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### Bigamy under Indian Law: A Constitutional and Statutory Analysis

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#### Abstract

Bigamy, defined as the act of contracting a second marriage during the subsistence of the first, occupies a critical position within Indian family law, criminal law, and constitutional jurisprudence. Despite legislative reforms enforcing monogamy across several personal laws, plural matrimonial practices persist due to religious exceptions. This paper undertakes a doctrinal and analytical examination of the law of bigamy under Indian law, focusing on statutory provisions, judicial interpretation, constitutional validity, gender justice concerns, and comparative legal perspectives. It critically evaluates the inconsistencies across personal laws and argues for uniform reforms grounded in constitutional morality, equality, and human dignity.

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#### 1. Introduction

Marriage occupies a central position in the socio-legal framework of Indian society. It is not merely a private contract between two individuals but a legally and socially sanctioned institution that governs personal relationships, family structure, legitimacy of children, inheritance, succession, and social stability. Indian family law, shaped by a unique blend of religious personal laws, statutory enactments, and constitutional principles, reflects the pluralistic character of Indian society. Within this complex legal mosaic, the issue of bigamy presents a significant challenge to the ideals of marital sanctity, gender justice, and constitutional equality.

Bigamy, understood as the act of contracting a second marriage during the subsistence of a valid first marriage, directly undermines the principle of monogamy that modern legal systems seek to uphold. In India, while monogamy has been statutorily enforced for certain communities through legislative reforms, plural matrimonial practices continue to exist under specific personal laws. This differential legal treatment has generated sustained academic debate, judicial scrutiny, and social discourse regarding the legitimacy, morality, and constitutional validity of bigamy.

The post-independence Indian legal system consciously moved towards monogamy as a social reform measure, particularly to protect women from exploitation, abandonment, and economic insecurity. The enactment of the Hindu Marriage Act, 1955, marked a watershed moment in Indian matrimonial law by statutorily mandating monogamy and criminalizing bigamy among Hindus. Similar prohibitions exist under the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, and the Special Marriage Act, 1954. These statutes reflect a legislative intent to align matrimonial law with constitutional values of equality, dignity, and individual autonomy.

However, the continued permissibility of polygyny under Muslim personal law introduces a complex constitutional dilemma. While Article 25 of the Constitution guarantees freedom of religion, such freedom is expressly subject to public order, morality, health, and other fundamental rights. The coexistence of criminal prohibition of bigamy for some communities and religious permissibility for others raises serious questions under Articles 14, 15, and 21 of the Constitution, particularly concerning gender equality and non-discrimination. The judiciary has repeatedly been called upon to balance religious autonomy with constitutional morality,

often emphasizing that personal laws cannot operate in isolation from fundamental rights.

Judicial pronouncements, most notably in *Sarla Mudgal v. Union of India* and *Lily Thomas v. Union of India*, have highlighted the misuse of religious conversion as a device to circumvent monogamy laws and have reaffirmed the commitment of Indian constitutional jurisprudence towards gender justice and rule of law. These decisions underscore the role of courts as guardians of constitutional values while navigating the sensitive terrain of personal laws.

From a socio-legal perspective, bigamy disproportionately affects women, subjecting them to emotional distress, social stigma, financial deprivation, and legal uncertainty. The absence of uniformity in matrimonial laws often leaves women without effective remedies, thereby undermining the promise of substantive equality. Consequently, the issue of bigamy is not merely a question of criminal liability or personal law compliance but a broader concern involving human dignity, social justice, and constitutional governance.

Against this backdrop, the present research paper undertakes a comprehensive examination of the law of bigamy under Indian law. It seeks to analyze the statutory framework, penal consequences, judicial interpretation, constitutional implications, and comparative legal perspectives relating to bigamy. The paper further critically evaluates existing inconsistencies and argues for coherent legal reforms grounded in constitutional morality, gender equality, and the evolving needs of Indian society.

## 2. Historical Evolution of Bigamy Laws in India

The evolution of laws relating to bigamy in India is deeply intertwined with the historical development of marriage as a social, religious, and legal institution. From ancient customary practices to modern statutory regulation, the legal treatment of bigamy reflects a gradual transformation from religious permissibility and social acceptance to legal regulation and criminalization based on constitutional values of equality and justice.

### 2.1 Bigamy and Polygamy in Ancient Indian Society

In ancient India, marriage was primarily regarded as a sacramental and religious institution rather than a contractual or civil relationship. Hindu religious texts, including the *Dharmashastras*, *Smritis*, and *Puranas*, permitted polygamy under certain circumstances. Polygynous marriages were particularly prevalent among kings, rulers, and the elite, often justified on grounds of lineage preservation, political alliances, or absence of male progeny. While monogamy was the social norm for the majority of the population, polygamy was not legally or religiously prohibited.

