy was committed by the appellant because he was still married to his first wife which was solemnized on 6th September, 1970.

JUDGMENT

The ingredients mentioned under Section 494 of IPC³ essential for the commission of offence are,

- a. The first marriage must have been contracted/ solemnized by the accused,
- b. While the first marriage was still subsisting, the accused contracted the second marriage, and
- c. Both the marriages should be valid. That means they should be solemnized with all the customs and laws applicable to the parties.

It was held by the Metropolitan Magistrate that an important and essential ceremony termed “saptapadi” was not performed and hence the second marriage was invalid. The learned single judge of the High Court reversing the decision of the Magistrate held that Section 7-A of the Hindu Marriage Act governs the parties and that according to that “saptapadi” is not an essential ceremony for a marriage to be termed valid and hence, S. Nagalingam is guilty of the offence of bigamy.

As per the complaint filed by Sivagami, the marriage was contracted according to the Hindu Marriage at RCC Mandapam, Thiruthani. She also contended that the witness by the priest (PW 3) was a detailed one and that it should be taken into consideration. On the other hand, the counsel for the appellant contended that “saptapadi is an important ritual and since that was not performed; marriage cannot be termed as valid.

According to Section 17 of the Hindu Marriage Act, 1955- Punishment in case 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 and 495 of the Indian Penal Code, 1860 (45 of 1860), shall apply accordingly.”⁴

Section 7-A was inserted by the State Amendment Act by the State of Tamil Nadu. It is a special provision which provides for suyamariyathai and seerthiruththa marriages. In this case, both the

³ Section 494, Indian Penal Code, 1860.

⁴ Section 17, Hindu Marriage Act, 1955.

parties to the second marriage namely, the accused, S. Nagalingam and the second wife, Kasturi both are residents of Tamil Nadu and the marriage ceremony were performed in the same state itself. The conditions for a valid marriage under this provision are as follows:

“7-A. Special provision regarding suyamariyathai and seerthiruththa marriages

(1) This section shall apply to any marriage between any two Hindus, whether called suyamariyathai marriage or seerthiruththa marriage or by any other name, solemnized in the presence of relatives, friends or other persons-

(a) by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife or, as the case may be, her husband; or

(b) by each party to the marriage garlanding the other or putting a ring upon any finger of the other; or

(c) by the tying of the thali.

(2) (a) Notwithstanding anything contained in section 7, but subject to the other provisions of this Act, all marriages to which this section applies solemnized after the commencement of the Hindu Marriage (2a[Tamil Nadu] Amendment) Act, 1967, shall be good and valid in law.”⁵

Ratio Decidendi:

The verdict in this case was delivered by K.G. Balakrishnan. The Supreme Court in this case upheld the judgment of the High Court of Madras banishing the plea of S. Nagalingam. The issue before the court was whether the marriage between S. Nagalingam and the second wife was a valid one or not as per the provisions of the Hindu Marriage Act. The court in this case held that the marriage was a valid one as per the provisions of Section 7-A which was added by the virtue of Hindu Marriage (Tamil Nadu Amendment) Act, 1967. According to the Supreme Court, “Saptapadi” is an essential ceremony for a marriage to be solemnized but only for the parties to whom it is applicable. In this case, since the marriage falls under Section 7-A of the act, the only

⁵ Section 7-A, Hindu Marriage Act, 1955.

essential/mandatory ceremony was exchange of garlands or rings or tying of thali and the same was carried out in the present case as per the witness.

Hence, it was held that the appellant had committed the offence of bigamy under the Hindu Marriage Act as well as Section 494 of Indian Penal Code.

Obiter Dicta:

Customs are a crucial part of the society. Customs, in general terms are practices that have been followed in a particular community from time immemorial. Section 3 (a) of the Hindu Marriage Act defines custom as any rule which has been uniformly observed for a long period of time and has obtained the force of law by the locals. Customs should not be unreasonable or opposed to public policy.

In the present case, the Supreme Court observed that in relation to the provisions applicable to marriages under the Hindu Marriage Act, it is not essential that all the ceremonies be performed by everyone. Customs and norms applicable to the marriage are taken into consideration. For example, in this case it was held that “saptapadi” is not an essential ritual, while the same maybe essential in some other case.

