

LIFE WITH POLYGAMIST: SECURING GENDER JUSTICE AMIDST PLURAL MARRIAGES IN INDIA

Sub-Theme: Gender Justice and the Constitution

Name of Author: Sadaf Tariq

Name of Institute/Organization: Shri Ram Swaroop Memorial University,

Lucknow- Deva Road, Barabanki, Uttar Pradesh, 225003

Official Designation: Research Scholar

E-mail Address: stariq2009@gmail.com

Postal Address: 165/102, Niyaz manzil, Behind Mosque Zia-ul-Islam, Kachcha

Hata, Aminabad, Lucknow 226018

Contact Number: 8960567337

Name of Co-Author: Dr. Purnima Bhardwaj

Official Designation: Assistant Professor

Department: Institute of Legal Studies

Name of Institute/Organization: Shri Ram Swaroop Memorial University, Lucknow- Deva
Road, Barabanki , Uttar Pradesh, 225003

E-mail ID: 1purnimabhardwaj@gmail.com

Abstract

The concept of gender justice and equality is inherent in the words as well as in the soul of our Constitution. The problem of Plural marriages or polygamy in India is not new. The life of a woman with a polygamist is not easy. In order to provide justice to a married woman living with a husband having another wife, many things are to be kept in mind. This paper aims to cover various aspects of psychological pressure and mental agony through which the first wife goes through. There are various legislations and other personal laws that seeks to provide justice to women within plural marriages. Gender justice is not merely confined to providing equal status to women in matters of employment, education and in cases of sexual harassment of women at workplace but it also extends to the women who are confined and compelled to live with a husband who has several wives with no escape. The term polygamy immediately attracts the religion of Islam. A Muslim man undoubtedly can marry as many as four times at a time but he has to fulfill all the conditions attached to it. One of the main conditions attached to polygamy is 'justice'. Justice to a woman

within plural marriages is something beyond imagination. The conditions attached to polygamy are so severe and harsh that it is almost impossible for any person to comply with. In the Indian patriarchal system, physical and mental harassment is meted out to the women sometimes in the name of discipline, sometimes in the name of religion and sometimes in the name of morality. Nevertheless, this paper aims to throw light on the plight of woman within plural marriages and how justice can be served to such women.

Keywords: Justice, Equality, Polygamy, Marriage, Women

INTRODUCTION

In nature, everybody is equal, whether it be man or woman. Obviously, the nature has honoured everyone with some special characteristics which defines an individual in reality. However, those attributes are conferring in nature and provide for the special traits which are most essential for the world to exist. For example only females have been honoured with the special job of giving birth, Plants and trees give us food and oxygen, Rivers give us water etc. It is understandable that every mechanism in the nature expects everyone to co-exist and perform their jobs in harmony. It is also discernible that any breakdown or defect in the rhythm of co-existence would seriously damage the course of nature.

Thus, it is very clear that nature itself treats everybody equally and any inequality would create imbalance. It can also be said that any discrimination against any individual on basis of the special roles assigned to him or her is against the law of nature.

Justice means harmonization of interest between individuals, between groups between individuals and groups on one hand and the best interest of the community on the other hand. The essence of justice is the 'attainment of the common good'. It embraces the entire social, economic and political sphere of human life. The word '*justice*' is inherent in the Preamble of the Constitution of India. Justice requires the attainment of social justice. It means the abolition of all sorts of inequities which result from inequalities of wealth, race, caste and religion. Social justice and equality are complementary to each other, so that both can maintain their own vitality. The rule of law is thus a 2012 patent instrument of social justice to bring about equality. *CERS v. Union of India*¹

The concept of social justice thus enables the courts to uphold legislation-

- (a) to protect the interests of the weaker sections;
- (b) to remove economic inequalities; and
- (c) to provide a decent standard of living to the inhabitants of the country.