Importantly, ancient Hindu law did not recognize bigamy as an offense in the modern sense. The absence of a centralized legal system and the predominance of customary law meant that matrimonial practices were regulated by social norms rather than penal sanctions. Women, however, occupied a subordinate position, and the permissibility of multiple marriages often resulted in economic and social vulnerability for wives.

Similarly, Islamic law, which later influenced Indian society following the advent of Muslim rule, permitted polygyny up to four wives subject to the condition of equal treatment. This permission was rooted in socio-historical circumstances, particularly in the context of social security for widows and orphans. Thus, plural marriages were historically embedded within religious and cultural frameworks.

### 2.2 Position during Medieval Period

During the medieval period, plural marriages continued to be practiced under both Hindu and Muslim traditions. Hindu rulers and nobles frequently engaged in polygamous marriages, while Muslim rulers followed Islamic personal law, which allowed polygyny. Importantly, there was no unified legal framework governing marriage or marital offenses during this period. Dispute resolution was largely administered through religious authorities, customary practices, and local courts.

The absence of codified law meant that bigamy was neither criminalized nor uniformly regulated. Women's rights in matrimonial relationships were minimal, and marriage remained deeply patriarchal in character. The concept of individual consent and legal equality within marriage had not yet emerged as legal principles.

### 2.3 Colonial Period and British Legal Policy

The advent of British colonial rule marked a significant turning point in the evolution of matrimonial law in India. The British administration initially adopted a policy of non-interference in religious personal laws, particularly in matters relating to marriage, divorce, and succession. This approach was based on respect for religious diversity and the practical difficulty of imposing uniform laws across communities.

However, the colonial period also witnessed the emergence of social reform movements that challenged traditional matrimonial practices. Reformers such as Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, and others highlighted the oppressive consequences of polygamy and bigamy on women. Legislative interventions such as the Hindu Widows' Remarriage Act, 1856 and the Civil Marriage Act, 1872 (later the Special Marriage Act) signaled the beginning of state involvement in matrimonial reform.

Despite these reforms, bigamy was not comprehensively criminalized during the colonial period. The Indian Penal Code, 1860 introduced provisions on bigamy (Sections 494 and 495), but their application was limited by the recognition of personal laws. The IPC penalized bigamy only where the second marriage was legally void under the applicable personal law, thereby maintaining religious distinctions.

### 2.4 Post-Independence Reforms and Codification of Hindu Law

The most significant transformation in the law of bigamy occurred in the post-independence era. Guided by the constitutional vision of equality, secularism, and social justice, the Indian legislature undertook extensive reforms of personal laws. The enactment of the Hindu Marriage Act, 1955 marked a radical departure from traditional Hindu law by introducing statutory monogamy as a mandatory condition for a valid marriage.

Section 5(i) of the Act expressly prohibited bigamy, while Section 11 rendered bigamous marriages void. Section 17 further applied the penal provisions of the Indian Penal Code to Hindus contracting bigamous marriages. This legislative reform was primarily aimed at protecting women from the social and economic consequences of plural marriages and aligning Hindu matrimonial law with constitutional ideals.

Similar monogamous principles were incorporated into the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, and the Special Marriage Act, 1954, thereby reinforcing monogamy as the statutory norm for most communities in India.

## 2.5 Continuity of Religious Exception and Judicial Response

Despite these reforms, Muslim personal law continued to permit polygyny, leading to persistent debates regarding legal uniformity and gender justice. Courts have repeatedly addressed the constitutional implications of such exceptions. In *Sarla Mudgal v. Union of India*, the Supreme Court strongly criticized the misuse of religious conversion to circumvent monogamy laws and emphasized the need for a Uniform Civil Code.

The judiciary has consistently interpreted bigamy laws in a manner that prioritizes constitutional morality over patriarchal customs. While respecting religious freedom, courts have clarified that personal laws cannot be used as instruments of fraud, exploitation, or injustice.

## 2.6 Transition from IPC to Bharatiya Nyaya Sanhita, 2023

The replacement of the Indian Penal Code by the Bharatiya Nyaya Sanhita, 2023 marks the latest phase in the evolution of bigamy laws in India. By retaining the offense of bigamy under Sections 82 and 83, the legislature has reaffirmed its commitment to monogamy, gender justice, and marital integrity. The continuity of criminal sanctions underscores the recognition that bigamy is not merely a private matrimonial issue but a public wrong with serious social consequences.

