

ISLAM AND POLYGAMY

INTRODUCTION

In Malaysia, ever since the Law Reform (Marriage and Divorce) Act 1976 was enforced in 1982, banning polygamy for non-Muslims, polygamy has increasingly come to be associated with Islam.

In the late 1970s and early 1980s, certain attempts have been made intending to control the abuse of polygamy among the Muslims. However, these attempts have not been very effective in practice, and it is most unfortunate that any vigorous measures against the abuse of polygamy are often condemned as being “un-Islamic”, due to a general mistaken notion that polygamy is a sacred male right guaranteed by Islam.

Sisters in Islam (SIS) wish to point out that Islam neither invented nor encouraged polygamy. Unlimited polygamy was a pre-existing practice prior to the revelations of the Qur’an. The Qur’anic revelations relating to polygamy are clearly restrictive rather than permissive.

Since the nineteenth century, several leading Islamic scholars including Sheikh Muhammad Abduh, the Grand Mufti of Egypt until his death in 1905, have pointed out that polygamy was reluctantly tolerated by Islam due to the pre-existing conditions at the time of revelation. Similarly, slavery was also reluctantly tolerated by Islam, with the guiding principles towards its eventual abolition by enjoining the kind treatment of slaves as well as making the freeing of slaves a cardinal virtue.

The guiding principles in the Qur’an against polygamy can be demonstrated by firstly, limiting the maximum number of wives to four, then by enjoining on the fair and just treatment of multiple wives, and finally by declaring that fair and just treatment is impossible.

An argument that is sometimes put forward in support of polygamy is that it is intended to reduce social ills such as illicit affairs, prostitution and the birth of illegitimate children. However, the legality of polygamy has not actually put an end to these social ills among the Muslim community. In some cases, it might even have contributed to the problem of social ills among young people who have been brought up in unhappy and neglected polygamous households.

It is disheartening that many of those who advocate polygamy seem to ignore Qur’anic injunctions on polygamy in Surah An Nisa 4: 3: “if you fear you cannot deal justly (with your wives), marry only one (wife)”. The Qur’an is also the only holy scripture that contains the phrase “marry only one”. A further injunction is to be found in Surah An Nisa 4:129 which goes on to add that “You are never able to be fair and just as between women, even if it is your ardent desire...”.

If the rights of Muslim women are upheld and advanced as contained in the spirit of the Qur’an, then the justice that it embodies will never be ignored.

Sisters in Islam

"I did not even know that he had married another woman. He just came home one day and said, he had married another as though he was telling me he had got his bonus. Do I not matter? What about this baby I am breastfeeding, does she not matter?"

-interview with 28-year-old woman, mother of two children.

"Whenever we have a disagreement, he often says to me, "Remember your place, I can always marry another, and then you'll know [the consequences]. You can agree or you can be without a husband - the choice is yours". What kind of a choice is this?"

