SOCIAL STRUCTURE OF ISLAM: A TEXTUAL PERSPECTIVE

ABSTRACT

THESIS

SUBMITTED FOR THE AWARD OF THE DEGREE OF

Doctor of Philosophy IN

SOCIOLOGY

By

MALIK RAIHAN AHMAD

Under the supervision of

PROF. NOOR MOHAMMAD

DEPARTMENT OF SOCIOLOGY AND SOCIAL WORK
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ABSTRACT

In the present piece of research work basic institutions of Islam have been analyzed from Structural Functional perspective. The Structural Functional approach is a very old approach as well as a dominant sociological perspective.

The background of the Structural Functionalism is found in the works of A. Comte, H. Spencer and E. Durkhiem. Ibne-Khaldoon is also a great name among sociologists who too used this perspective. Khaldoon’s work did not have dramatic impact on classical sociology because the work was originally written in Arabic and was not available in other languages to the scholars for further development of Sociological literature. But he discussed many Ideas in common with contemporary sociologists.

Comte applied this perspective in his work, more prominently in his theory of organicism. H. Spencer also adopted organicism which led him to look at the social whole and the contribution of parts to the whole.

E. Durkheim’s interest in Social Facts reflects his interest in the parts of the social organism and their inter-relationships as well as their impact on the society.
The major concern of this perspective is the analysis of the things-structures and the functions- that a social system needs in order to survive.

Parsons is considered one of the giants of this perspective. His Structural Functional analysis becomes conspicuous when he says that four basic conditions have to be met if any social system is to operate at all. These are Adaptation, Goal attainment, Integration and Latency. These conditions are fulfilled by four institutions of Economy, Polity, Kinship and Culture.

Islam also provides directions to meet these basic conditions of the social system by presenting a model of institutions. Islam is a religion widely practiced in the whole world. It is propagated by Prophet Muhammad\textsuperscript{PBH} from Mecca, Saudi Arabia.

Islam emerged from the tribal society in which patriarchal system was in practice. Each tribe was sovereign in all matters.

The economic activities of Arabs may be categorised from the point of their inhabitants. Rural Arabs normally depended upon Cattle rearing and looting of the caravans. These lootings were considered the symbol of bravery. But the urban economy mostly rested upon business, craft etc. Overall the whole Arab society was prosperous.
They were without any formal political organization. There was no government that can assure peace and harmony. Each tribe was independent and interference of others rarely tolerated. They used to fight with each other, and once it started continued for years.

The social life of Arabs was not much regularized. Prosperity brought their living standard at higher level but at the same time absence of formal political authority provided ways for many social evils. Marriages with unlimited wives and keeping unlimited lady-slaves were considered a symbol of prestige. Female infanticide was in practice and women were not given their proper status in society. This condition of Arabian society reflects that the social system became dysfunctional as it was not fulfilling the needs of the society.

Islam presented a model of such institutions that proved functional not only to the Arabian society but even for the whole society. That is why Islam as a social system rapidly spread in most parts of the world.

The institutions that function to meet the basic conditions for the survival of any society have remained the focus of my attention. The functional prerequisites as propounded by Parsons
are Adaptation, that is fulfilled by economy, Goal Attainment, fulfilled by political institution, Integration, fulfilled by law which is included in political institution and Latency, fulfilled by socializing agencies and family is the most important and basic agency for socialisation. After Family, chapters like Marriage and Divorce have been discussed, because the family is constituted through marriage and dissolved through divorce.

This study is descriptive and explanatory in nature. The descriptive research design enables researcher to describe or present a picture of phenomenon under investigation. This design is qualitative in nature.

In this study Textual Approach has been used. These institutions have been explained and analysed in the light of Qura’n and Hadith.

The Holy Qura’n is a revealed book which contains full information about institutions of Islam. Commentaries have been written by many theologians, but in this work I consulted Maulana Maudoodi’s commentary because he has highlighted many social institutions and issues in such a way that could suit the researchers, especially in the field of social sciences.
Hadith is the deed and sayings of Prophet Muhammad\textsuperscript{PBUH}. Many collections of Hadith are available. But I used Sahih Bukhari and Sahih Muslim due to their much reliability in comparison to others. Some other collections of Hadith on purposive basis have also been referred to here and there in this piece of research.

In this work I tried to concentrate only upon basic principles of these institutions and deliberately ignored the indulgence in juristic discussions as much as possible.

While explaining I found all these institutions of a balanced nature. Islamic economic model encourages earning but it does not consider wealth as an end. For Islam humanity is more important than wealth. Islam favours business but prohibits the business of those things about which it feels disturbing for society. Islam believes in equality, in respect of the equal distribution of wealth, on the first hand it inculcates the habit of spending wealth but on the other it frames laws that assure equal distribution of wealth.

Islam also prescribes suggestions in regard to consumption. It prohibits hoarding and directs ways to spend the wealth. Islam shows a balanced nature of expenditure by saying that, do not overspend and do not hoard.
Islamic model of polity provides its citizens the freedom to establish their Government in a democratic way. But democracy in Islam is unique in the sense that the sovereignty lies in the hands of God.

Like all other political systems Islam has three governmental organs: legislature, executive and judiciary. Legislature frames the laws in the light of Qura’n Hadith and Ijma which are implemented by executive and judiciary administers the justice.

Family life is much stressed in Islam. Beside certain other important functions it makes people useful for society through socialization. Both the sexes have importance in their spheres of work.

About the structure of family, Islamic texts have indirect injections against the joint family. The wife has been given the right of a separate house. But since husband-wife relations are based on love and mutual cooperation, then on moral grounds wife is expected to show her willingness to live with the parents of husband, whose care is the duty of her husband.

In order to regulate the sexual life of individuals, Islam stressed much on marriage and prohibits free sexual relations.
For providing stability to the institution of marriage Islam advocates about procedures that seems very important for its stability. Islam says that this contact should be among equals. It allows seeing fiancé and it is in favour of publicizing marriage. In some situations, in order to protect this institution from dissolution, Islam allows polygyny.

To tackle the critical situations, Islam opens a way for those couples who are not feeling comfortable with each other. They can break marital bonds by divorce. Islam is not in favour of frequent use of divorce. Islam suggests its followers to avoid divorce at the maximum limit of its capacity. It frames the procedure for divorce in such a way that assures maximum avoidance. Islam argues that divorce is not good, though at time it becomes functional for both the partners.
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CERTIFICATE

This is to certify that Mr. Malik Raihan Ahmad has worked under my supervision for his Ph. D. work in Sociology on the topic entitling, "Social Structure of Islam: A Textual Perspective". This is his original work and is suitable for the submission for the award of Doctor of Philosophy degree in Sociology. He has fulfilled all the requirements prescribed by the Academic Ordinances under Chapter XXV.

(PROF. NOOR MOHAMMAD)
SUPERVISOR
Dedicated

to

My Loving Parents

and

My Mentor in Sociology
Islam is a religion with an Ideology. It presents a system of life that forms institutions and structure of a society. That structure of society may be called Social Structure of Islam.

In every society there are social institutions and structure. These institutions are determined and crystallized by the ideology of that society (and its practice). In this way, the Social Structure of any society could be understood in the context of the central ideology of a society. For instance, Hindu Social Structure can be comprehended through Hindu Ideology.

Although, theologians have written extensively on the subject matter in their own way, but a sociological orientation of the topic has remained a critical missing link with academic analysis. It is in this milieu, the suggestion of my supervision and my own interest in the topic has become a source of motivation for me to pursue research on the fore mentioned Topic.

In the present work I have tried to discuss the different institutions in terms of their structure and functions as prescribed by Islamic Ideology. In order to acquire in depth knowledge of the Social Structure of Islam, I have used the Textual Approach.

This work is divided into five chapters excluding introduction and conclusion. I have arranged chapters according to the Parsonian prerequisites
of the society. These chapters are: Economic Institution, Political Institution, Family, Marriage and Divorce.

In the first chapter (Economic Institution) I have discussed the ways which are appreciable to produce the wealth and the means prescribed for it. Since for each economy after production distribution is also an important aspect, so I have discussed the economic morality of Islam regarding spending wealth and the laws which provides backup to its morality.

In the second chapter (Political Institution) I brought in to focus a complete reflection of Islamic political model. I elaborated the democratic spirit in Islamic political system and differentiated it from Modern Democracies. I also highlighted three basic organs of the government: legislature, executive and judiciary, and their functions respectively.

Chapter third, discusses the institution of Family and the importance attached to it by Islam. The position of sexes in a family life, their scope of work as well as their duties assigned by Islam towards each other, have been covered. At the end of the chapter discussion about the desirable family structure Islam has been elaborated.

Chapter fourth, entitled Marriage, covers almost all the questions- Mate Selection, Guardianship, Mahar and the laws and suggestion for its organization- that any individual confronts in making a marital contract. Besides, what Islam says about polygamy is also covered in this chapter.
In the last chapter (Divorce) the functional and legal aspects of Divorce have been comprehensively brought into light. Besides, Khula which is considered as a way for a woman to express the desire of being divorced has been discussed.
In the name of Allah the most beneficent and the most merciful: who gave me the potentiality, strength, courage and spiritual help to complete this work.

With immense pleasure and profound sense of gratitude, I take this opportunity to express my most sincere and deep thank to my supervisor Prof. Noor Mohammad, Department of Sociology and Social Work Aligarh Muslim University Aligarh for his valuable support, skilful guidance, continuous encouragement and scholarly direction that helped me in understanding the dynamics of the Social Structure of Islam. Despite of his busy schedule as Chairman of the department, Director of various social work projects and other academic responsibilities, he was always readily available for help and guidance. It would have been difficult for me to accomplish this task without his whole hearted guidance and supervision.

I woe to place on record my deep sense of indebtedness to all the members of the Department of Sociology and Social Work for their constant inspiration and cooperation in the completion of this Research work.

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Malik Raihan Ahmad
Aligarh.
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CHAPTER-1

INTRODUCTION
INTRODUCTION

This is the study of Social Structure of Islam. Islam has been extensively studied but by theologians. Sociologists have not paid much attention to the study of Islam. And therefore, not much study on the social structure of Islam has been done. This is also true that the concept of social structure in sociology has not rigorously been defined. Definition of social structure varies from one school of thought to another school of thought and within a school from one thinker to another thinker. However, among various sociological perspectives it is the Structural Functionalism which appears to be most pertinent for the definition of social structure.

Social structure in Functionalism/Structural Functionalism is broadly defined as consisting of different interrelated and interdependent social institutions. Functionalists generally compare society with any living organism. As a biological organism has certain needs and these needs/prerequisites are fulfilled by different interrelated organs, likely, the needs of any society are fulfilled by interrelated institutions. The major concern of Structural Functional perspective is an analysis of the things: the structures, and particularly the functions that a social system needs in order to survive. The tradition of this perspective in sociology is very old, and at time, it was one of the dominant sociological theories. Robert Nisbet argued that Structural Functionalism was “without any doubt the single
most significant body of theory in the social sciences in the present
century."¹ Kingsley Davis (1959) took the position that Structural
Functionalism was, for all intents and purposes synonymous with
sociology.²

Mark Abrahamson (1978) argued that Structural Functionalism is
not monolithic. He identifies three varieties of it: The first is individualistic
functionalism. In which the focus is on the needs of actors, and the various
large scale structures (for example, social institutions, cultural values) that
emerge as functional responses to their needs.³ Bronislaw Malinowski was
a major proponent of this perspective.

The second is interpersonal functionalism; here the focus is on social
relationships particularly the mechanism to accommodate strains that exist
in relationships. The exemplar was another Anthropologist A.B. Radcliff
Brown.

The third variety, societal functionalism, is the dominant approach
among sociological Structural Functionalism. The primary concern of this
type is the large scale social structures and institutions of society, their
interrelationships, and their constraining effects on actors.⁴ Parsons is the
proponent of this approach.

The roots of the structural functional perspective are found in the
works of Auguste Comte, Herbert Spencer and E. Durkheim. Ibn-
Khaldoon is also a great name in the history of the origin and development
of sociology. It is a tendency to think of sociology as a modern and western
phenomenon. But scholar like Ibne-Khaldoon dealt sociology even much before than the founding fathers of sociology. He was an Arab philosopher, wrote his book in Arabic in which he discussed many things of sociology. G. Ritzer noted, while writing his biographical sketch that “Ibne-Khaldoon had produced a corpus work that had many ideas in common with contemporary sociology”.

Ibne-Khaldoon's work did not have dramatic impact on classical sociology, simply because his work was in Arabic and was not available in other languages for the scholars of sociology. As for the Structural Functional approach is concerned, the reflection of this perspective can be seen in his work. G. Ritzer also says that “He devoted considerable attention to various social institutions and their interrelationships”.

A. Comte too used this approach. He had a normative conception of a good society. This concept led him to say that every social phenomenon contributes to the society. He also sensed a kind of equilibrium within societies. However, his theory of organicism -the tendency to see analogies between societies and biological organism- was the most influential concept.

Herbert Spencer also adopted organicism. His organicism led him to look at social whole and the contribution of parts to the whole.

Both A. Comte and H. Spencer have thrown tremendous impact on the thinking of Durkheim. He gave the concept of ‘Social Fact’. His interest in Social Fact reflected an interest in the parts of the social
organism and their interrelationships as well as their impact on the society. In terms of Structural Functionalism Durkheim has much to say about structures, functions and their relationships to the needs of society.\(^8\)

Parsons is considered one of the giant of this perspective. He highlighted the place of social action in the analysis of social system. He developed abstract concepts on ideal typical typologies for constructing his meta-theoretical scheme of social system. The scheme is designed for the purpose of analysing the structure and process of social system.

Social structure is conceived as a recurrent and regularized interaction among two or more persons, the primary units of social structure are not persons as such but selected aspect of interaction among persons such as roles, clusters of roles and statuses. For Parsons, actors are goal seekers who possess alternative means to achieve their goals. In the course of goal seeking actors confronted with a variety of situational conditions, such as their own biological make up and external ecological constraints. These constraints influence their selection of goals and means. Actors also seem to be controlled by values, norms and sanctions, for they influence the goal as well as the means selected to achieve it. The structure of social action thus includes various elements like statuses, collectivity, norms, values, sanctions etc.\(^9\)

All these elements are defined and connected by another concept called institutionalization. Institutionalization is both process and structure.
As interactions become institutionalized, a social system can be said to exist.\textsuperscript{10}

Parsons' Structural Functional Analysis becomes conspicuous when he says that four basic conditions have to be met if any social system is to operate at all. These are Adaptation to the environment, Goal Attainment, Integration and Pattern Maintenance. These conditions are fulfilled by four social subsystems (structures) of economy, polity, kinship and culture. In this way a social system is structured of interrelated and interdependent subsystems which function for meeting the basic conditions of social system.\textsuperscript{11}

In this theoretical context for better understanding of the problem it seems necessary to have a look into the socio, economic and political position of pre Islamic society of Arabia where Islam emerged.

During that period Arabia, corresponding to the two fold nature of the land, was divided into two groups: nomadic Bedouins and the settled folk. The line of demarcation between the wandering and the sedentary elements in the population is not always sharply drawn. There were stages of semi nomadism and quasi urbanity. Action and reaction between the towns' folk and the desert folk are motivated by the urgent direction of self interest and self preservation.\textsuperscript{12} The Arab society was organised on clan line. Every tent represents a family, and encampment of tents forms a clan. A number of kindred clans grouped together make a tribe.\textsuperscript{13}
The larger size of population of a tribe was considered as a source of social prestige and power so they used to marry many wives and used to keep lady slaves in order to procreate more children to strengthen their position among the Arabian tribes. Generally the tribes less in number were considered weak who used to make alliances with other tribes to consolidate their position in the society.\textsuperscript{14}

The people had little social consciousness. They had little regard for moral. Might is right was the order of the day. People were moved by emotions and not by reasons. They were leading a life full of vices, superstition and barbarism. They were addicted to drinking and gambling. Women were regarded as chattels. They had no right and no social standing. A man could marry as many women as he liked and could divorced them any time at his sweet will. On the death of the father the son inherited his step mothers and could marry them. There was no ban on fornication and adultery. The society was morally degenerated. Most of the female infants were killed or buried alive.\textsuperscript{15}

The economic life of Arabs was of two types. The nomads insist on extracting from his more favourably situated neighbour such resources as he himself lacks, and that too either by violence- raids- or by peace full methods-exchange. Sheep and camel raising and to a lesser degree horse breeding, hunting and raiding, from his staple occupation and are to his mind the only occupation worthy for a man.\textsuperscript{16}
Urban economy was based on business. Mecca was a business centre where capital enjoyed active circulation. The business has a flair for hoarding and gathering of wealth. Usury was the common trade practice, and the rich made money on the cost of the poor. Mecca had many financers whose first article of trade was money, and they advanced money on credit at profitable terms. The society of Mecca was steeped in to materialism and the people in their race to make money had little consciousness of the higher moral and social values.\textsuperscript{17}

Arabs were without any formal political organization at the eve of Islam except Yemen. There was no governance that can assure peace and harmony for them. As earlier mentioned that the whole country was divided in to tribal groups and each tribe was a world by itself. It has its own code of honour, its own concept of law and order. All activities were conceived within the framework of the tribe.\textsuperscript{18}

It appears from the description of pre Islamic Arab society that no system at macro level existed. There were only tribal groups who had their own system but inter-tribal relationships were not controlled by any authority.

It is safe to assume here that Islam originated in Arab when the society was struggling for stability and order.\textsuperscript{19} It is a fact, that when a society does not function with its\textsubscript{2}prerequisites, it gets terminated either by absorption into another society through annexation, conquest or through conversion into a new system.
It is in this way, when Prophet Muhammad\textsuperscript{PBH}, the last Prophet of Islam, started propagating Islam the whole society embraced it. As Islam represented a system that provided stability and functionality. In functionalistic terminology it could be said that pre Islamic Arabia was the case of extreme deinstitutionalization. During the period of Prophet Muhammad\textsuperscript{PBH} Islam not merely integrated itself but became a dominant social, economic and political force. It is in this context the large number of people of Arabia who did not merely opposed Prophet Muhammad\textsuperscript{PBH} but also mentally and physically tortured, converted in to Islam.

1.1 Research Design

"Research design is the plan structure and strategy of investigation conceived to as to obtain answer to research questions."\textsuperscript{20} The designing aspect of research study, especially in the field of social sciences is very complex. The selection of a method or methods of the logic and the planning of the design do not guarantee sound results. The research design at the most is a blue print and therefore, at best it is only tentative. Every design has its strength and weaknesses, and at the same time there is no such thing as a single correct design. A good research design satisfies the objectivity, reliability, validity of the findings. A research design provides the logical basis for drawing conclusions.
Present study is descriptive and explanatory in nature. The descriptive research design enables researcher to describe or present a picture of phenomenon under investigation. This design is mostly qualitative in nature.

In this study textual approach has been followed, that is the institutions are tried to be dealt only with the help of Islamic texts. These Islamic texts are Qur’an and Hadith.

The Qur’an is the religious book of Islam and it is revealed by Allah upon his Prophet Muhammad\(^{PBH}\) to provide guidelines for humanity to succeed here and hereafter. This book is preserved in its original form even today.

The Qur’an was explained and its commentaries have been written by many theologians. In this work Maulana Moudoodi’s commentary, originally written in Urdu, named ‘TAFHIM-UL-QUR’AN’ consisting of six volumes has been consulted. The reason for using this commentary is that, the explanations are found more relevant to modern world and is more sociologically oriented.

Maulana Syed Abul Al’a Maudoodi, a well known theologian of the 20\(^{th}\) century was born in Hyderabad, India and migrated to Pakistan at the time of partition. He wrote more than hundred books on Islam, and was the recipient of Shah Faisal international award as recognition of his work.

The saying and the deeds of Prophet Muhammad\(^{PBH}\) recorded by his companions are called Hadith. The collection of Hadith was started after
the Prophet’s passage. So its validity and reliability is not as much as Qur’an. The collectors put up a lot of effort a precaution in their work to maintain the authenticity and reliability. Many collections of Hadith are available. But in this work Sahih Bukhari and Sahih Muslim have been consulted mainly, because these two are considered the most reliable books of Hadith. Besides, the researcher has quoted some Hadith from other collections on purposive basis in order to support these two above mentioned books.

It is also tried to be concentrate only on basic principles of the substructures, because my attempt is to analyse the functional ability of these. The researcher has deliberately ignored the indulgence in juristic discussion except the inevitable.
1.2 References


2- Ibid, p.233

3- Ibid, p.233

4- Ibid, p.233

5- Ibid, p.8

6- Ibid, p.8

7- Ibid, p.233

8- Ibid, p.234

9- Ibid, p.239

10- Ibid, p.241

11- Ibid, p.245


13- Ibid, p.26


17- Masoodul Hassan, Op.cit. p. 43
Note: “Islam literally means commitment and obedience- as a religion; it stands for belief in one God and in all the Prophets of God, the last of whom was Muhammad\(^{PBH}\), and for complete submission to the divine will as revealed through his Prophets. A Muslim believes in the Prophet hood of Abraham, Moses and Jesus, holding that all of them conveyed the same message from God. The final revelation came through Prophet Muhammad\(^{PBH}\) and is known as Islam- the religion of all Prophets not ‘Mohammedanism’. This revelation is preserved in the Qur‘an in the form in which it was revealed to the Prophet Muhammad\(^{PBH}\).”


CHAPTER-2

ECNOMIC INSTITUTION
ECONOMIC INSTITUTION

Economic institution is an important structural element of every society. It highlights the complete structure of any social system. Islamic social system as elaborated in Qur’an also emphasizes on this institution because the type and the nature of interacting processes are determined by this institution. In order to regulate other institutions and their interactive processes, economic institution plays a determining role.

In depth analysis of the Islamic texts reveals that Islamic ideology provides central importance to human beings. Qur’an while highlighting the importance of man, says, that everything has been created for the benefit of human beings. Human beings are supposed to exploit them as per their needs. Qur’an says:

- “He is who created for you all that is on earth”¹
- “And surely, we gave you authority on the earth and appointed for you there in provisions (for your life)”²
- “Allah is He who has created the heavens and the earth and sends down water from the sky and there by brought forth fruits as provision for you and he has made the ship to be of service to you, that they may sail through the sea by His command; and He has made rivers to be of service to you. And He has made the sun and the moon, both constantly pursuing their courses, to be of service to
you and He has made the night and the day, to be of service to you.
And He gave of all that you asked for, and if you count the blessings of Allah, never will you be able to count them.”

In Islam we find a spirit of encouragement to produce more and to earn more through the exploitation of natural resources created by Allah. The following verse of Qur’an shows the encouragement “Then when the prayer is finished, you may disperse through the land and seek the bounty of Allah”.

