

Immigration and Refugee Board of Canada

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Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website.

18 December 2013

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Pakistan: Practice of polygamy, including legislation; rights of the first wife versus the second, including whether she has the right to refuse a second wife (2011-2013)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Prevalence of Polygamy

Sources indicate that there are no statistics on the prevalence of polygamy in Pakistan (Professor of Law 8 Dec. 2013; Gender Studies Consultant 11 Dec. 2013). In correspondence with the Research Directorate, a professor of Law at the Warwick Law School, indicated that polygamy is not widely prevalent (Professor of Law 8 Dec. 2013). According to the Professor of Law, polygamy "though accepted as part of a religious and cultural tradition, is not approved of and the second wife is not normally welcomed into the family" (*ibid.*). In correspondence with the Research Directorate, a Gender Studies Consultant in New York and Pakistan, indicated that, in her view, "socially and culturally polygamy is not liked by common people," although it exists in some segments of Pakistani society (11 Dec. 2013).

In contrast, in correspondence with the Research Directorate, the Manager of Advocacy at Shirkat Gah, a multifaceted Pakistani women's rights organization (n.d.), said that "polygyny" [the practice of a man having more than one wife (Oxford n.d.)] is "common" (11 Dec. 2013). Also in correspondence with the Research Directorate, the Secretary-General of the Women Employees Welfare Association (WEWA), a Pakistani women's rights organization that provides, among other services, legal assistance and counselling to women, indicated that polygamy can be found among families in Pakistan (11 Dec. 2013).

In correspondence with the Research Directorate, a representative of the Human Rights Commission of Pakistan (HRCP), indicated that polygamy in Pakistan is "rare," outside of feudalists, particularly in Sindh and Southern Punjab, and religious extremists (HRCP 12 Dec. 2013). According to the Gender Studies Consultant, it is common among feudalists and affluent land holders who can conveniently afford to keep and maintain more than one wife and multiple children. Again, it is present among the urban elite too. Urban middle class men face economic constraints and social resistance for second/third marriage. It does not mean that it is totally absent here, but the number of polygamous marriages is very low. The lower class, whether urban or rural, also face economic constraints for getting married a second time. (11 Dec. 2013)

NorthJersey.com, a US-based news site, reports that polygamy in Pakistan is "clustered among the elite and the very poor" and states that "women in poorer, rural areas, which tend to be more conservative, may have no choice" (15 Feb. 2013). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. An article by the Islamabad-based non-profit research organization (IPS n.d.), Institute of Policy Studies (IPS), in its publication *Policy Perspectives*, indicates that polygamy is a "rare phenomenon" in urban areas (29 June 2013). According to the Manager at Shirkat Gah, "polygyny" is "mostly in rural areas" but is also in urban areas (11 Dec. 2013).

The Professor of Law indicated that women attempt to get a high mahr [also meher], which is a marriage gift from the husband to the wife, to "inhibit a man from taking another wife" (8 Dec. 2013).

The Professor of Law at Warwick University indicated that there are several reasons that polygamy is practiced, including the inability of a wife to conceive children, or because the husband fallen in love with another woman (8 Dec. 2013). According to an article by Ihsan Yilmaz in the *Journal of Research Society in Pakistan*, [a]rranged marriages have a crucial impact on the institution of polygamy. It is customary to marry the boy of the family at a fairly young age to a girl cousin to keep the property within the family. Often such marriages prove unsuitable when the boy attains manhood. He, then, takes a second wife. Or when men attain wealth or position they seek younger and sociable wives. Thus, the picture one gains is that "the boys often keep two wives, first, 'the traditional' wife, chosen by his parents, and the other 'the modern' [one], of his own choice." Especially, rich people "resort to polygamy, justifying it either by the first wife's failure to produce a male child or in order to have a love-match." Evidently, in the last case, a subsequent marriage is a device to avoid charges of zina [extra-marital sex (*The Express Tribune* 11 Apr. 2011)]. (Yilmaz 30 Dec. 2011)

The IPS article indicates that the reason that polygamy is practiced is "generally socio-cultural and not sexual" (29 June 2013).