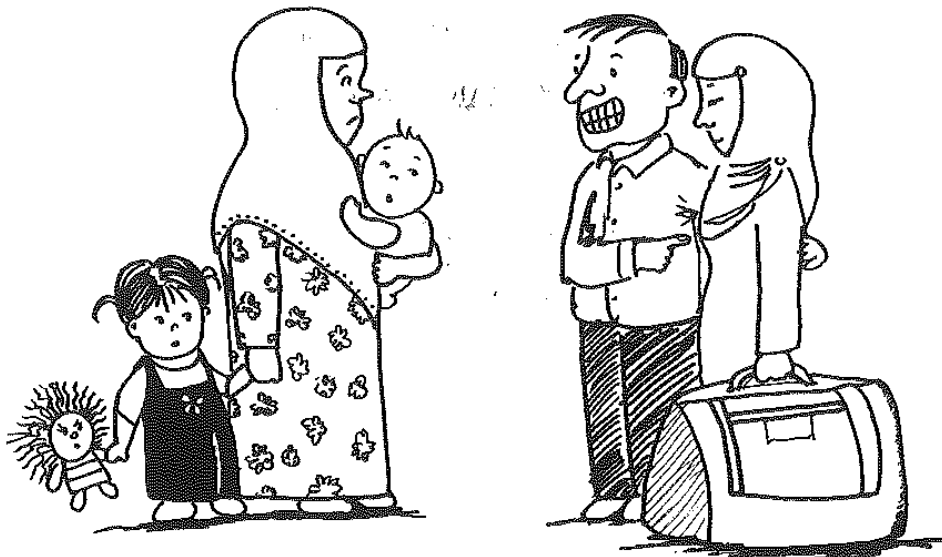
-interview with 35-year-old woman

"When I tell him that I don't believe Islam allows men to ill-treat women in this way (polygamy), he says that I am challenging the word of Allah, that I will become a murtad if I question this law. So, even though in my heart I feel this is wrong, I don't say it anymore - he might just divorce me on the grounds that I am a non-believer! Who will support me and my kids then?"

-interview with 40-year-old woman, mother of four, two still school-going.

"I do not understand, Your Honour. If he considers himself someone who has pity, then why does he not pity our kids?"

(39-year old mother of five whose husband applied for permission for a polygamous marriage in the Wilayah Persekutuan Court, in January 2001 edition of Mingguan Wanita)



"I did not even know he had married another woman. He just came home one day and said he had married another as though he was telling me he had been given a pay rise."

Q1. We have often been told that polygamy is a right of Muslim men, that it is God-given and that nothing can change that? Is this true?

Most of our present-day Syariah laws come from principles from the Qur'an. There are two verses in the Qur'an that deal with the issue of polygamy, and both are in Surah Al-Nisa'.

Surah Al-Nisa' 4:3 (translation by Abdullah Yusuf Ali) states:

"If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three or four; but if you fear that ye shall not Be able to deal justly (with them), then only one that will be more suitable, to prevent you from doing injustice."

Surah An Nisa 129 goes on to add this caveat:

"You are never able to be fair and just as between women, even if it is our ardent desire..."

Muslims who say that polygamy is a "right" base their view on the phrase "marry women of your choice, two, three or four..."

However, there seem to be three very important points that often get left out by those who consider polygamy a "right".

Many of them have overlooked the earlier part of the verse in Surah 4:3, which states '*if you fear that you will not be able to deal justly with the orphans, then marry women of your choice, two, three or four...*'. It is very clear here that polygamy is not a right, but a restriction and a responsibility to ensure that justice be done to orphans. The letter and the spirit of the verse on polygamy was revealed following the tragedy of the battle of Uhud and was concerned with the overriding welfare and protection of women and children following the death of dozens of Muslim men in the still formative Muslim community of Medina. In those circumstances, Allah (s.w.t.) could have sanctioned the unlimited practice of polygamy of the time, but instead, Allah (s. wt.) restricted the practice to a maximum of four wives.

In the present day practice, however, rarely is polygamy a question of orphan's care. In fact many are unaware that the verse makes any reference to orphans at all!

The verse in fact goes on to say "If you fear that you will not be able to deal justly (with them), *then only one,....*That will be more suitable to prevent you from doing injustice." (4:3). Once again, it is obvious here that the Qur'an does not promote polygamy as an unconditional right, but that it is to ensure justice is done to widows and orphans.

This is further strengthened by 4:129 which states "*you are never able to do justice between wives even if it is your ardent desire*". When the Qur'an explicitly stresses just conduct toward women and equal treatment among wives, it also recognises the impossibility of living up fully to these ideals (4:129). By stressing the need for just conduct toward women and for equal treatment of all wives, and recognising the impossibility of doing so (4:129), verse 4:3 cannot be seen as one that promotes polygamy. It is not a command for men to practise polygamy. The verse, in fact, promotes monogamy as the original and ideal state of marriage in Islam..

Several great reformers of the nineteenth century such as Sheikh Muhammad Abduh, the Mufti of Egypt at the turn of the century, and Sayyid Ahmad Khan and Mumtaz Ali of the Indian subcontinent had regarded polygamy only as a tolerated institution of the past that should, in the present circumstances, give way to the Qur'anic ideal of monogamy.

