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A Study of the Concept of Polygamy in Islam and the Legal Systems of Afghanistan, Malaysia, and Turkey

İslam'da Çok Eşlilik Kavramının Afganistan, Malezya ve Türkiye Hukuk Sistemlerinde İncelenmesi

بررسی مفهوم تعدد زوجات در اسلام و نظام حقوقی افغانستان، مالیزیا و ترکیه

دراسة ظاهرة تعدد الزوجات في الإسلام والنظام القانوني في أفغانستان وماليزيا وتركيا

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**Abstract**

Polygamy, defined as the practice of having multiple spouses simultaneously, is theoretically permissible for all Muslims according to jurisprudential texts. Over time, many Islamic nations have either permitted polygamy under stringent regulations or outright banned it. This study aims to comparatively analyze the status of polygamy in Islam and the legal frameworks of Afghanistan, Malaysia, and Turkey. Utilizing library and document research methods, alongside descriptive - analytical and comparative approaches, this research examines the conditions, disparities, and similarities within the legal systems of these countries concerning the implementation of polygamy. The findings reveal that Islam permits polygamy only under the condition of equity. The legal treatment of polygamy varies among Islamic nations; for instance, Afghanistan and Malaysia have legalized polygamy under Islamic law, subject to certain legal stipulations. Notably, Malaysian Islamic Family Law imposes fines and short prison sentences, illustrating a significant contrast in approach compared to Afghanistan. Conversely, Turkey, with its secular legal system, unequivocally prohibits polygamy. Moreover, the differing stances on polygamy acceptance or prohibition among these countries stem primarily from cultural, social, economic, legal, and political factors.

**Keywords:**

Polygamy,  
Islamic Principles,  
Justice, Legal System,  
Afghanistan,  
Malaysia, Turkey.

**Özet**

Çok eşlilik, aynı anda birden fazla eşe sahip olmak anlamına gelmektedir. Çok eşlilik, teorik olarak fıkıh kitaplarında Müslümanlara yasallaştırılmıştır. Ancak zaman geçtikçe İslami ülkelerin birçoğunda çok eşlilik katı bir şekilde yasaklanmıştır. Bu araştırmanın temel amacı İslam'da çok eşliliğin koşulları ile Afganistan, Malezya, Türkiye hukuk sistemini ve Kur'an-i Kerim'e uygunluğunu karşılaştırmaktır. Araştırmada, çok eşliliğin uygulanabilmesi için İslam kurallarıyla uyumlu olarak söz konusu ülkelerin hukuk sistemlerinin farklılıklarını ve ortak noktalarını ortaya çıkarmakla beraber önemli şartları incelemek amacıyla analitik-betimleyici ve karşılaştırmalı yöntem kullanılmıştır. Bilgi toplamanın yöntemi ise kütüphane yöntemidir. Bu araştırmanın sonuçları, İslam'ın çok eşliliği adalete ve saygıya bağladığını göstermektedir. Söz konusu ülkelerin hukuk sisteminde çok eşliliğin uygulanması farklı olmakla birlikte Afganistan ve Malezya gibi bazı İslami ülkeler çok eşliliği belli koşullar ve kısıtlamalar ile yasallaştırmışlardır. Bu nedenle çok eşlilik konusunda eşler arasında adaletin sağlanması ve erkeğin maddi yeterliliği kanunların ortak noktasıdır. Yukarıda adı geçen ülkeler, İslami kurullarla yönetilen ülkeler kabul edilmektedir. Ayrıca Malezya İslam Aile Hukukunda para cezası ve kısa süreli hapis cezasının uygulanması, çok eşliliğin uygulanması noktasında iki ülke kanunları arasındaki en önemli fark olarak bilinmektedir. Türkiye hukuk sisteminde çok eşlilik tamamen ve kesin bir şekilde yasaklanmıştır. Ayrıca söz konusu İslami ülkelerde çok eşlilik ile ilgili caiz olup olmayan uygulamalar kültürel, sosyal, ekonomik ve siyasi temeller ve gerekçeler ile farklılık göstermektedir. Bununla birlikte bu makalede, araştırmacı tarafından adı geçen ülkelerin yasalarındaki boşlukların giderilmesine yönelik öneriler sunulmuştur.

**Anahtar Kelimeler:**

Çok Eşlilik,  
İslami Kurallar, Adalet,  
Hukuk Sistemi,  
Afganistan,  
Türkiye, Malezya.

## چکیده

### کلمات کلیدی:

تعدد زوجات،  
قواعد اسلامی، عدالت،  
نظام حقوقی، افغانستان،  
ترکیه، مالیزیا.

