



**POLYGAMY AND LAW IN NORTHERN NIGERIA: A
CASE STUDY OF ITS PRACTICE AND IMPACT ON
WOMEN'S RIGHT IN BAUCHI STATE**

BY

MANSUR ISA YELWA

**A thesis submitted in fulfilment of the requirement for the
degree of Doctor of Philosophy in Law**

**Ahmad Ibrahim Kulliyyah of Laws
International Islamic University Malaysia**

MARCH 2014

ABSTRACT

The current Shari'ah legal framework as administered in Northern Nigeria has been in existence since long period of its ancient history. It went through distinct dimensions throughout the chronicles of its legal aggregate, starting from the pre colonial era, via the colonial epoch, up to the post independence eon. Buttressed by this Shari'ah framework, polygamy remains a crucial issue of Islamic family law, owing to its ample practice in Nigeria. Religion and culture are the main reasons behind its overwhelming acceptability and widespread. The religious background on polygamy undoubtedly correlated with the cultural position of the Nigerian people, thereby significantly influencing its practice. Besides overheating the controversies surrounding the practice, it is rightly argued that the mix-up of religion and culture rendered the practice inconsistent with the religious principles and its objectives in polygamy. This phenomenon posited the Nigerian framework incompatible with the contemporary developments in the legal framework of polygamous practices around the Muslim world. The main remonstrance surrounding the inconsistent practice is its pessimistic impact on the rights of women which Islamic law overwhelmingly protects. The Nigerian Shari'ah framework with respect to family law generally, and on polygamy in particular, is mainly based on uncodified and unregulated classical law of the Maliki School. The non codified system is seen as an efficacious factor responsible for numerous socio-legal botherations linked to polygamous practice in Nigeria. This thesis lucubrates the practice of polygamy in Nigeria and how it affects the rights of women in the Northern Nigerian states. It presents an in-depth study of the classical Maliki law and to what extent is the Nigerian practice compatible with the law. The methodology employed the library-based doctrinal research approach as well as both quantitative and qualitative empirical research approach. Bauchi state was coherently selected as a model of case study for empirical research about the practice of polygamy in Northern Nigeria. For the purpose of presenting a comparative overview of model jurisdictions, the thesis canvasses upon a concise but comprehensive appraisal of the legal framework and practice of polygamy in selected Muslim countries. It concludes with a sum-up of the thesis and a recapitulation of its salient findings and sets forth the author's suggestions. The research is aimed at proposing for the review and gradual reform in the administration of Islamic family law for an arrayed and improved Shari'ah implementation in Bauchi state and Nigeria at large.

خلاصة البحث

إن إطار النظام الشرعي المعمول به حاليا في شمال نيجيريا يعود تاريخه إلى أمد بعيد. ولقد مرّ بمراحل تاريخية مختلفة ابتداءً بعهد ما قبل الاستعمار ثم ما بعد الاستعمار. وفي إطار هذا النظام الشرعي ظلّ تعدّد الزوجات قضيةً بالغة الأهمية في قانون الأسرة، نظرا لشيوعه في نيجيريا. و يعتبر الدين والتقاليد السببين الرئيسيين في انتشار التعدد، غير أن خلط الدين بالتقاليد قد جعل تعدد الزوجات غير متوافق مع الأهداف التي شرع لأجلها. هذه الظاهرة جعلت النظام الشرعي النيجيري غير منسجم مع التطور القانوني لممارسة تعدد الزوجات حول العالم الإسلامي. إن الاعتراض الرئيسي حول ممارسة تعدد الزوجات هو تأثيره السلبي على حقوق النساء التي تدافع عنها الشريعة الإسلامية بحق. إن إطار النظام الشرعي النيجيري - بالنسبة لقانون العائلة عموما، وبتعدد الزوجات خصوصا - يعتمد في أغلبه على الفقه المالكي، إلا أن عدم تقنين هذا الفقه كان السبب في ظهور كثير من القضايا الاجتماعية والقانونية ذات الصلة بتعدد الزوجات. هذه الرسالة العلمية تبحث عن ممارسة تعدد الزوجات في نيجيريا ومدى تأثيرها على حقوق النساء في ولايات شمال نيجيريا. وتحاول الرسالة تقديم بحث عميق في الفقه المالكي الأصيل والوقوف على موافقته للممارسات العملية في نيجيريا. ولقد استعان الباحث بالمنهج المكتبي إضافة إلى التحليل الكمي والكيفي كما تمّ اختيار ولاية بوتشي كنموذج للبحث الميداني حول ممارسة تعدد الزوجات في شمال نيجيريا. وبغرض تقديم دراسة مقارنة لأنظمة قضائية مختلفة، تضمن البحث الإطار القانوني والممارسة العملية لتعدد الزوجات في بعض البلدان الإسلامية. وختم البحث بجملة نتائج وتوصيات أهمها تقديم اقتراح لإعادة النظر والإصلاح التدريجي لقانون الأسرة و تفعيل تطبيق الشريعة الإسلامية بنيجيريا عموما وفي ولاية بوتشي على وجه الخصوص.

