

## Polygamy in Islamic Law and Algerian Family Law

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Received date: 12.02.2025; Accepted date: 16.03.2025; Publication date: 24/04/2025  
doi : 10.56334/sei/8.1.60

### Abstract

Polygamy has been practiced since ancient times and was widespread in human societies. However, it was not regulated and had no specific limitations on the number of wives a man could marry. With the advent of Islamic law, polygamy was structured, its rules were refined, and strict conditions and limitations were imposed, including not having more than four wives, and being fair between wives. Arab family laws have addressed polygamy based on Islamic jurisprudence (fiqh), with varying approaches some expanding its scope, others restricting it, and some prohibiting it altogether. The Algerian Family Law is among those that have regulated polygamy within a defined legal framework.

Keywords: Polygamy; Algerian Family Law; Legal Justification; Islamic Law; Judicial Authorization.

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**Citation.** Boukhari, F. (2025). Polygamy in Islamic Law and Algerian Family Law. *Science, Education and Innovations in the Context of Modern Problems*, 8(1), 920-942. doi: 10.56352/sei/8.1.60. <https://imcra-az.org/archive/356-science-education-and-innovations-in-the-context-of-modern-problems-issue-1-volviii-2025.html>

## Introduction

Islam has advocated for marriage, encouraged it, and emphasized the importance of sustaining love between spouses. It has established a comprehensive system for the Muslim family to protect Islamic society from disintegration and moral deviation. Allah Almighty states

*"And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He is placed between you affection and mercy. Indeed, in that are signs for a people who reflect." (Quran 30:21, Sahih International translation).*

From a Quranic perspective, marriage aims to establish tranquility, love, and the construction of the earth. In light of these objectives, polygamy has been regulated in a way that ensures women's dignity and guarantees men's chastity. Allah says

*Marry those that please you of women, two or three or four..." (Quran 4:3, Sahih International translation).*

Islamic law was not the first to introduce polygamy; Rather, it found it as an existing practice, approved it, refined it, and established specific legal conditions and restrictions that must be observed. Arab family legislations have followed the same approach, albeit with variations in their regulatory frameworks, including Algerian family law.

Accordingly, the following questions arise: What are the necessary conditions for polygamy? To what extent has Algerian legislation addressed this issue?

This study derives its significance from the importance of the topic itself, as polygamy has long been a subject of debate. It remains a central issue in discussions surrounding amendments to family law, with proponents and opponents engaging in ongoing discourse. Moreover, it is a matter that has attracted scholarly attention from various disciplines, as it constitutes a purely social issue.

To address the issue at hand, we have adopted the analytical approach by examining the interpretation of Islamic legal texts and analyzing legislative provisions related to polygamy. Additionally, we have employed the comparative approach to juxtapose the conditions and restrictions of polygamy in both Islamic jurisprudence and statutory law.

## First Topic: Polygamy in Islamic Jurisprudence

Islamic law permits polygamy but imposes strict conditions that must be met before practicing it. In this section, we will first discuss the general meaning of the Quranic verse on

polygamy, then move on to its legal and ethical restrictions, and finally explore the perspectives of contemporary scholars and jurists on the issue.

#### First Subsection: The Legitimacy of Polygamy

Islam permits polygamy, which means that a man may be married to more than one wife simultaneously, provided that the total number does not exceed four. This ruling is firmly established in both the Qur'an and Prophetic tradition (Sunnah), and there is scholarly consensus (ijmā') on its permissibility, with the condition that no man may marry more than four wives at a time. This consensus is documented in Marātib al-Ijmā' (The Hierarchy of Consensus), which states:

"The jurists unanimously agreed that a free, adult, sane, chaste, and physically capable Muslim man may legally marry up to four free Muslim women. They also agreed that marrying more than four wives is impermissible for anyone after the Prophet Muhammad (peace be upon him)." (Ibn Hazm Al-Dhahiri, 1998, p. 115)

#### The Quran states

"And if you fear that you will not deal justly with the orphan girls, then marry those that please you from [other] women—two, 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]" (Quran 4:3, Sahih International translation).

In this verse, God addresses all people in general and specifically the guardians of orphaned girls—those eligible for marriage, such as paternal cousins. The verse warns them: if they fear being unjust in marrying these orphans—whether by denying them a proper dowry (mahr), mistreating them, or exploiting their wealth—then they should avoid marrying them altogether. Instead, they are permitted to marry any other lawful women they desire. The verse grants each man the choice of taking two, three, or four wives, provided that he does not exceed four at any time (Sidr, 2010, p. 93) However, if a man fears that he cannot uphold justice, he is required to restrict himself to one wife only (Al-Sabuni, 1980, p. 419).

