The Law on The Books Versus the Law in Action: Muslim Women in Polygamous Marriages Under The Jewish State

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Abstract

*Although polygamy is criminally prohibited by the state of Israel, it is widely practiced among its Arab Bedouin population. How is this anomalous condition made possible?*

*Taking essentializing notions of the 'customary' Bedouin family to task, this article proposes an analysis of the governmental mechanisms and institutions responsible for perpetuating polygamy. It will present the several overlapping juridical systems and laws and analyse how these affect the ways in which the Bedouin family and home, as well as the lives and bodies Muslim Bedouin women, are made exposed to political contestation. Overlapping systems of legalized oppression and gender-based marginalization effectively strip Muslim Bedouin women from their legal rights.*

*Casting polygamy as the main marker of the "otherness" of the Bedouin family, the Israeli state poses the Bedouin family as an anomaly in the ostensibly "modern" Israeli society. In not enforcing its own criminal law, and delegating juridical authority to the most conservative elements in the Muslim clergy, the state of Israel de facto streamlines polygamous marriages. The persistent rise in polygamous households amongst the Bedouin during the last decades is achieved by means of a quiet inculcation of customary legal norms and procedures into the state-run Shari'a court system, endowing an intensely patriarchal legal apparatus with the power to exercise a disproportionate, unrestrained authority over the legal rights of Bedouin individuals, particularly women.*

*A central objective of this article is to delineate the tangible legal and discursive mechanisms by which the Israeli establishment actively cultivates a 'Tribal' Bedouin identity, and examine how polygamy has become a central marker of difference. The state-sponsored preservation of 'traditional' and 'religious' norms among the Bedouins in matters of personal status will be located within a wider effort to keep the Bedouins a politically subjugated and culturally isolated minority. Drawing comparisons from other colonial and post-colonial settings as analyzed by critical colonial theorists and researchers, the article will argue that the Israeli policy regarding polygamy is not dissimilar from not uncommon colonial governing practices that exploited the codification of family law to entrench and expand colonial systems of control*.

Keywords

*Polygamy, Bedouin, Family law, Colonial societies, Shari'a law, Israel, Palestine, Muslim Women's rights, intersectional oppression*

**I. Introduction**

Polygamy is permitted under Shari'a law governing personal status issues of Muslims in the State of Israel, notwithstanding its status as a prosecutable criminal offence according to Israeli Penal Code ("punitive statute").[[2]](#footnote-2) In itself, the criminalization of polygamy by Israeli state law does not invalidate its legality in the eyes of Muslim Shari'a law. This basic contradiction between the religious and secular legal approaches to this issue gives rise to a hitherto scarcely documented gap between what I identify as law on the books and law in action. First, I will explore the nature of this gap and identify the structural mechanisms responsible for it. Using Shari'a court records (*sijil)* of Beersheba (2008-2016), I will illustrate the Shari'a court's actual practice in the matter and strive to demonstrate that it is not a 'natural' outcome to the conflict between two incompatible judicial systems operating in parallel. Disentangling the myriad legal and political ties between the two reveals a consistent overarching Israeli design to exercise indirect proxy control over the Shari'a courts, allowing the state to retain vital political control over its Muslim citizens but falling short of meeting the responsibilities of governing them. The prioritization of indirect control and the mechanisms responsible to perpetuate it come the price of sacrificing individual legal freedoms of Muslim Bedouin women and risking the distortion of the very notion of universal equality before the law.

One of the principal causes of this gap is the government's policy of non-enforcement of anti-polygamy laws in Israel.[[3]](#footnote-3)It is a long-standing unofficial policy rooted in an Israeli political culture permeated by colonial attitudes and dedicated to the formation of state control mechanisms over Palestinians in general and Bedouins in particular. The system of indirect control over the Shari'a courts and the de-facto non-enforcement of criminal law in regard to the structuration of Bedouin families are therefore expressions of an colonially-tinged policy by the Israeli government vis-à-vis the Palestinian indigenous population. As I will strive to show, the relationship between the Shari'a Courts and the Israeli state goes beyond the much debated intermixture of religion and state in the state of Israel and the myriad adverse effects the relegation of personal status matters to religious institutions on Israeli women. Viewed through the issue of polygamy, the instrumentalization of the Shari'a court system in a colonial scheme of indirect control is revealed as a unique legal entanglement in which the state enforcement bodies systematically ignore state laws, thus denying the full protection of the law to entire portions of the state's citizens. By consciously turning a blind eye towards infractions of the prohibition of polygamy, the State became an accomplice in the unimpeded spread of polygamy among the Bedouin, legalizes and legitimates it as a fundamental tenet of Bedouin "way of life".

How do these colonial and patriarchal power relations intersect and reproduce themselves in the private spheres of the family? What role doesfamily law have in reinforcing or undermining existing power relations? As Shalhoub-Kevorkian (2015) succinctly wrote, exploring how colonial power is gendered and how gendered subjects are colonized is an indispensable pursuit in any attempt to situate the question of polygamy among the Bedouin in Israel within its many relevant facets.[[4]](#footnote-4)

One of the central debates I wish to touch upon here pertains to the formative effects of Israeli policy on the persistence of polygamy. As I shall strive to demonstrate, the actions of Israeli state apparatuses regarding polygamy traps Bedouin women in a legal no-man's-land, effectively denying them the protection of the law and exposing them to extreme forms of subjugation. This legal transparency is perpetuated by a routine circumvention not only of state criminal law, but also of Muslim Shari'a law. As I will demonstrate, the Beersheba Shari'a court ratifies polygamous marriages without observing its role to ensure mandatory Shari'ic oversight, thus facilitating polygamy against the dictums of Muslim religious law.

The facilitation and streamlining of political control by proxy and adjutant legal transparency expresses and perpetuates what I call the "tribal citizenship" of Bedouins in the Israeli state. Tribal citizenship is an indirect form of partial and conditional citizenship, in which one's citizenship does not mean a direct association between the individual and the state but is rather mediated through, and irrevocable from, his or her membership collective groups. This deficient citizenship type is made possible by the reinforcement of preexisting tribal structures that foster internal social hierarchies which determine, among other things, matrimonial relations between the different groups. These tribal structures were reinforced by the state and presently constitute an important tool in the perpetuation of indirect political control over Israel's Bedouin population. Within the bounds of the tribal citizenship, a Bedouin individual's belonging to a specific tribal category determines social arrangements among different tribal groups, mediated through autonomic systems operating externally to the formal institutions of the Israeli state. It is here where 'customary polygamy', an ostensibly old Bedouin marital practice, originates. It is dependent, however, on the Shari'a court's cooperation, which is unequivocally given. By failing to enforce the criminal prohibition against polygamy and by supplying the main means by which it is streamlined – the Shari'a courts – Israel, in practice, recognizes the validity, and, indeed, the primacy of the customary Bedouin legal system and, through its law-in-action approach, consolidates its role as an enabler of polygamy and a prime agent of its spreading amongst the Bedouin. It is not, therefore, merely non-enforcement as a self-interested colonial practice but an active regurgitator and facilitator of tribalism among the Bedouin. In fact, the autonomous sphere of Shari'a court reproduces legal culture of polygamy that legitimized it as an acceptable social and legal practice and as such entrapped and exposed Bedouin women even further.

**II. Polygamy And Muslim Bedouin Women**

Throughout the 20th century, and especially in the decades following the foundation of the state of Israel in 1948, Bedouin women had undergone significant social, economic and political transformations. These transformations deeply affected the kinship and economic structurers in which they lived as well as the political constellations which kept them in place. Throughout such transformations, however, Bedouin women have had to face with one basic, continual political reality, one that pitted them against intersectional mechanisms of oppression: being, at once, members of a rampant patriarchal society, an ethnic and religious minority subjected to political oppression within a Jewish state. Their precarious social and legal status, as well as the injunctions of their gender and their sense of self and community, have all been inscribed by these unstable and combustible structures and constellations.[[5]](#footnote-5) For my present discussion, however, I will limit myself to on one area, that of polygamous marriages and polygynous households.

The contagion of polygamy affects Bedouin women's lives on several different levels. Most directly, Bedouin women are affected by it in their capacity as co-wives or as other female members of a polygamous household. Bedouin women who are not directly involved in polygynous households are also affected by polygamy indirectly, encountering it either as professional women (social workers, lawyers, activists etc.) or enduring its destructive reverberations on the normative status of women in the Bedouin society.[[6]](#footnote-6) Kelly's study found that the existence of polygyny broadly strengthens patriarchy, undermines equality between the sexes, and reinforces gender inequality even in non-polygynous marriages.[[7]](#footnote-7) Women in polygamous marriages have been observed as having marked psychological and micro-political effects, , as well as reports of lower self-esteem. They reported lower levels of marital satisfaction and higher levels of depression, anxiety, volatile behavior, paranoia and familial dysfunction.[[8]](#footnote-8) Domestic violence, too, has been recorded as more common in polygamous households.[[9]](#footnote-9)

While Polygamy has been widely experienced by Bedouin women as a source of distress and humiliation, researchers investigating its particular effects revealed complex power-structures within polygamous households.[[10]](#footnote-10) Al-Kranawi's study on the mental wellbeing of co-wives in polygamous marriages, for instance, reveals that the economic and physiological effects of polygamy on senior wives in polygamous marriages are considerably greater than on that of junior wives.[[11]](#footnote-11) Noting that the first wives often reported a feeling of individual failure when their husband decide to marry additional wives, Al-Kranawi found that senior wives were more susceptible to suffer from mental disorders as a result their husband's polygamous marriages.[[12]](#footnote-13)

Bedouin women also find it difficult to exit polygamous marriages. Seldom do divorcees have prospects of remarriage outside the confines of specific families and tribes; the marital structure of the Bedouin society, defined by kinship, contributes to the tremendous social value for women being married, even if to polygamous, abusive husbands. The almost complete economic dependency of Bedouin women on their spouses, in conjunction with the staunchly patriarchal structure of the Bedouin society, further reflects their limited ability to resist becoming parts of polygamous households.[[13]](#footnote-14)

In the absence of effective legal protection either provided by the state or by the religious establishment, Bedouin Muslim women become extremely vulnerable to polygamous marriages. In other words, despite the fact that both civil and religious law on the books accord her protection, an analysis based on law-in-action reveals that a Bedouin woman whose husband decides to marry a second wife has little to no legal, political or social sanctions to deploy in her protection.

