

An Overview of Modern Statutes on Polygamy under Muslim Law

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Islamic law allows a man to marry up to four wives subject to a strict Quranic condition. This is a special provision in Islamic law, which has been provided to apply in limited circumstances. The permission for polygamy is a much-discussed issue. Unfortunately, this provision is widely misused in many Muslim societies. The social perception about polygamy is that a man may marry up to four wives unconditionally. However, the Quran has clearly set a very strong condition, which is very hard to satisfy in practice in many cases. The Qur'anic condition regarding polygamy has not been much highlighted unlike the permission for polygamy. 'Adl' (just behaviour) among co-wives is the most important condition to satisfy. The relevant Qur'anic verse reads as follows:

And if you fear that you shall not be able to deal justly with the orphan girls, then marry (other) women of your choice, two or three, or four but if you fear that you shall not be able to deal justly (with them), then only one or that your right hands possess. That is nearer to prevent you from doing injustice.¹

Thus, the Qur'anic condition is that the man who wants to marry more than one wife must be certain about doing just behaviour. If there is any confusion in the mind of that person about maintaining the just behaviour, then the person must marry only one. The Quranic term 'adl', translated as 'just behaviour', needs to be interpreted in the proper context. Does this 'just behaviour' mean 'equal behaviour' or 'equitable behaviour'? There are some jurists who have doubted the maintainability of equitable behaviour to be possible humanely.² Nasir commented:³ 'Indeed, it is now widely held, because the condition of justice and fairness in all things is too difficult to fulfil, that men should lead monogamous lives, unless the circumstances of any particular Muslim society necessitate otherwise.'

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¹ The Holy Qur'an, 4:3.

² Tanzilur Rahman, *A Code of Muslim Personal Law*, vol. 1, Karachi, 92-3.

³ Nasir, Jamal J.A., *The Status of Women under Islamic Law and Modern Islamic Legislation*, Leiden Boston (2009) 26.

Limitations on Polygamy

It is worth mentioning here that the Holy Quran itself created a scope for limiting the right to marry more than one wife. Because, the Quran has imposed a condition for polygamy and has expressly mentioned that in case of the fear of non-fulfilment of the Qur'anic condition, polygamy is not allowed. It is important to note that the Quran prohibited polygamy just on the ground of apprehension in the mind of a man regarding his ability to ensure 'just behaviour'. Thus, a state can interfere to identify the persons who do not seem to be capable of maintaining the Quranic standard. The plain reading of the Quranic condition suggests that a very poor man (who does not have the capacity to provide maintenance to his existing wife) or a man of evil repute (for example who beats his wife) are not allowed to marry more than one. Thus, a state may introduce a system for scrutiny to determine who is eligible to keep more than one wife according to the Qur'anic standard. Some jurists termed the provision regarding polygamy as 'rukhsat' (permission), and not 'azimat' (fixed rule).⁴

Modern Legislation: An Overview

Many countries around the world enacted different laws regarding polygamy. Most of the laws have imposed some restrictions on the powers of male to contract a polygamous marriage. One of the reasons for statutory interference is 'to stop people from committing an act, which though legal, has the possibility of creating mischief.'⁵ On the basis of the Qur'anic restriction, laws have been interpreted from different perspectives. Some of those changes are discussed below:

Statutory Restrictions by Procedural Requirements:

Most of the countries introduced some procedural requirements to fulfil before one marries an additional wife. Those countries have not banned polygamy; rather a man has to obtain official permission in this regard. For example, in Bangladesh, one has to apply to a statutory body that will provide a licence for a polygamous marriage subject to satisfaction of certain conditions if the authority thinks it reasonable.⁶

The present law in Morocco has made an elaborate provision on polygamy. Morocco has adopted its new family code titled 'Moudawana' in 2004,⁷ which has imposed a number of restrictions on polygamy. The law reflects the Qur'anic provision on polygamy as the law prohibited polygamy if there is any risk of 'inequity between the wives.'⁸ Fatima Harrak has said:

⁴ Tanzilur Rahman, *A Code of Muslim Personal Law*, vol. 1, Karachi, 93.

