

POLYGAMY IN ISLAMIC LAW

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1. Introduction:

Like Judaism and Christianity, (See, Footnotes No. 2,3,4 and 5) Islam does not provide an explicit prohibition of polygamy (more correctly polygyny).

Unlike Judaism, Christianity and perhaps other religions as well, Islam deals with the issue more clearly and provides certain legal requirements and restraints that amount to the discouragement of such a practice.

The reason for not prohibiting polygamy categorically is perhaps due to the fact that there are certain conditions which face individuals and societies in different places and at different times, which make the limited practice of polygamy a better solution than either divorce or the hypocritical pretence of morality.

Our present day feelings about what is "tasteful" or "distasteful" are something we cannot force on all people everywhere, at all times and under all conditions, unless it is a question of a law coming from God. This leads to the following question.

2. Is Polygamy immoral Perse?

To shorten the discussion, let us begin with the assumption that religions are acceptable sources of "morals". Let us also select two religions (Judaism and Christianity) which are the closest to Islam, in order to see where they stand on that issue.

a. In Judaism: It is notable that most of the Old Testament Prophets were polygamous. According to the Old Testament, Abraham “the friend of God” had more than one wife, David had one hundred wives, and Solomon is even said to have had 700 wives and 300 concubines.

If polygamy is immoral perse, then these and other leading figures in the Biblical traditions are immoral. In this case, there would be no sanctity attached to the Bible, its Prophets, or its teaching! No sincere Jew, Christian, or Muslim would regard God’s chosen Messengers as immoral persons!

The Dictionary of the Bible states

Polygamy meets us a fact: e.g. Abraham, Jacob, the Judges, David, Solomon.....In Deuteronomy 17:17, the king is warned not to multiply wives; later regulations fixed the number at eighteen for a king and four for an ordinary man. (Dictionary of the Bible (James Hasting Editor), Revised Edition, Charles Scribner’s Sons, N.Y., 1963, p.624)

The philosophy behind the legalization of polygamy is explained in the *Encyclopedia Bibilica*:

The man who owns his wife as a chattel can on the same principle own as many as he pleases that is to say, as many as he can afford to buy and keep....The Talmudists formulate the rule that no Jew may have more than four wives, kings may have at most eighteen. Encyclopedia Biblica (Rev T.K. Cheyene, and J.S. Black, Editors), The Macmillan Co., London, 1902, vol.3, p. 2946.)

It was only at the beginning of the eleventh Century! (about four centuries after the advent of Islam) that polygamy was expressly prohibited in Jadaism. According to Westermarck:

Among European Jews ploygyny was still practiced during the Middle ages, and among Jews living in Muhammadan countries it occurs even to this day. An express prohibition of it was not pronounced until the convening of the Rabbinical Synod at Worms, in the beginning of the eleventh century. This prohibition was originally made for the Jews living in Germany and Northern France, but it was successively adopted in all European countries. Nevertheless, the Jewish Marriage Code tained many provisions which originated at a time when polygyny was still legally in existence. (Westermarck, Edward A., The History of Marriage, (5th Edition Rewritten), Macmillan and co. Ltd., London, 1925, vol. III, pp. 42-43.)

b. In Christianity: As the Old Testament is a vital part of the Christian faith, it cannot be disregarded in this discussion. It was concerning the Old Testament laws and the Old Testament Prophets that Jesus (P.) said plainly that he came not to

destroy the Law or the Prophets but rather to fulfill. In addition, there is no passage in the *New Testament* that clearly prohibits polygamy. This was the understanding of the early Church Fathers and for several centuries in the Christian era.

Westermarck, the noted authority on the history of human marriage states:

Considering that monogamy prevailed as the only legitimate form of marriage in Greece and Rome, it cannot be said that Christianity introduced obligatory monogamy in the Western World. Indeed, although the New Testament assumes monogamy as the normal or ideal form of marriage, it does not expressly prohibit polygyny, except in the case of a bishop and a deacon. It has been argued that it was not necessary for the first Christian teachers to condemn polygyny because monogamy was the universal rule among peoples in whose midst it was preached; but this is certainly not true of the Jews, who still both permitted and practiced polygyny at the beginning of the Christian era.

