
RIGHTS OF WOMEN IN POLYGAMOUS RELATIONSHIPS IN INDIA

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1. Introduction

“A Brahmana can take three wives. A Kshatriya can take two wives. As regards the Vaishya, he should take a wife from only his own order. The children born of these wives should be regarded as equal” these words were said by Bhishma to King Yudhishtira in the Hindu scripture “Mahabharata”.¹ The now-looked-down-upon practice of polygamous/ Bigamous marriages among Hindus was glorified back then in ancient scriptures and are idols in today's time.

Polygamy, the practice of having more than one spouse at the same time, has a long and complex history. This practice has been seen to be a significant factor affecting women who are a part of such marriages with respect to their social status, maintenance and denying them the basic right to equality. Throughout history, various groups and societies have practised it with differing degrees of regularity and acceptance.

2. History of Polygamy

Polygamy was common among kings and wealthy individuals in many early cultures like the ancient Egyptians, and pharaohs who usually had a large number of wives and concubines. It was also common in ancient Rome, where men were allowed to have multiple wives or concubines.

In several communities, Polygamy was considered a religious obligation. For example, In some Islamic countries, men are allowed to have up to four wives as long as they can support them all equally. However, this equal treatment has been subject to misuse as history predates itself.

¹ Kisari Mohan Ganguli, *The Mahabharata of Krishna Dwaipayana Vyasa* (Munshiram Manoharlal Publishers Pvt. Ltd. 2008)

Polygamy has also been practised by some Jewish and Christian communities throughout history, although it is not very common today.

In certain cases, polygamy was used to strengthen political connections or to consolidate wealth and power. Polygamy, for example, was regarded in many African societies as a means of expanding family networks and maintaining communal bonds.

Polygamy is outlawed in many nations around the world, often due to concerns about women's rights and gender equality. Polygamy, for example, was prohibited in the United States in the nineteenth century, though it is still practised surreptitiously by some religious organisations.²

Despite its history and prevalence in diverse societies, polygamy remains a contentious and frequently divisive practice, with many claiming that it is fundamentally unfair to women and children.

It was employed in some circumstances to build political ties or to concentrate riches and power. For example, it was considered as a means of expanding family networks and maintaining communal links in many African communities.

Some British men saw polygamy as a symbol of money, power, and status since it allowed them to maintain many residences and demonstrate their ability to provide for and support multiple families. These men frequently married Indian women and sometimes had many wives, despite the fact that such activities were frowned upon by the Christian churches and missionaries active in India at the time.

However, it is crucial to emphasise that the British government did not officially recognise or encourage polygamy, and there were laws and regulations in existence that forbade or regulated such practices. Polygamy, was rendered illegal in India by the Indian Criminal Code of 1860, and British officers were required to follow British law and Christian moral norms. Furthermore, Christian missionaries in India were aggressively promoting monogamy and against polygamy.

Polygamy among British men in India was a complicated and multifaceted phenomenon influenced by cultural, social, economic, and political considerations. Approaching this topic

² Anna Clark, 'James Hinton and Victorian Individuality: Polygamy and the Sacrifice of the Self' (jstor.org,2011) <<https://www.jstor.org/stable/pdfplus/10.2979/victorianstudies.54.1.35.pdf>> accessed 1 April 2023

requires a comprehensive and contextual grasp of the historical and cultural aspects of the time. It has been practised throughout history in numerous cultures and societies, including some Hindu and Muslim communities in India.

Polygamous marriages, also known as many marriages or polygyny, have a long and intricate legal history in many different civilizations throughout the world.

Since the development of Christianity and the influence of Roman law, which banned polygamy, it has largely been prohibited in the Western world. This practice was outlawed throughout Europe during the Middle Ages, and it was made a crime in England during King Henry VIII's reign.³

Generally, the legal history of polygamous marriages has been characterised by a complex interaction of religious, cultural, and legal issues, and the matter remains problematic in many parts of the world.

2.1. Polygamy In India

In India, polygamy has a lengthy and complicated legal history. Polygamy has been practised in India since ancient times, and it was not rendered illegal by the British until the colonial era.

