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**Is the legislation on polygyny
in the Republic of Kazakhstan
related to family law?**

The article deals with the problems of legalizing polygamy, or uselessness legalization in family law of the Republic of Kazakhstan. In addition, the regulation is considered legal – relationship in polygamous families, as well as the issue of liability sides of the couple.

Key words: family law, marriage, spouse, family law.

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**Қазақстанда көп әйел
алушылық мәселесі
өзекті ма?**

Мақалада Қазақстан Республикасындағы отбасы заңнамасы бойынша көпәйелалушылық мәселесін заңдастыру, не заңдастырмау мәселесі қарастырылады. Оған қоса, көпнекеден туындайтын отбасылық құқық қатынастарды құқықтық реттеу, жұбайлардың жауапкершілік мәселелері қарастырылады.

Түйін сөздер: отбасы құқығы, неке, жұбайлар, отбасылық заңдар.

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**Актуальна ли проблема
многоженства в Казахстане?**

В статье рассматривается проблема узаконивания многоженства или ненужность узаконивание в семейном законодательстве Республики Казахстан. В добавок, рассматривается регулирование правоотношении в многобрачных семьях, а так же проблемы ответственности супругов.

Ключевые слова: семейное право, брак, супруги, семейное законодательство.

IS THE LEGISLATION ON POLYGYNY IN THE REPUBLIC OF KAZAKHSTAN RELATED TO FAMILY LAW?

Although the family legislation of Republic of Kazakhstan has become more complex and the new family code is being used, there are still some important problems which are not being addressed. Like all types of legislation, family legislation also will have changes and additions, even more so because relationships among family members are very important. The new Family Code was discussed by Parliament for a long time because of the problem of the legislation on polygyny.

The new «Marriage and Family Code» was finally adopted on 26 December 2011. This code prohibits polygyny. In Article 11 of the Family Code, it is written that each person can have only one spouse. Additionally marriages are considered invalid according to Article 25 of the code [1]. However, it is hard to say that this ruling will resolve all problems related to polygyny due to the fact that polygyny has been a constant phenomenon since the beginning of humanity. Scientists at the University of Arizona carried out a research project on human genetics in order to find out when polygamy got started. The study took DNA samples of more than 90 representatives of different ethnic groups. In the end, it was proved that people have more X chromosomes than Y chromosomes. Thus, humanity is nearer to polygamy than to monogamy. Thus, the problem of polygyny is not only a problem of the past, it is also a problem of the present [2].

Polygyny is often associated with Islamic countries; however, if we look at the history of polygyny, we can see that it came to Asia from Europe. For example, the European king Solomon had 700 wives and 300 female slaves. Many other kings had more than 300 wives[3].

In the literal translation from the Greek, the term «polygamy» has a broader meaning than its modern usage. It means «multi-marriage», and thus can be applied either to a woman who has more than one husband or to a man who has more than one wife. This phenomenon of having more than one spouse as seen as «polygyny». Brockhaus and Efron, on the other hand, clearly define the term polygamy as the phenomenon of having several wives, apparently due to the reason that the phenomenon of having more than one husband – «polyandry» – is today extremely rare.

In general, the term used in Greek to describe the concept of multiple marriages is «polygamy». More specifically, having many

wives is called “polygyny”, and having many husbands is “polyandry”. Polyandry was widespread among 19th-century Aleuts and Eskimos. Nowadays, it is still practiced in some ethnic groups of North India and Tibet. Polygyny, on the other hand, is still practiced in some Islamic countries. In legal literature - in addition to “polygyny” and “polyandry” - there also exist terms for “having two wives - bigyny” and “having two husbands – biandry”[4]. As previously stated, according to Marriage and Family Code adopted on 26 December 2001 and the Marriage and Family Act adopted in 1998, a person cannot have two spouses at the same time”[5]. If we look at history of the legal system, in Soviet times polygamy was banned despite the fact that there were many Muslims in the territory. According to the Article 107 of the Kazakh Criminal Code adopted on 22 July 1959, having more than two wives was deemed “polygyny” and for having two or more wives there was a penalty of years of imprisonment or one year of correctional labor, regardless of whether the marriage was registered or not. Nowadays, in the former USSR and current CIS countries, the criminal penalty for polygyny is not applied. Only Uzbekistan and Tajikistan have criminal penalties for this offence, i.e. imprisonment for three years and a fine [6, 7]. After the collapse of the USSR, the newly-formed nations debated the legalization of polygyny. According to Article 14 of the Russian Family Code, having one wife is a barrier for another marriage. Article 27 of the Code states that having two or more wives is unacceptable [8]. After the collapse of the USSR, the first to legalize polygyny was Ichkeria of The Chechen Republic and a notice was written in their citizens’ passports. They even inscribed polygyny into election and housing documentation. In July 1999, Aushev - the president of Ingushetia – legalized polygyny and granted permission to register polygamous marriages in the registry office. Later, however, Boris Eltsin - then president of Russia - issued a special edict banning polygyny in Ingushetia. One year later it was proved that the Aushev’s edict opposed provisions of the Russian Family Code and all marriages were cancelled by the Russian Supreme Court. After all these cases, Ramazan Kadyrov, the president of the Chechen Republic, as well as spiritual leaders and deputies of Tatarstan, Bashkiria and Dagestan, wanted to legalize polygyny, but their proposal was rejected. In spite of these prohibitions, some Muslim families still practiced polygyny. Because of this, and in order to increase the population of Russia, Russian deputy Duma Zhirinovskii also proposed to legalize polygyny. Nevertheless, polygyny is still

