

## **Forbidden yet practiced: Polygamy and the Cyclical Making of Israeli Policy**

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One of the most important issues in public policy research is crisis of governance. Researchers argue that in Israel the governance abilities of governments are being increasingly diminished. (Nachmias & Arbel-Ganz, 2005) The absence of political stability and the inefficiency of administrative bureaucracy, which are identified as the gap between policy makers and the bureaucrats implementing policy, are often cited as two of the causes of this phenomenon.

In his book, *Street-Level Bureaucracy*, Michael Lipsky contributes a model to the discourse over the crisis of governance, in which he challenges the traditional separation of roles between the policy makers and those who implement. (Lipsky, 1980) Lipsky proposes a model in which the agents of the state, the lower-ranking civil servants (teachers, police officers or social workers) do not merely execute policy but also in practice determine it through their actions. Thus, the pyramid is flipped on its head. No longer is policy directed from above but rather, from the ground upward. Lipsky explains the behavior of the street-level bureaucrats by arguing that they find it difficult to alter their worldviews and their perception of their “clients,” and maintains that under such circumstances a top-down policy has little chance to be effective. In addition, officials at the lower level all too often suffer from lack of motivation, the absence of resources, and having to deal with too many clients. As such, the street-level officials often prefer organizational efficiency to social impact. The more the conflict between the elected officials and the agents on the ground grows, the problem of governance, according to Lipsky, intensifies. (Lipsky, 1980)

The significance of this theory lies in the challenge to the traditional binary/hierarchic approaches that present a dichotomy between the elected policy makers and the bureaucracy that is meant to implement policy. In some instances it is also possible to identify Lipsky’s theory with arguments made by the various “clients” of policy, who tend to blame the functionaries on the ground for failures. This article proposes that Lipsky’s model, as well as others dealing with failures of governance, are limited, especially because they have no cultural references and do not relate to the contribution of public narratives in the creation of political process. This argument is examined through the case study of polygamy among the Bedouin in the Negev, in southern Israel. It examines existing policy in view of the rise in the number of cases of polygamy in recent years, which researchers hold to be practiced by 30 percent of married Bedouin men (Ben David, 2004) and examines the effectiveness of legislation as a tool for implementing policy. (Knesset, Minutes of the House Committee, 2004) Furthermore, the article argues that under the current conditions of Israeli society, a cyclical model of policy is created, which includes legislators, politicians, officials on the ground, “clients” and narrative-makers. The interests of the various policy makers, both at the political and the street levels, combine with the interests of the Bedouin tribal leadership. This cyclical concord, which prevents the polygamy being ended, is fueled by concepts from academic sociological and anthropological circles, and by public and institutional views, which grant legitimacy the failure to combat polygamy. It also enables the perpetuation of an ambiguous policy on a subject that may agitate society because of its position along the national, religious and social fault line.

## Introduction: Polygamy and Israeli policies

On 17 December 2003, journalist Shimon Ifargan published a report [Maariv, “Present absentees”] on the growing phenomenon of “disappearing” Bedouin women “who dare complain against their husbands.” The article shows that the men in the tribes cause the disappearance of their wives, police fail to locate these women and thus the system fails in its attempt to negotiate between the state laws and tribal tradition. On the basis of official data, an estimated 30 Bedouin women disappeared in the last 4 years after lodging complaint of serious domestic violence against their husbands. According to the testimony of social workers, one concludes that the “phenomenon” of disappearing women – women who are deliberately kept secreted away from police by their families, continues to this day.

Ifargan quotes from the 26 December 2002 ruling of Judge Dov Meged, who wrote that, “the already familiar tune repeats itself. Once more the case is stuck because of evidence, as the [female] plaintiff does not appear in court, and the prosecution [in this case the police prosecutor] is unable to locate her... the plaintiff did not attend any of the meetings.” After many delays, due to repeated requests by the State Prosecutor’s office, the judge accepted the request of the defense attorney and exonerated the allegedly violent husband because the charges against him were not proven. In his decision, the judge was severely critical of the functioning of the police and proposed that the state reconsider the viability of bringing charges against husbands from the Bedouin community, a policy that is proving to be ineffective. “This is a little bit like talking about the weather; everyone talks, but no one can change a thing,” the judge wrote (Ifargan, 17 December, 2002).

This court ruling reflects to a large extent the cyclical model that explains the general difficulties of governance among the Bedouin in Israel, and from one has draw conclusions about the failure of enforcement in cases of polygamy. Judge Meged made it clear in his message that the interaction between state agents and the Israeli courts in family affairs of the Bedouin community is a task which the public, and especially its functionaries, cannot fulfill, and therefore the government should not waste its time or that of the judges. The judge recommended that a suitable policy be formulated according to the capabilities of the agents in the field.

This particular case, which received widespread media coverage, alerted public attention to the fact that the phenomenon of the disappearance of Bedouin women had reached plague proportions. The story also drew the attention of MK Reshef Chen (Shinui party), who says that following the article and a tour of the Negev as part of the Knesset Committee for the Advancement of the Status Women, he filed a proposed amendment to the punitive law of Israel on 12 July 2004.

His proposal calls for the introduction of a clause into Article 177, which deals exclusively with polygamy, stipulating that anyone who officially divorces but continues to live with is or her partner as de-facto husband and wife will be considered married. This article would regard any two people who cohabit or live in very near proximity, and share a joint household, as married. This attempt to redefine what is a polygamist, along the same lines as the American law of 1882 on unlawful cohabitation, has put the issue of polygamy among Israeli Bedouin back on the public agenda.

The debate has once more emphasized the fact that the State of Israel is comprised of a human collage, but also a legal puzzle whose parts are not congruent and where segments of its public, in this case Bedouin women, do not enjoy equal citizen status. It should be stressed that reference to citizenship here is not understood within the limited parameters of carrying a passport or an identity card, but in the broader sense of a “contract, based on broad social

agreements, which forms the basis of the link between the individual and the state. These understandings, as Michael Mann notes, usually represent the point of view of the elites. (Mann, 1987) Women, in different parts of the world, like minorities, do not participate in formulating these civil understandings, nor are they created in a manner that represents women. In most cases, the women benefiting from these social understandings are those belonging to the elite. In the case of the Bedouin women in Israel, a significant portion of them do not benefit from their privileges as citizens because the state fails to provide them with protection from violence, and because, from the point of view of the various agents of the state, they are not perceived as individuals in society but as segments of a familial unit. Moreover, Bedouin women also suffer for being part of a collective minority that fight for legitimacy in the Jewish Israeli state.

The bill proposed by MK Reshef Chen drew angry responses from both women's rights organizations and tribal leaders and their representatives. They argued that Chen's empathy for women and his rush to "save" Bedouin women from their husbands is motivated by politics. In practice, it is argued, the bill would harm women and their children, and its real purpose is to serve economic and political interests by minimizing the income subsidies that single-mothers and their children receive through the National Insurance Institute, rather than serving the women themselves. Furthermore, the bill's detractors argue, legal interference may do more harm than good, a warning voiced before the Knesset committee by a local social worker: "The law will not help; on the contrary – it will make matters worse. We all know this." (Knesset, Minutes of the House Committee, 2004) In response, the Knesset member Chen argues that the purpose of the bill was to send a clear message to its two target audiences: the Bedouin population, that public opinion will not tolerate discriminatory behavior toward women under the guise of tradition and culture; and the Interior Ministry and its main organ for enforcement, the police, that it must change its attitude toward the weak enforcement of the law and make the issue a higher priority. The debate raised two fundamental questions: is legislation the right way of dealing with this subject; and is the problem one of implementation or policy. Are the law and the courts the right arena for containing a social phenomenon such as polygamy?

