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## Redefining Polygamy Among the Palestinian Bedouins in Israel: Colonialism, Patriarchy, and Resistance

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# REDEFINING POLYGAMY AMONG THE PALESTINIAN BEDOUINS IN ISRAEL: COLONIALISM, PATRIARCHY, AND RESISTANCE

RAWIA ABU RABIA\*

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## I. INTRODUCTION

*“[When] Samira, a Bedouin woman from one of the villages in the Naqab<sup>1</sup> desert of Israel, found out about her husband’s intentions to marry a second wife, she decided to resist her polygamous husband. Samira filed a complaint at the Israeli police station. The Bedouin policeman refused to register her complaint saying: ‘Do you want to get me into trouble with your tribe?’<sup>2</sup> She went to the head of the police station, an Israeli (Jew) that told her, ‘I cannot do anything about it, it is an internal matter I suggest you to talk with the Sheikh.’<sup>3</sup> She went to the Sheikh and was told, ‘I don’t understand what do you want from me, your husband can marry more than one wife. He is a Muslim, isn’t he?’<sup>4</sup>*

It is easier to write an article that tackles a legal issue than an article

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1. In Hebrew, the southern part of Israel is called the Negev. I will use the word “Naqab,” which is the Arabic term for the region.

2. In the Bedouin society there is a hierarchical division between the tribes based on their historical origin as Bedouins.

3. See *Sheikh – Definition*, WORDIQ.COM, <http://www.wordiq.com/definition/Sheikh> (last visited Sept. 28, 2010) (defining the term “Sheikh” as (1) a high status leader or (2) religious figure).

4. The author is a Arab Bedouin woman who works with other Bedouin women. Therefore, this analysis of the Bedouin society takes place from both an inside and outside perspective.

analyzing an interdisciplinary issue. With respect to a legal question, it is usually clear which issue is pending, which law was violated, which right was harmed, and which methods are available for rectifying the injustice. The arena of action is the legal arena, the tools are legal tools, and the language is legal language.

But how do we tackle an issue that is simultaneously legal, social, cultural, and political, and that pertains to the Arab Bedouin women in the Naqab? How do we deal with the phenomenon of multiple wives in the Naqab, a phenomenon that is gaining momentum and reaching a rate of up to thirty percent?<sup>5</sup> How do we deal with the invisibility of Bedouin women in polygamous marriages, the invisibility of citizens in the eyes of the Israeli law, and the invisibility of women in the eyes of the Bedouin society? How do we crack the conspiracy of silence surrounding the phenomenon of polygamy, and discern the mechanisms that perpetuate it and those who have an interest in perpetuating it?

The aim of this study is to explore theories that explain why polygamy has increased within the Palestinian Bedouin population of the Naqab in Israel. It serves as a framework to unmask the mechanisms of power in those societies in which polygamy takes place and suggests alternative explanations for the increased prevalence of polygamy among the Palestinian Bedouin population. As we begin to discuss the phenomenon of polygamy, we must take into account the broader context in which polygamy occurs. We must analyze the changes that Bedouin women have faced in the last sixty years, which have led to both the oppression and agency of Bedouin women. We must take into account that Bedouin women are not helpless, frozen in time and space, and that culture is fluid and exists as a true space of agency. We also must analyze the mechanisms of power that operate to silence and debilitate Bedouin women, and to preserve their absence and transparency.

Polygamy in the Arab Bedouin society is not a phenomenon that occurs in a vacuum. It operates in the intersection of colonial power<sup>6</sup> and patriarchal power. These terms—"patriarchy" and "colonialism"—are loaded words. In this context, colonial power is the way in which Israel

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5. See Orly Lotan, *Polygamy Among the Bedouin Community in Israel*, KNESSET RES. AND INFO. CTR. 1, 1 (2006) (in Hebrew), <http://www.knesset.gov.il/mmm> (providing estimates that confirm polygamy exists among twenty to thirty-six percent of households in the Naqab); see also Aref Abu-Rabia et al., *Polygyny and Post-nomadism Among the Bedouin in Israel*, 3 ANTHROPOLOGY MIDDLE EAST 20, 23 (2008) (estimating that close to forty percent of Bedouin women are in polygamous marriages, a significant increase from previous estimates).

6. See Oren Yiftachel, *Epilogue: Studying Naqab/Negev Bedouins: Toward a Colonial Paradigm?*, 8 HAGAR STUD. CULTURE, POLITY & IDENTITIES (Special Issue) 1, 3 (2008) (adopting the colonial paradigm to assess key aspects of Bedouin life in the Naqab).

exercises its political power as a State towards its non-Jewish citizens. Colonial power segregates Bedouin society internally by supporting the traditional tribal system and by condoning practices such as polygamy.<sup>7</sup> Patriarchal power is the way in which Bedouin men exercise their domination over Bedouin women in a hierarchical society based on gender differences.

Such power simultaneously operates both actively and reactively within the Bedouin society and in relation to the State and its colonial power. The State of Israel's colonial power operates alongside the patriarchal power of Bedouin men. The division between the mechanisms of power is not binary but changes constantly. The exercise of the colonial power by the State of Israel encourages patriarchy and weakens Bedouin women. The operation of these powers leads eventually to the externalization of polygamy from the legal system and to the invisibility of Bedouin women in the eyes of the law.

Part II of this Article will examine the existing research on polygamy, alongside the changes that Bedouin women have experienced in the last sixty years. It will also address the reasons that prevent Bedouin women from resisting polygamy. Part III will address the legal dimension of polygamy under international law, Israeli criminal law, and personal law as governed by Shari'a. Part IV will analyze this research and will include a presentation of polygamy's alternative genealogies. This Article will frame the exercise of colonial power through Israel's land confiscation, urbanization, and economic and international political policies. This Article will then study patriarchal power as a suppressive power reactive to the State's colonial power. It will analyze how the operation of these powers leads to the invisibility of Bedouin women by the externalization of polygamy from the legal system. Part V will look beyond the binary of the colonizer/colonized and examine whether Bedouin women are powerless. This Article will conclude by addressing polygamy as a case study and demonstrate the mechanisms of colonial and patriarchal powers, which silence and debilitate Bedouin women.

## II. THE PALESTINIAN BEDOUIN WOMEN IN ISRAEL

Bedouin women have been through significant social, economic, and political changes. These changes have affected their status as women, their gender relations, and the prevalence of polygamy in their societies. These changes have led Bedouin women to deal with multiple mechanisms of power both internally, as part of the patriarchal society, and externally, as an ethnic minority in Israel.

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7. *Id.* at 7.

### A. Undergoing Change

In the last sixty years, Palestinian Bedouin society has undergone dramatic changes in kinship structure, economic structure, and political power. These changes have drastically impacted the sense of self and community among the Arab-Bedouin population in Israel. The State of Israel forced the Arab-Bedouin people to resettle in impoverished townships and, as a result, they underwent a process of social and economic marginalization.<sup>8</sup> Such constant changes have impacted gender relations, the status of Bedouin women, and the prevalence of polygamy in the Bedouin society of the Naqab. Bedouin women face a new reality in which they are forced to deal with multiple mechanisms of power, both internally from the patriarchal Bedouin Society and externally from the State of Israel.

In the first half of the 20th century, Bedouins had a sedentary existence in the north of the Naqab. They subsisted on agriculture and pastoralism.<sup>9</sup> As the State of Israel came into being in 1947, between 11,000 and 18,000 Bedouin people lived in the Naqab.<sup>10</sup> In the early 1950s, the State of Israel forced the Bedouin people to relocate to “*muntagat as-siyaj*,”<sup>11</sup> where they lived under military rule until 1966.<sup>12</sup> The State restricted the Bedouins’ mobility and required them to obtain special permits in order to pursue employment and educational opportunities in Israel. Consequently, Bedouins, particularly women, had virtually no access to formal education.<sup>13</sup>

Prior to 1948, women had played a significant role in Bedouin society,

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8. See, e.g., Abu-Rabia et al., *supra* note 6, at 29 (suggesting that the Israeli government policy of relocating nomadic Bedouins in towns has contributed to socio-economic stratification within Bedouin society).

9. Cedric Parizot, *Crossing Borders, Reinforcing Boundaries: Kin-Nection of Negev Bedouin in Gaza, the West Bank and Jordan*, in CROSSING BORDERS, SHIFTING BOUNDARIES: PALESTINIAN DILEMMAS 60 (Sari Hanafi ed., 2008).

10. SHLOMO SWIRSKI & Yael Hasson, ADVA CTR., INVISIBLE CITIZENS: ISRAELI GOVERNMENT POLICY TOWARD THE NEGEV BEDOUIN 6 (2005) (stating that the majority of Bedouins were expelled by the State of Israel, or fled to Jordan and Egypt, but many stayed in the Negev).

11. See *id.* (stating that Bedouins who had been uprooted from their homes relocated to an area in northeastern Negev called “Siyag”).

12. See Ghazi Falah, *Israel State Policy Toward Bedouin Sedentarization in the Negev*, 18 J. PALESTINE STUD. 71, 78-79 (1989) (stating that in 1951 Israeli military authorities evicted and transferred eleven tribes from the “Siyag” to a “closed area” to the east of Beersheba, and prohibited this group from leaving this location for the next fifteen years).

13. See Sarab Abu-Rabia-Queder, *Does Education Necessarily Mean Enlightenment? The Case of Higher Education Among Palestinians-Bedouin Women in Israel*, 39 ANTHROPOLOGY & EDU. Q. 381, 384 (2008) [hereinafter Abu-Rabia-Queder, *The Case of Higher Education*] (noting that it was not until 1988 that the first Bedouin woman was admitted to a university in the Naqab region, and that by 1998, only twelve Bedouin women had received their bachelor’s degrees).

and the division of labor between men and women was clear. Women were in charge of farming while men were responsible for guarding the land and receiving visitors.<sup>14</sup> Thus, Bedouin men were mostly dependent on the knowledge and decision-making of women with respect to domestic livelihood. Bedouin women were also involved in decision-making on issues such as relations with neighbors and the marriage of their daughters, which meant that they exercised a certain amount of power.<sup>15</sup> However, with the forced resettlements, women's roles changed dramatically. Their productive roles as farmers were no longer functional in their newly constrained domestic spaces. As such, the resettlement process reinforced Bedouin women's dependency on men.

