

IBN TAYMIYYA'S *FATWĀS* ON POLYGAMY IN MEDIEVAL ISLAM

Mohamad Abdun Nasir

State Institute for Islamic Studies (LAIN) Mataram, Indonesia

Abstract

The paper discusses about the fatwa of Ibn Taymiyya on polygamy. It is well known that as one of the famous jurisconsults in the end of the thirteenth century, Ibn Taymiyya has dispensed many of his responses to Islamic legal cases arose in his time. This paper shows that although relatively an infrequent case posed to him, the issue of polygamy was discussed in such a great length in his book Majmū' Fatawā. That is why it is important according to the author to know why and what kind of problems related to the practice of polygamous marriage posed to this giant Muslim jurist. It is argued that Ibn Taymiyya tended not to view the practice of polygamy as a wrongdoing although it might lead to some negative excess in concern of its practice in Muslim society. Thus, in spite of some problems that might occur, such as injustice to women, neglecting or deserting to the wives, he does not invalidate the marriage as long as the husband can assure the fairness in distributing material supports. Beyond its substantive legal response, the fatwā of polygamy indicates the rareness of the cases arose in his time. This is true if compared to other problems, such as divorce, pervasively posed to Ibn Taymiyya for a response.

Key Word: Polygamy, *Fatwā*, Jurist, *Ta'wīl*, Islamic family Law, Endogamous Marriage, *Tahlīl* Marriage, *Majmū' Fatawā*

A. Introduction

Polygamy constitutes a heated issue in Islamic legal discourse. On the one hand, the legal status of polygamy is strong for it is clearly stated in the main Islamic texts, the Qur'an and the ḥadīth. On the other hand, practices of polygamy have often caused disharmony within the family. Unlike contemporary views mainly from Muslim reformists and feminists appealing to re-address the legal status of polygamy because of its negative impacts for women, most jurists of pre-modern times did not challenge polygamy as a legal conjugal relation. They based their arguments for polygamy chiefly on the authoritative texts, and did not consider the consequences of polygamy felt by women in their real lives as a cogent reason to question its validity. Nevertheless practices of polygamy in medieval Islam and jurists' responses to them have been rarely explored, so that this remains a vast untouched scholarly research area. In addition to traveler's notes, chronicles and biographical accounts, scholars and historians occasionally consult to works of juristconsults (*muftīs*) that relate to the issues of Islamic family law in order to construct the history of Muslim societies. *Fatwās* (plural form of *fatwā*) or legal *responsa* given by *muftīs* reveal a particular legal discourse and social practice at a certain historical context within a Muslim society.¹ Through *fatwās*, the discourse and practices of polygamy in medieval Islam can be partially assessed and reconstructed.

This paper will focus on the *fatwās* concerning polygamy compiled in the book *Majmū' Fatawā* by Ibn Taymiyya, one of the most influential juristconsults at the end of the thirteenth and the beginning of the fourteenth century. Born in Ḥarran, North Syria, in 661/1263, Ibn Taymiyya grew up in an academic milieu within his own family, and he later received trainings in various Islamic disciplines from many scholars. His extraordinary scholarly achievement as a rising young scholar emerged when he replaced his father as a professor at al-Sukkariya, a Hanbalite-affiliated Islamic school in Damascus while he was only in

¹ For a general overview about the historical development of *fatwās* see Muhammad Khalid Mas'ud, Brinkley Messick and David S Powers (ed.), *Islamic Legal Interpretation: Muftis and their Fatwas* (Cambridge: Harvard University Press, 1996), pp. 3-32.

his twenties.² He lived in the era of the Mamluks that seized power and ruled many Muslim regions from 1260 until 1515 after the fall dawn of the Abbasid Empire in 1250s. This era experienced widespread practices of theological innovations (*bid'a*) and legal imitations (*taqlīd*), which Ibn Taymiyya harshly criticized in his works.³ His criticism resulted in severe polemics with other scholars, followers of Islamic sects, and Muslim rulers, which in turn brought about his detention for several times in jail before his death in 727/1328.⁴ Scholars after his period compiled and edited his scattered legacy of scholarly works covering Islamic sciences such as *tafsīr* (Qur'anic exegesis), ḥadīth (Prophet's sayings), *fiqh* (law) and *uṣūl al-fiqh* (epistemology of Islamic jurisprudence).⁵ Of these, the most popular compilations are *Jāmi' al-Rasā'il li Ibn Taymiyya*, edited by Muḥammad Rashād Sālim, *Majmū' Fatāwā Shaykh al-Islām Aḥmad ibn Taymiyya* compiled by Muḥammad al-Āsimī, *Majmū'at al-Rasā'il wa'l-Masā'il* by Rashīd Riḍā, *Majmū al-Rasā'il al-Kubrā*, and *Mu'allafāt al-Shaykh wa Tilmidhib Ibn Qayyim*.⁶ It is through these works and his other shorter treatises that Ibn Taymiyya advocated Islamic reform and issued his *fatwās* in response to various religious, social and legal issues.

Unlike other topics regarding marriage (*nikāḥ*) such as *mahr/ṣadāq* (dowry), *ṭalāq* (divorce), or *khul'* (consensual divorce initiated by the wife), to which are devoted a long and heated discussions in his *fatwās*, polygamy is discussed in a relatively separate, short passage. This does not automatically mean that polygamy was scarcely practiced among Muslims in his period, however. It needs further exploration. The truth

² H.A.R. Gibb and J.H. Kramers (ed.), "Ibn Taymiyya" in *Concise Encyclopedia of Islam* (Leiden: Brill, 2005), pp. 151-2.

³ Boaz Shosan, *Popular Culture in Medieval Cairo* (Cambridge: Cambridge University Press, 1993); Nicola A. Ziadeh, *Damascus Under The Mamluks* (Oklahoma: University of Oklahoma Press, 1964). Both sources offer analysis on Ibn Taymiyya's responses to popular traditions at this time while he was in Cairo and Damascus.

⁴ Gibb and J.H. Kramers (ed.), "Ibn Taymiyya", p. 151.

