AN ANALYTICAL COMPARATIVE EXAMINATION OF THE OFFENCE OF BIGAMY UNDER THE NIGERIAN AND INDIAN LAW

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DOI: 10.5281/zenodo.5793144

ABSTRACT

The paper undertakes an examination of the Comparative Family Law in juxtaposition with Comparative Criminal Law in the Nigerian and Indian legal systems particularly, on the family law of bigamy. This was with a view to understanding the concepts, nature and extent of enforcement of the law as well as provoking a symbiotic approach towards legal practice with regard to maintenance of the law on bigamous offences in these jurisdictions.

The study relied on primary and secondary sources of information. The primary comprised the major legislations creating the offence of bigamy and analogous offences in Nigeria which are the Criminal Code Act 2004, the Nigerian Penal Code Act 2004, the Matrimonial Causes Act 2004 and the Marriage Act 2004; compared with those of the India comprising of the Indian Penal Code 1860, the Hindu Marriage Act 1955, and other legislations particularly the Christian Marriage Act 1872; Parsi Marriage and Divorce Act 1936; Special Marriage Act 1954; and Foreign Marriage Act 1969 especially the aspect relating to bigamous offences. Other primary source relied upon were unstructured interviews, and judicial decisions. The secondary source included books, journal articles, blog publication, conference proceedings, newspapers and magazines as well as the internet. Data collected were subjected to content analysis.

The study found that adequate provisions of law are available, in the Nigerian and Indian family systems, for protection of statutory marriage against bigamy and bigamous related offences. It also found that, for certainty and stability, most couples patronise statutory marriage which is potentially monogamous, but, greed, covetousness and other socio-economic factors have always worked against this noble objective. The writers insist that an adoption of uniform civil code of personal laws is key to advancement of family law, in both legal systems.

Keywords: Marriage; Statutory Marriage (Monogamous Marriage); Customary Marriage (Polygamous Marriage) Bigamy and; Adultery

1.0 INTRODUCTION

Marriage is an institution universally recognised as the root of the family and the society.[i] Expectedly, it is a spousal union of a man and a woman to enable it deliver on its role of procreative productivity.[ii] A marriage could be contracted under either the monogamous or polygamous system. Of particular importance to our discourse, is monogamous marriage which has been construed in *Hyde v Hyde*[iii] as "the voluntary union for life of one man and one woman to the exclusion of all others". As a pure sacrament, particularly to the people who have imbibed the culture of an inseparable bond that joins two lives together into one till death parts them in their sojourn on earth, human laws have set in order, a prescription of pious conducts for preservation of the sanctity of this awesome union and relationship, from the sneaking and blatant approach of the enticing eyes. Considering the hazards to which promiscuity could put the society of men, rightly then, has Apostle Paul admonished the Corinthians church that:

> *Nevertheless, to avoid fornication, let every man have his own wife and let every woman have her own husband.*[iv]

Ontologically, bigamy occurs when either of the two spouses in a monogamous marriage is drawn away from the other, to contract another marriage with any other person while the wife or the husband is still living. It is this offence that shall presently, engage our attention, in this chapter. This work comparatively, in addition to the introductory, shall, among others, examine conceptualisation of term and definitions of keywords; legal framework for the offence of

bigamy and; the nature and rationale for bigamous and analogous offences. The study shall also appraise the prosecutorial proof and punishment for the offence of bigamy; the socio-legal impacts of the offence and conclusion, will proffer some recommendations.

2.0 CONCEPTUALISATION OF TERMS & DEFINITIONS

To avoid the risk associated with misuse of words, it is necessary to have the key words defined. Thus, words like marriage, monogamous marriage, polygamous marriage, bigamy and adultery will hereunder be conceptually defined.

i. Marriage—concept and type

The word marriage is defined by *Cambridge Advanced Learner's Dictionary*[v] as "a legally accepted relationship between two people in which they live together, or the official ceremony that resorts in this".[vi] A more loose and in varying degree, of definition for marriage is proffered by *Merriam-Webster Dictionary* as "a state of being united as spouses in a consensual and contractual relationship recognized by law; the mutual relations of married persons: wedlock; the institution whereby individuals are joined in marriage or the act of marrying or the rite by which the married status is effected especially the wedding ceremony and attendant festivities or formalities".[vii] Marriage is notably conceived by *Oxford Languages and Goggle* as "the legally and formally recognized union of two persons as partners in a personal relationship (historically and in some jurisdiction, specially a union between a man and a woman".[viii]

Ijalana and Agbana have critiqued the above definition as vague, incomprehensible and with less active force, as regards gender specificity which they claimed as capable of corrupting the African moral.[ix] This according to them is because:

> *Except the Oxford Languages and Goggle that uses, vaguely though, gender specificity howbeit inconceivably, most lexical definitions merely adopt species at the risk of gender. This is understandably so, considering the introduction and acceptance of same sex marriages (lawful and marriage*

> *consisting of two persons of the same sex) into the world's social order and its adoption makes stern rebuff against gender discrimination otherwise.*[x]

Eminent scholars' attempts at the definition and nature of marriage also assist in the conceptual definition of the term. To this end, Nwogugu in his treatise has conceived marriage as:

> *It [Marriage] is a universal institution which is recognised and respected, all over the word. As a social institution, marriage is founded on, and governed by the social and religious norms of the society. Consequently, the sanctity of marriage is a well-accepted principle in the world community. Marriage is the root of the family and of society.*[xi]

Ijalana and Agbana have suggested that the use of the phrase "the root of family and of the society" as used by Nwogugu above, connoted spousal union of a man and a woman, since the root of the family would expectedly be a procreative productivity.[xii] This understandably because marriage is universally accepted as a union of a man and woman, especially people of opposite sex. This informs while sex is a *sine qua non* to marriage relationship.

Equally instructive is the conception of the Hindu of India about marriage. To them, marriage is an important right of man and, actually, a sacred institution. Accordingly, the Hindu conceive marriage as:

> *A religious sacrament in which a man and woman are bond in a permanent relationship for the physical, social and spiritual need of dharma.*[xiii] *procreation and sexual pleasure.*[xiv]

Realising this awesome nature of marriage an Indian scholar submits that:

> *It is the relationship between husband and wife; according to Hinduism this sacrament is one of the most important sacraments out of sixteen sacraments in Hinduism. It is a sacred tie that cannot be broken. It is a relationship from birth to birth; it is a bond which continue after rebirth and death. According to Veda*[xv] *a man is incomplete until he gets marry and meets with his partners.*[xvi]

Nigerian, by virtue of their religion, having a similar conception with the Hindu, see marriage, as the root of the family and the society. Thus, under the Nigerian and Indian legal systems, laws are made to protect the sanctity of marriage and punish its breach.[xvii]

Consequently, attempting the legal characteristics of marriage in its universality, Nwogugu rightly posits that:

> *Marriage is a contract whereby the parties enter into legal relations involving rights and obligations. This statement is true of both the monogamous and the polygamous systems of marriage. But the contractual aspects of the two systems differ in material respects. In monogamous marriages, the contractual elements are fully developed on the line of English law of contract. But in customary law marriages, the applicable rules are undeveloped and uncertain because the customary law has no developed or precise rules governing contractual relations.*[xviii]

ii. Monogamous marriage

Monogamous marriage otherwise called the statutory marriage under the Nigeria Family Law, is predicated on a family relationship between a man and a woman. It is also referred to as Christian marriage which is statutorily defined by the CCA 2004 as a marriage recognised by the law of the place where it is contracted as the voluntary union for life, of one man and one woman to the exclusion of others.[xix]

Lexically, monogamy is construed by *Black's Law Dictionary*[xx] as "the custom prevalent in most modern cultures restricting a person to one spouse at a time".[xxi] It also means "the fact of being married to only one spouse i.e., being monogamous". *Cambridge Advanced Learner's Dictionary* defines monogamy as "a part or custom of having a sexual relationship or marriage with only one other person at a time". Since the phrase "with only one other person at time" appears to be very nebulous, we resort to *Wikipedia* which defines monogamy as "a form of dyadic relationship in which an individual has only one partner during their lifetime".[xxii]

As a voluntary union, a monogamous marriage is essentially consensual in nature. Thus, section 12 of the Hindu Marriage Act, 1955 provides that when one's consent is not obtained, the marriage is considered void. The nature of modern marriage is contractual; thus, it accepts the ideals of equality and liberty. This underscores why the voluntary agreement of the parties is necessary.

To this end, it is sufficient to hold that a monogamous marriage does not admit further marriage between any of the spouses with any other person during the continuance of the marriage or (and) in the lifetime of the other spouse. Doing otherwise, would attract a sanction for a punishment of seven years imprisonment in Nigeria and, in India, with imprisonment of up to ten years imprisonment or fine or both.[xxiii]

iii. Polygamous marriage

The term *polygamy* is made up from two Latin words, *polis* meaning many and *gamos* meaning marriage so polygamy means a marriage of many. It originates from the Greek word *polugamos*[xxiv] which translates into *often marrying*. Law Circa identifies three types of polygamy; viz., polygyny which is a system of marriage wherein a man has multiple wives; the polyandry, a system of marriage wherein a woman has multiple husbands and; group marriage which is an arrangement wherein the men and women of the group consider themselves married to each other within that group.[xxv] The *Cambridge Advanced Learner's Dictionary* defines polygamy as "the fact or custom of being married to more than one person

at the same time.[xxvi] The same word is defined, by *The Black's Law Dictionary* as "the state or practice of having more than one spouse simultaneously".[xxvii] Polygamy relates to customary marriages contracted under the native law or custom or under the Islamic law.[xxviii] In a polygyny type of polygamy the man is at liberty to contract marriage with different women at different times or worse still, at the same time or on same date.

iv. Bigamy

Bigamy is defined by *Oxford Advanced Learner's Dictionary*[xxix] as "the crime of marrying somebody while you are still legally married to somebody else".[xxx] It is defined by the *Cambridge Advanced Learner's Dictionary* as "the crime of marrying a person while legally married to someone else.[xxxi] *Wikipedia* depicts bigamy, in cultures that practice marital monogamy as:

> *The act of entering into marriage with one person while still legally married to another. Bigamy is a crime in most western countries and when it occurs in this context, neither the first nor the second spouse is aware of the other.*[xxxii]

v. Adultery

Adultery is otherwise denoted as infidelity in the English parlance. Adultery and infidelity are used interchangeably. Adultery or infidelity is defined in *Ibeabuchi v Ibeabuchi*[xxxiii] as:

> *The consensual intercourse between two opposite sexes, at least one of whom is married to a person other than the one with whom the intercourse is had, and since the celebration of the marriage.*[xxxiv] *Thus, to establish adultery, there must be sexual intercourse, the sexual intercourse must be voluntary and at least one of the parties must be married.*

Though adultery is not a crime in the southern part of Nigeria,[xxxv] it is an offence contrary to section 387 and 388 of the Penal Code and constitutes a ground for divorce if the spouse finds it intolerable.[xxxvi]

A notable feature of adultery is its secretive nature; thus, the court in *Ibeabuchi*'s case,[xxxvii] expounded further on certain circumstances from which adultery or infidelity is inferred as follows:

> *It is axiomatic that adultery is essentially an act which can rarely be proved by direct evidence. It is a matter of inference and circumstances the law has thus set down certain condition from which adultery can be inferred and these are: (i) evidence of disposition and of opportunity for sexual intercourse with a person order than the spouse; (ii) general co-habitation –where it is establish that there is a state of general cohabitation between a man and a woman, adultery is presumed between them; (iii) confession and admission of adultery; (iv) entry in register of birth- entry of birth by the wife which omits the name of the child's father's or simply gives a name order than the husbands' amounts to an admission of adultery; and (v) frequent visits to hotel.*[xxxviii]

3.0 LEGAL FRAMEWORK FOR THE OFFENCE OF BIGAMY

The hallmark of every serious crime is its involvement of conducts that are anti-social which offend against the moral consciousness of the society.[xxxix] In the classification of offences in Nigeria, bigamy is classified as an offence against public moral.[xl] Comparatively the major legislations creating the offence of bigamy and analogous offences in Nigeria are the Criminal Code Act 2004 [CCA 2004], The Nigerian Penal Code Act 2004 [NPCA 2004] and the Marriage Act 2004 [MA 2004] ss46 & 47; while in India, the Indian Penal Code 1860 [IPC 1860] s494, the Hindu Marriage Act 1955 [HMA 1955] ss5 & 11, and other legislation particularly the Christian Marriage Act 1872 [CMA 1872]; Parsi Marriage and Divorce Act

1936 [PNDA 1936]; Special Marriage Act 1954 [SMA 1954]; and Foreign Marriage Act 1969 [FMA 1969] form the legal framework for Bigamous Offences.

The Criminal Code 2004 s370 provides that:

> *Any person having a husband and wife living marries in any case, in which such marriage is void by reason of is taking place during the life of such husband or wife, is guilty of a felony, and is liable to imprisonment for seven years.*

Similarly, Penal Code 2004 s384(1) provides in a like vein as follows:

> *Whoever having a husband or wife living marries in a case in which that marriage is void by reason of is taking place by reason of wife or husband shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.*

Aside from the margin note and the punishment which slightly vary, both offences are, no doubt, bigamous offences in Nigeria, although some scholars have argued against this. They are of the opinion that both offences cannot be considered as same though, they affirm that the offence created by Criminal Code 2004 s370 is indeed bigamy.[xli] Since offences are, except on information, described in the charge sheet by facts and not with the name in the margin note (but by facts constituting the offence), and considering always that the provisions of the NPCA 2004 s384 are of same wordings (except in the punishment) with those of CCA s370 and IPC 1860 s494 which are statutorily christened bigamy, the reference to the offence created by NPCA 2004 s384 suffers no loss or any debility, either in substance or in form, just by same reference. More so, both offences, like that of IPC 1860 s494, are held in the Indian case of *Boloram Baruoti v Mt. Surjya Baruoti*[xlii] to be "known in the English law as bigamy".[xliii]

Additional to the above, the MA 2004 ss46 & 47, on its part, created two offences that are analogous to bigamy. They are offences against void marriage by reason of either prior or subsequent marriages in the lifetime of the first marriage's spouse. S46 created the offence of

contracting marriage under the statue prior to which there was a valid marriage under the native law while s47 created the offence of contracting marriage by customary law by when already married under the MA 2004. They are offence analogous to bigamy or put differently, bigamous offences. Marriages contracted in both instances are void. They are not in context with the offence of bigamy, they are created to aid the former to success.

