

Polygamy in Islam: A critical Analysis

Muhammad Aqeel Khan and Hidayat Ur Rehman

Department of Law, Abdul Wali Khan University, Mardan, PK Pakistan

Received: June 11, 2016
Accepted: August 29, 2016

ABSTRACT

The right of a Muslim male to marry more than one woman at a time has attracted much attention in recent years. In many Muslim societies, polygamy has been criticized by many scholars. They argue that the said verse of Quran does not highlight the true spirit of Islam, which are equity, justice and tolerance. Many argue that the said verse needs proper interpretation. The condition of 'Adl' i.e. justice attached to a permission of this right has been totally neglected. A comparative study of different religions has been under taken to analyse this issue and at the end different suggestions are given by indicating various legislations carried out in many Muslim countries.

KEY WORDS: *Adl* or justice, permissible, reforms, financial means.

INTRODUCTION

POLYGAMY:

One of the most debatable issues at present times is the right of a Muslim man to have more than one wife, which is considered as an infringement upon the rights of a woman and as a symptom of 'patriarchy'¹ by the critics in the modern world. It is quite important to quote the exact verse or text of Shari'ah law in order to understand the issue before commenting over it. Quran says;

"To orphans restore their property (when they reach their age), nor substitute (your) worthless things for (their) good ones; and devour not their substance (by mixing it up) with your own. For this is indeed a great sin. If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that you shall not be able to deal justly (with them), then (marry) only one, or (a captive) that your right hand possesses. That will be more suitable, to prevent you from doing injustice".²

By analyzing the above verse of the Holy Quran that has become the sole basis for legitimizing the right of polygamy, it looks like many Muslim males have taken for granted the strict condition attached to the same right once they are able to exercise it. A Muslim male is only allowed to marry more than one wife if he can maintain justice among his spouses. So it is not an order or rule but an exception. It comes under one of the five categories of Do's and Don'ts of Islam. This one is known as 'Mubah' i.e. permissible or allowed.³ Therefore, it is neither compulsory (Fard) nor recommended or encouraged (Mustahab).

The condition attached to the enjoyment of this right is 'Adl' or justice. Now the question arises what can be considered justice or fairness regarding treatment with wives? Though the word 'justice' has not been defined but all the scholars unanimously agree that justice in this verse means equality of treatment, food, clothing and boarding⁴, while some consider fairness also necessary in love, affection and esteem. Syed Amir Ali in his book 'The spirit of Islam' mentions that absolute justice in matters of feeling is impossible. Ali says, Quran speaks itself; "God has not made for any man two hearts in his (one) body..."⁵, suggesting that a man would not be able to "love two women

¹ *The Economist*.

² The Holy Quran, Ch No.4, Verses No.2-3, English Translation by Abdullah Yusuf Ali, MARCH 2007 (Islamic Dawah Centre International United Kingdom 2004) at p 46

³ Available at www.irf.net, Dr Zakir Naik, Most Common questions asked (polygamy) at p 1

⁴ Muhammad Sharif Chaudhry, *WOMEN'S RIGHTS IN ISLAM* (Lahore, Ashraf Printing Press, 1991) at p 84

⁵ The Holy Quran, Ch No.33, Verses No. 4, English Translation by Abdullah Yusuf Ali, MARCH 2007 (Islamic Dawah Centre International United Kingdom 2004) at p 251

equally” at the same time.⁶ This proviso actually speaks indirectly of prohibition rather than the permission because it is most difficult to fulfil this condition; hence the recommendation is towards monogamy.⁷ Even Allah Himself has pointed out that maintaining justice between wives is impossible.⁸

Some scholars like Omer Ahmed Osmani assert that the condition of marrying more than one wife applies only to orphan girls and widows and it does not apply to other women. He further adds on that the word ‘*YATAMA*’ not only includes orphans but also widows and divorcees.⁹ This might be the logic behind marrying an orphan girl to prevent her property from being misappropriated.¹⁰ Such scholars reject any such meaning of this verse that provokes its general application to all women. “Right hand possesses” are presumed to be war captives, ‘slaves and concubines’, all of whom were an unbroken element of the seventh century Arab society. Quran sent guidelines to treat them on equitable terms. Many jurists interpreted *aw* as “or” thus allowing men to marry such women while Ali translated *aw* as “that is”, referred to “women whom men’s right hands possess, that is, their spouses (Asad, 1980, 519).”¹¹

