

## THE CONTROL OF POLYGAMY

Shaik Mohammed Abduh said —

Polygamy although permitted in the Holy Quran is a concession to necessary social conditions which was given with the greatest reluctance, in as much as it was accompanied by the proviso that a man may marry more than one wife only when he is able to care for all and give to each her rights with impartiality and justice. The practical impossibility of doing so indicates that the Divine law, in its intent, contemplated monogamy as the original and ideal state of marriage.<sup>1</sup>

The verses of the Holy Quran which deal with the question of polygamy are as follows:—

- (a) If you fear that you shall not be able to deal justly with the orphans, marry women of your choice two or three or four; but if you fear that you shall not be able to deal justly with them then only one. That will be more suitable to prevent you from doing injustice.<sup>2</sup>
- (b) You are never able to be fair and just as between women, even if it is your ardent desire but turn not away from a woman altogether so as to leave her as it were hanging in the air. If you come to a friendly understanding and practise self-restraint, God is Oft Forgiving, Most Merciful.<sup>3</sup>

The conditions laid down in the first verse took care of a situation arising out of the after-effects of the wars of Islam, when countless Muslim girls were left orphans and women became widows. The permission to adopt the practice of marrying more than one wife was therefore given to encourage social justice. The verse clearly shows the existing fear that orphan girls and widows may be unjustly dealt with or exploited. Thus the Holy Quran, seeking to avoid such a situation as a matter of emergency, permitted Muslims to marry more than one wife. But it also added the proviso that if this permission led to injustice in family relations then the individual was advised to practise monogamy.<sup>4</sup>

1. Quoted in C. C. Adams, *Islam and Modernism in Egypt*, (London, 1933), at p. 230. Shaik Mohammed Abduh was at one time *Mufti of Egypt*.
2. *The Holy Quran*, Surah IV Verse 3 (Translated by A. Yusuf Ali, Lahore, 1938).
3. *The Holy Quran*, Surah IV Verse 129 (*Ibid*).
4. The connection between not acting equitably towards widows and orphans and taking in marriage more wives than one is made clear in another verse in the *Holy Quran*: — "That which is recited to you in the *Hooly Quran*, is concerning the orphans of women to whom you do not give what is appointed for them — and you are not inclined to marry them — nor to the weak among the children" (Surah 4 Verse 127). When a widow was left with orphans to bring up she and her children did not get any share of inheritance; nor were people inclined to marry widows who had children on account of the burden of bringing up the children. For the relief of distress to widows and orphans therefore two reforms were made by the Prophet. The widow and the orphans were given their share of inheritance and limited polygamy was allowed to provide a home for the widow and her children.

The permission to enter into polygamous marriages has been abused by certain Muslim groups and it is sad to hear those who abuse this privilege justifying their action by quoting what they interpret to have been the example given by the Holy Prophet. Yet for more than twenty-five years of his life the Holy Prophet had only one wife. It was only after his wife, Khadijah, died that he married a number of women. Of these only Ayesha was a virgin. All the others were widows or had been divorced from their husbands. If one examines these marriages it will be seen that they were partly designed to assist the women who would otherwise have been destitute or to cement bonds of personal or tribal friendship.<sup>5</sup>

A study of some of the juridical treatises on Islam does in fact support the interpretation that polygamy was suggested only when it avoided and was not conducive to social injustice. Shaik Abu Bakar Al-Razi, for example, in his book *Akhamul Quran*<sup>6</sup> said that Allah commands marriage with one wife only if there is fear of injustice in marrying more than one. Muslim jurists interpreted justice in such a case to mean cohabitation in turn, equality in maintenance and in treatment. In other words their interpretation was one of outward justice but not justice in matters of the heart, as for example, in love and affection. This interpretation is based on the verse of the *Holy Quran* which reads: "You are never able to be fair and just as between women even if it is your ardent desire".<sup>7</sup> It is said that the Prophet himself, though he treated his wives with justice, was unable to do so in matters of the heart for he loved his wife, Ayesha, more than any of his other wives.

The Muslim jurists considered also the problem of showing such type of justice to wives in different towns or countries. They suggested that the conditions of equality of treatment and of cohabitation in turn must be satisfied even in such cases and could only be waived with the permission of the wives.<sup>8</sup>

A further condition for the permission of adopting polygamy is that the husband must provide adequate maintenance for each of his wives and his dependants. This condition is based on the interpretation by Imam Shafii of the concluding words in the verse of polygamy that is, *dhalika adna an la ta'ulu*. These words which are usually interpreted, as in A. Yusuf Ali's translation, to mean "to prevent you from doing

5. The *Holy Quran* in addressing the wives of the Prophet enjoined them to "make known and teach what is rehearsed to you in your homes of the signs of God [that is the verses of the *Holy Quran*] and His Wisdom [that is the instruction derived therefrom]" (Surah 33 Verse 34). The wives of the Prophet, the mothers of the Faithful, were given an enormous responsibility in respect of the dissemination of the teachings of Islam. The Muslims have learnt a great deal about Islam through those very pious ladies who unveiled even their private lives to the community so that the personal lives of the Muslims may be illumined with the example of the Prophet.
6. (Cairo, 1347 A.H.), vol. 2, at p. 66.
7. Surah IV Verse 129 (translated by A. Yusuf Ali).
8. See for example Syed Abu Bakar Al-Bakri, *I'anat Al-Talibin*, (Cairo, 1884) at p. 376. The *I'anat al-Talibin* gives recent rulings on Muslim law and is very much used in Indonesia and Malaysia.

injustice”, are interpreted by Imam Shafii to mean “that you may not cause them (the wives) to suffer in their livelihood”.<sup>9</sup>

The question then arises as to whether the ability to fulfil the two conditions, *i.e.* to treat the wives with justice and to give adequate maintenance to the wives and to dependants, should be left to the conscience of the individual or whether the State should step in to ensure that the conditions are fulfilled before marriage is permitted. Many Muslim jurists take the view that this is a matter to be decided by the individual concerned. It is he who should satisfy himself that he is able to fulfil the two conditions. The only way in which the State may interfere is to punish the individual if he fails, after the marriage, to fulfil the two conditions or to give the wife the right to apply for divorce or compensation. The same group of Muslim jurists would not support an attempt by the State to impose any pre-condition to the solemnization of a plural marriage.<sup>10</sup> Other Muslim jurists however argue that because the permission has been abused it is the duty of the State to intervene so that polygamy is not practised except in such cases where it can be justified and supported by the presence of justice.