تعدد زوجات به معنی داشتن چند همسر به طور هم‌زمان است. از لحاظ نظری چندهمسری در همه کتب فقهی برای مسلمانان مشروع گردیده است؛ اما با گذشت زمان تطبیق چندهمسری در اکثریت کشورهای اسلامی با وضع قوانین سخت‌گیرانه مشروع و در برخی از آن‌ها به‌طور کلی و قطعی ممنوع اعلام گردیده است. هدف اساسی این تحقیق بررسی مقایسه‌ای شرایط چندهمسری در اسلام و نظام حقوقی کشورهای افغانستان، مالیزیا، ترکیه و مطابقت آن با قرآن کریم می‌باشد. در این تحقیق از روش تحلیلی-توصیفی و مقایسه‌ای جهت بررسی شرایط و هم‌چنان دریافت وجوه افتراق و اشتراک نظام‌های حقوقی کشورهای متذکره در هماهنگی با قواعد اسلامی در راستای تطبیق چندهمسری استفاده گردیده است. روش جمع‌آوری اطلاعات کتابخانه‌ای می‌باشد. نتایج این تحقیق نمایانگر آن است که اسلام چندهمسری را با رعایت عدالت مشروط کرده است؛ در حالیکه تطبیق چندهمسری در نظام حقوقی کشورهای فوق‌الذکر متفاوت می‌باشد. که عده‌ای از کشورهای اسلامی مانند، افغانستان و مالیزیا مشترکاً چندهمسری را تحت شرایط و محدودیت‌های خاص، قانونی اعلام نموده است. بنابراین، تأمین عدالت بین همسران و توان مالی مرد در موضوع چندهمسری تنها مواردی است که وجه اشتراک قوانین کشورهای فوق‌الذکر را با قواعد اسلامی نشان می‌دهد. هم‌چنان، تطبیق جرمه نقدی و حبس قصیر در قانون اسلامی خانواده مالیزی نشان دهنده مهم‌ترین وجه افتراق قوانین دو کشور در زمینه تطبیق چندهمسری می‌باشد. در حالی که ترکیه از جمله کشورهایی است که با داشتن نظام حقوقی لائیک، چندهمسری را به‌طور کلی و مطلق ممنوع نموده است. علاوه بر آن، دلایل فرهنگی، اجتماعی، اقتصادی، قانونی و سیاسی به‌عنوان مهم‌ترین وجه افتراق در زمینه جواز و ممنوعیت تطبیق چندهمسری در سه کشور اسلامی فوق‌الذکر است. علاوه بر آن، جهت رفع خلاءهای قانونی در قوانین کشورهای فوق‌الذکر از جانب محقق پیشنهاداتی نیز مطرح گردیده است.

## المخلص

### الكلمات المفتاحية:

افغانستان، تعدد الزوجات،  
النظام القانوني، تركيا،  
قواعد الإسلامية، عدالة،  
ماليزيا.

تعدد الزوجات هو أن يكون للرجل أكثر من زوجة، لأن الأصل في الزواج التعدد، وهو ثابت من الكتاب والسنة، وقد تناول هذا الموضوع جميع كتب الفقه الإسلامي دراسةً وتحقیقاً، و تلقت الأمة بالقبول، ولكن بعد مرور فترة من الزمن اتخذ كثير من الدول الإسلامية موقفاً مخالفاً حول مسألة التعدد و وضعوا قوانين رادعة تجاه هذه المسألة، فقوانين بعض الدول تسمح التعدد بشروطها الخاصة و بعض البلاد الإسلامية لايسمح التعدد ابداً، و الغرض من هذا التحقیق مقارنة شروط التعدد في الإسلام مع قوانين الدول المذكورة و تطابقها بالكتاب و السنة، و اتبعت في كتابة هذا البحث المنهج التحليلي و الوصفي و مقارنة بيان وجوه تباين الاشتراك أنظمة قوانين الدول المذكورة مطابقاً مع قواعد الإسلامية حول تلك المسألة، و أخذت المعلومات والأرقام من المكتبات الحقيقية والمجازية، فنتيجة هذا التحقیق تظهر أن الإسلام قد شرع تعدد الزوجات مع رعاية العدالة، مع أن موضوع التعدد في الدول الإسلامية تكون مغايراً من ذلك، كما أن قوانين أفغانستان، و ماليزيا تسمح التعدد مع رعاية شروط معينة، والفرق بين قانوني الدولتين: الأفغاني والماليزي، فجهاز القانون الماليزي قد قرر سجن القصير المدة مع غرامة مالية في بعض الأحيان، و هذا هو وجه الافتراق بين النظام القانوني الماليزي والمنظومة الحقوقية الأفغانية، و أما أنظمة القوانين التركية لاتسمح التعدد مطلقاً و هي الدولة الإسلامية الوحيدة التي تمنع التعدد مطلقاً، و ينشأ هذا الخلاف من اختلاف الوضع الاقتصادي و القانوني والسياسي و الحضاري في تلك الدول، كل تلك الظواهر تسبب الخلاف بين تلك الدول الإسلامية حول مسألة التعدد لأن اختلاف العوامل قد تؤثر في حكم مسألة ما.

## Introduction

Before the Holy Qur'an's revelation, which occurred almost 1400 years ago, polygamy was a widespread norm. Pre-Islamic Arabia was home to a diverse range of marital customs. At this period, agreement marriage, capture marriage, purchase marriage, inheritance, and temporary marriage were the most prevalent and well-known forms of marriage.<sup>3</sup> In Islam, polygamy is acceptable under specific situations because Islam has special and strict instructions on polygamy. In the present era, every Islamic country has a unique legal framework governing the practice of polygamy, and how polygamy is implemented differs between Islamic nations.<sup>4</sup> In Afghanistan, under Sharia Law, polygyny is permitted, allowing men to have up to four wives. The 1977 Afghan Civil Code has outlined the regulations regarding polygamy.<sup>5</sup> Similarly, Polygamy is legal in Malaysia according to Section 23, Part II of the Islamic Family Law Act 1984 (IFLA). The provision is divided into eight subsections, each focusing on administration, polygamy application management, registration, and basic marital criteria applicants must meet to get court authorization.<sup>6</sup> Moreover, it is important to note that neither of the two countries' laws—the IFLA or the Civil Code of Afghanistan—provides enough information about the jurisprudential framework that would explain how this provision on polygamy was formulated. This is especially true for the parts of the laws that deal with the textual sources (nuṣūṣ) of the legislation on polygamy and the conditions that it imposes, as stated in the Qur'ān, nor the authentic ḥadīth of the Prophet (PBUH), which could shed light on the historical context in which the Qur'ānic verses on the legislation of polygamy were revealed, as well as the Prophet's Companion's reactions to the

<sup>3</sup>. Hekmatullah Muradi - Rohaida Nordin, "Polygamy and Its Wisdom in Islam: The Law and Customary Practice in Afghanistan", *Journal of Asian and African Social and Humanities* (2019), 19.

