

THE DEBATE ON POLYGAMY & THE LAWS IN INDIA: AN ANALYSIS**Purba Das^{1*},**^{1*}PhD Scholar, Faculty of Law, Symbiosis International Deemed University, IndiaEmail: purbadas2609@gmail.com**Dr. Abhijit Vasmatkar²**²Associate Professor, Symbiosis Law School, Pune, India

ABSTRACT: It has been sufficiently established that polygamy as a form of practice has been a menace in society. Several countries have reformed their respective laws to maintain the law and order of the society. India as a democracy suffers due to the conflict of laws. Polygamy is an archaic practice which is like an umbrella for several other outrageous practices like child marriage, disputes over maintenance, contests of inheritance and many other legal implications arising out of polygamy alone. This article discusses the nuisance of polygamy with various case laws proving that polygamy conventionally violates the basic human rights of a woman, frustrating the tenets of the Universal Declaration of Human Rights 1948 (UDHR). This article further identifies the various conflicts and laws arising in India by discussing the scope and ambit of such laws. Religion and personal laws cannot be separated from each other as they are interlinked with one another. Therefore, the personal laws and the decisions of the court can be recognized as precedents as has been highlighted in the article. Subsequently, the conflict of laws dealing with outdated practices like polygamy is thoroughly analysed with the help of case laws in India. The article calls for a reconsideration of the rules governing the practice of polygamy under the Muslim Personal Law Section 2 of the Shariat Act, 1937 with insights and discussions over Articles 14, 15, 21, 25 of the Constitution, Section 198 of the Code of Criminal Procedure, Sections 494 and 495 of the Indian Penal Code, sections 5(i), 11, 17 of the Hindu Marriage Act, with its underlying case laws and the Indian Evidence Act.

Keywords: Personal laws; Polygamy; Section 494 Indian Penal Code, Muslim Personal Law; Gender Equality.

INTRODUCTION:

Polygamy, the practice of having multiple spouses simultaneously, has long been a subject of debate and controversy in India. While polygamy is permitted under certain personal laws governing different religious communities, it remains a contentious issue due to its implications for gender equality, women's rights, and social justice.¹ This article aims to critically examine the debate surrounding polygamy laws in India, exploring the arguments for and against its

¹ Naqvi, Z.B., 2023. Introduction: Polygamy, Law and Women's Lives. In *Polygamy, Policy and Postcolonialism in English Marriage Law* (pp. 1-22). Bristol University Press.

legalization and regulation. India's legal framework regarding polygamy is complex and varies across religious communities. Under Islamic law, Muslim men are allowed to have up to four wives, subject to certain conditions. Hindu law generally prohibits polygamy, although there are historical and cultural exceptions. Other religious communities, such as Christians and Parsis, largely adhere to monogamous norms. The coexistence of different personal laws within a secular legal system has led to inconsistencies and tensions regarding the regulation of polygamy.²

On the one hand, critics of polygamy laws argue that the practice perpetuates gender inequality and undermines women's rights. They contend that polygamous marriages often result in the exploitation and subordination of women, who may face economic dependence, marital discord, and emotional distress.³ Moreover, polygamy can lead to social instability, family breakdown, and inter-spousal conflicts, thereby posing challenges to societal cohesion and harmony.⁴ On the other hand, there are some proponents of legalizing polygamy who argue that it is a matter of religious freedom and personal choice.⁵ 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 rights.⁶

Justice V.R. Krishna Iyer, a distinguished former judge of the Supreme Court of India, was known for his progressive views on various legal and social issues, including polygamy. He firmly believed that polygamy was incompatible 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 fundamental rights of individuals, particularly women. He emphasized the need to uphold the principles of equality and dignity within marital relationships, irrespective of religious or cultural beliefs.⁷

One of Justice Iyer's notable pronouncements on polygamy came in the landmark case of *Mohammed Ahmed Khan v. Shah Bano Begum (1985)*⁸. In this case, Justice Iyer was part of the bench that delivered a progressive judgment recognizing the right of Muslim women to maintain

² Shankar, S., 2021. *An Uneasy Embrace: Africa, India and the Spectre of Race*. Oxford University Press.

³ 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.

⁴ PACWA, E.B.J., 2023. Marriage and Divorce. *GEORGETOWN JOURNAL OF GENDER AND THE LAW*, 24, p.671.

⁵ 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.

⁶ 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.

⁷ Ahmed, H., Mishra, R.K. and Jehangir, K.N. eds., 2022. *Rethinking Muslim Personal Law: Issues, Debates and Reforms*. Taylor & Francis.

⁸ Mohammed Ahmed Khan v. Shah Bano Begum (1985), 1985 AIR 945

beyond the period of iddat (post-divorce waiting period). The court held that Muslim husbands had a legal obligation to provide maintenance to their divorced wives under the provisions of the Indian law, irrespective of the personal law provisions. Justice Iyer's judgment in the Shah Bano case reflected his commitment to gender equality and social justice. He emphasized the importance of protecting the rights and dignity of women, particularly those who were vulnerable and marginalized within society.⁹ While the case did not directly address polygamy, Justice Iyer's broader principles of justice and equality were evident in his approach to the issue of maintenance for Muslim women.

