

Suspension of Polygamy in Arab Legislations: Benefits and Drawbacks - A Comparative Study

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Abstract:

This article delves into the contentious issue of polygamy within Arab legal frameworks, examining its substantial impact on family cohesion and the divergent legislative responses it elicits. The disparity in legislative approaches—ranging from permissive stances to stringent restrictions, and even criminalization—reflects broader societal and jurisprudential debates. These divergent stances have profound implications, as families face instability issues, such as polygamy through unofficial contracts, increased spinsterhood, and youth aversion to marriage, coupled with a rise in familial crimes, including cheating, adultery and prostitution, leading to more children born out of wedlock. This study underscores the critical necessity for harmonized legislative amendments across Arab jurisdictions to regulate polygamy and standardize judicial practices accordingly.

Keywords: Marriage; Polygamy; Progeny; Spinsterhood; Familial Disintegration.

Introduction:

Law, as a system of rules governing individual conduct within a society, aims to balance social harmony with individual rights, fostering security, stability, and prosperity. Given the dynamic nature of societal behaviors, it is imperative that laws evolve to stay abreast of these changes. Family law, a cornerstone in societal regulation, has sparked extensive debate regarding its amendments. While there is a consensus on the need for revision, opinions diverge on specific provisions and their implications. Critics argue that current laws undermine patriarchal guardianship and disproportionately favor women, especially divorced women. Conversely, proponents of women's rights fear that any regression in legal protections signifies a societal setback¹.

Family matters should not be treated from the standpoint of being either pro or anti-women, as some portray for ulterior motives. Instead, the focus should be on the rightful status of women in a cohesive, morally robust Muslim society.²

Polygamy is a particularly contentious issue within family law, generating significant debate due to its profound impact on familial structure. The legislative responses in Arab countries vary: some permit polygamy with minimal restrictions, others impose stringent conditions, while some criminalize the practice altogether. Despite these legislative variances, families encounter numerous challenges, including the prevalence of unofficial polygamous marriages. This contributes to rising rates of spinsterhood among women, youth aversion to marriage, and an increase in familial crimes such as domestic violence, adultery, and prostitution.

Some argue that the judicial scrutiny of polygamy often stems from instances of misuse and failure to meet the requisite conditions, such as fairness and financial capability, thus distorting the principles of Shariah.

The significance of this research is underscored by our objective to elucidate the legislative stances on polygamy in various Arab jurisdictions, comparing them to the Algerian legal framework. It examines jurisprudential perspectives, aligns them with Islamic Shariah, and identifies the most congruent view. Additionally, it assesses the purported benefits and confirmed drawbacks of suspending polygamy, ultimately determining whether to amend Algeria's polygamy regulations or maintain the current laws. The core issue we address is: to what extent have Arab legislations effectively regulated polygamy? Are there justifiable grounds for amending the current regulations? What are the benefits and drawbacks of suspending polygamy?

These questions will be addressed through a bifurcated analysis: the first section details polygamy in Shariah and law, while the second section examines the consequences of its suspension, referred to as the benefits and drawbacks of suspending polygamy.

Section One: Polygamy in Sharia and Law

The issue of polygamy is a critical subject within Islamic jurisprudence (fiqh) and is meticulously regulated by Arab civil legislations. Its significance is rooted in the esteemed status of marriage in Arab and Muslim societies. This section seeks to provide a detailed examination of the regulation of polygamy within both Islamic and civil legal frameworks, accompanied by a comparative analysis of the varying positions adopted by Arab legislators.

Subsection One: Definition and Regulation of Polygamy in Islamic Jurisprudence

Prior to engaging with the legislative nuances of polygamy, it is imperative to elucidate its conceptual underpinnings within Islamic jurisprudence and delineate the Sharia rulings associated with it.

1. Definition of Polygamy

While many scholars might assume the definition of polygamy to be self-evident, a comprehensive review of the literature reveals a range of perspectives that often describe polygamy as a "**social phenomenon**."³ This characterization warrants scrutiny: is it appropriate to describe polygamy in this manner, or is this terminology employed to imbue the practice with a negative connotation? This prompted us to lead a deeper search to ascertain the precise definition of polygamy.

Islamic scholars have long deliberated over the concept of polygamy, yet a unified definition remains elusive. Notably, Imam Mahmoud Shaltout (may Allah have mercy on him) remarked, "While some social researchers classify polygamy as a social crime detrimental to the family unit that should be curtailed, others argue that this perspective exaggerates reality, and that exceptional cases should not be used to undermine a practice that, in general, contributes significantly to moral and social wellbeing."⁴

Similarly, Professor Abdul Alim Abu Al-Majd contends, "Society has attributed distorted concepts and disgraceful practices to polygamy, which are both abhorred by Allah and the human conscience. These misconceptions arise from a fundamental misunderstanding of the conditions under which a man is permitted to marry more than one wife. Furthermore, such misconceptions are often propagated by those who seek to discredit Islam."⁵

A considerable body of research erroneously links polygamy to illiteracy, low educational attainment, and arduous professions such as fishing and agriculture, primarily within rural areas⁶. However, these

studies frequently overlook the profound issues present within urban environments, which can surpass the challenges associated with polygamy.

