

## **Impact of Polygamy on Indian Women and Children: A Critical Study**

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### **Abstract**

Engaging in a polygamous or bigamous union is illegal in India. The paper discusses the stance of the Indian Judicial system with the help of various judicial decisions, that polygamy is a diabolical tradition which should be eliminated from our societies, in order to preserve the integrity of women and prevail gender justice. However, no concrete legal structure is codified in order to deal with this issue. Arguing on these points the paper further discusses the legal implications of polygamous unions on women and children. Although there are laws in the Indian society to deal with such a menace, yet there are large numbers of instances of such polygamous unions still prevalent in many parts of India discussed broadly in the paper. The purpose of this article is to identify the rationale behind such a blatantly discriminatory practice like polygamy to still be prevalent in the Indian society. This paper aims to comprehensively analyze gender biased provisions on bigamy and polygamy within the Hindu Marriage Act, 1955 and the Muslim Personal Law (Shariat) Application Act, 1937 respectively, which allow the offenders to exploit and escape the law. Further the prevalence of polygamy cited in the paper sheds light on the effects of such a practice on the status of the wives and Their Children With The Help Of A Plethora Of Judicial Decisions. Finally, The Paper Also Suggests Conclusive Reformative Measures To Deal With The Same.

**Keywords:** Polygamy, Women Rights, Gender Bias, Inequality, Muslim Personal Law, Second Wives.

### **Introduction**

In Its Report [1], The Law Commission Of India Noted That The Practise Of Bigamy That Is Common In Modern India—In Which The First Wife Is Completely Abandoned And The Second Wife Usurps Her Position In The Home—Is Not Sanctioned Anywhere In The Islamic Legal Canon. The Law Commission's Definition Of Bigamy Is Ground-Breaking.

The definition of personal laws in India has been shaped by strong prejudices against the rights of women compared to those of males. Personal Laws are derived mostly out of religion or traditional values which in itself gives rise to the debate of universalism and cultural relativism. However, India has successfully managed to establish a secular framework with utmost respect given to the Constitution of the land and Fundamental Rights of the citizens. Yet, traditional practices like polygamy or bigamy do not cease to exist even in today's world. This blatant discriminatory practice still existing in India violates the basic human rights of women.

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Men and women entering into a marriage are considered to be equal in all matters relating to family relations. [2] According to the judgment in *Pinakin Mahipatray Rawal v. State of Gujarat* [3] (2013), a marital relation between a husband and wife is constitutionally obligated to protect each other's marital requirements. Not only camaraderie, but also to care, support and love each other at all times. Being exclusive with one another provides stability and security in the relationship. Marriage is seen as an inviolable and sacred amalgamation of two people in Hindu Marriage Law. At the same time, a marriage is considered to be a civil contract in Muslim Personal Law.[4] The Supreme Court's stance on *Shayara Bano v. Union of India* [5] (2016), wherein The Court Declared Triple Talaq As An Invalid Form Of Practice Which Marked A Fresh Start To The Age-Old Struggle Towards Gaining Gender Neutrality On The Religious Personal Laws. With This Ongoing Debate, There Has Been An Increase In The Awareness Of Women Rights.

With The Amount Of Gender Biasness Visible Everywhere Around India, Human Rights Have Taken A Backseat In India. The Practice Of Polygamy Not Only Violates And Undermines Articles 14, 15, 16, 21 And 25 Of The Indian Constitution But Also Violates The Fundamental Human Rights As Enshrined Under The United Nation's Universal Declaration Of Human Rights (Udhr) [6].

### ***Legal System And Conflict Of Laws In India***

Constitutional Diversification Could Be Dependent Upon A Number Of Factors Like Religion, Ethnicity As Well As Territory. Religion And Personal Laws Are Largely Interlinked With Each Other In India. Unlike The Uniformity Of Civil And Criminal Laws Which Are In Force, Family Laws Are Not Uniform In India. Therefore, In India, Everyone Is Subject To The Personal Laws Of The Faith To Which They Adhere. Similar To How Individuals Of Different Faiths (Such As Hindus, Muslims, Parsees, And Christians) Have Their Own Personal Laws And How Traditional Communities (Such As The Adivasi) Have Their Own Customary Laws Or Practises, Tribal Groups Also Have Their Own Set Of Laws And Practises That They Abide By. [7] Law Changes With The Development Of The Society And Often It Is The Same For Personal Laws As Well. Only Sometimes Some Obsolete Practices Which Discriminate Against Women Are Still Present In India In The Name Of Traditions, Customs, And Religion. Polygamy Is One Such Practice Still Prevalent In The Muslim Law. The Practice Of Polygamy Has Raised Many Fingers Over These Years On The Issue Of Religious Morality V. Constitutional Morality Even Though India Has Strived To Provide Protection Of Women By Enacting Various Acts, But The Complexity Of Religious And Social Norms Does Not Allow Homogeneous Civil Rights Legislation To Its Optimum Level.