⁵ For the list of his *fiqh* and *uṣūl al-fiqh* works see Abdul Halim I. al-Matroudi, *The Hanbali School of Law and Ibn Taymiyyah: Conflict or Conciliation* (London: Routledge, 2006), pp. 25-30.

⁶ For the complete list of his works see Jon Hoover, *Ibn Taymiyya's Theodicy of Perpetuated Optimism* (Leiden: Brill, 2007).

is that Ibn Taymiyya as a great juristconsult, like other jurists,⁷ only received a very few questions concerning polygamy.

This fact provokes curiosity to search to the practice of polygamy and jurists' views about it. It is to know whether polygamy was a rare phenomenon at that time, or it was prevalent, but disputes over it were hardly brought to *muffīs*, or there might be any other possibilities. *Muffīs*' responses to polygamy through their *fawās* will be therefore at least partially helpful in solving this puzzle. As one of the leading *muffīs* in medieval Islam, Ibn Taymiyya, through his *fatwās*, may offer valuable information in this respect. This paper therefore seeks to examine his legal *responsa* regarding the problems of polygamy and to strive to disclose the practices of polygamy in medieval Islam.

B. The *Fatwās* Regarding Polygamy

The discussion of polygamy in Ibn Taymiyya's *Majmū' Fatāwā* is found in volume 32. Despite being discussed separately under different subchapters, this topic is systematically subsumed under the chapter of marriage (*kitāb al-nikāḥ*). The collection's compiler, Abd al-Raḥman bin Muḥammad bin Qāsim al-Āṣimī, put polygamy issues under the subchapter of *al-muḥarramāt fi al-nikāḥ* (forbidden women to marry) and *al-qism bayn al-ẓanjāt* (dividing shares among wives).⁸ The term *al-qism* is frequently used in classical Islamic legal texts (*kutub al-fiqh*) when authors discussed polygamy, while the term *ta'addud al-ẓanjāt* (literally means being multiple wives) is commonly used in contemporary books of *fiqh*. In the subchapter of *muḥarramāt*, through a question-answer model of explanation, the *fatwās* elaborate in great detail about a legal boundary that totally restricts people to marry, namely biological-genealogical (*nasab*) and suckling (*raḍā'*) ties. In spite of a huge number of questions in this section, only two of them deal

⁷ A small portion of discussion is found in a later work of jurist consult. Out of his 12 volume of *fatwās*'s collection, Ibn 'Ābidīn, died in 1836 di Damascus, discussed this issue in a ten-page. See Ibn 'Ābidīn, *Radd al-Mukhtār 'alā al-Dār al-Mukhtār Sharḥ Tanwīr al-Aḥsār* (Beirut: Dār al-Kutub al-'Ilmiya, 1993).

⁸ Ibn Taymiyya, *Majmū' Fatāwā Shaykh al-Islām 'Aḥmad bin Taymiyya*, compiled by Abd al-Raḥman bin Muḥammad bin Qāsim al-Āṣimī, vol. 36 (Beirut: Risāla, 1997), pp. 62-75 and 269-71.

indirectly with polygamy. They both forbid marrying two women holding such ties. Meanwhile, in the subchapter of *al-qism*, only two out of eight questions are really concerned directly with polygamy. The other questions deal with the issue of intercourse with the wife, the use of herb to stimulate intercourse that causes a medical problem, seeing and touching the wife's body, the waiting period of divorced women, the obligation of the father to provide or pay for breast-feeding for their child, and, the last, breast-feeding by the wife to another child. This 'misplacement' of the inclusion of other topics which seem to be unrelated to polygamy is strange. The *fatwā* compiler usually subsumes questions under closely related themes.

Regarding the issues of *al-muḥarramāt*, the *fatwās* prohibit combining (*al-jamʿ*) two women who are forbidden be married to the same husband. This restriction is caused by either bio-genealogical tie or suckling relation. Conversely, if the women have no such a relation, the prohibition is repealed. In conjunction with this, a *fatwā* petitioner posed to Ibn Taymiyya a question concerning the legal status of a man who married somebody's mother's sister (maternal aunt/*khālat insān*) and his daughter (*ʿibnatah*). It means that a man married the aunt and her niece together. The other questioned the validity of marital status of a man who had combined in his marriage someone's mother's sister/maternal aunt (*khālat rajul*) and a daughter of his brother (*ʿibnat ʿakhlahu*). In this second case, the man married a woman and the maternal aunt of her father (her grand-aunt/paternal grandmother's sister).⁹

Responding to these questions, Ibn Taymiyya argues that both marriages are unlawful/invalid (*ḥarām*), because the men had combined two forbidden women into his marriage together. In support of his argument, Ibn Taymiyya refers them to one report of of ḥadīth and takes recourse to methods of consensus (*ijmāʿ*) and analogy (*qiyās*) in deducting a legal decision, especially when answering the second question. He quotes a ḥadīth that prohibits someone from marrying a woman together with her aunt from both the father's (*ʿamma*) and

⁹ *ibid.*, pp. 75-6. See also in this volume p. 68 and 76 in which his *fatwās* declare the prohibition from marrying two female siblings and a girl with her paternal aunt and from combining two forbidden women.

mother's (*khāla*) side. He maintains that all founders of the legal schools agree upon this view. Meanwhile, in responding to the second question, he does not mention any authoritative text, and consequently resort to consensus and analogy. Although in other places he is critical of the method of *ijmā'* (consensus),¹⁰ in this *fatwā* he does not deny applying it, because it is supported by that ḥadīth. The consensus of all schools against marrying paternal and maternal aunt is based on this ḥadīth. The restriction in this ḥadīth is believed by all schools of Sunni legal thoughts (*'Aimmat al-madhāhib*) to cover also the maternal and the paternal grandmother. This means that the *ijmā'* of all Sunni legal schools in this latter case is based on an authoritative source. In addition, he draws an analogy between the position of the grandmother and the aunt (from mother's side), as happened in both marriages, declaring that they hold exactly the same status as *muḥarramāt* meaning that marrying them together with their nieces or grand nieces is totally forbidden. Therefore, he argues that the second marriage of both men would be automatically disqualified. If the man first got married with the woman and later with her mother's sister (aunt), then the contract of the second marriage is by itself invalid. The men, he suggests, should conclude a new contract with her if he has divorced his first wife.¹¹