From our perspective, and upon thorough examination of these viewpoints, it becomes evident that polygamy is a divinely ordained system characterized by intricate wisdom. When practiced within the stringent guidelines prescribed by Sharia, polygamy can serve as an efficacious remedy for numerous social issues. Conversely, when these guidelines are disregarded, the practice can precipitate significant societal challenges. This duality mirrors other divinely mandated systems, such as divorce and financial maintenance, which must be exercised within the bounds of necessity and aligned with Sharia objectives.

2. Regulation of Polygamy in Islam

The legitimacy of polygamy is unequivocally enshrined in the Qur'an, specifically in Surah An-Nisa, verse 3: "And if you fear that you will not deal equitably with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice]."⁷ This verse is particularly intricate and poses interpretative challenges as it presents two conditions: the fear of not acting equitably (al-qist) and the fear of not maintaining justice (al-'adl), alongside two corresponding outcomes: polygamous marriage and monogamous marriage. The use of the terms "justice" and "equity" signifies profound divine wisdom⁸, understood fully by only a select few scholars, as elucidated in the verse: "But no one knows its [true] interpretation except Allah. And those firm in knowledge say, 'We believe in it. All [of it] is from our Lord.' And no one will be reminded except those of understanding" (Qur'an 3:7).⁹

Extensive exegetical works have addressed this verse, though a comprehensive review is beyond our scope. Key interpretations, however, merit discussion. Sheikh Abu Bakr Jabir Al-Jazairi explains that Allah advises the guardian of an orphan girl, fearing he might not act justly if he marries her, to marry other women not under his guardianship—two, three, or four, based on his capacity. If a believer fears he cannot uphold justice among his wives, he should restrict himself to one.¹⁰

Islamic theorist Sayyid Qutb views the verse as a cautious permissibility of polygamy, encouraging guardians who doubt their ability to act equitably with orphan girls in their care to marry other women, thereby avoiding potential suspicions or injustices¹¹. Another significant interpretation of this verse: "And if you fear that you will not deal equitably with the orphan girls, then marry those that please you of [other] women"¹², posits that the primary objective of polygamy is the welfare of orphans, underscoring a deeply humanitarian principle aimed at societal reform.¹³

Dr. Muhammad Okasha interprets the verse not as an endorsement of increasing from one to four wives but as a restriction, preventing men from exceeding four wives. It simultaneously cautions against oppressing orphan wives and admonishes against injustice and partiality among multiple wives.¹⁴

Conversely, some critics of polygamy interpret Qur'anic verses as implicitly prohibiting it, arguing that the requirement of justice is unattainable, as highlighted in the verse: "And you will never be able to be just between wives, even if you should strive [to do so]" (Qur'an 4:129)¹⁵. They contend that the impossibility of achieving justice renders polygamy impermissible. However, this interpretation is considered by many scholars as a misreading and distortion of the verses' intent. It is inconceivable that Allah would guide believers towards polygamy only to later negate its feasibility¹⁶. The command for justice is recognized as contingent on varying circumstances and the individual's

disposition, thus representing a subjective condition related to personal conduct rather than a prerequisite for the validity of marriage. Critics of polygamy are but mujtahids often lacking comprehensive understanding in other areas of fiqh, demonstrating excessive rigidity in their interpretations.¹⁷

Subsection Two: Arab Legislations' Approach to Polygamy

The stance of Arab legislators on the issue of polygamy varies widely. In this section, we aim to explore the legal texts that reveal how different legislators approach the regulation of polygamy.

1. The Algerian Legislator's Stance on Polygamy

The Algerian legislator has addressed the issue of polygamy through Article 8 of the Family Code¹⁸, which permits a man to marry up to four wives, in accordance with Islamic Sharia. However, the Algerian legislator has imposed several conditions for polygamy, which have been subject to significant critique, summarized as follows:

A. The Requirement of a Legitimate Justification:

This condition has sparked considerable debate among scholars and legal practitioners regarding the meaning of "legitimate justification," given its vague and interpretative nature. The justification for a man to marry a second wife can vary widely among individuals, and any man who decides to marry again will inevitably have a motive, which can be easily demonstrated. Thus, any judicial refusal to recognize the presented justification is often seen as an unjustifiable hindrance, lacking a firm basis in Sharia or law. Moreover, this requirement has no clear support from Islamic jurisprudence.

Several jurisprudential sources have attempted to clarify Article 8, narrowing the legitimate justifications to scenarios such as the first wife's inability to bear children or her incapacity to fulfill marital obligations due to illness or disability. These conditions ostensibly make polygamy not just an option but a necessary measure, more humane than divorce under such circumstances.¹⁹ Yet, what about cases where a man wants to marry a woman who has no family, wealth, or support, or cases involving spinsters, widows, and divorced women vulnerable to societal pitfalls? Or a man seeking to safeguard himself from sinful inclinations? In these cases, facilitating polygamy protects both the man and the woman. Additionally, could a wife's disobedience (nushuz) be a sufficient legitimate reason for polygamy, as it justifies withholding financial support according to the majority of jurists? Dr. Tawfiq Al-Attar critically notes that the requirement for a legitimate justification could inadvertently increase divorce rates, as spouses might opt for dissolution of the first marriage rather than disclosing sensitive justifications for a subsequent marriage²⁰. This phenomenon is evident in Algeria, where over 44,000 divorces and more than 10,000 instances of judicial separation (khula) were recorded in the first half of 2021 alone²¹.

