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Polygamy in India: Its Constitutional Validity in Light of Recent Legal Developments and the Road Ahead

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The practice of polygamy and its legal validity in India becomes all the more pressing and relevant in light of recent statements from the Apex Court and cultural changes within the Indian Muslim community. In India, the practice is legally permissible for the Muslim community. The Triple Talaq judgment and the lines of reasoning used by the concerned Judges, as well as domestic and international socio-legal obligations, leave the question of polygamy resting on precarious grounds. The religious-historical context for polygamy being permitted in the Quran, as well as the conditions of equitability attached to it being sanctioned and their impossibility for application in modern times, makes the practice an unessential part of the Islamic faith in the modern day, allowing an outlawing of the practice to be viewed from a fresh perspective. Polygamy as an 'essential religious practice' is viewed through the lens of previous cases on Islamic personal law, followed by a wider analysis of 'Shayara Bano v Union of India and Ors (2017)' and the implications of the case for a future judgment on polygamy. Muslim Personal Law and constitutional rights can be seen as working in tandem through harmonious construction and not as adversaries, to further the goal of equality and the ultimate stakeholders of a future judgment– Muslim women themselves are kept in mind.

Keywords: *essential religious practice, equity, harmonious construction, polygamy.*

INTRODUCTION

In 2017, a five-judge bench of the Indian Supreme Court in *Shayara Bano v Union of India* ruled that the practice of *Triple Talaq* was unconstitutional. The practice, which would essentially allow a Muslim Man to divorce his wife through a process wherein the word '*talaq*' is uttered three times in succession, was found to be 'manifestly arbitrary'.[1] This was followed by the enactment of Parliamentary legislation, which criminalised the practice.[2] The petition to prohibit the practice was filed by a Muslim woman, and shortly after, many Muslim women followed suit, challenging the validity of other legally accepted Islamic practices including polygamy, *nikah halala* and *nikah al-misyar* (practices relating to the act of marriage, such as permissible temporary marriage arrangements and mandatory consummation of a second marriage before re-marriage). The *Shayara Bano* judgment unsettled old legal assumptions on the protections afforded to religious personal law, and their interrelation to fundamental rights, opening the doors to challenge any other practices viewed as discriminatory and arbitrary. On the 30th of August, 2022, the Supreme Court stated that it would hear a writ petition,[3] filed under Article 32, challenging the validity of polygamy and other practices in Muslim Personal Law.[4] The case is a combined hearing of eight Public Interest Litigations (PILs) which followed the Triple Talaq judgment. The five-judge bench also issued notices to the National Commission for Minorities, the National Commission for Women and the National Human Rights Commission.[5][6] These practices sanctioned under Shariah are challenged because they violate Articles 14, 15 and 21 (the rights to equality, not being discriminated against on grounds of religion and the right to life, respectively) of the Indian Constitution.[7] More recently, in January 2023, the apex court said it would move to set up a new constitutional bench to discuss the

[1] *Shayara Bano v Union of India* (2017) 9 SCC 1
[2] The Muslim Women (Protection of Rights on Marriage) Act 2019
[3] *Sameena Begum v Union of India* (2018) Civ WP No 222/2018
[4] Aneesha Mathur, '5 Judge SC Bench to Hear Muslim Women's Plea Against Nikah Halala, Polygamy' *India Today* (30 August 2022) <https://www.indiatoday.in/india/story/muslim-women-challenge-nikah-halala-polygamy-before-supreme-court-1994488-2022-08-30> accessed 07 May 2025
[5] Dhananjay Mahapatra, 'Bigamy Offence for All: Supreme Court Seeks Centre's View' *Times News Network* (31 August 2022) <https://timesofindia.indiatimes.com/india/bigamy-offence-for-all-supreme-court-seeks-centres-view/articleshow/93890400.cms> accessed 07 May 2025
[6] 'Supreme Court to Hear Cases Challenging Validity of Polygamy & Nikah Halala in Muslim Personal Law in October; Issues Notice to NHRC, NCW, & NCM' *Live Law* (30 August 2022) <https://www.livelaw.in/top-stories/supreme-court-to-hear-cases-challenging-validity-of-polygamy-nikah-halala-in-muslim-personal-law-in-october-issues-notice-to-nhrc-ncw-ncm-207873> accessed 07 May 2025
[7] The Constitution of India 1950, arts 14, 15 and 21

