

Justice V.C. Misra
Chairman

U.P. State Law Commission
Lucknow.

Ra. Vi.Aa- 1735/2012
Dated: Aug, 06, 2012

Dear Chief Minister/Law Minister,

I have great pleasure in forwarding herewith **Sixteenth Report-2012** of the Uttar Pradesh State Law Commission proposing amendment in **Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956**, titled **“Proposed Amendment of Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956.”**

A **Division Bench** of the **Hon’ble High Court, Allahabad** vide its judgment and order dated 15-11-2011. Passed in **special Appeal No. 1205 of 2003, Ramesh Chand Vs Executive Engineer, Electricity Distribution Division –II, U.P. Power Corporation Ltd. and others**, made a reference to the U.P. State Law Commission along with the Legal Remembrancer, Uttar Pradesh Government, Lucknow to consider the recommendations and suggestions made under the heading Recommendations and Suggestions wherein, the Hon’ble High Court has recommended to the State **“to amend Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956, and prohibit marriage during life time of the first spouse. Such a course may be adopted by all Corporations, authorities. Bodies under the State”**, hence Commission took up the matter.

Keeping in mind the recommendations and suggestions of the Hon’ble High Court, the Commission recommends to amend Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956, in terms of occupying **Model Draft, Annexure-I**.

If recommendations are accepted and acted upon by amending Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956, it will remove its inconsistency with the Hindu Marriage Act, particularly Clause (i) of Section 5, which introduces monogamy, as it is the rule of all civilized societies, while its contravention is punishable under the Indian Penal Code.

With kind regards,

Yours sincerely

(Justice V.C Misra)

Shri Akhilesh Yadav
Chief Minister/Law Minister,
Uttar Pradesh

Encl: A Report with Model Draft, Annexure-I

**THE UTTAR PRADESH STATE LAW COMMISSION
SIXTEENTH REPORT-2012**

ON

**PROPOSED AMENDMENT OF RULE 29 OF THE UTTAR PRADESH
GOVERNMENT SERVANTS CONDUCT RULES, 1956**

**THE UTTAR PRADESH STATE LAW COMMISSION
SIXTEENTH REPORT – 2012**

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**PROPOSED AMENDMENT OF RULE 29 OF THE UTTAR PRADESH
GOVERNMENT SERVANTS CONDUCT RULES, 1956**

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Rule, 2012)

UTTAR PRADESH STATE LAW COMMISSION**SIXTEENTH REPORT-2012****PROPOSED AMENDMENT OF RULE 29 OF THE UTTAR
PRADESH GOVERNMENT SERVANTS CONDUCT RULES, 1956****CHAPTER-I
INTRODUCTION**

1.1 It is expedient to State briefly the genesis of this report so that its scope can be properly understood and appreciated in its right perspective.

1.2 Vide his letter no. 6741, dated - 15-12-2011, Assistant Registrar (Judl. Misc.), High Court Allahabad, has made the present reference , the relevant extracts of which read as follows:-

“I am directed to enclose herewith the certified copy of court’s order dated 15.11.2011 passed in Special Appeal No. 1205-03.

Kindly consider the recommendation and suggestions made under the heading ‘RECOMMENDATIONS AND SUGGESTIONS’.”

1.3 In Special Appeal No. 1205 of 2003, Ramesh Chand Vs Executive Engineer Electricity Distribution Division –II, U.P. Power Corporation Ltd. and others, a Division Bench of the Hon’ble High Court, Allahabad, in its order dated 15-11-2011, under the heading ‘ THE RECOMMENDATIONS AND SUGGESTIONS’ made the following observations, particularly regarding Rule 29 of the Uttar Pradesh Government Servants Conduct Rule, 1956 (hereinafter referred to as the U.P. Conduct Rules) :-

“**35.** The Board had adopted UP Conduct Rules; its rule 29 deals with bigamous marriage. The Corporation, the successor - in –

Interest of the Board, has framed its own rules known as UP Vidyut Parishad Parichlkeey Karmchari Varg Seva Niyamwali, 1995 (the Corporation-Conduct Rules). Such marriage are dealt under rule 25.19 of the Corporation – Conduct Rules. It is departure from Rule 29 of the UP- Conduct Rules that were adopted by the Board. It bars second marriage by a person who already has a living spouse. However, rule 29 of the UP- Conduct Rules still continues and is applicable to government servants in UP.

