

Polygamy: Between Divine Law, Jurisprudential Approach, and Human Reality

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Abstract:

Marriage is a legitimate bond that unites a man and a woman, fostering affection and compassion between them. Under its umbrella, rights are preserved, duties are fulfilled, and families and society are built on these foundations. However, family life inevitably faces challenges and trials that confront both husbands and wives, such as infertility in one spouse or a man's desire to have multiple wives, whether for personal or social reasons. Therefore, the aim of this study was to shed light on the reality of polygamy in Islamic law and jurisprudence, and its role in resolving social problems facing society. The study's methodology was inductive, gathering Qur'anic and Hadith texts that outline polygamy and its rulings. The analytical approach was used to analyze Qur'anic texts through interpretation and the jurisprudential rulings derived from them, and to analyze societal problems that require solutions, such as polygamy.

Keywords: Polygamy, marriage, divine law, jurisprudence, human reality.

Introduction:

The family is a structure composed of a husband and wife—bound by the marriage contract—whose relationship constitutes a building block of society. The continuation of this relationship creates stability, balance, and continuity. However, this stability and continuity may be disrupted. This disruption may occur due to the death of the husband or wife, the infertility of the wife, or the husband's desire to have children. To maintain this stability despite the disruption, a solution outside the family and societal framework is required. The One entrusted with this solution is the Creator of this universe and humanity, for He,

glory be to Him, knows what is good and what benefits humanity. The solution is polygamy.

Polygamy is a family and social issue ; it is family-related, as it relates to the organization of the family in terms of its formation (husband and wife), and social, as it alters the social order, creating gaps that could lead to dissolution and a proliferation of problems.

Focusing on polygamy is about clarifying its rulings, as it is a divine ruling and a social and realistic Quranic topic, intended to serve as a law for resolving societal problems.

First: Defining marriage and the wisdom behind its legitimacy

First: Linguistically, the definition of marriage is:

"The root word for marriage is **Nikah** (marriage), from the root word **yadrah** (strike), which refers to a marriage contract and sexual intercourse." ⁽¹⁾. The first is the Almighty's statement: "And marry the unmarried among you and the righteous among your male slaves and female slaves." ⁽²⁾.

The second is the Almighty's statement: "But if he divorces her, then she is not lawful to him afterward until she marries another husband." ⁽³⁾. Marriage in terminology: The jurists of the various schools of thought have used different terms to define marriage, and they all revolve around the meaning of the contract that allows for enjoyment of a woman according to the legal conditions ⁽⁴⁾.

Second: The wisdom behind the legitimacy of marriage

Marriage is permissible in the Qur'an, the Sunnah, and consensus. Allah the Almighty says: **{And if you fear that you will not be able to deal justly with the orphan girls, then marry those that please you of [other] women, two, three, or four.}** ⁽⁵⁾, and He the Almighty says: **{And whoever among you is not able to marry free, believing women, then [marry] from those your right hands possess of believing girls. And Allah is most knowing of your faith. Some of you are from others}. "Marry them with the permission of their people and give them their due compensation according to what is**

¹) Al-Mufradat, Al-Raghib Al-Isfahani, entry: Nikah, p. 506; Ibn Manzur, Lisan Al-Arab, entry: Nikah, 2/625; Al-Misbah Al-Munir, entry: Nikah, p. 321.

²) Surah An-Nor: 32.

³) Surah Al-Baqarah: 230.

⁴) Ibn Abidin, Ibn Abidin's Commentary, 2/258; Al-Sharh Al-Saghir with Al-Sawi's Commentary, 3/78-79; Mughni Al-Muhtaj, 3/123; Kashshaf Al-Qina', 5/5.

⁵) Surah An-Nisa: 3.

acceptable, [while] they are chaste, not unchaste, nor taking [other] lovers.”⁽⁶⁾.

