International Journal of Law
ISSN: 2455-2194
www.lawresearchjournal.com
Volume 2; Issue 1; January 2016; Page No. 53-58

Effect of conversion of religion in Hindu law with special reference to bigamy

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Abstract

Marriage laws other than that of the Muslims 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 Indian Penal Code which is applicable to the bigamous marriage if it is void under the governing law for the reason of being bigamous.

For a long time 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 the belief that such conversion enables them to marry again without getting their first marriage dissolved .In this article we are going to analyze it.

Keywords: Bigamy, Religion, Hindu Marriage Act, Muslim Law

1. Introduction

India is a land inhabited by people professing different religious faiths and thus there are different personal laws governing different communities, such as Hindus, Muslim, Christian, Parsi and Jews depending upon the religious affiliation of the particular individual. As a result each citizen of India is entitled to have his own personal laws inter alia in the matters of marriage and divorce.

Marriage laws other than that of the Muslims 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 Indian Penal Code which is applicable to the bigamous marriage if it is void under the governing law for the reason of being bigamous [1].

For a long time 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 the belief that such conversion enables them to marry again without getting their first marriage dissolved.In this article we are going to analyze it.

1.1 Hindu Marriage Act, 1955

In 1955 Parliament enacted the Hindu Marriage Act putting a blanket ban on bigamy for the Hindus,Buddhist,Jains and Sikhs, declaring bigamous marriage on their part in future to be void and penal [2].

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(1)]. Violation of this condition shall make marriage null and void and liable to be so declared by a decree of nullity on a petition filed by either party against other party [3].

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 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 shall apply accordingly.”

1.2 Effect of Conversion

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 provisions, or any other provisions 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, it is generally believed, is permissible under Muslim law.

The question to be examined is that – if a non muslim converts to Islam without the real change in belie, merely to avoid an earlier marriage and enter into a second one, should the second marriage be considered void and the person prosecuted for bigamy ?

There has always been a simmering discontent in the judiciary regarding the tendency of converting to Islam for the sake of contracting a second bigamous marriage and the courts have tried to control it.

In the case of Govt. of Bombay v. Ganga [4], which obviously is a case decided prior to coming into force of the Hindu Marriage Act it was held by the Bombay High court that where a hindu married women having a hindu husband living marries a Mohammedan after conversion to Isla,she commits the offence of polyandry as,by mere conversion, the pervious marriage does not come to an end. The other decisions based on this principle are Budansa Rowther v. Fatima Bi [5]; Emperor v. Mst. Ruri [6]; and Jamna devi v. Mulraj [7]. In Rakeya Bibi v. Anil Kumer Mukherji [8], it was held that under the Hindu law,the apostasy of one of the spouses does not dissolve the marriage.

In Sayeda Khatoon alias A.M. Obadiah v. M.Obadiah [9], it was held that a marriage solemnized in India according to one

personal law cannot be dissolved according to another personal law simply because one of the parties has changed his or her religion.

In Robasa Khanum v. Khodadad Bomanji Irani [10]. the parties were married according to the Zoroastrian law. The wife became Muslim whereas the husband declined to do so.The wife claimed that her marriage stood dissolved because of her conversion to Islam. The court did not agree with it. Thus a marriage celebrated under a particular personal law cannot be dissolved by the application of another personal law to which one of the spouses converts and the other refuses to do so.

In Gul Mohammad v. Emperor [11], a Hindu wife was fraudulently taken away by the accused a Mohammedan who married her according to Muslim law after converting her to Islam.The High court held that, the conversion of the Hindu wife to Islam does not, ipso facto dissolve the marriage with her Hindu husband. It was further held that she cannot, during his lifetime, enter into a valid contract of valid marriage with another person. Such person having sexual relationship with the Hindu wife converted to Islam, would be guilty of adultery under S. 497, IPC as the women before her conversion was already married and her husband was alive.

So, it is very clear, that under the Hindu personal law as it expiated prior to its codification in 1955, a hindu marriage continued to subsist even after one of the spouses converts to Islam. There was no automatic dissolution of the marriage. The position has not changed after coming into force of the Hindu marriage Act,1955 (the Act) rather it has become worse for the apostate. The Act applies to the Hindus by religion in any of its form and development. It also applies to Buddhist, Jains and Sikhs. It has no application to Muslims, Christian and Parsees.

