

## Legal and Social Viability of Polygamy: An Analysis

Abdul Haseeb Ansari\* & Kyaw Hla Win Md. Hassan Ahmed\*\*

### Abstract

In Islam, a Muslim male is allowed to have up to four wives provided all wives are treated equally and do not suffer from any kind of discrimination. The divine injunction of equal treatment is actually for protecting rights of the wives. It is for this reason that many Muslim countries have enacted laws for providing protection to wives. One of the notable legal principles is that a man, who has a wife, cannot marry with another female without permission of the first wife, and so on; or he can do so if allowed by the court of competent jurisdiction. Some other countries, like Tunisia, have banned polygamy. This, in effect, is denial to the right guaranteed in the *Sharī'ah* to both Muslim males and females, as in certain circumstances polygamy brings happiness to the family. For example, if wife is suffering from some kind of contagious disease and the husband is deprived of fulfilling his sexual desire, in view of the ban, he will have to divorce his first wife in order to marry with some other female. In India, in such a situation, there are reports that the first wife, who is already in agony of a disease, is either burned or divorced on the basis of mutual consent, which is generally based on duress or payment of inappropriate amount of money. This is violation of matrimonial rights guaranteed by the *Sharī'ah* and constitutions of modern states. The paper discusses the human right aspect of polygamy referring to various religious positions and law in some Muslim countries. The paper concludes that polygamy should be allowed but law should be designed in such a way that the divine injunction of equal treatment of all wives is ensured.

**Keywords:** Polygamy, Polygyny, Marriage, Sharī'ah, Human Right.

### Abstrak

Dalam Islam, seorang lelaki muslim dibenarkan mempunyai sehingga empat isteri dengan syarat perjanjian yang sama untuk setiap isteri, dan tidak mengalami sebarang bentuk diskriminasi. Perintah ilahi layanan sama rata sebenarnya melindungi hak-hak isteri-isteri. Ia adalah atas sebab-sebab ini bahawa banyak negara-negara Islam telah digubal undang-undang untuk memberi perlindungan kepada isteri-isteri. Salah satu prinsip-prinsip undang-undang yang ketara adalah bahawa seorang lelaki, yang mempunyai seorang isteri, tidak boleh berkahwin dengan seorang perempuan lain tanpa kebenaran isteri pertama, dan sebagainya; atau lelaki boleh berbuat demikian jika dibenarkan oleh mahkamah mempunyai bidang kuasa berwibawa. Beberapa negara lain, seperti Tunisia, telah

---

\*Professor of Law, AIKOL, International Islamic University Malaysia. E-mail: [ahaseeb111@yahoo.com](mailto:ahaseeb111@yahoo.com); [ahaseeb@iium.edu.my](mailto:ahaseeb@iium.edu.my)

\*\*Lecturer of Law, Management & Science University, Malaysia. E-mail: [hwkyaw@msu.edu.my](mailto:hwkyaw@msu.edu.my)

mengharamkan poligami. Ini, di kuat kuasa, penafian kepada hak yang di jamin dalam *Shari'ah* kepada lelaki dan perempuan, seperti dalam keadaan poligami tertentu membawa kebahagiaan kepada keluarga. Misalnya, jika isteri menghidap sejenis penyakit yang berjangkit dan suami dilucutkan dari memenuhi keinginan seksual, memandangkan larangan tersebut, dia perlu menceraikan isteri pertamanya untuk berkahwin dengan wanita lain. Di India, dalam situasi seperti ini, terdapat laporan bahawa isteri pertama, yang menghidap penyakit, sama ada dibakar atau diceraikan atas dasar persetujuan bersama, yang umumnya berdasarkan paksaan atau pembayaran jumlah wang yang tidak wajar. Ini adalah melanggar hak-hak perkahwinan yang dijamin oleh *Shari'ah* dan perlembagaan negara moden. Karya ini akan membincangkan aspek hak manusia atas poligami merujuk kepada pelbagai jawatan agama dan undang-undang di beberapa negara-negara islam. Karya ini menyimpulkan dengan bahawa poligami harus dibenarkan tetapi undang-undang perlu direka bentuk sedemikian supaya perintah ilahi atas layanan sama rata pada semua isteri-isteri dipastikan.

