

## Rationality of Restraining the Practice of Polygamy: Hegelian Discourse

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### Abstract

*Taking More than one wife is called polygamy. Traditional Islamic and classical Hindu law permits it. It practically creates obstacles to ensure the ideal family, society ultimately state. Probably for this reason, the political scientist, Hegel emphasized on the monogamy to create an ideal state. This article will argue what should be done in the national legislation from Religious and Hegelian aspects. This article will also argue that those who are accusing Islam or any other religion for its permission are not acquainted with the religiosity of life. As the solemnization of the Polygamy creates the breach of the standing of the ideal society in the modern age, so it is the proper time for abolition of this type of practice. It will also not forget to criticize the present Muslim laws regarding polygamy which actually reiterated the practice of patriarchal society. If the abolition of the polygamy is not possible, the law of polygamy should be accommodated providing the equitable conditions upon which husband would be able to be polygamous.*

**Key Words:** Polygamy, Hegelian Concept, Conditions of the Polygamy, Religious Permission of Polygamy, Statutory Reforms

### Rationality of Restraining the Practice of Polygamy from Hegelian Aspect

“The Prophet was not an impractical visionary who simply made high sounding moral pronouncements. It was a central function of the Prophet and his mission, after having made the moral pronouncements, to be effective in society and to move it in a certain direction. In other words, the Prophet was a seer-cum-reformer. But at any time a reformer, however, zealous, cannot change the society beyond a certain point.”<sup>1</sup>

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### Introduction

Marriage is the socially and religiously significant matter for maintaining the social tie and mutual interaction. Exception to some other religions, Muslim marriage is the civil contract. Hindu Marriage is religious sacrament. Mutual

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<sup>1</sup> Pearl, David and Menski, Werner (eds.), *Muslim Family Law*, London Sweet and Maxwell, 1998, p. 238

consent of both parties is essential for making this Muslim marriage contract. But why the husband has been given the avenue to take more than one wife in Islamic law or any other religious law is a query. From the every corners of the so called modernism, this practice is being increasingly criticized. Virtually those who are criticizing the Polygamy of Islamic or any other religious Law are not acquainted with generally the religious life, the Islamic way of life particularly. Every religious law, particularly Islamic law demands to establish the ideal society. Justice is not properly implemented in the society as we do not have standard facets to constitute just society from no laws of either religions or the regions. So many countries try to abolish or penalize unhealthy and unhygienic practice of the society which has been practiced in the name of the Islam or religious permission. Polygamy is like that. The traditional Islamists or Hindu fundamentalists try to propagate the permission of the Polygamy and justify the unusual polygamy. Our MFLO accommodated the pre-requisite for the Polygamy which obliges the husband to show what the irregularities or faults of the wife for which he thinks necessary to take additional wife. Ironically the husband does not require to prove any condition for the Polygamy under contemporary laws. But the verses of the holy *Quran* provide some conditions where the husband is to prove that he is capable to maintain his wife in a just manner. Surprisingly our law does not accommodate any conditions which actually conform to those verses. Despite the India declared the practice of polygamy illegal in Hindu law, Islamic law has not been in any way reformed in this respect there. Nevertheless, imposition of certain conditions for restricting polygamy it is not little achievement.

The purposes of this article are to show what types of conditions are accommodated in the MFLO and MFLR and what types of additional conditions should be added further. The objective of this article is show how the ideal society may be established in the frame of the expectation of the Hegel's ideal state and religious perspectives and how the women's honor can be realized in the society in these days.