constitutional validity of polygamy since two judges of the previous bench have now retired.[8] Polygamy refers to a marriage in which 'a spouse of either sex may have more than one mate at the same time.'[9] While the practice is not etymologically constrained to multiple wives and a single husband, referring in a neutral sense to one person having multiple spouses irrespective of gender, it is generally used in the former context. It is important to note that for this paper, we are referring to polygyny only, considering it is the only valid form of polygamy under Muslim Personal Law in India. A man can marry up to four wives, but a marriage with a fifth wife would be irregular, not void.[10] Shia Muslims, however, consider the fifth marriage as void, with this practice largely being incorporated by Sunni practitioners, who form the majority of Indian Muslims.[11] Muslim women cannot have a second marriage with a living spouse, and as polyandry is not sanctioned by Shariah, Muslim women cannot avail themselves of the same protection from criminal prosecution as Muslim men.[12]

With regard to Hinduism, the Hindu Marriage Act of 1955 lays down certain conditions for a Hindu marriage to be valid in the eyes of the law. One of these was that a Hindu could not marry while they had a living spouse, therefore outlawing polygamy.[13] Sections 82(1) and 82(2) of the BNS[14] (Bharatiya Nyaya Sanhita) outlaw polygamy by preventing remarriage during the existence of a living spouse, criminalising polygamy with a punishment that can extend up to seven years, while also making offenders liable to be fined. Concealment of the previous or first marriage from the person they subsequently attempt to wed is also a criminal act under Section 82(2). However, the promulgation of the Muslim Personal Law (Shariat) Application Act of 1937 put forth that, irrespective of customs or practices that contradict it, the Shariat or Sharia (Muslim Personal Law) will apply in cases of marriage where the parties are Muslim.[15] Section 82 of the BNS would not apply to Muslim men marrying up to four wives as the second, third

[8] Satya Prakash, 'Supreme Court to Set Up Fresh Constitution Bench to Hear Petitions Against Polygamy, "Nikah Halala"' *The Tribune* (20 January 2023) <https://www.tribuneindia.com/news/nation/supreme-court-to-set-up-fresh-constitution-bench-to-hear-petitions-against-polygamy-nikah-halala-472157> accessed 07 May 2025
[9] 'Polygamy Definition & Meaning' (*Merriam-Webster)* <https://www.merriam-webster.com/dictionary/polygamy> accessed 07 May 2025
[10] Dinshah Fardunji Mulla, *Mulla on Mohammedan Law* (7th edn, Sweet & Soft Publications 2022)
[11] 'Religion in India: Tolerance and Segregation' (*Pew Research Center*, 29 June 2021) <https://www.pewresearch.org/religion/2021/06/29/religion-in-india-tolerance-and-segregation/> accessed 07 May 2025
[12] Mulla (n 10)
[13] Hindu Marriage Act 1955, s 5
[14] Bharatiya Nyaya Sanhita 2023, ss 82(1) and 82(2)
[15] The Muslim Personal Law (Shariat) Application Act 1937

and fourth marriages of the man would not constitute a 'void' marriage under the wording of the section, and a bigamous marriage would be permissible under Shariah law.[16][17][18] This brings us to the permissibility of Polygamy in Sharia and the analysis of various logical derivations that can be made regarding it from Quranic injunctions and the Hadith.

THE QUR'ANIC ORIGINS BEHIND THE PERMISSIBILITY OF POLYGAMY AND THE INJUNCTIONS OF EQUITABLE TREATMENT ATTACHED TO THE PRACTICE ARE TOLERATED.

The Nature of Marriage in Islam and the Quranic verse on Polygamy: Marriage in Islam is a very important component of the faith. The Prophet Mohammad himself is believed to have said that a man completes one-half of his religion when he enters a marriage.[19] It is interpreted in a more legalistic sense in the faith as a contract rather than a sacrament.[20] The practice of polygamy (hereon referring only to polygyny) is mentioned once in the Quran in Surah 4, verse 3. A man can take up to four wives, provided that he can deal with all justly.

