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# Polygamy in Bangladesh and Legal Advancement: A Critical Appraisal

Mst. Ummay Munmun<sup>1</sup>  
Sadia Afroz Binte Siraj<sup>2</sup>

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## Abstract

Polygamy as a valid practice is included in the legal system of many countries who apply Shariah in the personal matters. Islam allowed marrying up to four wives in an exceptional situation. But the system is often widely practiced as a special prerogative of a husband and is manipulated over the time. Many states made necessary changes by way of *ijtihad* and made it applicable and accommodated the practice according to the social transformation. Polygamy cannot be considered as a matter of religious interpretation only it embraces social, economical, psychological and personal liberty and security. It can also be treated as reason and consequence for torture (both mental and physical) against women, dowry and domestic violence. A very few states prohibited the system but could not bring desired result because of other social problems occurred for making it a non-accessible scheme. The existing law of restricting polygamy in Bangladesh failed to reflect the actual aim of the Shariah. This paper aimed to discuss the system of polygamy existing in Bangladesh, made a comparison with the contemporary nations who brought required changes. Focused on judicial activism as a parallel weapon but suggested for necessary statutory intervention as a probable solution.

**Keywords:** Polygamy, Shariah, Reform, Statutory Intervention, Polygamous Marriage.

## Introduction

Polygamy as a permitted practice exists in many countries of the world where *Sharia* is in operation. However the corresponding trouble caused by the institution which contemplates both legal and social, are hardly addressed. Polygamy is permitted only in an exceptional situation but in societies it has often been treated as a right of a male. Generally polygamy is a process where a man is allowed to have more than one wife at time. Polygamy is lawful in

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<sup>1</sup> The author is a Lecturer at Department of Law & Justice in Southeast University, Dhaka, Bangladesh. She completed LL.B. (Hon's) and LL.M. from the University of Rajshahi, Bangladesh. Her email address is [mst.munmun@gmail](mailto:mst.munmun@gmail)

<sup>2</sup> The author is an Assistant Professor at Department of Law & Justice in Southeast University, Dhaka, Bangladesh. She completed LL.B. (Hon's) and LL.M. from the University of Dhaka, Bangladesh. Her email address is [sirajsadia15@gmail.com](mailto:sirajsadia15@gmail.com)

many countries around the world. There are lots of arguments argued by the society in favour of polygamy both from religious and secular perspectives. Despite the fact that, the very concept of polygamy upraises various legal injuries in 21st century, family disputes being one, have failed to secure much legislative attention. As a result, many countries either outlawed or imposed legal restrictions for entering into polygamous marriage including Bangladesh. The procedural restrictions on polygamy in Bangladesh has been enacted five decade ago which currently declines to meet the actual aim of the statutory prohibition. Therefore, in Bangladesh the laws regulating polygamy has a room to renovate its provisions by accommodating the progressive legal reforms of other countries in the world.

From the time of British period there is a development of changing religious laws by legislative enactments to encounter the challenges of time. Before the partition of India and Pakistan, matters concerning family relationship were governed by the Shariah eventually modified by the interpretation. Subsequently, in 1972 Bangladesh as an independent country recognized that, all the laws that were in force in Bangladesh on 25th March, 1971 continued to be so in force by the proclamation of the Laws Continuance Enforcement Order, 1971.<sup>3</sup> As a result, most of our statutory laws operating in family issues were the enactment of the then East Pakistan Government. Among those The Muslim Family Laws Ordinance 1961 plays a pivotal role in the settlement for personal dispute. This Ordinance legitimates polygamous marriage of Bangladeshi Muslims community subject to certain restrictions. History of legal reforms verified that this evolutionary enactment was the achievement of regular persuading by All Pakistan Woman's Association in 1950s to curb polygamy in Pakistan (including East Pakistan, now known as Bangladesh) and the reformers admitted some reasonable compromise between traditionalist and modern view of polygamy.<sup>4</sup> In due course, society demands more secured laws in family matters to diminish the agony of polygamous marriage.

In current trend, many Islamic state or the states which apply Shariah have been endeavouring to configure the Muslim personal law with contemporary legal improvement but obviously not at the cost of its holy nature.<sup>5</sup> The objective of writing this paper is three folded: to critically analysis the existing laws on polygamy in order to determine the widest possible scope for reforms; to review the modern legislation relating to polygamous marriage in different countries, and finally, to suggest some appropriate legal recommendations to make it more effective and a better accessible institution.

<sup>3</sup> Judicial Portal of Bangladesh, 'History of Judiciary of Bangladesh' <[www.judiciary.org.bd/en/judiciary/history-of-judiciary](http://www.judiciary.org.bd/en/judiciary/history-of-judiciary)> accessed 3 November 2018.

<sup>4</sup> Naila Maqsood, 'The Debate over Polygamy in the Context of Muslim Family Law' (2016) 28(4) Sci. Int. 5.

<sup>5</sup> Mohammad Ataul Karim and Saeed Ahsan Khalid, 'ADR Mechanisms in Polygamy and Divorce under the Statutory Laws of Bangladesh: A Critical Analysis' (2016) 4 Jahangir Nagar University Journal of Law 1, 3.

## Polygamy in Islam

Monogamy is the ruling of Islam, whereas polygamy is an exception.<sup>6</sup> Islamic law allows, subject to strict Quranic conditions, a man may marry up to four wives at one time in complying appropriate narrow circumstances.<sup>7</sup> The Holy Quran expressly states that: “And if you fear that you cannot act equitably towards orphans, then marry such women as seem good to you, two and three and four; but if you fear that you will not do justice (between them), then (marry) only one or what your right hands possess; this is more proper, that you may not deviate from the right course”.<sup>8</sup> The aforesaid verse is very clear that if a man is hesitant to perform equal behaviour to his each existing wives, monogamy is the only choice. Again the Holy Quran unequivocally declares:

“And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging. And if you amend [your affairs] and fear Allah - then indeed, Allah is ever forgiving and Merciful”.<sup>9</sup>

These two arguments imply that monogamy is the preferred rule in Islam as because it is impossible or hard to satisfy the sacred imposition of Quran for a human being. Unfortunately, this permission of polygamy is widely misused by many Muslim societies and the social perception is that a man can marry up to four wives unconditionally<sup>10</sup> irrespective of the stipulation that they must act ‘equal’ among them. The word *Adle* is used to express the term Justice between the wives which translates ‘Just Behaviour’. There are several jurist who felt doubt about the biasness of human being and it is quite impractical to behave justly or equally with every single wife.<sup>11</sup> Nasir commented:<sup>12</sup> ‘Indeed, it is now widely held, because the condition of justice and fairness in all things is too difficult to fulfil, that men should lead monogamous lives, unless the circumstances of any particular Muslim society necessitate otherwise.’

