

**ADDITIONAL REPORT ON POLYGAMY BY THE ADVISORY COMMITTEE  
APPOINTED TO PROPOSE REFORMS ON MUSLIM PERSONAL LAWS IN  
SRI LANKA**

**MUSLIM MARRIAGE AND DIVORCE**

05th October, 2022

## Muslim Law Reform Advisory Committee to the Hon. Minister of Justice

The Committee has deliberated the issue of Polygamous marriages as permitted by the existing Section 24 of the Muslim Marriage and Divorce Act and presents two positions taken by the members in relation the same.

### Position on repealing polygamy

As Committee Members of the Advisory Committee on Muslim Law Reforms to the Ministry of Justice, on the question of retaining the permission for Muslim males to contract polygamy, we, the undersigned propose that this permission is prohibited, and **Section 24 is repealed in the Muslim Marriage and Divorce Act of the 1951.**

This measure is justified as the practice of polygamy has resulted in cruelty towards women, denial of maintenance to existing wives and children, and abandonment of existing wives and children. These injustices are contrary to the principles of Islam. Comparative experiences in other Muslim countries that have imposed conditions for entry into a polygamous marriage demonstrates that it does not work.<sup>1</sup> It is extremely difficult for the legal system to evaluate and monitor the satisfaction of conditions and male spouses have continued to circumvent conditions and misuse the law. In today's context, the option of polygamy introduces inequality, hierarchy and disrespect into the marriage relationship and Muslim women and children are denied access to equal protection of the law guaranteed by the Constitution.

We take the position that Islam promotes monogamy as demonstrated in Surah an-Nisa' 4:3 which states "If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, three or four, but if you fear that you shall not be able to deal justly (with you wives), **then marry only one... that will be more suitable, to prevent you from doing injustice**". It is clear that polygamy is not a mandatory requirement for Muslim males in Islam. In fact, Islam does not encourage it and as such prohibiting polygamy is not contrary to Islam. As Islam guides us to make laws and rules to promote of justice, kindness and tranquility, in today's context, it is incumbent on us to pursuit of principles of Shari'ah by prohibiting polygamy.

Safana Gul Begum  
Ermiza Tegal

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<sup>1</sup> Malasiya - 2019 - A study showing that polygamy has cross-border consequences and has potential to generate intra-family conflict between co-wives, financial insecurity and mental distress. 2017 - Available data on polygamy showed that most husbands could not fulfill financial and familial needs and majority (90%) of women in polygamous marriages do not recommend the practice. 2010 - Stress, quarrels and neglect: the 'normal' polygamous family

Indonesia - (2021) Expert Voices Concern over Polygamy and the Impact on Children. 'Minister of Women's Empowerment and Child Protection, Bintang Puspayoga, asserted that this practice heavily affects women and causes them to experience "psychological violence and pressure which one of its reasons is because of unfair treatment.". (2019) Rise of ultra conservative groups and training seminars for polygamous marriages. (2016) Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property

Studies relating to impact of polygamy on families and health: (1) Ertan Yilmaz & Lutz Tamam, The relationship between polygamy and psychiatric disorders in Turkish women, International Journal of Social Psychiatry (2018) (2) Oyeromi S O, Olaolu F, Fadkun J B & Omiyale G, Effects of marital stability and divorce on the academic performance of adolescent students in senior secondary schools in Ogun State, Nigeria, Greener Journal of Education Research (2018)

### Position on retaining polygamy with conditions governing the practice

We, the undersigned propose that **permission to contract a polygamous marriage be restricted with the introduction of conditions**, and an amendment to that effect be made in Section 24 of the Muslim Marriage and Divorce Act of 1951.

Marriage is a sacred institution in Islam with very important objectives. In most cases, the objective is achieved through monogamy. However, according to the Koran, in certain situations, a man is allowed to marry more than one wife, with the condition that he treats his wives with justice, and takes the decision with God Consciousness. It is allowed, though not mandatory, as a remedial measure for certain situations that may arise from time to time.

In the said context, we having considered the representations made on this behalf by major Muslim Civil Society organizations including the All Ceylon YMMA Conference, All Ceylon Jamiathul Ulema, the report of the Muslim Law Reform Committee chaired by Dr. Justice Saleem Marsoof in 2018, the review of the law relating to practice of polygamy in Singapore, Malaysia and Indonesia and the deliberations of the Committee members propose that permission to contract a subsequent marriage be granted, pursuant to an inquiry by the Muslim Marriage Conciliator, if the said Conciliator is satisfied that:

- (a) the applicant is living with, and justly and adequately maintaining and caring for, his present wife or wives;
  - (b) the applicant is looking after his children born to his wife or wives in a just and equitable manner;
  - (c) the applicant is capable of dealing justly and equitably with his intended wife and his other wife or wives;
  - (d) the applicant has the financial capacity to maintain and provide suitable and independent place of residence in accordance with his and her social standing for his wives and children; and
  - (e) the applicant has the capacity to provide a life that is balanced in regard to the financial, physical and emotional well-being of all wives;
- OR
- (f) The existing wife and/or wives is/are unable to perform her conjugal duties or suffer from a physical infirmity or an incurable disease or cannot bear children.