In this article, the idea is that central to the debate on polygamy laws is the principle of gender equality and the protection of women's rights. Polygamy violates the fundamental principles of equality and non-discrimination enshrined in Article 14 of the Indian Constitution.¹⁰ It undermines women's autonomy, dignity, and well-being, perpetuating patriarchal norms and power imbalances within marriages and families. Furthermore, polygamy often exacerbates economic disparities and social inequalities among women, particularly in cases of unequal treatment and resource allocation.¹¹ Given the complex nature of the debate, legal reforms and policy interventions are needed to address the challenges posed by polygamy laws in India.¹² This may include revisiting existing personal laws to ensure consistency with constitutional principles of equality and justice. Additionally, measures should be taken to promote gender-sensitive legislation, empower women, and provide support services to individuals affected by polygamous marriages.¹³ Public awareness campaigns and community engagement initiatives can also play a vital role in challenging social norms and promoting gender equality within diverse religious and cultural contexts.¹⁴

Therefore, this article, on the debate on polygamy laws in India reflects broader tensions between religious freedoms, cultural traditions, and principles of gender equality and social justice. This prompts a reassessment of the regulations about polygamy within the Muslim Personal Law, as delineated in Section 2 of the Shariat Act, 1937. This re-evaluation would incorporate analyses and deliberations regarding Constitutional Articles 14, 15, 21, and 25, as well as Section 198 of the Code of Criminal Procedure, Sections 494 and 495 of the Indian Penal Code, and sections 5(i), 11, and 17 of the Hindu Marriage Act, along with relevant case precedents. While polygamy remains a deeply entrenched practice in certain religious communities, its existence raises

⁹Kudalkar, A.B., 2021. Rethinking Muslim Personal Law.

¹⁰ Narain, V., 2021. Reconciling Constitutional Law, Gender Equality and Religious Difference: Lessons from Shayara Bano, India's Triple Talaq Decision. In *The Asian Yearbook of Human Rights and Humanitarian Law* (pp. 345-377). Brill Nijhoff.

¹¹ Das, P. and Kamthan, M., 2023. Impact of Polygamy on Indian Women and Children: A Critical Study. *resmilitaris*, 13(3), pp.336-348.

¹² Chatterjee, B. and Bandyopadhyay, B., 2021. Finding The Ratio Between Law As An Instrument Of Social Change And Social Changes That Germinated Law: A Unique Indian Scenario. *Indian JL & Just.*, 12, p.220.

¹³ Kannabiran, K., 2022. Feminist Activism, Violence in the Family, and Law Reform in India: A Three Decadal History. In *Routledge Readings on Law, Development and Legal Pluralism* (pp. 275-296). Routledge India.

¹⁴ Niaz, N.S. and Soman, Z., 2023. *Seeking justice within family: A national study on Muslim women's views on reforms in Muslim personal law*. Notion Press.

profound ethical, legal, and social considerations. As India continues to evolve socio-legally, it is imperative to engage in constructive dialogue and deliberation to address the complexities surrounding polygamy laws and advance the principles of gender equality, women's rights, and social cohesion.

POLYGAMY: A CONSTITUTIONAL CLASH:

a. 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, as a practice, violates the principles enshrined in Article 14 in several ways, including gender discrimination, denial of equal rights within marriage, and perpetuation of social and economic inequalities. Recent case laws further illustrate how polygamy violates the constitutional right to equality.¹⁵

b. Discrimination Based on Gender:

Polygamy inherently discriminates against women by allowing men to have multiple wives while denying women the same privilege. This gender-based discrimination is in direct contravention of Article 14, which prohibits discrimination on the grounds of sex. By granting men the right to enter into polygamous marriages while denying women the same right, polygamy perpetuates inequality and undermines the principle of equal protection under the law. In *Sarla Mudgal v. Union of India* (1995)¹⁶, the Supreme Court of India addressed the issue of bigamy among Hindu men who converted to Islam to marry again without divorcing their first wives. The court held that such conversions solely to contract a second marriage were invalid and amounted to an offence under Hindu law. This decision underscores the principle of equality before the law and the prohibition of discrimination based on gender. Another recent case law: In *Joseph Shine v. Union of India* (2018)¹⁷, the Supreme Court of India struck down Section 497 of the Indian Penal Code, which criminalized adultery. The court emphasized the importance of gender equality within marital relationships, stating that women cannot be treated as the property of their husbands. This decision underscored the need to abolish laws that perpetuate gender-based discrimination and uphold the principles of equality and dignity enshrined in Article 14.

c. Violation of Marital Rights:

Polygamy undermines the rights and dignity of individuals within marriage, particularly women. In polygamous unions, women may experience inequality, neglect, and emotional distress due to their subordinate status as secondary wives. This unequal treatment violates the right to marital equality and dignity guaranteed under Article 14 of the Constitution. Case Law: In *Shayara Bano v. Union of India* (2017)¹⁸, the Supreme Court declared the practice of triple talaq (instant divorce) among Muslims unconstitutional, citing its arbitrary and discriminatory nature. The court

¹⁵ Sri Srinivasa Theatre v. Govt. of Tamil Nadu, (1992) 2 S.C.C. 643

¹⁶ Sarla Mudgal v. Union of India (1995), 1995 AIR 1531

¹⁷ Joseph Shine v. Union of India (2018), AIR 2018 SC 4898

¹⁸ Shayara Bano v. Union of India (2017), AIR 2017 SUPREME COURT 4609

emphasized the importance of upholding the principles of equality and dignity within marital relationships, reaffirming the rights of individuals, particularly women, under Article 14.

Justice D.Y. Chandrachud referenced the case of *K.S. Puttaswamy v. Union of India* (2017)¹⁹ 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. Justice Chandrachud's judgement underscored that Section 497 infringed upon women's marital freedom, autonomy, dignity, and privacy.

d. Economic Injustice:

Polygamy can exacerbate economic disparities within families, particularly among women and children. In polygamous households, resources such as financial support, inheritance, and property rights may be unevenly distributed among spouses and their offspring, leading to financial instability and deprivation for certain family members. This economic injustice violates the principle of equal protection of the laws guaranteed by Article 14. In *Revanasiddappa v. Mallikarjun* (2011)²⁰, the Supreme Court emphasized the importance of equal inheritance rights for daughters under Hindu law, rejecting discriminatory practices that favoured sons over daughters. This decision underscored the principle of economic equality and the prohibition of arbitrary discrimination under Article 14. In another instance in *Danamma Suman Surpur v. Amar* (2018)²¹, the Supreme Court ruled that daughters have equal rights to ancestral property under the Hindu Succession Act, irrespective of whether they were born before or after the enactment of the amendment in 2005. This decision emphasized the importance of equal inheritance rights for women and rejected discriminatory practices that perpetuated economic inequalities.

