

A DOCTRINAL ANALYSIS ON JUDICIAL APPROACH TO WOMEN'S RIGHTS IN POLYGAMOUS MARRIAGES IN INDIA

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Abstract:

While polygamy is still practiced in India, particularly under Muslim personal law, there is no specific law regulating the practice of polygamy. The absence of law can negatively impact women's constitutional rights of equality, non-discrimination, and dignity, as well as violations of their fundamental human rights. Even though the Quran assumes that justice is to be meted out fairly among co-wives (Surah An-Nisa 4:3), the standard is often violated. Many women suffer from economic deprivation, psychological trauma, and social marginalization. As judicial redress is always situational, there is a clear gap in research and need for a common law to safeguard the rights of women from polygamous marriages.

This research paper analyzes the evolution of judicial intervention with respect to women's rights in Muslim polygamous marriages through some major judicial pronouncements. The study references landmark judgments of the Supreme Court like Mohd. Ahmed Khan v. Shah Bano Begum [(1985) 2 SCC 556] which established the right to claim maintenance beyond iddat; Shayara Bano v. Union of India [(2017) 9 SCC 1] in which triple talaq was declared invalid; and Sarla Mudgal v. Union of India [(1995) 3 SCC 635] where the issue of bigamy-by-conversion was dealt with. The High Court decisions discussed here include Muhammad Shareef C v. State of Kerala [2025 KER 82441] which made it mandatory for a husband to inform the first wife before registering second marriage. The outcomes point to a gradual move toward constitutional morality taking precedence over inequities within personal law, but the largely ad hoc nature of judicial responses continues to limit consistent, system-wide

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protection. The study concludes with policy recommendations to standardize multi-wife maintenance protocols and introduce judicial training focused on gender-sensitive enforcement, thereby helping align personal laws with India's secular framework and strengthening protections for women facing marital exploitation.

Keywords: polygamy, Muslim personal law, judicial approach, women's rights, gender justice

Introduction

Historically, polygamy has been a complicated subject in the Indian judicial and cultural arenas, particularly in respect to Muslim Personal Law. Although various laws regarding marriage practices in India advocate for monogamy, polygamy continues to be recognized as a legitimate practice under Muslim Personal Law that permits a Muslim male to marry four wives according to the conditions set forth in the Qur'an³. On the other hand, the authorization offered in the Qur'an is not ultimately unrestricted. Inextricably connected with the need for fairness and justice, it postulates that a husband must furnish his wives with fairness in provision, good company, emotional support and monetary protection. Traditional Islamic legal scholars have always understood these principles as creating a considerable moral and legal duty placed on the shoulders of a husband rather than giving him the right to do wrong⁴.

Although there are these regulations that are supposed to ensure implementation of polygamy, the real life is often much more different from the interests of those individuals involved. Nowadays polygamous marriages are entered into without the knowledge about the first wife, thus not allowing the latter to think about the rights and obligations that are the result of this decision. Polygamous marriages introduce many negative consequences for those on whom they affect. In particular, if the subsequent marriages are clandestine or happen informally without any paperwork done, then women cannot seek official maintenance or inheritance from the new husband or receive any rights related to it⁵.

³ The Muslim Personal Law (Shariat) Application Act 1937; The Qur'an, Surah An-Nisa (4:3). See also Tahir Mahmood, *Muslim Law in India and Abroad* (3rd edn, Universal Law Publishing 2016) 123–126.

⁴ The Qur'an, Surah An-Nisa (4:3): 'But if you fear that you shall not be able to deal justly with them, then marry only one'; see also Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003) 292–294.

⁵ Narendra Subramanian, 'Legal Change and Gender Inequality: The Politics of Personal Law in India' (2010) 44(1) *Law & Society Review* 107, 118–120.

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India experiences a unique challenge with regard to the legal regulation of polygamy. Unlike various countries with a majority-attributed Muslim population that have incorporated statutory provisions such as compulsory legal permission, pre-consent requirements, financial capability evaluation, or administrative oversight, India predominantly considers the uncodified Muslim law along with interpretations and constitutional adjudications⁶. Thus, courts are becoming the leading authorities in maintaining equilibrium between the fundamental right to freedom of religion and the principles of equality of the sexes and human dignity⁷. Due to the lack of comprehensive legislative measures, the judicial decisions have played a key role in defining the rights and remedies which women can enjoy as a result of polygamous marriages.