### **Meaning of Polygamy**

Polygamy means the procedures of taking more than one wife at the same time. It is totally opposite to the polyandry.<sup>2</sup> Under Islamic jurisprudence, Muslim men are allowed to take more than one wife having economic solvency and the situation where there is no possibility of the injustice among any of such wives. From such guidance of the holy *Quran*,<sup>3</sup> the Muslim Family Laws Ordinance and Muslim Family Rules-1961 provided the guidelines which should be followed, complied or satisfied for taking another wife in the existence of one or two wives. They can have more than one wife at the same time and the number will be up to a total of four. Polyandry, the practice of a woman having more than one husband is not

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<sup>2</sup> <http://en.wikipedia.org/wiki/Polygamy> accessed on 19-05-2013

<sup>3</sup> See, the holy *Quran*, Ch. 4, Verse. 3, 129.

permitted as it is unnatural and impossible to determine the paternity of the issues. Polygamy is permitted to prove the natural congruent nature of the Islam. Polyandry is also prohibited because of this type of nature of the Islamic law. On the other hand, during the rudimentary stage of Islamic civilization, polygamy was allowed because such limiting the husband to restrict to take such four wives was also challenge as taking wives for the husband was not limited then.<sup>4</sup> In some Muslim countries, Polygamy is relatively common whereas the opposite status is rare or non-existent. However, the Muslim countries are trying to prohibit or restrict or limit the practice of the Polygamy as this has been being used humiliatingly against the women or accommodated the arrangement of the penalty against the husband who has taken second or more than second wife. As the second marriage is not null and void according to Islamic Law, so the statutory law cannot say that this marriage is invalid. It is worth mentioning that the practice of polygamy in Islamic law is limited polygamy.

### **Permission of the Polygamy in Various Laws: Obstacle to Create Ideal State**

Islam as a religion accommodated every aspect of the life of the human being. It did not forget to provide the guideline for the establishment of the society. As the family is the significant element of the society, the fraternity and empathy among the family members has been encouraged. Nevertheless the exceptionality has been covered by the limited polygamy.

Hegel also encouraged to constitute the family and society with reason, logic and wisdom which will be out of any defects. Even for this reason the husband should continue his conjugal life with one wife. As the polygamy is the consequence of the chaos of the family. If the chaos is not allowed in the family or society, the polygamy needs not to be continued.

Before the advent of Islam, the moral standing of the inhabitants of the Arab society was so predicaments-laden that any reformatory activity was impossible. Patriarchy was one of the characteristics of that society. Women were not treated as human being. The husband was at liberty to take unlimited number of wives.<sup>5</sup> The birth of the female-child was unwelcomed. Female children were buried after their birth. The opinions of the female were not considered in taking any decision.

Religion is revealed as a tool for purifying the heart of the human being. Realistically, Islam is the religion of like that. Polygamy is one of the practices to be abolished by religion, Islam. But outright rejection of the innumerable polygamy was not practical during the preliminary stage of Islam. If monogamy was introduced, it could create another complexity. Nevertheless, it tried to limit the number till four to introduce the ideal society.

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<sup>4</sup> See, Pearl, David, *A Textbook on Muslim Law*, Room Helm London, 1979, P. 69.

<sup>5</sup> *Supra* note 1, at p. 237.

... [T]he man's right of polygamy to four concurrent wives, which has been widely seen as "an achievement of a high order, a definite step towards the amelioration of the harsh lot of woman and a definite advancement in the then prevailing juristic thought."<sup>6</sup>

Now, misuse of this exceptional facility created a public concern because it is solemnized by the males without considering the interest of his existing wife, family relations and interests of their children. Thus family is broken down. The psychological problems increase among them. So the demand of the conscious people of the society is to prohibit or declare it as penal offence. It does not mean that all the inhabitants of the society have become morally sound. Another immoral deed will not be allowed to be committed, if it is prohibited or if the access of more wives than one is restricted.

Despite the Hindu Marriage is indissoluble, polygamy has been permitted in the classical Hindu law in Bangladesh, and legislative reforms have been made in the India regarding the Polygamy. It remains legal for Muslims under the terms of The Muslim Personal Law (Shariat) Application Act of 1937.

Western countries do not accommodate the justification of the polygamy in any aspect. Actually this is the reason for ensuring the equality, non-discrimination and level playing situation among the women and men. Recent development of the human right concept is playing also a significant role in this respect.<sup>7</sup> Virtually the concept of ideal state has been reiterated by this practice.