⁵ Statement made by Sayyid Muhammad Rashid, an Egyptian scholar, cited by Tanzilur Rahman, *A Code of Muslim Personal Law*, vol. 1, Karachi, 93

⁶ Muslim Family Laws Ordinance, 1961, section 6.

⁷ An unofficial English translation of the original Arabic text is available at <http://www.hrea.org/moudawana.html#32> accessed on 5 November 2013.

⁸ Article 40 of the Moudawana.

Polygamy is now subject to stringent restrictions: a prospective wife can stipulate that contract of marriage is conditional on the pledge of the husband-to-be not to take a second wife; the consent of the wife is necessary before any new marriage can be contracted; the wife reserves the right to ask for divorce if she does not accept the polygamous situation; and the Family Judge is responsible for ensuring that there is no presumption of inquiry and that the husband has the ability to guarantee equal treatment of wives.⁹

The preamble to the Code has nicely presented the position of the Moroccan law on polygamy and explained the rationale behind that. The relevant part of the preamble reads as follows: "In our sovereign instructions and guidance to the Commission, and while giving our views on the Family Code bill, we adopted the following fundamental reforms:

...Four: Concerning polygamy, we took into consideration the commitment to the tolerant

principles of Islam in establishing justice, which the Almighty requires for polygamy to take place, as it is plainly stated in the Holy Koran: He said '...and if you fear that you cannot do justice (to so many) then one (only).' And since the Almighty ruled out the possibility for men to do justice in this particular case, He said: 'You will not be able to deal equally between (your) wives, however much you wish (to do so),' and he thus made polygamy quasi impossible under Sharia (religious law).

We further adhered to the distinguished wisdom of Islam in allowing men to legitimately take a second wife, but only under compelling circumstances and stringent restrictions, with the judge's authorisation, instead of illegitimate polygamy occurring if we prohibit it entirely.

From thence, polygamy shall be allowed only in the following circumstances and according to the following legal conditions:

- The judge shall not authorize polygamy unless he has verified the husband's ability to guarantee equality with the first wife and her children in all areas of life, and there is an objective and exceptional motive that justifies polygamy.

- The woman has the right to stipulate a condition in the marriage contract by which her husband will refrain from taking another wife, as Omar Ibn Al-Khattab, may God be pleased with him, is quoted as saying: 'The intersection of rights is in the conditions.' In the absence of such a condition, the first wife is summoned to obtain her consent, and the second wife must also be notified and consent to the fact that the husband is already married to another woman. Moreover, the first wife has the right to petition for divorce for harm suffered.'

Fatma Harrak, *The History and Significance of the New Moroccan Family Code*, Working Paper No. 09-002, Institute for the Study of Islamic Thought in Africa (ISITA) Working Paper Series, The Robert Buffett Centre for International and Comparative Studies, Northwestern University (2009).

The specific Moroccan legal provisions on polygamy are as follows:

Article 40: Polygamy is forbidden when there is the risk of inequity between the wives. It is also forbidden when the wife stipulates in the marriage contract that her husband will not take another wife.

Article 41: The court will not authorize polygamy:

- If an exceptional and objective justification is not proven.
- If the man does not have sufficient resources to support the two families and guarantee all maintenance rights, accommodation and equality in all aspects of life.

Article 42: In the absence of a stipulation by the wife in the marriage contract precluding polygamy, the husband wishing to resort to it must petition the court for authorization. The authorization petition should include the exceptional and objective motives that justify the request, and attach a statement on the applicant's financial situation.

Article 43: The court summons the wife whose husband wishes to take another wife. When she personally receives the summons and does not appear in court, or refuses to accept the summons, the court sends her a formal notice by a process server instructing her that if she does not appear at the hearing scheduled in the notice, the husband's petition will be decided in her absence. The petition is also decided in the wife's absence when it is impossible for the Public Prosecutor Office to ascertain her permanent address or place of residence where the summons may be delivered. When the wife does not receive the summons due to the mala fide transmission of a false address by the husband or the falsification of the wife's name, the husband incurs, upon request by the prejudiced wife, the penalties provided for in Article 361 of the Penal Code.