<sup>4</sup>. Zarifa Abbasy, *Adequacy of Criminal Law in Protecting Women against Domestic Violence in Afghanistan, Malaysia, and Islam: A comparative evaluation* (Malaysia: International Islamic University Malaysia, Master Thesis, 2022), 168.

<sup>5</sup>. Lau Martin, *Islamic Law and the Afghan Legal System* (London: School of Economics and Political Science, 2003), 2.

<sup>6</sup>. Mohd Shah Jani - Raudlotul Firdaus Binti Fatah Yasin, "The Efficiency of Legal Provision on Polygamy in Malaysia: A critical analysis from Quranic perspective", (IIUM Repository, 2021), 3.

legislation. The IFLA and the Afghan Civil Code have no mention of the strict requirements and heavenly rebukes that are reflected in the sources upon those who are unfit to practice polygamy and those who have neglected to treat their wives fairly and justly. Lack of this knowledge might lead to misunderstandings and incorrect interpretations of the Shari'ah's intents or objectives (maqāsid al-Shar'iyah) regarding polygamy.<sup>7</sup> In contrast, Turkey is the only country located in the Middle East that has banned polygamy since 1923 and criminalised it with the Turkish Civil Code of 1926 (a milestone in Atatürk reforms in Turkey).<sup>8</sup> Ultimately, the main issue in this research is whether the permissibility of polygamy in Islam is subject to specific social conditions or whether Islam has not invented the law of polygamy but rather restricted and signed it with conditions, which is justice. Therefore, considering the issues and questions raised, it is necessary to examine the topic of polygamy from the perspective of Islamic law and how it is observed in Islamic countries, particularly Afghanistan, Malaysia, and Turkey. Polygamy in Islam and its legal position in Afghanistan, Malaysia and Turkey are important topics to study for a variety of reasons. First, it provides vital insights into these civilisation's cultural and religious standards, increasing our comprehension of their values and behaviours. Finally, it is crucial to recognise the parallels, distinctions and potential obstacles in implementing these legal systems within the context of Islamic teachings. The main objectives of the current research are to examine the concept of polygamy from an Islamic perspective, to determine the primary requirements found in the Quran that Muslims must observe to engage in polygamy, to identify the similarities and differences of the legal system of Afghanistan, Malaysia and Turkey regarding the practice of polygamy, to examine the adequacy of the laws in Afghanistan, Malaysia and Turkey on women's protection against those who are not eligible according to

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<sup>7</sup>. Raudlotul Firdaus Binti Fatah Yasin, "Analysis of Polygamy Provision under the Islamic Family Law", (*IJUM Law Journal*/18/2 (2010), 263.

<sup>8</sup>. Naseem Razi, "Polygamy in Turkey, Malaysia and Pakistan: A comparative analysis in the light of Socio-Economic conditions", *Fiqh and Law Journal* of the Hamdard National Foundation, Pakistan (2020), 54.

the Quran teachings to practice polygamy. To achieve the objectives, the researcher designed these questions:

- 1) What is the concept of polygamy from an Islamic perspective?
- 2) What are the primary qualifications, according to the Quran, which make Muslims eligible to practice polygamy?
- 3) What are the similarities and differences between the three countries' legal systems regarding polygamy?
- 4) Does the law in these nations adequately protect women against those who are not eligible, according to the Quranic teachings, to practice polygamy?

Given that a portion of this research examines the concept of polygamy in Islam, numerous studies related to the research topic can be found; the present paper sheds light on the issue from different perspectives, comparing existing laws on polygamy in three different countries. Hence, this research focuses on the civil laws of the three mentioned countries on the issue of polygamy and compares them with Islamic rules. More specifically, it focuses on the shortcomings in Malaysia and Afghanistan's Acts in support of women. In the form of a comparative study to open new horizons in differences, commonalities, and loopholes in Afghanistan and Malaysia's Civil Codes in the issue of polygamy. The reason for choosing Afghanistan, Malaysia, and Turkey for comparative study on polygamy are religious and cultural commonalities, as well as identifying key factors influencing each country's approach to polygamy and exploring similarities and differences in their legal systems. Therefore, first of all, the researcher discusses the issue of polygamy from the point of view of the holy religion of Islam and then in the legal systems of the three countries mentioned above using library-based research via analytical-descriptive and comparative methods.

### **A. The definition and concept of Polygamy**

The word polygamy is derived from the Greek words poly (many) and Damien (marriage), which, when combined, signify many weddings. In Arabic, polygamy is known as ta'adudal-zawjat.<sup>9</sup> Polygamy is defined as a form of marriage in which one individual has multiple spouses. There are two types of polygamy: one in which a man marries numerous women and the other in which a woman marries numerous men. While polyandry is strictly forbidden in Islam, limited polygamy is allowed. Since the term polygamy was used in many books, this paper defined polygamy as having two or more wives concurrently.<sup>10</sup>

### **B. A Historical Overview of Polygamy**

Nearly a historical occurrence, polygamy has existed alongside human social life. In the East, polygamy was commonplace; people from Babylonia, Assyria, Iran, Hinduism, and China, for example, were pleased to have only one partner. Polygamy was common in ancient Sassanian Iran. Men had unmarried spouses, including enslaved women and servant women, in addition to their marital partners. According to Firdausi's Shahnameh, Bahram-e-Gaur married more than (930) women. Spartans permitted men to marry many wives under certain conditions, and women could marry multiple husbands simultaneously. Pre-Islamic faiths did not ban polygamy, as evidenced by these narratives. The majority of their initiatives were founded on two fundamental principles: first, the ban of marriage with close relatives, and second, the annulment of polygamy. According to divine faiths and rules, males were allowed to marry many women. The detailed discussions are as follows.

