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The Legality of Polygamy in Republic of India

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ABSTRACT

Since ancient times, polygamy has been a common social custom. At first, it was common among the wealthy, as emperors, kings, and nobles had more than one wife. In due course, the scriptures and sacred texts also mentioned the practice of polygamy. This tradition was followed by the majority of nations, but it is still in use in Islamic nations today. In India nowadays, polygamy is totally outlawed. Sections 494 and 495 of the Penal Code, 1860, were also passed in order to lessen the effects of polygamy in addition to outlawing this practice of polygamy in India, the Hindu Marriage Act Bill was drafted in 1955. All Hindus are subject to this regulation, which forbids marrying another woman while the previous wife is still living while the Muslims are allowed to practice bigamy/polygamy as per there personal law i.e., Shariat Act 1937. These papers talk about the legality of polygamy in context of Indian law as well as personal laws applicable in India.

I. INTRODUCTION

The foundational institution of any progressive civilization is marriage, which was created to both uphold the social order and shield the community from immoral behaviour. Marriage confers the status of husband and wife upon the married individuals, regardless of whether it is perceived as a sacrament or a contract. It bestows legitimacy on the children. It results in rights and obligations for the couples. The main rule governing how people of different sexes interact with one another is marriage. Marital conduct is governed by different laws in different places and societies. Hindu religious regulations, more than any other aspect, have a stronger impact on society. In the classical era, polygamy was widely accepted as a social norm and was extremely simple to practise. The reinstatement of such a ritual was unhindered by the law. Furthermore, the rules of that era were not particularly oppressive or punitive. Therefore, there's no concern of penalising the persons who are practicing it. However, polygamy legal in the Republic of India for Muslims. Hindus are not allowed to practice Bigamy/Polygamy. The Penal Code of 1860, sections 494 and 495, stipulate specific penalties for bigamy/polygamy. It follows that men are not allowed to marry more than one wife at the same time.

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II. POLYGAMY IN HINDUISM:

Marriage was a well-established institution from the very beginning of the Rig Vedic civilization, and the Aryan ideal of marriage was extremely high. Although monogamy was the norm, there are plenty of references to polygamy.³ Aims of Hindu marriage is Dharmasampatti, praja (progeny and consequent freedom from falling into hell) and rati (sexual and other pleasure) according to the Smritis and nibandhas.⁴ The Apastamba-dharmasutra (11.5.11.12.13) states that a man may marry another woman before he has dedicated the sacred srauta fires, but he is not allowed to marry another wife if his current wife is devoid of either of the two (dharma or progeny).

According to Vedayan, Aryan is born burdened with three debts, to sages, Gods and pitrs and that by brahmacharya (studenthood), by performing Yajnaas and by procreating sons he freed himself from those three debts respectively. According to P.V. Kane Manu (41.35) enjoins upon a man that he should not think of Moksa before he has paid off the three debts and further says that by the very birth of the eldest son a man becomes free from the debt owed to ancestors. Vasisthadharmasutra (17.5) Visnudharmasutra (15.46) contain the same verse proclaiming that a man attains all (heavenly) worlds by means of a son, Manu (IX. 138) Vishu-dharmasutra (15.44) declare that a putra is so called because he saves his father from the hell called put. The Nairakta (11.11) also derives the word putra similarly. Further the water and pindas (balls cooked rice) offered by the son to his father and other deceased ancestors were supposed to be of great efficacy for the peace of the soul of the departed. On account of these sensual benefits conferred by a son, the highest importance was attached to the birth of a son. The wife helped a man to discharge two of his debts to the gods by associating with him in sacrifices and to the pitras by procreating a son or sons. Therefore, the goal of the life of women was declared to be get married and procreate sons.⁵

Manu states in IX. 96 that "men have to propagate (the race), and women are created for procreation." For this reason, the Veda declares that the wife and husband undertake religious responsibilities together. It is also declared by Narda (Stripumsa 4.19) that women are made for (procreating) children. Because of these beliefs regarding the purpose of a woman's existence and the paramount significance of a son, the smritis and dharma-sutra works permitted or advised a husband to remarry even if his first wife was still alive.⁶

³ Kapadia; *Marriage and Family in India*, p.97, (Ed. 1938).

