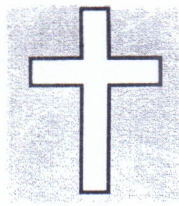


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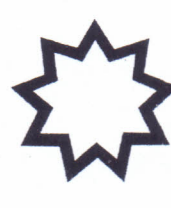
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CONTENTS

The Yorùbá Muslims' Cultural Identity Question Muhib O. Opeloye -----	1-18
The Study of African Traditional Religion and its Challenges in Contemporary Times Rotimi Williams Omotoye -----	19-36
The Practice of <i>Ta'addud Al-Zawjah</i> under <i>Shari'ah</i> and Neo- <i>Ijtihad</i> Challenges Among The Contemporary Muslims Kazeem Adekunle Adegoke -----	37-50
A Critique of Commercialization of Religions in Nigeria Via The Mass Media Abioje, Pius Oyeniran -----	51-72
Bible, Ecology and Sustainable Development: A Reading of Genesis 1:1-2:4a Kojo Okyere -----	73-88
Book Review Amidu Olalekan Sanni -----	89-91

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THE PRACTICE OF *Ta'ADDUD AL-ZAWJAH* UNDER *SHARI'AH* AND NEO-IJTIHAD CHALLENGES AMONG THE CONTEMPORARY MUSLIMS

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Abstract

The practice of Ta'addud al-Zawjah (polygyny) among the contemporary Muslims has been criticized by some scholars of Islam in their juristic exercise of neo - Ijtihad despite the fact that the practice is permitted under Shari'ah. This study aims at having a critical look at the practice of Ta'addud al-Zawjah in different Jahiliyyah societies, religious circle and under Shari'ah during the time of the Prophet (S.A.W.) and the first generation of Muslims. Then, the study examines neo-Ijtihad legal exercise of some scholars of Islam and its influence on the contemporary Muslims.

Introduction

Monogamy, Polygamy and Polyandry are three forms of marriage practised in different communities of human races at different periods of time. Monogamy is a one man – one wife marriage, polygamy is a one man – many wives marriage while polyandry is a one woman – many husbands. As time went on, polyandry went into oblivion due to the human civilization and the problem of paternity of the child arisen from it. The monogamy and polygyny became normal form of marriage in different communities of human race. Some communities adopt monogamous form of marriage and shun off the polygamy while other adopt polygynous form of marriage. *Shari'ah* as a legal principle of Islam adopts both monogamy and polygamy as a norm for Muslim. The polygyny is termed under *Shari'ah* as *Ta'addud al-Zawjah*. *Shari'ah* places the concept of *Ta'addud al-Zawjah* under permissible legal principle (*Mubah*) for the societal welfare. It was in practice during the time of Prophet Muhammad and early generation of Muslims. Despite this undisputable fact, various scholars of Islam have embarked on difference neo-Ijtihad in this fifteenth century of *Hijrah* so as to suppress the concept of *Ta'addud al-Zawjah* in the Muslim Community. It is on this line that this study aims at examining the practice of *Ta'addud al-*

Zawjah under *Shari'ah* and exploring some of the challenges facing the practice through the neo – *Ijtihad* of some scholars in Islam. The purpose is to see the *Shari'ah* legal principle of *Ta'addud al-Zawjah* and element of influence of neo – *Ijtihad* on the practice among the contemporary Muslims.

Definition of Conceptual Terms

In order to understand this study, some conceptual terms in the paper have to be clarified. The term *Ta'addud al-Zawjah* linguistically means plurality of wives. Technically, it means polygamy or polygyny. Polygamy is defined as a practice of having two or more wives or husbands at the same time while polygyny is a practice of having two or more wives at the same time.¹ In this study, we prefer the word “polygyny as an English meaning for the term “*Ta'addud al-Zawjah*” because of the double-faced meaning of the word “polygamy”. The term “*Shari'ah*” literally means a course or way to the watering place and a resort of drinkers. Technically, it means an act of rules, which regulates the conduct and affairs of people for setting all differences and avoiding all disputes.² The term “Neo-*Ijtihad*” is coined out of the two words. Neo and *Ijtihad*. The word “Neo” according to Hornby means “new” or “in a later form”³ while the word *Ijtihad* according to Al-Alwani means the interpretation of the source materials inference of rules from them, or giving a legal verdict or decision on any issue on which there is no specific guidance in the Qur'an and the *Sunnah*.⁴ Therefore, the term “Neo-*Ijtihad*” according to Doi quoting Muhammad Abduh of Egypt, is intellectual re-interpretation of various issues.⁵ Ajetunmobi explains that neo-*Ijtihad* is an offshoot of an early *Ijtihad* of the earlier generation of Muslims (*Salaf*) which is now re-interpreted so as to bring out new legal ruling according to the culture and custom (*urf* and *Adat*) of a particular society.⁶