Marriage is permissible for many reasons and authentic purposes. Among them is the preservation of the human race through procreation, lowering the gaze, and protecting oneself from adultery. The Prophet, may God bless him and grant him peace, said: “Whoever among you has the means, let him marry, for it is more effective in lowering the gaze and guarding one’s chastity. Whoever does not, then fasting is a shield for him”⁽⁷⁾. Marriage was also prescribed to protect women, divide the tasks of running the family between men and women, and increase the number of his nation, may God bless him and grant him peace, as in the hadith of Anas: The Messenger of God, may God bless him and grant him peace, commanded marriage and strictly forbade celibacy, and said: “Marry the loving, fertile woman, for I will outnumber the prophets with you on the Day of Resurrection.”⁽⁸⁾. In another narration: “Marriage is from my Sunnah, and whoever does not act according to my Sunnah is not from me. Marry, for I will outnumber the nations with you”⁽⁹⁾.

Third: Polygamy in the Quranic Context

The Holy Quran contains two explicit verses about polygamy, both mentioned in Surat An-Nisa. God Almighty says: {And if you fear that you will not be able to deal justly with the orphan girls, marry such women as seem good to you, two, three, or four; but if you fear that you will not be able to deal justly, then only one or those your right hands possess. That is more suitable that you will not incline towards injustice}⁽¹⁰⁾. The second verse is God Almighty’s saying: {And you will never be able to deal justly between wives, even if you should strive to do so. So do not incline towards all of them}⁽¹¹⁾. And if you reform and fear Allah, then indeed, Allah is Forgiving and Merciful. Allah the Almighty said: {And if you fear that you will not be just with the orphan girls, marry such women as seem good to you, two or three or four; but if you fear that you will not be just, then one or those your right hands possess. That is more suitable that you will not incur injustice.} ⁽¹²⁾, the reason for its revelation is what Al-Bukhari narrated: On the authority of Hisham bin Urwah, on the authority of his father, on the authority of

⁶) Surah An-Nisa: 25.

⁷) Al-Nisa’i, The Book of Marriage, Dar Al-Fikr Edition, Beirut. 6/57

⁸) Al-Haythami said in Majma’ al-Zawa’id 4/258: “It was narrated by Ahmad and al-Tabarani in al-Awsat, and its chain of transmission is good.”

⁹) Ibn Majah: The Book of Marriage, Vol. 1/592, 1395 AH/1975.

¹⁰) Surat An-Nisa: 3.

¹¹) Surat An-Nisa: 129.

¹²) Surat An-Nisa: 3.

Aisha, may Allah be pleased with her, that a man had an orphan girl and married her, and he had a bunch of dates, and he used to keep it for her, but he did not have anything to do with her, so the following was revealed about him: {And if you fear that you will not be just with the orphan girls, then ... and you will not incur injustice.} In the orphans (fi al-yatama) I think he said she was his partner in that bunch of dates, and in his money⁽¹³⁾. Fear in the noble verse is doubt and suspicion, so in the language it means “the diminution of something”⁽¹⁴⁾. It “includes the meaning of suspicion in its reality and metaphor, and it is a grief that befalls due to the expectation of something bad, as well as worry”⁽¹⁵⁾. And justice: “is a sound root that indicates two opposite meanings, and the structure is one, so justice is fairness, and it is said from it: Aqsata, yoqsato. God Almighty said: {Indeed, Allah loves the just ones”⁽¹⁶⁾. And justice is oppression, and Al’qosut is deviation from the truth..⁽¹⁷⁾.

As for ‘Awl, it is said, “He was unjust to his wife and to his wealth.”⁽¹⁸⁾. So, if the guardian has the slightest doubt or suspicion that he might harm his orphan, male or female, by not being just to them or by taking their wealth to satisfy his own psychological and sensual desires, by marrying her for her wealth and beauty, to seize her wealth. Or if his wives become numerous, he would turn to his orphan’s wealth to support his wives in the event of his insolvency. To avoid the injustice that the guardian might commit against his orphan, God Almighty commanded him to be content with one wife, as she is a cause for justice. Rashid Rida, in his interpretation of the two verses, said: " Whoever contemplates the two verses we have mentioned from Surat An-Nisa’ will realize that the permissibility of polygamy in Islam is a matter of extreme restriction, as if it were a necessity permitted to those in need of it, provided they are confident in the establishment of justice and are safe from injustice... Then he said: Polygamy in the early days of Islam had benefits, the most important of which were kinship and marriage ties, which were strengthened by tribalism. It did not cause the same harm as it does now, because the religion was firmly established in the souls of women and men, and the harm of a co-wife did not extend beyond her co-wife. Today, however, the harm is transmitted from each co-wife to her son, to his father, to all his relatives. She incites enmity and hatred among them, inciting her son to enmity towards his brothers, and inciting her husband to usurp his son’s rights from another woman,

¹³) Narrated by Al-Bukhari.