#### Second Subsection: Restrictions and Regulations on Polygamy

Islam neither prohibits polygamy nor leaves it unrestricted. Rather, it regulates and refines the practice by imposing strict conditions and legal constraints derived from the Qur'an and the Prophetic Sunnah. These conditions include:

#### The First Section: The Prohibition of Exceeding Four Wives



The Quranic verse states

*"And if you fear that you will not deal justly with the orphan girls, then marry those that please you from [other] women—two, three, or four..."*(Quran 4:3, Sahih International).

This verse abrogated the pre-Islamic and early Islamic practice that allowed a man to marry as many free women as he wished. Instead, the verse limits the number to four wives (Al-Qurtubi A., 1964, p. 12). Commenting on this verse, Ibn Kathir states:

*"That is, marry as many as you wish of other women, two, three, or four* (Ibn Kathir, 1999, p. 209), *as Allah says:*

*He made the angels messengers having wings, two or three or four..."*(Quran 35:1).

However, some Shia scholars and certain adherents of the Zahiri school have argued that the numerical restriction in the verse is cumulative rather than absolute, permitting the marriage of up to nine women. Others from the Zahiri school have even allowed up to eighteen wives (Al-Qurtubi A., 1964, p. 17), while a few have asserted that there is no limit (Ibn Kathir, 1999, p. 209).

The Sunnah provides clear evidence prohibiting a man from exceeding four wives simultaneously. It is reported that Abdullah ibn Umar narrated:

*"Ghailan ibn Salamah al-Thaqafi accepted Islam while he had ten wives from the pre-Islamic period, and they all accepted Islam with him. The Prophet (peace be upon him) commanded him to choose four of them"* (Ibn Hanbal, 2001, p. 393).

Another narration from al-Harith ibn Qays states: "I accepted Islam while having eight wives. I mentioned this to the Prophet (peace be upon him), and he said: 'Choose four of them'" (Abu Dawood, page 272).

Likewise, Nofal ibn Mu'awiyah reported: "I embraced Islam while I had five wives. I asked the Prophet (peace be upon him), and he said: 'Divorce one and keep four'" (Al-Bayhaqi, 1989, p. 51).

These reports establish a definitive limit on polygamous marriages within Islamic law.

The Second Section: The Obligation of Justice Among Wives

Allah commands justice among wives

*"But if you fear that you will not be just, then [marry] only one or those your right hand possesses..."* (Quran 4:3, Sahih International).

This verse establishes justice as a condition for polygamous marriages. Allah also states

*"And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]..."* (Quran 4:129, Sahih International).

Thus, whoever fears failure to uphold justice should marry only one (Ibn Kathir, 1999, p. 212).

The Prophet (peace be upon him) reinforced this in the Sunnah, as narrated by Abu Huraira: "Whoever has two wives and inclines toward one of them, will come on the Day of Judgment with one of his sides leaning" (Abu Dawood, page 242).

Aisha (may Allah be pleased with her) narrated: "When the Messenger of Allah (peace be upon him) wanted to travel, he would draw lots among his wives" (Bukhari, page 33).

Justice here refers to the equitable treatment of wives in material and tangible rights (Farhat, 2002, p. 37), such as housing, clothing, food, drink, and time spent. However, absolute fairness in emotional inclination is beyond human control (Al-Tawil, page 9), as expressed in the Prophet's supplication: "O Allah, this is my division concerning what I control, so do not blame me for what You control and I do not" (Abu Dawood, page 242).

Allah acknowledges this human limitation

*"And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave the other hanging [ie, neither divorced nor fully married]..."* (Quran 4:129, Sahih International).

This verse indicates that while complete emotional fairness is impossible (Al-Zamakhshari, page 572), excessive favoritism leading to neglect is prohibited. The prohibited neglect leaves a wife in a state where she is neither treated as a full wife with rights nor freed through divorce to seek another marriage (Al-Qurtubi A., 1964, p. 107). Such injustice is not tolerated in Islam.

Allah, the Creator of men and women, and the One who knows the secrets of His creation, has acknowledged that absolute justice among wives is unattainable, even if a person tries his best. True means justice treating both wives equally, like two perfectly balanced scales. However, if one

cannot do so, he must at least ensure that the scale does not tip entirely to one side, leaving the other wife neglected. This is the justice required in polygamy (Al-Attar, 1972, pp. 166-167).

