
BHAURAO SHANKAR LOKHANDE V. STATE OF MAHARASHTRA (AIR 1965 1364)

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INTRODUCTION

In the landmark Judgement of Bhaurao Shankar Lokhande vs. State of Maharashtra AIR 1965 1364 where the court discussed about the customary rites and traditions that are needed to be completed in a marital union for a marriage to be considered as valid. This case involved bigamy where the validity of second marriage was questioned due to non-performance of the customs and traditions which are essential for Hindu marriage to be considered as valid as defined under the Section 5 & 7 of the Hindu marriage act, 1955.

Marriage is considered as a holy and social institution in India, where not only the husband and wife gets involved but their families as well as society in some way gets influenced by this union and the notion of getting married should be comprehended from all individuals in society. Different religions have different customs and traditions with regard to marriage. In Muslim marriages, there is clear representation and custom of signing a contract at the time of marriage, whereas in, Hindu marriages there is no requirement of signing a contract for a marriage to be valid. A Hindu Marriage include many traditions and customs that has been going on from the time immemorial and became the norm or the ground on which the fulfillment of these rituals and customs is considered for a marriage to be valid. One such tradition is *saptapadi* (where the bride and the bridegroom take seven steps together before the sacred fire). There are certain exceptions to this where a particular group of people might have different rites and traditions as per their beliefs, they are also considered valid traditions for a marriage to be solemnized and cohered.¹ But there are some pre conditions that need to be satisfied such as those traditions and rituals should be practiced from ancient times and should not be against

¹ Jus Corpus, Jus Corpus / About Author More posts by JusCorpus and JusCorpus, M. posts by (2022) *Customary rights and ceremonies: Probing the loopholes of customs in a Hindu marriage*, Jus Corpus. Available at: <https://www.juscorpus.com/customary-rights-and-ceremonies-probing-the-loopholes-of-customs-in-a-hindu-marriage/> (Accessed: March 2, 2023).

the contemporary laws, public policy or morality. In case, these ceremonies are not performed then that marriage is considered to be null and void.

The question of second marriage was of interest in this particular case as to determine whether the performance of these traditions and customs have been duly performed with regard to law. Section 7 of Hindu Marriage Act, 1955 stated that a Hindu Marriage must be solemnized according to the rites and ceremonies of either of the parties. Further mentioning the ceremonies such as *saptapadi* where seven steps is taken together in front of the holy fire and at the end of the seventh step the marriage becomes complete and binding. ²We will further discuss the facts, issues and every aspect of this case in this case note

FACTS OF THE CASE

APPELLANT: Bhaurao Shankar Lokhande

RESPONDENT: State of Maharashtra

CITATION: AIR 1965 1364, AIR 1965 SCR (2) 837

YEAR: 1965

BENCH: Dayal, Raghubar; Mudholkar, J.R; Ramaswami, V.

Bhaurao Shankar Lokhande, the appellant, was married to the complainant Indubai around 1956. Later in 1962, Bhaurao performed another marriage with a lady named Kamlabai, during the life time of Indubai. ³A Complaint was filed by Indubai regarding Bhaurao under Section 494 of Indian penal Code, 1960 which states that whoever having any husband or wife living marries again in any case will be considered void on the ground of it taking place during the lifetime of the husband or wife. It shall be punished with imprisonment of either term described which can extend up to 7 years and also be liable to fine.⁴ Further exception is described in the section where if the marriage is declared void by the court of competent jurisdiction, then such husband and wife will liable under this section to get married again. Also, not to any party where the husband or wife is living at the

² *The Hindu marriage act, 1955 arrangement of sections - highcourthd.gov.in* (no date). Available at: https://highcourthd.gov.in/hclsc/subpages/pdf_files/4.pdf (Accessed: March 2, 2023).

³ Ambade, A. (2020) *Case summary: Bhaurao Shankar Lokhande V state of Maharashtra, LawLex.Org*. Available at: <https://lawlex.org/lex-bulletin/case-summary-bhaurao-shankar-lokhande-v-state-of-maharashtra/25294> (Accessed: March 2, 2023).

⁴ *Indian penal Code* (no date). Available at: <https://legislative.gov.in/sites/default/files/A1860-45.pdf> (Accessed: March 2, 2023).

time but has been continually absent for the space of seven years, have not heard any information regarding the party that is absent whether he is dead or alive within the time period at the time of subsequent marriage. The person with whom such marriage is taking place should be well aware of the real state of facts at the time of marriage. He can also be held liable under the Section 17 of Hindu Marriage act of 1955 where punishment for bigamy is described that any two Hindus solemnized their marriage at the time of their husband or wife living, further sections 494 and 495 will apply accordingly. Indubai also charged Bhaurao brother's Deorao Shankar Lokhande and a barber who witnessed the marriage with 114 of Indian Penal code, 1960 which defines the punishment for the abettor who is present at the time of offence which states that if a person who is present at the time of offence punishable by law is being committed, then as consequence abetment is committed.⁵ The brother and barber were acquitted of the charge by the sessions judge. They further reached to high court for the revision of the case but it was further dismissed then through special leave petition then Supreme court looked into the case.