Notably, the Judge, in *the State v Ezeagbo Nweke,*[xliv]distinguishing the offences created under the MA 2004 ss47 and 48, from bigamy created under the NPCA 2004 s384 or CCA 2004 s370, had held otherwise, substituting his thought for the law.[xlv] Considering the fact of Nweke's case, one cannot but question the audacity of the judge who, in deliberate avoidance of section 46 which was apposite at that instance. Whatever is the reason behind the judge's decision, it is sufficient to say, putting all things into consideration more particularly, that the use of the phrase 'in any case' in CCA 2004 s370, NPCA 2004 s384, and IPC 1860 s494, is liberal enough to accommodate offences analogous to bigamy as expressed in the above sections.[xlvi]

Again, the NPCA 2004 ss385 and 386; and IPC ss495 and 496 respectively create other extensive offences that are also analogous to bigamy. They are offences of remarriage with concealment of former marriage and that of marriage ceremony fraudulently gone through without lawful marriage. For our purpose, it is apposite to note that while CCA 2004 s370, NPCA 2004 ss384 & 385, and IPC 1860 ss494 & 495 are offences which have been statutorily and judicially classified as bigamy[xlvii] others, of similar description are offences analogous to bigamy. In the words of their Lordship, in *Subhash Babu v State of Andhra Pradesh & Anor,*[xlviii] the Indian Supreme Court held that:

> *Section 495 of IPC provides that if a person committing defined in section 494 IPC consists from the person with whom subsequent marriages is contracted, the fact of the former marriage, the said person is liable to be punished as provided therein. The offence mentioned in section 495 IPC is an aggravated form of bigamy provided for in section 494 IPC. The circumstance of aggravation is the concealment of the fact of the former*

> *marriage to the person with whom the second marriage is contracted. Since the offence under section 495 IPC is in essence bigamy, it follows that all the elements necessary to constitute the offence must be present here also.*[xlix]

These and some other analogous offences may rightly be captioned as bigamous offences.

4.0 NATURE AND RATIONALE FOR THE OFFENCE OF BIGAMOUS OFFENCES

The punishment of one month in *the R v Princewill,*[l] and that of a term of two months' imprisonment or a fine of $15 in *the State v Ezeagbo Nweke,*[li] for an offence punishable with not less than a term of imprisonment for seven years, aptly illustrate the nature and responses of Nigerians to the offence of bigamy. In Nigeria, bigamy is a dead-letter law, often honoured more in its breach than observance. The mean punishment of the defendants is occasioned by the fact that the court appreciates the potential rationale behind the commission of bigamous offences. If one may ask, why do spouses commit bigamy? In explaining the rationale behind the offence of bigamy we shall adopt those reasons suggested by the trial judges in *R v Princewill*[lii] *and State v Nweke*[liii] as addition to others below.

1. Nigeria is, naturally, a polygamous society where men are prone to polygamy and adulterous relationship in the course of which misplaced affection may be precipitated. A new-found illicit relationship often grows in proportion to which its attachment may become difficult to eliminate. Where this occurs at varying period of times, it may lead to contracting of a new spousal relationship without minding whether or not there is a subsisting marriage. The new lover is quite aware of the existence of the continuance of subsisting marriage since the husband plays no deception on her. No person is put in the dark except the wife at home who, in rare cases, is not ignorant of the developing relationship. The point here is better illustrated with the cases of *Ogunmodede v Thomas*[liv]and *Osho & Ors. v Philips & Ors.*[lv] In *Ogunmodede v Thomas,*[lvi] the deceased had married under the Act and had one issue, a female, called Patience Ajibabi. During

the subsistence of the marriage, the deceased had 16 other children from different women. He openly acknowledged these children before his matrimony. His legitimate wife and his daughter, Patience, also accepted these children and treated them as co-owners of the estate of the deceased.[lvii]

A similar case of same experience and practice is the case of *Osho & Ors. v Philips & Ors*,[lviii] where the facts were that the plaintiffs/respondents had claimed that, although their mothers were never married to the deceased and that they were born during the subsistence of a statutory marriage to the mother of the defendant, they (the plaintiffs) had been in the house of the deceased and were christened by him, in the presence of the defendant's mother and they had lived together with the defendant in the deceased's house.[lix] The issue of concealment, not rampant in Nigeria, is nonetheless quite common and appears to be the base of most bigamous cases in India.

2. Unlike in the United Kingdom, most cases of bigamy are devoid of deception. Some people who take the second marital partner inform the new partner of the existence of the marital spouse, mitigating the punishment as the intent to deceive is not available. English laws are swift against bigamy as the new partner often acts under the representation that the partner is single. The non-deception and the non-secretiveness of the bigamous relationship in Africa would have been predicated upon the fact that an average African is considered potentially polygamous. As a matter of common knowledge people who grew up from polygamous background, are used to polygyny; it is part of their way of life to live among the women so they don not really see the bigamous relationship as offensive;

3. Most men, before the statutory marriage, were surrounded by many girlfriends who were known to each other and sometimes cohabit together. Such men find it difficult to separate from their way of life before the statutory marriage and the demand of monogamous marriage. Possibilities are, that they continue with the old girlfriends who maintain affectionate relationship irrespective of the current status since there is no love lost between the two of them. Such girlfriends see nothing bad about being a second

wife to their old partner. So, they often pressure the man to continue dating and living together which ultimately may transform into a real relationship often matured when the new partner eventually conceives, thus forcing them into contracting a customary marriage between them.

4. Many are ignorant of the rule of bigamy and enters new marriages without legally terminating the previous ones even when it has been constructively terminated.

5. Most statutory marriages are built on faulty foundation as a result of desperation of some women who desire statutory marriage with the aim of keeping the man off from their real love. This often happens in where such women are from rich background and the man is desperate to fraudulently swindle the woman of her possessions. Having successfully swindled the spouse, such men often abscond with their real love to new location to start new life on the former spouse's fortune and they may eventually get wedded until they are found and charged with bigamy.