Most Muslim jurists are in agreement that the Ruler may restrict or even prohibit in the public interest something which is ordinarily lawful or permissible by the Divine law, provided that this is only done on a temporary basis. It is also contended that the Ruler may command the observance of anything which the Divine law approves.<sup>11</sup> Where a legal right or permission has been abused, it is the duty of the Ruler to take steps to prevent such abuse and the Caliph Umar bin Abdul Aziz<sup>12</sup> laid down the principle that legal remedies should be devised to match every device of evil doers. This has been the argument that has been used to control the practice of polygamy. Polygamy is only permissible if it does not involve fear of injustice. If injustice is feared

9. Imam Shafii, *Kitab Al-Umm*, (Bulaq, 1321 A.H.), Vol. 5, at p. 36. Imam Shafii interprets the word *ta'ulu* as referring to supporting a family. The best translation of the last clause in the Verse of polygamy, as Imam Shafii seems to interpret it, appears to be “that would be more likely to secure that you be not overburdened with children” (See R. Bell’s translation of the Quran, (Edinburgh, 1937-39)) or “that you be not responsible for supporting a large family”. In the Arabic dictionary of Hans Wehr, translated into English by M. Cowan (New York, 1961), the words “*ala ya'ulu.*” are given the meanings: to deviate, oppress; to support; to have to provide for; be responsible for supporting; to have a numerous family. See also *Rashida Begum v. Shahab Din* P.L.D. 1960 Lah. p. 1142 at p. 1159 where Muhammad Shafii J. refers to the verse of the Holy Quran which lays down that those persons who lack the means to marry should not marry (24:33) and says “If a person is prohibited to marry one wife for lack of means he must be stopped to marry more than one wife for the same or similar reasons”.
10. Among the modern Muslim jurists who belong to this group are Shaik Mahmood Shaltut and Dr. Abu Zahrah, of the United Arab Republic.
11. Ahmad Safwat, “The Theory of Muslim Law” (1920) 2 Journal of Comparative Legislation and International Law 310, reproduced in (1946) 12 M.L.J. xl; M. Hasbi Ash-Shiddieqy, *Pengantar Hukum Islam*, (Djakarta, 1959), at p. 255; Shaik Muhammad Abduh in articles in *Al-Manar* collected in Muhammad Rashid Rida’s *Tarikh al-ustadh al-imam al-Shaikh Muhammad Abduh* (Cairo, 1910).
12. The Caliph or Ruler of the Muslim Empire from 717 to 720. See J. N. D. Anderson, “Reforms in Family Law in Morocco”, (1958) 2 Journal of African Law 152.

from its results and effects, it can be forbidden. It is therefore permissible for the Ruler in the public interest either to forbid polygamy entirely or to subject it to pre-conditions.<sup>13</sup>

Such control by the Ruler is justifiable too from the example of the Prophet. He is reported to have said:

The family of Hisham ibn Al-Mugirah have requested my permission to give their daughter in marriage to Ali Ibn Abi Talib. I did not give them my permission for this, nor will I give it to them in future, unless and until Ali Ibn Abi Talib divorces my daughter, for surely she is part of me and what troubles and agitates her troubles and agitates me too; and what harm befalls her befalls upon me too.<sup>14</sup>

Shaik Mohammed Abduh emphasised that the "Verse of Polygamy" in the *Holy Quran* laid down two basic conditions, firstly that, if the would-be polygamist feared that he might be unjust in distributing his favours, he must content himself with a single wife, and secondly, that he must be in a position to support a plurality of wives in addition to fulfilling his existing family responsibilities. The conditions for polygamy should not only be regarded as binding on the individual conscience but enforced by the courts as a condition precedent to the registration of a second marriage. He therefore proposed that a man who already had one wife should be forbidden to marry another unless the courts were satisfied that he would be able to fulfil those two conditions.<sup>15</sup> In summing up his opinion on the question of polygamy he said:

He who mediates on the meaning of the two verses [of the *Holy Quran*] will know that the permission for polygamy in Islam is very restricted; it is equivalent to an exceptional measure which will only be conceded at the extreme limit; to him who needs it, on the condition of his being sure to observe justice.<sup>16</sup>

What are the considerations which would justify permission being given to a person to marry more than one wife? It might be argued that strictly speaking and looking back on the historical reason for the permission and the example of the Holy Prophet, the only justification for polygamy would be that it is the only means whereby justice and fair treatment can be given to widows and orphans. Where the problem of widows and orphans is not a pressing one and where it can be adequately met by welfare services in a State, there is ample justification for the prohibition of polygamy. The majority of Muslim jurists have,

13. Ahmad Safwat, *loc. cit.*; J. N. D. Anderson, "Syrian Law of Personal Status", (1955) 17 Bulletin of School of Oriental Studies, at p. 34.

14. *Sunan Ibn Majah*, Vol. I, at p. 616. This is one of the authoritative collections of the traditions of the Prophet.

15. See J. N. D. Anderson, *Islamic Law in the Modern World*, (London, 1959) at p. 49, Muhammad Rashid Rida, *op. cit.*, vol. 2, at pp. 113-118.

16. Added support for this view is to be found in the law of inheritance established by Islam. According to Muslim law, if a man with two or three or four wives dies, all his wives together will only have the portion of a single one. If Muslim law had aimed at allowing the man to marry more than one wife, this law would have given to the several wives a greater portion than that for the single wife. Consequently this is a proof that polygamy did not originally enter into the intention of Islam. If the law permits it, it is only in cases of necessity and in the conditions which limit it and render it an exception. — See Osman Amin, "Muhammad Abduh's Polemics for the Muslim Faith", *Islamic Review*, vol. XLVII, (January, 1960), at p.5.

however, held that the need for the protection of the widows and orphans is not the only justification for polygamy. Polygamy however must be the exception and not the rule. In order to obtain permission for a second or subsequent marriage a man must be able to show that there are exceptional circumstances which would justify the grant of permission in his case. Furthermore, he must show that he is able, if he marries, to do justice to each of his wives and his children.

