

ARMY ORDER

AO 44 /2001 : DISCIPLINE – PLURAL MARRIAGE

Introduction

1. This Army Order deals with the discipline on plural marriage.

Aim

2. The aim of the Army Order is to disseminate to the environment the instructions on the subject.

Layout

3. The layout of this Army Order is as under :-
 - (a) Plural marriage by persons in whose case it is permissible.
 - (b) Plural marriage by persons in whose case it is not permissible.
 - (c) Ineligibility for enrolment/appointment in the Army.
 - (d) Petition for maintenance be dealt with simultaneously.

Main Body

4. The Special Marriage Act 1954 and Hindu Marriage Act 1955 lay down the rule of 'Monogamy' that is, neither party has a spouse living at the time of marriage. These Acts also provide for decrees of nullity of marriage, restitution of conjugal rights, judicial separation and divorce and also orders for alimony, and custody of children. The Hindu Marriage Act applies to all Hindus, Buddhists, Jains and Sikhs and also applies to all other persons (with certain exceptions), who are not Muslims, Christians, Parsis or Jews by religion. Christians, Parsis and Jews are also prohibited under their respective personal laws from contracting a plural marriage. Thus no person who has solemnised or registered his/her marriage under the Special Marriage Act or who is a Christian, Parsi or Jew or to whom the Hindu Marriage Act 1955 applies, can remarry during the life time of his or her wife or husband. Paragraphs 13 and 14 apply to such persons only. A Muslim or such other person to whom the Hindu Marriage Act does not apply and whose personal law does not prohibit Polygamy or Polyandry can marry during the lifetime of his or her wife or husband and paragraphs 5 – 12 below apply to such persons only.

Plural Marriage By Persons In Whose Case It Is Permissible

5. No person subject to the Army Act, except Gorkha personnel of Nepalese domicile, whose personal law permits plural marriage and whose previous marriage is subsisting, will marry again without prior sanction of the Central Government.
6. An individual may, during the life time of his wife apply for sanction to contract a plural marriage on any one or more of the following grounds :-
 - (a) His wife has deserted him and there is sufficient proof of such desertion;
 - (b) His wife has been medically certified as being insane;
 - (c) Infidelity of the wife has been proved before a court of law;
7. Applications will state the law under which the subsisting marriage was solemnised, registered or performed and will include the following details where applicable :-
 - (a) Whether the previous wife will continue to live with the husband;
 - (b) If the previous wife does not propose to live with the husband, what maintenance allowance is proposed to be paid and in what manner;
 - (c) Name, age and sex of each child by previous marriage and the maintenance allowance proposed for each in case any such child is to live in the custody of the mother.

In all cases, the applicant will render a certificate to the effect that he is not a Christian, Parsi or Jew by religion; that he had not solemnised or registered his previous marriage under the Special Marriage Act 1954 and that the Hindu Marriage Act 1955 is not applicable to him.

8. Applications will be forwarded through normal channels and each intermediate commander will endorse his specific recommendations. Such recommendations will be signed by the commander himself or be personally approved by him. Before making his recommendations a commander will satisfy himself that the reasons given for the proposed plural marriage are fully supported by adequate evidence.
9. An individual whose marriage is alleged to have been dissolved according to any customary law but not by a judicial decree will report, immediately after the divorce, the full circumstances leading to and culminating in dissolution of marriage together with a valid proof of the existence of alleged custom or personal law. Existence and validity of the same, if considered necessary, will be got verified from civil authorities and it is confirmed by the civil

authorities action will be taken to publish casualty for the dissolution of the marriage. The individual thereafter will not be required to obtain sanction for contracting the second marriage.

10. An application which is not recommended by the Commanding Officer and an authority superior to him need not be sent to Army Headquarters, but may be rejected by the GOC-in-C of the Command concerned.