ISSUES RAISED

1. Where the appellant is guilty of the charges under Section 494 of Indian Penal Code of 1960?
2. Whether the second marriage was solemnized by appellant is valid or not?
3. Whether it was necessary for prosecution that the second marriage was duly performed as per the rites and traditions? ⁶

JUDGEMENT

After hearing the arguments from both the sides the court was of the view that the marriage between the appellant and Kamlabai cannot be considered as a valid or solemnized marriage because of the absence of customs and traditions that are essential for Hindu marriage to be considered as valid defined under the Section 17 of the Hindu marriage act, 1955. The ceremonies performed in their marriage failed to prove the ground that their ceremonies were

⁵ Sharma, I. (2021) *Bhaurao Shankar Lokhande v state of Maharashtra case summary 1965*, Law Planet - Legal News, Law Updates & Law Exams Preparation. Available at: <https://lawplanet.in/bhaurao-shankar-lokhande-v-state-of-maharashtra-case/> (Accessed: March 2, 2023).

⁶ Mansinghka, P. (2020) *Case study: Bhaurao Shankar Lokhande and ANR. v. State of Maharashtra and ANR.*, Legal Wires. Legal Wires. Available at: <https://legal-wires.com/case-study/case-study-bhaurao-shankar-lokhande-and-anr-v-state-of-maharashtra-and-anr/> (Accessed: March 2, 2023).

sufficient and still recognized by their community to be considered as valid marriage.⁷ Even though there are some ceremonies that are distinct from the defined ones because of the diversity of the population residing in India. There are some ancient customs and rituals that are still followed by the people and to accommodate and consider the needs of the people, the customs that does not go against the law, public policy and morality is recognized within India.⁸ If things are done in accordance with those recognized traditions, then the actions gain validity. But in our case this ground was not fulfilled. The tradition that they followed might be thousand years old but it's no more practiced in India and does not go in parallel with the contemporary times. The court held that the second marriage is an invalid marriage and an invalid marriage is no marriage in the eyes of law, thus the charges imposed by Indubai cannot be contested even though the second marriage took place at the time of her living but the second marriage was inconsistent and section 494 will not be applicable in this case also if no solemnization has taken place, then it does fulfill the essential ingredient defined in section 17.⁹

ANALYSIS

The diversity of India follows with the diversity in traditions, customs and rituals that are present in the society with respect to the various communities present in the society.¹⁰ In the concerned case, Bhaurao married Kamlabai in the form of Gandharva marriage which is recognized and was prevalent in Maharashtra. In earlier times, there were 8 different kind of marriages that were recognized which were: Brahma, Daiva, Arsha, Prajapatya, Asura, Rakshasa, Gandharva and Paisacha marriages.¹¹ Gandharva Marriage is one of the marriages which somewhat resemble to current live in relationships. In this type of marriage women select their own spouse. According to the ancient Hindu discourse Apastamba Grhyasutra, Gandharva marriage is a method of marriage wherein the woman chooses her own husband. They meet on their own with approval to reside together, and consummate their cooperation during

⁷ *Sample - Hindu marriage act case law* (no date) *Delhi Law Academy*. Available at: <https://www.delhilawacademy.com/sample-hindu-marriage-act-case-law/> (Accessed: March 2, 2023).

⁸ *Bhaurao Shankar Lokhande v. state of Maharashtra - (1965) 2 SCR 837: AIR 1965 SC 1564* (no date) *Studocu*. Available at: <https://www.studocu.com/in/document/amity-university/law-of-contract/bhaurao-shankar-lokhande-v-state-of-maharashtra/36350292> (Accessed: March 2, 2023).

⁹ *At Indore before - live law* (no date). Available at: https://www.livelaw.in/pdf_upload/kailash-vs-gordhan-and-others-criminal-appeal-no958-of-1998-mp-hc-425892.pdf (Accessed: March 2, 2023).

¹⁰ *Hindu marriage is a contract or a religious sacrament?* (No date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-5879-hindu-marriage-is-a-contract-or-a-religious-sacrament-.html> (Accessed: March 2, 2023).

