

## WOMEN'S ADVOCACY FOR IMPOSING STRINGENT STIPULATIONS ON POLYGAMY IN MUSLIM MARRIAGE AND DIVORCE ACT OF SRI LANKA: A JURISTIC ANALYSIS

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### ABSTRACT

*There has been a deadlock between the women's organizations and the Islamic jurists concerning the reforms in Muslim Marriage and Divorce Act of Sri Lanka. Exclusively, the women organizations in Sri Lanka advocate for reforming the polygamous system by imposing harsh conditions on the husbands who intend to contract subsequent marriages such as obtaining the consent of the first wife, assurance of fair treatment, declaration of assets and nullification of the marriage if it is not registered officially. All these changes are lobbied for the ultimate purpose of gradual abolition of polygamy so as to safeguard the women and children from the detrimental effects of polygamy physically, fiscally, mentally and socially. Nonetheless, the Islamic jurists in Sri Lanka denounce this proposal as being fallacious and against the ruling of polygamy in Islam. Hence, this study aims to bridge the gaps by breaking the deadlock between the women organizations and the Islamic jurists. Accordingly, it scrutinizes the women's lobby for amending the polygamous practice and its contingencies in the Sri Lankan context by juristic analysis drawing on the Islamic jurisprudential sources, the standpoints of prominent jurists and the outlook of eminent scholars in Sri Lanka from both parties as obtained from interviews. Consequently, the outcome of this study provides a mediating solution for breaking the thirty years' long-lasting deadlock considering the interests and aspirations of not only women one-sidedly but those of men and children as well.*

Key words: Muslim Marriage and Divorce Act, Polygamy, Sri Lanka, Stringent stipulation, Women's advocacy

### INTRODUCTION

During the advent of Islam, the custom of polygamy was prevailing all over the globe as it was a custom in the human history regardless of race, religion and region. However, stipulating stringent conditions, Islam restricted the numbers of wives in a polygamous marriage of a man. Nonetheless, Muslim feminists and Non-Muslim critics of Islam insist the Muslim scholars and jurists to rethink and re-interpret the Islamic rulings regarding the polygamy.

The women organizations in Sri Lanka, namely Muslim Women's Research and Action Forum (MWRAF) also criticize that the polygamous marriages allegedly because of unwanted social and fiscal consequences for women and children. Consequently, they urge the Sri Lankan government to amend the polygamous system imposing stringent conditions such as assurance of fair treatment, declaration of assets, obtaining the consent of the first wife and nullification of unregistered marriages. Considering the long-lasting advocacy of women, the government appointed a reform committee to amend the MMDA. Subsequently, the report of the committee was submitted to the Ministry of Justice in December 2017.

On the contrary, the mainstream Islamic jurists, namely 'All Ceylon Jam-e-athul Ulama (ACJU) oppose the proposal of women organizations that which has led to a stalemate between them. Particularly, ACJU vehemently condemned the report of the reform committee and pleaded the government to withhold the amendment. As a result, it created chaos among the Sri Lankan Muslims and the deadlock has deteriorated. This scenario urges an academic and juristic analysis to break the stalemate between ACJU and women's organization.

Hence, this study explores the lobbies of women in Sri Lanka for cramping the men who intend to practice the subsequent marriages and its consequences on jurisprudential perspective so as to find a mediated solution bridging the gaps.

This academic endeavor draws on qualitative research methodology collecting data from library research and interviews, scrutinizing with descriptive and analytical methods. Since polygamy is a controversial issue in the contemporary Muslim world, the findings of this study may provide an academic and juristic contribution to Sri Lanka as well as to other countries for further legal amendments to polygamy.

### DEBATE OVER THE LEGITIMICAY OF POLYGAMY

The issue of polygamy was not an issue in pre-modern time. However, the modernism has made it a contentious issue, thus today there are supporters and opponents worldwide. For the purpose of this paper, we confine our discussion on the Muslims' internal debate regarding polygamy from many angles.

Hence, there are three contradicting views among the jurists concerning the validity of polygamy. The first group determines the complete admissibility of polygamy while the second group advocates for its abolition. However, the third group allows it only in case of exigencies with stringent conditions.

## 1. ABSOLUTE PERMISSION OF POLYGAMY

The majority of jurists suggest that ‘the polygamy is permissible without any conditions except two stipulations such as fair treatment of the co-wives and capability for maintaining them. Because, there are personal, familial and societal interests behind the adjudication of polygamy.

