



Juristic Debates on Consent of Wife for Second Marriage in Pakistan: Views in Shariah Perspective

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ABSTRACT

Islamic Sharia gives significance to the marriage and great importance to the consent of prospective husband and wife for a legal contract of marriage. Its significance is evident through the Quranic injunctions and traditions of the Prophet Muhammad (P.B.U.H) who used to take consent of his daughters even after divine order. Muslim Jurists define consent as the prerequisite of the marriage contract in absence of it is invalid. The present research is an effort to explore the consent of wife before second marriage. In Sharia, the second marriage is valid for husband in presence of first wife and it is considered that husband doesn't require any permission from his wife for second marriage as it is his right established by Sharia by the referring Surah Nisa, 4:129 marry women of your own choice. The Quranic evidence along with the practices of the Companions of the Prophet for not taking permission before conducting second marriage. The debate on Section 6 clause 2B of Muslim Family law 1961 generate the legal clause of consent of wife before second marriage. Since Sharia has not specified any such condition before another marriage therefore objection generated on this clause. The methodology adopted for the present research is qualitative based on the evidences of Quran and Hadith literature to draw the actual facts and give suitable recommendations in this regard.

Keywords: *Marriage, Consent of Wife, MFLO, Shariah, Family Laws, Juristic Discourses*

Section 1: Introduction

Marriage is an important aspect of Islam which is based on principles of *Sharia*, also known as *Islamic law*. The term like *al nikkah*, *az zouj*, *al hiba* is being used by jurists for marriage which means to bind, brings together, to tie a knot etc. its significance is evident through this that it is considered as *Sunna*. It is also considered as fort just like fort protects from army similarly marriage protects from evil. It protects our modesty, Chastity, dignity and honor. It protects from indulging in illicit relationships. Its objectives are procreation, hereditary, perseverance from



evils. Marriage contract have certain conditions just other contracts have. These are: offer and acceptance, witnesses, mahr etc. It also has certain elements like spouse should be wealthy, have great lineage, and should be beautiful, spiritually upright. Among this great stress laid on spiritual uprightness. It is a halal (permissible) way of satisfying needs. It is a framework for raising children, best way of inculcating moral values, and maintaining social order. It is mean of spiritual growth, compassion and support between spouses which leads to the closeness towards God. Islam prohibits premarital and extramarital relationships. Marriage develops a sense of responsibility among spouses¹

In Islamic jurisprudence (Fiqh), consent in marriage have a great significance it is evident through this that scholars have debate on it. They believe that taking consent from both the bride and the groom is essential for a marriage contract which leads to happy and prosperous life. They also believe that both parties should enter into a marriage contract voluntarily and there should be no compulsion in it as Islam is against coercion.

As far as second marriage is concerned, according to Islamic law, second marriage is permitted only on one condition that provisions should be made equally and fairly among co wives by husband and if he fears that he is unable to do then he simply stick to one²:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ
مِّنْكُمْ - وَلَا تَقْتُلُوا أَنْفُسَكُمْ - إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا³

“O you who believe! Do not consume one another’s wealth unjustly, except through lawful trade by mutual consent. And do not kill yourselves (or one another). Indeed, Allah is ever Merciful to you.”

This verse acknowledges that it is difficult to treat multiple wives with absolute equality but emphasizes the importance of justice and fairness in one's treatment of them. It encourages husbands to be just and not favor one wife over another.

Laws are for the betterment of society. The law that has been discussed in this research is Muslim Family Laws Ordinance (MFLO) 1961⁴. It is a legal framework which is established to deal with various aspects of family issues, including marriage, divorce, and inheritance. In this research particularly article 6 of MFLO which deals with polygamy have been discussed as it is an important part of the research in which it is mentioned that a man cannot marry a second time while his first marriage is still going strong, according to the Muslim family law legislation of 1961. Then lately certain Amendments have been made in 2015 in which it is stated that an application for permission under section (1) (clause 2)

shall be submitted to the chairman in the prescribed manner, reason shall be stated for the propose. Among the other important aspects that have been addressed by MFLO, there is also the concept of consent which particularly deals with context of second marriages either consent of existing wife has to be taken or not have. This particular part has been discussed in the research as research revolves around it. In other words, it is an important part of our research. The MFLO seeks to reconcile this fundamental Islamic principle with modern legal requirements and societal norms.⁵