### ***Muslim Personal Law***

With The Affidavit Submitted By The Government For The Ban Of Such Practices To The Supreme Court, There Has Been Much Debate On Muslim Personal Law. As Islam Is The Only Religion In India Which Vehemently Allows Such A Practice Which Not Only Defies The Principle Of Natural Justice Expressed Under The Constitution, But Also Overrides The Principle Of Non-Discrimination, Dignity Of A Woman And Equality. [8] Even Though Polygamy Is Restricted In Islam, Polyandry Is Entirely Forbidden. [9] In Spite Of Article 16 Of The Udhr Which States The Right To Form A Marriage And Found a family for both men and women, being recognized as a fundamental human right, such a discriminatory practice is still practiced. [10]. The International Covenant on Civil and Political Rights (ICCPR) under Article 23 states that a marriage entered willingly shall be protected by the Law and the State party by maintain equality and fairness in the marriage. [11] General recommendation no 25 of the CEDAW explains that the state parties to the convention are legally obligated to protect, respect, promote non-discrimination of women. [12] Though Islam permits polygamy; it has

laid down various conditions, which, in practice, are very difficult to adhere to. Following the text of the Quran, below are the prominent conditions required to be fulfilled in order for a man to enter into a polygamous marriage:

- A man shall have sufficient financial resources to suffice all of his wives equally and their respective families.
- A man must possess physical prowess for satisfying the sexual desires of each of his wives and
- Lastly, a man must be observant to complete justice and equality among each family in every way without any favouritism. [13]

Verse 129 Of The Quran Also Has To Be Mentioned Along With The Above-Mentioned Provisions, Wherein It Declares That It Is Nearly Impossible For Men To Achieve Such Equity Between His Wives And Families Despite Their Best Efforts. [14]

The Most Misinterpreted Concept By Far In Islam Is Polygamy, Conveniently Misconstrued By The Patriarchal Mindset Of The People. Muslim Men Have Failed To Realize The True Intent Of Such A Sanction Mentioned In The History Of Islam. Namely, In The Historical Battle Of Uhud, When The Muslim Men Suffered Great Casualties Several Women And Children Were Left Uncared For. It Is Clear That Verse 4:3 Of The Quran Is Not To Be Considered As An Epicurean Permit For Marriage With More Than One Woman. A Number Of Verses Attribute Towards Monogamy As An Acceptable Form Of Marriage In Quran. Quran Mentions In Verses 7:189 And 30:12, The Relation Of A Husband And Wife To Be "Marriage Partners" Who Can Find Peace And Mindfulness Only In Each Other's Company. Polygamy Is A Form Of Practice Which Discriminates Against Women That International Law Requires State Parties To Eliminate. Cedaw Through Its Various Gen Recommendations Have Been Trying To Establish The Principle Of Non-Discrimination Like, General Recommendation 21 Of The Cedaw On Equality In Marriage And Family Relations.[15] Dr. Tahir Mahmood Stated In His Book, That It Is Obvious That Islam Developed The Norm For Monogamy As An Ideal Form Of Marriage. [16] Thus It Can Be Positively Stated That Quran Holds Monogamy As The Entrenched Rule And Not Polygamy.

### ***Hindu Marriage Law***

Polygamy Or Bigamy Stands Banned With The Commencement Of The Hindu Marriage Act, 1955 Under Section 5 Sub-Section (I), Section 11.[17] Further Section 17 Mentions Polygamy Or Bigamy To Be A Criminal Offence. The Relevant Section Mentions That Any Marriage Between Hindus Is Considered To Be Void Automatically, If On The Date Of Such A Marriage, Either Party Has A Spouse Living. [18] Along With That, Bigamy Or Polygamy Is Defined As An Offence Under Section 494 And Section 495 Of The Indian Penal Code. [19]

Although The Hindu Marriage Act, 1955 Has Prohibited Second Marriage Or Bigamy, It Is Still Widely Done In The Present Society. The 2011 census [20] Suggest That Bigamy Prevails To Wreak Havoc Even Now Among The Hindus. According To 2011 Census Hindus Married Women Outnumber Married Men By Almost 44 Lakhs. There Can Be Only One Deduction By Looking At These Numbers. Which Is 43, 56, 294 Hindu Women Are In Bigamous Relationships With Hindu Men.

There Can Be Two Apparent Reasons For This. First Reason For This Could Be The Fact That Section 198 Of The Code Of Criminal Procedure, 1973 [21] Does Not Allow Any Court To Take Cognizance Of An Offence Which Is Punishable Under Chapter Xx Of The

Indian Penal Code, 1860 [22] Except Upon A Complaint Made By The Aggrieved Person Himself Or Herself Or Any Complaint Made On Her Behalf. As Per Such A Law, The First Wife Of The Male Bigamist Is The Aggrieved Person And If She Does Not Lodge A Complaint Against Him, In Such A Case The Husband Cannot Be Prosecuted By Other Means. Like, In The Case Of Mohd. Ahmed Khan V. Shah Bano Begum (1985) [23], The Apex Court Pronounced Favoring Maintenance Given To An Aggrieved Divorced Muslim Wife. The Lawsuit Was Based On Maintenance Of The Aggrieved Party. Since Polygamy Is Allowed In Islam, Shah Bano Begum Had Very Little To No Scope So As To File A Complaint Against Her Husband On Practicing Polygamy And Hence She Filed A Maintenance Suit Instead. As The Aggrieved Party Was Immediately Divorced By Her Husband After Him Contracting His Second Marriage. In Another Instance, Thangamani S. V. State Of Kerala And Anr, (2005) [24], The Petitioner Is The Second Wife. The Aggrieved Wife Did Not File The Complaint Instead Her Son Filed A Complaint Against His Father In His Individual Capacity. The Petition Was Dismissed After Careful Consideration Of The Contentions Of The Respondent. The Court Contemplated The Case On The Points Of Section 198 Of Code Of Criminal Procedure, 1973.

