

# A Comparative Study of Polygamy Based on Islamic Jurisprudence and the Foundations of Iranian Civil Law in Comparison with the Laws of England and the United States

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## Abstract

In the Islamic jurisprudential system, which constitutes the foundation of the civil law of the Islamic Republic of Iran, there is no absolute prohibition against polygamy, and this institution is recognized within the framework of Islamic legal regulations. The present article was conducted with the aim of comparatively examining polygamy based on Islamic jurisprudential principles and the provisions of Iranian civil law, and comparing them with the legal systems of England and the United States. The study employed a descriptive–analytical method and was based on library research data. The findings indicate that in Islamic jurisprudence, and consequently in Iranian law, the principle of the permissibility of polygamy is recognized subject to conditions such as the observance of justice, financial capability, and the ability to fulfill the rights of spouses. Furthermore, the Iranian legislator has restricted the practical scope of this institution through mechanisms such as requiring the verification of legal conditions, permitting the inclusion of a contractual stipulation prohibiting the husband's remarriage, or making a subsequent marriage contingent upon the consent of the first wife. In contrast, within the legal system of England, the validity of marriage is founded upon monogamy and compliance with statutory requirements, and polygamous marriages are generally not recognized, except in certain exceptional cases involving marriages lawfully concluded in jurisdictions where polygamy is permitted, which may be accorded limited legal effects. Similarly, in the United States, polygamy is criminalized at both the federal and state levels and is prohibited in all states. Although some fundamentalist religious groups adhere to the practice, it continues to be regarded as unlawful from a legal perspective.

**Keywords:** Polygamy; Polygamy in Islamic Jurisprudence and Iranian Law; English Civil Law; United States Civil Law; Comparative Study; Plural Marriage.

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## 1. Introduction

Marriage in human life must take place in accordance with religious and divine rules, because marriage is one of the valuable divine traditions that is regarded as a source of goodness, blessing, and increased sustenance, and in Islam it has been

emphasized as a sacred and important duty. In Islamic teachings, marriage is considered a highly recommended act; however, whenever abandoning it leads to sin or hardship and difficulty, it may become obligatory. Numerous verses in the Holy Qur'an address the principle of marriage as well as the issue of remarriage, indicating the attention of the Sharia to this institution. For example, Surah al-Nisa refers to polygyny and explicitly recognizes its legitimacy under certain conditions. In addition, there are numerous traditions in this regard, and the Prophetic tradition also confirms the principle of this matter. Nevertheless, polygyny should not be understood as being merely related to pleasure-seeking or sexual desire; rather, in the historical context of the early Islamic period, one of its rationales was the protection of widowed women and families who had lost their guardians as a result of wars.

This phenomenon gradually became embedded in the tradition and culture of some Islamic societies. In some societies it became more widespread, whereas in others, including Iran, it did not expand significantly. In Iran, although the law, inspired by Islamic standards, has recognized the legitimacy of polygyny, in practice this institution is not very common, and where it occurs, it is usually limited to having two wives. Iranian laws, including the Civil Code, the Family Protection Law enacted in 1975, and the Family Protection Law enacted in 2012, have provided regulations in this regard. By contrast, in many European countries, due to the influence of Christian tradition and the Church's negative perception of polygamy, this institution has not found a place in the legal system; and if it had any historical precedent, it related to the period before the dominance of Christianity. In the United States, too, the principle is the prohibition and criminalization of polygamy, although in the state of Utah this issue has historically been associated with some religious groups.

In this article, the concept of polygyny is first explained. Then, its status in Iranian law is examined, under which the history and course of legal development, legal foundations, conditions of realization, enforcement guarantees, legal objections and ambiguities, and the condition of justice in remarriage are analyzed. Subsequently, polygyny in Islamic jurisprudence is examined, including its jurisprudential foundations, evidence and authorities, its status in the Qur'an and traditions, and the views of jurists with emphasis on the opinions of Imam Khomeini (RA), as well as the necessities and possible improper forms of polygyny. In the final section, the status of polygyny in the common law system is explained with a focus on the United Kingdom and the United States, and after examining its history and legal status in these two countries, the crime of polygamy is comparatively analyzed.

## **2. The Concept of Polygyny**

The term "ta'addud" is the verbal noun of the tafa'ul form ([Hosseini Zabidi Wasiti, 1993](#)), and lexically means being more than one, multiplicity, becoming countless, increase in number, and plurality ([Ibn Manzur, 1993](#)). In jurisprudential and legal terminology, polygyny is defined as a man's simultaneous taking of more than one permanent wife, with conscious intention and will ([Farooqi, 1991](#)). From one perspective, the title "remarriage" includes any marriage other than the first marriage and may include a second, third, or fourth marriage.