The concept of permission for second marriage is thoroughly examined in this paper within the MFLO framework and in the light of sharia law. It aims to investigate how with relation to second marriages in particular, the MFLO strikes a balance between Sharia principles and modern legal norms, The present research will thoroughly examine the consent of first wife/wives for second marriages according to MFLO and juristic opinions in light of Sharia, a comparative analysis on the basis of Islamic rules and contemporary legal norms in order to give recommendations and possible mechanism to the challenges in marriage contract.

1. Definition of Marriage Contract according to Sharia:

In sharia, the terms like al nikkah, az zouj, al hibbtu is being used for marriage which means bringing together and to bind and to tie a knot as it brings two individual and families together. It is a contract or bond in which two individuals enjoy companion ship of each other. As far as they enjoy companionship, they also have some right and responsibilities over each other which is an important aspect of marriage though. One`s rights is the responsibility of other`s. and if anyone neglect his/her responsibility then he/she will be answerable to Allah and their spouse too. Amongst the rights and responsibilities of marriage the most important and foremost right and duty is that marriage should be declared publicly its undeclaration could cause problems e.g., maintenance, inheritance, child`s legitimacy etc. Sharia considers Marriage a fort just like fort protects from enemies similarly marriage protects our religion from evil. Islam brings ease in life those who can't get married it allows them keep fast as it protects their Chasity.⁶

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَ
بَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ
كَانَ عَلَيْكُمْ رَقِيبًا⁷

“O men! Fear your Lord Who created you from a single being and out of it created its mate; and out of the two spread many men and

women.1 Fear Allah in whose name you plead for rights, and heed the ties of kinship. Surely, Allah is ever watchful over you."

Marriage has great significance in Quran and Sunna and it is evident through this that the word *Mithaq Ghalith* is used for marriage which means "Covenant Contract" a contract which have its own objectives, conditions, and elements. It is in Quran:

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُم إِلَىٰ بَعْضٍ وَآخَذْتُم مِّنْكُمْ مِّيثَاقًا غَلِيظًا⁸

How can you take it away after each one has enjoyed the other and we have taken a strong Pledge from you?"

2. A Sacred Civil Contract between two parties:

Aqd is an Arabic term that is used for contract. Literally its means to tie up, to fastened, to bring closer. Technically it is an agreement between two existing parties in which one party offers it and the other party accepts it. The elements of a contract is offer and acceptance, existing parties, consideration. Conditions for contract in Islam is that it must be according to the principles of sharia. If it's not then contract would be cancelled immediately. Subject matter must be deliver on time because it's an essential part of it. Marriage and commercial contracts are consider same due to its elements which are almost same except one aspect marriage contract have dowry whereas in commercial there is consideration. Both are profit-loss sharing contract but one have money investment other have investments of emotions, feelings and lives are attached which are unbearable loss in such a way that money can come back but trust cant. So loss is big. Marriage is a civil contract. Commercial are Social contracts. In commercial, if you deal with third party it doesn't affect the first party. But in marriage, it's not the same. It affect the other party. It is important to explain this concept in detail⁹ The objective of marriage is to procreate children, hereditary, perseverance of religion from evils. the conditions which an Islamic marriage contract have: offer and acceptance, witnesses, mahr etc. the elements which are required for spouse in a marriage are wealthy, lineage, beauty, spiritual rightness. In other words, it's a civil, social and religious contract. It means that Quran also consider it a contract just like other commercial contract. Both marriage and commercial have almost same rule and principles. Both requires consent of the parties without which a contract cannot occur. Both have the principle of offer and acceptance in which one party offers while other accepts it. Then witnesses who witness that contract happened in front of them. In a commercial, if one party have contract with other party and its fulfill all their right and responsibilities of that party and at the same time it have contract with third part also then first part have no right of interfere among them. Same goes with marriage contract to if husband fulfills the

rights of his first wife and he contracts another marriage and lives happily then first wife have no right to create disturbance between them.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَعْتَمِرُونَ¹⁰

“One of His indications is that He appointed partners for you from among yourselves, so that you could find solace in them. He put mercy and love there. For those who exercise intelligent judgment, there is undoubtedly proof.”

