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ENTITLEMENT OF THE SECOND WIFE TO MAINTENANCE IN HINDU LAW: CRITICAL ANALYSIS OF LAWS AND PRECEDENTS

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I. ABSTRACT

The essentiality of the rule of monogamy under the Hindu Marriage Act of 1955 holds any marriage in contravention of it void. Specific rights and privileges flow to a woman through a valid marriage. With this legal reality, this research paper examines the second wife's right to maintenance under Hindu law. It would mainly focus on the right to maintenance of the second wife who knowingly entered into a bigamous marriage.

This research paper critically evaluates the evolving judicial pronouncements for the maintenance of the second wife and the case of the voluntary second wife. It critically analyses the scope of the remedy available to the second wife in such cases by taking recourse to different provisions of the Hindu Marriage Act, 1955, the Hindu Adoption and Maintenance Act, 1956, Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Protection of Women from Domestic Violence Act, 2005 and pointing the limitations of these provisions, specifically for the second wife having knowingly entered in a bigamous relationship.

The paper thoroughly analyses specific sanctions against the husband for committing bigamy while living with his first wife. It goes on to point out the limitations of these sanctions in the case of the second wife having knowingly married him despite his married status. After examining the various issues and factors, this paper will attempt to propose a tentative solution to relieve and compensate women who have to face the uneven social stigma and hardships in their sustenance and prospects by having knowingly entered into a bigamous relationship.

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II. KEYWORDS

Voluntary, Bigamy, Second-wife, Remedies, Maintenance, Hindu Law, Case Laws

III. INTRODUCTION

In the evolving Indian socio-economic landscape, women's increasing education and mobility into the economic sphere have changed their participation rate in the labor force. However, a large number of women still happen to be dependent on their male counterparts for survival. The recent Periodic Labour Force Survey² (P.L.F.S.), released by the Labour Bureau showed a considerable increase in women's participation from 2017-18 to 2022-2023, which still stands at 37% (an increase from the previous 23.3%).

In this background, unfortunately, the survival of many from the weaker sections depends upon this very maintenance, especially within the marital framework. Thus, maintenance is not merely a legal right. It is part and parcel of basic human rights. In the patriarchal Indian set-up, the wife does not hold the same support of her parents as she would have before marriage for her sustenance and living. Thus, after marriage, the wife usually depends on the husband for her economic needs, making maintenance crucial for her survival if something goes off the rails. That being so, the courts have also not been stringent in granting maintenance to the wife.³

The Hindu Marriage Act of 1955 (hereafter referred to as H.M.A.) permits monogamy as the only valid marriage that may be solemnized—the woman's right to maintenance and other privileges within marriage flow from it. The marriage solemnized by the second wife is not socially acceptable in a Hindu marriage. However, in various precedents set forth by the superior courts, the second wife was also provided maintenance, provided she was deceived by the man she married about his married status.

² The Labour Bureau, *The Periodic Labour Force Survey*, 2023.

³ See for example, *Nallani Sambasiva Rao v. Nallami Varalakshmi*, 2019 (6) ALT 365; *Nagendrappa Natikar v. Neelamma*, AIR 2013 SC 1541; *Aher Mensi Ramsi v. Aherani Bai Mini Jetha*, AIR 2001 Guj 148 (2000); *Magan Bhai Chhotubhai Patel v. Maniben*, AIR 1985 Guj 187 (1984); *Lakhan Murmu v. Gurubhai Murmu*, AIR 2011 Ori 13.

Maintenance has specifically been prevented when the second wife knowingly married an already married man. This is where a contentious debate arises. Is preventing maintenance in such cases appropriate? Should maintenance be provided when an offspring is born out of such marriage? This research paper embarks on a critical exploration of these dimensions and related questions to determine the justness of maintenance in cases of second wives voluntarily having committed bigamy in light of the hardships and stigma imposed upon such women in sustaining their livelihood.

IV. RESEARCH OBJECTIVES

- To examine the right of the second wife to maintenance, especially when the second wife knowingly solemnized marriage with a married man.
- To research the remedies available, if any, to the second wife who knowingly married a married man under Hindu law in the face of the hardships faced by such women.
- To research the actions and recourses that can be taken against the husband for committing bigamy under Hindu law, notwithstanding the second wife's knowledge of his marital status.
- To suggest possible remedies for the second wife having knowingly married a married man and potential actions that can be implemented against the husband for committing bigamy irrespective of the knowledge of the second wife as to his marital status.