In its report the Commission on the Marriage and Family Laws in Pakistan stated:—

It is incumbent on the State to prescribe a procedure which would prevent people from taking advantage of this permission without any restrictions on them. It is a universally accepted maxim that prevention is better than cure. It would be absolutely in the interest of justice and in conformity with the spirit of the *Holy Quran* that a man contemplating to have a second wife should present himself before a court to explain the circumstances, which according to him, justify him in taking this step. There may be some cases in which there may be rational justification and in such rare cases, the court could permit a man to take a second wife only on the condition that in the matter of maintenance and other treatment no injustice is done to the first wife and her children ... Apart from monetary considerations a person applying to the Matrimonial and Family Law Courts for marrying a second wife in the lifetime of the first should satisfy the court that the first wife is insane or is suffering from some incurable disease or that there are other exceptional circumstances which make his second marriage an inescapable necessity and that he is not taking a second wife merely because he wishes to marry a prettier or a younger woman than his first wife. In such matters the court shall also see whether a man desiring to have a second wife and a second family is capable financially of supporting the families, satisfying their basic needs of life and guaranteeing the standard of living to which the first wife and her children have been accustomed. The court shall ascertain the wishes of the first wife also, and if she insists on living separately from her husband and the second wife, the court shall not pass any order permitting the second marriage unless adequate arrangements are made by her husband for suitable separate accommodation and other amenities for the first wife.<sup>17</sup>

Some Muslim countries have gone further than merely controlling the practice of polygamy and have attempted to abolish it. In Turkey the Swiss Civil Code was adopted in 1926 in place of the Muslim law and this substituted a new system of family law for one that had been applied for centuries. Polygamy was made illegal and a civil form of marriage was introduced. Recent detailed studies have shown that the attempt to abolish polygamy in Turkey has not been a complete success especially in the villages. Only a small proportion of the marriages are performed and registered under the civil law, and it would appear that the people in the villages still prefer the religious type of marriage, as the civil forms of marriage requires the production of birth certificates and medical certificates which are not easy to obtain and often not available. Despite the fact that the religious marriages are not recognised by the law, these are still being celebrated and legislation has had to be introduced to facilitate the legitimation of the children of such marriages. The people in the villages, who have concluded an informal marriage, do not regard it as unlawful or void, whether it be monogamous or polygamous, provided the marriage was accompanied by a religious ceremony; indeed it would appear that some regard the civil marriages celebrated in the form laid down by the Civil Code as illegitimate unions.

17. Reproduced in Khursid Ahmad, *Studies in the Family Law of Islam*, (Karachi, 1961), at p. 62f.

Polygamy continues to be practised in the villages as it provides cheap labour for agriculture and because it is easy to divorce a childless wife. The difficulties which the outright adoption of the Swiss Civil Code encountered in Turkey are however gradually decreasing. The administrative organization has been improved with a view to facilitating marriage ceremonies and simplifying the formalities connected with them. There has also been an increased acceptance and realization of the advantages of the civil marriage and of the disadvantages of the religious marriage, if not preceded by a civil celebration.<sup>18</sup>

Similar attempts to abolish polygamy have been made in Yugoslavia, where the rule adopted for the Muslims of Bosnia and Herzegovina was that those who had already contracted polygamous marriages continued to be bound by them, but no new polygamous marriages could be contracted after the appointed day.<sup>19</sup>

In the Arab countries, in Pakistan and in Malaysia attempts have been made to restrict the practice of polygamy.

In Syria it has been provided that the *qadi*<sup>20</sup> may withhold permission for a man who is already married to marry a second wife, where it is established that he is not in a position to support them both.<sup>21</sup>

The Tunisian Law of Personal Status, 1957, goes further and provides that polygamy is prohibited. Penalties are provided for infraction of the prohibition but it is not specifically stated that a marriage in defiance of the prohibition of polygamy is invalid. The Courts have however, after some hesitation, decided that such a marriage is void.<sup>22</sup>

The Moroccan Code of Personal Status, 1958, is considerably less drastic than the Tunisian law. It is enacted that a woman has the right to stipulate in her marriage contract that her husband shall not take another wife and if her husband does not fulfil his undertaking the existing wife shall have the right to demand the dissolution of the marriage. If any injustice is to be feared between the wives, polygamy is not

18. International Science Bulletin, Vol. IX (1957), at p. 7-70.

19. C. D. Farran, *Matrimonial Law of the Sudan*, (London, 1963), at p. 12; The New Constitution for the *Shia Imami Ismailis* in Africa of 1962 also prohibits polygamy as does the Law of Personal Status for the Druze Community of Lebanon which was promulgated in 1948 — See N. J. Coulson, *History of Islamic Law*, (Edinburgh, 1964), at p. 215 - 216.

20. The Judge in the Muslim religious court.

21. J. N.D. Anderson, "Syrian Law of Personal Status," [1955] Bulletin of School of Oriental Studies, at p. 36. This provision is based on the last phrase in the "Verse of Polygamy" (Surah IV Verse 3) according to Imam Shafii's interpretation "that you may not cause them to suffer in their livelihood" and the application suggested by Shaik Mohammed Abduh.

22. J. N. D. Anderson, "Tunisian Law of Personal Status", (1958) 7 I.C.L.Q. 262 at p. 269. See also (1960) 9 I.C.L.Q. 542 at p. 550, and J. N. D. Anderson, "Recent Reforms in Family Law in the Arab World", (1963) (paper presented to the Conference of *Gesellschaft fuer Rechtsvergleichung*). The prohibition of polygamy in Tunisia is justified from the provision in the *Holy Quran* that a man should confine himself to one wife unless confident that he is capable of treating a plurality of wives with equal justice and the argument that both experience and revelation has made it clear that such impartiality is in fact unattainable.

permitted, but no right or duty is given for the court to interfere except retrospectively on the grounds presumably that a court of law can scarcely be expected to exercise the gift of prophesy. A wife who has not stipulated any such option may if her husband contracts another marriage refer her case to the Muslim religious court to consider any injury which may have been caused to her. It is also provided that the contract of marriage with the second wife must not be concluded until she has been informed of the fact that her suitor is already married to another woman.<sup>23</sup>

In Iraq it is provided that marriage with more than one wife is not allowable without the permission of the *qadi*<sup>24</sup> and such permission will not be given except on the following two conditions:—

- (i) that the husband is financially competent to support more than one wife; and
- (ii) that there is some lawful benefit involved.

