

LEGALFOXES LAW TIMES

BRINGING AN END TO BIGAMY IN INDIA

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Abstract

The satisfaction of a human being deals within him; the control mechanism lies in the hand of his parents for a while husband or wife; and when it takes the turn of a large event the state needs to take action. The state has amended laws in the view of protection and punishment, we mostly believe in punishment not in stopping someone from making it happen. Sex education is one of the missing pillar of Indian Education system. Managing a healthy relationship between two human-being is a difficult task but some of us take the honour to find someone new. The lack of satisfaction of a human leads to step further to find a new mate as a partner to live with. And ultimately end with a punishment. My objective will be to put a halt to this practice.

KEY WORDS

Bigamy, Religion, Sex Education, Marriage, Society, Indian

Introduction

The word couple generally describes the relationship between a man and a woman together. The word couple can be described as form of married couple or a live in relationship couple. It is not quite usually that one of the mate finds out another one irrespective of gender and starts making him / her as the new mate and starts a relationship with him / her. The problem arises when you are actually having a mate already. The decriminalization of Adultery has led to a new beginning

of era¹ ((Sharma, 2021). A couple who are willing to start their family in most case look for marriage to happen between them so as their child comes to be legitimate ones. Well that again depends upon the fact of nature of marital status of the parents.

Marriage is considered as one of the sacred rituals in any religion discovered in the current society. Generally, it marriage is an old ritual cum ceremony cum tradition coming from a long time stating the bond between two individuals. The individuals were considered to be a man and a woman together to be called a couple. Now it has been given a broader meaning by adding same sex marriage which is again controversial. Well that is upon sexuality o the human. So with respect to most of the religion a man and a woman is supposed to have a wife or a husband; exceptions to specific cast o Muslim religion.

What is the relevance of marriage in Indian society?

According to Hindu law there are stages of a human and one of them is Grihastha which means to start a family of your own making wife and children. It is also stated that a man and a woman are incomplete as a couple, after marriage according to rituals they attain Moksha.

Marriage in Islam Law is contractual which comes with terms and conditions and so as called Nikah- Nama meaning the same. For them marriage is from to full-fill sexual desire; it being a social need it also generates/establishes families in society. Further adding marriage gives rise to legitimacy to a relation and also to their children.

Christian marriage is somewhat a formal marriage; taking blessings and acceptance from each other as couple and from the Jesus and the Father who bring them into a marriage and subsequently they sign a form for the same.

Talking about Divorce it is quite simple in rest of the religion except of Hindu as in it is stated to be true and binding from heaven and there is no clause for Divorce in Hindu personal laws. But

¹Sharma, D., Sharma, D. and Sharma, D., 2021. *Joseph Shine Archives / SCC Blog*. [online] SCC Blog. Available at: <<https://www.sconline.com/blog/post/tag/joseph-shine/>> [Accessed 14 August 2021].

according to new amendments Divorce is finally possible in Hindu religion over court proceedings stating any ground for the same.²

Or Islam there are certain laws known as personal Laws with respect to which they are supposed to give Divorce (Talaq).³

From the ancient history it has been read and figured out that a King of a kingdom irrespective of they being Hindu or Muslim he had more than one wives due to the culture or tradition or necessity of the situation. After 1956, polygamy was made illegal in India for Hindu in all over the country except for the Hindus in Goa and Western Coast where bigamy is still legal; And for Muslim, the certain cast who are permitted to have more than one wife but less than four.

Will it be fine if I say that we humans are made to do mistakes even if we have choice? The cause is even if we know the fact and knowledge that if I'm married once I can't think about having another one until I get divorced from the current one. But still we do take the step destroy the family.

The consequence of extra marital affair from the point of view of the Society to that person is usually, suffers disgrace in society, monetary loss depending upon if the couple had kids or not, fight for guardianship of children and a lot more.

National Legislation and their stands on Bigamy with respect to in Family Law and I.P.C. also mentioning the punishment for the offender.

- Hindu Marriage Act 1955 – According to Section -1; Subsection (a), (b) and (c) which states the specific religion and persons come under this Act and are recognised w.r.t. Law. Thus, under Section -17 of the Hindu Marriage Act, any person who is considered as Hindu according to Section - 1 marries again during the life of first husband/wife, shall be punished under Indian Penal Code (IPC) provision.
- Parsi Marriage and Divorce Act – According to Section - 5 of the Act declares Bigamy to be null and void or dissolved and impose a penalty under Section - 494 and Section - 495 of Indian Penal Code (IPC) provision.

²Section-13, The Hindu Marriage Act 1955

³ Dissolution of Muslim Marriage Act 1939

- Christian Marriage Act – The Christian Marriage Act also does not have any specific provisions regarding Bigamy. Form of Register Marriage is only for Bachelor/Spinster and Widow/Widower. For Marriage Certificate Section - 60 Sub-Section - (2) states that “neither of the persons intending to be married shall have a wife or husband still living”, and making false oath or declaration is punishable under Section - 193 of IPC, this clarifies that more than one marriage will be considered as illegal under this act.
- Special Marriage Act 1954 – Section - 44 of the Act states the punishment for Bigamy and imposes a penalty under Section - 494 and 495 of the Indian Penal Code (IPC).
- Foreign Marriage Act 1969 - Section - 19 of this Act states the punishment for Bigamy and imposes a penalty under Section - 494 and 495 of the Indian Penal Code (IPC).
- Muslim Marriage Law – There is no codification or specific provisions for this law. It is written in Quran that a Muslim male can marry two, three or four times, if they are capable to treat and respect each wife equally after marriage, if not then only one. Muslims in the rest of the country is subject to the terms of The Muslim Personal Law (Sharia) Application Act of 1937, interpreted by the All India Muslim Personal Law Board.
- Laws for Scheduled Tribes (ST) & Castes (SC) – As special protection has been provided to the socially backward classes of the society, the Constitution of India is of the view that the traditional customs and cultural practices should not be hurt. Therefore, Section - 2 Sub-Section (2) of the Hindu Marriage Act states that “Nothing contained in this shall apply to the members of any Scheduled castes within the meaning of Article - 366(25) of the Constitution of India unless the Central Government, by notification in the Official Gazette, otherwise directs.