V. RESEARCH QUESTIONS

- Whether there are specific remedies available with the second wife who knowingly married a married man considering the disproportionate stigma and hardships she faces.
- Whether specific remedies and maintenance be provided to the second wife, having knowingly married a married man, considering the social stigma and hardships she faces in sustenance.
- Whether there exist sanctions for a married man committing bigamy irrespective of the knowledge of the second wife whom he marries.

- Whether specific sanctions be imposed on a married man for committing bigamy, notwithstanding the second wife's knowledge of his marital status in marrying him.

VI. RESEARCH HYPOTHESES

- The scope of the remedy is minimal for a woman knowingly having married a married man in Hindu law.
- Limited sanctions exist to be taken against the husband in specific cases where the second wife solemnizes a marriage with him despite knowledge of his marital status.
- Providing specific remedies to wives having knowingly married a married man and imposing specified sanctions against the husband for committing bigamy, even in cases of the second wife having known his marital status, would be appropriate.

VII. RESEARCH METHODOLOGY

This paper utilizes a strictly doctrinal research approach. Doctrinal research, known as library-based research, primarily involves studying and analyzing legal statutes, case law, and academic writings. This method is ideal for exploring the theoretical and conceptual dimensions of law.

It systematically presents legal doctrines and principles. In doctrinal research, primary sources include statutory materials, judicial decisions, and authoritative literature. Secondary sources like commentaries, articles, and legal summaries are also essential. The research process entails identifying, gathering, and critically evaluating these sources. The goal is to form logical conclusions and provide insights into the legal questions being studied. This paper aims to deliver a thorough and unified view of the relevant legal structure.

VIII. LITERATURE REVIEW

This research paper has majorly utilized the various relevant provisions of the Hindu Marriage Act of 1955, the Hindu Adoption and Maintenance Act of 1956, and different provisions related to maintenance in multiple legislations, namely – the now repealed

Code of Criminal Procedure, 1986, the Bharatiya Nagarik Suraksha Sanhita, 2023, the Protection of Women from Domestic Violence Act, 2005. Specific provisions relevant to bigamy in the now repealed Indian Penal Code, 1860, the Bharatiya Nyaya Sanhita, 2023, have also been studied. Reference to key precedents in the Indian scenario relevant to the maintenance and appropriation of remedy in the case of a second wife in Hindu marriages has also been made.

IX. MONOGAMY - AN ESSENTIAL OF A VALID MARRIAGE UNDER THE H.M.A., 1955

A valid Hindu marriage gives rise to specific rights, duties, and privileges for the individuals in that wedlock. Section 5⁴ Of the H.M.A., 1955, indicates five conditions where a valid Hindu marriage may be solemnized. Section 5, along with the other four conditions, reads – *“A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: – (i) neither party has a spouse living at the time of the marriage;”*⁵

Section 5(i), read in congruity with Section 11⁶ That talks of void marriages serve monogamy as an essential condition for solemnizing a Hindu marriage. Monogamy is thereby a rule under H.M.A. for a valid Hindu marriage.

Monogamy forms the base of any right or privilege arising out of wedlock. The marriage must have confirmed the rule of monogamy for any rights or privileges to arise through that Hindu wedlock.

A. Status of the Second Wife under the H.M.A., 1955 and its Implications

The H.M.A. declares ‘monogamy’ a rule. Section 11⁷ of the H.M.A. holds any marriage contravening this rule as void and null. Thus, legal recognition is not given to a marriage that does not conform to the rule of monogamy. Thereby, section 17⁸ of the

⁴ The Hindu Marriage Act, 1955, §5.

⁵ The Hindu Marriage Act, 1955, §5(i).

⁶ The Hindu Marriage Act, 1955, §11.

⁷ The Hindu Marriage Act, 1955, §11.

⁸ The Hindu Marriage Act, 1955, §17.