**II. Is Polygamy in Israel a Multicultural or Colonial Practice?**

***The Multicultural Explanation***

How, then, and why, has polygamy—an infraction of Israeli criminal law—flourish to such a degree that currently estimates are that anywhere between a fifth and a third percent of Bedouin households are polygynous?[[14]](#footnote-15)

One possible explanation, astonishingly often evoked by external contemporary observers, is that the non-enforcement policy is a benevolent, if lax, concession to the Bedouins, born out of a multicultural commitment toward respecting the distinct cultural practices of minority groups within the Israeli state. According to such explanations, the government of the state of Israel tolerates the practice of polygamy amongst the Bedouin in the interest of preserving "cultural sensitivity,"[[15]](#footnote-16) having resigned itself to the persistence of polygamy, a fundamental, albeit distasteful, part of Bedouin culture. In such a multiculturalist perspective, the Bedouins are an indigenous ethnic minority seeking to protect its right to exercise its unique and ancient cultural heritage rights without external restrictions. The state of Israel reappears here as a benevolent, culturally sensitive liberal state, committed to respecting and going to lengths in order to accommodate its citizens' diverse cultures.[[16]](#footnote-17) Although polygamy runs in contradiction to the state's core liberal creed, and indeed infringes upon its criminal penal code, in this instance its commitment to minorities' freedom of religion and cultural heritage overrides considerations of individual equality before the law. Thus, the state's de-facto exemption of the Bedouins from the criminal code regarding polygamy is a sensible, though imperfect and obviously impermanent, solution by the state.[[17]](#footnote-18)

Yet sustained examinations of the history of polygamy and a straightforward mapping out of the mechanisms at play clearly imply that what we have here can hardly be characterized a case of benevolent multiculturalism. As aptly demonstrated by Michael Karayanni, the multicultural rhetoric in the case of accommodation of religious minorities' in Israel is often used as a façade for other, more somber control policies of the state.[[18]](#footnote-19) I argue, rather, that it is a cellular expression of the exclusionary ethnocratic principles and consonant with an established heritage of colonial oppression by the Israeli state's legal systems against its non-Jewish minorities.[[19]](#footnote-20)

The applicability of multicultural modalities to an analysis of the realities of the Palestinian minority in Israel is fundamentally flawed. It is undermined by the state's own proclamations of its own ethno-national foundation as a Jewish state, by its non-separation between religion and state, and by an extensively documented history of Israeli systematic discrimination and violence against Palestinians, both citizens and non-citizens.[[20]](#footnote-21) In other words, despite its extension of some individual legal rights to those Palestinians admitted as citizens, Israel today cannot be viably considered liberal in the multicultural sense. The state and its institutions do not recognize any national collective rights other than those privileging Jews; the notion of a consciously crafted policy designed to ensure protection of the Bedouins' right to an autonomous culture therefore seems improbable. I argue that a more suitable analytical framework and toolkit for our present study of Israel's policy on polygamy can be found in the critical theories on colonialism, an admittedly diverse body of scholarship focused around the intersection of colonial control, social structures, cultural identities and the legal system. More precisely, I will make use of studies dealing with the preservation of family law among indigenous societies during the colonial era and their reverberations today.

***The Colonial Explanation***

Scholarship on settler colonialism explores the political, social and economic commonalities in the circumstances of the colonization of indigenous peoples around the world. Researchers associated with this growing body of work focused largely on world regions under colonization by English speakers such as Australia and the oceanic islands, Southern Africa, and North America.[[21]](#footnote-22) It explores the social and political structures created by the colonization of these lands and compares the shared experiences of the indigenous populations subjected to elimination in both historical and contemporary time periods.[[22]](#footnote-23)

As a theoretical perspective, comparative scholarship on settler colonialism fostered a broadly informed collective discussion on the various ways in which colonial realities interact and help shape precolonial gender, sexual and racial relations, hierarchies and identities. These variegated colonial arenas helped researchers identify recurrent elements in the imprints of colonial relations onto the formation of family and family law and provide a generalized pattern from which to assess more closely the phenomenon of polygamy among the Bedouin community in Israel.

Unlike the 'classic' European exploitative colonialism, the socio-political phenomenon of settler colonialism is based on the premise of displacing (or replacing) the indigenous on their land, undergoing a radical, if incremental, appropriation by the settler group .[[23]](#footnote-24) Patrick Wolf memorably characterized settler colonialism as "an invasion," one that is an ongoing structure rather than a singular event.[[24]](#footnote-25) Settler colonial projects are realized though a constant expansion of the society of settlers, its continued appropriation of lands and other resources, and the replacement of pre-existing arrangements with its own political, legal, cultural and social institutions.[[25]](#footnote-26)

Settler colonial analyses have recently been increasingly applied to the Israeli-Palestinian conflict, promoting a fruitful re-consideration of the conflict as a case of settler colonialism.[[26]](#footnote-27) The merits, and limitations, of this new perspective are easily visible in the scholarship dealing with the Bedouins in Israel. To date, most of the scholarship using the settler colonial prism to analyse the relationship between the State and the Bedouins tended to focus on sedentarization: the processes by which the Bedouins were confined by increasingly powerful Israeli governments to smaller geographical areas on the one hand, and were simultaneously deprived of their property rights over large swathes of land on the other.[[27]](#footnote-28) This rather masculinist preoccupation with the "big picture" of Sedentarization and the struggle over land rights has failed to drown out other illuminating studies. Recent work, for instance, used the settler colonial perspective to reexamine the marginalization of professional Bedouin women in the Israeli labor market.[[28]](#footnote-29) Much as the control of Bedouin land was commandeered in an explicit effort to entrench Jewish control over the prized resource of land, so, too, were traditional and religious norms among the Bedouins in matters of personal status evoked to propagandize against the resisting Bedouin.

One invaluable insight born of the scholarly debates focusing on Israel/Palestine as a case of settler colonialism was to tie between family life, women's sexuality and political expediency on behalf of the colonial power. Acquiring and retaining some degree of control over indigenous women's sexuality is fundamental to colonial projects; the issues of 'normative' family life, sexual behavior and reproduction have all been central to notions of European modernity.[[29]](#footnote-30) Yuval Davis' groundbreaking study demonstrated how national movements cast women in the role of markers of the national collectives. Primordialists tied women's chastity and sexual exclusivity to national 'purity' and pride; control over women's bodies and sexuality became a central imperative omnipresent in men-led national struggles for liberation.[[30]](#footnote-31) Women's bodies and sexuality, then, are prime sites for contention. In the colonial and postcolonial arenas, they are torn between colonial intervention and control[[31]](#footnote-32) on the one hand, and patriarchal-nationalist impositions of 'purity' on the other.[[32]](#footnote-33)

In the modalities of settler colonialism, Bedouin have been portrayed by Israeli officials as "enemies of progress," inimical by their very nature to the Zionist modernizing project.[[33]](#footnote-34) Evocative of colonial contexts elsewhere in the world, members of these semi-nomadic people been derided as violent, uncivilized, thieves and trespassers, sometimes their very presence criminalized.[[34]](#footnote-35) Polygamy, a supposedly premodern evil ever present in Bedouin culture, serves as part of this narrative, as can be seen in the words of Moshe Shohat, the former head of the Bedouin Education Authority,[[35]](#footnote-36) who furiously expressed his frustrations with the "bloodthirsty Bedouins, who commit polygamy, have 30 children and incessantly expand their illegal settlements, taking over state land."[[36]](#footnote-37) The woes of Bedouin women in polygynous households, in such contexts, transmute into as moral justifications for their "saving" from their backward culture and menfolk by the self-congratulating Westerner.[[37]](#footnote-38)

One might argue that the deterministic Israeli attitude toward polygamy as intrinsic to Bedouin culture is counterproductive to what Wolf called "the logic of elimination" of the native, due to its alleged contribution to the "demographic threat". Shohat's lamentations that the Bedouin "have 30 children" are not coincidental: they are indicative, rather, of a broadly shared Zionist anxiety, namely, high birthrates among the Israel's non Jewish population and the eventual demographic "overthrow" of the Jewish majority in Israel. These paranoid demographic discourses often evoke higher birth ratings to the exercise of polygamy among the Bedouins. Why, then, is polygamy not subjected to harsh police crackdowns or the object of intensive legal prosecution?

I argue that the non-enforcement policy of the state of Israel is not a lax expression of an ill-defined policy. It is, however counterintuitively, consistent with this logic: anti-polygamy laws are vigorously enforced, for example, in instances where Israeli Bedouins take Palestinian brides from the West Bank and Gaza.[[38]](#footnote-39) The uncharacteristically rigorous treatment of marriages involving Bedouins and Palestinians from the occupied Palestinian territories should be understood in the context of demographics. According to the logic of elimination of the native, admitting Palestinian women intended to be married into polygynous households as second and third wives jeopardizes an Israeli recognition of the Palestinian refugees' "right of return" through the back door. Here Government inaction regarding Bedouin polygamy would implicate a contentious political issue which potentially could, if unchecked, threaten the demographic balance and the very social makeup of the settler colonial state, central to which is the preservation of a Jewish majority.

The politics of polygamy are therefore largely derivative from, and consonant with, the primary objective of assuring control over land and people in a settler colonial project. Polygamy plays a double role in defining and maintaining the perceptions of boundaries between a "modern" Israeli state and "backward" Bedouin women. It is evoked, on the one hand, as evidence of the "harshness" of Bedouin "culture", its inhumane treatment of women, while on the other hand it is recruited to build a case for a 'modernization' project, one which would include uprooting of Bedouin from their land and relocate them to "recognized" townships, a move which would ostensibly not only grant access to basic facilities and essential services presently denied to the Bedouin, but also help "save" indigenous women from their oppressive male counterparts.[[39]](#footnote-40) As a settler-colonial state, Israel's priorities hold lands the most coveted, and therefore contested, of commodities. In the interim of the slowly unfolding, piecemeal seizure of land and efforts to concentrate the Bedouins into government designated townships, a system of indirect control, in which the Bedouin are made Israeli subjects but fall short of being fully-fledged citizens, has been established. In other words, the state effectively opted to maintain indirect rule over the Bedouins in a range of issues, including the private familial sphere, for the duration required to seize their lands. This state policy, where the Bedouin are denied even the most basic services and facilities, such as water and electricity, policing services, accessible education and healthcare, places Bedouin women at the mercy of an unrestrained patriarchal system of domestic subjugation while furnishing hegemonic rhetoric evocations of the woes of Bedouin women and the poverty of the large majority of Bedouins as evidence of an essential cultural gulf between the "Bedouin way of life" and the modern world.

