

The Social System in Islam

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Hizb ut- Tahrir

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Translation of the Qur'an

It should be perfectly clear that the Qur'an is only authentic in its original language, Arabic. Since perfect translation of the Qur'an is impossible, we have used the translation of the meaning of the Qur'an throughout the book, as the result is only a crude meaning of the Arabic text.

Qur'anic *Ayat* and transliterated words have been *italicised*.

Abadith appear in **bold**

سُبْحَانَكَ - subhanahu wa ta'ala
سَلَامٌ عَلَيْكَ - sallallahu 'alaihi wa sallam
رَضِيَ اللَّهُ عَنْكَ - radhi allaho anha/anho
AH - After Hijrah
CE - Christian Era

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا
زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۚ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ
بِهِ ۖ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ۝ وَآتُوا الْيَتَامَىٰ أَمْوَالَهُمْ
وَلَا تَبَدَّلُوا الْخَبِيثَ بِالطَّيِّبِ ۚ وَلَا تَأْكُلُوا أَمْوَالَهُمْ إِلَىٰ أَمْوَالِكُمْ ۚ إِنَّهُ
كَانَ حُوبًا كَبِيرًا ۝ وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا
مَا طَابَ لَكُمْ مِنَ النِّسَاءِ ۚ مَتًى وَتِلْكَ وَرِيعٌ ۚ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا
فَوَاحِدَةٌ أَوْ مَآ مَلَكَتْ أَيْمَنُكُمْ ۚ ذَلِكَ أَذْنَىٰ ۚ أَلَّا تَعُولُوا ۝ وَآتُوا
النِّسَاءَ صَدَقَاتِهِنَّ مَحَلَّةً ۚ فَإِنْ طَبَنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ
هَنِيئًا مَرِيئًا ۝ وَلَا تَزُولُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ
قِيَمًا وَآزْرًا قُوهُمْ فِيهَا وَآكُسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا ۝ وَابْتَلُوا
الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا
إِلَيْهِمْ أَمْوَالَهُمْ ۚ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا ۚ وَمَنْ كَانَ
غَنِيًّا فَلْيَسْتَغْفِرْ ۚ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ۚ فَإِذَا
دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ ۚ وَكَفَىٰ بِاللَّهِ حَسِيبًا ۝

O mankind! Be dutiful to your Lord, Who created you from a single person, (Adam) and from him He created his wife and from them both He created many men and women and fear Allah through Whom you demand your mutual (rights), and (do not cut the relations of) the wombs (kinship). Surely, Allah is Ever an All-Watcher over you.

And give unto orphans their property and do not exchange (your) bad things for (their) good ones; and devour not their substances (by adding it) to your substance. Surely, this is a great sin.

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, 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) that your right hands possess. That is nearer to prevent you from doing injustice.

And give to the women (whom you marry) their Mahr with a good heart, but if they, of their own good pleasure, remit any part of it to you take it, and enjoy it without fear of any harm (as Allah has made it lawful).

And give not unto the foolish your property which Allah has made a means of support for you, but feed and clothe them therewith, and speak to them words of kindness and justice.

And try orphans (as regards their intelligence) until they reach the age of marriage; if then you find sound judgement in them, release their property to them, but consume it not wastefully, and hastily fearing that they should grow up, and whoever amongst you guardians is rich, he should take no wages, but if he is poor, let him have for himself what is just and reasonable. And when you release their property to them, take witness in their presence; and Allah is All-Sufficient in taking account.

[An- Nisa: 1 - 6]

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Introduction

Many people overstep the mark and apply the term 'social system' to all systems of life. This is an erroneous application; given that the systems of life befit more to be called the 'systems of society' since in reality that is what they constitute, as they organise the relationships which arise between a people living in a particular society regardless of their meeting or dispersing. The meeting of people is not considered, what is noted is only the relationships (*'Alaqat*). Consequently, they will be diverse and differ according to the different relationships. They include economics, ruling, politics, education, penal code (*'Uqubat*), societal transactions (*Mu'amalat*) and the rules of (testimonial) evidences (*Bayyinat*) etc.

Thus, the application of the term 'social system' to all of these relationships is meaningless and inapplicable. Besides, the word 'social' is a description of a system, thus the subject matter of this system should be the organisation of the problems arising from the meeting (of people) or the relationships that arise from people meeting together. The meeting of a man with a man and a woman with a woman does not require a system because no problems arise from it, nor do relationships arise which require a system. Only the organisation of their interests requires a system in view of the fact that they live in the same country even if they did not meet. As for the meeting of a man with a woman and vice versa, it is from this meeting that problems and relationships arise which need to be organised by a system. Thus, this meeting (*Ijtima'*) befits more to be designated as the social system, because in reality it is this system which organises the meeting between men and women, and the relationships which arise from such meetings. That is why the social system is confined to the system which demonstrates the organisation of the woman's meeting with the man and vice versa, and organises the woman's relationship with the man and vice versa. Thus the social system addresses the relationships that result from men and women meeting and not from their interests (Masalih) in society, and it clarifies all that branches out from this relationship. Thus, trade

between men and women pertains to the systems of society and not to the social system, because it falls within the economic system. As for the prohibition of (*Khalwa*) seclusion between men and women, or when a woman has the right to instigate divorce for herself, or who has the right of custody for a child, all of these issues pertain to the social system. Therefore, the social system is defined as: the system which organises the meeting of a man with a woman and vice versa and organises the relationship which results from their meeting and all that branches out from this relationship.

Peoples' conception, especially the Muslims, of the social system in Islam became extremely confused. Their understanding became far removed from the reality of Islam due to their alienation from its thoughts and rules. They went to the extreme, holding the view that a woman has the right to be in seclusion (*Khalwa*) with a man as she wished, or that she can go out with her 'Awrah uncovered wearing whatever she pleased. Others went far to the other extreme taking the view that women do not have the right to practise trade or meet with men under any circumstances, and viewed the whole of the woman's body as 'Awrah including the hands and face. Due to this extremism there was degeneration of morals and a stagnation of thinking (*Tafkeer*). The results of all this has been the break up of the social aspect, unrest within the Muslim family, the prevalence of dissatisfaction and discontent amongst family members, and numerous disputes and divisions between its individuals.

The need to unite the family and to ensure its happiness was felt by all Muslims, and the search for a solution to this serious problem occupied the minds of many people. Different attempts of various sorts appeared to present such solutions. Many books were written demonstrating the societal solution and amendments were made to the laws of the Shari'ah courts and electoral systems. Many tried to apply their views on their families in terms of their wives, sisters and daughters. Changes were made to the school system with regards to the mixing of boys and girls. Thus, these attempts continued to appear in these and similar guises. However, none of them could succeed in finding a solution, or come with a system or find a method to implement what they conceived as reform (*Islah*). This is because the issue of the relationship between the two sexes became obscure in the minds of many Muslims. They were unable to comprehend the way in which the two genders can co-operate with each other, even though the well being (*Salah*) of the *Ummah* stems from this co-operation. They were completely

ignorant of the thoughts and rules of Islam, which relate to the meeting of the man and the woman. This led them to discuss and debate over the means of treatment, avoiding the study of its reality, until as a consequence of their attempts anxiety and confusion increased. A chasm began to exist in society due to which grew a concern for the entity of the Islamic *Ummah*, in its capacity as an *Ummah* with distinct characteristics. It was feared that the Muslim household would lose its Islamic character, and the Muslim family would lose the guidance of the thoughts of Islam, and stray from valuing its rules and thoughts.

As for the cause of this confusion, and deviation from the correct understanding, it is attributable to the crushing onslaught of Western culture. Western culture completely dominated our thinking, tastes (*Dhawq*), changed our concepts (*Mafahim*) about life, the criteria (*Maqayees*) for things and our convictions (*Qana'at*) which used to be deep rooted within us, such as our concern for Islam and our veneration for the things we hold to be sacred. Thus, the victory of western culture over us was comprehensive - encompassing all sectors of life amongst which was the social aspect.

This happened because when the western culture emerged in Muslims countries, together with its material forms and materialistic advancements, many were dazzled by it. Consequently they tried to adopt this culture because those material forms, produced by the followers and advocates of this culture, were seen as a sign of progress. That is why they tried to imitate western culture without distinguishing between this western culture and its material forms. They did not comprehend that culture constitutes a set of concepts about life and a specific way of living while civilisation (*Madaniyya*) denotes the material forms, or tangible objects, in life, irrespective of concepts about life or the way of living. They did not realise that western culture was founded upon a basis which contradicts the basis of Islamic culture, and that it differs from the Islamic culture in its perspective about life and its understanding of happiness (*Sa'ada*), for which man strives to achieve. The inconceivability of the Islamic *Ummah* taking from western culture was not apparent to them. Nor was the fact that it is not possible for any community of the Islamic *Ummah*, in any country, to adopt this culture and remain part of the Islamic *Ummah* or to continue to be described as a Muslim community.

Their lack of awareness of the intrinsic difference between the Islamic and Western cultures led to transference and imitation. Many Muslims

attempted to transfer western culture without understanding it, like the one who copies a book restricting himself just to the writing of words and letters. Some began to imitate western culture by adopting their concepts and criteria without reflecting on the effects and consequences of such adoption. These people noticed that women in western societies stood alongside men without differentiation and without concern for the consequences that would entail. They also noticed that the material forms were manifested in western woman and she manifested them, so they imitated her or tried to imitate her without realising that these forms agreed with the western culture, its concepts about life, and its depiction of life which contradict with the culture of Islam, its concepts about life, and its depiction of life. They did this without the slightest consideration for what these forms manifested in her and by her, and what they entailed in terms of issues. Yes, they witnessed this and consequently believed that Muslim women should stand alongside men in society and meet with them, regardless of the consequences. They thought that western material forms should be manifested in Muslim woman, and she should manifest western material forms, irrespective of what they entailed in terms of problems and issues. Therefore, they called for securing the personal freedom of Muslim woman and granting her the right to do whatever she wished. As a result of this they called for the mixing of men and women even when a need did not exist, and they called for women to reveal their charms (*Tabarruj*) and beauty (*Zeena*), and for women to take up positions of ruling. They viewed this as progress and as a sign of revival.

What made things worse was that the imitators gave themselves complete free reign over personal freedom, until a woman would directly contact a man just for the sake of contact and for the enjoyment of personal freedom. This was without a reason which necessitated contact, and without the need in society for such mixing. This contact between the sexes was made for the sake of socialising and merely for the enjoyment of personal freedom. The evil effect that this faction of imitators who embarked on applying such ideas had was that the relationship between a man and a woman became solely restricted to a male-female relationship. The evil effect of this faction, spread to the other factions in society. This contact did not produce any form of co-operation between men and women in any sector of life. On the contrary what resulted from it was moral degeneration, such as women displaying their charms and adornment to people other than their husbands or mahram men. Amongst Muslims other results were the deviation from the correct way of thinking, corruption in their taste, mistrust and destruction

of the criteria (for actions). The social aspect in the West was taken as the ideal model and western society was taken as a benchmark (*Miqyas*) without considering the fact that western society does not care about extra-marital sex and does not see in it any shame, defamation or breach of the correct and acceptable behaviour, nor any violation or threat to morality. They did this without noticing that Muslims society fundamentally disagrees with it and completely contradicts it. This is because the Islamic society considers the extra-marital relationship as one of the grave sins (*Kaba'ir*) for which there is severe punishment; either flogging or stoning to death. It also considers the one who commits this sin as an outcast, and a deviant who is looked upon with loathing and contempt. It as well, sees it as axiomatic that honour should be protected and it is one of the issues that is not open to discussion or debate, an issue for the defence of which wealth and lives should be sacrificed willingly and with zeal, without any excuses.

Indeed, those transferors and imitators did not consider the difference between the two societies and the huge disparity between the two positions just as they did not consider what the Islamic life made incumbent on them and what the Shari'ah rules demanded of them. They rushed headlong in the pursuit of transference and imitation until the call for woman's revival dressed with licentiousness (*Ibahiyah*) and indifference to the characterisation of morally reprehensible behaviour. In this manner those transferors and imitators continued to destroy the social aspect in Muslims life in the name of reviving women and under the pretext of working to revive the *Ummah*. However, in the beginning, such people were a minority and the *Ummah* did not initially accept their call. After the capitalist system was implemented in the Muslims countries and they were ruled by the disbelieving colonialists and then by their agents who followed their direction blindly, the minority was able to influence and bring most people in the cities, and some of the inhabitants of the villages, to proceed along the path they had taken. So they started to transfer from and imitate western culture until the Islamic character was erased from many quarters of Muslims cities. There was no difference between Istanbul and Cairo or between Tunis and Damascus. Nor was there a difference between Karachi and Baghdad or Al- Quds and Beirut. All of them proceeded on the path of transferring and imitating western culture.

It was natural for a group from amongst the Muslims to rise up and struggle against these thoughts. It was inevitable that a great number of

people from the Muslims countries would set about to fight these ideas. So a group or rather groups were formed which called for the obligation of protecting Muslim women and safeguarding the virtues in society. However, they did this without understanding the systems of Islam nor were the Shari'ah rules clear to them. They accepted interest (*Maslaha*), as perceived by the mind, as a basis for study and as a criterion for judging ideas and matters. They also called for the preservation of customs and traditions. They called people to hold on to morals, without comprehending that the basis is the Islamic '*Aqeedah* and that the criterion is the *Shari'ah* rules. Blind fanaticism concerning the *Hijab* of women reached the point where they advocated restrictions over women, not giving them permission to leave their house, or to undertake the fulfilment of their needs, or pursue matters themselves. Late jurists (*Fuqaha*) ascribed five (types) of '*Awrah* to women: '*Awrah* in prayer, '*Awrah* when in the presence of male *Mahrams*, '*Awrah* when in the presence of foreign (non *Mahram*) men, '*Awrah* when amongst other Muslim women and '*Awrah* amongst non-muslim women. According to this they called for the total segregation (*Hijab*) of women preventing them from seeing or being seen by anyone. They called for barring the woman from pursuing life's activities. So they maintained that she should be banned from practising her right to vote by excluding her from holding an opinion about politics, ruling, economics or society. So they stood between her and life until they thought that some verses had come to address men to the exclusion of women. They gave the *Hadith* of the Prophet ﷺ about his ﷺ shaking the hands of woman in the *Bay'a*, his *Abadith* about the '*Awrah* of women and his ﷺ societal transactions (*Mu'amalat*) with women, interpretations that agreed with what they intended for women and not what was required by the *Hukm Shar'i*.

Thus, all of this served to distance people away from the *Shari'ah* rules and obscure the aspect of social system in the minds of the Muslims. Consequently, their views were not able to stand in the face of attacking thoughts, or impede the overwhelming flow of western ideas, or have even the slightest effect in elevating the aspects of the social system amongst the Muslims. This happened inspite of the existence of scholars in the *Ummah*, who are of the foremost *Mujtahidin* and scholars of mazahib in terms of their knowledge and erudition, and in spite of the existence of an intellectual and legislative wealth at the disposal of Muslims which is unparalleled compared to any other wealth of any other nation. This occurred inspite of the abundance of books and valuable works in the possession of Muslims

in their public and private libraries. All of this had no effect in holding back those bent on transferring and imitating from their error, or in convincing the narrow minded, of the Islamic opinion which had been derived correctly by a mujtahid, as long as it disagreed with what they wanted women to do. This is because such people on both sides, amongst the imitators, the narrow minded, the scholars and the educated were far from being described as thinkers. They did not understand the reality, or they didn't understand the *Hukm* of Allah ﷻ. They did not study the *Shari'ah* rules intellectually by accurately applying them to the reality so as to be in full agreement with it. Due to this, the society in Muslims countries continued to oscillate between two notions: imitation (*Tagleed*) and rigid narrow mindedness (*Jumud*). The social aspect continued in a confused state until the Muslim woman became bewildered. She stood between on one side women who were anxious and confused, taking from western society without understanding it and without being aware of its reality, or knowing the contradiction that existed between it and the Islamic culture; and narrow minded women who did not benefit themselves, nor did their presence benefit the Muslims on the other side. All of this was due to a failure in studying Islam intellectually and not understanding the Islamic social system.

Therefore, we must study the Islamic social system comprehensively. We must study it deeply until it is realised that the problem is the meeting between the man and the woman and the relationship that results from their meeting and that which branches out from this relationship. And that what is required is the treatment of this meeting and the resultant relationship and that which branches out from it. It should be understood that this solution is not dictated by the mind but by the *Shar'a*. As for the mind, its role is to understand the solution, that the solution is for Muslim men and women who live a specific lifestyle which is the lifestyle which Allah ﷻ has obliged them to live. They are most definitely obliged to restrict their living solely to this lifestyle as Allah ﷻ has commanded in the Qur'an and *Sunnah* irrespective of whether it contradicts with the West or disagrees with the customs and traditions of their own fathers and forefathers.

1

The View of Man and Woman

Allah ﷻ said:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَى وَجَعَلْنَاكُمْ شُعُوبًا
وَقَبَائِلَ لِتَعَارَفُوا

"Oh mankind! We have created you from a male and female, and made you into nations and tribes, so that you may know each other." [Al- Hujurat: 13]

He ﷻ says:

يَا أَيُّهَا الْإِنْسَانُ مَا غَرَّكَ بِرَبِّكَ الْكَرِيمِ

"Oh mankind! What has misled you from your Lord, most Generous?"
[Al- Infitar: 6]

He ﷻ says:

قَتَلَ الْإِنْسَانُ مَا أَكْفَرَهُ (١٧) مِنْ أَيِّ شَيْءٍ خَلَقَهُ (١٨)
مِنْ نُطْمَةٍ خَلَقَهُ فَقَدَرَهُ (١٩)

"Woe to mankind! What has made him reject God? From what thing did He create him? From a clot He Created him..." [Abasa: 17 - 19]

Thus, Allah ﷻ has addressed mankind with obligations and He ﷻ has made Mankind the subject of that speech and those obligations. He ﷻ has revealed the laws (*Shar'a*) to mankind and He ﷻ will resurrect mankind, account him/her and admit him/her to Paradise or Hell. Therefore, He ﷻ has made mankind - not men or women - the subject of the obligations.

Allah ﷻ has created mankind, whether male or female, with a specific nature which is distinct from that of animals. The woman is a human, as is the man, and they do not differ from each other in terms of their humanity. Nor is one distinguished from the other in any aspect of that humanity. Allah ﷻ has prepared both of them, in their capacity as humans, to enter the walks of life and inevitably made them live in the same society. He also made the survival of the human race dependent on their meeting together and their mutual presence in every society. It is not permitted to view one of them except as the other is viewed because, as humans, they possess all human characteristics and the essential requirements of life. Allah ﷻ has created within each of them a vital energy (*Taqa Hayaniya*), and it is the same vital energy which He ﷻ has created for the other. So He ﷻ made in each of them organic needs such as hunger, thirst and the need to relieve nature and He ﷻ made in each of them a survival instinct (*Gharizat al-Baq'a*) and a procreation instinct (*Gharizat al-Nau'*) and a sanctification (*Gharizat al-Tadayyun*) instinct. They are the same organic needs and instincts that are present in each other. He ﷻ has granted both of them the faculty of thought, and it is the same faculty of thought that is present in the other. Thus, intelligence is present in a man and it is the same intelligence that is present in a woman, since Allah created an intellect for mankind and not exclusively for a man or a woman.

The procreation instinct can be satisfied by a man with a man, or an animal and so on, or a woman can satisfy it with a woman, animal etc. However, this will not serve the purpose for which the instinct has been created in mankind except in one case, that is if a man satisfies it with a woman and a woman satisfies it with a man. Therefore, the relationship of a man with a woman and vice versa from the angle of instinctual sexuality is a natural relationship free from any abnormality. It is the only genuine relationship by which mankind realises the purpose for which this instinct was created, that is the survival of the human race. So when a relationship takes place between them in terms of sexual intercourse, that is instinctive and natural, and there is nothing strange or odd about that. Rather, it is a necessary matter for the

survival of the human species. However, allowing this instinct to run loose is detrimental to mankind and his social life. The purpose of its existence is to produce offspring for the survival of the species. Therefore, mankind's view of this instinct must be oriented towards the purpose for which it is found in him, and that undoubtedly, is for the survival of the species without distinction between men or women. As for the pleasure and enjoyment which is obtained by satisfaction, that is a natural and inevitable matter whether mankind considers it or not. Therefore it is not correct to say: pleasure and enjoyment should be dissociated from the procreation instinct. Disassociation between them is not attainable, this is because it is not possible. However, man's view stems from his concept about this satisfaction, and the purpose of its existence. Consequently, mankind must generate a specific concept about this instinct and the purpose for which it exists in him. This will form a distinct view concerning the procreation instinct, so that he restricts it to the relationship of a man with a woman, and a woman with a man. It will also form in him a distinct view concerning the relationship between men and women in the male-female sense, i.e. the sexual relationship, such that it is directed according to the purpose for which it was created, i.e. the survival of the human race. Through this view, the satisfaction of the instinct is achieved, as is the purpose for which it was created. The community which adopts this concept and possesses this distinct view also achieves tranquillity (*Tamanina*). The view of the community - any human community - concerning that which exists between men and women in terms of the male-female relationship, (i.e. their sexual relationship), must be changed from a view focused on pleasure and enjoyment, to one of considering pleasure and enjoyment a natural and necessary matter, but the view is orientated towards the purpose for which this instinct exists. This view maintains and discharges the procreation instinct according to the correct manner for which it was created, and gives man the opportunity to carry out his other activities and frees him to pursue the things that make him happy.

For this reason man must possess a concept concerning the satisfaction of the procreation instinct and the purpose for which it exists. The human community must have a system that ensures co-operation between the man and the woman and eliminates from peoples minds the dominance of the notion of sex, making it the concern that overrides all other concerns. This is because the community is of no worth (*Salah*) without the co-operation between men and women, considering them as two colleagues who support

each other in mutual love and kindness. For this reason, we must emphasise the importance of complete change in the community's outlook towards the relationship between men and women, which will end the dominance of the concepts of sex, turning it into a matter which is natural and necessary for satisfaction and ending the restriction of this relationship to pleasure and enjoyment. Instead, it will produce a view which seeks the good of the community, not a masculine or feminine one, and it will be governed by the fear (*Taqwa*) of Allah ﷻ and not by enjoyment or lust. It is a view which does not deny man the enjoyment of sexual pleasure, but makes it lawful (*Mashru*), ensuring the survival of the human race and agreeing with the ultimate goal of a Muslim, which is to seek the pleasure of Allah ﷻ.

Verses in the Qur'an came to address the marital aspect, i.e. the purpose for which the procreation instinct was created. Thus, there are verses which make it clear that the creation of the procreation instinct, in origin, is for the purpose of marriage i.e. survival of the human race. In other words, Allah ﷻ has created the instinct only for the purpose of marriage. The verses clarify this using different styles and various meanings in order to ensure that the view of the community towards the relationship between the man and woman, is a view which is focused on marriage and not on sex.

Allah ﷻ said:

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً

"Oh mankind! Be dutiful to your Lord, Who created you from a single person, and from him created his wife, and from them both He created many men and women".

[An- Nisa: 1]

He ﷻ says:

هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا فَلَمَّا تَغَشَّاهَا حَمَلَتْ حَمْلًا خَفِيفًا فَمَرَّتْ بِهِ فَلَمَّا أَثْقَلَتْ دَعَوَا اللَّهَ رَبَّهُمَا لَئِنْ آتَيْنَا صَالِحًا لَنُكَوِّنَنَّ مِنَ الشَّاكِرِينَ

"It is He Who has created you from a single person, and He has created from him his

wife, in order that he might enjoy the pleasure of living with her. When he had sexual relations with her, she became pregnant and she carried it about lightly. Then when it became heavy, they both invoked Allah, their Lord: If You give us a good child, indeed we shall be amongst the grateful". [Al- Araf: 189]

He ﷻ says:

وَلَقَدْ أَرْسَلْنَا رُسُلًا مِنْ قَبْلِكَ وَجَعَلْنَا لَهُمْ أَزْوَاجًا وَذُرِّيَّةً وَمَا
كَانَ لِرَسُولٍ أَنْ يَأْتِيَ بِآيَةٍ

"And indeed We sent Messengers before you and made for them wives and offspring".
[Ar- Rad: 38]

He ﷻ says:

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ
أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً

"And Allah has made for you wives of your own kind, and has made for you, from your wives, sons and grandsons". [An- Nahl: 72]

He ﷻ says:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا
إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً

"And among His Signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has put between you affection and mercy."
[Ar- Rum: 21]

He ﷻ says:

فَاطِرُ السَّمَاوَاتِ وَالْأَرْضِ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا

"The Creator of the heavens and earth. He has made for you mates from yourselves".
[Ash- Shura: 11]

He ﷻ says:

وَأَنَّهُ خَلَقَ الزَّوْجَيْنِ الذَّكَرَ وَالْأُنثَى (٤٥) مِنْ نُطْفَةٍ إِذَا تُمْنَى (٤٦)

"And that He (Allah) creates the pairs, - male and female, from nutfah (drops of semen) when it is emitted". [An- Najm: 45-46]

He ﷻ says:

وَخَلَقْنَاكُمْ أَزْوَاجًا

"And We created you in pairs". [An- Naba: 8]

Thus, Allah ﷻ restricted the creation of the male and female to the marital aspect. He ﷻ repeated this, so that the view towards the male and female be focused on marriage i.e. towards producing offspring for the survival of the human race.

2

The Impact of this view on the relationship between Man and Woman

Only when the instinct is excited, will it require satisfaction. Once the instinct requires satisfaction, it will drive mankind to acquire it, and the human will experience anxiety as long as the instinct is excited. Once it is calmed down, anxiety will no longer exist. The non-satisfaction of this instinct will not result in death or any physical, mental, or psychological harm. Harm will be merely through anxiety and frustration. Consequently the satisfaction of this instinct is not mandatory such as the satisfaction of the organic needs, it is rather a matter to bring about tranquillity and comfort.

Two matters excite the instinct:

1. The tangible reality and
2. Thought and association of ideas.

One of these matters at least, must be present for the instinct to be excited. Meaning, it is not excited due to an internal motive, as is the case with the organic need, but rather from an external incentive, namely the tangible reality or associated thoughts. This holds true for all instincts, namely the instinct of survival, sanctification and procreation, with no difference between them.

Since the procreation instinct is similar to the other instincts in that if it is excited it will require satisfaction, and since it is not excited except by a tangible reality or associated thoughts, then the human is able to control this satisfaction. As a matter of fact, the human is able to initiate this satisfaction, or to prevent it from taking place except in such a manner that

it is geared towards preserving the human race. Seeing the opposite sex or any tangible reality related to the procreation instinct will excite the instinct and cause it to require satisfaction. Consequently, reading sexual stories and listening to sexual ideas will excite the procreation instinct. Conversely, keeping away from the opposite sex, sexual ideas or anything related to the procreation instinct will prevent the instinct from being excited. This is so because the procreation instinct cannot be excited except by a tangible reality or a sexual thought.

If the community's view of the relationship between men and woman is focused on the male-female relations, i.e. the sexual relations, as is the case in Western society, then it will be preoccupied with creating exciting tangible realities and generating sexual thoughts necessary to excite the procreation instinct, so as to require satisfaction, and by its satisfaction, the relationship is achieved and comfort is gained. Contrary to this, if the view of the community to the relationship between man and woman is focused on the purpose for which this instinct was created, namely preserving the human race, then keeping the tangible realities and sexual thoughts away from men and woman in public life is a necessity. Otherwise, the instinct will be excited and require a satisfaction that is not available, a matter which causes anxiety and frustration. Also, restricting exciting tangible realities to the case of marriage is necessary to preserve the human race, by producing tranquillity and comfort when satisfaction is demanded within marriage.

This is a clear indication of the extent that the community's view of man-woman relations has in directing public life in the community and in the society. Both the Western and Eastern view of the man-woman relationship is one that is sexual, not one geared to preserving the human race. Hence, they purposely worked on finding tangible realities and sexual thoughts for man and woman to excite this instinct, in order to satisfy it. They claimed that if this instinct is not satisfied, this will lead to suppression, which leads to physical, psychological and mental harm. As a result, one finds in the Eastern and Western communities and in the Western and Communist societies, many sexual thoughts in writing, poetry, and literature in general. It is normal in these societies to have unnecessary free mixing between men and women in their homes, parks, roads, and swimming pools for example. This is because they consider these things a necessity which they purposely create. It is a part of organising their life and a part of their life style.

Muslims who believe in the *Aqeedah* of Islam and the validity of its rules, carry a different point of view. Meaning, Islam views the man-woman relations as for preserving the human race. The Islamic point of view does not focus on the sexual aspect of the relationship': though considering it an inseparable part of satisfaction, however, it is not the motive. Consequently, Islam views the presence of sexual ideas and the tangible realities that excite the instinct as a cause of corruption and harm. Hence, it forbade man and woman to meet in seclusion (*Kbulwa*), the woman from showing her charms to strangers (those whom she can marry) and the men and women from looking at each other in a sexual fashion. Islam also has defined the co-operation between men and women in public life and confined sexual relations between men and women to two situations, namely marriage and ownership of concubines.

Therefore, Islam works to prevent the procreation instinct from being excited by anything in the public life and works to confine sexual relations to specific situations. Contrary to Islam, Capitalism and Communism work to create situations that excite this instinct in order to satisfy it and to set it loose in everything. Also, while Islam views the man-woman relations as only for the purpose of preserving the human race, Capitalism and Communism view the man-woman relations as a male-female one, i.e. a sexual view. The wide difference between what Islam aims to achieve and what the other two ideologies are designed to achieve becomes evident. This reflects the Islamic point of view as being one of purity, righteousness and chastity, and it is for the tranquillity of the human and the continuation of his race.

With regard to what the Westerners and the Communists claim that suppressing the sexual instinct in men and women alike causes mental, physical and psychological disorders to the human, this claim is wrong and conflicts with reality. This is due to the fact that there is a difference between the organic needs and the instincts in terms of the necessity of satisfaction. The former, such as the need for food, drink, and relieving the call of nature, must be satisfied or it will result in physical harm that may lead to death. As for the instincts of survival, sanctification and procreation, if not satisfied these will not lead to any physical, mental or psychological harm, but merely lead to anxiety and pain. This is proven by the fact that a person might spend his entire life without satisfying some of the instincts and no harm befalls him. Also their claim that physical, mental and psychological illnesses

occur when the procreation instinct is not satisfied is false, since it only happens to some individuals, not humans at large. This shows that such illnesses do not happen naturally due to its non-satisfaction but rather due to other factors. If such complications were a result of suppressing the instinct, it would have happened in every case of non-satisfaction, according to the laws of nature, a matter which has never occurred. And they admit to the fact that it does not occur naturally due to non-satisfaction. Therefore, such complications must be due to factors other than the suppression of the instinct.

Furthermore, an organic need requires satisfaction naturally from within. It does not require an external stimulant, though an external stimulant incites it when the need is present. This is different from the instinct which does not require satisfaction naturally from within, without the presence of an external stimulant. It is not stimulated internally unless there exists an external stimulant which results either from an exciting tangible reality or an exciting sexual thought, part of which is the association of exciting thoughts. When the external factor is absent, there will be no stimulation. This holds true for all instincts with no difference between the instinct of survival, sanctification or procreation and with all their external manifestations. Therefore, if a stimulant for any instinct is present, the person will be excited and the instinct will require satisfaction. Once the stimulant is kept at bay or the person becomes occupied in something that is more important, the demand for satisfaction will disappear and he will calm down. This is different from the organic need where once excited, it will never go away until satisfied.

This clearly demonstrates that if the procreation instinct is not satisfied, there will result no physical, mental or psychological illness, since it is merely an instinct, and not an organic need. What in fact happens is that once a person is confronted with an exciting tangible reality or sexual thought, which stimulates the procreation instinct, that person will be excited and demand satisfaction. If the demand is not met with satisfaction, that person will experience nothing more than anxiety. With repetition, anxiety will turn to pain. However, if the stimulant is kept away or the person is kept occupied with something that dominates the instinct, the anxiety disappears. Therefore, suppressing the procreation instinct once aroused will result in anxiety and pain, and if not excited, nothing will result, not even anxiety or pain. Therefore, the proper solution is not to excite the instinct. This is achieved by preventing anything from exciting it as long as it can not be satisfied.

This shows the fallacy of the Western and Communist point of view, which made the community's view to the relations between men and women focused on the male-female relations. Consequently, it shows the falsehood of the treatment produced by this point of view of stimulating the instinct in the man and the woman via highlighting things that stimulate it, such as free mixing, dancing, games, stories, etc. It also shows the truthfulness of the Islamic point of view which made the community's view to man-woman relations focused on the purpose for which this instinct was created, namely preserving the human race. Accordingly, it shows the correctness of the solution produced by this view of keeping away any kind of stimulating tangible reality or sexual thought when legal satisfaction through marriage or through concubines is not available. Therefore, Islam alone is able to completely and correctly treat the corruption caused by the procreation instinct in the society and among the people. Such correct and complete treatment will result in piety and elevation in the society and among the people.

3

Regulating the Relations between Man and Woman

The fact that women stimulate the procreation instinct in men and vice versa, does not inevitably mean that the stimulation will exist whenever a man meets a woman. Rather, it means that fundamentally they can potentially stimulate the instinct in each other when they meet which may result in sexual relations. However, they may meet and not stimulate the instinct, such as when meeting for trading or to conduct an operation on a patient, or for attending circles for knowledge, etc. In all these cases and others, the possibility of stimulating the sexual instinct still remains. However, the presence of the possibility, does not mean the presence of excitement. Excitement occurs once they view each other from the male-female angle instead of the view of preservation of the human race. Therefore, the fact that the woman and the man stimulate this instinct in each other should not become a reason to seclude the woman from the man completely. In other words, it is incorrect to make the possibility of arousing the procreation instinct prevent men and women from meeting together in public life and from co-operating amongst each other. Rather, they must meet in public life, and they must co-operate amongst each other, for their co-operation is essential for society and public life. Such co-operation, however, can not be achieved except with a system that regulates the relationships between them. This system must emanate from the view that the relationship between males and females is meant to preserve the human race. By this system, the meeting of men and women in public life and co-operation between them becomes possible and safe.

The only system that guarantees a peaceful life and organises man-woman relations naturally is that whose basis is spirituality and whose criterion is the *Abkam Shariyah* (divine rules), including the rules that achieve the ethical value. Such a system is the social system in Islam. Islam looks upon humans,

be they men or women, as humans with instincts, sentiments, inclinations and a mind. The Islamic system permits the human to enjoy the pleasures of life. It does not denounce the human for taking from life the greatest share he can. It assumes, however, that this be carried out in such a way that protects the community and the society, and enables the human to proceed to achieve tranquillity. The Social system in Islam is the only correct social system (assuming that other social systems exist). This is due to several features: It views the procreation instinct as being for the purpose of preserving the human race; it accurately organises male-female relations whereby it guarantees that this instinct proceeds only in its natural course, thus fulfilling the purpose for which Allah created the human. At the same time it organises the relations between men and women and makes the regulation of the male/ female relationship a part of these relations, whereby it guarantees co-operation between men and women which produces goodness for the community, society and the individual. At the same time, it guarantees the achievement of the ethical value. It makes the pleasure of Allah ﷻ, which is the ideal, the controller of such co-operation. This ensures that piety and purity decide the method of the relations between the two sexes in this life, and ensures that the styles and means in life do not in any way contradict with this method.

Islam restricted sexual relations i.e. the male-female relations between the man and woman to marriage and concubines. Any relation outside of these two is considered a crime that must be punished severely. As for other kinds of relations which are of the external manifestations of the procreation instinct, such as, parenthood, childhood, brotherhood, unclehood, they are allowed and considered of the unmarriageable kinship. Islam permitted for women matters which it allowed for men, such as practising trade and industry, farming, attending classes of knowledge, praying, carrying the *Da'mah*, etc.

Islam made co-operation between men and women in life's affairs and in the peoples relations among themselves a fact in all dealings. All are the servants of Allah ﷻ and all co-operate in worshipping Him ﷻ in goodness, and in fearing Him ﷻ. The *Ayat* came to address humans with regards to inviting them to Islam irrespective of the fact that they are men or women.

Allah ﷻ says,

قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا

"Say, Oh people, I am the Messenger of Allah to you all". [Al- Araf: 158]

and,

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ

"Oh people fear your Lord". [An- Nisa: 1]

With regard to the rules of Islam, the *Ayat* addressed the believers.

Allah ﷻ said:

يَا أَيُّهَا الَّذِينَ آمَنُوا اسْتَجِيبُوا لِلَّهِ وَلِلرَّسُولِ إِذَا دَعَاكُمْ لِمَا يُحْيِيكُمْ

"Oh you who believe, answer the call of Allah and the Messenger when he calls you to that which gives you life". [Al- Anfal: 24]

The *Ayat* have been revealed to include men and women.

He, ﷻ said:

كُتِبَ عَلَيْكُمُ الصِّيَامُ

"Fasting is prescribed upon you" [Al- Baqarah: 183]

and said,

أَقِمُوا الصَّلَاةَ

"Establish Salat, [Al- Anam: 72]

خُذْ مِنْ أَمْوَالِهِمْ

"Take from their wealth," [At- Tauba: 103]

and,

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ

Sadaqat (zakat) is only for the poor and the needy". [At- Tauba: 60]

He, ﷺ said:

وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ

"And those who hoard gold and silver". [At- Tauba: 34]

He ﷺ said,

قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ

"Fight those who believe not in Allah and the Day of Judgement". [At- Tauba: 29]
and,

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا آبَاءَكُمْ وَإِخْوَانَكُمْ أَوْلِيَاءَ إِنِ اسْتَحَبُّوا الْكُفْرَ عَلَى الْإِيمَانِ

"Oh you who believe, take not your fathers and brothers as allies if they choose Kufr over Iman". [At- Tauba: 23]

These *Ayat*, among many others, are general, and address men and women. Carrying out these commands might encompass the meeting between men and women, including the commands that are performed individually, such as, *Salah*. This, therefore, proves that Islam permitted men and women to meet to fulfil whatever rules it commanded them with, and actions that they have to carry out.

However, Islam mandated certain precautions against anything that would lead to an illegal sexual relationship or divert men and women from the specific system Allah ﷻ mandated to control the sexual relationship. Islam is very strict in observing these precautions. Thus, it made chastity mandatory, as well as obliging the use of every method, style or means that would lead to the protection of chastity and morals. This is due to the fact that anything that is necessary for the fulfilment of an obligation is an obligation. To achieve this goal, it determined certain divine rules (*Abkam*

Shar'iah). Some of which are:

1. It commanded men and women, to lower their gaze.

Allah ﷻ said,

قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ ذَلِكَ أَزْكَى لَهُمْ إِنَّ اللَّهَ خَبِيرٌ بِمَا يَصْنَعُونَ (٣٠) وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ

"Tell the believing men to lower from their gaze and to protect their private parts. That is better for them, Allah knows the details of what they do. And tell the believing women to lower from their gaze and protect their private parts". [An- Nur: 30]

2. It commanded women to wear modest clothes that cover and hide all places of charm except what is apparent (by necessity) and to drape their clothes over them so as to cover them.

Allah ﷻ said:

وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ

"And they are not to show their charm except that which is apparent. And let them cover their chests and necks (jaibs) with their head covers (khimars)". [An- Nur: 31]

He ﷻ also said:

يَا أَيُّهَا النَّبِيُّ قُلْ لَأَزْوَاجَكُمْ وَبَنَاتِكُمْ وَنِسَاءَ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ

"Oh prophet tell your wives and daughters and the women of the believers to drape down their outer clothes (Jilbab)". [Al- Ahzab: 59]

Meaning, they are not to show the places of their charm, except that which is apparent i.e. the face and the hands. *Khimar* is the head cover and *Jaib* is the shirt. i.e. the shirt opening from the neck to the chest. In other words, let them place their *Khimar* over their necks and chests. *Idnaa* of the *Jilbab* is to drape the dress down.

3. It forbade the woman from travelling from one place to another for over one day and one night without a *Mahram* (unmarriageable man). The Messenger ﷺ said: **“It is not permitted for a woman who believes in Allah and the Day of Judgement to travel one night and one day except with a mahram”**.

4. It forbade a man and a woman to be in seclusion (*Khulwahy*) except in the company of a *Mahram*. The Messenger ﷺ said: **“No man should be in seclusion (Khulwahy) with a woman without her Mahram.”** Ibn Abbas reported that he heard the Prophet ﷺ give a speech in which he ﷺ said: **“No man should be in seclusion (Khulwahy) with a woman except with her Mahram. Also no woman is to travel but with her Mahram.”** Upon hearing this, a man stood up and said: “Oh Messenger of Allah, my wife is out to perform Hajj and I have been conscripted in such and such battle”. The Messenger ﷺ said: **“Go and perform Hajj with your wife.”**

5. Islam forbade the woman to leave her house without her husband's permission. Since he has rights on her, she is not to leave his house without his permission. If she leaves without his permission, she is considered disobedient and therefore rebellious (*Nashiz*), who does not deserve financial support (*Nafaqah*). Ibn Buttaḥ reported in “Woman's Rules” from Anas that a man travelled out of town and prevented his wife from leaving the house. Then her father became ill. She asked the Messengers ﷺ permission to visit her sick father. The Messenger ﷺ replied: **“Fear Allah and do not disobey your husband”**. Later on her father died. She asked the Messenger's ﷺ permission to attend his funeral. He ﷺ said: **“Fear Allah and do not disobey your husband”**. Then Allah ﷻ revealed to the Prophet ﷺ that I have forgiven her due to her obedience to her husband.

6. Islam made the community of women separated from the community of men in private life and in the Mosques, schools and their likes. So it made the woman live among women and the men among men. It also made the lines of women behind the lines of men in prayer, and the woman is to live with women or a *Mahram*. So, the woman would perform her public life affairs such as buying and selling and the like then go afterwards to live with women or a *Mahram*.

7. Islam endeavoured to maintain the co-operative relation between men and women public in all transactions. It did not allow such relation to be

private such as exchanging visits among the non-*Mahram* men and women, and going out together. This is due to the fact that the purpose of this co-operation is for the woman to fulfil her rights and affairs as well as take care of her obligations.