**Kata kunci:** Poligami, Poligini, Perkahwinan, *Shari'ah*, Hak manusia

### Introduction

Marriage is a crucially important social institution in all religious, cultural and ethnic groups. Marriage is defined as a union of two opposite sexes for living together, sharing each other's joy and woe, cohabiting and procuring children. Under some religions and laws, marriage is a contract based on volition. In some other religions and laws it is a sanctimonious religious performance. For example, the *Shari'ah* and laws in Muslim countries are based on contract; whereas, Hindu religion and Hindu law considers it as a sacrament. It is only recently the right to divorce on mutual consent basis has been recognized. It is for this reason that governing laws of marriage in different ethnic, cultural, religious groups are varied from one another<sup>1</sup>. From the secular point of view, marriage is a personal union of individuals which may also be called matrimony, while the ceremonies – which are generally based on customs and religious norms - that mark solemnization of a marriage is usually called wedding ceremonies, and the status created is sometimes called as wedlock. It is also nothing but a contract demonstrating mutual promises generating various rights between the husband and the wife. Marriage is an institution in which interpersonal relationships of the parties are acknowledged by the religion, and state. In Islam, the ultimate object of marriage is to have a healthy family where a man and his wife or wives and children enjoy their rights, live in peace,

---

<sup>1</sup>Tauqir Mohammad Khan, *Law of Marriage and Divorce in Islam*, (New Delhi: Pentagon Press, 2007), p. ix

love and harmony as required the Qur'anic injunction: “*Among His Signs is that He created for you wives from among yourselves, that you may find repose in them, and He has put between you affection and mercy.*” (The Qur'an, 30:21). Thus, the man as the father and the woman as the mother of the children dwell together and build up a family unit<sup>2</sup>. The Qur'anic *āyāt* (plural of *āyah*) clearly demonstrate that women have right to enjoy their rights guaranteed by the *Shari'ah* and accentuated by enacted laws. People marry for numerous reasons, i.e. to form a family unit, to share joys and woes, to cohabit, to procure and nurture children, to maintain social and economic stability of the family. However, wives have a number of rights. Significant among them is right to work. It is because evils of family violence and undermining women's' rights are because of the economic dependency of wives. Denial of this right of wife or wives is denial of their rights guaranteed by the *Shari'ah* and laws of many contemporary states<sup>3</sup>. In countries, where women work, the economic conditions of families, in turn, strengthen. This has been stated by Gunnar Myrdal in his *Asian Drama* that in Muslim countries if women do not contribute to the economic development of their countries, the countries will relatively lag behind. This paper intends to examine as to how polygamy has been allowed to be practiced in various religions; and discuss laws of certain Muslim countries allowing polygamy and ensuring rights of the second wife and so on.

### Forms of Marriage

Various forms of marriage can be divided into two major categories, monogamy and polygamy. Monogamy is a union between one man and one woman as husband and wife. In a polygamous marriage, there is more than one wife. Polygamy can be classified into three specific forms: polygyny, polyandry, and polygynandry. Polygyny is a marriage in which a man is married to more than one wife at one time. Polyandry is a marriage where a woman is married to more than one husband at the same time. It was customarily practiced by nomadic Tibetans in Nepal and parts of China. In this practice, two or more brothers shared one and the same wife. It had been practiced in these regions due to the scarce environmental

<sup>2</sup>Abdul Rahman I Doi, *Women in Shari'ah* (London :Taha Publishing Ltd 4<sup>th</sup> edn, 1989), pp. 51-52

<sup>3</sup>Haseeb Ansari,. “Feminist Jurisprudence”, *Journal of Islamic Law Review*, Vol.6, 2010.

resources and limited human population growth. Polygynandry is a marriage in which more than one man and more than one woman form a single family unit, and all members in such a marriage share parental responsibilities for their children arising from that marriage.

Historically, although all these forms of polygamous marriages have been practiced in various societies around the world, polygyny is the most common practice among them. Furthermore, the term polygamy is repeatedly used to identify the practice of polygyny alone rather than the practice of polyandry and polygynandry. In this paper, accordingly, the term “polygamy” will be used frequently as the same appraisal with the term “polygyny” since most of the commentators also employ the same approach in relation to these terms.

### **Polygamy in Various Religions**

Polygamy was commonly practiced among all ancient nations and religions, including Judaism, Christianity, Islam and Hinduism except Buddhism. The status of the practice of polygamy in these religions seems to be appropriate to be discussed.

#### **Islam**

The Qur'an is the only religious Book on the earth that contains the phrase “*marry only one.*” In Islam, monogamy is a general rule while polygamy is only an exception and being practiced in certain places under circumstances which depend on the requirements of the society<sup>4</sup>. Unrestricted polygamy had been in practice before the advent of Islam in Arabia as well as other parts of the world. Only when the Prophet (s.a.w.) preached Islam, based on a Qur'anic injunction, the practice was restricted only up to four wives and that too under the condition that the husband will grant right to equality of all his wives. Right after this divine injunction, the Prophet (s.a.w.) said that: “Keep four of them and set the others free”<sup>5</sup>. Freed women, thus, had right to become wives of other persons or to lead solitary life.