The Second Reason For This Can Be Assessed With The Ingredients For Establishing Of The Case For Bigamy. The Hindu Marriage Act, 1955 Lays Down That For A Valid Hindu Marriage To Be Solemnized; The Customary Ceremonies Need To Be Performed. The Court Recognized These Ingredients Under S. Nagalingam V. Shivagami, (2001) [25]. Further, In The Above-Mentioned Case Of S. Nagalingam V. Sivagami, The Metropolitan Magistrate, Madras Acquitted The Appellant Due To Lack Of Proof Of The Second Marriage As One Of The Most Important Customary Rites Namely “Saptapadi” Was Not Performed And Hence The Validity Of The Second Marriage Cannot Be Proved. The High Court Of Madras Reversed The Order Of Acquittal Passed By The Metropolitan Magistrate, Madras Citing The Hindu Marriage Act, 1955. [26]

Again, In Promod Thakuria And Anr V. State Of Assam, (2008) [27], The Court Observed In Para 16 Of The Judgment That Validity Of Both The Marriages Have To Be Proved By The Complainant. Consequently, No Offense Could Be Made Out Because Of Lack Of Proper Evidence On Validity Of The Second Marriage.

A Similar Scenario Happened During Krishnakanta Nag V. State Of Tripura, (2012) [28] It Was Established That Unless The Prosecution Can Prove The Validity Of The Second Marriage, It Cannot Erect The Edifice Of Its Case.

In Another Recent Instance, The Lack Of Proof Of The Second Marriage To Confer The Case Of Bigamy Was Decided By The Gauhati High Court In Mon Mayur Sharmah And Anr V. State Of Assam And Anr, 2019 [29]. It Was Mentioned In The Above-Mentioned Case That On Perusal Of The Provision Of Section 494 Of Ipc, It Is Revealed That In Order To Establish The Charge Of Bigamy, The Complainant Must Prove The Validity Of Both The Marriages Strictly Adhering To The Law Governing Both The Parties Involved In The Case. Thus, The Burden Of Proof Or The Evidential Proof Mentioned In The Indian Evidence Act, 1872 [30], For The Validity Of The Second Marriage Lies On The Complainant By Providing Satisfactory Evidence.

Thus, In Spite Of Existence Of The Legal Implications For Bigamy, The First Wives Or The Complainants Still Find It Difficult To Gather The Proof Of Validity Or Evidence Of The Second Marriage. Which In Most Of The Cases Are Performed Secretly Or By Token Rituals Like For Instance Exchange Of Garlands In A Temple. Over The Years, Bigamy Laws



Have Brought About Serious Inequality By Allowing Guilty Partners To Escape The Law. The Legal Loophole Made It Possible To Escape Legal Consequences For Such Accused Partners. This Disproportionate Burden Of Proof Of The Second Marriage By The Complaining Wife Has Compounded Injustice Even In Recent Times For Grieving Women.

### ***Legal Effects Of Polygamous Or Bigamous Marriages Maintenance Of The Second Wives***

The Constitutionality Of Laws Dealing With The Second Wives Seriously Raises Some Important Questions Regarding Her Right To Equality And A Life With Dignity Guaranteed Under The Constitution Of India. The Flaws In Technicality Of The Hindu Law Are Well Known By The Courts And Therefore The Course Of Dealing With The Maintenance Of The Second Wife Has Been The Discretionary Power Of The Judges. Thus, The Courts Have Tried To Deal With This, By Deontological Interpretations.

The Provisions For Interim Maintenance Under Section 24 And 25 Of The Hindu Marriage Act, Does Not Protect The Rights Of The Second Woman. That Is The Reason Why This Section Has Been Given A Very Extensive Interpretation By The Judiciary So That The Rights Of The Second Wife Could Be Protected. This Means That Even After The Marriage Is Annulled, The Second Wife Has The Right To Claim Maintenance.

Under The Hindu Adoptions And Maintenance Act, 1956, The Claim For Maintenance Is Valid Even After The Wife Has Abandoned Her Husband.[24] The Madras High Court In C.Sarojini Devi Vs The Director Of Local Fund Audits, (2020), [25] Held That The Second Wife Can Claim The Family Pension But Only After The Death Of Her Husband.

In Rameshchandra Rampratapji Daga V. Rameshwari Rameshchandra Daga, (2004) [26], It Was Ascertained That Even Though The Second Marriage Is Considered Illegal Yet This Reason Cannot Be Used To Deny The Wife And Her Children Their Maintenance. The Right To Alimony To Be Provided For Those Who Are Economically Unable To Do So. This View Of The Apex Court Was Upheld Again In The Case Of Badshah V. Sou Urmila Badshah Godse And Anr (2014) [27].

Further The Apex Court Pronounced In T. K Surendran V. P. Najima (2019) [28] That Even If The Marriage Is Declared Null And Void Due To Any Action Committed By The Husband, He Shall Pay Alimony To The Wife, Despite Declaration Of Nullity Of Marriage. [29]

The Social Stigma Attached To The Second Wife Is Atrocious With The Absence Of Legal Recognition Of Their Marriage. Lapses In The Hindu Law Are Created Due To The Lack Of Such Laws. The Accused Husbands Take Advantage Of These For Defense. There Is Also A Severe Need To Make Strict And Effective Laws In Order To Provide Justice To The Second Wives.

