



The Legality of Polygamy in India

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Abstract: Since ancient times, polygamy has been a common social phenomena. 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 82 of Bharatiya Nyaya Sanhita, 2023 (BNS), were also passed in order to lessen the effects of polygamy in addition to outlawing this practice of polygamy in India and the Hindu Marriage Bill was passed in 1955. Where no Hindu can do marriage when his previous wife is alive while the Muslims are allowed to practice bigamy/polygamy as per their personal law i.e., Shariat Act 1937. These research papers talk about the legality of polygamy in context of Indian law as well as personal laws applicable in India.

Key Words: polygamy, biagamy, personal laws, uniform civil code.

1. INTRODUCTION:

Polygamy, the practice of having more than one spouse at the same time, has been a subject of legal, social, and religious debate in India. The legality of polygamy varies depending on the personal laws governing different religious communities. Under the Hindu Marriage Act, 1955, Hindus, Buddhists, Jains, and Sikhs are prohibited from entering into a second marriage during the lifetime of their spouse, making polygamy illegal for these communities. Similarly, Christians and Parsis are governed by laws that recognize only monogamous marriages. However, under Muslim Personal Law (Shariat) Application Act, 1937, Muslim men are permitted to marry up to four wives, subject to certain religious principles, while Muslim women are not granted the same right. This difference in personal laws has generated ongoing discussions about gender equality, religious freedom, and the need for a Uniform Civil Code. Understanding the legal framework surrounding polygamy in India requires examining the interaction between constitutional principles, personal laws, and judicial interpretations.

2. REVIEW OF LITERATURE:

- Mulla, Dinshaw Fardunji. *Principles of Mohammedan Law*. 22nd ed., LexisNexis, 2017-Describes the legal rules governing Muslim marriages in India. It explains the traditional legal basis for polygamy under Muslim personal law, the conditions attached to it, and judicial interpretation.
- Basu, D. D. *Introduction to the Constitution of India*. 26th ed., LexisNexis, 2021.-Discusses constitutional principles such as equality, religious freedom, and Uniform Civil Code. It explains how Article 44 relates to the debate over uniform marriage laws, including polygamy.

3. RESEARCH PROBLEM: The legality of polygamy in India varies across religious communities because personal laws govern marriage differently. While the Hindu Marriage Act prohibits polygamy among Hindus, Buddhists, Jains, and Sikhs, Muslim personal law traditionally permits a Muslim man to have up to four wives under certain conditions. This legal diversity raises questions regarding equality before the law, gender justice, religious freedom, and the constitutional goal of a Uniform Civil Code.

4. RESEARCH QUESTION: To what extent is the legal recognition of polygamy under Indian personal laws consistent with the constitutional principles of equality, gender justice, and religious freedom?

5. RESEARCH OBJECTIVE:

- To examine the legal framework governing polygamy in India.
- To analyze constitutional provisions and judicial decisions relating to polygamy.



- To assess the impact of polygamy on women's rights and gender equality.

6. Research hypothesis - The existing legal framework governing polygamy in India creates inconsistencies with constitutional principles of equality and gender justice due to the differential treatment under personal laws.

7. RESEARCH METHODOLOGY: Doctrinal methodology has been used in this research. The research work has been done through primary and secondary data such as Indian Constitution, Hindu Marriage act 1955, Sariat Act 1937, Quran, websites, judicial decisions, commission reports etc.

8. RESEARCH SCOPE AND RESEARCH LIMITATION: In the presented research, the evaluation of legality of polygamy in India is limited to the information available on the internet, study of judicial decisions and study of reports of commissions and committees.

9. POLYGAMY IN HINDUISM: HISTORICAL AND CONTEMPORARY LEGAL POSITION:

The institution of marriage occupies a sacred position in Hindu philosophy and has traditionally been regarded as a *sanskara* (sacrament) rather than merely a civil contract. Although monogamy has always been considered the ideal form of marriage in Hindu society, ancient Hindu law did not impose an absolute prohibition on polygamy. Instead, the permissibility of multiple marriages was regulated by religious texts, customs, and social necessities.

