



Open Society Institute  
& Soros Foundations Network



***Research Report***

**Polygamy**

**In**

**Afghanistan**

**Year: 2006**

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### **Acknowledgement**

The Women and Children Legal Research Foundation expresses its gratitude to the following organizations and persons:

- Open Society Institute for its financial support and budgeting of the project
- To all organizations and governmental and nongovernmental offices supporting the project in the preparation and providing the relevant information
- To all people and persons who helped us by sharing their life tales for disclosing realities of the affaires
- To Henrich Boll Foundation covering the general expenses of the Foundation for contribution in performing of different projects

### **Introduction of the book**

Book Title: Polygamy In Afghanistan

Prepared by: Women and Children Legal Research Foundation

Donor: Open Society Institute (OSI)

Circulation: 700 copies

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**In the Name of Allah**

**CHAPTER ONE**

**Introduction**

**Introduction and History:**

*Translation:* "... marry the woman of your choice, two, or three, or four; but if ye fear that you shall not be able to deal justly (with them), then marry only one,..."<sup>1</sup>

Article 86 of the Civil Code of Afghanistan states, in regard to polygamy:

*"Polygamy can take place after the following conditions are fulfilled:*

1. When there is no fear of injustice between the wives.
2. When the person has financial sufficiency to sustain the wives. That is, when he can provide food, clothes, suitable house, and medical treatment.
3. When there is legal expediency, that is when the first wife is childless or when she suffers from diseases which are hard to be treated."

Polygamy is one of the common and basic issues in the legal frame work of the Islamic countries, including Afghanistan which relates to the family rights and particularly women rights. Therefore, this issue is included in the holy Qur'an, as well as in the laws of Islamic countries, in order to make sure that the limits and conditions for Polygamy are clear and avoid any injustice in the personal affairs of Muslims.

This report is an assessment of the phenomenon of polygamy in Afghanistan whit taking in to consediration the guidance and instruction of the holy Quraan and the specific provisions of the Civil Code of Afghanistan.

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<sup>1</sup> The Abdullah Ysuof Ali translation into English

Family is the main and key cell of every society; it has an important role in formation of a civilized society. The assessment of polygamy is important because marriage is the basis of the family, and marriage itself is a holy and firm pledge constituting the foundation for the life of two human beings.

Polygamy is considered as a calamity when men decide to marry for a second, third and even fourth time, and act against Islam and civil law in Afghanistan. At this time, women – to whom Islam and civil law give rights – are deprived of these rights and are sacrificed in these illegal actions. Since the family has a particular role and value in all entities, organizations and social agencies, all those who have thought about society, all advisors, and even dreamers and those who turned to utopianism,<sup>2</sup> emphasize on family and its vital value for the society. So it is quite important to think about the factors which can put the normal and safe growth of a family at risk.

This report includes enough and clear information regarding legal and Islamic texts and the treatment of Polygamay in these contexts, and compares this with the actual practice of this issue by men in Afghanistan. In addition, the impacts of illegal polygamy, which have been take place with out consideration of principles set out in the civil law and Islamic shari'a on women, children, and society has been assessed. The report also has been enriched by the views and analysis presented by law and shari'a scholars.

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<sup>2</sup> . That group that has been far away from dreaming of civil realities sat aside and started their dreaming or a special kind of wishes are called utopianist and their dreaming society called utopia. The civil literature is filled with their thoughts and has covered the history of knowledge from Plato to Thomas Moor.

**Opinions of the people regarding Polygamy:**

**“Although Islamic Shariah allows us to marry even four wives, it is very difficult even impossible to observe the limits that have been set for us.**

“A man from Kabul”

**Polygamy is a calamity if the husband acts against Shariah, and in my point of view, the better life is life with one wife.”**

“A women from Herat”

**“it is very easy to say, but I don’t agree with Polygamy in the current situations of the society as applying principles of justices which is the main condition would not be possible.**

“A man from Mazar e Sharif”

**The aims of this research:**

The aim of this research report has been to provide:

1. An analysis of Polygamy in Afghanistan,
2. An assessment of the practice of polygamy in comparison with the guidance of Islam and the civil law of Afghanistan,
3. An assessment of the position of judicial institutions pertaining to polygamy, and
4. An assessment of the impact of polygamy on the family and society.

**Research Methodology:**

The data and information was collected through questionnaires and interviews. The questionnaires and interviews were prepared by researchers, and after being pre-tested in a pilot program, were used to conduct this research.

This research was conducted after the following:

**a) The employment of the interviewees:**

Paying due regard to the sensitivity of the issue, a number of individuals who were familiar with the different areas of our research program were employed as interviewers. They received training about the value of the research, and about the method of information collection and completion of the questionnaires. They were then sent to previously select provinces to identify cases and fill out the questionnaires.

**b) The information collection process:**

By using these questionnaires, the maximum amount of information was collected. The questionnaires consisted of two types of questions – open and closed – in order to provide a broader basis for collecting the information. (Please refer to the sample of the questionnaires provided at Annex 2.)

**c) Analysis and assessment of the information:**

The information received was thoroughly assessed, based on which the framework for the report was established and the report was drafted.

**The Statistical Society (Areas for Assessment):**

The statistical society for this research is all persons who are linked in one way or another with the causes of polygamy. This research utilized a method of sampling based on geographic divisions. In this sampling, the area in which research was conducted was divided into various geographic zones. Each of these zones has been covered representing one province. The areas observed were as follow:

1. Herat
2. Maidan
3. Kabul and its surroundings
4. Balkh
5. Juzjan
6. Parwan
7. Badakhshan
8. Kandahar
9. Ningarhar

Since the sampling of the research was taken from geographic areas representative of the various ethnicities of Afghanistan, we can say that results of the research can be generalized to all Afghanistan.

“Please see the area of assessment in annex 3.”

**Principles:**

An attempt was made to observe the following standards:

- 1- To collect outstanding, first hand and precise information.
- 2- The analysis of the information does not necessarily reflect the opinion or point of view of the researcher.
- 3- Through the preparation of the research report and collection of information principle of non discrimination on the bases of each and every kind of difference were prohibited.
- 4- The safety of the interviewee was a priority.
- 5- The confidentiality of the victim and interviewees was taken into account.

**Number of interviewees:**

Three thousand two hundred and fifty people were interviewed in this study.

- 1- 1350 from the public,
- 2- 450 men who married only one wife,
- 3- 450 women whose husbands married a second time,
- 4- 450 women who married men who were already married,
- 5- 450 people related to such families,
- 6- 90 religious scholars, and
- 7- 10 authorities from the courts of Kabul city and the mentioned provinces.

**Challenges for the Research Team:**

Everyone knows that every study contains certain social challenges, but the research pertaining to such sensitive issues as Polygamy, particularly about the personal life, has its own special challenges. Women who are the direct victims of this calamity are not willing to be interviewed. On the whole, the study faced the following problems that slowed down the process of collecting information.

1. Lack of interest of the families to interviews,
2. Problems with identification of interviewee as there is no reference and document in this regards,
3. Lack of security in some of the areas,
4. Most of the families do not allow the women to be interviewed, and
5. Since it is a sensitive matter, most of the men refused to answer.

## CHAPTER TWO

### Historical Background of Polygamy

Polygamy is almost a historical phenomenon that goes with the social life of human beings. There is no lack of historical reports in this respect. There is a lot of evidence concerning Polygamy in the two last periods/eras. In eastern parts, multiple marriages have been a common custom. Mads, Babuliths, Ashoriths, Iranians, Indians and Chinese were satisfied with a single wife<sup>3</sup>. In Iran during the Sasanis dynasty, the custom of multiple marriages was a common thing. Besides having married women, men had some unmarried wives with them. There were mistresses and captive women too, and they were called servant ladies<sup>4</sup>. According to Ferdawsi's Book (Shahnama), Baharam Gur had 930 wives.

**Now there are nine hundred and thirty girls  
All of them wearing crowns made of gems & pearls  
The palace of the king is full of wives  
All of them living very luxurious lives**

**Figure 1 poem from Shahnama e Ferdawsi - Farsi poet**

Among the Sparts, men could get married for the second time only in a particular situation. However, women could get married more than men according to their wish or tendency<sup>5</sup>.

<sup>3</sup> . Amir Ali Saadat Hindi, Political, Social and Islamic History, Translation, Irj Rizaqi, Tehran, Qum Publication, 1378, Page 207.

<sup>4</sup> . Same source

The reports and information in regard of polygamy in the history state that all religions and laws before Islam did not try to make any endeavor to limit Polygamy. They focus of reform in this regard was only on two issues: first, avoidance of marriage with *mahram* (relatives to whom marriage is prohibited), and second, termination of the practice of women taking multiple husbands. Nonetheless, Polygamy was allowed almost in all religions for men. Bellow is a brief assessment of some of these religions:

### **1. Polygamy in Judaism:**

Marriage in Judaism is considered separation of a woman from her family, and the real meaning of marriage means to purchase the girl. The money paid for her is called Maher. The will and consent of the father is the basic condition for the marriage. Polygamy is common in the religion of Jews. A man can marry more than one wife<sup>6</sup>, and it is appreciated for raisings the new generation<sup>7</sup>. Besides, Polygamy, without any limits, is legally permitted<sup>8</sup>. Solomon, the messenger, had 700 permanent wives and 300 temporary wives. His son had 18 permanent and 60 temporary wives<sup>9</sup>. Financial strength is considered the basic condition for getting married to many women<sup>10</sup>.

Thus, he who was rich and well-to-do could marry more than one wife. Poor men, despite having logical excuses as childlessness, disease etc could not marry a second time.

### **2. Polygamy in Christianity:**

Marriage is accorded little value in the Bible. According to the Bible, “Jesus has lived a single life”<sup>11</sup>. Polls say: “The single person thinks in God’s creation/affairs and the married one thinks about the worldly affairs/things”. Jesus never married, thus, Polls did not marry either.