It is also declared that if any failure of equal treatment between wives is feared, then polygamy is not permitted; and the determination of this matter is left to the discretion of the *qadi* although no indication is given as to how the *qadis* are to discharge this invidious task.<sup>25</sup> It is provided that anyone who concludes a contract of marriage with more than one wife in contravention of the provisions of the Code will be punished with imprisonment or fine, or both.<sup>26</sup>

In Pakistan as a result of the recommendations of the Commission on Marriage and Family Laws it has been enacted by the Muslim Family Laws Ordinance, 1961, that no man during the course of an existing marriage shall except with the previous permission in writing of the Arbitration Council, constituted by the Chairman of the Union Council

23. J. N. D. Anderson, "Reforms in Family Law in Morocco", (1958) 2 *Journal of African Law* 146 at p. 152. The Moroccan Law is concerned primarily with the first condition for polygamy, that is, that there should be justice to all the wives. It goes on to provide that a wife whose husband indulges in polygamy may complain to the court of any injury this may entail and may demand divorce if she can prove this. This provision is justified, presumably, by the general principle that in *Maliki* law, a wife may claim divorce for injury.
24. The Judge in the Muslim religious court.
25. The Iraqi law therefore includes both the conditions for polygamy, that is, that there should be justice between the wives and that the husband is financially competent to support more than one wife. The provisions correspond to those proposed in Egypt in 1927 but never promulgated — See J. N. D. Anderson, "Recent Developments in Sharia Law, III", *Muslim World*, April 1951, at p. 124-126.
26. J. N. D. Anderson, "Law of Personal Status for Iraq", (1960) 9 *I.C.L.Q.* 542 at pp. 549-550. The Law of Personal Status, 1959, contained a provision which classified a marriage to a second wife without the permission of a *qadi* as a temporary impediment to a valid marriage and this would appear to have made the marriage invalid. This provision has however been removed by an amendment to the Code enacted on the 18th March, 1963 — See J. N. D. Anderson, "Changes in the Law of Personal Status in Iraq", (1963) 12 *I.C.L.Q.* 1026.

or the Town or Union Committee<sup>27</sup> or a Chairman specially appointed and a representative of each of the parties, contract another marriage, nor shall any such marriage contracted without such permission be registered under the Ordinance. An application for permission must be submitted to the Chairman of the Arbitration Council in the prescribed manner and shall state the reasons for the proposed marriage and whether the consent of the existing wife or wives has been obtained. On receipt of the application, the Chairman shall ask the applicant and his existing wife or wives each, to nominate a representative and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, subject to such conditions as may be deemed fit by the Arbitration Council grant the permission applied for. In deciding the application the Arbitration Council shall record its reasons for the decision and any party may prefer an application for revision, in the case of East Pakistan to the Collector and in the case of West Pakistan to the Sub-Divisional Officer,<sup>28</sup> whose decision shall be final and shall not be questioned in any court. Any man who contracts another marriage without the permission of the Arbitration Council shall immediately pay the entire amount of the dower, whether prompt or deferred due to the existing wife or wives. The amount if not so paid shall be recoverable as arrears of land revenue and the husband shall also on conviction be liable to imprisonment and fine.<sup>29</sup>

It has been laid down that in considering whether another proposed marriage is just and necessary during the continuance of the existing marriage, the Arbitration Council, without prejudice to its general powers to consider what is just and necessary, may have regard to a number of circumstances, as, for instance:—Sterility, physical infirmity, physical unfitness for the conjugal relation, wilful avoidance of a decree for restitution of conjugal rights or insanity on the part of the existing wife.<sup>30</sup>

The Indian Dissolution of Muslim Marriages Act, 1939 (No. VIII of 1939), which applies in India and Pakistan, gives a woman married under Muslim law the right to apply for a decree of dissolution of marriage in any case where the husband, if he has more wives than one, does not treat her equitably in accordance with the injunction of the *Holy Quran*. An additional ground for divorce was added in Pakistan by the Muslim Family Law Ordinance, 1961, so as to enable a woman married under Muslim law to apply for a decree of dissolution of marriage where

27. These are local authorities and local government officers, set up and appointed under the Basic Democracy Scheme in Pakistan.
28. The *mahr* or *maskahwin*, that is, the obligatory marriage payment due under Muslim law to the wife at the time the marriage is solemnized.
29. Pakistan Muslim Family Laws Ordinance, 1961 (No. VIII of 1961) s. 6. The *Holy Quran* orders "If you fear discord between the husband and the wife appoint two arbitrators one from his family and the other from hers" (4:35). This system has been used in cases where a wife sought dissolution of her marriage on the ground of her husband's cruelty which she was unable to prove. The provisions in Pakistan appear to extend this system of arbitration to the case where the husband wishes to take a second wife and this is justifiable, as discord between the spouses might arise in this case.
30. Rule 14 of the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961, and the East Pakistan Family Law Rules, 1961.



the husband has taken an additional wife in contravention of the provisions of the Muslim Family Law Ordinance, 1961.<sup>31</sup>

In India the Hindu Marriage Act which makes monogamy compulsory is applicable only to Hindus and the Muslims are still permitted to practise polygamy. In *Itwari v. Asghari*<sup>32</sup> it was held that in a suit for restitution of conjugal rights by a Muslim husband against the first wife after he has taken a second wife, if the court after a review of the evidence feels that the circumstances reveal that in taking a second wife the husband has been guilty of such conduct as to make it inequitable for the court to compel the first wife to live with him it will refuse relief. Muslim law as enforced in India, it was held, has considered polygamy as an institution to be tolerated but not encouraged, and has not conferred upon the husband any fundamental right to compel the first wife to share his consortium with another woman in all circumstances. A Muslim husband has the legal right to take a second wife even while the first marriage subsists, but if he does so, and then seeks the assistance of the court to compel the first wife to live with him against her wishes, she is entitled to raise the question whether the court ought to compel her to submit to cohabitation with such a husband. In that case the circumstances in which his second marriage takes place are relevant and material in deciding whether his conduct in taking a second wife was itself an act of cruelty to the first wife. In considering the question of cruelty in any particular case the court cannot ignore the prevailing social conditions, the circumstances of actual life and the change in people's habits and modes of living. The test of cruelty is based on universal and humanitarian standards, that is to say, conduct of the husband, which would cause such bodily or mental pain as to endanger the wife's safety or health. The law does not recognise various types of cruelty such as "Muslim" cruelty, "Christian" cruelty, "Hindu" cruelty and so on. In deciding what constitutes cruelty, the courts have always taken into consideration the prevailing social conditions and the same test will apply in a case where the parties are Muslims. Muslim society has not remained static and to contend otherwise would be to ignore the record of achievements of Muslim civilization and the rich development of Muslim jurisprudence in different countries. Muslim jurisprudence has always taken into account changes in social conditions in administering Muslim law. "Social conditions and habits among Indian Muslims" Dhavan J. said, "have changed considerably and with it the conscience of the Muslim community. Today the importing of a second wife into the household ordinarily means a stinging insult to the first. It leads to the asking of awkward questions, the raising of unsympathetic eyebrows and the pointing of derisive fingers at the first wife who is automatically degraded by society. All this is likely to prey upon her mind and health if she is compelled to live with her husband under the altered circumstances. A husband who takes a second wife in these days will not be permitted to pretend that he did not realise the likely effect of his action