Islam stipulates only two conditions for polygamy: the ability to maintain justice (as much as is humanly possible) and financial capacity. It does not restrict polygamy to necessity or judicial permission²². Thus, a comprehensive perspective on polygamy is essential to avoid judicial shortcomings.

B. Intent and requirements of Justice:

This criterion, too, has not escaped critique, primarily due to its reliance on the subjective and inherently variable element of intent. Justice, as a deeply philosophical and ethical concept in Islamic jurisprudence, is difficult to ascertain and cannot be adequately confirmed through mere documentary evidence at the time of applying for polygamy authorization. Some view this condition as a covert

mechanism to obstruct polygamy, a stance that could potentially contravene explicit religious texts and consensus.²³

Yet, the legislative intent seems to be geared towards ensuring that a judge, when granting permission for polygamy, verifies that the husband can provide materially adequate conditions for all wives. This includes sufficient living arrangements and financial resources at the time of marriage, recognizing that these circumstances are subject to change.

Some argue that this criterion—justice—is manipulable by the judiciary to deny a man the right to a second wife, given its speculative nature. They propose amending the article to read, "If the judge finds definitive evidence of material injustice between the wives, he shall not permit the marriage." The focus, therefore, should be on material justice, not subjective intentions.²⁴

Our review of judicial practice found a Supreme Court ruling linking the intention of justice to spousal abandonment: "Abandonment of the marital bed in the case of multiple wives is evidence of a lack of intent for justice, justifying the aggrieved wife's request for divorce."²⁵ However, the judges seemingly overlooked that spousal abandonment is a legitimate disciplinary tool sanctioned by the Qur'an and Sunnah for a disobedient wife, as stated: "As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all). (Qur'an 4:34)²⁶. Then, how can a husband be penalized for a disciplinary measure that is sanctioned in Shariah?

The ruling by the Supreme Court likely pertains to "**hajr al-madaji**" or "**hajr min al-madaji**," which translates to abandoning the conjugal bed and departing from the wife's bedroom. This interpretation should be distinguished from the Sharia-sanctioned disciplinary measure of "**hajr fi al-madaji**," which translates to estrangement from marital bed, a provision granted to the husband, reflecting his role as **qawwam** (maintainer and protector) under Islamic law. The measure of "**hajr fi al-madaji**" does not imply exiting the household or permanently vacating the marital bedroom; rather, it is a nuanced psychological gesture aimed at rectifying marital discord and reinstating harmony. This disciplinary tactic serves to mitigate any potential arrogance on the part of the wife due to her allure²⁷, thus fostering a more compliant and harmonious marital relationship.

This nuanced interpretation is supported by the prophetic tradition reported from Mu'awiyah ibn Haydah, in which he queried the Prophet Muhammad (peace be upon him) regarding the rights of a wife over her husband. The Prophet responded, "You should feed her when you take your meal, clothe her when you clothe yourself, do not strike her face, do not revile her, and do not forsake her except within the home."²⁸ This guidance emphasizes the necessity of maintaining the domestic peace and the psychological well-being of the spouse within the confines of the home.

The imperative to accurately define and apply legal and Sharia terms in judicial decisions is crucial, particularly in Supreme Court verdicts, as these form the cornerstone for judicial precedent across the judicial spectrum in the nation. These rulings not only guide the lower courts but also ensure the uniformity of judicial reasoning and adherence to the principles of Islamic jurisprudence.

C. Knowledge and Consent of Previous and Prospective Wives:

The prerequisite for both the incumbent and prospective wives to be cognizant of their husband's intent to engage in a polygamous union is fundamentally rooted in the principles of transparency and mutual awareness, which are paramount in the matrimonial partnership. Nevertheless, the requirement for the first wife's consent has been subjected to intense scrutiny and critique. Many

scholars argue that this stipulation contradicts Sharia, as the Islamic jurisprudential framework traditionally emphasizes notification rather than explicit consent. They assert that any legal mandate requiring the first wife's consent deviates from established Sharia principles.²⁹

The breach of this provision allows the first wife to initiate a divorce under Paragraph 06 of Article 53 of the Family Code. Jurisprudential interpretations by the Supreme Court underscore that mere knowledge of a subsequent marriage does not suffice—consent is imperative. This distinction underscores that awareness of polygamy does not equate to acceptance thereof, legitimizing the wife's petition for divorce due to harm.³⁰

However, eminent jurists like Dr. Azmi Al-Bakri argue that the mere act of taking another wife does not inherently constitute harm that would justify divorce under Sharia. They contend that Allah has permitted polygamy within a framework that inherently assumes the husband's capacity for justice—if not, the directive is to remain monogamous³¹. Thus, the onus is on the wife to substantiate actual, non-speculative harm resulting from her husband's polygamy before a divorce can be considered justified.³² From our perspective, we believe that this viewpoint is more accurate as it balances the rights of the first wife to be free from harm, the second wife's right to a legitimate marriage, and the husband's right to enter into a second marriage without being subject to his first wife's authority.