This group draws on the Quranic interpretation of classical and modern scholars on the verse of polygamy as it asserts “if you fear that you shall not be able to deal justly with the orphan-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 slaves) that your right hands possess. That is nearer to prevent you from doing injustice (An-Nisa:03). Qurtubi elaborates “if you fear the fair treatment in the bridal gift and the maintenance of orphans. Then marry whoever the women you adore regardless of orphans”.

There are numerous Hadiths confirming the tradition of polygamous marriage during the Prophet period. When Gailan bin Salma embraced Islam with his ten wives, the Prophet instructed him to choose four of them and divorce others (Ibn Majah, Hadees No:2029). Similarly, Qais bin Haaris stated: ‘I embraced Islam having eight wives. When I told this to Prophet (PBUH), he advised me to retain four of them releasing others (Ibn Majah, Hadees No:2028).

Moreover, they cite the Quranic verse “(from the women forbidden to you for marriage is) keeping two sisters at wedlock at the same time” (An-Nisa:23) and the Hadith “A man cannot marry to a woman with her mothers’ sister or with her father’s sister” (Muslim, Hadees No:2033). Hence, this Quranic verse and Hadith provide Muslims the guidelines regarding the polygamous marriage. Had been impermissible in Islam, the Quran and Sunna would have abolished it entirely.

Al-Zahrani (2005, p.8) elaborates that the two Quranic verses of polygamy do not stipulate sickness and sterility of the first wife for contracting the second marriage. Because, the Prophet (PBUH) commanded his companions to divorce their wives if they had more than four wives. In contrast, during the time of legitimizing, the Prophet did not mention any conditions of being the first wife as sterile and sick for solemnizing the subsequent marriages.

Abu Zahra (1971, p.78) opines that ‘imposing stipulations on the polygamy is a misguided religious innovative (bid’ah) which was not in epochs of the Prophet, his companions and their successors. Besides, they cite numerous Hadiths and historical evidences in the Prophetic period and subsequent centuries.

Ibn Baz (2005, p.30) opines that ‘a man can consummate subsequent marriages without any exigency. Because, the Quranic verse mentions the word, ‘*ma taaba lakum*’ which means ‘whom you adore and applaud’. Hence, a man can contract subsequent marriages without any stimulating cause.

In accordance with Qur’an, *Sunnah* and standpoints of prominent jurists, the ACJU (2017, p.68) also stresses that the polygamy should be encouraged in Sri Lanka to rectify the grievances and challenges encountered by widowed and divorced women.

## 2. ABOLITION OF POLYGAMY

Nonetheless, the second group lobbies for the abolition of polygamy considering it as an abysmal custom derived from *Jahiliyya* period (dark age before the advent of Islam) such as alcoholism (Al-Haddadh, 2011, p.61). Thus, they draw on the justifications below:

1. The Arabs of *Jahiliyya* had the custom of having numerous wives without limitation utilizing them for farming, herding animals and other household services. In contrast, Islam imposed strict controls on the numbers of wives as the Prophet (PBUH) instructed those who embraced Islam with numerous wives to retain four of them and releasing others. Later on, Islam stipulated fair treatment of the co-wives and warned of committing injustice among them, thus convincing them to practice monogamy by the verse “if you fear the inability of fair treatment, then marry only one” (An-Nisa:03). And then, cautioned them of the impossibility of fair treatment of the co-wives in the verse “you never able to offer fair treatment among the wives even though it was your ardent desire” (An-Nisa:03).
2. The custom of polygamous marriages contradicts the Quranic verse “And of his signs is that he created for you from yourselves spouses that you (may) find rest in them and he made intimacy and mercy between you” (Ar-Room:21). As stated in this verse, the highly aspired intimacy and mercy would not be attained in the polygamous marriages. On the contrary, it creates chaos and troubles among the co-wives and then among their children and thus foiling the aims of the marriage (Al-Haddad, 2011, p.61).

Moreover, Ibn Aashur canvasses the abolition of polygamy citing the verse “if you fear the unfair treatment, then marry only one” (An-Nisa:03). He opines that ‘the command for the polygamous marriages and limitation of wives’ was to overcome the maltreatment of orphans by their guardians. However; this perception was not comprehended by the jurists who proceeded in the history of the Islamic jurisprudence (Ibn Ashur, p.225).

