



**THE ABUSE OF POLYGAMY IN MALAYSIA,  
2007-2009; A CRITICAL ANALYSIS FROM  
ISLAMIC PERSPECTIVE**

**BY**

**RAUDLOTUL FIRDAUS BINTI FATAH YASIN**

**A dissertation submitted as a requirement for the  
degree of Doctor of Philosophy in Qur'an and Sunnah  
Studies**

**Kulliyyah of Islamic Revealed Knowledge  
and Human Sciences  
International Islamic University  
Malaysia**

**AUGUST 2012**

## ABSTRACT

The abuse of polygamy in Malaysia is a reality that can no longer be ignored. This research is based on the theoretical assumption that the abuse has nothing to do with the Sharī'ah provision on polygamy, but with the human agency which has failed to apply it according to its Sharī'ah general intents (*maqāṣid al-Sharī'ah*) as enshrined in the Qur'ān and Sunnah of the Prophet (PBUH). This is mainly a qualitative research that involves an analytical study of relevant Qur'ānic verses and Prophetic traditions (*ahādīth*) of the Prophet (PBUH) related to polygamy, and their interpretations by both classical and modern commentators. This textual analysis is aimed at determining the general intents of Sharī'ah legislation on polygamy, and to identify basic qualifications that qualify Muslims to practice it. The same analytical method is applied to study a total of 220 selected polygamy application files from 2007 to 2009 available at Kuala Lumpur and Selangor Shariah Judiciary Courts. Its main objective is to determine the educational background and financial capability of the polygamy applicants, and to ascertain as to whether the "reasons for polygamy" stated in their applications are explicitly consistent with the basic qualifications and the general intents of Sharī'ah legislation on polygamy. Critical analysis on IFLA (Islamic Family Law Acts) has shown that its legal provisions on polygamy and penalties on those who break the law on polygamy are inadequate to curb the abuse of polygamy. The study has also found that the majority of polygamy applicants were not equipped with the basic qualifications required by the Sharī'ah, and the reasons they produced in the application forms were not consistent with the general intents of Sharī'ah legislation on polygamy as reflected in the Qur'ān and Prophetic traditions. Based on the findings, the study demonstrates; first, the absence of basic qualifications on behalf of the applicants is one of the main causes of the abuse of polygamy; and second, many of the reasons produced by the applicants were simply concocted, uncorroborated with evidences and unjustified, and thus may lead to the abuse of polygamy. Finally, in order to address this problem, this research proposes a comprehensive reform of the administration of Islamic Family Law in Malaysia and Sharī'ah judicial system and the introduction of parenting course in schools and higher institutes of learning.

## ملخص البحث

إن تعسف الرجال في الإقدام على تعدد الزوجات في ماليزيا أصبح واقعا لم يعد قابلا للتجاهل. ويستند هذا البحث على الافتراض النظري بأن التعسف في قضية تعدد الزوجات ليس له علاقة بالأحكام الشرعية، وإنما علاقته مع السلوك البشري الذي فشل في ممارسة تعدد الزوجات وفقا للمقاصد الشرعية على النحو المنصوص عليه في القرآن والسنة. ويسير هذا البحث على أساس الدراسة النوعية وينطوي على دراسة تحليلية للآيات القرآنية ذات الصلة وتفسيرها، والأحاديث النبوية المتعلقة بتعدد الزوجات، من قبل كل من المفسرين المتقدمين والمعاصرين. ويسعى هذا البحث إلى تحليل المقاصد العامة للشرعة في تشريع تعدد الزوجات، والتأكد من المؤهلات الأساسية التي يجب على أحد أن يؤهله من أجل ممارسته. ويطبق نفس الأسلوب التحليلي لدراسة ملفات مختارة وتبلغ مجموعتها ٢٢٠ ملفاً لمقدمي طلب تعدد الزوجات من العام ٢٠٠٧م - ٢٠٠٩م المتوفرة في المحاكم الشرعية القضائية بكوالا لمبور وسلانجور. وهدفه الرئيسي هو تحديد الخلفيات التعليمية والقدرات المالية لمقدمي الطلب على تعدد الزوجات، وكذلك للتأكد من ما إذا كانت "الأسباب لتعدد الزوجات" المذكورة في طلباتهم متفقة بشكل صريح مع المؤهلات الأساسية والمقاصد العامة للشرعة في تشريع تعدد الزوجات. وقد أظهر التحليل النقدي على مرسوم قانون الأسرة الإسلامية أن بنود الأحكام القانونية بخصوص تعدد الزوجات والعقوبات المفترض على أولئك الذين خرقوا القانون ليست مؤثرة للحد من ارتكاب التعسف. فبناء على النتائج التي توصل إليها، أثبت البحث؛ أولاً: إن عدم وجود المؤهلات الأساسية لدى مقدمي الطلبات هي إحدى الأسباب الرئيسية للتعسف؛ وثانياً: إن العديد من الأسباب الإقدام على الزواج كانت مصطنعة لدى المتقدمين وواهية، غير مؤيدة بالأدلة وغير مبررة. ولمعالجة القضية، اقترح البحث إجراء إصلاح شامل لإدارة قوانين الأسرة الإسلامية في القانون الماليزي والأنظمة القضائية وإدخال المواد الدراسية التي تعنى بالتربية الأسرية في المدارس والمعاهد العليا.