Sura 4 Verse 3: *If you fear that you might not treat the orphans justly, then marry the women who seem good to you: two, or three, or four. If you fear that you will not be able to treat them justly, then marry (only) one or marry from among those whom your right hands possess.*[21]

It is important to note both the context and connotations of this verse. It was revealed after the battle of Uhud, which left many Muslim widows and orphans without maintenance and support, and their due care was necessary. The context of the verse's revelation indicates that the practice is intended for the benefit of orphans and widows, not the man himself. We can also see that polygamy is not recommended, encouraged or compulsory; it is merely permitted in the special context of a war occurring in the context of a much older time.[22] Furthermore, the Quran also

[16] *Sarla Mudgal, President, Kalyani v Union of India* (1995) 3 SCC 635
[17] *Chand Patel v Bismullah Begum* (2008) 4 SCC 774
[18] *Lily Thomas v Union of India* (2000) 6 SCC 224
[19] *Ibid*
[20] *Ibid*
[21] Fajar Syarif, 'The Contextual Interpretation of Polygamy Verses in the Qur'an' (2020) 5(1) Journal of Islamic Studies and Humanities <https://www.researchgate.net/publication/362594837_THE_CONTEXTUAL_INTERPRETATION_OF_POLYGAMY_VERSES_IN_THE_QUR'AN> accessed 07 May 2025
[22] *Ibid*

specifies that in a scenario where just treatment is not possible, the man should marry only one woman.

The Application of Qur'anic Injunctions in Indian Law: In Indian law, the Dissolution of Muslim Marriages Act (1939) seems to incorporate this injunction into its understanding of polygamous marriages. Clause 2 of the Act lists various grounds upon the occurrence of which a Muslim woman becomes entitled to obtain a decree for the dissolution of her marriage. The treatment of the wife with cruelty by the husband is a valid ground to obtain a decree of dissolution.[23] This notion of 'cruelty' is looked at with an expanded understanding if the man has more than one wife, and does not treat one of his wives equitably to the injunctions of the Quran, it is considered to be cruelty.[24]

The legal understanding of applying Quranic injunctions and the perceptions of polygamy within the community itself were drawn out very strongly in the case of *Itwari v Smt. Asghari and Ors. 1959*.[25] The case dealt with a Muslim wife who alleged that cruelty was meted out to her by her husband after the taking of a second wife, and his countersuit for the restitution of conjugal rights after his wife filed for maintenance under Section 488 of the Code of Criminal Procedure, which is now mirrored in Section 443 of the Bharatiya Nagarik Suraksha Sanhita (BNSS). The Court speaks specifically of the 'injunction' of equitable treatment and justice, recognising that the Quran permits and does not encourage polygamy.[26] More than the recognition of Quranic injunctions, the judgment stressed the fact that polygamy is permitted and not 'encouraged' in the same paragraph, agreeing with many Muslim jurists who believe impartial treatment is a virtually impossible condition, thereby making polygamy a practice discouraged by Muslim Law. Another important case is '*Ayatunnessa Beebe v Karam Ali*', which holds that a Muslim wife, just by knowledge and initial acceptance of the second wife, does not let go of her right to divorce the husband, because the second marriage is a 'continuing wrong' to the wife.[27] Mohammedan Law by giving the first wife the right to dissolve her marriage rather than stay with her husband and his second wife, according to the court, is indicative that Islamic law would rather dissolve

[23] Dissolution of Muslim Marriages Act 1939, s 2(viii)
[24] Dissolution of Muslim Marriages Act 1939, s 2(viii)(f)
[25] *Itwari v Smt Asghari and Others* (196) AIR 1960 All 684
[26] Mulla (n 10)
[27] *Ayatunnessa Beebee v Karam Ali* (1909) ILR 36 Cal 23

the first marriage than compel a wife to share a husband. Thereby, polygamy is not essential to Islam but is merely tolerated with discouragement.

