

# THE PLIGHT OF A SECOND WIFE: A CASE STUDY

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## INTRODUCTION

Bigamous and polygamous marriages have not been given statutory recognition under the personal laws of different communities<sup>1</sup> with exception of Muslims. Section 5 lays down the conditions for a valid marriage; Section 5(i) is relevant for the present study which states that 'neither party has a spouse living at the time of marriage.' The expression, 'spouse living' here needs to be understood as the legally wedded spouse in the eyes of the law. Section 11 of the Hindu Marriage Act clearly says that a marriage solemnized in contravention of Clause (i) of Section 5 would be void *ab initio*. Thus, the issue pertinent for the present study is, whether a married woman whose marriage is void or defective is entitled to maintenance or not? We shall look into the present legal regime as well as study various judicial decisions in order to find out the status of the second wife, both under the civil and criminal law.

## MAINTENANCE UNDER THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

As per Sastric Hindu Law, it was the duty of the husband to provide food, clothes and shelter to his wife and fulfill her necessities during their marriage<sup>2</sup>. However, after the codification of Hindu law relating to maintenance and marriage, a Hindu male is under the legal obligation to maintain his spouse and this obligation is personal arising out of the very nature of the relationship that exists between them. An inclusive definition of 'maintenance' is found under Section 3 (b) (i) of the Hindu Adoptions and Maintenance Act, 1956, according to which maintenance includes, in all cases, provision for food, clothing, residence, education and medical attendance and treatment. Section 18(2)(d) sets out the grounds upon which a married woman shall be entitled to live separately from her husband without forfeiting her claim to maintenance if he has another wife living.

## MAINTENANCE UNDER THE HINDU MARRIAGE ACT, 1955

The Hindu Marriages Act, 1955 deals with the procedural aspects of the claim of

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1. Kusum, *Family Law Lectures, Family Law I*, (New Delhi: Lexis Nexis Butterworths, 2003), pp. 3-7. Also see 'Section 18 & 19 of the Parsi Marriage and Divorced Act, 1936; Section 4 (a) read with S.24 of the Special Marriage Act, 1954 and Indian Christian Marriage Act, 1872 Section 60, Indian Divorce Act, 1869 Sections 18 & 19

maintenance by a married woman who is a respondent in matrimonial proceedings during pendency of such litigation under Section 24 and permanent alimony and maintenance under Section 25<sup>3</sup>. An order for permanent alimony and maintenance under section 25 may be made when any decree granting substantive relief is passed.

### **MAINTENANCE UNDER THE CRIMINAL PROCEDURE CODE, 1973**

Apart from personal laws, the Code of Criminal Procedure also provides for maintenance of wives, irrespective of religion. This relief is available whether or not any matrimonial proceedings are pending. Section 125 of the Code mentions that maintenance shall be granted to a 'legally wedded wife' only. In another capacity, namely as a divorced wife, she is entitled to claim maintenance from the person to whom she was married.<sup>4</sup>

According to the Explanation to Section 125 of the Criminal Procedure Code, 'wife' includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried. However, the second wife is disentitled from receiving maintenance from her husband as the laws declare second marriage to be null and void. Marriage between the parties thus plays an integral part in deciding the question of maintenance. The right of maintenance is based upon the existence of marital relations and her right terminates on remarriage.

### **MAINTENANCE TO THE SECOND WIFE: JUDICIAL DICTA**

The issue of maintenance of a second wife has in fact come up before different High Courts on several occasions. And courts have taken conflicting views depending on the facts and situation of each case and interpreting the expression "wife" under Section 125 either liberally or narrowly.

### **HIGH COURT CASES**

The question first came up before the Madras High Court in *Narayanaswami v. Padmanabhan*<sup>5</sup>, where the Court was of the view that Section 25 of the Hindu Marriage Act, 1955, cannot be construed in such a manner as to hold that notwithstanding the nullity of the marriage, wife retains her status for purposes of applying for alimony

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2. Vyas. N, "Right of maintenance and second wife's despondancy under Hindu Law", 2007 (2) Gujarat Law Herald 29.