From a legal perspective, particularly in Iranian law, Article 941 of the Civil Code recognizes the assumption of polygyny. Thus, in the case of multiple wives, the inheritance share prescribed for the wife or wives, namely one-fourth or one-eighth, is divided equally among them. The use of the plural term "wives," alongside the foundations of Islamic jurisprudence, indicates the possibility of a man having a maximum of four permanent wives. In Imami jurisprudence, polygyny is limited to four permanent wives, and exceeding this limit is not permissible. However, at the time of its initial enactment, the Iranian Civil Code did not explicitly refer to conditions such as the man's financial or physical ability, and it merely accepted the numerical limitation on the basis of jurisprudence ([Hojjati Ashrafi, 2005](#)). Before the enactment of the Family Protection Law in 1967, having multiple wives up to a maximum of four women was recognized as permissible, provided that Islamic standards were observed.

Polygyny, as a legal institution, has a customary and jurisprudential background in many Islamic countries. By contrast, in Western countries and legal systems based on common law, the principle is monogamy, and polygamy has no legal standing. Therefore, a customary concept similar to what exists in Islamic societies has not developed in these systems. Examining the status of polygyny in these countries requires a historical study of legal developments and attention to the religious foundations of Christianity and its influence on Western legal systems, which will be addressed in later sections.

### 2.1. Conditions of Polygyny and Enforcement Guarantees

In Iranian law, although the principle of polygyny remains an institution based on Islamic jurisprudence, the course of legislative developments shows that the legislator has consistently moved toward restricting and controlling this institution. An examination of the legislative process indicates that regulations concerning men's remarriage have gradually been accompanied by more restrictions and conditions, and even judicial practice and the prevailing approach of courts have confronted this phenomenon with a restrictive view and, at times, with a sense of social disapproval. In addition, cultural developments and the public morality of society are such that polygyny is no longer accepted as it once was. One of the most important tools for restricting this institution is the requirement to obtain the permission or consent of the first wife, which, although it may appear simple in form, has in practice played an effective role in reducing cases of remarriage.

This approach was first introduced in the Family Protection Law of 1967 and was then consolidated and completed in the Family Protection Law of 1975. According to Article 14 of the 1967 law, taking a second wife without the permission of the court was considered a violation, and a criminal enforcement guarantee was provided for it; accordingly, the punishment prescribed in Article 3 of the Marriage Law of 1931 applied in this regard (Katouzian, 2011). The provision of judicial enforcement guarantees was considered an important step toward preserving the foundation of the family and ensuring justice among wives.

The 1975 law took another step toward intensifying the restrictions. According to Article 16 of this law, a man could not remarry while having a wife unless he obtained the consent of the first wife. The important difference between this provision and the previous law was that mere "permission" was replaced by "consent," which has a broader meaning and may even refer to the genuine and inner satisfaction of the wife. Thus, the scope of restriction was expanded, and a more effective enforcement mechanism was provided for controlling remarriage (Mehrpour, 1996).

Although some have considered these enforcement guarantees debatable in terms of their conformity with jurisprudential standards, there is no doubt that restricting remarriage to specific and strict conditions was justifiable in accordance with the social developments of the time. Nevertheless, one noteworthy point is that in these laws, the issue of observing justice among wives—which has a fundamental place in Islamic jurisprudence—was not explicitly and sufficiently addressed; this is a matter that is presented in jurisprudential sources as a foundational condition for the permissibility of polygyny (Karimi, 2020).

In addition to statutory provisions, the inclusion of contractual stipulations in official marriage deeds has also played an important role in creating practical restrictions on remarriage. Based on the approvals of the Supreme Judicial Council in 1982 and 1983, stipulations were inserted into official marriage documents according to which the husband, within the marriage contract or in a binding external contract, grants the wife an irrevocable power of attorney with the right of substitution, so that upon the realization of the prescribed conditions, she may apply to the court, obtain authorization, and divorce herself. The wife is also authorized, in the case of a waiver, to accept it on his behalf (Eslami Baba Heydari, 2010). This legal initiative may be regarded as an attempt to provide greater protection for women through contractual stipulation in cases where direct legislation of certain restrictions was not possible.