The **Rig Veda**, one of the earliest Hindu scriptures, predominantly portrays marriage as a union between one man and one woman. Vedic hymns describing the marriage ceremony invoke blessings upon a single bride and groom, suggesting that monogamy was the ordinary and socially desirable form of marriage.¹ Similarly; the **Atharva Veda** emphasizes harmony, fidelity, and companionship between husband and wife without encouraging plural marriages.²

However, the later **Dharmashastra** literature recognized limited circumstances under which a man could marry another wife. The **Manusmriti** provides that if a wife was barren, repeatedly lost children, or was unable to perform her marital and religious obligations, the husband could contract another marriage after the lapse of a specified period.³ These provisions were not intended to establish polygamy as the norm but rather as an exception to preserve lineage (*putra*), which was considered essential for the performance of ancestral rites (*shraddha*).

The **Narada Smriti** and **Vishnu Smriti** similarly acknowledge circumstances in which a husband could marry again, particularly where the first wife suffered from incurable disease, infertility, or abandonment.⁴ The nineteenth and twentieth century's witnessed significant social reform movements led by scholars and reformers such as **Raja Ram Mohan Roy** and **Ishwar Chandra Vidyasagar**, who advocated monogamous marriage and greater protection for women's rights. These reforms ultimately culminated in the enactment of the **Hindu Marriage Act, 1955**, which transformed Hindu marriage law by making monogamy a mandatory condition for every valid Hindu marriage. Section 5(i) of the Act provides that neither party should have a spouse living at the time of marriage, while Section 17 declares that any marriage solemnized in contravention of this condition attracts criminal liability for bigamy.⁵

Current Legal Position under the Bharatiya Nyaya Sanhita, 2023

The criminal offence of bigamy, formerly punishable under Section 494 of the Indian Penal Code, is now contained in **Bharatiya Nyaya Sanhita, 2023, Section 82**. Section 82(1) provides that any person who contracts a second marriage during the lifetime of a legally wedded spouse, where such marriage is void by reason of the subsistence of the first marriage, shall be punished with imprisonment which may extend to **seven years** and shall also be liable to fine. The provision retains the traditional exceptions where the first marriage has been declared void by a competent court or where the former spouse has remained continuously absent and unheard of for seven years, provided full disclosure is made before the subsequent marriage. Section 82(2) further prescribes a higher punishment of **up to ten years' imprisonment** where the accused conceals the existence of the earlier marriage from the person with whom the subsequent marriage is contracted.⁶

Thus, while ancient Hindu jurisprudence tolerated polygamy in narrowly defined exceptional situations, contemporary Hindu personal law recognizes **only monogamous marriages**. Any second marriage contracted by a Hindu during the



subsistence of the first valid marriage is void under the Hindu Marriage Act, 1955⁷, and may also attract criminal prosecution under Section 82 of the Bharatiya Nyaya Sanhita, 2023.

10. POLYGAMY IN CHRISTIANITY AND ITS CURRENT LEGAL POSITION

Christianity has consistently regarded **monogamy** as the ideal and divinely ordained form of marriage. Although the **Old Testament** records instances of polygamy among patriarchs such as Abraham, Jacob, David, and Solomon, these accounts are historical descriptions rather than religious commands. The foundational Christian understanding of marriage originates from the Book of **Genesis**, which declares that "a man shall leave his father and his mother and be joined to his wife, and they shall become one flesh."⁸ This passage has traditionally been interpreted to establish marriage as an exclusive union between one man and one woman.

Early Christian theologians also rejected polygamy as inconsistent with Christian doctrine. **St. Augustine**, in his treatise *De Bono Coniugali (The Good of Marriage)*, observed that although polygamy had been tolerated among the ancient Israelites due to historical circumstances, it ceased to be permissible under the Christian dispensation.⁴ Likewise, **St. John Chrysostom**, while commenting on the Gospel of Matthew, interpreted Christ's teachings as restoring the original institution of monogamous marriage established at creation.⁹

In India, Christians are governed principally by the **Indian Christian Marriage Act, 1872**, and the **Divorce Act, 1869**. Although the Indian Christian Marriage Act does not expressly define monogamy, it proceeds on the assumption that a valid Christian marriage exists only between one man and one woman. Accordingly, a Christian cannot lawfully contract a second marriage during the lifetime of a legally wedded spouse unless the earlier marriage has been dissolved or declared void by a competent court.¹⁰

The criminal consequences of bigamy are presently governed by **Section 82 of the Bharatiya Nyaya Sanhita, 2023**, which has replaced Section 494 of the Indian Penal Code, 1860. Section 82 provides that any person, who marries again during the lifetime of a spouse, where the first marriage is legally subsisting, commits the offence of bigamy and is punishable with imprisonment which may extend to seven years and fine. Where the accused conceals the existence of the earlier marriage from the subsequent spouse, the punishment may extend to ten years along with fine.¹¹