The Impossibility of the Fair Application of Qur'anic Injunctions in Modern Times: In the case of *Sophia Begum v Zaheer Hasan 1947*, the court recognised the spirit and intention of the Dissolution of Muslim Marriages Act 1939 and how it recognises the absence of equitable treatment of multiple wives by Quranic injunctions as grounds for cruelty and the dissolution of marriage. The court also recognised the purpose of this act was to 'ameliorate the lot of the wife' and called for the application of 'law in consonance with the spirit of the legislature.' The bench further went on to recognise the virtual impossibility of multiple wives in modern conditions. More importantly, it highlighted changing social conditions within the Islamic community. In today's Muslim society, a second wife would be a 'stinging insult' to the first, and in the absence of any cogent explanation, the court will presume that taking a second wife constitutes cruelty to the first.[28] Refusal by a wife to live with her husband on account of his second marriage does not deprive her of her maintenance under Section 488(3) of the Code of Criminal Procedure (Section 443 of the BNSS). In the case of '*Abdurahiman v Khairunneesa 2010*',[29] the parties are a husband and wife with three children. They begin to have marital problems, during which they have a fourth child. The husband, after the conception of the fourth child, takes a second wife, which he initially denies and then admits to at a later stage.

The court attempts to frame a standard to understand equitable treatment. It also attempts to decipher the Quranic understanding of polygamy, and how it tolerates polygamy, but observes that having a multiplicity of wives (up to four) is only in the case that their just treatment is possible. Failing this, monogamy is recommended. The court also stresses the usage of 'equitable' in place of equal. Equal treatment is not the same as equitable treatment, because while 'equal' could be understood in a material sense, equity incorporates intangible aspects like affection. The context of the Quran permitting polygamy (gender ratio, number of orphans and widows and their need for care) is also considered in the judgment, and the court leaves it up to the wife to decide if she is being treated equitably. Quranic injunctions, considered with the context of the verse permitting polygamy, seem to intend for the practice to be exercised in a

[28] *Sophia Begum v Syed Zaheer Hasan Rizvi* (1947) AIR 1947 All 16
[29] *Ambattuparambil Abdulrahman v Khairunnisa* (2010) Kerala Appl No 82 /2004

manner that guarantees the utmost equitable treatment to a woman, and only in times where it is of dire necessity.

ANALYSING POLYGAMY IN THE CONTEXT OF HOLDING SHARIA ACCOUNTABLE TO CONSTITUTIONAL PROVISIONS

Article 25 of the Indian Constitution entitles all citizens to the right to freely 'profess, practice and propagate' their religion.[30] The Article has been used to buttress arguments in favour of religious practices that are detrimental to women's rights, as seen in the case of a Hindu man approaching the court arguing that any restriction on his taking of a second wife conflicts with the rights guaranteed to him under the constitution.[31] Article 25, especially section (1), can be broadly interpreted to deal with the rights of individuals. Therefore, the question also arises as to what extent the understanding of a faith by dominant voices within the community can be imposed on those who do not limit their faith to those interpretations. It would be a disservice to understand a defence for polygamy concerning Muslim males at the cost of rights for Muslim women, as a fight for the rights of the community as a whole. Moreover, it is only Muslim men, and not those belonging to any other religious denomination in India, that can legally enter into a marital relationship with more than one woman. In the light of all these considerations, Articles 14 and 15 of the Constitution can be found at the forefront of subjecting the practice of polygamy to the test of fundamental rights. Putting Muslim women at a disadvantage while giving Muslim men a unilateral right to more than one spouse may constitute a flagrant contravention of Articles 14 and 15, which bar the state from denying equality before the law or equal protection of the law on the grounds of sex. As polygamy is only legally permitted for Muslims, Muslim women are being subjected to what has been explained previously as a harmful and sexist practice, while women of other denominations are not. This would again bring forth the question of Articles 14 and 15, this time, on the grounds of whether Muslim women are being discriminated against because of their religion.

The Sabarimala Verdict: In the case of '*The State of Bombay v Narasu Appa Mali 1951*',[32] the Court critically laid down for the first time the answer to whether personal laws stood the test of constitutionality and, more importantly, the question of them being subject to

[30] The Constitution of India 1950, art 25
[31] *Ram Prasad Seth v State of UP and Ors* (1957) AIR 1957 All 411
[32] *The State of Bombay v Narasu Appa Mali* (1951) 53 Bom LR 779

fundamental rights as defined in 'Article 13'. The court, in its analysis of Article 13, held that the phrase 'laws in force' did not apply to personal laws, henceforth exempting them from being tested under Part III (fundamental rights) of the Constitution. In a discussion, Justice D.Y. Chandrachud opined that putting personal law outside the domain of being tested against fundamental rights was a flawed understanding of the law.[33] In 2019, in the case of '*Indian Young Lawyers Association v State of Kerala* (2019)', Justice D.Y Chandrachud observed that all freedoms espoused in Part III of the Constitution share a common thread of co-existence and found that the exclusion of customs and usages from laws in force would be akin to decrying the primacy of the Constitution. [34] Considering this landmark judgment of the court, the non-inclusion of uncodified religious law like the Shariah, from 'laws in force' and not allowing them to be subject to the test of constitutionality, is a matter for the Court that becomes all the more pressing and concerning.