Some of the Fathers accused the Jewish Rabbis of sensuality, but no council of the Church in the earliest centuries opposed polygyny, and no obstacle was put in the way of its practice by kings in countries where it had occurred in the times of paganism. In the middle of the sixth century Diarmait, King of Ireland, had two queens and two concubines. Polygyny was frequently practiced by the Mervian kings. Charles the Great had two wives and many concubines; and one of his laws seems to imply that polygyny was not unknown even among priests. In later times Philip of Hesse and Frederick William II of Prussia contracted bigamous marriages with the sanction of the Lutheran clergy. Luther himself approved of the bigamy of the former, and so did Melancthon. On various occasions Luther speaks of polygyny with considerable toleration. It had not been forbidden by God; even Abraham, who was a "perfect Christian", had two wives. It is true that God had allowed such marriages to certain men of the Old Testament only in particular circumstances, and if a Christian wanted to follow their example he had to show that the circumstances were similar in his case; but polygamy was undoubtedly preferable to divorce. In 1650, soon after the Peace of Westphalia, when the population had been greatly reduced by the Thirty Years' War, the Frankish Kreistag at Nuremberg passed the resolution that thenceforth every man should be allowed to marry two women. Certain sects of Christians have even advocated polygyny with much fervor. In 1531 the Anabaptists openly preached at Munster that he who wants to be a true Christian must have several wives. And the Mormons, as all the world knows, regard polygyny as a divine institution.

3. WHAT IS THE LEGAL STATUS OF POLYGAMY IN ISLAM?

The verse which allows polygamy "was revealed after the battle of Uhud in which many Muslims were killed, leaving widows and orphans for whom due care was incumbent upon the Muslim survivors. (Abd Al-Ati, Hammuda, Islam in Focus, The Canadian Islamic center, Edmonton Alberta, Canada, 1963, p.103.)

The translation of the verse is as follows:

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.... (Qur'an 4:3)

From this verse a number of facts are evident:

1. That polygamy is neither mandatory, nor encouraged, but merely permitted.
2. That the permission to practice polygamy is not associated with mere satisfaction of passion. It is rather associated with *compassion toward widows and orphans*, a matter that is confirmed by the atmosphere in which the verse was revealed.
3. That even in such a situation, the permission is *far more restricted* than the normal practice which existed among the Arabs and other people at that time when many married as many as ten or more wives.
4. That dealing justly with one's wives is an obligation. This applies to housing, food, clothing, kind treatment..etc., for which the husband is fully responsible. If one is not sure of being able to deal justly with them, the Quran say: "then (marry) only one." (Qur'an 4:3)

This verse, when combined with another verse in the same chapter, shows some discouragement of such plural marriages. The other verse plainly states:

"You are never able to be fair and just as between women even if it is your ardent desire..." (Qur'an 4: 129)

The requirement of justice rules out the fantasy that man can "own as many as he pleases." It also rules out the concept of "secondary wife," for all wives have exactly the same status and are entitled to identical rights and claims over their husband. It also implies, according to the Islamic Law, that should the husband fail to provide enough support for any of his wives, she can go to the court and ask for a divorce.

3. The verse says "Marry," not kidnap, buy, or seduce. What is "marriage" as understood in Islam? Marriage in Islam is a civil contract which is not valid unless both contracting parties consent to it. Thus no wife can be forced or "given" to a husband who is already married.

It is thus a free choice of both parties. As to the first wife:

- a. She may be barren or ill and see in polygamy a better solution than divorce.
- b. She may divorce him (unilaterally) if he is married to a second wife provided that the nuptial contract gives her the right of unilateral divorce (*Ismah*).