31. The Dissolution of Muslim Marriages Act, 1939, (No. VIII of 1939), s. 2(ii) and 2(ia), as amended by the Muslim Family Laws Ordinance, 1961, (No. VIII of 1961). These provisions, like those in Morocco, follow the principle of the Maliki law, that a wife may claim a divorce for injury.

32. A.I.R. 1960 All. 684.

on the feelings and health of the first wife. Under the law the husband will be presumed to intend the natural consequences of his own conduct. Under the prevailing conditions the very act of taking a second wife in the absence of weighty and convincing explanation, raises a presumption of cruelty to the first wife. The onus today would be on the husband who takes a second wife to explain his action and prove that his taking a second wife involved no insult or cruelty to the first. For example he may rebut the presumption of cruelty by proving that his second marriage took place at the suggestion of the first wife or reveal some other relevant circumstances which will disprove cruelty. But in the absence of a cogent explanation the court will presume, under modern conditions, that the action of the husband in taking the second wife involved cruelty to the first wife and that it would be inequitable to compel her against her wishes to live with such a husband".

In Singapore since 1960 attempts have been made to control the exercise of the permission to take more than one wife. The Muslims Ordinance provides that where a man has already a wife living and wishes to marry again he must apply to the *Chief Kathi*,<sup>33</sup> who will hold an inquiry before solemnizing the marriage or giving his permission for the marriage to be solemnised. The *Chief Kathi* is required to hear all the interested parties including the man and the woman to be married and he may only solemnise the marriage or give his permission for the marriage to be solemnised if he is satisfied that there are no lawful obstacles according to the Muslim law to the marriage.<sup>34</sup> There has been a strict control on the exercise of the privilege of polygamy, and, in 1961, only three men were given permission to marry again, in 1962 permission was only granted in six cases, while in 1963 permission was granted in six cases.<sup>35</sup>

The example of Singapore, has not yet been generally followed in the Malay States although there has been agitation from women's organizations for the control of the exercise of the permission to marry more than one wife. Only in Selangor and in Negri Sembilan has it been expressly provided that a man, who already has a wife living and wishes to marry again, should so declare in his application form and the *kathi* is then required to make full inquiries before solemnising the marriage.<sup>36</sup> Moreover it has been agreed by administrative arrangements that where the man is not a resident of the State, the *kathi* will ascertain the views of the *Chief Kathi* of the State from whence the man came before solemnising

33. "*Kathi*" is the Malay equivalent of *qadi*, the judge in the Muslim religious court. Much of the judicial functions of the *Kathi* has been taken over in Singapore by the Shariah Court but the *Kathi* still exercises judicial functions in approving applications for marriage. The *Chief Kathi* is specially appointed as such in Singapore to deal with applications for marriages where the woman has no guardian for marriage or where the guardian refuses his consent or where the man has already a wife living.
34. Muslims Ordinance, 1957 (No. 25 of 1957), s. 7A (as amended by the Muslims (Amendment) Ordinance, 1960 (No. 40 of 1960)).
35. See the Appendix where the cases are analysed.
36. Administrative Rules issued by the Religious Department, Selangor, 1962; Negri Sembilan Muslim Marriage, Divorce and Revocation of Divorce Rules, 1962.

ing the marriage; this will have the effect of preventing a man from Singapore going to one of the Malay States to have his polygamous marriage solemnised without the consent of the *Chief Kathi* in Singapore.

In Sarawak it is provided that a man who already has a wife is not allowed to marry another wife unless he shows that he is able to maintain them both.<sup>37</sup>

Muslim marriage being in essence a contract it is possible for the parties to the marriage to agree to conditions which are not illegal being incorporated into the contract. The orthodox Muslim law schools<sup>38</sup> (with the exception of the *Hanbali* school) consider that the conditions governing a Muslim marriage have been laid down in the law and they disregard any attempt by the parties to make stipulations (except for example about the amount of the dower) of their own. Thus Imam Nawawi in the *Minhaj-et-Talibin* regards conditions inconsistent with the precepts of the law relating to marriage as being illicit and he classifies among such conditions, a condition that the husband cannot take a wife so long as he is married to the first. In such cases the marriage is left intact, but the conditions are invalidated.<sup>39</sup> In India however it has been held that a condition in a marriage contract that the husband shall not marry a second wife is enforceable. If such a condition is not supported by a clause providing for the consequence of another wife being taken the wife will have a claim for damages. If the condition is accompanied by a clause that on marriage to a second wife, the first wife will have the right to divorce herself, this clause may be enforced.<sup>40</sup> The *Hanbali* school of law on this point holds that any condition which is not contrary to the essentials of a Muslim marriage must be duly observed. Polygamy though permissible was never incumbent. So a Muslim who voluntarily gave up this right must be held to his agreement.<sup>41</sup> Such conditions are therefore held to be valid and enforceable in Morocco, Syria, Jordan and Iraq, where the *Hanbali* principles have been adopted in recent legislation.

In Iran it is provided that the parties to a marriage can stipulate any condition to the marriage which is not incompatible with the terms of the contract. For example it can be stipulated that if the husband

37. Sarawak *Undang-Undang Mahkamah Melayu*, Sarawak (Laws of Sarawak, 1958, Vol. VII), s.37. The provision appears to provide for the second condition for polygamy, that is, that the husband should be financially competent to support more than one wife.

38. The four *Sunni* or orthodox schools of law are the *Maliki* School founded by Maliki bin Anas, the *Hanafi* School founded by Abu Hanifa, the *Shafii* School founded by Shafii and the *Hanbali* School founded by Ahmad bin Hanbal. Most of the Malays follow the *Shafii* School. The four *Sunni* schools are regarded as equally orthodox and authoritative. The orthodox Muslim follows one or other of these Schools.