The Implications that the Case of '*Shayara Bano v Union of India'* holds for the Codification and Constitutionality of Islamic Personal Law: There are three separate judgments to consider in the Triple Talaq Judgment case of *Shayara Bano v Union of India,*[35] split between the five judges on the Supreme Court Bench- Justices Nariman and Lalit authoring one and Justices Nazeer and Khehar authoring another, Justice Joseph writing his own. The important consequences of this 2:2:1 split are explained very succinctly by constitutional law scholar Gautam Bhatia.[36] Considering how all statutes can be challenged on allegations of being violative of fundamental rights, the question Triple Talaq gave rise to was whether it was even codified, not being explicitly mentioned in any statutes. A majority of three judges held that the Shariat Application Act of 1937 did not codify Triple Talaq, however, Justice Joseph reasoned that it was not a part of Muslim personal law or an essential or integral part of Islam and it cannot avail of protection under Article 25 which provides for the freedom to practice, profess and propagate religion. By ignoring the question of whether uncodified personal law is subject to constitutional restrictions, Justice Joseph leaves ambiguity with regard to the entirety of Islamic

[33] Krishnadas Rajagopal, 'With Sabarimala Verdict, "Ghost of Narasu" Is Finally Exorcised' *The Hindu* (28 September 2018) <https://www.thehindu.com/news/national/justice-chandrachud-ends-the-unchallenged-reign-of-a-bombay-hc-verdict/article61528629.ece> accessed 07 May 2025
[34] *Indian Young Lawyers Assn v State of Kerala* (2019) 11 SCC 1
[35] *Shayara Bano v Union of India and Ors* (2017) 9 SCC 1
[36] Gautam Bhatia, 'The Supreme Court's Triple Talaq Judgment' (*Issues in Contemporary Constitutional Law*, 22 August 2017) <https://indconlawphil.wordpress.com/2017/08/22/the-supreme-courts-triple-talaq-judgment/> accessed 07 May 2025

personal law, which derives its legitimacy from the Shariat Application Act and not explicit codification.[37] Polygamy and Nikah Halala, both under the ambit of marriage, also currently derive legitimacy from the same Act. The Triple Talaq judgment, as G. Bhatia explains,[38] provided a powerful opportunity to reconsider Narasu Appa Mali, which would have been a 'broader route' to overturn or invalidate the practice of 'Triple Talaq' and review what Praharsh Johorey and many others in the legal field consider an erroneous judgment with dangerous implications for women of all religions. While Justice Nariman does call for a review of 'Narasu Appa Mali', he avoids the question of personal laws and the test of constitutionality.[39]

Analysis of Polygamy is an Essential Religious Practice: The ruling that Triple Talaq was not codified under the Muslim Personal Law (Shariat) Application Act of 1937 has implications for the ruling on polygamy as well, which derives its applicability and legality in India from the act. By precedent, polygamous marriage and its permissibility are not codified by the Application Act, so the question before the court will be whether it constitutes an essential and integral part of Islam, receiving protection under Article 25. Polygamy has to stand the Essential Religious Practices test because failing the test would pave the path for the practice to be struck down, even if it is held to be uncodified in line with the Triple Talaq judgment. The test of ERP[40] (Essential Religious Practices) has been highly criticised by many jurists as it compels secular courts to make theological judgments and tends to be highly inconsistent. Moreover, it blocks practices deemed 'essential' from undergoing tests of constitutionality, giving dangerous leeway to religious irrationality. The test originates from a speech by Dr B.R Ambedkar on his understanding of how Article 25 is to be interpreted. In the case of '*Sardar Syedna Taher Saifuddin Sahed v State of Bombay*',[41] the court laid down that the texts and tenets of the faith are what must be used to determine if a practice is essential to the religion or not. The Supreme Court in '*Khursheed Ahmad Khan v State of U.P and Ors'* ruled that polygamy is not an integral part of religion and monogamy was a reform within the power of the State under Article 25.[42] This appears to be a break from what previously appeared to be a general hesitancy on the part

