

FIFTY YEARS SINCE ENACTING THE ADMINISTRATION OF MUSLIM LAW ACT

Muslim Law on Polygamy in Singapore

The Muslim law on polygamy in Singapore has developed significantly since the enactment of the Administration of Muslim Law Act (Cap 3, 2009 Rev Ed), which established procedural rules to regulate applications to contract a polygamous marriage. On the other hand, the legal principles underlying polygamy are deeply rooted in the religion and guidance can be gleaned from the decisions of the Singapore Syariah Appeal Board to understand how contemporary courts practise Muslim law on polygamy in the current legal landscape. Therefore, this article aims to provide a meaningful articulation of Singapore's Muslim law on polygamy based on the decisions of the Singapore Syariah Appeal Board and the interaction with the relevant statutes, and considers comparisons between Singapore and Malaysia in their approach towards Muslim polygamy.

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I. Introduction

1 Singapore is amongst the few countries¹ that statutorily allow Muslims to engage in polygamy.² This is provided for under ss 96(2) and 96(3) of the Administration of Muslim Law Act³ (“AMLA”). The exercise of Singapore's Muslim law is constitutionally provided under Art 153 of the Constitution, which states that the “Legislature shall by law make provision for regulating Muslim religious affairs”.⁴ The enactment of the AMLA in 1968 “does not seek to deal with the Muslim law itself but only with its administration [and no] attempt has been made to alter the fundamental concepts or rules of Muslim law”.⁵ Therefore, understanding Singapore's Muslim legal jurisprudence involves

1 Some examples of other countries are Southeast Asian countries like Malaysia and Indonesia, and Middle Eastern countries like Saudi Arabia.

2 The term “polygyny” accurately refers to a man having multiple wives but, for consistency, this article will use the term “polygamy”.

3 Cap 3, 2009 Rev Ed.

4 Constitution of the Republic of Singapore (1999 Reprint).

5 *Singapore Parliamentary Debates, Official Report* (17 August 1966), vol 25 at col 239 (Inche Othman Bin Wok, Minister for Culture and Social Affairs).

understanding the AMLA and various important sources of substantive and procedural Muslim law, such as the Quran⁶ (the Holy Book), that are relied on by the Singapore Syariah Appeal Board (“the Appeal Board”).

2 In Singapore, only Muslims are permitted to practise polygamy. Non-Muslims are prohibited from practising polygamy due to the Women’s Charter⁷ enacted in 1961,⁸ which was the intention of the People’s Action Party if they became the Government.⁹ Prior to enactment of the Women’s Charter, Chinese customary law permitted polygamy and was given effect to by the Singapore courts and Legislature of that time. For example, the court in *In The Goods Of Lao Leong An*¹⁰ highlighted the differences in women’s status in polygamy under Muslim law and Chinese customary law, such as the wives having equal status under the former, whilst the first wife holds a higher rank than the others in the household under the latter.

3 This article focuses on examining Singapore’s contemporary Muslim legal position under the AMLA as articulated by the Appeal Board. Notably, only one local contemporary legal textbook¹¹ has touched on the Muslim laws of polygamy. Although other jurisdictions, in particular common law jurisdictions such as Malaysia, also allow the practice of Muslim polygamy, the Appeal Board observed that the administration of Muslim law (that is, the legal requirements that the applicant has to satisfy before being permitted to practise polygamy) varies amongst countries, and decisions from foreign jurisdictions that administer Muslim law will “be treated with caution”.¹²

4 Given the foregoing, this article will refer to principles found in Muslim sources, especially the Quran, as articulated by the Appeal Board and relevant authorities under s 114 of the AMLA. A brief summary of the sources of Muslim law for Sunni Muslims was articulated by the Singapore High Court in *Mohamed Ismail bin*

6 Islam’s Holy Book is sometimes spelt as “Koran” or “Qur’an” or “Quran”. For the purposes of this article, the spelling of “Quran” that is generally used by the Singapore Syariah Appeal Board will be adopted for consistency.

7 Cap 353, 2009 Rev Ed.

8 For an overview of the Women’s Charter (Cap 353, 2009 Rev Ed), see Leong Wai Kum, “Fifty Years and More of the Women’s Charter of Singapore” [2008] SingJLS 1.

9 Speech at a mass rally at Bukit Panjang on 8th March 1959, *The Tasks Ahead Part 2* (Singapore: Petir, 1959) at pp 18–19.

10 [1893] 1 SSLR 1.

11 *Law and Practice of Family in Singapore* (Valerie Thean JC & Foo Siew Fong eds) (Singapore: Thomson Reuters, 2016) at pp 598–599.

12 *Re Abdul Rahman bin Ibrahim* (1990) 5 SSAR 27 at [14]–[15].

*Ibrahim v Mohammad Taha bin Ibrahim*¹³ as follows: (a) the Quran; (b) *Hadith* (the traditions of the Prophet Muhammad (“the Prophet”), viz the oral precepts delivered from time to time by the Prophet and references to the daily mode of his life as handed down to posterity by his immediate followers); (c) *Ijmaa* (consensus amongst highly qualified legal jurists); and (d) *Qiyas* (reasoning by analogy or analogical deduction).¹⁴ For a more detailed explanation of each component, guidance is provided in the written works¹⁵ of the late Professor Ahmad Ibrahim, Singapore’s first Advocate-General (more commonly known today as the Attorney-General).¹⁶ Besides the decisions of the Appeal Board, this article places great reliance on the legal commentaries of the learned common law legal practitioner, the late Abdullah Yusuf Ali (“the Learned Commenter”), whose translations of the Quran¹⁷ and accompanying commentaries were constantly relied upon by the Appeal Board in making their determination on matters of Muslim polygamy.¹⁸

5 Part II¹⁹ examines the Muslim legal jurisprudence, especially the principles permitting polygamous marriages and applications for polygamous marriages under the AMLA. Part III²⁰ examines various evidentiary factors taken into account by the *Kadi* and the Appeal Board. Part IV²¹ examines situations where a polygamous marriage was obtained outside of Singapore and the applicant wishes to register the marriage in Singapore. Part V²² examines the differences between Malaysia and Singapore in their approach towards regulating polygamy for Muslims and their interpretation of Muslim jurisprudence. Part VI²³

13 [2004] 4 SLR(R) 756.

14 *Mohamed Ismail bin Ibrahim v Mohammad Taha bin Ibrahim* [2004] 4 SLR(R) 756 at [5].

15 Dr Ahmad Ibrahim, *Islamic Law in Malaya* (Singapore: Malaysian Sociological Research Institute Ltd., 1965) at pp 10–37.

16 *Parliamentary Debates Singapore: Official Report* (1 August 2017), vol 94 “Second Reading Bill: Administration of Muslim Law (Amendment) Bill” (Assoc Prof Dr Yaacob Ibrahim, Minister for Communications and Information and Minister-in-charge of Muslim Affairs).

17 The verses of the Quran in this article are based on the Quran by the late Abdullah Yusuf Ali (s 114(1)(a) of the Administration of Muslim Law Act (Cap 3, 2009 Rev Ed)).

18 *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [23]; *Salleh bin Suati v Maimunah* (1990) 5 SSAR 10 at [7] and [9]; *Re Abdul Rahman bin Ibrahim* (1990) 5 SSAR 27 at [14]; *Re Yusope bin Lasim* (1991) 5 SSAR 53 at [7]; *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [7]; *Re Mohamed Murat bin Sehan* (1992) 5 SSAR 82 at [11]; *Re Ramlah bte Haji Abdul Wahid* (1996) 5 SSAR 119 at [25]; *Re Adam bin Arifin* (1999) 5 SSAR 168 at [8] and [16].

19 See paras 6–36 below.

20 See paras 37–64 below.

21 See paras 65–69 below.

22 See paras 70–87 below.

23 See paras 88–90 below.

highlights this author's humble observations of possible advancements in the AMLA.

II. Muslim law on polygamous marriages

A. Historical origins

6 The Learned Commenter explains that in the period prior to Islam's arrival, termed in Islamic history as *Iyam-i-Jahilyat*²⁴ or "Time of Ignorance", a man engaging in polygamy could have more than four wives without restrictions.²⁵ However, Islam regulated polygamy by restricting a Muslim man to a maximum of four wives and imposing conditions that he must be able to fulfil, such as treating the wives equitably, before contracting into polygamy.²⁶ A learned Muslim scholar mentions that married men who accepted Islam during the time of the Prophet, such as those with eight²⁷ or ten²⁸ wives, were instructed to retain only four wives.²⁹

7 Furthermore, reference can be made to the Learned Commenter's commentaries on the Prophet's polygamous marriages

24 Syed Ameer Ali, *The Personal Law of the Mahommedans* (London: WH Allen & Co, 1880) at pp 1–2.

25 Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 1 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 179, note 509; *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [23]; *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [7].

26 Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 1 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 179, note 509; *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [23]; *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [7].

27 Hadith No 2241 (*Da'if*) in Imam Hafiz Abu Dawud Sulaiman bin Ash'ath *et al*, *English Translation of Sunan Abu Dawud* vol 3 (Saudi Arabia: Maktaba Dar-us-Salam, 2008) at pp 54–55.

28 Hadith No 1128 (*Da'if*) in Imam Hafiz Abu 'Eisa Mohammad Ibn 'Eisa At-Tirmidhi *et al*, *English Translation of Jami' At-Tirmidhi* vol 2 (Saudi Arabia: Maktaba Dar-us-Salam, 2007) at p 499.

29 Sheikh Yusuf Al-Qaradawi, *The Lawful and the Prohibited in Islam* (Egypt: Al-Falah Foundation for Translation, Publication & Distribution, 2nd Ed, 2001) at p 185. It must be noted that this written work of Sheikh Yusuf Al-Qaradawi is cited herein because he has been cited approvingly as a "contemporary Muslim scholar" in a book published by the Islamic Religious Council of Singapore in *Fatwas of Singapore Volume 1: Science, Medicine and Health* (Nazirudin Mohd Nasir ed) (Singapore: Majlis Ugama Islam Singapura (MUIS), 2017) at pp 62, fn 7, and 64–65.

pursuant to Quran 33:50 to 33:52.³⁰ Notably, the learned Muslim scholar mentions that the Prophet had nine wives because he was exempted from the restriction of the maximum of four wives.³¹ The Learned Commenter explains that Quran 33:50 to 33:52 declare that the Prophet's marriages are due to his special circumstances.³² These special circumstances cover compassion, which includes providing for suffering widows, and assisting the Prophet's duties of leadership.³³ More importantly, the Learned Commenter states that Quran 33:50 does not introduce new exemptions or privileges for other Muslim men.³⁴

8 Given the above, reference can be made to the observations of a learned author on Singapore's circumstances prior to the enactment of the AMLA.³⁵

The permission to enter into polygamous marriages has been abused by certain Muslim groups and it is sad to hear those who abuse this privilege justifying their action by quoting what they interpret to have been the example given by the Holy Prophet. Yet for more than twenty-five years of his life the Holy Prophet had only one wife. It was only after his wife, Khadijah, died that he married a number of women. Of these only Ayesha was a virgin. All the others were widows or had been divorced from their husbands. If one examines these marriages it will be seen that they were partly designed to assist the women who would otherwise have been destitute or to cement bonds of personal or tribal friendship.

B. *Legal principles*

9 The Appeal Board has held that the basis for a Muslim man to marry up to four wives is God's command in Quran 4:3.³⁶ The Appeal

30 Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 3 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at pp 1121–1124.

31 Sheikh Yusuf Al-Qaradawi, *The Lawful and the Prohibited in Islam* (Egypt: Al-Falah Foundation for Translation, Publication & Distribution, 2nd Ed, 2001) at p 185.

32 Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 3 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 1121, note 3741.

33 Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 3 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 1113, note 3706.

34 Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 3 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 1121, note 3741.

