

## Restricting polygamy in Bangladesh

ZAHIDUL ISLAM

It is very unfortunate that polygamy in Islam has been a subject of controversy. While a group of scholars has, without going into deep study of the divine rules, preached that Islam has permitted to have more than one and upto four wives without reservation, the other group of scholars has, without paying any thought to the reality of life and society, opined that Islam in effect prohibited polygamy. Consequence is that they have made polygamy in Islam a moot question, which it is really not. Most deplorable state is that without any insights into the polygamy in Islam, some people have begun terming the provisions on polygamy as anti-women and biased to men. Hence here is an attempt to clarify the issues.

It is obvious that unrestricted polygamy was an accepted mode of behaviour during the *aiamey jaheliah* (period of ignorance). But the scenario changed radically after the Revelation, that is, *Sura Nisa* of the holy Quran. Verse 3 of *Sura Nisa* is clear with its provisions that:

"If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two, three or four; but if ye fear that you shall not be able to deal justly (with them) then only one, or (a captive) that your right hand possesses. Thus that will be more likely to prevent you from doing injustice."

This is the verse that contains perfect guidance for the believers that they may marry more than one wife only when they sincerely believe and possess the capacity to deal justly with the co-wives. But where they have an apprehension that it would not be possible for them to do justice as between wives, they are commanded to have only one wife. And this is the approved course of marital life which, as Allah says, will prevent men from doing injustice.

Then the next question is whether a Muslim man possesses the capacity to practice perfect justice as between women. The answer is also present in verse 129 of *Sura Nisa*. In this verse Allah, who knows the nature of man the best, cautions that 'you are never able to be fair and just as between women, even if it is your ardent desire'. Hence humans do not possess the ability to practice just dealing of a perfect nature. It is inferable from this verse that monogamy should be practiced as general rule of matrimonial behaviour.

Then what about the polygamy? There are diverse views as to this. The first view is that a male is permitted to have upto four wives with the condition that he should be just between them. The capacity to be perfectly just does not exist in the humans and hence it is impossible for a person to satisfy the condition of doing justice as among wives. Hence polygamy is, in effect, prohibited.

The advocates of the other view point out that the permission to have more than one wife is explicitly provided for and there is no express provision prohibiting polygamy and hence to deny it on the ground that the condition of justice is impossibility is fallacious. They argue that any such interpretation based on the relevant two verses is impermissible because it will mean that the two parts of the Holy Quran suffer from discrepancy which is an impossibility as pointed out by the Quran itself. Thus they reject absolute prohibition of polygamy as a rule of conduct under the Islamic law. They are of the opinion that a person can validly upto four wives where he has no fear that he shall not be able to deal justly with them. But the person, who does not possess the ability to fulfil this condition but still takes the advantage of this permission, commits a fraud or abuses the Divine Permission. And for this he will be tried by Allah.

However, the most accepted view taken by Islamic jurists and thinkers is that the permission



to have more than one wife is conditional, and the condition is to deal with the wives justly. The nature of this condition is such as it is almost beyond the capacity of man to fulfil it. Therefore, the permission of polygamy is an exception and not a general rule.

The vital questions at this stage are two. First, in what conditions or under what exceptional circumstances and according to what rules of conduct polygamy may be permitted. Second, for what purposes and reasons polygamous marriage is impermissible.

Before answering these two questions it seems necessary to mention the approach of Islam towards marriage. Islam accepts marriage as an essential requirement for the wellbeing of the individual and the society. On the contrary, Islam clearly disapproves celibacy and treats it as an unnatural condition which produces evil. However, it does not regard marriage as inevitable. In the need of individual, family or society, there may be divorce and remarriage; and there are provisions for those. Likewise, Islam provides for polygamy for the better interest of the individual and as well as the society. Following are some specified circumstances when polygamy may also be permissible.

If we recall the occasion of the Revelation of the Quranic verse permitting polygamy, we see, it was after the war 'Uhad' when the Muslim community was faced with the problem of rehabilitation of many orphans, widows and captives of war. Their treatment was to be governed by principle of greatest humanity and equity. Thus it was commanded that you marry the orphans, widows if you are quite sure that in this way you will be able to protect their interest and property with perfect justice to them. If not, make other arrangement for them. However, it does not mean that this was guidance for that time only. In fact, it was a rule provided for posterity, since such a situation may be faced by some future nations. Examples are the present Palestine, Bosnia, Afghanistan, Iraq etc.

b. Polygamy may be resorted to in those circumstances in which the purpose of marriage becomes frustrated. Capacity of procreation, care of children, of household affairs, marital sex satisfaction and compatibility of behaviour as between spouses are some of the elements of comprehensive purpose of a marriage. When such purpose is frustrated or not fulfilled because of wife's barrenness, chronic illness, feeble-mindedness, madness, physical handicaps etc.,

polygamy may be permitted. The insights into this provision is that if another marriage was not allowed in such circumstances, and monogamy was the only way, then men would become prone to divorce the first wife resulting in throwing her in a more helpless and unsecured state of life.