There are two Qur'anic verses that refer to polygamy. In the first verse, Allah (s.w.t.) says that: “*If you fear that you shall not be able to deal justly with the orphans-girls, then marry women of your choice, two or three or four; but if you fear that you shall not be able*

---

<sup>4</sup>Pearl, D and Menski, W.. Muslim Family Law (London: Sweet & Maxwell, 3rd edn, 1998.), p. 237

<sup>5</sup> Sunan Abī Dāw'ud, Kitāb al-Ṭalāq, No.2241

*to deal justly, then only one or what your right hand possess. That is nearer to prevent you from doing injustice*" (The Qur'an, 04:03). It was revealed immediately after the Battle of *Uhud* when the Muslim community was left with many orphans and widows and some captives of war. The treatment to wives is to be governed by principles of greatest humanity and equality<sup>6</sup>. If a person is not able to deal justly with all four wives, he should not marry more than the number he can be just with. Thus, Islam allows a man to practice polygamy up to four women conditionally in accordance with the humanitarian perspectives, i.e. he can give them equal treatment. If he cannot do so, he has to abstain. More appropriately, permission for more than one wife is contingent on two conditions: firstly, if there is excess of single or husbandless women in the society and there is no other reasonable solution possible; and secondly, justice can be done to all individuals in the family<sup>7</sup>. If someone marries with more than one woman (up to four) and beats any one or more of them, he is not practicing *taqwa* (virtuous act). The Prophet (s.a.w.) said: "How does anyone of you beat his wife as he beats the stallion camel and then embrace (sleep with) her?"<sup>8</sup>

The permission to practice polygamy must be read together with conditions and requirements to practice it. It should also be noted that in the same Chapter, Allah (s.w.t.) articulates that: "*You will never be able to do perfect justice between wives even if it is your ardent desire...*" (The Qur'an, 04:129). Actually, it is not easy to deal justly even with one wife in line with the spirit of the Qur'an, let alone wives. In Islam, a wife is a trust from Allah (s.w.t.) and men will be questioned on the Day of Judgment regarding the manner they honored the trust with<sup>9</sup>. If a man takes more than one wife, it is absolutely essential for him to be just by all possible means to them. The word just here means within one's ability in all matters, especially in terms of maintenance and distribution of the time. The Prophet (s.a.w.) said: "He who does not do justice between his two wives will face dire consequences on the Day of Judgment"<sup>10</sup>. Another *ḥadīth*

<sup>6</sup>Nik Noriani Nik Badli Shah, *Marriage and Divorce under Islamic Law*. Kuala Lumpur: International Law Book Services, 1998) p. 33-34

<sup>7</sup>Mimi Kamariah Majid, *Family Law in Malaysia*. Malayan law, Kuala Lumpur. Journal Sdn Bhd, 1999), p. 60

<sup>8</sup>Al-Bukhārī, *Kitāb al-Nikāḥ*. Bābu Mā Yukrahu Min Ḍarbi al-Nisā'i.

<sup>9</sup>Shah, *The Muslim View*. The Criteria Weekly Newspaper, 14 July, 25-31. 2008, p. 14

<sup>10</sup>Al-Tirmidhī, *Abwabu al-Nikāḥ*, 1141

narrated by ‘Ā’ishah (*r.a.*) states that: “The Messenger of Allah used to divide his time between his wives and he was fair. He used to say, “O Allah! That is my division with respect to what I have control over. Do not blame me for what You control and over which I have no control”<sup>11</sup>.

The Prophet (s.a.w.) did not allow his son-in-law ‘Alī ibn Abī Ṭālib (*r.a.*) to marry another woman. To testify it we can refer to a *ḥadīth*: “Unless and until ‘Alī ibn Abī Ṭālib divorces my daughter, for surely she is part of me and what troubles and agitates her troubles and agitates me too; and what harm befalls her befalls me too”<sup>12</sup>. It is notable here that this *ḥadīth* reflects the sentiments of the Prophet (s.a.w.) towards his daughter, and ‘Alī (*r.a.*) did not practice polygamy as he respected the Prophet’s sentiments. But this *ḥadīth* cannot have general application in the contemporary society.

Islam allows a Muslim to have more than one wife provided he is able to afford to maintain his wives. He is also not allowed to marry for simply fulfilling his lust. If a person has four wives, he divorces one of them in order to marry with another woman is also not allowed, as in Islam divorce is considered as the most disliked permissible act. Divorcing for no reason is not allowed. A divorce has to be preceded by genuine reconciliatory efforts, it should be the last resort either as *aḥsan* (best) divorce or *ḥasan* (good) divorce, and the husband should send his wife honorably with gifts according to his financial conditions. In order to check the evils of divorce some countries have law, which requires that divorce can be given only through courts and there will be division of properties acquired during the wedlock among the husband and the divorced wife. However, the courts are cautious in applying these provisions for the sake of ensuring justice and protecting the rights of the spouses.