¹⁴) Ibn Faris, Dictionary of Language Standards, 2/230.

¹⁵) Abu al-Baqa: Al-Kulliyat, p. 428.

¹⁶) Surat Al-Mumtahina: 8.

¹⁷) Ibn Manzur, Lisan al-Arab, 3/85.

¹⁸) Abu al-Baqa, al-Kulliyat, p. 643.

while he foolishly obeys his most beloved wife, thus spreading corruption throughout the entire family " (19)." (Surat An-Nisa' is considered one of the most legislative surahs in the Holy Quran. It is an insight into the unity of humanity, and that no one has superiority over another except through piety.) Then the second verse came directly ordering the giving of orphans' money, and threatening those who consume it with painful punishment. The third verse contains a very important ruling, which is polygamy as part of the care of orphans' wealth. Abu Ja'far said: "The most correct interpretation of the verse we have mentioned is that it is interpreted as follows: 'And if you fear that you will not deal justly with orphan girls, then fear also regarding women. Do not marry any of them except those with whom you do not fear that you will wrong them, from one to four. But if you fear that you will wrong one as well, then do not marry her. But you should marry those whom your right hands possess, for that is more likely that you will not wrong them.'" (20). We said that this is more appropriate for the interpretation of the verse because God, may He be glorified and exalted, began the verse before it by prohibiting unlawfully consuming the wealth of orphans and mixing it with other wealth. God, the Exalted, said: "And give the orphans their property and do not exchange the bad for the bad." "With good things, and do not consume their wealth with your wealth. Indeed, that is a great sin." Then he informed them that if they feared God in that, then they would be cautious about it. What is obligatory upon them is to fear God and be cautious in the matter of women, just as they are required to be cautious in the matter of orphans. He informed them how to rid themselves of injustice in their matter, just as the Savior informed them of injustice in the property of orphans, saying: "Marry, if you are safe from injustice in the matter of women, what I have permitted and made lawful for you of them, two, three, or four. If you also fear injustice in the matter of one woman, such that you will not be able to treat her fairly, then do not marry her. But marry her to a slave woman, for you are more likely not to be unjust to them, because they are your property and your property, and you are not obligated to them as you are obligated to free women. This will be closer to you being safe from sin and injustice." (21).

Fourth: The Origin of Polygamy :

Polygamy appeared before Islam among previous nations and civilizations. "It was prevalent before the advent of Islam among many peoples, both civilized and uncivilized, such as the Chinese, Indians, Persians, ancient Egyptians, Hebrews,

¹⁹) Rashid Rida, Al-Manar, 4/349.

²⁰) Al-Tabari, Jami' al-Bayan fi Ta'wil al-Qur'an, 7/540.

²¹) Al-Tabari, Jami' al-Bayan fi Ta'wil al-Qur'an, the same source, 7/541.

Arabs, and the Germanic and Saxon peoples to which the inhabitants of Eastern and Western Europe belong, such as Germany, Austria, Switzerland, Czechoslovakia, Sweden, England, Belgium, the Netherlands, and Norway. This system is still widespread today in India, China, Japan, and Africa"⁽²²⁾. It appeared in Egypt among the Pharaohs, Jews, Christians, Romans, Persians, Indians, and in the Arabian Peninsula, which was not unique to this system, nor was it confined to it. Those who have written about the history of marriage across various human systems have shown that polygamy was known in all pre-Islamic environments, Jewish and Christian, Arab and non-Arab. Judaism permitted it without limit, and it was common among its kings and prophets. There are no texts in the Old Testament prohibiting polygamy or prohibiting it for the patriarchs, prophets, or those below them, both elite and common ⁽²³⁾. Rashid Rida says: "Polygamy was widespread among the Romans in practice, not in law, until Justinian prohibited it in his laws. However, it remained widespread in practice, and some popes permitted it for certain kings after Islam, such as Charlemagne, King of France, who was a contemporary of the Abbasid Caliphs al-Mahdi and al-Rashid."⁽²⁴⁾.

