

Polygamy versus equality rights: Is polyandry a solution?

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Abstract: The right to Equality has been accepted as one of the principles of jus cogens since the Second World War and it is protected in numerous international and regional human rights instruments. The Convention on Elimination of all Forms of Discrimination against Woman (CEDAW) is a comprehensive document that serves as the international Bill of Rights for women and it prohibits polygamy. This paper examines whether the most unusual customary practice of polyandry would serve as a solution in elevating the status of women to be on par with that of man that are polygamists or not. This paper concludes by arguing that polyandry cannot solve the problem of inequalities that are confronted by women because even in polyandrous societies there is male domination that is detrimental to the equality rights of women.

Keywords: Polygamy, Polyandry, discrimination

Introduction

Polygamy is divided into two forms, that is, polygyny and polyandry. Polygyny is where a husband has more than one wife at the same time (that man is regarded as a polygamist) while polyandry is where a wife has more than one husband at the same time. Although polygyny is technically the correct term, the more common and popular usage in many scholarly writings is polygamy. However, this paper will deviate from the latter popular usage and will refer to polygyny when discussing a marriage relationship where a man has more than one wife and refer to polyandry when discussing a marriage relationship where a wife has more than one husband at the same time.

The issue of polygamy became a subject of debate and condemnation from the advent of colonialism and missionaries in South Africa. Colonizers treated it with distaste and recommended for its abolition.¹ It is beyond any doubt that the struggle for survival of African traditions such as polygyny has been an uphill one.²

In recent years some scholars persisted with the arguments for the condemnation of polygyny.³ It is clear that polygyny only permits a husband to have more than one husband while not affording the same right to a woman. For some people this may be perceived as a blatant discrimination against women. This is partly supported by the fact that in Zulu culture a man who has multiple sexual partners or wives is known as “*isoka*”, while the man with one or no sexual partner is regarded as “*Isishimane*”. *Isishimane* is a derogatory term used to label someone with one or no woman lover.⁴ A woman with more than one sexual partner or husband is regarded as “*isifebe*”. *Isifebe* is a derogatory term used to label a female with more than one lover.

¹ HA Junod “Bantu Marriage and Christian Society” (1941) 15 Bantu Studies 30-31; Kerr AJ “The Cape Government Commission on Native Laws and Customs (1883)” 1986 Transkei Law Journal 11

² DS Koyana “The Resilience of Customary Law in South Africa” 2013 Paper Presented in the International Conference – Two Decades of Constitutional Democracy and the Bill of Rights in South Africa held on the 21st - 23rd of October 2013 in East London (University of Fort Hare) 1-10.

³ JC Mubangizi “A South African Perspective on the Clash between Culture and Human Rights with Particular Reference to Gender-Related Cultural Practices and Traditions” 2012 (13) 3 Journal of International Women’s Studies 41-43; M Mswela “Cultural Practices and HIV in South Africa” 2009 (12) 4 Potchefstroom Electronic Law Journal 171-213

⁴ SM Mogotlane et al “Women’s Cultural Perspectives on Reasons for HIV/AIDS Prevalence in Rural Area of KwaZulu Natal Province of South Africa” 2007 (9) African Journal of Nursing and Midwifery 40.

It is not surprising that CEDAW ended up drawing an inference in one of its concluding observations that polygamy is in conflict with the equality rights of women by stipulating that:

Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The committee notes with concern that some state parties, whose Constitutions' guarantee equal rights, permits polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of Article 5 (a) of the Convention.⁵

As mentioned earlier, the correct technical term for a marriage relationship where a man has more than one wife at the same time is polygyny whereas a marriage relationship where a wife has more than one husband at the same time is polyandry. It appears from the latter statement of CEDAW that the main intention is to discourage and abolish polygyny and not polyandry and this raises a question whether polyandry is in line with the principles of gender equality or not.

This paper intends to investigate whether the giving of the same opportunity to women to have more than one husband at the same time (that is polyandry) would constitute a solution to the problem of discrimination or not. In doing so, the first part of this paper will discuss the reasons that led people to practice polyandry and different forms of it. The second part intends to discuss polyandry versus human rights as protected in numerous international and regional human rights instruments. The study will rely on journal articles, books, conference presentations, decided cases and reports on the issue of polygyny and polyandry and would not extend to questionnaires.

The following part is dedicated to the discussion of the reasons that led people to practice the custom of polyandry.

Reasons that Led People to Practice Polyandry

In undertaking this project of studying different family systems, it is of crucial importance to start by understanding systems of kinship in polyandrous societies. Polyandry is not common like polygyny but it exists in some parts of the world such as India, Tibet, South America and some parts of Africa.⁶ This form of unusual marriage relationship is practiced in many forms, namely:

1. Fraternal polyandry – this is a common form of polyandry and it connotes a marriages relationship where a group of co-resident brothers jointly conclude a marriage with one woman. Normally the eldest brother is the one who is in control of the wife even though he permits other brothers to have sexual relations with the wife.⁷ This form of marriage relationship is not free from problems, more especially, when the age gap between brothers is too high.