6. Other bigamous marriages may result from itinerant relationship. For instance, where a Nigerian man married under the statute in Nigeria leaves his wife and children in Nigeria for the U S in search of greener pastures and marries an American lady, while in the US, to validate his resident permit. The wife in Nigeria is, in most cases, aware of the latter marriage and indeed, she is privy to it. Worse still, the latter marriage may be celebrated in Nigeria where the real wife would be presented to the American lady as her husband's next sister or cousin. Later, having achieved his aim, the man may return to the family in Nigeria. Other cases are where a Nigerian is married to a wife in the US but later in life, while on visit to Nigeria, conduct another marriage with other lady in Nigeria.

The list is endless as witnessed in Nigeria.

5.0 PROSECUTORIAL PROOF OF BIGAMY AND PUNISHMENT

Though, adultery must be proved strictly and clearly with evidence and its standard of proof is the preponderance of evidence as required in civil cases, the standard of proof in bigamous offences, however, is proof beyond reasonable doubt. Understanding the offence of bigamy would demand a thoughtful examination of the sections creating the offence under the Nigerian Law and the Indian's. By virtue of CCA2004 s 370 with NPCA s 384; and IPC s494, which provides that:

> *any person who having a husband and a wife living marries in any case in which such marriage is void by reason of his taking place during the life of such husband or wife, is guilty of a felony and is liable to imprisonment of seven years.*

Akin to the above provision, is section 384 of the Nigerian Penal Code with a similar provision that:

> *Whoever having a husband or wife living marries in a case in which that marriage is void by a reason of his taking place during the life of that husband or wife, shall be punished with imprisonment for a term which may extend to seven years and shall be liable to a fine.*

In the same concordance, section 494 of the India Penal Code provides with regards bigamy thus:

> *Whoever having a husband and wife living marries again in any case in which such marriage is void by reasoning of his taking place during the life of such husband or wife shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to a fine.*

The above three sections of these different legislations have similar peculiarities and would thus, be treated together, for purpose of proof.

The first element of proof relates to validity as regards the marriage in accordance with the contracting laws necessarily proscribing bigamy or voiding same.[lx] The validity of the marriage essentially depends on two things namely (a) the law of the place where the marriage was conducted and the ceremonies that would thereby be celebrated as necessary a condition of fulfilling the marriage rite.[lxi] For a person to be convicted for the offence of bigamy, he or she must therefore, have contracted a valid marriage under a law which prohibits further marriage with any other person during the subsistence of the marriage so contracted with the spouse. The requirement of a valid marriage connotes the absence of any factor that may result in its avoidance. A void marriage spikes on the legality of the subsistence of the earlier marriage. At common law, a void marriage consists of incurable defect that would resort to dissolution of the marriage by the court. It is an unpardonable error. It differs from voidable marriage that is allowed at condonation. [lxii] It must however be noted that a void marriage can only be a ground for an annulment of a marriage and it cannot, on its own, allow a defendant to walk out of the void marriage without a court order declaring the marriage void and ordering the dissolution of the marriage.[lxiii] This is because "a walk out" is not amongst the known processes of dissolution of marriage.

It therefore means that where a marriage is contracted under any other regime, which allows further marriages with other person other than the spouse with whom the marriage is contacted during the continuance of the said marriage, such person cannot be said to have committed the offence of bigamy. Admittedly, marriages contracted under the Muslim customary law or those contracted under native law and custom which, potentially, are polygamous in nature by the personal law of those spouses cannot be said to be subject to the offences of bigamy except only where such personal law are regulated by law outlawing polygamous marriages.[lxiv] For instance, persons to whom the Hindu Marriage Act 1955 applies,[lxv] are only allowed to solemnise a marriage if neither party has a spouse living at the time of the marriage. This informs why monogamy thrives so well in India more than Nigeria, where the monogamous marriage is a matter of election. The Nigerian Marriage Act is only patronised by the educated elite majority of whom are mainly of Christian religion, unlike the Hindu Marriage Law of 1955, which is applicable to a vast proportion of the Indian nation, particularly:

(a) any persons who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lindayat or a follower of the Brahlo, Prathana or Ararya Samaj;
(b) any person who is a Buddhist, Jaina, or Sikh by religion; and
(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi, or Jew by religion, unless it is proved that any such person would have been governed by the Hindu law or by any custom or usage as part of that law in respect of any other matters dealt with herein if the act has not been passed.[lxvi]

Accordingly, tracing the historical development of bigamy as an offence in India, Sushmitha-ramkumar attributed the rapidity of successes recorded in the prosecution of bigamy offences to positive resolve of the people of India to imbibe monogamy which has always been the rule right from the Vedic times except for the little percentage of people who are in polygamy.[lxvii] This informs why reportage and prosecution of bigamy offences are of greater number in India than it is in Nigeria where the population of people imbibing monogamy is less than 10% of adults domiciled in Nigeria whose personal law is the Nigerian customary law which primarily promotes polygamy.

The aspect of this element of the validity of the subsisting marriage's proof is a necessary factor that must be proved to exist. This is because, its existence is what determines the reasonableness of the nullity of the bigamous marriage. Similarly, this aspect distinguishes the principle in marriage which pushes to intolerable limit, the need for a court order declaring the void marriage a nullity as being ineffectual from the bigamous jurisprudence which renders this practice of no use in bigamous offences. A void marriage is a complete defence to a charge of bigamy where the first marriage was in nullity and void, thereby resulting in an effect that no marriage was indeed conducted.

In the case of *Bhaurao Shankar Lokhande & Anor. v State of Maharashtra & Anor.,*[lxviii] construing the India Penal Code S494 which reads that "whoever, having a husband or wife

living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with an imprisonment of either description for a term which may extent to seven years and shall also be liable to a fine", the Indian Supreme Court opined thus:

> *Prima facie, the expression 'whosoever'... marries must mean 'whoever marries validly' or 'whoever... marries' and 'whose marriage is a valid one'. If the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person married arises. If the marriage is not a valid marriage, it is no marriage in the eye of the law. The bare fact of a man and a woman living as husband and wife does not, at any rate, normally give them the status of husband and wife even though they may hold themselves out before society as husband and wife and the society treats them as husband and wife.*[lxix]

The court went on to accept the voidance of the earlier marriage as a full justification or defence for the bigamous marriage. In their Lordships words, the court held that:

> *We are of [the] opinion that unless the marriage which took place between the Appellant No 1 and Kamlabai in February 1962 was performed in accordance with the requirements of the law applicable to a marriage between the two parties, the marriage cannot be said to have been solemnized and therefore Appellant No 1 cannot be held to have committed an offence under the Indian Penal Code s494.*[lxx]

Resulting from this principle, a valid second marriage would, therefore, take precedent and prevail over the former subsisting marriage. Recall that the wordings of the Indian Penal Code s494 are similar to the Nigeria Penal Code s384 and the Criminal Code in Nigeria in s370. We

have therefore placed much reliance on the bigamous jurisprudence and the horde of judicial authorities well-developed in the Indian legal system.