2. Legislation

The *Muslim Family Laws Ordinance, 1961* (MFLO), "extends to [the] whole of Pakistan, and applies to all Muslim citizens of Pakistan, wherever they may be" (Pakistan 1961a). Article 6 of the MFLO states:

1. No man, during the subsistence of an existing marriage, shall except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.
2. An application for permission under Sub-section (1) shall be submitted to the Chairman in the prescribed manner together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto.
3. On receipt of the application under Sub-section (3), Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such condition if any, as may be deemed fit, the permission applied for.
4. In deciding the application the Arbitration Council shall record its reasons for the decision and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, to the Collector concerned and his decision shall be final and shall not be called in question in any Court.
5. Any man who contracts another marriage without the permission of the Arbitration Council shall,
 - a. pay immediately the entire amount of the dower whether prompt orred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and
 - b. on conviction upon complaint be punishable with the simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both. (Pakistan 1961a, Art. 6)

According to Article 14 of the West Pakistan Rules Under Muslim Family Laws Ordinance, 1961,

[i]n considering whether another proposed marriage is just and necessary during the continuance of an existing marriage the Arbitration Council any, without prejudice to its general powers to consider what is just and necessary, have regard to such circumstances, as the following amongst others: Sterility, physical infirmity, physical unfitness for the conjugal relation, willful avoidance of a decree for restitution of conjugal rights, or insanity on the part of an existing wife. (Pakistan 1961b, Art. 14)

In a book titled *The Islamization of the Law in Pakistan*, Rubya Mehdi indicates that a marriage that takes place without permission from the Arbitration Council "is not invalid, but it is denied official registration, which means that any grievance arising from such a marriage would be denied judicial relief" (2013, 164). Yilmaz similarly indicates that "non-registration of a marriage does not make the marriage invalid or unlawful in the eyes of the official law ..." (Yilmaz 30 Dec. 2011). He adds that "many marriages in Pakistan are still not registered" (ibid.).

Sources indicate that subsequent marriages that have not received permission from the Arbitration Council are still valid (Professor of Law 8 Dec. 2013; Yilmaz 30 Dec. 2011). According to Yilmaz, the MFLO

does not specifically lay down that a marriage during the subsistence of an existing marriage, without the permission of the council is illegal, void or voidable. In that regard the fact that subsequent marriages contracted in contravention of section 6 of the MFLO remain valid that makes the official law less effective against arbitrary and unjustified polygamy. (Yilmaz 30 Dec. 2011)

Yilmaz added that some people marry more than one woman without any official permission (*ibid.*). The Manager of Advocacy at Shirkat Gah indicated that if a man marries a second woman without permission from the Arbitration Council, his first wife can divorce him and get her mahr back (11 Dec. 2013).

The Gender Studies Consultant stated that "Arbitration Councils exist only on paper and men do not go to the Council when they decide to take a second or third wife" (12 Dec. 2013). The Professor of Law at Warwick University similarly said that, although the MFLO requires a man to "inform the Chairman of his local government of his intention to re-marry who then constitutes a committee to ascertain the cause of the intention to remarriage and then give permission ... very few cases go through this procedure" (8 Dec. 2013). Yilmaz indicates that "some observers ... describe the provisions requiring the permission of the Arbitration Council as a mere 'formality'" (30 Dec. 2011). The IPS article states that

since personal life in society is generally regulated on the basis of guidance and injunctions of Islam, lack of endorsement of the provisions of the Muslim Family Laws Ordinance, 1961, has resulted in a scenario where this law is still looking for acceptability among the masses and is more often avoided than acted upon. (29 June 2013)

According to Yilmaz, the judiciary is "reluctant to apply the penalties contained in the MFLO (as indicated by the case law)" (Yilmaz 30 Dec. 2011). Yilmaz also states that "sanctions placed are miniscule and have not been an effective deterrent" (*ibid.*). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The HRCP representative indicated that "to a large extent" legislation is only being implemented and is only effective in urban areas (13 Dec. 2013). The Professor of Law at Warwick University indicated that the legislation pertaining to polygamy "is not very effective, although a few cases have been reported regarding this issue" (8 Dec. 2013). According to the Manager of Advocacy at Shirkat Gah, most citizens are unaware of the law, and the law is not being implemented as there are "very few cases" on record (11 Dec. 2013).