With such rules, Islam took precautions to prevent the meeting of men and women from turning into sexual encounters, in order to continue as meetings of co-operation, to discharge interests and allow the performance of duties. Therefore, Islam treated the relations that result from the interests of individuals, men or women, when the two meet. It also treated the relations that result from the meeting of men and women, such as, financial support, parenting, marriage, etc. Islam's treatment restricts meeting to the relations for which they were made, and it keeps them from turning into sexual encounters.

4 Private Life

The nature of the human is that he lives a public and a private life. In public life he lives with members of society in his tribe, village or city. In his private life he lives at home and among his family members. For his private life, Islam introduced specific rules to treat the problems that the human encounters, male or female. One of the main rules that Islam brought is that the private life is exclusively under the control of that human. It forbade anyone to enter his house without his permission. Allah ﷻ says:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا
ذَلِكَ خَيْرٌ لَكُمْ لَعَلَّكُمْ تَذَكَّرُونَ

"Oh you who believe enter not homes other than yours until you establish familiarisation and greet their inhabitants. This is better for you, so that you might remember".

[An- Nur: 27]

In this *Ayah*, Allah ﷻ commanded people not to enter homes without being permitted to. He ﷻ considered not seeking the permission as estrangement and seeking it as familiarisation. He ﷻ said:

حَتَّى تَسْتَأْذِنُوا

"Until you establish familiarisation". [An- Nur: 27]

This is metaphoric for seeking the permission, for familiarisation will not occur without it, i.e. until you seek the permission of its people. At-Tabarani reported that the Messenger ﷺ said: **"Whoever peeps at a home without**

the permission of its people, it is as if he destroyed it." Abu Dawood reported, a man asked the Prophet ﷺ, about whether he should seek permission from his mother (when he enter her quarters) He ﷺ said: **"Yes"**. He said: "There is no one to serve her but me. Should I seek permission every time I enter?" He ﷺ said: **"Do you like to see your mother naked?"** The man said: "No." He ﷺ said **"Then seek permission."** Therefore, Islam forbade any human from entering a home other than his without the permission of the home's inhabitants. There is no difference whether the home to be entered upon is of a Muslim or not. This is due to the fact that while the speech is for Muslims, regarding seeking permission, the speech regarding the home came in an unqualified form (*Mutlag*) without any restriction (*Taqyeed*), and in a general form (*Aam*) without any specification (*Takhsees*). Therefore, this includes every home. This clearly indicates the sanctity of the home, and that the private life has specific rules such as seeking permission to enter someone's home. In the case where the one seeking to enter doesn't find anyone at home they are not to enter until permission is granted. And if they are told to turn back then they must turn back and are not allowed to enter.

Allah ﷻ said:

فَإِنْ لَمْ تَجِدُوا فِيهَا أَحَدًا فَلَا تَدْخُلُوهَا حَتَّى يُؤْذَنَ لَكُمْ وَإِنْ قِيلَ لَكُمْ ارْجِعُوا فَارْجِعُوا
هُوَ أَزْكَى لَكُمْ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

"And if you find no one in, then do not enter until you are permitted. And if it is said to you to return, then return. That is better for you and Allah is knowledgeable of all that you do". [An- Nur: 28]

This means that you are not to persist in seeking permission, or in seeking to ease the barrier (*Hijab*) nor to stand by the door waiting. All these rules apply in the case of the residential houses. As for the houses which are not inhabited, they have to be examined. If the person who wants to enter has possessions inside, then he can enter without seeking permission, and these homes are excluded from the houses that require the seeking of permission before entering.

Allah ﷻ says:

لَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَدْخُلُوا بُيُوتًا غَيْرَ مَسْكُونَةٍ فِيهَا مَتَاعٌ لَكُمْ وَاللَّهُ يَعْلَمُ مَا تُبْدُونَ
وَمَا تَكْتُمُونَ

"It is no fault on your part to enter houses not used for living, in which you have some possessions. And Allah has knowledge of what you reveal and what you conceal."
[An- Nur: 29]

The opposite meaning is that if you have no possessions there you are not to enter. So the exclusion is for the unoccupied house which contains possessions of the person who wants to enter. By these rules of seeking permission, the private life is protected against the inconvenience of those who knock on the door. Thus those who live inside would be able to enjoy peace, free of the interruption of the outsiders.

The above rules apply to free adults. As for the slaves and the children below the age of puberty, they may enter houses without seeking permission. However, three times of the day are made exceptions. These times are before the prayer of *Fajr*, at noon, and after the *Salah* of *Ishaa* (night prayer). In these three times, they must seek permission, for at such times people change their clothes to go to sleep or to wake up, thus revealing their '*Anrrah*'. As for the time prior to *Fajr Salah*, it is the time to wake up from sleep and when people change from their sleeping clothes. Around noontime, it is a rest and naptime. At this time people also change their clothes. As for after the *Salah* of *Ishaa*, it is a time of sleep and people change their day clothes for their sleeping attire. Other than these times, slaves and children under the age of puberty need not seek permission to enter. They may enter the houses at any other times they wish without permission. Once children reach the age of puberty, they lose their privilege to enter. They become like everyone else.

Allah ﷻ said:

يَا أَيُّهَا الَّذِينَ آمَنُوا لِيَسْتَأْذِنَ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا الْحُلُمَ مِنْكُمْ ثَلَاثَ مَرَّاتٍ مِنْ قَبْلِ صَلَاةِ الْفَجْرِ وَحِينَ تَضَعُونَ ثِيَابَكُمْ مِنَ الظَّهِيرَةِ وَمِنْ بَدْرِ صَلَاةِ الْعِشَاءِ ثَلَاثُ عَوْرَاتٍ لَكُمْ لَيْسَ عَلَيْكُمْ وَلَا عَلَيْهِمْ جُنَاحٌ بَعْدَهُنَّ طَوَافُونَ عَلَيْكُمْ بَعْضُكُمْ عَلَى بَعْضٍ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ الْآيَاتِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

"Oh you who believe at three times of day let those whom you possess as well as those from among you who have not yet attained puberty, ask permission from you (before intruding upon your privacy): before the prayer of daybreak, and whenever you lay aside your garments in the middle of the day, and after the prayer of nightfall: the three occasions on which your nakedness is likely to be bared. Beyond these (occasions) neither you nor they will incur any sin if they move (freely) about you, attending to (the needs of) one another. In this way Allah makes clear unto you His messages: for Allah is all knowing and wise!"
[An- Nur: 58]

These are the rules to protect the private life at home against outsiders who wish to enter with no difference between a person whom the woman can marry (*Ajnabi*) or a close person whom she cannot marry (*Mahram*) or in-law. In this private life, the woman lives with women or her mahram men, since they are the ones whom she can show the places of charm of her body, which she naturally shows in her private life. Other than women and her *Mahram* men, the woman may not live with anyone because she is not allowed to show before them the places of her body which are usually apparent when she carries out her home duties, further to the face and hands. So private life is restricted to women and mahram men. There is no difference between Muslim or non-Muslim women. They are all women. The fact that women are commanded not to show the places of charm of her body to people whom she can marry and the fact that she is allowed to show them to her *Mahrams*, are a clear evidence that private life is restricted to the mahram alone. Allah ﷻ said:

وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ بُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوْ التَّابِعِينَ غَيْرِ أُولِي الْإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَاتِ النِّسَاءِ

"And tell the believing women to lower their gaze, protect their private parts and not to show their places of charm in public beyond what may (decently) be apparent thereof; hence let them draw their head-coverings (*khumur*) over their necks and bosoms (*juyub*). And let them not display (more of) their charms to any but their husbands, their fathers, their husbands fathers, their sons, their husbands sons, their brothers, their brothers sons,

their sisters sons, their women folk, their concubines, such male attendants as are beyond all sexual desire, or children that are as yet unaware of women's nakedness;"

[An- Nur: 31]

Falling under the same rules of the mahram men are the slaves they own, and those men who have no desire in women such as the elderly, insane, castrated, the one with no penis and the like. Such people may be present in the private life. Other than them, i.e. *non-Mahram* men, even if they were relations, they are not allowed at all to be in the private life. This is because the woman is not allowed to show before them the places of her body, which usually appear at home.

Thus, it is definitely *Haram* for non-mahram men to meet women in private life. Exceptions are only those which the legislator defined such as for food and visiting the close relatives (*Rahm*). Such exceptions, however, are allowed only if the woman is accompanied by a *Mahram* man and has her entire *Anrah* covered.

5

It is obligatory to separate Man from Woman in Islamic Life

Islamic life, in which Muslims live and conduct their general affairs where men and women are separated from each other, is established by the Qur'an and *Sunnah*. Men are separated from women in the private life, such as in the homes and the like, and in the public life, such as the markets and the roads. Such a style of life is further established by the overall *Abkam Shari'ah* (divine rules) addressing the man separately, the woman separately, and both of them together. It is also established by the Qur'anic speech to women as women and men as men such as Allah's ﷻ saying:

وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّانِمِينَ وَالصَّانِمَاتِ وَالْحَافِظِينَ فُرُوجَهُمْ وَالْحَافِظَاتِ
وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ

"The men and women who give charity and fasting men and women, and the men and women who guard their chastity and the men and women who remember Allah much..."
[Al- Ahzab: 35]

and other verses. Such a segregated type of life is also reported as the actual practice in collective form since the days of the Prophet ﷺ and throughout all the times of Islam.

As for the overall evidences, studying them leads us to notice that the Legislator did not accept the women's testimony in crimes, since women do not live where crimes predominantly take place. It obliged the woman to wear the *Jilbab* if she goes out of her home. It made the entire body of the woman as '*Anrah*' (which must be covered) except her hands and face. It forbade her from revealing her charms to non-mahram men. It forbade men

from looking at her private parts, even her hair. It forbade the woman from travelling, even to Hajj without her mahram. The Legislator also forbade people from entering homes without having permission. The Legislator did not oblige the woman to attend the *Jamaah* in the *Masjid*, *Jummah*, or to go for *Jihad* as it did for the man. We also find that it obliged the man, but not the woman, to strive and earn provision. Additionally, the Messenger of Allah ﷺ separated men from women, so he made the womens' lines in the masjid and in *Salah* behind the mens' lines; and he commanded women to leave the *Masjid* before men, in order for them to be separated. In his classes, a woman asked him to designate a special day for women since men dominated the other days.

These rules and situations among many others show in their entirety, the manner in which the Islamic way of life is lived, and that it is one where men are separated from women. It also shows that this separation is general and includes the public as well as the private life. The Islamic life at the time of the Messenger ﷺ had men and women separated from each other in both public and private life. No exceptions were made except those which the Legislator permitted, whether in private life or public life.

Upon studying the rules of Islam we find that the Legislator permitted women to buy and sell, to hand over things and receive, obliged the Hajj upon her, allowed her to attend the *Salah* in *Jamaah* in the *Masjid*, to fight the *Kuffar*, to own and invest her wealth, besides other matters allowed to her. Such activities which the Legislator permitted or obliged the women to engage in, may require the meeting with men to accomplish them, then such a meeting is permitted. This is provided that the meeting is within the rules of Islam and required by the activity which she is permitted to perform. Examples for this are buying and selling, renting, education, medical treatment, farming, industry, etc. This is because the evidence, which allows or obliges such activities, includes the permission for them to meet together. However, if the activities do not require the women to meet with men, such as walking in the street to go to the *Masjid*, to the market, to visit the family, going to a picnic, or eating and drinking, etc, then it is not allowed for men and women to meet. This is because the evidence for the separation of men and women is general, and there is no evidence to permit meeting in such cases. These activities are not also required to fulfil that which the Legislator permitted the woman to do. Therefore, meeting for such matters is sinful even if done in public life. Consequently, separation of men and women in

the Islamic life is an obligation. Separation in the private life must be complete except the cases allowed by the Legislator. As for public life, separation is the norm. It is not allowed for men and women to meet in public life except for that which the Legislator allowed, obliged or recommended for women to do, and, at the same time, it requires meeting with men; whether this meeting is with separation such as in the *Masjid* or with mixing such as in Hajj and trading.

6 Looking at Women

Whenever someone wants to marry a woman, he has the right to look at her but not in seclusion (*Khulwahy*). Jabir said that the Messenger of Allah ﷺ said: **“If a man proposes to a woman and he is able to look at whatever would encourage him to marry her, let him do so.”** He said, “I proposed to a woman whom I used to look at from a hide out, I did this until I saw what invited me to marry her then I married her.” It is allowed to look at her with or without her permission. This is due to the fact that the Prophet ﷺ ordered us to look without restriction. In the *Hadith* of Jabir (I used to hide and look) it is not allowed, however, to be in seclusion (*Khulwahy*) with her. For the Prophet ﷺ said: **“Whoever believes in Allah and the Day of Judgement he should not be in a khulwahy with a woman without her mahram for the third (person) that will be with them is the shaytan.”**

This is a general rule, and no exception is made for the one who is seeking marriage, as is the case with looking. The person seeking marriage may look at the face and the hands as well as other parts. This is due to the fact that looking at the face and hands is allowed for everyone, including the one seeking marriage. So giving an exception to the one who is seeking marriage would be meaningless unless it means allowing him to see more than the face and hands. Also, the Messenger ﷺ said: **“To look at her”**. This is general and therefore includes the face and hands as well as other parts, which are needed to be known for the purpose of marriage in order for him to propose to her. In addition, Allah ﷻ commanded the believers to lower their gaze. Lowering their gaze requires that one should not look directly, be they men to women, or women to men. The *Hadith* of Jabir allows the marriage seeker to look directly at the woman and therefore, it excludes him from the order of lowering the gaze. This means, believing men must lower their gaze except the ones proposing, who have the right not to lower their gaze, in order for them to look at the women they seek to propose to.

It is allowed for the married couple to look at the entire body of the other. Bahz b. Hakeem reported from his father from his grandfather, he said: **“I said, O Messenger of Allah, what should we hide and what should we show of our private parts?”** He ﷺ said to me ‘protect your ‘Awrah except from your wife and concubines.”

In addition, the man is permitted to see more than the face and hands and the places of charms (*Zeenah*) of his *Mahram* women, be they Muslims or non-Muslims. This is due to the unrestricted (*Mutlag*) text on the matter. Allah ﷻ says:

وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَائِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّابِعِينَ غَيْرِ أُولِي الإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَاتِ النِّسَاءِ

"They should not show their Zeenah (charms) in public beyond what may (decently) be apparent thereof; hence let them draw their head-coverings (khumur) over their necks and bosoms (juyub). And let them not display (more of) their charms to any but their husbands, their fathers, their husbands fathers, their sons, their husbands sons, their brothers, their brothers sons, their sisters sons, their women folk, their concubines, such male attendants as are beyond all sexual desire, or children that are as yet unaware of women's nakedness; and let them not swing their legs (in walking) so as to draw attention to their hidden charms". [An- Nur: 31]

All of these are allowed to see of the woman's hair, neck and places of bracelet, necklace, and leg band, as well as other places that fit the category of charms (*Zeenah*). This is because Allah ﷻ says: “They shouldn't show their charm” i.e. the place of their charm (*Zeenah*), except to those mentioned in the Qur'an. Such people are allowed to see what appears of her when she is wearing house clothes. Ash-Shafee reported in his Musnad from Zaynab bint Abi Salama that she was breastfed by Asmaa, Az-Zubayr's wife. She said: “I used to see him as a father. He used to walk in while I was combing my hair - he would hold a lock of my hair and say come here .” It was also reported that Abu Sufyan upon coming to Madinah to renew the treaty of Hudaibiyah, went to his daughter, Ummu Habibah, who was the Messenger's wife. Upon entering her house, she folded the Messenger's bed so that he would not sit on it. She did not cover up in his presence. She

mentioned the incident to the Messenger of Allah ﷺ, and he approved of her action and did not order her to cover up in her father's presence as he was a mahram to her even though he was a *Mushrik*.

With regards to the person who is *non-Mahram*, not proposing, nor a husband, there are detailed rules that address his seeing of a woman. If there is a need for the man to look at the woman or the woman to look at the man, then it is allowed to look only at that part which is necessary. Other than that, he or she is not allowed to see more than the face and hands. People who might have a need to look at such parts of the woman's body which the Legislator allowed them to see include the doctor, the nurse, the investigator and other such people. It was reported that when the Prophet ﷺ appointed Saad to give his verdict on Bani Quraythah, he used to remove children's Izar (piece of cloth used to cover their private parts). Also, Uthman, may Allah be pleased with him, was brought a boy who stole. Uthman said: "Look under his *Izar*." They found no pubic hair and so did not cut his hand. Uthman's action was with the full knowledge of the sahabah and none of them objected, therefore this is considered *Ijma'a*.

However, if there is no need to look at such parts, and the *non-Mahram* man is not from the people who have no desire and ability, he is allowed to see the face and hands only and is forbidden to look at anything else. Aisha reported that Asmaa bint Abu Bakr entered the quarters of the Messenger of Allah ﷺ wearing thin clothes. The Messenger ﷺ turned his face away and said: **"O Asmaa, if the woman reaches puberty, it is not allowed to be seen from her except this and this."** and he pointed to his face and hands. The hands and face are the only exception made by the Qur'an to the prohibition of showing the places of charm. Allah ﷻ said:

وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا

"And let them not show their charms except that which is apparent from it".
[An- Nur: 31]

Ibn Abbas in explaining the above honourable *Ayah* said this means the face and hands. The command to the woman not to show her charm is a command not to show her private parts (*Anwrah*). The fact that it is prohibited for her to show them means it is prohibited for men to look at them. To

make what is apparent as an exception from the prohibition of showing them means it is an exception from the prohibition of looking at them. This means, it is allowed to look at them. Therefore, a *non-Mahram* man is allowed to look at the face and hands of a *non-Mahram* woman. The look that is permissible is limited to that which would enable him to recognise her and distinguish her from other women whom he might testify for or against if required, to recognise her if he traded with her, rented to or from her, or to identify her if he borrowed from, or lent money to her.

Similarly, the woman is allowed to look at non-*Anwrah* body parts of the man. Aisha said: The Messenger of Allah ﷺ used to cover me with his garment while I was watching the Abyssinians in the masjid. Also, when the Prophet ﷺ finished the Eid *Khutbah*, he went to the women with Bilal and preached to them and commanded them to give sadaqa. It is clear from this that the Messenger ﷺ approved the women to look at men. As for looking being restricted to the non-*Anwrah* parts, this is because Aisha was watching the Abyssinians playing, where she saw all of them except the '*Anwrah*'. Looking was therefore, not restricted, rather it was absolute. Also, Amru bin Shuayb reported from his father from his grandfather who said: "The Messenger of Allah ﷺ said: **"If you get your servant married to your slave or a hired hand, you should not look at anything below the navel and above the knee, for it is 'Awrah."** One can conclude from this *Hadith*, permission to look at other than this area. The permission is not restricted and thus includes men and women.

As for the report of Umm Salamah in which she said: **"Hafsah and I were sitting with the Prophet ﷺ and Ibn Umm Maktoom sought permission to enter. The Prophet ﷺ said (to us): 'hide from him'. I said: 'O Messenger of Allah, he is blind and cannot see.' He ﷺ said: 'Are you both blind and cannot see him?'"** This *Hadith* is reported by Abu Daud and others on the authority of Nabhan. An-Nisai said: "We do not know persons who reported from Nabhan except Az-Zuhri." Ibn 'Abd el-Birr said, 'Nabhan is unknown, no narration from him is known except this *Hadith* by Az-Zuhri'. The narration from the unknown is a weak (*Daiif*) *Hadith*, which is not good as an evidence.

As for what was reported from Jarir ibn Abdullah who said: **"I asked the Messenger of Allah ﷺ about the look of surprise, so he commanded me to look away."** And what was reported from Ali who said: The

Messenger of Allah ﷺ said to me: **“Do not follow up the (first) glance with a second look. The first is permitted for you but not the second.”**

These *Abadith* are regarding men looking at women, not women looking at men. What is understood from the first *Hadith* is looking at other than the face and hands, since they are allowed to be seen. The second *Hadith* is addressing the prohibition of looking repeatedly since it might cause desire. The prohibition is not regarding the mere looking.

As for the saying of Allah : “And command the believers to lower down their gaze”, it refers to lowering their gaze from that which the believers are forbidden to look at, and restricting themselves to that which is allowed to be looked at. It doesn't mean lowering the gaze absolutely. This is true due to the fact that the Legislator has permitted looking at the *Mabrams* hair, chest, breasts, arms, legs and feet. As for the non-*Mahram* woman, it is not allowed to see of her more than her face and hands. In addition, the word *Ghadd ul Basar* (lowering the gaze) is merely lowering one's sight.

Therefore, it is allowed for the man and woman to look at each other as long as they are looking at other than each others '*Anwrah*' and without the intention of lust. The '*Anwrah*' of the woman is her entire body except her face and hands. Thus, her neck, hair (even one hair) and any side of her head are '*Anwrah*'. Anything other than that must be covered. This is taken from the saying of Allah ﷺ: "*And they are not to show their charms except that which is apparent*". That which is apparent are the face and the hands because they are the body parts that were shown by the Muslim women in front of the Prophet ﷺ and to which he approved by his silence. Also, these are the parts of the body that are shown in *Haji* and *Salah*, as well as being the parts which were usually shown at the time of the Messenger ﷺ, i.e. at the time of the revelation of the *Ayah*.

Furthermore, there are other proofs confirming that the woman's '*Anwrah*' is her entire body while her hands and face are the only exception. The Messenger of Allah ﷺ said: **“The woman is ‘Awrah.”** He also said: If the woman reaches the age of puberty, she is not permitted to show but her face and what is beyond this (point), where he held his arm and left a distance of a fist or so between his fist and the hand. In another report, he ﷺ said to Asmaa bint Abu Bakr: **“O Asmaa, if the woman reaches the age of puberty, nothing should be seen of her but this and this”** - pointing to his face and hands. These are clear and explicit evidences that the entire

body of the woman is '*Anwrah*' with the exception of the face and hands, and that the woman is obliged to cover her '*Anwrah*' i.e. her entire body with the exception of the face and hands.

As for the material used for covering the body of the woman, the Legislator did not specify a specific attire to cover the '*Anwrah*'. The Legislation merely said: and not to appear from her i.e. the '*Anwrah*' should not appear, they are not to show, she is not allowed to show, and it is not fitting to be seen from her. Thus, any type of clothing that covers her entire body except her face and hands is considered a covering (*Saatir*) whatever its shape. So, the long dress, the pants, skirt or the socks are all considered covering (*Saatir*). This is because neither the type of clothes nor the shape of clothes has been specified by the Legislator. Therefore, every cloth that covers the '*Anwrah*' i.e. the '*Anwrah*' is not seen through it, is considered legally valid to cover the '*Anwrah*' regardless of its shape, type and number of pieces.

However, the Legislator stipulated that clothes must cover the skin. This means the clothes must hide the colour of the skin, for example, it should not be identified as white, red or black. In other words, whatever is used to cover the '*Anwrah*' must do so in such a way that the colour of the skin is not known. If the clothing is thin enough to let the colour of the skin be seen, then that clothing is unfit to cover the '*Anwrah*'. The '*Anwrah*' in such cases is considered to be revealed, for the covering is not considered valid unless it conceals the skin. 'Aisha, may Allah be pleased with her, reported that Asmaa bint Abu Bakr entered upon the dwelling of the Messenger of Allah ﷺ while wearing thin clothes. He ﷺ turned his face away and said: **“O Asmaa, if the woman reaches puberty, it is not allowed to be seen from her except this and this.”** The Messenger of Allah ﷺ did not consider the thin garment to be covering the '*Anwrah*'. He ﷺ considered Asmaa to have revealed her '*Anwrah*', to which he reacted by turning his face away and commanded her to wear a garment, which would cover her '*Anwrah*'. This is further illustrated by the *Hadith* of Usama where the Messenger ﷺ inquired from him about the *cuptiyah* (thin garment) and to which he replied that he dressed his wife in it. The Messenger ﷺ, in response said: **“Command her to wear a ghilalah (under garment) underneath it, for I fear it might describe the size of her bones.”** The *cuptiyah* cloth is a type of cloth that is thin. Once the Messenger ﷺ found out that Usama dressed his wife in it, he commanded him to tell her to wear a garment under it in order for her skin not to appear through the *cuptiyah* cloth. The Messenger ﷺ said: **“Command her to**

wear a ghilalah under it". He gave his reason for this command by saying: **"For I fear it might describe the size of her bones."** The word he ﷺ used was *tasif*. Such a word is used in reference to something that is transparent. Thus his saying *Tasif* is derived from the verbal noun *wasf*. *Wasf* is only used for something that shows what is behind it, and not for something that describes the form of the body behind it. That is why He ﷺ said *Tasif* and not *Tushakkil*, i.e. I fear that it will reveal what is behind it, meaning the size of the bones, that is, their colour, not their shape. Both of the above mentioned *Abadith* are clear that the Legislator stipulated that the material used to cover the '*Anrah* must cover the skin in such a way that it does not reveal what is behind it. Therefore, the woman must use a cloth that is not too thin in order to cover the '*Anrah*.

This is the subject of covering the '*Anrah*. This subject should not be confused with the woman's dress in public life, or the *Tabarruj* (revealing the beauty) portrayed by some types of clothes. Even though a garment covers the '*Anrah*, it does not mean that the woman is allowed to wear it in public, whilst in public a specific type of clothing has been specified by the Legislator. To merely use something that covers the '*Anrah* while in public is not sufficient. So trousers, for example, do cover the '*Anrah*, but still cannot be worn alone in public i.e. it is not proper to be worn in the main street. This is because there is a specific dress that *Shar'a* obliged to be worn in the main street. If the woman disobeyed the command of the Legislator and wore clothes different from those determined by the Legislator, she would have sinned. The issue of covering the '*Anrah* therefore, must not be confused with the woman's dress in public. Similarly, the issue of covering the '*Anrah* must not be confused with the issue of *Tabarruj*. Trousers for example, as long as they are not made of thin material, do cover the '*Anrah*, but this does not mean that a woman can wear them in front of non-mahram men in such a way that she would be revealing her beauty and charm. While she would be covering her '*Anrah* in this case, she would be in a state of *Tabarruj*, which is forbidden by the Legislator. So, the fact that the woman has her '*Anrah* covered, does not mean that her clothing prevents her from being in a state of *Tabarruj*. Consequently, there should be no confusion between the issues of covering the '*Anrah* and *Tabarruj*. Each is different from the other.

With regard to the woman's dress in public life, the Legislator ﷺ has obliged her to wear a wrap (*Jilbab*) which conceals her (home) clothes and

drapes down until it covers her feet. If she does not have such a wrap (*Jilbab*), she must borrow one from a neighbour, female friend or relative. If she is unable to borrow one, she is not allowed to go out without such a cloth. If she leaves without a wrap over her (home) clothes, she would be sinful, for she has abandoned an obligation from Allah ﷻ. This is in reference to the lower portion of woman's clothes. As for the upper portion, she must have a *Khimar* (head cover) or anything similar, which covers the entire head, the neck and the opening of the garment on the chest. Such a *Khimar* should be available when she goes out in public as this constitutes the upper portion of the woman's dress in public life. Once the woman has these two items of clothing, she is allowed to leave her home. If the woman does not have these two pieces of clothes, she is not allowed to go out at all. This is because the command to wear these two pieces is general and it will remain so, since there is no proof to make an exception to that.

As for the evidence which obliges these two items of clothing to be worn in public life, it is the saying of Allah ﷻ with respect to the upper part of the clothing:

وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ

"Let them draw their head-coverings (*khumur*) over their necks and bosoms (*juyub*). And let them not display (more of) their charms to any but their husbands..."

[An- Nur: 31]

As for His ﷻ saying regarding the lower half:

يَا أَيُّهَا النَّبِيُّ قُلْ لِّأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءِ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ

"Oh Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks (*jalabeeb*) all over their bodies" [Al- Ahzab: 59]

Additionally, it has been narrated from Umm Atiyya (ra.), who said: The Messenger of Allah ﷺ ordered us to bring out the young women, the menstruating women and veiled women for the two Eid festivals. The menstruating women were to keep away from prayer, yet witnessing the goodness and the *Daw'ah* (address) to the Muslims. I asked, "O Messenger

of Allah, what about one who does not have a *Jilbab*?” He said: **“Let her use the Jilbab of her sister”**. These evidences are clear in their indication of a woman's dress when in public. Allah has thus described accurately, completely and comprehensively in these above verses clothing which He ﷻ has obliged the woman to wear in public life. Allah ﷻ has said with respect to the upper part of a woman's clothing:

وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ

"Let them draw their head-coverings (khumur) over their necks and bosoms (juyub)"
[An- Nur: 31]

i.e., to drape their head-coverings over their necks and bosoms and to conceal the collar of the shirt and garment from the neck and chest. As regards the lower part of a woman's clothing He ﷻ said:

يُذْنِبْنَ عَلَيْهِنَ مِنْ جَلَابِيبِهِنَّ

"To draw their cloaks all over their bodies" [Al- Ahzab: 59]

i.e. to drape their garments over their bodies which they wear over their normal clothes when going out, wearing a cover (*Mula'a*) or sheet (*Milbafa*) of cloth which is draped down. Concerning the general manner in which this clothing should be worn Allah ﷻ has said:

وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا

"And they do not show off their charms (Zeenah) except only that which is apparent"
[An- Nur: 31]

The objects of charm in terms of the parts of the body including ears, arms and lower leg should not be shown except of that which normally appeared of her at the time this verse was revealed, i.e. the hands and face. According to this strict description it is clearly evident what the dress of the woman is in public life. The *Hadith* of Umm Atiyya explains very clearly the obligation on her to wear a garment which covers her normal clothes when she goes out. When she said to the Messenger (peace and blessings be

upon him): “Oh Messenger of Allah what about one who does not have a *Jilbab*?” The Messenger ﷺ ordered her, **“Let her use the Jilbab of her sister”**. When she said to the Messenger that she did not have a garment to wear over her clothing so that she may go out, he ﷺ ordered her to borrow one from her sister. This means that if she is unable to borrow one then it would not be correct for her to go out. This is an indication (*Qarina*) that the order in this *Hadith* constitutes an obligation (*Wujub*). It is obligatory therefore, for the woman to wear a *Jilbab* over her normal clothes when she wishes to go out.

It is stipulated that the *Jilbab* is draped down to the floor until it conceals the feet because Allah ﷻ says in the *Ayah*: *“to draw their cloaks (Jalabeeb) all over their bodies.”* [Al- Ahzab: 59] i.e. they should drape their Jilbabs because the preposition *min* here is not partative but explanatory. In other words they should drape their cover (*Mula'a*) and sheet (*Milbafa*) down towards the floor. Since it has been narrated on the authority of Ibn Umar that the Messenger of Allah ﷺ said: **“On the Day of Judgement, Allah will not look with mercy towards the one that trails his garment behind him/herself in haughty pride”**. Umm Salama asked: **‘What are the women to do with the hems of their dresses?’** He answered: **‘Let them increase their hems the length of a hand span’**. She enquired: **‘Then their feet will be uncovered!’** He then replied: **‘Let them increase a fore arm’s length and no more’**”. This clearly shows that the garment which is worn over one's clothes i.e. the cover (*Mula'a*) and sheet (*Milbafa*) - should be draped down towards the floor until it covers the feet. Even if the feet were to be concealed by wearing socks or shoes, that will not substitute the draping of the garment down towards the floor in the manner which indicates that it has been draped. It is not necessary to cover the feet (by the draping of the garment) if the feet are concealed (by wearing shoes and socks). But the draping of the garment must be done, the *Jilbab* must come down towards the floor in a clear manner such that it is understood that it is the dress of public life, which the woman is obliged to wear. The draping must be plain to see in accordance with the saying of Allah ﷻ: *“Draw down their Jilbabs.”* [Al- Ahzab: 59]

It is clear from this that the woman is obliged to have a wide and loose fitting (baggy) garment, which she wears over her normal clothes in order to go out. If she does not have such a garment and she wishes to go out then she should borrow one from her sister, i.e. she should borrow the dress

from any Muslim woman, which is worn over her home clothes. If she did not find someone to borrow from, she should not go out until she finds a garment to wear over her home clothes. If she goes out wearing her home clothes without a wide and loose fitting garment which drapes down towards the floor then she would be sinful even if her entire 'Anrrah was covered. Wearing a wide and loose fitting garment, which drapes down towards the floor until the feet, is obligatory (*Fard*). If she does not wear this garment, she will be going against this *Fard* and is sinful in the sight of Allah ﷻ. She will be punished by the state with the penalty of *T'aazeer* (discretionary punishment).

Two issues remain to be discussed with regards to the woman looking at the man and the man looking at the woman. The first issue is the presence of male non-*Mahrams* in houses with the permission of their occupants, and their looking at the women who are attired in their normal home clothes and seeing the parts of the woman's body which exceed the limit of the hands and face. The second is the issue of non-Muslim and even Muslim women in public who display more than their hands and face. These two issues are a reality and so is the reality of their affliction on Muslims. Therefore, the ruling of Allah ﷻ with regards to these two issues must be clarified.

As for the first issue, there may be brothers or relatives living together in the same house with the wives of each appearing before each other in their home clothes, with their hair, neck, arms and lower legs showing as well as anything else the home clothes may reveal. Her brother-in-laws or her non-mahram relatives look at her in the same way as her brothers, father and other such *Mahrams* look at her, even though her brother-in-law is *non-Mahram* like any other *non-Mahram*. Similarly, relatives visit each other such as cousins (on the maternal and paternal sides), and other such non-mahram relations or non-relatives. It happens that they greet the women and sit with them whilst they are attired in their normal home clothes that show more than their hands and face such as their hair, neck, arms and lower legs. The *non-Mahram* men deal with their uncovered female relatives as if they are *Mahrams*. Sadly, this problem is widespread and most Muslims are afflicted by it and they think it is permitted (*Mubah*). The ruling concerning this is that Allah ﷻ has absolutely forbidden the woman to be an object to be looked at or for sensual pleasure. He made the sensual pleasure an exception for spouses and then He made the charms i.e. the gaze at it, an exception for

twelve categories of people in addition to them and those that are similar to them such as the maternal and paternal uncles. Allah ﷻ made an exception of the woman showing her hands and face to all men. The sensual pleasure, that is, the lustful look is completely *Haram* except for the husband. Looking at just the hands and face as a mere look is undoubtedly permitted (*Mubah*) without restriction. Looking at more than the hands and face is absolutely *Haram* except for the *Mahrams* whom Allah ﷻ has mentioned.

Previously discussed was the *Shari'ah* ruling with regards to public life as can be found in the texts (*Nusus*). Regarding the private life, the Legislator has permitted the woman to reveal more than the hands and face of that which normally appears when she does the housework. Allah ﷻ said:

يَا أَيُّهَا الَّذِينَ آمَنُوا لِيَسْتَأْذِنَكُمْ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا
الْخُلُمَ مِنْكُمْ ثَلَاثَ مَرَّاتٍ مِنْ قَبْلِ صَلَاةِ الْفَجْرِ وَحِينَ تَضَعُونَ ثِيَابَكُمْ
مِنَ الظَّهِيرَةِ وَمِنْ بَعْدِ صَلَاةِ الْعِشَاءِ

"Oh you who believe! Let your legal slaves and slave-girls, and those amongst you who have not reached the age of puberty ask your permission (before they come to your presence) on three occasions; before fajr (morning) prayer, and while you take off your clothes for the noon day (rest), and after ishaa (late-night) prayer" [An- Nur: 58]

Allah ﷻ has ordered the boys who have not reached the age of puberty, and slaves, not to call upon women at those three times. He then permitted them to enter at other than those three times:

ثَلَاثُ عَوْرَاتٍ لَكُمْ لَيْسَ عَلَيْكُمْ وَلَا عَلَيْهِمْ جُنَاحٌ بَعْدَهُنَّ طَوَافُونَ عَلَيْكُمْ

"These three times are of privacy for you, other than these times there is no sin on you or on them to move about". [An- Nur: 58]

It is clear that other than at those three times, young boys and the slaves of women can visit women without their permission whilst wearing their home clothes. So it is understood that the woman is allowed to reside in the house whilst attired in her home clothes, and permitted for her to appear in

these clothes before young boys and her slaves. Thereupon, the woman is allowed to live in her house in her home clothes without any doubt, and she will not be committing any sin. It is permissible for young boys and her slaves to enter her home without permission and to see her in such a condition. Similar to slaves are the servants who work in the house even if they are non-mahram men. Since the verse justifies the slave entering without permission by the fact that they move about them, as Allah ﷻ said:

طَوَّافُونَ عَلَيْكُمْ بَعْضُكُمْ عَلَى بَعْضٍ

"Or to move about attending to each other". [An- Nur: 58]

i.e. because they move about you, or, they move about them. This reason (*Illa*) that exists for the slave, exists for the servant and all those similar to the servant. Accordingly, the woman in private is not obliged to cover that which exceeds the hands and face in terms of what normally appears when she is doing her household work except if she is naked or semi-naked, that is except in those three circumstances.

As for those other than young boys, slaves and servants, Allah ﷻ has clarified the judgement on them in the private life as He ordered them to seek permission before they enter:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا

"Oh you who believe! Enter not houses other than your own, until you establish familiarisation and greet their inhabitants." [An- Nur: 27]

Allah ﷻ has commanded that the Muslim seeks permission (*Istizān*) (for which He has used the word *istinas* meaning familiarisation) when he wishes to enter a house other than his own. When he wishes to enter his own house it is not necessary for him to seek permission. The cause of revelation (*Asbab Nuzul*) for this verse can be seen when a woman from the Ansar said: "Oh Messenger of Allah! I live in the house in such a state (condition) that I do not wish anyone to see me. Neither my father nor my son. But my father comes and enters my house (without permission). Menfolk from my family continue to enter whilst I am in such a state. So what shall I do?" The verse of *Istizān* (seeking permission) was then revealed. If the cause of revelation

is linked with the wording (*Mantuq*) and meaning (*Maflum*) of this *Ayah* it would indicate that the issue in the private life is not the covering or not covering of the 'Anrah, rather it is the woman's attire of her home clothes. Allah ﷻ did not order the women not to wear home clothes or to screen themselves but rather ordered that men seek permission before they enter. In this particular situation there is no difference if they are *Mabrams*, non-*Mabrams*, men or women. The father and the foreign man (*Ajnabi*) are thus the same as the man and the woman, the only exceptions being young boys, slaves and servants. Consequently, a man living with his wife, in a house where another man or woman resides, has the same ruling as living with the brother and the father, whether *Mabram* or non-*Mabram* (*Ajnabi*). There is no blame on the woman if she appears in her home clothes in private. As for the man, he must seek permission if he wishes to enter a house other than his own.

As for the man looking at the woman in her home clothes, this is a different matter since it relates to looking, whether it is in private or elsewhere. Allah ﷻ has forbidden the non-*Mabram* from seeing more than the hands and face while permitting that to the *Mabrams*. He ordered men to lower their gaze when it exceeds the hands and face. Allah ﷻ has however forgiven the look, which is not a full glance. The prohibition of looking at more than the hands and face is clear. The lowering of the gaze from that which exceeds the hands and face, becomes evident where Allah ﷻ commands:

قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ

"Tell the believing men to lower from their gaze" [An- Nur: 30]

What is meant here is the lowering of the gaze from that which exceeds the hands and face as evidenced by the permissibility of looking at the face and hands. Bukhari narrated: Said b. Abu al-Hasan said to al-Hasan: "The wives of the non-Arabs reveal their chests and heads." Al-Hasan responded: "Divert your gaze." In the *Hadith* regarding the prohibition of sitting in the streets he said: "Lower your gaze," that is, whilst in public women may reveal more than their hands and face in which case men are commanded to lower their gaze and not look at all. When Allah forbade the look He prohibited that which exceeds the hands and face which He defined as the premeditated look. As for the non-premeditated look, He did not forbid it

or order its abstention but ordered that the gaze should be lowered as

He ﷺ says:

يَغُضُّوا مِنْ أَبْصَارِهِمْ

“lower from (min) their gaze” [An- Nur: 30]

The preposition 'Min' here is partative, indicating that they should lower a portion of their gaze, which means the permissibility of the partial gaze, that is the ordinary gaze, and not the premeditated look.

Accordingly, it is permitted for a man to live with his relatives. In this respect the *Mahram* and *non-Mahram* are all equal, for example, the father, brother and cousin. There is no harm for the woman to appear in her home clothes in front of those living in the same house with her husband or brother. The man who resides therein is obliged to lower his gaze. There is no harm for him to look at her normally whilst she is attired in her home clothes except in the three circumstances, i.e. except in the three mentioned time periods, that is, except the situation in which she will be in the three (stipulated) times.

As for those entering the house from the outside whether relatives, non-relations, *Mahrams* or *non-Mahrams*, they are all obliged to seek permission before they enter. In the case of *Mahrams* entering the house, the woman is not required to cover herself from them because it is permitted for them to look at her charm, i.e. her '*Anrrah*'. If the visitors are *non-Mahrams*, the woman is obliged to conceal her charm from them, showing no more than her hands and face. If she does not comply and remains in her ordinary home clothes then she will be sinful. The man is obliged in this case to lower his gaze. The difference between the visitor and the one living in the house is that the latter is not required to seek permission because it is his home and the woman is not required to do anything as she is in a private place. In the situation of a visitor going to a house, Allah ﷻ has demanded that he seeks permission. This implies that the woman should not be wearing her home clothes except if the visitor is a *Mahram* to her. The requirement of her to cover herself is evidenced by the cause of revelation for the *Ayah*. So if anyone visits a woman, he must ask permission to enter, whether he is a mahram or *non-Mahram*. The seeking of permission implies that she should

cover herself from *non-Mahram*.

