

***SOCIO-ECONOMIC CONCEPT OF ISLAM***

***V SEMESTER***

***(UG-CCSS – SDE)***

***OPEN COURSE***

***(For candidates with core course  
other than Arabic)***

***(2011 Admission)***



**UNIVERSITY OF CALICUT**

**SCHOOL OF DISTANCE EDUCATION**

**Calicut university P.O, Malappuram Kerala, India 673 635.**

# **UNIVERSITY OF CALICUT**

SCHOOL OF DISTANCE EDUCATION

## **STUDY MATERIAL**

### **Open Course**

***(For candidates with core course other than Arabic)***

### **V Semester**

## ***SOCIO - ECONOMIC CONCEPT OF ISLAM***

*Prepared by:* Dr. K. Ali Noufal  
Assistant Professor,  
Farook College, Calicut

*Scrutinized by:* Dr. T.A. Abdul Majeed,  
Principal, MAMO College,  
Mukkom, Calicut.

*Layout:* Computer Section, SDE

©  
Reserved

	<b>Content</b>	<b>Page No</b>
➤	<b>Part – I</b>	<b>4</b>
	<ul style="list-style-type: none"><li>▪ Islamic Polity and economy</li><li>▪ Political Structure of an Islamic State</li><li>▪ Economic Functions of an Islamic State</li><li>▪ Financial Resources of an Islamic State</li><li>▪ Capitalism, Socialism and Marxism</li></ul>	
➤	<b>Part – II</b>	<b>15</b>
	<ul style="list-style-type: none"><li>▪ Islamic Concept of Crime</li><li>▪ Causes of Crime</li><li>▪ Islamic Concept of Punishment</li><li>▪ Object of Punishment</li><li>▪ Crime and Punishment of Islam</li></ul>	
➤	<b>Part – III</b>	<b>25</b>
	<ul style="list-style-type: none"><li>▪ Social Concept of Islam</li><li>▪ Islam and women</li><li>▪ Islam and Ideal Sex Equality</li><li>▪ Importance of Marriage in Islam</li><li>▪ Polygamy in Islam</li></ul>	
➤	<b>Part – IV</b>	<b>52</b>
	<ul style="list-style-type: none"><li>▪ Islamic Economic Order</li><li>▪ Distribution of Income and wealth in Islam</li><li>▪ Economy in Islamic Legal System</li><li>▪ Banking and Interest in Islam</li><li>▪ Zakat and its importance</li></ul>	

## **Part - I**

### **ISLAMIC POLITY AND ECONOMY**

Muslims firmly believe that Holy Prophet (peace be upon him) had established the first Islamic state on this earth under divine instructions. But after the rightly guided caliphs, the concept of the Islamic state was completely dismantled by those who had lust for power and wealth. The Islamic unitary state disappeared along with the concept of Khilafat. Thereafter the Muslims had kings and sultans; the brotherhood of Muslims was fragmented into nations and nationalities; the rule of law was subordinated to the will of the autocrats.

The basic foundation of the Islamic state is that sovereignty and absolute power vests in Allah. The second basic factor is that Allah has given us a complete code of life in the shape of Holy Quran. The third factor is that we have not only to obey Allah, but also to obey His Apostle Muhammad who practically demonstrated how to follow the commandments of Allah.

The pattern of the Prophet's government is before us. It postulates loyalty to Allah and not to thrones. Kinship has no room in Islam and Khilafat is the pivot of an Islamic state. Though the Khalifa is a spiritual and temporal leader of the Muslims, he acts like a trustee, within the limits of the Holy Quran and Sunnah, with Adl (Justice) and Ihsan (Mercy). Islam aims at creating a casteless and classless society. It is the duty of the Khalifa to establish Salat, Zakat, enjoin virtue and forbid evil and ensure spiritual, social, economic and moral welfare of the people.

#### **Islamic Polity**

The modern concept of State is that it is an organized institution, which is run by the people through their elected representatives for the collective welfare of the people residing in a specified territory. The ultimate power vests in the people, who are masters of their destinies. They are free to legislate and enact any law following their own desire. The constitution of the state is moulded according to the history, belief, customs, and ideology of its people. All the secular states of the world, whether Democratic or socialistic are administered by man made laws and institutions and are based on the theory of material advancement and utilitarianism. The Islamic state however is based on Islamic ideology as prescribed by Holy Quran and Sunnah. Allah has given us divine Laws by revealing them Holy Quran to the Holy Prophet Muhammad (peace be upon him), and which have been preserved intact for all times to come in the Holy Quran.

The Quran furnishes guidance to mankind, so that they may follow the path which would bring them in a state of complete submission to their maker. It contains fundamental principles and vast treasures of absolute truths for being acted upon to attain the everlasting facility and contentment, both here and the hereafter. The Islamic state is only a trustee of God, and acts through the Khalifa or Amir. The Islamic state, acting as vice regent of God as successor to the Holy Prophet, and as representative of the people, has to discharge the trust by creating conditions in the state for the benefit of the people, so that they may achieve the purpose of their own creation. The three essential elements of in Islamic state are: Mulk or country, Millat or community with a specific ideology and Khilafat or vice regency. The state is, of course, a divine trust.

## **Functions of an Islamic State**

The first and foremost function of an Islamic state is to defend and protect its national frontiers from foreign aggression. In order to ward off aggression the state is required to equip itself full with strong, efficient, well trained and disciplined army, navy and air force. They must be in constant combat readiness to meet the challenge of sudden aggression. The government should give military training in the use of all essential equipment of modern warfare to every able bodied adult citizen, making a standing reserve military force the purpose of defending the country in peace and war, whenever an occasion arose.

Equally important function of the state is to remain peace and order, internally in the state. In the absence of peace and order, chaotic conditions prevail, which destroy the very fabric of society. The increase in the desires of the individual clashes with those of the others and the state steps in to maintain the equilibrium, with justice, equity and fair play. In order to achieve this, the state occasionally uses the coercive apparatus at its disposal. The state is therefore required to maintain a well disciplined and highly trained Police Force. The strong arm of the law is absolutely necessary for maintaining sanctions for evildoers.

One of the most important functions of an Islamic state is to enforce the Islamic way of life in its totality; and to create conditions for the natural growth of the ideas of Islam. It should implement the tenets of Islam in all spheres of life. Man has been created by God for his service and worship (S. 51:56), and has been put to the test, (S. 76:2), and he shall have to give his account on the Day of Judgment. Deen –e- Islam is complete code of life. It is therefore necessary to establish the five pillars of Islam in all seriousness, with full faith in them. Tauheed is the basic principle, on which the whole structure of Islam is founded. It is the duty of the state to propound its full implications. But there is no compulsion in religion (S22:256). Non – Muslims cannot be forced to embrace Islam (Sura Al- Baqara, verse 256).

The state must guarantee to all its citizens the fundamental rights i.e. protection of life, honor and property; freedom of thought and expression, belief and worship; freedom of assembly and association; freedom to adopt any profession of occupation; the right to own, acquire and dispose of property; equality of opportunity in all the spheres of life; equality before law; and no one should be detained unless he is a threat to peace, order or tranquillity or to the integrity or to the integrity and solidarity of the state. Correspondingly the citizen is bound to obey the orders of those who are in powers, cooperate with the government, be loyal to the state, and be ready to sacrifice his life and property for the defence, solidarity and integrity of the country.

The Non – Muslims are free to follow their own religion. They may perform their religious rites freely. No one should interfere with their places of worship. The moral principles embodied in the Holy Quran deal with all the aspects of life. By following these principles the people lead a clean and contented life. It is the duty of the state to arrange for the moral education of the people, and to enact and enforce laws for ensuring the due practice of morality.

## **Political Structure of an Islamic State**

As Khalifa or Amir is the central figure in the Islamic form of government, it is incumbent upon the Muslims to obey him implicitly, so long as he acts within the limits prescribed by the Holy Quran and Sunnah. It must be a unitary form of government. A Muslim country should elect

its own Amir, who should be a man piety, knowledge and learning, and they in turn should elect one of them as Khalifa, who would be the spiritual and religious head of the entire Muslim world.

Political parties cannot exist in the Islamic State, because their manifestos cannot be other than the manifesto proclaimed by God. The Muslim states should be partyless states and should function accordingly. The Khalifa or the Amir should appoint the functionaries of the state only on basis of merits, i.e. Taqwa and Ilm, and they should be really capable and deserving persons. The state may carry out its work through the following three organs: (1) The Executive (2) The legislature and (3) The Judiciary.

### **The Executive**

The executive must enforce the directives of God, and try to create a society ready to accept and adopt these directives for practical application in its life. It is the main responsibility of the Khalifa or Amir to establish the Kingdom of God through the functionaries of the state, who should be men of piety, skilled and experienced, sagacious and farsighted. The government functionaries should be provided all the facilities, medical and house accommodation etc. necessary for discharge of their duties. The service rules should be so framed as to encourage honest, diligent and pious functionaries and to punish the inefficient, dishonest and shirkers of work.

### **The Legislature**

The Khalifa or Amir can legislate only subsidiary matters, in respect of which there is no clear injunction in the Holy Quran and we do not find anything about it in the Sunnah. This can be done on the advice of the Majlis – e – Shura, which may be described as the Parliament, members of which should be elected by qualified persons. The Legislature cannot legislate in contravention of the direction of God and His Prophet, but they can certainly frame rules for carrying out the purpose of the injunctions of the Holy Quran and Sunnah. If the injunctions of the Holy Quran and Sunnah are capable of more than one interpretation, then the Legislature can be decided which interpretation prefer. If there is no provision in the Quran and Sunnah, and there is no precedent, then alone the Legislature is free to enact laws and regulations, subject to the approval of the Khalifa or the Amir. All existing Laws shall be brought in conformity with Shariah as soon as possible. Justice (Adl) is the main pillar of the Islamic system.

### **The Judiciary**

Muhammed the Prophet (peace be upon him) was the Supreme Judge in the first Islamic state, and he acted strictly in accordance with the Laws of God, so much so that he could not have forgiven his dearest daughter if she had contravened any of the Laws Allah has ordained. "So judge between them by that which Allah hath revealed, and follow not their desires, diverging from the Truth that hath come to thee" (Sura 5, verse 48). The court shall enforce this divine code. There is Hadith, reported by Abu Dawud, Tirmazi and Ahmad which says: "when two persons bring a dispute to you for decision, do not deliver judgment unless you have given an equal hearing to both of them". Our judges should be imbued with the spirit of Islam, should be fully conversant with the Islamic Laws, Jurisprudence and Fiqh. They should be men of high moral stature, of unimpeachable integrity and strength of character, who while deciding a case have their eyes fixed on God, and are not at all swayed by greed, fear, pressure of personal interest.

Dispensation of justice requires the highest degree of piety and full responsibility. The executive should have no say in their appointments. The Khalifa or the Amir should appoint the chief justice of the Supreme Court, and he in turn should appoint his colleagues and the chief justices of the high courts should appoint all subordinate judges, including Magistrates. The judges are bound to do justice. The Holy Quran says: "Deal justly, that is nearer to Taqwa".

### **A welfare state**

The welfare function of the Islamic state was particularly stressed by the Prophet when he stated: "Any ruler who is responsible for the affairs of Muslims but does not strive sincerely for their well-being will not enter Paradise with them".(42:38) The companions of Prophet clearly appreciated this welfare role of the Islamic state as is evidence by numerous utterances of the early caliphs and their instructions to their governor. Umer, the second caliph, wrote to abu Moosa, the governor of province: "The best of men in authority is he under whom people encounter hardships". Muslim jurists have unanimously held that catering to the welfare of the people and relieving them of hardships is the basic objective of the Shari'ah and hence of the Islamic state, and the same stress is evident in the writings of medieval Muslim thinkers like Al-Gazzali, Ibnu khaldun, Ibnul Qayim and Ibnu Thaimiah.

Islam distinguishes itself by its own unique philosophy of welfare which is comprehensive and consistent with its concept of human nature. Man has been created from matter but has been infused with a part of the Divine Spirit. The matter and the Spirit together constitute the indivisible human self which is free but responsible before God for all its actions within the frame of reference of divine guidance. He is intelligent and capable of differentiating between right and wrong and acting on his own initiative. His mission is to fulfil his obligation as the agent of God on earth. He is not only a member of the brotherhood of Islam but also a part of mankind, the family of God.

