Page 1:  
GOVERNMENT OF INDIA  
  
LAW  
COMMISSION  
OF  
  
INDIA  
  
Preventing Bigamy via Conversion to Islam — A  
Proposal for giving Statutory Effect to Supreme  
Court Rulings  
  
Report No. 227  
  
August 2009  
  
  
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THE LAW COMMISSION OF INDIA  
(REPORT NO. 227)  
  
Preventing Bigamy via Conversion to Islam — A  
Proposal for giving Statutory Effect to Supreme  
Court Rulings  
  
Forwarded to the Union Minister of Law and Justice,  
try of Law and Justice, Government of India by Dr.  
e AR, Lakshmanan, Chairman, Law Commission of  
India, on 5" day of August, 2009.  
  
  
  
Page 3:  
¢ 18° Law Commission was constituted for a period of three  
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‘Admn.III (LA), dated the 16% October, 2006, issued by the  
Government of India, Ministry of Law and Justice, Department of  
Legal Affairs, New Delhi.  
  
¢ Law Commission consists of the Chairman, the Member-  
Secretary, one full-time Member and seven part-time Members.  
  
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man  
1¢ Hon'ble Dr. Justice AR. Lakshmanan  
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Dr. Justice AR, Lakshmanan t ILI Building (IInd Floor)  
  
D.O. No. 6(3)/159/2009-LC (LS) 5 August, 2009  
Dear Dr Veerappa Moily ji,  
  
Subject: Preventing Bigamy via Conversion to Islam — A Proposal  
for giving Statutory Effect to Supreme Court Rulings  
  
1 am forwarding herewith the 227" Report of the Law Commission of  
India on the above subject.  
  
2. Fora long time past, married men whose personal law does not allow  
bigamy have been resorting to the unhealthy and immoral practice of  
converting to Islam for the sake of contracting a second bigamous marriage  
under a belief that such conversion enables them to marry again without  
getting their first marriage dissolved.  
  
3. The Supreme Court of India outlawed this practice by its decision in  
the ease of Sarla Mudgal v Union of India, AIR 1995 SC 1531. The ruling  
was re-affirmed five years later in Lily Thomas v Union of India (2000) 6  
SCC 224  
  
4, In view of the above, 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 changes in various family law  
statutes.  
  
5. We have recommended in this Report as under:  
i) Inthe Hindu Marriage Act 1955, after Section 17 a new  
  
Section 17-A 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  
  
  
  
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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.  
  
ii) 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.  
  
) 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,  
  
iv) 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.  
  
v) 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.  
  
With warm regards,  
  
Yours sincerely,  
  
(Dr AR. Lakshmanan)  
  
Dr M. Veerappa Moily,  
Union Minister of Law and Justice,  
Government of India,  
  
Shastri Bhawan,  
  
New Delhi — 110 001  
  
  
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Preventing Bigamy via Conversion to Islam - A Proposal for giving  
  
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Chapter I  
  
Introduction  
  
Marriage laws other than that of the Mustims now in force in the country  
prohibit bigamy and treat a bigamous marriage as void. For this reason a  
marriage to which any of these laws apply attracts the anti-bigamy  
provisions of the Indian Penal Code which are applicable to a bigamous  
marriage if it is void under the governing law for the reason of being  
  
bigamous [Sections 494-495].  
  
Fora long time past, married men whose personal law does not allow  
bigamy have been resorting to the unhealthy and immoral practice of  
converting to Islam for the sake of contracting a second bigamous marriage  
under a belief that such conversion enables them to marry again without  
  
getting their first marriage dissolved.  
  
The Supreme Court of India outlawed this practice by its decision in  
the ease of Sarla Mudgal v Union of India, AIR 1995 SC 1531. The ruling  
was re-affirmed five years later in Lily Thomas v Union of India (2000) 6  
SCC 224  
  
Though these cases related to marriages govemed by the Hindu  
  
Marriage Act 1955, their ratio decidendi would obviously apply to all  
  
marriages whose governing laws do not permit bigamy.  
  
  
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The Supreme Court decision on this s  
  
bject is now the law of the  
land, and yet it is being widely violated across the country. Two  
conspicuous cases of unlawful bigamy through the route of conversion to  
  
Islam have made headlines in recent days.  
  
In one of these cases a prominent politician, already a husband and a  
father, mysteriously disappeared and surfaced a month later with a new bride  
claiming that they had become husband and wife under the law of Islam to  
which both of them had since converted. The fact that the new bride in this  
case, who is a lawyer and has been a law officer with the government of her  
State, keeps on publicly claiming that her marriage to the convert-bigamist is  
fully legal due to his conversion to Islam clearly shows the ignorance about  
the law settled in this respect by the Supreme Court prevails also in the  
  
community of lawyers.  
  
In the second case another married man, an army physician of India  
serving in Afghanistan, converted to Islam in order to marry an Afghan  
Muslim girl serving him as an interpreter. The poor girl was kept in the dark  
about his marital antecedents and discovered the same only when years later  
  
he returned to India leaving her behind in Afghanistan.  
  
These are, of course, not the only prominent instances where married  
‘non-Muslim men claiming to have converted to Islam have duped their first  
wives; many such cases go unnoticed. There is, thus, a need to make the  
legal position as settled by the Supreme Court clear enough by introducing  
necessary provisions to that effect in all the existing legislative enactments,  
  
governing marriages among various communities,  
  
  
Page 11:  
This Report examines the existing legal p  
  
ition of bigamy in India  
and suggests ways to check the s  
  
cial malaise of bigamy through the route  
  
of sham conversion,  
  
Depending on the number of plural marriage in a particular case and  
  
the gender of the person indulging in them, etymologists use different  
  
expressions for various situations of plural marriages — bigamy (double  
marriages by a man or woman), polygamy (triple or more marriages by a  
man or woman), polygyny (bigamy by men) and polyandry (bigamy by  
women). Avoiding these subtle differences and for the sake of brevity and  
convenience, we are using in this Report the common terms “bigamy” or  
polygamy’ which are opposite of monogamy and may be applied to all  
cases of plural marriages irrespective of gender and number of spouses.  
  
