

RECOGNITION OF POLYGAMOUS MARRIAGES IN ENGLISH LAW

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§ 1 INTRODUCTION

This paper is concerned with the equivalence of institutions or statuses: when should a status formed under a foreign law be regarded as equivalent to a status under the law of the *forum*, with the consequences that flow from that?

In the field of marriage, homosexual marriages and polygamous marriages are the most prominent examples. We will consider the latter.

Polygamous marriages may be divided into two kinds:

- what anthropologists call “polygynous” marriages (one husband and two or more wives);
- what anthropologists call “polyandrous” marriages (one wife and two or more husbands).

The latter are rare, though they may still exist in parts of Africa. We will consider solely the former and will use the term “polygamy” to refer exclusively to polygyny.

§ 1.1 Legal systems permitting polygamy

Islamic law permits a man to have a maximum of four wives and this is still possible in many Muslim countries. Various systems of African customary law, as applied in present-day African States, permit polygamy. Hindu law used to permit it, but this was changed after India gained independence.¹ Jewish law at the time of Jesus permitted polygamy. European Jews gave it up in the Middle Ages but it was still found among Middle-Eastern Jews in the Twentieth Century.² Polygamy among Jews in Israel is forbidden.

§ 1.2 The definition of polygamy

Many legal systems define polygamy as a union between a man and two or more women. English law adopts a different approach. It regards a marriage as polygamous if, under the applicable law, the man is entitled to take a

¹ Hindu Marriage Act 1955.

² See *Cheni v. Cheni* [1965] P 85.