**V. The Law on the Books Versus the Law in Action: Analysis of polygamy cases in the Shari'a Court in Beersheba**

***Methodology***

The objective of this part is to indicate the gap between the Law-on-Books—the blanket criminal ban against bigamy—and the Law-in-Action—Shari'a court's actual recorded practice—through the analysis of polygamous marital cases kept in contemporary Shari'a court records (*sijil)* of Beersheba (2008-2016). A brief outline of these two legal phenomena is a necessary first step to understanding the power constellations at play when the Shari'a court ratifies polygamous marriages in spite of its illegality according to Israeli Criminal Law.

The decision to sample the years 2008-2016 was taken mainly due to the availability of materials. I originally requested to review Shari'a court records since its establishment in 1971, but was granted, ultimately, access only to those files which were stored electronically, spanning the years 2008 to 2016. The total number of cases categorized as dealing with marriage between these years was 10,479. Of these, I sampled 30%, some 3,150 individual marriage cases. Once the review process was underway, after the analyses of 643 marriage cases between the years 2008-2009, a repetitive pattern began to emerge. I thus decided, instead, to sample every second year as follows: 2008-2009, 2010, 2012, 2014, and 2016 (January-September). The total amount of individual marriage cases I ultimately reviewed is 2,052. 667 cases indicated that they involved polygamous matrimony, amounting to as much as 32.5% of all matrimonial cases brought before the court.

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| --- | --- | --- | --- |
|  | **Year** | **Marriage Cases** | **Polygamy Cases** |
|  | 2008 | 352 | 87 |
|  | 2009s | 291 | 99 |
|  | 2010 | 365 | 117 |
|  | 2012 | 360 | 127 |
|  | 2014 | 343 | 120 |
|  | 2016  (Jan-September) | 341 | 117 |
| Total |  | 2,052 | 667 |

Based on textual analysis and a quantitative survey of the polygamy cases, I will provide select examples illustrative of the ways in which the Shari'a court routinely registers and ratifies polygamous marriages disregarding its illegality. The examples will demonstrate the ways in which the Bedouin customary legal system precedes and directs the subsequent actions taken by the Shari'a court, and the legal and political environment the state cultivates that enables and encourages the spread of polygamous marriages amongst the Bedouins.

The choice of Beersheba Shari'a court primarily informed by its outstanding rates of ratifying customary Muslim marriages, recorded as being much higher in Beersheba than other Shari'a courts in Israel. A comparison of the marriage permits issued by the Shari'a Court in Beersheba with other Shari'a courts in Israel between 2000-2004 reveals that the relative volume of marriage certification in Shari'a court in Beersheba was exceptionally high, standing at 66.6%.. In Jaffa, by contrast, marriage permits amounted to 7.5%; in Acre 3.6%; in Taibeh 2.8%, while in Haifa, 19.6%.[[40]](#footnote-45) According to Jahshan, these statistics suggest that the majority of polygamous marriages in the State of Israel today were ratified by the Shari'a court in Beersheba. Jahshan's data not only seconds the empirical findings of the present study, but also demonstrates that the Shari'a court in Beersheba is an extreme case amongst the Islamic Shari'a courts operating in Israel today. This significant difference in ratification of polygamous marriages, I argue, should be understood in the regional context of the presence of a highly active tribal customary legal system serving the Naqab desert's relatively large Bedouin population.

***Categorization of Shari'a Court records (sijil)***

Following the review process of the *sijil*, the 2,052 cases reviewed were classified and sorted according to the type of requested legal service. This basic typology will help locate types of recurrent issues brought before the court and demonstrate the court's behavior through specific cases. Such an analysis of the records allows to us draw some preliminary conclusions regarding the legal culture of the Shari'a Court in Beersheba, as well as assess the nature and extent of the state's implication in the ratification of polygamous marriages. What kind of legal services could be expected, based on precedent, political necessity and social and cultural affinities, from the Qadi? How might such records deepen our understanding of the legal culture and institutional mechanism in which the Shari'a court in Beersheba operates? Answering these questions will allow an accurate assessment of the actual meaning of the existence of a gap between the law-on-books and the law-in-action.

Before turning to presenting the cases themselves, I will briefly map the legal elements at play, and discuss their multiple effects on the behavior of the court and the Qadis in Beersheba.

***Substantive Law in Shari'a Court in Israel and Polygamy***

Present day Shari'a courts in Israel operate by the same substantive law that was applicable during the British rule in Palestine.[[41]](#footnote-46) Article 52 of the Palestine Order in Council, later adopted by the Israeli government, granted Shari'a courts in the state of Israel exclusive jurisdiction over personal status matters of Muslims. Amendment No.5 of the Family Court Law was passed by the Israeli Knesset in 2001, granting secular family courts an equal footing with the Shari'a court, with the significant exception of the latter having the monopoly over carrying out marriages and divorces. As parts of the state-run justice system, the Shari'a courts are subject to periodic judicial review by the High Court of Justice.[[42]](#footnote-47) The courts themselves are funded and run by the Ministry of Justice, and all its employees are Israeli civil servants.

The Israeli system allows the Qadis operating the state-supervised Shari'a courts to monopolize both the interpretation and the praxis of Shari'a law within the state. This effective monopoly by the Qadis is a situation unique to the Israeli case: in most state-run legal systems in Muslim-majority countries, a number of different religious factions, interpretative schools, legal traditions and active religious institutions jointly share the responsibility to interpret the Shari'a and collectively participate in determining the manner of its application.[[43]](#footnote-48) In the absence of well-established and officially recognized *Mufti* and *Ulama (*Religious Scholars), Abou Ramadan claimed, the Israeli legal field is better described as "judge-made-law" rather than "jurist-law", as was originally intended in classic Islamic jurisprudence.[[44]](#footnote-49)

This state of affairs is also abetted by the continued use of outdated legal frameworks and codes. Despite being promulgated over a century ago, the Ottoman Family Law of 1917, the Qadri Pasha's Code of 1875, the *Majalla,*[[45]](#footnote-50) and the Ottoman Code of Civil Procedure of 1879 are all still applicable today in the Shari'a courts in Israel with no significant changes or ammendments.[[46]](#footnote-51) The Hanafi jurisprudence, the dominant jurisprudential school during the late Ottoman Empire, comprises the basis of the substantive law and serves as a foundational framework for the Shari'a Courts' jurisdiction today.[[47]](#footnote-52) The Shari'a Court of Appeals has recently declared, however, that it is not exclusively bound to the premises set by the Hanafi School, but rather sees itself as free to draw on any and all other legal schools and traditions, since Islam is one.[[48]](#footnote-53)

*The Code of Personal Status by Muhammad Qadri Pasha*

The Qadri Pasha Code is a legal code pertaining to matters of personal status, compiled in 1875 by the Egyptian Jurist, Muhammad Qadri Pasha (1821-1888).[[49]](#footnote-54) The code comprises of 647 articles explicating personal status matters according to the Hanafi School.[[50]](#footnote-55) Sections and segments of Qadri Pasha's code continue to serve as a source of religious law in Lebanon, Syria, Egypt, Jordan, Palestine (Gaza and West Banks), and Israel.[[51]](#footnote-56)

Significantly to our purposes, Qadri Pasha's code included an early effort to regulate polygamy. It permitted men to engage in polygamy but restricted the maximum number of wives a man may be wedded to simultaneously to four. A man married to four wives who wished to marry a fifth must divorce one of his wives and wait for the end of the *iddah* (waiting period)[[52]](#footnote-57) before being allowed to proceed with his new marriage.[[53]](#footnote-58) The code stipulated that polygamous marriages could be conducted either in a single occasion, with a single man marrying several wives under the same marriage contract, or consecutively, with a single man marrying several wives in different individual contracts drawn up on different occasions.[[54]](#footnote-59)

Articles 152-159 delve into the polygynous household and establish regulations meant to ensure equality between the wives. The husband is thus bound to treat his wives with equality in accommodation arrangements, provide each with equal and adequate financial support to her and to her children,[[55]](#footnote-60) and equally disburse his affections – a criterion generally measured by the number of evenings he spends with each of his wives.[[56]](#footnote-61) These stipulations bind the husband to each of his wives individually. It forbidden to discriminate between wives on the basis of temporary physical or psychological impairments such as illness, invalidity, menstruation etc.[[57]](#footnote-62) A polygynous husband is also barred from permanently residing with one of the wives, unless such an arrangement is willfully accepted by the rest of his wives. In times when one of the wives falls ill, however, the law considers the husband's preferential treatment favorably until her full recovery.[[58]](#footnote-63)

While travelling, the husband is entitled to choose which of his wives will accompany him.[[59]](#footnote-64) If the husband succumbs to illness in his own house, he may summon each one of his wives to nurse him in turn, but if he falls ill in the house of one of his wives, and is unable to move, he may stay there until his recovery; he is legally bound, however, to appropriately compensate his other wives upon his recovery.[[60]](#footnote-65) The Qadri Code allotted a number of punishments the court may decide upon if it is proven the husband discriminated against his wives by ignoring his responsibilities or intentionally mistreating or granting favors to any single one.[[61]](#footnote-66)

*The Ottoman Law of Family Rights, 1917*

Like the Qadri code, the Ottoman Law of Family Rights of 1917 does not prohibit polygamy *per se,* but does contain a modernizing spirit that sought to regulate polygamy and saw it as its role to preserve the wives' dignity and livelihoods. It acknowledges the Muslim man's right to marry more than one wife but limits the number of wives to four.[[62]](#footnote-67) In almost all matters of family law, this late-Ottoman period law refers to classic Islamic orthodox lawmakers according to which the husband is bound by religious law to treat his wives with equanimity, equality and fairness.[[63]](#footnote-68) There are several places, however, where the modernist Ottoman laws break with classical Islamic orthodoxy. Article 38, for instance, asserts the wife's right to insist on a monogamous clause in her marriage contract, which would prohibit her husband from marrying another wife as long as their marriage endured. Men bound by such an agreement attempting to marry a second wife expose themselves to court's intervention, which had the authority to either dissolve the marriage on the spot or annul the husband's marriage to his second wife.[[64]](#footnote-69) This article is based on the Hanbali School, and, under the Ottoman law, is valid and enforceable.[[65]](#footnote-70) Seeking to improve the status of women in matrimonial matters without wholly upturning Islamic traditions, the modernizing Ottoman legislator apparently presumed this to be an adequate deterrence, operating under the premise that no wife would willfully give her consent to her husband's polygamous marriage.[[66]](#footnote-71)

***The Legal Culture of the Shari'a Court in Beersheba***

Acting as a sole discussant, the Qadi may decide on a course of action seemingly at his discretion. Dominating the proceedings, the versatility of the Qadi's decisions are suggestive of a large degree of autonomy enjoyed by the Shari'a court to pursue various courses of action in arbitrating matters pertaining personal status laws.