2. Associated polyandry – this is a marriage relationship where a female is permitted to marry more than one husband. It is possible for husbands to be related to each other (brothers) or non-related. However, the common way of this marriage relationship is the marriage of a woman to a group of brothers. It is noted that this form of polyandry begin as a monogamous marriage and other husbands are incorporated at a later stage. The first husband is regarded as the primary husband while the second one is regarded as the secondary husband.⁸

3. Secondary marriage – this form of marriage relationship is found in some parts of Africa such as Northern Nigeria and Northern Cameroon. It connotes a combination of polygyny and polyandry. A woman get married to various husbands concurrently and the same man are married to several wives simultaneously.⁹

4. Nayar polyandry – this form of marriage relationship is more common among the Nayar of South West India. It is a unique form of polyandrous relationship where husbands do not live together with their wife in a single household and is non-fraternal. In this unique marriage relationship, a wife becomes the wife of the whole village and theoretically she enjoys a high status if all customs are properly followed. However, her status would be low and can be treated as an outcast or killed if she decides not to be abided by the custom.¹⁰

⁵ CEDAW General Recommendations number 21, 13th Session, "Equality in Marriage and Family Relations", 1994, paragraph 14.

⁶ Katie Starkweather "A Preliminary Survey of Lesser-Known Polyandrous Societies" 2009 Nebraska Anthropologist pp 17-33 paper 50 available at <http://digitalcommons.unl.edu/nebanthroso> ; DG Berreman "Pahari Polyandry: A Comparison" 1962 (64) 1 American Anthropologist 60-75.

⁷ Katie Starkweather supra 18.

⁸ Katie Starkweather supra 18.

⁹ Katie Starkweather supra 19.

¹⁰ EK Gough "The Nayars and the Definition of Marriage" 1959 (89) 1 The Journal of the Royal Anthropological Institute of Great Britain and Ireland 23-34.

In view of the latter mentioned forms of polyandry it is necessary to discuss the reasons that led to the practice of polyandry.

Economic factors – this form of marriage relationship (polyandry) is more common in places where people find themselves in an environment that is not conducive to produce sufficient food and other things that can make human survival possible. Polyandry is common in mountainous areas that are rocky and with marginal economy. In such a society people tries by all means possible to limit population growth, so that their environment will continue to accommodate low density population.¹¹

Difficulty in raising enough money to defray bride price and of providing expensive jewelry that is required if you want to marry a Pahari woman is one of the reasons that made people to resort to polyandry. This is so because in a polyandrous relationship, brothers jointly pay the bride price and marry a wife that they share amongst themselves.¹² This shows beyond any doubt that it expensive to obtain a wife and it is also expensive to maintain the wife and to support the family. Therefore this constitutes one of the reasons for the continuation of polyandry.¹³ In a polyandrous relationship that is fraternal brothers are jointly responsible for the maintenance of their wife and the general support of the family. Therefore all economic hardships confronted by the people in polyandrous societies necessitated a co-operation between brothers for the sake of survival.¹⁴

Social factors- it is noted that security of a wife is one of the justifications of the continuation of polyandry. Husbands usually spend prolonged periods away from home to look after their livestock. Therefore this necessitated one or two brothers to remain at home to protect the wife and to ensure that she has no sexual contact with strangers.

Polyandry versus human rights

On the face of it, one may assume that this unusual marriage relationship that give a woman a right to have more than one husband elevates her status in society and makes her equal to men. On the contrary, in polyandrous societies a woman has no property rights of her own except in most unusual circumstances and she forfeits even her jewelry if she divorces her husband.¹⁵ It is common practice amongst polyandrous societies to exclude woman from inheriting, and this is a form of wealth conserving mechanism. Polyandrous societies are patrilineal and property is jointly controlled by male members of the extended family.¹⁶

In view of the above, this paper argues that polyandry constitutes discrimination against women in the context of inheritance rights. This traditional practice of excluding women from inheritance that is common in polyandrous societies is harmful to a specific group (women and girl children) and contributes to the economic subordination of women and consequently perpetrates the inferiority status of women. This contravenes equality rights as protected in numerous international human rights instruments. The right to equality has been described as the overriding human rights norm that is the ‘obvious starting point in operationalizing human rights.’¹⁷ In fact the right to equality has been accepted as one of the principles of jus cogens since the Second World War.¹⁸ The exclusion of women from inheritance clashes with equality rights as protected in the United Nations Charter, Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on Elimination of all forms of Discrimination against Woman (CEDAW).

¹¹ GD Berreman “Ecology, Demography and Domestic Strategies in Western Himalayas 1978 (34) 3 Journal of Anthropological Research 333-335.

¹² DN Majumda “Family and Marriage in Polyandrous Society” 1955 The Eastern Anthropologist 95.

¹³ PNM Bhat and SS Halli “Demography of Bride Price and Dowry: Causes and Consequences of the Indian Marriage Squeeze” 1999 (53) 2 Population Studies 129-148.

¹⁴ KM Kapadia Marriage and Family in India 1955 Oxford University Press 71, AR Radcliffe-Brown The Study of the Kinship Systems 1941 Journal of the Royal Anthropological Institute of Great Britain and Ireland 07.

¹⁵ GD Berreman “Polyandry: A Comparison” 1962 (64) 1 American Anthropologist 63.

¹⁶ MC Goldstein “Pahari and Tibetan Polyandry Revisited” 1978 (17) 3 Ethnology 334.

¹⁷ K Tomasevski ‘Indicators’ in A Eide, C Krause and A Rosas (eds), Economic, Social and Cultural Rights, 2 ed (2001) 533.

¹⁸ L Berat “The Future of Customary Law in Namibia: A Call for an Integration Model” 1991 (15) Hastings International Law and Comparative Law Review 1.

Conclusion

It has been argued in this paper that the rationale behind polyandry is not to elevate the rights of women to be on par with that of man but it came as a result of economic difficulties and some social problems. It also appears that wherever polyandry exists there is male domination and in most cases polygyny also exists in such polyandrous societies. There is a gross violation of equality rights for women in polyandrous societies and this is because women are not entitled to property inheritance. Therefore polyandry cannot serve as a solution to the question of gender equality and it perpetuates gender discrimination instead.