Hegel (1770-1831) tried to establish a concept of an ideal state where there will be presence of consciousness, reason, perception, religion and complete knowledge. The element of the society should be conscious so that society cannot be established merging with the immoral complexities. Similarly the state will also be safe from such irregularities. So Hegel emphasized on the one male and one female for lifelong on the basis of marriage.

Marriage in its essence is monogamy, because in this relation it is the personality, the directly exclusive individuality which subsides and resigns itself. The true inner side of marriage, the subjective form of the real substantive institution, issues only out of such a mutual renunciation of personality as is shared in by no one else. Personality acquires the right of being conscious of itself in another, only in so far as the other appears in this identity as a person or atomic individuality.<sup>8</sup>

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<sup>6</sup> Ibid., at p. 238 .

<sup>7</sup> Ibid., at p. 273.

<sup>8</sup> Hegel, G. W. F., *Philosophy of Right*, (Translated in English by S. W. Dyde), Batoche Books, Kitchener, 2001, p. 145.

### ***Quranic Directives regarding Polygamy***

As the holy *Quran* is the prime and premier source of the Islamic Law, any law inconsistent with the *Quranic* verses will be considered as null and void. To interpret the rules of Islamic law, the *Quranic* verses are the primary guide. So the *Quranic* verses will be first considered to specify the scope of the Polygamy.

And if you fear that you shall not be able to deal justly with the orphan girls, then marry (other) women of your choice two, or three, or four but if you fear that you shall not be able to deal justly (with them), then only one or (the captives and the slaves) and that your right hands possess. And that is nearer to prevent you from doing injustice.<sup>9</sup>

*The conditions of the Polygamy are that*

(i) the husband can take more than one wife, if the husband thinks that it will be welfare for the orphan daughter of the widow; and

(ii) the husband has to maintain the wives justly.<sup>10</sup>

Now the question may arise, can this justice include the mental affection? Mental affection and sympathy are the internal situations. It cannot be measured by the human being. So it will be irrational and illogical, if the injustice is defined considering the internal conditions as pre-requisite for making it exhaustive. Proven humanely religion, Islam did not accommodate this impractical imposition.

You will never be able to do perfect justice between wives even if it is your ardent desire (i.e. emotion of the heart), so do not incline too much to one of them (by giving her more of your time and provisions) so as to leave the other hanging (i.e. neither divorced nor married). And if you do justice and do all that is right and fear Allah by keeping away from all that is wrong, the Allah is Ever Oft-Forgiving, Most Merciful.<sup>11</sup>

Provisions of the holy Quran evince that taking more than one wife is permitted, though such permission is subject to various specters depending on the socio-economic factors of the region. All schools of the Islamic law are also in agreement that polygamy is permissible in Islamic law for the same reasons.<sup>12</sup> Ensuring the just treatment towards the wife is compulsory duty of the husband in cases, but the question of 'justice' towards the wives arise when the polygamy has been solemnized.<sup>13</sup> Unfortunately, every school

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<sup>9</sup> Supra note 3, Ch. 4, V. 3.

<sup>10</sup> 'Justly' is the term which provides the justice among the wives in mundane affairs and it can only be complied if the husband has enough financial solvencies to maintain them. Without having financial capability, justice is not possible for the husband to implement.

<sup>11</sup> Supra note 3, Ch. 4, V. 129.

<sup>12</sup> Supra note 4, at P. 70.