Section 125 Of The Crpc Which Included Maintenance Of Muslim Women As Well In The Act Created Major Crisis Amongst The Muslim Community Under The 1973 Amendment. The Conflict In Laws Arisen Because The Maintenance Of A Muslim Woman Was Considered To Be Under The Muslim Personal Law's Purview. [The Section Under Mpl] With The Passing Of The Judgment Of The Controversial Shah Bano Begum Case, The Legislature Passed The Muslim Women (Protection On Rights On Divorce) Act, 1986. Even With This Act Being Passed, Muslim Women Are Still Struggling For Maintenance. [ Jubair Ahmed V. Ishrat Bano 2019]

### ***Property Disputes Arising Out Of Polygamy Or Bigamy***

As Per The Hindu Marriage Act, 1955, Marriage Without Divorce From The First Marriage Is Illegal. Therefore, The Second Wife In Such A Circumstance Cannot Claim The Deceased Husband's Property. In Case Of Death Of The Husband Without Leaving Any Will (Intestate). Subsequently The Child From The Second Marriage Would Be Considered Legitimate As Per Section 16 Of The Hindu Marriage Act, 1955 [30] And Section 8 And Section 15 Of The Hindu Succession Act, 1956. [31] Under The Hindu Succession Act, 1956, Children Of The Second Wife Are Deemed To Be Related To Their Legitimate Kinship And One Another [32], And Can Therefore Inherit From Each Other. However, This Contentious Issue On Whether The Children Of The Second Wife Can Inherit The Father's Ancestral Properties Is Still In Need Of An Authoritative Decision. The Decision Of The Supreme Court In Vasant Ramchandra Alias Chander And Others V. Gurudas Vasantrao Yelvande And Others (2018) [33] Provides That The Illegitimate Son, Has The Right In The Share Of His Father In Coparcenaries Or Joint Family Property, But To Get The Said Right, He Has To Wait For The Death Of His Father. Until Which He Cannot Maintain Suit Against His Father Claiming Right In Those Properties. In April 2018, In The Case Of Mangalaam V. T.B. Raju (2018) [34], The Apex Court Observed That A Part Of The Ancestral Property Could Be Claimed By The Living Coparceners, Living Daughters. As Per The Hindu Succession Act, 1956, [35] If The Woman Dies Intestate, Her Own Property Goes To The Heirs Of The Husband, Whereas When A Man Dies Intestate, His Property Is Inherited By His Heirs And Relatives And Not The Wives. Evidently, There Is A Prejudice. However, There Is A Lot Of Speculation Over This And Therefore It Is Left Upon The Discretion And Interpretation Of The Judges On Matters Of Inheritance Of The Illegitimate Children.

The Legal Mechanism For Inheritance Provided To Muslim Women Is Stated Under The Muslim Personal Law (Shariat) Application Act, 1937. As Per The Law, A Son Is Entitled Twice The Proportion Of The Property As That Of A Daughter. [36] The Writ Petition Of Khuran Sunnath Society And Ors V. Union Of India And Anr (2015) [37] Upheld That The Practices As Per The Inheritance Laws Prevalent In The Muslim Society Is Violating Various Articles Under The Constitution Of India. Thus, Are Unconstitutional.

A Wife, Having Children Receives 1/8th Of The Property Of Her Deceased Husband. If There Are No Issues, Then The Wife Receives 1/4th. In Case The Husband Has More Than One Wife; That Is, In Case Of Polygamy, The 1/8th Share Is Divided Equally Among Them, But This Rule Does Not Include Agricultural Land. This Leads To Vast Economical Dependency Of The Wife On The Husband. All The Above-Mentioned Facts Were Observed In The Case Of Abeda Bano Shaikh Jalaluddin And Ors V. Jamshid Amir Ali Khan And Ors (2017) [38]. Ownership Of Properties Increases The Value Of A Woman In Her In-Law's Household And Reduces Violence. [Study By Land Rights Advocacy Group Landesa India]. The Study Conducted By The Bmma In 2015 Showed 82% Of The Indian Muslim Women Did Not Own Property. [Excluding Up, Cite The Study] Thus It Can Be Observed That There Is A Clear Inconsistency Between The Division Of Property Between A Woman And A Man.

### ***Increased Divorce Rates***

According To The Recent Census Data Of 2011, Current Number Of Hindu Males Divorced Is 344281 Whereas Current Number Of Hindu Females Divorced Are 618529. The Differences Between The Numbers Clearly Show That 274248 Hindu Females Are Divorced More Than That Of Hindu Males. The Same Trend Is Seen In Case Of Muslim Population, Where The Total Number Of Divorced Males Is 57335 Where As The Number Of Women Who Are Divorced Are 212074, And The Difference Between Them Being 154539 More Females Divorced Than Males. Hence As It Clearly Evident By The Numbers That Muslim

Women Are Divorced More Than Muslim Men. The Same Trend Is Followed By Buddhists And Christians As Well. The Reason For This Vast Difference In Number Can Be Inferred To Be Bigamy Or Polygamy Unless Proven Otherwise.