## 2.7 Evolution Towards Constitutional Morality

The historical evolution of bigamy laws in India reveals a gradual but decisive shift from religious permissibility to constitutional regulation. This transition reflects the growing influence of constitutional morality, which demands that laws governing personal relationships uphold equality, dignity, and justice. The movement away from patriarchal customs towards rights-based matrimonial law signifies the maturation of Indian legal consciousness.

## 3. Nature & Concept of Bigamy in India

The concept of bigamy derives its etymological origin from the Greek words 'bi' meaning two and 'gamos' meaning marriage. In legal terminology, bigamy refers to the act of contracting a second marriage during the subsistence of a legally valid first marriage. It constitutes a matrimonial offense as well as a criminal wrong under Indian law, reflecting the statutory commitment to monogamy as the normative foundation of marital relations.

In India, bigamy has traditionally been governed by Sections 494 and 495 of the Indian Penal Code, 1860 (IPC). With the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaces the IPC, the offense of bigamy continues to retain its legal character with substantially similar ingredients and punishment, thereby ensuring continuity in criminal jurisprudence while aligning with the broader reformative objectives of the new criminal law framework.

## Essential Ingredients of Bigamy under Indian Criminal Law

Whether examined under the IPC or the BNS, the essential legal ingredients of bigamy remain consistent:

**Existence of a Legally Valid First Marriage:** The first marriage must be valid and subsisting in the eyes of law. A void marriage does not attract the offense of bigamy.

**The First Spouse Must be Alive:** The offense is attracted only when the first spouse is living at the time of the second marriage. Legal dissolution by divorce or annulment negates criminal liability.

**Solemnization of a Second Marriage:** The second marriage must be performed with legally recognized ceremonies. Mere cohabitation or live-in relationships do not amount to bigamy.

**Mens Rea (Knowledge and Intention):** Criminal liability under Section 82 BNS requires that the accused knowingly entered into the second marriage while being aware of the subsistence of the first marriage.

**Concealment (for Aggravated Offense):** Under Section 83 BNS, deliberate concealment of the prior marriage from the second spouse constitutes an aggravated form of the offense.

## Nature of Bigamy: Civil and Criminal Dimensions

The offense of bigamy under Indian law has a dual character. From a civil perspective, a bigamous marriage is void or voidable depending upon the applicable personal law, such as the Hindu Marriage Act, 1955 or the Special Marriage Act, 1954. From a criminal perspective, the BNS imposes penal sanctions to deter such conduct and to protect the legal and social interests of spouses, particularly women.

The incorporation of bigamy provisions within the BNS underscores the recognition that matrimonial offenses are not merely private wrongs but have wider societal implications. Bigamy often results in emotional trauma, economic deprivation, and social marginalization of women, thereby necessitating state intervention through criminal law.

## Distinction from Polygamy and Adultery

Bigamy must be clearly distinguished from polygamy, which refers to the practice of having more than one spouse and may be religiously sanctioned under certain personal laws, and adultery, which involves extramarital sexual relations without the formation of a second marital bond. While polygamy may be permissible under Muslim personal law, bigamy remains a criminal offense under the BNS where statutory monogamy applies.

## 4. Statutory Framework Governing Bigamy

### Statutory Framework Governing Bigamy in India

The statutory framework governing bigamy in India represents a carefully structured legal response aimed at regulating matrimonial relationships, preserving marital sanctity, and protecting vulnerable spouses, particularly women. Unlike a uniform matrimonial code, Indian law addresses bigamy through a combination of personal law statutes and criminal law provisions, resulting in a pluralistic yet complex legal regime. This framework reflects the Indian State's attempt to balance religious autonomy with constitutional mandates of equality, dignity, and social justice.

### 4.1 Bigamy under the Hindu Marriage Act, 1955

The Hindu Marriage Act, 1955 (HMA) marks a watershed moment in the statutory regulation of marriage among Hindus. It introduced monogamy as a mandatory condition for a valid Hindu marriage, thereby fundamentally altering traditional Hindu matrimonial law.

- Section 5(i) of the Act explicitly provides that neither party to a marriage shall have a living spouse at the time of marriage. This provision establishes monogamy as a statutory requirement and renders any marriage in violation thereof legally impermissible.
- Section 11 declares any marriage solemnized in contravention of Section 5(i) to be void ab initio, meaning that such a marriage has no legal existence from its inception.