### **Economic Functions of an Islamic State**

Every state is supposed to take care of the economy of the country. It is not only responsible for the development but also with the economic upliftment of the people as a whole. It is bound to provide the basic necessities of life to its people and has some of the essential functions with respect to the economy.

Some of the essential functions of the Islamic welfare state with respect to the economy may be stated to be:

- (1) To eradicate poverty and create conditions for full employment and high rate of growth
- (2) To promote stability in the real value of money
- (3) To maintain law and order
- (4) To ensure social and economic justice
- (5) To arrange social security and faster equitable distribution of income and wealth
- (6) To harmonize international relations and ensure national defence.

## **Social and Economic Justice**

All humans are equal before the God. Since Islam considers mankind as one family, all members of this family are alike in the eyes of God and before the law revealed by Him. There is no difference between the rich and the poor, the high and the low, or the white and the black. There is to be no discrimination due to race, colour or position. The only criterion for a man's worth is character, ability and service of Islam and humanity. Said the Holy Prophet: "Certainly God does not look at your faces or your wealth; He looks at your heart and your deeds". "The noblest of you are the best in character".

The Islamic teaching of brotherhood and equal treatment of all individuals in society and before the law would not be meaningful unless accompanied by economic justice so that everyone gets his due for his contribution to society or to the social product and that there is no exploitation of one individual by another. This point is also very well stressed in Islamic writings. The Quran urges Muslims to "withhold not what is justly due to others"(26:183), implying thereby that every individual must get what is really due to him, and not more by depriving others of their share. The Prophet aptly warned: "Beware of injustice for injustice will be equivalent to darkness on the Day of judgment". This warning against injustice and exploitation is designed to protect the rights of all individuals in society (whether consumers or employees) and to promote general welfare, the ultimate goal of Islam.

## **Financial Resources of an Islamic State**

The Islamic state would naturally stand in need of adequate financial resources by confiscating property duly possessed by individuals or groups. However, if income or property has been wrongly acquired, then the state not only has the right to confiscate it, rather it is its moral responsibility to rectify this state of affairs. As the means of income of the Islamic state, they are the following: Zakath, income from natural resources, taxation and borrowing, in addition to the sale of relevant services.

Islam has instituted a powerful social security system giving it a religious sanctity which it enjoys nowhere else in the world. It is a part of religious obligation of a Muslim to pay Zakath at the prescribed rate on his net worth or specified income flows to Zakath fund. It is the duty of the state to institute a system for the collection of Zakath. The monetary benefit derived from natural resources should, permeate to all people and should not under any circumstances be allowed to be diverted specially to certain individuals or groups. Most jurists have upheld the right of the state to tax. If the resources of the state are not sufficient, the state should collect funds from the people to serve the public interest because if the benefit accrues to the people it is their obligation to bear the cost. In view of the goals of social justice and equitable distribution of income a progressive tax system seems to be perfectly in harmony with the goals of Islam.

If total revenue from all the above sources (including sale of services) is not sufficient, the Islamic state would stand in need of borrowing. In this case because of the Islamic injunctions against interest, the borrowing would need to be free of interest.

It is important to clarify that the "ideal" Islamic state should not be confused with the "richest" one. The ideal is to be constructed in the light of general spiritual and material welfare attained for God's vicegerents within the frame of resources. Adequacy of resources is a relative term and is to be judged against attainable standard in the light of stage of economic development.

Islamic state would have to establish a schedule of priorities in the light of shari'ah and the welfare needs of people. Planning through the Islamic process of consultation so that different viewpoints and interests are given due consideration.

While the state stands duty-bound to make an honest effort to create the ideal conditions which Islam visualizes, it is also obligatory for the public to render to the state their best terms of cooperation and goodwill.

## **Capitalism**

Nobody imposes capitalism on any country from outside. It develops by itself within the country out of internal social conditions. Every one needs necessities of life for his subsistence and survival. Therefore, people work to create these necessities out of indigenous natural resources available to them. Application of wisdom and effort to varying degrees of one's knowledge and skill produces varying results for each, which split society into haves and have – nots in due course. As technical knowledge for creating utility products develops, production processes become team works needing organizations to handle them properly. An economic enterprise is such an organization with managing authority at top, which pools capital and labour force, plans production and sale, and distributes the wealth so produced amongst various factors of production. This process of production and distribution of wealth under free market economy is called capitalism.

Guided by self – interest rather than social interest, and operating in a so- called open market rather than a centrally planned economy, the primary objective of a capitalist enterprise becomes pooling of more utility goods and employment opportunities for the public. With personal gain as its goal the enterprise indulges in productive as well as non productive exploiting practices in discriminately, totally unmindful of its consequences for society.

## **Components of Capitalism**

Production, exchange consumption and saving are the main economic functions common to all economic systems. The way these functions are performed differs from system to system. Norms and practices are established by each system to channel human conduct in its own desired way and these norms and practices constitute the components of the respective economic systems. Capitalism wished to retain the free flow of self interests and performed such practices which could boost it up. Islamic ideology wished to restrain its free flow and to disburse wealth more freely for the benefit of all by introducing its own norms for production, distribution and consumption. Socialism decided to pool all means of production under an all powerful central authority which could use wealth at its own discretion. Practices established by each system with its own objective in view differ materially. We are concerned here with the components of capitalist economy alone.

No institution is responsible under capitalism to provide employment for earning livelihood to all or any. Self employment sought through self help is the norm. If others need your services you can sell them, otherwise you have to start your enterprise with whatever resources you possess. Earn, save, expand your business and become a millionaire, there is none to stop you. Thus free enterprise becomes the first component of capitalist economy. Capitalist has evolved a specific form of free enterprises known as limited liability Corporation which limits the liability of its share holders and drives a wedge between ownership and management.

The second component of capitalism is highly developed credit system whereby finance for any enterprise can be borrowed from the banks on payment of interest as the cost of borrowing. The banking network is firmly established throughout the world. Its branches operate in all cities, towns and villages. Credit banks are founded on the practice of usury. On lending money the banks extend a facility to others and they are naturally entitled to charge something for this service. Therefore, you pay a certain percentage annually for using the banker's money. As this business involved no risks of loss, the institution of banking developed fast and now it holds the entire economy of the world in its clutches.

The third component of the capitalist economy is its peculiar monetary system which always suffers from inflation due to its tendency towards deficit financing. Monetary systems all over the world are the same in principle. You use money as a medium of exchange, and so long as the money retained its original shape of gold and silver coins, the intrinsic worth of the medium continued to remain self evident, without involving any trust on the money issuing authorities. But when paper currency notes to pay on demand gold and silver coins to the public in exchange for the notes. The shift of intrinsic worth from solid gold to mere promise involved confidence and trust in the honesty and integrity of the state authorities that they would not print and issue a single paper currency note over and above what the contents of the currency reserve chests justified. For so long as this honesty was maintained by the monetary authorities, paper currency remained as good as gold. When dishonesty stepped in, and paper currency beyond justification flooded the markets, it lost its value and inflation gripped the country concerned.

The fourth component of Capitalist economy is the peculiar status this economy allots to and reserves for the labor force. It treats laborers as commodity instead of living human beings. Which like any other dead commodity could be bought in the open market when needed, and discarded by dismissal when recession gripped the economy. Capitalism does not bother to consider that the dismissed human beings are as much entitled to survive and exist as the capitalist or the industrialist who dismissed them. That unemployment brings starvation and death in its wake does not disturb the equanimity of the guardians of capitalism. Stratification of human society between classes of masters and slaves, and subordination of the under- dog to the dominance of capital is a masterpiece, which only capitalism could produce.

Since capitalism thrives on market economy, its fifth component is network of markets of various categories it has established for different economic pursuits. These markets are many and varied and each has become a giant in its own domain: the main division being the commodity markets, the money markets and stock exchanges.

Commodities produced by a country whether industrialized or developing need organized arrangements for their disposal. These arrangements have been established separately for each commodity by the commodity markets. They collect their specific commodity from its centre of production and shift it to the wholesale market of that specific commodity for bulk storage and distribution wherefrom the retailers move these commodities to their retail shops. Storage arrangements for bulk storage differ in each case. Perishable goods like meat, vegetables, fish, and eggs need cold storage while automobile require huge marshaling yards. All the required facilities are provided by the concerned markets in a befitting way. Dealers in these commodities as wholesale stockiest make ample profit. Motor cars and electronic goods have developed excellent international markets of their own.

Money markets are equally important because they provide the needed finance to the producers, the traders and the states. As state revenues take some time to flow in, governments resort to money markets for their short term and long term requirements money markets assume the shape of banking network and other credit institutions established for specific purpose.

Besides producing socially needed goods and rendering legitimate services, capitalist economy also resorts to producing other goods and rendering other services which decent people hate on social or moral grounds, and which other economic systems refrain from. They are: production of narcotics, harmful drugs and commodities injurious to public health, and trading therein; production of pornographic films and literature with their exhibition and sale; traffic in females, running of brothel houses and gambling dens, and acting as call – girls, smuggling of contraband goods and drugs; and depriving others of their wealth by immoral means under legal cover.

## **Socialism**

It would be advisable to acquaint oneself with the rudiments of socialism itself before further study of its history. Profounders of socialist theory claim that the capitalist mode of production splits society into two permanent classes: the rich owners of the means of production and the poor wage earning class. The capitalist pays only subsistence wages to the working labor force to keep them under permanent servitude and usurps the entire surplus value created by labor, for augmenting his own self and power. The laboring class cannot cast away this tyrannical yoke by peaceful means, socialism, therefore incites them to rise in revolt, create chaos, catch hold of political power by force, obliterate capitalism and transfer all means of production and distribution to the state for socialistic management.

The transformation of feudal society into an industrial one created an upheaval in the settled life of people and agitated their minds insinuating them to think in terms of revolution, and to use force in their actions. Although this impulse affected various strata of society in different degrees, however, to revolt and to create chaos for exploiting the situation so created, was common to them all. That is how, where Utopian socialists failed, men like Marx and Engels succeeded.

Karl Henrich Marx was born in Germany at Trier in 1818. He studied law, history and philosophy at Bonn and Berlin universities and received his Ph.D. at Jena in 1842. In the same year he married Jenny Von Westphalen, step sister of Ferdinand Von Westphalen, a reactionary states man: and was about to become an assistant professor in philosophy when politics attracted him. He became a news paper editor in Cologne. The paper was banned in 1843 due to harsh criticism against government policies and Marx moved to Paris where he met Friedrich Engels. Working here as a journalist and a bitter critic, he was expelled from France 1845. He went to Belgium and taught economics there for three years and also wrote his first book "the poverty of philosophy" in 1847. Here he also founded a German workers society and joined communist league. He moved to London in 1849, and lived there till death 1883.

German reactionaries, terrorists and political adventurers had been forming secret anarchist gangs for creating chaos, hoping to overthrow the government thereby. When caught such persons were imprisoned for various times and then deported from Germany. Three such persons who attracted Marx and Engels in London deserve specific mention. The first was Karl Schapper, a student of forestry in 1832, and a member of the conspiracy organized by George Buchner. He took

part in storming the Frankfort constable station in 1833, escaped abroad and joined Mazini's march on Savoy. The second was Heinrich Bauer, a shoe-maker. Both of them indulged in anarchist activities in France, imprisoned and deported. The third was Joseph Moll, a watch – maker from Cologne. All the three were revolutionary agitators and members of an underground political party, and then called the League of Just.

These three impressive proletarians persuaded Engels and Marx to join this secret communist League and to recognize it; which they did in 1847. They took charge of its control, and wrote the famous Communist manifesto, wherein aims and objectives of the communist Party were explained, and guidelines for operation were also laid down. The Manifesto was published in January 1848.

The communist Party experienced its first birth pangs in the labor room of history between the years 1847 and 1852. Marx and Engels secretly distributed by hand copies of the Communist Manifesto amongst reliable members of the worker's parties and trade unions in various countries of Europe, advising them to form Communist cells everywhere and raise the battle cry of working men of all countries. Unite! Continued extensive field work for establishing communist cells here and there and holding secret meetings every now and then to arouse the workers from revolt fanned class hatred. Incidents of petty uprising happened resulting in violence, arson, and plunder followed by arrests and imprisonments; but without any revolution worth its name taking place anywhere.