  
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Chapter II  
  
Penal Law on Bigamy  
  
Bigamy in General  
  
The Chapter on Offences relating to Marriage under the Indian Penal Code  
of 1860 contains two provisions relating to bigamy — the first of these  
applicable to married persons marrying again without concealing from the  
second spouse the fact of the first marriage, and the second to those who do  
so by keeping the second spouse in the dark about the first marriage. Section  
494 of the Code reads as:-  
  
“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.  
  
Exception. -- This section does not extend to any person whose  
marriage with such husband or wife has been declared void by a  
court of competent jurisdiction, nor to any person who contracts a  
marriage during the life of a former husband or wife, if such  
husband or wife, at the time of the subsequent marriage, shall have  
been continually absent from such person for the space of seven  
years, and shall not have been heard of by such person as being  
alive within that time, provided the person contracting such  
  
subsequent marriage shall, before such marriage takes place,  
  
  
Page 13:  
B  
  
inform the person with whom such marriage is contracted of the  
real state of facts so far as the same are within his or her  
  
knowledge.  
  
Coming to the cases of bigamy where a person indulges in it by deceiving  
  
the second spous  
  
, Section 495 of the Indian Penal Code says:  
  
“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”.  
  
It will be seen that application of these provisions of the Indian Penal  
Code would be attracted only if the second marriage is void, for the reason  
of being bigamous, under the law otherwise applicable to the parties to a  
  
particular case; but not so otherwise.  
  
As such the anti-bigamy provisions of the Indian Penal Code apply to  
all those whose marriages are governed by any of the following legislative  
enactments all of which regard a second bigamous marriage, by a man or  
  
woman, as void  
  
(i) Special Marriage Act 1954  
(ii) Foreign Marriage Act 1969  
(ii) Christian Marriage Act 1872  
  
  
Page 14:  
“4  
  
(iv) Parsi Marriage and Divorce Act 1936  
(v) Hindu Marriage Act 1955  
  
As regards the Muslims, the IPC provisions relating to bigamy apply to  
women ~ since Muslim law treats a second bigamous marriage by a  
married woman as void — but not to men as under a general reading of the  
traditional Muslim law men are supposed to be free to contract plural  
  
marriages. The veracity of this belief, of course, needs a careful scrutiny.  
  
The anti-bigamy provisions of the Indian Penal Code would not apply  
also to tribal men and women if their customary law and practice does not  
treat their plural marriages as void. It has been judicially affirmed that  
Section 494 of the Indian Penal Code will not apply to. members of  
Scheduled Tribes unless the tribal law applicable to a case treats a bigamous  
marriage as void. See, for instance, Suraimani Stella Kujur (Dr.) v Durga  
Charan Hansdah AIR 2001 SC 938.  
  
Nature of Offence  
  
The offence under Section 494 of the Indian Penal Code is non-cognizable,  
bailable and compoundable by the aggrieved spouse with the permission of  
the court, That the offence is compoundable by mutual consent of the parties  
was affirmed in Narotam Singh v State of Punjab AIR 1978 SC 1542.  
  
In the State of Andhra Pradesh, however, by a local amendment of  
1992 the offence under Section 494 was made cognizable, non-bailable and  
  
non-compoundable  
  
  
Page 15:  
The offence under Section 495 of the Penal Code is non-cognizable,  
bailable and — unlike that under Section 494 -- non compoundable. Notably,  
in Andhra Pradesh this offence too has been made cognizable and non-  
bailable.  
  
IPC Provisions in Action  
  
Bigamy by women is very exceptional in the society, but bigamy by men is  
indeed rampant. However, since the anti-bigamy provisions of the Indian  
Penal Code are (except in Andhra Pradesh) non-cognizable most cases of the  
offence of bigamy remain unpunished. The aggrieved first wives of all  
  
‘communities silently suffer the miseries caused by the practice of bigamy.  
  
There is also a trend in the society to use devices, supposed to be  
‘legal’, to escape application of the IPC provisions. Among these are  
holding incomplete and defective marriage ceremonies, non-marital  
  
cohabitation and fake change of religion.  
  
With the sole exception of Andhra Pradesh, nowhere have any  
changes in the IPC provisions or the related procedural law been yet  
  
considered in order to improve upon the working of the said provisions,  
  
  
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6  
  
Chapter It  
  
Bigamy under Civil Marriage Laws  
  
Special Marriage Act 1954  
  
Monogamy is the rule under the Special Marriage Act 1954. Among the  
conditions for solemnization of a civil marriage spelt out in the Act the  
  
foremost is that “neither party has a spouse living” ~ Section 4 (a).  
  
In respect of bigamy there are two different penal provisions under the  
‘Act. If'a person already married, under whatever law, fraudulently contracts  
a civil marriage the provision of Section 43 of the Act reproduced below will  
  
apply:  
  
“Save as otherwise provided in Chapter III, every person who, being  
at the time married, procures a marriage of himself or herself to be  
solemnized under this Act shall be deemed to have committed an  
offence under section 494 or section 495 of the Indian Penal Code,  
  
fas the case may be, and the marriage so solemnized shall be void.”  
  