## Judaism

The Hebrew Bible indicates that polygamy was practiced by the ancient Hebrews, though it was not very much widespread. For that reason, it was not prohibited or discouraged by the Bible. The Bible mentions several polygamists including prominent figures like Abraham, David, Jacob, Moses and King Solomon. The Torah, the Five Books of Moses, includes a few specific provisions on the practice of polygyny: “If he takes for him another wife, her food, her

<sup>11</sup> Abū Dā’ūd, Kitabu al-Nikaḥ, No.2134

<sup>12</sup> Al-Bukhārī, Kitabu Aṣḥāb Al-Nabī ﷺ, 2943

raiment, and her duty of marriage shall be not diminish” (Exodus, 21:10). It could be seen clearly that the marriage is allowed but not to diminish the status of the first wife. However, Karaite Jews ban polygyny on the basis of their interpretations of *Torah*. They interpret that a man can only take a second wife if his first wife gives her consent and he is capable of maintaining the same level of marital duties to both wives. As a result of these two limitations on polygamy, Israel has limited the ability to enter polygamous marriages for Jews, but existing polygamous families had remained lawful. Some of Sephardic and Mizrahi Jews discontinued polygyny when they immigrated to countries where polygamy is forbidden. The Jewish Sephardic communities residing in Muslim countries continued the practice of polygamy until 1950 when an Act of the Chief Rabbinate of Israel extended the ban on having more than one wife. It is manifest in the Old Testament that polygamy was not only permitted but also practiced as provisions for polygamy have been set out in the scriptures, provided the rights of all the wives are protected. The prohibition on polygamy was just a recent departure from the old practice in Judaism.

### **Christianity**

There is a widespread misguided belief that Christianity introduced the prohibition of polygamy in the New Testament. There is no scriptural account of Jesus prohibiting polygamy and early Christians were polygamous like Jews. Polygamy was also practiced during the New Testament period. Both the Old Testament and the New Testament allow polygamy. But in both of them the element of just to all wives has been of paramount importance. It means if a male is not economically and emotionally sound to support or to give equal treatment to his wives, he should abstain from practicing polygamy. According to Father Eugene Hillman, “Nowhere in the New Testament is there any explicit commandment that marriage should be monogamous or any explicit commandment forbidding polygamy”. In the Fourth Century, a Roman emperor authorized Christians to marry two wives. In the Eighth Century Charlemagne, holding power over both church and state, practiced polygamy and used to have six or, according to some authorities, nine wives<sup>13</sup>. According to Joseph

---

<sup>13</sup>Matilda Joslyn Gage, *Woman, Church And State*. New York: The Truth Seeker

Ginat, the author of “Polygamous Families in Contemporary Society”, the Catholic Church frowned at the practice, but occasionally sanctioned second marriages for political leaders<sup>14</sup>. Again, in 1531, the Anabaptists preached that a true Christian must have several wives<sup>15</sup>. St. Augustine affirmed that polygamy was not a crime where it was the legal institution of a country. He stated that polygamy “...was lawful among the ancient fathers: whether it be lawful now also, I would not hastily pronounce. For there is not now necessity of begetting children, as there then was, when, even when wives bear children, it was allowed, in order to get a more numerous posterity, to marry other wives in addition, which now is certainly not lawful.” In actual fact, the Church in Rome prohibited practicing polygamy in order to be in conformity with the Greco-Roman culture which prescribed to have only one legal wife while tolerating concubines and prostitution<sup>16</sup>.

In Africa, generally, the main purpose of marriage is to have many children as they consider children are their glory. Polygamy is an old established custom. Churches have long recognized polygamy as it is stated in the 1988 Lambeth Conference, “It has long been recognized in the Anglican Communion that polygamy in parts of Africa, and traditional marriage, do genuinely have features of both faithfulness and righteousness”<sup>17</sup>. Most Africans feel that monogamy is as an European culture imposed on the newly converted Africans by the missionaries. Therefore, it can also be seen obviously that there is no explicit prohibition on polygamy in Christian and it has been practiced in Christianity since it is not intrinsic immorality or sinfulness. The practice of monogamy in Christianity was merely introduced by the Greco-Roman Monarchy. It is allowed in the New Testament with a condition of ensuring domestic rights of wives.

---

Company, 1893, p. 398

<sup>14</sup>Peggy Fletcher Stack, . Globally, Polygamy Is Commonplace. The Salt Lake Tribune, 20 September,1998, The Qur’an, (30:21), (04:03), (04:129).

<sup>15</sup>Philips , Abu Ameenah Bilal and Jones, J,. Polygamy in Islam (2nd edn.). International Islamic Publishing House (IIPH). 2005), p. 14

<sup>16</sup>Deferrari,Saint Augustine - Treatises on Marriage and Other Subjects. Vol. 27, pp. 31, 34, 36, 18.