“In case of marriage, whenever husband and wife used to separate from each other, they were prohibited to marry for the second time. And whenever this happened,

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<sup>5</sup> . Same source Page 208

<sup>6</sup> . Hashim Raza, History of Religions, Tehran: Kawa, 1347, Page 1245.

<sup>7</sup> . Same source

<sup>8</sup> . Mubaligh Abadani, History of Religions and Religious groups in the world, Tehran, Rooz publications, 1376, Page 626.

<sup>9</sup> . Same source

<sup>10</sup> . Same source

<sup>11</sup> . Mubaligh Abadani, History of Religions and Religious groups in the world, Tehran, Rooz publications, 1376, Page 720.

the man and woman were considered to be adulterers or adulteresses and heterodox<sup>12</sup>.

Based on the above references, it can be inferred that Polygamy is prohibited in Christianity, and foundation of family is based on only one wife. This order has been considered highly significant. Though the husband and wife may not be able to live together, and the atmosphere in the family has been damaged by conflict, the man/husband should not marry a second wife.

### **3. Philosophy of Polygamy in Islam:**

Before the revelation of the Holy Qur'an, or almost 1400 years ago, Polygamy was a custom. When the earth was in its initial stages and less populated, Polygamy was one of the ways to populate the earth in order to bring human beings to earth for implementing God's plan. When the holy Qur'an was revealed, the world was sufficiently populated and the Qur'an set out the first limitation on Polygamy.

Polygamy is permitted in Holy Qur'an but under very strict circumstances. Exploiting this permission in any way will cause heavy torment from God. Although polygamy is permitted by Allah (God), it might be useful to review the conditions set out for this issue.

The best example is that of our prophet (PBUH). He married only one wife, Khadija. All of the children except one belonged to her until she died. As she spent twenty years of her life with the prophet (PBUH), she was certainly given full attention by the prophet (PBUH). For the certain reasons the prophet (PBUH), from the age 25 until 50, had only one wife. He married the widows of his old friends that had died and left a lot of children. The children needed a home and parental care, which were provided by the prophet (PBUH). Provision of parental care is one of the main reason that allows a man to exercise Polygamy in the holy Qur'an. (3.4)

Besides marrying the mothers of orphans, there were three political marriages in the life of prophet (PBUH). His close friends, Abubaker (Rz) and Omar (Rz), emphasized that the prophet should marry their daughters, Aisha and Hafsa (Rz), in order to establish family (kin) relationships with (PBUH). The third marriage was with Maria Masri (Egyptian), who was given to the prophet (PBUH) as a symbol of political friendship by the ruler of Egypt. This perfect example clarifies that a man should be loyal to his family and his wife, and should pay his undivided attention to looking after his family and children. The glorious Qur'an emphasizes the restriction on Polygamy:

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<sup>12</sup> . Hashim Raza, History of religions, Book no. 3, Tehran, Kawa publications, 1374, Page 1418.



*“If you are scared that you can not sustain equality among more than one wife, then, you marry one wife.” (3:4)*

*“You can never make justice among several wives as much as you try.” (129:4)*

Restrictions on Polygamy indicate that there are possibilities that the law made by God can be misused by human beings so to make sure that this would not happen certain conditions have been put in place and it clearly says that until you are not sure that you can do just it is preferable not to enter polygamy.

If we live in an area or location where Polygamy is not a common custom, it is better to pay attention to our single wife. The social and psychological welfare of children, especially in countries where Polygamy is prohibited, always recommends taking only a single wife.

The religion of Islam did not eliminate the custom of Polygamy, but rather reformed it. The reform was as follow:

### **1: Thread of Polygamy:**

The first reform made by the Islamic religion in this custom was the restriction of polygamy. Polygamy was unlimited before Islam. A single person could have a hundred wives, and establish a *Haram Sarai*, but Islam identified the maximum limit for them and according to such limits a man can not have more than four wives. This fact has been mentioned in the history of Islam and there are examples on application of the limitation on polygamy. Profit Mohammad advised the persons converted to Islam to keep only four of their wives. One of the examples are the case of a person named Ghailan Bin e Aslam, who had ten wives. The prophet (PBUH) asked him to leave (divorce) six of them. In addition, a man named Nofel Bin e Mawia had five wives, but the prophet (PBUH) ordered him to leave one of his wives.

### **2: Justice:**

Another reform that Islam made was considering justice a condition of polygamy: discrimination among wives and their children is never allowed. Justice was not considered a condition before Islam “as the Judaism used to consider economy the basic condition for Polygamy.”

### **3: Removal of Discrimination:**

The third reform that Islam made was the removal of discrimination among women and children.

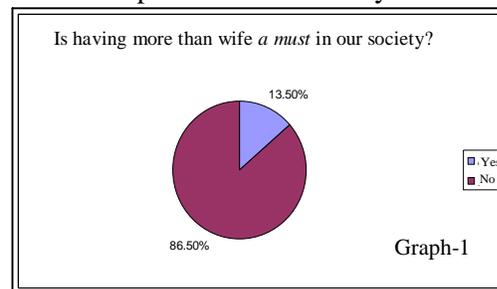
## CHAPTER THREE

### Findings of Research

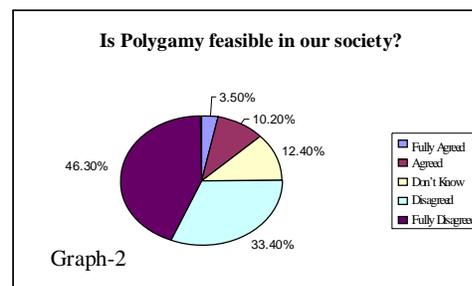
This chapter explain the major findings of the research according to the information received from the field and been analyzed accordingly. These findings are as follow:

#### ***First Session: What do people say about polygamy?***

The interviews with 1400 people in the various parts of the country show that generally, society favors having one wife. As graph number 1 shows, 86.5 percent of the interviewees prefer single marriage for the safety of the family. Only 13.5 percent agree on polygamy.



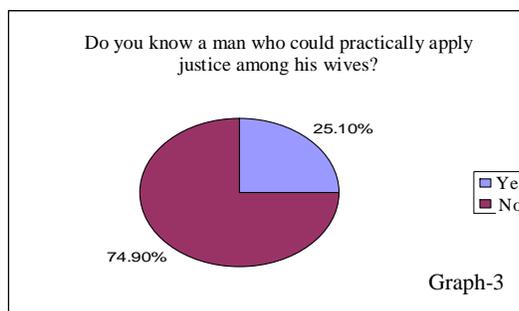
Regarding whether polygamy is possible and applicable in the social context of Afghanistan today? Graph number 2 shows that 46.30 percent of interviewees consider polygamy absolutely impossible in the current situation of Afghanistan.



Also in this session, an attempt was made to analyze people's views on wither application of Justice and equality is possible in the context of polygamy or not? The results are explained in the graph 3<sup>rd</sup> which shows that 75% of interviewees said it is not possible at all to apply justice and equality in the context of polygamy.

Bellow is a comment made by women in this regard:

*“What I know about conditions related to polygamy where justice is considered as one of the major conditions, I can say that it is impossible in practice and I have not seen any men who have been able to act according to justice principles with his wives”*



### Second Session: Factors for polygamy:

Although polygamy and conditions related to polygamy is vividly mentioned in holy Quraan and the civil law of Afghanistan, in many situations, different factors and reasons other than what has been mentioned in the Qura'n and Civil code could cause polygamy. In addition although consent of women is not important in many cases concerning marriage, but there are different factors that contribute and answer the question on why women agree to marry married men.

Here, we will try to analyze those factors in to 2 parts; one factors related to men and second factors related to the women consent in marrying a married men:

#### a) Factors for polygamy in relation to Men:

Number	Factors	Percentage
1	Tribal competitions	26.23
2	Insecurity	9.13
3	Not having a child	11.1
4	Not having a son	6.00
5	Sickness of wife	13.25
6	Wealth	7.32
7	Power and status	6.82
8	Traveling	1.11
9	Custom and tradition	14.12
10	Differences and inexistence of agreement between husband and wife	4.97

Interviews with 950 people indicated that the greatest percentage of new marriages of men was not in accordance with the rules of Islamic Shariah and law, but rather involved personal issues and factors. Here, we assess the main ones, which are as follow:

### 1. Tribal or Regional Competitions:

The interviews showed that there are competitions among men in many families and tribes. And these competitions, in many situations, have affected the personal lives of individuals. If one of them decides to marry for a second time due to some reason, the other, in competition with him, decides to marry for a second, third or even fourth time. Some times it happens that they marry four wives.

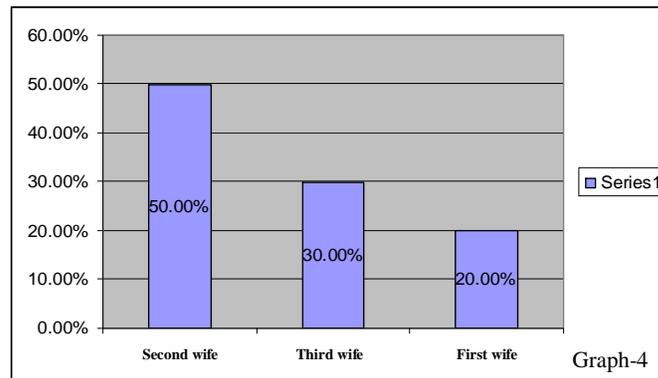
The graph 4 clarifies that those men who get married based on competition decide for the third and fourth time as well and this factor has not been noted in other situations.