The British Governor-General Lord William Bentinck approved legislation in 1829 making Sati (widow-burning) illegal, and the East India Company passed the Hindu Widows' Remarriage Act in 1856, allowing Hindu widows to remarry. These regulations were part of the British Empire's campaign to change Indian society and promote Western virtues like monogamy.

Under the Indian Penal Code, which was enacted in 1860, polygamy was made illegal. Section 494 of the Indian Penal Code states 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 imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."⁴

³ Sarah M.S. Pearsall, 'Polygamy: A very Short Introduction'(academic.oup.com, February 2022) <<https://academic.oup.com/book/41093/chapter-abstract/350218502?redirectedFrom=fulltext>> accessed 15 April 2023

⁴ Indian Penal Code 1860, s 494

Nonetheless, the Indian legal system recognises varied personal rules for different religions, and certain Indian religions continue to allow polygamous marriages. Islamic law allows Muslim men, for example, to have up to four wives. In India, this has created some debate and controversy, with some stating that polygamy opposes gender equality and human rights values.

In recent years, there have been calls in India for a universal civil code that applies to everyone, regardless of faith, and forbids polygamous marriages. Nonetheless, this is still a sensitive issue in Indian politics and society.

2.2. Polygamy In Pakistan V. India

Polygamy is permitted in India for Muslims under the Muslim Personal Law (Shariat) Application Act of 1937⁵. A Muslim man, on the other hand, cannot have more than four wives at the same time and must acquire the consent of his current wife or spouses before marrying another woman. Furthermore, a Muslim man who wishes to marry again must demonstrate that he can treat all of his wives fairly and appropriately provide for them.

Before marrying a second wife, a Muslim man must seek the written agreement of his first wife. The consent of the first wife is essential to ensure that the husband can treat all of his wives equally and sufficiently provide for them.

While the requirement for written agreement is not officially specified in the Muslim Personal Law (Shariat) Application Act, 1937, it is a widely accepted practise in India's Muslim community. In fact, it is regarded as a necessary condition for the legality of the second marriage.

The husband must acquire written agreement from the first wife before a Qazi (Islamic religious court), and it must explicitly declare that the first wife has granted her permission for the husband to marry again. The Qazi will then provide a certificate confirming the receipt of written consent.

In Pakistan, however, polygamy is lawful for Muslims under the Muslim Family Laws Ordinance of 1961. However, before marrying another woman, a Muslim man must acquire

⁵ Muslim Personal Law (Shariat) Application Act of 1937

permission from an arbitration committee and establish that he can treat all of his wives equally and adequately provide for them.

Polygamy has been condemned in both India and Pakistan. Polygamy, critics believe, reinforces gender inequality by enabling men to have several wives while women are not permitted to have multiple husbands. Furthermore, polygamy can lead to women's exploitation and abuse, particularly when women are pushed into marriages or do not receive appropriate assistance from their husbands.

2.3. A Constitutional Wrong

Articles 15 and 14 of the Indian Constitution⁶ provide the right to equality and non-discrimination on the basis of gender, religion, race, caste, or place of birth. Polygamy, or having many marriages, is frequently viewed as a breach of these fundamental rights.

Polygamy, which is permissible under Muslim personal law, has sparked debate about women's unequal treatment. as it is considered as discriminatory towards women and goes against the values of equality and non-discrimination entrenched in the Constitution.

It has been criticised for perpetuating gender inequality by seeing women as property to be acquired and discarded at will. It also contributes to women's marginalisation and subjection, as they are frequently forced into unequal and coercive partnerships. Furthermore, polygamy can create social and economic gaps within a community, with wealthier men able to finance numerous wives while poorer men have no choice.

Polygamy is a constitutional violation under Articles 15 and 14 of the Indian Constitution because it contradicts the ideals of equality and non-discrimination.

3. Hindu Law and Polygamy

The history of India has witnessed many polygamous marriages in its history. The ruling kings had many wives which set a precedent for the practice to be normalised. However, in the present India, polygamy as a practice stands prohibited among the Hindus.