35 Mehrun Siraj, "The Control of Polygamy" [1964] 6 MLR 387 at 388.

36 "If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four, but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess that
(cont'd on the next page)

Board rationalised Quran 4:3 as a “general rule that a man has only one wife and a man is allowed to marry more than one wife only in exceptional cases and where he can show that he can treat all his wives equitably, that is so far as possible, equally”.³⁷ The Learned Commenter explained that the Muslim man must have the ability to treat the wives with “perfect equality in material things as well as in affection and immaterial things”.³⁸ He also opined that this is difficult to satisfy and understands the recommendation for monogamy.³⁹ Moreover, the Appeal Board observed that polygamy is only permissible under certain conditions.⁴⁰ Thus, the applicant “must be prepared to shoulder further responsibility”.⁴¹

10 The Appeal Board cited the Learned Commenter’s translation of Quran 4:129⁴² for their observation that Islam recognises the difficulty for a Muslim husband “to love each of his wives to the same degree”.⁴³ The Learned Commenter opined that Quran 4:129 addresses the issues of marital division when the Muslim man deals with the “other woman” in his marriage.⁴⁴ He states that the man would have placed himself in

will be more suitable to prevent you from doing injustice”: Abdullah Yusuf Ali, *The Holy Qur’an: Arabic Text with an English Translation and Commentary* vol 1 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 179. See also *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [23] and [27]–[28]; *Salleh bin Suati v Maimunah* (1990) 5 SSAR 10 at [7]; *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [7]; *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [10]; *Re Ramlah bte Haji Abdul Wahid* (1996) 5 SSAR 119 at [25]; and *Re Adam bin Arifin* (1999) 5 SSAR 168 at [8].

- 37 *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [28]; *Re Yusope bin Lasim* (1991) 5 SSAR 53 at [15]. See also Ahmad Ibrahim, *Muslim Marriage and Divorce in Singapore* (1962) 28 MLJ xi at xiv.
- 38 Abdullah Yusuf Ali, *The Holy Qur’an: Arabic Text with an English Translation and Commentary* vol 1 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 179, note 509.
- 39 Abdullah Yusuf Ali, *The Holy Qur’an: Arabic Text with an English Translation and Commentary* vol 1 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 179, note 509.
- 40 *Saheeda Banu v Osman Mohamed Sabeer* (1998) 5 SSAR 164 at [9]–[10]; *Re Mohamed Murat bin Sehan* (1992) 5 SSAR 82 at [8].
- 41 *Saheeda Banu v Osman Mohamed Sabeer* (1998) 5 SSAR 164 at [8].
- 42 “Ye are never able to be fair and just as between women, even if it is your ardent desire ...”: Abdullah Yusuf Ali, *The Holy Qur’an: Arabic Text with an English Translation and Commentary* vol 1 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 221.
- 43 *Re Abdul Rahman bin Ibrahim* (1990) 5 SSAR 27 at [14]. See also *Salleh bin Suati v Maimunah* (1990) 5 SSAR 10 at [9]; *Re Mohamed Murat bin Sehan* (1992) 5 SSAR 82 at [11]; and *Re Abdul Talib bin Salay* [1996] 5 SSAR 114 at [13].
- 44 Abdullah Yusuf Ali, *The Holy Qur’an: Arabic Text with an English Translation and Commentary* vol 1 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 221, note 639; *Salleh bin Suati v Maimunah* (1990) 5 SSAR 10 at [9]; *Re Mohamed Murat bin Sehan* (1992) 5 SSAR 82 at [11].

an impossible position to be “perfectly fair and just to” his wives and “it is only right to insist that he should not discard one but at least fulfil all the outward duties that are incumbent on him in respect of her”.⁴⁵

11 For completeness, the learned Muslim scholar cites a *Hadith* for the position that a Muslim man in a polygamous marriage must be aware that divine punishment befalls those who fail to treat their wives equitably: “Anyone who has two wives and does not treat them equally will come on the Day of Resurrection dragging one part of his body which will be hanging down.”⁴⁶ The learned Muslim scholar also cites how the Prophet strove to treat his wives equitably, such as casting lots among his wives whenever he planned to go on a journey. The wife chosen by lot would accompany him.⁴⁷

12 Given the above, reference can be made to the findings of a Malaysian judge who cited Quran 15:85⁴⁸ to highlight that the central concept to Islam is justice and all types of transactions, such as judicial, commercial or private transactions, are subject to it.⁴⁹ Reference can be made to the Learned Commenter’s observation on Quran 15:85 that “God’s Creation is all for a true, just, and righteous purpose”.⁵⁰ The Malaysian judge went on to cite a learned author who wrote that Islam’s concept of justice is much higher than any manmade law because it examines the person’s innermost motives as he acts in the presence of “God, to Whom all things, acts, and motives are known”, and Islam is against all injustices and is a warning to transgressors.⁵¹ Therefore, it

45 Abdullah Yusuf Ali, *The Holy Qur’an: Arabic Text with an English Translation and Commentary* vol 1 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 221, note 639; *Salleh bin Suati v Maimunah* (1990) 5 SSAR 10 at [9]; *Re Mohamed Murat bin Sehan* (1992) 5 SSAR 82 at [11].

46 Sheikh Yusuf Al-Qaradawi, *The Lawful and the Prohibited in Islam* (Egypt: Al-Falah Foundation for Translation, Publication & Distribution, 2nd Ed, 2001) at pp 185–186.

47 Sheikh Yusuf Al-Qaradawi, *The Lawful and the Prohibited in Islam* (Egypt: Al-Falah Foundation for Translation, Publication & Distribution, 2nd Ed, 2001) at p 186.

48 “We created not the heavens, the earth, and all between them, but for just ends. And the Hour is surely coming (when this will be manifest). So overlook (any faults) with gracious forgiveness”: Abdullah Yusuf Ali, *The Holy Qur’an: Arabic Text with an English Translation and Commentary* vol 2 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at pp 651–652.

49 *Malayan Banking Bhd v Ya’kup bin Oje* [2007] 6 MLJ 389 at [13]; *Yong Fuat Meng v Chin Yoon Kew* [2008] 5 MLJ 226 at [5].

50 Abdullah Yusuf Ali, *The Holy Qur’an: Arabic Text with an English Translation and Commentary* vol 2 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 652, note 2005.

51 *Malayan Banking Bhd v Ya’kup bin Oje* [2007] 6 MLJ 389 at [14]; *Yong Fuat Meng v Chin Yoon Kew* [2008] 5 MLJ 226 at [5].

appears that Islam's concept of polygamy is intended to achieve equity in this world and the hereafter.

C. *Administration of Muslim Law Act*

13 Sections 96(2) and 96(3) of the AMLA regulate the application to contract into polygamy. Section 96(2) stipulates that the marriage can only be solemnised by the *Kadi*,⁵² or by the *wali*,⁵³ who has the *Kadi*'s consent, of the woman to be married and aims to "control unauthorised polygamous marriages".⁵⁴ A consequence of an unauthorised polygamous marriage in Singapore is that where no marriage certificate is issued, this affects parties' ability to purchase housing or ensure that the Muslim man's name is recorded as the father in his child's birth certificate.⁵⁵ Under s 96(3), the *Kadi* will conduct an inquiry and satisfy himself of the absence of any lawful obstacle to their marriage under Muslim law or the AMLA before solemnising or giving his consent pursuant to s 96(2).

14 The Appeal Board observed that there are significant policy reasons behind ss 96(2) and 96(3):⁵⁶

The inquiry provisions as contained under ss 96(2) and 96(3) of the [AMLA] were first introduced in 1960 under s 7A of the Muslims (Amendment) Ordinance, 1960 (No 40 of 1960). Prior to its introduction, no approval was necessary and no application was statutorily obligatory before any Muslim took a second wife. The first wife could not object and her views and remonstrance bore little or no effect and men in the position of the appellant had often assumed that they had an untrammelled right to take a second, third or fourth wife

52 The "*Kadi*" are "suitable male Muslims of good character and position and of suitable attainments" appointed by the President of Singapore: Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) ss 2 and 91(1).

53 "*Wali*" means the lawful guardian according to the Muslim law for purposes of marriage of a woman who is to be married: Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) s 2.

54 *Re Mohd Nazran s/o Mohd Hanifa* (1990) 5 SSAR 22 at [18].

55 *Re Mohd Nazran s/o Mohd Hanifa* (1990) 5 SSAR 22 at [3]. A Member of Parliament highlighted her concerns on the impact on children born from an unregistered polygamous marriage albeit in the context of amendments to s 95. She stated that the absence of such registration and the lack of a birth certificate mean that "the child who is born [to an unregistered polygamous marriage] will be similar to an illegitimate child without a father", and this would complicate matters such as (a) "getting an HDB flat for the mother and her child"; (b) "registering the birth of that child and receiving related benefits like the baby bonus"; (c) "matters relating to inheritance in the future"; and (d) "when the child eventually gets married after he/she is old enough": *Parliamentary Debates Singapore, Official Report* (1 August 2017), vol 94 "Second Reading Bill: Administration of Muslim Law (Amendment) Bill" (Dr Intan Azura Mokhtar).

56 *Salleh bin Suati v Maimunah* (1990) 5 SSAR 10 at [8].

without regard to the sensibilities of the co-wives. Not unnaturally, the women suffered in quiet anguish and the children the trauma of a split family and there was little hope until Muslim jurists noting the unhappy and inequitable state of affairs desired some protective legal framework consonant with the Quranic injunction. The matter was put right in 1960 (s 7A of the Muslims (Amendment) Ordinance followed by r 8C of the Muslim Marriage and Divorce [(Amendment)] Rules, 1961) when the Legislature first introduced a process of inquiry by the Chief Kadi and gave further form and shape to that process of inquiry in 1968 (r 11 of the Muslim Marriage and Divorce Rules, 1968) by providing additional determinants to the Kadi.

This is a substantial explanation of Parliament's intention for enacting the AMLA. Similarly, a Member of Parliament expressed that the AMLA "represents a significant advance in social legislation for the protection of women, and ... has restored to Muslim women their rights of which for long they have been deprived".⁵⁷ To illustrate the significance of this, comparisons can be made to the observations of a learned author regarding circumstances before the AMLA where there were criticisms against the then Syariah court for approving applications for additional marriages although no attempt was made to obtain the subsisting wife's views or, in other cases, the subsisting wife's consent might not have been given freely.⁵⁸

15 Furthermore, r 5 of the Muslim Marriage and Divorce Rules 1999⁵⁹ ("MMDR1999") details procedures for the *Kadi* conducting the inquiry. Prior to enactment of r 5 of the MMDR1999, the *Kadi* abided by r 11 of the Muslim Marriage and Divorce Rules 1968⁶⁰ ("MMDR1968"). As such, it is important to examine their differences.

(1) *Old position before 1 August 1999*

16 The Appeal Board's judgments before 1 August 1999 applied the provisions of r 11 of the MMDR1968:

11.–(1) In considering whether to solemnize or to give his written consent to the solemnization of a marriage under subsection (2) of section [96] of the Act, the Kathi shall, without prejudice to his general powers to consider what is just and proper, have regard to the following matters:—

- (a) whether the husband is competent to support more than one wife and will be able, if he marries more than one

57 *Singapore Parliamentary Debates, Official Report* (17 August 1966), vol 25 at col 242 (Inche Othman Bin Wok, Minister for Culture and Social Affairs).

58 Mehrun Siraj, "The Control of Polygamy" [1964] 6 MLR 387 at 404.

59 Cap 3, R 1, 2001 Rev Ed.

60 S 165/1968.

wife, to treat them with equity in accordance with the Muslim law; and

(b) whether there is some lawful benefit involved in the marriage and in particular whether the existing wife suffers from sterility, physical unfitness for the conjugal rights or insanity.

(2) The Kathi may refuse to solemnize the marriage or give his written consent for the solemnization of the marriage, if any failure of equal treatment between the co-wives is feared.