Because of their femininity, women are considered inferior. Women were subjected to social restrictions and from the time when discrimination started in the upbringing of the boy and the girl child. This discrimination has continued till today. Before the middle ages there were no restrictions upon the women in this country. There were no separate standards for women and

¹ A.I.R. 1955 S. C. 922)

therefore women were not considered inferior in those days. Women have been subjected to the various tortures right from the Vedic ages till today. In a patriarchal society, physical and mental harassment is meted out to the women sometimes in the name of discipline, sometimes in the name of religion and sometimes in the name of morality.

The problem of gender inequality is a historical one. In the early ancient times, it is found that women were given equal status as men. The status of women in ancient Egypt depended on their fathers or husbands, but they had property rights and were allowed to attend court, including as plaintiffs² Women of the Anglo-Saxon era was commonly afforded equal status.³

This practice of discrimination against women has been passed down from older generation to the newer ones for ages in every part of the world. Its traces can be followed back to thousands of years B.C.

The male dominant societal structure and the state built on it are the underlying bases of gender inequality. The sociological reality behind this structure is the transition from the matriarchal society, which is more egalitarian in its nature, to the patriarchal society. That is the underlying reality of the problem.

Even though the economic and technological progresses have changed the social and the modern thinking of India today, the problem of gender inequality continues to exist even in the urbanized modern society up till date. Although we talk about the knowledge-based information in today's world, the problem of gender inequality has not been yet solved. And it is not just women who will bring social equality. The other half part of the society, the men, also should step forward and join the struggle to bring gender equality⁴.

POLYGAMY: MEANING

Marriage is one of the most important aspects of Human life. Marriage is a sacred institution and a complex legal entity governed by various personal laws in different cultures and religions. In Muslim law, marriage, or "Sunnat," is considered a civil contract between a man and a woman. Polygamy in Islam is one the favourite topic for the critics of Islam. It is a complicated aspect of marriage in Islam in which the welfare of the community supersedes the desires of the individual (women).

Marriage and divorce have had a disproportionate share in public debate among all matters of family law. Marriage is frequently theorised as the foundation of a family, and family the foundation of society. The glorification of marriage sometimes also means that there are arguments made for non-interference in personal matters, however, discrimination and even violence in intimate relationships cannot be overlooked on pretext of privacy.

There are significantly different attitudes towards how a union between two people is imagined. While in Hindu law, marriage is a sacrament, in Christian law, divorce continues to be stigmatised;

² David P. Silverman (2003). *Ancient Egypt*. Oxford University Press. pp. 80–84.

³ Stanford Lehmberg (2013). *A History of the Peoples of the British Isles: From Prehistoric Times to 1688*. Routledge. p. 35.

⁴ <http://www.hurriyetdailynews.com/opinion/fikret-bila/the-problem-of-gender-inequality-128637>

in Muslim law, marriage is a contract and Parsi law registration of marriage is central to the ritual of marriage. It is important that these different attitudes are respected and not placed in hierarchy, pitting one religious attitude against another. At the same time marriage cannot be defined in religious terms alone, and religiously inspired gender roles and stereotypes cannot be allowed to come in the way of women's rights.

The Word Polygamy comes from two words: "poly," which means "many," and "gamos," which means "marriage." As a result, polygamy **relates to marriages that are several**. Thus, polygamy is marriage in which **a spouse of either sex may have more than one mate** at the same time.

The critics of polygamy laws argue that the practice results in gender inequality and hinder women's rights. It is contended that plural marriage often result in the exploitation and subordination of women, who may face economic dependence, marital discord, and emotional distress.⁵ polygamy can further lead to social instability, family breakdown, and inter-spousal conflicts which ensures jealousy, thereby posing challenges to societal cohesion and harmony. On the other hand, there are some proponents of legalizing polygamy who argue that it is a matter of religious freedom and personal choice⁶. They contend that individuals should have the right to enter into polygamous marriages if it aligns with their religious beliefs and cultural practices. Legalizing polygamy, they argue, would also provide legal recognition and protection to individuals in polygamous unions, ensuring their rights and entitlements, including inheritance and property rights⁷.

