

**JUSTICE AMONG CO WIVES: STRIKING BALANCE BETWEEN A WORKING
CLASS AND FULL HOUSE WIFE**

Juwairiyya Badamasiuy*
Ibrahim Muhammad Ahmad**
Aliyu Mustapha***
Aminu Adamu****

ABSTRACT

The question of polygamous marriage and how co-wives are treated with a semblance of equality especially if one of the wives is working and the other is not, is a challenge in some Muslim families in Nigeria. In practice, the working-class wife is either treated with kid gloves or with levity on the premise that she is an income earner and therefore should take care of herself. On the other hand, some full-time house wives are treated preferentially or left to meander and struggle to make ends meet. Using the doctrinal methodology, this article discusses Justice among Co-Wives: Striking Balance Between a Working Class and Full House Wife within the Nigerian context. It is found that, although polygamy in Islam preaches equal treatment, fairness and protection to all wives, the practice by some polygamous husbands in Nigeria is exploitative and imbalanced. The article recommends Islamic law should be strictly followed by spouses in their marital life. Marriage guardian and religious leaders should ensure that women do not suffer from material or economic injustice. Financial support should be accorded to all wives (both working and not working) and provide economic security for the family without discrimination.

*LLB, LLM, PhD. BL. Professor of Law, Department of Islamic Law, Faculty of Law, Bayero University, Kano.

**LLB, LLM, Ph.D, BL, Reader and Head, Department of Sharia, Faculty of Law, University of Maiduguri, Email: ibrahimahmad2003@gmail.com

*** LLB, LLM, PhD. BL. Reader and Head, Department of Islamic Law, Faculty of Law, Bayero University, Kano. He can be contacted through aliyumustaphagembu@gmail.com

****LLB, BL, LLM Candidate Faculty of Law, Bayero University, Kano and Assistant Lecturer, Department of Sharia, Faculty of Law, University of Maiduguri. He can be contacted through aminuadamu058@gmail.com

1.0 Introduction

The debate on the issue of equality in the practice of polygamy is a continuous one. The controversy, misunderstanding and misapplication of the law on the subject is unceasing. Although, the arguments on the legality of polygamy and its practice in Nigeria is not the main focus of the paper, but this paper embarked on voyage for facts finding on the legality of polygamy to lay foundation for discussion on the central theme of the paper.

Islam calls a woman *muhsana*- a fortress against Satan because a good woman, by marrying a man, helps him keep to the path of rectitude in his life. Thus, woman is considered as an integral part of the Muslim society. Rights of a wife and that of a co-wife is a subject of discussion at different fora. Yet, misconceptions and misapplication of the provisions of Islamic family law becomes an issue at the Muslims and non-Muslims for a, particularly when the issue of polygamy is tabled. This include the right of a wife/co-wife to maintenance and equality.¹ Right to maintenance includes provision of food, shelter, clothing, education² and protection of her/their dignity.³ Rights to equality amongst co-wives is a responsibility that attracts stiff consequence for violators. It was reported that the Prophet (SAW) said: *husband who exhibits inequality among his co-wives would be resurrected with half of his body paralysed*.⁴

This article discusses the position of Islamic Law on polygamy as well as justice among co-wives especially the working class and the non-working class. The article ends with a conclusion and some recommendations.

2.0 Polygamy and its Practice in Islam

Polygamy is not a new phenomenon as it was in practice among the Jews, Christians and the Arabs even before the advent of Islam.⁵ With the advent of Islam, the institution was formally recognised

¹Al-Gharyani, A.A. *Mudawwanatu al-Fiqhu al-Maliki wa Adillatuhu* (Dar Ibn Hazm, Beirut, 2015) Vol. III, Pp.211-229.

² Education is part of the rights which accrues to the wife from the husband. Educating wife includes spiritual and mundane. Islam entrusts educating women on their parents and guardians. However, this burden shifts to the husband the moment she gets married and becomes wife.

³Al-Gharyani, A.A. *Mudawwanatu al-Fiqhu al-Maliki wa Adillatuhu* (Dar Ibn Hazm, Beirut, 2015) Vol. III, Pp.230-273.

⁴ Imam Tirmizhi, Hadith No. 1141.

⁵ Nora Abdul Hak, 'Just and Equal Treatment in Polygamous Marriage: The Practice in the Sharia Courts in Malaysia' (2008) 16 *IJUMILJ* 141, 142.

with certain modifications, limitations and conditions. Islam permits a man to marry more than one wife provided that he can deal justly amongst them. The Qur'an enjoined justice and fairness between co-wives, and there is a warning against wronging at the expense of another.