- Section 17 extends the application of criminal law to bigamous marriages by making Sections 494 and 495 of the Indian Penal Code (now Sections 82 and 83 of the Bharatiya Nyaya Sanhita, 2023) applicable to Hindus. The combined effect of these provisions is that a bigamous marriage under Hindu law is both civilly void and criminally punishable, thereby reinforcing the seriousness of the offense.

#### 4.2 Bigamy under the Special Marriage Act, 1954

The Special Marriage Act, 1954 (SMA) provides a secular framework for marriage irrespective of religion, caste, or creed. The Act strictly enforces monogamy as a foundational principle.

- Section 4(a) mandates that neither party should have a living spouse at the time of marriage.
- Section 24 declares a marriage solemnized in violation of Section 4(a) to be null and void.
- Section 44 makes bigamy punishable in accordance with criminal law provisions.

The SMA plays a critical role in ensuring uniform application of monogamy in inter-religious and civil marriages and prevents the circumvention of personal laws through religious conversion or manipulation.

#### 4.3 Bigamy under Christian and Parsi Laws

Monogamy is firmly entrenched in the matrimonial laws governing Christians and Parsis in India.

- The Indian Christian Marriage Act, 1872, read with the Indian Divorce Act, 1869, prescribes monogamous marriage and treats any subsequent marriage during the subsistence of a valid first marriage as void and punishable under criminal law.
- The Parsi Marriage and Divorce Act, 1936, explicitly mandates monogamy and declares bigamous marriages invalid, with penal consequences attached under criminal law provisions.

These statutes reflect a consistent legislative approach towards monogamy as a universal matrimonial norm for these communities.

#### 4.4 Bigamy under Muslim Personal Law

Muslim personal law occupies a distinct position within the statutory framework governing bigamy. Classical Islamic law permits polygyny, allowing a Muslim man to marry up to four wives, subject to the condition of equal treatment. Consequently, bigamy or plural marriage is not per se prohibited under Muslim personal law.

However, this permissibility has been subjected to increasing judicial and scholarly scrutiny, particularly in light of constitutional principles of gender equality and dignity. Judicial observations have emphasized that the Quranic permission is conditional and not an unqualified right. Moreover, modern statutory interventions such as the Muslim Women (Protection of Rights on Marriage) Act, 2019 reflect a growing trend towards regulating unilateral matrimonial practices, though bigamy itself remains outside its scope.

#### 4.5 Bigamy under the Bharatiya Nyaya Sanhita, 2023

The **Bharatiya Nyaya Sanhita, 2023 (BNS)**, which replaces the Indian Penal Code, continues to criminalize bigamy, thereby reinforcing the State's commitment to monogamy and marital integrity.

- Section 82, BNS penalizes marriage during the lifetime of a husband or wife with imprisonment up to seven years and fine.

- Section 83, BNS prescribes enhanced punishment where the second marriage is contracted by concealing the existence of the former marriage.

These provisions apply uniformly across communities where monogamy is statutorily mandated, and they underscore the public nature of the offense.

#### 4.6 Interplay between Personal Laws and Criminal Law

The statutory framework governing bigamy demonstrates a significant interplay between personal laws and criminal law. While personal laws determine the validity of marriages, criminal law imposes sanctions to deter violations. Courts have consistently held that criminal liability for bigamy arises only when the second marriage is legally void under the applicable personal law.

This interaction ensures that bigamy is addressed not merely as a private matrimonial issue but as a public wrong affecting social order and gender justice.

#### 5. Constitutional Dimensions of Bigamy

The law of bigamy in India occupies a crucial constitutional space where personal laws, criminal law, and fundamental rights intersect. The constitutional scrutiny of bigamy primarily involves an examination of Articles 14, 15, 21, and 25 of the Constitution of India. These provisions collectively shape the limits of religious freedom, the scope of equality and non-discrimination, and the evolving concept of dignity and autonomy within marital relationships. The constitutional discourse surrounding bigamy reflects the ongoing tension between respect for religious plurality and the imperative to uphold constitutional morality and gender justice.

##### 5.1 Article 14: Equality Before Law and Equal Protection of Laws

Article 14 guarantees equality before the law and equal protection of the laws. The differential treatment of bigamy across religious communities raises significant concerns under this provision. While bigamy is criminalized for Hindus, Christians, Parsis, and persons married under the Special Marriage Act, it remains conditionally permissible under Muslim personal law. This disparity has been the subject of sustained judicial and scholarly debate.

