International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 13, Issue 1
January, 2026
Pages: 322-335

A Comparative Study of the Legal Status and Legislation of Polygyny in Iran and Selected Islamic Legal Systems

Zainab Ejresh*[1]; Abdolhosseyn Rezaei Rad[2]; Seyyed Hossein Al-Taha[3]

[1] Corresponding author, Postgraduate of Jurisprudence and Foundation of Islamic Law, Shahid Chamran University of Ahvaz, Ahvaz, Iran, zechresh64@gmail.com

[2] Associate Professor of Jurisprudence and Foundation of Islamic law of Shahid Chamran University of Ahvaz, Ahvaz, Iran, ahrr39@scu.ac.ir

[3] Associate Professor of Jurisprudence and Foundation of Islamic law of Shahid Chamran University of Ahvaz, Ahvaz, Iran, shaltaha@scu.ac.ir

http://dx.doi.org/10.18415/ijmmu.v13i1.7400

Abstract

Polygamy, as one of the most challenging institutions of family law in Islamic countries, is the intersection of traditional jurisprudence, modern social developments, and legislative policies. This research, using a descriptive-analytical method and a comparative approach, examines the legal status and regulatory mechanisms of polygamy in the Iranian legal system and compares it with the countries of Iraq, Syria, Morocco, and Tunisia. The fundamental goal of the article is to explain the transition from the absolute freedom of the male will in classical jurisprudence to the paradigm of the state's discretionary supervision in contemporary laws. The research findings indicate that all the systems studied, with the exception of Tunisia, have accepted the principle of religious permissibility and have transferred this institution from the private to the public sphere. In this regard, three legislative patterns were identified: first, “Supervisory Pattern” in Iran and Syria, focusing on ensuring financial means; second, “Deterrent Pattern” in Iraq and Morocco, requiring strict conditions such as objective justification and legitimate interest, and in Morocco, women are given the right to immediate divorce; and third, “Sanctions Pattern” in Tunisia, ruling for the civil nullity of marriage. The comparative results show that the most important common challenge is the deep gap between “Shar’i Validity” and “Legal Prohibition”, so that marriage without permission, although regarded a criminal act, has legal consequences. A distinctive feature of Iran is the existence of “Broken Marriage” institution, which practically weakens the functioning of legal restrictions. Ultimately, the outcome of the developments reflects a move towards "Judicializing" the marriage process and limiting polygamy with the aim of strengthening the foundation of the family, although the Moroccan model has been more successful in creating a balance between tradition and the time requirements.

Keywords: *Polygamy; Comparative Family Law; Judicial Supervision; Justice; Financial Sufficiency*

1-Introduction

The institution of the family, as the most fundamental pillar of society, has always been at the center of attention of legal and religious systems. Among the numerous family law issues, the issue of "Polygamy" is considered one of the most controversial and complex legal institutions in Islamic countries which is the intersection of long-standing jurisprudential traditions, modern social developments, and governmental policies. In classical Islamic jurisprudence (Fiqh), citing the explicit text of the Holy Qur'an (verse 3 of Surah An-Nisāʿ), recognizes the permissibility of polygyny subject to the condition of justice (ʿAdl). However, for centuries, the achievement of this justice was largely left to the moral conscience of the couple (Religiosity), and governments did not intervene in its regulation. However, with the entry into the modern era and changing the social, economic, and cultural structures, as well as the emergence of new debates about women's rights and human dignity, the approach of non-intervention of the government no longer met the needs of society. The developments of the 20th century and the formation of modern states in the Islamic world are considered a turning point in the history of family law. Legislators in Islamic countries faced the fundamental challenge of how to strike a balance between the definite Shar'i rulings on the one hand and the requirements of the time and public order on the other. This shared concern led to the transition from the "Private Sphere" to the "Public Sphere" in family law; a process during which the determination of the condition of justice was removed from the sphere of the man's personal discretion and transferred to the institution of judgment (court's discretionary supervision). However, the way Islamic countries deal with this phenomenon is not the same and covers a wide range from "Conditional Freedom" to "Absolute Prohibition."

Understanding this necessity, the present study conducts a comparative study of the legal status and legislative approach of polygamy in the legal system of Iran and selected Islamic countries (Iraq, Syria, Morocco, and Tunisia). These countries were selected based on the diversity of legislative models; Iran and Syria as representatives of the "Monitoring and Adjustment" model, Iraq and Morocco as implementers of the "Restrictive and Deterrent" model, and Tunisia as the only Islamic country that has chosen the "Sanction" model with a different approach.

In Iranian law, the evolution from the civil law (which had been silent) to the family protection law (which required judicial intervention) indicates the legislator's attempt to limit this institution, although challenges such as the duality between "Shar'i Validity" and "Legal Requirements" as well as the existence of the institution of broken marriage have created certain complexities in the Iranian legal system.

The main objective of this article is to carefully examine the theoretical foundations and practical procedures in these legal systems in order to determine how each of these countries has transformed abstract jurisprudential concepts such as "Justice" and "Benefit" into legal and judicial propositions. A comparative study of these patterns not only helps to better understand the strengths and weaknesses of legislation in Iran, but also shows how, by utilizing the capacities of dynamic jurisprudence (such as the experience of the Moroccan family code), it is possible to develop solutions that, while adhering to Shari'ah, protect the family entity from the abuse of the right to polygamy. Therefore, this research attempts to present a clear picture of the current situation and future horizons in the legislation of polygamy by dissecting conditions such as financial security, consent of the first spouse, and rational necessities.