The Hindu Marriage Act of 1955: This law controls Hindu, Sikh, Jains, and Buddhist marriages and divorces in India. It expressly forbids polygamy and considers any such marriage void.

⁶ The Constitution of India 1950, art 14, 15

Before the Hindu Marriage Act of 1955, a Hindu man could marry more than one woman at the same time, and this practise was common among the rich and aristocratic Hindus. Kings, village headmen, and rich merchants or Zamindars were the ones who usually had multiple wives at the same time. Certain tribal communities and castes in both southern and northern India practiced polyandry, which is a sort of marriage in which a woman is married to more than one spouse.⁷

Polyandry was common in these societies due to the need to preserve brotherly brotherhood, family property, and to battle economic challenges. Polygynous and polyandrous marriages have been prohibited for Hindus, as well as Jains, Sikhs, and Buddhists who are also bound by Hindu law, since the passage of the Hindu Marriage Act in 1955. Bigamy is also prohibited for Christians, Parsis, and Jews who are not subject to Hindu law.

3.1. Religious Conversion To Constitute Second Marriage

Converting to a faith where bigamy is lawful for the purpose of forming a second marriage is illegal, and such a second marriage is null and invalid. The Court held in *Sarla Mugdal & others. v. Union of India* that the first marriage had to be dissolved under the Hindu Marriage Act, 1955 in order for him to marry again. As a result, the first marriage is still legally valid under Hindu law, whereas the second marriage, which occurred after his conversion to Islam, is null and void, and the man will be prosecuted for bigamy under Section 49 of the Indian Penal Code, 1860⁸.

Rights of the Second Spouse: When someone commits bigamy, the second spouse cannot truly claim any rights because they have a void marriage with no legal meaning. Because the second marriage is invalid, the second spouse will not be entitled to any maintenance or divorce settlement because there can be no divorce without a lawful marriage. However, the second wife may have some chances of receiving maintenance, but because there are no explicit rules in the law defining the rights of the second wife, such chances are entirely dependent on the judges' discretion.

Succession and inheritance: According to Hindu law, only the first wife has all the rights of a wife and is the legal heir of the husband, whereas the second wife is not entitled to inherit any ancestral or self-acquired property if the husband died without leaving a will. Once a competent

⁷ The Hindu Marriage Act of 1955

⁸ Indian Penal Code 1860, s 49

jurisdiction declares the second marriage void, the second wife cannot even claim maintenance as a matter of right because maintenance is only provided after divorce, and when the marriage is declared void ab initio, there can be no divorce because there was never a legally valid marriage in the first place. Children born out of wedlock, on the other hand, have the right to inherit from their father's ancestors.⁹

Recently a Hindu man who identifies as Korra Damodhar a resident of Sundruputtu locality of ASR district, had allegedly married another women without divorcing his first wife to whom he was married to for 6 years. Later he went on to marry 2 more women. One of the victims went on to lodge a complaint stating that he had clicked semi-nude pictures of the victim and sent it to a friend. Upon investigation by the police it was found that he was married to four women all at the same time and promised them a good life. He was produced in front of the magistrate and remanded in custody.¹⁰

4. Muslim Law And Polygamy

Under the Muslim Personal Law (Shariat) Application Act of 1937, Muslims are legally allowed to practice polygamy. However, even for Muslims, polygamy is not an absolute right, and there are several restrictions on the practice.

Implementation of Muslim Personal Law (Shariat) Act of 1937: This legislation regulates Muslim personal matters such as marriage, divorce, and inheritance. It permits Muslim men to have up to four wives if certain conditions are met. They must, for example, seek the approval of their current spouses, offer equal maintenance and support to all wives, and be able to treat all women equitably. Muslim women, on the other hand, are not allowed to have more than one husband.

Muslim men are allowed to have up to four wives under the Muslim Personal Law (Shariat) Application Act, subject to certain conditions.

Even though Muslim men have the privilege to practice the same, women in such marriages carry the right to divorce too.

