



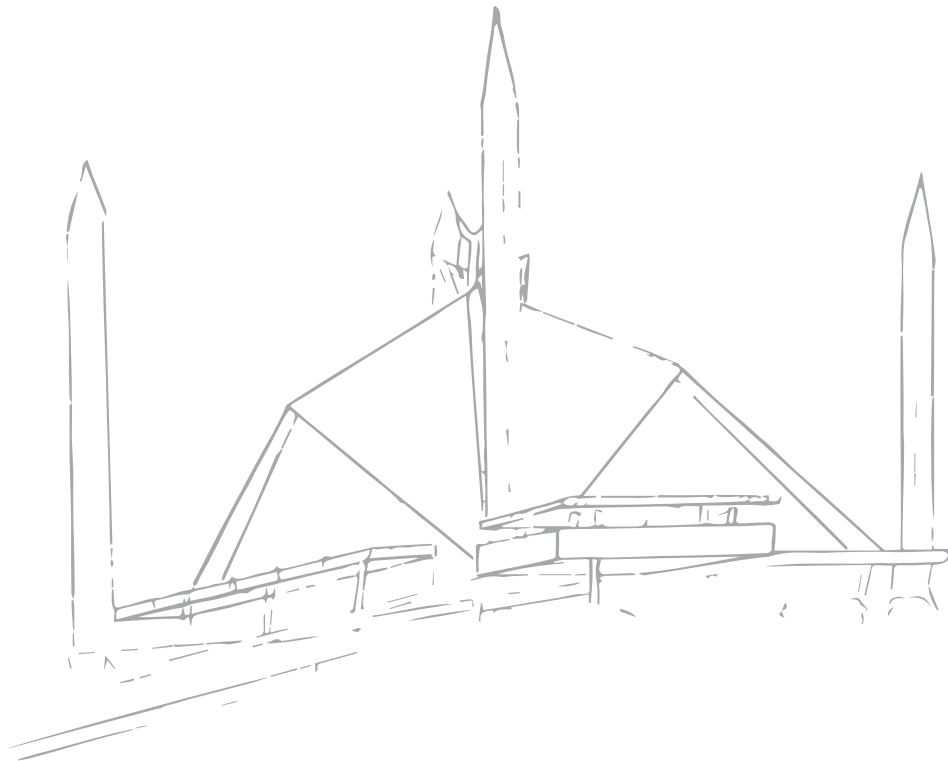
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## Laws Relating To Polygamy in Pakistan: Rights of the Polygamous Wives

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### Abstract

*Polygamy continues to be the most contentious and unsettled issue throughout the contemporary Muslim world. In all the Muslim countries including Pakistan protests were made. The reason behind women going against polygamy is that they don't feel protected under polygamous marriages. Polygamous wives are deprived of their due rights and their husbands are negligent in supporting them emotionally and financially. No academic study has been conducted in Pakistan on the circumstances faced by polygamous wives. Great work has been done on the advantages and disadvantages of Polygamy but no one has touched the topic of effects of Polygamy on mistreated wives. Through this study, the researchers want to provide awareness to the legal authorities, common people and specifically the women who are directly affected by this misunderstood law of Polygamy. A detailed study, therefore, required to be done on the subject. The research study relates to the legal and social sciences therefore methods of research used in social sciences will be applied. Cases brought before the courts in Peshawar (2010-2015) will be looked into for examining the troubles faced by polygamous wives and the security provided to them.*

**Key Words:** Polygamy, Muslim Family Laws Ordinance, Council of Islamic Ideology, District Courts

### 1. Background of Muslim Family Laws Ordinance

The story of the origin of the Muslim Family Laws Ordinance started in the United States shortly after emergence of Pakistan in 1947. Pakistan's elegant and magnetic representative to the United Nations, Mohammad Ali Bogra, lost his heart to Aliya Saadi, his social secretary. The smitten Bogra got married, as he knew that multiple marriages were not an issue as now the Islamic Republic of Pakistan existed. He suggested in an interview to an American

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newspaper, that polygamy was a solution to the Western practice of divorce.<sup>1</sup>

Prime Minister Bogra got married on April 2, 1955, without obtaining consent of his first wife. The angry first Mrs. Bogra didn't kept quiet. She associated with the wives of Pakistan's influential dignitaries, who were learned and highly linked ladies and did token acts for authorization and empowerment for Pakistan's under privileged women.<sup>2</sup> Collectively, the women build up a political assault, by staying away from official gatherings attended by the new Mrs. Bogra and by launching campaign for legislation that would outlaw polygamy. The ban failed, but soon Bogra was no longer prime minister. <sup>3</sup>General Ayub Khan, a military man took the control through imposition of military ruling. His daughter Naseem was also a part of the campaign and the first thing which the general did was to pass the Muslim Family Laws Ordinance of 1961. Democracy failed but women had won, at least to some extent.<sup>4</sup> According to the new legislation, polygamy was not banned but written authorization of the senior wife was made mandatory, minimum age of 18 was made compulsory for marriage, and gave stipulations under which both men and women could file petition for divorce. Although several elucidation permits of the Holy Quran Polygamy stayed lawful in Pakistan, even though some interpretation of the Holy Quran allow expository space for a ban. Years have passed, but no more steps have been taken to ban polygamy.<sup>5</sup>

