



## Polygamy in India

**For Prelims:** Polygamy in India, [Hindu Marriage Act, 1955](#), [NFHS](#), [Indian Penal Code, 1860](#), [Muslim Personal Law Application Act of 1937](#).

**For Mains:** Polygamy in India among religious groups.

### Why in News?

Recently, the Chief Minister of Assam has said that the state government will move to ban the practice of Polygamy through “**Legislative Action**”, and that an “**Expert committee**” would be formed to **examine the issue**.

### What is Polygamy?

#### ▪ About:

- 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.
- Traditionally, polygamy — mainly the situation of a **man having more than one wife** — was practiced widely in India. The [Hindu Marriage Act, 1955](#) **outlawed** the practice.
- The [Special Marriage Act \(SMA\), 1954](#) allows individuals to perform inter-religious marriages, but **it forbids polygamy**. The Act has been used by **many Muslim women to help them stop practicing polygamy**.

#### ▪ Types:

- **Polygyny:**
  - It is the matrimonial structure in which a **male individual has numerous wives**. Polygamy in this form is more common or widespread.
  - Monarchs and emperors in the [Indus Valley Civilisation](#) were believed to have several wives.
- **Polyandry:**
  - It is a type of marriage in which a **female has several husbands**.
  - Nevertheless, this can be an extremely uncommon occurrence.
- **Bigamy:**
  - When one is already married additionally, the marriage continues to be valid, then married with someone else is known as bigamy plus the **person committing this will be called bigamist**.
  - It is considered a criminal offense in many countries, including India. In other words, it is the **act of entering into a marriage with someone else while still being in a valid marriage** with another person.

#### ▪ Prevalence in India:

- The [National Family Health Survey-5 \(2019-20\)](#) showed the **prevalence of polygamy was 2.1% among Christians**, 1.9% among Muslims, 1.3% among Hindus, and 1.6% among other religious groups.

- The data showed that the highest prevalence of polygynous marriages was in the **Northeastern states with tribal populations.**
- A list of 40 districts with the highest polygyny rates was dominated by those with high tribal populations.

## What are the Various Religious Laws Pertaining to Marriage in India?

### ▪ Hindus:

- The Hindu Marriage Act, which came into effect in 1955, made it clear that **Hindu polygamy would be abolished and criminalized.**
- Under Section 11 Act, which states that polygamous marriages are void, the **Act cautiously mandates monogamous relationships.**
- When someone performs it, they are punished under Section 17 of the very same Act, as well as Sections **494 and 495 of the [Indian Penal Code, 1860.](#)**
  - Because **Buddhists, Jains,** and **Sikhs** are all considered Hindus and do not have their own laws, the provisions in the Hindu Marriage Act apply to these **three religious denominations as well.**

### ▪ Parsi:

- The **Parsi Marriage and Divorce Act, 1936, had already outlawed bigamy.**
- Any Parsi, who has been married during his or her life, is subject to the penalties provided for by the India Penal Code for an offence to return to marriage during the lifetime of a Parsi or not, without being legally divorced by a wife or husband or having his or her previous marriage declared invalid or dissolved.

### ▪ Muslims:

- The clauses under the **'[Muslim Personal Law Application Act \(Shariat\) of 1937,](#)** as construed by the All India Muslim Personal Law Board, apply to Muslims in India.
- Polygamy is **not prohibited in Muslim legislation** because it is recognised as a **religious practice,** hence they tend to preserve and practice it.
- It is, nevertheless, clear that if this **method is determined to violate the constitution's basic rights,** it can be overturned.
  - When there is a disagreement between the Indian Penal Code and personal laws, the **personal laws are implemented since it is a legal principle that a specific law supersedes the general law.**

## What are the Judicial Perspectives Related to Polygamy?

### ▪ *Parayankandiyal v. K. Devi & Others (1996):*

- The **[Supreme Court \(SC\)](#)** concluded that monogamous relationships were the **standard and ideology of Hindu society,** which scorned and condemned a second marriage.
- Polygamy was not allowed to become a part of Hindu culture due to the influence of religion.

### ▪ *State of Bombay v. Narasu Appa Mali (1951):*

- The Bombay High Court ruled that the **Bombay (Prevention of Hindu Bigamy Marriage) Act, 1946 was not discriminatory.**
- The SC ruled that a state legislature has the authority to enact measures for public welfare and reforms, even if it **violates the Hindu religion or custom.**

### ▪ *Javed & Others v. State of Haryana & Others (2003):*

- The SC decided that under Article 25 freedom is **subjected to social harmony, dignity, and wellness.**
- Muslim law allows for the marriage of four women, but it is not compulsory.
- This will not be violating religious practice to not marry four women.

## What is the Impact of Polygamy on Indian Society and the Constitutional Standpoint?

- Polygamy has a significant impact on **Indian society and has been debated for its validity from a constitutional standpoint,** particularly in relation to religions such as Islam and Hinduism.

- India is a secular state, where **no religion is considered superior or subordinate to another, and each religion** is treated equally under the law.
- The Indian Constitution guarantees [fundamental rights to all citizens](#), and any legislation that conflicts with these rights is deemed unconstitutional.
- **Article 13 of the Constitution** specifies that any law that contravenes Part III of the Constitution is invalid.
  - In **R.C. Cooper v. Union of India (1970)**, the SC observed that the theoretical approach that the component and construct of state intervention ascertain the **severity of the safeguard that an underprivileged group** may purport is incompatible with the constitutional provision, which aims to provide the ordinary citizen with the broadest possible safeguards of his fundamental rights.
- **Article 14 of the Constitution** guarantees equal treatment and protection under the law to every individual within the territory of India.
- The state is prohibited from discriminating against any person based on their religion, ethnicity, gender, or place of birth, **according to Article 15(1)** of the Constitution

## In Which Countries Polygamy Legal?

- Polygamy is permissible and legal exclusively for Muslims in nations such as India, Singapore, as well as Malaysia.
- Polygamy is still recognised and practiced in nations such as **Algeria, Egypt, and Cameroon**. These are the only areas in the world where polygamy is still legal.

## Conclusion

- It is true that polygamy has existed in Indian society for a long time, and while it is now illegal, it is still practiced in some areas.
- The practice of polygamy is not **unique to any one religion or culture** and has been justified in the past for various reasons.
- However, as society has evolved, the **justifications for polygamy are no longer valid, and the practice should be abandoned.**

## UPSC Civil Services Examination, Previous Year Questions (PYQs)

### Prelims

**Q. Which Article of the Constitution of India safeguards one's right to marry the person of one's choice? (2019)**

- (a) Article 19
- (b) Article 21
- (c) Article 25
- (d) Article 29

**Ans: (b)**

**Exp:**

- The right to marry is a component of the right to life under Article 21 of the Constitution of India which states that "No person shall be deprived of his life and personal liberty except according to the procedure established by law".
- In *Lata Singh v. State of Uttar Pradesh 2006*, the Supreme Court viewed the right to marry as a component of the right to life under Article 21 of Indian Constitution.
- **Therefore, option (b) is the correct answer.**

## **Mains**

**Q.** Customs and traditions suppress reason leading to obscurantism. Do you agree? **(2020)**

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