## **Marxian Doctrine**

Study of economics and history led Marx to conclude that society has always remained a composite of two antagonistic classes, one of which possessed the means of production and the other which did not possess them. The latter class could, therefore, contribute towards the production process only with their physical and mental exertions. The exploitations of laboring class by the proprietary class have always been the cause of antagonism. Although the production methods have been changing with the march of time, the two classes and their antagonism always remained persistent. History has become a never ending story of exploitation and struggle between these two classes, and will remain so until the cause of antagonism is removed.

For so long as production managers remain proprietors of the means of production and workers remain wage earners antagonism will continue. Therefore, the only possible stable remedy is to deprive the capitalists of their proprietary rights, to confiscate the means of production and had them over to the state for socialist management; and to reduce the capitalists to worker's level. Only then will society become a classless society devoid of all antagonism and friction. All other measures are mere time saving make shift arrangements which provide no permanent solution. The proletarians should therefore, unite to bring about the overthrow of the capitalist class by force, and to convert private property into communist property for state administration.

According to Marx and Engels history is moving towards this goal automatically and will reach it in due course under the law of necessity. But as historical processes are time consuming and slow moving, the proletarians could expedite the process by their concerted efforts under Marx's guidance. Marx and Engels participated in the expedition by formulating theories of socialist economy and by providing leadership in actual march towards the goal. They know that the overthrow of the capitalist class required Herculean efforts, which could not be generated in the proletarians without convincing them about the feasibility of the whole scheme. To promote this conviction an impressive theoretical foundation was essential. Marx and Engels worked hard to formulate the needed theories.

Marxian doctrine is based on the following three main components (1) Dialectical Materialism as the only basis of all thoughts, ideas and action (2) Economic interpretation of history as the only true explanation of all historical events and human behavior. (3) the theory of surplus value which explains how capital is in fact the product of labor and labor alone which the capitalist usurp by allowing class a mere subsistence wage.

Socialist concept emerging out of the Marxian doctrine outlined above is the only true and scientific socialism according to Marx and Engels. All other socialist ideas and concepts are regarded by them to be defective, unscientific and utopian deserving no attention.

There is a pertinent point we would like to divert readers attention in to it: the order of precedence between theory and practice as established by history. History confirms that ever since the dawn of civilization practices always preceded theory in economic field. Cast background glance on the changing episodes of economic history through ages, and you will find this order of precedence always in tact; the practice always preceded the theory, and the theory always followed the practices to explain them and to justify or condemn them. Why Marx, the devout disciple of history should have deemed it fit to violate this order is not understood. Another historical fact about economics is that you do not find a single instance of entire scrapping of an economic structure by force to introduce a new one. If the solution suggested by Marx is also the goal of history as alleged by him, then why not let history reach it at its own natural pace? Marx's instance to carry on his crusade energetically in violation of history makes him real Utopian like Robert Owen.

In this connection a word about the use of the word "scientific" will not be amiss. That which is scientifically true can pertain to the realm of physical sciences alone. Social sciences which deal with the ever changing social circumstances and demands are variable by nature. Therefore, measures considered most suitable for a particular country during a particular epoch are not likely to fit another country during another epoch. Such being the mercurial nature of social sciences, to expect from them that scientific accuracy and stability which is the monopoly of the physical sciences, is asking for the impossible.

### **Comprehension**

1. What is the basic foundation of the Islamic state?
2. Discuss the functions of an Islamic state
3. What are the three organs in the political structure of an Islamic state?
4. Explain the political structure of an Islamic state.
5. What are the fundamental rights of a citizen in the Islamic state?
6. Explain the structure and functions of the following in the Islamic state
  - a. The Executive
  - b. The Legislature
  - c. The Judiciary
7. Discuss the concept of a welfare state in Islam.
8. Quote the prophetic saying about a ruler who does not strive sincerely for the well being of his people

9. What was the content of the letter written by Umar the second Caliph to Abu Musa the Governor of province?
10. What are the economic functions of an Islamic state?
11. What are the financial resources of an Islamic state?
12. Explain the basic concepts of the following ideologies
  - a. Capitalism
  - b. Socialism
  - c. Marxism



## Part - II

### ISLAMIC CONCEPT OF CRIME

Before deciding whether or not a criminal should be punished, we must to determine the extent of his responsibility for the offence he committed. It is to be noted that Islam takes this into account when it considers the question of crime and punishment.

Islam holds the balance of justice in the right manner and insists on examining all conditions and circumstances connected with the offence. On studying a crime Islam takes into consideration at the same time the viewpoint of criminal and that of the community against which aggression took place. In the light of such considerations Islam prescribes the fair punishment which is in accordance with the dictates of sound logic and wise reasoning.

A person commits crime because he knows that he can escape the grip of law for lack of evidence; he may succeed in getting acquittal through the influence of persons or wealth. Last of all, if he is punished, the punishment will be much less than the magnitude of injury he has done, or the wrongful gain he has made. But the one who believes in the existence of Allah, and the life Hereafter may even in thick layers of darkness, desist from committing crime because of the fear that permanent witness appointed on his shoulders by the Sovereign are present and cannot be avoided in any way. He will not be able to abscond and escape punishment. However secretly a man may plot, everything is known to Allah. His recording angels are by at all time and in all places, to prepare a record of his deeds for his own conviction when the time comes for final judgment. The holy Quran says:

‘Or deem they that we cannot hear their secret thoughts and private confidences? Nay, but our envoys, present with them, do record’ (43:80)

Not only Allah is having track and full record of everything going on in this universe but also according to Islam, this record of events is being preserved and will be presented on the Last Day. Each and every individual is answerable to Allah on the Day and everybody will be either rewarded or punished according to his deeds performed during his or her life tenure in this universe. He may escape punishment of any crime committed by producing false evidence in this world, but in the next world he or she is bound to face the consequences. The Holy Quran says:

“And every man’s augury have we fastened to his own neck. On the Day of Judgment we shall bring out for him a scroll, which he will see spread open. (It will be said to him :) “Read thine (own) record: Sufficient is thy soul this Day to make out an account against thee”. (17: 13, 14)

Now this comprehensive system of belief in the Unseen (One Allah), accountability on the day of Resurrection and Allah’s Own Guidance about right and wrong make the behaviour and living of a man quite distinct from the one having any other conception about man’s status in the universe.

Human behaviour over thousands of years endorses this fact that the people who do not consider themselves as answerable and responsible to Allah who act on this presumption that live is but of this world only, who measure one’s success or failure according to the attainment achieved in this world in respect of wealth, power and popularity, who depending upon their materialistic

views reject Allah's Guidance, do become a symbol of wickedness. They live like animals paying least regard to any moral values. Actually their moral values follow the footsteps of their desires and selfish ends. To achieve these ends they commit every sort of cruelty and injustice. Their misdeeds convert the whole universe into a hell for others. All the mischief was introduced by evil. The Holy Quran says; "Mischief has appeared on land and sea because of (the meed) that the hands of men have earned". (30:41)

Actually a man devoid of Allah's Guidance and the conception of accountability in the life Hereafter may be great man otherwise, but is bound to behave like a beast. He runs after the benefits, lusts and comforts of the world and succumbs to temptations. He is so overpowered by avarice of these low desires that he discards all the moral values. He transgresses all the limits that he ought to have observed. Such human beings are no doubt like animals. The Holy Quran says:

"Many are the Jinns and human beings We have made for Hell. They have hearts wherewith they understand not, eyes wherewith they see not, and ears wherewith they hear not. They are like animals- nay, even worse, for they are heedless (of warning)". (7:179)

### **Causes of crime - Inner urge**

Islam works for removal of sins and thereby removes the chances of brewing crime. Every crime is sin but every sin is not crime. If the sin is removed the brewing of crime will be minimized, if the sin remains unattended and the society is not secured from sinners who have indulged into the sin due to the inner urge, crime will be rampant, and no punishment will be useful in curing the criminals. Therefore, the basic question is to reform the society from the sinful life.

Secondly, Islam strives by various means to preclude circumstances that may lead to crime. There are sins which emerge out of the inner urge and environments create cause for it: such as false suspicion, envy, malice, sneaking, whisper and the desire of godhood. It is the lust for power and desire for exploitation that prompts him to project himself on other people as god and extract their obedience, force them to bow down before him in reverential awe and make instrument of self aggrandizement. Although no one can be punished for any these sins by any human society for the reason that none of these can be brought in a judicial court and none can be proved by documentary or circumstantial evidence, yet a person who is under influence of such sins may commit crime by causing injury to the society or to the individuals in one way or the other. Therefore, Islam takes notice of these sins and tries to remove them from the society.

### **Environmental influence and incentive of crime**

Man as a species of the living creature is in need of food, clothing, shelter, comfort and other things connected with the security of life and security of his race. He labors and exerts for getting his needs. If he can get his need without any hindrance, discrimination or preference for any person or a group then there will be no inducement for a man to act unlawfully. Islam takes full responsibility to see that the basic needs of life are proved, and takes care of the needs of destitute. It manages to provide equal privileges and opportunities for every citizen to enable him to seek economic livelihood. Then social atmosphere is created in which none is compelled by force of circumstances to steal. To remove adultery and suppress the desire of sexual intercourse, marriage has been made easy. Mixed gathering of men and women and public appearance of printed and pampered women are completely prohibited. In the society so organized, having love for virtues and hate for evils and sins, it will not be tolerated by the society that any person may be sinful or

may disturb the economic system, or cause difficulties for the citizens to earn their livelihood through honest and legal means. In such a society if anyone would insist to carry on the evil designs, try to encroach upon the right of others, pollute the social atmosphere and commit crime when there was no incentive for doing so, it becomes absolutely essential to isolate, eliminate, exterminate and annihilate such elements for security of the social set up. It is for such elements that punishment is to be inflicted and law should operate.

## **Islamic concept of punishment**

The punishment prescribed by the law cannot be reduced or increased even under sentiments of mercy. The Holy Quran says: “ And let not pity for the twain withhold you from obedience to Allah, if you believe in Allah and The Last Day.” (24:2)

From the above verse of the Holy Quran, the following conclusions may be drawn:

1. If the guilt is proved, the culprit must be punished at all costs.
2. There should be no mercy in inflicting the punishment.
3. The prescribed punishment cannot be replaced: (a) if the change is due to the sense of mercy, it is disobedience, (b) if it is due to the sense of cruelty, it is denial and defiance and only a hypocrite can imagine or say so.

The Holy Prophet (Peace and blessings of Allah be upon him) is reported to have said:

An officer will be produced on the Day of Judgment who reduced a strip from the punishment. He will be questioned for the reduction. “On the ground of mercy for thy slave”, will be his reply. “Were you more merciful than myself”, Allah will say unto him, thus he will be ushered to be taken to the Hell.

Another officer will be produced who enhanced the punishment by one stripe. He will be questioned for his doing so. “To stop them from disobedience”, will be his reply. Allah will say unto him, “Do you stand wiser than Me”? and he will be ordered to be taken to Hell.

The above was the decision of the case when punishment was changed either way, but if reduction or the enhancement is in view of the status of the man it will become worst.

‘A’isha (Allah be pleased with her) reported Allah’s Messenger (Peace and blessings of Allah be upon him) as saying: “ O people, the nations have gone, who were destroyed for the reason that one of status if he committed theft was overlooked and when a poor powerless committed theft he was punished”.

## **Objectives of punishment**

Humiliation for the convict and the lesson for the public is the purpose of punishment. Thus the object of punishment is:

- To award punishment to the culprit equal to the magnitude of his guilt.
- To prevent him from repeating the crime.

- To serve as a lesson for others so that inclinations of crime be removed through this operation and none may dare commit crime.
- Punishment be given publicly so that the officers may not favour any one while inflicting punishment. This public display will have deterrent effect, and all those in the public who had inclination of committing crime will know that they will have to endure such punishment if they commit a crime.
- Protection of honour and chastity: In the modern system very little value is attached to the honour of man and chastity of women. We find that fornication is no crime under the modern systems. Adultery is a crime to the extent that the adulterer has infringed the right of husband.

Islam assigns priority to the value attached to the chastity of women and to the respect and honour of men. Therefore, it takes strong measures to preserve this value. Thus we see that the severest punishment is prescribed for persons who molest a woman, or dishonour a man. Therefore, punishment is prescribed in this respect by Allah and it has not been left to man to impose punishment for such crimes at his own discretion. Islam differentiates between fornication and adultery. For the former hundred stripes, and stoning to death for the latter, are prescribed. For false accusation, the punishment of eighty stripes is also prescribed, and the criminal cannot escape punishment unless he produces four witnesses to prove accusation.