The provision of private property itself is an indication of encouragement for earning and production. The spirit of 'my property' provokes individuals to earn more unlike 'socialism' where every thing belongs to the state. We can notice many verses in Qur’an which explain and advocate the legitimization of private property and consequently favours more earning. Qur’an says:

- “Do they not see that we have created for them of what our hands have created, the cattle, so that they are their owners”
- “But if you repent, you shall have your capital sums”
- “Take alms from their wealth”.
- “But pay the due thereof on the day of its harvest”.
- “And that you strive hard and fight in the cause of Allah with your wealth and your lives”.
All these verses from the Qur’an highlight the importance of earning more and more which also can be possessed by the earners. This endorses the concept of private property.

Another thing that is worthy to note regarding encouragement to earn is that, undoubtedly, Islam has a provision to manage livelihood for the poor of the society through alms, but at the same time it also declares that upper hand is better than the lower one which of course is an injection for encouragement to earn.

At no point Islam limits the earning, but Qur’an cautions men that they should not indulge completely in earning money and forget their basic duties. Unlike other social systems like capitalism and socialism, the end object of Islam is humanity not money. So Islam prohibits using all those means that lead to dehumanization of society and corruption. Qur’an says: “Let not your properties and your children divert you from the remembrance of Allah”.

The verse referred above, of course, encourages earning, but it also puts a limit to it by prioritising prayer. So earning money is essential but not at the cost of basic principles.

The next question arises about the sources of production and earning. The process of production in any society is based either on agriculture or on trade and business. Islamic economic model does not specify any occupation or profession. But admirers of Islam are of the opinion that Islam prescribes business as the best way to earn livelihood.
They cite Prophet’s \textsuperscript{PBH} liking for business as well as his personal involvement in it for their argument.

Besides the life structure of a man that Islam intends to build seems very favourable for business and marketing. If we see the pattern of prayers, grouping of people five times in a day in the village and grouping of villagers from different villages in town once in a week, this pattern increases information and provides more opportunities for communication, forming a harmonious atmosphere for business and economic interaction.

The same case is with the 'Hajj'. It is one of the five fundamental duties of Islam. Hajj attracts people from entire world, and of course provides opportunity for all to give and to take information, and consequently becomes a base for global business.

One may object here that worldly business is not suitable for a man who has come for prayer or Hajj. But one must know that the verse referred earlier from chapter Juma is in the context of Juma Prayer, and it implies that after performing Juma prayer, one is free to buy and sell.

During the time of Prophet \textsuperscript{PBH}, People always used to keep their business commodities with them, either going for war or for Hajj and whenever they got a chance they did the business.\textsuperscript{11}

Islam has not ignored the economic angle. It has prescribed laws regarding money. It has given us the concept of ‘Haram’ and ‘Halal’. The money, which is earned by abiding the laws prescribed by Islam, is valid (Halal), and which is earned by violating these are invalid (Haram), and
hence prohibited. Qur'an says: "O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent".\textsuperscript{12}

In this verse two basic conditions are prescribed under which an agreement, related to business or job, is considered valid. These Conditions are:

- First that both the parties should agree voluntarily without any pressure.
- The second that both the parties should be benefited by the agreement and it does not have any negative impact upon society.

Islam prohibits business in those things which are considered harmful for society. The details are prescribed in the books of Fiqh (Juristic discussion). Qur'an also talks about the fundamentals of it and says:

- "And eat up not one another's property unjustly nor give bribe to the rulers that you may knowingly eat up a part of the property of other's sinfully."\textsuperscript{13}
- "Then if one of you entrust the other, let the one who is entrusted discharge his trust".\textsuperscript{14}
- "And whoever deceives his companions as regards to booty; he shall bring forth on the day of Resurrection that which he took (illegally)".\textsuperscript{15}
- "Cut off the hand of the thief, male or female"\textsuperscript{16}
➢ “Verily those who unjustly eat up the property of orphans, they eat up only a fire into their bellies, and they will be burnt in the blazing fire”.

➢ “O you who believe! Intoxicants, gambling, and arrows for seeking luck or decision are an abomination of Shaitan's handiwork. So avoid that”.

➢ “And force not your maids to prostitution if they desire chastity in order that you may make again in the goods of this worldly life”.

According to these verses bribes, usurpation, embezzlement either in private or public property, theft and dacoity, acquisition of wealth of orphans without any right, business of obscenity, prostitution, business of liquor, its transportation, gambling, idol making, selling, palmistry and all other ways of the same types are strictly prohibited.

Qur'an is also against the business of those things that make Muslims unmindful of Allah and their duties. Qur'an says:” And of mankind is he who purchases idle talks to mislead from the path of Allah without knowledge and takes it by way of mockery”.

While writing the commentary of the verse, Maudoodi writes that ‘Lahwal-hadith’ denotes all talks that attract people towards it and make inattentive from the rest. It implies absurd, vain and senseless things. For instance silly talks, stories, tales, novels, singing, joking and such other kind of things. In support of this explanation, Tirmizi noted a saying of
Prophet[^P^B^H] narrated by Abu Umama Al-Bahili in which Prophet[^P^B^H] says “purchasing lady singers and selling them is prohibited.”[^22]

Another important way of earning money for people at that time, and is still in vogue, was the system of Riba (Interest). The system is based on specific and assured return for the investing party and is exploitative of one on the cost of other. Qur’an says when it prohibits Riba. “Those who eat Riba will not stand except like the standing of a person beaten by Shaitan leading him to insanity. That is because they say, trading in only like Riba where as Allah has permitted trading and forbidden Riba”[^23]

Maudoodi writes that some people argue that business and lending money on interest are alike as both require investments and return profits. Differentiating both, he writes they should know that there is no business in the world (either it is industry, trade, artisan or farming) without risk and with a determined return. Then why a moneylender should have determined and assured return of his investments. It is this basic thing that differentiates business from interest.[^24]

Maudoodi, an Islamist, while explaining the above verse, differentiated between business and interest. He wrote that in business both the parties are benefited. Buyer entertains and fulfils his needs and seller entertains the money of his labour. But in the system of interest this distribution is not equal between lender and borrower. It is based either on the benefit of one party and the loss of the other, or the determined and assured gain of one and undetermined and unassured gain of other.
In business profit is earned once, but in interest it continues and there is a possibility that the debtor can not escape from the continuous payment to the lender till his last breath. But in the system of interest, debtor invests money. He must have to return that money with addition, after generating it from the invested money, which is really very difficult task. But in business, the case is different from interest.

In the system of interest creditor is not like business partner because a business partner shares profit and loss both. But a creditor will take profit only at any cost.

Qur’an also talks about the social impact of Riba, it says: “And that which you give in gift in order that it may increase from other peoples property, has no increase with Allah, but that which you give in Zakah (religious tax) seeking Allah's countenance then those, they shall have manifold increase”.

It was the first verse of Qur’an in contempt of Riba. It is in the nature of Islam to orientate first, and implement it by framing laws. Here it says in very simple manner and of course, tries to create mental conditions favourable to implement.

At other place Qur’an talks about Riba “Allah will destroy Riba and will give increase for Sadaqat. And Allah likes not the disbelievers, sinners.” In this verse Qur’an used the term Sadaqah, as against Riba and said that Riba is not only obstacle in moral, spiritual, economic and social development, it also causes decline. On the other hand Sadaqah (spending
money without any hope of return) contributes towards these developments.  

Both from moral and spiritual perspectives we find that interest is not only a product of selfishness, misery, niggardliness and callousness, it also produces and promotes these vices. While Sadaqah is the product of benevolence, sympathy, magnanimity and generosity it also produces and promotes these characteristics among men. Now every one can himself judge that which set of characteristics are good and suitable for smooth functioning of a society.

At the societal level, we find that in a society where Riba is practiced, men are fully selfish and needs of others are taken as an opportunity of gain and exploitation. There is a clash between the interests of the rich and poor and ultimately it’s the poor who suffers. Such society will not only lose its harmony, opportunism, antagonism, enmity, mercilessness and cruelty will grow there. On the other hand in a society where people behave well with each other, share their problems and show sympathy and generosity towards each other, it functions in full harmony and the pace of development goes upwards as well.

As per Qur’anic prescription taking and giving of interest is prohibited. Borrowing, in economic sense, is of two types on which one is to pay interest: The loan that people borrow for their personal use and necessities of life and the loan that is borrowed for business purpose.
The first category of loan is popularly known by its dangerous nature. A person who borrows for his livelihood rarely becomes able to return it with interest. Consequently interest goes on increasing and he is forced to borrow another debt to pay off the earlier debt. Ultimately a time comes when he has to pay all his earnings in the form of interests of his debt, and he loses all his rights from his own earnings. Finally he loses interest of his work and a kind of antagonism, angriness, develops against the creditors which may turns at times in human sufferings and miseries.

The second type of loan also has negative consequences upon economic development. In this case borrower always tries to invest money in a business that can generate comparatively more profit. This mentality concentrates a huge amount of money in a particular direction, irrespective of its social importance.

There is no business that assured profit. Then how it will be good to invest capital on the agreement of assured and determined return to the capitalist.

The creditor does not have any interest in the business in which capital has been invested. He always keeps his eyes on his assured profit, and whenever, he feels any kind of slump in the market, he tries to withdraw his capital that some times accelerates the slump. These three realities can not be denied by any man who has even a little touch with economics. So we can conclude that Riba is great hurdle in economic development.
Contrary to this Sadaqah has a positive effect on society. How good that society will be in which rich of the society distribute their surplus money, after they have fulfilled their needs, among poor. Even after that if they have surplus, then either they lend that money to the people who want to do some work without interest or on the basis of equity. If even wealth remains surplus, then hand over it to the government in public interest. In this type of society the development of industry, trade, commerce and agriculture will grow faster than earlier. At other place Qur'an further condemns Riba by saying, “O you who believe! Eat not Riba doubled and multiplied, but fear Allah that you may be successful”.

Next to this verse Qur'an talks about the goodness of those who do not eat Riba. “Those who spend in prosperity and in adversity, who repress anger and who pardon men” Saying of Prophet also prohibits Riba. “Narrated Aun bin Abu Juhaifa that my father bought a slave who practiced the profession of cupping. I asked my father why he had done so. He replied that the Prophet forbade the acceptance of the price of a dog or blood, and also forbade the profession of tattooing getting tattooed and receiving or giving Riba (Usury) and cursed the picture maker”.

Beyond interest Islam does not allow its followers to take benefit from the mortgage. Qur'an talks that “and if you are on a journey and can not find a scribe, then let there be a pledge taken”.

Islam is very conscious about social relations. It says that whenever you make any agreement of give and take, you should write that if you do
not find any writer available, then put something to the debtor as mortgage that may assure him about repayment. Saying of Prophet\textsuperscript{PbH} supports the message. “Narrated Aisha, The Prophet\textsuperscript{PbH} purchased food grains from a Jew on credit and mortgaged his iron armour to him”.\textsuperscript{37}

The worthy thing to note here is that a person can not take any benefit from the mortgage. If a person is taking benefit, actually he is taking interest. But if the mortgage is an animal, the animal and the milk of that animal can be used in compensation to that fodder fed to it.

Islam prohibits all kind of business in which chance of loss remains with one party and always cautions its followers not to earn by cheat and not to take crisis of others as opportunity to earn. To lessen the chance of loss for one party, Islam prohibits the selling of fruits upon trees until they reached into a safer stage from the expected calamities. Prophet\textsuperscript{PbH} says: “Narrated Umerah that Prophet\textsuperscript{PbH} prohibited selling of fruits until it escaped from calamities”.\textsuperscript{38} In another saying that denotes almost the same meaning. “Narrated Abdullah bin Omer that Prophet\textsuperscript{PbH} prohibited selling of fruits until it reached its culmination, He prohibits seller & buyers”.\textsuperscript{39}

Islam teaches, do exploit resources and do business for earning much and much, but you must remember that you should not cheat in your business. Qur’an says in following verses:

\begin{itemize}
\item “And to the Madyan, their brother Shuaib. He said O my people! Worship Allah, you have no other Allah but Him verily a clear proof from your lord has come unto you, so give full measure and full
\end{itemize}
weight and wrong not men in their things, and do not mischief on the
earth after it has been set in order, that will be better for you, if you
are believers".⁴⁰

➢ “And to the Madyan people their brother Shuaib. He said O my
people! Worship Allah, you have no other Allah but him, and give
not short measure or weight, I see you in prosperity; and verily I fear
for you the torment of a day encompassing”.⁴¹

➢ “And give full measure when you measure, and weight with a
balance that is straight, that is good and better in the end”.⁴²

➢ “Give full measure, and cause no loss (to others). And weight with
the true and straight balance. And defraud not people by reducing
their things, nor do evil, making corruption and mischief in the
land”.⁴³

➢ “Woe to those who give less in measure and weight, those who when
they have to receive by measure from men, demand full measure,
and when they have to give by measure or weigh to men, give less
than due”⁴⁴

In all these verses, referred above, same kind of cheating
highlighted, that is to give short in weight. It does not mean that Islam
prohibits only this particular type of cheating. Qur’an highlighted this
because this was the common form of cheating prevalent in the society in
which Qur’an was revealed. These verses include all kind of cheating that
hide the reality regarding quality and quantity of commodities and of course strictly prohibited.

As mentioned earlier that Islam is very conscious about the relationship of people and humanity. To maintain the humanity in society Islam is not in favour of earning profit more and more. Islam negates the Say's law of price determination in which prices are determined only by supply of and demand for commodities, without any consideration of humanistic spirit. Islam always gives priority to humanity in determining the prices and tries to eliminate the exploitative nature of market.

2.1 Distribution

After production the second question that arises in any economic model is about distribution of wealth. Equal distribution assures equality in society and development.

Islamic economic model is very conscious about equal distribution. The intention of Islamic economic model is that money should not be concentrated in few hands. Those who have got more wealth, either due to their ability or fortune, should not hoard it. They should spend it in the ways that may prove helpful for over coming misfortunes of the society. For this, at the one hand, Islam tried to develop a spirit by encouraging some thing (expenditure) and discouraging some other things (hoarding) and on the other hand it frames laws for those hard-core people who even
do not want their money to be distributed equally in society. These laws are related to Zakah (religious tax), expiation for sin, laws regarding inheritance and laws regarding distribution of spoils of war.

2.1.1 Zakah (Religious Tax):- It is declared as the third pillar among the five fundamental pillars of Islam. These pillars are of great importance and said that who demolish any of the pillars, demolish the Islam.

Islam is the oldest religion and many Prophets came with Islam in different times and at different places. Prophet Muhammad\(^\text{PBH}\) came with the final revised edition of it, and no Prophet will come further. In this context I would like to say that Zakah (religious tax) has been the part of Islam since the very beginning. Following verses of Qur’an indicate:

- “And we made them leaders, guiding by our command, and we inspired in them the doing of good deeds, performing Salah (prayer), and the giving of Zakah (religious tax) and of us they were worshipper”.\(^{45}\)
- “And they were commanded not, but that they should worship Allah, and worship none but Him Alone, and perform Salah (prayer), and give Zakah (religious tax), and that is the right religion”.\(^{46}\)
- “And mention in the book Ismail, verily! He was true to what he promised, and he was a Messenger, and a Prophet. And he used to enjoin on his family and his people, Salah (prayer), and the Zakah (religious tax), and his lord was pleased with him”.\(^{47}\)
“And when we took a covenant from the children of Israel, worship none but Allah and be dutiful and good to parents, and to kindred, and to orphans and the poor, and speak good to people. And perform Salah (prayer) and give Zakah (religious tax)”.

“And he has made me blessed wheresoever I be, and has enjoined on me Salah (prayer), and Zakah (religious tax) as long as I live”.

In the same manner the final edition of Islam, that Prophet Muhammad brought with him, also directed its followers to pay Zakah (religious tax). Qur’an says:

“it is he who has named you Muslims both before and in this (Qur’an) that the Messenger may be a witness over you and you be witnesses over mankind. So perform Salah (prayer), give Zakah (religious tax) and held fast to Allah”.

“This is the book, whereof there is no doubt, guidance to those who are pious. Who believe in Ghaib (hidden things) and perform Salah (prayer) and spend out of what we have provided for them”.

“The believers are only those who..... Perform Salah (prayer), and send out of what we have provided them”.

“Verily your Wali (Protector and helper) is Allah, His Messenger and the believers; those who perform Salah (prayer) and give Zakah (religious tax) and they bow down”.

“But if they repent, perform Salah (prayer) and give Zakah (religious tax) then they are your brethren in religion”
Qur'an says that until you will not pay Zakah (religious tax) your money will remain impure. Using this impure money will pollute all the works in which it is spend. Qur'an says: “Take Sadaqat from their wealth in order to purify them and sanctify them with it”.55

These Zakah (religious tax) should be spent in works which are socially beneficial. Qur’an says: “As Sadaqat (here it means Zakah (religious tax)) are only for the Fuqara (poor) and Masakeen (the poor) those employed to collect (the funds); and for to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt and for Allah's cause, and for the wayfarer, a duty imposed by Allah”.56

This fund acts as cooperative society. It is a source of assistance for absurd of the society, and it is a source of patronage for disabled, handicapped, sick, orphans and widows.57

Zakah (religious tax) must be paid by each one who has certain amount of money for the one complete year. ProphetPBUH, by the direction of Allah, fixed the amount as seventy five gram gold and five hundred twenty five gram silver or any thing of equal value remains one complete year in the possession of one man that must be purified by paying Zakah (religious tax). It is also essential in agricultural productions and business goods. ProphetPBUH fixed the ratio of Zakah (religious tax) in different kind of wealth.

➢ 2.5% in silver, gold and in cash.
➢ 10% in agricultural productions when it is produced by natural resources.

➢ 5% in agricultural production when it is irrigated by artificial means.

➢ 20% in mines when they are in private sector and the same amount is in buried treasure.

Zakah is also prescribed in cattle when they were kept for business. The ratio of Zakah (religious tax) is different in different kind of cattle that can be seen in any book of Fiqh.58

Islam does not leave Zakah (religious tax) on voluntary level. It says that, it is the duty of government to collect and to punish those who are not paying Zakah (religious tax). Qur’an says:

➢ “those who, if we give them power in the land, order for Salah (prayer), to pay Zakah (religious tax) and they enjoin Al-Maruf (all that Islam orders) and forbid Al-Munkar (all that Islam has forbidden)”59

➢ “Allah has promised those among you who believe and do righteous good deeds, that He will certainly grant them succession to in the earth, as He granted it to those before them, and he will grant them the authority to practice their religion that which He has chosen for them. And He will surely give them in exchange a safe security after their fear they worship me and do not associate any thing with me. But whoever disbelieved after this, they are the rebellious to Allah.
And perform Salah (prayer) and give Zakah (religious tax) and obey the Messenger, that you may receive mercy”.60

But in case of non Islamic government each and every Muslim, who has above prescribed amount of money should himself distribute Zakah (religious tax).

2.1.2 Expiations of Sin: - Islam says, that a man who commit a sin, he should purify himself by expiations 'Kaffarah'. These expiations are not for all kind of sin. Qur'an described those sins along with their expiations. These expiations are socially very important. At the one hand, these expiations act as checks against sin and on the other these contribute in harmonizing society and in distributing money. Qur’an says that if a person swears and does not fulfil it. His expiation is to feed ten poor people or to give cloths or to set free a slave, and those who are unable or poor to do these, should fast for three days. Qur’an says: “Allah will not punish you for what is unintentional in your oaths, but He will punish you for your deliberate oaths; for its expiations feed ten poor person on a scale of the average of that with which you feed your own families; or cloth them; or manumit a slave. But whosoever can not afford then he should fast for three days”61

In the same way Qur’an talks about a person who put his wife on the supposed status of his mother or sister and he wants to come back. Qur’an says: “And those who make unlawful to them (their wives) and wish to free themselves from what they uttered, (the Penalty) in that case is the freeing
of a slave before they touch each other. That is an admonition to you, and Allah is all aware of what you do. And he who finds not, must fast each successive months before they both touch each other. And for him who is unable to do so, he should feed sixty poor people".62

The same kinds of expiations are referred in regard to Hajj and fasts of Ramadhan. Qur’an says regarding Hajj:

➢ “and perform properly the Hajj and Umrah for Allah. But if you are prevented, sacrifice an animal (Hady) such as you can afford and do not shave your heads until the animal reaches the place of sacrifice. And whosoever of you is ill or has on ailment in his scalp, he must pay a ransom of either observing fasts or giving Sadaqah (Charity), or offering sacrifice”.63

➢ “O, you who believe! Kill not game while you are in a state of Ihram for Hajj or Umrah, and whosoever of you kills it intentionally, the penalty is an offering, brought to the Kabah, of an eatable animal equivalent to the one he killed, as adjudged by two just men among you; or, for expiation, he should feed Masakeen (poor persons), or its equivalent in fasting, that he may taste the heaviness of his deed”.64

At the other place Qur’an talks about expiations regarding fasts of Ramadhan. It says: “O you who believe! Observing the fasting is prescribed for you as it was prescribed for those before you, that you may become the pious, for a fixed number of days, but if any of you is ill or on
a journey, the same number from other days. And as for those who can fast with difficulty, they have to feed a poor person.\textsuperscript{65}

If we go through these verses, we find that the expiations prescribed above, are really of the nature that can bring harmony in society, create love and do not let the money remain in one place. Qur'an provided fasting as expiations for those who already do not have money.

\textbf{2.1.3 Spoils of War:} - It is a unique way sought by Islam to assist poor of the society. According to Islam spoils of war should be distributed among the soldiers who participated in war except one fifth of it. The one fifth is for the upliftment and assistance of the poor, orphans and travellers. Qur’an says: “And know that whatever of war-booty that you may gain, verily one-fifth of it is assigned to Allah, and to the Messenger, and to the near relatives and orphans, poor, and the wayfarer”.\textsuperscript{66}

In this verse the word 'Masakeen' includes orphans, widows, handicapped, sick and disabled people. Islam include travellers here because an individual may face financial crunch during travel.\textsuperscript{67}

Islam reserved all the spoil that is captured without war, for orphans, widows, sick disabled etc. Qur’an says: “what Allah gave as booty (without war) to his Messenger from the people of townships, it is for Allah, His Messenger, the kindred, the orphans, the poor and the wayfarer, in order that it may not become a fortune used by the rich among you.....(there is also a share in this booty) for the poor emigrants, who were expelled form their homes and their property,.....and those who, before them, had homes
(in Medina) and had adopted the faith,……and those who came after them.”

In these verses Islam not only describe the list of those among whom these spoils of war have to be distributed, but it also told the cause that is the money should not circulate among only rich people. This is the backbone and fundamental article of Islam regarding its economic structure.

Islam took another step to distribute the money which remains concentrated in one hand after spending upon self, family and after paying Zakah (religious tax). Islam frames certain laws with the intention to distribute the remaining wealth and property which belongs to a deceased one among his or her relatives. Qur’an says; “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”.

