CHAPTER IV

POLYGAMY AMONGST MUSLIMS: ORIGIN & DEVELOPMENT
(With Special Reference To India)

(a) Polygamy amongst Muslims in early period.
(b) Polygamy among Muslims in India.
(a) POLYGAMY AMONGST MUSLIMS IN EARLY PERIOD:

The essential features of the Muslim law of marriage go back to the customary law of the Arabs. Early life in Arabia was considerably influenced by the peculiar geographical and climatic conditions. Arabia is one of the hottest and desert countries in the world. The variations in the climate and the geographical conditions led to the formation of two different kinds of inhabitants. Some of them were more or less the nomadic kind and the others were settled folk. The nomadic Bedouins had all the hardy characteristics of a life of struggle in the country. They showed a great adaptation to the desert conditions. The character of Beduins was marked by a spirit of independence and individualism.

The necessity of the struggle for existence made them offer unconditional loyalty to their own class men.

The Government of the Pre-Islamic Beduins was based on qabila (Tribe). The group of blood relatives who claim descent from a common ancestor was the unit of the society. Every individual owed allegiance not merely to its nominal leader but to the whole tribe, and it was from the tribe as a whole that he obtained the protection of his interests.

2. Ibid.
The tribe is conceived not merely as the group of its present representatives but as a historical entity embracing past, present and future generations and this notion is the basis of the recognition of a customary law.

They were bound by the body of unwritten rules which had evolved along with the historical growth of the tribe itself as the manifestation of its spirit and character. Neither the tribal head nor any representative assembly has legislative power to interfere with this system. Modification of the law which naturally occurred with the passage of time, may have been initiated by individuals but their real source lay in the will of the whole community, for they could not form part of the tribal law unless and until they were generally accepted as such.

In the absence of any legislative authority there did not exist any official organisation for the administration of the law. Enforcement of the law was generally the responsibility of the private individual who had suffered injury. Tribal pride usually demanded that inter-tribal disputes be settled by force of arms, while within the tribe recourse would usually be had to arbitration. The decision of the arbitrator was obviously not an enforceable judgement but a statement of what the customary law was or ought to be.

4. Ibid.
5. Ibid.
Under this system, the individual lacked legal protection outside his tribe. For the protection of tribe, presence of many sons was highly desired. This was ensured by the fertility of their marriage and by polygamy which, in itself, provided the family with abundant female labour. The allocation of the sons to this family was, therefore, a highly important matter which was governed by two ways of bringing about a union; that by which the woman and her childre became members of her husband's clan, and that which kept the woman in her own clan and allocated the children to her. Traces of this second kind of marriage are frequently found in stories describing manner of life among the Beduins and it is represented today by the important position in the family which is held by the maternal uncle (Khal). But during the life of Muhammad, the first kind of union was the most frequent in Arabia, as well as generally prevailing in the eastern countries which the conquests brought into the Muslim Empire and which followed Roman Byzantine or Semitic law.

According to Joseph Schacht, the relations of sexes in pre-Islamic Arabia were characterized not so much by polygamy, which certainly existed, as by the frequency of divorce, loose union and promiscuity, which sometimes


Cited by - B.K. Verma, Mohammedan Law.
makes it difficult to draw a line between marriage and prostitution. There were differences in the law of family and marriage between Mecca and Medina, and no doubt other places as well. Slavery and concubinage with slave were taken for granted.

In general, the woman of Arabia in the early Muslim era was in subjection either to her nearest male kinsman - father, brother or whoever he might be - or to her husband, whose right over her was regarded in the same way as his right over any other property.

Though there were differences according to districts and the conditions of the individual cases, the regulations governing marriage were based upon the patriarchal system, which permitted the man very great freedom and still bore traces of an old Matriarchal system.

Robertson Smith pointed to the Sixth and Seventh centuries as a transitional phase in Arab kinship history. He characterised the period of Islam's appearance as having multiplicity of sexual unions belonging to two trends: a Matrilineal trend which he calls Sadica marriage, and a patrilineal trend he call ba'al or dominion marriage. The two system which existed side by side down to the Prophet's

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8. Levy; Social Structure of Islam, p.92.
time, were diametrically opposed to each other. Not only were they governed by different laws of kinship, but they imply fundamental differences in position of women and so in the whole structure of social relations. Sadica marriage (from Sadic, 'Friend', and Said 'Female Friend') was a union whose offspring belonged to the women's tribe. It was initiated by a mutual agreement between a woman and a man and took place at the house of the woman, who retained the right to dismiss the husband.

In ba'al marriage the offspring belonged to the husband. He had the status of a father as well as that of his wife's baal, i.e. 'Lord' 'Owner'. In such a marriage, the wife, who followed her husband bore his children, who were his blood, and lost the right freely to dispose of her person. Her husband had authority over her and he alone had the right of divorce.