There is a strong connection between the interpretation of gender bias and polygamous behaviour. Polygamy activities that are contrary to religious values are perpetuated by the interpretation of gender bias. In recent years, modern Qur'anic exegesis has developed a strategy that has spread throughout the Islamic world to relativise the ominous verses by establishing a distinction between meanings that apply on one side (universal, and bound by time and situational meaning) and certain verses on the other side. Thus, another effort is needed to study feminist approaches to gender equality, as their interpretations differ from traditional interpretations, and the basis of how they shape the new Quranic hermeneutics towards contemporary development of gender equality and gender justice.⁸

ENSURING JUSTICE TO WOMEN WITHIN PLURAL MARRIAGES UNDER MUSLIM LAW

An unthinking criticism has been levelled against Islam for having permitted polygamy. This is all because this institution has been misunderstood by both Muslims as well as Non-Muslims. To understand the true meaning and position of polygamy in Islam. One has to delve deep into the injunctions of the Holy Quran and the circumstances under which the polygamy was allowed as well as the practice followed by Prophet Mohammad.

⁵ Noreen, M. and Asif, M., 2023. Muslim Women's Agency and South Asian Literature: A Postcolonial Feminist Analysis of Purdah and Polygamy: Life in an Indian Muslim Household by Iqbalunnisa Hussain. Pakistan Languages and Humanities Review, 7(2), pp.68-77.

⁶ Suleman, M., 2023. Muslim Personal Law, Yes and No: Religious Leader's Views on its Legalization. Journal for the Study of Religion, 36(1), pp.1-34.

⁷ Goldfarb, S.F., 2020. Legal recognition of plural unions: Is a nonmarital relationship status the answer to the dilemma? Family Court Review, 58(1), pp.157-173.

⁸ (Banu & Jamali 2019; Riyani & Ismail 2018).

The verse permitting polygamy was revealed in the Holy Quran out of necessity and due to the demands of the circumstances. After the battle of Uhud in 3rd Hijrah, large numbers of Muslim men were killed leaving many widows and orphans. The verse came as follows:

“If your fear that you won’t be able to deal justly with the orphans, marry the woman of your choice, two, three or four; but if you fear that you will not be able to deal justly (with wives), then (many) only one”.

From the verse it is quite evident that the permission is given to solve social emergency. It is not obligatory. The negative aspect of the verse, the second part, is to be seriously considered before taking a second wife. Anyone can imagine the social condition of Arabia in early 7th century AD, when one man could keep wives upto ten or more. The number was restricted to four only with strict conditions of imparting justice among wives, which is very difficult

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

(Quran, 4:129)

From above verses it is clear that there are strict conditions to be fulfilled by a person marrying second wife, i.e. ***the condition of justice between two, three or four wives and if he is not able to do justice among them it is clearly provided that only one wife is allowed.*** The condition of justice is very strict. Abdullah Yusuf Ali says that the unrestricted number of wives of the Times of Ignorance’ was now strictly limited to a maximum of four, provided you could treat them with perfect equality in material things as well as in affection and immaterial things.

As this condition is most difficult to fulfill, I understand the recommendation to be towards monogamy. 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” (XXXIII:4).

These verses read with Sura Nisa make it clear that how- much Islam emphasizes on justice among wives and itself says that it is impossible to deal justly with two wives. After studying the provisions of Quran, the most important thing is to study the life of Prophet Mohammad. It is a conceived notion that Prophet Mohammad practiced polygamy. It cannot be denied that Prophet Mohammad practiced polygamy but fail to give due consideration that the prophet himself was a monogamist for majority of his life.

Many Muslims who regard polygamy as the Sunnah of the Prophet (saw), forget or fail to fully understand the type of polygamy that the Prophet practised. First of all, the Prophet himself was monogamous throughout his 25 year marriage to his first wife Khadijah (r.a.), and his polygamous marriages after her death in the tenth year of his prophethood were to widowed or divorced women for political or tribal reasons. The only virgin he married was his second wife, Aishah (r.a.). He

married a total of 11 times, and most of his marriages were to elderly widowed or divorced women with children, entered into for political and tribal reasons. The Prophet married his nine wives after Aishah within a space of 5 years and never divorced any of the women he was married to. The Prophet did not marry younger and prettier women to fulfill his desires. In fact, he practised polygamy within the realm of spreading Islam to the communities at the time. Unlike the other men, the Prophet was allowed to keep all his wives after the maximum four wives limit was imposed upon the previous practice of unlimited polygamy, but he was eventually prohibited from adding to his wives or divorcing any of them with a view to taking another wife in her stead.⁹