17 The significance of r 11, which the Appeal Board held to encapsulate the legal principles of Quran 4:3,⁶¹ is:⁶²

The *Kadi's* duties are statutory and clearly defined under r 11. He is given powers to consider what is just and proper and to have regard whether the applicant is competent to support more than one wife and will be able, if he marries more than one wife, to treat them with equity if he marries in accordance with the Muslim law and whether there is any lawful benefit involved in the marriage.

18 With r 11 and Quran 4:3, the Appeal Board established the objective test of the “reasonable Muslim” when determining whether the applicant is able and competent to support multiple wives.⁶³ They reasoned:⁶⁴

[A]ny other test is bound to give rise to whimsical interpretations of varying shades and slants and as such would not be in accord with the concept of ‘*ijma*’ (consensus) so deeply rooted in our system of jurisprudence.

Accordingly, r 11 governs the husband’s probable course of conduct in his daily dealings with his wives and not his personal belief or state of mind with what he deems equitable.⁶⁵ The objective test was reaffirmed by a subsequent decision of the Appeal Board.⁶⁶ Thus, all the

61 *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [23].

62 *Salleh bin Suati v Maimunah* (1990) 5 SSAR 10 at [8].

63 *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [27].

64 *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [27].

65 *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [27].

66 *Salleh bin Suati v Maimunah* (1990) 5 SSAR 10 at [9]; *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [7].

circumstances surrounding each case must be weighed in making a determination.⁶⁷

(2) *Contemporary position*

19 Rule 5 replaces the statutory requirements of r 11. The effect is an omission of the substantive factors that the *Kadi* considers during the inquiry under r 11 and is replaced by detailed procedures under r 5.⁶⁸ Despite their differences, the legal principles and the objective test remain. As highlighted earlier, the Appeal Board has held that r 11 encapsulates the legal principles in Quran 4:3. As such, replacing it with r 5 does not affect the substantive legal principles. Thus, the Appeal Board's precedents that applied r 11 are still applicable.

D. Regulating Singapore's polygamous marriages

20 The decisions of the *Kadi* and the Appeal Board are a confluence of Muslim law and the AMLA. The process of examining an application to contract into a polygamous marriage begins with an application to the *Kadi* who conducts an inquiry to determine whether to allow or reject the application.⁶⁹ The *Kadi's* decisions are generally never reported but references to their findings may be found in the reported Appeal Board's decisions.

21 When the *Kadi* rejects an application, the applicant may appeal to the Appeal Board under s 55(1) of the AMLA. The process on appeal as summarised by the Appeal Board is as follows:⁷⁰

Therefore, it is the duty of the Appeal Board to look into the application of the respondent to request for [a] second wife, whether such request deserves consideration; and not to stop such application. The consensus among Muslim jurists (*ulama*) for such marriage, among other things include the ability of [the] husband to maintain more than one households; ability to treat the wives fairly and with equity (if allowed to take more than one wife); and whether such marriage brings benefit to the society as a whole. It should be stated that polygamous marriage in Islam is more of an exception rather than

67 *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [23]–[24]; *Re Abdul Rahman bin Ibrahim* (1990) 5 SSAR 27 at [16]–[17]; *Re Yusope bin Lasim* (1991) 5 SSAR 53 at [10]–[12]; *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [15]; *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [18].

68 *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at 8–9.

69 *Law and Practice of Family in Singapore* (Valerie Thean JC & Foo Siew Fong eds) (Singapore: Thomson Reuters, 2016) at p 598.

70 *Saheeda Banu v Osman Mohamed Sabeer* (1998) 5 SSAR 164 at [8].

as a rule. [An] aspirant for [a] second marriage therefore must be prepared to shoulder further responsibility for polygamy.

22 Given the foregoing, a learned author observed that “[m]ost Muslim jurists [agree] that the Ruler may restrict or even prohibit in the public interest something which is ordinarily lawful or permissible by [Muslim] law, provided that this is only done on a temporary basis”.⁷¹ Accordingly, “the Ruler may command the observance of anything [that Muslim] law approves” and “[w]here a legal right or permission has been abused, it is the duty of the Ruler to take steps to prevent such abuse”, which is “the argument that has been used to control the practice of polygamy”.⁷² Thus, she observed that it is permissible for the Ruler to either forbid polygamy entirely or to subject it to preconditions if it may cause injustice, which is justifiable from the Prophet’s example:⁷³

The family of Hisham ibn Al-Mugirah have requested my permission to give their daughter in marriage to Ali Ibn Abi Talib. I did not give them my permission for this, nor will I give it to them in future, unless and until Ali Ibn Abi Talib divorces my daughter, for surely she is part of me and what troubles and agitates her troubles and agitates me too; and what harm befalls her befalls upon me too.

In a commentary on the above *Hadith*, a learned author explained that when Ali (that is, the Prophet’s son-in-law) wanted to marry the daughter of Abu Jahl, all of Fatima’s sisters and her mother had passed away.⁷⁴ Accordingly, Fatima lacked women companions to face such adversity and the situation would be troubling for her father (that is, the Prophet), which led the Prophet to ask Ali to relinquish his intentions to engage in polygamy.⁷⁵

23 Notably, there are others who have interpreted the above *Hadith* for the position that the Prophet believed that monogamy was ideal for men because he prohibited Ali from marrying a second wife while being married to Fatima.⁷⁶ Nevertheless, learned authors dispute this

71 Mehrun Siraj, “The Control of Polygamy” [1964] 6 MLR 387 at 389.

72 Mehrun Siraj, “The Control of Polygamy” [1964] 6 MLR 387 at 389–390.

73 Mehrun Siraj, “The Control of Polygamy” [1964] 6 MLR 387 at 390, fn 14; See also Hadith No 1998 (*Sahih*) in Imam Muhammad Bin Yazeed Ibn Majah Al-Qazwini *et al*, *English Translation of Sunan Ibn Majah* vol 3 (Saudi Arabia: Maktaba Dar-us-Salam, 2007) at pp 141–142.

74 Imam Hafiz Abu ’Eisa Mohammad Ibn ’Eisa At-Tirmidhi *et al*, *English Translation of Jami’ At-Tirmidhi* vol 6 (Saudi Arabia: Maktaba Dar-us-Salam, 2007) at p 486.

75 Imam Hafiz Abu ’Eisa Mohammad Ibn ’Eisa At-Tirmidhi *et al*, *English Translation of Jami’ At-Tirmidhi* vol 6 (Saudi Arabia: Maktaba Dar-us-Salam, 2007) at p 486.

76 Abdussalam Muhammad Shukri & Musa Yusuf Owoyemi, “Sisters in Islam’s Quest for the Reinterpretation of the Qur’an and Hadith: An Analysis of Their Views on Equality, Women Judges, and Polygamy” (2014) 32(1) *Kajian Malaysia* 55 at 68–69.

interpretation and query whether there were unequivocal statements positing that monogamy is the ideal state of marriage for Muslim men.⁷⁷

24 Ultimately, Singapore's approach to regulating polygamous marriages was articulated by Singapore's then State Advocate-General, the late Ahmad Ibrahim. He introduced what would eventually become s 96(3) of the AMLA as being in line with the "liberal orthodox view" in interpreting Muslim law.⁷⁸ In explaining this "liberal orthodox view", he provided four classifications of interpreting the various approaches to polygamy in Islam:⁷⁹

(i) the *conservative orthodox view* is that polygamy is allowed in Islam, but is neither enjoined nor forbidden. The test of equity to the wives is a subjective test—that is if a person feels he can be equitable to the wives he can marry them and should not be prevented from doing so. It is assumed that the individual Muslim would have sufficient education and moral character to judge whether he is justified in marrying more than one wife. The test of 'equity' applies only to outward conduct over which a man has control but not for example in the affection of the heart. As a learned commentator on the Quran says 'Though a person cannot treat a wife equally with a beloved wife, yet he should observe some measure of justice towards her; for if a man is not able perfectly to perform his duty, he might not for that reason entirely neglect it.' (Baidawi). This view is still officially adhered to in Malaya.

(ii) the *liberal orthodox view* agrees with the conservative orthodox view that polygamy is permitted in Islam. It goes on to claim however that the interpretation of the 'verse of Polygamy' should not only be regarded as binding on the individual conscience but should be enforced by the courts as a condition precedent to the registration of a second marriage, on the principle that the Ruler may command the observance of anything which the sacred law approves. This is the view held by Shaik Mohammed Abduh, who was at one time Mufti of Egypt. This view has been officially adopted in Syria where it is provided that 'The Qadi (Kathi) may withhold permission for a man who is already married to marry a second wife, where it is established that he is not in a position to support them both.' The Explanatory Statement to the Syria legislation stated 'Seeing that the lawfulness of polygamous marriages is restricted, in the Sharjah, by the husband's ability to support all the wives concerned, and seeing that the draft law has adopted the view of those who hold that a marriage may be

77 Abdussalam Muhammad Shukri & Musa Yusuf Owoyemi, "Sisters in Islam's Quest for the Reinterpretation of the Qur'an and Hadith: An Analysis of Their Views on Equality, Women Judges, and Polygamy" (2014) 32(1) *Kajian Malaysia* 55 at 74.

78 Legislative Assembly, *Select Committee on the Muslims (Amendment) Bill* (LA 14 of 1960) (31 March 1960) at p B24.

79 Legislative Assembly, *Select Committee on the Muslims (Amendment) Bill* (LA 14 of 1960) (31 March 1960) at pp B23–B24.

dissolved for failure of maintenance, a married man has been forbidden to marry another wife if he cannot support both spouses, on the principle that doors which lead to abuses must be closed'. It is reported that legislation to this effect has also been enacted in the United Arab Republic.

(iii) the *unorthodox view* interprets the verses of the Holy Quran as in effect prohibiting polygamy. The argument is that the Holy Quran states that it is not possible to treat wives with equity and therefore the condition precedent for marriage with more than one wife cannot exist. This view is contrary to the practice and example of the distinguished companions of the Prophet and contrary to the accepted interpretation of the verses of the Holy Quran. It has however been officially adopted in Turkey, which has adopted the Swiss Civil Code, and in Tunis where polygamy has been prohibited by law, although it is not expressly provided that a polygamous marriage contracted in defiance of the prohibition is invalid.

(iv) the *historical view* interprets the verses of the Holy Quran in the context of the events of the time when they were revealed, when as a result of war there were a large number of widows and orphans in Arabia, and also in the light of the example of the Prophet and his Companions who married widows in order to provide a means of livelihood for them. In this view it would not be wrong for the legislature (as representing the consensus of opinion in a country) to prohibit polygamy in the context of present-day conditions of life.

[emphasis added]

E. *The legal threshold*

25 A Singapore Member of Parliament had commented that Quran 4:3 imposes a stiff condition because Muslim law does not encourage polygamy even though it permits polygamy.⁸⁰ Similarly, the Appeal Board observed that the *Kadi* examines an application to determine if either there is an “urgent reason or necessity”⁸¹ or there is “a good reason”⁸² to grant the marriage. The latter is defined as the “consistency with the principle, essence, spirit and purpose of the Islamic prescription of polygamy”.⁸³

26 While “urgent reason or necessity” and “good reason” are worded differently, it appears that their purpose and approach are the same. They involve examining the relevant considerations based on the

80 *Singapore Parliamentary Debates, Official Report* (6 April 1960), vol 12 at col 464 (Inche Yaacob Bin Mohamed, Parliamentary Secretary to the Minister for National Development).

81 *Re Mohamed Murat bin Sehan* (1992) 5 SSAR 82 at [8].

82 *Re Ja'afar bin Kassim* (2010) 5 SSAR 179 at [4].

