



## ANALYSIS OF THE LEGALITY OF THE INSTITUTION OF POLYGAMY IN ISLAMIC LAW

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### ABSTRACT

*This paper attempts to analyze the wisdom behind the legality of polygamy in Islam. It has been observed that many misunderstanding and parochialisms were attributed to the practice of polygamy especially in Western societies where monogamy was imposed on the people without any divine text to support it. This study attempts to analyze some of the wisdom behind the legality of polygamy in Islam. Polygamy, though legalized in Islam, has some conditions attached to its practice. The study proved beyond any shed of doubt that polygamy does not only serve as the best solution to the problems of widows and orphans in the society, but also helps in controlling the preponderance of female in the society, controlling immorality, checking infidelity and control single parent family or what in Western societies is called mother headed family. The practice of polygamy serves as a remedy to many evils such as prostitution, venereal diseases, abortion, misery of the illegitimate children, the misfortune of millions of unmarried women leading to adultery and fornication in the society. The study recommends that scholars and religious organizations should commit themselves to writing books on the subject matter with the motive of removing the parochialism and misunderstanding related to the practice of polygamy.*

**Keywords:** polygamy, analysis, legality, institution, Islamic Law

### Introduction

Islamic law is a comprehensive legal system that regulates life and the activities of Muslims concerning their rights and duties. The objective of the law is to promote the welfare of the people both individually and collectively. The institution of polygamy has existed among various societies since time immemorial. It was a recognized practice for the benefit of human race and for the healthy development of society.

### Concept and History of Polygamy

The word polygamy is derived from two Greek words “Poly” meaning “many” and “gamous” meaning “marriage”. It is the tradition of having more than one wife simultaneously. Miram (2008:12) identified three forms of polygamy namely: Polygyny, the one in which a man is married

to several wives; sororal polygyny, a form of plural marriage in which the co-wives are customary sisters, and non sororal polygyny, where the co-wives are not related. Since time immemorial, polygamy has been a recognized and established institution in almost all human societies. Its practice was very common among the royalty, but sometimes it was practiced even by the common people. Polygamy existed among the Hindu in India, Assyrians, Babylonians, Persians, Athenians, Arabs, etc. Polygamy was common in Biblical and Talmudic times. Prophet Ibrahim (Abraham) (A.S) had two wives, Prophet Y’aqub (Jacob) (A.S) and Prophet Musa (Moses) (A.S) had four wives each. Prophet Dawud (David) (A.S) had nine wives and Prophet Sulayman (Solomon) (A.S) had seven hundred wives and three hundred concubines. (Haroun, 2006:98).

Furthermore, among the Hebrews, the Mosaic Law did not impose any restriction on the number of wives. It was the norm among, the Talmud of Jerusalem. The only condition was the ability of the husband to maintain the wives properly. Even in Christianity which has now become synonymous with monogamy, Prophet Isa (Jesus) (A.S) had never mentioned a word against polygamy. In fact, some notable Christian theologians like Luther and Bucer did not hesitate to mention the permissibility of polygamy from the parable of the ten virgins, spoken of in the Gospel of Mathew (25:1 – 2), for Jesus (A.S) predicted the possibility of one man with as many as ten girls simultaneously.

### Polygamy in Islamic Law

Islam is the only religion limiting the number of permissible wives to four. The Islamic Law, after restricting the number to four, tied it up with the condition of justice and equal treatment for all the wives. Allah (SWT) Says:

﴿وإن خفتم ألا تقسطوا في اليتامى فانكحوا ما طاب لكم من النساء مثنى وثلاث ورباع وإن خفتم ألا تعدلوا فواحدة أو ما ملكت أيمانكم ذلك أدنى ألا تعدلوا﴾ لنساء: ٣

If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two or three, or four, but if ye fear that ye shall not be able to deal justly (wife them), then only one, or (a captive) that your right hands possess. That will be more suitable, to prevent you from doing injustice (Qur'an 4:3).

The above verse shows clearly that Islam took a moderate stance between the unrestricted polygamy of the Old Testament and the practice of Romans, Persians and the pre-Islamic Arabs and the unobserved celibacy that some latter Christian Saints preached. The legality of polygamy in Islamic Law does not mean that Muslims are compelled to have more than one

wife nor does it impose polygamy as a universal practice. One is expected to regard monogamy as the norm and polygamy as the exception, in case of genuine need, that too with the condition of justice and equality attached, (Haroun, 2006:99). The husband must try his very best to maintain balance and accord his wives equal treatment in the things on which he has control like food, clothing and lodging. The Prophet (SAW) is reported to have said:

When a person has two wives and he does not observe equality and justice with them, he will come before the throne of the justice of Allah Ta'ala with only half his body (Bukhari, Bab-al-Qasm).

In relation to justice among wives, al-Dhahaak and others in Qurtabi (2002:201 vol. 3) are of the opinion that justice required in the verse quoted above is for the husband not to incline to sexual relationship, feeding/clothing and division of days among the wives at the expense of others. If a person is proved to be incapable of doing justice on these issues, then he should marry only one wife.

