BIGAMOUS MARRIAGES UNDER THE HINDU LAW: ITS SOCIO LEGAL IMPLICATIONS

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Marriage and Bigamy

India is a country with rich culture and legacy. It permits persons belonging to different religions to follow their own religious personal laws. Different laws and rules are applied in respect of marriage[1] depending on the religion followed and practiced by the individuals.

Westermarck has defined "Marriage as a more or less durable connection between male and female, lasting beyond the mere act of propagation till after the birth of the offspring". In *The Future of Marriage in Western Civilization* (1936), he rejected his earlier definition, and provisionally defining marriage as "a relation of one or more men to one or more women that is recognized by custom or law"[2].

The rule of one man – one wife at a time is known as monogamy. If a man indulges in polygamy the technical term for it is called polygamy; and if a woman does so it is called polyandry. The most common expression used for all non-monogamous marriages, irrespective of gender and number is bigamy.

Historical Perspective of Marriage Monogamous or Bigamous

Marriage as a social institution which is very fundamental unit of society and is the *grundnorm* of legal rights and duties. Marriage postulates mutual rights and obligations and beyond that it confers a status. In all the civilized countries, marriage is both a religious as well as a natural and civil contract.

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Persons who choose to enter into sacred or secular bonds of marriage are obliged to fulfil the vows taken at the time of marriage and discharge their onerous duties and obligations towards each other and their children.

Marriage in Vedic era was a sacramental union, as an eternal knot, which once tied cannot be broken. The ethos of Hindu marriage has always been very high as it was considered to be an inviolable and everlasting pious bond - a bond that would subsists for present as well as for all lives whenever birth would take place. Once only

[1] The word "marriage" has been taken from Middle English marriage, which first appears in 1250–1300 CE. Eventually which is resulted from Old French word marier which means to marry. In Latin language marītāre means to bestow with a husband or wife and the word marītāri associated with to get married.

[2] Edward Westermarck, *The Origins and Development of Moral Ideals*, Macmillan Co. London, Vol.I, 1906, p.611. Also see, Edward Westermarck, *The Future of Marriage in Western Civilization*, Macmillan Co., London, 1936, p.3. (https://archive.org/details/futureofmarriage032513mbp, visited on 24th June 2018).

a maiden is given in marriage[3]. The command is: "May mutual fidelity continues till death"[4] . Marriages were monogamous and the conjugal bond lasted even after death. Though monogamy was the rule, polygamy as an exception existed to some extent side by side [5].

Law and Practice of Bigamy in Retrospect

Among Hindus

The fundamental conception of marriage was monogamous and not polygamous. The word 'Dampati' has been frequently used in Vedic texts, which means "household being shared by two owners". It disregards a third person from the conjugal life. Though monogamy was the rule, but still there are some instances in *Rig Veda*[6] regarding polygamous marriages.

Among the general population, the practice was that, if the first wife was barren then, husband was permitted to have another wife. According to *Aitareya Brahman*, 'Patni' was only allowed to take part in the sacrificial rituals and other religious ceremonies[7]. 'Adhivedna' is a peculiar technical term coined by *Manu*, which means 'Supersession'. *Manu* says that a barren wife may be superseded by a second wife. The principle of supersession produces disastrous consequences for the happiness of wife, as if it was an encroachment upon wife's right to conjugal fidelity. *Kautilya* also encourages polygamous for the sake of progeny. One of the reasons for committing polygamy was the preference of having a son. The importance of the son was for attaining Swarga. *Kane* had recommended that for some classes, polygamy should be endured on economic grounds[8]. The practice of polygamy was prevalent in royal families. Polyandry did not exist in any of the cultured segments of Indian society except in some hilly tracts and few uncivilized tribes. Polyandry is practiced in traditional Nayar and Tada communities in India in

which a group of men usually brothers have a common wife between them. Lahaul Spiti valley in Himachal Pradesh and the Thiyyas of South Malabar witnessed polyandry and in these parts it was recognized as a custom[9].

