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# Sarla Mudgal V. Union of India (AIR 1995 SS 1531): Bigamy and Conversion under Islam in India

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## ABSTRACT

*Bigamy as defined in the Webster's dictionary is a practice through which one person enters into a marriage while still being legally married to another person. This practice had been followed for several years in different religions. It existed from the time when kings used to marry in order to spread their rule throughout the country. India has been very diverse in terms of culture and tradition, also has borne the impact of several kinds of reigns by different rulers. This paper stresses upon the historical influence of bigamy on India and how the times were different pre-independence. A country like India, which is home to different caste, religion, culture and traditions of people found the need to regulate such practices. Personal Laws administer people from different religions. Islam advocates for polygamy and a man under Islam is allowed to have four wives. The primary law for bigamy is provided under Section 494 of the Indian Penal Code, 1860 that makes bigamy a criminal offence. The main aim of this research is to study the case of Sarla Mudgal v. Union of India in the light of Article 15, 16 and 20 of the Indian Constitution. In this case, the court addressed the conflict between personal laws and freedom of religion. This was a writ petition that was filed by four petitioners namely Sarla Mudgal, Meena Mathur, Sunita Narula and Geeta Rani. The petitioners contended that the respondents, in order to escape the action under section 494 in the IPC converted themselves to Islam so that such punishments do not apply to them. The judgement was given by the division bench of the Supreme Court that made conversion for this purpose invalid and the second marriage would be a violation of the Hindu Marriage Act, 1955 and this marriage would be void according to section 494 of IPC. This judgment also laid emphasis on the need to have a Uniform Civil Code in such matters to prevent arbitrariness in the society. The court also gave direction to the government to enforce Article 44 under the Directive Principles of State Policy to highlight the essence of the Supreme Court as the guardian of the constitution.*

**Keywords:** Bigamy, Conversion, Islam, India.

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## I. PRELIMINARY DETAILS OF THE CASE

Case No.	-	W.P.(C) No.-001079-001079 / 1989
Jurisdiction	-	Supreme Court of India
Case filed on	-	1989
Case decided on	-	10th May 1995
Judges	-	Justice R.M.Sahai and Justice Kuldeep Singh J
Legal Provisions involved	-	Constitution of India -Article 25 and 44 Indian Penal Code- Section 494 Section 5,11 and 17 of Hindu Marriage Act,1955

## II. BRIEF FACTS

In this Sarla Mudgal case, there were four petitions filed under Article 32 of the Indian Constitution, which suggests the various constitutional remedies in the form of Writ Petitions in the Supreme Court.

In the first Writ Petition registered as 1079/89, there were two petitioners. First Sarla Mudgal, Head and President of a registered society named 'KALYANI' which is an organisation that is aimed at working for the welfare families in need and women in distress<sup>2</sup>. The first petitioner under this petition is Meena Mathur, who was married to Jitender Mathur on February 27, 1978 and had three children. In 1988, the petitioner got to know about her husband's second marriage with Sunita Narula alias Fathima, which they solemnised after converting into Islam.

The second petition was filed by Sunita Narula alias Fathima, registered as Writ Petition 347/1990, where she contended that she and the Jitendra Mathur who is the respondent in this case converted to Islam in order to get married, and they also had a child from this marriage. The respondent gave an undertaking in 1988, that he will convert back to Hinduism

<sup>2</sup> Kaustubh Singh Thakur and Kunal Mittal, Case Comment on Sarla Mudgal v. Union. Of India, Lawcutor <https://lawcutor.com/2020/08/02/sarla-mudgal-and-ors-v-union-of-india-air-1995-sc-1531/>

and maintain his first wife and three children due to pressures from his first wife Meena Mathur. As the second petitioner continues being Muslim, she was not being maintained by her husband and had no protection under either of the personal laws.

The third petitioner filed a petition registered as Writ Petition 424/1992 in the Apex court. The petitioner, Geeta Rani was married to Pradeep Kumar in 1988 according to the Hindu rites. In December 1991, it came to the knowledge of the Geeta Rani that her husband Pradeep Kumar converted to Islam and married another woman, Deepa. The Petitioner asserts that the sole purpose of conversion to Islam was to aid the second marriage.

