

Restricting Polygamy within an Islamic Constitutional Context: The Kurdistan Region and Human Rights Compliance

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Abstract

Although it is perceived as a relatively recent legal concern, the practice of polygamy is deeply embedded in human history. While its global prevalence has diminished, the practice continues to hold significant legal and cultural weight across much of the Islamic world. The Iraqi Constitution enshrines both Islam and human rights as foundational principles, an arrangement that causes constitutional tension, as Islam permits polygamy whereas modern human rights frameworks contest it. In contrast to the 1959 Iraqi Federal Personal Status Law, which allows polygamy with minimal conditions, the Kurdistan Region introduced notable restrictions through a 2008 amendment to the federal law. This article examines the Region's legislative approach within the framework of Iraqi constitutional principles, arguing that the amendment reflects a rights-based reinterpretation of Islamic constitutional authority. In this reinterpretation, polygamy is no longer treated as a normative male entitlement but rather as an exceptional marital arrangement. While this approach may remain unpersuasive to many human rights advocates, it nonetheless constitutes an effort to reconcile Islamic legal traditions with evolving international human rights standards.

Keywords: polygamy, Islam, human rights, gender equality, personal status law, Iraq, Kurdistan Region.

سنووردارکردنی فره‌ژنی له چوارچیوهی دهستوریکی ئیسلامیدا: هه‌ریمی کوردستان وپابه‌ندبوون به مافه‌کانی م‌رو‌ف
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پ‌و‌خ‌ت‌ه

سه‌ره‌رای ئه‌وه‌ی که ئه‌م‌پ‌و‌ دیارده‌ی فره‌ژنی وه‌ک پ‌ر‌س‌ب‌کی یاسای تاراده‌یه‌ک تازه مامه‌له‌ی له‌گه‌لدا ده‌ک‌ر‌یت، به‌لام ر‌ه‌گ‌ی‌کی ق‌و‌لی له‌ م‌ی‌ژ‌و‌وی م‌ر‌و‌ف‌ایه‌ت‌یدا هه‌یه. ئه‌م دیارده‌یه‌ ئه‌گه‌ر‌چی له‌ ئاستی جیهانیدا به‌ره‌و که‌م‌بو‌نه‌وه‌ چ‌و‌وه، به‌لام ه‌ی‌شتا گ‌ر‌نگ‌یه‌کی یاسای و‌ک‌ت‌و‌وری به‌ر‌چ‌ا‌وی هه‌یه له‌ به‌ش‌ی‌کی ز‌و‌ری جیهانی ئی‌س‌لامدا. ده‌س‌ت‌وری ع‌ی‌راقی سا‌لی (٢٠٠٥) هه‌ریه‌که‌ له‌ ئی‌س‌لام و‌م‌افه‌کانی م‌رو‌ف وه‌ک دوو ب‌ن‌ه‌مای ب‌ن‌چ‌ینه‌ی له‌خ‌و‌ گ‌رت‌و‌وه، ئه‌م ر‌ی‌ک‌خ‌س‌ت‌نه‌ش له‌ ده‌ر‌ئه‌ن‌جام‌دا نا‌رو‌نی و‌نه‌س‌ازی ده‌س‌ت‌وری در‌وس‌ت‌ک‌رد‌و‌وه، چ‌و‌ن‌که ئی‌س‌لام ر‌ی‌گه‌ به‌ فره‌ژنی ده‌دات، به‌لام چ‌و‌ار‌چ‌ی‌وه ها‌و‌چ‌ه‌رخه‌کانی مافه‌کانی م‌رو‌ف د‌ژی ئه‌و دیارده‌یه ده‌و‌س‌ت‌نه‌وه. یاسای باری که‌س‌یتی ع‌ی‌راقی ژماره (١٨٨) سا‌لی (١٩٥٩)، به‌چه‌ند مه‌ر‌ج‌ی‌کی که‌م، ر‌ی‌گه‌ به‌ فره‌ژنی ده‌دات، به‌لام هه‌ریمی کوردستان، له‌ ر‌ی‌گه‌ی هه‌م‌وار‌ک‌رد‌ن‌یکه‌وه‌ که‌ له‌ سا‌لی (٢٠٠٨) دا له‌ یاسا فید‌ر‌ال‌یه‌که‌دا ئه‌ن‌ج‌ام‌یدا‌وه، ئه‌م ر‌ی‌گه‌پ‌یدا‌نه‌ی به‌ر‌ته‌س‌ک‌تر ک‌رد‌و‌ته‌وه. ئه‌م ت‌و‌ی‌ژ‌ینه‌وه‌یه ئه‌و ر‌ی‌چ‌که‌ یاسا سازیه هه‌ل‌ده‌س‌ه‌ن‌گ‌ین‌یت که‌ هه‌ریمی کوردستان گ‌رت‌ویه‌ته‌ به‌ر‌له چ‌و‌ار‌چ‌ی‌وه‌ی ب‌ن‌ه‌ما‌کانی ده‌س‌ت‌وری ع‌ی‌راقیدا و‌ته‌وه ده‌خ‌اته‌پ‌رو‌و که‌ ئه‌م هه‌م‌وار‌ک‌رد‌نه ر‌ه‌ن‌گ‌دا‌نه‌وه‌ی ر‌اف‌ه‌یه‌کی چه‌س‌پ‌ا‌وه له‌سه‌ر‌ب‌نه‌مای مافه‌کانی م‌رو‌ف ب‌و‌ ده‌سه‌ل‌اتی ده‌س‌ت‌وری ئی‌س‌لامی. به‌گ‌و‌ی‌ره‌ی ئه‌م ر‌اف‌ه‌کرد‌نه، ئی‌تر فره‌ژنی وه‌ک ماف‌ی‌کی پ‌یا‌و مامه‌له‌ی له‌گه‌لدا نا‌ک‌ر‌یت، به‌ل‌کو وه‌ک ر‌ی‌ک‌خ‌س‌ت‌ن‌ی‌کی

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هاوسه رگيرى تايهت سه يرده كرئت. ئه گهرچى ئهم رچكه يه رهنكه بو زورئيك له چالاکوانانى بواری مافه كانى مروؤف هيشتا جيگه ي رهمه ندى ته واو نه بئت، به لام له گهل ئه و راستيه شدا، هه وئيكه بو گونجاندى نه ريته ياساييه ئيسلاميه كان وستاندارده نيوده وه لته تيه په يوه نديداره كان به مافه كانى مروؤف.

كليله وشه كان: فره ژنى، ئيسلام، مافه كانى مروؤف، يه كسانى ره گه زى، ياساى بارى كه سئتي، عيراق، هه ريمى كوردستان.

تقييد تعدد الزوجات في سياق دستوري إسلامي: إقليم كردستان والامتثال لحقوق الإنسان

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ملخص

على الرغم من النظر إلى تعدد الزوجات بوصفه مسألة قانونية حديثة نسبياً، فإن ممارسته متجذرة بعمق في تاريخ البشرية. ومع تراجع انتشار هذه الظاهرة عالمياً، ما تزال تحتفظ بوزن قانوني وثقافي مهم في جزء كبير من العالم الإسلامي. وينص الدستور العراقي لسنة (٢٠٠٥) على كل من الإسلام وحقوق الإنسان بوصفهما من المبادئ التأسيسية، وهو ترتيب يفرض إلى توتر دستوري، إذ يجيز الإسلام تعدد الزوجات، في حين تعارضه أطر حقوق الإنسان الحديثة. وعلى خلاف قانون الأحوال الشخصية الاتحادي رقم (١٨٨) لسنة (١٩٥٩)، الذي يجيز تعدد الزوجات بشروط محدودة، أدخل إقليم كردستان قيوداً ملحوظة من خلال تعديل أجري عام (٢٠٠٨) على القانون الاتحادي. تتناول هذه الدراسة النهج التشريعي الذي اتبعه المشرع في الإقليم في إطار المبادئ الدستورية العراقية، وتجادل بأن هذا التعديل يعكس إعادة تفسير قائمة على حقوق الإنسان للسلطة الدستورية الإسلامية. ووفقاً لهذا التفسير، لم يعد تعدد الزوجات يُعامل بوصفه حقاً للرجل، بل باعتباره ترتيباً زواجياً استثنائياً. ورغم أن هذا النهج قد لا يكون مقنعاً لكثير من المدافعين عن حقوق الإنسان، فإنه يُعدّ، مع ذلك، محاولةً للتوفيق بين التقاليد القانونية الإسلامية والمعايير الدولية المتطورة لحقوق الإنسان.

الكلمات المفتاحية: تعدد الزوجات، الإسلام، حقوق الإنسان، المساواة بين الجنسين، قانون الأحوال الشخصية، العراق، إقليم كردستان.

Introduction

In 1986, in response to global campaigns for the improvement of women's rights¹, Iraq ratified the Convention on the Elimination of All Forms of Discrimination against Women

¹ For more detailed information on the topic of polygamy and gender equality, see, United Nations (UN), *Universal Declaration of Human Rights (UDHR)*, adopted December 10, 1948, UNGA Res. 217 A (III); United Nations, *International Covenant on Civil and Political Rights (ICCPR)*, adopted December 16, 1966, entered into force March 23, 1976, 999 UNTS 171; Dinda Difia Madina *et al.*, "The Dynamics of Polygamy and Divorce in Muslim Countries," *el-Aqwal* 2, no. 2 (2023); Elijah M. Baloyi, "Critical Reflections on Polygamy in the African Christian Context," *Missionalia* 41, no. 2 (2013); Farooq Azam *et al.*, "Polygamy in Islam: Cultural Pressures and Religious Justifications in Pakistan," *Journal of Islamic Thought and Civilization* 11, no. 2 (2021); Sara Qayum *et al.*, "Practices and Reforms in the Legislation of Polygamy in Pakistan," *Journal of Humanities, Social and Management Sciences* 3, no. 1 (2022); Ismail Shaiful Bahari *et al.*, "Psychological Impact of Polygamous Marriage on Women and Children: A Systematic Review and Meta-Analysis," *BMC Pregnancy and Childbirth* 21, no. 823 (2021); Stephanie Kramer, *Polygamy Is Rare Around the World and Mostly Confined to a Few Regions*, Pew Research Center, December 7, 2020, <https://www.pewresearch.org/short-reads/2020/12/07/polygamy-is-rare-around-the-world-and-mostly-confined-to-a-few-regions/> (accessed: June 6, 2024); *Official Gazette*:

(CEDAW), whose primary goal was to uphold gender equality and eliminate discriminatory traditions in the world.² The force that urged the country toward such a commitment was the constitutional recognition of human rights, including the rights of women.³ However, the ratification was accompanied by several reservations⁴, including those relating to the equal rights of women with men. The state justified its reservations on the grounds that the convention partially contradicts Islam, the constitutionally recognized state religion.⁵

Because Islam was the foundational source of legislation,⁶ the application of the convention did not extend beyond the confines of what were defined as the established principles of Islam.⁷ The convention ultimately lost much of its purpose with respect to Iraq and had no significant effect on the country's lawmaking domain or judicial practice.⁸ As a result, the

General Provisions, Sherifyan Dahir (Royal Edict) No. 1.04.22, issued 12 Dhu al-Hijjah 1424 (February 3, 2004), Implementing Law No. 70.03 as the Family Code of Morocco; Susan E. Marshall and Randall G. Stokes, "Tradition and the Veil: Female Status in Tunisia and Algeria," *The Journal of Modern African Studies* 19, no. 4 (1981); Emanuela Dalmasso and Francesco Cavatorta, "Reforming the Family Code in Tunisia and Morocco – The Struggle Between Religion, Globalisation and Democracy," *Totalitarian Movements and Political Religions* 11, no. 2 (2010); Samuel Chapman, *Polygamy, Bigamy and Human Rights Law* (Bloomington, IN: Xlibris Corporation, 2001).

² United Nations, *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, adopted December 18, 1979, entered into force September 3, 1981, 1249 UNTS 13, art. 2.

³ *Constitution of the Republic of Iraq*, adopted September 18, 2005, arts. 14–46.

⁴ The 1969 Vienna Convention on the Law of Treaties defines reservation as follow: "“reservation” means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State”, see, United Nations, *Vienna Convention on the Law of Treaties*, adopted May 23, 1969, entered into force January 27, 1980, 1155 UNTS 331, art. 2 (d).

⁵ The reservations were specifically made to article 2 (f) and (g), article 9 (1) and (2), article 16 and article 29 (1) of the Convention, see *Declarations, Reservations, Objections and Notifications of Withdrawal of Reservations Relating to the Convention on the Elimination of All Forms of Discrimination against Women*, Meeting of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women, 16th meeting, United Nations, New York, June 28, 2010, 12.

⁶ *Constitution of the Republic of Iraq (2005)*, art. 2 (1) (A).

