

Maintenance of Second Wife

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I. INTRODUCTION

BIGAMY

Bigamy is when a man remarries while the subsistence of the previous marriage. Bigamy is criminalized under Indian Penal code and considered illegal under the Hindu Law. Any marriage which is entered into by a man while he has a subsisting marriage with another woman, the subsequent marriage is not legally recognized and neither are the relationships arising out of the marriage.

However, it is not an uncommon occurrence nor is the second marriage being illegal enough of a deterrence to stop people from doing so. Even though the laws regarding eventual separation in second marriages or child custody or maintenance etc., from second marriages, are unclear, they are still taking place in the society. The apparent contrast between the law and social practice regarding second wives in India has led to a situation where it is realized that they are gravely wronged and that they are not properly protected under the law.

The social stigma attached with being a second wife, the absence of any legal status to the relationship, and the enormous pain of being cheated into the marriage are undoubtedly extremely depressing for a woman. Even though there is no recognition given to a second wife, due to the judicial interpretation of existing law as discussed above, she may have some chances of getting maintenance. In the absence of any clear provisions under the law, her chances of claiming her rights are largely dependent on the discretion of the judges.

Monogamy is a rule subsisting from the Vedic times and what Hindu Law took up in its essence. In those times, bigamy of wives was beyond reasonability, it was only the husbands that could marry more than once but there were certain conditions in that regard in theory, in Practical bigamy or even polygamy became a common phenomenon. Under the old laws i.e before the commencement of the HMA, a woman was not allowed to remarry until and unless her customs permit her. However, there was no such law for the men. Slowly, Hindu law was made Monogamous with various states bringing anti-bigamy laws. As a norm, the first wife had precedence over the others and her first-born son over his half-brothers. It is probable that originally, the subsequent wives were considered as merely a superior class of concubines. Later, in the courts of British India, it was a settled law that a Hindu male could without any restriction marry again while his previous marriage subsisted (second marriage) without his wife's consent and justification. Custom, however, did prevent the second marriage without the consent of the first wife and without making provision for her. It was however held in *Raghveer Kumar v ShanmukhaVadivar*¹, that a custom prevalent amongst Nadars in UdumalapetaTaluk preventing a second marriage, even if established could not have the force of law.

LAWS RELATING TO BIGAMY

Criminal Law

As per **Section 494** of the IPC; marrying again during lifetime of husband or wife, marries subsequently without legally divorcing or gaining a divorce decree by the competent court any, is liable to be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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

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

Such a person has not been heard of by the other spouse as being alive within that time

¹AIR 1971 Mad 330, (1962) 2 MLJ 193

Provided the person contracting such subsequent marriage shall, before such marriage takes place, 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.

Evidence Act

Section 114 of The Indian Evidence Act provides for liberal acceptance of evidence to prove that the marriage was in existence (even though in the eyes of law it might be otherwise illicit). The Section, in essence, provides that in the presence of improvable facts, the person's conduct and the happening of an event etc. can be used as evidence to prove the existence of marriage.

Hindu Marriage Act

The law of maintenance has been given under **Section 24** of the HMA. However, this law does not provide for maintenance to the wife of the second marriage but, in a catena of cases, the courts have given a wide interpretation to this section. Now, under Section 24 even a second wife can claim maintenance from her husband.

Similarly, under **Section 25**, HMA the provisions for permanent alimony has also been interpreted widely by the courts to protect the rights of the second wives. After the marriage is annulled, the second wife has the right to claim for maintenance.

Hindu Adoption and Maintenance Act

HAMA provides that the second wife can claim maintenance from her husband even after she abandoned him when she comes to know that her husband has another wife living. The phrase 'any other wife living has been interpreted variously by the different High Courts. The issue has been with respect to whether the phrase intends "living together" or includes living separately as well.

II. CONCEPT OF MAINTENANCE

Hindu Adoption and Maintenance Act, 1956, a Hindu male has the duty put upon him legally to maintain his spouse. "Maintenance" includes provision for food, residence, clothing, education and medical attendance and treatment. The **Criminal Procedure Code** also provides for a provision for maintenance, regardless of religion.