These changes led to a paradoxical situation that jeopardized the well being of the Bedouin women.<sup>16</sup> The disintegration of the economic structure of the Bedouin society within the urban labor markets of Israeli society has forced Bedouins to rely on external economic resources that are beyond the direct control of its members, particularly Bedouin women.<sup>17</sup> As a result, changes in the economic structure of the family have excluded Bedouin women from positions of power and have increased their dependence on men. This process led to social constraints in which Bedouin women are at risk of being left without the internal social support that previously enabled their socialization, well being, and contribution to social stability.<sup>18</sup>

One significant change in women's lives in the Naqab is the increasing prevalence of polygamy. The prevalence of polygamy redefined Bedouin women's marginality as they were suddenly subjected to triple marginalizations by being (1) women in a (2) patriarchal-tribal society as part of (3) an ethnic minority in a Jewish State.

### *B. Polygamy in the Literature*

Polygamy is defined as "a marital relationship involving multiple

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14. See AREF ABU-RABIA, *THE NEGEV BEDOUIN AND LIVESTOCK REARING: SOCIAL, ECONOMIC AND POLITICAL ASPECTS* 40 (1994) (providing an example of the typical duties of Bedouin men and women).

15. See Sarab Abu-Rabia-Queder, *Coping with 'Forbidden Love' and Loveless Marriage: Educated Bedouin Women from the Negev*, 8 *ETHNOGRAPHY* 297, 301 (2007) (asserting that Bedouin women's productive roles have been abrogated by modern services).

16. See Gillian Lewando-Hundt, *The Exercise of Power by Bedouin Women in the Negev*, in *THE CHANGING BEDOUIN* 86 (Emanuel Marx & Ahron Shmoeli eds., 1984) (arguing that wage labor increases segregation from men and limits the extent of women's power and influence).

17. See *id.* (discussing the rapidly decreasing presence of nomads in the Negev).

18. See *id.* (pointing out that new economic structures have major implications regarding social norms).

wives.”<sup>19</sup> Polygamy is widely practiced in 850 societies across the world.<sup>20</sup> Polygamous marriages exist in the Middle East, North Africa, Eastern Asia, and in some communities in Europe and North America.<sup>21</sup>

Scholars have examined the various causes of polygamy. In some societies, polygamy is a status symbol—a marker of a man’s economic success.<sup>22</sup> Another potential reason for polygamy is the desire to increase the number of children within a family.<sup>23</sup>

In certain societies, polygamy can be economically advantageous by increasing the labor power of the family, which in turn helps to increase the power and prestige of the family.<sup>24</sup> Another reason may be demographic; women of marriageable age are more numerous than men, and child mortality rates are high.<sup>25</sup> Other explanations for polygamy in Arab culture suggest multiple social, cultural, economic, and religious factors working together.<sup>26</sup>

Studies of the prevalence of rates of polygamy in rural versus urban settings are inconclusive. One study found no significant differences between the prevalence of monogamous and polygamous marriages on the basis of rural versus urban residency.<sup>27</sup> Meanwhile, another study found that the number of wives per union in rural areas was higher than in urban areas.<sup>28</sup>

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19. Bobbi S. Low, *Measures of Polygyny in Humans*, 29 CURRENT ANTHROPOLOGY 189, 189 (1988).

20. Salman Elbedour et al., *The Effect of Polygamous Marital Structure on Behavioral, Emotional, and Academic Adjustment in Children: A Comprehensive Review of the Literature*, 5 CLINICAL CHILD & FAM. PSYCHOL. REV. 255, 256 (2002).

21. Alean Al-Krenaw et al., *Attitudes Toward and Reasons for Polygamy Differentiated by Gender and Age Among Bedouin-Arabs of the Negev*, 35 INT’L J. MENTAL HEALTH, no. 1, 2006 at 46, 47.

22. See Roger Klomegah, *Socio-Economic Characteristics of Ghanaian Women in Polygynous Marriage*, 28 J. COMP. FAM. STUD. 73, 76 (1997) (suggesting that polygamy differentiates between the haves and the have-nots).

23. See *id.* (pointing out that polygamy can serve as a means of achieving societal ideals and goals—namely having many children); see also Francis J. Sichona, *The Polygyny Fertility Hypothesis Revisited: The Situation in Ghana*, 25 J. BIOSOCIAL SCI. 473, 481 (1993).

24. See Klomegah, *supra* note 23, at 76 (arguing that agricultural production depends on manpower, making a large number of children profitable); see also Halen Ware, *Polygyny: Women’s Views in a Transnational Society, Nigeria 1975*, 41 J. MARRIAGE & FAM. 185, 185-86 (1979).

25. See Klomegah, *supra* note 23, at 76 (emphasizing the desire to ensure the presence of children—important for labor, emotional support, and old-age security).

26. See Glenn E. Weisfeld, *Sociobiological Patterns of Arab Culture*, 11 ETHOLOGY & SOCIOBIOLOGY 23, 24 (1990).

27. Sara Ann Peterson, *Marriage Structure and Contraception in Niger*, 31 J. BIOSOCIAL SCI. 93, 103-04 (1999).

28. Cf. Klomegah, *supra* note 23, at 73 (suggesting that the higher frequency of rural polygyny in Ghana may have to do with rural widow remarriage).



Polygamous marriages are more common within Islam than in other religions.<sup>29</sup> Polygamy has been an undisputed structure within Islamic family law for more than thirteen centuries, and some argue that polygamy persists nearly to the point of being ineradicable because it is derived from divine Islamic law.<sup>30</sup>

Some interpret Islamic law's approach to polygamy as protecting Muslim women because divine law restricts the number of wives a man can have, whereas, before Islam, a man could take as many wives as he wanted.<sup>31</sup> Thus, restrictions on polygamy actually reduced the number of wives that men can take. Other interpretations of Islam's impact on the practice have examined polygamy from a sociological approach. During the expansion of the Muslim empire, many men died in wars. Scholars argue that the institution of polygamy at that time served the purpose of taking care of widows and orphans.<sup>32</sup>

Other interpretations suggest that polygamy is the exception to the general rule of monogamy in Islam,<sup>33</sup> since polygamy is only permitted under certain conditions. For instance, no man can have more than four wives at any one time, the man must be able to financially support more than one wife, and the man must treat all his wives equally.<sup>34</sup> The most important condition is that of justice between co-wives.<sup>35</sup> Reformist approaches have adopted a restrictive interpretation which argues that the threat of injustice will exist in nearly all cases of polygamy, necessitating the total ban of polygamy or heavy restrictions placed upon the practice.<sup>36</sup>

### *C. Bedouin Women and Polygamy*

The practice of polygamy is a central part of Bedouin women's lives. Some of them are part of polygamous marriages as co-wives. Others are familiar with polygamy through family members who practice it. Still, others encounter the practice from a professional context as social workers,

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29. *See id.* at 74 (finding that that rate of polygamy among Muslims was 47.2%, compared to only 17.3% among Catholics).

30. *See* TOVE STANG DAHL, *THE MUSLIM FAMILY: STUDY OF WOMEN'S RIGHTS IN ISLAM* 180 (1997) (clarifying that the Koran recognizes a place for polygamy despite urging caution in its adoption).

31. *See id.* at 181 (limiting the number of wives to four).

32. *Id.*

33. DAVID PEARL & WERNER MENSKI, *MUSLIM FAMILY LAW* 237 (3d ed. 1998) (quoting V. P. BHARATIYA, SYED KHALID RASHID'S *MUSLIM LAW* 74 (3d rev. & enl. ed. 1996)).

34. J. Chamie, *Polygyny Among Arabs*, 40 *POP. STUD.* 55, 55 (1986).

35. *See* MOHAMMAD HASHIM KAMALI, *FREEDOM, EQUALITY AND JUSTICE IN ISLAM* 77 (2002) (noting that the Moroccan Law of 1958 prohibits polygamy when the fear of injustice exists between co-wives).

36. *See, e.g., id.*

activists, lawyers, and so forth. Additionally, polygamy fosters gender inequality because it “reinforces patriarchy and undermines women’s equality in marriage.”<sup>37</sup>

While there is no accurate data on the real prevalence of polygamy within the Arab-Bedouin society, many estimates confirm that polygamy exists in between twenty to thirty-six percent of households.<sup>38</sup> In the last twenty to thirty years, there has been a consistent increase in polygamous marriages at all levels of the Arab-Bedouin society.<sup>39</sup> Polygamy is increasing regardless of age, education, or socio-economic status. In the last twenty years, it has expanded at a rate of one percent per year.<sup>40</sup>

Several studies examined the effects of polygamous marriages on Bedouin women. One study focused on the psychological impacts and found that the women living in polygamous marriages suffer from psycho-social damage.<sup>41</sup> Another study found that domestic violence is higher among wives in polygamous families.<sup>42</sup> Scholars report that Bedouin women in polygamous marriages in the Naqab perceive polygamy as a source of anguish, and conflicts have invariably been a salient feature in relationships among co-wives.<sup>43</sup> A third study focused on comparisons between the co-wives and their mental health and showed that polygamy affects senior wives in polygamous families to a greater extent, economically and psychologically, than it does junior wives.<sup>44</sup> Senior

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37. Lisa M. Kelly, *Bringing International Human Rights Law Home: An Evaluation of Canada’s Family Law Treatment of Polygamy*, 65 U. TORONTO FAC. L. REV. 1, 9 (2007) (discussing how polygamy might have once served a protective function for “surplus” women in societies in which women outlived and married younger than men).

38. Lotan, *supra* note 6, at 1.

39. Abu-Rabia et al., *supra* note 6, at 23.

40. *See id.* at 9 (claiming that polygamous marriages have reached thirty to thirty-five percent of marriages); *see also* Anat Lapidot-Firilla & Ronny Elhadad, *Forbidden Yet Practiced: Polygamy and the Cyclical Making of Israeli Policy*, CTR. FOR STRATEGIC & POL’Y STUD. 1, 9 (2006).

41. *See* Alean Al-Krenawi & Vered Slonim-Nevo, *The Psychological Profile of Bedouin Arab Women Living in Polygamous and Monogamous Marriages*, 89 FAM. SOC’Y: J. CONTEMP. SOC. SCI. 139, 145-46 (2008) (finding that women commonly suffered from lower levels of self-esteem and marital satisfaction and higher levels of depression, anxiety, hostility, paranoia; and problematic family function).

