

# Introduction

The concept of single marriage is known as monogamy and it is followed by most of the systems in the world.

However, there are some exceptions to it as well that exist. In India, Hindus, Christians, Parsis and Muslim women are supposed to follow the concept of monogamy under their personal laws.

Marrying another person while being married to someone is known as 'Bigamy' and has been declared an offence under Indian Penal Code in India.

# **Indian Penal code 1860, Section 494.**

**Marrying again during lifetime of husband or wife:** 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.

**Exception-**This section does not extend to any person whose marriage with such husband or wife has been declare void by a Court of competent jurisdiction ,

nor to 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, and shall not have been heard of by such person as being alive within that time

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.

HOWEVER,. this offense is attracted only when the second procedure was conducted legally so as to give it a legally

accepted marriage status. If not, there is no second marriage to begin with and so no second wife and so, no bigamy.

### **Bigamy- legal definition?**

A person commits bigamy when he/she:

- has a husband or wife living,
- marries again ,but such marriage is void,
- by reason of its taking place during the life of the previous husband or wife.

### **Section 494 IPC shall NOT apply if:**

- . the first husband or wife is dead, or
- . the first marriage has been declared void by the Court of competent jurisdiction, or

- . the first marriage has been dissolved by divorce, or
- . the first spouse has been absent or not heard of continually for a space of seven years. Here The party marrying must inform the person with whom he or she marries of this fact.

## **Religious Conversion for contracting second marriage...**

If a Hindu converts into any other religion, he is not absolved from his obligations of marital bond from his previous marriage as a Hindu. So, he will be considered a Hindu at the time of contracting second marriage post

apostasy and provisions of this section will apply.

Renunciation of Islam does not dissolve the marriage and so Muslim woman needs to get decree of dissolution from court in order to remarry without attracting provisions of this section.

So, basically conversion into another religion does not give a ground to remarry without attracting provisions of this section and will still be dealt under personal laws of religion one belonged to while contracting the marriage.

**In Sarla Mudgal v. Union of India (1995 AIR 1531 SC),** the Supreme Court held that if a man, who has adopted Islam

and renounced the Hindu religion, marries again without taking divorce from the first wife, then such second marriage is not legal. The person shall be punished for committing bigamy under section 494 of Indian Penal Code (IPC).

## **Case Law.**

### **ii) Kanwal Ram v. HP Administration**

- Supreme Court held that essential ceremonies of second marriage must be proved.

.Even if the accused confesses the offence the second marriage will have to be proved.

.Otherwise it will be considered as mere adulterous act and not bigamy.

## **What if the person hides the first marriage and contracts another one ?**

Complaint for cheating can be filed under section 415 of IPC

## **What is the Punishment under the Act?**

Bigamy is a NON-cognizable offense. It is bailable and compoundable with the permission of court if the offense is committed under section 494 of the IPC. Punishment is imprisonment, which may extend till 7 years or fine or both. In case

the person charged of bigamy has performed the second marriage by hiding the fact of first marriage, then he shall be punished with imprisonment of up to 10 years or fine or both. Such offense under section 495 is not compoundable.

### **Attending 2nd marriage is abetting bigamy?**

“It is a settled law that mere participation in the second marriage would not ipso-facto make the relatives or the participants liable for abetment to bigamy since abetment connotes an active suggestion or support to the commission of the crime.” ruled Delhi High Court.

## **Status of Scheduled Tribes**

This penal provision will not apply if the offender is a member of the Schedule Tribes.

## **Registration of Marriage compulsory?**

In order to stop second marriages and child marriages, the registration of marriages is made compulsory as directions of Supreme Court

## **Can children born out of wedlock inherit fathers ancestral property?**

The Supreme Court has ruled that children born out of wedlock have the right to inherit their father's **ancestral** property.

In **Revanasiddappa vs Mallikarjun**, Justices G.S. Singhvi and A.K. Ganguly ruled that children from a second wife had rights to their father's ancestral property.