

**STATUS OF WOMEN
IN ISLAM**

BY

**SH. YUSUF AL-
QARADAWI**

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This web edition created and published by Global Grey 2013.

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NOTHING BUT E-BOOKS

When and how does divorce take place?

Islam, however, does not decree divorce at all times nor in all cases. Divorce is permissible, according to the Qur'an and the Sunna (prophetic traditions) when the man is not hasty and chooses a suitable time. For instance, he should not divorce his wife when she has her menstrual period, nor when she is purified of her menses if he has had intercourse with her. [That is, if she is purified of her menses (i.e. between her periods) and he had had intercourse with her, he should not divorce her until she has completed her next menstrual period. This will ensure she is not pregnant. (editor's note)] If he did, his divorce would not be according to the teaching (Sunna) of the Prophet and would be forbidden. Some jurists have gone so far as to say the divorce is not valid then because it does not follow what the Prophet (blessings and peace be upon him) has commanded us to do. In the authentic Hadith, "Whoever did what we did not command, his deed is invalid". [Transmitted by Muslim (1718) on the authority of Isha.] The man should be sober, in a well-balanced and judicious state. If he is not fully conscious, or forced, or in a state of wrath which causes him to go beyond his intention and imagination and utter what he does not want to say, it is not considered valid. [Transmitted by Abu Dawud (2193) and Ibn Majah (2046) on the authority of Isha.]

The noble Hadith says, "No divorce in blind rage." Abu Dawud interpreted it to mean "anger," while another interpreted it to mean "by force." Both are correct.

He should have the intention to divorce his wife and to be actually separated from her. But if he makes of the divorce an oath to swear with, blackmail or threaten, it will be invalid, as some ancient scholars have said. This is reiterated by the well-versed jurists Ibn Al-Qayyim and his Sheikh Ibn Taymeya.

If such types of divorce are not valid, what remains is the intended, premeditated divorce which is reflected upon and studied by the husband before approaching it, and which he sees as the sole cure for an unbearable life. This divorce is described by Ibn `Abbas as "the divorce which is only according to an aim (an intention). [Mentioned by Al-Bukhari in Section 11, "Book of Divorce" (6/168) on the authority of Ibn Abbas.]

After divorce

However, when divorce takes place, it does not utterly cut off the marriage tie and make it irremediable. On the contrary, as mentioned in the Qur'an, divorce gives every divorced man two chances to go back and redeem the situation. If the divorces occur one after another, and if the two times do not succeed in changing their minds, the third divorce is the final and decisive one, after which the divorce cannot return to him unless she has first been married to another man (and widowed or divorced from him).

Therefore, putting the three chances given by Allah in one utterance is against the decree of the Qur'an. That is what is indicated and illustrated by the Sheikh of Islam Ibn Taymeya and his disciple Al-Qayyim, and what the Islamic Law courts accept in several Arab countries.

However, divorce does not deprive the divorced woman from taking maintenance during the legislated period that she stays without marriage (iddah). [Iddah is a waiting period. Its duration is usually (a) until she gives birth if she is pregnant, or (b) three menstrual cycles if she has regular periods, or three calendar months if she no menses. For details and exceptions, consult a book of Islamic jurisprudence (Fiqh). During the iddah the woman is not free to marry anyone else. If it is a reversible divorce, her husband may choose to take her back at any time during the iddah. If he does not take her back after the waiting period, the divorce is final and the woman is free to marry someone else, or she may go back to her husband with a new marriage contract, and he must Pay her a new dower. (editor's note)] Divorce does not allow the husband to dismiss her from her home, but forces the husband to let her stay in her house with him (in the same house); perhaps sentiments would return, hearts be purified and urges renewed: "it may be that Allah will afterward bring some new thing to pass (i.e. to return her back to you if that was the first or second divorce)". [Surah 65:1]

Moreover, it does not allow the man to consume the woman's dower or take back what was given before: "And it is not lawful for you (men) to take back any of your Mahr (bridal money given by the husband to his wife at the time of marriage) (from your wives) which you have given them". [Surah 2:229]

She also has the right of mut'a, the amount of which can be decided the social conventions. " And for divorced women, maintenance (should be provided) on reasonable (scale). This is a duty on Al-Mutaqeen (the pious)". [Surah 2:241] That is something general for every divorced woman to appease and compensate her. [Muta is compensation or gift made in a lump sum rather than on-going maintenance. (editor's note)]

It is also forbidden for the divorced man to spread rumours about his ex-wife or to scandalise her or offend her or her family after divorce: "either you retain her on reasonable terms or release her with kindness" [Surah 2:229] "And do not forget liberality between yourselves". [Surah 2:237]

That is divorce as decreed by Islam. It is a cure as it should be, at the right time, in the right measure, in the right style and with the right aim.