39. Nawawi, *Minhaj-et-Talibin*, (translated by E.C. Howard, London, 1914), at p. 308.

40. *Badarunissa Bibee v. Nafiatulla* (1871) 7 Beng. L.R. 42.

41. J. N. D. Anderson, "Recent Developments in Sharia Law III" [1951] *Muslim World*, at p. 122f; J. N. D. Anderson, *Islamic Law in the Modern World*, (London, 1959), at pp. 50 - 51.

marries another wife the wife has the power to obtain a divorce herself after establishing in the court the fact and after a final judgment to that effect. The wife is also given a right to apply for dissolution of a marriage for fraudulent misrepresentation where she marries a man on the understanding that he has no previous wife and it turns out that he has a wife. If a special qualification is mentioned as a condition of the marriage to exist in one of the marrying parties and if after the marriage it is found that the party concerned lacks the desired qualification the other party has the right to cancel the marriage; the qualification may be explicitly mentioned or impliedly understood.<sup>42</sup>

In Singapore the necessity of some control over the permission to practise polygamy appears to be generally accepted except by a small minority in Singapore, and it is only the nature and extent of such control that has been questioned. It is to be expected that the men who wished to marry again and the women they desired to marry, should resent the control which is sought to be imposed. Many have questioned the necessity to get the views of the wife and have argued that this requirement means in effect that polygamy will not be allowed. They apparently forget that one of the conditions for permitting polygamy is that justice should be shown to all the wives. How can this be done if the man marries in secret and the first wife does not know that her husband is marrying again? In the majority of cases the man has applied for permission to marry on the ground that the wife has grown old and is therefore unable to satisfy him and to look after the home and family. In such cases, it seems unjust for permission to be granted unless the person is able to show other exceptional circumstances which justify the second marriage. In many cases too, the man has already a number of children from the marriage. It would only be right that care should be taken so that the interests of the children are adequately safeguarded.

The Muslims Ordinance, 1957, in Singapore requires the *Chief Kathi* before solemnising or consenting to the solemnisation of a marriage, where the man already has a wife, to satisfy himself after inquiry that there is no lawful obstacle according to the Muslim law to such marriage. No rules have been formulated for the guidance of the *Chief Kathi* and his task is therefore an invidious one. The precedents in the Arab countries and in Pakistan might prove useful in the formulation of such rules so as to ensure that the two conditions for polygamy, namely that there will be justice between the wives and that the husband is financially competent to support more than one wife, are fulfilled.

Polygamy is by no means widespread in any Muslim country. Recent surveys and studies have shown that cases of polygamous marriages are in general rare. The problem in most Muslim countries has indeed ceased to be that of a man taking two or three or four wives but merely of a man taking a second wife and there is some justification in the criticism that the efforts at control in Muslim countries have assumed that the permission of polygamy is restricted to two wives, not to four wives.<sup>43</sup>

42. Iranian Civil Code, arts. 1119 and 1128; M. I. Zagday, "Modern Trends in Islamic Law", [1948] Current Legal Problems, at p. 206f.

43. Khurshid Ahmad, *Studies in the Family Law of Islam*, (Karachi, 1961), at p.215f, 249.

In some agricultural countries for example in Turkey polygamy has been practised as a cheap way to get extra labour on the farms. In the conclusions which he drew from the symposium on the Reception of Foreign Law in Turkey held in 1955 Dr. K. Lipstein stated: "The reasons for preserving the outward forms of polygamy in the villages are not however because of resistance to monogamy as such but are partly based on extraneous social factors and partly eugenic. If the first wife is sterile, the husband may wish to ensure progeny by taking another woman into the household. Female servants, whose help is needed in the household and female relatives who require a home and assistance, cannot according to the traditions which still survive in rural districts, be accommodated under the roof of the head of the family or the master unless he goes through a form of marriage with them. The polygamous marriage conceals thus a contract of employment or a measure of social assistance. As the social status of women grows new legal relations will come into their own; wages and pensions will take the place of maintenance granted and obtained by the antiquated form of an informal second marriage."<sup>44</sup>

In the States of Malaya the Malays have a strong tradition of a matrilineal customary law — the *adat perpatih*. In a customary marriage under the *adat* it is forbidden to take another wife within the same tribe. It is an offence says the custom to take two where one is given. Custom thus reduces the incidence of polygamy and encourages monogamy. In Rembau a Malay may not marry a second wife without obtaining the special sanction of the Ruler, while in the other States which follow the *adat* the first wife's consent is expected before a second wife is taken. In practice, polygamy is rare among the *kampong* Malays.<sup>45</sup>

The view is sometimes expressed that the Muslim society which accepts polygamy is better socially and morally than the Western society which enforces monogamy but condones other social evils arising from such enforcement. The views of Dr. Annie Besant are quoted in support of this view. She wrote: "There is pretended monogamy in the West but there is real polygamy without responsibility. The mistress is cast off when the man is weary of her and she sinks gradually to be the woman of the street: for the lover has no responsibility for her future and she is a hundred times worse off than a sheltered wife and mother in the polygamous home. When we see thousands of women who crowd the streets of Western towns in the night, we must surely feel that it does not lie in Western mouths to reproach Islam for polygamy. It is better for women, happier for women, more respectable for women to be consorted to one man only with the legitimate child in her arms and surrounded with respect than to be reduced, cast out in the streets perhaps with an illegitimate child, outside the rule of the law". Such an apologetic

44. International Social Science Bulletin, Vol. IX (1957), at p. 78.

45. Intisari, Singapore, Vol. I, No. 3, at pp. 25-26; E. N. Taylor, "Malay Family Law", (1937) Journal of the Malayan Branch of the Royal Asiatic Society, at p. 5; J. R. Wilkinson, "Malay Law", *Papers on Malay Subjects*, (Singapore, 1914), at pp. 58-59. Polygamy was a symbol of rank in old Malay society. In Negri Sembilan, custom prescribed that only the *Yang di-Pertuan* (or Ruler) could have four wives, only an *Undang* (or territorial chief) three, only a *Lembaga* (or tribal chief) two and ordinary folk one — R. O. Winstedt, *The Malays*, (London, 1961), at p. 51.

for polygamy ignores the facts that prostitution and the keeping of mistresses are to be found as much in Muslim societies as in others and that in Malaya many of the prostitutes come from Muslim homes. Moreover while it is true that for the second wife herself a home is better than no home at all, it seems hardly equitable to force the wife and children of the first marriage, through no fault of their own, to accept the other half of the home, when they are entitled to the whole home.<sup>46</sup>

Polygamy has been prohibited for all other than Muslims in Singapore.<sup>47</sup> The Muslims have been allowed to retain the qualified permission to practise polygamy but it is up to them to ensure that this permission is not abused.