<sup>17</sup>Robin Gill, Churchgoing and Christian Ethics. Cambridge University Press, England.1999), p. 249; Marc Lacey, Polygamy in Kenya an issue after wives of president revealed. New York Times, 19 December.2003



## Hinduism

Both polygyny and polyandry have been practiced in ancient, medieval and early-modern periods of Hindu societies. Hindu Epic Ramayana mentions that father of Ramchandra, king Dasharath had three wives but Ram preferred only one wife; and another Hindu mythological source, Mahabharat describes how a woman namely Draupadi married five brothers, the Pandavas. Historically, Hindu kings used to take concubines routinely. In India as well, in fact, monogamy was only imposed by European Rulers, especially by the British in 18th and 19th Centuries after the colonization. Under contemporary Hindu Law, polygamy is forbidden for Hindus, Jains, and Sikhs. However, Muslims in India are allowed to have multiple wives (limited to four) as their personal laws are governed by the *Shari'ah*. It is notable here that the prohibition of polygamy has encouraged several evils. Notable among them are: burning wife in order to clear the way for marrying another woman; compelling the wife, including the wife who cannot bear a child or who suffers from some kind of contagious diseases, to take divorce on mutual consent basis; having a number of concubines; and battering the wife in order to get rid of her. Monogamy has also been a contributing factor for women to become prostitutes in Indian Hindu families.

## Buddhism

Marriage is considered a secular issue in Buddhism. According to Theravada Buddhism, polygamy is discouraged and extramarital affairs are considered sinful. Although Theravada Buddhism discourages polygamy, it has been practiced widely in most of the countries where Buddhists constitute majority such as Myanmar and Thailand. Polyandry (especially fraternal polyandry) is also common among Buddhists in Tibet, Sri Lanka, Bhutan, Ladakh, and other parts of the Indian subcontinent.

## Practice of Polygamy in Contemporary Muslim Societies

Some modernists look at Islamic institutions including polygamy as irrelevant simply because they do not conform to Western lifestyles. They misinterpret verses of the Qur'an and vehemently oppose polygamy by saying that it is not even allowed in Islam. Their arguments are mainly based on the same two Qura'nic verses (4:3 & 4:129) as quoted earlier. They insist that polygamy

appear to be allowed in the Qur'an but the condition of being just and fair to wives is almost impossible hence polygamy disallowed<sup>18</sup>. This line of argument appears untenable because the Prophet (s.a.w.) would have, then, abolished polygamy as in the case of *mut'ah* (a fixed-term marriage). There is consensus (*ijmā'*) among the '*ulamā'*' of the world over the legal validity of polygamy.

There is no denying the fact that Islam favors the better interest of people. One Islamic principle is the prevention of harm. This principle warrants ban on polygamy in a situation where there is fear of injustice<sup>19</sup>. It is undeniable fact that the permission for polygamy under Islamic law has been abused by some Muslim men in several parts of the world. However, the law gives power to judicial authorities to grant permission for polygamy strictly for those who can fulfill its conditions. Polygamy serves to foster high social values and safeguard the society against promiscuity<sup>20</sup>. Legislators always have the right in setting conditions for a man who wishes to practice polygamous marriage in order to protect rights of individuals and control abuses of Qur'anic injunctions<sup>21</sup>. In contemporary Islamic societies, therefore, reasonable restrictions on polygamy may be imposed in order to render adequate safeguards for women in polygamous marriages.

### **Legal Provisions of Polygamy in Selected Muslim Countries**

There is lack of uniformity of Islamic family laws in Muslim countries. Saudi Arabia strictly follows the classical *Shari'ah*, and takes "God's Book and the *Sunnah* of His Prophet, as the bases for the constitution" [Basic Law of Government 1993 (Constitution of Saudi Arabia), Article 1]; and declares that "the family is the Kernel of Saudi Society, and its members shall be brought up on the basis of Islamic faith, and loyalty and obedience to God..." [Basic Law of Government 1993 (Constitution of Saudi Arabia), Article 9]. Similarly, in United Arab Emirates (UAE), courts apply classical Islamic law of personal status. Yemen (Constitution of Yemen 1991, Article 3) and Oman (The Basic Law [Constitution] of Oman 1996,

<sup>18</sup> Abdul Rahman I DoiIbid, pp. 55-56.

<sup>19</sup> Al-Man'Er, IV, pp. 349-350

<sup>20</sup> Mohammad Hashim Kamali, Islamic Law in Malaysia: Issues and Development. (Kuala Lumpur Ilmiah Publishers, 2000), p. 62

<sup>21</sup> Ala'eddin Kharofa, . Islamic Family Law "A comparative study with other religions". (Kuala Lumpur: International Law Book Services, 2004), pp. 40.41

Article 2) declare that the *Shari'ah* will be the source of all legislation<sup>22</sup>.

Only during the colonial era, majority of Muslim countries changed their law of personal status and imposed some legal restrictions on polygamy. Some countries, prominently Turkey and Tunisia, prohibited contracting a second polygamous marriage. However, in a number of jurisdictions, various restrictions have introduced by statutes, especially in Syria, Morocco, Iraq, Iran, Egypt, Somalia, Algeria, Yemen, Pakistan, Indonesia and Malaysia<sup>23</sup>.