The word polygamy is derived from two Greek words “*Poly*” meaning “many” and “*gamous*” meaning “married”. It is the system of having more than one wife simultaneously.⁶ Polygamy also means the custom of having more than one wife at the same time.⁷ The term polygamy generally means having more than a wife.⁸

Generally, Islam does not impose polygamy as an obligation on men but subjected its practice upon the condition of fairness. The Prophet (SAW) was a monogamist for a greater part of his married life.⁹ Nevertheless, some of the reason for polygamy are; to take care of husbands who desire to marry after a failed marriage where he may not want to divorce his wife, to reduce the number of widows whose husbands die every day for different reasons, a husband whose wife is barren or chronically sick may need another wife if he cannot manage the situation or who is in dare need of children, to control the devastating effects of infidelity in the society such as increase in abortion rate, to satisfy some husbands with strong natural sexual urge. Similarly, polygamy is practiced to maintain the moral fabric of the society.¹⁰ It also minimize immorality and strengthens the family institution.

⁶ Miriam K. Z., *Polygamy Across-Culture, Analysis* (New York U.S.A., Berg Oxford International Publishers, 2008). The author identified three forms of polygamy namely: Polygyny, the one in which a man is married to several wives; sororal polygyny, a form of plural marriage in which the co-wives are customary sisters, and non sororal polygyny, where the co-wives are not related. It should be noted here that for the purpose of this research, Islam only allows the practice of a man marrying up to four wives.

⁷ BBC English Dictionary, (Harper Collins Publishers London, 1992) 888.

⁸ Rahmin T. Husain, Arifuddin Ahmad, Siti Aisyah Kara and Zulfahmi Alwi, 'Polygamy in the perspective of Hadith: Justice and Equality among wives in a Polygamy Practice' (2019) Vol. 23, No. 1, Madania 96.

⁹ Lemu A.B and Heeren F., *Women in Islam*, Glasgow Ltd, London, 1978, 27. From the age of twenty-five when the Prophet (s.a.w) married khadija until he was fifty when she died, he remained a monogamist. It is submitted by some authors that monogamy is regarded as a norm and polygamy as an exception. Interestingly Islam does not permit mistresses but allow a man to take more than one wife to a limit of four and still bear the legal responsibility of taking care of them and their children. This is not the case for a mistress where the man does not have the legal responsibility for taking care of the mistress.

¹⁰ Abu Saif, A.A, *The Choice of Every Woman*, Darus Salam, Riyadh, 2004, 135, Al-Gharyani, A.A. *Mudawwanatu al-Fiqhu al-Maliki wa Adillatuhu* (Dar Ibn Hazm, Beirut, 2015) Vol. III, Pp.213-217.

The basis for polygamy is provided by the Qur'an;

If you fear that you shall not be able to deal justly with the orphans marry women of your choice, two or three or four, but if u fear that you shall not be able to deal justly (with them) then only one...that will be more suitable to prevent you from doing injustice.¹¹

There are so many arguments and views on the position of marrying more than one wife at a time. This paper argues that the understanding of the existing wife/wives is important in marrying a subsequent wife so that the whole family may live in harmony. However, the existing wife/wives should not deny their husband the privilege of marrying second/third wife provided, the husband has satisfied the requirements of *Shari'ah* in doing so. Denying the husband venturing into polygamy may result into social and moral problems.¹²

Commenting on Qur'an 4:3, Shaikh Abdul Rahman al-Sa'adi(may Allah have mercy on him) said:

...the one who wants to take two or three or four wives may do so, but no more than that, because the context of the verse reminds people of the blessings of Allah, so it is not permissible to add anything to the number that Allah has defined, according to scholarly consensus. That is because a man's desire may not be fulfilled by one wife, so it is permitted for him to take more, up to four, because four is sufficient for anyone, except in rare cases. However, that is only permitted to him if he is confident that he will not be unfair and unjust, and that he will be able to give them their rights...¹³

¹¹ Qur'an 4:3. See also Shah N.N.B., *Marriage and Divorce under Islamic Law*, International Law Book Services, Kuala Lumpur, 2001, 33-134. There are many misconceptions among the Muslims regarding polygamy in Islam. Polygamy is actually not a male right granted in Islam. In the contrary, polygamy was a pre-existing institution in the age of Ignorance which the Qur'an drastically reform by introducing limitations and conditions before it may be allowed in a restricted form under certain circumstances, as provided in the above verse. It should always be remembered that suratu al-Nisa 4:3 was revealed after the tragedy of the battle of Uhud in which many Muslims men were killed leaving behind many war widows and war orphans. Even in that situation, the Qur'an discontinued the then existing practice of unlimited polygamy and commands monogamy if there is fear of injustice on the wife.

¹² Al-Gharyani, A.A. *Mudawwanatu al-Fiqhu al-Maliki wa Adillatuhu* (Dar Ibn Hazm, Beirut, 2015) Vol. III, Pp.214-215.

