Afghanistan: Legality of Multiple Marriages of Afghan Citizens in Pakistan

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Executive Summary

The Civil Code of Afghanistan allows polygamy under certain conditions, no matter where it takes place.

Laws of Afghanistan Regarding Polygamy

According to Article 86 of the Civil Code of Afghanistan, polygamy can take place after the following conditions are fulfilled:

1. When there is no fear of injustice between the women;
2. When the person has financial sufficiency such as suitable food, clothing, house and medical treatment to maintain the wives; and,
3. When there is legal expediency such as sterility of the first woman or being afflicted with a hard to treat disease.

The following additional provisions of the Civil Code apply to situations where polygamy has taken place:

Article 87. The woman whose husband has married contrary to the provisions of Article 86 of this law, may demand divorce from the court in accordance with the provisions of 183 of this law on the grounds of damage.

Article 88. The woman may, at the time when the marriage contract is being concluded, make the marriage subject to the condition that if her spouse would marry another wife contrary to the provisions of Article 86 of this law, the right of divorce shall be transferred to her. This condition will be valid when it is mentioned in the marriage contract.

Article 89. When a person at the time of marriage to more than one wife according to Article 86 of this law conceals his previous marriage and has failed to secure the clear consent and agreement of the woman who has married recently, in that case the newly married wife, in case she could not agree to continue living with the husband, can demand divorce from the court in accordance with the provision of article 183, on the basis of damage.

Article 183. When the wife claims a damage as a result of the relations with the husband which makes continuing of the relations under such conditions impossible between similar spouses, she can demand divorce from the court. (Translated by author).
Laws of Afghanistan with Respect to Place of Marriage

The Civil Code of Afghanistan has the following provisions regarding the place of a legal event:

Article 16. In case of ascertaining legal relations in which the laws are contradictory, provisions of the law of Afghanistan shall be applicable.

Article 19. As regards the subjective conditions of the validity of a marriage, the respective laws of each of the spouses shall be applicable. But with respect to the formative conditions, the provisions of the laws of the country shall be applied where the marriage is taking place.

Article 20. With regard to divorce, the provisions of the law of the country of the citizenship of the husband shall be applied. (Translated by author).

Conclusion

Article 86 of the Civil Code of Afghanistan allows polygamy under certain conditions, no matter where it takes place. With respect to divorce, according to Article 20 of the Civil Code the provisions of the laws of the country of the husband’s citizenship will be applicable.

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