In Addition, Ibn Aashur and Juaid insist that a man is unable to implement the fair treatment among the co-wives. As it is explicitly stressed 'if you fear the unfair treatment, then you marry only one'. Accordingly, a country can abolish the polygamous marriage for the protection of women and their children. According to their opinion, Tunisia promulgated the abolition of polygamous marriage in 1956 (Elsi, 2019).

Rashid Rida (1367H, p.351) elaborates that 'if a scholar scrutinizes the consequences of polygamous marriage nowadays, definitely he would assess the impossibility of polygamous practice. Because, if there are two wives for a man, he would be unable to live in comfort. In contrast, he adds fuel to the disputes among the wives which can lead to demolishing the whole family. Then, not only the wives loathe each other, but their children also become rivals. In this horrific scenario, the adverse disputes slip from the individuals to the whole house. Then, from the house to the community degenerating into violence' (Elsi, 2019).

Abduh (2008, p.86) states "if there is justice and fairness, then polygamy is permissible. On the contrary, if the injustice predominates among the co-wives in a community or if the polygamy leads to loathe each other in a family, then a ruler can abolish the polygamy considering the social interests.

Likewise, The Kandy forum (2017, p.4) also blames MMDA for the misunderstanding and misinterpreting the Quranic verse "marry women of your choice, two or Three or four" (An-Nisa: 03). Hence, The Kandy forum elaborates that though Islam does not prohibit polygamy, it imposes stringent stipulations on it. In the beginning of Islam, the men used to have infinite wives. Hence, Islam limited it to four wives at a time as a progressive step to eliminate the practice of polygamy. Therefore, Islam granted permission to marry four wives at a time with very strict conditions and it convinces the Muslims to be monogamous in the same verse. Another Qur'anic verse strengthens the above verse declaring that "you are never be able to be fair and just as between women, if it is your ardent desire" (An-Nisa: 129). On this perception, Tunisia abolished polygamy.

### 3. LEGALITY OF POLYGAMY IN CRUNCH

The third group argues that polygamy is permissible only in case of exigencies. Otherwise, in normal conditions, it is impermissible for the sake of protecting social interest (*maslaha*). Ibn Uthaimin opines that the Quranic verse directly commands the husbands who are incapable of fair treatment physically, fiscally and mentally to restrict one wife, 'if you fear the unfair treatment then marry to single wife' (An-Nisa:03). If a man consummates a second marriage when he is financially incapable, it would lead him to beg people. Consequently, his loans would be multiplied. If he is physically vulnerable, then he would be unable to fulfil the rights and physical needs of second wife or both wives (Al-Juraisi, 1999, p.71).

AL- Haseem elaborates that 'Allah does not mention polygamous marriage in vain. However, He allows it for the benefits of human being and is a privilege to be utilized in exigency and exceptional conditions. Therefore, a man should refrain from contracting second marriage, if it hurts others. Because, some husbands shun their first wife because of the second wife, and resulting into divorcing her. Hence, if he contracts the subsequent marriage for chastening or boasting or for personal and material benefits, then the second marriage is impermissible (Saheem, 2016).

Overall, considering all the arguments and justifications of three groups for regulating, not regulating and abolishing, polygamy could be summarized according to the standpoint of Imam Shafi. Definitely, it would be the mediated solution without harming the religion as well as the women, the children and the men. Thus, Imam Shafi (1990, p.155) and all other jurists elaborate that "the polygamous marriage would be adjudicated considering circumstance of a particular man, it can be *wajib* (obligatory), haram (prohibited), *mandub* (recommended), *makruh* (discouraged) or *mubah* (optional) as follow:

- If a husband is passionate for having children when the first wife is infertile or if a wife suffers from a disease that would be a burden for copulation. Then the husband should contract the second marriage to protect him from fornication.
- If a husband has physical and fiscal capacities with the ability of fair treatment among the wives, the subsequent marriage would be favorable.
- If a man desires to raise the Muslim population or if a man fear the falling into fornication, the subsequent marriage would be optional.
- If a man fears the fair treatment among wives though having physical and fiscal capacities, the second marriage would be animosity.
- If a man does not have sufficient fiscal capacities to spend on the wives and children or if he does not have physical capacity to fulfil the basic needs of his wives, then the second marriage would be prohibited.

