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Restricting Polygamy in Bangladesh

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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 have 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.

a. 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 freewill 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 others 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.