Ta'addud Al-Zawjah in Jahiliyyah Societies

Practice of *Ta'addud Al-Zawjah* is a common phenomenon in all society. This practice has always been with mankind from the time immemorial among different peoples in the various parts of the world. It was recognized among Medes, Greeks, Babylonians, Abyssinians, Persians, Africans, Aussies, Mormons of United States of American and Arabs. It could be rightly pointed out, at this juncture, that the practice of

Ta'addud Al-Zawjah was prevalent in Europe, Asia, Middle East and Africa. The noble and wealthy person from these continents used to take as many wives as possible so as to exhibit how wealthy and influential they were in their community.⁷ By this, kings and rich men used to marry as many as twenty or more wives. Among the Greeks, wife is not only transferable but also marketable to the highest bidder or purchaser. Among the Hindu in India, customary law does not limit the number of wives that a man can take at a time.

In Africa where major occupation is farming, majority of people practise *Ta'addud Al-Zawjah* in order to use their wives as labourers on the farm and at home in the service of their husband and were not paid a single dime for doing such work except that they were maintained by the husband.⁸ Similarly, in Arabian peninsular during the pre-Islamic period, *Ta'addud al-Zawjah* was freely practised as there was no limit to the number of wives one can have at a time. This was a common practice among the Arabs in their socio-cultural life despite the fact that those large number of wives would be kept as chattels because women could be bought and sold by man as he wished.⁹

***Ta'addud al-Zawjah* in Religious Circle**

Practice of *Ta'addud al-Zawjah* was given a strong recognition and acceptability in the various world religions across the globe. Sabians (star worshippers), Majus (fire worshippers), Judaism, Christianity, Islam and large number of indigenous religions of various tribes such as Hindu, Zoroastrianism and African Traditional Religions give full support to the practice of *Ta'addud al-Zawjah*. There is no scriptural account in the Torah, Talmud, Veda, Bible, Zend-Avesta and Qur'an prohibiting the practice of *Ta'addud al-Zawjah* among their adherents. Some prophets are mentioned in the Bible to have practised *Ta'addud al-Zawjah* as the following accounts exhibit.¹⁰ Judges had several wives as exhibited in the following Biblical verses:

And Gideon had three scores and ten sons of his body begotten, for he had many wives. (Judge 8:30).

And Rehoboan took him Mahalath the daughter of Jerimoth the son of David to wife, and Abilail the daughter of Eliab, the son of Jesse which bore him Abijah, and Attai, and Ziza and Shelomith. And

Rehoboam loved Maachuh, the daughter of Absalom above all his wives and his concubines: (for he took eighteen wives, and three score concubines) (2nd Chronicle 11:18-21).

And he (Solomon) has seven hundred wives, princesses and three hundred concubines who turned his heart away from God.
(1st King 11:1-3).

Therefore, it could be rightly said that there is no single word of reproach in both the Old and New Testaments that goes against the institution of polygyny as some of the Israelite prophets such as Abraham, Jacob, David and Solomon lived polygynous life. Even the priest of Talmud scripture among the Jews advised the Jews that none of them should marry more than four wives, the number of wife possessed by Jacob. Though, some Bible scholars argue that New Testament assumes monogamy as each of Rehoboam's twenty-eight sons had many wives, but it does not expressly prohibit polygyny except in the case of bishops, deacons and church priests. It also could be said that no church council of earliest century opposed polygyny.¹¹

Martins Luther, the founder of protestant Christianity approved the bigamous status of Philip of Hesse. Also in 1531, the Anabaptist Christians openly preached that a true Christian must have several wives. Even, there was a time in 1650 when some of the Christian leaders resolved that every man should be allowed to marry two women. The wise men of Talmud also advised that no man should marry more than four wives, the number of wives kept by Jacob who was known as the father of Israelites. Condemnation of the practice of *Ta'addud al-Zawjah* by many Christians and their adoption of monogamous way of life could be traced to Paulian doctrine of Saint Paul who inaugurated it into Christian theology and creed in his method of conforming Christianity with Greek and Roman monogamous cultural civilization.¹²