The constitutional framework provides the normative foundation for this judicial intervention. Article 14 guarantees equality before the law and equal protection of the laws, Article 15 prohibits discrimination on grounds including sex, and Article 21 has been expansively interpreted to encompass the rights to life, dignity, privacy, autonomy, and personal liberty⁸. It has been through the constitutional guarantees that the approach towards family law has been changed by making it compulsory for the personal law practices to fall within the larger ambit of rights. Article 25 has provided for the freedom to practice, propagates and profess religion but this freedom is made subject to the conditions of public order, morality, health and other provisions of Part III of the Constitution⁹. This means that the Indian constitutional jurisprudence accepts that practices of religions affecting the fundamental rights of women will not escape the judicial scrutiny¹⁰. The Supreme Court of India has significantly contributed to the development of this constitutional discourse. In the case of Mohd. Ahmed Khan v. Shah Bano Begum, the Court reiterated the duty of a Muslim husband to pay maintenance to his divorced wife as required under Section 125 of the Code of Criminal Procedure, stating that the personal law should not be construed to defeat the very purpose of avoiding

⁶ Tahir Mahmood, *Muslim Personal Law: Role of the State in the Subcontinent* (Vikas Publishing House 1977) 42–45; Asghar Ali Engineer, *The Rights of Women in Islam* (Sterling Publishers 2008) 123–125.

⁷ *Shayara Bano v Union of India* (2017) 9 SCC 1; Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019) 186–190.

⁸ Constitution of India arts 14, 15 and 21; *Maneka Gandhi v Union of India* (1978) 1 SCC 248; *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

⁹ *Joseph Shine v Union of India* (2019) 3 SCC 39; *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

¹⁰ *Sayara Bano v Union of India* (2017) 9 SCC 1; *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.

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homelessness.¹¹ The ruling prompted much political and legal discussion, but put the judiciary's inclination to protect women's economic rights outside the somewhat rigid parameters of personal law on record. In *Sarla Mudgal v. Union of India*, the Court then disapproved of the practice of converting to Islam just for the purpose of marrying a second time whilst still married, calling it a misuse of law and a violation of the institution of marriage.¹² The ruling upheld the concept that converting one's religion cannot be seen as a means to work around the laws in place to protect the rights of women¹³. Constitutionality of personal laws gained further ground in the case of *Shayara Bano v. Union of India* whereby the Supreme Court abrogated the system of instant talaq, termed as talaq-e-biddat. The case itself was not directly related to the problem of polygamy; however, it was instrumental in establishing the important legal premise that personal laws that do not comply with the classical standards of constitutional review in terms of women's rights cannot escape constitutional scrutiny simply because they derive from religion.¹⁴

The recent High Court rulings demonstrate the concern of the judiciary with regard to the safety and protection of women involved in polygamous marriages. In *Muhammad Shareef C. v. State of Kerala*, the Kerala High Court ordered that the existing wife should receive notice prior to the registration of another marriage, thereby stressing the necessity of fairness in the matrimonial procedure.¹⁵ Similarly, in the case of *Abdurahiman v. Khairunnessa*, the Kerala High Court interpreted section 2(viii)(f) of the Dissolution of Muslim Marriages Act, 1939, ruling that a Muslim wife may petition for dissolution of marriage if her husband refuses to treat his other wives equally after remarriage.¹⁶ The decisions taken by the judiciary establish their efforts to enhance procedural protections

¹¹*Mohd Ahmed Khan v Shah Bano Begum* (1985) 2 SCC 556. The Supreme Court held that the obligation of maintenance under Section 125 of the Code of Criminal Procedure, 1973, is a statutory obligation independent of personal law and is intended to prevent destitution and vagrancy.

¹²*Sarla Mudgal v Union of India* (1995) 3 SCC 635. The Supreme Court held that conversion to Islam by a Hindu husband for the purpose of contracting a second marriage without dissolving the first marriage does not invalidate the first marriage and amounts to an offence under Section 494 of the Indian Penal Code, 1860.