ANALYSIS

Analysis by the court:

The accused filed an appeal before the Supreme Court challenging the order of the High Court which held the appellant accused of the offence of bigamy. The issue into consideration was whether the marriage between the accused and the second wife Kasturi was valid so as to the commission of the offence of bigamy. The High Court noted that the basic ceremonies of a legitimate marriage under Section 7-A of the Hindu Law was carried out and hence, the marriage was a legally valid one.

In the support of the accused his counsel claimed that since the essential ceremony of saptapadi under the Hindu Law was not performed the marriage was void. It was observed that the ritual of saptapadi was not essential as per the laws applicable to the parties contracting to the marriage and hence the claim of the accused was rejected by the High Court and he was held guilty under

Section 495 of the IPC. The other ceremonies that were necessary under the custom were performed according to PW 3. The High Court was fully justified in charging S. Nagalingam for the offence of bigamy. The High Court with all the concerns mentioned came to a conclusion stating that the second marriage is valid and was undertaken while the first marriage was subsisting. Thus, S. Nagalingam can be convicted under Section 494 of IPC.

The court in this case held that the marriage was a valid one as per the provisions of Section 7-A which was added by the virtue of Hindu Marriage (Tamil Nadu Amendment) Act, 1967⁶. According to the Supreme Court, “Saptapadi” is an essential ceremony for a marriage to be solemnized but only for the parties to whom it is applicable. In this case, since the marriage falls under Section 7-A of the act, the only essential/mandatory ceremony was exchange of garlands or rings or tying of thali and the same was carried out in the present case as per the witness.

The Supreme Court upholding the decision of the High Court held that S. Nagalingam is accused of committing the offence of Bigamy under Section 494 of IPC and Section 17 of the Hindu Marriage Act.

Self analysis:

In the present case the decision of the High Court has been challenged before the apex court. The Supreme Court upholding the decision of the lower court held that the second marriage was valid and hence the offence of bigamy has been committed.

Section 5 of the Hindu Marriage Act mentions the conditions for a valid Hindu marriage. Section 5 (i) of the provision says that neither party should have a spouse living at the time of marriage and in this case, the accused without taking divorce from the first wife, married the second which makes the second marriage void.

Section 7 talks about the ceremonies for a Hindu Marriage to conclude. The words of Section 7(1), if carefully read, mention that the marriage should be solemnized according to the rites and ceremonies of either party, In this case, the parties contracted marriage without performing the ceremony of saptapadi. However, the marriage is still valid because it falls under Section 7-A of

⁶ Hindu Marriage (Tamil Nadu Amendment) Act, 1967 (Act 21 of 1967).

the Hindu Marriage Act and hence only exchange of garlands or rigs or tying thali is an essential ceremony.

Section 7-A was introduced to the Act by a State Amendment which is termed as Hindu Marriage (Tamil Nadu State Amendment Act), 1967.

Section 17 of the act mentions punishment for bigamy under Section 494 and 495 of Indian Penal Code, 1860. In the present case of S. Nagalingam v. Sivagami, Sivagami's husband was held guilty of the offence of Bigamy under IPC because he married the second wife, Kasturi whilst the first marriage was still subsisting.

According to me, the decision taken by the High Court and the Supreme Court is valid and the appellant will be punished under Section 495 of the IPC. Section 495 of the IPC provides for punishment for the offence of bigamy.

“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.”⁷

JUDICIAL APPROACH

Essential Ceremonies to be performed to constitute a valid marriage: Case Laws

Marriage among Hindus is sacred and so performance of certain rituals and ceremonies is still necessary to constitute a valid marriage. Section 7 of the Hindu Marriage Act provides for the essential ceremonies for a valid Hindu marriage. Saptapadi is an essential ritual of marriage and its non-performance will constitute the marriage as invalid. The performance of vedic rights is not adequate to conclude the marriage.

Customary ceremonies **may not** include any one of the Shastric ceremonies (Sagai, Kanyadan and Saptapadi) including Saptapadi. It may be totally non-religious ceremony or it may be very

⁷ Section 495, Indian Penal Code, 1860.

simple ceremony. For instance, among santhals smearing of vermilion by bridegroom on the forehead of the bride is the **only essential ceremony**.