The discussion also intertwines with broader debates on gender equality, especially in the context of international human rights instruments such as the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women). These conventions often challenge traditional Islamic notions of marital hierarchy, advocating for a form of egalitarianism that negates any need for spousal permissions³³, thus potentially undermining the structural foundations of Muslim familial norms. This is indeed deceitful and manipulative, representing an attack on the fundamental principles upon which the Muslim family is built. We must be vigilant and collectively oppose it.

Recent trends in advocating gender equality utilize enticing terminologies like "partnership," "gender roles," "family entitlements," and "empowerment,"³⁴ often propagated by Western societies aiming to reshape familial relationships in more conservative settings, particularly within Islamic and Arab nations. These notions pose direct challenges to the integrity of Muslim family structures and the societal values therein.³⁵

This movement seeks to abolish the wilayah (guardianship) that Sharia grants men over their daughters during the process of selecting and approving a spouse. Consequently, women would have complete autonomy to enter into a marriage contract with any individual, regardless of the suitability of their choice, equating their rights with those of men. This concept of equality would entail the unrestricted freedom for women to marry, including the allowance for Muslim women to marry non-Muslims. Additionally, it advocates for the elimination of the mahr (dower) provided by the husband, deemed discriminatory, and potentially the abolition of the husband's right to polygamy or allowing polyandry for wives.³⁶

In addressing this expansive interpretation of equality, attorney Ahmad Sarkis underscores that true equality pertains to rights and responsibilities, recognizing both men and women as human beings and citizens. He clarifies that it does not necessitate women imitating men, as a woman who abandons her feminine nature does not become a man, nor does she retain her identity as a woman³⁷. Many proponents of spousal equality overlook that Allah established this balance millennia ago, as evidenced by the Qur'anic verse: "And they (women) have rights similar to those (of men) over them in kindness" (Qur'an 2:228)³⁸. However, Allah's wisdom dictates that equality is not absolute in every

aspect, as each gender is favored in specific areas³⁹. The verse continues: "But men have a degree over them [in responsibility and authority], and Allah is Exalted in Might and Wise" (Qur'an 2:228).⁴⁰ Thus, we conclude that the principle of equality between spouses is deeply rooted in Islamic Sharia, which promotes justice and rejects discrimination in all areas. Nonetheless, the inherent nature and capabilities of men necessitate assigning them certain responsibilities from which women are exempted, and vice versa. The notion of absolute equality propagated by modern liberal movements is unsubstantiated, as practical experience has demonstrated its infeasibility.

D. Judicial Authorization for Polygamy:

Legislative prudence in permitting polygamy reflects a concern that without adequate safeguards, the practice could become a tool for subjugating women. The harm critiqued here is not inherent to polygamy but emerges from potential misuses involving deceit or manipulation⁴¹. The stipulation for judicial approval aims to ensure that polygamy is conducted transparently and justly, safeguarding both parties' rights in the event of disputes.⁴²

However, this requirement has inadvertently prompted a trend where men avoid official channels for marriage, opting instead for informal unions that meet minimal Islamic requirements—guardian consent, dowry, and witnesses—or, in worse scenarios, lead to covert relationships that flout normative legal and ethical standards.

This phenomenon is highlighted by Attorney Jamal Boufreeda, who notes a surge in 'secret marriages' following the 2005 legislation prohibiting men from registering a second marriage without the first wife's consent. This legal obstacle has not only fostered a subculture of hidden polygamous unions but has also brought to the fore significant social issues in court, impacting societal stability due to the effects of divorce and separation on children.⁴³

The legal discourse is further complicated by legislative encouragements for women to stipulate non-polygamy clauses in marriage contracts, reflecting in statutes such as Article 19. This provision, while intended to empower women, paradoxically may engender severe societal repercussions, ranging from domestic violence to the neglect and non-recognition of offspring, thereby instigating broader social chaos.

In sum, these legal and jurisprudential frameworks highlight a dynamic tension between traditional Islamic marital doctrines and contemporary interpretations influenced by global human rights discourses. The discourse reflects a profound need for a jurisprudentially sound, yet socially responsive rearticulation of marital rights and duties within the Islamic legal tradition, balancing between doctrinal fidelity and practical exigencies in modern Muslim societies.

2. Polygamy in Arab Legislations

Arab jurisdictions have endeavored to extract polygamy regulations from Islamic jurisprudence. However, influenced by substantial advocacy from feminist organizations and human rights groups, various legislators have instituted amendments to their respective family law statutes⁴⁴. This analysis will delineate the stance of Arab legislators on polygamy.

A. Legislations Permitting Polygamy:

Several Arab states maintain adherence to Sharia stipulations governing polygamous unions, thereby not criminalizing, but rather regulating polygamy under strict legal and ethical guidelines:

1. **Jordanian Personal Status Law:** Article 13 mandates that the judge verify the husband's financial capacity for maintenance and *mahr* before granting permission for polygamy. It also requires that both the potential and existing wives are informed of the polygamous arrangement.⁴⁵

2. **Qatari Family Law:** Article 14⁴⁶ stipulates that the notary must ensure the wife is informed of the husband's financial conditions that may affect his capability to fulfill marital obligations. This law obliges the notary to proceed with the documentation if mutual consent is present, notwithstanding the financial status. The wife or wives are to be informed post-documentation. This regulation underscores the necessity of financial transparency and consent in polygamous marriages, reflecting a nuanced understanding that while financial capability is crucial, it should not strictly impede the matrimonial consent if mutual agreement exists.