83 *Re Ja'afar bin Kassim* (2010) 5 SSAR 179 at [4].

facts of the case.⁸⁴ Moreover, it is arguable that an “urgent reason or necessity” applies where there is an aspect of urgency, such as where couples of fairly advanced ages are unable to have offspring, while a “good reason” lacks urgency. An example of a situation that lacks urgency is bringing a non-Muslim into Islam.⁸⁵

F. *Divorce in polygamy through fasakh*

27 Under s 49(1) of the AMLA, the woman in a polygamous marriage can divorce her husband through *fasakh*⁸⁶ if it is found that he has treated her with cruelty by failing to treat her equitably pursuant to Muslim law.⁸⁷ The procedure involves the court recording the sworn statements from her and at least two witnesses before considering making a decree of *fasakh* if it is satisfied that she is entitled to it.⁸⁸ There is one Appeal Board decision that recorded the Syariah court’s decision of granting a decree of *fasakh* in a polygamous marriage. The Syariah court found that the husband had spent a significant portion of his time and money on the second wife, and failed to maintain the first wife and her children fairly and equally, amongst other things.⁸⁹

G. *A condition (taklik) in the parties’ marriage contract*

28 Muslim couples entering into a marriage are essentially entering into a contract⁹⁰ where they can incorporate a “special condition”⁹¹ or just “condition”,⁹² which is called “*taklik*” in the Arabic language. A learned author observed that Singapore’s custom involves the *taklik* to be pronounced at each marriage and formulates a condition to protect the woman.⁹³ The wife is freed from the marriage if the husband breaches the *taklik*.

84 *Re Mohamed Murat bin Sehan* (1992) 5 SSAR 82 at [8]; *Re Ja’afar bin Kassim* (2010) 5 SSAR 179 at [4].

85 *Re Adam bin Arifin* (1999) 5 SSAR 168.

86 “*Fasakh*” in the context of marriage means the judicial annulment of the marriage. See also Mehrun Siraj, “The Shariah Court of Singapore and Its Control of the Divorce Rate” [1963] 5 MLR 148 at 149, fn 8.

87 Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) s 49(1)(f)(vi).

88 Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) s 49(4).

89 *Mohamed Sabeer Osman v Saheeda Banu Mohamed Sabeer* (2012) 6 SSAR 159 at [14] and [25].

90 Ahmad Ibrahim, *Muslim Marriage and Divorce in Singapore* (1962) 28 MLJ xi at xiv.

91 *Mohd Irwan bin Abdullah Teo v Salijah bte Abdul Latif* (1996) 1 SSAR 50 at [1].

92 *Abdul Aziz bin Ahmad v Khatijah bte Abdul Rahman* (1994) 3 SSAR 14 at [3(b)].

93 Ahmad bin Mohd Ibrahim, “The Administration of Muslim Law in South-East Asia” [1971] 13 MLR 124 at 142–143.

29 Under certain schools of Muslim law, a *taklik* stipulating that the husband cannot take another wife and that a breach of the condition would grant the wife the right for divorce would not be allowed because it prohibits the practice of polygamy. Accordingly, this article analyses the form and substance for such a *taklik*.

(1) *Taklik in the marriage contract*

30 The following paragraph describes a standard *taklik* written into a Singapore Muslim marriage contract:⁹⁴

The *taklik* covered three distinct situations when she would be divorced by one *talak*, namely, if he left her for four months or more intentionally or unintentionally; or if he failed to maintain her for 4 months or more, whereas she was obedient to him; or on every occasion that he caused any injury to her body or damage to her property or caused her to lose her self-respect.

31 Section 48(1) of the AMLA provides that the Muslim wife may rely on any of the above and any other written *taklik* made at or after the marriage to apply to the Syariah court for a divorce in the event of the husband's breach. A sample of the standard *taklik*, Form 2, could be found in the First Schedule to the MMDR1999.⁹⁵

32 The utilisation of a *taklik* to deter a man from engaging in polygamy is not novel. A learned author in his seminal legal textbook published in 1880 documents the Muslims of British-ruled India who had drawn up marriage deeds “containing a formal renunciation on the part of the future husband of any right or semblance of right which he might possess or claim to possess to contract a second marriage during the existence of the first”.⁹⁶ He observed that it was an “efficacious check upon the growth and the perpetuation of the institution of polygamy”.⁹⁷

(2) *Legal jurisprudence on taklik for polygamous marriages*

33 A Muslim's adherence to a school of Muslim law affects his or her exercisable rights under Muslim law.⁹⁸ This will affect the substance and enforceability of the *taklik*. A learned jurist from the *Shafi'i* school

94 *BC v BD* (2011) 6 SSAR 96 at [8].

95 As at 1 January 2018. It was subsequently repealed on 22 October 2018.

96 Syed Ameer Ali, *The Personal Law of the Mahommedans* (London: WH Allen & Co, 1880) at p 29.

97 Syed Ameer Ali, *The Personal Law of the Mahommedans* (London: WH Allen & Co, 1880) at p 29.

98 *Salmah And Fatimah, Infants, By Their Next Friend Shaik Omar v Soolong* [1808–1884] 01 KY 421; *Syed Abdullah Al-Shatiri v Shariffa Salmah* [1959] MLJ 137.

of Muslim law states that the condition must not be incompatible with the fundamental object of marriage because it would make the marriage null and void.⁹⁹ The learned Muslim jurist opined that a condition prohibiting the husband from taking another wife while his current marriage subsists is considered illegal.¹⁰⁰ However, stipulating such a condition is deemed permissible under the *Hanafi* school of Muslim law where the repudiation of the wife by the husband “is said to be suspended on or attached to a condition when it is combined with a condition and made contingent on its occurrence”.¹⁰¹ Similarly, it was stated in the *Hedaya* that a husband might grant his wife the power to divorce him either on the spot or in a future period.¹⁰² An appellate civil court of British-ruled India has held such an agreement between the parties as compatible with Muslim law.¹⁰³

34 Similar to the *Hanafi* school, a learned author observed that the *Hanbali* school’s position is that any condition not contrary to the fundamentals of a Muslim marriage must be duly observed, which means a Muslim who voluntarily gives up the right to contract into polygamy must be held to his agreement since polygamy is permissible but not incumbent.¹⁰⁴ In support of her statement, she cited the foreign jurisdictions of Morocco, Syria, Jordan and Iraq where the *Hanbali* principles were adopted in their legislation and such conditions held to be valid and enforceable.¹⁰⁵ Without considering the view of the *Maliki* school, the legal position of the *Shafi’i* school is at polar opposites with the *Hanafi* and *Hanbali* schools. Another learned author opined, after researching the use of conditions in Muslim marriage contracts in Middle Eastern countries and Malaysia, that legislators are not unanimous in giving rights to the wife to pursue divorce if her husband takes another wife, but the wife could pursue divorce if her husband was

99 Ahmad Ibrahim, *Muslim Marriage and Divorce in Singapore* (1962) 28 MLJ xi at xiv.

100 Mahiudin Abu Zakaria Yahya Ibn Sharif En Nawawi, *Minhaj Et Talibin: A Manual of Muhammadan Law According to the School of Shafi’i* (London: W Thacker & Co, 1914) at p 308.

101 Neil B E Baillie, *A Digest of Moohummudan Law – Part First* (London: Smith, Elder, & Co, 2nd Ed, 1875) at p 218.

102 Charles Hamilton, *The Hedaya* vol 1 (London: T Bensl, 1791) at p 257.

103 *Badarunnissa B v Mafiatulla* (1871) 7 Beng L R 442 at 445–446. The facts of this case involved a decree for dissolution of the marriage due to the husband’s breach of a condition in the parties’ marriage contract that he was not allowed to marry without the first wife’s consent while the first wife was still alive; thus, the husband’s second marriage entitled the first wife to divorce him.

104 Mehrun Siraj, “The Control of Polygamy” [1964] 6 MLR 387 at 397.

105 Mehrun Siraj, “The Control of Polygamy” [1964] 6 MLR 387 at 397.

found to act inequitably in the polygamous marriage.¹⁰⁶ However, this is covered under *fasakh*, as stated above.¹⁰⁷

(3) *Legal effect of taklik in Singapore’s Syariah courts*

35 The stipulation of a *taklik* is arguably an option for consideration that the wife could rely on for divorce upon the husband’s application for polygamy. She must bring it to the attention of the Syariah court by way of a divorce application relying on the *taklik* and evidence of the breach of it for the divorce process to begin.¹⁰⁸ If she does not make the application, then the *taklik* is rendered impotent albeit still binding. If the wife makes the application, the *Kadi* will examine the *taklik* and enquire whether the divorce is valid in accordance with Muslim law,¹⁰⁹ and subsequently confirm the divorce when it is found to be valid.¹¹⁰ For the enquiry, there will be an examination of the parties’ evidence.¹¹¹

36 In the absence of a *taklik*, the wife can only rely on other methods of divorce under the AMLA, such as *fasakh*. However, the procedure of obtaining a divorce through *fasakh* appears more straightforward than through a *taklik*. A *taklik* requires evidence but *fasakh* only requires the court to record the sworn statement of at least two witnesses to satisfy itself that the woman is entitled to the divorce.¹¹² Moreover, *fasakh* operates differently compared to a *taklik* because the former operates after there is evidence that the husband treated the wife inequitably while the latter operates at the time the husband engages in polygamy.

III. Evidentiary factors taken into account

37 Before analysing the factors, it is helpful to reiterate the two legal considerations. First, the objective test of a “reasonable Muslim” is applied when determining whether the applicant is able and competent

106 Abdullah, Raihanah, “Inserting Stipulation Pertaining to Polygamy in a Marriage Contract in Muslim Countries” (2008) 46(1) *al-Jami’ah: Journal of Islamic Studies* 153 at 156–165 and 167.

107 See para 27 above.

108 Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) s 48(1).

109 Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) s 48(2)(a).

110 Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) s 48(2)(b).

111 *Hood bin Syed Alwi v Rugayah bte Syed Hussain* (1991) 1 SSAR 25 at [8]–[10] and [20]–[23]; *Abdul Aziz bin Ahmad v Khatijah bte Abdul Rahman* (1994) 3 SSAR 14 at [6]–[9].

112 *Mohd Irwan bin Abdullah Teo v Salijah bte Abdul Latif* (1996) 1 SSAR 50 at 59.

to support multiple wives.¹¹³ Secondly, the applicant must, through these factors, satisfy the high threshold of an “urgent reason or necessity” or a “good reason”.

38 There are several factors taken into account and the list is non-exhaustive. In the earliest reported Appeal Board decision of a polygamous marriage under the AMLA, the Appeal Board examined the applicant’s income level, competency, evidence of his ability to treat his wives equitably, and any lawful benefit.¹¹⁴ Similarly and after replacing r 11, a Singapore Member of Parliament stated that the applicant “must be able to demonstrate his ability to provide for the financial, physical and emotional well-being of his wives, as well as prove that he can treat his wives equitably”.¹¹⁵

39 During the inquiry, the *Kadi* examines any evidence deemed a “lawful obstacle according to [Muslim law or the AMLA]” pursuant to s 96(3) of the AMLA. This inquiry is pursuant to r 5(1) of the MMDR1999:

5.—(1) A Kadi who holds an inquiry under section 96(3) of the Act may issue summons to require —

- (a) the man;
- (b) the woman;
- (c) the *wali* of that woman; and
- (d) any other person who is able to give any evidence in the matter, to attend the inquiry.

40 Section 42(1) of the AMLA covers the applicable principles of evidence, which is the “law of evidence for the time being in force in Singapore, and shall be guided by the principles thereof, but shall not be obliged to apply the same strictly”. The Appeal Board has held that the standard of proof for s 42(1) is the common law of evidence, which is the balance of probabilities, and not the Muslim law of evidence, but the Muslim law of evidence appears to remain applicable.¹¹⁶ Thus, it can be observed from the Appeal Board’s finding that the applicant’s evidentiary burden is to provide acceptable or satisfactory evidence that

113 *Ayisha Begum d/o KMK Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [27]; *Salleh bin Suati v Maimunah* (1990) 5 SSAR 10 at [9]; *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [7].

114 *Mohamed Ishaq v Salamah d/o Mubarak Ali* [1976] SGMLL 1.

115 *Singapore Parliamentary Debates, Official Report* (21 September 2004), vol 78 at col 791 (Assoc Prof Dr Yaacob Ibrahim, Minister for the Environment and Water Resources and Minister-in-charge of Muslim Affairs).