In various instances, the Hon'ble Supreme Court of India has upheld that "essential ceremonies" varies from community to community and depends on the customs and the norms applicable to the parties marrying. Essential ceremonies, shastric or customary, whichever are prevalent on the side of both the parties contracting for marriage must be performed failing which the marriage will be invalid.

It was in the case of *Kanwal Ram v. H.P. Admn.*⁸ That the court held that for the second marriage to be proved valid and to constitute an offence of bigamy it is essential that all the rituals and ceremonies be performed in accordance with the laws applicable to the parties. It was held that mere admission on the part of the accused will not be a sufficient proof.

One of the earliest cases before the court for the question of whether "saptapadi" will be considered an essential practice was in the case of *Priya Bala Ghosh v. Suresh Chandra Ghosh*⁹. In this case it was held that the second marriage needs to be a valid one. However, in this case, there was no evidence as to the performance of the essential ceremonies of "data homa" and "saptapadi" when the respondent in this case married Sandhya Rani. As per the case, the two parties accepted the practice of "data homa" and "saptapadi" as essential ceremonies, so the fact that there is no evidence that these ceremonies were performed leads us to the fact that the marriage cannot be held to be valid in the eyes of law.

In the case of *Laxmi Devi v. Satya Narayan*¹⁰, the court relied on the judgment of *Priya Bala Ghosh* and it was held that the offence of bigamy cannot be claimed to have been committed in case there is no valid proof of the essential ceremonies being performed which in this case was "saptapadi".

In a similar decision by the High Court in the case of *Lingari Obutamma v.L. Venkata Reddy*¹¹. In this case, it was contended by the appellant that in the "Reddy" community in Andhra Pradesh

⁸ AIR 1966 SC 614.

⁹ (1971) 1 SCC 864.

¹⁰ (1994) 5 SCC 545.

¹¹ (1979) 3 SCC 80.

did not follow any essential ceremony like “data homa” and “saptapadi”. However, the court held that the second marriage cannot be considered valid until there is sufficient evidence to prove that these ceremonies were performed. The Supreme Court upheld this judgment of the High Court that there is nothing to prove that the second marriage is valid.

In *Shanti Deb Berma v. Kanchan Prava Devi*¹², the Supreme Court upheld the judgment of the High Court which held that since according to both the parties “saptapadi” was an essential ceremony and there was no proof of it being performed, the marriage could constitute as a valid marriage.

Development of the concept of Bigamy: Case Laws

Bigamy is a punishable offense under the Indian Penal Code. It refers to the act of marrying another person while the first marriage is still in existence. The offence of bigamy makes the second marriage void. In a country like India, where there are different religions and customs followed by different people all around, the personal laws hold more importance than the Indian Penal Code. Therefore, though the Penal law strictly prohibits Bigamy, if the personal law allows it, it will not be punishable.

For instance, Bigamy is an offense under the Hindu Marriage Act but the Muslim personal Law does not consider it as a punishable offence. Hence, individuals falling under the Muslim Law will not be liable for the offence of Bigamy.

Bigamy: Ground for Divorce

Section 11 of the Hindu Marriage Act provides that bigamous marriages are void. Section 17 of the Hindu Marriage Act mentions that in the case of bigamy the second marriage will be void and the accused will be punished under Section 494 and 495 of the IPC. The elements of bigamy are defined under Section 494 of IPC.

¹² (1991) Supp (2) SCC 616.

The court in the case of *Payari v. Faqir Chand Alakha*¹³, held that it is not a requirement that the second marriage should be considered valid according to the law. But, both the marriages should be proved to be valid in the eyes of law for the offence of bigamy to be punishable¹⁴

In the case of *Sandhiya Devi v. State of Uttar Pradesh*¹⁵, test to determine the validity of the marriage and prove that the marriage was bigamous was established. The court has also held in the case of *Mina Dei v. Abdhu Biswas*¹⁶ that mere keeping a mistress or concubine is not sufficient to prove bigamy. There should be the performance of valid ceremonies for the same¹⁷.