The second element of the offence of bigamy is that there must not only be a latter marriage to another person other than his spouse, such latter must have been contracted during the lifetime of the spouse. The first segment of this second element to prove the offence of bigamy is the requirement for a latter marriage with another person other than the spouse. This requirement that the existence of a second marriage must be proved beyond reasonable doubts with convincing facts evidencing this existence. A mere cohabitation would not suffice.[lxxi] The prove of validity or second marriage would need to be established by credible evidence relating to the performance of the ceremony necessarily required by the respective community, otherwise the defendant cannot be convicted on a charge of bigamy.[lxxii] It is immaterial that after the husband's second marriage, there has not been a reasonable cohabitation between the latter couple in establishing the offence of bigamy. It is this requirement of validity of the second marriage that distinguishes bigamy from adultery. In the celebrated case of *Ibeabuchi v Ibeabuchi*[lxxiii] adultery was construed as:

> *Consensual intercourse between two persons of opposite sexes, at least one of whom is married to a person other than one with whom the intercourse is had, and since the celebration of the marriage.*[lxxiv]

On a line of the Supreme Court judicial authorities,[lxxv] it has been firmly laid down that in a bigamy case, the existence of second marriage must be proved by credible facts and; the ceremonies constituting it must therefore, be proved.[lxxvi] It has also been held that the admission of marriage by the defendant cannot be a sufficient proof of evidence for the purpose of proving an existence of a latter marriage in an adultery or bigamy's case.[lxxvii] In *Kanwal Ram and Ors.*,[lxxviii] the Supreme Court held that:

> *The admission in Exh. 2 cannot in in law be treated as evidence of the second marriage having taken place, in an adultery or bigamy case and… second*

> *marriage as a fact, that is to say, ceremonies constituting it, must be prove ….*

Beyond a bare admission by a defendant, there is much burden still remaining on the prosecution to put forth before the court to strengthen the evidence received through the defendant's admission at cross-examination. It is the opinion of the Indian Supreme Court Lordships in *P. Satyanranyan v P. Mallaiah,*[lxxix] that:

> *The plea of guilt afore-referred to could, at best, be understood to mean that the first appellant has taken a wife, but that admission could not necessarily mean that he had taken the second wife after solemnizing a Hindu marriage with her, after performing due ceremonies for the marriage. Such plea, which he made, need not to have been entered upon, and which was ignorable by the court [below], did not absolve the prosecution [of the burden] to otherwise prove its case that the marriage in question was performed in a regular way so as to visit it with Penal consequences.*[lxxx]

In the case,[lxxxi] it was reiterated that the prosecution must prove that the marriage was performed at a named location and district.

The second segment of the second element of prosecutorial proof for the offence of bigamy is that bigamous marriage was conducted during the lifetime of the spouse or during the continuance of a subsisting marriage. The proof of these facts becomes necessary in the light of the statutory defence offered to the defendant in situations where the defendant could reasonably draw an inference that the spouse may no longer be living from the existence of facts or combination of facts leading incontrovertibly to the probable death of the spouse creating a rebuttable presumption that the spouse, for not less than seven years preceding the allegation, had not been heard of or seen by the defendant.

Apart from this, where there was a court order dissolving the earlier marriage by way of a divorce order which brings an end to the subsisting marriage, the offence of bigamy cannot be said to have been committed. Again, a void marriage can also be a lawful defence for a charge of bigamy.

It is therefore, necessary that the prosecution must, in the course of preparing the case, exhaust its investigation to controvert by credible evidence, those statutory defences conferred on the defendant; as not being indeed available. This is because the prosecution's duty of proof cannot, in any way, be transferred to the defence. In the case of *Mohammed v Attorney General of the Federation*,[lxxxii] the Supreme Court re-emphasised that:

> *The settled position of the law is that if the commission of a crime in any proceeding is directly in issue, it must be proved beyond reasonable doubt. In other words, the burden is on the prosecution to establish the guilt of the accused beyond reasonable doubt… the burden remains on the prosecution throughout the proceedings and does not shift.*[lxxxiii]

Though it is necessary that the first marriage would need to be valid, both in the face of the law of the place where it is contracted and the ceremonies and customs, it is sufficient to prove the second marriage's validity on strength of the ceremonies, in order to establish the offence of bigamy.[lxxxiv]

Finally, the third element for proof in a charge of bigamy relates to an ancillary issue arising from the existence of a latter marriage which is germane to proving the guilt of the accused which is that of the validity of the second marriage. This aspect of proof involves a proof that the second marriage was wholly contracted and celebrated in accordance with the personal law of the parties. This must be more than merely ascertaining in the court that parties in the second marriage live together as husband and wife. The second marriage is a complete marriage in itself but, for the voidance of the marriage by the combining effects of sections 11 and 5 (1) of the Hindu Marriage Act 1955, and MA 2004 ss 33, 35 47 and 48 respectively against NPCA

2004 s384, CCA2002 s370 and IPC 1860 s494. In the *Gopal Lal v State of Rajathan*'s case,[lxxxv] the Indian Supreme Court has ruled that:

> *In order to attract the provisions of s494 ICP both the marriages of the accused with the subsistent spouse and the second wife must be valid in the sense that the necessary ceremonies require by the personal laws governing the parties must be duly performed.*

PUNISHMENT AND OTHER RELIEFS FOR BIGAMY

The punishment for bigamy and other bigamous related offences are contained in various Indian and Nigerian legislations. NPCA 2004 s384 prescribes a punishment of up for a term which may extend to seven years and the convict shall also be liable to a fine. The same punishment is offered by the provisions of IPC 1860 s494. However, section 370 extends a term of punishment to seven years. Though the intendment of the Nigerian Criminal Code would, no doubt, have been to exert deterrence on potential breakers of the law of bigamy, in two cases of bigamy ever reported in Nigeria, lesser punishment was meted. In *R. v Kingsway,*[lxxxvi] the punishment was for one-month imprisonment while, in *State v Ezeagbo Nweke,*[lxxxvii] the court sentenced the accused to a term of two months' imprisonment or a fine of 15 dollars. The judges in these cases explained the rationale behind their decision, recognising that Nigeria is naturally a polygamous society and; most bigamous cases are devoid of deception, unlike the United Kingdom, India or other clime, thereby mitigating the punishment, as the intention to deceive is absent.

However, the Indian laws are strict against bigamy as the new partner often acts under a misrepresentation that the other party is single. In the India, polygamy was practised in many sections of the Hindu society in ancient times. Tracing the scope, purpose, context, and objects of enacting section 494 of the Indian Penal Code and the prevailing practices in the society sought to be curbed by the law of bigamy, the Indian Supreme Court explained that:

> *It is not a matter of long past that in Indian, Hypergamy brought forth wholesale polygamy and along with its misery, plight and ignominy to woman having no parallel in the world. In post Vedic India, a king could take and generally used to have more than one wife. Section 4 of Hindu Marriage Act nullifies and supersedes such practices all over India among the Hindu. Section 494 is intended to achieve loadable object of monogamy.*[lxxxviii]

This element of the subsistence of the first marriage and its being in the lifetime of the first spouse imputes the prove of *mens rea* as a necessary factor in a trial for bigamy. Where the accused had a reasonable belief in the death of the husband which prompted her remarriage, though unknown to her that the husband was living, the intent to commit bigamy was said to have been negative.[lxxxix] Merely drawing an inference without due diligence of ascertaining the whereabout of the spouse by a reasonable process of search would however not be enough.