116 *Zainoon bte Ibrahim v Md Zain bin Ismail* (1980) 2 SSAR 1 at [16].

justifies an inference that he can support multiple households, which includes responsibilities to parents and children.¹¹⁷

A. *Financial ability*

41 The common concern is the applicant's financial ability to support multiple households, which the Appeal Board has held to be a lawful obstacle to a polygamous marriage in Muslim law.¹¹⁸ This is because the husband is solely responsible for maintaining the wife and children.¹¹⁹ This could be further supported by the findings of a learned author on Quran 4:3:¹²⁰

A further condition for the permission of adopting polygamy is that the husband must provide adequate maintenance for each of his wives and his dependants. This condition is based on the interpretation by Imam Shafii of the concluding words in the verse of polygamy that is, *dhalika adna an la ta'ulu*. These words which are usually interpreted, as in A. Yusuf Ali's translation, to mean 'to prevent you from doing injustice', are interpreted by Imam Shafii to mean 'that you may not cause them (the wives) to suffer in their livelihood'.

42 In addition to the learned author's above explanation, she also referred to the decision of the Pakistani court in *Rashida Begum v Shahab Din*,¹²¹ that referred to Quran 24:33.¹²² In the Pakistani decision, Muhammad Shafii J found that Quran 24:33¹²³ lays down the principle that individuals who lack the means to marry should not marry. He held that "[i]f a person is prohibited [from marrying] one wife for lack of means he must be stopped [from marrying] more than one wife for the same or similar reasons".¹²⁴ In this context, the Learned Commenter explains that a Muslim marriage requires some form of dowry for the wife and if the man is unable to afford it, he must hold off on marriage and keep himself chaste, as he has no excuse to justify satisfying his natural cravings either within or outside marriage.¹²⁵

117 *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [24].

118 *Re Abdah bte Mohamed* (1996) 5 SSAR 136 at [15].

119 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [16].

120 Mehrun Siraj, "The Control of Polygamy" [1964] 6 MLR 387 at 388–389.

121 PLD 1960 Lah 1142.

122 Mehrun Siraj, "The Control of Polygamy" [1964] 6 MLR 387 at 389, fn 9.

123 "Let those who find not the wherewithal for marriage keep themselves chaste, until God gives them means out of His grace...": Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 2 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 906.

124 *Rashida Begum v Shahab Din* PLD 1960 Lah 1142 at 1159.

125 Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 2 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 906, note 2990.

43 On the other hand, the Appeal Board cited the Learned Commenter's translation of Quran 65:7¹²⁶ and held that the husband is only obliged to discharge this responsibility of maintaining his wife and children to the best of his earning capacity.¹²⁷ The wife is obliged to live with her husband in accordance with his means.¹²⁸ Moreover, the Appeal Board held that Islam permits the "wife to voluntarily contribute her money for the good of the family and to relieve her husband of his responsibility to provide maintenance either wholly or partially".¹²⁹

44 Given the foregoing, a survey of the Appeal Board's precedents shows that an applicant must have a minimum monthly income of \$3,000.¹³⁰ Accordingly, there are several analyses to be made. Firstly, it appears that the Appeal Board based the minimum value for net monthly income on the financial circumstances of the society at the material time of the application. This can be observed from the findings of a learned author, which show the lowest incomes of the applicants for which the application was granted in the period prior to the enactment of the AMLA for the following years: (a) in 1961, a shopkeeper earning a monthly income of \$150.00,¹³¹ (b) in 1962, a salesman earning a monthly income of \$60.00,¹³² and (c) in 1963, a driver earning a monthly income of \$165.00.¹³³

45 Secondly, the Appeal Board's methodology involves assessing the applicant's monthly net income against the estimated net expenses for multiple households.¹³⁴ This enables the Appeal Board to determine

126 "Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what God has given him. God puts no burden on any person beyond what He has given him. After a difficulty, God will soon grant relief": Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 3 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 1565.

127 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [16].

128 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [17].

129 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [17].

130 In *Re Mohd Shah bin Jantan* (1992) 5 SSAR 76 at [5]–[6], and [19], the appellant's monthly income was not less than \$3,000. In *Re Ibrahim bin Abdul Wahab* (1995) 5 SSAR 112 at [6], the appellant had a monthly income of \$3,300. In *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [9], the appellant had a net monthly income of \$3,000 to \$4,000. In *Re Ramlah bte Haji Abdul Wahid* (1996) 5 SSAR 119 at [22], the respondent had a monthly net income of \$4,100. In *Abdul Hafiz bin Mohammad Taha Suhaimi v Maimunah bte Sapawi* (1997) 5 SSAR 133 at [11], the appellant had a monthly income of more than \$3,000. In *Re Adam bin Arifin* (1999) 5 SSAR 168 at [12] and [14], the appellant had a total net monthly income of \$3,200 to \$3,300.

131 Mehrun Siraj, "The Control of Polygamy" [1964] 6 MLR 387 at 401–402.

132 Mehrun Siraj, "The Control of Polygamy" [1964] 6 MLR 387 at 402–403.

133 Mehrun Siraj, "The Control of Polygamy" [1964] 6 MLR 387 at 403–404.

134 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [12]–[14] and [20]–[22].

whether the appellant's monthly net income is "at the minimum level needed to maintain two families, but adequate for a modest lifestyle".¹³⁵ This approach gives effect to the recognition that such assessments must consider increasing annual expenses and Singapore's high cost of living.¹³⁶

46 Thirdly, there has been no Singapore precedent for applications involving a third or fourth wife. With reference to the findings¹³⁷ of the Pakistani court in *Rashida Begum v Shahab Din*,¹³⁸ the demands of financial capability would be higher and the monthly income of \$3,000 would be insufficient for an applicant seeking a third or fourth wife. Fourthly, the Appeal Board will consider each wives' monthly income to determine whether they are "sufficient to meet contingencies in times of need".¹³⁹

B. Evidence of treating wives equitably

47 The Appeal Board has consistently held that the wives must be treated equitably and the evidence of it is dependent on the facts and circumstances of each case. For instance, the Appeal Board in *Re Abdul Talib bin Salay*¹⁴⁰ ("*Talib*") took into account the fact that the appellant paid for his subsisting wife's medical expenses, adorned her with gold ornaments, and dressed her well as evidence of the appellant's care towards her.¹⁴¹

48 The applicant's representations and undertakings have significant value. The Appeal Board in *Talib*¹⁴² was persuaded when the appellant represented that he had no desire to divorce his wife and even gave an oath to treat his wife equitably if allowed to remarry.¹⁴³ Similarly, the Appeal Board would consider parties' agreement that the appellant would protect the first wife.¹⁴⁴ However, if the appellant declares a preference for the second wife-to-be over his subsisting wife, the Appeal Board would deem there to be a likelihood that the appellant would not treat the wives equitably.¹⁴⁵

135 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [12]–[14].

136 *Re Mohd Shah bin Jantan* (1992) 5 SSAR 76 at [3(a)].

137 See para 42 above.

138 PLD 1960 Lah 1142 at 1159.

139 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [18]–[19].

140 (1996) 5 SSAR 114.

141 *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [14].

142 (1996) 5 SSAR 114.

143 *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [14].

144 *Abdul Hafiz bin Mohammad Taha Suhaimi v Maimunah bte Sapawi* (1997) 5 SSAR 133 at [12].

145 *Re Othman bin Abdul Rahman* (1990) 5 SSAR 15 at [19].

C. *Impact on those affected*

49 The impact on persons affected has significant evidential value. Under r 5 of the MMDR1999, the *Kadi* will obtain evidence from the woman,¹⁴⁶ the woman's *wali*,¹⁴⁷ and any other person¹⁴⁸ during his inquiry. For example, in *Re Adam bin Arifin*¹⁴⁹ (“*Adam*”), the Appeal Board had considered the first wife's letter to them, which reflected positively on the application because she declared that she had no objections to the application and pleaded for the appeal to be granted.¹⁵⁰ Similarly, the first wife may express that she has no objections to the application because she maintains good relations with the second wife-to-be.¹⁵¹

50 Accordingly, the emotional impact on the wives is important due to the evidence of a happy and harmonious relationship. The Appeal Board will consider if the appellant is a just individual who enables harmony to exist amongst the parties in their domestic life.¹⁵² For example, the Appeal Board in *Adam* noted that for the past two years, parties had lived as two families after the appellant's marriage to the second wife, and she often had meals at the first wife's house and tutored the first wife's children.¹⁵³ Furthermore, the Appeal Board noted that the parties' relationship as husband and wife was sound, “both outwardly and in sexual intimacy”, and that the husband cared for his home, family, and the children's education.¹⁵⁴

D. *Applicant's financial conduct*

51 The applicant's financial conduct towards the household indicates his ability to treat them equitably. For example, the Appeal Board considers that an appellant's equitable treatment of the households is evident from his ability to provide accommodation for the second wife while accommodating his first wife in the matrimonial house.¹⁵⁵

146 Muslim Marriage and Divorce Rules (Cap 3, R 1, 2001 Rev Ed) r 5(1)(b).

147 Muslim Marriage and Divorce Rules (Cap 3, R 1, 2001 Rev Ed) r 5(1)(c).

148 Muslim Marriage and Divorce Rules (Cap 3, R 1, 2001 Rev Ed) r 5(1)(d).

149 (1999) 5 SSAR 168.

150 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [25] and [27]–[29].

151 *Re Ibrahim bin Abdul Wahab* (1995) 5 SSAR 112 at [8], cited in *Re Adam bin Arifin* (1999) 5 SSAR 168 at [26].

152 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [31].

153 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [29]–[30].

154 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [33].

155 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [32].

52 However, evidence of the applicant's irresponsible financial conduct is detrimental to his application. The Appeal Board in *Re Abdul Hamid bin Salim*¹⁵⁶ ("*Hamid*") found the appellant not to be financially competent to support two wives.¹⁵⁷ The Appeal Board even found that the appellant had selfishly saved substantial portions of his income at the expense of his first wife and their two school-going children for his contemplated marriage ceremony with the second wife-to-be.¹⁵⁸

E. Attainable benefits

53 The Appeal Board has held that the question of benefit is to have a broad interpretation.¹⁵⁹ Accordingly, the application for a polygamous marriage must bring about benefits to all parties concerned. The Appeal Board recognises several categories of benefits that will be addressed.

(1) *First wife suffering from severe illness*

54 Where the first wife suffers from illness that impairs her ability to carry out her wifely duties, there is a likelihood of the application being granted. The *Kadi* and the Appeal Board would assess the wife for sterility, physical unfitness for conjugal rights and/or insanity, amongst others.¹⁶⁰ There must be evidence, such as medical reports, because the lack of it means a rejection of the applicant's bare statements.¹⁶¹ For example, in *Talib*,¹⁶² the first wife was suffering from prolonged illness such as vaginal bleeding, third-degree uterovaginal prolapse, mitral stenosis, and hypertension, and hence was unable to fulfil her conjugal rights.¹⁶³ Moreover, she was incapable of assisting her husband's business, and allowing the second marriage would be beneficial to the appellant, to her, and the *ummah* because the second wife could assist her husband's business and take care of her.¹⁶⁴ Notably, an application does not fail merely because the first wife was not found to be suffering from any illness or unable to fulfil her wifely duties, because it is still based on weighing all the circumstances surrounding the case.¹⁶⁵

156 (1991) 5 SSAR 62.

157 *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [12].

158 *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [10]–[11].

159 *Re Sadali bin Rasban* (1998) 5 SSAR 140 at [23].

160 *Re Mohamed Murat bin Sehan* (1992) 5 SSAR 82 at [8]; *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [16]–[18].

161 *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [16].

162 (1996) 5 SSAR 114.

163 *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [16].

164 *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [17]–[18].

165 *Re Abdul Rahman bin Ibrahim* (1990) 5 SSAR 27 at [4] and [16]–[17].