- c. She can go to court and ask for a divorce if there is evidence of mistreatment or injustice inflicted upon her.

But if polygamy is discouraged and loaded with such constraints, could it have been better if the Quran simply forbade it? To answer this question, we may have to raise another one:

4. CAN POLYGAMY BE A BETTER SOLUTION IN SOME CASES?

Scholars in the past and at present, Muslims and non-Muslims, have consistently pointed out such cases. The following are a few examples which are tied in with the general approach of Islam to individual and social problems.

a. Individual cases:

1. A man who discovers that his wife is barren, and who at the same time instinctively aspires to have children and heirs.

In a situation as this, the man would either have to:

- Suffer the deprivation of fatherhood for life.
- Divorce his barren wife and get married to another woman who is not barren.

In many cases, neither solution can be considered as the best alternative. Polygamy would have the advantage of preserving the marital relationship without depriving the man of fathering children of his own.

2. A man whose wife becomes chronically ill would have one of possible alternatives:

- He may suppress his instinctive sexual needs for the rest of his life.
- He may divorce his sick wife at the time when she needs his compassion most, and get married to another woman, thus legally satisfying his instinctive needs.
- Or he could compromise by keeping his sick wife, and secretly take for himself one or more illicit sex partners.

Let us discuss these alternatives from the point of view of the Islamic teachings. The first solution is against human nature. Islam recognizes sex and sexual needs and provides for legitimate means for their satisfaction. The second solution is clearly less

compassionate, especially where there is love between the two parties. Further more divorce is described by Prophet Muhammad (P) as the “permitted thing which is hated most by God.” The last solution is plainly against the Islamic teachings which forbid illicit sexual relations in any form.

To sum up, Islam being against immorality, hypocritical pretense of morality, and against divorce unless no better solution is available, provides for a better alternative which is consistent with human nature and with the preservation of pure and legitimate sex relationships. In a situation like this, it is doubtful that any solution would be better than polygamy, which is, after all, an optional solution.

b. *Social cases*

1. Anthropologists tell us that among various tribes and societies, polygamy is a social and economic necessity. In some very poor areas, the infant mortality is very high. Children on the other hand, are a source of additional labour for the earning capacity of the family. To have more children under such situations would require the practice of polygamy. It is by this very reason Christian missionaries in some African regions justified their permission to local people to practice polygamy without being excommunicated from the church. One researcher has even found, through his studies that women in such societies not only accept polygamy, but some of them even prefer this. (See for example Campbell, D., *In the Heart of the Bantuland*, Seeley, service and Co.,Ltd., London, 1922, p. 160, and Cory H., *Sukuma Law and Customs*, Oxford University Press, N. Y., 1953, p.52.)
2. Aside from cases where women outnumber men, devastating wars, in the past and at present, have taken their toll mainly among men. The result is not simply more women who cannot find husbands, but even more widows who may aspire to a respectable family life. In such a situation, if polygamy is bad, the limitation on polygamy is even far worse.

Both unmarried women and widows are human beings. Unless their instinctive needs are legitimately satisfied, the temptation is great for corruption and immorality. But aside from the moral question these women are also exploited. They are used as tools for men’s pleasure, yet have no guarantees, no rights or security, financial or emotional. Should they become pregnant, it is their burden alone. But even if such women are ready to pay the price for this personally, society also suffers seriously from such situations. The increasing number of illegitimate children born today under conditions such as these provides a potential base for tomorrow’s maladjusted and even criminals. Further more it is inhuman, humiliating for those children to grow up without knowing who their fathers were and without enjoying a lean and normal family life.

One question remain:

5. WHY NOT POLYANDRY (PLURALITY OF HUSBANDS FOR THE SAME WOMAN)?

It is evident that the nature of women is physiologically and psychologically different from that of men. Psychologically speaking, the woman is monogamous by her very nature. Furthermore, in all cultures, new and old, the headship of the family, is normally man's. One can imagine what would happen if the family had two or more heads. Furthermore, if the woman is married to more than one husband, which would be the father of her children?

