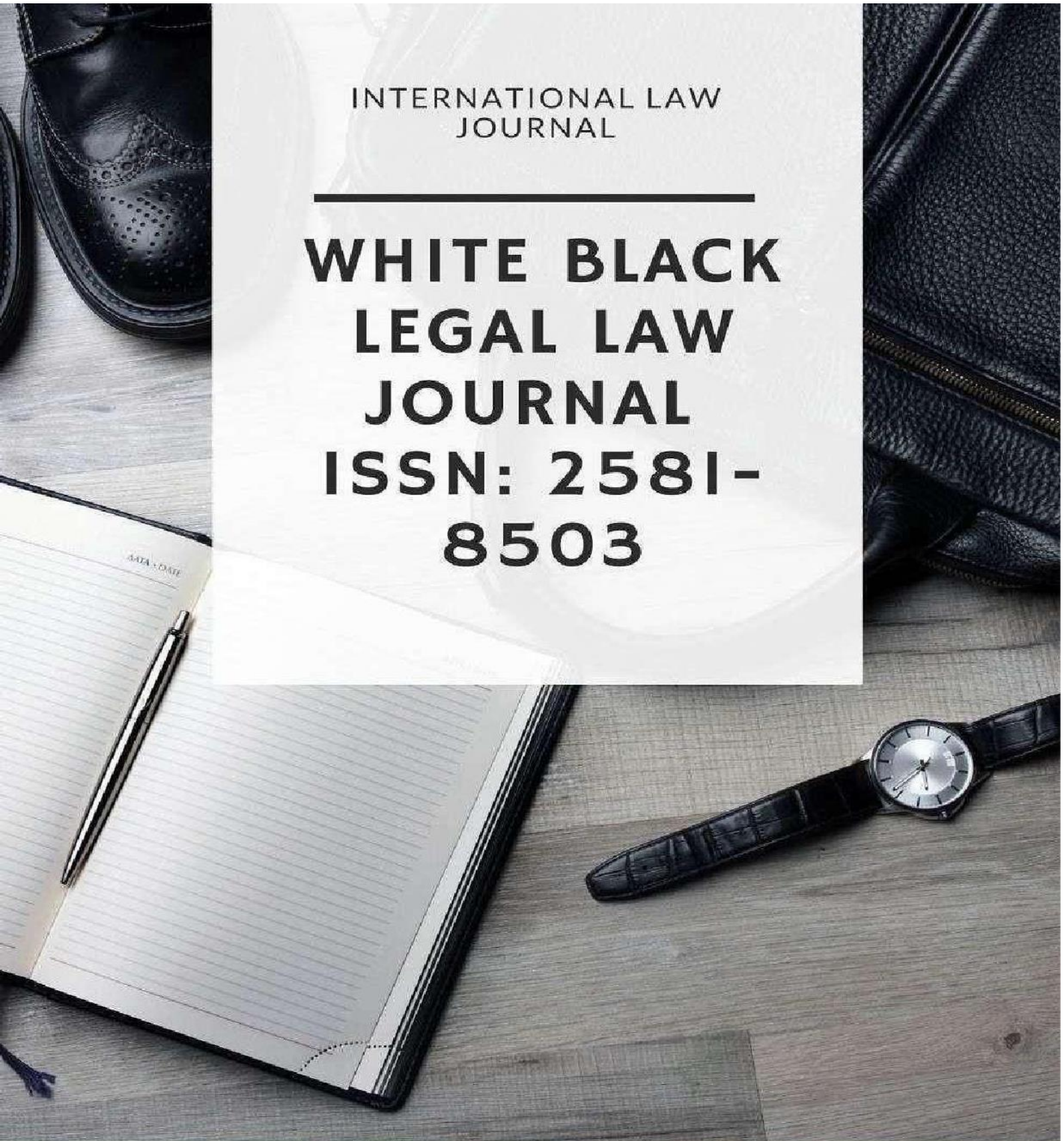




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THE LEGAL FRAMEWORK OF POLYGAMY IN INDIA: AN ANALYTICAL STUDY OF PERSONAL LAWS, GENDER JUSTICE, AND THE UNIFORM CIVIL CODE

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Abstract

India is a country inhabited by a multi-religious population, governed by diverse personal laws—some of which are codified while others remain uncoded. Consequently, a persistent conflict is observed between these codified personal laws and statutory laws. On one hand, frameworks like the Hindu Marriage Act of 1955, along with Christian and Parsi marriage laws, strictly prohibit polygamy. On the other hand, Muslim personal law permits polygamy subject to certain conditions. This research paper evaluates the legal and constitutional aspects of polygamy in India. It examines the legal divergence between treating bigamy as a criminal offense under the *Bharatiya Nyaya Sanhita* (BNS) and the constitutional protections guaranteed under Article 14 and Article 25. Furthermore, this paper analyzes the impact and consequences of recent reforms and restrictions introduced by states like Uttarakhand and Assam, as well as the growing discourse surrounding the nationwide implementation of a Uniform Civil Code (UCC). Based on a study of judicial precedents and legal principles, this research concludes that enacting a Uniform Civil Code is essential to eliminate discriminatory personal laws, thereby safeguarding the rights of all women and ensuring equal rights for everyone.