¹³ *Tafseer al-Sa'di* (p. 163).

The verse stipulates that limiting to one wife applies where a person fears that he may be unjust or unfair and may fail to do what is required. It was narrated from Abu Hurayrah (RA), that the Prophet (SAW) said:

Whoever has two wives and favours one of them over the other, will come on the day of Resurrection with one of his sides leaning.¹⁴

In ensuring that justice is done between co-wives, the Prophet (SAW) used to draw lots if he wants to travel with a one wife and he will take the one whose name is drawn.¹⁵ Flowing from these provisions, Ibn Hazm views that, it is not it is not permissible on a husband to choose one of his wives to travel with him except by drawing lots.¹⁶

The practice of polygamy varies from country to country. In Nigeria, there are no existing codified legal framework that regulates the practice of polygamy. The practice is that every eligible Muslim who can afford to take more than one can wife do so without restriction. However, a look at some other jurisdictions may point some light on the conditions placed before polygamy can take place. In Indonesia, the provisions regarding polygamy declares that the main condition before a husband may be permitted to practice polygamy is that the husband should be capable of being just to his wives and children.¹⁷ Such permission is given if the existing wife is incurably sick or infertile and the husband can financially take care of the family. In Iraq and Syria, the judge plays a role in giving permission for polygamy. In the two jurisdictions, subsequent marriage by a husband is allowed only by permission of the judge who often refuse same unless he is sure that the husband is financially capable and that there is a legitimate interest. The judge can forbid polygamy unless there is a legitimate justification for the husband to marry another wife.¹⁸ Sayyid Ahmad Khan and Mumtaz Ali also regarded polygamy merely as a tolerated institution in the past that should in present day circumstances give way to monogamy.¹⁹

The Sunnah of the Prophet (SAW) indicate that the man must divide his time, night and day, among his wives and must divide it equally, and that he is not allowed to be unfair in that.²⁰ However,

¹⁴Sunan Abi Dawud: 2133.

¹⁵Sahih al-Bukhari: 2454.

¹⁶Al-Muhalla: 9/212.

¹⁷Shah N.N.B., 38.

¹⁸Ibid.

¹⁹Shah N.N.B., 39.

²⁰Al-Umm: 5/110.

looking at the current realities, another verse provides that it is impossible to fulfill the condition regarding justice among wives in a polygamous home. The Quran provides:

You will never be able to do perfect justice between wives even if it is your ardent desire., so do not incline too much (to one of them) by giving her more of your time and provision) so as to leave (the other) hanging (ie neither divorced nor kept in the marriage). And if you amend (your affairs) and fear Allah, then indeed, Allah is ever forgiving and merciful.²¹

The above verse according to some commentators refers to fairness which the husband has no control over them like love, intimacy, desire and affection, but even on that, he should not display his manifest behavior, portraying that he loves one wife and hates.²² As-Sa'di comments that the verse means that husbands are not capable of complete justice between women, because justice requires the presence of equal love and equal inclination in the heart towards them, and this is impossible and that is why Allah pardons what is impossible and forbade what was possible by saying do not incline so much that you do not fulfil their due rights but rather do what is within your power in justice.²³ It is further understood from the wordings of the Prophet (SAW) when he used to say:

Oh Allah, this is my ability in what I possess, so do not blame me for what You possess and I do not possess.²⁴

Thus, this should not amount to foreclosing the rights of the husband to marry more than one when he may have the justification of doing so. Unless the anticipated or the inflicted injustice is clear and the husband is malicious in so doing. It is therefore submitted that, practicing polygamy should be done with reasonable conditions that will check mate the excesses of husbands and providing succor to wives. Al-Quran is categorically clear on the inability of a husband to absolutely do justice to his wives in a polygamous home even if he desires to do so. The Quran provides:

What is important for the husband in practicing polygamy is good reason, equal treatment of wives and maintaining them irrespective of their status.

²¹Al-Quran 4:129

²²Abubakar Ismaila Shika, Abubakar Sabo Yusha'u and Mustapha Isa Qasim, 'Analysis of the Legality of the Institution of Polygamy in Islamic Law' (2020) 8 UMYUK, 77, 78. See also the commentary of Qur'an 4: 129 by Ibn Kathir.

²³ Muhammad Nasir as-Sa'di, *Taysir Kareem ar-Rahman* (Mu'assasah ar-Risala, n.d) 207.

²⁴ Imam al-Hafiz Ibn Hajar al-Asqalani, *Bulugh al-Maram min Adillah al-Ahkam* (al-Maktabah al-Asriyya, 2012) 214.

