

The Supreme Court of India ruled on appeal at the fag end of April 2009 that legal and punitive proceedings against men cohabiting with but not legally married to a woman were valid in matters connected to dowry demands and harassment and other forms of cruelty. The ruling is welcome given that many 'irregular marriages' subsist in the country, whether monogamous or polygamous, the latter despite the existence of laws barring them, and it would be a travesty of natural justice to deny women in such unions the protective umbrella of the law. It could well be maintained, in fact, that women in 'illegal' marriages are often more in need of protection from the state because they do not have even that modicum of relief other women might just about have in the shape of social sanctions and familial support. This ruling is of a piece with recent judicial verdicts that have given women in unions that do not have a legal imprimatur a variety of safeguards including the right to maintenance when abandoned.



That having been said, there is probably a case for more proactive state action to prevent infringement of laws against polygamy. There can be little doubt that an overwhelming majority of polygamous marriages leave all the wives involved in such arrangements in seriously invidious situations. The first wives most often face abandonment, often with the added responsibility of looking after children from the legal marriage. Since, unfortunately, the social stigma against polygamous practices is near non-existent, especially in rural areas, sanctions against abandonment barely exist. Once married, women cease to enjoy the support of their own families and are unenviably cast adrift to fend for themselves. And since, in most cases, their access to legal processes is at best tenuous, they are deprived of the support of the state as well. The second wife or subsequent wives were worse off since technically they did not have the protection of the law in the first place, till recently. But, as we have noted, since, most women do not have ready access to legal redress, it is incumbent on the state to crack down on polygamous practices to begin with. It is a matter of deep disquietude that celebrity polygamists, most notably in Bollywood, seem to get away with polygamous misadventures with impunity because the law-enforcement agencies do not act suo motu. If the law has to be changed to facilitate such action without the necessity of a complaint from the injured parties that should be seriously contemplated. It might not matter to the relatively empowered women but it does to the large majority of women in this country.



The Hindu right in India has for long made a fetish of the uniform civil code, hinging its arguments on the discriminatory provisions that allow Muslim men to practice polygamy and prohibit men of other religious persuasions from doing so. It is a measure of the devastating intellectual bankruptcy of the anti-modernist Hindutva parivar that the debate over polygamy is cast as a matter of the enjoyment of an extra right or privilege by men of the Muslim minority as against a disability imposed on men of the majority community rather than as a matter of women's rights and freedoms. That is in context, however, unsurprising, since pitching the argument in the frame of equal rights would entail an interrogation and critique of the often medieval oppressions heaped upon Hindu women and the iniquities deeply embedded within Hindu society. The Hindu right is incapable of embracing this project not just because of its ideological proclivities but because central to its mobilisational strategy is the consolidation of the fundamentalist and ultra-conservative wing of the majority community.

Now that the highest court in the country has taken a proactive interest in the grey area of cohabitation practices and the rights entailed in them, a short step forwards would be directions to the central and state governments for a review of the legislative situation, followed by the formulation and implementation of a new policy on women's rights, if necessary monitored by the judiciary itself. It is a matter of some optimism that of late the ministry in charge of women's and children's affairs has acquired a higher profile by encouraging and participating in more vigorous public debate on crucial issues. It deserves greater support from the public and the political establishment.

Source for Pics 1 & 2. www.google.com/images

In Mexico, 18.7 per cent of couples were cohabitants in 2005. The for "Cohabitation Societies Law"

In Bangladesh cohabitation after divorce is frequently punished by courts, especially in rural areas

In Indonesia, an Islamic penal code proposed in 2005 would have made cohabitation punishable

In post-Apartheid South Africa, the Violence Against Women and Children Act (VAWA) and the National Policy Guideline

¹ <http://en.wikipedia.org/wiki/Cohabitation#Americas> , last accessed on 16/07/2009.

² Taj I. Hashmi, *Women and Islam in Bangladesh: Beyond Subjection and Tyranny*, Palgrave Macmillan, 2000, New York, p. 112.

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<http://news.bbc.co.uk/1/low/world/asia-pacific/4239177.stm> , last accessed on 16/07/2009.

⁴ <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/vetten.vaw.pdf>
accessed on 21.07.2009.