Abdullah Yusuf Ali in his commentary on the verse also stated that since the condition for equality in polygamy is so difficult to fulfil, then he understood the verse to recommend towards monogamy. It is interesting to note that in a revised edition of Abdullah Yusuf Ali's translation and commentary of the Qur'an, his recommendation on monogamy was expediently removed by the publishers.

Q2. But, isn't it also a sunnah, following the traditions of the Prophet (s.a.w)?

Many who say this forget or fail to fully understand polygamy as practised by the Prophet (s.a.w).

Prophet Muhammad (s.a.w.) had a monogamous relationship with Siti Khadijah bint Khuwailid, who was 15 years his senior, for 28 years until her death. Of these 28 years, 17 were before he became a Rasul and 11 years after that. During those 28 years, he never married anyone else. His next marriage took place two years after Siti Khadijah's death, following the marriage of three of his four daughters. Siti Khadijah's death was a deep loss for the Prophet (s.a.w.) for he had not only lost his wife, but his companion and partner in the struggle.

When the Prophet (s.a.w.) began practising polygamy – a common custom for Arabian society at the time -- it was at the age of 54. He married a total of 11 times, and most of his marriages were to elderly women, widows, women with children and divorcees, entered into for political and tribal reasons. The only virgin he ever married was Aishah (r.a.), on the insistence of her father, Abu Bakar, the first caliph of Islam. The Prophet married nine women after Aishah within a space of 5 years and never divorced any of the women he was married to. The only wife who was to bear him children who lived to adulthood was Siti Khadijah, with whom he had four girls and one boy. The boy died in infancy.

So, when we look at the way and reasons he married the 11 women they indicate that the Prophet did not marry to have a "keturunan" (progeny), nor did he marry young women to fulfill his desire. In fact, he practised polygamy within the realm of spreading Islam to the communities at the time.

Many, if not most, polygamous marriages in Malaysia today share almost nothing in common with the sunnah of the Prophet. It would even be unjust and improper for those who contract polygamous marriages today to even compare their justification for polygamy to the reasons that the Prophet practised it.

What is even more striking is the fact that even though the Prophet himself practised polygamy, he prohibited his son-in-law, Saidina Ali Ibn Abi Talib (r.a.) who was married to his daughter Fatimah az-Zahra', from doing the same.

Many forget the authentic hadith (as reported in Sunan Ibn Majah) which reported that the Prophet (s.a.w.), when asked if he would permit Saidina Ali to marry another woman, said that he would not, "...unless and until Ali Ibn Abi Talib divorces my daughter, for surely

she is part of me and what troubles and agitates her, troubles and agitates me too; and what harm befalls her befalls me too."

It is regretful that many do not cite this hadith nor appreciate the wisdom of the actions of the Prophet in this regard.

Q3. How is it then that polygamy is allowed in many Muslim countries?

Actually, very few Muslim states today allow polygamy as such. In most countries, including Malaysia, polygamy is restricted by law. Tunisia is one Muslim country which in fact does NOT allow polygamy at all under its law.

Laws that allow and/or restrict polygamy are based on the interpretation that if a man can deal justly with all of them, he can marry up to four wives.

However, the Qur'an goes on to state that "*you are never able to do justice between wives even if it is your ardent desire*". It is disheartening that this verse, in spite of the clear message it sends, has not been given enough importance by the majority of Muslim jurists and law-makers.

Q4. I heard that there are almost 14 times more women than men in Malaysia. Isn't it better to allow polygamy to ensure that women have someone to look after them?

There is no truth in this statistic whatsoever and where these "mythical" figures were created is unclear! In fact, it is impossible for any country in the world to have these figures unless that country practises the killing of male babies. As far as we know, such practices do not occur in Malaysia.

Furthermore, figures from the 1991 National Population Census issued by the Statistics Department show that there are in fact 103 men to every 100 women. Only in the group of "60 years and above" do the women outnumber the men. So, clearly, this 'reasoning' has no basis.

Q5. What does Malaysian family law say on polygamy?

Our Constitution says that each state in the country decides on its own Muslim family law. All states in Malaysia have chosen to allow polygamy, most of them with conditions. Muslim men face several restrictions under the law before they can marry a second (or third or fourth) wife.