APPROVAL PAGE

The thesis of Mansur Isa Yelwa has been approved by the Following:

Najibah Mohd Zin
Main Supervisor

Noraini Md. Hashim
Co-Supervisor

Azizah Mohammad
Internal Examiner

Abdul-Qadir Zubair
External Examiner

Mohammad Altaf Hussain Ahangar
External Examiner

Noor Mohammad Osmani
Chairman

DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Mansur Isa Yelwa

Signature.....

Date

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
DECLARATION OF COPYRIGHT AND AFFIRMATION
OF FAIR USE OF UNPUBLISHED RESEARCH

Copyright © 2015 by Mansur Isa Yelwa. All rights reserved.

POLYGAMY AND LAW IN NORTHERN NIGERIA: A CASE
STUDY OF ITS PRACTICE AND IMPACT ON WOMEN'S RIGHT
IN BAUCHI STATE

No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without prior written permission of the copyright holder except as provided below.

1. Any material contained in or derived from this unpublished research may be used by others in their writing with due acknowledgement.
2. IIUM or its library will have the right to make and transmit copies (print or electronic) for institutional and academic purposes.
3. The IIUM library will have the right to make, store in a retrieval system and supply copies of this unpublished research if requested by other universities and research libraries.

Affirmed by Mansur Isa Yelwa

.....
Signature

.....
Date

This Research Work is Dedicated to the Illustrious Nigerian Muslim Women

ACKNOWLEDGEMENTS

In the name of Allah, the Most Beneficent, the Most Merciful. All praise is due to Allah, the One, the Self-Sufficient, the Omniscient, the Eternal and Absolute Sovereign over everything and everyone, out of Whose infinite mercies the difficult is made easy. May His peace and blessings perpetually shower upon our beloved Prophet, Muhammad, the only path to the eternal bliss and success for the life here and Hereafter.

First and foremost, my sincere gratitude goes to my supervisor, the dexterous but humble pedant, the friendly but motherly behaved, the mild but morally disciplined, the civilised but religiously modeled, the legal luminary and academic Professor, Dr. Najibah bint Mohammad Zin, with whose wholehearted dedication and educational guide this work became a success. I am similarly indebted to my co-supervisor, Asst. Prof. Dr. Noraini Mohd. Hashim, without whose tremendous assistance, the work would not have been complete.

I owe a great debt that cannot be compensated by just a word of thanks, but also by invoking Allah's reward for the entire members of my extended family. Notable among them are my dear parents, Alhaji Isa Muhammad Yelwa and Hajiya Hauwa Adamu upon whose upbringing, care, blessing and prayers, Allah has made me what I am. Next to their significance in my life are my loving queens, the patient, virtuous and ever-affectionate duo, Hauwa Salih AbdulQadir and Rasheeda Umar Abubakar. In this context, I must remember my brothers, Alhaji Mukhtar Isa Yelwa and Br. Umar Isa Yelwa for their moral support.

My career wouldn't have been achieved without Allah's support, then with the support of distinguished personalities who contributed tremendously, directly or indirectly, in sponsoring or facilitating the subsistence of my studies. The Executive Governor, Bauchi State of Nigeria, Mallam (Dr) Isa Yuguda, is the first to mention. Some responsible gentlemen among his cabinet were also significant in this regard. They include the Honorable Attorney General and Commissioner of Justice, Barrister Al-Mustapha Sulaiman Hassan, the Honorable Commissioner, Ministry of Education, Alhaji Ibrahim Muhammad Aminu, the State Accountant General, Alhaji Adamu Umar Gokaru, the former Special Adviser to the Governor and Chairman of Due Process, Alhaji Sirajo Garba, the former Chairman, Bauchi State Qur'anic Recitation Competition Committee, Dr Salisu Shehu and his successor, Alhaji Ibrahim Babaji.