⁹ Prabisha Pradeep, 'The Position Of Bigamy In Hindu Law' (Legal Service India - Law, Lawyers and Legal Resources, 1 May 2021) <<https://www.legalserviceindia.com/legal/article-5521-the-position-of-bigamy-in-hindu-law.html> > accessed 2 April 2023

¹⁰ TNN, 'Man Arrested For Bigamy In Paderu: Visakhapatnam News - Times of India' (The Times of India, 28 November 2022) <<https://timesofindia.indiatimes.com/city/visakhapatnam/man-arrested-for-bigamy-in-paderu/articleshow/95814671.cms> > accessed 2 April 2023

4.1. Muslim Women's Right To Divorce In Polygamous Marriages-DDMA

The Dissolution of Muslim Marriages Act, of 1939 is an Indian law that controls Muslim marriage dissolution. It allows for the dissolution of Muslim marriages on a variety of grounds, including polygamy. The act provides grounds for the dissolution of a Muslim marriage in cases where the husband has more than one wife and the first wife is not willing and consenting to continue with the marriage. The Act also states that a Muslim husband may seek dissolution of his marriage if his wife is unable to perform her marital obligations or has been incurable of unsound mind for a specified period of time.¹¹

Grounds on which a Muslim woman may seek divorce:

1. The whereabouts of the husband are not known for a period of four years.
2. The husband has neglected or failed to provide for the wife's maintenance for two years.
3. The husband has been sentenced to imprisonment for a period of seven years or more.
4. The husband has failed to perform his marital obligations for a period of three years.
5. The husband has been impotent for a period of two years.
6. The husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease.
7. The wife was married before the age of fifteen and has repudiated the marriage before reaching eighteen years of age.

It should be noted that the Dissolution of Muslim Marriages Act of 1939 only applies to Muslims in India and not to other communities. It is also worth noting that the Act does not address the validity of polygamy under Muslim Personal Law, but rather allows for its abolition.

The Act was enacted in response to a need for reform of Muslim personal law, which was perceived to be discriminatory against women. The Act's goal was to give Muslim women more protection and rights in marriage and divorce, as well as to align Muslim personal law with modern, secular values of justice and equality.

In addition to giving grounds for Muslim marriage dissolution, the Act allows for the payment of maintenance and alimony to the woman following the breakdown of the marriage. The court

¹¹ The Dissolution of Muslim Marriages Act of 1939

determines the amount of maintenance depending on variables such as the husband's income and the needs of the wife and children.

The Act also specifies the procedures for requesting the dissolution of a Muslim marriage, including the necessity that the husband must provide the woman with a notification of talaq (divorce). The divorce notification must be in written and delivered to the wife, and it must include the grounds for the divorce.

Overall, the Dissolution of Muslim Marriages Act of 1939 is a significant piece of law that provides better protection and rights to Muslim women in India during marriage and divorce. Nonetheless, some have argued that the Act is still insufficiently comprehensive and does not go far enough in addressing the issue of gender discrimination in Muslim personal law.

4.2. Maintenance Under Muslim Law

A second wife is entitled to maintenance from her husband under Section 125 of the Criminal Procedure Code (CrPC)¹² if she is unable to support herself. This provision applies whether or not the marriage is polygamous. The husband's commitment to support his second wife is the same as his obligation to support his first wife or any other dependent.

Mohd. Ahmed Khan v. Shah Bano Begum, 1985¹³, is a landmark case in India involving divorced Muslim women's maintenance. Shah Bano Begum, a 62-year-old Muslim woman, was divorced after 43 years of marriage by her husband, Mohd. Ahmed Khan. She petitioned the Supreme Court of India for support from her husband.

The case highlighted concerns regarding the applicability of Muslim Personal Law to maintenance claims, which controlled Muslim weddings and divorces in India at the time. The Muslim Personal Law included no provision for maintenance beyond the three-month period following a divorce during which a woman is entitled to support.

The Supreme Court found in favour of Shah Bano Begum, stating that under Indian law, she was entitled to maintenance from her husband. The court determined that the provisions of the

¹² Code of Criminal Procedure 1973, s 125

¹³ *Mohd. Ahmed Khan v. Shah Bano Begum* [1985] AIR 945

Muslim Personal Law did not supersede those of Indian law, and that Shah Bano Begum was entitled to maintenance under Section 125 of the Indian Code of Criminal Procedure.