When deceased does not have any relative the whole property goes to Islamic treasure. No person has any right to handover his or her property to any one even to the adopted one, which may cause the concentration of wealth in a single hand. Qur’an Says, “nor has He made your adopted sons your real sons. That is but your saying with your mouths”.

Qur’an itself fixed the shares which will be discussed in latter pages. The point which is pertinent to note is that Islam did not ignore the orphans, disabled, sick and handicapped people of the society so the distribution can be made more use full to its aim. It is clearly written in
Qur'an that, "And when the relatives and orphans and the poor are present at the time of division give them out of the property, and speak to them words of kindness and justice."  

To conclude the discussion we can say that Islam developed very effective laws to maintain economic equality in society. These laws seem capable to prevent the wealth from to be centralized and seem helpful to distribute it equally with in society.

2.2 Consumption

Consumption is another important aspect of any economic model. Expenditure in proper and desirable ways, assures prosperity in society and help in maintaining equal and continuous distribution and circulation of money. Proper consumption contributes to the regular development of society.

Islam gives direction towards the desirable ways to consume. In this connection Islam starts talking by nullifying hoarding wealth because it feels that hoarding money disturb the circulation and distribution, of money. Latter Islam prescribed a complete system of expenditure that is most suitable for equal and regular distribution and circulation of money. Qur'an does not simply discourage hoarding rather declared it a punishable crime, and puts the responsibility of government to check it.
Qur’an criticized the habit of hoarding money in various ways and said:

➢ “O, you who believe! Verily, there are many of the rabbis and the monks, who devour the wealth of mankind in falsehood, and hinder from the way of Allah, and those who hoard up gold and silver and spend it not in the way of Allah announce unto them a painful torment. On the day when that will be heated in the fire of hell and with it their foreheads, their flanks and their backs will be branded. This is the treasure, which you hoarded for yourselves. Now taste of what you used to hoard”.

➢ “And let not those who covetously withhold of that which Allah has bestowed on them of his bounty, think that it is good for them, Nay, it will be worst for them”.

➢ “Shaitan threatens you with poverty and orders you to commit evil deeds, whereas Allah promises you forgiveness from himself and bounty and Allah is all sufficient for his creature, needs, All-Knower”.

➢ “The mutual rivalry for piling up of worldly things diverts you, until you visit the graves”.

➢ “Woe to every slanderer and backbiter who has gathered wealth and count it he thinks that his wealth will make him last forever”.

Some sayings of Prophet support the verse. “Ahnaf bin Qais reported while I was in the company of the Quraish. Abu Dharr came there
and he was saying. Give glad tidings to the hoarders of riches that their backs would be branded that (the hot Iron) would come out of their sides and when the backs of their necks would be branded it would come out to their foreheads. He then went away and sat down. I asked who he was. They said He is Abu Dharr. I went to him and said to him. What is this that I heard from you, which you were saying before? He said, I said nothing but only that which I heard from Prophet^{PBH}. In another saying “Narrated Asma Bint-e-Abu Bak'r that she had gone to the Prophet^{PBH} and he said, do not shut your money bag otherwise Allah too will hold his blessings from you. Spend as much as you can afford”.

Islam as mentioned above negates hoarding money. It tries to inculcate the spirit of high morality among the individuals and encourages them to spend money in a way that brings social welfare and harmony, ensuring equal distribution of wealth in society. Qur'an encourages spending money by saying:

➢ “it is not piety that you turn your faces towards east and west, but piety is the one who believes in Allah, the last day, the angels, the book, the Prophets and gives his wealth in spite of love for it, to the kinsfolk, to the orphans and to the poor, and to the wayfarer and to those who ask and to set slave free”.

➢ “And they ask you what they ought to spend. Say: That which is beyond your needs”.

39
“By no means shall you attain piety unless you spend of that which you love”\(^{81}\)

Saying of Prophet\(^{PBH}\) are also with the same meaning. “Narrated Abu Masud, I heard the Prophet\(^{PBH}\) saying, there is no envy except in two, a person whom Allah has given wealth and he spends it in the right way and a person whom Allah has given wisdom and he gives his decisions accordingly, and teaches it to the others”.\(^{82}\) In another Hadith “Narrated Aisha, some of the wives of Prophet\(^{PBH}\) asked him, who amongst us will be first to follow you (i.e. die after you). He said whoever has the longest hand. So they started measuring their hands with a stick and Sauda's hand turned out to be the longest. We come to know latter that the long hand was a symbol of practicing charity so she was the first to follow the Prophet\(^{PBH}\) and she used to love to practice charity”.\(^{83}\) There is further a Hadith “Narrated Abu Huraira that the Prophet\(^{PBH}\) said, a person who gives in charity so secretly that his left hand does not know what his right hand has given. And the statement of Allah “if you disclose charity it is good, but if you conceal them and make them reach to the poor it will be better for you”.\(^{84}\)

The ways about which Islam considers the best to spend money are as follows. Qur'an says:

“Worship Allah and join none with him in worship, and do good to parents, kinsfolk, orphans the poor, the neighbour who is near of kin,
the neighbour who is a stranger, the companion by your side, the wayfarer and those whom your right hands possess”.

➢ “And they give food in spite of their love for it to poor, the orphans and the captive”.

➢ “And those in whose wealth there is a known right, for the beggars who ask, and for the unlucky who has lost his property and wealth”.

➢ “And such of your slaves as seek a writing (of emancipation), give them such writing, if you know that they are good and trust worthy. And give them something yourselves out of the wealth of Allah which He has bestowed upon you”.

➢ “So give the kindred his due, and to the poor and to the wayfarer. That is best for those who seek Allah's countenance, and it is they who will be successful”.

One may confuse here that Islam wants a beggarly life because it always asks its followers to spend whatever they have. It does ask to spend but indicates the ways as well. It favours moderation and expects its followers not to overspend and become a beggar. Qur'an says:

➢ “and waste not by extravagance, verily He likes not those who waste by extravagance”.

➢ “But spend not wastefully in the manner of a spendthrift, verily spendthrifts are brothers of the devils and the devil is ever ungrateful to his lord”.

41
Islam demanded a balanced way of expenditure. Qur'anic verses teach that:

- "And eat and drink but waste not by extravagance".92
- "And let not your hand be tied to your neck, nor stretch it forth to its utmost reach, so that you become blameworthy and in severe poverty".93
- "And those who when they spend, are neither extravagant nor niggardly, but hold a medium between those".94
- "But seek, with that which Allah has bestowed on you, the home of the hereafter, and forget not your portion of legal enjoyment in this world".95

Saying of Prophet PBH connote the same meaning. Narrated Abu Huraira that Prophet PBH said, "the best charity is that which is practiced by a wealthy person, and start giving first to your dependents".96

The bottom line on which Islam differentiates extravagance from a moderate expenditure is splendour. The money that is being spent to show off and to take pride in does not have any social contribution. Qur'an says:

- "Do you build high palaces on every high place, while you do not live in them. And do you get for yourselves palaces as if you will live there in forever".97
- "And you carve houses out of mountains with great skill".98

It should be noted that to build high rise buildings and spatial palaces just for splendour and public display is of the category of
extravagances. Verses talks about buildings, palaces, but it include all the expense that has been done to show off, to splendour and to fame.

The most important article of Islamic constitution, which is extremely worthy to note here is that, Islam says, take off the money from those who does not spend it according to Islam. Qur’an says: “And give not unto the foolish your property which Allah has made a means of support for you, but feed and cloth them therewith, and speak to them words of kindness and justice”.

In this verse Islam instructed its followers that money which is for the establishment of life do not let it be with those foolish men who disturb the social and economic systems, either by hoarding it or by spending it for wrong ends. It is the duty of the government to take off the money from them and manage their necessities of life.

After analysing the ways of distribution and encouragement to expenditure, the conclusion can be drawn that Islam provides a base for pure egalitarian society.
2.3 References

1. Qura'n, Baqrah, 29
2. Qura'n, Araf, 10
3. Qura'n, Ibrahim, 32,33,34
4. Qura'n, Juma, 10
5. Qura'n, Yaseen, 71
6. Qura'n, Baqrah, 279
7. Qura'n, Tauba, 103
8. Qura'n, Anam, 141
9. Qura'n, Saf, 11
10. Qura'n, Munafiqoon, 9
12. Qura'n, Nisa, 29
13. Qura'n, Baqrah, 188
14. Qura'n, Al-Imran, 161
15. Qura'n, Maidah, 90
16. Qura'n, Luqman, 6

17. Qura'n, Baqrah, 283
18. Qura'n, Al-Imran, 161
19. Qura'n, Maidah, 38
20. Qura'n, Luqman, 90

22- quoted in, Ibid, Vol.4, p.10

23- Qura'an, Baqrah, 75, 

24- Maudoodi, op.cit., Vol.1, pp.210-213

25- Maudoodi, op.cit., Vol.1, pp.210-213

26- Qura'an, Rum, 39, وما آتىتم م من ربا ليبروا في اموال الناس فلا بربوا عند الله و ما آتىتم من زكوة تريدون وجه الله فآولون هم المضفعون

27- Maudoodi, op.cit., Vol.3, pp.759-760

28- Qura'an, Baqrah, 276, ليمحقو الله الربى وبربى الصدقات والله لا يحب كل كفار الربى

29- Maudoodi, op.cit., Vol.1, p.214

30- Maudoodi, op.cit., Vol.1, p.215

31- Maudoodi, op.cit., Vol.1, p.215

32- Maudoodi, op.cit., Vol.1, p.217

33- Qura'an, Al-Imran, يادها الذين آمنوا لا تأكلو الربى اضعاها مضاعفة واتقوا الله لعلكم،130

34- Qura'an, Al-Imran,134

35- Sahih Bukhari, Kitab-ul-Buyoo

36- Qura'an, Baqrah, 283, وان كنتم على سفر ولم تحبذوا كابنا فهذن مقصوده

37- Sahih Bukhari, Kitab-ul-Buyoo


39- Ibid, Kitab-ul-Buyoo

40- Qura'an, Araf, 85, وإلي مدين اخاهن شعبنا قال يقوم اعبدوالله ماكلكم من الله غيره قد جاء تكم

41- Qura'an, Hood, 84, والإلي مدين اخاهن شعبنا قال يقوم اعبدوالله ماكلكم من الله غيره ولا تفصموا للمكاب والميزان الي اراكم ببحر واتى اخاف عليكم عذاب يوم محيط
42- قرآن، بني إسرائيل، 35

43- قرآن، شوراء، 181, 182, 183

44- قرآن، م(IF), 1, 2

45- قرآن، أنبياء، 73

46- قرآن، ببيان، 5

47- قرآن، مريم، 54, 55

48- قرآن، بقرة، 2, 3

49- قرآن، هجاء، 78

50- قرآن، بقرة، 2, 3

51- قرآن، الفاتحة، 2, 3

52- قرآن، بقرة، 2, 3

53- قرآن، الفاتحة، 2, 3

54- قرآن، الفاتحة، 2, 3

55- قرآن، توبة، 11

56- قرآن، توبة، 103

57- محدودي، عبدAllows, Islam aur Jadid Maashi Nazriyat, دكا، 1963، ص.32

58- محدودي، عبدAllows, Qura'n ki Maashi Talimat, مكتب دلهيIslami, دلهي، 1969

59- قرآن، هجاء، ص.141

الذين إن مكثوا في الأرض اماما الصلاة واتو الزكوة وآمرو بالمعروف ونهر عين
٦٠ - القرآن، نور، ٥٥-٥٦، "وَوَعَدُ اللَّهِ الَّذِينَ آمَنُوا مَنْ كَبَّرْنَا عَلَيْهِمْ فِي الْأَرْضِ كَعَلَى الْمَشْرِقِ وَالْمَغْمُرِ، إِنَّمَا بَلَغَ حَمِيمَتَهُمْ مَا كَبَّرَنَا عَلَيْهِمْ فِي الْأَرْضِ إِلَّا لِيُصَلُّنَّهُمْ قُرْآنًا وَأَنْثَى فَأَذِنَّ مَنْ آمَنَ L تَحْيَيْنَا كُلَّ شَيْءٍ مِّنْكُمْ فَأَذِنَّ مَنْ آمَنَ، إِنَّمَا يَحْيَيْنَا كُلَّ شَيْءٍ مِّنْكُمْ فَأَذِنَّ مَنْ آمَنَ، إِنَّمَا يَحْيَيْنَا كُلَّ شَيْءٍ مِّنْكُمْ فَأَذِنَّ مَنْ آمَنَ لِيُصَلُّنَّهُمْ قُرْآنًا وَأَنْثَى فَأَذِنَّ مَنْ آمَنَ

٦١ - القرآن، ميهاد، "وَلَيْسَ لِلَّهِ كُلُّ شَيْءٍ مِّنْكُمْ إِلَّا مَعْظُومٌ أَوْ نَمَسُولُ مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ أَوْ هَذَا مَعْظُومٌ A

٦٢ - القرآن، مجير، "وَالَّذِينَ يَبْتَغُونَ مِنْ نَسَائِهِمْ مَا لَمْ يَعْمَدُوا لَّمْ يَعْمَدُوا لَّمْ يَعْمَدُوا لَّمْ يَعْمَدُوا لَّمْ يَعْمَدُوا لَّمْ يَعْمَدُوا لَّمْ يَعْمَدُوا L

٦٣ - القرآن، ي Threads, "وَالَّذِينَ يَبْتَغُونَ مِنْ نَسَائِهِمْ مَا لَمْ يَعْمَدُوا لَّمْ يَعْمَدُوا لَّمْ يَعْمَدُوا L

٦٤ - القرآن، ي Threads, "وَالَّذِينَ يَبْتَغُونَ مِنْ نَسَائِهِمْ مَا لَمْ يَعْمَدُوا L

٦٥ - القرآن، ي Threads, "وَالَّذِينَ يَبْتَغُونَ مِنْ نَسَائِهِمْ مَا L

٦٦ - القرآن، ي Threads, "وَالَّذِينَ يَبْتَغُونَ مِنْ نَسَائِهِمْ مَا L


٦٨ - القرآن، ي Threads, "وَالَّذِينَ يَبْتَغُونَ مِنْ نَسَائِهِمْ مَا L

٦٩ - القرآن، ي Threads, "وَالَّذِينَ يَبْتَغُونَ مِنْ نَسَائِهِمْ مَا L

٧٠ - القرآن، ي Threads, "وَالَّذِينَ يَبْتَغُونَ مِنْ نَسَائِهِمْ مَا L

٧١ - القرآن، ي Threads, "وَالَّذِينَ يَبْتَغُونَ مِنْ نَسَائِهِمْ مَا L

٧٢ - القرآن، ي Threads, "وَالَّذِينَ يَبْتَغُونَ مِنْ نَسَائِهِمْ M
وإذا حضر القسمة أولو الفريقين والمساكين فارزقوهم منه وقولوا لهم: قولاً معروفاً

با أيها الذين آمنوا أن كنتم من الأحباء والرهبان ليأكلون إموال الناس، 34،35،36
بالباطن ويضرون عن سبيل الله والذين ينكرون الذهب والفضة ولا يتفقوا في سبيل الله فبشرهم بذلائمهم
يوم يحل عليهم في نار جهنم فتركون بها جوابهم وجنوبهم وظهورهم. هذا ما كنتم لا نفسكم فذلقو ما كنتم تıklıرون.

وألا حسمن الذين يجلدون بما أنهم الله من فضله هو خير لهم بل هو شر لهم

الشيطان بعدكم الفقر ويدرككم بالفحشاء والله يدرككم مغفرة منه وفضلاؤه.

الهكم التكلئ حتى زرت المقاير، 1،2،3،4

ويل لكل همزة لمزة نا الذي جمع مالاً وعددبه يحسب أن ماله اعدله، 1،2،3

Sahih Muslim, Kitab-uz-Zakat

Sahih Bukhari, Kitab-uz-Zakat

ليس البران تولوا ووجهكم قبل المشرق والمغرب ولكن البر من آمن بالله، 177
واليوم الآخر والمملكة والكتب والنبين والمال على حب ذوو القريب واليبني فلمساكين وابن السبيل
والسائلين وفي الرقاب.

ويمتلون ما ذا ينققوه قل العفو، 19

أين تناوا البر حتى تنفقوا مما تحبون، 92

Sahih Bukhari, Kitab-uz-Zakat

Sahih Bukhari, Kitab-uz-Zakat

Sahih Bukhari, Kitab-uz-Zakat

واعبدو الله ولا تشركوا به شياً وبالوالدين احساناً وبذوى القريب واليبني، 36

والمساكين والجاهلي القريء والأحبار والصاحب بالحري وابن السبيل وململكت ايمانكم

ويطعمون الطعام على حبه مسكاتنا ونبتينا وسائرنا، 8

والذين في موالاتهم حق موالاتهم للسائل والمحرمون، 24،25،26

والذين يبتغون الكتب مما ملكت ايمانكم فكتراً لهم ان علمتم فيه خيرًا وانتموه، 33

من مال الله الذي اتمكم

فات ذا القريء حقه والمملكت وابن السبيل ذلك خير للذين يريدون وجه الله، 38

وأولئك هم المفلحون.
90- Qura'n, Anam, 141, ولا تسفروا أنه لا يحب المسئفين
91- Qura'n, Bani Israil, 26, لا تبدر تذيريَّة أن المبذرين كانوا أخوًا الشياطين، وكان الشيطان لربه كفرًا.
92- Qura'n, Araf, 31, ولكلوا واشريوا ولا تسفروا
93- Qura'n, Bani Israil, 29, ولا تحمل بذك معلولة إلى عنتك وتسبطها كل البسط فهو فتعد معلومًا محسورًا.
94- Qura'n, Furqan, 67, والذين إذا انفقوا لم يسرفوا ولم يفسروا ولم يفرو واكن نبين ذلك ف axiom،
95- Qura'n, Qasas, 77, وابتغ فيما أرك الله الدار الآخرة والانص نصيبك من الدنيا
96- Sahih Bukhari, Kitab-uz-Zakat
97- Qura'n, Shoara, 128,129, ابتعدون بكل ربع آية تعبتون وتتحدون مصانع للعملكم تحلدون
98- Qura'n, Shoara, 149, وتجدون من الجبال بيوتاً فرحين
99- Qura'n, Nisa, 5, ولانوتو السفهاء اموالكم التي جعل الله قينًا وارزقوهم فيها وأكسوهم وقولوا لهم قولاً
100- Maudoodi, Tafhim-ul-Quran, op.cit., Vol.1, pp.322,323

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CHAPTER-3

POLITICAL INSTITUTION
POLITICAL INSTITUTION

Political institution deals with the authority, process of law formation and its implementation. Each society recognizes the importance of political institution. Ralf Dahrendorf just in contrast to Marxian analysis opines that polity is more important than the economy because changes in society can be brought through it. Here an effort is being made to analyse the political institution in Islam as it is regarded, by many thinkers, an important institution of social change than the economy.

There are many systems of governance. These can be classified, as Aristotle did, into three forms on the basis of the number of people governing.

Monarchy: - It represents that form of government, where the source of all political authority is to be found in a single supreme ruler. It is based on hereditary principle.

Aristocracy: - It represents that form of government where the source of power rests in a group of few, who were to be considered best men of the community.

Democracy: - Aristotle considers it a perverted form of government, the good form of it, according to him, is polity. But latter thinkers considered it the best form of government. It is defined by Abraham Lincoln to be a government of the people by the people and for the people.
The Islamic system of governance does not favour monarchy, aristocracy and modern democracy. Islamic system of governance is based on community governance which is a type of democracy. Although Islamic system resembles much with the modern democracies, such as elected representation, elected head of the state and equal opportunity for all to enter in to the political process of the country, but the thing that separates Islamic democracy from western democracy is the sovereignty.

Political scientists believe that “sovereignty is the most important constituent element of the state. As a matter of fact, we can not think of a state without sovereign power.”¹ Sovereignty as defined by Burgess is original, absolute, unlimited power over the individual subject and over all associations of subject and it is underived and independent power to command and compel obedience”.²

In modern democracy sovereignty belongs to state. “The state, in its corporate capacity, was thus, endowed with all the attributes of sovereignty which the monarch previously possesed”.³ But in Islamic democratic system sovereignty belongs to Allah. The sovereignty differential affects the legislation. In a state where sovereignty resides in the hands of people, any law can be formulated there on the demand of people, but where sovereignty rests in the hands of Allah, no law can be formulated against the will of Allah whether it is a popular demand or choice of few.⁴
3.1 Sovereignty in Islamic Government

The Islamic concept of sovereignty is based on its concept of ownership of universe. Analysis of Qur’anic concept about ownership of universe shows that:

- Allah has created man and all other things are meant for him.
- Allah is the sustainer and manager of the universe.

The whole Qur’an speaks about the oneness of Allah and His glory and the very purpose of creating this universe. At many a places It says:

> “It is He who has created the heavens and earth in truth”.\(^6\)
> “Say, Allah is the creator of all things, He is the one, the irresistible”.\(^7\)
> “He, it is who created for you all that is on earth”.\(^8\)
> “To him belongs all that is on the heavens and all that is on the earth, and all that is between them, and all that is under the soil”\(^9\)
> “To him belongs whatever is in the heavens and the earth. All are obedient to him”\(^10\)
> “Surely, His is the creation and commandment”.\(^11\)
> “He arranges (every) affair from the heavens to the earth”.\(^12\)

Islam says that Allah is the only authority that has all characteristics essential for sovereignty. He knows every thing. Each and every thing is under his authority either voluntarily or non-voluntarily. No one is there to
revise his orders. Allah is not answerable to anyone. These characteristics are prescribed in Qur'an as follows:

- "And he is the irresistible, above His slaves, and He is the all wise, well acquainted with all things". ¹³
- "All knower of the unseen and the seen, the most great, the most high" ¹⁴
- "He is Allah than whom there is none has the right to be worshiped but He the king, the Holy, the one free from all defects, the Giver of security, the watcher over His creatures, the All-Mighty, the compeller, the supreme". ¹⁵
- "Blessed is He in whose Hand is the dominion, and He is able to do all things". ¹⁶
- "While to him submitted all creatures in the heavens and the earth willingly or unwillingly". ¹⁷
- "For all power and honour belong to Allah". ¹⁸

Besides these, there are a large number of verses which talk about the characteristics of a sovereign, and stress that these are all present in the authority of All-Mighty Allah. According to Islam Allah is the Creator and Sustainer of universe and possesses all the qualities of a sovereign authority hence, sovereignty should belong to Him i.e. Allah. Many verses in Qur'an clearly proclaim that sovereignty is only for Allah. It says:

- "The command is for none but Allah" ¹⁹
- "Surely His is the creation and commandment" ²⁰
“They said, “Have we any part in the affair?” Say you: indeed the affair belongs wholly to Allah”

“Know you not that to Allah belongs the dominion of the heavens and the earth!”

