

ABOLITION OF POLYGAMY IN HINDU LAW

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ABSTRACT

The article starts with discussing the position of women in Vedic Era and Ancient India in respect of her marital rights then progress to the discuss the status of polygamy through various periods and how it came to be declared as unlawful. The article then discuss the effect which the declaration of polygamy as an unlawful act had on the Hindu society and the position of a Hindu woman. It analyses the effectiveness of the law in eradicating polygamy from Hindu society. The article raises the issue that the prohibition of polygamy did not result in more equality for a Hindu woman in the patriarchal Hindu society and rather made her position more difficult due to the deep rooted social norms and realities which affect her decision making in respect to her actions after marrying for a second time.

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Introduction

Polygamy/Bigamy is defined by the India Penal Code as: Whoever, having a husband or wife living, marries in any case. The practice of polygamy for religions except for Muslims was banned by the Hindu Marriage Act, 1955. This article discusses the effect which the Hindu Marriage Act of 1955 had on the status of a Hindu woman in the society and addresses the questions that Whether the Hindu Marriage Act, 1955 had been effective in eradicating polygamy from the Indian Hindu society and also discusses whether the abolition of polygamy in Hindus has resulted in more equality for a Hindu woman or has worsened her position from that which was before the passage of the Act.



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POLYGAMY IN VEDIC INDIA

The practice of polygamy was quite common in Ancient India¹. There are many mentions of polygamy being practised and allowed by the society in the Hindu scriptures and Vedic texts. It is mentioned in Manusmriti that

“For the first marriage of twice-born men (wives) of equal caste are recommended; but for those who through desire proceed (to marry again) the following females, (chosen) according to the (direct) order (of the castes), are most approved.”²

And also mentioned in Mahabharat during a conversation between Yudhishtira and Bhishma that

“A Brahmana can take three wives, a Kshatriya can take two wives and as regards the Vaishya, he should take only one wife from his order.”³

There are many instances of Hindu gods having more than one wife like Ganesha had two wives and Krishna famously wedded 1,600 women. Though there is no clear allowance given to polygamy in Hindu mythology and various text provide contrasting views but the existence of such practices in the religious text show that polygamy was not discouraged as a practice during the Vedic period. The practice of polygamy was prevalent among the ruling class the Kshatriyas. The reasons could be political gain, wealth or social status. The multiple marriages mentioned in the myths show the objectification of women and the sole purpose of a second marriage having some material benefits for the husband this resulted in the ill-treatment of a woman as could be seen in various instances in the mythology. One such instance could be seen in Ramayan:

Kausalya's lament when Rama is exiled is as much about herself as it is about her son's misfortune. She says that she had never had Dasarata's heart and so waited her entire life to get the respect and prestige accorded to the mother of the king. But with Rama's exile, even that glorious position has been lost to her. Dasarata's remorse at succumbing to the younger and lovelier Kaikeyi's outrageous whim does take him back to Kausalya.⁴

And also in Mahabharat:

Kunti chooses Pandu at her swayamvara and Pandu later marries Madri in order to extend the boundaries of his empire. Madri looks down on Kunti for being from a cattle-herding family (she is a Yadava) and Kunti has to live with the disdain from her co-wife. Cursed Pandu persuades Kunti to share her boon for producing sons with the gods so that his favoured wife would also have the pleasures of motherhood. Later, Pandu can no longer contain his desire during the sap-rich spring

1 Sukumari Bhattacharya, 'The Position of Women in Vedic Society', India International Centre Quarterly,

Vol. 19, No. 4 (WINTER 1992), pp. 40-5

2 Manusmriti 3.12

3 Mahabharat-Ansusan Parva, Chapter 44

4 Arshia Sattar, 'King's wife, but not Queen of his heart' <<https://www.thehindu.com/society/history-and-culture/epics-and-myths-highlight-the-many-wives-of-kings-and-their-rivalries/article18822660.ece>> accessed 20th October 2018

time. It is Madri with whom he chooses to sleep. When he has to die as a result of his sexual act, Madri claims the right to become sati. Kunti is left with five sons, living as an appendage to power in the palace and the kingdom of which she could have been queen.⁴

These instances in the Hindu religious texts clearly highlight the discrimination faced by women due to the practice of polygamy and their suppression due to the prevalent patriarchy and hegemony which found its basis in the support it garnered from the religious scriptures.

Though there are many recallable instances of men marrying multiple wives the same could not be seen in case of women except for the case of Draupadi who was married to Pandavas, the five brothers. The practice of bigamy for women is prohibited by the ritual-pseudo logic: “Because two pieces of cloth are twined around one stake and not vice-versa, therefore a woman may not take two husbands, but the man can take two wives.”⁵

Such mentions in the religious texts encouraged the practise of polygamy in the society and reduced it to the extent of man and his pride. Polygamy more accurately polygyny as polygamy for women was not allowed resulted in the culture of oppression of objectification of a woman as the act of marrying multiple wives resulted in the increase of glory, wealth and the social status of an individual this is revealed in the passage, “That is prosperity if a man’s wives are fewer than his cattle”. One can notice that cattle and wives are treated in the same light as regards to measuring the affluence of a person.⁵

The practice of polygamy in the Vedic period gave rise to being practised in the society in the medieval India, during this time there was shift in the nature and reasons for the practice of polygamy in the Indian society as it came to be practised primarily by the ruling class to extend the boundaries of their empire or to establish peace through matrimonial alliances. Although the Vedic texts do not allow for polygamy explicitly but the mention of so many instances where it is being practised has resulted in it being accepted by the society.