Therefore, it can be said that polygamy, was not there in Hindu society, right from the Vedic age to modern day. It had been allowed in limited cases. Polygamy has always been a matter of abhorrence.

[3] Manusmriti IX, 48
[4] Manusmriti IX, 102
[5] Mayne's, Hindu *Law and Usage*, Bharat Law House, New Delhi, 1998, p.155.

[6] Rig Veda X, 85.
[7] Aitareya Brahmana VII: 3.
[8] History of Dharamshala, Vol. III, p. 824.
[9] *Krishnan v. Ammalu*, AIR1972 Karn. 91 (Relate to Thiyyas).

Hindu Polygamy under British Rule

"The Warren Hastings Regulation of 1772" drafted the policy guaranteeing non-interference in Hindu and Muslim family laws by the British. Polygamy was considered as a matter of personal laws.

The position of polygamy was uncertain in olden period among Hindus but certainly it has been practised by Minorities.

Position of Marriage after 19th Century

In India, before 1955 polygamy was permissible and practiced by majority of Hindus and Muslims. The Christian community was the only community which adhered to monogamy from the very beginning. It was only Christians, Parses and Jews that do not practice polygamy. They perform monogamous marriages. In the early 19th century, with the advancement of thought along with the changing conditions of the world, condemnation of polygamy has increased.

The legislation, world over especially in the west had evolved a progressive legal system by forbidding polygamous unions. Several provisional legislatures passed local laws making monogamy the rule for those governed by Hindu law. In 1932, the Madras Marmakkethayam Act was passed by which marriages of Nairs and other communities who followed the Marumakkethayam law of Kerala were made strictly monogamous. In 1946, the Bombay Prevention of Hindu Bigamous Marriage Act [10]declared Hindu bigamous marriage as void, a term which included Sikhs, Jains, Buddhists, Arya and Brahmo samajists and converts to Hinduism. Section 4 of the Act provided that a bigamous marriage is void not only if contracted in Bombay but also outside, if one or both the parties to the marriage are domiciled in Bombay State. The punishment for the offence of bigamy under Section 5 was seven years imprisonment and fine. It further provided under Section 6 that whoever performs, conducts or abets any bigamous marriage in this State was likewise punishable. Under Section 7, even the parents or guardians permitting, promoting or negligently failing to prevent such marriage were liable to conviction.

It was contended that The Bombay Prevention of Hindu Bigamous Marriage Act was ultra vires of the Constitutional provisions[11] but the Act was declared valid by the Apex Court. Prior to Bombay Act of 1946, a Hindu could marry for the second time and particularly when it was preceded by the consent of the first wife, there was no objection to that and such marriages were valid[12].

The Madras Hindu Bigamy Prevention and Divorce Act, 1949[13] and The Saurashtra Prevention of Bigamy Act, 1950[14] were enacted by The Provinces of Madras and Saurashtra, respectively for the prevention of bigamy in

[10] Act XXV of 1946.
[11] *State of Bombay v. Narasu Appa Mali* AIR 1952 Bom. 84 ; (1951) Bom. 775.
[12] *Mandakini v. Chandra Sen* AIR 1986 Bom. 172.
[13] Act No VI of 1949.
[14] Act No V of 1950.

their States on the line of Bombay enactment. Similarly, in the State of Madhya Pradesh 'The Madhya Pradesh Prevention of Bigamous Marriage Act, 1955'[15] made marriage among Hindus in that State monogamous.

Having attained Independence, the circumstances were considered ripe for introducing the social reform of monogamy on all India bases, by making a law, applicable to everyone, governed by the Hindu law. Public opinion was strongly in its favour and local laws were already in force in several states. The stage was thus set for the Hindu Marriage Act 1955. For amending and codifying the marital laws the Hindu Marriage Act was passed in 1955 and all the Provisional Statutes have been repealed by it. This law has revolutionized the institution of marriage and has introduced the principle of monogamy in the whole of India (except the State of J&K), Section 17 of the Hindu Marriage Act[16] provides , "Any marriage between two Hindus solemnized after the commencement of this Act, is void if at the date of such marriage either party had a husband or wife living; and the provisions of Section 494 and 495 of Indian Penal Code shall apply accordingly."