In addition, polygamy is not a general rule and must not be practiced generally, but an exceptional rule that Almighty Allah has bestowed many wives for capable Muslim men, as a different preference who can meet the prerequisite of Quranic verse such as necessity, and not for gratification.<sup>13</sup>

<sup>6</sup> Dr. Muhammad Faiz-ud-din, *A Text Book on Islamic Law* (Shams Publication 2009) 56.

<sup>7</sup> Muhammad Ekramul Haque, *Muslim Family Law* (LCLS(S) 2015) 204.

<sup>8</sup> Sura An-Nisa, Verse- 3. <www.noblequran.com> accessed 10 November 2018.

<sup>9</sup> Sura An-Nisa, Verse- 129. <www.noblequran.com> accessed 10 November 2018.

<sup>10</sup> Haque (n 7) 204.

<sup>11</sup> Tanzilur Rahman, *A Code of Muslim Personal Law* (Islamic Publication 1978, vol. 1) 92.

<sup>12</sup> Jamal. J. Nasir, *The Status of Women under Islamic Law and Modern Islamic Legislation* (3<sup>rd</sup> edn, Brill Arab and Islamic Laws Series 2009) 26.

<sup>13</sup> Dr. Raudlotul Firdausbinti Fatah Yasin and Dr. Mohd. Shah Jani, ‘*The Efficiency of Legal Provision on Polygamy in Malaysia, A Critical Analysis from Qur’anic Perspective*’

Some jurists conclude the policy of polygamy in Islam as ‘rukhsat’ (permission), and not ‘azimat’ (fixed rule).<sup>14</sup> The answer of this permission can be found by the analysis of the situation when Surah Al-Nisa of the Holy Quran was revealed. After the battle of Uhud, dozens of Muslim were martyred leaving behind widows and orphans in want of support.<sup>15</sup> On that particular time, it was rational to allow continuing matrimonial liability with more than one wife to balance the society with male and female ratio. Moreover, there was a huge possibility of social illness regarding women exploitation. Polygamy was considered as the single accepted policy for the best protection against indulgence in indecent activities. It also offered a moral, practical and humane solution for those problems.<sup>16</sup> Another important reason was to establish close ties after the war of Uhud with the neighbouring communities who were earlier found to be fighting and showing hostilities.

The Islamic law considers the system of polygamy as one of the last recourse to be taken and practiced as of rights. As divorce was considered a worse practice, Polygamy was instituted as a better alternative. Before including the concept of polygamy men used to take wives not limited within a number so it is evident that the reason behind was to minimize the number up to four.

As of today, Shariah is being prevailed to interpret laws relating to Muslim personal matters. The laws concerning polygamy should uphold the will and aspirations of Islamic disclosure of the specific verses of the Quran. In short, the main objectives of polygamy in Islam might be summed up as follows:

1. Monogamy is the general rule of Islam but polygamy may be tolerated subject to comply with certain rigid conditions. The object of polygamy was to create and sustain marriage and to legalize the relationship of men and women in exceptional circumstances. One of the strong reasons behind allowing polygamy is to give respect and protect rights of widow and orphans not only social protection but also economic, as the property of a man devolves upon its wed locked wife and not upon the divorced wife.
2. Polygamy is not prohibited by Islam. However Shariah limits the number of woman to be married as wives and the limit will not be more than four<sup>17</sup> and the intention is to do justice, fairness and any sort of ease in favour of the women.<sup>18</sup>

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(International Conference on Multidisciplinary Innovation for Sustainability and Growth, Kuala Lumpur, 27-28 August 2014) 5.

<sup>14</sup> Rahman (n 11) 93.

<sup>15</sup> Komayal Hassan, ‘When Polygamy is Allowed in Islam?’ <<https://blogs.tribune.com.pk/story/26080/when-polygamy-is-allowed-in-islam/>> accessed 10 November 2018.

<sup>16</sup> Raushan Ara, ‘Receding Traditional Controversies Regarding Women’s Right in Islam’ in D. M. Khan (ed), *Women’s Right in Islam* (The Nahar Light Foundation 2009) 75.

<sup>17</sup> Sura An-Nisa, Verse- 3. <[www.noblequran.com](http://www.noblequran.com)> accessed 10 November 2018.

<sup>18</sup> Yasin and Jani (n 13) 5.

3. The ultimate aim of the permitting polygamy is to do justice to vulnerable women but it does not permit to do injustice to his existing wife and children.

In conclusion, according to Quranic restrictions it is clear that polygamy is not encouraged by Islam as a norm to lead a family life. It is very unfortunate that many Muslims believe that they can have four wives without any doubt and responsibility. In another word, it could be a misconception of patriarchal society. Therefore, enactment of new law covering the areas of Muslim Personal laws consisting Islamic perceptions should be covered up with all the possible aspects and objectives which can ensure the end of justice both the individuals and society.

### **Polygamy: The Transformation from Islamic Approach to Statutory Intervention**

Many countries around the world enacted different laws either to permit or to prohibit polygamy. Most of the countries imposed some procedural requirements to be confirmed by a male contracting polygamous marriage. For example, Syria, Iraq, Jordan, Pakistan, Bangladesh and Malaysia have made polygamy subject to permission by statutory authority of fulfilling certain conditions. On the other hand, many Islamic countries discouraged polygamy and tried to put embargo by the way of stipulation through their legislation. For instance, Tunisia and Morocco has prohibited polygamy on their personal law.<sup>19</sup> The reason for preventing the rights of polygamy under statutory laws has a religious overtone. Because, the Quran itself inserts strict conditions to carry out polygamy and also reminded the probable chance to do mischief in the society. In fact, Islam tolerates more wives for a husband as a secondary option in support with socio economic background of him where the alleged purpose of Quran may well be satisfied. For example, a very poor man (who does not have the capacity to provide maintenance to his existing wife) or a man of wicked reputation (for misbehaving with his wife) should not be permitted to marry more than one at a time. Thus a state can take initiatives for scrutinizing their social perceptual experience and sustainability for enabling polygamy in respect of Islamic overtone.<sup>20</sup>

In present context, right to polygamy is a debating issue for many Islamic countries, especially those who adopted secularism within the purview of Shariah and has undergone remarkable changes. Among the states some argue for draconian legal barriers and abolishment to do polygamy and many Islamic countries still permit many wives unreservedly. The issue can be realized by the various facts and circumstances of standing and legal implementing mechanism of individual state party.

