



Constitutional and Human Rights Dimensions of Monogamy and Polygamy in 21st Century India: A Comparative Study

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ARTICLE DETAILS	ABSTRACT
Research Paper	
Keywords :	
Monogamy, Gender, Constitutional Law, India, Freedom	<i>Marriage, as a social and legal institution, has long oscillated between monogamy and polygamy. While monogamy has become the dominant model in modern democratic societies, polygamy persists in certain religious, cultural, and customary frameworks. India represents a unique constitutional dilemma where monogamy is legally enforced for Hindus and Christians, but Muslim personal law continues to permit polygyny. This dual framework raises questions of gender justice, equality, religious freedom, and constitutional morality. This paper critically examines the constitutional validity of monogamy and polygamy in India, explores human rights implications under international law, and compares global trends toward outlawing polygamy. By analyzing statutory frameworks, case laws, Constituent Assembly debates, and human rights treaties, the paper argues for the gradual movement toward a uniform system of monogamy that balances religious diversity with constitutional guarantees of equality, dignity, and liberty.</i>

I. Introduction

Marriage lies at the intersection of religion, culture, law, and individual rights. Historically seen as a sacred union or religious sacrament, marriage in modern jurisprudence has increasingly been understood as a social contract with legal consequences. The tension between monogamy, the union of two individuals,



and polygamy, the practice of one individual marrying multiple spouses simultaneously, reflects broader debates about equality, morality, and freedom.

In India, this debate is sharpened by a pluralistic legal framework that enforces statutory monogamy for Hindus, Christians, Parsis, and civil marriages under the Special Marriage Act, 1954, while continuing to recognize polygyny under Muslim personal law. This creates a paradox: a constitutional democracy that aspires to gender justice and equality simultaneously accommodates religiously sanctioned inequality.

The Constitution of India, particularly Articles 14, 15, 21, and 25, provides the normative framework for resolving these tensions. Yet, the judiciary and legislature have often taken cautious approaches, balancing religious freedom with progressive reform. Meanwhile, international human rights law, through instruments like the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), increasingly identifies polygamy as discriminatory.

This paper undertakes a detailed study of the constitutional and human rights dimensions of monogamy and polygamy in 21st-century India. It contextualizes the historical evolution of marriage practices, analyzes judicial pronouncements, compares global reforms, and offers a roadmap for reconciling tradition with constitutional morality.

II. Historical Evolution of Monogamy and Polygamy

A. Hindu Tradition

Ancient Hindu texts and practices reveal a complex picture. The Manusmriti declared monogamy as the ideal, stating that “a wife is half the body of her husband.” Yet, it tolerated polygyny, particularly for kings and rulers, who often married multiple wives for political alliances or succession. The epics Ramayana and Mahabharata illustrate both monogamy (Rama and Sita) and polygamy (Pandavas’ marriage to Draupadi). Over time, monogamy emerged as the preferred social norm among Hindus, though exceptions persisted.

B. Islamic Tradition

Islam permits a man to marry up to four wives under the condition of equal treatment, as articulated in the Qur’an (Surah An-Nisa, 4:3). The emphasis on justice and fairness, however, makes polygyny conditional rather than absolute. Islamic jurisprudence also places obligations of maintenance and equality on the husband, though in practice these conditions are often violated.



C. Christian and Western Influence

Christianity has long upheld monogamy as the sacred model of marriage. The canon law tradition, influenced by Greco-Roman ideals, rejected polygamy, and colonial legal systems extended this prohibition to governed territories.

D. Colonial and Post-Colonial India

During British rule, the state intervened primarily in Hindu law, culminating in the Hindu Marriage Act, 1955, which outlawed polygamy among Hindus. Muslim personal law, however, was preserved under the Muslim Personal Law (Shariat) Application Act, 1937, reflecting the colonial strategy of non-interference in Muslim practices. Post-independence, this duality has continued, producing friction with constitutional principles of equality.

III. Constitutional Perspectives in India

A. Equality and Non-Discrimination

Article 14 guarantees equality before law. Polygamy disproportionately favors men, enabling them multiple wives but not vice versa. This inherently discriminatory structure undermines Article 15(1), which prohibits discrimination on grounds of sex.