Polygamous marriage in the present scenario shares nothing in common to the sunnah that was practiced by prophet Mohammad. It is very wrong and unacceptable or rather unjust to say that the muslim people who practice polygamy in 21st century can be compared to the justification of Polygamy that was practiced by Prophet Mohammad. The Prophet's monogamous marriage with Khadijah, if one can think and ponder over it, it would appear that Prophet's Monogamous Marriage with Khadija that a man should not take another wife at all during the lifetime of his first wife. A gist of reasons justifying the act of Polygamy by prophet are listed below:

1. To provide shelter to women and orphans
2. For solving a social problem was to deal with the crisis of orphans and widows.
3. to provide a good example for his followers that Muslims must protect the minority and vulnerable groups as well as guard against social stratification
4. Political and missionary reasons also became some of the reasons why the Prophet Muhammad practiced polygamy
5. to expand Islam

Conditions Under Which Polygamy Is Allowed

The law states that polygamy is allowed only in certain conditions such as

1. if the wife cannot have a baby,
2. the wife is chronically sick or disabled, or
3. if the wife cannot fulfil her obligation as a wife,
4. This law also mentions that polygamy can be done if there is consent from the wife, guarantee that the husband can fulfil economical needs and will treat all wives and children justly.

The law seems to protect women from discrimination in terms of polygamy, but it still has gender bias and ignores women's rights

POLYGAMY IN INDIA

In the Words of Justice V.R. Krishna Iyer, a distinguished former judge of the Supreme Court of India who was well known for his progressive views on various legal and social issues, including polygamy firmly believed that polygamy was incompatible and absolutely inconsistent with the principles of justice and equality enshrined in the Indian Constitution. In several judgments and writings, Justice Iyer expressed his stance against polygamy, arguing that it violated the

⁹ Surah al-Ahzab 33 : 52.

fundamental rights of individuals, in particular women. He emphasized the need to uphold the principles of equality and dignity within marital relationships, irrespective of religious or cultural beliefs¹⁰

Although polygamy is permitted within Islam but with stringent conditions, it is a rare practice among Indian Muslims, on the other hand it is frequently misused by persons of other religions who convert as Muslims solely for the purpose of solemnising another marriage rather than Muslim themselves. Comparative law suggests that only few Muslim countries have continued to protect the right to polygamy but with strict measures of control.

In India it has been statistically proved that more Hindus practice polygamy than Muslims. Hindus are not legally allowed polygamy, while Muslims are allowed as per their Personal law. Muslims are economically poorer than Hindus are. They cannot afford the luxury of maintaining second wife and their children. Polygamy was practiced prior to the enactment of the which completely abolished its practice.

▪ **Hinduism:**

- Polygamy was practiced **prior to the enactment of the Hindu Marriage Act, 1955 (HMA) which completely abolished its practice.**
 - The HMA is applicable to any person who is Hindu by religion in any of its form or development or to any person who is a **Buddhist, Jaina or Sikh by religion.**
- **Section 11 of HMA** states that bigamous marriages are **null and void**, i.e., they don't hold any value under the Indian Laws.
 - **Section 17 of HMA** states that if any individual indulges in polygamy after the introduction of this Act, he could be punished under **Section 82 of the Bhartiya Nyaya Sanhita, 2023**
 - **Section 82 – Marrying again during lifetime of husband or wife.** Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception: This sub-section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the

¹⁰ Ahmed, H., Mishra, R.K. and Jehangir, K.N. eds., 2022. Rethinking Muslim Personal Law: Issues, Debates and Reforms. Taylor & Francis

person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

- Whoever commits the offence under sub-section (1) having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

▪ **Christianity:**

- Under the New Testament (the second part of the Christian Bible, written originally in Greek, recording the life and teachings of Christ and his earliest followers), it was stated that the church leaders should only **practice monogamy and should not have multiple wives**.
- Apart from that, Paul, the Apostle had clearly indicated that widows should be allowed to remarry even the already married men as this would provide them with a means of sustenance.
- In modern times, the **Christian Marriage Act, 1872**, applies to regulate the matters
- of marriage among Christians in different parts of the country and **it prohibits bigamy**.