The Second Section: The Jurisprudential Approach to Polygamy

Jurists have addressed the issue of polygamy from the perspective of the rulings resulting from it, including the conditions a woman may stipulate: "If a man marries her and stipulates that he will not marry another woman, then she has the right to divorce him if he marries another woman. If the wife fails to stipulate this condition in the marriage contract, then she has the right to seek divorce if her husband neglects any of her rights or causes her harm. We do not disagree here that a woman sharing one husband with one or more other women does not provide her with comfort or the happiness she seeks in her life. However, the harm that befalls a woman when she shares one husband with another woman is much less than the harm that befalls her if she remains unmarried." ⁽²⁵⁾. Jurists have stated that the basic ruling on polygamy is permissibility. Evidence for this is found in the Book of God Almighty, including His words: "And if you fear that you will not be just toward the orphan girls, then marry those that please you of [other] women, two, three, or four."⁽²⁶⁾ . Based on the actions of the Prophet (peace and blessings be upon him) and the consensus of the Companions on this matter, it has been observed in their interpretations that polygamy is subject to the

²²⁾ Ali Abdel Wahid Wafi: The Story of Marriage and Celibacy, Cairo, 1395 AH, p. 52.

²³⁾ Abbas Al-Akkad, The Facts of Islam and the Falsehoods of Its Opponents, Al-Hilal Edition, p. 177.

²⁴⁾ Rashid Rida, Women's Rights in Islam or an Appeal to the Fairer Sex, Islamic Office Edition, 1395 AH, 1975 AD, p. 61.

²⁵⁾ Ibn Qudama: Al-Mughni, 6/548.

²⁶⁾ Surah An-Nisa: 3.

five legal rulings, as is the case with marriage: obligation, prohibition, desirability, dislike, and recommendation. This is dependent on the situation upon which polygamy is based and refers to it. If there is an absolute necessity for polygamy, such as the need for offspring for someone who did not have children from his first wife, or someone whose wife has a disease that makes it difficult for him to have intercourse with her, so he marries to protect himself from what is forbidden, then in such cases polygamy is obligatory. And the obligation here only occurs in the case of fear of falling into sins... In that case, the person is in dire need of marriage unless he himself sees otherwise, for example, due to his financial inability to marry a second wife, or due to his lack of desire to marry another wife, or due to his lack of moral ability due to his fear of not being fair between them. And it is emphasized that the obligation only occurs when there is fear of falling into sins. Polygamy is recommended for those who have the physical and financial ability to do so, while also being able to treat their wives fairly. It is also recommended for those who want it for a legitimate reason, such as increasing the Muslim population, reducing the rate of spinsterhood among women, or for those who fear that they may fall into sin by not being satisfied with one wife. Polygamy is disliked for those who have the financial and physical ability, but are strongly suspected of not being able to treat their wives fairly. Polygamy is prohibited for those who do not have the financial ability to marry, or who suffer from sexual weakness that harms them and prevents them from fulfilling the desires of their wife or wives, or who believe they are unable to treat their wives fairly, or who are strongly suspected of being unjust to one of their wives if they resort to polygamy, but they have no need for marriage.

Muhammad al-Ghazali says in the newspaper (Al-Muslimeen): “ The ratio between men and women must either be equal or be in favor of one party. If it is equal or the number of women is less, then the system of polygamy must disappear automatically, and each person will be satisfied, willingly or unwillingly, with what he has. However, if the number of women is greater than the number of men, then we are faced with one of three solutions: either we condemn some women to death by depriving them of marriage; or we permit taking lovers and mistresses, thereby sanctioning the crime of adultery; or we permit polygamy. Certainly, women reject a life of deprivation from marriage and refuse the bed of crime and disobedience. Consequently, they have no choice but to share with others a man who will care for them and to whom their children are

attributed. After that, there is no alternative but to recognize the principle of polygamy, which Islam has permitted.”⁽²⁷⁾.

Third Section: The Human Reality of Polygamy

We present here what some Islamic countries have said about polygamy and the laws related to it:

First: Polygamy in Egypt

Muhammad Abu Zahra notes that after about twenty years, proposals were made to restrict polygamy judicially, with two restrictions: justice between wives and the ability to provide for them. This was the subject of a committee formed in October 1926, which presented a draft law including these restrictions. However, after careful examination and various responses from scholars of jurisprudence and Shura Council members, the authorities decided to abandon this proposal, and Decree Law No. 25 of 1929 was void of it.