Keywords: Polygamy, Personal Laws, Gender Justice, Uniform Civil Code (UCC), Constitutional Rights.

Introduction

From the perspective of terminology, "polygamy" is a broad and general term that means marrying more than one person. It has two parts: first, polygyny, which means a man having more than one wife; and second, polyandry, which means a woman having more than one husband. If we look at the context of global history, and especially Indian

history, a man marrying more than one woman (polygyny) is what is most commonly seen. Although both parts are included within the legal and linguistic scope of polygamy, but, when people use the word "polygamy," they usually mean polygyny.

India is a country where people from different religions live together. Here, for personal matters like marriage, divorce, and property division, there is no single uniform law for all religions; instead, every religion has had its own distinct rules (personal laws). After independence, the 'Hindu Marriage Act' was enacted in the year 1955, which completely banned Hindus from marrying more than once. However, Muslim personal law continued to give men the exemption to have more than one marriage under certain conditions. Because of this, there is always a conflict between religious freedom and the right to equality before the law.

From a legal standpoint, this is a major contradiction (dilemma) in Indian law. On one hand, under the new law, the *Bharatiya Nyaya Sanhita* (BNS), if a Hindu, Christian, or Parsi marries a second time while their spouse is still alive, it is a crime and they can face imprisonment. On the other hand, this is legally permitted under Muslim personal law. This difference goes against Article 14 (Right to Equality) and Article 15 (Prohibition of Discrimination) of our Constitution, as it hurts the rights and dignity of women.

In recent years, this issue has not remained limited just to books or debates, but laws are actually being made on it. For instance, the state of Uttarakhand has completely banned polygamy for people of all religions by implementing the 'Uniform Civil Code' (UCC). Other states like Assam have also passed their respective bill in this regard. These changes have restarted the discussion on Article 44 of the Constitution, which states that there should be a uniform law (Uniform Civil Code) for all citizens across the country. Now, most people have started believing that no practice that discriminates against women should get an exemption in the name of religion.

Keeping today's changing times in mind, this research paper provides a deep analysis of the laws related to polygamy in India. The main objective of this study is to see whether this exemption given in the name of religion holds true on the scale of modern morality and human rights. Ultimately, this paper proves that giving justice

and the right to equality to women does not weaken religious freedom, but rather makes our democracy even stronger.

Historical Background

From a sociological perspective, the practice of polygamy started in the early stages of human history. In ancient times, because of frequent wars between different tribes, many men died, which led to a decrease in the male population and an increase in the proportion of women. Due to this, the practice was adopted as a way to protect and preserve society. Even though polygamy started in the past due to these specific reasons, in today's changing times, it is considered a backward way of thinking.

In the same way, during medieval India, polygamy was common among royal families and upper-class people, even if religious books considered this practice wrong or immoral. Kings and elite people believed in polygamy to gain political benefits, expand their kingdoms, and secure their heirs. Slowly, over time, this practice also became a symbol of status and prestige.

After this, during the British era, the British government also adopted a policy of not interfering in the family and personal matters of Indians. It was decided that matters of marriage, divorce, and property would be handled according to each religion's own laws or scriptures. Later, in 1937, the British passed the Muslim Personal Law (Shariat) Application Act, which made this practice even stronger within their traditional framework.

After independence, a major change came to these family laws in India, and the 'Hindu Marriage Act' was passed in 1955. Under this act, practicing monogamy (having only one marriage) was made compulsory for Hindus, Buddhists, Jains, and Sikhs, and a second marriage was completely banned. However, due to certain reasons, the government did not make any changes to the Muslim Personal Law at that time, which allowed the practice of polygamy to continue. Because of this, there are different provisions in the family laws of different religions for the exact same practice in the country today.