11. Polygamy under Muslim Personal Law

Polygamy occupies a distinct position under Muslim personal law and is regulated primarily by the **Qur'an**, the **Hadith**, and the classical schools of Islamic jurisprudence. Unlike some other personal law systems, Islamic law does not treat polygamy as an unrestricted right but permits it under carefully prescribed conditions. The Qur'an allows a Muslim man to marry up to four wives simultaneously, subject to the condition that he treats each wife with absolute justice and equality. The relevant verse provides:

"Marry women of your choice, two, three or four; but if you fear that you shall not be able to deal justly (with them), then marry only one..."¹²

This verse (Qur'an 4:3) was revealed in the context of protecting widows and orphans following wartime losses and was intended to regulate rather than encourage the practice of polygamy. . The Qur'an itself later acknowledges the practical difficulty of maintaining absolute equality among multiple wives:

"You will never be able to be equal between wives, even if you strive to do so..."¹³

Many modern Islamic jurists interpret this verse to emphasize that monogamy is generally preferable, as complete equality is difficult to achieve.

Classical Sunni schools of Islamic law—including the Hanafi, Maliki, Shafi'i, and Hanbali schools—recognize the legality of polygamy, although they differ in certain procedural aspects. The **Hanafi School**, which is predominantly followed by Indian Muslims, permits a Muslim male to marry up to four wives without requiring judicial or prior consent



from existing wives, provided that the marriages are conducted according to Islamic law.¹⁴ However, Islamic jurisprudence imposes legal and moral obligations upon the husband to provide equal maintenance, accommodation, financial support, and fair treatment to each wife. Failure to discharge these obligations is regarded as a violation of Islamic principles, although it does not automatically invalidate the marriages.¹⁵

The leading commentator **Ameer Ali** observed that the Qur'anic permission for polygamy was intended as a social reform in seventh-century Arabia, where unrestricted polygamy was prevalent. According to him, Islam restricted the number of wives to four and subjected the practice to the stringent condition of equal treatment, thereby significantly limiting arbitrary plural marriages.¹⁶

Current Legal Position in India

In India, Muslim marriages are governed by the **Muslim Personal Law (Shariat) Application Act, 1937**, which provides that matters relating to marriage, dissolution of marriage, maintenance, inheritance, and other family issues shall be governed by Muslim Personal Law (Shariat).¹⁷

Consequently, the offence of bigamy under **Bharatiya Nyaya Sanhita, 2023**, Section 82, generally does **not** apply to a Muslim man whose subsequent marriage is valid under his applicable personal law.

Although Muslim personal law continues to recognize limited polygamy, judicial decisions and scholarly opinion increasingly emphasize the Qur'anic requirement of justice and equality among wives. Contemporary debates on gender justice, constitutional equality, and the possibility of a Uniform Civil Code have renewed discussion regarding the future of polygamy under Muslim personal law in India.

12. Judiciously Rendered Decisions On Polygamous Marriage:

Sarla Mudgal v. Union of India (1995) 3 SCC 635

Facts- Several Hindu husbands converted to Islam solely to contract a second marriage without dissolving their first marriage under the Hindu Marriage Act, 1955. Their wives challenged the validity of such marriages before the Supreme Court.

Issue- Whether a Hindu husband, after converting to Islam, can lawfully marry again without obtaining a decree of divorce from his first wife.

Held- The Supreme Court held that conversion to Islam does not automatically dissolve a marriage solemnized under the Hindu Marriage Act, 1955. A second marriage during the subsistence of the first marriage is void and amounts to the offence of bigamy under Section 494 IPC (now Section 82 of the Bharatiya Nyaya Sanhita, 2023). The Court also observed that misuse of religious conversion to circumvent monogamy is contrary to public policy. It further emphasized the desirability of a Uniform Civil Code under Article 44 of the Constitution.

2. Lily Thomas v. Union of India (2000) 6 SCC 224

Facts- The petitioners sought review of the decision in *Sarla Mudgal*, contending that the judgment violated Articles 20, 21, 25 and 26 of the Constitution.

Held- The Supreme Court reaffirmed the ruling in *Sarla Mudgal* and clarified that conversion to Islam does not dissolve an existing Hindu marriage. Unless the first marriage is dissolved by a competent court, any subsequent marriage is void and punishable as bigamy. The Court also clarified that *Sarla Mudgal* merely interpreted existing law and did not create a new offence.