In Case Of Hindus, The Second Marriage Is Not Considered To Be A Legal Marriage. An Important Aspect Of This Point Is That The Second Wife While Pleading For Maintenance From The Bigamous Husband Has To Annul The Marriage. This Option For Annulment Is Stated Under The Hindu Marriage Act, 1955. [39] Another Provision For Divorce Under The Hindu Marriage Act, 1955 Provides Remedy To The Second Wife. [40] As Was Observed In Balbir Singh V. Baljinder Kaur (2019) [41].

With The Enactment Of The Muslim Women (Protection Of Rights On Marriage) Act, 2019 By The Government Of India Declaring Instant Triple Talaq In Any Form To Be Unconstitutional And Upto Three Years Jail Time For The Husband, The Rate Of Divorcing Muslim Women Has Been Stalled. Nevertheless, The Appalling Numbers In The Census Data Shows That Women Are Easily And Conveniently Divorced More Than That Of Men. One Of The Reasons For This Can Be Attributed To Polygamy. Triple Talaq, As In Shayara Bano (2016), Is A Provision Of Islam That Is Only Employed By Male Muslims In India, And Even Then, It Is Often In The Context Of Polygamy. They Will Marry A Younger Woman And Cast Off The Elder One Without Much Fanfare, Often Taking The Children With Them.

### ***Child Marriage***

Polygamy Being A Disgraceful Reality In India Even Today, Has Affected Women Of All Age Groups. As A Man Marries Two Or Three Women, The Last Of His Wives Is Generally The Youngest Among All Of The Other Members; Sometimes Even Under Age. According To The National Family Health Survey (Nfhs-4), It Was Estimated That Around 47% Of Married Women In The Age Group 20-24 Were Already Married Before They Turned 18 Years Of Age. [42] The 2011 Census Data Revealed That More Than 18 Lakh Girls Were Under The Age Of 15 Years When Married Off. Further, The Data Also Stated That More Than 4.5 Lakh Girls Had Also Witnessed Child Birth At The Time Of The Census With About 3 Lakhs Having Two Kids.

Alarmingly, Out Of The Total 7.8 Lakh Children Born To Married Girls Below The Age Of 15, More Than 56,000 Are Already Dead. Having Stated That, One Cannot Imagine The Health Of These Young Girls Having Two Or More Children Even Before Reaching The Legal Age For Marriage. No Wonder The Children Born Out Of These Young Girls Did Not Have A Long Life. In A Recent Report, Such A Polygamous Union, Where The Youngest Wife Is Only 12 Years Old Happened In The Lodhwara Village Of Chitrakoot District In Uttar Pradesh. [43] However To Compromise On The Health Of The Young Girls In The Name Of Marriage And Family Is Just Plain Shameful.

### ***Present Scenario In India***

The Basis Of This Study Being The Conflict Of Laws Dealing With Polygamy Has Been Highlighted Thoroughly. The Menace Of Polygamy Or Bigamy For That Matter Is Still Prevalent In The Society Even To This Day. The Occurrence Of Bigamy Or Polygamy Has Become A Regular Thing With Little To No Regard For The Laws Regulating It. India Is A Land Of Various Cultural Diversities And Various Personal Laws To Regulate Those Diversities. Patriarchal Bias Is Also To Be Considered One Of The Greatest Hindrances In Regulating The Laws And Making Them Gender Neutral.

The Times Of India [44] Reported In 2019 That The Thakurs And The Brahmins In A Hindu-Dominated Hamlet In The Isangara Block Of The Lakhimpur Kheri District, The Biggest District In Uttar Pradesh, Had Kept The Practise Of Polygamy Alive. The Hindu Marriage Act Is Not Well Respected In The Area. Polygamy Is Practised For A Variety Of Reasons, Including Men's Desire To Uphold Cultural Norms And Women's Inability To Have Children Via Conventional Means. Lodhwara Hamlet In Uttar Pradesh's Chitrakoot District Was The Site Of Yet Another Incidence Of Polygamy, According To A 2019 Article By The Gulf News [45]. Derasar Males In The Barmer, Banswara, And Jaisalmer Districts Of Rajasthan, According To A 2019 Article In The Free Press Journal [46]. Having Two Or Three Wives Is A Matter Of Prestige, Tradition, But The Reasons As Stated By The Villagers Is That It Is The Best Way For Having An Heir; Incase One Wife Fails To Bear A Child The Other Wives Would Step In And To Perform Household Chores As Well As Take Care Of The Entire Family.

There Are Many Incidences By Which The Entire Scenario Of India Has Been Made Crystal Clear In Matters Dealing With Polygamy. For Instance, In Another 2019 Report By Times Of India [47] Male Residents Of The Gudavali Village In Bhind In Madhya Pradesh Encompasses Districts Of Tikamgarh, Chhatarpur, Panna, Damoh And Sagar Of Madhya Pradesh Have Been Performing Polygamous Marriages Even Though The Law Of The Land States Differently.

The Same Case Is For Andhra Pradesh. [48] Despite Polygamy Being Illegal, This Practice Is Highly Prevalent In All Social Structures Of Andhra Pradesh, Especially In Telengana And Rayalseema. Ranging From Politicians, Ministers, Bureaucrats To Film Stars All Have Flaunted Two Or Three Wives. An Example Of The Practice Of Polygamy Being Openly Conducted Was By M. Karunanidhi, Ex- Chief Minister Of Tamil Nadu.