## 2. Laws in Pakistan

According to the laws in Pakistan, a man is allowed to contract subsequent marriage only after attaining the approval of his first wife. Pakistani and Islamic laws subsists to dispirit this practice by imposition of strict limitations on polygamy; but, the custom of polygamy is still widespread, especially in rural areas.<sup>6</sup>

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<sup>1</sup> Akhtar Baloch, The Pakistani Prime Minister Who Drove a Locomotive, *Dawn News*, 8th September 2015 <https://www.dawn.com/news/1205473>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Zakaria. R, *Polygamy and Child Wives: Women's Rights Are Going in the Wrong Direction in Pakistan* 2014, October 24

<sup>6</sup> Mansoori Tahir, *Family Law in Islam, Theory and Practice*, (Sharia Academy, IIUI, 2006), p. 232-234

Government of Pakistan constituted the Commission on Marriage and Family laws for complying with the issue of polygamy, divorce and other related matters. Its objective was to propose reforms in the family laws of Pakistan.<sup>7</sup> The Report of the commission pointed out that the verse relating to polygamy was revealed for giving protection to orphan girls and widows who were likely to be subjugated. For that reason, Quran allowed Muslims to marry more than one wife. But restriction was imposed on this concession by revelation of one more verse which declared that Polygamy will only be acceptable if the husband could do impartiality among all his wives. But it has been noticed that men who have indulged themselves in Polygamy have overlooked the main cause behind the permission given as well as the provision attached. Hence it is the most important responsibility of the state to make available such a procedure which can curb such men who shape laws according to their own benefit.<sup>8</sup>

The Commission on Marriage and Family Laws in 1955 composed a Report for the protection of the woman rights.<sup>9</sup> Commission was headed by Justice Abdur Rasheed. It consisted of seven members, of which three were women and four were men. The Commission agreed upon the theory that Family Laws had to be modernized and gave suggestions for modifications in law. After 1956, the civilian governments kept away from making legislations on the Report, but General Ayub Khan in 1961 made some of the recommendations of the Report into law through an Ordinance. Afterwards a resolution was submitted against the Muslim Family Law Ordinance in the National Assembly but was not approved. The Ordinance was never accepted by the Ulema and was declared as against Islam. It was left as an uncompensated law by the elected parliament of 1970.

The MFLO, 1961 in section 6 also incorporated several restricted modifications in the law linking to polygamy, by introducing the condition that the husband must present an application and submit fees to the local Union Council for obtaining prior written consent for marrying subsequent wife or wives.<sup>10</sup> Reasons for the marriage should be stated in the

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<sup>7</sup> Report of the commission on marriage and family laws, *The gazette of Pakistan*, (1956, June 20), p.1216.

<sup>8</sup> Ibid.

<sup>9</sup> Law and Justice Commission of Pakistan, *Reports of Ad hoc Law Reform Commissions*, <http://www.ljcp.gov.pk/>

<sup>10</sup> *The Muslim Family Law Ordinance*, (1961).

application, and it should also be mentioned whether the applicant has taken the permission of the existing wife or wives. The chairman of the Union Council builds with the representatives of existing wife or wives and the applicant an Arbitration Council for determining the need of the proposed marriage.<sup>11</sup> If the husband contracts polygamous marriage without prior consent of wife or wives then he must pay the whole dower to the existing wife or wives without any delay, a fine of Rs.5000/- is also imposed and he may also be imprisoned for one year as a penalty. <sup>12</sup>Any polygamous marriage cannot be registered under the MFLO without the approval of Union Council. However, his subsequent marriage remains lawful even if he has not obtained consent of his existing wife or the Union Council. Moreover, the complexity in enforcing resort to the application procedure to the Union Council, put together with the unwillingness of judiciary to enforce the penalties enclosed in the MFLO (as apparent from the case law), is likely to hamper the effectiveness of the reform provisions. This might be the reason why some observers portray the provisions requiring the authorization of the Arbitration Council as a simple formality.