#### The Third Section: Prohibition of Simultaneous Marriage to Close Kin (Mahram Relations)

Islamic jurisprudence strictly prohibits a man from simultaneously marrying women who are considered *maḥram* to each other by virtue of consanguinity, affinity (marital ties), or *riḍāa* (milk kinship). This prohibition, grounded in explicit legal injunctions, encompasses cases such as marrying two sisters concurrently or marrying a woman alongside her paternal or maternal aunt. The rationale behind this restriction lies in preventing the severance of familial bonds (*qaṭʿ al-ḥimam*) and mitigating potential discord (*fitna*) that may arise from heightened jealousy (*ghīra*) between co-wives, thereby safeguarding familial harmony and social cohesion (Al-Tuwaijri, 2009, p. 17).

In both the Qur'an and Sunnah. A man is categorically forbidden from marrying two sisters simultaneously, whether through consanguinity (*nasab*) or milk kinship (*riḍāa*), as explicitly stated in the Qur'anic verse

"And [prohibited to you is] that you marry two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful." (Quran 4:23, Sahih International)

Likewise, it is impermissible for a man to be married to a woman and her paternal or maternal aunt at the same time, or to a woman alongside her nieces (daughters of her brother or sister), whether by blood or nursing ties. This is reinforced by the Prophetic tradition narrated by Abu Huraira (may Allah be pleased with him), in which the Messenger of Allah (peace and blessings be upon him) stated: "A woman should not be married simultaneously with her paternal aunt, nor with her maternal aunt." (Bukhari, p. 12)

In another narration, the Prophet (peace and blessings be upon him) prohibited:

*"That a woman be married alongside her paternal aunt, or that a paternal aunt be married alongside her brother's daughter, or that a woman be married alongside her maternal aunt, or that a maternal aunt be married alongside her sister's daughter."* (Al-Tirmidhi, p. 419)

Classical Islamic jurists reached consensus (*ijmāʿ*) on the prohibition of marrying two sisters concurrently, as well as the prohibition of marrying a woman alongside her paternal or maternal aunt. Some scholars further extended this ruling, stating that any two women who share a degree of

kinship that would render them *maḥram* to each other fall under the same restriction (Ibn Rushd, 2004, p. 65).

The Mudawwana, affirms this principle, stating:

*"It is not permissible to unite under one marital bond a paternal aunt with her brother's daughter, or a maternal aunt with her sister's daughter, or two sisters. If a man unknowingly contracts marriage with two such women and consummates the marriage with the latter before the former, or with both simultaneously, he must separate from the latter and remain with the former, as her marriage was legally valid from the outset. The subsequent marriage does not invalidate the first, even if it involves her paternal or maternal aunt. If consummation occurred with the latter, the dower (ṣadāq) agreed upon must be given to her, and if no specific dower was stipulated, she is entitled to a fair dower (ṣadāq al-mithl). The separation in this case occurs without divorce, as he cannot remain married to both. This is the ruling of Imam Malik in its entirety."* (Malik, 1994, p. 202)

#### Third Subsection: Contemporary Scholars and Jurists' Perspectives on Polygamy

Modern jurists and intellectuals have expressed differing views regarding polygamy, leading to three main schools of thought.

First View: Some scholars argue that polygamy should only be permitted under exceptional circumstances (Fath Al-Din, page 2). Their reasoning is based on several key arguments:

- The fundamental condition for polygamy is the ability to uphold justice among wives. Since this condition is often unattainable in practice, it should not be considered a general rule. If injustice becomes prevalent, and it is more likely that men will fail to treat their wives equitably, it is permissible for religious authorities or state rulers to prohibit polygamy altogether as a precautionary measure (Abdo, 1993, p. 92).
- Many cases of polygamy result in the mistreatment of wives, deprivation of their financial rights, and lack of emotional and physical well-being. Furthermore, empirical observations suggest that hostility among children of different mothers frequently leads to family discord. Each child grows up harboring animosity towards their half-siblings, fostering long-term familial conflicts that can ultimately lead to the destruction of families. In light of these negative consequences, religious authorities or state officials may impose restrictions on polygamy to safeguard family integrity and social harmony (Abdo, 1993, p. 92).

It is universally acknowledged that Islamic law is designed to promote the well-being of individuals and society. One of its fundamental maxims is the prevention of harm (*ḍarar waḍirār*). If a practice that was previously permissible leads to widespread corruption in contemporary times, its legal ruling must be reconsidered. This aligns with the established legal principle: “Preventing harm takes precedence over securing benefits” (*dar’ al-mafāsīd muqaddam ‘alā jalb al-maṣāliḥ*) (Rashid Rida, 1947-1948, p. 350).