On the other hand, Christianity has totally forbidden divorce for Catholics; except in the case of adultery, it is also forbidden by the Orthodox Church. Their reason is that what is united by Allah (whom they call God) cannot be separated (divorced) by man. As for Muslims, they believe that Allah unites and He is the One Who separates (divorces) through His decreed Laws. Allah makes Laws for His worshippers according to what is in their interest, and He is the One Who knows them better. The result is that many Christians have abandoned what is forbidden, which have obliged most Christian countries to set local laws allowing divorce without the restrictions, ties and morals of Islam. It is no wonder that many now get divorced for the most trivial reasons, and their married lives have been subjected to degeneration and collapse.

Why is divorce initiated by the man?

They ask, "Why is divorce initiated by the man alone?" The reply is that the man is the one in charge of the family and is its backbone. He is the one who pays the dower and what follows until the establishment of the family is built on his own shoulders. Therefore, it is very hard for him to destroy that establishment except for powerful reasons and inevitable necessities which would make him sacrifice all these expenses and absorb these losses. A man may be less hasty as he is less affected by emotions. As for the woman, she can be very affected

by emotions, especially during the menses. What is more, it may not be in the parties' interests to leave the divorce to a court because not all the reasons for divorce are meant to be public, to be transmitted by lawyers and writers to become the subject of gossip on everyone's tongue. Yet, in the West divorce is achieved through court. This does not lessen divorce, nor does the court stand in the way of the man and woman who seek divorce.

How can an averse wife divorce her husband?

This is an important question for a great number of people: "If divorce is initiated by the man-and we already know the reasons and justifications for this-what, then, is decreed concerning a woman's initiating a divorce? What is her way to get rid of the injustice of the husband if she loathes life with him for his harsh temper, his ill conduct, or for not performing his duties in an obvious way? Or there could also be physical or financial impotence which prevents him from fulfilling these duties, or other reasons.

The answer is that the Judicious Law-Maker (i.e. Allah) has made several outlets for the woman through which she can overcome her dilemma:

1 - Her condition in the marriage contract to have divorce in her hands, which is eligible according to Abu Hanifa and Ahmad. In the authentic Hadith, "The truest condition is that which you made lawful, to have physical intercourse". [Mutafaq aley (agreed upon) according Uqba Ibn Amer, The Pearl and the Coral (Al-Lu'lu' wal-Marjan) (2/894).]

2- By paying a ransom (Khul'). A woman who dislikes her husband can ransom herself by repaying what she took as a dower and things like that. It is not fair of her to be the one who wishes for the divorce and the destruction of the marriage bond; and then the husband becomes the only loser. Almighty Allah says: "Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin for either of them if she gives back (the mahr or part of it) for her al-khul' (divorce)". [Surah 2:229]

According to the prophetic traditions, Thabet Ibn Qais's wife complained to the Prophet (blessings and peace be upon him) of her

strong loathing of her husband. The Prophet (blessings and peace be upon him) asked her, "Would you give back his orchard?"¹-which was her dower.- She answered, "Yes." The Prophet (blessings and peace be upon him) ordered Thabet to take back his orchard and nothing more. He asked the husband to utter one irreversible repudiation". [Transmitted by Al-Bukhari (6/170). "Book of Divorce" division 112, on the authority of Ibn Abbas.]

3- Divorce through two arbitrators when there is a breach between husband and wife. Allah has said: "If you fear a breach between them twain (the man and his wife) appoint (two) arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation". [Surah 4:35]

The Qur'an's calling that family council the "arbitrators" indicates that the two selected persons have the right to judge and decide. Some of the Prophet's Companions said to the arbitrators, "If you wish to unite them, then do so; and if you wish to divorce them, then do so."

4- Divorce for physical impotence. If the husband has a weakness which deprives him of having sexual intercourse, the wife can raise the matter to court for a divorce in order to prevent any harm touching her. In Islam, there should not be harm or any harming effect on others.

5- Divorce for injury falling on the wife. If the husband harmed his wife and hurt her, restricted her unfairly, such as by refusing to sustain her, for example, she can ask the judge to divorce her. In such a case, the judge will force a divorce to put an end to harm and injustice on her. The Almighty says: " But do not take them back to hurt them". [Surah 2:231]

The Almighty also says: "either you retain her on reasonable terms or release her with kindness". [Surah 2:229]

One of the injuries befalling a wife is to be struck without provocation. And some scholars of Islam have gone so far as to divorce a wife from her poor husband if he failed to sustain her and she asked for divorce. Islamic Law does not commit her to be patient when it comes to hunger with a poor husband if she does not accept it out of loyalty and nobility.

With these outlets, Islam has opened many doors for a woman to be liberated from the cruelty of some husbands and their being domineering without having the right to be. [See "The Right of the Averse Wife in my book Contemporary Legal Opinions (Fataawa Mu'aserah), 2/361-366]

The laws laid down by men may be against the rights of women, but the Law decreed by Allah, the Creator of men and women, is a Law void of injustice or prejudice. It is perfect justice: "And who is better in judgement than Allah for a people who have firm Faith". [Surah 4:129]

The abuse of using divorce

It remains to say that a great number of Muslims have abused divorce and have set it in the wrong place, making of it a sword pointed at a wife's neck. They have used it as an oath to swear with about everything great or small. Moreover, many jurists have widened the scope of divorce, even to include the divorce of the drunkard and the one in wrath, and also the forced one, though the Hadith says, "No divorce in blind rage". [Transmitted by Abu Dawud - his own wording - (3133), Al-Termithy (1141), Al-Nisa'i, 7/63, Ibn Majah (1969), Al-Doramy p.539, and Ahmad, 2/347,471. All on the authority of Abu Huraira.]

