



## Law related to maintenance of second wife in India

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### Abstract

Most of the personal laws operating in India treat bigamy as void and illegal and also the criminal system of India punishes the offence of bigamy under sec 494 of Indian Penal Code (IPC) The position of legislations and personal laws with respect to the bigamous marriages are so stringent that the even innocent second wives who were kept in dark by the husbands regarding their first marriage have no respite with respect to the maintenance under current Indian legislative framework. This paper intends to deals with how innocent second wives who were betrayed by the husbands can rightfully claim maintenance in India. This paper attempts to provide a useful insight as to how with the help of liberal interpretation of the statutes by the judiciary the claim for maintenance by second wives has also given a valid position within the personal laws and also under sec 125 of Code of Criminal Procedure (C.r.P.C.)

**Keywords:** second wife, maintenance, void marriages

### 1. Introduction

The maintenance is payable to the wife during the subsistence of marital relations or upon the breakdown of nuptial ties. The expression maintenance not only includes the provisions for food, clothing and shelter but inclusive of all these, it includes a reasonable sum given to the wife so that she can live her life with full honor and dignity.<sup>[1]</sup> Generally the maintenance is provided to only those aggrieved wives whose marriage is valid and not in contravention with any pre-requisites or conditions of a valid marriage as prescribed in the respective personal laws/statutes of India. Any marriages in violation of personal laws are considered as void and no legal right including right to claim maintenance arises from such void marriages. In India, many personal laws operating in India strictly adheres to the monogamy and treats bigamy as illegal and void. Even the criminal system of India has made bigamy a criminally punishable offence under sec 494 of Indian Penal Code (IPC).<sup>[2]</sup> Hence at present, the position of law is clear that any marriage taking place during the subsistence of first marriage is considered as void/illegal and attracting criminal provisions and thus second wife has been left high and dry with no legal relations and rights. Although the law stands clearly with respect to the monogamy, but still second/bigamous marriages are common in the Indian society. In this back drop it is imperative to understand the concept of second wife, how she can claim her right to maintenance under different personal laws of India and also under sec 125 of Code of Criminal Procedure (C.r.P.C).

The expression “second wife” is given different interpretations under different personal laws. Under Hindu, Parsi and Christian personal laws operating in India which provides for monogamy institution of marriage, second wife in these personal laws would be the one who marries to the man who is already married and has a wife living with him. Under Muslim Personal Laws functional in India which provides for polygamy i.e. a Muslim husband can enter into the marriage contract and can marry up to four women, therefore under Muslim Personal Laws, the second wife

would be the one who contracts fifth marriage with the Muslim man who has already done four marriages and have four wives living with him.

### 2. Status of maintenance to second wife under Hindu Law

Under Hindu Personal Laws, sec 5(1) of Hindu Marriage Act, 1955 (HMA) provides conditions for valid marriage and one of the conditions is that neither party must have a spouse living at the time of the marriage.<sup>[3]</sup> Any marriage taking place in violation of the conditions mentioned under sec 5(1) is considered as void as per sec 11 of HMA.<sup>[4]</sup> Such a stringent position with respect to the second/bigamous marriages, it becomes a herculean task for the second wife to claim maintenance from the husband under the current legislative framework. However with the liberal interpretations of the laws and statutes by the judiciary, the second wife has also been made eligible to claim maintenance from the husband under the following legislations:

#### 2.1. Hindu Adoptions and Maintenance Act 1956 (HAMA)

Sec 18(2) states that a Hindu wife has a right to live separately from her husband without forfeiting her to claim maintenance under different circumstances or grounds and one of the grounds under which a wife can claim maintenance is where the husband is living with another wife as per sec 18(2)(d).<sup>[5]</sup>

The meaning of the expression “wife” and “husband” were interpreted differently by different High Courts of India. Calcutta High Court gave a very literal interpretation and held that “wife” and “husband” means who are married in accordance with the Hindu Personal Laws and whose marriage is valid. However Bombay High Court held that the expression “wife” and “husband” cannot be narrowed down to such an extent that it only includes legally married spouses. The expression would also include under its ambit those spouses who are claiming to be husband and wife and

have gone through the ceremonies of the marriage. The Supreme Court also held that for the purpose of providing maintenance to the wife under sec 18, no strict proof of marriage is required and maintenance can be provided even in the cases of void marriages.<sup>[6]</sup>

Looking at this legislation and specifically the provisions of sec 18, the provisions does not specifically states that only legally wedded wife has a right to claim maintenance. No such expression neither explicitly nor implicitly have been used in sec 18 so as to exclude the claim for maintenance arising out of void marriages. Further, the Hindu Adoptions and Maintenance Act 1956 came after the passing of the Hindu Marriage Act 1955 which specifically prohibits bigamy, but still there is a provision under HAMA 1956 which provides for the ground to the wife whose husband is living with the another wife. Thus it can be said that the legislature was aware of the position of law with respect to bigamy and monogamy but still it does not deploy any expression which implies that only legally wedded wife can claim maintenance from husband. The legislature has instead only used the expression wife which implies that it was the intention of the legislature to allow the claim for maintenance even from second wife or whose marriage has been declared void.