The limitations put on polygamy by prerequisite of application to the local Union Council for consent of existing wife/wives, combined with the penal sanctions for contracting a polygamous marriage without former permission; husband's contracting polygamous marriage in infringement of legal provisions is an ample ground for first wife to obtain decree of dissolution of marriage.<sup>13</sup> Article 9(1) of the MFLO lays down that if a husband is unsuccessful in fulfilling the needs of his wife sufficiently, or if the husband has multiple wives and he fails to keep them justifiably, the wife may seek any legal remedy and she may also make an application to the Chairman who shall compose an Arbitration Council to resolve the issue, and the Arbitration Council may also direct the husband to pay maintenance to the wife. <sup>14</sup>

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Kalanauri.Z. *Concept of Polygamy in Islam and Law in Pakistan*, (The electronic copy of it is available at: <https://zafarkalanauri.com/wp-content/uploads/2020/05/CONCEPT-OF-POLYGAMY-IN-ISLAM-AND-LAW-IN-PAKISTAN.pdf>), pg. 4-5.

<sup>14</sup> Ibid.

### 3. Laws Proposed by Council of Islamic Ideology of Pakistan

According to Mr. Sheerani, laws on marriage should be abolished which are opposed to the Sharia in his vision. He urged that Clause (f) of Section 2 of the Dissolution of Muslim Marriage Act 1939 which permits a wife to sue her husband for divorce i.e. "If he has multiple wives, does not take care of her equitably according to the directives of the Holy Quran" should be annulled.<sup>15</sup> He declared that a subsequent marriage is not a justifiable ground for a woman to file divorce. He affirmed that Islam has given right to men to keep multiple wives and asked the government to modify the laws where a husband is required to seek permission from the existing wives.<sup>16</sup>

The law relating to Polygamy is contained in section 6 of MFLO which requires the husband to seek the written approval of the local government authorities. According to Rule 14 of the MFLO, a polygamous marriage must be "just and necessary" which may be determined on the grounds such as barrenness of the existing wife, her mental illness, her disability, her incapability to have sexual relations, or her denial to reside with her husband followed by a decree for restitution of conjugal rights against her. According to section 6(5) of the MFLO if the husband fails to adopt the required procedure, he will be liable to make the immediate payment of the entire dower whether deferred or prompt to the existing wife/wives and he can also be imprisoned up to 1 year or fine. Thus these are the procedural mechanism which subsists to check exploitation of the right to polygamy which is permitted under Islam. It must be taken into consideration that there are several countries which have amended the laws of Sharia in order to meet up the requirements of the present age and how can one go against any other interpretation except the literal one of the Holy Quran when Quran has itself validated *Ijma* and *Ijtihad*. *Ijtihad* on such matters in conformity with the era, fair dealing and utility of the situation is significantly encouraged in our religion.

Polygamy is prohibited in several Muslim countries, such as Tajikistan, Tunisia, Lebanon, Turkey, Uzbekistan and Kyrgyz Republic. In Indonesia, Malaysia, Singapore, Philippines, Bangladesh and Pakistan, polygamy is allowed but is

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<sup>15</sup> Ali .K, Muslim women cannot object to husbands marriages, *Dawn News*, 22 October 2014 <https://www.dawn.com/news/11395>

<sup>16</sup> Ibid.

conditional.<sup>17</sup> Hence the submissions which are made by Mr. Sheerani appear unneeded in the contemporary world, even inside the community of Muslim states itself. Though opposition in banning polygamy is extensive, but it must be regulated fully to put a stop to exploitation of this stipulation which is available only by way of an exception. This verse in which the law relating to polygamy is embodied was revealed during the battle of Uhud.<sup>18</sup> A large number of men were killed which raised the worry for widows and orphans.<sup>19</sup> This point should be taken into consideration that “justly” should not be understood in terms of monetary aspects only but in all the aspects relating to marriage. The elder wife must believe the second marriage of her husband just. The stress is that “only one” is better so that that you do not incline towards injustice. There is an example of a woman namely Jamila who, approached the Holy Prophet (PBUH) and without any trouble got the first *khula* in Islam on the ground basis of her discontentment with her husband’s appearance. If Islam has given such ample rights to women which includes permitting them divorce their husbands on such basis, it is worthwhile to say they also have the right of not allowing their husbands not to contract subsequent marriages in order to safeguard the sanctity of their marriage.

Numerous studies have revealed that polygamous marriages cause grave mental issues in women arising from worry, strain, envy and uncertainty.<sup>20</sup> It is frequently argued that opting for marriage is better than keeping extra marital relations, but lust only cannot be recognized as a legitimate ground for subsequent marriage by putting the rights of the elder wife and children at stake. Islam has laid huge significance on integrity and harmony of family relations; therefore, it is rationally imprudent to accept this argument.<sup>21</sup> If we look into all the references gathered from Quran and Hadith, the argument of Maulana Sheerani hold no significance. It is undeniable fact that *khula* is a legitimate yet unwanted act, but in such situations when a woman is being deprived of her rights in a marriage then this option can be availed. Law makers should play a vital role in controlling polygamy rather restricting the rights of an individual who is

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<sup>17</sup> Ahmad H. Sheriff. *Why Polygamy Is Allowed*, Iran: World Organization for Islamic Services

<sup>18</sup> Khan.M *Polygamy in Islam*. DAWAN booklets.