Another important enforcement guarantee in judicial practice is granting the wife the right to divorce if the husband takes a second wife, provided that this stipulation has been signed by both parties within the marriage contract. Since divorce in Iranian law is regarded as a unilateral legal act and is, in principle, under the authority of the man, women may request divorce only if legal conditions exist or if a power of attorney has been granted within the marriage contract. In the case of remarriage without the consent of the first wife, if the aforementioned stipulation has been inserted and signed in the marriage deed, the wife may apply to the court and, after proving the realization of the condition, divorce herself. In addition, if justice is not observed among the wives, the court may, upon the request of the harmed wife, issue a divorce judgment.

Since the granted power of attorney usually includes the authority to choose the type of divorce and to accept the waiver, the wife may choose *khul'* divorce and thereby eliminate the husband's right of revocation during the waiting period. The aforementioned stipulation has a general character and may be invoked in all cases where the husband remarries without the consent of the first wife (Eslami Baba Heydari, 2010).

Overall, although the principle of polygyny remains in Iranian law, a set of legal conditions, criminal and civil enforcement guarantees, and contractual stipulations has, in practice, subjected this institution to serious restrictions and transformed it from an absolute right into a conditional and limited institution.

## 2.2. *The Condition of Justice in Remarriage*

As noted earlier, under the provisions of the Civil Code, a man may implicitly take more than one permanent wife. This rule is rooted in Imami jurisprudence, although the Iranian Civil Code does not explicitly refer to the maximum of four permanent wives as prescribed in Islamic jurisprudence. However, some legal provisions implicitly indicate the acceptance of polygyny. For example, Article 941 of the Iranian Civil Code provides: “In the case of multiple wives, the one-fourth or one-eighth of the estate belonging to the wife shall be divided equally among all of them.” This wording indirectly presupposes the existence of more than one wife. In view of the jurisprudential foundations and the custom based on them, limiting the number of permanent wives to four women is an accepted matter in the Islamic legal system (Karimi, 2020).

Nevertheless, the Civil Code enacted in 1934, like the laws enacted after it, did not explicitly address the number of wives and left the matter to jurisprudence. This legislative silence was later repeated in the Family Protection Law of 2012. It appears that the legislator entrusted the determination of the limits and conditions of polygyny to jurisprudential sources and judicial practice, and the courts have also generally adjudicated disputes arising from it by relying on jurisprudential foundations (Katouzian, 2011).

The argument that the legislator’s failure to explicitly mention “completion of the permitted number” was due to the fact that society was not faced with it does not seem very defensible. This is because institutions such as *li’an*, which even at the time of drafting the Civil Code did not have broad practical application, were explicitly mentioned in Article 1131 of the same Code. Therefore, if completion of the permitted number was important as one of the impediments to marriage in Islamic jurisprudence, it could also have been explicitly mentioned in the Civil Code (Mehrpour, 2016).

With respect to the condition of justice, some believe that the legislator, in the Family Protection Law of 1967 and the Family Protection Law of 1975, practically limited the man’s authority to a degree less than that prescribed in Islamic jurisprudence by restricting remarriage. In their view, however, through the precise implementation of the condition of justice, it is possible both to defend the rights of four wives and to respect the man’s right (Mehrizi, 2007).

Nevertheless, such a view does not seem consistent with contemporary social realities. When polygyny is not a common practice in the social custom of society and, on the other hand, may destabilize the family foundation and cause emotional and economic conflicts, insistence on expanding its scope has little justification. Furthermore, the condition of justice in Islamic jurisprudence is not merely a formal or minimal concept, but requires real equality in the rights and duties of wives.

On jurisprudential grounds, justice in polygyny includes equality in providing maintenance, good treatment, division of overnight stays, provision of customary needs, avoidance of discrimination and humiliating treatment, and preservation of the human dignity of each wife. Therefore, it may be argued that the condition of justice, if precisely and practically guaranteed, can function as the most important jurisprudential and legal restriction on remarriage. The explicit and effective incorporation of this criterion into positive law, together with the provision of effective enforcement guarantees, can establish a balance between jurisprudential foundations and the requirements of the time in line with social developments (Karimi, 2020).

## 3. **Polygyny in Jurisprudence**

Our discussion of polygyny in Iranian law, as addressed in the previous sections, is rooted in Islamic jurisprudence and has been derived from the Qur’an, the Sunnah, and the consensus of jurists. From the perspective of Islam, polygyny is permissible and legitimate, and according to Islamic jurisprudence, a man may simultaneously marry up to four women.