Bigamy under Hindu personal law and the Role of Judiciary

The evolution of the society brought about a change in its lifestyles, law has to be in consonance with the societal and constitutional values prevalent in the societies. Now a days the Indian judiciary participated actively in the interest of the society. The ultimate goal of the judicial system is to prevent the miscarriage of justice while keeping in mind the social and cultural ethos and Constitutional values.

Statutory Ban

1. Bigamy was prohibited for the Hindus, Buddhists, Jains and Sikhs first by local legislation in the then states of Bombay, Madras and Saurashtra in 1946, 1949, and 1950, respectively. After the commencement of the Constitution in 1950, the constitutional validity of the Bombay law was challenged in the local High Court but was held[17]. The Supreme Court in *Sant Ram v. Labh Singh*[18] was in unison with the Bombay High Court. In *State of Bombay v. Narasu Appa Mali*[19], Bombay High Court held that even though customs and usage would fall within the scope of the definition of "laws in force", there was always a difference among custom and personal laws, and personal laws would not be covered by Article 13.

2. The Hindu Marriage Act 1955, Section 5(1), establishes the rule of monogamy and makes no exceptions to it. As per Hindu Codes enacted during 1955-56, Hindus, who are once married, are not permitted to marry again while their first marriage is legally subsisting. In *Ram Prasad v. State of UP*[20], the

[15] Act No X of 1955.
[16] Dr. Paras Diwan, *Law of Marriage and Divorce*, Universal law Publishing Co. Pvt. Ltd., New Delhi, 2002, p.537.
[17] *State of Bombay v. Narasu Appa Mali* AIR 1952 Bom. 84.
[18] AIR 1965 SC 314.
[19] AIR 1952 Bom. 84.
[20] AIR 1961 All. 334.

constitutional validity of this restriction was challenged in the Allahabad High Court and the Court upheld the validity of this restriction. In this case Both the appellant and his father believe that according to Hindu Dharma Shastras, salvation was not possible without a son and in the absence of a male child in the family a number of religious obligations would remain unfulfilled. The appellant, therefore, decided to marry a second wife in the hope that he will be able to get a son by her. His first wife at first consented to the proposal but then changed her mind. The Hindu religion, the learned Judge pointed out, permitted the adoption of a son and an adopted son was for all purposes as good as a natural born son. The petition filed by the appellant was, therefore, rejected and the validity of the Section 5(1) of the Hindu Marriage Act, 1955 was upheld.

3. The desertion of matrimonial home by a wife for long years will be no justification for her husband to remarry and the second marriage would still be illegal and void, held by the Supreme Court in the case of *Saygobai v. Cheeru Bajrangi*[21] ,
4. In the case of *Santosh Kumari v. Surjit Singh*[22], the Court held that the consent of the first wife, even if free and genuine, is also no justification for bigamy; the second marriage in such a case too will be void.
5. The Supreme Court in the case of *Ban Singh v. Devi Ram*[23], while referring to *Partap Singh v. Guman Singh*[24], held that the custom of "*joridari*" marriages prevailing in some regions of North India in which two or more brothers marry the same woman, or two or more women ,is repugnant to the enacted law and hence any such marriage will be null and void under its provisions unless custom permits.

Defeating the law

In order to bypass legal provisions against bigamy, married persons illegally contracting a second marriage unscrupulously leave room for the first or the second marriage to be seen as void or incomplete under the provisions-or in an afterthought use this, as an alibi when facing legal action.