<sup>19</sup> Ibid.

<sup>20</sup> Hamzah.M Othman.N *Stress, quarrels and neglect: the 'normal' polygamous family* 2010, January 14.

<sup>21</sup> Ibid.

already disadvantaged.<sup>22</sup> All traditional Muslim law schools have the same opinion that a Muslim man requires no authorization to contract subsequent marriage up to the limit of four. He is not required to present himself to inspection by any organization in advance for obtaining permission for a subsequent marriage. Though, section 6 of the MFLO attempts to curb this right. A man wishing to conduct multiple marriages is required to present an application to the chairman of the Union Council mentioning the grounds for the proposed marriage as well as whether he has obtained the permission of the existing wives. If the Council considers the proposed marriage just and necessary, then it may give permission.

The Council has full authority to make the decision whether the proposed marriage is necessary or not. It looks into such circumstances such as infertility, physical unfitness for conjugal relations, willful avoidance of a decree for restitution of conjugal rights, or mental illness of an existing wife. Section 6 of the MFLO clearly states that no man shall contract subsequent marriage without obtaining the authorization of the Arbitration Council. Though, it does not explicitly states that a marriage during the continuation of an existing marriage, without the authorization of the council is illegal. The subsequent marriage remains valid though it is contracted in contravention of section 6 of the MFLO; this fact makes the authorized law less effective. Regardless of considerable move towards confining polygamy, sanctions put are minute and have not been an effectual prevention.

A number of people are indulged in polygamy without any official authorization. Arranged marriages are responsible for polygamy to a certain extent.<sup>23</sup> Under the customs and traditions of the family young boys are forced to marry girl cousins with the motive to keep the property within the family. <sup>24</sup> Such marriages fail when the boy reach manhood. He, afterwards, marries a second wife. In some cases, when men get wealth they look for younger wives. Hence, the image once again is that the boys often have two wives, first one is the traditional wife which is selected by his parents and the second one is the sociable one, which he

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<sup>22</sup> Khan.A .*Polygamy: a choice or an exception?* 2014, December 15.

<sup>23</sup> *Pakistan: Practice of polygamy, including legislation; rights of the first wife versus the second, including whether she has the right to refuse a second wife* (2013, December 18) Canada: Immigration and Refugee Board of Canada.

<sup>24</sup> Ibid.



chooses himself. Particularly, wealthy people opt for polygamy and justify it by the first wife's infertility or in order to have a love-match". In the latter case, a second marriage is a mechanism to keep away from charges of adultery. The fundamentalists in the country assert that section 6 of MFLO must be omitted in its present form as it is against the spirit of the Holy Quran and Sunnah. No matter what the authorized law commands, the observance of polygamy is accepted and only a small number of voices are elevated against it. Thus, polygamy "continues to be a vaguely viewed reality of life."<sup>25</sup>

#### 4. Landmark Ruling against Polygamy

Shahzad Saqib was an already married man who decided to contract a subsequent marriage. But he felt no need of obtaining consent from his first wife Ayesha Bibi. When she came to know about her husband's second marriage she approached the court. Her lawyers made convincing arguments saying that MFLO states that permission from the first wife for contracting subsequent marriage is necessary. Saqib, argued that Islam has given him the permission to keep four wives and no such requirement has been made essential by the sharia.<sup>26</sup> According to the judgment of the court he was found guilty for violating the provisions of MFLO which states that a man wishing to re- marry must submit an application to the Chairman of the Arbitration Council. If chairman is not available, then he can submit the application to the Council. He was wrong. As the verdict showed, the Family Laws Ordinance requires that any man seeking permission to marry a second time must submit a written application to the chairman of the Arbitration Council. If the required criterion is not met, then the law levies fine and such man can also be put behind bars. The known consequences of polygamy faced by women and children invite interference by the judiciary.

A small number of judges in Pakistan have implemented this law. Some are convinced with the principle that as the permission of keeping four wives has been given by the Quran, conditions relating to the union hold no weight. This issue came up before the Supreme Court recently. In that case the judges have rightly pointed out that permission of polygamy should not be

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<sup>25</sup> Ihsan Yilmaz. *Limits of Law: Social Engineering versus Civil Disobedience in Pakistan*. P. 33-34.