3. Definition of Polygamy in Shariah Rulings:

Islam of polygamy it is evident through this that there are only two verses (Verse 3, 129 of Surah Nisa) in Quran regarding polygamy. Though Prophet did multiple marriages Scholars's discussion on polygamy which is based on justice. They believed that if husband is financially stable and could do justice among his co wives then there is no haram in it. According to them justice in materialistic things e.g. Provision of food, shelter, home equally. Right of maintenance which is an important aspect of a marriage contract and its significance is evident through this that its absence could dissolve marriage. Whole discussion revolve around the consent of first wife whether it's required or not. It is in Quran:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبْعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْنَىٰ أَلَّا تَعُولُوا¹¹

If you fear you might fail to give orphan women their 'due' rights 'if you were to marry them', then marry other women of your choice—two, three, or four. But if you are afraid you will fail to maintain justice, then 'content yourselves with' one or those 'bondwomen' in your possession.² This way you are less likely to commit injustice.”

The Quran says:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا¹²

“O you who believe! Do not consume one another's wealth unjustly, except through lawful trade by mutual consent. And do not kill yourselves (or one another). Indeed, Allah is ever Merciful to you.”

وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كِتَابَ اللَّهِ عَلَيْكُمْ وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسْفِحِينَ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ

أُجُورُهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِيْمَا تَرْضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ
عَلِيمًا حَكِيمًا¹³

“Besides them, it is lawful for you to marry other women, if you pay them their dowry, maintain Chasity and do not commit indecency. So those women whom you married for limited time, pay them their agreed upon dowries. There is no harm if you reach an understanding among yourselves about the dowry. Allah is All Knowing and ALL- Wise”

4. Jurists Perspective about Polygamy:

Muslim Jurist including Imam Hanifa, Malik, Ahmed Bin Hambal justice prevails in accommodation and spending nights equally. They are of the view that justice can be possible but in feelings it is impossible because he can't love all wives equally. Al-Razi, Imam Qutbi, Maulana Fazlur Rahman agreed on wives up to 4 and minize it to one wife but they all are agreed upon this point that there must be justice among the wives if one cannot do it then its better he should go with one wife¹⁴. Whereas for gender perspective, it is simply a discriminatory among genders.it not only effects the family but it also disturbs the peace of society. In other words we can say that it is an alternate in situation in which husband is not happy with his wife or she is sterile and have disease like Aids etc. polygamy also be allowed to secure people from fornication.¹⁵ Polygamy means multiple marriages. Islamic Shariah is not fond of polygamy it only allows it is crucial circumstance along with the condition of justice. If he is unable to do justice it's better for him stick to one. As discussion revolves about concept of polygamy and consent it is important to understand it in the light of sharia and constitutions of the country.

5. Legality of Consent in Sharia on Polygamy:

Consent in marriage contract have great significance in Sharia whether it's a consent of bride or groom or of a wali (guardian). Quran and Sunna depicts its significance. Scholars have their own stances regarding it. All are agreed on this point that bride`s consent should be taken whether in written form or in verbal form but regarding wali consent they have diffences. For some wali consent is necessary while for others it's not. It is in Quran:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا وَلَا تَعْضُلُوهُنَّ لِيَنْتَهَبُوا بِبَعْضِ
مَا آتَيْنَهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ وَوَ عَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ
فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا¹⁶

“O you who believe! It is not lawful for you to inherit women against their will. And do not treat them harshly in order to take

back part of what you have given them, unless they commit a clear act of indecency. And live with them honorably. For if you dislike them, it may be that you dislike something in which Allah has placed much good.”