The whole concept of maintenance was brought into picture by the virtue of the concept of karta. Under Hindu Law it is considered that the Karta is the representative of the Hindu joint family and he is supposed to take care of all the members and provide them with anything that they need when the women of the house are not married. When the women gets married the same right passes on to the husband and the right to maintenance is introduced in order to see that if there is a spouse who is not independent financially than the other spouse should help him/her in order to make the living of the other person possible and independent. Providing maintenance means that the other person who is getting the maintenance should be able to live the life as he or she lived before marriage in case of divorce and in case where the two partners are not living together and they seek maintenance than the spouse getting maintenance should be able to live a life as when they lived together. Maintenance is the amount which a husband is under an obligation to make to a wife either during the subsistence of the marriage or upon separation or divorce, under certain circumstances. Maintenance not only includes basic necessities like food, clothing and residence but it also includes the things necessary for comfort and status in which the person entitled is reasonably expected to live.² The main aim of providing maintenance is that the wife should not be left destitute on separation or divorce from her husband. In a laymen's term maintenance are those things which are indispensable for the survival of human being. The person who is being given Maintenance should not have any independent source of income because that is the whole idea. According to the societal standards, husband is supposed to work and earn, wife is supposed to manage the tasks at home by the amount husband yields, wives are not conventionally expected to go out and work and hence the laws are framed as such. It is expected that wife cannot support herself after separation and hence the husband should enrich her with his salary. Although this makes sense if the wife is to support their child because husband is also expected to be equally spending in the child's life.

The court can fix the maintenance at any amount, depending on its discretion. When deciding the quantum of maintenance to be awarded, the court takes into account the income of parties, their status and other circumstances. When the wife applies for maintenance, the onus is on the husband to declare his income.

²P 301, MihaelaRobila, Springer Science & Business Media, Handbook of Family Policies Across the Globe

The persons who are entitled to maintenance are wife, widowed daughter-in-law, children, aged parents and dependants.³Whereas, under the Muslim law, the persons entitled to maintenance are wife, young children, the necessitous parents, and other necessitous relations within the prohibited degrees.⁴

III. MAINTENANCE BE GIVEN TO THE SECOND WIFE

Earlier position

Under the old laws i.e before the commencement of the Hindu Marriage Act, 1955, a woman was not allowed to remarry until and unless her customs permit her. However, there was no such law for the men. Slowly, Hindu law was made Monogamous with various states bringing anti-bigamy laws.

The Hindu husband has a legal obligation to maintain his wife during his lifetime. However, if a wife ceases to be Hindu or lives separately under no legal grounds she loses the right to claim maintenance too.⁵

Under Criminal Procedural code, 1973, only wife can claim for maintenance. The various sections of CrPC are criminal in nature and are used for the criminal charges. As per the Code, only a legally wedded wife is entitled to receive maintenance. Although In this capacity, “wife” also includes a wife who has separated via the right legal procedures with the husband i.e has obtained a true decree of divorce, can also claim maintenance from the person she was married to.

The problem arises where a woman, who stands as a second wife to a man, is not granted such a right since the second marriage is declared void by the law. In this entire stigma of the second marriage, the person who suffers the most is – the second wife. It is mental harassment for the second wife if what is happening to her is not due to her fault. Keeping aside the cases of connivance, in most of the cases the husband tricks the wife into marrying her without letting her know of his previous marriage. Within moments the whole life of the second wife comes crashing, there is no legal status, all the rights are declared void and the woman no more has any legal standing. It is not only humiliating for the wife but also socially discrediting. In cases where the wife also has a child, it becomes very difficult for the woman to pick herself up and also work to support her family.

Current position

There is no specific provision as to providing the second wife with maintenance but it is through this landmark judgment that this status of second wives was reviewed and the provisions were interpreted in pursuance of the same.

- *Badshah vs. Sou. Urmila Badshah Godse & Anr.*⁶

The respondents filed an application under Section 125 of the Code of Criminal Procedure, 1973 and stated that respondent 1; Urmila was married to Popat Papale. In 1997, she got divorced from her first husband. On demand of the petitioner for her marriage through mediators, she married him on 10.2.2005 at Devgad Temple situated at Hivargaon-Pawasa. Her marriage was performed with the petitioner as per Hindu Rites and customs. After her marriage, she resided and cohabited with the petitioner. Initially, for 3 months, the petitioner cohabited and maintained her nicely.

About three months later, a woman named Shobha came to Urmila’s house and claimed herself to be Badshah’s first wife. On inquiring from her husband about the lady, he replied that if she wanted to cohabit with him, she should reside quietly; otherwise she was free to go back to her parent’s house. When Shobha came to their house, Urmila was already pregnant with Badshah’s child.

Due to her pregnancy, she tolerated the ill-treatment by her husband and stayed along with Shobha. However, the petitioner started to mentally and physically torture her under the influence of liquor. Her husband also doubted that her womb is begotten of somebody else and it should be aborted.

When the ill-treatment became intolerable, she came back to parents’ house. In 2013, the Bombay High Court awarded maintenance to respondent 1 at Rs.1000 per month and to the daughter at Rs. 500 per month. The appeal petition was filed by the husband against this decision.