My profound gratitude goes to Shafa family for their sincere love and support. At this juncture, I am specially indebted to the honorable and eminent gentleman, Alhaji AbdulMumini Muhammad Shafa. His brother, Alhaji Yakubu Muhammad Shafa and their nephew, Alhaji Abubakar Isma'il Yaqub will remain in my memory as well. Also worth mentioning here is the role of my mentors in this work and beyond. Barrister Garba Hassan, the proprietor, G. Hassan Chambers Bauchi is of reputable memory. Also worth mentioning are the former and incumbent Provosts of my College, ADR CLIS Misau, Associate Professor Dr. Yahaya Ibrahim Yero, Dr.

Muhammad Babangida Muhammad and Dr Mustafa Muhammad Kasim respectively, as well as the College Registrar, Alhaji Hamma Bashir and the Dean of law, Barrister Sadiq Haruna. The significance of the contribution and support for this work from the Honorable Justice of the Supreme Court of Nigeria, Justice Ibrahim Tanko Muhammad cannot be overemphasised.

Among my sincere friends are those to whose contribution the success of this work is owed. They include: Sharia Judge Umar Shehu Aliyu, Barrister Adam Idris, Barrister Mahmud Idris, Barrister Zakariyya Mu'azu Gombe, Dr. Zubairu Abubakar Madaki, Dr. Aliyu Muhammad Dahiru, Dr. Amir Isma'il Dawud, Dr. Ibrahim Adam Umar, Shaikh Abubakar Muhammad Mukhtar, Shaikh Sha'aya'u Yusha'u, Alh. Yahya Tanimu, Engr. Adebisi Adetayo AbdulMumin, Engr. Abubakar Manga, Br. Huzaifa Aliyu Jangebe, Br. Auwal Adam Sa'ad, Br. Shu'aibu Umar Gokaru, Br. Nuruddeen Idris Imam, Br. Aliyu Abdurrahman, Br. Luqman S. Sadiq and Br. Shitu Muhammad, Br. Kamaluddeen Is'haq Sambo, among others.

Finally, I would like to conclude my remarks by a special acknowledgement to all those who assisted honorably in giving me the required attention, audience and information during the conduct of my research interview. Their vast experience represents a vital part of the information provided in this research work. The Honorable Grand Khadi of Bauchi State, Alhaji Abdullahi Yakubu Marafa has been an important figure in this context. Hajiya Aisha Awak Bint Musa played a central role in coordinating and facilitating my link to women organisations and relevant stakeholders. Hers is a gigantic role of a mother and mentor. Hajiya Maryam Garba, Hajiya Fatima Yahaya Abba and Hajiya Halima Ibrahim are of those reputable ladies of Bauchi State who shared their vast experience with me.

There are others who contributed in one way or the other as well. Allah knows them better. I solemnly mention them in my mind and pray to Allah to abundantly reward all with the best of His tremendous rewards. *Jazākumullāhu khayra.*

Wa ākhiru da'wānā an alḥamdu lillāhi Rabbil 'ālamīn

TABLE OF CONTENTS

Abstract	ii
Abstract in Arabic	iii
Approval page	iv
Declaration	v
Copyright Page.....	vi
Dedication	vii
Acknowledgements	viii
List of Tables	xiv
List of Statutes	xv
List of Cases.....	xviii
List of Abbreviation	xix
Table of Transliteration.....	xx

CHAPTER ONE: INTRODUCTION	1
1.0 Background of Study	1
1.1 Research Objectives.....	10
1.2 Statement of Problem	10
1.3 Hypothesis	11
1.4 Literature Review	12
1.4.1 Literatures pertaining to contemporary social and legal issues on the practice of polygamy in Nigeria	12
1.4.2 Literatures pertaining to the classical framework of Islamic law on polygamy as applicable in Nigeria.....	14
1.4.3 Literatures pertaining to the legal framework of polygamy in other jurisdictions	19
1.5 Scope and Limitation of the Study	21
1.6 Methodology	22
1.7 Expected Findings	25
1.8 An Appraisal of the Practice of Polygamy in World's Societies and Civilisations	25
1.8.1 Polygamy in World's Ancient Societies	26
1.8.2 Polygamy in Religious Scriptures.....	31
1.8.2.1 Polygamy in Judaic and Christian Scriptures	32
1.8.3 Polygamy in the Contemporary World	41

CHAPTER TWO: THE DEVELOPMENT OF SHARĪ'AH IMPLEMENTATION IN NORTHERN NIGERIA	44
2.0 Introduction.....	44
2.1 Background of the Northern Nigeria	45
2.2 Prevalence of Customary Practices in the Pre-Caliphate Era.....	47
2.3 Establishment of Caliphate Administration in Northern Nigeria	51
2.3.1 Model Sharī'ah Administration in the Caliphate	52
2.3.2 Family Law System and the Status of Women during the Caliphate.....	56
2.4 Colonisation of the Northern Nigeria and the Fall of the Caliphate.....	59