2-Research background

Legal studies on polygyny in Iran have examined the subject from various perspectives and with different methodological emphases:

Zeinali (2008), through an analysis of legislative developments, articulated a model of "Minimal Criminalization", arguing that eliminating criminal enforcement guarantees in recent laws has created the

conditions for the violation of women's rights. In this regard, Mohammad Taghizadeh and Hamidi-Souha (2017) criticized the silence of the legislator by pathologically analyzing judicial practice and emphasized the need to clarify the justified reasons for remarriage to prevent abuse.

Ahmadifar and Kakavand (2021), in their analysis of the Family Protection Law of 2012, contended that in practice the issuance of judicial authorization for polygyny has become largely obsolete within the current Iranian legal system, and that divorce has effectively replaced polygyny as the dominant legal solution. Furthermore, Moghaddam and Sheikh Mahmoudi (2024) explored the tension between the conditional permissibility of polygyny in Iranian law—grounded in Shari'a—and its absolute prohibition in international legal documents.

Most previous studies have examined polygamy solely from a jurisprudential perspective or limited to the laws of a single country. The innovation of this study is the simultaneous comparative study of five legal systems (Iran, Iraq, Syria, Morocco, and Tunisia) with a focus on analyzing the transition from personal will to "Judicial Supervision." By presenting a three-tiered classification of legislative patterns (supervisory, preventive, and sanctioning), this article examines for the first time the gap between "Shar'i Validity" and "Legal Requirements" in a transnational scope and with a pathological perspective.

3- Research Method

The present study is applied in terms of purpose and descriptive-analytical in terms of nature and method with a comparative approach. Data collection was carried out in a library-documentary manner and by taking notes from reliable jurisprudential sources, legal texts and legal doctrines of Iran, Iraq, Syria, Morocco and Tunisia. In the research process, after extracting and describing the relevant laws, using the technique of content analysis and legal reasoning, the theoretical foundations of the transition from jurisprudential freedom to judicial supervision were analyzed and legislative patterns were evaluated and classified comparatively based on indicators such as "Restrictive Conditions", "Role of Court" and "Guarantee of Execution".

4. Theoretical Foundations of the Study

4.1. Conceptualization and Legal Nature of Polygyny

Analyzing the theoretical foundations of the Islamic and Iranian legal systems, the institution of polygamy has never been legislated as a "Primary Principle" or a ruling on "Absolute Desirability"; rather, its nature in Islamic jurisprudence is defined as "Permission" and in some cases "Remedy" for social problems such as the excess of women over men or the protection of widows. Mohaqeq Damad believes that Islam, with the revelation of the third verse of Surah An-Nisāʿ, not only did not invent polygamy, but by setting a numerical ceiling (four wives) and imposing a strict condition of "Justice," it transformed it from an unlimited practice of ignorance into a "Restricted" and "Conditional" institution (Mohaqeq Damad, 2010: 315).

In the current Iranian legal system, the legislator's approach is based on the transition from "Pure Religious Permission" to "Judicial Supervision." Although Article 1049 of the Civil Code and Imāmī jurisprudence have accepted the principle of permission, but recent protection laws have placed the principle on "Monogamy" and consider polygamy an exceptional situation. Explaining this nature, Dr. Katouziyan states that by imposing difficult conditions in the Family Protection Law, the legislator has tried to limit the scope of this institution and, by changing its nature from "The free and personal will of the man" to "Court-approved supervision," prevent polygamy from becoming a tool for lust and the weakening of the family foundation (Katouziyan, 2018: 125).

In addition, Dr. Safayi, analyzing Article 16 of the Family Protection Law, emphasizes that conditions such as "Providing Financial Capacity" and "Execution of Justice," which are determined by the court, indicate that Iranian law considers the nature of this establishment to be "Conditional Permission," not an absolute right; in such a way that the failure to meet these conditions by the judge renders the nature of the act illegitimate (Safayi and Imāmī, 2016: 148). Therefore, polygamy in the theoretical context of Iranian law is an institution that is controlled between two powerful arms of "Quantitative Limitations" (completing the number in marriage and divorce) and "Qualitative and Judicial Limitations" (justice and court ruling).

4.2. Jurisprudential Foundations of Quantitative Limitation

One of the primary restrictive pillars governing polygyny is the principle of (istīfāʾ al-ʿadad) namely completing the number in marriage and divorce, which delineates the quantitative boundaries of this institution.

Consensus on the four-wife limit

There exists a broad consensus (Ijmāʾ) among Imāmī jurists and the four Sunnī schools (Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī) that a Muslim man may not simultaneously maintain more than four permanent wives (nikāḥ dāʾim). Any marriage contracted beyond this limit is deemed invalid (bāṭil). (Shahid Thānī, 1410 AH: Vol. 5, 110; Al-Jaziri, 1424 AH: Vol. 4, 168).