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<sup>19</sup> The Moroccan Family Code 'Moudawana' 2004, The Tunisian 1956 Code of Personal Status.

<sup>20</sup> Haque (n 7) 206.

## Origin of legal provisions of Polygamy in Bangladesh

After the emergence of Bangladesh in 1971, initially there was no change of laws and the judicial system. Bangladesh adopted all the personal laws of Pakistan including both statutory and personal. In fact, most of the Pakistan's legal system was enacted by the British colonial administration. Following the Warren Hastings's legal reforms in 1780, the British established secular civil and criminal justice system in lieu of the administration of Islamic law, counting the customary usages of Muslim, with regard to personal and family matters.<sup>21</sup> Beside this, the various eminent Muslim leaders raised objections for applying common law respecting Shariah provisions in personal matters.<sup>22</sup> In 1937, the Muslim Personal Law (Shariat) Application Act was passed by the British and the enactment re-enforced application of Shariah on the number of specified matters such as marriage, divorce, maintenance, dower, guardianship, gift and intestate succession.<sup>23</sup>

After the independence of India and Pakistan, over a decade, family law did not experience any reforms. In 1961, Muslim family Laws Ordinance was promulgated bearing in mind the constitutional provision of Pakistan in 1956 that no law repugnant to Islamic injunctions would be enacted and that all existing law would be considered and amended in light of this provision.<sup>24</sup> The context of this ordinance is quite interesting and encouraging for all woman who were struggling for their precise religious and constitutional rights as a human being and also a citizen of a country. The former president of Pakistan, Muhammad Ali Bogra, remarried his secretary Aliya Begum in 1955 although still having his first wife Begum Hamida, who was an activist of an organisation named 'All Pakistan Women Association' (APWA). subsequently, APWA along with another organisation named 'United Front of Women's Rights' managed to introduce a new Ordinance/Bill for the protection of rights of woman in family relations.<sup>25</sup> Much debate has been done between the committee of Modernist vs. Traditionalist in the Pakistan and finally in 1961 Pakistan initiated their first legal step towards ensuring men and women 'equal rights' through the declaration of The Muslim Family Laws Ordinance 1961(MFLO) in March 1961.<sup>26</sup> The ordinance coated the question of succession, marriage registration, polygamy, divorce, maintenance, dower and dissolution of marriage. The Muslim Family Laws Ordinance was the first legal attempt in Pakistan to codify Muslim Personal

<sup>21</sup> Ridwanul Hoque and Md. Morshed Mahmud Khan, 'Judicial Activism and Islamic Family Law: A Socio-Legal Evaluation of Recent Trends in Bangladesh' (2007) 14(2) Islamic Law and Society, 214.

<sup>22</sup> From the statement of object and reasons accompanying the Bill of The Muslim Personal Law (Shariat) Application Act 1937 Act no XXVI of 1937.

<sup>23</sup> The Muslim Personal Law (Shariat) Application Act 1937 (Bangladesh), s 2.

<sup>24</sup> Maqsood (n 4) 1.

<sup>25</sup> *ibid*

<sup>26</sup> *ibid*

Law maintaining reliability with religious analysis. Conversely, it had much significance towards the safeguards of women in marriage, polygamy, divorce and so on.<sup>27</sup>

Following the legacy of India and Pakistan, all the laws relating to shariah and MFLO 1961 are existing in Bangladesh depending on certain modifications and required amendments.<sup>28</sup> In 1974, Bangladesh introduced its first statute in relation to Muslim Family Law as the Muslim Marriages and Divorces (Registration) Act 1974 and later on The Family Court Ordinance 1985<sup>29</sup> (composed of judges of the lowest civil tier of the judiciary) with exclusive authority to try and entertain suits relating to five specified matters: dissolution of marriage, restitution of conjugal rights, dower, maintenance, and custody and guardianship of children.<sup>30</sup> However, matters on polygamy is not the exclusive jurisdiction of the Family Court rather the law refers that pre permission to do polygamous marriage has to be obtained by the Arbitration Council.

### **Existing (Statutory) Provisions on Polygamy in Bangladesh**

The Muslim Family Laws Ordinance, 1961 imposes a restriction on arbitrary polygamy in Bangladesh. Section 6, Sub-section (1) to (5) discuss on the conditional restriction on the permission of polygamous marriage and its effect, application procedure, duty of the Arbitration Council, revision of the decision of the council and lastly the remedy for the existing wife.<sup>31</sup> However, having those rules still the practical social scenario in Bangladesh about polygamy is not demonstrating the actual objectives of Islamic tone with the core statutory aim of such restrictions of having many wives at a time. Before the explanation of the efficiency and justification of the existing laws on polygamy in Bangladesh, a brief introduction is necessary of the said provisions are following:

- 6(I) A man, who have a living wife or wives shall not contract marriage again, without the prior written permission<sup>32</sup> of the Arbitration Council, and without such permission the contracted marriage shall not be registered too.<sup>33</sup>

<sup>27</sup> Mumtaz Ahmad, 'The Muslim Family Laws Ordinance in Pakistan' (1993) 10 International Journal on World Peace, <[www.jstor.org/stable/20751912?seq=3#metadata\\_info\\_tab\\_contents](http://www.jstor.org/stable/20751912?seq=3#metadata_info_tab_contents)> accessed 12 November 2018.

<sup>28</sup> Abdullah Raihan, 'The Legal Reform of the Islamic Family Law in Indian Sub-Continent' in D. M Khan (ed), *Women's Rights in Islam* (The Nahar Light Foundation 2009) 1-15.

<sup>29</sup> As amended by the Family Courts Ordinance (Amendment) Act 1989.

<sup>30</sup> S. 5.

<sup>31</sup> The Muslim Family Laws Ordinance 1961 (Bangladesh), s 6.

<sup>32</sup> The Muslim Family Laws Rules 1961 (Bangladesh), r 15.

<sup>33</sup> *ibid* (n 31) s 6(1).