3. Corresponding provisions under the personal Laws are Special Marriage Act, 1954, s.37, The Divorce Act 1869 Ss. 36, 37 & 38 as amended in 2001 Dissolution of Muslim Marriage Act, 1939, S.2(a) The Muslim Women (Protection of Rights on Divorce) Act, 1986, Section.4

4. *Rohtash Singh v. Ramendri*, 2000 Cr. L. J. 1498 (SC) as cited in Anil Zachariah, A SECOND WIFE IS ENTITLED TO MAINTENANCE OR NOT?, 2004 (2) KLT, p. 16.

5 *Narayanaswami v. Padmanabhan* AIR 1966 Mad. 394.

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and maintenance. According to the Court the proper construction of Section 25 would be that where a marriage is admittedly a nullity, that section will have no application. Thus, the Madras High Court took a conservative view on maintenance to a wife whose second marriage is in contravention with the provisions of Section 5(i) read with clause (2) of Section 5 and Section 11 of the Hindu Marriage Act, 1955.

However, the Madhya Pradesh High Court and Bombay High Court made a bold attempt and took a broad and different view. In *Laxmi Bai v. Ayodhya Prasad*<sup>6</sup>, the Madhya Pradesh High Court held that the expression 'wife' or the 'husband' used in Section 24 of the Hindu Marriage Act does not have to be literally construed so as to convey only legally wedded wife and husband but construed liberally to mean petitioner or respondent claiming to be wife or husband in a pending matrimonial case. The expression "wife and husband" in the context of the section and scheme of the Act should mean a "person claiming to be a wife and husband." It was held that the Act confers wide powers on the matrimonial Courts so as to regulate the matrimonial relationship between the parties and such powers are to be exercised by the Court even in a case of alleged or proved invalid bigamous marriage.

A similar view was taken by the Bombay, Punjab, Patna, and Madras High Courts.<sup>7</sup> However, in the year 2004 the Full Bench of the Bombay High Court overruled its earlier decision in *Bhausahab v. Leelabai*<sup>8</sup> and held that the expression "any decree" in Section 25 of the Hindu Marriage Act, 1955 cannot be construed to read in so liberal and expanded a form that it would interpret "every decree". Section 25 though a welfare legislation does not have a distinct tilt in favour of the woman so as to enable even an "illegitimate wife" to claim maintenance. The Court further observed that if the construction of word "wife" is not accepted uniformly, for the purpose of same remedy provided in a special legislation i.e., Section 125 of Criminal Procedure Code, an anomalous position may occur. A woman who has been denied maintenance in a petition under Section 125 of Criminal Procedure Code for the reason that she is not a "legally wedded wife" would successfully pray and obtain permanent alimony in total disregard of earlier judicial pronouncements.

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6 *Laxmi Bai v. Ayodhya Prasad* AIR 1991 MP 47.

7 *Govindrao Ranaji v. Ayodhya Prasav. Ayodhya Prasad* AIR 1976 Bom. 433; *Singh v. Bhajan Kaur* AIR 1973 punj.44; *Rajeshbhai v. Shantabai* AIR 1982 Bom; *Rajeshbhai v. Shantabai* AIR 1982 Bom; *Shantaram v. Dagybau* AIR 1987 Bom.182; *Mangla v. Prahlad* 1994 Cr.LJ 2643, 2644 Bom; *Krishankant Vyas v. Reena* AIR 1999 Bom. 127; *Veena Devi v. Ashok Kumar Mandal* 2000 Cr LJ 2332(Pat.); *Mallika v. P. Kundanlal* Cri. LJ 2000 142 (Mad).

8 *Bhausahab v. Leelabai* AIR 2004 Bom. 283.

However, in January 2008, the Delhi High Court in *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla*<sup>9</sup> again took a different view that a second wife has the right to claim maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956. The legislature has carved out a distinction between a 'second wife' and a 'concubine'. In this case, the husband had not discussed the facts of his first marriage, and then married the appellant and maintained a relationship for a period of 14 years as husband and wife. The second wife was known as a lawfully wedded wife, took responsibility for the house and bore two children.

The Court also took support from the provisions of the Protection of Women from Domestic Violence Act, 2005 and held that if to not give maintenance to the second wife would amount to giving a premium to the respondent for defrauding the appellant.