42. Alean Al-Krenawi & Rachel Lev-Wiesel, *Wife Abuse Among Polygamous and Monogamous Bedouin-Arab Families*, 36 J. DIVORCE & REMARRIAGE 151, 158 (2002) (disputing earlier findings that an increase in the practice of monogamy had increased wife abuse in Arab cultures).

43. *See* Abu-Rabia et al., *supra* note 6, at 26 (noting that ‘dharrah,’ the term for co-wife, is also the term for enemy in Bedouin dialect).

44. Alean Al-Krenawi et al., *The Psychological Impact of Polygamous Marriages on Palestinian Women*, 34 WOMEN & HEALTH 1, 3, 12 (2001) (defining a senior wife as any married woman whose husband later married another woman and noting that first wives often experience feelings of failure when their husbands take additional wives).

wives report lower self-esteem than junior wives<sup>45</sup> and have an increased risk of mental disorders.<sup>46</sup> The communications between the wives concerning their children has been characterized by competition, hostility, and jealousy.<sup>47</sup>

Studies have not found a conclusive relationship between the frequency of polygamy and education in Arab-Bedouin society.<sup>48</sup> Research has shown inconsistencies in the relationship between the education level of men and women and the frequency of polygamy. In Bedouin society, no significant differences were found between the education level of two groups of Arab-Bedouin women, where one group was composed of senior wives in polygamous marriages and another group was composed of wives in monogamous marriages.<sup>49</sup>

Most of the literature regarding polygamy within the Bedouin society deals with several aspects of polygamy—social, cultural, economic, demographic—and its effect on women and children. Most of the existing literature focuses on psycho-social effects and does not consider the rise of polygamy as a mixture of internal and external factors—cultural, economical, social, political, and legal—that also impact the prevalence of polygamy. The literature also neglects to consider the invisibility of Bedouin women in the eyes of the Israeli law.

The increasing prevalence of polygamy contrasts with the rise of the education rate among Bedouin women in the last three decades.<sup>50</sup> Further, it contrasts with the process of “urbanization” that the Bedouin society has experienced in the last 60 years. This appears to be the paradox of “modernization” as a concept used by the State of Israel to associate modernization with education and urbanization, and thus to justify the process of taking control over Bedouin land.<sup>51</sup>

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45. Alean Al-Krenawi, *Women of Polygamous Marriages in Primary Health Care Centers*, 21 CONTEMP. FAM. THERAPY 417, 424 (1999).

46. Kutaiba Chaleby, *Women in Polygamous Marriage in Inpatient Psychiatric Services in Kuwait*, 173 J. NERVOUS & MENTAL DISEASE 56, 58 (1985); see also Lotfy Al-Sherbiny, *The Case of First Wife in Polygamy*, 8 ARABPSYNET E. J. 18, 23 (2005).

47. See Alean Al-Krenawi, *Family Therapy with a Multiparental/Multisposual Family*, 37 FAM. PROC. 65, 71 (1998) (describing the communications between the co-wives concerning their children as competitive, hostile, and with a sense of jealousy).

48. See Alean Al-Krenawi, *Women from Polygamous and Monogamous Marriages in an Out-Patient Psychiatric Clinic*, 38 TRANS-CULTURAL PSYCHIATRY 187, 191 (2001) (finding that women in polygamous marriages obtained 3.88 years of education while women in monogamous marriages obtained 3.66 years of education).

49. But see Al-Krenawi & Slonim-Nevo, *supra* note 42, at 140.

50. See, e.g., Abu-Rabia-Queder, *The Case of Higher Education*, *supra* note 16, at 384 (noting that by 1998, twelve Bedouin women had bachelor's degrees).

51. See Sarab Abu-Rabia, *Women, Education and Control*, 8 ADALAH'S NEWSL., Dec. 2004, at 4 (discussing ways in which Bedouins are disadvantaged by the State, including schools integrated by sex).

These apparent contradictions cannot be explained merely from one or two perspectives. Rather, it should be seen as part of internal and external social, cultural, and political changes that impact women and the prevalence of polygamy. These changes enable the State of Israel to construct polygamy as an external phenomenon to the legal system and to foster it.

*D. Reasons that Arab-Bedouin Women do not Resist Polygamy*

There are several reasons that explain why Arab-Bedouin women do not resist polygamy. First, kinship defines the marital structure of Bedouin society, and Bedouin women do not have many options for marriages outside the family and tribe. As such, marriage, including polygamous, is valued. Second, Bedouin women are economically dependent on their spouses, making it that much more difficult for women to resist polygamy. Third, the patriarchal structure of the Bedouin society, which places Bedouin women at the bottom of the hierarchy, contributes to their limited ability to resist polygamy.

*1. Marital Patterns*

The marital patterns of the Bedouin society in the Naqab are based on kinship relations; marriages remain inside the family and the tribe. There is a preference for marriages to cousins<sup>52</sup> because blood is an essential part of the Bedouin cultural identity.<sup>53</sup> Additionally, the origin of the tribe is a crucial factor impacting marital patterns in the Bedouin society.

While Arab-Bedouin women face great pressure to marry, the patriarchal tribal structure of marriage limits their choices and often forces them to become parties to polygamous marriages. Additionally, Bedouin women face social pressure against responding negatively to the prospect of sharing a husband.<sup>54</sup>

There are many deeply held values and traditions related to female chastity, marital relations, and fertility. Bedouin society values and admires fertile women.<sup>55</sup>

*2. Economic Dependency on Men*

The complexity of the social and economic reality of Bedouin women is

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52. SARAB ABU-RABIA-QUEDER, EXCLUDED AND LOVED: EDUCATED BEDOUIN WOMEN'S LIFE STORIES 67 (Eshkolot & Mages eds., 2008) (in Hebrew).

53. LILA ABU-LUGHOD, VEILED SENTIMENTS: HONOR AND POETRY IN A BEDOUIN SOCIETY 64 (1999).

54. *See id.* at 228 (finding that negative reactions to the prospect of sharing a husband are discouraged).

55. *Id.* at 125.

largely based upon their economic dependence on men. The social, economic, and political reality of Arab-Bedouin women makes it difficult for them to eliminate the phenomenon of polygamy; more than ninety percent of Arab-Bedouin women are unemployed,<sup>56</sup> and over sixty-percent of the Bedouin teenage girls residing in unrecognized villages drop out of school.<sup>57</sup>

Bedouin women's dependence on men for economic support ultimately undermines their social status and bargaining power, and exacerbates their subordination to men. As Bedouin women, they suffer several hardships—such as trying to provide basic living conditions for their families in impoverished villages, being an ethnic minority oppressed by a colonial power, and enduring subordination within their own communities as a result of tribal patriarchy.

### *3. Choices and Prices*

The reality for Arab-Bedouin women is that of ongoing debilitation and exclusion from the power structures of Bedouin society. These women struggle for their place in a patriarchal tribal society, which refuses to surrender the social supremacy which has been granted to men, by men. As part of an oppressed, national community, Arab-Bedouin women split as to how to connect their “emerging sense of national identity and participation with their emerging political identities as women.”<sup>58</sup>

Arab-Bedouin society expects women to accept polygamy as an integral part of their lives and requires them to cooperate with the mechanisms of oppression and exclusion. Polygamy, although a destructive practice which undermines social normalcy, is legitimized in accordance with pseudo religious “permission.”

The patriarchal structure of Bedouin society makes it difficult for women to resist polygamy since Bedouin society associates honor and autonomy with masculinity, but associates modesty and dependency with femininity.<sup>59</sup> Bedouin women are expected to behave modestly, speak “softly,” remain “obedient,” and be sensitive to social contexts.<sup>60</sup> Bedouin society also expects that women recognize their position in the hierarchy—which is lower than men's—and accept polygamy.

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56. MAA'N FORUM OF WOMEN'S ORGANIZATIONS IN THE NEGEV, THE ARAB WOMAN IN THE NEGEV: REALITY AND CHALLENGES 50 (2005).

57. SARAB ABU-RABIA-QUEDER, DROPOUT BY TEENAGE GIRLS FROM BEDOUIN SCHOOLS IN THE NEGEV: FEAR, DISCRIMINATION AND OTHERNESS 15 (2004).

58. See CYNTHIA ENLOE, BANANAS, BEACHES & BASES: MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS 54 (1990) (depicting the struggles women experienced in Sri Lanka while coping with gender and cultural forms of oppression).

59. ABU-LUGHOD, *supra* note 54, at 118.

60. *Id.* at 180.

Women who resist polygamy are subjected to social pressure and may pay a “high price” for acting against social norms. In extreme cases, their families might ostracize them. Given the social context and their invisibility in the eyes of the State, Bedouin women often are forced to make choices from a limited set of options.

### III. POLYGAMY AND THE LAW

International law regards polygamy as discriminatory and harmful to women’s physical, mental, sexual, reproductive, and economic health. Under the Israeli punitive code, polygamy is a criminal offense. However, it is permitted according to the Shari’a law that governs Muslims in Israel, and the State of Israel does not enforce the punitive code on the Bedouins with regard to polygamy.

#### *A. Polygamy Under International Law*

International law regards polygamy as a practice that violates women’s right to be free from all forms of discrimination.<sup>61</sup> Women’s rights activists contend that the practice of polygamy violates many of the fundamental human rights recognized in international law.<sup>62</sup>

For instance, the Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) states that a “polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.”<sup>63</sup> The Committee noted, with concern, that some State Parties to CEDAW permit polygamous marriage in accordance with personal or customary law, despite constitutions that guarantee equal rights. Polygamy violates the constitutional rights of women and breaches the provisions of Article 5(a) of the Convention.<sup>64</sup>

In a similar vein, the U.N. Human Rights Committee opined that equality of treatment with regard to the right to marry implies that

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61. See Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW), art. 16(1)(b), G.A. Res. 34/180, U.N. Doc. A/34/36 (Dec. 18, 1979) (requiring State Parties to take all appropriate measures to eliminate discrimination in family relations, particularly a woman’s right to enter into marriage).

62. See REBECCA J. COOK & LISA M. KELLY, DEP’T OF JUST. CAN., POLYGAMY AND CANADA’S OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW 1, 2 (2006) (arguing that the notions of obedience, modesty, and chastity preclude women from operating as full citizens).