▪ **Muslim Law:**

- Polygamy **is legalized among Muslim men**, i.e., Muslim men can marry multiple wives at the same time, but this should not exceed four at a given time.
- In the modern period, Indian Muslims are required to follow the legal provisions stated under the Muslim Personal Law Application Act, 1937 **which doesn't prohibit polygamy in any form**.

The following data is provided by the NFHS¹¹-5 for the period between 2019-2021.

- **1.4 % of married Indian women** said their husbands had another wife or wives.
- A higher rate of polygamy **exists among the Scheduled Tribes** (2.4 %) and marginally among the Scheduled Castes (1.5 %).
- At 1.6 %, **Meghalaya** reported the **highest figure for polygamy**, while **Goa was at the bottom** of this list with a figure of 0.2 %.
- The rate of polygamy among various religions is as follows:
 - **2.5 %** in the case of other religions or castes.
 - **2.1 %** among Christians

¹¹ National Family Health Survey

- 1.9 % among Muslims
- 1.3 % among Hindus and Buddhists
- 0.5 % among Sikhs

Polygamy can have many consequences, including mental health issues for women and children, as well as adverse child health outcomes

PLURAL MARRIAGES VERSUS CONSTITUTION

Article 14: Article 14 of the Indian Constitution guarantees the right to equality before the law and equal protection of the laws to all citizens. Polygamy violates the principles enshrined in Article 14 which include gender discrimination, denial of equal rights within marriage and social and economic inequalities. Recent case laws further illustrate how polygamy violates the constitutional right to equality¹².

In *Shayara Bano v. Union of India (2017)*¹³, the Supreme Court declared the practice of triple talaq (instant divorce) among Muslims unconstitutional, citing its arbitrary and discriminatory nature. The court emphasized the importance of upholding the principles of equality and dignity within marital relationships, reaffirming the rights of individuals, particularly women, under Article 14 of the Constitution¹⁴

Article 15: The practice of polygamy is allowed only in Muslims which is clearly in contravention with Article 15 which prohibits discrimination based on religion. The Supreme Court in the case of *State of Karnataka v. Appa Balu Ingale & Ors* ruled that

“The Judges should adopt a purposive interpretation of the dynamic concepts under the Constitution and the act with its interpretive armory to articulate the felt necessities of the time. The existing social inequalities or imbalances are required to be removed readjusting the social order through rule of law.”

Article 15(1) prohibits state discrimination based on religion, race, sex, caste, or place of birth, extending the right to citizens to be free from discrimination in their rights, privileges, and immunities.¹⁵

The case of *Charu Khurana v. Union of India (2015)* sets a precedent for viewing polygamy as unconstitutional and oppressive under Articles 14 and 15 of the Indian Constitution.²⁵ It was deemed contrary to gender justice as it perpetuates discrimination based on gender.

Article 21: The right to life, enshrined in Article 21 of the Indian Constitution, encompasses a wide range of freedoms and rights, including the right to live with dignity and security. By its very nature, polygamy undermines these rights of women, leading to psychological distress, economic hardship, and social exclusion. Since women's right to human dignity, social respect and self-respect is an integral part of the right to life under Article 21 of the Constitution, it is recognized that the practice of polygamy is a violation of Article 21 of the Constitution. The Supreme Court,

¹² Sri Srinivasa Theatre v. Govt. of Tamil Nadu, (1992) 2 S.C.C. 643

¹³ Shayara Bano v. Union of India and Others (2016), AIR 2017 SUPREME COURT 4609

¹⁴ Mohd. Haroon v. Union of India, (2014) 5 S.C.C. 705.