As for the second issue; since the onslaught of the western culture and the rule of the Muslim countries by the systems of *Kufr*, non-Muslim women have started to go out semi-naked; showing their chests, backs, hair, arms and lower legs. Some Muslim women began to imitate them and also went out in public attired in this manner, until a man could not tell the difference between a Muslim woman and a non-Muslim woman when they walk in the market or stand in a shop haggling for purchase. The Muslim men who lived in these cities were unable to eradicate this munkar by themselves. They were also unable to live in these cities without looking at these '*Anrrah*' of women. A man would inevitably look at a woman's '*Anrrah*' due to their lifestyle and the type of building in which they lived. No man could guard himself from looking at the '*Anrrah*' of women; their arms, chests, backs, lower legs and hair, no matter how much he tried not to look, except if he sat in his own house and didn't leave it. A man could not remain at home as he has to establish relations with people in terms of buying, selling, leasing, work and others similar. He could not undertake such relationships whilst guarding himself from such '*Anrrah*'. However, the prohibition of looking at such women is clear in the *Kitab* and *Sunnah* and this problem is circumvented only in two situations:

Firstly, the sudden look (*Naẓrat al-Fuja'a*) which is what he encounters whilst in public. This person is forgiven for the first unexpected look (at an '*Anrrah*') but he is obliged not to look again as has been narrated from Jarir b. Abdullah, he said: I asked the Messenger of Allah ﷺ about the sudden look (*Naẓrat al-Fuja'a*), so he instructed me to divert my gaze. It has been narrated on the authority of Ali that he said: The Messenger of Allah ﷺ told me: **“Do not follow up the (first) glance with a second look. The first is permitted for you but not the second.”**

In a situation where a *non-Mahram* man is talking to a woman whose head and arms are uncovered as well as other parts she has become accustomed to show, he must divert his sight and lower his gaze. This has been narrated by Abu Dawood: al-Fadhl b. Abbas was the Prophet's riding partner at the time when a woman from Banu Khath'am came seeking a *Hukm* (ruling), so al-Fadhl began to look at her and she at him, so the Messenger of Allah ﷺ made him turn his face from her.

Allah ﷻ Has said:

قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ

"Tell the believing men to lower from their gaze and protect their private parts".

[An- Nur: 30]

What is meant by 'lowering the gaze' is to curtail it. The solution to this problem is the lowering of the gaze by the man whilst, for example, partaking in necessary conversations with her, travelling by car or sitting on a balcony due to the intense summer heat. These are needs which are part of the necessities of the public life for man. He does not have the ability to repulse this affliction of the womens' uncovering of their '*Awrah*' and so he is obliged to lower from his gaze in accordance with the provision of the *Ayah*.

It cannot be said here: that this affliction of looking at the '*Awrah*' of women has become unavoidable and is difficult to guard against. Indeed, this principle contradicts the *Shar'a*. The *Haram* does not become *Halal* when it becomes an affliction and nor does the *Halal* become a *Haram* when it becomes an affliction. It cannot be stated that these women are unbelievers and so they should be dealt with in the same way as the slave girls. Thus their '*Awrah*' is the same as that of the slave girl. This is not true because the *Hadith* is general and applies to all women, not exclusively to Muslim women. The Prophet ﷺ said: **"O Asmaa, if the woman reaches puberty, it is not allowed to be seen from her except this and this"**, and he pointed to his face and hands. The *Hadith* prohibits looking at a woman whether she is Muslim or non-Muslim and this is general applicable to all situations. The *Kafir* woman is not compared to the slave girl because the analogy is devoid of meaning.

Men who visit houses other than their own, where *non-Mabram* women reside, should lower their gaze from that which exceeds the hands and face. Those who live in the cities and are forced to go into society or deal who are in terms of buying, talking, renting, leasing or selling with *Kafir* women revealing their '*Awrah*', should lower their gaze during that time. They should limit the encounter to that which they necessarily need.

With regard to a handshake, between a man and a woman, it is permitted with no barrier between them due to what has been established in the *Sahih* Bukhari regarding Umm Atiyya. She said: **"We gave our Bay'a to the Messenger of Allah ﷺ, so He ﷺ recited to us they should associate none with Allah and he forbade us from wailing (for the dead). A woman among us withdrew her hand....."** The pledge used to be taken by the shaking of hands. She withdrew her hand and retracted it after extending it for the pledge. This also implies that the others did not withdraw their hands and they took the pledge by shaking hands. Also the meaning (*Mafhum*) of the saying of Allah ﷻ *"Or you have touched the women"* [An-Nisa 43] with its wording that includes all women regarding that touching invalidates ablution (*Wudu*), indicates the restriction of the rule to the invalidation of *Wudu* by touching of women. Thus touching them without desire, is not *Haram* and so shaking their hands is not *Haram* either. Just as the woman's hand is not '*Awrah*', and it is not forbidden to look at her without desire, handshaking is not forbidden either.

The permissibility of the shaking of hands is contrary to the act of kissing. A man's kissing of a (non-*Mabram*) woman and vice versa is forbidden because it is one of the preludes to fornication (*Zina*). It is the nature of such a kiss that would normally be a prelude to *zina*, even if there was no actual desire in it and it did not lead to *zina*. The Prophet ﷺ said to Maiz, when he came to him demanding that he be purified because he had committed fornication; **"perhaps you kissed"**. This indicates that such kisses are a prelude to *zina*. The verses and *Ahadith*, which prohibit *Zina*, include the prohibition of all the preludes to it even the touching, if by its nature it constitutes a prelude to *zina*. Such preludes take place if a person who has designs on a woman, wishes to seduce or kiss her, hold her tightly, or embrace her similar to what takes place between some of the disgraceful youth today. This kind of kissing is prohibited even if it was for the purpose of greeting someone on return from a journey as the nature of such a kiss between young men and women acts is a prelude to *zina*.

7

It is not obligatory for the Muslim woman to cover her face

The view that the veil (*Hijab* or face cover) has been made compulsory for women in Islam, by which their faces, excluding the eyes, should be covered, is an Islamic opinion. Some Mujtahid-Imams from the mazahib have taken this view. Another Islamic opinion is that veil has not been made compulsory for women in Islam and that their faces do not have to be covered under any circumstance. This view has also been held by some *Mujtahid-Imams* from amongst the *Mazahib*. This is one of the serious social problems as the adoption of either of these two opinions, will effect the style of the Islamic life. A comprehensive exposition of the Shari'ah evidences relating to this problem, by its study, pursuance and application to the problem is imperative so as Muslims can only adopt the strongest opinion in terms of the evidence and in order that the Islamic State adopts the strongest opinion according to the preponderance of the evidence.

Indeed, for nearly half a century discussions concerning women have taken place. These discussions were generated by the disbelieving colonialists in the minds of those infatuated by the West, and smitten by its culture and viewpoint about life. They attempted to insert un-Islamic opinions into Islam and corrupt the Muslims *Aqeedah*. The colonialists inserted the notion of veiling (*Hijab*) or unveiling of women. The intellectuals amongst the *Ulama* did not challenge these people. It was authors, men of letters and narrow minded educated people who confronted them and led to the strengthening of the views of those smitten by the western culture. This made their thoughts the subject of study and discussion despite the fact that they were western thoughts, which were initiated to attack Islam, corrupt the Muslims and cause doubt concerning their *Deen*. Indeed, these discussions did take place and their remnants and effects are still present today. However, they do not merit study or reach the status of a legislative

and societal discussion. The correct discussion only concerns the *Shari'ah* rules derived by the *Mujtahidin* in which they relied on a *Daleel* or a semblance of a *daleel* (*Shubhat Daleel*) and not the study of the views of writers, designations of agents, the sophistry of the deceived, and the lies of the ones enamoured by the western culture. As for what the *Mujtahidin* have stated by way of derivation from the *Shari'ah* evidences, this what should be made the subject of study and discussion from the legislative point of view. In addition to the views of *Mujtahidin*, the views of certain *Fuqaha*, sheikhs and those partisan to *Hijab* will be studied in order to eliminate any doubt from their minds. The views of the *Mujtahidin* and their evidences will be examined until the strongest view is apparent and whoever considers this view preponderant is required to act according to it and work to apply it.

Those who advocated the veil took the opinion that the '*Anrah* of the woman includes the whole body except the hands and face, a matter which only applies in prayer. Whilst not praying, they said that her whole body is '*Anrah*, including the hands and face. This opinion is based on their view of the *Kitab* and *Sunnah*.

As for the *Kitab*, Allah ﷻ says:

وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَاسْأَلُوهُنَّ مِنْ وَرَاءِ حِجَابٍ

"And when you ask (his wives) for anything you want, ask them from behind a screen (*Hijab*)". [Al- Ahzab: 53]

The verse is clear in terms of its imposition of the screen (veil) on them. Allah ﷻ says:

يَا أَيُّهَا النَّبِيُّ قُلْ لَأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءَ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ ذَلِكَ أَدْنَى أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ

"Oh Prophet ! Tell your wives and your daughters and the woman of the believers to draw their cloaks all over their bodies. That will be better, that they should be known so as not to be annoyed." [Al- Ahzab: 59]

They maintained that the meaning of 'to draw their cloaks all over their bodies' is that they should cast it over their persons and conceal their faces and figures with them. They thought that women in the early period of

Islam followed the custom in *Jahiliyya*, thus indecently wearing a chemise and a *Khimar* (head cover), with no difference between a free woman and a slave girl. The devious amongst the youth (of Madinah) used to molest the slave girls when they used to go out through the palm trees in the fields to answer the call of nature. Sometimes they would molest free women and claim that they were slave girls, they would say we thought that so and so is a slave girl. Free women were thus ordered to differ in their attire from the clothing of slave girls i.e. by wearing a loose outer garment (*Ardiya*) and cover (*Malahif*), and by covering their heads and faces in order to look modest and walk briskly so that the wishful do not desire anything of them. This was considered more appropriate so that they are recognised and not molested. Some amongst them say (with respect to the part of the verse); that they should be known that there is an elision of the la (of negation). In other words it is more appropriate that attractive and non-attractive women should not be recognised so that they are not antagonised. Allah ﷻ also says:

وَقَرْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُولَى

"And stay in your houses, and do not display yourselves as in the times of ignorance".
[Al- Ahzab: 33]

They said that Allah's command to women to stay in their houses is an evidence for the veil.

As for the *Sunnah*, they base their opinion on the narration that the Prophet ﷺ said: **"The woman (herself) is 'Awrah"**, and because of the Prophets saying: **"If anyone of you (the women) has a (male) slave who wants to free himself (by buying himself) and he possessed the price, you should seclude yourself from him"**. And due to what has been narrated from Umm Salama who said: Hafsa and I were sitting with the Prophet ﷺ when Ibn Umm Maktum asked permission to enter. So the Prophet said: **"seclude yourselves from him"**. So I said "Oh Messenger of Allah. He is blind, he cannot see." He ﷺ said: **"Are you both also blind. Can you not see him?"** Abu Dawood narrated that: Al-Fadhl b. Abbas was the Prophet's riding partner when a woman from Banu Khath'am came seeking a *Hukm*. Al-Fadhl began looking at her and she at him, so the Messenger of Allah made al- Fadhl turn his face away from her. Jarir b. Abdullah narrates: "I asked the Messenger of Allah about the sudden glance (*Nazrat al-Fuja'a*), so

he instructed me to look the other way." It has been narrated from Ali (ra) that he said: "The Messenger of Allah ﷺ told me: **"Do not follow up the (first) glance with a second look. The first is permitted for you but not the second."**

These are the evidences of those who advocate *Hijab* and say that a woman's entire body is 'Awrah. However, they are evidences, which do not apply to the issue they are quoted for, because none of them relates to the subject at hand. As for the *Ayah* of *Hijab* and the verse "*stay in your houses*", there is absolutely no connection between them and the wives of the Muslims. Both are specific to the wives of the Messenger ﷺ as the verse explicitly indicates when it is read in full. It constitutes a single verse interlinked by words and meaning. The (full) text of the *Ayah* is:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتَ النَّبِيِّ إِلَّا أَنْ يُؤْذَنَ لَكُمْ إِلَى طَعَامٍ غَيْرِ نَظِيرٍ إِنَّمَا وَلَكِنْ إِذَا دُعِيتُمْ فَادْخُلُوا فَإِذَا طَعِمْتُمْ فَانْتَشِرُوا وَلَا مُسْتَأْنَسِينَ لِحَدِيثٍ إِنَّ ذَلِكَ كَانَ يُؤْذِي النَّبِيَّ فَيَسْتَحْيِي مِنْكُمْ وَاللَّهُ لَا يَسْتَحْيِي مِنَ الْحَقِّ وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَاسْأَلُوهُنَّ مِنْ وَرَاءِ حِجَابٍ ذَلِكُمْ أَطْهَرُ لِقُلُوبِكُمْ وَقُلُوبِهِنَّ وَمَا كَانَ لَكُمْ أَنْ تُؤْذُوا رَسُولَ اللَّهِ وَلَا أَنْ تُنْكِحُوا زُجُوجَهُ مِنْ بَعْدِهِ أَبَدًا إِنَّ ذَلِكَ كَانَ عِنْدَ اللَّهِ عَظِيمًا

"Oh you who believe! Enter not the Prophet's houses, except when permission is given to you for a meal, (and then) not (so early as) to wait for its preparation. But when you are invited, enter, and when you have taken your meal, disperse, without staying for a conversation. Verily, such (behaviour) annoys the Prophet, and he is shy of (asking) you (to go), but Allah is not shy of telling you the truth. And when you ask (his wives) for anything you want, ask them from behind a screen (Hijab) that is purer for your hearts and for their hearts. And it is not (right) for you that you should annoy the Messenger of Allah, nor that you should ever marry his wives after him. Verily! With Allah that shall be an enormity". [Al- Ahzab: 53]

So the verse is a text concerning the wives of the Prophet ﷺ and is specific only to them. It has no connection to the wives of the Muslims or to any woman other than the wives of the Messenger ﷺ. Supporting the fact that this verse is specific to the wives of the Messenger ﷺ is the narration from 'Aisha(ra) who said: **"I was eating food (Hais) with the Prophet ﷺ in a dish. Umar passed by, so the Prophet ﷺ invited him in and he ate. My**

finger touched his, Umar said: ‘Had my view about you (the Prophets wives) been taken, no one should have seen you. Then the seclusion (Hijab verse) was revealed’”. This is also supported by the narration that Umar said: “O Messenger of Allah, the righteous person and the Fajir one are admitted to you. Have you not secluded the mothers of the believers?” Then Allah revealed the verse of al-Hijab. Also it was narrated that Umar passed by the Prophet's wives while they were with the women in the Mosque, he said: “If you secluded yourselves you would have status over the women as your husband has the status over the men.” Zainab (may Allah be pleased with her) said “O son of al-Khattab! Indeed you're more concerned about us while the *Wahy* comes down in our houses.” It was not long after that, that the *Ayah* of *Hijab* was revealed. Therefore, the text of the *Ayah* and these *Abadith* are definite in meaning that they were revealed regarding the wives of the Prophet ﷺ and for none other.

As for the verse: “And stay in your houses”, it is also specific to the wives of the Messenger ﷺ. The following is the complete text:

يَا نِسَاءَ النَّبِيِّ لَسْتُنَّ كَأَحَدٍ مِنَ النِّسَاءِ إِنِ اتَّقَيْتُنَّ فَلَا تَخْضَعْنَ بِالْقَوْلِ فَيَطْمَعَ الَّذِي فِي
قَلْبِهِ مَرَضٌ وَقُلْنَ قَوْلًا مَعْرُوفًا وَقَرْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُولَى
وَأَقِمْنَ الصَّلَاةَ وَآتِينَ الزَّكَاةَ وَأَطِعْنَ اللَّهَ وَرَسُولَهُ إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ
أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا

"Oh wives of the Prophet! You are not like any other women. If you keep your duty (to Allah), be not soft of speech, lest he in whose heart is a disease should be moved with desire, but speak in a fitting manner. And stay in your houses, and do not display yourselves as in the days of ignorance (Jahiliyya), and perform As-Salat, and give Zakat and obey Allah and His Messenger. Allah wishes only to remove Ar-Rijs from you, Oh members of the household (of the Prophet) and to purify you with a thorough purification". [Al- Ahzab: 32-33]

Thus, it is explicit that the verse was specifically revealed concerning the Prophets wives because the speech is addressed to them and is specific to them; *"Oh wives of the Prophet! You are not like any other women"*. There cannot be a text more informative and indicative than the fact that this verse was revealed concerning the Prophet's wives and that it is particular to them.

This understanding is confirmed in the last part of the speech of Allah at the end of the verse itself;

إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا

"Allah wishes only to remove Ar-Rijs from you, Oh members of the household (of the Prophet) and to purify you with a thorough purification" [Al- Ahzab: 33]

It is clear that this description is specific to the wives of the Prophet and that He has instructed them with the foregoing in order to remove from them the rijs and purify them because they belong to the household of the Prophet. This has also been confirmed by the verse that directly follows it. After His ﷺ saying: *"to purify you with a thorough purification"*, Allah ﷻ says:

وَاذْكُرْنَ مَا يُتْلَى فِي بُيُوتِكُنَّ مِنْ آيَاتِ اللَّهِ وَالْحِكْمَةِ إِنَّ اللَّهَ كَانَ لَطِيفًا خَبِيرًا

"And remember (Oh you members of the Prophets household, that which is recited in your houses of the Verses of Allah and Al-Hikmah. Verily, Allah is Ever Most Courteous, Well-Acquainted with all things" [Al- Ahzab: 34]

Thus, Allah ﷻ reminds them that their houses are the cradle of revelation (*Wahy*) and He has commanded them not to forget what is recited in them from the Qur'an.

These two verses are clear in that they concern the Prophet's wives and that they are specific to them. There is no indication in any of the two verses that the command is intended for Muslim women other than the Prophet's wives. There are yet other verses which are specific to the wives of the Messenger ﷺ such as the saying of Allah ﷻ: *"And nor that you should ever marry his wives after him"*. So it is not permitted for the Prophet's wives to marry after him contrary to the example of Muslim women who can get married after the death of their husbands. Both verses of *Hijab* are specific to the Prophet's wives just as the verse, which prohibits their marriage after the Prophet ﷺ.

It is not correct to say in this context that what matters is that the expression is general and that it matters little that the cause is specific. And that the cause (*Sabab*) of the revelation of the verses is the Prophet's wives but these verses are general (*Aam*) to the Prophet's wives and others. This is

not true, because the cause (*Sabab*) of revelation is an event that has happened. Thus, the event is the cause (*Sabab*) of revelation. With regards to the situation here, the wives of the Messenger ﷺ do not constitute an event that has happened, rather it is a case of a specific text that has been revealed concerning specific persons whose identity has been stated. Thus, Allah ﷻ said: "Oh wives of the Prophet! You are not like any other women." He ﷻ also said: "And when you ask them for anything you want." The personal pronoun they (*Hunna*) refers to the Prophet's wives and designates them to the exclusion of others. And that is followed by Allah's saying: "And it is not (right) for you that you should annoy Allah's Messenger", which informs us of the reason (*Illa*) for their veil (*Hijab*). All of this indicates that the two verses are texts that have come concerning the wives of the Messenger ﷺ. Therefore, the principle: What matters is the generality of expression and not the specificity of the cause (*Al-'ibra bi 'umum al'lafẓ la bi khusus as-sabab*) does not apply to these two verses.

Similarly, it should not be said that the speech (*Khitab*) to the wives of the Messenger is an address to Muslim women because the fact that a specific address for a specific person is a speech for the believers only pertains to the Messenger Muhammad ﷺ. It does not include his wives. Therefore, the speech (*Khitab*) to the Messenger ﷺ is speech to the believers. As for the address to his wives, it is specific to them because only the Messenger ﷺ is the object of emulation in each address, action or silence, as long as it does not include those things that are particular to him. As for the wives of the Messenger they are not the object of emulation because Allah ﷻ says:

لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ

"Indeed in the Messenger of Allah you have a good example" [Al- Ahzab: 21]

It is not right that the Prophet's wives should be emulated, in the sense that an action is done because they did it, or an attribute should be possessed because they have been characterised with it. This only pertains to the Messenger ﷺ because he ﷺ doesn't follow anything but the revelation.

Likewise, it should not be said that since they are the wives of the Messenger and they are pure, and since the revelation has been recited in their houses and they have been required to seclude (*Hijab*) themselves, then

other Muslim women by greater reason (*Bab-awla*) should be required to stay in seclusion (*Hijab*). This cannot be claimed for two reasons:

Firstly: this judgement is not by way of greater reason because the (principle) of greater reason (*Al-awla*) is that Allah forbids a small issue which then becomes prohibition of a large issue by greater reason (*Min bab awla*), such as the saying of Allah ﷻ:

فَلَا تَقُلْ لَهُمَا أُفٍّ

"Say not to them a word of disrespect (uff)" [Al- Isra: 23]

Thus, by greater reason a person should not beat his parents. The principle of greater reason is understood from the context of the statement such as the saying of Allah ﷻ:

وَمِنْ أَهْلِ الْكِتَابِ مَنْ إِنْ تَأْمَنَّهُ بِقِنْطَارٍ يُدِّدْهُ إِلَيْكَ
وَمِنْهُمْ مَنْ إِنْ تَأْمَنَّهُ بِدِينَارٍ لَا يُدِّدْهُ إِلَيْكَ

"Among the people of the Scripture (Jews and Christians) is he who, if entrusted with a qintar (of wealth), will readily pay it back; and among them there is he who, if entrusted with a single silver coin, will not repay it". [Al- Imran: 75]

The payment of less than a *qintar* is by greater reason and the non-payment of more than a silver coin (*Dinar*) is by greater reason. The verse of *Hijab* is not of this type because the sequence of the verse does not indicate anything other than the Prophet's wives nor does it indicate any other understanding. The expression 'wives of the Prophet' is a defective noun which cannot have any other understanding (particularly an opposite understanding). The statement is thus specific to the thing for which the text has come and does not extend to anyone else or have any other meaning. There is absolutely no issue arising in the verse by way of greater reason, whether in terms of the wording of the verse or its sequence.

Secondly: those two verses are an instruction to specific persons who have been identified by their particular attributes. The instruction, therefore, can

be at no time for people other than them, nor for people superior or inferior to them, because it is a specific description. It is an instruction to the wives of the Messenger ﷺ, as they are not like any other women and because this action annoys the Messenger.

The application of the principle: 'What matters is the generality of expression and not the specificity of the cause' has been disproved as well as the question of emulating the wives of the Messenger ﷺ. Additionally the consideration of people other than the Prophet's wives by greater reason has also been refuted, and it has been established that the text is definite in its reference to the wives of the Messenger ﷺ. It follows therefore that those two verses are specific to the wives of the Messenger ﷺ and they definitely do not include Muslim women in any way whatsoever. From this, it can be determined that *Hijab* is specific to the wives of the Messenger ﷺ and the order to remain in the house is also specific to them.

As for the second verse which is the saying of Allah ﷻ: "to draw their cloaks (*Jalabeeb*) all over their bodies", it does not indicate veiling the face at all. Neither in terms of its wording (*Mantuq*) nor in terms of its understanding (*Ma'fhum*). Nor is there a word, which indicates this whether on its own, or as part of a sentence, assuming that the cause (*Sabab*) of revelation is correct. The verse says: "*to draw their cloaks (Jalabeeb) all over their bodies*". Its meaning is that women should cast from (*Min*) their cloaks over their persons and the preposition (*Min*) here is not used partatively but only to explain (*Lil-bayan*) that they should cast it over their persons. To lower the covering means to let it drape down. To lower the clothing means to let the clothing drape down, and they lowered their clothing means they let it drape down. The *Jilbab* is a cover (*Milhafa*), used to conceal a dress and other items of clothing. It can also be clothing which covers the entire body. It is stated in the al-Qamus (dictionary) of al-Muhit: that the *Jilbab*, is in the form of the *Sirdab* or the *Sinmar*, which is the gown or a large garment for women under the cover (*Milhafa*), which is that which conceals her clothing like a cover (*Milhafa*). Al-Jawhari has stated in al-Sihah (another dictionary) that: The *Jilbab* is the cover (*Milhafa*) and some say it is a sheet (*Mulaah*). *Jilbab* has been mentioned in the *Hadith* with the meaning of *Mulaah* (sheet) which the woman wrapped over her clothes. It has been narrated on the authority of Umm Atiyya (ra.): **"We were ordered to bring out our menstruating women and veiled women in the religious gatherings and invocation of Muslims on the two 'Eid festivals. These menstruating women**

were to keep away from prayer, witnessing the blessing and call to the Muslims. I asked, "O Messenger of Allah! What if one of us does not have a Jilbab?" He said, 'Let her wear the Jilbab of her sister.'" Which means that she did not have a garment to wear over her clothes to go out in. So, the Prophet ordered her to borrow one from her sister, which she could wear over her dress. The verse makes it clear that Allah ﷻ has requested the Prophet ﷺ to tell his wives and the wives and daughters of the Muslims to wear garments over their clothes which reach right down to the feet as evidenced by the narration of Ibn Abbas: "The *Jilbab* is the *Rida* (large sheet of cloth) which covers from top to bottom."

So the verse indicates that the *Jilbab*, which is a large garment should be draped down to the bottom (feet), and does not indicate anything other than this. If this is the case, how is it possible to understand that to cast their outer garments (*Jalabeeb*) over their persons means to cast their garments over their faces? No matter how much the word *Yudnina* (to drape down) or the word *Jilbab* is interpreted within the limits of the linguistic (*Ma'na lughawi*) and juristic meaning, the verse stipulates the draping down of the garment. Draping can only mean draping it down to the bottom (feet) and not raising it to the head. Therefore, there is no evidence in this verse to prove *Hijab*. Nor is there even a semblance of an evidence, by any stretch of the imagination. The words and sentences of the Qur'an are interpreted according to their linguistic and jurisprudence meanings, it is incorrect to interpret them in any other way. The linguistic meaning clearly indicates that women have been ordered to cast their outer garments (*Jalabeeb*) over their persons, to let them lower their garment over their clothes to the floor until the feet are covered. This meaning, in terms of letting the *Jilbab* drape down, is found in the noble *Hadith*. It is narrated on the authority of Ibn Umar that the Messenger of Allah ﷺ said: **"On the day of judgement, Allah will not look with mercy towards the one who trails his garment behind him in haughty pride"**. Umm Salama asked: "what are the women to do with the hems of their dresses?" He ﷺ answered: **"Let them increase their hems the length of a hand span"**. She rejoined: "Then their feet will be uncovered! He then replied: **"Let them increase a fore arm's length and no more."** [Tirmidhi]

This is with respect to the verses that are used as evidence by those who claim that *Hijab* for Muslim women has been decreed by Allah. As for the *Abadith* which are used to prove *Hijab* they do not indicate this.

The Prophet ﷺ said: **“If anyone of you (the women) has a (male) slave who wants to free himself (by buying himself) and he possessed the price, you should seclude yourself from him”**.

And due to what was narrated from Umm Salama who said: Hafsa and I were sitting with the Prophet ﷺ when Ibn Umm Maktum asked permission to enter. So the Prophet said: **“seclude yourselves from him”**. So I said “O Messenger of Allah. He is blind, he cannot see.” He ﷺ said: **“Are you both also blind. Can you both not see him?”** Abu Dawood narrated that: Al-Fadhl b. Abbas at the time was the Prophet's riding partner when a woman from Banu Khath'am came seeking a hukm. al-Fadhl began to look at her and she at him so the Messenger of Allah made al-Fadhl turn his face away from her. Jarir b. Abdullah narrated: I asked the Messenger of Allah about the sudden look, so he instructed me to look the other way. It has been narrated from Ali that he said: The Messenger of Allah ﷺ told me: **“Do not follow up the (first) glance with a second look. The first is permitted for you but not the second.”**

There is no indication in these *Abadith* that the Muslim women should seclude themselves. In particular, the *Hadith* of Umm Salama and the Prophet's requesting of Hafsa and her to seclude themselves, is daif (weak) and cannot be advanced as an evidence. In any case, the *Hadith* is specific to the wives of the Prophet as it is a text concerning Umm Salama and Hafsa. As for what has been narrated that Aisha said: “The horseman used to pass by us while we were with the Prophet ﷺ wearing ihram clothes (of Hajj). If he came near one of us, we would draw our jilbabs from our head down to our face. Once he walked past, we would uncover our (face).” This conflicts with what has been narrated by Bukhari on the authority of Ibn Umar that the Prophet ﷺ said: **“The Muhrima (a woman in the state of Ihram) should not cover her face, or wear gloves.”** Ibn Hajar in the Fath al-Bari has stated: “The veil (*Niqab*) or *Khimar* is fastened from the nose or below the eyes.” So the *Hadith* of 'Aisha (ra) states that women in the state of *Ihram* had covered their faces when a group of horsemen passed them. The *Hadith* of Ibn Umar indicates the prohibition of wearing a *Niqab* which only conceals the lower half of the face. How can this be reconciled with respect to completely covering the face by lowering the garment over the face. With respect to the two *Abadith* it becomes clear that the *Hadith* of 'Aisha is defective in that the narration is of Mujahid from Aisha. Yahya b. Said al-Qattan has mentioned that Mujahid did not directly hear from Aisha. As

for the *Hadith* of Ibn Umar which has been narrated by Bukhari it is *Sahih*. Aisha's *Hadith*, therefore, is turned down because it is weak and conflicts with an authentic (*Sahih*) *Hadith*. Hence it is not used as an evidence. As for the *Hadith* in which al-Fadhl b. al Abbas is present, there is no indication in it to make *Hijab* compulsory. On the contrary, it is an evidence that *Hijab* is not an obligation because the Khath'ami woman was asking the Prophet about a matter whilst her face was unveiled. This is evidenced by the fact that al-Fadhl was looking at her. Another variant of this *Hadith* states: **“Thus, the Prophet took hold of al-Fadhls (beard) and turned his face away from the other side.”** This story has been narrated by Ali b. Abuy Talib who adds: **“al-Abbas said to the Prophet: ‘O Messenger of Allah, why did you turn your cousins neck?’ He ﷺ replied: ‘I saw a young man and a young woman in such a situation that I feared what effect Shaytan might have upon them’”**. The *Hadith* of the Khath'ami woman is an evidence for the absence of *Hijab* not an evidence for it. This is because the Prophet ﷺ was looking at her whilst her face was uncovered. As for the Prophets turning of al-Fadhl's gaze away, this is because he noticed that he was looking at her, and she at him, with desire as evidenced by the narration of Ali: **“I feared what effect Shaytan might have upon them”**. Therefore, he ﷺ diverted al-Fadhl's sight because he was looking at her with desire and not merely looking. The desirous look, even if it is at the face and hands, is *Haram*. As for the sudden look (*Nazrat al-faja'a*) the Prophet ordered Jarir to turn his gaze or lower it. This is the type of lowering of the gaze which is mentioned in the Qur'an:

قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ

"Tell the believing men to lower from their gaze" [An -Nur: 30]

What is intended here is the sudden look at other than the hands and face which constitutes the '*Anrrah*' and not looking at the hands and face. This is because looking at the hands and face is permitted irrespective of whether it is sudden or not, as evidenced by the permissibility of looking at a woman in the aforementioned *Hadith* of al-Khath'amiyya. This is also proven by the fact that the Prophet ﷺ used to look at the faces of women when they gave *Bay'a* to him and when he preached to them. All of which indicates that what one needs to be careful about is the sudden look at other than the hands and face. As for the *Hadith* of Ali: **“Do not follow up the (first)**

glance with a second look.” This is a prohibition from looking repeatedly and not from the mere look.

Thus, no evidence can be found to oblige *Hijab* (face covering) in the *Abadith* which have been quoted by those who claim Allah ﷻ has legislated *Hijab*. Therefore, it becomes clear that there is no evidence to say Allah ﷻ has made *Hijab* obligatory for Muslim women or that the hands and the face should be considered as '*Anrrah*, whether inside or outside prayer. The evidences which they quote have no strong reason for concluding that *Hijab* is compulsory. They are weak in narration and weak in reasoning.

As for the hands and face not being part of the '*Anrrah* and the permission for women to go out to any marketplace and roadway with her hands and face uncovered, this is proven from the Qur'an and *Hadith*.

As for the Qur'an Allah ﷻ says:

وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا

"And they do not show off their charm (Zeena) except only that which is apparent and let them draw their head coverings (khumur) over their necks and bosoms (juyub)"
[An- Nur: 31]

Allah ﷻ forbade believing women from displaying their charms (*Zeena*) i.e. forbade them from showing the place of their charm (*Zeena*) since this is what the prohibition is from. He excluded from the place of their charms that which is apparent from it, and this is an explicit exception. This means that there is a part of the woman's charm which is shown, and does not come under the (general) prohibition of women displaying the places of their charms. Nothing more remains to be said about this. So, Allah has forbidden women from displaying their *Zeena* except that which is apparent from it. As for which parts are intended by: *"except only that which is apparent from it"* [An- Nur: 31] its interpretation must be referred to two matters. First, to the transmitted tafseer (*Tafseer Manqul*) and secondly to what was understood from the expression: *"that which is apparent from it"*; and its application to what the Muslim women used to display in the presence of the Prophet ﷺ, in his time and in the time of the revelation of this verse.

As for what has been transmitted, it is narrated that Ibn Abbas in the tafseer of this verse took (the expression) *"that which is apparent from it"* to mean the hands and face. This opinion became commonly held by the mufasssireen. Imam Ibn Jarir at-Tabari says: "The most correct of these views is that which states that the intended meaning is the hands and face", and Qurtubi said: "Since the face and hands are, by custom and during worship such as in Hajj and *Salat*, most ordinarily displayed then the exception must refer to them." Imam al-Zamakhshari said: "A woman has no choice but to do things with her hands and by uncovering her face especially when she has to testify, is being tried, is getting married, or when she is forced to walk in the streets displaying her feet, especially those amongst them who are poor." This is the meaning of: *"except that which is apparent from it"*.

As for what is understood from the expression *"that which is apparent from it"*, it is clear that what used to be apparent in the time of the revelation of this verse is the hands and face. Women used to show their face and hands in his ﷺ presence and he did not object to their doing so. They used to uncover their face and hands in the market or on the road. Such incidents are innumerable. Here are a few examples:

1. Jabir b. Abd Allah said: "I attended prayer on *Eid* day with the Messenger of Allah ﷺ. He commenced with the prayer, before the *Khutbah*, without any *Adhan* or *Iqamah*. Then he rose, leaning on Bilal and addressing those present before him, commanded them to fear Allah and exhorted them to obey Him. He further admonished and warned them. Then he moved on until he came to the women whom he addressed saying: **"Give charity, for verily most of you are fuel for the hellfire"**, whereupon there arose from among the middle ladies congregation, a dark-cheeked woman who said: "Why is that, Oh Messenger of Allah"? He replied: **"Because you women make too many complaints, and you refuse to acknowledge your husband's good treatment"**. Upon hearing this the women began tossing their jewellery in charity upon Bilal's (outspread) cloth."

2. Narrated by 'Ata'a b. Rabah who said: "Ibn Abbas said to me; Shall I show you a woman who will go to Paradise (*Jannah*)"? I said: "Yes." He said: "This black woman came to Prophet ﷺ and said: 'I have epilepsy and I get uncovered, so make *dua* to Allah for me'. So he ﷺ said to her: **"If you will**

be patient the Paradise (Jannah) shall be yours. And if you want I will make dua to Allah to cure you". So she said: 'I will be patient'. She said: 'I get uncovered so make *dua* to Allah that I don't uncover myself'. So he ﷺ made *dua* for her."

3. Narrated by Fatimah b. Qays that Abu Amr b. Hafs divorced her irrevocably (by three pronouncements) when he was away from home. She went to the Messenger of Allah ﷺ and mentioned that to him. So he commanded her to spend the *Iddah* (waiting period) in the house of Umm Shareek, but then said: **"That is a woman whom my companions visit. So you had better spend this period in the house of Ibn Umm Maktum, for he is a blind man, so you can take off your garments and he will not see you"**. Thus the Prophet ﷺ accepted the daughter of Qays to be seen by men when he ordered her to spend the *Iddah* in the house of Umm Shareek. But he did not accept her to take off her garments in the house of Umm Shareek while this is visited by men, otherwise what is prohibited might appear from her, so he ordered her to move and spend her *iddah* in the house of Ibn Umm Maktum.

4. Abu Bakr narrated on the authority of Ibn Jurayj who said that 'Aisha said: "My cousin came while she was wearing her ornaments. The Prophet ﷺ came in and turned away from her (when he saw her). So I said: "Oh Messenger of Allah! She is only my cousin, a mere maiden." He said: **"Oh Aisha, when a woman reaches puberty then it is not permitted that any part of her body should be seen (by non-mahrams) except her face and what is below this"**. So he clenched his arm just above the joint of the hand leaving a space in-between for another fist to be clenched."

5. What indicates that the hand is not part of the '*Anwrah*' is the Prophet's handshaking of women in the *Bay'a*. Umm 'Atiyya said: **"We gave our Bay'a to the Messenger of Allah ﷺ, so he ﷺ recited to us they should associate none with Allah and he forbade us from wailing (for the dead). A woman amongst us withdrew her hand saying: 'so and so woman has made me happy and I want to reward her', he ﷺ said nothing, the woman went, then came back"**. This *Hadith* indicates that women used to give *Bay'a* by hand because this woman withdrew her hand after extending it for the *Bay'a*. The fact the *Hadith* states that the woman withdrew her hand when she heard the terms of the pledge (*Bay'a*), demonstrates clearly that the *Bay'a* used to take place by hand and that the

Prophet ﷺ used to take the pledge by his noble hand. As for what has been narrated about 'Aisha (ra) that she said: **"The hand of the Messenger of Allah ﷺ did not touch the (hand of) any woman other than his own wives."** This is an opinion of Aisha and an expression of the limit of her knowledge. If we compare 'Aisha's statement with this *Hadith* of Umm 'Atiyya then the latter's *Hadith* is preferred. This is because it specifies an action which happened in the presence of the Messenger ﷺ and indicates an action of the Messenger ﷺ, thus it is preferable to a mere opinion of 'Aisha. That is why transmitters preferred Umm 'Atiyya's *Hadith*. They adopted it and permitted a man to shake the hand of a woman.

These five incidents are well established in the *Abadith* which unambiguously indicate that what was shown of women is the hands and face. The fourth *Hadith* indicates that the Messenger ﷺ diverted his view away from the adorned woman because she was displaying more than what is apparent from it. Then he explained to her that it is not permitted for her to display her *Zeena* except her hands and face. This shows that the hands and face are not part of the '*Anwrah*' whether in or outside prayer because the verse is of general import (*Aam*):

وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا

"And they do not show off their charms (*Zeena*) except only that which is apparent of it" [An- Nur: 31]

As for the verse which comes after, its understanding also indicates that the hands and face are not part of the '*Anwrah*'. Allah ﷻ says:

وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ

"And to draw their head-coverings (*khumur*) over their necks and v-neck (*juyub*)".

[An- Nur: 31]

Khumur is the plural of *Khimar* and it is used to cover the head. *Juyub* is the plural of *Jayb*. It is the v-neck. Thus, Allah ﷻ has ordered that the *Khimar* should be worn round the neck and chest. This indicates the obligation to cover both areas. But He did not order that the *Khimar* should be worn over the face, thereby indicating the face is not part of the '*Anwrah*'. *Jayb* does not

mean the chest as some would assume. Rather it is the v-neck, the opening which is around the neck and the upper portion of the chest. Wearing the *Khimar* over the *Jayb* means wearing it around the shirt collar from the neck and chest. So, by ordering the covering of the head, which includes the neck and chest, this excludes the face, indicating that it is not part of the '*Anrah*. Consequently, *Hijab* (face covering) is non-existent and Allah ﷻ did not legislate the *Hijab*.

This is in terms of the evidences from the Qur'an. In addition these are evidences from the *Hadith* which show Allah ﷻ has not legislated *Hijab* and that the hands and face are not part of the '*Anrah*. Abu Dawood narrates on the authority of 'Aishah (ra), that Asmaa bint Abi Bakr entered the quarters of Allah's Messenger wearing thin clothes. The Messenger ﷺ turned his face away and said: **“O Asmaa, if the woman reaches puberty, it is not allowed to be seen from her except this and this, and he pointed to his face and hands”**. Abu Dawood narrates on the authority of Qatada that the Prophet ﷺ said: **“When a young lady begins to menstruate, it is not correct that anything should be seen of her except her face and hands excluding the wrist.”** Al-Bayhaqi narrates on the authority of Asma' bint 'Umayy that she said: “The Messenger of Allah entered the house of 'Aisha bint Abu Bakr while her sister, Asmaa bint Abu Bakr, was with her. She was wearing a *Shammi* (Syrian) dress with wide sleeves. When the Messenger of Allah ﷺ saw her he got up and went out.” 'Aisha said: “leave the room for the Messenger of Allah has seen something he does not like.” So she withdrew. Then the Messenger of Allah ﷺ entered and 'Aisha (ra) inquired as to why he stood to leave? He ﷺ said: **“Did you not see what she was wearing? It is not permitted for anything to be seen of a Muslim woman except this and this.”** He took his sleeves and covered the upper part of his hands until nothing could be seen of his hands except his fingers. Then he lifted his hands to his temples until only the face could be seen.”

These *Ahadith* are clear that the hands and face are not part of the '*Anrah*. They are also explicit that Allah ﷻ has not legislated the covering of the hands and face, and He has not legislated *Hijab*. If anything like that was legislated then it would have contradicted the text of these *Ahadith* which are not open to any other explanation (*Tafseer*) or interpretation (*Taweel*). On the contrary, they clearly and unambiguously show that the Muslim woman used to go out to the market with her face and hands uncovered, and conversed with non-mahram men whilst her face and hands were revealed. And she

made all lawful transactions with people such as buying, selling, renting, leasing, right of pre-emption, representation, whilst her hands and face were uncovered. They also show that Allah ﷻ has not legislated *Hijab* except for the wives of the Messenger ﷺ. Even though the view concerning *Hijab* is an Islamic opinion because it has a semblance of an evidence (*Shubhat al-Daleel*) and *Mujtahid-Imams* amongst the madhahib have taken this view, the semblance of a *daleel* which they use is untenable with hardly any credible reasoning apparent in it.