It is also a fact that Quran is the only religious book that uses the phrase ‘Marry only one’. In none of the other religious scriptures whether it be the Vedas, The Ramayan, the Mahabharat, the Geeta, the Talmud or the Bible can we find the restriction on the number of wives.¹² According to Hindu scriptures King Dashrat, the father of Rama had more than one wife. Similarly in Christianity some famous Christian theologians like Luther, Bucer indicate the legality of polygamy from the parable of ten virgins, spoken of in the Gospel of Mathew (25: 1-12); for Christ conceived of the possibility of the marriage of one man with as many as ten girls simultaneously.¹³ Judaism didn’t put any restriction on the number of wives a Jewish husband could have. King Solomon had hundreds of wives. Prophets Jacob and Moses had four wives each. It was not until very recently that the Hindu priests and Christian Church restricted the number of wives to one. In Talmudic law (Judaism) the practice was continued until Rabbi Gershom ben Yahudah put a ban on polygamy.¹⁴

Those scholars who are not in favour of abolishing the polygamy assert that it helps in keeping the society clean from committing sins or evils. A French scholar Dr. Le Bon says that polygamy actually resolves many social evils, like “prostitution, venereal disease, abortion, the misery of illegitimate children, the misfortunes of millions of unmarried women resulting from the disproportion between the sexes and adultery”.¹⁵

One argument which is usually given in support of polygyny is that if a man’s sexual needs cannot be satisfied by one wife then he should go for having two or three and until he has four. Only after four the Islamic teachings of self-constraint, modesty and fidelity are attracted.¹⁶ The said virtues of Islam always considered the qualities of women but these are equally important for her male partner too. As far as satisfaction of lust is concerned, I am personally very sceptical about the assurance that a person won’t have an extra-marital affair despite having four wives already. He can never be contented with any number of women particularly allowing him only with four. Islam as mentioned earlier permits polygamy on *conditional*¹⁷ basis but the Muslim males almost all over the world have clearly exploited this conditional right and as a result the Muslim societies have stopped their progressive growth. In the words of Mazhar-ul-Haq; “Purdah and Polygamy are demoralising and degenerative institutions on social scales. They hinder the growth and development of the character, mind and personality of both men and women of the new generation in such a manner that they remain inferior in achievement capabilities to those of the preceding generation.”¹⁸ Many countries have introduced reforms to the Muslim Family Laws but still because of a few loopholes in a particular country’s legislation, the purposes are not achieved yet. For example, in Malaysia the

⁶ Asma Barlas, “*BELIEVING WOMEN*” IN ISLAM, *Unreading Patriarchal Interpretations of the Qur’an*, (University of Texas Press USA 2002) at p 191

⁷ Abdullah Yusuf Ali, an eminent scholar.

⁸ The Holy Quran, Ch No.4, Verse No.129, English Translation by Abdullah Yusuf Ali, MARCH 2007 (Islamic Dawah Centre International United Kingdom 2004) at p 57

⁹ Muhammad Sharif Chaudhry, *WOMEN’S RIGHTS IN ISLAM* (Lahore, Ashraf Printing Press, 1991) at pp 92-93

¹⁰ Amina Wadud, *QURAN AND WOMEN, reading the sacred text from a women’s perspective* (Oxford University Press, 1999) at p 83

¹¹ Asma Barlas, “*BELIEVING WOMEN*” IN ISLAM, *Unreading Patriarchal Interpretations of the Qur’an*, (University of Texas Press USA 2002) at pp 190-191

¹² www.irf.net, Dr Zakir Naik, *Most Common questions asked* (polygamy) at p 1

¹³ Muhammad Sharif Chaudhry, *WOMEN’S RIGHTS IN ISLAM* (Lahore, Ashraf Printing Press, 1991) at p 96

¹⁴ Dr Zakir Naik, *Most Common questions asked* (polygamy) at pp 2-3 available at www.irf.net

¹⁵ Muhammad Sharif Chaudhry, *WOMEN’S RIGHTS IN ISLAM* (Lahore, Ashraf Printing Press, 1991) at p 94

¹⁶ Amina Wadud, *QURAN AND WOMEN, reading the sacred text from a women’s perspective* (Oxford University Press, 1999) at pp 84-85

¹⁷ Nuzhat Afza and Prof. Khurshid Ahmed, *THE POSITION OF WOMAN IN ISLAM (A COMPARATIVE STUDY)*, (Markazi Maktaba Islami Publishers New Delhi-25, 2003) at p 24