Regarding things which the husband has no control over like love and affection, even on that, he should not display his manifest behavior, portraying that he loves one wife and hates the other one. Allah (SWT) says:

﴿ولن تستطيعوا أن تعدلوا بين النساء ولو حرصتم فلا تميلوا كل الميل فتذروها كالمعلقة﴾ النساء: ١٢٩

You are never able to be fair and just between women, even if it is your ardent desire: but turn not away (from a woman) altogether, so as to have her (as it were hanging) (in the air) ... (Qur'an 4:129)

In Islamic Law, polygamy is generally regarded as permissible (*Mubah*). However, in relation to an individual, it may be recommendable (*Mandub*) or undesirable

(*Makruh*) or forbidden (*Haram*) depending on the capability of the person who intends to practice it. For example, polygamy is permissible for a person whose sexual desire cannot be satisfied by one wife and he has the ability to exercise justice among the wives. On the other hand, the practice of polygamy is undesirable upon a person who intends to have additional wife just for comfort and entertainment and he is not sure of exercising justice between the wives. The Prophet (SAW) said:

Leave what makes you in doubt to what does not make you in doubt (al-Albani, 420 Alt vol. 6)

Marrying more than one wife is prohibited (*Haram*) for a person who knows that he is not capable of exercising justice among the wives due to his weakness, or poverty or lack of confidence in himself that he may likely incline to one of them.

### **The Wisdom behind the Legality of Polygamy**

Polygamy is permitted in Islam due to a number of factors, some known to humanity, while some of its benefits are unknown to us. Allah (SWT) who legalized it knows better. Below are some of the benefits or wisdom behind the legality of polygamy in Islam:

#### **i. Preventing Immorality in the Society**

It is known in history that male members are killed during wars more than women. This usually leads to increase in the number of widows and orphans in the society. Therefore, polygamy is legalized in order to give protection to the helpless widows and orphans in the society against the immorality and corruption that may hinder the moral and spiritual development of the society which might be created by the existence of large number of young widows. The rationale behind the legality of polygamy is to save the society from indulging into immoral practices either because of poverty or the natural sexual desire on the part of the unmarried women.

If polygamy is not permitted to support the widows and bring the unmarried women into marriage bond, it would lead not only to the economic misery of families, but also to immoral practice like prostitution, adultery, sexual anarchy, etc. It is not strange, then, to hear that some of the fairer and weaker sex who cannot get married try to find some sort of satisfaction with their pet animals, such as dogs, if they cannot obtain sexual satisfaction from their male servants. Such a social disintegration can be averted only if a man is permitted by law to have more than one wife. (Haroun, 2006: 102).

#### **ii. Controlling the Preponderance of Female in the World**

It is quite obvious that men are usually the victims of wars and tragedies. Not only that, mortality rate is much higher among boys, women generally tend to live longer than men; not to mention the large number of young men who die daily in various wars around the world. Even though, the ratio varies from one country to another, women still outnumber men. Hence, there are more females competing for a diminishing number of males. Consequently, there will always remain a large segment of women unable to fulfill their sexual and psychological needs through legitimate means in monogamous societies. Their presence in an increasingly permissive society, also contributes to the breakdown of Western family structure. (al-Kahtany, 2003: 42 – 43).

Therefore, women seem to have a vested interest in legally institutionalized and recognized polygamy as acknowledged by Islam because of the obvious socio-economic protection it provides. Similarly, Haroun, (2006: 103) quoted Birdsell, president of Young Women's Christian Association, during her address as saying:

There are over twelve million young girls over the age of fourteen in U.S.A, who are all unmarried. And against this number, there are only nine million young men. So,

three million girls will never be able to have husbands, since the war has badly upset the balance of male and female population of the country.

The above statement is an indication that the three million souls would definitely suffer for no fault of theirs, but due to the wrong concept of marriage in American society.

**iii. Controlling Infidelity in the Society:** Infidelity is the act of not being faithful to one's wife or marriage partner, by having sex with somebody else. This extra marital sex practices may cause many problems in the society at large especially in societies where monogamy has been the practice. One of the wisdom behind the legality of polygamy in Islamic law is to control the devastating effects of infidelity in the society such as increase in abortion rate, giving birth to children out of marriage wedlock, social and psychological traumas, degeneration of family ethics and morality and imbalance in the number of men and women in most communities where monogamy is institutionalized.

According to the National Opinion Research Centre 1995, reported in the Macmillan Visual Almanac, in (1998: 104), 25% of American married men had sex partner(s), (from one to six), beside their wives between 1994 – 1995. During the same period, about 15% of American married women had other sex partners beside their husbands (from one to six). During their lifetime, American men usually have an average of six sex partners. (Kahtany, 2003: 27). The Clinton-Lewinsky drama may take place with ordinary people, but was not expected of the Commander-in-Chief of the most powerful nation on earth. It evolved very outrageous sexual acts and was discussed in the most disgusting way that parents had to keep their children away from television sets or listening to the horrible details of such immoral relation.

The main reason why the aforementioned development took place is, because polygamy as a natural instinct of man was not observed. These immoral practices are expected to happen in any society that does not value what Allah (SWT) legalized, to control the fragile relationship between women and men. Infidelity and other unchaste practices are expected to become the norm in the societies that perceive polygamy as radical, backward and abnormal.