**Preservation of Life:** in the modern system apparently importance is attached to the life of a man but the state has become a party in all such cases instead of satisfying the aggrieved. Therefore the state punishes a criminal unmindful of the fact that the revenge exists or is washed out of the mind of aggrieved. Under this legal system neither revenge is removed nor is the recurrence of crime checked with the result that a long chain of murders and crimes continues between the parties.

Under the Islamic Legal system, an equal right of revenge is permitted. Eye for eye, ear for ear, limb for limb and life for life is the law. But this is the right of a person who received injury or of his heir and not the state as is seen in the other legal systems. Therefore, the aggrieved can forgive the accused or demand compensation instead of revenge. Islamic Law is clear and natural that is enforced the chain of crime which continues between the parties involved for generation by generation will be finished. The basic object of Penal Law of Islam is eradication of grievance from the heart and mind of the aggrieved party.

**Preservation Property:** in the un-Islamic system highest value is attached to the property and there is distinction between a man of the upper class and a common man. In order to protect machines and palaces, sometimes hundreds of persons are shot dead; and there is nothing in the so-called modern legal system to redress the aggrieved. No such class distinction exists in Islam.

Islam distinguishes between theft and dacoit, embezzlement, bribery dishonesty and criminal breach of trust in prescribing punishments. Punishment for theft and dacoit are prescribed by Allah and no one can make any change in it. As regards punishments for embezzlement, it is left to the discretion of the Qadi. There is also distinction in the crime of theft of eatables, i.e., fruits, vegetables etc., in regard to inflicting prescribed punishment. A person who steals to appease his hunger cannot be punished if he steals an eatable to keep his soul and body together.

## **Characteristics of punishments prescribed by Islam**

Punishments prescribed by Islam have been severely objected to by the opponents of Islam. Punishments in Islam include amputation of hand, flogging and stoning to death and are thus considered very severe. But apart from being severe these punishments have some prominent characteristics which are not usually taken in to account while making this objection. Some of the chief characteristics are:

1. These punishments are inflicted as a last resort.
2. These punishments are inflicted to serve as an example to others.
3. These punishments are reformative.
4. These punishments are retributive, and redressive.

### **Punishment is inflict as last resort**

Islam does not remain in search of any victim committing offence and as soon as it comes across one it inflicts the punishments immediately. Actually Islam leaves no stone unturned to block all the channels leading to a sin and it is in very rare cases that one commits sin and is thus exposed to punishment. For example we take adultery or fornication and see how Islam imposes checks to wipe out their possibility.

**Internal checks:** Belief in the Hereafter is the backbone of these checks. Islam explains that every action major or minor of every human being is recorded very accurately and this recorded will be placed before each and every individual on the Day of Resurrection, thus rewarding or disrewarding him depends upon the nature of actions. An act done in thick layers of darkness may remain a secret in this world but cannot go unresponded in the life hereafter. Even the feelings and passions taking turn in the very corner of any heart, is known to Allah and cannot go unnoticed. In this way apart from external checks Islam establishes a permanent sort of internal checks in the very heart of each of its followers. This is the greatest check in the way of incentives leading to sins.

**External checks:** Then Islam imposes external checks which are again of two types:

### **Institution of Marriage**

In the first instants it induces the individual to marry and makes the institution of marriage as easy as possible. Celibacy has been condemned and it has been ordained that unmarried people must be brought in to the bondage of marriage. Bachelors if nothing else do generally start taking interest in spreading foul news. Thus in the Holly Quran it is said:

“And marry those among you who are single, and those who are pious among you males slaves and your female slaves; if they are needy, Allah will make them free from want out of His Grace; and Allah is Ample-Giving, knowing. And let those who cannot find a match keep chaste until Allah makes them free from want out of His Grace.”(24:32, 33)

Hadith also lays great stress upon living in a married state. The Holly Prophet (Peace and Blessings of Allah be upon him) is reported to have said,” O assembly of young people! Whoever of you has the means to support a wife, he should get married, for this is best the means of keeping

the looks cast down and guarding chastity, and he who has not enough means, let him keep fast, for this will act as castration” (Bukhari)

According to another Hadith the Holy Prophet (Peace and Blessings of Allah be upon him) said: when a servant (of Allah) marries, he perfects half (his) religion; and let him fear Allah in regard to the remaining half. (Mishkath)

- Monasticism as well as celibacy is disallowed.
- If a man is not satisfied with one wife, he is allowed to marry up to four ladies.
- A widow is allowed to remarry as and when she deems fit (except for a short period after the death of her husband).
- If a couple get fed up of each other the provision of divorce has been made, which can be exercised by either of them.
- After separation there is no restriction if any one of them wants to remarry (except for a woman who is required to wait for a few months or till the end of pregnancy).
- Early marriage has been encouraged. Reward in the Hereafter has been announced for those fathers who marry their daughters as soon as signs of puberty appear.
- Whereas the illegal sexual act (fornication) between man and woman is said to be severely punishable, the legal sexual act (through marriage) is reported to be a part of devotion.

### **Restrictions on Free Mixing Of Men and Women**

Secondly, Islam puts restrictions on the general mixing of men and women. Women’s activities have been restricted within the walls of the house. Even when coming out of their houses for certain necessities of life women are forbidden to display their beauty and make up and to wear ringing and attracting ornaments. The Holy Quran says: “And stay in your houses and display not your finery like that of the times of Ignorance” (33:33).

The institution of ‘veil’ is the corner-stone to guard the chastity of the women. The Holy Quran says: “O Prophet! Say to thy wives and thy daughters and the women of the believers that they should cast their outer garments over their persons; this will be more proper, that they may be known (ladies of reputation); and thus they will not be given trouble.” (33:59)

Even when coming across, men and women are not allowed to gaze at each other lustily: the Holy Quran says: “Say to the believing men that they should lower their gaze and restrain their sexual passions. That is purer for them. Lo! Allah is aware of what they do. And say to the believing women that they should lower their gaze and restrain their sexual passions and should not display their ornaments except what appear thereof.” (24:30, 31)

Islam does not allow that a man should cast eyes upon women except his own wife or *Mahrams* (the women of the prohibited degrees, closely related to a man like mother, sister, daughter etc) in full gaze. The first surprised look is naturally unavoidable, but the second sight upon ladies except those mentioned above is not allowed. Such a sort of looking at is tantamount to fornication according to a saying of Holy Prophet (peace and blessing of Allah upon him) who said

that a man can commit fornication through all his senses. Staring is fornication of eyes; passion arousing and artificial type of talk is a fornication of tongue; to enjoy the voice is a fornication of ear; and to touch and walk for an illicit act is the fornication of hands and feet.

Islam lays great stress upon the privacy of home-life. In the first place entering other's house without permission is forbidden. The Holy Quran says:

“O you who believe! Do not enter houses other than your own houses until you have asked permission and saluted their inmates” (24:27)

Another verse of Holy Quran runs thus: “O you who believe! Let those whom your right hands possess, and those of you who have not attained puberty ask permission of you three times: before Morning Prayer, and when you put off your clothes at midday in summer and after the prayer of night. There are three times of privacy for you” (24:58)

Privacy of home-life is not limited to the entering of others houses only. But there are clear *Ahadith* of Holy Prophet (peace and blessing of Allah be upon him) which forbid to peep into the houses of others and to stay in front of the doors of other's houses while calling them out. As a corollary, reading the letters of others without their permission is sin. Further the instructions not to enter into houses without the permission of their inmates are not limited to other's houses only, but even enter in to the houses of mother or sister without seeking her permission is not allowed. Once a man asked the Holy Prophet (peace and blessing of Allah be upon him): I am required to go to my mother frequently as there is none else to look after her except myself, so should I seek her permission each time I have to go to her? The Holy Prophet (peace and blessing of Allah be upon him) said: “Do you like to see your mother naked otherwise”?

Islam does not allow talking of men and women face to face (with the exception of Mahrams) the Holy Quran says: “ And when you ask them ( the wives of Holy Prophet) for anything you want, ask them from behind a curtain, that makes for great purity for your hearts and for theirs.”

It is thus clear from the above verse of Holy Quran that when men and women are forbidden face to face talk, the question of mixed gatherings, co-education, and their working together in offices and factories does not arise. Even when talking from behind a curtain the women should speak firmly, so that someone having bad intentions may not feel inclination in the talk.

Last but not least is the overall system ordained by Islam to keep the general atmosphere of Muslim society pure of false rumors and lustful talks. Islam does not allow that its followers should propagate sexual news and enjoy by playing with the character of others. A false accusation of adultery (qadhaf) is punished almost as severely as adultery itself. The Holy Quran says:

“ And those whose accuse free women of fornication, then do not bring four witnesses, scourge them with eighty stripes, and never admit evidence from them, for such men are indeed transgressors. Except those who repent after this and act aright, for Allah is Forgiving, Merciful.” (24: 4, 5)

It may be seen here that while in ordinary matters two witnesses are required, in case of an accusation of adultery four witnesses must be produced. Thus a case of adultery can be established on the strongest possible evidence.

In view of this comprehensive system of internal and external checks, one can easily visualize the general environment in which committing of an offence itself become almost impossible. The last nail in this system, however, is thrust by the fear of a severe punishment.

Thus the penal law of Islam curbs fornication and adultery by force at a last resort. Whereas the moral teachings of Islam cleans man within so that he does not feel inclined towards sinning; its penal law regulates his external behaviour so that in case the moral teachings remain ineffective, his evil inclinations taking practical shape may be suppressed by force.

The Holy Prophet (peace and blessing of Allah be upon him) said: Protect the Muslim as far as possible against the application of the law. Let the culprit off if he can possibly be let off. For the Imam making a mistake in forgiving is better than his making a mistake in applying the law. (Thirmidhi)

### **Punishments are exemplary**

Now one can easily think of the social set up in which such a comprehensive plan of checks is exercised. But in spite of all these internal and external checks if one still commits a crime, severe punishment should be inflicted on the convict because he has no excuse or justification. Even while inflicting punishment, Islam still plans to make use of it in one way or the other. By inflicting exemplary punishment to stubborn wrong-doer Islam carries out psychological operation of all those in the society having criminal intention and trends. This is the object of gathering the masses on the occasion of punishing the adulterers. This is why hands or feet are cut off and this is a punishment like stoning to death is carried out in open day light. Hanging somebody in the late hours of night as is prevalent in many present days so called civilized countries is not allowed by Islam, because it does not serve as an example to others.

### **Punishments are reformatory**

It may be noted that whenever in Holy Quran the punishment has been prescribed for an offence, it has been concluded either by advice or by a threat of punishment in the life Hereafter mentioning great attributes of Allah Almighty. For example, in case murder, the Holy Quran says: "And he who does this shall (not only) receive the punishment (but) the chastisement shall be doubled to him on the day of Resurrection, and he shall abide therein abasement" (25: 68, 69)

Further the Holy Quran says: "And there is life for you in the law of retaliation, O men of understanding, that you may guard yourself" (2: 179)

In case of theft the Holy Quran says: "But whoever repents after his iniquity and reforms himself, Allah will turn to him mercifully, for Allah is Forgiving, Merciful" (24: 4, 5)

Actually an individual who commits a crime never get rid of its bad consequences even after he receives punishment in this world until and unless he or she also repents and acts aright.

### **Punishments are Retributive**

Islamic punishments, in the fourth place, are retributive as laid down in the Holy Quran: "O you who believe! Prescribed for you is retribution in case of the slain: the free for the free; and the slave for the slave; and the woman for the woman. And if something is remitted for him (the

offender) by his brother (who has suffered the loss of his near one) then let this remission be adhered to with fairness, and let it payment (be made) in a goodly manner” (2: 178)

Its object is, therefore, to satisfy that emotion of retributive indignation which in all healthy communities is stirred up by injustice.