### **C. Polygamy in Judaism**

Marriage is seen in Judaism as a means of a woman being separated from her family; the girl is purchased with a dowry, which serves as her payment to her family. The fundamental

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<sup>9</sup>. Zakri Badawi, A Dictionary of Social Sciences (Beirut: Librarie Du Liban, 1978), 319.

<sup>10</sup>. Muradi - Nordin, "Polygamy and Its Wisdom in Islam: The Law and Customary Practice in Afghanistan", *Journal of Asian and African Social and Humanities*, 19.

prerequisite for marriage was approval from the father. Jews have a custom of polygamy. Man is commended for being able to have several marriages as their generation grows. Additionally, there are no restrictions on polygamy's legality.<sup>11</sup>

Also, it is stated that under this faith, the better economic capabilities on the part of the man are a prerequisite for polygamy. This meant that everyone who was affluent and influential could have several wives, but those who were poor and had valid reasons for not being able to marry again, such as an abortion or a wife's illness, were not allowed to do so.<sup>12</sup>

#### **D. Polygamy in Christianity**

First, it should be noted that marriage is undervalued in the Bible. According to the Bible, "Christ had lived single". Paul once stated, "A single person thinks about spiritual concerns, whereas a married person worries about world issues. As Christ never married, neither did Paul. In the case of marriage, if the husband and wife separated, they were not allowed to marry again, and if either of them did, they were treated as an adulterer and apostates. So, polygamy is outlawed in Christianity, and the family structure is built on a one-spouse basis. This is significant because if a married couple cannot live together and their disagreements have made the household environment bleak, the man cannot marry a second wife."<sup>13</sup>

#### **E. Polygamy From the perspective of the Holy Quran**

Polygamy in Islam has been the topic of academic debates as well as unjustified controversies involving academics from various fields of study and ideological affiliations. While the Sharia explicitly endorses polygamy in Surah al-Nisa 4:3.<sup>14</sup>

The mentioned Surah clarifies Quranic context, which states:

<sup>11</sup>. Massouda Royin, "Factors and consequences of polygamy in Afghanistan", *Spring Journal of Arts, Humanities and Social Sciences* 22/7 (2023), 61-63.

<sup>12</sup>. Abolqasem Garji, "Comparative Study of Family Law", *Spring Journal of Arts, Humanities and Social Sciences* (2005), 12-13.

<sup>13</sup>. Royin, "Factors and consequences of polygamy in Afghanistan", 10.

<sup>14</sup>. Abbasy, "Adequacy of Criminal Law in Protecting Women against Domestic Violence in Afghanistan, Malaysia, and Islam: A comparative evaluation", 160.

﴿ وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ ۚ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ  
أَيْمَانُكُمْ ذَٰلِكَ أَدْنَىٰ ۖ أَلَّا تَعُولُوا ۗ ﴾

And if you fear that you will not deal justly 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] <sup>15</sup>

The first part of verse 4:3 refers to orphan women protected by a male guardian and advises the guardian to perform reasonably with the orphans. The second part of verse 4:3 states, " But, if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice." If a man cannot deal fairly with multiple wives, he must marry only one. This passage was revealed out of compassion for women, not to appease male sexuality, as is a prevalent modern interpretation of such scriptures. Also, the Quran strongly emphasises the concept of adl (justice), which encompasses not only fair treatment of housing, clothes, and other necessities of life but also the distribution of love, devotion, and care. However, Muslims have a misconception about the concept of polygamy from the perspective of the Noble Quran, while Islam permits polygamy under certain conditions.<sup>16</sup>

These conditions are as follows:

1. Ensuring financial stability and adequate wealth to maintain a decent standard of living for families.
2. The husband must be capable of treating all his wives equally, without favouritism towards any of them. He should allocate his time fairly and equally among them and demonstrate equal affection towards each wife.

<sup>15</sup>. Sheikh Mohammad Ali Sabouni, *Tafsir Ayaat Ahkaam*, Trans. Pohand Namatullah Shahrani (Kabul: Naumani, 1385), 1/473.

<sup>16</sup>. Al-Nisa ¼.

3. The man should demonstrate wisdom and rationality, ensuring fairness in all aspects, including providing food, clothing, and treatment for each of his wives and addressing any minor issues impartially. <sup>17</sup>Therefore, considering the verse above, the Quran permits polygamy primarily to provide for widows and orphans, not to fulfil a man's sexual desires solely. This suggests that while meeting sexual needs is part of marriage's wisdom, it's not the primary purpose in the context of polygamy.<sup>18</sup>

## F: The Practice of Polygamy in the Legal Systems of Afghanistan, Malaysia and Turkey

### 1. Afghanistan

Polygamy and its specific state are vividly defined in the holy Quran, Hadith, and Afghan civil law in a variety of situations. Article 86 of the Civil Law of Afghanistan permits men to enter polygamous marriages under specific conditions. Polygamy can take place after the following conditions:

1. When there is no fear of injustice between the wives,
2. When the person has financial sufficiency to sustain the wives. That is when he can provide food, clothes, suitable house, and medical treatment,
3. When there is legal expediency or when she suffers from hard-to-treat diseases. Based on the foregoing and Article 86 of the Afghan Civil Code, it can be concluded that a substantial economic role alone, without meeting other requirements, does not justify polygamy. A man should be compelled to provide a strong justification for remarrying.<sup>19</sup>

Additionally, this research examines the critical factors regarding the practice of polygamy in Afghanistan: the practice of polygamy by men, women's permission, and practices of women who involuntarily marry a married man.