Another point discussed was in Braurao Shankar Lokhande v. State of Maharashtra [12], The marriage between two Hindus is void in view of S. 17, if two conditions are satisfied (1) the marriage is solemnized after the commencement of the Act (2) at the date of such marriage, either party had a spouse living. If the marriage which took place between the appellant and Kamlabai in February, 1962 cannot be said to be 'solemnized ', the marriage will not be void by virtue of S. 17 of the Act and S. 494, IPC will not apply to such parties to the marriage as had a spouse living. "

This decision was followed in Kanwal Ram v. H.P. Administration [13]

In Gopal Lal v. State of Rajasthan [14], Murtaza Fazal Ali.J, speaking for the court observed that." where a spouse contracts a second marriage while the first is still subsisting the spouse will be guilty of bigamy if it is proved that the second marriage was a valid one, in the sense the necessary ceremonies required by the law of custom have been actually performed. The void ness of the marriage under S. 17 of Hindu Marriage Act is in fact one of the essential ingredients of S. 494 because the second marriage will become void only because of the provisions of S. 17 of the Hindu Marriage Act

1.3 Now coming back to our discussion,

In Vilayat Raj v. Snila [15] Justice Leela Seth of the Delhi High Court has 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).

Finally came the case of Smt. Sarla Mudgal v. Union of India [16], the supreme court of India decided that every bigamous marriage of a Hindu convert to Islam would be void and therefore punishable under the Indian Penal Code.

The question for consideration was –whether a hindu husband married under the Hindu law, by embracing Islam can solemnize second marriage? Whether such marriage without having the first marriage dissolved under the law, would be a valid marriage qua the first wife who continues to be a Hindu? Whether the apostate husband would be guilty of offence under S. 494 of IPC?

Here, four petitions filed under Article 32 of the constitution were clubbed in this case,

Meena Mathur got married to Jitender Mathur in 1978 and had three children by him. In 1988, she learnt that her husband had married Sunita Narula, alias Fathima. The marriage had been solemnised after Jitender and Sunita converted to Islam. Meena contended that her husband's conversion was done solely for the purpose of marrying Sunita, and to circumvent the provision of Section 494 of the IPC (Indian Penal Code), which punishes bigamy.

Sunita, alias Fathima, filed a petition submitting that she and Jitender Mathur had embraced Islam, got married and had a son. After marrying her, Jitender, under the influence of Meena Mathur, reverted to Hinduism and agreed to maintain his first wife and their three children. Sunita (Fathima), who is still a Muslim, pleaded that she receives no maintenance from husband and has no protection under either of the two laws.

Sushmita Ghosh is another unfortunate lady who is petitioner in Civil Writ Petition 509 of 1992. She was married to G.C. Ghosh according to Hindu rites on May 10, 1984. On April 20, 1992, the husband told her that he no longer wanted to live with her and as such she should agree to divorce by mutual consent. The petitioner was shocked and prayed that she was her legally wedded wife and wanted to live with him and as such the question of divorce did not arise. The husband finally told the petitioner that he had embraced Islam and would soon marry one Vinita Gupta. He had obtained a certificate dated June 17, 1992 from the Qazi indicating that he had embraced Islam. In the writ petition, Ghosh asked the courts to declare polygamous marriages by Hindus and non-Hindus after conversion to Islam, illegal. And to make suitable amendments to the Hindu Marriage Act to curtail and forbid the practice of polygamy. If a non-Muslim male converted to the Muslim faith without any change of belief, merely to avoid an earlier marriage and enter into a second one, then any marriage entered into after the so-called conversion should be considered void. Ghosh also prayed for an order restraining G C Ghosh from marrying Vanita Gupta or any other woman during the time he was married to her.

Geeta Rani was married to Pradeep Kumar according to Hindu rites, in 1988. Her husband mistreated and beat her. In 1991, he converted to Islam and married Deepa. Kalyani, a women's organization, filed a petition to check the growing number of desertions of wives married under Hindu law, and husbands resorting to conversion in order to rid themselves of their wives.