In conclusion, polygamy violates Article 14 of the Indian Constitution by perpetuating gender-based discrimination, undermining marital rights and dignity, and exacerbating economic injustice within families. Through various case laws, the judiciary has upheld the principles of equality, dignity, and non-discrimination, reaffirming the fundamental rights of individuals, particularly women, within the institution of marriage.

RELIGIOUS DISCRIMINATION:

Polygamy, as practised under different personal laws in India, presents a complex legal landscape that intersects with various provisions of the Indian Constitution. One significant issue is the potential religious discrimination inherent in the treatment of polygamy under different legal frameworks.

Under Section 2 of the Shariat Act, of 1937, Muslim men are permitted to practice polygamy, subject to certain conditions prescribed by Islamic law. However, men belonging to other religions

¹⁹ *K.S. Puttaswamy v. Union of India* (2017), 2017 10 SCC 1

²⁰ *Revanasiddappa v. Mallikarjun* (2011), 11 SCC 1

²¹ *Danamma Suman Surpur v. Amar* (2018), (2018) 3 SCC 343

are prohibited from engaging in polygamous marriages under Section 494 of the Indian Penal Code, which criminalizes bigamy. This distinction creates a disparity in treatment based on religious affiliation, potentially violating the right to equality before the law guaranteed by Article 14 of the Constitution. In *Sarla Mudgal v. Union of India* (1995)²², the Supreme Court addressed the issue of bigamy among Hindu men who converted to Islam to marry again without divorcing their first wives. The court held that such conversions solely to contract a second marriage were invalid and amounted to an offence under Hindu law. This decision highlighted the discriminatory nature of polygamy laws and emphasized the need for consistent treatment under the law, irrespective of religious affiliation. Furthermore, the absence of legal recourse for Muslim women in cases of polygamy raises concerns about gender equality and discrimination. While women of other religions can seek legal remedies if their husbands engage in bigamy, Muslim women are not afforded the same rights under the Muslim Personal Law. The intent and nature of polygamy laws must be scrutinized in light of constitutional principles and evolving societal norms. While certain religious practices may be allowed under personal laws, they must align with the broader principles of equality and justice enshrined in the Constitution.²³ In *Shayara Bano v. Union of India* (2017)²⁴, 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 Constitution. The treatment of polygamy under different personal laws in India raises significant constitutional and legal questions, particularly regarding religious discrimination and gender equality. While certain religious practices may be protected under personal laws, they must be subject to constitutional scrutiny to ensure compliance with fundamental rights and principles of justice for all individuals, regardless of their religious affiliation.

GENDER DISCRIMINATION:

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 sex. Moreover, polygamous practices not only contravene existing laws but also undermine the constitutional mandate, which upholds gender justice as integral to the realization of human rights. India's plural legal system grants different religious groups autonomy under personal laws, yet these laws must align with constitutional validity and morality.

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.²⁶ Thus, by condoning polygamy, the State discriminates against both the Constitution

²² Ibid; P16.

²³ Mohd. Haroon v. Union of India, (2014) 5 S.C.C. 705.

²⁴ Shayara Bano v. Union of India and Others (2016), AIR 2017 SUPREME COURT 4609

²⁵ Charu Khurana v. Union of India, (2015) 13 S.C.C. 44.

²⁶ Nain Sukh Das and Ors. v. State of U.P. and Ors., A.I.R. 1953 S.C. 384

and individuals based on sex and religion. Judicial interpretation must adapt to evolving constitutional principles to address present social disparities and uphold the rule of law.²⁷

The Supreme Court, in *S.R. Bommai v. Union of India* (1994)²⁸, affirmed the preamble's significance as an integral part of the constitutional framework, ensuring equality. Personal laws, rooted in religious scriptures rather than the Constitution, must align with constitutional principles without infringing on human rights under Article 13. Any partially void law should be applied, retaining validity where possible.²⁹ Therefore, the practice of polygamy violates Article 14 of the Constitution and warrants judicial intervention to uphold gender equality.

In conclusion, polygamy's acceptance perpetuates gender discrimination and violates the fundamental principles of equality enshrined in the Indian Constitution. Judicial scrutiny and intervention are necessary to align personal laws with constitutional morality and ensure gender justice for all individuals, irrespective of religious affiliations.

VIOLATION OF THE RIGHT TO LIFE:

The right to life, as enshrined in Article 21 of the Indian Constitution, encompasses a broad range of liberties and entitlements, including the right to live with dignity and security. Polygamy, by its very nature, undermines these rights for women, leading to emotional distress, economic hardship, and social marginalization. In *Venugopal K v. Union of India*³⁰, a writ petition was filed by the wife seeking to register a case under Section 494 of the Indian Penal Code. In such a case it was held that such kinds of marriages have been resorted to harass and dupe innocent women in the name of personal laws. The case highlighted that since a Muslim person can marry up to four wives at a time and there is no clarity in the rules regarding the registration of such marriages, the petitioner demanded that section 494 IPC should be applied against all citizens who commit bigamy, irrespective of their law.

It is recognized that the practice of polygamy constitutes a breach of Article 21 of the Constitution, as a woman's right to human dignity, social esteem, and self-worth are integral components of her Right to life under Article 21. Ensuring the fulfilment of the Right to life necessitates the right to live with dignity and respect, encompassing access to employment, an improved standard of living, hygienic working conditions, and recreational opportunities.³¹ The Supreme Court, through a series of judgments, has affirmed that the right to life extends beyond mere existence and encompasses the right to live with human dignity.³² In the case of *Bandhu Mukti Morcha v. Union of India*³³, the State is mandated to safeguard the vulnerable sections of society from violations of fundamental rights, with women recognized as part of the vulnerable group. Any tradition or practice that contravenes human rights, dignity, and social equality, prevalent before the

²⁷ State of Karnataka v. Appu Balu Ingale & Ors., A.I.R. 1993 S.C. 1126.