<sup>13</sup> Ibid., at P. 70

has done mistake to qualify economic capability of the husband to solemnize the polygamy. Practically the ‘justice’ which the holy *Quran* clearly specifies in this respect will be unthinkable, if the husband is financially incapable. Since the equal treatment is not possible by the human being, the verses of the holy *Quran* indirectly guided not to be polygamous.<sup>14</sup> As a result it is clear that if there is possibility of unequal treatment between and among the wives by the husband, the polygamy will not be allowed.<sup>15</sup>

Although section 6 of the Ordinance does not declare the second marriage as illegal or invalid and it only prescribes a penal provision for violating it but the expression of holy *Quran* by the words “be able to deal justly” is the condition precedent to marry more than one woman which implies equally in love and affection and such equality being impossible in the weakness of human nature, the permission to take another wife amounts, virtually to a prohibition for which section 6 of the Ordinance is against the principles of Islamic Law.<sup>16</sup>

However, in the age of modernity the practice of polygamy is now contentious as the male dominated society is continuously misusing this practice. Two reasons are considered as significant in this respect such as<sup>17</sup> (i) the existence of this type of law allowing males to take a second wife severely hinders the progress of the movement to emancipate Muslim Women and (ii) this practice showed the antagonistic approach of conservative and orthodox believers to the westernization. So the societies, states or the countries which are trying to be moderate and liberal followers of the Islam cannot hesitate to restrict, control, prohibit, penalize or make it subject to tough conditions. For instance, Tunisia, Turkey, Israel accommodated the complete abolition of the practice of polygamy. Similarly, Egypt, Saudi Arabia and India (Bangladesh, India and Pakistan) did not accept the concept of the complete abolition of the polygamy. The Indian sub-continent enacted laws to direct when the polygamy will be allowed. If the requirements are not fulfilled, the husband will be subject to punishment. Various modernists Islamic thinkers try to say that Polygamy is not encouraged in Islam. They tried to say that it rather prohibited polygamy.<sup>18</sup>

### **Statutory Enactment of Bangladesh Regarding Polygamy**

The Muslim Family Laws Ordinance-1961 specifies the grounds upon compliance of which conditions, the polygamy can be permitted. Section 6(1) provides that no man shall be permitted to contract another marriage during the existence of the marriage without the previous permission from the Arbitration Council of Union Council. If marriage is completed, it cannot

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<sup>14</sup> Supra note 1, at P. 239.

<sup>15</sup> Doi, Abdur Rahman I., *IShariah Islamic Laws*, Ta ha Publishers London, United kingdom, p. 147.

<sup>16</sup> Jesmin Sultana Vs Md. Elias, 2 BLC 233.

<sup>17</sup> Supra note 4, at P. 70

<sup>18</sup> Khanum, Rashida A., *Contemporary Gender Issues*, A H Development Publishing House, 2012, pp. 22-23.

be registered.<sup>19</sup> For achieving permission, the husband has to submit an application to the Chairman depositing the prescribed fees and stating the reasons for such another marriage. Whether the consent of the existing wife or wives has been obtained or not is also to be submitted with the application.<sup>20</sup> Though wife's permission is not mandatory or compulsory for second marriage, the Arbitration Council is at liberty to consider.<sup>21</sup>

Importantly, Rule 14 provided the grounds and conditions of the 'just and necessary' for determining the urgency of the second marriage. Sterility, physical infirmity, and physical unfitness for the conjugal relation, willful avoidance of a decree for restitution of conjugal rights, or insanity of the existing wife are the conditions which Arbitration Council can consider to determine what is 'just and necessary'.<sup>22</sup> It does not include the consent of the wife. The Arbitration Council is also not bound to consider the reasons mentioned in the application and status of consensual conditions of the wife. So the consent of the existing wife or wives is the ornamental condition for polygamy.<sup>23</sup> The Chairman constituting the Arbitration Council shall hear the nominated representative and give the decision regarding second marriage of the applicant.<sup>24</sup> All the flaws of the wife are considered whether the proposed marriage is 'just and necessary'. Unfortunately, flaws of the husband have not been mentioned to consider for determining the term 'just and necessary.' The *Quranic* verses provided the directives which the husband is bound to comply. Surprisingly the MFLO-1961 and the MFLR-1961 do not consider the financial solvency of the husband to be qualified for the second marriage similarly to the opinion of the established *Madhab* of Muslim community.