Article 44: The hearing takes place in the consultation room in the presence of both parties, and both are heard in order to reach agreement and reconcile them after an examination of the facts and the presentation of the requested justifications. The court may authorize polygamy in a well-founded decision not open to appeal once it establishes the existence of an objective and exceptional justification and puts into place conditions benefiting the first wife and her children.

Article 45: When the court confirms in the discussions that continuation of the conjugal relationship is impossible, and where the wife whose husband wants to take another wife persists in her request for a divorce, the court determines a sum of money corresponding to the first wife's full rights as well as those of their children that he is required to support. The husband must pay the fixed sum of money within a maximum time limit of seven days. Upon submission of the requisite sum of money, the court issues the divorce decree. This decision is not open to appeal as concerns the dissolution of the marital relationship. The non submission of the requisite sum of money within the fixed deadline is considered as a withdrawal of the polygamy authorization petition. If the husband persists in his polygamy authorization petition, and the wife to whom he wishes to

join a co-wife refuses to consent and does not ask for divorce, the court automatically applies the irreconcilable differences procedure in Articles 94 and 97 below.

Article 46: If the polygamy authorisation petition is granted, the marriage with the future wife cannot be concluded until the judge has informed her that the applicant husband is already married and she has consented to this. This notice and consent are recorded in an official report.

Rabea Naciri has summed up the present position of Moroccan law in the following words:

Although polygamy is still allowed under the new code, it is now subject to draconian legal conditions and a judge's authorization. New restrictions stipulate that a man's first wife must be informed of her husband's intention to take another wife, and the latter must be informed that her future husband is already married. A woman also now has the right to ask her future husband not to take another wife and to give her the right to have the marriage dissolved if this agreement is not respected. Polygamy is forbidden in cases that might result in unfair treatment between the wives, and a court will only authorize polygamy if it is proven necessary and if the husband possesses sufficient resources to support both families and guarantee all rights, including household allowance, lodging, and equality, to both wives.¹⁰

Egyptian law also imposed some restrictions on polygamous marriage:¹¹

Law no. 100 of 1985 placed restrictions on polygamy by treating it as a special type of harm, based on which the wife could sue for divorce. However, the law makes the wife's right to obtain a judicial divorce on the grounds of the husband's subsequent marriage up to the court's discretion. Article 11bis of the 1985 law requires the wife to prove that the polygamous marriage caused her moral or material harm that obstructs normal cohabitation as husband and wife. The Article further stipulates that the first wife may only seek judicial divorce if she had no knowledge of and did not consent to the second marriage. It also places another restriction on the wife's right to divorce; she must file the lawsuit within one year of learning about her husband's second marriage. Finally, the second wife may also seek judicial divorce on the basis of harm if she was ignorant to the fact that the husband had other wives at the time of marriage. The restrictions on polygamy were based on Maliki jurisprudence, and were supplemented by the procedural restriction that the first wife must be notified of the husband's subsequent marriage.

¹⁰ Rabea Naciri, 'Morocco', in Sameena Nazir and Leigh Tomppert (eds), *Women's Rights in the Middle East and North Africa* (1st ed, Freedom House, USA, 2005) 183, 189.

¹¹ Jasmine Moussa, *The Reform of Shari'a-derived Divorce Legislation in Egypt: International Standards and the Cultural Debate*, The paper is based on a chapter of the author's MA Thesis.

Polygamy in Jordan now has been made subject to the Court's satisfaction. In Jordan, polygamy has been restricted chiefly by the financial ability of the husband.¹² The Court will notify the first wife about the second marriage of the husband and the Court will inform the second wife about the earlier marriage of the husband. In addition to this notification procedure, the Court shall examine whether the husband has the financial ability to maintain his new wife. On satisfaction of these requirements, a husband is allowed to go for a polygamous marriage.