Current Legal Framework and Statutory Contradictions

The contemporary legal framework governing polygamy (marrying more than once) in India is highly complex and divided, because on one hand, a citizen is punished for bigamy, while on the other hand, another citizen is exempted on religious grounds to marry more than once, which has created a major contradiction (a strange anomaly) within the law. In this regard, Section 82(1) of the *Bharatiya Nyaya Sanhita* (which was formerly Section 494 of the IPC) states that if a person marries again while their husband or wife is still alive, they can face up to 7 years of imprisonment and a fine, and similarly, when a person contracts a second marriage by hiding (fraudulently concealing) the fact of their first marriage, Section 82(2) (formerly Section 495 of the IPC) provides for a punishment of up to 10 years of imprisonment. This law applies uniformly to India's Hindus, Buddhists, Jains, Sikhs, Christians, and Parsis to ensure that the practice of monogamy is maintained in society, whereas, in stark contrast, according to Muslim Personal Law, a Muslim man can have up to four wives at the same time and these sections of the *Bharatiya Nyaya Sanhita* do not apply to them. However, a Muslim wife can institute a suit for purpose of divorce against the husband on the ground that her husband is having more than one wife and he is not dealing with her equality and fairly.

Thus, a practice that is considered a crime for individuals of other religions is a legal right for Muslims under Muslim Personal Law. Because of this, a major inequality is visible in the country's legal system. This duality in the law has created a constitutional conflict, and this exemption for polygamy in Muslim law constantly faces challenges in court on the grounds of Articles 14, 15, and 25.

Critics argue that this is a violation of Article 14 (Right to Equality) and Article 15 (Prohibition of Discrimination on the basis of Sex), because this criminal law does not apply equally to everyone, and polygamy is against women since this right is only given to men. On the other hand, supporters believe that Muslim Personal Law is a part of the right to freedom of religion under Article 25. However, the Supreme Court has clarified multiple times that the right to freedom must be granted only within the boundaries of public order, morality, health, and other fundamental rights.

In this way, India's legal framework remains caught between protecting the dignity

and rights of women and the right to religious freedom.

Judicial Approach and Landmark Precedents

The Supreme Court and various High Courts have frequently been called upon to resolve the crises arising from polygamy and have also had to review the mutual conflicts involved.

The jurisprudential journey began with the early landmark case of *State of Bombay v. Narasu Appa Mali*.¹ Here, the Bombay High Court examined the validity of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946. The law was challenged on the grounds that it excluded Muslims, which allegedly violated Article 15 (non-discrimination) and the right of Hindu men to practice their religion under Article 25. The Bombay High Court rejected the challenge and held that marriage as an institution is different for Hindus and Muslims. Since the legislation was a measure for social reform, the differentiation between the two would not amount to discrimination. Additionally, the court held that uncodified personal laws are exempt from the application of fundamental rights, as they do not constitute state-sponsored discrimination.

Shifting the focus to Muslim personal law, the Allahabad High Court in *Badrudin v. Ayesha Begum*,² rightly held that under Muslim law, a Muslim is allowed to have a maximum of four wives, but it is not an essential part of the religion. The Court observed that the Legislature is fully competent to make a law requiring Muslims to have only one wife at a time. Such regulation does not amount to an interference with the freedom of conscience or the right to profess and practice religion.

Echoing similar progressive stance decades later, the Madras High Court in *Shahulameedu v. Zubaida Beevi*³ observed that it is distressing for a court to discriminate against Muslim women who have, for ages, been subject to several social disabilities imposed on them in the name of personal laws. The court further observed that it is a dubious religious interpretation of its value and codes, and these values are nothing but a mere legal super-position over basic human rights.

¹ AIR 1952 Bom. 84.

² 1957 ALJ 300 (All).

³ 1970 MLJ 562 (Mad.)

While the previous cases dealt with specific personal laws, a new challenge arose regarding the misuse of religious conversion to bypass monogamy laws. In the landmark 1995 case of *Sarla Mudgal v. Union of India*,⁴ the primary question before the apex court was whether a non-Muslim husband, whose marriage was solemnized under the Hindu Marriage Act, could legally contract a second marriage by merely converting to Islam without dissolving his first marriage. On this, the court stated that if a person married under the Hindu Marriage Act adopts Islam, he is not freed from the rule of monogamy as laid down under the Hindu Marriage Act; the second marriage contracted after conversion will be considered illegal and void. Consequently, the person contracting the second marriage will remain criminally liable for bigamy. In this case, the court also observed that the absence of a Uniform Civil Code (UCC) creates a major loophole.

The one another case of *Lily Thomas v. Union of India*,⁵ the Supreme Court reviewed and reaffirmed its *ratio decidendi* from the *Sarla Mudgal* judgment. The petitioners in this case argued that prosecuting a converted Muslim man for bigamy violated his fundamental right to freedom of conscience and religion under Article 25 of the Constitution.

The Apex court categorically rejected this argument, clarifying that freedom of religion cannot be weaponized to commit a penal offense or violate the civil rights of an existing spouse. The judiciary held that while an individual has an absolute right to choose and practice their faith, they do not possess the right to exploit religious conversions solely to escape criminal liability for bigamy. This judgment solidified the principle that statutory laws protecting the integrity of marriage override fraudulent individual actions masked as religious freedom.