### DISCORD ON THE REVELATORY EVENTS OF THE VERSE

The Quranic verse explicitly elucidates the admissibility of polygamous marriage and its stipulations as "And if you fear that you shall not be able to deal justly with the orphan-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 slaves) that your right hands possess. That is nearer to prevent you from doing injustice (An-Nisa:03). There are contradicting views regarding the revelatory circumstances of this Quranic verse that is the main reason for dissent on its rulings.

1. The Quranic verse was revealed on the matters of an orphaned girl who was in the custody of a guardian. When the guardian was attracted by her property and beauty, he desired to marry her without the bridal gift. Then, the Quranic

verse was revealed commanding the Muslims to offer the bridal gifts and to marry women of their choice rather than the orphans (Al-Juraisi, 1999, p.88).

2. There were some men who married multiple wives such as four, five, six, ten and so on. They took pride for increasing the wives until they lost their belongings. Then they began to misuse the property of orphans. Hence, Almighty Allah limited the numbers of wives to protect them from the bankruptcy that led them to the misuse of the orphans' property (Al-Zuhaili, 2010, p.12).

Nonetheless, Ali Shariati argues that this Quranic verse was revealed allowing polygamous marriage after the Uhad battle which left many young widows and orphaned children. However, due to the flourishment of Islamic jurisprudence in the second and third centuries, jurists gave up the pragmatic and sagacious reformist spirit of Islamic jurisprudence. Consequently, the culture of male dominance which prevailed in the Arabic world impacted on the legal system. Thus, the interpretations and translations of legal texts were formed based on discrimination against women (Ali, 1997).

Likewise, women organizations in Sri Lanka argue that the polygamy was introduced to empower the widows and orphans who were abandoned in the aftermath of *Uhad* battle. Therefore, there is no necessity to practice polygyny in the Sri Lankan context (Hasanah, 2015, p.21).

In contrast, ACJU (2017, 62) argues that the modern thinkers and reform proponents misconceived the revelatory circumstances of the Quranic verse of polygamy conveying the irrational message that polygamous marriage was promulgated soon after the battle of Uhad. According to their interpretation, they endeavor to marginalize the significance of polygamy. In Addition, ACJU (2017, 63) stresses that the prominent Mufassirun such as Ibn Kathir and al-Qurdubi assert that the narration of Ayisha (radi) lucidly elucidates the exact revelatory circumstance of this verse as it was revealed to 'command the men (guardians) to marry other woman instead of marrying orphaned girls which was leading to dissipation of the orphans' assets.

Moreover, ACJU (2017, 64) clarifies that the Quranic verse "if you fear that you will not do justice to the orphans" use the term '*yatama*' which denotes orphaned girls who have not attained the puberty and definitely it does not mean the widowed woman. Instead, this verse encourages the men to marry the women (*nisa*) of choice discouraging the marriage with orphaned girls in order to protect their assets from the corruption in the guise of marriage. Hence, the justification of reform proponents for the revelatory context of this verse becomes baseless.

## STRINGENT STIPULATIONS FOR POLYGAMY

Though Islam allowed polygamy, it strictly imposed on it some stringent stipulations such as ability of maintenance and fair treatment among the co-wives. Accordingly, similar stipulations are enacted in MMDA. Nonetheless, the reform proponents in Sri Lanka criticize that the conditions of the MMDA for polygamous marriages are rarely followed or mostly violated. Therefore, they advocate to enforce two additional conditions to make the polygamy beneficial to the community as well as to be protective from the evildoers.

### 1. ATTESTING THE ABILITY OF MAINTENANCE

Maintenance means providing food, dress, lodge, medicine, other basic needs and services for wives and children according to the command of Quranic verses. "But, the fathers of the child bear the cost of mothers' food and clothing in a reasonable basis" (Baqara: 23). And "lodge them (the divorced women) where you dwell according to your means and do not harm so as to cramp them and if they are pregnant then spend on them until they lay down their burden" (At-Talaq: 06).

Hence, Islam stipulates the ability of maintenance as a basic condition since the Prophet declares; "O youngsters, whoever of you afford the ability (of physical and fiscal maintenance) let him marry. Because, it would more efficient in lowering the gaze and protecting the chastity. If he cannot afford it, then he should fast. Because the fasting would be a constraint for him" (Muslim, Hadees No: 2005).