The Court referred to *Reema Aggarwal v. Anunpan*<sup>10</sup>, a case of dowry death. The Apex Court pressed into service the mischief rule and purposive interpretation to hold that for the purpose for which section 498-A and 304-B were introduced by the legislature in the Indian Penal Code, the Court can read a male entering into second matrimonial alliance, as 'husband' why, for the purpose of granting maintenance to a woman under Section 18 of the Act, can the second wife be not treated as a 'Hindu wife' in the absence of the definition of 'Hindu wife' specifically excluding second wife. Even if it is presumed that appellant could not be treated as 'Hindu wife' since she is not the legally wedded wife of the respondent, such a wife is entitled to a lump sum amount in the form of damages or otherwise.

On 3.3.2008, a Division Bench of the Bombay High Court<sup>11</sup> held that the second wife has no claim over the family pension of a government employee as per Rule 21 of Central Civil Services (Conduct) Rules which bars a government employee from entering into a second marriage when his or her spouse is still alive. The petition was filed by Leelabai Bagade, who claimed to be the second wife of Vithal Bagade. The husband had died in 2000, followed by the first wife Lakshmi in 2002. Leelabai then applied for a family pension and the government rejected her plea. The Central Administrative Tribunal too, dismissed her application and she approached the High Court. The Judges referred to the Supreme Court decision of *Rameshwari Devi v. State of Bihar* (2000) where it was held that while minor children from a second marriage could claim a share of family pension till they turned adult, the second wife was not entitled to it.

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9. *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla* AIR 2008 Del. 7

10. *Reema Aggarwal v. Anunpan* AIR 2004 SC 1418

11. *Shibu Thomas, 2nd Wife has no claim on family pension-HC* : TOI, 3.3 2008, p. 1.

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But on 9.4.2008, a Division Bench of the Delhi High Court<sup>12</sup> held that the law protects not only a man's wife but also a "mistress" or live-in partner, thus, expanding the ambit of the new law on Protection of Women from Domestic Violence Act, 2005. The Division Bench passed the judgment on a petition filed by a man for quashing criminal proceeding against him on a complaint filed by his live-in partner.. Rejecting this, the Court held that:

"Like treatment to both (wives and mistress) does not, in any manner derogate from the sanctity of marriage since an assumption can fairly be drawn that in a live-in relationship with a man it could be fairly assumed that the relationship was initiated and perpetuated by a male."

The Bench said that in dealing with such cases: "the Court should also not be impervious to the social stigma which always sticks to women and not to the men."

The Court also said that "it is not unconstitutional for the parliament to provide for protection to a woman in a relationship akin to marriage along with and juxtaposed to the protection given to wives and legitimate children."

### **SUPREME COURT CASES**

There have been unfortunate situations where a woman has been defrauded by a man into a bigamous relationship and has had to suffer. Her status being that of an illegitimate wife, she is not entitled to claim maintenance. In view of the Supreme Court rulings in *Yamunabai v. Anantrao*<sup>13</sup> and *Bakulbai v. Gangaram*<sup>14</sup> this is the settled law. The Supreme Court in these cases held that a wife whose marriage is void because of the subsistence of the husband's marriage could not claim maintenance. In *Bakulbai's* case the Court went further still and held that such a wife has no claim even if she is kept in dark by the husband about his first marriage. According to the Court while the legislature has considered it advisable to uphold legitimacy and paternity of the child born out of the void marriage it has not extended a similar protection in respect of the mother of the child.

In order to lend efficacy to the provisions of Section 125 of the Criminal Procedure Code, a presumption has been engrafted through judicial construction. If the claimant proceeding under this section shows that she and the respondent have lived together as husband and wife, the Court may presume that they are a legally wedded couple for the purpose of granting maintenance. This presumption of valid marriage, however, is rebuttable, if respondent is able to prove by adducing cogent evidence

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12. Mistress or Wife , Law protects every one –Metro Now, 9. 4. 2008, p.10

13. *Yamunabai v. Anantrao* AIR 1988 SC 644

14. *Bakulbai v. Gangaram* 1988(1) SCALE 188

that the so-called valid marriage is in fact a void marriage and thus no relief can be given under Section 125.