<sup>26</sup> Zakaria. R 2017, *A lesson to all men*. 2017, November8, Retrieved from [www.dawn.com](http://www.dawn.com).

merely taken as an authority given to men but should be recognized as an inspiration of maintaining justice among the wives. The implementation of polygamy laws will prove to be a praiseworthy step in promotion of family laws in Pakistan and will also become an example for other Muslim countries to follow.<sup>27</sup> The enforcement of the penal laws of the Family Law Ordinance must be appreciated. Such like steps are promising towards the safeguard of women rights under Pakistani law.<sup>28</sup> This landmark verdict of the judiciary in the case of Shahzad Saqib, who violated the provisions of law, will be a deterrent tale for such likeminded men. The fright of prison will definitely stop what conscience has been incapable to.<sup>29</sup>

## 5. Prevalence of Polygamy in Pakistan

No statistics are available on the prevalence of polygamy in Pakistan. Polygamy is not extensively widespread. Although Polygamy is recognized component of religious tradition, yet it is not acceptable and the second wife is not usually honored by the family.<sup>30</sup> Polygamy is disliked by the people in general, socially as well as culturally, though it is practiced in some parts of Pakistani society.<sup>31</sup> It is more prevalent among feudalists and rich land holders who can easily manage to pay for maintaining multiple wives and many children. It exists among the urban elite as well. Economic restraints and social confrontation is faced by urban middle class men for contracting subsequent marriages.<sup>32</sup> In such classes the number of polygamous marriages is very minimal. The lower class, either urban or rural faces financial problems for marrying for the second time. Often women endeavor to get a high amount of dower, a marriage gift which wife receives from the husband in order to hold back a man from marrying for the second time. A marriage that is conducted without the approval of the Arbitration Council is not illegal, but it cannot be officially registered, meaning thereby that no judicial relief would be granted if any objection arises from such a marriage.<sup>33</sup> Non-

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<sup>27</sup> Yasin.R, *POLYGAMY or one wife?* July 24, 2017.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Sattar.N , *Multiple Marriages* , *Dawn News*, 4<sup>th</sup> September 2020  
<https://www.dawn.com/news/1577829>

<sup>31</sup> Ibid.

<sup>32</sup> Krammer.S, *Polygamy is rare around the world and mostly confined to a few regions*, 7<sup>th</sup> December 2020.

<sup>33</sup> Canada: Immigration and Refugee Board of Canada, *Pakistan: Practice of polygamy, including legislation; rights of the first wife versus*

registration of a marriage does not invalidate the marriage nor is illegal according to the provisions of the official law.<sup>34</sup>

The MFLO does not particularly states that a marriage during the continuation of subsisting marriage, without obtaining the approval of the council is invalid, void or voidable. The fact that marriages contracted in infringement of section 6 of the MFLO continues to be legal turns the authorized law less effectual against illogical and unfair polygamy.<sup>35</sup> Arbitration Councils hold no importance and are not approached before contracting subsequent marriages. According to the MFLO a man is required to bring in notice of the Chairman of his local government about his intent of marrying for the second time, who subsequently forms a committee to determine the reason behind the intent of the subsequent marriage and then grant permission. The laws regarding the approval of the Arbitration Council are nothing more than a formality.<sup>36</sup> In view of the fact that private life in society is usually harmonized in accordance with the Islamic injunctions, lack of acceptability of the laws of the Muslim Family Laws Ordinance, 1961, has created such a situation where this law is still awaiting endorsement among the public and is time and again avoided than followed.<sup>37</sup> The judiciary is hesitant to impose the punishments embodied in the MFLO. Sanctions placed are minute and have failed to prove as an effective deterrent.<sup>38</sup> Majority of the citizens are ignorant of the law, and the law is not being put into action as the cases on record are very few in number. Legally speaking, both of the wives enjoy similar rights for instance both of them get an equal share in the inheritance. But when a husband takes another wife in marriage, the senior wife may be dishonored, distressed, or acquire less attention of the husband.<sup>39</sup>

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the second, including whether she has the right to refuse a second wife (2011-2013), 18 December 2013, PAK104701.E, available at: <https://www.refworld.org/docid/52eb9ea04.html> [accessed 29 June 2021].

<sup>34</sup> Ibid.

<sup>35</sup> Shah.W, Fresh Controversy over Polygamy, marriage dissolution, 27<sup>th</sup> October 2014.

<sup>36</sup> Ibid.

<sup>37</sup> Pearl, David. "The Impact of the Muslim Family Laws Ordinance (1961) In Quetta (Baluchistan) Pakistan." *Journal of the Indian Law Institute* 13: 4 (1971): 561-69.

<sup>38</sup> Ibid.

<sup>39</sup> Hammadi. Z (2015, October 12). Retrieved from <https://www.linkedin.com/pulse/negative-consequences-polygamy-zainab-al-hammadi>.