It is our assertion that, in this case, the state finds refuge behind its crisis of governance [the problematic nature of governance in Israel] and thus collaborates, on different levels, with the failed enforcement of the law in the field. In other words, the political and legal systems are exhibiting ambivalence, for a variety of reasons to be examined herein, but also because of the unwillingness and failure of the law enforcing agents, and those who read into the state's faltering as legitimating the absence of enforcement. The broad array of moral, ethical and practical problems that is placed on the shoulders of the social workers and the police, while lacking clear policy, means and resources, forces them to act to prevent the immediate damage at the cost of the liberty and dignity of women. Presumably this process will continue until a combined decision is made to end it. However, the chance that such a decision will be made is slim. The reason for this is that polygamy is viewed as something that touches one of the most sensitive nerves of the State of Israel, and as one of the great divides among the different communities – the issue between the personal and national status [of the individual]. In Israel, as Sylvia Fogiel-Bijaoui notes, the personal status, or marriage and divorce, is structured along religious, not civil patterns. As a consequence the ownership of a man over his wife is instituted. (Sylvia Fogiel-Bijaoui, 1999, p. 114)

The family is a central part of the ideological and institutional mechanism of the biological reproduction of ethnic communities living within Israel. The family also a key part of the self-definition of the two largest such communities in Israel. As long as the hegemony of religious law (or tribal law in our case) continues to be directly linked to Jewish-Arab conflict within Israel and, for both sides in the conflict, the family continues to be a central element in

formulating and reinforcing the collective identity (Fogiel-Bijaoui, 1999, 144), it is highly unlikely that either the state, on the one hand, or the Bedouins' tribal defense mechanism on the other hand, will make any seriously effort to deal with the problem of polygamy. This is because each side perceives such an effort as upsetting the balance, approved by the elites, regarding survival strategy on issues of religion, community, demographics and personal status. This is also why social and legal rights groups in the Israeli-Arab sector hesitate to rally round the cause of fighting polygamy, preferring instead, for internal political considerations, to ignore the problem. Their primary criticism on the subject of polygamy is aimed at those responsible for not enforcing the prohibition, but they fail to point the finger at society or leaders of the Arab communities involved. It seems that the solution to the problem of polygamy will unavoidably linked to the ability to disconnect the problem from the context of personal status and collective identity. The state must facilitate this by making the tribal leadership understand that polygamy harms the Bedouin community's survival strategy – a complex task given Israel's political and social fabric.

The problem of polygamy among Israel's Bedouin population is linked to a number of key issues, including the relationship between State and Religion, the issue of personal law and the question of to what extent democratization, initial attempts at urbanization and modernization affect women in Bedouin society.

The key question relates to the extent to which Bedouin society is culturally autonomous and to what extent any autonomy could clash with personal rights in general and women's right in particular. Until now, because of the cultural and political circumstances surrounding its establishment, the State of Israel has adopted a legal legacy and Mandate-era perspective that differentiates between discernable religious and ecological communities and allows some of the puzzle pieces that make up the whole to ignore and evade the law (as protest or convenience). This is true of various communities, and is particularly true for the ultra-Orthodox and Arab communities. In the case discusses herein, many people believe that it would be easier to let the tribal leaders impose whatever order they deem fit, rather than to confront them. This is true not just in Israel, but in other Middle Eastern countries that were under British Mandate during the 20th century. According to Mandate law, bigamy among the Muslim communities is part of the tribal tradition and, as such, "a person shall not be convicted of bigamy if the marriage laws of his religion or tribe permit multiple marriages" (Verthzberg, 2001) After the establishment of the state, this Mandate law was replaced by the Women's Equal Rights Law 1951 and later, bigamy was included in an amendment to the penal law in 1977. Nonetheless, tribal customs that contravened Israeli law were granted de facto recognition thanks to a policy of non-enforcement of acts that were de jure illegal. In the case of polygamy, a perusal of the relevant rulings issues since the establishment of the state shows that, over different periods, the courts have been lenient in the punishments they have handed down when dealing with crimes that are perceived as being related to cultural differences, irrespective of the gravity of crimes such as murder, polygamy, trading in women for prostitution and violence toward these women. In the 1950s, there was a period during which the courts consistently condemned bigamy and handed down slightly more severe penalties to state law offenders. (Adler, 1995)

But the legal system was not speaking with one voice and judges like Dov Megeg gave legitimacy to the police policy of not interfering in family matters, and sent out a negative message to women who dared to complain. That said, the Supreme Court have started to erode the status of the religious courts and, as a result, more and more women are starting to view it as a legitimate recourse to air their grievances. Before 2002, recourse to the civil law was a privilege reserved exclusively for Jewish women only, and was denied to Muslim and Christian women. Since then, Muslim and Christian women are also entitled to seek help from civil courts, but only

on issues pertaining to financial support for their children. Despite initial enthusiasm, it seems that only a handful of Christian and Muslim women have taken advantage of the new law.

With the establishment of the State of Israel, the Bedouin were forced to accept the law of the land. But, because of the duality that exists within the Israeli legal-political system, the Bedouin were able to bypass the laws, by means of marriages that were acceptable according to Sharia law, but were not legally registered with the state, or by pretending to expel previous wives, marrying a new wife in a civil ceremony and then bringing back the previous wife or wives. In many cases, these women were recognized as common-law wives when it came to their request to receive income support.

The second question we have posed is to what extent legislation and the courts are the proper forum in which to deal with social problems in this multicultural age. There is, of course, a difference between legislation (a political tool allowing the symbolization of social norms) and the courts (the arena in which dynamic negotiations between the public and the policies implicit in the law). This is the arena in which various values are considered and a balance is created between them. In the current context, the law indicates that polygamy is a phenomenon that society cannot tolerate. The bill proposed by MK Reshef Chen intimates that the legal sophistry is no longer useful, not for the offenders and not for the enforcement agencies. The question is how to ensure that Bedouin women know that they do not have to accept forced polygamy and how their men in their community are supposed to realize that the phenomenon must end. Is the court the correct forum for engendering a change in the attitude and behavior of the Bedouin in this context?

### **Modernization and Semi-Urbanization: Influences on polygamy**

While polygamy exists in many places in the world, among various Muslim, Christian and, on occasion, Jewish communities, the reasons for the phenomenon must be understood in their specific social and political contexts, and one must avoid the kind of sweeping generalization that all too often characterize the public discourse on 'Islamic women.'

Mohanty is right when she asserts that one of the most glaring conceptual mistakes in Western feminist writing is the attempt to turn women into a category for analysis instead of trying to understand certain women within the context that they operate. (Mohanty, 1988) Even though this article does not focus on the implications of processes of urbanization and modernization on polygamy, and does not attempt to understand the reasons for polygamy, or the politics of gender (which is doubtless connected to the debate), but instead focuses on government policy in this context, it is almost impossible to differentiate between the two and we must make every effort to understand the reciprocal relationship between them.

With the establishment of the State of Israel, some 11,000 Bedouin remained in the Negev. During the 1950s, they were concentrated in a defined area in the Be'er Sheva valley, an area known as 'the Saig area' between Beit Kama, Be'er Sheva, Arad, Dimona and Yerucham in the northeastern Negev. The Bedouin who remained in the Negev after the establishment of the state were granted citizen status, but, that said, lived under martial law, which shaped and was responsible for various aspects of civilian life in the Bedouin sector until 1966 (Abu-Saad, 2003).

This situation has political, economic and social implications, primarily turning the tribe into a coherent political unit headed by a sheikh. In addition, the question of land ownership was raised, both within the 'delimited area' and without. The entire Negev desert was declared state-

owned land and the conflict over the problem of land would affect the relationship between the Bedouin population and the State of Israel for years to come.

In order to solve the problem of land, the State of Israel tried to settle the Bedouin in small, permanent townships it constructed. The plan to settle the Bedouin was based on the principle that the Bedouin were forced to cede their lands which are the subject of an ownership dispute with the state, and in return, to receive land and infrastructure in seven townships constructed in the Saig zone (Rahat, Tel Sheva, Kseifa, Arara of the Negev, Segev Shalom, Houra and Laqiyya. (Ben David, 1993) In practice, this plan was especially attractive to the Bedouin farmers, rather than the nomads, since it allowed them to own property and extricated them from the patronage of the nomads.

According to the most recent estimates (the annual statistical yearbook of Bedouin Negev), there are currently some 120,000 Bedouin living in the Negev. Around 40 percent of these live in the seven townships and the remainder live in what is referred to a 'the Bedouin Diaspora' – the unrecognized (by the state) villages and in tents located adjacent to the townships or to Jewish communities.

The transformation from a nomadic lifestyle to settling into "urban" communities is not unique to Bedouin in the Negev. Similar policies processed can be found in other Middle Eastern countries, especially in those bordering Israel – Egypt and Jordan. The general idea behind these different policies is to make the move from a nomadic lifestyle to urban settlement. That said, difference can be found in the transfer process, which is dependent on time and place, as well as the outcome of the policy implement in each country in relation to the Bedouin communities within each specific country. As a rule, it can be argued that every country in which there are Bedouin is interested in limiting them to a defined geographical area, for the following reasons: security, to prevent any ownership claims and to facilitate the provision of services and infrastructure (Ben David, 2004). This is in addition to the social-public policies that have been internalized among the elites and the Westernize democracies that see urbanization as a clear sign of progress, as the third stage in human development, after nomadism and rural settlement.