⁷ The established principles of Islam are the foundational beliefs and practices on which the Islamic religion is based and constitute altogether a comprehensive legal system to govern the life of Muslims. The principles include the articles of faith, the core practices, the objectives of Islamic law, and ethical and moral dimensions of religion. For more detailed information on this subject, see, Ahmad al-Ramhi, "Framing Constants and Variables with Legal Controls and Its Effects on Society," *Journal of the College of Islamic and Arabic Studies* 39, no. 4 (2023): 2308–2340.

⁸ See, Committee on the Elimination of Discrimination against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Iraq*, Twelfth

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country became the target of human rights campaigns and faced persistent criticism for its hostile legislative policy toward gender equality.⁹ The human rights bodies have, since then, called on Iraq to withdraw its reservations, as they contradict the overall purpose of the convention and modern cultural values.¹⁰

In contrast, the Kurdistan Region of Iraq¹¹ showed greater openness toward this modern international commitment and initiated legislative compliance to the maximum extent of its political and legal capacity. In this context, the Region amended the 1959 Federal Iraqi Personal Status Law in 2008 and enacted significant changes¹² to the conception of marriage alongside a radical reconceptualization of polygamy.¹³ Accordingly, marriage is not only a means to mutual life and reproduction but a sacred bond based on love, respect,

Session, January 18 February 5, 1993, excerpted from Supplement No. 38 (A/48/38), https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_COMMENT_S/Iraq/Iraq-CO-1.pdf (accessed: June 22, 2025); Committee on the Elimination of Discrimination against Women, *Consideration of Reports of States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Iraq*, Twenty-Third Session, June 12–30, 2000, <https://www.un.org/womenwatch/daw/cedaw/cedaw23/Iraq%20as%20adopted.html> (accessed: June 22, 2025).

⁹ *Woman and the Law in Iraq* (Washington, DC: Institute of International and Human Rights, 2010), 96–106.

¹⁰ See, for example, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Iraq*, UN Doc. CEDAW/C/2000/II/Add.4, June 14, 2000, paras. 192, 26; Marilou Grégoire-Blais, *Iraqi Women: Lost Liberties*, policy paper (Montreal: Alternatives – La solidarité en action, 2010), 1–25.

¹¹ The Kurdistan Region is the only federal region in Iraq, located in the north of the country. It was first established as an autonomous region in 1992. Following the fall of the Ba’thist regime and the promulgation of Iraq’s new constitution in 2005, the Region was granted federal status. In 2017, the Region held a public referendum in which the majority of its residents voted in favor of declaring an independent state. However, the international community did not recognize this new status, and the Region was compelled to remain a part of Iraq, see, for example, *Constitution of the Republic of Iraq (2005)*, art. 117 (1); Dylan O’Driscoll and Bahar Baser, “Independence Referendums and Nationalist Rhetoric: The Kurdistan Region of Iraq,” *Third World Quarterly* 40, no. 11 (2019): 2016–2034.

¹² The 2005 Iraqi Constitution recognizes the right of the Kurdistan Region to adopt its own constitution: “[e]ach region shall adopt a constitution of its own that defines the structure of powers of the region, its authorities, and the mechanisms for exercising such authorities, provided that it does not contradict this Constitution”. The Constitution further recognizes the right of the Region to enact its own laws and regulations as well as amend the application of the Iraqi laws, as it states: “[i]n case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region”, see, *Constitution of the Republic of Iraq (2005)*, arts. 120–121 (2).

¹³ See, Act No. 15 of 2008: An Act to Amend the Application of Personal Status Law No. 188 of 1959, as Amended, in the Kurdistan Region of Iraq.

and mutual responsibility.¹⁴ In this sense, polygamy falls outside the scope of the new definition. However, the drafters were also fully aware that Islam was the fundamental basis of lawmaking in Iraq; therefore, their efforts were not aimed at the outright prohibition of the practice but rather at curbing its widespread presence through a legislative reconciliation between Islamic principles and the concept of gender equality as a modern international commitment of the state.¹⁵

Across its multiple dimensions, polygamy may have been the subject of numerous academic references; however, there remains a lack of comprehensive analysis of the legislative approach adopted by the Kurdistan Region since 2008,¹⁶ which serves as a reasonable legal position and a justifiable framework for other similar jurisdictions. The study, in other words, aims to present a comprehensive and pragmatic approach to the question of polygamy. It finds that the Kurdistan Region represents a theo-secular stance in the sense that it does not conceal its subordination to the cultural authority of Islam, while simultaneously accepting the modern state's human rights obligations, including gender equality. Hence, the constitutional model that the Region truly seeks is the model of compromise and reconciliation, a model that is today theoretically recognized as plural constitutionalism.¹⁷ The study is comprehensively analytical and quasi-comparative in

¹⁴ Act No. 15 of 2008, art. 1 (1).

¹⁵ Act No. 15 of 2008, art. 1 (2).

¹⁶ Some scholars have indeed conducted analytical studies on the 1959 Iraqi Personal Status Law and even on the Kurdistan Region's amendment. However, these studies generally examine the issue of contradictions through the lens of constitutional conformity, and nearly all criticize the Kurdistan Region's drafters for exceeding the constitutional limits defined by the 2005 Iraqi Constitution. This study, by contrast, analyzes the modern interpretative approach and its human rights foundations in the legislation of the Kurdistan Region. An approach that is characterized by transnational responsiveness to the uniformity of legal rules, and more specifically, by global receptiveness to the principle of gender equality, see, for example, Ammar Abdulhussein Ali Shah and Kadhim Hamdan Sadkhan, "Legal and Practical Problems of the Difference in Legislation in the Federal State (Polygamy in Iraq as a Model)," *Journal of Legal and Political Studies*, (2024): 624-638; 'Ārif, 'Ārif 'Alī, and Rzgar Sleman Mawlud. "Polygamy Restriction Law in the Kurdistan Region of Iraq: A Jurisprudential Analysis of Contemporary Realities", *Mujallat al-Islām fī Āsyā* 1, no. 1 (2014): 70-103; Alī, Ismā'īl Abābakr. "Al-Mu'ālaja al-Tashrī'iyya li-Mas'alat Ta'addud al-Zawjāt fī Ḍaw' Ta'dīl Taṭbīq Qānūn al-Aḥwāl al-Shakhṣiyya" [The Legislative Treatment of the Issue of Polygamy in Light of the Amendment of the Application of the Personal Status Law], *Journal of the University of Duhok* 22, no. 2 (2019): 233–252; Saadi Hassan Baram, "Legal and Constitutional Analysis of Federal Court Decision No. 230/Federal/2022 Regarding Marriage to Second Wife in the Province of Kurdistan", *As-Siyasi: Journal of Constitutional Law* 4, no. 2 (2024): 242-263.

¹⁷ Plural constitutionalism refers to a constitutional order in which multiple legal authorities coexist and interact with one another. This order allows each authority to preserve its own legitimacy and exercise its influence over social institutions within society. This phenomenon stands in contrast to traditional constitutionalism, which is characterized by a state-centered order and the notion of a single supreme

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nature, relying primarily on the Iraqi Constitution and the Iraqi Personal Status Law, along with the amendment introduced by the Kurdistan Region.

The study is generally intended to respond to the following main inquiry: What is the legislative perspective of the Kurdistan Region regarding the regulation of polygamy and what makes it divergent from the federal approach? However, to offer a fully convincing response to this inquiry, the study necessarily addresses the following subsidiary questions: What is the actual conception of polygamy? What is the rationale behind the reference to such a practice? What are the constitutional principles that govern the regulation of this practice in Iraq? Finally, can the Kurdistan Region's legislative model become a replicable stance for countries experiencing a similar phenomenon?

The article is divided into three main arguments, each of which is further divided into two sub-arguments: first, the conceptual framework and justification of polygamy; second, the constitutional hybridity in the regulation of polygamy in Iraq; and third, polygamy in the KRI's amendment to the Iraqi Personal Status Law: constitutional compatibility and human rights compliance.

1. The Conceptual Framework and Justifications for Polygamy

The concept of polygamy, in Arabic and Islamic cultural and legal traditions, typically signifies a marital engagement that a man concludes with a woman while he is married to other women simultaneously.¹⁸ However, the concept carries broader connotations in other cultural contexts around the world and may denote marital commitments in any form of non-monogamous unions, whether involving multiple husbands, multiple wives, or multiple husbands and multiple wives concurrently.¹⁹ Considering its historical and social dimensions, polygamy is not a regular phenomenon stemming from cultural evolution and thus cannot be practiced as a valued norm anywhere. The practice, rather, emerges as a result of one or several interrelated factors, including biological conditions, health related considerations, social circumstances and expectations, economic issues, political dynamics, and conservative cultural and religious beliefs.²⁰

authority within the territory, see, Ravza Altuntaş-Çakır, "The Pluralising Constitution," in *A Political Theory of Muslim Democracy* (Edinburgh: Edinburgh University Press, 2022), 217–240; Michael J. Rosenfeld, "From Constitution to Constitutionalism: A Global Framework for Public Power System," *International Journal of Constitutional Law* 8, no. 3 (2010): 671–732; Julio Baquero Cruz, "Another Look at Constitutional Pluralism in the European Union," *European Law Journal* 22, no. 3 (2016): 356–374.

¹⁸ 'Ārif and Mawlud, "Polygamy Restriction Law", 74.

¹⁹ Remilekun Elizabeth Olasore, "The Extent of Polygamy in Africa, Any Role for the Information Professionals in Curbing Further Spread?" *Information and Knowledge Management* 6, no. 6 (2016): 7.

²⁰ Hatem Younis Mahmood, "Polygamy: its Reasons and Social Reflections", *Ādāb al-Rāfīdayn*, no. 52 (2008):1-38.

1.1. The Concept of Polygamy

Most Arabic dictionaries offer similar linguistic definitions for the words: '*ta'addud*' (plurality) and *zawjāt* (wives). They define the two words through their lexical origins, attributing *ta'addud* to its singular form '*adad*', which means (enumeration and increase),²¹ and presenting *zawjāt* as being derived from its singular form *zawja* (wife).²² The concept altogether denotes a man's spousal partnership with multiple wives.²³

It is noteworthy that the linguistic conception of the word: *ta'addud al-zawjāt* (polygamy) reflects the full social understanding of the phenomenon within Arab culture and Islamic jurisprudence, which is the practice of a man engaging in marital relations with several women concurrently.²⁴ However, the term is, in the English language, broader and more gender neutral that may be understood as simultaneous spousal partnership without necessarily specifying whether the practice is the marital commitment of a man with multiple wives or the spousal relationship of a woman with multiple husbands. Still, there are precise terms for each of the aforementioned cases, such as 'polygyny' for the phenomenon of multiple wives for a man, and 'polyandry' for the practice of multiple husbands for a woman.²⁵ It should also be mentioned that the English term of polygamy remains predominant in academic and non-academic discourses, and includes any other non-monogamous configurations.²⁶

Polygamy was historically a widespread global phenomenon influenced by a number of social, political, and cultural factors²⁷ that left few places on Earth untouched by its

²¹ Ibn Manẓūr, *Lisān al-‘Arab al-Muḥīṭ*, vol. 1 (Lebanon: Dār al-Jīl, 1988), 2832–2834; Iṣām Nūr al-Dīn, *Mu‘jam Nūr al-Dīn al-Wasīṭ*, 1st ed. (Lebanon: Dār al-Kutub al-‘Ilmiyya, 2005), 393.

²² Ibn Manzur, *Lisan al-Arab*, 8885; Muhammad ibn Muhammad al-Zabidi, *Taj al-‘Arus min Jawahir al-Qamus*, (ed.) by a group of scholars, vol. 6 (Cairo: Dar al-Hidaya), 23; Ahmad Mukhtar Umar, *Mu‘jam al-Lugha al-‘Arabiyya al-Mu‘asira*, 1st ed., vol. 2 (Cairo: ‘Alam al-Kutub, 1429 (2005)), 1006.

²³ See, for example, Muhammad Asif Safdar *et al.*, “Conceptualization of Polygamy in the Context of Islamic Law: A Study of Modern Human Rights Law and Pakistani Law,” *Al-Qamar* 4, no. 1 (2021), 162-163.

²⁴ Ahmad Farrag Husayn, *Aḥkām al-Zawāj fī al-Sharī‘a al-Islāmiyya* [The Rulings of Marriage in Islamic Law] (Cairo: Dār al-Jāmi‘a al-Jadīda, 2004), 144; ‘Alī ‘Abd al-Wāḥid Wāfi, *Qiṣṣat al-Zawāj wa-al-‘Uzūba fī al-‘Ālam* [The Story of Marriage and Celibacy in the World], 2nd ed. (Cairo: Dār al-Nahḍa al-‘Arabiyya li-al-Ṭibā‘a wa-al-Nashr, 1987), 50.

²⁵ Olasore, “The Extent of Polygamy in Africa,” 7.