36. We have clarified that under rule 29 of the UP Conduct Rules Permission can not be granted in those cases where personal law, applicable to that person, does not permit him to marry during life-time of his spouse. Now, such a situation may not arise in case of the Corporation but it may arise for the employees of the State of UP. In such a situation the government will do well to decline to consider the case on merits.

37. Monogamy is the rule of all civilized societies. The Corporation has taken a step forward in this regard. It has rightly prohibited second marriage during life time of the first spouse amongst its employees. It is a commendable step. **We also recommend to the State to amend rule 29 of the UP- Conduct Rules and prohibit marriage during life time of the first spouse. Such a course may be adopted by all Corporations, authorities, bodies under the State.”**

1.4 In view of the aforesaid observations made by the Hon’ble High Court, in its order under reference the Uttar Pradesh State Law Commission has took up the matter to examine the various aspect of Rule 29 of the UP- Conduct Rules, regarding its amendment, and submit a Report, **titled “Proposed Amendment**

of Rule 29 of The Uttar Pradesh Government Servants Conduct Rules, 1956” with Model Draft, Annexure-I, to the State Government.

1.5 To resolve this issue we discussed the related laws and rules at length in the light of the recommendations and observations made by the Hon’ble High Court, in its order dated 15-11-2011, under reference, at various meetings of the Commission held at its Head Quarter and Camp Office at Allahabad. There was consensus among the Members of the Commission that Rule 29 of the U.P- Conduct Rules requires amendment, as it contravenes the clause (i) of section 5 of the Hindu Marriage Act. A marriage in contravention of section 5 (i) of the Hindu Marriage Act is a nullity. A prior subsisting marriage is a civil disability which renders marriage with any person whose prior marriage is subsisting void ab initio. Section 17 of the Hindu Marriage Act provides for the punishment of bigamy under the Indian Penal Code.

1.6 The proposed amendment of Rule 29 of the U.P.- Conduct Rules, in terms of **Model Draft, Annexure-I**, provides that existing Rule 29 of the U.P- Conduct Rules may be amended in the following manner:-

Proposed Amended Rule

“29. Restriction regarding marriage-

- (1) NO government servant shall enter into, or contract, a marriage with a person having, a spouse living and-
- (2) No Government servant having a spouse living, shall enter into, or contract a marriage with any person:

Provided that the State Government may permit a Government servant to enter into, or contract , any such marriage as is referred to in Clause (1) or Clause (2), if it is satisfied that-

- (a) Such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage;
- (3) Government servant who has married a person other than of Indian Nationality shall forthwith intimate the fact to the Government.”

1.7 It is apparently clear from the existing Rule 29 of the U.P- Conduct Rules, that it is against the spirit of the Hindu Marriage Act, particularly clause (i) of section 5, which introduces monogamy. In accordance with the section 17 of the Hindu Marriage Act, bigamy is punishable under the Indian Penal Code. If Rule 29 is amended in terms of terms of accompanying **Model Draft, Annexure-I**, it will remove the inconsistency with the Hindu Marriage Act and will also desist bigamy, as it is an offence under the Indian Penal Code.

CHAPTER-II

LEGAL SCENARIO AND REASONS LEADING TO AMEND RULE 29 OF THE UP-CONDUCT RULES

2.1 A Division Bench of the Hon'ble High Court, Allahabad consisting of Hon'ble Mr. Justice Yatindra Singh & Hon'ble Mr. Justice Dinesh Gupta vide their order dated 15.11.2011, while dismissing the Special appeal No. 1205 of 203 filed against the order of Hon'ble Single judge (Hon'ble Mr. Justice Sunil Ambwani, J.) dated 15.10.2003 passed in Civil Misc. Writ Petition No. 10736 of 2003, Ramesh Chand Vs. Executive Engineer electricity Distribution Division-11, U.P. Power Corporation Ltd. & others, have sent a copy of the aforesaid order to the Legal Remembrancer, Uttar Pradesh Government, Lucknow as well as to the Chairman, U.P. State Law Commission, Lucknow to consider the recommendations and suggestions made under the heading '**RECOMMENDATIONS AND SUGGESTIONS**' wherein the Hon'ble Division Bench has recommended to the State to consider amendments in Rule 29 of the U.P Conduct Rules and prohibit marriage during life time of the first spouse and such a course may be all the corporations, bodies under the State.