¹⁸ Mazhar-ul-Haq khan, *PURDAH AND POLYGAMY, A study in the social Pathology of the Muslim Society*, (Nashiran-e-ilm-o-Taraqiyet, Peshawar Cantt, NWFP, Pakistan 1972) at p 143

males go to another state where there are less strict laws regarding polygamy when they find themselves refused by the courts of a state where laws are more 'stringent'.¹⁹

The government of Pakistan has regulated the option of polygamy under the Muslim Family Laws Ordinance, 1961. According to the said Ordinance, one shall not contract another marriage during the subsistence of an existing marriage except with the previous permission in writing of the Arbitration Council.²⁰ The said council records reasons to consider whether the proposed marriage is necessary and just before submitting its approval to the chairman. Anyone who violates the above law is penalized to pay immediately the entire amount of the dower whether prompt or deferred due to the existing wife or wives and is also punished with simple imprisonment which may extend to one year or some amount of fine or both.²¹

Having introduced these positive reforms the Government of Pakistan still could not implement that law in *toto*. It is perhaps one of those many laws which are restricted to the statute book only and didn't get its due implementation behind it. The reason might be either a non-serious approach of a male dominated government or a stronger voice against such implementation within the society where male enjoys his life at his will to the exclusion of a woman's aspirations and rights. Another cause of such non-serious implementation of these laws can be identified as a strong resentment within the religious traditional pundits who are against any reforms which can either diminish or abolish their superiority particularly over women. I strongly believe that it is high time for the government to introduce strict legislation in the parliament where at present women are given more powers than ever before to introduce tougher measures for the implementation of such laws. It is needed more than ever to stop the misuse of this right any more. Perhaps it can be done either by completely banning polygamy e.g. many Muslim countries like Bosnia, Tunisia and Turkey have done it or allowing it only along with fulfilling strict conditions beforehand like in Singapore where a husband's application to arrange a second marriage is only allowed after meeting three strict conditions i.e. husband's "financial means", "fair treatment between wives" and lastly "lawful benefit involved in the second marriage."²²

The Working Group's Recommendations made in Malaysia initiated two suggestions to reform the laws on polygamy. One group wanted an end to polygamy while the other proposed strategies to reform this practice. The latter group gave the argument that slavery was abolished with the passage of time when Quran prohibited the unjust treatment with the slaves. Later on the former group that initially suggested a complete ban on polygamy also agreed to proposals for reformation of this practice as they also realized that 'Rome was not built in a day'. Both groups pointed out to the fact that men should also follow the Sunnah when Prophet Muhammad (SAW) didn't arrange a second marriage during the life time of Khadijah, his first wife. Shaheen Sardar Ali quotes Al-Hibri who argues that the fact that the Prophet Muhammad (SAW) was polygamous in his later life does not give a right to polygamy to a Muslim man. Al-Hibri proves her argument on the basis of a Quranic verse that states in clear words that "neither the Prophet nor his wives are like other men and women."²³ The Working Group (Workshop) further proposed that there should be legal provisions and tougher penalties for the husbands if they violate the requirements. The wife should have an automatic right to divorce if her husband wishes to take another wife.²⁴ In an Indian case *Itwari v. Asghari* (AIR 1960 ALL 684), a suit for restitution of conjugal rights was filed by the husband having a second wife already. The Allahabad High Court held that the burden is on the husband to prove that his second marriage did not constitute any cruelty or dishonour to his first wife whom he wants to bring back to his home. Despite accepting the plea of the husband that a Muslim male can contract a polygamous marriage, it was held that the Court would not award a decree for restitution of conjugal rights despite the lack of evidence of cruelty against the husband if it appeared that her return to her husband was "unjust and inequitable."²⁵

¹⁹ Hjh. Nik Noriani Nik Badlishah, (Regional workshop on Islamic Family Law and Justice for Muslim Women), *ISLAMIC FAMILY LAW AND JUSTICE FOR MUSLIM WOMEN*, (Published by: Sisters in Islam, JKR No.851, Jalan Dewan Bahasa, Kuala Lumpur, Malaysia, 2003) at pp 28-29

²⁰ The Muslim Family Laws Ordinance XIII of 1961, section 6.

²¹ Ibid

²² Hjh. Nik Noriani Nik Badlishah, *ISLAMIC FAMILY LAW AND JUSTICE FOR MUSLIM WOMEN*, (Published by: Sisters in Islam, JKR No.851, Jalan Dewan Bahasa, Kuala Lumpur, Malaysia, 2003) at pp 29-30

²³ Shaheen Sardar Ali, *GENDER AND HUMAN RIGHTS IN ISLAM AND INTERNATIONAL LAW, EQUAL BEFORE ALLAH, UNEQUAL BEFORE MEN?*, (Kluwer Law International, Netherlands 1999) at p 74. Citing Al-Afghani (1945)p.79 "Quran verse 33:32,50. For example, while the Prophet encouraged widows and divorcees to remarry, his own wives were not to be remarried after his death. They were considered 'the mothers of all believers', and no believer may marry his mother. However as the Prophet (SAW) grew older he gave his wives the choice to leave and marry another male more fulfilling perhaps of husbandly duties. All but one wife refused to leave him. See, Al-Hibri, op.cit..., n.1 at p.216."