2.1 Right to Maintenance of Wife by the Husband

Islam is categorical on the responsibility of the husband to maintain his wives. The *Shari'ah* has placed it obligatory upon every husband to provide maintenance to his wives whether they are rich or poor and even if he is poor.²⁵ There are many verses in the Qur'an relating to maintenance. For instance, the Qur'an provides: "Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore, the righteous are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard..."²⁶ Maintenance include the responsibility of feeding, clothing and medication of a wife by her husband. This responsibility is not a moral but a legal obligation.²⁷ A husband is therefore under an obligation to maintain his wife irrespective of her financial status. The later part of the verse is to the effect that Allah has made man responsible for the care of his wife with kindness and tolerance. One of the arguments put forward is that a man is less emotional and more conscious of his responsibilities than a woman and as such he must be up and doing in discharging that responsibility. Allah orders the husband to treat his wife nicely and in a friendly way.²⁸ In this issue Allah says: "And live with them in a friendly way..."²⁹ It can be understood that the issue of maintenance is the responsibility of the husband. However, it is to be noted that men and women are helpers of each other. The Holy Quran provides: "And male and female believers should take one another as helpers; they should enjoin what is right and forbid what is wrong."³⁰

Fairness in accommodation should also be observed. This is to the extent that each of the co-wives should have her own accommodation, and their accommodation should not vary with the intention of favouring one over the other. Ibn Qudamah said:

The man does not have the right to make his two wives live together in one house without their consent, whether they are young or old, because that causes them harm due to the enmity and jealousy that exists between them, so making them live together provokes arguments and fighting, and each of them can hear sounds when he is intimate with the

²⁵Zidan, A K., *Al Mufasssil fi Ahkamil Mar'ah wal baitil Muslim fisshar'iiyyatil Islamiyya*, Mu'assatu Al Risala (1997) 7, 424.

²⁶Al-Qur'an 4:34.

²⁷Lemu A.B and Heeren F., *Women in Islam*, Glasgow Ltd, London, 1978, 18.

²⁸Al Asfar, M.M., *Woman's Role in Social Life according to the Injunctions of the Sharia*, Darul Mnarah, Egypt, 2012, 31.

²⁹Qur'an 4:19.

³⁰Qur'an 9:71.

other, or she can see that. But if they agree to that then it is permissible, because they have that right but they are also allowed to forego it.³¹

This also applies to a working class wife as well as a full time house wife.

In a tradition, it was reported that during the Farewell Pilgrimage, the addresses and speeches of the Prophet (SAW) sum up the teaching of Islam, and with regard to women, the Prophet (SAW) is reported to have said to the effect that:

Fear Allah concerning women! Verily you have taken them on the security of Allah, and intercourse with them has been made lawful by the words of Allah. You too have right over them and they should not allow anyone to sit on your bed whom you do not like. But if they do that, you can chastise them but not severely. Their rights upon you are that you should provide them with food and clothing in a fitting manner. I have left among you the Book of Allah, and if you hold fast to it, you would never go astray.³²

From the above, it can be understood that marital rights are reciprocal obligation. But maintenance is the duty of a husband and a right of the wife.

Taking a look at Malaysia for instance, it is well established by the statutory provision of the Islamic Family Law (Federal Territories) Act, 1984 which provides that the court may ... order a man to pay maintenance to his wife.³³ However, there is exception to this provision if it is confirmed by the court that a wife is unreasonably disobedient to her husband, she shall not be entitled to maintenance. For instance, if she deserts her husband or leaves him against his will or she refuses to move with him to another home or place, without any valid reason.³⁴

2.2 Division and Allocation of Time between the Co-Wives (*Al-Qismah*)

Al-qisma has been defined by different jurists in different ways. According to Maliki and Shafi'i, *Al-qisma* means giving equal rights by the husband to his co-wives.³⁵ Hambali sees it as the distribution of time by the husband to his co-wives.³⁶ This definition of Hambali goes with the theme of this topic and hence, adopted. The Jurists agree that the division and allocation of nights on equal basis is a right of each co-wife. This is premised on the provision of Qur'an 4:29 which

³¹Ibn Qudama, *Al-Mughni*, 7/229.

³²Sahih Muslim Kitab al-Hajj, Vol. II, Hadith 2803.

³³Section 59 (1) of the Islamic Family Law (Federal Territories) Act, 1984.

³⁴Section 59 (2) of the Islamic Family Law (Federal Territories) Act, 1984.

³⁵Muhammad Arsalan Muhammad, *Islamic Marriage: Rights and obligations* (JTC prints) 82.