63. U.N. Committee on the Elimination of Discrimination Against Women, *General Recommendation 21: Equality in Marriage and Family Relations*, ¶ 14, U.N. Doc. A/49/38 (Apr. 24, 1994).

64. *Id.*

polygamy is incompatible with this principle.<sup>65</sup> Polygamy violates the dignity of women and is an inadmissible discrimination against women. Consequently, it should be “abolished wherever it continues to exist.”<sup>66</sup>

Polygamy relies on obedience, modesty, and chastity, which together preclude women from operating as full citizens. Women in polygamous marriages are socialized into subservient roles that prevent them from fully participating in family and public life.<sup>67</sup> Thus, polygamy under international law is an oppressive practice to women.

### *B. Polygamy Under the Israeli Law*

#### *1. Tension Between Family Law and the Punitive Code*

“Family law in Israel is governed by the principle of religious personal law in family matters[:.]” thus, Shari’a governs Muslims in Israel.<sup>68</sup> Shari’a law in Israel permits polygamy. However, according to the Israeli penal code (“punitive statute”),<sup>69</sup> polygamy is a criminal offense. Under the penal code, “a married man who will marry another woman and a married woman who will marry another man will be sentenced to five years in prison.”<sup>70</sup>

The penal code allows polygamous marriages for non-Jews in Israel in two cases: (1) if one’s former spouse is unable, due to mental illness, to agree to marriage expropriation or marriage cancellation; or (2) if one’s former spouse is missing, and there exists a reasonable concern for his life, due to his whereabouts being unknown for at least seven years.<sup>71</sup> Polygamy, as practiced by the Arab-Bedouin, does not meet these criteria.

#### *2. Lack of Enforcement*

The State of Israel does not enforce its prohibition on polygamy in the case of the Arab-Bedouin of the Naqab.<sup>72</sup> This lack of enforcement by the State of Israel encourages the practice of polygamy. From 2005 to 2006, the police conducted only four investigations among the Bedouin

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65. *Id.* ¶ 16.

66. *Id.* ¶ 24.

67. Cook & Kelly, *supra* note 63.

68. RUTH HALPERIN-KADDARI, *WOMEN IN ISRAEL A STATE OF THEIR OWN* 227 (2004).

69. *See* Punitive Statute, § H cl. 176 (1977) (declaring that polygamous marriage is a criminal offense).

70. *Id.*

71. *Id.*

72. *See* Lotan, *supra* note 6, at 6; *see also* Lapidot-Firilla & Elhadad, *supra* note 41, at 4 (noting that a number of Middle Eastern countries also permit polygamous marriages, despite legal prohibition, due to religious practices).

population for alleged violations of the Israeli punitive code prohibiting polygamy.<sup>73</sup>

Legal authorities claim that there are evidentiary difficulties in proving polygamous marriages because most polygamous marriages are not registered officially by the Sharia'a court and take place informally.<sup>74</sup> According to the state's attorney's office, to file charges against a suspect of polygamous marriage the state must have evidence of a binding marriage ceremony.<sup>75</sup> Some law enforcement authorities hold the view that "polygamy is an acceptable norm among the Bedouin society, [sic] therefore there is no need to fight against it."<sup>76</sup> Moreover, such law enforcement authorities explain their lack of enforcement by stating that, "women in polygamous marriages do not file complaints against their polygamous husbands and do not cooperate with the police."<sup>77</sup> Samira, who did complain, did not elicit any reaction from the police.

Lapidot and Elhadad argue that the failure to enforce the law against polygamy is rooted in the general failure of the government to execute its own policy against any of its populations and that Israel is not specifically targeting the Arab-Bedouin.<sup>78</sup> One reason for this is that Israel may lack cultural understanding and does not relate to the contribution of public narratives in its political process. Lapidot and Elhadad also argue that polygamy is an example of the ineffectiveness of legislation as a tool for implementing policy.<sup>79</sup>

This approach to policy weakens women and increases their gender-based marginalization, which stems from their increasingly restrictive patriarchal society and ethnic marginality from the Jewish State. It limits the power Bedouin women have and reflects the State's indifference towards women. Bedouin women know that the State does not enforce the law; some of them tried to challenge it but they did not succeed because of the patriarchal and colonial power.

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73. Lotan, *supra* note 6, at 6.

74. An example is "zawag urfi," which means marriage with the presence of two witnesses and the father of the bride. According to Islamic Law these marriages are valid but according to the Israeli law the second wife will be considered as "known in public," which is an acceptable term used by State authorities to recognize couples that live together without marriage. *See id.*

75. STATE ATT'Y OFFICE, GUIDELINES FOR THE STATE ATTORNEY'S OFFICE, GUIDANCE NO. 2.7, available at <http://www.justice.gov.il/NR/rdonlyres/99358E8A-4587-400E-8C1C-760287367924/0/27.pdf> (last visited Feb. 20, 2011).

76. Lotan, *supra* note 6.

77. *Id.*

78. *See* Lapidot-Firilla & Elhadad, *supra* note 41, at 4 (explaining how Israeli laws on polygamy are circumvented by pretending to expel previous wives).

79. *See id.* at 5 (expressing doubts that proposed legislation on polygamy will be used by Bedouin women).



#### IV. ALTERNATIVE GENEALOGIES FOR POLYGAMY

##### *A. Patriarchal Power Versus Colonial Power*

To understand why polygamy is increasing among the Palestinian Bedouin in the Naqab requires applying an alternative genealogy that deviates from the conventional way in which polygamy has been explained. The patriarchal power and the colonial power operate in collaboration, leaving Bedouin women trapped in the margin of the Israeli society and in their own society. While this Israeli policy towards the Bedouin may appear to be a laudable example of “multiculturalism,” as a matter of fact it is a guise for a policy that sanctifies and actively nurtures the values of obedience and resignation in Palestinian society.<sup>80</sup>

Polygamy is increasing among the Palestinian Bedouin due to these two main mechanisms of power: colonial power and patriarchal power. Colonial power is the way in which Israel exercises its political power as a State towards its non-Jewish citizens. Colonial power is not static; it is a product of changes associated with land, urbanization, economics, and politics beyond the State.

Patriarchal power is the way in which Bedouin men exercise their domination over Bedouin women in a hierarchical society based on gender differences. Such power operates actively and reactively at the same time, both within Bedouin society and in relation to the State and its colonial power. Patriarchal power requires analysis in light of the changes that the Bedouin society has been through, with a particular focus on the link between property and women.

Colonial power and patriarchal power operate together actively and reactively to exclude Bedouin women and to increase their marginalization. The State does not enforce the law and thereby enables Bedouin men to manipulate the system and practice polygamy. The operations of the mechanisms of these two powers lead to the activation of two legal systems and to the externalization of polygamy from the legal system. Bedouin women remain invisible in the eyes of the law.

##### *B. Unmasking Polygamy: Polygamy from a Colonial Perspective*

###### *1. The Colonial Discourse in Israel*

Colonialism is “a systematic, collective project of seizing and expanding control over contested lands, people, resources and power.”<sup>81</sup> Since its

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80. See Manar Hasan, *The Politics of Honor: Patriarchy, the State and the Murder of Women in the Name of Family Honor*, 21 J. ISRAEL HIST. 1, 32 (2002).

81. Yiftachel, *supra* note 7, at 5.

establishment as a State, Israel has acted as a colonial power toward the non-Jewish population. This article will focus on the Arab-Bedouin, Palestinian citizens of Israel residing in the Naqab.

Israel exercises its colonial power with Zionist ideology as its premise. This ideology constructed the Zionist myth of a “land without people for a people without a land.”<sup>82</sup> The Zionists created this myth for the purpose of making the false claim that Palestine was empty at the creation of the State of Israel. This myth became the foundation upon which the settler movement operated and is similar to settler projects in other colonial contexts.<sup>83</sup> The complex history of the Palestinian tragedy that began in 1948 is absent from the official history of Israel because the historical view of the Palestinian population, up to the 1980s, was based on stereotypes and narratives that paid little heed to Palestinian culture and history.<sup>84</sup>

Israeli exercise of the colonial power has taken different forms. Different groups within Israeli society have differential access to the State according to the criteria of nationality, ethnicity, religion, and gender.<sup>85</sup> The Israeli Ashkenazi Jews<sup>86</sup> are the most dominant group in Israel—economically, socially, and politically. They determine other groups’ access to power. On the other hand, the Arab-Bedouin of the Naqab, particularly women, are the most marginalized group in Israel, behind Arabs and Sephardic Jews.<sup>87</sup>

Israel asserted its colonial power over the Arab-Bedouin population by using special mechanisms of control, including land confiscation, urbanization, and economic policy. Israel perceived the Arab-Bedouins as a “problem,” treating them as “limited citizens,” rather than as Jewish Israeli citizens, and mandating that “special bodies” should deal with them indirectly through the mediation of tribal leaders.<sup>88</sup> According to some commentators, Israel’s treatment of the Arab-Bedouins is “reminiscent of the relations that existed in colonial times between imperial States and their

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82. Nahla Abdo & Nira Yuval-Davis, *Palestine, Israel and the Zionist Settler Project*, in UNSETTLING SETTLER SOCIETIES 291 (Daiva Stasiulis & Nira Yuval eds., 1995).

83. *Id.*

84. Ilan Pappé, *Post Zionist Critique on Israel and The Palestinians: Part I: The Academic Debate*, 26 J. PALESTINE STUD. 29, 32 (1997).

85. See Abdo & Yuval-Davis, *supra* note 83, at 308 (describing how ethnicity is just one of many social dividers).

86. Jews of European background.

87. See Abdo & Yuval-Davis, *supra* note 83, at 309 (explaining that Sephardic Jews are in the margin of the Israeli society as well because of their origins as Arab-Jews and because of years of exclusion and discrimination by Ashkenazi Jews that were, and to certain extent still are, the most powerful group in Israel).

