



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Crucial Exploration of whether Polygamy is Lawful in Republic India

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Received 21 July 2021; *Accepted* 10 August 2021; *Published* 13 August 2021

Polygamy is regarded as the usages or practices of a ritual tradition where a man is married to more than one wife simultaneously. In other words, Polygamy is a marriage in which a spouse of either sex has more than one mate at the same time. Polygamy and polyandry are types of polygamy. Polygamy was prevalent as a ritual in society since ancient times. Originally it was popular among the rich people emperors King and noble had more than two wives. Eventually, the practice of polygamy was also found in the scriptures and holy books. Most of the countries followed this practice. but at present, this practice continues in Islamic countries. Now polygamy is completely banned in India, and it is considered null and void. In addition, to prohibiting this practice, sections 494 and 495 of the Indian Penal Code, 1860, were enacted to reduce the effect of polygamy. In 1955 the Hindu Marriage Act Bill was drafted to prohibit polygamy in India. This law applies to all Hindus and strictly prohibited marrying other women when the first wife is alive. Although polygamy became illegal for citizens of the Republic of India in 1956, Muslims and residents of Goa were excluded. Whether polygamy is legal or not depends on the laws of that country. Hence, monogamy is going on among Hindus.

Keywords: *polygamy, marriage, Muslim law.*

INTRODUCTION

The principle of polygamy and how highly the practice was contagious in society is provided in the above para. In the classical period, polygamy was also considered a part of the community, and polygamy was very easily enacted. There was no legal impediment to the restoration of such a custom. The laws of that time were also not very harsh and tyrannical. So there is no fear of punishing people. Nevertheless, the practice of polygamy in the Republic of India remains unclear. Some followed the practices of polygamy and some were considered illegal, so the beliefs of the people differed from each other. Traits of the practice of polygamy according to religion still seem to be legally deviant.

Sections 494 and 495 of the Indian Penal Code, 1860, provide for certain punishment in respect of polygamy, although the existing partner has no complaint about any other marriage. Thus, it is furnished that a man from the above para cannot marry more than one wife simultaneously as polygamy is strictly prohibited and illegal among Hindus. But the circumstances are getting away under the personal law of Muslims and a man has the privilege of marrying more than one wife, so bigamy is contagious next to the Western coast and Goa. Although till now no strict law has been updated to prohibit the practices of polygamy among Muslims, while under the Indian Constitution it has already been mentioned that a man cannot marry more than one wife, then This practice is also practiced by the Hindus. Rigorously restricted and liable to punishment.

There cannot be an unambiguous explanation to emphasize whether polygamy is legal in India or not. For example, if a Muslim is getting married in Goa or is admitted for marriage in Goa, he cannot, polygamy or marry more than one wife. So it would be unfair to assume that polygamy is legal in Goa. If bigamy is being legalized in India then it seems to be a tough time for Indian women.

POLYGAMY AND HINDU FAITH

Still, it is difficult to say that polygamy is legal for Hindus but both Indian and individual personal laws are ruling in India, and people are related to their religion. So if a person believes or follows Hinduism, he cannot do any illegal activity which is beyond religion.

In classical times it was observed that the laws in India were not very strict and rigid, so people practiced the practice of polygamy. So at that time the husband was soft and married more than one wife. But now with the developing time, polygamy is considered illegal among Hindus after the amendment of the Hindu Marriage Act and the practice of polygamy has been completely criminalized. Polygamy is prohibited and illegal under Indian law and according to the Hindu Marriage Act for those who practice Hinduism. So if a Hindu man marries more than one husband or wife then it will be illegal and punishable.

Now it can be said that polygamy is not legal in India if a man marries more than one wife then the second marriage is considered illegal. And the first partner has the right to sue the husband for carrying out polygamy under the Hindu Marriage Act. Hence, the Hindu Marriage Act is a systematic law and prohibits the practice of polygamy among Hindus.

POLYGAMY BENEATH MUSLIM PERSONAL LAWS

It was already verified from the above para that two laws govern in India, the Indian Law and the Muslim Personal Law which unites the religion of the people. Thus, polygamy among Hindus is prohibited and unfair under the Hindu Marriage Act. But the situation is barely different in Muslim personal law. Nevertheless, the finding of polygamy is valid, and the male spouse has ownership of having more than one wife at the same time. Such marriage is legal and proper under Muslim Personal Law, so Muslim women want to take legal action against the horrific practices.

The usage of polygamy increased rapidly in Muslim personal law. A Muslim man can unite more than one wife at the same time. So Muslim women want to resist the practice of polygamy and have taken relief under the Special Marriage Act. According to this act, a

Muslim man is not entitled to marry more than one wife. Thus, polygamy is prevalent among Muslims from earlier duration and is deemed as a practice hence not punishable. It is obvious from the above discussion, yet polygamy is practiced in several locations. Many countries follow the practice of polygamy, so it is difficult to count how many countries are practicing this custom. Even it is considered illegal and null for many countries as per their rules and regulations. Even today, countries like Algeria, Egypt, and Cameroon recognize the practice of polygamy while India, Singapore, and Malaysia strictly prohibit polygamy, but it is legal for Islamic countries based on their laws.