In the urbanization process of Israel's Bedouin, one can discern that, for the large part, the Israeli government opted for a policy of direct transfer from nomadism to urbanization, while the vast majority of the Bedouin Diaspora adopted a lifestyle that combined life in small villages with a nomadic lifestyle, in accordance with the season. This means that the Bedouin population of the Negev is in various stages of transformation between nomadism and urban life. Residents of the unrecognized villages in the Bedouin Diaspora live in small settlement concentrations, in which their semi-nomadic lifestyle, based on small-scale agriculture, is maintained. These communities, which preserved part of the traditional lifestyle, suffer from a lack of basic infrastructure, such as regular and satisfactory water supply, electricity, healthcare, welfare and education ( Abu-Saad 2002). In the delimited zone, each town was designed to accommodate around 15,000 people, but not of the seven, with the exception of Rahat, actually ended up taking in that many residents. The planning and design of the urban make-up of the seven towns was plagued with planning problem and incorrect policy, which are today manifested in the socio-economic, demographic and social status of the residents of these towns. As a rule, it could be argued that the planning of these towns did not take into account the traditional Bedouin lifestyle, primarily because the local leadership did not cooperate with the planners and failed to offer any employment, social and economic alternatives for residents. (Tal, 1994). According to researchers there are inadequacies in the lack of land and accompanying services, the infrastructure is lacking, there are no public lands, there is a serious shortfall in funding, there are not places of employment, accompanied by the destruction of traditional fields of employment, there was, until 2000, no local autonomy, healthcare, education, social life and entertainment, and there was a

basic lack of economic development in these towns. ( Ben David, 1999. The State Comptroller Report, 1999. Litwik, 2002. Meair, 1999)

While the physical edifices in these regulated settlements were changed and fixed, the cultural and social attitudes underwent some unexpected changes – changes that did not always fall into place with particular view of modernization. The transition to a modern, urbanized life led to the collapse of the economic, political and social way of life that existed previously. The tribe as a social unit and the commitment to it and to the head of the tribe are still important and influential, but the economic and political status of the tribal leader and the heads of the families are on the wane. The drop in the status of the tribal leader has led to, among other things, a decrease in his ability to serve as an intermediary within the community and between the community and the various state agencies. The emergence of a new, educated generation, the direct involvement of the state in areas that previously required mediation, the process of urbanization, the change in the general structure, the education of individuals irrespective of their tribal ascription and the increasing use of communications are some of the reasons that the relevancy of tribal leaders is being challenged and reduced (Meair & Ben David, 1994, Ben David 2004). This situation explains the tendency of the tribal leaders to be insular and to wage wars of survival for the last fortresses under their control – women and family. This could also explain why they blame state interference and legislation for the existence of polygamy and the damage to the state of women, including violence.

It should be pointed out that dismantling the old social structure is not a homogenous process; each tribal group experiences it and responds to it differently. But, as a rule, it can be asserted that dismantling the traditional lifestyle, couple with the lack of adequate tools for integration into modern Israel society, have left the Bedouin far behind in terms of standard of living and other socio-economic indices, compared to Jewish society, or even to the Bedouin community in northern Israel. Sociological studies show that a sharp transition to a new lifestyle led to the loss of ability to earn a living from traditional income sources, coupled with the difficulties of becoming integrated into the modern workforce because of lack of suitable training and education and the lack of temporary places on employment. Furthermore, the new planned settlements are not real towns rather fixed houses with no sufficient cultural, commercial or social centers and institutions (Abu-Saad 2003, Rimlet, 1991).

The problems of employment and adaptation to an urban lifestyle, as well as the deliberate policy of barring the Bedouin from the Israel labor market, forced the Bedouin to abandon their traditional behavior patterns and support systems in favor of artificial support systems (Ben David, 2004). “In the past, benefits caused the Bedouin to become closer to agencies of the state, which were, by their very nature, members of the ruling party.”(Ben David, 2004, P.464). Today, the two main sources of income for the Bedouin are guaranteed income payments and employment with the local authority. Indeed, within the community the most significant change was the construction of the towns in the Negev and the establishment of municipal councils that altered the political relationships. The transition to life in towns brought about the gathering of a number of tribes and families under one local authority.

In contrast to the ambiguity that exists in national elections (where the Bedouin vote is part of a greater whole), in local elections the identity of the individual in the family is high, since a candidate running as part of a larger family will garner more votes and will, in turn, look out for the interests of his family on the municipal level – usually at the expense of the needs of the other residents. In an electoral system whereby “winner takes all,” especially when almost the way to create new workplaces and to enlist resources is through the municipal authority, the since of the clan has a critical effect on the political and social chances of survival of the clan within the community. Indirectly, it can be argued that the change to the political system contributed to the

increase in the number of polygamous marriages, or at least to their legitimization. The lack of resources, soaring unemployment and poverty no doubt partly explain the strategy of multiple marriages. This social institution is tied to social, political and economic processes in a changing society.

The 200,000 Bedouin in Israel make up around 3 percent of the general population. Some 120,000 Bedouin live in the Negev (Ben David, 2004). That said, the political influence of the Bedouin on determining Israeli government policy is strictly limited, and they suffer from discrimination in terms of allocation resources in relation to other sectors of Israeli society. It is possible that this is one of the main reasons for the accelerated rate of natural population increase in Bedouin society, which currently stands at an annual average of 5.5 percent. This means that the Bedouin population of the Negev doubles in size every 15 years on average. This high level of natural population growth is possible in part because of the increase in standard of living and the availability (even partial and limited) of advanced healthcare services, which reduce infant mortality and contribute to the growth in life expectancy. The age distribution of the Bedouin community shows that some 60 percent of the population is under the age of 18 (54 percent of who are under the age of 12), while the number of elderly stands at 2 percent (compared to 10 percent in the Jewish population). Nonetheless, compared to other communities, the infant mortality rate is among the highest in Israel.

The weakening of traditional values has led, on the one hand, to the adopting of and adaptation to a Western lifestyle, and, on the other hand, to a pendulum reaction that aims to preserve some of the traditional elements. The desire to maintain tradition is especially prominent in the area of family honor in general and social supervision of women along with the woman's place within the tribe in particular (al-Krenawi, 1997). On the one hand, more women are becoming educated and are coming into contact with the hegemony of Israel society, but on the other hand, they are becoming the only "asset" that the men of the community still have control over, given the state's interference in their lives and the invasion of their traditional domains.

The transition to permanent dwellings brought with is an involuntary disconnection from the traditional way of life and to a series of economic, social and political upheavals. Some of these changes were to the lifestyle and status of women in Bedouin society. (al -Atawne, 1993). In a certain sense, Bedouin society suffered from similar phenomena to those experienced by immigrant societies, except that the Bedouin are experiencing these changes on their own lands. One of the changes that characterize an immigrant society and which most directly impacts on the family and the functioning of the individual within the family is related to the mobility of the woman. (Tal, 1994) Researchers point out that women from immigrant families in North America and from the Middle East to Europe feel that the mobility they enjoyed in the rural environment has been taken away from them in the transition; they feel they are trapped in their homes, with no connection to the outside world or with the traditional support mechanisms. (Mandel, 1990) This is also true of Bedouin society in the Negev. If, during their periods of nomadism, woman and children were considered to contributors to the family income (as shepherds, laborers in the field, cattle herders and bearing responsibility for maintaining the tents), the transition to permanent residences (in which each family has its own dwelling unit) and the transition to hired labor, significantly reduced the functions, the field of operations and the mobility of Bedouin women.

Employment of women outside the family home is still as marginal phenomenon in Bedouin society, partly because of the lack of workplaces, the lack of professional training and education and the social control of women's movements. If, in the past, women's mobility was limited to the tribal area, which fanned out across the entire area of nomadic movement, today's Bedouin townships restrict the women to their own homes and just leaving the home now



requires spousal permission, a justified reason and accompaniment. These conditions made it difficult for women – even those with some degree of education and professional training – to find work outside the home. Even though the process of urbanization and the non-involvement of women in the workforce mean that the burden of providing for the community falls on 18 percent of the population (Ben David, 1993), researchers claim that most Bedouin men object to women going out to work. Despite this, there are now cracks appearing in this attitude.

Against this background, one can understand the complexity of the phenomenon of polygamy. Marriage in Bedouin society is not considered the individual choice of each woman, but a contract between families that, if broken, would lead to sanctions. The institution of marriage is arranged and supervised by the clan. Romantic marriages or marriages for love are rare. Most of the marriages are arranged according to rigid paternalist rules and are usually used to further the ties within families and between families (al-Krenawi, 1998). In this context, it is relevant to point out that, among Bedouin in the Negev, in addition to polygamy, marriages between cousins and ‘exchange marriages’ (marriages in which two men marry each other’s sister in exchange for forgoing the dowry) are still acceptable.

Polygamy and the causes of polygamy among Bedouin in the Negev have been forced for years onto the sidelines of research. One of the reasons for this is the objective difficulty involved in collecting data (that the government agencies also do not have) among a population that refuses to cooperate for fear of providing incriminating evidence, thereby making it easier for the state to take away what is considered communal property (such as water or land). These circumstances, where this is a paucity of reliable, detailed, quantitative and systematic information about the population as a whole and about the problem of polygamy in general, reflect the crisis of governance but, at the same time, makes them permanent. From the little study that has been done, we learn that in most of the polygamous households, each wife lives with her children and sets up a separate household; sometimes, however, a number of women will share the same household. Similarly, in most polygamous households, there is a differentiation between the senior wife and those who come after her. For the most part, the senior wife has more privileges than the other wives. Among the Bedouin in the Negev, the opposite is true (al-Krenawi, 2002).