[37] The Muslim Personal Law (Shariat) Application Act 1937
[38] Bhatia (n 36)
[39] *Shayara Bano v Union of India* (2017) 9 SCC 1
[40] *Ibid*
[41] *Sardar Syedna Taher Saifuddin Saheb v State of Bombay* (1962) AIR SC 853
[42] *Khursheed Ahmad Khan v State of UP and Ors* (2015) 4 SCC 105

of the judiciary to weigh in on Islamic Personal Law. [43] The Court held that Article 25 also allowed government interference like legislation within its ambit in specific cases like the provision of 'social welfare and reform' under 25 2(b). Polygamy, not being an essential practice of Islam, as it is only permitted and not obligated or mandated, is not exempt from state interference. The argument of the Jamiat-Ulama-i-Hind, which is defending both polygamy and Nikah Halala in the most recent case to be heard by the Supreme Court in the month of October 2022, is that personal laws and their constitutional validity cannot be challenged. This exact argument was put forth by them in the case of Triple Talaq, a judgment that left the question of constitutionality ambivalent but did strike down the practice itself. The argument that it cannot be challenged, therefore, is dubious. The court itself did not pass judgment on the constitutionality or the applicability of polygamy and nikah halala, but did note the need for the practices to be inspected. Justice Joseph, in his judgment, notes the sanctity accorded to matrimony in Islam. However, he also noted that triple talaq is against the basic tenets of the Holy Quran, therefore violating Shariat. Polygamy is slightly different in this aspect, considering that it is directly mentioned in the Quran (4:3) as already discussed. While it is not encouraged, it being permitted in the primary source of Islamic law cannot be ignored. In the judgment of Justice Nariman J and Justice Lalit J, they take note that while *talaq-ul-biddat* was permissible under Islamic law, it was strongly disapproved. The situation with polygamy is the same, with technical permissibility but conditions that implement by Quranic injunctions virtually impossible.

DOMESTIC AND INTERNATIONAL OBLIGATIONS

Compliance with the Ideals of the Constitution: An argument the petitioners in the Shayara Bano judgment utilised was that many Islamic nations had prohibited the practice because it was un-Islamic.[44] Referring to the laws of foreign Muslim nations may have implications for the judicial pronouncement on Polygamy because out of many Muslim nations worldwide, only Turkey and Tunisia have banned the practice completely. Many others, like Egypt, Algeria, Jordan, Sriya, Morocco and more, have simply restricted the practice. [45] The

[43] Nathalie Gunasekera, 'The Supreme Court of India Weighs in on Muslim Personal Law' (*Islamic Law Blog*, 08 September 2020) <https://islamiclaw.blog/2020/09/08/the-supreme-court-of-india-weighs-in-on-muslim-personal-law/> accessed 12 May 2025
[44] Harish V Nair, 'Triple Talaq Is Not Fundamental to Islam, Argues Shayara Bano as Supreme Court Begins Hearing' *India Today* (12 May 2017) <https://www.indiatoday.in/mail-today/story/triple-talaq-is-not-fundamental-to-islam-argues-shayara-bano-976596-2017-05-12> accessed 12 May 2025
[45] Law Commission, *Preventing Bigamy via Conversion to Islam: A Proposal for Giving Statutory Effects to Supreme Court Rulings* (Law Com No 19, 2009)

process of understanding the application of Sharia in India using international Muslim jurisprudence is a precarious one because Sharia and its application here are deeply grounded and connected to our constitution, deriving power and legitimacy from it. As legal scholar Faizan Mustafa succinctly says, "The touchstone of judging such laws should be our own Constitution."[46]