Therefore considering the intention of the legislature and the liberal interpretation of Supreme Court, it can be said that the husband who enters into another marriage despite the fact that he is already married and has a wife living with him and keeping the second wife in dark about his the factum of his first marriage then in such a situation the husband cannot be allowed to take undue advantage of his own wrong and taking the defense of void marriage and escaping from providing maintenance to the second wife. Hence second wife who was kept in dark by her husband regarding his first marriage have all the legal rights to claim maintenance from husband under the relevant provisions of sec 18 HAMA 1956.

## 2.2 Hindu Marriage Act 1955 (HMA)

Sec 25 of HMA 1955 provides for providing permanent maintenance to either wife or husband as the case may be. However the question arises whether the second wife whose marriage is void can still exercise her right to claim maintenance from the husband. Supreme Court affirmatively answered this question in the case of *Ramesh Chandra Daga v Rameshwari Daga*.<sup>[7]</sup> In this case the husband entered into the nuptial bond with the first wife in 1963 and again in 1969 he married for the second wife (appellant) despite the subsistence of first marriage. In 1979 the first wife passed away and the husband started living with the second wife. Meanwhile husband started ill treating her wife for which the wife filed the suit for judicial separation along with the claim for maintenance. Husband pleaded that since the second marriage is void hence no claim for maintenance can arise from such void marriage. However the court took a different opinion and ruled that since the bigamous marriages were very prevalent in the Hindu community and it is only after the passing of HMA second/bigamous marriages were prohibited and made illegal, but still second marriage cannot be considered as immoral enough so as to exclude the second wife who is financially weak and not able to maintain herself from the ambit of sec 25 of HMA 1955, whose main purpose is to prevent destituteness and vagrancy in the society. Therefore

the court finally held that even second wife whose marriage is void can still claim for maintenance provided that she is not in a position to maintain her. Thus second Hindu wife has alternative remedy to claim maintenance from the husband.

## 2.3. Code of Criminal Procedure 1973 (C.r.P.C)

Sec 125(1) (a) of C.r.P.C. orders the husband having the enough means to provide maintenance to the wife who is not in a position to maintain her. So again confusion arises whether expression 'wife' used in sec 125 encompasses second wife also. Supreme Court in *Smt. Yamunabai Anantrao Adhav A v Ranantrao Shivram Adhav*<sup>[8]</sup> case held that the since the second marriage is considered as void and hence no legal rights arises from such void marriages including the maintenance. However with the passage of time, the Apex Court of India started interpreting the meaning of 'wife' in a liberal manner. In the case of *Chamuniya v Virendra Singh Kushwaha*<sup>[9]</sup>, which was the case dealing with the right to claim maintenance arising from live-in relationships, it was held that the for the purpose of providing maintenance to the wife, no strict proof of marriage is required and 'wife' includes even those situations where the man and women are living together for a considered duration of time.

Recently Supreme Court in *Badshah v Sou. Urmilla Badshah Godse*<sup>[10]</sup> overruled the ratio of *Yamuna Bai* case and ruled that the even second wife who was oblivious or who was kept in dark by the husband regarding his first subsisting marriage can fully exercise her legal right to claim maintenance from the husband. The court also discussed the objective and purpose of sec 125 which is a benevolent provision created to provide speedy and easy remedies to economically weaker sections of society including destitute wife, children and parents who are not in position to maintain themselves. Hence the court finally ruled that with such a social welfare objective as envisaged by sec 125, even the innocent second wives can claim maintenance from the husband who cheated her and did not disclosed to her about the factum of his first marriage and thereby he cannot take the undue advantage of his own wrong.

## 3. Status of maintenance to second Wife under Muslim laws

The Muslim personal laws functional in India allows for polygamy, making eligible the Muslim man to contract maximum of four marriages. However once he enters into the contract for fifth marriage, that fifth marriage is considered as void (batil) under Shia law and irregular (fasid) under Sunni law. Maintenance under Muslim law in India is known as *Nafqah*. Muslim woman irrespective of whether she is able to maintain or not has a absolute right to claim maintenance from the husband. Sec 163 of Compendium of Islamic laws published and released by All India Muslim Personal Law Board states that husband has the obligation to provide maintenance to the wife irrespective of the financial conditions.<sup>[11]</sup> However under Muslim laws, the right to claim maintenance to the wife arises only in cases of valid marriages and since fifth marriage is considered as either void or irregular under Muslim law hence second innocent Muslim wife has no respite under her own personal laws. Even Muslim Woman (Protection of Rights on Divorce) Act 1986 provides for

maintenance only to the divorced wives and since the fifth marriage is void or irregular hence no decree of divorce can be passed (since decree of divorce can be passed only in cases of valid marriages) hence fifth wife with respect to maintenance is remediless under her own personal laws.