In 1943, the Egyptian Ministry of Social Affairs considered publishing the deceased, because its minister at the time believed he was fit for life. However, he soon changed his mind, thus acknowledging his merits.

Then another minister came after that, and made this issue his greatest concern. He republished the treasure trove and intended to submit it to the Public Prosecution Office for further investigation. However, after taking some steps and warning of its social danger—among those who wrote about this was Professor Abu Zahra himself in the *Journal of Law and Economics* in the first and second issues of the fifteenth year—he returned it to its original location. After Professor Abu Zahra published this book, the debate resumed last year, 1961, in the newspapers. Various elements supported the prohibition of polygamy or the imposition of restrictions on it, while Islamic scholars, led by the eminent scholar Sheikh Abu Zahra, strongly opposed it.⁽²⁸⁾.

Second: Polygamy in Tunisia

In Tunisia, a law was issued completely banning polygamy and imposing a penalty on anyone who married more than one woman. The ruler there is known for his Western inclinations, culture, and orientation.

The decision to ban polygamy had a mixed effect: in Islamic and scholarly circles, it had a regrettable resonance, highly indicative of the intellectual direction toward

²⁷) Muhammad al-Ghazali, *Al-Muslimoon* newspaper, issued in 1410 AH.

²⁸) Mohammad Abu Zahra, *Lectures on the Marriage Contract and its Effects*, p. 127.

which Tunisia was being led during its independence era. In colonial and feminist circles, it had a favorable resonance. This measure was described as a progressive step toward the liberation of Tunisian women! ⁽²⁹⁾

Third: Polygamy in Pakistan

Recently, news from Pakistan indicated that its president, Ayub Khan, in his capacity as military ruler, had issued a law imposing very strict restrictions on polygamy. These restrictions included requiring the matter to be submitted to a family council and the payment of a large sum of money. This law was met in Pakistan with indignation and denunciation in international Islamic and popular circles, and was also met with approval and pleasure by educated women and other intellectuals. Colonial newspapers and missionary circles supported and praised it extensively.

Fourth: Polygamy in Syria

As for Syria, the Personal Status Law states the following in the chapter on legal capacity:

This, as we can see, restricts polygamy to one condition: the ability of the man married to one wife to provide for the other wife, and the judge has the right to "not authorize" such a marriage if financial incapacity is proven. This text clearly states that, in the event of inability, the judge's authority is limited to refusing permission. The law does not address the invalidity of the contract. This indicates that the contract is valid and carries its legal effects. This is consistent with the unanimously agreed-upon rulings of Islamic jurisprudence. However, the party entering into the contract is subject to financial penalties—like any other marriage contract—that are not registered in the Sharia court.⁽³⁰⁾

Fourth Requirement: The Social Function of Polygamy

The system of polygamy is an emergency and exceptional one, and it is severely restricted because it is related to establishing human relationships and building families and communities. Polygamy was not obligatory for anyone, nor was it desired. Rather, Sharia permitted it to fulfill specific social functions:

First: The Role of Polygamy in Resolving Marital Problems

²⁹) See, Orphan care research through the Qur'an and Sunnah, a master's thesis by researcher: Soraya Sharafawi, University of Hajj Lakhdar, College of Social Sciences and Islamic Studies, 1423 AH/2003 AD. The research details the issue of polygamy and its relationship to orphans in great detail.

³⁰) Syrian Personal Status Law, issued on 9/17/1953, Chapter on Legal Capacity.

- A woman's infertility or illness, or her nature not being compatible with her husband's nature

A woman may be infertile and unable to bear children, or she may suffer from a repulsive illness that prevents her from fulfilling her husband's desires, or her nature may not be compatible with her husband's nature. In this case, it would be better, more merciful, and more chivalrous for this wife to remain in the marital bond. Because it is more honorable for her and more beloved to her, and the man is given the opportunity to marry a second wife who will bring him happiness through bearing children and satisfying his instinct for loving children. A woman's illness may go away, and her nature and morals may improve with the passage of time and the maturity of her mind, so she finds hope in her husband and is spared from deprivation, despair, and psychological complexes. This is within the limits of four wives, commensurate with the man's energy and ability to bear the burdens of married life. ⁽³¹⁾

- One woman menstruates, gets sick, gives birth, and has other preventative obstacles.