Distinction in temporary marriage (nikāḥ al-mutʿa)

A fundamental divergence between Imāmī and Sunnī jurisprudence lies in the scope of this numerical limitation. In Imāmī law, the principle of istīfāʾ al-ʿadad applies exclusively to permanent marriage and does not extend to temporary marriage (mutʿa), which is not subject to numerical restriction (Najafi, 1981: Vol. 30, 150). By contrast, Sunnī jurists—who reject the validity of mutʿa—apply the four-wife ceiling to all lawful marital relations (Al-Zahili, 1989: Vol. 9, 6657)..

The transitional period (ʿIddah)

If a man divorces one of his four wives through a revocable divorce (Ṭalāq rajʿī), the woman remains legally classified as a wife during (ʿIddah), and the numerical barrier persists. However, in the case of an irrevocable divorce (Ṭalāq bāʾin), the impediment is lifted immediately upon the pronouncement of divorce (Mohaqeq Damad, 2010: 320).

4.3. Justice (ʿAdl)

In Islamic family law, the legitimacy of polygyny is suspended and conditional, rather than absolute. Verse 3 of Sūrat al-Nisāʿ, with the phrase "fa-in khiftum allā taʿdilū fa-wāḥida" ("if you fear that you will not maintain justice, then [marry] one"), places justice (ʿAdl) at the boundary between permissibility and prohibition.

In jurisprudential discourse, justice is not treated as a mere ethical exhortation; rather, it is articulated as a concrete legal obligation, primarily expressed through the doctrines of equitable allocation of time (Ḥaqq al-qasm) and equality in maintenance (Taswiya fī al-nafaqa).

(a) Concept and Scope of Justice

The term "Qasm" linguistically denotes division, and in legal terminology refers to the equitable distribution of cohabitation and overnight stays (mubīt) among wives. The normative objective of this rule is the protection of women's dignity and the prevention of excessive desire (Kull al-mayl), against which the Qur'ān explicitly warns in verse 129 of Sūrat al-Nisāʿ.

Sheikh al-Ṭūsī emphasizes that Ḥaqq al-qasm constitutes a binding obligation (Wājib), and that its violation entails moral sin (ithm) and, in certain circumstances, may give the right of divorce to the wife (Ṭūsī, 2008: Vol. 4, 325).

(b) The Duality of Jurisprudential justice (Behavioral and Emotional)

The main challenge in the issue of justice is the feasibility of its implementation. Jurists and commentators, through careful analysis of the verses, have distinguished between two aspects of justice:

1) Obligatory (behavioral) justice

This justice concerns the external and measurable actions of the man and includes equality in "Nafaqa" and "Mubīt". Sahib Jawahir emphasizes that justice in Nafaqa does not mean "Mathematical Equality", but rather "Providing for Needs based on their Circumstances"; but in the case of "Passing the Night", the criterion is precisely "Equality in Time" and the man cannot stay with one wife longer than the other, except with the consent of the other (Najafī, 1981: vol. 31, 148).

2) Abstentionist justice (heart):

Heart's desire is a passive thing and outside of the direct will of man. ʿAllāma Ṭabāṭabāʾī, citing the verse "And you will not be able to be just between women..." states that God has not imposed on His servants the duty of being more than they can bear. therefore, loving one spouse more than the other (due to youth, beauty, or morality) is not forbidden as long as it is not manifested in outward behavior (unfairness in sleeping at night) (Ṭabāṭabāʾī, 2011: Vol. 4, 515). Qurṭubī, one of the great Sunni commentators, also confirmed this view and does not consider heart justice to be a condition for the validity of polygamy (Qurṭubī, 1985: Vol. 5, 407).

4.4. Comparative Study of the Implementation Mechanisms of Ḥaqq-e-Qasm

Although the principle of the necessity of observing justice is agreed upon by all Islamic schools, there are subtle differences between the schools of jurisprudence in the “Implementation Mechanisms” and the “Quality of Distribution of Rights”, which are due to differences in the bases of inferring rulings.

The starting point of the implementation of justice, i.e. the right to sleep where, is the point of disagreement. Shāfi’ī jurists believe that “lotting” is mandatory in order to prevent any suspicion of undue preference and to observe complete caution. Wahaba Zahili states that since all spouses are equal in the right to be slept with, determining one person without lotting is a form of cruel preference (Al-Zahili, 1989: Vol. 9, 6660).

In contrast, the famous Imāmīyyah jurists (such as Shahid Thānī) and Ḥanafī jurists believe that the primary right to manage time lies with the husband and he has the "Wilayah" to arrange the start of the turn. Therefore, the man can start the turn with whomever he wants, without drawing lots, provided that he completes the "Round of Justice" and the rights of others are not violated (Shahid Thānī, 1410 AH: vol. 5, 115).

Ibn Qudāma, the great Ḥanbalī jurist, states in Al-Mughni that if a man wants to take only one of his wives with him while traveling, a "Lotting" is obligatory in order to ensure justice (Ibn Qudāma, 1405 AH: Vol. 8, 145). This opinion is also agreed upon by most Imāmī jurists.

In Mālikī jurisprudence, there is a more flexible approach; if a man becomes seriously ill and is unable to move, Ḥaqq-e-Qasm is temporarily suspended and he can stay with the wife who is willing (or who provides better care). However, in Imāmī and Shāfi’ī jurisprudence, illness in itself does not nullify the rights of other women and the man must seek their consent or, if possible, administer justice even in the midst of illness (Al-Jazīrī, 1424 AH: vol. 4, 215).