So is the case of *Rameshwari Devi v. State of Bihar*<sup>15</sup>, where the dispute was over the payment of family pension and death-cum-retirement gratuity to two wives of Narain Lal, who died in 1987 while posted as Managing Director, Rural Development Authority of the State of Bihar. Appellant was the first wife. Narain Lal was stated to have married second time with Yogmaya Devi on April 10, 1963 while the appellant was still alive. From the first marriage he had one son and from the second marriage four sons born in 1964, 1971, 1972 and 1976. The learned single judge in his judgment held that children born to Narain Lal from the wedlock with Yogmaya Devi were entitled to share the family pension and death-cum-retirement gratuity and further that family pension would be admissible to the minor children only till they attained majority. He also held that the second wife Yogmaya Devi was not entitled to anything. Appeal by the first wife Rameshwari Devi against the judgment was dismissed by the Division Bench. According to her there was no marriage between Narain Lal and Yogmaya Devi and the children were, therefore, not legitimate. Aggrieved Rameshwari Devi came to the Supreme Court.

The stand of the State Government was that Rameshwari Devi was the “legally wedded” wife of Narain Lal. He married Yogmaya Devi in April, 1963 and that the marriage with Yogmaya Devi was against the provisions of law as contained in Sections 5(i) and 11 of the Hindu Marriage Act, 1955. It was, therefore, a void marriage. Second wife had thus no status and could not claim any share from the estate of Narain Lal as per the provisions of Hindu Succession Act, 1956. Accordingly State Government sanctioned family pension and gratuity to Rameshwari Devi only.

In appeal before the Supreme Court, the crucial question for consideration was whether the term ‘wife’ in Section 125, Cr PC includes also the appellant – a woman whose marriage was solemnized with the respondent without her knowing that he was already married. Arijit Pasayat J of the Supreme Court, by expressly relying upon the earlier decision of the Apex Court in *Smt. Yamunabai Anant Rao Adhav v. Anant Rao Shivram*,<sup>16</sup> reiterated the principle that in order to invoke the benefit of Section 125 Criminal Procedure Code, a ‘wife’ has to be a “legally wedded wife.” Accordingly, if a woman marries with full Hindu rites a man who already has a living spouse, her marriage with that man is “a complete nullity in the eye of law and she is, therefore, not entitled to the benefit of Section 125 of the Code, or the Hindu Marriage Act, 1955”.

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15. *Rameshwari Devi v. State of Bihar* AIR 2000 735. See also in Supreme Court cases *Mohd. Ikram Hussain v. UP*, *Raj Kumar Kanwal v. UOI* and *K. Vimla v. K. Veerswamy*.

16. *Smt. Yamunabai Anant Rao Adhav v. Anant Rao Shivram* AIR 1988 SC 644.

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In *Savitaben Somabhai Bhatya v. State of Gujarat*<sup>17</sup>, the appellant claimed to have married respondent no. 2 according to the customary rites and ceremonies of their caste. Subsequently, a child was born out of this union. As the respondent neglected the appellant and the child, an application in terms of Section 125, Criminal Procedure Code was filed before the judicial magistrate claiming maintenance. The respondent opposed the application by stating that the appellant was not his 'legally wedded' wife, nor was the child his. Notwithstanding this plea, the judicial magistrate awarded maintenance. However, the respondent husband in special criminal appeal before Gujarat High Court succeeded in setting aside the maintenance order on the plea that before the alleged date of marriage between the appellant and respondent no. 2, the latter was already married. Thus, maintenance was granted only to the child.

Pursuing the principle laid down in *Smt. Yamunabai Anantrao Adhav* Case, the Supreme Court in *Savitaben's* case went further to the extent of observing that the fact that the respondent was treating the appellant as his wife "is really inconsequential," because "it is the intention of the legislature which is relevant and not the attitude of the party." Further, even the plea that the appellant was not informed about the respondent's earlier marriage when she married him is of "no avail", because "the principle of estoppel cannot be pressed into service to defeat the provision of Section 125 of the Code." Hence she is not entitled to the benefit of Section 125. In this respect, however, the Supreme Court seems to sympathize with the appellant by agreeing with her that the law operates harshly against the woman who unwittingly gets into a relationship with a married man. Thus, in the opinion of the court, as per the present provisions of Section 125, there is no escape from the conclusion that the expression 'wife' refers to 'legally wedded wife'.<sup>18</sup>

In view of the above Supreme Court decisions, in *Yamunabai, Rameshwari Devi* and *Savitaben's* cases, this is now the settled law that the second wife is not entitled to claim maintenance. However, there have been cases where the Supreme Court has taken a liberal view on the question of the standard of proof required in proceedings for claim of maintenance, for example in *Dwarika Prasad Satpathy v. Bidut Prava Dixit*<sup>19</sup>.