The other provision contained in Section 44, reproduced below, is  
meant for a person married under the Special Marriage Act who contracts a  
  
second marriage under any other law:  
  
“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, for the offence of  
  
  
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7  
  
marrying again during the lifetime of a husband or wife, and the  
  
marriage so contracted shall be void.”  
  
Chapter III of the Act, referred to in Section 43 reproduced above,  
provides the facility of turing a pre-existing marriage solemnized as  
per religious or customary rites into a civil marriage by registering it  
under this Act. This facility is also available subject to the condition  
that “neither party has at the time of registration more than one spouse  
living” — Section 15 (b). If a person having more than one spouse living  
fraudulently registers either of his marriages under this Act he will be  
guilty of the offence of knowingly making a false statement punishable  
  
under Section 45 of the Act.  
  
The anti-bigamy provisions of the Special Marriage Act apply to  
  
every marriage contracted under its provis  
  
mns irrespective of the  
religion of the parties. A court has specifically held that if a Mustim  
contracts a civil marriage under the Special Marriage Act instead of his,  
personal law the anti-bigamy provisions of the Act will apply to him.  
See S. Radhika Sameena v. S.H.O., Habeeb Nagar Police Station,  
Hyderabad 1997 CriLJ 1655 (AP).  
  
However, if a person who has registered his pre-existing marriage  
under the Special Marriage Act in terms of Section 15 contracts a  
second bigamous marriage, it is not clear from the language of the Act  
if the provision of Section 44 reproduced above will apply to the case.  
The words “Save as otherwise provided in Chapter III” in Section 43  
are not clear in their meaning. In the fitness of things, since ex post  
  
facto registration of a religious or customary marriage tums it into a  
  
  
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civil marriage for all purposes, the anti-bigamy provisions of the Act  
  
should also apply to such a case.  
Foreign Marriage Act 1969  
  
This Act facilitates solemnization of civil marriages in foreign countries  
between two Indians or an Indian and a foreigner. Monogamy is the  
  
rule under this Act as well, the first condition for the solemnization of  
  
marriage under its provisions being that “neither party has a spouse  
  
living” — Section 4 (a).  
  
If the condition of monogamy and the other conditions  
mentioned in Section 4 of the Act are met, a pre-existing marriage  
between two Indians or an Indian and a foreigner solemnized in a  
foreign country under a local law can be registered under the Foreign  
Marriage Act, upon which it shall be deemed to have been solemnized  
  
under the said Act ~ Section 17.  
  
The anti-bigamy penal provision of Section 19 of the Foreign  
Marriage Act, reproduced below, applies to both marriages originally  
solemnized under its provisions and those solemnized as per a foreign  
  
law but later registered under the Foreign Marriage Act:  
  
“(1) Any person whose marriage is solemnized or deemed to have  
  
been solemnized under this Act and who, during the subsistence of  
his marriage, contracts any other marriage in India shall be subject  
to the penalties provided in sections 494 and 495 of the Indian  
  
Penal Code, and the marriage so contracted shall be void.  
  
  
Page 19:  
19  
  
(2) the provisions of sub-section (1) apply also to any such offence  
  
‘committed by any citizen of India without and beyond India.”  
  
The anti-bigamy provisions of the Foreign Marriage Act, like those of  
the Special Marriage Act 1954, are applicable to all cases governed by  
  
it, irrespective of the religion of the parties.  
Effect of change of religion  
  
Post-marriage conversion by either party to a civil marriages has no  
legal consequences ~ the convert remains subject to the provisions of  
the Special Marriage Act 1954 or the Foreign Marriage Act 1969, as the  
case may, and neither the converting spouse can contract another  
marriage nor the other spouse can seek divorce on the ground of  
  
change of religion.  
  
If either party in such a situation marries again after changing  
religion, but without obtaining divorce or a decree of nullity, his or her  
conduct will still attract anti-bigamy provisions of the Indian Penal  
Code.  
  
  
Page 20:  
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Chapter IV  
Bigamy under Community-Specific Legislation  
  
Christian Marriage Act 1872  
  
As is well known, the Christian religion prohibits bigamy. In India Christian  
marriages are governed by an old Act of the British period — the Christian  
Marriage Act 1872. It applies to all sorts of marriages among the Christians  
  
of India and requires them to be s  
  
lemnized under its provisions not only  
  
when both parties are Christian but also when one of them is a Christian and  
  
the other a non-Christian (see Section 4 of the Act),  
  
Marriages can, under this Act, be either solemnized by a ‘Minister of  
  
Religion’ of a Church, or by or in the presence of a Marriage Registrar.  
  
In the first case, the notice to be given for marriage by either party is  
to be accompanied by a declaration of the parties’ marital status at the time  
  
of marriage, and the prescribed form for this purpose mentions only two  
  
possibilities — the person giving a notice may be either a bachelor/spinster or  
widower/widow. A certificate of compliance with the notice requirement is  
to be issued upon the applicant filing a declaration affirming that “he or she  
believes that there is not any impediment of kindred or affinity or other  
lawful hindrance, to the said marriage;” and the marriage shall be  
solemnized only after such a certificate has been issued (Sections 12, 18, 25  
  
& Schedule 1),  
  
For obtaining a certificate in the case of a marriage solemnized by or  
  
in the presence of a Marriage Registrar, is  
  
tead of filing a written  
  
declaration the person giving the notice has to take an oath to the same effect  
  
  
Page 21:  
~ that “he or she believes that there is not any impediment of kindred or  
1-42).  
  
affinity or other lawful hindrance, to the said marriage” (Sections  
  
The marriage of a native Christian can be certified without the  
preliminary notice mentioned above subject to the condition, inter alia, that  
“neither of the persons intending to be married shall have a wife or husband  
  
still living” (Section 60).  
  