²⁶ See, for example, Leda Castrillo, “Polygamy: An Inappropriate Relationship,” *Mako: NSU Undergraduate Student Journal* 1, no. 1 (2007), 3, <https://nsuworks.nova.edu/mako/vol1/iss1/1> (accessed: March 20, 2025).

²⁷ Polygamy is generally regarded as an inhuman practice by its very nature, but mankind has mostly referred to its exercise as a solution to several issues that caused many tragic consequences. The practice, in other words, has indeed served the interests of mankind to a certain degree, besides its unfortunate

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practice.²⁸ It has, however, witnessed a significant global decline in our modern era as a result of changing social structures, political reforms, economic developments, and evolving cultural values.²⁹ These days, the practice of polygamy is mostly common in Muslim-majority countries or in communities where Muslims constitute a minority, with exceptions of Turkey, Tunisia, Albania, Kosovo, and the Central Asian republics where the practice has significantly undergone legal restrictions or has been fully abolished.³⁰ However, the practice also persists within certain non-Muslim communities, particularly in Christian-majority states in Central and West Africa, including the Democratic Republic of Congo, Uganda, and Zambia.³¹

As of today, out of the 193 officially recognized countries in the world, nearly 50 permit polygamy and merely in the specific form of polygyny.³² In countries where polygamy is prohibited, violations of relevant rules are typically recognized as bigamy in their criminal laws. Bigamy, in legal terms, refers to the act of concluding a marital commitment while

outcomes relating to the status and well-being of women. It is from this reality that many people, including notable scholars, have approached the practice as a social necessity that ought to continue to exist, see, Anna Clark, "James Hinton and Victorian Individuality: Polygamy and the Sacrifice of the Self", *Victorian Studies* 54, no. 1 (2011): 35-61.

²⁸ See, Zarifa Abbasy and Muhammad Alam Adeel, "A Study of the Concept of Polygamy in Islam and the Legal Systems of Afghanistan, Malaysia and Turkey," *International Scientific and Research Journal* 5, no. 2 (2024), 235.

²⁹ Castrillo, "Polygamy: An Inappropriate Relationship", 1-11. The decrease in the phenomenon throughout the world is attributed to European religious principles and the dissemination of their values to their colonies in Africa and Asia. Studies indicate that the phenomenon was very prevalent in Africa before its colonization by Europeans. The European missionaries tried to replace the practice with monogamy and succeeded to a certain degree, but the complete elimination of the phenomenon was never realized, see, Lea Mwambene, "What is the Future of Polygyny (Polygamy) in Africa?" *PER/PELJ* 20, 2017, 5.

³⁰ Muhammad Roy Purwanto *et al.*, "Polygamy in Muslim Countries: A Comparative Study in Tunisia, Saudi Arabia, and Indonesia," *Advances in Economics, Business and Management Research* 168, (2018), 435-437;

Safdar *et al.*, "Conceptualization of Polygamy," 163; Clyde R. Forsberg and Tuba Gonel, "A Marriage of Necessity: The Return of Polygamy to Central Asia in the Aftermath of Democratization," *Journal of Humanities*, no. 7 (1998): 311-325.

³¹ Sunday Igwe Ukoha, "The Plight of Polygamists in Contemporary African Society," *LWATI: A Journal of Contemporary Research* 14, no. 2 (2017), 179; Kramer, *Polygamy Is Rare*. The phenomenon of polygamy is still very pervasive in Africa to such an extent that many states legally permit it, such as Chad, Gabon, Niger, Sudan, Tanzania, and Zambia. However, the practice takes many forms: some countries formally recognize it just as they recognize monogamous marriage, like Kenya; some allow polygamous marriage under customary rules, albeit prohibit it under civil law, such as Malawi; and some permit the practice restrictively, like South Africa, see, for example, Mwambene, "What is the Future of Polygyny," 5-8.

³² Kramer, *Polygamy Is Rare*; "Countries where Polygamy is Legal in 2025", *World Population Review*, [https:// worldpopulationreview.com/country-rankings/countries-where-polygamy-is-legal](https://worldpopulationreview.com/country-rankings/countries-where-polygamy-is-legal) (accessed: June 30, 2025).

one of the spouses is legally married to someone else.³³ The penalties for bigamy vary from country to country and range from six months to ten years of imprisonment.³⁴ Despite formal prohibitions on the practice, some countries continue to recognize polygamous marriages under several specific conditions, such as the consent of the first wife or in cases of medical necessity in relation to the first wife (e.g., sexual incapacity, chronic illness, or infertility).³⁵ Moreover, a number of states that do not officially recognize polygamy in their relevant legislations nevertheless tolerate the practice in reality through refraining from enforcing the criminal rules and penalties.³⁶ It is of particular significance to note that although no explicit instrument or even a provision within contemporary international law³⁷ criminalizes polygamy, the perspective adopted by international legal scholars and United Nations (UN) human rights bodies remains largely oppositional to the practice. The perspective is primarily grounded in foundational human rights instruments, notably the Universal Declaration of Human Rights

³³ Theodore Bennett, "Why the Bigamy Offence Should Be Repealed," *Sydney Law Review* 41, no. 3 (2019), 359–360.

³⁴ See, for example, the Belgian Criminal Code, adopted June 8, 1867, art. 391; the Criminal Code of Ghana, Act 29, adopted 1960, sec. 262.

³⁵ The examples of these countries are Egypt, Morocco, Jordan, Indonesia, Pakistan and Malaysia, see, Purwanto *et al.*, "Polygamy in Muslim Countries", 435; Mala Htun and S. Laurel Weldon, "State Power, Religion, and Women's Rights: A Comparative Analysis of Family Law," *Indiana Journal of Global Legal Studies* 18, no. 1 (2011): 145-165; Raihanah Abdullah, "Inserting Stipulation Pertaining to Polygamy in A Marriage Contract in Muslim Countries", *Al-Jami'ah* 46, no. 1 (2008): 153-169.

³⁶ An example of such a country is Kazakhstan, where the phenomenon is neither legally permitted nor penalized under the country's penal code, see, Forsberg and Gonel, "A Marriage of Necessity," 315.

³⁷ Despite the above-mentioned reality, there are two international instruments that mention polygamy, which are the Convention on Celebration and Recognition of the Validity of Marriages (CCRVM) (1978) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as "the Maputo Protocol" (2003). The CCRVM, in article 11, states: "[a] Contracting State may refuse to recognise the validity of a marriage only where, at the time of the marriage, under the law of that State – (1) one of the spouses was already married...". The Maputo Protocol, in article 6, states: "States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that... Monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected...". However, neither of the instruments outlawed the practice, see, United Nations, *Convention on Celebration and Recognition of the Validity of Marriages*, adopted March 14, 1978, entered into force May 1, 1991, 1901 UNTS 131; African Union, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (Maputo Protocol), Adopted July 11, 2003, entered into force November 25, 2005.

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(UDHR)³⁸, the International Covenant on Civil and Political Rights (ICCPR)³⁹ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁴⁰ which, according to their interpretative framework, regard polygamy as incompatible with the right to equality⁴¹ in marriage and thus as undermining the dignity of women. The practice is, therefore, construed as contravening international human rights standards and as constituting a legitimate target for legal prohibition or regulatory restriction.⁴²

Based on this general legal understanding, numerous states, including several Muslim-majority states, have implemented legislative reforms with the aim of either outright

³⁸ The UDHR addresses polygamy in articles 1, 2 and 16. Article 1 states: "[a]ll human beings are born free and equal in dignity and rights...". Article 2 is more directly relevant to the practice and states: "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...". Article 16 is related to the right to marry and states: "[m]en and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution", see, United Nations, *UDHR*, arts. 1, 2, 16.

³⁹ The ICCPR also includes an article, article 3, on the equality between men and women in the enjoyment of human rights and freedoms, as it states: "[t]he States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant". The UN Human Rights Committee has expressed its view on the issue of polygamy, believing that the practice violates the content of article 3, see, United Nations, *ICCPR*, art. 3.

⁴⁰ The content of CEDAW is generally devoted to the right to equality between men and women, but the convention specifically refers to this right in its article 2, which states: "...[t]o embody the principle of the equality of men and women in their national constitutions or other appropriate legislation...". Another point of particular significance pertaining to polygamy in CEDAW is article 16, which states: "[s]tates Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent...", see, United Nations, *CEDAW*, arts. 2, 16.

⁴¹ Equality in the entitlement to rights and freedoms is regarded as one of the most important principles in the field of human rights. The UN Charter included this right in paragraph 2 of its preamble for the first time as an obligation upon its member states: "...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women ...". The Charter further, in article 55, reiterates the commitment of its member states to universal respect for human rights and freedoms for all, without any distinction as to race, sex, language, or religion. It is worth noting that equality is now an inherent right in almost all the main human rights instruments, see, United Nations, *Charter of the United Nations (UN Charter)*, adopted June 26, 1945, entered into force October 24, 1945, 1 UNTS 16, preamble, para. 2 and art. 55.

⁴² Human Rights Committee, *General Comment No. 28: Equality of Rights Between Men and Women (Article 3)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), para. 24.

prohibiting the practice or subjecting it to demanding legal conditions, thereby transforming it from a widespread social phenomenon into an exceptional occurrence within their jurisdictions.⁴³ Iraq, however, has not enacted any formal legislative amendments to eliminate or even strictly restrict the practice under its national Personal Status Law. The practice, in other words, remains lawful, albeit partially conditional and subject to judicial review and discretion.⁴⁴ In contrast, the Parliament of the Kurdistan Region introduced substantive amendments to the law in 2008, and significantly raised the threshold for polygamous marriages.⁴⁵

1.2. The Justifications for the Practice of Polygamy

As previously noted, polygamy is a historical social phenomenon existing throughout human societies. Accordingly, its legal regulation can be traced back to ancient civilizations, including Mesopotamia⁴⁶. Under the Code of Hammurabi⁴⁷, for example, a man in Babylon was permitted to marry a second wife for two reasons: if his first wife was afflicted with illness or was unable to bear children.⁴⁸ The French philosopher Montesquieu⁴⁹ attributed the prevalence of polygamy in Eastern and Islamic societies to

⁴³ Boumediene Mohammed, “Rukḥṣat Ta’addud al-Zawjāt bayna Tashrī’āt al-Duwal al-Islāmiyya wa-Qānūn al-Usra al-Jazā’iri” [The Permission of Polygamy Between the Legislations of Islamic States and Algerian Family Law], *Majallat al-Qānūn wa-al-Mujtama’*, no. 2 (2013): 1–25.

⁴⁴ Iraqi Personal Status Law No. 188 of 1959, art. 3(4)– (7).

⁴⁵ See, *Act No. 15 of 2008*.

⁴⁶ Mesopotamia is a historical region situated in western Asia, specifically between the Tigris and Euphrates rivers. The region lies entirely in today’s Middle East and corresponds mostly to present-day Iraq and partly to modern Syria and Turkey. Mesopotamia has been home to many ancient civilizations, such as the Sumerians, Akkadians, and Assyrians. The people who lived on this land are believed to have practiced polygamy throughout their history and for various reasons, such as biological, economic, social, and political reasons, see, for example, Kathleen Kuiper, *Mesopotamia: The World’s Earliest Civilization* (New York: Britanica Educational Publishing, 2011).

⁴⁷ The Code of Hammurabi is an ancient Iraqi legal code written in the Akkadian language around 1755 to 1750 BC by King Hammurabi, the sixth king of the First Babylonian Dynasty. This code is considered one of the most significant written laws ever discovered in the ancient world, as it was extremely comprehensive, covering all aspects of human life, and its punishments reflected the influence of emerging civilization and the evolution of human consciousness, see, *The Oldest Code of Laws in the World*, trans. C. H. W. Johns (Edinburgh: T. & T. Clark, 1903).

⁴⁸ *The Code of Hammurabi*, trans. L. W. King, *The Avalon Project*, Yale Law School, <https://avalon.law.yale.edu/ancient/hamcode.asp> (accessed: June 22, 2025).