¹³ *John Vallamattom v Union of India* (2003) 6 SCC 611; see also Paras Diwan and Peeyushi Diwan, *Modern Hindu Law* (24th edn, Allahabad Law Agency 2018) 216–218.

¹⁴*Shayara Bano v Union of India* (2017) 9 SCC 1. The Supreme Court by majority invalidated the practice of talaq-e-biddat (instant triple talaq), holding that it was arbitrary and violative of constitutional principles.

¹⁵*Muhammad Shareef C v State of Kerala*, 2021 SCC OnLine Ker 5132. The Kerala High Court emphasized the importance of transparency and procedural safeguards in the registration of subsequent marriages under Muslim Personal Law.

¹⁶*Abdurahiman v Khairunnessa*, 2021 SCC OnLine Ker 2705; Dissolution of Muslim Marriages Act 1939, s 2(viii)(f), which provides a ground for dissolution where the husband fails to treat wives equitably as required under Muslim law.

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and consolidate the moral responsibilities inherent to Islamic law while providing legal relief to women.

Despite these changes in the judiciary, the legal system for polygamy in India continues to be patchy and confusing. There is no system of law or policy in place that will make registration of any new marriages mandatory, specify rules for early announcement of polygamous marriages, safeguard the financial interests of the existing wife, and create standard laws for the fair treatment of co-wives.¹⁷ Hence, legal protection is frequently dependent on the individual facts of the case thus making the situation uncertain and arbitrary in the implementation of women's rights. The lack of uniform legal protection continues to put women at highly risk despite the advancements in constitutional law.

Numerous scholarly works have tackled issues related to the constitutionality of Muslim Personal Law, controversies regarding the Uniform Civil Code, and the legality of certain marriage practices, such as triple talaq. On the contrary, not much attention has been given to the systematic doctrinal analysis of the judicial approach to women's rights in polygamous marriages. Most of the existing literature on the subject has been devoted to constitutional issues or religious reforms, ignoring the growing legal cases concerning issues related to maintenance, equal treatment, matrimonial relief, custody, legitimacy of children, procedural safeguards, and protection from exploitation.¹⁸ This absence calls for exhaustive doctrinal research aimed at thorough examination of judgments and legal concepts developed in the context of constitutional laws, statutes and personal law. Thus, in this light, the current research provides an insight into doctrinal research into court decisions on women's rights in polygamous marriages in India. It examines constitutional provisions, statutory policies and court cases in order to assess whether courts have implemented the law and provided women with the necessary protection in polygamous marriages. It is argued in this paper that Indian courts have been gradually improving the remedies regarding maintenance, divorce, procedural justice, legitimacy of children, custody rights and protection against abuse in polygamous unions, however, the lack of a coherent legislative structure leads to inconsistencies and a lack of effective implementation of the law.

¹⁷ Law Commission of India, *Consultation Paper on Reform of Family Law* (31 August 2018) 11–15; Muslim Personal Law (Shariat) Application Act 1937. The Law Commission's consultation process considered reforms within personal laws, including issues relating to marriage registration, maintenance and gender equality.

¹⁸ Asaf A AFyze, *Outlines of Muhammadan Law* (5th edn, Oxford University Press 2008) 109–116; Tahir Mahmood, *Muslim Law in India and Abroad* (3rd edn, Universal Law Publishing 2016) 123–132.

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Methodology

The approach taken by this study consists of doctrinal legal research methodology, which requires an orderly examination and more importantly critical analysis of the legal principles from the primary and secondary sources of law. Majorly based on the constitution and laws along with statute law, and judicial decisions handed down by the Supreme Court and various High Courts in India, and also appropriate legal literature, the study aims to understand how the judges are secured towards the protection of women's rights in regard to polygamous marriages as stipulated by the Muslim Personal Law of India.