A person, from Jalalabad, said:

*“My wife was sick, so I married another woman. My cousin imitated me and married a second wife as well. When I saw him marrying for the second time, I got married for the third time.”*

A person from Kandahar said:

*“My wife and I were not in harmony. I was compelled to marry a second wife. My brother imitated me and got a second wife as well. As I saw him getting married a second time, I married a third time. My brother did the same. Now, I am planning to marry a fourth time.”*



### 2. Need for Safety:

The physical power of men is recognized as a major tool for defense in Afghanistan. In the other hand, disputes over issues related to property and assets, and issues related to family and honor has been a daily and common problem in our country. The judiciary and police departments have the responsibility to solve disputes according to the law. But these institutions are not available every where and people don't have access to them.

So in the absence of the responsible institutions people take the law on their hands and when the disputes are not solved in a peaceful way, they start to fight, and it is obvious that men are considered as fighters. Those who have fewer fighters (*men in their families*) are defeated. Talking the important role of men in fighting, it is very important from the community and families point of view to have access to power by having more men and sons in the family.

Also graph number 5 indicates that in some of the areas where those men who don't have any brothers, or have fewer brothers and sons, feel insecure, in order to compensate for this shortage, men go for second marriages. Opinions of some men in this regard are as follows:

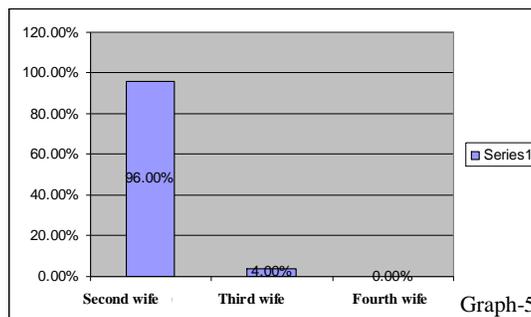
A person from Jalalabad:

*“My son always used to be beaten by his cousins. Since my son didn't have a brother, I was compelled to get another wife.”*

A person from Maidan:

*“I have enmity in my tribe and I had only two sons from my first and second wives, so I was compelled to get a third wife.”*

Based on these quotations, it can be inferred that, in many parts of the country, it is necessary to have male children for safety. Nevertheless, attention should be paid to this point that sons are used only as a means of revenge, as it is against the provisions of the Child Rights Convention.



Graph-5

### 3. Childlessness:

Childlessness is one of the factors that the Civil Code of our country, in article 86, recognizes as grounds authorizing a man to marry another wife. Besides other factors, childlessness is also one of the factors that facilitates the opportunity for marrying more than one wife.

Among the individuals who were questioned in relation to their second marriage, only 11.01 per cent remarried due to not having children. But only one percent of them visited a doctor before attempting this second marriage. (*as it is clear it is not always the problem of a women in not benig able to produce a child and it could be men problem as well*)

#### 4. Sonlessness (not having a male child):

6 % of the interviewees in our research presented sonlessness (not having a male child) the reason for their new marriage. In the traditional society of Afghanistan, sonlessness (not having a male child) is intolerable, as was mentioned before in the discussion of safety.

There is a famous proverb which states: “a family without a son is like a home without any light.” This proverb shows the value of a son to a family. Some of the opinions of

those who married for a second time due to the lack of a son or male child are as follows:

*“I didn’t have any sons, so my cousins used to taunt me ...” “a man from Herat Province”*

Or a man from Juzjan Province:

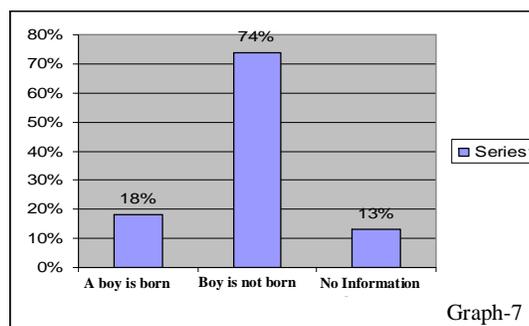
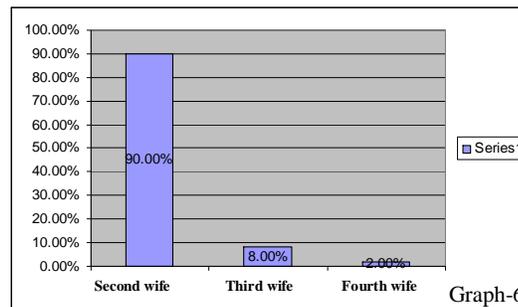
*“I was so embarrassed by not having a son that I was unable to walk in my village freely”*

We have to cite that this issue highlights two of the factors that are very common in our country.

#### 1. Discrimination between Girls and Boys:

As it is clear to everyone, discrimination on the bases of gender has a strong route in Afghanistan and it starts from the discrimination between girls and boys in most families, whether they are urban or rural. Unfortunately, this discrimination, in all matters of life, ranging from birthday parties, to naming ceremonies, access to education, health, decision in regard of marriage etc. in other word discrimination against women starts from their childhood in their family and it goes on over the life period of the girl in her in laws house as well.

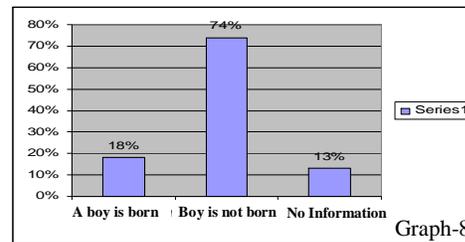
This kind of discrimination has reached the point where men who don’t have a son decide to marry a



second and even third wife, in order to have sons.

Lack of awareness:

The second issue that is inferred from this factor is a lack of sufficient information and awareness about men's role in producing the gender of the child. Men don't know that the identification of



Graph-8

gender of the child is mainly their role not of the women. For more information, we had an interview with Dr. Fahima Sekandari:

*“All of the human beings have 23 pairs of chromosomes. 22 of those chromosomes are vital or somatic and one of the pairs is the sexual chromosomes. The sexual chromosomes, in men, are called by the name of “x, y”, while these chromosomes, in women, are called by the name of “x, x”. Therefore, when the x of mother gets together with the x of the father during conception, it results in a baby girl, and when the x of mother gets together with the y of father, it results in a baby son.”<sup>13</sup>*

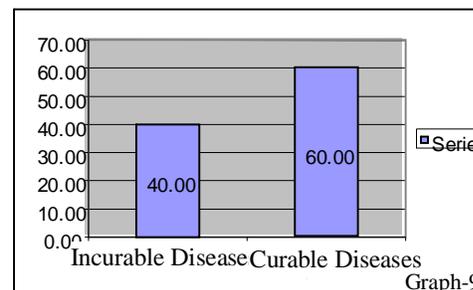
so now it is clear that men have an important role to play in the identification of the child sex, because if the above mentioned fact this report also shows that a notable number of men who married for second time to have sons failed to have sons This issue is illustrated in graph number “8”. The graph show that the majority of those who married for the second time for the purpose of having a son were not able to have it

**5. Maternal Disease:**

Un treatable disease is also one of the reasons to which the civil law has pointed as a reason for second marriage of a man. researches shows that men have exploited this condition, and they, without treating their wives, have decided to marry second wife.

Graph number “9” illustrates this:

The graph clarifies that most men decide to marry a second wife, though their wives did not have an incurable disease. It is worth mentioning that 30% of these women lost their lives



Graph-9

<sup>13</sup> From our phone interview with Dr. Fahima Sekandari, deputy director of Malalai Maternity Hospital, in Kabul, 14/02/2006

due to lack of timely treatment. It makes it clear that there has been a lack of attention to, and care for, women suffering from minor disease. But if the husbands had spent the amount of money on the treatment instead of their second marriage, their wives would have possibly got well. For further clarification, we review some opinions of the ladies here.

A lady from Mazar e Sharif:

“I had diabetes but my husband, without treating my disease, got married for a second time.”

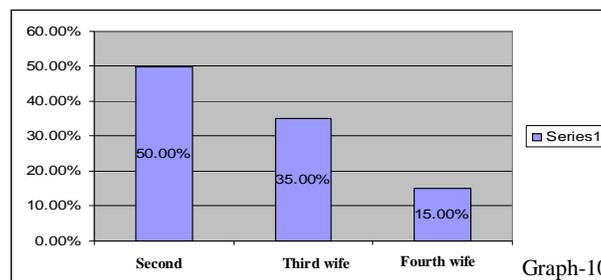
A lady from Ningarhar:

“I had a skin rash and my husband could treat me with a small amount of money, but he got another wife.”

### 6. Strong Economy:

7.3% of the men who married for the second time cited the reason of their strong economic situation. This group of men, based on research results, did not get satisfied with the second wife and married third and even fourth wives. This is illustrated in graph number “10”.

The graph explains that a remarkable percentage of the men in a strong economic position decided to marry for the second, third, and even fourth times. Here, we review some of the questionnaires.



A man from Kabul:

“God had blessed me with wealth, so I can marry four wives and can provide them with their needs.”

A man from Herat:

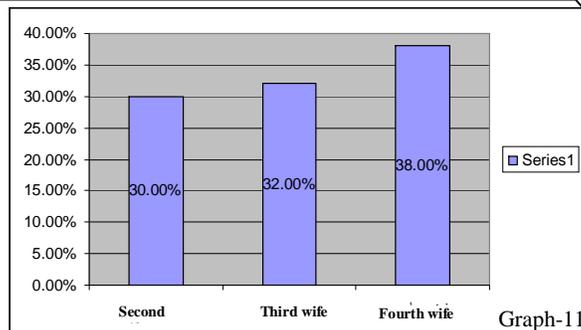
“I am thankful to God that I have lots of money and can provide all of my wives and children with their expenses.”

Based on what is mentioned above, and based on our comprehension of article 86 of the Civil Code, it can be inferred that strong economy, without joining other conditions in the law for new marriage, is not sufficient. A man should have a legal and logical excuse for the new marriage.