Practically, a wife cannot prevent her husband from contracting a second marriage. A wife may refuse to give her consent regarding second marriage, and can seek support from the court.<sup>40</sup> However, this way she can only get back her dower and right to seek divorce, but she in no way can stop her husband to re-marry. A very small number of women approach the court practically and seek help from the law. Senior wives seldom are in position to refuse second wives due to the culture and financial dependence. The husband may become violent to her if a senior wife refuses to accept a second wife. He may also take away her possessions and keep her children away from her in order to obtain her consent for second marriage.

The provision in MFLO which states that elder wife's permission must be obtained is contrary to Islamic laws. According to the Muslim law, a man is not bound to take consent of his existing wife for subsequent marriage. Religious leaders in Pakistan have rejected this provision of MFLO in an outright manner. In the Sharia law, first wife has no right of stopping her husband from contracting second marriage.<sup>41</sup> It is fair to conclude that the MFLO 1961 is no longer sustainable as the leading law even though it has not been abolished or abrogated.<sup>42</sup> A man becomes suspicious in the judgment of society if he talks about polygamy. Usually people consider polygamy as a sin; still it is legalized by the law of Pakistan. Stopping someone from having multiple wives is considered to be a breach of men's rights. Fair treatment of all the wives is an essential condition for a man who wishes to marry multiple wives. But unluckily, Pakistani men lack the quality of observing equality among wives, due to this reason the ratio of polygamy in our society is low.<sup>43</sup>

## 6. Unprotected Polygamous Wives

Monogamous wives are not protected completely as men often take pleasure in extramarital relationships with no binding economic consequences; therefore, he can 'play around' exclusive of any accountability for his sexual conduct. A man having

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<sup>40</sup> Ibid.

<sup>41</sup> *Pakistan: Practice of polygamy, including legislation; rights of the first wife versus the second, including whether she has the right to refuse a second wife* (2013, December 18) Canada: Immigration and Refugee Board of Canada.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

mistresses and illegitimate offspring is left blameless in a lot of countries. Polygamy, on the other hand, means protection for women united to one man, with a legitimate child in her arms and surrounded with respect, contrary to being seduced and then cast out into the streets perhaps with illegitimate children outside the rule of law.<sup>44</sup> Polygamy is prevalent in places where farming is major craft. Polygamy is practiced to strengthen social and financial stability of family. Hence, some societies are proud of polygamy and growing number of offspring to ensure their social and financial status. Additionally, some societies and considered polygamy as reproductive policy by men to increase their children.

Polygamy is mainly popular in the rural areas and is taking place in little educated people. Particularly in the developing nations and rural regions men are the heads in a family.<sup>45</sup> Men are free to take decisions at any time to marry one, two, three or four wives. Permission to marry multiple wives shows that males have the ability in bearing responsibility.<sup>46</sup> The major issue faced by wives is that men will always love new wife. Senior wives suffer pains and distress as their husband has mistreated them because of his marriage to a new wife. Polygamy results from various factors including cultural, social, economic, emotional and psychological factors.<sup>47</sup> Keeping in view the cultural characteristic of polygamy, it is said that polygamy is natural and necessary because women are larger in number as compared to men, thus polygamy should be eternal. On the contrary, modern women reject polygamy and demand its elimination being an old custom. In the Middle East countries, polygamy is marked with envy and rivalry among co-wives.<sup>48</sup> According to several studies envy among wives may rise to different levels even they reach up to causing physical hurt by women and suicide attempts among the women. <sup>49</sup>Most of the

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<sup>44</sup> Jacobs.H (2014, February 15). Retrieved from <http://dailytimes.com.pk/opinion/15-Feb-14/polygamy-in-pakistan>

<sup>45</sup> Abbo, C., Ekblad, S., Waako, P., Muhwezi, W., Musisi, S., Okello, E. (2008). Psychological distress and associated factors among the attendees of traditional healing practices in Jinja and Iganga districts, Eastern Uganda: A cross-sectional study. *International Journal of Mental Health Systems*, 2, 1-9.

<sup>46</sup> Ibid.

<sup>47</sup> Abu Rabia, R. *Redefining polygamy among the Palestinian Bedouins in Israel: Colonialism, patriarchy, and resistance*. American University Journal of Gender Social Policy and Law, (2011). 19, 459-493.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

families live in congested conditions which worsen conflicts and tension between co-wives.