B. Right to Life and Dignity

Article 21 has been expansively interpreted to include dignity, privacy, and autonomy. Polygamy often subjects women to economic, emotional, and psychological vulnerabilities, contravening their dignity. In *Joseph Shine v. Union of India*, the Supreme Court emphasized that marital relations must rest on equality and dignity.

C. Freedom of Religion and Constitutional Morality

Article 25 guarantees freedom of religion, but this is subject to public order, morality, and fundamental rights. The doctrine of constitutional morality, articulated in *Indian Young Lawyers Association v. State of Kerala*, prioritizes constitutional values over religious traditions. Thus, practices like polygamy cannot be insulated from constitutional scrutiny if they undermine gender equality.

D. Directive Principles and Uniform Civil Code

Article 44 envisions a Uniform Civil Code (UCC). While politically contentious, it provides a constitutional aspiration for harmonizing personal laws, including moving toward a uniform regime of monogamy.



IV. Judicial Pronouncements in India

A. State of Bombay v. Narasu Appa Mali (1952)

The Bombay High Court upheld Muslim polygamy by ruling that personal laws are not “laws” under Article 13, and thus immune from fundamental rights review. This precedent continues to shield polygamy from constitutional scrutiny.

B. Sarla Mudgal v. Union of India (1995)

The Supreme Court confronted cases of Hindu men converting to Islam to practice polygamy. The Court held that such conversions for marriage were invalid and underscored the need for a UCC.

C. Javed v. State of Haryana (2003)

The Court upheld disqualification of persons with more than two children from panchayat elections, observing that polygamy is not an essential religious practice under Islam.

D. Khursheed Ahmad Khan v. State of U.P. (2015)

The Court upheld dismissal of a government servant who contracted a second marriage, again affirming that polygamy is not protected as an essential religious practice.

E. Shayara Bano v. Union of India (2017)

Though focused on triple talaq, this judgment illustrates judicial willingness to test personal law practices against fundamental rights. The Court struck down instant triple talaq as unconstitutional.

These cases collectively reveal a judicial trajectory toward subordinating personal laws to constitutional principles, though Narasu Appa Mali remains a stumbling block.

V. Comparative Global Perspectives

Globally, there is a strong trend toward monogamy.

1. **United States:** In *Reynolds v. United States* (1878), the Supreme Court upheld anti-polygamy laws, rejecting religious justifications.
2. **United Kingdom:** Domestic law prohibits polygamy, though limited recognition is given to polygamous marriages performed abroad for inheritance or immigration purposes.
3. **Turkey and Tunisia:** Both abolished polygamy, with Tunisia framing it as a violation of women’s dignity and equality.



4. **South Africa:** The Constitution recognizes polygamous marriages under customary law but subjects them to equality norms.
5. **Canada:** Polygamy is criminalized under Section 293 of the Criminal Code, upheld in Reference re: Section 293 of the Criminal Code of Canada (2011), where the court cited harm to women and children.

These reforms reflect a global convergence toward monogamy grounded in gender justice and human rights.

VI. Human Rights Dimensions

A. International Instruments

- **UDHR, 1948:** Article 16 recognizes marriage based on equal rights and free consent.
- **ICCPR, 1966:** Article 23 emphasizes equality between spouses.
- **CEDAW, 1979:** The CEDAW Committee has consistently declared polygamy discriminatory.

B. UN and Regional Perspectives

The UN Human Rights Committee and CEDAW Committee have urged states to abolish polygamy. The African Charter on Human and Peoples' Rights acknowledges traditional practices but is increasingly interpreted in light of women's rights.

C. India's Obligations

India, as a signatory to CEDAW, is obligated to eliminate gender-discriminatory practices. Failure to address polygamy undermines its international commitments.

VII. Gender Justice and Women's Rights

Polygamy disproportionately disadvantages women. Feminist critiques argue it perpetuates patriarchal control, subjects women to competition, and jeopardizes emotional and financial security.

The Law Commission of India, 227th Report (2009) observed that polygamy often leads to neglect of wives and children, creating adverse social consequences. The National Commission for Women has repeatedly called for uniform monogamy.

Case studies from Muslim women reveal experiences of abandonment, lack of maintenance, and psychological trauma in polygamous marriages. Such realities contradict the constitutional promise of dignity, equality, and social justice.

VIII. Contemporary Debates

A. LGBTQ+ Marriage Equality

With *Navtej Singh Johar v. Union of India* decriminalizing same-sex relations, the question of marriage equality has arisen. Whether future same-sex marriages in India should follow monogamous norms is a pressing issue.