²⁸ S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1.

²⁹ R.M.D Chamarbaugwalla v. Union Of India, A.I.R. 1957 S.C. 628

³⁰ *Venugopal K v. Union of India*, (2008) 5 SCC 1

³¹ Francis Coralie v. Union Territory of Delhi, (1981) 1 S.C.C. 608.

³² Vishaka v. State of Rajasthan, (1997) 6 S.C.C. 241.

³³ *Bandhu Mukti Morcha v. Union of India* (1997), (1997) 10 S.C.C. 549

Constitution's enactment, should not be considered a valid source of law solely based on its historical existence.³⁴ Similarly, polygamy violates a woman's entitlement to a dignified existence and persists despite attempts to eradicate it. A dignified and civilized life constitutes a fundamental right, encompassing access to food, suitable living conditions, and a decent environment. The practice of polygamy deprives Indian Muslim women of this right, with limited recourse available to them. Polygamy has been acknowledged as a detrimental scourge and has been prohibited under section 494 of the IPC. However, it continues to afflict Muslim women, leading to severe health, social, economic, moral, and emotional harm.³⁵ The right to life encompasses the right to a healthy existence and the ability to utilize the capacities of the human body fully. This can also be construed as a right to development, representing one of the essential human rights inherent to all individuals.³⁶ As has been highlighted in the case of *Mustt. Zubeda Ahmed vs Mustt. Fazila Begum on 7 May, 2015*³⁷.

Polygamy disrupts women's peace of mind and imposes a strain on their mental well-being. It is argued that if a husband enters into another marriage while the first one is still valid, it inevitably inflicts mental cruelty on the first wife. Consequently, polygamy is deemed as a form of cruelty towards women, encroaching upon their right to a peaceful life as guaranteed by Article 21 of the Constitution. According to Muslim law, marriage is regarded as a binding agreement that cannot be unilaterally annulled. Neither personal laws nor the Constitution empowers a husband to unilaterally dissolve a marriage contract, whether verbally, in writing, or through ex parte decisions.³⁸ Hence, the practice of polygamy appears unsustainable under legal scrutiny, as it contradicts established legal principles and is deemed unacceptable.³⁹

Marrying a second wife not only constitutes a single act of wrongdoing but an ongoing injustice against the first wife.⁴⁰ In the case of *Smt. Vijayalaxmi W/O. Udaya v. The State of Karnataka (2023)*⁴¹, the Supreme Court ruled that a continuing offence is susceptible to ongoing perpetration and differs from an offence committed once and for all. Subsequently, in the case of *Jafar Abbas Rasool Mohammad Merchant V. State of Gujarat, reported in (2015)*⁴², a learned single Judge of the High Court of Gujarat reaffirmed this principle, stating that bigamy is considered a continuing offence. The learned Judge has held as follows: "56. In interpreting Section 494 of the IPC, one should look into the purpose of enactment and also the mischief to be prevented. The object of

³⁴ N. Adithayan v. The Travancore Devaswom Board, (2002) 8 S.C.C. 106.

³⁵ Choudhury, (2020) J. Life Stress, Self-esteem and Mental Health of Women

³⁶ Tabe, S. T. (2020). Traditional Law and Discriminatory Customary Practices against Women in Cameroon: A Critical Perspective. African Journal of International and Comparative Law, 28(3), 418-431.

³⁷ Mustt. Zubeda Ahmed vs Mustt. Fazila Begum (2015), AIR 2016 GAUHATI 5

³⁸ Aaqil Jamil and Ors. v. State of U.P. and Anr, (2017) 2 A.C.R. 1870.

³⁹ Aboobacker v. Rahiyanath, 2008 (3) K.L.T. 482.

⁴⁰ Editor, "Whether the offence of bigamy is a Continuing Offence or the proceedings instituted for an offence punishable for bigamy under S. 494 CrPC can be obliterated on the ground of delay? Kar HC answers...", SCC Times Online, June 07th, 2022.

Available: <https://www.scconline.com/blog/post/2022/06/07/whether-offence-of-bigamy-is-a-continuing-offence/>

⁴¹ Smt. Vijayalaxmi W/O. Udaya v. The State of Karnataka (2023), CRL.P No. 100469 of 2022

⁴² Jafar Abbas Rasool Mohammad Merchant v. State of Gujarat, (2012) S.C.C. Guj. 1358.

enacting Section 494 of the Penal Code, 1860, to my mind, clearly was to punish persons, who in defiance of the law applicable to them in matters of marriage and divorce, etc., take a second wife during the existence of the first, but for the Personal Law of the Muslim, as discussed above, the applicant would be guilty of the offence of bigamy, if ultimately proved, based on the evidence recorded in the course of the trial. He can get away with this by misinterpreting and misusing to his advantage, the message of the holy prophet Mohmmad, which is reflected in the holy 'Quran'. The 'Quran' does not say that a Muslim can treat his wife cruelly, or drive her out and without dissolution of the first marriage under the law, he can marry for the second time and up to four times. The message of the holy prophet is loud and clear. Everyone knows about it but still does not want to follow it.”

The concept of polygamy may appear structurally egalitarian, yet polygamous marriages, whether polygyny or polyandry, inherently involve an unequal power dynamic among its members. This inequality is evident in the disparity in consent among polygamous partners to enter or dissolve relationships with other partners, as well as in the unequal ability to exit such arrangements as has been observed in *Nasiruddin Khan vs State of Bihar* on 20 September 1972.⁴³ It is imperative to prioritize the complete eradication of polygamy, as it renders the status of Muslim women exceedingly precarious and undermines their human rights. Upholding the principles outlined in Articles 14, 15, and 21 of the Indian Constitution, no law that discriminates against women should be permitted to stand.