As for the question under the subchapter of *al-qism*, there are two problems being asked in this section. Both focus on the principle of justice and its application in a polygamous family. In conjunction with unfair treatment and mal-distribution received by co-wives, the petitioners asked for a fixed legal status of men who were found to discriminate to their wives. The first question pertains to a man who tended to grant a favor for one over the other of his two wives. The discrimination occurred because he did not give them a balanced portion of the expenses for clothing and food, and of sharing intercourse. Similarly, the second question is also concerned with another man, who displays his greater affection to one beloved wives over the other. The man's affection was so strong that it was as if he were almost

¹⁰ Victor E. Makari, *Ibn Taymiyyah's Ethics: The Social Factor* (California: Scholars Press, 1993), pp. 98-9.

¹¹ Ibn Taymiyya, *Majmū' Fatāwā*, pp. 65-7.

completely absent in fulfilling the other's rights upon him and he had almost gave her up (*ḥattā innahu bajaranā*).¹²

In response to these questions, Ibn Taymiyya bases his argument on the main source of Islamic law, the Qur'an and the ḥadīth. In these *fatwās*, he first cites the ḥadīth report denouncing any polygamous men who treat their wives unfairly. The moral sanction imposed upon them is that they should walk on the Day of Judgment while half of their body is bent down.¹³ Ibn Taymiyya goes on to say that on the basis on this ḥadīth, a polygamous man has to keep fair by distributing the shares equitably to his wives. For example, if the man spends one night or more with one of his wives, he should give exactly this same amount to the others. He therefore states in this *fatwā* that the man must remain fair towards his wives, because it is obligatory to treat co-wives fairly, even though he emphasizes the justice and fairness in terms of sharing only material goods. Relating to the second question, Ibn Taimiyya suggests that the man should either guard his undesired wife with appropriate courtesy (*bi-ma'rūf*) or divorce her beneficently (*bi-iḥsān*). This means that putting his undesired wife in this uncertainty will be dilemmatic. She faces a predicament if she is bound up in legal wedlock, while her husband is totally indifferent to her. On the one hand, she is still a legal wife of the man, while on the other hand she cannot pursue happiness within such a frustrating conjugal relation. Therefore letting her go, in Ibn Taimiyya's view, would be far better than restraining her carelessly so that she could be released her from unbearable burdens and probably find another man to marry.

Though Ibn Taimiyya does not offer an elaboration of the meaning of either *al-ma'rūf* or *al-iḥsān*, he discusses them in other *fatwās* relating to divorce.¹⁴ In these polygamy *fatwās* he apparently borrowed these two terms from the passage in the Qur'an *Ṣūrat al-Baqara* [2]: 229. The verse says "The divorce is only permissible twice: after that the parties should either hold together in equitable terms or separate

¹² *ibid.*, pp. 75-6.

¹³ This ḥadīth is cited in the four books of ḥadīth (*al-Sunan al-'Arba'a*); Abū Dāwud, al-Tirmidhī, Ibn Māja (all under chapter of marriage), and al-Nasā'ī (under chapter of companionship of women). See for detail Mirwan Kujuk, *Takhrīj 'Aḥādīth Majmū'a Fatāwā*, Vol. 5 (Riyadh: Dār Ibn Ḥazm), p. 329.

with kindness”.¹⁵ These terms, especially the former (*al-ma'rūf*), are widely used concerning proper conducts in relation of spouses. This term suggests a commandment to realize rights and obligations that the husband and the wife must assert and assume. It also accentuates that their reciprocal relationship must be held in accordance with generally accepted conventions of courtesy within a society, even if the couple separates. If the husband, for example, divorces his wife, he is entitled to follow all procedures of divorce stipulated in the scriptural texts, and currently by the court, and he must fulfill his obligation to pay maintenance and settlement expenses to her.¹⁶ A divorced wife, especially if she is pregnant and/or brings along with her children from her previous marriage, deserves to obtain maintenance expenses or alimony (*muta'* or plural form *mut'ah*) during her waiting period (*'idda*) and usually until the child is mature as it is prescribed in the Qur'an (*Ṣūrat al-Baqara* [2]: 241), even though the amount and the condition for alimony remain interpretable among jurists.¹⁷ Following this scheme, what Ibn Taymiyya should mean by the word *al-ma'rūf* is in this sense, that is the husband if wishing to divorce her wife should follow the procedures of divorce properly and pay the maintenance expense accordingly.¹⁸

Unlike his insistence on the husband's the obligation to distribute an equivalent allotment of material support to his wives, Ibn Taymiyya does not consider the balance in terms of love or affection and sex as

¹⁴ See his *fatwās* under the subchapter of *arkān al-nikāḥ wa shuruṭūh*, in volume 32 as well as in volume 3 which specially discusses about divorce.

¹⁵ Abdullah Yusuf Ali, *The Glorious Qur'ān. Translation* (New Delhi: Islamic Book Service, 2004), p. 22.

¹⁶ As stated in the Qur'an (*al-Ṭalāq* [65]: 1-7) that is concerned with several stipulations, such as divorce on the right occasion, provision for a shelter for the divorced, revocation, a waiting period, and expenses for pregnant divorced women. The term *al-ma'rūf* is used three times in these verses indicating the necessity to fulfill those procedures and obligations in good conduct.

¹⁷ Although there has been dispute over the compensation that divorced women receive from their previous husbands, jurists agree that the compensation is incumbent upon the husband. See Ibn Taymiyya, *Majmū' Fatāwā*, pp. 26-7.