Ibn `Abbas says, "Divorce is only according to an aim (an intention)." But they take seriously the three times a man mentions divorce in one utterance in a state of anger, meant to be a threat in a fight outside the house, though he is totally happy and satisfied with his wife. However, what is indicated in the texts and the intentions of the forgiving nature of the Islamic Law, in order to establish a family and protect it, is to narrow the scope of divorce. It is not valid except by a certain utterance, at a certain time, with a certain intention. We owe this to Allah; that is what Imam Al-Bukhari and other predecessors perceived, and which has been confirmed by Ibn Taymeya and Al-Qayyim and others. This expresses the spirit of Islam. As to miscomprehension or misapplication of the rules of Islam, it is the responsibility of Muslims not of Islam.

Polygamy

Missionaries and orientalists treat the subject of polygamy as if it were one of the rites of Islam, or one of its duties, or at least a desirable practice in Islam. This is an inaccuracy or a misconception. The overwhelming norm of marriage, for a Muslim, is to marry one woman to be his solace, the joy of his heart, the keeper of his house, and the one to trust with his secrets. Thus, quietude, love, and mercy, the foundation of married life according to the Qur'an, would support them. Therefore, the learned say, "It is disliked for a man who has a wife who is chaste and modest and who is enough for him to marry another. This will subject him to what is forbidden." The Almighty says: "You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provision) so as to leave the other hanging (i.e. neither divorced nor married)". [Surah 4:129]

The Prophet (blessings and peace be upon him) said, "The man who had two wives and was inclined towards one of them will come on the Day of Judgement bent to one side". [Transmitted by Abu Dawud - his own wording - (3133), Al Termithy (1141), A-Nisa'i, 7/63, Ibn Majah (1969), Al-Doramy p.539, and Ahmad, 2/347, 471. All on the authority of Abu Huraira.] As for the man who is unable to sustain a second wife, or who is afraid of not being fair [The obligatory fairness is to treat them equally in maintenance, clothing and housing. He is forbidden to go to the one on the night devoted to the other except out of expedience such as a crisis or grave illness. He is also forbidden to go there in the day time except for necessity such as a visit for a harmless illness, or to inquire about a certain matter he needs. If he does not stay long, there is no expiation because it is a slight matter. If he stays or has his lust consumed, he should expiate by going to the one he treated unfairly and staying at her place the same time he stayed with the first woman. That is what is decided as an elucidation of the obligatory justice.] to both of them, it is forbidden for him to marry another. The Almighty says:" but if you fear that you shall not be able to deal justly (with them), then only one". [Surah 4:3]

Though it preferable for a man to have only one wife to avoid slips and out of fear of troubles in this world as well as punishment on the Day of Judgement, there are other humane considerations for the individual and society-which we will mention-that made Islam allow the Muslim to marry more than one wife. This is because Islam is the

religion which conforms to sound naturalness and treats reality without escape, exaggeration or fantasy.

Polygamy in olden times and in Islam

Some people talk about polygamy as if Islam was the first to permit it. This is incorrect and a dismissal of history.

Many nations and religions before Islam had allowed marrying a great number of women, tens of them, even a hundred, without any conditions or limitations. The Old Testament mentioned that David had three hundred women and that Solomon had seven hundred, some of whom were wives, while others were concubines.

With the advent of Islam, a condition and a limitation were laid on polygamy. The limitation made the maximum number of wives four. Ghilan Ibn Salma became a Muslim while he had ten women, so the Prophet (blessings and peace be upon him) said to him, "Choose four of them and leave (divorce) the others". [Transmitted by Al-Termithy (1128) and Ibn Majah (1953) On the authority of Ibn 'Umar] The same thing happened to those who embraced Islam while having eight or five wives; they were ordered by the Prophet (blessings and peace be upon him) not to keep more than four.

As for the marriage of the Prophet (blessings and peace be upon him) to nine women, it was something restricted and specified by Allah for him for the Islamic call and for the nation's need of them after his passing away. He lived most of his life with one wife, Khadijah, may Allah be pleased with her. That was a glorification by Allah of the Prophet's wives, who chose the way of Allah, His Prophet (blessings and peace be upon him) and the afterlife. Therefore, Allah forbade him to marry any others nor to choose another instead of one of his wives. The Almighty says: "It is not lawful for you (to marry other) women after this, nor to change them for other wives even though their beauty attracts you". [Surah 33:52]