Dr. Jafari Langroudi has attempted in this regard to connect the legal and jurisprudential definitions and has also examined the differences of opinion among Islamic scholars. He states that polygyny may include both permanent and temporary marriage, but there is disagreement among jurists as to whether this permissibility is specific to permanent marriage or also includes temporary marriage (Jafari Langroudi, 2021).

In Imami jurisprudence, unlimited temporary marriage is legitimate, but Shiite jurists, such as Shahid Thani in *Sharh al-Lum'ah*, have not permitted having more than four permanent wives and have argued that it is unlikely that the Infallibles would have ruled in favor of unlimited plurality. Therefore, the prohibition of marriage to more than four women also includes temporary marriage (Qorbanizadeh, 2017). Since our focus is on the jurisprudential authorities and conditions of polygyny, we avoid discussing the details of *mut'ah* and proceed directly to the Qur'anic and Sunnah-based authorities and the views of jurists, especially the opinion of Imam Khomeini.

### 3.1. *Jurisprudential Foundations: Evidence and Authorities*

#### 3.1.1. *Polygyny in the Qur'an*

An examination of jurisprudential books and sources shows that until the eleventh century CE, jurists mainly issued legal opinions and paid less attention to theoretical reasoning regarding the permissibility of polygyny. From this century onward, argumentative and analytical discussions in this regard emerged in jurisprudential works. For example, in the eleventh century CE, Shaykh Tusi, for the first time in his work, relied on consensus, traditions, and verse 3 of Surah al-Nisa, and discussed the permissibility of polygyny. After him, Allamah Hilli also examined this issue in detail (Hilli, 1997).

The Holy Qur'an, as the first source of Islamic rulings, contains numerous verses from which the ruling on polygyny is implicitly derived, such as verses 32 and 50 of Surah al-Ahzab and verses 1, 3, and 5 of Surah al-Tahrim. However, the third verse of Surah al-Nisa directly addresses the permissibility of polygyny (Sadr, 2017).

God states in this verse:

“And if you fear that you will not deal justly with orphan girls when marrying them, then marry other lawful women of your choice, two, three, or four; but if you fear that you will not act justly, then marry only one, or those whom your right hands possess. That is more appropriate so that you may not incline to injustice.” This verse has been cited by jurists and exegetes to prove the permissibility of polygyny and to explain its conditions.

In this verse, the verb “*ankihu*” is used in the sense of “marry.” Jurists agree that the command in this verse cannot indicate obligation, because marriage itself is not obligatory; therefore, polygyny cannot be regarded as obligatory either. Some jurists have interpreted the command as indicating recommendation, but most exegetes and jurists consider it to indicate permissibility and legal allowance, meaning that this verse is in the position of granting authorization, not encouraging the practice (Fadel Miqdad, 1998).

A careful examination of juristic reasoning shows that the permissibility of polygyny applies to all women and is not limited to orphaned or helpless women, although some exegetes have interpreted it in an illustrative manner and with the aim of providing greater protection to women (Qorbanizadeh, 2017).

#### 3.1.2. *Polygyny in the Traditions*

In Shiite and Sunni jurisprudential sources, numerous traditions have been transmitted regarding the permissibility of polygyny, addressing this issue either explicitly or implicitly. In addition to expressing permissibility, these traditions also refer to the detailed rulings of polygyny and its wisdom and philosophy. Some of these traditions have strong chains of transmission and some are weak, but in this section our focus is on the jurisprudential authorities and traditions cited in authoritative Shiite works (Makarem Shirazi, 2003).

##### a) The tradition of Imam al-Sadiq (AS)

Imam al-Sadiq (AS) states: Jealousy is specific to men; therefore, God has prohibited women from all men except their husbands, while He has permitted men to marry up to four women. God is too noble to test women with jealousy on the one hand and, on the other hand, permit men to have three other wives besides them.