¹⁸ Ibn Taymiyya, *Majmū' Fatāwā*, vol. 32, p. 27. He bases his argument on *Ṣūrat al-Baqara* [2]: 241, saying “for the divorced women maintenance (should be provided) on a reasonable (scale)”. Translation is adopted from Ali, *The Glorious Qur'ān*, p. 23.

necessary, and subsequently being unfair in this matters has no consequences (*lakin in kāna yuḥibbuhā akthar, wa yuṭa'uhā akthar: fa-bādhā lā ḥaraj 'alayh fih*). In support of this argument, he cites another ḥadīth concerning the Prophet's inability to share (the feeling of) love for his wives. According to this ḥadīth, the Prophet remains fair and gives an equivalent share to his wives, except in sharing the heart.¹⁹ This means that the feeling of the heart is very subjective, hidden and cannot be legislated. This uncertainty transgresses beyond legal authority, because in a legal perspective, something can only be categorically judged or evaluated based on an outer utterance or appearance (*naḥnu naqūm bi'l-ẓawābir*). Since affection is beyond the grasp of legal measurement, jurists commonly exclude justice in terms of sharing affection or love from a substantial element and condition for polygamy. In other words, in jurists' views a man may never remain just and fair amongst his co-wives in terms of sharing the feelings of love and affection. Ibn Taymiyya appears to be of this opinion as well.

What surprising is that he includes sexual intercourse (*waṭ'* or *jīmā'*) in this category that is exempted from legislation, implying that intercourse is an abstract category that, like affection, cannot be clearly measured. Therefore, to follow his perception, a husband having intercourse more often with one wife than with the rest of his wives should not be judged as committing injustice. It is however arguable to say such a statement, because love and intercourse differ. One almost cannot have a reliable measurement to know how much and deep a husband loves his co-wives, because such a feeling is abstract. In contrast, sexual intercourse is not abstract, but a real action the volume and intensity of which can be easily recognized. Therefore intercourse should not be equated with love and affection, because this equation could lead to another problem relating to husband's frequency and ability to have intercourse with his other co-wives. If the husband for instance overacts in making intercourse excessively with his most beloved wife, then this can influence the quality and quantity of his sexual performances with his other wives, or even can cause him abstain completely from having sex with them.

¹⁹ See Kujuk, *Takhrīj Aḥādīth Majmū'a Fatāwā*, Vol. 5, pp. 329-30.

Besides citing the ḥadīth, Ibn Taymiyya also quotes the Qur'an, namely *Sūrat al-Nisā'* [4]: 129. It says "You are never able to be fair and just as between women, even if it is your ardent desire".²⁰ What is interesting is that he makes use of this verse as a legal proof to declare that being unjust amongst wives in terms of sharing affection has no consequences; this verse, in his view, can be employed as an irrefutable legal argument to tolerate men's unjust treatment in sharing their affection with their co-wives. Polygamous men will never be able to display justice of affection, as the verse suggests, he argues. This legal statement in Ibn Taymiyya's *fatwās* is in fact only a logical consequence resulting from his methods of approaching the text, and not caused by other factors, like patriarchy. It is often said that patriarchic society influences the way classical interpreters, jurists or scholars construe the scriptural texts.²¹

In Ibn Taymiyya's legal method, the Qur'an stands as his first fundamental authoritative text followed by the ḥadīth or *sunnaḥ*, *ijmā'* (consensus) and *qiyās* (analogy).²² Nevertheless he still applies to some extent and in regard to particular cases other sources such as *maslaḥa* (benefit), *istiḥsān* (interest not mentioned by the texts) *istiṣḥāb* (presumption of continuity), *sadd al-dharī'a* (blocking the means) and *'urf/ 'āda* (customary law) to endorse legal decisions whenever the fundamental sources are silent about particular cases.²³ He, therefore, first returns to the Qur'an, and then to the ḥadīth, in responding to questions. Only if these two main sources are silent, does he turn to the next lower sources invariably. In response to the questions regarding unjust treatment in polygamy, it seems that he applies this approach, because no secondary legal sources are found in these *fatwās*. In other

²⁰ Ali, *The Holy Qur'an*, p. 59.

²¹ Some feminists focus their criticism over patriarchy as the main factor causing gender bias in reading the text. See for instance Mai Yamani, *Feminism and Islam: Legal and Literary Perspective* (UK: Ithaca Press, 1996); and Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretation of the Qur'an* (Austin: University of Texas Press, 2002).

²² Al-Matroudi summarized scholars' opinions regarding the sources used by Ibn Taymiyya in his legal arguments. See Al-Matroudi, *The Hanbali School of Law*, pp. 39-46.

²³ *ibid.*

fatwās, however, when no evidence displayed in the main texts, secondary sources such as *ijmā'* and *qiyās* will be inevitably used by him.²⁴ This occurs because the scriptural text (*al-naṣṣ*) is limited while the context is constantly changing and subsequently socio-legal problems will be everlastingly increasing as the time passes. The text alone will be no more able to grasp for accommodating this dynamics. As a result, jurists have to develop legal devices to anticipate any issue having no clear and direct guides from the texts. In Ibn Taymiyya's legal principle, when the Qur'an and the ḥadīth have clearly pointed out basic norms of polygamy, automatically no other sources can substitute them.²⁵ To him, the scriptural texts such as the verses from the Qur'an and ḥadīth reports should be apprehended from their literal utterance as long as they does not contain metaphorical words or sentences which need further interpretation (*ta'wīl*).²⁶ It is through this theoretical perspective that the *fatwās* regarding polygamy were produced.

However, the application of such a method, which could lead to a reading that grants male privilege over females, in this current time, can trigger critical remarks stemming especially from contemporary Muslim feminists. Instead of taking such a reading for granted, they strive to offer a new approach in reading the Islamic texts particularly concerned with the issue of women and gender. The method aims at countering classical-medieval legal interpretations which establish male religious and legal superiority and subsequently create female inferiority and subjugation. This jurists' approach can produce an oppressive gender ideology which could be misleading and slippery of being corrupted by parties to justify their oppressive interpretation as "purely Islamic". Different from Ibn Taymiyya's way in interpreting the texts, current feminists and contemporary Muslim scholars employ different approaches in reading the verses concerning

²⁴ Benjamin Jokisch, "Ijtihād Ibn Taymiyya's *Fatāwā*", in Robert Gleave (ed.), *Islamic Law: Theory and Practice* (New York: I.B. Tauris, 1997), pp. 125-9.