Accordingly, if the maintenance is compulsory in monogamy, it is highly stressed in polygamy. On the contrary, if a marriage is prohibited based on the inability of maintenance, it is noteworthy that the polygamous marriage should be prohibited based on the same factor. Thus, the Qur'an emphasizes that it is nearer to prevent you from doing injustice (An-Nisa: 03).

Interpreting this verse, the majority of Mufassirun elucidate that "*Allaa ta oolu*" means 'don't increase the poverty or inability or don't discriminate among the co-wives increasing the poverty (al-Bagawi). Similarly, al-Baihaqi cites the exegesis of Imam Shafi'i that "*Allaa ta oolu*" means 'don't increase your dependents (that lead to the poverty) even though the polygamy is permissible (Alwan, 2003, p.24).

Ibn Qudamah (p.564) elaborates 'the maintenance of wife comprises all the expenditures of essential needs such as food, drink, dress and lodge. If a man is unable to fulfil these necessities, he cannot contract the second marriage. Because, the *nafaqa* (expenditures) of wife or wives is obligatory in the Islamic jurisprudence.

The women organizations in Sri Lanka criticize that the MMDA is in breach of Islamic rules and guidance allowing the men to marry subsequent marriages with the flexible loophole of the Law. When a father chooses a second marriage, his income and affection are scattered and his income would be inadequate to maintain the wives and to fulfil the needs of the children of each wife. Consequently, the vulnerable wives and children would be victimized due to the polygamous marriages. Therefore, the women organizations demand that a Qadi should be empowered to ensure the maintenance of the first wife and her children

including their future education and expenditures as well as to estimate the maintenance of upcoming wife and her offspring and to reject the application for second or subsequent marriage, if he is not satisfied with the provided justifications (Faizun & Chulani, 2014, p.48).

A respondent from women organization emphasizes that the Qadi can ensure the capacity of a man from his employer if he is an employee in government or private sector. If he is self-employed, the Qadi can estimate his income considering the nature of his occupation and earning power (Interviewee No: 03).

In contrast, a respondent from ACJU responded that it is impossible to estimate the income of a man by Qadi, because majority of the Muslims in Sri Lanka are self-employed and businessmen. So, there is no evidence or proper mechanism to prove his financial capacity (Interviewee No: 07).

Hence, the president of ACJU explained that Islam has strictly stipulated fiscal capacity for every marriage, whether it may be first or second. So, the groom is accountable for maintaining his family and adhering to the rulings of Islam. Simultaneously, we admit that there are abuses and malpractices in maintaining wives, especially in polygamous marriages. Thus, we are obliged to innovate a mechanism to curb the misbehaviors and malpractices (Interviewee No: 01).

It was found that most of polygamous marriages are consummated by some of middle class or lower-class men who are not economically stable. Majority of them contract the subsequent marriages on the assumption of future earning that perhaps might be unachievable. Consequently, his economical and behavioral conditions would be deteriorated. In this case, their first wives are compelled or comforted to live with co-wives. Hence, the jurists and scholars should find an appropriate mechanism to mitigate such malpractices and its consequences on women and children. The intervention of mosque administration can play a major role in this regard.

## **2. ASSURANCE OF FAIR TREATMENT AMONG THE CO-WIVES**

Islam imposes stiff stipulations on those who wish to have plural wives stressing ‘marry women of your 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 slaves) that your right hands possess. That is nearer to prevent you from doing injustice (An-Nisa: 03).

The ‘Adl’ (fairness) in this verse denotes the fairness that a man can have the ability to fulfil it treating all the co-wives with equality in food, drink, dress, lodge, coitus and interaction. Besides, some jurists opine that if a man smiled at a wife, then he should smile at others too. Accordingly, Jaabir bin Zaid I had two wives and strived to deal justly between them till I counted the kisses to be fair (Ibnu Abee Shaiba, Hadees No:17544). Because, the Prophet emphasized ‘whoever has two wives and he leaned to one wife regardless of next wife, he will come on the day of judgment leaning one side of his body’ (Abu Dawood, Hadees No:2133).

Nevertheless, Ibnu Katheer and Al-Qurthubi stress that the word ‘Adl’ in the verse “you never be able to deal justly” means the fairness in affection, emotion and passion. However, since these feelings are based on the heart, they are ungovernable and immeasurable as the Prophet (PBUH) beseeched “O Allah, this is my sharing and caring in which I belong. So, don’t reproach me in which you belong and I do not belong (Tirmithi, Hadees No: 1121). Therefore, the fairness in these feelings is unattainable and beyond the control of a man as it is confirmed by this verse “never can you treat justly between your wives, though it is your ardent desire” (An-Nisa: 129).