The vast majority of cases are summarily discussed and are concluded over the course of a single hearing. The records themselves depict a procedure akin to summary process, detailing succinct verdicts published in standard forms where oftentimes only the parties' names are changed. Out of the 2,052 cases examined, not a single application was rejected, except for cases where the parties discontinued their process of their own accord or failed to tend to their request in a timely fashion, prompting the courtroom to dismiss the case. Shar'i oversight, though required by religious law, is seldom upheld and, in fact, the process of authenticating and approving polygamous matrimony is a rapid, common, even formulaic one.

The process of ratification of marital bonds in the Shari'a court, therefore, is essentially a retroactive official confirmation based solely upon the request of the parties and on their testimonies. Since little to no effective state oversight is exercised over the cases brought before the Shari'a court in Beersheba, the Qadi often resorts to amending and changing marriage and divorce registries at his own discretion, in order to allow polygamous men to circumvent the criminal ban on polygamy as the specific examples in the following pages will demonstrated.

***Application of Ottoman laws in polygamy cases in the Beersheba Shari'a Court***

In discussing most requests to ratify ostensibly polygamous marriages, the Qadi at the Shari'a court in Beersheba evokes article 148 of the Qadri Pasha Code and article 79 of the *Majalla*, both of which constitute the heart of the procedural part. The court record quotes Article 148 of the Qadri code:

If a man acknowledges a woman as his wife; if it is established that there is no Shar'i impediment that would have prevented her from marrying him; if he does not have more than four wives including her; and if she accepts his recognition and she does not otherwise have a husband, nor she was at a *Iddah* period, the marriage will be considered valid and he is obliged to provide her with maintenance and she is entitled to inherit him.[[67]](#footnote-72)

Article 79 of the *Majalla* plays a procedural role, determining that the signatory is legally bound by his own testimony.[[68]](#footnote-73) The procedure of Shar'i review consists mainly of the husband's admission that he recognizes the woman presented before the court as his lawful wife. In no-less common cases involve a request for establishment of kinship ties between the parents and their children – when couples are married outside of the Shari'a court under customary polygamous matrimony, have children, and later seek the court's ratification, usually in order to claim social benefits to which they have a right as Israeli citizens – The court evokes article 333 of the Qadri Code, dealing with the establishment of kin ties (*nasab)*.

Given the unmitigated jurisdiction of the Qadis to apply and interpret Shari'a, the Qadi in Beersheba may opt to restate and clarify the husband's obligations to equality between the wives, as required by Islamic law, and use the court hearing to directly inform women of their reserved right under article 38 of the Ottoman Family Rights Law to insist that monogamous clauses be introduced into their marriage contract. Yet seldom does he do so. Not only does he routinely fail to inform both parties of the full extent of their marital rights and obligations under the Ottoman Family Right's law, the *Majalla* and the Qadri Pasha code, the Qadi also derelicts his religious duty to assure the observance of the Shar'i concept of justice between the co-wives, a mandatory precondition under Islamic law for permitting the practice of polygamy amongst Muslims. Thus, the Shari'a court not only reneges on its responsibility to uphold Israeli criminal law, but also Islamic law, determining that the court educate and hold the polygamous husband accountable to the various obligations and limitations religious law places on his marriage. This legal culture is not, it seems, the product of mere oversight: court records reveal that such obligations and limitations are seldom even mentioned. This is so even despite the fact that Shar'i impediments regarding the truthfulness of the husband's admission are stated as a routine part of the procedure, as mentioned before.

According to the criminal prohibition against polygamy, Qadis are authorized to sanction polygamous marriages only in unusual and extraordinary cases, such as a husband's prolonged absence or his irreversible and permanent descent to mental or physical invalidity. The current investigation into recent court records from Beersheba reveal that at no time did the Qadi make any mention of the criminal status of polygamy incurring harsh criminal sentencing, nor make any reference to these exceptional cases afforded by law.

According to the guidelines for the State Attorney's Office regarding the enforcement of the prohibition against polygamy, in order to file charges against an individual suspected of being involved in a polygamous marriage, the state must produce evidence of a binding marriage ceremony.[[69]](#footnote-74) Although the undocumented customary marriage do not qualify as such necessary evidence, the ratification of polygamous marriage by the Shari'a court does, demonstrating the gap between the law on books and the law in action. The next part will address specific court records that will further illustrate this gap.

***The Mechanism of Customary Polygamy and the legal transparency of Women and children***

The majority of cases brought before the Shari'a court of Beersheba are cases in which the plaintiffs seek retroactive recognition of marriages originally conducted in the customary Bedouin legal system (*urf)*.[[70]](#footnote-75) Customary law is a significant factor in Bedouins' lives, often preceding Shari'a law.[[71]](#footnote-76)

Since this customary legal system is valid and practiced among the Bedouin, it is important to consider the differences between the Islamic and customary approaches to polygamous marriages. According to Islam, a marriage may be considered valid when a formal proposal of marriage (*ijab)* has been formally accepted (*qubul*) in the presence of two witnesses.[[72]](#footnote-77) The parties themselves, the groom and the bride, must each voice their consent to the match. Customary marriage, by contrast, is officiated in a public wedding ceremony that is not necessarily commemorated by any kind of written record. It should be emphasized that due to their not being mutually exclusive, customary marriage could, in theory, be considered valid according to Islamic Shari'a law. The validation of a particular marriage agreement is, however, the sole prerogative of the Qadis.

Though the two are often fluid, unfixed categories, infusing each other and subject to changing macro-and micro-historical circumstances and conditions, in the interest of clarity, I will for our present purposes, present a reading juxtaposing the two as rigidly distinct. Such rigidity allows us to locate the distinctly conservative roots and convictions underpinning the legal culture that had developed in the Shari'a court at Beersheba, and to tie the issue of giving free reign to polygamy to the imposition of a highly contestable conservative version of Islamic law over the Bedouin society. This politicized state of affairs, coupled with the Israeli policy of non-enforcement of criminal law against polygamists, merge to create a legal *no man's land* entrapping Bedouin women and children.

Out of 2,052 marriages analyzed, only a fraction -- 64 marriages -- were administered in the presence an official clerk *(maazon)* of the Shari'a court and recorded in writing. None of these were polygamous unions. This means that the overwhelming majority of marriages recorded by the Shari'a court in Beersheba were first conducted under the customary system, whether polygamous marriages or monogamous marriages. The customary system, then, is the principle, most immediate, legal system in place. Customary polygamy is therefore a phenomenon rooted in a socio-legal reality in which most marriages are held outside of the purview of the Shari'a court, and are only later, when a need for official recognition arises, presented to the Qadi for ratification. Usually ratification is sought when the household members are required to produce documentation of their marital status or kinship ties vis-à-vis Israeli government agencies in order to claim their rights to financial aid or to legal protection.

***The 'Classical' Case − Ratification of polygamous marriage conducted outside of court***

Each marriage file record comprises of a document providing personal information on the partners, such as name, ID number, date of birth, religion, citizenship, address prior to marriage and the partners' marital status prior to the agreement: married, unmarried, divorced, or widowed. The file also contains the Qadi's verdict regarding the specific marriage case, whether the matrimony is recognized by court and ratified and the date of marriage. In specifying clearly each of the parties' marital status and proceeding to ratify the ensuing agreement, these documents clearly indicate the Shari'a courts' consciousness of its sanctioning of polygamous marriages.

The court records suggest that the most common are cases of legal ratification of marriage where the supplicants petition the court after having been wed in a customary ceremony for a period of time. Ordinarily, a petition to the court is filed through legal representations, Shar'i advocate or a lay lawyer, who mediate between the petitioners and the court and file the necessary documentation. Each request is appended by two witness statements, who attest to the sincerity of the request and supporting testimonies. Direct contact between petitioners and the court is usually minimized to a single hearing. The usual, formulaic procedure consists of several short ceremonial steps: the Qadi first warns all parties against perjury and alerts them to the penalties determined by law in case it has been committed. The parties then formally attest to having been joined in wedlock and mention the date in which the ceremony took place. Records reveal that in several instances the parties' appearance before court is as late as several years after their marriage: according to some records, the court ratified customary marriages ostensibly having taken place as much as seven, and even twenty, years later. The parties testify that, at the time of their marriage, they were eligible to marry according to Shari'a law. Having heard their sworn testimony, the Qadi proceeds to summarily ratify their marriage and issue a certificate of marriage. Seldom does a Qadi attempt to ascertain whether the parties uphold the Shar'i requisites regarding polygamous wedlock, as the following cases will illustrate.

In a petition to ratify marriage of a Bedouin Israeli married man from Rahat and a divorced Palestinian woman from Tulkarem,[[73]](#footnote-78) the parties stated to the court that their customary unrecorded Shari'a marriage took place on April 2008 by observing the ceremonial offer and acceptance, and that they had mutually agreed upon both prompt and deferred dowry payments. The documents produced by the couple in support of their petition reveal that the husband has already been married and is still registered as such.