2.2 The relevant facts of the case in which the aforesaid recommendations have been made by the Hon'ble Division Bench

are that one Late Satai was employed as Petrol Man in electricity Distribution Division-II, Allahabad whose first wife Smt. Satina Devi had no issue and in the year 1978 with the consent of Smt. Satina Devi late Satai sought Permission of the Executive Engineer, Electricity Distribution Division, Allahabad for second marriage which was given to him on 24.10.1978 with the condition that as soon as a child is born, his relation with the second wife shall cease. With this permission he married one Kaushalya Devi (petitioner's mother) during the life time of his first wife Smt. Sri Satai Died on 19.11.2000. It is alleged that there was a settlement between Smt. Satina Devi and Smt. Kaushalya Devi on 1.7.2002 under which Smt. Satina Devi was entitled to receive the post retiral dues and the petitioner – appellant would be entitled to compassionate appointment to which Smt. Satina Devi will have no objection. The petitioner-appellant applied for compassionate appointment under उत्तर प्रदेश परिषद सेवा काल में मृत परिषदीय सेवको के आश्रितों की भर्ती नियमावली, 1975 (**Uttar Pradesh Rajya, Vidyut Parishad Sewakal Men Mrit Parishadiya Sewako ke Ashrito ki Bharti Niyamawali, 1975**) (**the Dying –in – harness Rules**). On the receipt of the application, the Executive Engineer, on behalf of the General Manager (Distribution) Allahabad, wrote a letter dated 28.11.2002 to the headquarter at Lucknow . In the light of the

aforesaid facts, the guidelines were asked for, whether the appellant could be considered for compassionate appointment. The Personnel Officer, U.P. Power Corporation vide his order dated 25.02.2003 has found that compassionate appointment cannot be given on the basis of a settlement and the child born out of second marriage is not a legitimate child.

2.3 The Dying –in – harness Rules, 1975 define ‘family’ of the deceased employees of the Board which include (i) husband or wife; (ii) son, also includes adopted son in respect of Hindu employees, and (iii) unmarried daughters and widowed daughters. As per law a second marriage during the lifetime of a living spouse is void. **Section 11 of the Hindu Marriage Act, 1956 (in short the Act, 1956)** declares such a marriage being in contravention of Section 5 (i) as null and void. The legitimacy of child is, however, protected under **Section 16 of the Act, 1956** which is quoted as below:

“16- Legitimacy of children of void and voidable marriages:-

- (1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate, if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage laws (Amendment) act,

1976, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

- (2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.
- (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person other than parents, in any case where, but for the passing of this Act, such child would have been incapable of possession or acquiring any such rights by reason of his not being the legitimate child of his parents.

2.4 Section 16 deals with legitimacy of children of void marriages and voidable marriages so declared by a decree under Section 11 and 12 of the Act. This Section was enacted to avoid

bastardy. A decree of nullity of marriage does not affect the legitimacy of the child begotten or conceived before such decree. This section however, does not save the marriage or extend the protection to the mother. Though a child born out of marriage which is null and void under Section 16, quoted as above, is legitimate yet sub-section (3) of Section 16 restricts his rights in or to the property of any person other than the parents, in any case where, but for the amendment Act, such child would have been incapable to possess or acquire any such rights by reason of his not being the legitimate child of his parents. However, the Hon'ble Single Judge in para 10 of the Judgment dated 15-10-2003, passed in Civil Misc. writ Petition No. 10736 of 2003, held that right to compassionate appointment is not a right to property of the deceased employee. The parents of a child referred to under Section 16 (3) are his parents who have entered into a void or voidable marriage and the Court was concerned with void marriage for which no decree of annulment was required. Such a child did not have a right to property of any person other than his parents, therefore, he could not claim compassionate appointment which was a statutory right of the family of the deceased. Hon'ble single Judge further held that such child could not defeat the right of other persons to the property such as retiral benefits and pension of the deceased and these other persons will include only the legally

2.7 Hon'ble Appellate Court formulated following points for determination in the appeal.

1. Whether the permission. Granted by the Executive Engineer to marry second time during lifetime of the first wife was legal?
2. Whether the appellant is a legitimate son?
3. Whether the appellant is entitled to all rights like a son born out of valid marriage?
4. In the circumstances of the case, should the court exercise its jurisdiction under article 226 of the constitution?