In contrast to the various findings from the rest of the world, which show a drop in the number of polygamous marriages among young and educated people, there is no such drop in polygamous marriages among Bedouin who fall into this category. In Bedouin society in the Negev, the extent of polygamous marriages is not dropping over the years. Over time, the popularity of polygamous marriages has been increasing, irrespective of age, education or socio-economic standing (Ben David, 2004). This is probably because it the popularity of polygamy is linked to the struggle for hegemony being waged by the local authority. Ben David claims that in the last 20 years, we have witnessed an expansion of polygamous marriages among the Bedouin – at a rate of 1 percent per year, reaching a level of around 30-35 percent. (Ben David, 2002)

Researchers from within the Bedouin population prefer not to investigate the issue directly, and only address it indirectly. These researchers have, in recent years, examined the correlation between life in a polygamous relationship and the following phenomenon: violence toward women, schoolchildren’s academic achievement, socio-economic indices, incidence of mental disease among women and others (studies by al-Atawne and al-Krenawi). The studies have found that:

The senior wives suffer most in polygamous families; their marriages are almost always non-voluntary, on the part of either partner. In many cases, the husband will take additional wives, who, along with their children, take material and emotional precedence over the original

wife. Studies found that women in polygamous families in general and the first wives in such families in particular, complain of somatic pains, anxiety and stress.(by al-Krenawi et al.,1997) Other researchers report incidents of depression, somatic disturbances and other psychopathologies (Hassaouneh-Phillips, 2001).

In Phillips' study, which was carried out among Muslim women living in polygamous marriages in the United States, the women reported abusive treatment by their partners, that they were the victims of physical, emotional and sexual violence. In addition, there were also reports of violence between the other wives. al-Krenawi and Weisel reinforce these assertions in the findings of the studies, in which wives in polygamous marriages reported far high levels of violence than women in monogamous relationships. (al-Krenawi & Weisel, 2002) In terms of self-esteem, the sense of being in control of one's own life, commitment to society, which is defined as a sense of ability, the monogamous women in the study reported highly levels of ability than polygamous women. Similarly, al-Krenawi found (1999) that the self-esteem of women from polygamous relationships is lower than that of women from monogamous families.

These studies also examined the influence of life in a polygamous family on the psychological and physical condition of children, as well as on their academic achievements. In Phillip's study, it polygamy was found to be a contributory factor in child illness (Hassaouneh-Phillips, 2000). In studies carried out in Saudi Arabia, a link was found between mental disease among children and the fact that they come from polygamous families. Another study found that children from polygamous families reported a far higher incidence of violence, behavioral problems, poor academic performance and worse social adaptation than children from monogamous families (al-Krenawi and Litman, 2000). Polygamy, therefore, has far-reaching effects on society, effects which go far beyond questions of morality, sexual politics, and women's rights.

### **The involvement of religious leaders in countering polygamy**

When discussing the correct ways to counter the phenomenon of polygamy, it is worth examining – with great care – similar historical cases, without falling into the trap that Mohanty was so careful to avoid; in other words, to avoid turning polygamy into a general phenomenon with no local social, political and cultural roots. (Mohanty, 1988)

Polygamy, it should be remembered, is not an unavoidable phenomenon, and there are historical examples of campaigns against polygamy that have successfully controlled the problem. The best example is the struggle of the United States Federal government, which successfully controlled polygamy among the Mormon population of Utah in the 1880s. Even though these two cases are not identical, and it is possible that the reasons for polygamy among the Mormons are fundamentally different, the case does bear further examination, for two main reasons; the involvement of the leadership of the Mormon church, which permitted and even encouraged polygamous marriages, and the fact that polygamy was connected to wealth and financial power in that particular communal context. At the heart of the public and legal argument in the United States was the question of morality that accompanies the discourse in Israel: the Mormons claimed that they had the collective right to live according to their beliefs and customs, without the state interfering. Polygamy, they claimed, permitted by the Mormon religion. But, in the 1880s, the federal government gave top priority to stamping out polygamy. As John Kincade showed, in the historical circumstances of the United States, the struggle was seen as parallel to the fight against slavery (Kincade, 2003) The argument of territorial and cultural diversity and the demand for judicial territorial independence seemed inferior when they were placed up against a

legal and philosophical approach of the supremacy of individualism. In legal terms, the federal government's fight against polygamy among the Mormons ended when the Supreme Court ruled that the constitution granted an American citizen the right to believe in polygamy, but not to practice it. But the ruling was only the opening salvo in the struggle to prevent polygamy. The federal government, therefore, was left with two complex challenges: to prosecute anyone who failed to marry officially but, in practice, lived in a polygamous family (in other words, to redefine polygamy) and to successfully prosecute in a society in which the majority refuses to see polygamy as something illicit. The government's great success lay in its ability to send a clear message to the Mormon leadership that its survival was dependent on its ability to prevent the phenomenon occurring. The message was imparted by means of uncompromising legislation and stiff penalties for offenders, including but not limited to rescinding the right to vote, on the one hand, and effective protection – including guaranteeing the women's portion of any inheritance and physical protection – for women who chose to testify against the husbands. The government did not stop at punitive legislation, but aimed high and introduced stringent enforcement of the law. Between 1887 and 1896, some 1,400 cases were brought before the courts, testimony to the unprecedented prosecutorial effort. (Kincade, 2003: 10). The Mormon leadership understood the message clearly. Church leaders were forced to declare a ban on polygamy, and even went so far as to expel leaders who violated the prohibition. Polygamy did not disappear entirely from the social landscape, but was redistricted to a small minority.

A different, but no less important case, is that of the Druze communities in Israel and Lebanon. This case proves that the most effective way of combating polygamy is through a decision by the religious leadership to ban the phenomenon and to announce a social boycott and clear sanctions against offenders. In his article on the Druze, Aharon Layish demonstrates that in places where the Druze community lives a communal lifestyle, there are almost instances of polygamy. (Layish, 1979) By moving out of community to more rural areas, where the threat of sanctions was less effective, a small number of Druze was able to marry more than one woman. Clearly, penal sanction of the Knesset does not perform as prevention. (Layish, 1979) The experience of Turkey backs up this assumption. The secular Turkish state, in which Sharia has no legal standing, bans polygamy. In other words, there was no attempt to try to reform the religion – rather, religion was simply ignored. In practice, therefore, in rural areas, where even the long arm of the Kemalist rulers could not reach, the agricultural and tribal patriarchal families continued to practice bride exchanges (*berdel*) and polygamy. In the urban centers, on the other hand, the lack of polygamous families was obvious. It should be remembered, however, that polygamy was already in decline by the end of the 19<sup>th</sup> century in large cities, for financial reasons and because of the influence of the process of Westernization that changed the attitudes of the elite. The mass immigration to the cities that started in the 1850s brought polygamy from the rural periphery to the urban centers. Data shows that the cultural and social revolution that Turkey underwent was not completed or fully absorbed in the peripheries and at a time of relatively open pluralism, the Kemalists were forced to deal with the demands and, to a large extent, to grant them some legitimacy. (Lapidot-Firilla, 2004). The disdain with which the Kemalists viewed religion and religious leaders meant that little thought was given to convincing the leaders to ban polygamy and reform their religion; to a large extent, therefore, the attempt to stamp out polygamy failed.

Israel provides another example of how cooperation with religious leaders helped to eradicate an unwelcome phenomenon: the underage marriage that were common among the Georgian community in Israel. Israeli law imposes a two-year jail term on anyone who marries an underage boy or girl (17), or anyone who allows their underage son or daughter to marry, or encourages them to do so, or performs the wedding ceremony for an underage bride or groom. For many years, however, the phenomenon was widespread amongst Israel's Georgian

community until, finally, the group's leading rabbis agreed to announce a ban on the practice; since then, the number of incidents has dropped. (Knesset, 28 June 2004)

The issue of polygamy among the Bedouin residents of the Israeli Negev is complex, for two key reasons. Firstly, by Israeli law, interfamilial relations are subject to the authority of each ethnic group's religious courts. In practice, Israel classifies its citizens, as far as an interpersonal relation is concerned, according to the ethnic background and their religious affiliation. Although the Sharia court is forbidden from approving polygamous marriages, in accordance with the law of the land, the state does not have the power to annul such a marriage if it is carried out privately. Despite signing international pacts, the State of Israel cannot annul a polygamous marriage, but can only take steps to punish the offender. This is also true of polygamous marriages among Israel's Jewish communities, but this is negligible because of the tiny number of cases and the existing social sanctions that exist to ensure that polygamists do not re-offend. This means that even if a woman in a polygamous, legal marriage manages to obtain a divorce and financial compensation, for a variety of legal reasons, such as the damage to her dignity, she would also certainly lose the rights to her children and in most cases, the elementary rights to see them. In such a situation, very few women are willing to jeopardize the future of their children and themselves.