Fairness is a condition of polygamy

As for the condition set forth by Islam for polygamy, it is the self-confidence of the Muslim to be fair in his treatment to his two wives in food, drink, clothing, housing and sustenance. If one is not sure of his

ability to fulfil such duties equitably and fairly, he is forbidden to marry more than one wife. Allah says: " But if you fear that you shall not be able to deal justly (with them), then only one". [Surah 4:3] The Prophet (blessings and peace be upon him) said, "Whoever has two wives and is more inclined towards one of them, he will come on the Day of Judgement dragging one of his sides while it is drooping". [Transmitted by Abu Dawud - his own wording (3133), Al-Termithy (1141), Al-Nisa'i, 7/63, Ibn Majah (1969), Al-Doramy p.539, and Ahmad, 2/347, 471. All on the authority of Abu Huraira.] The inclination which the Hadith warns us of takes place when he overlooks her rights and not when he merely inclines in feelings toward her, which is part of the equity that is not possible and which is forgiven by Allah. The Almighty says: " You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provision)". [Surah 4:129] For this reason, the Prophet (blessings and peace be upon him) used to divide equitably between his wives and say, "Allah, that is my division as it is in my power to do so. Do not blame me for what You have and I have not. [Transmitted by Abu Dawud (2134), Al-Termithy (1140), Ibn Majah (1971), Al-Doramy Book of Marriage p.540, and Ahmad 6/144 on the authority of isha.] By what he had not got , he meant feelings and inclination towards one of them in particular. Whenever he used to travel, he turned to drawing lots; the one whose arrow appeared would accompany him. He resorted to that in order to avoid jealousy and to satisfy them all.

Islam is the last word of Allah by which all His messages are concluded (sealed). Therefore, it came with a general and eternal Law to embrace all nations, all ages and all people. Islam has not made laws for the urban while overlooking the rural, nor for the cold regions and not the hot ones, or vice versa; nor for a certain age while ignoring the rest of the ages and the other generations. Islam appreciates the importance of individuals as well as communities.

A man could have a strong desire to have children but find him self married to a wife who is childless because of infertility or illness, or any other reason. Would it not be more respectable and better for her if he married another to realise his wish while at the same time keeping the first and ensuring her rights?

Some men are more sexual and lusty, but one could be married to a wife who has little desire for men, or who is ill or has a long period of

menstruation or whatever. She does not satisfy the desire of his instinct nor fill his lustful eyes that seek other women. Would he not be allowed to marry another in a lawful manner instead of seeking another as a mistress, or instead of divorcing the first one?

In addition, the number of eligible women for marriage might be more than the men able to marry, especially after wars that deplete the best of men and youth. It might be in the interest of the society and the women themselves who would prefer being second wives than living as spinsters all their lives, deprived of married life and what it has of quietude, love and protection, deprived of the bliss of the motherhood their instincts call for. There are only three ways for these surplus women:

1 - to spend their whole life feeling the bitterness of deprivation of married life and of motherhood, which is a severe punishment for them as they did not commit any crime.

2- or give them some freedom to follow their instincts and accept the means of pleasure with corrupt men who, after satisfying their desires, cast them away when their bloom and youth are gone. This is in addition to what might happen afterwards of begetting illegitimate children, increasing the number of fatherless children deprived of physical and psychological rights who become unproductive citizens and tools of destruction and corruption.

3- or to allow them each to marry a married man who is able to sustain and protect her, confident of his fairness as Allah Almighty has commanded.

Doubtless, this last alternative is the ideal, fair solution and a curing balm. That is what Islam has decreed: "And who is better in judgement than Allah for a people who have firm Faith". [Surah 5:50]

Polygamy as a moral, human system

The system of polygamy according to Islamic Law is a moral, human system. It is moral because it does not allow man to have intercourse with any woman he wishes, at any time he likes. He is not allowed to have intercourse with more than three women in addition to his (first) wife, and he cannot do that secretly, but must proceed with a contract

and announce it, even among a limited audience. The people in charge of the woman should know about this lawful intercourse and agree to it or at least should not object to it. It should be registered-according to the modern system-in a specialised court for marriage contracts. It is desirable to have a special dinner for the occasion in which the man invites his friends. Dufoof (hand drums) may be played to express utmost joy and hospitality.

It is human because through it a man lessens the burdens of the community by sheltering a woman who has no husband and transforms her to a chosen, protected wife. It is also human because he justifies his sexual intercourse based on a legal marriage for which the bridegroom provides a dower, furniture and expenses. Also of social benefit is the establishment of a social unit (family) capable of producing working progeny. It is also human because he is not only responsible for the woman with whom he has intercourse, but he is responsible when she suffers from the troubles of pregnancy. He does not leave her to bear it alone, but he bears a part of it by paying for her sustenance and expenses during her pregnancy and for her delivery. It is also that he recognizes the children begotten through sexual intercourse and presents them to the society as the fruits of a noble and honourable love, which are cherished by him and will be by the society in the future.

Dr Mustafa El-Siba'i, may Allah have mercy on him, said of the system of polygamy, "Man distributes and lessens his lust to a certain extent, but he multiplies his burdens, troubles and responsibilities to an unlimited extent." Certainty, it is a moral system protecting morals, and it is a human system honouring mankind.