##### b) The tradition of Imam al-Rida (AS)

“The reason why a man is permitted to marry four women and a woman is prohibited from marrying more than one man is that when a man marries four women, the child born is attributed to him; but if a woman has two or more husbands, it is not clear to which man the child belongs, and this leads to disorder in lineage and inheritance.” (Al-Hurr al-Amili; Salahshour)

This tradition provides a rational and social reason for limiting the plurality of women to four and shows that the order of the family, lineage, and inheritance is an important criterion in legislation in this field.

c) Another tradition from Imam al-Sadiq (AS)

This tradition explicitly states the limitation of four wives for men and emphasizes that exceeding this limit is not legitimate. The evidence of the Prophet's practice

The lifestyle of the Prophet of Islam (PBUH) is also practical evidence for the permissibility of polygyny. Surah al-Ahzab, by mentioning "Say to your wives" and "the wives of the Prophet," indicates the Prophet's plurality of wives. A tradition from Aisha in the interpretation of the verse "And if you fear that you will not deal justly with orphans" states:

"O son of my sister, this orphan girl was under the guardianship of a man who benefited from her property and intended to marry her without observing justice in the dowry and without paying the customary bridal gift. This event caused the revelation of the verse, and thereafter people asked the Prophet (PBUH) for a legal opinion regarding marriage to women, and God revealed the verse: 'They ask you for a ruling concerning women.'" (Suyuti, 1983)

Other verses and traditions also state that if a man cannot observe justice in marrying orphan girls, he may marry other women—two, three, or four at the same time (Suyuti, 1983).

Based on these verses and traditions, many jurists have concluded that men may, without exception, take up to four wives, provided that they observe justice among the wives and comply with the jurisprudential rulings concerning maintenance, rights, and dignity.

### 3.2. *The Necessities of Polygyny*

The necessities of polygyny may be derived from the verses of the Qur'an, especially verse 3 of Surah al-Nisa. This verse first addresses the issue of orphans and then refers to the permissibility of polygyny. On this basis, it may be concluded that the purpose of polygyny is to prevent harm to women and to provide shelter and protection for them. Exegetes and jurists, including Shaykh Tusi, have presented six different explanations for this issue (Tusi, 2010).

Jurists believe that the verse under discussion is closely related to the preceding verse, which concerns the protection of orphans' property. If guardians fear that they will not observe justice in marrying orphan girls and that their rights will be violated, it is better for them to avoid marrying orphans and turn to other women. Therefore, both the beginning and the end of the verse concern marriage: the beginning refers to marriage with orphans, and the end refers to marriage with other women (Makarem Shirazi, 2013).

The occasion of revelation also shows that in the Age of Ignorance, men would assume guardianship over some orphan girls who possessed wealth or beauty and would benefit from their property. Other verses, such as verse 10 of Surah al-Nisa, which states, "Indeed, those who unjustly consume the property of orphans only consume fire into their bellies," caused fear and anxiety among men regarding the misuse of orphans' property. Therefore, the third verse of Surah al-Nisa permits a man, if he is not confident of observing justice in marrying orphan girls, to marry other women in order to prevent transgression against orphans' property (Shobeiri Zanjani, 2004).

Verse 127 of Surah al-Nisa also emphasizes the observance of justice in marriage to orphan girls and shows that the beginning and end of the verse have a logical connection and both refer to the issue of marriage (Makarem Shirazi, 2013).

Another important point is the man's financial capacity. Islam, including Imam Khomeini (RA), has emphasized that financial ability is a necessary condition for polygyny, and this ability must not lead to discrimination or injustice among women. Differences in age, physical beauty, or financial status among women must not prevent the observance of justice. Accordingly, men may remarry in order to support weak, unprotected women, or women whose husbands have been martyred, so that unlawful paths or social harm may be prevented.

Verse 129 of Surah al-Nisa explicitly emphasizes justice among wives and warns that ordinary people may not be able to implement justice. Therefore, the purpose of polygyny is not sexual pleasure, but the provision of support, justice, and protection for vulnerable women (Karimi, 2020; Tabatabaei, 1995).

#### 4. Polygyny in the Common Law System

In common law countries, as in Iran, laws have largely been developed on the basis of customs, traditions, and, at times, religion, especially in personal status and family matters. Unlike Romano-Germanic systems or Iran, these systems do not possess extensive comprehensive and written codes and are instead largely based on judicial precedent and the tradition of judges. For this reason, the examination of issues such as marriage and polygyny in these countries is usually conducted on the basis of judicial precedents.

In the common law system, polygyny, in accordance with Christian tradition and social custom, is prohibited. Marriage in English is defined by the term “marriage,” and in a classical definition it has been described as “the union and will of one woman and one man for a shared life.” In this definition, the word “woman” is used in the sense of one woman, indicating that the lawmaker intended to emphasize monogamous marriage (Clark, 2004).