What remains is an issue which some *Mujtahidin* have subscribed to, namely, that *Hijab* has been legislated for women due to the fear of temptation (*Fitna*.) Thus, they say that the woman has been forbidden from revealing her face not because it is '*Anrah* but due to the fear of causing temptation *Fitna*. This view is not valid from a number of angles:

Firstly for the prohibition of unveiling the face due to the fear of *Fitna*, there is no *Shari'ah* provision whether in the *Kitab*, *Sunnah*, *Ijma'a* of the *Sahabah* and nor is there a *Shar'a* provision from a *Shari'ah* reason (*Illa Shariyya*) according to which an analogy is made. Consequently, this opinion has no *Shari'ah* value nor is it considered a *Shari'ah* rule (*Hukm Shar'i*), because a *Shari'ah* rule is the speech of the legislator, but the prohibition of unveiling the face is not included in the speech of the legislator. It is also known that the *Shari'ah* evidences have come in complete contradiction to it, and that the *Ayah* and *Ahadith* unconditionally permit the uncovering of the face and hands without being restricted by something nor being specified by a particular circumstance. Thus, the opinion that showing the face is forbidden and it is obligatory to conceal it, is an opinion which prohibits that which Allah permitted. It is an obligation that Allah ﷻ the Lord of the Worlds has not decreed. Thus, this opinion beyond not being considered as a *Shari'ah* rule, it invalidates the *Shari'ah* rules that are established by clear text.

Secondly, making the fear of *Fitna* a reason (*Illa*) for prohibiting the unveiling of the face and for the obligation to conceal it is an opinion for which there is no *Shari'ah* text whether explicitly (*Sarabatan*), by indication (*Dalalatan*), extraction (*Istanbatan*) or by analogy (*Qiyas*). Therefore, under no circumstances is it a *Shari'ah* reason (*Illa shariyya*). Rather it is a rational reason (*Illa Aqliyya*) which is of no consideration with regards to the *Shari'ah* rules. However, what is considered is the *Shari'ah* reason (*Illa Shariyya*) and none other. Accordingly, no weight is given to the fear of *Fitna* in legislating

the prohibition of showing the face or obligating the concealment of it because it is not present in the *Shari'ah*.

Thirdly the principle of: 'the means to a *Haram* is (itself) prohibited' (*Al-wasila il al-Haram muharrama*), does not apply to prohibiting the showing of the face due to fear of temptation (*Fitna*). This is because this principle requires that two conditions are met; first, the means (*Wasila*) must lead to a *Haram* by the least amount of doubt (*Bi ghalabat al-zann*), and that it must be the cause of the *Haram* such that it definitely produces the effect and does not deflect from it. Second, there must be a text prohibiting what the means (*Wasila*) leads to, and it is not to be prohibited by the mind. This is not present with regards to showing the face in fear of temptation. For they say the face should be veiled in fear of temptation and not because of the occurrence of a temptation. Consequently, showing the face due to the fear of temptation does not apply to the principle of forbidding the cause of a *Haram*, assuming that the temptation is prohibited by the *Shari'ah* for the one tempted by it, because it does not definitely lead to it. And, there is no text making the fear of temptation *Haram*. On the contrary, the *Shar'a* did not make the temptation itself *Haram* for the one who is the object of temptation of people. Rather, the *Shar'a* prohibited the one who looks from watching with temptation, and it did not prohibit it for the one who is looked at.

Abu Dawood narrates that **Al-Fadhl b. Abbas was the Prophet's riding partner at the time when a woman from Banu Khath'am came seeking a hukm (opinion), and al-Fadhl began to look at her and she at him so the Messenger of Allah made him turn his face from her. i.e. he turned the face of al-Fadhl away from her, as evidenced by another variant of this Hadith: Thus, the Prophet took hold of al-Fadhl's beard and turned his face away from the other side.** This story has been narrated by Ali b. Aby Talib to which he adds: **"Abbas said to the Prophet: 'O Messenger of Allah, why did you turn your cousins neck?' He ﷺ replied: 'I saw a young man and a young woman in such a situation that I feared what effect Shaytan might have upon them.'"** It is clear from this that the Messenger ﷺ turned the face of al-Fadhl away from the Khath'ami woman. He did not order her to cover her face. Her face was visible to him. If temptation was *Haram* for the one who was the object of temptation then the Messenger ﷺ would have ordered the Khath'ami woman to veil her face after it had transpired that al-Fadhl had looked at her, with the look of desire. However, he did not order her to do this but he turned the neck of al-Fadhl,

which indicates that the prohibition is for the one who is looking and not for the one who is looked at.

Therefore, regarding the prohibition of people's desire for the woman, there is no text which prohibits it upon the woman, by whom people are tempted. Rather the text says it is not prohibited for her. Therefore, the matter which it leads to is not *Haram* even if it had definitely led to it. However, it is permitted for the state which is working to look after the affairs of the people to move specific individuals away from the view of those who are infatuated by them, in order to make the one who tempts others inaccessible to people, if the infatuation for that person is widespread. As Umar b. al-Khattab did with regards to Nasr b. Hajjaj when he exiled him to Basra, because women used to be tempted by his good looks. This is general to men and women. So it should not be said that women must be forbidden from unveiling their faces due to the fear of temptation, even due to the occurrence of temptation. This cannot be said by using the principle of 'the means to a *Haram* is itself *Haram*'.

8

Man and Woman before the Shari'ah Commandments

Islam came with the *Shari'ah* commandments (*Takaleef Shari'ah*), which it obliged on the man and the woman. And when it clarified the Shari'ah rules (*Ahkam Shari'ah*) which treat the actions of each of them, it did not give the issue of equality (*Musawa*) or comparison (*Mufadala*) any attention nor did it give it the slightest consideration. Rather it viewed that there was a specific problem which required a solution. So, it treated it in its capacity as a specific problem regardless of whether it was a problem pertaining to a man or a woman. Thus, the solution was for the action of a human, for the problem-incident, and not for the man or woman. Therefore, the question of equality or the lack of equality between the man and woman is not the subject of discussion. This expression is not present in the Islamic legislation. Rather what exists is the *Shari'ah* rule (*Hukm Shari'*) of an incident, which has resulted from a certain human whether it be a man or a woman.

Hence, equality between men and women is not an issue for discussion, nor is it an issue which forms a subject in the social system. The woman being equal to the man, or, the man being equal to the woman is not a significant matter which has influence over the societal life nor is it a problem which is likely to occur in the Islamic life. It is but a phrase which is only found in the West. None from amongst the Muslims holds this view except those imitating the West, which has violated the woman's natural rights in her capacity as a human. Hence, she called for the restitution of these rights. This demand used the discussion about equality as a means to obtain these rights. As for Islam, it has nothing to do with these terms because it has established its social system on a firm basis which ensures communal and societal cohesion and elevation. And it secured for the man and woman true happiness which befits the dignity and honour of humankind whom Allah ﷻ has honoured in His ﷻ saying:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ

"And indeed We have honoured the children of Adam" [Al- Isra: 70]

Thus, when Islam granted the woman rights (*Huquq*) and enjoined on her certain obligations and granted the man rights and enjoined on him certain obligations, it only assigned rights and obligations which related to their interests as defined by the Legislator. It also provided solutions for their actions, in their capacity as specific actions of a particular human. Therefore, the legislator assigned the rights and obligations in the same manner when their human nature necessitated they should be granted in the same manner and it assigned them in a disparate manner when the nature of each necessitated such disparity. This equivalence in the rights and obligations is not termed equality just as it is not called inequality. Similarly the disparity in the rights and obligations is not understood to mean inequality or equality. This is because when Islam views the community, whether comprising of men or women, it looks at it in its capacity as a community of humans and nothing else. It is of the nature of a human community that it consists of men and women. Allah ﷻ said:

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ رَحَلَى مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً

"Oh mankind! Be dutiful to your Lord, Who created you from a single person (Adam), and from him created his wife (Eve), and from them both He created many men and women" [An- Nisa: 1]

The *Shari'ah* commandments (*Takaleef shariyya*) have been legislated upon this basis, and according to it, the rights and obligations of men and women have been assigned. When the rights and obligations are for the human, i.e. the obligations (*Takaleef*) which relate to man in his capacity as a human, then you will find equivalence in these rights and obligations, i.e. you will find the equivalence in the commandments (*Takaleef*). Thus, the rights and obligations will be for all, and assigned to all men and women as one, without difference or disparity. Hence, you will find that Islam did not differentiate between men and women when it invited people to the *Iman* (belief). It did

not also differentiate between men and women in the commandment of carrying the call to Islam. It made the commandments relating to worships such as prayer, fasting, Hajj and *Zakat* the same in terms of their legal obligation. It made as well the description of the moral characteristics which have come in the *Shari'ah* rules as morals for men and women without distinction and made the rules of societal transactions (*Mu'amalat*) such as buying, renting, representation, guardianship and other such societal transactions relating to mankind, the same for men and women. And it imposed punishments for breaching the rules of Allah ﷻ such as the determined punishments (*Hudud*), criminal laws (*Jinayat*) and discretionary chastisements (*Ta'zeer*) on men and women without discrimination in their capacity as humans. In addition Islam made learning and teaching an obligation for Muslims with no difference between men and women. So, in this manner Allah ﷻ has legislated all the rules pertaining to humans in their capacity as humans, the same for men and women without distinction. So, the commandments from this perspective are all the same, and the rights and obligations are also the same. The verses and *Abadith* which are found with regards to such rules have come as general (*Aam*) and inclusive (*Shaaamil*) for humans in their capacity as humans, and for the believers in their capacity as believers. Indeed, many verses stipulate that the legal obligation (*Takleef*) is for the male and for the female. Allah ﷻ said:

إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَانِتِينَ وَالْقَانِتَاتِ وَالصَّادِقِينَ وَالصَّادِقَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَاشِعِينَ وَالْخَاشِعَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّانِعِينَ وَالصَّانِعَاتِ وَالْحَافِظِينَ وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُمْ مَغْفِرَةً وَأَجْرًا عَظِيمًا

"Verily, the Muslims, men and women, the believers men and women, and the men and women who are obedient (to Allah), the men and women who are patient, the men and women who are humble, the men and women who give Sadaqat, and the fasting men and women, and the men and women who guard their chastity, and the men and women who remember Allah much. Allah has prepared for them forgiveness and a great reward" [Al- Ahzab: 35]

Also Allah ﷻ said:

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ

"It is not fitting for a believer, man or woman, when Allah and His messenger have decreed a matter that they should have any option in their decision" [Al- Ahzab: 36],

and He ﷻ said:

مَنْ عَمِلَ صَالِحًا مِنْ ذَكَرٍ أَوْ أَنْثَى وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهَ حَيَاةً طَيِّبَةً وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ

"Whoever works righteousness, whether male or female, while he (or she) is a true believer verily, to him will give a good life, and We shall pay them certainly a reward in proportion to the best of what they used to do" [An- Nahl: 97]

And He ﷻ said:

وَمَنْ يَعْمَلْ مِنَ الصَّالِحَاتِ مِنْ ذَكَرٍ أَوْ أَنْثَى وَهُوَ مُؤْمِنٌ فَأُولَئِكَ يَدْخُلُونَ الْجَنَّةَ وَلَا يُظْلَمُونَ نَقِيرًا

"And whosoever does righteous deeds, male or female, and is a true believer, such will enter Paradise and not the least injustice will be done to them even to the size of a naqir (speck on the back of a date-stone)" [An- Nisa: 124]

And He ﷻ said:

فَاسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أَضِيعُ عَمَلَ عَامِلٍ مِنْكُمْ مِنْ ذَكَرٍ أَوْ أَنْثَى بَعْضُكُمْ مِنْ بَعْضٍ

"So their Lord accepted of them, never will I allow to be lost the work of any of you, be he male or female. You are (members) one of another" [Al- Imran:195]

And He ﷺ said:

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ
وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ

"There is a share for men and a share for women from what is left by parents and those nearest related, whether the property be small or large - a legal share"

[An- Nisa: 7]

And He ﷺ said:

لِلرِّجَالِ نَصِيبٌ مِّمَّا كَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا كَسَبْنَ

"For men there is a reward for what they have earned, (and likewise) for women there is a reward for what they have earned" [An- Nisa: 32]

Thus we find all the *Shari'ah* rules relate to humans as humans whatever these rules are and however disparate and numerous they may be. Allah has legislated them as one, equally for the man and woman. Although that should not be considered as equality between men and women. Rather, they are rules legislated for humans, for the man and woman without distinction because each one is a human. And these rules are a speech from Allah ﷻ relating to the actions of humans.

When these rights and obligations, and these *Shari'ah* commandments relate to the nature of a female, in her description as a female, and they relate to the nature of her position in the community and her place in society, or when they relate to the nature of the man in his description as a male, and they relate to the nature of his position in the community and his place in society; then these rights and obligations i.e. these commandments (*Takaleef*) will be disparate between the man and woman. This is because they are not a general solution for humans but a solution for this type of human whose attribute of human nature is different from the other. Therefore, there must be a solution for this type of human, not for all humans. Hence, the testimony (*Shahada*) of two women is equal to the testimony of one man in actions which take place amongst the male community and in the public life. Such as the woman's testimony concerning rights and societal

transactions (*Mu'amalat*). Allah ﷻ said:

وَأَسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ
مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَى

"And get two witnesses out of your own men. And if there are not two men (available), then a man and two women, such as you agree for witnesses, so that if one of them (two women) errs, the other can remind her" [Al- Baqarah: 282]

The testimony of women is accepted on its own, in matters which take place amongst the female community, where there are no men present, such as a crime which is committed in the ladies' room. The testimony of one woman is sufficient for matters in which only women are familiar, such as their testimony regarding questions of virginity (*Bakara*), matronhood (*Thaynba*) and suckling (*Rada'a*). This is because the Messenger ﷺ accepted the testimony of a single woman with regards to suckling. And in certain cases Islam made the share of inheritance of the woman half the share of the man. Allah ﷻ said:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِي

"Allah commands you as regards your children's inheritance; to the male a portion equal to that of two females" [An- Nisa: 11]

This is in connection to the agnates (*Asaba*) such as sons, full brothers and half brothers through the same father, because the reality of the female with regards to this is that her financial maintenance (*Nafaqah*) is the obligation of the brother if she is poor even if she was able to work. And in certain cases Islam made the share of the woman the same as that of the man.

Allah ﷻ said:

وَأِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثَّلَاثِ

"If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of them receives a sixth; but if they were more than two, they share a third" [An- Nisa: 12]

This is with respect to the half brothers through the same mother because the *Kalala* is the one cut off without descendants, ascendants, full brothers or half brothers through the father. It is clear that what is meant by 'a brother or a sister' is the half brothers from the same mother. The reality of the female in this regard is that her financial maintenance (*Nafaqah*) is not an obligation on her half brother from the same mother because even though he is a mahram, he is however not one of those on whom her maintenance has been made compulsory.

And Islam has ordered that the attire of women be different from men, just as it has ordered that the attire of men should be different from the attire of women. It forbade the one from resembling the other in attire, and from resembling what is particular to one gender which distinguishes it from another gender, such as adorning certain parts of the body. It has been narrated from Abu Hurayra (ra) that he said: **"The Messenger of Allah cursed the man who wears the clothing of women, and the woman who wears the clothing of men"**. It has been narrated from Ibn Abu Mulayka that he said: **"It was said to A'isha; 'Did the women wear shoes'? She said: 'The Messenger of Allah cursed the manliness (Rajla) amongst the women'"**. It has been narrated that 'Abd Allah b. 'Umru said: **"I heard the Messenger of Allah ﷺ saying 'Women who resemble men don't belong to us'"**. And Ibn 'Abbas said **"The Prophet ﷺ cursed the effeminate amongst men and the manly amongst women."** And He ﷺ said **"Expel them from your houses"**. And he (Ibn 'Abbas) said: **"so the Prophet expelled so-and-so out and 'Umar threw out such and such person."** And in one variant: **"The Messenger of Allah cursed the men who seek to resemble women and the women who seek to resemble men"**.

Also Islam made the dowry (*Sadaq*) i.e. the *mahr* obligatory on the man to give to the woman. It made it her right (*Haqq*) even though the (sexual) enjoyment is shared by both and not for the man only. Allah ﷻ said:

وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيئًا

"And give to the women (whom you marry) their *mahr* with a good heart, but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm" [An- Nisa: 4]

The meaning of "Nihlatan" (i.e. give with a good heart) is that it is a gift since the bridal dower is a gift. It is not in exchange for the consummation of the marriage as some would imagine. And He (peace and blessing be upon him) said to the *Sahabah* who married the woman who offered herself in marriage: **"Do you have anything to give her?"**. He looked around but did not find anything. So the Prophet said **"look for even an iron ring"**. **But he did not find anything so the Prophet gave him in marriage to her with what he memorised from the Qur'an that he could teach her with as dower.**

Allah ﷻ made work, for the earning of money, an obligation (*Fard*) on the man but did not make it obligatory for the woman. Rather it is permitted for her whether she wishes to work or does not wish to work. Allah ﷻ said:

لِيُنْفِقَ ذُو سَعَةٍ مِّنْ سَعَتِهِ

"Let the rich man (zu sa'atin) spend according to his means". [At- Talaq: 7]

The word 'zu' is not used except in the masculine gender. And He ﷻ says:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ

"But the father of the child shall bear the cost of the mother's food and clothing" [Al- Baqarah: 233]

Thus, He enjoined the financial maintenance (*Nafaqah*) on the male.

And Islam has assigned to the man the guardianship (*Qiwama*) over women. It also gave them the right to lead (*Qiyada*), order (*Amr*) and prohibit (*Nahy*). Allah ﷻ said:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَحَافُونَ نَشُورَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

"Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means. Therefore the righteous women are devoutly obedient, and guard in their husbands absence what Allah orders them to guard. As to those women on whose part you see rebellion, first admonish them, next refuse to share their beds and last beat them (lightly), but if they return to obedience, seek not against them any means (of annoyance): Surely Allah is Ever Most High, Most Great" [An- Nisa: 34]

Allah explains that this guardianship (*Qiwama*) is for the man because of the extra responsibilities Allah ﷻ has imposed on him such as ruling, leading the prayer and the guardianship (*Wilaya*) in marriage and placed (the power of unilateral) divorce in the hands of the man. Allah ﷻ said:

بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ

"Because Allah has made one of them to excel (Fadl) the other" [An- Nisa: 34]

This guardianship (*Qiwama*) has also been assigned to him due to the responsibilities placed on him such as the obligation of providing the expenses in terms of the dower and provisions. Thus, Allah ﷻ said:

وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ

"Because they spend (to support them) from their means" [An- Nisa: 34]

Just as He has given the man the right to discipline his wife by friendly

exhortation, separating from her in bed or beating her lightly as much as the offence warrants. That is, when she is rebellious, i.e. disobeys her husband and rebels against him. Islam gave the woman the right of custody over the minor, boy or girl, and barred the man from this custody. Islam also gave the woman the right to manage the expenditure for the children if their father delays their expenses or is miserly towards them. The man is prevented in this case from managing the expenses. Hind came to the Messenger of Allah ﷺ and said "O Messenger of Allah! Indeed Abu Sufyan is a miserly man. He does not provide me with the maintenance that my children and I need." So the Messenger of Allah told her **"Take that which suffices you and your children in a fitting manner (Bil Ma'roof)."** The judge will force him to provide her with *Nafaqah* and give her the right to manage the expenditure and he will not be allowed to control the expenses in this case.

Thus, Islam came with different rules, some of which are particular to men and some of which are special to women. And it distinguished between men and women with regards to a section of these rules and ordered them to accept what Allah ﷻ has specially assigned for them in terms of these rules and He forbade them from envying each other, and from desiring things in which Allah ﷻ has preferred one over the other. And He ﷻ said:

وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضَكُمْ عَلَى بَعْضٍ لِّلرِّجَالِ نَصِيبٌ مِّمَّا اكْتَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا اكْتَسَبْنَ

"And wish not for the things in which Allah has made some of you to excel others. For men there is allotted from what they have earned, (and likewise) from women there is allotted for what they have earned" [An- Nisa: 32]

This specification (*Takhsees*) does not mean inequality. Rather it is a solution for the actions of the female in her capacity as a female, and as well, a solution for the actions of the male in his capacity as a male. All of these actions have been addressed in the speech of the Legislator which relates to the actions of the humans. If all of their realities are studied it becomes clear that the solution is for the problem of a particular type of human in its capacity as a certain type, and it should differ from the solution which is for a human in his/her capacity as a human. The perspective of equality or inequality is not considered because it is not the subject of study. What is noted is the fact that it is a specific solution for a specific human. And this

is the nature of the disparity in the rules concerning the men and women with respect to the disparate rules that have been mentioned. In any case, they are a solution for the problem of a human, whether it is the same solution for both the man and the woman such as seeking knowledge, or it is disparate between them such as the disparity concerning the definition of the '*Awrah*' for men and women. This does not mean discrimination between humans or that it is a discussion about equality or inequality. As for what is mentioned in the report (*Atthar*) that women are deficient intellectually and in terms of their deen; what is meant is in terms of the resultant effect, with regards to the mind and deen. It does not mean there is a deficiency in their intellect or in their adherence to the deen. Since the intellect is the same in terms of the natural characteristics (*Fitra*) of men and woman and adherence to the deen is also the same in terms of the belief and action of the men and the women. The deficiency that is intended in this report is in terms of the testimony of the woman, by making the testimony of two women equal to that of one man. It also refers to the deficiency in the number of days the woman prays, because of her abstention from prayer during her days of menstruation (*Hayd*) each month and in the postnatal period (*Nifas*). As well as of her abstinence from fasting during menstruation and after childbirth (*Nifas*) in *Ramadhan*.

This is the subject of the rights and obligations, i.e. the *Shari'ah* commandments, which Allah has legislated for the human in his capacity as a human and for each gender of human, male and female. This is in terms of legislating for him in his capacity as one who has a certain gender and a human at the same time. It is not intended to distinguish the one from the other, just as nothing is considered in terms of the issues of equality or inequality.

The Activities of the Woman

The nature of Islam determines that the actions which humans perform in their capacity as humans are permissible for each man and woman without distinction, discrimination or differentiation. It also determines that these actions are made: obligatory (*Wajib*), forbidden (*Muharrama*), disliked (*Ma'ruh*) and recommended (*Mandub*) without discrimination or differentiation. As for the actions that a male undertakes, in his capacity as a male and as a human as well, or the actions that a female undertakes in her capacity as a female and as a human as well: Allah has distinguished both of them in this regard and differentiated between them with respect to each other, whether in terms of obligation (*Wujub*), dislike (*Karaha*), recommendation (*Nadb*) or permissibility (*Ibaha*). Accordingly, we find that the *Shari'ah* has invested ruling and authority with the man as opposed to the woman. We also find that it has entrusted the custody of the children, whether sons or daughters, with the women to the exclusion of men. Therefore it was inevitable that actions which relate to the female in her capacity as a female should be entrusted with the woman, and actions which relate to the male in his capacity as a male should be entrusted with the man. Since Allah ﷻ created the male and the female and He knows best the situation of the man and the woman, then we must limit ourselves to the rules which He ﷻ has legislated and not overstep them. This applies to whether these rules are intended solely for the men or exclusively for the women or whether they are for humans irrespective of their being men or women, because He ﷻ knows best what is suitable for the human. Therefore, attempting to use the mind to deprive the woman from performing certain actions under the pretext that she has nothing to do with them, or to give her activities which are specific to men, under the assumption that this dispensation is in fairness to her and realises justice between her and the man; all of these are transgressions against the *Shari'ah*, a total mistake and a cause of corruption (*Fasad*).

The *Shari'ah* has made the woman a mother and a housewife. It came to her with rules relating to pregnancy, childbirth, suckling, custodianship and the waiting period (*Iddah*). It did not grant men any part in that because these rules relate to the woman in her capacity as a woman. Thus it placed on her the responsibility of the child in terms of pregnancy, delivery, suckling and custody. Therefore, these are her most important activities and greatest responsibilities. Hence, it can be said that the primary role of the woman is that she is a mother and housewife because it is through this action the human race survives and because she is distinguished by this from the men. Therefore, it should be clearly understood that whatever actions she is charged with and whatever responsibilities are placed on her, she should continue in her primary responsibility which is that of motherhood and the upbringing of children. That is why we find that the *Shari'ah* allowed the woman to break her fast in *Ramadhan* if she is pregnant or suckling a baby. Also, the *Shari'ah* exempted her from praying if she is menstruating, or is in childbirth, and prevented the man from travelling with his child from the country in which the mother resides, as long as she still has custody over the child. All of this is to facilitate the completion of her primary role, which is her being a mother and a housewife.

However, the woman's primary role as mother and housewife does not mean she is confined to this role and prevented from pursuing other activities. Rather it means that Allah ﷻ has created the woman so that the man may dwell in tranquillity with her and so that he may obtain from her progeny and offspring. Allah ﷻ says:

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ زَوْجِكُمْ بَنِينَ وَحَفَدَةً

"And Allah has made for you wives of your own kind, and has made for you, from your wives, children and grandchildren" [An- Nahl: 72]

And He ﷻ said:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا

"And among His Signs is this, that He created for you wives from among yourselves, that you may find repose in them" [Ar- Rum: 21]

However, at the same time He ﷻ has created her to be active in the public life as she is active in her private life. Thus, He ﷻ has obliged her to carry the Call (*Da'wa*), seek knowledge with regards to the actions that are incumbent on her in her life, and He ﷻ allowed her to trade, lease, delegate, and forbade her from lying, treachery and betrayal. Just as He ﷻ has obliged, allowed and forbade the man from these things. And Allah ﷻ gave her the right to work in agriculture or industry just as she practises trade. He ﷻ gave her the right to form contracts, own all types of property and invest her wealth. He ﷻ also gave her the right to look after her own affairs by herself, become a partner or employee, employ people, lease property and things, and undertake the rest of the societal transactions (*Mu'amalat*). This is due to the general import of the Legislator's speech and the absence of prohibitions specific to women. However, it is not permitted for the woman to take up positions of ruling whether as leader of a state, his *Mu'awin* (assistant), *Wali* (governor), *'Amil* (Mayor) or any other activity considered as ruling. This is due to what has been narrated by Abu Bakrah that he said: When the news reached the Messenger of Allah ﷺ that the people of Persia had appointed the daughter of Chosroes (Kisra) as queen over them he ﷺ said: **"People who appoint a woman to run their affairs shall never succeed."** This is clear in its prohibition of women assuming the position of ruling and in its censure for those who appoint a woman to run their affairs. And the person in authority (*Wali al-Amr*) is the ruler. Allah ﷻ says:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ

"Oh you who believe! Obey Allah and obey the Messenger, and those of you who are in authority (*ulu al-amr minkum*)" [An- Nisa: 59]

Thus, the authority of ruling is not permitted for the women. As for positions other than ruling, the woman is allowed to undertake them. Therefore, women can be appointed to government civil-servant positions because they do not constitute ruling, rather they fall under employment. The employee is a private government worker. They are like the employee of any other individual or company. It is allowed for the woman to assume the position of judge because the judge is not a ruler but rather he settles disputes between people and informs the disputants of the binding *Shari'ah* rule. Therefore, the judiciary (*Al-Qadha'a*) can be defined as the pronouncement of the *Shari'ah* rule by way of compulsion. So the *Qadhi* is

an employee and not a ruler. He is a government employee like the rest of the workers. It has been reported from 'Umar b. al-Khattab that he appointed al-Shifa - a woman from his folk - as a market judge (inspector) i.e. a judge of *Hisba* who passes judgement on all violations. However, the permissibility for a woman to be a judge, relates to the text of the *Hadith* and its applicability to the reality of the function of a judge. If the *Hadith* which forbids the appointment of women over peoples' affairs is applicable to the judicature, then appointing them as judges would not be permitted. If the *Hadith* does not apply, then it cannot be used as an evidence to prevent women from being appointed to the judicature. Looking at the *Hadith*, we find that the Messenger ﷺ dispraised the people who appointed a woman over their affairs in response to the news that reached him that the people of Persia had appointed a woman as queen. It is, therefore, a comment on a piece of news, and in a manner of a response to a question. It is specific to the topic of the report and to none other. The subject matter of the news is the ruling (*Mulke*) i.e. the leadership of the state. The comment was on this topic and it is specific to the issue of state leadership and whatever is related to that, which is governance (*Hukm*). This is from one perspective. From another angle we see that the prohibition is directed towards the general authority because it is the authority over the affairs (of people). This is what the *Hadith* means and this is what it indicates. As for the issue of the Judge, it is a role different to the role of the *Khaleefah*, or the role of the *Wali*. The role of the *Khaleefah* and the *Wali* is the execution of the rule directly by themselves, regardless of whether a case has been raised to them, the judgement of a *Qadhi* has been raised to them, or no case has been raised but they observed it as going against the *Shari'ah*. So the ruler judges against the transgressor without the presence of a claimant and he applies the verdict on him.

As for the *Qadhi*, he cannot pass a judgement without the presence of a case, i.e. that a case is referred to him and there are two claimants present. So he passes judgement when there is a case but he has nothing to do with it if no one initiates a legal action. In the event of looking into the case, he informs the people of the ruling of Allah ﷻ with regards to the case in a manner that is binding. He has absolutely no authority of execution, except if he is appointed as judge and ruler. Then, he will execute the rules in his capacity as a ruler and pass judgement in his capacity as a judge. Thus, the reality of the judiciary is different to the reality of ruling. Therefore the *Hadith* does not apply to the judge. Moreover, the judiciary does not belong

to authority whatsoever. The *Qahdi* does not have authority over any people of a country in which a *Qahdi* has been appointed, even over claimants. Obedience to him is not obligatory, rather it is obligatory to implement his ruling when he passes a judgement on a case because it is the ruling of Allah and not because the *Qahdi* ordered it. His ruling is not considered a ruling of a judge unless he passes judgement in the judicial court. Therefore, his witnessing of an event or his hearing of it in other than the judicial court does not permit him to pass judgement on what he has witnessed or heard as long as it did not take place in the judicial court. This differs from the ruler who must be obeyed in every situation and he does not need a specific court for the passing of a ruling. Rather he can pass judgement in his own house, street or the state capital, and in every place. Obedience to him is obligatory. The Prophet ﷺ said: **“Whoever obeys the Ameer, he has obeyed me”**. Therefore, the *Hadith* which prohibits the appointment of women as rulers does not in any way apply to the function of the *Qahdi*. So the post of judge cannot be prohibited for the woman by this *Hadith*. The reality of the *Qahdi* is that he is an employee of the ruler whom he has employed for a certain salary to do a certain job. The word 'employee' (*Ajeer*) is mentioned in the authentic *Abadith* which include all employees for all types of jobs. Since the Messenger ﷺ considered the Qur'anic teacher an employee, he ﷺ said: **“Indeed, the best action which you deserve a wage for is the teaching of the Qur'an.”** Indeed, the *Qahdi* likewise is considered an employee and whatever he takes from the treasury (*Bayt al-mal*) is considered a wage. No one should say that the *Qahdi* is an assistant to the ruler and so he should be considered a participant in ruling, because the *Qahdi* is only an employee of the ruler and not his assistant. His function is to understand the reality of a problem between two disputants and examine the application of legal laws in the case of adopted rules, or the application of *Shari'ah* rules in the absence of an adoption, to whom the judiciary finds guilty or not guilty. Therefore, they are employees hired for a certain salary to do a certain job.

This is with regards to the judge and the *Qahdi* of *Hisba*. As regards the *Qahdi* of the court of unjust acts (*Mazalim*), it is not allowed for this *Qahdi* to be a woman. The woman is not permitted to assume the post of the judge of *Mazalim* because it is ruling. Its reality is the reality of ruling and the *Hadith* is applicable to it. This is because the unjust acts that take place via the ruler, on the people, are raised whether someone made a claim or not. The judge does not need to call in the defendant (eg an official), when someone claims a case of injustice. However, it is allowed for the judge to

call him to sit in his presence or not to call him, because the issue is not to pronounce a verdict over a case. Rather, it is to lift the injustice that occurs from the rulers upon the people. The corresponding reality of the judgement of the *Mazalim* is that of ruling. Therefore it is not allowed for the woman to assume such a position.

Still remaining is the issue of the permissibility of the woman to be a member of the *Majlis al-Ummah* or not, in case one exists. Indeed this is unknown to some. So they say it is not permitted by comparing the *Majlis al-Ummah* in Islam to the parliament in democracy. The truth, is that there is a difference between parliament in the democratic system and the *Majlis al-Ummah* in Islam. The parliament is part of ruling because, according to democracy, it has the jurisdiction to rule since it is the parliament that elects the president and removes him and it is the parliament which gives the cabinet the vote of confidence and takes it away, and so at once deprives it of power. The reality of the parliament is that it undertakes three functions: Firstly, it accounts the government and monitors it. Secondly, it passes laws. Thirdly, it appoints rulers and removes them from office. In terms of accounting the government and monitoring it, that is not considered part of ruling, but in terms of legislation, discharging rulers and installing them, that is considered part of governance. This is contrary to the *Majlis al-Ummah*. Its reality is that it accounts the ruler and monitors him and it shows its discontent whenever required. This includes the shortcoming in looking after the affairs of the people, complacency in the application of Islam or neglecting to carry the Islamic Call (*Da'wah*) etc. However it does not enact laws, and appoint or depose rulers, therefore it is different from the parliament. That is why it is not allowed for the woman to be a member of parliament as long as it is considered part of ruling according to the capitalist system. The woman is allowed to be a member of the *Majlis al-Ummah* because it is not part of governance. However, the impermissibility of the woman to be a member of parliament does not mean she is not allowed to elect the ruler. Her being a member of parliament places her in a position of ruling i.e. one who has authority to rule, and this is not allowed due to the clear prohibition of that in the saying of the Prophet ﷺ **“People who appoint a woman to run their affairs shall never succeed.”** This is different to her electing the ruler because she is not placed in a position of ruling. Rather she is given the right to elect the person who will rule over her. The *Shar'a* has permitted the woman to elect the ruler and to select any man for any action of ruling because it is allowed for her to give *Bay'a* to the

Khaleefah and elect him. It is narrated from Umm Atiyya that she said: **“We gave our Bay'a to the Messenger of Allah ﷺ, so He ﷺ recited to us "they should associate none with Allah" and he forbade us from wailing (upon the dead). A woman among us withdrew her hand saying: so and so woman has made me happy and I want to reward her. He ﷺ said nothing, the woman went then came back”**. Giving the *Bay'a* to the Prophet ﷺ was not on the basis of Prophethood but an obedience to the ruler. So this *Hadith* shows that the woman can give *Bay'a* to the *Khaleefah* and elect him. This is with respect to the parliament. As for the *Majlis al-Ummah* it is contrary to this because it is a council for consultation and the presentation of opinions and it has no authority to rule. The *Majlis* does not elect a ruler except if the *Ummah* has delegated it to do so, nor does it remove the ruler or enact laws. All of its work relates to opinions. The function of the *Majlis al-Ummah* is that the state refers to it to seek its opinion with regards to what it wishes to see implemented in terms of the internal policies and to account what it has undertaken of the internal and external actions. In addition, the *Majlis* itself will submit opinions about matters which are internal and external. It is also part of its work to give opinions with regards to candidates for the post of *Khaleefah*, as well as to make known their grievances concerning *Walis* and *Mu'awins*, this also constitutes putting forward an opinion. All of this falls within the presentation of opinions which point to an action. Its work also includes consultation, which the *Khaleefah* is not obliged to adhere to it; such as expressing its opinion concerning the rules which the *Khaleefah* has adopted. All of these matters are merely opinions and not ruling. Therefore its task relates only to opinions and none other.

The members of the *Majlis al-Ummah* are themselves representatives of the people only with respect to opinions and nothing else. They are not representatives of the people in ruling or in the appointment of a ruler except if the *Ummah* delegates this responsibility to them, nor does it represent the people in the removal of a ruler. Even when they show their disapproval of *Walis* and *Mu'awins* (assistants) such people are not automatically discharged because of their opinion rather the *Khaleefah* dismisses them according to their opinion. This is contrary to parliament where the cabinet is dissolved the moment the confidence of the parliament is withdrawn and without the need of the president to dismiss it.

As long as the members of the *Majlis al-Ummah* represent the people in

their opinions, then the woman has the right to air her political, economic, legislative or other opinions. She also has the right to delegate anyone she wishes to put forward an opinion or she can be delegated to put forward this opinion for whom she wishes. Islam has given her the right to put forward her opinion just as the men put forward their opinions. Consultation (*Shura*) in Islam is the right of the man and woman without differentiation. He ﷺ

وَشَاوِرْهُمْ فِي الْأَمْرِ

says:

"And consult them in the affair" [Al- Imran: 159]

And He ﷺ said:

وَأَمْرُهُمْ شُورَى بَيْنَهُمْ

"And who (conduct) their affairs by mutual consultation" [Ash- Shura: 38]

This is a general text which includes the man and the woman. The order to command good (*Amr bil al-ma'ruf*) and forbid the evil (*Nahi 'an al-munkar*) is equally obligatory upon the man and the woman.

He ﷺ said:

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ

"Let there arise out of you a group of people inviting to all that is good (Islam), commanding al-Ma'ruf (good) and forbidding al-Munkar (evil)" [Al- Imran: 104]

And the Prophet ﷺ said: **"Whoever of you sees a munkar let him change it"**. This is a general text which includes the man and the woman. So accounting the rulers is obligatory upon the man and the woman. The giving of advice (*Al-nasiha*) has been prescribed for men and women. When the Prophet ﷺ said: **"The deen is to give advice (nasiha)"**. It was asked "to whom O Messenger of Allah"? He replied **"To Allah, His Messenger, to the rulers of the Muslims, and the Muslims at large"**. He ﷺ did not confine the giving of advice to the man. Rather the Muslim has the right to

give advice to the leaders of the Muslims and the general public irrespective of whether the one who puts forward the opinion is a man or woman. Since women used to discuss with the Messenger and ask him questions, this means that a woman has the right to discuss with the *Khaleefah* and put questions to him. It has been narrated **that the Messenger ﷺ after preaching to the men on the day of Eid moved on until he came to the women, whom he preached to and admonished and warned saying: "Give charity, for verily most of you are fuel for the hellfire", whereupon there arose from the middle ladies' congregation, a dark-cheeked woman who said "Why is that, O Messenger of Allah"? This shows that the woman discussed with the Messenger and asked him when he said something pertaining to them. The story of Khawla bint Tha'laba when she approached the Messenger asking him about the issue of her husband's divorce of her by way of Zihar (swearing that she is like his mother to him). He replied that it was not in his power to do anything, so she argued with him ﷺ. It is a well known story which Allah ﷻ has alluded to in the Qur'an. Thus, He ﷺ said:**

قَدْ سَمِعَ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي زَوْجِهَا وَتَشْتَكِي إِلَى اللَّهِ وَاللَّهُ يَسْمَعُ تَحَاوُرَكُمَا

"Indeed Allah has heard the statement of her that disputes with you (Oh Muhammad) concerning her husband, and complains to Allah. Allah hears the argument between you both" [Al- Mujadilah: 1]

This unambiguously shows that women discussed with the Messenger. Nothing more needs to be said about the permissibility of the woman in presenting her view in every matter and discussing it. No one doubts this matter and accordingly an (consensus) has taken place on this issue.

As for the woman being allowed to delegate to anyone she wishes to air her opinion or that she can be delegated to express an opinion for whom she wishes. Nothing more really needs to be said about its permissibility since the woman can delegate in marriage, selling and renting etc, and others can delegate to her in these things. This delegation is not specific to some things to the exclusion of others but it is general to all things which includes expressing an opinion. Therefore, it is allowed for the woman to delegate to anyone she wishes to express an opinion or she herself can be delegated to, to express an opinion for whom she wishes.

Since the *Majlis al-Ummah* is an assembly for the airing of opinions and its

members represent others in expressing opinions, it is permitted for the woman to elect and be elected in the *Majlis al-Ummah*, i.e. she has the right to represent others and delegate others to express opinions. Furthermore, in the thirteenth year of the Prophethood, i.e. the year in which the Prophet ﷺ made the *Hijra*, he ﷺ was met by seventy three men and two women (of the Ansar). The two women were Umm 'Umara bint Kalb, one of the women of Bani Mazin and Asma bint 'Amr b. 'Addi who was one of the women from Bani Salama. The Messenger arranged to meet them at al-'Aqaba. So they went in the middle of the night. All of them climbed the mountain including the two women. The Messenger ﷺ told them: **“I take a pledge from you that you protect me as you would protect your women and children.” Their pledge was that they should say ‘We made the pledge (Bay’a) that we would hear and obey, in ease or difficulty, whether we liked or disliked it. And that we should say the truth wherever we may be, we should not fear, for the sake of Allah ﷻ, the blame of anyone.** This is a political pledge and since the woman is allowed to give a political pledge then it is allowed for her to elect and be elected, because the pledge and election are of the same issue: which is, the selection of a ruler and obedience to him. The evidence to say that the *Bay’a* and the election are of the same issue, is that if the *Khaleefah* does not receive a pledge then he cannot lawfully become *Khaleefah*. What makes him *Khaleefah* is the pledge (*Bay’a*). Therefore its reality is that of electing a *Khaleefah*, and as an oath to hear and obey him. It is not true to say that the *Bay’a* is an oath to hear and obey only, since this only applies to those who have given the pledge after the appointment of the *Khaleefah*. However, the initial *Bay’a*, is for election and then an oath to hear and obey the *Khaleefah*. It is stipulated that such a pledge is based on consent because it is an oath of consent. Therefore, the *Bay’a* and election are of the same issue. The election of someone who will represent the woman in an opinion in the *Majlis al-Ummah* is established by way of greater reason (*Min bab awla*). Since, if she is allowed to elect the *Khaleefah*, and he presides over the highest position of ruling, then by greater reason she is allowed to elect someone of lesser position. Therefore, it becomes clear that the woman's electing of members of the *Majlis al-Ummah* is permitted by the *Shari’ah*.

This is in terms of the indication from the second pledge of 'Aqabah, that the woman is allowed to elect others in the *Majlis al-Ummah*. As for its indication that others can elect her as a member of the *Majlis al-Ummah*, the Messenger ﷺ, after the completion of the pledge, told all the men and

women **“Bring forth from amongst you twelve chiefs (Naqibs) who will be responsible for their people including themselves”**. This is an order of the Prophet ﷺ, to all the people, to elect from the people present. It is general, the Messenger did not specifically mention the men. Neither did he exclude the women, either from those that were electing, or from those that were being elected. The general import of a text is applied in its generality as long as there is no evidence of specification. Since the Prophet ﷺ did not specify, then his order is inclusive of all men and women without distinction, whether they are in the process of electing or are being elected.