These petitions were heard together and a judgment delivered in 1995 in the Sarla Mudgal versus Union of India case.

The court said that –"Since it is not the object of Islam nor is the intention of the enlightened Muslim community that the Hindu husband should be encouraged to become Muslim

merely for the purpose of evading their own personal law by marrying again, the courts can be persuaded to adopt a construction of the law 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 be strictly 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. Any act which is in violation of mandatory provisions of law is per-se void. The real reason for the void ness 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-bye 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 the apostate husband married under the Hindu Marriage Act would be in violation of the rules of equity, justice and good conscience, and also those of natural justice.

1.4 The court further observed 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 legal systems of law just as there should be harmony between two communities. The result of the interpretation we have given to S. 494 IPC, would be that Hindu law on one hand and the Muslim law on 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 R.M. Sahai, indeed spoke the truth when he said that "much misapprehension prevails about bigamy in Islam ". Grossly caricatured now, the Quranic concept of bigamy envisaged two women happily married to the same man and getting from him equally all that a lawfully wife could rightfully expect from the husband. Where this is not possible, the Quran enjoined monogamy. While the Quranic norms be strictly observed also by born muslims, the popular belief that the Quran enables a non –muslim husband who has kicked out his wife without a legl divorce to marry again by announcing a sham conversion to Islam is absolutely false. Derecognizing bigamous marriage of the non-muslim husbands contracted in such a fraudulent manner indeed enforces Quranic justice.

Sarla Mudgal case was looked at with disfavor in certain circles. So, the review of the 1995 judgment was sought and was heard along with a PIL by Lily Thomas, in case of Lily Thomas v. Union Of India [17].

In this particular judgment, Honble Justice S. Saghir Ahmad has made the understanding of the judgment by giving a thread base on account of the factual aspects of the sushmita ghosh case.

Smt. Sushmita Ghosh filed a Writ Petition No. 509 of 1992 in the Supreme Court and stated that she was married to Mr. G.C. Ghosh (now Mohd. Karim Ghazi) according to Hindu rites on 10 May, 1984. He asked her to agree for a divorce by mutual consent as he had converted to Islam and was to marry Ms Vanita Gupta (a mother of two children) in the second week of July. Smt. Sushmita challenged the second marriage of her husband as being violative of Article 15 (1) of the Constitution, she also submitted that Shri Ghosh had converted to Islam not being influenced by its teachings and ideals but only for the purpose of the second marriage. After conversion, he has done no overt act of being a Muslim. He has not mutated or got entered his new name in the official records. His conversion is simply feigned and sham. She had got filed the case through Smt. Sarla Mudgal, the president of an NGO Kalyani in 1992 which was decided in 1995. During the pendency of this case Mr. Mohd. Karim Ghazi had married Ms Vinita Gupta (now Hena Begum) on 3 September, 1992 and a son was born out of this second wedlock. Ms Sushmita filed the birth certificate of this baby in the Court in which the name of the father and mother was written as G.C. Ghosh and Vinita Ghosh respectively. She also filed copy of the voters' list for the year 1994 in which the name of the husband and wife were mentioned as G. C. Ghosh and Vinita Ghosh. Mr. Mohd. Karim Ghazi had applied for Bangladesh visa. Ms Sushmita filed copy of that document also in the court in 1994 in which his name was written as Gyan Chand Ghosh and religion was mentioned as Hindu. The name of the husband was mentioned as Mohd. Karim Ghazi but he signed the certificate as G.C. Ghosh and name of wife was given as Hena Begum in the Nikahnama which was issued by Mufti Mohd. Tayyab Qasmi. Mr Kapil Gupta, the brother of the bride had signed as a witness in English. Based on the above peculiar fact-situations of the case, Honb'le Justice S. Saghir Ahmad and Honb'le Justice R.P. Sethi passed the instant judgment, the salient features of which are briefly enumerated as follows: -