Ensuring Gender Justice: Polygamy in conflict with Article 15, which guarantees equality by the state on many grounds, one of which is gender, is an important aspect to consider as well. The visible gender imbalance in the practice, with men being permitted to take multiple wives, but women not being given the same freedom, is visible. This argument holds ground, considering the strongly patriarchal nature of the practice, despite the original intention behind it being permitted. Owing to the nature of the practice where a greater degree of control is exerted over women, studies point to greater chances of domestic abuse within a polygynous household.[47] Cases of exploitation of the practice, often to a violent extent, can be seen in cases like '*K.P.Y Siddhique v Amina 1996*',[48] where the respondent was the fourth wife of the appellant and the marriage lasted less than a year. She sought dissolution of the marriage on the grounds of cruelty, which was granted and then challenged. Here, she was made to abort two children, physically tortured and told that her place in the house was one akin to domestic help and not a wife.

Dominant Voices within the Muslim Community do not Necessarily Represent the Voices of the Marginalised within those Communities: The All-India Muslim Personal Law Board (AIMPLB) had defended polygamy previously, calling it a social need and 'blessing' that would serve to prevent a husband from divorcing his wife to marry another one or engaging in extramarital affairs.[49] The scripture on the matter, as already mentioned, seems to permit the practice with the safety of orphans and widows in mind, and not to satisfy the sexual urges of the men marrying multiple wives. The government's response to an affidavit filed by the AIMPLB

[46] Ajaz Ashraf, 'As Supreme Court Decides on Banning Polygamy, a Look at How Muslim Countries Deal with the Practice' *Scroll* (30 March 2018) <https://scroll.in/article/873813/as-supreme-court-decides-on-banning-polygamy-a-look-at-how-muslim-countries-deal-with-the-practice> accessed 12 May 2025
[47] Rose McDermott and Jonathan Cowden, 'Polygyny and Violence Against Women' (2015) 64(6) Emory Law Journal <https://scholarlycommons.law.emory.edu/elj/vol64/iss6/4/> accessed 12 May 2025
[48] *KP Y Siddhique v Amina* (1996) AIR 1996 Ker 140
[49] 'Polygamy a Blessing, Not Curse, Says AIMPLB; Defends Triple Talaq' *Business Standard* (02 September 2016) <https://www.business-standard.com/article/news-ians/polygamy-a-blessing-not-curse-says-aimplb-defends-triple-talaq-116090201204_1.html> accessed 12 May 2025

during the *Shayara Bano* case rings true even today- 'any practice that leaves women socially, financially or emotionally vulnerable or subject to the whims and caprice of menfolk is incompatible with the letter and spirit of Articles 14 and 15 of the Constitution'.[50] Moreover, bodies like the AIMPLB are not necessarily the voices of the Muslim Community in India as a whole, but may reflect the ideas of influential voices within the community while sidelining those of others. The question that then arises is, why is the AIMPLB necessarily deemed to be the spokesperson or the sole voice for all sections of the Muslim community? The very constitution of the AIMPLD is heavily steeped in patriarchal and class-based power structures. As Dr Faiyaz Ahmad Fyzie, a social activist from the community, writes, the board does not have a 'constitutional, moral or Islamic basis' to represent all Muslims and simply protects the status quo, which is the interests of Ashraaf Muslims while portraying their fight as the fight of all Indian Muslims.[51] Moreover, a survey administered by the Bharatiya Muslim Mahila Andolan in 10 Indian States brought surprising information to light. An overwhelming 91.7 per cent of the women surveyed have denounced the practice of polygamy.[52] The Law Commission in its 277th report (2009) shines a light on the strict conditions behind permitting polygamy in Islam, as well as the hindrances to their application today in the modern world. It also speaks of the general disfavour towards the practice within the community itself, with 'religious sensitivities' preventing legislative reform.[53]

International Obligations: The practice of polygyny is in contravention of several international laws and not in line with many international obligations. CEDAW, [54] or the Convention on the Elimination of All Forms of Discrimination against Women under Article 5(a), necessitates states to modify 'social and cultural patterns of conduct of men and women' to facilitate the elimination of prejudice from customs and practices rooted in misogyny or gendered functions. India signed CEDAW on the 39th of July 1980 and ratified the same on the