FREEDOM OF RELIGION:

Polygamy does not constitute a fundamental tenet of Islam. Article 25 of the Constitution safeguards religious beliefs, recognizing that altering them would fundamentally change the nature of faith. The crucial issue at hand pertains to what constitutes "an essential part of the practice of a religion." In the present case, the respondents argue that polygamy and talaq-e-biddat are central practices of Islam. A central belief integral to a religion refers to a practice essential to that belief. Practices deemed indispensable are those that are crucial to a religious belief.⁴⁴ The determination of whether a practice is essentially integral to the religion hinges on whether the essence of the religion would be altered without it, thus rendering it an integral part of the religion. Previously, Muslims believed that it was impermissible to relocate graves. However, in the case of *Abdul Jalil v. State of Uttar Pradesh*⁴⁵, the Hon'ble Supreme Court clarified that there is no Quranic prohibition on shifting tombs. It is often observed that Muslim clerics misinterpret the Quran, such as advocating for polygamy and unilateral divorce.

It is contended that Article 26(b) grants a Muslim the freedom to manage and regulate its affairs in religious matters openly, provided it does not violate public order or moral law. While a particular religion enjoys this prerogative, the courts also possess the authority to ascertain what constitutes a constitutional right or ceremony in the context of the values of a specific faith.

⁴³ *Nasiruddin Khan v. State of Bihar* (1972), AIR1973SC186

⁴⁴ *Commissioner of Police v. Acharya Jagadish warananda Avadhuta and Ors.*, (2004) 12 S.C.C. 7.

⁴⁵ *Abdul Jalil v. State of Uttar Pradesh*, A.I.R. 1984 S.C. 882.

Polygamy is not considered a central tenet of Islam and thus falls within the scope of clause 2 of Article 25 of the Constitution as in the case of *Sri.Yusufpatel S/O Shamshurpatel v. Smt.Ramjanbi W/O Yusufpatel* (2020)⁴⁶.

Polygamy cannot be deemed an essential aspect of the religion without which the faith of the community would be undermined, as referenced in Article 29(1). It is magnanimously argued that other basic religious traditions will survive in isolation without this practice. It can be understood that in India Muslim law has seen polygamy as an institution accepted but not promoted and has not granted the husband the fundamental right to compel the first wife to share his consortium in all circumstances with another woman.⁴⁷ Muslim Personal Law forbids a Muslim from cruelly treating a wife, driving her out, and getting married for the second time.⁴⁸ In the case of *Zahid Mukhtar and Ors. v. The State of Maharashtra and Ors.*,⁴⁹ it was observed that Article 29 is designed to preserve the fundamental culture rather than supplementary customs with minimal connection to an established culture. The example provided regarding the abolition of untouchability or the practice of Sati illustrates that eliminating such traditional customs does not amount to cultural degradation. Hence, it is appropriate to assert that the right to freedom of religion should not be conflated with cultural rights. Language, script, and culture—not religion—are the common threads of Article 29(1).

Muslim women faced this challenge not only in India but also in other parts of the world. The dire circumstances experienced by Muslim wives were the catalyst for the expansion of reform principles into the realm of family law. According to the most authoritative Hanafi opinion, a Muslim wife had no recourse to seek judicial dissolution of her marriage, even if abandoned by her husband for extended periods or unknowingly married to a man afflicted with serious physical or mental ailments like leprosy or insanity as has been the case in *Abdurahiman V. Khairunneesa* (2010)⁵⁰. This situation was deemed intolerable.⁵¹ It is noteworthy that Muslim jurists did not acknowledge the rights of wives to seek divorce, despite the Quran recognizing such rights for them.

THE INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE:

According to section 494 of the Indian Penal Code, entering into a marriage while one's spouse is still alive constitutes a punishable offence, which is considered non-cognizable. The punishment for such an offence may include imprisonment for a term extending up to seven years, imposition of a fine, or both. This provision applies universally without any exceptions based on religion, caste, or creed. However, adherence to section 198(1), subsection (c) of the Code of Criminal Procedure, 1973 is mandatory. As per section 198(1), the Court is prohibited from taking cognizance of an offence punishable under Chapter XX of the IPC (45 of 1860) unless a complaint

⁴⁶ Sri.Yusufpatel S/O Shamshurpatel v. Smt.Ramjanbi W/O Yusufpatel (2020), MFA No.201154/2018 (FC)

⁴⁷ Smt. R.A. Pathan v. Director of Technical Education and Ors., A.I.R. 1960 All. 684

⁴⁸ Jafar Abbas Rasool Mohammad Merchant v. State of Gujarat, (2012) S.C.C. Guj. 1358.

⁴⁹ Zahid Mukhtar and Ors. v. The State of Maharashtra and Ors., (2017) 2 A.B.R. 140.

⁵⁰ Abdurahiman V. Khairunneesa (2010), 2010 (1) KLT 891

⁵¹ Anderson, J.N.D., 1959. Islamic law in the modern world. Pg26.

is lodged by the aggrieved individual or any person closely related to them by blood, marriage, or adoption.⁵²⁵³ However, the Andhra Pradesh Legislative Assembly, through the Andhra Pradesh Second Amendment Act 3 of 1992, revised the first schedule of Central Act 2 of 1974, specifically the Code of Criminal Procedure, 1973. This amendment designated the offence under Section 494 IPC as a 'cognizable' and 'non-bailable' offence. Consequently, as of February 15, 1992, offences punishable under Sections 494 and 495 IPC are undoubtedly cognizable in the State of Andhra Pradesh. Therefore, law enforcement officers now have the authority to register cases under Section 154 of the Code of Criminal Procedure. and conduct investigations under Section 156 of the Code of Criminal Procedure. The restriction imposed by Section 198(1) Code of Criminal Procedure., which prevents the court from taking cognizance of a case under Section 494 IPC, applies to the court and not to the police. As it is now a cognizable offence, the police can register the case based on a report lodged with them and proceed to investigate the matter, ultimately filing a final report under Section 173(2) Code of Criminal Procedure. The pivotal question that arises is whether the court can consider the case based on such a police report or charge sheet, given the explicit prohibition in Section 198(1) Code of Criminal Procedure., which restricts the court from taking cognizance of the case unless a complaint is filed by the aggrieved party before it. This has been substantiated in several judgements by the judiciary, like in *B. Parvathi vs The State Of Andhra Pradesh* (2020)⁵⁴, *Bhaurao Shankar Lokhande v. State of Maharashtra* (1965)⁵⁵, *Gopal Lal v. State of Rajasthan* (1979)⁵⁶, *Padullaparathi Mutyala Paradeshi v. Padullaparathi Subbalakshmi And Anr.* (1961)⁵⁷.