not legalized and many men keep a secret second wife, hiding her from the first wife [8].

In CIS countries, polygyny is legally recognized only in Turkmenistan, where a man who wants to marry an additional woman has to provide documentation attesting to the fact that he has sufficient income to sustain her. However, on 21 January 2012, a new Family Code was adopted prohibiting polygyny. The code took effect on 1 April 2012. In addition, the code stipulates that if a citizen of another country wishes to marry a woman from Turkmenistan he must pay 50,000 euros [9]. In Azerbaijan polygyny is forbidden not only by law, but also by religion. Imams do not have the power to perform a second wedding.

In Turkey, polygamy was officially criminalized with the adoption of the Turkish Civil Code of 1926. Nevertheless, the practice still persists, although to a lesser extent. In order to attenuate controversy connected with problems of children’s rights in polygamous families, husbands unceremoniously registered children from their second, third and fourth wives as children from their first wife, consequently solving the legal issues of property inheritance. Currently, Turkey follows the law according to which all children born of an illegitimate marriage are considered to be legitimate.

In Indonesia, where polygamy is officially recognized, the institution known as «adat» - a system of local and traditional laws - retains considerable power. In the majority of cases, «adat» gives the consent of marriage to parents and guardians of the youth and not to the future newlyweds themselves. For this reason, there are various types of violations of women’s’ rights, as women are forced to marry for redemption. All of this contradicts Sharia law, according to which marriage cannot be contracted without the women’s consent. Nevertheless, the law does not protect the rights of such women and bestows authority to local judges, implementers of the «adat,» to resolve issues based on traditional laws.

Denise Zintgraff, who was invited to the UAE as a French teacher and lived as guest in a harem, described her impressions in her book *Die Frau aus Tausendundeiner Nacht. Mein Leben in einem Haem*. In the book, she illustrates her own dissatisfaction with the laws of the United Arab Emirates, which prohibits extra-marital affairs and requires women to be subordinate to their husbands. The author believes that such laws keep “the normal women of the 20th century” living in fear. Perhaps, in contrast with the Muslim view and behind the author’s understanding of a “normal woman”

are hidden her fears regarding polygamy? In the author's opinion, the harem is a sort of prison, akin to slavery, while the relationship between woman and man in Sharia is limited solely to keep women clean and subordinate to the husband - the head of the family. This is the only ancient and wise law of harmony in family life, which is widespread not only in the Eastern countries, but also in Russia.

The key point here is the concept of "subordination," which is difficult to accept for the normal Western «woman of the 20th century.» Westerners tend not to understand this concept as the conscious recognition of a husband's merits and the respect of his wishes and feelings. Instead, Western women magnify such subordination, and turn this concept into servility and silent, hopeless resignation.

The Northern Yemen Family Code, which is based on Sharia Law [30], prohibits a Muslim man from having more than one wife if he cannot be true to all his wives. Southern Yemen, however, has adopted a stricter attitude towards polygamy and allows it only in certain cases. Various restrictions are also present in Malaysia. Such restrictions are mostly related to the financial capabilities of husband and designed to protect women's rights.

In most Muslim countries, women can object to polygamous practices in the marriage contract. In Senegal, for instance, where polygamy is quite common among Muslims, it is possible to choose the form of marriage contract, the type of marital property and even the procedure for divorce.

In some Islamic countries such as Turkey and Tunisia polygyny is now forbidden. It remains legal in many other countries. The following is a non-exhaustive list:

Indonesia, the UAE, Afghanistan, Algeria, Egypt, Iran, Iraq, Jordan, Lebanon, Libya, Morocco, Nigeria, Pakistan, Syria, Senegal. Sudan, Sri Lanka, and Ethiopia.

In the North Yemen Family Code, if a man mistreats his additional wives, he is only allowed to stay with one wife. In South Yemen, a man is given permission to take a second wife only for important reasons. Yemen's 1978 Constitution even goes so far as to state that men and women are equal. Thus, women are not under men's authority and men are not legally obliged to provide for their wives.