The case aroused debate and controversy, notably among hard-line Muslim groups who claimed that the court's judgement violated their religious liberties. The Indian government eventually passed the Muslim Women (Protection of Rights on Divorce) Act, 1986, which defined the law governing divorced Muslim women's maintenance and aimed to combine women's rights with Muslim communal concerns.

4.3. Polygamy And Cruelty

There have been several instances where the question of, can polygamy be treated as cruelty? Has come up. The same is answered through the following landmark judgements.

In the case of *Itwari V. Smt. Asghari And Ors, 1960*¹⁴, the husband had filed for a petition on restitution of conjugal rights claiming that the wife had left the matrimonial home. The wife claimed that he used to ill-treat her and had taken a second wife. The judgement examined the scheme of the Quran and they said that women have to be treated equally, with fairness and justice otherwise the man should remain monogamous. The Quran also says that it is impossible to treat all wives equally. Even in the Muslim society polygamy is looked down upon. It was ruled that cruelty is cruelty and in this case the wife was subject to it.

Similarly in the case of *Ambattuparambil Abdulrahiman vs Khairunnisa, 2010*¹⁵, in this case the woman was pregnant with her 4th child when the husband married another woman. He had also sold her jewellery in order to buy property as he claimed. It was ruled in this case that the woman has the right to decide if she is being treated equally in a polygamous marriage where the husband marries another woman. Polygamy is seen as a continuing wrong against the wife.

5. Other Laws Relating To Polygamy In India

1. Indian Criminal Code, 1860: Polygamy is a criminal offence under Section 494 of the Indian Penal Code for non-Muslims. It states that anyone who marries another person while still married to their live spouse commits bigamy and faces up to seven years in prison and a fine.

¹⁴ *Itwari V. Smt. Asghari And Ors* [1960] 1959 SCC OnLine All 150

¹⁵ *Ambattuparambil Abdulrahiman vs Khairunnisa* [2010]

2. The Special Marriage Act of 1954: This law requires the registration of weddings between members of different religions or between people of the same religion who marry in a civil ceremony. It also forbids polygamy and renders such marriages null and void.

5.1. Financial Protection and Protection Against Domestic Violence

Section 125 of the Criminal Procedure Code (CrPC) applies to all religions. Any woman can use the same in order to access support from their husband if she is unable to financially sustain herself.

A second wife is entitled to protection from domestic violence under the Domestic Violence Act of 2005 (DV Act)¹⁶, regardless of whether the marriage is polygamous or not. Under the DV Act, an "aggrieved person" is defined as a woman who is or has been in a domestic relationship with the respondent, as well as a woman who is in a relationship with a male person who lives or has lived with her in a shared household and is not related to her by marriage or blood.

As a result, a second wife in a polygamous marriage is entitled to support under Section 125 CrPC and domestic abuse protection under the DV Act.

6. Landmark Cases and their Impacts on Literary Pieces

The reading by Flavia Agnes suggests that weddings under the Hindu Marriage Act and the Special Marriages Act, or any legally identified practice of law must follow a certain procedure to complete the marriage and for it to be recognized in the eyes of the court. It also gives an insight into the problematic conversion of Hindu men to Islam in order to marry a second wife. The various landmark cases discussed in the literary piece by Agnes have proven to be extremely useful in making decisions in recent cases and have been subject to deeper analysis.

The landmark case of *Sarla Mudgal v. Union of India, 1995*¹⁷, a petition which was filed by the President of "KALYANI" an organisation to help women and promote their welfare. The judgement, in this case, was, Conversion of faith by one or both spouses did not destroy the marriage, nor did it mean that a marriage solemnised under a specific statute or personal law

