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EXPLORING THE IMPLICATIONS OF BANNING POLYGAMY IN ISLAM: A CRITICAL STUDY

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Abstract

Polygamy has its origins in Islamic customs, with references in the Quran allowing men to take up to four wives under specific conditions. Polygamy is uncommon in most parts of the world. While it is legal in India, there are restrictions and judicial measures in place to prevent abuse and ensure fairness. On a global scale, polygamy is largely regarded as a breach of human rights and is frequently discouraged or prohibited. Economic factors, the cost of supporting several wives and their children, their education, marriage, housing difficulties, caregiving responsibilities, and the rapid pace of contemporary life all significantly contributed to its decrease. In various Muslim countries, polygamy is no longer practiced, not only in India.

Key Words – Polygamy, Quran, Constitution, Judicial Observation, International Concern

Introduction

Marriage is an institution that allows a man and a woman to enter family life together. It represents a stable bond in which a man and a woman can cohabit without forfeiting their standing in the community. The significance of marriage extends beyond just the couple; it impacts society as a whole and the generations that follow. The duties it assigns to a couple are therefore both significant and sensitive. Marriage is not a response to human frailty, but rather a path to spiritual development.

Islamic culture places a high value on marriage, and its legality is based on a number of fundamental components that represent the concepts of competence, consent, and following Islamic law. In Islam, marriage is a well-regarded institution with significant objectives. Monogamy is typically used to accomplish the objective. A man may, however, marry more than one wife under specific circumstances, provided that he treats each one fairly and makes decisions based on Taqwa, or God Consciousness.

Meaning of Polygamy

Polygamy is the generic term for multiple marriages and it has two logical subtypes, polygyny and polyandry. Polygyny is the marriage of one man to two or more women. Polyandry is the marriage of one woman to one or more men. Of these two types of polygamy, polygyny is by far the most prevalent. The word “Polygamy” can be applied to both polygyny and polyandry, but popularly it is used to connote polygyny. The Islamic approach to polygamy is radically different to its meaning in the west. In non-Muslim societies, polygamy is widely associated with lust and greed.

Polygyny and polyandry are the two logical subtypes of polygamy, which is the general term for many marriages. One man marrying two or more women is known as polygyny. The marriage of one woman to one or more men is known as polyandry. The more common of these two forms of polygamy is polygyny. Although the term "polygamy" can refer to both polygyny and polyandry, it is most commonly used to imply polygyny. The Islamic approach to polygamy is radically different to its meaning in the west. In non-Muslim cultures, polygamy is frequently linked to covetousness and lust.

Polygamy refers to a marriage system in which an individual has multiple wives. Muslims are commonly believed to be free to enter into four marriages at a time under their religion. But it is a wrong notion. The verses of the Quran make it abundantly evident that polygamy is an exception to the general rule of monogamy in Islam. While there were no restrictions on the number of spouses in pre-Islamic Arabia, Islam restricted the number of women to four and encouraged monogamy as the ideal arrangement. Around the world, polygamy is both socially and religiously acceptable. Polygamy is acknowledged in the Quran as a behaviour that is acceptable but unpleasant.

In this context, it is worth mentioning that, before the advent of Islam religion, many Prophets came to this earth. Many of them married a number of wives. Jacob and Joseph and his brothers were born of different wives and Solomon had contracted many marriages. Abraham had at least two wives. The Jewish Sephardic communities living in Muslim countries continued the practice till as late as 1950. Polygamy was recognized institution among Medes, Babylonians, Assyrians and Persians. Polygamy was observed among the Athenians, the most civilized and most cultured of all nations of antiquity. In Hindu religion, king Dasharatha (father of Rama), had more than one wife, Krishna had several wives.

Objective of the Study

Polygamy is permitted for many social reasons. However, it is by permission and not an obligation or recommendation in the Quran that a Muslim male should indulge in polygamy.

The objectives of the present study are:

1. To understand the concept of Polygamy.
2. To know and explain the various reasons behind the practice of Polygamy.
3. To highlight some significant judicial decisions in relation to the topic.

Literature Review

In Islam, marriage is viewed as a highly esteemed institution, establishing it as the norm of life, with divorce considered merely an exception. The Islamic perspective does not require marriage to be documented or to adhere to any specific religious rituals. **(Syed Khalid Rashid in Muslim Law)**. The legal framework in Islam is divinely inspired. Marriage is both a religious obligation and a contractual agreement, characterized by a lasting bond founded on the mutual consent of both partners. **(Dr. M.A. Qureshi, Muslim Law)**. It is absolutely untenable to claim that Islam has originated and legalized polygamy. On the contrary Islam has put restrictions to the number of wives. It is rarely practiced in India. **(Aqil Ahmad, Mohammedan Law)**.