⁴⁹ Montesquieu (1689-1755) was a French philosopher and jurist whose ideas marked the establishment of today’s democratic governance. He opposed the concentration of power in a single authority, as it historically served as the basis of tyrannical governments, and instead favored administrative institutional

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climatic influence. He argued that warmer climates typically intensify sexual desire more than colder ones and that such climates also result in a higher birth rate of females relative to males. He further stated that the people living in such climates need to engage in early marriages to satisfy their intense sexual desire. Alongside this reality, the demographic surplus of females also encourages men to seek multiple wives.⁵⁰

However, a more accurate and empirically grounded perspective is that the pervasiveness of polygamy cannot be ascribed to a single reason but rather to a confluence of interrelated factors. While these factors may vary, at least to some degree, across historical epochs and sociocultural contexts, the underlying drivers of polygamy can generally be classified into five principal domains, which are: biological, social, economic, political, and cultural motives.⁵¹

Perhaps the most fundamental factor in relation to polygamy is biological, namely the enduring attraction to the opposite sex coupled with the human inclination toward continuous sexual activity and the desire to engage in such relations with multiple partners.⁵² Another reason related to human biology is the physiological changes that women experience during pregnancy and postpartum periods. The physiological state of women in such times causes sexual unavailability and thus the man's sexual urge is left unfulfilled.⁵³ Health-related conditions such as: female infertility, chronic illness, or the inability to engage in sexual relations may additionally stand as justifications for a husband to take more than one wife.⁵⁴

Another fundamental reason behind the practice of polygamy is social in nature. In some societies, polygamy is closely associated with social prestige and high status, as it creates large extended families which, in turn, foster broad social relationships. This social network consequently reinforces a person's position within society, particularly in less structured and pre-modern societies, where individuals draw their sense of protection and security from the power and influence of their families.⁵⁵ Moreover, polygamy may also be used as a means

design and the diffusion of power within the state, see, Alan Macfarlane, *Montesquieu and the Making of the Modern World* (2013), <https://rb.gy/mc4un8> (accessed: June 10, 2024).

⁵⁰ Montesquieu, *The Spirit of Laws*, trans. Thomas Nugent (Kitchener: Batoche Books, 2001), 277–279.

⁵¹ These reasons reflect the broader global philosophy underlying the practice of polygamy. Historically, they have all served as justifications for the practice. However, some have significantly diminished in influence today due to cultural changes, see, Hātim Yūnis Maḥmūd, “Nizām Ta‘addud al-Zawjāt wa-Dawāfi‘uh wa-In‘ikāsātuh al-Ijtimā‘iyya” [The System of Polygamy, Its Motives, and Its Social Impacts], *Ādāb al-Rāfidayn*, no. 52 (2008).

⁵² Olasore, “The Extent of Polygamy in Africa,” 9.

⁵³ ‘Alī, “Al-Mu‘ālaja al-Tashrī‘iyya”, 236.

⁵⁴ ‘Alī, “Al-Mu‘ālaja al-Tashrī‘iyya”, 236.

⁵⁵ This reason was once prominent in the history of many world nations but these days, remains evident in only parts of Africa, see, for example, Sanā’ al-Khūlī, *Al-Zawāj wa-al-‘Alāqāt al-Usariyya* [Marriage and Family Relations] (Alexandria: Dār al-Ma‘rifa al-Jāmi‘iyya, 1982), 52; Maḥmūd Salām, *Ta‘addud al-Zawjāt ladā al-Shu‘ūb al-Afrīqiyya* [Polygamy Among African Peoples] (Cairo: Dār al-Ma‘ārif, 1963), 12–13.

to resolve social conflicts, such as terminating warfare and hostilities, preventing bloodshed, or bringing together adversarial factions.⁵⁶ The practice may also arise from familial tensions between a husband and his first wife or from strained relations between the husband and the relatives of his first wife. In other cases, polygamy may be the consequence of an ex-wife being returned to her husband or of a widow being rematched to a relation of the deceased.⁵⁷

It is important to note that the phenomenon of polygamy has also economic motivations, as multiple family members can take on additional labor and contribute additional help to fulfill the material needs of their families. Accordingly, in numerous societies, especially in parts of Africa, this phenomenon is closely linked to family wealth, and it is a sign of family well-being.⁵⁸ Furthermore, in some societies, men have two residences, one in rural areas and one in urban centers, which practically require two wives and a large number of children to manage their domestic affairs.⁵⁹ In certain cases, economic hardship and suffering may push women to accept marriage to wealthy men, even if they are already married, as a means of supporting their families financially. A man, conversely, may marry a second wife, primarily because of her wealth or social standing as a means to improve his economic status through the marital relationship.⁶⁰

Another major reason behind the persistence of polygamy is the phenomenon of warfare. Men have historically constituted the primary actors in armed conflict due to their physical attributes and societal roles. This reality has consequently made them the majority of wartime casualties and often caused them to become numerically smaller than the female population.⁶¹ In response to this gender imbalance, societies have resorted to polygamy to restore social equilibrium and curb the rise of celibacy, romantic chaos, or other unregulated sexual relationships that lie outside of marriage and family life.⁶²

Cultural perceptions and social relationships also serve as notable contributors to sustaining polygamous practices. In certain societies, particularly within Islamic-majority states, polygamy is culturally associated with increasing the Muslim population and the

⁵⁶ This is also another reason that has significantly lost its impact on the practice of polygamy within societies and might only be evident among traditional and custom-based communities such as those that exit in Africa, see, Olasore, "The Extent of Polygamy in Africa," 8-9.

⁵⁷ 'Alī, "Al-Mu'ālaja al-Tashrī'iyya," 236; Zaydān 'Abd al-Bāqī, *Al-Mar'a bayna al-Dīn wa-al-Mujtama'* [Woman Between Religion and Society] (Cairo: Maktabat al-Nahḍa al-Miṣriyya, 1977), 166.

⁵⁸ Mwambene, "What is the Future of Polygyny," 9.

⁵⁹ Olasore, "The Extent of Polygamy in Africa," 9.

⁶⁰ 'Alī, "Al-Mu'ālaja al-Tashrī'iyya," 237.

⁶¹ Alī al-Za'ī, *Al-Taghayyur fī al-Khaṣā'is al-Bunyawiyya li-al-Usra fī Shamāl al-Urdun: Dirāsa Maydāniyya fī Jāmi'at al-Yarmūk* [Change in the Structural Characteristics of the Family in Northern Jordan: A Field Study at Yarmouk University] (Amman, 1989), 53; Olasore, "The Extent of Polygamy in Africa," 9.

⁶² 'Alī, "Al-Mu'ālaja al-Tashrī'iyya," 237.

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strengthening of the Islamic nation.⁶³ It is also resorted to as a means to support the widows and children of martyrs through marriage while also curtailing the spread of extramarital or illicit sexual relations.⁶⁴ In other cultural contexts, monogamy may be seen as a symptom of weakness or lack of masculinity. Accordingly, a man with only one wife is perceived as miserly, lacking generosity in the expenditure of wealth and struggling due to insufficient courage and strength. Polygamy, conversely, is idealized as a sign of economic capability and social authority; the ability to manage multiple wives and large households, and therefore it is conflated with leadership, strength, and status.⁶⁵

It is worth noting that the phenomenon of polygamy remains relatively widespread in Iraq generally and in the Kurdistan Region in particular⁶⁶. The primary drivers of its persistence appear to be predominantly sociopolitical in nature. Religious considerations play a relatively minor role, while economic factors are only infrequently reflected in such cases.⁶⁷

2. The Constitutional Hybridity in the Regulation of Polygamy in Iraq

The 2005 Constitution is the most recent constitutional document promulgated in Iraq. Compared to its predecessors⁶⁸, this Constitution accords greater prominence to Islam and

⁶³ Besides this reality, some Africans view Islam as a cultural system that restricted polygamy on the continent. Before the arrival of Muslims in Africa, African societies practiced polygamy without any limitation on the number of a man's wives. However, Muslim rulers permitted the practice with a restriction of up to four women. In other words, the practice of polygamy under Muslim rule, was more regulated, particularly in terms of the rights and obligations of spouses, compared to other cultures during their respective periods of imperial influence, see Olasore, "The Extent of Polygamy in Africa," 8.

⁶⁴ Muḥammad Badawī, *Mabādi' 'Ilm al-Ijtima'* [Principles of Sociology] (Alexandria: Dār al-Ma'rifa al-Jāmi'iyya, 1987), 377–378.

⁶⁵ Maḥmūd Ḥasan, *Al-Usra wa-Mushkilātuhā* [The Family and Its Problems] (Cairo: Dār al-Ma'ārif, 1967), 151.

⁶⁶ According to data announced by the Judicial Council of the Kurdistan Region between 2009 and 2022, a total of 1,625 cases of second marriage were officially registered. This figure corresponds to approximately 116 cases annually, 10 cases per month, and one case every three days. However, these figures are unlikely to reflect the full extent of the phenomenon, as a significant number of people residing in the Kurdistan Region apparently travel to other Iraqi cities to contract second marriages, see, *Al-Zawāj wa-al-Tafakkuk al-Usarī fī Iqlīm Kurdistān (2009–2022)* [Marriage and Family Disintegration in the Kurdistan Region (2009–2022)], *Drawmedia*, June 21, 2023, https://drawmedia.net/page_detail?smart-id=13170 (accessed: June 10, 2024); Avīn Silāḥ, "483 Rajulan Tazawwajū min Zawjāt Thāniyya fī Maḥākīm Kurdistān" [483 Men Married Second Wives in Kurdistan Courts], *Rudaw*, June 5, 2014, <https://www.rudaw.net/sorani/kurdistan/050620146> (accessed: June 10, 2024).

⁶⁷ See, for example, Moroge Modher Abbas, "Polygamy in Light of Societal Changes in Iraq", *Journal of the College of Education for Women* 27, no. 3 (2016): 1022-1031.

⁶⁸ Iraq has enacted six constitutions since its establishment in 1924. The first constitution was promulgated following the declaration of the state in 1925. It recognized Islam as the state religion and as the basis for personal status matters for Muslims. The second constitution was enacted in 1958, following the victory of

enshrines it as a foundational source of legislation.⁶⁹ The institution of marriage in general, and polygamy in particular, is regarded as a matter of personal status and is therefore governed by Islamic legal principles.⁷⁰ The Constitution concurrently affirms the state's contemporary and internationally recognized commitments to human rights, most notably the right to gender equality.⁷¹ However, this principle inevitably comes into tension with the permissibility of polygamy and thus the lawmakers and enforcement authorities continually face the challenge of maintaining a constitutional balance between these competing considerations.⁷² As a relevant constitutional amendment in Iraq is unlikely to occur, at least in the near future, the state instead relies on the interpretative alignment of domestic legal traditions with its international human rights obligations. However, such alignment is unlikely to be achieved without some degree of compromise of one of the constitutional objectives.

2.1. Islam as a Constitutional Authority: Implications for the Permissibility of Polygamy

The 2005 Constitution may be regarded as the most comprehensive and pragmatic constitutional document in Iraq's history, as it reflects the full spectrum of the country's

the republican revolution. It was similarly secular in nature, maintaining the previous status of Islam as the state religion and a basis for personal status matters. The third constitution was enacted in 1964 after a military coup against the republican leadership. This constitution introduced Islam as a fundamental constitutional rule, while retaining its previous status as the state religion. In 1968, following the emergence of a new political leadership, a new constitution was enacted. However, this constitution preserved the role of Islam and its status as established in the 1964 constitution, namely, as the religion of the state and a fundamental constitutional rule. In 1970, another major political shift took place, resulting in the adoption of a new constitution, but this constitution did not bring any change to the status of Islam. The most recent constitutional enactment occurred in 2005, following the fall of the Ba'thist regime in 2003. The new constitution redefined the role of Islam and accorded it significantly greater importance, see, Rebaz Rasul Khdir, "The Constitutional Status of Islam in the Iraqi legal Order", *The Journal of Legal and Political Sciences* 2, (2024): 226-276.

⁶⁹ See, the Constitution of the Kingdom of Iraq, adopted March 21, 1925, art. 13; The Interim Constitution of 1958, adopted 1958, art. 4; The Law of the Interim Constitution, adopted April 29, 1964, art. 3; The Interim Constitution, adopted September 21, 1968, art. 3; The Interim Constitution of 1970, adopted July 16, 1970, art. 4; *Law of Administration for the State of Iraq for the Transitional Period (2004)*, art. 7; *Constitution of the Republic of Iraq (2005)*, art. 2 (1) (a).

⁷⁰ *Constitution of the Republic of Iraq (2005)*, art. 41.

⁷¹ *Constitution of the Republic of Iraq (2005)*, arts. 14-46.

⁷² Iraqi Personal Status Law No. 188 of 1959, art. 3.

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historical, religious, social, and cultural characteristics.⁷³ Iraq is located in the Middle East and has been part of the Islamic world since the Muslim conquest of Mesopotamia under the Rashidun Caliphate in 638 CE.⁷⁴ Islam is the religion of approximately 95% to 98% of Iraq's population,⁷⁵ and for this reason, successive Iraqi constitutions, including the 2005 Constitution, have accorded Islam a constitutional status and designated it as a foundational framework for regulating the lives of citizens, particularly in matters of personal status.⁷⁶ According to the 2005 Iraqi Constitution, specifically article 41, citizens enjoy the freedom to manage their personal status affairs in accordance with their religion, sect, beliefs, or personal choices. The article states: "Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law." Although Iraq is a Muslim-majority country, it also comprises a significant number of ethnic, religious, and sectarian minorities. Therefore, in accordance with the Constitution, the personal status affairs of Muslim citizens are governed by Islamic legal principles, while those of non-Muslim citizens are governed by the norms of their respective religious traditions.⁷⁷

⁷³ The Constitution opens with a notable preamble that reflects the historical context and realities of Iraq. It describes the country as the land of great civilizations and honors the divine revelations sent by God to humanity through prophets who lived on its soil. The preamble also addresses the historical tragedies that befell the inhabitants of Iraq and highlights the enduring will of Iraqis to confront political and social challenges in order to rebuild a strong nation capable of leading humankind once again. Moreover, the content of the Constitution pragmatically outlines the rights and obligations of the state and its citizens toward each other in a way that fosters a sense of citizenship, nationhood, and statehood in everyone, see *Constitution of the Republic of Iraq (2005)*, the Preamble.