WOMEN’S MOVEMENT

The practice of polygamy surrounded itself with the notion of mother hood of an Indian woman. The practice of motherhood and its status was influenced by the practices and customs in which motherhood was made an inviolable space as a crucial parameter to determine the ultimate identity and worth of Indian women. The identity of motherhood thus completely overshadowed all other roles which an Indian woman can play and restricted her roles only to being a mother or a wife to ensure this she was raised to be as an individual who will become an ideal mother in the future.⁶ The image of a woman as a mother overshadowed all her other identities.

4 Arshia Sattar, ‘King’s wife, but not Queen of his heart’ <<https://www.thehindu.com/society/history-and-culture/epics-and-myths-highlight-the-many-wives-of-kings-and-their-rivalries/article18822660.ece>> accessed 20th October 2018

5 Sukumari Bhattacharya, ‘The Position of Women in Vedic Society’, India International Centre Quarterly, Vol. 19, No. 4 (WINTER 1992), pp. 40-5

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6 Chitra Sinha, “Images of Motherhood”, EPW [2007] Vol. 42, No. 43 , pp. 49-57

The notion of a woman as a mother got more established during the Mughal rule where the patriarchy made a woman unnoticeable under the custom of keeping harem.

The Indian Society began to show changes in the nineteenth century. This age saw the rise of awareness among the masses and the social practices which were prevalent since ancient time came to be analysed under the lens of the learned reformer. The Indian woman started to break out of her traditional gender role as a mother or a wife. While the British did not intervene in the socio-religious practices of the Indians they also projected that the colonial rule for the reformation of the backward Indian society.

Beginning of the twentieth century women came into the public sphere and their concerns were started to be given heed to due to the nationalist struggle. Active participation in the freedom movement gave women new perspective over the issues concerning them. There was growing realization that the ideals of marriage could not uphold without giving women rights as observed in The Report of the Hindu Law Committee, 1941 that “But a lofty ideal of marriage ill consorts with a low standard of property rights: if a widow is expected to be true to her deceased husband till death, she must be assured of the means of subsistence during her widowhood.”⁷

Some significant changes in the society were observed during the 1940s and 1950s. There were two contrasting views present in the society at that time one was of the liberal outlook of women opposed by the orthodox outlook of the conservative Hindu factions which wanted to preserve its ancient ideals as against the women who wanted to reform the Indian society and ensure some basic rights for themselves. The government acknowledging the movement tried to reform the Hindu society by forming a Hindu Law Committee to look into the Hindu Law, mainly the property and the rights relating to marriage.

The process of lawmaking increased significantly during 1950s which was an extremely fertile phase in Indian socio-legal sphere. The law reforms of 1955 and 1956 saw intense debates in the legislature, bar associations and social and religious organisations not merely getting restricted to the lawyers. As a result of this vigorous debate on the Hindu Code Bill was passed which made significant changes in the Hindu socio-legal scenario.

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THE HINDU CODE BILL

The Hindu Law prevalent in the society traced its origin to divine scriptures like Manusmriti. When Britishers started codifying the Hindu law they accepted the embedded patriarchal biases except for certain extremely violent acts. As a result they were in favour of reforming practices like Widow remarriage and sati but was reluctant in doing so as they thought it would constitute interference with the religious practices of the society. The banning of sati and widow remarriage resulted in an intensification of pressures to bring changes in the legal status of women. In 1941 a committee was set up by the government to inquire into the problems of legal reform under the chairmanship Sir B.N.Rau. The committee drafted the bills relating to the Hindu intestate succession and Hindu marriage. The two houses of the parliament then through joint committee recommended the revival of the Rau committee to codify the Hindu law. The committee when re-established in 1944 travelled the country to elicit public opinion on the two bills. The bill was introduced in 1946 but was passed. The bill was reintroduced after Independence in 1947 and faced strong opposition from the conservative Hindu groups, the passage of the law was prevented by the delaying practices.

7 Chitra Sinha, Debating Patriarchy: The Hindu Code Bill Controversy in India (1941-1956)

The central and provincial legislature passed many laws aiming to improve the condition of women during this time like The Hindu Marriage Disabilities Removal Act of 1946 legalised marriage between Hindus belonging to the same clan. The Child Marriage restraint Act of 1949 raised the marriage for girls from 14 to 15 years. Bigamy was outlawed in the state of Bombay by the Prevention of Hindu Bigamous Marriage Act of 1946.