<sup>17</sup>. Hekmatullah Muradi, "et al". "*Polygamy and Its Wisdom in Islam: The law and Customary Practice in Afghanistan*", 20.

<sup>18</sup>. Firdaus, *The Abuse of Polygamy in Malaysia: Critical Analysis from an Islamic Perspective*, 12.

<sup>19</sup>. Civil Code (1977) legislative decree 2418, official-Gazette No.353, Article 86.

### **1.1 Practicing of polygamy by men in Afghanistan**

Polygamy among men is prevalent and firmly established within the societal customs of Afghanistan. It is commonly rationalised and governed by religious explanations and cultural practices.<sup>20</sup> Therefore, in Afghanistan, the men's reasons and their social positions for practising polygamy vary. This research examines four different types of men based on their reasons and social positions regarding polygamous practices, as follows:

#### **1. 1. 2. Polygamy amongst affluent and educated men**

Taking a second wife comes up primarily for three reasons in this social stratum.

1) When the couple does not have a male heir. In this instance, the husband's parents frequently encourage their son to marry for the second or third time to have a male heir. The parents argue that polygamy is necessary because the first wife is incapable of bearing a male child.

2) The rivalry between brothers and other close relatives is another factor. This group of people is more likely to practice polygamy in Urban and rural locations alike due to social prestige.

3) if the wife has a medical condition that is challenging to treat.<sup>21</sup>

#### **1. 1. 3. Polygamy amongst illiterate, rich men**

The males have cited wealth as the driving force for their decision to get into new marriages. These men married for the third and fourth times because they were not even content with having two women. According to Section 2, Article 86 of the Civil Code, being rich and wealthy alone is insufficient for a new marriage; additional legally stipulated requirements must exist. A new marriage should have a valid and reasonable purpose. Rich people who

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<sup>20</sup>. Abbasy, *Adequacy of Criminal Law in Protecting Women against Domestic Violence in Afghanistan, Malaysia, and Islam: A comparative evaluation*, 77.

<sup>21</sup>. Max Planck Institute for Foreign Private Law and Private International Law, "Family Structures and Family Law in Afghanistan- A Report of the Fact-Finding Mission to Afghanistan -March 2005", JSTOR (accessed 3 February 2024), 20.

make considerable money cannot uphold the law and ensure their spouses are treated equally.<sup>22</sup>

#### 1. 1.4. Polygamy Amongst Illiterate, Poor Men

Polygamy is uncommon among the impoverished and illiterate. Their precarious financial situation is the primary barrier to polygamy. These people have a great desire to marry several times because it would be a sign of social and material grandeur to be able to support another wife.<sup>23</sup>

#### 1.2 Women Marrying a Married Man

Afghan women are integral to wedding planning. According to the Afghan Civil Code, the couple's permission is one of the fundamental prerequisites for marriage arrangements. To be valid, a marriage contract must have the following terms: a valid suggestion and acceptance by the parties protectors or agents, the existence of two capable eyewitnesses, and the nonappearance of any permanent or temporary legal disablement among the marrying male and female. However, the fact is that, despite the existence of these codes and rules, many types of prohibited marriages continue to be practised in Afghanistan.<sup>24</sup>

Forced marriages were not asked for, such as baad (exchanging daughters) and widows' marriages to her husband's family. Occasionally, women consent to marry a married man out of desperation. According to studies, the primary reason for polygamy in Afghanistan is a lack of family centralisation. Other factors, such as economic difficulties and traditional traditions, make women helpless rather than autonomous. In many parts of Afghanistan, girls still lack financial independence. As a result of their inability to communicate with their parents, some girls are viewed as burdens and suffer significant consequences. As a result,

<sup>22</sup>. Civil Code (1977) legislative decree 2418, official-Gazette No.353, Article 86.

<sup>23</sup>. US, Department of Justice, (2011, 27 April), *Polygamous Marriages Afghanistan* [https:// www. Justice. Gov.](https://www.Justice.Gov) (accessed 8 March 2024).

<sup>24</sup>. Muhammad Aunurrochim bin Mas'ad, "Marriage Rights of Afghan Women in Traditional Practices and Legislation Protection", *Ahkam* 3/2 (2014), 16.

they are forced to marry a married guy. The absence of a mother can lead to problems such as misconduct by a stepmother, a lack of affection from the father, and a lack of the father's favour, which encourages girls to wish to marry a married man because this will benefit them both financially and emotionally.<sup>25</sup>

### 1.3 Women's Silence on the Husband's Second Marriage

In Afghanistan, most women do not agree for their husbands to marry a second or multiple wives. In other words, the husband marries a second, third, or fourth girl without the consent of their wives. This matter is explicitly discussed under "Article 87 of the Afghan Civil Code", which states That Article 183 provides that a woman may seek separation from her spouse if he remarries in contravention of Article 86. One of the preconditions of polygamy is that the wife is aware of her husband's second marriage. However, the wives remained silent since they were unaware of their fundamental rights, including those outlined in the Civil Code. While some women are alert of their legal rights, they have opted not to pursue any matter due to a flawed judicial system and other procedural impediments within the judiciary. Due to the strains endured by the ruling class, contacting the court is viewed as a source of humiliation and embarrassment, particularly for women. As a result, women rarely seek the courts to assert their rights. Domestic violence is more common among women in polygamous marriages. Emory University researchers looked at polygamous marriages in over 170 countries and discovered higher levels of abuse against women and children. Husbands can assault their spouses, and wives can even abuse each other. Polygamy has long been linked to female mental illness and family tension.<sup>26</sup> As a result, in Afghanistan, cultural, religious, and the men's social and economic position considerations play a significant role in polygamy. Although it is allowed by Islamic law, it is practiced extensively throughout

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<sup>25</sup>. Abbasy, *Adequacy of Criminal Law in Protecting Women against Domestic Violence in Afghanistan, Malaysia and Islam: A comparative evaluation*, 88.