CONCLUSION

It is now evident that the association of "polygamy" with Islam is not only unfair or biased but based on serious misunderstanding. Polygamy was practiced, often without limitation, in almost all cultures. It was sanctioned by various religions, and practiced both before Islam and for many centuries thereafter. It is presently practiced, though secretly, by the Mormons, (It is estimated that in Utah alone over 30,000 middle-class Mormon Americans secretly cling to the practice of plural marriage. The Mormon church accepted the principle of Plural Marriage as a revelation from God. It was widely adopted after Brigham Young led the Mormons into their "Promised Land"—the Territory of Utah, in 1847. In 1890, however, after polygamy was outlawed a Federal statute, Church funds and property were confiscated. This apparently led the Church to issue a manifesto banning plural marriage. Church President Wilford Woodruff later declared the manifesto had been divinely inspired. For a first-hand report on the practice of polygamy in the U.S. A. as late as 1967, see Ben Merson, "Husband with More than one Wife." In *Journal*, June 1967, esp. p. 78) and it is allowed by Christian missionaries in Africa and other areas where polygamy is a social necessity.

It is both honest and accurate to say that it is Islam which regulated this practice, limited it, made it more humane, and insisted equal rights and status for all wives. What the Qur'anic decrees amount to, taken together, is a discouragement of polygamy unless necessity for it exists.

It is also evident that the general rule in Islam is monogamy and not polygamy. However, permission to practice limited polygamy is only consistent with Islam's realistic view of the nature of man and woman and of the various social needs, problems, and culture variations.

The question is, however, far more than the inherent flexibility of Islam; it also is the frank and straightforward approach of Islam in dealing with practical problems. Rather than requiring hypocritical and superficial compliance, Islam delves deeper into the problems of individuals and societies, and provides for legitimate and clean solutions which are far more beneficial than would be the case if they were ignored. There is no

doubt that the second wife legally married and treated kindly is better off than a mistress without any legal rights or security. There is no doubt also that the legitimate child of a polygamous father, born in the "full light of the day", and who enjoys all the rights and privileges of a son or daughter, is far better off than the wanted or unwanted illegitimate child (especially if it is a girl).

It is fair also to say the polygamy may be harmful in many respects. Islam, however, does not regard polygamy as a substitute for monogamy. Realizing its disadvantages Islam allows it under strict conditions and when no better alternative is available. This is actually consistent with a general rule in Islamic Law, "The Lesser of two evils." This means that if a harm is certain, and if there is no way to avert such harm unless some other harm is done, then it is better to cause the lesser harm in order to avoid the greater. It is like a captain who gets rid of the ship's freight in order to save the lives of the sailors.

The vitality, flexibility, and far-sightedness of the teachings of Islam cannot possibly be attributed to any man or group of men, including Prophet Muhammad (P) himself. Its secret simply lies in its Divine Source, God Most high, who knows in entirety what human needs and problems are.

Man can reject the guidance of God, become his own god, and establish his own standards of morality. Ultimately, however, he may discover the mirage that alluded him. A few honest questions finally: What is the situation in countries which banned polygamy? Do they really enjoy sincere and faithful "monogamy?" What is the degree of cohesion of the family? Is there any significant number of mistresses, "Sweethearts", and illegitimate children? How observant are married men and women of the strict "monogamous" relationship? Are infidelity and secret extramarital sexual relationships more moral than the legitimate, legally-protected husband-wife relationships, even under polygamy if there is a pressing need for it? Which of the two situations is best?

After all, Islam by its very nature, is a universal religion which is revealed by God guide people in all places and at all times.

The guidance can hardly be secured by avoiding issues and problems which are real, even as they are relevant to human life on earth with its diversity. Hypocrisy, apology, or burying one's head in the sand are hardly realistic means of achieving righteous human life. They are not effective in achieving moral upliftment either!