[50] Govind Bhattacharjee, 'Triple Talaq, Polygamy Violate Fundamental Rights of Indian Muslim Women' (*Dawn*, 19 October 2016) <https://www.dawn.com/news/1290751> accessed 15 May 2025
[51] Faiyaz Ahmad Fyzie, 'The AIMPLB Is No Defender of Muslim Personal Law. It Doesn't Even Represent All Muslims' *The Print* (26 April 2022) <https://theprint.in/opinion/the-aimplb-is-no-defender-of-muslim-personal-law-it-doesnt-even-represent-all-muslims/931203/> accessed 15 May 2025
[52] Aarti Dhar, 'Muslim Women Want Reforms in Personal Laws, Study Reveals' *The Wire* (20 August 2015) <https://thewire.in/gender/muslim-women-want-reforms-in-personal-laws-study-reveals> accessed 15 May 2025
[53] Law Commission, *Preventing Bigamy via Conversion to Islam: A Proposal for Giving Statutory Effects to Supreme Court Rulings* (Law Com No 19, 2009)
[54] Convention on the Elimination of All Forms of Discrimination Against Women 1979

9th of July 1993. Polygynous marriages also contravene Article 3 of the International Covenant on Civil and Political Rights, which guarantees equal rights for men and women and is found to be discriminatory towards women by the Committee on the Elimination of Discrimination against Women and the Human Rights Committee.[55]

Harmonious Construction: Seeing the Quran and the Constitution as antagonists locked in a legal battle for dominance is harmful to creating laws that further the goals of gender justice and basic rights for all. There can appear, in this case, to be a conflict between provisions of Muslim Personal Law as interpreted in India and the Fundamental Rights enshrined in Part III of the Constitution. However, a deeper analysis of this superficial understanding opens the door to the possibility of harmonious construction between the Islamic understanding of polygamy and the gender justice the Constitution staunchly aims to provide to every Indian citizen.

The Supreme Court in the case of '*Commissioner of Income Tax v M/S Hindustan Bulk Carriers*'[56] put forth principles that can regulate the rule of harmonious construction in the interest of courts, minimising situations of conflict arising from disputing legal provisions and attempting an interpretation of them to 'harmonise' them in place of overturning one of the two. The provision of one section cannot be utilised to overthrow the provision of another section unless there is absolutely no ground on which the court can find a way to settle their differences, despite attempts made to do so. If reconciliation of differences is virtually impossible, there must be interpretation in a manner that both provisions are given effect to as far as possible. While doing so, courts must take into consideration that any interpretation that would disregard one provision completely is not in line with the spirit of harmonious construction. In the section on Quranic interpretation, it was put forth that the background context for polygamy, along with the injunctions in the Quran, makes polygamy virtually unsuitable for current times, just using the primary source material of Sharia Law alone. An inability to guarantee complete equitable treatment with prevailing social views and norms on marriage as monogamous, along with a lack of necessity to ensure provision for widows and orphans through marriage, provides almost no grounds on which any argument for polygamy as necessary for the practice of the Islamic faith can be advanced. The Quranic concepts associated with polygamy- equity and the protection of women- are the same goals the constitution of India seeks to advance in its provision of

[55] *Ibid*
[56] *Commissioner of Income Tax v M/S Hindustan Bulk Carriers* (2002) 7 SCC 705

fundamental rights. To outlaw polygamy would not be the victory of the Constitution over the Quran, but a tangential working of both to further the equality of the sexes and protect women from an oppressive practice that has no place in our times.

CONCLUSION

It is evident that the practice of polygamy, although permitted under Muslim Personal Law, is neither essential nor compatible with the ideals of gender justice and equality enshrined in the Indian Constitution. The Qur'anic allowance for polygamy was context-specific, intended for a time and circumstance that no longer exists in the modern world. Today, the conditions of equitable treatment, which are a prerequisite for the permissibility of polygamy under Islamic law, are virtually impossible to meet. Personal laws cannot remain insulated from constitutional scrutiny, particularly when they perpetuate gender-based discrimination. Polygamy fails both the essential religious practices test and the constitutional mandate for equality. The goal must be to uphold the dignity and rights of Muslim women, who are often sidelined in the debates by dominant voices within the community. Outlawing polygamy would not represent a conflict between religion and the Constitution but would instead reflect a harmonious advancement of both, working together to achieve justice and equality for all. The road ahead must prioritise the lived realities of Muslim women and seek to meaningfully secure their constitutional rights.