Prophet Muhammad (P.B.U.H) said:

“The widow and divorce woman shall not be married until and unless her consent is obtained. A virgin shall not be married until her consent is taken.”¹⁷

Section 2: Relationship of Wife’s Consent with the Marriage Contract

Marriage, contract, consent, polygamy are interlinked with each other. One can’t understand one concept without understanding the other. For better understanding of marriage contracts one have to understand the concept of contract in Shariah perspective. the significance of consent in a marriage contract the significant one the concept of consent thr aspects marriage, contract, consent and polygamy have been discussed in detail in this research under the guidance of sharia. Laws are made for the betterment of humanity either its divine law or country`s law. The objective of these laws is to keep law and order situation intact in the country and to make sure that everyone gets their rights fully and if not then courts are here who will give them their rights¹⁸. The word consent means to allow someone for something. In case of marriage you allow someone to enter in your life. it is not just a word.it is an emotion on which your entire next life is based. Without your consent no one can enter in your life nor can you enter in his life. Islam is based on equality it laid stress on consent of bride and the groom for marriage. Quran, Sunna, even scholars of classical period have written a lot about the concept of consent. Basically our discussion revolve around this concept. So we have to understand this concept without this we can’t move further. The original is that while entering into someone’s life both bride and guardian have been ready for it. Secondly we have living example of our beloved prophet Muhammad (P.B.U.H) in the form of proposal of Hazrat Fatimah. Even scholars of classical agreed about this except hanifa he believes that bride need no permission of her guardian when she gets mature in case her spouse would be compatible with her. Well that’s not the point.The article discussed in this research is the proof in this context.

1. Legal Provision of MFLO about Consent of Wife regarding Second Marriage:

The research is about legal provision of mflo about consent of existing wife for second marriage. So in this research Section 6 of Polygamy, Clause 2b have been discussed in which it is stated a husband cannot get married without the permission of first wife and arbitration council. For this he have to give solid reasons and have to satisfies the council only then council grants permission and

if he don't do so he will get punishment of one year imprisonment and fine and payment of entire dower for which case study have been included . The objective of these laws is to protect the rights of women. Scholars have raise certain objections on this particular article. They viewed that this particular section is against principles of Islam. They also believed that second marriage is the right of men and for this he don't need his wife's permission. Due to their objections no further development have been made on this law for 6 years. Finally in Ayub's Reign (1961), it was made a part of the Constitution. By time, reforms and amendment have been made in this specific article of law accordingly. After objections of scholars (1955), in 2014 certain recommendations have been made by Islamic Ideology Council among these are the exclusion of section 6 from law. Second marriage of husband shouldn't be a solid ground for dissolution of marriage. It happened because cases related to divorce occurred due to second marriage came in court and court dissolved such marriages that's why it is recommended. Somehow in initial days of article 6, under subsection 13 women have right of divorce if her husband's contracts second marriage but unfortunately it was exempted from law under Zia's reign. Cases that have been taken in this context, are related to divorce, maintenance, consent which shows that law is not only being made by lawmakers but it is also implemented by court etc. then effects of these laws have been discussed. The major effect is to avoid all these legal procedure either wife consent have been taken forcefully or husband mostly hide their nikkah which could cause problems like their second wife couldn't get their maintenance and and inheritance rights from court because state have no official records of their marriage. Same goes with inheritance rights she can't claim for her inheritance rights and expect that court will help her out. Court will definitely help if it will have any proof of their marriage.¹⁹

2. Background of Muslim Family Laws:

The story of poly gamy laws begun with the second marriage of Muhammad Ali Bhogra the Prime Minister of Pakistan in 1955. Before that there were no such laws in the country. The major role is played by All Pakistan Women Federation. Without their efforts it couldn't be possible. That that time some cases happened that made them to protest against government in order to pressurize them to make certain laws that would deal with marriage, divorce and inheritance cases. Fortunately Ali Sahib did the marriage with his secretary which give boost to their protest and as a result Ali agreed to make commission that dealt with family cases. Commission give certain recommendation which were against Islam according to the scholars of that time because scholars played significant role in freedom movement so their opinion took special place so they are not agreed with the recommendation of commission. Due to these issues commission didn't

become part of Pakistani constitution. After bogra reign was over and Ayub came into power women federation again raise this issue and Ayub passed the recommendation of commission. He said recommendation are not against Islam.²⁰