2.4.1 The Impact of Colonisation on SharĒ‘ah Implementation in Northern Nigeria.....	61
2.5 Application of SharĒ‘ah in the Post-Colonial Era.....	63
2.5.1 Classification of Islamic Law as Customary Law	64
2.5.2 Restriction of the Applicability of Islamic Law within Personal Status.....	67
2.6 The Abortive Struggle for the Establishment of Federal SharĒ‘ah Court of Appeal	69
2.7 The Current SharĒ‘ah Implementation in Northern Nigeria and Its Challenges	71
2.7.1 Constitutionality of SharĒ‘ah Implementation in Nigeria	73
2.8 The Judicial Structure.....	78
2.8.1 The SharĒ‘ah Courts	80
2.8.2 The Sharia Court of Appeal	83
2.8.3 The Federal Court of Appeal	84
2.8.4 The Supreme Court	85
2.9 Jurisdictional Problems in Nigerian SharĒ‘ah Dispensation	86
2.10 Conclusion	89

CHAPTER THREE: LEGAL FRAMEWORK ON POLYGAMY IN NORTHERN NIGERIA.....91

3.0 Introduction.....	91
3.1 The Nigerian Constitution	92
3.2 The Nigerian SharĒ‘ah Statutes.....	98
3.2.1 A Critical Study of the Position of the SharĒ‘ah Statutes on Women’s Right.....	100
3.3 The Applicable Classical Islamic Law on Polygamy in Nigeria.....	102
3.3.1 Legal Issues and Principles on Polygamy in Islamic Law	104
3.3.2 A Critical Appraisal of the Philosophical Objectives of Islamic Law on Polygamy between the Classical and Contemporary Scholars	109
3.3.3 Protection of the Wives’ Conjugal Rights in the Context of Islamic Classical Law	122
3.3.3.1 Right to Maintenance (Al-Nafaqah).....	123
3.3.3.2 Right to Housing (al-Suknā).....	132
3.3.3.3 Right to Division of Time (Al-Qasm)	137
3.3.3.4 Right to Good Treatment (al-Mu‘āsharah al-Ĥasanah)....	143
3.4 The Procedural Law.....	151
3.4.1 The Classical Procedural Law.....	151
3.4.2 The Statutory Procedural Law	157
3.5 Conclusion	161

CHAPTER FOUR: PROBLEMS AFFECTING THE PRACTICE OF POLYGAMY IN NORTHERN NIGERIA.....163

4.0 Introduction.....	163
4.1 Quantitative Data Analysis	167
4.1.1 Respondents’ Demographic Information	167
4.2 Qualitative Data Analysis	186

4.2.1 Theme 1: General Perception of Polygamy in the Northern Nigerian Society	188
4.2.2 Theme 2: Effects of Polygamous Practice on Women’s Rights ...	190
4.2.3 Theme 3: Factors Affecting the Practice of Polygamy in Nigeria	191
4.2.3.1 Intellectual Factor	192
4.2.3.2 Economic Factor	194
4.2.3.3 Legal Factor	195
4.2.3.4 Social Factor	197
4.2.4 Theme 4: Causes of the Factors affecting Polygamy in Nigeria... ..	198
4.2.4.1 Ignorance	198
4.2.4.2 Poverty	199
4.2.4.3 Selfishness	199
4.2.4.4 Lawlessness	200
4.2.5 Theme 5: Views Regarding the Regulation of Polygamy in Nigeria	201
4.3 Conclusion	202

CHAPTER FIVE: COMPARATIVE STUDY OF THE LEGAL FRAMEWORK AND PRACTICE OF POLYGAMY IN SELECTED MUSLIM COUNTRIES203

5.0 Introduction.....	203
5.1 Polygamy and Law Reforms in Muslim Jurisdictions.....	204
5.1.1 Jurisdictions where Polygamous Practice is Unregulated.....	207
5.1.2 Jurisdictions where Polygamous Practice is Prohibited.....	216
5.1.2.1 The Tunisian System	217
5.1.2.2 The Turkish System.....	219
5.1.3 Jurisdictions where Polygamous Practice is Regulated	221
5.1.3.1 The Egyptian Model	223
5.1.3.2 The Syrian Model	224
5.1.3.3 The Moroccan Model	227
5.1.3.4 The Afghani Model	231
5.1.3.5 The Pakistani Model.....	235
5.1.3.6 The Malaysian Model.....	237
5.2 Conclusion	249