(2) *Bringing a non-Muslim into Islam*

55 The application would likely be granted if it brings a non-Muslim into Islam. The Appeal Board justified this benefit based on the authority of a *Hadith* narrated in *Sahih Al-Bukhari* and *Sahih Muslim*, which states: “If Allah provides guidance for a person through your hand, that is better than a ‘red camel.’”¹⁶⁶

(3) *Benefits to the children*

56 The Appeal Board considers the impact on the children from the subsisting marriage and the children of the second wife-to-be. It recognises the benefits of a stepfather to the child of the second wife-to-be would be the provision of financial assistance, non-material support, and security.¹⁶⁷ The applicant can provide protection to the young children of the second wife-to-be who “need a father figure in their family”¹⁶⁸ or maintain the young children of the second wife-to-be until they are able to fend for themselves.¹⁶⁹ Furthermore, the Appeal Board found in *Re Mohd Shah bin Jantan*¹⁷⁰ that a polygamous marriage could enable the second wife-to-be to have more time to care for her child if she was concerned that she had been neglecting her child by working full-time.¹⁷¹

57 Nevertheless, it appears that the interests of the second wife-to-be’s children must be balanced against that of the children from the subsisting marriage. The application could be rejected if it is found that the appellant’s children from the subsisting marriage are “very young and in great need of the attention and guidance of a father who can devote his time fully to them.”¹⁷²

(4) *Subsisting wife’s inability to conceive*

58 The Appeal Board may grant applications involving parties in a marriage of more than seven¹⁷³ or 13¹⁷⁴ years but are unable to have offspring. The Appeal Board in *Abdul Hafiz bin Mohammad Taha*

166 *Re Adam bin Arifin* (1999) 5 SSAR 168 at [37]–[38]. See Hadith No 3701 in Muhammad Muhsin Khan, *The Translation of the Meanings of Sahih Al-Bukhari* vol 5 (Saudi Arabia: Maktaba Dar-us-Salam, 1997) at pp 47–48.

167 *Re Mohd Shah bin Jantan* (1992) 5 SSAR 76 at [16].

168 *Re Ibrahim bin Abdul Wahab* (1995) 5 SSAR 112 at [9].

169 *Mohamed Ishaq v Salamah d/o Mubarak Ali* [1976] SGMML 1.

170 (1992) 5 SSAR 76.

171 *Re Mohd Shah bin Jantan* (1992) 5 SSAR 76 at [16].

172 *Re Sadali bin Rasban* (1998) 5 SSAR 140 at [4(1)].

173 *Abdul Hafiz bin Mohammad Taha Suhaimi v Maimunah bte Sapawi* (1997) 5 SSAR 133 at [3].

174 *Re Mazlan bin Ahmad* (1998) 5 SSAR 158 at [13].

*Suhaimi v Maimunah bte Sapawi*¹⁷⁵ held that it was fair to allow an application where the appellant is desperate for offspring after more than seven years of marriage.¹⁷⁶ Similarly, the Appeal Board in *Re Mazlan bin Ahmad*¹⁷⁷ had solemnised¹⁷⁸ a polygamous marriage because the applicant's wife, who was reaching 45 years of age, was found to be unable to conceive despite undergoing treatments, which included surgery.¹⁷⁹ In this context, a learned Muslim scholar observed that the goal of marriage is preservation of the human species and Islam encourages Muslim couples to have multiple children regardless of the gender.¹⁸⁰

F. *Non-persuasive factors*

59 There are several factors that have been argued by applicants to justify their application but are deemed either insufficient or not persuasive. For example, the *Kadi* and the Appeal Board have held that an application for a polygamous marriage based on love and affection is insufficient.¹⁸¹ It was explained that “a marriage in Islam is [about] accepting responsibility and offering protection” and not just desire.¹⁸² The applicant “must be prepared to shoulder further responsibility”.¹⁸³

60 Moreover, the Appeal Board has held that an application for polygamy to avoid engaging in adultery (that is, “*zina*” in the Arabic language) is not persuasive and that marriage is neither the only answer nor an avenue for a man who wants to avoid committing adultery.¹⁸⁴ Reference could be made to the findings of the Learned Commenter on Quran 17:32¹⁸⁵ for his view that adultery destroys the basis of a family, is

175 (1997) 5 SSAR 133.

176 *Abdul Hafiz bin Mohammad Taha Suhaimi v Maimunah bte Sapawi* (1997) 5 SSAR 133 at [3] and [13].

177 (1998) 5 SSAR 158.

178 “The Appeal Board’s order was that the husband was permitted to marry a second wife, *ie*, apparently, to solemnise the second marriage, not to register the said marriage under s 106 of the Administration of Muslim Law Act (Cap 3, 1985 Rev Ed)”: *Re Mazlan bin Ahmad* (1998) 5 SSAR 158 at 161.

179 *Re Mazlan bin Ahmad* (1998) 5 SSAR 158 at [3], [13], and [17].

180 Sheikh Yusuf Al-Qaradawi, *The Lawful and the Prohibited in Islam* (Egypt: Al-Falah Foundation for Translation, Publication & Distribution, 2nd Ed, 2001) at p 193.

181 *Salleh bin Suati v Maimunah* (1990) 5 SSAR 10 at [5] and [10]–[11]; *Re Sadali bin Rasban* (1998) 5 SSAR 140 at [4(2)] and [34].

182 *Re Sadali bin Rasban* (1998) 5 SSAR 140 at [4(2)].

183 *Saheeda Banu v Osman Mohamed Sabeer* (1998) 5 SSAR 164 at [8].

184 *Salleh bin Suati v Maimunah* (1990) 5 SSAR 10 at [6]; *Re Asis bin Hutnabee* (1992) 5 SSAR 58 at [7] and [14].

185 “Nor come nigh to adultery: For it is a shameful (deed) and an evil, opening the road (to other evils)”: Abdullah Yusuf Ali, *The Holy Qur’an: Arabic Text with an* (cont’d on the next page)

detrimental towards the children's interests, may cause murders, feuds, loss of reputation and property, and may even weaken the bonds of society.¹⁸⁶ He concludes that it is a sin and should be avoided at all costs.¹⁸⁷

61 An applicant who engages in an illicit extramarital relationship with the second wife-to-be and makes an application for a polygamous marriage would also be rejected. The Appeal Board in *Re Othman bin Abdul Rahman*¹⁸⁸ held that there is no justification for an applicant to take on a second wife if parties have engaged in an illicit extramarital relationship.¹⁸⁹ It was explained that this is a self-serving excuse, and allowing the application is to condone illicit extramarital relationships by irresponsible married men, especially those with meagre financial capability.¹⁹⁰

62 The above examples of applicants attempting to contract polygamous marriages on the basis of avoiding adultery or to formalise the illicit extramarital relationship is not new. In the period prior to the AMLA, a learned author observed that individuals frequently relied on the reasoning that polygamy helps to prevent unlawful sexual relations amongst Muslims, and that they criticised the Syariah court for preventing parties from legalising their unlawful relationship.¹⁹¹ Accordingly, the position of the Appeal Board under the AMLA is a contrast to the position prior to the AMLA. The learned author found that at least four cases amongst those approved for polygamy in 1962 and 1963 involved parties that had either lived together before the application or been associated together for some time.¹⁹²

63 If the second wife-to-be is capable of providing for herself and her family, the application is unlikely to be granted because she has no need of the applicant's protection. For example, in *Hamid*,¹⁹³ the Appeal Board rejected the application because the woman was deemed self-sufficient, as evident from her being gainfully employed and

English Translation and Commentary vol 2 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 703.

186 Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 2 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 703, note 2215.

187 Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 2 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 703, note 2215.

188 (1990) 5 SSAR 15.

189 *Re Othman bin Abdul Rahman* (1990) 5 SSAR 15 at [19]–[20].

190 *Re Othman bin Abdul Rahman* (1990) 5 SSAR 15 at [20].

191 Mehrun Siraj, "The Control of Polygamy" [1964] 6 MLR 387 at 405.

192 Mehrun Siraj, "The Control of Polygamy" [1964] 6 MLR 387 at 405.

193 (1991) 5 SSAR 62.

English-educated; she even had to assist the applicant in drafting his petition for appeal.¹⁹⁴

64 Furthermore, an application could be rejected where there is no happiness to be gained from the marriage. In *Hamid*, the woman was taking care of her blind mother, two handicapped brothers, and was the family's main contributor for household expenditure.¹⁹⁵ Furthermore, her father was a trishaw puller, which implied that he earned a meagre income; thus, the Appeal Board found that there was no happiness to be gained from their marriage due to the appellant's tight financial situation and the appellant's intentions to stay with the second wife-to-be's family.¹⁹⁶

IV. Registering the overseas polygamous marriage in Singapore

65 A married Singapore Muslim man may marry another woman in a foreign jurisdiction. However, the man may not want to contract a polygamous marriage in Singapore because it is perceived to be difficult,¹⁹⁷ which can be observed from the various legal and factual considerations based on precedents by the Appeal Board. Moreover, such foreign marriages do not become automatically recognised in Singapore; there are certain procedures to register the marriage in Singapore, in contrast to a polygamous marriage contracted in Singapore, which would be registered pursuant to s 102(1) of the AMLA.¹⁹⁸

A. Remarriage

66 Under the present AMLA, an overseas polygamous marriage can be registered in Singapore through remarriage.¹⁹⁹ The Appeal Board observed that there are no prohibitions against an applicant who has contracted into an overseas polygamous marriage from remarrying the same person in Singapore.²⁰⁰

67 However, the application could still be rejected despite having been allowed in the foreign jurisdiction. The *Kadi* will abide by Singapore's Muslim legal jurisprudence and the AMLA. As stated earlier, the administration of Muslim law varies amongst countries, and

194 *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [13]–[15].

195 *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [13].

196 *Re Abdul Hamid bin Salim* (1991) 5 SSAR 62 at [13]–[14].

197 *Re Ishack s/o Syed Mohd Mustafa* (1991) 5 SSAR 39 at [3].

198 Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) s 102(1).

199 Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) ss 96(2) and 96(3).

200 *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [4].

decisions from foreign jurisdictions are treated with caution.²⁰¹ There are precedents where the *Kadi* rejected such an application for remarriage.²⁰²

B. Registering through an appeal

68 Under s 106(1) of the AMLA, the Appeal Board is empowered to order a marriage to be registered.²⁰³ The Appeal Board held that registration under s 106(1) requires the Appeal Board to be satisfied with the validity of the marriage that was conducted.²⁰⁴ In determining its validity, there must be evidence that the marriage ceremony satisfies all the essential requirements of a valid marriage in Muslim law.²⁰⁵ For example, it could be observed from the Appeal Board's findings in *Re Othman bin Abdul Rahman*²⁰⁶ that an applicant may produce a marriage certificate that was genuinely issued by a competent authority in that foreign jurisdiction responsible for Muslim religious affairs or Muslim marriages as evidence that all the conditions necessary for a valid Muslim marriage had been satisfied at or during the marriage ceremony.²⁰⁷

69 However, the AMLA does not provide for whether a foreign Muslim marriage certificate is automatically valid in Singapore. For instance, the Appeal Board observed that the then AMLA had no provision that Muslim marriage certificates contracted or issued in Thailand were valid in Singapore.²⁰⁸ Ultimately, the Appeal Board may not allow the polygamous marriage contracted in the foreign jurisdiction to be registered in Singapore despite the appellant having successfully registered the marriage overseas. This is especially where the applicant is found to be unable to support more than one wife or there are doubts regarding the possibility of any social benefit to be gained by society.²⁰⁹

201 *Re Abdul Rahman bin Ibrahim* (1990) 5 SSAR 27 at [14]–[15].

202 See *Re Salleh bin Sawi* (1992) 5 SSAR 74 at [1]–[2] and *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [1] and [4].

203 *Re Ishack s/o Syed Mohd Mustafa* (1991) 5 SSAR 39 at [4]; *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [2].

204 *Re Abdah bte Mohamed* (1996) 5 SSAR 136 at [15].

205 *Re Ishack s/o Syed Mohd Mustafa* (1991) 5 SSAR 39 at [5].