The Act provides that a person making a false oath or declaration or  
  
signing a false notice, intentionally and for the purpk  
  
se of procuring a  
marriage, shall be guilty of the offence punishable under Section 193 of the  
  
Indian Penal Code ~ Section 66.  
  
There is no specific reference in this Act to the anti-bigamy provisions  
contained in Sections 494-495 of the Indian Penal Code. Since bigamy is  
strictly prohibited by the Christian religious law and the Act also impliedly  
prohibits it, applicability of the said IPC provisions to married Christians.  
may be seen as a foregone conclusion. Yet, there is a case for making the  
  
‘Act specific on this point.  
  
‘A post-marriage change of religion by either spouse may have no  
effect on prohibition of bigamy under the Christian law since both the  
Christian Marriage Act 1872 and its divorce supplement, the Indian Divorce  
  
Act 1869, apply also to cases where only one spouse is a Christian.  
Parsi Marriage and Divorce Act 1936  
  
Unlike the Christian Marriage Act 1872, the Parsi Marriage and Divorce Act  
1936 specifically prohibits bigamy and says that Sections 494-495 of the  
  
  
Page 22:  
Indian Penal Code will be attracted by every case of bigamy in any marriage  
  
governed by that Act. Sections 4 and 5 of the Act read as follows:  
Section 4  
  
“(1) No Parsi (weather such Parsi has changed his or her religion  
or domicile or not) shall contract any marriage under this Act or  
any other law in the life time of his or her wife or husband,  
whether a Parsi or not, except after his or her lawful divorce from  
such wife or husband or after his or her marriage with such wife or  
  
husband has lawfully been declared null and void or dissolved;  
  
and, if the marriage was contracted with such wife or husband  
under the Parsi Marriage and Divorce Act, 1865, or under this Act,  
except after a divorce, declaration or dissolution as aforesaid under  
  
cither of the said Acts,  
  
(2) Every marriage contracted contrary to the provisions of sub-  
section (1) shall be void.”  
  
Section 5  
  
“Every Parsi who during the lifetime of his or her wife or husband,  
whether a Parsi or not, contracts a marriage without having been  
lawfully divorced from such wife or husband, or without his or her  
marriage with such wife or husband having legally been declared  
‘null and void or dissolved, shall be subject to the penalties  
provided in sections 494 and 495 of the Indian Penal Code (45 of  
1860) for the offence of marrying again during the lifetime of a  
  
husband or wife”.  
  
  
Page 23:  
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The reference to bigamy after change of religion and its prohibition  
constitute a unique feature of the Parsi Marriage and Divorce Act 1936  
which has no parallel under any other family-law enactment for the time  
  
being in force.  
Hindu Marriage Act 1955  
  
Since times immemorial it was believed — rightly or wrongly — that Hindu  
religious law allowed an unrestricted polygamy and imposed no specific  
  
conditions on the polygamist-husband. ‘The Muslim rulers of India had left  
  
the Hindu law on polygamy —~ whatever it was — untouched and did not  
impose on any non-Muslim the rules of Islamic law tolerating limited  
polygamy in a well-defined discipline of equal justice to co-wives. The  
British rulers, who did reform many other aspects of Hindu law, also did not  
abolish the rules on polygamy under the traditional Hindu law and custom.  
Only the Brahmosamajis had managed to legally adopt monogamy under a  
  
special law enacted for them in the erstwhile Bengal province in 1872.  
  
After the advent of independence anti-bigamy laws were enacted for  
the Hindus by provincial legislatures in Bombay, Madras, Saurashtra and  
Central Provinces. Finally, in 1955 Parliament enacted the Hindu Marriage  
‘Act putting a blanket ban on bigamy for the Hindus. Buddhists, Jains and  
Sikhs, declaring bigamous marriages on their part in future to be void and  
  
penal (see Sections 5, 11 & 17)  
  
‘One of the conditions for a valid marriage under the Hindu Marriage  
‘Act is that “neither party has a spouse living at the time of the marriage”  
  
[Section 5 (i)]. Violation of this condition shall make the marriage null and  
  
  
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void and liable to be so declared by a decree of nullity on a petition filed by  
  
cither party against the other party ( Section 11).  
  
Section 17 of the Hindu Marriage Act once again declares every  
bigamous marriage among persons governed by the Act to be void and  
makes it punishable under the anti-bigamy provisions of the Indian Penal  
Code 1860. It reads as follows  
  
“Any marriage between two Hindus solemnized after the  
‘commencement of this Act is  
  
oid if at the date of such marriage  
cither party had a husband or wife living; and the provisions of  
sections 494 and 495 of the Indian Penal Code shall apply  
  
accordingly.”  
  
Though Section 7 (2) says that if a marriage is solemnized through the  
saptpadi ceremony the marriage will be complete and binding on taking the  
sevenths step, some High Courts took the view that this is not a special rule  
of evidence requiring in a ease of bigamy proof of the seventh step having,  
been duly taken. ~ Padullapath Mutyala v Subbalakshmi AIR. 1962 AP 311,  
Trailokya Mohan v State AIR 1968 Ass 22.  
  