They have also sworn that they were not subjected to Shar'i impediments prior to their marriage and that their marital relations are still on-going. Two witnesses supported these sworn testimonies. A certificate of Shar'i non-impediment was even produced by the woman, signed by the Shari'a court in Tulkarem, probably due to her being a divorcee before her current marriage. The purpose of the couple's petition was to ratify their marital status according to the legal Shar'i requirement, and, by extension, gain official recognition in the eyes of Israeli law. Based on their statements and with accordance to article 148 of the Qadri Pasha Code and article 79 of the *Majalla*, the court ratified their marriage and issued them an official certificate of marriage, dated April 2008.

In another case,[[74]](#footnote-79) a Palestinian married man from Dahreya and a Bedouin Israeli single woman from Rahat filed a request to ratify their marriage, ostensibly officiated in customary fashion. The documents produced by the couple in support of their petition reveal that the husband has already been married and is still registered as such. The couple sought to do so in the interest of registering their marriage with the authorities and applying for civic services. The same legal procedure of declaration of the parties supported by two witnesses was followed. The Qadi referred to the same articles (article 148 of the Qadri Code and article 79 of the *Majalla*),and ratified their marriage. A similar case,[[75]](#footnote-80) tells of a Palestinian married man from Der-Albalah and a Bedouin Israeli divorced woman from Rahat seeking to ratify their marriage. The same legal procedure was followed here, too, resulting in the Qadi's recognition of their marriage.

In a similar case,[[76]](#footnote-81) a married Bedouin man from Tal-Alsabe and a Palestinian widow woman from Halhul requested that their marriage be ratified based on the marriage certificate of the Shari'a court in Halhul, in order to formally recognize their marriage. The same formulaic procedure was followed. Numerous additional examples of polygamous marriage ratification cases following the same patterns and the legal procedures were detected.[[77]](#footnote-82)

These cases provide us with evidence to the routine ratification of polygamous marriages by the Shari'a court without the required Shari'ic oversight, and in spite of the criminal illegality of polygamy. Such recurrent cases suggest that the ratification of polygamous marriages is automatic, formulaic, overseen by a well-operating legal machinery. In none of the cases examined has the Shari'a court rejected such a request (apart from cases in which the petitioners themselves failed to follow through with the procedure or the procedure was cancelled at the request of one of the parties). Nor was it ever mentioned in court that polygamy is deemed a criminal offense by state authorities. Only in 2016 did the court, selectively and moderately, begin alerting its petitioners that polygamous matrimony is a punishable criminal offense.[[78]](#footnote-83) In none of the cases, however, did the Qadi refer to the Shar'i proscriptions regarding the husband's obligation to treat his wives with equality as stipulated by the Shari'a, as previously discussed.

***Ratifications of Polygamous matrimony and acknowledgement*** ***of kinship ties***

Another category of retrospective ratification of polygamous matrimony, years after they have supposedly occurred, pertain to acknowledgement of kinship ties. This is when couples are married outside of the Shari'a court under customary polygamous matrimony, have children, and seek the courts' ratification in order to register with the Israeli authorities. Thus, for example, in a case from 2008[[79]](#footnote-84) after 23 years of bigamous matrimony, the supplicants requested that the court ratify their marriage and confirm the familial ties between themselves and their three children.

The supplicants were a 71-year-old man and a 51-year-old woman from the town of Rahat. They filed a single joint request to ratify their marriage and confirm their familial ties between themselves and their three children. They were represented by a lawyer. The documents produced by the couple in support of their petition reveal that the husband has already been married and is still registered as such. At the court hearing, the supplicants', their lawyer and two witnesses were informed by the Qadi of the penalties of delivering false testimony. The couple then testified that:

Our Shar'i marriage took place in 1984, by offer and acceptance, in accordance to Shari'a. We were not constrained by any Shar'i impediment before our marriage. The ties of matrimony still bind us. During our marriage, three children were born. We are therefore asking the court to ratify our marriage and confirm our familial ties to our children. Their ID certificates are attached. The purpose of this request is to register the marriage and the children at the relevant governmental offices.

Based on the couple's declaration and the supporting testimonies of their witnesses, the Qadi ratified their marriage and proceeded to confirm their familial ties with their children. Explaining his decision, the Qadi evoked article 148 of the Qadri Pasha Code referring to the authorization/acknowledgment to the court by a man that a woman is his wife. He also recognized that there was no Shar'i impediment that would prevent them from marrying, and added that their marriage is validated by article 79 of the *Majalla*, and article 333 of the Qadri pasha code, according to which:

If a woman gives birth to a child six months after her marriage (nikah) the familial ties (nasab) between the father and the son will be established. However, if the child was born less than six months after the marriage, the nasab to the father will not confirmed unless the husband acknowledges him as his son and confirming that the child was not born outside of wedlock (zena).[[80]](#footnote-85)

These cases demonstrate the routine manner in which the customary polygamous marriages are retroactively ratified by the Shari'a court. The procedure carried out in the Shari'a court does not include any mention of the husband's obligation to treat his wives with equality in accordance to the Qadri Pasha Code and the Ottoman Family of Rights Law, nor a warning of the parties that exercising polygamy is an infraction of the State's criminal law.

These cases reflect, however, only a fracture of the matrimonial arrangements amongst the Bedouin -- those cases brought before the Shari'a court for registration. The full scope of the phenomenon of polygamy and its various expressions in the informal customary sphere remain unknown. In this sphere, customary law operates under the patronage of the state, which has been reinforcing the authority of customary law for years, by strengthen tribalism among the Bedouin as a mean of control. This state recognition of customary legal arrangements leads to an outspread of *de-facto* legal polygamy, relegating Bedouin women and children to a state of legal invisibility, depriving them of the most elementary of legal rights they are entitled to as citizens.

This legal transparency is comprised of several tiers: non-registration is one tier, where the customary system operates unmitigated, enabling the arbitrariness of oppressive patriarchal structures which allow polygamous marriages to flourish. The second tier is non-enforcement: situations in which the second wife's marriage is registered in the Shari'a court but no enforcing or deterring actions are taken to dissuade men from engaging in polygamous marriages. Despite the importance of the second wife being registered and the establishing of her own and her children's legal status, this comes at the expense of the first wife's matrimonial rights; whose husband's marriages to other women commonly lead to their streamlining and entail harm to their economic situations while affording them no means by which to protest against or extract themselves from their unrequited new position of oppression

The successful completion of this registration further perpetuates and encourages the phenomenon of customary polygamous marriage. It is conceivable that had the Shari'a court performed its duty of Shar'i scrutiny, it could contribute to the reduction of this phenomenon by an announcement of the state authority that beyond a certain timeframe, polygamous customary marriage won't be recognized. The next section will delve into the polygamy-encouraging legal climate dominating the Shari'a court in Beersheba.

***Shari'a Courts' cooperation with polygamy: facilitating circumvention of Israeli State Law***

***Clearance of Shar'i impediments to polygamous marriages***

Shari'a courts not only ratify polygamous marriages by granting them official recognition without alerting the parties to polygamy's status as a criminal offense. They also, as the following section will demonstrate, assist polygamous men to circumvent the law in plain sight of the state and engage in multiple marriages without any fear of persecution or intervention.

One of the most legally fraught phenomena in polygamous matrimony is the stage in which the courts proceed to clear Shar'i impediments to polygynous marriages at the request of polygamous men. According to the directives of the Shari'a courts in Israel, certificates of non-impediment are mandatory when a man wishes to marry a woman from a different region. This criterion is designed to protect the prospective wife and her family; since, assumedly, if he is from a different region, the potential bridegroom's past is an unknown quantity. The certificate is intended to formally attest to his eligibility to marry. While such certificates can be freely issued to bachelors, widowers or divorcees – issuance of such a certificate to a married man is a criminal offense.[[81]](#footnote-86) A large part of these requests point out that the man intends to marry a woman from the Palestinian Occupied Territories, implying that Shari'a courts in the territories do adhere to such procedures as well. It should be noted, however, that the Qadi does not base his decision in any of the cases reviewed for the purposes of this study on the articles of the Ottoman Law applicable to the Shari'a court in Israel.[[82]](#footnote-87)

Court records reveal that Shari'a courts routinely grant such certificates to polygamous men and fail to even alert them that polygamy constitutes an infraction of Israeli criminal law, despite the likelihood that these instances are potentially pivotal to the curtailing of polygamy, since the court is in a position to forewarn the supplicant prior to his committing the offense, as opposed to attempt to remedy the complications born of an already consummated polygamous marriage which often include children borne of the relationship and financial rights. Even with the courts beginning to warn parties that polygamous marriages are criminal offenses, a development introduced as late as 2016, no similar forewarning was part of the procedure when men known to be married apply for certificates of non-impediment to marriage.

In a case from 2008[[83]](#footnote-88), for example, when a man married to two women attests to his marital status as is required in order to request a certificate of non-impediment which would enable him to marry a third wife, the court readily accedes. The court issues its decision without ascertaining whether there is a Shar'i impediment, basing its decision solely on the applicant's declaration and his witnesses' testimony. The applicant declares before the Qadi his prior marriage to two women, whereas the Qadi not only abstains from reporting the case as required, requesting the involvement by the attorney general's office, but goes as far as to grant him the certificate knowing that the man intends to utilize the document in order to marry a third wife, apparently from the occupied territories. In so doing, the Qadi and his court become complicit in the continuation of the applicant's criminal behavior.

In another case,[[84]](#footnote-89) a man married to three women requests a certificate of non-impediment from the court in the interest of marrying a forth woman, and the court accedes once again:

The applicant appeared before the Shari'a court in Beersheba accompanied by two witnesses, declaring that he is married to three women… is released from matrimonial contracts with other women (وليس في عصمته زوجات اخريات, ) is not husband of a wife currently in a Shar'i waiting period that is subject to nullification (ولا معتدة من طلاق رجعي), is free of all Shar'i impediments and wishes marry and requests Shar'i permission to do so. [[85]](#footnote-90)

In a two paragraph-long verdict repeating the applicant's request and basing itself on his declaration and the testimonies of the two witnesses, the court accedes and issues the certificate despite the fact that the applicant is already married thrice. Not only does the court ratify polygamous marriages, it also issues the permits requisite to the bigamous man to marry multiple times, fails to warn him that in engaging in polygamy he is committing a criminal offense and therefore is, in fact, a full accomplice to the entire ordeal. There was no investigation into the applicability of Shar'i impediments that might have prevented him from marrying an additional wife. This evidence adds up to portray a legal climate in the Beersheba Shari'a court which aids and encourages multiple marriages in disregard of the stipulations of criminal law. The entire structure is not hidden from the Israeli government who turns its eyes blind to the polygamous atmosphere in the Shari'a court of Beersheba that further strengthen the gap between the law on books and the actual practices of the Beersheba Shari'a court. In fact, the law on books and the law in action are two simultaneous expressions of state attitudes towards polygamy. The Shari'a courts are integral and foreign to the Israeli legal system at the same time. These dualities project and influence the Shari'a court positionality as a community and state court, and on the Qadis's roles. The Qadi's are state appointed civil servants, and as such their actions are in full view of the law and their superiors. However, the Qadi's are also part of their own communities and as such they reflect their social and political dynamic. In this conflicting stance, polygamy is made possible.