Given the current realities and the widespread negative consequences associated with polygamy, it has lost many of the social benefits it once provided in early Islam, such as strengthening kinship ties and tribal alliances. Therefore, a critical re-examination of the issue is necessary. (Rashid Rida, 1947-1948, page 349)

Second View: A second group of scholars advocates for the complete prohibition of polygamy (Fath Al-Din, page 3), supporting their stance with several arguments:

- Prior to Islam, polygamy was widely practiced among Arabs without restriction. It served multiple purposes, including agricultural labor, household management, and personal gratification. With the advent of Islam, an initial limitation was imposed, setting a maximum of four wives. The Prophet (peace be upon him) instructed those with multiple wives: “Keep four and divorce the rest.” (Ibn Hibban, page 465) Over time, further conditions were introduced, most notably the requirement of absolute justice among co-wives. The Qur’an warns against the dangers of polygamy, stating:

*“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].”* (Quran 4:3, Sahih International)

However, the Qur’an also declares the impossibility of achieving perfect justice among multiple wives, regardless of human effort:

*“And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging. And if you amend [your affairs] and fear Allah—then indeed, Allah is ever Forgiving and Merciful.”* (Quran 4:129, Sahih International)

This progression in legislation suggests a gradual movement toward monogamy, as Islam underscores the practical difficulties and moral challenges inherent in polygamous arrangements (Al-Haddad, 2011, pp. 62-63).



- Some scholars further support their position by citing a hadith narrated by Al-Miswar ibn Makhrama. The Prophet (peace be upon him) explicitly opposed the idea of polygamy in the case of his daughter, Fatimah: “The family of Hisham ibn al-Mughirah sought my permission for their daughter to marry Ali ibn Abi Talib, but I do not grant permission. I do not grant permission. I do not grant permission! Unless Ali ibn Abi Talib wishes to divorce my daughter and marry theirs, for she is but a part of me. What distresses her, distresses me, and what harms “She harms me.” (Bukhari, page 37)

Third View: A third group of scholars advocates for the unrestricted permissibility of polygamy, provided that the number of wives does not exceed four and that justice among co-wives is maintained (Fath Al-Din, page 5). Their arguments are as follows:

- Classical and contemporary Muslim scholars have consistently understood the verse on polygamy in a way that affirms its permissibility under the condition of justice. The structure of the verse: }And if you fear{ (wa in khiftum...) “And if you fear...” (fankihū...) – “Then marry...”

indicates a conditional clause, where the fear of failure to uphold justice in matters such as dowries and financial maintenance leads to the command:- “Then marry those that please you of [other] women.”

This interpretation reinforces the view that the primary concern of the verse is ensuring justice, rather than prohibiting polygamy outright (Al-Qurtubi, A., 1964, p. 5)

- The hadith narrated by ‘Abdullāh ibn ‘Umar further supports the unrestricted permissibility of polygamy. It states that:

*“Ghīlān ibn Salamah al-Thaqafī embraced Islam while he had ten wives from the pre-Islamic period, all of whom also accepted Islam. The Prophet (peace be upon him) instructed him to choose four and divorce the rest.”*

This hadith, along with similar reports, demonstrates that polygamy was an established practice regulated by Islam, rather than an exception requiring justification.

- The scholars of this view argue that the permissibility of polygamy is a well-established and indisputable ruling in Islamic law (ma‘lūm min al-shar‘ bi-ḍarura). They reject the notion that rulers or religious authorities may prohibit it on the basis of potential harm to women or the absence of justice, citing three key reasons:

1. First: While rulers have the authority to regulate permissible acts (*mubāḥat*), they cannot prohibit an entire category of what is legally permitted—such as polygamy up to four wives—since its permissibility is derived from definitive and unequivocal scriptural evidence (*qaṭʿand al-Thubut, qaṭʿthe whole world*).

2. Second: Marriage is a personal and individual matter that does not fall within the discretionary domain of the state's authority. Therefore, rulers cannot impose overarching restrictions on polygamy beyond those explicitly prescribed by Islamic law.

3. Third: The legal nature of *MBāḥ*(permissible acts) is that they are neutral one may choose to act upon them or refrain. If authorities are allowed to prohibit polygamy under the pretext of regulation, this would also imply that they could mandate polygamy, which is clearly an invalid conclusion(Ben Ali, 2011, p. 48).

This perspective acknowledges that, while polygamy remains legally permissible, its ruling can shift depending on the consequences it entails—whether beneficial or harmful. Islamic jurisprudence allows for the contextualization of legal rulings based on time, place, and circumstances. Thus, the ruling on polygamy is not fixed at all times:

- In cases of necessity, where a man is unable to remain within the limits of monogamy, polygamy may become obligatory (*wājib*) to prevent greater harm. A categorical prohibition in such cases would cause undue hardship and injustice to men who have legitimate reasons to marry more than one wife.