This regulatory approach is also reflected in the personal status laws of the UAE, Oman, Kuwait, Syria, and Egypt.

Despite Egyptian legislation providing avenues for aggrieved wives to seek divorce, frequent calls⁴⁷ are made to amend Article 11 (repeated) of the Personal Status Law. The proposed amendments aim to impose additional statutory conditions to further restrict polygamy and to penalize violations, such as failing to inform the first wife⁴⁸.

B. Legislations Prohibiting and Criminalizing Polygamy:

Tunisia stands as the sole Arab nation that categorically bans and criminalizes polygamy, viewing it as an affront to women's dignity⁴⁹. Under Article 18 of the Tunisian Personal Status Code, a husband proven to have contracted a subsequent marriage faces a potential year of imprisonment and a fine of 240,000 francs, enforceable whether or not the marriage adheres to legal formalities⁵⁰. Critics of polygamy, referencing this legislation, quip that any attempt to marry more than one wife could result in incarceration and fines, thus highlighting the stringent punitive measures associated with such matrimonial practices⁵¹.

Proponents of Tunisia's legal stance argue that the ban stems from observations that men often fail to ensure equitable treatment among multiple wives, invariably resulting in injustices towards women. They cite Qur'anic guidance in Surah An-Nisa (4:129): "You will never be able to do perfect justice between wives even if it is your ardent desire."⁵²

Critics of polygamy view it as an antiquated practice, arguing that Qur'anic endorsements of polygamy were context-specific and ceased to apply with the end of those historical circumstances. They question why, if polygamy is considered a solution to societal issues, polyandry is not similarly endorsed⁵³.

Moreover, after criminalizing polygamy, Tunisian legislation has not addressed other forms of non-marital relationships⁵⁴, which could potentially have more detrimental social effects. This legislative gap, critics argue, undermines the intended protective measures against non-marital relationships explicitly discouraged in Islam: "So marry them with the permission of their family and give them their due compensation according to what is reasonable, [they should be] chaste, neither [of those] committing unlawful sexual intercourse nor taking [secret] lovers" (Qur'an 4:25).⁵⁵

Critics of polygamy often overlook the prevalence of fornication (zina), illegitimate progeny, human trafficking, sexual exploitation, and deviant behaviors that permeate their societies. Contrary to such practices, Islamic jurisprudence (fiqh) does not endorse base instincts or indecencies; instead, it fosters an ethos of dignity and purity among its adherents. Islam explicitly promotes chastity and prohibits all forms of illicit relations, advocating nikah (marriage) as the sole legitimate framework for a relationship between men and women. The Sharia caps the number of concurrent marriages a man may enter into, directly contradicting the misinformed assertion that it supports boundless polygamy⁵⁶.

A significant impetus behind the criminalization of polygamy in Tunisia is the prevailing ideology advocating absolute gender equality. Within this discourse, Professor Taheri Habib questions the proponents of such equality and defenders of women's rights: Have they considered the inherent marital rights of women? What viable alternatives have they offered to address the resultant societal dilemmas?

The conventional monogamous system presumes a balance in the male-to-female population ratio. However, where such parity does not exist, the inflexibility of the legal framework often condemns a substantial segment of the female population to involuntary celibacy. For example, in the United Kingdom, the current demographic disparity leaves over two million more women than men. Thus, the insistence on a strict monogamous regime proves ineffectual and imposes significant deprivations on many women. It fails to address demographic disparities and overlooks the fundamental rights of women to marry.⁵⁷

C. Legislations Imposing Conditional Polygamy

Various Arab jurisdictions have instituted stringent prerequisites for polygamy, aligning with both the traditional Sharia mandates and contemporary socio-legal considerations. These regulations necessitate demonstrating legitimate and objective justifications under Sharia, ensuring adequate financial provision, obtaining consents from existing and prospective spouses, and securing judicial endorsement.

1. **Moroccan Legal Stance on Polygamy:** The Moroccan Family Code⁵⁸ articulates a cautious approach to polygamy, typified by a presumption against its practice unless exceptional conditions are met. Specifically, Articles 40 and 41 outline prohibitive conditions, where polygamy may only proceed under judicial scrutiny to ensure fairness and adequate financial arrangements. The court must confirm the absence of a pre-existing anti-polygamy clause from the first wife and scrutinize the husband's rationale and financial stability.
2. **Iraqi Personal Status Legislation:** Iraq's approach, detailed in Paragraph 4 of Article 3 of the Personal Status Law, mandates a petition to the judiciary to validate the financial solvency and the legitimate motives for pursuing additional matrimonial alliances. This legislation penalizes non-compliance. However, an exemption exists for marriages with widows, reflecting a policy intent to encourage support for this vulnerable group within society, recognizing their potential social and economic precariousness.

This examination does not exhaustively cover all Arab legislations but highlights the prevailing tendencies between permitting, restricting, and criminalizing polygamy.

