

POLYGYNOUS MUSLIM MARRIAGES IN SOUTH AFRICA: THEIR POTENTIAL IMPACT ON THE INCIDENCE OF HIV/AIDS

N Moosa*

Summary

This article examines whether there is any relationship between the institution of polygynous marriages in Islam and the incidence or spread of the disease. It is suggested that, while polygyny may be a contributing factor, it is not the institution of marriage per se that relates to the disease (although the prospect of greater infection intra marriage must be present in polygynous marriages, if the husband is the infecting party), but the conduct of the parties to the marriage relationship, whatever its nature.

The focus and thrust lies with the institution of polygyny in Islam, the South African response to polygyny, the (potential) impact of polygyny on the incidence of AIDS, and the contribution that both an informed approach to HIV and an enlightened approach to the application of Islamic values could or would have on the limitation of the disease's spread.

* Former Dean, Faculty of Law, University of the Western Cape, Bellville, South Africa. This article started out as a co-authored joint venture with Mr Armien Cassiem (formerly of the University of the Western Cape). It has subsequently been completely refocused and revised by the current author who would like to acknowledge the initial contribution of Mr Cassiem. This article is based on a paper that was presented at the Inaugural Conference of the Centre for Responsibilities, Rights and the Law on *Gender, Family Responsibility and Legal Change*, hosted by the Sussex Law School, University of Sussex, United Kingdom, held on 10-12 July 2008. The author would like to thank Professors I Leeman (University of the Western Cape) and Z Motala (Howard University, Washington, DC, and Extraordinary Professor, University of the Western Cape) for their editorial assistance in preparing this article.