- Men's hatred of women intensifies at certain times: A family dispute may arise between the husband and his wife's relatives, or between him and his wife. Solutions become difficult, situations become tense, and both parties become rigid. The only solution is either a final separation that will eat away at the woman's heart forever, or temporary patience from the man, required by morality, loyalty, wisdom, and reason. There is no doubt that adopting the latter position, by keeping the wife under the guardianship of her husband with another wife, is much easier than divorce. ⁽³²⁾

- Some men, due to their psychological and physical nature, may have an intense sexual desire that cannot be satisfied by one woman. Therefore, it is permissible for them to satisfy their desires through legitimate means, rather than taking a mistress who would corrupt their morals.

Second: The Role of Polygamy in Resolving Family Problems

Polygamy has addressed many family problems. Without it, the family would be plunged into a dark tunnel that could lead to separation and disintegration. This solution addresses women, who are more in need of care and support than men. - All women are ready for marriage, but many men are unable to meet the

³¹) Wahba Al-Zuhayli, *Islamic Jurisprudence and its Evidence*, 9/163.

³²) *Sahih Fiqh al-Sunnah*, its evidence, and clarification of the doctrines of the Imams, 3/215.

necessities of marriage due to their poverty. Men who are ready to marry are fewer than women.

- Polygamy may be an honor for a female relative or uterine relative whose husband has died or divorced her, and who has no one to support her other than a married man.

Third: The Role of Polygamy in Solving Social Problems

The family is the foundation of society, and the stability of these families ensures the stability of society and maintains the cohesion of the social structure. Polygamy is the solution when gaps arise in society. This is evident in:

- Addressing the lack of men and the abundance of women, whether under normal circumstances by increasing the proportion of women, as in northern Europe, or in the aftermath of wars, as occurred in Germany after World War I, when the ratio of women to men became one to four or six. German women held demonstrations demanding the introduction of polygamy after the war killed most of Germany's men and after foundlings became numerous in the streets and public parks .⁽³³⁾.

- Polygamy is a social and moral necessity, required by public interest and mercy, and to protect women from extravagance and deviation, and from contracting serious diseases such as AIDS, and shelter in the marital home where the woman finds comfort and reassurance, instead of searching for temporary companions, or carrying signs at traffic lights announcing the desire for sexual intercourse, or cheap displays in the windows of some shops on public streets as in Germany and elsewhere .⁽³⁴⁾.

- Establishing kinship and marriage relationships to spread the Islamic message, as happened with the Prophet (peace and blessings be upon him). He married nine wives at the age of fifty-four in order to spread his message and gain supporters for the new religion of God. Until this age, he remained married to one wife, Khadija (may God be pleased with her).

- The nation sometimes needed to increase its offspring, to fight wars and battles against enemies, or to provide assistance in agriculture, industry, and other fields.

Polygamy remains a license, not an obligation, and its legislation is intended to find solutions for society, not to exacerbate crises. "One of the facts that must be taken into account when studying this topic is that the spirit of Sharia rejects the

³³) Wahba Al-Zuhayli, Islamic Jurisprudence and its Evidence, 9/161.

³⁴) Wahba Al-Zuhayli, Islamic Jurisprudence and its Evidence, 9/161.

purpose of marriage being the satisfaction of sexual desires... The goal must be to direct efforts toward the purpose of intimacy being to seek the offspring God has ordained, not to seek pleasure... and to seek a solution, not to expand sexual desires... and to restrict polygamy, not to permit it." In conclusion:

The tolerant Sharia allows Muslims to live within a broad and broad range of permissible activities, with only a few prohibited activities.

Although polygamy is generally governed, as understood, the context of the verse specifically relates it to orphans. The reason for the revelation of the verse on women is only an indication of this.

The original legislation of polygamy was to preserve the wealth of orphans and their well-being, as stated in the Qur'an and the Prophet's words and deeds.

Protecting orphans and widows is achieved through polygamy, which guarantees them proper and complete care, protects them from homelessness, and safeguards widows from the hardships of life, begging, or deviating from the path of earning a living.³⁵

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