CHAPTER SIX: CONCLUSION251

6.0 Research Summary	251
6.0.1 Summary of Research Approach	252
6.1 Comparative Overview	255
6.2 Major Research Findings.....	257
6.2.1 Literal Interpretation of Shari‘ah and Its Sources.....	257
6.2.2 Incompatibility between the Law and the Practice	258
6.2.3 Influence of Culture in the Practice of Polygamy.....	258
6.3 Recommendations.....	259
6.3.1 The Need for Awareness Initiatives.....	259
6.3.2 The Need for Reforms.....	260
6.4 Implications for Further Research	263
6.5 Conclusion	264

BIBLIOGRAPHY	266
APPENDIX I QUESTIONNAIRE	280
APPENDIX II PIE CHART SHOWING THE QUESTIONNAIRE RESPONDENTS' RESULTS	287
APPENDIX III INTERVIEW GUIDELINE QUESTIONS/DISCUSSION.....	308
APPENDIX IV SAMPLE OF A REPORT BY WOMEN NGO FOR THE RESEARCH INTERVIEW	313

LIST OF TABLES

<u>Table No.</u>		<u>Page No.</u>
4.1	Demographic Profile	167
4.2	Income and Income Means	170
4.3	Level of Knowledge	173
4.4	Information on Polygamy and its Practice	175
4.5	Personal Experience on the Impact of Polygamy on Women's Rights	177
4.6	Experience Regarding Husband	179
4.7	Experience Regarding Co-Wife	182
4.8	Experience Regarding the System	185
4.9	Profile of the Experts Interviewed	187

LIST OF STATUTES

Acts

Legal Practitioners Act, Cap 207, Laws of the Federation of Nigeria, 1975.
Penal Code (Northern States) Federal Provision Act, Cap 38, Laws of Northern States of Nigeria 1960.

Laws

Area Courts (Civil Procedure) Rules, 1971 Cap. A9, Laws of Kwara State, 2007
Area Courts Law, Cap 9, Laws of Kano State of Nigeria, 1991
Bauchi State Shari'ah Courts (Administration of Justice and Certain Consequential Changes) Law, 2001
Bauchi State Sharia Courts (Civil Procedure) Rules, 2001
Criminal Procedure Code, Cap 37, Laws of Kano State of Nigeria
Laws of Kwara State, High Court Law (2007), Cap. 42
Laws of Northern Nigeria, High Court Law (1963), Cap. 49
Laws of Northern Nigeria, Native Courts Law (1963) Cap. 78
Laws of Northern Nigeria, Shari'ah Court of Appeal Law (1963) Cap. 122
Plateau State Customary Court of Appeal Law, 1979
Shari'ah Court's (Administration of Justice and certain Consequential Changes) Law, Laws of Bauchi State of Nigeria, 2001
Sharia Courts Commencement (Administration of justice and consequential Changes) Law, 2000
The Criminal Procedure Code, Cap 30 of the Laws of Northern States of Nigeria, 1963
Zamfara State Shari'ah Court Law No. 5 of 1999

Constitutional Provisions

The Constitution of the Federal Republic of Nigeria 1999 (as amended)

Foreign Statutes

Afghanistan

Civil Law of the Republic of Afghanistan (Civil Code) No. 353 of 1977

Bahrain

Bahraini Code of Personal status No 9 of 2009

Iran

Iranian Family Protection Act No. 6516 of 1967

Jordan

Jordan Law of Personal Status No. 26 of 2010

Malaysia

Administration of the Islamic Family Law (Terengganu) Enactment No 2 1985

Enakmen Undang-Undang Keluarga Islam (Sarawak) No 5 of 1991

Islamic Family law (Federal Territories) Act No 303 of 1984 (as at 2011)