Provided, in such instance the wife of the subsisting marriage and/or the intended wife will be at liberty to waive of the conditions specified herein above.

An application in the prescribed form be made to the Muslim Marriage Conciliator of the area within which his wife, or where he has more than one wife, the first of his subsisting wives usually resides. The said Conciliator shall hold an inquiry taking into consideration the aforesaid conditions and be empowered to grant or refuse permission for the contract of a subsequent marriage. Granting of permission be in writing, by way of a certificate issued by the Conciliator.

An appeal from such decision of the Conciliator be made available to the applicant or any party directly aggrieved, to the District Court in a manner similar to that has been provided for in proposed Section 26F.

It is also recommended that no such subsequent marriage shall be solemnized or registered without a Certificate issued by the Conciliator.

Further, it is recommended to make it an offence for any person to knowingly contract, solemnise or register a subsequent marriage contrary to a refusal to grant permission to contract a subsequent marriage or without complying with all conditions that may have been imposed and any marriage solemnised or registered contrary to such provision be made invalid.

Accordingly, the proposed amended section 24 of the Muslim Marriage and Divorce Act could read as follows:

24.

- 1) Where a married male Muslim intends to contract a second, third or fourth marriage, he shall apply for permission substantially in Form IV(a) set out in the First Schedule, to the Muslim Marriage Conciliator of the area within which his wife, or where he has more than one wife, the first of his subsisting wives usually resides.
  - 2) Upon receipt of such application, the Muslim Marriage Conciliator pursuant to an inquiry into all circumstances that may be relevant to the application for permission to marry, in accordance with the Third schedule, may or may not grant permission for such subsequent marriage by issuing a certificate substantially in Form IV(b) set out in the First Schedule, and specifying the conditions, if any, if the said Muslim Marriage Conciliator is satisfied that –
    - (a) the applicant is living with, and justly and adequately maintaining and caring for, his present wife or wives;
    - (b) the applicant is looking after his children born to his wife or wives in a just and equitable manner;
    - (c) the applicant is capable of dealing justly and equitably with his intended wife and his other wife or wives;
    - (d) the applicant has the financial capacity to maintain and provide suitable and independent residence in accordance with his and her social standing for his intended wife, and any children that might be born to such intended wife; and
    - (e) The applicant has the capacity to provide a life that is balanced in regard to the financial, physical and emotional well-being of all wives;
- OR
- (f) The existing wife and/or wives is/are unable to perform her conjugal duties or suffer from a physical infirmity or an incurable disease or cannot bear children.

Provided, in such instance the wife of the subsisting marriage and/or the intended wife will be at liberty to waive any one or more of the conditions specified herein above.

- 3) No such subsequent marriage shall be solemnized or registered without such Certificate.
- 4) The conditions that may be imposed by the Muslim Marriage Conciliator in terms of sub-section (2) of this Section shall include conditions to ensure the proper maintenance of the wife or wives or children of the applicant, including the expenses that may have to be incurred for their future education, and the maintenance of the wife the applicant proposes to marry.
- 5) Notwithstanding anything contained in Section 16 and 17 of this Act, an applicant who has been refused permission to contract a subsequent marriage shall not contract, solemnize or register such subsequent marriage, nor shall he contract, solemnize or register a subsequent marriage for which permission has been granted, until the expiry of one month from the date of the Certificate granting such permission, and in the event any appeal has been preferred, unless the appellate proceedings have been concluded with an order affirming the granting of permission.
- 6) Notwithstanding anything contained in Section 16 and 17 of this Act, an applicant who has been granted permission to contract a subsequent marriage subject to any condition or conditions, shall not contract a fresh marriage, solemnize or register the same without fulfilling all conditions imposed.
- 7) It shall be an offence for any person to knowingly contract, solemnise or register a subsequent marriage contrary to a refusal to grant permission to contract a subsequent marriage or without complying with all conditions that may have been imposed, before contracting a subsequent marriage or solemnising or registering the same.
- 8) Any marriage solemnised or registered contrary to the provisions of this section shall be invalid.

The Section relating to APPEAL could be incorporated in proposed Section 26F itself. The said new section could read as follows:

26F -

- (1) An applicant or any party directly aggrieved by the decision of the Muslim Marriage Conciliator made under Section 24(2) of this Act; or
- (2) A party to a Muslim Marriage who is aggrieved by the recording of -
  - a. a conciliation under paragraph (a) of subsection (1) of section 26D;
  - or

- b. a settlement of divorce only under paragraph (c) of subsection (1) of section 26(D),  
on the ground of forgery or duress or failure to follow the procedure laid down in terms of this Act,

may appeal against such decision or such recording or conciliation or such settlement in the manner hereinafter provided to the District Court within whose jurisdiction the wife resides.