Main sources comprise the Constitution of India, the Muslim Personal Law (Shariat) Application Act, 1937, the Dissolution of Muslim Marriages Act, 1939, relevant provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Section 125 of the Code of Criminal Procedure) and others statutory provisions applicable with respect to the matrimonial rights and maintenance.¹⁹ The research also looks into groundbreaking court rulings that have influenced the legal discussion surrounding gender justice and personal law. Among them are Mohd. Ahmed Khan v. Shah Bano Begum, Sarla Mudgal v. Union of India, Shayara Bano v. Union of India, Abdurahiman v. Khairunnessa, Muhammad Shareef C. v. State of Kerala. All these decisions are scrutinized to examine the process of judicial interpretation of constitutional guarantees of equality, dignity, justice regarding the concept of polygamous marriage.²⁰

The study subsequently does not only analyze judicial reasoning but also scrutinizes the interpretational methods pursued by the courts when merging the premises underlying Muslim Personal Law with those of the Constitution of India. More specifically, it examines the decisions taken by the courts related to Articles 14, 15, 21, and 25 of the Constitution in reference to the topics of maintenance, matrimonial remedies, fairness of procedures, legitimacy of offspring, and prevention from domestic violence in order to identify any judicial patterns, consistencies, and inconsistencies in the regulations of personal law. In addition to examining domestic legal materials, the research also takes

¹⁹ Constitution of India; Muslim Personal Law (Shariat) Application Act 1937; Dissolution of Muslim Marriages Act 1939; Bharatiya Nagarik Suraksha Sanhita 2023.

²⁰ Constitution of India arts 14, 15, 21 and 25; *Shayara Bano* (n 36); *Shah Bano* (n 36).

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into account the normative aspects of Islamic law.²¹, specially referring to the Qur'anic injunction found in Surah An-Nisa (4:3), allowing polygamy under conditions of just treatment amongst wives. By contrasting these religious principles with judicial interpretation and the practical realities surrounding polygamous marriages in India, this research work draws a distinct line between the ethical foundations of Islamic law and the ensuing challenges in its implementation. This doctrinal analysis intends to assess whether the present judicial framework provides adequate legal protection to women and to point out where legislative or judicial reforms can lend strength to gender justice within the framework of constitutional values.

Literature Review

Research into Muslim Personal Law in India primarily deals with topics like maintenance, divorce, triple talaq issue and other aspects of personal law reforms from gender justice perspective. Legal scholars have extensively considered matters regarding the conflicts between the autonomy of religious personal laws and the Constitution's principles of equality, non-discrimination and dignity of human beings. Furthermore, it has been noted that the literature discusses the transition in the role of judiciary in reconciling religious practices with constitutional values with emphasis on women's rights.²².

Research on Mohd. Ahmed Khan v. Shah Bano Begum has shed light on the widening of Muslim women's maintenance rights and the judges' efforts to avoid financial poverty via a purposive interpretation of the law. Likewise, discussions on Shayara Bano v. Union of India have delved into the role of constitutional morality and transformative constitutionalism as vital judicial measures to tackle gender discrimination in personal laws. Other works examined the importance of Sarla Mudgal v. Union of India in preventing the abuse of religious conversion for getting married a second time, as well as protecting the rights of the first wife.²³. Despite the aforementioned contributions, not much is written about the laws on women's rights within polygamous marriage. There are few writings providing a thorough overview of the decisions made in court on issues of

²¹ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019) 186–202; Flavia Agnes, *Family Law: Volume I: Family Laws and Constitutional Claims* (Oxford University Press 2011) 201–220.

²² Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019) 186–202; Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2nd edn, Cambridge University Press 2006) 278–289.

²³ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019) 186–202; Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2nd edn, Cambridge University Press 2006) 278–289.

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fair treatment of co-wives, maintenance, residence, child custody, procedural guarantees, emotional safety, the right to divorce, etc. In addition, the existing doctrinal literature does not deal with the relations between constitutional ideas, legal rules, and Islamic rules of law concerning polygamous marriages.²⁴

In order to fill this gap, the study conducts a doctrinal analysis of the judicial rulings made in relation to women's issues in polygamous marriages. The analysis evaluates how the propositions devised by the courts in India are evolving and in particular whether the interventions by the judiciary have succeeded in ensuring real equality, dignity, and adequate protection for women under the prevailing system of Muslim Personal Law.

Objectives of the Study:

The objectives of the research study will be:

1. To study the legal and constitutional framework concerning women's rights in polygamous marriages in India.
2. To study the judiciary's role in protecting women in polygamous marriages through important Supreme Court and High Court judgments.
3. To study judicial developments concerning maintenance, divorce, custody, legitimacy of children, accommodation, and remedy against exploitation in marriage.
4. To find out the extent to which the judicial interventions have brought about harmony between personal law and constitutional principles.
5. To identify the weak points of law and thereby suggest ways of enhancing the provisions that protect the rights of women in polygamous marriages.