***Ta'addud al-Zawjah* in *Shari'ah*'s Perspective**

Shari'ah permits and modifies the institution of *Ta'addud al-Zawjah* which was already in practice in all walks of human life. With the advent of *Shari'ah* during the time of Prophet Muhammad (S.A.W.), the old practice of limitless *Ta'addud al-Zawjah* as practised in various human society was modified and reduced the plurality of wives to four at

a time with a special decorum and circumstance.¹³ Therefore, the argument of orientalist and non-Musims that *Shari'ah* gave *Ta'addud al-Zawjah* legal backing by increasing the number of wife from one to four is a distortion of fact and mis-representation of truth.¹⁴ Rather, *Shari'ah* takes note of the injustice against women from the limitless number of wives that one can take at a time, drastically cut down the number of wives to four. Not only this, it also outlaws and forbids man to marry more than four at a time in any case.¹⁵

Shari'ah, in its legal ruling, places institution of monogamy as *wajib* (obligatory) and norm for the mature and capable man who is physically, psychologically and financially capable to cope with a woman while the *Ta'addud al-Zawjah* is placed as *Mubah* (permitted) and *Mandub* (recommended) for man on the condition that justice would be done to the wives¹⁶ as envisaged in the following Qur'anic verse:

Marry women of your choice, two, or three, or four. But if you fear that you shall not be able to deal justly with them, then only one, or the one whom your right hands possess (captives). That will be more suitable, to prevent you from injustice. (Qur'an 4:3).

According to *Tafsir Jalalayn*, this Qur'anic verse was revealed immediately after the Battle of Uhud in 625 C.E. between Makkah pagans and Muslims in which Muslims suffered heavy loss. The Muslim community (*Ummah*) were left with many widows, orphans and captives. It was now left to the few male Muslims to take care of these people under a kind treatment which must be governed by kindness, equality and responsibility. This kind gesture could be easily exhibited in the marital or matrimonial relationship for women in terms of social and financial protection.¹⁷ With this background, it is obvious that *Shari'ah* does not impose *Ta'addud al-Zawjah* as a regulation, for essential practice in order to be a good Muslim. After all, Prophet Muhammad (S.A.W.) remained a monogamist for the greater part of his married life (that is twenty-five years) till the death of his first wife (Khadijah Bint Khuwaylid) when he was fifty years old.¹⁸

Shari'ah gives a legal recognition to some circumstances that could lead to a point where marriage to more than one wife may be preferable.¹⁹ Such circumstances could be of individual or communal

basis which are going to be highlighted in this passage. The individual circumstance may be any of the following:²⁰

- (a) When the wife is suffering from a serious disease like a paralysis, epilepsy, mental problems or a contagious disease.
- (b) When the wife is proved barren by the medical expert after thorough medical examination.
- (c) When the wife is naturally or artificially of unsound mind or psychological disposition.
- (d) When the wife has reached the old age and has become weak and infirm and could not perform perfectly her matrimonial duty.
- (e) When the wife has a bad character and could not be reformed.
- (f) When the wife is physically weak and could not satisfactorily satisfy her agile husband on bed.
- (g) When the wife becomes disobedient to her husband and moves away from her husband's house.
- (h) When the husband needs more children and his wife is not ready to do so for personal or medical reason.
- (i) When the husband needs a particular sex of child which his present wife has not or could not give him.
- (j) If the man feels that he cannot do without a second, third or fourth wife in order to satisfy his natural lust and desire.
- (k) If the husband feels, out of sympathy, to marry a widow, divorced woman or orphan so as to financially, emotionally and socially maintain them.
- (l) If the husband decides to marry a woman of a certain profession, status or lineage.
- (m) If the woman feels an empathy for another woman who is divorced or loses her husband or her parent (if she is not yet married) or had a problem of getting a fiancée by advising or encouraging her husband to marry her.

The communal circumstance which can serve as a basis of marrying more than one wife may be any of the following:

- a. During the period of war when several men are killed and many women are left behind as widows and orphans, *Ta'addud al-Zawjah* can provide the best solution.
- b. In an environment or community where the population of women is greater than that of men. Since those Muslim women are not allowed to marry non-Muslim, there is nothing bad in being a second, third or fourth wife in a Muslim home.

- c. In a country where the government gives the citizens moral and financial support to marry more than one wife.
- d. In a community where the unmarried women outnumber married women and men.