¹¹ *Dynamics of marriage and family* (no date) *Dynamics of Marriage and Family: Ancient forms*. Available at: <http://ecoursesonline.iasri.res.in/mod/page/view.php?id=104537> (Accessed: March 2, 2023).

copulation caused of passion.¹² This type of marriage is does not require parents blessings or consent. It is also known as love marriage. In Gandharva Marriage, there are some essential ceremonies that are needed to be satisfied. These marriages have been mentioned in the Vedas. During the rig Vedic time, this was the norm where marriages were taking place in the form of Gandharva. From the above fact we can say that, this form of marriage has been going on from the ancient times and satisfying the ground that the custom should be memorial.¹³ Thus, the marriage between the Kamlabai and Bhaurao should be considered valid as it is according to the customs of ancient times and was not against any law, public policy or morality. Therefore, Bhaurao can be charged for bigamy under Section 17 of Hindu Marriage Act, 1955 and Section 494 of Indian Penal code, 1960 should be punished accordingly.

In general sense, the essential ceremonies that are required to be fulfilled for a marriage to be considered as valid are:- The invocation before the sacred fire, saptapadi and kanyadan. A marriage will be considered as valid only if these three customs are performed at the time of ceremony but an exception to this rule is if a tribe or group of people have a tradition regarding marriage that they have been following for a long period of time and is not against any law, public policy or morality of any individual involved then those customs and traditions can be recognized as ground for a marriage to be considered as valid under section 7 of Hindu Marriage act.¹⁴ There are many such traditions for example even though Sikh marriages are accounted under Hindu Marriage act, 1955 but their ritual ceremonies regarding marriage is very different from the Hindu traditions such as four pheras are done in the presence of guru grant sahib with the chanting of the holy mantras.¹⁵ There are still marriages in the Hindu society where there is no formal commencement or performance of Kanyadan has been seen as in contemporary times it has been a topic of debate that women should not be treated like things where they can be transferred or possessed. So, with changing times many customs and rituals have changed to keep up with the contemporary times. South Indian weddings do not

¹² M.L. (2022) *Bhaurao Shankar Lokhande v. state of Maharashtra*, *My Legal Partner*. Available at: <https://mylegalpartner.wordpress.com/2018/05/23/bhaurao-shankar-lokhande-v-state-of-maharashtra/> (Accessed: March 2, 2023).

¹³ *8 traditional forms of Hindu marriage in India* (2015) *Your Article Library*. Available at: <https://www.yourarticlelibrary.com/marriage/8-traditional-forms-of-hindu-marriage-in-india/47455> (Accessed: March 2, 2023).

¹⁴ Aironline.in (no date) *Need to amend the sections 7 and 11 of the Hindu marriage acts, 1955*, *aironline.in*. Available at: <https://www.aironline.in/legal-articles/Need%20to%20Amend%20the%20Sections%207%20and%2011%20of%20the%20Hindu%20Marriage%20Act,%201955> (Accessed: March 2, 2023).

¹⁵ *Bhaurao Shankar Lokhande vs. State of Maharashtra* (2021) *Hein Online*. Available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals%2Fcalcut154&div=6&id=&page=> (Accessed: March 2, 2023).

follow the norm of saptapadi as well. They follow their own rituals and traditions according to which they become married in the eyes of the lord. Similar tradition goes on in Bengal. In *S. Nagalingam vs Sivagami* where it was held that the saptapadi essential for a marriage to be valid but where saptapadi has not been performed but other ceremonies have taken place with respect to the customs of both parties then such marriage will be held valid.¹⁶

In Santhal community as well, where just smearing of vermilion (*sindoor*) by a Santhal man and that would amount as marriage.¹⁷ In the case of *Namita Patnaik Mohanty v. Deelip K. Patnaik*, where an Oriya couple who married in compliance with the 'Bibah Bandhan agreement' The parties recognized that the wedding was registered. They resided as husband and wife, and when the complications were raised in their relationship, the husband rushed to court contending that the documentation of their marriage was compromised or false.¹⁸ The court in his judgement concluded that Clause 7 was satisfied with and that the husband consciously agreed the 'Bibah Bandhan agreement' He cannot challenge it. In *Ramadevi vs Ashok Vyas*, the court contended that there should be evidences regarding the ceremonies that are performed in a marriage.¹⁹ In our case the marriage took place after the commencement of the act and also at the time of second marriage the spouse from the former marriage was living. None of the exceptions would apply to this case as the as the spouse was neither absent for a long nor the court ordered anything regarding their separation.

There is a presumption regarding the solemnization of marriage where the burden of proof lies with the party who is challenging the marriage as it is considered very irrational by the parties marrying that they would not keep in mind the or purposefully enter into a void or invalid marriage.²⁰ Bhaurao did marry another female with the customs and traditions that they sought to be appropriate for their marriage. His intentions were clear from the beginning to bring another wife. His further actions of marrying Kamlabai forms a solid ground for Indubai to charge him with bigamy. A ceremony in Gandharva marriage where the father of the girl

¹⁶ Isha Sharma, *S Nagalingam v Sivagami Case Summary 2001 - Law Planet*, Legal News, Law Updates & Law Exams Preparation (Nov. 2, 2021), <https://lawplanet.in/s-nagalingam-v-sivagami-case-summary-2001/>.