- Conversely, unrestricted polygamy may lead to social and economic harm, especially if a man takes additional wives without the financial means to support them or without ensuring fairness between them. In such cases, polygamy may be discouraged (*makrūh*) or even prohibited (*ḥarām*) if it results in prosecution or neglect

#### Second Topic: Polygamy in Algerian Family Law

The Algerian legislator has addressed polygamy in Article 08 of the amended and supplemented Family Law, which states:

*“Marriage to more than one wife is permitted within the limits of Islamic law, provided that a legitimate justification exists and the conditions for justice are met.*

*The husband must inform his current wife and the woman he intends to marry and must submit a request for authorization of marriage to the President of the Court in the jurisdiction of the marital residence.*

*The President of the Court may authorize the new marriage if he verifies the consent of both women and establishes that the husband has a legitimate justification and the capacity to provide justice and the necessary conditions for married life."*

This provision indicates that the Algerian legislator allows polygamy within the framework of Islamic law; However, it does not grant unrestricted permission. Instead, it imposes a set of regulations and constraints, including:

#### First Subsection: The Existence of a Legitimate Justification

The Algerian legislator has stipulated that polygamy is contingent upon the presence of a legitimate justification. However, it does not define what constitutes such a justification, nor does it provide any specific criteria for distinguishing between a legitimate and an illegitimate reason (Chowar, 2010, p. 144). This makes the condition flexible, as any man seeking to engage in polygamy may claim to have a legitimate justification, but the final decision remains within the discretionary power of the judge, who determines whether the justification is valid under the law (Al-Kurdi, 2016, p. 156).

The phrase "legitimate justification" is broad and encompasses various situations that may be considered valid, such as the desire for offspring, the wife's incapacity due to chronic illness or a sexual dysfunction, a man's love for another woman, or even his aversion toward his current wife (Shandarli, 2014, p. 96). Since it is impossible to definitively list all possible justifications for polygamy, they may vary according to time, place, and individual circumstances (Belhaj, 2012, p. 250).

However, possessing a legitimate justification alone does not suffice for a man to marry a second wife. The intention to uphold justice among his wives must also be present.

A second marriage should not be the result of a fleeting whim or an attempt to cover up a scandal or criminal act involving an immoral relationship, as such actions would cause harm to the first wife (Yahyaw, 2015, p. 313).

It is worth noting that Ministerial Circular No. 84/102, issued on September 23, 1984, as an interpretation of Article 08 of the Family Law, specifies that the notary or civil status officer must

verify the existence of a legitimate justification. This cannot merely be based on an oral statement or personal declaration; Rather, it must be substantiated by a medical certificate from a specialist physician. This implies that the legislator effectively limited legitimate justification to cases of the wife's illness or infertility (Boubshish, 2004, p. 137). As a result, the phrase "legitimate justification" in this context appears to refer more to a legal justification than a strictly Islamic one, thus further restricting the husband's ability to take another wife.

Despite the issuance of this ministerial circular, the issue remained unresolved, as real-life cases have demonstrated additional circumstances that could justify polygamy, such as a man's aversion to his wife despite having children together or the wife's unwillingness to engage in marital intimacy (Shandarli, 2014, p. 96). In response, the Algerian legislator issued another ministerial circular, No. 85/14, dated August 22, 1985, which aimed to broaden the scope of legitimate justification. This circular stipulated that, in cases beyond the two previously mentioned (illness and infertility), the judge's opinion must be considered in evaluating the reason for the second marriage, particularly if the first wife consents. The judge has the discretionary power to either authorize or deny the second marriage through a non-appealable order issued upon a simple petition (Aoun Allah, 2017, p. 99).

Upon reviewing the provisions of Islamic jurisprudence concerning the legitimate justification for polygamy, we find that most classical Islamic legal texts discuss various justifications. Scholars have classified them into general reasons, such as an imbalance in the male-to-female ratio due to wars or the need to increase the Muslim population, and specific reasons, such as the wife's infertility, her inability to fulfill marital duties due to a chronic, contagious, or repulsive illness, a man's love for another woman, or his high sexual drive, which makes a single wife insufficient for him. The presence of any of these reasons justifies polygamy under Islamic law.

#### Second Subsection: The Availability of Conditions and the Intention of Justice

The Algerian legislator has stipulated that a husband seeking to engage in polygamy must possess the intention of justice, without explicitly defining the precise meaning of this condition. Intentions are internal aspects of a person's conscience, inaccessible to others. Moreover, the legislator does not specify how this intention should be proven whether through oral testimony or written documentation (Zaghoudi and Boujani, 2015, p. 259).