Therefore, the permissibility of the woman being a member of the *Majlis al-Ummah* and being allowed to elect its members is proven from the angle of her being a representative of others in their opinion, or herself delegating others to air an opinion. It is also established by the *Hadith* of the second pledge of 'Aqabah.

No one doubts that consultation (*Shura*) is a right of the man and the woman and that accounting the ruler is obligatory upon the man and the woman and that commanding the good (*Ma'ruf*) and forbidding the evil (*Munkar*) is compulsory upon the man and the woman. The advice (*Nasiha*) has been legislated for men and women, and the representation of people's views (*Wakala*) is permitted for the man and the woman. The woman has the right to hold and air this opinion. There is no difference whether this opinion is political, legislative or any other type of opinion. Since the activities of the *Majlis al-Ummah* are confined to consultation (*Shura*), accounting the ruler, commanding the good (*Ma'ruf*) and forbidding the evil (*Munkar*) and advice (*Nasiha*) to Imams of the Muslims, all of which relate to opinions and does not involve ruling. Then, this demands that there should be no doubt about the permissibility of the woman being a member of the *Majlis al-Ummah* or about the permissibility of the woman electing a member of the *Majlis al-Ummah*. Despite this some doubted the permissibility of her electing members in the *Majlis al-Ummah* because the *Bay’a* is considered an oath of hearing and obedience and not for the purpose of election. Hence, they did not find in it any evidence for election. However, since it has been established that the *Majlis al-Ummah* is only for the purpose of airing opinions and that the woman has the right to delegate whoever she wishes to present her opinion, then there should be no doubt over the permissibility of the woman electing members of the *Majlis al-Ummah*. Besides, the pledge initially is an oath of consent, and thus is considered an election of the *Khaleefah* by the

contracting parties and not only a contract of obedience. Therefore, the oath of consent and the election are of the same issue, which is the selection of the *Khaleefah*. So the woman has the right to elect and select the ruler as the established *Hadith* of the *Bay'a* of the women (*Bay'at al-Nisa*) indicates. Hence, by greater reason, it is allowed for her to elect the members of the *Majlis al-Ummah*. Also, some doubt the legality of the woman being a member of the *Majlis al-Ummah*, because of its similarity with parliament even though it has been established that the *Majlis al-Ummah* is different to parliament. The *Majlis al-Ummah* is for the purpose of airing opinions whereas the parliament is for ruling. One does not resemble the other. Therefore, there should be no doubt as to the admissibility of the woman being a member of the *Majlis al-Ummah* because any doubt over whether the *Majlis al-Ummah* is equivalent to Parliament has been removed. Thus no doubt remains over the permissibility of the woman to be a member of the *Majlis al-Ummah* and to elect the members of the *Majlis al-Ummah* except for the most stubborn.

10

The Islamic Community

It may occur to some to ask: How is it possible for the woman to undertake all the responsibilities that the *Shar'a* has permitted her such as being a government employee, or a judge settling disputes, or a member of the *Majlis al-Ummah* remonstrating with rulers and accounting them, bearing in mind the restrictions which have been placed on her in terms of the absence of *Khalwa*, non display of her charms, and the spending of her private life with women and *Mahrams*?

It may occur to others to inquire as to how the morals are to be protected? Also how are the morals to be safeguarded if women are allowed to frequent the marketplace, talk to men and undertake their activities in the public life and in the society.

These two questions and others like them are borne out of scepticism and incertitude, which often occur to such people when you present to them the *Shari'ah* rules of the (Islamic) social system. This is because they see the reality of the life in which they live, under the capitalist system and in the shadow of the banner of *Kufr*. Hence it becomes difficult for them to conceive the implementation of Islam.

The response to such questions is: that the social system in Islam is a set of diverse *Shari'ah* rules linked with each other. The requirement to follow one of its rules does not mean the abandonment of another. Rather, the Muslim man and woman should adhere to all of the *Shari'ah* rules so that there are no contradictions within a single person, otherwise discrepancies would appear in the *Ahkam*. Islam does not intend by permitting the woman certain activities that she should go to a government building and work as an employee, even as a nurse in a hospital after she has adorned herself with ornaments and dressed in a manner as if she is a bride in procession, showing men her alluring charms, and inciting their desires for her. Nor

does Islam intend that she goes to the store wearing such adornments, or selling a product in a state of softness and seductivity, using a manner of speech which tempts the buyer to enjoy chatting to her during the haggling, thereby increasing the price of the commodity or enticing him to make a purchase. Nor does Islam intend that she works as a clerk for a lawyer or as a secretary for a businessman leaving her alone with him whenever the job necessitated *Khalwa*, wearing for him such clothes that reveal her hair, bosom, back, arms and lower legs and displaying that which he desires from her naked body.

Islam certainly does not intend any of those things. Nor does it intend other such examples that take place within a community which resides in a non Islamic society dominated by the western way of life. Indeed what Islam intends is that the Muslim implements all the rules of Islam on him/herself. Hence when Islam permitted women to buy and sell in the marketplace, it prohibited her from going out displaying her charms and ordered her to adopt both rulings concurrently. So the belief in Islam obliges the Muslim to apply all its rules on him/herself. Islam has legislated rules, which include the undertaking of some actions and abstaining from others, which protects the Muslim, whether man or woman, from deviating from the path to moral virtue. They will act as a defence for the Muslim, preventing him from sliding into a sex-orientated outlook whilst living in the community.

These rules number many. The rules, which include the performance of actions, are:

1. Both the man and the woman have been ordered to lower their gaze and protect their private parts. So Allah ﷻ said:

قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ ذَلِكُمْ أَرَكِي لَهُمْ إِنْ اللَّهُ خَيْرٌ بِمَا
يَصْنَعُونَ (٣٠) وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ

"Tell the believing men to lower from their gaze, and protect their private parts. That is purer for them. Verily, Allah is All Aware of what they do. And tell the believing women to lower from their gaze and protect their private parts" [An- Nur: 30-31]

The lowering of the gaze by every man and woman is the true protection for each of them. That intrinsic protection prevents a person from involving

in *Haram*, because the sight is the effective means to fall in *Haram*. When the gaze is lowered then the *Munkar* is prevented.

2. Islam ordered the man and the woman to fear Allah ﷻ. He ﷻ said:

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا

"Oh you who believe! Fear Allah and speak (always) the truth." [Al- Ahzab: 70]

He ﷻ said:

وَاتَّقِينَ اللَّهَ إِنَّ اللَّهَ كَانَ عَلَى كُلِّ شَيْءٍ شَهِيدًا

"And fear Allah. Verily, Allah is Ever All-Witness over everything".
[Al- Ahzab: 55]

And He ﷻ said:

وَالْعَاقِبَةُ لِلتَّقَوَى

"And the good end (i.e. Paradise) is for the God fearing persons." [Ta- Ha: 132]

When the Muslim is characterised by the fear of Allah ﷻ and he fears His punishment, desires His Paradise and wishes to attain His good pleasure, then this fear will deter him from committing a *Munkar* and deter him from disobeying Allah ﷻ. This is the intrinsic deterrent beyond which there is no deterrent and when the Muslim fears Allah ﷻ then he is characterised by the sublimest attributes of perfection.

3. Islam ordered the man and the woman to keep away from areas of uncertainty, and to be careful with regards to that, lest they fall into disobeying Allah ﷻ. The Muslim has been ordered not to frequent any place nor do any action, nor be drawn into any situation in which there is uncertainty, lest they commit *Haram*. The Messenger of Allah ﷺ said:

"Both legal (Halal) and illegal (Haram) things are evident but in between them there are doubtful things and most of the people have

no knowledge about them. So whoever saves himself from these doubtful things, he would save his religion and his honour. And whoever indulges in these doubtful things would fall into Haram like a shepherd who grazes (his animals) near the Hima (private pasture) of someone else and at any moment he is liable to fall into it. Oh people! Beware! Every king has a Hima and the Hima of Allah on the earth is what he declared as Haram things.”

The doubt here occurs in three cases:

Firstly) He doubts whether a thing is prohibited or permissible (*Mubah*) or concerning an action whether it is obligatory (*Fard*), prohibited (*Haram*), disliked (*Makruh*), recommended (*Mandub*) or permissible (*Mubah*). The existence of such doubt concerning the description of a thing or the rule of an action, does not permit him to approach it until the rule of Allah ﷻ concerning it becomes clear. This means that he approaches it with the least amount of doubt, trusting that it is the rule of Allah ﷻ for it. This is irrespective of whether it was his own *Ijtihad* or after becoming aware of the rule of Allah ﷻ concerning it, either from a *Mujtahid* or from one who is aware of the rule, even if he be an imitator (*Muqallid*) or follower (*Aam*). This is so long as he trusts his *Taqwa* and knowledge of the rule rather than in his general knowledge.

Secondly) He suspects that he will commit a *Haram* through a *Mubah* action because of its closeness to the *Haram* and because of the possibility that it might lead to it such as depositing money in a bank which deals with interest, or selling grapes to a trader who owns a brewery or teaching girls regular lessons etc. Such actions are *Mubah* and allowed for him to do, but it is better for his integrity if he does not do them by way of piety.

Thirdly) That people suspect a *Mubah* action is prohibited hence the person avoids the *Mubah* action lest people think ill of him. This is like someone who passes a place suspected of corruption, and thus people suspect him of being a corrupt person. In order that people do not speak of him in such a way, he avoids the *Mubah*. Similarly the person who is strict about his wife or *Mahrams* covering their faces. He takes the opinion that the face is not *'Awrah*, but he is strict lest people say that the wife of such and such person or his sister is going about brazenly unveiled. This intent can be seen in two respects:

a: The thing that people doubt as being *Haram* or *Makruh* is actually, *Haram* or *Makruh* in the *Shari'ah*. By the person performing a *Mubah* action people understand that he has performed a prohibited action. In this situation the person should avoid the *Mubah* action in case people think badly of him or he should explain himself to them. It has been narrated on the authority of Ali b. al-Husayn that Safiyya bint Huyai (ra), the wife of the Prophet ﷺ told him that she went to the Messenger of Allah ﷺ to visit him in the Mosque while he was in Itikaf in the last ten days of Ramadhan. She spoke to him for a while after Isha, then she got up in order to return home. The Prophet ﷺ accompanied her. When she reached the gate of the Mosque, opposite the door of Umm Salama the wife of the Prophet ﷺ, two Ansari men were passing by and they greeted the Messenger of Allah ﷺ and continued on. He told them: **“Wait a little!”** and said, **“She is (my wife) Safiyya bint Huyai”**. Both of them said, “Subhan Allah, how dare we think of any evil O Messenger of Allah”, and they felt hurt that they would think such a thing. The Prophet ﷺ said (to them): **“Shaytan reaches everywhere in the human body as blood reaches in it. I was afraid lest Shaytan might insert an evil thought in your minds”**. It is understood from this *Hadith* that the Messenger dispelled the doubt, which may have arisen in the minds of his two companions even though he ﷺ, is beyond all doubt and suspicion.

b: That a thing should be suspected by people of being prohibited but in reality it is permitted. However in case people say that he has committed a prohibited action, he avoids it, not because it is prohibited but because of what people would say. It is not permitted to keep away from such types of suspicion, rather he should undertake it according to the manner the *Shari'ah* has instructed and not according to the estimation of the people. AllahI has mildly reproached the Messenger for that. He ﷺ said:

وَتَخَشَى النَّاسَ وَاللَّهُ أَحَقُّ أَنْ تَخْشَاهُ

"You (Oh Muhammad) did fear the people, but it is more fitting that you should fear Allah" [Al- Ahzab: 37]

This indicates that if the Muslim sees that the *Shari'ah* has not forbidden a thing then he should do it even if all the people say it is prohibited.

If the man and woman stay away from these suspicions which the *Shar'a*

has forbidden then it will protect them from disobedience to Allah ﷻ and enable them to be characterised by moral excellence.

4. Islam encourages marriage at an early age so that it begins to restrict the sexual activity of a man and a woman to marriage from an early age. Thus one is brought up in this atmosphere and one is protected by restricting the sexual activity to marriage when the sexual instinct begins to be agitated. He ﷺ said: **“O you who are young. Whoever amongst you who can afford to marry should marry”**. Marriage has been made exceptionally easy by urging the reduction of the bridal dower (*Mahr*). He ﷺ said: **“The one (amongst you, women) who receives the least amount of mahr is the most blessed (Baraka).”**

5. Those men whose specific circumstances do not allow them to get married, they have been commanded that they should be characterised by chastity and self control. He ﷺ said:

وَلْيَسْتَغْفِرِ الَّذِينَ لَا يَجِدُونَ نِكَاحًا حَتَّىٰ يُغْنِيَهُمُ اللَّهُ مِنْ فَضْلِهِ

"And let those who find not the financial means for marriage keep themselves chaste, until Allah enriches them of His Bounty". [An- Nur: 33]

And they have been ordered to fast as a treatment for the sexual or procreation instinct so that they seek recourse to the worship of fasting in order to overcome it and occupy themselves with that which is more sublime and noble i.e. the strengthening of their relationship with Allah ﷻ by way of pious deeds. He ﷺ said: **“O you who are young. Whoever amongst you can afford to marry should marry, because it will help him refrain from looking at other women, and guard his modesty (i.e. private parts from unlawful sex). And whoever is not able to marry he should fast because it will protect him”**. Fasting is not there to suppress the procreation instinct but to generate concepts linked to the instinct of sanctification by which he will be distracted from the concepts of the procreation instinct, thus it will not agitate him causing him anxiety and pain. Fasting is not intended to weaken the body because eating at night and taking enough food serves as a substitute for eating during the day. So debilitation by way of fasting is not realised but what is realised is the presence of spiritual concepts through such optional fasting.

6. Women have been instructed to act modestly by wearing the complete attire in the public life. In addition Islam restricts the private life to women and non-marriageable men (*Mahram*). There is no doubt that the appearance of the woman in a modest serious fashion will act as a barrier between her and the unscrupulous gazes of those who do not fear Allah ﷻ. The Qur'an has described this dress in a precise, complete and comprehensive manner. When the woman wears this complete dress which is when she draws her *Khimar* over her bosom and wraps her head-covering around her neck and chest, and when she drapes her *Jilbab* over her body and lowers it towards the floor such that her whole body is concealed even to the feet, then she can be said to have worn the complete dress, taken protection in her attire and manifested her modesty. Wearing this complete dress, she can go out into the public life in order to pursue her activities in the most modest and dignified manner, which, will thus guard herself against the unscrupulous gazes of those who do not fear Allah ﷻ.

These are the divine rules which include the performance of affirmative actions. As for the *Shari'ah* rules which include the abstention from actions they are:

1. The private meeting between a man and a woman alone is prohibited. *Khalwa* is the meeting of a man and a woman in a place where no one is able to enter except by their permission. An example is such as their getting together in a house or in an open space remote from public access. So the *Khalwa* is the meeting of two people in isolation, secure from the presence of others. This *Khalwa* is corruption itself, therefore Islam has categorically prohibited it between a man and woman who are not *Mahram* to each other, whoever these two persons may be and whatever this *Khalwa* may be. The Prophet ﷺ said: **“Whosoever believes in Allah and the Last Day (Al-yawm al-akhir) let him not be alone with a woman who has not a Mahram with her. Indeed, the third (person) is al-Shaytan!”** By preventing *Khalwa* the *Shar'a* took the necessary safeguards between the men and women. The reality of *Khalwa* is that it makes the man and woman more sexually agitated. And by prohibiting this solitary privacy (*Khalwa fardiyya*) the causes of corruption are eliminated, because the *Khalwa* is one of the direct means to corruption.

2. The woman has been forbidden from displaying her charms (*Tabarruj*) from the time when Allah ﷻ prohibited it.

He ﷺ said:

وَالْقَوَاعِدُ مِنَ النِّسَاءِ اللَّاتِي لَا يَرْجُونَ نِكَاحًا فَلَيْسَ عَلَيْهِنَّ
جُنَاحٌ أَنْ يَضَعْنَ ثِيَابَهُنَّ غَيْرَ مُتَبَرِّجَاتٍ بِزِينَةٍ

"And as for women past childbearing who do not expect wed-lock, it is no sin on them, if they discard their (outer) clothing in such a way as not to show their charms"

[An- Nur: 60]

Thus, Allah ﷻ has forbidden women past child-bearing age from displaying their charms (*Tabarruj*), allowing the discarding of the dress, without displaying their charms (*Tabarruj*). Implicit in this, is the prohibition of *Tabarruj*. Since women past the age of childbirth have been prohibited from displaying their charms (*Tabarruj*) then by greater reason women who have not reached such an age should not make *Tabarruj*.

He ﷺ said:

وَلَا يَضْرِبْنَ بَأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ

"And let them not stamp their feet so as to reveal what they hide of their charms".

[An- Nur: 31]

Examples such as these are considered *Tabarruj*. *Tabarruj* is the showing of the charms (*Zeena*) and beauty (*Mahaasin*) to non-marriageable men (*Non-Mabrams*). It is said the woman adorned (*Tabarrajat*) herself meaning: She displayed her charms (*Zeena*) and beauty (*Mahaasin*) to non-marriageable men (*Non-Mabrams*). There are a number of *Ahadith*, which prohibit what is considered to be *Tabarruj*. It has been narrated by Abu Musa al-Ash'ari that the Messenger of Allah ﷺ said: **"Any woman that uses perfume and walks past men in order for them to smell her fragrance; she is a fornicator"** i.e. She is similar to the fornicator in terms of sin. And he ﷺ said: **"Two categories of people ﷻ have not seen them (yet): some people who hold whips like the tails of the cows by which they lash the people. And women who wear (clothes) but (are) half-naked, bending (their bodies) and bending the sight of the men to them. Their heads are like the tilted humps of the camels. These women will not enter**

the paradise nor will they experience its smell (odour), though its odour is felt at a distance of so and so (days)." All of these evidences are very clear in their prohibition of *Tabarruj*, and therefore *Tabarruj* is *Haram*. Consequently, every unusual *Zeena*, which draws the attention of men and reveals the beauty (*Mahaasin*) of the woman, is *Tabarruj* if the woman appears like this in the public life or if she appears like this before non-mahram men in the private life. Example includes using perfume, make-up, wearing false hair on the head without a *Khimar*, or wearing trousers without a *Jilbab* when she goes out into the public life.

The reality of *Tabarruj* is that it incites both men and womens' emotions and agitates the procreation instinct for sexual intercourse. It invites man's solicitation of a woman causing their association to be based on attraction, and this makes their relationship of a sexual nature. This corrupts co-operation between them. It makes this co-operation non-conducive to the building of a community, leading rather to its destruction. This *Tabarruj* acts as an obstacle to the true association, whose basis is purity and *Taqwa*. Without due care it can also fill the great void in one's life, by agitating the emotions and inciting the procreation instinct. Life should not be filled except by great responsibilities and serious concerns, nor should it be spent in satisfying bodily desires, including the desires incited by *Tabarruj*. With this understanding there would be a defined barrier between man and woman, leading to the successful fulfilment of his/her mission in life. This mission is carrying the Islamic Call and undertaking Jihad for raising high the Word of Allah ﷻ. Therefore, we must appreciate the danger of *Tabarruj* to the Islamic community and appreciate what *Tabarruj* in which the female displays herself to the male, inciting him, of danger to the community and its relationships. This is the *Tabarruj*, which Islam has prohibited, and this is its reality and what it contains in terms of a danger to an Islamic community. As for displaying the charms and adornment in the house and in the private life, this is not considered *Tabarruj* nor *Tabarruj* applies to it.

3. Islam has prohibited every man and woman from pursuing occupations which endanger morals and cause corruption in society. Hence the woman is prohibited from performing jobs which aim to exploit her femininity. Raf'i b. Rifa'aa (ra) narrates: **"The Prophet ﷺ forbade us from the earnings of the slave-girl except that which she earned with her own two hands."** And He ﷺ said indicating with his fingers to mean baking, spinning yarn, and engraving. So the woman has been forbidden from working in shops where the aim is to attract customers because of her sex or to work in embassies,

consulates and other such places in order to use her femininity to realise political objectives. She is also prohibited from working as an airhostess in an aeroplane or other occupations where the woman works with the intention of using her femininity.

4. Islam forbade the defamation of chaste woman, i.e. accusing them of fornication.

He ﷺ said:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ
ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ

"And those who accuse chaste women, and produce not four witnesses, flog them eighty stripes, and reject their testimony forever, they indeed are the Fasiqun (transgressors)".
[An- Nur: 4]

And He ﷺ said:

إِنَّ الَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ الْغَافِلَاتِ لُعِنُوا
فِي الدُّنْيَا وَالْآخِرَةِ وَلَهُمْ عَذَابٌ عَظِيمٌ

"Verily, those who accuse chaste unaware and believing women, are cursed in this life and in the Hereafter, and for them will be a great torment." [An- Nur: 23]

And the Messenger of Allah ﷺ said: **"Avoid the seven great destructive sins"**. The people enquired, "O Allah's Messenger! What are they?" He ﷺ said: **"to associate partners along with Allah, to practice sorcery, to kill the life which Allah has forbidden, to eat up Riba (usury), to eat up an orphan's wealth, to retreat in front of the enemy at the time of fighting, and to accuse chaste and unaware women believers"**. What is meant by chaste women here are the modestly attired women. Defamation of a modest woman is prohibited. By prohibiting the accusation of chaste women the *Shar'a* has silenced the tongues of those which have become accustomed to speak badly of and slander, who wish only to lap up the honour of people. Hence evil gossip and rumours do not spread in the Islamic community neither does the false accusation. In this, is a protection

for the Islamic community.

So, these divine rules which include the abstention from certain actions ensure that the Islamic community, wherever co-operation may occur, proceeds to co-operate within the limits of purity (*Tahara*) and *Taqwa* (God fearing).

Through all of this, it is possible for a person to visualise what the Islamic community is and comprehend what the Muslim woman is. He can realise that the woman's performance of actions in the public life which the *Shar'a* has permitted her, will not result in corruption nor lead to any harm. He can see it is necessary for the public life and elevation of the community. Therefore, Muslims must adhere to the rules of *Shar'a* whether they be in *Dar ul-Islam*, *Dar ul-Kufr*, in a Islamic or non-Islamic country, amidst a community of Muslims or non-Muslims. They must undertake the activities the *Shar'a* has permitted for the women, and they should not fear any blame from it. Indeed acting according to the *Shar'a* rules is a protection for the woman, elevation for the community and obedience to the orders and prohibitions of Allah ﷻ. The *Shar'a* is the best in informing of what will suit man as an individual or a community in the private and public life.

This is briefly the system by which Islam treated the meeting from which problems arise, which is the meeting of men and women. It becomes clear from this system that divine rules have come to ensure the prevention of corruption, which may arise from this meeting. They also ensure the attainment of the well being (*Salah*) of the Islamic community, which provides the purity, *Taqwa*, diligence and work. It guarantees a private life in which the person attains tranquillity and rest from life's troubles. And it ensures a public life, which is serious, productive and provides for the community that which it requires in life in terms of happiness and ease. These rules are part of the social system because they organise the social intercourse of men and women. As for the relationships, which arise from this social intercourse and the problems that branch out from it, they are another part of the social system. These are: marriage, divorce, sonship and financial maintenance (*Nafaqah*) etc. Although these rules (of marriage and divorce) are from the systems of society because they organise the relationship between individuals, from the point of view of their origin, they have however resulted from the social intercourse that takes place between men and women. Therefore, they are studied in the social system in

view of their origin and source. As for their details and ramifications, they are part of the systems of society, and they are studied under that category of societal transactions (*Mu'amalat*).

11

Marriage

From the social gathering (*Ijtima*) of men and women arise relationships which pertain to their interests and the interests of the community in the midst of which both sexes live. They are different to the problems in society that arise when people come together for the purpose of selling, renting, delegating and other such matters. It may occur to some that these relationships constitute only marriage. The truth is that marriage is only one of the relationships, and they include other than marriage. Therefore, the sexual association is not the only manifestation of the procreation instinct, but rather it is one of its manifestations since there are others. Thus, motherhood, fatherhood, brotherhood, sonship and unclehood (maternal and paternal) are all manifestations of the procreation instinct. Consequently, the relationships, which result from the meeting of men and women, include motherhood and fatherhood, just as marriage. The social system includes them, just as it includes marriage. The *Shar'a* came with rules for sonship, fatherhood and motherhood, just as it came with rules for marriage.

However, marriage is the origin of all these relationships, and all of them branch out from it. If marriages were not to take place, then there would be no fatherhood, sonship nor motherhood etc. Accordingly, marriage is their origin and all of them branch out from it in terms of the need for organisation. Yet, the feeling of such needs erupts naturally in order to satisfy them the same way the feeling of the need for sexual association does. The instinct demands satisfaction, caused by the agitation of motherhood or sonship manifestations, just as the instinct demands satisfaction due to the agitation of the manifestations of the sexual association. This is because marriage, motherhood, fatherhood and sonship, are all manifestations of the procreation instinct. Their feelings are also feelings of the procreation instinct. The inclination towards any of these manifestations is formed by the reality of the procreation instinct linked with the concept about that manifestation, a matter that applies to all the

manifestations of the procreation instinct.

Marriage is the organisation of male-female relationships i.e. organisation of the sexual association between the men and the women by a specific system. This specific system should organise the male-female relationships in a defined manner. Procreation should result according to the system only, and it should ensure the reproduction of the human species. And through it the family will come to exist and on its basis the organisation of the private life will proceed.

Islam has encouraged marriage and ordered it. Ibn Masud narrates that the Messenger of Allah ﷺ said: **“O you youngsters. Whoever amongst you who can afford to marry should marry, because it will help him more to lower his gaze, and guard his modesty (i.e. private parts from unlawful sex). And whoever is not able to marry he should fast, because it will be protection for him.”**

Qatada narrated from al-Hasan who narrated from Samura that he said the Prophet ﷺ forbade us from celibacy. Qatada quoted the verse:

وَلَقَدْ أَرْسَلْنَا رُسُلًا مِنْ قَبْلِكَ وَجَعَلْنَا لَهُمْ أَزْوَاجًا وَذُرِّيَّةً

"And indeed We sent Messengers before you (O Muhammad) and made for them wives and offspring". [Ar- Rad: 38]

The meaning of celibacy is abstention from marriage and what follows that of retreating to worship. Abu Hurayrah (ra) narrates that the Prophet ﷺ said: **“Three (persons) have a right from Allah to be helped: the Mujahid in the way of Allah, the seeker for marriage who wishes to guard his chastity and the slave who seeks funds to free oneself.”** He ﷺ said: **“There is no monasticism in Islam.”** Monasticism is celibacy which is abstinence from women and abandonment of marriage due to being preoccupied with the worship of Allah ﷻ. The Qur'an has clearly mentioned the issue of marriage.

He ﷺ said:

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثَلِي ثَلَاثَ وَرُبَاعَ

"Marry women of your choice, two or three, or four". [An- Nisa: 3]

He ﷺ said:

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ

"And marry those among you who are single and the virtuous ones among your slaves, male and female". [An- Nur: 32]

Islam encouraged marrying virgin women, who are able to bear children and those possessing Islamic character. Anas (ra) narrates that the Prophet ﷺ used to order people to marry and strictly forbade them from celibacy. He ﷺ used to say: **“Get married to the tender and fertile (women), for indeed I will vie with the Prophets in your great numbers on the day of judgement”**. M'aqal b. Yasar (ra) narrates: A man came to the Prophet ﷺ and said: “I have found a woman who is beautiful and of noble descent but she cannot bear children. Shall I marry her?” He ﷺ said: **“No”**. Then he came to him again for the second time and he ﷺ prevented him. Then he came to him a third time, so the Prophet ﷺ said: **“Get married to the tender and fertile (women) for indeed I will vie in your great numbers”**. Jabir narrates that the Prophet ﷺ said to him: **“O Jabir, did you marry a virgin or a non-virgin (divorcee or widow)”**. He replied: “a non-virgin.” So the Prophet ﷺ said: **“Why did you not marry a young girl so that you may have enjoyment with her and she with you?”** Abu Hurayrah (ra) reported that the Prophet ﷺ said: **“A woman is married for four things: her wealth, lineage, beauty and Islamic character (Deen). So gain success with the one who possesses a good character (Deen).”** So it is preferred for a man to choose a virgin woman (for marriage) and someone who is known to be fertile according to the knowledge of her mother, maternal and paternal aunts. Also he should choose someone who is of good deen (character) and also beautiful in order to remain chaste. It is preferred that she is of noble descent and lineage i.e. brought up in beneficence, *Taqwa* (God fearing) and distinction. But that does not mean they are stipulations for marriage, rather they are recommended and

preferred. Otherwise, a man has the right to choose the wife he pleases and the woman has the right to choose the husband she pleases.

As for the question of equivalence (matching) between husband and wife, it has no basis in the *Shar'a*. It was not mentioned except in fabricated *Abadith*. The noble Qur'an contradicts it, as do the authentic *Abadith*. Every Muslim woman is a match to another Muslim man and vice versa. There is no weight for the differences between men and women in terms of wealth, occupation, lineage etc. The son of a refuse collector is a match for the daughter of the *Amir al-Mumineen*, and the daughter of the barber is a match for the son of the Ameer as well. Thus Muslims are a match to each other. Allah ﷻ said:

إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ

"Verily, the most honourable of you with Allah is that (believer) who has more Taqwa"
[Al- Hujurat: 13]

The Prophet ﷺ gave his cousin Zaynab bin Jahsh (ra), who was from the exalted people of the Quraish, in marriage to Zayd bin Haritha (ra) who was a freedman. Abdullah b. Burayda (ra) narrates on the authority of his father that a young girl came to the Messenger of Allah ﷺ and said: **"My father married me off to his nephew in order to raise his lowly status."** So the Prophet ﷺ gave her the right to repudiate the marriage. She responded: **"I accept what my father has done, but I wanted to inform the (other) women that fathers do not have any authority to give their daughters in marriage against their wishes."** The meaning of her statement: 'in order to raise his lowly status' is that her father wanted to raise his nephew's social standing by marrying her to him. This means that the father gave her in marriage against her wish because she did not consider him suitable for her, not because she thought he was not a match for her, indeed he was her cousin, but because she did not agree to the marriage. Abu Hatim al-Muzani reports that the Messenger of Allah ﷺ said: **"When someone whose character and morals are agreeable to you approaches you for marriage give your daughter to him in marriage. If you do not then there will be tribulation and immense corruption in the earth"**. They said: "O Messenger of Allah, even if he has some deficiency"? He said: **"When someone comes whose character and morals are agreeable to you and approaches you for marriage, give your daughter to him in**

marriage". He said this three times. Also Abu Hurayrah (ra) narrated this *Hadith*. His version reads: The Messenger of Allah ﷺ said: **"When someone proposes for your daughter and his character and morals are agreeable to you, then give to him in marriage. If you do not there will be tribulation and immense corruption in the earth"**. And this *Hadith* has been narrated through other lines of transmission as well. Abu Hurayrah (ra) narrated that Abu Hind cupped the Prophet ﷺ from the crown of his head (for treatment). The Prophet ﷺ said: **"O sons of Bayadha, marry Abu Hind (one of your women) and seek a woman for his marriage"**. Hanzala b. Abu Sufyan al-Jumahi (ra) narrates that his mother said: "I saw the sister of Abdur-Rahman b. Awf as a wife to Bilal." All of these evidences clearly show that matching between spouses has no consideration or value. Any woman who consents to a man becoming her husband, she can marry as she wishes, and any man that consents to a woman becoming his wife, he can marry without considering the issue of matching. As for what has been narrated from Ibn Umar that the Prophet ﷺ said: **"The Arabs are equal to each other. Tribe to a tribe, a family to a family and a man to a man except a tailor and or a clipper (Hajjam)."** This *Hadith* is a lie and baseless and is not valid. Ibn Abu Hatim said: "I asked my father about this *Hadith*. He replied: it is rejected." Ibn Abdel Birr said that this *Hadith* is fabricated. As for what Al-Bazzar has recorded of the *Hadith* of Mu'adh: **"The Arabs are a match to each other and the freedmen (non-Arab patrons) are a match to each other"**. The narration of this *Hadith* is weak. As for the *Hadith* of Barira, which states that the Prophet ﷺ said to Barira: **"When you had been freed, that part of you (i.e. being wife to a husband) has been freed"**. This does not indicate matching because her husband was a slave and when a slave-girl who is married to a slave becomes free she can choose to remain married to the slave or annul her marriage. There is no indication in this *Hadith* of matching. The evidence that Barira's husband was a slave is what Al-Qasim has narrated from Aisha (ra), that Barira was married to a slave man when she (Aisha (ra)) helped to free her. The Messenger of Allah ﷺ told her: **"Choose, if you wish to remain married to this slave or separate from him"**. Another evidence is what has been narrated in Muslim by Urwa on the authority of Aisha (ra) that Barira was freed whilst her husband was still a slave. So the Prophet ﷺ allowed her to choose (either to stay married to him or annul the marriage). If he was a free man then he would not have given her the choice. As for what has been reported from the Prophet ﷺ that he said: **"Do not marry women except those that are your match and do not marry them to men except those**

who are friends (Awliya)". It is weak (*Daiif*) and baseless.

Hence, it becomes clear that there are no texts to indicate equivalence (matching) and the texts used by the proponents of matching are all invalid or they have no indication for the matter. The stipulation of matching contradicts the saying of the Messenger ﷺ: **"An Arab is not better than a non-Arab except in Taqwa (God fearing)"**. And it contradicts the definite text of the Qur'an:

إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ

"Verily, the most honourable of you with Allah is that (believer) who has more Taqwa"
[Al- Hujurat: 13]

As for the difference of religion, that discussion is not about matching. Rather, it is about Muslims marrying non-Muslims, which is a different subject altogether. It is evident that Allah ﷻ has permitted a Muslim to marry a woman from the people of the Book, whether a Jewess or Christian, because Allah ﷻ says:

الْيَوْمَ أُحِلَّ لَكُمْ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ
وَوَطَعَامُكُمْ حِلٌّ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ
الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أَجُورَهُنَّ مُحْصِنِينَ
غَيْرَ مُسَافِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ

"It is Made lawful to you, this day, all kinds of halal (lawful) foods, and the food of the people of the Scripture (Jews and Christians) is lawful to you and yours is lawful to them. It is lawful to you in marriage the chaste women from the believing women and from those who were given the Scripture (Jews and Christians) before your time, when you have given their due (bridal-dower), intending to preserve their chastity not lewdness nor taking them as lovers." [Al- Maidah: 5]

So the *Ayah* is clear in that chaste women (*Muhsanat*) from amongst those who have received the Scripture are legal (allowed) for the Muslims, and their dues are their bridal-dowers. Acting in accordance with this verse it is permitted for a Muslim man to marry a Christian or Jewess woman. Since the verse mentioned that chaste women (*Muhsanat*) from amongst those who have received the Scripture are allowed for the Muslims i.e. marrying them

is permitted for you. As for a Muslim woman marrying a Jew or Christian that has been prohibited by the *Shar'a*. It is absolutely forbidden. If the marriage takes place then it will be null and void and it will not be concluded. The prohibition of a Muslim woman marrying a Jewish or Christian man is established in the clear text of the Qur'an. Allah ﷻ said:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمْ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ
اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ
إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ

"Oh you who believe! When believing women come to you as emigrants, examine them, Allah knows best as to their Iman (belief), then if you ascertain that they are true believers, send them back not to the disbelievers, they are not lawful (wives) for the disbelievers nor are the disbelievers lawful (husbands) for them". [Al- Mumtahinah: 10]

This text has only one meaning, that it is not permitted for Muslim women to marry disbelievers (*Kuffar*) and that disbelievers (*Kuffar*) men are not permitted to marry Muslim women. And that the disbelief (*Kufr*) of the husband does not allow a marriage to be concluded between him and a Muslim woman. He ﷻ said:

فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا
هُنَّ حِلٌّ لَهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ

"Then if you ascertain that they are true believers, send them back not to the disbelievers, they are not lawful (wives) for the disbelievers nor are the disbelievers lawful (husbands) for them" [Al- Mumtahinah: 10]

He expressed it with the word *al-kuffar* (the disbelievers) and not with the word *Al-Mushrikeen* (idolaters) in order to include all disbelievers whether they be idolaters or from the people of the Book. As for the people of the Book, Jews and Christians, being disbelievers (*Kuffar*), that is established in the text of the Qur'an.

He ﷺ said:

مَا يَوَدُّ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَلَا الْمُشْرِكِينَ
أَنْ يُنْزَلَ عَلَيْكُمْ مِنْ خَيْرٍ مِنْ رَبِّكُمْ

"Neither those who disbelieve from among the people of the Scripture (Jews and Christians) nor from the idolaters, like, that there should be sent down unto you any good from your Lord". [Al- Baqarah: 105]

The preposition 'Min' (from) here is explanatory and not partative. And He ﷺ said:

إِنَّ الَّذِينَ يَكْفُرُونَ بِاللَّهِ وَرُسُلِهِ وَيُرِيدُونَ أَنْ يُفَرِّقُوا بَيْنَ اللَّهِ وَرُسُلِهِ وَيَقُولُونَ نُؤْمِنُ
بِبَعْضٍ وَنَكْفُرُ بِبَعْضٍ وَيُرِيدُونَ أَنْ يَتَّخِذُوا بَيْنَ ذَلِكَ سَبِيلًا (١٥٠) أُولَئِكَ هُمُ الْكَافِرُونَ
حَقًّا وَأَعْتَدْنَا لِلْكَافِرِينَ عَذَابًا مُهِينًا

"Verily, those who disbelieve in Allah and His Messengers and wish to make differentiation between Allah and His Messengers saying: We believe in some but reject others, and wish to adopt a way between. They are in truth disbelievers. And We have prepared for the disbelievers a humiliating torment" [An- Nisa: 150-151]

The People of the Book do not believe in the Prophethood of Muhammad ﷺ and therefore they are disbelievers. He ﷺ said:

لَقَدْ كَفَرَ الَّذِينَ قَالُوا إِنَّ اللَّهَ هُوَ الْمَسِيحُ ابْنُ مَرْيَمَ

"Surely, they became disbelievers those who say that Allah is the Messiah, son of Maryam (Mary)". [Al- Maidah: 17]

He ﷺ said:

لَقَدْ كَفَرَ الَّذِينَ قَالُوا إِنَّ اللَّهَ ثَالِثُ ثَلَاثَةٍ

"Surely, they became disbelievers those who said: Allah is the third of the three (in a Trinity)". [Al-Ma'idah: 73]

And He ﷺ said:

لَمْ يَكُنِ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَالْمُشْرِكِينَ

"Those who disbelieve of the people of the Scripture (Jews and Christians) and al-mushrikun (idolaters) were not..". [Al- Baiyinah: 1]

The preposition 'Min' (of) here is explanatory and not partative.

He ﷺ said:

إِنَّ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَالْمُشْرِكِينَ

"Verily, those who disbelieve of the people of the Scripture and the idolaters." [Al- Baiyinah: 6]

The preposition 'min' (of) is again explanatory and not partative.

He ﷺ said:

هُوَ الَّذِي أَخْرَجَ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ مِنْ دِيَارِهِمْ لِأَوَّلِ الْحَشْرِ

"He it is Who drove out the disbelievers of the people of the Scripture (i.e. Jews of the tribe of Banu an-Nadhir) from their homes at the first gathering" [Al- Hashr: 2]

He ﷺ said:

أَلَمْ تَرَ إِلَى الَّذِينَ نَافَقُوا يَقُولُونَ لِإِخْوَانِهِمُ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ

"Have you (Oh Mubammad) not observed the hypocrites who say to their friends who disbelieved of the people of the Scripture ...". [Al- Hashr: 11]

From these verses it is evident that the people of the Book are disbelievers owing to the clear text of the Qur'an.

Therefore, the saying of Allah ﷻ:

فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا مِنْ حِلٍّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ

"Then if you ascertain that they are true believers, send them back not to the disbelievers, they are not lawful (wives) for the disbelievers nor are the disbelievers lawful (husbands) for them". [Al- Mumtahinah: 10]

It is clear Muslim women are not permitted to marry a man from the people of the Book, because the people of the Book are, without doubt, disbelievers.

As for the Mushrikin (polytheists), they are not from the people of the Book such as the Magians (Majus), Sabeans (Sabia), Buddhists, idol worshippers and other such people. It is absolutely not permitted to get married from them. It is absolutely not permitted for a Muslim man to marry an idolatrous woman nor is it at all allowed for a Muslim woman to marry a idolater man. This is mentioned in the clear and definite text of the Qur'an. He ﷻ said:

وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَ وَلَأَمَّةٌ مُؤْمِنَةٌ خَيْرٌ مِنْ مُشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ وَلَا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلَعَبْدٌ مُؤْمِنٌ خَيْرٌ مِنْ مُشْرِكٍ وَلَوْ أَعْجَبَكُمْ

"And do not marry (idolatresses) till they believe. And indeed a slave woman who believes is better than a (free) idolatress, even though she pleases you. And give not (your daughters) in marriage to idolaters till they believe, and verily a believing slave is better than a free idolater, even though he pleases you" [Al- Baqarah: 221]

This verse has only one meaning, which is the unequivocal prohibition of an idolatress woman marrying a Muslim man and vice versa. If such a marriage took place it would be void and it would not be contracted. Al-Hasan b. Muhammad (ra) narrated: that the Messenger of Allah ﷻ wrote to the Magians of (Hijr) inviting them to Islam. **"So whoever embraces Islam he would be accepted into the fold, and those who reject, Jizya would be imposed on them, their slaughtered animals would not be eaten and nor their woman married"**.

Thus, the *Shari'ah* does not stop at exhorting people to get married. Rather, it goes further to clarify who the Muslim man and woman are allowed to marry and who they are forbidden to marry. It makes clear the best characteristics that should be sought in spouses for those who wish to marry. However, it stipulates that the woman should not be the wife of another man nor be in her waiting period for him, because the condition of marriage is that she is free from marriage and the waiting period.