***Revision of marriage dates in the Shari'a Court to accommodate polygamous marriages***

Now I will turn to another category of the Shari'a court records that deals with revision of marriage dates by the court for the purpose of accommodating polygamous marriages. This category adds another dimension to the analysis of the tensions between the law on books and the law in action. While previously discussed cases have demonstrated the gulf between the law on books and the law in action, this category exposes how the written law and actual legal practice also overlap and interact with each other.

One record tells of a couple married in February 20, 2000, who submitted, after four years of marriage, a request to the Shari'a court to ratify their marriage and recognize their familial connections.[[86]](#footnote-91) The parties attested that their marriage took place on 2004 according to the Shar'i principles of the *ijab* and *qubul*, and that they agreed on the prompt and deferred dower. They have also stated that they did not have any Shar'i impediments before their marriage and that their marital relations are still on-going. As a result of the couple's four-year-long marriage, three offspring were born. Two witnesses supported their testimonies. Based on their statements and on the witnesses and in accordance with article 148 and 333 of the Qadri Pasha Code and on article 79 of the *Majalla*, the Qadi recognized their marriage.

Over the next decade, however, the same couple appears again before the court regarding its marriage documentation. In a hearing held in February 4, 2008, the court corrects the date of marriage it itself has formally recognized, setting it, instead, to February 20, 2002. The file also contains a certificate of divorce dated February 11, 2004, some two years after the man married his second wife. The man requested that the Shari'a court amend the date of marriage, citing the Ministry of Interior's refusal to register his second marriage on grounds of his already being registered as married when he took another wife. In his petition, the man returns to the Sharia court asking that the Qadi revise the original date of marriage to February 20, 2004, therefore making his second marriage legal, since by then would have ostensibly been already divorced. The court acquiesces to the polygamists' request and proceeds to rectify the dates. The file, however, still contains the two conflicting court verdicts regarding the couple's date of marriage: an original (February 4, 2008) and an amended one (February 20, 2004), both with different dates.

This case further illustrates the extent of the complicity of the Shari'a court in streamlining and legalizing polygamy. Here, the court goes as far as to revise legally-tender official documentation in order to allow the man to register his multiple marriages and evade prosecution by the authorities. This suggests that not only does the Shari'a court in Beersheba ratify polygamous matrimonies without alerting the parties to the criminality of multiple marriages, but that it also goes as far as revising public records in order to assist bigamous men to evade prosecution. The fact that this flagrant infraction of the anti-polygamy laws has not been prosecuted highlights the lack of effective oversight over the Shari'a court, whose adjudication goes unchecked by the state, going so far as to engage in an intentional revision of legal tender documents designed to facilitate polygamous matrimony. This case also reveals another dimension of the contradictory stance of the Shari'a court as a community and state court that is aware of the undesirable gaps between the written and the praxis of the law, yet seeks to assist polygamous men. The next cases will illustrate additional aspects of this complicity, namely how the reconciliation of the illegality of the polygamous marriages results in a legal culture that encourages polygamy.

In one such case,[[87]](#footnote-92) a couple requests its marriage to be ratified. A document stipulating each party's personal status before marriage reveals that both are registered as bachelors. However, a suspicious irregularity appears in the man's ID appendix, stating that he is married and is father to a daughter. The couple, accompanied by two witnesses, declare before the court that their marriage took place on 2008 according to the Shari'a principles of *ijab* and *qubul* and that they have agreed on the deferred dower, and that they did not have any Shar'i impediment before their marriage and their marital relations are still taking place. The witnesses confirmed their statements. Based on these sworn testimonies, the Qadi recognized their marriage in accordance to article 148 of the Qadri Code and article 79 of the *Majalla*.

The court ratifies the marriage without inquiring about, let alone resolving, the incongruity between the appendix and the personal status prior to marriage. It does not alert the parties' attention to the potential of their marriage's criminality if the husband is already registered as married nor seek to explore the possibility of Shar'i impediments to this wedlock. It is specifically in such cases that the Shari'a court should have revised this registration due to the incongruity between the two documents, but it does not bother to do so, since revising the registry means acknowledging the polygamous nature of their marriage, although the court routinely validates and ratifies polygamous marriages, as we have seen above.

The next case,[[88]](#footnote-93) portrays another case of revision of date of marriage although this did not occur in a polygamous marriage, but, rather in a request of proof of marriage between an Israeli woman and a Palestinian man in which the court revised the date of marriage in accordance to the wishes of both parties. The parties declared that they have been married according to the Shar'i principles of the *ijab* and *qubul* and they have agreed on the terms of the deferred dower. They also state that they do not have any Shar'i impediment and their marital relations are on-going. The Qadi recognized their marriage based on their declaration in accordance to article 148 of the Qadri Pasha Code and article 79 of the *Majalla*. The court records reveal that initially the parties declared that they have been married in May 20, 2004, a declaration on which the court ratified their marriage, only to later request to alter their original date of marriage to May 31, 2008. In their petition, they sign an affidavit stating that they falsely attested the first date in order to be eligible for a family reunion request submitted by the woman. The court acceded to their request and revised the original date.

This case, alongside the aforementioned cases, attest to the ease at which the courts accommodate requests to revise dates of marriage. In the last case, as many as four years divide between the first and second stated dates. The court accedes in full knowledge that it is a false statement. These cases also illustrate the considerable degree of autonomy enjoyed by the Shari'a courts, which operate regardless to Israeli Law and in the absence of any form of effective oversight. One could argue that there are some cases where this autonomy affords the Qadi to assist and provide valuable legal aid to the parties appearing before him that they would not have otherwise received from the Israeli authorities, like in the instance depicted in the last case. This state of affairs raises concern with respects to the practice of polygamy, routinely ratified and facilitated by Shari'a courts without recourse to Shar'i scrutiny, a state of affairs that give rise to the impression that there is a legal vacuum where women are subjected to the patriarchal control of the Shari'a court and the Customary system.

In sum, the Shari'a court in Beersheba facilitates and cultivates a polygamous legal environment in which fictitious marriages and divorces are routinely ratified. The Qadi extends active assistance to polygamous men receive in reconciling the illegality of their marriages to additional wives with their wishes to do so. This court therefore encourages polygamy and entrenches it as an acceptable, normative behavior. Polygamist men know that they can trust the Shari'a courts to ratify their polygamous marriages, to produce Shar'i certifications establishing their eligibility to marry additional women, and, if need be, revise public records and issue certificates based on fraudulent attestations in order to bypass criminal persecution. Thus, under the guise of culturally-sensitive autonomy, a legal no-man's-land is created and maintained in which a phenomenon that infringes upon women's legal status and fundamental civic rights.

By consciously turning its blind eye to the legal culture of the Shari'a court of Beersheba as an autonomous body, the state encourages the thriving of customary Bedouin legal system, and subjugates Bedouin women to the patriarchal traditional order. This leads to polygamy as a widespread phenomenon plaguing Bedouin communities and families.

**VI. Conclusion**

Do Shari'a courts sanction polygamy? By what means? Does the Shari'a court convey to the parties that polygamy is a criminal offense in Israel? In what manner? How are these questions relevant to the premises of the law on the books versus the law in action, the legal culture of the Shari'a court, and its relative location within the Israeli legal system? how do all these elements contribute to the legal transparency of Bedouin women?

The findings presented here demonstrate how the state's lack of intervention in polygamy as oppressive practice bolsters the patriarchal control of Bedouin women. It locates two main legal avenues to do so, one official, the Shari'a courts, and the other unofficial, the traditional/tribal customary tribunals. The two cooperate to streamline and legalize polygamy.

One of the most poignant results of this legal situation is the effective stripping of Bedouin women of their legal rights. These women are deprived of any legal defense in case their husbands decide to marry another woman and offer no mechanism by which to achieve redress and compensation. They thus become caught in a situation in which they are virtually "transparent" in the eyes of the various legal systems: the criminal prohibition is not enforced among the Bedouins, second marriages are deemed valid according to Shari'a law, and the oppressive marital arrangements initiated by the customary legal system are routinely ratified and officialized in the Shari'a court system. The lack of this legal protection is confounded by the multi-pronged discrimination facing the Arab-Palestinian minority in Israel, ultimately leading to aggravatethe political subjugation of Bedouin women, by revoking their ability to extricate themselves from oppressive households and marriages.

The lack of enforcement, coupled with the Qadis' unprecedented jurisdiction to interpret and apply Shari'a law strengthen the fissure between the law-on-books and the law-in-action. The Shari'a court records provide a closer look on the multiple forces at play within the Shari'a courts, operating at once as an organ of the state, but also as an establishment rooted in and serving the Bedouin community on a day-to-day basis.