### 7. Power and Position:

Power and position provide the opportunities for marrying more than one wife, and men, by utilizing their power and position, have married more than one wife. Since

the commanders and landlords were influential, people used to be afraid of them. This fear made them give their daughters in marriage to the commanders and landlords. Most of these men married up to four wives. Graph number 11 shows that those who have power and influence have affected the other factors and have the highest rate of having four wives.



#### **A man from Juzjan province:**

*“Now I want to marry the fourth wife since the people in the area are afraid of me and cannot give me no answer.”*

A man from Mazar e Sharif:

*“I am wealthy and a lord of my village. I have decided to marry a third wife. Her father cannot reject me since he is working as a farmer for me.”*

It is worth noting that 6.8 percent of the reasons given in this report for polygamy is due to power and high position in society.

#### **8. Travels:**

One of the factors cited by men as a reason for new marriage is traveling. They argue that they have married new wives due to continuous travel and need for home. 92% of these men have only married 2<sup>nd</sup> wife not 3<sup>rd</sup> and 4<sup>th</sup>. Some comments are bellow:

*“A man who is a resident of Parwan province but doing business in Mazar e Sharif, each times he comes to Mazar e Sharif, stays for two or three months, so he married a woman from the city of Mazar e Sharif.”*

A person from Badakhshan says: *“I go to Kabul to earn money. I stay there for a long time, so I had to marry a woman from Kabul city too.”*

#### **9. Customs and Traditions:**

Unsuitable customs and traditions are profoundly involved in a number of marriages against the law. The custom itself is also directly considered one of the

factors for the polygamy. Unsuitable customs are, for example: marriage in childhood, marriage of a widow with her husband’s relatives, giving a daughter in marriage to resolve hostility, exchange of daughters, and forced marriages. These customs are always imposed on women and in some cases even, the man does not have a say in the marriage.

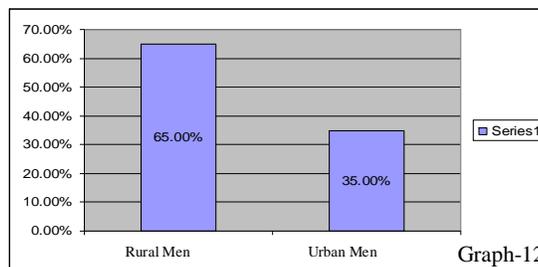
**10. The Existence of Differences between Husband and Wife:**

Most of the differences between husband and wife pave the way for men to get another wife. These differences can be due to education, living environment, tribe, race, religion, and way of thinking. Among the interviewees, 2.52 % got a second wife based on one of these differences. In order to clarify the issue, the following is an assessment of the above differences:

**Geographical Differences:**

The researches have proved that where women from urban areas marry men from rural areas, or where women from rural areas marry men from urban areas, their have been conflict between them due to their attitudes, and some of their husbands got married for a second time.

Graph number 12 shows that 65 percent of men who married a second time are men from rural areas.

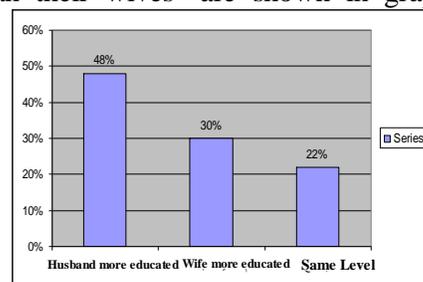


Graph-12

**Educational Differences:**

There were observed differences of educational level, especially in situations where the man’s qualifications are higher than his wife’s. The statistics for new marriages of men whose qualifications are higher than their wives’ are shown in graph number 13 to be 48 %, and the rate of new marriage decreases to 30 percent where the wife is educated. The equal level in education between man and woman has decreased these events to 22 %.

Graph number 14 shows that a high number of men who have higher education than their wives’ got married for the 2<sup>nd</sup> time.



Graph-13

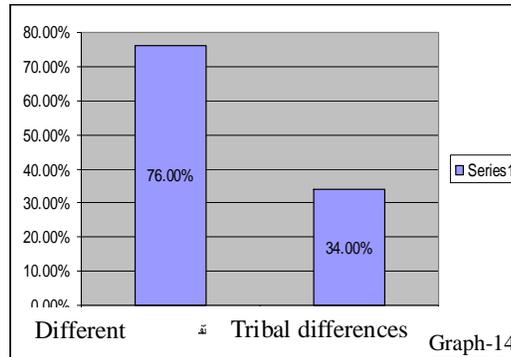
Nonetheless, those husbands whose educations are lower than their wives are in the 2<sup>nd</sup> level in terms of polygamy , and those who have an equal education level has few cases of polygamy

**Tribal Differences:**

Tribal differences are also one of the reasons that attract men to second marriage, because both men and women belong to different tribes and they follow different principles and also have different cultural background and it affect a lot their marriage life.

Here is another quotation from a man:

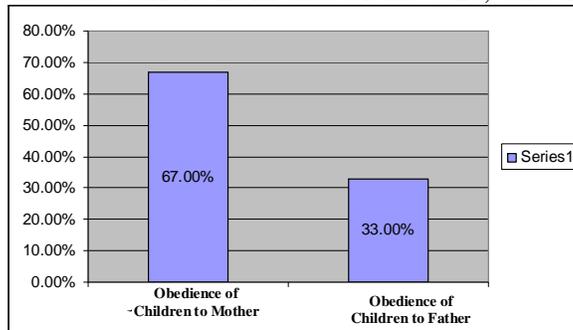
*“My wife and I did not belong to one tribe and my wife didn’t have any information about our customs and traditions. I was compelled to marry a woman from my own tribe.”*



Graph-14

**The Religious Differences:**

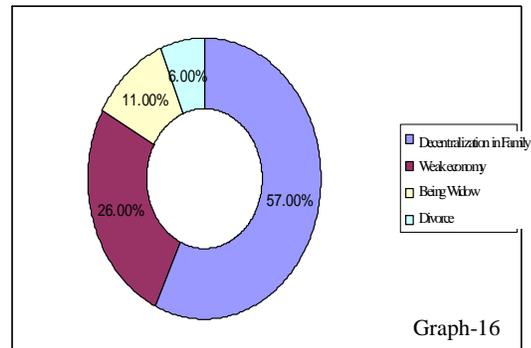
Sometimes, the religion of the husband differs from that of his wife, and these differences motivate the husband to get married with a second wife especially when their children follow their mother’s religion. Graph number 15 shows that 67 % of men whose children have followed their mothers’ religion have married another wife, while 33 % of men whose children followed their religion got another wife.



Graph-15

### 3<sup>rd</sup> Session: Assessment of reasons and factors that coerce women to marry a married man:

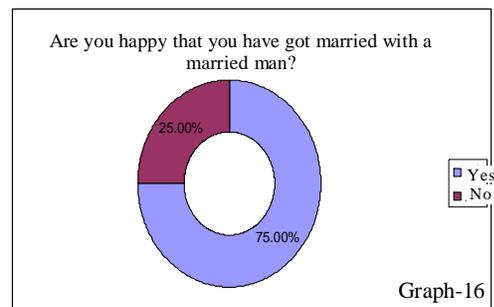
In reviewing the reasons for polygamy, we should not forget that women also play a specific role in arranging the marriage. Article 77 of Civil Code of Afghanistan considers the contentment of the couple to be one of the basic conditions for the arrangement of marriage. If one of the couple shows unwillingness, the marriage is considered void. On the other hand, what we have been studying and what we have been considering a problem in marriages in Afghanistan is the issue of forced marriage, which, despite the legal prohibition, has been practiced broadly in society. Thus, we will try to discuss the factors which forced women to marry a married men in 2 parts: (a) situation where women are not agree and we consider it as forced marriage and (b) situation where women express their consent.



**a) Assessment of the reasons and factors in which the women consent is not involved:** 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.

**b) Assessment of the reasons and factors in which women consent is involved:** 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.

A girl who married a married man in Badakhshan says:

*“I studied in school up to class eight because my parents were alive at that time. They wished I would become a doctor, but after a short time, my mother, due to some disease, passed away. My father told me to continue my school, but soon my father bid farewell to the land of mortal. I was forced to go to my uncle’s home. My uncle told me to stop going to school and look after his children, so I had no choice but to consent. I was compelled to marry a married man because I had no single peaceful moment in my uncle’s home after I lost my parents.”*

A girl who married a married man who already had two wives in Herat city says:

*“I studied school up to class six and had a happy life with my parents. When I was sixteen, I lost my parents one after another due to some disease they were suffering from. I had to live with my uncle’s family. My uncle’s wife used to taunt and beat me. I decided to commit self emulation and burn myself alive, but one of my neighbors who was a married man proposed to marry me and I had no way and no option but to accept his proposal.”*

This report reveals that sometimes the women are forced to marry a married person because of the lack of the presence of one of the parents. This situation is completely different when it is lack of mother or father. As lack of mother cause problems like misbehavior of the step-mother, lack of attention from the father, and deprivation of the father’s love, have caused girls to get rid of the singleness accept to marry a married men. When only the mother is alive, there are other problems – for example, economic problems and lack of supervision – that cause girls to consent to marry married men for the purpose of their safety or sometimes to assist their mothers financially. Here, we review some of these cases:

A lady from Kabul:

*“I was fifteen when my mother died, and my father got married to another woman. My step-mother always used to force me to do heavy works. I was forced to work until late nights, and my father didn’t know about my plight. At this time, one of my step-mother’s relatives, who was forty-five and was already married, proposed to me, and I consented to marry him.”*

A lady from Ghazni: “When my mother died, I was a student of class nine at school. My father got another wife, and he asked me not to go to school any more. I had to do all the chores at home. There was not a single day that I was not beaten by my father, since his wife always used to provoke him against me. At this time, a man who was twenty years elder than me proposed to me and I didn’t reject him.”