“He is Allah than whom there is none has the right to be worshiped but He, the king, the Holy, the one free from all defects, the Giver of security, the watcher over His creatures, the All Mighty, the compeller, the supreme.”

“Whatsoever is in the heavens and the earth glorifies Allah, and He is the All-Mighty, All wise”.

3.2 Position of Human Beings

After accepting the sovereignty of Allah the basic question arises about the position of human beings upon earth. According to Islam one should surrender all his authority and will to the will of Allah, and accept that he is only a representative (kalifah) of Allah. Qur’an says:

“And when your Lord said to the angels: I am going to place caliph on earth”

“He it is who has made you caliphs in the earth”.

The concept of caliphate, according to Qur’an, is that all powers and authorities that men have in this world are given by Allah, and these
powers can be used only where Allah authorizes them to, that is why man is not sovereign, but His caliph. Qur’an says:

- “And remember that He made you caliph after the people of Nuh”
- “And remember when He made you caliph after Aad”
- “It may be that your lord will destroy your enemy and make you caliph on the earth”

3.3 Democracy in Islam

The authority, in the caliphate system of Islam, does not reside in any group, family or individual, like Monarchy or Aristocracy, but in the community which has accepted the sovereignty of Allah. Each Muslim is responsible and has rights and duties towards caliphate system.

The community caliphate can be carried out only in a democratic way. Qur’an used the term ‘Shoora’ (mutual consultation) for it. Qur’an stressed a lot on it and said:

- “And those who answer the call of their Lord, and perform Salah (prayer), and do their affairs by mutual consultation…”
- “And consult them in the affairs.”

Maulana Maudoodi has done an in depth analysis of these verses and has highlighted the importance of social aspect of mutual consultation and has written that, it is an important pillar of Islamic life. Dealing social
matters without mutual consultation is not only bad but it is against the will of Allah. Islam has stressed on it because of three following factors.

To decide a matter individually which involves two or more persons implies exploitation. It is nearer to justice that all those party to the matter are given a chance to express their opinions. If the matter belongs to a huge population, then the chance should be given through their reliable representatives.

Selfishness and superiority complex make a man monopolistic. Both are equally bad. A real Muslim can never be selfish and can never feel himself superior so will never impose himself upon others.

Taking decisions about a common matter is not an easy task. Any one who is Allah fearing and believes that he will be answerable before Allah, can never dare to take decisions independently. A responsible person will try to involve all the people to whom the matter belongs, either directly or indirectly, so decisions can be taken in an appropriate way and the responsibility can be shared by all.32

This system of mutual consultation is not recommended only at governmental level, but it is an essential part of society at all levels.33 Here are some sayings of ProphetPBH that support the mutual consultation. Ali asked ProphetPBH that what we should do if we come across of any problem, about which we do not find any direction in Qur’an, and in your sayings? ProphetPBH said “assemble the good men of my Ummah and do
mutual consultation among them and do not judge any matter by the opinion of any single man"^34

The second caliph Umer says: "You are not prohibited to kill any one who invites to his own leadership or to the leadership of any other without mutual consultation of Muslims". At another place he says: No caliphate without mutual consultation"^35

Islam says that mutual consultation is an essential task directly or indirectly. Of course, at family level and village level, direct consultation is possible but at state level it is not possible. So an indirect process is needed. The term that is used for Islamic democracy is ‘Shooraiet’.

3.4 Relation between the Individual and the State (Rights and Duties)

The relationship between state and individual is complementary. It is a general belief that state should guarantee to its citizens security, fundamental rights and basic human rights. A man without rights is a slave. All doctrines of freedom assume the existence of rights. Laski has said "state is known by the rights that it maintains."^37

Besides rights, duties are also equally important. Duties are the obligations of citizens towards state. What is a right in regard to one's self is a duty in regard to others. These are two sides of the same thing.
3.4.1 Fundamental Rights

Islam has also given fundamental rights to its citizens. These are as follows:

3.4.1.1 Right to Life: - Islam gives importance to the life of all citizens. No one can be deprived of his or her life without any legitimate legal cause. Qur'an says:

➢ "And those who invoke not any other Allah along with Allah, nor kill such life as Allah has forbidden, except for just cause."\(^{38}\)

➢ "And do not kill any one which Allah has forbidden, except for a just cause".\(^{39}\)

3.4.1.2 Right to Religion: - Islam guarantees the freedom of religion to practice and profess. It is against any sort of conversion by force. Qur'an says:

➢ "there is no compulsion in religion".\(^{40}\)

➢ "And had your Lord willed, those on earth would have believed, all of them together. So will you then compel man kind, until they become believers"? \(^{41}\)

➢ "And Fitna is worse than killing".\(^{42}\)

Allama Jarir writes that 'Fitna' denotes conversion by force.\(^{43}\)

Another important point is that, beyond right to religion, Islam does not allow even to criticize or abuse any religion. Qur'an says:
“and insult not those who they worship besides Allah, lest they insult Allah wrong fully without knowledge”.

“And argue not with the people of the scriptures unless it be in that is better”.

3.4.1.3 Freedom of Association: - Islam grants freedom for all associations that are for social and moral developments. It does not allow any association which causes disturbances. Qur’an says: “Let there arise out of you a group of people inviting to all that is good, enjoining Al-Maruf (i.e. Islamic monotheism and all that Islam orders) and forbidding Al-Munkar (i.e. Polytheism and all that Islam has forbidden) and it is they who are the successful. And be not as those who divided and differentiated among themselves after the clear proofs had come to them”.

3.4.1.4 Freedom of Speech and Expression: - Islam directs its followers to let the good prevail over the evil. Maudoodi says that it includes right to criticize, speech and expression. Qur’an says:

“those among the children of Israel, who disbelieved were cursed by the tongue of David and Jesus, son of Mary. That was because they disobeyed and were ever transgressing beyond bounds. They used not to forbid one another from the wrong, evil-doing, which they committed, vile indeed was what they used to do”.

“We rescued those who forbade evil, but we seized those who did wrong”.

60
You are the best of peoples ever raised up for mankind you enjoins virtues and forbid evils, and you believe in Allah."50

3.4.1.5 Right to Private Life: - Islam advocates for privacy which is a right of every individual. It is a sin to meddle in any body's personal matter. Qur'an says: “You who believe! Avoid much suspicion, indeed some suspicions are sins. And spy not, neither backbite one another. Would one of you like to eat the flesh of his dead brother?”51

Maudoodi writes that it is not a task of a Muslim to find the weaknesses of others. Reading someone’s private letters, eavesdropping, spying on others to know what is private and personal, are extremely immoral.52

At another place Qur’an says, “O you who believe! Enter not houses other than your own! Until you have asked permission and greeted those in them”.53 This verse undoubtedly protects the privacy of people.

3.4.1.6 Right to Minimum Amenities of Life: - It is the duty of government to collect Zakah throughout the country and to distribute it among the needy people of the state in order to provide them basic necessities of life. Qur’an says. “And in their properties there was the right of beggar, and the poor.”54
3.4.2 Duties of People towards Government

Islam also talks about the duties of the people towards the state as it has talked about the rights they are entitled to from state. These may be called fundamental duties.

People must follow the government. Qur’an says: “Obey Allah and obey Messenger and those of you who are in authority”.55

The laws, explanations of the laws or any other instruction issued by government, must be followed.

The citizens in an Islamic state are not allowed to create disturbances. They must be loyal to the government. Qur’an says: “The recompense of those who wage war against Allah and his Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the hereafter”.56

Fighting with Allah and his Prophet[^57] is actually the war against the system established by Islam. At another place Qur’an says: “and do not mischief on the earth after it has been set in order”58

They should cooperate in all the progressive steps of government. It is a symptom of a healthy state. Qur’an says: “Help you one another in Al-Birr and Al-Taqwa (virtue, righteousness and piety) but do not help one another in sin and transgression”.59
The last but the most important duty of people towards their government is protecting its integrity by all means. Qur’an says:

➢ “What is the matter with you, that when you are asked to march forth in the cause of Allah, you cling heavily to the earth? Are you pleased with the life of this world rather than Hereafter”? 

➢ “If you march not forth, He will punish you with a painful torment and will replace you by another people”.

➢ “March forth whether you are light, or heavy, strive hard with your wealth and your lives in the cause of Allah”.

3.5 Features of the Constitution

Each constitution has certain characteristics. Islamic constitution can also be characterised as follows:

3.5.1 Written Constitution: - The constitution of Islam is “Holy Qur’an” Qur’an was revealed upon Prophet MuhammadPbuh which has been preserved and is in written form. Several people were appointed to write Qur’an during the days of ProphetPbuh. Among those are Abu Bakr, Umer, Usman, Ali, Sharjul bin Hassan Kindi and others. Qur’an is still in its original form. Qur’an says about it, “Nay! This is a glorious Qur’an inscribed in the preserved table”.

3.5.2 Supremacy of Law: - As mentioned earlier no amendment can be made in the laws given by Allah. Even the punishments prescribed by
Allah cannot be replaced. Qur’an says: “let not pity withhold you in their case, in a punishment prescribed by Allah, if you believe in Allah and the last day”. Maudoodi, while explaining the verse, writes that the punishments prescribed in Islam cannot be replaced.

The pleading of any order which is against the spirit of Islamic law is prohibited. Qur’an says: “and that they will not disobey you in any Maruf (Islamic monotheism and all that which Islam orders)

Prophet®PBH says: “A Muslim has to listen to and obey (the orders of his ruler) whether he likes it or not as long as his orders involve not one in disobedience (to Allah) but if an act of disobedience (to Allah) is imposed one should not listen to it or obey it”.

3.5.3 Rule of Law: - All the citizens in Islam are equal before law. There is no discrimination and the same law is applicable to all; from the lower stratum of the society to the head of the country. Allah addressing His Prophet®PBH says in Qur’an. “(but say…) and I am commanded to do justice among you”.

Prophet®PBH himself has asserted that even he is no exception to the Islamic law. He says: “The people before you were destroyed because they used to inflict the legal punishments on the poor and forgive the rich. By him in whose hand my soul is if Fatima (daughter of Muhammad.) did that (i.e. stole) I would cut off her hands”.

3.5.4 Equality between Muslims: - All the Muslims have equal rights
and equal opportunities in this system, irrespective of their race, colour and clan. In this system no group or clan or family can achieve special status. Qur’an says:

➢ “The believers are nothing else than brothers”

➢ “O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily, the most honourable of you with Allah is that who is pious”.

Prophet ﷺ made the point more clear by saying that:

• “Indeed, Allah does not see your faces and your wealth, but He sees to your hearts and deeds”

• “All Muslims are brothers; no one has any superiority except by piety”

• “O man kind, your cherisher is only one, no superiority to Arabs above non Arabs and vice versa, and no superiority to red above blacks and vice versa but by piety”.

• “Who witnessed, that no Allah except Allah, accepted our Qibla, pray like us, eat our slaughtered, he is Muslim. He has all rights and obligations of Muslims”.

• “All Muslim blood is equal, they are one against other, even the lowest man of the society can take the responsibility on behalf of them”.

65
Of course, Islam differentiates between Muslims and Zimmis (non-Muslims under Islamic regime). But it gives all civil rights to them as equal to Muslims. Zimmis are deprived only from political rights/participation, because in an ideological government only those persons can share political powers who believe in that ideology. Qur'an says: “O you who believe! Take not as your Bitanah (advisors consultant, protectors, helpers etc.) those outside your religion, since they will not fail to do their best to corrupt you”.

Zimmis will have to pay taxes (Jiziya) instead of Zakah (religious tax paid by Muslims). Prophet says: “Jiziya is not for Muslims”. 3.5.5 Decentralization of Power: - Executive, legislature and judiciary are independent organs in an Islamic government like others. They function independently from each other within their scope of work. But all of them individually and collectively are bound to follow the laws of Allah.

3.5.6 Government is Answerable to People: - It is also one of the fundamental features of Islamic constitution that the government remains answerable to its people. This feature is based on the concept that the Islamic government is just a trustee of the people it rules and all the powers and wealth under it are in fact entrusted by Allah. They should not breach the trust. Qur'an says: “Verily, Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice”.
Prophet\textsuperscript{PBUH} also says: “surely everyone of you is a guardian and is responsible for his charges: The Imam (ruler) of the people is guardian and is responsible for his subjects”.\textsuperscript{87}

3.6 External Policy of Islam

External policy is one of the most important aspects of any political system. It shapes the relations among international community. Islamic constitution provides directions regarding foreign policy of its government. The following points are highlighted here as under:

Bilateral or multilateral agreements must be adhered. In case of a need to breakout of the agreement, it is necessary to inform the parties involved beforehand. Qur’an says in this regard:

- “And fulfil covenant, verily the covenant, will be questioned about”\textsuperscript{88}
- “And fulfil the covenant of Allah, when you have covenanted and break not the oaths after you have confirmed them”.\textsuperscript{89}
- “So long as they are true to you, stand you true to them”.\textsuperscript{90}
- “Except those of the Mushrikeen with whom you have a treaty, and who have not subsequently failed you in ounge, nor have supported anyone against you. So fulfil their treaty to them to the end of their term”.\textsuperscript{91}
"Verily those who believed, and emigrated and strove hard and fought with their property and their lives in the cause of Allah as well as those who gave asylum and help- these are allies to one another. And as to those who believed but did not emigrate, you owe no duty of protection to them until they emigrate, but if they seek your help in religion, it is your duty to help them except against a people with whom you have a treaty mutual alliances and Allah is the all-seer of what you do".  

This verse denotes that political relations of Muslims are within the boundaries of a nation. Muslims of two separate countries do not have any political obligation with each other. But Muslims all over the world are bound by a religious Brotherhood. So that if someone somewhere is under threat or being exploited or his/her rights violated and is asking help from an Islamic government, it becomes the duty of that government to help them out within the limits of international laws, and with the mutual agreement of the government where help is needed.

An Islamic government should be honest in International Affairs. Qur'an says:

➢ "and let not the enmity and hatred of others make you avoid justice. Be just: that is near to piety."

➢ "And make not your oath a means of deception among yourselves".

Maintaining the sanctity of international boundaries of neutral countries is also an important direction of its foreign policy. Qur'an says:
"But if they turn back, take them and kill them wherever you find them, and take neither protector/friends nor helpers from them. Except those who join a group, between you and whom there is a treaty\(^\text{96}\). \(^\text{2}\)

Qur'an also discusses the importance of compromise. It says: "But if they incline to peace, you also incline to it, and trust in Allah. Verily, He is the All-Hearer, the all-knower. And if they intend to deceive you, then verily, Allah is All sufficient for you\(^\text{97}\)." 

External policy of an Islamic nation should be bold and practical in nature. It should not chose the path of confrontation if the opposite party is ready to negotiate and compromise\(^\text{98}\). 

The Nation should have friendly relations with neutral nations. Qur'an says: "Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, Allah loves those who deal with equity\(^\text{99}\)." At another place it says: "Is there any reward for good other than good?\(^\text{100}\)"

### 3.7 Governmental Organs

Any government has three basic organs, which are known as the organs of the government. These are Legislature, Executive and Judiciary. Legislature enacts the general rules of society in the form of law. Executive ensures that the laws of the state are duly obeyed by all and there is no
infringement, and the judiciary determines that the justice is done to all concerned.

But the legislature occupies a superior place. In fact, the primary and the most important function of the state is legislation. The executive and judiciary have no meaning without legislature.¹⁰¹

3.7.1 Legislature

Islam used the term ‘Shoora’ for its legislature. Shoora is an elected group of representatives of the people. Qur’an used the term ‘Uool-ul-Am’r’ for these representatives.

Islamic texts do not talk about any process of their election. So it can be based upon any procedure that can preserve democratic values of Islam and its spirit.¹⁰² A letter of Hazrat Ali shows the spirit of election. He writes “The community plights its fealty to me that had plighted its fealty to Abu Bak’r, Usman and Omer on the same things. It is not necessary to select who was present and to reject who was absent. The consultation is for all Muhajireen and Ansar. If they unanimously agree on a person as a leader, the unanimous decision will be binding on all and those who disagree and resist or show resentment must be forced to follow the majority decision “.¹⁰³
The election of these Uool-ul-Am’r should be based on the system of Adult Franchise. They should be elected from their respective constituencies.\textsuperscript{104}

Every citizen of the nation should not be elected as representative in Shoora. Like all other constitutions, Islam also talks about certain qualifications for the membership of Islamic legislature or Shoora. These are as follows:

Only a Muslim can become a Shoora member. Qur’an says:

- “O you who believe! Take not as your Bitanah (advisors, consultants, protections, helper, friends etc.) those outside your religion”.\textsuperscript{105}
- “Do you think that you shall be left alone while Allah has not yet tested those among you who have striven hard and fought and have not taken Walija (helpers, advisors, consultants form disbelievers etc) besides Allah and his Messenger, and the believers?”\textsuperscript{106}
- “O, you who believe! Obey Allah and obey the Messenger and those of you (Muslims) who are in authority.”\textsuperscript{107}

This criteria is essential because the responsibility for the establishment of any ideology can not be given to a person who does not believe in that ideology.\textsuperscript{108}

He must be honest, Allah fearing and should bear a good moral character. Qur’an says:
➤ “And (remember) when the lord of Ibrahim tried him with commands, which he fulfilled. He said “verily, I am going to make you a leader of mankind, (Ibrahim) said and of my offspring, (Allah) said, My covenant includes not Zalimon (Polytheists and wrong doers)”

➤ “Shall we treat those who believe and do righteous good deeds, as those who associate partners in worship with Allah and commit crimes on earth? Or shall we treat the pious as the criminals, disbelievers, wicked etc”.

➤ “And follow not the commands of Al-Musrifin (i.e. their chiefs, leaders who were polytheists, criminals and sinners) who make mischief in land, and reform not”.

➤ “Verily the most honourable of you with Allah is that who has Al-Taqwa (Pious)”

He must not be ignorant, but erudite, wise, and should posses the ability to understand matters. Qur’an says:

➤ “And give not unto the foolish your property which Allah has made a means of support for you”

➤ “He said verily, Allah has chosen him above you and has increased him abundantly in knowledge and stature”

➤ “We made his kingdom strong and gave him Al-Hikmah (ProphetHood etc.) and sound judgment in speech and decision”.
Joseph said: “set me over the storehouses of the land, I will indeed guard them with full knowledge”\textsuperscript{116}

“If only they had referred it to the Messenger or to those charged with authority among them, the proper investigators would have understood it from them”\textsuperscript{117}

“Say: Are those who know equal to those who know not”.\textsuperscript{118}

He must be trustworthy in private as well as in public affairs. Qur’an says: “Verily! Allah commands that you should render back the trusts to those, to whom they are due”.\textsuperscript{119}

The fore mentioned qualifications must be kept into consideration while electing the members of Shoora (Legislature).

3.7.1.1 Legislation : -In an Islamic government Shoora is not an independent and sovereign body. This body can not frame or amend laws, given by Allah regarding any matter.\textsuperscript{120} Qur’an says: “And whatsoever you differ, the decision thereof is with Allah.”\textsuperscript{121}

This body is bound to follow all the laws given by Allah in the form of Qur’an and Hadith. Qur’an says: “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”.\textsuperscript{122}

This body has right to explain these laws and can frame ordinary rules to bring original laws into practice. There may come up situations and problems where Qur’an and Hadith do not provide direct guidance. In such a situation legislature can frame laws keeping the original spirit of Islam.
into consideration. Qur'an says "O you who believe obey Allah and obey the Messenger and those of you who are in authority, if you differ in any thing amongst yourselves, refer it to believe in Allah and in the last day".

3.7.2 Executive

The second organ of government is the executive. This term is used to designate all those officers of the government who implement the law. The executive includes all officials, high and low, the head of the state, his principal advisers and ministers as well as the whole body of subordinate officials through whom the laws are administered.

3.7.2.1 Head of the State: - Islam used the term Khalifa (Caliph) for the head of the state. Caliph is the elected supreme authority and representative of the country. He is the head of the executive as well as head of the government. He is equally important in the process of law formation as well as in its implementation. Every governmental task is carried out in the name of caliph. He has rights to appoint governors, secretaries of various departments and other officials in order to carry on the governance of the country. He is bound to consult the Shoora in matters of national importance, (the elected members) but is independent to decide on his own if he feels it to be the right course.

Qur'an has prescribed qualifications for caliph:
He must be polite and gentle in nature. Qur'an says: "And by the mercy of Allah, you dealt with them gently. And had you been sever and harsh-hearted, they would have broken away from about you; so pass over (their faults) and ask (Allah's) forgiveness for them; and consult them in the affairs". At other place "And those who avoid the greater sins and Al-Fawahish (illegal sexual intercourse etc.) and when they are angry, they forgive".

He must not be arrogant. Qur'an says: "And walk not on the earth with conceit and arrogance. Verily you can neither rend nor penetrate the earth, nor can you attain a stature like the mountains in height".

The verse is applicable at personal as well as institutional level. And it was due to the verses like these that the leaders of the Medina government never felt proud and never showed arrogance even in war like situations.

He must be punctual in Salah (prayer) and consistent in Zakah (religious tax). Qur'an says: "And to David we gave Salomon. How excellent slave! Verily he was ever oft returning to repentance (to us)." further at another place "Those who, if we give them power in the land, (they) order compulsory for Iqamat-us-Salah (prayer) (i.e. to perform the five compulsory congregational Salah (prayer)/Prayer) to pay the Zakah (religious tax)".

The most important criterion to hold any position in general and the position of caliphate in particular is that he must not himself be in desire of
the post. Qur’an says: “That home of the hereafter, we shall assign to those who rebel not against the truth with pride and oppression in the land nor do mischief by committing crimes”.

Prophet’s sayings support the position in which He says: “we do not assign the authority of ruling to those who ask for it or to those who are keen to have it”. “The great usurper in my eyes is he who is in desire of that (post)” and “We do not appoint any one on work who is in desire of it”.

Prophet said, “O Abdurrahman bin Samra! Do not ask for leadership, If it is given to you on your demand you will be responsible to Allah, if it is three given to you without your desire, Allah will help you in discharging your duties”.

3.7.2.2 Election of Caliph: - It is the responsibility of Shooora to propose the most suitable man according to the above mentioned qualifications. The decision of the Shooora then will be backed by a referendum. If the people do not accept the proposed name, then the Shooora (legislature) will revise its decision and will propose another name. After the appointment of the caliph every one must have to follow him.