An ancillary issue of the prosecution of bigamy relates to who has the right to complain. It is settled in law that only an aggrieved person, usually the wife of the subsisting marriage can lay a complaint in case of bigamy against the husband and the second spouse. It has however. been settled that the subsisting supposed spouse of the second marriage can likewise lay a complaint, in situation where a second marriage was obtained by concealment of the first marriage.[xc]

6.0 SOCIO-LEGAL EFFECT OF BIGAMOUS OFFENCE

The case of *Subhash Babu v State of Anhdra Pradesh & Anor,*[xci] painted a gory illustration of socio-legal effects of bigamous offences and their lordships accordingly held that:

> *...the criminality attached to the act of the second marriage either by the husband or by wife who has a living husband or living wife in the case of which the second marriage is void by reason of its taking place during the life of such husband and wife resulting in the voidance of the second marriage*

> *brings or attaches several legal disabilities to the woman with whom the second marriage is performed.*

The Indian Supreme Court went on in the above case to draw a list of what negative impacts the voidance of second marriage may have on the supposed second wife. This includes inhumane treatment; traumatic mental and physical cruelty of variety of kinds; lack of maintenance; suffering of outrageous, wrong and absurd social stigma for being a reckless interloper; a meretricious intermeddler in other women's houses; ostracism by members of the society including her immediate family who would look down on her by reason of the bigamous marriage; loss of support; risk of imprisonment; and a lot of more untold hardships.

We saw from the above holding, what traumatic impacts bigamy may cause to the second wife Akin to the above also, is its effects on the legitimate spouse which include the loss suffered by the spouse at home; the injury to spousal's honour and feeling; the hurt to family life, and the diminished value of the family's worth occasioned by compelling adulterous claims.

The spouse whose husband committed a bigamy is entitled to sue for a divorce and claim maintenance from the husband.[xcii] Where payment for maintenance is predicated on the husband's salary against which a conviction for bigamy may constrain regular flow of renumeration by reason of probable loss of employment, the court may allow the compromise or condonation of the charge against the offending husband by the spouse up to a doubled proposal of her claim for maintenance. Thus, in the case of *P. Satyanranyan v P. Mallaiah,*[xciii] their Lordships at the Supreme Court of India, considered the advocacy of the learned counsel for the first appellant to the effect that the said appellant is a Class IV employee working in the State Board of Revenue, fetching about Rs. 16100 per mensem as salary out of which, under a court order, he pays in an interim way Rs. 400 per mensem as maintenance to the respondent, being wife and his grown-up child. Upon a genuine offer, thereabout made by the said learned counsel to increase the said allowance, should the respondent-wife not persist in her claim in branding the 1st appellant as a bigamist, claiming that if he were to get convicted and imprisoned, she would lose the maintenance all together [as a result of his probable loss of

employment and income during the jail term], allowing the condonation of the offence, their Lordship empathetically held that:

> *We see the force of the argument. She cannot afford to kill the goose which lay the golden egg. As realities of the situation require that the 1st appellant is not deprived of his job so that he keeps providing the necessary wherewithal to the respondent wife and his child besides maintaining himself. Taking that into account he should think that the appellant shall pay to the respondent and his child a sum of Rs. 800 per mensem has offered on these considerations as maintenance allowance operating with effect from October 1, 1996.*

Although only the second wife is entitled to file a petition for declaring her marriage void and the first wife cannot file a petition, for that reason, the good thing about law is its dynamism. Law is dynamic and keeps evolving. By judicial activism however, the first wife can bring an action for the enforcement of her fundamental right to family life and privacy, and claim all legal remedies available to her including a declaratory order from the court declaring the second marriage void with other ancillary prohibitory and mandatory order of separation against the bigamous couple. The question that may come to mind, for purposes of circumventing the harsh defect of the operation of the above remedies, is whether a person can convert from religion to enable him contract second marriage? In the light of *Saria Mudgal v Union of India and Anor*,[xciv] this only appears to be a possible if, the first marriage is dissolved first before the eventual latter marriage. Declaring the second marriage of the Hindu husband after his conversion to Islam as void marriage in terms of section 494 IPC (1860) s494, the Indian Supreme Court, in the *Saria Mudgal v Union of India and Anor.*, held that:

> *When a marriage takes place under Hindu Marriage Act, 1955 certain rights and status are acquired by both the parties, and if one of the parties is allowed to dissolve the marriage by adopting and enforcing a new personal law, it would destroy the existing rights of the spouse who continues to be Hindu. A*

> *marriage performed under the Act cannot be dissolved except on the grounds given under section 13 of the same Act.*

The Supreme Court further held that such marriage is a violative of justice, equity and good conscience just as it emphasised the need for harmonious working of the two systems of law. Under the Parsi Marriage and Divorce Act, a person is bound to follow Parsi Marriage Law even after converting to any other religion; thus, the second marriage by any person will be considered void. If a person marries under Special Marriage Act 1954, and Muslim Marriage Act, he overrides Personal Law and would be convicted for bigamy under Special Marriage Act.[xcv] The above holding remained undauntedly affirmed after its effective celebrated review in the celebrated case of *Lily Thomas v Union of India and Anor*.,[xcvi] on the ground that the judgment violates the fundamental rights to life, liberty and freedom to practice any religion enshrined under Articles 20, 21, 25 and 26 of the Indian Constitution.

7.0 CONCLUSION AND RECOMMENDATIONS

Bigamy and other bigamous related offences are creatures of law under both Nigerian and Indian legal systems with a view to enforcing the marital contractual relationship between couples who have adopted monogamous marriage by their personal law. Although legal jurisprudence of the law of bigamy is at the lowest ebb in Nigeria, making it a dead-letter law whereby breach is more honoured than its enforcement, its broad development however in India is commendable as its operation covers all aspects of bigamy and it is still evolving.