A lady from Ningarhar:

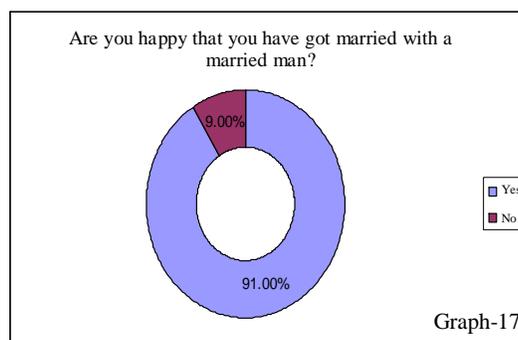
“After my father died, we were a burden on our mother’s shoulders and could not assist her. I stop going to school and tried to find a job, but I didn’t find one. Therefore, I was compelled to marry a man who was a shopkeeper and already had two wives so that I could assist my mother, sisters, and bothers.”

A lady from Maidan:

“I was fourteen years old and a student of class six at school when my father died. We were living in our grand-father’s family. My uncle, who was old and to whom no one wanted to give a daughter, gave me as an exchange in marriage to his brother-in-law.”

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. Also women who give consent to marry a rich and married man think that by scarifying their life and feelings they would be able to safe the life of their brothers and sisters, or at least they will reduce their living costs from their family.

Here, we review opinions of some women:

A woman from Parwan:

“Our father didn’t have money to solve our financial problems. We could only have a meal one time a day and would stay hungry the rest of the day. Therefore, I married a married and rich man who promised to assist my father.”

A lady from Ghazni:

“My father was old and could not work any more, and my brothers were young. I was the only young girl in my family. I was compelled to marry a married man since I wanted to help my family.”

Since men are the providers for their families, and women do not have economic independence, being widowed affects them very much economically. They have to marry married men to ensure their livelihood and that of their children. Most of the time, the men they marry are their husbands’ relatives.

A lady from Herat:

“After the death of my husband, I had three children. All of them were young and only one of them used to go to school. I could not send him to school, for I didn’t have money, and at the time, I didn’t want him to remain uneducated. I was worried about their future and there was not any one in the family to assist me. I had to marry a married man who pledged to pay for my children’s expenses.”

A lady from Kabul:

“When my husband was killed, there was no one in his family to help me financially. My daughter was young. We were living in a rental house and I could not live alone. Besides, I was uneducated and didn’t have any possibility of working, so I had no way except marrying a married man.

Divorce is also one of the factors that attract the consent of wives. Wives are compelled to allow their husband to marry a second wife. In other word, those

women who are divorced by their husbands and have no means for survival, as the very last option they chose to marry a married man.

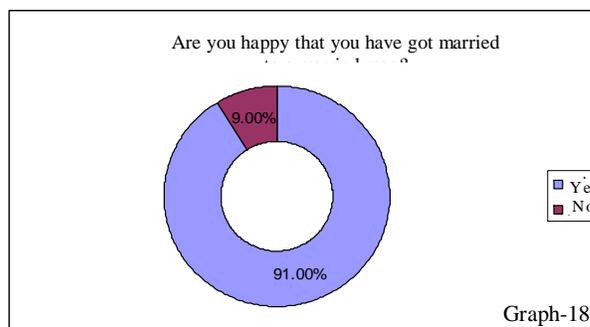
Bellow is some comments in this regards:

A woman from Kabul:

*“After I got my divorce from my husband, I had a lot of problems because I could not provide support to my children. Therefore, I was compelled to marry a married man.”*

A women from Herat :

*“After my husband divorced me, I had to marry a married man because the local people used to taunt me.”*



#### **Session Fourth:**

##### **The experiences of those people who married more than one wife:**

In general, the men who married for a second time or more regret their action, for it has created numerous problems for them. Furthermore, as was mentioned before, many such marriages were against the consent of men, and these marriages occurred merely based on traditions and customs. Regarding this issue, we assess the opinions of those men who married more than once.

A person from Badakhashan said:

*“I loved a girl and got engaged to her. My brother died at the same time, and I was coerced by my father and elders to marry the widow of my brother. I have to say that my sister-in-law seems to be 15 years older than I am. I had no way but to marry her.”*

A man from Maidan shared his memory with us:

*“I had been engaged to my cousin in my childhood. As I grew and became older, I didn't have any interest in this engagement. My father and uncle forced me to marry. After the first marriage, I made a decision to marry the girl I loved.”*

#### **Session fifth:**

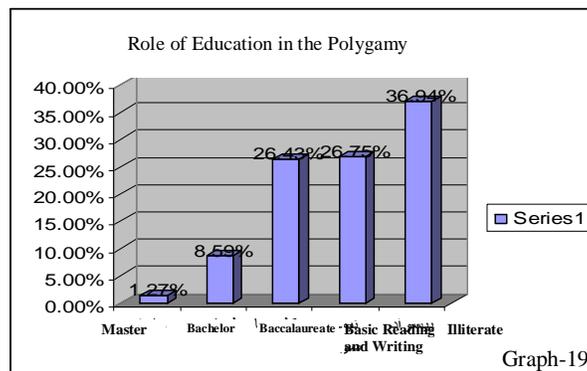
##### **Classification of the Individuals Married for the Second Time:**

In this section, an attempted has been made to assess the characteristics of the people who married for a second time. In other words, an attempt has been made to

identify the characteristics and specifications that make a person suitable to marry more than one time. These characteristics include the following: education, economy, living environment, and social status.

**a) Education:**

Education is one of the significant and valuable indicators in human life. This factor affects all aspects of human life, constitutes the foundation of world civilization, and plays an important role in society. It is by education that individuals are aware of their rights and obligations, and it is less likely that educated and literate people hurt others. The role of education is valuable in the personal life of human beings, and graph number 19 illustrates the role of education regarding polygamy.

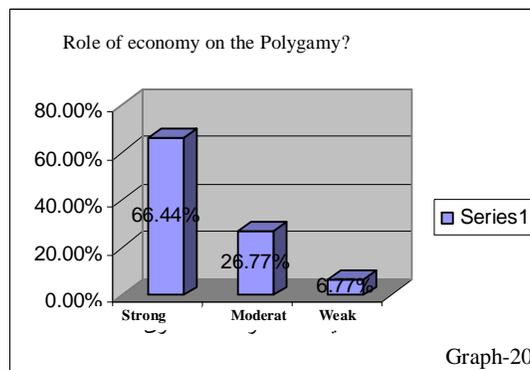


The graph indicates that those men whose qualifications are higher – bachelor and masters – have less of a tendency to having more than one wife, while those men who are illiterate or completed primary school have married more than one wife.

**b) Economic status:**

Strong economic status has had positive effects in most aspects of human beings life, but it contribute a lot in increasing of polygamy and thus has a negative effect on families in this regard. In other words, those men who are in a strong economic position have a greater tendency to having more than one wife.

Graph number 20 shows that the highest of the statistics for marrying more than one wife goes to those who have strong

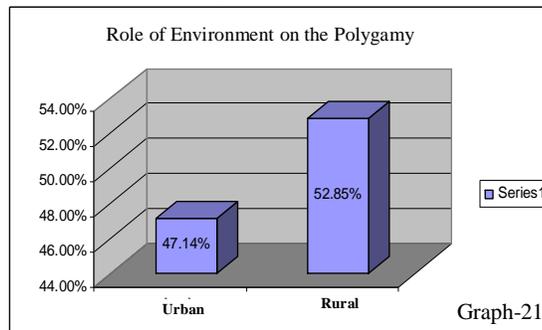


economy, while those who have medium or weak economy less attempt to exercise polygamy.

### c) Settlement in Urban/Rural vicinities:

The domicile has also affected this phenor <sup>Role of Environment on the Polygamy</sup> reas differ from one another in traditions, culture and required social facilities. These differences have left their special effects on the residents of those areas, as graph number 21 illustrates.

The graph shows that the highest statistics regarding polygamy exist among rural men. Nonetheless, as we see in the figures provided in the chart living area is not a direct and strong factor as it clearly shows



that even men who live in cities also have a high percentage of polygamy cases, which is around 47%. Also it has been observed that rural men who migrate to cities wish to have a literate or educated wife, and so they attempt to marry a second wife.

### d) Power and Influence

Power and influence play a significant role in family and society, and those who possess enough power and influence in the community can use their power and marry more women in the form of polygamy. The source of power and influence can be found in the two following factors.

#### 1. Lack of the Rule of Law:

As far as it has been studied, in most parts of the country the rule of law and the structure which can apply those rules are not exist, thus the decisions in such places are taken by powerful people in the community, who most of the time miss use the power and position.

#### 2. Factor of Tribal Power:

There are numerous tribes in our society, and each tribe has its own landlord or elder. All of the main decisions are taken by these people. Thus, they exploit this power and pressure families to give their daughters in marriage to them. The following are opinions of some women in this regard.

A woman from Juzjan:

“My father was working with one of the commanders. One day when I just left school and went to see my father in the working spot, one of the commander’s followers saw me. He asked his commander to suit me for him from my father. The commander threatened my father and warned my father that if he refused, he would not only fire my father from the job but would kill my young brother. My father, afraid of his threat, consented, and I became the fourth wife of that person.”

A woman from Kandahar:

“The landlord of our tribe is my father’s cousin. He has great influence within the tribe, and all of the residents are afraid of him. If someone doesn’t accept his decision, he penalizes him harshly. Therefore, he dared to suit me from my father. Despite having two wives, my father was coerced to give me in marriage to him.”

### Session Sixth:

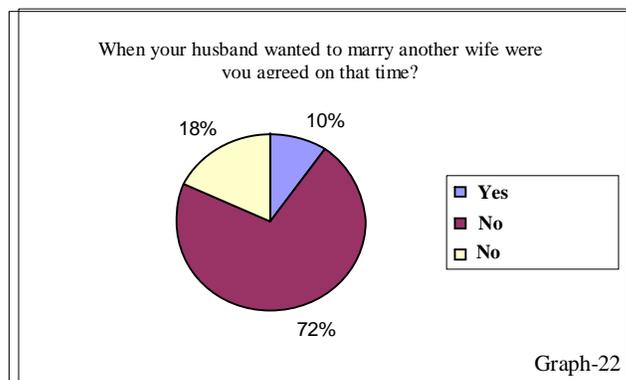
#### Why are women silent in the face of second marriage of their husband?