H.M.A. also makes bigamy punishable. However, two exceptions exist to the said rule. As per Section 82⁹ of the Bharatiya Nyaya Sanhita [hereafter referred to as the B.N.S.], 2023 (previously Section 494¹⁰ and 495¹¹ of the now-repealed Indian Penal Code [hereafter referred to as I.P.C.], 1860), bigamy is not an offense when – One, the earlier marriage has been declared void by a competent court; two, the spouse from the first marriage has not been seen or heard to be alive for at least seven years (the facts related to which need to be disclosed to the second spouse with whom the marriage is being solemnized). Notwithstanding exceptions, any Hindu marriage solemnized during the subsistence of the first spouse is void. Hence, the second wife does not have the legal status of a wife under the Hindu law.

The implications of such void status relate to a wife's privileges and rights. The privileges or rights that accrue from a marriage are available only in the case of a valid legal marriage. Hence, a wife in a marriage considered null and void would not have recourse to those rights or privileges. Thus, the second wife is left without sufficient recourses, with no specific right or privilege she could claim against the man she married.

B. Application of General Provision for Maintenance to Wife

The husband must look after and maintain his legally wedded wife. A denial of this privilege can also be judicially enforced. Any other relationship, though in the nature of marriage, does not attract the same security to the female partner.

As against a legally wedded wife, multiple forums exist where she can enforce her right to maintenance as against her husband. For instance, sections 18-28¹² Of the Hindu Adoption and Maintenance Act (hereafter referred to as H.A.M.A.), 1956, pertains to maintenance. Specifically, section 18¹³ Of the H.A.M.A., 1956 talks about maintaining the wife while living and still married if deserted, subjected to cruelty by husband, him having other wife/s or living with a concubine, him having stopped being a Hindu or other justiciable cause to allow her maintenance.

⁹ The Bharatiya Nyaya Sanhita, 2023, §82.

¹⁰ The Indian Penal Code, 1860, §494.

¹¹ The Indian Penal Code, 1860, §495.

¹² The Hindu Adoption and Maintenance Act, 1956, §18-28.

¹³ The Hindu Adoption and Maintenance Act, 1956, §18.

Maintenance, thus, would extend to a wife even if she lives separately from her husband in certain circumstances.

Section 125¹⁴ Of the Code of Criminal Procedure (hereafter referred to as Cr.P.C.), 1986, pertained to maintenance (with minor changes, which has been replaced by Section 144¹⁵ Of the Bharatiya Nagarik Suraksha Sanhita, 2023), making it another avenue for a wife to claim maintenance through a summary suit. In multiple judgments, the Superior Courts have construed Section 125 of the Cr.P.C. to maintain only the legally wedded wife and not any other woman, though in a relationship of the nature of a marriage.

These specific provisions protect the rights of a legally wedded wife and provide maintenance to her. The legally married wife can claim maintenance under either or all such provisions.¹⁶

A wife can also claim maintenance under the provisions of the Protection of Women from Domestic Violence Act (hereafter referred to as the D.V. Act), 2005. The woman can secure two kinds of orders under the D.V. Act – residential and protection orders. Orders and remedies under the D.V. Act extend to women in relationships like marriage, though not a second wife.

Thus, the general maintenance provisions leave the second wife out of the ambit of maintenance.

C. Scope of Remedy available to the Second Wife

No specific legal right exists with the second wife due to the non-existent nature of the marriage in the eyes of the law. No maintenance can be granted to the second wife as per the bare texts of provisions about maintenance. Relevant provisions that might come to the aid of a second wife include –

¹⁴ The Code of Criminal Procedure, 1986, §125.

¹⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023, §144.

¹⁶ See for example, Nallani Sambasiva Rao v. Nallami Varalakshmi, 2019 (6) ALT 365; Nagendrappa Natikar v. Neelamma, AIR 2013 SC 1541; Aher Mensi Ramsi v. Aherani Bai Mini Jetha, AIR 2001 Guj 148 (2000); Magan Bhai Chhotubhai Patel v. Maniben, AIR 1985 Guj 187 (1984); Lakhan Murmu v. Gurubhai Murmu, AIR 2011 Ori 13.

Section 81¹⁷ of the B.N.S. (previously Section 493¹⁸ The now-repealed I.P.C.) prescribes punishment that may extend to ten years imprisonment and also a fine where he has deceitfully cohabited or had sexual intercourse with a woman, making her believe to be in a lawful marriage.