2.8 Hon'ble appellate Court discussed Rule 29 of the U.P-Conduct Rules which deals with Bigamous Marriages and Rule 21 of the Central Conduct Rules which deals with Restriction regarding Marriage. These rules are as under:

2.8.1 Rule 29 reads as under:

“Bigamous marriages:

- (1) No government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.
- (2) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government.

2.8.2 Rule 21 of the Central Conduct Rules reads as follows:

“ Restriction regarding Marriage:

- (1) No Government servant shall enter into, or contract, marriage with a person having a spouse living and-
- (2) No Government servant having a spouse living, shall enter into, or contract a marriage with any person:

Provided that the Central Government may permit a Government servant to enter into or contract, any such marriage as is referred to in Clause (1) or Clause (2), if it is satisfied that-

- (a) Such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and
 - (b) There are other grounds for so doing.
- (3) Government servant who has married a person other than of Indian Nationality shall forthwith intimate the fact to the Government.

2.9 Section 5 of the Hindu Marriage Act which deals with Conditions for a Hindu Marriage has also been referred by Hon’ble Appellate Court. The first condition under Section 5 (i) of the Hindu Marriage Act provides that ‘neither party has a spouse living at the time of marriage’. Section 11 of the Hindu Marriage Act provides for ‘void marriage’ which states that apart from other reasons, a marriage is void If it contravenes section 5 (i) of the Hindu Marriage Act. Hon’ble appellate Court further held that the U.P. Conduct Rules are merely rules and are subordinate to any statute validly enacted. Rule 29 id subject to the Hindu Marriage Act, It does not envisage a case of grant of permission to Hindu to marry for the second time during life time of the

first spouse as it would be contrary to Section 5 (i) read with Section 11 of the Hindu Marriage Act. In case, it empowers the Government to grant such permission, then it would contravene these Sections of the Hindu Marriage Act. The scope of Rule 29 (1) of the U.P. Conduct Rules is limited to the persons belonging to the faith, where personal law permits second marriage during life time of their first spouse. The deceased was a Hindu, therefore, no such permission could be granted under Rule 29 (1) of the U.P. Conduct Rules.

2.10 Hon'ble Appellate Court opined that the permission under Rule 29 of the U.P. Conduct Rules can only be granted to the persons where under personal law they could marry again during life time of their first spouse. The Executive Engineer had no right to grant permission. It was only the Government that would grant such permission. Therefore, the permission granted to the deceased was invalid. The first point related to permission granted by the Executive Engineer to marry second time during lifetime of the first wife was decided against the petitioner-appellant.

2.11 Hon'ble Appellate Court while deciding the second and third points, which are related to 'whether the appellant is a legitimate son' and as to 'whether he is entitled to all rights like a son born out of valid marriage', has observed, that the appellant is entitled to all rights as a son, who might have been born out of valid marriage except in regard to inheriting the property in question other than of his parents. Section 11 read with Section 5(i) of the Hindu Marriage Act declares second marriage during life time of

first spouse to be invalid. However, Section 16 grants legitimacy to the children who were earlier not considered to be legitimate. Sub-section (1) of Section 16 of the Hindu Marriage Act declares that the children born out of void marriages under Section 11 to be legitimate whereas sub-section (2) of Section 16 grants a similar legitimacy to the children born out of voidable marriage under Section 12 of the Hindu Marriage Act, the Logical conclusion to the grant of legitimacy to such children is that there is no difference between them and children born out of valid marriages, they have same rights as the children born out of valid marriages unless there is any specified exception. The Hindu Marriage Act provides one exception which is mentioned in sub-section (3) of section 16 of the Hindu Marriage Act. Section 16 (3) of the Hindu Marriage Act provides that nothing contained in Sections 16 (1) and 16 (2) which construe as conferring any right upon children to the property other than of their parents. Apart from section 16(3), there is no other restriction to the rights available to such children. Hon'ble Appellate Court further observed that the Appellant would be covered within the definition of the word 'family' under Rule 2 (ga) of the Dying- in – Harness Rules and would be entitled to have his application considered on merit under Rule 5 of the Dying –in – Harness Rules. Rule 2 (ga) and Rule 5 of the Dying-in- Harness Rules, read as under:-

2.11.1 नियम 2 (ग) परिभाषाएं:-

जब तक कि संदर्भ में अन्यथा अपेक्षित न हो, इस नियमावली में.....