3. Javed v. State of Haryana (2003) 8 SCC 369



Facts-The constitutional validity of the Haryana Panchayati Raj Act was challenged because it disqualified persons having more than two children from contesting Panchayat elections.

Held-While discussing Muslim personal law, the Supreme Court observed that polygamy is only a permissible practice and not an essential religious practice in Islam. Therefore, the State may impose reasonable restrictions in the interest of social reform without violating Article 25 of the Constitution.

4. Khursheed Ahmad Khan v. State of Uttar Pradesh (2015) 8 SCC 439

Facts-A Muslim government employee contracted a second marriage without obtaining prior permission as required under the U.P. Government Servants Conduct Rules.

Held-The Supreme Court upheld the disciplinary action against the employee. It ruled that although Muslim personal law permits polygamy, the State may regulate the conduct of government servants through service rules. The Court reiterated that polygamy is not an integral part of religion protected by Article 25.

5.SC issues notice to Centre on plea to ban polygamy, 31st July, 2026- The Supreme Court on Friday (July 31, 2026) sought the Centre's response on a petition to declare polygamy among Muslims as unconstitutional, for a direction to take legislative steps to abolish the practice for all citizens regardless of religion. A Bench headed by Chief Justice of India Surya Kant issued notice to the Union government on a petition filed by activist Zakia Soman and others, for an order to apply Section 82 of the Bharatiya Nyaya Sanhita (BNS), which punishes bigamy, uniformly and by removing any exemptions under Muslim Personal Law.

The petition said that the Quran's intent was the eventual elimination of the practice of polygamy over time.

"Many Muslim-majority countries have moved away from unrestricted polygamy, using Quranic interpretation or state necessity to prioritise monogamy as the ideal social state. Several Muslim-majority jurisdictions have demonstrated that polygamy is neither essential to the practice of Islam nor immune from legislative reforms," the plea said.

The petitioners said a survey submitted last year across seven States, including Maharashtra, Gujarat, West Bengal, Kamataka, Tamil Nadu, Delhi, and Rajasthan had found that 88% of husbands did not seek consent for a second marriage, and 79% did not even inform their first wives, proving that the practice was now "characterised by fraud rather than 'justice'".

The petitioners contended in court that polygamy was a "primary driver of female destitution".

Indian Constitution neither grants any absolute protection to personal law of any community that is arbitrary or unjust, nor exempts personal laws from jurisdiction of the legislature or the judiciary," the petition said. The plea said the Uniform Civil Code remains an elusive Constitutional goal despite repeated apex court orders.¹⁸

13. Polygamy already banned in following states through implementation of uniform civil code-

State	Law	Date	Status of Polygamy
Uttarakhand	Uniform Civil Code, Uttarakhand	27 January 2025 (came into force)	Polygamy is prohibited. A valid marriage requires that neither party has a living spouse at the time of marriage. ¹⁹
Gujarat	Gujarat Uniform Civil Code	March 2026 (Bill passed by the Gujarat Legislative Assembly)	Polygamy and bigamy are prohibited under the State UCC (subject to the Act's scope and exemptions). ²⁰



Assam	Assam Uniform Civil Code	May 2026 (Bill passed by the Assam Legislative Assembly)	Polygamy is prohibited under the State UCC. ²¹
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14. Conclusion and Suggestion

The study concludes that the legal position of polygamy in India is not uniform, as it varies under different personal laws. This creates inconsistencies with the constitutional principles of equality, non-discrimination, and gender justice enshrined in Articles 14, 15, and 21 of the Constitution of India. Recent developments in states such as Uttarakhand, Gujarat, and Assam indicate a legislative shift towards monogamy through the adoption of Uniform Civil Code laws. A uniform legal framework would promote equal rights for all citizens while ensuring greater legal certainty and protection for women.

Suggestions

- The Central Government should enact legislation prohibiting polygamy for all citizens, irrespective of religion, to uphold the constitutional principles of equality and gender justice.
- A Uniform Civil Code should be implemented throughout India in accordance with Article 44 of the Constitution to establish a common and non-discriminatory law governing marriage and family matters.
- The Uniform Civil Code should preserve constitutional guarantees of religious freedom while ensuring that no personal law violates fundamental rights, particularly the rights to equality, dignity, and non-discrimination.
- Parliament should provide adequate safeguards for women and children affected by polygamous marriages, including rights relating to maintenance, inheritance, residence, and child welfare.
- Public awareness and legal education should accompany the implementation of the Uniform Civil Code to facilitate its effective acceptance and enforcement.

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