3. Muslim Family Laws in Pakistan:

On March 1961, Muslim Family Law came into being which deals with the laws of polygamy. Section 6 of MFLO deals with polygamy which states: it is mandatory for husband to take permission from arbitration council and wife. For people wife consent is not necessary but when one would go to council it required written permission of first wife. Along with that solid reasons are required for second marriage. If council is satisfies that second marriage is just and necessary then it would grant the permission. Besides that a nominee have to be submitted by husband and wife. If parties are not happy with decision then they could appeal for reversion of decision. According to the section 6 clause 5b if he marries without permission he have to face imprisonment and charge a fine of 5000000. It is amended in 2015 in which it is mention if council grant permission without wife permission then it is liable of punishment of fine and imprisonment.²¹

4. Implementation of Laws:

Laws are easy to make but practically it is difficult to implement it. Mostly problems arises in its implementation. Just like the laws of polygamy.²² The first problem is that women don't know their rights. They have less knowledge that they can get their maintenance in case of divorce. They face long-term hearings of courts in which in very rare cases women get their decision in their favor.²³ According to the reports only 42% women go to the option of courts. 19% women get decision. 99% women withdraw their cases either because of the procedures of courts, or due to the threats that they get from their in laws. That's why people avoids to go to courts.²⁴ The effect of these laws are that it controlled the ratio of polygamy in Pakistan. Pakistan is economically an unstable where inflation rises every time. In the era of inflation most of the people prefer only one. One should keep one thing in minds that these laws don't made second marriage invalid. As we discuss earlier that laws are for the betterment of society. So it is for the betterment of society in such a way through these laws peace of society remain the same. Family which is the main part of society don't get disturb. It safe children from sufferings. Further laws like this should be made in future.

Section 3: Polygamy Laws in Different Countries

Laws are made for the betterment of humanity and society either it is Islamic law or constitutional law of any country. Egypt, Syria, Malaysia, Indonesia, and Jordan etc. they deal polygamy differently. In these countries laws are that

husband have to take permission from court and from existing wife. He have to provide solid reasons for proposed marriage. He have to satisfy court for second marriage. Otherwise court will grant permission. If he fails to do that he will be imprisoned and fine of heavy amount. In these countries laws are not only made and implemented but also followed by the citizen strictly. Whereas countries like tusnia and turkey, they ban polygamy completely. In India, husband don't need any permission neither from court nor from wife. In Bangladesh and Pakistan, husband requires permission of both court and wife according to their law.²⁵

1. Judges Discussion about Polygamy:

Judges have also share their opinions on polygamy. They said that it is not an obligation but it is a right which one could use in crucial circumstances. They believed that women can take khula in case of polygamy. They also believed that if people won't accept polygamy they should be ready for extra marital relationships. Some judges thinks that condition of justice not fits in case of Pakistan where wife is not being consented before second marriage. Neither wives are being consented nor have they been consulted by the husbands in this regard in order to void court procedure. Even in some cases, they are not provided with the financial assistance and were asked to leave home as soon as possible if she can't live peacefully with his second wife.²⁶