Whatever will be the decision, the Arbitration Council will record its reason for such decision. The aggrieved person shall be allowed for applying for revision to the Assistant Judge. The decision of Assistant Judge shall be final. It shall not be questioned in any court.<sup>25</sup>

Though the permission of the Arbitration Council is essential, without compliance of the directives of the Arbitration or without having permission from the Arbitration Council, if anybody takes another wife in existence of the wife or wife, that marriage cannot be said as invalid. But the previous marriage contract may be liable to be breached as the husband committed the materially injurious action for the other party. Probably, for this reason if the existing wife feels necessary, she may file suit for the dissolution of marriage.<sup>26</sup> The husband shall also be bound to pay the entire amount of

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<sup>19</sup> Section 6 (1) of the Muslim Family Laws Ordinance, 1961

<sup>20</sup> Ibid., Section 6 (2).

<sup>21</sup> Rule 14 and 15 of the Muslim Family Laws Rules, 1961.

<sup>22</sup> Ibid.

<sup>23</sup> Supra note 19, Section 6(2).

<sup>24</sup> Ibid., Section 6 (3).

<sup>25</sup> Ibid., Section 6 (4).

<sup>26</sup> Section 2 (iia) of the Dissolution of Muslim Marriages Act, 1939

dower whether prompt or deferred due to the existing wife or wives.<sup>27</sup> If the husband denies or tries to deny such amount, the amount due shall be recoverable as arrears of land revenue.<sup>28</sup> The court may also punish the husband which may extend to one year or with fine which may extend to ten thousand taka or both.<sup>29</sup> The provision for punishment has been provided to deter the male society not to be aggressive against/indifferent to the women.

### **Polygamy in the Changing Muslim World**

Naturally, men have to move from one place to another. It is also the factor to accommodate it. Evaporating the immoral and unchaste practice to meet the natural needs, it may be helpful. It may be helpful to protect the degradation of human civilization. To stabilize the society with high moral values and ethics, Islamic law permitted it.

However, such permission cannot be opened for the men to humiliate and harass the women. Being randomly used for undermining the women folk, the query of prohibiting it arose from country to country. Various countries provided the varied types of laws such as civil, customary and Islamic laws, though the approach of such laws is different from country to country. For example, most of the African societies are traditionally polygamous, though the practice has declined as a result of colonization<sup>30</sup> and conversion to Christianity. All the peoples of the Horn accept that a man may have more than one wife.<sup>31</sup>

Since the laws of Polygamy in Islam are made justified by the sole logic of the Allah-Almighty, only prohibition by the governance can't be efficient to phase out it exactly. The Islamic laws revelation was made adaptable to the then existing society. So if anything is changed, it should be made considering the existing laws, customs, practices and other formalities.

Kazakhstan had officially banned Polygamy in 1920, despite the practice continued and increased in recent years.<sup>32</sup> Even manifesto of the various political parties during election<sup>33</sup> provides the commitment for the legalization of the polygamy having demand of the men for legalizing it. Even it is opposed by various social workers there as well.<sup>34</sup> Social activists are claiming that if the polygamy is permitted or legalized, the polyandry has also to be legalized.<sup>35</sup> The activists who are saying for the polygamy are also heard to say that without having the financial capability to maintain all the wives equally and with proper status, polygamy cannot be practiced by the

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<sup>27</sup> Supra note 19, Section 6(5)(a).

<sup>28</sup> Ibid., Section 6(5) (a).

<sup>29</sup> Ibid., Section 6(5) (b).

<sup>30</sup> An-Na'im, Abdullah A, Islamic Family Law in a Changing World, A Global Resource Book, Published by Zed Books Limited, London, 2002, P. 47.

<sup>31</sup> Ibid., at P. 73.

<sup>32</sup> Ibid., P. 34.