Justice between wives primarily pertains to material aspects, such as the husband's ability to provide financial support, housing, and other necessities. However, emotional or spiritual justice

which pertains to the husband's feelings is not required in this context (Choir, page 39). Rather, justice is confined to equitable treatment in matters that can be objectively ensured, such as equal distribution of time spent with each wife. This principle was reinforced by a ruling of the Algerian Supreme Court, which stated: "Since the husband has failed to fulfill his marital obligations toward the plaintiff, spending the majority of his time with his second wife, he has thereby violated the principle of equality between spouses as mandated by Islamic law." (Aoun Allah, 2017, p. 87)

Under this condition, the judge has the authority to verify the husband's financial capacity through witness tests, evidence, and documentation. The key concern is whether the husband's income is stable and sufficient to support two wives and provide for his children without causing harm to any party (Boubshish, 2004, p. 138).

The legislator's use of the phrase "the availability of conditions and the intention of justice" introduces a degree of ambiguity. Intentions and motives belong to the realm of human consciousness and cannot be exclusively observed or verified only God knows the inner workings of the human heart. Thus, making marriage contingent upon this condition is impractical, as it is inherently impossible to assess prior to the marriage itself. It is illogical to require a prospective husband to demonstrate justice before marriage, since justice between wives can only be evaluated after marital life begins, not before the marriage contract is concluded (Saadi, 2014-2015, p. 123).

Consequently, stipulating the intention of justice as a precondition for marriage is misplaced and cannot be reasonably upheld as a legal restriction on polygamy. Any condition that cannot be materially verified should not serve as a prerequisite for entering into marriage.

For this reason, it would have been preferable for the legislator to use the phrase "the availability of conditions for justice", or to simply state "within the limits of Islamic law", which inherently implies the requirement of justice.

#### Third Subsection: Informing the Previous and Future Wives

In addition to the previously mentioned conditions, the Algerian legislator has mandated that a husband seeking to engage in polygamy must inform his current wife and the woman he intends to marry. However, the law does not specify the manner in which this notification must be carried out whether it should be given orally or if it must be done through a judicial officer via an official notification report, in accordance with the procedural requirements set out in the Civil Procedure Code. Furthermore, the law conditions the court's authorization for polygamy upon verifying the consent of both wives but does not clarify how this consent should be

established whether it requires their physical presence before the court for oral testimony, or if it necessitates a written record confirming their approval (Saad, 2010, pp. 88-89).

This lack of clarity has led to differing interpretations. Some scholars argue that mere notification should suffice without requiring explicit consent. They reason that if the first wife refuses to consent, the husband might resort to divorce to proceed with a new marriage, which could ultimately dissolve an existing marital bond (Saadi, 2014-2015, p. 123). Others caution that restricting polygamy in this manner may drive men toward informal customary marriages ('urfi) or even illicit relationships outside of marriage.

Ministerial Circular No. 84/102, previously mentioned, clarifies that prior to the amendment of the Family Law, the notification was carried out before a notary or a civil status officer. However, following the latest amendments, this notification must now take place before a judge. If both wives are present, they are to be informed of the husband's intent to contract a second marriage, and their approval or objection is formally recorded in the marriage contract as a reference for any future disputes (Burned, 2017, p. 389).

The legislator's requirement for prior notification was primarily introduced to regulate polygamy and safeguard the rights of all parties involved, particularly protecting the wives from harm and ensuring transparency in marital arrangements. However, this raises a fundamental legal question:

Can a judge, in cases of dispute, balance the husband's right to take multiple wives against the first wife's refusal to consent? If the husband meets all legal conditions except for the first wife's approval, does the judge have the discretion to authorize the marriage? (Bin Shuaikh, 2008, p. 114)

A report by trainee judges on this issue stated: "Through our field training in various courts, we observed that most judges grant authorization for marriage in such cases. A judge must weigh the validity of the justification for polygamy and the husband's capacity to ensure justice and fulfill marital obligations against the first wife's refusal to consent. Only then can the judge make a fair decision that aligns with the legal and religious purposes of polygamy." (Shamrouk, Mahmoudi, and Gharbi, 2008, p. 14)

The recent amendment poses a significant practical challenge, particularly concerning the requirement for prior consent from both wives. In reality, such consent is rarely granted, making the requirement nearly impossible to fulfill. As a result, husbands may circumvent the law by resorting to customary ('urfi) marriages.

When comparing Article 08 of the amended Family Law with Article 22 of the same law, we find an inherent inconsistency (Saji, 2010, p. 90). Article 22 states: "Marriage is proven by an official extract from the civil status register. If it is not registered, it may be established by a ruling court."