3. Rights of the First Wife versus the Second Wife

Article 9(1) of the MFLO states that:

If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband. (Pakistan 1961a, Art. 9)

Several sources indicate that, legally, both the first wife and the second wife have the same rights (Professor of Law 8 Dec. 2013; Shirkat Gah 11 Dec. 2013; WEWA 11 Dec. 2013). For example, the Manager of Advocacy at Shirkat Gah indicated that both wives get an equal share of the inheritance (Shirkat Gah 11 Dec. 2013). However, the Manager of Advocacy at Shirkat Gah also indicated that, in practice, both wives may not have equal rights (*ibid.*). The WEWA Secretary-General indicated that when a husband marries another wife, the existing wife or wives may be "humiliated, tortured, or get less attention" (11 Dec. 2013).

4. Refusing a Second Wife

Several sources indicate that, in practice, a man does not need the approval of his first wife to marry a second wife (Gender Studies Consultant 12 Dec. 2013; HRCP 13 Dec. 2013; Yilmaz 30 Dec. 2011). The Gender Studies Consultant indicated that "a husband can and does marry a second wife without the approval of the first wife" and added that some husbands are open about their second marriages, while others hide it due to "social and economic problems" (12 Dec. 2013). The Professor of Law at Warwick University indicated that, although the MFLO requires a man to obtain permission to marry another wife, "this does not normally happen" (8 Dec. 2013). The WEWA Secretary-General indicated that the Chairman of the Union Council can still permit a husband to marry a second wife, even without the permission of his first wife (11 Dec. 2013). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Several sources indicate that, in practice, a first wife cannot stop her husband from marrying a second wife (Professor of Law 8 Dec. 2013; Gender Studies Consultant 12 Dec. 2013; Shirkat Gah 11 Dec. 2013). The Professor of Law at Warwick University indicated that a wife can refuse to give her husband permission to marry a second wife, and can seek assistance from the court (8 Dec. 2013). However, she added that this "will only lead to her receiving her mahr and a right to divorce, but she cannot prevent the second marriage of her husband going forward" (Professor of Law 8 Dec. 2013). The Manager of Advocacy at Shirkat Gah stated that a first wife can only divorce her husband, because legally a man can have four wives at a time (11 Dec. 2013). The Professor of Law said that "in practice, very few women go to the court or seek support from the law, which is limited" (8 Dec. 2013). The HRCP representative indicated that first wives rarely are able to refuse second wives because of "culture and economic dependence" (HRCP 13 Dec. 2013; *ibid.* 12 Dec. 2013). The WEWA Secretary-General indicated that, if a first wife refuses a second wife, the husband may use violence against her, steal her belongings, or keep her children from her in an attempt to get her to agree to the second wife (11 Dec. 2013). The

HRCP representative indicated that if a first wife refuses a second wife, she "may [be] subject to violence" (13 Dec. 2013).

The Gender Studies Consultant indicated that although the MFLO states the requirement that women must approve of their husbands marrying another wife, the Quran, Sunnah and Sharia law do not mention any such requirement (12 Dec. 2013). Yilmaz, writing in *The Journal of Research Society of Pakistan*, similarly indicates that "[i]n Muslim law, a man is not required to have permission of an existing wife or wives to contract a further marriage" (30 Dec. 2011). The Gender Studies Consultant said that "clergy in Pakistan out rightly reject this clause of the MFLO" (Gender Studies Consultant 12 Dec. 2013). The Consultant of Gender Studies also said that, in the Quran, Hadith and Sharia law, there is no mention of any rights that a first wife has to stop her husband from marrying another wife (ibid.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Oral sources: Attempts to contact the following individuals and organizations were unsuccessful within the time constraints of this Response: All-Pakistan Women's Association; Aurat Publication and Information Service Foundation; Punjab – Women's Development Department; Professor of Islamic Studies, McGill University.

Internet sites, including: Amnesty International; Asian Human Rights Commission; Aurat Publication and Information Service Foundation; *Dawn*; ecoi.net; Factiva; Human Rights Watch; Pakistan – Ministry of Law, Justice and Human Rights, Supreme Court of Pakistan; *Pakistan Today*; Punjab – Women's Development Department; Sindh – Women's Development Department; United Nations – Integrated Regional Information Network, Refworld, UN Women; United States – Department of State; Women Living Under Muslim Laws.

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