Methodology

This study's methodology is primarily doctrinal. Books, statutes, journals, periodicals, and other publications accessible via online resources including search engines and websites serve as secondary sources of data for the study.

Legal Status of Polygamy in India

The legal framework that regulates marriage and personal laws in India vary depending on the religion. Islamic personal laws, which govern issues like marriage, divorce, and inheritance, are adhered to by the Muslim community. These laws are recognized and codified by the Muslim Personal Law (Shariat) Application Act of 1937.

Muslim males in India are permitted to have up to four wives under Islamic law, as long as they meet certain requirements, such as having the resources and the capacity to treat each wife fairly. It is important to remember, that Indian law treats Muslim polygamy differently than

other personal rules. Although polygamy is legal, there are limitations and judicial oversight to guard against abuse and maintain equity.

Constitutional Validity and Polygamy

The Indian Constitution does not clearly permit or prohibit polygamy. Muslims are subject to their personal laws, which allow polygamy under certain conditions. This indicates that issues related to marriage and divorce fall under personal laws that are safeguarded by Article 25 of the Constitution. The practice of polygamy is evidently within the reasonable limitations outlined in Article 25 and does not contravene public morality, peace, or health. Therefore, the judiciary should refrain from intervening in areas reserved for the legislature. Nevertheless, it is important to highlight that if any custom or practice recognized by personal law infringes upon the fundamental rights established in the Constitution, it ought to be annulled.

International Concern and Polygamy.

The UN General Assembly, through various resolutions and reports, has expressed concerns about polygamy, viewing it as a violation of women's rights and equality, and has recommended that states discourage and prohibit such practices.

The UN Human Rights Committee has noted that polygamy, particularly in the form of polygyny (a man having multiple wives), violates the ICCPR, which guarantees the right to marry without discrimination.¹

The Committee on the Elimination of Discrimination Against Women (CEDAW) has also examined the issue of polygamy, indicating that it can lead to significant emotional and financial consequences for women and their dependents. The relevant state authorities can take action by enacting laws to prohibit such practices that are harmful and discriminatory towards women.²

¹ *A Simple Guide on The International Covenant on Civil and Political Rights, An overview of Article 1-27*, Centre for Civil and Political Rights, CCPR, available at: https://ccprcentre.org/files/media/Simple_guide_on_The_International_Covenant.pdf (last visited on April 4, 2025)

² *Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979*, United Nations General Assembly resolution 34/180, United Nations Human Rights, Office of the High Commissioner, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (last visited on April 8, 2025).

No rule applies to polygamy

The first thing to keep in mind on this matter is that polygamy is not a rule that all Muslims are required to adhere to. Rather, it is a clause—something permitted—for exceptional situations. Here's how Hazrat Mirza Tahir Ahmad explains it:

“...first this provision in Islam of marrying more than once is not a generality. It pertains to certain situations when it becomes necessary for both preserving the health of society and the rights of women to have this provision available.”³

The husband may wish to marry

In certain instances, cohabitation cannot be enjoyed due to the wife's infertility or chronic disease. In these situations, a man in a monogamous society has three options: divorce his wife, wait for her to pass away, find a way to murder her, or give up on the possibility of a problem and the desire to live together. Maybe having a second wife would be preferable in these circumstances to tormenting ourselves or abandoning a defenseless wife.⁴

Additionally, it cannot be claimed that every married man experiences happiness, success, and satisfaction in his marriage. Regardless of whether the issue stems from him or his spouse, he may seek other forms of companionship and comfort from someone else. Some individuals possess a stronger sexual drive than others. When polygamy is not permitted, these individuals may resort to adultery, concubinage, prostitution, and various other sexual offenses. To mitigate such detrimental behaviors, polygamy could be permitted.⁵

Islam prohibits hypocrisy, disloyalty, and adultery. It mandates capital punishment for both the adulterer and the adulteress. It encourages an unhappy and dissatisfied husband to marry a second wife openly and responsibly rather than engaging in deceit, mockery, cunning, falsehood, hypocrisy, and the degradation of moral integrity.

Ameer Ali has accurately stated that, "in societies with differing conditions, where the resources that allow women in more developed communities to sustain themselves are lacking

³ *Why does Islam allow polygamy?* by Farhan Iqbal, Missionary Ahmadiyya Muslim Community, Canada, Al Islam The Official Website of the Ahmadiyya Muslim Community, available at: <https://www.alislam.org/articles/why-does-islam-allow-polygamy/> (last visited on Jan. 12, 2025).