The comparative studies herein undertaken, is an eye opener to the possibilities of the law in ensuring a pursuit of decent life and the certainty of contractual relationship in marriages as an extension of the application of the law of estoppel within the legal system. For its growth and development, the underlisted recommendations are proffered:

i. There is need for a legal regime for codification of the various Personal Laws of Nigeria relating to marriages that would enhance a thorough understanding of the

customs and practices endowed in those personal laws. This would make way for certainty of the law.

ii. Similarly there is need for enactment of regulatory legislations in Nigeria relating to the concept, nature, scope, practices, rules and extent of the accepted practices in each personal law governing the validity of marriages in the varying communities in Nigeria. This will afford the statutoriness of the various marriage laws in Nigeria.

iii. Besides the forgoing there is need for conscious orientation and creating of awareness among the general public as regards law of bigamy and its operations in Nigeria, as this would assist, considerably, in ensuring that spouses stay within their marital obligation.

iv. Although the law of bigamy in India is well-developed in the India Legal System, there is further need for expanding the law beyond the frontier of the current exigencies since authorities fully grown would still be expected to add to its valour and due to the ambivalence of dynamism of the human society, noting that the law cannot afford to be static. Therefore, a proactive regular review of the law is required, with a view to making provisions ahead of time, for contingencies particularly, towards advancing a uniform civil code for enhancement of all personal laws in the Indian legal system as recommended by the Supreme Court in *Saria Mudgal v Union of India and Anor*.[xcvii] This uniform civil code is also necessary for the Nigerian legal system.

v. Legal practices in Nigeria should endeavour to go beyond the frontiers of the rule in *R v Princewill*[xcviii] *and State v Ezeagbo*[xcix] *Nweke* to legal exploitation of settled principles of law in the Indian legal system which may form persuasive authorities to the Nigerian legal system.

vi. The protection of parties should be well preserved by due enforcement of the law. The preference of couples subscribing to statutory marriage is its protection against meretricious interlopers, therefore, the law should, as a matter of exigency, seek to ensure the realisation of the noble intendment of the parties in their varying contractual relationship with all vigour.

It is hoped that the above recommendations, if inertly pursued, it will help considerably, in ensuring the stability, growth, practice and enforcement of the law of bigamy in both the Nigerian and Indian legal systems.

ENDNOTES

[i] Nwogugu E.I., *Family Law in Nigeria* (Heinemann Educational books Nigeria Limited 1985) p. 88.
[ii] Ijalana E.F., and Agbana J.O., 'A Critical Appraisal of the Concept of Double Decker marriage under the Nigerian Family Law' (Unpublished 2021) p. 2.
[iii] *Hyde v Hyde* (1860) LR 1 PD 130.
[iv] King James Bible, "First Epistle of Paul to the Corinthians" chapter 7 verse 2.
[v] Colin Mclntosh, *Cambridge Advanced Learner's Dictionary* (4th edition, Cambridge University Press 2013).
[vi] Ibid at p. 948.
[vii] https:// www.Merriam-webster.com/dictionary/marriage.
[viii] https://languages.oup.com/goggle-dictionary-en/marriage.
[ix] Ijalana and Agbana, 'A Critical Appraisal of the Concept of Double Marriages Under the Nigerian law' [n 2].
[x] Ibid at p. 2.
[xi] Nwogugu E.I., *Family Law: Principles, Statutes and Commentaries* (Malthouse Law Books 1999) p. lxxviii.
[xii] Ijalana and Agbana, 'A Critical Appraisal of the Concept of Double Marriages Under the Nigerian law' [n 2] p. 2.
[xiii] (Dharma in India religion) means the internal and inherent nature of reality, regarded in Hinduism as a comic law underlaying right behaviour and social order. https://languages.oup.com/goggle-dictionary-en/ dharma.
[xiv] Rachit Garg, 'Hindu Law notes' p. 15. https://blog.ipleaders.in/hindu-law-notes/
[xv] Veda (in Hindu religion) means any of the four collections forming the earliest body of Indian Scripture, consisting of the Rig Veda, Sama Veda, Yajur Veda and Atharva Veda, which codified the ideal and practice of Vedic religion and stipulated the basis of classical in Hinduism. They were properly composed between 1500 and 1700 BC, and contain hymns, philosophy, and guardian on ritual. https://languages.oup.com/goggle-dictionary-en/veda .
[xvi] Rachit Garg, "Hindu Law notes" [n 13] p. 15.
[xvii] In Nigeria, these laws include the Marriage Act Cap M6 Laws of the Federation of Nigeria 2004 [MA 2004] ss35&37; Matrimonial Causes Act Cap M7 Laws of the Federation of Nigeria 2004 [MCA 2004]; Criminal Code Act Cap C38 Laws of the Federation of Nigeria 2004 [CC 2004] s370 and; Penal Code Act Cap P3 Law of the Federation of Nigeria [NPCA 2004]. In India however, the provisions of the Hindu Marriage Act 1955 [HMA 1995]; the Special Marriage Act 1954 [SMA 1954] and; the Indian Penal Code 1860 s494 are quite instructive.
[xviii] Nwogugu E.I., *Family Law: Principles, Statutes and Commentaries* [n 11] p. lxxxiv.
[xix] See CCA s2.
[xx] Garner Bryan A., *Black's Law Dictionary* (Eighth Edition, Thomson West 1998.
[xxi] Ibid at
[xxii] Monogamy-Wikipedia https://en.m.wikipedia.org/wiki/Monogamy
[xxiii] See [n 16].
[xxiv] Law Circa, 'The Concept of Polygamy in India' p. 2.
[xxv] Ibid at p.3.
[xxvi] Colins Mclintonsh [n 5] p. 1183.
[xxvii] Garner B., *Black's Law Dictionary* [n 20] p.1195.
[xxviii] Nwogugu *Family Law in Nigeria* [n 11] p. 3.