In *Ramesh Chandra v. V. R. Daga*<sup>20</sup> the Supreme Court held that strict proof of performance of essential rites is not required. It further tried to distinguish between the legality and the morality of relationships. It observed that keeping in consideration the present state of statutory Hindu law, a bigamous marriage may be declared

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17. *Savitaben Somabhai Bhatya v. State of Gujarat* AIR 2005 SC 1809.

18. *Ibid* p. 1811.

19. *Dwarika Prasad Satpathy v. Bidut Prava Dixit* 2000 Cr. LJ 1 SC.

20. *Ramesh Chandra v. V. R. Daga* AIR 2005 p.441

illegal for contravention of the provisions of the Act but cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependent.

The Supreme Court in its recent judgment of 22<sup>nd</sup> January, 2008 in the case of *Vidyadhari v. Sukharana Bai*<sup>21</sup> has given partial relief to a second wife who had been duped into bigamous relationship, without deciding as to her status. In this case, Sukharana Bai was the wife of Sheetaldeen. During the subsistence of the first marriage Sheetaldeen got married to Vidyadhari, who had four children out of wedlock and lived with him for about twenty-five years. The deceased Shetaldeen had nominated Vidyadhari for receiving amounts under provident funds and the family pension plan. The major issue raised in this case was, to whom was the succession certificate to be granted. The Court though acknowledging Sukharana Bai as the only legitimate wife of the deceased, yet granted the certificate in favour of Vidyadhari on the ground of being the nominee of his property and the mother of four children. To balance equities the Court also recognized Sukharana Bai as one of the legal heirs of the deceased and ordered Vidyadhari to protect her one - fifth share and to pay the same to her.

## **CONCLUSION AND SUGGESTIONS**

Until now the maintenance of a woman marrying a male Hindu during the subsistence of his first marriage is the moot question that has been debated and confronted by various jurists, lawyers, judges of both the High Courts and the Supreme Court, social workers and other fora. The legislature considered it necessary to include within the scope of Section 16 of Hindu Marriage Act and Section 125 of Cr. P.C. an illegitimate child for maintenance but it has not done so with respect to a woman not legally married. As such it is desirable to take note of the plight of the unfortunate woman who unwittingly enters into wedlock with a married man and gets no monetary benefit. The legislative intent being clearly reflected in Section 125 of the Code, there is no scope for enlarging it by introducing any artificial definition to include a woman not lawfully married in the expression 'wife'. This inadequacy in law can be corrected only by the legislature.

In this regard, it is pertinent to note the recommendations of the 178<sup>th</sup> Report<sup>22</sup> of the Law Commission of India, suggesting amendments in Section 125 of Cr. P.C and Section 18 of the Hindu Adoptions and Maintenance Act, 1956, towards maintenance to the second wife.

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21 Civil appeal no. 575 of 2008.

22. 178th Report on Recommendations for amending various Enactments, both Civil and Criminal, December, 2001(Web site [www.lawcommissionofindia.nic.in](http://www.lawcommissionofindia.nic.in))



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We learnt from the above discussions that the High Courts gave conflicting decisions over the issue of maintenance to a second wife. In particular, the recent judgment of a Division Bench of the Delhi High Court, in *Narinder Pal Kaur Chawla's* case (2008) gave a purposive interpretation to "wife", thus granting maintenance to a second wife. But the law as of date clearly states that marriage with a second 'wife' during the lifetime of the first is a void marriage and the wife of a void marriage is not entitled to maintenance.

The question that arises for consideration is whether the husband can take advantage of his own wrong by not disclosing to the second wife the factum of his first marriage, and hence can it be said that the legislature which was conscious of the social stigma attached to children of void/voidable marriages closed its eyes to the plight of a woman who, unknowing of the legal consequences, entered into a matrimonial relationship. If such a restricted meaning is given, it would not further the legislative intent. When legal terms are inadequate and lead to loose ends and unfair treatment, the court can rely on its inherent power to do justice by giving remedial and salutary reliefs like payment damages in the form of maintenance to the second wife.