- 6(II) A written application of such proposal shall be presented to the chairman of the Arbitration Council in the prescribed manner, along with the prescribed fee, and shall specify the grounds and importance for the intended marriage, and whether the consent of the existing wife or wives has been obtained thereto.<sup>34</sup>
- 6(III) In reply to any submission, the chairman shall inquire the applicant and his existing wife/wives each to recommend representative, and the arbitration council so composes may with the satisfaction of another proposed marriage is just and necessary while in presence of an existing marriage then may allow the aforesaid proposition.<sup>35</sup>

In judging the application by the Arbitration Council shall consider to conditions for instance, sterility, physical infirmity, physical unfitness for the conjugal relation, unreasonable avoidance of decree for restitution of conjugal rights or insanity on behave of the existing wife and shall record of the explanation of the assessment.<sup>36</sup>

- 6(IV) If any party aggrieved by the decision of Arbitration Council may, file an application for revision to Assistant Judge Court, on the prescribed manner within the stipulated time and the judgment of assigned court shall be absolute, and cannot be called in inquiry in any court.<sup>37</sup>

If any man fails to pursue the set rules will be deemed as a punishable offence and the punishment will be

- 6(V) (a) full payment of dower, if due to any existing wife/ wives, and (b) on demonstrating definite guilt, the accused shall be punishable with simple imprisonment which may extend to one year, or with fine which may extend to ten thousand taka, or with both.<sup>38</sup>

### **Explanation of the Efficiency of Legal Rules on Polygamy in Bangladesh**

The statutory authorized provisions on polygamy on the aforesaid ordinance of 1961 have been chosen in order to ensure that it may “transform a family dispute resolution system from one that disrupts and tears apart families to one that helps to heal them”.<sup>39</sup> The main features of the ordinance are to ensure and enable to maintain Muslim lifestyle. However, with all the earnest efforts

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<sup>34</sup> *ibid* s 6(2).

<sup>35</sup> *ibid* s 6(3).

<sup>36</sup> *ibid* s 14.

<sup>37</sup> *ibid* s 6(4).

<sup>38</sup> *ibid* s 6(5).

<sup>39</sup> Barbara A Babb and Gloria Danziger, ‘Families Matter: Recommendations to Improve Outcomes for Children and Families in Court’ (June 2014) <<http://ssrn.com/abstract=2504076>> or <<http://dx.doi.org/10.2139/ssrn.2504076>> accessed 7 November 2018.



of our lawmakers, the prevailing enactments regulating polygamy have been entangled with the following loopholes and uncertainties.

### **Party to whom this statutory restriction is applicable?**

In Bangladesh, the restriction for polygamous marriage is only applicable for Muslim citizens not for others as like Hindus, Buddhist, or Christians. Section 1(2) of the Muslim Family Laws Ordinance, 1961 states that it shall be applicable to whole Bangladesh and all Muslim citizens of Bangladesh; wherever they may be. Here it is worth mentioning that the marriage between a Muslim male and a Christian (Kitabia) female is valid under the Muslim personal law. Regarding this issue, in a book written by *Serajuddin* invoked some pertinent questions, for example does the MFLO's title itself point out that provisions of this ordinance are only applicable to Muslim couples? Or are they equally applicable where husband alone is a Muslim citizen of Bangladesh?<sup>40</sup> This vary inquires also have been dealt by the Supreme Court of Pakistan through a case of *Syed Ali Nawas v Muhammad Yusuf*<sup>41</sup> where the respondent counsel argued that the provision of MFLO are applicable only to those cases where both the parties of marriage are Muslim citizens of Pakistan. Though, the court did not agree with the contention rather make an explanation that in section 6(1) of MFLO use the terms 'existing marriage' and 'another marriage' are stood unqualified. Therefore, section 6 is also applicable for each valid Muslim marriage whether the party both is a Muslim or husband is a Muslim and the wife is a Christian (Kitabia). Similar plea arisen in case of dual citizenship when the party register their one marriage outside the national jurisdiction.<sup>42</sup> Thus the said ordinance has some ambiguity regarding the issue of parties to whom this restriction of polygamy is applicable?

### **Prior Permission of doing Polygamous Marriage**

It should be noted that the law has clearly mention no one can make polygamous marriage without the previous permission of the Arbitration Council and if anyone does, the marriage shall not be registered under statutory law as well as punishable offence.<sup>43</sup> But it is interesting to refer that non-registration of a marriage is not vitiate the validity of marriage rather it is a punishable offence too.<sup>44</sup> In Bangladesh, the validity of marriage does not depend on registration consequently people have tendency of non-registration of their marriage. For example, in 2015, a report was published by The Dhaka

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<sup>40</sup> Karim and Khalid (n 5) 1, 12.

<sup>41</sup> PLD [1963] SC 51.

<sup>42</sup> *Mst. Fauzia Hussain v Main Khadim Hussain*, [1985] PLD 165 (SC).

<sup>43</sup> The Muslim Family Laws Ordinance 1961, s. 6.

<sup>44</sup> The Muslim Marriages and Divorces (Registration) Act 1974 (Bangladesh), s 5.

Tribune shows that about two-third of contracted marriage are not registered by law.<sup>45</sup> Furthermore, according to Hazi Masum Billal,<sup>46</sup> the existing office of the marriage registration in Bangladesh has no mechanism to scrutinize the information of having permission or not. In this case, the registrar has to believe the party's truthfulness. As a result, the term used by the said ordinance 'without such permission the contracted marriage shall not be registered too' cannot congregate the suitable restriction of polygamy. Conversely, the punishments attached for non-compliance of this provision is too simple to deter the husband from contracting polygamous marriage.<sup>47</sup>

### Application to the Arbitration Council

According to the Ordinance, the application of polygamous marriage containing with cause of further marriage and with the permission of existing wife or wives must be submitted to the chairman of the Arbitration Council.<sup>48</sup> However, the status, structure and powers of Arbitration Council under the MFLO have embraced many criticisms in case of satisfying the ultimate aim of family law in Bangladesh. Firstly, the Arbitration Council under MFLO is constituted by the Chairman and representative of each of the parties to a matter is termed as a mere quasi formal authority which is a non-judicial body has the power to interpret the law. Under this Ordinance the fundamental mechanism for authorization through the application of polygamous marriage is under the supervision of a non-judicial body that do not have any formal legal or religious expertise to resolve the family issue. Legally the chairman of the Arbitration Council is the elected member of the Union Parishad (UP) of each district of Bangladesh and the person is mostly nominated by the political party who does not need to have any kind of expertise to be a Chairman of Arbitration Council. As a result, the percentage of such permission giving trial in Bangladesh is very low, particularly in rural areas. Secondly, the ordinance does not provide any explanation of arbitration procedure as well as no accountability of fail to do their obligation. Conversely, Under the Muslim Family Laws Rules, 1961 there is no guidelines as to how the proposed marriage can be ascertained to be 'just and necessary',<sup>49</sup> and the council may take into consideration several circumstances such as sterility, physical infirmity and insanity on the part of an existing wife.<sup>50</sup> It is interesting to mention that the law is still vague to

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<sup>45</sup> Md. Kamrul Hasan and Asif Showkat Kallol, 'Two third of marriages in 2015 were not registered' *Dhaka Tribune* (Dhaka, 4 January 2017) <[www.dhakatribune.com/bangladesh/2017/01/04/two-thirds-of-marriages-in-2015-were-illegal](http://www.dhakatribune.com/bangladesh/2017/01/04/two-thirds-of-marriages-in-2015-were-illegal)> (accessed 25 November 2018).