In 1988 a learned judge of the Andhra Pradesh High Court, Radha  
  
Krishna Rao, had issued an important note of caution:  
  
"During the subsistence of the first marriage the second marriage  
will generally be done in secrecy. It is to0 idle to expect direct  
testimony. In some cases the purohit also who performed the  
  
marriage will be treated as abettor. The courts are giving acquittals  
  
  
Page 25:  
‘on the ground that the required ceremonies for the second marriage  
have not been proved beyond reasonable doubt. Suitable  
legislation has to be made with regard to the mode of proof of the  
second marriage. If the marriage was done publicly and openly to  
the knowledge of one and all, the court can expect direct evidence  
  
When second marriage is  
  
being performed in secrecy, knowing  
fully well that it  
  
an offence, if the courts insist on strict proof, it  
amounts to encouraging perjury. The motto of the court is not to  
encourage perjury, but to find out the real truth and conviet the  
accused if there is a second marriage. Unfortunately, none of the  
social organizations which’ claim about the protection of the rights  
of women, have taken any steps to see that suitable legislation be  
made with regard to the mode of proof for performance of the  
second marriage." — [1988 CriLJ 1848]  
  
However, linking the anti-bigamy provisions of the Act with the  
requirement of a ceremonial solemnization of marriages under Section 7 (2)  
of the Act, the Supreme Court later held that if a customary ceremony is,  
incompletely or defectively performed (to get married again), the resulting  
second marriage will be non-existent in eyes of law and hence will not  
attract the anti-bigamy provisions of the Act, or of the IPC. See Bhaurao v  
State of Maharashtra AIR. 1965 SC 1564.  
  
Going by this interpretation, if the saptpadi ceremony has been  
incompletely employed in view of the rule of Section 7 (2) there is all the  
  
more reason to treat the second allegedly bigamous marriage as non-existent.  
  
  
Page 26:  
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If the anti-bigamy provisions of the Hindu Marriage Act are to be  
  
strictly enforced, there is a case for de-linking them from the provision of  
  
Section 7 of the Act under which some ceremony has to be necessarily  
  
‘employed for solemnizing a marriage.  
  
Effect of Change of Religion  
  
Post-marriage change of religion by either party is under the Hindu Marriage  
‘Act a ground for divorce in the hands of the other non-converting spouse  
[Section 13 (1) (ii)]. Without obtaining this relief the non-converting spouse  
  
cannot marry again,  
  
‘As regards the converting spouse, the Act says nothing as to weather  
its anti-bigamy provision, or any other provision for that matter, would cease  
to apply to him or her. In the absence of a clear statutory provision on this  
point, it has always been a contentious issue if a married man governed by  
this Act can upon his conversion to Islam contract a second bigamous  
  
marriage which, itis generally believed, is permissible under Muslim law.  
  
Unexceptional abolition of bigamy for the Hindus, Buddhists, Jains  
and Sikhs has created a serious problem for those married men among these  
communities who for some reason or the other, justifiable or unjustified,  
want to marry again. The new law wants them to first have the existing  
marriage legally dissolved. This is not easy. The Hindu Marriage Act makes  
room for dissolution of marriages, but the cumbersome judicial process in  
the ordinary civil courts given the jurisdiction under the Act has tured  
  
divorce-proceedings into vexatious and long-drawn out struggles. There are  
  
  
Page 27:  
27  
  
‘genuine cases of broken marriages, as also those in which people dishonestly  
want to kick out their first wives and take new partners — the former cases,  
of course, outnumber the latter. Those married men who want to marry again  
have no religious inhibition, since they believe that their religion allows  
them to have their wish; and they do not mind violating the newly imposed  
  
legal ban on bigamy without any religious sanction for it. To avoid the  
  
penalties threatened by the new law to be inflicted on bigamists  
  
they,  
however, need a ‘device’. And, different ‘devices’ are suggested by those who  
are always ready to help lawbreakers — a fake conversion to Islam being,  
  
foremost among these devices.  
  
‘The law of monogamy under the Hindu Marriage Act is, indeed, full  
  
of serious shortcomings and loopholes. Combined with the Act's provisions.  
  
relating to marriage-rites, it provides in-built devices for an easy avoidance  
  
of all the consequences of its violation.  
  
  
Page 28:  
28  
  
Chapter V  
  
Bigamy under Muslim Personal Law  
  
Traditional Law  
  
It is generally believed that under Muslim law a husband has an unfettered  
right to marry again even where his earlier marriage is subsisting, On a  
closer examination of the relevant provisions of the Qur'an and the other  
sources of Islamic law, this does not seem to be the truth. The rule of  
Muslim law conditionally permitting bigamy in fact visualized two or more  
women happily living with a common husband — taking a second wife after  
  
forsaking or deserting the first was not Islam’s concept of bigamy.  
  
Bigamy with no restrictions or discipline whatsoever was rampant in the  
society where Islam made its first appearance and also in many other  
societies across the globe. The Holy Qur'an put restrictions on it, allowing it  
within limits, and even within those limits subjecting it to a strict discipline.  
The Qur'an permitted polygamy subject to a strict condition that the man  
must be capable of ensuring equal treatment of two wives in every respect.  
Asserting that this may not be possible even with the best of intentions, the  
Holy Book at the same time advised men to keep to monogamy as “this  
would keep you away from injustice” (Qur'an, IV: 3 & 129). To this  
Quranic reform the Prophet added a highly deterrent warning: "A bigamist,  
unable to treat his wives equally will be torn apart on the Day of Judgment."  
This was the reform that the Islamic religious law could, and did, introduce  
  
in the 7th century AD.  
  