In the case of *Jafar Abbas Rasool Mohammad Merchant v. State of Gujarat* (2015), Justice J. B Pardiwala extensively examined the concept of bigamy through the Indian Penal Code, Civil marriage law, and relevant community laws. The Judge delved into the definition and nature of bigamy, while also exploring the concept of marriage and polygamy under Muslim law. Additionally, the Judge considered fundamental rights about freedom of religion, as enshrined in Part III of the Constitution of India, and referenced landmark Supreme Court judgments such as *Sarla Madgal* (1995) and *Lily Thomas* (2000)⁵⁸.

Furthermore, in paragraph 43.2 of the same judgment, Justice J.B. Pardiwala expressed his opinion that, given the proliferation of modern radical opinions and views, India should prohibit polygamy. He argued that marriage is a fundamental right over an individual's body, and engaging in polygamy infringes upon this right. Additionally, marriages are viewed as contractual agreements under Muslim law. However, the absence of a standardized format for proposing and accepting

⁵²Section 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.

⁵³ Sec 493- Sec 498 of Indian Penal Code, 1860, Act no 45 of 1860. Article XX of The Indian Penal Code, 1860 deals with the offences relating to marriage.

⁵⁴*B. Parvathi vs The State Of Andhra Pradesh* (2020), Crl. M.P.No.89 of 2019

⁵⁵*Bhaurao Shankar Lokhande v. State of Maharashtra* (1965), 1965 AIR 1564

⁵⁶*Gopal Lal v. State of Rajasthan* (1979), 1979 AIR 713

⁵⁷ *Padullaparathi Mutyala Paradeshi v. Padullaparathi Subbalakshmi And Anr.* (1961), 1962CRILJ308

⁵⁸ *Lily Thomas v. Union of India*, (2000), AIR 2000 SC 1650

marriage contracts leaves individuals at the mercy of religious clerics, who interpret the Quran according to their discretion.

HINDU MARRIAGE LAW:

The Hindu Marriage Act of 1955 explicitly prohibited polygamy or bigamy through Section 5 sub-sections (i) and Section 11.⁵⁹ Moreover, Section 17 of the Act categorizes polygamy or bigamy as a criminal offence. As per this provision, any marriage among Hindus is automatically invalidated if, during such a marriage, either party already has a living spouse.⁶⁰ Additionally, bigamy or polygamy is recognized as an offence under Section 494 and Section 495 of the Indian Penal Code.⁶¹ Despite the Hindu Marriage Act of 1955 explicitly prohibiting polygamy, there are instances where individuals manage to circumvent the law and enter into multiple marriages without facing legal consequences.⁶² The lax enforcement of the law contributes to the perpetuation of polygamous relationships.

Despite the legal prohibition against second marriage or bigamy outlined in the Hindu Marriage Act of 1955, such practices persist within contemporary society. The National Family Health Survey 5 (2019-2021), shows that polygamy is practiced across all the religions in India.⁶³ The most recent NFHS data spanning from 2019 to 2020 reveals that the prevalence of polygynous marriages varies across different religious groups. Among Muslims, the prevalence rate stands at 1.9%, among Hindus at 1.3%, and other religious groups at 1.6%. The data suggests that polygynous marriages are more common among certain demographic segments, including individuals from impoverished backgrounds, those with limited education, residents of rural areas, and older women. These findings underscore the influence of socioeconomic factors alongside regional and religious considerations in determining the prevalence of polygynous unions.⁶⁴

The percentage of married women aged 15 to 49 reporting that their partners have more than one wife serves as an indicator of the prevalence of polygynous marriages. Over time, there has been a decline in the prevalence of such marriages, with the rate decreasing from 1.9% in 2005-06 to 1.4% in 2019-21. Notably, certain regions exhibit higher rates of polygynous marriages compared to others. In the northeastern states, particularly Meghalaya and Tripura, the prevalence rates are notably higher, standing at 6.1% and 2%, respectively. Conversely, states like Bihar, Jharkhand, West Bengal, and Odisha in other regions exhibit higher rates of polygyny compared to their northern counterparts. These disparities highlight the regional variations in the prevalence of polygynous marriages across India.⁶⁵ In most of the states, polygamy is more prevalent amongst

⁵⁹ Section 5(i) read with Section 11 of The Hindu Marriage Act, 1955, Act no 25 of 1955.

⁶⁰ Sec 17 of The Hindu Marriage Act, 1955, Act no 25 of 1955.

⁶¹ Sec 494 read with Sec 495 of The Indian Penal Code, 1860, Act no 45 of 1860

⁶² Pandey, P.K., 2020. *Women's Right-In reference to Marriage*. Walnut Publication.

⁶³ The National Family Health Survey -5, 2019-2021. Available at: https://rchiips.org/nfhs/NFHS-5Reports/NFHS-5_India_Report.pdf

⁶⁴ Sahoo, H., Nagarajan, R. and Mandal, C., 2022. IIPS Working Paper Series.

⁶⁵ Rema Nagarajan, "Multiple wives most common among Tribals: NFHS data", July 28th, 2022. Available at: <https://timesofindia.indiatimes.com/india/multiple-wives-most-common-among-tribals-nfhs-data/articleshow/93174538.cms>

Muslims, only in Andhra Pradesh, Tamil Nadu and Telangana, polygamy is more prevalent among Hindus.