⁷⁴ The Rashidun Caliphate refers to the period in the history of the Islamic state that began following the death of the Prophet Muhammad in 632 CE. This period lasted from 632 to 661 CE, during which four of the Prophet's closest companions ruled: Abū Bakr al-Ṣiddīq, 'Umar ibn al-Khaṭṭāb, 'Uthmān ibn 'Affān, and 'Alī ibn Abī Ṭālib. The word *Caliphate* in Arabic signifies *succession*, and since these companions succeeded the Prophet in leading the Muslims and governing the Islamic lands during that time, the period came to be known by reference to their status as the successors of the Prophet, see, for example, Muḥammad ibn Jarīr al-Ṭabarī, *Tārīkh al-Umam wa-al-Mulūk*, vol. 3, edited by Muḥammad Abū al-Faḍl Ibrāhīm, 2nd ed. (Cairo: Dār al-Ma'ārif, 1967).

⁷⁵ Iraq, *The World Factbook*, last updated May 31, 2024, https://www.cia.gov/the-worldfactbook/countries/iraq/#_people-and-society (accessed: June 15, 2024).

⁷⁶ See, *Constitution of the Republic of Iraq (2005)*, arts. 2 (1) and 41.

⁷⁷ Article 2, in paragraph 2, states: "[t]his Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandaean Sabians". This paragraph complements article 41 which concerns the regulation of citizens' personal status based on their religious affiliation: "Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law", see, *Constitution of the Republic of Iraq (2005)*, art. 2 (2); Iraqi Personal Status Law No. 188 of 1959, art. 3.

Article 2, paragraph 1 of the 2005 Iraqi Constitution, in addition to recognizing Islam as the official religion of the state, establishes it as a foundation source of legislation in the country. The text explicitly states: “Islam is the official religion of the State and is a foundation source of legislation”. Clause (a) of the same paragraph further affirms that no law may ever be adopted if it contravenes the established rulings of the religion: “No law may be enacted that contradicts the established provisions of Islam”.⁷⁸

It is important to note that article 2 of the 2005 Iraqi Constitution is formulated using a number of complex legal and theological terms that require both linguistic and substantive interpretation. The recognition of Islam as the official religion of the state implies not only a symbolic or ceremonial designation but also an acknowledgment of Islam as a comprehensive social message mediating the relationship between God and humanity, as well as a reflection of respect for the faith of the vast majority of the Iraqi population.⁷⁹ Given the central role that Islam has historically played in the regulation of social life, the constitutional drafters appear to have intended to assign it a more dynamic function than that of a merely recognized religion.⁸⁰ Their aim was to establish Islam as a foundational basis for the legal order of the state and to ensure that the broader framework of social regulation is either derived from, or at the very least not in contradiction with the fixed principles of Islamic law.⁸¹

⁷⁸ See, *Constitution of the Republic of Iraq* (2005), art. 2 (1) (a).

⁷⁹ The 2005 Constitution includes many religious symbols, from Qur’anic verses to fundamental principles, which give the Constitution a distinct religious character. The drafters begin the Constitution in the name of God and later refer to a verse from the Qur’an concerning the honor of humankind on earth. In the preamble, they also describe Iraq as the ancient land of prophets and messengers and the resting place of righteous people. This reference highlights the responsibility of Iraq’s ancient inhabitants as those who established civilization and contributed to humanity by providing rules and regulations for an organized life. The Constitution further reminds Iraqis their duty toward God to rebuild their country and civilization through the peaceful coexistence of its diverse social components and the elimination of the spirit of racism and discrimination, see, *Constitution of the Republic of Iraq* (2005), preamble; Khdir, “The Constitutional Status of Islam,” 253-256.

⁸⁰ Iraq has been part of the Islamic world since the beginning of the Rashidun Caliphate, specifically during the caliphate of Abū Bakr al-Ṣiddīq. The land remained connected to the Islamic state throughout the successive caliphates and was governed by Islamic rules until the collapse of the Ottoman Caliphate in 1921. Islam, as a legal order, has played a crucial role in regulating the lives of Iraqis, to the extent that the drafters of the 2005 Constitution sought to reinforce the role of Islamic principles in the Constitution as a contribution to the country’s security and well-being, see, Khdir, “The Constitutional Status of Islam,” 234-244.

⁸¹ Khdir, “The Constitutional Status of Islam,” 256-257; Ḥaydar Ḥusayn ‘Alī al-Karīfī, “Al-Tanzīm al-Dustūrī li-Makānat al-Sharī‘a al-Islāmiyya fī al-Nizām al-Qānūnī” [The Constitutional Organization of the Status of Islamic Sharia in the Legal System], *Majallat al-Uṭrūḥa* 2, no. 5 (2017): 133–166.

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On the basis of these constitutional provisions, Iraq enacted a specific legal framework for personal status matters: the Iraqi Personal Status Law of 1959. Among the central areas governed by this law is the institution of marriage, including the regulation of polygamy under article 3. The law permits polygamy in accordance with Islamic law but only with the approval of a judge and under specific conditions, namely, the man's financial capability, the presence of a legitimate interest on the part of the husband, or when the woman to be married is a widow.⁸²

Article 1 of the Iraqi Personal Status Law establishes the framework for the application and implementation of the law, affirming that its legislative provisions govern all matters falling within its scope, whether explicitly or implicitly addressed. However, in the absence of an applicable statutory provision, recourse must be made to the principles of Islamic law that are consistent with the content of the law. In such cases, Iraqi courts are also permitted to draw upon Islamic jurisprudence developed in Iraq or in other Muslim-majority jurisdictions whose legal systems are compatible with Iraqi legal principles.⁸³

It is important to note that any law enacted or amended in Iraq must conform not only to the general principles of the Constitution but also to the specific principles of Islamic law. The law is otherwise considered null and void. It is also noteworthy that the nullity of laws may arise not only under article 2 of the Constitution, which affirms the supremacy of the fixed principles of Islam, but also under article 13, which establishes the overarching constitutional authority in Iraq, as the article, in paragraph 1, states: “[t]his Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception”. Article 13, in paragraph 2, further provides that any law enacted within the territory of Iraq, including those in the Kurdistan Region, must fully comply with the provisions of the Constitution; otherwise, it shall be deemed legally void: “[n]o law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void”.⁸⁴

2.2. Human Rights as Modern Constitutional Commitments: Tensions with a Polygamous Legal Culture

Iraq is one of the countries that have experienced a complex political development throughout its history due to its diverse social, religious, and geographical characteristics.⁸⁵ As a result of this complexity, the design of the country's legal system has faced multifaceted challenges and obstacles. The country underwent its most recent fundamental

⁸² Iraqi Personal Status Law No. 188 of 1959, art. 3(4)–(7).

⁸³ Iraqi Personal Status Law No. 188 of 1959, art. 1(1)–(3).

⁸⁴ See, *Constitution of the Republic of Iraq* (2005), art. 13 (1)–(2).

⁸⁵ See, Khdir, “The Constitutional Status of Islam”, 226-276.

transformation of the legal order following the military intervention in Iraq in 2003⁸⁶, and specifically with the promulgation of its current constitution in 2005. This new legal order aimed to promote social and political harmony and balance, prevent the recurrence of historical injustices, and create an environment conducive to achieving social, economic, and cultural development in the country.⁸⁷

Polygamy is a social phenomenon that has long been the subject of legal debate and scholarly research in Iraq.⁸⁸ The practice is permissible under Islam as the official religion of the state and a primary source of legislation, but conflicts with the principle of gender equality as a contemporary liberal value enshrined in the constitution. This contradiction has consequently led to a legal dilemma within the constitution that represents the supreme framework of the country's legal order.⁸⁹

Article 1 of the Iraqi Constitution stipulates the introduction of a new political system in the country and defines Iraq as a federal parliamentary democratic republic.⁹⁰ Article 2 recognizes Islam as the official religion of the state and a primary source of legislation, affirming that no law may contravene the established principles of Islam.⁹¹ The constitution

⁸⁶ The military intervention in Iraq in 2003 is a reference to the military operation launched by the international coalition led by the United States against the Ba’thist regime, which resulted in the complete transformation of the regime and the country’s political system. Importantly, the terms ‘the Liberation Process of Iraq’ and ‘the Invasion of Iraq’ are also used depending upon people’s political views and ideological affiliations. The first term is usually used by opposition forces that fought against the regime, whereas the latter is more commonly used by people who viewed the process as an invasion, such as academics, international media outlets, and lawyers, see, for example, Daniel Lieberfeld, “Theories of Conflict and the Iraq War,” *International Journal of Peace Studies* 10, no. 2 (2005): 1–21; Rebaz Rasul Khdir, “The Iraqi High Criminal Court: Judicial Lessons and Necessary Steps,” *Zanco Journal of Law and Politics* 22, no. 36 (2023): 226-276; Joseph Stieb, “Why Did the United States Invade Iraq? The Debate at 20 Years,” *Texas National Security Review* 6, no.3 (2023): 12-28.

⁸⁷ See, *Constitution of the Republic of Iraq* (2005), arts. 1–6.

⁸⁸ The debate has been ongoing within Iraqi academic and legislative circles since at least Iraq’s accession to the CEDAW Convention in the early 1980s, during which time the country adopted multiple legislative measures that often contradicted one another, see, for example, Committee on CEDAW, *Concluding Comments: Iraq*, 1993; Committee on CEDAW, *Consideration of Iraq’s Report*, 2000; Human Rights Committee, *General Comment No. 28*, 2000; CEDAW States Parties Meeting, *Declarations and Reservations*, 2010.

⁸⁹ See, *Constitution of the Republic of Iraq* (2005), arts. 2, 14, 29, 37.

⁹⁰ The article states: “[t]he Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq”.

⁹¹ See, *Constitution of the Republic of Iraq* (2005), art. 2(1)(a).

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simultaneously establishes democratic principles as the basis for legislative legitimacy⁹², and prohibits the enactment of any law that conflicts with the human rights and fundamental freedoms included in articles 14 to 46 of the Constitution.⁹³

Article 14 of the Iraqi Constitution affirms that all citizens are equal before the law without any discrimination based on gender, religion, belief, or social or economic status.⁹⁴ This article enshrines the principle of equality as the cornerstone of the country's legal justice. Article 37 guarantees the preservation of personal freedom and human dignity, considering them fundamental rights that must be respected and protected.⁹⁵ Article 29 highlights that the family is the fundamental unit of society and obligates the state to protect it from all forms of violence and abuse.⁹⁶ Despite these constitutional guarantees, Iraq is also internationally bound by several international conventions that prohibit discrimination on the basis of gender, most notably the UN Charter, the ICCPR, and CEDAW.⁹⁷ The rules of the UDHR⁹⁸, in addition to customary rules⁹⁹ related to human rights and fundamental

⁹² Article 2, in addition to recognizing Islam as the state religion and the foundational source of legislation in paragraph 1, subparagraph (a), it also, in paragraph 1, subparagraph (b), refers to democracy as another basis for the legislative process, as it states: “[n]o law may be enacted that contradicts the principles of democracy”, see *Constitution of the Republic of Iraq* (2005), art. 2 (1) (b).

⁹³ Article 2, in subparagraph (c), includes: “[n]o law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution”, see, *Constitution of the Republic of Iraq* (2005), art. 2 (1) (c).

⁹⁴ The article states: “Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status”.

⁹⁵ The article, in paragraph 1, subparagraph (a), states: “[t]he liberty and dignity of man shall be protected”.

⁹⁶ The article, in paragraph 1, subparagraph (a), states: “[t]he family is the foundation of society; the State shall preserve it and its religious, moral, and national values”. It further, in paragraph 4, states: “[a]ll forms of violence and abuse in the family, school, and society shall be prohibited”.

⁹⁷ Iraq was a founding member of the UN at the San Francisco Conference in 1945 and has been a party to the Organization's Charter ever since. The country ratified the ICCPR in 1971, and the Covenant entered into force in 1976. As for the CEDAW, the Convention was adopted in 1979, and Iraq ratified it in 1986, see, for example, Rebaz R. Khdir *et al*, The Impact of the International Instruments on the Provisions Related to the Inheritance in the Iraqi Personal Status Law”, *TWEJER* 7, no. 4 (2025): 199-208; United Nations Human Rights Office of the High Commissioner, *Ratification Status for Iraq*, UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=82&Lang=en (accessed: April 1, 2025).