Now comes a question that when a person practices polygamy in permissible limit, how will he deal with his wives, as it is clear that a man is not capable of doing perfect justice as between women?

Certainly, to escape Allah's punishment, a person should try his best to do justice as between wives. Moreover, there is a guideline in the holy Quran (*Sura Nisa*, Verse 129) that: 'But turn not away (from a woman) altogether so as to leave her (as it were) hanging in the air.'

It means that where a person practices polygamy within the permissible limits, he should refrain from treating the first wife in a manner which renders her position as that of a woman without husband. Kindness and equity must inform marital relations even in case of a person having more than one wife.

The next point to be discussed here is the purposes and reasons for which polygamous marriage is impermissible. In Islam, protection of chastity and purity of sex life constitutes the basis of marital status. And the holy Quran in different places indicates that lust, lewdness, property, beauty, lineage, or status cannot be the motive for seeking a woman in marriage. Thus where any of these constitutes the basis of desiring a polygamous marriage, that will be violation of divine commandments and hence impermissible.

The question that comes here logically is whether the observance of these rules of conduct by Muslims may be left to their free will or it is the duty of the state. Islamic jurists are of the opinion that Islamic state possesses the jurisdictions and power to take steps so that the injunction of the

Quran is followed.

Bangladesh, like many other countries with large Muslim population, does have law, as personal law, to regulate polygamous marriage of its Muslim communities. The relevant portions of that law, i.e., section 6 of the Muslim Family Laws Ordinance 1961, reads as follows:

1. No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the arbitration council, contract another marriage ...

2. ... (such) application form ... shall be submitted to the chairman (of the arbitration council) ... and shall state the reasons for the proposed marriage and whether the consent of the existing wife or wives has been obtained thereto.

3. On receipt of the application ... the Chairman (of the arbitration council) shall ask the applicant and his existing wife or wives, each, to nominate a representative, and the arbitration council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions, if any, as may be deemed fit, the permission applied for.

This law has given the Arbitration Council a wide discretionary power to deal with the issue. Also, it has not defined what can possibly be 'necessary and just grounds' in this regard. These are why, according to legal experts, this law is prone to be abused. They think it necessary to define the expression 'necessary and just ground' with illustrations. Herewith I would like to add that that should be done in light of the rules of conduct provided in the holy Quran. No doubt, that will ensure maximum good to the Muslim individuals as well as the society.

The author is an advocate of Bangladesh Supreme Court, currently working for Bangladesh Legal Aid and Services Trust (BLAST). The views expressed here do not necessarily reflect those of the organisation he serves.

## HUMAN RIGHTS monitor



ERADICATION OF DOWRY

## Needed strict application of law



the eternal bond they promised to maintain broke within three months into their marriage. This, also, is the same story. All love and fancy died down within three months, and lust for dowry money became the prime objective and consideration.

Gopal Das demanded one lakh taka. But Shampa's poor father, Sukumar Roy who works in a furniture shop, could not pay it. And the consequence: Shampa was throttled to death, and the inmates of the house including the husband fled away, keeping her body hanging by a rope in the bathroom.

The third incident of dowry-related death this month took place at North Kazipara in Dhaka. Naima Khanum Lovely, daughter of Ziauddin Ahmed Khan, was married to Syed Masuduzzaman in the village Baniapara under Mirzapur thana. The husband started repression on Naima when he did not get dowry of two lakh taka. Traumatised by years of physical abuse, Naima informed her mother over telephone of the torture and humiliation she was suffering and, when her parents were trying to meet the demand, with their daughter being brutally killed by the monster husband.

The horror of domestic violence has always been with us. But now it is spreading like an epidemic to more and more homes. Assuredly, after the present caretaker government's coming to power, the law and order situation has improved vastly, with crimes like extortion, kidnapping and political killing recording a marked decline. However, criminologists, as well as the crime assessment wing of the government and some NGOs assert that dowry-related crimes have skyrocketed of late.