Also, the punishment for such offences will be considered by looking into “Customs ” of such a community or religion. On which the Supreme court of India gave a judgment in the affirmation of the judgment given by the Delhi High court earlier that “in the absence of specific pleadings, evidence, and proof of the alleged ‘custom’ making the second marriage void, no offence under Section 494 of the IPC can possibly be made out against the respondent.”

- But, Article 3 of the Goa Family laws 1867 provides for the following laws which are somewhat different from the Hindu Marriage Act –
 - i. “The marriage contracted by a male Gentile Hindu by simultaneous polygamy shall not produce civil effects; except in the following cases only –
 - ii. Absolute absence of issues by the wife of the previous marriage until she attains the age of 25 years.
 - iii. Absolute absence of male issue, the previous wife having completed 30 years of age, and being of lower age, ten years having elapsed from the last pregnancy;
 - iv. Separation on any legal grounds when proceeding from the wife and there being no male issue,
 - v. Dissolution of the previous marriage as provided for in Article 5.”

Bigamy or Polygamy among Hindus is sometimes accepted in some rural areas as a custom often with approval by earlier wives. The 2005-06 National Family Health Survey (NFHS-3) found that about 2 per cent of women reported that their husbands had other wives besides her which shows that despite so many legislations the practice is still in continuance in many parts of India⁴. (T., 2021)

But it is quite unfortunate that we haven't taken any steps for the same even we are capable now despite having such infrastructure with us.

Let's start with the procedure of Marriage Registration I.e. Court Marriage Registration. This procedure is made so simple that when you find online registration the agencies certify that the procedure to be completed within 2 hours, quite simple, put your details fill up the form and wait for the moment when you are declared as Husband and Wife.

⁴ LLP, T., 2021. Is Bigamy a Punishable Offence in India?. [online] TaxGuru. Available at: <<https://taxguru.in/corporate-law/bigamy-punishable-offence-india.html>> [Accessed 14 August 2021].

How Marriage takes place in India?

In India a marriage is usually in a form of an arranged format so as called as Arrange Marriage where the parents of both the parties join together and find a suitable mate for their siblings and in exchange expect their children to stay happy. So the fact is again we are entering into the world of research and findings of a suitable mate, we engage an agent and numerous family members for the same task.

Following to which again we live in the doubt about the other family if they are trust worthy or not, the bridal family stays in doubt of Dowry; and so as the groom how much will they receive and then the question comes about sexuality of the female.

It is quite easy to be great in-front of all but the reality is when you understand a person. Now family members are being broad minded and letting them choose their own mate for their future, but not always they are successful.

Recently a news flowed all over followed by memes in social media about a women running behind his husband, who is getting married to a second one. The lady was dying out of screaming for his love. If you talk about religion, it was a Hindu family and the marriage was taking place in full form of as a Hindu marriage should take place.

It's quite trouble-some for any family to hear about such complex nature of relations. And these relations are known mostly when the marriage is done. What if we could prevent such events before they occur? One of the major necessity of law is that to prevent the wrong happening from happening. We are now days connected to the world and to the Government. The Government knows what all transactions we do on a daily basis, we have linked our AADHAR card to numerous places as per the guidelines so far such as Banks, Pan-card, Passport etc. Will it be wrong for me to say that after all these facilities and infrastructure we haven't built up a network that connects us to matrimonial solutions or the link generated to any person/s. Documents are written on a daily basis regarding family related issues for land issues, divorce, marriage certificated are also generated daily aren't they not mush of help to pull of the data for any person.

Recommendations

Use of current technologies and infrastructure to build up a network that reflects the marriage status of couples.

Mandatory for every couple to make a registered marriage certificate which should also be linked to official ID like AADHAR card.

The religious ceremony and the registration of marriage could be done together or after registration of marriage then the ceremony that shall give time for a check for official status about the parties for the same. Implementing new laws for the same with contrast to the same shall protect the interest of parties.

Conclusion

How far shall a person be held liable for a crime that satisfies his needs, that makes him happy. Well Bigamy is a crime where no one is hurt physically but yes it is considered to be an offence as it breaks the law of Indian statute. Now you need not to prove a marriage and the legitimacy of a child, even if in future the law is made for a two child policy every couple will have permission for a two child and further give rise to population in an exponential level again the question will arise who their parents are their siblings and their guardians.

Accepting Bigamy as a crime will definitely lead to a benefit too as in there be no confusion in marital status of parents and legitimacy of a child. But the punishment is not satisfactory as far prohibiting the act is concerned, we need new laws and for the time marriage counselling shall be made mandatory. Accepting bigamy for the new era might not be efficient but still it can be given a chance.