As for the woman who is engaged but her marriage contract has not yet been concluded, her matter should be looked into. If she or her guardian had assented to the proposing man or she had given permission to her guardian to accept engagement or to conclude the marriage, whether that was explicitly stated or by hint, then it is forbidden for others to make a proposal of marriage to her. This is due to what has been narrated by 'Uqba b. 'Amir (ra) that the Messenger of Allah ﷻ said: **"The believer is the brother of another believer"**. So it is not allowed for a believer to bargain a deal already agreed upon between some other persons (by offering a greater price), nor should he propose marriage to a girl who is already engaged to his Muslim brother until he withdraws. Abu Hurayrah (ra) narrates that the Prophet ﷺ said: **"A man should not make proposal of marriage whilst she is engaged to his Muslim brother till he gets married or withdraws his proposal"**. But in case the girl rejected the proposal for marriage or she had not yet answered, or has started enquiries about him, then it is permitted for a man to propose to her. She will not be considered engaged to either of them due to what has been narrated by Fatimah b. Qays (ra) that she went to the Prophet ﷺ and mentioned that Mu'awiya and Abu Jahm had both proposed to her. The Messenger of Allah ﷻ said: **"Mu'awiya is a miserable and he has no money. As for Abu Jahm he does not put down his staff from his shoulder for a moment (i.e. he is very busy). Marry Usama b. Zayd!"** So the Prophet ﷺ proposed to her on behalf of Usama after she had informed him of Mu'awiya and Abu Jahm's proposal.

When a woman is asked for marriage, she has the sole right to accept the marriage or to reject it. None of her guardians (*Awliya*) or any body else has a right to marry her off without her permission or prevent her from marrying. It has been reported from Ibn 'Abbas that he said that the Messenger of Allah ﷻ said: **"The matron has greater right than her guardians and the virgin her permission is sought. Her permission is her silence"**. Abu Hurayrah (ra) also narrated that the Messenger of Allah

ﷺ said: **“A matron should not be given in marriage except after consulting her; and a virgin should not be given in marriage except after her permission is sought”**. The people asked, “O Messenger of Allah, How can we know her permission”? He ﷺ said: **“To remain silent”**. Ibn 'Abbas narrates that a young virgin came to the Messenger of Allah ﷺ and mentioned that her father had given her in marriage against her wishes. So the Prophet ﷺ gave her the choice of repudiating the marriage. Khansa bint Khizam al-Ansariya (ra) narrated that her father gave her in marriage when she was a matron and she disliked the marriage. So she went to Allah's Messenger ﷺ and he annulled her marriage. These *Ahadith* clearly show that if a woman does not give permission for her marriage then that marriage is not concluded. If she rejects the marriage or she was forcibly married the contract becomes void, except if she returns and consents to it.

As for the prohibition of barring a woman from marrying when somebody proposes to her, that is established in the Qur'an. He ﷺ said:

فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكَحْنَ أَرْوَاجَهُنَّ إِذَا تَرَاضُوا بَيْنَهُنَّ بِالْمَعْرُوفِ

"Do not prevent them from marrying their (former) husbands, if they mutually agree on a reasonable basis". [Al- Baqarah: 232]

It is also established by the authentic *Hadith* of Ma'qil b. Yasar (ra). He said: **“I married my sister to a man and he divorced her, and when her days of Idda (three menstrual periods) were over, the man came again to propose to her, but I said to him, ‘I married her to you and made her your bed (your wife) and favoured you with her, but you divorced her. Now you come to ask for her hand again? No, by Allah, she will never go back to you again!’ That man was not a bad man and his wife wanted to go back to him. So Allah ﷻ revealed this verse: "Do not prevent them..."** [Al- Baqarah: 232] **So I said: ‘Now I will do it (let her go back to him), O Messenger of Allah.’ So he married her to him again”**. The meaning of *Adhl* in the verse is to prevent a woman from marrying when she requests it. It is *Haram* and its perpetrator is a *Fasiq* (transgressor). Whoever bars a woman from marrying he will become a transgressor by this action. The jurists have stipulated that a man will become a transgressor (*Fasiq*) if he commits *Adhl*. When the woman is asked for marriage or she requests to be married, then she is the only one who has the right to act, whether she

consents to or rejects the proposal.

When an agreement of marriage takes place between a man and a woman they should undertake a contract of marriage. The marriage will not be complete without a *Shari'ah* contract. This marriage cannot be considered a proper marriage except with a *Shari'ah* contract which has been concluded according to the *Shari'ah* rules. It then becomes permissible for them to enjoy conjugal relations with each other, and the rules that result from the marriage come into effect. If the contract is not concluded, it will not be considered a marriage, even if the man had been cohabiting with a woman for a long time. Consequently, the cohabitation of two lovers like the living together of two spouses is not considered a marriage, rather, it is considered fornication and the living together of two men with the agreement of intimate companionship is not considered marriage but is homosexuality.

As for the civil marriage it is an agreement, concluded between a man and a woman, on intimate companionship, divorce, and what results from that in terms of financial maintenance and rights of disposal, leaving the house, her obedience to him and vice versa. It also includes terms of parental rights as to who shall have custody over the son and who shall have custody over the daughter. In addition it consists of terms of inheritance, and whatever matters that depends on the intimate association or on the termination of this association, according to certain conditions which they both agree on and adhere to. The civil marriage is not just an agreement of marriage, rather it also includes matters that result from this marriage in terms of relationships, financial maintenance, inheritance etc. It also includes cases where both or any one of the spouses can leave the other, that is, it includes divorce. Moreover, it grants each man the freedom to marry any woman and for any woman to marry any man based on the agreement to which they have mutually consented, allowing them to do whatever they desire according to the agreement. Consequently, the civil marriage is not permitted by the *Shar'a*. By no means is it viewed as an agreement of marriage, nor is it considered a contract of marriage, because it has no value in the view of *Shar'a*.

If a civil marriage contract takes place between a Muslim man and a Muslim woman, or between a Muslim man and a woman from the people of the Book, then the wording, whether verbal or written, that takes place between the man and woman must be looked into. In the event of a marriage taking place if any wording of marriage or matrimony is present between

them, and the offer (*Ijab*) and acceptance (*Qubul*) is present and satisfies what is required of the offer and acceptance by the *Shari'ah*, and the guardian is present together with two witnesses, it will be considered a marriage due to the wording. Because it is a contract which fulfils the features and conditions of a *Shari'ah* contract; it will be considered a marriage, only due to the *Shari'ah* contract and not because of the civil contract. If all that is required in the *Shari'ah* contract is not present between the two spouses, it will not be considered a marriage. As for the conditions that are contained in the civil marriage contract they have absolutely no value even if they accord with the *Shar'a*. This is because the obligation of abiding with the divine rules does not arise from the agreement between the man and the woman over the rules, it rather arises from the marriage contract and from the rule of the *Shari'ah* which determines the contract. Therefore, the conditions contained in the civil marriage contract are not given any consideration. If the conditions contradict the *Shari'ah*, their invalidity is obvious. If the conditions agreed upon between the spouses of those permitted by *Shar'a* for either of the spouses to stipulate, if they do not go against the *Shari'ah* or negate any requisites of the contract, then they will be accepted, if the contract of marriage between them is recognised. If what takes place between the man and the woman is not considered a marriage contract, then these conditions have absolutely no value. This is the case if the civil marriage contract is between a Muslim man and a Muslim woman or between a Muslim man and a woman from the people of the Book. As for a civil marriage contract that takes place between a Muslim and a idolatress woman, or someone considered by *Shar'a* as a polytheist, or a civil marriage contract that takes place between a Muslim woman and non-Muslim man, then the marriage will be null and void and not considered valid. Consequently, it becomes clear that marriage must take place according to a legitimate, correct marriage contract which satisfies all the *Shari'ah* conditions. If the marriage is not concluded according to that, then it will not be considered a marriage at all.

The marriage is contracted by legitimate offer and acceptance. The offer is what originates initially from the statement of one of the two contracting parties. The acceptance is what originates secondly, from the statement of the other contracting party, such as when the betrothed woman says to the suitor, I have married you. and the suitor replies I have accepted, or the suitor offers first and she accepts. Just as the offer and acceptance can take place between two fiancées it can also take place between their

representatives (guardians) or between one of them and the representative (guardian) of the other. It is stipulated in the offer that the wording should be of marriage and matrimony, but that is not stipulated in the acceptance. Rather the condition is the consent of the other (contracting party) to this offer, by any wording that indicates the consent and acceptance of marriage. The offer and acceptance must be worded in the past tense such as 'I have married you' and 'I have accepted'. Or the first must be in the past tense and the second in the future tense. For marriage is a contract, and its wording must indicate that it certainly happened, that is, in the past tense. The sound contracting of marriage stipulates four conditions:

The First condition is the occurrence of the offer and acceptance in the same sitting, where the sitting in which the offer was given is the same sitting in which the acceptance took place. This is if the two contracting parties are present together. If the two parties are in two different countries and one of them writes a letter to the other with an offer of marriage and the recipient of the letter accepts, then the marriage has been contracted. However, in such a situation it is stipulated that she reads or lets someone read the letter out to two witnesses who are made to hear its wording. Or she should say to them so-and-so person has sent me a letter in which he has proposed to me and calls upon them in the same sitting to bear witness that she has given herself in marriage to him.

The second condition for the contracting of marriage is that each of the two contracting parties should hear the statement of the other and understand it to mean that he wants to contract the marriage with this statement. If he did not know, either because he did not hear or did not understand, the marriage will not be valid. For example if a man dictated to a woman the meaning of 'I have married you to myself in French', whilst she did not understand the language, and she repeated the expression without knowing that the purpose of what she said was the contract of marriage, and the man subsequently accepted it, then the marriage will not be valid. If however she knew that the purpose of what she had said was a contract of marriage, then the marriage would be valid.

The third condition is that the acceptance should not object to the offer, whether the objection is to the whole offer or part of it.

The fourth condition is that the *Shari'ah* has allowed the marriage of one

contracting party to the other, like if the woman is a Muslim or from the people of the Book and the man is a Muslim and nothing else.

If the contract meets these four conditions then the marriage will be valid. If any of the conditions are not met, the marriage will not come into effect. It will be void from its very basis. When the marriage is contracted, it must, in order for the marriage to be correct, satisfy the conditions of correctness which are the following three:

The First condition is that the woman should be suitable for the contract of marriage.

The Second condition is that the marriage will not be correct without a guardian since the woman does not possess the right to give herself or give others in marriage. Similarly, she does not have the right to delegate anyone other than her guardian to give her in marriage. If she does this, the marriage will not be correct.

The third condition is the presence of two sane, mature Muslim witnesses who hear the statements of the two contracting parties and understand that the purpose of the offer and acceptance statements is to contract in marriage. When the contract satisfies these conditions it will be correct. If any of these conditions are lacking, the marriage will be improper (*Fasid*). However, it is not stipulated that the marriage contract be in writing or be registered as a document. The mere occurrence of the offer and acceptance from a man and a woman, whether verbally or in writing, which satisfies all the conditions, will ensure that the marriage contract is correct regardless of whether it was written down or not. As for the marriage not being complete without the offer and acceptance, this is because it is a contract, by its very nature, between two parties.

The reality of the contract is that it will not be complete without the offer and acceptance, neither will it be considered to be a contract. As for the stipulation that the wording of the offer be that of marriage or matrimony, this is because the text has mentioned it. He ﷺ said:

زَوَّجْنَاكِهَا

"We gave her to you in marriage" [Al- Ahzab: 37]

He ﷺ said:

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ

"And marry not women from whom your fathers married" [An- Nisa: 22]

In addition the *Ijma'a* (consensus) of the *Sahabah* has taken place on this. As for the stipulation that the offer and acceptance be combined in the same sitting, this is because the ruling of the sitting is a ruling on the situation of the contract. If they part before the acceptance, the offer is void, since the acceptance has no meaning, because turning away from the offer has been expressed by departing, so it would not be considered an acceptance. The same goes if they engage themselves with something that suspends the acceptance, because he also turned away from the contract by being distracted from the acceptance. As for the condition that the contracting parties should hear each other and understand what is said i.e. know that what is meant is to contract the marriage according to this expression. This is since that is what makes the acceptance a response to the offer, because the offer is a proposal of one of the contracting parties to the other, awaiting an acceptance. If he did not understand what was said the proposal will not have taken place, and the acceptance of this proposal is also deemed not to have taken place. Therefore, its reality is that it is neither an offer nor an acceptance. As for the condition of the absence of objections in the acceptance to the offer, this is because it will not be considered a proper acceptance unless it indicated an approval of the whole offer. If the acceptance differed it will not be considered an agreement to what has been mentioned in the offer. Thus, it will not be considered a proper acceptance. As for the condition that the *Shari'ah* must give permission for one contracting party to marry the other, that is because prohibition of certain contracts can be found in the *Shar'a* and these are not allowed to be conducted.

This is with regards to concluding the contract. As for its correctness, if the contract does not contain any *Shar'a* prohibitions then it will be complete. However, if a prohibition over a specific matter is violated in the execution of the contract, the contract will be improper (*Fasid*) but it will not be void. As for the stipulation that the woman should be *suitable* for the contract of marriage, this is because the *Shar'a* prohibited the marrying of certain women and prohibited the combining of some women in one marriage. If the

contract was concluded over someone who is forbidden for contracting then the contract will not be correct (*Sabih*). As for the marriage not being correct without a guardian (*Wali*) this is due to what has been narrated by Abu Musa from the Prophet's ﷺ saying: **“There can be no marriage without a guardian (Wali).”** As for the woman not possessing the right to give herself or give others away in marriage, nor possessing the right to delegate anyone other than her guardian to give her in marriage, this is due to what 'Aisha reported from the Prophet ﷺ **“Any woman who gets married without the permission of her guardian (Wali), her marriage will be void, her marriage will be void, her marriage will be void.”** And also due to what Abu Hurayra has reported that the Prophet ﷺ said: **“A woman shall not give another woman in marriage, nor should a woman give herself in marriage. Indeed only the fornicatress shall give herself (unilaterally) in marriage”.** As for the stipulation that there be two Muslim witnesses, this is because the Qur'an has stipulated that there be two Muslim witnesses in taking back the divorcee from a revocable divorce back into wedlock. He ﷺ said:

فَإِذَا بَلَغْنَ أَجْلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهَدُوا ذَوَى
عَدْلٍ مِنْكُمْ

"Then when they are about to fulfil their term appointed, either take them back in good manner or part with them in a good manner. And take for witness two just persons of you" [At- Talaq: 2]

Since the return to one's wife after divorce which is a continuance of the contract of marriage is stipulated to have two Muslim witnesses, then the initiation of matrimony, that is, the initiation of the contract of marriage, by greater reason, should be required to have two witnesses. Moreover, the contract of marriage and the continuation of the contract of marriage are one issue and therefore they are like the same rule.

12

Women to whom Marriage is Prohibited

The origin for the women with whom marriage is prohibited, has to be, and is clearly mentioned, in the Kitab and Sunnah. As for the Kitab, Allah ﷻ says:

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ
فَاحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا

"And marry not women from whom your fathers married, except what has already passed; indeed it was shameful and most hateful, and an evil way." [An- Nisa: 22]

And He ﷻ said:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمُ مِنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّاتِي فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَخَالَاتُكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كِتَابَ اللَّهِ عَلَيْكُمْ وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ

"Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your foster mother who gave you suck, your foster milk suckling sisters, your wives' mothers, your step-daughters under your guardianship, born of your wives to whom you have gone in - but there is no sin on you if you have not gone in them (to marry their daughters), the wives

of your sons who (spring) from your own loins, and two sisters in wedlock at the same time, except for what has already passed; verily, Allah is Oft-Forgiving, Most Merciful. Also (forbidden are) women already married, except those (captives and slaves) whom your right hand possesses. Thus has Allah ordained for you. All others are lawful".

[An- Nisa: 23-24]

As for the Sunnah, Abu Hurayra has reported that the Messenger of Allah said: **"One should not bring together a woman and her father's sister, nor a woman and her mother's sister in marriage"**. Muslim narrates that 'Aisha (ra) said that the Messenger of Allah ﷺ said: **"Suckling makes women unlawful (for marriage) the same as birth makes unlawful."**

Thus, the marriage to mothers is absolutely forbidden. The mothers are everyone to whom you are related by childbirth. This is so, whether the one whom you are related to qualifies for the true word 'mother' which is the one who gave birth to you or she is a metaphorical mother i.e. is the one who gave birth to the one who gave birth to you and even if she is higher (in the line of descent)/and beyond. Therefore, your grandmothers: your mothers' mother and your fathers mother; the grandmothers of your mother and father; and the grandmothers of your grandmother and grandfather and even higher, irrespective of whether they are entitled to inheritance from you or not, they are all metaphorical mothers to whom marriage is prohibited.

Marriage to daughters is absolutely forbidden. They are every female who is related to you by your birth, such as the daughter who springs from your own loins or the daughters of sons and daughters, even if they go down in the line of descent. Whether they inherit or not, they are all daughters to whom marriage is forbidden.

Also absolutely forbidden to marry are the sisters from three directions; from the (same) mother and father or from (just) the father, or (just) the mother (uterine sisters).

Marriage to paternal aunts, the sisters of the father from three directions are forbidden, also the sisters of grandfathers through the father or mother, whether the grandfather is immediate or distant and whether he inherits or not.

Marriage to maternal aunts, the sisters of the mother from three directions are forbidden, also sisters of grandmothers and whosoever is higher in the

line of descent, because every grandmother of a mother, and likewise every sister of a grandmother is considered a maternal aunt to whom marriage is prohibited.

Marriage to nieces and any woman who is related to the brother by birth is forbidden; so the daughter of a brother is forbidden from whatever direction the brother may be. The daughters of the sister are likewise forbidden.

Marriage to foster mothers is forbidden. They are the ones who have suckled you, their mothers and grandmothers, and whosoever is higher in the line of descent according to what has been mentioned in the genealogy. Every woman whose mother has suckled you or whom your mother suckled, or she and you have been suckled by the same woman, or you and she were suckled from the milk of the same man. Even if there were more than one foster mother. Such a woman is your sister and it is forbidden for you to marry her.

Marriage to the mothers of wives is forbidden. Whoever married a woman then everyone who is a mother to her by lineage or suckling, whether close or distant (in relation) becomes forbidden to him by the existence of a mere contract irrespective of whether he has consummated the marriage or not. This is due to what has been narrated by 'Amr b. Shu'ayb, on the authority of his father who narrated on the authority of his grandfather that the Prophet ﷺ said: **"Whoever marries a woman and then divorces her before he has consummated the marriage with her, there is no objection to him marrying his step-daughter (the woman's daughter) but it will not be permitted for him to marry her mother."**

Marriage to daughters of wives with whom he has consummated the marriage is forbidden. They are the stepdaughters. They are not forbidden except by consummation of the marriage with their mothers. They include every daughter of the wife by lineage, suckling, close or distant (in relation), whether inheriting or not, according to what has been mentioned concerning the daughters. If the marriage is consummated with the mother, then the daughters become forbidden for him, whether they were under his guardianship or not, because the statement *"Your step-daughters under your guardianship"* [An- Nisa: 23], is a description of their general state and it is not mentioned as a condition. As for the statement: *"born of your wives to whom you*

have gone in". [An- Nisa: 23] This comes in the form of a condition, due to what is clearly mentioned after it: "... *but there is no sin on you if you have not gone in them (to marry their daughters)*". [An- Nisa: 23] Therefore, if he has not consummated the marriage with the woman, then marriage to her daughter is not prohibited.

In addition marriage to daughters-in-law is absolutely forbidden, i.e. marriage to wives of his sons and wives of his grandsons through lineage, suckling, whether close or distant (in relation), the moment the contract was concluded, irrespective of whether the marriage was consummated or not.

Marriage to one's step-mothers is forbidden. Therefore, a man is forbidden from marrying the wife of his father whether he is a close or distant relation, whether he is entitled to inheritance or not and whether he is related by lineage or suckling. An-Nisai has reported that al-Barra' b. 'Azib said: **"I came across my maternal uncle who was carrying a (war) banner. I said: 'what do you wish to do?' He said: 'The Messenger of Allah ordered me to go to a man who had married his father's wife after his death, in order to strike his neck (i.e. kill him).'"**

It is prohibited to be married to two sisters at the same time, whether they were sisters because of lineage, suckling, from the same mother and father, from one father or one mother, and irrespective of whether the marriage to the sister took place before or after consummation. If he marries them both in a single contract then the contract will be improper (*Fasid*).

It is also forbidden to be married to a woman and her paternal or maternal aunt at the same time. This is because of what has been narrated by Abu Hurayra that the Messenger of Allah said: **"One cannot be married to a woman and her paternal aunt, or a woman and her maternal aunt at the same time"**. And in the narration of Abu Dawood: **"A woman and her paternal aunt, a paternal aunt and her brother's daughter, or a woman and her maternal aunt and a maternal aunt and her sister's daughter cannot be married to the same man at the same time. Neither the older after the younger, nor the younger after the older can be combined in marriage."**

In addition it is also forbidden to marry women that are already married. Allah has called them '*Al-Muhsanat*' (chaste women) because they have

protected their private parts (from *Zina*) through marriage.

Suckling prohibits that which lineage prohibits. Every woman that is forbidden due to lineage, likewise is also forbidden due to suckling. This applies to mothers, daughters, sisters, paternal and maternal aunts, and nieces (daughters of the brother and sister). They are forbidden in the same manner as in the prohibition of lineage due to the saying of the Prophet ﷺ: **"What is forbidden by lineage is likewise forbidden by suckling"**. And in the narration of Muslim: **"Suckling makes unlawful what birth makes unlawful"** (in terms of marriage). And 'Aisha (ra) narrated that: **"Aflah, the brother of Abu al-Qu'ays, asked me permission (to enter the house) after the partition (Hijab) was revealed. So I said: 'By Allah, I would not admit Aflah unless I have asked the opinion of Allah's Messenger ﷺ on this matter, for the brother of Abu al-Qu'ays has not suckled me but it was the wife of Abu al-Qu'ays who suckled me', when Allah's Messenger ﷺ came, I said: 'O Messenger of Allah! It was not the man who suckled me but it was his wife' He said: 'Permit him to enter for he is to you a (paternal) uncle, you may have perished, had you not asked.'"** The prohibiting factor in suckling is the milk. So both the owner of the suckled milk and the one who made suckling are prohibited to the person who was suckled. Whether the owner of the milk was a man or a woman, and whether the one who was suckled was child for whom he suckled from or not. Consequently, it is allowed for a person to marry his foster brother's sister but not allowed to marry his/her foster brother or sister. So, if a person was breast fed from a woman, this woman will be his foster mother and her husband will be his/her foster father. Their children (both sons and daughters) will be his foster brothers and sisters, while the brothers of the person who was suckled are not brothers and sisters of his/her foster brothers and sisters. Therefore, they are allowed to marry the foster brothers and sisters of their brother. Thus the prohibiting factor is the milk.

These are the women to whom marriage is forbidden, and any women other than these are permitted for marriage.

This is due to His ﷺ's saying:

وَأَحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ

"All others are lawful (for marriage)" [An- Nisa: 24]

This as explained earlier, excludes the marrying of a *Mushrik* and a woman who is already married.

13

Polygyny

Allah ﷻ has said in His Noble Book:

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْنَىٰ أَلَّا تَعُولُوا

"Marry 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 your concubines. That is more fitting so that you do not deviate from the right course" [An- Nisa: 3]

This verse was revealed to the Prophet ﷺ in the 8th year of the *Hijra*. It was revealed to limit the number of wives one can marry to four. At the time of revelation of this verse there was no limit to the number of wives one could marry. On reading and understanding the verse it becomes clear that it was revealed to limit the number of wives to four. The meaning of the verse is: marry of the women, two, three or four who are permitted and agreeable to you. Twos, threes and fours are mentioned instead of repeated enumerations. i.e. marry the women of your choice from these mentioned numbers twos, threes and fours. The speech is addressed to everybody, therefore there has to be a repetition so that each suitor who wishes to marry a number of women can choose whatever he wants of number on condition that the combination he desires is restricted to this number. In other words, each suitor who wishes to marry more than one woman can marry as many as he likes from the number that is made optional for him. Just as we would say to a group distribute this money. Let's say there was a thousand dinars for example. We would say; distribute dinars by twos, threes and fours. If you made your statement in the singular form then it would have no meaning. So the expression twos, threes and fours is inevitable so that each individual can choose what he wants from the specific number in

the expression. So when Allah ﷻ says each one of you can marry the woman of his choice two, three or four, this effectively means: marry all of you twos, threes or fours. i.e. each of you can marry two, three or four.

As for the meaning of His ﷻ saying:

فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً

"But if you fear that you shall not be able to deal justly (with them), then marry only one" [An- Nisa: 3]

This means that if you fear that you shall not be able deal with these numbers of wives justly then you should simply choose one wife and relinquish the marriage to more than one wife immediately. The issue revolves around justice. Wherever you find it just, adhere to it. Marrying only one wife is closer to not doing injustice. So that you should not deviate (from the right course of action) means it is more fitting so that you do not do injustice, because the deviation here means injustice. It is said the ruler has deviated from the right course when he has committed injustice. 'Aisha (ra) narrated about the Prophet ﷺ that he said: **"So that you may not deviate (from the right course): so that you do not make injustice."**

The *Ayah* permits the plurality of wives and limits it to four. However, it orders justice between them and enjoins the restriction to one wife when it is feared there would be injustice, because the restriction to one wife when there is fear of committing injustice is closer to avoiding injustice, a matter for which a Muslim is obliged.

Indeed it should be known that the justice mentioned here is not a condition for marrying more than one wife. Rather it is a ruling for the man who wishes to marry a number of wives, that he must observe in the event of marrying more than one wife, and an exhortation to restrict himself to one wife if he fears he will not be able to deal with them justly. This is because the meaning of the sentence is completed in the verse by His ﷻ saying: *"Marry women of your choice, twos or threes, or four"*. [4:3] this means there is an absolute permissibility of marrying more than one wife. Thus, the meaning of the sentence is completed. In another statement, He ﷻ said: *"But if you fear"*. The phrase *"But if you fear"* cannot result in being a condition because it is not linked with the first verse as a conditional clause. Rather it is a resumption of a new statement. If Allah ﷻ had wished to make it a

condition then he would have said: *"Marry women of your choice, twos or threes, or fours if you can deal with them justly"*, but that is not the case, so it is established that justice is not a condition, rather it is another *Shar'a* ruling different to the first rule. So firstly He ﷻ permitted the plurality of marriages up to four, then He came with another ruling which is that it is better to restrict oneself to one wife when he believes that marriage to more than one wife will make him incapable of dealing with them in a just manner.

From the above it becomes clear that Allah ﷻ has permitted polygyny without restriction, condition or any recourse to any justification. Rather, every Muslim is given the right to marry two, three or four wives of his choice. That is why we find Allah ﷻ saying: *"women of your choice"* [4:3] i.e. those women whom you find agreeable to you. It is clear that Allah ﷻ has ordered us to be just between our wives and exhorted us that if we fear we could not be able to do justice between our wives, we restrict ourselves to just one wife because the restriction of marrying one wife make us more likely not to commit injustice.

As for what constitutes desired justice between wives, it is not 'absolute justice'. Rather it is the justice in marriage between wives which is within the ability of the man to undertake, because Allah does not impose on man that which he cannot bear. He ﷻ said:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

"Allah burdens not a person beyond his scope" [Al- Baqarah: 286]

It is true that the phrase 'be just' has been mentioned in the verse with a general import, as He ﷻ says:

فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا

"But if you fear that you shall not be able to deal justly (with them)" [An- Nisa: 3]

This encompasses all aspects of justice, but this general order has been specified in another verse to what the human has the capability to do. Thus, Allah ﷻ said:

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا
تَمِيلُوا كُلَّ الْمِيلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ

"You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline completely to one of them so as to leave the other suspended"
[An- Nisa: 129]

Allah ﷻ has clarified in the verse that it is impossible for us to realise justice and equality between wives, such that no inclination (towards one of them) would ever happen nor increase or decrease in what is obligatory upon us in providing for them. Due to this He ﷻ has lifted from us the complete and full extent of justice and He ﷻ has not imposed on us except that which one can bear on condition that we exert our utmost effort and energy. For the imposition of what one is not able to do is tantamount to oppression:

وَلَا يَظْلِمُ رَبُّكَ أَحَدًا

"And your Lord treats no one with oppression" [Al-Kahf: 49]

And He ﷻ says:

فَلَا تَمِيلُوا كُلَّ الْمِيلِ

"So do not incline completely to one of them" [An- Nisa: 129]
as a comment on His ﷻ saying: *"You will never be able to do perfect justice"* [An- Nisa: 129] and as a reference for it, is an evidence that its meaning is: you will never be able to deal with them justly and equally with regards to love. The correct understanding is that it is possible to be just in everything other than love. This is what the previous verse obliges, as it has specified the desired justice to be other than love, and made love and sexual intercourse excluded from justice, because it is not obliged in these two issues, since a human is not able to be equal in his love. This meaning is supported by what has been reported about 'Aisha (ra) that she said: "The Messenger of Allah ﷺ used to distribute things and do justice to all and used to say, **"Oh My God, this is my distribution of what is in my control, but do not blame me for what is in Your control and over which I have no control"**. i.e. his heart. It has been narrated from Ibn 'Abbas (ra) concerning

the saying of Allah ﷻ: *"You will never be able to do perfect justice between wives"* [An- Nisa: 129]. He said "this is with regards to love and sexual intercourse." Allah ﷻ has ordered us to abstain from completely inclining towards one wife. This means He has permitted the inclination because the prohibition of the complete inclination indicates the permissibility of the inclination. An illustration of this is the prohibition of unrestrained and excessive generosity mentioned in His ﷻ saying:

وَلَا تَبْسُطْهَا كُلَّ الْبَسْطِ

"Nor stretch your hand forth to its utmost reach" [Al- Isra: 29]

Which means it is permitted to stretch your hand by giving to the needy. Therefore, Allah ﷻ has permitted the husband to incline towards some of his wives to the exclusion of others. However, He has forbidden this inclination to include all matters. Rather, the inclination should be to whatever this inclination applies, which is the love and desire. So the meaning of the verse is: refrain from the absolute inclination towards a wife, because if the complete inclination occurs from you, it will leave the other wife suspended, i.e. one who is neither divorced nor possessing a husband. It has been narrated by Abu Hurayra (ra) that the Prophet ﷺ said: **"Whosoever has two wives and he inclines towards one to the exclusion of the other, he will come on the Day of Judgement with half his body dropping or bending down"**.

Thus, the justice which is obligatory upon a husband is the equality between his wives in that which he has control over such as staying overnight, providing food, clothing and lodging etc. As for what falls under the meaning of inclination, which is love and desire, It is not obligatory to be just in these things because that is impossible, and they are excluded by the Qur'an.

This is the subject of polygyny as mentioned in the *Shar'a* texts. By studying these texts and limiting oneself to their *Shar'a* and linguistic meanings in terms of what they indicate and what is deduced from them, it becomes clear that Allah ﷻ has in a general manner permitted the marriage to more than one wife (up to four) without restriction or condition. The text concerning this matter did not include any cause (*'Illa*). On the contrary, Allah ﷻ has expressed Himself in a way which indicates the rejection of a justification. So He ﷻ said:

مَا طَابَ لَكُمْ مِنَ النِّسَاءِ

"(Marry) women of your choice". [An- Nisa: 3]

Therefore, we must stop at the limit of the *Shar'a* text and at what is derived from it in terms of *Shari'ah* rule. It is not permitted to justify this rule with any cause (*Illa*), or justify it with justice, need or anything else, because the text did not bring *Illa* for the rule nor can any reason (*Illa*) be found in any other *Shar'a* text. The cause (*Illa*) of the rule should be a *Shar'a* reason i.e. there must be a text to mention it so that the rule which is derived from it can correctly be considered a *Shar'a* rule. If the reason is rational or not mentioned in any text, then the rule which is derived by means of it will not be a *Shar'a* rule. Rather it will be a man-made law and it will be *Haram* to adopt, nor will it be permitted to apply it. This is because it will be a *Kufr* rule, since any rule which is not a *Shar'a* rule is a *Kufr* rule. However, since the definition of the *Hukm Shar'i* (*Shari'ah* rule) being 'the speech of the Legislator' makes it inevitable that the rule is derived from the speech of the Legislator, either explicitly mentioned in the text, or from its meaning, or by indication, or due to the presence of a sign (*Amara*) in the text which points to the *Shar'a* rule, such that every rule which has that sign (*Amara*) will be a divine rule. This sign (*Amara*) is the *Shar'a* reason (*Illa Shar'iyya*) which is mentioned in the text either explicitly or by indication, inference or analogy. If this sign (*Amara*) i.e. this *Illah* is not found in the text then it has no value. Consequently, it becomes clear that it is not allowed to justify polygyny with reason (*Illa*) since no *Illa* is found in the speech of the Legislator. An *Illa* has no value in making a rule into a *Shar'a* rule except when it is found in the speech of the Legislator.

However, the absence of an explanation of a *Shar'a* rule by an *Illa* does not mean it is not permitted to explain the reality of what will take place in terms of the effect of this *Shar'a* rule and the reality of what it solves in terms of problems. Rather this is an explanation of a reality and not justification for a rule. The difference between explaining the reality and justifying a rule, is that the justification of a rule by an *Illa*, is that the *Illa* should constantly exist in the rule, and analogy of other things to this rule is made whenever the *Illa* is found in them. As for explaining the reality this is the clarification of the reality at the point in time when it is explained. The reality may cease, so it is incorrect to make an analogy to it with other things. Hence, it becomes clear from the effect of polygyny of wives that in

the community in which it is permitted there will not be a plurality of mistresses, and in communities which forbid the plurality of wives there will be a plurality of mistresses. In addition, polygyny solves many other problems, which take place in a human community in its capacity as a human community, which depends on polygyny to solve them. The following are some examples of these problems:

1. There are some men with unusual dispositions, who are unable to satisfy themselves with one wife. Either such men will oppress or hurt their only wife or they will look at other women if they find the door shut in front of them to take a second, third or fourth wife. There is a danger of this happening in terms of the spread of indecency and fornication amongst people and the creation of suspicion and doubts within families. Therefore, it is essential that a person who possesses such a disposition should have the opportunity to satisfy his strong urge in a halal manner i.e. in a way that Allah ﷻ has legislated.

2. It may be that a woman is barren and therefore cannot bear children but her husband still loves her dearly and vice versa, which makes them determined to continue with their happy married life. The husband may however desire offspring and have a love for children. If it is not permitted for him to marry another wife and he finds no options available to him he will have to either divorce his first wife, which would lead to the destruction of the stability of the household and the end of a happy marriage, or he is deprived from enjoying offspring. This will lead to the suppression of the aspect of fatherhood present in the procreation instinct. Therefore, it is essential that such a spouse is given the opportunity to marry another wife in addition to the existing wife so that he can have the offspring which he desires.

3. The wife may be ill with a disease, which excuses her from having conjugal relations or looking after the house and seeing to the husband and children. She might still be cherished and dearly loved by her husband who might have no wish to divorce her, although he cannot live his life properly with just her alone, and consequently without another wife. It is imperative that in such a situation the opportunity is given to him to marry more than one wife.

4. Wars and uprisings might take place which claim the lives of thousands, even millions of men which may upset the balance between the numbers of men and women, as has happened actually, especially in Europe, in the First and Second World War. If a man is not able to marry more than one wife what are the rest of the women supposed to do? They will be deprived from family life and the happiness of a home and the ease and comfort of married life, not to mention what the procreation instinct can lead to in terms of the danger to morality.

5. It may be that in a nation, people or region the number of males and females is not equal. The number of females may be higher than males so the numerical balance between men and women is upset. And this is almost the case amongst many peoples and nations. In such a situation there is no solution to this problem except the permissibility of polygyny.

These are real problems faced in the human community among peoples and nations. If polygyny is outlawed then such problems remain, since there is no solution for these problems except through allowing polygyny. Hence, polygyny should be permitted so that these problems which humans face are dealt with. Indeed Islam has permitted polygyny but has not obliged it. The permissibility of polygyny is inevitable although it should be known that the situations outlined above and their like which may exist among humans and in human societies are real problems which occur but they are not an *Illah* (cause) for marrying more than one wife nor are they a condition for the permissibility of polygyny. Rather, the man is allowed to marry a second, third and fourth wife whether problems which require polygyny as a solution has arisen or not. Because Allah ﷻ says:

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ

"Marry women of your choice, two or three, or four" [An- Nisa: 3]

And He ﷻ said: "of your choice". He ﷻ has made this general without restriction or condition. As for the restriction of marrying one wife, the *Shari'ah* has preferred this in only one situation, which is where there is a fear that one is not able to do justice between his wives. As for anything other than that, there is no expressed preference to marry only one in any of the texts. In spite of the fact that polygyny is a *Shar'a* ruling found in the clear text of the Qur'an, Capitalist culture and Western propaganda, particularly

that against Islam as opposed to other religions, has portrayed marriage to more than one wife as a hideous and repugnant practice and depicted it as a deficiency and a source of shame in the *Deen*. The motive for this is not because a defect has been noticed in the laws of Allah ﷻ but in order to disparage Islam, and there is no motive for it other than this. This propaganda has greatly affected Muslims, particularly the ruling faction and the educated youth. This drove those who were moved by Islamic emotions to stand for Islam. Such Muslims adopted false interpretations to forbid polygyny, thus they were actually influenced by the false propaganda circulated by the enemies of Islam. That is why we must warn the Muslims that pretty actions (*Hasan*) are what the *Shar'a* deems to be pretty (*Hasan*) and ugly actions (*Qabeeh*) are what the *Shar'a* deems to be ugly (*Qabeeh*), and whatever the *Shar'a* permits is pretty (*Hasan*) and whatever the *Shar'a* forbids is ugly (*Qabeeh*). Also we must warn the Muslims that polygyny, whether it has a tangible good effect or not, and whether it solves problems which have occurred or not, the *Shari'ah* has permitted it, and the Qur'an has stated that clearly. Therefore it is a pretty action and the prohibition of polygyny is ugly, because it is a *Kufr* rule. It must be made clear that Islam did not make polygyny *Fard* on the Muslims nor *Mandub* (preferred). Rather, it made it one of the permissible things, which is allowed for them to do if they wished to do so. The fact that Islam made it permissible means that it has placed before the people a solution that they can use whenever it is necessary to do so, and it has permitted them not to deprive themselves from the women of their choice if in their view they were to incline towards them. Thus, permitting polygyny and not making it obligatory is what makes it one of the most effective solutions for humans in the community and society.

14

The Prophet's ﷺ Marriages

Allah ﷻ revealed His saying:

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ
فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ

"Marry 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 your concubines. That is more fitting so that you do not deviate from the right course" [An- Nisa: 3]

At the end of the eighth year of the *Hijra*, after he had consummated all of his marriages with his wives, the Messenger ﷺ was, at the time of the revelation of the verse, married to more than four wives, however he did not leave a single one of them but continued to be married to all his wives. This is because marriage to more than four wives, is specific to him ﷺ. It is clear that being married to more than four wives is unique to the Messenger and so he kept them after the revelation of the verse which limited marriage to four wives. This is because the Prophet's ﷺ action does not contradict a statement that he makes. If there is a contradiction then the action is specific to him while the saying is general to the *Ummah*, for it has been established in the foundations of jurisprudence that the action of the Prophet ﷺ does not contradict his speech relevant to the *Ummah* but it can be specific to the Prophet ﷺ. This is because his order to the *Ummah* is relevant to them, which is more specific than the evidences calling for us to emulate him, by following his sayings and actions. Thus, the general order is built on the specific order, and therefore it is not allowed to emulate the Prophet ﷺ in an action in which there is a different order to the *Ummah*. However the Prophet's marriage to more than four wives, and allowing them to offer

themselves to him in marriage etc. have been demonstrated by the verses of the Qur'an:

يَا أَيُّهَا النَّبِيُّ إِنَّا أَحْلَلْنَا لَكَ أَزْوَاجَكَ اللَّاتِي آتَيْتَ أُجُورَهُنَّ وَمَا مَلَكَتْ يَمِينُكَ مِمَّا
أَفَاءَ اللَّهُ عَلَيْكَ وَبَنَاتِ عُمَّاتِكَ وَبَنَاتِ خَالَكَ وَبَنَاتِ خَالَاتِكَ اللَّاتِي
هَاجَرْنَ مَعَكَ وَامْرَأَةً مُؤْمِنَةً إِنْ وَهَبَتْ نَفْسَهَا لِلنَّبِيِّ إِنْ أَرَادَ النَّبِيُّ أَنْ يَسْتَنْكِحَهَا
خَالِصَةً لَكَ مِنْ دُونِ الْمُؤْمِنِينَ قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْهِمْ فِي أَزْوَاجِهِمْ
وَمَا مَلَكَتْ أَيْمَانُهُمْ لِكَيْلَا يَكُونَ عَلَيْكَ حَرَجٌ

"Oh Prophet! Verily, We have made lawful to you your wives, to whom you have paid your *Mahr*, (their dower) and your concubines - whom Allah has given you, and the daughters of your paternal uncles and the daughters of your paternal aunts and the daughters of your maternal uncles and the daughters of your maternal aunts who migrated (from Makkah) with you, and a believing woman if she offers herself to the Prophet, and the Prophet wishes to marry her; - a dispensation for you only, not for the rest of the believers. Indeed We know what We have enjoined upon them about their wives and their concubines - in order that there should be no difficulty on you" [Al- Ahzab: 50]

This verse says: 'a dispensation for you only, not for the rest of the believers.' The word '*Khalisa*' (dispensation) in the verse is a verbal noun which confirms whatever preceded it i.e. a dispensation has been made for you by permitting what We have made lawful for you specifically. The evidence to say that it includes all that precedes it and that it is specific to the Messenger of Allah ﷺ is that it came after the four permissible matters which are the non permissibility of marrying wives, captives directly from the *Fey'*, daughters of his relations who have been mentioned amongst those that migrated with him, and a woman that directly offers herself for marriage, beside the fact that this was stated in an emphatic manner. This is supported by the fact that at the completion of His ﷺ saying: 'not for the rest of the believers', His ﷺ saying came: 'Indeed We know what We have enjoined upon them about their wives and their concubines'. So it means this is not what We have enjoined on them, that is why after all of this He ﷺ said: 'in order that there should be no difficulty on you'. i.e. so that there is no hardship for you.