Section Two: Implications of Restricting Polygamous Marriages

This section delves into the ramifications of constraining polygamy, as manifested in various legislative frameworks, particularly within the context of Islamic jurisprudence and contemporary legal reforms. The outcomes are delineated into positive gains and negative consequences, each explored under respective subsections.

Subsection One: Benefits of Restricting Polygamy

This subsection evaluates the affirmative outcomes of imposing restrictions on polygamous unions, with a specific focus on the Algerian context within a broader Arab legislative panorama. The discourse synthesizes viewpoints from an array of critics who advocate for the curtailment or abolition of polygamy. International bodies such as the United Nations argue that diminishing the prevalence of polygamy serves to enhance gender equality and safeguard women's dignity. Polygamy,

in many instances, is construed as a practice that subjugates and devalues women, a sentiment echoed in the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁵⁹.

Proponents of this view argue that the prohibition of polygamy is not the primary cause of social issues like divorce, spinsterhood, deviance, and single motherhood. Evidence suggests that Arab societies permitting polygamy also encounter these problems, sometimes at higher rates⁶⁰. They assert that restricting polygamy modernizes Arab family laws, aligning them with contemporary values of women's rights. This legislative evolution aids in achieving equilibrium within family units and aligns with international norms and agreements, such as CEDAW.

Subsection Two: Drawbacks of Suspending Polygamy

In scholarly and legal discourse, many experts examine the restrictions placed on polygamy by Arab legislators as contributing to a plethora of societal malaises, such as escalating rates of spinsterhood, a decline in birth rates, marital infidelity, non-marital relationships, family breakdown, and informal marriages. The argument posits that one fundamental remedy to these issues is to permit polygamy⁶¹, ostensibly because eliminating spinsterhood effectively curtails adultery—a direct correlation upheld by Islamic jurisprudential reasoning.

A. The Nexus Between Polygamy Suspension and Spinsterhood:

Empirical research across Arab societies has consistently highlighted disturbingly high rates of spinsterhood, with some countries reporting nearly epidemic levels. For example, data indicate that Lebanon leads with a spinsterhood rate of 85%, followed by high percentages in the UAE, Syria, and Iraq at 70%, and Tunisia at 60%. More moderate rates are seen in countries like Algeria (50%), Saudi Arabia, Jordan, Egypt, and Morocco, all under 40%. Yemen and Bahrain have rates exceeding 30%⁶², Libya is at 35%, Qatar at 26%, and Kuwait at 22%. Notably, Palestine exhibits the lowest rate at approximately 12%.⁶³

In Algeria, the National Office of Statistics reported in 2017 that over 12 million women remain unmarried⁶⁴, a figure surpassing the combined populations of 5 Arab nations and markedly higher than 2015 where the rate was around 4 million unmarried women.⁶⁵

The reduction in spinsterhood in Palestine is principally due to an increased adoption of polygamous marriages as a demographic countermeasure to the oppressive Zionist occupation, which annually kills thousands. This strategy, however, has seen restrictions from the Israeli occupation government.⁶⁶

The stark statistics provoke grave concerns about the future of these societies; thus, NGOs have proposed various strategies to address this crisis, including advocating for the judicious application of polygamy and facilitating more accessible marital processes⁶⁷.

Moreover, the postponement of marriage exacerbates the pressures on women, expanding the scope of their social marginalization and rights violations. One prevalent issue is the denial of inheritance rights due to their vulnerability⁶⁸, coupled with verbal derogations that stigmatize them as spinsters. Critics of current legislative approaches argue that efforts to reform polygamy laws must maintain legislative coherence; solving existing societal problems should not precipitate new issues. Over-regulation of polygamy, ignoring the stark reality of a substantial segment of unmarried, widowed, or divorced women, may inadvertently perpetuate injustices within family law. This oversight could lead to an increase in both divorce rates and domestic violence cases, as observed in recent legal

applications, suggesting a need for more nuanced lawmaking that considers both Islamic legal principles and contemporary societal needs.⁶⁹

B. Suspending Polygamy and Its Impact on Reproduction:

Nations sometimes necessitate expedited population growth for various socio-economic or geopolitical reasons, where polygamous marriages serve as a potent mechanism to fulfill this objective. The prohibition of polygamy, however, impedes this natural growth. Notably, countries like Sudan have encouraged polygamy to augment their populations post-conflict⁷⁰. In contrast, recognizing polygamy's role in bolstering population growth among Palestinians, Israeli occupation have enforced stringent restrictions on polygamous unions to curb population increments⁷¹.

C. Suspending Polygamy and Its Relation to Marital Infidelity and Family Disintegration:

Analyzing societies that constrain or prohibit polygamy reveals a panorama of sexual chaos where women disproportionately bear the brunt of such policies. Reports indicate annually, between 40 to 60 million women globally engage in attempts to terminate unwanted pregnancies, with a significant majority being unmarried⁷². These alarming statistics underscore the imperative to shield our societies from these dire consequences. Polygamy, when regulated judiciously, tips the balance towards moral rectitude, making deviations an unacceptable anomaly rather than a normalized behavior. Unfortunately, prohibiting polygamy may lead to widespread moral decline.⁷³

C. Suspending Polygamy and Its Connection to Customary Marriage:

In Algeria, as in most Arab nations, stringent legal constraints on polygamy have given rise to a surge in secret marriages. These marriages occasionally comply with Sharia stipulations and are recorded under Article 22 of the Family Law; however, they often lack requisite legal formalities, rendering them illicit. Judicial precedents from the Family and Inheritance Chamber of the Supreme Court have ruled that such second marriages, even if customary, can be substantiated through various evidential means, and judicial declarations therein provide irrefutable proof against the declarant⁷⁴. Should these marriages not meet legal standards, they fall into the realm of illegitimate relationships, fraught with extensive socio-legal complications. Legislators are thus urged to promulgate reforms that safeguard societal mores and prevent moral decay.