Another problem is related to tribal law and customs and to the consensual dispensation to wed without having the marriage legally ratified in court. The customs of bride exchange, polygamy, underage marriages and slavery are very much alive among certain Bedouin communities, even if it contravenes the legal instructions of the local contemporary religious authorities. The social and communal law is much more relevant to the community than the law of the land.

Israeli law can draw inspiration not only from the American experience of combative legislation against polygamy, but also from the progress that Israeli law has made. For example, by law, the rabbinical courts can, by means of a restraining order, infringe the rights of men who refuse to grant their wives a divorce. The rabbis have the power to prevent a man from leaving the country, receiving an Israeli passport or transit permit, holding or obtaining a driver's license, to hold any elected or official position, to work in certain professions or to run a business that needs a license. It can even prevent a man from owning a bank account or cashing checks. If these sanctions are not enough to contain the phenomenon of polygamy, they certainly send out a clear message about how the state views its fight against the phenomenon.

The cultural circumstances and legal complexity of the law in Israel make one wonder to what extent legislation that cannot annul a marriage and which cannot impose harsh sanction, is effective. Legislation, without a commitment to enforcement and protection, is hesitant and damaging. It creates expectations without the ability to fulfill them. It also creates antagonism because it is perceived as being an attempt by the hegemonic community to invade a private area, the last citadel of the Bedouin community's battle for survival, and thereby allows (rather than cause) violence toward women, without providing them any protection from violence. The police see this hesitancy as gelling well with their policy of unwillingness to breach the agreements reached with the Bedouin leadership over an issue that they do not appear to see as a threat to national security and which, perhaps, they see as a "natural" occurrence among the Bedouin. The police, therefore, do not enforce the law and then provide the politicians with justifications for their non-treatment of the problem. Worse still, in the absence of a guiding hand, the agents of the state in the field – the social workers, primarily – are forced to make decisions on complex issues, and to make judgments on intractable questions of ethics and morals.

## **An examination of the cultural narratives in the discourse on Bedouin women and polygamy**

No less important than an examination of the stated and practical policy is an examination of the public discourse of the issue. The discourse, along with other branches of social sciences, can make various contributions to the study of policy. In this context, it is worthwhile examining the narratives, myths and rhetoric that accompanies the public discussion about the status of Bedouin women in Israel in general, and polygamy in particular. The importance of these narratives lies in the understanding that they contribute, to a large extent, to the transparency of the situation, but also to affixing it in the future. The creation of an accepted framework for relating to a group of people creates a template from which it is hard to extricate oneself. As Hayden White explains, this framework is implanted on our imaginations and is passed from generation to generation by a variety of means, literary texts, visual material such as movies or images, or by means of other sociological and academic theories. (White, 1974) Understanding the narrative will reveal the cultural components of those who determine and enforce policy. Martha Nussbaum has written at length about the importance of literary narratives and the connection between them and the law. (Nussbaum, 1995). Moreover, an examination of the court rulings demonstrates just how important the work of academics is in helping formulate legal opinion. Judges use academic arguments and narratives and quote academic writers.

An examination of the rhetoric shows that there are several explanations for polygamy, just as there are several arguments why agents of the state should not get involved in the issue and the exact opposite – why they should ‘save’ Bedouin women. Most of those involved in the discussion represent the Bedouin women as victims of a historic social and cultural tradition in which women are used for the sexuality and their sole function is related to the family. These are women who do not have names and who do not have any significance of their own. They are the ‘disappeared,’ ‘missing’ Bedouin women; not present to represent themselves.

In Turkey, the primary explanations given for polygamy are related to religion and to patriarchal tribalism. According to the explanation, Islam permits a man to take four wives, on the condition that he has the financial and emotional wherewithal to satisfactorily cope with the needs of each of his wives and their children. Even though the laws of the land determine that polygamy is forbidden, and the Sharia courts are prevented from registering polygamous marriages, other than under exceptional circumstances, the assumption is that the public does not allow the authorities to enforce a ban on something that Sharia law permits. The religious argument is raised, therefore, not only by Bedouin men, but by researchers themselves, who too often believe that cultural relativism demands that the problem be solved by labeling it ‘in the private realm,’ and ruling that the communities customs and rules apply – as shown by Manar Hassan in her critical essay on ‘family honor’ murders.(Hassan,1999) Hassan demonstrates how cultural relativism and Orientalist approach set a forgiving behavioral pattern on the part of the authorities toward men guilty of violence toward women. (Hassan, 1999) Ignoring the need to protect women in the context of the polygamy is not, therefore, unique, but represents part of an entire worldview held by policy-makers based on patriarchal and Orientalist assumptions. This attitude is reinforced by High Court rulings which reveal differences between Arab and Jewish justices over their understanding of how the practice affects the rights of women in Arab society. The rulings show that Jewish judges are more willing to accept discrimination against women in the Arab sector as customary and therefore acceptable, while their Arab colleagues believe that discrimination is no longer either customary or legitimate.

Another oft-used argument for granting legitimacy to polygamy is that the institution of the polygamous marriage protects sick or barren women (who are unable to fulfill the societal expectation to have children or to live as a married woman) from divorce (Badawi, 2002, Keet, 2003). The husband can take another wife, thereby remains married to his original wife and still being able to father children. Similarly, in accordance with the patriarchal belief that women need the protection of men, concern for widows and orphans is cited as a legitimate moral basis for polygamy. Polygamous marriages protect women, give them security and financial safety. This protection, it must be remembered, is the basis of the male demand that women not be involved in public life and must be controlled.

In the patriarchal arsenal, one weapon that is often rolled out is the somewhat sophistic argument that, from a moral and social viewpoint, a polygamous relationships avoids the infidelities, lies and hypocrisy that exist in monogamous relationships, since everything is 'out in the open.'

This argument is warmly accepted by those who see the Western world as corrupt, hypocritical and full of promiscuity. Sociologists and Bedouin political leaders who perpetuate this argument contribute to the legitimization of polygamy. Bedouin Knesset member Talab A-Sana told the Committee on the Status of Women that the phenomenon of polygamy is no different to the common-law marriages and adultery that exists in Western society; many even claim that it is preferable to them in humanitarian terms. The heads of the Bedouin tribal leadership are trying, through their rhetoric, to blur reality by using claims of multiculturalism, claims that this is not the time to try and change traditional customs by means of legislation, but by means of a long process of education, not force. Majid al-Atawne, for example, told the Knesset House Committee that, "When Yitzhak Shamir was prime minister of Israel, he visited my village and jokingly asked one of the sheikhs how he does it. He said he too wanted a second wife. The sheikh said, 'Mr. Prime Minister – we Bedouin do openly what you Jews do in secret'." (Knesset, Minutes of the House Committee, 2004, Page 6) And so, using stories that have become folklore, the educated Bedouin evade responsibility for denouncing polygamy and instead, they look for cultural nuances to explain it. But, as Catherine MacKinnon wrote, there is nothing evasive, complicated or ambiguous about most rapes and most cases of violence toward women. Those who look for nuances and those who seek excuses collaborate with the repression. (MacKinnon, 1987)

The repetitions of arguments that are linked to culture are an effective weapon in perpetuating patriarchy. Similarly, they perpetuate the mistaken approach that prevents any positive change. For example, the planning of towns like Rahat that was based on the internal allocation of plots between tribes failed to take into account something that researchers have know for a long time – the importance of public areas in empowering and promoting women. In interviews we conducted with Bedouin women, this issue was raised as a key factor preventing women's growth. The women pointed to real difficulties in receiving help for activities and programs aimed at empowering women, primarily because of the difficulty obtaining lands rather than objections to the activities themselves. For example, large sums of money that was allocated by the government or by international organizations were returned because of the refusal of the Laqqiya regional council to cooperate and to allocate land that belonged to one of the clans. The women also complain that jobs are allocated according to tribal affiliation, rather than by merit. This, of course, encourages a high birth rate, and not investment in education.

