

CONCEPT OF POLYGAMY IN ISLAM AND LAW IN PAKISTAN

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If a man has more than one wife at the same time, this is called polygamy¹. Under Islamic marital jurisprudence, Muslim men are allowed to practice polygamy that is, they can have more than one wife at the same time, up to a total of four.

When Islam was re-presented by Holy Prophet Muhammad (peace be upon him) the practice of polygamy was common and deeply rooted in the social life. The Holy Qur'an did not ignore the practice or discard it, nor did it let it continue unchecked or unrestricted. The Qur'an could not be indifferent to the question or tolerant of the chaos and irresponsibility associated with polygamy. As it did with other prevailing social customs and practices, the Qur'an stepped in to organize the institution and polish it in such a way as to eradicate its traditional evils and insure its benefits. The Qur'an interfered because it had to be realistic and could not condone any chaos in the family structure, which is the very foundation of society. The benevolent intervention of the Qur'an introduced these regulations:

1. Polygamy is permissible with certain conditions and under certain circumstances. It is a conditional permission and not an article of Faith or a matter of necessity.
2. This permission is valid with a maximum of four wives. Before Islam there were no limits or assurances of any kinds.
3. The second or third wife, if ever taken, enjoys the same rights and privileges as the first one. She is fully entitled to whatever is due to the first one. Equality between the wives in treatment, provisions and kindness is a prerequisite of polygamy and a condition that must be fulfilled by anyone who maintains more than one wife. This equality depends largely on the inner conscience of the individual involved.
4. This permission is an exception to the ordinary course. It is the last resort, the final attempt to solve some social and moral problems, and to deal with inevitable difficulties. In short, it is an emergency measure, and it should be confined to that sense.

¹ **Polygamy.** Marriage to more than one spouse at a time. Although the term may also refer to polyandry (marriage to more than one man), it is often used as a synonym for polygyny (marriage to more than one woman), which appears to have once been common in most of the world and is still found widely in some cultures.

The Quran Verses on Polygamy:

Marriage from multiple women in Islam might not be allowed for those who might result in damaging the society with their marriage by bringing more illiterate, poor, and in many cases starving children to the society.

Let us look at Verse 4:3 of Surah 4 (An-Nisa [Women]):

"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 (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice."

Notice how Allah Almighty allowed polygamy only for helping the orphans (more women are needed to take care of the Muslims' and infidels' orphans after every battle.) Notice also how Allah Almighty ordered the men to be either fair to their wives or else to never marry more than one wife.

Let us look at Verse 4:129:

"Ye are never able to be fair and just as between women, even if it is your ardent desire: But turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air). If ye come to a friendly understanding, and practise self-restraint, God is Oft-forgiving, Most Merciful."

Here we clearly see that Allah Almighty tells men that they will never be fair to their wives.

Let us see why then Allah Almighty temporarily ordered polygamy but yet very highly discouraged it, and why I personally believe from the Holy Quran that polygamy should not be allowed today to most Muslim men in the Muslim world.

The purpose of the Holy Verse 4:3.

Verse 4:3 was revealed to Holy Prophet Muhammad (peace be upon him) in *Madina* after he migrated to it from *Mecca* and established an Islamic state there right after the battle of *Uhud*² in which the Muslims not only had lost badly against the Pagans, but

² The **Battle of Uhud** (Arabic: *azwat 'U ud*) was fought on Saturday, March 19, 625 (3 Shawwal 3 AH in the Islamic calendar) at the valley located in front of Mount Uhud, in what is now northwestern Arabia.[1] It occurred between a force from the Muslim community of Medina led by the Islamic prophet Muhammad, and a force led by Abu Sufyan ibn Harb from Mecca, the town from which many of the Muslims had previously emigrated. The Battle of U ud was the second military encounter between the Meccans and the Muslims, preceded by the Battle of Badr in 624, where a small Muslim army had defeated a larger Meccan army. Marching out from Mecca towards Medina on March 11, 625 AD, the Meccans desired to avenge their losses at Badr and strike back at Muhammad and his followers. The Muslims readied for war soon afterwards and the two armies fought on the slopes and plains of Mount 'U ud. Whilst outnumbered, the Muslims gained the early initiative and forced the Meccan lines back, thus leaving much of the Meccan camp unprotected. When the battle looked to be only one step away from a decisive Muslim victory, a serious mistake was committed by a part of the Muslim army, which altered the outcome of the battle. A breach of Muhammad's orders by