## **Crimes and Punishment in Islam**

### **Crimes**

A criminal act is defined as one that infringes public right: a right whose infringement leaves wider repercussions on the society. From the viewpoint of Islam when certain primary public rights are violated the wrong is called Masa’at, that is, crime or offence: and it gives rise to certain substitutory public rights in the form of ‘Uqubat or punishments. ‘Uqubat denotes the punishments instituted in the Holy Quran and Traditions of The Holy Prophet (peace and blessing of Allah be upon him). According to the Islamic law criminal offences mostly concern:

1. Person
2. Property
3. Honour
4. State
5. Religion
6. Public peace and tranquility
7. Decency or morals

### **Punishments**

The penal law of Islam is called ‘Hudud’ (plural of Hadd) in Hadith and Fiqh. Hadd means prevention, hindrance, restraints, prohibition, and hence a restrictive ordinance of Allah, respecting things lawful and unlawful. Punishment is divided into three classes (1) Hadd (2) Qisas (3) Ta’zir

### **Hadd**

The Hadd is a punishment the limits of which have been defined by the Holy Quran and the Sunnah. The following belong to this class

1. **ADULTERY**: Punishment for adultery is stoning to death (Rajm) in case of married person
2. **FORNICATION (Zina)**: For an unmarried person punishment for fornication is one hundred stripes.
3. **FALSE ACCUSATION (Qadf)**: Insinuating a false charge of adultery against a married man or a woman for which the offender must receive eighty stripes.
4. **APOSTASY (Irtidad)**: Renunciation or abandonment of Islam by one who professes Islamic faith, it is punishable with death.
5. **DRINKING WINE (Khamr)**: for which the offender must receive eighty stripes
6. **THEFT (Sariqa)**: it is punishable with cutting off the hand.
7. **DACOITY, ROBBERY (Qat’al Tariq)**: For robbery only, the loss of hands and feet, and for robbery with murder, death either by sword or crucifixion.

## **Qisas**

Qisas stands for the return of life for in a case of murder. Retaliation (Qisas) is that punishment which although fixed by law, can be remitted by the person offended against, or in the case of a murdered person, by his heirs. It is applicable to cases murder and wounding.

## **Ta'zir**

Ta'zir is punishment which is left to the discretion of the court in regard to the form and measure in which such punishment is to be inflicted. It is applicable to those crimes for which Hadu'd and Kaffara have not been prescribed.

The punishments described above are the maximum punishments for the above mentioned crimes. These can be reduced keeping in view the circumstances in which the crimes were committed, the nature of evidence, and the motive of the criminals with which he committed the crime.

## **Comprehension**

What is a crime in Islamic concept?

1. Discuss the following causes of crime
  - a. Inner urge
  - b. Environmental Influence
2. Quote the prophetic saying reported by Ayisha which warns us from doing discrimination between haves and have-nots in punishment for the same crime.
3. What are the objectives of punishment?
4. How does Islamic Legal system permit the right to revenge?
5. What is the basic object of Penal Law of Islam?
6. What are the characteristics of punishments prescribed by Islam?
7. Quote a Quranic verse which commands to marry
8. Quote a prophetic saying which lays stress upon living in a married state
9. Who perfects the half of his religion in Islam?
10. How does Islam restrict the free mingling of men and women?
11. How does Holy Quran discuss the privacy of family life?
12. Give a brief note on the following types of punishments in Islam
  - a. Hadd
  - b. Qisas
  - c. Ta'zir



## Part – III

### SOCIAL CONCEPT OF ISLAM

#### Position of women under different civilisations and religions

Before discussing the Islamic conception of womanhood, it would be worth while to have a glimpse at other religions regarding her position and importance.

**Greek civilisation:** Starting with Greek civilisation, perhaps the oldest in the world, the conception of women can be summed up in the words of Socrates. He says: “Women is the greatest source of chaos and disruption in the world. She is like the dafali tree which outwardly looks very beautiful but if sorrows eat it they die with out fail. Anderosky gives the Greek conception of women in the following words: “Cure is possible for fire – burnt and snake –bite but is impossible to arrest women’s subtility”

**Chinese Civilisation:** in Chinese scripture women have been called the “Waters of woe” that wash away all good fortune. In Chinese life the woman had always been regarded as inferior to man and she had no rights whatsoever. A woman was regarded eternally a minor- very children not properly belonging to her. A man could, whenever he pleased, repudiate his wife: he could sell his wife as a concubine. After widowhood she remained the property of her husband’s family and it was almost impossible for her to remarry.... with all this went slavery and infanticide.

**Hinduism:** A Hindu marriage was indissoluble. Neither adultery nor prostitution nor degeneration could ever dissolve Hindu marriage, even after death of the husband widows could not claim separation. The cruel rite of Sati was practiced by which the widow of a Hindu used to burn herself on the pyre of her husband. The widow was and is still looked upon as something loathsome, inauspicious, and fit to be shunned. The status of those widow who did not perform Sati was so disgraceful that the poor souls considered it much better to be burnt alive than bearing long and inhuman torture at the hands of a cruel and unsympathetic society.

Professor Indira in her book Status of Women in Mahabharata writes: “There is no creature more sinful than woman, Woman is burning fire. She is the sharp edge of a razor. She is verily all these in a body, Men should not love them” In Hinduism according to the ordinance of Manu: “A woman must never seek independence and must never do anything according to her mere pleasure” The Law of Hinduism is: “By a girl, by a young woman, or even by an aged one nothing must be done independently even in her own house”. “In childhood a female must be subjected to her father, in youth to her husband, when her lord is dead, to her sons; a woman must never be independent”

#### Buddhism

As regard Buddhism the teaching that Nirvana (Salvation) can’t be attained in the company of women is sufficiently eloquent to give us a clue to its attitude towards this sex. Mr. U May Young writes: “The idea of a wedlock and its attendant worldly life is opposed to the ultimate end of Buddhism annihilation of desire.... the striving for which must necessarily involve celibacy” To a follower of Buddhism therefore according to the celebrated historian Wester Mark “women are of all the snares which the temper has spread for men the most dangerous in women are embodied all

the powers of infatuation which blind the mind of the world". The concept of women in Buddhism is summed up in the words of a renowned Buddhist scholar recorded by Bettany in his world's religions in the following words

"Unfathomably deep, like a fish's course in the water, is the character of women, robbed with many artifices, with whom truth is hard to find, to whom a lie is like the truth and the truth is like a lie"

### **Judaism**

In Judaism according to Hebrew Scriptures the women is under an eternal divine curse "of the women came the beginning sin and through her we all die" is a belief which called poor women responsible for all the wickedness of man. Hence her degradation in Jewish society, where she was considered not as a creature worthy of honour but as one who could be deservedly subjected to any amount of insults, and reduced to the position of a mere chattels in the house.

### **Christianity**

To come to Christianity whole structure of Christian creed is based on the doctrine of original sin or which Christianity holds women. "The women whom thou gavest to be with me, she gave me of the tree and I did eat" (Gen: 3: 12) Eve first committed the sin and caused the fall of Adam, thus actually she was responsible for the sins of humanity and God had to send his only begotten son "Jesus Christ" to be crucified and to wash off the sin of humanity with his blood! This is the summary of Christian faith.

A few quotations taken from the new Testament are reproduced below which alone are sufficient to show what women in Christianity is, and how she should be shunned by those who are candidates to the kingdom of heaven "it is good for a man not to touch a woman (corinthians: 7: 1) St. Gregory says "among all men I sought for chastity proper to them and I found it among none. And verily, a person may find one man chaste among a thousand, but among women never". St. John says: "A woman is a necessary evil, a desirable calamity, a deadly fascinator, and painted ill".

## **ISLAM AND WOMEN**

### **Condition of women before Islam:**

Before the advent of Islam the condition of women was highly miserable thorough out the world. No religion allowed them equality; no religion gave them a share in the property of their parents or husbands. Women were looked upon as evil and unwanted burden, a source of disgrace and humiliation to the family. Women were universally treated as chattels. Their own consents in anything were considered immaterial. In fact they were never viewed as a party to the marriage. They could be had at pleasure and discarded most capriciously; only the heart and purse could lay limitations. They had no independent status, could own no property were given no rights of inheritance. In Arabia particularly, immediately before Islam their plight was most miserable. They were not regarded as human beings; women stood somewhere between the animal world and man. In pre-Islamic Arabia, daughters were considered expendable and female infants were often buried alive. The education of women was neglected; women were ill treated and commented little respected for the most part. Unrestricted polygamy was the order of the day and women could be divorced at the whim and pleasure of their husbands. Concubinage and Slavery were the recognised social institution.

It was Islam that, for the first time, vindicated the rights of women and gave them a status of unknown, unthought-of even to this day. The practice of infanticide was abandoned. Women as well as men were urged to acquire learning. They were granted all the fundamental rights they were given the right of inheritance of the property of their father, mother, husbands and brother as regard marriage and divorce, they have got fair liberty. Islam has removed various domestic and conjugal hardships of the women by prohibiting the unlimited polygamy prevalent in those days. In short, Islam has made adequate provisions for preparing the women as equal partners of men. There is no other religion in the world that favours women so much as Islam. It raised her from the lowest status to equality with men.

### **Status of women in Islam**

Having seen how cruelly women was treated and mercilessly exploited by different religion and secular cultures of the world, it will now be possible for us to understand correctly the glorious achievements of Islam in this direction. "Islam removed the stigma of wickedness and impurity which the other religions of the world had placed upon women. Men and women, it proclaimed, both come from the same essence, and therefore, if women could be said to be wicked, man also should be regarded as such, or if man had a single spark of nobility in him women also should have it. "Women declared the messenger of Allah (peace and blessing of Allah be up on him). "Are twin halves of men" the holy Quran says "Oh mankind! Be careful of your duty to your Lord who created you from a single soul and from it created its mate and from the twine hath spread abroad a multitude of men and women. Be careful of your duty towards Allah in whom you claim (your rights) of one another, and towards the wombs (the bear you). Lo! Allah hath been a watcher over you" (4:1)

"And Allah hath given you wives of your own kind"(16:72)

Islam refuted the biblical Assertion that the women was the first deceived and she was, there for responsible for the fall of Adam. It declared in the most unambiguous terms that Adam and Eve were deceived simultaneously and were, therefore, equally responsible for the deed. The holy Quran says "And we said .... Oh Adam! dwell thou and thy wife in the garden and eat ye (both) freely (of the fruits) thereof where ye will; but come not nigh this tree lest ye become wrong doers. But Satan caused them (both) to diflect there from and expelled them from the (happy) state in which they were" 2: 35,36

The concept that man is dominant over woman is retrained in Islam but between the two sexes has been narrowed. The Holy Quran says: " and they (woman) have rights similar to those (of men) over them in kindness, and men are a degree above them- Allah is Mighty, Wise" (2:228)

The only difference it makes in the realm of physical conditions, and this difference is based on hard facts. It believes in the principle of the division of labour. It allots the strenuous work and the rough outdoor life to man and makes him responsible for the maintenance of the family. It regards home as the first concern of women. It allots the work of managing the home and upbringing and training of children to women, a work which forms the most important item in the task of nation building. It exhorts her to engage herself in the cultivation of learning and allows her to participate, if necessary in social uplift and other schemes of national reconstruction. The life of the office and factory it considers as uncognial and unnatural for her, and is emphatic in its demands that woman should in no case step into the shoes of the man, nor should man encroach upon her sphere of activity. Both should work in a spirit of harmony and sympathy and love.

Further there is the problem of vesting the ultimate authority in the administration of the affairs of the family. It is a fact that sound administration is impossible without a unitary policy. In a Muslim family, so far as honour is concerned, Islam has ordered the honour the mother more than the father, the sister more than the brother and daughter more the son, but as regards administration that is, in the case of husband and wife, the final authority is vested in the husband who is also held responsible for looking after the comfort of the wife, and who cannot use his power for doing any injury to her, except at the risk of losing the favours of Allah, because the wife is not his subordinate but in the words of the messenger of Allah (peace and blessings of Allah be upon him) “the queen of her home”.

Through Islam women gained legal rights she did not formerly possess in pre-Islamic Arabia and which women in the west acquired only many centuries later. Pierre Crabitte, an American judge who was familiar with Muslim law, wrote “Muhammed was probably the greatest champion of woman's right the world has ever seen. Islam conferred upon the Muslim wife property rights exactly the same as their husband. She is free to dispose and manage her financial assets as she pleases without let or hindrance from her husband”. Women were given a share of inheritance from parents and near kindred. The Holy Quran says: “Unto the men (of a family) belongeth a share of that which parents and near kindred leave, and up to the woman a share of that which parents and near kindred leave, whether it be little or much- a legal share”

In pre-Islamic days a step son or brother took possession of a dead man's widow or widows along with his goods and chattels. This practice was condemned by Islam. The Holy Quran says: ‘O ye who believe! It is not lawful for you forcibly to inherit the women’ (4:9)

Some concepts of Islamic attitudes towards woman may be gained from the following verses of Holy Quran. It is stated: ‘He has put love and mercy between yours (hearts)’ (30:21)

According to the Prophet Muhammed (peace and blessings of Allah be upon him) woman was not “an organ of the devil” but muhsanah – a fortress against Satan. He gave the most honourable position to mothers when he said "Paradise lies under the feet of the mother". As regards daughters “whoever befriendeth three daughters, or three sisters and teacheth them manners, and is affectionate to them, till they come of age, May Allah apportion paradise for him. With regards to wives, “A virtuous wife is a man's best treasure”, and “the most perfect of the believers in faith is the best of them in moral excellence and the best of you are kindest of you to their wives.” Thus Islam improved women's lot immeasurably and conferred upon her rights and privileges not enjoyed by her contemporary Christian counterpart.

