

**Bill No. XXII of 2009**

THE MARRIAGE LAWS (AMENDMENT) BILL, 2009

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BILL

*further to amend the Special Marriage Act, 1954, the Hindu Marriage Act, 1955 and the Code of Criminal Procedure, 1973.*

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5      **1.** (1) This Act may be called the Marriage Laws (Amendment) Act, 2009.  
(2) It shall come into force at once.

Short title and commencement.

CHAPTER II

AMENDMENT TO THE SPECIAL MARRIAGE ACT, 1954

- 43 of 1954.      **2.** In the Special Marriage Act, 1954, after section 44, the following section shall be inserted, namely:—

“44A. If an existing marriage, by whatever law it is governed, becomes inter-religious due to change of religion by either party, it shall be governed by the provisions of this Act, including its anti-bigamy provisions.”

Insertion of new Section 44A.  
Existing marriage becoming inter-religious due to change of religion.

## CHAPTER III

## AMENDMENT TO THE HINDU MARRIAGE ACT, 1955

Insertion of new section 17A. **3.** In the Hindu Marriage Act, 1955, after section 17, the following section shall be inserted, namely:— 25 of 1955.

Punishment for marrying again after changing religion. “17 A. A married person, whose marriage is governed by this Act, cannot marry again even after changing religion unless the first marriage is dissolved or declared null and void in accordance with law, and if such a marriage is contracted, it shall be deemed to be null and void and the provisions of sections 494 and 495 of the Indian Penal Code, 1860 shall apply, accordingly.” 5 45 of 1860.

## CHAPTER IV

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## AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973

Amendment of the First Schedule. **4.** In the Code of Criminal Procedure, 1973, in the First Schedule, — 2 of 1974.

(a) In the entry against section 494:—

(i) In column 4, for the word “Non-cognizable” the word “cognizable” shall be substituted. 15

(ii) In column 5, for the word “bailable”, the word “non-bailable” shall be substituted.

(b) In the entry against section 495:—

(i) In column 4, for the word “non-cognizable” the word “cognizable” shall be substituted. 20

(ii) In column 5, for the word “bailable”, the word “non-bailable” shall be substituted.

## STATEMENT OF OBJECTS AND REASONS

In our country, marriage laws, except the Muslim law which are in force, prohibit bigamy and treat bigamous marriage as void. For quite some time, the married men whose personal laws do not allow bigamy have been resorting to immoral and unethical practice of converting to Islam for solemnising the second marriage. These men believe that conversion to Islam enable them to marry without dissolving the first marriage. Of late, the marriage of a prominent person after conversion has hit the headlines of the newspapers and electronic media. Besides this, there are many cases of bigamy which go unnoticed. Since the anti-bigamy provisions of the Indian Penal Code are non-cognizable, most of the cases of bigamy remain unpunished as the first wife remains silent and suffers. In the absence of any complaint, the courts cannot do anything. Even the Muslim Personal Law does not permit bigamy in its plain form. The Quran only offers conditional permission for a man to have four wives. It lays down that a person can keep second wife, if he can treat both of them equally and give them equal justice. In most of the cases, the conversion is sham and thus the second marriage is a fraud on the Islamic law and has no recognition under it. Several High Courts while deciding the issue, have held that contracting second marriage after conversion is void and therefore, attracts the punishment under sections 494 and 495 of the Indian Penal Code. Finally, the Supreme Court of India outlawed this practice in *Sarla Mudgil versus Union of India* (AIR 1995-SC-1531). The ruling of the Supreme Court of India that "second marriage after conversion is void was reaffirmed in the year 2000 in the case of *Lilly Thomas versus Union of India* (2000) 6-SC-224.

The Law Commission in its 227th Report has also recommended for amendment of the marriage laws particularly, in view of the Supreme Court's judgments. Therefore, there is a need to give statutory backing to the legal position settled by the Supreme Court by amending the marriage laws. Further, it is also proposed that offences under sections 494 and 495 of the Indian Penal Code should also be made cognizable and non-bailable to put a check on bigamy.

Hence this Bill.

MAHENDRA MOHAN

ANNEXURE

EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE, 1973

Section	Offence	Punishment	Cognizable or Non- Cognizable	Bailable or Non- Bailable	By what Court triable.
1	2	3	4	5	6
494	Marrying again during the lifetime of a husband or wife	Imprisonment for 7 years, and fine.	Non-Cognizable	Bailable	Magistrate of the first class.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Imprisonment for 10 years, and fine	Non-Cognizable	Bailable	Magistrate of the first class.

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*(Shri Mahendra Mohan, M.P.)*