⁴ *Ibid.*

⁵ *Id at.* 561

⁶ Apastambadharmasutra (Ed. G. Duhler and M. G. Shastri 1932. Bihler Sacred Books of the East Series

Vasudeva had sixteen thousand wives, according to the Mahabharata (Mausala - Parva V.6). There have been up to 100 wives for some monarchs throughout history. As an illustration, the Jabalpur plate of Yusahkur-nadeva, dated 1122 A.D. in E.I. Vol.II p.4, and the Khosa Plates of the Same King in E.I. Vol. XII p. 2C5, both mention the Cedi King Gangeyadeva, also known as Vikramaditya, obtaining Mukti (Salvation) at Pragaga with his hundred wives.⁷ So far as the Hindus are concerned Dr. Kane in His History of Dharmasastra (Vol.II, Part I, p.553) has critically examined all the material texts bearing on the question of polygamy and has come to the conclusion that one must not be carried away by the notion that marrying many wives was either very common or was not looked down upon amongst the Hindus.⁸ Polygamy was recognised, but at no stage of development of Hindu law, polygamy has been approved or acclaimed. It was always held in low esteem. Though it was tolerated, it was practised by a very few people.⁹ Kapadia, says, Polygamy, though recorded is the Vedic tradition and in the life of the Vedic personalities, need not be regarded as a prevalent form of union.¹⁰ In the wedding hymn in the Rigveda, the marriage tie is hailed with reverence and mutual conjugal fidelity is emphasized. Even in the Atharvaveda consistency in conjugal affection is earnestly solicited. This tradition of monogamy finds expression even in the Manusmhitas "Let mutual fidelity continue until death". This may be considered as the summary of the highest law for husband and wife. Let men and women united in marriage consistently exert themselves that (they may not be) disunited (and) may not violate their mutual fidelity.¹¹ The polygamy amongst the Hindus in the past could be traced to variety of reasons at different stages of History. When the ideal of marriage was very high specially during the Vedic period the instances of polygamy were rather rare and those could be traced to the fulfilment of certain ideals. One of the most pronounced ideals was the desire to have a son for the fulfilment of religious obligations. The fulfilment of this ideal led a man to marry.

Legislations are now made against polygamous marriages. The Special Marriage Act of 1872 launched the first major offensive against bigamy. This Act required that neither party have a husband or wife living at the moment of marriage in order for a marriage to be deemed lawful. Additionally, the Act stipulated that the Indian Divorce Act of 1869 might be used to terminate such a marriage. However, the person attempting to take advantage of the Act was required to

11.11.12.13. Manusamhita (Nirnagasgartress, 1933; G. Buhlers Sacred Books of East Series. Kautilya Arthasastra, Trivandrum Sanskrit Series, 1924; R. Shamasastri, Vol.11, pp.16,17

⁷ P.V. Kane, II *History of Dharmasastra Ancient and Medieval Religious and Civil Law in India* .427 (1974).

⁸*Ibid.*, at 553.

⁹Paras Diwan, *Modern Hindu Law* 75 (1982).

¹⁰Kapadia, *Marriage and Family in India* 97 (1938).

¹¹S. I. Pandit, *Atharvaveda Samhita* (1895).

state that he did not belong to any caste or religion. This declaration was removed from the modified Act of 1923 because it was determined to be a significant hindrance to the law's success. But even the amended Act failed in its purpose because the parties to a marriage under this Act had to slur their connection with their joint family. Succession to the property in these cases was regulated not by Hindu Law but by the Indian Succession Act of 1865. However, even the modified Act was ineffective since it forced married couples to sully their relationship with their shared family. In these situations, the Indian Succession Act of 1865, rather than Hindu Law, governed property succession.