88. SWIRSKI & HASSON, *supra* note 11.

colonies.”<sup>89</sup>

Moreover, Israel is engaging in both internal and external forms of colonization.<sup>90</sup> Although Israel presents itself as a democracy, it may arguably be described as “an ethno-republic, the State of Jewish people.”<sup>91</sup> Under a normal application of the right to self-determination, Israel would be defined as an Israeli State and not as a Jewish State. However, Israel’s definition of itself as a Jewish State supports calling it an ethnocracy.<sup>92</sup> That is, on one hand, Israel has democratic features and formalities. Moreover, while it has not promulgated a national constitution, Israel does have basic laws that have constitutional status.<sup>93</sup> Additionally, Israel’s legal system contains legislation that protects human rights.<sup>94</sup> On the other hand, Israel has established a legal, institutional, and cultural regime which advances the undemocratic project of Juda-izing and de-Arab-izing the country.<sup>95</sup> It has nearly twenty discriminatory laws that treat Arabs and Jewish citizens differently from one another.<sup>96</sup>

The fact that Jewish “citizens of other countries have more rights in Israel’s land” and settlements than the Arab citizens of Israel is further evidence of the ethnocratic nature of the Israeli State.<sup>97</sup> Israel imposes institutional and municipal regulations in rural areas—which do not apply to Jews—to prevent its Arab citizens “from purchasing land in about 80% of the country.”<sup>98</sup> The problem of the Bedouin in Israel is not so much of being Bedouin, but rather of being Arabs in a Zionist State.<sup>99</sup>

Before the establishment of the State of Israel, the future colonial government created a “status quo” agreement with the rabbinical authority.<sup>100</sup> The “status quo” agreement set the guidelines for the relations

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89. *Id.* at 27-28.

90. *Id.*

91. See Abdo & Yuval-Davis, *supra* note 83, at 306 (explaining this principle is best illustrated in the Law of Return).

92. Oren Yiftachel, ‘Ethnocracy’ and Its Discontents: Minorities, Protest and the Israel Polity, 26 CRITICAL INQUIRY 1, 725, 731 (2000).

93. See Basic Law: Human Dignity & Liberty, 5754-1994, SH No. 1454 p. 90 (Isr.) (establishing the basic values of the Jewish State); see also, Ruth Levush, *A Guide to the Israeli Legal System*, LLRX.COM (Jan. 15, 2001), <http://www.llrx.com/features/israel.htm>.

94. See, e.g., SH No. 1454.

95. Abdo & Yuval-Davis, *supra* note 83, at 307.

96. See generally LEGAL VIOLATIONS OF ARAB MINORITIES IN ISRAEL ADALAH (1998), <http://www.adalah.org/eng/publications/violations.htm>.

97. Yiftachel, *supra* note 93, at 741.

98. See *id.* (explaining that this permits Jewish settlements to select their own residents).

99. See *id.* (illustrating how the problem extends to the Druze, Palestinian-Arab citizens, Palestinian residents of Jerusalem, and subjects of the Palestinian Authority).

100. See PATRICIA J. WOODS, JUDICIAL POWER & NATIONAL POLITICS 36 (2008)

between the State and the Jewish religion. By this agreement, the orthodox authorities became the executive body of the colonial power. They decide “who is a Jew” for the purpose of the Israeli Law of Return.<sup>101</sup> The law enables Israel to control its demography and to ensure that it maintains a Jewish population majority. Furthermore, the “status quo” agreement enables the State of Israel to activate its colonial power through family law by giving the religious courts the exclusive authority over personal status.<sup>102</sup> The lack of separation between religion and the State of Israel, as such, has an adverse implication on women’s citizenship rights—regardless of their religion. In particular, this lack of separation excludes Palestinian women from all decision-making circles concerning their family or personal status.<sup>103</sup> Additionally, as a result of the exercise of colonial power, Arab-Bedouin women are excluded from full Israeli citizenship, which negatively impacts their access to civil, political, and social rights.

Despite their exclusion and marginalization, Palestinian citizens have engaged in different forms of resistance since the 1950s.<sup>104</sup> In light of this resistance, gender relations affect the “complex historical dynamics of the Zionist settler project.”<sup>105</sup> The negotiations regarding power between the Zionist State and the indigenous Bedouins have effectively created a governing dynamic that has affected the Arab-Bedouin women and, consequently, determines their gendered roles.

## 2. *Civil Servants Exoticize the Bedouins*

Civil servants have exoticized the Bedouins since the inception of the State of Israel. This occurred first through military rule and later through the actions of civilian ministers, namely, “special authorities”<sup>106</sup> that dealt with the “other Bedouin.”<sup>107</sup> The process of exoticism affected Bedouin

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(explaining that, in accordance with this agreement, the orthodox community agreed to participate in the new State by exerting orthodox control over religious matters, such as kosher dietary laws, Sabbath observance, possibility for Jewish religious education, religious marriage, and personal status issues in general).

101. See The Law of Return, 5710-1950, SH No. 51 p. 159 (Isr.) (providing that all Jews, wherever they come from, are automatically entitled to Israeli citizenship).

102. See WOODS *supra* note 101, at 36 (explaining there was no major challenge to this authority until the late 1980s).

103. See Abdo & Yuval-Davis, *supra* note 83, at 309 (excluding both Muslim and Christian Palestinian women from these circles).

104. *Id.* at 311.

105. See *id.* at 316 (comparing gender relations to the other political and social relations in Israel and Palestine).

106. See SWIRSKI & HASSON, *supra* note 11, at 30-32 (noting the special governmental bodies that were established by the State of Israel to deal with the Bedouin, such as the ministerial committee for coordinating policy and activities in the Bedouin society).

107. *Id.*

women, because Israeli authorities portrayed them as exotic symbols of the “other.”

Moreover, “[u]ntil 1966, Palestinian citizens of Israel were placed under military rule.”<sup>108</sup> Villages were isolated from each other, “segregated from the Jewish population,” and “from the rest of the Arab population outside of Israel.”<sup>109</sup> During this time, the military administrators acted as the sole representatives of every matter arising within Bedouin communities.<sup>110</sup> The settlements’ inhabitants needed special permits from the military governors to leave their villages, whether to seek employment or to visit relatives.<sup>111</sup> Women had restricted mobility while men had most of the contact with the military administrators to obtain permits for work or for movement.<sup>112</sup> The military governors’ rule operated through the mediation of sheikhs and did not involve direct contact with Bedouin citizens.<sup>113</sup> Arab-Bedouins “almost entirely depended on the good will of the military government.”<sup>114</sup> The position of the military rule had more impact on the Arab-Bedouin in the Naqab than on the Arabs in the northern parts of the country. This disparity likely resulted from the fact that the latter were better educated and more familiar with political procedures and therefore found it easier to wield political pressure and make use of the courts.<sup>115</sup>

By the end of the military rule in 1966, the government administration shifted from the defense ministry to civilian ministries.<sup>116</sup> However, contact with the Bedouin society was still not direct but took place through third party “special authorities.” The Bedouin community is the only community in Israel for which a special government body is in charge of their “development.”<sup>117</sup> The existence of “special authorities” to deal with the Bedouin community perpetuates the State’s image of the Bedouin as “savage” and “other.” Thus, the “special authority” propagates the idea that the Bedouin are unlike “civilized Jewish citizens,” who, by virtue of their majoritarian and non-offending status, deserve direct and professional treatment from the various governmental ministers. The establishment of

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108. Abdo & Yuval-Davis, *supra* note 83, at 307.

109. *Id.*

110. SWIRSKI & HASSON, *supra* note 11, at 29.

111. Abdo & Yuval-Davis, *supra* note 83, at 307.

112. *Id.*

113. Porat Chanina, *Israel’s Policy on the Bedouin Issues and Left-Wing Alternatives, 1953-1960*, in IYYUNIM BITEKUMAT ISRAEL 431 (2000) (in Hebrew).

114. *Id.* at 421.

115. EMANUEL MARX, *THE BEDOUIN SOCIETY IN THE NEGEV* 39 (1974) (in Hebrew).

116. Cf. Isamel Abu-Saad, *The Education of Israel’s Negev Bedouin: Background and Prospects*, 2 ISRA. STUD. 21, 24-35 (1997) (describing the Military Administration era and its effect on Bedouin education and life).

117. SWIRSKI & HASSON, *supra* note 11, at 32-34.

the “special authorities” for Bedouins has created the image of Bedouins as incapable of exercising the right to self-determination. In essence, the “special authorities” for the Bedouin population are the embodiment of the “divide and conquer” policy that the State uses to approach its Arab citizens.<sup>118</sup>

The Israeli State created a situation in which individuals were in competition with local sheikhs who used their exclusive access to the civil administration to assert their power and ensure their social and political mobility. The sheikhs acted at the expense of the rest of the Bedouin population which could not afford to compete because they lacked networks and education and because they had to fight a perceived lack of competence. Women were not part of this dynamic, which only served to increase their social marginalization.

The State of Israel constructed its relations with its Arab citizens on a foundation of control, subordination, and oppression. The Arab-Bedouins were not treated in the same way as Jewish citizens legally, socially, or politically. The State perceives Arab-Bedouin women as a homogenous group; what is common to them is their subordination to men. Because polygamy is justified as a traditional practice that has social legitimacy among young and educated Bedouin men, women cannot act against it because “their status in the patriarchal society is low and they lack any tools to change the situation.”<sup>119</sup> The power relation is binary: men are the exploiters, and women are the exploited.<sup>120</sup>

### 3. The Construction of the “Other”

The increasing prevalence of polygamy is a direct result of Israel’s colonial power as exercised against the Bedouin population. State authorities benefit from the practice of polygamy among the Arab-Bedouins because it keeps them preoccupied in their internal affairs.<sup>121</sup> It is much more crucial for Israel to keep the Bedouin in the Naqab preoccupied with their own “tradition” than to keep Arabs in other parts of Israel

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118. Cf. Yeela Raanan, *My Shoes—I Can’t Find My Shoes—They Are in the Rubble*, JERUSALEMITES (Aug. 19, 2007), <http://www.jerusalemmites.org/Testimonies/49.htm> (describing how agents of the Authority for the Advancement of the Bedouins told a Bedouin man that his home was going to be demolished).

119. See Lotan, *supra* note 6, at 4; see also Abu-Rabia et al., *supra* note 6, at 31 (contradicting the studies that relate monogamy with greater education and that show a negative relationship with polygamy).

120. See CHANDRA TALPADE MOHANTY, *FEMINISM WITHOUT BORDERS* 38-40 (2003) (describing the problem associated with the binary definition of power is that it locks all struggles into the same binary structure).