Syariah law, therefore, varies from state to state. In Perak, for example, the decision to contract polygamous marriage is made solely by the husband and in fact the Syariah court there is not required to grant permission. Kelantan and Terengganu have deleted the specific conditions for polygamy, leaving the Syariah judge to use his own discretion to decide on whether a husband is eligible to take another wife.

This means that the laws are more stringent in some states than others and has created some loopholes. For example, in order to avoid the laws in their own state, some

husbands have gone across to states within Malaysia, and even across international borders, to contract polygamy without the consent of the existing wife/wives.

Check what the rules are for your own state. For more information you can get help from the State Legal Aid Bureau or the Bar Council Legal Aid Centre in your state. The phone numbers are at the back of this booklet.

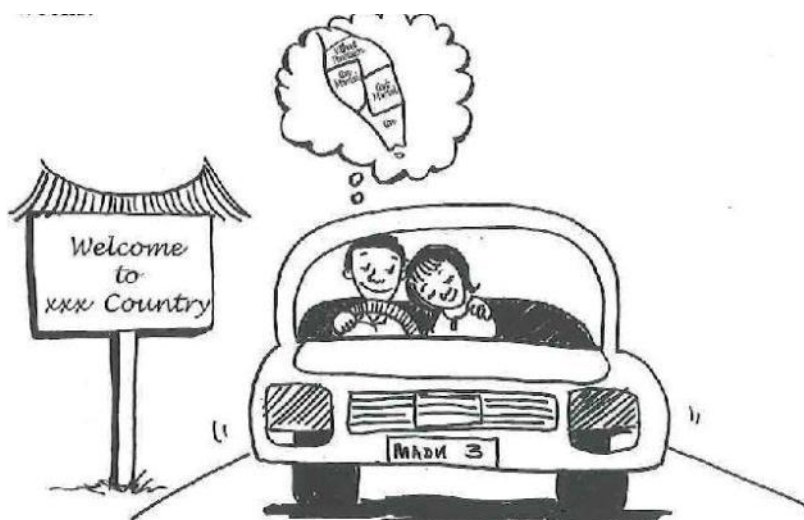
In all states, all applications for polygamy must go through the Syariah Court in your state. It is an offence if the husband does not get permission from the Court before contracting the new marriage. The judge will look at the requirements under the law before considering the application.

Q6. If it is an offence for husbands to contract polygamy without getting permission from the Courts, how come the marriages are still recognised, even when they are done outside Malaysia?

The Islamic Family Law Act/Enactment considers it an offence if a polygamous marriage takes place without the permission of the Court. However, the marriage eventually gets registered, with a penalty imposed upon the husband. The law actually states that the husband will have to pay a fine not exceeding RM1000 or undertake a jail term of not more than six months.

However, it is very rare for a man to be sentenced to jail for such an offence, and in most cases, he is merely sentenced to pay fine. The fines are usually about RM300! Many argue that this kind of penalty only makes it easier for husbands to contract polygamous marriages first, and inform the court after the fact, because they know that all they will have to do is to pay a small fine.

SIS has always argued that this amount hardly serves as a deterrent. We have found out that the number of illegally contracted marriages keeps increasing from year to year. Our “Memorandum on Reform of the Islamic Family Law on Polygamy” recommends that in order to deter errant husbands from taking advantage of the loophole and to stop them insulting the law, the penalty should be amended to provide for an increased penalty of a minimum of RM1000 with a mandatory jail sentence of not less than four weeks.



Husbands have gone across borders to marry another woman because their own state laws require the courts to seek the views of the existing wife or wives.

Q7. Is the existing wife involved at all? Shouldn't her permission be obtained first before the husband is allowed to marry again? Does she have any right to stop the second marriage?

In theory, most state laws say that the existing wife will be *informed* of the application. The laws also allow the existing wife to come to the hearing and state her views on the matter. In many situations, she is given a copy of the husband's application and his supporting declarations and documents.

None of the states in Malaysia provide for the consent of the existing wife/wives as a strict requirement before the husband is allowed to marry again. However, the laws in most of the states provide that the consent or views of the existing wife/wives should be taken into consideration by the court.