The Western system of promiscuity is immoral and inhuman

How different the Islamic system is from the actual promiscuity in the life of the Western society! One Western writer insisted that no one on his death-bed could confess to the priest that he had not had intercourse with a woman (other than his wife) at least once in his lifetime. This promiscuity of the West is without a law; moreover, it occurs while the law stands by. It does not happen in the name of wives, but in the name of friendships and mistresses. It is not limited to only four, but is unlimited. It is not announced in order to be celebrated by the family, but happens secretly without anyone knowing about it. In addition, it does not commit the doer to any

financial responsibility towards the women he has intercourse with. Suffice it for him to tarnish their honour and then leave them to scandal and poverty and to endure the troubles of pregnancy and delivery. Besides, he is not committed to recognise the children begotten as the outcome of the intercourse. They are considered illegitimate, bearing the stigma of being bastard children as long as they live.

It is a legal promiscuity, but it is not called "polygamy". It is void of any moral behaviour, awakening of sensibility or human feeling. It is a promiscuity directed by lust and selfishness which flees from any responsibility.

Which of the two systems then is closer to morality, more allaying to lust, more honourable to women, more denotative of progress and more righteous to humanity? [See Women Between Jurisprudence and Law (Al-Mara'ah baina al-Fiqh wal-Qann) by Dr Mustafa El-Sibai. See also The Liberation of Woman in the Period of the Messenger (Tahrir al-Mara'ah fe Asr Al-Resalah) by Abd Al-Haleem Abu Shaqqah, fifth part.]

The abuse of the license of polygamy

We do not deny that many Muslims have abused the license of polygamy as decreed by Allah in the same way they have abused the license of divorce, as explained earlier. The failure is not in the Law itself but in the application due to misunderstanding, ill manners, or lack of the teachings of the religion.

We have seen some men marry more than one when the man is not certain of his fairness, which is a condition set by Allah for marrying another. Some of them marry more than one when they are unable to sustain both nor, in addition, what follows the marriage, i.e. children and responsibilities. Some men are able to sustain more but are unable to protect them.

Frequently, the abuse of this right leads to harmful consequences for the family as a result of pampering the new wife and treating the old one unfairly. He could totally end his inclination towards her until she is left hanging in the air, so to speak, neither married nor divorced. This frequently leads to envy among children who belong to one father

because he is not fair to them in their rights, nor does he treat them equally in moral and financial dealings.

Whatever the transgression of some people in that realm, it will never reach the evil to which the Westerners have lowered themselves by considering the moral polygamy a crime while allowing the immoral promiscuity. (However, polygamy is longer a problem in most Muslim societies, as marriage to one woman has now become a great problem.)

The call of westernized people to forbid polygamy

Unfortunately, some people calling for Westernisation in our Arab and Islamic countries have made use of what has happened because of the Muslims who transgress; they raise their voices asking for polygamy to be abolished completely. Day and night the disadvantages of polygamy are reiterated while silence is kept about the disadvantages of adultery and fornication, which is, unfortunately, allowed by local laws which rule over Muslim states nowadays. The mass media, especially films and serials, have played a serious role in spreading repulsive feelings toward polygamy, among women in particular, so that some of them would tolerate the husband when he commits adultery but not when he marries another.

The basis on which those who call for rejection of polygamy rely

Such advocates have succeeded in some Arab and Islamic countries, and laws have been issued forbidding what God has ordained and made lawful, thus allowing the laws of the West. There are still others who call for these changes in other countries.

The incredible thing in this case is they want to justify their system of polygamy in the name of Islamic Law and have proofs in the form of jurisprudence. They have objected it is the right of the person in authority to prevent what is allowed when it is in the interest of the people, or to avoid harm. Such a pretext is unacceptable by Islamic Law. Some have even gone so far as to attempt, in a rude and audacious way, to use the Qur'an to justify their claims. The Qur'an has put a condition for the man who marries more than one to be sure of his fair treatment of the two (or more) wives, and whoever is afraid of not being fair should keep only one. Allah says: "And if you fear that

you shall not be able to deal justly with the orphan-girls, then many (other) 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 only one". [Surah 4:3] This is the Qur'an's condition for polygamy-fairness. However, the Quran, they claim, has clarified in another verse in the same Surah that the conditioned fairness is not possible, in the verse: "You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provision)". [Surah 4:129] Therefore, it is claimed, this verse has negated the previous one. In fact, all the evidence which is being used is false and cannot stand sound criticism. Each will be discussed.

1- Islamic Law does not allow something whose evil outweighs its good

The claim that polygamy has caused social and familial corruption and detriment is an open fallacy; Islamic Law cannot permit something which will do harm; likewise, it does not forbid something of benefit. This is expressed in the Qur'an in the most eloquent and comprehensive phrases with the description of the Messenger (blessings and peace be upon him), and addressing the people of the Book (i.e., the Jews and Christians). "He commands them for Al-Ma'ruf (i.e. Islamic Monotheism and all that Islam has ordained); and forbids them from Al-Munkar (i.e. disbelief polytheism of all kinds, and all that Islam has forbidden); he allows them as lawful At-Tayyibat [(all i.e. good and lawful) as regards things deeds, beliefs, persons, foods etc] , and prohibits them as unlawful Al-Khabaith (all i.e. evil and unlawful as regards things, deeds, beliefs, persons, foods etc.), he releases them from their heavy burdens (of Allah's Covenant), and from the fetters (bindings) that were upon them. [Surah 7: 157] All that is permitted by Islamic Law has pure benefit or benefits which outweigh harm. All that is forbidden by Islamic Law must have pure harm or the harms must outweigh the benefits. This is clear in what is said in the Qur'an about alcohol and gambling: Say, "In them is great sin, and (some) benefit for men, but the sin of them is greater than their benefit". [Surah 7:219] This is also what Islamic Law has provided for in polygamy, as it balances interests and corrupting matters, benefits and harms.