121. See Yiftachel, *supra* note 93, at 730 (noting that the state laws enable one ethnic group essentially to dominate and seize the State by providing certain autonomy to the other groups in order to appease them).

preoccupied because the State and the Bedouin population, particularly, are still engaged in land disputes. It is much more convenient for the State to define polygamy as the problem of the “other” and detach itself from its obligations toward this “other,” despite the fact that the Bedouin are Israeli citizens.

The construction of polygamy as part of the “other” Bedouin customs and norms serves as a barrier between State and subjects and shifts the Bedouin’s focus from external (disputes over land) to internal (maintenance of the polygamous family) matters. Women’s invisible status as second class citizens is primarily the product of Israel’s status as the colonial power, which has sanctified the customs by deferring to the “general code of tribal custom.”<sup>122</sup> The colonial power of the State operates by setting up visible and hierarchical distinctions between the colonizers and the colonized.<sup>123</sup> The physical and symbolic separation of the legal system in Israel and the establishment of the “special authorities” for Bedouins have rendered the perception that Bedouins are incapable of exercising their right to self-determination, with the exception of family law matters. The “freezing” of such traditional practices as polygamy is also indicative of the colonial policy of the State of Israel. Given these factors, the increasing prevalence of polygamy is a direct result of Israel’s colonial power as exercised against the Bedouin population.

#### *4. Polygamy as a Product of Change*

The State of Israel has exercised its colonial power in special ways that have led to the increasing prevalence of polygamy and the continuing invisibility of Bedouin women. This article will now explore three primary forms that this exercise of power has taken and then examine the implications of each: (1) land confiscation, (2) urbanization, and (3) economic deprivation.

##### *a. Land confiscation laws*

During the military rule from 1949-1966, Israel passed laws to enable it to confiscate land previously owned or used by the Bedouin population and to then register it in the name of the Israeli State.<sup>124</sup> The Bedouin’s ancestral land was declared a military zone that the Arab-Bedouin could not enter.<sup>125</sup> Because Israel permitted no formal construction in

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122. MOHANTY, *supra* note 121, at 62.

123. *See id.* at 59.

124. SWIRSKI & HASSON, *supra* note 11, at 14-16.

125. TARIK N. IBRAHIM, ARAB ASS’N FOR HUMAN RIGHTS, BY ALL MEANS POSSIBLE: A REPORT ON THE DESTRUCTION BY THE STATE OF CROPS OF BEDOUIN CITIZENS IN THE NAQAB (NEGEV) BY MEANS OF AERIAL SPRAYING WITH CHEMICALS 20 (Christine Koleski, Marie Hoehn & Jonathan Cook eds., Shaul Vardi trans., 2004).

the “*muntagat as-siyaj*,” the Arab-Bedouin population had to erect towns of shacks and tents.<sup>126</sup> Meanwhile, Jewish settlers gained the valuable and fertile land in the northern part of the Naqab. Within a few years, 50 Jewish settlements were built on these lands.<sup>127</sup>

The State activated its colonial power over the indigenous Bedouin population by using the law as a mechanism of control to expropriate and displace the Arab-Bedouin of the Naqab. The 1953 Land Acquisition (Validation of Acts and Compensation) Law<sup>128</sup> gave the Israeli State the right to register previously confiscated land under certain conditions. One of these conditions rested on whether the owner was in possession of the property on April 1, 1952.<sup>129</sup> If not, then the Israeli State could register the land in its name. This policy enabled the State to register in its name Bedouin land located outside of the “*muntagat as-siyaj*,” as, by this date, the forced removal of the Bedouin into “*muntagat as-siyaj*” was complete and few Bedouins could establish that they were in possession of the land on the required date.

Another example of the State’s control is the 1965 Planning and Building Law<sup>130</sup> that created the first Israeli master plans to identify existing and projected areas for construction in every part of Israel. The authorities did not acknowledge the existence of the populated Bedouin villages on the original master plans and zoned this land as agricultural. As a result, even the few currently recognized villages cannot receive a building permit.<sup>131</sup> The zoning law also criminalized existing villages by categorizing them as illegal or unrecognized. By doing so, some populated areas became legitimate and others illegitimate in the eyes of the Israeli law. Half of the Bedouins live in these villages, which do not have basic services such as paved roads, running water, garbage disposal, health care services, and an education system, because the State of Israel denies them.<sup>132</sup> The State of Israel prohibits permanent construction in the unrecognized villages; those who do construct permanent structures risk heavy fines and the demolition of their permanent structures.<sup>133</sup>

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126. Oren Yiftachel, *Bedouin Arab and the Israeli Settler State: Land Policies and Indigenous Resistance*, in INDIGENOUS PEOPLE BETWEEN AUTONOMY AND GLOBALIZATION 31 (Duane Champagne & Ismael Abu-Saad eds., 2003).

127. *Id.* at 33.

128. Land Acquisition Law (1948-1987) (Isr.), “*Laws of the State of Israel: Authorized Translation from the Hebrew, Volume 7*”, Government Printer, Jerusalem, Israel (1948-1987), p. 43-45.

129. *Id.*

130. *Id.* at 330-93.

131. SWIRSKI & HASSON, *supra* note 11, at 60-61.

132. *Id.*

133. See NEGEV COEXISTENCE FORUM FOR CIVIL EQUALITY, THE INDIGENOUS BEDOUINS OF THE NAQAB-NEGEV DESERT IN ISRAEL (Ariel Dloomny et al. eds., 2008)



As a result, the Arab-Bedouin have become strangers in their own lands. Their movement has been restricted, and their collective identity has been disrupted and reshaped. The Arab-Bedouins have acquired a status similar to refugees in their own land within a very short time period.<sup>134</sup> These rapid changes have affected Bedouin women's identities, roles, and status. The story of the land has generally come from a male perspective; however, women have a strong tie to the land, which is part of their identity and history as Bedouin women.

*b. Urbanization*

In 1962, the Israeli State established seven Bedouin townships in "*muntagat as-siyaj*."<sup>135</sup> The purpose of this plan was to establish the presence of the State in most of the remaining lands in "*muntagat as-siyaj*," which would put an end to the Bedouin claims of ownership rights to the land.<sup>136</sup> The government also stated the purpose of its plan: to secure land suitable for settling Jews, for setting up Israel defense force bases, and to remove the Bedouin population from key Naqab routes.<sup>137</sup>

This approach is a direct reflection of the policy of Israel's previous military regime. The overarching agenda was to control the Bedouin populations and to minimize Bedouin control over land. Today, these villages are on the margin of the Israeli society economically, socially, and politically.

The process of resettlement into townships affected Bedouin women. Their farming skills were no longer needed in the settlements, and the State did not provide them with workplaces that were appropriate for their skills. Most of the men relied on employment in the Jewish cities,<sup>138</sup> while women stayed at home with no employment apart from their roles as wives and mothers. As a result, Bedouin women became more economically dependent on men than they had previously been.

Following the Bedouin transfer to the permanent settlements, the State of Israel, claiming the mantle of the "advanced" and "modern" West,

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(discussing the ramifications of Israeli policy on the indigenous Negev Bedouin populations).

134. Ghazi Falah, *Israel State Policy Toward Bedouin Sedentarization in the Negev*, 18 J. PALESTINIAN STUD. 71, 78-79 (1989).

135. See SWIRSKI & HASSON, *supra* note 11, at 9 (explaining that the State rationalized this move by citing to the precedent of the Ottoman and British Mandatory periods).

136. See *id.* (noting the consistency in the State's view that Bedouin land was State land and that the Bedouin have no legal title to such land).

137. Chanina, *supra* note 114, at 454.

138. Aref Abu-Rabia, *Employment and Unemployment Among the Negev Bedouin*, 4 NOMADIC PEOPLES 84, 85 (2000).

evaluated the “modernization” of the Arab-Bedouins.<sup>139</sup> A “modernity discourse”<sup>140</sup> described Bedouin women as going through social and cultural shifts which altered their status from prolific producers in a nomadic society to consumers in an urban society.

Such discourse, however, fails to explain the increasing prevalence of polygamy, despite the pseudo “modern” education of Bedouin women and the process of urbanization. The explanation for this paradox is that “modernity” is the discourse of the “other” and does not reflect the true situation of the Bedouins. In fact, the opposite is true. Patriarchy has grown stronger since the exercise of colonial power by Israel.

*c. Economic Deprivation*

In light of Israel’s exercise of colonial power, it is crucial to ask what remained of the humiliated proletarian men. Seeking employment in Jewish cities and seeing their ancestral lands given over to Jewish settlement has caused Bedouin men to lose their dignity as providers of economic resources to their families. Struggling to regain a sense of dignity, Bedouin men have turned to the practice of polygamy to exercise power by playing the role of “male” at home. Thus, practicing polygamy is one of the only ways that Bedouin men can exercise their dominance in the “modern” State of Israel. Being a man is to have not only many children, but also many wives. In order to understand the relationship between polygamy and power, one should consider the fact that wealthy people and Sheikhs practiced polygamy as a status symbol in the past.<sup>141</sup>

The need for Bedouin men to practice polygamy to regain their power in society sheds light on the new subservience that Bedouin women experience. Arab-Bedouin women cannot participate in the discourse that constructs Bedouin men and cultural patriarchy as part of hegemonic masculinities.<sup>142</sup>

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139. Safa Abu-Rabia, *Between Memory and Resistance, An Identity Shaped by Space: The Case of the Naqab Arab Bedouin*, 8 HAGAR STUD. CULTURE POL. IDENTITIES (Special Issue) 93 (2008).

140. See *id.* at 95 (providing the discourse that described the process of “transition from nomadism to modernism” of the Arab Bedouins and how this process described the Bedouin as categorically positioned on the low end of the scale, gradually moving up toward its western, civilized end through the adoption of technological innovations and improved living conditions characteristic of a Western lifestyle).

141. See EMANUEL MARX, *BEDOUIN OF THE NEGEV* 138 (1967) (noting that the most popular way for a Sheikh to increase his status and power was to marry more women, as this built up his family and bolstered his effectiveness in his tribe).

142. See MOHANTY, *supra* note 121, at 62 (discussing the limitations placed on women and widows in a patriarchal system designed to serve the economic interests of a gendered political economy).

