

Polygamy as a Phenomenon External to the Legal System: Colonial Versus Patriarchal Power¹

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There is no accurate data on the real prevalence of polygamy within Palestinian Bedouin society, but many estimates confirm that polygamy exists in roughly 20% to 36% of households.² Over the last 20 to 30 years, there appears to have been a consistent increase in polygamous marriages at all levels of Palestinian-Bedouin society.³ Polygamy seems to be increasing across broad social spectra, irrespective of age, education, or socio-economic status.

Under international law polygamy is perceived as discriminatory and attributed with multiple forms of harm towards women: physical, mental, sexual, reproductive, and economic.⁴ Women's rights activists contend that the practice of polygamy violates many fundamental human rights recognized by international law.

Yet, in the Sharia law that governs Muslim private affairs in Israel, polygamy is permitted. Even though polygamy is a criminal offence according to the state penal code, the State of Israel does not enforce this particular statute among Palestinian citizens.⁵

This state of affairs raises many unanswered questions. How can this issue affecting the Palestinian-Bedouin women in the Naqab be addressed, an issue that is simultaneously legal, social, cultural, and political? How can the three-fold invisibility of Bedouin women be ended: in polygamous marriages, as citizens in the eyes of Israeli law, and as women in the eyes of Bedouin society? How can we break through the conspiracy of silence around this practice? By what

¹ This article is based on the author's thesis "Redefining Polygamy among the Palestinian Bedouins of the Naqab: Colonialism, Patriarchy and Resistance." LL.M studies Washington College of Law, American University, 2009.

² Almagor-Lotan, Orly (2006), *Polygamy Among the Bedouin Community in Israel*, The Knesset Research and Information Center.

³ Abu-Rabia, Aref, Salman Elbedour and Sandra Scham (2008), Polygyny and Post-Nomadism among the Bedouin in Israel, *Anthropology of the Middle East*, 3 (2), pp. 20-37.

⁴ See Article 16 1(b) The convention of on the elimination of all forms of discrimination against women ("CEDAW") <http://www2.ohchr.org/english/law/cedaw.htm>.

⁵ According to the Punitive Statute, section H clause 176 (1977) polygamy is a criminal offense.

mechanisms and in whose interest is its perpetuation? In this viewpoint, I primarily discuss the legal aspects of this issue.

Polygamy in Palestinian-Bedouin society does not occur in a vacuum. It operates at the intersection of colonial power and patriarchal power.⁶ “Colonial power” describes how Israel exercises its political power as a state towards its non-Jewish citizens. It works to segregate Bedouin society internally by supporting the traditional tribal structures, and through practices such as polygamy.⁷ “Patriarchal power” describes how Bedouin men exercise domination over Bedouin women in a hierarchy based on gender differences.

In Bedouin society, patriarchal power operates both actively and reactively and in relation to the colonial power of the state. The line between these two mechanisms of power is not fixed but fluid, and changing constantly. The State of Israel’s colonial power buttresses patriarchy and weakens Bedouin women. The operation of these forms of power enables polygamy’s exemption from the legal system and Bedouin women’s invisibility in the eyes of the law.

The State of Israel applies two distinct legal systems against the Bedouin population: one in relation to land and demography, and another in relation to marriage and family. The first system represents the state’s sovereignty and takes advantage of its mechanisms of enforcement to pursue its interests in the public sphere. The second system is governed by the religious courts that address legal matters in the private sphere.

The state activates its colonial power in both domains. In the first system it acts directly as the state and colonizer. In the second system it acts indirectly by choosing not to act—native norms are maintained for the native. This creates a strict dichotomy between the state-based penal law and religion-based family law. The state prohibits polygamy, yet it avoids enforcing the law in the case of the Bedouin population.

In terms of rights, the structure of the law leaves little power to women. It gives more power to men since they can manipulate the system to marry more than one woman by failing to register additional marriages with the Israeli authorities. Local government has turned a blind eye to this practice, as evidenced by the way the children of such unions are added to the population registry either under the first wife’s name or solely with a declaration of paternity.

⁶ I am adopting the colonial paradigm suggested by Yiftachel. See Yiftachel, Oren. (2008). Epilogue: Studying Naqab/Negev Bedouins: Toward a Colonial Paradigm? *HAGAR Studies in Culture, Polity and Identities*, 8 (2), pp. 83-108.

⁷ Ibid.

Another way Bedouin men manipulate the legal system is by marrying additional wives according to the Bedouin way of *zawaj'urfy* (informal marriage). If a man marries a woman from the occupied Palestinian territories, he does not bring it to the attention of the Israeli authorities. If this second wife gives birth in an Israeli hospital, the man will claim she is his "girlfriend," "known in public,"⁸ or will sign documents stating that he is the legal father of the baby without claiming that the mother is his wife.⁹

The state activates two legal systems that serve to externalize polygamy from the sphere of law enforcement and allows Bedouins to activate their customary law in the guise of "multiculturalism." However, this autonomy is granted by the state only in the family law sphere, leaving Bedouin women outside the legal system as invisible citizens. The jarring silence of the State of Israel and the patriarchal society is suggestive as to how Bedouin women are treated generally and to the ways they are marginalized. Future study is required to hear the narratives of Bedouin women on polygamy and to analyze the ways these women challenge this practice and struggle for their rights as women and as part of an ethnic minority.

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⁸ This term is used to indicate a situation in which spouses live together, in a familial frame without marriage, usually used by Israeli Jews. According to Shari'ah law this term is illegal.

⁹ Abu-Rabia, Aref, Salman Elbedour and Sandra Scham. (2008), Polygyny and Post-Nomadism among the Bedouin in Israel, *Anthropology of the Middle East*, 3 (2), *supra* note 4, p.29.