The comment made by Mounira M Charrad is also worth mentioning here:

Although polygamy has not been abolished, in contrast to Tunisia where it is illegal, there are now tighter controls over the practice. Whereas in the past a man could take up to four wives without either judicial consent or the permission of his first wife, judicial authorization is now required for a second wife. New restrictions on polygamy—including a man's need to prove his ability to financially support his wives and children equally, and his need for an exceptional reason for seeking another wife—are supported by provisions to protect a man's first wife. A woman can now legally insert and enforce a monogamy clause in a marriage contract, and she must be notified and present if her husband appears in court to seek authorization for a second wife (Zoglin 2009 and Sadiqi 2006).¹³

In Libya, the family code was enacted based on Maliki School. The husband has to take permission from the Court which will grant the permission based on the considerations of physical and financial abilities of the husband.¹⁴ In addition to the judicial permission, he has to obtain written consent of the first wife.

Iraqi law also has made polygamy 'extremely difficult.'¹⁵ In the United Arab Emirates (UAE), 'family law continues to permit men to have more than one wife at a time; however, marriage law requires that the man obtain permission from his first wife to marry a second wife.'¹⁶ Malaysia has also imposed restrictions on polygamy, which reads as follows:¹⁷

¹² Reem Abu Hassan, 'Jordan', in Sameena Nazir and Leigh Tomppert (eds), *Women's Rights in the Middle East and North Africa* (1st ed, Freedom House, USA, 2005) 105, 112.

¹³ Mounira M. Charrad, *Family Law Reforms in the Arab World: Tunisia and Morocco*, Report for the United Nations Department of Economic and Social Affairs (UNDESA), Division for Social Policy and Development, Expert Group Meeting, New York (2012).

¹⁴ Alison Pargeter, 'Libya', in Sameena Nazir and Leigh Tomppert (eds), *Women's Rights in the Middle East and North Africa* (1st ed, Freedom House, USA, 2005) 165, 170.

¹⁵ Gihane Tabet, *Women in Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria*, SHS Papers in Women's Studies/ Gender Research, Gender Equality and Development Section, Division of Human Rights, Social and Human Sciences Sector, UNESCO (2005).

¹⁶ Shatha K. Al-Muttawa, 'U.A.E.', in Sameena Nazir and Leigh Tomppert (eds), *Women's Rights in the Middle East and North Africa* (1st ed, Freedom House, USA, 2005) 313, 318.

¹⁷ Article 23, *Islamic Family Law (Federal Territories) Act 1984*.

23. (1) 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: Provided that the Court may if it is shown that such marriage is valid according to Hukum Syarak order it to be registered subject to section 123.(2) Subsection (1) applies to the marriage in the Federal Territory of a man who is resident within or outside the Federal

Territory and to the marriage outside the Federal Territory of a man resident in the Federal Territory.

- (3) An application for permission shall be submitted to the Court in the prescribed manner and shall be accompanied by a declaration stating the grounds on which the proposed marriage is alleged to be just and necessary, the present income of the applicant, particulars of his commitments and his ascertainable financial obligations and liabilities, the number of his dependants, including persons who would be his dependants as a result of the proposed marriage, and whether the consent or views of the existing wife or wives on the proposed marriage have been obtained.
- (4) On receipt of the application, the Court shall summon the applicant and his existing wife or wives to be present at the hearing of the application, which shall be in camera, and 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, wilful 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 dependants, including persons who would be his dependants as a 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 syarie to the existing wife or wives.
- (5) A copy of the application under subsection (3) and of the statutory declaration required by that subsection shall be served together with the summons on each existing wife.

- (6) Any party aggrieved by or dissatisfied with any decision of the Court may appeal against the decision in the manner provided in the Administration Enactment for appeals in civil matters.
- (7) Any person who contracts a marriage in contravention of subsection (1) shall pay immediately the entire amount of the maskahwin and the pemberian due to the existing wife or wives, which amount, if not so paid, shall be recoverable as a debt.
- (8) The procedure for solemnization and registration of a marriage under this section shall be similar in all respects to that applicable to other marriages solemnized and registered in the Federal Territory under this Act.