A case quoted in the *Mingguan Wanita* January 2002 edition is an example of this. The existing wife told the Wilayah Persekutuan Syariah Court that she opposed her husband's application for polygamy as her husband was barely able to afford the expenses of the current family of five children on his RM1600 salary. She added that her paid employment only brought in RM1000 and at times she had to bake and sell cakes and biscuits to make ends meet.

The judge rejected the husband's application on the grounds that he was not able to prove that he would be able to sufficiently provide for both families.

As some state laws require the courts to seek the views of the existing wife or wives, some husbands have gone across borders to marry another woman to avoid the law in their own states.

In any case, the consent of the wife is only *one of the factors* the court will consider. There have been cases where a judge has the practice of asking wives who had consented to explain why they had agreed. In many of these cases, the wife informs that she had to consent for fear of being divorced and losing her children. Clearly, her consent is not given freely, but has been coerced, under duress. This information on its own may not be the deciding factor, but at least the court has knowledge of the manner the wife has been treated in the current household and this reflects badly on the husband-applicant.

Q8. If I do not consent to my husband marrying another, will I be considered nusyuz?

We draw upon the wisdom of the authentic hadith (as reported in Sunan Ibn Majah) which reported that the Prophet Muhammad (s.a.w.) did not allow Saidina Ali Ibn Abi Talib (r.a.) who was married to the Prophet's daughter, Fatimah, to marry another woman "*....unless and until Ali Ibn Abi Talib divorces my daughter, for surely she is part of me and what troubles and agitates her, troubles and agitates me too; and what harm befalls her befalls me too.*"

Clearly, had Prophet Muhammad (s.a.w.) felt that his daughter should consent and allow Saidina Ali to marry another, he would not have said the above. He would have insisted that she gave her consent. Instead he was emphatic in his support for her feelings and felt the hurt that she felt.

A great - granddaughter of the Prophet, (Sakina, daughter of Hussein and granddaughter of Fatimah and Ali) put various conditions in her marriage contract, including the condition that her husband would have no right to take another wife during their marriage (reported in Kitab Al-Muraddafat).

From the example shown in question 7 above as well, we can see that the existing wife vehemently opposed her husband's application. The judge did not declare that she was 'nusyuz' simply because she opposed the application.

So, evidently, not consenting to polygamy does not constitute 'nusyuz'. However, some husbands have used previous claims of 'nusyuz' as grounds for marrying another woman.

Q9. What about the proposed wife, is she called to the hearing?

The law in Malaysia does not say that this is required. However, in Singapore, for example, the proposed wife is required to attend the hearing, as in some cases she may not know that the man is already married. In the eyes of the court, not informing the proposed new wife of his marital status reflects badly on the integrity of the husband-applicant. Sometimes the "wali" (guardian in marriage) of the proposed wife may be consulted.

Q10. Is it possible to check if your intended husband is already married or not? Doesn't the law say that the husband has to register his marriage?

Yes, the marriage is required by law to be registered. However, there is still no common computerised register of Muslim marriages, which means that the Courts and State Religious Departments are not able to establish immediately if the intended husband is already married or not. So, it is actually very difficult to ascertain the marital status of the intended husband. You would actually end up having to check every state to find this information out.

Q11. What if the second wife, after the akad nikah, finds out that her husband has already got an existing wife? Or what if the first wife finds out that her husband married another woman without her knowledge? Is the deceit grounds for a divorce?

The current standard "ta'liq" agreement in Malaysia does not provide redress for this. It only provides for divorce in cases of desertion, non-maintenance or cruelty. In other Muslim countries such as Syria, Jordan, Morocco, Egypt and Iran, they have adopted the ruling that a husband who has agreed in his marriage contract not to take another wife during the marriage, is bound by that stipulation. The awareness about being able to do this is high in those countries and many couples do insert this stipulation into the marriage contract.

In Malaysia, Section 22 (1) of the Islamic Family Law (FT) Act 1984 allows the registration of additional ta'liq in the marriage register. But in practice this is not usually done. In fact, most people are unaware of the use of this condition as a possible stipulation to the marriage contract. Even amongst those who are aware, most women would hesitate to

ask for this condition to be included because they feel they would be challenging the laws and the trust of the husband.

