

Monogamy under Hindu Marriage Act, 1955

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Section 5 (1) of the Hindu Marriage Act, 1955 provides the rule of monogamy and prohibits polygamy and polyandry. Before this Act, Hindu could marry any number of wives, even if he had a wife or wives living.¹ But Hindu Marriage Act, 1955 abolished polygamy. In *M.M.Malhotra v. Union of India*,² the Supreme Court held that bigamous marriages are void. Bigamy is an offence after the enactment of HMA, 1955. Sec. 17 of Hindu Marriage Act read with Sec. 494 and 495 of Indian Penal Code, 1860 provides the wife or husband punishment for committing the offence of bigamy.³

The Supreme Court held that the marriage becomes null and void where it is in violation of the first condition of Section 5 (1). It becomes void ab initio and ipso facto. The court also made it clear that wife in a void marriage cannot claim maintenance under section 125 of the Cr.P.C.⁴

Constitutionality of monogamy:

In *Sambireddy v. Jayamma*,⁵ it was argued that this provision prohibits only Hindus from having more than one wife, whereas under the Muslim Law a man can have four wives at the same time. This restriction therefore discriminates against Hindus on the ground of religion only and thus violates the right to equality guaranteed under Article 15 (1) of the Indian Constitution. The court held that 'discrimination' means 'to make adverse distinction with regard to, to distinguish unfavourably from others'. The condition of monogamy is a measure of social reform. It is in the interest of the Hindu society and not against it. As it does not differentiate against the Hindu it does not violate Article 15 (1). Moreover, Christians, Parsis, Jews etc. also have the rule of monogamy. In *Haisnam Barunition Singh v. Thokchom Ningol Haisnam Ongbi Bhani Devi*,⁶ the

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¹ *Viraswami v. Appaswami*, (1863) 1 Mad HC 375.

² (2005) 8 SCC 351; *Ranjit Kumar Bhattacharyya v. Sabita Bhattacharyya*, AIR 1996 Cal 301.

³ *Ramesh Chandra Rampratapji Daga v. Rameshwari Ramesh Chandra Daga*, (2005) 2 SCC33.

⁴ *Smt. Yamunabai Anant Rao Adhar v. Anant Rao Thiraram Adhar*, AIR 1988 SC 644

⁵ AIR 1972 AP 156

⁶ AIR 1959 Mani 20

court held that this condition does not go against Article 14 of the Constitution, which guarantees the right to equality. Article 14 does not mean that all laws should be applied to all the persons. The State may decide to bring about a social reform in phases taking into consideration the differences of regions and communities.

Violation of Section 5 (i)

Marriages solemnized in contravention of this condition are of two consequences:

1. Under Section 17 of this Act, marriage will be void ab initio.
2. Under Section 494 and 495 of Indian Penal Code shall apply which made it punishable offence.