The present law in Saudi Arabia is interesting. It has not imposed any restriction on polygamy, but has provided a scope for a wife to insert a stipulation against polygamous power by reserving the power of divorce in case of a polygamous marriage contracted by her husband. Saudi Arabian law allows insertion of stipulations in a contract of marriage by both parties, provided they are not against any provision of the sharia. 'An example of these stipulations could involve the husband-to-be's pledge that should he choose to take a second wife, the bride would be entitled to an automatic divorce.'¹⁸

On the other hand, Kuwaiti law strictly adheres to the classical opinion, where polygamy is wholly uncontrolled by the state. A man can marry a second wife without taking permission from his first wife or even without notifying her about the polygamous marriage. Wife's right to seek divorce on the ground of a polygamous marriage of her husband is also not recognized.¹⁹ Syrian law imposed no restriction whatsoever on polygamy.²⁰

Arguments in Favour of Restrictions on Polygamy:

Alim Amini's paper on polygamy has made elaborate arguments in favour of modern statutory restrictions on polygamy.

Alim Amini began his presentation with the Qur'anic reference to polygamy. He argued that most Muslim scholars only emphasize the first

¹⁸ Eleanor Abdella Doumato, 'Saudi Arabia', in Sameena Nazir and Leigh Tomppert (eds), *Women's Rights in the Middle East and North Africa* (1st ed, Freedom House, USA, 2005) 257, 262.

¹⁹ Haya Al-Mughni, 'Kuwait', in Sameena Nazir and Leigh Tomppert (eds), *Women's Rights in the Middle East and North Africa* (1st ed, Freedom House, USA, 2005) 125, 130.

²⁰ Gihane Tabet, *Women in Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria*, SHS Papers in Women's Studies/ Gender Research, Gender Equality and Development Section, Division of Human Rights, Social and Human Sciences Sector, UNESCO (2005).

part of the Qur'anic verse on polygamy—that refers to the ability of a Muslim man to marry up to four women—while ignoring the latter part of the verse that emphasizes one wife if a man cannot ensure justice among more than one spouse. Amini said the third verse states that if one can fulfil the rights and entitlements of orphans, then he has the right to marry more than one woman. “If someone can afford it, marrying more than one wife who has orphans will help society,” he said. Therefore, Amini underlined, the Qur'anic principle emphasizes one wife. The idea of multiple wives is secondary. “Qur'an emphasizes that if justice can't be implemented and the rights of orphans can't be ensured, then it directs Muslims to prefer one wife,” he said. “If we solve our problems based on this Qur'anic guideline, we can find workable solutions to many of our social ills and problems.” Amini cited the examples of other Muslim countries that have adopted a family law that limits polygamy. Moroccan law prohibits polygamy if it results in injustice between wives, or if a wife has included conditions against polygamy in her marriage contract. In addition, if the judge knows there will not be justice between the wives by the husband, he can refuse to administer the second marriage contract. Algerian law includes similar provisions that require Shariah based reasons for more than one marriage, and in Iran, the first wife's consent is required for a second marriage.²¹

Banned Polygamy:

Tunisia has introduced the extreme change by completely banning polygamy. Tunisia is a de facto secular state,²² although Islam is the state religion over there. Tunisia's 1956 code of personal status [CSP], also known as the *Majalla*, afforded women rights and legal protections that were significantly progressive in relation to the rest of the Arab/Muslim world at the time.²³ The CSP has abolished polygamy in Tunisia. Mounira M. Charrad commented:

In one of the boldest moves in the Arab-Islamic world, especially in 1956, it abolished polygamy unconditionally. The outright abolition of polygamy has become one of the best-known aspects of the CPS. Even though in Tunisia, as in most of the Arab-Islamic world, only men able to support two or more wives and their children could have several wives, polygamy was nevertheless a constant threat for women. Tunisia is the only Arab-Islamic country to make a second marriage null and void, as well as to

²¹ Alim Amini, *Polygamy: Review of the Moroccan and Egyptian Laws in Light of Shariah*, paper summary published in the Seminar Report of the 3rd International Conference of 'Rights & Democracy' on "Family Law Reform and Women's Rights in Muslim Countries: Perspectives and Lessons Learned", Canada (2010).

