Is it fair to Hold Bigamy an offence Involving Moral Turpitude?

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Abstract

The authors attempt to distinguish illegal and immoral conduct and argue bigamy is only illegal but not immoral and no offence involving moral turpitude arises out of bigamy. The authors further raise fairness in the decision of regulatory body.

The authors problematise this perception. As per the provisions of Chartered Accountants Act, 1949, a chartered accountant is guilty of professional misconduct if he is convicted for an offence involving moral turpitude and can be removed from rolls. The High court of Madras has upheld the decision of the regulatory body to remove a member from its role for committing the offence of bigamy.

Key Words


Introduction

This paper is written in the light of the judgment of the Madras High court in P. Mohana sundaram v. The president, The Institute of chartered Accountants of India. The judgment narrates the story of a chartered accountant caught by a matrimonial proceeding and finally lost his profession too. The judgment deals with various issues. To be put short the question involved in the case is “whether the offence of bigamy is a one involving moral turpitude?”. Honourable Madras High court answered the question affirmatively in this case. Authors of this paper attempt to bring a bird’s eye view about the law in this regard.

Admittedly the appellant Mohana Sundaram, the chartered accountant contracted his second marriage during the pendency of the divorce proceeding against his wife who is, the complainant before ICAI. He had been convicted and sentenced for the offence of bigamy and later confirmed by the High court of Madras and subsequently by the Supreme Court of India.

His wife preferred a complaint under Sec. 21 of the Chartered Accountants Act, 1949 enclosing the criminal complaint filed before the Metropolitan Magistrate Court, Egmore, Chennai. On 29-01-2004 Institute found him not guilty of professional or other misconduct and on 03-02-2004 communicated its decision henceforth. However it was not brought to the attention of the institute that his conviction was confirmed by the Supreme Court of India.
After four years on 05.01.2009 institute re-opened the said issue and sent a letter to the accountant stating that the conviction for bigamous marriage involves moral turpitude under Sec.8 of The Chartered Accountants Act, 1949 and directed the accountant to appear for an enquiry on 13.01.2009 to explain why his name should not be removed from the roll. The accountant never appeared for enquiry, instead he wrote a letter stating that proceedings against him was concluded and no further action can be taken.

On 16-04-2010 Institute removed his name from the roll of Chartered Accountants. This order was challenged before the Madras High court. The Honorable Madras High court examined Sec. 8 of the Chartered Accountants Act, 1949 and came to the conclusion that the accountant is guilty of misconduct and suffers disability under Sec 8\(^1\) of the Act. Madras High Court observed in the judgment “The above referred statutory provision amplifies the disqualification of persons involved in an offence of moral turpitude either to become a member or continuing as a member of the Chartered Accountants Council”.

While examining whether bigamous marriages are immoral, the Honourable Madras High Court discussed many judgments, with due respect to the Court, not relevant to the case in their hand.\(^2\) In Ram Prasadh Seth v State of UP\(^3\), the Allahabad High Court only upheld a specific rule which prohibits civil servants from having more than one spouse at a time. Here there are no such specific rules of conduct made by Indian Institute of Chartered Accountants. In Sushil Kumar Singal v Punjab National Bank\(^4\) as cited by the Madras High

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\(^1\) Notwithstanding anything contained in section 4, a person shall not be entitled to have his name entered in or borne on the Register if he—

- i. Has not attained the age of twenty-one years at the time of his application for the entry of his name in the Register; or
- ii. Is of unsound mind and stands so adjudged by a competent court; or
- iii. Is an undischarged insolvent; or
- iv. Being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or
- v. Has been convicted by a competent Court whether within or without India, of an offence involving moral turpitude and punishable with transportation or imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the central government has, by an order in writing, removed the disability; or
- vi. Has been removed from membership of the institute on being found on inquiry to have been guilty of professional or other misconduct:

Provided that a person who has been removed from membership for a specified period, shall not be entitled to have his name entered in the register until the expiry of such period.]