SIS is of the opinion that this should be added to the standard ta'liq agreement to protect women, and couples can choose to delete it or maintain it. In the event that it is not honoured by the husband, the wife would be entitled to a ta'liq divorce. In addition, we also feel that if the husband breaches any term in the agreement, this will entitle the wife to a divorce and to "muta'ah" (financial compensation) as the wife has been forced to apply for a divorce because of a breach of the ta'liq agreement.



In Muslim countries such as Iran, Syria, Jordan, Morocco, Egypt, they have adopted the ruling that a husband who has agreed in his marriage contract not to take another wife during the marriage, is bound by that stipulation.

Q12. Is financial means the deciding factor as to whether the man can marry another?

No. If this was the case, then all rich men should be able to contract polygamy! Financial means alone does not make out a case for polygamy. This was in fact decided by the Shariah Appeal Board in 1990 in Selangor in the case of Aishah Abdul Rauf vs Wan Mohd. Yusof bin Wan Othman. In this case, although the Appeals Board was satisfied that Wan Mohd. Yusof was in fact financially able to support the proposed polygamous marriage his application was still rejected.

Nevertheless, financial means is one of the factors considered. Usually, the applicant has to show that he is financially able to support another household. He has to show the particulars of his commitments, his financial obligations and liabilities and the number of his dependents (immediate family members, parents etc.). He is, for example, required to produce documentary evidence from his employer or company, as well as income tax returns to prove his real monthly income.

There have been cases, where the judge interviews the applicant and his wife on the household budget (including pocket money and children's allowances etc.). At the end of the day, there may not be very much to support another household. The judge sometimes consults the proposed wife (in a case where she is called to the hearing) as to the maintenance she wishes to receive in the assessment of means.

The fact that the existing wife or the proposed wife are both earning their own income is not a factor in deciding the applicant's means.

Q13. Apart from financial means, are there any other factors that are usually taken into consideration in a polygamy application?

Apart from Perak, Kelantan and Terengganu which have deleted the conditions for polygamy, all other states in theory lay down four conditions before a man can marry another:

- ◆ that the proposed marriage must be **just and necessary**,
- ◆ that the husband must have the **financial means** to do so,
- ◆ that the husband will accord **equal treatment** to the existing wife/wives and
- ◆ that the proposed marriage **will not cause darar syarie (danger or harm) to the existing wife**.

In the interest of protecting the woman, each condition is of equal importance to the others and should be proven independently. In practice, however, many women have reported that some judges tend to give emphasis to a man's financial capacity to support more than one family.

In fact, of the four conditions, only the financial means condition can come close to being proven sufficiently (by producing statements, documents, tax forms, etc). The other three conditions are really left to human interpretation, which accounts for the difference in opinions. For example, the definition of what is 'just and necessary' is very wide. The Qur'an clearly states that "you are never able to do justice between wives even if it is your ardent desire", but does not in its own logic lay down specific details of what constitutes fairness or justice.

In the Aishah Abdul Rauf case, her husband merely stated that he would be fair in his conjugal relations without proof and support from witnesses. This was deemed insufficient to establish his capacity to deal justly with his wife and the proposed wife. This was also another ground upon which the Appeals Board rejected his application.

As to the last condition, whether the proposed marriage would cause darar syarie is also difficult to measure and prove either way. It might perhaps be said that the marriage would certainly cause darar syarie if the existing wife is strongly opposed to it.

Q14. Does darar syarie also include the fact that the proposed marriage must not lower the standard of living enjoyed by the existing wife and children?

There *used* to be a fifth condition in the law that husbands must prove that the proposed marriage will not directly or indirectly affect the standard of living of the existing wife/wives. This in fact protected existing wives, by ensuring that they did not suffer financial difficulties as a result of the proposed marriage.

Sadly, this provision has been deleted. Husbands no longer have to prove this and as a result, the existing families have been known to undergo substantial financial hardship especially when they are expected to be patient and make do with what they get. The physical and mental anguish caused by this may result in darar syarie - however, as mentioned earlier, much of what is considered darar syarie is in fact left to human interpretation.

In our memorandum, SIS advocates that the provision be reinstated in the law to give women the protection due to them.