B. Serial Monogamy

Modern societies witness successive marriages through divorce and remarriage. While legally permitted, it challenges the idea of permanence in marriage and raises questions of children's welfare and property rights.

C. Digital Age Challenges

Online infidelity, dating apps, and virtual relationships complicate legal definitions of monogamy. Courts may need to address whether “cyber-adultery” undermines marital fidelity.

D. Uniform Civil Code (UCC)

The UCC remains politically sensitive. However, recent debates emphasize that gender justice cannot be sacrificed to religious exemptions. A phased, consultative UCC could harmonize personal laws without imposing uniformity abruptly.

IX. Challenges and Reforms Needed

The debate over monogamy and polygamy in India cannot end with mere acknowledgment of historical pluralism or contemporary conflicts. What is required is a roadmap of reform that reconciles constitutional mandates with social realities. Five crucial measures emerge in this direction: revisiting the judicial insulation of personal laws, enacting gradual legislative reform, creating social awareness, ensuring judicial consistency, and aligning Indian law with international human rights obligations.

1. Revisiting *Narasu Appa Mali*: The Immunity of Personal Laws

One of the biggest obstacles to reform lies in the precedent set by the Bombay High Court in *State of Bombay v. Narasu Appa Mali* (1952), where it was held that personal laws are not “laws in force” within the meaning of Article 13 of the Constitution and therefore cannot be tested against the touchstone of fundamental rights. This ruling has for decades shielded practices like polygamy from constitutional scrutiny.

The implications of *Narasu Appa Mali* are profound. While statutory enactments like the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954, are subject to equality and dignity review, Muslim personal law enjoys an immunity that effectively creates a constitutional blind spot. This undermines the basic structure doctrine, which emphasizes the supremacy of fundamental rights.

Scholars have argued that *Narasu Appa Mali* was incorrectly decided because Article 13 explicitly subjects “custom or usage having the force of law” to constitutional review. Personal law, when enforced through courts or state machinery, falls squarely within this definition. The Supreme Court itself has moved in this direction in later judgments. In *Shayara Bano v. Union of India* (2017), the Court tested triple talaq against constitutional guarantees and struck it down, despite its location in Muslim personal law. Similarly, in *Joseph Shine v. Union of India* (2019), the Court held that social practices rooted in patriarchy cannot survive constitutional scrutiny.

A constitutional reconsideration of *Narasu Appa Mali* is therefore essential. The Supreme Court must explicitly hold that all personal laws, whether statutory or uncodified, are subject to fundamental rights review. Only then can practices like polygamy be examined on their true merits in light of Articles 14, 15, and 21.

2. Legislative Reform: Toward Statutory Monogamy for All

While judicial intervention can catalyze reform, sustainable change requires legislative clarity. At present, monogamy is mandated under the Hindu Marriage Act, 1955, the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, and the Special Marriage Act, 1954. However, under Muslim personal law, polygyny is still permitted. This fragmented framework undermines both legal certainty and gender justice.

Parliament should gradually extend statutory monogamy to all communities through a gender-just reform of marriage law. Such legislation need not be abrupt or insensitive to religious concerns. A phased model could be adopted:

A.Optional Civil Code – Providing individuals across all faiths the option to marry under a uniform monogamous framework (already available under the Special Marriage Act) could be strengthened with more incentives.

B.Incremental Restrictions – Restrictions on polygamy could be introduced initially in state employment or welfare schemes, as already seen in *Javed v. State of Haryana* (2003), where polygamous individuals were disqualified from contesting panchayat elections.



C. Full Prohibition – Finally, statutory monogamy could be extended universally, accompanied by legal safeguards ensuring maintenance, succession, and property rights for women already in polygamous unions.

Legislative reform must be careful to mitigate harm to existing spouses and children, ensuring they are not rendered destitute. In this sense, the reform must be as much about social justice as legal uniformity.

3. Social Awareness: Beyond Legal Texts

Even the most progressive legal reforms risk failure if not supported by social acceptance. Polygamy, though statistically rare in India, persists in certain communities due to religious sanction, patriarchal norms, or economic vulnerabilities. Laws alone cannot dismantle these deeply embedded practices.