1. The most important question before the court was that if some Hindu husband/wife converts to another religion, contracts a second marriage during the subsistence of the first marriage simply for the purpose of avoiding the legal clutches of Section 17 of the Hindu Marriage Act, then what will be the effect of this criminal liability? According to Section 5, 11 and 17 of the Hindu Marriage Act, if one marries second time during the life time of his/her spouse, the second marriage shall be void, and such husband or wife may be prosecuted for having committed the offence of bigamy under sections 494 and 495 of the Indian Penal Code. According to the judgment, the conversion will have no effect on the first marriage. The first marriage subsists, and does not come to an end automatically. Since the relations of husband and wife continue under the first marriage, their matters/disputes will be decided as per their personal laws, i.e., section 17 of the H. M. Act; the

second marriage will be void and on the complaint of first wife or her near relation, the new convert husband may be prosecuted under Section 17 of the H. M. Act and under sections 494 and 495 of the IPC. Conversion does not end the first marriage but becomes a groused for divorce, and unless the first marriage is dissolved by a judicial verdict, no second marriage is permissible under any other Personal Law and if such a second marriage takes place the same shall be void and the person may be held criminally liable for a bigamous marriage.

Sarla Mudgal judgment was challenged by All India Muslim Personal Board and The Jamiat Ulema hind etc. on the ground that it violates the fundamental rights guaranteed under Articles 20,21,25,&26 of the Constitution of India.

The grievance that the judgment of the Court amounts to violation of the freedom of conscience and free profession, practice and propagation of religion 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. The rule of monogamous marriage amongst Hindus was introduced with the proclamation of Hindu Marriage Act. Section 17 of the said Act provided that any marriage between two Hindus solemnised after the commencement of the Act shall be 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 (45 of 1860), shall apply accordingly. The second marriage solemnised by a Hindu during the subsistence of first marriage is an offence punishable under the Penal law. Freedom guaranteed under Article 25 of the Constitution is such freedom which does not encroach upon a similar freedom of the 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 his belief and ideas in a manner which does not infringe the religious right and personal freedom of others. It was contended in Sarla Mudgal 's case that making a convert 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.

1.5 On the review petition on ground of violation of Art. 20, the court held that,

This Court had not laid down any new law but only interpreted the existing law which was in force.. It is settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the Court does not legislate but only give an interpretation to an existing law. We do not agree with the arguments that the second marriage by a convert male muslim has been made offence only by judicial pronouncement. The judgment has only interpreted the existing law after taking into consideration various aspects argued at length before the Bench which pronounced the judgment. The review petition alleging violation of Article 20(1) of the Constitution is without any substance and is liable to be dismissed on this ground alone.

The alleged violation of Article 21 is misconceived. What is guaranteed under Article 21 is that no person shall be deprived of his life and personal liberty except according to the procedure established by law. It is conceded before us that actually and factually none of the petitioners has been deprived of any right of his life and personal liberty so far. The aggrieved persons are apprehended to be prosecuted for the commission of offence punishable under Section 494 IPC. It is premature at this stage, to canvass that they would be deprived of their life and liberty without following the procedure established by law. The procedure established by law, as mentioned in Article 21 of the Constitution, means the law prescribed by the Legislature. The judgment in Sarla Mudgal's case has neither changed the procedure nor created any law for the prosecution of the persons sought to be proceeded with for the alleged commission of the offence under Section 494 of the IPC.

1.6 As regards the true position for bigamy under the traditional Muslim, the court said

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 the second marriage cannot be permitted to urge that such marriage should not be made 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 converted has been deprived of practicing any other religious right for the attainment of spiritual goals. The Islam which is pious, progressive and respected religion with rational outlook cannot be given a narrow concept as has been tried to be done by the alleged violators of law.

1.7 Now regarding the issue of Uniform Civil Code

In Sarla Mudgal case, one of Hon’ble Judge (Kuldeep Singh, J)after referring to the observations made by Supreme Court in Mohd. Ahmed Khan v. Shah Bano Begum (AIR 1985 SC 945) requested the Government of India through the Prime Minister of India to have a fresh look at Article 44 of the Constitution of India and “endeavor to secure for the citizens a uniform civil code throughout the territory of India“. In that behalf direction was issued to the Government of India,Secretary, Ministry of Law and Justice to file an affidavit of a responsible officer indicating therein the steps taken and efforts made towards securing a uniform civil code for the citizens of India.