¹⁵ Nain Sukh Das and Ors. v. State of U.P. and Ors., A.I.R. 1953 S.C. 384

through a series of judgments, has affirmed that the right to life extends beyond mere existence and encompasses the right to live with human dignity¹⁶.

*K.S. Puttaswamy v. Union of India (2017)*¹⁷ and underscored the necessity for the provision to reflect women's status as equal participants in the institution of marriage, entitled to constitutional protections of privacy and dignity. He emphasized that a life of dignity entails safeguarding the "inner recesses of the human personality" from unwanted intrusion. His ruling placed significant emphasis on the importance of sexual autonomy as a fundamental aspect of life and personal liberty under Article 21.

Article 25: In **Khursheed Ahmad Khan versus State of UP in 2018**, the Supreme Court held that "though the personal law of Muslims permitted having as many as four wives it could not be said that having more than one wife is a part of religion. Neither is it made obligatory by religion nor is it a matter of freedom of conscience." Furthermore, The Supreme Court held that the Conduct Rules do not violate Article 25, as polygamy is not integral to Islam, and therefore does not constitute a religious practice

In PK Mukmuthu Sha v. PS Mohammed Afrin Banu (2023) ▪ The Madras High Court observed that although Islamic Law allowed a husband to have polygamous marriages, he was obligated to treat all the wives equally

Javed v. State of Haryana (2003) ▪ It may be permissible for Muslims to enter into four marriages but no religion dictates or mandates an obligation to enter into polygamy.

LAW COMMISSION REPORT ON POLYGAMY

Law Commission in its 227 reports¹⁸says— Since time immemorial it was believed – rightly or wrongly – that Hindu religious law allowed an unrestricted polygamy and imposed no specific conditions on the polygamist husband. The Muslim rulers of India had left the Hindu law on polygamy – whatever it was untouched and did not impose on any non-Muslim the rules of Islamic law tolerating limited polygamy in a well-defined discipline of equal justice to co-wives. The British rulers, who did reform many other aspects of Hindu law, also did not abolish the rules on polygamy under the traditional Hindu law and custom. Only the Brahmo samaj is had managed to legally adopt monogamy under a special law enacted for them in the erstwhile Bengal province in 1872. After the advent of independence anti-bigamy laws were enacted for the Hindus by provincial legislatures in Bombay, Madras, Saurashtra and Central Provinces. Finally, in 1955 Parliament enacted the Hindu Marriage Act putting a blanket ban on bigamy for the Hindus. Buddhists, Jains and Sikhs, declaring bigamous marriages on their part in future to be void and penal.

The Law Commission of India in 227th Report¹⁹– A Proposal for giving Statutory Effect to Supreme Court Rulings' (2009), discusses how the section 494 applies to persons under various personal laws and also to Muslim women: As regards the Muslims, the IPC provisions relating to

¹⁶ Vishaka v. State of Rajasthan, (1997) 6 S.C.C. 241.

¹⁷ K.S. Puttaswamy v. Union of India (2017), 2017 10 SCC 1

¹⁸ <http://lawcommissionofindia.nic.in/reports/report227.pdf> (as accessed on 10.2.25)

¹⁹ Preventing Bigamy via Conversion to Islam – A Proposal for giving Statutory Effect to Supreme Court Rulings 2009 (REPORT NO. 227)

bigamy apply to women – since Muslim law treats a second bigamous marriage by a married woman as void – but not to men as under a general reading of the traditional Muslim law men are supposed to be free to contract plural marriages. The veracity of this belief, of course, needs a careful scrutiny. 2.97. The Sachar committee report of 2004 was also a significant step in this direction, which took stock of the status of Muslims in India. It also referred to problems of health and education.⁸⁰ 2.98. Under the India Administrative Service (cadre) Rules, 1954, the Central Civil Services (Conduct) Rules 1964 bigamy attracts penalties. These conduct rules provide that a person who has contracted a bigamous marriage or has married a person having a spouse living shall not be eligible for appointment to such services – Rule 21. The All-India Services (Conduct) Rules 1968 also place restrictions on members of any such service – Rule 19. The 227th report states: Both the Rules, however, empower the government to exempt a person from the application of these restrictions if the personal law applicable permits the desired marriage and —there are other grounds for so doing. These provisions of Service Rules apply to the Muslims and their constitutional validity has been upheld by the Central Administrative Tribunal and the courts. See, e.g., *Khaizar Basha v Indian Airlines Corporation*²⁰