4.5. The Iranian Legislator's Approach

Over the past century, the Iranian legal system has undergone a clear shift from a "traditional jurisprudential approach" to a "modern supervisory approach." The Civil Code (approved in 1928) in Article 1049 merely stated the obstacles to marriage (such as the union of two sisters) and based the principle on the permissibility of polygamy (based on jurisprudence). However, social developments led to the adoption of family protection laws (1974 and 2012), which changed the governing paradigm.

A) State intervention and the principle of prohibition:

The legislator, in Article 16 of the Family Protection Law of 1974 and subsequently the judicial practice based on the Law of 1992, has placed the principle on "Prohibition" of polygamy, except in exceptional cases (such as the first wife's disobedience, incurable illness, etc.) and subject to "Court Permission." Dr. Safayi believes that the condition of "Financial capability verification" and "Ability to administer justice" by the court is an additional constraint on the jurisprudential rulings that have been established to preserve the family's integrity and public order. In fact, the legislator has taken away the determination of justice from the "Conscience of the man" and has assigned it to the "Judge's determination" (Safayi and Imami, 1996: 148).

B) Guarantee of criminal and civil enforcement:

The main innovation of Iranian law is the creation of worldly enforcement guarantees. Dr. Langroodi points out in legal terminology that justice in polygamy has transformed from a "Religious duty" to a "Legal duty" with a specific enforcement guarantee (Ja'fari Langroodi, 2019: 452). Contrary to traditional jurisprudence, which considered the enforcement guarantee of injustice to be mainly otherworldly, the Iranian legislator has attempted to create criminal deterrence by criminalizing the registration of remarriage without a court order (Article 49 of the Family Protection Law, 2012) and requiring notaries to obtain a license. Dr. Katouziyan describes this approach as an attempt to stop the abuse of rights and turn polygamy into a solution for emergencies only (Katouziyan, 2018: 128).

5. Discussion and Review

The issue of polygamy, as one of the most challenging issues in family law in Islamic countries, is the intersection of traditional jurisprudence, modern social developments, and public policy. In this section, the approach of the Iranian legal system in comparison with four other Islamic countries (Iraq, Syria, Morocco, and Tunisia) is examined with detailed analysis and in-depth analysis.

5.1. Iran

The Iranian legal system has gone through a turbulent path in dealing with polygamy, which reflects the legislator's attempt to create a balance between primary jurisprudential rulings and secondary social requirements. In the Civil Code of 1928, the legislator, based on Imami jurisprudence, established the principle of permitting polygamy up to four permanent wives and did not foresee any formal restrictions or the need to obtain permission from the court. During this period, the only restriction was the general ruling of "Observing justice" derived from verse 3 of Surah An-Nisāʿ, which was religious rather than legal in nature (Imāmī, 2007: 188).

However, with the approval of the "Family Protection Law" in 1974, a new approach was adopted. Article 16 of this law established the principle of prohibiting remarriage except in nine limited cases (such as the consent of the first spouse, the inability of the first spouse to fulfill marital duties, criminal conviction, etc.). The main innovation of this law was the direct intervention of the state in the privacy of the family by requiring "Court permission." Dr. Safayi believes that this law changed the nature of polygamy from a "Unilateral male right" to a "Privilege under judicial supervision" (Safayi and Imami, 2016: 112).

After the Islamic Revolution, although some thought that returning to traditional jurisprudence meant abolishing all restrictions, the Guardian Council's theory and subsequent laws showed that judicial oversight still existed. Although criminal penalties were challenged for a while, the "Family Protection Law of 2012" in Article 56, while implicitly repealing some previous regulations, emphasized the need to register remarriages and made their registration subject to a court order.

Currently, in Iranian law, there are two basic conditions for issuing a remarriage license: 1) the man's financial ability to lead two independent lives, and 2) a commitment to implement justice. In analyzing this situation, Dr. Katouziyan states that the Iranian legislator has chosen the strategy of "Indirect restriction"; meaning that instead of a religious prohibition, it highlights administrative and financial obstacles so much that it makes it difficult for most men to practice polygamy (Katouziyan, 2014: 245).

In addition, the inclusion of conditions in the marriage contract (Article 12 of the contract) that gives the first wife the power of attorney in divorce in the event of the husband's remarriage (without her consent) is a powerful lever of pressure that has effectively increased the legal cost of polygamy for men. However, there is also criticism that if a man marries without court permission, even though he has committed an administrative offense (lack of registration), his second marriage is "valid" from a religious and legal perspective, and this dichotomy of "religious validity" and "legal prohibition" is considered the Achilles' heel of the Iranian legal system (Mohaqeq Damad, 2009: 305).

5-2- Iraq

Iraqi family law, influenced by Hanafi and Ja'fari jurisprudence, is one of the most progressive systems in the Middle East in restricting polygamy. The Iraqi Personal Status Law (No. 188, 1959) takes a stricter stance than Iran.

According to Article 3 of this law, marriage to more than one wife is not permitted except with the permission of a judge (al-Qazi al-Shari'ah). The Iraqi legislator has made the issuance of this permission conditional on the fulfillment of two basic conditions:

1. **Financial capability**: The husband must have the financial capability necessary to provide for the expenses of two families.

