



Afghanistan – Researched and compiled by the Refugee Documentation Centre of Ireland on 27 April 2011

Information on Polygamous Marriages in Afghanistan.

A document published by the *Social Institutions and Gender Index*, in a paragraph headed “Family Code”, states:

“The Afghan Constitution and Islamic Sharia law both support polygamy, allowing men to take up to four wives. Certain conditions apply to polygamous marriages, such as the equal treatment of all wives, but these are not always observed. A report by the Max Planck Institute reveals that the social prestige of divorced women is so low in Afghanistan that many divorcees will agree to be a second or third wife rather than remain single – even if they are treated unfairly by the husband.” (Social Institutions and Gender Index (undated) *Gender Equality And Social Institutions In Afghanistan*)

A report published by the *Max Planck Institute for Foreign Private Law and Private International Law*, in a section titled “Polygamy”, states:

“Generally the social and public reaction toward polygamy is condemnatory. It is considered to have negative social consequences. For most ordinary people, however, polygamy does not seem to be an issue; their attitude is rather indifferent. Since divorce is seen as a bad thing, the social prestige of a divorcee is very, very low, and for the majority of women, living alone is not an option. That is why women would rather be a second or third wife than a divorcee. According to Islamic law and the AfgCC, polygamy is a legal institution whereby a man can marry up to four wives simultaneously. However, the conditions set for multiple marriages, such as the equal treatment of all wives, are not observed in practice by the bride's parents or the polygamous husband. A court permission for the conclusion of a second, third, or fourth marriage is not required either under classical hanafi law or the AfgCC. The unequal treatment of spouses gives rise to many family troubles such as abuse, home detention, and prevention of living in the house of the husband, problems with child custody and inheritance leading sometimes to suicide. Usually the most recent wife will be preferred to the first, second or third wife.” (Max Planck Institute for Foreign Private Law and Private International Law (April 2005) *Family Structures and Family Law in Afghanistan – A Report of the Fact-Finding Mission to Afghanistan January – March 2005*, p.20)

In a subsection titled “1. Polygamy amongst rich, educated Afghans” this report states:

“In this social stratum, the issue of taking a second wife arises mostly for three reasons: (1) When the couple has no male heir. In this case, the parents of the husband often pressure their son to enter into a second or third marriage to produce a male heir. The parents argue that polygamy is necessary because the first wife is unable to give birth to a male child. The perception seems to be that it is the wife's ‘fault’ if no male child is born and a new wife opens the perspective of giving birth to a son.

(2) Another reason is the competition between close relatives, especially brothers. Social prestige favours polygamy among this category of people not just in remote parts of the country but also in urban areas.

(3) If the wife suffers from a disease which is difficult to treat.” (ibid, p.21)

In a subsection titled “2. Polygamy amongst educated Afghans” this report states:

“Polygamy rarely happens in this category. Amongst the interviewees, the educated persons explained that for them marriage was an emotional, religious, and consciously binding contract. Therefore, plurality of marriage only takes place where it can’t be refused or avoided: for example, as tradition dictates, the lack of male heirs is a reason for a multiple marriage because a male child is considered very important. This is due in particular to the son’s role as the supporter of his elderly parents or as a successor in the business of the family. This is an essential element, since the family will not relinquish this authority to any outsider.” (ibid, pp.21-22)

In a subsection titled “3. Polygamy amongst illiterate, rich Afghans” this report states:

“Polygamy usually takes place among this category of people, be they rural or urban. According to the interviewees, the number of multiple marriages has increased in the past 15 years amongst this category of people. The new generation has strong political affiliations to warlords and smugglers, providing these people with illegal capital and giving them the means to support several wives. Given that these individuals are ignorant and illiterate, polygamy is practised without observing the limitations set for it under Islamic law and statutory law. Most of the polygamy cases were among this category of people.” (ibid, p.22)

In a subsection titled “4. Polygamy amongst illiterate, poor Afghans” this report states:

“Polygamy rarely happens among illiterate, poor people. The main reason preventing polygamy is their weak financial condition. The desire for multiple marriages is very strong amongst these people, since being (financially) able to have another wife would represent social and material prestige.” (ibid, p.22)

A report published by the *Afghanistan Research and Evaluation Unit*, in a section titled “Polygamous Marriage” (section 8), states:

“As the quotation above illustrates, a man having more than one wife is viewed by the communities where the research was conducted as, at the least, a difficult family dynamic to manage. It is commonly associated with destructive family relationships and violence, and, as the quotation infers, it is considered by some as un-Islamic — particularly if it is not practised in a certain manner. The quotations in box 5 provide further examples of individuals’ opinions on polygamy. The main reason for disapproval of this practice is the potential it is seen to create for conflict in the family. It is interesting to note how aware some respondents were that this conflict between adults in the family can have a detrimental effect on children. Given that there is wide-scale acknowledgement of the potential detrimental consequences for a family when a man is married to more than one woman at a time, the stories presented in this section highlight that compliance with perceived cultural norms and expected gender behaviour can lead to people living in family structures that they knew would be likely to be problematic

before they entered into them.” (Afghanistan Research and Evaluation Unit (February 2009) *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, p.50)

In a section titled “Reasons for polygamy — infertility” (section 8.1) this report states:

“A unanimous belief was expressed by respondents discussing the rights and wrongs and consequences of polygamous marriages that a man should marry again if his current wife had not borne him children and to a lesser degree if a wife had not borne him a son. Some female respondents said that the sex of a child was Allah’s making and therefore it was not entirely acceptable to marry again if a woman had not produced a son.” (ibid, p.51)