So in numerous places, the practice of polygamy continues and in the states. Still, the husband has the right to keep more than one wives which is unlawful, but there is no fear of penalty and punishment. This custom is regularly practiced in Muslim countries because of their laws and is considered a legal and legitimate connection to their customs and rituals. This practice becomes a curse for the Muslim woman, yet in this situation, the woman cannot raise her voice against the husband. Even the husband marries another woman without divorcing his first partner. This type of scenario has been created due to gender discrimination. If the same practice is performed by a Muslim woman, she is liable to punishment, so the practice of polygamy does not apply to a Muslim woman. A Muslim woman cannot marry more than one husband, so this practice is forbidden for a Muslim woman. The picture clearly shows that the laws for polygamy in the same religion vary according to the gender of the individual.

JUDICIAL JUDGMENTS IN RESPECT OF POLYGAMOUS MARRIAGE

The Supreme Court has held in the case of **Parthatayankanadiyal v K Devi**¹ and others that several authorities had observed that a monogamous marriage under the Hindu Marriage Act is practicing in the Hindu society to validate the ethos and morals of Hindu culture. As the affiliation with a religion prohibits the custom of polygamy in Hinduism. Further, The Court has also pointed out that many individuals had tried to make an additional benefit of the freedoms specified by the law or authority. Hence, the law shall take legal action to regulate such conduct.

¹ *Smt Parayankandiyal v K Devi & Others* 1996 AIR 1963

The court accepted the practice of polygamy that has existed in India since ancient times and considered polygamy as a social issue that needs revolutionizing with time.

Bombay State v Narasu Appa Mali² case, Bombay High Court dismisses the contention that the Prevention of Hindu Marriage Act, 1946 was biased. Court has also observed that the state assembly is adept in introducing laws for social welfare and reforms of the society if Hindu culture gets violate. At the question of Muslims from a range of convicts, The Court said that the circumstances get examined Law Council. Therefore, the state legislature can detail the legal steps for the welfare of society.

In the case, **G. Sambereddy v G.Jayamma**³ Andhra Pradesh High Court reached the above judgment and noted that Sections 11 to 17 of the Hindu Marriage Act are not violative of Article 15(1). These sections apply only to those persons to whom this Act is applicable.

The apex court in the **Ahmed Khan v Shah Bano Begum**⁴ case had made it clear that there is no conflict between the likely Muslim Personal Law and the provision of section 125 CrPC. It deals with various matters. In case of dispute, the law will handle the circumstances.

In the case, **Smt R.A. v Director of Technical Education**⁵ mentioned that polygamy is not a religious practice or belief among Muslims. Further, The Bombay High Court in **Abdul Rahim under v Padma Abdul Rahim Under**⁶ case held that the provisions of the Muslim Personal Law were not mandatory to marry more than one wife. It would only be optional for a Mohammedan man to marry more than one wife.

² *State of Bombay v Narasu Appa Mali* AIR 1952 BOM 84

³ *G Sambireddy v G Jayamma* AIR 1972 A P

⁴ *Mohd Ahmed Khan v Shah Bano Begum & Others* (1985) 2 SCC 556

⁵ *Smt R A Pathan v Director of Technical Education & Others* 1981 (22) GLR 289

⁶ *Abdur Rahim Undre v Padma Abdur Rahim Undre* AIR 1982 Bom 341

Sarala Mud gal v Union of India⁷ is a landmark judgment where the Hon'ble Supreme Court held that Hindu marriages solemnized under Hindu Marriage Act. It can be dissolved only on grounds specified under such an Act. Conversion and remarriage to Islam will not eliminate the prior marriage. A Hindu person has the right to modify to Islam, but he has no right to remarry without ceasing his earlier marriage.

CONCLUSION

Polygamy affects the life of women very badly because a man cannot satisfy all his wives financially and emotionally. At the time of the coalition of property, the problem arises when the husband dies. Women take away more property for their existence. Polygamy affects the community very badly and magnifies the problem to the children who are the creations of such illegal marriages. Due to this practice children are not getting proper education and supervision, so their future seems bleak.

Indian Constitution always protects religion whenever it is needed. Religion is given top priority in our country. So progressive amendments in the constitution maintain the constitutional morality with time. And the modernization of the society requires amendments in the constitution flowing with the changing movement. So it was already discussed that polygamy is illegal and prohibited in some countries, but this practice continues in Islamic law, although the consequences of polygamy affect society very badly. It has already been discussed in the above para. Laws are being changed for the betterment of society and fellowship. Hence, this custom or practice may end for the good and happiness of the people. Polygamy will never be legalized in India.

Thus, polygamy is practiced in Islam since time immemorial, and specific rules and regulations have been modified as personal law. But the practice of monogamy is going very smoothly among Hindus and strict laws are in force against such practices (polygamy) under sections 494 and 495 of IPC 1860. Once Martin Luther said in his statement "Law cannot change the heart of the people, it can control the heartless. After that, the laws are amended for

⁷ *Ibid*

the betterment and improvement of the society so that their rights are not curtailed." Therefore, it is legal to enforce monogamy for the happiness of the people.