The only legitimate way available to a second Muslim wife is sec 125 of C.r.P.C. Supreme Court of India in the landmark judgment of *Mhd. Ahmed Khan v Shah Bano Begum* <sup>[12]</sup> held that sec 125 of C.r.P.C is secular in nature and is applicable to all the persons irrespective of the religion and personal laws. It is socially benevolent provision created to prevent poverty and vagrancy in the society and overrides all the personal laws. Further as repeatedly held by various High Courts and even Apex Court of India that for the purpose of providing maintenance under sec 125, the expression wife must be interpreted liberally so as not to exclude those aggrieved wives (whose marriage is either valid or void) and who are economically weak and financially dependent. Thus even the second Muslim wives even though their marriage is considered as void or irregular, she can use the easy and expedient remedy provided under sec 125 of C.r.P.C.

#### **4. Status of maintenance to second wife under Christian Laws**

The provision for maintenance to the Christian wife is provided under sec 37 and 38 of Indian Divorce Act 1869. <sup>[13]</sup> However, the right to claim maintenance can only be exercised by either divorced or judicially separated Christian wife. Thus second wife under Christian laws whose marriage is already void has been implicitly excluded from claiming maintenance. The only remedy left to the innocent Christian second wife is again sec 125 of C.r.P.C which is a special provision created for the benefits of financially dependent and deserted wives. Furthermore sec 125 does not require any pre condition with respect to the pending marriage petition (suit for divorce/ judicial separation/restoration of conjugal rights etc) in the court is required in order to avail the remedy under 125. The only requirement is that the husband having enough means is neglecting his wife who is not able to maintain her. On fulfillment of this condition any wife irrespective of her personal/religious laws is eligible to use this secular remedy of sec 125.

#### **5. Status of maintenance to second wife under Parsi Laws**

Sec 39 and 40 of Parsi Marriage and Divorce Act 1936 deals with the provision related providing maintenance to wife or husband as the case may be. <sup>[14]</sup> The maintenance is provided on passing of any decree by the court (like decree for divorce or judicial separation etc). However no such provisions of Parsi Laws explicitly talks about entertaining the claim for maintenance arising out of void marriages or second marriages. Therefore second Parsi wife who has solemnized her marriage under Parsi Marriage and Divorce Act has no remedy under the act. Thus again the only alternative left to such a innocent Parsi second wife is sec 125 of C.r.P.C. which is an economic umbrella intended to cover all the vulnerable and financially weaker sections of the society irrespective of one's personal laws and religious beliefs.

#### **6. Conclusion**

In all the personal laws and relevant statutes of India, the concept of maintenance to wife has been given a great consideration so as to prevent financial distress and destituteness of the economically weaker wives in the society and to promote the overall welfare of the society. In this context, it becomes imperative for us to understand the legal position of right to claim maintenance by the second wives. The research paper analyzed the status of second wife under different personal laws of India. Under Hindu Personal laws and legislations, the second wife can avail her right to claim maintenance under different Hindu Personal Legislations including HAMA 1956 (Sec 18) which allows the wife to claim maintenance on one of the grounds that husband has been living with another wife and HMA 1955 (Sec 25) after the landmark judgment of Supreme Court in *Ramesh Chandra Dagg* case which allowed to accept the suits for maintenance arising even out of second/bigamous marriages. Similarly the second Hindu wife has another alternate and easy remedy available to her under sec 125 of C.r.P.C. after the recent judgment of Supreme Court in *Badhsah v Urmilla Godse case*, where the second wives who were unaware of the husband's first marriage and married to the husbands in a false belief can legitimately claim maintenance from such fraudulent husbands. However the position of second wife under other personal laws of India like Muslim Personal laws, where fifth marriage is considered as void or irregular and no suit for maintenance can be arise from such irregular/void marriages, hence innocent second Muslim wives have the only remedy left is under sec 125 of C.r.P.C. which is secular in nature and applicable to all the parties irrespective of one's personal laws or religion. Similarly the Parsi Marriage and Divorce act is silent on providing the maintenance arising out of void marriages hence in case of Parsi second wives the only alternative remedy available to them is sec 125 of C.r.P.C. Likewise under the Indian Divorce Act 1869, no claim for maintenance can be entertained arising out of void marriages as sec 36 and 37 of the statute provides for maintenance only to the divorced or judicially separated wives. Therefore second Christian wife can take shelter under sec 125 of C.r.P.C. which includes under its ambit even the claim for maintenance arising out of void marriages and the main purpose of which is to promote financial well being of the marginalized and weaker sections of the society.

Many innocent wives fall into the trap of fraudulent husbands and do not disclose about the factum of their first marriages. The second wives has to face a lot of stigmas and biasness in the Indian society and the worse thing is that she does not enjoy the legal status of her marriage without any fault on the part of her side. Although with the help of liberal interpretation of laws by the judiciary, the second wife has been made eligible to claim maintenance but still the absence of such specific laws related to the maintenance to the second wife give opportunity to the husbands to take undue benefits of the loopholes in the law. Hence there is a dire need to make relevant, clear and unambiguous laws for the second wives to ameliorate their situation in the Indian society.

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