A man is not allowed to take another wife unless the first one has been unwell for more than five years, has not given birth to a child within five years of the marriage, or has been cast out of society, according to the Madras Nambudiri Act of 1933. Marriage that violates this Act is punishable by a fine of up to Rs. 1,000. The Madras Marumakkattayam Act of 1932 forbids bigamy among those subject to Marumakkaattayam law. According to the Baroda Bigamy Act, a bigamous marriage is null and void unless the wife has leprosy or another abhorrent disease, or unless she has turned insane since the marriage and there is no chance of her recovery even after three years.

Bombay Prevention of Hindu Bigamous Marriage Act 1946, Bombay government. This act permits bigamy only in cases when the husband has been continuously away for seven years and his family have not heard from him during that time. The Act also stipulates that before getting married, the second wife must be informed that the first wife exists. If a marriage is consummated in the state where the parties reside or if the marriage was contracted in violation of this Act, it is null and void. The offense is punishable by a seven-year jail sentence and a fine. The Madras Government enacted the Madras Hindu (Bigamy Prevention and Divorce) Act 1947 after Bombay State, enabling a wife to sue for divorce if her husband took a second wife. Both the Madhya Pradesh Prevention of Hindu Bigamous Marriages Act of 1955 and the Saurashtra Prevention of Hindu Bigamous Marriages Act of 1954 declared Hindu bigamous marriages illegal and punishable under section 454 of the Indian Penal Code. In addition, the guardian of a young offender and the encourager face a maximum 6-month jail sentence, a fine, or both in Madhya Pradesh. Nonetheless, because of their bigamy, the tribes were immune from the Act's application.

The 1955 Hindu Marriage Act. Nowadays, it is stipulated that not having a spouse living at the time of marriage is one of the requirements for getting married. Any union that violates this

requirement will end in divorce.¹²

The ideal of monogamy could not be fully achieved, even if the sex ratio restriction on the practice of polygamy had checked its distribution but could not totally eradicate it due to attitudes such as religious conviction and the caste social system that provided sanction for it. Legislations are now made against polygamous marriages. Even so, it is challenging to conclude that polygamy is acceptable for Hindus because both national and private laws apply there, and individuals are bonded by their faith. Thus, a person who practices or believes in Hinduism is prohibited from engaging in any illegal behavior that goes beyond religion.

Polygamy was common in ancient India since it was noted that the country's regulations were not very rigorous or rigid. Therefore, the husband was pliable and had multiple wives at that period. However, as time goes on, Hindus now view polygamy as unlawful due to changes made to the Hindu Marriage Act, which renders the practice entirely unlawful. In accordance with Indian law and the Hindu Marriage Act, polygamy is forbidden and unlawful for Hindus. Therefore, it is against the law and subject to punishment for a Hindu man to marry more than one husband or wife.

III. POLYGAMY IN CHRISTIANITY

Early historical accounts attest to the fact that polygamy predated Christianity in that community. With two wives named "Adah" and "Zillah"¹³, Lamech is the first polygamist in the Bible. Documents also exist that list the Prophet Abraham's numerous wives. The Holy Bible identified Sarah, Hagar, and Keturah¹⁴ as Abraham's concubines and wives (though they are referred to as "wives" in other places of the Bible)¹⁵. These historical examples show that polygamy existed long before Abraham and Lamech who are regarded as early Christian prophets were recognised and used in society. But, based on an analysis of the constitutions of the Christian-majority nations, it may be inferred that although polygamy was once practiced, most Christians do not now favour it, and the laws of the land do not outright forbid it. In the Catechism, the Roman Catholic Church declares that:

'Polygamy is not in accord with the moral law. [Conjugal] communion is radically contradicted by polygamy; this, in fact, directly negates the plan of God which was revealed from the beginning, because it is contrary to the equal personal dignity of

¹²The Hindu Marriage Act, 1955., s. 11

¹³ *Holy bible*, (Old Testament), (Gen 4:19)

¹⁴ *Ibid*, (Gen 16:3, 21:1-13, 25:1)

¹⁵ *Ibid*, (Gen 25:6)

men and women who in matrimony give themselves with a love that is total and therefore unique and exclusive.'

