

MALAYSIA: The woman who decides if men can take a second wife

By Heather Chen

BBC (20.11.2018) – <https://bbc.in/2TxRDwE>– Islamic law, also known as Sharia, is often associated by critics with harsh punishments and hardline attitudes. But one of Malaysia's first female Sharia high court judges says her role gives her an opportunity to protect women in the Muslim-majority nation.

Judge Nenny Shushaidah presides over five trials a day and can hear up to 80 cases a week.

Malaysia practises a moderate form of Islam but conservative attitudes have been on the rise and the use of Sharia is growing as well. Under a dual-track legal system, thousands of Muslims use it to settle moral and family matters. Non-Muslims are required to follow secular laws that deal with the same matters.

She passes judgment on everything from financial cases to those involving the Sharia concept of Khalwat [unmarried Muslim couples being caught in compromising situations].

But her expertise lies in child custody and cases of polygamy – the Muslim concept of allowing men to marry up to four wives, which is legal in Malaysia.

Judge Shushaidah says there are many factors she considers before, for example, allowing a polygamous union.

“Every case is complex and different,” she explained. “You can’t generalise Islamic law and say it favours men and treats women badly... I want to correct that misconception.”

All those involved in a proposed polygamous marriage are required to be physically present in Judge Shushaidah’s court.

“I want to hear from everyone, not just [the] men,” she said. “I make it a point to speak with women to find out if they are on board with the arrangement. It is important that they agree to it because if I see any signs that say otherwise then I won’t grant permission.”

“I am female and I can understand most women would not like the idea. But it is allowed under Islam, and our Malaysian courts have enacted strict laws to govern this.”

“A man has to have very strong reasons for wanting another marriage,” she said.

“He must show he can look after the welfare of his first wife as well as the women who come after. He is not allowed to neglect the needs of anyone.”

Judge Shushaidah added that some wives can be supportive of the idea.

She recalls, for example, a case which involved a seriously ill woman who could no longer bear children.

“She loved her husband and wanted me to grant him permission to marry a second wife. So I did.”

She defends her religion’s reputation for strict laws by arguing that it is capable of fairness.

But critics and rights groups argue Sharia is often misused.

“We have no objection to Sharia law that doesn’t discriminate against women, gay people or social and religious minorities,” Asia deputy director of Human Rights Watch Phil Robertson told BBC 100 Women.

“But the problem with Sharia law in Malaysia is that too often it does precisely that.

“Religion is never an acceptable reason to violate international human rights standards of equality and non-discrimination.”

For example rights activists were outraged by the recent caning of two Malaysian women convicted of attempting to have lesbian sex, and say Sharia law was misused in this case.

Judge Shushaidah would not address the case, but said: "Caning under Sharia law serves to educate offenders so as not to repeat the act again."

Judge Shushaidah also argues that Sharia does not always rule in favour of men.

"Our law exists to protect women's rights. It looks at their welfare and safeguards their livelihoods," she said.

"Islam holds women in high regard and as judges, we must return to its teachings and maintain worthiness using Sharia."

Her greatest concern lies with Muslim men bypassing strict Sharia court procedures by marrying overseas.

"He wouldn't be bound by Malaysian law if he marries abroad. Some wives actually consent to this to protect their husbands but they don't realise how it works against them," she said. "Our Sharia laws are in place to protect the interests of women and hold men accountable."

Women's groups like Sisters in Islam highlighted a "severe shortage of female representation" in the courts and a "strong sense of patriarchy" in the overall system.

“The Sharia legal context in Malaysia not only selectively discriminates against women, it vilifies them as the cause of social immoralities,” said spokeswoman Majidah Hashim.

“State Islamic institutions... have done little to ensure women are accorded due justice. In fact, the recent prosecution of women under Sharia law clearly shows that their voices are alarmingly silenced and access to justice is worryingly stifled.”

This makes Judge Shushaidah’s appointment a particularly significant one.

“Back in my day, most Sharia judges were men who questioned the need for women in the practice,” said Judge Shushaidah.

“I never dreamed of becoming a judge,” she admitted. “As a lawyer, I didn’t know if I could take on such a senior role that dealt with complicated cases. And as a woman, I felt doubt and fear.”

“Sometimes I do feel uneasy. As a woman, I must feel, and I’d be lying if I said I felt nothing. But I am a judge and I have to make sure I am always clear and objective. So in my judgment, I try and address this. I make do with the best evidence I get in court.”

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Indian Supreme Court to examine legality of polygamy

The practices of 'nikah halala' and polygamy are discriminatory, say women's rights groups

By Karuna Madan

Gulf News India (26.03.2018) – <https://bit.ly/2pGg50G> – Months after declaring the instant “triple talaq” form of divorce unconstitutional, India’s Supreme Court (SC) on Monday agreed to examine the legal validity of polygamy, as well as “nikah halala” – an Islamic process required to remarry one’s divorced wife.

A Constitution Bench of the court, comprising five of the most senior judges, will next month hear four petitions challenging the legal validity of the two practices.

Bharatiya Janata Party (BJP) lawyer Ashwini Kumar Upadhyay filed a petition, along with two Muslim women and another lawyer from Hyderabad, demanding a ban on polygamy and 'nikah halala'.

"Banning polygamy and 'nikah halala' is the need of the hour to secure basic rights for Muslim women. I know so many women who are victims of polygamy. We want the Supreme Court to look into the plight of thousands of Muslim women across the country," Upadhyay said.

Over the years, several women's rights groups have said the practices of 'nikah halala' and polygamy were discriminatory.

According to a Hyderabad-based petitioner, whereas the Muslim law allows a man to have multiple wives by way of the temporary marriages or polygamy, the same permission is not extended to women and therefore the law violates the fundamental rights of Muslim women.

While polygamy is the practice of being married to more than one woman, 'nikah halala' is a practice meant to curb divorce.

Under 'nikah halala', a man cannot remarry his former wife without her going through the process of marrying someone else, consummating that marriage and getting divorced.

Meanwhile, the court on Monday issued notices to the central government and Law Commission asking them to make their stand clear on several such petitions asking for the two practices to be abolished.

The court observed that the five-judge bench which examined instant 'triple talaq' last year had kept open the issues of polygamy and 'nikah halala'.

In its judgment, the top court had described instant 'triple talaq' as "bad in law".

"Instant 'triple talaq' is not integral to religious practice and violates constitutional morality," the court had said.

In August last year, Chief Justice J.S. Khehar had said "we have taken a conscious decision to deal only with triple talaq and not polygamy or 'nikah halala'".

When the Attorney-General (AG) requested all three issues to be heard together, Justice Khehar had said, "It does not even happen in T20 cricket that one can take three wickets in one ball."

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TANZANIA: President Magufuli supports polygamy to end prostitution

CAJ News (12.02.2018) – <http://bit.ly/2nYvsSc> – The Tanzanian President, John Magufuli, is encouraging men to practise polygamy and reduce prostitution in the East African country.

Speaking in the commercial capital, Dar-es-Salaam, he disclosed government will be giving some incentives to men that married more than one wife.

The leader argued promiscuity was also fuelled by imbalances around population in a country with 40 million women and 30 million men.

“Our women are crying every day due to lack of men to marry and support them economically hence they engage in prostitution,” Magufuli said.

“So please try to work hard and be productive so that you can help our women by marrying two or more wives provided you are able to provide for their basic needs,” he told thousands of men attending a conference.

Prostitution is illegal but quite widespread in Tanzania.

Poverty, lack of job opportunities, culture and the disintegration of family unit are blamed for the trend.

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