<sup>46</sup> Hazi Masum Bilal, interviewed by self, 26 November 2018, (Dhanmondi Kazi Office), Dhaka.

<sup>47</sup> The Muslim Family Laws Ordinance, s 6(5).

<sup>48</sup> *ibid* s 6(2).

<sup>49</sup> *ibid* s 14.

<sup>50</sup> The Muslim Family Laws Rules, r 15.

control the discretionary power of the Council and obviously the Council on their part is hardly seen to take all these into consideration and found to permit second marriages on insignificant excuse.<sup>51</sup> Thirdly, if the chairman is a party or he is a non Muslim, then the Council has to nominate a Muslim UP member by the Parishad by a resolution which is time consuming to get the remedy.

### **Consent of Existing Wives**

There is another requirement of filing an application of polygamous marriage to the Arbitration Council is that the application must be supported by the permission of the existing wife/wives.<sup>52</sup> This is also mention in Muslim Family Laws Rules 1961.<sup>53</sup> However, both statutes unfortunately have failed to ensure the requirement as a mandatory one. On the other hand, the justifying grounds of the proposed marriage is under the sole consideration of the Arbitration Council where the consent of the existing wife/wives is just an option in order to take the decision of giving permission of second marriage.<sup>54</sup> In our country there is a misconception exists with the people is that the consent of existing wife is enough to contract another marriage.<sup>55</sup> As a result, seeking consent from the existing wife or not cannot restrict the party to do second marriage when there is a written permission of the Arbitration Council. The court has been cleared this issue and held that legislative intent was to restrict arbitrariness of husband in polygamous marriage. Accordingly The Muslim Family Laws Ordinance, 1961 has not made the consent of existing wife/s compulsory for contracting another marriage.<sup>56</sup> Finally, the law of polygamy does not reflect the actual aim which is to control the arbitrary polygamous marriage through the consent of existing wife/s.

### **Punishment for Non-compliance of the Provision**

Certainly, non-compliance of the set rules about polygamous marriage is a punishable offence. But the question is whether the punishment is sufficient to persuade the main objectives? According to the section 6(5) of the Ordinance the punishment has two folds: First one is that the husband has to pay the full dower of the existing wife or wives if it is due whereas payment of dower is a consequence of valid marriage.<sup>57</sup> Dower is a unilateral obligation on the

<sup>51</sup> Dr. Nusrat Ameen, 'Dispensing Justice to the Poor: The Village Court, Arbitration Council Viz-a-Viz NGO Mediation' (2005) Part-F 12(2) The Dhaka University Studies 103.

<sup>52</sup> The Muslim Family Laws Ordinance, s 6(2).

<sup>53</sup> The Muslim Family Laws Rules, r 15.

<sup>54</sup> Haque (n 7) 229.

<sup>55</sup> ibid 221.

<sup>56</sup> *Abul Basher v Nurun Nabi*, [1987] 39 DLR 333.

<sup>57</sup> Haque (n 7) 142.

husband which has been imposed by Shariah and it has to be paid as an inalienable right of a wife. Therefore, payment of dower could not be an appropriate punishment for polygamy. Instead of this, law can ensure another or extra financial benefit for the wife or wives to secure their safety and dignity. For example, many Islamic Countries has the option to insert stipulations on their marriage deed regarding subsequent polygamy by their husband. Secondly, on confirmation of unambiguous fault, the husband shall be punished with simple imprisonment which may extend one year, or with fine which may extend to ten thousand taka, or with both.<sup>58</sup> This provision is made as a preventive mechanism for restricting polygamy and the possible way out of unjust treatment by the husband where he concealed the fact that he is already married. At this instant, a very evident question can be raised that does the husband have an obligation to inform the second wife about his first wife? The answer is no, there is no certain law in *fiqh* in this point that can oblige a man to disclose the fact of his existing wife to his to be second wife.<sup>59</sup> It is worth mentioning here that in the Penal Code 1860 there is an offence relating to marriage. The particular sections implies that according to section 494, “Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine” and the section 495, “Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”. Although the offence which is related to this issue under section 494 and 495 is not applicable in case of Muslim male’s polygamous marriage.<sup>60</sup> This is because the offence of concealment of earlier marriage and marrying during the lifetime of a husband or wife only occurs when the subsequent marriage is invalid of having existing spouse. Hence, the status of the polygamous marriage is valid but punishable offence. Contrasting the reality and contemporary trend of penalties, the punishment for polygamy is relatively low thus insignificant. Paradoxically, if a husband determines to do second marriage without abiding the law nothing can seriously frighten him to do it.

To summarize the competency and effectiveness of the existing legal provisions on polygamy in Bangladesh, we can conclude that the prerequisite for obtaining the consent of the Arbitration Council and indirectly, the approval by the present wife or wives to the subsequent marriage under Sec. 6 of the Muslim Family Laws Ordinance, 1961 has in reality no realistic importance for most women in Bangladesh rather it elevated multifaceted

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<sup>58</sup> The Muslim Family Laws Ordinance, s 6(5).

<sup>59</sup> Haque (n 7) 225.

<sup>60</sup> Ratanlal and Dhirajlal, *The Indian Penal Code* (27<sup>th</sup> edn, Lexis Nexis Butterworths Wadhwa Nagpur 1985) 414.

grievance to them. Moreover, the consent of existing wife may be easily managed from a wife economically and if not burden of dependency on the husband.<sup>61</sup> In fact, our legislator had tried to satisfy themselves by enacting such an immature and impractical law on polygamous marriage whereas many Islamic countries have interpreted the Quranic injunctions regarding polygamy are impossible to comply today and certainly prohibit polygamy completely.

### **Contemporary Legal Reform through Judicial Pronouncement**

Marriage and other related issues which are actually getting its legal consequences out of the marital wedlock, such as divorce, custody of children, legitimacy of children and inheritance Waqf, pre-emption and gift are the other areas governed by Muslim Law.<sup>62</sup>

The system of polygamous marriage amongst the other areas of Muslim law in practice held a notable area for further development both in terms of statutory intervention and social approach. The present social condition made it beyond repairable system because of its hugely mal practiced nature in last few decades. So the paper is suggesting statutory intervention to make it an exceptionally accessible scheme. Since, most of the states have brought legislative changes in their personal laws, deviating from their traditional approach.