## APPROVAL PAGE

The thesis of Raudlotul Firdaus binti Fatah Yasin has been approved by the following:



---

Mohamad Shah Jani  
Supervisor

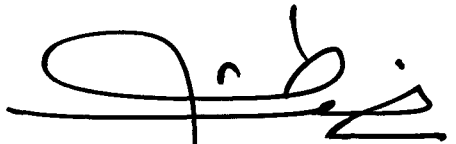


---

Israr Ahmad Khan  
Internal Examiner

---

Muhammad Mustaqim Mohd Zarif  
External Examiner



---

Radwan Jamal Yousef Hussein  
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.

Raudlotul Firdaus binti Fatah Yasin

Signature.....*رومنة الغزواني*.....

Date.....*7/8/2012*.....

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

**DECLARATION OF COPYRIGHT AND AFFIRMATION  
OF FAIR USE OF UNPUBLISHED RESEARCH**

Copyright © 2012 by International Islamic University Malaysia. All rights reserved

**THE ABUSE OF POLYGAMY IN MALAYSIA, 2007-2009; A CRITICAL  
ANALYSIS FROM ISLAMIC PERSPECTIVE**

No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by 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 only 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 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 Raudlotul Firdaus binti Fatah Yasin.

روضه الفردوس

.....  
Signature

7/8/2012

.....  
Date

*Dedicated to my...*  
*Beloved Husband & Children,*  
*Respectful Parents & Parents in-law,*  
*Great Supervisor,*  
*Helpful Brothers, Sisters & in-laws...*  
*...your prayers to The Almighty have been supporting me throughout this life.*

## ACKNOWLEDGEMENTS

In the name of Allāh, the Most Gracious, the Most Merciful, the Bestower of Mercy. May peace and blessings be upon His Messenger, Prophet Muḥammad, his family and faithful Companions. I ask Allāh to inspire me with wisdom, to honor me with the grace of pure-hearted devotion to Him alone, and to render this effort, fruitful in this world and acceptable to Him in the Day After. For a certainty, His mercy and grace, I am able to complete this research.

This research would not have been possible without the wills of Allāh, guidance and the help of several individuals who in one way or another contributed and extended their valuable assistance in the preparation and completion of this research.

Above all, I would like to thank my husband, Ahmad ‘Arif, for his personal support and great patience at all times. My parent and parent in laws for their continuous prayers and unequivocal supports, as always, for which my mere expression of thanks likewise does not suffice.

First and foremost, my absolute gratitude to my great supervisor, Asst. Professor Dr. Mohd. Shah Jani whose sincerity and encouragement I will never forget. Dr. Mohd. Shah has been supervising me as I hurdle all the obstacles in the completion of this research work.

The good advices of the internal examiner, Professor Dr. Israr Khan of the Department of Qur’an and Sunnah Studies, International Islamic University Malaysia. My sincere thanks to the external examiner, Assoc. Prof. Dr. Muhammad Mustaqim Mohd. Zarif from Islamic Science University of Malaysia (USIM).

I am most grateful to Chief Registrars and Research Officers of both Kuala Lumpur and Selangor Shariah Courts for providing me with all the related information on polygamy and the abuses, which have been a valuable and reliable source of analysis for this research.

Last, but by no means least, I thank my siblings, friends and colleagues for their cooperation and encouragement throughout. May Allāh grants all of you with the best rewards in this world and the Day After.



## TABLE OF CONTENTS

Abstract.....	ii
Abstract in Arabic.....	iii
Approval Page.....	iv
Declaration Page.....	v
Copyright Page.....	vi
Dedication.....	vii
Acknowledgements.....	viii
List of Tables.....	xiii
List of Figures.....	xiv
List of Abbreviations.....	xv

### CHAPTER 1: INTRODUCTION

1.0 Introduction.....	1
1.1 Problem Statement.....	9
1.2 Research Questions.....	17
1.3 Objectives of the Study.....	17
1.4 Limitation and Scope of Research.....	18
1.5 Significance of the Study.....	22
1.6 Literature Review.....	24
1.7 Research Methodology.....	41
1.8 Thesis Outline.....	43