2. Legitimate interest: There must be a "rational and legitimate interest" (such as the infertility of the first wife or her illness) that justifies the second marriage.

A very important point in Iraqi law is Article 3, paragraph 5, which stipulates: "If there is a fear of injustice between the spouses, polygamy is prohibited and the judge must not permit it." This article leaves the determination of "possibility of injustice" to the judge and effectively leaves the court free to reject capricious requests (Al-Ahmar, 2015: 92).

In addition, the Iraqi legislator has also adopted a criminal approach to guarantee the implementation of these restrictions. Violation of the provisions of this article and marriage without court permission is punishable by imprisonment and a fine. More recent developments have also occurred in the Kurdistan Region of Iraq that has intensified the restrictions. In the Kurdistan Reform Law (2008), in addition to the provisions of the 1959 law, the condition of "consent of the first wife" has been added as a fundamental element, and without the written consent of the first wife in the presence of the court, permission for a second marriage is not granted. This approach has brought Iraqi law (in the Kurdish part) closer to the Moroccan model (Bazanji, 1980: 145; Al-Jabouri, 2012: 78).

Therefore, the Iraqi legal system can be considered a system based on "judicial deterrence" in which the principle is monogamy and polygamy is considered an exception that requires proof in court.

5.3- Syria

Syria was the first Arab country to explicitly recognize the right of judges to prohibit polygamy in its Personal Status Law (adopted in 1953). Although the Syrian approach has similarities to Iraq and Iran, its main distinction is its special emphasis on the "Economic" aspect of the matter.

Article 17 of the Syrian Personal Status Law (amended in 2019) stipulates: "A judge may not allow a married man to remarry unless he has a legal justification and the judge is satisfied that the man is able to pay alimony and living expenses." (Al-Zahili, 2002: Vol. 7, 185).

In the Syrian legal system, the concept of "legal justification" has a broader scope than in Iraq and is not necessarily limited to illness or infertility, but the main filter is "financial power." Dr. Al-Saba'i, a prominent Syrian jurist, argues that the Syrian legislator's goal was to prevent poverty in families. In fact, the legislator's premise is that polygamy, if not financially viable, will lead to oppression of the first wife and children; therefore, it "blocks the means" and closes the way (Al-Saba'i, 1998: 210).

The subtle difference between Syria and Iran is that in Iran, if the man is financially viable and observes justice, he can issue a ruling even without the consent of the first wife (if she disagrees), but in Syria, the judge has broader powers to assess the "general interest of the family." Also, in the 2019 amendments (Law No. 4), the Syrian legislator went a step further and emphasized that the second wife must be aware of the man's marital status and declare her consent, otherwise the marriage is annulled. However, the Syrian legal system remains more conservative than Iraq and Tunisia, focusing more on formal and financial aspects than on creating difficult substantive obstacles (Daghestani, 2019: 55; Al-Attar, 2020: 112).

5.4- Morocco

Morocco changed the paradigm governing family law in North Africa by adopting a new family law called the "Code of Families" in 2004. Although this law did not prohibit polygamy outright (as in Tunisia), it regulated its conditions in such a way as to make its occurrence "rare" and "very difficult" in practice. This approach can be called "Permissible but not allowed".

According to articles 40 to 46 of the Code, polygamy is only permitted if the court finds "objective and exceptional justification". The Moroccan legislator has deliberately used vague and strict language to leave the judges free to reject applications. In addition, the man must prove sufficient financial means to support two families (Al-Alami, 2014: 65).

The radical innovation of Moroccan law is that:

1. Summoning the first wife: The court is required to summon the first wife and seek her opinion.

2. The right to immediate divorce: If the first wife does not agree to remarriage, she can immediately request a divorce and the court is required to collect all the financial rights of the first wife from the man and pay her before issuing a second marriage license.

3. Informing the second wife: The second wife must also be officially informed of the man's marriage and give her consent.

Legal scholars believe that Moroccan law, by placing the first wife in a position of power (veto rights or the right to immediately receive all property), has effectively eliminated the economic and psychological motivation of men to remarry. In fact, Morocco, without explicitly contradicting the text of the Qur'an, has marginalized polygamy by using implementation mechanisms and implicit conditions (Ben Radia, 2007: 44; Zarari, 2010: 89).

5-5- Tunisia

Tunisia has adopted the most progressive and radical position among Islamic countries. According to the "Code of Personal Status" approved in 1956, which was drafted under the influence of the reformist ideas of Habib Bourguiba and religious innovators, polygamy was generally prohibited and declared a crime.

Article 18 of this law explicitly states: "Polygamy is prohibited. Anyone who remarries while having a wife shall be sentenced to imprisonment and a fine." The distinctive and unique point of Tunisian law is that a second marriage is not only a crime, but also considered "null and void" and has no legal effect (such as inheritance or legitimate lineage for possible children under certain circumstances) (Al-Jandali, 2011: 115).

The theoretical basis of the Tunisian legislator is a theological-legal argument. By juxtaposing verse 3 of Surah An-Nisāʿ (which makes polygamy conditional on justice) and verse 129 of the same Surah (which states: "And you will never be able to do justice between women…"), the Tunisian reformers concluded that the "condition of justice" is impossible; and since the condition (justice) is impossible, the condition (permission to have polygamy) is also impossible.