To cap it all, *Shari'ah* acknowledges the polygynous tendencies in human and so it does not suppress them but finds a dignified outlet both for man and woman; to man by giving him the right to polygyny and to woman by giving her the right to self-divorce (*Khul'*) and re-marriage.²¹

Challenges of Neo-Ijtihad on *Ta'addud al-Zawjah*

Shari'ah permits polygynous marriage of four wives at a given time and no more. This is the main reason why Imam Ibn Kathir in his Qur'anic commentary quoting Shafi' that it is not permitted under *Shari'ah* for anyone to marry more than four wives at a given time other than the Prophet Muhammad.²² This fact is corroborated in the Qur'an 33:50 which says:

Oh, you Prophet, verily, we have made lawful to you your wives, to whom you have paid their dower, and those whom your right hand possesses whom Allah has given to you, and the daughters of your paternal uncles and the daughters of your paternal aunts and the daughters of your maternal uncles and the daughters of your maternal aunts who migrated with you, and a believing women if she offers herself to the Prophet, and the Prophet wishes to marry her – a privilege for you only, not for the rest of the believers

Despite this *Shari'ah's* position on the issue of *Ta'addud al-Zawjah*, the Zahiri School of Thought founded by Imam Dawud as-Zahiri interpreted the legal rule of Qur'an 4.3 in their neo-Ijtihad that the term *Mathna* means two and two, *Thulath* means three and three while *Ruba'* means four and four and by this understanding, the maximum number of wives that man can marry is eighteen.²³

Doi asserts that there are some people who argue that the term *Mathna wa Thulatha wa Ruba'* means two and three and four, which is equal to nine.²⁴ And so nine wives are the maximum wives allowed in *Shari'ah* at a time thinking that article *Wa'* appearing in the term is an additional *Wa'* (*Wa' Atf*). Some scholars in exercising of neo-Ijtihad

claim that the concept of *Istibdal* (replacement) is mentioned in the Qur'an 4:20 which goes thus:

But if you intend to replace a wife by another and you have given one of them a great amount of dower, take not the least bit of it back, would you take it wrongfully without a right and with a manifest sin.

Such scholars claim that the above mentioned verse allows keeping of more than four wives at a time through the process of retiring one wife due to a certain reason and replacing her with a new wife without the process of divorce (*Talaq*). According to the concept of *Istibdal*, the replaced wife is still regarded as a legal wife except that her residence will be separated from that of her husband and there should be no sexual intercourse between them. In short, the husband would release her by paying her off with agreeable term. By this, she can no more inherit such husband after his death or *vice-versa*. It should be mentioned here that no Qur'an commentator (*Mufasssir*) interprets the Qur'an 4:20 in such way. According to some commentators, the term "*Istibdal*" as used in this verse means divorce (*Talaq*).²⁵

There are some modern scholars of Islam who also propound their own neo-*Ijtihad* that seeks to outlaw the concept of *Ta'addud al-Zawjah* for the Muslims. They argue that the main premise of involving oneself in *Ta'addud al-Zawjah* is the ability to maintain justice among the wives as the following Qur'anic verse points out:

And if you fear that you shall not be able to deal justly with orphan girls, then marry women of your choice, two, or three, or four, but if you fear that you shall not be able to deal justly with them, then only one or that which your right hands possess. That is nearer to prevent you from doing injustice. (Qur'an 4:3)

They point out that man should remain a monogamist throughout his lifetime if he does not have ability to maintain fairness and justice among the wives. They strengthen their argument that this condition of fairness and justice is impossible to fulfill as the Qur'an 4:129 points out:

You will never be able to do perfect justice between wives even if it is your ardent desire ...

As a result of this Qur'anic verse, the modernist conclude that *Ta'addud al-Zawjah* is not allowed in *Shari'ah* as no one can fulfil the

legal condition of fairness and justice among the wives. Therefore, a man who involves himself in *Ta'addud al-Zawjah* puts himself in an impossible task.²⁶ It should be pointed out at this juncture that Qur'an 4:129 quoted by the modernists is only quoted half-way. The full verse runs as follows:

You will not be able to do perfect justice even if it is your ardent desire, so do not incline too much to one of them so as to leave the other hanging. And if you do justice, and do all that is right and fear Allah by keeping away from all that is wrong, then Allah is ever forgiving, Most Merciful.