Similarly, Al-Zahrani (2004, p.08) states that the fair treatment among the co-wives does not mean the equality but it means the fulfilment of the basic needs of every wives citing the opinion of Ibn Hajar “if every wife is fulfilled in dress, expenditures and overnight stay, then there would be no harm or no blame of unfairness on him for his excessive donation or inclination to one wife regardless of others.

Nonetheless, some scholars such as Abduh, Rasheed Rila, Ibn Aashur and others interpret this Quranic verse as an evidence for the prohibition of polygamy (Khalid, 2019). However, Sayyid Qutub (p.743) refutes that “this is misinterpretation. Because, it is not the tradition of Sharia for allowing a matter in a verse while abolishing it in another verse. But, the ‘Adl’ in this Quranic verse means the emotional treatment which is beyond the control of the human being.

Hence, having nine wives at the same time, the Prophet (PBUH) endeavoured to treat his wives with equality and equity. However, the Prophet (PBUH) adored Aayisha (rabi) more than other wives, since the ‘hearts are between the fingers of Allah who inverts them as He wills’ (Muslim, Hadees No: 2654). Therefore, the Prophet (PBUH) beseeched to Allah for his inability in the ungovernable matters saying “O Allah, this is my sharing and caring in which I belong. So, don’t reproach me in which you belong and I do not belong (Tirmithi, Hadees No: 1121).

Abu Zahra (1971, p.76) elucidates that when the Quranic verse offer stipulations, it demonstrates the admissibility of polygamy with condition of providing a balanced portion of physical, mental and material distribution among the wives. In addition, fair treatment of a man depends on his mind and behavioral patterns which cannot be detected or measured by others. Because the marriage agreement will not be spoiled by the anticipated matters. On the contrary, it would be spoiled by the unexpected affairs. Therefore, if a person fears the injustice, definitely he strives to escape from detrimental effects since he is cautious and extra vigilant.

In Sri Lanka, the woman organizations advocate for authorizing the Qadi to inquire and investigate the justice and fair treatment of a wife by an applicant who wishes to contract polygamy as follow (Report, 2017):

- a. Whether the applicant is living a just life by providing maintenance for his present wife or wives
- b. Whether the applicant is looking after his children born to his wife or wives in a just and equitable manner
- c. Whether the applicant is capable of dealing justly, equitably with his intended wife and his other wife or wives

Furthermore, women organization claim that the possibilities of being just and fair among the co-wives is scarce. Therefore, the Quranic verses discourage the polygamy (Faizun & Chulani, 2014, p.48).

Nonetheless, the ACJU argues that 'the two Quranic verses of polygamy are misunderstood and misinterpreted by women organization. Certainly, the first verse stresses the equality that is attainable by human being whereas the second verse mentions the matters which are not achievable. Therefore, the Prophet beseeched to Almighty Allah for the inclination beyond his control.

Hence, it is pertinent to conceive that the Quranic verses do not discourage polygamy and there is no need to enforce stern stipulations on polygamy. Because, Islam has imposed the adequate conditions to safeguard the rights and interests of women and children.

### **3. CONSENT OF THE FIRST WIFE FOR THE SECOND MARRIAGE**

The consent of the first wife for the second marriage is not stipulated and not required in Islam. Because, there is no any evidence to prove that the Prophet (PBUH) and his companions practiced the polygamous marriage based on such a condition. Hence, if a man takes a second or subsequent marriage without the consent of the first wife, the particular marriage would be solemnized according to the Sharia.

Responding to this matter, Ibn Uthaimen elaborates "obtaining the consent of first wife is not a stipulation of the marriage. If he requests his wife for her consent, definitely, she will refuse. However, though having the autonomy for the subsequent marriage, he could consult and console her until she feels comfort and accept his justifications and her fellow-wife. Because, if the first wife was already acknowledged she would be relaxed and content to interact with her fellow-wife when she springs into the house. Then, both wives will live in comfort without discord and disharmony. Correspondingly, when deeply analysed the benefits, the husband should obtain the consent of his first wife and acknowledge her regarding his decision. Hence, obtaining the consent of the first wife would be mandatory though it is not obligatory in the Sharia (Al-Juraisi, 1999).