The major drawback of polygamy is the poor educational achievement of kids plus psychological troubles of husbands. Various researches suggest that there is a close connection between polygamy and emotional troubles among kids and wives living in such set ups. The first wife suffers psychologically and therefore they are at risk to visit mental health centers. Affected ratio of drop in school among children, increased addiction of alcohol, juvenile felony as well as low sense of worth has also been reported as the causes of polygamy. It was specified that polygamous wives, have more problems than other type of wives who are living in monogamy in terms of matrimonial troubles. Additionally, polygamous women are not very much contented with their life as they undergo pains, sufferings from co-wives. Although a wife in order to seek her husband's attention may prepare what she owns to her husband, but the husband may not necessarily be glad about efforts of his wife.

Besides, polygamy leaves negative effects on mental healthiness of youngsters and teenagers. It is established that family structure mainly effects mental fitness of the kids; so the children will be more violent, troubled in communication and adjustment problems. Children also suffer from bad health due to poor nutrition and little attention and care with children. Furthermore, family clash is very common in polygamous families. It is found that polygamous women suffer huge problems and misery in their life. They experience low sense of worth, fear, nervousness, gloominess and aggression than monogamous wives. All such factors have negative influences on children. Kids may have psychological issues, social difficulties and poor educational level. Moreover, child-parent connection may be poor and ineffective in polygamous families. Polygamy causes rivalry and imbalanced division of the chores in household among co-wives. Furthermore, polygamy builds bitterness among the children and co-wives.<sup>50</sup>

## 7. Effects of Polygamy

There are numerous harmful effects that come from polygamous marriages including depressed co-wives against each other. Physical, psychological, and sexual abuse are often seen in

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<sup>50</sup> Ibid.

polygamous marriages.<sup>51</sup> The co-wives compete with each other for the sake of seeking attention of their husband and they often feel envious when they see their husband with the other wives.<sup>52</sup>

### 7.1. Physical, Sexual, and Emotional Abuse

Abuse appears in various forms in a polygamous marriage. Often times, it is used as a tool of controlling the wives. Physical, psychological, or abuse of religion may be used by husband for controlling their wives. According to a study, in most of the cases where ruthless abuse cropped up in polygamous marriages, the women time and again entered into it reluctantly. Several husbands opted to keep subsequent marriages undisclosed to the older wives. Even if wives come to know about the additional wife, such addition cause considerable strain as it signifies a change in family unit and financial composition.<sup>53</sup>

In Islam, men are allowed to marry four wives provided he treats them with equity. Many polygamous wives have declared that it is the unfairness within their marriage that causes abuse and not polygamy itself. Envy and ambiguity are seen in the lives of such women. Time and again, wives feel jealousy toward the other co-wives when the husband is with them. And when the husband comes to her, she is not able to be with him sexually because she is thinking of the time when he was with the other wife and not with her. This can result into sexual abuse to the wife because the husband may coerce or compel her into it.<sup>54</sup>

### 7.2. Mental Health Issues

Islam permits women to work outside the home subject to the permission from her husband. Most of the women are not interested in doing jobs outside which creates serious financial issues as their husband has to distribute his finances among all.<sup>55</sup> Multiple wives, mistreatment, and financial issues create

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<sup>51</sup> Al-Krenawi, A. Women of polygamous marriages in primary health care centers. *Contemporary Family Therapy*, (1999). 21, 417–430.

<sup>52</sup> Ibid.

<sup>53</sup> Rahmanian, P., Munawar, K., Mukhtar, F. et al. Prevalence of mental health problems in women in polygamous versus monogamous marriages: a systematic review and meta-analysis. *Arch Womens Ment Health* 24, 339–351 (2021). <https://doi.org/10.1007/s00737-020-01070-8>

<sup>54</sup> Ibid.

<sup>55</sup> Al-Krenawi, A., Lev-Wiesel, R. *Wife abuse among polygamous and monogamous Bedouin-Arab families*. *Journal of Divorce & Remarriage*, (2008). 36, 151–165.

psychological problems polygamous wives.<sup>56</sup> Senior wives are usually considered as old wives whereas junior wives are viewed as young wives. Self-respect also gets lesser because senior wives consider the addition of a new wife as their failure as they were not capable to perform their duties of being a wife.

### 7.3. Religious Abuse, Or Exploitation of Religion

Women in Islam enjoy many rights that are granted to them by the Quran. Marriage is a social contract to which both the groom and bride agree to, but if any of the parties is not willing to continue due to any reason then divorce is allowed. Any party can seek divorce if the other party had become offensive and negligent.<sup>57</sup> Even in the matters of inheritance and property, a Muslim woman is not bound to share her income or inheritance with anyone. Lastly, according to the Islamic belief, Allah is the only master to women and if their husbands do not symbolize Allah then the marital bond is broken down.<sup>58</sup>