If we go back to the history of Islamic governance, we will find that governors, advisers, secretaries, writer, assistants, jurists and different other officers were appointed in different departments of the state directly through caliph to execute the laws and to administer the society.
Islamic state was divided into various sub-states. The head of the state was caliph and the heads of the sub-states were governors, appointed directly by caliph. They were given salaries and they were also given rights to appoint their subordinate officers in different departments, in order to maintain administration and for other tasks.\textsuperscript{139}

Since Qur'an and Hadith are almost silent about the process of recruitment of these officers. The system which prevailed at that time was based on the delegation of powers from the office of the caliph. Now the society is very large and it is not possible easily to appoint right persons for the right job, so the process of the recruitment of officers, their legal boundaries, their tenure and all other things related to them, should be decided by the legislature of the country according to need of the time.

3.7.3 Judiciary

Judiciary, the third organ of the governmental machinery administers the justice. The judiciary is the guardian of the rights of citizens and protects these from individual as well as public encroachment. If there is no adequate provision for the administration of the justice, the liberty of the people will be jeopardized for there will be no definite process which should ascertain and decide rights, punish criminals and protect the innocent from injury and usurpation.\textsuperscript{140}
Islamic political system developed an independent model of judiciary. Independent in the sense that it can bring any one, even caliph, in the courts.\textsuperscript{141}

Prophet\textsuperscript{PBI}, during his days, was chief justice, and used to appoint judges. These judges either they were appointed for capital or for other sub-states, were independent in their respective areas, and were considered local officers. Only Prophet\textsuperscript{PBI} had right to direct them, to revise their judgments and even to cancel it. If any party in any case is not satisfied with the decision of a (lower) court, the case was brought to the highest court of the Prophet\textsuperscript{PBI}.\textsuperscript{142}

Like executive, the recruitment of judicial officers was based on delegation of power through direct appointment. There were no institutionalized provisions to recruit them. Prophet\textsuperscript{PBI} at that time, being the chief justice of the state, used to appoint judges and Governors. Governors being the head of the sub-states, were given power to appoint judicial officers in their respective sub-states.\textsuperscript{143}

As mentioned earlier, in the case of executive, it is hard to maintain the same appointment procedure as it was prevalent, so the legislature should frame provisions for the recruitment of these judicial officers.
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لعن الذين كفرُوا من بني إسرائيل على لسان داوو وعيسى ابن مريم 79, 78
ذلك بالمعاصروا، وكانوا يعتقدون أن أنفسهم ليس كأ鸾 فعلوا

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91- Qura'n, Tauba, 4

92- Qura'n, Anfal, 72

93- Maudoodi, *Tafhim-Ul-Qura'n*, op.cit., Vol.2, pp.161,162
ولا يجعل منكم شنآن قوم علی الا تعلموا اعدموا هو اقرب للقوؤ

ولا تتخذوا اسسكم دعلا بينكم,

فان تقولوا فذلونكم ويقلوا امتي وحضوركم ويدعوها وليو،

نصيرالذين يصلون الى قوم بينكم وبينهم ميثاق

وان جستروا لمسجد فاجتمع احولون كل على الله ان هو السميع العليم، وان، 61,62

يهدعوا فان حسب الله هو الذي ابدع بنصره والمؤمنين


لا ينهكم الله عن الذين لم يقاتلوكم في الدين ولم يخرجواكم من دياركم ان تبروا وتقسطوا اليكم ان الله يحب المتقين

Maudoodi,Khilafat-o-Mulookiat, op.cit., p.42

هل جزاء的良好ات الا الاحسان

Kapur, op.cit., p.32

ام حسبتم ان تزروا ولاما يعلم الله الذين جاهدوا منكم ولم يتخذوا من دون الله ولا رسوله ولا المؤمنين وليحة

Maudoodi,Khilafat-o-Mulookiat, op.cit., p.37

يا ايها الذين آمنوا ان تتخذوا بطانة من دونكم، 118

اذن ابعثوا فهل كنتم فاهمين قال ابي جاهل للفرس امامها قال ومن, 124

الم نجعل الذين آمنوا وعملوا الصالحات كالملضدين في الأرض ام نجعل المتقين كالفسحار

Maudoodi,Khilafat-o-Mulookiat, op.cit., p.37

دي بهاء المسرفين الذين يفسدون في الأرض ولا يصلحون, 15,152

ان كرمكم عن الله قفاكم, 13

ولن تتوالى السفاهة امساككم التي جعل الله قياما, 5

قال ان الله اصلفه علىكم وزيدته بسطة في العلم والمحمص, 247

وشهدنا ملكه وآثامه الحكمة وفصل الخطاب, 20
116- Qura'n, Yusuf, 55

117- Qura'n, Nisa, 83

118- Qura'n, Zumar, 9

119- Qura'n, Nisa, 58

120- Maudoodi, Tafhim-Ul-Quran, op.cit., Vol.4, p.510

121- Qura'n, Shooa, 10

122- Qura'n, Ahzab, 36

123- Maudoodi, Khilafat-o-Mulookiat, op.cit., p.43

124- Qura'n, Nisa, 59

125- Kapur, op.cit., p.59.

126- Siddiqi, Yaseen Mazhar, op.cit., Vol.1, p.172

127- Qura'n, Al-Imran, 159

128- Qura'n, Shooa, 37

129- Qura'n, Bani Isra'il, 37

130- Maudoodi, Tafhim-Ul-Quran, op.cit., Vol.2, p.617

131- Qura'n, Saad, 30

132- Qura'n, Hajj, 41

133- Qura'n, Qasas, 83

134- Sahih Muslim, Kitab-ul-Imarah

135- Al-Sajistani, op.cit., Kitab-ul-Imarah

136- Almuttaqi, op.cit., Vol.6, Hadith no.206

137- Ibid, Vol.6, Hadith no.69

138- Ghulam Mohd, op.cit., p.31

139- Siddiqi, op.cit., Vol.1, p.179

140- Kapur, op.cit., p.492

141- Sarwat Sawlat, Millat-e-Islamia ki Mukhtasar Tarikh, Markazi Maktaba
142- Siddiqi, Yaseen Mazhar, *Ahde Nabvi Mien Tanzeeme*  
*Riyasat-o-Hukoomat*, Idarah Tahqeeq-o-Tasneef Islami, Aligarh, p.309

143- Ibid, p.343
CHAPTER-4

FAMILY
FAMILY

4.1 Importance of Family

Family is the outcome of marriage. Islam encourages marriages and ultimately encourages family life. The family relations are foundation of human civilization. No one, either men or women can escape form the laws, that are being created to establish family relations. From the childhood to the old age these laws affect an individual. If he is a child, the parental relation will affect his socialization. If he is young, he has to face his own life partner, and if he is in old age then his or her children will go through marital relations, and the satisfaction of his life depends upon the relations of his sons daughters and in-laws. So the laws regarding family life are the foundation of civilization and most effective for it.¹

As mentioned that Islam encourages marriage, Qur’an says:” Then marry women of your choice, two or three, or four but if you fear that you should not be able to deal justly then only one”.²

The Prophet⁴ himself discouraged celibacy. According to him “To live in marriage is to observe my way, he who turns away from this way, is not of me”.³
4.2 Position of Sexes in Family Life

Islam itself explains about the basis of laws regarding the relations of men and women. Qur’an says: “And of every thing we have created pairs.” This verse denotes that all things are in pairs and the whole system of universe is based on this fundamental principle of nature. Here the question arises that, what is masculinity (Zaujiat)? Masculinity denotes the activeness of one and the passiveness of the other. One affects and other is being affected. Each and every thing has been created in pairs and one of them is active while the other is passive. The whole system of universe continues on the basis of this law. With this assumption following points can be inferred:

- Both active and passive are essential to keep this universe in continuation. Both have equal importance. Activeness of one part is not prestigious and passiveness of other is not humiliating. The difference is that one has good active capacity and other has good passive capacity to carry out their assigned works in a better way.
- The action, of course, is more important than effect. This importance is not in the sense of prestige or humiliation but in the terms of strength and weakness. Indeed the affecter turns out to be stronger enough to affect the affected and vice versa. An action needs both activity and passivity since equal strength of the (parties) involved will never make an action complete.
Islam created equality between both sexes that can be known by analyzing the rights and duties that Islam has assigned to them. These rights and duties will be discussed latter, but here it must be known that being human being Islam gave equal rights to both. Qur'an says: “And they (women) have rights, similar (to those of their husbands) over them”.

Shamima Mohsin, an Islamist from Pakistan, writes that for the establishment and perpetuation of social life Islam gave equal rights to both sexes and considered it essential for an Islamic society. But the personal importance goes to men because of their activeness in the process of action. Qur’an says: “but men have a degree over them”.

Islam has put the foundation of Islamic family on these ground, discussed above, and has declared man as head of the family. According to Qur’an says: “Men are the protector and maintainer of women, because Allah has made one of them to excel the other, and because they spend from their means”.

Man is the guardian and protector of his family. He is responsible to meet all the necessities of his family. All the members of his family are bound to obey him, except when it is anti Islamic; Prophet residential. Prophet \( ^{PBH} \) says: “man is guardian of his family and is responsible for his subjects”.

Women are bound to obey their husbands. Qur’an says: “Therefore the righteous women are devoutly obedient and guard in the husband’s absence what Allah orders them to guard”.
Prophet[^1] says: “When a woman goes out of her house and her husband dislikes it, all the angels and surroundings she passes through, curse her, until she returns”[^13]

Qur’an further says: “As to those women on whose part you see ill conduct, admonish them, refuse to share their beds, beat them but if they return to obedience, seek not against them means”[^14]

## 4.3 Scope of Work for Women

In Islamic model of family women is the queen of the house. The responsibility of earning money goes to husband, and her responsibility is to manage the house by his earnings. Prophet[^2] has said: “a Woman is responsible for her husband’s house and she is answerable.”[^15]

Women are discharged from outside duties. They are exempted from Juma prayer, Jihad (holy war) Janazah (prayer for the burial) and are not obliged to pray in groups (Jamat) their travelling alone without any Mahram is not appreciated. The conclusion is that they were denied to come outside of their homes. Qur’an says: “and stay in your houses”[^16]

But it was not made too rigid. Women did serve as nurses on the battle field and were allowed to pray in the mosques in earlier days of Islam. So the Prophet[^3] says: “Allah had permitted them to go out for their needs.”[^17]
Here, it must be noted that this concession for women will not make any change in original Islamic laws. This freedom is conditional.\textsuperscript{18}

### 4.4 Comparison

An adult woman is given much freedom in her matters, but comparatively men have more freedom. Men are free to travel anywhere, but women (married or unmarried) can not travel except with a Mahram. Here are some sayings of Prophet\textsuperscript{PBUH}:

- "It is not for a woman who believe in Allah, and in the day of Judgment, that she travels three days or more but with her father, brother, husband, son or any other Mahram\textsuperscript{19}

- "Narrated Abu Huraira, Prophet\textsuperscript{PBUH} said that do not travel a woman of one day and one night but with Mahram\textsuperscript{20}

- "Narrated Abu Huraira, Prophet\textsuperscript{PBUH} said that, it is not permitted for a believer women, that she travels one complete night but with Mahram\textsuperscript{21}

The differences between the durations of travel indicate that the importance does not lie with time, whether it is one, two or three days, but it lies with the issue that women should not be given permission to travel, with whom they can marry, since it may create social disturbance.\textsuperscript{22}

In matrimonial matters men enjoy more freedom. They may marry with Muslims and with those who were given books and may keep lady
slaves. But women can only marry with Muslims. Qur’an says: “they are not lawful (wives) for the disbelievers nor are the disbelievers lawful (husbands) for them”.

A Muslim woman is not allowed to have sexual relation with her slave. Unlike men Qur’an has prohibited women for it. During the caliphate of Umer a case of such nature was reported. Umer called a meeting and it was unanimously passed that the women has misinterpreted the book of Allah and that there is no such provision.

A woman can chose her husband from independent Muslim men, in consultation with her guardians. But guardians do not have right to arrange her marriage without her permission. According to the Prophet (PBUH) “Unmarried girl has more right about herself than her guardian”. At other place Prophet (PBUH) says “marry not a virgin without obtaining permission”.26

If we analyse the verses of Qur’an regarding marriage we will find that, whenever the marriage has been discussed in relation to men Qur’an addresses them directly such as:

- “And do not marry idolatresses till they believe”.27
- “And marry those among you who are single”.28
- “And give not (your women) in marriage to idolaters till they believe”.29
- “Wed them with the permission of their own folk”.30
The verses make it clear that women in Islam are supposed to be under the guardianship of men whether it is father, husband or others responsible in the family.\textsuperscript{31}

\section*{4.5 Duties of Husband}

Islam has prescribed duties which are necessary to be performed by a husband. These are as follows:

a) Husband must pay the bride price (Mahar). Qur’an says:

\begin{itemize}
  \item \textit{“And give to the women their bridal money (Mahar) with a good heart”}\textsuperscript{32}
  \item \textit{“All others are lawful provided you seek (them in marriage) with bridal money (Mahar) from your property”}\textsuperscript{33}
  \item \textit{“Wed them with the permission of their own folk and give them their Mahar according to what is reasonable”}\textsuperscript{34}
  \item \textit{“(Lawful to you in marriage) are chaste women from the believers and chaste women from those who were given the scripture before your time, when you have given their due Mahar”}\textsuperscript{35}
\end{itemize}

b) Paying bride price (Mahar) is mandatory in Islam. If a man refuses to pay up, the woman has every right to keep herself off from him. But if the woman gives some time for its payment or voluntarily forgives it then there is no harm in it. Qur’an says:
➢ “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”

➢ “But if after a Mahar is prescribed, you agree mutually, there is no sin on you”

c) He must provide maintenance to his family. In Islam men are the bread winners for their families. If a husband is not discharging this duty properly, law will force him to do so. Law can break the marriage if the husband is not ready to provide maintenance to his wife as per his means. Qur'an says; “But bestow on them, the rich according to his means and the poor according to his means”.

d) A husband should not use his rights to exploit his wife. This exploitation may be in various forms. Such as:

• IELA (not fulfilling sexual desire of his wife without any reason). Islam has fixed the maximum period of ‘Iela’ by four months. If a husband is not having sexual relation with his wife for four month with the intention of punishment, then the government may force him to divorce his wife. Qur'an says: “those who take an oath not to have sexual relations with their wives must wait four months”

• Husband should not keep a wife, towards whom he does not have attraction with the intention of punishment and exploitation. Qur’an says: “But do not take them back to hurt them, and whoever does that, then he has wronged himself”. The verse includes all kind of exploitation either physical or emotional.
• In case of polygamy, full inclination toward a single wife and ignoring other is exploitation. Qur'an says: "so do not incline too much to one of them so as to leave the other hanging (i.e. neither divorced nor married)."^44

4.6 Duties of Wives

Islam prescribes a set of duties and obligations for wives as well. The first and the fundamental duty of a wife towards her husband is to protect all that belongs to him. Qur’an says: “therefore the righteous women are devoutly obediently, and guard in the husband's absence what Allah orders them to guard (e.g. their chastity, their husband’s property etc.).”^45 It includes protection of his gene by her chastity, his wealth and secrets etc.^46

The second obligation is obedience of her husband. Qur’an says: “Therefore the righteous women are devoutly obedient”.^47

The Prophet^PBH has explained it by a saying, “It is your right upon her that she should not allow anyone at your home, whom you yourself dislike.”^48 Further Prophet^PBH said that “she should not give alms from his husband's house without his permission, if she does, the reward will reach the husband and she will be sinned, and she should not go outside of his home without his permission”.^49
In another Hadith Prophet⁵⁷ said, “a good wife is one, when you see her you feel pleased, when you order her, she obeys you, and when you are not around, she preserves your wealth and your right upon her”⁵⁰

Here the general order of obedience excludes all that is against the will of Allah such as drinking (alcohol etc.), leaving the daily prayers, giving up fasting or Hijab (veil) as Prophet⁶ has rightly said “no one should be followed against the will of Allah”⁵²

Besides the above mentioned obligations towards each other, Islam has given some administrative powers to husband, so that the family can be maintained. But these powers are conditional.

Husband has a right to rebuke his wife, to avoid her in bed and to beat her. But all these rights are conditional. If a wife is not obeying her husband, then he can reprimand her, but if she continues such behaviour, he is allowed to avoid her in bed and if the disobedience continues further, the husband has every right to beat her until she obeys. Qur’an says: “As to those women on whose part you see ill conduct, admonish them, refuse to share their beds (and last) beat them”.⁵³

The permission of beating is further conditioned by Prophet’s saying. Prophet⁶ says: “if she disobeys your just orders, beat them in such a way that causes less torment. Do not slap on her face and do not abuse.”⁵⁴ Maudoodi writes that these punishments should be relative to the sin.⁵⁵
Secondly he may divorce his wife if he feels that he can’t live with her any more. This provision is also conditional and will be discussed latter in the chapter dealing with divorce.

4.7 Objectives of Family

4.7.1 Protection of Morality and Chastity: - The first objective of family, according to Islam, is protection of morality. It prohibits free intermingling of opposite sexes and forces them to enter into a family union to satisfy their sexual needs. Qur’an has used the word fort (Hisn) for marriage. It denotes that marrying is fortifying oneself from free sex. Qur’an says: “Wed them with the permission of their own folk and give them their Mahar according to what is reasonable, they should be chaste, neither adulterous, nor taking boy-friends”

4.7.2 Psycho-Emotional Establishment: - The second important objective of Islamic family is to infuse love and affection between husband and wife. The bond within a family is not based on selfishness, but on spirituality, love and benevolence and this contributes towards fulfilling the aims of marriage. Qur’an conveys this message in a manner which shows that both the sexes have been created to satisfy each other. “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.” At another place Qur’an says: “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.

This objective of love and compassion within, spans itself in all the laws prescribed by Islam for family life. A family devoid of love is like a dead body; dysfunctional and meaningless. That is why Qur'an says: “And if you do justice, and do all that is right, and fear Allah by keeping away from all that is wrong, then Allah is ever oft forgiving, most merciful. But if they separate (by divorce) Allah will provide abundance for every one of them from his bounty.” At another place Qur'an says: “The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness.”

These verses clearly indicate that the institution of family should be based on mutual understanding, love and compassion of both husband and wife, and whenever these contents feel missing the parties should part their ways as well.

4.7.3 Socialization and Value Orientation: - Family is an agency of socialization. Islam also puts this responsibility on family. Qur’an says:

➢ “Protect yourself and your family members from fire.”

➢ “your wives are a tilth for you, so go to your tilth, when or how you will, and send before you for your own selves”.

Prophet referred socialization at various places, by saying that “of all that a father can give to his children, the best is their education and training”.

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At another place Prophet^P^H said “and whosoever has cared for his three daughters or three sisters and given them good education and training, treated them with kindness till Allah makes them stand on their own feet, by Allah's grace he has earned for himself a place in the paradise”.

With the above quotes it is clear that Islam stressed a lot on parental care and socialization of the whole family.

4.7.4 Continuation of Human Race: - The most important and the basic objective of family, as according to Islam is continuation of human race. Without human beings cultural continuity a transformation will not be achieved. For this purpose nature has created differences, both physiological and psychological, between sexes. Both are complementary to each other. In order to make these differences operational, to achieve its desired goals, stable and structured norms are needed. These norms build the institution of family. In a way it is the institution of family that helps in the continuation of human race in an organised manner. Qur’an says: “He created his wife and from them both he created many men and women.”

Elsewhere Qur’an says: “your wives are tilth for you, so go to your tilth when and how you will and send (good deals or ask Allah to bestow upon you pious offspring) before you for your own selves”. Here the verse indicates not only about the children expected from this relationship but their education, upbringing and moral training etc.
4.7.5 Social Security of Individual: - The relationship of husband and wife in a family is not only based on the fulfilment of sexual desires, and consequently reproduction of children, but it is a relationship based on love and affection. This harmonious relation between them makes the children good natured and loving and at broader level the same love covers the whole universe.\textsuperscript{68}

For the persistence of love and affection among the family members, Islam has prescribed directions that have become laws for social security of people. Islam says, love your family members, take care of others and share their problems. Islam talks especially about the care of old parents, and never talks about any old age nursing homes prevalent in modern societies. Qur’an says “and do good to parents, kinsfolk, orphans, the poor, the neighbour who is near of kin, the neighbour who is stranger, the companion by your side, the wayfarer.”\textsuperscript{69}

4.8 Structure of Family

Islam does not prescribe a stable structure of family. But Islam concerns in this regard can be understood by analyzing other injections of Islam about family life. We can infer from such injections that Islam advocates a separate house for each wife where she may live with her children and her father and mother in-laws. Husband is supposed to be the family head and is responsible for supporting his wife, children and
dependent parents economically. The responsibility of wife lies with in the house; to protect her husband's home, wealth and reputation.

The following conditions will highlight and support the above conclusion:

4.8.1 **Single House for Each:** - Islam promotes separate, single and independent unit of residence for each married couple. Qur’anic injections favour this idea and Allah talks about one of the most important articles on social system with this presumption in Qur’an: “O you who believe! Enter not houses other than your own, until you have asked permission and greeted those in them, that is better for you, in order that you may remember”.70

Even in the case of polygyny each wife should be provided separate house since Prophet\textsuperscript{PBH} himself provided separate house to all his wives. In Qur’an while addressing the wives of the Prophet\textsuperscript{PBH} Allah says: “and stay in your houses”71, “and remember, that which is recited in your houses of the verses of Allah”72 again at another place He says: “you who believe! Enter not the Prophet's houses”73

The above verses clearly indicate that Prophet\textsuperscript{PBH} built separate houses for his wives and each houses was a self sufficient unit. Imam Bukhari has described these houses in his collection of Hadith with the respective names of Prophet’s wives.74

4.8.2 **Separate House is a Fundamental Right of Wife:** - It is an important article that indicates about the desired Islamic family structure.
This article shows that providing a separate home is mandatory duty of a husband. In a famous book of Fiqh, it is said that a separate house is the fundamental right of each wife which should be without any relatives form his/her side. In an other important book it has been discussed as “and it is the duty of husband to provide residence in a separate house, no one should be there from his relatives until wife desires it, because residence is her fundamental right like maintenance.

To fulfil this fundamental right it is not necessary for a husband to own a house but it can be rented or leased etc. The aim of the right is to provide an open and free atmosphere where she may feel more secure and less hesitant and is less bugged with privacy violations. Since it is a fundamental right so she can’t be deprived of it without her own permission.

The standard of the home will be as per means of husband as it is about food and cloth etc.

4.8.3 Evidences from Purdah (Veil): - Purdah is a very important part of Islamic social system. Islam has described Purdah very clearly. In between the lines many aspects of family structure can be traced out. Whatever Qur’an talks about Purdah, can be divided into two categories;

- Purdah inside home.
- Purdah outside home.