In the case *Sankaran Sukumaran v. Krishnan Saraswathy & Another*, the accused believed that her husband had died and because of which she remarried but found out that she was mistaken. So the intent of committing bigamy was proved negative. In the case of *Kouch Muhammad Kunsu Ismail v. Mohammad Kadeja Umma*, it was held that if a person charged with bigamy believed that he/she was legally allowed to remarry it cannot be said that the crime was committed either intentionally or recklessly. The question that arises in such cases is whether the belief was unreasonable is irrelevant.

In the case of *Satya Devi v. Khem Chand*¹⁸, the wife filed a case against her husband for committing the offence of bigamy and cruelty. The wife in this case could not prove that the second marriage was solemnized with all the ceremonies and was valid in the eyes of law. Therefore, her case was dismissed by the court.

Exceptions to Section 494 of IPC:

1. If the court finds out that the first marriage which was entered into by the accused was not valid and was not in accordance with the ceremonies and laws applicable, the person accused cannot be held liable of bigamy.
2. In case, either of the spouse has not been heard of for 7 years and the other spouse considers him/her as dead and marries another person and later, the person finds out that

¹³ AIR 1961 Punj 167, (1961) 1 Cri. LJ 549.

¹⁴ *Modi Bala Krishna Ramaraju v. Bodi Thimpathamma*, 1975 Cri.L.J. 208, 211, 1973 Mad LJ (cr) 740.

¹⁵ 1974 All CR Cas 341.

¹⁶ 1947 All WR (Supp) 33.

¹⁷ *Ratnakar Nanda v. Ramesh Kumar*, ILR 1963 Cut 464

¹⁸ 2013 (5) RCR (Criminal) 812 (H.P.) (D.B.).

he/she is still alive, the person will be accused of bigamy. The question raised by the court in such cases is whether the accused made reasonable efforts to find about his/her spouse.

LEGISLATIVE APPROACH

ROLE OF PARLIAMENT

Bigamy laws in India:

Bigamy according to the Section 17 of the Hindu Marriage Act is defined as the state of contracting another marriage while the first one is still subsisting. The second marriage in such cases will be termed invalid and void and will have no effect on the first marriage. A person who commits the offence of bigamy is rarely charged for the same until and unless it is part of other crime for example, for the fraudulent gain of property.

Bigamy laws vary from state to state but normally a person is not held guilty for the offence when, a person assumes that his first marriage was not as per the laws or it was invalid or the first marriage has been dissolved by death, divorce or annulment. In case the party assumes that his /her spouse is no more alive and they have not met for a reasonable number of years, he/she may not be held liable of bigamy.

Section 494 strictly prohibits the act of bigamy while the other spouse is still alive or the first marriage is still existent. If a party commits the offence of Bigamy he/she is liable for imprisonment that can stretch for 7 years along with fine according to Section 495 of Indian Penal Code, 1872.

For the offence of bigamy to be proved under Section 494 of IPC, before the court of law, it is necessary to prove the following facts:

1. The accused must have entered into a second marriage.
2. The first marriage should have been subsisting.
3. Both marriages should have been valid as per the norms and customs applicable to both the parties.

The Personal laws are given higher preference in India over IPC. Although, the IPC prohibits bigamy, if the personal laws permit for it, it will not be punishable.

Section 5 of the Parsi Marriage and Divorce Act, Section 60 (2) of the Christian Marriage Act, Section 44 of the Special Marriage Act and Section 19 of the Global Marriage Act prohibits bigamy and considers it as an offence. There are no specific legislations or provisions Mentioned in the Muslim Personal Law regarding bigamy. Whereas, Quran mentions that a Muslim man can marry two, three or four times if he is capable of treating and respecting each woman equally after marriage, and not just one. Therefore, Bigamy is not an offence under the Muslim Law.

Bigamy laws in other countries:

During the 16th Century the people guilty for the offence of bigamy were awarded harsh punishments such as exile and execution. As per the laws of many countries, the act of bigamy is considered illegal including western countries such as UK, Britain, and Whales etc. Bigamy is an offence in UK under the Matrimonial Causes Act, 1973 and is punishable with imprisonment and fine. As per the Italian Penal Code, any person who commits bigamy shall be punishable with imprisonment ranging from one to five years as mentioned under Article 556of the Code.