³⁶*Ibid*.

states: "...but turn not away (from a wife) altogether, so as to leave her (as it were) hanging..."³⁷ This means that it is unfair for the husband to incline totally to one wife leaving the other co-wife. Aishah (may Allah be pleased with her) said:

Allah's Messenger (SAW) would divide his visits to his wives equally and say: "O Allah, this is my division concerning what I possess, so do not blame me concerning what You possess and not me."³⁸

This hadith indicates that the Messenger of Allah would divide his time between his wives in fairness, and in that he would not give preference to one over another. It was known that he loved some of them more than others. He loved Aishah more than the others. Yet he would still not give her more than her allotted division of time.

The hadith further highlights the fact that the man had no possession over the actions of his heart. In other words, love and affection are in the heart and human being does not have control over his heart, it is in the will of Allah. It is therefore, very difficult to have equal love for the wives. So the hearts are in the control of Allah and He is the turner and controller of the hearts and no one else. For this reason, Allah said:

He it is Who has supported you with His Help and with the believers. And He has united their (i.e. believers') hearts. If you had spent all that is in the earth, you could not have united their hearts, but Allah has united them. Certainly He is All-Mighty, All-Wise.³⁹

In ensuring fairness in the division of time between co-wives, Anas (RA) said:

It is from the Sunnah that when a man who already has a wife marries a virgin, he should spend with her seven nights, and thereafter divide the time between them equally. And if he marries a formerly married woman, he should spend with her three nights and thereafter divide his time equally between his wives.⁴⁰

The above hadith shows that if a man marries a new woman whilst he is already married to a woman or women, Allah has placed limits on the time he will stay with the new wife to avoid inclining to the new wife and leaving the other wives. So, if he marries a virgin, he remains with her seven nights so that he (and her) may find enjoyment and happiness. And because the virgin is a stranger to marriage and she has left her family so she needs company, friendliness and

³⁷Qur'an 4:29.

³⁸Sunan Abi Dawud: 2134.

³⁹Qur'an 8:62-63.

⁴⁰Sahih Al-Bukhari: 5214.

comforting. So in this there is a benefit for the husband and the wife. Then he divides his time among the rest of his wives after the seven nights. The new wife becomes like the rest of his wives and thus receives her share.

If he marries a maiden (a formerly married woman i.e one who was previously married to another man and had intimate sexual relations with him), he spends three continuous nights with her upon marriage. Thereafter, he divides his time equally among all his wives. This is because she is familiar with marriage and such three nights suffice her. This is the justice that Islam has come with so that the husband does not show bias against the rest of his wives by abandoning them for a lengthy period when taking on a new wife, as that will cause injustice.

3.0 Right to Work by a Wife and Equal Treatment of co-wives by their Husband

In Islam, a married woman is under no obligation to spend on things such as housing, food, and general expenses; this role is up to the male (husband, brother, father, etc.). A woman has the right to spend and earn money as she wishes but she has no obligation to share that money with her husband unless she chooses to do so. When a woman gets married, she has the right to a dowry from her husband; this belongs to her alone and cannot be given to or shared with anyone else. In the case of divorce, she is allowed to keep all that she owned before and all that she attained during the marriage; this ensures her financial security to support herself after the split.⁴¹

A Muslim woman is allowed to involve herself in economic activities following some rules. The women who are highly talented and have the opportunity to acquire higher degree can render services for the betterment of the society, particularly in the teaching profession. But here too, a strict Islamic code of conduct has to be observed in the classroom. As for medical profession, women doctors are badly needed in the field of gynecology and obstetrics. Usually women feel shy and even forbidden by Islam from consulting male doctor as per as possible in their ante-natal and post-natal treatment but if it is a question of life and death then in special circumstances it is permitted. In Islam women are encouraged in medical profession. Women can involve in welfare institutions of the society. With her Allah-given touch of loving and affection she can handle juvenile delinquents, drop-outs from schools frustrated youths. Even she has right to work in a factory if it is run by women.

⁴¹ Patoari, M. H., 'The Rights of Women in Islam and Some Misconceptions: An Analysis from Bangladesh Perspective' (2019) 10 Beijing Law Review 1211-1224 available at <<https://doi.org/10.4236/blr.2019.105065>> accessed 8 February 2024.

Woman is not forbidden to go out of her home for necessity. In the time of the Prophet (SAW), women went out to the market or their farms. Earning a living is one of the main sources of sustenance and is encouraged for both women and men. The Qur'an demonstrates:

*To men is allotted what they earn, and to women what they earn.*⁴²

Some authors⁴³ rely on the above verse to uphold the right of women to earn money turning away from the traditional interpretation of this verse that it was meant for religious equality. Others interpreted in the sense that it is related to man and woman's good worth.⁴⁴ Women can do any lawful job to earn money, being within or beyond the four walls, without violating the prescribed *purdah* system in Islam. In the period of Prophet (SAW) some women took some jobs.⁴⁵

The prophet (SAW) did not stop a woman in her *iddah* from going out of her house in case of necessity. Jabir Ibn Abdullah (RA) says the husband of my aunt divorced her and when she was spending her *iddah* in the house she wanted to go outside of the house to get some of her date palms harvested and sold. Someone halted her, saying that you are not allowed to go out of the house during *iddah*. She went to the Prophet (SAW) to ask whether she could go outside of the house or not and the Prophet (SAW) said, "*You go out and get the date trees harvested (and sold) so that you may be able to do some other good work.*" (Abu Dawud).