⁴ Aqil Ahmed, *Mohammedan Law*, 138, (Central Law Agency, Allahabad, 2000).

⁵ Syed Khalid Rashid, *Muslim law*, 80, (Eastern Book Co, Lucknow, 2004).

or insufficient, polygamy is likely to persist." According to Prof. Anderson, "if the prohibition of polygamy is unilateral and is accompanied by the husband's unrestricted right to unilaterally divorce, it would be a backward rather than an advanced move, as it would imply that a man wishing to take a second wife would feel the need to divorce his first wife. Allowing polygamy under certain conditions would undoubtedly be more advantageous for Muslim women."⁶

Hazrat Mirza Tahir Ahmad explains:

"...it is evident from a study of the Holy Quran that a special situation of a post-war period is being discussed. It is a time when a society is left with a large number of orphans and young widows, and the balance of male and female population is severely disturbed. A similar situation prevailed in Germany after the Second World War... There were a large number of virgins, dejected spinsters and young widows for whom it was impossible to get married"⁷

Therefore, Islam suggests polygamy as a remedy during times of hardship. Rather than leaving many families, widows, and orphans without support in pursuit of a strict idea of "equality" through monogamous marriage regardless of the situation, Islam provides a pragmatic solution that considers the enduring well-being and spiritual state of both individuals and society as a whole.

From the perspective of Justice

In this context, it is worth-mentioning here the Quranic verse where it has been clearly mentioned that "Get married to two, three, or four women of your choosing if you are worried that you might not give orphan women their "due" rights "if you were to marry them." However, if you fear that you will not uphold justice, then "content yourselves with" one or more of the "bondwomen" that you own. You are less prone to commit injustice in this way."⁸

This verse makes clear that the main justification in Islam for permitting numerous marriages, although with stringent restrictions, is "fair dealing with the orphans." The male must first make sure he will treat his wives and any orphans fairly before deciding to take a second wife. He should remain monogamous if he can't ensure that.

⁶ Syed Khalid Rashid, *Muslim Law*, 51, (Eastern Book Company, Lucknow, 2020).

⁷ *Why does Islam allow polygamy?* by Farhan Iqbal, Missionary Ahmadiyya Muslim Community, Canada, Al Islam. The Official Website of the Ahmadiyya Muslim Community, available at: <https://www.alislam.org/articles/why-does-islam-allow-polygamy/> (last visited on Jan. 12, 2025).

⁸ *Quran, Sura, An-Nisa*, Quran.com, available at, <https://quran.com/an-nisa/3-13> (last visited on April 13, 2025).

Additional justifications for Polygamy

Although caring for orphans is the main justification for numerous marriages given in the Quran, there are other circumstances in which a second wife can be desired. To fully understand the secondary reasons for polygamy, we must first grasp what the Quran identifies as the main purpose of marriage. Aqil Ahmad, outlines four goals for marriage: 1. The restraint of sexual passion; 2. The ordering of domestic life; 3. The increase of the family; and 4. The discipline of the same in the care and responsibility of wife and children.⁹ According to Hedaya, cohabitation, society, and equal friendship are the three purposes of marriage.

It is significant to remember that the Quran makes no mention of pursuing passion and sensuality as the goal of marriage. Whether you have one woman or several, that is not the goal of marriage in Islam. Therefore, it is entirely false to believe that Islam is allowing males to live lusty lives.

According to certain religions, being abstain from marriage due to some religious promise is the most spiritual way to live, and any satisfaction of one's natural urges is demure or worldly. Contrarily, Islam does not adopt this drastic stance and views marriage as a vital tool for protecting an individual from ills by giving them a way to express their natural impulses, which are required for reproduction and the continuance of human life. Without marriage, one would constantly be at risk of sinning to satisfy such cravings. Nonetheless, Islam has not made carnal, sensual pursuits the exclusive goal by acknowledging the existence of such cravings.

Therefore, in Islam, marriage is an institution meant to strengthen a person's spirituality and relationship with God. A person can freely and peacefully follow their true purpose in life, which is to adore God, by having a way to express their natural aspirations. This goal is the same regardless of whether a marriage is monogamous or polygamous.

Some significant Judicial Decisions

In *Abdurahiman v. Khairunnisa*¹⁰, the High Court of Kerala reviewed the purpose of marriage, Quranic restraints imposed on the polygamy and the need of the polygamous marriage at different points of time. The Court observed that:

⁹ Aqil Ahmad, *Mohammedan Law*, 109, (Central Law Agency, Allahabad, 2021).