-Catholic Catechism, Para- 2387.

IV. POLYGAMY IN MUSLIM PERSONAL LAWS

Understanding the true meaning and status of polygamy in Islam requires a thorough understanding of the prohibitions included in the Holy Quran, the conditions under which polygamy was permitted, and the customs of the Prophet Muhammad.

Quranic Provisions for Polygamy:

The permission for polygamy is provided in verse 3 of Sura Nisa. It says:

“If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice two, three or four; But if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hand possesses. That will be more suitable to prevent you from doing injustice.”¹⁶

- (Quran, 4:3)

“And you will not have it all in your power to treat your wives, alike, even if you fain would do so.”¹⁷

- (Quran, 4:129)

Condition of Justice: It is evident from the verses above that a person who marries a second wife must meet severe requirements. These conditions include the condition of justice between two, three, or four women. If he is unable to provide for them all, it is stipulated that only one wife may be married. Justice comes with very rigorous requirements. According to Abdullah Yusuf Ali, the number of spouses that were uncontrolled during the Times of Ignorance is now strictly regulated to a maximum of four, provided that they are treated equally with regard to material possessions as well as affection and immaterial things. I realize that the advice to pursue monogamy is because this requirement is the hardest to meet.¹⁸

Verse 129 of the same Sura (Nisa) also states that,

“And you will not have it at all in your power to treat your wives alike, (4:129)”.

Further verse 4 of Sura Al Ahzab says - “God has not given a man two hearts within him”

¹⁶Holy Quran, 4:3.

¹⁷Holy Quran, 4:129.

¹⁸ Abdullah Yusuf Ali, *The Holy Quran, Text, Translation and Commentary.*

(33:4).

It is evident from these verses when read in conjunction with Sura Nisa exactly how much Islam values fairness, even if the Quran admits that treating two women fairly is extremely difficult.

Islam upholds extremely rigid legal principles. Furthermore, the above-mentioned Quranic verse makes it very clear that a man who has multiple wives must treat each one equally in all respects, as Allah views justice as being extremely strict and even a small degree of differentiation between them is unacceptable. Instead, it explicitly states that if a man cannot treat his wives fairly, he should not marry more than one. The verse "*And you will not have it at all in your power to treat your wives alike*" (4:129) is another passage from Sura-al-Nisa in the Quran.¹⁹

The Quran provides a very clear explanation of polygamy; nonetheless, in order to fully comprehend it and be aware of its limits and conditions, it is crucial to study the life of Prophet Muhammad (Pbhu). In order to establish an example for the ummah (people of this world), the messenger of Allah (SWT) engaged in polygamy. He did so under the criteria and conditions specified in the Holy Quran. The Prophet (peace and blessings be upon him) said: "Anyone who has two wives and does not treat them equally will come on the Day of Resurrection dragging one part of his body which will be hanging down." Sheik Yusuf Al-Qaradawi cited the following hadith. (Reported by Ibn Hibban-al-Hakim, and the writers of the Sunan).

Here is an example of justice amongst wives from the life of the Prophet Muhammad (peace and blessings be upon him). When Allah's messenger was with one of his wives, Hazrat Umme Salma (R.A.), he was about to leave when she grabbed him by his cloth and asked him to stay longer. To which Allah's messenger replied, "If you desire, I can extend the time of my stay with you, but then I shall have to calculate the time of my stay with you and shall have to spend an equal amount of time with each of the other wives."²⁰ This example of equality justice and his humble gesture of love shows that how the messenger of Allah treated all his wives.