On the question of uniform civil code R.M. Sahai, J. the other Hon’ble judge constituting the bench suggested some measures which could be undertaken by the government to check the abuse of religion by unscrupulous persons, who under the cloak of conversion were found to be otherwise guilty of polygamy. It was observed that:

Freedom of religion is the core of our culture.Even the slightest deviation shakes the social fiber. It was further remarked that :

The Government would be well advised to entrust the responsibility to the Law Commission,which may in consultation with Minorities Commission examine the matter and bring about a comprehensive legislation to keep with modern day concept of human rights for women.
It was alleged that in Sarla Mudgal case the supreme court directed the Central Govt. and the Prime Minister to legislate and implement the Uniform civil code.
In Lily Thomas case court held that –
Learned Counsel appearing on behalf of the Jamiat-Ulema Hind and learned, counsel appearing on behalf of Muslim Personal Law Board have rightly argued that this Court has no power to give directions for the enforcement of the Directive Principles of the State Policy as detailed in Chapter IV of the Constitution which includes Article 44. This Court has time and again reiterated the position that Directives, as detailed in Part IV of the Constitution are not enforceable in Courts as they do not create any justiciable rights in favor of any person.
In Ahmedabad Women Action Group (AWAG) and Ors. v. Union of India [18] this Court had referred to the judgment in Sarla

1.8 Mudgal's case and held

The question regarding the desirability of enacting a Uniform Civil Code did not directly arise in that case. The questions which were formulated for decision by Kuldip Singh, J. in his judgment were these: (SCC p. 639, para 2)
Whether a Hindu husband, married under Hindu Law, by embracing Islam, can solemnize a second marriage? Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continues to be a Hindu? Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?
Sahai, J. in his separate but concurring judgment referred to the necessity for a Uniform Civil Code and said. (SCC p. 652, para 44)
...The desirability of uniform code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change.' Sahai, J. was of the opinion that while it was desirable to have a Uniform Civil Code, the time was yet not ripe and the issue should entrusted to the Law Commission which may examine the same in consultation with the Minorities Commission. That is why when the Court drew up the final order Signed by both the learned judges it said "the writ petitions are allowed in terms of the answer to the questions posed/in the opinion of Kuldip Singh, J". These questions we have extracted earlier and the decision was confined to conclusions reached thereon whereas the observations on the desirability of enacting the Uniform Civil Code were incidentally made.
So, court in this case held that this Court in Sarla Mudgal's case had not issued any direction for the enactment of a common civil code.
The apprehension expressed on behalf of Jamiat-Ulema Hind and Muslim Personal Law Board is unfounded but in order to ally all apprehensions we deem it proper to reiterate that this Court had not issued any directions for the codification of the common Civil Code and the judges constituting the different Benches had only expressed their views in the facts and circumstances of those cases.
In Maharshi Avadhesh v. Union of India [19] the Supreme Court had specifically declined to issue a writ directing the respondents to consider the question of enacting a common civil code for all citizens of India holding that the issue raised being a matter of policy, it was for the legislature to take effective steps as the court cannot legislate.
The Supreme Court in John Vallamattom v. Union of India [20] has observed: "It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country.A common civil code will help the cause of national integration by removing the contradictions based on ideologies."

1.9 The 18th Law Commission Report –on
Preventing Bigamy via conversion to Islam. A proposal for giving statutory effect to S.C. ruling.

1.10 Report no. 227,5th August
Chairman – Hon'ble Dr. Justice A.R. Lakshmanan

The law commission has made certain recommendations to the government of India. They are:-

1. 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 marriage is contracted it will be null and void and shall attract application of Section 494-495 of the Indian Penal Code 1860.
2. A similar provisions be inserted at suitable places into the Christian Marriage Act 1872, the Parsi Marriage Act and Divorce Act 1936 and Dissolution of Muslim Marriage Act 1939.
3. The Proviso to Section 4 of the Dissolution of Muslim Marriage Act 1939 –saying that this section would not apply to married women who was originally a non-muslim if she reverts to her original faith –be deleted.
4. In 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 the change of religion by either party it will henceforth be governed by the provisions of the Special Marriage Act including it's anti-bigamy provisions.
5. The offence relating to bigamy under Section 494-495 of the Indian Penal Code 1860 be made cognizable by the necessary amendment in the Code of Criminal Procedure 1973.