206 (1990) 5 SSAR 15.

207 *Re Othman bin Abdul Rahman* (1990) 5 SSAR 15 at [15].

208 *Re Othman bin Abdul Rahman* (1990) 5 SSAR 15 at [15].

209 *Re Salleh bin Sawi* (1992) 5 SSAR 74 at [2]–[5]. See also *Re Ishack s/o Syed Mohd Mustafa* (1991) 5 SSAR 39 at [17].

V. Singapore's Muslim jurisprudence on polygamy *vis-à-vis* Malaysia

70 The creation of Singapore's AMLA followed the pattern of consolidating legislation on administering Muslim law in the then Federation of Malaya.²¹⁰ The AMLA, in the main, follows the structure of various Administration of Muslim Law enactments in the states of Western Malaysia.²¹¹ A Member of Parliament mentioned that it incorporated provisions requiring permission to engage in polygamy, which was followed by the Malayan States of Selangor, Negri Sembilan, and Perlis.²¹² Accordingly, the AMLA has been regularly reviewed to maintain robustness and ensure it serves the needs of Singapore's Muslim community,²¹³ coupled with developing its own Muslim legal jurisprudence.²¹⁴

71 In Malaysia, the states have their respective Muslim family law statutes. For instance, the Malaysian Federal Territories of Kuala Lumpur, Labuan, and Putrajaya are governed by the Islamic Family Law (Federal Territories) Act 1984²¹⁵ ("IFLA").²¹⁶ With respect to the other Malaysian states, this article examines the Administration of Islamic Family Law Enactment 1985 (Terengganu)²¹⁷ ("IFLT") and Islamic Family Law (State of Selangor) Enactment 2003²¹⁸ ("IFLS").

A. *The Islamic Family Law (Federal Territories) Act 1984*

72 Section 23(1) of the IFLA states that a Muslim man must obtain permission in writing from the court before he can engage in a

210 *Parliamentary Debates Singapore: Official Report* (29 December 1960), vol 14 at col 912 (K M Byrne, Minister for Labour and Law).

211 *Parliamentary Debates Singapore: Official Report* (17 August 1966), vol 25 at col 240 (Inche Othman Bin Wok, Minister for Culture and Social Affairs).

212 *Parliamentary Debates Singapore: Official Report* (30 December 1965), vol 24 at col 770 (Inche Othman Bin Wok, Minister for Culture and Social Affairs).

213 *Parliamentary Debates Singapore: Official Report* (1 August 2017), vol 94 "Second Reading Bill: Administration of Muslim Law (Amendment) Bill" (Assoc Prof Dr Yaacob Ibrahim, Minister for Communications and Information and Minister-in-charge of Muslim Affairs).

214 *Parliamentary Debates Singapore: Official Report* (1 August 2017), vol 94 "Second Reading Bill: Administration of Muslim Law (Amendment) Bill" (Assoc Prof Fatimah Lateef).

215 The Islamic Family Law (Federal Territories) Act 1984 (No 303 of 1984) being referred to in this article is as at 1 January 2014.

216 Islamic Family Law (Federal Territories) Act 1984 (No 303 of 1984) s 1(1).

217 No 12 of 1985. The statute's name in the Malay language is "Enakmen Undang-Undang Pentadbiran Keluarga Islam (Terengganu) 1985".

218 No 2 of 2003. The statute's name in the Malay language is "Enakmen Undang-Undang Keluarga Islam (Negeri Selangor) 2003".

polygamous marriage. When the Syariah court receives the application, the court examines various factors pursuant to s 23(4) of the IFLA:

(4) On receipt of the application, the Court shall summon the applicant and his existing wife or wives, the woman to be wedded, the *wali* of the woman to be wedded and any other person who, in the opinion of the Court, may provide information relating to the proposed marriage to be present at the hearing of the application, which shall be *in camera*, and the Court may grant the permission applied for if satisfied —

(a) that the proposed marriage is just or necessary, having regard to such circumstances as, among others, the following, that is to say, sterility, physical infirmity, physical unfitness for conjugal relations, wilful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife or wives;

(b) that the applicant has such means as to enable him to support as required by Hukum Syarak all his wives and dependants, including persons who would be his dependants as a result of the proposed marriage;

(c) that the applicant would be able to accord equal treatment to all his wives as required by Hukum Syarak; and

(d) that the proposed marriage would not cause *darar syarie* to the existing wife or wives.

Based on the reading of s 23(4) of the IFLA, the Selangor Syariah Appeal Court held that the Muslim applicant has to satisfy ss 23(4)(a)–(d) because these conditions carry the same importance and must be proven separately by the applicant.²¹⁹ Moreover, the court held that the four conditions under s 23(4) of the IFLA are not contradictory to the Quran's principles, especially Quran 4:3, and they are aimed at ensuring the fairness of the marriage as mandated by God.²²⁰ The court also held

219 See the second holding of the court in *Aishah Bte Abd Rauf v Wan Mohd Yusof Bin Wan Othman* [1991] JH VII:

Yang Arif Hakim tidak langsung menyentuh di dalam penghakimannya di atas keterangan dan bukti apakah yang beliau berpuashati bahawa pemohon telah melaksanakan beban membuktikan terhadap soal 'patut dan perlu' berpoligami. Di dalam penghakimannya Yang Arif Hakim seolah-olah berpendapat bahawa apabila seseorang pemohon telah mematuhi syarat (b) di bawah Sek. 23(4) maka dengan secara otomatis syarat (a), (c) dan (d) terbukti dengan sendirinya. Mahkamah ingin mengingatkan bahawa keempat-empat syarat di [bawah] Sek.23(4) adalah sama pentingnya dan hendaklah dibuktikan berasingan.

220 See the fifth holding of the court in *Aishah Bte Abd Rauf v Wan Mohd Yusof Bin Wan Othman* [1991] JH VII:

Keempat-empat syarat di bawah Sek. 23(4) tidak bertentangan dengan al-Quran khususnya surah al-Nisa' ayat ke 3. Syarat-syarat di bawah seksyen
(cont'd on the next page)

that s 23(4) does not abolish polygamy for Muslims but provides constructive conditions that aim to achieve justice for the Muslim family effectively.²²¹

73 A learned author stated that similar provisions requiring the consent or views of the existing wife or wives pursuant to s 23(4) of the IFLA are found in the Islamic family law statutes of Selangor, Perak, Pulau Pinang, Malacca, Pahang and Johor.²²² However, she observed that such a requirement is non-existent in Kedah and Terengganu's Islamic family law statutes.²²³

B. The Islamic Family Law Act 1985 of the State of Terengganu

74 Given that the IFLT does not contain the same conditions found in s 23(4) of the IFLA, this article will compare the IFLA and the IFLT. Subsequently, the relevant precedent that applied s 21 of the IFLT in relation to Muslim polygamy will be examined. Section 21 of the IFLT simply provides that a Muslim man is prohibited from contracting into a marriage with another woman, regardless of location, during the subsistence of a marriage except with prior written permission of the judge of the Syariah court.²²⁴ The Syariah Subordinate Court of Kuala Terengganu ("KT Syariah Court") held that in deciding to grant the permission, the following factors have to be examined: whether (a) he can be just to his wives; (b) he has the means to support the wives and his other dependants; (c) the proposed union is necessary and a must; (d) the proposed union will cause *darar syarie* to the existing wife and children; and (e) the proposed union will lower the standard of living

itu adalah bertujuan untuk memastikan keadilan beristeri yang dituntut sebagai wajib oleh al-Quran.

See also *Syarie Prosecutor v Shafie bin Mohd Omar* [2009] 4 ShLR 177 at [43].

221 See the fifth holding of the court in *Aishah Bte Abd Rauf v Wan Mohd Yusof Bin Wan Othman* [1991] JH VII:

Sek. 23(4) tidak bertujuan untuk menghapuskan poligami tetapi memperuntukkan syarat-syarat yang membina dengan harapan keadilan bagi keluarga Islam dapat tercapai dengan lebih berkesan lagi.

See also *Syarie Prosecutor v Shafie bin Mohd Omar* [2009] 4 ShLR 177 at [43].

222 Zainunnisaa Binti Abd Rahman "Notification and Consent of Existing Wife for Polygamous Marriage: A Comparative Study" [2005] 4 ShLR 31 at 34, fn 17.

223 Zainunnisaa Binti Abd Rahman "Notification and Consent of Existing Wife for Polygamous Marriage: A Comparative Study" [2005] 4 ShLR 31 at 34, fn 17.

224 "Tiada seseorang lelaki boleh berkahwin dengan seseorang perempuan lain di mana-mana tempat dalam masa dia masih beristerikan isterinya yang sedia ada kecuali dengan terlebih dahulu mendapat kebenaran secara bertulis dari Hakim Syar'i": Administration of Islamic Family Law Enactment 1985 (No 12 of 1985) (Terengganu) s 21.

that has been enjoyed or expected to be enjoyed by the existing wife or wives and his dependants, either directly or indirectly.²²⁵

75 The KT Syariah Court explained that the first factor relates to specific things that a husband can naturally do, such as providing shelter, and spending equal time with each wife.²²⁶ The court explained that the concept of justice excludes matters that are not humanly implementable, such as providing the same amount of affection toward each wives, as manifested by Quran 4:129.²²⁷ If the applicant feels that he is unable to be just to his wives, he should not engage in it because practising polygamy is not a necessity and is subjected to the condition of justice under Quran 4:3.²²⁸ The court also warned that those who practise polygamy despite being unable to treat their wives fairly will be punished in the hereafter pursuant to Quran 43:65²²⁹ because they are deliberately oppressing and tyrannising women.²³⁰

76 The KT Syariah Court explained that the second factor concerns the applicant's ability to shoulder the responsibility for all his wives and dependants, including those who shall be his dependants in connection with the proposed marriage.²³¹ The court highlighted that the applicant has an obligation to provide (a) appropriate and reasonable subsistence for his wives and children according to his ability; (b) guidance and education, which includes religion, for the children pursuant to Islamic commandments; (c) care and protection for the wife and children from any danger pursuant to God's command in Quran 65:6;²³² and (d) wise guidance for his wives and children to achieve a life that pleases God.²³³

77 The KT Syariah Court explained that the third factor provides that the proposed marriage must be appropriate and necessary in the circumstances. This refers to situations where the first wife is barren, physically infirm, insane, or is unable or deliberately refuses to engage in

225 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [17], [22]–[24] and [28].

226 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [17].

227 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [18].

228 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [19].

229 "... then woe to the wrong-doers, from the Penalty of a Grievous Day!": Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 3 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 1338.

230 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [20].

231 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [22].

232 "Let the women live (in 'iddat) in the same style as ye live, according to your means; annoy them not, so as to restrict them ...": Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 3 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at pp 1564–1565.

233 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [22].

sexual intercourse.²³⁴ The KT Syariah Court explained that the fourth factor concerning *darar syarie* involves the applicant being completely satisfied, after sincere consideration, that the second marriage does not have a negative impact on the first wife's and children's soul and feelings.²³⁵ Moreover, the court highlights that it must not harm the life of the first wife as well as the children pursuant to the principle of consideration that avoiding harm must be preceded by benefits.²³⁶ The court stated that a man prioritising his own interest in a polygamous marriage would just be satisfying his sexual desires; there must be consideration for safeguarding and maintaining the interests of the existing wife and her children to ensure happiness in the household.²³⁷ Furthermore, the court held that the polygamous marriage will not be allowed if the well-being and interests of the first wife and her children, such as the children's education, are in danger of being neglected, causing them to turn to crime.²³⁸

78 The KT Syariah Court explained that the fifth factor concerns whether the proposed marriage will directly or indirectly diminish the current quality of life that is supposed to be enjoyed by his wife and dependants if the marriage does not occur.²³⁹ The court highlighted that a marriage in Islam is not an ordinary contract but a strong covenant as God commanded in Quran 4:21,²⁴⁰ and is deemed virtuous because it forges the bond between two people to achieve the happiness and blessings of God's grace.²⁴¹ Therefore, the court stated that marriage has certain goals besides merely satisfying sexual needs, such as creating legitimate offspring, providing peace of mind, and creating a sense of peace and prosperity due to the affection between the husband and wife.²⁴²

79 From the above, it appears that the approaches of the Syariah court in Terengganu, based on precedent, and the court in the Federal Territories, based on s 23(4) of the IFLA, are generally the same.