According to the Quran, a person can only practice polygamy if they are equal to all of their wives. Islam's polygamous society holds that a husband who treats his wives unfairly or carelessly will ultimately answer to Allah, who knows all of humanity's actions regardless of whether they are carried out in secret or under cover of darkness since nothing is hidden from His sight. According to a hadith, the best of you are those who are the best to their spouses, and

¹⁹ Holy Quran Chapter 4 verse 129

²⁰Fiqh Islam online, available at, <https://fiqh.islamonline.net/en/maintaining-justice-between-wives>. (last visited on 29 June 2023).

the most perfect man among believers is the one whose behavior is the best.

Studying the life of Prophet Muhammad is crucial after learning about the teachings of the Quran. Although he engaged in polygamy, he served as a model of fairness for everyone and accomplished what was desired by everybody. According to Abdur Rahman, Hazrat Umme Salma (may Allah be pleased with her) was married to Allah's Messenger. When he went to visit her and she grabbed hold of his cloth as he was about to leave, the Messenger of Allah said:

“If you desire, I can extend the time of my stay with you, but then I shall have to calculate the time of my stay with you and shall have to spend an equal time with each of the other wives”²¹

Pre-requisitely, a husband with multiple wives must be extraordinarily diligent in order to treat each one fairly. Allah, who is fully aware of the nature, degree, and manner of a person's transgressions, may hold him accountable for even the smallest act of carelessness.

Sura-al-Nisa²² of Holy Quran depicts the entire facts about polygamy through which one who is going to practice it or thinking to do so can understand it very clearly that he can perform it with a orphans, widows, or captives. As it is clear from the Quranic verse that if you fear that you shall not be able to deal justly with the orphans then many of them of your choice up to maximum of four but if you fear that you cannot do justice with them then only one is permitted.

V. JUDICIOUSLY RENDERED DECISIONS ON POLYGAMOUS MARRIAGE:

In *Bombay State v. Narasu Appa Mali*²³, The Bombay High Court rejects the argument that the 1946 Prevention of Hindu Marriage Act was biased in the case. The state assembly is skilled at proposing laws for social welfare and societal reforms when Hindu culture is violated, the court has also noted. Regarding Muslims who have served a variety of sentences, the Court stated that the circumstances are reviewed by the Law Council. The state legislature can therefore specify the legal measures for ensuring societal well-being.

In *Parthatayankanadiyal v. K Devi*²⁴, the Supreme Court ruled that multiple authorities had noted that Hindu society practices monogamous marriages under the Hindu Marriage Act, which upholds the values and ethos of Hinduism. Since polygamy is not permitted in Hinduism, identification with a particular faith is prohibited. In addition, the Court has noted that numerous

²¹Sabiruddin, *A Muslim Husband and Wife; Rights & Duties*, P.83

²² *Holy Quran* Chapter 4 verse 3.

²³ AIR 1952 Bom 84

²⁴ AIR 1996 SC 1963

people have attempted to take advantage of extra freedoms granted by the law or other authorities. Therefore, legal action will be taken by the law to control such behavior. The court acknowledged polygamy as a social issue that requires ongoing reform and acknowledged that it has been practiced in India from ancient times.

In *G. Sambereddy v. G. Jayamma*,²⁵ The Andhra Pradesh High Court rendered the aforementioned ruling in the matter of noting that Article 15(1) is not violated by Sections 11 through 17 of the Hindu Marriage Act. These provisions are solely applicable to individuals to whom this Act may be applicable.

In, *Smt. R.A. v. Director of Technical Education*²⁶ It was indicated in the case of that Muslims do not practice or believe in polygamy as a religious practice. Additionally, in *Abdul Rahim Undre v. Padma Abdul Rahim Undre*²⁷, the Bombay High Court ruling in the case concluded that marrying more than one wife was not required by the rules of the Muslim Personal Law. A Mohammedan male would only be able to choose to marry more than one wife.

In *Sarala Mudgal v. Union of India*²⁸, the Supreme Court of India ruled that Hindu marriages performed in accordance with the Hindu Marriage Act are legally binding. It can only be dissolved for the purposes allowed by such an Act. The previous marriage will not end with conversion and remarriage to Islam. Hindus are free to convert to Islam, but they are not allowed to get married again without ending their previous union.

