CHAPTER I

INTRODUCTION
Equality among human-beings is now a universally accepted principle. Article I of the Universal Declaration of Human Rights 1948, states that "(a)ll human beings are born free and equal in dignity and rights". Moreover, right to equality is granted by the constitutions of most of the nations of the world. Our Constitution also aims to secure social, economic and political justice to all people. It guarantees equality before the law and equal protection of law as one of the fundamental rights.

Notwithstanding all such declarations and constitutional guarantees women have not so far acquired complete equality with men. There are still such laws and customs, which do not give equal rights to women. Prime among these are the personal laws which perpetuate male domination. One of the greatest inequalities which militate against equal status of women with men continue to be in force is the institution of polygamous marriage. Although this problem is no more the direct concern of the personal laws relating to Hindus, Christians, Parsis and Jews, but they get affected in this respect by the Muslim personal law of India where this problem continues to exist.

Polygamy, understood in loose sense, implying a men cohabiting with more than one women (not necessarily in marriage), seems to be prevalent the world over. In certain communities or societies monogamy did exist, but
it is difficult to infer from the data at our disposal whether monogamy was prevalent as a matter of course on the basis of natural sex ratio, which usually does not depart considerably from one to one relationship, or as a moral ideal, or an entrenched institution safeguarded by sanction.

Among some people however, cultural factors intervene in favour of polygamous marriages. It may be the result of decrease in the number of men. It may be carried on inspite of a equal sex-ratio due to other causes. For instance, in patriarchal society women were treated no better than chattles. Besides that polygamy was practised for augmenting the economic power of men and also for increasing the number of offsprings. Gradually, however, polygamy was limited, restricted or even abolished through legal sanctions and yet it shows up even now in one form or the other, such as concubinage, the practice of keeping mistresses. But so far as Muslims are concerned, limited polygamy, particularly in India, still is in vogue.

In India, vedic ideal of marriage favoured monogamy. But the latter development during Dharmashastra was that if a women failed to procreate son then a person could go in for a second marriage, so that he could have a son for religious purposes; that is, to continue lineage and to release ancestors from the hell. In post-Shastric period
this restricted privilege of polygamy became a rampant practice in almost all the castes of Hindu society.

During British regime the rule of monogamy was recognised through legislation, particularly in Bombay and Madras. However after Independence, the most important legislative enactment is the Hindu Marriage Act, 1955, which governs practically any person domiciled in the territory of India who is not a Muslim or Christian or Parsi or Jew.

Under Section 5(i) of this Act, bigamy is prohibited. Section 11 makes bigamous marriage void and section 17 makes it a penal offence for both males and females, under section 494 and 495 of the Indian Penal Code.

In India Muslims, Christians, Parsis and Jews are governed in matrimonial matters by their own personal laws. The Parsi marriage and Divorce Act 1936 governs the matrimonial matter of the Parsis. Jews have their own customary law derived from the traditional Mosaic law. Christians are governed by the Indian Christian Marriage Act, 1872 and Indian Divorce Act 1869. All these laws prohibit bigamy.

Muslims in India are governed mainly by uncodified Muslim law of marriage and divorce derived from the Quran.

1. See, the Special Marriage Act, 1872;
   the Madras Marumakkattayam Act, 1933;
   the Bombay prevention of Hindu Bigamous Marriage Act, 1946;
   the Madras Hindu (Bigamy prevention & Divorce) Act, 1947.
and Sunnat. To a certain extent, however, they are also
governed by the enactment, namely, The dissolution of
Muslim Marriage Act, 1939. By the Quranic law polygamy
seems permissible. The main reason of permitting polygamy,
the Muslim authors, as a rule maintain that, prior to
Islamic society there was unlimited polygamy; divorce was
easy and female infanticide was common, women captured in
war were either married or kept as such.

Prophet Muhammad tried to improve this low position
of women. But he realized that prohibition of polygamy
was neither possible nor practicable due to the conditions
of the then Arabic society. The institution of polygamy
still seemed to be the means to secure comfort and protection
for the women-folk of that time, who could not protect
themselves. In Arabic and other places where men being in
minority due to continuous wars, she would never get a
protective husband if strict monogamy had prevailed. Keeping
in view all these prevailing conditions and circumstances
the Prophet gave permission to marry more than one wife,
but not more than four, and that too only on the condition
that all the wives should be equally treated. The permission
for polygamy under the Quran was thus in fact only an
exception and not a rule, and as an exception it was meant
as a remedy for many evils.
In India according to the Muslim Law, Muslim male may have as many as four wives at a time. There seems nothing whatever to prevent a husband who has even no means to maintain the wives equitably from contracting a second marriage. By neglecting both the rationale of the Quranic permission for polygamy as well as the condition to which it was specifically subjected, polygamy became an incidence of frequent occurrence in India.

Surprisingly, Polygamy has been abolished in some Islamic countries by re-interpreting those very Quranic injunctions which earlier seem to permit Polygamy. Should we then feel shy in following their example in this respect?