This provision effectively allows the legal recognition of unregistered ('urfi) marriages, thereby undermining the significance of Article 08, which sets out the conditions for polygamy. As a result, a marriage that fails to meet the legal conditions for polygamy may still be conducted informally and later validated by the court, thus circumventing the legislator's original intent.

It is worth noting that the Algerian legislator grants both wives the right to file for divorce in cases of deception. This is explicitly provided for in Article 08 bis("In cases of fraud, either wife may file a lawsuit against the husband to request divorce.") and Article 53(6)( "A wife may request divorce for the following reasons: ... Violation of the provisions set forth in Article 08 above.") of the amended Family Law.

The Algerian Supreme Court confirmed this right in a landmark ruling, stating: "Article 08 of the Algerian Family Law grants a wife the right to divorce if her husband fails to inform her about his new marriage. If she does not consent, she may turn to the judiciary to seek a dissolution of the marriage. ruling." (Sayce, 2013, p. 937)

The new procedural requirements introduced by the Algerian legislator—namely the notification and approval conditions—are largely ineffective. A more practical approach would have been for the legislator to require only notification of the previous and future wives, without making their consent a prerequisite for the marriage. This would prevent situations where the first or second wife is unaware of the marriage, while also avoiding legal and social complications stemming from the current restrictive framework.

#### Fourth Subsection: Requesting Authorization for Marriage from the President of the Court

With the amendment of Article 08 of the Algerian Family Law, the legislator introduced a new legal requirement for polygamy. This amendment mandates that a man seeking to take a second wife must obtain official authorization from the President of the Court in the jurisdiction where the marital home is located. This authorization is contingent upon the judge's verification of: The consent of the first wife and the prospective wife, The existence of a legitimate justification for polygamy, The husband's ability to ensure justice and fulfill the necessary conditions for marital life.

This judicial authorization represents a significant legal measure aimed at regulating polygamy and protecting the rights of both wives, the current wife and the woman, the husband intends to marry (Al-Aish, 2007-2008, p. 14).

From the wording of Article 08, it is clear that polygamy cannot be legally conducted without prior judicial approval. The judge is granted broad discretionary power to either grant or deny the authorization based on his assessment of whether the conditions stipulated in the law have been met.

Through Ordinance No. 05-02, issued on February 27, 2005, the Algerian legislator introduced two new provisions related to Article 08:

- Article 08 bis, which states:

*"In cases of fraud, either wife may file a lawsuit against the husband to request divorce."*

- Article 08 bis 1, which states: "A new marriage is subject to annulment before consummation if the husband fails to obtain legal authorization as required by law." in accordance with the conditions set forth in Article 08 above."

From these provisions, it is evident that the Algerian legislator does not consider a violation of the polygamy conditions as grounds for declaring the marriage contract invalid. Instead, the marriage remains legally valid and enforceable, producing all legal effects associated with marriage. However, a penalty is imposed in the form of dissolution of the marital bond, which may occur through either divorce (ṭalāq) or annulment (faskh), depending on the specific circumstances.

First Case: The wife's right to seek divorce is explicitly recognized in Article 53(6) of the amended Algerian Family Law, which serves as the general legal principle governing cases of judicial divorce. This article grants any wife the right to request divorce if her husband violates the provisions of Article 08.

A wife may seek divorce on the grounds of fraud (ṭadlīs: Fraud (ṭadlīs) involves deceptive that mislead the other party into contracting. It must be serious enough that the contract would not have been concluded without it. Fraud is not limited to physical deception; concealing the truth can also constitute fraud if it influences the other party's decision practices.) if the husband fails to obtain the required judicial authorization for polygamy. However, if the judge grants authorization, then fraud cannot be claimed (Ayashi, 2004-2005, p. 113), since the polygamous marriage would



have been legally sanctioned (Boumediene, The Permission to Polygamy between the Legislation of Islamic Countries and Algerian Family Law, 2013, p. 20).

Fraud (*tadlīs*) occurs when a husband deceives his second wife by concealing the fact that he is already married. Had she known, she might not have consented to the marriage in the first place (Boumediene, The Judge's Authority to Grant a Polygamy License: A Comparative Study, 2013, p. 71). A common example would be a man failing to inform his first wife of his intention to remarry and proceed with the second marriage. If the first wife later discovers this deception, she may claim that she was wronged and seek either: Compensation for the deception, if she chooses to remain in the marriage; Both compensation and divorce, if she refuses to accept the situation.