The Supreme Court in *Bhaurao Shankar Lokhande & Anr v. State of Maharashtra & Anr*[25] on 1 February, 1965 held that if the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eyes of law. Live in relationship over an innumerable long period of time, when the parties were known to live as man and woman in the nature of contracting marriage, then in the absence of ceremonies was considered to be solemnized though no ceremonies had been performed. Today's scenario is unless the marriage is celebrated or performed with proper ceremonies

[21] AIR 2011 SC 1556.
[22] AIR 1990 H.P. 77.
[23] AIR 2012 H.P. 97.
[24] AIR 2010 H.P. 857.
[25] AIR 1965 SC 1564.

and due form, it cannot be said to be 'solemnized' within the meaning of Section 17 of the Hindu Marriage Act, 1955.

Bigamy by Conversion

Married men, within the ambit of anti-bigamy legislation, wanting to re-marry have been dishonestly taking recourse to a fake conversion to Islam believing, erroneously, that Muslim law unconditionally allows polygamy.

In the landmark judgements namely *Sarla Mudgal v. Union of India* [26] and *Lily Thomas v. Union of India*[27,] the Supreme Court has applied breaks to this dishonesty and decided that a person married as per the provisions of the Hindu Marriage Act, 1955 will even after conversion (Genuine or Sham) would continue to be governed by his original faith and his second marriage would amount to bigamy.

In 2009, the 227th Report of the Law Commission of India recommended for the amendment of the Hindu Marriage Act, 1955 and the Special Marriage Act 1954 for making these acts in consonance with the Supreme Court rulings on conversion.

Preventive Action

There is a conflict of judicial opinion on the question if a married woman apprehending that her husband is likely to marry again can seek and be granted a court injunction restraining him from doing so. In the case of *Uma Shanker v. Radhadevi* [28], the Supreme Court held that for wife apprehending husband's second marriage, no injunction provisions are there for restraining husband from remarrying in the Hindu Marriage Act, 1955. Section 11 or 17 or any other provision of the Hindu Marriage Act do not provide for such relief but in *Lily Thomas Case*[29] ,the Supreme Court held the wife apprehending her husband's second marriage can approach the court under Section 9 of the Code of Civil Procedure, 1908 and get a restraint preventing him from transecting a second marriage.

Further in *Kirti Sharma v. Civil Judge, Etah*[30] the Apex Court laid down that Section 11 declares that while spouse of first marriage is alive, second marriage is void. No doubt Hindu Marriage Act is a special Act, but if it is silent on the issue of injunction, the place can be occupied by general legislation especially so as to restrain a party from performing a void act.

Further, relying on the principle of 'prevention is better than cure' injunctions should be permissible for prohibiting violation of all mandatory requirements, for a valid marriage, including bigamy, according to the Hindu Marriage Act.

[26] AIR 1995 SC 1531.
[27] (2000) 6 SCC 224.
[28] AIR 1967 Pat. 220.
[29] *Supranote* 27 at 7.
[30] AIR 2005 All. 197.

Solemnization and Completion of Marriage Rites and Rituals

When a marriage is considered to be complete and binding in a case where some customary rituals other than saptpadi have been observed is anybody's guess. In each such case it will depend on what the custom says. This uncertainty may, and has, helped married men and women to unlawfully indulge in bigamy.

The Supreme Court decided the case of *Kanwalram v. The H P Administration*[31] relying upon the *Bhuaurao Shankar Lokhande v. State of Maharashtra*, in this case the accused contracted second marriage while his wife from first marriage was still alive. They performed customary form of marriage 'Praina' as they belonged to a village in Himachal Pradesh where such marriage is prevalent. In this marriage saptapdi is not done. The court held that to prove second marriage, all essential ceremonies must be proved. Court held that admission made by accused is not sufficient hence acquitted him.

In *Priya Bala Ghosh v. Suresh Chandra Ghosh*[32], the Hon'ble court refused the testimony of priest who had performed the marriage and acquitted the accused. Court further ruled that the responsibility of proving the second marriage is solely upon the complainant.