234 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [23].

235 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [24] and [25].

236 The principle is explained in the Malay language: "Perhitungan ini adalah perlu berdasarkan kaedah feqah yang maksudnya: 'Menolak perkara kerosakan mestilah didahulukan di atas perkara yang membawa kebaikan.'" See *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [25].

237 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [26].

238 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [27].

239 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [28].

240 "And how could ye take it when ye have gone in unto each other, and they have taken from you a solemn covenant?": Abdullah Yusuf Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 1 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 185.

241 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [28].

242 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [29].

C. Comparisons to Singapore

80 For simplicity, this article does not aim to examine every single difference or similarity between Singapore and Malaysia; just the most obvious and fundamental ones.

(1) Statute and jurisprudence

81 *Prima facie*, s 23(4) of the IFLA appears to be a combination of ss 96(2) and 96(3) of the AMLA as well as the requirements of r 11 of the MMDR1968 and r 5 of the MMDR1999. For example, s 23(4) of the IFLA highlights that the court will summon individuals during its inquiry, similar to r 5. Notably, a learned author observed that a wife is provided a single opportunity to be notified of her husband's application under the AMLA while the IFLA provides her with two opportunities (that is, when her husband seeks her consent and when she is summoned for the hearing).²⁴³ Moreover, s 23(4)(a) of the IFLA lists the circumstances that the court will examine, akin to r 11(b). However, it bears repeating that r 5 has replaced r 11; thus, the substantive factors for consideration are not codified, unlike under the IFLA. Accordingly, the AMLA's provisions on polygamy are to a small extent similar to the IFLT because both omit the consideration of substantive factors, which arguably accords flexibility to the Syariah court in making its assessment.

82 Section 23(4)(a) of the IFLA requires the court to consider that the application is “just *or* necessary” [emphasis added] while the KT Syariah Court²⁴⁴ will consider whether the application is “just” under the first factor and “necessary” under the third factor. It is posited that the requirement under the IFLA is similar to Singapore's position where the applicant has to show that there is either an “urgent need or necessity” or “a good reason”, in comparison to precedents applying the IFLT. Furthermore, the requirement of a “lawful benefit” pursuant to s 96(3) of the AMLA is not explicitly stated in either s 23(4) of the IFLA or the IFLT. However, it is arguable whether Singapore's concept of a “lawful benefit” is covered as a consideration under the factors pursuant to the Malaysian precedent.

83 Section 23(4)(b) of the IFLA is similar to r 5 of the MMDR1999 while s 23(4)(c) is a determination to be made by the *Kadi* and the Appeal Board under Singapore's circumstances. Under s 23(4)(d), the term “*darar syarie*” refers to “harm, according to what is normally

243 Zainunnisaa Binti Abd Rahman, “Notification and Consent of Existing Wife for Polygamous Marriage: A Comparative Study” [2005] 4 ShLR 31 at 43.

244 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [17]–[21] and [23].

recognised by [Muslim law], affecting a wife in respect of religion, life, body, mind, or property”.²⁴⁵ Notably, this requirement does not appear to be explicitly addressed in the AMLA but is arguably a consideration of the *Kadi* and the Appeal Board in Singapore. When examining the evidence, factors such as the emotional impact on the wives and the relationship between parties are taken into account.

84 It can be seen that both jurisdictions are in agreement that a Muslim applicant’s practice of polygamy is not absolute. The Appeal Board,²⁴⁶ the Malaysian KT Syariah Court²⁴⁷ and the Malaysian Syariah Subordinate Court of Shah Alam, Selangor²⁴⁸ have held, pursuant to God’s command in Quran 4:3, that the permission to marry more than one wife is only granted provided certain conditions are satisfied. Moreover, a Malaysian High Court, in making a determination on a constitutional challenge, held that the statutory requirement for an applicant to obtain permission before engaging in polygamy is constitutional because polygamy is permissible but it is not a religious obligation.²⁴⁹

(2) *Penal punishment*

85 In the respective Malaysian states, the statute provides that a Muslim citizen who engages in polygamy either within or outside jurisdiction without the court’s written permission would be punished with a fine or imprisonment or both. It was held by the Selangor Syariah Court of Malaysia (“Selangor Syariah court”) in *Syarie Prosecutor v Aziz bin Johari*²⁵⁰ that pursuant to God’s command in Quran 4:59,²⁵¹ Islam

245 Nora Abdul Hak, “Just and Equal Treatment in Polygamous Marriage: The Practice in the Shariah Courts in Malaysia” (2008) 16 IIUMLJ 141 at 147.

246 *Ayisha Begum d/o K M K Saigu Abdul Kader v Hajiah Maideen s/o Nainamusa* (1988) 5 SSAR 1 at [28]; *Re Yusope bin Lasim* (1991) 5 SSAR 53 at [15].

247 *Re Amirudin bin Abd Rashid* [2008] 2 ShLR 171 at [14].

248 *Syarie Prosecutor v Hakim bin Sukirman* [2008] 1 ShLR 127 at [43]–[44].

249 *Zakaria bin Abdul Rahman v Ketua Polis Negara Malaysia* [2001] 3 MLJ 385. The facts of this case involve a plaintiff, a civil servant, who married a second wife despite the defendant’s denial of his request. The defendant brought disciplinary actions against the plaintiff, who was subsequently found guilty under two charges – conduct that brought the public service into disrepute; and insubordination by committing polygamy – which resulted in his dismissal. The plaintiff was dissatisfied and applied for judicial review to determine whether the charge for insubordination was unsustainable as it transgressed his right to practise his religious belief as enshrined in Art 11 of the Federal Constitution of Malaysia. The judge disagreed with him.

250 [2008] 3 ShLR 111.

251 “O ye who believe! Obey God, and obey the Apostle, and those charged with authority among you. If ye differ in anything among yourselves, refer it to God [ie, the Quran] and His Apostle [ie, the *Hadiths*], If ye do believe in God and the Last Day. That is best, and most suitable for final determination”: Abdullah Yusuf
(*cont’d on the next page*)

empowers the Government to direct and order its citizens to follow certain directives, such as the prohibition of unauthorised polygamy, as long as they do not conflict with Muslim law.²⁵² Section 123 of the IFLA provides:

Any man who, during the subsistence of a marriage, contracts another marriage in any place without the prior permission in writing of the Court commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or both.

This section is similar to s 120 of the IFLT and s 124 of the IFLS. The Selangor Syariah court held that the main objective in determining the appropriate sentence is that it serves as a lesson and reminder, amongst other considerations, for the accused and the Muslim society so that others do not commit the same offence as the accused.²⁵³

86 The Selangor Syariah court explained that the general purpose of the law is to benefit Malaysia's Muslims, including Selangor, by curbing the contracting of polygamous marriages outside of Malaysia without obtaining consent.²⁵⁴ The Selangor Syariah court also found that although the severity of the punishment for contracting in an unauthorised polygamous marriage is not as serious as that of other criminal offences, unauthorised polygamy must be contained because it would cause social problems such as divorces and illegitimate children.²⁵⁵ Nevertheless, the Selangor Syariah court opined that the total number of Syariah criminal penalties should be increased to ensure the court's credibility and public respect of Muslim law.²⁵⁶ The current maximum fine of RM1,000 (that is, S\$328.68)²⁵⁷ is ineffective since many have the ability to pay, and it is not the best solution to educate the masses.²⁵⁸

87 Without going beyond the scope of this article, the AMLA neither requires the Muslim man to obtain the court's written permission before entering into a polygamous marriage, whether in Singapore or overseas, nor provides for an accompanying penal punishment for failure to obtain the court's permission. Although the

Ali, *The Holy Qur'an: Arabic Text with an English Translation and Commentary* vol 1 (India: Shaikh Muhammad Ashraf, 3rd Ed, 1937) at p 198.

252 *Syarie Prosecutor v Aziz bin Johari* [2008] 3 ShLR 111 at [35]–[36].

253 *Syarie Prosecutor v Aziz bin Johari* [2008] 3 ShLR 111 at [30]; *Syarie Prosecutor v Shafie bin Mohd Omar* [2009] 4 ShLR 177 at [38].

254 *Syarie Prosecutor v Shafie bin Mohd Omar* [2009] 4 ShLR 177 at [44]–[45].

255 *Syarie Prosecutor v Shafie bin Mohd Omar* [2009] 4 ShLR 177 at [60].

256 *Syarie Prosecutor of Selangor v Moktar bin Radin* [2010] 3 ShLR 148 at [50].

257 Based on the exchange rate of RM1 to S\$0.33 (as at 3 June 2019).

258 *Syarie Prosecutor of Selangor v Moktar bin Radin* [2010] 3 ShLR 148 at [50].

requirement for the *Kadi* to make an evidentiary inquiry applies to applicants making an application to contract a polygamous marriage within Singapore, the same requirement does not apply to a Singapore Muslim man contracting a polygamous marriage in a foreign jurisdiction. There are precedents of Singapore Muslim men contracting polygamous marriages in foreign jurisdictions such as Thailand²⁵⁹ and Indonesia,²⁶⁰ which could be due to the perceived difficulties of contracting a polygamous marriage in Singapore.²⁶¹ The addition of the requirement of a Singapore Muslim man to obtain the court's written permission before contracting another marriage and the penal punishment to the AMLA could be something for the Singapore legislature to consider to deter Singapore Muslim men from entering into overseas polygamous marriages that are unregistered in Singapore.

VI. Conclusion

88 Singapore's legal jurisprudence on polygamous marriages has come a long way since the enactment of the AMLA in 1968. There are currently established legal principles based on the Appeal Board's decisions that are consonant with the interests of Singapore's jurisdiction. More importantly, it accurately reflects the principles espoused in the sources of Muslim law and will continuously be refined.

89 With respect to comparisons to Malaysia's Muslim family law statutes and jurisprudence on polygamy, it is apparent that there are similarities in terms of legal principles. However, Malaysia has taken the additional step of deterring Malaysian Muslim men from engaging in unauthorised polygamous marriages, especially outside their jurisdiction, through the requirement of a written permission as well as deterrence through penal punishment to protect their society's well-being. Although the Malaysian Syariah courts recognise that their penal punishment is still inadequate to have the desired impact, it is this author's humble view that such penal punishment may nonetheless be a further step to be adopted here to achieve equity.

90 From an analysis of the Muslim legal jurisprudence on polygamy, it is clear that Singapore's Syariah courts ensure that the practice of polygamy achieves equity for all parties concerned. However,

259 *Re Othman bin Abdul Rahman* (1990) 5 SSAR 15 at [4] and [8]; *Re Ishack s/o Syed Mohd Mustafa* (1991) 5 SSAR 39 at [3]; *Re Asis bin Hutnabee* (1992) 5 SSAR 58 at [9]; *Re Salleh bin Sawi* (1992) 5 SSAR 74 at [2].

260 *Re Abdul Talib bin Salay* (1996) 5 SSAR 114 at [1]; *Re Mazlan bin Ahmad* (1998) 5 SSAR 158 at [10] and [12]; *Re Adam bin Arifin* (1999) 5 SSAR 168 at [24] and [27]; *Re Ja'afar bin Kassim* (2010) 5 SSAR 179 at [5].

261 *Re Ishack s/o Syed Mohd Mustafa* (1991) 5 SSAR 39 at [3].

challenges remain in terms of Singapore Muslim men contracting overseas polygamous marriages that are unregistered in Singapore. The Malaysian courts could mete out penal punishment as deterrence but policy-centric approaches of educating the masses may also achieve the desired effect. Ultimately, it is arguable that a combination of both may be beneficial in Singapore.