### Turkey

Turkey became the first Islamic country to control polygamy in 1917, by requiring the consent of first wife to any subsequent marriage of the husband. The practice was banned completely with the adoption of the Turkish Civil Code, 1926<sup>24</sup>. Since the adoption of Turkish Civil Code in 1926, polygamy has been restricted and discouraged. Although it is not allowed by the legislation and not approved by state authorities, polygamous marriages have been praised by *imams*. However, the second wife is called as *kuma* and she has no legal rights under Turkish Civil Code, 1926. According to a report, though polygamous marriages are not legally recognized in Turkey, more than 186,000 women share their husbands with a second wife, a practice that is particularly common in the country's east. Second wives are married in religious or cultural ceremonies, and generally are eligible for few legal protections, according to the report by two academics, who presented their research to the Parliamentary Commission on Equal Opportunity for Women and Men.<sup>25</sup>

### Tunisia

The Tunisian Code of Personal Status of 1956 interprets the Qur'anic provision in Chapter IV, Verse 3 as a legal condition which overrules polygamy and, consequently, prohibits polygamy

---

<sup>22</sup>Abdul Ghafur Hamid, Reservation to CEDAW and the Implementation of Islamic Family Law: Issues and Challenges. (Asian Journal of International Law, 1(2): 121-155. 2006,) pp. 121-155

<sup>23</sup>Pearl, D and Menski, W., Ibid., p. 241

<sup>24</sup>An-Na'im, Abdullahi A, Islamic Family Law in A Changing World (A Globe Research Book). London: Zed Books Ltd),.2002, p. 34

<sup>25</sup><http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=some-186000>, 8 January 2012)

completely. The Code provides that “Any person, who is already married and before the marriage is lawfully dissolved, marries again, shall be liable to imprisonment for one year or for a fine of 240,000 francs, or to both”<sup>26</sup>. According to this reform, in Tunisia, polygamy is forbidden by law and constitutes a criminal offence.

### **Egypt**

Interestingly, the issue of polygamy has passed through numerous steps under Egyptian law. In 1967, the Draft Family Law was passed together with some restrictions on polygamy. The new element within the 1967 Draft Law gave the right to divorce on the ground of her husband’s subsequent marriage within two months of her learning of the marriage, unless she explicitly consented to the marriage and her consent implied that she knew he had taken another wife.

Later, Egyptian reforms in 1979 and again in 1985 also remained limited to it but appear to be confused on the complaining wife<sup>27</sup>. The Egyptian Act No.100/1985 follows the same trend. The Act No.25/1929 requires the husband to declare in the marriage document his social status, stating in his declaration the name of the wife or wives living with him in harmony. The Public notary is required under the law to notify his wife or wives about his new marriage by registered mail with recorded delivery. The new law also entitles the wife to apply for divorce if she suffers a material or moral injury due to her husband’s subsequent marriage even though she might not have stipulated in their marriage contract that he may not marry another. The wife shall lose the right to apply for divorce on this ground on the lapse of one year from her knowledge of the marriage to another, unless she has consented thereto whether expressly or by implication. This right shall be renewed whenever the husband marries again. If the new wife does not know that her husband is already married until her marriage to him, she may also apply for divorce<sup>28</sup>. There is a strong possibility that the new government of Egypt will certainly address the issues pertaining to polygamy, especially the issue of justice to all wives.

---

<sup>26</sup>The Tunisian Code of Personal Status of 1956, Section 18

<sup>27</sup>Pearl, D and Menski, W., Ibid, p. 245

<sup>28</sup>Jamal J Nasir C.V.O, The Islamic Law of Personal Status, (3rd Edn.. Kluwer Law International. 2002), p. 68

## Syria

Syria is also one of the earliest states that attempted to restrict polygamy. Syrian law authorizes the judge (*Qāḍī*) to refuse permission for a man who is already married to marry another woman, if it is established that he is not in a position to support two wives<sup>29</sup>. Financial ability is the only criterion for polygamous marriage in Syria. However, it is unclear whether the marriage is void if a man simply ignored the law and entered into another marriage (*nikāḥ*)<sup>30</sup>. In such a case, perhaps the marriage is deemed to be valid but defaulting man would be liable to penalties. The law also made further provisions to safeguard the legitimacy of the children from such marriages<sup>31</sup>. Syrian law is for protecting rights of women in polygamous marriages. There might be few other changes in the law if the present public outrage succeeds in establishing an Islamic state.