### CHAPTER 2: POLYGAMY FROM AN ISLAMIC PERSPECTIVE

2.0 Definition and Historical Background.....	47
2.1 Polygamy in the Qur'ān.....	57
2.1.1 Traditional Muslim Scholars Interpretations on Polygamy.....	60
2.1.2 Modern Muslim Scholars Interpretations on Polygamy.....	73
2.1.2.1 Pro Polygamy Interpretation.....	77
2.1.2.2 Strict and Stringent Interpretation.....	87
2.1.2.3 Objective Interpretation.....	98
2.1.3 The Connection of the Verse, between Polygamy, Widows and Orphan Girls.....	109
2.2 Polygamy in the Sunnah.....	117
2.2.1 The Practise of Polygamy During the Early Age of Islam.....	117
2.2.1.1 The Legislation of Polygamy in the Sunnah.....	117
2.2.1.2 The Tradition on Polygamy.....	121
2.2.2 The Prophet Muḥammad's (PBUH) Prohibition on Polygamy.....	127
2.3 The Higher Intents of Polygamy in Shari'ah Legislation.....	134
2.3.1 Helping orphans .....	138
2.3.2 Helping and sheltering widows.....	142
2.3.3 Protecting a woman's faith.....	144
2.3.4 Attracting the enemy's tribe for peace.....	146
2.3.5 Strengthening Muslim Brotherhood.....	149
2.3.6 Freeing and appreciating female slaves or captives.....	149
2.3.7 Appreciating a gift or proposal from noble people.....	150

2.3.8	Introducing new legislation regarding adopted son.....	151
2.4	The Qualification of Practising Polygamy in the Qur'ān and Sunah.....	152
2.4.1	Financial Eligibility.....	154
2.4.1.1	The Obligation of Financial Support.....	154
2.4.1.1.1	The Obligation of Financial Support in the Qur'ān.....	157
2.4.1.1.2	The Obligation of Financial Support in the Sunnah.....	160
2.4.1.2	Woman's Renouncement/Waive of her Right for Justice.....	165
2.4.1.3	<i>Misyār</i> Marriage.....	168
2.4.2	Physical Eligibility.....	175
2.4.2.1	Physical Eligibility to Perform Daily Rotation and Fulfil Woman's Biological Needs.....	175
2.4.2.1.1	The Obligation of Daily Rotation for Polygamous Man.....	177
2.4.2.1.2	The Obligation of Undertaking Sexual Intercourse with Wives.....	179
2.4.2.2	Physical Eligibility to Earn Living Income.....	185
2.4.3	Psychological Eligibility.....	187
2.5	The Wisdom of Polygamy in Islam.....	191
2.5.1	The Wisdom of Polygamy in Reducing Women Socio Related Problem in Malaysia.....	192
2.5.1.1	Prostitutions.....	193
2.5.1.2	Adultery and Pregnancy Out of Wedlock.....	196
2.5.2	The Wisdom of Polygamy in Saving the Widows, Single Mothers and Unmarried Aging Women in Malaysia.....	204
2.5.2.1	Widows and Single Mothers in Malaysia.....	204
2.5.2.2	Unmarried Aging Women in Malaysia.....	205
2.5.3	The Wisdom of Polygamy in Solving the Problems of Barren Wives.....	209
2.5.4	The Wisdom of Polygamy in Solving the Problems of Menopause and Wives.....	211

### **CHAPTER 3: THE ABUSE OF POLYGAMY IN MALAYSIA**

3.0	Introduction.....	215
3.1	The Process of Polygamy Application in Shariah Courts.....	216
3.1.1	Inconsistency of Polygamy Application in Different States.....	216
3.1.2	Polygamy Application Process in Selangor Shariah Judiciary Court (JKSS).....	218
3.1.3	Polygamy Application Process in Kuala Lumpur Shariah Court (MSWP).....	221
3.1.4	Analysis on the Process of Polygamy Applications in both Shariah Courts.....	223
3.2	Analysis on the Recorded Applications in Relation to the Abuse of Polygamy.....	233
3.2.1	The Definition of Abuse of Polygamy .....	233
3.2.2	Analysis of the Reasons Stated in Polygamy Applications in Relation With the Abuse of Polygamy.....	237
3.2.2.1	Reasons Stated in Polygamy Applications.....	237
3.2.2.2	Analysis of the Reasons Stated in Polygamy Applications.....	238
3.2.2.3	The Relation between the Reasons Stated and the Abuse of Polygamy.....	251

3.2.3 The Qualifications of the Applicants in the Recorded Applications and Their Relation to the Abuse of Polygamy.....	256
3.2.3.1 Introduction.....	256
3.2.3.2 The Analysis of the Qualifications of the Applicants at Shariah Courts.....	259
3.2.3.3 The Relation between the Qualifications of the Applicants and the Abuse of Polygamy.....	263
3.3 Analysis on the Efficiency of Current Legal Provision in Curbing the Abuse of Polygamy.....	274
3.3.1 Introduction.....	274
3.3.2 An Overview of Islamic Family Law Act (Federal Territories) 1954, and State of Selangor Enactment 2003 Provisions on Polygamy.....	275
3.3.3 The Provision on Polygamy Permission in IFLA.....	276
3.3.4 The Conditions of Polygamy in IFLA.....	280
3.3.5 The Consent or View of Wives in IFLA.....	285
3.3.6 Darar Sharie in IFLA.....	290
3.3.7 Penalties of Illegal Polygamy in IFLA.....	294
3.3.8 Conclusions of IFLA Federal Territories and Selangor Enactment.....	298
3.3.9 The Relation between the Weakness of IFLA and the Cases of Polygamy Abuses in Malaysia.....	300