With The Story And Short Film Made On 'The Water Wives Of India' By Actionaid, Concept Of Polygamy Was Highlighted In The Danganmal Village In Thane District, West Of Maharashtra. The Name Water Wives Were Derived From The Massive Scarcity Of Water That This Village Faces. A Family Has To Survive On Water And To Get The Water; The Villagers Have To Walk For 12 To 14 Hours To Get Water. The Solution To Which Is A Water Wife. That Is To Marry More Than One Woman So That When One Wife Is Busy Doing The Household Chore, The Other One Can Fetch Water From The Well Or River. The Question Is Does Only Danganmal Village Face This Problem? Answer Is No, With More Than 19,000 Villages In Maharashtra, Water Crisis Is Common In All Such Villages.[49]

Therefore, The Present Scenario Of India In Dealing With Bigamy Or Polygamy Has Shown No Improvement Even With The Various Laws Regulating Such A Practice.

### ***Suggestions And Reforms***

The Report Of The Justice Malimath Committee Advocates For Precise Modifications To Section 494 Of Ipc Stating That If A Man And A Woman Are Cohabiting Together As Husband And Wife For A Reasonable Period Of Time Then They Shall Be Considered As Married With Or Without Customary Rites And Rituals Of Either Party. [50]

### ***Burden Of Proof Of Validity Of Marriage To Be Relaxed***

There Is A Requirement To Reconsider And Relax The Conditions Necessary To Prove The Validity Of The Second Marriage Under Section 494 Of Ipc. The Number Of Years A



Man And Woman Are Cohabiting Together Should Be Considered And Thus An Amendment Is Absolutely Necessary. The Decision Of The Apex Court Regarding This Matter Has To Be Considered As A Piecemeal Reform Effort. Thus, It Can Be Stated That Even Cohabitation With Another Person Other Than Your Legally Wedded Spouse Should Be Declared Illegal And Subsequently Criminalized.

### ***Increase The Scope Of Section 198***

As Per Section 198 Sub-Section (1) (A) Of The Code Of Criminal Procedure, 1973; The Scope And Ambit Of The Phrase “Some Other Person” Should Be Made Wider. Section 198 Subsection (1) (A), (B), (C), (D) Mentions A Few Conditions For Which “Some Other Person” Who Is Not Related To The Aggrieved, Can File A Complaint On Behalf Of The Person Aggrieved.

With The Widening Of The Scope And Ambit Of The Section, Many Other Women Would Get Relief Other Than Those Mentioned Under The Mentioned Section. As There Are Many Other Societal Pressures And Problems That Can Obstruct A Woman From Filing A Complaint.

Another Aspect Of Section 198 Of Code Of Criminal Procedure, Which Can Be Amended, Is The Words “On Behalf Of The Person Aggrieved”. The Phrase Could Either Mean That No Person On His Or Her Individual Capacity Can File A Complaint For The Person Aggrieved Or It May Mean That Due Permission Is Required From The Person Aggrieved, If Any Person Other Than Those Mentioned; Wants To File A Complaint For The Person Aggrieved. This Aspect Needs More Clarification And Interpretation On Part Of The Judiciary. It Rests In The Discretionary And Interpreting Power Of The Judges As Stated Under Section 482 Of Code Of Criminal Procedure, 1973[51], As Was Held In *Rekha V. State Of Maharashtra*, (2020) [52]. Therefore, The Suggestion Would Be To Widen The Scope And Ambit Of Section 198 Sub-Section (1) (A) Of The Code Of Criminal Procedure.

### ***No Benefits Or Subsidies For Person Committing Polygamy Or Bigamy***

The 73<sup>rd</sup> Constitutional Amendment Introduced The Law Of Two-Child Norm For Election Of Representatives In The Panchayats. This Legislation Prohibited Persons With More Than Two Children From Holding Any Post From The Panchayats To The Parliament In Future. However, There Is No Such Rule In Case Of Person Involved In A Polygamous Or Bigamous Relation [53]. A Recent Instance Would Be The Former Chief Minister Of Tamil Nadu; M. Karunanidhi. In A Similar Manner For Those Who Are Involved In Polygamy Should Also Be Prohibited From Getting Any Kind Of Benefits Or Subsidies From The Government And Should Also Be Prohibited From Contesting Elections. Although There Are Legal Provisions Dealing With Bigamy And Polygamy Already Available, Yet There Are Innumerable Cases Of Person Committing The Same Crime, Till This Day. Hence A Suggestive Reform Would Be To Prohibit The Person Involved In A Polygamous Union, To Claim Any Kind Of Benefits Available To Them. General Benefits Under Section 80 Of The Income Tax Act, 1961 Can Be Prohibited And Subsidies Ranging From Food, Fertilizers And Electricity To Education, Public Distribution System Of Kerosene And Lpg [54].

Also, The Law Against Polygamists Is Unaffected By The Fact That Agricultural Revenue Is Not Subject To Income Tax. Therefore, It Is Recommended That The Inclusion Of Agricultural Revenue In The Total Income For The Purpose Of Determining The Tax Rate Under The Income Tax Act, 1961 Be Revisited, As Was Suggested In The Sixth Law Commission Report, 1972 [55].

### ***Nature Of The Offence Should Be Considered***

In India, The Crime Of Bigamy Is Considered Non-Cognizable, Bailable, And Compoundable By The Aggrieved Spouse Under Section 494 Of The Indian Penal Code. The Crime Became Cognizable, Non-Bailable, And Non-Compoundable In All Jurisdictions Except Andhra Pradesh (Through A Local Amendment In 1992). Because Of This, It Is Recommended That This Crime Be Made Cognizable, Non-Bailable, And Non-Compoundable.