As under Section 82(2)¹⁹ of the B.N.S. (previously section 495²⁰ Of the now repealed I.P.C.), any person may be punished with up to 10 years imprisonment and a fine for concealing their marital status while performing a void subsequent marriage.

Both these provisions would require either deception or concealment to be present for the man to be liable under either or both of them. Hence, a person cannot be liable under these provisions where the marriage has been performed with knowledge.

Under clause (1)²¹ of section 82, B.N.S. (previously section 494²² Of the now repealed I.P.C.), any person performing a subsequent void marriage while with their living spouse may be punished with up to seven years imprisonment and a fine. For the man to be held liable under this provision, a complaint must first be filed by the man's legal wife or her relatives. Otherwise, the man can go scot-free with no consequences.

D. Precedents concerning Maintenance to Second Wife

In the case of *Suresh Khullar v. Vijay Khullar*²³, the husband obtained an ex-parte divorce from his first wife and subsequently married the second wife. The ex-parte divorce was challenged and set aside, leading to an issue regarding the validity of his marriage to the second wife. Mental and physical cruelty was alleged by the second wife against the husband.

Subsequently, she sought legal redress; thereby, the court allowed for the continuance of interim maintenance. Delving into the rights of parties under Hindu marriage laws, especially regarding the validity of marriages in cases of fraudulent representation or concealment of facts, the court highlighted the importance of full disclosure in marital relationships. It upheld certain rights of the second wife.

¹⁷ The Bharatiya Nyaya Sanhita, 2023, §81.

¹⁸ The Indian Penal Code, 1860, §493.

¹⁹ The Bharatiya Nyaya Sanhita, 2023, §82(2).

²⁰ The Indian Penal Code, 1860, §495.

²¹ The Bharatiya Nyaya Sanhita, 2023, §82(1).

²² The Indian Penal Code, 1860, §494.

²³ *Suresh Khullar v. Vijay Khullar*, AIR 2008 Delhi 1 (2007).

In *Narinder Pal Kaur Chawla v. Manjeet Singh Chawl*²⁴, the Delhi High Court, considering that fraud was committed against the second wife, held she was entitled to damages and ordered interim maintenance.

In *X v. State of Maharashtra*²⁵, the court expressed that for maintenance under section 125 of Cr.P.C., the second wife would be treated as 'wife' while deciding the matter of a second wife who married a man on his assertion that he had divorced his first wife and subsequently had children out of the marriage.

The husband later evicted her from the house and denied her maintenance; thus, a petition was filed seeking maintenance. The court said the husband cannot take advantage of his wrongdoing and deny maintenance to the second wife.

In case of *Bakulabai v. Gangaram*²⁶, the court also assured of the right to maintenance of children born to a second wife as a consequence of her bigamous wedlock.

E. Limitations of the available Remedy to a Second Wife

The available remedies, first and foremost, essentially attempt to preserve the monogamous nature of a Hindu marriage, thereby denying maintenance to the second wife. Provisions and judicial pronouncements that extended maintenance to the second wife limit such remedy to the second wife whom the husband has deceived by concealing his marital status at the time of marriage.

Various sections punishing the husband for bigamy also have limited application, as section 81 of the B.N.S. requires an element of deception, and section 82(2) requires an element of concealment. Thus, both cannot be used to hold the husband accountable and liable for committing bigamy in instances where the second wife was aware of his marital status. In such a case, Section 82(1) of the B.N.S would be the only resort to hold him accountable.

But a provision requiring the legal wife to file a complaint would lead to the limited liability of the husband owing to the Indian scenario of wives usually being dependant on their husbands for economic needs, thereby reducing the likelihood of a complaint

²⁴ *Narinder Pal Kaur Chawla v. Manjeet Singh Chawl*, 148 (2008) DLT 522 (2007).

²⁵ *X v. State of Maharashtra*, 2023 SCC OnLine Bom 2676.

²⁶ *Bakulabai v. Gangaram*, 1988 SCR (2) 787.

being filed by the legal wife in an instance where her husband has committed bigamy with another woman. Thus, the available provisions give a limited remedy to the second wife in cases where she knowingly married a married man.