Constitutional and Personal Law Framework

The opening part of the discussion focuses on the legality of polygamy as per the norms of Indian Constitution and personal law, and investigates the scope of polygamy allowed by Muslim Personal Law, specifically the requirements laid down under the verses of Qur'an concerning Surah An-Nisa (4:3), and compares the conditions of lawful polygamy under Shari'ah versus the rights guaranteed by the Constitution, pertaining to equality (Article

²⁴ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019) 186–202; Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2nd edn, Cambridge University Press 2006) 278–289.

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14), non-discrimination (Article 15), dignity and personal freedom (Article 21), and freedom of religion (Article 25). This section explains how the principles developed in the Indian constitutional jurisprudence require interpretation of personal laws in accordance with the fundamental rights.²⁵

Judicial Recognition of Women's Economic Rights

This chapter examines the legal evolution of women's economic rights in Muslim marriage cases, focusing specifically on *Mohd. Ahmed Khan v. Shah Bano Begum* (1985). In this case, the Supreme Court ruled that the statutory right to maintenance, outlined in Section 125 of the Code of Criminal Procedure (now included in the *Bharatiya Nagarik Suraksha Sanhita*, 2023), is available for everyone, regardless of applicable personal laws, and is not subject to any restrictive interpretation of the obligations of religion. The analysis illustrates that the Court was concerned with the prevention of destitution and viewed the maintenance obligation as a constitutional duty or a social welfare obligation rather than an entitlement of a personal law nature. Finally, this chapter discusses how the applicability of the concept is still relevant to women in polygamous marriages, who consistently suffer from financial disadvantage and unequal treatment.

Judicial Control over Misuse of Polygamy

The study is next aimed at *Sarla Mudgal v. Union of India* (1995) affecting the considered decision of the misuse of religion conversion for the purpose of contracting second marriage. The ratio of the said judgment states that converting to Islam in order to enter into another marriage while still being married in Hindu is termed as abuse of law and is liable to get punished for committing bigamy.²⁶ The ruling by the Court clarified that freedom of religion cannot be used as a way of escaping obligations imposed by law on the first wife. This section discusses how the decision solidified the role of judiciary in reigning in marital exploitation and reiterated the principle that personal law must not be used for defeating the rights of women.

Constitutional Morality and Judicial Review of Personal Law

²⁵*Shayara Bano* (n 36); *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1; Gautam Bhatia (n 43) 186–202.

²⁶*Sarla Mudgal v Union of India* (n 36). The Supreme Court held that conversion to Islam solely to contract a second marriage, without dissolving the first marriage, does not dissolve the earlier marriage and exposes the husband to prosecution for the offence of bigamy under s 494 of the Indian Penal Code, 1860.

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This part of the paper presents a critical analysis of *Shayara Bano v. Union of India* (2017) and how it has helped in the constitutionalisation of Muslim Personal Law. Even though this case involved the issue of instant triple talaq (which is a different concept altogether) rather than the problem of polygamy, the court's judgment was such that, from a different point of view, it touched upon all aspects of the judicial regulation of personal law. As this opinion of the Apex Court of India, personal law, which has its source in religion and at the same time, which causes some sort of arbitrary impact on women's rights cannot automatically expect to be kept outside the purview of the constitution by just citing that it is a religious tradition, so it must be subjected to the constitutional test. The decision also clearly showed the constitutional values namely moral and ethical principles plus gender equality which are inseparable features of our fundamental law have got, the constitutional protection through the decision of the court itself by being the subject matter of personal law judicial decisions.²⁷. This section analyses how the reasoning in *Shayara Bano* provides a constitutional foundation for evaluating the legality and fairness of practices associated with polygamous marriages.