Community-level awareness campaigns are essential to highlight the harmful consequences of polygamy:

- Economic neglect of women and children.
- Emotional trauma caused by rivalry and insecurity among spouses.
- Increased vulnerability of women to domestic violence and abandonment.
- Incompatibility of polygamy with ideals of equality, dignity, and mutual respect in marriage.

Civil society organizations, women's groups, and religious leaders can play a transformative role in shifting perceptions. Educational curricula and media campaigns can emphasize that monogamy is not merely a Western imposition but consistent with constitutional morality and women's empowerment.

Importantly, reforms must be framed not as an attack on religion but as a step toward intra-religious justice. For instance, Islamic scholarship itself emphasizes fairness in polygamy, which is practically unattainable, thereby making de facto monogamy the moral ideal. Such culturally sensitive framing can make reforms more acceptable.

4. Judicial Consistency: Constitutional Morality over Religious Justification

The Indian judiciary has oscillated between deference to religious practices and assertion of constitutional values. While decisions like *Shayara Bano* and *Joseph Shine* reflect a progressive trajectory, the lingering influence of *Narasu Appa Mali* has produced inconsistencies.

For true reform, the judiciary must adopt a consistent approach anchored in the doctrine of constitutional morality. As articulated in *Indian Young Lawyers Association v. State of Kerala* (2019), constitutional morality requires that traditions and customs be measured against values of liberty, dignity, and equality.



This doctrine provides the normative foundation for striking down polygamy, which structurally disadvantages women.

Moreover, the Court must move away from the “essential practices test,” which determines whether a religious practice deserves protection based on its centrality to the religion. Polygamy, even if considered permissible in Islam, cannot override fundamental rights. Instead, the judiciary must prioritize a rights-based test, ensuring that gender equality always supersedes patriarchal traditions.

Judicial consistency will also strengthen public confidence in the courts. Fragmented rulings that allow certain discriminatory practices under the guise of religion while prohibiting others create perceptions of arbitrariness. By consistently applying constitutional morality, the Court can provide a clear moral and legal compass for society.

5. International Alignment: India’s Human Rights Obligations

Finally, India must situate its domestic reforms within the broader framework of international human rights. As a signatory to the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), India is bound to uphold the principles of equality and non-discrimination in family law.

The CEDAW Committee has explicitly stated that polygamy contravenes women’s dignity and equality, urging states to abolish it. The Human Rights Committee under ICCPR has similarly interpreted Article 23 as incompatible with polygamy. Many countries with strong Islamic traditions, such as Turkey and Tunisia, have abolished polygamy, while others like Indonesia regulate it strictly with judicial oversight. India risks international criticism and weakened credibility in human rights forums if it continues to tolerate polygamy. Aligning domestic law with these commitments will not only strengthen India’s global standing but also fulfill its constitutional mandate under Article 51(c), which directs the state to respect international law and treaty obligations.

Moreover, harmonizing Indian law with global norms will protect vulnerable women from transnational complications, such as cross-border marriages where polygamy is practiced. Uniform statutory monogamy would also simplify issues of immigration, inheritance, and family law in an increasingly globalized world.

Reforming India’s marriage laws to ensure universal monogamy is neither a purely legal nor a purely cultural project—it is a constitutional necessity. Revisiting *Narasu Appa Mali* will remove judicial



roadblocks. Legislative reform will provide clarity and uniformity. Social awareness campaigns will ensure that reforms are rooted in public consciousness. Judicial consistency will guarantee that constitutional morality prevails over patriarchal traditions. Finally, aligning with international human rights obligations will affirm India's role as a democracy committed to equality and dignity.

Together, these five measures create a roadmap for a future where marriage in India is not an arena of gendered subordination but a partnership grounded in justice, equality, and mutual respect.

X. Conclusion

The contest between monogamy and polygamy in India reflects the deeper struggle between constitutional morality and religious pluralism. While monogamy has emerged as the global norm under human rights law, India continues to tolerate polygyny under Muslim personal law. Judicial decisions increasingly restrict polygamy, yet legislative inertia persists.

In the 21st century, constitutional guarantees of equality, dignity, and liberty demand a decisive shift toward monogamy. Such reform need not erase cultural diversity but must ensure that individual rights, particularly women's rights, prevail over patriarchal traditions. The gradual implementation of a gender-just Uniform Civil Code, aligned with international standards, represents the path forward.

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