The existing subsection (2) onwards to be renumbered from (3) onwards

The Section relating to offence by the Registrar is already in Section 82 (Section 48 of the proposed bill). With regards others the OFFENCE section could be inserted may be after Section 82 and the sections thereafter could be renumbered. The said proposed section could read as follows:

- Any person who knowingly contracts or solemnise a subsequent marriage contrary to a refusal to grant permission to contract a subsequent marriage or without complying with all conditions that may have been imposed, before contracting a subsequent marriage or solemnising in contravention of the provisions of section 24 shall be guilty of an offence, and shall on conviction after summary trial before a Magistrate, be liable for a fine of not less than ten thousand rupees and not exceeding twenty five thousand rupees or to imprisonment of either description for a term of not less than six months and not exceeding three years or to both such fine and such imprisonment.

Application for entering into a subsequent marriage

The Muslim Marriage Conciliator,  
.....(address)

..... (area)

I, .....(name in full), of.....(address in full),  
(holder of NIC or Passport bearing No:..... ), hereby declare that I married  
.....(name in full), of.....  
(address in full) (holder of NIC or Passport bearing No:..... ), on.....(date) within the  
District of....., in Sri Lanka, and the marriage was registered under the provisions of the  
Marriage and Divorce (Muslim) Act No. 13 of 1951. A copy of the extract from the Muslim Marriage  
Register maintained under the said Act is annexed herewith.\*

[In the event that there are more than one subsisting marriage, the names and other particulars of  
the other wives shall be included in the application in the same format]

I further declare that we have no children\* / the below named children\* whose ages are stated  
against their names:

- 1.....(name) .....(age)
- 2.....(name) .....(age)
- 3.....(name) .....(age)

[If there be more than 3 children, the names of the other children be added in the same format]

My wife / wives\* and I have mutually agreed on the following terms with respect to the future affairs  
of the children\*and / or .....(state any other matters on which settlement has  
been reached:..... (If  
there is a detailed agreement signed by the parties, the same may be attached)

I further declare that I desire to contract another marriage and do hereby apply for permission of  
the same.

Full name of the intended wife : .....  
Address of the intended wife : .....  
NIC or Passport No: .....  
Age as at date of Application :

\*Strike off what is inapplicable

.....  
(Signature of the Applicant)

The above was read and explained to the affirmant above named by me In .....(state  
language), who placed his right thumb impression/ \* signed before me at ..... on this day,  
the.....th of..... 20....)

.....  
(Signature of Justice of Peace)





(a) Name :	
(b) Address and Area	
(c) Signature	

### THIRD SCHEDULE

(Section 24)

#### PROCEDURE BEFORE THE MUSLIM MARRIAGE CONCILIATOR WITH REGARDS AN APPLICATION TO CONTRACT A SUBSEQUENT MARRIAGE

- 1) Where a married male Muslim intends to contract a second, third or fourth marriage, he shall apply for permission substantially in Form IV(a) set out in the First Schedule, to the Muslim Marriage Conciliator of the area within which his wife, or where he has more than one wife, the first of his subsisting wives usually resides.
- 2) Upon receipt of such application, the said Conciliator shall issue notice of such application to each of the wife/s to whom the Applicant is married or any other person whose presence is required, by way of registered post, informing the applicant's intent to contract another marriage, and requiring such wife/s or other person to appear before the said Conciliator on a date and time to be specified in such notice, a date being not earlier than one month after the date of the said notice.
- 3) If the Notice sent under paragraph 2 returns, the Muslim Marriage Conciliator shall issue such Notice through the Grama Niladari in the area where such wife/s or the other person reside.
- 4) The Conciliator shall in addition –
  - a. cause a copy of the notice to be exhibited at each of the Jumma mosques within the area the wife/s reside, informing the public of the contents of such application; and
  - b. where in all the circumstances of the case it considers appropriate, direct a public notice of the application to be made and in such manner as he may direct, at the expense of the Applicant.
- 5) The Conciliator shall on such date and time specified in the notice referred to in paragraph 2 or 3 or such other date and time as may be determined by the said Conciliator, if the wife/s appear, where appropriate shall;
  - a. persuade the applicant and the wife/s to reconcile and facilitate an amicable and consensual settlement of any dispute or difference that may have given rise to the application,
  - b. refer the applicant and the wife/s to a competent Muslim mediator to provide necessary mediation or other dispute resolution method, and facilitate an expeditious resolution of any cause of disharmony which may have given rise to the application.
- 6) The Conciliator shall then adjourn the inquiry for a date and time not less than one month from that date, and require the applicant and wife/s to appear on such date and time to which the same is adjourned.

