

LAW AREA NAME : WOMAN
SECTION NAME : CRIMINAL LAWS
SUB SECTION NAME : BIGAMY

LAW IN BRIEF

Second marriage during the subsistence of the first marriage is illegal in India and the relationship arising from the same does not have any validity. One of the conditions for a valid marriage under Section 5 of the Hindu Marriage Act, 1955 is that neither of the party should have a spouse living at the time of the marriage. Under Section 11 of the Act, second marriages can be declared null and void.

LAW IN DETAIL

Bigamy becomes an offence only if the husband or wife is alive. It is an offence even if it is performed with the consent of the first wife.

It will not apply,

- if the husband or wife of the first marriage is dead or
- if the first marriage has been dissolved by a decree of divorce or
- the former marriage is void or declared void by a decree of nullity

Section 494 of the Indian Penal Code exempts from punishment a second marriage contracted seven years after the absence of the spouse.

In *Sarla Mudgal v. Union of India* (1995 air 1531 SC), the Supreme Court held that,

- If a man after renouncing Hindu religion has adopted Muslim religion and he without taking divorce from his wife has married again, then this marriage is not legal.
- He will be punished for committing bigamy under section 494 IPC

Bigamy is a non-cognizable offence, bailable and compoundable with the permission of the court. It is punishable with imprisonment up to 7 years or fine or both. For the offence of committing bigamy by concealing the fact of the first marriage is punishable with 10 years imprisonment or fine or both. However, this offence committed under section 495 is not compoundable.

As for the second wife, though she is not entitled to any kind of right or share in the husband's property, she can also claim interim maintenance from her husband. In *Laxmibai v. Ayodhya Prasad*, it was held that 'wife' and 'husband' used in Section 24 of the Hindu Marriage Act are not to be given strict literal meaning. The expression should mean a person claiming to be wife or a husband.

In *Rajesh Bai v. Shantabai*, it was held that a woman whose marriage is void because of the existence of another wife is entitled to maintenance under section 25 of the Act. Interim maintenance under Section 20 is also allowed.

The children from the second wife are entitled to share in their father's self-acquired property.

PROCESS FOR SOLUTION

Complaint Under which Section ?

Only the person aggrieved can complain in case of bigamy. If the aggrieved is the wife, then her father can complain under section 494/495 of the Indian Penal Code.

A petition for declaration that the second marriage is void can be filed only by the parties to the marriage and not by the first wife.

A complaint can also be filed for cheating under section 415 IPC for fraudulently deceiving the person by keeping the subsistence of the first marriage a secret.

Whom to complain / where to complaint?

The wife can file a complaint either in the court or in the Police station.

How to file the Case ?

The Supreme Court has laid down that proof of solemnization of second marriage in accordance with the essential religious rites applicable to parties is absolutely essential and a must for conviction for bigamy. Mere admission by the accused is not enough.

What Next ?

Appeal lies to the next higher court in the hierarchy.

ALTERNATE REMEDIES

If the offence is committed under section 494, it can be compounded with the permission of the court.