An important element here is that women and men are entitled to the fruit of their work, and hence should be entitled to the means of earning a living while taking care of their responsibilities at home. One of such means is the right to access, manage and control assets. Hence Islam granted both women and men the right to access property, and to enjoy financial autonomy in the management of their Source of income.⁴⁶ Khadijatul Kubra is the best example in this regard as

⁴² Qur'an 4:32.

⁴³ Ali Shaheen Sardar, 'Gender and Human Rights in Islam and International Law, Equal before Allah Unequal before man?' (1999) Kluwer Law International, Netherlands 46.

⁴⁴ Hussain Aftab, *Status of Women in Islam* (Law Publishing Company, Lahore, Pakistan 1987) 240.

⁴⁵ Ibid, examples are tanning skin and thread beads to sell.

⁴⁶ Hiam Salah EI-din Ali EI-gousi, 'Women's Rights in Islam and Contemporary Ulama: Limitations and Constraints (Egypt as Case Study)' (Thesis Submitted in accordance with the requirements for the degree of Doctor of Philosophy, The University of Leeds School of Modern Languages and Cultures November 2010) 46.

she was a wealthy merchant. Muslim scholars such as Abu-Hanifa and Al-Tabari have no objection regarding women's right employment.⁴⁷

Kind treatment of a wife by her husband is also a marital right of a wife. It is not important whether the wife is rich or poor.⁴⁸ Allah says:

But consort with them in kindness, for if you hate them it may happen that you hate a thing wherein God has placed much good.⁴⁹

After restricting the number of wives to four, Islamic law has tied it up with the condition of justice and equality for all the wives. Justice is interpreted as impartial, fair, siding with the right, adhering to the truth, and not arbitrarily.⁵⁰ Thus, it contains the meaning of equality and the absence of discrimination in any form. Allah has forbidden injustice and wrong doing to his slaves and a strong warning and punishment was provided to those who are unjust. The Qur'an provides that Allah commands justice and the doing of good.⁵¹

In similar vein, it was narrated from Abu Dharr (RA) that the Prophet (SAW) said, narrating from Allah(SWT):

O My slaves, I have forbidden injustice to myself and I have made it forbidden among you, so do not wrong one another.⁵²

One of the objectives of Sharia is to bring justice to human life. Therefore, the above authorities have clearly indicated that injustice is generally forbidden. This encompasses every form of wrong doing on everything or persons either Muslims or non-Muslims, human or animal, husband and wife/wives, etc. The provisions suffice to say that a husband who has more than one wife is forbidden to treat all or one of them unfairly. Fairness here includes, spending the night,

⁴⁷ Sayeeda Anju, 'Informative Discussion on Women's Rights ensured in CEDAW and Islamic Law' (n. d) available at: <<https://ssrn.com/abstract=2995540>> accessed 8 Feb, 2024.

⁴⁸Gurin, A.H, An Introduction to Islamic Family Law, 2nd edn., Malthouse press Limited, Zaria 2014, 111.

⁴⁹ Ibid.

⁵⁰ Rahmin T. Husain, Arifuddin Ahmad, Siti Aisyah Kara and Zulfahmi Alwi, 'Polygamy in the perspective of Hadith: Justice and Equality among wives in a Polygamy Practice' (2019) Vol. 23, No. 1, Madania.

⁵¹ Qur'an 16:19.

⁵² Narrated by Muslim in Hadith No. 2577.

accommodation, spending, clothing, and everything that he is capable of, whether they are all house wives, working class or a combination.

Reiterating justice as a condition for polygamy, the Qur'anic provision which legalises polygamy is instructive.⁵³ The provision of Qur'an 4:3 on the legality of polygamy does not mean that Muslims are compelled to have more than one wife nor does it impose polygamy as a universal practice. One is expected to regard monogamy as the norm and polygamy as the exception in case of genuine need with the condition of justice and equality attached.⁵⁴ The husband must try his very best to treat his wives equally only on those things which he has control like feeding, clothing, lodging and division of time amongs others. While explaining Qur'an 4:3, Al Dahhak and others in the commentary of the Holy Qur'an by Qurtuby are of the view that justice required in the verse is for the husband not to incline to sexual relationship, feeding/clothing and division of days among the wives at the expense of others.⁵⁵ If a person is proved to be incapable of doing justice on these issues, then he should marry only one wife.