²⁴ Hjh. Nik Noriani Nik Badlishah, (Regional workshop on Islamic Family Law and Justice for Muslim Women), *ISLAMIC FAMILY LAW AND JUSTICE FOR MUSLIM WOMEN*, (Published by: Sisters in Islam, JKR No.851, Jalan Dewan Bahasa, Kuala Lumpur, Malaysia, 2003) at p 124

²⁵ See for details available at www.law.emory.edu/ifl/legal/india

The Egyptian Committee appointed under 1926 legislation to reform the Muslim marriages and divorce suggested that the marriage contract should have a clause allowing a wife to make her husband agree not to arrange a second marriage during her life time and that the man should be restricted to monogamy and his second marriage must not be officially registered without the approval of a Judge (*Qadi*). The Egyptian enacted Law No. 44 inserted amendments according to which the wife should be informed if her husband conducts a second marriage and she has the right to sue for divorce if she disapproves. If a husband conceals from his wife about his being married already, it would make a ground for the wife to get a divorce (Art. 6b). The need for all these restrictions on polygamy was highlighted by many arguments which also included that “the vast majority of neglected children in Egypt were the result of polygamous marriages contracted by men who were incapable of supporting even a single family”.²⁶

REFERENCES

- John L. Esposito, *WOMEN IN MUSLIM FAMILY LAW*, (Syracuse University Press 1982)
- Ann Elizabeth Mayer, *ISLAM AND HUMAN RIGHTS, Tradition and Politics*, Third Edition, (West view Press USA, 1999)
- Nuzhat Afza and Prof. Khurshid Ahmed, *THE WOMEN IN ISLAM*, (Markazi Makataba Islami Publishers New Delhi 2003).
- Hjh. Nik Noriani Nik Badlishah (Editor), *ISLAMIC FAMILY LAW AND JUSTICE FOR MUSLIM WOMEN*, (Published by sisters in Islam, JKR No. 851, Jalan Dewan Bahasa, Kuala Lumpur, Malaysia, 2003)
- Shaheen Sardar Ali, *GENDER AND HUMAN RIGHTS IN ISLAM AND INTERNATIONAL LAW, EQUAL BEFORE ALLAH, UNEQUAL BEFORE MEN*, (Kluwer Law International, The Hague, Netherlands, 1999)
- Sir Danish Fardunji Mullah, *PRINCIPLES OF MUHAMMADAN LAW*, (Mansoor Book House, Katchery Road, Lahore Pakistan 1996)
- Mazhar-ul-Haq Khan, *PURDAH AND POLYGAMY, A study In the Social Pathology of the Muslim Society*, (Nashiran-e-Ilm-o-Taraqiyet, Peshawar Cantt, N.W.F.P, Pakistan 1972)
- Asma Barlas, *BELIEVING WOMEN IN ISLAM-Unreading Patriarchal interpretations of the Quran*, (University of Texas Press, Austin 2002)
- Muhammad Sharif Chaudhry, *WOMEN'S RIGHTS IN ISLAM*, SH. Muhammad Sharif Publishers, Book sellers and Exporters 1991).
- Abdullah Yusuf Ali, *THE MEANING OF THE HOLY QURAN* (English Translation), Islamic Dawah Centre International 2004
- Amina Wadud, *QURAN AND WOMEN, Reading the sacred text from a women's perspective*, (Oxford University Press, New York 1999)
- Valentine M. Moghadam (Editor), *FROM PATRIARCHY TO EMPOWERMENT, Women's participation, movements and rights in the Middle East, North Africa and South Asia*, (Syracuse University Press 2007).
- www.irf.net
- www.britishcouncil.org/pakistan-gep-learning-forum-legal-empowerment-danish-zuberi.doc
- www.rightsathome.org
- www.un.org/womenwatch
- Itwari v. Asghari* (AIR 1960 Allahabad 684), a case law on polygamy.

²⁶ John L. Esposito, *WOMEN IN MUSLIM FAMILY LAW*, (Syracuse University Press 1982) at pp 59-61