Emerging Judicial Safeguards in Polygamous Marriages

This part looks at the recent rulings of the courts about women's rights in polygamous marriages. *Muhammad Shareef C. v. State of Kerala* is one among them, where the court of Kerala was very conscious about fair procedures and ordered notices should normally be given to the existing wife before another wife is registered. The decision shows that Court realizes that only transparency and informed participation in the matter will help prevent abuse. This part also deals with the case law of the *Abdurahiman v. Khairunnessa* where the Kerala high court interpreted part 2(viii)(f) of the Dissolution of Muslim Marriages Act 1939 to say that if a husband does not treat his wife with equality and fairness after contracting a second or subsequent marriage, the Muslim woman has a right to ask the court for dissolving the marriage. The ratio of this case is a great reinforcement that the responsibility of fair and equal treatment per the Qur'an is a standard which has legal force and not merely a moral standard²⁸.

²⁷*Shayara Bano* (n 36); *Navtej Singh Johar v Union of India* (2018) 10 SCC 1; *Joseph Shine v Union of India* (2019) 3 SCC 39; Gautam Bhatia (n 43) 198–202.

²⁸ The Qur'an, Surah An-Nisa (4:3); Asaf A AFyze, *Outlines of Muhammadan Law* (5th edn, Oxford University Press 2008) 109–114; Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003) 292–295.

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Critical Evaluation of Judicial Trends

Taking these judgments as a foundation, the paper analyzes the gradual changes in the judiciary's thinking when it comes to the rights of woman in polyandrous marriage. A clear change is discernible from a strict reliance on personal law to a constitutional perspective emphasizing rights and equality. The author, while acknowledging this shift, also emphasizes that the judges' response is mainly corrective in nature and is confined to individual cases. Judges have widened various rights for allowance, termination of marriage, fairness of procedures, and against spouse-abuse. Yet, the lack of a complete law on such marriages keeps leading to uneven implementation of the judgments and legal insecurity. It is brought out that the strategy of only the judiciary to interpret the laws without the necessary changes in the laws is the source of limitations in this field²⁹.

Towards a Gender-Just Legal Framework

A paper ends this by stating that the protection of women's rights in polygamous marriages takes a comprehensive legal approach that recognizes the freedom of religious practice and at the same time ensures that it does not go against the constitutional values. It suggests amendments through which subsequent marriages have to be mandatorily registered, the already married wife has to be fully informed about this, maintenance is determined by established guidelines, there are stronger procedural safeguards, and a decision-maker is required to recognize the Muslim personal law provisions that deal with the Qur'anic principle of fair distribution as more significant. These will help to make Muslim Personal Law consistent with the constitutional guarantees of equality, dignity, and gender justice, but at the same time they will not undermine the fundamental religious doctrines that regulate marriage.³⁰.

Concluding Observations and Suggestions

The judicial treatment of women's rights for polygamy in India reflects slow but significant change from a perspective that was solely about personal law to one that

²⁹ S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002) 238–242; Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980) 75–80.

³⁰ S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002) 238–242; Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980) 75–80.

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considers constitutional rights as the key basis. With judicial interpretation over time, the Indian judiciary has started to see how the Muslim Personal Law and the constitutional values of equality dignity fairness, and fair dealing could live together. Decisions like Mohd. Ahmed Khan v. Shah Bano Begum, Sarla Mudgal v. Union of India, Shayara Bano v. Union of India, Abdurahiman v. Khairunnessa, and Muhammad Shareef C. v. State of Kerala illustrate judicially the protection of women against economic insecurity, capricious treatment, procedural injustice, and unequal handling. These verdicts together highlight that personal law cannot be understood to goes against the fundamental rights the Constitution guarantees.³¹

Still, the legal setup still is a patchwork which largely depends on judgments of individual courts. Although the courts have widened the legal remedies on maintenance, divorce and nullity of marriage, legitimacy and custody of children, the rules on the fairness of procedures, there is no overall regulatory mechanism to the formation of a polygamous marriage. In fact, many subsequent marriages are more or less clandestine which practically fails to offer a practical, financial and emotional security to the intact wife and children by subjecting them to protracted proceedings.³²

Islam's legal viewpoint permits polygamy as a privilege that is subject to conditions and exceptions. This legal exception is based on the justice system and equity treatment among wives principles, in particular as mentioned in the Qur'an (Surah An-Nisa 4:3). Polygamous marriage per the Holy book demands just equal treatment of the wives in financial housing psychological and all matters related to husband's responsibilities. The modern day problems yet quite often show that these standard norms and laws are far away from the actual practice. Although legal rulings have been made to protect the rights and interests of women they can not by themselves overcome the deeper, systemic issues that allow the continued exploitation of polygamous marriages in their wrong way.