Commenting on Qur'an 4:3, Abdul Rahman al-Sa'di (may Allah have mercy on him) said:

...the one who wants to take two or three or four wives may do so, but no more than that, because the context of the verse reminds people of the blessings of Allah, so it is not permissible to add anything to the number that Allah has defined, according to scholarly consensus. That is because a man's desire may not be fulfilled by one wife, so it is permitted for him to take more, up to four, because four is sufficient for anyone, except in rare cases. However, that is only permitted to him if he is confident that he will not be unfair and unjust, and that he will be able to give them their rights...⁵⁶

Similarly, It was narrated from Abu Hurairah (may Allah be pleased with him) that the Prophet (SAW) said:

⁵³Qur'an 4:3.

⁵⁴Haroun M.A., *Sexual Issues in Modern Era and its Solution in Islam* (New Delhi, Adams Publishers and Distributors 2006).

⁵⁵Muhammad ibn Ahmad Qurtubi, *Tafsir al-Qurtubi: al-jami li-ahkam al-Quran* (Dar wa-Matabi al-Shab).

⁵⁶ Tafseer al-Sa'di (p. 163).

*Whoever has two wives and favours one of them over the other, will come on the Day of Resurrection with one of his sides leaning.*⁵⁷

Al-Teebi said in his commentary on the words “with one of his sides leaning”, it means tilting. And it was said that this will be in such a way that all the people on the Day of Resurrection will see him, so this will increase his punishment.⁵⁸

According to Muhammad Yusuf Qardlawi, the word “inclined” means to underestimate the rights of his wife.⁵⁹ A man who has two or more wives must treat his wives equally. In this case, the equality of rights is crucial. These rights include the fulfilment of the wife’s primary and secondary needs in the form of food, clothing, shelter, health insurance and others.⁶⁰ Wife’s rights must be given equally and proportionally as the rights and obligations of husband and wife are not only a necessity but a need to achieve harmony in the household.

Because of human nature and human frailty, Allah enjoins husband to treat his wives with some minimum degree of equality as He prohibits preferential treatment of a wife over another. In Suratu al-Nisa, Allah said;

You will never be able to do perfect justice between wives even if it is your ardent desire., so do not incline too much (to one of them) by giving her more of your time and provision) so as to leave (the other) hanging (ie neither divorced nor married). And if you do justice and do all that is right and fear Allah (by keeping away from all that is wrong), the Allah is Ever Oft-forgiving Most Merciful.⁶¹

Some Jurists opine that the above verse refers to things which the husband has no control over like love and affection, but even on that, he should not display his manifest behavior, portraying that he loves one wife and hates the other one.⁶²

On his part, Ubaidah al-Salmani said concerning love and intercourse:

If you are able to treat them equally with regard to intercourse that is better, because it is more fair and just... But it is not obligatory to treat them equally with regard to intimacy

⁵⁷Narrated by al-Tirmidhi (1141), Abu Dawud (2133), al-Nasa’i (3942) and Ibn Majaah (1969).

⁵⁸See Tuhfat al-Ahwadhi (4/248).

⁵⁹Rahmin T. Husain, Arifuddin Ahmad, Siti Aisyah Kara and Zulfahmi Alwi, 'Polygamy in the perspective of Hadith: Justice and Equality among wives in a Polygamy Practice' (2019) Vol. 23, No. 1, Madania 96.

⁶⁰Ibid.

⁶¹Qur’an 4:129.

⁶²Abubakar Ismaila Shika, Abubakar Sabo Yusha’u and Mustapha Isa Qasim, 'Analysis of the Legality of the Institution of Polygamy in Islamic Law' (2020) 8 UMYUK, 77, 78.

that is less than intercourse, kissing, touching, etc, because if it is not essential to treat them equally with regard to intercourse, then that applies even more to the things that lead to it.⁶³

On his part, Al-Hafiz Ibn Hajar said:

If he gives each of them her rights with regard to clothing, spending and spending time with them, then it does not matter if his heart is inclined more towards one or if he gives one a gift...⁶⁴

The question is what happens to a working-class wife? How can she be treated by her husband? A woman generally has the right to work and practice a profession that suits her to earn money such as teaching, medical practice, trading, dressmaking etc. To do so it is an obligation of the woman to obtain the consent of her husband before engaging in any such businesses or work.⁶⁵ This is because, a husband is fully responsible for the maintenance of his wife, children and in some cases of his needy relatives, especially females. This responsibility is neither waived nor reduced because of his wife's wealth or because of her access to personal income from work, profit, rent or any other legal means.⁶⁶ This means women have greater latitude of financial security. Since a woman is not prohibited from seeking employment whenever there is necessity for it,⁶⁷ her possession before, during and after marriage such as dowry, maintenance allowance, personal income from work and alimony are exclusively for her to the exclusion of her husband. Nowadays, because of the economic hardship of some families especially in Nigeria, women are forced to go out and take jobs to supplement the earnings of her husband.⁶⁸ However, a husband cannot capitalize on such income for his benefit or use same to show discrimination among his wives either in favor or to the detriment of the working wife.