Fourth Petition registered as Civil Writ Petition 509 of 1992 was filed by Sushmita Ghosh was married to G.C.Ghosh according to Hindu religious rites on May 10, 1984. In April 1992, her husband asked her to take divorce by mutual consent as he didn't want to live with her. The petitioner prayed that she was not willing to divorce her husband and wanted to remain his legally wedded wife<sup>3</sup>, so that divorce can be avoided. Her husband claims that he had obtained a certificate dated June 17, 1992, that he had embraced Islam and will soon marry one Vinita Gupta.

### **III. ISSUES INVOLVED**

1. Whether a Hindu husband married under the Hindu Marriage Act, 1955 can convert himself to Islam and solemnize a second marriage with another woman while the first marriage is existing?
2. Whether conversion for this purpose would be valid in eyes of law?
3. Whether this second marriage would be valid as the first wife still continues to be a Hindu?
4. Whether the deserter husband would be held liable under section 494 of IPC?

### **IV. ARGUMENTS OF THE PARTIES**

#### **(A) Petitioner**

- Meena Mathur contested that her husband's second marriage was solemnized after he converted to Islam, and this one was done only to escape the provisions under Section 494 of IPC and for the sake of marrying Sunita also known as Fathima.
- Sunita also known as Fathima is the petitioner and she contends that her spouse Jitendra Mathur who is even the spouse of Meena Mathur converted back to

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<sup>3</sup> Manali Agarwal ,Case Analysis Sarla Mudgal and Ors v. Union of India, Lawgic Stratum May 31<sup>st</sup> 2020, <https://www.lawgicstratum.com/post/case-analysis-sarla-mudgal-and-ors-v-union-of-india>

Hinduism and now she is not maintained nor she getting any protection under any personal laws.

- Geeta Rani, the petitioner in Writ Petition 424 of 1992 opposed her husband Pradeep Kumar's conversion was only to facilitate the second marriage with Deepa.
- Sushmita Ghosh, who is the petitioner in Civil Writ Petition 509 of 1992, claimed that she was the legally wedded wife of her husband and wanted to spend her life with him, hence the question of divorce did not arise. Furthermore, her husband be restrained from marrying Vinita Gupta.
- All the four petitioners in this case had a common contention<sup>4</sup> that their spouses converted themselves to Islam in order to elude the provisions for bigamy under Section 194 of Indian Penal Code,1860 and validate their marriage with other women.

### **(B) Respondents**

All the respondents have a common contention that all of them have embraced Islam which allows a man to have four wives regardless of the fact that whether the first wife is a Hindu. They also asserted that the provision of Section 11 of the Hindu Marriage Act,1955 which makes bigamous marriage void did not apply to them.

## **V. LEGAL ASPECTS INVOLVED IN THE CASE**

### **(A) Constitution of India**

**Article 25:** This article not only guarantees freedom of conscience but also the freedom to profess, practice and propagate any religion<sup>5</sup> of their choice. India being a secular country which is home to numerous religions, culture and heritage this case caused a controversial issue as this article allows the citizens to follow a religion or faith that is of their choice. But there is also an exception to these which states that nothing in this article shall affect the operation of any existing law or prevent the state from making any law.

**Article 44 (Directive Principle of State Policy):** "The State shall endeavour to secure for the citizens a Uniform Civil Code<sup>6</sup> throughout the territory of India"<sup>7</sup> is an explicit directive under Article 44 of the Constitution of India which aims at introducing a uniform personal law. In India, the objective of the Uniform Civil Code is to reinstate the personal laws based

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<sup>4</sup> Rachit Garg, Bigamy in India : Sarla Mudgal Case, 22<sup>nd</sup> August 2020, <https://blog.ipleaders.in/bigamy-in-india-sarla-mudgal-case/>

<sup>5</sup> Indian. Constitution, art. 25

<sup>6</sup> MANU-SC-0290-1995-BLJR

<sup>7</sup> Indian Constitution, art.44

on the scriptures and customs of each major religious community in the country with a common set of laws that govern every citizen<sup>8</sup>. For instance, there are different personal laws for Hindus and Muslims. Personal law mainly deals with property, marriage and divorce, inheritance and succession. This article seeks to have the same laws for all the citizens irrespective of their religion in order to avoid conflicts between personal laws. When passed, the code will try to simplify laws that are separated at present on the basis of religious beliefs like the Hindu Code Bill, Shariat law, and others. The code will also segregate the complex laws around marriage ceremonies, inheritance, succession, adoptions, making them one for all.