There are two prominent reasons behind this phenomenon. Firstly, Section 198 of the Code of Criminal Procedure, 1973⁶⁶, stipulates that no court can initiate legal proceedings for offences punishable under Chapter XX of the Indian Penal Code, 1860⁶⁷ unless a complaint is lodged by the aggrieved individual or on their behalf. In this context, the first wife of a male bigamist is considered the aggrieved party, and if she chooses not to file a complaint, the husband cannot be prosecuted through other means. For instance, in the case of *Mohd. Ahmed Khan v. Shah Bano Begum* (1985)⁶⁸, the Supreme Court ruled in favour of granting maintenance to a divorced Muslim wife who was deemed aggrieved. The litigation centred around the maintenance rights of the aggrieved party. As polygamy is permitted in Islam, Shah Bano Begum had limited recourse to lodge a complaint against her husband for practising polygamy, leading her to file a maintenance suit instead. Notably, the aggrieved party was promptly divorced by her husband following his second marriage. In another scenario, *Thangamani S. v. State of Kerala and Anr* (2005)⁶⁹, the petitioner was the second wife, while the aggrieved wife refrained from filing a complaint, prompting her son to lodge a complaint against his father on her behalf. Following a thorough examination of the respondent's arguments, the petition was dismissed. The court deliberated on the provisions outlined in section 198 of the Code of Criminal Procedure, 1973, during the case proceedings.

The second rationale for this phenomenon can be analysed by examining the requisites for establishing a case of bigamy. According to the Hindu Marriage Act of 1955, a valid Hindu marriage necessitates the performance of customary ceremonies. These criteria were acknowledged by the court in the case of *S. Nagalingam v. Shivagami* (2001)⁷⁰. In this instance, the Metropolitan Magistrate in Madras acquitted the appellant on the grounds of insufficient evidence of the second marriage, particularly because one of the crucial customary rites, namely "Saptapadi," was not conducted, rendering the validity of the second marriage unverifiable. However, the High Court of Madras overturned the acquittal order issued by the Metropolitan Magistrate, citing the provisions outlined in the Hindu Marriage Act of 1955. Similarly, in the case of *Shrawan Singh vs the State of Rajasthan on 6 January 2023*⁷¹, the court emphasized in paragraph 16 of the judgment that the complainant must establish the validity of both marriages. As a result, no offence could be substantiated due to the absence of adequate evidence regarding the validity of the second marriage. In a similar vein, *Krishnakanta Nag v. the State of Tripura*

⁶⁶ Section 198 of Code of Criminal Procedure 1973, Act no. 02 of 1974. As amended in 2013 by The Lokpal and Lokayuktas Law (Amendment) Act, 2013.

⁶⁷ 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.

⁶⁸ *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), AIR 1985 SC 945

⁶⁹ *Thangamani S. v. State of Kerala and Another* (2006), II (2006) DMC222, 2006(1) KLT110

⁷⁰ *S. Nagalingam v. Shivagami* (2001), AIR 2001 SC 3576

⁷¹ *Shrawan Singh vs State of Rajasthan* (2023), [CRLMP-3716/2022]

(2012)⁷² illustrated that unless the prosecution can substantiate the validity of the second marriage, it cannot establish its case conclusively.

Another recent case, *Mon Mayur Sharmah and Anr v. State of Assam and Anr*, 2019, addressed the issue of lacking proof of a second marriage essential for the charge of bigamy. The Gauhati High Court highlighted that according to Section 494 of the IPC, establishing the charge of bigamy necessitates proving the validity of both marriages in compliance with the applicable laws governing the involved parties. Consequently, the burden of proof, as stipulated in the Indian Evidence Act, of 1872⁷³, regarding the validity of the second marriage rests upon the complainant, requiring them to furnish satisfactory evidence.

Despite the legal ramifications associated with bigamy, first wives or complainants often encounter difficulties in procuring evidence validating the second marriage. In many instances, such marriages are conducted clandestinely or through nominal rituals, such as the exchange of garlands in a temple. Over time, loopholes in bigamy laws have perpetuated significant inequalities, enabling culpable individuals to evade legal repercussions. This disproportionate burden of proof regarding the second marriage placed upon the aggrieved wife continues to perpetuate injustice, even in contemporary times, leaving many women in a state of distress.

MUSLIM PERSONAL LAW:

The Muslim Personal Law in India has seen limited reformation, unlike the Hindu or Christian personal laws, which underwent gradual reforms over time to adapt to the changing society.⁷⁴ The enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019 stands as the sole legislative reform introduced post-independence.⁷⁵ However, various aspects of Muslim Personal Law still adhere to traditional practices, which not only appear outdated in the modern era but also raise concerns regarding their compatibility with the fundamental rights guaranteed by the Indian Constitution.⁷⁶ The Muslim Personal Law in India, governed primarily by the Shariat Act of 1937, addresses the issue of polygamy, outlining both permissions and restrictions within the framework of Islamic jurisprudence. Section 2 of the Shariat Act recognizes the applicability of Muslim personal law in matters related to marriage, succession, and other personal affairs for Muslims in India.⁷⁷

Under Muslim personal law, polygamy, known as polygyny, is permitted but subject to certain conditions. According to Islamic principles, a Muslim man is allowed to have up to four wives simultaneously, provided he meets specific criteria. The Quran, Islam's holy book, addresses polygamy in Surah An-Nisa (4:3), stating that a man may marry up to four women if he can treat

⁷² Krishnakanta Nag v. the State of Tripura (2012), 2013(5) RCR (Criminal) 338 (Gauhati) (Agartala)

⁷³ Section 114 of the Indian Evidence Act, 1872, Act no 01 of 1872.

⁷⁴ Mahmood, S., & Mahmood, T. (2016), Muslim Law in India and Abroad, Universal Law Publishing Co.

⁷⁵ Saxena, S., 2022. *Divorce and Democracy: A History of Personal Law in Post-independence India*. Cambridge University Press.

⁷⁶ An-Na'im, A.A., 2021. Islam, Islamic Law and the Dilemma of Cultural Legitimacy for Universal Human Rights 1. In *Asian Perspectives on human rights* (pp. 31-54). Routledge.