More than ten African countries have also legalized polygyny. Jacob Zuma, the president of South Africa, has five wives. The sultan of Brunei, Khassan Bolkhiya, has 1788 women in his harem. Among the members of his harem was the 1992 Miss USA, who spent three months in

his harem and received \$100,000 and a brilliant necklace as a present from the sultan. In addition, his heir - Sobzukha II - had 70 wives. Jigme Singye Wangchuck, king of Butan from 1972 – 2006, had 4 wives who were sisters.

In countries where polygyny is legalized, a mixed legal system is used to govern the relations of married people. For example, in Egypt both the Islamic and Roman-Germanic systems are in effect. In Sri Lanka, despite the fact that Muslims make up only around 8% of the country's population, they are allowed to resolve problems in family relations by Islamic rules.

In Israel, family relationships are controlled by religious norms. The concept of civil marriage does not exist. Registration of marriages, divorces, birth statements, and death registrations are made by religious social organizations. Thus, polygyny is not forbidden in Israel. In India, both state laws and religious rules accept polygyny. In countries where polygyny is not allowed conditions are more difficult. For example, in Ireland - a country with very strict Catholic laws - divorce was prohibited until 1995. In Spain, it was allowed only after 1978; in Brazil, after 1977. In some countries like Hungary, Denmark, Sweden, Norway, Canada, Holland, and England, gay marriages are allowed. In Netherlands not only are gay couples allowed to get married, but they are also allowed to adopt children.

Polygamy has been outlawed in the USA since 1878. However, current research shows that 23-50% of all men, 13-15% of all women, and roughly 70% of married men over 40 years old have a relationship on the side. In addition, in the USA polygyny is considered wild; in some states it is allowed to marry animals and with rocks and stones.

It is not a secret that due to increasing sexual promiscuity there is a growing epidemic of various sexually transmitted diseases, AIDS, and children born outside of wedlock. Consequently, in the USA, the number of illegitimate children has grown so rapidly that lawyers haven't had enough time to rewrite laws to bestow additional rights to these children. Some countries have legalized prostitution and same-sex marriages. Even teenagers in school are encouraged to implement caution in sexual relations. For example, in Kazakh schools there are "valeology" courses, designed to familiarize teenagers with the rules of "safe sex", fueling their interest in pre-marital relations. Undoubtedly, the mere introduction of polygamy will not solve the issue of moral decadence and the spiritual impoverishment of society. People are in need of recognition of family values, duty and responsibility

towards the family as the most important component of societal morality.

The number of relationships «on the side» in our society is growing so quickly that we are afraid to count it. Nearly every day we hear that someone had another woman. The number of single mothers and orphans is growing day by day.

Deputies' opinions are highly divided regarding the adoption of the new "Family Code.» One side claims we cannot legalize polygyny, because it is reflection of the past and unimaginable to European countries. In addition, they claim that legalizing polygyny opposes women's rights and that if we legalize polygyny women will demand the legalization of polyandry. The other side supports the legalization of polygyny. This side claims that polygyny will increase Kazakhstan's population, that our old women will marry Kazakh men instead of men from other countries, and that some problems of inheritance will be solved. While some people give importance to the treatment of women, others consider the protection of the rights. In the end, the problem of polygyny remains unresolved. It is not legalized, yet men continue to hold second wives in secret. This practice is setting a bad example for the younger generation.

It is essential to note that polygamy is prohibited not only in all European countries, but also in a number of countries with a predominantly Muslim population. However, prohibition on the legal level does not always translate into abolition of the practice.

It is also important to underline that in the countries in which polygamy is permitted, it is rare for a husband to abuse his power, as legislation usually assures the protection of women. However, it is necessary to take into consideration that the

prevailing mentality of the population of such countries plays a significant role, and very often Russian and European girls brought into such families as second or third wives are not able to adapt to the local customs.

Not all customs contradict with Sharia law. Many of them, however, are difficult to accept for people from a more distinguished background. That is why, before plunging into an «Oriental fairytale,» as it seems for many women who imagine life in an Arabic country with a rich, or not-so-rich, husband and his family, it is necessary to be familiar with the laws of the country and to be equipped to face potential difficulties. One must be aware of the rights and privileges that the law of the country can guarantee to a woman entering into a polygamous marriage.

The legalization of polygamy brings a lot of problems. Firstly, we are against polyandry. A woman who has many husbands cannot be a normal mother and won't be respected by society. Polyandry has not been a common practice historically in Kazakhstan. Polygyny, on the other hand, is an entirely different question. According to the Kazakh Civil Code, married people have several responsibilities to each other: all property is common property and the couple must work together to maintain the household. In practice, however, this is rarely the case. Perhaps the times have changed, or perhaps its the people. In any case, women are not the same as the used to be. As our ancestors used to say, «two goat heads will not fit into one cup.» It is difficult for children of the same father born of different mothers to be amicable. So, the father must look after his families separately or must know the Sharia very well.

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