### **(B) Indian Penal Code**

**Section 494:** This section criminalizes bigamy and this is based on the English Law of bigamy. Bigamy is made an offence under this section, and it extends both males and females irrespective of their religions except in the case of Muslim males. Under Islam, polygamy up to four wives is allowed and they can have up to four wives. This section applies to a Muslim male marrying the fifth time when he already has four marriages subsisting. Moreover, all the four marriages should be conducted according to Muslim Law. Section 494 also lays down that if there is already a marriage existing between a man and woman and either of them solemnizes another valid marriage while they are living such a marriage will be void. The punishment for this offence is imprisonment of either description which may extend till seven years and will also be liable for fine.

The essential element required for this section is that both marriages that are conducted must be valid, which means that all the essential ceremonies should have taken place according to their respective religion's personal law. If the second marriage is not a valid marriage, it will not be considered a marriage in the eyes of law<sup>9</sup>. Under this section, the offence is non-cognizable, bailable, compoundable and triable by a magistrate of first class<sup>10</sup>.

### **(C) Hindu Marriage Act, 1955**

**Section 5:** This section lays down the conditions that need to be fulfilled in order to solemnize a Hindu marriage. Section 5(i) of the Act provides that marriage between two

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<sup>8</sup> Srishti Khandelwal ,case analysis of Sarla Mudgal v. union of India air

[https://probono-india.in/Indian-](https://probono-india.in/Indian-Society/Paper/405_Case%20Analysis%20on%20Sarla%20Mudgal%20v.%20Union%20of%20India%20-%20Srishti%20Khandelwal.docx)

[Society/Paper/405\\_Case%20Analysis%20on%20Sarla%20Mudgal%20v.%20Union%20of%20India%20-%20Srishti%20Khandelwal.docx](https://probono-india.in/Indian-Society/Paper/405_Case%20Analysis%20on%20Sarla%20Mudgal%20v.%20Union%20of%20India%20-%20Srishti%20Khandelwal.docx)

<sup>9</sup> Rachit Garg, Bigamy in India : Sarla Mudgal Case, 22<sup>nd</sup> August 2020,

<https://blog.ipleaders.in/bigamy-in-india-sarla-mudgal-case/>

<sup>10</sup> Ibid

Hindus can be contracted only when “neither party has a spouse living at the time of marriage” which does not support bigamy and makes it void if a person marries again when his previous marriage is subsisting<sup>11</sup>.

**Section 11:** Declares that all the marriages that were solemnized in contravention with Section 5(i) before the enactment of this Act shall be considered void.

**Section 17:** Specifies the punishment for bigamy in accordance with Section 494 and 495 of Indian Penal Code,1860.

## VI. JUDGEMENT IN BRIEF

The Supreme Court in *Sarla Mudgal v. Union of India* held that second marriage of a converted Hindu would commensurate to breach one personal law in another’s territory. When a Hindu marriage takes place the parties acquire certain rights and obligations against each other and validity of a second marriage would destroy the rights existing against another spouse. Due to this reason the marriage of a Hindu continues to subsists even though he converts to Islam. The court relied on Section 13 of the Hindu. Marriage Act,1955 that lays down grounds for divorce of which one of the ground is conversion that explains “the other party has ceased to be a Hindu by conversion to another religion”. The court was of the opinion that conversion can only serve as ground for divorce and second marriage in no manner implies an end to the first marriage. The marriage will still remain valid until a decree of divorce is obtained from a competent court of jurisdiction. The court while reaching the conclusion relied on the case of *Robasa Kanum v. Khodadadd Bhomanji Irani*<sup>12</sup> wherein there was a matrimonial dispute between an Islam convert and non-Muslim spouse Justice Chagla was of the view that in such cases the decision should be judged upon the. principles of justice, equity and good conscience. In such matters the rule of decision is not required to be Muslim Personal Law. The second marriage of a Hindu Husband embracing Islam would be void and violative of justice, equity and good conscience which makes it avoid marriage and also attracts provisions of Section 494 and 495 of the Indian Penal Code,1860. The second marriage of an Hindu husband would be a violation of natural justice<sup>13</sup>, even though he has the right to embrace Islam as his religion but he has no right under any statute to marry again without getting the earlier marriage dissolved. Thus, second marriage after converting into Islam would be a violation of the rules of natural justice. The court also relied

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<sup>11</sup> Section 5, Hindu Marriage Act,1955, Act no.25 of 1955

<sup>12</sup> *Robasa Kanum v. Khodadadd Bhomanji Irani* (1946) Bombay Law Reporter 864

<sup>13</sup> MANU-SC-0290-1995-BLJR

on *Mohammad Ahmed Khan v. Shah Bano Begum*<sup>14</sup> and *Jordan Deingdeh v. S.S. Chopra*<sup>15</sup> where Justice Kuldeep Singh J. suggested for a Uniform Civil Code under Article 44 of the Indian Constitution.