Furthermore, in the United States of America, the National Centre for Health Statistics Conducted interviews with 60,201 women in response to National Survey of Family Growth between January and October 1995. Only 10.5% of women interviewed did not have partners beside their husbands. The remaining 89.5% of women reported having extra-marital relations.

**iv. Controlling Single Parent Family** Single parenting is not a common type of human social relations throughout history especially where polygamy is practiced. It was only during the latter part of the last century that this type of family relations developed. It is more common in monogamous societies. Though, one can find the traces of single parenting in Muslim communities, it is more common among societies that adopt monogamy as a way of life. The practice of monogamy in Western societies had increased the rate of children born out of wedlock. This has increased to about 50% in countries like Sweden, (Kahtany, 2003:30). It is called mother headed family because mothers head more than 90% of these single parent families.

The United Kingdom occupied the highest rank in the number of single parent families in the whole of Europe. The Times of the 27<sup>th</sup> of September, 1991, reported that the percentage of single parent families had doubled during the nineties, 16.7% in comparison to 8.3% during the early seventies. Women compose 90% of these families. Similar situations were also reported in Australia, (Zerekly, 1997: 95).



This development could be attributed to the violation of the institution of polygamy which resulted in increase in the birth of illegitimate children in most western societies.

**v. Sickness or Disability of the First Wife**

It has been proved beyond any shed of doubt that marriage to more than one wife may be preferable to other available alternatives, especially where the first wife is really sick or disabled and cannot satisfy the sexual urge of the husband. There are, of course, some husbands who can manage this situation, but no one will deny its potential hazards. A second marriage in some cases could be a solution acceptable to all the three parties. (Haroun, 2006:104)

Similarly, there are instances in which a wife becomes sterile or infertile and the natural desire for children may lead the husband to contract another marriage, without divorcing the first wife. Under the Western Law, a man must either accept the infertility of his wife or divorce her in order to marry again. This could have been avoided if the parties agreed on a second marriage.

**vi. During war when many men are killed**

It is obvious that during wars men lose their lives more than women. This usually leaves the women with large number of children. A clear example of this was after the Second World War, millions of women lost their husbands and were left alone without any income or care or protection for themselves or their children. If it is still maintained that under these circumstances a man should still marry one wife, then what options are left for the millions of other women who have no hope of getting a husband? They will definitely be exposed to dishonest men who will sexually misuse them and dump them without the security of legal husband and family. The compromise therefore, is for women under these circumstances to face the fact that if given the alternative, many of them would rather prefer to share a husband than have none at all. There is no doubt, it is easier to share a husband when it is an established and

publicly recognized practice, than when it is carried out secretly with attempts to deceive the first wife.

**vii. To satisfy some men with strong natural sexual urge:**

Some men may by nature, be sexually strong, so they cannot remain satisfied with one wife. A woman may be undergoing menses for almost a week in every month and she has to face pregnancy and weaning of the child is spread over almost a period of more than two years. During these periods, she may be unable to meet the husband's biological needs.

**viii. To complement the unhappy husband whose wife is barren or seriously ill:**

No one can pretend that every man is happy, successful and satisfied in marriage. Whether it is his own fault or his wife's, the unhappy husband will look for some other kind of companionship and consolation from someone else. This is made easy for him when women outnumber men. If he cannot get it through honest channels, he will get it by other means which may result in illegitimacy, abortion and other endless troubles (Gurin, 2014:147). The solution which Islam offers in this respect is permission to the unhappy and dissatisfied husband to marry a second wife and live with her openly in a responsible way with equal fulfillment of all obligations to the first wife and also the second.

**Conclusion**

From the aforementioned analysis, it is clear that in Islam, polygamy is legalized in order to remedy many evils that may hinder the smooth spiritual, moral and social progress of the Muslim society. There are numerous circumstances that may warrant polygamy depending on the situation that may require its practice to be adopted. Modern civilization came with many complexities and advancements that tend to extinguish the practice of polygamy which in turn jeopardize the lives of millions of, women thereby pushing them into the evil



of prostitution, immorality, insecurity and other social vices.

Islam legalized limited polygamy in order to respect both male and female, control infidelity and ensure the smooth and decent progress of societies, devoid of immorality and reoccur.

### Recommendations

1. Muslim scholars and religious organizations should encourage the practice of polygamy with special emphasis on how it should be practiced without violating the teachings of Islam
2. Strict observance of *Shari'ah* should be encouraged on whoever intends to practice polygamy. In other words, it must be ensured that whoever is going into polygamy has the physical, material strength and the knowledge of its rules before practicing it.
3. Muslim scholars and religious organizations should support and encourage the practice of polygamy in order to check the spread of crime and immorality in our communities.
4. Conferences, seminars and workshops should be organized by Muslim organizations and institutions in order to enlighten Muslims on the practice and benefits of polygamy.

5. Muslim scholars should endeavour to write books on the subject matter with a view to removing parochialism and misunderstanding relating to the practice of polygamy.

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