Moreover, India is a Multi-religions nation. The practice of applying law in Matrimonial Matters, according to the religious faith and belief has led to prevalence of diverse matrimonial laws. In these circumstances the change of religion leads to different consequences under the different personal laws, because even where the legislature had codified the laws of certain communities, no set pattern or definite policy had been followed. Sometimes interpersonal law conflict: problems arose when the converted spouse (as distinguished from the non-converted spouse) invoked the application of his new personal law to sort out his or her matrimonial problems. Sometimes conversion is sought so that the converts could seek the
The existence of Polygamous law side by side with monogamous laws is said to be a standing offer and temptation to the Hindu and Christian husbands to become Muslims to contract second marriage. Such a position seems to be destructive of the secular character of our constitution.

The institution of family is changing under the impact of such factors as urbanization, industrialization, the economic emancipation of women, population mobility and so on. Change is also accruing in thought as a result of new ideals of about human personality and human relationships. Muslim law of polygamous marriages as applicable in India, causes hardships, leads to social inequalities and results into instability of family life. As such, it conflicts with the ideals of equality before law, and equal protection of law enshrined in the Indian constitution and is inconsistent with the existing personal laws of other religious communities in India.

The limiting condition of the sex-ratio coupled with the fact that there are powerful economic, social and psychological forces appear to dictate against polygamy and yet it has not been abolished. So long as the religious beliefs sanction polygamy, the ideal of monogamy cannot be completely realized.
In the recent past Islamic personal law relating to family rights and succession has formed the subject of legislation in several Muslim countries. In these countries, polygamy has either been restricted or abolished. However, no reforms have been made in India to control or abolish polygamy among Muslims, although for a long time a controversy has been going on for its reform, or even eventual merger of Muslim personal law into a uniform civil code as envisaged under Article 44 of the Constitution.

The issue of reform of the Muslim personal law in India has, for some time past been a battle field between the progressive and the conservatives in the society. Some conservatives on ground of religion abhor interference with their personal law, and, therefore, it seems appropriate to inquire how, and with what consequences the emerging desire of masses for sexual equality will be met in modern Indian Society.

Among the Hindus and the others, communities in India excepting Muslims, laws have been passed to ban bigamy, and yet strict monogamy could not be strictly enforced. Although monogamy is considered a rule, because statutes prescribe it, but it is doubtful whether it exists as a fact or not. There is yet another ultra-modern version of polygamy prevailing in the western world, through what
may be termed as successive monogamous marriages. In the west it is not uncommon, say, for an American, to have three or more spouses in his or her life time. This is made possible and legal by the device of easy divorce.

Hence, the Problem of polygamy is to be tackled, broadly speaking, from two angles: one may be purely legal, and in this context, we think of modifying the personal law of Muslims. The other angle is much wider. In this latter respect we have not to become contented merely by having a legislation on the statute book for prohibiting polygamy. We have to go much beyond that. More in the direction to think of formulating some sound social policy which would enable us to evaluate why polygamy is practiced notwithstanding its legal abolition. In other words, what social conditions or factors should be created which would be conducive to ameliorate the women's lot in this respect.

In this perspective, it is considered profitable to examine, first how the institution of polygamous marriages came to the fore; secondly, how this problem was overcome in the personal laws governing the Hindus, Christians, Parsis and jews; thirdly, why and how it is still continuing amongst the Indian Muslims, especially in the context when polygamy has been abolished in very many other Islamic countries. Finally, it is also attempted to find out the fall outs of

of this continuing problem vis-a-vis other personal laws in India. And thus the present study of the problem of polygamy and its changing perspective under the personal laws in India in its socio-legal context.

For putting the whole subject in to proper perspective, the present work is divided in as many as eight chapters, including the introductory chapter, which has been titled as Chapter I. In order to gain insight into the institution of polygamy the following chapter, namely Chapter II has been devoted to study, the very origin of the institution of marriage in anthropological and sociological setting. In Chapter III titled as 'Status of Women' I have endeavoured to dilate upon the status which was conferred upon women in the changing socio-economic conditions over the centuries. This has enabled me to deal with the practice of polygamy amongst the Muslim in particular and the Hindus, Christians, Parsis and Jews in general. Both these aspects have been dealt with in Chapter IV and Chapter V respectively. In the light of this background Chapter VI is devoted to the study of the problem created by the conversion of persons married under their respective non-polygamous personal law to polygamous personal law. Chapter VII is exclusively devoted to examine the Constitutional imports of the Muslim personal law sanctioning polygamy.
In the light of the various socio-legal considerations coupled with the constitutional imports of personal laws in general and Muslim personal law in particular, finally I have tried to build up a case for the abolition of polygamy. For preparing this case I have derived valuable support from the Quranic injunctions which seem to permit polygamy but only conditionally. In this respect I have also taken into account the lead which has been given by very many Muslim countries who have either abolished or restricted the practice of polygamy. Prevailing social mode amongst the Indian Muslims which appeared to be precursor for prohibiting the practice of polygamy have also been taken into consideration. Recognising that the belief in polygamy is not a part of the basic tenet of Islam, I have suggested that the Muslim personal law can certainly be reformed from 'Within' by legally abolishing polygamy amongst the Muslims, and this step in turn would pave the way for raising the status of women based upon justice - social, economic and political. This in short is the conclusion contained in Chapter VIII. Since the last chapter is the culmination of all the rest, a need for a separate chapter is thus obviated.