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. Here, two points needs more attention:

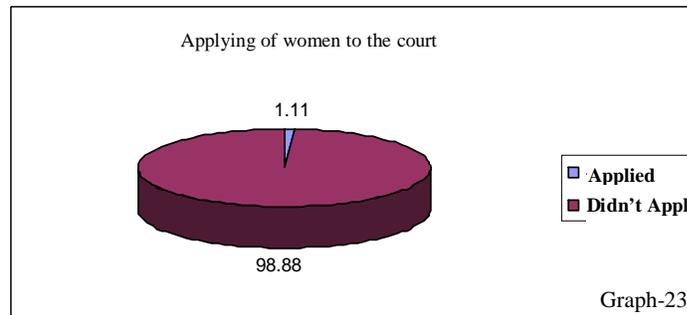
*First:* Although 72 % of women were not agree with their husbands’ marriages, a small number of them have appealed to justice and judicial courts, especially to family courts, for the realization of their rights. This is set out in graph number 23. The graph shows that 98.88 percent of the women have not appealed to the courts, while one percent of them appealed to the courts and asked for their rights.



*Second:* 18 % of women claimed that they had not been aware of their husbands' second marriage, whereas the Civil Code of Afghanistan has spoken to this issue in article 87 as follows:

“The woman, whose husband has married contrary to the provisions of article 86 of this law, can demand divorce from the court in accordance with the provisions of article 183 of this law on the grounds of separation caused by damage or loss.”

According to this article, the awareness of the first wife from the second marriage of her husband has been considered as condition. But in both situations (non consent and lack of awareness) the wives

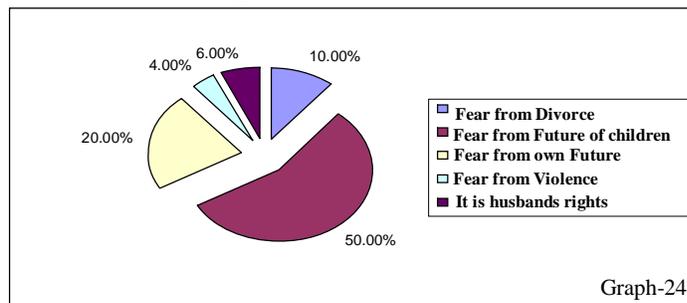


have remained silent against action taken by their husbands. Followings are some of the causes of such silence.

1. Most of the women in Afghanistan don't know about their basic rights set out in the codes, because there is no means to upgrade their understanding of their rights in different areas of the country.
2. A number of women know about their rights, but due to lack of access to justice and judiciary, and existence of bureaucracy and other obstacles in the courts, they have kept silent.
3. Due to the stress of ideas ruling the community, contacting the court is considered a shame and a disgrace, especially for women, and because of this, women do not contact the courts to vindicate their rights.
4. Fear of her husband and her in-laws, and fear of being beaten and violated, are also fundamental factors.
5. 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.

6. in addition the lack of trust on judiciary, lack of Family Courts and also lack of female lawyers and judges are factors silencing women.

We studied the major reasons contributing to the silence of women in relation to the second marriage of their husband in graph number 24. The anxiety of women concerning the future of their children has the highest statistics, while anxiety about their own future and divorce have the second highest statistics, and fear of violence is in the lower level. Now, we present some quotations about these factors from among these women.



some quotations about these factors from among these women.

### 1. Fear of Divorce:

“A lady from Ghazni, aged 27, has four children. Her husband, six years after their marriage, decided to marry a second wife. This lady says: I can endure the second wife of my husband but not divorce.”

Also a lady from Herat says:

“I spent seven years with my husband, but after some time he, due to tribal competition with cousins, decided to marry a second wife. I remember it very well that when I objected, he told me if you make a complaint, I will divorce you.”

### 2. Anxiety about the Future of Children:

A woman from Kabul said:

“When my husband wanted to marry a second wife, I objected, but he told me that if I complained anywhere, he would leave me alone with my children without providing any support.”

A lady from Badakhshan shared her ideas with us:

“I would not dare to stand against my husband when he married a second wife because he threatened that he would leave us and would go with his second wife.”

### 3. Anxiety about her Own Future:

A lady from Maidan:

“It has been six months since I married, but my husband wants to marry the widow of his brother. He said, if I complain, he would send me to my father’s home.”

A lady from Ningarhar:

“It has been eighth months since I married, yet I am not pregnant. My husband, who should wait for god’s blessings and mercy, has decided to marry another wife. He has threatened that if I make any complaint anywhere, he will send me to my father’s home.”

**4.. Fear of Violation:**

A lady from Herat: “My husband had decided to marry a second wife. I objected to him, but he beat me so harshly that I couldn’t eat anything for three days. He told me that if I made any complaint somewhere else, he would beat me more harshly.”

A lady from Juzjan:

“It has been nine years since I married, and I have five children. Before my husband wanted to marry another wife, he beat my so that I was scared and would not make any complaint in the future.”

**5. Considering it the Husband’s Right:**

A lady from Maidan:

“When my husband wanted to marry another wife, he didn’t ask me anything about his second marriage. I said nothing since men can marry four wives.”

**A lady from Ningarhar:**

“I have no right to interfere in men’s tasks and can’t ask him why he marry second, third, and fourth wives.”

**Seventh Session:**

**How do the courts handle polygamy cases?**

One of the three branches of government of the Islamic Republic of Afghanistan is the judicial branch, which is responsible for handling judicial affairs. The judicial branch in all countries that have accepted the principle of separation of powers, including Afghanistan has been given a considerable level of power. Islam has considered justice as a spiritual duty as well and gives it certain values; therefore, the constitution of the Islamic republic of Afghanistan has also recognized this power. Therefore, the executive power will get in line with the law only if the justice system is working properly. The courts should know their duties precisely and act upon them. The constitution, at article 119, has made the judicial power responsible for realizing social justice and supporting individual and social rights. It has considered the presence of this power vital to preventing crimes in the country.

The constitution according to article 120 has given the judiciary the authority to review and decide on cases regarding to violation and all kind of complaints, which require lots of facilities.

**a) If complaint of Ex-wife is available:**

At this point the court will resolve like this based on the article 87.

*“The woman, whose husband has married contrary to the provisions of article 86 of this law, can demand divorce from the court in accordance with the provisions of article 183 of this law on the grounds of separation caused by damage or loss.”*

Based on this reason, when the ex-wife appeals to the court and proves that her husband has acted against article 86 and married another wife, she can only claim separation. Article 86 orders regarding this as follows:

“Polygamy can be taken place after the following conditions are fulfilled:

1. When there is no fear of injustice between the wives
2. The person has financial sufficiency to sustain the wives that is when he can provide food, clothes, suitable houses and medical care.
3. When there is legal expediency, that is when the first wife is childless or when she suffers from diseases which are hard to be treated.”

As it shows the best support provided by the court for the first wife is to grant her a divorce. Here we would like to comment on some of the issues raised in this provision:

1. It is difficult for the wife to prove that her husband has acted against article 86 and decided to marry another wife because the wife will have difficulty proving that her husband cannot ensure justice or has failed in providing her with livelihood.
2. This article has not provide any punishment for the husband who has violated the law
3. The only possibility anticipated in the law is the right of divorce to the complainant, which does not only harm the husband but harms the harmed wife further.

**b) Complaint of the Subsequent Wife:**

The court in this case will issue the order according to the provision of article 89 of the civil law, which provides as follows:

“During the 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 woman on that matter, the newly married wife, in case she should not agree to continue living with husband, can

demand divorce from the court in accordance with the provisions of article 183 of this law.”

Also article 183 provides as follows:

“Where the wife receives any harm from intercourse with husband, and if this makes the intercourse impossible, she can demand from the court to grant her an order of separation.” Based on this reason, the wife is also obliged to prove it at the first step that she did not know about the first wife of her husband. If she is not consent, she should immediately go to court and ask for separation based on the damage according to article 183 of the civil law. This article as well includes the following disadvantages:

1. To prove that she didn't have any information about the first wife of her husband.
2. This article too does not have any indication for the husband who has violated the law.
3. The best thing that the court can do for the (harmed) junior wife is to receive her divorce from her husband, so, after practice of this exercise, the wife is stilled damaged but not her husband.

### **Can polygamy be restricted and referred to the permission of the court?**

As we said legitimacy of polygamy (up to four wives) is one of the clear instruction in Islam, which has a justification for itself and has been discussed earlier. But what is understood from the third verse of the chapter Nisa in holy Qur'an is that the ideal life is to marry only one woman. Polygamy has been permitted with conditions and preferred in exceptional cases, and even due it there has been condition which is not very easy to provide. One of the strong conditions is applying justice it means that the man should deal with his wife with Justice in all affaires related to their marriage life and treat them equally. Qura'n says:

*“Translation: Then, marry the person whom you like, of the women two, two, three, three and four, four. Then, if you are scared that you can not make justice, then, marry only one wife... (Chapter of Nisa,verse No. 3,Tafseer e Kabuli).”*

It is worth mentioning that although the holy Qur'an has permit man to marry up tp four wife but it also prohibit marriage with more than one wife if there is a fair or doubt of injustice. So according to Islam marrying more than one wife is only possible when there is insurance of justice.

It is not far from the reality that we can infer from this verse that if a person has the fear of not applying justice and still marry more than one wife his last marriage is considered void. Because, in fact, considering polygamy a legal matter in this verse is conditioned very strongly with justice.