⁹⁸ The UDHR is one of the primary instruments in modern public international law issued by the UN General Assembly on December 10, 1948. The objective of the Declaration was to promote human rights worldwide, and it, following its adoption, made a significant contribution to this area over the decades. The Declaration became the basis for many other international instruments such as the ICCPR and the ICESCR, which were adopted in 1966, see, United Nations, (*UDHR*).

⁹⁹ Customary rules are considered the second source of law in general and of international law in particular, which are established through the repeated practice of states and the acceptance of such practices as legal rules in their relations with one another, see, ‘Abd Allāh ‘Alī ‘Abū, *Al-Qānūn al-Duwalī al-‘Āmm* [Public International Law] (Duhok: Maktabat Yādgar, 2015), 156–166.

freedoms, constitute a normative framework that shapes the conduct of states, including Iraq.¹⁰⁰ In this context, article 8 of the Constitution affirms Iraq's commitment to respecting and implementing its international obligations, reflecting the State's legal responsibility toward the international community.¹⁰¹ Article 13 further establishes that the constitution is the supreme law in the land and thus no legislation may be enacted that conflicts with its provisions. Any such law, including those issued by regional governments, is to be deemed void.¹⁰²

It is worth noting that the Iraqi Personal Status Law predates the 2005 Constitution by several decades, having originally been enacted in 1959.¹⁰³ While the Constitution appears to affirm the general content of the law, it does not explicitly provide for any modifications or limitations regarding its application.¹⁰⁴ With the growing involvement of women in human rights advocacy since the mid-twentieth century and the emergence of gender equality as a core principle in numerous international instruments, Iraq has come under increasing legal pressure to limit the practice of polygamy within its society.¹⁰⁵

During the drafting of the 2005 Constitution, the drafters sought to establish a theoretical balance between the Islamic identity of the state, given that Islam is the religion of the majority of the population, and Iraq's obligations within the international order as an active participant in shaping global governance strategies and embracing the values and principles of contemporary life. However, this balance has remained largely theoretical and has not been fully realized in practice. Certain legal provisions, such as those relating to the permissibility of polygamy, are viewed as obstacles to achieving the principle of gender equality, a fundamental principle of modern liberal systems.¹⁰⁶

In their assessment of this issue, liberal commentators direct their criticism at the Iraqi Constitution, arguing that it goes further than its predecessors in incorporating and enshrining Islamic law, which, in their view, leads to infringement of the limits of personal

¹⁰⁰ 'Abū, *Al-Qānūn al-Duwalī al-Āmm*, 156–166.

¹⁰¹ The article states: "Iraq shall observe the principles of good neighborliness, adhere to the principle of noninterference in the internal affairs of other states, seek to settle disputes by peaceful means, establish relations on the basis of mutual interests and reciprocity, and respect its international obligations".

¹⁰² The article states: "[t]his Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception".

¹⁰³ See, Iraqi Personal Status Law No. 188 of 1959.

¹⁰⁴ See, *Constitution of the Republic of Iraq* (2005), arts. 2 (1) (a), 41.

¹⁰⁵ See the international instruments issued in the field of human rights in general and women's rights in particular, to which Iraq is a state party on the United Nations Human Rights Office of the High Commissioner, *Ratification Status for Iraq*.

¹⁰⁶ Imān al-Warrāqī, "Ḥuqūq al-Insān fī Khaṭar...Hal Fataḥ al-ʿIrāq Abwāb al-Tamyīz bi-Taʿdīl Qānūn al-Aḥwāl al-Shakhṣiyya?" [Human Rights at Risk: Did Iraq Open the Door to Discrimination by Amending the Personal Status Law?], *Jusoor Post*, January 26, 2025, <https://jusoorpost.com/ar/posts/53262/hkok-alansan-fy-khtr-hl-fth-alaarak-aboab-altmyyz-btaadyl-kanon-alahoal-alshkhsy> (accessed: April 2, 2025).

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rights and freedoms. From this perspective, they call upon the lawmakers and law enforcement authorities to limit the interpretation and implementation of Islamic principles within the framework defined by the modern conceptions of human rights and fundamental freedoms.¹⁰⁷ The critics furthermore call for the prohibition of polygamy, considering it inconsistent with the principle of gender equality as one of the most fundamental bases of contemporary liberal thought.¹⁰⁸

Despite this reality, Iraq has not taken any explicit legislative steps to prohibit the phenomenon of polygamy or broadly restrict it within the Personal Status Law of 1959.¹⁰⁹ However, the parliament of the Kurdistan Region amended the law in 2008, particularly article 3 and with a more specific focus on paragraph 4, which addresses the issue of polygamy. The amendment came in response to domestic and international human rights campaigns aimed at limiting the practice of this phenomenon.¹¹⁰

3. Polygamy in the Kurdistan Region's Amendment to the Iraqi Personal Status Law: Constitutional Compatibility and Human Rights Compliance

As previously addressed, the 2005 Iraqi Constitution establishes Islam as the official religion of the state and recognizes it as the primary source of lawmaking. It simultaneously affirms the protection of fundamental rights and individual freedoms.¹¹¹ However, these two constitutional principles may come into tension when applied to the issue of polygamy. Iraq has witnessed increasing domestic and international advocacy for limiting the practice of polygamy, but the state's response has thus far remained limited and shown little

¹⁰⁷ As previously noted, Iraqi constitutions, except for the 1964 and 1968 versions, did not accord Islam any practical role in political life in general, or in the legislative process in particular, until the fall of the Ba'athist regime in 2003 and the subsequent enactment of new laws and constitutions between 2003 and 2005. Even the 1964 and 1968 constitutions, while recognizing Islam as a fundamental principle, did not alter the essentially secular character of the political system. In other words, the 2005 Constitution marked a radical shift in the political identity of the state from a purely secular system to one grounded in Islam, democracy, and human rights. As these frameworks reflect different historical periods and cultural paradigms, they inevitably come into conflict with one another. To resolve the conflicts, liberal commentators have advocated for a broader interpretation of democracy and human rights, often in ways that limit the influence of Islamic principles, see, Khdir, "The Constitutional Status of Islam," 248-267.

¹⁰⁸ Human Rights Watch, "Al-'Irāq: Ta'dīl Qānūn al-Aḥwāl al-Shakḥīyya Intikāsa li-Ḥuqūq al-Mar'a" [Iraq: Personal Status Law Amendment Sets Back Women's Rights], March 10, 2025, <https://reliefweb.int/report/iraq/iraq-personal-status-law-amendment-sets-back-womens-rights-enar> (accessed: April 2, 2025).

¹⁰⁹ Despite the above-mentioned reality, the Iraqi legislator conditionally permits the practice. To be eligible to conclude a second marriage contract, a man must demonstrate financial capability to support two households and prove the existence of a legitimate interest, see, Iraqi Personal Status Law No. 188 of 1959, art. 3 (4).

¹¹⁰ See, Iraqi Personal Status Law No. 188 of 1959, art. 3; Act No. 15 of 2008, art. 1.

¹¹¹ See, *Constitution of the Republic of Iraq* (2005), art. 2 (1) (a)-(c).

substantive progress.¹¹² Against this backdrop, the Kurdistan Region took tangible steps in 2008 to restrict the practice of polygamy by amending specific provisions of the Iraqi Personal Status Law, particularly those governing marriage and polygamy.¹¹³ This legislative development has prompted significant constitutional debate regarding the extent to which these regional amendments are compatible with the overarching national constitutional framework.¹¹⁴

3.1. Analysis of the Kurdistan Region's Amendments Related to Polygamy

Polygamy remains, to this day, a prominent phenomenon in the majority of Muslim societies. However, its prevalence cannot be attributed solely to the Qur'an and the Hadiths of the Prophet Muhammad as sources of religious authority for Muslims.¹¹⁵ The phenomenon is shaped more by the interrelation of sociopolitical factors that consciously influence the dynamics of these societies.¹¹⁶ Although polygamy was historically established to solve certain problems, it, in contemporary contexts, has become the origin of certain legal challenges.¹¹⁷ These challenges are not merely theoretical or incidental. Rather, they wield a significant influence over society. Perhaps the most prominent of these challenges is the violation of the principle of equality between men and women. This challenge ultimately leads to social imbalance and perpetuates the construction of a patriarchal society in which male authority dominates family and social relations. From this perspective, prohibiting or significantly restricting polygamy has come to be regarded as an implicit fundamental value in many international human rights instruments.¹¹⁸ Its domestic implementation is also considered an international obligation incumbent upon states, whether through the enactment of specific laws or by amending existing legislation to conform to international human rights standards.¹¹⁹

¹¹² See, Act No. 15 of 2008, art. 1.

¹¹³ See, for example, *Woman and the Law in Iraq*, 96–106; Blais, *Iraqi Women: Lost Liberties*, 1–25.

¹¹⁴ See, for example, Ali Shah and Sadkhan, "Legal and Practical Problems", 624–638.

¹¹⁵ Islam, both in its Qur'anic verses and Prophetic traditions, generally permits the practice of polygamy, and Muslims have followed it on this basis. However, the practice predates Islam, as polygamy was practiced by various communities prior to its emergence. In other words, Islam preserved an existing phenomenon for certain sociopolitical reasons. Additionally, the relevant Islamic rulings indicate permissibility, but not any form of encouragement, see Abu Ameenah Bilal Philips and Jameelah Jones, *Polygamy in Islam* (Riyadh: International Islamic Publishing House, 2005).

¹¹⁶ See, for example, Abbas, "Polygamy in Light of Societal Changes in Iraq," 1022–1033.

¹¹⁷ Thom brooks, "The Problem with polygamy", *Philosophical Topics* 37, no. 1 (2009): 109–122.

¹¹⁸ See, United Nations, *UN Charter*, preamble, para. 2; United Nations, *UDHR*, arts. 1, 2; United Nations, *ICCPR*, art. 3; United Nations, *CEDAW*, preamble, para.8.

¹¹⁹ United Nations, *CEDAW*, art. 2.

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What can be observed in this context is that several attempts have been made in Iraq to take legislative steps toward more broadly restricting or prohibiting the practice of polygamy.¹²⁰ However, these efforts have thus far failed to bear fruit, primarily due to the political dominance of conservative forces within the country's decision-making centers.¹²¹ It is particularly noteworthy, however, that such efforts have succeeded in the Kurdistan Region. This success is attributed to the secular nature of the ruling Kurdish political parties, along with the relatively weak political influence of Islamist parties within the Region.¹²² One of the most significant steps taken in this regard was the 2008 amendment to the Personal Status Law, specifically article 3, and in particular paragraph 4, which regulates the practice of polygamy.¹²³ This amendment introduced strict and specific conditions for men seeking to engage in polygamous marriage, effectively bringing the practice close to a *de facto* ban.¹²⁴ Among the key provisions introduced by the legal reform are the following. The legal amendment, first and foremost, introduces a new definition of marriage. In paragraph 1 of article 3 of the amended law, the previous definition of marriage, which read: "marriage is a contract between a man and a woman through which the woman becomes lawful to the man under Islamic law, and its purpose is to establish a bond for shared life and procreation",¹²⁵ was replaced with this formulation: "marriage is a consensual contract between a man and a woman through which each becomes lawfully permitted to the other under Islamic law, and its purpose is to establish a family on the foundations of affection, compassion and mutual responsibility...".¹²⁶ Although some legal scholars view this amendment as merely superficial in nature, the legal reality suggests that it represents a substantive shift in both the jurisprudential and legal conception of marriage. Whereas marriage was previously understood as a simple contract, one that could, in some interpretations, be concluded without the full consent of one or even both parties, it is now, under the revised definition, necessarily based on the mutual consent of both sides.

¹²⁰ See, for example, Rend al-Rahimi, "Amendment to the Personal Status Law: A Blow to Iraqi Women and Society," *Wilson Center*, August 22, 2024, <https://www.wilsoncenter.org/blog-post/amendment-personal-status-law-blow-iraqi-women-society> (accessed: June 25, 2025); Human Rights Watch, "Iraq: Personal Status Law Amendment Sets Back Women's Rights" [EN/AR], *ReliefWeb*, March 10, 2025, <https://reliefweb.int/report/iraq/iraq-personal-status-law-amendment-sets-back-womens-rights-enar> (accessed: June 25, 2025).

¹²¹ al-Rahimi, "Amendment to the Personal Status Law".

¹²² See, *Act No. 15 of 2008*.

¹²³ The paragraph of the original law states: "marriage to more than one wife is not permitted except with the permission of a judge and granting such permission is conditional upon the fulfillment of the following two requirements: (a) The husband must have sufficient financial means to support more than one wife; (b) There must be a legitimate interest", see, *Iraqi Personal Status Law No. 188 of 1959*, art. 3 (4).