ROLE OF LAW COMMISSION

In the 227th report of the Law Commission of India titled, “Preventing Bigamy via Conversion to Islam – A Proposal for giving Statutory Effect to Supreme Court Rulings” the following concepts were put forward which are seen as a positive step by the legislature.

Objectives:

Married men, whose personal law does not permit bigamy have been taking to the unhealthy and immoral practice of converting to Islam for the purpose of contracting a second marriage under a belief that such conversion enables them to marry again without getting their first marriage dissolved. This has been happening for a long time now. The Supreme Court of India banned this

practice by its decision in the case of *Sarla Mudgal v Union of India*¹⁹. The ruling was again upheld five years later in *Lily Thomas v Union of India*²⁰.

In view of the above situations, the Law Commission suo motu took up the subject to examine the existing legal position on Bigamy in India along with judicial rulings on the subject and to suggest amendments in the various family law provisions.

Recommendations made:

The following recommendations have been made by the committee,

1. *“In the Hindu Marriage Act 1955, after Section 17 a new Section 17-A should be inserted to the effect that a married person whose marriage is governed by this Act cannot marry again even after changing religion unless the first 6 marriage is dissolved or declared null and void in accordance with law, and if such a marriage is contracted it will be null and void and shall attract application of Sections 494-495 of the Indian Penal Code 1860.*
2. *A similar provision be inserted at suitable places into the Christian Marriage Act 1872, the Parsi Marriage and Divorce Act 1936 and the Dissolution of Muslim Marriages Act 1939.*
3. *The Proviso to Section 4 of the Dissolution of Muslim Marriages Act 1939 – saying that this Section would not apply to a married woman who was originally a non-Muslim if she reverts to her original faith – be deleted.*
4. *In the Special Marriage Act 1954 a provision be inserted to the effect that if an existing marriage, by whatever law it is governed, becomes inter-religious due to change of religion by either party it will thenceforth be governed by the provisions of the Special Marriage Act including its anti-bigamy provisions.*
5. *The offences relating to bigamy under Sections 494-495 of the Indian Penal Code 1860 be made cognizable by necessary amendment in the Code of Criminal Procedure 1973.”*²¹

¹⁹ AIR 1995 SC 1531.

²⁰ (2000) 6 SCC 224.

²¹ Law Commission, Preventing Bigamy via Conversion to Islam – A Proposal for giving Statutory Effect to Supreme Court Rulings (227th Report, 2009).

RECOMMENDATIONS/ SUGGESTIONS

After analyzing the complete judgment in the case of *S. Nagalingam v. Sivagami*, it can be said that the rationale used by the court to reach the decision was valid according to me. *S. Nagalingam* contracted for the second marriage without even filing for the divorce with the first wife and hence, according to me it is absolutely correct to punish the accused under Section 494 of the Indian Penal Code and Section 17 of the Hindu Marriage Act.

Bigamy cases are increasing day by day, even though the ones that are reported are very less as compared to the actual happenings. Bigamy is an offence in India as per the Indian Penal Code but the laws in India differ from that in England. In England, monogamy is the rule of law. It is the universal and solitary practice for all marriages.

In India, the criminality perspective of the second marriage depends on the personal laws and hence, many people take the same as a defense. As per the Quran, bigamy is not an offence, but when the same was instituted, the purpose of it was not to disrespect or throw the first wife and marry with another wife without any reasonable defense. The purpose of marrying or living with two or more women was validated because of the Muslim laws which looked upon them after the death of their first husbands. Therefore, it was permitted for a man to live with three or more women so that he could take care of their well being. But today, the practice is not being used for this purpose and has been exploited to a large extent.

The laws that prohibit bigamy exist to discourage the practice and to ensure that the first wife is never disowned. However, it has been contended in the court in the case of *Sindhiya Devi*²² that if the husband is sent to jail, the possibility of the couple in the first marriage to ever live together, is tarnished.

But the fact that the husband has committed an offense and that if he is not punished for it, the offense will be nullified altogether should be taken into consideration and hence validating the punishment for bigamy. It has also been put forward in the cases of *Sarla Mudgal*²³ and *Lily*

²² 1974 Cri.LJ 1403 (All).

²³ AIR 1995 SC 1531.