It permits what the individual needs and is able to do as long as he is sure of his fairness, and is not afraid of being unjust or having a

greater inclination towards one of them: "but if you fear that you shall not be able to deal justly (with them), then only one". [Surah 4:3]

It may be in the interest of the first wife to be the sole one on the throne of marriage without any rivals, and she sees that she will be harmed by the presence of another wife; but it is also in the interest of the husband to marry another to protect him from illicit relationships or bring him an awaited-for child, etc.; moreover it may also be in the interest of the second wife to have someone take care of her.

To have half a husband, to live under his protection and be in his charge may be better than living as a spinster, widow or divorcee, in deprivation.

It is also in the interest of society to protect its men and women by legitimate marriage-in which each of them bears the responsibility for himself or herself and the spouse and for what Allah may give them of children-that is, instead of promiscuity, allowing the multiplicity of mistresses, which is immoral and inhuman, and in which each has the pleasure of a companion without any responsibility for what follows, even if a child is born of that illicit relationship. In turn, the child is then considered a wild plant without a father to belong to, or a family to give him love and compassion or a heredity to cherish.

Which harms should be avoided then? On the other hand, Islamic Law has reserved the first wife's right to equity between herself and the second wife concerning maintenance, housing, clothing and staying at her place. That is the equity put as a condition for polygamy. It is true that some husbands do not observe the justice commanded by Allah, but the misapplication does not mean the basic principle should be cancelled; otherwise the whole of Islamic Law and all other laws would be abolished. Adherence of the law should be enforced.

2- The right of the person in authority to prevent what is allowed

As to the claim that the person in authority has the right to prevent some of what is allowed, we have the following to say: what the Law has given to the person in authority is the right to limit some of what is permitted for a weighty interest at some times, or in some cases, or for certain people. He should not generally or utterly prevent it forever because that would be like forbidding, which is only Allah's right,

denied by the Qur'an to the People of the Book. "They (Jews and Christians) took their rabbis and their monks to be their lords besides Allah by obeying them in things which they made lawful or unlawful according to their own desires without being ordered by Allah". [Surah 9:31] The Hadith came to interpret the verse, "They allowed for them and forbade them and thus followed them". [Transmitted by Al-Termithy on the authority of Adeyy ibn Hatim in the interpretation sections (3095) and by Ibn Jarir in his interpretation section (16631). Al-Termithy said this Hadith is ghareeb (i.e., it has only one transmitter), but in the section about Hudhaifa, it is mauqf (i.e., it was narrated by the Companions, not by the Prophet [blessings and peace be upon him]) and transmitted by Al-Tabary (16634).]

To limit what is allowed is like preventing the slaughter of animals on certain days to lessen their consumption, as happened at the time of `Umar, may Allah be pleased with him; or like preventing excess cultivation of a certain crop so cultivation space will not encroach upon the space attributed to growing grains and other nutritious crops that are staple foods for the people. It is also similar to preventing the highest ranks of military officers or diplomats from marrying foreigners for fear of leaking state secrets through women to the enemies. It is also like preventing men from marrying a Christian or a Jew out of fear that it would affect Muslim women, especially in the communities that have small Islamic minorities and limited Muslim expatriates.

But to come to something allowed by Allah in His Book and mentioned by His Prophet (blessings and peace be upon him), established in the state, such as divorce or polygamy, and to prevent it utterly and forever is considered something different from limiting what is allowed according to the examples given.

The meaning of You will never be able to do perfect justice between wives. [Surah 4:129]

As to the illustration from the Glorious Qur'an, it is wholly rejected. It is a corruption of the order of words and carries within it an accusation against the Prophet Mohammed (greetings and peace be upon him) and his companions (may Allah be pleased with them), implying they did not understand the Qur'an, or maybe that they did but intentionally deviated from its precept. The verse quoted to illustrate the point also gives an answer if the meaning is perused;

Almighty Allah has allowed polygamy on the condition of fairness, then highlights the fairness needed in the same chapter when He says: " You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provision) so as to leave the other hanging (i.e. neither divorced nor married)". [Surah 4:129] This verse indicates that complete and absolute justice between women is impossible due to the nature of the human being because complete justice requires equity between them in everything, even in the inclination of the heart and in sexual desire, and that cannot be controlled by the man. He may love one more than the other, incline towards one more than another. Hearts are controlled and turned by Allah in the way He likes.