Some Western scholars have acknowledged the advantages of polygamy. Gustave Le Bon, in his seminal work "The Civilization of the Arabs," extols the virtues of the Eastern polygamous framework, asserting that it enhances moral standards, strengthens family bonds, and elevates the status and happiness of women—a stark contrast to the situation in Europe⁷⁵. Annie Besant has articulated that Islamic polygamy, which dignifies and protects women, is far superior to the libertine promiscuous practices prevalent in the West, where women are often exploited and discarded post-consumption⁷⁶.

Conclusion

Based on the aforementioned discussion, it is crucial to initiate a substantive dialogue on the phenomenon of polygamy and its ramifications within the societal fabric. This discourse should explore the strategic employment of this Shariah sanctioned mechanism as a means for societal reform and amelioration of pervasive societal afflictions. Observing the distress in a Muslim society grappling with problems for which the Quran and Sunnah provide abundant remedies is a matter of significant concern. Herein, we encapsulate the principal findings from our analysis:

- Polygamy, as ordained divinely, is a meticulously crafted system established by the wise legislator (Al-Sharī'). It encompasses both men and women within the bounds of legitimacy, following strict

parameters. When appropriately applied, it serves as an efficacious remedy for numerous societal dilemmas; conversely, its misuse without adherence to its stipulated conditions can precipitate significant societal disruptions.

- Alleviating the stringent conditions imposed on polygamous unions could potentially decrease the judicial caseload related to the verification of legitimate marriages and reduce the prevalence of clandestine marriages and the consequent social issues such as disputes over paternity and marital infidelity.
- Contrary to some portrayals, polygamy is not inherently a precursor to domestic violence; rather, it can serve as an effective solution to mitigate the widespread occurrence of violence within families. By adhering to its judiciously defined legal bounds, it can foster a more tranquil and stable domestic environment, significantly curtailing factors that precipitate domestic strife, such as infidelity and spinsterhood.
- Empirical data and sociological research underscore that societies prohibiting polygamy often experience moral disarray and a decline in ethical values, despite outward appearances of regulatory adequacy.

Legislative Recommendations :

To harness the benefits of polygamy and achieve its noble Sharia objectives, we recommend the following legislative amendments:

- Amend Article (8), Paragraph 1 of the Family Code to Eliminate the requirement of a "legitimate justification" as it lacks solid Sharia grounding and has proven counterproductive, being easily manipulated.
- Amend Article (8), Paragraph 3, transitioning from requiring the first wife's consent to merely necessitating her notification. This amendment addresses potential issues of marital coercion and abuse, as the requirement for consent may facilitate abusive dynamics or contribute to the prevalence of clandestine polygamous unions.
- Amend Article (53), by removing paragraph 6, which allows the wife to seek judicial divorce solely on the grounds of polygamy. The law already permits divorce for any substantial harm as recognized by Sharia. Polygamy alone should not be grounds for divorce unless it involves proven injustice, physical incapacity, or financial inability. Moreover, the first wife should be liable if she insists on divorce due to polygamy without proving harm.

In closing, we echo the comprehensive and inclusive statement of the thinker and jurist Mustafa Al-Siba'i: "The issue of women is the issue of every father and son. As long as there are fathers and sons in the world, there will be deep respect for the dignity of women. Those who cannot distinguish between dignity and vulgarity are drowning in illusions and mire."

¹ Al-Qabas website, seminar: "Polygamy Needs Legal Regulations," published on 02/02/2018, accessed on 16/03/2022, [link](#).

² Mustafa Al-Siba'i, "Women between Fiqh and Law," fourth edition, Dar Al-Salam, Egypt, 2010, p. 7.

³ A social phenomenon is what people practice as a collective behavior in a society, or what a group of people suffer from, enduring its consequences and repercussions. A phenomenon almost becomes

a problem if it has a negative dimension or results, casting its shadow over society in general. See the encyclopedia Everything for You, accessed on 30/03/2022, [link](#). Although some sociologists distinguish between healthy and negative phenomena, the term 'phenomenon' is commonly used when discussing societal ailments. For more, see Anwar Abdel Hamid Al-Mousa, "Literary Sociology," p. 50.

⁴ Mahmoud Shaltout, "Islam: Creed and Law," eighteenth edition, Dar Al-Shorouq, Egypt, 2001, p. 178.

⁵ Mahmoud Akasha, "Rights of the Wife in Islam," Dar Al-Ma'arif Library, Egypt, 2009, p. 95.

⁶ Ibrahim Jaber Al-Sayyid, "Domestic Violence and Its Causes," Dar Al-Ta'leem Al-Jame'i, Egypt, 2016, pp. 103-104.