The survey points out that crime rate among the youth, especially such deviant young husbands, has gone up by as much as 40 percent. The countrywide survey conducted by the Bangladesh Women Lawyers Association revealed that women repression incidents, mostly dowry related, have increased alarmingly in the last few years.

Although many cases of harassment for dowry were reported, a staggering number of such cases were not. It is a phenomenon that escapes easy answers the continued harassment and repression due to a complex mix of social trends. The sudden affluence that emerged, starting from rural areas to the cities, in the last one decade is the primary factor.

The money, as social scientists say, was not channelled productively. Instead of being used to enhance women's education, for instance, it was used to perpetuate ostentatious lifestyles. With "get-rich-quick" becoming the new goal in life, dowry became the perfect instrument for upward material mobility. Growing consumerism, flashy life styles and, in most cases, joblessness and drug addiction are fuelling these crimes.

If once, a bicycle, a wrist-watch, or a little money for starting a business sufficed for the lower income groups, nowadays a TV, home appliances and motor cycle, other than cash, are the common demands. For the upper middle class and better educated grooms the demand is soaring. They look for flat ownership, or a plot of land in Dhaka, or a

chunk of the share in father-in-law's business. People are inclined to believe that the quantum of dowry exchange may be still higher among the upper classes, but 90 percent of the dowry deaths and nearly 80 percent of dowry harassments occur in the middle and lower strata.

For women, it is a difficult battle to win. They are handicapped by history, victims of a firmly embedded gender system. Still, some women with the assistance of women activist groups are fighting back. True, increased awakening has led to a growing resistance against dowry demands but, consequently, resulted in familial friction. (Mentionably, Nisha Sharma, the daughter of an affluent family in Hyderabad, India, became an overnight celebrity by refusing to marry the man whose family upped its dowry demand. It was the stand that Nisha, an educated girl, took when the price tag for her groom, a software engineer, went bigger and bigger. Nisha's decision is anything but heroic, but undoubtedly true. Her attempt at dissolving the marriage, calling the police and handing over the prospective in-laws to police has broken the ice).

In Bangladesh, in cities and rural places, women are yet to wake up and take a bold stand against dowry because most women are steeped in poverty, often with no education, employment or business to fend for themselves. Sadly but truly, it typifies the indifference toward the crime that goes on. The belief that most husbands, or their families, can get away with such crime is one of the main reasons why torture on wives is so common in the country.

Unhappily, there exists a nonchalant attitude in a majority of modern families who participate in dowry based marriages instead of opposing them. People talk glibly about dowry prohibition, or anti-dowry movement, but when it comes to the weddings of their own sons and daughters most people would do the same thing that others have done. Shockingly true, down the years the lack of collective political will to curb dowry has become obvious.

Women face double peril. Inside the barred doors is humiliation, outside awaits public ire. Harassed and tortured women are now going to the court, or to the police, for protection. But even if appeals for protection are met, only scorn greets them when they return home. Despite every stigma, dowry continues to be the signature of marriage. It is taken as a normal custom, and dowry harassment as a part of family life. The odd NGO groups, or women activists or women lawyers associations, may pursue one or two cases and rehabilitate some tortured women, but, appallingly, by and large, any major success or breakthrough is hardly possible because social intervention is low and ignorance high.

No doubt the laws remain stringent. But their application is seldom strict. And a dowry death is a relatively easier crime to prosecute than murder, and so the crime continues. Due to several factors, most go unreported. And in the court, a majority of the victims belong to the under-privileged classes and they have hardly any means to fight out the lengthy legal battles. Because court appearances, and seeking police protection from all these types of torture and violence by husbands are traumatic, women prefer to sweep their bitter experiences under the carpet. However, the strength must come from the society and the government. In a bid to weed out this menace, or so to say this curse, from the system this scenario must be changed. Strict application of stringent law is imperative.

The author is a former teacher of physics and controller of examinations, BUET.

## LAW campaign



CHILD SOLDIER PREVENTION ACT OF 2007

## US cuts military aid to governments using child soldiers

Of 10 governments worldwide implicated in the recruitment or use of children as soldiers, nine receive US military assistance. A new bipartisan bill introduced by US Senators Richard Durbin and Sam Brownback would restrict such aid. An estimated 250,000 children are exploited each day in state-run armies, paramilitaries and guerrilla groups around the world. Called "child soldiers" they serve as combatants, porters, human mine detectors and sex slaves. Their health and lives are endangered and their childhoods are sacrificed. The bill is designed to encourage governments to disarm, demobilize, and rehabilitate child soldiers from government forces and government-supported paramilitaries.