Islamic Family Law (Federal Territories) Act No. 303 of 1984

Islamic Family Law (Johor) Enactment No 5 of 1990

Islamic Family Law (Kedah) Enactment No 1 of 1984

Islamic Family Law (Kelantan) Enactment No 1 of 1983

Islamic Family Law (Kelantan) Enactment No. 6 of 2002

Islamic Family Law (Malacca) Enactment No 8 of 1983

Islamic Family Law (Malacca) Enactment No. 12 of 2002

Islamic Family Law (Negri Sembilan) Enactment No 8 of 1983

Islamic Family Law (Pahang) Enactment No 3 of 1987

Islamic Family Law (Pahang) Enactment No. 3 of 2005

Islamic Family Law (Penang) Enactment No 2 of 1985

Islamic Family Law (Penang) Enactment No. 5 of 2004

Islamic Family Law (Perak) Enactment No 13 of 1984

Islamic Family Law (Perak) Enactment No. 6 of 2004

Islamic Family Law (Perlis) Enactment No 4 of 1992

Islamic Family Law (Perlis) Enactment No. 7 of 2006

Islamic Family Law (Sabah) Enactment No 15 of 1992

Islamic Family Law (Sarawak) Ordinance No. 43 of 2001

Islamic Family Law (Selangor) Enactment No 4 of 1984

Islamic Family Law (Selangor) Enactment No. 1 of 2003

Morocco

Moroccan Family Code (*Mudawwanah*) Law No. 5 of 2004

Pakistan

Pakistani Muslim Family Laws Ordinance, No. VIII of 1961

Saudi Arabia

Saudi Arabian Basic Law of March, 1992

Syria

Syrian Law of Personal Status (as amended) No. 2437 of 2009

Syrian Law of Personal Status, Decree Law No. 59 of 1953

Tunisia

Tunisian Code of Personal Status 1958 (as amended) Law No. 63-65 of 1993

Turkey

Ottoman Law of Family Rights, 1917

Turkish Civil Code, 1926

Turkish Criminal Code Law No. 5237, 2004

Yemen

Yemeni Law of Personal Status No. 27 of 1998

LIST OF CASES

Reported

Mariyama v Sadiku Ejo [1961] NRNLR 81
Alkamawa v Bello [(1998) 6 SCNJ 127
Abdul Salami v Salawu [2002] 6 S C (Pt. II) 196
Maida v Modu [2000] 4 NWL (Pt. 659) 99
Karimatu Yakubu and Anor v Yakubu Paiko and Anor [1961-1989] 1 Sh.LRN 126
Azatu Adamu v Alhaji Mohammadu Bello Masaba and 7 ors BD/MC/DCR/ 43//2013
Munira Ali v Husaini Bakoji BAS/SCA/CVA/27/BH/2011
Amina Malam Ali and 1 Anor v Abubakar Abba Sugu [BOS/CSA/CV/76/2003] 139
Governor of Kaduna State v the President of Nigeria [1981] 2 NCLR 786
Fernando Vadillo & Anor v Alawiyah bt Abdul Rahman [2012] 4 SHLR 38
Adibah bt Mohd Salleh & Anor v Shareena bt Azali [2012] 4 SHLR 60
Syarie Prosecutor of Selangor v Moktar bin Radin & Ors [2010] 3 SHLR 148
Zarina bte Shaari v Mohd Yusoff bin Omar. [2005] 4 SHLR 173
Adisa v Oyinwola [2000] 6 SCNJ 290
Amina Lawal v Government of Katsina State [KTS/SCA/FT/86/2002
Aishah bte Abdul Rauf v Wan Yusuf bin Wan Othman [1990] 3 MLJ
Syarie Prosecutor v Shafie bin Mohd Omar [2009] 4 SHLR 177

Unreported

Amina Ibrahim v Sharif Gobirawa CVFI/105/96
Amina Abubakar v Alh. Shuaibu CV/128/12
A'ishatu Aliyu Gachi v Aliyu Gachi CV/134/12
Habiba Abubakar v Suleiman Dauda CV/121/12
Shafa'atu Usman v Alhaji Usman CV/80/12
A'ishatu Isa Moh'd v Isa Moh'd Sale CV/25/2011

LIST OF ABBREVIATION

AH	After <i>Hijrah</i>
AIDS	Acquired Immunodeficiency Syndrome
CEDAW	Convention on the Elimination of All Kinds of Discrimination Against Women
CPS	Code of Personal Status
FAWOYDI	Fahimta Women and Youth Development Initiative
FCT	Federal Capital Territory
FOMWAN	Federation of Muslim Women Association of Nigeria
HIV	Human Immunodeficiency Virus
IFLA	Islamic Family Law Act
IFLSE	Islamic Family Law (Selangor) Enactment
JSC	Justice of the Supreme Court
MFLO	Muslim Family Law Ordinance
MLJ	Malaysian Law Journal
MSO	Muslim Sisters Organisation
NGN	Nigerian Naira
NGO	Non Governmental Organisation
NJC	National Judicial Council
NNRL	Northern Nigeria Law Report
RWAFF	Royal West African Frontier Force
SC	Supreme Court
SPSS	Statistical Package for the Social Sciences
SHLR	Sharia Law Report
USD	United States Dollar
WID	Women in Da'awa