(ग) कुटुम्ब के अंतर्गत मृत परिषदीय सेवक के निम्नलिखित सम्बंधी होंगे:-

of aforesaid marriage. A direction to the authorities to consider the Appellant's application on merit, would be granting recognition to the conduct that was not permissible under the law. It was of the view that it is not a fit case for exercising discretionary jurisdiction under Article 226 of the Constitution of India and dismissed the intra court appeal.

2.14 Hon'ble Appellate Court has also observed that the Board had adopted U.P. conduct Rules and the Corporation has framed its own rules known as U.P. Vidyut Parishad Parichalkeey Karmchari Varg Seva Niyamwali, 1995 (the Corporation – Conduct Rules). Such marriages are dealt under Rule 25.19 of the Corporation Conduct Rules which reads as under:

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- (1) कोई भी कर्मचारी किसी ऐसे व्यक्ति के साथ विवाह अथवा विवाह की संविदा नहीं करेगा जिसका कि जीवन साथी जीवित हो, तथा
- (2) कोई भी कर्मचारी, जिसकी जीवन साथी जीवित हो, किसी अन्य व्यक्ति के साथ विवाह अथवा विवाह संविदा नहीं करेगा,
- (3) जो कर्मचारी भारतीय नागरिक को छोड़कर किसी अन्य व्यक्ति से विवाह करता है, तो वह इस तथ्य की सूचना तुरन्त नियुक्ति प्राधिकारी को देगा।

2.15 Hon'ble Appellate Court further observed that in departure from Rule 29 of the U.P. Conduct Rules, above rule was adopted by the Board. It bars second marriage by a person who already has a living spouse. However, Rule 29 of the U.P. Conduct Rules still continues and is applicable to Government servants in U.P. The Corporation has taken a step forward in this regard. It has rightly prohibited second Marring during life time of the first spouse amongst its employees. It is a commendable step. Hon'ble Appellate Court has also recommended to the State to amend Rule

29 of the U.P. – Conduct Rules and prohibit marriage during life time of the first spouse and that such a course may be adopted by all Corporations, authorities, bodies under the State.

2.16 The aforesaid legal scenario, reasons and observations are to be kept in mind to propose any amendment in Rule 29 of the U.P. Government Servants Conduct Rules, 1956.

CHAPTER-III

CONCLUSIONS AND RECOMMENDATIONS

- 3.1** In view of the earlier discussions under preceding chapters and having regards to the observations made in Special Appeal No. 1205 of 2003 (supra) by the Hon'ble Division Bench of the High Court, Allahabad and related provisions under the U.P. – Conduct Rules, Central Conduct Rules, other rules and laws particularly Hindu Marriage Act, we are of the view that Rule 29 of the U.P – Conduct Rules, requires amendment as in existing form it contravenes the clause (i) of section 5 of the Hindu Marriage Act which is punishable under the Penal Code.
- 3.1** Here, we refrain ourselves to make any suggestion on the point of eligibility of a person to get the benefits of the provisions of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 of Uttar Pradesh Rajya Vidyut Parishad Sewakal Men Mrit Praishadiya Sewako ke Ashrito ki Bharti Niyamawali, 1975 of legitimacy of such children born out of void marriages, as it will be an out of context of reference made by the Hon,ble High Court. We are concerned with Rule 29 of the U.P- Conduct Rules only to ascertain whether it requires any amendment, if, so, its nature and reasons thereof.

3.3 In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Uttar Pradesh is pleased to make the rules to regulate the conduct of Government servants employed in connection with the affairs of the State of Uttar Pradesh, titled **‘The Uttar Pradesh Government Servants Conduct Rules, 1956.’**

3.4 Rule 29 of the U.P.- Conduct Rules deals with the **Bigamous marriages**, provides :-

3.4.1 29. Bigamous marriages-

- (1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.
- (2) No female government servant shall marry any person who has a wife living without first obtaining the permission of the Government.