Therefore, the Prophet (blessings and peace be upon him) used to say after dividing between his women the apparent affairs of maintenance, clothing and spending nights, "Allah, that is my division as it is in my power to do so. So not blame me for what You have and I have not". [Transmitted by Abu Dawud (2134), Al-Termithy (1140), Ibn Majah (1971) Al-Doramy Book of Marriage p.154; and Ahmad 61144 on the authority of - isha] He meant the heart's inclination. It is this inclination in which one cannot be fair that Allah has pardoned, as the Almighty does not rebuke man for something beyond his ability when it is not in his power to do it.

Therefore the noble verse says: "You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provision) so as to leave the other suspended (i.e. neither divorced nor married)". [Surah 4:129] What is understood from this verse is that some inclination, which is the emotional inclination, is forgivable.

The amazing thing is that some Arab countries adopt the forbiddance of polygamy, though in their legislation they do not forbid adultery, except in certain cases when one is forced (rape), or in the case of the woman's marital infidelity if the husband does not drop the charge. Adultery is described by Allah as a great sin: "And come not near to the unlawful sexual intercourse. Verily, it is a fahshah (a great sin), and an evil way". [Surah 17:32]

I came to know through the great Imam Sheikh `Abd Al Haleem Mahmud, may Allah have mercy on his soul, that a Muslim living in an

African-Arab country which had laws against polygamy secretly married another wife through a legitimate conventional contract, abiding by all its conditions except that it was not authenticated. This is because the country's established law refused to authenticate or admit it and considered such a marriage a crime for which he would have to be punished. The man used to frequent the house of his (second) wife, so the police watched him and came to assume that she was his wife and that he had committed an offence against the law. One night they waited for him, arrested him at his wife's place and took him to court accusing him of marrying a second wife.

The man was clever and asked those interrogating him, "But who told you she is my wife? She is not a wife. She is a mistress whom I took as a companion and I call on from time to time " The interrogators were taken aback and told the man very politely, "We are awfully sorry for the misunderstanding. We thought she was a wife and did not know she was a companion." Thereupon, they released him because, to them, to have the illicit company of a woman as a mistress to commit adultery with is considered within the framework of personal freedom protected by the law.

The Woman as Member of the Society

Some biased people who are guided by personal interests propagate that Islam has forced the woman to be imprisoned at home and not to go out except to the grave!

Has that verdict a true basis in the Qur'an or in the Sunna (prophetic traditions) or in the history of Muslim women in the first three centuries, which were the best? Certainly not.

The Qur'an makes the man and woman partners in bearing the heaviest responsibilities in Islamic life, and that is the responsibility of enjoining the right and forbidding the evil. The Almighty says: "The believers, men and women, are "Auliy," (helpers, supporters, friends, protectors) of one another, they enjoin (on the people) Al-Maaruf (i.e. Islamic Monotheism and all that Islam orders one to do), and forbid (people) from Al-Munkar (i.e. polytheism and disbelief of all kinds, and all that Islam has forbidden); they offer their prayers perfectly Iqamat-as-Salat and give the Zakat and obey Allah and His Messenger". [Surah 9:71] As an example of the application of that principle, it happened that there was a woman in the mosque who disagreed with the caliph

`Umar Al-Faruq ("The One Who Distinguishes Truth from Falsehood", i.e. `Umar ibn Al-Khattab) while he was addressing the congregation from the pulpit. He accepted her opinion and discarded his, saying openly, "A woman is correct and `Umar is wrong. [Mentioned by Ibn Kathir in his interpretation, improving its authority, as mentioned earlier] The Prophet (blessings and peace be upon him) said, `seeking knowledge is obligatory for every Muslim. [Transmitted by Ibn Majah, part 1, (224), on the authority of Anas, corrected by Al-Seyoti in ancient times, and by Al-Albany in modern times.]

The Muslim scholars agree that a Muslim woman is also included in the meaning of the Hadith, as she is obliged to know what corrects her creed, improves her worship, and controls her manners within the morals of Islam, etc. She is obliged to know Allah's laws about what is allowed, what is forbidden, and her rights and duties. She could reach the highest stage of knowledge to achieve the grade of ijtiḥād (independent judgement of religious matters).

Her husband has no right to prevent her from seeking knowledge, which she is obliged to do, if he is not able to teach her or if he does not do it properly. The wives of the Prophet's Companions used to go to the Prophet (blessings and peace be upon him) to ask him about issues that concerned them. They were not prevented by modesty (shyness) from knowing their religion well.

Congregational prayer is not demanded of a woman, as it is demanded of a man. Her praying at home could be better for her circumstances and calling. However, her husband cannot forbid her if she wishes to go to congregational prayer in a mosque. The Prophet (blessings and peace be upon him) said, "Do not forbid Allah's women to go to Allah's mosques". [Transmitted by Muslim in his Sahih on the authority of Ibn Umar, 1/327,

(442).] A woman can come out of her house to run an errand for herself, her husband, or her children in the field or in the market place, as did Asma'a bint Abu Bakr That Al-Nit, gain ("The One Who Possessed Two Belts"). She said, "I used to carry date pits on my head from Al-Zubeir's land-my husband's-while I lived in Medina, and it was about two thirds of a league from Medina."