⁷⁷ Jones, J., 2020. Towards a Muslim Family Law Act? Debating Muslim women's rights and the codification of personal laws in India. *Contemporary South Asia*, 28(1), pp.1-14.

them equally and justly. However, this permission is often subject to interpretation and varies among different Muslim scholars and schools of thought. In India, Section 2 of the Shariat Act recognizes the validity of polygamous marriages under Muslim personal law. It acknowledges the authority of Islamic law in regulating marriage and family matters for Muslims. However, this recognition does not imply unrestricted permission for polygamy; rather, it establishes the legal framework within which polygamous marriages can occur.

Despite the allowance for polygamy, there are certain conditions and restrictions imposed by both Islamic law and Indian legal statutes. For instance, a Muslim man seeking to enter into a polygamous marriage must obtain permission from his existing wife or wives, and he must be able to provide for each wife equally in terms of financial support, housing, and other necessities like it is in various Muslim-majority nations.⁷⁸ Additionally, the Quran emphasizes the importance of treating all wives with fairness and justice, and failure to do so may render the polygamous marriage invalid. While the Muslim personal law permits polygamy under specific circumstances, it also recognizes the importance of safeguarding the rights and dignity of women. Therefore, any polygamous marriage that violates the principles of equality and justice may be subject to legal scrutiny and may not be considered valid under both Islamic law and Indian legal provisions.

In summary, the Muslim personal law in India, as governed by the Shariat Act, allows polygamy under certain conditions outlined in Islamic jurisprudence. However, this allowance is accompanied by strict requirements regarding equality, fairness, and consent, aimed at ensuring the welfare and rights of all parties involved in polygamous marriages.

CONCLUSION:

It is evident that polygamy was not originally part of the Islamic framework; rather, it was a pre-existing practice that has been misinterpreted and adapted over centuries to align with patriarchal societal norms. An analysis reveals that many Islamic nations have restricted or advocated for monogamy, demonstrating a departure from traditional interpretations. These countries have achieved this through careful legal manoeuvring, such as limiting the jurisdiction of courts to interpret religious laws, thereby leaving the interpretation primarily to the sovereign authority.

In India, courts have often deferred to Parliament on matters concerning personal laws, asserting limited scrutiny over them. The Law Commission of India has proposed measures to address polygamy, such as stipulating in marriage contracts that it constitutes an offence under Section 494 of the Indian Penal Code. The Supreme Court has also affirmed that polygamy is not an essential Islamic practice, opening the door for legislative action to promote monogamy within the Muslim community. Various NGOs are actively working to combat polygamy, proposing measures like implementing civil service conduct rules to deter government employees from engaging in polygamous unions. Some states, like Arunachal Pradesh, have introduced legislation

⁷⁸ Meidina, A.R., 2023. Legal System of Polygamy and Divorce in Muslim Countries: Comparative Studies among Turkey, Pakistan, and Indonesia. *Matan: Journal of Islam and Muslim Society*, 5(1), pp.15-30.

to regulate marriages and curb polygamy.⁷⁹ Other states like Uttarakhand have passed the Uttarakhand Uniform Civil Code Bill which bans polygamy.⁸⁰

Polygamy's infringement on Article 21 of the Indian Constitution has prompted significant judicial interventions. However, loopholes in existing laws enable offenders to evade accountability, undermining women's rights and well-being. Despite protective legislation, gaps persist, allowing offenders to exploit legal ambiguities. The continued prevalence of polygamy in Indian Muslim law contrasts with the trend in many Muslim-majority nations, where significant legal reforms have been undertaken or outright bans imposed. This underscores the urgency for India to address polygamy through legislative reform, empowering Muslim women and safeguarding their rights. In conclusion, with the help of various judicial pronouncements and case laws, the author establishes the lax in the present set of laws in India. Indian laws about polygamy lack gender neutrality, thereby perpetuating gender inequality within society. Despite constitutional guarantees of equality, polygamy laws disproportionately affect women, particularly within the Muslim community, where the practice is more prevalent. The absence of stringent legal provisions and loopholes in existing laws allow perpetrators of polygamy to evade accountability, further marginalizing women and undermining their rights.

The Indian judiciary has made strides in recognizing the discriminatory nature of polygamy and its adverse impact on women's well-being. However, legislative action is necessary to address these systemic inequalities effectively. Reforms must prioritize gender equality and ensure that laws governing marriage and family uphold the principles of justice and fairness for all individuals, irrespective of gender. Moreover, the prevailing cultural and societal norms that condone polygamy contribute to its persistence, highlighting the need for broader societal awareness and education on gender equality. Civil society organizations, legal advocacy groups, and policymakers must collaborate to challenge patriarchal norms and promote gender-neutral legal frameworks that protect the rights and dignity of women. In essence, achieving gender-neutral laws regarding polygamy requires a multifaceted approach that encompasses legislative reform, judicial activism, and social change. By addressing the inherent biases in existing laws and challenging entrenched patriarchal attitudes, India can move towards a more equitable and just society where all individuals are treated with dignity and respect, regardless of their gender.

⁷⁹ Arunachal Pradesh Marriage Recording Rules, 2009.

http://www.apwws1979.org/sites/default/files/Recording_of_Marriage_Rules2009.pdf

⁸⁰ Namrata Mukherjee, Kartavi Satyarthi "Uttarakhand UCC Bill: What changes in marriage, divorce, guardianship, and adoption?", February 08th, 2024. Available at: <https://indianexpress.com/article/explained/explained-law/uttarakhand-ucc-bill-what-changes-in-marriage-divorce-guardianship-and-adoption-9149384/>

⁸¹ Zeeshan Sheikh, "Uttarakhand Uniform Civil Code bans polygamy: Is the practice more prevalent among Muslims?", 11th February, 2024. Available at: <https://indianexpress.com/article/explained/ucc-bans-polygamy-is-the-practice-more-prevalent-among-muslims-9153803/>