<sup>33</sup> [http://en.wikipedia.org/wiki/Polygamy\\_in\\_Kazakhstan](http://en.wikipedia.org/wiki/Polygamy_in_Kazakhstan) accessed on 14-05-2013.

<sup>34</sup> <http://www.refworld.org/docid/4844c1e7c.html> accessed on 25-05--2013.

<sup>35</sup> Ibid.



husband.<sup>36</sup> A survey was conducted whether the polygamy can be legalized or not. It found that only 40 percent of the men agree to legalize the polygamy, 73 women demand to be only wife of their husband and 22 women did not oppose to live in a polygamous family having separate apartments and provided equally and adequately provided for by the husband.<sup>37</sup>

Turkey restricted polygamy in 1917. Consent of the existing wife was made compulsory.<sup>38</sup> This law was banned adopting the Turkish Civil Code in 1926. Practically it has been practiced now only by the urban rich citizens and the citizens of rural areas.<sup>39</sup> The second wife is called as *kuma*. The marriage is conducted through the solemnization of the religious ceremonies by Imam.<sup>40</sup> The *kuma* has no legal rights under the Turkish Civil Code.<sup>41</sup> The Constitution and the Civil Code of Turkey provided the equality of the husband and wife. Even the word 'spouse' has been used instead of using the word husband and wife. Article 41 of the constitution provides 'the family is the foundation of the Turkish society and based on equality between spouses'.

Polygamy is allowed in Egypt even in this modern age.<sup>42</sup> It is expected that it will try to adopt laws to restrict the polygamy like other Middle Eastern states i.e. Turkey, Tunisia or Israel etc. A survey found that about 25 percent men take second wife whereas 73 percent of these polygamous marriages end in divorce.<sup>43</sup>

In 1979, the Egyptian government passed a package of personal status law reforms, including the law regarding limiting polygamy which granted a woman the right to divorce if her husband took a second wife without her consent. However, this law was not consistently enforced and the 1979 reforms were declared unconstitutional in 1985. The law eventually passed regarding limits on polygamy allowed a woman to divorce her husband for taking a second wife only if she could prove that she suffered 'moral<sup>44</sup> or material<sup>45</sup> damage' as a result.<sup>46</sup>

Saudi Arabia, Polygamy is allowed upto four wives. Besides these, though most of the Muslim countries of Horn accept the practice of

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Supra note 30, at P. 34.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Supra note 4, at P. 70.

<sup>43</sup> [http://en.wikipedia.org/wiki/Polygamy\\_in\\_Egypt](http://en.wikipedia.org/wiki/Polygamy_in_Egypt) accessed on 19-04-2013.

<sup>44</sup> Moral Damage apparently indicates the losses which oblige the wife to choose any profession which is degrades the status of the wife.

<sup>45</sup> Material Damage is damage means the condition by which wife (and son if any) in an insecure situation.

<sup>46</sup> Supra note 1, at p. 241.

polygamy of taking more than one wife by the husband. Most of the men do not take more than one wife because of the strict compliance of the maintenance by the men to women. If they take more than one wife, the residence is separately provided for all wives.

In Syria, Article 17 of the Syrian Law of Personal Status 1953 endeavored to limit the polygamy empowering the *Qadi* to refuse permission to marry a second wife. So it categorized that he is to be financially capable of supporting wives. The husband should also prove the lawful cause for another marriage.<sup>47</sup>

The Law of Personal Status 1959 of Iraq<sup>48</sup> restricted polygamy. The man had to show economic solvency to maintain his wives and lawful interest in the second marriage with convincing evidence. Chapter: 1, Section: 1, Article 3 and paragraph 4 and 5 of the Iraqi Law of Personal Status 1959 (Act No. 88 of 1959) states that Granting this authorization is dependent upon the fulfillment of the following two conditions:

- a. The husband should have financial capacity to provide for more than one wife.
- b. There is legitimate interest. If justice between wives is feared, polygamy may not be allowed. The issue would then be left to the judge's determination.<sup>49</sup>