Likewise, the second wife has the right to request compensation if she chooses to remain in the marriage. However, if she asserts that she would not have agreed to marry had she known about the first wife, she has the right to seek both divorce and compensation on the grounds of deliberate concealment (Malouya, 2011, pp. 398-399).

The provision in Article 08 bis, which allows a wife to seek divorce in cases of fraud, can only be applied if the husband obtained authorization through fraudulent means. This might occur, for example, if a man forges documents to falsely prove that his first wife consented to his remarriage.

It is important to note that fraud (*tadlīs*) cannot apply to the first wife in this context. This is because her marriage contract was already concluded and finalized, and her husband's subsequent polygamous marriage does not affect the validity of her existing marriage contract. However, Can the second wife claim fraud if the husband deliberately concealed his marital status from her before entering into the new marriage?

We propose that, in light of the ambiguities surrounding Article 08 bis, the Algerian legislator amends the wording of this provision. Specifically, the phrase "in cases of fraud" should be replaced with "in cases of lack of consent" to eliminate uncertainty and clarify the true legal basis for a wife's right to seek divorce in such cases.

Second Case: Second legal consequence concerns the annulment (*faskh*) of the new marriage before consummation. If a husband contracts a second marriage without obtaining judicial authorization as required by Article 08, the marriage contract is considered null and void and has no legal effect for the parties involved, nor is it recognized by third parties (Aoun Allah, 2017, p. 112).

Conversely, if the marriage has already been consummated, annulment is no longer an option. In such a case, the second wife has only two options: Accept the marriage as it is, or Request divorce and claim compensation for any damages suffered, in accordance with Articles 53(6) and 53 bis of the amended Family Law.

This legal loophole, established by Article 08 bis 1, effectively undermines the judicial authorization requirement, making it a mere procedural formality rather than a substantive condition for polygamy. As a result, individuals seeking to contract a second marriage without legitimate justification may exploit this provision as a way to circumvent the restrictions imposed by the legislator(Zaghoudi & Boujani, 2015, p. 262).

In most cases, such unauthorized polygamous marriages are conducted in accordance with Islamic law but are not legally registered. As a result, the first wife often remains unaware of the second marriage until it is too late. When she does find out, she faces two choices: Remain in the marriage despite the circumstances, or Seek divorce, which is often difficult due to the legal challenges involved.

More often than not, the first wife is forced to accept the situation, as the Algerian legislator has not criminalized polygamy conducted in violation of Article 08. Unlike some other Arab legal systems, Algerian law does not impose legal sanctions on a husband who marries a second wife without fulfilling the required conditions(Mahruq, 2017, p. 393), nor does it establish a clear penalty for fraudulent misrepresentation (tadlis) in such cases(Belhaj, 2012, p. 251).

The Algerian legislator does, however, grant wives the right to stipulate a monogamous marriage in the contract. Article 19 of the amended Family Law states:

"The spouses may include in the marriage contract or in a subsequent official document any conditions they deem necessary, particularly a condition prohibiting polygamy."

#### Conclusion and Final Remarks:

From the preceding discussion, it is evident that the Algerian legislator, in permitting polygamy, has aligned with Islamic law since the implementation of the Family Law. However, with the introduction of new legal restrictions through the latest amendments, the legislator has significantly narrowed the scope of polygamy. This is particularly evident in the stringent conditions imposed, such as:

- The requirement to inform both the first and second wife.

- The necessity of obtaining their consent.
- The obligation to secure judicial authorization, while judicial authorization was intended as a safeguard, it has, in practice, become a legal loophole exploited by those seeking to engage in polygamy without legitimate justification.

It is possible that the legislator's intent was to limit polygamy due to its negative social consequences in the modern era. The unregulated practice of polygamy has been associated with:

- An increase in abandoned children and family instability
- Frequent marital disputes due to mistreatment of wives and deprivation of their rights
- The severing of family ties and heightened hostility among half-siblings
- The breakdown of social cohesion within families

Despite these legal restrictions, the latest amendment is not without its shortcomings, as certain legal gaps persist. Therefore, it is essential for the Algerian legislator to re-evaluate the legal framework governing polygamy and refine the provisions to ensure both legal clarity and practical enforceability.

#### Final Conclusion:

In conclusion, the practice of polygamy was permitted and legislated for high moral and social purposes. When exercised in accordance with Islamic principles, it serves as a solution to various social and moral issues prevalent in modern society. However, its improper application by individuals has undermined its intended purpose.

Moreover, the legal restrictions introduced by the Algerian legislator are largely a consequence of Algeria's ratification of numerous international human rights treaties, particularly those concerning women's and children's rights. Among these, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has had a significant influence on various aspects of Algerian family law, particularly regarding marriage and polygamy regulations.

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