The report of the Hindu Law committee, 1947 acknowledged that there was considerable opposition to the Bill but also underlined the fact that there was support for the bill also. The Hindu society could no longer be reformed by making gradual changes but had to be reformed by enacting legislations. The committee forwarded a draft to the legislature that the revised draft of the Hindu Code Bill with changes as the legislature may make will earn the public support. The Hindu Code Bill according to the Report of the Hindu Law Committee, 1947 garnered a support of 33.4 % all over the nation.

THE HINDU CODE BILL AND POLYGAMY

The Hindu Code Bill decreed that the husband will not take another wife while she(his first wife) is living. Hitherto polygamy has been recognized under the Hindu law, although in practice economic factors and “enlightened conscience” have severely restricted its exercise.⁸ The abolition of polygamy by the Hindu Code Bill received 43.10% public support according to the Report of The Hindu Law Committee, 1947. Dwarkanath Mitter of the committee recommended that the monogamy law should not be introduced taking into consideration the public opinion against it. The law of monogamy received strong support in Bombay and Madras but in the rest of the country including Calcutta the support was not strong.

The abolition of polygamy by the Hindu Code Bill came to be extensively debated. The women's organisation supported the abolition of polygamy, which according to them was the key to the dignity of women. Women felt that desertion was associated with polygamy and detrimental to the interests of the poor. Leelabai Phadke and B.N. Gokhale felt that, “Monogamy should be a strict rule without any exceptions” Some women felt that in case first wife not begetting any children a man should be allowed to marry another wife the solution to this as proposed by the women supporting polygamy was adoption. P.V. Kane felt that polygamy should be allowed on economic grounds, a man may be allowed to marry if that relieves economic hardship for the family in form of additional hands. L.K. Barve was of the view that polygamy should be permitted in case of bareness for more than twelve years and in case the wife was seriously ill.

The opposition of the bill was on the basis that it gave rights to women which were far more than that given by the existing statutes. Resentment of such approach could be observed both in the society and in the parliamentary debates which happened during the passage of the bill.

Though the Hindu Code Bill abolished polygamy by the passing the Hindu Marriage Act, 1955 whether it has been effective in the practice from the Hindu society is debatable as there are large parts in North-Eastern and Southern India where polygamy is still a prevalent practice. The passing of law in itself could not result in the eradication of a practice until there is implementation on it.

8 Chitra Sinha, Debating Patriarchy: The Hindu Code Bill Controversy in India (1941-1956)

The main purpose of the Hindu Code Bill was to bring more equality in the Indian Society and whether the law has achieved its purpose or has failed to do so or has it worsened the position of a Hindu woman rather than improving it.

POLYGAMY IN INDEPENDENT INDIA

The practice of polygamy for Hindus was abolished by the Hindu Marriage Act, 1955 but it is still prevalent in the Hindu society. According to the survey conducted by the Indian government in 1974 the practice of polygamy is more prevalent among Hindus(5.8%) than Muslims(5.6%) as against the popular belief. The Muslim women are protected by the law and given rights in regard to the practice of polygamy but the same is not in the case of the Hindu woman which rather than improving her position worsens it.

The ambiguity in the law arising due to the all forms marriages and customs allowed gives men the opportunity to marry a second wife and also evade the responsibility of maintaining a second wife. Hindu laws and customs allowed bigamous marriage and provided both the women right over maintenance and residence but after the introduction of monogamy such rights were taken away from them. According to Flavia Agnes the Hindu society has never been and never was monogamous in nature the introduction of the practice has resulted in problems for the women who are married to a husband who already has a wife. After the passage of the law the practice of polygamy has shifted from the affluent class to the poor and deprived. This has resulted in their oppression, these women when face violence or are deserted by the husband do not have an effective remedy under the law. Due to social stigma and fear of abandonment women accept their husband's second marriage. The reasons of marrying a second wife still remains the same that is progeny, as is shown in the survey conducted by the 2005-06 National Family Health Survey which shows that the husband's of women who can not bear children or don't have children are more likely to have more than one wife(2.51 per man) than the women who at least have one child(1.80).

The image of a woman as a mother is so deep-rooted in the Indian society that a woman who can not beget children or has given birth to consecutive girl child feels guilty and accepts the second marriage of her husband as it is seen as a sacrifice which will pay for the sin she has committed which is of giving birth to a male child or begetting no children at all. This happens due to the practice of adoption not being so popular among the poor masses due to its strict procedures which are not understandable to an uneducated person resulting in multiple marriage for the continuation of their lineage.

CONCLUSION

Though the Hindu Marriage Act, 1955 was passed with the motive to bring more equality for a Hindu woman in the Indian society it did not result in equality for the Hindu woman but rather

made her position more difficult due to the deep-rooted patriarchal notions prevalent in the society the law shows that it was enacted not with the purpose of providing equality to woman but rather preserving the institution of marriage which is considered sacred in the eyes of lawmakers. The law has many loopholes which provide means for men to exploit it to satisfy their needs of marrying another woman or to abandon her first wife as there are no effective remedies under the law.

It is undisputable that polygamy as a practice is unjust and should be abolished, such abolition should come in consideration of the societal conditions prevalent during the time and should effectively protect the woman who has been married second time so as the purpose of law is not defeated that is bringing in more equality for women.