The author of Tafseer ul Manar says:

“It seems from the content of two verses in Sura Nisa that legality and eligibility of polygamy in Islam is crucially restricted, and presumably it is permitted if someone needs it, and still with the condition that he must apply justice.”<sup>14</sup>

Dr. Yusuf Al Qarzawi also comment and says:

“The condition exist for polygamy in Islam is that the Muslim man should have the insurance that he would be able to apply justice in his relation to his wives so if some one doesn’t have such confidence marrying more than one women is considered sin for him<sup>15</sup>”.

It is to be mentioned that purpose of practicing justice is its external and material aspect of it, to make sure that wives have equal access to all rights originated from the marriage relationship, as justice in feeling is not possible.

As God, has pointed to the above issue in other verses of chapter of Nisa as bellow:

Translation: “*you will not be able to act just amonge your wives even you try. Then don’t attempt for that and not leave the wife with out moral support*<sup>16</sup>... ”

(Chapter of Nisa. verse No. 3, Tafseer e Kabuli).

The verse has pointed to issues of internal feelings and interest more obviously and specifically. But it has been mentioned once again not to leave them without any support. It means you should provide them with livelihood and all of their necessities.

Regarding this issue, that who should monitor and also implement justice and whether polygamy has to be restricted by the order of court or not; we can translate the bellow Qur’anic words in 2 different ways:

“...*if you were afraid that you cannot apply justice so one wife is enough....*”

1. If we consider this matter a personal issue, there is no room left for the interference by the court. According to such interpretation if a man is confident that he can apply justice so he can decide on marrying more than on woman, Thus the conscience of the man replace the power of judiciary and the judiciary only can interfere if the first wife or second wife complain in certain issue in regard of polygamy.

2. The second analysis would be that because polygamy is conditioned to application of justice and failure of a man to apply justice could effect the family

<sup>14</sup> Sayed Mohammad Rashid Reza, Tafseer Alminar, fourth volume, Tehran, Ganj I Dansish, pp 349 , year 1375

<sup>15</sup> Dr. Yosuf Al Qarzawi, Al Helal and Al Haram in Islam, Tehran, Publication by Islamic studies center, 409 page 296

<sup>16</sup> . vers. 129. section Alnesa, Tafseer Kabuli

and also the society, mainly when man goes beyond the principles set in Islam and civil law regarding polygamy, it gives enough justification for the judiciary to interfere and take certain measures so a man can not go against the principle of justice.

In a interview with one of the Supreme Court judges in regard of polygamy we got the following statement:

*“ ... Courts take actions against polygamy in accordance with the order of the articles 88, 87, 86, of the civil law. The court can grant her a divorce according to the provision of article 183 of the civil law of Afghanistan.”*

Therefore, from the context of the interview, it seems that the courts have no role in the reduction of polygamy since the person who doesn't consider the religious regulations and violates the law is not punished, and the only punishment given to him by the court is his separation from his first wife, but it still helps the husband rather than the wife.

### **Case Studies:**

In order to asses the effects of polygamy on the family, in this section we will review a number of cases and interviews made with the people who have been related to the cause of polygamy in one way or another:

#### **Experience of women as a second wife:**

*“When my parents were alive, I had a great live and felt like being in paradise. But when I lost my father, my young uncle married my mother, and later on, my life became miserable. The next time, when my uncle wanted to marry a girl of his own choice, he did not have money, so he gave me in marriage to the father of that girl whom he wanted to marry. Since I married the married man, I changed a lot and got sick as well. Now, I don't know what to do.”*

#### **Experience of a woman as first wife:**

*“At the beginning of marriage, I had a happy life. My husband used to love my children and me. But he had a negative competition with his cousin and when he decided to marry the second wife, my husband did same thing and married second wife. Afterwards, our life became miserable and it increased in our family disputes and conflicts. My husband, now, comes to my house once or maximum twice a week, and doesn't pay attention to my children. Whenever we need something, we are compelled to contact him several times and when he provide things for us it is always with lots of problem.”*

Experience of man with more than one wife:

*“I was newly married and leading a happy life, and had no single problem. But, unfortunately, my brother died. I had to marry his widow wife who is ten years older than me. Now, I had a miserable life and do not want to live with my sister in law who is now my wife. Because before I had so much respect to her and I was looking to her as my mother. My first wife with whom I had a good life is now getting into disagreement with me and asks me why you married this woman...”*

The memories of children with polygamist fathers:

*“I loved my father. I wanted to see him and wanted him to love me. But he married a new wife and had forgotten me and my mother. I am waiting when my father is coming and hugs me but he doesn’t come often. He doesn’t bring me toys and he doesn’t play with me anymore. But he buys toys for his other children. Now I don’t love him as I used to.”*

### **9<sup>th</sup> Session:**

#### **Assessment of polygamy in the Courts rules and procedures:**

*Polygamy in the civil law of Afghanistan and some other Islamic countries:*

Islamic countries had different positions regarding polygamy or having more than one wife. Now in the first section we, review the position of Afghanistan civil law, then we will be reviewing other Islamic countries’ laws in regards of polygamy.

#### **a. Polygamy in 1355 civil law of Afghanistan:**

In article 86 of this law it is mentioned that:

*“Polygamy can be taken place after the following conditions are fulfilled:*

- 1. When there is no fear of injustice between the wives*
- 2. The person has financial sufficiency to sustain the wives that is when he can provide food, clothes, suitable houses and medical care.*
- 3. When there is legal expediency, that is when the first wife is childless or when she suffers from diseases which are hard to be treated”.<sup>17</sup>*

According to the above mentioned article men can marry more than one wife nonetheless; they cannot use or get advantage from this article unconditionally. As, this article has restricted the utilization of this right. And has put three main conditions attached with the right, and according to that conditions every one cannot marry more than one wife. To better understand the issue and to know that whether one of the above mentioned conditions could give the right of polygamy to a man or it has to be a combination of the three conditions, we are referring to an

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<sup>17</sup> Civil Law, Kabul, Ministry of Justice , 1355 , article 86

interview made with Mr. Hussain Khawari<sup>18</sup> and he has expressed his opinion as follow:

*“Having only one condition is not sufficient for legalizing polygamy there has to be a combination of all three conditions mentioned in the article 86 of the civil law.”*

**b. Polygamy in other Islamic Countries:**

Among the Islamic countries, only Tunisia has prohibited Polygamy and regards it as a crime. According to article 18<sup>th</sup> of the personal law, for the Polygamy a penalty has been fixed that is one year imprisonment along with 240 000 franc as a fine or one of these two. And according to article 21 of the same law, second marriage which is done without ending the first marriage is considered void.

The personal law in Syria regards Polygamy as a legal act, but it has authorized the judge to determine whether the person is not able to provide living for more than one wife should not grant permission for second marriage. However at the introduction part of the above-cited law that recommends if such marriage takes place the court view it as a legal one and it is not void.

But in Iran, if someone is marrying a second wife, although the law of family support is exist but still his second marriage is not considered void, nevertheless, he is merely punished.

The Algerian family law allows Polygamy based on Islamic regulations only if there is a legal reason and application of justice. However it does not require the man to ask the court for permission but it gives both wives the right to divorce (separation) if they prove that they have been cheated by the husband.

In Malaysia, according to the law in some parts of the country the man should ask the court for permission where in some other parts of the country there is no such condition exist.

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<sup>18</sup> Member of legislative board of Ministry of Justice

## **Section Four Conclusion and Suggestions**

Though polygamy is considered one of the necessities of the society, the religion of Islam has applied special conditions and limits on those men who want to marry more than one women. But, regrettably, in our country, the husbands have crossed the identified limits and married more than one wife without taking the specific conditions into account. As a result, this action changes into a kind of social disaster, still this research will conclude following points:

**a) From the Chronologic points of view:**

1. Before Islam, polygamy existed but without any conditions.
2. Before Islam, the other religions have prohibited only the marriage of a woman with more than one man.
3. The religion of Islam made the following reforms: it limits the number of wives a man can marry and put certain conditions for that.

**b) From legal proceedings points of view:**

1. provisions in the civil law of Afghanistan is not a proper solution to the problem.
2. Family Courts are not operating every where in the country to follow up such cases and most of the family cases are dealt with in ordinary courts.

**c) From the findings of this research:**

1. Most of the people in our country consider polygamy impossible in the current situations.
2. Most of the polygamists are illiterate but with strong economy, and they are mostly in powerful positions.
3. The types of marriages with more than one wife usually are conducted in different ways: Exchange for dispute settlement (BAD), exchange of daughters

(Badal), under age marriage, marriage of widow with relatives of their husband, forced marriage and contentment of both sides because of poverty.

4. The reasons due to which men marry more than one wife consist the tribal competitions, feeling insecure by being Sonless ( not having a male child), limit number of sons, sickness of wife, strong economy, power and status, travels, custom and traditional practices, and existence of the differences among the couple.

5. The reasons and factors that coerce women to marry the married man are as follow:

a) The factor in which doesn't involve women consent; like Bad, Exchange of daughters, Marriage of widow with her husband's relatives, early marriage, etc.

b) Factors which involves women consent in one way or another; like decentralization of family, weak economy of the parents, Being Widow, being divorced, etc.

6. The reasons for women silence towards theirs husbands' new marriage are fear of divorce, anxiety of their future, anxiety of the children's future, fear of violence, considering the husbands' rights.