## Morocco

In Morocco, polygamy is prohibited when there is any apprehension of unequal treatment. It is provided that “if any injustice between the wives is feared, plurality of wives is not permitted”. Moreover, it is stated that: “a wife may stipulate in the marriage contract that her husband shall not marry a second woman along with her, and if the husband violates such a stipulation she will have a right to seek dissolution of her marriage”<sup>32</sup>. Thus, the Moroccan Law of Personal Status allows a wife to stipulate in her marriage contract that the husband shall not take a second wife and allows her to demand divorce if he violates this condition. This is to guarantee the protection of a wife against unwanted changes in the future. In addition, there is also a provision which states that “where a husband contracts a second marriage, and the wife had not stipulated against such an act in the marriage contract, the *Qāḍī* may consider whether the second marriage has caused any injury to the first wife; marriage with a second woman shall not be contracted unless she is informed that the husband is already married to another woman”<sup>33</sup>. Therefore, in Moroccan law, a marriage contract for the second or subsequent marriage shall not be drawn up until the new wife has been informed

---

<sup>29</sup>Law of Personal Status of 1953, Article 17

<sup>30</sup>Abdul Rahman I Doi, *Ibid.*, p. 150

<sup>31</sup>Pearl, D and Menski, W, *Ibid.*, pp. 241-242

<sup>32</sup>The Moroccan Code of Personal Status of 1958, Section 30 [1]

<sup>33</sup>*Ibid.*, Section [2]

that the husband is already married. In 1993, this area of the law was slightly reformed, adding one more requirement that the existing wife should be informed that her husband is intending to take another wife. The existing wife is allowed to claim for divorce if she is not given proper maintenance in accordance with principles of Mālikī School of thought.

### **Iraq**

In Iraq polygamy is not prohibited but the law has imposed several restrictions. The law provided, in essence, that it is not permissible for a man to marry more than one woman without authorization from the judge. It is provided in the law that “Marriage with more than one wife is not permissible except with the permission of the *Qāḍī* and the granting of such permission shall depend on the following conditions: (a) the husband’s financial position should be sound enough to have more than one wife; and (b) any lawful interest.....should be involved<sup>34</sup>. In cases “Where injustice between the wives is feared, plurality is not permissible, and determination of this fact is left to the *Qāḍī*”<sup>35</sup>. There is another condition for polygamy: the *Qadi* will not grant permission unless he is satisfied that there will be no fear of any unequal treatment of the wives.

Apart from setting restrictions on polygamy the Iraqi Law of Personal Status 1959 details the penalties for men who fail to comply with these legal provisions. It is stated in the law that “All those who enter into a contract of marriage with more than one woman in contravention of clauses (4) and (5) shall be liable to imprisonment for a period not exceeding one year, or to a fine not exceeding hundred dinars, or to both” (The Iraqi Law of Personal Status 1959; Article 3 [6]). However, a polygamous marriage without the *Qāḍī*’s permission is valid, although it gives rise to penal sanctions<sup>36</sup>.

### **Indonesia**

Under the Indonesian Marriage Law 1974, although polygamy is not prohibited, the consent of existing wife or wives is an essential requirement for a husband to enter into a polygamous marriage. A man may receive permission from a court to contract a polygamous marriage if: “(i) his wife cannot carry out her conjugal duties, or (ii)

---

<sup>34</sup>The Iraqi Law of Personal Status 1959; Article 3 [4]

<sup>35</sup>The Iraqi Law of Personal Status 1959; Article 3 [5]

<sup>36</sup>Pearl, D and Menski, W, *Ibid.*, pp. 242-243.

his wife becomes crippled or terminally ill, or (iii) his wife cannot give him children, and (a) his present wife or wives give him permission, (b) his ability to support all his wives and children is certain, and (c) his ability to be fair to all his wives and children is certain”<sup>37</sup>.

### Malaysia

In Malaysia, the Islamic law is the state subject and administered by Syariah (it is a Malay version of *Shari’ah*) Courts. From various Malaysian legislation of Islamic family law, the authors will discuss only the provision pertaining to polygamy under the Islamic Family Law (Federal Territories) Act 1984 as a model. It is provided under Section 23 (1) that: “No man, during the subsistence of a marriage, shall, except with the prior permission in writing of the Court, contract another marriage with another woman nor shall such marriage contracted without such permission be registered under this Act...” Again, under section 23 (4), the court may grant the permission applied for if satisfied:

- (a) that the proposed marriage is just and necessary, having regard to such circumstances as, among others, the following, that is to say, sterility, physical infirmity, physical unfitness for conjugal relations, willful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife or wives;
- (b) that the applicant has such means as to enable him to support as required by *Hukum Syarak* all his wives and dependents, including persons who would be his dependents as the result of the proposed marriage;
- (c) that the applicant would be able to accord equal treatment to all his wives as required by *Hukum Syarak*; and
- (d) that the proposed marriage would not cause *darar syar’i* (harm under the *Shari’ah*) to the existing wife or wives.

If a man enters into a polygamous marriage contract without the permission from the court, such marriage is valid according to

---

<sup>37</sup>Ibid., p. 245

*Hukum Syarak*. However, such marriage is to be registered under Section 123 which provides that: “Any man who, during the subsistence of a marriage, contracts another marriage in any place without the prior permission in writing of the court commits an offence punishable with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both fine and imprisonment.