Courts have consistently held that Article 14 does not mandate absolute uniformity but permits reasonable classification. However, such classification must be based on intelligible differentia and bear a rational nexus with the object sought to be achieved. Critics argue that permitting polygyny under Muslim personal law lacks a rational nexus with the constitutional objective of gender equality, particularly when the adverse impact of plural marriages on women is well documented. The persistence of religious exceptions, therefore, poses challenges to the substantive equality envisioned under Article 14.

##### 5.2 Article 15: Prohibition of Discrimination on Grounds of Sex

Article 15 prohibits discrimination on grounds of sex and empowers the State to make special provisions for women. Bigamy and polygamy have historically operated within patriarchal frameworks that disproportionately disadvantage women. The legal permissibility of plural marriages in certain personal laws has been criticized as reinforcing gender hierarchies and denying women equal marital rights.

Judicial interpretation increasingly recognizes that practices which undermine women's autonomy, dignity, and security

are incompatible with Article 15. The State's legislative interventions mandating monogamy in several personal laws can be viewed as affirmative measures aimed at protecting women from exploitation, abandonment, and economic deprivation. From this perspective, the criminalization of bigamy aligns with the constitutional mandate to eliminate gender-based discrimination.

### 5.3 Article 21: Right to Life, Personal Liberty, and Human Dignity

Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted by the Supreme Court to include the right to live with dignity, autonomy, and privacy. Bigamy directly affects the dignity and emotional well-being of spouses, particularly women, who may suffer psychological trauma, social stigma, and financial insecurity as a result of plural marriages.

Judicial pronouncements have emphasized that marital relations must be governed by mutual respect, fairness, and consent. A marital arrangement that subjects one spouse to unequal treatment or emotional deprivation may be inconsistent with the dignity-based interpretation of Article 21. Consequently, the criminalization of bigamy serves not only a punitive function but also a protective role in safeguarding the fundamental right to dignity within matrimonial relationships.

### 5.4 Article 25: Freedom of Religion and Its Limitations

Article 25 guarantees freedom of conscience and the right to freely profess, practice, and propagate religion. However, this freedom is expressly made subject to public order, morality, health, and other fundamental rights. The constitutional protection of religious practices does not extend to practices that are inconsistent with constitutional values or that infringe upon the fundamental rights of others.

In the context of bigamy, courts have drawn a distinction between essential religious practices and practices that are social or secular in nature. Judicial observations have clarified that marriage, though influenced by religion, is predominantly a social institution subject to state regulation. Consequently, religious freedom cannot be invoked to justify practices that undermine gender equality or constitutional morality.

### 5.5 Judicial Balancing of Religious Freedom and Constitutional Morality

The judiciary has played a pivotal role in balancing religious autonomy with constitutional mandates. In *Sarla Mudgal v. Union of India*, the Supreme Court condemned the practice of converting religion solely to contract a second marriage and emphasized that such acts constitute fraud upon the law. The Court underscored the need to harmonize personal laws with constitutional principles.

Similarly, in *Lily Thomas v. Union of India*, the Court reaffirmed that religious conversion does not dissolve a prior marriage and that bigamy remains punishable notwithstanding a change of faith. These decisions reflect the judiciary's commitment to constitutional morality and the rule of law over personal law manipulation.

### 5.6 Bigamy, Secularism, and Uniform Civil Code

The constitutional dimensions of bigamy are closely linked to the debate on the Uniform Civil Code (Article 44). The absence of uniformity in matrimonial laws, particularly with respect to bigamy, highlights the challenges posed by legal pluralism. Proponents of a Uniform Civil Code argue that

uniform regulation of marriage is essential to ensure equality, legal certainty, and gender justice.

While the implementation of a Uniform Civil Code remains a matter of political and social debate, judicial pronouncements have consistently emphasized the desirability of harmonizing personal laws with constitutional values. Bigamy, as a matrimonial offense affecting fundamental rights, occupies a central position in this discourse.

### 5.7 Constitutional Morality and Evolving Jurisprudence

The concept of constitutional morality has emerged as a guiding principle in adjudicating conflicts between tradition and rights. Constitutional morality requires that laws and practices conform to the values of liberty, equality, dignity, and justice enshrined in the Constitution. In the context of bigamy, this principle demands that personal laws be interpreted and reformed in a manner that protects vulnerable spouses and promotes substantive equality.

### Conclusion

The law of bigamy in India reflects the ongoing tension between tradition and constitutional morality. While statutory reforms have advanced monogamy, disparities across personal laws persist. Comprehensive reform is essential to ensure equality, dignity, and justice.

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