Dr. Anderson, a Western jurist specializing in Islamic law, considers this Tunisian action to be the most daring legal interpretation in the Islamic world, in which the state has abrogated a jurisprudential ruling by relying on "public interest" and "changes in time and place" (Anderson, 1997: 98).

In Tunisia, this prohibition is so deeply rooted in public order that even with political changes and the 2011 revolution, it remains a red line for women's and family rights (Mayer, 2013: 205).

5-6-Comparative Study

A comparative study of the legal systems of Iran, Iraq, Syria, Morocco and Tunisia shows that although all of these countries have relied on "Islamic Shari'a" as a primary source or basic inspiration in formulating their family laws, in practice they have reached completely different legal results. These differences are due to differences in jurisprudential reading (dynamic jurisprudence versus traditional jurisprudence), political structure and pressures from civil movements. For a better understanding, a summary of the status of the legal systems is first presented and then the similarities and differences are analyzed.

Based on the degree of state intervention and restriction of the male will, these five countries can be placed on a continuum:

1. Iran (consensual supervision model): While maintaining the principle of polygamy, the Iranian legislator has transformed it from an absolute right into a "supervised right." State intervention is at the "license issuance" stage, and the main condition is financial means and a moral commitment to justice. However, weak criminal enforcement guarantees and the existence of the institution of temporary marriage have reduced the severity of the restriction (Katouzian, 2014: 245).

2. Syria (economic pragmatism model): The Syrian approach is very similar to Iran, but its focus is explicitly on "financial power." The Syrian judge has broad powers to prevent remarriage if the family is likely to become poor. Recent reforms (2019) emphasize the awareness of the second spouse (Al-Saba'i, 1998: 210).

3. Iraq (constraint model based on expediency): Iraq has gone a step further and, in addition to financial means, has added the condition of "legitimate interest" (such as the first wife being infertile). In this system, the man's mere desire is not enough. Also, in the Kurdistan Region of Iraq, the condition of the first wife's consent has become mandatory, making it one of the strictest laws in the region (Al-Ahmar, 2015: 92).

4. Morocco (model of deterrence and suspension of the impossible): Morocco adopted a policy of "permissible but not allowed" by passing the 2004 code. By imposing very difficult conditions (exceptional objective justification and the right of the first wife to immediately divorce with compensation), the legislator has practically made polygamy a rare and costly affair, without explicitly calling it a prohibition (Al-Alami, 2014: 65).

5. Tunisia (model of prohibition and criminalization): Tunisia is at the end of this spectrum. With a novel interpretation of the verses of the Qur'an, this country has considered polygamy inherently oppressive and impossible (in terms of justice) and has declared it a "crime" and "invalid" (Al-Jandali, 2011: 115).

B) Axes of similarity

Despite the differences in the severity of the restrictions, four main areas of convergence can be seen in the legal systems of these countries (with the exception of Tunisia in some cases):

The most important similarity in modern times is the removal of polygamy from the sphere of personal decision-making of men and its entry into the sphere of sovereign supervision. In the past (classical jurisprudence), men themselves determined whether they could observe justice or not. However, today in Iran, Iraq, Syria and Morocco, this competence has been assigned to the "court". This paradigm shift indicates the acceptance of the principle that polygamy has adverse social effects and requires state control (Mehrpour, 2010: 112).

In all countries that accept polygamy (Iran, Iraq, Syria, Morocco), "financial capacity" is an inalienable condition. Legislators in these countries agree that poverty should not be reproduced. The only difference is in the way it is verified (local investigation in Iran or depositing a financial guarantee in Morocco).

All these systems have transformed the moral concept of "justice" in verse 3 of Surah An-Nisāʿ into a "legal constraint." Even Tunisia has reached a prohibition based on this concept of justice (and its impossibility of realization). Therefore, the central signifier of all these laws is the concept of justice (Al-Zahili, 2002: 185).

C) Axes of Difference

The differences between these systems are deep and structural and are rooted in theological foundations and social policy:

1- Difference in the legal nature of the condition

In Iran and Syria, the main condition for issuing a license is not "negative"; that is, if the man has money and promises justice, the court (in principle) grants the license. The man does not need to prove that his first wife is sick or infertile.

However, in Iraq and Morocco, a different approach prevails. The man must provide "objective justification". That is, he must prove "why" he wants to marry. In Morocco and Iraq, "lust" or "diversity" has no legal basis and the judge rejects the request. This is a major substantive difference (Ben Radiyeh, 2007: 44)

2- The position of the consent of the first wife

In Iran, the consent of the first wife is a condition of perfection but not a condition of validity. If the first wife does not consent but the man has financial capability and justice (and, for example, the wife disobeys him), the court grants the license.

In Iraqi Kurdistan and Moroccan practice, the consent of the first wife has almost the status of a "veto right". In Morocco, the lack of consent of the first wife leads to an immediate divorce decree and the seizure of all financial rights before the second marriage, which effectively discourages the man.

In Syria (after 2019), the emphasis is on the second wife's knowledge rather than the consent of the first wife.

3- Guarantee of execution

This is the most important technical point of difference.

In Tunisia, the second marriage is "void"; that is, as if it never happened at all.