  
Page 29:  
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If bigamy means forsaking of the first wife without divoreing her and  
bringing in a new wife, the Qur'an certainly does not permit it. In Mustim  
law bigamy envisages two women happily married to the same man actually  
living with him and getting from him equally all that a wife can expect from  
her husband. Where this is not possible, the Qur'an enjoins the husband to  
remain a monogamist. Bigamy of the type now prevalent in India in which  
the fi  
  
st wife is wholly forsaken and thereby tortured and a second wife is  
allowed to usurp her place in the husband's home is not approved anywhere  
  
in Islamic legal texts,  
  
The Muslim law ~- as now traditionally understood, interpreted and  
applied in India -- is however believed to permit four marriages during the  
subsistence of one another. Though the capacity to do justice between co-  
wives is in law a condition precedent for bigamy, whether a man has such  
capacity or not is, for inexplicable reasons, not justiciable before he actually  
contracts a bigamous marriage. ‘The Dissolution of Muslim Marriages Act  
1939 treats unequal treatment between co-wives as a ground for divorce  
available to the aggrieved wife; but there is no law under which a man’s.  
ight and capacity to contract a second marriage can be examined by  
  
anybody before he enters upon such a course of action,  
  
Rules of Muslim law empower women to restrict the freedom of their  
would-be husbands to indulge in bigamy by entering a condition to that  
effect in their marriage contract. And since Muslim law allows out-of-court,  
divorce at the instance of both men and women, it further provides that a  
woman who after availing the legally provided facility to get rid of her  
  
husband marries again, will not face the charge of bigamy. These pro-  
  
  
Page 30:  
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women provisions of Muslim law have been judicially recognized in India in  
  
several cases,  
  
Social & Judicial Trends  
  
Bigamy has been fully abolished or severely controlled by law in most  
Muslim countries of the world. Turkey and Tunisia have completely  
outlawed it while in Egypt, Syria, Jordan, Iraq, Yemen, Morocco, Pakistan  
and Bangladesh, it has been subjected to administrative or judicial control.  
(Details of these reforms can be seen in Tahit Mahmood’s book Statutes of  
  
Personal Law in Islamic Countries, 2" edition, 1995),  
  
In India bigamy is not very common among the Muslims and cases of  
men having more than one wife at a time are few and far between. The  
Muslim society of India in general in fact looks at polygamy with great  
disfayour and a bigamist is generally looked down upon in and outside his  
  
family. Despite th  
  
unfortunately, the religious leaders are not prepared for  
  
any legislative reform in this respect and the religious sensitivities have  
  
never allowed the State to introduce any reform in this regard  
  
The courts in India also greatly look down upon bigamy and provide  
all sorts of relief to the first wives of bigamist husbands. Several High  
Courts have held that bigamy amounts to cruelty which can be pleaded as an  
  
answer to the man’s  
  
suit for restitution of conjugal rights against the first  
wife — see Invari v Asghari AIR 1960 All 684, Raz Mohammad v Saceda  
Amina Begum AIR 1976 Kant 200, Shahina parveen v Mohd Shakeel AIR  
1987 Del 210.  
  
  
Page 31:  
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The Supreme Court of India has held that the provision of Section 125  
of the Code of Criminal Procedure 1973 allowing separate maintenance to a  
wife on the ground of her husband's cruelty applies to Mustim women  
whose husbands contract a second bigamous marriage. See Khatoon v  
Yaamin AIR 1982 SC 853.  
  
In another case the Supreme Court has severely crit  
  
ized the practice  
of bigamy and observed that there is no difference between a second wife  
and a concubine. See Begum Subhanu v Abdul Ghafoor AIR 1987 SC 1103.  
  
Administrative Service Rules  
  
The Central Civil Services (Conduct) Rules 1964 provide that a person who  
has contracted a bigamous marriage or has married a person having a spouse  
living shall not be eligible for appointment to such services — Rule 21. The  
All India Services (Conduct) Rules 1968 place the same restrictions on those  
who are already member of any such service ~ Rule 19. Both the Rules,  
however, empower the government to exempt a person from the application  
of these restrictions if the personal law applicable permits the desired  
  
marriage and “there are other grounds for so doing.”  
  
These provisions of Service Rules apply to the Muslims and their  
constitutional validity has been upheld by the Central Administrative  
  
Tribunal and the courts. See, eg. Khaizar Basha v Indian Airlines  
  
Corporation, New Delhi AIR 1984 Mad 379 [relating to a similar provision  
found in the Regulations framed under the Air Corporation Act 1953}.  
  
  
Page 32:  
Effect of Change of Religion  
  
Under the traditional Muslim law if a married Muslim woman converts to  
another religion her marriage would be automatically dissolved. This rule is,  
however, not applicable in India. The Dissolution of Muslim Marriages Act  
1939 provides that apostasy of a Muslim wife shall not dissolve her marriage  
(Section 4). So, although the 1939 Act does not specifically say so, if a  
  
married Muslim woman renounces Islam and, believing that her first  
  
marriage has been ipso facto dissolved marries again, her second marriage  
  
will attract application of Section 494-495 of the Indian Penal Code.  
  
There is an exception to this rule under the Dissolution of Muslim  
Marriages Act 1939 — if a married convert Muslim woman by renouncing  
Islam reverts to her original religion the provision of Section 4 will not  
apply. In other words, in this case her re-conversion will automatically  
dissolve her marriage with her Muslim husband. In such a case, therefore,  
anti-bigamy provisions of the Indian Penal Code will not apply. ‘The  
  
exceptional provision clearly seems to be discriminatory.  
  
  
Page 33:  
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Chapter VI  
  
Bigamy by non-Muslims on Embracing Islam  
  
Bigamy by conversion ~ viz. a s  
  
-cond marriage by a married non-Muslim  
man after convers  
  
mn to Islam — is a common practice in India, ‘The man.  
having resort to it is given to believe by the lawyers ignorant of the true  
Islamic law that on becoming a Muslim he will be legally entitled to freely  
marry again irrespective of his previous marital status. This mistaken belief  
militates against the letter and spirit of the Islamic law on bigamy. If the  
conversion in any such case is sham —as in most such cases it indeed is — the  
second marriage will be a fraud on Islamic law and can have no recognition  
in it. If the conversion is genuine the second marriage can be allowed  
subject to the bar of equal treatment of the co-wives, which obviously would  
be impossible in such a case. In either case therefore the second marriage  
  
will be repugnant to the Islamic religion and law.  
  