The existing system left the burden of rationalizing the act of polygamy on the Arbitration Council as they are the body to permit second marriage judging the circumstances and need for another marriage in existence of the first one. The council is empowered to look into the matter of the second marriage if necessary and just.<sup>63</sup>

Another requirement is the consent of first wife and whether consent has been taken or not, that must have been proved too, but the vulnerable social position of women makes their consent almost non-existent because of the fact of their illiteracy and non-favourable social structure. The system is mostly practiced in the rural areas where women hardly can read and write, because of this fact husband can easily extract their consent by describing the paper whatever they want it to mention. The insufficiency of the statutory punishment which is confined only in, payment of remaining portion of dower

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<sup>61</sup> Shanaz Huda, 'Protection of Women in the Marriage Contract: An Exploration' (2001) 5(1&2) Bangladesh Journal of Law 77.

<sup>62</sup> Shahdeen Malik, 'Recent Case Law on Custody and Second Marriage in Bangladesh: A Trend Towards Secularisation of the Legal System?' (1995) 28(1) Law and Politics in Africa, Asia and Latin America 103, 109.

<sup>63</sup> The Muslim Family Laws Ordinance, s 6 (2, 3).

and 1 year simple imprisonment hardly play any role against the practice of polygamy.

We are observing a trend on judicial activism for ensuring social justice crucial for enhancing the concept of welfare state. Welfare state - the term no longer exists in ensuring economic competence but establishing a society for enjoyment of rights by male, female and third gender. Judiciary being one of the key organs can play a decisive role in ensuring enjoyment of rights irrespective of their gender. Accordingly it is observed that judiciary tried to make positive changes in the area of polygamy but proved to be insufficient as the scenario of polygamy being almost same in the last few decades.

The very early example of judicial intervention after the birth of Bangladesh was the case *Faruque Miah v Tahera Begum*<sup>64</sup>. First reported case on polygamy, led to the Amendment of MFLO in 1962. The issue was raised for notifying that in absence of a Union Council or a Chairman whether the parties can avoid the requirement of taking permission from the Arbitration Council as provided by Section 2(a). By this Amendment it was fixed by section 3 that permission for second marriage can be taken from 'Chairman from Union Parishad and Pourashava' who will be considered as competent authority to fulfil the requirement of Arbitration Council.

In *Abul Basher v Nurun Nabi*,<sup>65</sup> it was held that how the council is going to judge the term 'necessary and just' or 'reasonable' that is not very clear, or there are no prescribing guidelines to interpret those terminologies. Though there is a guideline in Rule 14 of MFLO Rules and included sterility, physical infirmity, physical unfitness for conjugal life, wilful avoidance for a decree of restitution of conjugal rights, or insanity on the part of the existing life. Though these are not the only grounds for allowing for taking a second wife, but if we try to identify the reasons for giving such permission those are all for the incapability i.e. physical or mental on the part of the wife for not being able to perform the marital functions or responsibilities.<sup>66</sup> Hence leaves opportunity to further development and inclusion of new grounds accommodating the recent need.

In *Makbul Ali and Others v Munwara Begum*,<sup>67</sup> the Court emphasized the same reasons as probable grounds for taking a second wife in marital wedlock. So further it was rather defined as not a right but only a permitted practice allowed under Muslim Law. So asking permission from the Arbitration Council and get it granted is not a 'matter of right' on the part of husband rather a matter of discretion on the part of the Arbitration Council which must be judged very carefully taking circumstances in consideration. Religious

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<sup>64</sup> [1981] BLD 165.

<sup>65</sup> [1987] 39 DLR 333 (HCD).

<sup>66</sup> Malik (n 62) 103, 119.

<sup>67</sup> [1987] 39 DLR 183 (HCD).

leader and legal activists have always paid due regard to the vulnerability of women in the matter of polygamy.<sup>68</sup>

In *Nelly Zaman v Giasuddin Khan*<sup>69</sup> it was held that husband suing for the forced restitution of conjugal rights against an unwilling wife is both out-dated and unreasonable.

Regarding the activities of Arbitration Council hardly we can have information as almost no record is found. One of a rare publication of such record has been produced by Asia Foundation in 2002 which said that Union Parishad is quite biased and not having pro women mentality in ensuring justice to women and poor and in some cases declined to convene session.<sup>70</sup>

A notable case in this regard is *Mohammad Ilias v Jesmin Sultana*,<sup>71</sup> where Appellate Division ruled out the decision of High Court Division which through its pronouncement guided legislature to abolish polygamy from the society. The Court held that 'Muslim Jurists and Scholars are almost unanimous in taking the view that in the context of modern society it is virtually impossible to be able to deal with the wives justly and as such the Quranic sanction for taking a second wife under specified conditions virtually amounts to a prohibition in taking a second wife during the subsistence of an existing marriage'.<sup>72</sup> So the Honorable High Court Division suggested a sanction of 'prohibiting polygamy'. But unfortunately the Judgment was ordered to be obliterated.

Muslim women continue to encounter resistance when they seek to obtain judicial separation, polygamy being one of the approved act and husbands are very rarely facing consequences as a result of polygamy.<sup>73</sup>

Furthermore, in several judicial decisions the Court has condemned on the act of polygamy. In some instances they seemed contended with the law. As in *Shafiqul Islam v State*, the Court termed it as a unilateral act since it involved the Arbitration Council<sup>74</sup> but did not enlighten what can be the role of the Council. The mere presence of the permission of Council hardly deterred the practice. Similarly in *Dilrunba Akter v A.H.M. Mohsin*,<sup>75</sup> the Court opined to

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<sup>68</sup> Attila Ambrus, Erica Field and Maximo Torero, 'Muslim Family Law, Prenuptial Agreements, and Emergence of Dowry in Bangladesh' (2010) 125(3) *The Quarterly Journal of Economics* 125.

<sup>69</sup> [1982] 34 DLR 221 (HCD).

<sup>70</sup> *ibid* (n 68).

<sup>71</sup> [1999] 17 BLD (HCD).

<sup>72</sup> Barrister Turin Afroz, 'Judicial Interpretation of Polygamy' *The Daily Star* (Dhaka, 7 April 2007) <<https://www.thedailystar.net/2007/04/01.index.htm>> accessed 26 December 2018.

<sup>73</sup> Hoque and Khan (n 21) 227.

<sup>74</sup> *Shafiqul Islam v State*, [1994] 46 DLR p 228.