Second marriage in Iran is possible to be solemnized after obtaining permission from the existing wife. It is generally not exercised as the wife is not willing to give the permission for second wife. Again financial capability is the important condition of the polygamy. The marriage without the wife's permission is invalid. Such law was later amended in 1963.<sup>50</sup>

Tunisia is unique in the Arab world in outlawing polygamy. The rest of the North Africa accommodates the practice of polygamy. Algeria permits hardly polygamy.<sup>51</sup> From the study of 1950, only 2 percent of the men were seen to practice polygamy. From the study of 1993 the two-thirds women wanted changes in the personal status laws so that the polygamy can be abolished.<sup>52</sup>

Morocco did not abolish the practice of polygamy. It is rarely practiced. Monogamy is seriously practiced. The practice of polygamy is also fading away day by day in Libya. Here the polygamy is practiced rarely. Nevertheless, if the polygamy is required to be practiced, the following

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<sup>47</sup> Ibid.

<sup>48</sup> [http://apps.americanbar.org/rol/publications/iraq\\_personal\\_status\\_law\\_1959\\_english\\_translation.pdf](http://apps.americanbar.org/rol/publications/iraq_personal_status_law_1959_english_translation.pdf) accessed on 11-04 -2013.

<sup>49</sup> [http://apps.americanbar.org/rol/publications/iraq\\_personal\\_status\\_law\\_1959\\_english\\_translation.pdf](http://apps.americanbar.org/rol/publications/iraq_personal_status_law_1959_english_translation.pdf) accessed on 11-05-2013.

<sup>50</sup> Supra note 1, at p. 242.

<sup>51</sup> Supra note 30, at P. 160.

<sup>52</sup> Ibid., at P. 161.

conditions should be satisfied: (i) the consent of the existing wife has been taken; and (ii) the husband is both healthy and wealthy enough to treat with wives justly.<sup>53</sup>

In Southeast Asia, the practice of polygamy is allowed. The hard requirement of obtaining the consent of the wife is essential. Along with capability to maintain wives oblige the husband not to take more wives usually. Though rarely practiced, the polygamy was prevalent in Indonesia before the arrival of the Islam. It is also practiced after the arrival of Islam.

Though the *Tausang* practiced polygamy, Yakan men cannot marry second or subsequent time without the consent of the first wife in Philippine. Most men have only one wife. In West Africa the polygamy practiced regardless of religion. The property is distributed on the basis of the number of the children and wives.<sup>54</sup> Many West African Muslims are seen to practice polygamy as part of being religiosity and symbolic capability for men. Affluence is the main determining factor whether or not a man has to have more than one wife. Although the law requires to be declared polygamous or monogamous at the time wedding in practice this is rarely done and there are no sanctions against men who change their minds. In Senegal, the literate men whether they have studied primary education or completed university will have more wives than illiterate. On the other hand, the women who have completed the higher education are less likely to have polygamous families than others.<sup>55</sup>

In Mali, particularly of the merchant class male ponder to have perceived having more than one wife as part of being a serious person.<sup>56</sup> Similarly for the Sosa of Guiena and Sierre Leone, a predominantly Muslim people of about a million think to be prestigious to have more than one wife even upto four wives. One exception to the general rule is Mauritania.<sup>57</sup> The Maures are the elite of the country and are basically monogamous while the rest of the population is frequently polygamous. At the time of wedding, a woman can stipulate that the marriage is dissolved if the husband takes a second wife. Maure women use this provision regularly.<sup>58</sup>

In both *Guiena* and *Cote dlvoire*, polygamy is illegal but widely practiced among the Muslims Dyula and Jahanka. In sire Leone, Muslim Limba men sometimes have more than four wives.

### **Practice: Duty of the Governance**

The nature of the men works outside and they have to go here and there. But the family life is significant as the family is the founding institution to

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<sup>53</sup> [http://en.wikipedia.org/wiki/Polygamy\\_in\\_Libya](http://en.wikipedia.org/wiki/Polygamy_in_Libya) accessed on 11-05-2013.