Section 4: Polygamy- A Possibility in Crucial Circumstances

1. Polygamy: A Possibility in Crucial Circumstances

Polygamy isn't an issue rather it is a possibility in cruel states. Islam is not in favor of polygamy and it is evident through this that there are only two verses on polygamy whereas other topics that's being discussed in Quran have many verses though polygamy is not at all introduced by Islam. Though Islam put some restrictions and conditions on it. Islam allowed it in crucial state e.g. in warzone in which male agnates embraced martyrdoms and security of widow and orphan girls become a problem in that case Islam allow polygamy with condition of justice. As it is mentioned in Quran that you can marry, two, three, four of your own choice but if you fear that you cannot than one is better for you. Discussion about polygamy's possibility rather than an issue divides scholars into two categories traditionalists and modernists. Traditionalists considered polygamy a source of Islamic Perseveration, a suitable alternative, justice prevails in both marriages. They also believe that court should not interfere in family matters as it could have a dangerous effect on family unit. While according to modernist polygamy should be banned in order to protect wife from injustice. They believed it is right rather than obligation. Then the debate classical and contemporary on consent have been included in it. As consent is an important part of research so its concept and its significance and scholars opinion about it is important for better

understanding. Directly we don't get opinions of classical scholars but through their views one would assume that wife consent is not necessary whereas opinions of contemporary scholars which is taken through discussion with them or through fatwas that though wife's consent is not required but wife should know about her husband second marriage.²⁷

2. Recommendation Proposed by IIUC:

In this context, some recommendations proposed by IIUC regarding the laws of polygamy are also included in this research. Along with that some modern laws related to polygamy of other Muslims countries have been included to analyze our laws and other Muslim Countries Laws and it have been analyzed in the light of sharia. Then some discussion of the lawyers regarding polygamy have also been inculcated in this chapter. Anyhow. The bottom line is that wife's permission is not needed under sharia but she should know about her husband's second marriage as being his wife it is her right.²⁸

3. Juristic Opinion about Polygamy:

Polygamy remains a debate among Islamic scholars which divides them into categories of traditionalists and modernists. Traditionalists defend polygamy. They believe polygamy is source of reduction of immorality in society. It preserves Islamic culture. It eliminates extra marital relation among Muslim communities. It is the best way of induction of women into the family who husband died in the war. According to them it is a suitable alternative in extraordinary circumstances. It helps widows and orphans economically and socially. They also consider court interference in this matter absurd as it would bring disastrous consequences to family and society. Traditionalists don't consider injustice and discrimination as big issues to make polygamy invalid. While modernists thinks that polygamy is conditioned with justice which is humanely not possible. It's better to ban polygamy to prevent any kind of injustice towards wife. They considered polygamy as concessionary law (rukhsah). For modernists it is only allowed in necessary situation like in case of war, sterility etc. they condemn tis stance of traditionalists that extra marital relations prevail only because of monogamy. According to them it is because of industrialization of west. Through above discussion we learnt that Quran and Sunna are not very fond of polygamy while scholars have mix opinions about it some are in its favor while some are against it. So this is the Islamic perspective about polygamy now we see what laws of other countries regarding polygamy are.²⁹

4. Contemporary Scholars on Consent of Wife for second marriage

The point is according to the law of Pakistan men requires existing wife consent before going into second marriage. For this we have discussion with scholars of Pakistan. They believe that it is the right of the husband and they don't need anyone's permission not even his wife for this. Secondly they also said that this clause 2b of Muslim family law should be excluded from the law it is not need. Since the formation of mflo they are against this clause. In this context they refer to the example of Prophet Muhammad. They said that even prophet didn't get permission from his wives before marriage but they forget this fact that it is prophet who didn't allow his son in law ali bint talib for second marriage whatever the reason was he didn't allow him. He requested Allah Almighty not to put in test for things which is not in his control. Fatimah is my beloved daughter one who hurts her, he hurts me. After discussing all facts and figure that man avoids polygamy, if in case he go towards polygamy then he should take his wife into confidence and tell about his second marriage. There should be a midway through which a problem could be solved which is suitable for both parties

Section 5: Islamic Ideology Council and Scholarly Opinions

IIUC is a legal body which deals with such kind of matter. such kind of ruling in Islam which shows the necessity of consent of wife for second marriage. all scholars agreed upon this stance either it's Qibla Ayaz Sahab from IIUC or Mufti Taqi Usmani from Dar uloom Karachi. All of them have been agreed on this point though wife's consent is not needed but wife should know about his second marriage.³⁰

Recommendations of IIUC on Section 6 of MFLO

According to IIUC, Section 6 of Muslim Family law is against the laws of sharia. Hence it is proved through injunctions of Quran, Sunna of Prophets and through the Ijmah of Scholars husband is allowed to keep 4 wives at a time and there is no harm in it religiously. There is no need of getting permission from Civil Judge and from first wife for conducting second marriage.