3.5 Words “without first obtaining the permission of the Government” used under Clause (1) and Clause (2) of Rule 29 denote that after obtaining the permission of the Government, a government servant having a spouse living may contract another

marriage or a government servant may contract another marriage with a person having spouse living, while section 5 (i) of the Hindu Marriage Act makes the precondition for a Hindu Marriage i.e 'neither party has a spouse living at the time of marriage.'

3.6 Section 11 of the Hindu Marriage Act deals with the void marriage, provides :

“ 11. Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in Clauses (i), (iv) and (v) of section 5.”

3.7 Thus, clause (i) of section 5 of the Hindu Marriage Act introduces monogamy which is essentially the voluntary union for life of one man with one woman to the exclusion of all others. It enacts that neither party must have a spouse living at the time of marriage. The expression 'spouse' there used means a lawfully married husband or wife. Before a valid marriage can be solemnized both parties to such marriage must be either single or divorced or a widow or widower and then only they are competent to enter into a valid marriage. If at the time of performance of the marriage rites and ceremonies one or other of

the parties had a spouse living and the earlier marriage had not already been set aside in accordance with law, the later marriage is no marriage at all, being in contravention of the condition laid down in this clause, it is void ab initio¹ and cannot be treated as voidable under Section 12².

3.8 The general rule of matrimonial law that a party to a marriage of which the other party is incompetent to join in the celebration because of the existence of a previous husband or wife, is entitled without recourse to any court to marry anyone else because that particular marriage is not a marriage at all in the eye of law and this general rule is applicable equally well to marriages under the Act. A person, an innocent party to a bigamous marriage, may go to a court for a declaration that the bigamous marriage is null and void. That would be for the purpose of precaution or record of evidence. But the bigamous marriage is non-existent and simply because there is no recourse to the court it cannot be said that it exists unless and until a decree is passed declaring it to be null and void³

1. Prakash Chandra vs. Parmeshwari, (1987) P&H 37, Mohmed Ibram Vs State of U.P., (1964) ASC 1625, Surjeet kaur vs Ghujhar Singh, (1980) Punj.&H 274
2. Yamuna bai vs Anant Rao, (1988) ASC 644
3. William Hudson vs. Webster, AIR (1937) Mad. 565

3.9 The provision which prohibits bigamy does not contravene Article 25 of the Constitution of India.

3.10 Section 17 which deals with the punishment of bigamy, Provides that “Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the Provisions of sections 494 and 495 of the Indian Penal Code (XLV of 1860) shall apply accordingly”.

3.11 A marriage in contravention of section 5 (i) of the Hindu Marriage Act is a nullity. A prior subsisting marriage is a civil disability which renders marriage with any person whose prior marriage is subsisting void ab initio with the result that the parties to such marriage are not husband and wife. Section 11 lays down inter alia the rule that any such marriage solemnized after the commencement of this Act is void. Therefore, Section 17 also in terms reproduces that rule and also declares that the provisions of sections 494 and 495 of the Indian Penal Code which impose punishment for the offence of bigamy are applicable in case of any such marriage.

3.12 Here, we would also like to mention the relevant provision of Central Civil Service (Conduct) Rules, 1964 as it is

related with Rule 29 of the U.P- Conduct Rule. Rule 21 of the Central Conduct Rules runs as under:-

“21. Restriction regarding Marriage.-

- (1) No government servant shall enter into, or contract, a marriage with a person having, a spouse living and-
- (2) No Government servant having a spouse living, shall enter into, or contract a marriage with any person:

Provided that the Central Government may permit a Government servant to enter into, or contract , any such marriage as is referred to in Clause (1) or Clause (2), if it is satisfied that –

- (a) Such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and
 - (b) There are other grounds for so doing.
- (3) Government servant who has married a person other than of Indian Nationality shall forthwith intimate the fact to the Government.