<sup>54</sup> Supra note 30, at P. 157.

<sup>55</sup> Ibid., P. 289.

<sup>56</sup> Ibid., P. 290.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

initiate the socialization process. Moving of the men cannot be regarded to avoid the responsibility of the men to maintain the family members. So he has to maintain the family whether he is with the family or not and the connection of him is to be continued.

The polygamy may be considered as natural adjustability of the Islam, but from the verses of the holy Quran and traditions of the prophet Mohammad (PBUH), the polygamy cannot be practiced avoiding the responsibility of the husband to maintain all of the wives justly.

Financial and physical capabilities of the men are the main considerations of the men. Without having these conditions no one can practice polygamy. But unfortunately such conditions are not mentioned in the polygamy law of Bangladesh. In the same way, the various countries provide the powers to decide the qualifications of the husband. Unfortunately the Muslim Family Laws Ordinance 1961 does not accommodate the purposes of the verses of the holy Quran. Rather the 1961 law catered something which fall the women in embarrassed situation. The faults and defects of the women are predominantly considered to justify the husband's scope of another marriage. The responsibility and qualifications of the husbands have not been mentioned in our laws. So this law is influenced by the patriarchy virtually.

The powers to decide this matter is upon the Chairman of the Union Council, *Pourasova* and Mayor of the City Corporation. Because of the practical inconvenience of catering this power to the Chairmen is dangerous for the women. So this should be revisited.

From the laws of the various countries, we see that all states are trying to evaporate this practice because of the inconvenience of it. The women think it as humiliating for them as the men try to harass them exercising this practice. In terms of modernity and ideality, being more ethics oriented religion, Islam also permitted it.

Another issue is that if the men earnestly desire to be polygamous, they have no chance to incline anyone unjustly. The husband should properly cater the maintenance for the wives.

From the above discussion we have understood that polygamy is not permitted as principle rather it is permitted exceptionally and as privilege to ensue the just society and establish the cooperative society. If any practice humiliates anybody, it will be obstruction for the just, cooperative and balanced society. As it is not also the intention of Islam.

Hindu religion could take the challenge of restricting the polygamy. As per classical Hindu Law, the males are allowed innumerable polygamy.

In these days the male dominated societies try to legalize it in the name of the permission of the religion even if the husband does not have capacity to maintain. Thus the women should have to fall in the critical condition. Virtually it obstructs to create the ideal society at large. Considering the bad

impacts of the polygamy, G. W. F Hegel instructed the male to cohabit and live with one female.

Probably considering the importance of the restriction or monogamy, many Muslim countries are also empathy in restricting the polygamy or abolishing this practice. The practice of polygamy may be subject to punishment as it is permitted in Islam. So if the abolition is not possible, the conditions for polygamy are to be made in such a way that the polygamy will be difficult to be practiced. And if practice is committed, the nature of just society will not be violated. From the example of the various countries, the following conditions may be considered as the conditions. These are i. the husband has to prove the financial solvency to maintain the wives justly; ii. The consent of the existing wife or wives is obligatory; and iii. The husband has to prove the lawful justification of proposed marriage.

### **Conclusion**

Hegel was not concerned with the practice in Islamic or Hindu law or the specific society rather he tried to cater a concept of the ideal state. In the dialect of phenomenon, he tried to emphasize on the constituent elements of the States. Family being a constituent element of the society should be continued in such a way so that the fraternity of it cannot be broken down.

To comply the strict adherence of the spirit of the Islam, Hindu religion or principles of the Hegel's ideal state, polygamy should be restricted so that the promotion of the principles of the ideal society and state cannot be obstructed. If there appear any individual case, polygamy requires to be justified, it should be tested on the specific conditions. Faults and defects of both parties of the marriage should be considered. Thus the ideal society either from Hegelian or religious (Islamic, Hindu, or any other ideological) aspects can be ensured.

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