¹⁶ Domestic Violence Act of 2005

¹⁷ *Sarla Mudgal v. Union of India* [1995] 3 SCC 635

may be dissolved by another personal law just because the parties changed their religion. The Court also ruled that Hindu Personal Law existed previous to its codification in 1955, that a Hindu marriage will continue to exist even if one of the spouses converts to Islam, and that any marriage that was solemnised before or after the Act's inception can only be dissolved under Section 13. The Court then stated “ The second marriage of a Hindu husband after conversion to Islam, without having the first marriage dissolved under law, would be invalid. The second marriage would be void in terms of the provisions of Section 494 IPC and the apostate husband would be guilty of the offence under 494 IPC.”¹⁸ The Court believed that the second marriage would contradict the concepts of natural justice, equity, and good conscience, and thus declared the second marriage void. As all four requirements of Section 494 were met in the instance, the Court decided that a Hindu husband's second marriage following his conversion to Islam would be a void marriage under Section 494 of the IPC.

This judgement catered the issues relating to married men converting to Islam just to marry for the second time and get away without divorcing the first wife. Agnes in her piece agrees with the same by stating “there is this an open inducement to a Hindu husband who wants to enter a second marriage to become a Muslim”.¹⁹ Making bigamous and polygamous marriages illegal among the Hindus resulted in many women who were in such relationships losing their right to maintenance, respectability and legitimacy.

Another important aspect of a bigamy prosecution that is seen is where the burden of proof is on the first wife to prove that the husband is in a second marriage. This burden of proof has been seen to be extremely problematic for the wife due to the lack of information as she is already away from the place of the second marriage, the husband does not want her to prove the same and the lack of knowledge as to how to prove the same.

Section 7 of the Hindu Marriage Act (HMA)²⁰, 1955 states “Ceremonies for a Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. (2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.”

¹⁸ Sarla Mudgal v. Union of India [1995] 3 SCC 635

¹⁹ Flavia Agnes, ‘Hindu Men, Monogamy and Uniform Civil Code’ (Economic and Political Weekly, 16 December 1995) < https://www.jstor.org/stable/pdf/4403569.pdf?ab_segments=> accessed 28 March 2023

²⁰ Hindu Marriage Act 1955, s 7

In the case of *Bhaurao Lokhande v. State of Maharashtra, 1965*²¹ where the man enters into a second marriage without dissolving the first marriage bringing the burden of proof on the first wife. The man had done the second marriage by the procedure of “Gandharva” which is customarily known as a “pat” marriage the essentials of this marriage include one witness, a barber, a Bhramin, the presence of a “Thakur” and specific stages that the marriage must take place like Saptapadi, invocation of a sacred fire Section 7(2) HMA and so on. The husband and the woman had not done either. The second marriage was thus not solemnized and the second marriage had not commenced and the husband was acquitted.

Another such judgement that highlights the importance of proving essential ceremonies which legally shows that a second marriage has taken place is *Kanwal Ram And Ors vs The Himachal Pradesh Admn on 19 August 1965*²². In this judgement prior to the prosecution of bigamy, the wife had filed a petition for the restitution of conjugal rights. The second wife claimed that the husband had only married her after he had dissolved his first marriage. The testimony of the witness called to testify about the marriage rituals revealed that the necessary rites had not been completed. As a result, the evidence cannot support the conviction. The trial Court reached the same conclusion. The learned counsel came to the conclusion that it appeared in order to contract a marriage in that manner, one of the parties was required to reside in Scotland for twenty-one days, which none of the participants in the second marriage had done. As a result, the marriage was declared void.

7. Conclusion

This practice of polygamy has resulted in many women being oppressed and their social standing has seen a significant fall. Since history prevails polygamy has seen to stand the test of time disregarding the women who are subject to such marriages. Hindu men, concealing marriages from the second wife to get married without divorcing the first wife, converting to Islam in order to practice polygamy and simply letting the women suffer. Muslim men, take the support of the Quran and call it their legal right to marry up to four wives, despite the Quran itself saying that it is near to impossible to treat all wives equally. It is imperative to promote gender equality and ensure that all individuals, regardless of gender or religious affiliation, are treated with dignity and respect. The government should seek to end this unfair practice and ensure that all people's rights are protected.

²¹ *Bhaurao Lokhande v. State of Maharashtra* [1965]AIR 1965 SC 1564

²² *Kanwal Ram And Ors vs The Himachal Pradesh Admn* [1965] AIR 614