The Holy Prophet Muhammed ((peace and blessings of Allah be upon him) enjoined the acquisition of knowledge equality on women and men by his order: “the acquisition of knowledge is incumbent upon every Muslim Man and every Muslim woman” (Ibn Majah) The matrimonial union of man and woman had been viewed with disapproval and had been regarded as derogatory to man in certain religions. But the Messenger of Allah (peace and blessings of Allah be upon him) laid it down once for all: “Marriage is of my ways and whoever disinclines from my ways is not from me (i.e. is not my followers). (Bukhari, Muslim)

“When man has married, he has completed one – half of his faith” (Bukhari)

He inculcated respect for women in these words: “Allah commands us to treat women gently, for they are our mothers, daughters and aunts” The world and all things in the world are precious but the most precious thing in the world is a virtuous woman” (Muslim)

He bade his followers to behave most humanely towards their wives: “the best of you are the who behave best to their wives” (Turmudhi)

“A Muslim must not hate his wife, and if he be displeased with one bad quality in her then let him be pleased with one that is good”

The more civil and kind a Muslim is to his wife , the more perfect of faith he is” (Tirmidhi) “When a woman observes the five times prayers and fasts in the Month of Ramadan , and is chaste, and is not disobedient to her husband , then tell her to enter paradise by whichever door she likes” before the advent of the holy prophet Muhammed (peace and blessings of Allah be upon him) women didn't enjoy position independent of man. In Islam woman is an independent personality. She can enter in to business; make contract or testament in her own name. She is entitled to inherit as mother, wife, sister and daughter, a thing unknown in any other religion, civilisation or legislation.

She was also given an independent position as regards the right of owning wealth “undo men a fortune from that which they have earned, and undo women a fortune from that which they have earned (envy not one another) but ask Allah of his boundary. LO! Allah is ever Knower of all things “(4:32).

“undo the men (of a family) belongth a share of that which parents and near kindred leave, and up to the women a share of that which parents and near kindred live, whether it be little or much a legal share” (4:7)

### **Islam and the Ideal of sex equality**

Equality is a term which is hard to define. There is a sense in which all human beings are equal in all respects. There are differences of tastes, temperaments, faculties, powers and out look, all of which cannot be traced to differences of environment or upbringing. It is apparent that the rights and duties of men and their social position flow from these inborn differences. In spite of the fundamental and essential unity of all human beings, it is impossible in practice to level down all differences and inequalities, because some of them are the outcome of native differences, in equality leads to injustice and oppression only where artificial impediments, whether in the shape of laws and customs or traditions are super - added to natural inequalities so as to prevent men and women from developing their native capacities to the full. It is the task of religion, state and law to remove all hindrances to human development and create an environment where only natural inborn differences and inequalities may fix a man's station in life.

The ideal of sex equality should also be studied from the same point of view. If by sex equality is meant that artificial customs, traditions and laws which prevent the female sex from playing its full part in collective life and developing its inherent capacities to the maximum extent should be removed out of the way, there is hardly any individual of sound understanding who would disagree. But if sex equality means that the type of mental and bodily faculties, psychological make-up and temperamental equipment possessed by the two sexes is identically the same and that men and women exist and have their being not as complements to each other but as

competitors and rivals in a common sphere of action, then it is an ideal about which most people would disagree. As we shall discuss later, even modern writers and specialist on sex are not agreed on this point.

As far as the Holy Quran is concerned, it promulgated the doctrine of human equality, including sex equality, in a comprehensive verse which negates all inequalities due to sex, race, colour, nationality, caste or tribe. Says the Quran: O people! be careful of (your duty to ) your Lord, who created you from a single being and created its mate of the same (kind) and spread from these two many men and women (iv.1).

This is a declaration in plain terms that, in essential human dignity and fundamental rights, all human beings of whatever sex or race or nationality stand on a footing of equality, because they all ultimately spring from a single source.

When Islam appeared in Arabia, women held a very low position in society. They were treated not only as social inferiors but like slaves and chattel. When a man having many wives died, the latter were inherited by his sons like movable property. It was a mark of dishonour for any man to have a daughter, and many preferred to bury alive their female children rather than face social opprobrium. It was Islam and the teachings of the Holy prophet which dispelled the prevailing idea that women were inferior to men or those female children deserved any treatment different from that meted out to male issues. The Quran asserted the dignity of women by declaring:

They are an apparel for you and you are an apparel for them (ii 188).

Here, again, the Quran lent support to the basic equality of women and men by declaring that each sex complements the other, and neither is inferior in status and dignity. The word 'apparel' may be interpreted to mean either 'protection' of dignity and beauty. The verse would mean, therefore, that men and women protect each other from sin and dishonour or it may mean that women lends dignity and adds beauty to the existence of man, as man does to that of woman. Similarly, the Holy Quran heaped scorn on the Arabs traditional attitude towards the female sex in the following verses: "And when a daughter is announced to one of them his face becomes dark and he is full of wrath. He hides himself from the people, because of that which is announced to him. Shall he keep it with disgrace or bury it (alive) in dust? Now surely evil is what they judge" (xvi. 58 – 59).

With a view to contradicting the notion that women have no rights, the Quran came out with the plain and unambiguous declaration: They have rights similar to those against them, in a just manner (ii 228).

In consonance with the spirit of equality the prophet of Islam constantly reminded his followers that female children should be treated exactly in the same manner as male issues. Prior to Islam daughters were looked upon with disfavour and as a kind of economic and social burden the result was that male members of the family enjoyed a respect which was denied to those of the fair sex. There were marked differences in the treatment and upbringing of sons and daughters. All this was discouraged by the Holy prophet (peace be with him) who upheld the rights of female children and insisted on their being treated on a footing of equality. For example, according to report of 'Ibn Abbas', the prophet's cousin, he is said to have declared: if a daughter is born to a man and he brings her up affectionately, shows her no disrespect and treats her in the same manner as he treats his sons, the Lord will reward him with paradise (Kanz al- Ummal, p. 277). According to another

report from 'Anas b. Malik', the prophet said: Girls are models of affection and sympathy and a blessing to the family. If a person has one daughter, god will screen him from the fire of the hell owing to his daughter, if he has two daughters, god will admit him to paradise; if he has three, God will exempt him from the obligations of charity and Jihad. Abu Hurira, a revered companion of the prophet, says: the prophet of god said that if person has three daughters whom he provides for and brings up, God will surely reward him with paradise. According to Abdullah ibn Masu'd, the prophet is reported to have said: if a daughter is born to a person and he brings her up, gives a good education and trains her in the arts of life, I shall myself stand between him and hell fire. Not content with moral exhortations intended to assert the equal rights of free women, the prophet went so far as to declare: A person who has a female slave in his charge and takes steps to give her a sound education and trains her in arts and culture, and then frees her and marries her, he will be doubly rewarded (Bukhari, Sahih, Kitab al – Nikah).

The Holy Quran has at more than one place made it plain that in regard to moral and spiritual development, men and women stand on a level of perfect equality. There are no limits to the moral progress of a woman as that of a man. For example, the Holy Qur'an says: Men shall have benefit of what they achieve and acquire and women shall have the benefit of that which they similarly achieve and acquire. (iv. 32).

And again:: And whoever does good deeds, whether male of female, and he or she is a believer, these shall enter the garden and they shall not be dealt with a jot unjustly (iv. 124).

In regard to religious duties, the Quran recognises no distinction between men and women. Their obligations towards God and man are similar in many respects and, therefore, their position and status in the eyes of God are also not dissimilar. Says the Quran: "And as for the believing men and the believing women, they are guardians of each other; they enjoying good and forbid evil and keep up prayer and pay the poor – rate and obey Allay and his Apostles; (as for) these, Allah will show mercy to them, surely Allah is Mighty, wise.

Allah has promised to the believing men and the believing women gardens beneath which rivers flow, to abide in them, and goodly dwelling in gardens of perpetual abode; and the best of all is Allah's Godly pleasure; that is the grand achievement (ix. 71 – 72).

It follows that if men and women have equal duties in regard to prayers, the payment of poor-tax and, most of all, in the enjoining of good and the forbidding of evil in all their social, economic and political forms, it is necessary that they should have equal educational opportunities. How can a woman enjoin the good in politics or forbid men from bad politics, how can she raise her voice against ruinous economic policies or advocate beneficial economic policies if she is not mentally and spiritually well equipped for the supreme religious duty? It should also be remembered that Islam makes no distinction between secular duties and religious duties. According to the teachings of Islam, all duties, whether they concern politics economic or social well-being in general, are religious duties, in no way different from prayers, fasts and the organisation of social charity. It is, therefore, a plain deduction from the above verses that men and women should be regarded as equal in the fields of politics, economics and education, etc., and consistent with the discharge of their special responsibilities in their particular spheres, they should receive equal rights in all these fields of action.

The prophet not only enunciated this general doctrine of sex equality involving equal educational opportunities but also practised it. Innumerable are the traditions of the prophet which show that women, like men, used to come freely in the presence of the prophet for putting questions and addressing inquiries on all sorts of social religious and economic matters. The prophet used to answer their queries and enlighten them on all live issues. Arabia, in particular and the world in general, was so backward in those days that there were no organised educational institutions even for boys, not to speak of girls. So the Islamic attitude towards female education can be studied only from the casual remarks of the Prophet and his permission to women to approach him freely for inquiries on matters of religious, economic and social importance. There is no doubt that Prophet encouraged women in the spirit of understanding and inquiry. His wife, 'Ayisha', was herself a very learned woman, and during the reign of the first four Caliphs her advice, even on political matters, was eagerly sought by the rulers of Islam. On Islamic jurisprudence she was and is still regarded as a great authority. In his collection of traditions, Imam Muslim reports that 'Ayisha' praised the women of Ansar for their spirit of inquiry and learning, saying how praise worthy are the women of Ansar that their modesty does not prevent them from attempts at learning and the acquisition of knowledge (Muslim, Sahih, Kitab al- Tahrat) this statement was occasioned by the fact that the women of Ansar were more eager than others to learn from the Prophet and they used to address frequent inquiries to him. Instead of discouraging them, the wife of the Holy Prophet characterises as highly praise-worthy their eagerness for learning and inquiry.

The Holy Quran further stresses the equality of women in regard to the possibilities of spiritual progress by quoting from history the examples of women who rose to spiritual eminence by their own efforts:

And Allah set forth an example to those who believe – the wife of Pharaoh when she said: My Lord, build for me a house with thee in the Garden and deliver me from Pharaoh and his doings, and deliver me from the unjust people. And Mary, the daughter of Imran, who guarded her chastity, so we breathed unto her of our inspiration, and she accepted the truth of the words of her Lord and His Books, and she was of the obedient one (Ixvi. 11 – 12).

Despite the great stress it has laid on the essential and fundamental equality of men and women and their equal rights in all matters of vital concern, the Holy Quran does not believe in that conception of sex equality which ignores the natural differences, special aptitudes and specific powers and faculties of men and women with the resulting fitness of men for some kinds of work and the equal fitness of women for other types of activity. On the whole, the Holy Quran regards men and women as complementary to each other, one sex making up what the other lacks. This is evident from the following verses of the Holy Quran which underline the purposive nature of sex differences:

He it is who created you from a single being, and of the same (kind) did he make his mate, that he might incline to her (vii. 189). And one of his signs is that he created mates for you from yourselves, so that you may find quiet of mind in them and He put between you love and compassion (xxx. 21). Men are the maintainers of women because of that excellence which Allah has given to some of them over others and because they spend out of their property (iv. 34). And they (women) have rights similar to those against them in a just manner men are a degree above them (ii. 228).