Robertson Smith concludes that Islam speeded up the transition from matriliney to patriliny by enforcing a marriage institution which had very much in common with the patrilineal dominion marriage, and by condemning as Zina all Matrimonial Unions.

Abdur Rahim, citing the Kashfu'l Ghumma, tells us of four types of Arabian marriages.

11. Ibid.
12. Ibid.
(i) A form of marriage similar to that sanctioned by Islam; a man would ask another for the hand of his daughter or ward, and then marry her by giving her a certain dower.

(ii) A man desiring noble offspring would ask his wife to send for a great chief and have intercourse with him.

(iii) A number of men less than ten, would be invited by a woman to have intercourse with her. If she conceived, and was delivered of a child, she had the right to summon all the men and they were bound to come. She would then say, "O so an so, this is your Son". This established paternity conclusively and the man had no right to disclaim it.

(iv) Common prostitutes were well known. They used to have a definite number of visitors and their tents had a special flag as a sign of their calling. If a woman of this class conceived, the men who frequented her house were assembled and the physiognomists decided to whom the child belonged.

Another marriage (marriage of pleasure or temporary marriage) was also a common practice.
In pre-Islamic Arabia, it seems, there were several types of marriage, ranging probably from the patrilocal to the patrilineal and including the so-called marriage of temporary enjoyment.

The panorama of female sexual rights in pre-Islamic culture reveals that women's sexuality was not bound by the concept of legitimacy. Women had sexual freedom to enter into and breaks off unions with more than one man, either simultaneously or successively.

The woman's independence from her husband and her insistence on sexual self determination seems to have been possible only because she was backed by her own people. This independence persisted even with the growing affirmation of patrilineal trends in the Arab society of Mohammad's time when the principle of marriage by capture or purchase was gaining ground.

Montgomery Watt analyzes Arabia's socio-economic foundations in the transitional period during the sixth and early seventh century. He traces Islam's sweeping success among the tribes (Muhammad started preaching in 613, and when he died in 632, most of Arabia's tribes were already converted) to a pre-existing malaise caused by the disintegration of the tribal system. Insecurities and

14. W.R. Smith; Kinship in Early Arabia, p.85
Cited by Fatima Mernissi, Beyond the Veil, Ed.1975.
discontent were spreading because of the rise of a thriving Mercantile economy which was cord ing the traditional tribal communalism. Individuals engaged in trading were motivated by new Mercantile allegiances which often clashed with traditional tribal allegiances. In thriving Urban settlements like Mecca the contradictions between new and old allegiances were particularly acute. The violation of traditional allegiances brought about isolation and economic insecurity among the weakest members of the tribe. Responsible members of the tribe who were supposed to administer property for the communal good were now lured by individualistic pursuits and neglect their traditional roll as protections of the weak women and children were among those most directly affected by the disruption of the old networks of solidarity since they had no institutionalized access to property through inheritance.

It has been said that many of Islam's institutions were a response to the new needs which emerged with the disintegration of tribal communalism, a Means of absorbing the insecurities generated by such a disintegration. Polygamy, for example has been explained as such an institution.

16. *Id.* p. 260.
17. *Id.* p. 290, 398.
The Prophet, concerned about the fate of women who were divorced, widowed or unmarried orphans, decided to create a kind of responsibility system whereby unattached women were resituated in a family unit where a man could protect them, not just as a kinsman, but as a husband. Moreover, the Prophet had a vested interest in having women, made helpless by the breakdown of tribal solidarity, reintegrated into new solidarity units, because otherwise they were likely to seek protection in transitory sexual unions considered as Zina by Islam. It is here that one sees the genius of Islam. The appropriateness of its institutions is shown by its success in connecting both communal and self-serving tendencies and channeling these otherwise contradictory trends into the most cohesive social order Arabia has ever known.

The old allegiance to the tribe was replaced by an allegiance entirely different in both form and content. The form is the Umma, and the basic unit is not the tribe, but the individual. The tie is not kinship but a more abstract concept, communion in the same religious belief. Parallel to the harnessing of tribal bellicosity in the service of the Muslim community, there was a similar absorption of self-serving tendencies into the family

structure, One of these channeling mechanisms was the concept of fatherhood and legitimacy, which allowed full expression to the believers' self-interest.

For a man to transfer his goods to his son implies that he has sons which had not generally been clear. Physical paternity had been considered unimportant in the pre-existing systems and the patterns of female sexuality made it rather difficult to establish who begot whom. Islam dealt with this obstacles in two ways. It outlawed most previous sexual practices as Zina and institutionalized a strict control over paternity in the form of idda or waiting period.
Islam came to India in the 6th century A.D., through the Arab travellers and traders who used the South West coast (Malabar) of India as a halting place, which was situated at the cross roads of the trade route to Burma, Indonesia and China on the East and Persia, Africa and Arabia in the west. Although the Malabar Coast was mostly used as a transit station it was inevitable that many Arabs should settle there.  