A woman could accompany the army for first aid and nursing tasks and similar services suitable to her nature and her abilities. Ahmad

and Al-Bukahri recounted on the authority of Al-Rubayyi' bint Muaawith of the Ansar who said, "We went to the battle with Allah's Messenger (blessings and peace be upon him) offering water to the men and doing them service and returning those killed and wounded to Medina". [Transmitted by Ahmad, 6/358.]

Similarly, Ahmad and Muslim recounted on the authority of Um `Ateyya, who said, "I went to the fighting with Allah's Messenger (blessings and peace be upon him) seven times, following them in their campaigns, preparing food, treating the wounded and helping the sick". [Transmitted by Ahmad, 6/407 and Muslim (1812)]

This is the work for the woman and for the nature of her function; but to carry a weapon and fight or lead a battalion is not one of her affairs, unless there is a special need for that; then she could share with men in their struggle against the enemies as much as she is able. On the Day of Hunain Um Salm took a dagger, and when her husband asked her the reason, she said, "I took to so that if any of the polytheists came near me I would stab him in his abdomen". [Transmitted by Muslim (1809)] Um `Imarah of the Ansar fought so well in the Battle of Uhud that the Prophet (blessings and peace be upon him) commended her, and in the apostate wars she witnessed the battles herself until Musaylimah Al-Khattab ("The Liar") was killed. She returned with ten stab wounds.

If in some ages the women are deprived of knowledge, isolated from life at home as if they were pieces of furniture, not taught by the husbands and not given the chance to learn-even going to the mosque is considered forbidden-if such a picture its prevalent, then it is a consequence of ignorance, exaggeration and deviation from the guidance of Islam. It is then an exaggeration in rigidity, not allowed by Allah. Islam is not responsible for such absurd traditions of the past; likewise it is not responsible for other exaggerated conventions created at present. The nature of Islam is the gentle balance in every thing legislated and suggested concerning rules and morals. Islam does not grant one thing to forbid something else, nor does it exaggerate one side at the expense of the other. It does not exaggerate in giving rights, nor in assigning duties.

Thereupon, it was not the intention of Islam to pamper the woman at the expense of the man, nor to be intent on satisfying a woman's whims and diminishing her calling, nor satisfying the man while

matter with you? " They said "We cannot water (our flocks) until the shepherds take (their flocks). And our father is a very old man. [Surah 28:23]

The society itself might be in need of the woman's work, as in giving medical treatment to women and looking after them, teaching girls and such work that concerns women. It is more proper for a woman to deal with another woman like herself, instead of with a man. The acceptance of a man in some cases is a matter of necessity which should be considered accordingly and should not be taken as a rule. The same case applies when the society needs working hands for the sake of development. If we allow some women to work, it should be restricted by a number of conditions:

* The work itself should be Islamically lawful in the sense that it should not be Islamically forbidden (haram) or lead to what is forbidden, for instance as a maid working in the house of a bachelor, or as a private secretary for a manager, whose position requires her to stay with him alone, or as a dancer who excites physical instincts and lusts, or as a worker in a restaurant serving alcohol. The Prophet (blessings and peace be upon him) condemned those who produce alcohol as well as those who transport or sell it. She should not work as an air hostess, a position which obliges her to wear forbidden clothes and offer what is unlawful (haram) to passengers. Her job would also require her to stay overnight alone in foreign countries, some of which are not safe. She should not work in other types of work forbidden by Islam for women in particular, or forbidden for men or women.

* If she goes out of her house, she should adhere to the morals of a Muslim woman in her clothing, her talk and movement. " And tell the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts) and not to show off their adornment except only that which is apparent and let them not stamp their feet so as to reveal what they hide of their adornment. [Surah 24:31] then be not soft in speech, lest he in whose heart is a disease (of hypocrisy or evil desire for adultery, etc.) should be moved with desire, but speak in an honourable manner. [Surah 33:32]

* Her work should not affect other duties which cannot be neglected, such as her duty towards her children and husband, which is her

foremost and basic duty. [For more information about the woman's position in Islam, see *The Liberation of Woman in the Period of the Message (Tahreer al-Mara'ah fe Asr Ar-Resalah)* by Abd Al-Haleem Mohammed Abu Shaqqah. It is a six Volume encyclopaedic book documented with texts from the Qur'an and Sunna.]

* What is required of the Muslim community is to organise matters and make arrangements so that the Muslim woman can work-if her interest or her family's or her society's requires that-without touching her modesty, or contradicting her commitment towards Allah, herself or her home. The general atmosphere should help her to perform her tasks as well as obtain her rights. There should be some arrangements where she can work part-time for half pay (threes day a week, for example). She should also be granted enough leave for her marriage, delivery and nursing.

* Some of the arrangements should include setting schools, colleges and universities especially for girls where they can practise sports and physical exercises suitable for them and where they can have freedom of movement to practise different activities. There should also be women in ministries, establishments and banks, away from places of temptation and where a woman will not be alone with one or more men, in addition to other and new means which cannot be counted.

It is Allah Who says the truth and guides to the right path.