Thomas²⁴ that a uniform civil code for all castes and religions must exist with respect to bigamy so that there is uniformity regarding the concept in the whole of India.

Need for a Uniform Civil Code for Bigamy:

Uniform Civil Code implied that there should be the same set of secular civil laws so as to administer all people irrespective of their religion, caste and tribe. The requirement for such a code was felt to take into account in order to protect the constitutional mandate of securing justice and equality for all the citizens of India. In more general terms, Uniform Civil Code was defined as a suggestion in which the personal laws of the country should be replaced on the basis of the ritual texts and customs of each major religious community in India with a common set governing all.

Personally I feel that each and every person in India carries with him his own heritage and culture which is protected by the personal laws. The personal laws vary widely on the basis of their sources, philosophy and application. Therefore, an inherent difficulty and conflict is seen so as to bringing people together and to create a common bond between them when they are governed by special laws.

There is multiplicity of family laws in India and most of the people fall under the existent personal laws like the Hindus have their Hindu law (Hindu Marriage Act, 1955), Parsis have their own Parsi marriage and Divorce Act, 1936, Muslims preach Muslim law, Christians follow Christians Marriage Act, 1872, the Indian Divorce Act, 1869, the Jews have their uncodified customary marriage law, and other laws.

According to me, there should be a Uniform Civil Code along with the other personal laws because the total disregarding of the personal laws does not make sense. Customs and rituals of a particular community are unique to that community and it is something that has been followed from time immemorial and therefore, should not be invalidated. India, is own to be a land of varied cultures and I believe that is something which is a unique characteristic of our nation and should remain the same.

²⁴ (2000) 6 SCC 224.

For debated and burning topics like that of bigamy, a Uniform Civil Code is something I would propose; That will not only lead to reduction in the cases of bigamy but will also eventually prove to escalate the position of women in the society.

UCC is provided under Article 44 of the Indian Constitution under which there is a provision for Uniform Civil Code which the state shall endeavor to secure for its citizens. At present, UCC is applicable only in the Union Territory of Goa. Article 44 has always been a subject of dispute. The Constitution of India enshrines Article 44 of the DPSP with a view to achieve the uniformity of law, its secularization in order to make it equitable and non-discriminatory.

Remedy for the second wife in case of Bigamy:

Bigamy, which implies contracting a second marriage while the first marriage is still subsisting, is illegal in India and the relationship arising from it does not have any validity in the eyes of law. Even though the law is crystal clear on this point, 'second marriage' has become a common practice in Indian society these days.

As a result of the aforementioned contrast between the law and social practice, second wives in India have little protection under the law. Moreover, the social stigma attached with being a second wife, the absence of any legal status to the relationship, and the enormous pain of being cheated into the marriage are undoubtedly extremely depressing for any woman.

No recognition given to a second wife, due to the judicial interpretation of existing law as discussed above. However, she may have some chances of getting maintenance. In the absence of any clear provisions under the law, her chances of getting maintenance under the law is highly doubtful and to a large extent depends on the discretion of the judge. Even under the criminal law, it is extremely difficult to prove bigamy, as the marriage has to be validly performed to prove the offence of bigamy. The proofs of the essential ceremonies of a Hindu Marriage are a must to prove a valid marriage which becomes difficult.

Usually these loop holes in the law/ legal provisions are exploited by men to defend themselves in such cases. Given this background of contrasting legal provisions, lawmakers should make clear provisions to protect the rights of those women who have been dumped into 'second

marriages' so that they can get some relief and can lead a normal life with at least the basic necessities being fulfilled.

CONCLUSION

According to me this judgment was a historic judgment as it upheld the faith of many women in the judiciary whose spouse takes to second marriage without breaking ties with the first wife. In this case the apex court overcame the boundaries created by religion, customs and rituals and displayed that justice above everything. Time and again the Supreme Court has iterated that rituals and customs according to the Hindu Marriage Act are not exclusive and if there are some customs which are applicable to the parties then that will be examined by the court to secede the validity of the marriage.

There are certain loopholes in the provisions of bigamy using which the parties derive benefit and the same must be looked into. Hence, there is a need for a Uniform Civil Code in cases such as that of bigamy. Rights of the second wife should be given a legal provision so as to give them a sense of security under the law.

De Jure Nexus

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