Similarly, the standing committee for fatwa in Saudi Arabia responded regarding the consent of the first wife as follows: 'obtaining the consent of the first wife is not obligatory for the husband since it is not a stipulation of marriage in Sharia. Nonetheless, it is his moral obligation and best manners to make her feel comfort diminishing her psychological pains that might be caused by the second marriage through the delightful conversation and adorable approaches even by the financial inducement to obtain her consent (Fatwa No:2036).

Considering the consequences of second marriage, the majority of Muslim countries such as Syria, Iraq, Morocco, Pakistan and Malaysia imposed legal restrictions on the husband. Hence, he should submit the written permission of the first wife to the court for contracting the subsequent marriages. 'The husband significantly should provide his financial strength for caring the wives and their children or the evidences proving the infertility or sterility of his first wife. In such cases, the judge is authorized whether he permits or prohibits the applicant for the second marriage (Nadia, 2016).

Simultaneously, some jurists opine that 'a woman has the right to impose restrictive stipulation in her marriage contract banning the subsequent marriage of her husband in future. Subsequently, if he infringes the previously agreed contract, then the wife has the right to appeal for the divorce as Ibn Qudama elaborates 'if he consummates the subsequent marriage repealing the restrictive stipulation of second marriage. Then, the wife has the right to get divorced.

On the contrary, even though she does not utilize the privilege during the marriage contract, she has the right to ask for divorce if her husband fails to fulfil her needs or whenever she is harmed by the subsequent marriage of her husband (Az-Zahrani, 2004, p.9).

Accordingly, women organizations criticize most of the first wives who are not informed or not consulted regarding the subsequent marriages of their husbands. Consequently, when the secret is disclosed, the entire family would be collapsed. Therefore, the consent of first wife should be enacted in MMDA (Hasanah, 2015).

However, the ACJU (2017, p.69) argues that when the man is compelled to obtain permission from the first wife or the Qadi, he may accuse his first wife or express false statements or dissatisfaction with the first wife which definitely leads to degrading her image or to divorcing her. In addition, if the first wife refuses to give consent for the second marriage, her husband may harm her by direct or indirect means. He may punish her physically or verbally or mentally. Such harms may be more severe than living with co-wife.

Hence, even though obtaining the consent of first wife is not a stipulation for solemnizing the subsequent marriage of a husband, it would be generous way to continue a peaceful life and fair treatment among the wives as suggested by Ibn Baz (1991).

#### 4. NULLIFICATION OF UNREGISTERED MARRIAGE

The registration of Marriage has been a debated issue for decades. In 1880s, when Siddi Lebbe lobbied for enacting the registration of marriage as mandatory for every Muslims in order to mitigate the consequences and malpractices of unregistered marriages, especially, unregistered polygamous marriages. In contrast, there were severe oppositions against this lobby (Ameen, 2000).

However, the registration of marriage was promulgated as an act of MMDA section 16 which makes the registration of marriage optional and section 81 recognizes the validity of the marriage though it imposes fine for non-registration (Jaldeen, 2004).

Nonetheless, the women activists demand to amend section 16 of MMDA to make the registration of marriage mandatory for the validity of marriage and to amend section 81 as it should consider the persons guilty of offence if they fail to register the marriage (Report, 2017). Furthermore, they criticize that 'almost the second or subsequent marriages are conducted with absolute autonomy without the official registration. Consequently, the survey also does not depict the real fact of polygamous marriages in Sri Lanka. Sometimes the first wife does not know the second marriage of her spouse' (Faizun, 1999, p.37).

In contrast, ACJU (2007, p.35) argues that the registration is not a vital stipulation for validating marriage. According to the rulings of Islam, having bride, bridegroom, two witnesses, *eejab* and *qabool* are the adequate stipulations for solemnizing a marriage.

Evidently, Muslims in Sri Lanka have been relishing the privilege of validating marriage without the registration more than thousand years. The constitution of Sri Lanka also recognizes it as a customary marriage. So, if the registration is enacted as mandatory, Muslims may forfeit their privileges and simplicity. For instance, the poor and illiterate families may face financial and procedural difficulties in registering the marriage. Moreover, if the bride is widowed by a government employee, then the registration of her second marriage would nullify her privileges and endowment fund from the government.