11. Cases where it is found that an individual has contracted plural marriage without obtaining prior Government sanction as required in Para 5 above will be dealt with as under :-

(a) Cases of officers will be reported through normal channels to Army Headquarters (AG/DV-2) with recommendations as to whether *ex-post-facto* sanction is to be granted or administrative action is to be taken against the individual.

(b) Cases of JCOs and OR will be submitted to the GOC-in-C Command who will decide whether *ex-post-facto* sanction should be obtained or administrative action should be taken against the individual. In cases, where it is decided that administrative action should be taken against the individual his service will be terminated under orders of the competent authority.

When reporting cases to higher authorities, intermediate commanders will endorse their specific recommendations with reasons thereof. Here too, recommendations will be signed by the commanders themselves or be personally approved by them. Also, an opportunity to 'show cause' against the order of termination of service will always be given to the individual concerned.

12. In no circumstances will disciplinary action by way of trial by Court Martial or Summary disposal be taken against an individual who is found to have contravened the provisions of Para 5 above. If, however, the individual is also found to have committed another offence connected with his act of contracting a plural marriage, disciplinary action for the connected offence may be taken and progressed in the normal manner.

Plural Marriage by Persons In Whose Case It Is Not Permissible

13. A plural marriage solemnised, contracted or performed by any such person is null and void and may, on a petition presented to a court of law by either party thereto, be so declared by a decree of nullity. Not only is the plural marriage void but the offence of bigamy is also committed. This offence is, however, triable only on a complaint made to the civil authority by

an aggrieved party. The punishment for the offence of bigamy is prescribed in Section 494 and 495 of the Indian Penal Code.

14. When it is found, on receipt of a complaint, from any source whatsoever, that any such person has gone through a ceremony of plural marriage, no disciplinary action by way of trial by Court Martial or Summary disposal will be taken against him; but administrative action to terminate his service will be initiated and the case reported to higher authorities in the manner laid down in Para 11 above. In cases where cognisance has been taken by civil court of competent jurisdiction the matter should be treated as *sub judice* and the decision of the court awaited before taking any action. When a person has been convicted of the offence of bigamy or where his marriage has been declared void by a decree of court on grounds of plural marriage, action will be taken to terminate his service under AA Sec 19 read with Army Rule 14 or AA Sec 20 read with Army Rule 17 as the case may be. No *ex-post-facto* sanction can be accorded as such marriages are contrary to the law of the land.

Ineligibility For Enrolment/Appointment In The Army

15. No person who has more than one wife living shall be eligible for enrolment/appointment in the Army unless specifically exempted by the Central Government from the operation of this rule. Detailed instructions in this regard have already been issued to the enrolling officers/Selection Boards.

Petition for Maintenance to be Dealt with Simultaneously

16. While processing a case of contracting plural marriage, action with regard to grant of maintenance allowance, if claimed, will be processed separately. The provisions of Army Order 2/2001, as relevant, shall apply.

17. Army Orders 666/59 and 440/64 are hereby cancelled.

79333/AG/DV-1(P)

PC NOTE 79333/AG/DV-1(P)1

Copy of AO 666/59

- 1-A2

Copy of AO 440/64

- 2-A3

1. As per AG's directions, all AOs/SAOs more than 10 years old have to be reviewed and re-issued.

2. AO 666/59 deals with discipline on plural marriage and was issued in 1959. The ibid Army Order was amended once vide AO 440/64. No other amendment to the Army Order has been issued so far.

3. Accordingly, a draft Army Order is placed opposite for approval please.

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No 79333/AG/DV-1(P)

Oct 01

ADJUTANT GENERAL'S BRANCH
(AG/DV-1)

DISCIPLINE : PLURAL MARRIAGE

1. A draft Army Order, duly approved by AG in diglot version is forwarded herewith in duplicate for publication.
2. It is requested that 10 copies of the Army Order when published, may please be supplied to this Dte.

(S Gupta)
Jt Dir
AG/DV-1

MP-1

Encls : As above