The inability of man to do perfect justice as mentioned in this Qur'anic verse is in respect of love (*Hubb*) and sexual intercourse. In the matter of love, none can control his heart which is in the hand of Allah. Similarly, to the sexual intercourse in which one may satisfy one wife better than others.²⁷ The above-mentioned Qur'anic verse has nothing to do with monogamy, it is only a divine instruction on the necessity of fairness and justice and avoidance of unnecessary favouritism and partiality among the wives. *Neo-Ijtihad* stand of modernists is only a logical inference (*Mantiq*) which does not have a legal backing in both primary and secondary sources of *Shari'ah*.

It is relevant to mention that this erroneous understanding of Qur'an 4:129 had notable impact on the Islamic personal law (*Ahwalu-sh-Shakhsiyyah*) of some Muslim countries after their independence from western imperialists. For instance, in 1953, Syria government empowered the judge (*Qadi*) to disallow a married man (*Mutazawij*) to marry a second wife if it is established that the husband is not in a position to support two or more wives.²⁸ This position was upheld in Tunisia in 1957, Morocco in 1958, Iraq in 1959 and Pakistan in 1961. As a result of this, some jurists (*Faqaha'*) and judges (*Qudah*) in these Muslim countries maintained that Qur'an 4:129 is a positive legal condition precedent to the exercise of *Ta'addud al-Zawjah* which none can fulfil²⁹ By this, it should be outlawed on the basis of legal principle of *Sadd al-Dhara'i'* that those things that lead to sins and abuses should be blocked as in the crime of adultery or fornication (*Zina*) and moving closer to *Zina* (*Qurbatu'l-Zina*) in Qur'an 17:32. Therefore, the defaulters in these countries are liable to various punishments such as imprisonment, fine or both divorce at the

instance of the first wife of defaulter (*Khul'*) or divorce decreed by the judge on a law court (*Faskh*).

Conclusion

The study examined the practice of *Ta'addud al-Zawjah* and neo-*Ijtihad* challenges among the contemporary Muslims in which the negative impact of the legal ruling of neo-*Ijtihad* done by some modern Islamic scholars on some *Shari'ah* issues was exhibited. One of these Islamic issues is *Ta'addud al-Zawjah* which has already been thoroughly explored in both primary and secondary sources of *Shari'ah*. As a result of this development, the study discovers that:

- i. Neo-*Ijtihad* legal exercise on *Ta'addud al-Zawjah* of some Islamic scholars was done out of dogma or blind imitation (*Taqlid*) of their sect (*Firqah*) and School of thought (*Madhhab*).
- ii. Neo-*Ijtihad* legal exercise on *Ta'addud al-Zawjah* of some of these Islamic scholars was borne out of their western orientation from their teachers majority of whom were orientalist, so as to give their scholarship in their field western acceptability.
- iii. Neo-*Ijtihad* legal exercise on *Ta'addud al-Zawjah* of some of these Islamic scholars was borne out of their wrong application of the legal principle of Islamic Jurisprudence (*Usul al-Fiqh*) which theorizes that any door-way to sin is also a sin. They wrongly apply this theory to *Ta'addud al-Zawjah* by arguing that injustice and unfairness are regarded as sins and if *Ta'addud al-Zawjah* can lead to injustice and unfairness, therefore, it should be regarded as a sin and should be forbidden.
- iv. Neo-*Ijtihad* legal exercise on *Ta'addud al-Zawjah* of some of these Islamic scholars are nothing but imagination, personal opinion (*Ray'*) and re-interpretation verdict of the scholars which has no legal basis in Islam.

Based on these findings, the study recommends that:

- i. Islamic scholars should try their possible best to make their neo-*Ijtihad* legal exercise be in line with the spirit of *Shari'ah* legal principle.
- ii. Employment of neo-*Ijtihad* should be limited to those Islamic scholars who are specialists in the principle of Islamic

jurisprudence (*Usul al-Fiqh*). Those scholars are '*Usuliyyun* and *Fuqaha*'.

- iii. Neo-*Ijtihad* legal exercise should not be totally condemned because of its wrong application by some Islamic Scholars (majority of whom are not specialists in the field) as there are other contemporary issues in this modern age that need neo-*Ijtihad* legal exercise of the experts in order to find Islamic solution to them. For instance, the issue of Family Planning, Human Cloning, Organ Transplantation, Abortion, Test-Tube baby, Surrogacy, Prosthetic Surgery, Milk-banking, Genetic Counselling *et cetera*.

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26. Doi, *Women in Shari'ah*,p.55.
27. Doi, *Shari'ah: The Islamic Law*....., p.148.

28. *Ibid.* p.150.

29. *Ibid.* p.151.