¹⁷ Dr. Arti Aneja, *105 Family Law- I (2 files merged)*, (Feb. 6, 2023), https://lawfaculty.du.ac.in/files/LLB/LLBCM23/Ist%20Term_Family%20Law-%20I_LB105_2023.pdf.

¹⁸ *CauseListGenerate Report*, (Mar. 2, 2023), https://www.orissahighcourt.nic.in/uploads/cause_list/1677765382.pdf.

¹⁹ https://probono-india.in/Indian-Society/Paper/333_SANKALPITA%20PAL_B4_BHUNDA%20V%20CHETRAM_Symbiosis%20Law%20School,%20Pune.docx.

²⁰ (May 14, 2019), https://highcourtchd.gov.in/hclsc/subpages/pdf_files/4.pdf.

touches the forehead of the bride and the bridegroom.²¹ The statement of the witnesses regarding this issue that the ceremonies have been performed and those are the ceremonies and customs that were needed to be done for a valid marriage. The community should recognize the traditions and rituals if they are following their own rituals in the marriage. No organization, community, group of people or movement has the authority to change the rituals at will. In *Devyani Vs Chidambara*, an anti- purohit organization in Tamil Nadu made some simplified rites and rituals for marriage with objective to stop the prevalent Hindu ceremonies. The court held that no one has the authority to change or amend personal laws, even if such permission is provided to anyone than they have to bring a precarious doctrine regarding the object than only it will be considered. In this particular case, the court declared that the marriage performed in the instant case is void. ²²

Wherein, the essential elements for customs to be recognized even in today's time is their usage and its practice from the time immemorial. Not all traditions of earlier times are recognized and should be practiced. From the various forms of marriages only few are recognized. It was contended that the customary rites that are included in the Hindu marriage which include two ceremonies: - invocation of sacred fire and saptapadi. Prima facie (seeing this case) it is evident both of these ceremonies were not performed in the second marriage and as obvious if the marriage lacks these ceremonies, it is not considered a valid marriage and according to law this type of marriage is not even considered as marriage. Further, there was no evidence on record to establish that the performance of these two essential ceremonies has been abrogated by the custom prevalent in their community. The respondent failed to establish that the ceremonies that they performed in their marriage are valid. Those ceremonies were not recognized law. Thus, the second marriage was considered as invalid and the charges of bigamy were dropped against Bhaurao.²³

Earlier the ceremonies of Gandharva marriage required priest for chanting of mantras and with time essentials of that marriage were abandoned thus not form part of custom, as per the previous Gandharva marriage witnessed there was no performance of the mandatory rites mentioned in section 7 of the act but that doesn't establish that those ceremonies shall not be performed. Bigamy is considered as an offence in all religions except Muslim. It is an offence

²¹ *Live-in Relationship: An Indian Perspective*, <https://legalserviceindia.com/legal/article-9388-live-in-relationship-an-indian-perspective.html>.

²² https://gst.kar.nic.in/latestupdates/Central_Jurisdiction.pdf.

²³ <https://main.sci.gov.in/jonew/judis/3057.pdf>.

to marry another person if the wife or husband is living at the time of the subsequent marriage. According to Hindu Marriage act of section 7 it is essential for the parties to marry according to the ceremonies and traditions that are defined under the act for their marriage to be considered as valid one in eyes of law. But the ambit of these ceremonies and customs are in itself wide and extensive but shall be followed and recognized by the people of that community for it to be considered valid. Customs for one community might not be for the another. Even today there has been huge debate regarding this issue as Hindu marriages remain assorted and unaddressed in precise terms. Only because of the vagueness in the terms of the section as well as the exception that is provided creates a lot of conflicts in cases regarding this. Moving forward in today's time as earlier merely staying together and cohabiting in a particular case considering each other to be the husband and wife does not fulfill the ground of them being legally and officially married. But in "Badri Prasad Vs Deputy Director Consolidation," observation was made that *A strong presumption arises in Favor of wed-lock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favour of legitimacy and frowns upon bastardy.*" Same observation was made in "SPS Balasubramanian Vs Suruttayan", in which it was observed that where a man and a woman live together as husband and wife for long time, presumption under the law would be in favour of their being legally married to each other unless proved to the contrary.²⁴ Later in D. Velusamy and D. Patchaimal which laid down the conditions that needs to be fulfilled for it to considered in nature of marriage.

Religion is something very personal and sensitive issue, people are very possessive in protecting their culture. But changing times even rites and ceremonies of different religions has been changing tides. So, to accommodate all these diverse people in one country everybody's needs are to be taken in consideration so that nobody feels neglected and everybody's demand or needs are heard and paid attention to by keeping this provision open to interpretation and later to adjudged through precedence.

²⁴ <https://journals.sagepub.com/doi/10.1177/2631831820974585>