### **Position of Polygamy in Contemporary Non-Muslim Societies**

Those who tend to support in banning polygamy, unfortunately, fail to realize that there will be sexual anarchy and moral deterioration if polygamy is not allowed. The best example could be found in most of the Western societies that ban polygamy. Millions of fatherless and illegitimate children are there in those societies. At this juncture, a question arises whether the practice of monogamy really help them keep the society healthy. The answer is definitely not. In recent years, some Western thinkers have started thinking prudently on this matter and have admitted that polygamy is a viable solution for some social problems.

Dr. Annie Besant highlights that “the practice of monogamy is pretended one, but there is really polygamy without responsibility in the West. It is much more preferable to be a sheltered wife in the polygamous marriage instead of being a ‘mistress’ who is cut off when the man is weary of her and a ‘miserable woman on the street’. She further points out that monogamy with a blended mass of illegal sexualities are hypocrisy and more degrading than a limited polygamy.” Moreover, Dr. Billy Graham says that “Islam has permitted polygamy as a solution to social illnesses and a certain degree of latitude to human nature but only within the strictly defined framework of the law. Though Christian countries make a great show of monogamy, actually they practice polygamy. No one is unaware of the role mistresses play in Western societies. If contemporary Christianity cannot practice actual polygamy rather than pretended one, it is detriment to safeguard the moral probity of the community.” Maryam Jameelah, acknowledges that “polygamy is allowed in Islam because all sexual relations outside of marriage are absolutely prohibited. There are several harsh punishments for those who commit sexual relationships outside the marriage. Therefore, if a man cannot be



satisfied with a single wife and he desires to have another, he must marry her and take full responsibility for her as well as children born out of that marriage. It is more favorable than divorcing first wife and taking another.” A’isha Lemu speaks on polygamy from her personal experience as she is married to a polygamous husband: “Although polygamy has been abused in sometimes and some places, polygamy has under certain circumstances a valuable function. The obvious example could be seen especially in times of war when there are large numbers of widows and girls whose fiancés and husbands have been killed in the fighting. In such situation, if a man is allowed to marry only one, millions of women will become in between a chaste and childless old maid-hood, or somebody’s mistress, that is an unofficial second wife with no legal rights for herself or her children. Sir George Scott expresses that the increasing of female populations in this century relatively encourages the practice of polygamy. Dr. Rom Landau views that: “In the light of the evidence collected by History and Science, it is impossible to reject polygamy”<sup>38</sup>.

In fact, majority of countries today have greater number of female population than male. It is, then, essential to consider that if a man marries only one woman, what will happen to those who would not be able to have a partner due to the less male population<sup>39</sup>. The pragmatic solution to this issue is the practice of polygamy. The women can willfully choose to become someone’s additional wife whereby the marriage is proper and fully recognized by society and any child born out of that wedlock would be legitimate and entitled to inheritance. In such circumstance, therefore, polygamy would be a win-win solution for all<sup>40</sup>.

After considering numerous ideas of Western thinkers and critics that have mentioned above, it is proven that polygamy is a practice not to be condemned without thinking its usefulness and possible benefits. In aforesaid circumstances, polygamy will provide the best solution in order to sever to the society as well as, in a wide sense, to the whole nation to prevent from doing deeds

---

<sup>38</sup>Abdul Rahman I Doi, *Idib.*, pp. 75-85

<sup>39</sup>Maulana Wahiduddin Khan, *Women between Islam and Western Society*. New Delhi: Goodword Books Pvt. Ltd.2007), p. 189.

<sup>40</sup>Shah, *The Muslim View*. *The Criteria Weekly Newspaper*, 14 July, 25-31 p. 14

such as illegal and extramarital sexual relationships which are sinful in all most all religions and not acceptable in all most all societies all over the world. Thus, it is prudent to suggest Western societies that polygamy within a strictly defined legal framework is the only feasible solution to their social illnesses and conjugal hardships of women.

### **Conclusion**

Polygamy was widely practiced among all ancient nations and religions, including Judaism, Christianity, Islam and Hinduism. In Islam, polygamy is allowed subject to a condition that the husband will treat all wives equally in terms of distribution of material things and time, and bestow love and affection to all his wives to the best of his ability. The human right aspect in Islam is of paramount importance. He who marries more than one woman and does not practice justice among them violates the divine injunction. Polygamy will always be relevant not only in modern societies but also until the end of the world as a pragmatic solution for all human being regardless of race, religion and society in order to encounter social problems. Islam deals with the issue of polygamy more clearly compared to other religions and provides certain legal requirements and restrictions that may amount to the discouragement of polygamy. The reason for not prohibiting is that there are certain situations faced by individuals and societies in different places and at different moments where polygamy becomes highly desirable. Polygamy should be open to practice especially in the following situations: (1) when the wife is suffering from a serious disease; or she is completely incapable of bearing a child; or becomes mentally unsound; (2) when female populations significantly increases more than male; or (3) when a large number of men are killed in wars and women become widows. In order to prevent abuse of this permission of polygamy Muslim legislatures can prescribe necessary rules and regulations pertaining to polygamy in accordance with *Shari'ah*.