In *R.A. Pathan v. Director of Technical Education*.²⁹ Gujarat High Court ruled the following after carefully examining the principles of Muslim personal law and their theological foundation: a religious practice typically implies a duty that a devout person must do. Scripture does not dictate what is acceptable; that would be tantamount to imposing a religious practice. The court further found that there is no indication in the Quranic text excerpt that having many marriages is a matter of Muslim religious practice. Consequently, bigamous marriage is neither a religious requirement nor a religious practice among Muslims. It is also neither a belief nor an edict. Consequently, the issue of whether to invoke Articles 15(1), 25(1), or 26(b) in order to defend a bigamous marriage and in the name of religion does not arise.

In *Javed v. State of Haryana*:³⁰, the petitioner contended that section 175 of the Haryana Panchayati Raj Act, 1994 which disqualifies a person having more than two children from

²⁵ AIR 1972 AP

²⁶ (1981) 22 GLR 289

²⁷ AIR 1982 Bom 341

²⁸ AIR 1982 Bom 341

²⁹ (1981) 22 GLR 289

³⁰ (2003) 8 SCC 369; AIR 2003 SC 3057

contesting election for the office of Panch/Sarpanch as violative of Article 14 of the Indian Constitution. The Court held that the said section is in no way violative of Article 14 of the Indian Constitution because the classification made under the Haryana Panchayati Raj Act, 1994 is based on intelligible differentia and has nexus with the object of popularizing family planning. Further, it was also contended by the petitioner in this case that the personal law of Muslims permits performance of marriages with 4 women, obviously for the procreation of children and any restriction thereon would be violative of right to freedom of religion enshrined in Article 25 of the Indian Constitution. The Hon'ble court held in this regard:

“The Muslim Law permits marrying four women. The personal law nowhere mandates or dictates it as a duty to perform four marriages. No religious scripture or authority has been brought to our notice which provides that marrying less than four women or abstaining from procreating a child from each and every wife in case of permitted bigamy or polygamy would be irreligious or offensive to the dictates of the religion.”

In *Khursheed Ahmad Khan v. State of U.P.*:³¹, the validity of order removing the appellant from service for proved misconduct of contracting another marriage during existence of the first marriage without permission of the government in violation of Rule 29(1) of the U.P. Government Servant Conduct Rules, 1956 and it was contended that the Conduct Rule violates the fundamental right of the appellant provided to him by the Constitution of India under its Article 25. After hearing, the Hon'ble Supreme Court held: No Indian religion forbids bigamy or polygamy, nor does it require anyone to have more than one child. While it may be acceptable for Muslims to marry four times with four different women, it is not permissible for anyone, Muslim or not, to have as many children as they wish. What a religion forbids or permits does not transform into a religious practice or a core belief. Permission alone does not confer religious legitimacy upon a practice. Assuming that any community or group of individuals engages in the practice of having many wives or having multiple offspring, the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does.

VI. CONCLUSION

The Indian Constitution safeguards religion at all times. The importance of religion is paramount in our nation. Therefore, over time, progressive revisions to the constitution uphold its moral foundation. Furthermore, as society modernizes, the constitution must be updated to reflect these changes. As was previously said, polygamy is forbidden and illegal in several

³¹ Civil Appeal No. 1662 of 2015 (Reportable).

nations, yet it is nonetheless permissible under Islamic law, despite the detrimental effects polygamy has on society. Laws are being modified to promote better fellowship and society. As a result, this tradition or practice may stop for the benefit and contentment of the populace. In India, polygamy will never be permitted. As a result, polygamy has been practiced in Islam for eons, and certain laws and guidelines have been altered to become personal laws. However, monogamy is a highly common practice among Hindus, and sections 494 and 495 of the Indian Penal Code 1860 strictly prohibits Polygamy in India.