Researchers also point out that polygamy serves as a symbol of financial success and social status ((Meair & Ben David, 1990). After the establishment of the state, and with the improvement in the economic level of the Bedouin, many were now able to afford to take additional wives and did so. This trend intensified with the outbreak of the intifada, because of

the increasing gulf in the status of citizenship-holding Bedouin and the poverty in the West Bank and Gaza Strip. The economic gulf allowed the Bedouin to purchase girls and women from the Palestinian Authority (Ben David, 2004). In this context, it is worth mentioning another argument that is sometimes raised: that polygamy is encouraged by a welfare state that hands out money in the form of National Insurance Institute child support payments. But, if Ben David is right in his belief that one-third of the women living in polygamous families are from the West Bank and Gaza, they are not eligible for support from the NII. (Ben David, 2004) On the other hand, it should be stressed that this statistic also serves the Bedouin leadership in its efforts to legitimize the status quo of polygamy, since, if these women were to be divorces, or the husband to cease to recognize them, they and their children would be sentenced to terrible poverty (since they are not eligible for NII aid) and to social isolation.

Researchers also explain that, many times, polygamous marriages are used as a solution to the social problem of adolescent girls. Various interviews conducted by social workers in the Bedouin sector show that when a girl shows any sign of 'rebellion' – refusing to accept the patriarchal will or the decisions of the tribe or family, or tried to escape from the family – she is married off as the second or third wife of an older man. This is because the family of the 'rebellious' girl are unable to find a more suitable groom for her, and are keen to pass her off to the responsibility of a husband and thereby avoid any possible stain to the family's honor. Often the social workers are exposed to these problems when the girls seek help and refuge; given the lack of a clear policy, however, the social workers prefer the option of mediation, even though this often leads to forced marriage and polygamy.

The most controversial argument of all, however, is often raised by experts who seek to explain the value of social, 'therapeutic' marriages. Bedouin society suffers from a large proportion of people with disabilities – a problem that stems partly from inbreeding. This attitude sees communal logic in integrating the people as much as possible in the life of the community (it is not considered acceptable for these people to receive treatment outside the home or in an institution) and to find social solutions such as 'therapeutic' marriages. It is argued that the normative inclusion of people with special needs in Bedouin society obligates them to wed. Interviews have shown that it is far easier to marry off a male with a disability than a woman. Therefore, in contracts drawn up between the family of the disabled and the man she is to marry (and sometimes with his other wives, too), special nuptial conditions are agreed and the woman is often a third or fourth wife. The purpose of the marriage is to allow these women to be involved in normative life, and to give them the opportunity to have children who will look after them in their old age.

Another equally problematic argument that legitimizes polygamy is related to free will and the importance with which we view it. In Bedouin society, a man's first marriage is nearly always arranged by the family. In most cases, it is a marriage within the family, an exchange marriage or a marriage of convenience aimed at ending some political or tribal feud or to meet social expectations (such as marriage between cousins). Thereafter, the man has more choice when it comes to choosing his wives. Later marriages are therefore afforded a higher status by men, who also tend to invest more time, money and emotion in them. In a way, the man is portrayed as having had his first marriage forced upon him, so it is his natural right to choose whoever he wants as his second, third or fourth wife.

One of the most obvious elements in the description of the Bedouin population how they have been romanticized. Sociologists often portray them as living in harmony with nature; other speak of the three-stage cycle of life for women – pre-pubesence, before giving birth for the first time and loss of fertility. This portrayal of Bedouin perpetuates the impression that women's only purpose and significance is linked to their fertility and their relationship with the family. These

public narratives legitimize a policy of discrimination. Portraying the control of women, their exclusion from society and their sexual or physical abuse as an acceptable custom in Bedouin society and as the only existence they can expect legitimizes polygamy by turning it into a cornerstone of the cultural relationship. Perpetuating it prevents specific understanding of the political strategy of opposition.

In this context, portraying woman solely as victims is not only unfair, it is also offensive. As Mohanty pointed out, the use of women as a group or a stable category for analysis restricts the definition of the female individual to a gender-based identity, which bypasses social standing or any other consideration. (Mohanty, 1988) .Women are understood as a coherent group, identified with submission. The oversimplified patterns of abusive men and abused women are not simply a historic reduction, there are also unhelpful in the search for a solution and reinforce and perpetuate the binary division between men and women. In order to extricate ourselves from these patterns, we must employ a careful, focused, political and local analysis. We should ask how women are understood in a variety of political and social contexts. Bedouin women are not merely victims. They are also fighters, resisters; organizers of the status quo are a variety of historical junctures. The growth of women's organizations and associations, the dozens of financial or political empowerment programs being organized in Bedouin society is testimony to that. And the 'disappearance' of dozens of Bedouin women every year after they complain about their husbands shows how effective these women can be, and not just how bitter their fate is. We must tap in to this covert resistance among Bedouin women. The introduction of Bedouin women to other realities, such as Israeli society or other Arab societies, through television, the health maintenance organization or the market, creates cracks in consciousness and allows a variety of voice in.

By the same token, it is also not accurate to describe all agents of the state as part of the same ruling group – a fundamentally make group that has no desire to intervene because of its patriarchal attitudes. An examination of court rulings, for example, shows that even judges do not speak with one voice. The balance of power in our case is not one-way.

Even the language being used, the use of phrases like 'missing' women, grants a certain amount of legitimacy on the part of the public and the state to the murder and control of women, their bodies and their representation. The failure to call these women by their name and to bring them to the public's attention in a more direct manner, has contributed to their classification as a 'different' group, subject to the laws of tribal custom.

Recently, another element has entered the discourse, an element that is popular in the cultural and academic discourse. The argument is that government interference makes matters worse for the women. This myth is tempting since it is based on some element of truth; in other words, it is based on the lack of protection afforded to these women, on poor planning that lacked a basic understanding of the cultural needs of these people (the women in particular) and primarily, on the spirit of the times – a lack of faith in the political system and the agencies of the state – as well as a belief in multiculturalism. But the myth is dangerous because it reinforces the cyclical policy, both on the elected and bureaucratic level, on the street.

It is not accurate to claim that Bedouin women do not want legislation. They do not want legislation that would prevent them from receiving guaranteed income payments or National Insurance child support payments. Have there been any interviews conducted which show that these women oppose legislation and state intervention? Interviews conducted by researchers show that women who are active in Bedouin society are calling for strict legislation and enforcement, and for the state to take an effective stand [in contrast to other Arab women who are prevented from taking this view for ideological reasons]. Some of these women do not hesitate to put



responsibility on members of the community, and claim that Bedouin men are not able and not mature enough to run the local authorities in such a way that would allow free competition, based on merit, and not to spend all their time dealing with the politics of tribal land. Even if these voices do not represent the entire community, they testify to the cracks that exist in women's voices. Exposing these cracks is vital in order to escape from the narratives that lump all Bedouin women together as one unit, merely victims of the patriarchal regime. Above all, these women must be allowed to build new narratives that will make women visible in local life.

### **In Conclusion**

Is legislation and the courts the proper and effective forum wherein to find the solution to the problem of polygamy? The answer is that legislation is an important tool, but not one that can replace policy or implement it. Historic experience has shown that, given the absence of a commitment to overcome the problem, along similar lines to the American experience of the 19th century, it is better to concentrate on providing women in polygamous families with tools and protection, in addition to empowering men and women and providing them with suitable tools. In addition, history has shown that the laws of society are stronger than the laws of the land. The courts must back up the process of change and punish those who err from the norms laid down by law. The accepted approaches to social change claim that legislation is the last stage in a social and cultural process, and that it should come only after a change in consciousness. The problem with this approach is that, under certain circumstances, and especially given the lack of an implemented policy aimed at affected changes in education, employment and elsewhere, it is likely to legitimize the continuation of the current situation. And so, the court must accompany the voluntary social process that must be nurtured within the community. The community, policy-makers and enforcement agencies must not see the court as the end of the process, or the start. They must not wait for the courts to initiate. Similarly, women's over-reliance on the courts is not realistic and creates a pattern of dependence and passivity. The court cannot take the place of other social systems, such as the education system. In today's reality, the status of a Bedouin woman in whose name a complaint is filed does not improve. On the contrary.

Historical experience teaches us that, reforms to the status of women that were imposed from above and based on the understandings of the alienated elite or hegemonic society without any dialog are destined to failure. The problem of defeating polygamy is too complex for street-level bureaucrats. The increase in the number of polygamous marriages is not a problem of enforcement, but a problem of policy; thus far, the problem has not yet been clearly defined. To a large extent, the components that make up the policy-making system (elected officials, junior bureaucrats, Bedouin community leaders and narrative creators) are trapped, some of them voluntarily, in a cycle that grants legitimacy to the non-solving of the problem of polygamy and perpetuates it.

### **Policy-makers should consider the following points:**

Policy-makers in Israel at every level should be made aware that polygamy is not just a question of morals or women's rights. The problem of polygamy is linked to other social problems, such as problems of health, violence and demography.

The low-level bureaucrats, police and civil servants such as social workers should not be left without the proper policy tools. They are not necessarily trained to understand the ethical, philosophical, legal and practical complexity of their actions. They are called upon to make tough rulings and decisions that are too often connected to moral dichotomies and matters of life and death. The state must equip these people with clear instructions and not force them, or allow them, to make up their own rules.

