The Fragile Status of a Muslim Wife: The Legal History of Polygamy in Malaysia

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Abstract
In Malaysia, the law regarding polygamy is shrouded in complexities that cannot be simply addressed with a sweeping ban or a complete socio-legal acceptance. These complexities reflect the equally complex ways in which the practice has developed in this country throughout various historical periods. This article conducts a historical review of polygamy in Malaysia to understand the ways in which the legal developments have specifically impacted the status of women. It will focus in particular, on three key historical periods: the precolonial, the British colonial, and post-independence Malaysia.

Keywords
polygamy, legal development, impact on family law, Muslim woman, Malaysia

Introduction
Malaysia has a long history of polygamous marriage customs,¹ which have been inherited from precolonial Malay society.² Under the classical interpretation, polygamy is historically embedded in religious and ideological beliefs as well as cultural traditions in Malaysia. Although Malaysian Muslims believe that polygamy is part of the Shariah, it has been in practice long before the arrival of Islam and considered a common cultural practice among the elite and wealthy Indian and Chinese communities.³ However, there are no historical records on polygamy or women’s status within the family in early Malay societies of Malaya. It can be said that the practice subsisted as a normal communal custom in this period.⁴

The legal provisions related to polygamy in Malaysia have their roots in colonial times and in several other related legal codes.⁵ The substantial reforms with the insertions of equality of women and prohibitions or restrictions of polygamous marriage were not enacted in the pre-independence period.⁶ After independence, exclusive statutes for Muslims were rationalized to accommodate

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