In Iran, Iraq, Syria and Morocco, if a man circumvents all the laws and marries secretly, his marriage is "valid" (because it has the Shar'i pillars), but he has committed a crime.

The severity of the punishment also varies: in Iran, the punishment is relatively light (a fine or low-level imprisonment), but in Iraq and Tunisia, more serious imprisonment is applied.

4- The impact of religion

Iran, as the only Shiite country in this study (at the level of national laws), faces a phenomenon called "discontinued marriage", which does not exist in the other four countries. The existence of this institution has meant that the pressure for a second permanent marriage in Iran is less, because men have a legal way to have multiple wives without official registration and without having to go to court. This "legal escape way" has meant that the system of limiting polygamy in Iran functions differently from that in Sunni countries (such as Morocco and Syria), where there is no other option but permanent marriage (or illicit relationships).

The following table presents a comparative summary of the legal status of polygamy in the five countries studied (Iran, Iraq, Syria, Morocco and Tunisia) based on the key indicators of "legislative approach", "licensing conditions", "status of consent of the first wife" and "guarantee of enforcement":

Comparative table of legal systems of polygamy in Islamic countries

Key distinguishing feature	Status of second marriage without court permission	Is the consent of the first wife mandatory?	Main condition	General legal status	Country
The existence of (temporary marriage), which is a legal way to circumvent the restrictions on permanent marriage	The marriage is valid (they are husband and wife), but the man is fined or imprisoned	It is a condition of perfection Not the validity	Having financial means + a promise to observe justice	Allowed, but with court permission	Iran
The judge has great power to immediately stop the marriage if he feels that the man is becoming poor	The marriage is valid, but he is punished	No (it only needs to be proven that he can pay for both)	Only financial capability to run two lives	Strictness on money	Syria

The law in Iraqi Kurdistan (where the woman's consent is mandatory) is very different from the rest of Iraq	The marriage is valid, but there is imprisonment and a fine	No in all of Iraq, but in the Kurdistan region yes (it is mandatory)	There must be a "justified reason"	It requires a convincing reason	Iraq
The law is written in such a way that the man regrets it for fear of paying heavy financial damages to the first wife	The marriage is valid, but there is a lot of trouble and fines	The first wife can immediately divorce and take all her rights and entitlements at once	He must provide a very specific and strong reason to convince the judge	It is very strict (almost impossible)	Morocco
The only country that does not recognize a second marriage, even if it takes place	The marriage is void (as if the marriage never took place) + there is imprisonment	It is not at all an issue	There is no way (they do not give permission at all)	It is completely forbidden	Tunisia

The final comparison shows that Morocco has presented the most successful model in combining jurisprudence and modern law; because without an explicit prohibition (which may be considered against Shari'a), it has controlled polygamy through executive means. In contrast, despite the existence of regulatory laws, Iran has not been able to act as decisively as Morocco or Tunisia in limiting this phenomenon (at the legal level) due to the gap between "Shar'i marriage" and "legal marriage" and the existence of the "Temporary Marriage" solution.

Conclusion

A comparative study of the legal systems of Iran and selected Islamic countries (Iraq, Syria, Morocco and Tunisia) indicates a "paradigm shift" in family legislation. The findings of this study show that although the primary basis in most of these countries is "Islamic Shari'a", social necessities and the evolution of the status of women have changed the nature of the institution of polygamy from an "absolute male right" (in traditional jurisprudence) to an "exceptional legal establishment under the supervision of the government" (in modern law).

In the final analysis, the approach of legislators in this geographical area can be divided into three categories:

The regulatory approach (Iran and Syria): which focuses on establishing "financial capability" and "the administration of justice", and the role of the court is more of verification than a deterrent.

The deterrent approach (Iraq and especially Morocco): which has effectively made polygamy expensive and rare by adding difficult conditions such as "objective justification" (legitimate interest) and granting the right to immediate divorce and compensation to the first spouse.

The sanctioning approach (Tunisia): It, with an innovative interpretation of the concept of justice, has ruled for the "absolute prohibition" and "civil nullity" of second marriages.

The most important common challenge in most of these systems (except Tunisia) is the gap between "Shar'i validity" and "legal prohibition", meaning that the legislator recognizes remarriage as "valid" despite criminalizing the failure to obtain a license. Meanwhile, the Iranian legal system faces a unique situation; the existence of the institution of "interrupted marriage" (temporary marriage) as a

parallel Shar'i solution has effectively weakened the guarantees of enforcement of restrictions on permanent marriage and created a legal loophole that does not exist in Sunni countries (such as Morocco).

In general, the outcome of legal developments in Islamic countries indicates a move towards "Judicializing" the marriage process and limiting polygamy as much as possible with the aim of strengthening the foundation of the family although there is still no consensus on its complete prohibition.