⁷ Surah An-Nisa, verse 3.

⁸ Abdul Sattar Qasim, "Public Life of Muslim Women," first edition, Dar Wael, Jordan, 2002, p. 118.

⁹ Surah Aal-E-Imran, verse 7.

¹⁰ Abi Bakr Jabir Al-Jaza'iri, "The Easiest Tafsir of the Almighty's Speech," Volume One, Al-Uloom wal-Hikam Library, Saudi Arabia, 2010, p. 359.

¹¹ Sayyid Qutb, "In the Shade of the Qur'an," Volume One, Parts One to Four, first edition, Dar Al-Shorouq, 1972, Egypt, p. 578.

¹² Surah An-Nisa, verse 3.

¹³ Tariq Abdel Hamid, "Modern Interpretation of the Holy Quran - Spirit of the Quran," first edition, Dar Al-Quran for Publishing, Egypt, 2013, p. 100.

¹⁴ Mahmoud Akasha, Op.cit, p. 98.

¹⁵ Surah An-Nisa, verse 129.

¹⁶ Mahmoud Shaltout, "Islam: Creed and Law," eighteenth edition, Dar Al-Shorouq, Egypt, 2001, p. 178.

¹⁷ Abi Al-Fida Ismail Ibn Umar Ibn Kathir, "Condensed Tafsir of the Great Quran called (Umdat Al-Tafsir from Hafiz Ibn Kathir)," Volume One, Al-Kutub Al-Alamiya, Lebanon, 2010, pp. 420-421.

¹⁸ Law No. 84-11, dated 09 June 1984, includes the Family Code, Official Gazette No. 24, issued on 12 June 1984, amended and supplemented by Order No. 05-02, dated 27 February 2005, Official Gazette No. 15, issued on 27 February 2005.

¹⁹ Muhammad Atta Saeed Ramadan, "Summary of Investigations in Responding to Doubts and Perceptions," Dar Al-Kutub Al-Ilmiyah, Lebanon, 2010, p. 203.

²⁰ Abdul Nasser Tawfik Al-Attar, "Polygamy from Religious, Social, and Legal Perspectives," Egyptian Printing Company, Egypt, 1972, p. 310.

²¹ Abdul Hafidh Sajal, "Rising Divorce Cases in Algeria... A Judicial or Social Issue?", Ultra Algeria website, published on 22/01/2022, accessed on 30/03/2022, [link](#).

²² Kada Ben Ali, "Polygamy Between Unrestraint and Restriction," Al-Mi'yar Review, Volume Five, Issue Nine, Prince Abdul Qadir University for Islamic Sciences, Constantine, Algeria, p. 159.

²³ Sayyid Bin Hussein Al-Affani, "Flowers of the Gardens from the Stances of Scholars and Divine Men," Volume Three, Dar Al-Affani, Egypt, undated, pp. 421-422.

²⁴ Haider Hussein Kadhim Al-Shammari, "Iraqi Personal Status Law Between Necessity, Desire, and Alternative," Kufa Studies Center Journal, Volume One, Issue Seven, University of Kufa, Iraq, 2008, p. 203.

- ²⁵ Supreme Court, Personal Status Chamber, decision no. 480240, dated 11/02/2009, Supreme Court Magazine, Issue One, 2009, p. 279.
- ²⁶ Surah An-Nisa, verse 34.
- ²⁷ Aliyah Ahmad Saleh Daifallah, "Violence Against Women Between Jurisprudence and International Charters," Dar Al-Ma'mun for Publishing, Jordan, 2010, pp. 73-75.
- ²⁸ Imam Abi Abdullah Muhammad ibn Ismail Al-Bukhari, "Sahih Al-Bukhari," Book of Marriage, Chapter on Women's Migration to Non-Domestic Places, first edition, Dar Ibn Kathir, Syria, 2002, p. 1326.
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- ³¹ Muhammad Azmi Al-Bakri, "Encyclopedia of Fiqh and Judiciary in Personal Status," Volume One, Dar Mahmoud, Egypt, 2014, p. 378.
- ³² Mahmoud Rabie and Muhammad Abdel Hamid Al-Alfi, "Personal Status and Inheritance Law and Family Laws," Dar Mahmoud, Egypt, 2018, p. 52.
- ³³ United Nations, "Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)," adopted on 18/12/1979 by the UN General Assembly, ratified by Algeria with reservations in 1996 under Presidential Decree No. 96/51 dated 22 January 1996.
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- ³⁵ Amr Muhammad Azab, "The Image of the Family in Egyptian Press: Vision of Reality and Shaping the Future," Al-Arabi for Publishing and Distribution, p. 16.
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- ⁴² Abdul Nasser Tawfik Al-Attar, Op.cit, p. 317.
- ⁴³ Ali Yahi, "The Corona Pandemic in Algeria Exposes the Spread of Secret Marriages," Independent Arabia, published on 24/06/2020, accessed on 30/03/2022, [link](#).
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- ⁴⁵ Law No. 36 of 2010 containing the Jordanian Personal Status Law.
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- ⁵⁰ Order dated 13 August 1956 published in the Official Journal No. 66 dated 17 August 1956, amended and supplemented containing the Tunisian Personal Status Code.
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