²² V. M. Moghadam, 'Tunisia', in Sameena Nazir and Leigh Tomppert (eds), *Women's Rights in the Middle East and North Africa* (1st ed, Freedom House, USA, 2005) 295, 299.

²³ V. M. Moghadam, *ibid.*

make any attempt to take a second wife, while already married, punishable with a fine and imprisonment.²⁴

Bangladesh

In Bangladesh, the official arbitration council only can grant permission for taking an additional wife. However, marriage contracted without obtaining such permission will not be invalid, although that is a punishable act under the law. There is a wrong concept about the statutory law among many people in Bangladeshi society that a polygamous marriage can be contracted after obtaining the consent from the existing wife. The law has clearly mentioned that only the arbitration council may grant this permission, no one else. Consent of the existing wife is one of the factors which the Arbitration Council may take into consideration in granting the permission. The Council may grant permission even if the existing wife does not give her consent, in appropriate cases. The main point is that if the Council considers the polygamous marriage as 'necessary and just', then the Council will grant the permission. Section 6 of the Muslim Family Laws Ordinance contains the basic law on polygamy, which is summed up below.

No Polygamous Marriage without Permission of the Arbitration Council: The law has clearly said that no one can take a polygamous wife without permission obtained from the Arbitration Council. The law further adds that a marriage without such permission cannot be registered. Section 6(1) says:

No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under the Muslim Marriages and Divorces (Registration) Act, 1974 (LII of 1974).

Application to the Chairman: The law said that the application for a polygamous marriage must be submitted by the husband to the chairman in the prescribed. The application must contain the following two things: first, the reason for such marriage, and second, whether the existing wife/wives has/have given consent to the polygamous marriage. Section 6(2) says:

An application for permission under sub-section (1) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee, and shall state the reasons for the proposed marriage, and whether the consent of the existing wife or wives has been obtained thereto.

Rule 15 of the Muslim Family Laws Rules 1961 says:

²⁴ Mounira M Charrad, *Family Law Reforms in the Arab World: Tunisia and Morocco*, Report for the United Nations Department of Economic and Social Affairs (UNDESA), Division for Social Policy and Development, Expert Group Meeting, New York (2012).

An application under sub-section (1) of section 6 of permission to contract another marriage during the subsistence of an existing marriage shall be in writing, shall state whether the consent of the existing wife or wives has been obtained thereto, shall contain a brief statement of the grounds on which the new marriage is alleged to be just and necessary, shall bear the signature of the applicant, and shall be accompanied by a fee of twenty-five Taka.

Ground for Granting Permission: The law has given the Arbitration Council the power to give permission for polygamous marriage. However, section 6(3) has expressly mentioned the ground for such permission: the Council can give such permission only if it is satisfied that 'the proposed marriage is necessary and just'. Thus, the law has given wide power to the Council to decide whether permission would be given or not. The council shall interpret in its own way considering the relevant circumstances whether such a marriage is 'necessary' and 'just', if the council is satisfied that the marriage is both 'necessary' and 'just', only then it can grant permission. In doing so, the Council may grant permission subject to some conditions as well which according to its view deem to be appropriate. An appeal in the form of 'revision' shall lie against the decision of the Council to the 'Assistant Judge concerned and his decision shall be final and shall not be called in question in any Court.'²⁵

However, what should be the basis for taking a decision which marriage is just and necessary and which one is not? Rule 14 of the Muslim Family Laws Rules 1961 has provided a guideline for taking such decision:

In considering whether another proposed marriage is just and necessary during the continuance of an existing marriage the Arbitration Council any, without prejudice to its general powers to consider what is just and necessary, have regard to such circumstances, as the following amongst others: Sterility, physical infirmity, physical unfitness for the conjugal relation, wilful avoidance of a decree for restitution of conjugal rights, or insanity on the part of an existing wife.

It is worth mentioning here that the above factors are not exhaustive but inclusive.