3.13 Rule 21 of the Central Conduct Rules is conformity with the personal laws. It also does not contravene any

provision of the Hindu Marriage Act, particularly clause (i) of section 5. However, we are of the view that aforesaid sub-clause (a) to the proviso to clause (2) is sufficient to deal with such marriages, therefore, sub-clause (b) to the proviso is not needed, as it creates some confusion and apprehension in the mind, particularly among Hindu employees, Therefore, aforesaid Rule 21 of Central Conduct Rules may be adopted for the Uttar Pradesh Government Servants also with some modifications in terms of Annexure-I and existing Rule 29 of the U.P- Conduct Rules may be amended accordingly.

3.14 Hence, we are of the view that Rule 29 of the U.P Conduct Rules, in its existing form, contravenes the various provisions of the Hindu Marriage Act, particularly clause (i) of Section 5. If the existing provision remains as such, tendency of bigamy will increase among those Government servants of the State of U.P., who are governed by the Hindu Marriage Act, as they may obtain the permission from the Government on false pretext, while bigamy is punishable under the Indian Penal Code.

3.15 Keeping in mind the issues, as raised by the Hon'ble High Court, in its order dated 15-11-2011, in Special Appeal No. 1205 of 2003 (supra), it is felt that amendment of Rule 29

of the U.P- Conduct Rules , be proposed. Therefore, we have also drafted a **Model Draft** with this report in terms of **Annexure-I** . Accordingly, we propose the amendment of Rule 29 of the U.P- Conduct Rules in the following manner:-

3.15.1 The Uttar Pradesh Government Servants Conduct (Amendment) Rules, 2012

In exercise of the power conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules with a view to amending **The Uttar Pradesh Government Servants Conduct Rules, 1956**.

1. Short title and commencement-

- (1) These rules may be called The Uttar Pradesh Government Servants Conduct (Amendment) Rules, 2012.
- (2) They shall come into force at once.

2. Substitution of Rule 29- In the Uttar Pradesh Government Servants Conduct Rules, 1956 for existing Rule 29 set out in Column 1 below the rule as set out in Column 2 shall be substituted, namely:-

COLUMN-1	COLUMN-2
Existing Rule	Rule as hereby substituted
<p>29. Bigamous marriages-</p> <p>(1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, Notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.</p> <p>(2) No female government servant shall marry any person who has a wife living without first obtaining the permission of the Government.</p>	<p>29. Restriction regarding marriage-</p> <p>(1) No government servant shall enter into, or contract, a marriage with a person having, a spouse living and-</p> <p>(2) No Government servant having a spouse living, shall enter into, or contract a marriage with any person: Provided that the State Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in Clause (1) or Clause (2), if it is satisfied that-</p> <p>(a) Such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage;</p> <p>(3) Government servant who has married a person other than of Indian Nationality shall forthwith intimate the fact to the Government.</p>

3.16 Regarding Rule 21 of the Central Conduct Rules, Government of India has taken various decisions to deal with requests from Government servants for permission to remarry while first wife is still living and thereafter issued certain O.M.'s. We would like to quote these decisions, as under, because it will help to clarify proposed amendment, particularly its proviso. If proposed amendment is carried out, State Government may also take such decisions to make clear such amended provisions, particularly its proviso and may issue G.O's accordingly. It will deal with all the persons effectively governed by their personal laws.

3.16.1 Government of India's Decisions

(1) Procedure of dealing with request from Government servants for permission to remarry while first wife is still living.- Cases under this rule have been referred to the Home Ministry for advice whether the permission sought should be given, without any preliminary enquiry into the facts alleged. Such references have caused unnecessary loss of time as no advice can be given without ascertaining to what extent the facts alleged are correct. It is, therefore, requested that before such cases are referred to the Home Ministry, the Ministry or Department concerned should cause an enquiry to be made on the following lines.

The first point to be scrutinized when an application for permission is received is whether such marriage is

permissible under the personal law applicable to the applicant. If, so. the question arises whether there are sufficient grounds for allowing an exception to Government's general policy. The alleged grounds given in support of the request should be scrutinized to see whether the wife also joins the application, it should be ascertained whether she has willingly consented and whether any letter etc., purporting to proceed from her is genuine and is the outcome of her own free will. For this purpose, higher officers in the department concerned may, if necessary, send for the applicant and his wife and make personal enquiries. Where the first wife's views have not been stated, they should, if possible, be ascertained. If permission is sought on grounds, of alleged sickness of the wife, as much information as possible should be obtained in consultation with the medical authorities. the arrangements made by the husband for the maintenance of the first wife should also be ascertained and it should be examined whether they are satisfactory.