The practice of polygamy is incompatible with the principle of the equality of men and women and women who agree to enter into such polygamous unions are themselves lowering the status of women. Legislation alone cannot stop the practice of polygamy unless such legislation is accepted by society. Polygamy can therefore only be effectively controlled or abolished if the social conscience of the community condemns it. Recent events in Pakistan, Iraq and Singapore<sup>48</sup> have shown that the changes that have been made providing for the restriction of the practice of polygamy will not be easily accepted by the traditional Muslims. It will be necessary for Muslim women to continue to agitate for the removal of the discrimination and injustice which the practice of polygamy causes to them.

## APPENDIX

Section 7A of the Muslims Ordinance, 1957, as amended by the Muslims (Amendment) Ordinance, 1960, provides that where a man who is already married wishes to marry again the marriage may be solemnised only by the *Chief Kathi* or with his permission. Before solemnising such a marriage or giving his permission for such solemnising the *Chief Kathi* is required to hold an inquiry and to satisfy himself that there are no lawful obstacles according to the Muslim law to such marriage. For the purpose of such inquiry the *Chief Kathi* is required to hear the parties to the intended marriage and the *wali* (or guardian for marriage) of the girl who is to be married.

The criticisms that have been made against the administration of the provision of the Muslim Ordinance appear to be mainly directed at what was regarded as the strictness with which the law relating to the control of polygamy was administered in 1961. As a result of agitation by a section of the Muslim public, including some members of the

46. See for example Muhammad Ali, *Religion of Islam*, (Lahore, 1935), at p. 641; F. H. Malik, *Wives of the Prophet*, (Lahore, 1961), at p. 94f; Mirza Mohammad Hussain, *Islam and Socialism*, (Lahore, 1947), at p. 179f.

47. Singapore Women's Charter, 1961, s. 4.

48. There has been agitation in Pakistan and Singapore against the legislation for the control of polygamy. See the Appendix and also J. N. D. Anderson, "Changes in the Law of Personal Status in Iraq", (1963) 12 I.L.C.Q. 1026.

Muslim Advisory Board in Singapore,<sup>49</sup> the control was relaxed in 1962. All persons whose applications for plural marriages had been refused were given extended time to appeal but in fact no such appeal was filed. The Muslim Advisory Board set up a Committee to examine the administration of the law but unfortunately this Committee has not been able to do any constructive work and the *Chief Kathi* is still left without any guidance or rules in the exercise of his difficult task of deciding in what cases permission should be granted.

It might be useful to examine the applications that were dealt with by the *Chief Kathi* in 1961, 1962 and 1963. In 1961 there were 12 applications for secondary marriages, of which three were approved, three were withdrawn and six were refused. In 1962 there 22 applications for secondary marriages, of which six were approved (one in 1963), three were withdrawn, three were transferred to Johore at the request of the parties and ten were refused. In 1963 there were twenty-six applications for secondary marriages, of which six were approved and twenty were refused.<sup>50</sup> Short notes of the case are given below:—

#### 1961

(1) A., a shopkeeper in the Southern Islands, with a monthly income of about \$150/- was married to B. who had been of unsound mind for the last five or six years. They had no children. The wife was totally unable to look after the home and the couple had to be assisted in doing so by a relative, C., a girl aged 23 years. The husband applied for permission to marry this girl. The father of the girl gave his permission for the marriage and the girl herself agreed to the marriage, knowing that the man already had a wife. After the facts of the case had been verified by a visit to the home permission was granted.

(2) D. aged 42 years, a motor-car driver earning \$200/- a month had been married to E. since 1959. The wife was ill with elephantiasis and paralysis and could not move about or look after the house. They had no children. The wife was 52 years old. The couple were helped by a woman, F.. The husband applied to marry this woman and to this the wife consented. Both the woman and her father agreed to the marriage and she agreed to accept \$60/- a month for her maintenance. The husband agreed to give the first wife \$60/- a month. After

49. The members of the Muslim Advisory Board are appointed by the *Yang di-Pertuan Negara* or Head of the State to advise the Government on matters relating to the Muslim religion and Muslim law. They have no statutory functions.

50. In order to complete the picture it might be noted that in 1961 four persons were convicted in the Magistrates' Courts for making false declarations before the *Kathi* that they were unmarried at the time of the solemnisation of their marriages, when in fact they were already married; and that in 1962 five persons were so convicted. In 1963 twelve persons were charged for making such false declarations. In effect these persons have contracted polygamous marriages without the consent of the *Chief Kathi* and action has been taken to invalidate the registration of such marriages, as they were registered contrary to the provisions of the Muslims Ordinance, 1957.

the facts of the case had been verified by a visit to the home, permission was granted.

(3) G., an employee in a bus company, had been married to two women, H. and I., for a number of years and had children from them. There had been frequent quarrels between the parties. H. was a convert and claimed to have been assaulted by G. on many occasions, especially when he was drunk. H. ran away from G. and took shelter in a Welfare Home and later obtained a divorce for failure to maintain from G.. G. continued however to pester her and eventually she agreed to remarry him. Although he had a wife already, permission was granted.

1962

(1) AA. was a wage earner earning \$245/- a month. The wife AB. had been a tuberculosis patient since 1960, and was unable to look after the home by herself. They had two children. A girl, AC., 16 years old came to help in the house. The husband had sexual relations with her and at the time of the application for marriage with her she was 8 months pregnant. The wife agreed that the relations between them should be legalised and asked for \$100/- a month for her maintenance. The girl, AC. and her father also agreed to the marriage. The husband undertook to give \$100/- a month to each of the wives. Permission was granted.

(2) BA. was a clerk, 52 years old earning \$200/- a month. He has a wife and three children in India. He first came to Singapore in 1941, returned to India in 1945 and finally came back to settle in Singapore in 1946. He has not returned to India since and for the last ten years has been living with the woman, BB., who was a widow aged 49 years, whose husband died in India in July, 1954. No attempt was made to obtain the consent of the wife or to consider the interests of the children in India, and permission was granted.