*d. Politics Beyond the State*

When Israel occupied the Palestinian territories of the West Bank and Gaza, the majority of Bedouin who remained in Israel could maintain their link with their kin and neighbours in these regions.<sup>143</sup> After the 1967 War, the Green Line<sup>144</sup> was no longer an obstacle to movement. While it remained a political border, Israeli authorities allowed people to cross both ways.<sup>145</sup> In this new political reality, Bedouins were further able to develop and strengthen links with their Palestinian kin. People went shopping on a daily basis in the markets of Gaza and the south Hebron Mountains.<sup>146</sup> Bedouin developed matrimonial alliances with members of their families from whom they were separated in 1948. Later, Bedouin men sought their brides among peasant families,<sup>147</sup> and the low price that Palestinian families demanded for the bride gave Bedouin men the opportunity to marry more than one wife.<sup>148</sup>

*C. Polygamy and the Operation of the Patriarchal Power*

The State, however, did not operate in a vacuum and could not alone account for the increase of polygamy among the Arab-Bedouins. The operation of the patriarchal power has itself changed with the changes that Bedouin society has been through and has taken different forms as a suppressive and resistance power.

*1. The Patriarchal Power as a Product of Change*

The patriarchal power operates actively and reactively at the same time within Bedouin society as well as with its relations to the State of Israel as a colonial power. It changes over time. In order to understand how the mechanisms of power operate in the Bedouin society, there is a need to examine the forms of patriarchies that characterize Bedouin society and to establish a nexus between gender, the State, and patriarchy. Mechanisms of power cannot be studied in such a way so as to isolate them from their relationships with mechanisms of exploitation and domination.<sup>149</sup>

Polygamy in the Naqab takes place in the context of patriarchal control

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143. Parizot, *supra* note 10, at 5.

144. The border between the State of Israel and the occupied territories.

145. Parizot, *supra* note 10, at 5.

146. *Id.*

147. *Id.*

148. Lewando-Hundt, *supra* note 17, at 87.

149. See Michel Foucault, *Afterword* to BEYOND STRUCTURALISM AND HERMENEUTICS, THE SUBJECT AND POWER 208 (2d ed. 1982) (explaining why the study of power is important, how power is exercised, what constitutes power, and how to explain and analyze power and power relationships).

within the Bedouin society. Polygamy is not solely a legal issue that operates in the context of colonial power. Rather, it is an interdisciplinary issue that extends beyond the legal sphere. Polygamy is simultaneously a legal, social, cultural, and political issue and is mostly a product of change. For many of the issues accompanying polygamy, there is a colonial component that fosters its continuity as a traditional practice.

## *2. The Patriarchal Power as Suppressive Power*

### *a. Hierarchy and Power*

Bedouin society is hierarchical and segregated by gender. Kinship defines most relationships in Bedouin society; one's sense of "belonging" to the tribe and of belonging to one's immediate family are among the most important Bedouin values.<sup>150</sup> In polygamous families, a wife who is related by blood to her husband is usually better treated than her co-wives.<sup>151</sup> Bedouins, as a people, value men over women, and the strength of the tribe is measured by the number of men. Bedouin society perceives women as morally inferior to men, giving women a secondary status.<sup>152</sup> In other words, the tribal system is male-oriented.

From a patriarchal perspective, polygamy may be indicative of the perceived loss of "muscularity" of the Bedouin tribal authorities, since they are no longer free and autonomous under Israel's colonial power. The events subsequent to Israel's formation have rendered the tribal authorities powerless and have caused a loss in the social order of Bedouin tribal authorities. As a result, Bedouins have developed a deep nostalgia for past political structures. This idealization of traditional Bedouin practices has caused past norms and customs, which had previously been practiced with irregularity, now to become "central" to Bedouin identity. In this respect, polygamy may be a regression to the old patterns of the Bedouin in reaction to the colonial power.

One of the most significant values of Bedouin tradition is the connection between land and the honor, "*Alard Walard*,"<sup>153</sup> which is used by Bedouin to emphasize that women and land have the same status and should be protected to the same degree.<sup>154</sup> At the heart of the moral system of the Bedouins are honor and modesty.<sup>155</sup> When the State used its colonial

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150. ABU-LUGHOD, *supra* note 54, at 12-15.

151. *Id.* at 57.

152. *Id.* at 123.

153. In Arabic: "the land and the honor."

154. According to the Bedouin belief system, the punishment for harming a woman is very severe; four times that for injuring a man.

155. ABU-LUGHOD, *supra* note 54, at 78.

power to confiscate land, the patriarchal powers took different forms, all of which affected women. Because Bedouins have lost land, one of the most important assets of the lineage honor, women are the only “property” left to the tribes.<sup>156</sup> Women’s modesty is tied inextricably to their sexuality.<sup>157</sup> Thus, the defense of “honor” is now exercised almost exclusively through sexual control of women.

The tribal patriarchal power and a “code of honor” govern Bedouin women’s sexuality.<sup>158</sup> The greatest threat to the tribal system is unrestrained sexuality.<sup>159</sup> A significant mark of sexual control is the tribal consensus on marriage. The status of married women is higher than single, divorced, or widowed women. Bedouin society pressures unmarried women to marry. Because female sexuality is intrinsically linked to the community’s sense of honor, polygamy is reminiscent of the corollary need for the community to control women’s sexuality through marriage.

Polygamy, as a mechanism of control, takes place by making sure that sexual relations are “institutionalized” and takes place in a “legitimate” marriage. The increasing prevalence of polygamy may be an indication of the increasing “need” to control women’s sexuality. Why else would there be a pressing need to “protect” the social order and the tribal system in comparison to the past, before the interference of the State in Bedouin’s affairs? Could it be that women’s sexuality is threatening the tribal system? One possible explanation is that the Israeli colonial power shattered the Bedouin tribal structure and internal order and dislodged the different segments of the tribe and hierarchy that previously “controlled” women’s sexuality. In their new reality, the powerful members of the Bedouin society (men) feel a need to strengthen their tribal order and re-construct it.

### *3. The Patriarchal Power as a Resistance Power for the Colonial Power*

“Where there is power there is resistance.”<sup>160</sup> Abu-Lughod suggests using resistance as a diagnostic power.<sup>161</sup> She found resistance to the Egyptian State among Awlad Al-Ali Bedouins after Egypt sought to

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156. See Abu-Rabia et al., *supra* note 6, at 29, 30 (describing the treatment of women and measures to increase economic status in reaction to the strong pull downwards on the Bedouin’s economic status from the State).

157. ABU-LUGHOD, *supra* note 54, at 107.

158. See *id.* at 86 (describing both the cognitive and pragmatic components of the “honor code” and noting that the Bedouin honor code is less complex than that regarding women in Spain, Sicily, or Algeria).

159. *Id.* at 119.

160. 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: AN INTRODUCTION* 95-96 (1978).

161. Lila Abu-Lughod, *The Romance of Resistance: Tracing Transformation of Power Through Bedouin Women*, 17 AM. ETHNOLOGIST 41, 42 (1990).

“integrate” the Bedouins of the western desert into its State.<sup>162</sup> This example serves to demonstrate the way in which freedom and fearlessness are a part of the social identity of Bedouins.<sup>163</sup>

In the case of the Arab-Bedouin of the Naqab, polygamy can be explained as resistance to the State and to the colonial power it activates. Given that Bedouin society values freedom and autonomy,<sup>164</sup> it is understandable how external oppression from a ethnocratic government can translate into internal “autonomy” manifesting itself through adherence to cultural practices such as polygamy.

The State weakened Bedouin society and destroyed the social, cultural, and political structure of the tribe. It displaced the Bedouin population internally by depriving them of their ancestral lands, forcing them to “resettle” and to “modernize” in faltering townships, and relegating half of the population to unrecognized villages. Bedouin’s attempt to resist this colonial repression by increasing their focus on the only spaces that the State left for them: the spaces of tradition. Unfortunately, that very same space is also used to entrench patriarchal power and to subordinate women within the tribal hierarchy.

Polygamy reflects the profound distress that engulfs the Arab-Bedouin society today. It exposes a collective identity crisis, the origin of which is the abrupt and imposed transfer of Arab-Bedouins—whether to impoverished permanent communities or to a reality of living in tin shacks—and to home demolitions, poverty, and a resultant loss of hope. The difference in relative prevalence of this phenomenon before and after the State’s intervention in the Bedouins’ way of life supports this explanation. In the past, only a few Arab-Bedouin men married more than one woman. In general, the phenomenon was common mainly among Sheikhs and the wealthy. Now, it permeates all socioeconomic levels of Bedouin society.<sup>165</sup> Today, the phenomenon exists in so many families that the Arab-Bedouin society seems to be experiencing a severe regression; its patriarchal patterns are becoming more extreme as a reaction to the State’s exclusionary approach toward Bedouins.

Power operates in multiple arenas. The contexts of neo-colonialism, local patriarchy, and culture and customs all simultaneously dominate Arab-Bedouins.<sup>166</sup> Arab-Bedouins operate in the in-between spaces of the

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162. *Id.* at 43.

163. ABU-LUGHOD, *supra* note 54, at 88.

164. *Id.* at 117.

165. See Abu-Rabia et al., *supra* note 6, at 23 (noting the increase in the percentage of Bedouin women in polygamous relationships over the last 20 to 30 years).

166. See Abdo & Yuval-Davis, *supra* note 83, at 308-09 (depicting the various factors working against the Arab-Bedouins).

colonial power and their own patriarchal power. Polygamy has significant meaning in the intersections of the mechanisms of power. On one hand, Arab-Bedouin women face domination by the patriarchal structure of their own society, which legitimizes polygamy.<sup>167</sup> On the other hand, they are part of an ethnic minority that itself faces control and marginalization by a colonial power.

#### *4. Encouragement of Patriarchy*

Because Israel ignored the issue of Arab-Bedouin women as an internal matter, the patriarchal Bedouin social structure became the sole authority dealing with internal Bedouin issues and “their women.” The Bedouin patriarchal structure became free to exercise power—but only in Bedouin society, which became the only “legitimate” space in which an Arab-Bedouin could act freely. The patriarchal space occupied by Bedouin men has met with encouragement by Israel since the country’s establishment because it has strengthened the Israeli State. The State supported Bedouin religious leaders expressing traditional views by granting them special favors and recognizing their traditional values.<sup>168</sup>

State authorities reinforced the patriarchal structure by giving special treatment to the traditional patriarchal leadership in granting them respect and economic and social preference.<sup>169</sup> The government supported Arab tradition, which stabilized a dominant role for the Palestinian patriarchy by reinforcing the patriarchal structure and the *hamula* (clan) that had begun to weaken before the establishment of the State.<sup>170</sup> In this way, the State sought to ensure that the religious establishment would be “loyal” to the State.<sup>171</sup>

By accommodating the patriarchal authority, the State authorities sought to destabilize the situation of Arab-Bedouin women for the sake of State stability. Arab-Bedouin women are not perceived as citizens but rather are treated as “exotic symbols” of colonial rule.<sup>172</sup> They are invisible citizens in the eyes of the law.