The Supreme Court has made some rules[33] to prove the offence of Bigamy are enlisted here:

- For conviction of a Hindu man for 'bigamy', essentially there should be proof of performance of homa and saptpadi.
- The evidence of a priest is not valid for the proof of performance of a valid ceremony.
- It must be validated by a law text in case any custom to the contrary has been followed.
- Admission by the accused is not sufficient to prove bigamy in matrimonial proceedings. Neither the admission made by the alleged second wife is acceptable.

A Critical Analysis

Judiciary itself hinders the implementation of the anti-bigamy provisions of the law while asking for strict proof. Strict interpretation of the law for bigamy makes the errant Hindu husbands more courageous for contracting another marriage. The attitude of judiciary acts as double-edged sword when it demands proof of performance of Saptapadi and Homa in second marriage from already devastated first wife which results the escape of the devious husband from the clutches of law and drags the first wife to huge adversities. First wife is always under the threat of being harmed and declared her marriage as void. This situation leads us to think that Judiciary is itself zealously imposing polygamy. While allowing for polygamy among Hindus by asking an

[31] AIR 1966 SC 614.
[32] AIR 1971 SC 1153.
[33] *Gopal Lal v. State of Rajasthan* AIR 1979 SC 713.

unrealistically high proof of marriage, it advocates a Uniform Civil Code, ostensibly to prevent bigamous marriages among Hindu men[34].

Registration laws

For the objective of "facilitating the proof' of marriages the State governments were empowered by the 1955 Act to make Rules for voluntary registration of marriages, and also authorized to make such registration obligatory in the whole or any part of the State for all or select cases of marriage. In the latter case non-compliance with the requirement of registration was not to affect the validity of any marriage and would only be punishable with a small fine[35].

In the welcoming decision of *Seema v. Ashwani Kumar*[36], without referring to the CEDAW and India's reservation about its requirement for registration of marriages, Central and State governments has been directed to frame Rules for compulsory registration of all marriages in all parts of India.

Effect of Registration or Non-Registration

Registration is only an administrative and a procedural measure. Registration of an invalid marriage does not turn it into a valid marriage; nor can mere registration turn an invalid marriage into a valid marriage. Failure to register a marriage where it is compulsory to do so does not affect the legality of the marriage but is punishable with fine, the amount of which is prescribed by the Registration Rules.

Registration certificate of a marriage is admissible in evidence but is not a conclusive proof of the validity of marriage – it only raises a presumption of the existence of a marriage. It has been held in the case *VD Grahalakshmi v. T. Prashanth* [37] that a marriage certificate is not a substantial proof of marriage if one party to a marriage repudiates it.

Polygamous and Polyandrous marriages

According to the Hindu Marriage Act 1955 a bigamous marriage (involving polygamy or polyandry) is a nullity. On the petition of either party against the other party any such marriage may be declared by the court to be null and void and annulled by a decree of nullity. This is an optional course of action for the parties to a bigamous marriage which either party to it may want to avail. If neither party avails it, the marriage will still be a nullity in the eyes of law.

A proposal was made in 1974 to delete the words 'on the petition of either party' from Section 11 so as to leave it open to all persons affected by a bigamous marriage to seek the remedy. The 59th Report of The Law

[34] Lucy Caroll, "Notes and Comments-Religious Conversion and Polygamous Marriage", Journal of the Indian Law Institute, Vol.39 (2-4), 1997, p.272.
[35] The Hindu Marriage Act 1955, Section 8.
[36] AIR 2006 SC 1158.

[37] AIR 2012 Mad. 34.

Commission of India lead to the Hindu Marriage (Amendment) Act ,1976 which opposed it and 'against the other party' words had been inserted into the provision of Section 11. This addition means that even a party to a void marriage cannot seek a decree of nullity for it, after the lifetime of the other party.

First Spouse's Remedies

In *Amarlal v. Vilayatibhai*[38]; *Lakshmi Ammal v. Naikar*[39]; *Kedar v. Superva*[40]; *Ram Pyari v. Dharm Das*[41], the Courts were in consensus that the first lawfully wedded spouse of a bigamist, or any other affected person, can seek a declaration for the nullity of second marriage , by taking appropriate legal action under the general provisions of the Code of Civil Procedure 1908 and the Specific Relief Act 1963.

