

This would go a long way to solve the problem and pave the way for a unified civil code.

[Case Brief] Smt. Sarla Mudgal, President, Kalyani & Ors. Vs. Union of India & Ors.

Case Name: Smt. Sarla Mudgal, President, Kalyani & Ors. Vs. Union of India & Ors.

Case Number: W.P.(C) No.-001079-001079 / 1989

Court: The Hon'ble Supreme Court

Bench: KULDIP SINGH (J) SAHAI, R.M. (J)

Decided on: 10/05/1995

Relevant Act/Sections: Section 11, 13 & 15 of Hindu Marriage Act

Section 494 of the Indian Penal Code

BRIEF FACTS AND PROCEDURAL HISTORY:

1. These were four petitions under Article 32 of the Constitution of India. There were two petitioners in Writ Petition 1079/89.
2. Petitioner 1 is the President of "KALYANI" - a registered society - which is an organisation working for the welfare of needy-families and women in distress.
3. Petitioner 2, Meena Mathur was married to Jitender Mathur on **February 27, 1978**. Three children (two sons and a daughter) were born out of the wed-lock. **In early 1988**, the petitioner to learned that her husband had solemnised second marriage with one Sunita Narula @ Fathima.
4. According to the petitioner, conversion of her husband to Islam was only for the purpose of marrying Sunita and circumventing the provisions of Section 494, IPC. Jitender Mathur asserted that having embraced Islam, he can have four wives irrespective of the fact that his first wife continues to be Hindu.

5. Sunita alias Fathima is the petitioner in Writ Petition 347 of 1990. She contended that she along with Jitender Mathur embraced Islam and thereafter got married. A son was born to her. She further stated that after marrying her, Jitender Prasad, under the influence of her first Hindu-wife, gave an undertaking on **April 28, 1988** that he had reverted back to Hinduism and had agreed to maintain his first wife and three children. Her grievance is that she continues to be Muslim, not being maintained by her husband and has no protection under either of the personal laws.
6. Geeta Rani, petitioner in Writ Petition 424 of 1992 was married to Pradeep Kumar according to Hindu rites on **November 13, 1988**. It is alleged in the petition that her husband used to maltreat her and beat her. **In December 1991**, the petitioner learnt that Pradeep Kumar ran away with one Deepa and after conversion to Islam married her. It is stated that the conversion to Islam was only for the purpose of facilitating the second marriage.
7. Sushmita Ghosh is a lady who is petitioner in Civil Writ Petition 509 of 1992. She was married to G.C. Ghosh according to Hindu rites on **May 10, 1984**. **On April 20, 1992**, the husband told her that as such she should agree to divorce by mutual consent. The petitioner wanted to live with him and as such the question of divorce did not arise. The husband finally told the petitioner that he had embraced Islam and would soon marry one Vinita Gupta. He had obtained a certificate dated **June 17, 1992** from the Qazi. In the writ petition, the petitioner has further prayed that her husband be restrained from entering into second marriage with Vinita Gupta.

ISSUE BEFORE THE COURT:

1. Whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnise second marriage?
2. Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continue to be Hindu?
3. Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?

RATIO OF THE COURT:

1. The court observed that till the time a uniform civil code is achieved for all the citizens of India, there is an open inducement to a Hindu husband, who wants to enter into a second marriage, while the first marriage is subsisting, to become a Muslim.
2. The bench observed The doctrine of indissolubility of marriage, under the traditional Hindu law, did not recognise that conversion would have the effect of dissolving a Hindu marriage. Conversion to another religion by one or both the Hindu spouses did not dissolve the marriage.
3. Since monogamy is the law for Hindus and the Muslim law permits as many as four wives in India, The doctrine of indissolubility of marriage, under the traditional Hindu law, did not recognise that conversion would have the effect of dissolving a Hindu marriage.
4. The court opined the following cases; **Ram Kumari 1891 Calcutta 246, Ram Kumari in Budansa vs. Fatima 1914 IC 697, Gul Mohammed v. Emperor AIR 1947 Nagpur 121** and observed that a marriage solemnised under a particular statute and according to personal law could not be dissolved according to another personal law, simply because one of the parties had changed his or her religion.
5. It was observed from the catena of case-law that a marriage celebrated under a particular personal law cannot be dissolved by the application of another personal law to which one of the spouses converts and the other refuses to do so. Where a marriage takes place under Hindu Law the parties acquire a status and certain rights by the marriage itself under the law governing the Hindu Marriage and if one of the parties is allowed to dissolve the marriage by adopting and enforcing a new personal law, it would tantamount to destroying the existing rights of the other spouse who continues to be Hindu.
6. The court held that the real reason for the voidness of the second marriage is the subsisting of the first marriage which is not dissolved even by the conversion of the husband. It would be giving a go-bye to the substance of the matter and acting against the spirit of the Statute if the second marriage of the convert is held to be legal.
7. It later added that a marriage solemnised, whether before or after the commencement of the Act, can only be dissolved by a decree of divorce on any of the grounds enumerated in Section 13 of the Act. One of the grounds under Section 13 (i) (ii) is that "the other party has ceased to be a Hindu by conversion to another religion".

8. A marriage performed under the Act cannot be dissolved except on the grounds available under section 13 of the Act. In that situation parties who have solemnised the marriage under the Act remain married even when the husband embraces Islam in pursuit of other wife. A second marriage by an apostate under the shelter of conversion to Islam would nevertheless be a marriage in violation of the provisions of the Act by which he would be continuing to be governed so far as his first marriage under the Act is concerned despite his conversion to Islam
9. The court observed that the expression "void" for the purpose of the Act has been defined under Section 11 of the Act. It has a limited meaning within the scope of the definition under the Section. On the other hand the same expression has a different purpose under Section 494, IPC and has to be given meaningful interpretation.
10. A Hindu marriage solemnised under the Act can only be dissolved on any of the grounds specified under the Act. Till the time a Hindu marriage is dissolved under the Act none of the spouses can contract second marriage. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Act. The second marriage by a convert would therefore be in violation of the Act and as such void in terms of Section 494, IPC. Any act which is in violation of mandatory provisions of law is per-se void.
11. The court also settled that a Hindu marriage solemnised under the Act can only be dissolved on any of the grounds specified under the Act. Till the time a Hindu marriage is dissolved under the Act none of the spouses can contract second marriage. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Act.
12. The second marriage by a convert would therefore be in violation of the Act and as such void in terms of Section 494, IPC. Any act which is in violation of mandatory provisions of law is per-se void. It later added that All the four ingredients of Section 494 IPC are satisfied in the case of a Hindu husband who marries for the second time after conversion to Islam. He has a wife living, he marries again. The said marriage is void by reason of its taking place during the life of the first wife.

DECISION HELD BY COURT:

1. The court requested the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavour to secure for the citizens a uniform civil code through the territory of India"
2. The court held that under the Hindu Personal Law as it existed prior to its codification in 1955, a Hindu marriage continued to subsist even after one of the spouses converted to Islam. There was no automatic dissolution of the marriage.
3. It also held that the second marriage of a Hindu husband after his conversion to Islam is a void marriage in terms of Section 494 IPC and the apostate-husband would be guilty of the offence under Section 494 IPC.
4. The court disposed the writ petitions.