Here the emphasis is upon Purdah inside home that seems comparatively more useful to understand family structure of Islam.
Qur’an prohibits the entry into the homes of others without permission. It says: “O you who believe enter not houses other than your own, until you have asked permission and greeted those in them, that is better for you, in order that you may remember. And if you find no one there in, still, enter not until permission has been given. And if you are asked to go back, go back for it is purer for you, and Allah is all knower of what you do”.79 Indirectly this verse indicates about the smallness of family, because the possibility of a house, consisting generations, being empty is very rare.80

The importance of seeking permission can be weighted by the fact that this rule applies upon all; even to the nearest relatives. Qur’an says: “And when the children among you come to puberty, then let them (also) ask for permission, as those senior to them”.81 Here the puberty denotes two possibilities. One that the son has reached to the age of puberty, he is married and living in a separate house. In this condition the verse needs no explanation. The second possibility is that he has come of age but is yet to be married and is still living with his parents. In the second condition the provision of seeking permission denotes that the inner structure of the house should be as such that the sanctity of permission can be maintained.82

Besides these there are several instructions of Prophetpb that can never be brought in to practice except in a small family. Such as Prophetpb prohibits men from intermingling with those women with whom they are
allowed to marry. Prophet \(^{PBH}\) says: "Beware of entering upon the ladies." A man from the Ansar said, "Allah's Apostle! What about Al-Hamu the in-laws of the wife (the brothers of her husband or his nephews etc.)? "The Prophet \(^{PBH}\) replied: The in-laws of the wife are death itself."\(^{83}\)

It is evident that a separate and a single home is a fundamental right of the wife, and the husband has no right to deprive her of it partly or fully without her permission. This conclusion leads us to an important question, that is, in this type of family structure, how the obligations of husband, as prescribed by Islam for his relatives, particularly for his old age parents, can be fulfilled?

Islam in fact makes the service of parents next to the servility of Allah. There are unparallel Hadiths and Qur'anic verses that take up the cause of parents very strongly. In the sayings of Prophet \(^{PBH}\) their obedience or disobedience is enough to land oneself in Heaven or Hell.\(^{84}\)

Islamic Fiqh asserts that, if parents are poor, the son is liable for their maintenance. Even if the parents are non Muslims they will never be denied of their rights.\(^{85}\)

Maintenance (Nafqah) includes food, cloth and shelter. In general, this is the duty of the offspring to look after the parents. No one else shares this responsibility with them. In a nutshell it is the obligation of man to look after his parents as he is supposed to do with his wife.\(^{86}\)

It will be hard for an individual to provide and maintain two different residences for his wife and parents, and seems hardly practical. So
parents are allowed to share the residence and the practice becomes practical and appreciated.

Islam puts character, morality, servility and humanity above all the laws. In fact all that Islam preaches is based on these principles. These values encompass both men and women. As above mentioned, husband-wife relationship is not just to fulfil biological needs, rather it is based on love and affection and mutual cooperation. That is why it is expected form a wife to cooperate and even to relax her rights so that her husband could discharge his duties towards his needy parents.

She is expected to relax her rights of housing, clothing and food. She is expected to allow her husband’s parents to live with him in the same house. In the same way a husband is supposed to oblige his wife whenever she is needed to serve her parents.\(^7\)

We can conclude that Islamic family structure is against traditional Indian joint family system like India. It is pro-nuclear and does not allow others to live with the husband, wife and their children, except with the voluntary permission of wife. This permission is expected on moral grounds, and becomes the base to extend the family structure of Islam from nuclear to extended family.
4.9 Inheritance

In pre Islamic Arabia, the rules of succession were connected directly with the system of tribal warfare; that is the participation in combat of the man, and the non participation in combat of the women. Thus those who inherited the estate in the pre Islamic system were able to trace their relationship with the propositus by male links exclusively. These relatives provided the cohesive unit of Arabian tribes. In a competition between two male agnatic relatives, the simple rule was that the nearest to the propositus inherited to the exclusion of those more remote.°°

One of Islam’s major political objectives was to substitute the tribal unity by a family structure. The old agnatic system is not excluded by Islam but Qur’anic system of inheritance compliments the old agnatic system. Qur’an prescribes a list of those relatives whom it assigned legal share. It says, “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”.89

Qur’an gives a detailed list of heirs it says:

➢ “Allah commands you as regards your children’s; to the male a portion equal to that of two females; if only daughters, two or more, their share is two thirds of the inheritance; if only one her share is half, for parents, a sixth share of inheritance to each if the deceased left children; if no children and the parents are the heirs, the mother
has a third, if the deceased left brothers or (sisters), the mother has a sixth, after the payment of legacies he may have bequeathed or debts.”

> “In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a forth of that which they leave after payment of legacies that they may have bequeathed or debts, in that which you leave their share is a fourth if you leave no child; but if you leave a child they get an eight of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or women whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies he may have bequeathed or debts, so that no loss is caused”.

The heirs listed in Qur’an and certain added by Prophet is called Qur’anic heirs. These are: Husband, Wife, Father, True Grandfather (a true grandfather is a male ancestor between whom and the propositus no female intervenes, that is, paternal grandfather.), Mother, True Grandmother (a true grandmother is a female ancestor between whom and the propositus no false grandfather intervenes. Both the paternal and maternal grand mother can inherit.), Daughter, Son’s Daughter, Full Sister, Consanguine Sister (children of the same father but different mothers.), Uterine Sister and Uterine Brother (children of the same mother but different fathers). Each
of them will be discussed separately so the picture of the phenomenon can be clearly understood.

(a) **The Husband:** - His share is one-quarter of the net estate. When there are no children, or agnatic grandchildren, his share is increased to one half of the estate. It is immaterial whether the children belongs to the spouse relit or is issue of another marriage of the deceased spouse.

(b) **The Wife:** - Her share is one-eighth of the net estate. If there are two wives, they share the one-eighth between them. Where there are no children, or agnatic grandchildren, the wife or wives will take one-quarter.

(c) **The Father:** - The father can inherit three possible categories. If the son is alive, the father’s share is limited to one sixth. If the daughter or son’s daughter is alive (but not the son), he receives one-sixth plus any residue as the nearest agnate. If there is no son or son’s daughter, he simply inherits as the nearest agnate.

(d) **The True Grandfather:** - The Grandfather is added by Prophet[^], for he was not expressly mentioned in the Qur’an. His share is one-sixth. If, however the father is alive, he is excluded. In the absence of the father, son, daughter or the child of the son, he will inherit as the nearest agnate. Like the father, the presence of the daughter or son’s daughter enables the grandfather to inherit in both capacities.

(e) **The Mother:** - The mother is given a normal share of one-sixth which she inherits when her child dies leaving surviving his or her own child or agnatic grandchild. The mother’s share is capable of increase. In the event
of no child or agnate grandchild of the propositus being alive at the moment of the death of the propositus, then the share of the mother is increased to one-third of the estate.

(f) The True Grandmother: - The true grandmother does not appear in the Qur’anic revelation and, like the grandfather this category is added by Prophet[^1^]. Her share is one-sixth of the estate. When the mother is alive, then the true grandmother is excluded entirely. When there is more than one grandmothers the nearer in degree will exclude the more remote.

(g) The Daughter: - The Qur’an share for the daughter is one-half of the net estate. If two or more daughters survive the propositus, then that share is to a collective two-thirds. As we have seen already, however, the presence of son agnatises the daughter, and she inherits with the son as an agnate, without regard to her Qur’anic status in the proportion two shares to the son and one share to the daughter.

(h) The Son’s Daughter: - The rules relating to the daughter are intertwined with the son’s daughter (he son being deceased). The share of the son’s daughter is one-half; if there are two or more it is two-thirds; but if there is a daughter and a son’s daughter, the daughter and the son’s daughter receive a collective portion of two-thirds in the proportion of one-half to the daughter as opposed to one-sixth to the son’s daughter. If, however, there are more than two daughters, the collective portion of two-thirds is exhausted by the presence of the daughter, and nothing will remain for the agnatic granddaughter.
(i) The Full (Germaine) Sister; The Consanguine Sister: - These two relatives can be considered together. The full sister’s share is one-half of the estate, or, if there are two or more of them, two-thirds. Similarly, the consanguine sister’s share is one-half (or if two or more of them then two-thirds). Like the grandfather, the grandmother and the son’s daughter, the full and consanguine sisters are excluded by the son, the son’s son however low in degree, the father and by the true grandfather. It needs to be emphasized that the full brother excludes the consanguine sister. The presence of the brother, the daughter, or the son’s daughter, tighter with the full sister, will affect the share of the sister.

(j) Uterine Brothers; Uterine Sisters: - The uterine collaterals are excluded by the superior heirs, namely son, daughter, son’s daughter, father, true grandfather. If one of these people are present, the uterine collateral will take one-sixth; or if two or more survive, one-third. The uterine have equal share in the estate. Thus the rule that a male participates in the estate to the extent of twice the amount of the female of equal degree from the propositus does not apply to the uterine relationships.

It is pertinent to note that, Islam took major emphasis on social relations; it directs the people to the repayment of debts before the distribution of estate as the above mentioned verses shows. This emphasis will negate the possibility of hesitating for any one in lending money to a needy sick man.
The other aspect of social relations that Islam protected by its provision in which it declares that one can not assign whole of his property to any one and he can not deprive any one from his or her rights. Qur’an says, “nor has He made your adopted sons your real sons. That is but your saying with your mouths”.93 “And blood relations among each other have clear personal ties in the decree of Allah”.79 It is the wealth that causes many damages in social relations, people try to posses it by any possible means. Islam tried its best to safeguard these relations. In case of no heirs the whole estate will be for Islamic treasure.

But Islam did not handicap completely in regard of possessions, if a man or woman feels necessary either by any special affection or for the cause of goodness, he or she may right a testament. Qur’an says, “It is prescribed for you when death approaches any of you, if he leaves wealth that he makes a bequeath to parents and next of kin according to reasonable manners”.95

According to this verse a person have right to leave a testament about his property in favour of any one about which he feels needy either he or she has share in property or not. But the testament should not exceed 1/3 of the net estate. ProphetPBH says: “Amir bin Sad reported on the authority of his father Sad bin Abi Oqqas. Allah’s Messenger visited me in my illness, which brought me near death in the year of Hajjat-ul-Wida. I said to Allah’s Messenger, you can well see the pain with which I am afflicted and I am a man possessing wealth and there is none to inherent me
except only one daughter, should I give two third of my property as Sadaqah? He said no. I said should I give half as Sadaqah? He said no, He said give one third and that is quit enough. To leave your heirs rich is better than to leave them poor, begging from people. That you would never incur on expense seeing there with the pleasure of Allah but you would be rewarded therefore”.

The distribution system of Islam provides social security to all the family members by providing them economic security. It is the economy that plays crucial role in all spheres of human life. Any one can be exploited on economic terms. Islam provides a kind of protection and tried to establish an egalitarian family. Islam gives share to the women while women were not given economic responsibility of any one, rather it is the responsibility of father and husband to fulfil their needs. In this sense, Islam provides double protection to women, which is unparallel to any other religion.
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CHAPTER-5

MARRIAGE
Islamic social system has been built upon the principle of high standard of human values, piety, purity and dignity. The relationships between men and women are regulated by these principles that have been incorporated in the institution of marriage. The Qur’an is very specific in this regard. Qur’an prohibits free sexual relations by saying that “and come not near to the unlawful sexual intercourse”.¹

By prohibiting free sexual relations it closed ways to sexual deviations. To fulfill the biological needs as well as to keep the world system in order, it was necessary to open a way through which the process of reproduction can be regulated. This process is known as Nikah (marriage). Unlike other religions who consider marriage as an inevitable sin Islam has laid clear procedures for it and has encouraged its followers to practice it openly.²

For bringing the sexual urge of human beings at a balanced level, Islam prohibits free sexual relations and encourages sex through marriage and declares it as a Thawab (good deed) for Muslims. “You should marry, for that will help him lower his gaze and guard his modesty. Those who are unable to marry should keep fast”. (Prophet Muhammad⁶)³

The aim of the institution of marriage is to close all the ways of sexual anarchy in society and to limit the sexual relation within the
boundary of family. So individuals can serve the civilization and society with all their conserved energies.⁴

5.1 Importance of Marriage

The importance of this institution can be known by analyzing its functions. As above mentioned marriage is the institution to regulate sexual life. By regulating sexual life marriage forms family which is the most powerful basic institution upon which civilizations grow. The family provides peace, stability and forms a group. By this institution new generations get good socialization.

But in a society where people do not give importance to marriage, where gender relations do not have any aim except sexual relation, family can not there, and it can not carryout it's functions. With the absence of marriage, people do not feel responsible towards their children, parents and ultimately towards the whole society.

Without the institution of family, formed through marriage, it's hard to upbringing the children. It is a high moral work, which requires sacrifice of desire, wealth and health in which one has to overcome many difficulties. But those who indulge in satisfying only biological needs do not feel obliged for their social duties.⁵

Islamic texts stress a lot on marriage highlighting the importance of this institution. Qur’an stresses at many places about it:
“Then marry women of your choice”. ⁶

“Wed them with the permission of their own folk”. ⁷

Many of the verses and the Sayings of Prophet⁸ to this effect have been quoted before. This level of encouragement shows the level of importance that Islam has given to the institution of marriage.

5.2 Mate Selection

Mate selection is the first and basic task for marriage. Islam has some guidance here as well. Like other issues, Islam provides a balanced way regarding this matter. Islam accepted the fact that, both the partners should be well informed about each other. Guardians do play a role in match making and men are allowed to see their fiancées before any commitment. Islam also has given arbitration to women about their marriages. A guardian cannot marry her ward off against her will. Prophet's saying shows: “Narrated Khams’a bint-e-Khidam that her father gave her in marriage when she was a matron and she disliked that marriage. So she went to Allah's Messenger and he declared that marriage invalid”. ⁸

The permission to see the fiancé is only for men, as they enjoy an upper status in Islamic social system. Prophet⁹ advised “When any one of you proposes to a lady for marriage and you want to see something that is attractive in her, then do it”. ⁹ In another Hadith Prophet⁹ says: “When
Allah makes someone feel for a woman to marry, then there is no restriction that he sees her.\textsuperscript{10}

Prophet\textsuperscript{PBH} explained the cause when, one of the companions of Prophet\textsuperscript{PBH}, Mughira bin Shaba desired to propose a lady, Prophet\textsuperscript{PBH} said: “See her because it is expected that the relation of love between you will be more reliable by it”.\textsuperscript{11}

Bukhari has noted that once a woman presented herself to Prophet\textsuperscript{PBH} for marriage. At that time Prophet\textsuperscript{PBH} had looked her from top to bottom carefully.\textsuperscript{12}

It is not necessary to inform a woman to see her. According to the Prophet\textsuperscript{PBH}, “When any one of you proposes a woman for marriage then there is no restriction in seeing her. But his seeing must be for marriage purpose, and it is not necessary that woman knows about it”.\textsuperscript{13}

A fiancé can be seen in a hidden way. A companion of the Prophet\textsuperscript{PBH} reports “I proposed a lady for marriage then I used to see her without her knowledge, that attracted me to marry her and finally I married her”.\textsuperscript{14} But beyond seeing every thing is prohibited unlike in advanced and so called westernized societies where almost everything is permissible.\textsuperscript{15}

A man, if satisfied about the match, can propose either to woman herself or to her guardian. When a man proposes to a woman others should not propose, until a final decision is taken by the parties involved.\textsuperscript{16}

A woman can propose to a man as well. According to a Hadith, “Narrated Haisham's father, Khula Bint-e- Haikam was one of those ladies
who presented herself to the Prophet[^BH] for marriage. Aisha said that, doesn’t a lady feel ashamed for presenting herself to a man?[^17]

5.3 Guardianship

After mate selection the important question is regarding guardianship. Islam recognizes the position of both partners in regard to their marriage. But it also realises that generally till that age partners do not have as much experience for a healthy decision. So the responsibility extends to the guardians of both the partners.[^18]

Where Qur’an talks about marriage, it addresses the guardians. Qur’an says, “And marry those among you who are single”.[^19]

The verse indicates that it is the legal and moral responsibility of the guardians to take care of the marriages of those who are under their guardianship. The importance of guardianship is much in marriage. Prophet[^PH] says, “No marriage without guardians”.[^20] In other place Prophet[^PH] says: “Any woman, who has married without the permission of her guardian, her marriage is invalid”.[^21] It is clear from these sayings that without the concern of a guardian marriage will not be complete.

Islam categorises the guardianship in that of a male and a female, and of a female between virgin and matron (widow, divorced). In case of a male the interference of the guardian is moral. Male has full authority in his marriage. No one can arrange his marriage without his acceptance. The
real effect of guardianship is expressed in the case of a girl, which is not only moral but legal. A saying of Prophet^{PBH} differentiated between virgin and matron in which he said, "Narrated Abu Hurairah, that Prophet^{PBH} 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. The people asked, O Allah's Messenger how can we know her permission? He said, her silence".\textsuperscript{22} In other saying Prophet^{PBH} says: "A matron has more rights in her matters than her guardian, and virgins will be asked for permission, and their permission is silence".\textsuperscript{23}

It is obvious that a matron is given more right in selection of her husband than a virgin girl. But it does not negate the authority or interference of a guardian. In the case of matron it is the responsibility of the guardian to take clear expression from her but in the case of a virgin her silence is enough for permission.\textsuperscript{24}

As mentioned above the guardianship in the case of a boy is more moral than legal. In a Hadith Prophet^{PBH} has directly addressed the youth about their marriages. He said "O young men whoever is able to marry among you should marry".\textsuperscript{25}

The guardians have been empowered to exercise control at their female wards. There are various categories of guardians as per Islamic jurists. Accordingly the most appropriate guardian for the marriage of an independent woman is her father then her grandfather and so on, then her brother, the step brother in the same order, then her brothers' son and so
on, then her paternal uncle and his son and so on, and then the uncle of her father. The conclusion of the series is that those who have more share in her property after her death, have more right to the guardianship of that girl.²⁶

The legal right of guardianship is all in the hands of men. Women do not have any right to interfere in it. But a saying of Prophet⁰⁹ shows that consulting with their mothers is appreciable “Do mutual consultation with women about their daughters”.²⁷

5.4 Mahar (Bride Price)

Mahar is an Arabic word. It means gift, fixed with mutual consent, for the woman, who is being married, either paid immediately or latter.²⁸ Mahar is a free gift to a woman from her husband. Qur’an says: “And give to the women their Mahar with a good heart”.²⁹

Mahar is an indispensable part of marriage, without Mahar the validity of marriage will be questioned. Wherever Qur’an talks about marriage it talks about Mahar as complementary to it. It says:

- “All others are lawful provided you seek with Mahar from your property desiring chastity”.³⁰
- “So with those, of whom you have enjoyed sexual relations, give them their Mahar as prescribed”.³¹
- “And give them their Mahar according to what is reasonable”.³²
> “And there will be no sin on you to marry them if you have paid their Mahar to them”.  

> “O Prophet verily we have made lawful to you, your wives to whom you have paid their Mahar”.  

The essentiality of Mahar can be realized by the fact that, Prophet was given permission from Allah to marry without Mahar with those Muslim women who presented themselves to Prophet and Prophet wished to accept them. The words in Qur’an in this regard are “and a believing woman if she offers herself to the Prophet and the Prophet wishes to marry her-a privilege for you not for the rest of the believers”.  

On the basis of this permission Prophet married with Maimoona in 7th Hijri. But he did not like the special privilege and gave her the Mahar even though she did not ask for it.  

Maudoodi writes that the last words of the verse indicate that no Muslim is allowed to marry, even with those women who offer themselves for marriage without Mahar.  

Paying Mahar is obligatory to the bride, whether she is a Muslim or a woman from the People of Scriptures (Ahl-e-Kitab). Wherever Qur’an has granted permission for marriage with the women who are from those who have been given books it has added about Mahar. Qur’an says: “(lawful to you in marriage) are chaste women from the believers and chaste women from those who were given the scripture before your time, when you have given their due Mahar”.  

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Mahar is the right of wife that is why exchange marriages without Mahar are prohibited. Exchange marriage refers to a marriage where Guardians agree to marry each other’s female wards with their male wards in exchange without Mahar.

In a Hadith “Narrated Ibn-e-Umer, Allah's Messenger forbade Ash-Shighar, which means that some body marries his daughter to some body else and the latter marries his daughter to the former without paying Mahar”.39

Paying Mahar is essential either immediately at the time of marriage or after some time if the wife agrees. ProphetPBH says: “Whoever married a woman by Mahar with the intention that he will not pay, he is adulterer, and whoever borrowed with the intention that he will not repay, is a thief”.40

As for the amount of Mahar is concerned, no amount was fixed by ProphetPBH. Although the analysis of different sayings of ProphetPBH shows that the amount should not be as much as to be a burden, and could not be paid. ProphetPBH says: “give away women in marriage to men and do not exceed in Mahar”.41

Hazrat Umer says: “Do not exceed in fixation of Mahar, if it is some thing admissible in this world, and something for piety in the life after death, then the ProphetPBH was a better adapter to it than you, but the Mahar of Prophet's wives and his daughters were not more than twelve Oqia”.42 In another saying, “Narrated Anas bin Maalik that
AburRahman bin Auf came to Prophet\(^\text{PBUH}\): Since he was bearing some yellow spots so he told that he has married an Ansari woman. Prophet\(^\text{PBUH}\) asked, how much did you fix the Mahar for her? Abdur Rahman replied gold equal to date stone”.\(^{43}\)

Here are some sayings that indicate the importance of Mahar and deny the importance of amount. “Narrated Sahal bin Saad As-Saidi while I was sitting among the people in the company of Allah's Messenger a woman stood up and said, O Allah's Messenger she has given herself in marriage to you, please give your opinion about her. The Prophet\(^\text{PBUH}\) did not give her any reply. She again stood up and said, O Allah's Messenger she has given herself to you, so please give your opinion about her. The Prophet\(^\text{PBUH}\) did not give her any reply. She again stood up for the third time and said, she has given herself in marriage to you, so give your opinion about her. So a man stood up and said, O Allah's Messenger! Marry her to me. The Prophet\(^\text{PBUH}\) asked him “Have you got any thing? He said no. The Prophet\(^\text{PBUH}\) said “Go and search for something even if it were an Iron ring. The man went and searched and returned saying, I could not find anything, not even an iron ring. Then the Prophet\(^\text{PBUH}\) said, “Do you know something of the Qur’an?” He replied “I know (by heart) such and such Surah”. The Prophet\(^\text{PBUH}\) said; go I have married her to you for what you know of the Qur’an”.\(^{44}\)

The conclusion that can be drawn from these sayings is that the Mahar is the right of a bride, and without any special cause it should not be
as minimum as it may seem a kind of usurpation in her right and it should not be as much as that its payment becomes burdensome. Qur’an conveys this message in a Verse “the rich according to his means and poor according to his means a gift of reasonable amount”.45

The amount fixed for Mahar at the time of marriage can be increased or decreased by the mutual understanding of husband and wife. And this can be done at any time after marriage. It is very clearly said in Qur’an “but if after a Mahar is prescribed you agree mutually there is no sin on you”.46

Nowadays Mahar is considered a kind of check upon divorce and it is thought that Mahar should be so high that no Muslim (married) even dares to think about divorce. But sometimes it creates problems. In a married life if at some time both parties find it difficult to coexist, they must part. But this approach makes it problematic. A husband may find it difficult to pay the Mahar and hence might not be able to release his wife through divorce.