In the United States, although the general principles are similar, there are differences in the legal structure. The federal government does not have the authority to legislate on family law, marriage, and divorce, and the states are required to enact their own laws in this field. Therefore, laws concerning marriage, family, and divorce in the United States differ and are influenced by the judicial precedents and local traditions of each state (Giddens, 1997).

In general, in common law countries, polygyny not only lacks legal legitimacy, but if it is committed, the second or subsequent marriage has no legal effect and cannot create legal rights for the spouse or children. This is an important difference from Islamic and Iranian laws, where multiple marriage is possible and legitimate under specific conditions.

##### 4.1. The United Kingdom

###### 4.1.1. The History of Polygamy

Recent developments in British legal policy toward polygamy are related to the arrival and influence of Asian and African immigrants in the country after World War II. With the increase in immigration, questions arose concerning the recognition of polygamous unions and the legal control of the English state over men in such situations. Due to the complexities of English law and its relationship with private international law, this issue acquired particular importance.

In most Asian and African societies, polygamy had a long history and was formally accepted by the legal sphere. With the arrival of immigrants in Britain after World War II, courts attempted to respond appropriately to the culture of polygamy in light of immigrants’ demands for justice. In the early 1970s, Britain introduced a legal amendment requiring immigrants to comply with the behavioral patterns of the country. However, the consequences of this amendment for the South Asian community were overlooked, and many polygamous marital ties of immigrants were not recognized.

In the mid-1980s, immigration became one of the important legal fields, and issues related to polygamous marriages, social security, and marital relations became prominent. Gradual reforms arising from reports and judicial experiences were connected, on the one hand, to changing migration patterns among South Asian groups and, on the other hand, to the strict controls of the British government in the field of immigration. Different governments offered different solutions for legal control of the issue, but none was able to completely eradicate the phenomenon of polygamy among immigrants.

In the jurisdictions of South Asian countries, where a large portion of immigrants residing in Britain originated, polygamy was observed as a social practice among Hindus, Muslims, and other groups. However, its prevalence had declined, and no state law or custom recognized the legal power of men to practice polygamy. Therefore, immigrants are expected to act in accordance with the standards of English law, and no special status exists for the implementation of polygamy.

Nevertheless, some reports and statistics show that the number of polygamous individuals is very small. Douglas Hurd, the British Home Secretary, stated in this regard:

“I do not wish to exaggerate. The number of polygamous persons who come here is very small, perhaps about 25 people per year. However, if men residing here wish to marry any of these women, serious harm will be caused to social relations.”

As a result, there is a long history of opposition to polygamy in Britain. This opposition was initially shaped on the basis of Christian religious assumptions, but it is now also accepted as a socially unacceptable culture from the perspective of gender equality and women’s human rights.

#### 4.1.2. *The Status of Polygyny in British Law*

In Britain, marriage laws were challenged by the arrival of Asian and African immigrants, whose numbers increased after World War II. Polygamy had a long history and social function among these groups, but English law attempted to restrict polygamous marriages through legal control. In general, in order for a marriage to be legally recognized in Britain, marriages must be monogamous and must be registered in accordance with statutory conditions and requirements.

For individuals residing in countries where polygamous marriage is permitted, such marriages are recognized in those countries, but they are not registered or formalized in Britain. Under paragraph d of the Matrimonial Causes Act 1973, polygamous marriages entered into after July 31, 1971, in England and Wales are considered void, and even bigamy by residents of England is regarded as a criminal offense. In an October 2011 response, the Attorney General of Britain confirmed that the Crown Prosecution Service did not record information on the number of defendants charged with bigamy.

Polygamous marriages in Britain do not have the same legal rights as formal couples; they do not include access to divorce remedies, inheritance rights, or other legal benefits. The government has attempted to encourage religious groups, such as mosques, to assume civil responsibilities in marriage and to increase women's awareness of their rights. This issue is particularly important for women with low levels of employment and legal awareness, because their economic and social dependence on their husbands may lead to violations of their rights.

Official marriage statistics in England and Wales include only legally registered marriages, and no data exist on religious or informal polygamous marriages. However, since 1930, courts have decided to recognize marriages concluded in immigrants' former places of residence, while taking a second wife on English soil remains prohibited. An example of this situation is the "Hussain" case in 1982; he was a Pakistani man whose second marriage in Pakistan was not recognized in Britain, and the English court held that his marriage was valid in his legal place of domicile, but that a second marriage in Britain was not possible.