It is requested that the procedure suggested should be brought to the notice of all subordinate authorities who may have occasion to deal with such cases ⁴.

The question of granting permission for remarriage will not arise in the case of persons governed by the Hindu Marriage Act, as a second marriage is possible under the said Act only after the person concerned has obtained a divorce against his present wife from a Court of law. Once

he has obtained a divorce, he is free to remarry and Government's permission is not necessary. There is, therefore, no point in forwarding application for remarriage form persons governed by the Hindu Marriage Act ⁵.

- (2) **Declaration to be obtained from new entrants.**- The question of revision of the standard rule to be incorporated in the recruitment rules and the declaration to be obtained from new entrants to Government service has been examined. It has been decided that various recruitment rules may be amended as indicated in the Annexure and the form of declaration to be obtained from the new entrants to Government service should be as given thereunder⁶.
- (3) A question has been raised whether the rules prohibiting bigamous marriage are at all attracted by a case in which a male candidate for Government service contracts a second marriage but the women with whom the second marriage is contracted does not, under the law, acquire the status of a wife or when a female candidate contracts a marriage with a person which is void by reason of his already having a wife living. It is hereby clarified that even a marriage which is legally null and void by reason of there being a spouse living at the time of the marriage, would disqualify the person concerned for appointment to Government service⁷.

5.D.G.P.&T.'s memo. No. 62/3/58- Disc., dated the 28th April, 1958.

6.M.H.A.O.M.No. 25/37/69-Ests. (A), dated the 22nd April, 1970.

7. M.H.A., O.M. No. 25/35/60-Ests. (A). dated the 9th December, 1960.

3.17 If recommendations are accepted and acted upon in terms of **Model Draft Annexure-I**, by the State Government, it will desist the developing tendency of 'bigamy', particularly among those U.P Government Servants who are governed by the Hindu Marriage Act, as bigamy is clearly prohibited there and its contravention is punishable under the Indian Penal Code.

3.18 We recommend accordingly.

(Justice V.C. Misra)
Chairman

(Prof. Balraj Chauhan)
Member
(Part-time)

(Ishwar Dayal)
Member
(Full-time)

**ANNEXURE-I
MODEL DRAFT**

THE UTTAR PRADESH STATE LAW COMMISSION

SIXTEENTH REPORT- 2012

ON

**PROPOSED AMENDMENT OF RULE 29 OF THE UTTAR
PRADESH GOVERNMENT SERVANTS CONDUCT RULES, 1956**

THE UTTAR PRADESH STATE LAW COMMISSION

SIXTEENTH REPORT – 2012

ON

**PROPOSED AMENDMENT OF RULE 29 OF THE UTTAR
PRADESH GOVERNMENT SERVANTS CONDUCT RULES, 1956**

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ANNEXURE-I**Model Draft****The Uttar Pradesh Government Servants Conduct****(Amendment) Rules, 2012**

In exercise of the power conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules with a view to amending **The Uttar Pradesh Government Servants Conduct Rules, 1956**.

1. Short title and commencement-

- (1) These rules may be called The Uttar Pradesh Government Servants Conduct (Amendment) Rules, 2012.
- (2) They shall come into force at once.

2. Substitution of Rule 29- In The Uttar Pradesh Government Servants Conduct Rules, 1956 for existing Rule 29 set out in Column 1 below the rule as set out in Column 2 shall be substituted, namely:-

COLUMN-1	COLUMN-2
Existing Rule	Rule as hereby substituted
29. Bigamous marriages- (1) No Government servant who has a wife living shall contract another marriage without first	29. Restriction regarding marriage- (1)No government servant shall enter into, or contract, a marriage with a person

<p>obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.</p> <p>(2) No female government servant shall marry any person who has a wife living without first obtaining the permission of the Government.</p>	<p>having, a spouse living and-</p> <p>(2) No Government servant having a spouse living, shall enter into, or contract a marriage with any person:</p> <p>Provided that the State Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in Clause (1) or Clause (2), if it is satisfied that-</p> <p>(a) Such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage;</p> <p>(3) Government servant who has married a person other than of Indian Nationality shall forthwith intimate the fact to the Government.</p>
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