¹⁰ 2010 (1) KLT 891.

“An attempt to understand Islamic law cannot be undertaken without understanding the core concept of Islam that marriage is an institution to facilitate enjoyment of life and if the institution does not cater to enjoyment of life, the parties (the mates as they are referred to) have the option to walk out of the same.’¹¹

The Court further held that Islam permits polygamy with inbuilt restraints. It quoted in verse 3 and 129 Sura IV after Quran and help of exegesis provided in Abdul Yusuf Ali’s translation of the Quran. The Court extolled an equitable justice meted out to all wives which is deemed by Quran not possible by the man even if it is his ardent desire, therefore, the Muslim male has been ordered to remain content with one.

In *Badrudin v. Aisha Begum*¹², it was said that under Muslim law a Muslim is allowed to have maximum four wives. But it is not a part of religion. The legislature is fully competent to make a law requiring Muslims to have only one wife at a time. It will not be an interference with the right to profess, practice and propagate religion.

In *Sarla Mudgal v. Union of India*,¹³ the Supreme Court has recognized that in the United States, polygamy is viewed as harmful to 'public morals,' despite some religions considering it required or beneficial for their adherents. The Court determined that the State has the authority to override polygamy, similar to how it can ban human sacrifice or the practice of sati to maintain public order.

In *Sameena Begum v Union of India*,¹⁴ in this regard, a number of Muslim women launched PIL contesting the legitimacy of practices such as polygamy, nikah halala, and others that were sanctioned by Section 2 of the Shariat Act. According to these PILs, the practices in question violate Articles 14 and 15 of the Constitution by discriminating against women. Additionally, they argue that the procedures infringe upon a woman's Article 21 right to dignity.

In *Azizur Rahaman v. Hamidunnisa @ Shariffunissa*,¹⁵ the Allahabad High Court held that

¹¹ Dr. M.A. Qureshi, *Muslim Law*, 40-41, (Central Law Publications, Allahabad, 2018).

¹² (1957) A.L.J. 300

¹³ AIR 1995 SC 1531

¹⁴ Sameena Begum v Union of India, Supreme Today AI available at: <https://supremetoday.ai/doc/judgement/00100063212> (last visited on April 7, 2025)

¹⁵ Allahabad High Court, Sep. 19, 2022, available at: <https://www.casemine.com/judgement/in/6346655110225c7ea0cbb94c> (last visited on April 20, 2025)

Muslim Law permits husbands to marry four wives but does not encourage polygamy and the husbands do not have a fundamental right to compel the first wife to accept the additional wives. The High Court emphasized on the importance of equality before the law and the right to decent and civilized life under Article 21 of the Constitution. Respect towards wife is essential for a decent standard of life.

In *Nouruddin v. Safiya*,¹⁶ husband treated the wife with mental and physical cruelty and also hidden the fact that he has previously been married twice before the present marriage also some criminal case is pending against him at local police station. The High Court maintained and confirmed the divorce decree passed by the District Court. In the context of Polygamy court held that Muslim Law allows polygamy giving a man the right to marry up to four contemporaneously, provided he treats his wives fairly and does not differentiate between them.

CONCLUSION

Proponents of changing Muslim personal law in India argue that polygamy should be outlawed and that a uniform civil code should be established. However, they ought to look into the proportion of polygamous Muslims in India before advocating for such a shift. They appear to be attempting to end the nonexistent practice. Since there are more Muslim men than women in India, polygamy is not really feasible.

With a majority of Muslims, polygamy is uncommon in several of the nations that allow it. In Afghanistan, Pakistan, Bangladesh, Iran, and Egypt, where it is permitted for Muslims to live with more than one spouse, less than 1% of Muslim men do so.¹⁷

In reality, Muslim society no longer practices the norm of having many wives. Economic pressures, the expense of caring for multiple wives and their children, their education, marriage, housing challenges, caregiving, and the fast-paced nature of life all played a significant role in its decline. In many Muslim nations, polygamy is no longer practiced, not just in India.

¹⁶ Nouruddin v. Safiya, Casemine available at: <https://www.casemine.com/judgement/in/657b503f874c394749366795> (last visited on April 8, 2025)

¹⁷ Polygamy is rare around the world and mostly confined to a few regions, By Stephanie Kramer, available at: <https://www.pewresearch.org/short-reads/2020/12/07/polygamy-is-rare-around-the-world-and-mostly-confined-to-a-few-regions/> (last visited on Jan. 12, 2025).