The Supreme Court further clarified the constitutional status of polygamy under Article 25 in *Javed v. State of Haryana*.⁶ In this case, the court established that the practice of polygamy is merely permissible in religion, but not mandatory. Therefore, the State retains full power to enact laws in the interest of public welfare, social reform, or public health, even if it impacts Muslim religious customs.

⁴ AIR 1995 SC 1531.

⁵ AIR 2000 SC 1650.

⁶ AIR 2003 SC 3057.

A monumental shift occurred in the historic case of *Shayara Bano v. Union of India*,⁷ where the Supreme Court broke away from the 1952 *Narasu Appa doctrine* and stated that personal laws, even if uncodified, are subject to the overarching mandates of the Constitution.

Taking cue from this constitutional shift, in the case of *Sameena Begum v. Union of India*,⁸ a writ petition was filed in the Supreme Court specifically challenging the constitutional validity of polygamy and Nikah Halala. She argued that these practices violate the fundamental rights of Muslim women under Articles 14 (Equality), 15 (Non-discrimination), and 21 (Right to Life with Dignity) of the Constitution. The Supreme Court accepted this petition and referred it to a Constitution Bench, where the ultimate validity of these practices currently rests.

Thus, it is contrary to the principle of gender justice. It reflects inequality towards Muslim women, which undermines a woman's dignity. Not only this, but it also impacts our social fabric. According to the data from the National Family Health Survey (NFHS), women face mental stress and emotional trauma due to polygamy. Financial vulnerability and increasing domestic disputes also have a direct link with polygamy.

The Uniform Civil Code (UCC) and Contemporary Legislative Shifts

The intersection of gender justice and personal law reform has recently moved from court observations into actual law. The biggest example of this is the recently implemented Uttarakhand Uniform Civil Code. This is a major and historic change in the history of India's matrimonial laws. Uttarakhand has become the first state to create a uniform civil law, setting a definitive template for other states as well.

Section 4(1) is the most important part of the Uttarakhand Uniform Civil Code for banning polygamy. According to this section, at the time of marriage, neither the man nor the woman should have a living spouse.

In this way, this section of the Uttarakhand Uniform Civil Code completely bans bigamy or polygamy across all religious communities. Thus, Section 82 of BNS which provides

⁷ AIR 2017 SC 4609.

⁸ Writ Petition(S) (civil) No(s). 222/2018.

punishment for bigamy, which will apply equally to every citizen of the state.

Similarly, Gujarat and Assam have also passed UCC bills to ban polygamy. These different UCC models by various states have restarted the nationwide debate on whether there should be a central matrimonial framework for the entire country.

Ultimately, these recent legal changes show that these different personal laws and distinct customs are now rapidly coming to an end. Constitutional morality and human rights are being given priority over these archaic customs.

Conclusion and Suggestions

Looking at how marriage laws have evolved in India, it is clear that family laws cannot be kept separate from our modern democracy and Constitution. Today, on one hand, the country's criminal law punishes bigamy (having two marriages), while on the other hand, Muslim personal law allows polygamy (more than one marriage). This conflict weakens our legal system.

This research paper shows that polygamy cannot be ignored just by calling it a religious tradition. It is directly linked to women's justice and their fundamental human rights. As courts have pointed out multiple times, the religious freedom granted under Article 25 of the Constitution is also subject to public morality and the right to equality.

Recent steps taken by states, such as the Uniform Civil Code (UCC), are a good start toward legal reform. Making a strict one-marriage rule mandatory across all religions does not harm India's cultural diversity. Instead, it frees vulnerable sections of society from inequality and ensures that every woman in the country, regardless of her faith, can live with dignity and security.

Based on the comprehensive legal and social analysis conducted in this study, the following measures are recommended to reform the existing framework:

National Codification of Matrimonial Laws: While state-level initiatives like the Uttarakhand UCC are progressive steps, Parliament should enact a comprehensive central legislation to ensure that the prohibition of bigamy applies uniformly across all

states, preventing legal discrepancies during inter-state migration.

Strengthening Legal Protections for Vulnerable Wives: Lawmakers must introduce strict, non-negotiable statutory safeguards ensuring that in the event of any unauthorized plural marriage, the first wife receives immediate financial maintenance, a guaranteed share in matrimonial property, and legal custody of her children.

Socio-Economic Empowerment and Awareness: Legal prohibitions must be accompanied by grassroots social reforms. The state should invest heavily in expanding female education and economic opportunities within marginalized communities, alongside running awareness campaigns to educate women about their constitutional and legal rights.

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