All scholars are agreed on this point that conducting second nikkah is the Sunna of our prophets. Our beloved Prophet Muhammad (P.B.U.H) himself conduct many nikkah during his lifetime. Even today in this contemporary period, many contemporary scholars of this time follow this footsteps of Prophets and Companion. So according to them religiously it is a crime to give punishment to one who conduct second marriage in order to stop polygamy in society as it is his right and he is availing his right and no one has right to stop him not even courts and his first wife. It is against the teachings of Islam.

In sharia perspectives. Husband and wives have some rights/ responsibilities on each other. One right is the responsibility of the other. Morally and religiously it

is the responsibility of husband to fulfill the rights of his wife either he have one or more wives. If he fail to do justice among his wife/wives then it is better for him to have only one wife.in this case wife have the right to take legal action against him. According to IIUC, section 6 of MFLO not only disturb the family structure and peace of society but is also responsible for the destruction of other human rights. Scholars feared that may children, wife, husband deprive off their legal/ Shari rights due to this section 6. So this section 6 should be exempted from the MFLO Laws.³¹

Jamia Binoria's Stance

If husband could maintain his both wives equally then it is religious right and there is no harm in it. But it is better that husband should told his wife about his second marriage before indulging in any kind of legal procedure of judicial courts.³²

Mufti Hafiz Owais Ahmed's Opinion

About the consent of wife for second marriage in its response:

“There is nothing like that neither in history of Islam nor we have seen or heard that Prophet Muhammad (P.B.U.H) took the permission of his wives before marriage. Nor Quran said anything about it like there is no injunction in which it would be mentioned that wife permission is necessary. There is nothing like that. This is perspective of Islam regarding consent of wife for second marriage. But if we look into scenario of Pakistani law. Consent of wife is necessary. Well if we want to keep peace, solidarity and dignity in the society than its important that one should convince his wife first for second marriage if he wants to be protected from courts proceedings.

Mufti Khurram Iqbal Rehmani's View

the verse 3 of surah nisa presented same point of view as scholars like Abdu, fazul Rahman and many others have regarding justice. They all agreed on this point that justice can be done only in materialistic things like one can provide justice in food, shelter, clothes and turn of nights. In term of feelings, emotions it's impossible for one to treat them equally. It's against human nature. Islam doesn't burdened one on things which are not in its control. He also give reference of one of the tradition of Prophet in which he said: “If someone have two wives and intentionally he bow down towards one. Then on the Day of Judgment. He would be taken up with paralyzed body.”

1. Mufti Muhammad Akmal's Perspective

He was asked about nikkah and polygamy and justice. He said: He also recited the Verse 3 of Surah Nisah. He explained the concept of nikkah, its forms and its validity. He also explained farz, mandub, haram in this context. Surprisingly, he

advised women they should take care of them. When husband come back home from office, they should be ready in neat and clean dress along with the smiley face. He also said that no smell of onion and tomato should come from them. In this way, husband will not think about second marriage. They don't know need to give permission to their husband for second marriage.³³

Conclusion:

The research is that after the discussion and debate in the light of sharia is that if husband fulfills the demands of wife and she is happy with him and during this he contracts second marriage then neither she has right to stop him from doing so nor he need any permission from him. Marriage is a very beautiful bond in which you laugh together, you cry together, you live each and every moment of your life together. It is evident through this that the universe begins with couple. The first relation that was developed was husband and wife. It's neither a relationship of parents and children nor it is relation of siblings. It's simply a bond of husband and wife which the purest bond in the world. It occurs through the contract which is known as Mithaq Ghalizun a covenant contract which is different from all other contracts. A contract which cannot be happened without the consent of bride and groom along with the consent of their guardians. Consent is integral part of our discussion. It is as important as concept of marriage is. We can say that our discussion revolve around this concept. Consent is also be important because when you are a partner in contract you have to discuss things with the other partner. You can't do anything without his say or without his/her consent. Same rule applies in marriage contract too. You can't go for second marriage without taking your partner into confidence. Polygamy is not bad thing. It is neither prohibited nor favored by Islam. It is just restricted by Islam with condition of justice. So polygamy, consent, contract, marriage all are attached with each other like a best friend. One cannot understand other concept until unless he understands the first one. So marriage should be conducted with the blessings of guardians and with the consent of bride and groom. It is a precious bond so each and every moment of it should be enjoyed. Just like first marriage in second marriage too one should take consent of his wife. Discuss things with her and if she allows then go for it. Wife should understands her situation. If second marriage is necessary and he has no other option and his family pressurize him for it. Then she should let him go. But husband should support her financially. Fulfill her desires. She should not be neglected. Only in this way an ideal family could be establish.

The second result of the research is that the specific word "Consent" should be exempted from the law instead the word "*Willingness*" specifically in article 6 (polygamy) of mflo. The entire law should not be excluded due to one specific

word laws are for the betterment of society either its divine law or its country both have the same purpose.

It is made to keep the peace intact. Its objective is to avoid law and order situation in the country. When break laws injustice occurs. For example according to sharia do justice among your wives. It's a law. When one breaks injustice occurs automatically which disturbs the peace of society. Similarly the law (clause 2b of section 6 of MFLO) that have been discussed in this research is for the protection of women rights. So that they don't have to face any injustice from her husband. If they face then law will take actions. He will be accountable in front of both of them the law and the existing wife. Though law has given right of divorce to women in this case. It's better to avoid divorce instead she should fight for her rights. Divorce is the last option and Allah doesn't like it though. Secondly, it won't affect anyone rather than women itself. It affect the children the most. It destroy their personality. So it is recommended that she should stay there for betterment of her children. Laws are there but it is recommended that family matters should be resolve in house. It's better to avoid courts in this regard.

The third result of the research is that wife should know about husband's second marriage. It is her right and duty of husband. It's ok if he don't seek permission from her in this respect but at least he should tell him about his second marriage. Scholars believes that though it is not necessary to take consent of first wife before second marriage he should tell her first as it is her right to know about it. Though they are not agreed on this point wholeheartedly

It revolves around the issue upon which the whole building stands. The significance of research is to examine the legal provision of mflo in consenting her husband for second marriage and also husband attitude of fairness and equity towards his wife. The study is also significant in exploring Islamic way of protecting women's right through its law and to learn about families dynamics are being changed with passage of time. The objective of this research is to highlight the importance of female consent for marriage. To analyze the legal provision of mflo pertaining wife consent for second marriage and to learn about opinion of jurists regarding consent of wife for second marriage. The issue around which whole research revolves is that in section 6 of polygamy of mflo it is stated that husband need consent of his wife for second marriage. Scholars thinks that it's against principle of Islam. To resolve this query the research have been divided into 3 parts. Part I deals with the concept of marriage contract in Sharia perspectives because research base on it, then its significance in Quran and Sunna, its conditions and elements. Besides that other concepts like contracts, consent, and polygamy have also been a part of first part. These are pillars on which

building of first chapter is standing. As laws is an integral part of the research either sharia or state laws. Similarly Part II specifically deals with laws section. In this section, laws specifically article 6 (Polygamy) of MFLO have been discussed. In this context, background of the MFLO, its laws, reforms, amendments, analyses and effects have been part of this part. Whereas in Part III debates of scholars on consent of existing wife have been inculcated. For this purpose, opinions scholars of classical period and contemporary period have taken into account. The methodology taken for this research is qualitative. It is based on theoretical framework. Books, articles, fatwas have been taken for this research. Then some findings have been made in this research accordingly. Last not the least, some recommendations have been proposed at the last.

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