Despite legal prohibition, some individuals, especially among the Muslim population, conduct polygamous marriages informally and religiously; because these marriages are not legally registered, they have no legal validity. The legal enforcement guarantee for this matter in England and Wales is a maximum of seven years' imprisonment. In Scotland, the punishment includes a maximum of two years' imprisonment or a fine, or both, and in Northern Ireland, punishment of up to seven years' imprisonment or a fine is prescribed.

#### 4.2. *The United States*

##### 4.2.1. *Polygamy in the Legal History of the United States*

Polygamy has always been illegal in the United States. With the establishment of the country, the laws of the original thirteen states, influenced by England and Wales, prohibited polygamy and criminalized offenses related to it. During the nineteenth century, polygamy was used as a legal and political tool, particularly in political, legal, and cultural struggles against the newly established LDS Church, namely the Mormons.

One important case in this regard is the case of Joseph Smith. As the leader of the Mormon group, he had entered into a second marriage and regarded marriage to his second wife as legitimate under section 32 of the American law of 1832, but this matter was criticized and examined. The federal government began its campaign against polygamy in 1862, when Senator Justin Morrill introduced the anti-polygamy act in Congress. His effort was initially blocked by the southern states, but after some time a law was enacted prohibiting polygamy in all territories under the authority of the federal government.

Under the law, any person who has a living spouse and marries another person is considered guilty and faces a financial penalty of up to 500 dollars and imprisonment for less than five years. The Morrill Act had three important effects: first, it treated polygamy as a crime; second, it restricted the formation of the church; and third, it limited the church's ability to retain property and assets.

In 1874, Congress enacted a new law limiting the jurisdiction of Utah courts in all civil, criminal, and supreme court matters except divorce. This law made possible the prosecution of the George Reynolds case. Reynolds, a member of the LDS Church and private secretary to Brigham Young, had married his second wife a few months before the case was examined. He was

examined as a test case concerning the legal legitimacy of polygamy, and this case demonstrated that polygamy in the United States, especially among Mormons, had always been the target of legal and social opposition.

In the second half of the nineteenth century, public opposition among Americans to polygamy intensified, because this phenomenon was considered immoral and anti-Christian. Social movements such as abolitionism and women's suffrage also viewed polygamy as equivalent to oppression and exploitation of women. During this period, the legal campaign against polygamy was mainly focused on the LDS Church, although some fundamentalist religious groups in the United States continued to support this phenomenon.

#### 4.2.2. *The Legal Status of Polygamy in the United States*

Polygyny in the United States, as in England, is generally prohibited, and in many states this practice is not only unlawful but also considered a crime. This type of marriage is known in the United States as polygamy (Monger, 2004).

However, due to the special status of religious freedom in the United States Constitution and the beliefs of some religions, such as Mormons and Muslims, some argued that the prohibition of polygamy was incompatible with religious freedom. The most important judicial case in this regard is Reynolds in 1878. In this case, the United States Supreme Court held that although the Mormon religion permits polygamy, this matter cannot be legitimized under the title of religious freedom. Accordingly, convicting a person for polygamy does not violate the Constitution, and this case remains valid and cited (Hauser, 2020).

Since 1950, numerous cases of polygamy prosecution have been recorded in the United States. For example, in the state of Utah, polygamy cases have often been associated with other violations, such as marriage to minors. In matters such as child custody, the finding of polygamy does not prevent the granting of custody, and the decision is made on the basis of the best interests of the child.

Under United States immigration and nationality laws, individuals with a history of polygamy and other characteristics considered morally unsuitable are barred from receiving permanent residence or citizenship. Also, a man cannot use his residence permit to secure residence for his second wife. The legal policy of the United States regarding polygamy is very similar to that of Canada, because most cases of polygamy in these two countries relate to Mormons, and their social, cultural, and political contexts are closely related (Qorbanizadeh, 2017).

As a result, polygamy is considered a criminal offense and an immoral act in all states. Only Mormon immigrant groups in some limited areas show an inclination toward this type of marriage, but they receive no official support from Christian leaders or authorities. The legal policy of the United States is designed in such a way that, in the absence of justified reasons, polygamy leads to prohibition and prosecution; however, in special circumstances where justified reasons exist, enforcement of the law may face limitations.

One of the important developments occurred in the state of Utah, when a federal judge struck down part of the laws relating to polygamy on the ground of incompatibility with the Constitution and supported a person and his four wives. Before this, polygamy was considered a crime in Utah, and offenders could receive up to five years' imprisonment (Dobner, 2013). However, after this case, only those who fraudulently obtain a multiple-marriage license are recognized as offenders. In other states, polygamy remains a crime, and its punishment is usually between three and five years' imprisonment.