(3) CA., an Assistant Film Director, aged 29 years and earning \$1,250/- a month was married to CB. and had three children from the marriage. In the course of his work he met and fell in love with CC., aged 21 years an actress. There had been gossip and publicity about their affair and they sought permission to marry to avoid bad publicity. The wife said she had no say in the matter but left it to the husband. She agreed to accept \$700/- a month for herself and her children. The brother of the girl agreed to the marriage. Permission was granted.

(4) D.A., Assistant Manager in a shipping company, aged 36 years and earning \$600/- a month was married at 21 years of age to DB who was then a widow aged 33 years. They had four children. He claimed that his wife had the menopause since 1957 and that there was a verbal agreement at the time of the marriage that she will not object if he wishes to marry again. The husband sought permission to marry a girl DC. 27 years old who



worked as a typist in the shipping company. DB. aged 48 years agreed to her husband's marriage, but stipulated three conditions — that the husband should observe the rules as to cohabitation in turn, should provide her with a separate house and should give her the same maintenance for her and her children as she received before. The girl DC. agreed to accept \$100/- a month as maintenance. Despite the objection of her brother who was her *wali* permission was granted.

(5) EA., aged 32 years, a salesman earning \$60/- a month had a wife and three children in India. He went to India once in three or four years. He had been living with EB. for seven years and she had borne him two children and was pregnant with a third. The couple were brought by the people in the *kampong* to the Shariah Court. The women EB. said she had asked EA. to marry her but he had asked her to wait till he had money. No attempt was made to contact the wife and children in India, and permission was granted.

(6) FA., a broker earning \$1,000/- a month had a wife to whom he had been married for 20 years. There was one child of the marriage. He alleged that his wife was old and wished to live a life of piety. He agreed to give the wife \$250/- a month. He applied to marry a widow FB., and she and her father agreed to the marriage. The views of the wife were not obtained. Permission was granted.

1963

(1) GA., a taxi driver earning over \$200/- a month was married to GB., who was 51 years and has had her menopause. There were no children of the marriage but they had adopted a child. He had known a woman GC. aged 47 years and she has lived in the same house with him for over 16 years. The wife agreed to the second marriage. The husband agreed to give the wife \$100/- for herself and the adopted child and offered to give \$70/- a month to the new wife. Permission was granted.

(2) HA., a publisher earning \$600/- a month was originally married to HB. about twenty years ago and had left her 10 years ago. In 1960 he went to Kuala Lumpur and married HC., a widow. There were no children of this marriage. After his second marriage he did not give adequate maintenance to his wife HB. and children in Singapore and in 1961 HB. obtained a maintenance order against him. He only paid one month's maintenance under the order and then fell into arrears. The wife HB. then applied for and obtain a decree of *fasakh* (annulment of the marriage) from the Shariah Court of Singapore. He now applied to remarry HB. as he said he felt sorry for her and her children. He undertook to give them \$400/- a month. The present wife HC. agreed to his remarriage provided she was given a separate house and was given \$200/- a month as maintenance. Permission was granted.

(3) IA., a military policeman drawing \$238/- a month had been married to IB. for 14 years. The wife was 45 years old and in ill-health and has had her menopause. They have a daughter 11 years old. He applied to marry a girl IC. aged 23 years, an attendant at a hospital and undertook to give \$100/- a month to each of his wives. The wife agreed to the second marriage. Permission was granted.

(4) JA., a camera repairman earning \$600/- a month had been married to JB. for about 20 years. They have no children. He applied to marry a woman JC. formerly a Christian, who had been divorced from her husband in 1959. He had known her since then and gave as one of the reasons for his wishing to marry her that he may be able to lead her and keep her to a Muslim way of life. He offered to give \$200/- a month to each of them. The wife JB. agreed but asked that JC. should live separately from her. Permission was granted.

(5) KA. was a driver earning \$165/- a month. He had been married to KB. for eleven years but had no children from her. He came to know a woman aged 22 years, who was working as a servant with the same employer, with whom he worked as a driver. He applied to marry her and the wife agreed, as she stated she did not want to see her husband and the woman living together outside marriage. The brother of the woman gave his consent and permission to marry was granted.

(6) LA. was a shopkeeper aged 43 years. He had a wife and three children in India but was unable because of the Immigration laws to bring them to Singapore. He had become a citizen of Singapore and wished to marry a girl in Singapore. He gave his earnings as about \$1,000/- a month and said he had informed his wife in India about his intended marriage. He offered to give each of his wives \$150/- a month. The wife in India he said had income from his properties in India. The girl and her father knew that he was already married and agreed to the proposed marriage. No attempt was made to obtain the views of the wife and children in India. Permission was granted.

The main brunt of the criticism made against the Shariah Court was in regard to obtaining the views of the wife, before approving the second marriage. An examination of the cases approved shows however that in some of the cases approved no attempt was made to obtain the views of the wife, even where it would appear, because of the fact that the wife was in India, that her consent should have been obtained. Further in some of the other cases the assent given by the wife might not have been given freely.

In some of the cases approved the parties had children of the marriage but little attempt was made to ensure that their interests were safeguarded. There is no doubt that the children suffer in such cases through no fault of their own and it would appear that the *Chief Kathi* should have more regard for the interests of the children and for their education, maintenance and welfare.

It was contended by the critics of the Shariah Court that the Court stood in the way when the parties wished to legalise an unlawful relationship which they had set up. It is difficult to see the logic of this contention in the light of the argument frequently brought forward that polygamy helps to prevent unlawful sexual relations among the Muslims. The critics ignore the fact that adultery is liable to the *hadd*<sup>51</sup> punishment of death under Muslim law and that they would by allowing the parties to marry permit the parties to enjoy the fruits of their crime and to cause hardship and heartbreak to the wife and the children. Of the cases approved in 1962 and 1963 at least four were cases where the parties had lived together before the application for marriage and in some others the parties had associated together for some time.

The task of the *Chief Kathi* in Singapore is an invidious one and it has not been made easier by the uninformed criticism that has been levelled at him. It would appear to be necessary for rules to be laid down to guide the *Chief Kathi* in the exercise of his discretion. It is a pity that no appeals have so far been lodged against the decision of the *Chief Kathi* for this would have given an opportunity for the Shariah Court and for the Appeal Board to lay down some principles. In the absence of such judicial pronouncements it would appear necessary for the Minister to lay down such principles on the advice of the Muslim Advisory Board.

M. SIRAJ (MRS.)\*

51. The fixed punishment fixed by the Divine Law for certain offences.

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