The main points to be noted here are, first, that the female sex must be a source of comfort and peace of mind to its male counterpart; secondly, that men and women excel each other or are superior to each other in some respects and that in the General affairs of life men are partially, but not absolutely, superior to women. These general statements involve certain indirect conclusion which is of the greatest importance to social happiness. The Quran, it seems, first sets forth a general doctrine of sex equality and then qualifies and defines it with the assertion that this is not a bald and undifferentiated equality but one involving special rights and duties both for men and women, within the framework of their special responsibilities: both sexes are absolutely equal to each other.

Now, what are the conclusions to be drawn from the qualifications mentioned by the Holy Quran? It is emphasised by the Holy Book that the female sex is a source of comfort and quietness of mind to the male sex, this can happen only if men and women are united in a more or less permanent bond of interests which finds expression in a life planned and based on some idea of the future, requires them to co – operate, and integrates them as complements in an ordered whole. These considerations involve a pattern of life of which Marriage, Family and Children are the most important factors because there can be no other abiding interests to hold together two individuals of different sexes. A mere community of intellectual interests or identity of special aptitudes is an insufficient bond even for that microscopic minority to whom these can hardly provide any link unless they are supported and strengthened by the desire for family life and children. It is obvious, therefore, that Islam does not envisage any social pattern from which family and children have been excluded, and since these two factors involve special functions for women and special responsibilities for men, equality of rights in Islam means an equality which is adjusted to and qualified by the special duties and responsibilities of each sex.

Again, the Holy Quran recognises the superiority of both sexes over each other in some respects. To the extent that men are superior to women and women to men in certain matters, the doctrine of equality must be qualified with due regard to natural facts. About the special position of men, the Quran makes two statements. First, that men are the supporters or sustainers of women in an economic sense. But it must be noted that this implies no natural superiority on the part of men, nor any inherent inferiority of women, because it is a purely economic arrangements dictated by natural necessities. The Holy Quran however accords a slight superiority to men in general by saying that men are a degree superior to women. This superiority of men relates both to the domestic and political fields. In domestic life, final authority must rest with one sex or the other. There cannot be two co- equal authorities here as elsewhere. Similarly, in the political field also final decisions should rest with men in general, because their comparative freedom from certain natural limitations, which absorbs a considerable amount of female time and energy, enables them to devote more attention to political affairs.

### **Importance of Marriage in Islam**

Unlike Christianity, which looked upon marriage as if it were a necessary evil, Islam regards it as a most sacred institution and makes it incumbent on every Muslim man and woman, unless prevented by valid physical or economic incapacity to lead a married life. The following traditions of the Messenger of Allah (peace and blessings of Allah be upon him) stress the importance of marriage:

It is necessary for you to marry, because marriage is the most powerful shield against the allurements of sight and the protection of your private parts; if one of you cannot afford it, let him fast because fasting weakens the sexual impulse. The messenger of Allah (peace and blessings of Allah be upon him) declared that marriage was one of his most sacred practices and added: "Whoever dislikes my way of life is not of me" (Bukhari) A tradition reported by Anas (Allah be pleased with him) says "When a man has married he has made his religion half perfect. Then let him fear Allah for the remaining half" (Bukhari).

The Quran exhorts the followers of Islam to enter into marriage with chaste women: "Then marry of the woman, who seem good to you"(4:3) "Lawful unto you are all beyond those mentioned, so that ye seek them with your wealth in honest wedlock, not debauchery" (4:24) Ye (proceed) one from another, so wed them by permission of their folk, and give unto them their portions in kindness, they being honest, not debauched, nor of loose conduct" (5: 25)

These days are (all things) good and pure made lawful unto you. The food of the people of the Book is lawful unto you and yours is lawful unto them. (Lawful unto you in marriage) are (not only) chaste women who are believers, but chaste women among the people of the Book, revealed before your time, when ye give them their due dowers, and live with them in honour, not in fornication nor talking them as secret concubines" (5:5)

**Marriage Psychology:** A family is the basic unit which go to make a society. A family is maintained and preserved by a code of established law, the object of which is to secure marriage relationship against insecurity and instability." Fear Allah" said the Messenger of Allah (peace and blessings of Allah be upon him) "with regard to women. You have a right over your women and they have a right over you" In the same vein we see the Messenger of Allah (peace and blessings of Allah be upon him) sounding a similar admonition to men thus, Fear Allah about women for you (men) have taken hold of them as a trust from Allah and you have deemed their chastity lawful to you by the word of Allah"

"There are three essential elements in every normal marriage" says Dr.Wester Mark: "the gratification of the sexual impulse the relation between husband and wife apart from it and procreation of children". There is in Muslim life not merely the objects of procreation and sexual gratification but also the hallowing of instincts, that is, piety which being the third and significant object of marriage leading one to the attainment of what Muslim jurists call Lazzab (true pleasure) which subsists in the paradise where there will be neither protection nor the bodily retention of the sperm.

Islam declares fornication unlawful and obliges both sexes of human species to regularise their natural connection by a code which protects morality from obscenity and license and society from corruption. its for this reason that the holy Quran refers to Nikah (marriage contract) by the word Ahsen. The hasan denotes a castle and Ahsan means to fortify. The man who contract marriage is Muhsin i.e. one who builds the castle and the women with whom marriage is contracted is Muhsina that is, One who has entered the production of castle which has been erected in the form of Nikah for the safety of her person and morality.

### **Objectives of Marriage**

The first objects of Nikah in Islam are to save morality and chastity and the foremost function of the law of matrimony is to strengthen the castle of marriage. The safeguarding of morality and chastity is of such an overriding importance that every other purpose may be sacrificed for its sake.

The second important object is that the marital relation between the two sexes of the human species should be based on love and kindness so that the social and cultural aims attached to marriage may be fulfilled by them in partnership and they may attain that peace, bliss and contentment in their matrimonial life which is an essential condition for their being healthy and well adjusted members of society. A consideration of the manner in which this object has been described in the holy Quran reveals that the Islamic concept of matrimony is synonymous with love and kindness, and marriage partners only to receive the contentments from one another the holy Quran says: "And among his signs is this: that he created for you mates from among yourself, that ye may dwell in tranquillity with them; and he has put love and mercy between your (hearts)" (30:21)

In sura Baqara the concept of Matrimony is represented thus: "They are your garments, and you are their garments" (21:187). Here marriage partners are called the garments of one another. The garment stays close to the body of a person and conceals it and protects it from the ill effects of outer environment. The use of this metaphor for marriage partners is intended to show that marital relation should be literally like the relation between the body and its garments. The hearts and souls of marriage partners should be approximate to one another and they would protect one another from influences which might endanger their honour and morality.

Love and kindness is the soul of marital relationship. A marriage, without this soul, is a body without life. As long as marriage partners live together, they should do so in peace and tranquillity, love and harmony. But if they cannot do so, they would do well to separate with kindness. The holy Quran says: the (marriage) partners should either hold together on equitable terms or separate with kindness" (2:229) In respect of wives, the Holy Quran orders: "Either keep them on equitable terms or separate from them with kindness (65:2) Further it is enjoined: "and do not forget liberality between yourselves" (2:237) and: "Live with them (your wives) on a footing of equity and kindness (4:19).

### **Dower and dowry**

Mahar or dower as it usually translated is either a sum of money or other form of property to which the wife becomes entitled by marriage. According to the Holy Quran, the dower (Maher) is given as a free gift by the husband to the wife at the time of contracting the marriage: "And give the women (on marriage) their dower as a free gift" (4:4)

The payment of dower on the part of the husband is an admission of the independence of the wife, for she becomes the owner of property immediately on her marriage, though before it she may not have owned anything. The settling of a dower on the woman at the marriage is obligatory. The Quran says:

"And lawful for you are all women besides those, provided that you seek them with your property, taking them in marriage, not committing fornication. Then as to those whom you profit (by marrying), give them their dower as appointed" (4:24) The payment of dower is also necessary in the case of marriage with a slave girl. The Holy Quran says: so marry them with the permission of their masters and give them their dower justly" (4:25)

In the case of a Muslim marrying a woman from among the people of the Book, the payment of dower is obligatory. The Holy Quran says: "and the chaste from among the believing

women and the chaste from among those who have been given the Book before you, when you have given them their dower, taking them in marriage.” (5: 5)

It would appear from this that the Holy Quran renders the payment of dower necessary at the time of marriage. The payment of dower was necessary even though it might be a very small sum. In exceptional cases, marriage is legal even though the amount of dower has not been specified at the time of Nikah, but it is obligatory and must be paid afterwards. Thus the holy Quran says:

"There is no blame on you if you divorce women when you have not touched them, on appointed for them a dower" (2:236).

This shows that marriage is valid without specifying dower. Tradition also speaks of the validity of a marriage, even though no mention of dower is made at the time of Nikah. But the dower must be paid, either at the time of consummation of marriage or afterwards. The amount of dower in this case would depend upon the circumstances of the husband and the position of the wife. The holy Quran makes this clear by requiring the provision for wife to depend upon the circumstances of the husband. The holy Quran says: The wealthy according to his means and the straitened according to his means" (2: 236)

In a tradition it is reported that the case of a woman whose husband had died before finishing a dower and consummating marriage, was referred to "Abdullah bin Mas'ud (Allah be pleased with him) who decided that she should be paid a dower according to the dower of the women of like status with herself, and this decision was afterwards found to be in accordance with the decision of the Messenger of Allah (Allah be pleased with him) in a similar case (Abu Dawud). In jurisprudence, it is called customary dower (Maher mithl). Therefore even if no sum has been specified at the time of marriage she is entitled to her proper dower (Maher Mithl) which is customarily fixed for the females of her family and is to be paid afterwards, and if unpaid in the husband's lifetime, it is a charge on his property after his death. The plain words of the Holy Quran require its payment at the time of marriage having exceptional cases when it may be determined or paid afterwards. Imam Malik follows this rule and renders payment necessary at the time of marriage, while Imam Abu Haneefa treats it more or less as a debt.

So far as the dower (Maher) or nuptial gift is concerned, it should be clearly borne in mind that it has no relation to the purchase – money with which the women are purchased the practice that we find in pre – Islamic Arabia and in so many countries and tribes of the modern age. Maher is in fact the token of love that is offered by the bridegroom to the bride while contracting marriage with her.

**Amount of Dower:** No hard and fast rule has been specified by the Holy Quran about the amount of dower. It is to be adjudged according to the social status of the parties, their wealth, their personal qualifications, and the condition of the human society. The Holy Quran says: "The wealthy according to his means and the straitened according to his means"(2:36)

It may be a ring or a stipulation to barely of dates. It may even be fixed on condition of accepting the religion of Islam. The dower of Umm Habiba (Allah be pleased with her) in marriage with the Messenger of Allah (peace and blessing of Allah be upon him) was fixed at 4,000 dirhams. The Maher of his daughter Fathima (Allah be pleased with her) was 400 dirhams. Some relevant traditions are quoted here to this effect.

Sahl bin Sa'ad al – Saidi (Allah be pleased with him) reported: A woman came to Allah's Messenger (peace and blessing of Allah be up on him) and said: Messenger of Allah, I have come to you to entrust myself to you (you may contract my marriage with any one at your discretion). Allah's Messenger (peace and blessing of Allah be up on him) saw her and cast a glance at her from head to foot. Allah's Messenger (peace and blessing of Allah be up on him) then lowered his head. When the woman saw that he had made no decision to her, she sat down. There stood up a person from amongst his companions and said: Messenger of Allah, marry her to me if you have no need of her. He (the holy Prophet said): Is there anything with you (which you can give as a dower)? He said: No, Messenger of Allah, by Allah, I have nothing. Thereupon Allah's Messenger (peace and blessing of Allah be up on him) said: Go to your people (family) and see if you can find something. The messenger of Allah (peace and blessing of Allah be up on him) said: see even if it is an iron ring. He went and returned and said: No, by Allah, not even an iron ring, but only this lower garment of mine (Sahl said that he had no upper garment) half of which (I am prepared to part with) for her. Thereupon Allah's Messenger (peace and blessing of Allah be up on him) said: How can your lower garment serve your purpose for if you wear it, she would not be able to make any use of it and if she wears it there would not be anything for you? The man sat down and as the sitting prolonged he stood up (in disappointment) and as he was going back Allah's messenger (peace and blessing of Allah be up on him) commanded him to be called back and as he came he said to him: do you know any part of the Qur'an? He said I know such and such Sur (and he counted them) where upon he said: can you recite them from heart (from your memory) he said: yes whereupon he (Allah's messenger) said: go I have given her to you in marriage for the part of the Qur'an which you know (Muslim).