²⁵ *ibid.*, p. 120.

²⁶ Mohamed M. Yunus Ali, *Medieval Islamic Pragmatics: Sunni Legal Theorists' Models of Textual Communication* (London: Curzon, 2000), especially chapter four, pp. 125-7.

the issue of women and gender in Islam, including polygamy.²⁷

In fact, there are two Qur'anic verses concerning polygamy, yet Ibn Taymiyyas' *fatwās* only refers to one of them, as mentioned earlier. The other is in *Sūrat al-Nisā'* [4]: 3. It states "If you fear that you shall not be able to deal justly with the orphans, marry women of your choice two, three, or four, but if you fear that you shall not be able to deal justly (with them) then only one".²⁸ This verse clearly asserts that justice must be highly enforced by a polygamous man for it is a basic principle from which polygamy is permitted. Otherwise, no polygamy is permitted if no justice can be guaranteed. Moreover the verse does not enjoin polygamy as such, because polygamy is only a temporary solution after a war that leaves widows. Marrying these widows is a better way than marrying the orphans. The people at the time of the revelation of this verse only wanted to possess the orphans' property by marrying them. However, the commandment to marry more than one woman should be in principle based on justice.

The second verse of polygamy, *al-Nisā'*: 129, is according to Ibn Taymiyya a basis for an excuse from dispensing justice, especially in terms of sex and love. Contemporary discourse, in contrast, suggests that justice in emotions is a fundamental basic requirement for polygamy. Since no men will never be able to uphold justice in its truest meaning, including in terms of sharing affection, as explicitly demonstrated in this verse, then in combined verses do not in fact suggest polygamy, because the very basic principle of it will never be fulfilled completely. The verse emphasizing men's injustice (*al-Nisā'*: 129) should be construed in this way that is disapproving polygamy. In this approach, the verse confirming men's inability to realize justice amongst his wives constitutes a compelling argument for the restriction of polygamy in contemporary Muslims' views. Therefore this verse is to argue against polygamy, and not vice versa, as a ground for excusing

²⁷ The most prominent figures of Muslim feminists are Fatima Mernissi, Laila Ahmed, Riffat Hassan, Amina Wadud, and Asma Barlas. Of the contemporary Muslims scholars who offer alternative readings to the issue of women and gender and Shari'a in Islam are Asghar Ali Engineer, Nasr Ḥāmid Abū Zayd, Abdullahi Ahmed An-Naim, and Muḥammad Shahrūr, just to name some of them.

²⁸ Ali, *The Glorious Qur'an*, p. 46.

male injustice, regarding the distribution of affection, as suggested by Ibn Taymiyya. The logic of this legal reform tightening rules for polygamy overtly characterizes the current legal reform in Muslim countries.²⁹

The wave of Muslim family law reform having echoed throughout Muslim countries seems to follow such a rationale. Although polygamy is still permitted in some Muslim countries, the conditions and procedures of it are now being tightened. Before taking another wife, for example, a husband is required to submit to the Islamic court written consent from his wife as well as from their children declaring that they do not object to his plan to consummate another marriage. More importantly, the husband must show his sufficient income, insuring that his forthcoming marriage will not economically harm his family. Another reason for polygamy is infertility, when a wife is barren and cannot conceive. These are called substantive and procedural conditions for polygamy which are void in classical and medieval legal works. These all are required as a basis from which the judge will evaluate the proposal and, if approved, mete out a permit for polygamy. The problem however persists, since many men do not obey these conditions and tend to avoid registering their upcoming marriage to the court, worrying that their wives and children will not grant to them consent. In this respect, the second marriage is usually consummated tacitly by means of signing 'a secret marriage contract' (*nikāḥ sirr*) which is legalized by classical *fiqh* and preserved by many for the sake of their own interests. Although household problems in polygamous marriages can be stimulated by various causes, it is commonly through this back street marriage that violence, injustice and disharmony occur. Not surprisingly, of salient features of Islamic legal reform introduced in Muslim countries is to put a strict limitation on polygamy. Tunisia has totally banned it since 1956.³⁰

²⁹ See David Pearl and Werner Menski, *Muslim Family Law*, third edition (London: Sweet and Maxwell, 1998); and John L. Esposito with Natana J. DeLong-Bass, *Women in Muslim Family Law*, second edition (New York: Syracuse University Press, 2001).

³⁰ For a general overview of Islamic family legal profiles in Muslim countries see Abdullahi Ahmed An-Naim (ed.), *Islamic Family Law in A Changing World: A Global Resource Book* (London: Zed Book, 2002).

Nevertheless, beyond these scholarly discourses, the plurality of legal approach which in turn lead into different ways of reading the text, and the current reform in Islamic family law undergoing in the Muslim world, what do Ibn Taymiyya's *fatwās* tell us about the practice of polygamy in medieval Islam? Was polygamy widely practiced? To what extent are we allowed to reconstruct the practice of polygamy at that time?

C. Polygamy as a Social Practice

Although Ibn Taymiyya's *fatwās* does not provide ample information about polygamy practiced at his time, at least two features of polygamy in medieval Islam can be proposed, namely that wives often had a genealogical link to each other and that polygamy often creates mal-distribution and injustice among co-wives. The first case does not indicate endogamous marriage, because the wives were originally none of the husband's relatives.³¹ If this had been so, there would have been stated in the *fatwās* that the wives were daughters of the husband's uncle or aunt. It is also unclear the reasons for the men to marry their wife's maternal aunt and grandmother. We are not well informed about the intentions of the second marriages; whether the men purposely meant to gain close access within the wives' family, or to establish a political alliance or to protect wealth and resources. As for the second questions about the men's unfair treatment to their wives, it becomes a majority concern within a polygamous marriage that husbands are commonly unable to uphold a truest meaning of justice and to apply it fairly to his wives.³²

³¹ Endogamous marriage, for example by marrying uncle or aunt's daughters or other close relatives, continue to be practices among certain group of people aiming at protecting resources and wealthy and at reducing the influence coming from outside of the family link. For endogamous Arabian Joseph S. (ed.), *Intimate Selving in Arab Family: Gender, Self and Identity* (New York: Syracuse University Press, 1999).