In a section titled “Reasons for polygamy —“protecting” a widow through marriage” (section 8.2) this report states:

“One of the most common reasons found for men to have more than one wife was because they had been obliged to marry the widow of a male family member. In almost all of these examples, the women had lost their husbands as a result of war — either directly or indirectly. There was a particularly high number of war widows in Bamyan Province. Similarly to the case of taking another wife for reasons of infertility, marrying a widowed woman in the family is seen as an unavoidable necessity for both the man and woman involved, as the case study below illustrates. The quotations in Box 7 make clear that it is considered shameful across the four provinces studied for a widow to marry outside her husband’s family, and for many widows there is little choice in this as they are likely to lose custody of their children if they do not marry again within their in-laws’ family.” (ibid, pp.54-55)

In a section titled “Reasons for polygamy — men marrying again for a different type of marriage” (section 8.3) this report states:

“A small number of examples were found in which a man married a second wife simply because he or his family were not ‘satisfied with the first wife.’” (ibid, p.57)

A section of this report titled “Relationships between ambagh” (section 8.5) refers to the consequences of polygamy as follows;

“The worst consequences described by respondents of having more than one wife, and the most common reason found for disapproval of the practice, is conflict between women married to the same man. In most of the examples found during the research, including those examined above, there was overt conflict, rivalry and violence between ambagh. Despite this, some examples were found where women married to the same man had proved to be a source of support for each other, such as the case of Maha Jan and Zari Jan. Other women had, over time, found ways to live in cooperatively, often when there is a significant age difference between them.” (ibid, p.60)

The Conclusion of this report (section 8.6) states:

“This section has shown that for many men, marrying a second, third or fourth wife is often not a situation that they enter into willingly. Likewise, the women they marry are almost always unwilling to enter into a polygamous marriage but have little choice in the

matter. Polygamous marriage is something that, under particular circumstances, individuals feel compelled to enter into in order to conform to social norms and expectations of men's and women's behaviour in the family. Polygamous marriage was generally viewed by the respondents in this study, both men and women, as an undesirable family structure in which to live. While polygamous marriage is viewed as acceptable in Islam, the condition that all wives must be treated equally was stressed during focus group discussion and individual interviews, while the difficulty that this presents was also acknowledged." (ibid, p.61)

A research paper published by the Open Society Institute & Soros foundations Network, in a section titled "Assessment of the reasons and factors in which the women consent is not involved", states:

"Forced marriages is the common form in this regard in which there is no consideration on the well of the women in marrying a married men. We see the eminent examples in unsuitable traditions such as Bad, exchange of daughters, marriage of widow with her husband's relatives, marriage in childhood and similar examples." (Open Society Institute & Soros Foundations Network (2006) Polygamy in Afghanistan, p.26)

In a section titled "Assessment of the reasons and factors in which women consent is involved" this report states:

"Besides forms of forced marriages, that forced women to marry with married men there are also factors which make women vulnerable and force them to show consent in marrying a married man. These factors are introduced in graph number 16 as follow: The graph shows that the most significant factor behind polygamy caused by women well is the lack of centralization in the family, and other factors such as economic problems and being a widow come next, while the matter of divorce is less significant. Lack of family makes women vulnerable. Traditional practices, lack of stable security and social norms and believes are not allowing a women to live on her own. On the other hand, the girls do not possess any economic independencies in many areas of our country. Many girls are seen as a burden on the shoulders of their relatives and others, and face immense limitations due to lack of parents. Consequently, they are forced to marry a married man." (ibid, pp.26-27)

This section of the report also states:

"Lack of awareness from the man's marital status is one of the other factors for the girls' consent to such marriages, though it is a condition in the civil law of Afghanistan that the first wife should be aware that her husband is getting married to another woman and the second wife should be aware that the men who she is getting marry to is already a married person, but in practice it is not happening. Article 89 of the Civil Code states clearly: 'During marriage when a person conceals his previous marriage to more than one wife according to the provision of article 86 of this law, and when he has not secured the clear consent and agreement of the newly married wife, in case she would not agree to continue living with the husband, can demand divorce from the court in accordance with the provisions of article 183 of this law.' However, in many situations this provision is not practiced and the girl who is going to be the second wife is not aware of the first marriage of her husband. Our research proves this. The percentage of the men who have married without informing the second wife about the existence of the first wife is 34

% . In addition to economic problems of the families plays a strong role in pursuing women to marry a married man. This factor force poor families to give their very young daughter to a marriage to married men, who have promised to support the girl family economically.” (ibid, pp.28-29)

In a section titled “Why are women silent in the face of second marriage of their husband?” this report states:

“The research done indicates that the majority of women don’t consent to the second wives of their husband. In other words, the husband, without receiving the consent of their wives, decides to marry a second, third, and fourth wife. We describe this issue in graph number 22. The graph shows that the percentage of women who were not consented to the next marriage of their husbands was 72%. In addition, 18 % of women were not aware of their husbands’ second marriage.”(ibid, p.33)

This section also states:

“The civil law of Afghanistan has provided the women who her husband is married for second time with out her consent with the option of separation (dissolving the marriage according to the wife well). But this option make women more effected than man, because: a. She will likely not be granted custody of her children. b. She is likely economically dependent on her husband and loses this financial support. c. Due to unsuitable customs in the community, she loses her status among family and even in her father’s family. Hence, she refuses going to court because of her husband’s action and keeps silent.” (ibid, p.34)

This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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