5.5 Publicity of Marriage

In Islam marriage is a social contract, because it is breakable. So like all other contracts, it must be publicised. Qur’an says clearly “And there is no sin on you if you make a Girl of betrothal or conceal it in yourself, Allah knows that you will remember them, but do not make a promise of
contract with them in secret except that you speak an honourable saying according to the Islamic law". A Hadith also indicates about publicity of marriage "make public this marriage and perform it in the mosques and beat drums for it".

On one such occasion, girls sang with the beating of drums in the presence of Prophet. Bukhari has noted "Narrated Ar-Rabi the daughter of Muavia bin Afra, at the consummation of my marriage the Prophet came and sat on my bed as far from me you are sitting now and our little girls started beating the tambourines and reciting elegiac verses mourning my father. One of them said "among us is a Prophet who knows what will happen tomorrow" on that the Prophet said "leave this and keep on saying the verses which you had been saying before".

Imam Muatta has also noted a Hadith that shows the importance of publicity. "Narrated Abu Zubair that a person was presented before Umer, in whose marriage only one man and one woman were present as witness, Umer said, "this marriage is secret, I do not permit it, and if I were aware about it before, I could have stoned him to death".

Beside these verses and sayings the system of organizing a marriage ceremony is in such a way that shows a high level of publicity. Such as the tradition of sermon, essentiality of witnesses and the importance of marriage feast (Dawat-e-Walima).

Delivering marriage sermon is the tradition of Prophet. At the occasion of marriage, people gather around and a person delivers sermon.
Dr. Galwash writes in his book "I give below, in extense, the nuptial sermon, universally preached on the occasion of marriage in imitation of the Holy ProphetPBH":

"O ye believers fear Allah as He deserves to be feared, and die not without having become true Moslem. O men, fear your lord who hath created you of one progenitor and of the same species created He, his wife, and from these twain hath spread abroad so many men and women. And fear ye Allah in whose name ye ask mutual favours and reverence the wombs that bore you. Verily, Allah is watching over you. O believers fear Allah and speak with well-guided speech, that Allah may bless your doings for you and forgive you your sins. And who obeyth Allah and His apostle, with great bliss he surely shall be blest".51

The second thing is essentiality of witness which contributes in publicizing marriage. Qur’an clearly says: “O you who believe! When you contract a debt for a fixed period, write it down…..And get two witnesses out of your own men. And if there are not two men then a man and two women such as you agree for witnesses”.52

The verse has a general nature and talks about witness in any kind of contract. It also includes marriage. A Hadith of Muatta, noted earlier but worthy to be repeated, clearly indicates “Narrated Abu Zubair that a person was presented before Umer in who’s marriage only one man and one woman were present as witness. Umer said this marriage is secret, I do not
permit it, and if I were aware about it before, I could have stoned him to death “.53

In another verse Qur’an talks about witness upon divorce “then when they are about to fulfil their term appointed, either take them back in a good manner. And take for witness two just persons from among you and establish the witness for Allah”.54

While explaining the verse Ibn-e-Jarir (a well known commentator of Qur’an) referred to Ibne Abbas and said, according to this verse you have to get witnesses upon divorce and upon reconciliation as well.55

Hazrat Imran bin Hussain is asked about a man who divorced her wife and latter reconciliated, but he did not establish witness neither on divorce nor on reconciliation. He replied you did your divorce and reconciliation both as against the tradition of Prophet. Establish witness on both divorce and reconciliation, and do not do it again.56

With these verses and saying it is obvious that the establishment of witness is also an essential element of marriage.

The third thing that also contributes in the publicity of marriage is marriage feast. It is a feast given by groom or his guardian after marriage. Prophet did it himself and asked others to do so. Bukhari has noted that “Narrated Anas, Allah's Messenger manumitted Safiya and then married her and her Mahar was her manumission and he gave a wedding banquet with Hais (a sort of sweet dish made from butter, cheese and dates)”.57
In another Hadith Prophet[^58] asked Abdur Rahman bin Auf to do so, “Narrated Anas when Abdur Rahman bin Auf married an Ansari woman, Prophet[^P] asked him to give a banquet even if with a sheep”[^58] Another saying noted by Sahih Muslim shows the same meaning “Narrated Anas bin Maalik that Prophet[^P] saw yellow spots upon Abdr Rahman bin Auf, and asked what is this? He replied, I married with a woman giving a Mahar of Gold equal to date stone. Prophet[^P] said Allah will bring good fortune. Give banquet even if with a sheep”.[^59]

If some body refuses an invitation he indeed disobeys Allah and his Messenger. “Narrated Abu Hurraira, the worst feast is that of a wedding banquet where only the rich are invited while poor are denied. And who refuses an invitation (to a banquet) disobeys Allah and his Messenger”.[^60]

5.6 To Whom Marriages are prohibited

Each society has some checks and balances that prevent some relations to marry each other. Islam gives a list of those relatives to whom marriages are prohibited. The list includes some relatives from the lineage side and others are from in-law’s home. Qur’an says: “Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your brother’s daughters, your sisters’ daughters, your foster mother who gave you suck, your foster milk suckling sisters, your wives’ mothers, your stepdaughters 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 lines, and two sisters in wedlock at the same time except for what has already passed; verily Allah is oft-Forgiving, Most Merciful. Also (forbidden) women already married, except those (captives and slaves) whom your right hands posses. Thus has Allah ordained for you. All others are lawful provided you seek (them in marriage) with Mahar (bridal money given by husband to his wife at the time of marriage) from your property desiring chastity, not committing illegal sexual intercourse”.

Here ‘mother’ includes, stepmother, grandmother from father as well as from mother side, grandmothers of the parents and the complete chain of both lines. In the same way ‘daughter’ includes, granddaughters from the side of son as well as from daughter side with their complete chain, without any difference between real and stepdaughters. Sister also includes stepsisters either from father or from mother side. Paternal aunt and maternal aunt include the paternal aunt and maternal aunt of the parents. Nephew from, brother as well as from sister side include their below links.

The conclusion of all explanation is that the relations which have been declared as Haram (unlawful), the complete line of that relation will be in the same order. All the relations are Haram from the lineage side except four, that Qur’an describes, “O Prophet verily we have made lawful to your wives to whom you have paid their Mahra, and those whom your right hand possesses whom Allah has given to you and the daughters
of your paternal uncle and the daughters of your paternal aunts and the daughters of your maternal uncle and the daughters of your maternal aunts who migrated with you”

The wife of son excludes itself from the wife of adopted son. This law is only for real son. Qur’an says: “so when Zaid had accomplished his desire from her, we gave her to you in marriage, so that there may be no difficulty to the believers in respect of the wives of their adopted sons when the latter have no desire to keep them”.

Keeping two sisters as wives at the same time is prohibited. The same law is applicable if the two sisters are slaves. No one can have sexual relations with both at the same time.

Among the nearer relatives of husband and wife, all are allowed for marriage except four. These are wives of fathers and wives of sons, mothers of wives and their daughters. The complete chains of these relations, either in upper side or lower side are prohibited. It is prohibited for a man to marry with her wives’ mother and her grandmothers and so on. In the same way man is prohibited to marry with his wives’ daughter, i.e. his stepdaughter and his granddaughter and so on. Like step daughter the daughter of stepson is also prohibited.

A man is also prohibited to marry with a woman who is already married. Qur’an says: “Also (forbidden are) women already married”.

Prophet’s saying provides some more explanation. Such as “Narrated Jabir, Allah's Apostle forbade that a woman should not be married to a man
along with her paternal aunt or maternal aunt”. Abu Hurraira narrated that, Allah's Messenger said “A woman and her paternal aunt should not be married to the same man and similarly a woman and her maternal aunt should not be married to the same man together”.

Here the paternal aunt includes the sister of grandfather with the complete line and maternal aunt also includes the sister of grandmother from mother side and so on.

About the suckling relations, Qur’an has talked only about mother and sister, but Prophet has explained it. The boundaries are larger than it appears to be. Prophet says: “yes for foster suckling relations make all those things unlawful which are unlawful through corresponding birth relations”.

On the basis of above Hadith, it has been declared that the relation between suckling mother and suckling son will go further in their offspring.

Another dimension of the topic, which is most worthy to mention here, is that according to Islam the first criteria of marriage is that the parties to it should not be idolatress or idolater. Since the aim of marriage is to cultivate love, affection and spiritual harmony among the married, if a person marries with someone other than a Muslim, their thought, culture habit might differ and clash and ultimately the desired goal of marriage will not be achieved. Qur’an says: “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 in marriage to idolaters till they believe and verily, a believing slave is better than a free idolater even though he pleases you.”

Qur'an allows marriage with those women who are Ahl-e-Kitab (people who were given Holy Scriptures). Qur'an says: “Made lawful to you this day are At-Tayyibat (all kind of lawful foods). The food of the people of the scripture is lawful to you and yours’ is lawful to them. Lawful to you in marriage are chaste women from the believers and chaste women from those who were given the scriptures before your time”.

Although, the permission was given that a Muslim man can marry among the people of scriptures, because the cultural foundations of those people up to some extent are similar to Islam. But a Muslim woman cannot marry with the men of scriptures.

Marriage of a Muslim man with a woman of scripture is not appreciable rather it is discouraged. Ka’ab bin Maalik showed his desire to marry with a woman from those who were given scriptures. Prophet negated him.

Hazrat Ali and Hazrat Umer both declared this marriage as not desirable in Islam. Ali cited the verse of Qur’an “O you will not find any people who believe in Allah and the last day, making friendship with those who oppose Allah and His Messenger”.

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5.7 Kafaet (Equality)

Marriage is a good unifying positive contract between men and women. If both the partners of the contract are almost alike in their feelings, thoughts and habits, then the contract will be more stable. Otherwise it may lead to a divorce.

Islam has given much importance to the equality of status to both the partners coming into the marital contract. For this equality jurists of Islam have used the term ‘Kafaet’.

The things that have been the subject of discourse among jurists of Islam to measure the similarity or equality are piety, family and race, occupation, wealth, physical disability, similarity of status in terms of slave and free man, priority in adopting Islam and Wajahat (knowledge of religion with practice).

5.7.1 Piety: - Piety has key importance in establishing marital relations. Prophet\textsuperscript{PBH} directing towards it said, “When a marriage is offered to you from a person whose religious and moral conditions are satisfactory, then accept it, otherwise disturbances will occur upon earth”.\textsuperscript{76}

In another saying, narrated by Abu Hurairah, Prophet\textsuperscript{PBH} said, “a woman is married by four things, her wealth, her race, her beauty, her religiosity and you should prefer religiosity “.\textsuperscript{77}

5.7.2 Family and Race: - Imam Abu Hanifa, Imam Shafai and Imam Ahmad have propagated for social equality in marriage. They have quoted
Prophet[^P^B^H] to prove their point which follows. “Allah selected Kanana among the offspring of Ismaiel, and Quraish among the offspring of Kanana and Banu Hashim among Quraish and He selected me among Banu Hashim”.78

The above Hadith shows that race and family has been given importance in Islam that is why Prophet[^P^B^H] talked about this. In another Hadith, narrated by Hazrat Ali, Prophet[^P^B^H] said, “three things should not be delayed, the prayer, the death prayer when it is nearer to you, the marriage of unmarried girl when it is offered from similar people”.79

In another Hadith narrated by Hazrat Aisha, Prophet[^P^B^H] said “select good relations for your offspring and marry them with similar people” 80

Hazrat Umer says that, “I will not allow any women who belongs to upper race, to marry a man who belongs to a lower race”.81

Waliullah, a writer about Islam, has written with the reference of Al-Mabsoot that, it is difficult to maintain a healthy marital relationship in the absence of equal partners, because the feeling of racial superiority is an immodest thing. No woman would like to live with a man of lower race. Indeed it affects the very aim of marriage, the required atmosphere of love, affection and attachment will remain an illusion.82

5.7.3 Occupation: - Among the jurists, some are against the similarity in occupation and say that it is not important to measure similarity in occupation for marriage. But others are in favour of it. Imam Ahmad and Mohammad say that occupation will also be considered, and a person from
low occupation (known in society) can not be equal to a person from high occupation.\textsuperscript{83}

5.7.4 Wealth: - It is also an aspect of similarity among jurists of Islam. The saying of Prophet\textsuperscript{PBH} provides a base to their argument. “Fatima bint Qais went to Prophet\textsuperscript{PBH} and asked that Ma’avia bin Suffyan and Abu Jaham have proposed me for marriage, what is your suggestion? Prophet\textsuperscript{PBH} replied Abu Jaham tortures the women and Ma’avia is a poor man; marry with Osama”\textsuperscript{84}

This Hadith shows that Prophet\textsuperscript{PBH} prohibited her marriage with Ma’avia due to his poverty. In another Hadith, while explaining the importance of wealth Prophet\textsuperscript{PBH} said that “the nobility of people is wealth”\textsuperscript{85}

Abu Hanifa and Imam Mohammad say that, economic status of both, men and women, should be almost same for their marriage.\textsuperscript{86}

5.7.5 Physical Ability: - If there is any kind of defect in a man, but he did not expose that to the woman or to her guardian before marriage. Then, in both the cases woman will have right to move into court and to demand for the dissolution of marriage.\textsuperscript{87} So for the establishment of marriage this aspect is also necessary to be considered.

5.7.6 Free or Slave: - No slave can be equal to a free man (who is free by birth) whether he is still a slave or is freed from slavery. In the same way no free man whose father is slave can be equal to a free woman whose father is also free.\textsuperscript{88}
5.7.7 Priority in Adopting Islam: - It is also a well known aspect in which equality of status matters. Hanafi and Shafai jurists say that a converted Muslim can not be equal to that who is Muslim by birth. The converted Muslim will be considered equal to all other Muslims only after the passing of two generations in Islam.^^

5.7.8 Wajahat (Personality):- Ahnaf jurists give more importance to Hasab in measuring similarity of status for marriage. The importance is as much that a person with Hasab can be equal to a man of superior race. But if the person having superior race is of bad character the person having Hasab will be higher than him in status.^*^

But what is Hasab. Many explanations have been derived by jurists. Some say it is morality and cite this Hadith "nobility is high morality".^^ Some says that, it is religiousness by citing the evidence in which Prophet^^^ says, "it is said his nobility is his religiousness". But the jurists observe that it is knowledge and religiousness. Imam Abu Yusuf says that "if a man embraces Islam or if he becomes free and he competes with the people of superior race by acquiring knowledge and good deeds, he can be considered similar and can marry with the women of superior race". Hereby it is meant to say that the achieved status is more recognized than the ascribed status.

Without indulging in the deep discussion of jurists, the logical conclusion for our purpose is that, Islam intends to create love and affection not only among couples but also between their families. If this
goal remains unachieved, the inclination of Islam turns towards the dissolution of marriage. Islam stressed upon similarity of status because, the chance of love and attraction is more among similar people.94

5.8 POLYGAMY

Besides monogamy Islam also permits polygyny but prohibits polyandry. Qur’an says: “then marry women of your choice, two three or four”.95 Islam allows it with certain instructions. Polygyny was in practice among several groups and communities of the entire world. Now it is considered a mean of exploitation of women.

Islamists say that polygyny is a need of man. They believe that sexual desire is a natural desire, and among some males this desire is higher than others and they find it difficult to control, with the result single wife is not enough for them. They come out with another reason that women with the passage of time goes through certain biological changes like menstruation, pregnancy and lactation etc. due to these biological changes the physical condition of women gets effected and she loses her sexual appetite sooner than a male. So the second marriage becomes a need for men.96 They also say that in some situations polygyny is fruitful for women. They advocate that it is a natural desire to have offspring. If a wife is unable to reproduce due some physical or biological disabilities or due to some chronic illness, two conditions arise;
• He keeps another wife with her first wife or
• He divorces the first and marries to another one.

Rarely a woman will prefer the second choice.97

Polygyny is also a social need. Normally the sex ratio remains almost equal in all the groups and nations. But at times of war sex ratio gets disturbed due to the young male casualties in war. Many women are widowed. Then what will happen to those women? Should they be left in their precarious situation? The polygyny offers a chance to such women to settle their lives and as a result it helps in checking the corrupt practices in society. It is also favourable for those societies where the number of males is comparatively less.

Some people are of the opinion that why does Islam prohibit polyandry? There are several reasons. The most notable is that, if a woman has several husbands, it becomes difficult to trace the biological father. A huge amount of unsolved questions, related to inheritance and responsibility, will arise.98

5.8.1 Legal Bindings: - In spite of these social and individual justifications, Islam allows polygyny with strict rules that do not allow a man to use it unnecessarily. Islam allows such practice in a situation of crisis. Before the advent of Islam a man used to keep many wives, but in Islam, a man is not allowed to keep more than four wives at a time. Islam recognizes it as a social and individual need, but in no circumstances it allows to keep more than four wives at a time.99
It must be noted here that polygyny is not appreciated in Islam. It is only permitted to tackle the situations arising out of some crisis. In such marriages, Islam puts greater emphasis upon the responsibilities of men towards their wives. This type of marriage is never encouraged in Islam for the purpose of physical pleasure.\textsuperscript{100}

5.8.2 Conditions of Polygyny: -A man must be in a position to bear the responsibility of maintenance of all the wives. Secondly he must be able to have sexual relations with all the wives. Allama Ibn-e-Arabi observes that if a man has sufficient wealth and physically able, he can have four wives. But if his wealth and physical health is not sound, in such a situation he should keep only those, he can bear.\textsuperscript{101}

If a man is wealthy and physically able, even then there is condition to do justice among wives. Qur’an cautions that if you fear to do justice then do not go for another wife. It says: “if you fear that you shall not be able to deal justly then only one or that your right hands posses”.\textsuperscript{102}

Prophet\textsuperscript{PH} stressed a lot on justice among wives. Prophet\textsuperscript{PH} says: “if a man has two wives and he does not deal among them justly, at the day of judgement, he will come with parts of his body leaned”.\textsuperscript{103}

So, it is necessary for a man to deal justly among all wives about feasible matters. But in the matters which are beyond his control he is not responsible. To be equally inclined to all his wives is beyond his capability. “Aisha reported that the Messenger of Allah used to have turns among his wives and does justice. He used to say: O Allah this is my
division in what I can control. So do not blame me in what Thou do control and I can not”.

It does not mean that a man should incline himself completely towards one wife in the name of love by taking the shield of capability, and deprive the other wife. Qur’an says: “you will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them, so as to leave the other hanging”. Like wives, children of the wives have been given equal rights, and they can not be discriminated on any ground.

5.9 Mut’a Marriage

Mut’a marriage is a temporary marriage. It was permitted in the early age of Islam. This marriage is arranged for a particular period of time and with the completion of the time marriage ends.

The analysis of sayings of Prophet shows that the permission of this marriage was almost during journey. This permission was withdrawn firstly in seventh Hijri at the time of Khaiber. Prophet clearly prohibited it. “Narrated Ali, I said to Ibn-e-Abbas during the battle of Khaiber Prophet forbade Al-Mut’a and the eating of donkeys’ meat”.

During 8th Hijri, at the time of Awtas it was again permitted for three days. Lastly in the same year at the time of conquest of Macca, permission was given, but before retiring from Macca, this marriage was
forbade forever. Hazrat Sabra Jhani narrated that Prophet\(^{PBH}\) said “O people! I had given you the permission of Mut’\(a\), but now Allah has prohibited it till the day of judgement. If any one of you has such wives, release them and do not take any thing back whatever you have given them”\(^{112}\).

In another narration, “Apostle of Allah forbade Mut’\(a\) and said, listen, this is prohibited to you from today till the day of judgement, and whoever has given something to such kind of women, do not take back”\(^{113}\). Another place Sabra Jahni narrated that “indeed Apostle of Allah forbade it (Mut’\(a\)) at the time of Hajjatul-Wida”\(^{114}\). Many other sayings of Prophet\(^{PBH}\) leave the same impression about Mut’\(a\), that it was a temporary permission before the completion of social laws. But latter this marriage was forbidden forever. Abu Hurraira narrated that the Prophet\(^{PBH}\) has said “the rules of divorce, inheritance and Iddah (waiting period) destroyed Mut’\(a\)”\(^{115}\). Abdullah bin Masood has also propagated the same thing “verses of divorce, Iddah (waiting period) and inheritance have cancelled Mut’\(a\)”\(^{116}\).

Shia Muslims believe that, this temporary marriage is still allowed. The base of their belief is a narration of Hazrat Ibn Abbas. But in fact, he was also against this temporary marriage\(^{117}\).

The narration of Hazrat Jabir bin Yazeed clearly shows that Ibn-e-Abbas had changed his view about Mut’\(a\). Mohd bin Ka’\(b\) narrated with the reference of Abdullah bin Abbas. He says: “Mut’\(a\) was allowed in the early age of Islam. Men used to come to new places, about which they were
ignorant. They used to marry there with women, who can manage their
tasks and can look after their wealth till the time they desire to stay there.
But when the verse "except your wives and those your right hands posses"
is revealed Abdullah bin Abbas said, now all others are Haram (unlawful)
except these two".118

The above preachings show that Islam prohibits all kind of
temporary marriages. It encourages people to obtain stability through
marriage.
5.10 References

1. Qur'an, Bani Israil, 32
3. Sahih Muslim, Kitab-un-Nikha
4. Maudoodi, op.cit., p.175
5. Maudoodi, op.cit., p.71
6. Qur'an, Nisa, 3, فاتِنِحوُوا مَا طَابٌ لَكُم مِن النَّسَاءِ، 32
7. Qur'an, Nisa, 25, فاتِنِحوُوا بِذَٰلِكَ اٍهْلِهِنَّ، 25
8. Sahih Bukhari, Kitab-un-Nikah
12. Sahih Bukhari, Kitab-un-Nikah
16. Sahih Bukhari, Kitab-un-Nikah
17. Sahih Bukhari, Kitab-un-Nikah
18. Islahi, op.cit., p.312
19. Qur'an, Noor, 32, واتِنِحوُوا الْيَامِيِّْ الْمِنْكُمْ، 32
20. Al-Sajistani, op.cit., Kitab-un-Nikah
22. Sahih Bukhari, Kitab-un-Nikah
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**References:**

1. Qur'an, Nisa, 24: ولوا حنان عليكم إنا نكحونه إذا اعتمدنا أحورون فريضة.
2. Qur'an, Nisa, 24: فما استعمل به منهن فانوهرا أحورون فريضة.
4. Qur'an, Mumtahina, 10: ولا حنان عليكم إلا إن كنتما نكحونه إذا اعتمدنا أحورون.
5. Qur'an, Ahzab, 50: وأمرة موصئة أن وحبت نفسها للنبي إن اراد ان يستنكرها خالصا تلك من دون.