Other Remedies

If a second bigamous marriage is contracted with other woman or man concealing from her or him the fact of a legally subsisting first valid marriage, then it can also be annulled on the ground of fraud under Section 12 (1) (c) of the Hindu Marriage Act, this was held in *Sarswati Devi v. State of Bihar*[42]. The Supreme Court held in *Savitaben Somabhai Bhatia v. State of Gujarat* [43], that if a bigamous man fails or neglects to provide maintenance to the second woman he has married, she will not be entitled to seek maintenance from him either under the Hindu Adoption and Maintenance Act 1956 or the Code of Criminal Procedure 1973; but if she was kept in the dark about the first marriage she can claim damages.

In a case *Badshah v. Urmila Badshah Godse*[44]reported in January 2014, the Supreme Court has clarified that its earlier decisions would apply, only if woman marries an already married man with full knowledge of his legally subsisting first marriage, If she was kept in the dark by him about it, he cannot take the plea of nullity of marriage to deny maintenance to her by taking advantage of his own wrong. In *Deoki Panjhiyara v. Shashi Bhushan*[45] the court observed under the Protection of Women from Domestic Violence Act 2005, "Section 11 of the Hindu Marriage Act gives a choice to either of the parties to a void marriage to seek a declaration of invalidity or nullity of such marriage, (but) the exercise of such choice cannot be understood to be in all situations voluntary. Situations may arise when recourse to a court for a declaration of the nullity of marriage claimed by one of the spouses, to be a void marriage will have to be insisted upon in departure to the normal rule."

[38] AIR 1959 M.P. 400.
[39] AIR 1960 Mad . 6.
[40] AIR 1963 Pat. 311.
[41] AIR 1984 All. 147.
[42] 2006 (2) P.L.J.R 468.
[43] (2005) 3 SCC 636.
[44] (2014) 1 SCC 188.
[45] AIR 2013 SC 346.

The second woman in a bigamous marriage facing domestic violence can, it seems, seek the remedies available under the Protection of Women from Domestic Violence Act 2005 as her marriage does constitute a relationship "in the nature of marriage."

Further adding to this expression live-in has been eccentric to the Indian Social setup which has emerged in recent years. This type of relationships is still considered as out of bounds in a major part of the country. In today's scenario a boost in this kind of relationship in Indian society are a prodigious menace, to the well-being of the conjugal relationship of husband and wife and to the family thread which is weaved out of values and morals on which the Indian society rests upon. This results into adultery, because there is no guarantee that live in partners are single. Such relationships also turn out to be bigamous.

A survey conducted suggest that live in relationships are weak commitments[46]. **Soma Das,** a social geographer held that those who do not believe in marital ties prefer live in relationship.[47] The economic boom of India is concentrated into metros. As job opportunities are les in smaller cities, they are yet to onlooker of any major variance. So, in order to survive in big cities when male and female start sharing common house, it usually results into Live in.

As till day no legislation has been enacted regarding Live in relationship but judiciary acted as safeguard in such cases where women were thrown out of "in the nature of marriage" relationships. Section 125 of the Code of Criminal Procedure,1973, was incorporated under the Domestic Violence Act, 2005 to provide relief to such other woman so as to avoid vagrancy and destitution. This has now been extended by Judicial interpretation to partners of live in relationship.[48]

Though judicial pronouncements are there to provide the remedies to the aggrieved party, still there exists the evil of bigamy in numerous forms. The bigamist is a criminal and he must be prosecuted for his act.

Conclusion and Suggestions

The Supreme Court in series in cases viz. ***Bhaurao v. State; Kanwal Ram v. H. P. Administration; Priya Bala v. Suresh Chandra; Gopal Lal v. State of Rajasthan,*** has consistently followed the rule of strict proof. It has either acquitted the accused for want of evidence of essential ceremonies or has set aside conviction on the ground that the prosecution failed to prove the fact of solemnization of second marriage with essential ceremony beyond reasonable doubt.