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1) any person under age 18 who takes a direct part in hostilities as a member of governmental armed forces;

2) any person under age 18 who has been compulsorily recruited into governmental armed forces;

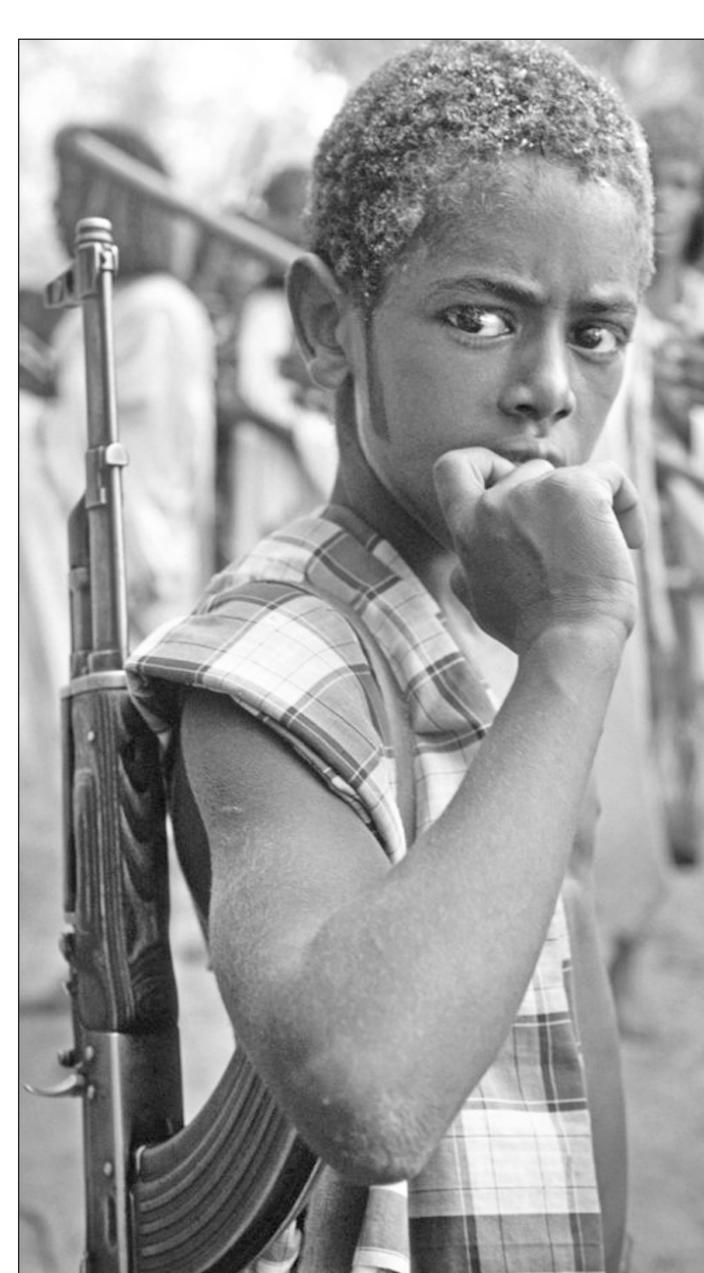
3) any person under age 16 voluntarily recruited into governmental armed forces;

4) any person under age 18 recruited or used in hostilities by armed forces distinct from the armed forces of a state;

5) persons identified in 2, 3, and 4 may be serving in any capacity, including in support roles such as, but not limited to, cooks, porters, messengers, medics, guards, sex slaves, etc.

This definition is based on the Optional Protocol to the Convention on the Rights of the Child, ratified by the United States in December 2002.

Both chambers of the United



States Congress have made clear their position on this issue in recent years as articulated in a series of resolutions. "Expressing condemnation of the use of children as soldiers and the belief that the United States should support and, where possible, lead efforts to establish and enforce international standards designed to end this abuse of human rights". In addition, the Congress now requires that the US Department of State monitor and report on this problem in its annual report on human rights practices.

The United States is a party to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which sets 18 as the minimum age for forced recruitment or participation in hostilities, and ILO Convention 182 on the Worst Forms of Child Labour, which defines the forced recruitment of children under the age of 18 for use in armed conflict as one of the worst forms of child labor.

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