**Translations:**

1. **Qur'an, Nisa, 24:** We do not wish you any harm if you return to the Faith and guard yourselves from wrongdoing. If you return to the Faith, the fault will be upon your individual consciences. But if you are a group and you commit wrongdoing, then you will be held responsible. The One who has ears should hear and one who has eyes should see. And He is the One who knows what is hidden in the breasts.
2. **Qur'an, Nisa, 24:** We do not wish you any harm if you return to the Faith and guard yourselves from wrongdoing. If you return to the Faith, the fault will be upon your individual consciences. But if you are a group and you commit wrongdoing, then you will be held responsible. The One who has ears should hear and one who has eyes should see. And He is the One who knows what is hidden in the breasts.
3. **Qur'an, Ahzab, 50:** And woman is not like man. If you fear harm from them, then guard yourselves from wrongdoing, and guard your women from unveiling themselves before men. And He is the One who knows what is hidden in the breasts.
4. **Qur'an, Ahzab, 50:** And woman is not like man. If you fear harm from them, then guard yourselves from wrongdoing, and guard your women from unveiling themselves before men. And He is the One who knows what is hidden in the breasts.

**Notes:**

1. *Qur'an,* Nisa, 24, *Sahih Muslim, Kitab-un-Nikah*.
7. *Qur'an,* Ahzab, 50.
8. *Qur'an,* Ahzab, 50.
15. *Qur'an,* Ahzab, 50.
17. *Qur'an,* Ahzab, 50.
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43. *Qur'an,* Ahzab, 50.
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45. *Qur'an,* Ahzab, 50.
46. *Qur'an,* Ahzab, 50.
47. *Qur'an,* Ahzab, 50.
48- Imam Tirmizi, op.cit., Kitab-un-Nikah
49- Sahih Bukhari, Kitab-un-Nikah
50- Imam Maalik, Muatta, Kitab-un-Nikah, Al-Majlisul-A'la
Le-Shouoone-Isamia Ahyaa-ut-Turas Islamiah, Koit, 1967
51- Dr. Galwash, The Religion of Islam, Al-ElEmad Press, Cairo, p.96
52- Qur'an, Baqrah, 282
53- Imam Maalik, op.cit., Kitab-un-Nikah
54- Qur'an, Talaq, 2
55- Maudoodi, Tafhim-ul-Quran, op.cit., Vol.5, p.566
56- quoted in, Ibid., vol.5, p.567
57- Sahih Bukhari, Kitab-un-Nikah
58- Sahih Bukkari, Kibat-un-Nikah
59- Sahih Mulsim, Kitab-un-Nikah
60- Sahih Bukhari, Kitab-un-Nikah
61- Qur'an, Nisa, 23, 24
62- Qur'an, Ahzab, 50, 51
63- Qur'an, Ahzab, 37
64- Islahi, op.cit., p.124
65- Islahi, op.cit., pp.125,126
66- Qur'an, Nisa, 24
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CHAPTER-6

DIVORCE
DIVORCE

Islamic social system provides a provision to breakout of marital relations. This provision is known as divorce ‘Talaqe’. The provision of divorce gives marriage in Islam a nature of social contract, unlike Hindu marriages where divorce is not possible.

The critics of Islam argue that, by allowing divorce, Islam opens a way to exploit women. But Islamists defend and argue that in some situations this provision of divorce becomes functional for both the partners and plays a crucial role in resolving acute problems regarding family life. A times a situation may arise where a husband and wife may find it difficult to live together because of their unmatched personalities, thoughts, habits etc. In such a situation, if they are forced to live together, the very aim of marriage will not be achieved.

6.1 Right to Divorce

Islam gives the right to divorce to the husband. It is only husband who can divorce the wife not the other way round. Wives were given a procedure of Khula that will be discussed latter. The right is reserved for husband because whenever Qur’an talks about divorce it addresses men, such as:
“O Prophetﷺ, When you divorce women, divorce them at their Iddah (prescribed periods)”¹

“And when you have divorced women and they have fulfilled the term of their prescribed period, do not prevent them from marrying their (former) husbands”.²

“And if you divorced them before you have touched them, and you have appointed unto them the Mahar”.³

Jalaluddin Omeri, an Islamist who has written many books, writes that only men are given the right to divorce because they have higher position in family life. Qur’ân also explains the upper position of men in family and says: “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”.⁴

While writing the note on the above verse Jalaluddin Omeri has written that it is the man who bears all the responsibilities of family whether it is related to earning livelihood, education or bringing of children etc. So it is he who should has the right to decide that either he is able to discharge his duties as a husband or not.⁵

At one hand Islam grants this authority to men and on the other, it frames laws in such a way that a man does not dare to use the provision of divorce easily. Because after divorce he will may face acute financial crisis. He will has to pay the Mahar to his wife, will be denied the marriage ornaments, and whatever he may has spent till now for his wife will not be
given back to him. Besides, he has to pay Mahar for his next marriage and will has to go under expenditure of new marriage.  

6.2 Legal Position of Divorce

Marriage is a lifetime contract. This contract is not made just to satisfy biological needs, but to inculcate love, affection and harmony for a lifetime, as Qur’an says, “And now could you take it (back) while you have gone in unto each others, and they have taken from you a firm and strong covenant”.

So marriage as well as its dissolution is not something that can be taken easy by individuals. In fact, Islam permits divorce but it always discourages it. The following Hadith clearly shows the legal position of divorce, in which Prophet has disliked and discouraged divorce “The worst among the permitted things is Talaqe, in the eyes of Allah”. In another saying which is narrated by Maharib bin Dasar Prophet says, “Allah did not allow anything more displeasing than Talaqe”. Further in another narration Prophet says “O Maaz! Allah did not created upon the surface of earth any thing more favourite than setting free a slave, and in the same way He did not created any thing upon the surface of the earth more displeasing than Talaqe”. In the same continuation Prophet addressed women and said that “Any woman who asks for divorce from
her husband without any compulsion, the fragrance of heaven is Haram (Prohibited) upon her "11

Islam also advocates about the sensitivity of Talaqe. No one can play a prank or joke with it. Highlighting the sensitivity of Talaqe Prophet\textsuperscript{PBH} says that, “There are three things which will be taken seriously and can never be joked. These are Nikah (Marriage) Talaqe (divorce) and Rujoo (Revocation of divorce)”.\textsuperscript{12}

The analysis of these sayings shows that the provision of divorce is not common with other laws. It is only to tackle emergency situations. It can not be applied anytime anywhere, its application is conditional.

6.3 Limitations of Divorce

Islam, as above mentioned, not only discourages the use of divorce it also frames laws through which its frequent use can be checked. Conflicts may occur at any level and group, so in a family as well. For the resolution of family conflicts between husbands and wives, Islam gives certain stages and at last it suggests the use of divorce.

At first Islam preaches men and says that they should try to adjust in the time of conflict and should not use divorce frequently, and even in the troubled situations should continue good behaviour with their wives. Qur’an clearly says, “And live with them honourably. If you dislike them,
it may be that you dislike them, and Allah brings through it a great deal of good”.\textsuperscript{13}

At the next stage Islam says that, if the conflict is acute and not adjustable, even then avoid the use of divorce. In order to resolve the acute conflicting situations, Islam gives some special powers to men and allows them to adjust the conflict by force. Qur’anic verses talk about it and say that “As to those women on whose part you see ill-conduct admonish them (first), (next), refuse to share their beds (and last) beat them (lightly if it is useful), but if they return to obedience, seek not against them means (of annoyance).\textsuperscript{14}

According to the verse, the first thing a man should do to resolve the conflict is admonishing. He should preach his wife about the fear of Allah, should make her understand her responsibilities and rights. In a way they should work it out through mutual discussion. If she agrees then it is better and if the preaching does not bring forth the desired goal then, going one step forward, Islam asks men to avoid sexual relations with her. If the avoidance of sexual relation does not help in resolving the conflict and doesn’t bring the wife into the obedience of the husband, Islam grants the permission to beat her.\textsuperscript{15} But Prophet\textsuperscript{PBH} limits the beating by saying that “do not beat them as such that it leaves marks (on their body)”.\textsuperscript{16}

Beside these steps and procedures, Islam, to avoid divorce, preaches women that they should not ask for divorce on small matters and should not stand before their husbands to fight for their rights, but should try their
best for reconciliation. Women should give up their rights, at times, to avoid conflict. Qur'an says: "And if a woman fears cruelty or desertion on her husband's part there is no sin on them both if they make terms of peace between themselves and making peace is better". The verse shows that one should try his/her best to avoid divorce even if it involves some personal sacrifices.

After the failure of all above mentioned methods for avoiding divorce, Islam finally involves the responsible persons of both the sides in order to seek ways of reconciliation. Qur'an says: "if you fear a breach between them twain (the man and his wife) appoint (two) arbitrators, one from his family and the other from her's".

Islam suggests the use of divorce when the people of both the parties completely fail to seek reconciliation.

6.4 Protection of Women from Exploitation

Islam took steps in order to protect women from the exploitations which are possible by divorce. Islam destroyed the big social evil that was prevalent in pre Islamic period in the Arabs. They used to have a multi divorce and revocation system and used it at will. This nature of divorce was very exploitative for women. In order to protect women from this exploitation Islam gives only two chances for revocation. Qur'an says "The
divorce is twice after that, either you retain her on reasonable terms or relieve her with kindness". 

The second step towards the protection of women against any exploitation is fixation of time for divorce. A man while using his right of divorce can exploit a woman. He may use his right after long gaps to keep the women hanged, neither discharging his duties towards her not setting her free. To protect from this kind of exploitation, Islam fixed a particular period of time within which a man has to take final decision about his wife. This period is called Iddah (waiting period). After the completion of the period the divorced woman will automatically be free.

6.5 Iddah (waiting period)

In Islam a divorced woman has to pass a particular period of time before she is allowed to marry to someone else. Islam is very sensitive about this period. In Qur'an the followers of Islam has been asked to calculate this period very clearly "O Prophet! When you divorce women, divorce them at their Iddah (prescribed period) and count (accurately) their Iddah (period)"

The divorce may be given to a woman either after having sexual relation as well as before it. If the divorce is given after having sexual relation, then in such cases the waiting period is three menstruations.
Qur’an says: “And divorced women shall wait (as regards their marriages) for three menstrual periods”.23

The period of three menstruations is for those women who are able to menstruate. But for those who are unable to menstruate either due to menopause or due to their young age, their Iddah (waiting period) is three months. Qur’an says: “And those of your women as have passed the age of monthly courses, for them the Iddah (prescribed period), if you have doubts (about their periods) is three months, and for those who have no courses (their Iddah is also three months likewise)”.24

The waiting period (Iddah) of a pregnant woman is until she delivers. Qur’an says: “And for those who are pregnant their Iddah is until they deliver”.25 And if the divorce is given before the sexual relation then no Iddah is required. Qur’an says: “O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no Iddah have you to count in respect of them”.26

6.6 How to Divorce

Islam, as above mentioned, discourages the use of divorce. It also suggests that the provision of divorce should not be used in anger, rage or depression. Islam has given clear instructions in regard of its use, through which the anger, hence any wrong decision, can be avoided.
A woman should not be divorced during menstruation. This is the period in which a woman passes through mental as well as physical stress, loses her vigour and sometimes becomes peevish. In this period a situation may arise which may lead to divorce.\textsuperscript{27}

A famous saying of Prophet\textsuperscript{PBUH}, about Abdullah bin Umer in which Prophet\textsuperscript{PBUH} prohibited people from giving divorce during menstruation, is enough in its support. "Narrated Nafa that Abdullah bin Umer divorced his wife during menstruation. Umer asked the Prophet\textsuperscript{PBUH} about it, Prophet\textsuperscript{PBUH} replied that order him to revoke and to keep her until she purifies herself from menstruation. Then, if he wants, may keep her or divorce her without having sexual relation with her".\textsuperscript{28}

The second instruction about divorce is that one should make sure that he had no sexual relation in the period (that is a pure one, not menstrual) in which he is divorcing his wife. He should divorce once at a time. The second divorce (if required) should be in the second pure period without having sexual intercourse and the third divorce will be in the same manner in the third pure period.\textsuperscript{29}

The third instruction in this regard is that, during Iddah, the divorced woman will remain in the same house with her husband except that she has committed some unforgivable crimes. Qur'an says "and turn them not out of their (husbands) homes nor shall they (themselves) leave, except in case they are guilty of some open illegal sexual intercourse".\textsuperscript{30}
The aim of all these instructions are to provide them, (husband and wife) more chance of reconciliation and to come back again in marital ties. If a person abides all these instructions while using divorce, rarely he will regret on it.

6.7 Revocability of Divorce

A man is allowed to revoke his divorce within Iddah, if he has used the option of single or double divorce. The revocation can be oral or by having sexual intercourse. After the expiry of Iddah he can not revoke it except by a new Nikah (marriage) and new Mahar (bride Price).

But if a person has used the option of triple divorce, he can not revoke the divorce. A reunion is possible only if the woman marries with another man and that man either divorces her after having sexual intercourse with her, or dies. Qur’an says “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 other husband divorces her, it is no sin on both of them that they reunite”.

But intentionally arranging a man who can marry with the divorced and after having sexual intercourse, can divorce her again so that the previous husband can marry her is strictly prohibited. This is called Halala. Prophet says: “The curse of Allah be on the man who commits Halala and on the woman for whom Halala is comitted.”
6.8 Khula

It is a provision for women to ask for divorce. Some people mistake it as a right of women to divorce. But it is not true. Islam provides the option of Khula for women to come out from the marital ties. But it happens to be a tool for women to express their desire to be divorced rather than divorce. Khula is also the right of husband. Khula denotes that husband after taking back the bride price, gives up all his rights towards her and sets her free.35

Jurists explain that since Khula is a kind of divorce, and right to divorce is given only to men, so only they can use divorce as well as Khula. It is said about Khula that “when the word Khula is used, it implies divorce”36. Hanafi and Shafai schools back the same expression.37 Some people are of the opinion that Khula is a provision that can be used by a husband to exploit his wife and to make money out of it. But jurists have tried to block this possibility. Ahnaf say that “if a husband forces his wife to ask for Khula, then he won’t be entitled to any sort of money from his wife. The payment of wealth to the husband and lapse of bride price will be based on the willingness of wife”.38

A kind of debate exists among jurists of Islam whether the right of Khula should be handed over to the government or not? Some jurists are in favour of giving the right of Khula in the hands of the government, so the ambiguities could be cleared and a sound judgement could be taken
accordingly. Hasan Basari, Mohd bin Sairain, Abu Obaida etc. are among those who favour a government intervention. They cited the evidences from Qur’an: “then if you fear that they would not be able to keep their limits ordained by Allah then there is no sin on either of them if she gives back (the Mahar)” \(^{39}\) “if you fear a break between them twain appoint arbitrators one from his family and the other from her's”. \(^{40}\)

They say that in both the verses Qur’an addressed responsible men for Khula so it should be decided by a ruler or by a government appointed authority.

But those who oppose government intervention argue that it is a personal matter of both the partners and should be decided by themselves. Imam Maalik, Imam Shafai and Imam Ahmed bin Hambel fall in this category.

In support of their view they argue that:

- Like divorce Khula is also the right of husband. A man can divorce without the permission of any ruling authority. So he can also decide about Khula on his own.
- Husband takes compensation from his wife in Khula and there is no need to take permission of a ruler for taking compensation.
- When Allah has given the right of divorce to men, no one has the right to give this right in the hands of government. \(^{42}\)
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CONCLUSION
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Each society has its own social structure. Social structure is the interrelationship of various institutions of society. These institutions build up by the crystallization of norms, values etc. For the functioning of any society these institutions must exist and fulfil the necessities of society. Islam has also presented a set of these institutions which constitutes social structure of Islam.

In the Present work, basic institutions have been described as according to Islam. These institutions are economy, polity, family, marriage and divorce. These institutions have been considered important for the constitution of any social structure.

Islam, being a religion, has a specific origin. As Muslims believe, Islam originated with the first man upon earth Adam, and after that many editions were send in different parts of the world, but the final edition that was brought by Prophet Muhammad\(^{PBH}\), in Saudi Arabia, appeared in December 610 AD. At that time the functioning of these institutions was not proper. So the society was facing an anomic situation. Islam gave a set of institutions that can effectively fulfil the requirements of society.

In the description of these institutions I found all these institutions very balanced in nature. Islam has designed these in such a manner so that the benefits can be enhanced and sufferings can be avoided.
Islamic economic model, at one hand encourages earning but it does not consider wealth as an end, so it also prohibits people from complete indulgence in money making. For Islam society and social relations are more important. To protect and safeguard the social relations it prescribes just means for earning and asks people to use these means. Business is encouraged for earning livelihood. The fundamental principle that must be kept in mind for business is that, both the parties of business should be benefited and society should not suffer as a result. In order to keep this principle into operation Islam frames certain laws and prohibits business in certain things.

Equal distribution of wealth is considered important for the growth of any economy. For it Islam tries to inculcate the spirit of spending wealth in a prescribed and controlled manner, and also frames laws that assure equal distribution of wealth in society.

Islam provides certain legal provisions under which an individual must part with his wealth. These provisions are Zakah (religious tax) inheritance, law regarding distribution of spoils of war and expiations of sin. These provisions are very helpful for the whole society in general and for the poor in particular. The funds are collected by government and distributed among the needy people, so it acts as a cooperative society for all the members of society.
Islamic also suggests about consumption of wealth. Islam is strictly against hoarding wealth, because it believes that hoarding wealth may create an anomic situation in society.

It always encourages earning and spending. But it asks people not to overspend and pass a beggarly life. In order to keep expenditure at a balanced pace it prescribes certain dos and don’ts.

Islamic political model is also very balanced in nature. It is democratic in spirit but curbs individual freedom where it may lead to anarchy. It provides ways for people to enter into governmental processes like legislation of laws and its execution, but by keeping the sovereignty in Allah it restricts people to frame laws according to their own will, they are bound to the sovereignty of Allah. This is what differentiates Islamic democracy from western democracies. Islamic political model has elected legislature, elected executive and it grants its people all the rights that are considered fundamental for them. Like all other political systems Islamic political model consists of three basic organs. These are legislature, executive and judiciary.

Since Islam gives a democratic spirit to its political system, so the legislature of Islamic political system consists of elected members. This legislature can explain the laws given by Allah and can frame new laws, according to the requirement, in the light of Qur’an, Hadith and Ijma (unanimous decision of Muslim Jurists from all over the world). Islam also
prescribes qualifications on pure humanitarian ground for the membership of this group.

The head of executive is called Caliph in Islam. He is the head of the legislature as well as the head of the nation. Caliph is also an elected authority within the members of legislature and through them, according to the prescribed qualifications.

In Islam for executive, which is also an essential organ for any government, there is no clear expression given about the recruitment of its members. During the days of Prophet PBH and after, the system was based on delegation of power. Governors of different states and other officers were appointed directly through Caliph. Now any procedure can be framed by the legislature for their recruitment, as the society has become too large and direct selection has become very difficult.

As far as judiciary is concerned during the days of Prophet PBH and after, judges were appointed directly through caliph. Caliph was head of judiciary also. Now when it has become more complex, the laws and procedures of the recruitment of judges should also be framed by the legislature of the country, keeping the greater objectives of the nation into consideration.

Family occupies an important place in Islam. It provides psycho-emotional satisfaction to people helps in the materialisation of human impulse to reproduce and proves to be the first and primary stage of socialisation. Islam considers both the sexes complementary to each other
in family life. Islam also believes that men and women are pairs. Like all other pairs one is active and the other is passive. Man, being the active part, has upper hand in family life, not in terms of prestige but in terms of strength. On humanitarian grounds, Islam grants equal rights to both the sexes.

Islam has divided the scope of work for both men and women, it confined female within the boundary of house and declared her as the queen of house. Her responsibility is to maintain the house and manage all things within it. But Islam did not make it too rigid; it permits women to come out in certain circumstances. Husband is entitled to work outside the home, particularly to earn and to provide maintenance to his wife and children.

Islamic texts are silent about family structure, but there are many indirect indications that show the desirable family structure of Islam. Islam desires a nuclear type of family because it wants to provide both the family partners an atmosphere where they can live as freely as they desire. But it also talks a lot about looking after the parents in their old age.

Islam says that separate house is a fundamental right of the wife; no one can deprive her from this right. Without her permission husband can not keep any one within that house. On the other hand, Islam makes this relation on the basic foundation of cooperation. So on moral grounds it is expected from the wife that she will relax her rights and cooperate with her
husband. So a husband, to look after his parents, should keep them with him in the same house with the permission of his wife.

It prohibits all kind of free sexual relations and encourages marriage to channel the energies in a right direction. In order to make marriages stable Islam prescribes many dos and don’ts while deciding for a match. It permits men to select their fiancées, and encourages the involvement of guardians and elders in society. It prohibits certain relations for marriage and prefers making marital ties with those who are equal in status.

Guardianship has been given importance up to a level that without the involvement of a guardian the validity of marriage may be questioned. A list of guardians is also prescribed by Islam.

Islam is in favour of publicizing the occasion of marriage. Islam has instructed about many things that seem helpful in publicizing it, such as witness, guardian, marriage sermon and marriage feast.

In order to provide security to women it asks to give certain amount of wealth, which Islam called Mahar.

Islam permits polygyny, because it gives much importance to society than individual. When the clash of interest occurs between individual and society, Islam always prefers society. A man who has more sexual desire may disturb the society, so for the protection of society from anarchy it permits polygyny. So it is an emergency provision and not much appreciable. Islam also frames laws for the protection of rights of those wives who are under the same husband.
Islam regards marriage as social contract and hence has a provision to break it. This is called Talaq (divorce).

Islam believes that sometimes divorce becomes functional for both the partners. When any of the partners feel that coexistence is not possible any more they should leave the contract instead of remaining in a miserable situation for life.

The right to divorce is given only to husband because husband enjoys an upper hand in family. Islam is not in favour of frequent use of divorce, but it prescribes a process through which maximum possibility to avoid divorce can be achieved.

Islam also grants women a provision through which they may ask for divorce, but the final decision will be taken by husband. This provision is known as Khula.

The discussion shows that the institutions, imparted by Islam, are of balanced nature and are more functional for the humanity.
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<td>New Delhi</td>
<td>1973</td>
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