Q15. Some women have also been told that not allowing their husbands to marry another will only lead their husbands to commit “zina”. Is “fear of committing a sin” a “just and necessary” factor that the court will accept?

It would be an insult to say that there is such consideration in the Qur’an! Nowhere in the Qur’an does it say that fear of committing “zina” can be considered grounds for polygamy. Nor do the laws of Malaysia recognise lust as a ground for polygamy.

In the Aishah Abdul Rauf case, the Syariah lower court in fact did accept this argument of “to prevent him from committing sins” based on the hadith recounted by Abdullah Bin Masud, which when translated means:

“O Men, those of you, who can afford it should marry because this will help you from falling into shame...”,

However, the Appeals Board rejected this argument on the grounds that this hadith was irrelevant to matters of polygamy as it applied *only* to men who are still single and have not married. It is naturally of deep concern that the hadith had been somewhat “misused” in the lower court to support the application of the husband.

In addition to this, where applicants cite the above hadith to support their application, judges should in fact remind them of Surah An Nur 24:33 which states that, *“... those who are without means (to marry) are to keep themselves chaste”*. In practical terms, judges often remind applicants that they already have an existing spouse to share conjugal relations with. The Appeals Board also stated that a Muslim should be able to restrain himself from committing zina.

Another case cited in *Mingguan Wanita* January 2002 edition highlighted the often-used argument that ‘polygamy is preferable to committing zina’. In this case, the husband had contracted polygamy outside the country without the court’s permission. He pleaded guilty and said that they had gotten married to ‘avoid vice’ and asked for a reduced sentence on the grounds that his salary was very small.

The presiding Judge at the Wilayah Persekutuan Syariah Court severely reprimanded the man for daring to ask for a reduced fine when he clearly had not thought about his financial situation, his wife and his six children at the time of his second marriage. The judge also rapped the applicant for his ‘avoiding vice’ excuse, adding that that excuse was too easily used by too many men wanting to contract polygamy. The judge upheld the conviction and fined both the husband and the second wife RM950 each, failing which they would have to serve a two-month sentence.

Men, unlike angels and animals are blessed by Allah with both desires and mental faculty. To ensure the human beings’ superior position among the three creations of Allah, human intellect must control their desires, and not vice versa.

Q16. What if the couple has no children. Would another marriage be “just and necessary”?

Islam asks that couples decide on family matters based on mutual consultation and mutual consent. The question of children, therefore, should be a matter for both partners to discuss and decide and to come to a mutual understanding. The wife has a right to have children as does the husband. Both parties should get proper medical examinations.

Medical science has shown that in cases of couples that do not have children, one-third are because of the woman's health, one-third due to the man's and one-third due to unknown causes. Either may not be physically able, but it should not be the reason to end a relationship at the expense of the other. Adoption is certainly an alternative.

In any case, childlessness is not a justification put forward by the Qur'an in favour of polygamy. It is for Allah to bestow children or not on whomever He will, as stated in Surah al-Shura' 42 : 49 - 50: *"To Allah belongs the dominion of the heavens and the earth ... He bestows (children) male or female according to His Will (and Plan). Or He bestows both males and females, and He leaves barren whom He will. For He is full of knowledge and power."*

Q17. How about unfitness for conjugal relations? Is this acceptable ground for polygamy?

This is again a very wide issue. It would be useful for both parties to seek medical and marriage counselling. Each case would have to depend upon its facts.

There are illustrations from cases where this has been cited. In one case the couple had been married for 29 years. Upon weighing the matter, the court was of the opinion that the wife had looked after the needs of the family for 29 years. Children had been born and taken care of. She now needed the attention and care of her family in return. The application by the husband to marry another on these grounds was therefore not allowed.

Q18. I feel that my husband has not been fair - he supports me and the children financially but rarely stays with me, maybe once a week, if that. I have no idea how much time he spends with his other wife. He is never there to help me or the children. How do I know if he is being "fair and just"? What can I do about it?

"Fair and just" is a challenge that no man can ever claim to achieve, as stated Surah 4:129 *"you are never able to do justice between wives even if it is your ardent desire"*, let alone be quantified and measured by a judge.