### 5. **A Comparative Analysis of the Crime of Polygamy in the United Kingdom and the United States**

Polygyny is generally considered a crime in both the United Kingdom and the United States, but differences can be observed in political structure, legal enforcement guarantees, and social conditions. In the United States, because the legal system is state-based, crimes and punishments differ from one state to another and may vary from three to five years' imprisonment, together with a fine or both. In general, polygamy is prohibited in all 50 states, and most Muslims do not practice it. Nevertheless, the state of Utah is an exception; Mormons in this state practice polygamy secretly and without official registration and attribute religious legitimacy to it. In 2013, a federal court, relying on religious freedom and the understanding of sexual relations as personal relations, ruled in favor of the validity of one person's polygamous marriage, and from then onward only those who fraudulently obtain a multiple-marriage license are recognized as offenders.

In Britain, polygamy is not common among native residents and is regarded as undesirable from the perspective of Christian tradition and social custom. After World War II and the extensive migration of people from South Asian countries and some Middle Eastern countries, this phenomenon became more common among Muslims, and the British legal system faced a challenge. Despite the fact that this act is criminal under the law, polygamous marriages are often performed in mosques in a religious and informal manner and do not create any legal rights for the parties. These marriages are not civilly valid, but they are religiously approved in Islam.

In terms of enforcement guarantees, Britain acts more strictly. Scotland provides the lowest level of punishment, while Northern Ireland prescribes the highest punishment for this crime. In the United States, although polygamy is considered a crime, it is practically not observed in most states, and punishments are usually lighter, except in Utah, where recent legal developments have reduced the severity of the response. For example, in 2020, polygamy in Utah was reduced from a third-degree felony to a minor infraction.

Overall, although polygamy is criminalized in both countries, their different political structures, judicial systems, and social conditions have led to different approaches in the implementation and enforcement of the law. This has created practical and cultural differences in confronting the phenomenon. In the United States, polygamy is mainly limited to Mormon groups and is practically not observed in other states, whereas in Britain, the phenomenon is more common among Muslim immigrants and is carried out informally and religiously, creating no legal rights for the parties.

## **6. Conclusion**

The comparative study conducted shows that the status of polygyny in Iranian law, jurisprudence, and the common law system has fundamental differences. In Iranian law, polygyny exists on the basis of jurisprudence and civil laws, and individuals may have up to four wives simultaneously. Although the Iranian Civil Code does not explicitly state this matter, it has implicitly accepted it. The Family Protection Laws enacted in 1967 and 1975, as well as the regulations relating to permanent and temporary marriage, have imposed restrictions on polygamy in order to control it and make the conditions of its implementation more difficult. The distinctive feature in Iran is the possibility of polygyny in the form of temporary marriage, through which a person may take any number of wives for a specified or unspecified period. Islamic jurisprudence has also confirmed this issue by relying on verse 3 of Surah al-Nisa and traditions, while emphasizing the observance of justice among wives. However, Iranian laws in 2012 did not directly address polygamy, and courts usually refer to the 1975 law as well as custom.

In the common law system, such as England and the United States, polygamy is considered reprehensible and undesirable from the perspective of Christian tradition and Western social custom, and the laws of both countries regard it as a crime. In England, polygyny is considered an absolute crime; however, in the United States, this act is a crime in all states except Utah and carries punishments such as imprisonment and fines. In the state of Utah, among Mormons, polygamy is practiced informally under specific conditions, whereas in other states it is absolutely prohibited. Studies show that even among Muslim immigrants in the United States, polygamy is not widely practiced, although in limited cases religious and informal marriages may be conducted at home or in mosques.

In Britain, too, despite absolute legal prohibition, this phenomenon exists secretly among Muslims and is practiced in mosques, and the legal system confronts it seriously. Consequently, it may be concluded that in Iran polygyny is legally and jurisprudentially accepted and has a defined framework, whereas in the common law system this act is largely prohibited and criminalized and may occur only in limited cases and under specific conditions. The major differences between these two systems arise from the influence of jurisprudence and religion in Iran and the influence of Christian tradition and social custom in common law countries, while the manner of legal enforcement and social culture shape the practical status of this phenomenon.

## **Ethical Considerations**

All procedures performed in this study were under the ethical standards.

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### Conflict of Interest

The authors report no conflict of interest.

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