Legal Consequence of Contracting a Polygamous Marriage without such Permission: The law has explicitly said that whoever contracts a polygamous marriage without obtaining the permission of the Arbitration Council will be punished by the law. Moreover, any dower due to the existing wife/wives would be ordered to be paid immediately. Section 6(5) says:

²⁵ Section 6(4), *MFLO 1961*.

- (5) Any man who contracts another marriage without the permission of the Arbitration Council shall-
- (a) pay immediately the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and
 - (b) on conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to 9[ten thousand taka], or with both.

Obligation to Inform the 2nd Wife about the First Marriage: There is an interesting question: does the husband require to inform the 2nd wife about the fact that he has already another wife? In other words, does a wife has any legal remedy if she discovers after the marriage that her husband already had another wife at the time of marriage with her and that the husband concealed the fact of his first marriage to her? Generally speaking, there is no clear law in fiqh on this point that can oblige a man to disclose the fact of his exiting wife to his to be second wife. It is submitted that there is a room to impose such an obligation of disclosure on the husband, intending to a polygamous marriage, based on the principles of equity and good conscience in Islam. It is worth mentioning here that the offence of concealment of the fact of an earlier from the other party of the next marriage, laid down in sections 494 and 495, is not applicable in case of a Muslim male's polygamous marriage.²⁶ Because, the offence of concealment of earlier marriage will occur only when the subsequent marriage is otherwise valid but becomes void for its happening during the existence of an earlier spouse.

Sections 494 and 495 of the Penal Code read as follows:

Section 494: Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.- This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as

²⁶ Ratanlal and Dhirajlal, *The Indian Penal Code*, 1985, India, 409-414.

being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

Section 495: Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

It appears that to constitute the main offence under section 494, the following two ingredients must be present:²⁷

1. Existence of the first wife or husband when the second marriage is celebrated.
2. The second marriage being void by reason of the subsistence of the first according to the law applicable to the person violating the provisions of the section.

It is clear that section 494 does not speak of every subsequent marriage; rather it speaks of a subsequent marriage that becomes void solely on the ground of its taking place during the subsistence of another marriage. Thus, the offence under section 495 read with section 494 will not occur if a husband conceals the fact of the first marriage from his 2nd wife. Because, the subsequent marriage does not become void on the ground of the existing wife of the husband. So, the offence under section 495 will not occur in case of a polygamous marriage of the husband. It is clear from the text of article 495 that to be an offence under it, the offence must be an offence first under section 494. And to constitute the offence under section 494, the subsequent marriage must be of such a nature that it becomes void just on the ground of its taking place during the subsistence of another marriage. The polygamous marriage, since is not void on the ground of the earlier existing marriage, is not attracted by section 494. So the concealment of the earlier marriage from the bride of the polygamous marriage is not an offence under section 495. However, this offence may occur in case of a married Muslim woman who contracts another marriage and conceals the fact of her existing earlier husband. It is interesting to note here the judgment pronounced by the High Court Division of the Supreme Court of Bangladesh in the criminal revision no. 1324 of 1995 where the Court held:

²⁷ Ratanlal and Dhirajlal, 410.

A male Muslim can marry more than one as per the provision of the personal law that is Mohammedan Law subject to comply certain condition; but concealment of the fact of former marriage to the intended bride before marriage is an offence within the mischief of Section 495 of the Penal Code. If a male Muslim wants to marry further he ought to have disclosed the fact of former marriage to the intended bride before marriage and any concealment with regard to the former marriage from the person with whom the subsequent marriage is contracted is an offence punishable under section 495 of the Penal Code.²⁸

Conclusion

Islamic sharia law does not provide an unconditional licence to contract a polygamous marriage. Modern countries imposed different types of restrictions on the power of contracting a polygamous marriage. It has been clarified in this article that in Bangladesh, the existing wife is not the authority to grant licence to her husband to contract a polygamous marriage. Rather the husband has to obtain it from statutory authority, where consent of the existing wife to the polygamous marriage applied for may play an influential role. It is submitted that there is enough room open to impose statutory restrictions on this power even within the framework of Islamic law.

²⁸ 2 ALR (2013) 499, 500.