1.11 Penal Law on Bigamy

The chapter of offences relating to marriage under the Indian Penal Code of 1860contains two provisions relating to bigamy –first of these applicable to married persons marrying again without concealing from the second spouse the fact of the first marriage i.e. sec. 494 and the second to those who do so by keeping the second spouse in dark about the first marriage i.e. sec. 495.

1.12 Section 494 of the code reads as follows:-

" 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. "

Coming to the cases of bigamy where a person indulges in it by deceiving the second spouse,Section 495 of the Indian Penal Code says:-

"Whosoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted,the fact of 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 the particular case,but not so otherwise.

As such anti –bigamy provisions of the Indian Penal Code apply to all those whose marriage is governed by any of the following legislative enactments all of which regard a second bigamous marriage,by a man or a women as void :

Special Marriage Act 1954
Foreign Marriage Act 1969
Christian Marriage Act 1872
Parsi Marriage and Divorce Act 1939
Hindu Marriage Act 1955

The anti-bigamy provisions of Indian Penal Code would not apply to tribal men and women if their customary law and practices does not treat their plural marriage as void.See for instance Surajmani Stella Kujur (Dr.) v. Durga Charan Handah [21]

1.13 Nature of offence

The offence 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 local amendment of 1992 the offence under Section 494 was made cognizable, non-bailable and non-compoundable.

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.

2. Conclusion

So, it is very clear, that under the Hindu personal law as it existed prior to its codification in 1955, a hindu marriage continued to subsist even after one of the spouses converts to Islam. There was no automatic dissolution of the marriage. The position has not changed after coming into force of the Hindu marriage Act, 1955 (the Act) rather it has become worse for the apostate. The Act applies to the Hindus by religion in any of its form and development. It also applies to Buddhist, Jains and Sikhs. It has no application to Muslims, Christian and Parsees.

We have noticed that in the past several years it had become common for Hindu males who could not get a divorce from their wives to convert to Islam solely for the purpose of remarriage. And that, after the second marriage, they re-converted to Hinduism in order to retain their rights over property. They then went about their business in their old name and religion. What married men do and are helped by ill educated religious functionaries and misinformed lawyers is a fraud on Hinduism, a disgrace to Islam, a cruel joke on the freedom of conscience clause of the constitution of the country and a criminal scheme against the law of the land.

The Supreme Court of India, very specifically outlawed this practice by it's decision in Sarla Mudgal and reaffirmed it in case of Lily Thomas in year 2000. Though these cases relate to marriage governed by the Hindu marriage Act,1955, their ratio –decidendi would obviously apply to all the marriages whose governing law does not permit bigamy.

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,Jordon,Iraq and Morocco, Pakistan and Bangladesh, it has been subjected to administrative or judicial control.

In India also similar efforts should be made. Also with sole exception to Andhra Pradesh, nowhere have any changes in IPC provisions or related procedural law been yet considered in order to improve upon working of the said provisions. So, offences related to bigamy under 494 and 495 of IPC should be made cognizable by necessary amendment in Code of Criminal Procedure. 1973.

3. Reference

1. Section 494 & Section 495 Indian Penal Code,1860
2. Sections 5,11 &17 of Hindu Marriage Act,1955
3. Section 11 of Hindu Marriage Act,1955
4. ILR (1880) 4 Bom 330
5. AIR 1914 MAD 192
6. AIR 1919 LAH 389
7. 1907 (PR No.49)198
8. ILR (1948)2 cal 119
9. (1944-45)49 Cal WN 745
10. 1946 Bombay Law Reporter 864
11. AIR 1947 Nagpur 121
12. (1965) 2 SCR 837
13. (1966)1SCR 539; AIR 1966 SC 614.
14. AIR 1973 SC 713
15. AIR 1983 Delhi 351
16. (1995) 3 SCC 635
17. (2000)6 SCC 227
18. (1997) 3 SCC 573
19. (1994 Supp (1) SCC 713)
20. [(2003)6 SCC 611]
21. AIR 2001 SC 938.