<sup>26</sup>. Al-Krenawi Alean, "Women from polygamous and monogamous marriages in an out-patient psychiatric clinic", *Transcultural psychiatry* 2/38 (2001), 187-199.

communities and geographical areas. Polygamy is more prevalent in traditional and rural communities, where social and economic circumstances frequently impact it. However, monogamy is more common in metropolitan areas and among persons with higher levels of education. Polygamy is a complicated problem in Afghanistan with social, cultural, and legal ramifications.<sup>27</sup>

## 2. Malaysia

Polygamy is being married to more than one person at the same time.<sup>28</sup> In Malaysia, under the "Administration of Islamic Law Enactment", there is no ban on polygamous marriages. However, there are procedures, terms, and conditions to be fulfilled if a man wants to practice polygamy.<sup>29</sup> Concerning the laws governing polygamy, Malaysian family law has established three requirements that must be met for someone to be considered polygamous: condition, justifications for thinking about polygamy, and procedure. In addition, Marriage is not affirmed under Malaysian legislation. Regarding the conditions that must be met, polygamy without prior court permission should not be registered; polygamy without prior court permission may be registered if a fine or a fixed penalty is imposed on the first day. The court considers the parties in question when deciding whether to grant or deny permission: the spouse, the husband, and the parties in question.<sup>30</sup> Regarding the source from the wife, the reasons are sterility, an ageing body, inappropriate or impractical physical conditions of sexual intercourse, purposeful refusal to return the rights of intercourse, or the wife being insane.<sup>31</sup>

<sup>27</sup>. Abbasy, *Adequacy of Criminal Law in Protecting Women against Domestic Violence in Afghanistan, Malaysia, and Islam: A comparative evaluation*, 80.

<sup>28</sup>. <https://dictionary.cambridge.org/dictionary/english/polygamy>, viewed 12 September 2021.

<sup>29</sup>. Rafeah S et al. "Regulating Polygamous Marriage to Prevent its Abuse: A Case Study of Malaysia", *Pertanika Journal of Social Sciences & Humanities* (2017), 35/197-208.

<sup>30</sup>. Raihanah Abdullah, "An analysis of the current legal mechanism in curbing abuse of polygamy in Malaysia: A socio-legal perspective," (Malaysia: International Islamic University Malaysia, PhD Thesis, 2006). 200.

<sup>31</sup>. Ibnu Radwan Siddi, "The Provisions of Polygamy in the Family Law of Islamic Countries (Saudi Arabia, Turkey, Tunisia, Malaysia, and Indonesia)", Al-Ussrah (accessed 10 January 2024).

As an example, in the case of Zainal Abidin bin Mohamed's application for polygamy, the Shariah High Court in Terengganu rejected his application to re-register a polygamous marriage that he and his new wife have solemnised in Narathiwat, Thailand. The wali Hakim in that marriage was considered unqualified by the court. Consequently, the marriage was pronounced invalid because "it was not by the principles of Hukum Syara."<sup>32</sup>

However, taking into account the spouse, which is also a prerequisite for polygamy is:

- The husband can afford to pay for all the costs associated with his new wives and the people who depend on him.
- The husband makes an effort to treat his wives fairly.

Furthermore, three steps make up moderate polygamy procedures:

- The husband requests authorisation from the court and provides the approval of one or more of his wives.
- The applicant's wife/ wives are being called, as well as the court's examination to verify the applicant's truth regarding the practice of polygamy.
- Decisions made by the court about the petition's acceptance or rejection.

It is generally the case that husbands who engage in polygamy in violation of the law may face fines of up to a thousand ringgit, up to six months, or both.<sup>33</sup>

In addition, in IFLA, the penalties for unlawful polygamy are stated in "section 23(1) if the applicant fails to obtain written permission from the court to contract polygamy, he is subjected to the penalties set out in sections 123 and 124 that is a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or both. " The offences set out in these sections have no basis in the Quran or the Sunnah. More specifically, anyone who deliberately refuses to be equal in a polygamous marriage should face harsher punishment. Currently, a polygamous husband who fails to provide proper justice to one or

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<sup>32</sup>. Abdullah, *Legal Mechanism in Curbing the Abuse of Polygamy* (Malaysia: International Islamic University Malaysia, Kuala Lumpur, PhD thesis, 2006), 159.