³² Injustice and competition among wives are two major problems of polygamy. This can be found in the stories and popular epics of Muslim rulers. See Remke Kruk, "Click of Needless: Polygamy as an Issue in Arabic Popular Epic", in Manuel Marin and Randi Deguilhem, *Writing the Feminine: Women in Arab Sources* (London: I.B. Tauris, 2002), pp. 3-23.

Since there is no explanation about the date, place and the person who posed the questions, the exact origin of such questions is unknown. It is thus not wrong to guess that it was one of the wives asking the question because she needed a fixed confirmation over her marriage, or her parent who hesitated regarding their daughter's marital legal status. It is also possible that another wife posed questions since she felt she was being discriminated against her husband. It is also likely to happen that a third person posed the question on behalf of the couple, of the husband, or solely of the wife. It might be completely somebody else posing the question, like the pupils of a *muftī*, who had nothing to do with the conflicting parties within that family. He/she could raise this question on behalf of his/her own interest, such as for addressing a legal issue in academic exercises during their lessons.³³ Regardless of who might initiate the questions, no less important point to emphasize is how far such questions represent the real picture of polygamy. How do we re-construct the history of polygamy based on these *fatwās*?

Although neither dates nor names were informed, we can still make a careful guess based on several hints. The questions most likely came from Damascus or Cairo, two cities where Ibn Taymiyya spent most of his life, or the petitioners came from other cities of Muslim lands.³⁴ In these cities, Damascus and Cairo, he held academic and scholarly positions and served as a juristconsult. It therefore can be assumed that the question came from both cities reflecting common problems of polygamy therein because the petitioners asked a relatively similar questions both concerning marrying two related women and a husband's discriminative treatment to his co-wives. According to al-Dhahabī, as quoted by al-Matroudi, Ibn Taymiyya began issuing his *fatwās* when he was only 17 or 19 years old.³⁵ (But let's take a middle

³³ Harald Motzki, "Child Marriage in Seventeenth-Century Palestine", in Muhammad Khalid Mas'ud, Brinkley Messick, and David S Powers (ed.), *Muftis and Their Fatwas*, p. 130.

³⁴ Al-Matroudi, *The Hanbali School*, p. 20. According to Shoshan, the high volume and intensity of Ibn Taymiyya's relation with the Mamluks rulers, it is assumed that Ibn Taymiyya's position and popularity were more influential in Cairo, rather than in Damascus. See Boaz Shoshan, *Popular Culture in Medieval Cairo* (Cambridge: Cambridge University Press, 1993), p. 67.

³⁵ *ibid.*, p. 51.

position, that he issued his *fatwās* when he was 18 years old). As he was born in 1263 and died in 1328, it should be certain that based on al-Dhahabī's source Ibn Taymiyya issued his *fatwās* from 1281 until 1328. His biography shows that he completed his studies in 1282 and replaced his father as a professor of law at al-Sukkariyya Ḥanbali school in Damascus.³⁶ He went to Mecca to perform the pilgrimage in 1292 and then he started giving his *fatwās* concerned initially with theology or creed (*ʿaqīda*). His *fatwā* regarding the attributes of God provoked furors and controversy in Cairo in 1299 that got him ousted from his position as a professor, but he was re-assigned to the post to teach the principle of the Holy war (*jihād*) against the Mongol invasion.³⁷ After having involved in polemics against Shiʿi sects in 1305, he again released another *fatwā* that allegedly containing element of anthropomorphic faith which put him into jail for a year and a half in 1206-07.³⁸

His other *fatwās* dealt with legal matters. Some of his *fatwās* on this issue stirred up disputes and controversies in legal discourse, such as triple divorce, the prohibition of *taḥlīl* marriage (another man marrying a women and divorcing her, so that she could remarry her first/previous husband) and the oath of repudiation (*al-ḥilf bi'l-ṭalāq*).³⁹ Since then, he composed many more works and released *fatwās* focusing this issue until 1326.⁴⁰ Of these, *fatwās* on divorce (*ṭalāq*) occupied a considerable portion of his *Majmūʿ Fatāwā*. Volume 33 of this work is specifically devoted to explaining his basic ideas and principles of divorce and to answer questions dealing with it. This is not to mention other *fatwās* on this issue sporadically found in previous volumes.⁴¹

³⁶ Gibb and J.H. Kramers, *Concise Encyclopedia of Islam*, p. 151.

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ *ibid.* About the oath of repudiation, see *Majmūʿ Fatāwā* volume 33. For the controversy over the oath of repudiation *fatwā* issued by Ibn Taymiyya, see Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society* (Cambridge: Cambridge University Press, 2005), p. 96.

⁴⁰ *ibid.*

⁴¹ In volume 32, for example, the questions concerning divorce are found almost under every subchapter of marriage. Ibn Qayyim, one of Ibn Taymiyya's famous students, compiled and elaborated his *fatwās* on divorce in a great detail. See Ibn Qayyim al-Jauziyya, *al-Masāʾil al-Fiqhiyya* (Egypt: Dār Ibn ʿAffān, 2007).