India could learn a number of useful things from the experience of several Muslim-majority countries which have introduced regulatory safeguards without banning polygamy entirely. A good example is how places like Indonesia Malaysia Egypt, and Pakistan have legally allowed for the regulation and legal control of polygamy by way of

³¹*Shayara Bano* (n 36); *Joseph Shine v Union of India* (2019) 3 SCC 39; Flavia Agnes, *Family Law: Volume I: Family Laws and Constitutional Claims* (Oxford University Press 2011) 214–220.

³²Tahir Mahmood, *Muslim Law in India and Abroad* (3rd edn, Universal Law Publishing 2016) 123–132; Law Commission of India, *Consultation Paper on Reform of Family Law* (31 August 2018) 17–20.

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statutory mechanisms that limit and regulate subsequent marriages.³³ Such arrangements would usually involve getting permission from, for example, a competent court or authorized body making the proposed union a matter of public notice through, taking into account the present wife's interests, substantiating the husband's capability of financially supporting more than one family, and providing evidence that he can equally share his time and resources among his wives. These precautions should not be understood as a rejection of polygamy as something that is permissible in Islamic law, but rather as protective measures meant to keep the practice of a marriage of several wives under control and make sure it follows the Qur'anic understanding of justice.

By the light of these contrasting accounts, the report indicates that Indian States might think of implementing a common regulatory system controlling the registration and supervision of polygamous marriages in the present frame of Muslim Personal Law. A proposed set of conditions may cover making the registration of second marriages compulsory, giving existing wives a chance by the form of notification or seeking their consultation before a new marriage is planned, getting judicial or administrative clearance before a new marriage is finalized, the requirement to the husband to furnish to a solemn swear that he is financially capable and can equally treat all the wives and children, and that a clear record of maintenance and residence is drawn up. If the steps for the registration are standardized, they can not only increase the disclosure in the registration process but also eliminate fraudulent or clandestine marriages, strengthen the evidentiary protections, and limit the unnecessary legal conflicts.³⁴

Judicial institutions may also create standard rules that they will follow when giving a ruling on any dispute that comes from a polygamous marriage mostly the issues of maintenance, inheritance and custody, matrimonial relief, and fair treatment. Besides specialized mediation processes, there may also be the provision of legal aids that shall be very useful in settling family differences while at the same time ensuring that the dignity and rights of the woman are respected. These measures would in no way touch religion or

³³ Muslim Family Laws Ordinance 1961 (Pakistan) s 6; Islamic Family Law (Federal Territories) Act 1984 (Malaysia) s 23; Indonesian Marriage Law No 1 of 1974 (as amended by Law No 16 of 2019), provisions relating to polygamous marriage; Egyptian Personal Status Law provisions regulating polygamy through procedural and judicial requirements.

³⁴ Registration of marriages as a legal safeguard has been recognized as an important mechanism for protecting women's matrimonial rights. See *Seema v Ashwani Kumar* (2006) 2 SCC 578, where the Supreme Court directed compulsory registration of marriages to protect women and prevent disputes relating to marital status.

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limit it as a freedom. They simply reinforce one of the constitutional duties of the government that is, protecting vulnerable people from being discriminated or exploited³⁵. Ultimately, the future evolution of Indian jurisprudence needs to go beyond the dichotomy of religious autonomy and constitutional guarantees. It could bring the ethical teachings of Islamic law closer to the constitutional commitment to equality, dignity, and gender justice. With the help of a very carefully framed regulatory mechanism supported by judicial interpretation that embraces the change and draws lessons from comparable experiences in other Muslim-majority countries, it will be possible not only to enhance women's rights without giving up religious personal law entirely but also to limit it just enough to allow women to benefit from their rights. This way, even polygamy where permitted by law will only continue to be practiced where and that such practice is not a violation of Islamic ideas of justice or of fundamental human rights and dignity. Islam permits a man to marry up to four women at the same time subject to certain conditions.

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³⁵ Constitution of India arts 14, 15 and 21; *Shayara Bano* (n 36); *Joseph Shine v Union of India* (2019) 3 SCC 39.

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