- 7) If it appears to the conciliator that the Applicant does not wish to pursue his application, the Conciliator shall state the same and record substantially in Form IV (b) set out in the First Schedule that permission is refused on the basis that the applicant does not want to proceed with the application and terminate proceedings.
- 8) In the event any party defaults in appearance before the Conciliator, consequent to the steps stipulated in paragraphs 2 and 3 above, the Conciliator shall deal with such default in a manner as may be conducive to the efficient disposal of the application in the absence of the party refraining so to appear.
- 9) If on the date and time to which the inquiry is adjourned, it appears to the Conciliator that the Applicant wishes to pursue the application, the Conciliator shall proceed with the inquiry.
- 10) At the inquiry any person who receives notice under paragraph (2) herein shall be entitled to make representations in writing to the Conciliator in regard to the matters that have to be considered in determining the said application. Where it is considered necessary, applicant or any other person who receives notice may furnish, within the period of time as the conciliator may direct, any relevant evidence by way of affidavit, or place before the Conciliator any other evidence that may be relevant.
- 11) The Conciliator shall inquire into all circumstances that may be relevant to the application for permission to marry, including matters set out in Section 24(2) (a) – (f) of this Act.
- 12) At the conclusion of the inquiry, the Conciliator shall forthwith or as expeditiously as possible, make a decision granting or refusing permission to contract a subsequent marriage, and laying down conditions, if any, that the Applicant shall fulfil prior to solemnizing and registering such marriage substantially in Form IV (b) set out in the First Schedule and terminate proceedings.

**SECTIONS TO BE INCORPORATED WITH REGARDS NUMBER OF COPIES OF THE CERTIFICATE - (SIMILAR TO SECTIONS 26D(3) AND (4))**

- (1) The certificate referred to in paragraph 24(2) shall be in Sinhala or Tamil. A translation thereof may be issued in English at the request of the parties.
- (2) The certificate in which permission to contract a subsequent marriage is refused shall be in triplicate and the Marriage Conciliator shall -
  - (i) keep the original with him;
  - (ii) issue the second copy to the applicant; and
  - (iii) send the third copy to the Judicial Service Commission, on or before the seventh day of the month following that in which such certificate was issued.
- (3) The certificate in which permission to contract a subsequent marriage is granted shall be in quadruple and the Marriage Conciliator shall -
  - (i) keep the original with him;
  - (ii) issue the second copy to the applicant; and
  - (iii) send the third copy to the Judicial Service Commission, on or before the seventh day of the month following that in which such certificate was issued; and
  - (iv) send the fourth copy within 7 days after the expiry of thirty days from the date on which such decision was made to the District Registrar of the District within which the Marriage Conciliator's area is situated.

**SECTIONS TO BE INCORPORATED WITH REGARDS MAINTAINING A REGISTER - (SIMILAR TO SECTION 26G)**

- (1) Every Marriage Conciliator shall keep a register of all details of all applications for permission for a subsequent marriage with relevant reference numbers, records of all proceedings, other material and the decision.
- (2) The Marriage Conciliator shall at the request of any party or their authorised representative and upon payment of the prescribed fee, issue to that person a copy of any such document or of any entry therein, certified under his or her hand to be a true copy.

**IF POLIGAMY IS PERMITTED THE FOLLOWING AMENDMENTS BE MADE IN THE ALREADY DRAFTED PROPOSED BILL**

**IN FORM II - DECLARATION BY THE BRIDEGROOM**

Immediately after item No. 5

If the bridegroom has subsisting marriage/s (that is, if the bridegroom's wife/s\* is / are\* still living and the marriage/s has / have not been declared a nullity or the said wife/s have not been divorced) -

Name, address and NIC number/s of all existing wife/s -

Details of the Certificate issued in terms Section 24(2) of the Act authorizing the proposed marriage

**IN FORM IV - MARRIAGE REGISTER**

Immediately after item No. 10

' If the instant marriage has been permitted under Section 24(2), reference No. of the application and the decision.

**AMENDMENT TO SECTION 43 OF THE ALREADY DRAFTED PROPOSED BILL**

Section 43 of the Amendment bill to be amended to remove Section 74 therefrom.

Section 74 of the existing Act be amended and inserted as a new section 43A (or as any other reference number) immediately after Section 43 of the Amendment Bill and shall read as follows;

43A - No Attorney at Law shall be entitled or permitted to appear on behalf of any party or witness in any proceedings before the Muslim Marriage Conciliator under this Act.

Shabry Haleemdeen  
SMM Yaseen  
MAM Hakeem  
Naamiq Nafath  
ABM Ashraf  
Sheik M Arkam Nooramith  
Sheik Muiz Bukhary

On this 5<sup>th</sup> day of October, 2022.

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