<sup>75</sup> [2003] 55 DLR 569.

possess a strong position against polygamy even by taking recourse from the Criminal Law. As a result the Court imposed a maximum fine against such act and not only that a step heading further the Court ordered the compensation to be paid to the wife. Though here the husband pleaded that it was not an act of polygamy as he divorced his wife before entering into the second marriage but failed to prove it as the divorce procedure was not completed as required by the Section.

A parallel tendency we are observing in recent past is denying the fact of second marriage to avoid the liability. In *Ashraful Alam v State*,<sup>76</sup> being a Criminal offence the first wife was liable to prove the second marriage and as she could not provide the Kabin Nama,<sup>77</sup> and the witnesses she produced was not fairly reliable as result the accused was acquitted. By this case another related problem is detected that is not taking the responsibility of the second marriage and putting the second wife in a vulnerable position.

In some instances even the second wife being accused of abetting the husband to get married with him leaves the position of husband completely clean creating further social dilemma and leaving the second wife in unnecessary hassle. As it has been observed in *Reshma Chowdhury v State*<sup>78</sup>. The Court held that 'there is no such provision whereby a person can be convicted for abetting an offence under 6(5) of the Ordinance', as charge of abetment was brought against the second wife. Court found it a mere waste of time as marrying second time is not a penal offence. So it seems that the system or procedure of polygamy needs to be restructured as it is mal functioning.

### **Reforms brought by different Muslim countries – borrowing the experience**

Only in two countries polygamy is properly controlled which is Tunisia and Morocco. Tunisia and Morocco has declared polygamy as invalid as well as criminal offence. Hanafi Law in theory gives women the right to stipulate the clauses in marriage contract that restricts a man to exercise right to Polygamy.<sup>79</sup> So, insertion of necessary stipulations on barring polygamy can also be a credible solution.

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<sup>76</sup> [2005] 57 DLR 719.

<sup>77</sup> Marriage deed as defined in the Muslim Marriages and Divorces (Registration) Act, 1974 (as amended in 2009).

<sup>78</sup> [2012] 17 BLC 816.

<sup>79</sup> Sally Baden, The position of women in Islamic countries: possibilities, constraints and strategies for change (1992) Institution of Development Studies, University of Sussex 15.



## Malaysia

By the latest amendment in 2005 of The Islamic Family Law Act 1984, Malaysia brought few changes in the system of polygamy.

According to Section 23, “No man during the subsistence of a marriage shall except with the prior permission in writing of the Court, contract another marriage with another woman nor shall such marriage contracted without such permission be registered under this Act”.

There are certain conditions to be fulfilled by the applicant or husband, before their application is approved. The conditions are codified under section 23 clause (3).

According to clause (3), “An application for permission shall be submitted to the Court in the prescribed manner and shall be accompanied by a declaration stating the ground on which the proposed marriage alleged is to be just or necessary”.

In the declaration includes the present status of the applicant, particulars of his commitments and his ascertainable financial obligations liabilities, the number of his dependents, including persons who will be his dependents as a result of the proposed marriage, and whether the consent or views of the existing wife or wives on the proposed marriage have been obtained or not will be assessed carefully.

Pursuant to this provision, there are requirements to be fulfilled by the applicant which are as follows:

1. The proposed polygamy marriage is alleged to be just or necessary.
2. The presence of the applicant in the court.
3. The particulars of the applicant’s financial income, commitments and liabilities.
4. The number of his existing and future dependents. This includes his existing wife/wives and children, as well as prospective wife.
5. Whether consent of existing wife/wives has been obtained.<sup>80</sup>

Provided that the Court may if it is shown that such marriages is according to Hukum Syara (the deciding court) order it to be registered subject to section 123 of The Islamic Family Law Act 1984. So the provision suggests that a husband can marry another woman with the written approval or permission of the Court. Here the court is to judge the existing situation and grant permission in the favour of the second marriage. The Court will carefully

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<sup>80</sup> Yasin and Jani (n 13) 15.

examine whether all the conditions stipulated in the Contract of Marriage have been performed or not. The Court needs to be satisfied that the proposed marriage is actually necessary. The financial stability is brought into consideration also to ensure the future of the children both existing and from second marriage.

To secure the interest of first wife Section 23 has also included that wife can claim her share in matrimonial property if husband exercises his right of polygamy.<sup>81</sup> The amendment made it mandatory for the husband, that current wife and prospective wife to appear before the court and to satisfy the marriage being *just*. The hearing where applicant's existing wife/wives and prospective wife can come for their statement and other persons can come up with the necessary information related to the proposed marriage too s. 23(5)<sup>82</sup> will ensure their mutual collaboration in support of the marriage. Most importantly they are getting all the information regarding the marriage. The Court simultaneously giving permission can require the husband to pay maintenance or even can order to divide the jointly acquired or owned property.

This approach tried to keep the traditional concept embracing the requirement of guaranteeing the social security of the first wife and the offspring. So polygamy is subsisting and can be practiced only after securing the rights of both husband and wife and the children.

## Tunisia

Tunisia by enactment of the Personal Status Code 1956 formally abolished polygamy. By Article 18 it is declared as prohibited and made to be subject to fine and punishment of 1 year. In addition, the second marriage is declared as invalid under Article 21.

Article 18 stated that—

1. Plurality of wives is prohibited. Any person who being already married and before the marriage is lawfully dissolved, marry again shall be liable to imprisonment for one year or for a fine of 240.000 malims/franc, or to both, even if the second marriage is in violation of any requirement of this Code”.
2. Any person who has married in violation of the provision laid down in Law No. 3 of 1957 relating to organization of civil status and contracts a second marriage while living in matrimony with the first wife shall be liable to the same punishment.
3. A person who knowingly marries someone liable to punishment under the forgoing clauses shall also be liable to the same punishment.

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<sup>81</sup> *ibid*

<sup>82</sup> Islamic Family Law (Federal Territory) Act 1984 (Malaysia).

Tunisia by allowing liberal interpretation (which allowed much adaptation) prohibited polygamy by taking recourse to *ijtihad* of the verse which asked to treat every wife ‘fairly’ which is almost impossible to comply by ordinary human being. It is suggested to seek further understanding of the spirit of the Qur’anic text in order to produce jurisprudential texts based on values of equality. Tunisia borrowed the context of justice in Sharia which emphasized on justice explicitly and to uphold the true inner essence of Islam Tunisia prohibited the practice of polygamy to ensure gender justice.<sup>83</sup>

It is nearly impossible to guarantee fairness in polygamous family in modern era. So in finding the inherent spirit Tunisia explained that ‘making restrictions on the number of women who can be married is a sign of the prohibition on polygamous marriages’. They further opined polygamy if not done in complete fairness will initiate various forms of violence and confusion both within the family or society. A husband who practices polygamy without ability to uphold fairness, he will treat arbitrarily their wives and children in putting their fate at stake. Therefore, “the writer argues that the prohibition of polygamy that has been established by the Government of Tunisia is example of the progress and the success of Islamic law in applying reinterpretation of Islamic doctrine toward the provision.”<sup>84</sup>

Tunisia borrowed the context of justice in Sharia and to ensure gender justice they prohibited the practice of polygamy.