CONCLUSION AND SUGGESTION

To conclude one would say that the letter and spirit of the Qur'anic verses and the Sunnah of the Prophet, polygamy or plural marriage is concerned with the welfare of women and children who were left unprotected after their husbands and fathers were killed in battle. After discussing the provisions of Quran, circumstances permitting polygamy and practice followed by Prophet Mohammad it may be concluded that polygamy is permitted **only with the orphans, poor, widow or captives** because the purpose for permitting polygamy was to provide protection and to address the sufferings of these women. The conditions which were prevalent in the Madani era are no more to be found in 21st century. Today polygamy is looked upon as a matter of right rather than matter of duty to protect the helpless.

Countries such as turkey, Israel, Argentina, China, Pakistan, etc have enacted and enforced laws which prohibit polygamy. The Goa Civil Code prohibits plural marriages and allowed polygamy only in special circumstances.

Therefore, the only way that a wife within plural marriage can secure justice is:

- Reinterpreting the Quran in the light of just and restricted polygamy
- A woman within plural marriage can include a clause in her marriage contract that prevents her husband from taking another wife.
- If her husband breaks this agreement, she can seek divorce.
- If her husband doesn't meet his legal obligations, she can petition the court for divorce.
- If her husband's polygamous marriage harms her, she can petition the court for divorce.

Last but not the least, it is submitted that it is not wrong or offensive to suggest a ban on polygamy when there is no social emergency as a result of war. Polygamy should be allowed in restricted terms.

²⁰ New Delhi AIR 1984 Mad

REFERENCES

Books:

- Constitution of India by J.N Pandey
- Spirit of Islam
- Introduction to the Constitution of India (25th Edition) by D.D Basu
- Constitutional Law of India by Dr. J.N. Pandey
- M P Jain Indian Constitutional Law by M.P. Jain
- Constitution of India by V. N. Shukla by Mahendra Pal Singh
- Marriage on Trial: A Study of Islamic Family Law by Ziba Mir-Hosseini
- Polygamy in Islam By Dr Ameenah Bilal Phillips & Dr. Jamila Jones

Journals and Articles

- "Polygamy and Gender Inequality: A Review of the Evidence" - Journal of Gender Studies
- The Marital Life of the Prophet Muhammad (PBUH): Monogamy versus Polygamy by Alimatul Qibtiyah
- The Law Commission: Report on Polygamous Marriages
- "Abuses in Polygamous Communities: A Sociological Perspective"
- "Legal and Ethical Implications of Polygamy: A Critical Review"
- Polygamy in India - With Special Reference to the Bulkiest Constitution in the World by Abhay Singh, 2012
- (PDF) THE DEBATE ON POLYGAMY & THE LAWS IN INDIA: AN ANALYSIS
- researchgate.net

E-sources:

- Practices of Polygamy Under Muslim Law in India legalserviceindia.com
- <https://sistersinislam.org/deception-and-dishonesty-in-the-practice-of-polygamy>
- Shodhganga@INFLIBNET: Polygamy in Islamic Law truth and myth a social legal study shodhganga.inflibnet.ac.in
- <https://www.jstor.org/stable/1094630>
- Misunderstanding the Prophet's Sunnah on Polygamy - Sisters in Islam sistersinislam.org
- lawcommissionofindia.nic.in
- al-islam.org
- Polygamy- A Religious Practice or an Utter Violation of Fundamental Rights? - Libertatem Magazine libertatem.in
- drishti judiciary.com
- Gender Justice in Rajasthan: Challenges and Pathways to Empowerment - IJFMR ijfmr.com