F. Need for Maintenance for Second-Wives Who Knowingly Committed Bigamy

Irrespective of the fact whether a woman knowingly or unknowingly marries a married man, the stigma and hardships these women face socially impact their living and sustenance. Where the legislature has been wary of the status of children born out of void or voidable marriages due to social stigma, leaving the second wives outside the ambit of any specific remedy a wife could claim adds to the hardships they face due to the social stigma already.²⁷

Whether a woman unknowing or unconscious of the legal realities entered bigamous wedlock, she deserves some form of legal cover to protect herself from the twisted social realities that come in the way of her sustenance and future living prospects.

By excluding second wives from seeking protection and maintenance under general and special provisions, the law allows for perpetuating a wrong whose consequences are unevenly suffered by the woman. In such cases, the husband goes scot-free unless his legally wedded wife files a complaint.

To counter the hardship such women face and to compensate for the unequal stigma they face socially, a limited maintenance would go a long way.

X. SCOPE FOR DEVELOPMENT IN THE LAWS

In the past, even after independence, courts have observed the plight of the second wife in a Hindu marriage but have yet resisted granting maintenance, under the claim that such inadequacy needs only be filled by the legislature.²⁸ Specifically, when it has come to women who voluntarily entered into bigamous marriages, the courts have held back from granting maintenance.

²⁷ See *Reema Aggarwal v. Anupam*, AIR 2004 SC 1418.

²⁸ See for example, *Khem Chand Om Prakash Sharma v. State of Gujarat*, 2000 (3) SCC 753; *Sivankutty v. S Komal Kumari*, AIR 1989 Ker 124; *Tarini Gupta Chowdhury v. Gouri Gupta Chowdhury*, AIR 1968 Cal 567; *Khadal Penthi v. Hulash Dei*, AIR 1989 Ori 137; *Neelam Malhotra v. Rajinder Malhotra*, AIR 1994 Delhi 234; *Hema v. S Lakshmana Bhat*, AIR 1986 Ker 130.

Some legitimacy has been given to a child born out of a bigamous, thereby letting them possess a right to maintenance and a share in their parent's property, though not ancestral. Similarly, extending the limited maintenance rights even to second wives would help these women face the uneven social hardships they bear.

A slight liberal interpretation by the courts to make a level playing field for such women in the face of pointed social stigma towards them. The husband being asked to pay limited maintenance to the second wife can be a tentative solution to this dilemma.

As was observed by the court in *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla*, *"When laws terms are inadequate and lead to loose ends in unfair tracts, the court can rely on its inherent power to do justice. With changing complexities of human relations and times, everything cannot be provided by enacted statute and unflinching as well as just results can be left to be worked out by the courts possessing such powers."*²⁹

XI. CONCLUSION, SOLUTIONS, SUGGESTIONS & RECOMMENDATIONS

The void nature of a bigamous or polygamous relationship in Hindu marriage leaves second wives with little to no remedy at their hands. The different maintenance provisions per se exclude second wives from seeking any maintenance. Though judicial precedents have sometimes extended this provision even to second wives as per facts of the case, a section of second wives still don't have recourse to maintenance, especially where the wife knowingly entered into a bigamous relationship.

The sanctions that can otherwise be taken against the husband for committing bigamy also fall short in this scenario unless the legal wife files a complaint against the husband for the offense of bigamy. This creates a situation where often the consequences for the offense of bigamy are one-sidedly and unevenly suffered by the second wife due to the social stigma and additional hardships that follow due to the nature of her bigamous relationship.

²⁹ *Narinder Pal Kaur Chawla v. Manjeet Singh Chawl*, 148 (2008) DLT 522 (2007).

The limitations in the law need to be interpreted liberally for further development of laws to come to a just conclusion and provide for limited maintenance, as would otherwise be available to a child born out of such a bigamous relationship, in such cases to lessen the woman's hardships in sustaining herself.

In conclusion, the conducted research shows –

- The remedy for the second wife deceived into marriage is already limited. As for the second wife who knowingly married a married man, the remedy is, at best, minimal. Thus, the first hypothesis tests positive.
- The possibility of any sanction against the husband in cases where the wife knowingly married him despite his marital status is negligible. Thus, the second hypothesis tests positive.
- There is minimal legal remedy and social stigma placed upon a woman who has voluntarily entered bigamous wedlock, and the husband holds limited liability in such cases. Thus, the third hypothesis is deemed favorable.

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