Every decision taken by a government ministry regarding the Bedouin population – even if it appears, at first glance, to have no direct impact on woman – must be minutely examined by the sensitive eyes of women’s organizations in general and local women’s groups in particular. Construction, economics, employment, education, land and health – all of these impacts on the status of women. This issue is particularly important today when new communities are being planned and talks are underway to obtain agreements on land ownership. The state must obligate those involved in planning and implement a new Bedouin community to take this into account. Participation in tenders should be conditioned on clearer gender sensitivity.

The struggle being waged by the National Insurance Institute to prevent women who are fictitiously divorced (in other words, women from polygamous marriages and their children) from receiving income guarantee payments must be rethought. Even if there is a chance that these payments encourage unemployment, high birthrates and even polygamy, the profit to be gained in waging this war is negligible compared to the loss. The struggle not only encourages opposition among Bedouin, but also among social groups, and serves as weapon in the arsenal of arguments of discrimination on racial and national grounds. Similarly, the main victims of this policy are the women and their children. The problem of dependency on the NII among the Bedouin population will be solved by the creation of jobs for men and women. Investment, instead of punishment, will create growth instead of hostility.

The government must not ignore the link between the economic and socio-economic condition of society and the status of women. The policy of excluding the Bedouin and ignoring their socio-economic plight for years has turned legal conflicts into national conflicts. In this context, intervening on behalf of Bedouin women is more difficult.

Thought must be put into finding the correct and efficient way to empower women through the education system, through the creation of jobs and through proper professional training. This will increase Bedouin women’s independence and awareness, and, in the long term, will change their image in the eyes of their children. Training of this kind must conform to known cultural limitations, but must also recognize the need for change. One good example is a training program for budding DJs, run by the AGIC Association and based on an initiative put forward by a local group. The program is designed to train women as dance leaders at weddings and other celebrations among the Bedouin women. Since women hold their celebrations separately, the need for dance leaders was recognized and it was decided to train local women for the job. The organization ensures that the women who undergo training remain committed by paying them. The equipment is bought using loans that the women are expected to repay within a reasonable period of time. Half of the women who finished the course reported that they had found employment. These women leave their homes at night – with the permission of their families – and are active contributors to the household.

At the same time as empowering women, children and youths must also be empowered. This should be done with the agreement and cooperation of the municipal authorities and the tribal leadership. It is also worthwhile examining the possibility of including religious leaders in the

process, both because of their growing influence and because they may make some contribution to finding original solutions that would be acceptable to society, to women and to the state.

Similarly, instead of social workers referring young girls with problems to the local sheikh – a solution that nearly always ends up with the girls being married off to an older man as his third or fourth wife – it may be that hostels for women, authorized by religious leaders, run by women and social organizations would be a better solution. In a situation in which the removal of women from the public sphere could end in death, or in forced marriage – and until a situation exists in which women are not forced to be seeking support from institutions and can stand on their own two feet – alternative institutions should be established. What is needed is dialog with the community, with special attention paid to women's voices, explanation and negotiation.

As far as the legal sphere is concerned, it should be stressed that the courts of law are capable of punishing offenders and can be part of the process, but not the entire process. The option of imposing relevant sanctions on men should be considered. Similarly, legislation that protects women, with financial and custodial ramifications, should be encouraged.

The government should also encourage new academic studies into the Bedouin community in general and women in particular. Similarly, it should ensure that there is an available reservoir of information, which includes data from all the various agencies, healthcare bodies, the National Insurance Institute, the Interior Ministry and the police.

Understanding should be reached with those responsible for public, academic and literary narratives that the language and world of images they create perpetuate the lot of Bedouin women. This is not some academic trick, but a social process on the road to solving the problem. Communal leaders – judges, politicians, teachers and writers must stop accepting the patriarchal narratives of the Bedouin leadership, and stop relating to women who have 'disappeared'; they must understand that these women have been made to disappear. The various texts studied in schools should be reexamined.

Like the rest of the nation, more and more Bedouin men and women are increasingly exposed to television and the media – which are not properly exploited. Even high school texts do not stress the place of women in local and general history. If it is not suitable to create role models of active and political women, then at least the activities of women in these narratives should be honored and appreciated. By portraying women as victims, we are contributing to the perpetuation of the gender-based power structure and indirectly but effectively legitimize a policy of ambivalence and non-enforcement.

Finally, we must find the balance between providing support for Bedouin women and turning them into dependents. We must find effective tools to encourage local elements to examine how women can be moved from a position and a self-image of victims to an active position and a self-image. This is the issue that policy-makers must address, but have so far failed to do.

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## אסורה אך תקפה: שאלת הפוליגמיה וההבנייה המעגלית של המדיניות הישראלית

ענת לפידות- פירילה  
רוני אלחדד

המאמר מתמקד בשאלת הפוליגמיה בקרב החברה הבדואית בדרום ישראל, באזור הנגב. הוא נדרש לפישרה של המדיניות הישראלית לנוכח הטענה לעלייה במספר המקרים של ריבוי נישואין בשנים האחרונות, ובדק את יעילותה של חקיקה ככלי ליישום מדיניות. המאמר מסביר כי בנסיבות הקיימות בחברה הישראלית נוצר מודל מעגלי של מדיניות הכולל מחוקקים, מדינאים, אנשי שטח, קליינטים ויוצרי נראטיבים. האינטרסים, הרגשות והדמיון של קובעי המדיניות למיניהם, בדרג המדיני ובדרג של הפקידים הממשלתיים בשטח, משתלבים באינטרסים של ההנהגה השבטית הבדואית. את ההרמוניה המעגלית הזו שמונעת את סיום הפוליגמיה מזינות תפיסות אקדמיות, ציבוריות וממסדיות המעניקות לאי המאבק בפוליגמיה לגיטימיות ומאפשרות את המשך המדיניות העמומה בנושא רגיש הממוקם על קו התפר הלאומי, דתי והחברתי.

שתי השאלות העקרוניות העולות לדיון הן האחת, האם קיומה של הפוליגמיה הינה בעיקרה בעיה של אימפלמנטציה או של מדיניות, והאם החוק הינו הזירה הנכונה ליצירת המהפך בתפיסות ובהתנהגות של הציבור הבדואי בהקשר זה? הכותבות טוענות כי במקרה הנלמד, כמו גם במקרים רבים אחרים הנוגעים לחברה הבדואית, למדינה נוח להסתתר מאחורי בעיות של משילות ולמעשה נותנת יד, ברמות שונות, להמשך אי אכיפת החוק ברמת השטח. כלומר, המערכת המדינית והשיפוטית מגלה אמביוולנטיות מסיבות שונות המפורטות במאמר, אך גם לנוכח חוסר הנכונות וההצלחה של הגורמים האוכפים. בהעדרה של מדיניות ברורה, מוטלות על כתפיהם של הבירוקראטים ברמת השטח מיגוון רב של משימות. פעמים רבות נאלצים אלו להכריע לטובת מדיניות של מניעת נזק רגעי על חשבון החרות והכבוד של האישה.

השאלה השנייה הינה- האם חקיקה ובית משפט הינם הזירות המתאימות והאפקטיביות לפתרון בעיית הפוליגמיה? התשובה המוצעת היא כי חקיקה איננה יכולה להחליף מדיניות או לדאוג ליישומה. בית המשפט אינו יכול לתפוס את מקומן של מערכות חברתיות אחרות. בהעדר מחויבות למיגור הבעיה עדיף להתרכז בהענקת כלים ומתן הגנה לנשים במשפחות פוליגמיות במקביל להשקעה בהעצמת נשים וגברים.

הכותבות בודקות דוגמאות היסטוריות למאבקים שהצליחו למזער את תופעת הפוליגמיה, המלמדות כי הדרך היעילה ביותר להלחם בפוליגמיה עוברת דרך החלטת ההנהגה הדתית להטיל איסור על התופעה ולהכריז על חרם חברתי וסנקציות ברורות על המפרים אותו. הנסיון ההיסטורי מלמד כי רפורמות במעמד האישה שכוונו מלמעלה על פי הבנות האליטה המנוכרת או של חברה הגמונית באופן של כפייה וללא דיאלוג נידונו לכישלון.

בנוסף לבדיקת המדיניות המוצהרת והמעשית מפנות הכותבות את תשומת הלב לחשיבות בדיקת השיח הציבורי אודות הנושא, את הנרטיבים, המיתוסים והרטוריקה המלווים את הדיון אודות מעמד האישה בקרב הבדואים בישראל בכלל ואודות הפוליגמיה בפרט. בחינת הנראטיבים מראה כי רובם ככולם מציגים את הנשים הבדואיות כקורבנות של מערכת חברתית תרבותית היסטורית אשר נשים משמשות בה בשל מיניותן וכל קיומן קשור במשפחה. אלו נשים ללא שמות וללא משמעות משל עצמן. השפה והכתיבה על נשים "נעלמות", נעדרות נותן הכשר מסוים מצד הציבור והמדינה לתופעה של רצח ושליטה ללא סייגים בנשים, גופן וייצוגן. חוסר הניסיון לקרוא לנשים אלו בשם תורם למיצובן כקבוצה "אחרת" המודרת בתוקף המינהג המקומי.