The presence of the Israeli colonial power serves to keep polygamy and tribal affairs within the power of Bedouin men. The colonial rule’s

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167. See Adrien Katherine Wing, *Polygamy from Southern Africa to Black Britannia to Black America: Global Critical Race Feminism as Legal Reform for the Twenty-First Century*, 11 J. CONTEMP. LEGAL ISSUES 811, 824 (2001) (citing Chandra Mohanty, *Introduction: Categories of Struggle, in THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* (1991) (describing the struggle of women, in particular)).

168. Hasan, *supra* note 81, at 19.

169. *Id.* at 22.

170. *Id.*

171. *Id.* at 19.

172. ENLOE, *supra* note 59, at 42-44.

emphasis is not to abolish the domination of the Bedouin men over the Bedouin women but to establish an Israeli rule over them both. It acts as a colonial power by transforming the existing patriarchies and class hierarchies according to its own agenda.<sup>173</sup>

#### *D. Polygamy as a Phenomenon External to the Legal System*

##### *1. The Activation of Two Legal Systems*

The State of Israel simultaneously activates dual legal systems against the Bedouin population: (1) the legal system relating to land and demography and (2) the legal system relating to family law. The first system represents the sovereignty of the State and the mechanisms of enforcement of the State over the public sphere. The second system, governed by the religious courts, represents legal matters relating to the private sphere.

The State activates a colonial power in both instances. In the first system Israel acts as both State and colonizer. In the second system Israel does not act—native norms are for the native to control. This creates a strict dichotomy between the State-based punitive law and a religion-based family law. On one hand, the State prohibits polygamy under its punitive code.<sup>174</sup> On the other hand, it does not enforce this prohibition in the case of the Bedouin population.<sup>175</sup> The presence of a colonial power explains this paradox.

In terms of rights, the implementation of law leaves little power to women and gives more power to men to exercise their patriarchal power. Bedouin men usually overcome the legal obstacle to marry another woman by not registering the first marriage with the Israeli authorities. Local governments have turned a blind eye to this practice by allowing the children of such unions to be added to the population registry under the first wife's name or solely under a declaration of paternity.<sup>176</sup>

Another technique that Bedouin men use to manipulate the legal system is to marry other women according to the Bedouin way, called “*zawaj ‘urfy*.” If they marry a woman from the Palestinian territories,<sup>177</sup> they do not bring it to the attention of the Israeli authorities. When the second wife

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173. See MOHANTY, *supra* note 121, at 61 (expanding on the consequences of women's status in Arab and Muslim societies).

174. See HALPERIN-KADDARI, *supra* note 69, at 281 (describing the fact that polygamy is illegal in Israel under Israeli civil law).

175. See *id.* (indicating that the law against polygamy is not enforced, and that it is actually more widely practiced in recent years despite its prohibition under the law).

176. See Abu-Rabia et al., *supra* note 6, at 29 (indicating that this practice gives the children access to all relevant rights under Israeli law).

177. West Bank or Gaza Strip.



gives birth in an Israeli hospital, the Bedouin man will claim that the wife is his “girlfriend,” “known in public,”<sup>178</sup> or will simply sign “documents as the legal father of the baby without stating that the mother is his wife.”<sup>179</sup>

The two bifurcated legal systems of the Israeli State externalize polygamy as a legal phenomenon and allow Bedouins to practice their customary law in the guise of “multiculturalism.” However, the State grants this autonomy only in the family law sphere, leaving Bedouin women outside the legal system as invisible citizens.

## *2. Lack of Enforcement Encourages Polygamy*

The Israeli government “encourages” the Arab-Bedouin to practice their culture to the fullest extent, under the purported interests of “cultural sensitivity” and “multiculturalism.” Israel’s lack of enforcement of its criminal statute prohibiting polygamy encourages the practice of polygamy. In this way, Arab-Bedouin men can channel their frustration and resistance to Israeli domination to the private sphere—toward women.

The State could exercise its power over the Arab-Bedouin population “easily” under the cover of the “modern,” “civilized” State trying to “save” the “oppressed” Bedouin women from “primitive” Bedouin men. Instead, the State acts as a colonial power towards those it seeks to colonize, thereby dominating that group by pushing aside the focus from its duties as a democratic State, and instead relegating the task to the “internal” matters of the Bedouin.

This turns the Arab-Bedouin women into invisible citizens in the eyes of the law and increases their marginality within the Bedouin patriarchal society. The State limits the rights of Bedouin women by “allowing” the practice of polygamy *de facto*. Israel created a mechanism of “reciprocal relations” in which it will not enforce the prohibition of polygamy, but accepts it by acquiescence if, in return, the Arab-Bedouin men “keep the peace” in the Naqab.

In these ways, polygamy is constructed as a phenomenon that is treated as external to the legal system because it is part of the cultural norms and tradition of the “other.” The State authorities reinforce polygamy by neglecting to enforce their criminal laws, while at the same time constructing polygamy in a binary way which juxtaposes “us”—the modern, “culturally sensitive”—with to the practices of the primitive “other.”

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178. This term is used to indicate a situation in which spouses live together, in a familial frame without marriage. Usually this term is used by the Israeli Jews. According to Shari’a law, this is illegal.

179. Abu-Rabia et al., *supra* note 6, at 29.

V. WHAT ABOUT WOMEN: POWERLESS? BEYOND THE BINARY OF THE  
COLONIZER

As the author began to write this paper, she struggled with the ubiquitous, near-reflexive labeling of Arab-Bedouin women as “victims.” She is still struggling with the questions: How can we analyze polygamy without portraying Arab-Bedouin women as victims? Is it possible not to attach such a label in this complex reality? What is the counter narrative of Arab-Bedouin women in polygamous marriages? How do they resist and how do they bargain with patriarchy?<sup>180</sup>

It is important to look beyond the colonizer versus colonized binary and to look beyond talk of victimhood, a status intrinsic to the colonizer discourse. The rhetoric of victimization reinforces an imperialist response towards women in the developing world and recreates the imperialist stance of viewing the subject native as uncivilized and backward.<sup>181</sup> Bedouin women have a story to tell that is a product of a complicated reality. This story is beyond the internalization of oppression and consists of their life circumstances and their political and social reality.

*A. Future Questions*

*1. The Role of Bedouin Women*

Bedouin women are not helpless, frozen in time and space. They play a role and they are still in the midst of a change. Their social mobility is constantly changing and reshaping. In the last sixty years they have gone through rapid, dramatic changes in so many aspects of their lives.

Bedouin women play different roles based on their different backgrounds and places. Their social and political power determine their bargaining powers and their ability to make change. Bedouin women are gaining power gradually in different ways and forms. These ways are sometimes hidden from the conventional way in which we think about power and resistance. The process of changes that Bedouin women are going through will determine the role that they will play vis-à-vis polygamy and in resisting it.

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180. Dniz Kandiyoti, *Bargaining with Patriarchy*, 2 GENDER & SOC’Y 274, 274-85 (1988).

181. See Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1, 18 (2002) (“[I]n the international arena, the victim subject, in the context of the primary focus on violence against women, creates an exclusionary category built on racist perceptions and stereotypes of Third World women.”).

## *2. Polygamy Should Be Examined in Light of These Complexities*

Polygamy should be examined in light of the complex reality of Arab-Bedouin women and their identities.<sup>182</sup> They are women, wives, mothers, Arabs, Bedouins, Palestinians, and Israeli citizens. They are sometimes monogamous and sometimes polygamous. They are invisible citizens in the eyes of the law, and they are invisible women in the eyes of the patriarchs. They are part of an ethnic group that struggles for its survival and its dignity. They are powerful and challenge their reality. And they have a story to tell us.

## *3. The Counter Narrative*

Bedouin women operate and resist in spaces of subjugation. What is the counter narrative that Bedouin women are presenting? How can we study the discourse of polygamy without portraying Bedouin women as victims? Can Bedouin women deconstruct the mechanisms of power and suggest a counter narrative for polygamy? What are the strategies that Bedouin women use to bargain with patriarchy and to unmask the colonial strategy of the State?

## VI. CONCLUSION

Polygamy is a case study that demonstrates the way that the mechanisms of colonial and patriarchal powers operate in Israel to silence and debilitate Bedouin women. These powers preserve the absence and transparency of Bedouin women by collaborating to externalize polygamy outside the legal system. The institutional and intra-societal factors reinforce this phenomenon and grant it legitimacy under the guise of a supposed “cultural sensitivity” by the State, on the one hand, and social legitimacy by the patriarchs on the other.

Polygamy in the Bedouin-Arab society in the Naqab is not a phenomenon that occurs in a vacuum. It is part of the characteristic reality of the lives of Arab-Bedouin women in the Naqab. This is a reality of ongoing debilitation and exclusion, in which the Arab women struggle for their place in a patriarchal tribal society.

The Israeli establishment reinforces this reality through “divide and conquer” mechanisms of control that are methods of exerting colonial power. The Israeli establishment strengthens the tribal leadership in order to maintain peace and quiet in the Naqab. The Arab-Bedouin women pay an exorbitant price for this. Bedouin women find themselves forced to cooperate with the mechanisms of oppression and exclusion. The phenomenon garners support from a religious interpretation and gains

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182. Wing, *supra* note 168, at 833.

social legitimacy from various directions, which makes it difficult to conduct a rational and intelligent discussion of the phenomenon. Thus, legitimacy manifests as a destructive phenomenon that undermines the cornerstones of social norms.

The jarring silence of the State of Israel and the patriarchal society are warning signs of the way in which Bedouin women face marginalization. Future study is necessary to bring out the counter narratives of Bedouin women facing polygamy and to analyze the way in which Bedouin women fight against polygamy and for their rights as part of an ethnic minority.