It will rely entirely upon the discretion of the judge if you should decide to seek the assistance of the court to compel your husband to spend more time with your family. Under section 128 of the Islamic Family Law (FT) Act 1984, a husband who fails to give proper justice to his wife commits an offence.

Ultimately, though, it is really whether your husband values the relationship he has with you or not. Get support from women's organisation's (numbers listed in the back of this booklet) or friends who may be able to think through some options with you. You need not go through this alone.

Q19. My husband has a second wife of 2 years, whereas I have been married to him for 18 years. The wealth that we acquired together is under his name because he insisted that I trust him with the financial arrangements of the house. Now I find that he has been shifting a lot of our property into the second wife's name. I am worried my children and I are going to suffer financially if anything should happen to him. What should I do?

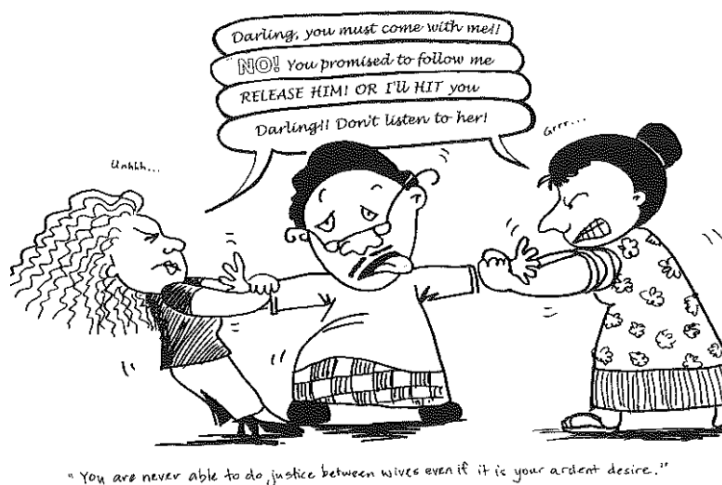
It may be possible to prove to the Courts that the property was jointly acquired by you and your husband, if you have evidence to show that you had contributed to the acquisition of the property in any way. However, this can be difficult to prove in some instances, and often depends on the discretion of the judge as well. The law also states that your contribution to the well-being of the family as a wife and mother entitles you to a share of the matrimonial property even though you have not contributed financially to its acquisition. In such cases, the courts usually award a woman not more than one-third share of the property.

However, in the Singapore Syariah Courts, there are cases where women in relatively long marriages have been awarded up to half share of the matrimonial home, even though she had made no direct financial contribution in the acquisition of the property. The interests of children in the women's custody are also taken into account. In cases where the women had made some financial contribution towards the acquisition of the property, even though the financial contribution is rather less than the husband's financial contribution, there are cases where the women have been awarded more than half share of the matrimonial home. In other words both the wife's financial and non – financial contributions have been combined to award the wife a larger share in the matrimonial home.

In Malaysia, to be on the safe side, one way of ensuring that your economic stability is protected is to ensure that some wealth is put solely in your name.

SIS feels strongly about the fact that there is little financial protection for women and has been advocating for more stringent measures to protect the aggrieved wife and children.

We in fact make two important recommendations in our "Memorandum on Reform of the Islamic Family Law on Polygamy". Firstly, we advocate an amendment to existing laws to ensure that before the husband's new marriage, the courts should automatically make an order for the husband to transfer to the first wife, her share of the jointly acquired wealth that was registered in his name, without the wife having to specifically apply for this.



The second recommendation that we make is that if a husband marries across borders, and does not register his marriage, the first wife can apply to the court for her share of the jointly acquired wealth to be transferred to her.

Surah al Hujarat 49: 13 states to the effect that:

*O humankind! We created you from a single (pair) of a male and female ... Verily the most honoured of you is the most righteous of you ...
Most honoured of you is the most righteous of you..*

Surah Rum 30: 21 states:

And among His Signs is this, that He created for you spouses from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your (hearts)

Surah Taubah 9: 71 states:

The Believers, men and women, are protectors, one of another, they enjoin what is just, and forbid what is evil ... on them will Allah pour His Mercy

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