As regards converts to Islam opting for bigamy, their conversion must  
be judged by the Prophet’s general verdict saying that “Effect of an action is  
governed by the underlying intention” and so conversion by a married non-  
Muslim man motivated by a desire to have another wife is of doubtful  
religious validity. But even where conversion seems to be genuine, it cannot  
be a license for indulging in bigamy by deserting the first wife in violation  
of Islam’s insistence on treating co-wives with unexceptional equality and.  
  
equal justice.  
  
The fact, of course, is that conversion in such cases is invariably a  
  
humbug and is generally followed by formal or informal re-conversion of  
  
  
Page 34:  
M  
  
the newly-wed to their original faith ~ in fact they never convert to Islam  
  
from the heart. This shuttle-cock playing with various religions is not  
  
checked by our existing law, though it is neither allowed by the religion  
  
which is dishonestly adopted nor sanctioned by the one that is forsaken for  
  
selfish ends. What married Hindu men do and are helped with by ill-  
  
educated religious functionaris  
  
and misinformed lawyers is a fraud on  
Hinduism, a disgrace to Islam, a cruel joke on the freedom-of-conscience  
  
clause in the Cons  
  
tution of the country and a criminal scheming against the  
  
law of the land.  
  
  
Page 35:  
35  
Chapter VIL  
  
Judicial Rulings on Bigamy by Conversion  
  
There has always been a simmering discontent in the judiciary regarding the  
  
tendency of converting to  
  
slam for the sake of contracting a second  
  
bigamous marriage and the courts have tried to control it.  
  
In Vilayat Raj v Sunila AIR 1983 Delhi 351 Justice Leela Seth of the  
  
Delhi High Court had decided that the Act would continue to apply to a  
person who was a Hindu at the time of marriage despite his subsequent  
conversion to Islam and that he could still seek divorce under the Act  
  
(except on the ground of his own conversion).  
  
In In re P Nagesashayya (1988) Mat LR. 123 Justice Bhaskar Rao of  
Andhra Pradesh High Court severely criticized the unhealthy practice of  
bigamy by conversion and observed that the old rule that the motive behind  
conversion could never be questioned had to be rejected at least in the cases  
of conversion coupled with bigamy. Similar observations were made in the  
case of B Chandra Manikyamma v B. Sudarsana Rao alias Saleem  
  
Mohammed, 1988 CriLJ 1849.  
  
Finally, in the leading case of Smt. Sarla Mudgal v Union of India  
(1995) 3 SCC 635 the Supreme Court decided that every bigamous marriage  
of a Hindu convert to Islam would be void and therefore punishable under  
  
the Indian Penal Code. The court observed:  
  
  
Page 36:  
36  
  
"Since it is not the object of Islam nor is the intention of the  
hould  
  
be encouraged to become Muslim merely for the purpose of  
  
enlightened Muslim community that the Hindu husbands s  
  
evading their own personal law by marrying again, the courts  
can be persuaded to adopt a construction of the laws resulting in  
denying the Hindu husband converted to Islam the right to  
  
marry again without having his existing marriage dissolved in  
  
accordance with law",  
  
‘As regards the logic by which a married non-Muslim’s second  
bigamous marriage contracted after conversion to Islam could be treated as  
  
void under the Hindu Marriage Act, the court argued as follows:  
  
“It is no doubt correct that the marriage solemnized by a Hindu  
husband after embracing Islam may not strictly be a void  
marriage under the Act because he is no longer a Hindu, but the  
fact remains that the said marriage would be in violation of the  
‘Act which strictly professes monogamy. The expression “void?  
for the purpose of the Act has been defined under Section 11 of,  
the Act. It has a limited meaning within the scope of the  
definition under the section. On the other hand the same  
expression has a different purpose under Section 494 IPC and has  
to be given meaningful interpretation. ‘The expression “void?  
under Section 494 IPC has been used in the wider sense. A  
marriage which is in violation of any provisions of law would be  
void in terms of the expression used under Section 494 IPC. A  
Hindu marriage solemnized under the Act can only be dissolved  
‘on any of the grounds specified under the Act. Till the time a  
Hindu marriage is dissolved under the Act none of the spouses  
‘can contract second marriage. Conversion to Islam and marrying,  
again would not, by itself, dissolve the Hindu marriage under the  
Act. The second marriage by a convert would therefore be in  
violation of the Act and as such void in terms of Section 494 IPC.  
  
  
  
Page 37:  
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Any act which is in violation of mandatory provisions of law is  
per se void. The real reason for the voidness of the second  
marriage is the subsisting of the first marriage which is not  
dissolved even by the conversion of the husband. It would be  
giving a go-by to the substance of the matter and acting against  
the spirit of the statute if the second marriage of the convert is  
held to be legal.”  
  
The court further observed that the second marriage of an apostate-husband  
married under the Hindu Marriage Act would be in violation of the rules of  
equity, justice and good conscience, as also those of natural justice. ‘The  
court concluded that:  
  
“The interpretation we have given to Section 494 IPC would  
advance the interest of justice. It is necessary that there should be  
harmony between the two systems of law just as there should be  
harmony between the two communities. The result of the  
interpretation, we have given to Section 494 IPC, would be that the  
Hindu law on the one hand and the Muslim law on the other hand  
would operate within their respective ambits without trespassing  
‘on the personal laws of each other.”  
  