From this historical account to his *fatwās*, it may be safe to assume that there are two phases of timing marking his *fatwās*'s issuance. The first phase is the span from 1299 until 1317. In this first period, he produced several *fatwās* regarding theological issues while in the other period he intensively engaged in the war against the Mongol invasion. The second phase starts from 1318 up to 1328 during which he launched a controversial statement over the oath of repudiation and other issues concerned very much with the matters of marriage, especially divorce. This is however not a fixed division, because he still issued in the end of his life his another *fatwā* regarding theology that dealt with the prohibition against visitations to saints' tombs.⁴² Nevertheless, such a division will partly help to make a classification of his *fatwās* based on timing and on the most concerned problems or questions he received during the course of his life. It is thus probably more convincing to argue that his *fatwās* on polygamy closely related to other issues of marriage in Islam were released in that second phase. During this period, He could be in Cairo and Damascus or he commuted mainly in both cities for several reasons, such as being a scholar giving lecture and delivering legal responses, or even as a captive in Cairo, Alexandria, and finally in the citadel of Damascus that brought about his death there in 1328.⁴³

As for the concern with the issues of Muslim family law, it appears that divorce dominated legal practices and discourse among Muslims during the Mamluks reign, and consequently this issue received a greater attention in Ibn Taymiyya's *fatwās*. In addition to his remarkable *fatwās* concerning divorce, evidence about the high rate of divorce can be found in other sources, such as the book *al-Madkhal ilā Tanmiyat al-A'māl bi-Taḥsīn al-Niyya* (The Introduction to the Development of Deeds by Improving Intention) by Ibn al-Ḥajj, a Mālikī jurist who died

⁴² Gibb and J.H. Kramers, *Concise Encyclopedia of Islam*, p. 152. See also Al-Matroudi, *The Hanbali School*, p. 20, and Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190-1350* (Cambridge: Cambridge University Press, 1994), p. 170.

⁴³ *ibid.* See also Sherman A Jackson, "Ibn Taymiyyah on Trial in Damascus", in *Journal of Semitic Studies*, 39, 1994, pp. 41-84.

in Cairo in 1336.⁴⁴ This book was written as a morale reminder against misconducts violating *sharʿ*'s rules including marriage issues like easy divorce. The author emphasizes the husband's duty to guide his wife into the right path. He severely denounced men performing as a *muḥallil* just for money underlining that "mother, daughter and granddaughter solicited the service of the same *muḥallil* in order to go back to their respective husbands, who had divorced them three consecutive times".⁴⁵

Ibn Taymiyya's two controversial views concerning the oath of repudiation and invalidity of triple divorce (*ṭalaq baʿin*) coupled with his majority *fatwās* on divorce are strong evidence of this jurist's attention to the most complicated matters of marriage at that time. Through his bolding arguments challenging the established view and consensus among mostly Sunni legal thought about the validity of the oath of repudiation and triple divorce, Ibn Taymiyya sought to combat these legal practices that he considered innovations (*bidʿa*) which have no precedent from the tradition of the Prophet.⁴⁶ The triple divorce, for instance, results in irrecoverable return of the divorced wife to his husband, unless she marries another man with another new contract, commonly called as *muḥallil*. Only after her second husband divorces her, can the first husband be permitted to get her back to him. The wide practices of *muḥallil* and the legalization of it in accordance with the majority legal discourse in Ibn Taymiyya's mind could be an immanent source for a soaring rate of divorce in the society. He therefore called for outlawing of both the legal perception and the practice.⁴⁷

In contrast, polygamy cases were rarely referred to jurists, as they can be scarcely found in Ibn Taymiyya's *fatwās*. There was also no recorded polygamy case discovered in the secular court (*maẓālim*) in the course of the Mamluks time. Although this court was not designed

⁴⁴ Huda Lutfi, "Manners and Customs of Fourteenth-Century Cairene Women: Female Anarchy versus Male Sharʿi Order in Muslim Perspective Treatises", in Nikki R. Keddie and Beth Baron (ed.), *Women in Middle Eastern History: Shifting Boundaries in Sex and Gender* (New Haven and London: Yale University Press, 1991), pp. 99-121.

⁴⁵ *ibid.*, p. 106.

⁴⁶ Al-Matroudi, *The Ḥanbali School*, pp. 171-85.

⁴⁷ Ibn Taymiyya's doctrine of divorce can be read in the volume 33.

to settle Muslims' legal disputes, evidence shows that several cases concerning the issues of Islamic private law had been found in the court's record, such as cases concerning child custody, property and endowment (*waqf*).⁴⁸ This court also recorded a case brought to it by people when they sued Ibn Taymiyya over his views on *ṭalāq*, but no polygamy case was reported.⁴⁹ It is also unclear whether there was different tradition or practices about polygamy between rural and urban areas.

The scarcity of polygamy cases recorded in both the *fatwās* and the court reports could represent urban phenomena, since women in this areas shown their established power *vis à vis* their husband. Women found it easy to ask for divorce from their husband, or they went to the court to discuss with judges the possibility of divorcing their husbands through consensual divorce initiated by the wife called *kebul'*. On the other occasions, before agreeing to accept the contract of marriage, these women and apparently their parents requested that the groom put a conditional clause (*ta'liq ṭalāq*) in such a contract stating that divorce would occur if he took another woman as wife. In other words, this sort of divorce would never occur if the husband did not violate such an agreement. Other items inserted into this agreement are husband's avoidance in drinking wine, permitting the wife to stay with her natal family and delaying the marriage until the bride reaches maturity.⁵⁰ In Damascus, during the Mamluks era, such contract inserting polygamy as a condition invalidating the marriage was remarkably prevalent, as the Damascene notary documents by Ibn Ṭawq and other evidence from al-Asyūṭī show.⁵¹ This phenomenon of prevalent divorces continued to be practiced in Egypt until the Ottoman period. It is said that in larger towns, marriage contracts covered several conditions in favor of wife's interests which were incumbent upon the

⁴⁸ Jorgen S Nilsen, *Secular Justice in an Islamic State: Mazālim under the Bahri Mamluks*, 622/1264-789/1387 (Leiden: Nederlands Institute voor het Nabije Oosten, 1984), chapter 3, pp. 35-48.

⁴⁹ This is revealed from the reported case no. 51, occurring on Tuesday, July 22, 720/1320 in Dār al-Sa'āda, Damascus. *ibid.*, p. 150.

⁵⁰ Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*, p. 74.

⁵¹ *ibid.*, p. 75.

husbands to fulfill. The contract obviously included husband's abstinence from polygamy.⁵² This conditional contract seems to have been a powerful means for restricting polygamy in medieval Islam.