The Military invasion of India by Muslim started in 712-13 A.D. when Muhammad Bin Qasim annexed Sind for the Arabs. From the 11th Century onwards Middle Easterners came to the country. They were only in the 16th century with the advent of the Mughals who held control over large parts of the country. In most cases the outsiders fought and conquered their own co-religionists, so one Muslim dynasty succeeded another. As the Muslim community expanded and as Islam moved out beyond the borders of Arabia the simple early dicta were interpreted and re-interpretted in the light of the new experience.  

In the realm of their treatment of women Muslims who came to India have been most deeply affected by the

1. Jamila Brijbhushan; Muslim Women in Purdah and Out of It, P.1, (1980)  
2. Id. at p.2.  
3. Id. at p.5.
value system existing in the sub-continent.

Available literature indicates that Indian Women who enjoyed a higher status during the Vedic and Buddhistic periods suffered, a reversal in their status during later times, when the Muslim conquerors established their rule over India, they found that the position of women in Hindu Society more or less confirmed with that in their own society.

During the period of Muslim rule the birth of a girl was looked upon as an unfortunate and unpleasant event in the Muslim family. Early Marriage i.e. Marriage at the age of 8 or 9 became a common practice during this period. As regards the settlement of marriage, it was parents on both sides, who agreed to the conditions of the contract. Akbar in order to abolish this practice, made the consent of the bridegroom and bride absolutely necessary for marriage but this injunction was soon ignored.

Dowry system was prevalent among the Muslims at that time among the richer people, probably borrowed from the Hindus. Divorce was commonly practised during this period. The Muslim laws and customs allowed divorce
conditionally. Muslim husbands used it more freely and liberally. Polygamy was also prevalent among the Muslims, especially among the high class people even though emperor Akbar prohibited this practice also by law. Conquest and conversion made polygamy not only possible but socially desirable. Women of the imperial and noble families were confined to 'harem' life.

Another practice which was generally prevalent among the Muslim women during the medieval period, particularly among high and well-to-do families, was the 'Purdah' or seclusion. The practice was looked upon as a symbol of respectability. Women belonging to the poor classes had to work outside home their livelihood and could not observe the purdah like women in upper classes. Among the Mohammedans it was a great dishonour for a family when a wife is compelled to uncover herself. Purdah system isolated these women from the outer world and confined them to the four walls of their house.

As a whole we find that the position of women during the Mughal period was definitely inferior. The women were not generally considered full, persons.

In the 20th century laws were passed, like the (Child marriage restraint Act, 1929 (Common to all), the Dissolution of Muslim Marriage Act of 1939, etc. to improve the condition of women and to safeguard them from the prevailing evil practices.

In modern time, economic conditions in many families make it necessary for women to go out of their home, work and thus earn their livelihood to supplement the family income. As a result of these conditions they cannot observe seclusion or purdah.

Among the educated sections of the population, there is the feeling that polygamy is an evil practice and many of the Indian Muslims now prefer monogamy.

6. For our country no exact figures are available but according to study based on All India surely less than one percent of Muslims in urban areas have more than one wife. The study made by Dr. Kanti Prakran of the Indian Statistical Institute, Calcutta, reveals that out of every 1000 married Muslims in urban areas in the country are polygamous; See Hindustan Times December, 2, 1969.

J.N.D. Anderson; Islamic Law in Modern India, (Edited by Tahir Mahmood) p.34.

J.N.D. Anderson; Polygamy is not in practice a very pressing problem in India, at p. 36. "In fact (it is) very rare in India", at p.34.
With the spread of education, segregation between the sexes is gradually disappearing. The number of women leaving purdah or seclusion and taking active part in many national affairs is slowly but steadily increasing.

Among Hindus the various law has been passed which directly or indirectly affect women. The main piece of legislation which changed the marital status of Hindu women is the Hindu Marriage Act, 1955, which prohibits Hindus from contracting bigamous marriage and gives to the wife the right to obtain divorce in certain circumstances.

But the condition of the Muslim women is however deplorable. There is hardly any legislation which improves the legal status of Muslim women in family life. Muslim husband can still easily get divorce but not the wife. A male Muslim may still have as many as four wives at a time but Muslim women cannot have more than one husband. Worst still, under the Hanafi law if a Muslim takes a fifth wife, the marriage is not void, but merely "irregular, which he can regularise at any time by divorcing any one of the earlier four wives". A Sunni taking a fifth wife is not guilty of the offence of bigamy under sections 494, 495 of I.P.C. However among

the Shias the fifth marriage is void and therefore, 
a Shia husband who takes a fifth wife can be prosecuted for bigamy. This, in brief, is the present position of polygamy amongst the Muslims in India.