<sup>33</sup>. Islamic Family Law (Federal Territories) Act 1986, 1 January 2006, articles 23,123,124.

both of his wives faces punishment under "section 128 of the Federal Territories Act and Section 129 of the Selangor Enactment"<sup>34</sup>. According to a review released by "an Islamic women's rights organisation in Kuala Lumpur", 70% of Malaysian Muslim women have faith in bigamy is a right of a man despite widespread acceptance of polygamy, just 32% of the 650 women polled by the NGO Sisters in Islam said they would allow their husbands to marry another woman. Therefore, such punishment cannot reduce the rate of polygamy and also increases domestic abuse against women since monogamy and family abuse are inextricably linked, as polygamy has various psychological consequences for men, women, and children in today's society. In addition, wives from polygamous families have more challenges with functioning and marital satisfaction. Sometimes, polygamy is practised in secret, without the sanction of the court and the knowledge of the existing wife, resulting in financial and emotional hardship for the family. Polygamy has also resulted in mental health issues among polygamous families. For example, they had higher levels of somatisation, anxiety, obsession-compulsion, melancholy, interpersonal sensitivity, hostility, paranoid ideation, psychoticism, and their General Severity Index (GSI). Polygamy also causes existing wives to have more family and mental health issues.<sup>35</sup> In addition, polygamous spouses, mainly elder wives, have a greater rate of psychological disorders such as dysthymia and depression. The polygamous marriage will also make the wives feel inferior since they would blame themselves for not being able to meet their husband's needs. The husbands in a polygamous marriage usually look after and love the junior wives more than the first wives. The younger wives are better off in terms of finances, support, and attention than senior wives.

### 3. Turkey

Turkey's existing family law is based on the 1926 Turkish Civil Code. This legislation covers

<sup>34</sup>. Islamic Family Law (1984) legislative decree 303, official-Gazette No.2001, Articles 123-124.

<sup>35</sup>. Rose Chen et al., "Systematic Review Agreement and Impacts on Wives and Children Well-Being of Polygamous Family Structure", *Critical Reviews* 3 (2020), 23.

divorce and separation, remuneration, inheritance law, and marriage provisions (including engagement issues, marriage age, mahram, polygamy, wedding reception, and cancellation of marriage).<sup>36</sup>In addition, in Turkey, it is prohibited to marry more than one wife while the first marriage is still valid. A second marriage can only occur after the dissolution of the first marriage through death, divorce, or annulment. Additionally, if a person marries his spouse from a previous marriage and is still alive, the court may declare the second marriage invalid. The Civil Code of 1926, in Articles 93, 112, and 114, prohibits polygamy and imposes penalties on those who engage in it. Moreover, Turkish Muslims have chosen to forego the permission for polygamy outlined in the Quran, citing specific conditions. According to some Turkish scholars, this decision was influenced by the Quran's emphasis on monogamy and the changing social and economic conditions in Turkey, which rendered the Quranic conditions for polygamy unattainable.<sup>37</sup>

### G: Comparison Analysis

This section compares the legal provisions available in the three mentioned countries and Islamic principles regarding the practice of polygamy; the objective of this comparative analysis is to determine the efficacy of the laws and their concordance with Islamic principles, and if there are loopholes, what actions can be taken to improve the law in the countries better? As mentioned earlier, polygamy in Islam is allowed under specific conditions mentioned in the holy Quran. The critical requirement is that a man must treat all his wives justly and equally. However, the practice and acceptance of polygamy vary across Islamic countries and regions; for instance, in Afghanistan and Malaysia, polygamy is legal and prevalent, but it is prohibited in Turkey. Therefore, Both Malaysia and Afghanistan are attempting to create comprehensive laws relating to the practice of polygamy and victim

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<sup>36</sup>. Tahir Mahmood, *Family law reform in the Muslim world*, New Delhi, Indian Law Institute, 1972, 12-15.

<sup>37</sup>. Ibnu Radwan Siddi, "The Provisions of Polygamy in the Family Law of Islamic Countries (Saudi Arabia, Turkey, Tunisia, Malaysia, and Indonesia)", 18.

protection. In certain areas, the Afghani and Malaysian Acts give reasonable provisions addressing polygamy, but in others, the Act must be enhanced in terms of providing precise regulations and processes. In addition, similarly, in both countries, Afghanistan, under Article 89 of the Civil Code and Malaysia under Article 23 section 3 of IFLA, some conditions must be met for polygamy to be considered permissible. These conditions typically include the husband's ability to treat all wives equally and provide for them financially, which means supporting his wives and their children in the future. Moreover, by comparing the Holy Qur'an's requirements for polygamy (justice and financial support), the IFLA and the Civil Code of Afghanistan codifications obey the Qur'an and Sunnah regulations formally and methodically. Regardless of the similarities mentioned above, there are a series of fundamental differences regarding polygamy in the laws of Afghanistan and Malaysia, which are the most important differences between the laws of the above-mentioned Islamic countries in the issue of polygamy. Firstly, In IFLA, Section 3 Article (23) requires written court consent and the approval of previous wives for polygamy. In contrast, Article 89 of the Civil Code in Afghanistan mandates only explicit permission from the new wife. Secondly, In contrast to Afghanistan, Malaysia has stricter regulations regarding violating polygamy provisions. In Malaysia, husbands who engage in polygamy that does not comply with the established legal requirements can face penalties. Typically, offenders can be subject to a maximum fine of one thousand ringgit, a maximum prison term of six months, or both. However, in the Afghan Civil Code, there are no known physical or financial sanctions specifically related to the violation of polygamy provisions. The so-called offence in section 123 of IFLA has no basis in the Qur'an or the Sunnah. Therefore, it is better in both countries That a stiffer penalty should be prescribed for those who failed to be fair in polygamous marriage or abandoned their family. Thirdly, Afghanistan's Civil Code explicitly protects women from polygamous violence in Articles 87-89. The new wife and the previous wife can directly request a divorce from the court if the new wife is unaware of the existing marriage

or if the married man chooses a new wife against the conditions stipulated in Article 86. Meanwhile, the Malaysian Act remains silent on this matter. From a justice point of view and the comparative analysis of polygamy laws in Afghanistan and Malaysia, it's clear that only ensuring justice between spouses and the man's financial capability aligns with the conditions in verse 4 of Surah Al-Nisa. However, the additional conditions mentioned in both countries' laws in order to practice polygamy are neither a stipulation stated directly in the Quran nor the authentic Hathis of the Prophet (PBUH). In addition, this issue highlights the most significant legal gap in both countries in the field of practising polygamy and their non-compliance with Islamic rules. It is vital to address this gap. Additionally, incorporating information about the practice of polygamy in conformity with Islamic teachings into the Acts of both countries is urgent. This is because many polygamous marriages today are not in line with the spirit and objectives of divine sources. Unfortunately, this lack of understanding often leads to the abuse of polygamy, which results in the violation of women's fundamental rights as wives and the rights of their children. Nowadays, many Muslim men mistakenly view polygamy as 'the right of men' sanctioned by the Shari'ah legislation rather than as a Shari'ah exceptional provision that is allowed only in extraordinary circumstances and with strict conditions.