The analysis of the Shari'a court records, particularly those illustrative of the legal culture of the Shari'a court and its role in ratifying polygamy, raises the question of the role of the community in changing patriarchal norms in general and polygamy in particular. This question is significant, given the political conflict between the Bedouins and the state of Israel, and the fact that marginalized minorities tend to resist cultural changes and to suppress individuality in order to defend their culture.[[89]](#footnote-94) Thus, feminist and other pro-reform activists in the Bedouin community who seek to upturn dominant patriarchal norms within their society run up against the onslaught of masculinist nationalist discourses seeking to suppressing internal criticism and debate in the name of maintaining unity in a besieged community. Cooperating with state institutions to enact reforms, they claim, is tantamount to cooperating with the colonizers. And since enacting enduring change necessitates the intervention of state institution, the few advocates of reform find themselves in the clutches of a difficult political situation. For the most part, Bedouin community leaders, and the Bedouin communities at large, prioritize "cultural survival" over reforms achieved through the intervention of the state.[[90]](#footnote-95)

The case of the Shari'a court of Beersheba also demonstrates the selective application of the Ottoman law by the court, cherry picking only those articles which sanction the ratification of polygamous marriages but not those refereeing to the articles holding the polygamous husband responsible to treat his wives equally and fairly, or those allowing the Qadi to use the court hearing as an opportunity to educate single women of the protections afforded to them, such as article 38 of the Ottoman Family Right Law, before being married. The selectiveness of the application of the Ottoman Law, the Shari'a court's abstention from warning the parties that polygamy is a criminal prohibition, and the lack of enforcement trap Bedouin women in the gaps between the legal systems, and severely curtails their rights as Israeli citizens, as Muslim women and as human beings.

The practice of polygamy and its routine ratification affect the legal status of Bedouin women and give a legal aspect to the interlocking spheres of marginalization to which they are subjected by virtue of being (a) women in (b) a patriarchal-tribal society as part of (c) an ethnic minority in a Jewish state. This transparency and exclusion is enabled and reinforced due to the colonial framework that abandon the private familial sphere of the native.

1. Sophie Davis Postdoctoral Fellow on Gender, Conflict Resolution and Peace. The[Leonard Davis Institute](http://en.davis.huji.ac.il/book/gender-forum)for International Relations. The Hebrew University of Jerusalem. [↑](#footnote-ref-1)
2. *See* Punitive Statute, § H Cl. 176 (1977) (Declaring That Polygamous Marriage Is a Criminal Offense). [↑](#footnote-ref-2)
3. I have addressed in details Israeli lack of enforcement policy towards polygamy between the years 2010-2016 showing how it is under enforced among the Bedouin. See Rawia Aburabia, Trapped Between National Boundaries and Patriarchal Structures: Palestinian Bedouin Women and Polygamous Marriage in Israel, *Journal of Comparative Family* Studies, Vol XLVIII No.3 (2017) 343-345 [↑](#footnote-ref-3)
4. Nadera Shalhoub- Kevorkian, *Security, Theology, Surveillance and the Politics of Fear* (Cambridge University Press, 2015): 2. [↑](#footnote-ref-4)
5. Rawia, Aburabia, "Redefining Polygamy Among the Palestinian Bedouins In Israel: Colonialism, Patriarchy and Resistance." *American University Journal of Gender, Social Policy & The Law* 19(2) (2009): 463. [↑](#footnote-ref-5)
6. *Ibid*, 459-493. [↑](#footnote-ref-6)
7. Lisa M. Kelly, "Bringing International Human Rights Law Home: An Evaluation of Canada’s Family Law Treatment of Polygamy." *University of Toronto Faculty of Law* 65(1) (2007):463 [↑](#footnote-ref-7)
8. Alean Al-Krenawi, and Vered Slonim-Nevo, "The Psychological Profile of Bedouin Arab Women Living in Polygamous and Monogamous Marriages." *Families in Society: The Journal of Contemporary Social Services* 89 (2008): 139, 145-46 [↑](#footnote-ref-8)
9. Alean Al-Krenawi and, Rachel Lev-Wiesel, "Wife Abuse among Polygamous and Monogamous Bedouin-Arab Families." *Journal of Divorce and Remarriage* 36 (2002):151, 158 [↑](#footnote-ref-9)
10. Abu-Rabia et al., *Polygyny and Postnomadism Among the Bedouin in Israel*, 23 [↑](#footnote-ref-10)
11. Alean Al-Krenawi et al., "The Psychological Impact of Polygamous Marriages on Palestinian Women." *Women and Health* 34 (2001): 1, 3, 12 [↑](#footnote-ref-11)
12. Kutaiba Chaleby, "Women in Polygamous Marriage in Inpatient Psychiatric Services in Kuwait." *The Journal of Nervous and Mental Disease*  173 (1985) 56, 58 [↑](#footnote-ref-13)
13. Aburabia, *Redefining Polygamy Among the Palestinian Bedouins In Israel,* 469. [↑](#footnote-ref-14)
14. Aref Abu-Rabia, Salman Elbedour, S., and Sandra Scham, "Polygyny and Post-Nomadism among the Bedouin in Israel". *Anthropology of the Middle East* 3(2) (2008): 23. [↑](#footnote-ref-15)
15. Avishai Margalit and Moshe Halbertal, "Liberalism and the Right to Culture", *Social Research* 61(3) (1994): 491. [↑](#footnote-ref-16)
16. It is beyond the scope of this article to get to all the reach and expanded literature and central scholarly debates with regards to multiculturalism in general and multiculturalism and feminism in particular. [↑](#footnote-ref-17)
17. Will Kymlicka, *Multicultural Citizenship: A liberal Theory of Minority Rights* (Clarendon Press, 1995): 126. [↑](#footnote-ref-18)
18. Michael Karayanni, "Multiculturalism as Covering: on the Accommodation of Minority Religions in Israel", *American Journal of Comparative Law*, (forthcoming, 2019). [↑](#footnote-ref-19)
19. Oren Yiftachel, *Ethnocracy: Land and identity politics in Israel/Palestine* (University of Pennsylvania Press, 2006). [↑](#footnote-ref-20)
20. Karayanni addressed the main problems in applying multiculturalism in the Palestinian case. See Michael Karayanni,"The Acute Multicultural Entrapment of the Palestinian-Arab Religious Minorities in Israel and the Feeble Measures Required to Relieve It", in René Provost (ed.) *Mapping the Legal Boundaries of Belonging: Religion and multiculturalism from Israel to Canada*(Oxford University Press, 2014). [↑](#footnote-ref-21)
21. Evelyn Nakano Glenn, "Settler Colonialism as Structure: A framework for Comparative Studies of U.S. Race and Gender", *Sociology of Race and Ethnicity* 2015 vol 1(1) 55 [↑](#footnote-ref-22)
22. Ibid*.*  [↑](#footnote-ref-23)
23. Patrick Wolfe, Settler Colonialism and the Transformation of Anthropology, (Cassell, New York 1999): 1-2. [↑](#footnote-ref-24)
24. Wolfe, *Settler Colonialism and the Transformation of Anthropology*, 1-2. [↑](#footnote-ref-25)
25. Veracini Lorenzo, *Settler Colonialism: A Theoretical Overview*, (Palgrave Macmillan, 2010): 21, 24. [↑](#footnote-ref-26)
26. Veracini Lorenzo, *Israel and Settler Society*, (Pluto Press, 2006): 1. Nadim N. Rouhana & Areej Sabbagh-Khoury, "Settler Colonial Citizenship: Conceptualizing the Relationship between Israel and its Palestinian Citizens", *Settler Colonial Studies*, (2014): 1. [↑](#footnote-ref-27)
27. Alexander Kedar et.al, *Emptied Lands: A legal Geography of Bedouin Rights in the Negev* (Stanford University Press, 2018); Oren Yiftachel, *Bedouin Arab and the Israeli Settler State*: *Land policies and Indigenous Resistance*, in Duane Champagne& Ismael Abu-Saad (eds.), Indigenous People between Autonomy and Globalization 31 ( University of California Press, 2003); Mansour Nasasra et.al, *The Naqab Bedouin and Colonialism: New Perspectives* (Routledge, 2015). [↑](#footnote-ref-28)
28. Sarab Abu-Rabia-Queder, "The paradox of professional marginality among Arab-Bedouin women", *Sociology* 51(5) (2017): 1084–1100. [↑](#footnote-ref-29)
29. Scott Lauria Morgensen, "Theorizing Gender, Sexuality and Settler Colonialism: An Introduction", *Settler Colonial Studies* 2(2) (2012): 3. [↑](#footnote-ref-30)
30. Nira Yuval-Davis, *Gender and Nation* (London: SAGE Publications Ltd, 1997). [↑](#footnote-ref-31)
31. Franz Fanon, *The Wretched of the Earth* (London: Penguin, 1963): 30. [↑](#footnote-ref-32)
32. Deniz Kandiyoti, "The Cry for Land: Algerian Reform, Gender and Land Rights in Uzbekistan", *Journal of Agrarian Change* (3) (2003): 225-256. [↑](#footnote-ref-33)
33. Amara and Miller, Unsettling Settlements: Law, Land, and Planning in the Naqab, 69 [↑](#footnote-ref-34)
34. Ibid, 70. [↑](#footnote-ref-35)
35. The treatment of the Bedouin as special, separated group was carried out through their ruling by special administrative bodies, and were directed by Israeli Jewish officials such as the Green Patrol, the Bedouin Education Authority and the Authority for the development and settlement of the Bedouin in the Negev. See: Ismael Abu-Saad and Cosette Creamer, "Socio-Political Upheaval And Current Conditions of the Naqab Bedouin Arabs." In Ahmad Amara, Ismael Abu-Saad, and Oren Yiftachel (eds.), (2012) [↑](#footnote-ref-36)
36. Cited in Abu-Saad and Creamer, *Socio-Political Upheaval And Current Conditions of the Naqab Bedouin Arabs*, 44. [↑](#footnote-ref-37)
37. Lila Abu-Lughod*, Do Muslim Women Need Saving* (Harvard University Press, 2013): 27-53. [↑](#footnote-ref-38)
38. In this regard, it is important to emphasize that the only sphere in which Israeli authorities act with resolve against polygamy is when these transgress immigration and citizenship laws, most poignantly culminating in family reunification cases. The policy of the Ministry of Interior is to categorically deny requests for family reunification in cases of polygamy, ostensibly in order to discourage its practice. This policy has been upheld by the Israeli Supreme Court, determining that the non-Israeli spouse of an Israeli citizen cannot be granted citizenship or residency status if he or she are already married to a third party. See: HCJ 5184/04 Sohila Abu Sarhan V. The Minister of the Interior (27.12.2006). The Supreme Court does not recognize marriages performed in states that allow bigamy. See:HCJ 5303/05 Ali Mohamad Badarne V. The Minister of The Interior (21.5.2007). The Supreme Court ruled that if a previous marriage is not reported when applying for residency status and revealed after the second wife is granted permanent residency status, it constitutes sufficient grounds for immediate revocation of the non-citizen spouse's residency permit. See:HCJ 3658/06 Khaled Ben Abdalla Loh V. The Minister of the Interior (5.3.2008). [↑](#footnote-ref-39)
39. Abu-Lughod, *Do Muslim Women Need Saving*?, 27-53. [↑](#footnote-ref-40)
40. Tagrid Jahshan, *Bedouin Women and Personal Status Rights,* in The Arab Women in The Negev Reality and Challenges, (Ma'an: the forum of Arab women's organizations in the Negev 2005): 85-96 (in Hebrew) [↑](#footnote-ref-45)
41. According to The Law and Administration Ordinance, No.1 (5708-1948) - Laws of The State of Israel, Vol.1, 9. That States That the Laws and Regulations in Force Prior To May 15, 1947 Would Continue to Apply. [↑](#footnote-ref-46)
42. Article 15 (A) (4) Of The Basic Law: The judiciary determines the Supreme Court's scope of judicial review regarding religious courts as follows: "(4) to order religious courts to hear a particular matter within their jurisdiction or to refrain from hearing or continue hearing a particular matter not within their jurisdiction, provided that the court shall not entertain an application under this paragraph is the applicant did not raise the question of jurisdiction at the earliest opportunity; and if he had no measurable opportunity to raise the question of jurisdiction until a decision had been given by a religious court , the court may quash a proceeding taken or a decision given by the religious court without authority. See: HCJ 3856/11 *Unanimous Vs. The Sharia Court of Appeal (*27.6.2013), A Petition Against the Sharia Court of Appeal Decision Not to Appoint a Woman as Arbitrator in Divorce Proceeding. The Supreme Court Accepted the Petition and Determined That a Woman Arbitrator Could Be Appointed. [↑](#footnote-ref-47)
43. Abou Ramadan, *Notes on the Anomaly of the Sharia Field in Israel*, 84, 105-106. [↑](#footnote-ref-48)
44. *Ibid.* [↑](#footnote-ref-49)
45. *Majallat-i Alahkami Adliya* 'The Books of Rules and Justice' is a codification of the Islamic principles applicable to the Shari'a courts in Israel based on the decrees of the Hanafi School. See Majid Khadduri and Herbert J. Liebensy, *Law in the Middle East: Origin and Development of Islamic Law* (Washington D.C: The Middle East Institute, 1955): 292. [↑](#footnote-ref-50)
46. Abou Ramadan, Moussa. "Divorce Reform in the Sharia Court of Appeals in Israel (1992-2003)."