¹²⁴ See, *Act No. 15 of 2008*, art. 1.

¹²⁵ See, *Iraqi Personal Status Law No. 188 of 1959*, art. 3 (1).

¹²⁶ See, *Act No. 15 of 2008*, art. 1 (1) 1.

More than that, the amendment redefines the very purpose of marriage itself. Instead of being centered primarily on establishing a union for cohabitation and procreation, the objective is now framed as the formation of a family built upon moral and spiritual foundations: affection (*mawadda*), compassion (*rahma*), and shared responsibility between spouses.¹²⁷ This conceptual transformation marks a shift from a traditional understanding of the marital relationship to a more modern and human-centered vision. A vision that places mutual consent, partnership, and equality at the core of the institution of marriage, rather than viewing it solely as a lawful bond between a man and a woman.

Another noteworthy matter in article 3 of the Personal Status Law relates specifically to polygamy, particularly in paragraphs 4, 5, 6, and 7. The relevant article of the Act of Amending the Application of the Personal Status Law effectively suspends the application of these paragraphs in their entirety within the Region.¹²⁸ According to the original text of the Iraqi Personal Status Law, marriage to more than one wife is prohibited unless the husband obtains prior judicial permission. This permission is conditional upon two primary requirements: proof that the husband has the financial capacity to support more than one wife, and the existence of a legitimate and convincing justification for the additional marriage.¹²⁹ Notably, paragraph 5 of article 3 of the original law expands the discretionary authority of the judge by granting him the right to deny permission for a second marriage if it appears that the husband may be unable to ensure justice between his wives or if such a marriage would likely cause harm to his family.¹³⁰ Paragraph 6 addresses cases in which a husband contracts a second marriage in violation of the stated conditions; it prescribes a penalty of one year of imprisonment, a fine of 100 dinars, or both.¹³¹ In contrast to these conditions, paragraph 7 introduces a single exception: in cases where the intended marriage is to a widow, the judge is permitted to exercise a degree of leniency in applying the conditions and procedures. In such instances, the court may allow the marriage to proceed without full compliance with all previously outlined requirements.¹³² Accordingly, the amendment introduced into the Kurdistan Region's version of the Personal Status Law, replacing paragraphs 4, 5, 6, and 7 of the original law, has imposed rigorous restrictions on polygamy.¹³³ Under this framework, polygamous marriage is only permitted with prior

¹²⁷ See, Act No. 15 of 2008, art. 1 (1) 1.

¹²⁸ See, Act No. 15 of 2008, art. 1 (2).

¹²⁹ See, Iraqi Personal Status Law No. 188 of 1959, art. 3 (4).

¹³⁰ See, Iraqi Personal Status Law No. 188 of 1959, art. 3 (5).

¹³¹ See, Iraqi Personal Status Law No. 188 of 1959, art. 3 (6).

¹³² See, Iraqi Personal Status Law No. 188 of 1959, art. 3 (7).

¹³³ The Kurdistan Region is not the only part of the Islamic world that has restricted polygamy. Broadly speaking, the Islamic world can be divided into three categories with regard to this practice. The first category allows polygamy without conditions, as seen in countries such as Iran, Qatar, and Saudi Arabia. The second category permits it under certain conditions, including Egypt, Jordan, Morocco, Pakistan, Malaysia, and Indonesia. The third category prohibits the practice entirely, as in Turkey and Tunisia. In this

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judicial authorization and must satisfy a set of precise legal conditions and standards¹³⁴ which are:

1. Obtaining the first wife's consent before the court for her husband's marriage to a second woman.¹³⁵ This condition is considered one of the essential requirements for polygamous marriage under the Law Amending the Application of the Personal Status Law in the Kurdistan Region.¹³⁶ Notably, this requirement does not appear in any form in the original federal law.¹³⁷ It represents a significant legislative development, as it grants the first wife a legal right to be informed of and to object to her husband's intention to remarry. This is particularly important in cases where she believes the second marriage may negatively affect her family life, emotional stability, or financial well-being, or where the husband may be unable to fulfill his marital responsibilities toward her and their children.
2. A medical diagnosis confirms that the first wife suffers from a chronic and long-term illness that prevents her from maintaining marital relations with her husband and for which there is no effective treatment, or an official medical report confirms the wife's infertility to the court.¹³⁸ This condition is not found in the Iraqi federal Personal Status Law,¹³⁹ but it was incorporated into the Law Amending the Application of the Personal Status Law in the Kurdistan Region as part of a broader effort to restrict polygamy by limiting it to exceptional cases involving compelling social need. Through this provision, the law in the Kurdistan Region does not permit a second marriage to anyone who simply desires it; rather, it imposes clear legal and religious constraints that tie eligibility to specific and verifiable social circumstances. The intent is to prevent polygamy from being exercised as a matter of personal preference or male privilege and to restrict it to cases where there is a legitimate and demonstrable necessity.

context, the Kurdistan Region occupies a unique position in the Islamic world; it permits polygamy but only under very restrictive circumstances, see, Purwanto *et al.*, "Polygamy in Muslim Countries", 435.

¹³⁴ See, Act No. 15 of 2008, art. 1 (2).

¹³⁵ See, Act No. 15 of 2008, art. 1 (2) 1.

¹³⁶ This condition is notable in the family laws of some Muslim-majority countries that permit polygamy, and it is likely that the Kurdistan legislator has adopted it from their legal systems, see for example, Htun and Weldon, "State Power, Religion, and Women's Rights," 159; Abdullah, "Inserting Stipulation Pertaining to Polygamy," 153-169.

¹³⁷ See, Iraqi Personal Status Law No. 188 of 1959, art. 3.

¹³⁸ See, Act No. 15 of 2008, art. 1 (2) 2.

¹³⁹ See, Iraqi Personal Status Law No. 188 of 1959, art. 3.

3. One of the essential conditions is that the husband must possess sufficient financial means to support more than one wife. He is required to prove this capacity by submitting official documentation to the court when applying for registration of a second marriage.¹⁴⁰ Although this condition is also mentioned in the Iraqi federal Personal Status Law,¹⁴¹ the amended law in the Kurdistan Region imposes stricter requirements. It does not accept a mere verbal affirmation of financial capability; rather, it mandates the submission of formal evidence before the court.¹⁴² The purpose of this condition is to ensure that the husband has the necessary financial resources to bear the responsibilities that come with marrying more than one woman at the same time, including the obligation to provide for the basic needs of both families. It is also intended to prevent polygamous marriages from becoming a social burden on the community.
4. A man applying for the registration of a second marriage is required to submit a written pledge to the court affirming his commitment to achieving justice among all his wives in fulfilling all related familial responsibilities, whether material or emotional, prior to initiating the marriage process.¹⁴³ Although this condition is referenced in paragraph 5 of article 3 of the Iraqi Personal Status Law, it is presented there as a discretionary matter left to the judge's evaluation rather than a mandatory legal requirement.¹⁴⁴ By contrast, the amended law in the Kurdistan Region elevates this commitment to the level of a binding legal duty, and failure to uphold the terms of the pledge may ultimately result in legal liability for the husband.¹⁴⁵
5. The wife must not have stipulated, at the time of the marriage contract, that her husband shall not marry another woman.¹⁴⁶ This is an additional condition¹⁴⁷ set forth in the Law Amending the Application of the Personal Status Law in the Kurdistan

¹⁴⁰ See, *Act No. 15 of 2008*, art. 1 (2) 3.

¹⁴¹ See, *Iraqi Personal Status Law No. 188 of 1959*, art. 3 (4) 1.

¹⁴² See, *Act No. 15 of 2008*, art. 1 (2) 3.

¹⁴³ See, *Act No. 15 of 2008*, art. 1 (2) 4.

¹⁴⁴ See, *Iraqi Personal Status Law No. 188 of 1959*, art. 3 (5).

¹⁴⁵ See, *Act No. 15 of 2008*, art. 1 (2) 4.

¹⁴⁶ See, *Act No. 15 of 2008*, art. 1 (2) 5.

¹⁴⁷ This condition has been included in the family laws of many Muslim-majority countries as a protective measure for women against the practice of polygamy, and the drafters of the Kurdistan Region's Amending Act may have adopted it from these jurisdictions, see for example, Abdullah, "Inserting Stipulation Pertaining to Polygamy," 153-169.

Region, and it is not referenced in the Iraqi federal Personal Status Law.¹⁴⁸ While this condition may appear to be an independent requirement, it is, in fact, complementary to the first condition: the first wife's consent to her husband's second marriage. Without such consent, the husband is not legally permitted to enter into a second marriage under the provisions of the amended law.¹⁴⁹

6. Anyone who enters into a second marriage in violation of the provisions outlined in this amended article shall be punished with imprisonment for a period of no less than six months and no more than one year, in addition to a monetary fine of ten million Iraqi dinars.¹⁵⁰ What is notable about this provision is that the penalty for unlawful polygamous marriage under the amended law is more severe than that prescribed in the original law.¹⁵¹ The amendment imposes both a custodial sentence and a financial penalty simultaneously, rather than leaving it to the judge's discretion to impose one or the other.
7. The judge is not permitted to suspend the execution of the sentence issued against anyone who has entered into a polygamous marriage in violation of the amended provisions of this law.¹⁵² This paragraph indicates that the drafters of the amendment in the Kurdistan Region have not only restricted the judge's discretion in determining the type of punishment, but have also completely prohibited the use of any mitigating circumstances or discretionary leniency in the enforcement of the sentence, even if such grounds are deemed present by the judge.

In addition to the aforementioned conditions, article 18 of the Act amended article 40, paragraph 5 of the Iraqi Personal Status Law, which had prevented the first wife from petitioning for divorce if her husband married a second wife.¹⁵³ The Act, in other words, considered a second marriage as a justification for divorce for the first wife before the

¹⁴⁸ See, Iraqi Personal Status Law No. 188 of 1959, art. 3.

¹⁴⁹ See, *Act No. 15 of 2008*, arts. 1 (2) 1, 5.

¹⁵⁰ See, *Act No. 15 of 2008*, art. 1 (2) 6.

¹⁵¹ See, Iraqi Personal Status Law No. 188 of 1959, art. 3 (6).

¹⁵² See, *Act No. 15 of 2008*, art. 1 (2) 7.

¹⁵³ Paragraph 5 of article 40 states: "If a husband marries a second wife without obtaining permission from the court, the wife does not have the right to initiate a criminal complaint pursuant to paragraph 1 of section (a) of article 3 of the Criminal Procedure Code No. 23 of 1971, in reference to paragraph 6 of the same article", see, Iraqi Personal Status Law No. 188 of 1959, art. 40 (5). Article 18 of the Act of Amending the Application of the Personal Status Law states: "If a husband marries a second wife, his first wife shall have the right to ask for separation", see, *Act No. 15 of 2008*, art. 18.

courts.¹⁵⁴ Thus, it is evident that the amendment introduced by the Kurdistan Parliament to the Iraqi Personal Status Law represents a substantial reform and a far-reaching change. It has considerably narrowed the scope for practicing polygamy within the courts of the Kurdistan Region, to the extent that many men residing in the Region now seek to register their second, or subsequent marriages in areas governed by the federal Iraqi government. This is because the amended provisions are not in force outside the Region, and courts in those areas continue to apply the original version of the Iraqi Personal Status Law.¹⁵⁵

3.2. From Conflict to Compromise: The Kurdistan Region as a Theo-Secular Model for the Regulation of Polygamy

As previously indicated, the formulation of the legal system in Iraq has been and remains a complex process. This complexity stems from the country's intricate social fabric and the cultural constraints surrounding the acceptance of gender equality,¹⁵⁶ alongside Iraq's binding international legal commitments to uphold modern civilizational values and standards, which often come into tension with the prevailing cultural characteristics of the society.¹⁵⁷ The 2003 military intervention in Iraq and the subsequent promulgation of the 2005 Constitution stand as a clear example that the state has not yet fully succeeded in establishing a civic environment that ensures the protection of all citizens' rights without discrimination based on gender, ethnicity, religion, or sect.¹⁵⁸

The issue of gender inequality has been a central focus of both international and domestic legal campaigns concerning human rights and women's rights throughout the second half of the twentieth century. These efforts have aimed to eliminate or restrict gender-based

¹⁵⁴ However, the Iraqi Supreme Court held, in a ruling on a case brought by a local personal status court, that a husband's second marriage does not entitle the first wife to request a divorce. Accordingly, article 18 of the Act amending the application of the Iraqi Personal Status Law was deemed unconstitutional and specifically contrary to the established principles of Islam as the constitutional foundation of legislation, see, Federal Supreme Court, *Decision No. 230/Federal/2022* (Iraq), November 30, 2022.