### **Dissenting opinion**

Justice R.M. Sahai gave a dissenting view on this matter, he was of the opinion that the introduction of Uniform Civil Code dissatisfaction and disintegration amongst different religions. The Indian Constitution through Article 25 guarantees freedom of religion and imposing of Uniform Civil Code would lead to a violation of this right. Moreover, Uniform Civil Laws can only be used in a place where there is harmony between all religions and no religion feels threatened. He suggested to the Government to pass a Conversion of Religion Act in order to keep a check on the abuse of any religion. This act shall apply to all the citizens and will also forbid the conversion of religion in order to marry. There shall also be provisions for succession and maintenance in order to avoid conflict of interest between the heirs.

This case also widened the definition of the term “void” which had a narrow meaning in the Act. According to Section 494 of IPC the term void is used in a wider sense which implies that a marriage which is in violation of any provisions under any Law would be void in terms of expression under this Section<sup>16</sup>. A Hindu Marriage solemnized under the Act can only be dissolved according to the provisions mentioned in that Act. And none of the spouses can contract a second marriage. Conversion to Islam would not by itself dissolve the Hindu Marriage under this Act. Therefore, this second marriage by a convert would be void in terms of Section 494 and also would be a violation of the terms mentioned in the Act. Any act which is in violation of mandatory provisions of law is per se void.

Thus, based on the above reasoning the court in this case held that conversion for the sake of another marriage makes the second marriage void when the previous marriage is still subsisting.

## **VII. COMMENTARY**

Bigamy has been practiced from several years and has a very huge history when the Kings used to marry in order to conquer a territory or a region. But during those times there were

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<sup>14</sup> *Mohammad Ahmed Khan v. Shah Bano Begum*. (1985) (3) SCR 844

<sup>15</sup> *Jordan Deingdeh v. S.S. Chopra* (1985) AIR 935

<sup>16</sup> Kumar Virendra, *Towards a Uniform Civil Code: Judicial Vicissitudes [from Sarla Mudgal (1995) to Lily Thomas (2000)]*, Vol. 42, Journal of the Indian Law Institute(2000)

no codification of laws as such. As the times have now changed we have a set of laws there can always be conflict between the personal laws and rights that are guaranteed under the Constitution of India. This was a case where there was conflict between the right to freedom of religion and conversion for the sake of bigamy. Conversion to Islam merely for the sake of marrying another woman would give a ground for divorce under the Hindu Marriage Act, 1955 and a Hindu who has married according to those terms must also dissolve the marriage according to those rules and regulations. Just a second valid marriage would not serve as sufficient proof for dissolving the previous marriage.

This judgement by the Supreme Court was indeed a remarkable one as it paved way for Uniform Civil Code that should be used in order to administer justice effectively, result of this would be that the Hindu Law and the Muslim Law would operate separately without trespassing into each other<sup>17</sup>. It also widened the definition of the term “void” under Section 494 of Indian Penal Code, 1860. This judgement also gave a positive view on the fact that since India is a secular country and unless we do not have a Uniform Civil Code that governs all the religions there will always be conflicts that can hamper the unity and integrity of the state. This landmark case also protected the position of women as they were in a way being exploited by their spouses. It also served as a landmark precedent for Constitutional, Personal and Criminal laws.

To conclude bigamy as practice itself goes against the rights guaranteed under the Indian Constitution and the practice of this must be curtailed. There is also a need to solve the conflict between the personal laws and the rights guaranteed under the Constitution. The addition of the Uniform Civil Code would be the right step the legislature could take in order to achieve secularism.

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<sup>17</sup> Case Brief: Smt. Sarla Mudgal v Union of India & Ors - LawBhoomi  
<https://lawbhoomi.com/case-brief-smt-sarla-mudgal-president-kalyani-ors-v-union-of-india-ors/>