References

1- Holy Qur'an
2- Ahmadifar, Rasoul and Kakavand, Mohammad, (2022), Study and investigation of the possibility of issuing a polygamy license for couples after the approval of the Family Support Law 1391, Bi-Quarterly Journal of Fiqh and Family Law, Volume 26, No. 75, pp. 235-255.
3- Ahmar, Faisal (2015). Comparative Arabic Family Law, Beirut: Al-Halabi Legal Publications.
4- Alami, Mohammad (2014). The family code between the text and its application during the judicial action of the court of appeal. Al Rabat: New Encyclopaedia Press.
5- Anderson, Norman (2017). Legal Reforms in the Islamic World, Translated by Fakhreddin Asghari, Tehran: Mizan Publishing House.
6- Attar, Abdul Naser Tawfiq (2020). Polygamy between jurisprudence and law, Cairo: Al Bostani Institute.
7- Bazarangi, Muhammad (1980). Explanation of the Iraqi Personal Status Law, Baghdad: Dar Al-Hurriya.
8- Dagestani, Salim (2019). New amendments in the Syrian Personal Status Law, Damascus: Charters of Justice.
9- Ibn Qudāma, Abdullah bin Ahmad (1405 AH). Al-Mughni. Beirut: Dar Al-Fikr.
10- Ibn Radiya, Hakima (2007). Polygamy in Moroccan Family Law, Maghla Al-Hukum Al-Maghribiyah, Issue 12.
11- Imami, Seyyed Hassan (2017). Civil Law, Tehran: Islamia Publications.
12- Ja'fari Langroodi, Mohammad Ja'far (2019). Detailed in Legal Terminology, Tehran: Ganj Danesh.
13- Jandali, Hamed (2011). The law of Tunisian personal status and its interest in the Islamic Shari'a, Tunis: Al-Atresh Assembly.
14- Jaziri, Abdul Rahman (1424 AH). Jurisprudence of the four schools of thought, Beirut: Dar al-Katb al-Alamiya.
15- Jubouri, Yasin Mohammad (2012). Description of the Iraqi Personal Status Law, Baghdad: Sabah School.
16- Katouziyan, Naser, (2018). Civil Law: Family (Volume One). Tehran: Publication Joint Stock Company.
17- Katouziyan, Naser (2014). Civil Law in the Current Legal System, Tehran: Mizan Publishing House.
18- Mehrpour, Hossein (2009). Comparative Study of Family Law, Tehran: Etelaat Publications.
19- Meyer, Anne Elizabeth (2013). Islam and Human Rights. Translated by Mohammad Qari Seyyed Fatemi, Tehran: Negah Moasar.
20- Moghadam, Farzaneh and Sheikh Mahmoudi, Mahdi, (1403), Legal Study of Polygamy by Men in Support of Women's Rights in the Iranian Legal System and International Documents, First International Conference on Law, Political Science, Islamic Politics and Islamic Jurisprudence.
21- Mohammad Taghizadeh, Mahdieh and Hamidi Soha, Zahra, (2017), Pathology of the Issue of Polygamy in Iranian Law and Judicial Practice, Journal of Women in Culture and Art, Volume 9, Issue 2, pp. 265-289.
22- Mohaqeq Damad, Seyyed Mustafa (2010). Jurisprudential Study of Family Law: Marriage and Its Dissolution. Tehran: Islamic Sciences Publishing Center.
23- Najafi, Mohammad Hassan (1981 AD). Jewels of the Word in the Explanation of the Laws of Islam, Beirut: Dar Ihya al-Turat al-Arab.

24- Qurṭubī, Muhammad bin Ahmad (1364). Al-Jamae for the rules of the Qur'an, Tehran: Nasser Khosro.
25- Sabaei, Mustafa (1998). Description of Al-Suri Personal Status Law, Damascus: University Press.
26- Safayi, Seyyed Hossein and Imami, Asadollah (2016). Brief Family Law, Tehran: Mizan Publishing House.
27- Second martyr, Zain al-Din bin Ali (1410 AH). Al-Rawda al-Bahiya in Sharh al-Lama' al-Damashkiyyah. Qom: Arbitration.
28- Shahidi, Mehdi (2015). Formation of Contracts and Obligations, Tehran: Majd Publishing House.
29- Shamari, Ily (2015). Women and Law in Arab Countries, Translated by Nasrin Faghih. Tehran: Roshangaran.
30- Tabataba'i, Seyyed Mohammad Hossein (2011). Tafsir al-Mizan. Translated by Seyyed Mohammad Baqer Mousavi Hamedani, Tehran: Islamic Publication Office.
31- The Civil Code of the Islamic Republic of Iran (approved in 1307, and subsequent amendments).
32- The Family Code of Morocco (approved in 2004).
33- The Family Protection Law of the Islamic Republic of Iran (approved in 1391).
34- The Iraqi Personal Status Law (No. 188, 1959, and amendments of the Kurdistan Region of 2008).
35- The Journal of Personal Status (Personal Status Law) of Tunisia (approved in 1956).
36- The Syrian Personal Status Law (No. 59, 1953, and amendments of 2019).
37- Tousi, Muhammad ibn Hassan (2008). Al-Mabsut fi fiqh al-Umamiyah, Tehran: Al-Muktaba al-Mortazawieh.
38- Zahili, Wahba (1418 AH). The Muslim family in the modern world, Damascus: Dar al-Fakr.
39- Zahili, Wahba, (2002). Islamic jurisprudence and jurisprudence, Damascus: Dar al-Fakr.
40- Zarari, Nozha (2010). Women and law in the Arab Maghreb, Dar Al Bayda: Alfank Publishing.
41- Zeinali, Amir Hamzeh, (2018), Transformation of Criminal Law Strategies in the Issue of Polygamy, Volume 13, Issue 49, pp. 47-66.

Copyrights