¹⁵⁵ According to a report, more than 600 men from the Kurdistan Region contracted their second marriages in the courts of Makhmour and Kirkuk cities during 2013 alone, both of which fall outside the jurisdiction of the KRG, see, Silāh, "483 Men Married Second Wives."

¹⁵⁶ See, for example, Kristen Kao, *Legal Pluralism and Fragmented Sovereignty in Iraq*, Working Paper, The Quality of Government Institute, University of Gothenburg, April 22, 2022, 2–62, https://www.gu.se/sites/default/files/2022-06/2022_5_Kao.pdf (accessed: June 27, 2025).

¹⁵⁷ *National Human Rights Plan in Iraq (2021–2025)*, translated by Ruaa Saad Hamody (Baghdad: Ministry of Justice, Human Rights Department, 2021), 1–220, <https://www.humanrights.dk/files/media/document/Iraq%20NHRAP%202021-2025%20English.pdf> (accessed: June 27, 2025).

¹⁵⁸ See, for example, *Human Rights Watch, World Report 2024: Events of 2023* (New York: Human Rights Watch, 2023), 318–323.

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discrimination on a global scale.¹⁵⁹ Among the regions particularly targeted by these initiatives is the Islamic world, where manifestations of gender inequality have appeared more prominently than in other parts of the world. In this context, Iraq stands out as one of the Muslim-majority countries where such patterns are clearly observable, making it the subject of mounting international and domestic pressure to adopt legislative and administrative measures aimed at prohibiting such practices.¹⁶⁰ However, Iraq's legislative trajectory in this area has not been viewed as promising by international bodies and monitoring committees responsible for overseeing the implementation of global human rights instruments. This is largely due to the deeply entrenched and sensitive nature of gender inequality in Iraq, which is closely intertwined with the cultural values and understandings of the majority of the population. As a result, legislative reforms seeking to prohibit gender discrimination remain exceptionally difficult to achieve in practice.¹⁶¹

With respect to the Kurdistan Region and as previously noted, the practice of polygamy is governed by the Iraqi Personal Status Law of 1959. However, the Region has undertaken a legislative reform of this law, including a notable amendment to article 3, paragraph 4, aimed at further restricting the practice, though not amounting to a complete prohibition. This legislative development can be understood as a partial response to international pressure and as an expression of the Region's alignment with globally circulating liberal values concerning women's rights and gender equality within the framework of family law.¹⁶² The Kurdistan Region has, in other words, established a distinct legal position regarding polygamy from the Iraqi federal legal framework. The position has, at a federal level, divided jurists into two groups: one group endorses the Act, while the other considers

¹⁵⁹ See, for example, *Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace* (Copenhagen: United Nations, 1980), <https://docs.un.org/en/A/CONF.94/35> (accessed: June 27, 2025); *Report of the International Conference on Population and Development* (New York: United Nations, 1994), https://www.unfpa.org/sites/default/files/event-pdf/icpdeng_2.pdf (accessed: November 5, 2025); *Report of the Fourth World Conference on Women* (New York: United Nations, 1995), <https://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf> (accessed: November 10, 2025).

¹⁶⁰ See, for example, *Human Rights Watch, World Report 2024: Events of 2023*, 319; *Amnesty International, Iraq: Decades of Suffering* (London: Amnesty International, 2005); *The Status of Women in Iraq: An Assessment of Iraq's De Jure and De Facto Compliance with International Legal Standards* (Washington, DC: American Bar Association, 2005); Grégoire-Blais, *Iraqi Women: Lost Liberties*, 1–25.

¹⁶¹ See, for example, Jaafar H. Khidir and Sarhang H. Salih, "Human Rights Situation in Iraq and Kurdistan Region: Constitutional and Political Prospects," *Beijing Law Review* 5, (2014): 298–305.

¹⁶² See, for example, Afif Sarhan, "Polygamy Law Irks Iraq Kurds," *IslamOnline*, November 11, 2008, <https://web.archive.org/web/20081112180008/http://www.islamonline.net/servlet/Satellite?c=ArticleC&cid=1226331242817&pagename=Zone-English-News%2FNWELayout> (accessed: June 27, 2025); *Amnesty International, Iraq: Submission to the UN Committee on the Elimination of Discrimination against Women, 92nd Pre-Sessional Working Group, 24–28 February 2025* (London: Amnesty International, 2025), <https://www.amnesty.org/en/documents/mde14/8889/2025/en/> (accessed: June 27, 2025); *UNHCHR, Report on the Present Situation of Human Rights in Iraq*, para. 86.

it a violation of certain provisions of the Iraqi Constitution. It is worth noting that the Kurdistan Region's Act has become the subject of several appeals before the Federal Supreme Court to assess its compatibility with the Constitution.¹⁶³

In amending article 3 of the Personal Status Law, the drafters first restructured the definition of marriage, shifting the concept from a simple contract to one based on mutual consent. At the same time, the drafters reconceptualized the purpose of marriage: it is no longer merely a means of procreation and the continuation of offspring but rather a process of building a family based on love, understanding, and shared responsibility. This redefinition of marriage suggests that the drafters' intent was to lay the foundation for the subsequent amendment to paragraph 4, which directly addresses the issue of polygamy.¹⁶⁴ Notably, the previous definition reflected a traditional and jurisprudential conception of marriage, whereas the revised version introduces a contemporary, practical, and legally based understanding of marriage. The revised definition, in other words, is aligned with human rights principles, particularly the principle of gender equality, which has increasingly become difficult to ignore.¹⁶⁵ Significantly, despite the clear influence of human rights values on the revised legal formulation of marriage, the drafters have remained committed to maintaining consistency with the overarching framework of Islamic law.¹⁶⁶

In the amendment to paragraph 4, the drafters did not adopt the position of outright prohibiting polygamy due to their full awareness of the Islamic foundation of the Iraqi Constitution, particularly the provisions that recognize Islam as the official religion of the state and as a principal source of legislation. Instead, operating within the bounds of legal permissibility, the drafters chose to significantly restrict the practice by imposing a series of concurrent conditions, including: the consent of the first wife; the presence of a chronic illness or infertility; the husband's proven financial capacity to support an additional spouse; a formal pledge by the husband to uphold justice and fulfill his familial responsibilities toward both wives; and the absence of any clause in the original marriage contract prohibiting the husband from marrying another woman.¹⁶⁷ These conditions, as set forth by the legislator, reflect a deliberate policy choice to impose stricter regulation on polygamy as a means of preserving social order within the broader cultural and legal context.

As previously mentioned, article 2 of the Iraqi Constitution establishes Islam and fundamental human rights and freedoms as the foundational principles upon which the country's legislative process must be based. It further prohibits the enactment of any law

¹⁶³ See, for example., Ali Shah and Sadkhan, "Legal and Practical Problems," 624-638.

¹⁶⁴ See, *Act No. 15 of 2008*, art. 1 (1) 1.

¹⁶⁵ See United Nations, *UN Charter*, preamble, para. 2; United Nations, *UDHR*, arts. 1, 2; United Nations, *ICCPR*, art. 3; United Nations, *CEDAW*, preamble, para.8

¹⁶⁵ United Nations, *CEDAW*, art. 2.

¹⁶⁶ See, *Constitution of the Republic of Iraq* (2005), art. 2 (1) (a).

¹⁶⁷ See, *Act No. 15 of 2008*, art. 1 (2).

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that contradicts either of these two principles.¹⁶⁸ Given the social, cultural, and political context of Iraq in 2005, the adoption of this article in its current form represented the maximum constitutional and linguistic compromise that the drafters of the Iraqi Constitution could realistically achieve. A more balanced formulation, one capable of safeguarding both political and cultural cohesion, was not attainable under the circumstances.¹⁶⁹ The Act of Amending the Application of the Personal Status Law in the Kurdistan Region affirms this reality by demonstrating that article 2 remains internally coherent and cannot be interpreted as allowing the application of Islamic law in matters such as polygamy in a way that undermines the principle of gender equality. The core legal tension instead lies in the content of article 3 and paragraph 4 of the original Personal Status Law, which, in their unamended form, fail to achieve the degree of harmony with article 2 of the 2005 Constitution.¹⁷⁰ In this sense, the amendment enacted by the Kurdistan Regional Parliament may be understood as a contemporary and realistic interpretation of article 2 itself. Although the amendment has significantly restricted the practice of polygamy in an effort to promote gender equality within society, it remains within the bounds of what Islamic law permits and does not transgress the framework of religious permissibility.

Another fundamental point worthy of attention in the Act of Amending the Application of the Personal Status Law in the Kurdistan Region is that the drafters did not rely solely on article 2 of the Constitution, particularly paragraph (c) to justify the amendment. Rather, they based the amendment on a broader set of constitutional provisions with the aim of reinforcing its legal legitimacy, namely, in articles 14, 29 and 37. Among the constitutional principles that attracted the attention of the drafters in these provisions are: the guarantee of gender equality as enshrined in article 14; the protection of the family from violence as stipulated in article 29; and the safeguarding of personal freedom and human dignity as affirmed in article 37. These principles provided further constitutional bases that complemented the framework of article 2 and thereby strengthened the validity of the amendment and legitimized the intent of the drafters.¹⁷¹

In brief, the position of the Kurdistan Region in relation to the regulation of polygamy reflects a more nuanced and responsible approach to the state's contemporary obligations in both domestic and international contexts. The reason is that the Region has not prohibited the practice entirely, as it is still part of the custom and religious culture of its population, but has imposed broader constraints on its exercise to comply with the principle of gender equality. Although the amendment was undoubtedly an explicit legislative response to broader global social and legal transformations, its significance stemmed more from not transgressing the bounds of Islamic law. At present, the key distinction between the

¹⁶⁸ See, *Constitution of the Republic of Iraq* (2005), art. 2 (1) (a)-(c).

¹⁶⁹ See, Khdir, "The Constitutional Status of Islam," 226-276; Zaid Al-Ali and Yussef Auf, *The Iraqi Constitution: Analysis of the Controversial Articles, Solutions and Recommendations*, 1st ed. (Amman: Friedrich-Ebert-Stiftung, 2020), 39-43.

¹⁷⁰ Al-Ali and Auf, *The Iraqi Constitution*, 39-43.

¹⁷¹ See, *Constitution of the Republic of Iraq* (2005), arts. 14, 29 (4) and 37 (1) (c).

positions of the Kurdistan Region and the federal drafters lies in the legislative framing of the practice; whereas the Kurdistan Region treats polygamy as an exceptional case within the marital framework, the federal drafters continue to view the practice as a male entitlement within society.

Conclusion

Polygamy is one of the most contested legal issues in the contemporary Islamic world, particularly in Iraq, where advocacy is increasing for the modern legal regulation of the practice through evolving interpretations of constitutional principles. The practice of polygamy continues to be permitted in Iraq under the 1959 Personal Status Law, largely due to customary and religious influences, but modern human rights standards, particularly the principle of gender equality, have necessitated legal reform. Such a reform may take the form of prohibiting the practice or, at a minimum, subjecting it to stricter legal restrictions, as has been done by the Kurdistan Region. The Kurdistan Region amended the federal Personal Status Law in 2008 to reconceptualize marriage and restructure social relationships within the institution of the family. The Region's new regulation consequently narrowed the scope of the practice of polygamy. This approach generally sought not to break with the Islamic tradition, but rather to engage pragmatically with the constitutional hybridity of the federal system. The approach, in other words, represents a notable attempt to reconcile constitutional human rights commitments with the cultural and religious principles of Iraqi society. In this context, if the practice was once governed solely by religious norms in the country, the amendment began to consider the challenge that gender equality poses to the exercise of the practice. The Region's amendment can alternatively be viewed as a legislative shift, which marks a significant social and legal development reflecting an evolving conception of the social constructs of marriage, gender, and authority. A comparative review of the federal and the Kurdistan Region's laws, on which this study is partially based, reveals a divergence between the two legal frameworks nowadays. Accordingly, while the federal law retains the permissibility of the practice with just minimal constraints, the Kurdistan Region's amendment introduces stringent conditions, which brings the practice close to a *de facto* prohibition. The reformative measure of the Region further indicates that Islam is not monolithic, nor is it inherently patriarchal in nature, but rather a dynamic normative framework that can neutrally be interpreted and applied in a way that reflects social realities. The Region's experience, moreover, challenges the historical political concerns that federal decentralization in relation to the Kurds as an ethnic minority may likely cause constitutional tensions. The amendment, in other words, suggests that localized legislative reforms may foster comprehensive legal harmonization at the federal level through cultural peculiarities of constituent societal units. By enshrining a rights-based legal framework subject to judicial scrutiny in the Region, the drafters of the amendment established a theo-secular model that reconciles religious legitimacy with human rights commitments through a legislative compromise. The

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legislative model of the Kurdistan Region ultimately offers an alternative framework for other states in the Islamic world grappling with similar tensions between religious normativity and legal positivism.

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