



Australian Government
Refugee Review Tribunal

Country Advice

India

India – IND40247 – The Hindu Marriage Act 1955 – Sikh Marriage – Registration – Divorce – Inclusion of Spouse’s Name in Passport – Polygamy

26 April 2012

1. What is the process for adding a spouse to a passport?

It is not mandatory for newly married Indian passport holders to have their spouse’s name added to their passports; the Government of India’s Ministry of External Affairs website states that “[i]t is better to include your spouse’s name in your passport”. To do this, the website advises that an applicant complete a “Form No.II (EAP-II) form and submit it along with marriage certificate, photocopy of spouse’s passport (if she has one) and proof of stay (if the present address is different from the one in the passport). Note: The procedure is the same if one wants to include her husband’s name in the passport”.¹ According to the Ministry of External Affairs Regional Passport Office in New Delhi, the procedure incurs a fee of Rs.300.² A copy of the EAP-II is attached.³

The Ministry of External Affairs website does not provide information on the timeframe for the process, nor a description of the endorsement.

2. Is it possible for a man in India, living in Punjab state, to marry another woman without a divorce from an earlier marriage?

Polygamy is illegal in India under Section 494 of the *Indian Penal Code of 1860*. The penalty for a breach of Section 494 can include a prison term of up to seven years and a fine.⁴ In 2011, *The Times of India* reported the case of a man who was sentenced to a prison term of six months and a fine of Rs.10,000 for marrying a second time without divorcing his first wife. The police only investigated the second marriage after the first wife lodged a complaint with the police.⁵

While illegal, it may be possible to marry again without having obtained a divorce. In India, most marriages are registered with the relevant registry body associated with their religion rather than with a central registry of births, deaths and marriages. A 2005 article in the *Ludhiana Tribune* reported that many Sikhs did not formally register their marriages as they

¹ Ministry Of External Affairs n.d., *Frequently Asked Questions (FAQ) regarding Passport Rules and Regulations*, Government Of India website, q.8 <<https://passport.gov.in/cpv/faq.htm> > Accessed 20 April 2012

² Ministry of External Affairs n.d. *How to Apply for Inclusion of Spouse Name in the Passport*, Government of India website <<https://passport.gov.in/pms/Addition%20of%20Spouse%20Name.htm>> Accessed 23 April 2012

³ Ministry of External Affairs n.d., *Application for Miscellaneous Services on Indian Passports*, Government of India website <<https://passport.gov.in/cpv/miscell.pdf>> Accessed 20 April 2012

⁴ *The Indian Penal Code 1860*, Indian Kanoon website, Section 494 <<http://indiankanoon.org/doc/508426/>> Accessed 16 April 2012

⁵ ‘Man marries for second time without divorce, sent to jail’ 2011, *The Times of India*, 5 March <http://articles.timesofindia.indiatimes.com/2011-03-05/guwahati/28658551_1_hindu-marriage-act-first-wife-cjm> Accessed 16 April 2012

are required to do so with the Hindu registry body.⁶ An April 2012 report by *BBC News* states that “[m]illions of marriages go unregistered in India every year”.⁷ Therefore, a second marriage registered in a different registry to the first marriage may not be cross-checked with other registries, allowing an act of bigamy to go undetected. Alternatively, a second, unregistered marriage would not alert authorities to an act of bigamy.

3. What would be the status of a second marriage, conducted without obtaining a divorce from one’s first marriage? That is, would a first marriage still be in force or is the second marriage not a legal one?

Under Indian law, a second marriage without first having obtained a divorce renders the second marriage void. Section 5(i) of *The Hindu Marriage Act* states that one of the conditions for a Hindu Marriage (including Sikhs and Jains) is that “neither party has a spouse living at the time of the marriage”. Section 11 of *The Hindu Marriage Act* states:

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), Section 5.⁸

A person whose spouse has been absent for at least two years may file for divorce on the grounds of abandonment. An applicant may petition for divorce without the consent of the absent spouse.^{9 10} Section 13 of *The Hindu Marriage Act* states that a petitioner has grounds for divorce if their spouse has deserted or abandoned the petitioner “for a continuous period of two years prior to the filing for divorce”:

- (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-
 - 1[(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or
 - (ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or
 - (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]
 - (ii) has ceased to be a Hindu by conversion to another religion; or
 - 1[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.¹¹

⁶ Thind, A. 2005, ‘Sikhs resent govt decision on marriage registration’, *Ludhiana Tribune*, 8 November
<<http://www.tribuneindia.com/2005/20051108/ldh1.htm>> Accessed 8 February 2006

⁷ ‘India clears way for compulsory marriage registration’ 2012, *BBC News*, 12 April
<<http://www.bbc.co.uk/news/world-asia-india-17686877>> Accessed 18 April 2012

⁸ *The Hindu Marriage Act*, 1955, Sudhirlaw.com website, sections 5(i), 11
<<http://www.sudhirlaw.com/indianlaw/marriage-divorces/enactments/HMA55.htm>> Accessed 21 March 2012

⁹ ‘SGMC seeks new marriage Act for Sikhs’ 2008, *The Times of India*, 21 October
<http://timesofindia.indiatimes.com/Delhi/SGMC_seeks_new_marriage_Act_for_Sikhs/articleshow/3620542.cms>
Accessed 9 June 2009

¹⁰ Tandon, A. 2011, ‘Centre drops proposal for separate Sikh Marriage Act’, *The Tribune*, 29 August
<<http://www.tribuneindia.com/2011/20110830/main6.htm>> Accessed 21 March 2012

¹¹ *The Hindu Marriage Act*, 1955, Sudhirlaw.com website, section 13
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- Thind, A. 2005, 'Sikhs resent govt decision on marriage registration', *Ludhiana Tribune*, 8 November <<http://www.tribuneindia.com/2005/20051108/ldh1.htm>> Accessed 8 February 2006.