    *Islamic Law and Society* 13(2), 247. [↑](#footnote-ref-51)
47. Amira Sonbol, "Women in Sharia Courts: A Historical and Methodological Discussion*,*" *Fardham International Law Journal* 27 (2003): 225, 234. [↑](#footnote-ref-52)
48. Abou Ramadan, *Divorce Reforms in the Sharia Court of Appeals in Israel*, 247. [↑](#footnote-ref-53)
49. Esther Van Eijk, *Family Law in Syria: Patriarchy, Pluralism and Personal Status Laws* (London: New York. I.B Tauris & Company, 2016): 50. [↑](#footnote-ref-54)
50. Moussa Abou Ramadan, "Islamic Legal Hybridity and Patriarchal Liberalism in the Sharia Courts in Israel" *Journal of Levantine Studies* 4(2) (2015): 39, 51. [↑](#footnote-ref-55)
51. Abou Ramadan, *Islamic Legal Hybridity*, 39, 50; Ahron Layish, "Qadis and Sharia in Israel"*,* 237-272. [↑](#footnote-ref-56)
52. According to the *Quran,* the waiting period a woman must observe after the death of her spouse or a divorce, during which she may not remarry. The waiting period after a divorce is three months, and after the death of a spouse it is four months and ten days. Any pregnancy discovered during this period is assumed to be the responsibility of the former husband. John [Esposito,](https://en.wikipedia.org/wiki/John_Esposito) ed. (2003), ["Iddah"](http://www.oxfordislamicstudies.com/article/opr/t125/e971), [*The Oxford Dictionary of Islam*](https://en.wikipedia.org/wiki/The_Oxford_Dictionary_of_Islam), [Oxford University Press](https://en.wikipedia.org/wiki/Oxford_University_Press). [↑](#footnote-ref-57)
53. Article 30 of the Qadri Code. [↑](#footnote-ref-58)
54. Article 19 Of – كتاب الاحكام الشرعية في الاحوال الشخصية لقدري باشا على مذهب الامام ابو حنيفة 1875 (Hereinafter: " The Qadri Code") [Https://Elawpedia.Com/Viewfile/518](https://elawpedia.com/viewfile/518) [↑](#footnote-ref-59)
55. Article 152 of the Qadri Code. [↑](#footnote-ref-60)
56. Article 154 of the Qadri Code. [↑](#footnote-ref-61)
57. Article 153 of the Qadri Code. [↑](#footnote-ref-62)
58. Article 155 of the Qadri Code. [↑](#footnote-ref-63)
59. Article 157 of the Qadri Code. [↑](#footnote-ref-64)
60. Article 158 of the Qadri Code. [↑](#footnote-ref-65)
61. Article 159 of the Qadri Code. [↑](#footnote-ref-66)
62. Article 14 Of the Ottoman Law of Family Rights: " من كان له اربع زوجات منكوحات او معتدات فلا يجوز زواجه بامرأة اخرى" [↑](#footnote-ref-67)
63. Article 74 Of the Ottoman Law of Family Rights: " على الزوج الذي له اكثر من زوجة واحدة ان يعدل ويساوي بينهن [↑](#footnote-ref-68)
64. Article 38 of the Ottoman Law of Family Right. [↑](#footnote-ref-69)
65. Layish, *Women and Islamic Law in A Non-Muslim State*, 30-31. [↑](#footnote-ref-70)
66. *Ibid*, 72. [↑](#footnote-ref-71)
67. Article 148 Of the Qadri Code "

    إذا أقر أحد لامرأة أنها زوجته ولم يكن تحته محرم لها ولا أربع سواها وصدقته وكانت خالية عن زوج وعدة تثبت زوجيتها له بإقراره وتلزمه نفقتها ويتوارثان" [↑](#footnote-ref-72)
68. Al-Majalla Al Ahkam Al Adaliyyah [Http://Www.Kantakji.Com/Media/8577/N252.Pdf](http://www.kantakji.com/media/8577/n252.pdf) [↑](#footnote-ref-73)
69. Guideline No. 2.7 from August 2002 of the State Attorney's Office with regards to the prosecution policy of the bigamy offence relevant to the discussed years. [↑](#footnote-ref-74)
70. Clinton Bailey, *Bedouin Law From Sinai and the Negev: Justice Without Government* (Yale University Press 2009) [↑](#footnote-ref-75)
71. Ahmad Natur, Shari'a Ve mienhag Bemishpacha Habedwit Al Pi Psikat Bet Hadin Hasharie Bbersheva."(Shari'a and Customs at The Bedouin Family According to Beer Sheva Shari'a Court Ruling). *Hamezrach Hachadash* 33 (1991): 94–95, 111, 129–132. (In Hebrew). [↑](#footnote-ref-76)
72. Nasir, *The Islamic Law of Personal Status* [↑](#footnote-ref-77)
73. File No. 491/2008 From 9.4.2008. [↑](#footnote-ref-78)
74. File No. 1039/2008 From 20.7.2008. [↑](#footnote-ref-79)
75. File No. 861/2009 From 17.5.2009. [↑](#footnote-ref-80)
76. File No. 249/2010 From 2.2.2010. [↑](#footnote-ref-81)
77. See File No. 1488/2010 From 15.7.2010, File No.3436/2012 From 2.12.2012, File 599/2014 From 2.3.2014, File No.2321/2016 From 18.7.2016. [↑](#footnote-ref-82)
78. See for Instance File No. 2285/2016 From 21.7.2016, And File No. 1924/2016 Where the Qadi Alerted the Parties to The Illegality of Polygamy According to Section 176 Of the Penal Code, And to Report the Case to The Office of The Attorney General for Appropriate Action. However, In File 1080/2016 From 30.3.2016 That Also Involves Polygamous Marriage, The Qadi Did Not Alert the Parties. [↑](#footnote-ref-83)
79. File No. 239/2008 From 20.2.2008. [↑](#footnote-ref-84)
80. Article 333 of the Qadri Pasha Code. [↑](#footnote-ref-85)
81. Dr. Iyad Zahalka At the First Meeting of The Inter-Departmental Action Committee for Dealing with Polygamy That Took Place At 4.4.2017 At the Ministry of Justice, Jerusalem. [↑](#footnote-ref-86)
82. Such As: File No. 417/2008 From 24.3.2008, File No. 419/2008 From 24.3.2008, File No. 566/2008 From 28.4.2008, File No. 1050/2010 From 18.5.2010, File No.1591/2010 From 22.7.2010, File No. 3206/2012 From 11.11.2012, File No. 1143/2014 From 24.4.2014, File No. 2206/2016 From 11.7.2016. [↑](#footnote-ref-87)
83. File No. 1036/2008 From 17.7.2008. Similar Cases Were Detected in File. No 1143/2014 From 24.4.2014 And File No. 3206/2012 From 11.11.2012. [↑](#footnote-ref-88)
84. File No. 3658/2012 From 17.12.2012. [↑](#footnote-ref-89)
85. *Talaq Raj'i* (Revocable Divorce) Which Allows the Husband to Take His Former Wife Back Without the Need of a New Marriage Contract. [↑](#footnote-ref-90)
86. File No. 177/2008 From 4.2.2008. [↑](#footnote-ref-91)
87. File No. 1101/2008 From 31.7.2008. [↑](#footnote-ref-92)
88. File No. 723/2008 From 2.6.2008. [↑](#footnote-ref-93)
89. Haideh Moghissi, "Away From Home: Iranian Women, Displacement Cultural Resistance and Change", *Journal of Comparative Family Studies* 30(2) (1999):208 [↑](#footnote-ref-94)
90. *Ibid,* 209 [↑](#footnote-ref-95)