xxix *Oxford Advanced Learner's Dictionary, International Student's Edition* (7th edn., Oxford University Press 2005).
xxx Ibid p. 132.
xxxi Ibid at 141.
xxxii Bigamy-Wikipedia https://en.m.wikipedia.org/wiki/Bigamy.
xxxiii *Ibeabuchi v Ibeabuchi* (2016) LPELR-41268 (CA)
xxxiv Ibid at p. 32.
xxxv See Aoko v Fagbemi
xxxvi See s15[2] of the Matrimonial Causes 2004
xxxvii *Ibeabuchi v Ibeabuchi* [n 33].
xxxviii Ibid at pp.32&33; see also *Erhahon v Erhahon* (1997) 6NWLR (pt. 510) 667; *Alabi v Alabi* (2008) All FWLR (pt. 418) 245.
xxxix See C. E. Ochem and C.T. Emejuruu, 'Bigammy in a Polygamous Society; A Critical Appraisal of the Law of Bigammy in Nigeria' *Journal of Law and Criminal Justice.* Dec 2017 vol. 5. No 2 DOI: 10. 15640/jscj. v5n2a1 p. 96.
xl Ibid.
xli See M.A Lateef and N.K Adegbite, 'Bigamy and Dearth of Prosecution in Nigeria' *OAU Journal Public Law* (2017) Vol. 1, No 1, pp. 91 -117.
xlii *Boloram Baruoti v Mt. Surjya Baruoti* AIR (1969) Assan and Nagaland 90.
xliii Ibid.
xliv *State v Ezeagbo Nweke* charge No. O/HC/1971 (High Court Onitsha unreported); see also Okonkwo C.O., 'Bigamy in a Polygamous Society', *the Nigeria Judicial Review* vol.1976 p. 76, quoted with approval in C. E Ochem and C. T. Emejuru [n 32].
xlv Ibid
xlvi More particularly MA 2004 ss46 and 47, HMA 1955 ss5 and 11; the Christian Marriage Act 1872 [CMA 1872]; Parsi Marriage and Divorce Act 1936 [PNDA 1936]; Special Marriage Act 1954 [SMA 1954]; and Foreign Marriage Act 1969 [FMA 1969].
xlvii In *Subhash Babu v State of Andhra Pradesh & Anor* (2011) 1 AIR SC 3031 p. 8. In this case, the Indian Supreme Court, after a thorough review of IPC ss494 & 495 which are similar to the provisions of NPCA 2004 ss384 & 385, came incontrovertibly, to the conclusion that they are part and parcel of the same section.
xlviii Ibid [n 47].
xlix Ibid at p. 8.
l *R v Princewill* [n 42]
li *State v Ezeagbo Nweke* [n 44].
lii *R v Princewill* [n 42].
liii *State v Ezeagbo Nweke* [N 40].
liv *Ogunmodede v Thomas* (1962) FSC 337 quoted with approval in Paul Okhaide Itua, 'Legitimacy, Legitimation and Succession in Nigeria: An Appraisal of Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) on The Rights of Inheritance'. *Journal of law and Conflict Resolution* Vol. 4 (3) pp.31-44. Accessed on August 7, 2021.
lv *Osho & Ors. v Philips & Ors,* (1972) JELR44113 (SC) or SC180/1969, 30 March, 1972.
lvi *Ogunmodede v Thomas* [n 52].
lvii See Ijalana and Agbana, "A Critical Appraisal of the Concept of Double Marriages Under the Nigerian Law" [n 2] p. 7.
lviii *Osho & Ors. v Philips & Ors.* [n 41].
lix See Ijalana and Agbana, "A Critical Appraisal of the Concept of Double Marriages Under the Nigerian Law" [n 2] p. 7.
lx For instance, the HMA 1955 s5 provides that the condition for a valid marriage is that neither party has a spouse living at the time of the marriage; see also MA 2004 s46.
lxi See Dommaraju, Premchand, 'Divorce and Separation in India.' *Population and Development Review* (2016). Pp. 195-223.
lxii *De Reneville v De Reneville* (1948) 1 All E. R. 56; [1948] P. 100 at 111 CA.
lxiii In the case of a void marriage, though a dissolution order is not essential to bring the marriage to an end because the parties were never husband and wife in the face of the law, in the first instance,

nevertheless, in order to remove any iota of doubt, a decree that simply declares the existing fact that there has never been a marriage may be obtained in respect of a void marriage.

[lxiv] Except that on rare cases, marrying second wife may, by the custom of the people, be appreciated, one of the major sources of Hindu Marriage Act 1955, the Manusmriti, clearly stated the permissible instances when second marriage is justified. Such instances include when a spouse of the person marrying is diseased, or vicious. But, in such instances, the first matrimonially-wedded wife alone would be considered as the wife and not the latter woman. In a more perspicuous sense, the first wife and her first son have primacy over the other woman and the husband's other sons. This position is entirely different in Nigeria by virtue of the constitution provisions relating to right to freedom from discrimination enshrined in section 42 of the Constitution of Federal Republic of Nigeria, 1999 (as amended). The status of the other wives is merely considered a little superior to concubines; see Melissa Crouch, 'Promiscuity, Polygyny, and the Power of Revenge', *Ancient Journal of Law and Society*, Vol 3, issue 1, May 2016 pp. 85-104.

[lxv] See section 2 of the Hindu Marriage Act, 1955.

[lxvi] See s2 of the Hindu Marriage Law.

[lxvii] Sushmitharamkumar, 'Bigamy as an Offence in India' <https:www.legalserviceindia.com/legal/ article-2438-bigamy-as-an-offence-in-india.html> accessed on September 26, 2021; see also Kaustav Chakraborty and Rajarshi Guha Thakurata, "Indian Concepts on Sexuality"; *Indian Journal of Psychiatry*, January 2013; vol 55 (Suppl 2) pp. 250-255.

[lxviii] *Bhaurao Shankar Lokhande & Anor v State of Maharasthra & Anor* (1965) AIR 1564; or (1965) SCR (2) 837.

[lxix] Ibid.

[lxx] Ibid.

[lxxi] *Mina Dei v Abdhu Biswas* 30 Cut LT 294; or (1947) All WR (Supp) 33.

[lxxii] In Sandhiya Devi v State of Uttar Pradesh, (1974) or CR Cas 341, two notable tests for determination of whether or not the marriage was bigamous were laid down. These are (1) will the second wife, if the former wife were not living, be entitled to claim maintenance as a married wife and (2) will the children, born of the union be deemed born in, or out of wedlock?

[lxxiii] Ibieabuchi v Ibieabuchi [n 33].

[lxxiv] Ibid.

[lxxv] *Bhaurao Shankar Lokhande & Anor v State of Maharasthra & Anor* [n 68]; *Kanwal Ram and Ors. v H.P. Administration* (1996) SC 614; and *Priya Bala Ghosh v Suresh Chandra Ghosh* (1971) 1 SCC 864.

[lxxvi] *Bhaurao Shankar Lokhande & Anor v State of Maharasthra & Anor* [n 68].

[lxxvii] *P. Satyanranyan v P. Mallaiah* (1996) 6 SCC 122.

[lxxviii] *Kanwal Ram and Ors.* [n 75].

[lxxix] *P. Satyanranyan v P. Mallaiah* [n 77].

[lxxx] Ibid.

[lxxxi] Ibid.

[lxxxii] *Mohammed v Attorney General of the Federation* (2020) 7 SCM 99.

[lxxxiii] Ibid at 112; *Dairo v The State* (2018) (pt. 1619) 399; *Michael v The State* (2008) 10 SCM 83.

[lxxxiv] *Payara v Faqir Chand Alakha* AIR (1961) Punj 167; (1961) 1 cri. LJ 549

[lxxxv] *Gopal Lal v State of Rajathan* (1979) 2 SCC 170.

[lxxxvi] *R v Princewill* [n 45].

[lxxxvii] *See State v Ezeagbo Nweke* [n 40].

[lxxxviii] *Subhash Babu v State of Anhdra Pradesh & Anor.*

[lxxxix] *Sankaran Sukumaran v Krishnan Saraswathy & Anor.* (1984).CRI. LJ 317 (Ker).

[xc] *See Subhash Babu v State Andra Pradesh & Anor* [n 47].

[xci] Ibid.

[xcii] See the case of *P. Satyanranyan v P. Mallaiah* [n 77].

[xciii] Ibid.

[xciv] *Saria Mudgal v Union of India and Anor*, AIR (1995) SC 1531

[xcv] Ibid.

[xcvi] *Lily Thomas v Union of India and Anor.* (2000) 6 SCC 224.

[xcvii] *Saria Mudgal v Union of India and Anor*, [n 94.

[xcviii] *R v Princewill* [n 45].

[xcix] *See State v Ezeagbo Nweke* [n 40].