In Sri Lanka, it was observed that even though there is no official registration of marriage, the Imam of the mosque and its administration know well such weddings. Because, mostly the Imams are invited to solemnize the marriages. Hence, the mosque administration can be empowered to curb the malpractices and violations in this regard.

#### PROS AND CONS OF STIFF STIPULATIONS

When it is delved into the advantages and disadvantages of stringent stipulations, it is amazing and obvious that both of the reform proponents and opponents are extensively concerned on the interests (*maslaha*) of women and children though their standpoints absolutely dissent and polarize them leading to a deadlock.

Women organizations invariably strive to save women and children from detrimental effects of polygamy, assuming the future consequences. They discourage or dissent the polygamous system by re-interpretation and modern exegesis of the divine texts. Hence, they argue that the fair treatment among the co-wives is humanly unattainable and fiscal capacity of the men is inadequate for the second marriage. Moreover, to restrict the men, they impose more additional conditions such as obtaining the consent of first wife and official registration of the marriage.

Nonetheless, the ACJU (2007, p.67) claims that it is deeply concerned about the interests of women, children and men in Islamic perspective as it elaborates that there are numerous widowed and divorced women in the Muslim community and most of them are jobless, helpless and vulnerable. Especially, the future of their children is also hopeless. Consequently, they become burdens on the Muslim community. Even though some welfare associations and philanthropists assist them to diminish their financial needs, the widowed and divorced women have physical and psychological needs that can be fulfilled by only the husbands. Hence, if the wealthy, generous, pious and fair gentlemen marry the widowed or divorced women, it would be effective solutions for the whole issues faced by widowed and divorced women. Exclusively, their children also would benefit by this marriage.

Moreover, ACJU (2017, p.70) opines that if the stringent stipulations are imposed to restrict the polygamy, it may create detrimental consequences on the women and children as well as on the men rather the women organizations envision from elimination of polygamy, for instance, when the legal second marriage is restricted or obstructed, the particular husband might have illegal wife or relationship that would not only destruct his character and religion but also his wife, children, relatives and the whole family.

When it is extensively analyzed, fiscal capacities and characters of a man are stressed by Islam not only in polygamy but also in monogamy. In addition, the researches reveal that there are numerous domestic violence, divorces and malpractices recorded in monogamy. Considering these consequences, no body lobby for the abolition of monogamy. Likewise, the jurists and scholars should find alternative solution for curbing the dire impacts of polygamy regardless of criticizing the universal divine rulings of Islam.

#### CONCLUSION

It is interesting to note that the women advocate for the reform to ensure the rights and interests of women and children whereas ACJU expresses that it also opposes the proposal of women for the same reason. Moreover, ACJU (2017, p.71) admits that there are some violations and malpractices due to the persons who exercise polygamy but not due to the legitimacy of polygamy itself. Likewise, women propose that the stiff stipulations and restriction would eliminate the malpractices and abuses. On the contrary, ACJU (2017, p.70) opines that the strict conditions would create invisible dire impacts on women and children as well as men.

Hence, if the stringent stipulations are imposed, the husbands who are strictly restricted may find secret or illicit relationship that absolutely would break the family structure by ruining the life of members from all aspects. Similarly, if the husbands are provided autonomous rights to consummate the subsequent marriages, it definitely would cause detrimental consequences on women and children as well as on the whole community.

Therefore, it is recommended that the jurists and the scholars should innovate mechanisms and criteria to curb the malpractices and misbehaviors of the violators regardless of reforming the universal divine rulings of Islam.

To put it in a nutshell, considering arguments and justification of both parties, the *Qadi* can be authorized to decide whether the second or subsequent marriage of a particular person is *wajib* or *mubah* or *makrooh* or haram scrutinizing his conducts and context (according to the opinion of Imam Shafi, 1990, p.155). Accordingly, the *Qadi* can decide whether he permits or rejects the particular application for the subsequent marriage. It would be the most appropriate mediated solution rather than generalizing the polygamy and re-interpreting the divine texts. Moreover, the both parties should provide social pressure and religious awareness on the husbands who intend to contract second or subsequent marriages in order to protect the vulnerable women and children from the severe impacts of the polygamy incorporating the stringent stipulations of Islamic Sharia. Since this study extensively focuses on juristic analysis, an empirical and statistical analysis in future may provide alternative solutions to eradicate the dire impacts on women and children.

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### **Interview**

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