#### **CHAPTER 4: SOLUTION OF THE ABUSE OF POLYGAMY IN MALAYSIA; ANALYTICAL STUDY FROM ISLAMIC PERSPECTIVE**

4.1 The Need to Clarify the Misconception on Polygamy.....	302
4.2 Preventive Measures Against the Abuse of Polygamy.....	308
4.2.1 Establishment of Public Awareness on the Objective of Polygamy and Its Obligation.....	309
4.2.1.1 Inculcation of <i>Taqwā</i> .....	310
4.2.1.2 Religious Awareness and the Sense of Integrity.....	319
4.2.2 Establishment of Social Awareness.....	329
4.2.2.1 Reappraisal of the Role and Place of Women in Society.....	329
4.2.2.2 Establishment of Ideal Islamic Environment.....	341
4.2.2.2.1 Righteous Worship of Allāh Derived from Sincerity of Faith.....	345
4.2.2.2.2 Enjoining <i>al-Ma'rūf</i> (permissible) and Forbidding <i>al-Munkar</i> (prohibited).....	346
4.2.2.2.3 Counselling and Advice.....	348
4.2.2.2.4 Introducing a Public Role Model.....	350
4.2.2.2.5 Guarding Dignity, Modesty and Virtue.....	351
4.2.2.3 Introducing Parenting and Family Related Subjects in Educational System.....	361

#### **CHAPTER 5: CURBING THE ABUSE OF POLYGAMY; INSTITUTIONAL REFORM**

5.0 Introduction.....	366
5.1 Islamic Family Law Act (IFLA), The Need of Reform.....	367
5.1.1 Introduction of “Pre-Polygamy Course and Assessment” for all Polygamy Applicants.....	370

5.1.2 The Need To Reform the Penalty for Polygamy without Court's Permission and Unjust Husbands or Wives.....	374
5.2 Quality Improvement and Authority Extension of Shariah Court.....	382
5.2.1 Memorandum of Understanding (MOU) between Malaysian Shariah Judiciary Body with the Neighboring Countries Islamic Councils.....	385
5.2.2 Quality Improvement of Shariah Court's Judges.....	388
5.2.3 Establishment of a Standard Judiciary Guideline for Polygamy Approval.....	393
6.0 Conclusions and Recommendations.....	400
6.1 Qualification of Practising Polygamy.....	401
6.2 Reasons for Contracting Polygamous Marriage.....	401
6.3 Definitive Meaning of the Abuse of Polygamy.....	403
6.4 Major Problems as a Result of the Abuse of Polygamy.....	404
6.5 The Insufficiency of IFLA in Curbing the Abuse of Polygamy.....	406
6.6 The Solution of the Abuse of Polygamy in Islamic Perspective.....	407
6.7 Curbing the Abuse of Polygamy: Institutional Reform.....	409
6.8 Suggestions for Future Studies.....	412
6.9 Closing Remarks.....	413

<b>BIBLIOGRAPHY.....</b>	<b>414</b>
--------------------------	------------

APPENDIX A (i): Interview script with Research Officer JKSS
APPENDIX A (ii): Interview script with Research Officer
APPENDIX B (i): Document required for polygamy application at JKSS
APPENDIX B (i): Polygamy application form JKSS
APPENDIX B (iii): <i>Iqrar</i> form JKSS
APPENDIX B (iv): Personal information form JKSS
APPENDIX C (i): Polygamy application form MSWP
APPENDIX C (ii): <i>Iqrar</i> form MSWP
APPENDIX D: Model of new polygamy application form
APPENDIX E (i): Interview script with Chief Registrar JKSS
APPENDIX E (i): Interview script with Chief Registrar MSWP

## LIST OF TABLES

<u>Table No.</u>		<u>Page No.</u>
2.1	Summary of Muslim marriages in Malaysia	204
2.2	Summary of Muslim divorces in Malaysia	204
2.3	Summary of Malaysian Population by Age, Group and Sex	206
2.4	Drug Addict Report from 2007 until January-July 2008	207
3.1	Comparison of polygamy application processes between MSWP and JKSS	228
3.2	Polygamy applications at the JKSS	231
3.3	Description of different categories of abuses in polygamous marriage	236
3.4	Types of reasons stated in polygamy applications in both Shariah Courts	250
4.1	Types of integrity and its role in preventing abuse of polygamy	327

## LIST OF FIGURES

<u>Figure No.</u>		<u>Page No.</u>
2.1	Population of Malaysia by gender in 2009	192
2.2	Prostitutes lives with both or either parents	194
2.3	Percentage of illegal infants born without fathers according to their religions	197
3.1	The flow of polygamy application at the Selangor Shariah Judiciary Court	221
3.2	Polygamy Application Process at MSWP	223
3.3	Polygamy applications percentage at MSWP	225
3.4	Appeals of Polygamy for Re-registration at MSWP	226
4.1	Benefits of <i>taqwā</i> in guiding again the abuse of polygamy	318
4.2	Conclusion of establishment of an Ideal Islamic Environment	361

•

## LIST OF ABBREVIATIONS

edn.	edition
e.g.	( <i>exempligratia</i> ); for example
etc.	( <i>et cetera</i> )
ibid	( <i>ibidem</i> ): at the same place
IFLA	Islamic Family Law Act
JKSS	Jabatan Kehakiman Shariah Selangor
MSWP	Mahkamah Shariah Wilayah Persekutuan
n.d.	no date
n.p.	no place/publisher
no.	Number
PBUH	Peace be upon him
r.a.	Raḍiya Allāh ‘anhu/hā
SWT	Subḥānahu wa Ta‘āla
Trans	Translated by
Vol.	Volume

## CHAPTER 1

### INTRODUCTION

In Islam, Muslims are allowed to take up to four women for wives. This permission is sanctioned by the Sharī‘ah on the ground of the command of Allāh as stated in the Qur’ān, Sūrah al-Nisā’ 4: 3:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِّنَ النِّسَاءِ مَثْنَىٰ  
وَتِلْكَثَ وَرُبَاعًا فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَذَىٰ  
أَلَّا تَعُولُوا

And if you fear that you shall not be able to deal justly with the orphans-girls, then marry (other) women of your choice, two or three or four; but if you fear that you shall not be able to deal justly (with them), then only one, or (the captives) that your right hands possess, that nearer to prevent you from doing injustice.

Muslims have recognized that all Sharī‘ah injunctions governing every aspect and activities of human life are founded on the command of Allāh, the Wise and the All-knowing of everything concerning what is beneficial and what is harmful for His creation. Based on this general assumption, they have concluded that all things permissible according to Sharī‘ah injunctions are due to the fact that their benefit to individuals and society is significantly greater than their harm. Similar assumption has been equally applied by Muslim exegetes (*mufasssirūn*) in their interpretations of the above quoted Qur’ānic verse that deals specifically and directly with the issue of polygamy.<sup>1</sup> Consequently, some Muslim scholars have a tendency to emphasize their interpretations on this Sharī‘ah injunction in the light of its “benefits” to individuals

---

<sup>1</sup>Interpretations of Muslim exegetes on the above quoted verse are essentially literal and general in nature, and often without providing any in-depth discussion concerning the *raison d’être* of polygamy, with the exception of al-Ṭabarī who has discussed at length by quoting relevant traditions pertaining to the mistreatments and various forms of injustice against widows and female orphans that brought about



and society only, while paying merely a lip-service, if not neglecting it altogether, on analyzing other pertinent issues related to polygamy, such as the *raison d'être* for the revelation of this injunction, the strict conditions and requirements that a Muslim must fulfill before exercising his right to practice polygamy, and more importantly the emerging problems affecting the life of many Muslim women and their children as immediate consequences of polygamy; the polygamy that has been irresponsibly practiced on the ground of predominantly male chauvinist philosophy of life which has viewed “polygamy as the right of Muslim men sanctioned by the Sharī‘ah” rather than as a sacred Sharī‘ah provision that is aimed at realizing the general purposes of the Divine Law (*maqāṣid al-Sharī‘ah*) as enshrined in the passages of the Qur’ān and the authentic traditions (*aḥādīth*) of the Prophet Muḥammad (PBUH).

Unfortunately, as it has been frequently pointed out by feminist authors, it was this male chauvinist interpretation of polygamy which has been dominating and continued to influence the codification of Islamic jurisprudence on matters closely related with personal and family laws. Not until the nineteenth century, the theoretical assumption of polygamy being “one of the rights of Muslim men sanctioned by the Sharī‘ah”, rather than as an “exceptional rule” attached with absolute conditions, such as being able to bear the responsibility (*amānah*) of treating the wives with fairness and to uphold justice (*‘adl*) in dealing with their affairs, was still predominant in the works of many classical jurists (*fuqahā’*) of the Four Schools of Islamic jurisprudence.<sup>2</sup> Arbitrary interpretation like this has opened the gate for the widespread abuse of this Sharī‘ah provision by irresponsible Muslim men whose practice of polygamy has created as a consequence more socio-economic and ethical

---

the revelation of the above Qur’ānic verse, not only restricting the number of women that a Muslim could take for wives, but also outlining certain preconditions for one’s eligibility to practice polygamy.

<sup>2</sup> Namely; *Shafī’iyyah*, *Ḥanābilah*, *Ḥanafīyyah* and *Mālikīyyah*.

problems rather than to resolve them. This reality contradicts the ideal philosophy and objectives of polygamy as enshrined in the Qur'ān and the Sunnah of the Prophet (PBUH).

Such a contradiction has forced Muslim scholars of the later centuries, who were appalled with dismay by the feminist and modernist criticism of polygamy, to calling for the reinterpretation of this Sharī'ah provision in the context of its original source as prescribed in the Qur'ān.<sup>3</sup> Famous among them was a renowned scholar and former rector of *al-Azhar*, Muḥammad 'Abduh, who often expressed his critical views on this subject in his writings, especially in his commentary of the Qur'ānic verses related to polygamy. He and those who supported his call for the reinterpretation of Islam and its place in the modern age have always argued that the Qur'ān has never imposed polygamy as a universal principle; it is neither encouraged nor advocated. Contrary to the traditional view held by his critics, 'Abduh did not hesitate to argue that the characteristic mode of Qur'ānic verse on polygamy is non-committal. It does not encourage polygamy as an alternative to monogamy, nor does it advocate it as a fundamental teaching of Islamic social system.

According to Muḥammad 'Abduh, the above Qur'ānic verse simply states that polygamy is permissible, but this permissibility is not absolute because it is attached with strict conditions indicated clearly in the same verse,<sup>4</sup> “but if you fear that you

---

<sup>3</sup> Especially after the 19<sup>th</sup> century when Sheikh Muhammad 'Abduh, the former Rector of Al-Azhar University of Egypt criticized the practise of polygamy in modern times where many abuses occurred from this practise. See Rashīd Riḍā, Muḥammad, *Tafsīr al-Qurān al-Ḥakīm (al-Manār)* (Al-Qāhirah: Al-Hai'ah al-Miṣriyyah al-'Āmah li al-Kitāb, 1990), vol. 4, 285-294; Engineer, Ashgar Ali, *The Rights of Women in Islam* (Kuala Lumpur: IBS Buku Sdn Bhd, 1992), 102.

<sup>4</sup> See Al-Ṭabarī, Abī Ja'far, *Jāmi' al-Bayān* (Beirut: Dār Iḥyā al-Turāth al-'Arabī, 2001), vol. 4, 292-297; Al-Zuhailī, Wahbah, *Al-Fiqhul Islāmī wa Adillatuhu* (Beirut: Dār al-Fikr, 2<sup>nd</sup> edn, 1997), vol. 9, 6669; Al-Zuhailī, Wahbah, *Al-Tafsīr al-Munīr* (Beirut: Dār al-Fikr, 2<sup>nd</sup> edn, 1998), vol. 4, 234-235; Abū Shaqqah, 'Abdul Halīm Muhammad, *Tahrīr al-Mar'ah fī 'Aṣr al-Risālah* (Kuwait, Al-Qāhirah: Dār al-Qalam, 2002), vol 5, 291.

shall not be able to deal justly (with them), then only one”.<sup>5</sup> The verse contains God’s command that if the husband has thought of not being able to treat the wives with justice and fairness, he should never be tempted of pursuing his intention to marry more than one wife. In this case, monogamy is more favorable to the Qur’ān than polygamy, because the possibility of certain groups of people, especially women and children, being subjected to all sorts of injustice and oppression is greater than the benefit they might have attained through the practice of polygamy.<sup>6</sup> In fact, the Prophet (PBUH) was aware of this possibility. In one of his traditions (*aḥādīth*), he has strongly reprimanded the Muslims with the warning of God’s chastisement in the Hereafter if they abused this Sharī’ah provision and deprived their wives of their legal rights to fair treatments. He says:

مَنْ كَانَتْ لَهُ امْرَأَتَانِ فَمَالَ إِلَىٰ إِحْدَاهُمَا دُونَ الْأُخْرَىٰ جَاءَ يَوْمَ الْقِيَامَةِ، وَشِقُّهُ  
مَائِلٌ

He who has two wives and has been biased in favour of one of them against the other shall rise on the Doomsday in a manner in which his shoulders are imbalanced.<sup>7</sup>

However, the justice mentioned in the verse is within human’s ability, which is related to being fair in division of time and treating each wife equitably with regards to their financial maintenance. As for being just with respect to heart feeling and conjugal relations, it is beyond human’s ability. Neither perfect nor absolute just is possible as indicated in another verse from Sūrah al-Nisā’: 129:

<sup>5</sup> Sūrah al-Nisā’: 3.

<sup>6</sup> Ibid; see also Al-Kurdīstānī, Mathnā Amīn, *Harakāt Tahṛīr al-Mar’ah min al-Musāwah ila al-Jundur*, edited by Muhammad ‘Imārah (Kuweit: Dar al-Qalam, 2004), 391.

<sup>7</sup> Narrated by Abu Hurairah, recorded by Abū Dāwūd, Sulaimān bin al-Ash’ath, *Sunan Abū Dāwūd* (Riyadh: Dār al-Salām, 3<sup>rd</sup> edn., 2000), Kitāb al-Nikāḥ, no. 2133, 1380; Al-Nasāī’, Aḥmad bin Shu’aib bin ‘Alī, *Sunan al-Nasāī’* (Riyadh: Dār al-Salām, 3rd ed., 2000), Kitāb al-Nikāḥ, no. 3394, 2307.

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا  
كَالْمُعَلَّقَةِ وَإِنْ تُصْلِحُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provision) so as to leave her hanging (i.e. neither divorced or married). And if you do justice, and do all that is right and fear Allāh by keeping away from all that is wrong, then Allāh is Ever Oft-Forgiving, Most Merciful.

The verse is not an excuse to legitimize the action of unequal treatment of wives, hence in a tradition related to this, ‘Aishah r.a. stated that the Prophet (PBUH) used to divide his time between his wives and he was fair. He used to say:

اللَّهُمَّ هَذَا قَسْمِي فِيمَا أَمْلِكُ فَلَا تُلْمَنِي فِيمَا تَمْلِكُ وَلَا أَمْلِكُ

Oh Allāh, that is my division with respect to what I have control over. Do not blame me for what You control over<sup>8</sup> which I have no control.<sup>9</sup>

Other scholars tend to be neutral in their views of polygamy by emphasizing that it may be useful in certain circumstances if it is practiced by those who are religiously and morally qualified according to the requirements of the Sharī‘ah. At the same time they have also expressed their apprehension amid the many social problems resulted of moral negligence by men who have practiced polygamy but failed to fulfil their obligations towards their wives and children. Consequently, instead of seeking to achieve objectives compatible to the general *maqāṣid* of the Sharī‘ah, their practice of polygamy has brought about misconceptions and negative impressions of other people towards Islam and its institutions. Some have put the blame on Islam for bringing more illiterate, uneducated, poor, and in some cases, starving children into already backward Muslim societies. It happens that among the major factors that have caused the existence of these problems is directly or indirectly related with irresponsible

<sup>8</sup> Means ‘heart’. See Abū Dāwūd, *Sunan*, Kitāb al-nikāḥ, Bāb al-qasm bayna al-Nisā’, no. 2134, 1380.

actions and negligence of those who have practiced polygamy, a tradition which is sanctioned by Islam.<sup>10</sup>

This research does not aim at analyzing the pros and cons of polygamy, nor does it seek to blame polygamy, which is in fact a legitimate provision of the Sharī'ah, for the existence of many social problems affecting the Muslim society in Malaysia today. As agreed by Muslim scholars, the ultimate aim for the application of Sharī'ah provisions prescribed by Islam is always for the betterment of the individual and collective life of its adherents. Similar observation should be equally applied to the Sharī'ah provision on polygamy. Like many other provisions under the Sharī'ah Law, the underlying objectives for the institutionalization of polygamy in Muslim society should therefore be interpreted as an integral whole of its endeavour to realize the general *maqāṣid* (purposes or intents) of the Sharī'ah as they are explicitly expressed throughout the two fundamental sources of the Sharī'ah; the Qur'ān and the traditions of the Prophet (PBUH).

Scholars of *uṣūl al-fiqh* (Principles of Islamic Jurisprudence), namely Imām al-Shāṭibī and the main interpreter of his legal theory on *maqāṣid* of the Sharī'ah, Ibn 'Ashur, have basically subsumed their interpretations and understanding to determine the higher objectives of Islamic legislation under the universal purpose of protecting and preserving the five essentials (*al-darūriyyāt*), which are absolutely indispensable for the wellbeing and betterment of human life in this world and the Hereafter.<sup>11</sup> These

---

<sup>9</sup> Ibid, 1380.

<sup>10</sup> See Ibid; See also Zaydān, 'Abdul Karīm, *Rudūd 'Alā al-Shubhāt Ḥaula al-Ta'ddud al-Zaujāt* (Al-Qāhirah: Maktabah al-Tau'iyyah al-Islāmiyyah, 1991), 4-5; Al-Maudūdī, Abul A'lā, *Ḥuqūq al-Zawjain*, translated from Urdu by Ahmad Idrīs (Jeddah: al-Dār al-Sa'ūdiyyah, 1985), 40; Al-Ni'mah, Ibrāhīm, *Al-Islām wa Ta'addud al-Zaujāt* (Jeddah: al-Dār al-Sa'ūdiyyah, 2<sup>nd</sup> edn, 1984), 19-22; Taghārīd Baydūn, *Al-Mar'ah wa al-Ḥayāh al-Ijtima'iyyah fī al-Islām* (Beirut: Dār al-Nahḍah al-'Arabīyyah, 1985), 87; Al-Muthī'ie, 'Abdul 'Azīm, *Al-Mar'ah fī 'Aṣr al-Risālah bayna Wāqi'yyah al-Islām wa Auhām al-Murjiḥīn* (Al-Qāhirah: Dār al-Fatḥi li al-I'lā al-'Arabī, n.d), 152-153.

<sup>11</sup> Al-Shāṭibī, Abī Ishāq, *Al-Muwāfaqāt Fī Uṣūl al-Sharī'ah* (Beirut: Dār al-Ma'rifah, 3<sup>rd</sup> edn., 1997), vol. 2, 322.

five essentials include the protection and preservation of religion (*dīn*), the protection and preservation of life (*hayāh*), the protection and preservation of wealth and property (*māl*), the protection and preservation of progeny (*nasl*), and lastly the protection and preservation of mind (*‘aql*).<sup>12</sup> Apart from protecting and preserving the universal essentials stated above, the scholars of *uṣūl* have also identified other higher intents of the Law Giver in Islamic legislations. Important among them is the protection of the general interests (*maṣāliḥ al-‘āmmah*) of mankind.<sup>13</sup> It is assumed that the attainment of this higher objectives is not possible unless with the implementation and application of the entire prescriptions of the Sharī‘ah Law governing every aspect of human life, which is also meant to bring about benefits (*manfa‘ah*) and to eliminate harm (*ḍarar*).<sup>14</sup>

Polygamy is no exception. Its legislation is complementary for the purpose at realizing the higher intents of the Law Giver. As such, its legislation must be therefore aimed at bringing about benefit and to eliminate harm. Al-Ghazālī and Ibn ‘Ashūr have furthermore analyzed the *maqāṣid al-sharī‘ah* as derived from the legislation of polygamy with special reference to protecting the sanctity of family institution in Islam. The theory was further expanded by later scholars<sup>15</sup> to include another seven purposes of Sharī‘ah, namely to regulate gender relationship between the opposite sexes (*tanẓīm al-‘alāqah bayn al-jinsain*), to protect and preserve the sanctity of human genealogy (*ḥifẓ an-nasl*), to bring about harmony, affection and compassion among members of a family (*tahqīq al-sakan wa al-mawaddah wa al-raḥmah*), to protect and preserve the inviolability of human descendants (*ḥifẓ al-nasab*), to protect

---

<sup>12</sup> Ibid, vol. 2, 326.

<sup>13</sup> Ibid, vol. 2, 365.

<sup>14</sup> Ibid, vol. 2, 353.

<sup>15</sup> One of them is ‘Aṭīyyah, Jamāl al-Dīn, *Naḥw Taf‘īl Maqāṣid al-Sharī‘ah* (Damsyiq: Dār al-Fikr, 2001).

the family's religious interest (*hiḥfẓ al-tadayyun fī al-usrah*), to enhance and strengthen the foundational structure of one's family (*tanzīm al-jānīb al-mu'assasah li al-usrah*) and lastly, to regulate the economy of one's family (*tanzīm al-jānīb al-mālī li al-usrah*).<sup>16</sup> Unfortunately, the prevailing reality related to some cases of the practice of polygamy in Malaysia is running counter against the original objectives of its legislation. Instead of bringing about benefit and eliminating harm, some cases of the practice of polygamy in Malaysia have created problems affecting many Muslim women and children. This research is always in agreement with the assumption that polygamy should never be a problem. However, to overlook and to remain silent over the many social problems directly or indirectly caused by the abuse of polygamy among Muslims in Malaysia is tantamount to an act of sheer absurdity and deliberate denial of truth.

This research does not claim of being comprehensive. It attempts to identify and analyze some of the social problems affecting Muslim women and children in Malaysia as a result of the practice of polygamy. It also aims at identifying what are the main reasons or factors that might have tempted Muslim men in Malaysia to opt for polygamy instead of monogamy, although some recognized the fact that they were far away from being religiously and morally qualified to practice it. It is also the objective of this research to bring to light some of the abuse cases or instances in the practice of polygamy in Malaysia that have not only been constantly subjects of criticism by feminist and human rights writers, but also contrary to the higher objectives or intents for the Islamic legislation of polygamy. Unfortunately, these are the cases that have been partly responsible in distorting the public understanding of

---

<sup>16</sup> See Ibid, 148-154.

polygamy, and are in themselves a form of *fitnah* (misunderstanding) which has severely tarnished the image of Islam to non-Muslims.

## 1.1 PROBLEM STATEMENT

It must be made clear that this research has nothing to do with the demands of some groups in Malaysia which are calling for Muslims to reinterpret the Sharī'ah provision on polygamy in the context of liberal ideologies and the western notions of human rights, nor does it concern itself with the necessity of defending polygamy from the many unfounded allegations by those who have accused it no longer in harmony with the so-called liberating spirits and practices of modernity. At the same time, it must be also emphasized that this research does not in any way represent the pseudo-traditionalist position on polygamy, which is proven to have widely influenced Muslims with their portrayal of polygamy being one of men's rights and privileges sanctioned by the religion. The fact of the matter is that many of its interpretations on polygamy are often mixed-up with the indigenous customs and practices (*'ādāt*) which are essentially patriarchal in nature. Such interpretations have paved the way for the widespread abuse of polygamy by those who have viewed it as an effective tool to reinforce their patriarchal credentials and status quo. More often than not, these pseudo-traditionalist<sup>17</sup> interpretations of polygamy constitute a kind of stimulant for the revival of the Arab *jāhiliyyah* practices rather than applying the truly Sharī'ah concept of polygamy whose ultimate aim is but justice.<sup>18</sup>

---

<sup>17</sup> Such as the member of Al-Arqaṃ group who tend to be a scholar while issuing *fatwā* although their religious educational background are insufficient to be called as scholars.

<sup>18</sup> The Arabic word for justice is *'adl*, but the Qur'ān in the case of polygamy has used the word *qist* whose meaning is deeper than the English rendering of *'adl* with justice. One can only argue that when dealing with polygamy, the Qur'ān has strongly urged the Muslim men to treat their wives with absolute justice and fairness (*qist*) in its both exoteric (*ẓāhir*) and esoteric (*bāṭin*) meanings.