The Law Commission Of India [56] Has Suggested Swift Legislative Action Against Bigamous Arrangements. The Law Panel Also Agreed To The Views From The Report Of The Ministry Of Women And Child Development [57] That Women Are Always Suffering In Case Of Bigamy. Women Have Always Been Suffering Be It In The Role Of A First Wife Or A Second Or Third Wife.

### **Conclusion**

The Practice Of Polygamy Violates The Articles 21 Of The Indian Constitution. The India Judiciary Has Given Many Landmark Judgments In This Sphere To Set The Law In Motion. An Amendment In This Area Is Most Urgent For The Empowerment Of The Status Of The Second Wives, Their Children And The First Wives In Case Of Muslim Women. The Fact That Polygamy Is Fundamentally Opposed To A Woman's Wellbeing Is Enough To Prove That This Practice Is Against Public Order And Morality. It Is Therefore, Safe To Conclude That Even Though There Are Many Laws Protecting The Interests Of Women In India, Yet A Large Number Of These Laws Have Lacunae's, Which In Turn Help The Offenders To Escape The Law Route.

The Loopholes Through Which These Offenders Can Escape Are Highlighted In The Paper Along With The Various Effects Of Such A Practice To Be Still Prevalent In A Society Like Ours. With Polygamy, Still Allowed To Practice Under Muslim Law In India, It Is Imperative To Understand The Logic Behind The Large Number Of Muslim Majority Nations, Totally Banning Or Undertaking Significant Reforms In Their Laws. The Article Closes With Identifying Few Suggestive Reform Measures In The Existing Law.

The Law Commission Of India Claims That Most Global Legislation Either Outlaw Or Severely Restrict Polygamy Or Bigamy. As The Largest Democracy In The World, India Is Therefore Suggested To Prohibit Polygamy Or Take Effective Steps From Taking Place Anywhere In The Country. There By, Ensuring Dignity And Gender Equality To All Women.

### **References**

- Law Commission of India, report no 227, Preventing Bigamy via Conversion to Islam – A Proposal for giving Statutory Effect to Supreme Court Rulings.
- Article 16 of the Convention on Elimination of Discrimination Against Women, 1979 states State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women. Article 16(2) states that the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.
- (2013) 10 SCC 48.

- Jain, M. P. (2016). 05\_Matrimonial Law in India.  
Writ Petition (C) No. 118 of 2016.  
Universal Declaration of Human Rights, 1948- UDHR is a historic document that was adopted for maintaining and creating awareness about Human rights by the United Nations General Assembly on the 10 December 1948.  
The Panchayat (Extension to Scheduled Areas) Act, 1996, and The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006  
Moonshee Buzloor Ruheem v. Shumsoonnissa Begum 11 M.I.A. 551 at 615.  
In this study, the researcher will use polygamy as it is the only form practiced. Polygamy means that a man can marry more than once and twice whereas Polyandry means a woman can marry more than once, which happens only rarely in some parts of India only.  
Article 16 of the UDHR states (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.  
General Recommendation 19, Article 23, Paragraph 1-4 of the International Convention on Civil and Political Rights. India ratified the Convention in 1979.  
General Recommendation 25, Article 4, Paragraph 1, of the Convention (temporary measures), UN CEDAWOR, 30<sup>th</sup> Session, UN Doc. HRI/GEN/1/Rev.7 at 282, Paragraphs 5,7,8,10,12.]  
The Quran states that "...then marry [other] women, who seem virtuous to you, two or three or four; and if you fear that you cannot do them justice, then one [only]..." See Surah Nisa' 4:3, Verses of Quran.  
"and you will never be able to be just between wives, even if you should strive, so do not incline too much to one of them so as to leave the other hanging, and if you reconcile and have piety, then surely Allah is Oft-Forgiving, Most Merciful..." See Surah A Nisa' 4:129, Verses of Quran.  
Gen Recommendation 21, Equality in Marriage and Family Relations, UN CEDAWOR, 13<sup>th</sup> Session, UN Document, A/47/38, (1994), Paragraph 14.  
Mahmood, S., & Mahmood, T. (2016), Muslim Law in India and Abroad, Universal Law Publishing Co.  
Sec 5(i) read with Sec 11 of The Hindu Marriage Act, 1955, Act no 25 of 1955.  
Sec 17 of The Hindu Marriage Act, 1955, Act no 25 of 1955.  
Sec 494 read with Sec 495 of The Indian Penal Code, 1860, Act no 45 of 1860  
Chandramouli, C., & General, R. (2011). Census of India 2011. Provisional Population Totals. New Delhi: Government of India, 409-413.  
Section 198 of Code of Criminal Procedure 1973, Act no. 02 of 1974. As amended in 2013 by The Lokpal and Lokyuktas Law (Amendment) Act, 2013.  
Sec 493- Sec 498 of Indian Penal Code, 1860, Act no 45 of 1860. Chapter XX of The Indian Penal Code, 1860 deals with the offences relating to marriage.  
AIR 1985 SC 945  
Crl. M. C. NO. 8984 of 2002  
AIR 2001 SC 3576  
Section 7-A of the Hindu Marriage Act, 1955, Act no 25 of 1955  
4 GLR 462  
2013(5) RCR (Criminal) 338 (Gauhati) (Agartala)  
Crl.Rev.P. 13/2010  
Section 114 of the Indian Evidence Act, 1872, Act no 01 of 1872.