Thus, with a glance to the conclusion made; followings are some of recommendations to relevant authorities:

## **Recommendations:**

1. Since every rights needs to be guaranteed by the law, it is necessary that regarding the right to polygamy for men and with the consideration of findings of this report, the articles about polygamy should be reviewed and revised in the civil code of Afghanistan, and for this followings are some of the suggestions:
  - a. Registration of marriage and divorce become obligatory
  - b. The permission of polygamy should be granted only by court with clear conditions.
  - c. In cases where the first or the second wife rights are violated due to the husband new marriage in addition to have the right to divorce, the wife should be given some guarantees for compensations of material and spiritual losses.
  - d. In the marriage certificate (nikahnama) it should be clearly mentioned that second marriage of a man without fulfilling the conditions written in the law is prohibited.
2. Justice is only possible when people have access to Judiciary, thus it is necessary that family courts to be established at the provincial and district level to address issues such as polygamy.
3. Religious scholars and clerics, considering the huge responsibility that they have towards increasing the Islamic knowledge of general public and informing them on their Islamic obligations, should explain the philosophy and rational of polygamy to the community and should prevent men from polygamy with out having proper reasons.
4. Women as the principle victims of polygamy must learn more about their religious and human rights mainly when it comes to family rights and issues related to polygamy. Then, by using this knowledge and awareness and practicing their rights should close the way for unjustifiable marriages of their husbands.
5. Undoubtedly, organizing conferences, gatherings and meetings about Islamic and human rights of people in the family and society, the rights and obligations of men and women towards each other in family and society has an effective role in increasing the awareness of the families. Therefore, these activities can prevent violence, injustice and especially unjustifiable polygamy. Thus, it is essential that government, media, religious leaders and international communities should put more effort to increase the awareness of general public about the above mentioned issues.

6. Building the capacities and economical empowering of women are considered the main methods for fighting against violence. Economical empowerment will help women to resist against the new marriages of their husbands. Thus, it is required to search areas for capacity building and economical empowerment of women through their own efforts and with the collaboration of government and other responsible organs, and to implement specific programs in this regard.

7. Children are amongst the most vulnerable groups in the families where men get married several times. The psychological effects of discrimination and injustice between children of wives cause problems in the process of their normal growth. A specific research can be done on the psychological effects of polygamy on children to make different dimensions of such effects cleared.

**Annexes**

**Annex 1**

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**Women and Children Legal Research Foundation  
Research Project on polygamy  
Questionnaire for the Relatives of the Families  
Questionnaire No. 2**

Address of the Interviewee:  
Province of the Interviewee:  
District / City:

Dare/time of Interview:  
Interviewer:  
Sub-District:

1. Is there someone who married more than one wife in your family?

- Yes.
- No.

a. What is your relationship with him?

b. How many times has he gotten married?

2- what was the cause for his second marriage

3- What type of marriage did he have?

- 1. Bad
- 2. Exchange
- 3. Agreement of both sides
- 4. Marriage of widow with her husband's relatives
- 5. Forced marriage
- 6. Early age marriage
- 7. Other

4. Please describe one of your experiences and memories concerning the life of these relatives who married more than one time.

.....  
.....  
.....

5. What is your suggestion for those want to marry second or more wives?

.....

6. What were the problems created in the family after the new marriage?

.....

I, \_\_\_\_\_, certify that the information provided in this form is true and I am responsible for its truth.

Women and Children Legal Research Foundation
Research Project on polygamy
Questionnaire for Polygamie Man
Questionnaire No. 3

The Address of the Interviewee:

Dare/time of Interview:

The Province of the Interviewee:

Interviewer:

District / City:

Sub-District:

- 1. How old are you?
2. How old is your first wife?
3. How many times did you get married?
4. How many of your wives are alive?
5. What do you do?
6. What is your position in your area?
7. What are your educations?

Half Educated Illiterate Baccalaureate Bachelor Master or Higher than That
[ ] [ ] [ ] [ ] [ ]

- 8. How many wives do you have now?
2. [ ] 3. [ ] 4. [ ]

- 9. How is the economical situation of your family?
a. Strong -----
b. Medium -----
c. Weak -----

10. Please describe the factor that forced you to get married for the second time.
.....

11. Please briefly describe your life background.
.....

12. Where did you and your first wife reside before marriage?
.....

Table with 3 columns: Spouse, City, Village. Rows: Wife, Husband.

- 13. How was the economical position of you and your wife's family?
[ ] a. The same level
[ ] b. The husband had strong economy





.....  
17. How many people have more than wife in your tribe?  
.....

18. Do you travel a lot?

Yes

No

If yes how many time in a year?  
-----

How mach time you spent in each trip out of home?  
-----

While traveling where you do live?  
-----

While traveling with whom do you live?  
-----

What is your recommendation for those who want to marry for more than once?  
-----  
-----  
-----

I, \_\_\_\_\_, certify that the information provided in this form is true and I am responsible for its truth.

Regards,

**Women and Children Legal Research Foundation  
Research Project on polygamy  
Questionnaire for the First Wife  
Questionnaire No. 4**

Address of the Interviewee: \_\_\_\_\_ Dare/ time of Interview: \_\_\_\_\_  
Province of the Interviewee: \_\_\_\_\_ Interviewer: \_\_\_\_\_  
District / City: \_\_\_\_\_ Sub-District: \_\_\_\_\_

1. How old are you?
2. How old is your husband?
2. What is your educational background?  
Half Educated      Illiterate      Baccalaureate      Bachelor      Mater of Higher than That
3. What is your relationship with your husband?
4. Please describe the factor that forced your husband to marry for the second time.  
-----
5. Please briefly describe your background.  
-----
6. What was your and your husband's residential place before marriage?  
-----

▪ Spouse	City	Village
▪ Wife		
▪ Husband		

- How was the economical position of your family and your husband's family?
- a. The same level
  - b. The husband had strong economy
  - c. The wife had strong economy
7. What are your and husband's qualifications?
    - a. The same level
    - b. The husband has higher qualifications
    - c. The wife has higher qualifications
  8. Do you (both) belong to the same religion?
    - Yes
    - No
  9. Do you (both) belong to the same tribe?
    - Yes

No  
10. Do you have children?

Yes

The number of daughters

The number of sons

11. Are you sick?

Please describe the type of the sickness you have.

12. Did your husband ask you when he wanted to marry second wife?

▪  Yes

▪  No

- Did you object to him?

- Did you complain to the court?

- Or remained silent?

- What was the reason?

12. How many people have more than one wife in your husband's family and tribe?

13. How many people have more than one wife in your family and tribe?

14. What was the problem your husband had after his second marriage? Please describe it.

15. What type of marriage did he had?

- (Bad)

- Exchange

- Early age marriage

- Forced marriage

- Agreement of both sides

- Marriage of widow with husband's relatives

- Others

16. What is your suggestion for other women?

I, \_\_\_\_\_, certify that the information provided in this form is true and I am responsible for its truth.

Regards,



**Women and Children Legal Research Foundation  
Research Project on polygamy  
Questionnaire for the Second, Third, fourth Wife  
Questionnaire No. 5**

Address of the Interviewee:

Dare/ time of Interview:

Province of the Interviewee:

Interviewer:

District / City:

Sub-District:

1. How old are you?

2. How old is your husband?

3. What is your educational background?

Half Educated

Illiterate

Baccalaureate

Bachelor

Mater of Higher than That

4. Please describe the factor that forced you to marry the married man?  
-----  
-----

5. Please briefly describe your background.  
-----  
-----

6. Your monthly income before marriage?  
-----  
-----

7. Your father or the father family monthly income before marriage?  
-----  
-----

8. What type of marriage did you have?

- (Bad)
- Exchange
- Early age marriage
- Forced marriage
- Agreement of both sides
- Marriage of widow with husband's relatives
- Others ...

Pleas describe: .....

8. How many children do you have?    Number of daughters        Number of sons   

9. How many people have more than one wife in your husband's family and tribe?

10. How people have more than one wife in your family and tribe?

11. How many brothers and sister do you have?

12. Are your father and mother alive?

▪  Yes

▪  No

Whom do you live with?

.....  
13. Please describe your life before your marriage.  
.....

a. Were you suppressed in your father's family?

▪  Yes

b.  No

What was the reason?

.....  
b. Were your expenses covered before your marriage in your parents family?

▪  Yes

▪  No

14. Please describe one of your life's memories.  
.....

15. What are your problems in your life?  
.....

16. What is your suggestion for those who want to marry the married man?  
.....

I, \_\_\_\_\_, certify that the information provided in this form is true and I am responsible for its truth.

Regards,



**Women and Children Legal Research Foundation  
Research Project on polygamy  
Questionnaire for Judiciary  
Questionnaire No. 6**

Address of the Interviewee:

Dare/ time of Interview:

Province of the Interviewee:

Interviewer:

District / City:

Sub-District:

1. Have the cases caused by polygamy been referred to the courts?  
.....

2. How does the court proceeds cases related to polygamy according to the law?  
.....

3. In case of polygamy with out consideration of the conditions provided by the law mainly when the disadvantage wife complaint to the court what is the proceedings of the court?  
.....

4. Do the courts interfere to the polygamy cases without complaint of the wife?  
.....

5. Approximately, how many polygamy cases has referred to the court within the current year?  
.....

6. to solve the problem of illegal polygamy what is your suggestion?  
.....

I, \_\_\_\_\_, certify that the information provided in this form is true and I am responsible for its truth.

Regards,



**Women and Children Legal Research Foundation  
Research Project on polygamy**

**Questionnaire for Mullah Imam (Religious Scholars)  
Questionnaire No. 7**

Address of the Interviewee:  
Province of the Interviewee:  
District / City:

Dare/time of Interview:  
Interviewer:  
Sub-District:

1. Please provide information regarding the Marriage procedure in Islam.  
.....
2. What are the conditions required for marriage?  
.....
3. What kinds of questions are posed for witnesses and representative?  
.....
4. Are the witnesses and representative asked for whether the groom has another wife or not?  
.....
5. What does the Mullah do if the groom has more than one wife?  
.....
6. Is it written in the marriage certificate that if the groom marries another wife, the right of divorce will be given (transferred) to the wife?  
.....
7. Is the groom (man) asked that he has sought for permission from his first wife?  
.....

I, \_\_\_\_\_, certify that the information provided in this form is true and I am responsible for its truth.

Regards,

Annex 3:

