

## LAW OPINION

# What does the Quran say regarding polygamy?

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It was not Islam that had initiated polygamy rather polygamy was the widespread customary practice in pre-Islamic Arabia which continued in the later ages by distorting the actual revelation of the Quran. The traditional practice of polygamy is one of the patriarchal practices that create discrimination against women by indicating the fact that equality between men and women has not been realised in society. While interpreting the Quranic verses relating to polygamy, jurists belonging to different schools of thoughts, presented diverse observations regarding the wholesale permission and restrictive approval of polygamy. Verse

*The underlying message of the Holy Quran regarding the injunction of polygamy disregards any discriminatory practices against women by virtue of the practice of polygamy. This Quranic proposition corresponds with the equality and non-discrimination principle of the international human rights law.*

IV: 3 of the Quran which is also known as 'verse of polygamy' says:

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

The classical or traditional jurists interpreted this verse as allowing a man to marry up to four wives, while the modernists as well as contextualists observed that this verse legislates monogamy and allows polygamy only under exceptional circumstances. It will be prudent to note that contextualists

emphasise the context and background of the verse. This verse actually urges to ensure proper treatment towards the orphan girls, it does not mean to allow blanket permission of polygamy to the men. During the period of revelation, some male guardians, responsible to manage the wealth of orphaned female children, often engaged in unjust management/misappropriation of the wealth of those children. In order to prevent such mismanagement, the Quran allowed them to marry those female orphans. While permitting marriage, Quran, on one hand limited the number of marriages up to four and on the other hand, envisaged that 'the economic responsibility for maintenance of wife would counterbalance access to the wealth of the orphaned female through the responsibility of management'. The Quranic injunction aimed to improve the conditions of weaker segments of the society like orphans and the poor in general.

The key argument of modernists is that while the Quran apparently, allowed polygamy, it added a moral rider to the effect that if a man cannot do justice among co-wives, then he must have only one wife. The meaning of justice does not only imply equality in terms of providing food, shelter, and clothing, it also signifies equality in love, affection, and esteem which is impossible to be rendered by a human being. In support of their argument, modernists relied on the Quranic verse IV: 129: 'Ye are never able to be fair and just as between women, even if it is your ardent desire.'

The interpretation of this verse along with the previous verse of polygamy indicated that Quranic injunction is functional on two levels: (i) a legal level where limited polygamy was permitted under exceptional circumstances (ii) a moral level where Quran had apparently expected that society would transform with the change of time.

The classical jurists, however, did not consider the 'justice' requirement as a condition precedent to a polygamous marriage rather they left the issue to be decided by the private judgment of every individual husband. Their understanding of Quranic verse by giving supremacy to the decisions

of individual husbands reflected the notion that men are superior to women. They also relied on the Quranic verse II:228:

'And women shall have rights equivalent to the rights against them, according to equitable prevailing practice (*al-ma'aruf*), but men have a degree [of advantage] over them [them].'

In interpreting this verse, traditionalists preferred to emphasise the later portion of the verse that gives superiority of men over women disregarding the parity of men and women. Contextualists while negating the interpretation of traditionalists construed the provision to imply that 'men have a degree of advantage

Though there exists difference of opinions regarding polygamy, contextual interpretation of the above mentioned Quranic verses suggests that an unrestricted licence for polygamy is contrary to the spirit of the Quran. While adopting contextual interpretations of Quranic injunctions, Islamic communities have imposed restrictions on polygamous marriages in various countries, including Pakistan, Bangladesh, Syria, Iraq, and Morocco and even there is an example of complete abolition of polygamy as in the case of Tunisia, by virtue of the practice of *ijtihad*. The Tunisian reformers, by virtue of the practice of *ijtihad*, highlighted that in addition to a husband's financial ability to

have been restricted by imposing few conditions that include the requirement of taking consent from the existing wife and obtaining permission from the Arbitration Council. In addition to legislative restriction and prohibition, judges interpreted the Quranic verse of polygamy progressively either by restricting, prohibiting or condemning the practice of polygamy in a large number of judicial decisions (Cases among others include *Jesmin Sultana v. Muhanamad Elias* 17 BLD 1997 4, *Amena Khatun v. Serajuddin Sardar* 17 DLR, (1965) 687). Judges also emphasised the condition of equal and impartial treatment that required to be fulfilled by the husband desirous to have more than one wife.

In the *Jesmin Sultana case*, the High Court Division (HCD) recommended that Section 6 of the MFLO should be repealed and replaced by a section prohibiting polygamy altogether. While coming to this pragmatic decision the court stated that Muslim jurists and scholars are nearly unanimous on the view that it is practically impossible to deal with co-wives justly, and so the Quranic injunction that a second wife may be taken under a specific condition is virtually a prohibition. It is noted that though the Appellate Division did not agree with the decision of the HCD, the observation of the HCD regarding polygamy carries significance and may work as a significant guideline in terms of the interpretation of the cases of polygamy.

The above discussion leads to the proposition that the underlying message of the Holy Quran regarding the injunction of polygamy disregards any discriminatory practices against women by virtue of the practice of polygamy. This Quranic proposition corresponds with the equality and non-discrimination principle of the international human rights law. In addition, the imposition of justice requirement in case of taking second wife implies that Quranic message not only conforms with the equality principle but also is significant to ensure a dignified life for women.

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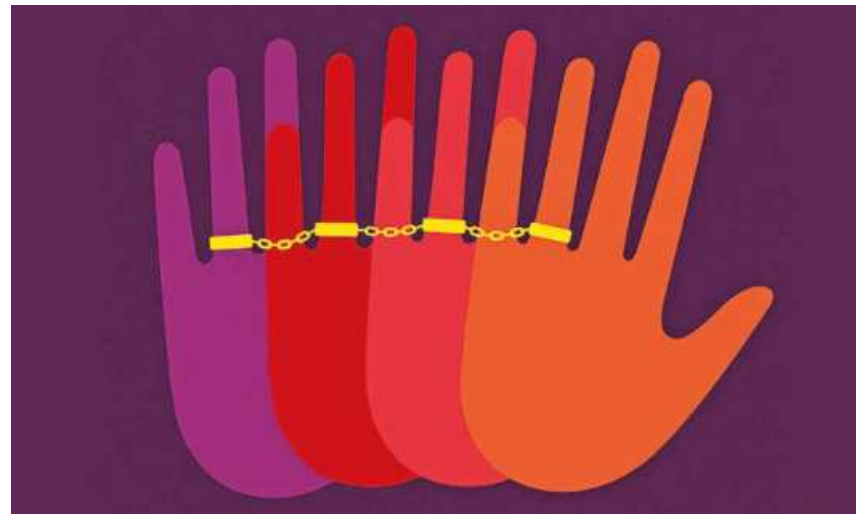


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over women' was reflected in the legal status of men and women in the previous context which should have no legal implications in the modern context. Ignoring the significance of context in interpreting Quranic verses, conservative jurists hold that polygamy as a response to multifarious situations of necessity is a better option than monogamy practiced in the west where positive laws leave loopholes giving tacit approval to extra marital sexual liaisons. Here, it can be argued that the demerits of positive laws cannot be used as a shield to justify polygamy because wholesale permission of polygamy does not reflect the true essence of the Quranic injunction.

maintain a couple of wives, the Quranic injunction also requires complete impartial treatment among co-wives. This injunction of the Quran should not be taken as a moral instruction but as a legal condition precedent which requires proving impartiality among co-wives through adequate evidence. The reformers maintained that under modern social and economic conditions, the stipulation of impartial treatment was impossible to fulfil and accordingly they declared to prohibit the practice of polygamy under Tunisian Law of Personal Status 1957.

In Bangladesh under the Muslim Family Laws Ordinance (MFLO) 1961, the practice of polygamous marriages

## LAW VISION

## Bangladesh: The most preferable investment destination in the world

MD. SAYFUL ISLAM

Bangladesh is one of the fastest growing economies in the world. Its economy has been growing steadily at the rate of above 6.5% on average over a decade and thus has transformed the country into a land of opportunities. It is now being considered as the next Asian Tiger. The country has made a stunning economic record, highly adaptive and competitive workforce and several potential industrial sectors with low cost and high return manufacturing regime in Asia.

Bangladesh offers its large domestic markets, strategic location, high profitability, demographic dividend and attractive incentive policies and consistent reforms for better business climate that rendered the country as one of the best investment destinations in the world. Inspired by the vision of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman, the government led by the Honorable Prime Minister Sheikh Hasina has built a solid foundation to support the growth of economic activities in Bangladesh. Under her strong leadership, Bangladesh is poised to diversify its economy and emerge as a developed country by 2041. Asian Development Bank has estimated Bangladesh's GDP growth by 5.2% in 2020 even amidst global pandemic and 6.8% in 2021. Bangladesh is also the world's 29th largest economy by purchasing power.

Bangladesh offers the most liberal FDI regime in South Asia, allowing 100% foreign equity ownership with unrestricted exit policy. Almost all the sectors are open for foreign investment without any quantitative restrictions. The country offers generous tax holiday, reduced tax rate for specific sectors, bond facility, export incentives, and other fiscal incentives. The country offers the most generous incentive Packages in the South Asian region which include the followings:

- Corporate Tax Holiday from 5 to 10 years in certain areas and sectors
- Accelerated Depreciation on cost of machinery for new industries in lieu of tax holiday

- Bonded warehousing facility for export-oriented industries
- Domestic market sales up to 20% allowed to export-oriented companies outside EPZ
- Cash incentives and export subsidies granted on the FOB values ranging from 5% to 20% on selected products
- Tariff concessions on import of raw materials of the export-oriented industries
- Duty free market access to EU & most developed countries
- 100% foreign equity is allowed
- Full repatriation of dividends and capital is allowed
- Tax exemption of remittance of royalty, technical know-how and



Accordingly, in such circumstances, Bangladesh has created within itself an unparalleled investment climate in recent years compared to other South Asian economies. A good investment climate is of fundamental importance for the private sector to be able to contribute to the global sustainable development agenda in the support of the following facilities prevailing for the investors.

- The Foreign Private Investment (Promotion and Protection) Act 1980 ensures full protection to foreign investors.
- The geographic location of the country is ideal for global trade with Strategic Location, Regional Connectivity and Worldwide Access.
- The One-Stop Service (OSS) puts all investment facilitation mechanisms under

a single window

- Highly adaptive and industrious workforce with the competitive wages and salaries are available in Bangladesh. About 57.3% of the population is under 25, providing a youthful group for engagement to meet global standards.
- No restrictions on issuance of work permits to project related foreign nationals and employees.
- Bangladesh is endowed with abundant supply of natural gas; water and its soil is very fertile.
- Bilateral investment treaties with 33 countries for promotion and protection of investment:
- Avoidance of Double Taxation Treaty (DTT) with 28 countries
- Bangladesh has also signed multilateral and regional treaties such as MIGA, ICSID, WIPO, WAIPA, OPIC, APTA, BIMSTEC, IORA, SAPTA, SAFTA, SAFAS, COMCEC, TPS-OIC.
- In addition, Bangladesh has signed trade agreements with 45 countries for trade facilities among the countries.

It is observed that Bangladesh offers significant competitive cost in case of skilled labour, industrial estate rent, low-cost energy, in terms of doing business, which is more than the other major countries like China, Bangkok, Vietnam, Indonesia and India. A steady macroeconomic environment, resilient domestic market, and export-oriented industry-led growth have positioned Bangladesh among the fastest growing economies of the world. Being the prime contact point for Foreign Direct Investment (FDI) in Bangladesh, the Bangladesh Investment Development Authority (BIDA) welcomes private sector investors to visit Bangladesh to see, explore, and be acquainted with the investment opportunities.

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## REVIEWING THE VIEWS

## Analysing the Judgment of Competition Commission on collusion for monopoly

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The Competition Commission (CC), Bangladesh in a *suo moto* rule warned Viqarunnisa Noon school (VNS) authorities and imposed a financial penalty of Tk 79,897 on Chowdhury Enterprise for a contract to supply uniforms to students of VNS by violating section 15 (1) of Competition Act 2012. This clause prohibits the collusion for purchase, sell, and bid manipulation etc.

The controversy has arisen on account of exusing the school authority from administrative penalty and instructing to select at least 3 suppliers through tender for supply of dress at an agreed price. This is tantamount to creation of oligopoly (with a fixed price set by tender); those appointed suppliers will sell school dresses at a fixed price, but customer will not enjoy the benefits of the competition. Both parts of the decision of the commission for exemption of one party of collusion of bid fixing and direction for creation of oligopoly are not consistent with the Competition Act, 2012 of Bangladesh. Chowdhury Enterprise was selected as lone supplier against 3 bids of different suppliers but the evidence revealed that the two bids were also arranged by Chowdhury Enterprise itself and these activities are apparently in collusion with the VNS authority. The Rule asked the authority to cancel the contract with Chowdhury Enterprise and to select at least three tailors for each of its three campuses for preparing the uniforms.

The evidence revealed that the existence of supply agreements between schools and suppliers give the suppliers an unfair advantage over other suppliers thus distorting competition in the market. It is noted that when school fees are inclusive of school uniform, the consumer has no choice but to buy school uniform from the school, thereby indirectly restricting competition in the market.

During the investigation as per section 17 and 18, the offences have been proven for the creation of barriers to entry, exit by competitors, limited choice of uniform suppliers to consumers, foreclosure, and limited access to the market by competitors.

This type of conduct by the schools also encourages exclusive dealing between schools and suppliers of school uniform because

the school has the discretion to choose the supplier. Furthermore, countervailing power is diminished as school uniform prices are determined by the school thus also taking away the power of the consumers to purchase school uniforms from other suppliers in the market.

In this case, to sum it up, it has revealed that (a) the agreement between school and the supplier created a strategic barrier since new entrants in the market are unable to effectively penetrate the market; (b) according to the counterfactual, the market for the supply of school uniform would have more suppliers or players; (c) customers do not have countervailing power in the market for the supply of school uniform.

The VNS and the suppliers of school uniforms are proven to be parts of a collusion whose object or effect is the restriction, prevention or distortion of competition to an appreciable or substantial extent, thus contravening section 15 (1) of the Competition Act. The nature of the offence committed by schools in collusion with the suppliers warrants a corrective penalty. The Commission in their verdict on February 24, 2021 exempted the schools from the penalty on the basis of "no intention of any business" on the part of school authority but only penalised the supplier for the offence. The law does not provide such clause to exempt any person / authority for any offence whatsoever.

In the second part of the judgment, the CC has given direction to the school authority regarding future procedure of selection of at least 3 suppliers (section 4 -3), through an open tender and regarding allowing suppliers to sell school dresses at the fixed bid price (section 4-4), further noting that the price list should be displayed in the open place of the shop(s). This direction seems an instrument for the creation of oligopoly of 3 suppliers at a fixed price. This means the process will not create competitive market for school dresses.

The CC has limited work force and poor logistics. They are facing much limitation in day-to-day activities. Their activities are appreciable. On the other hand, the judgement of the commission in this case needs reevaluation through appropriate legal procedure.

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