Though the Hindu Marriage Act,1955 contains sufficient provisions against polygamy the judicial system is still lacking behind while creating hindrances against the implementation of the law. Innovative methods are discovered for bypassing the law. Most of the communities in India do not consider the ceremonies for solemnization of marriage provided under the Act necessary, which opens the ways for husbands to indulge in bigamous relations.

[46] Available at http://indialawjournal.com/volume2/issue_2/article_by_saakshi.html , visited on 4th June 2019
[47] *ibid*
[48] *Ajay Bhardwaj v. Jyotsna And Ors* on 23 November, 2016.

Reformation of the society is only way to oust this social menace. It is the need of the hour to look into the legal implications of the offence of bigamy. The courts should understand the effect of their decisions and rulings regarding technicalities to prove a valid second marriage.

Therefore, following suggestions have been made to ensure effective enforcement of law:

1. Social awareness must be created in the society particularly among adults of marriageable age and their families so that they should conduct an inquiry about the particulars of the party before transecting matrimonial ceremonies to avoid being victimized. NGOs should play a crucial part in developing the society, creating awareness among weaker groups, and promoting citizen participation in checking the offence of bigamy from being committed.

2. There is strong need of the uniform code for family laws which could be an umbrella legislation for all the religious communities of India and could help in promotion of national unity and fraternity, a step towards true secularism.

3. The word 'solemnized' should be substituted by the words either "contracted" or "goes through a form of marriage". This should be incorporated in the Act. The Law Commission in its 59th report has also made similar recommendation for incorporation in Section 17 of Hindu Marriage Act, 1955.

4. It should be a mandate upon religious functionaries like pandits and purohits conducting marriage ceremonies at the parties' homes to issue a marriage certificate.

5. There should be Compulsory registration of all marriages in the State. It should be done by appropriate authorities and any violation of the law should be declared a cognizable offence. Compulsory registration will help to check bigamous marriages. Punishment should involve rigorous imprisonment.

6. Circumstantial evidence of the marital relationship between the person accused of bigamy, should be accepted as a proof of bigamy.

7. Section 17 of the Hindu Marriage Act, 1955 should incorporate an explanation that if there is an omission on the part of the party to the marriage to perform some of the essential ceremonies then it shall not be construed to imply that the offence of bigamy was not committed, provided other facts give rise to a de facto relationship of husband and wife.

8. Court as a proof of bigamy should accept the fact of (i) admission by a person who is accused of bigamy (ii) admission by the second man/woman that he or she entered into second marriage.

9. An explanation may be added to Section 494 of the Indian penal Code to the effect that when there are other proofs and facts that marriage has been solemnized, the court should raise presumptions for the valid marriage.

10. It is further suggested that law should punish not only the act of undergoing any form of marriage ceremony though not complete one, but part of marriage ritual.

11. The Hindu Marriage Act is self-contained and consolidating Act, but there is no provision that vests a right in the first wife to file a petition in the court for declaring the second marriage of her husband as null and void. It is suggested that the first wife should be permitted to seek a remedy against the second marriage of her husband to restraint him within the Act itself. Further along with Section 17 read with Section 5 of the Hindu Marriage Act, 1955 and Section 9(2) of the Code of Civil Procedure Code, 1908 empower the wife to seek an injunction order from the court restraining her husband from transecting a second marriage during the subsistence of the first marriage.

12. Though many States have enacted laws for registration of Muslim marriages, the Central Legislation should be enacted on this matter for all the citizens irrespective of their religions, castes and communities and non-judicial divorce[49].

[49]Tahir Mehmood (ed.) *Progressive Codification of Muslim Personal law: Islamic Law in Modern India*, *N*.M Tripathy Pvt. Ltd., Bombay, 1972, p.80-98.