The law on polygamy among religious groups in India

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Why in News: Assam Chief Minister Himanta Biswa Sarma 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.

Practice of polygamy

Polygamy is the practice of having more than one married spouse — wife or husband. The issue is governed both by personal laws and the Indian Penal Code (IPC).

Traditionally, polygamy — mainly the situation of a man having more than one wife — was practised widely in India. The Hindu Marriage Act, 1955 outlawed the practice.

IPC Section 494 (“Marrying again during lifetime of husband or wife”) penalises bigamy or polygamy. The section reads: “Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

This provision does not apply to a marriage which has been declared void by a court — for example, a child marriage that has been declared void.

The law also does not apply if a spouse has been “continually absent” for the “space of seven years”. This means a spouse who has deserted the marriage or when his or her whereabouts are not known for seven years, will not bind the other spouse from remarrying.

Prevalence of polygamy 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.

Regulation of Polygamy in India

Generally, the first wife files a complaint that her husband has remarried. The court will have to look into whether the husband has entered into a legally valid second marriage.

This means that the second marriage would have to be performed as per prescribed customs, and the penal provision will not apply for adulterous relationships that do not qualify as valid marriages under the law.

In Kanwal Ram and Ors v The Himachal Pradesh Administration (1965), the Supreme Court reiterated the legal position that the standard of proof must be of marriage performed as per customs. “In a bigamy case, the second

marriage as a fact, that is to say, the ceremonies constituting it must be proved…"

Section 495 of the IPC protects the rights of the second wife in case of a bigamous marriage. It reads: "Whoever commits the offence defined in the last preceding section (i.e. Section 494) having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Provisions under religious law

Under Hindu law

After Independence, anti-bigamy laws were adopted by provincial legislatures including Bombay and Madras.

The Special Marriage Act, 1954, was a radical legislation that proposed the requirement of monogamy — subsection (a) of Section 4 of the SMA ("Conditions relating to solemnization of special marriages") requires that "at the time of marriage…neither party has a spouse living".

Parliament passed the Hindu Marriage Act in 1955, outlawing the concept of having more than one spouse at a time. Buddhists, Jains, and Sikhs are also included under the Hindu Marriage Code. The Parsi Marriage and Divorce Act, 1936, had already outlawed bigamy

Section 5 ("Conditions for a Hindu marriage") of the Hindu Marriage Act lays down that "a marriage may be solemnized between any two Hindus, if…[among other conditions] neither party has a spouse living at the time of the marriage".

Under Section 17 of the HMA bigamy is an offence, "and the provisions of sections 494 and 495 of the Indian Penal Code, 1860, shall apply accordingly".

However, despite bigamy being an offence, the child born from the bigamous marriage would acquire the same rights as a child from the first marriage under the law.

A crucial exception to the bigamy law for Hindus is Goa, which follows its own code for personal laws. So, a Hindu man in the state has the right to bigamy under specific circumstances mentioned in the Codes of Usages and Customs of Gentile Hindus of Goa.

These circumstances include a case where the wife fails to conceive by the age of 25 or if she fails to deliver a male child by the age of 30. However Goa Chief Minister Pramod Sawant has said that the provision for Hindus is virtually "redundant" and that "no one has been given the benefit of it since 1910".

Under Muslim law

Marriage in Islam is governed by the Shariat Act, 1937. Personal law allows a Muslim man to have four wives. To benefit from the Muslim personal law, many men from other religions would convert to Islam to have a second wife.

In a landmark ruling in 1995, the Supreme Court in Sarla Mudgal v Union of India held that religious conversion for the sole purpose of committing bigamy is unconstitutional. This position was subsequently reiterated in the 2000 judgment in Lily Thomas v Union of India.

Any move to outlaw polygamy for Muslims would have to be a special legislation which overrides personal law protections like in the case of triple talaq.