In a separate judgment given in the Sarla Mudgal case Justice RM  
Sahai indeed spoke the truth when he said that “much misapprehension  
prevails about bigamy in Islam”, Grossly caricatured now, the Qur’anie  
concept of bigamy envisaged two women happily married to the same man.  
and getting from him equally all that a lawfully wedded wife could rightfully  
expect from the husband, Where this was not possible, the Qur'an enjoined  
monogamy. While the Qut’anic norms must be strictly observed also by  
born Mus  
  
ims  
  
the popular belief that the Qur’an enables a non-Muslim  
  
husband who has kicked out his wife without a legal divorce to marry again  
  
  
Page 38:  
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by announcing a sham conversion to Islam is absolutely false.  
Derecognizing bigamous marriages of non-Muslim husbands contracted in  
such a fraudulent manner indeed enforces Quranic justice. On this point the  
  
Sarla Mudgal ruling of the Supreme Court is unassailable.  
  
The Sarla Mudgal ruling was looked with disfavour in certain circles  
‘on the ground that it infringed a person’s fundamental right to freedom of  
conscience and profession of religion guaranteed by Article 25 of the  
  
Constitution. The matter was brought before the Supreme Court which  
  
dismissed the idea. In Lily Thomas v Union of India (2000) 6 SCC 227 the  
court observed:  
  
“The grievance that the judgment of the Court amounts to  
violation of the freedom’ of conscience and free profession,  
practice and propagation of religion is also far-fetched and  
apparently artificially carved out by such persons who are  
alleged to have violated the law by attempting to cloak  
themselves under the protective fundamental right guaranteed  
under Article 25 of the Constitution, No person, by the  
judgment impugned, has been denied the freedom of  
conscience and propagation of religion... Freedom  
guaranteed under Article 25 of the Constitution is such  
freedom which does not encroach upon a similar freedom of  
other persons. Under the constitutional scheme every person  
has a fundamental right not merely to entertain the religious  
belief of his choice but also to exhibit this belief and idea in a  
manner which does not infringe the religious right and  
personal freedom of others. It was contended in Sarla Mudgal  
case that making a covert Hindu liable for prosecution under  
the Penal Code would be against Islam, the religion adopted  
by such person upon conversion. Such a plea raised  
demonstrates the ignorance of the petitioners about the tenets  
of Islam and its teachings.”  
  
  
  
Page 39:  
39  
  
‘As regards the true position of the permission for bigamy under the  
id:  
  
traditional Muslim law, the court s  
  
“Even under the Muslim law plurality of marriages is not  
unconditionally conferred upon the husband. It would,  
therefore, be doing injustice to Islamic law to urge that the  
convert is entitled to practice bigamy notwithstanding the  
continuance of his marriage under the law to which he  
belonged before conversion. The violators of law who have  
contracted a second marriage cannot be permitted to urge that  
such marriage should not be made the subject-matter of  
prosecution under the general penal law prevalent in the  
country. The progressive outlook and wider approach of  
Islamic law cannot be permitted to be squeezed and narrowed  
by unscrupulous litigants, apparently indulging in sensual lust  
sought to be quenched by illegal means, who apparently are  
found to be guilty of the commission of the offence under the  
law to which they belonged before their alleged conversion.  
It is nobody's case that any such convertee has been deprived  
of practicing any other religious right for the attainment of  
spiritual goals. Islam which is a pious, progressive and  
respected religion with a rational outlook cannot be given a  
narrow concept as has been tried to be done by the alleged  
violators of law.”  
  
  
  
Page 40:  
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Chapter VII  
  
Recommendations  
  
Alll said and done, the Supreme Court of India settled the law once for all  
  
in its Sarla Mudgal ruling of 1995 affirmed in Lily Thomas case of 2000.  
  
We are in complete agreement with the thinking of the Supreme Court  
  
‘The verdict that a married non-Muslim even on embracing Islam cannot  
  
contract another marriage without first getting his first marriage dissolved is  
  
undoubtedly in conformity with the letter and spirit of Islamic law on  
  
bigamy.  
  
In any case, this is now the inviolable law of India -- whatever one may  
erroneously presume the Islamic law to be. Unfortunately this law as settled  
by the Supreme Court is now widely known to the public at large and is  
  
being constantly violated in numerous cast  
  
The need of the hour, therefore,  
is to turn the apex court’s ruling into a clear legislative provision inserted  
  
into all matrimonial-law statutes of the country  
  
‘Though these rulings were handed down in the context of the Hindu  
Marriage Act 1955 they will apply to all marriages governed by the other  
  
family-law statutes that are pari materia.  
  
On a careful consideration of all aspects of the trend prevailing among  
married non-Muslims to try to defy the law by marrying again on embracing  
to Islam, we recommend insertion of the following additional provisions into  
  
various family-law statutes:  
  
  
Page 41:  
al  
  
In the Hindu Marriage Act 1955, after Section 17 a new  
Section 17-A 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 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.  
  
‘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.  
  
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.  
  
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.  
  
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,  
  
  
Page 42:  
Although we fully agree with the fact that traditional understanding  
of the Muslim law on bigamy is gravely faulty and conflicts with the true  
Islamic law in letter and spirit, to keep our recommendations away from  
any unhealthy controversy we are not recommending any change in this  
  
regard in Mustim law.  
  
(Dr Justice AR. Lakshmanan)  
Chairman  
  
(Professor Dr Tahir Mahmood) (Dr Brahm A.  
Agrawal)  
  
Member Member-Secretary