## Conclusion

The comparative analysis of polygamy laws in Afghanistan, Malaysia, and Turkey reveals a spectrum of approaches influenced by Islamic principles and legal systems. Afghanistan permits polygamy with fewer restrictions, leading to challenges in implementation and potential gender inequalities. Malaysia places certain conditions on polygamous marriages, aiming to balance religious freedom with the protection of women's rights. Meanwhile, Turkey has opted for a complete ban on polygamy; the strict ban on polygamy in Turkey is mainly due to its secular legal system, which prioritises equality among all citizens regardless of their religious beliefs. Additionally, Turkey's efforts to modernise and reform its legal system, as exemplified by the abolition of polygamy in 1926 through the introduction of a civil code, have contributed to the ban. Furthermore, Turkey's commitment to women's rights, driven by feminist movements and its desire to meet European Union criteria, has also influenced the decision to outlaw polygamy. This aligns with societal trends towards embracing contemporary values, promoting gender parity, and upholding human rights. Understanding and evaluating these different approaches is crucial for policymakers, legal experts, and societies grappling with polygamy's complexities and implications for individuals and communities. Therefore, the only common aspect of the laws of Afghanistan, Malaysia, and Islam regarding the conditions of implementing polygamy is the establishment of justice between spouses and the financial ability to support wives and their children. In contrast, in Malaysia, polygamous marriage requires permission from a Shariah court, considering financial capability, current wives' welfare, and equal treatment of wives. The legal system prioritises financial aspects and balances religious freedom with women's rights. In Afghanistan, while consent of existing wives is typically sought, no legal requirement or specific financial obligations exist. Afghanistan's approach to polygamy is generally more permissive, with enforcement variations and cultural acceptance in certain regions. Also, short imprisonment in some special cases in the IFLA is the most crucial

difference between the legal systems of Afghanistan and Malaysia. Not only this, the present legislative provisions on polygamy implemented by both Afghan and Malaysian courts are insufficient to prevent polygamy abuse. Further information on the reasons for the practice's permissibility from Divine revelation is strongly advised to convey a clear image of its benefits to the ummah. However, there are some gaps in both country's legal systems regarding the practice of polygamy as follows,

- 1) Islamic teachings emphasise the importance of justice and fairness in all aspects of life, including polygamous relationships. However, the legal systems in Afghanistan and Malaysia do not clearly explain these principles in every aspect, such as justice in treatment, children's education and care, religious educational background and awareness approach to regulating polygamy. This can result in situations where the rights and well-being of spouses, particularly women, are not adequately protected.
- 2) The legal frameworks in both countries lack clear guidelines on the emotional and psychological aspects of polygamous relationships, leaving room for misunderstandings and conflicts.
- 3) Both Acts do not clearly define husbands' financial responsibilities towards their multiple wives and dependents. This can lead to an unfair distribution of resources among households and potential financial hardships for subsequent wives.
- 4) Islamic principles emphasise the protection and welfare of women in polygamous marriages. Still, the legal systems of both countries do not provide adequate safeguards to ensure their rights and well-being are upheld.
- 5) Malaysia requires husbands to obtain permission from a Sharia court before entering into a polygamous marriage; enforcement mechanisms can be weak or inconsistent. Some men may marry additional wives without seeking approval or facing proper consequences.

- 6) Although Malaysian law requires the first wife's consent before her husband can marry again, this requirement may be easily bypassed by marrying outside Malaysia without her knowledge or involvement.

Furthermore, addressing these loopholes in the legal systems of both countries requires strengthening enforcement, raising public awareness, and providing support services for affected individuals.

### **Recommendations**

The research offers specific means and methods for both countries' legal systems by following Islamic principles to enhance the relevant statutes to address issues of polygamy effectively; the suggestions are based on careful examination of the applicable laws, as well as Islamic guidelines as follows:

1. It is recommended that a set of detailed guidelines be created within the legal systems of Afghanistan and Malaysia that incorporate Islamic teachings on justice, fairness, and welfare in polygamous relationships. These guidelines should specifically address equitable treatment of all parties involved, education and care for children, religious education, and awareness of the impact of polygamy.
2. In both countries, Clear guidelines addressing the emotional and psychological aspects of polygamy should be established to reduce conflicts related to polygamy.
3. It is recommended to enhance legal safeguards within the legal systems of both countries to ensure the protection and welfare of women in polygamous marriages align with Islamic principles. This includes implementing measures to prevent exploitation, abuse, or discrimination against women and promoting their rights and well-being.
4. It's suggested to strengthen enforcement mechanisms within Malaysia's Sharia courts to ensure that husbands comply with the requirement to obtain permission before entering into polygamous marriages. This means implementing measures to enhance monitoring and oversight, deterring individuals from marrying additional wives without proper approval and ensuring appropriate consequences for non-compliance.

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