\(^3\) AIR 1961 All 334

\(^4\) (2010) 8 SCC 573
Court, Supreme Court only held that the ‘rule’ removing employee for reason of his conviction for the offence is not in violation of Art 311(2)

None of these cases dealt the issue whether bigamy is an offence involving moral turpitude. With due respect, the Honorable Madras High court mislead itself while coming to conclusion that bigamy is immoral and not only illegal based on those decisions. More over for Muslims bigamy is both legally and morally permissible. When law uses the term “offences involving Moral turpitude”, it does not mean acts which are legally and morally permissible for some sections of society and not for others. ‘Morality’ here means morality of entire society irrespective of religion, caste or creed.

It is also humbly submitted that Hindus practiced polygamy prior to 1955 and even continued after that as a practice even though not legal. Monogamy among Hindus is a statutorily imposed rule and not a traditional practice. Interestingly by virtue Sec.198 of Cr.P.C no prosecution under Sec 494 of Indian Penal code can be initiated against an accused except on a complaint made by the aggrieved party. Magistrate can take cognizance of any offence on complaint, police report or suo-moto. However certain offences like bigamy are taken cognizance of only on a complaint. Generally offences of high moral depravity will fall within the category of cognizable offences which can be taken Cognizance of by any of the means cited above. Sec. 494 never falls within its ambit. Hence even proceeding under sec 494 is a private proceeding between the parties. Hence by no stretch of imagination bigamous marriages are immoral.

Moreover recently supreme court in Badshah vs Urmila Badshah Godse held that bigamous marriages are not immoral though illegal. It is admitted that professional body or government can make rules enabling dismissal of their members or employees respectively for bigamy. Such dismissals are strictly due to the contravention of the ’rules’ and not because of any ‘immorality of the conduct’. Here there is no such rule made by the institute.

Interestingly, the provisions of Chartered Accountants Act, 1949 were amended by the year 2006. The amended Act altered and modified entire provisions dealing with disciplinary proceedings.

The provisions of Chartered Accountants Act1949 as stood at the time of initial proceedings which resulted in 29-01-2004 order have to be examined. As per the law stood then in force: Sec.21 speaks about disciplinary action for other misconduct (other than professional misconduct) also. Sec21 (4) provides that the council can take disciplinary action on professional misconduct specified in first schedule .For other misconduct council has to forward the case to the high court with its recommendation.

All complaints pending before council or inquiry initiated by the disciplinary committee or any reference or appeal made to a High Court prior to the commencement of the Chartered Accountants (Amendment) Act,2006, shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the chartered Accountants (Amendment)

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5 Sec.190 of The Code of Criminal Procedure,1973
6 Criminal Miscellaneous Petition No.19530 of 2013 in SLP (Cri) No. 8596/2013
7 Hon’ble Miscellaneous Court referred Rameshchandra Daga v.Ramashweri Daga (AIR 2005 SC 422) in this case. In Rameschandra case Supreme court held that bigamous marriages are not immoral though illegal.
8 Sec.21(5) prior to Amendment Act,2006
Act, 2006. In this case proceedings against him were initiated before the Amendment Act, 2006.

In this case the second proceedings started after 2006. The re-initiated Proceedings has no fresh cause of action and it is re-opening of an concluded matter and therefore Amendment Act of 2006 cannot be made applicable. Interestingly The Chartered Accountants Act, 1949 does not arm the disciplinary authority with any power to review its decision. Power to review must be conferred by law and not inherent. After 2006 Amendment Act Sec. 22 enables the disciplinary authority to remove a member for an act not mentioned in the schedules. No such power is expressly provided in the Act prior to the 2006 Amendment. Retrospective application cannot be given to Sec. 22. The fairness in reviewing the earlier decision and conducting inquiry under new provision is not examined by the Hon’ble High Court, perhaps that issue might not have been raised.

**Conclusion**

The authors are unable to accept the conclusion that bigamy is an offence involving moral turpitude. Honorable Court has never examined the question whether the Accountant could have been removed on any other ground.

**References:**

1. Sec 8 of the Chartered Accountants Act, 1949
2. Sec 494 of the Indian penal code, 1860

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9 Patel Tackersy v. Pradyumansinghji AIR 1970 SC 1273
10 Sec. 22 Professional or other misconduct defined “For the purpose of this Act, the expression” professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under Subsection (1) of Section 21 to inquire into the conduct of any member of the Institute under any other Circumstances