The court held that the second wife is entitled to maintenance under Section 125 and the petitioner duped the respondent by hiding the information about his first marriage. He cannot deny his second wife’s right to maintenance. The court’s decision was based on the following reasons:

- If a man and woman have been living together for a long time even without a valid marriage, the term of valid marriage entitling such woman to maintenance should be drawn and a woman in such a case should be entitled to maintenance under Section 125.

³Section 21, Hindu Adoptions and Maintenance Act, 1956

⁴Rakesh Kumar Singh, Universal Law Publishing Textbook on Muslim Law, P158

⁵the Hindu Marriage Act, 1955

⁶ Criminal Miscellaneous Petition No.19530/2013

- A false representation was given to respondent 1 that he was single and was competent to enter into a marital tie with respondent 1. The petitioner cannot be allowed to take advantage of his own wrong and deny maintenance to his second wife. For the purpose of Section 125 CrPC, respondent 1 would be treated as the wife of the petitioner.
- The wife was unaware of the first marriage of the husband.
- The purpose of Section 125 is to achieve 'social justice' which is enshrined in the Preamble of the Constitution of India.

A woman who is the second wife is also entitled to the right of maintenance under Section 125 when there is sufficient evidence to prove that she was unaware of her husband's previous wedding and the second wedding was performed in accordance with the personal laws.

Thus Supreme Court judgment on maintenance observed that second wife is not entitled to maintenance generally but where she was unaware of husband's first marriage she is entitled to maintenance under section 125.

When is maintenance provided to the second wife.

- *When the Parties have lived together for 'considerable time'*

It is held that it is sufficient if evidence is available to the effect that the parties lived together for a considerable time⁷. In this case, the court held that it was established that the petitioner had been living with the respondent for a considerable period and continuously, so as to give way for the child to be born- this status of the petitioner is sufficient to get maintenance for herself as well as for the child. Where the husband misrepresented that the first wife was dead, the second wife would be entitled to maintenance and the child from the maintenance and the child from the second marriage would be a legitimate child and deserve her/his rightful maintenance.

- *Where wife can prove she was unaware of First Marriage*

"At least for the purpose of claiming maintenance under Section 125 of Cr.P.C. (Criminal Procedure Code), such a woman (and any child from the second marriage) is to be treated as the legally wedded wife"

The interpretation of the word 'wife' as under section 125 of the CrPC was put forward to suit the position of the second wife.

The bench consisting of Justice RanjanaPrakash Desai and Justice AK Sikri, in the case⁸ made the issue clear with respect to - a woman marrying a man who claims to be unmarried or in a situation where the woman does not have prior knowledge of any subsisting marriage then such a second wife can rightfully claim maintenance. The reason is that the law cannot be misused by men to cower from paying maintenance where rightfully due to a second wife who was unaware of any subsisting marriage and needs/ or is claiming rightfully maintenance from the husband.

The Supreme Court said that the landmark judgement would be applicable in cases where the spouse from a second marriage would be unaware of her husband's first marriage.

"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife."

Thus, while interpreting a statute, the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. The court further added that the ruling of the Bombay High Court in *Aadhav and Savita Ben* would not be applicable if the second wife knows about the existence of the first marriage.

⁷*Tulsa v. Durghatiya* [(2008) 4 SCC 520]

⁸*Badshah vs. Sou. Urmila Badshah Godse & Anr.*, Criminal Miscellaneous Petition No.19530/2013

IV. CONCLUSION

A second wife has to suffer a lot due to the social stigma that is attached to the second marriage. The absence of legal recognition of her marriage is heartbreaking and pushes her to question even her existence. Being betrayed by someone on such a level breaks the person from inside to the point that the person loses the quiet sense to become practical about life. When a person is already going through so much, the burden of illegal marriage and void relations becomes too much to handle. Laws in a country is basically to protect the rights of the persons it governs and hence, it is commendable how the court has interpreted the provision in pursuance of protecting the rights of the second wife. Even though due to the judicial precedent that is available for the maintenance of the second wife, but the absence of the clear provision regarding the maintenance her claim for maintenance depends on the discretion of the judges.

The absence of such laws provides loophole in the Indian Law. These are easily exploited by the husbands to defend themselves.

Does the entitlement of Maintenance to the second wife validate the second marriage in any way?

No, the entitlement of maintenance to the second wife does not in any way validate the provision of the second marriage because the whole point of the interpretation to the provision was to protect the unfairness of bigamy and not promote the abuse of any kind of law.

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