TABLE OF TRANSLITERATION

b = ب	z = ز	f = ف
t = ت	s = س	q = ق
th = ث	sh = ش	k = ك
j = ج	ṣ = ص	l = ل
ḥ = ح	ḍ = ض	m = م
kh = خ	ṭ = ط	n = ن
d = د	ẓ = ظ	h = ه
dh = ذ	‘ = ع	w = و
r = ر	gh = غ	y = ي

SHORT: A = اَ ; I = اِ ; U = اُ

LONG: ā = آ ; ī = إ ; ū = أ

DIPHTHONG: ay = آي ; aw = أَوْ

CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND OF STUDY

Polygamy¹ remains a subject of controversial issues not only from the perspective of Western civilisation, but within the context of Islamic law and its philosophy as well. This research is of the opinion that Islamic law encompasses a perfect system of regulation of human life endeavors in entirety. It has unlimited sphere in terms of applicability. Its primary textual sources are infallible. It is suitable for all and sundry at all generations and spaces. A sincere study of its laws proves that all its principles are compatible and based on good conscience for the realisation of natural justice. These sterling features are a paradigm to the fact that Islamic law never relents in regulating crucial issues affecting human life and his rights within, of which polygamy is not exclusive. Thus, in its rulings on polygamy, Islamic law gives due consideration to the impact of such rulings on the status and rights of women. This benchmark sets a crucial principle to be considered by all lawmaking bodies in relation to family law in general and polygamy in particular. Within the context of the contemporary world legal set-up, this thesis addresses these issues, studying and

1 The term polygamy is defined as the practice of having more than one wife at the same time. Others use the word 'polygyny' instead. According to them, the term polygyny is used when one man is married to more than one woman. Polyandry on the other hand is used when one woman is married to more than one man. Polygamy is used to include both. Due to this linguistic divergence, some simply put the definition of polygamy as the practice of having more than one spouse. As commonly used, this study adopts the word polygamy, and, wherever used hereinafter, it is referring to polygyny. See: Oxford Advanced Learner's Dictionary, 7th Ed. P 1123, retrieved from <www.oup.com/elt/oald>, accessed 10 April, 2012; Oxford Dictionary of Law, 6th Ed. (Oxford University Press, 2006), at 399; A. A. Philips and J. Jones, *Polygamy in Islam*, (Riyadh: International Islamic Publishing House, 2005), at 13; M. A. Ambali, *The Practice of Muslim Family Law in Nigeria*, (Zaria: Tamaza Publishing Company Limited, 1998), at 160.

analyzing the practice of polygamy and its impact on women's rights in the Northern Nigeria.

Sharī'ah² implementation vis-a-vis the practice of polygamy have always been a subject of criticism from both Muslims and non-Muslims in Nigeria. The main point there is the question of whether or not Muslims' attitudes towards the practice of polygamy is Sharī'ah compliant. It is argued that the practice, among many of the Muslim folk, is contrary to the fundamental objective of Sharī'ah in its family system which aims at protecting the rights of both husband and wife. This fundamental objective aims at the erection of a solid foundation of civilised Muslim society, based on Islamic norms and values, originating from an arrayed family set-up. The reason that paved a way for criticisms against the practice of polygamy in Nigeria is that the practice, in many polygamous unions, is not in compliance with the teachings and the rationale and philosophy of Islamic law behind its institution. The challenges surrounding the practice of polygamy remain unanswered in the Nigerian context, considering the impact of its practice on the rights of women who are considered inseparable companions of men according to the norms of an ideal Islamic society. It should be rightly expected of a Muslim society, especially in a critical epoch like this, to remedy its legal and social challenges in crucial matters that affect fundamental issues of Islamic family law, specifically the issue of polygamy.

Generally speaking, it is unanimously observed by all writers on the practice of polygamy in Nigeria that it is widely practiced throughout the country with its prevalence in the Northern region, which is predominantly Muslim. The Southern

² The term Sharī'ah refers to the general framework of Islamic law or the complete system of life in the Islamic faith. See: 'Alī Ibn Muhammad al-Jurjānī, *al-Ta'rīfāt al-Fiqhiyyah*. (Beirut: Dar al-Kitāb al-'Arabī, 1405 AH), at 167. In the research text, the terms Sharī'ah and Islamic law are used interchangeably. Where the term is used to express an idea about the system from the classical perspective, it is written in the transliterated form, Sharī'ah. But where it is expressed on its usage in the Nigerian law, it is simply written Sharia, as written in the Nigerian Constitution.