also suffered a dramatic decrease in the number of Muslim men. The Muslim men before that battle were approximately 700. They became only 400 after the battle. This loss had left so many Muslim women (1) Widows, and (2) Not able to get married if they were single.

To make matters even worse, the Muslims had faced yet another battle against the *Pagans* in *Mecca* and its neighboring tribes who wanted to attack the Muslims in *Madina* to finish off Islam once and for all, and by the Jews and the Christians in *Madina* who betrayed the Muslims in the "*battle of Trench*" after signing a defense treaty with Muhammad (peace be upon him) against the *Pagans*. With Allah's Will and Mercy, the Muslims had miraculously won the battle against the *Pagans of Mecca* and drove them back to where they came from, and then attacked the Jews and the Christians who betrayed the defense treaty and kicked those hypocrites out of *Madina* forever!

These continuous battles against the Muslims were very costly in terms of Muslim men's lives. The women had to be taken care of one way or another. For this reason, Allah Almighty had revealed the Verse 4:3 to Muhammad peace be upon him to solve the social problems that the Muslims were facing. That is why at the very beginning of the Verse 4:3 we see Allah Almighty setting a conditional clause for Orphans "*If ye fear that ye shall not be able to deal justly with the orphans...(4:3)*." This Verse came down for the purpose of protecting the Orphans and to increase the number of the Muslims by allowing the men to marry multiple wives (preferably from the grown Orphans at that time), up to four wives only. The purpose was absolutely not for man's sexual pleasure nor privilege, nor was it to support man's personal ego. It was revealed to solve a major social problem to prevent major sins such as illegal sex and prostitution.

Polygamy is not encouraged in the Holy Quran, nor Allah Almighty had allowed it because He really liked it. He was clearly careful to highly discourage polygamy to men by telling them "*but if ye fear that ye shall not be able to deal justly (with them), then only one...(4:3)*" which clearly orders men to either be fair or to not marry at all, despite the fact that we lost many men, Allah Almighty still didn't want polygamy to really take place. That's why He later told men "***Ye are never able to be fair and just as between women, even if it is your ardent desire...(4:129)***" which clearly nullifies the excuse that He gave them to practice polygamy. Is this a contradiction then? Absolutely not! It clearly proves that when Allah Almighty allowed polygamy, He only allowed it because we (the Muslims) had an emergency; Muslims lost almost half of their men if not even more. When Islam later became much stronger and Muslims defeated the infidels in the continues battles that were forced upon them (the Muslims), Allah Almighty nullified the excuse that he gave to men to practice polygamy, which would then lead to prohibiting polygamy altogether.

the Muslim archers, who left their assigned posts to despoil the Meccan camp, allowed a surprise attack from the Meccan cavalry, led by Meccan war veteran Khalid ibn al-Walid, which brought chaos to the Muslim ranks. Many Muslims were killed, and even Muhammad himself was badly injured. The Muslims had to withdraw up the slopes of 'U ud. The Meccans did not pursue the Muslims further, but marched back to Mecca declaring victory. For the Muslims, the battle was a significant setback: although they had been close to routing the Meccans a second time, their breach of Muhammad's orders in favor of collecting Meccan spoils reaped severe consequences.

LAW IN PAKISTAN

Pakistani laws allow a man to contract a second marriage only after obtaining the express consent of his first wife. Pakistani and Islamic laws exist to discourage this practice by imposing stringent restrictions on polygamy; however, the culture of contracting more than one marriage is still prevalent, particularly in rural societies.