E. Conclusion

Ibn Taymiyya's *fatwās* demonstrate a legal response given by him upon the questions about polygamy and his *fatwās* reveal an indication of a fewer practice of polygamy in medieval Islam. Unlike contemporary approaches in reading the text offered by Muslim modernists and feminists who appeal for reforming the legal status of polygamy, the jurists in classical period, like him, did not challenge the validity of polygamy. This is mainly due to the fact that polygamy is not forbidden by the most authoritative texts. In spite of common problems emerging in polygamous marriage, that is injustice and discrimination, Ibn Taymiyya does not consider this misconduct to invalidate polygamy. He emphasizes the necessity to preserve fairness, even though he limits it to distributing material support equally. Unlike prevalent divorce that received his greater attention, rarely were problems concerning polygamy posed to him. This indicates that polygamy was not as pervasive as divorce at the Muslim communities in Syria and Egypt of the thirteenth and fourteenth century.

⁵² Abdal-Rehim Abdal-Rahman Abdal-Rehim, "The Family and Gender Laws in Egypt During the Ottoman Period", in Amira El Azhary Sonbol (ed.), *Women, the Family, and Divorce Laws in Islamic History* (New York: Syracuse University, 1996), p. 103.

BIBLIOGRAPHY

- Abdal-Rehim, Abdal-Rehim Abdal-Rahman, "The Family and Gender Laws in Egypt during the Ottoman Period", in Amira El Azhary Sonbol (ed.), *Women, the Family, and Divorce Laws in Islamic History*, New York: Syracuse University, 1996.
- Ali, Abdullah Yusuf, *The Glorious Qur'ān Translation*, New Delhi: Islamic Book Service, 2004.
- Ali, Mohamed M. Yunus, *Medieval Islamic Pragmatics. Sunni Legal Theorists' Models of Textual Communication*, London: Curzon, 2000.
- An-Naim, Abdullahi Ahmed (ed.), *Islamic Family Law in A Changing World. A Global Resource Book*, London: Zed Book, 2002.
- Barlas, Asma, *Believing Women in Islam. Unreading Patriarchal Interpretation of the Qur'an*, Austin: University of Texas Press, 2002.
- Chamberlain, Michael, *Knowledge and Social Practice in Medieval Damascus 1190-1350*, Cambridge: Cambridge University Press, 1994.
- Esposito, John L. and Natana J. DeLong-Bass, *Women in Muslim Family Law*, Second edition, New York: Syracuse University Press, 2001.
- Gibb, H.A.R. and J.H. Kramers (ed.), "Ibn Taymiyya", in *Concise Encyclopedia of Islam*, Leiden: Brill, 2005.
- Hoover, Jon, *Ibn Taymiyya's Theodicy of Perpetuated Optimism*, Leiden: Brill, 2007.
- Ibn 'Abidīn, *Radd al-Mukhtār 'alā al-Dār al-Mukhtār Sharḥ Tanwīr al-'Abṣār*, Beirut: Dār al-Kutub al-'Ilmiya, 1993.
- Ibn Qayyim al-Jauziyya, *al-Masā'il al-Fiqhiyya*, Egypt: Dār Ibn 'Affān, 2007.
- Ibn Taymiyya, *Majmū' Fatāwā Shaykh al-Islām bin Taymiyya*, Compiled by Abd al-Raḥman bin Muḥammad bin Qāsim al-Āṣimī, vol. 36, Beirut: Risāla, 1997.
- Jackson, Sherman A., "Ibn Taymiyyah on Trial in Damascus", in *Journal of Semitic Studies*, 39, 1994.
- Jokisch, Benjamin, "Ijtihād Ibn Taymiyya's Fatāwā", in Robert Gleave (ed.), *Islamic Law, Theory and Practice*, New York: I.B. Tauris, 1997.

- Joseph S. (ed.), *Intimate Selving in Arab Family: Gender, Self and Identity*, New York: Syracuse University Press, 1999.
- Kujuk, Mirwan, *Takhrīj Aḥādīth Majmū'a Fatāwā*, Vol. 5, Riyadh: Dār Ibn Ḥazm.
- Kruk, Remke, "Click of Needless: Polygamy as an Issue in Arabic Popular Epic" in Manuel Marin and Randi Deguilhem (ed.), *Writing the Feminine: Women in Arab Sources*, London: I.B. Tauris, 2002.
- Lufti, Huda, "Manners and Customs of Fourteenth-Century Cairene Women: Female Anarchy versus Male Shar'i Order in Muslim Perspective Treatises", in Nikki R. Keddie and Beth Baron (ed.), *Women in Middle Eastern History: Shifting Boundaries in Sex and Gender*, New Haven and London: Yale University Press, 1991.
- Mas'ud, Muhammad Khalid, Brinkley Messick and David S Powers (ed.), *Islamic Legal Interpretation: Muftis and their Fatwas*, Cambridge: Harvard University Press, 1996.
- Matroudi, Abdul Halim I, *The Hanbali School of Law and Ibn Taymiyyah, Conflict or Resolution*, London: Routledge, 2006.
- Motzki, Harald, "Child Marriage in Seventeenth-Century Palestine", in Muhammad Khalid Mas'ud, Brinkley Messick and David S Powers (ed.), *Islamic Legal Interpretation: Muftis and their Fatwas*, Cambridge: Harvard University Press, 1996.
- Nilsen, Jorgen S., *Secular Justice in an Islamic State. Madhālim under the Bahṛī Mamluks 622/1264-789/1387*, Leiden: Nederlands Institute voor het Nabije Oosten, 1984.
- Pearl, David and Werner Menski, *Muslim Family Law*, third edition, London: Sweet and Maxell, 1998.
- Rapoport, Yossef, *Marriage, Money and Divorce in Medieval Islamic Society*, Cambridge: Cambridge University Press, 2005.
- Shoshan, Boaz, *Popular Culture in Medieval Cairo*, Cambridge: Cambridge University Press, 1993.
- Yamani, Mai, *Feminism and Islam. Legal and Literary Perspective*, UK: Ithaca Press, 1996.
- Ziadeh, Nicola A., *Damascus Under The Mamluks*, Oklahoma: University of Oklahoma Press, 1964.