region, although there exists a large population of Muslims, especially in the Yoruba south-west, Christianity is predominant. There also, polygamy is practiced among some tribes even among the non-Muslim folk. Religion and tradition are the main causes that mechanise the practice. International reports on Nigeria observe that there is no legal mechanism for the protection of women's civil rights. Polygamy, according to such reports, is one of the social factors that affect the rights of women. It is important to note here that, according to the assertions of some of these reports, more than one-third of Nigerian women are in polygamous unions.³

Among the nineteen states of the Northern Nigeria, twelve states have proclaimed the re-introduction of the Shari'ah implementation which was fully applied in the region before the colonial era. The twelve states are: Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara. Polygamy, being a practice permitted by the Shari'ah, is widely practiced in these states and the region as a whole whereby men can marry up to four wives, provided they are able to afford it and treat them fairly. The widespread of the practice is related to religious and traditional reasons. However, in the southern region

³ See more on these reports in: CEDAW (Committee on the Elimination of Discrimination against Women) (1997), "Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Nigeria, Combined Second and Third Periodic Reports of States Parties", CEDAW/C/NGA/2-3, CEDAW, New York, NY; CEDAW (2003), "Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Nigeria, Combined Fourth and Fifth Periodic Reports of States Parties", CEDAW/C/NGA/3-4, CEDAW, New York, NY; CEDAW (2006), "Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Nigeria, Sixth Periodic Report of States Parties", CEDAW/C/NGA/6, CEDAW, New York, NY. Retrieved June 13, 2012, from <<http://www.un.org/womenwatch/daw/cedaw/reports.htm>>; National Population Commission, Federal Republic of Nigeria and ORC Macro (2003), "Demographic Health Survey of Nigeria", ORC Macro, Calverton, MD, <www.measuredhs.com/pubs/pub_details.cfm?ID=454&srchTp=advanced>; AFROL NEWS (n.d.), "Gender Profile: Nigeria", Retrieved from: <www.afrol.com/Categories/Women/profiles/nigeria_women.htm>;, Struensee, V. (2005). "The Contribution of Polygamy to Women's Oppression and Impoverishment: An Argument for its Prohibition", *Murdoch University Electronic Journal of Law*, Retrieved from: <www.austlii.edu.au/au/journals/MurUEJL/2005/2.html#fn100>; "Gender Equality and Social Institutions in Nigeria" n.a, (n.d). Retrieved from: <<http://genderindex.org/country/nigeria>> accessed on April 12, 2012.

which is predominately Christian, monogamy is predominantly practiced. However, there too, even among those who profess the Christian faith, some men also have more than one wife, based on social and traditional reasons as opposed to reasons of religion. This makes the practice wide in the south as well, considering the fact that the non-Christian traditionalists have inherited polygamy as a cultural norm and thus practice it widely. This is because, in the context of the Nigerian legal system, there is no regulation on the family law, and this is considered responsible for abusive polygamous practices.⁴

A relevant example to mention here of the lacuna in the legal set-up from the north is that of Mohammed Bello Abubakar, aged 84, who married 86 wives, insisting that his act was permitted by Islamic law.⁵ Despite the heretical position of his act in the face of Islamic law, he was able to escape prosecution and conviction as the case was thrown out due to the absence of a specific regulation relating to his conduct and thus, he was subsequently allowed to keep all his wives.⁶ This and other related issues pose a great challenge on the Nigerian legal system which allows the practice of polygamy but ignores its regulation. The abuse of the practice of polygamy in Nigeria has undoubtedly caused detrimental outcomes to women, children and the society as a whole. The legal silence on the practice of polygamy in Nigeria has resulted to the emergence of a number of challenges, namely: religious, legal, social and economic.

⁴ Phyllis Logie. (2009). "Polygamy in Nigeria is Fast going out of Style because of the ever Increasing Cost of Keeping Wives", African and Middle Eastern Culture. Retrieved from: <<http://www.lifepaths360.com/index>> Accessed April 18, 2012; Mercy Ilevbare, (2009). "Practice of Polygamy in Nigeria". African and Middle Eastern Culture. Retrieved from: <<http://www.lifepaths360.com/index.php/practice-of-polygamy-in-nigeria-10510/>> Accessed April 8, 2012.

⁵ Andrew Walker, BBC News, Bida, Nigeria. Reported on: Friday, 8 August 2008. Accessed on April 10, 2012 from: <<http://news.bbc.co.uk/2/hi/7547148.stm>>

⁶ Phyllis L, (2009). "Practice of polygamy in Nigeria." Retrieved from: <<http://www.helium.com/items/65621-practice-of-polygamy-in-nigeria>> Accessed on April 8, 2012.