However, it should be noted that there is a corresponding obligation on the part of a wife to reasonably assist and take care of her husband. Moral, religious and human motivations can drive a wife to share household expenses with her husband which brings her a great reward.⁶⁹ Supporting a husband attract great reward. For instance, the Prophet (SAW) was supported by his wife

⁶³Al-Mughni, 7/234, 235.

⁶⁴Fath al-Baari, 9/391.

⁶⁵Al Asfar, M.M., Op.cit, 41.

⁶⁶Ibid, 23.

⁶⁷Cited by Badawi, J.A., Woman Under the Shade of Islam, WAMY Organization of Islamic Conference, Jiddah 1998, 22. See also Badamasiuy, J., Status and Role of Women under the Shari'ah, Ahmadu Bello University Press Limited, Zaria, 2012, 39.

⁶⁸Badamasiuy, J., Ibid, 66.

⁶⁹Al Asfar, M.M., 40.

Khadijah, the mother of the faithful who was one of the first person to embrace Islam. Such moral and financial support was offered to her husband prior and after their marriage. This made her an excellent example for all women. It must be noted that such support was rendered out of love, compassion as well as good and exemplary qualities of the Prophet (SAW) towards Khadijah as his master and later as a wife. This is a lesson for both husband and wife to display good qualities to each other. It is advised that husband should be nice and good while a wife should reciprocate same by extending a hand of financial and moral support to her husband. This will promote more affinity, affection and mutual happiness.

When a woman earns money through any legal means, she has the freedom to handle the money as she so desires.⁷⁰ She can as well support her husband and family. This is a bar to the husband to rely on his wife for maintenance. Some husbands rely on their working wives to take care of their wives and children. Others give priority to their non-working wife while others give preferential treatment to the working wife because of her financial status.⁷¹

According to some sources, some husbands treat their wives who are not working with less concern and the working-class house wife is treated with preference. Such imbalance may be because, the working class wife supports the husband financially.⁷² In some instances, the full-time house wife is maltreated and denied some privileges because she is not working. On the other hand, the husband shifts responsibilities, such as school fess, to the working-class wife. This leads to inequality in the treatment of the children too. Sometimes the inequality is invoked on the children by enrolling them in different schools because of the unequal treatment of the wives by the husband. Unfortunately, some husbands marry other wives for material purpose and to get financial support.

A husband who has more than one wife is enjoined to observe equality, justice, and fairness among his wives in the amount, type, and quality of treatment he gives, as well as the manner he treats them except that which is beyond human capacity.⁷³ It is the duty of polygamous husband to behave comparably in all events, even if his wives are different in age, employment, education, beauty,

⁷⁰Ibid. 54.

⁷¹Zainab Godobe, interviewed at Bauchi on 16 November, 2019.

⁷²Bar. Rufai, 1 legal practitioner interviewed at Bauchi on 16 November, 2019.

⁷³Such as love and affection provided it is not physically displayed as to ruin the other co wife as argued by some Jurists based on the provision of Qur'an 4:129.

character, social status, and other virtues and perfections. This is premise on the fact that Allah commands justice and the doing of good.⁷⁴ While mandating justice and the doing of good, Islam obliges everyone to adhere to it.

4.0 Conclusion and Recommendations

The practice of polygamy varies from country to country. In Nigeria, there is no stipulated conditions in the form of legislation that guides the practice of polygamy. Husbands are polygamous for various reasons. While others treat their wives equally whether they are working or not, others give preference to either the working-class wife or the one who is not working. Polygamy is lawful and should not be practiced as a means of oppression and injustice. Polygamy is not a sacred institution created or encouraged by Islam but a moderated institution based on the principle of fairness and justice. Polygamy is justified if there is balanced treatment of co-wives by the husband irrespective of their financial status. A wife may be given financial support by the husband to serve as a guarantee to her economic security. This article then calls for intending polygamous men of the recent days to consider the concept of justice first rather than lust and other interests.

Finally, conferences, seminars and lectures should be organised by jurists and community stakeholders at all levels in order to create awareness and enlighten spouses on the importance of justice and equality and the consequences of being an impartial husband to a co-wife.

⁷⁴Qur'an 16:90.