Polygamy in India

Why in news?

Assam Chief Minister proposed to enact a legislative law to ban polygamy to address the growing incidents of the child marriages in the state.

What are the provisions that ban polygamy?

- Polygamy is governed both by personal laws and the Indian Penal Code (IPC).
- **The Parsi Marriage and Divorce Act 1936** - Prohibited polygamy in the Parsi community.
- The law regulates the marriage and divorce among Parsis.
- **Shariat Act 1937** - Governs the marriage in Islam. The act allows Muslim man to have 4 wives.
- The Supreme Court in ***Sarla Mudgal v Union of India*** held that religious conversion for the sole purpose of committing bigamy is unconstitutional.
- The Supreme Court in ***Lily Thomas v Union of India*** case reiterated the judgment of ***Sarla Mudgal v Union of India.***
- **The Special Marriage Act 1954** - A radical legislation that proposed the requirement of monogamy.
- ***Section 4*** of the act states that "at the time of marriage neither party should have a spouse living".
- **The Hindu Marriage Act 1955** - Outlawed the concept of having more than one spouse.
- Buddhists, Jains, and Sikhs are also included under the Hindu Marriage act 1955.
- ***Section 17*** of the act states that bigamy is an offence.
- **IPC Section 494** - Penalizes bigamy or polygamy. A person wife or husband in any case engages in second marriage should be imprisoned for e period of 7 years and liable to fine.
- This provision does not apply to a marriage which has been declared void by a court
- **Section 495 of the IPC** - Protects the rights of the second wife in case of a bigamous marriage.
- **Article 44** - States that the State shall endeavor to secure for all the citizens a ***Uniform Civil Code***.

Polygamy is the practice of having more than one married spouse (wife or husband).

What is the status of polygamy in India?

- **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 including second marriage should be performed as per customs.

- So the live-in-relationship doesn't come into the ambit of the second marriage.
- **Desertion of marriage** - IPC Section 494 penalizing polygamy doesn't apply in case of desertion by the spouse that is who has been continuously absent for 7 years.
- **Goa** - A crucial exception to the bigamy law for Hindus is Goa, which follows its own code for personal laws.
- 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 specific 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.
- **No uniform civil code** - Even now various religions are governed by their respective religion personal laws.
- **Tribal population** - Since they are governed and protected by special laws and the prevalence of polygamy is high among tribal population.

Bigamy is the offence of marrying someone while already married to another person.

What is the way forward?

- 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.
- The tribal population needs to be educated about the consequences of the polygamy.
- Uniform civil code needs to be followed to bring uniformity across India.

References

1. The Indian Express | Laws That Prohibit Polygamy
2. Deccan Herald | Issues With Polygamy

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