In spite of the rights and impartiality granted to women in the Islamic belief, religion can also sometimes turn into a form of abuse when the explanation and interpretation is used to manipulate women.<sup>59</sup> This is not only seen in Islam but other religions as well. According to a study husbands quote to their wives a verse according to which eternal life is promised to wife if she accepts her husband's second marriage. The wife was initially unwilling to accept her husband's second marriage unless and until her husband pressurized her to accept it by showing that Allah admire women who accepts her husband's remarriage. Often time's cruel and abusive husbands, manipulate religious content for controlling their wives in order to make them accept the polygamous marriage.<sup>60</sup>

### 7.4. Islamic Women's Spirituality

Irrespective of the religious belief, ill-treatment of women is common in almost all polygamous marriages. This mistreatment and disturbance of marital violence causes women to question their purpose of life, security and spirituality. Spirituality has always been to be both a source of strength and weakness among

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<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> *The Practice of and Reasons for Polygamy*. Retrieved from <http://www.religioustolerance.org/polyprac.html>.

<sup>60</sup> Ibid.



abused Muslim women. Spirituality was a source of hope for most of the women, which made them cope with unfavorable circumstances.

## **8. Cases from Judicial Courts, Peshawar**

### **8.1. *Mst Irum Shaheen vs Israr Ahmed* (Date of Institution: 02-04-2015), Status: Pending**

**FACTS OF THE CASE.**—The Plaintiff filed a suit for the dissolution of marriage, payment of dower and maintenance. She has also filed a complaint under Section 6 of the Muslim Family Law Ordinance, 1961. The plaintiff got married to the defendant in July, 2010. 7 tola gold was fixed as deferred dower. The plaintiff also received dowry articles from her parents. Soon after the marriage, the attitude of the defendant turned brutal, and he started abusing the plaintiff on petty issues. After a month of the marriage, defendant took plaintiff to her mother's house and left her over there, and flew to Dubai after 10 days. Since then the all the expenditures of the plaintiff are borne by her parents. After the passage of some time, it came to the knowledge of the plaintiff that defendant contracted second marriage with a woman namely Mst Ismi Bibi without her permission. The defendant on the other side has turned down her plea by stating in the written statement that he asked the plaintiff time and again to re-join him but the plaintiff did not agree. Moreover, he asserted that the plaintiff has granted him permission for second marriage and refused to go back to his home. After recording of the evidence the marriage was dissolved on the basis of Khula.

**DECISION.**—An application was filed by the respondent for the rejection of complaint. The Respondent stated that Family Court has got no jurisdiction to entertain the application, in fact, only magistrate can take cognizance. According to section 20 of Family Courts Act, 1964, the court can exercise the power of Judicial Magistrate and has got jurisdiction while rest of the controversies will be resolved after recording pro and contra evidence of the parties.

**ANALYSIS.**—The suit is still pending before the Family Court. No precise system is available for the ascertainment of the fact whether the consent was acquired or not.

**8.2. *Shumaila Hashmat v. Malik Shah Fahad* (Date of Institution: 18-10-2015), Status: Pending**

**FACTS OF THE CASE.**—The plaintiff has filed a suit for dissolution of marriage as the husband has failed to provide for the maintenance and dower. He has also re-married without her prior approval. The plaintiff got married to the defendant on 14-11-2012, Rs 10 lacs and 25 tola gold were fixed her dower. Additionally, a house measuring 5 marlas was also transferred to her name. Jewellery which was given to the plaintiff in marriage was taken away from her on the fourth day after marriage. The attitude of the defendant and his mother got cruel day by day with the plaintiff. The defendant told her that the plaintiff holds no place in his heart and asked her time and again to leave his house. He also told plaintiff that he will only divorce her on the condition if she returns the House measuring 5 marla to the defendant. But the plaintiff did not agree. After a few months, the defendant went to Dubai without providing maintenance to the plaintiff. She was turned out of the house by the mother of the defendant. She also came to know through some sources that the defendant has contracted second marriage from Chitral. The defendant has denied all these allegations in his written statement except the charge of second marriage. He has claimed that prior approval was obtained from the plaintiff.

**DECISION.**—The case is in the process of recording of evidence.

**ANALYSIS.**—The case is pending. The defendant has admitted that he has contracted second marriage with the permission of the plaintiff. There is no procedure available for ascertaining whether the permission has been granted or not. This way the defendant can very easily avoid the arrest and fine.

## **9. Conclusion**

This research paper concludes that polygamy is not a crime nor it is un-Islamic but the way husbands treat their wives is against all the fundamental rights of equality and equity. They violate all the norms of social justice by ignoring the senior wife or wives and giving more time and pleasure to the new wife or wives. If a person genuinely needs to marry again, he has to make sure that he able to fulfil all the demands of the existing as well as the new wife. This is exactly the teachings of Islam and the society we are living in. All the rights of polygamous women shall be fulfilled by

the husband; otherwise a strict legislation in this matter is the need of the hour.

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