## Indonesia

The position of Indonesia in the system of Polygamy has similarity with the system of Malaysia.

Indonesia has enacted a separate law solely concentrated on marriage termed as Marriage Law, 1974. After this law they could able to reduce number of polygamous marriage. They included taking permission from the Religious Court. The Court can permit the husband to practice polygamy, if—

1. His wife cannot fulfil her duty as a wife.
2. His wife has physical defect and/or an incurable diseases
3. His wife cannot bear children
4. The husband must have the consent of his existing wife/ wives
5. Be able to financially support all his wives and children

<sup>83</sup> Ayyus Sahidatul Chusnaiyaini, ‘Dynamics of Tunisian Polygamy Law in Gender Perspective’ (Undergraduate Thesis, The State Islamic University of Maulana Malik Ibrahim, 2014) 352 <[www.researchgate.net/publication/313087483](http://www.researchgate.net/publication/313087483)> accessed 7 November 2018.

<sup>84</sup> *ibid.*

6. Must ensure that he treats all his wife and children justly.

Upon fulfilment of the abovementioned conditions only court can permit polygamous marriage, which can be registered and being considered legal. But practice shows that to avoid the long procedure many perform unregistered marriage, which is polygamous of course.

### **Recommendation**

Polygamy is disgraceful for women in terms of their dignity, self-respect as well as self-esteem. Moreover, polygamous families have much possibility to manipulate of each legal right such as inherited property or other facilities of husband like pension or allowance etc. In Bangladesh the law restricting to polygamy not only fails to be effective but also misleading. For more effectiveness there are some suggestions:

1. The permission for polygamy should be taken from the formal court rather Arbitration Council.
2. The Party should enclose all the necessary particulars in document which can satisfy the need of second marriage is just not it is depended on only the discretion of the permitting authority.
3. Making a digital database accessible by the appropriate authority where along with other information the information regarding marriage and offspring will be included.
4. The right of first wife on husband's property can be made absolute and separable under the ownership of the first wife on the event of second or subsequent marriage.
5. The experience of Malaysia and Indonesia of creating a judicial body to judge the necessity of second marriage and providing permission in addition of the consent of first marriage (elaborated earlier) can be borrowed.
6. Separate pre-nuptial agreement can be put forward as an easy way out for the wife who will be applicable on the occasion of second marriage.<sup>85</sup>
7. The punishment for husband and the remedy for wife are to be justified and sufficient to meet the consequences.

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Nina Nurmila, 'Polygamous Marriage in Indonesia and their Impacts on Women's Access to Income and Property' (2016) 54(2) *Al Jami'ah: Journal of Islamic Studies* 427.

## Conclusion

Polygamy in Islam – is often a much debated issue taken into consideration and explained in a rather literal format deviated from its original spirit. The background and the reasons for the initiation is frequently overlooked rather mostly practiced as a general phenomenon. Islam acknowledges marriage as an essential requirement of the wellbeing of the individual and the society<sup>86</sup> whereas Polygamy often grounds of misery for Muslim women, often resulting in loneliness, mostly for those who can produce and sense that they are being used by their husband's needs, as result it tends to feel them of emotional rejection and inadequacy.<sup>87</sup> So keeping the society free from all kinds of evil activity is a motivation too. The recent practice of taking more than one wife is totally unacceptable from that perspective. Marriage in presence of another wife was allowed to do when the first marriage in almost frustrated. The obligation of protecting and caring the wife and children, carrying the household affairs, marital sex satisfaction and compatibility of behaviour as between spouses are component of the far reaching purposes of marriage.<sup>88</sup> The Quranic verses are partially adopted ignoring the requisite of being 'just and equal' to every wife who the Almighty considered almost impossible to do for human. Polygamy exists in most of the countries where Islamic law is in operation and the institution is given much attention, may that be regarding statutory alteration keeping the main spirit alive and focusing on the social implication. Most states approved it as a valid institution and concentrated on its legal application and tried to incorporate stipulation to fit into the social structure having an intention to allow this practice with little opportunity for only in the very exceptional situation where it is extremely needed. The observance of the practice is not left alone only on the will of the men but rather the duty of the state to make it a less accessible one. They allowed polygamy after fulfilling many conditions in few levels. The giving of permission made two tiered where the permission of wife is not the only criteria but a judicial body after judging the necessity of taking another wife will give permission, along with will try to ensure the treatment of all the wives and their offspring remains equal.

From the experiences of other states having either the similar social structure or Islamic belief this paper tried to find an avenue to accommodate the true spirit of Islam. So it's proposing an immediate legal attention to put strict restriction to make the practice available only for the appropriate instances. Muslim Family Laws Ordinance 1961 hardly brought any changes in last decades in its substantial matter regarding polygamy. We tried to focus in the judicial activism and found it quite insufficient and hardly worked as a

<sup>86</sup> Zahidul Islam, 'Restricting Polygamy in Bangladesh' *The Daily Star* (Dhaka, 28 April 2007) <archivethedailystar.net/law/2007/04/04index.htm> accessed 7 December 2018.

<sup>87</sup> Heather Johnson, 'There are Worse Things Than Being Alone: Polygamy in Islam, Past, Present, and Future' (2005) 11(3) *William & Mary Journal of Women and the Law* 563.

<sup>88</sup> *ibid* (n 86).

discouraging practice. There is no milestone judgment ensuring limited use of polygamy.

In today's social structure and position of women may be taken into consideration for giving a more progressive interpretation of statutory and non-statutory matters. It has been opined by Haque Ridwanul that though there are several progressive verdict by the Honorable Supreme Court regarding various issues of Muslim Family Law the 'Court have been reluctant to attempt a radical reconstruction of Shariah Law which arguably is possible within the framework of Quran and Sunnah'.<sup>89</sup>

So we are strongly suggesting immediate statutory intervention with a comprehensive stipulation performable before taking aid of polygamy in only appropriate cases. The judicial body may be incorporated to permit it along with previous wife/wives consent. There must be a provision for right to property for the wife and children from previous marriage.

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<sup>89</sup> Hoque and Khan (n 21) 227.

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