- Sec 18 of the Hindu Adoptions and Maintenance Act, 1956, Act no 78 of 1956.  
WP.No.34952 of 2019 And WMP.No.35740 of 2019  
AIR 2005 SC 422  
(2014) 1 SCC 188  
(2012) 1 KerLT 769
- Section 125 of the Code of Criminal Procedure, 1973, Act no 02 of 1974.  
Section 16 of the Hindu Marriage Act, 1955, Act no 25 of 1955  
Section 8 and Section 15 of the Hindu Succession Act, 1956, Act no 30 Of 1956.  
Sec 3 (1) (j) of the Hindu Succession Act, 1956, Act no 30 of 1956.  
Civil Revision Application No. 861 of 2014  
Civil Appeal No. 1933 Of 2009  
Sections 15 read with Section 16 of the Hindu Succession Act, 1956, Act no 30 of 1956.  
Press Trust of India, HC seeks govt stand on PIL for changing Muslim inheritance law,  
<https://www.indiatoday.in/pti-feed/story/hc-seeks-govt-stand-on-pil-for-changing-muslim-inheritance-law-1100806-2017-12-05>. Last Accessed on June 12, 2020.  
2015 SCC OnLine Ker 13643  
First Appeal 269 of 2006  
Section 11 read with Section 5 of the Hindu Marriage Act, 1955, Act no 25 of 1955.  
Section 13 of the Hindu Marriage Act, 1955, Act no 25 of 1955.  
FAO-M-74-2019  
Dhirar, N., Dudeja, S., Khandekar, J., & Bachani, D. (2018). Childhood Morbidity and Mortality in India—Analysis of National Family Health Survey 4 (NFHS-4) Findings. *Indian pediatrics*, 55(4), 335-338.  
Indo-Asian News Service (2019), Three sisters pray for their one and only husband in India,  
<https://gulfnews.com/world/asia/india/three-sisters-pray-for-their-one-and-only-husband-in-india-1.1571402444922>. Last accessed on June 12, 2020.  
Kanwardip Singh,(2019)In this UP village, polygamy is the key to respectability,  
<https://timesofindia.indiatimes.com/city/lucknow/in-this-village-polygamy-is-the-key-to-respectability/articleshow/70314084.cms>. Last accessed on June 12, 2020. And Namita Bajpai,(2019), In this Hindu Village in Uttar Pradesh , polygamy is an age old tradition. <https://www.newindianexpress.com/nation/2019/jul/27/in-this-hindu-village-in-uttar-pradesh-polygamy-is-an-age-old-tradition> Last accessed June 12, 2020.  
Indo-Asian News Service (2019), Three sisters pray for their one and only husband in India,  
<https://gulfnews.com/world/asia/india/three-sisters-pray-for-their-one-and-only-husband-in-india-1.1571402444922>. Last accessed on June 12, 2020.  
Free Press Journal Web Desk,(2019)Men in this Rajasthan village marry twice, and the reason will bemuse you, <https://www.freepressjournal.in/india/men-in-this-rajasthan-village-marry-twice-and-the-reason-will-bemuse-you>. Last accessed June 12, 2020.  
Dashdeep Saxena (2019), Have 3 wives to deal with water crisis: Official,  
<https://timesofindia.indiatimes.com/city/bhopal/Have-3-wives-to-deal-with-water-crisis-Official/articleshow/47608408.cms>. Last accessed on June 12, 2020  
Balakrishnan Ganeshan,(2018), Bridegroom forever': Jagan gets personal with Pawan Kalyan,  
<https://www.thenewsminute.com/article/bridegroom-forever-jagan-gets-personal-pawan-kalyan-85384>. Last accessed June 12, 2020.  
Reuters (2016), This Story of Maharashtra's Water Wives Is As Heartbreaking As The Drought Itself,  
<https://www.indiatimes.com/news/india/this-story-of-maharashtra-s-water-wives-is-as-heartbreaking-as-the-drought-itself-253278.html>. Last accessed June 12, 2020.  
Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India (March 2003)



[http://mha.gov.in/sites/default/files/criminal\\_justice\\_system\\_2.pdf](http://mha.gov.in/sites/default/files/criminal_justice_system_2.pdf).

Section 482 of Code of Criminal Procedure, 1973, Act no of 1974.

SCC Online Bom 291

Devika (2020), The Constitution (Amendment) Bill, 2020 — Private Member’S Bill Introduced In Rajya Sabha To Encourage — “Two Child Policy”, <https://www.scconline.com/blog/post/2020/02/11/the-constitution-amendment-bill-2020-introduced-in-rajya-sabha-bill-to-encourage-two-child-policy/>. Last accessed June 12, 2020.

Economic Survey 2004-05, GOI

Law Commission of India, Report no 49, the proposal for inclusion of agricultural income in the total income.

Law Commission of India in a consultation paper on Reform of Family Law. <http://www.lawcommissionofindia.nic.in/reports/CPonReformFamilyLaw.pdf> .

Annual Report of the Ministry of Women and Child Development of 2014-2015. <https://wcd.nic.in/sites/default/files/AR2014-15.pdf>