Therefore, the marriages of the Prophet ﷺ should not be taken as an example to emulate, nor as a subject of legislative discussion, because it is

unique to him ﷺ. Not to mention that the reality of his marriages indicates that they were marriages of a Prophet ﷺ and not the marriages of a man marrying for sex and satisfaction of the procreation instinct, in terms of the male-female aspect. By returning to the historical reality we find that he ﷺ married Khadija (ra) while he was twenty-three years of age, and Khadija (ra) herself remained as a spouse for twenty-eight years. She died in the eleventh year of the Prophethood i.e. two years before the *Hijra*, a few months after the rescission of the boycott document and shortly before his visit to Taif in the year 620 A.D, at the age of fifty. He did not contemplate, since the time he married Khadija (ra) until her death, the prospect of marrying more than one wife, and this was at a time when polygyny was a widespread practise amongst the Arabs. Before he was sent with the Message, he spent seventeen years with Khadija sharing a quiet and tranquil life. And he lived with her approximately eleven years after the Prophethood (*Bi'tha*), in a life of *da'wa* and struggle against the *kufr* thoughts; in spite of this he did not consider marrying again. It was not known of him during his life with Khadija (ra) or before his marriage to her that he was one of those tempted by the alluring charms of women in an age where the *Tabarruj* of the *Jabiliyya* used to tempt the people. It is not natural for us to take the view that after passing the age of fifty a sudden change took place in him which did not allow him to be content with one wife but rather to continue to marry until he had taken ten wives. Within five years in the sixth decade of the Prophet's life he gathered more than seven wives, and in the remaining seven years of the sixth decade and beginning of the seventh the Prophet gathered nine wives. At such an age can these marriages be attributable to a desire for women or to motives linked to satisfying the procreation instinct in terms of sexual intercourse? Or were there other motives, which were required by the reality of the type of life which the Prophet ﷺ was engaged in, i.e. the life of the Message, which he had been ordered to convey to the people? In order to understand this issue, let us examine the incidents surrounding the Prophet's ﷺ marriages.

In the eleventh year of the Prophethood, i.e. the year Khadija (may Allah be pleased with her) died, the Prophet ﷺ considered getting married. He was fifty, so he proposed to 'A'isha, the daughter of Abu Bakr, his friend and the first one who believed in his Prophethood from the men. When she was just a child of six he contracted a marriage with her but did not consummate it for a period of three years until she was nine, which was after the *Hijra*. However, at the time in which he contracted the marriage

with 'A'isha he married Sawda bint Zam'a. Sawda was a widow of al-Sukran b. 'Amr b. 'Abd Shams, who was one of the Muslims who had migrated to Abyssinia but died on his return to Makkah. Sawda had embraced Islam with her husband and she had migrated with him. She had suffered the same difficulties and hardships he suffered and faced the same harm he had faced. After the death of her husband he ﷺ married her. It has not been reported that Sawda was beautiful, or that she possessed wealth or standing, that would make any of the worldly aspects influence the Prophet's marriage to her. Since the Prophet ﷺ had married her after the death of her husband, the only thing we can deduce from this is that he married her to support her and raise her to the position of the mother of the believers. When he migrated he made the house of Sawda close to the Mosque. This was the first house the Prophet ﷺ built for any of his wives.

Then, in the first year of the *Hijra*, after the brotherhood between the Ansar and Muhajirin had been instituted, the Messenger ﷺ consummated his marriage with 'A'isha and he housed her next to the house of Sawda, close to the Mosque. He allowed his first *Wazir* (assistant) and friend Abu Bakr as-siddiq (ra) to come to see him in his house at his daughter's home.

In the second year of the *Hijra*, after the battle of Badr and before Uhud, he married Hafsa the daughter of 'Umar b. al-Khattab.(ra) Hafsa, before being married to the Prophet, was the wife of Hanish who was one of the early converts to Islam. He died leaving her for seven months before the Messenger married her. By marrying Hafsa he ﷺ enabled his second *Wazir*, his companion 'Umar b. al-Khattab (ra) to come to see him in his house at Hafsa's home. So the marriages to 'A'isha (ra) and Hafsa were marriages to the daughters of his two *Wazirs* (assistants), the daughters of two companions who persevered with him in *Da'wah*, ruling and fighting etc. So such marriages were not only for the purpose of marriage. Although 'A'isha (ra) was beautiful and the Prophet ﷺ found her attractive this was not the case with Hafsa (ra), which indicates that his marriage to both of them was for a purpose other than sexual gratification.

During the battle of Banu Mustaliq, in the fifth year of the *Hijra*, he ﷺ married Juwayriyya bint al-Harith ibn Abi Dirar. The reason behind his marriage to her was for the purpose of drawing her father closer to the Prophet ﷺ and raising her position. Juwayriyya was from the captives of Banu Mustaliq, and had fallen in the hands of one of the Ansar. She was the daughter of the leader of Banu Mustaliq, so she wanted to free herself from

her master to whom she had become a slave-girl. Her master increased the ransom money knowing that she was the daughter of the leader of Banu Mustaliq. So her father approached the Prophet ﷺ with the ransom required to free her, which he did. Then after believing in the Message of the Prophet he became a Muslim, and he took his daughter Juwayriyya to the Prophet ﷺ and she too embraced Islam, so the Prophet ﷺ asked her father for her hand. He married her to the Prophet ﷺ himself so the Prophet's marriage to her was in fact a marriage to the daughter of a leader of a tribe which he had subjugated. His ﷺ objective was to win the friendship of its leader through marrying his daughter.

In the seventh year of the *Hijra* after the victory of Khaybar he ﷺ married Safiyya daughter of Huyai ibn al-Akhtab who was one of the leaders of the Jews. The story of his marriage to her began when she was taken along with other captives which the Muslims seized from the fortress of Khaybar. Some of the Muslims advised the Prophet ﷺ: "Safiyya is a noble lady of Banu Qurayza and Banu Nadhir. She is not suitable for anyone other than you", hence the Prophet ﷺ freed and married her. This was therefore done for her protection and to free her from the bondage of slavery, and as well to raise her status. It has been narrated that Abu Ayyub Khalid al-Ansari feared that Safiyya harboured hatred against the Messenger ﷺ who had killed her father, husband and people. For this reason he spent the night, girded with his sword, around the tent in which the Messenger ﷺ consummated the marriage with Safiyya on the way back from Khaybar. When the Messenger ﷺ woke up in the morning he noticed him outside the tent and asked him: **"What is the matter?"** He replied: "I feared for you from this woman. You have killed her father, husband and her people and she has just recently come out of kufr." So the Messenger ﷺ set Abu Ayyub's mind at rest, and Safiyya remained loyal to the Messenger ﷺ until Allah ﷻ took his soul.

Later, in the eighth year of *Hijra* he ﷺ married Maymuna the sister of Umm al-Fadhl, the wife of al-'Abbas b. 'Abd ul-Muttalib. He married her at the end of the pilgrimage [*Umra al-qada*]. The account of his marriage to her began when Maymuna was twenty six years of age and that she had delegated her sister Umm al-Fadhl to find a suitor for her, but when she saw the predicament of the Muslims at the pilgrimage she herself yearned for Islam. Therefore al-'Abbas proposed to his nephew, our Master Muhammad on her behalf. He proposed to the Prophet at her behest and the Messenger agreed to marry her. The three days which the treaty of Hudaibiyah had

stipulated had expired, but the Messenger ﷺ wished to use his marriage to Maymuna as a means to increase the understanding between himself and the Quraish. When Suhayl b. 'Amr and Huwayteb b. 'Abd ul-'Uzza came to him representing Quraish they said to Muhammad ﷺ: "Your time in Makkah has expired, so leave us." He ﷺ said to them: **"What is the matter with you? Why do you not leave me? I will hold a wedding feast amongst you. We will prepare food for you so why not attend it?"** Their response to him was "we have no need of your food so depart from us"; the Messenger ﷺ did not hesitate; he left along with the Muslims behind him.

As for his ﷺ marriage to Zaynab bint Khuzayma and Umm Salama, they were marriages to the two wives of his companions who had been martyred on the battlefield. Zaynab was the wife of 'Ubayda b. al-Harith b. al-Muttalib who was martyred on the day of Badr, she was not of marked beauty, but she was known for her good nature and kindness to the extent that she became nicknamed as the 'mother of the needy.' She had passed her youth, but the Messenger of Allah ﷺ married her in the second year of the *Hijra*, after the battle of Badr and after the martyrdom of her husband. She stayed with him for only two years until Allah ﷻ took her soul. Which meant after Khadija, she was the only one who died before the Prophet. As for Umm Salama, she was the wife of Abu Salama, who had a number of sons with her. Abu Salama was injured in Uhud then recovered from it, so the Prophet agreed to let him fight Banu Asad. He defeated them and returned to Madinah victorious with the booty that had been captured but the injury he sustained at Uhud worsened and he remained ill until his death shortly thereafter. The Prophet ﷺ was present while he was on his deathbed, and he remained by his side, praying for his well being until he died. The Prophet ﷺ then closed Abu Salama's eyes. Four months after his death, the Messenger ﷺ proposed to Umm Salama herself, but she made excuses that she had a big family and that she had passed her youth. The Prophet however persisted until he married her and he himself saw to her children's upbringing. So it is clear that the Messenger married those two wives to care for the family of two of his companions after their death.

As for his marriage to Umm Habiba bint Abu Sufyan (ra), this was a marriage to a believing woman who had migrated to Abbyssinia fleeing with her deen intact. She had remained patient in the path of Islam after her husband had apostatised. That is because this Umm Habiba was Ramla the daughter of Abu Sufyan, the leader of Makkah and head of the *Mushrikin*.

She was the wife of a cousin (son of a paternal aunt) of the Messenger of Allah ﷺ, 'Ubayd Allah b. Jahsh al-Asadi. 'Ubayd Allah embraced Islam with his wife Ramla whilst her father was still upon kufr. She was afraid of hurting her father so she migrated, encumbered by her pregnancy, with her husband to Abyssinia. There in the place of refuge, Ramla gave birth to her daughter Habiba bint 'Ubayd Allah by whom she was named. So she came to be called Umm Habiba although her husband 'Ubayd Allah b. Jahsh did not take long before he left the fold of Islam and professed his belief in Christianity, the religion of the Abyssinians and tried to take his wife Ramla away from Islam, but she patiently persevered in her deen. Then the messenger of Allah ﷺ sent for the Negus delegating him to perform the marriage of Umm Habiba to the Messenger of Allah ﷺ. The Negus informed Umm Habiba of this, so she delegated Khalid b. Sa'id b. al-'As to give her in marriage, and her marriage contract with the Messenger ﷺ took place. Khalid undertook the marriage contract on her behalf and the Negus for the Messenger of Allah ﷺ. When the *Muhajirin* of Abyssinia returned to Madinah after the battle of Khaybar, Umm Habiba returned with them and entered the house of the Messenger of Allah ﷺ. Madinah celebrated the wedding of the Messenger to Umm Habiba and she remained in his house.

As for his ﷺ marriage to Zaynab bint Jahsh this showed legislation for a number of issues. It was legislation to demolish what was called equivalence (matching) between the man and the woman, in marrying a cousin (daughter of his paternal aunt), and who was from the leaders of the Quraish that was married to a former slave that had been freed. It showed the legislation for the destruction of what had become established amongst them in *Jahiliyah*, in that adopting a son is like one's own son, so one cannot marry his wife. Muhammad ﷺ married the wife of his freedman (Zayd) whom he had freed, after her divorce from him (Zayd) in order to destroy those customs. The account of the Messenger's marriage to Zaynab bint Jahsh was that Zaynab bint Jahsh was a daughter of Umayma bint 'Abd al-Muttalib the paternal aunt of the Messenger ﷺ. She was raised under his care and attention and because of this, she was to him like a daughter or a younger sister. He used to know her and knew whether she was attractive or not before she had married Zayd, and he had seen her from the time she was an infant crawling, until her childhood and through to her adolescent years. She was not a stranger to the Messenger ﷺ, but rather she was similar in position to his daughter. He (peace and blessings be upon him) proposed to her on behalf of his freed slave Zayd but her brother 'Abd Allah b. Jahsh

refused for his sister, being that she was from Quraish and a Hashimite in addition to being a daughter of the aunt of the Messenger of Allah, to be the bride of a slave bought by Khadija and later freed by Muhammad. He felt that this was a great shame for Zaynab as it used to be a great dishonour for the Arabs, as daughters of the nobility did not marry slaves even if they were given their freedom. But Muhammad ﷺ wanted these considerations which existed within people solely on the basis of tribalism to be erased and for them to comprehend that there is no superiority of an Arab over a non-Arab except in *Taqwa* and to understand Allah ﷻ's saying:

إِنَّا أَكْرَمُكُمْ عِنْدَ اللَّهِ اتَّقَاكُمْ

"Verily, the most honourable of you with Allah is that (believer) who has more taqwa".
[Al- Hujurat: 13]

He did not consider it right that a woman from other than his family should be pushed to do this. So, Zaynab bint Jahsh, daughter of his aunt, became the one to depart from the traditions of the Arabs and to destroy their customs, paying no attention to what the people may say about her, which she was afraid to hear. He ﷺ let Zayd, his slave whom he had adopted and who gained the right, due to the customs and traditions of the Arabs, to inherit from him like the rest of his sons, to be the one who would marry Zaynab. This was so that he would be ready for the sacrifice that the All-Wise Legislator had prepared for those who were adopted and taken as sons. The Messenger ﷺ insisted that Zaynab and her brother 'Abdullah accept Zayd, his freed slave, as her husband. However Zaynab persisted in her refusal as did her brother 'Abdullah. As a result Allah ﷻ revealed His ﷻ saying:

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُمْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ
الْخِيَرَةُ مِنْ أَمْرِهِمْ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ صِلًا مَبِينًا

"It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His Messenger, he has indeed strayed in a plain error" [Al- Ahzab: 36]

Hence, nothing remained for 'Abdullah and Zaynab other than to submit to Allah's will, so they said: 'We consent O Messenger of Allah ﷺ.' Zayd consummated his marriage with Zaynab after the Prophet had sent her the

dowry. However, married life between Zayd and Zaynab was not good; on the contrary, from the start it was unsettled and embittered and continued to be unsettled and embittered. Zaynab, herself was not happy with this marriage after it had taken place even though it was a command from Allah and His Messenger. She did not obey her husband, and she did not soften in her approach towards him. Rather, she used to boast to Zayd that the bondage of slavery had not befallen her and she made life difficult for him. Zayd complained to the Prophet ﷺ on numerous occasions and explained to him about her bad treatment of him. He sought permission from the Prophet ﷺ a number of times to divorce her. The Prophet used to reply: **“Hold on to your wife”**. Allah ﷻ revealed to the Messenger that Zaynab will be one of his wives. This was distressing for the Prophet ﷺ who feared that people will say that Muhammad has married his son's wife and will censure him for that since he ﷺ had adopted Zayd as a son. Therefore, he did not want Zayd to divorce her, but Zayd urged the Prophet ﷺ to allow him to divorce her. Despite the fact that the Prophet knew that she would be one of his wives as Allah ﷻ had informed him by way of revelation, he still said to Zayd: **“Keep your wife to yourself, and fear Allah”**. As a result of this Allah mildly reproached him since He told him that he had informed him that He would marry him to her and that he was concealing within himself that which Allah will make known.

This is the meaning of His ﷺ saying:

وَتُخْفِي فِي نَفْسِكَ مَا اللَّهُ مُبْدِيهِ

"But you did hide in yourself that which Allah will make manifest".

[Al- Ahzab: 37]

The matter that he concealed was the knowledge that Zaynab will be his wife even though she was the wife of someone he had adopted. This is what Allah would make manifest afterwards, which was his marriage to a divorcee of someone he had adopted as his son. The reason for the Messenger's concealment of this marriage, which Allah later made manifest, is that it was the custom of the Arabs to keep their adopted sons/daughters in their houses and ensure links with their relations. They used to give the 'da'iyy' i.e. the person who is adopted, all the rights of a son. All the rules of a son were applied to them even in inheritance and the esteem of lineage. So when Allah informed the Messenger that Zaynab, the wife of his freed slave whom

he had adopted will be his wife he hid this knowledge and strictly insisted that Zayd hold on to his wife and not to divorce her, despite Zayd's insistence, his complaints about her, and the lack of harmony between them and concord in their marital life ever since he married her. However, Zayd insisted on divorcing her so the Messenger gave him permission, and he eventually divorced her without any knowledge that the Messenger would marry her and without Zaynab herself knowing that the Messenger would take her as his wife this is illustrated by what Ahmad, Muslim and an-Nisa'i have reported via Sulayman b. al-Mughira on the authority of Thabit that Anas said: "When the 'Iddah (divorce period) of Zaynab was over, Allah's Messenger ﷺ said to Zayd to mention him to her. So I (Zayd) went to her and said: "O Zaynab rejoice! Allah's Messenger sent me to propose to you on his behalf." She said: "I do not do anything until I see my Lord order me." So she stood at her place of worship and Allah's Messenger came to her without permission when the verses of the Qur'an (pertaining to her marriage) were revealed:

فَلَمَّا قَضَىٰ زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا لِكَيْ لَا يَكُونَ عَلَى
الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ

"So when Zayd had accomplished his desire from her (i.e. divorced her), We gave her to you in marriage, so that (in future) there may be no sin to the believers in respect of (the marriage of) the wives of their adopted sons."[Al- Ahzab: 37]

If either she or Zayd had known then he would not have said to her 'rejoice,' nor she said 'until I see my Lord order me' i.e. she left the matter to Allah to guide her in this marriage. The 'Illa of this marriage is so that there is no sin on the believer in marrying the wife of someone they had adopted.

This is the account of the Messenger's marriages to his wives. It is clear from the account of the marriages that each one was for an objective other than the mere aim of marrying. The intent of the Prophet's marriage to more than four wives and why this number is unique to him from the rest of his *Ummah* becomes clear. The fact that the objective was not the agitation of the procreation instinct of a man who had passed the age of fifty is quite evident, since he was a man who was busy with the Da'wa, engaged in conveying the Message of his Lord to the world so that he may revive a people and mould them into an *Ummah* whose only aim in life was to carry

the Message of Allah to the world. His aim was to build the society anew after he had demolished the previous edifice, and establish a state pushing ahead the world before it, in order to carry the Call of Islam to the people. Anyone who's mind is occupied with the revival of an *Ummah*, the establishment of a state, the building of a society, and the carrying of the Message to the world cannot be preoccupied by women devoting himself to them and marrying one every year. Rather, he carried his *Da'wah* and he enjoyed a normal married life like any other human.

15

Married Life

A wife is not a partner of her husband in life rather she is his companion. Their living together is not based on partnership and they are not forced to live it all their lives. Rather, their living together is based on companionship and they become complete companions of each other in all respects. Companionship is where one finds repose and tranquillity in the other, Allah has made this marriage a source of tranquillity for both spouses. He ﷻ said:

هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا

"It is He Who has created you from a single person, and He has created from him his wife, in order that he might enjoy the pleasure of living with her". [Al- Araf: 189]

And He ﷻ said:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً

"And among His Signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has put between both of you affection and mercy". [Ar- Rum: 21]

The dwelling is the tranquillity i.e. so that the husband finds peace and tranquillity in his wife and his wife finds peace and tranquillity in him and that each one inclines to the other rather than shuns each other. So the basis of Marriage is tranquillity and the basis of marital life is tranquillity and peace of mind. In order that this relationship between the spouses becomes one full of comfort and tranquillity, the *Shari'ah* has clarified the rights of the wife over the husband and the rights of the husband over the wife. Verses and *Abadith* have come clearly to explain these issues.

Allah ﷻ said:

وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ

"And they (women) have rights (over their husbands) similar (to those of their husbands) over them, in reasonable terms". [Al- Baqarah: 228]

i.e. women have the same marital rights over the men as the rights men have over them. That is why Ibn 'Abbas said: 'Indeed I spruce myself up for my wife and she adorns herself for me, and I love that I should redeem all the rights I have over my wife, so that she should redeem all the rights she has over me, because Allah ﷻ said:

وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ

"And they (women) have rights (over their husbands) similar (to those of their husbands) over them, in reasonable terms" [Al- Baqarah: 228]

i.e. the charms in which there is no sin. Also it is reported from him that he said: 'They (women) have the right of good companionship and intimacy similar to the rights of obedience obliged over them towards their husbands'

Allah ﷻ has ordered that there should be a good marital relationship between spouses. He ﷻ said:

وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ

"And live with them honourably" [An- Nisa: 19]

And He said:

فَإِمْسَاكِ بِمَعْرُوفٍ

"so retain her (to you) honourably" [Al- Baqarah: 229]

Companionship is both intimacy and mixing, meaning to live together. Thus, Allah ﷻ has ordered men to have good relations with their wives, so that intimacy and intermixing between them grows to perfection. This results in tranquillity and comfort in life. The relationship between men and women is more than just fulfilling her right by paying her *Mahr* and maintenance.

Rather he must not frown at her for no reason, and he must be cheerful when speaking to her and not rude, harsh or displaying any inclination to other than her.

Also the Messenger ﷺ has ordered men to treat their women well. It has been reported by Muslim in his *Sahih* on the authority of Jabir that the Messenger of Allah ﷺ said in his speech at the *Hijjat-ul-wida'* (farewell Hajj): **"Fear Allah concerning women! Verily, you have taken them on the security of Allah, and intercourse with them has been made lawful unto you by the word of Allah. You too have rights over them, they should not allow anyone to sit on your bed whom you do not like. But if they do that you can chastise them but not severely. Their rights upon you are that you should provide them with food and clothing in a fitting manner."**

And it has been narrated from the Prophet ﷺ that he said: **"The best amongst you is the one who is best to his wives and I am the best of you to my wives."** And it has been narrated from him ﷺ that he had a close relationship with his wives, he would play with them, be mild-mannered toward them and to have fun with them to the extent that he used to race with 'A'isha (ra), the mother of the believers, and with that win her love. She said: "Allah's Messenger ﷺ raced me and I beat him, that was before I gained weight. Later I raced him when I had put on some weight, so he beat me and said: **"This was (in return) for that (time when you had beaten me)"**. The Prophet ﷺ after praying 'Isha would spend a short part of the evening chatting with his wives before sleeping thereby creating a friendly atmosphere. Ibn Maja reported that the Prophet ﷺ said: **"The best amongst you are the ones who are best to their wives."**

All of this indicates that husbands should have good relations with their wives. Since things may happen in married life that may disturb the order, Allah has granted the leadership of the home to the husband over the wife, i.e. he has been made a guardian over her. He ﷻ said:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ

"Men are the protectors and guardians over women". [An- Nisa: 34]

And He ﷻ said:

وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ

"And they (women) have rights (over their husbands) similar (to those of their husbands) over them in a fitting manner, but men have a degree (of responsibility) over them".
[Al- Baqarah: 228]

He ﷺ also ordered the woman to obey her husband. He ﷺ said: **"If a woman spends the night away from her husband's bed then the Angels curse her until she returns."** And He ﷺ said to a woman: **'Do you have a husband?'** She replied: 'Yes.' He said: **'Then he is your Paradise (Jannah) and Hellfire (Nar).'** Bukhari reported that the Prophet ﷺ said: **'It is not allowed for a woman to fast without the permission of her husband whilst he is present, nor admit someone to his house without his permission, and whatever she spends of his wealth (on charitable purposes) without his permission, half the reward will go to him.'** Ibn Batta has reported in his *Abkam an-Nisa* (The book of rules pertaining to women) on the authority of Anas that a man had gone on a journey and forbade his wife from going out. Her father became ill so she asked permission from Allah's Messenger ﷺ to visit her father. The Messenger of Allah ﷺ said: **"Fear Allah and do not disobey your husband"**. Her father then died. So she asked permission from Allah's Messenger ﷺ to attend his *Jana'za* (funeral prayer). He told her: **"Fear Allah and do not disobey your husband"**. So Allah revealed to the Prophet ﷺ: **"I have forgiven her sins due to her obedience to her husband."** (*Hadith Qudsi*) The *Shar'a* has given the man the right to prevent his wife from leaving the house whether she wishes to call on or visit her parents or for a thing she needs or just for recreation. It is not therefore allowed for her to go out without his permission. However, the husband should not prevent his wife to call on and visit her parents because that will create a rift between them and lead his wife to disobey him. Allah ﷻ has ordered them to live together honourably. Preventing her from visiting her parents is not living honourably. Nor should the husband prevent her from going to the Mosque, Since it has been narrated from the Prophet ﷺ that he said: **"Do not prevent slave girls of Allah (women) from going to the Masajid of Allah"**. If the wife rebels against her husband, Allah has given him the right to discipline his wife. He ﷺ said:

وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ
وَاضْرِبُوهُنَّ فَإِنْ أَطَعْتَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا

"As to those women on whose part you see ill-conduct, admonish them (first), (next), disengage from them in beds, (and last) beat them (lightly), but if they return to obedience, seek not against them means (of annoyance)" [An- Nisa: 34]

The beating mentioned here should be light i.e. not severe. As the Messenger ﷺ explained in the farewell Hajj when he said: **"But if they do then you can chastise them but not severely"**. The husband has been given the authority to punish his wife if she does wrong because he is the guardian in running and looking after the affairs of the house. In anything other than what Allah ﷻ has ordered her to undertake, the husband is absolutely not allowed to harass her with it. He ﷺ said:

فَإِنْ أَطَعْتَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا

"But if they return to obedience, seek not against them means (of annoyance)".
[An- Nisa: 34]

Rather he should be a friend to her, and kind when he requests something of her, to the extent if he desires her he should choose the best situation and condition suitable for her. He ﷺ said: **"Do not approach wives at night until the one with dishevelled hair has it combed and the one whose husband has been away has cleaned her private parts (of hair)."**

Guardianship of the husband over the wife and his leadership of the house does not mean being domineering in it or being its ruler such that no issue is opposed. Rather the leadership of the husband over the house is the looking after its affairs and administering it and there is no domination or commanding in it. Therefore, the woman has the right to answer back to her husband and debate with him and criticise what he says because they are companions and not a commander and commanded, or a ruler and a ruled. On the contrary they are two companions, one of whom possesses leadership in terms of running the house and looking after its affairs. In his house, the Messenger of Allah ﷺ, was likewise a companion to his wives, not a domineering ruler over them, in spite of his being the leader of a state and in spite of being a Prophet. 'Umar b. al-Khattab said in a *Hadith* reported by him: "By Allah, during the days of Ignorance we ignored women until Allah

the Exalted revealed about them what He has revealed, and gave them a share.” He said: “It so happened that I was thinking about some matter when my wife said: 'I wish that you had done so and so'. I said to her: “It does not concern you, and you should not interfere in what I intend to do.” She said to me: 'How strange is it that you, son of Khattab, do not like anyone to answer you back, whereas your daughter answers back Allah's Messenger ﷺ until he spends the day in vexation'. Umar said: “I took hold of my cloak, then came out of my house until I visited Hafsa and said to her: Oh daughter, (I heard) that you answer back to Allah's Messenger ﷺ until he spends the day in vexation.” Hafsa said: 'By Allah, we do answer him back'. I said: “Be careful, my daughter, I warn you against the punishment of Allah and the wrath of His Messenger ﷺ. You may not be misled by the one whose beauty, and the love of Allah's Messenger ﷺ for her have fascinated her (meaning A'isha). I (Umar) then visited Umm Salama because of my relationship with her and I talked to her. Umm Salama said to me: 'Umar b. al-Khattab, how strange it is that you interfere in every matter to the extent that you intend to interfere between Allah's Messenger ﷺ and his wives'. This perturbed me so much that I refrained from saying what I had to say, so I came out of her apartment.”. Muslim narrates in his *Sahih* that Abu Bakr came and sought permission to see Allah's Messenger ﷺ. It was granted to Abu Bakr and he entered. Then came Umar and he sought permission and it was granted to him and he found Allah's Messenger ﷺ sitting sad and silent with his wives around him. He (Umar) said: **“I wanted to say something which would make the Holy Prophet ﷺ laugh, so I said: ‘Oh Messenger of Allah, I wish you had seen the daughter of Kharijah when she asked me for maintenance (Nafaqah), and I got up and slapped her on her neck.’ The Messenger of Allah ﷺ laughed and said: “They are around me as you see, asking for maintenance (Nafaqah)”** From this it becomes clear that the meaning of the man's guardianship over the woman is that the command should rest with him, but it should be a command borne out of companionship and not domination and control. Thus she can answer back to him and discuss with him.

This is from the angle of companionship. As for the aspect of performing household functions, it is obligatory on the wife to serve her husband by making the dough, baking and cooking and by dusting and cleaning the house. She must also give him water when he requests a drink and provide him with food to eat and undertake the service of all that is necessary in the house. This applies to whatever is required in all affairs of the home without restriction. With regard to the husband he must bring her what she needs

from what is outside the home e.g. bringing the water, and whatever is necessary to remove dirt, clip nails and the means to adorn herself for him with that which is fitting for her.

In summation, any work that needs to be carried out inside the house the woman must undertake, whatever the type of work. Any work that needs to be carried out outside the house the man must undertake. This is due to what has been narrated from the Prophet ﷺ in the story of 'Ali and Fatimah (may Allah be pleased with them): He ﷺ imposed on his daughter Fatimah the duty of working in the house and imposed on 'Ali whatever was outside the house in terms of work. Allah's Messenger ﷺ used to order his wives to serve him. He said: **“O ‘A’isha, bring us some water. Oh ‘A’isha bring us food to eat. O ‘A’isha bring me the razor and sharpen it against a stone.”** It has been reported that Fatimah came to the Prophet ﷺ complaining to him about her difficulty in working a handmill, and she asked if she could get a servant to save her from that. All of this indicates that serving the husband in the house and looking after the house is one of the obligations of the wife which must be undertaken by her. However, the performance of such work is subject to her ability. If there is a lot of work to be done which would put her in hardship, then it is incumbent on the husband to provide her a servant that will enable the work to get done, and she has the right to demand this. However, If the work is not overwhelming and she is capable of doing it, then the husband is not obliged to provide a servant. In this case she is required to undertake the work by herself as evidenced by what the Messenger of Allah ﷺ imposed on his daughter Fatimah in tending to the house.

Hence the husband is obliged to deal with his wife in a fitting manner, and the wife is under an obligation to perform all her duties, in the same way as it is required of the husband. Such that marital life be one of tranquillity in which the saying of Allah ﷻ is realised:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا
إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً

"And among His Signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has made between you affection and mercy"
[Ar- Rum: 21]

16

Coitus Interruptus (Al- 'Azl)

‘Azl is when the man withdraws when close to ejaculation in order to discharge outside the vaginal passage. 'Azl is something which is permitted by the *Shar'a*. i.e. it is allowed for a man when he has sexual intercourse with his wife to discharge his semen, when close to ejaculation, outside the vaginal passage. Bukhari has reported on the authority of 'Ata'a from Jabir that he said: “We used to practise 'Azl in the time of the Messenger of Allah ﷺ while the Qur'an was being revealed.” It has also been narrated on the authority of 'Ata'a that he heard Jabir (ra) saying: “We used to practise 'Azl while the Qur'an was being revealed.” And in Muslim: “We used to practise 'Azl in the time of Allah's Messenger ﷺ, he knew of it and he did not forbid us from it.” This is the decision of Allah's Messenger ﷺ on 'Azl. Which indicates its permissibility, since if it were *Haram* he would not have remained silent. The *Hukm* of 'Azl has been related by the *Sahabi* to the time of the Prophet ﷺ, and because of this it becomes a *hukm* ascribed to him ﷺ since it is apparent that the Prophet knew about it and assented to it, due to the numerous occasions where they put their questions to him about the rules. With regards to the permissibility of 'Azl there are also a number of authentic *Abadith*. Narrated by Ahmad, Muslim and Abu Daud on the authority of Jabir: **“A man came to the Messenger of Allah ﷺ and said: ‘I have a slave girl who is our servant. She carries water for us. I have intercourse with her, but I do not want her to become pregnant’. He ﷺ said: ‘Practise ‘Azl, if you like. But what is decreed for her will come to her.’”** Muslim reports on the authority of Abu Sa'id: **“We went out with the Messenger of Allah ﷺ on the expedition of Bani al-Mustaliq. We took as captive some beautiful Arab women. We desired them, for we were suffering from the absence of our wives. We wanted to practise ‘Azl, so we asked Allah's Messenger ﷺ about it. He said: ‘What prevents you from doing so? Since Allah has ordained whom He has to create until the Day of Judgement’”**. Abu Daud narrated on the authority of Jabir who said: “A

man from the Ansar came to the Messenger of Allah ﷺ and said: **“I have a slave girl. I have intercourse with her but I do not want her to become pregnant.”** He ﷺ said: **‘Practise ‘Azl, if you like. But what is decreed for her will come to her.’”** 'Azl is unequivocally permitted whatever the intention of the one who practises it. Whether it is for the intention of not having offspring, having fewer children, or in sympathy for the wife because she is weak making it difficult for her to bear or give birth, or for any other reason.

The husband has the right to practise 'Azl regardless of his intention. That is because the evidences concerning it are unrestricted (*Mutlaqa*), and under no circumstances are they restricted; and they are general (*Aam*) without any specification (*Takhsis*). Thus, they remain unrestricted and general. It should not be said that 'Azl constitutes killing the child before its creation. There are clear *Abadith* which reject this. Abu Daud has reported on the authority of Abu Sa'id that a man said: “O Messenger of Allah ﷺ I have a slave girl and I practise 'Azl with her. I do not want her to get pregnant but I desire what men desire. The Jews say that 'Azl is the minor live burial of children.” He said: **“The Jews have lied. If Allah wanted to create a child you could not stop Him”**. The text came to permit 'Azl for the intention of not having children.

Ahmad and Muslim have narrated on the authority of Usama b. Zayd that a man came to the Prophet and said: I do 'Azl with my wife. Thereupon Allah's Messenger ﷺ said: **“Why do you do that?”** The man said: “I pity her child or her children.” Thereupon the Messenger of Allah ﷺ said: **“If that were harmful it would have harmed the Persians and the Romans”**. Here the Messenger ﷺ said “Why do you do that?” He did not say 'Do not do that'. It is understood from this *Hadith* that he agreed upon it; but he informed him that having children one after another does not cause harm as the evidence for that is by what Muslim reported in the *Hadith* of Usama b. Zayd when a man came to Allah's Messenger ﷺ and said: “I practise 'Azl with my wife pitying her child.” The Messenger of Allah ﷺ said: **“If it is for that reason, then no. It did not harm the Persians or the Romans”**, and it is also narrated in Muslim from Abdul-Rahman b. Bishr from Abu Sa'id: “Fearing that pregnancy will harm the child being suckled.” Consequently, since the Messenger allowed 'Azl in order to avoid pregnancy, even though the suckling infant is not harmed, it applies on 'Azl to prevent pregnancy for the purpose of avoiding a large family or avoiding having children in the first

place etc. This is because if Allah ﷻ knew that the child will be born, then the child will be born whether the (husband) practiced 'Azl or not. Thus, Ibn Hibban reported in the *Hadith* of Anas that a man inquired about 'Azl. The Prophet ﷺ said: **“If the semen from which a child comes is spilled on a rock, He will bring forth from it a child”**. It cannot be said that limiting offspring goes against the Prophet's ﷺ encouragement to have many children when he said: **“Marry, have offspring and multiply”**; and when he ﷺ said: **“A fertile black woman is better than a beautiful woman who is barren”**. This is not true because permitting 'Azl does not contradict the encouragement to have many children. On the one hand there is exhortation to have a lot of offspring and on the other there is a permission to practise 'Azl. As for what Ahmad has reported from Judhama bint Wahb al-Asadiyya, that she said: “I was present with the Messenger of Allah ﷺ among the people. He ﷺ was saying: **“I wanted to forbid sexual intercourse with mothers who are giving suckling to their children, but I have seen that the people of Persia and Rome do that and their children are not harmed at all”**. Then he was asked about 'Azl. The Messenger of Allah ﷺ said: **“That is the concealed burial. It is** (and he recited the verse): *“When the female (infant) buried alive (as the pagan Arabs used to do) shall be questioned”*. [At-Takwir:8-9]. This *Hadith* contradicts the clear and authentic *Abadith* which permit 'Azl. When a *Hadith* conflicts with another *Hadith* which has more lines of transmission, then the latter is preferred and the singularly transmitted *Hadith* is rejected. Accordingly, this *Hadith* is rejected because it contradicts what is stronger than it and has more lines of transmission.

It should not be said that the reconciliation of this *Hadith* with the *Abadith* which permit 'Azl is that this *Hadith* is taken to mean dislike for 'Azl. This would have been possible if there was no clash in the Messenger's ﷺ negation in the other *Hadith* to the same meaning which came in this *Hadith*. So the *Hadith* which Ahmad and Abu Dawood reported on the authority of Abu Said: “The Jews say that 'Azl is the minor live burial of children.” He ﷺ said: **“The Jews have lied”** and the *Hadith* of Judhama says: **“That is the concealed burial.” It is** (and he recited the verse):

وَإِذَا الْمَوْءُودَةُ سُئِلَتْ بِأَيِّ ذَنْبٍ قُتِلَتْ

“When the female (infant) buried alive shall be questioned” [At-Takwir: 8-9]

Thus, it is not possible to reconcile these two *Abadith*. Either one of them is abrogated or one of them is stronger than the other so the weaker *Hadith*

is rejected. Since the history of the two *Abadith* is unknown and the *Hadith* of Abu Said is supported by numerous *Abadith* and through numerous chains, while the *Hadith* of Judhama has come isolated and it is not supported by anything, it is therefore rejected and the *Hadith* which is stronger than it, is preferred. Therefore, 'Azl is definitely allowed without any dislike whatever the person intends from the practising of 'Azl, due to the general nature of the evidences. The man does not need to even ask permission from his wife to practise 'Azl because the issue relates to him and not to her. It should not be said that intercourse is her right, so the semen is also her right, thus he cannot discharge it outside the vagina without her permission. This is a rational justification and not one from the *Shari'ah* so it accordingly has no value. And furthermore it is nullified because intercourse is her right but not the discharge of semen as evidenced by the impotent man who if he entered the wife but did not discharge, he is considered to have fulfilled her right by the entering. She does not, then, have a right to the repudiation (*Faskh*) of marriage. As for what Ibn Maja has reported on the authority of Umar b. al-Khattab who said: “Allah's Messenger ﷺ forbade the practise of 'Azl with a free woman without her permission”, it is a weak *Hadith* and in the isnad there is Ibn Lahia and (much) has been said about him. Therefore, the *Abadith* remain unrestricted in their permissibility of 'Azl.

This ruling on 'Azl applies to the use of medicines, condoms or the use of a coil to prevent pregnancy. All of them belong to the same category because the evidences permitting 'Azl completely apply to them, as all these means belong to the question of 'Azl. This is so because the ruling is the permissibility of a man undertaking an action to prevent pregnancy whether by 'Azl or any other means. What is permitted for the man is permitted for the woman since the ruling allows the prevention of pregnancy through any of the available means.

This permission to prevent pregnancy is specific to the temporary prevention of pregnancy. As for the permanent prevention of childbearing or causing sterility, it is *Haram*. So the use of medicines which irrevocably prevent pregnancy and terminate the chance of having offspring, or the undergoing of surgical operations which permanently halt pregnancy and terminate procreation, are all prohibited. This is so because they are a type of castration so they fall within its category and take its ruling. This is because these practices terminate procreation just as castration terminates

procreation. A clear prohibition has been made with regards to castration. Reported by Sa'ad b. Abi Waqqas: "The Messenger of Allah ﷺ rejected (the idea) of Uthman b. Maz'un living in celibacy (saying): And if he ﷺ had given me permission we would have got ourselves castrated." Uthman b. Muz'un came to the Prophet ﷺ and said: "O Messenger of Allah ﷺ, I am a man suffering from having no wife. Permit me to castrate myself." He ﷺ said: **"No! However, you should fast"**. And in different wording he said: **"O Messenger of Allah will you permit me to castrate myself?"** He ﷺ said: **"Allah has substituted for us monasticism with the True Religion"**. Narrated about Anas that he said: **"The Prophet used to order us to marry and strictly forbade us from celibacy. He used to say: "Get married to the tender and fertile for indeed I like my Ummah to outnumber others on the Day of Judgement"**.

The permanent termination of procreation conflicts with the Legislator's making of procreation and childbearing as the original purpose of marriage. That is why Allah ﷻ said in showing His ﷻ benevolence to people:

وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً

"And He has made for you, from your wives, sons and grandsons" [An- Nahl: 72]

The Legislator has made the having of many children *Mandub* and encouraged people towards it and praised the one who does it. It was narrated by Anas that the Prophet ﷺ said: **"Get married to the tender and fertile for indeed I like my Ummah to outnumber others on the Day of Judgement"**. Abdullah b. Umar narrated that the Messenger of Allah ﷺ said: **"Marry the mothers of children so that I can vie with other peoples by your great number on the Day of Judgement"**. Ma'qal b. Yasar narrated: "A man came to the Prophet ﷺ and said: "I have found a woman who is beautiful and of noble descent but she cannot bear children. Shall I marry her ?. He ﷺ said: **"No."** Then he came again and he ﷺ prevented him. Then he came for the third time, so the Prophet said: **"Get married to the tender and fertile for indeed, I like my Ummah to outnumber others"**.

The permissibility of temporary birth control through 'Azl or any other method of birth control does not mean the permissibility of abortion. So when the soul (secret of life) has been breathed into the foetus, its abortion

is *Haram* whether the abortion was brought about by taking a medicine, violent movements or medical operation. This applies whether it was performed by the mother, father or doctor, because it is an aggression on a human soul whose blood is sacrosanct. It is a crime for which blood money (*Diyya*) has to be paid, the value of which is to free a male or female slave. Its amount is one tenth of the blood money for an adult. He ﷺ said:

وَلَا تَقْتُلُوا أَنْفُسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ

"And kill not anyone whom Allah has forbidden, except for a just cause"

[Al- Anam: 151]

Bukhari and Muslim reported from Abu Hurayra (ra) who said: "Allah's Messenger gave a verdict regarding an aborted foetus of a woman from Bani Lihyan that the killer (of the foetus) should give a male or female slave (as a *Diyya*). And the minimum age of the foetus which requires blood money is when it appears to have some human features such as a finger, hand, feet, head, eye or fingernail."