הכותבות מציעות כי אין להשאיר את הבירוקרטים הזוטרים, שוטרים ועובדי מדינה כגון עובדים סוציאליים, חשופים ללא כלים ומדיניות ברורה. עובדים אלו נדרשים להכריע ולקבל החלטות קשות הנוגעות לעיתים קרובות מידי לסתירות מצפונית ולעניינים הנוגעים לחיים ומוות. על המדינה לציידם בהוראות ברורות ולא לאלצם או לאפשר להם לקבוע אותם. לאחר שנים רבות של כפיית פתרונות או התעלמות מבעיות יש לנסות ולמסד דפוס של שיתוף פעולה והסכמה עם הרשויות המוניציפאליות, הנהגת השבטים, וראשי ארגונים אזרחיים בדואיים בתוכם ארגוני נשים. כדאי גם לבחון אפשרות של שיתופם של המנהיגים הדתיים בתהליך, הן בשל העלייה הגוברת בהשפעתם והן משום שהם עשויים לתרום למציאת פתרונות מקוריים שיהיו מקובלים על החברה הבדואית, הנשים

שבה והמדינה. כמו כן, יש למצוא את האיזון העדין שבין הענקת תמיכה לנשים הבדואיות ולבין הפיכתן לנתמכות. יש למצוא כלים אפקטיביים המעודדים גורמים מקומיים לבדוק כיצד תעבורנה נשים ממצב ודימוי של קורבן למצב ודימוי אקטיבי. אלו הן סוגיות שקובעי המדיניות חייבים להתייחס אליה אך טרם עשו זאת.

## ملخص: ممنوع ام سارى المفعول- قضية تعدد الزوجات والاستثناء الدائري في السياسة الاسرائيلية

يناقش هذا المقال قضية تعدد الزوجات لدى البدو في النقب، جنوبي اسرائيل، وذلك بهدف التوصل الى تفسير السياسة الاسرائيلية في ظل ارتفاع نسبة تعدد الزوجات في السنوات الاخيرة، كما ويفحص المقال مدى نجاعة الاستحقاق كاداة لتطبيق السياسات.

يوضح المقال انه وفي ظل الازدواج الراهنة في المجتمع الاسرائيلي، نتج نموذج دائري للسياسة والذي يشمل السياسيين، عملاء في الحقل، مستهلكين وناسجي الروايات الفكرية. تختلط مصالح، مشاعر وخيالات صناعات القرار السياسي على اختلاف انواعهم بمصالح القيادة القبلية البدوية. هذا التناسق الدائري، والذي يعرقل وضع حد لتعدد الزوجات، يستمد قوته من المفاهيم الاكاديمية، الجماهيرية والمؤسسية والتي تمنح الشرعية لعدم مكافحة تعدد الزوجات، وكذلك الاستمرارية للسياسات الضبابية فيما يخص موضوع على هذه الدرجة من الحساسية، كونه يقع على الحدود ما بين الوطنية، الدينية والاجتماعية.

يعلو من خلال النقاش سؤالان على درجة كبيرة من الهمية، اولهما، هل تعدد الزوجات مشكلة تطبيق ام مشكلة سياسة وتخطيط، وثانيهما، هل يشكل القضاء الحلبة المناسبة لتحقيق تغيير جذري في مفاهيم ونهج حياة الجمهور البدوي في هذا الخصوص؟

تعتقد الباحثات انه وفي سياق موضوع البحث، كما في مواضيع اخرى كثيرة تتعلق بالمجتمع البدوي، من الاسهل على الدولة ان تختبأ خلف مشاكل الانقياد، وبذلك تقوم عمليا بتقديم الدعم، وعلى مختلف الاصعدة، لاستمرار عدم تطبيق القانون على مستوى الواقع.

هذا يعني ان النظام السياسي والقضائي يتصف بالازدواجية ولاسباب مختلفة يفصلها هذا المقال، ولكن ايضا لعدم تهيئة ونجاعة العوامل التطبيقية. في ظل غياب سياسة واضحة هناك الكثير من المهمات التي تبقى ملقاة على عاتق البيروقراطيين على صعيد الحقل، حيث يضطر اولئك في الكثير من الاحيان الى قرارات في مصلحة السياسة بهدف منع الاضرار الآنية وذلك على حساب كرامة المرأة.

هل يشكل الاستحقاق والقضاء النطاق الملئم والناجع لحل مشكلة تعدد الزوجات؟ الجواب الذي تقترحه الباحثات هو ان الاستحقاق لا يستطيع ان يحل محل السياسة او ان يهتم بتنفيذها. لا يمكن للمحاكم ان تحل محل الأنظمة الاجتماعية الاخرى. عمليا، وفي ظل غياب الالتزام بالقضاء على المشكلة، من الافضل التركيز على منح النساء في العائلات المتعددة الزوجات الادوات والحماية بدل الاستثمار في أطر تمكين النساء والرجال.

تفحص الباحثات امثلة تاريخية لمحاولات نجحت في تقليص ظاهرة تعدد الزوجات، والتي تدل على ان الطريقة الأكثر فاعلية في محاربة هذه الظاهرة هي محاولة التوصل الى قرار من قبل القيادة الدينية وذلك بهدف فرض منع الظاهرة وعلان المقاطعة الاجتماعية والعقوبات الصارمة على من يخالف هذا القرار. تثبت التجربة التاريخية أن الاصلاحات الخاصة بمكانة المرأة والتي وضعت من قبل هيئات عليا بناء على قراءات فوقية معزولة او مجتمع متجانس عن طريق الفرض وبدون حوار قد باءت بالفشل.

بالإضافة إلى بحث السياسة المعلنة والعملية، تلقت الباحثات النظر إلى أهمية فحص الخطاب العام حول الموضوع. بما في ذلك الروايات، الاعتقادات والبلاغة التي يتصف بها النقاش حول مكانة المرأة في المجتمع البدوي في إسرائيل عامة، وحول تعدد الزوجات خاصة. من خلال دراسة الروايات يتبين أنها جميعاً تظهر النساء البدويات بمظهر ضحايا النظام الاجتماعي الثقافي التاريخي، والتي تستخدم النساء بسبب جنوستهن وارتباطهن الوجودي بالعائلة. تظهر النساء كشخص بلا أسماء ولا فحوى خاصة بهن، كما و"تختفي" لغة وكتابة النساء، فيعطي هذا الغياب درجة من الإباحة من قبل الجمهور والدولة لظاهرة القتل والسيطرة على النساء، أجسادهن وتمثيلهن. إن عدم دعوة تلك النساء بأسمائهن يدعم موضعتهن كمجموعة "أخرى" مهذرة الحقوق تحت شعار القادة المحلية. تقترح الباحثات عدم إبقاء البيروقراطيين في الدرجات السفلى، سواء كانوا من رجال الشرطة أو من موظفي الدولة كالعامل الاجتماعي، مكشوفين من غير وسائل وسياسة واضحة. يطالب هؤلاء الموظفون بالاتصال إلى قرارات حازمة في الكثير من الأحيان بشأن متناقضات ضميرية وأمر تتعلق بالحياة أو الموت. يتوجب على الدولة أن تسلحهم بالتعليمات الواضحة وألا تدع لهم الفرصة للتوصل إلى هذه التعليمات بمفردهم. بعد سنوات من فرض الحلول أو تجاهل المشاكل يجب محاولة تأسيس منهاج للتعاون والتوافق مع السلطات البلدية، قيادة القبائل، ورؤساء المنظمات الأهلية البدوية بما في ذلك المنظمات النسائية. من الجدير أيضاً فحص إمكانية إشراك الزعامة الدينية في هذه العملية، وذلك بسبب تزايد فعاليتهم في التأثير وكذلك لقدرتهم على إيجاد الحلول ملئمة وتجديدية يتقبلها المجتمع البدوي بما في ذلك النساء، و تقبلها الدولة كذلك. كما ويجب إيجاد التوازن الدقيق بين تقديم الدعم للنساء البدويات وبين تحويلهن إلى مدعومات. من الضروري أيضاً إيجاد الوسائل الفعالة والتي تدعم الهيئات المحلية بفحص كيفية تحويل النساء من حالة الضحية إلى حالة الفعالية. هذه هي القضايا التي يجب على صانعي القرار بحثها، وهذا ما لم يحدث بعد.