In 1955, the Commission on Marriage and Family Laws prepared a Report safeguarding, inter alia, the rights of the woman. Justice Abdur Rasheed headed the Commission. It comprised seven members, three women and four men. Justice Abdur Rasheed wrote the Report while Maulana Ehtesham-ul-Haq Thanvi, the cleric member of the Commission, appended a dissenting note to the Report. The Commission accepted the principle that Family Laws had to be liberalised in the light of modern times, and made recommendations for changes in law. The civilian governments after 1956 avoided legislating on the Report, but General Ayub Khan made selected recommendations of the Report into law through an Ordinance in 1961. A resolution against the Muslim Family Law Ordinance was subsequently presented in the National Assembly but was not passed. The Ordinance never carried consensus among the *Ulema* and was considered by them as being against Islam. It was never presented in the parliament for proper legislation but stood as an indemnified law by the elected parliament of 1970.

The Muslim Family Laws Ordinance, 1961 (MFLO)³ also instituted some limited reforms in the law relating to polygamy, with the introduction of the requirement that the husband must submit an application and pay a fee to the local Union Council in

³ Muslim Family Laws Ordinance, 1961

6. Polygamy.

(1) No man, during the subsistence of an existing marriage, shall except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.

(2) An application for permission under Sub-section (1) shall be submitted to the Chairman in the prescribed manner together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto.

(3) On receipt of the application under Sub-section (1), Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such condition if any, as may be deemed fit, the permission applied for.

(4) In deciding the application the Arbitration Council shall record its reasons for the decision and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, to the Collector concerned and his decision shall be final and shall not be called in question in any Court.

(5) Any man who contracts another marriage without the permission of the Arbitration Council shall, (a) pay immediately the entire amount of the dower whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and (b) on conviction upon complaint be punishable with the simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

order to obtain prior written permission for contracting a polygamous marriage. The application must state the reasons for the proposed marriage and indicate whether the applicant has obtained the consent of the existing wife or wives. The chairman of the Union Council forms Arbitration Council with representatives of the existing wife or wives and the applicant in order to determine the necessity of the proposed marriage. The penalty for contracting a polygamous marriage without prior permission is that the husband must immediately pay the entire dower to the existing wife or wives as well as being subject to a fine of Rs.5000/- and/or imprisonment of one year; any polygamous marriage contracted without the Union Council's approval cannot be registered under the MFLO. Nevertheless, if a man does not seek the permission of his existing wife or the Union Council, his subsequent marriage remains valid. Furthermore, the difficulty in enforcing resort to the application process to the Union Council, combined with the judiciary's reluctance to apply the penalties contained in the MFLO (as indicated by the case law), tend to restrict the efficacy of the reform provisions. This has led some observers to describe the provisions requiring the permission of the Arbitration Council as a mere formality.

The constraints placed on polygamy by requirement of application to the local Union Council for permission and notification of existing wife/wives, backed up by penal sanctions for contracting a polygamous marriage without prior permission; husband's contracting polygamous marriage in contravention of legal procedures is a sufficient ground for first wife to obtain decree of dissolution.

The Federal Shariat Court was pleased to set aside the Report of the Council of Islamic Ideology recommending that provisions against polygamy be further strengthened in Section 6 of the Muslim Family Law Ordinance. The ground taken by the Court was that the Report had had no effect and therefore could not be considered as binding. Conservative *Fiqh* inclines to the Quranic reference to polygamy in a number of verses but ignores verses that clearly prefer monogamy to polygamy. In 4:3 the Quran says '...but if ye fear that ye shall not be able to deal justly with them then only one, or that which your right hands possess, that will be more suitable to prevent you from doing injustice'. Then in 4:129, the Quran says, 'Ye are never able to do justice between wives even if it is your ardent desire'. Many scholars, including Syed Abul Ala Maududi who favoured the contents of the Muslim Family Law Ordinance, have inferred from these verses that the state should codify law against polygamy accordingly, but the conservative clergy is of the opinion that the above Quranic verses still do not constitute a clear order. In Tunisia and Turkey polygamy is banned under Muslim Family Law.