But if the abortion took place before the soul was breathed in it, it has to be examined: if the abortion takes place after forty days from the beginning of the pregnancy when the formation of the foetus starts, it will be likewise *Haram*, and it will take the *Hukm* of aborting a foetus after the soul (secret of life) has been breathed into it. That is because when the development of the foetus begins and some limbs appear, it becomes certain that it is a living foetus on its way to becoming a complete human. So, it will be an aggression against a human life whose blood is sacred and it will be like burying it alive, a matter which Allah ﷻ has forbidden. He ﷺ said:

وَإِذَا الْمَرْءُودَةُ سُئِلَتْ بِأَيِّ ذَنْبٍ قُتِلَتْ

"And when the female (infant) buried alive shall be questioned. For what sin she was killed?" [At- Takwir: 8-9]

So the abortion of the foetus after forty days from the beginning of pregnancy is forbidden for the mother, the father or the doctor. Anyone who aborts after forty days will be committing a sin and a crime for which blood money of an aborted foetus must be paid, which is the giving of a male or female slave as mentioned in the *Hadith* reported by Bukhari and

Muslim.

It is not permitted to abort a foetus whether in the stage of development or after life is breathed into it except if trustworthy doctors decide that the existence of the foetus in the womb of the mother will lead to the death of both her and accordingly the foetus. In this case, it is allowed to abort the foetus and save the life of the mother.

17 Divorce

Just as Allah ﷻ legislated marriage He also legislated divorce. The basis of its legitimacy is the *Kitab*, *Sunnah* and *Ijma'a*. As for the *Kitab*, Allah ﷻ said:

الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ

"The divorce is twice, after that, either you retain her on reasonable terms (*bilmarooif*) or release her with kindness" [Al- Baqarah: 229]

As for the *Sunnah* it has been narrated on the authority of Umar b. al-Khattab that the Prophet ﷺ divorced Hafsa then took her back. And it was narrated on the authority of Abdullah b. Umar who said: "I had under my charge a wife whom I loved but my father did not like her so he ordered me to divorce her. I refused." He then mentioned it to the Prophet ﷺ. He ﷺ said: **"O Abdullah b. Umar divorce your wife."** The *Sahabah* reached an *Ijma'a* on the legitimacy of divorce.

Divorce is an annulment of the contract of marriage i.e., the knot of marriage. The permissibility of divorce has no *Shari'ah Illah*. The texts which allow it do not include any *Illah* whether in the text (reason) of the Qur'an or the *Hadiith*. It is allowed because the *Shar'a* has allowed it and not for any other reason. The *Shari'ah* divorce consists of three pronouncements, one after another. If a man divorced his wife once then that constitutes one pronouncement. It is allowed for him to take her back (*Raj'aa*) during the *Iddah* (waiting period) without a new contract of marriage. If he divorced her the second time, then the second pronouncement has taken place. It is permitted for the husband to take her back during the *Iddah* without a new contract. When the *Iddah* has been completed in those two cases and he has not taken her back then she will become irrevocable (*Bain*) to him, this being the lesser irrevocability (*Baynuna Sughra*). He is not permitted to take her

back except with a new contract and dowry. If he divorced her a third time then three pronouncements have taken place, and she will become irrevocable to him, this being the greater irrevocability. It is not allowed for him to take her back except after she marries another person and he consummates the marriage with her and she completes her *Iddah* from him. Allah ﷻ said:

الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ وَلَا يَحِلُّ لَكُمُ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ

"The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you to take back any of the dowry which you gave them, except when both parties fear that they would be unable to keep the limits ordained by Allah. Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back (the dowry or a part of it for her Khula (divorce)). These are the limits ordained by Allah, so do not transgress them. Whoever transgresses the limits of Allah, then such are the Zalimin (wrong-doers). And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband. Then, if the husband divorced her, it is no sin on either of them that they reunite, provided they feel that they can keep the limits ordained by Allah. These are the Limits of Allah, which He makes plain for the people who have knowledge" [Al- Baqarah: 229-230]

So in the *Ayah* Allah ﷻ has taught the Muslims how to divorce. He ﷻ said: *"The divorce is twice"*. Then He gave them the choice after teaching them (the manner of divorce) either to hold onto their wives and live with them honourably and discharge their obligations to them, or release them in a nice way, which is incumbent upon them. Then He ﷻ said: *"And if he has divorced her (the third time), then she is not lawful to him thereafter until she has married another husband"*; i.e. if he divorced her a third time after the two previous times, it is not allowed for him to marry her until after she had married another husband. Then He said: *"Then, if the husband divorced her, it is no sin on either of them that they reunite"*; i.e. if the other husband divorced her, then, it

will be allowed for the first husband to take her back with a new contract and dowry. The subject of the second word 'He divorced her' refers to the closest person mentioned which is the expression: *'another husband'*. i.e. the second husband. And the subject of *s* refers to the first husband i.e. there is nothing to prevent each of them from returning back to his/her companion by marriage. Therefore, the man has the authority of three pronouncements of divorce over the woman, two of which allow him to take her back and the third of which does not allow him to take her back until she has married another husband.

Divorce is in the hands of the man rather than the woman; so the man alone has the power to divorce, a power she does not have. As for why the man has that power, this is because Allah ﷻ has put it in his hands. No reasoning can be found for it in the *Shar'a*. Accordingly no reason (*Illa*) should be sought for it. Indeed, reflecting on the reality of marriage and divorce, one notices that marriage is the beginning of a new marital life, where the man and the woman cooperate in choosing each other as the spouse whom they respectively wish to marry. Each one has the right to marry or to refuse marriage with whomever he/she wants. However, once the marriage actually takes place, the man is given the leadership of the family and he is given guardianship over the woman. It is then inevitable that divorce too be the prerogative of the man, or his right, because he is the chief of the family and head of the household. The sole responsibility and the duties of the house have been placed on him. Therefore only he should have the authority to untie the knot of marriage. The authority is commensurate with the responsibility, and separation between the spouses is in the hands of the one who has guardianship over the other. However, this is a description of the existing reality and not a reasoning for the *Shar'a* rule, because the *Illa* of the *Hukm Shar'i* is not allowed to be other than a *Shari'ah Illa* found in the *Shar'a* text.

Nonetheless, divorce being in the hands of the man does not mean that the woman cannot divorce herself or bring about a separation between her and her husband. Indeed he, originally and unequivocally, has the sole authority without being restricted by any situation. In fact, he has the right to divorce her even without a reason. However, the wife has the right to divorce herself from him and bring about separation between herself and her husband in special cases as stated by the *Shar'a*. The *Shar'a* has permitted the wife to annul the contract of marriage in the following cases:

1. If the husband puts the issue of divorce under her authority. In this case she has the right to divorce herself from him according to what he himself has authorised her with. So she should say: I divorce myself from my husband such and such person or address him saying: I divorce myself from you. She should not say I divorce you or you are divorced because divorce occurs on the woman and not the man, even if the divorce came from the woman. It is permitted for the husband to leave the issue of divorce to the wife because the Messenger ﷺ gave his wives the choice (to remain as his wives or not) and also due to the *Ijma'a* of the *Sahabah* on this matter.

2. If she learns of a defect in the husband which prevents intercourse, such as impotence or castration, and she is free from such defects herself. In such a situation, she has the right to request the annulment of her marriage to him. If the judge confirmed the existence of this defect, he would delay the issue for a year, and if he was still unable to have intercourse with her then her request would be answered and the marriage would be annulled. It has been reported that Ibn Mundhir married a woman while being castrated. Umar said to him: "Have you informed her?" He said: "No." He (Umar) said: "Tell her and give her the choice (to ask for divorce)." And it has been narrated that Umar delayed the impotent for one year. If the wife finds that her husband's penis is cut or paralysed then her choice is given at once. No delay would be imposed on her because sexual intercourse is hopeless and there is no point in waiting.

3. If it became apparent to the wife before or after intercourse that the husband had a certain disease that does not permit her to reside with him without fear of harm, such as leprosy, burs, syphilis or tuberculosis, she can refer to the judge and demand separation between her and her husband. Her request would be answered if the existence of this illness was established and there was no possibility of a cure within a specified period of time. Her choice is permanent and not temporary. That is due to what has been mentioned in the Muwatta on the authority of Malik that Said ibn al-Musayyab said: "If a man married a woman, and he was insane or had a physical defect, she has the right of choice. If she wished she could stay, and if she wished she could separate from him."

4. If the husband became mentally insane after the contract of marriage the wife has the right to refer to the judge and demand separation from him. The judge would delay the separation for the period of a year. If his

insanity did not cease in this period and the wife was insistent, then the judge would give a verdict of separation. This is according to the aforementioned *Hadith* of Muwatta.

5. If the husband travelled to a place either distant or close, and failed to return, and reports of him cease and obtaining maintenance became impossible. In such circumstances she has the right to demand separation from him after trying her best to search for him and making inquiries about him. That is due to the saying of the Messenger ﷺ (about the wife who said to her husband) **"Give me (something) to eat or divorce me."** He made the absence of feeding the *Illa* of divorce.

6. If the husband stopped maintaining his wife and he is wealthy, and it became impossible for her to reach his wealth for the purpose of maintenance in any way whatsoever, then she has the right to demand divorce and the judge is obliged to divorce her from him at once without delay. This is because the Messenger ﷺ said: **"Your wife whom you support should say: give me (something) to eat or divorce me."** And because Umar (ra) wrote to those who were absent from their wives and ordered them to give them their maintenance or divorce them.

The *Sahabah* knew this and they did not go against his decision. Thus it indicates *Ijma'a* (consensus).

7. If dispute and conflict appeared between the spouses. In this case she has the right to demand separation. The judge is then obliged to appoint an arbitrator from the wife's family and an arbitrator from the family of the husband. This family assembly will listen to the complaints of both parties and do its utmost to bring a reconciliation. If a reconciliation between them was not possible, then the assembly would separate them from each other in the manner that it sees fit, according to the findings of its investigation. He ﷺ said:

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا
مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا

"If you fear a breach between them appoint arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation"
[An- Nisa: 35]

So, it is in these situations that the *Shar'a* has granted the woman the right to divorce herself in the first case, and the right to request separation between her and her husband in the remaining cases. The reality of these cases, shows that the *Shar'a* has looked upon the woman as a companion of the husband in marital life. Any distress and cause for aversion which takes place in the house, affects her just as it affects the husband. Therefore it became necessary that the *Shar'a* would ensure that she can free herself from the misery that takes place in the house by untying the knot of marriage. Therefore, the *Shar'a* did not abandon her, nor did it force her to remain with a husband when a peaceful marital life has become impossible. So the *Shar'a* has permitted her to annul the contract of marriage in situations which lead to the impossibility of an honourable or tranquil life.

In this way, it becomes clear that Allah ﷻ has placed divorce in the hands of the man because he is the guardian over the woman and he is responsible for the house. He ﷻ has also given the woman the right to annul the marriage so that she does not suffer misery in her marriage, and that the house, which is a place of tranquillity and stability, does not become a place of misery and anxiety.

As for the *Illa* (reason) re the legality of divorce, we have stated that the *Shar'a* texts do not give an *Illa* for divorce, so it has no *Illa*. However, it is possible to clarify the reality of the legislation of divorce and the manner in which its validity has been mentioned in relation to marriage and what it entails. The reality of marriage indicates that it exists for the creation of the family and to provide tranquillity for this family. If anything happens in this marital life which threatens this tranquillity and the situation reaches a point where it becomes impossible to lead a married life, then there must be a way by which the spouses can separate from each other. It is not allowed to compel them to maintain this bond which is hated by both or by one of them. Thus Allah ﷻ has legislated divorce. He ﷻ says:

الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٍ بِإِحْسَانٍ

"The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness" [Al- Baqarah: 229]

In order that misery does not continue in the house and so that marital

tranquillity may exist between couples. If it becomes impossible to establish tranquillity between the two, due to their incompatibility or because of something which befell them causing disorder in their life together, then each should be given the opportunity to find marital tranquillity with a different partner. However, Islam did not make the mere existence of discontent and aversion a reason for divorce. Rather it ordered the spouses to live together honourably, and encouraged them to bear the aversion because there may be some good in it. He ﷻ said:

وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

"And live with them honourably (Bilmaroof). If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good" [An- Nisa: 19]

He ﷻ ordered the men to use means by which they can lighten the fury of the woman's disobedience. So He ﷻ said:

وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الصُّجُجِ وَاصْرُبُوهُنَّ

"As to those women on whose part you see ill-conduct, admonish them (first), (next), separate from them in the beds, (and last) beat them (lightly), but if they return to obedience, seek not against them means (of annoyance)" [An- Nisa: 34]

In this manner the *Shar'a* ordered the taking of all lenient and non-lenient means to solve the problems which occur between spouses in order to find a solution which helps them to avoid divorce. Even when living together is not honourable and other stern means do not help, and the matter has gone beyond dislike, rebellion and disobedience to a state of dispute and breach between them, Islam did not make divorce the second step, despite the intensity of the crisis between them. Rather it ordered that the issue be referred to persons other than the spouses from their families. This is so that they could undertake an attempt to bring about a reconciliation between them.

So He ﷺ said:

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا
إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

"If you fear a breach between them appoint arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knowing, Well-Acquainted with all things" [An- Nisa: 35]

If these two arbitrators cannot reconcile the two spouses, then there is no room for the marital life to remain between them after all these attempts. For the problem between them has no solution except separation. In this case divorce is inevitable, so they might find marital tranquillity in another marriage or perhaps the problem is solved by the divorce. He ﷺ said:

وَأِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلًّا مِنْ سَعَتِهِ وَكَانَ اللَّهُ وَاسِعًا حَكِيمًا

"But if they separate, Allah will provide abundance for everyone of them from His Bounty. And Allah is Ever All-Sufficient for His creatures needs, All-Wise" [An- Nisa: 130]

However, in this issue of divorce an opportunity has been left for the spouses to reunite, in a way that the separation between them is not definite. They have been given the right to go back a first time and a second. The first and second divorce might cause the spouses to return to marital life, for a second time after the first pronouncement of divorce, and for a third time after the second pronouncement of divorce. Therefore, we find that the *Shar'a* made divorce in three stages: *"The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness"* [Al- Baqarah: 229]. In this way, each one of the spouses has the opportunity to take the other back and return to the *Taqwa* of Allah which is entrenched in his/her heart. Thus they may attempt to go back again and try to have a marital life and attain marital tranquillity, and ease or peace of mind which they could not attain before. Consequently, we find that Islam permitted the husband to take back his wife after the first and second pronouncement of divorce. Thus *Shar'a* has legislated something that will assist the spouses to take each other back and review the matter and re-consider it more earnestly than they had done

before. Islam made the period of the *Iddah* after divorce into three menstrual cycles which is approximately three months or until the time of delivery, (in the case of a pregnant woman) and imposed on the man the duty of providing maintenance to the divorcee and housing her throughout the period of the *Iddah*, and prohibited the man from expelling the woman that is observing her *Iddah* until she completes it. This is for the purpose of bringing reconciliation between them and making room for an opportunity by which they can take each other back and resume a new and peaceful life. From this point of view, a clear admonition has been given in the Qur'an. He ﷺ said:

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَلَمْ يَكُنْ لَهُنَّ أَجَلُهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لَتَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ

"And when you have divorced women and they have fulfilled the term of their prescribed period, either retain them on reasonable terms or set them free with kindness. But do not retain them back to hurt them. And whoever does that, then he has wronged himself" [Al- Baqarah: 231]

If these procedures did not have an effect, or it had an affect after the first and second pronouncements of divorce and then the third took place despite all of this, then the issue is more deep rooted, complicated and intensely disputed. There is no point in going back, let alone in continuing the marriage. In this case a complete separation is inevitable and resuming another marital union is necessitated without re-attempting the same marital union, before trying another marital union. That is why the third pronouncement of divorce has been made the decider.

He ﷺ said:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ

"And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband" [Al- Baqarah: 230]

The husband has been absolutely forbidden to take back his wife after the third divorce until she has lived with another husband other than him who consummates the marriage with her. She must taste his honey and he

tastes hers i.e. to have sexual intercourse with him, in order to experience the marital union completely. If she tries another marital union with someone else naturally, and she does not find ease and peace of mind in this second marital union and separation takes place between her and the second husband, it is then possible for her to return to marital union with the first husband because she has passed the second attempt of a marital union with the second husband and she has compared between the two. Then when she chooses to return, she does so with a better awareness. Consequently, we find that the Legislator permitted her to return to her first husband who divorced her three times after her marriage to another husband. He ﷺ said:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ

"And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband" [Al- Baqarah: 230]

Then after that He ﷺ immediately said in the same verse: *"And if he has divorced her"*. i.e. the second husband and not the first: *"It is no sin on both of them"*. i.e. the first husband and the woman who has been divorced for the second time: *"That they reunite"*. i.e. each one returns to the other in marriage.

This is what the procedure of divorce legislation alludes to. Thus it appears that what is contained in the legislation of divorce, the procedure of its legislation and the manner of its occurrence, has a far-reaching wisdom and an accurate view towards the social life, so as to ensure for it the peaceful comfortable life in a way that imparts tranquillity. If this comfort is lost and there is no hope to restore it, then it is inevitable that the spouses should separate. That is why Allah ﷻ has legislated divorce in the form which we have clarified.

18

The Lineage (An-Nasab)

The divine wisdom has required that the woman be the bearer of pregnancy and childbirth. Therefore, the woman needs to be restricted in marriage to one man and she has been forbidden from marrying more than one husband. This has been forbidden to her so that each person will know to whom they are related. The *Shar'a* has taken upon itself to establish lineage and has clarified the matter in the clearest manner.

The shortest duration of pregnancy is six months; in the majority of cases it is nine months and the longest is two years. Regarding the husband, when his wife gives birth to a child, it is possible that it is from him if she gave birth to it after more than six months from the date of marriage. So it is his child due to the saying of the Prophet: **"The child belongs to the one on whose bed it is born (Al-walad Lil-firash)."** In short: As long as the woman is married to the husband and she gives birth to a child after six months from marriage, it is definitely the child of the husband.

However, when his wife gives birth to a child after six months and he is sure that this child is not his, then it is allowed for him to disown it according to certain conditions which he must fulfil. If these conditions are not confirmed then there is no point in him disowning it. Rather the child remains his, whether he wants it or not. These conditions are:

First: The child that he disowns as his must be born alive. He cannot disown the lineage of the child if it is born dead because there is no divine rule pertaining to the disowning of a still born child.

Second: He has not already acknowledged, either explicitly or implicitly, that it is his child. If he has acknowledged explicitly or implicitly by indication that the child is his, then after that it will not be valid for him to disown its lineage to him.

Third: That the disowning of the child should be at particular times and in particular situations. These are the time of delivery or time of buying the necessary things for it, or the time when he knew that his wife had given birth if he was absent. The lineage of the child cannot be disowned at other than these times and situations. When his wife gives birth to a child and he remains silent, not disowning it even though he had the opportunity to do so, then its lineage is related to him and he will not have the right to disown it after that. The choice is determined according to the place at which he came to know of and his ability to disown it. If he had known about the child and it was possible for him to disown it but he did not disown it then its lineage is established because the Messenger of Allah ﷺ said: **“The child belongs to the one on whose bed it is born (Al-walad Lil-firash).”** If he claims he did not know about its birth, then it is possible to trust his words if he is at a place that makes the birth concealed to him; for example, if he was at another place or in another country. The decision in this case is his together with his oath, because originally he does not know. If it is not possible to believe him because he was with her in the house, his claim is not accepted because it is not possible that it was concealed from him, it may occur that he says “I knew about its birth but I did not know I had the right to disown it, or I did not know I had to disown it instantly.” If the matter is usually not known to the ordinary people, this saying is accepted of him because this Hukm is not known by the ordinary people. This is applicable to the situation of a person who had become Muslim recently. The ignorance of any Hukm the like of which is unknown to some one like him is excused, as is in the case of one who is a new Muslim. If the example of such a Hukm is not unknown to such a person as him, then his ignorance is not excused.

Fourth: The disowning of the child should be followed by imprecation (*Li'aan*) or he should disclaim it through imprecation. The child will not be disowned from him unless he disclaims it through complete imprecation.

When these four conditions have been fulfilled, then the child is disowned and given to the wife. Ibn Umar reported that a man imprecated his wife in the time of the Messenger of Allah ﷺ and her child was disowned so the Messenger of Allah ﷺ separated them and gave the child to the wife. If the conditions of the disownment of the child are not fulfilled then it is not disclaimed and its paternity is ascribed to the husband and all the rules of fatherhood will be binding on him. This is if the dispute over the birth

originated from the husband. But if the dispute between the spouses over the birth arises from the wife, where she claims during the course of her marital life that she gave birth to a child from him and the husband rejects it, such that he says 'you did not give birth', then it is up to her to prove her claim by the testimony of a single woman witness. In this case the testimony of a single woman witness is sufficient because the lineage is proven by the woman being his wife. Birth can be correctly proven by a single woman witness who meets the conditions of testimony.

19

The Imprecation

(Al-Li'aan)

Li'aan (oath of condemnation) is derived from *Li'aan* (curse) because each one of the spouses curses himself/herself (in the fifth time) if he/she is lying. The origin of it is in His ﷺ's saying:

وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ۝ وَالْخَامِسَةُ أَنَّ لَعْنَةَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ ۝ وَالْعَذَابُ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ ۝ وَالْخَامِسَةَ وَيَذَرُ عَنْهَا أَنْ غَضِبَ اللَّهُ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ

"And for those who accuse their wives but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allah that he is one of those who speak the truth. And the fifth testimony should be the invoking of the Curse of Allah on himself if he is of those who tell a lie against her. But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allah, that he (her husband) is telling a lie. And the fifth (testimony) should be that the Wrath of Allah be upon her if he (her husband) speaks the truth" [An- Nur: 6-9]

Abu Dawood reports through his isnad (line of transmitters) on the authority of Ibn Abbas (ra) who said: "Hilal ibn Umayyah was one of three people whose repentance was accepted by Allah. One night he returned home from his land and found a man with his wife. He witnessed with his eyes and heard with his ears. He did not stir him till the morning. Next day he went to the Messenger of Allah ﷺ in the morning, and said: **"O Messenger of Allah! ﷺ I came to my wife at night and found a man with her. I saw with my own eyes and heard with my own ears". The Prophet of Allah ﷺ disliked what he described and he took it seriously. There upon the following Qur'anic verse came down: "And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them..." Then the Messenger of Allah ﷺ was**

relieved and said: 'Glad tidings for you, Hilal. Allah, the Exalted, has made an easy way out for you'. Hilal said: 'I expected that from my Lord'. The Messenger of Allah ﷺ said: 'Send for her'. She then came. The Messenger of Allah ﷺ recited (the verses) to them that the punishment in the next world was more severe than that in this world. Hilal said: 'I swear by Allah, I spoke the truth against her'. She said: 'He told a lie'. The Messenger of Allah ﷺ said: 'Apply the method of invoking curses between them'. Hilal was told: 'Bear witness'. So he bore witness before Allah four times that he spoke the truth. When he was about to utter a fifth time, he was told: 'Hilal, fear Allah, for the punishment in this world is easier than that in the next world; and this is the deciding one that will surely cause punishment to you.' He said: 'I swear by Allah. Allah will not punish me for this act, as He did not cause me to be flogged for this act'. So he bore witness a fifth time invoking the curse of Allah on him if he was one of those who told lies. Then she was told: 'Testify'. So she gave testimony before Allah that he was a liar. When she was going to testify a fifth time, she was told: 'Fear Allah, for the punishment in this world is easier than that in the next world. This is the deciding one that will surely cause punishment to you'. She hesitated for a moment, and then said: 'By Allah, I shall not disgrace my people'. So she testified a fifth time invoking the curse of Allah on her if he spoke the truth. The Messenger of Allah ﷺ separated them from each other and decided that there would be no dwelling or maintenance for her from the husband."

So if a man accused his wife and said to her: "you have committed fornication or you are a fornicator or I have seen you commit fornication", and he did not bring proof, then the punishment for defamation will be imposed on him if they do not invoke curse upon each other. If he invoked curses upon her and she does not do the same to him, then the punishment will be imposed on her due to the saying of Allah ﷻ:

وَيَذَرُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ

"But it shall avert the punishment from her, if she bears witness four times by Allah" [An- Nur: 8]

The punishment that will be averted from her is the punishment that is mentioned in His ﷻ's saying:

وَلْيَشْهَدْ عَذَابُهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ

"And let a party of the believers witness their punishment" [An- Nur: 2]

Because when Hilal b. Umayya accused his wife of fornication and came to the Prophet ﷺ he told him to send for her and he made them invoke curses upon each other. This is one of the specific cases in which fornication is proven, i.e. the case in which the husband accuses his wife of fornication and proves it by invoking curses upon her and she does not. If she invoked curses upon him then it is not proven. Her refusal to invoke curses proves fornication and obliges the imposition of the punishment on her due to his *Li'aan*.

If they both invoked curses upon each other the judge will separate them (terminate the marriage) and they can never marry each other again. She is forbidden for him forever because the Prophet ﷺ separated the two cursing parties. Malik reports from Nafi from Ibn Umar that a man accused and made *Li'aan* to his wife in the time of the Messenger of Allah and rejected her child so the Messenger separated them and granted the child to the woman. **Sahl b. Sad reported that the Sunnah which continued with respect to the two cursing parties is that they are separated and shall never come back together again.** This separation by imprecation (*Li'aan*) constitutes an annulment (*Faskh*) of the marriage contract because this type of separation requires prohibition of marriage forever. It is not allowed for him even if he declares himself to have lied. However if he returns and admits to lying then she has the right for the punishment to be imposed on him. And the child's paternity will be ascribed to him whether he admitted lying before or after the imprecation.

The imprecation which absolves the husband from the punishment and obliges it to be imposed on the wife if she refuses to invoke curses, is that the husband should say in the presence of the judge; 'I bear witness by Allah that she has committed fornication' and he points to her. If she is not present he mentions her name and lineage until he repeats it four times and then at the fifth time he stops. It will be said to him fear Allah this is the deciding one, for the punishment in this world is easier than that in the next world. If he refuses to stop he should say; (in the fifth) 'The curse of Allah is on him if he was one of those who told lies in regards to his accusation

that she committed fornication'. And she should say: 'I bear witness that he has lied' (four times) and stops at the fifth. She will be told to fear Allah as the man was told. If she refuses to stop she should say (in the fifth): 'Allah's wrath be on her if he was telling the truth' with respect to accusing her of fornication. If they have a child then the child is mentioned in the *Li'aan*. When he said: 'I bear witness she has committed fornication' he should say: 'and this child is not mine'. And she should say: 'By Allah he has lied, and this child is his'.

This is the method of mutual imprecation (*Li'aan*) and these are its words and sentences. That is why if the woman gives birth to a child and he says this child is not from me or this is not my child, there is no punishment on him because this is not defamation (*Qadhf*). However he will be asked: If he meant she has committed adultery and she gave birth from *Zina*, this is defamation (*Qadhf*) and it is proven through imprecation. If he said "I meant that he does not physically resemble me or I doubt she had intercourse and the boy is from the one who had intercourse" or things similar to that. In such case there will be no punishment on him, and the child's lineage will be ascribed to him because he has not defamed (*Qadhf*) her. There is no imprecation in such situations because one of the conditions of imprecation is defamation (*Qadhf*).

The Guardianship of the Father

Since the father is the head of the family and he is its leader and guardian, then it is inevitable that the guardianship over it should go to him. Therefore, he is the guardian over the children. He has guardianship over his minor children and mature children who are not responsible (*Mukallafin*), whether male or female, with respect to themselves and their property, even if the minor children are in the custody of the mother or her relatives.

A person is either a minor or mature. The mature person is either sane or mentally deranged. If the person is mature and sane then no one has guardianship over him in terms of himself and his property, rather he is the one who will administer his own affairs. However the right of guardianship remains with the father. If the person is a minor, or mature but is insane, then the guardianship will not be in his hands because he is unable to undertake it, so the guardianship over him will go to the father. This guardianship will continue as long as the description which required it is still present, i.e. to be a minor or insane. When the minor becomes mature or if the mature child is cured of his/her madness and idiocy, then the guardianship over him/her is terminated. Then he/she becomes a guardian over his/her own affairs, and the father continues to have the guardianship over them out of preference (*Nadb*) and recommendation, because his right of guardianship is permanent.

Custody of the Child

Taking care of the child is fard because it may perish if it is neglected. It is by way of preserving a life that Allah ﷻ has made it obligatory, so it has to be protected from death and safe from danger. Even though caring for the child is fard, its right of kinship also requires it, because the child is entitled to that caring, so the right as well as the duty are related to the custody. It is the right of every child and the duty of everyone whom Allah ﷻ has obliged to take care of him. It is fard on the custodian when no one else has been assigned other than him. As for the right of the one on whom Allah ﷻ has obliged the custody, in assuming this custody, it is specific to those who are qualified for it and it is not general; so it is not given to the one with whom the child will surely perish. Therefore custody is not given to a child or the one that is insane, because each of them is unable to undertake it. This is because they themselves are in need of custody, so how could they look after another? And it cannot be given to the one with whom the child will surely be ignored, due to negligence or preoccupation with their own activities which detracts from their ability to look after the child. Or because they are characterised with attributes such as *Fisq* (transgression) for example, which by its nature will corrupt the upbringing of the child, since corruption is considered a form of destruction.

As for the disbeliever, it cannot be imagined that he can be a father to a child while his mother is a Muslim due to the prohibition of Muslim women marrying disbelievers. It has been decided, therefore, that the person deserving custody of the child be a woman, whether the mother or someone else. In such a situation it will have to be examined. If the child is at the age of distinction and is able to comprehend things and understand the difference between the conduct of his mother and the conduct of his father, as when he is over the age of weaning; in this case he will be allowed to choose between his parents. He will be given to either of the two he chooses, due to what was reported by Abu Dawood that Abdul Hamid ibn Ja'far narrated from his father on the authority of his grandfather Rafi' ibn Sinan

that he (Rafi' ibn Sinan) embraced Islam and his wife refused to embrace Islam. She came to the Prophet ﷺ and said: "My daughter; she finished suckling (or was about to stop suckling) Rafi' said: "My daughter." The Prophet ﷺ said to him: **"Be seated on a side."** And he said to her: **"Be seated on a side."** He then seated the girl between them, and said to them: **"Call her."** The girl inclined to her mother. The Prophet ﷺ said: **"O Allah! guide her."** The daughter then inclined to her father, and he took her. This *Hadith* has been reported by Ahmad. Al-Nasai reported it in other versions but the same meaning is present as in this narration.

If the child is under the age of distinction and does not comprehend things and does not realise the difference between the conduct of its mother and its father in, such that he is still suckling or just finished he is not given a choice but is united with his mother. That is according to the understanding of the aforementioned *Hadith* of Rafi b. Sinan, and because it has been proven that the mother is more entitled to custody of the child and there is no text that prohibits her from gaining custody. It should not be said here that custody (*Hadana*) is guardianship (*Wilaya*) so a *Kafir* cannot have custody over a Muslim. Because the reality of custody is that it is (child) raising and service, and not guardianship. Thus the rules of guardianship do not apply to it.

The mother is more entitled to have custody over the child and over the insane when she becomes divorced. This is due to what Abu Dawood has reported on the authority of Abdullah b. Amr b. al-As that a woman said: **"Prophet of Allah, my womb is a vessel to this son of mine, my breasts are a water-skin for him, and my lap is a guard for him, yet his father has divorced me, and wants to take him away from me". The Prophet of Allah ﷺ said: 'You have more right to him as long as you do not marry.'"**

Ibn Abi Shayba reported on the authority of Umar that he divorced the mother of Asim. Later he visited her and Asim was on her lap. He wanted to take him from her. They pulled him back and forth until the boy began to cry. So they went to Abu Bakr who said: "Her wiping, her lap and her smell are better for him than yours until he grows up so that he can choose for himself." If the mother is not a custodian because she does not meet the conditions mentioned with regards to it, or she does not meet some of them such as being married or insane etc. she is considered as if she does not

exist, and so the right of custody passes to the closest to her in entitlement. If the parents do not qualify as custodians then the right of custody goes to whoever is closest to them because they are considered as missing persons. The one most entitled to custody is the mother and then to her mothers (mother and grandmother) and higher; the closest from amongst them to the mother is given precedence, because they are women and their experience of childbearing is certain. So they are considered in the same sense as a mother. The right of custody then goes to the father, then his mothers (mother and grandmother); then to the grandfather and then to his mothers; then to the father's grandfather and then to his mothers even if they do not inherit, because they have relations with those who are qualified to be custodians. If the fathers and mothers have died then the right of custody passes to the sisters. The sisters of the mother and father are given precedence; then to the half sister through the father and then to the half sister through the mother. The sister is given precedence over the brother because she is a woman and thus one of those best qualified for custody. She is given precedence over those men who are at her level (in terms of the right to custody). If there is no sister then the brother of the parents have greater entitlement. Then the half brother through the father and then to their sons. The half brother through the mother has no right to custody. If they are not present then the custody passes to the maternal aunts. If they are absent then to the paternal aunts. If they are absent, then to the paternal uncle through the two parents. Then to the paternal uncle through the father. The uncle through the mother is not entitled to custody. If they are absent then it passes to the grand aunts (maternal) through the mother, and then to the grand aunts (maternal) through the father, and then to the grand aunts (paternal) through the father. The grand aunts (paternal) through the mother are not entitled to custody because they are related to the mothers father and he has no right to custody.

Custody does not pass from one that is entitled to the next entitled except in the event of his/her absence or in the event of incapacity (*Ahliyya*). However, if the one with the right of custody abandons custody of the child then custody does not pass to the next custodian unless they are capable of custody. Because custody, even though it is the right of the custodian, is also at the same time an obligation upon him/her and a right for the child. So to relinquish custody is not possible except if someone who is qualified undertakes the obligation. Only then does custody pass to whoever is closest to the custodian who has relinquished his custody according to the above order. If the one who has relinquished the right to custody wishes to demand

that right again and their capacity to take custody still exists then they maintain that right and the child is returned. Likewise, if the mother remarried and her right to custody is nullified, but was she divorced then her right to the custody of the child reverts back to her. Similarly, for any relative who is entitled to custody but is prevented by an impediment, if the impediment ceases then their right to custody returns because the reason for custody still exists.

If a group of people dispute over which of them is more entitled to the custody of a child, the descendent of the one who is more entitled to custody is preferred. It is narrated by al-Barra b. 'Azib that 'Ali, Ja'far and Zayd disputed about the daughter of Hamza. Ali said; "I am more entitled to take custody of her because she is the daughter of my paternal uncle." Ja'far said: "She is my cousin and her aunt (maternal) is my wife." Zayd said: "Hamza is my nephew." The Messenger of Allah passed judgement in favour of her aunt (maternal). He ﷺ said: **"The maternal aunt is in the position of the mother."**

All of this is with regards to the child which is in need of custody in order to protect it from death. As for the child which is in no need of custody, then by the absence of his/her need for custody, the reason (*Ilā*) of his custody disappears, and thus the rule of the obligation for his custody and the right of his relatives to custody disappears. Then the matter will be examined. If the one who had the right to custody, such as the mother, was a disbeliever then he will be taken from her and given to someone who has guardianship over him because the reality has changed to guardianship not custodianship. Guardianship is not allowed for a disbeliever due to His ﷺ's saying:

وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا

"And Allah will never allow an authority to the disbelievers over the believers"

[An- Nisa: 141]

And because of his ﷺ saying: **"Islam will always dominate and nothing shall dominate over it."** The speech is general, nothing has come to specify it and the specific discussion of upbringing does not apply to him for he is in no need for upbringing. But if those entitled to custodianship and guardianship are Muslims, such as when the father and mother are Muslims, then the boy or the girl i.e. young boy or girl will be given the choice between

the father and mother. Whichever one they choose they will be joined to, due to what Ahmad, Ibn Maja and al-Tirmidhi have reported on the authority of Abu Hurayra **"that the Prophet ﷺ gave a boy the choice between his father and mother."** And in the narration of Abu Dawood: that a woman came to the Prophet of Allah ﷺ and said: "My husband wishes to take away my son, O Prophet of Allah, and he drew water for me from the well of Abey Inabah and he has been good to me." The Prophet of Allah ﷺ said: **"Cast lots for him"**. Her husband said: "Who is disputing with me about my son?" The Prophet ﷺ said: **"This is your father and this is your mother, so take the hand of whomever you wish. So he took his mother's hand and she went away with him."** Al-Bayhaqi has produced a report from Umar that he granted a boy the chance to choose between his father and mother. He also produced a report from Ali that he granted Amara al-Jizzami the right to choose between his mother and paternal aunt when he was a boy of seven or eight years of age. These *Ahadith* are clear and there is evidence within them, that if the father and mother dispute over their child, then it is obligatory to give the child the choice; and they will go with whoever is chosen. As for the casting of lots mentioned in the narration of Abu Dawood, it is not mentioned in the narration of al-Nisai nor in the other narrations. It is understood to refer to a situation where the child did not choose either of them. The granting of choice is not restricted to a specific age. Rather, it is referred to the judge to decide what he deems correct according to the estimation of the experts. If they say he does not require custody, i.e. upbringing, and the judge is convinced of that, then he will grant him the choice. Otherwise he will leave him with the one who has the right to raise him. This differs according to the children. A child may not be in need of custody when he is five years old, another child may not need it when he is nine. The consideration is the age of the child in terms of whether he is in need for custody or not.

22

Maintaining Good Relations with Kith and Kin (Silat-ur-Rahm)

When Allah ﷻ forbade the tribalism of *Jabiliyah* He only forbade that tribalism should be the bond between the sons of the *Ummah*, and He forbade that it controls the relationships amongst the Muslims. However, He ordered people to maintain contact with relatives and show kindness to them. It has been reported that a man asked the Prophet ﷺ: “who shall I show kindness to?” He said: **“Your mother, father, sister and brother.”** In another version: **“And your (Mawla) relation who is closer to you, as a right and duty and a tie of relationship (Rahm) which you should be kind to.”** Asmaa bint Abu Bakr said: “My mother who was a pagan, came to see me during the period of the treaty between the Muslims and Quraish. I went to seek the advice of the Prophet ﷺ saying: ‘My mother has arrived and she is hoping (for my favour).’” The Prophet said: **“Yes, be good to your mother”**.

Islam has divided the relations into two categories; firstly the relations from whom it is possible to inherit when they die. And secondly the relatives from the maternal side (*Ulu al-Arham*). As for the ones who have the right to inherit they are the ones entitled to a statutory portion of inheritance (*Ashab al-Furud*) and the agnate relations (relatives on the paternal side) (*Asabat*). As for relatives on the mothers side (*Ulu al-Arham*) they are different from the former; they are the ones who have no share in inheritance nor are they from the agnate relations. They include ten categories: The maternal uncle (*Khal*) and aunt (*Khala*), maternal grandfather (*Jadd li al-umm*), son of the daughter and son of the sister, daughter of the brother, daughter of the paternal uncle and paternal aunt, and the half paternal uncle, son of the half brother and whoever declares to be one of them. Allah ﷻ did not give those people any share in the inheritance of the person nor is their

maintenance an obligation on the person. However Allah ﷻ ordered the maintaining of good relations and being kind to all the relatives. Jabir (ra) narrated that the Prophet ﷺ said: **“If any one of you is poor let him start with himself and if any one of you has surplus (wealth) let him spend on his family, and if any of you has further surplus let him spend it on his relatives.”** Narrated Abu Ayyub: A man said to the Prophet ﷺ “Tell me of such a deed as will make me enter Paradise.” The people said, “What is the matter with him? What is the matter with him?” The Prophet ﷺ said, **“He has something to ask”**. The Prophet ﷺ said: **“(In order to enter Paradise) you should worship Allah and do not ascribe any partners to Him, offer prayer perfectly, pay the Zakat and keep good relations with your Kith and kin.”** Thus, he ordered the keeping of good relations. It may be asked: Who are the relations meant in these *Abadith*? Are they only the maternal side (*Ulu al-Arham*) or anyone related to the *Rahm* of the person! The *Abadith* indicate that keeping good relations include all the relatives whether they are relatives from the unmarriageable degrees (*Mahram*), a *non-Mahram* from the *Asaba* (relations on the paternal side/agnates) or the relatives from the maternal side. There exist a number of *Abadith* concerning the keeping of good relations (*Silat ar-rahm*). He ﷺ said: **“The one who severs ties with the relations will not enter Paradise”**. It was narrated by Anas b. Malik that the Messenger of Allah ﷺ said: **“Whoever loves that he be granted more wealth, and that his lease of life be prolonged, then he should keep good relations with his kith and kin”**. It is narrated by Abu Hurayra that the Prophet ﷺ said: **“Allah created His creation, and when He finished it, the womb got up and said, I seek refuge with you from Al-qatia (ties being severed with me).”** On that Allah ﷻ said: **“Don’t you accept that I bestow my favours on him who keeps your ties, and withhold My favours from him who severs your ties?”** On that it said, **“Yes, Oh my Lord!”** Then Allah ﷻ said: **“That is for you”**. Then the Messenger of Allah ﷺ said: **“If you wish, you can recite:**

فَهَلْ عَسَيْتُمْ إِنْ تَوَلَّيْتُمْ أَنْ تُفْسِدُوا فِي الْأَرْضِ وَتَقَطَّعُوا أَرْحَامَكُمْ

Would you then if you were given authority, do mischief in the land and sever your ties of kinship?” [Muhammad: 22]

He ﷺ said: **“The Al-wasil (the one who keeps good ties with kith and kin) is not the one who recompenses the good done to him by his**

relatives, but Al-Wasil is the one who keeps good relations with those relatives who had severed the bond of kinship with him.” All of this indicates the exhortation to keep good relations with kith and kin.

The *Silat ar-Rahm* (keeping good relations) indicates the importance of what Allah ﷻ has legislated regarding the keeping of good and friendly relations within the Islamic community, in the maintaining of good relations and co-operation between relatives, and the extent of the *Shari’ah* concern to organise the meeting of men and women and organise what results from this meeting in terms of the relationships (*Alaqaat*) and whatever branches out from it. Hence the Islamic *Shar’a*, through the rules which it legislated for the social aspect in the society, provides the best social system for mankind.