Abu Salma bin Abd al – Rahman reported: I asked A'isha the wife of Allah's messenger (peace and blessings of Allah be up on him): what is the amount of dower of Allah's messenger (peace and blessings of Allah be up on him)? She said: it was twelve uqiyas and on Nash. She said: do you know what is al – Nash? No, she said. I said: it is half of uqiya and it amounts to five hundred dirhams, and that was the dower given by Allah's messenger (peace and blessings of Allah be up on him) to his wives. (Muslim).

Umar bin al – Khathab (Allah be pleased with him) reported: beware! Don't make dear dower of women. Had it been a cause of honour in the world and piety near Allah, Allah's messenger (peace and blessings of Allah be up on him) would have been the first about it. I didn't know whether the Allah's messenger (peace and blessings of Allah be up on him) married any of his wives and got his daughters married for more than 12 uqiyas. (Ahmad, Tirmidi, Abu Dawud, Nasa'I, and Ibn Majah).

Jabir (Allah be pleased with him) reported that the Allah's messenger (peace and blessings of Allah be up on him) said: whoso gives two handfuls of barley or dates as dower of his wife has rendered (private parts) lawful.(Abu Dawud).

Ummu Habiba (Allah be pleased with her) reported that she was the wife of "Abdullah bin Jahash who died in the land of Absiniya and then the Negus gave her in marriage to the Allah's messenger (peace and blessings of Allah be up on him) and took from him a dower of 4,000 dirhams. Then he sent her to the Allah's messenger (peace and blessings of Allah be up on him) with Shurahbil bin Hasana. (Abu Dawud).

Prompt and Deferred Dower: The latter jurists divided dower into two portions: one is called Mahr Mua'jjal (مهر معجل) that is, immediately exigible of prompt and the other Mahr Muajjal (مهر مؤجل) that is deferred. Whether a dower should be entirely or in part exigible of deferred depends on the contract of the parties and in the absence of any contract, on the custom of the country. Even during the subsistence of the marriage the wife is entitled to demand so much of her dower as is exigible, but she is not entitled during the continuance of the marriage to demand the deferred portion of the dower. It becomes due on the death of either party, or on the dissolution of marriage.

**Dowry:** is the property which a woman brings to her husband at marriage. It is quite different from dower which is a payment made by the bridegroom to her bride in terms of the contract of marriage. Dower has a legal sanction. It is enjoined in the Holy Quran to pay it.

"And give the women (on marriage) their dower as a free gift....."

Dowry is the free gift given by the parents to their daughter at the time of her marriage. Dowry may be given in the form of cash, utensils, furniture, ornaments of clothes. The idea behind dowry is to help the newly formed family to set up a home of their own. Dowry has no legal requirements in Islam. There is no injunction in the Holy Quran about it. It depends upon the sweet will as well as the capability of the parents of the girl to give dowry or not.

Today the problem of giving dowry has become very serious because people have started thinking about it differently. The would – be (bride groom) demands it as a matter of right. Mostly such demands are too excessive. The parents of the girl might not afford to meet them. The result, some time is that marriage of their girl does not take place. There are many girls in our society who have passed the blooming years of their life at their parents' home waiting idly for their rightful consort.

Some parents for fear of their daughter being neglected by her prospective husband try to meet his demands despite their meagre resources. They are burdened in debt on this account. For that reason dowry has become a curse today. There are others who bestow dowry lavishly to display in public eye their wealth and status.

Evil Practice: there is in vogue an evil practice among the fuelled class of Muslims that they give heavy dowry to their daughter at the time of her marriage and in consequence deprive her of the share of inheritance from their property. This is against the injunction of the Holy Quran which says:

"From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property be small or large – a determinate share"(4:7).

Again the Holy Quran says:

"Allah (thus) directs you as regards your children's (Inheritance): 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 ... These are settled portions ordained by Allah: and Allah is All – knowing, All – wise" (4:11)

Dowry is not a religious obligation. People seem to have given it sanctity because the Holy prophet Muhammed (Peace and blessings of Allah be up on him) had given dowry to his daughter, Hadrat Fathima (Allah be pleased with her), at the time of her marriage. However, there is a vast difference between the dowry given by the Holy prophet Muhammed (Peace and blessings of Allah be up on him) and the one exorted from the parents of the girl today. The dowry gifted to Hadrat Fathima ( Allah be pleased with her) consisted of the utility articles of daily use, such as a mattress a cot , a grind stone, a water – bag, which were partly purchased out of the sale proceeds of the armour of Hadrat Ali ( Allah be pleased with him).

These Items show the reader that the dowry provided to Hadrat Ali and Hadrat Fathima (Allah be pleased with them) met the basic needs of newly – wedded couple. It was gifted out of necessity. The bride groom, Hadrat Ali (Allah be pleased with him) was not an affluent person. He even had not the money to pay dower money or meet the expenses of his marriage. He had no house of his own. It was a rented house in which he brought his wife, Hadrat Fathima (Allah be pleased with them) to live in. He had to sell his armour which the Holy Prophet Muhammed (peace and blessings of Allah be up on him) had him bestowed upon him. The large paraphernalia generally given to the girl of today cannot be compared with the dowry of Hadrat Fathima (Allah be pleased with her).

It may clearly be understood by every boy and every girl of today who are planning marriage that they are not superior to Hadrat Ali and Hadrat Fathima (Allah be pleased with them). They should therefore, discourage to be provided large scale dowry as a pre – requisite of marriage. Islam likes moderation. The well-known saying of the messenger of Allah (peace and blessings of Allah be up on him) is:

Moderation in affairs is the best of all "(Sha'b al Iman)

Islam does not enjoin any dowry or makes wealth as the deciding factor for taking a woman for life. Islam, provides, on the other hand, dower for the woman from her husband.

## **POLYGAMY IN ISLAM**

Polygamy was practiced by the ancient Jews. Among askenazi Jews, plural marriage had virtually disappeared at the time it was formally forbidden by Rabenu gershomi in the 11th century AD. Nonetheless polygamy has continued even until the present day among oriental Jews among whom it is considered legal but is not generally practised and has become increasingly rare. in Israel today while new second marriages are not allowed, present exiting polygamous marriages are recognised.

It should be noted that in actual fact in most cultures Polygamy rather than monogamy has been the rule. Monogamy is not even implied in early Christian doctrine and Jesus is now known to have spoken against polygamy. Charlemagne had two wives simultaneously. Polygamy was legally practised and accepted by the Christian church as recently as the 17th century. Polygamy was also practised by the church of jesus chrism of latter-day saints (Mormons) in America in the 19th century until it was forbidden by secular law.

"In Hindustan polygamy was prevalent in Vedic and Post-Vedic ages. The existence of polygamy or promiscuous marriages presupposes the low status assigned to women in the earliest ages. that a man could marry as many wives as he pleased is surely an index of the backwardness of the society.

It appears that in the time of Manu, the practice of polygamy was not held in contempt, but was treated as a privilege reserved for the twice-born classes and in this matter a Brahman was most fortunately placed as he could keep as many as four wives, one being from his own caste and the rest from the remaining three cast, a Kshatriya was entitled to three one being from his own caste and the rest from the remaining two castes. Similarly, a Vaishya was entitled to two wives, one belonging to the Vaishya caste and the other to the shudra caste. A shudra was allowed only one wife and therefore, had to lead a monogamous life.

Thus polygamy, the relic of barbarous times existed also in Hindu society. Polyandry too existed. The five Pandava brothers had a common wife. Many of the Israelites patriarchs were polygamous and some had hundreds of wives.

Solomon the wise is said to have seven hundred wives in addition to three hundred concubines. Hadrat Dawud (peace be upon him) had ninety-nine wives. Hadrat Ibrahim, Yaqub and Musa (peace be upon them) had three or four wives each but neither the Jews nor the Christians not even the Vedic Hindus and Zoroastrians prescribed limits as to the number. The Germans up to the 16th century enjoyed an unbridled licence. King Constantine and his successors had more than one wife. The Romans and the French practised polygamy before they came into the fold of Christianity. The Christian law of monogamy was framed by Justinian, the Roman lawgiver, who was suspected of being an atheist. In Iran, Egypt, Greece, Babylon and Austria polygamy was in vogue. The New Testament, while upholding monogamy does not prohibit polygamy except in the case of a bishop or a deacon. Even the Christian kings practised it.

In Islam, the practice of polygamy is allowed. It should however, be noted that Islam did not introduce the custom but rather restricted the practice already existing. There is only one verse in the holy Qur'an which discusses polygamy:

"And if ye fear that ye will not deal fairly with the orphans, marry of the women who seem good to you two, or three or four, and if ye fear that ye cannot do justice (to so many) then one (only) or (the captives) that your right hands possess. Thus it is more likely that ye will not do injustice."

As a commentary to the above, Maulana Syed Abdul A'la Maududi writes:

Polygamy was a current practice in Arabia even before the revelation of this verse. The prophet (peace and blessings of Allah be upon him) had also a number of wives; and similar was the case with quite a number of his companions. This verse was revealed after the war of Uhud. It aimed at making Muslims feel that they need not worry about the upshot of orphans due to martyrdom of many Muslims, that it was an easy solution to resort to polygamy which was permissible even from before, this verse did not indicate any new permission it urged that a particular current practice which was permissible should be resorted to for the solution of a social problem. What was new in the verse was the restriction on the number of wives."

This verse which is the only one on the topic clearly shows that the holy Qur'an favours the natural course of monogamy; however to meet certain physical, family, social or political situations, it has given permission of polygamy. Monogamy is the food which sustains society. Polygamy is the medicine of the disease of the society. If the West were to follow Islam in this respect today, all the destitute and helpless women there could become members of decent families, and prostitution and immorality can be effectively stamped out.

From the age of 25 to the age of 50, the messenger of Allah (peace and blessings of Allah be upon him) lived with one wife only, khadija (Allah be pleased with her). That way he demonstrated that Islam favoured monogamy. He married again only after khadija (Allah be pleased with her) had died and when the situation had changed socially and politically.

In the case of having more than one wife, it is a tyranny to incline towards one wife so exclusively as to leave the other wife or wives in a state of suspension. This is declared unlawful by the holy Qur'an in unambiguous terms:

"Do not incline towards one so exclusively as to leave the other in a state of suspension" (4:129)

The holy Qur'an grants the permission of taking more than one wife under the provision of justice. The verse which permits up to four wives also contains a clear order that if you cannot do justice, you should keep one wife only.

The great western thinker and play writer, Bernard Shaw advised the people of Europe to adopt polygamy in order to save Europe from the flood of adultery. Another western writer Mr. J.E McFarlane, in his book entitled the case for Polygamy, writes:

It is untrue that Christ advocated monogamy. Whether the question is considered socially, ethically or religiously, it can be demonstrated that polygamy is not contrary to the highest standards of civilization. The suggestion offers a practical remedy for the western problem of the destitute and unwanted females, the alternative is continued and increased prostitution, concubine and distressing spinsterhood.

From this it is crystal clear that thousand of young women remain unmarried or seek refuge in churches and monasteries due to non-availability of males and they naturally adopt illegitimate ways of satisfaction.

In short, polygamy in Islam came into practice to serve the interest of the weaker sex, and it will continue to serve in this capacity whenever the situation demanded. This is the spirit of the Islamic Law of polygamy.

A word from Dr. Annie Besant would not be of place here. she says:

There is pretended monogamy in the west, but there is really polygamy without responsibility; the "mistress" is cast off when the man is weary of her and sinks gradually to be the "woman of the stress" for the first lover has no responsibility for the sheltered wife and mother in the polygamous home. When we see thousands of miserable women, who crowd the streets of western towns during the night we must surely feel that it does not lie in western mouths to reproach Islam for its polygamy. It is better for a woman, more respectable for a woman, to live in Islamic polygamy united to one man only. with the legitimate child in her arms surrounded with respect than to be reduced, cast out on the streets, perhaps with an illegitimate child outside the pale of law- unsheltered and uncared for, to become a victim of any passer-by, night after night, rendered incapable of motherhood, disposed by all.

Dr. Billy Graham, the world famous Evangelist says: "Christianity cannot compromise on the question of polygamy. If present-day Christianity cannot do so, it is to its own detriment. Islam has

permitted polygamy as a solution to social ill and has allowed a certain degree of latitude to human nature but only within the strictly defined framework of the law. Christian countries make a great show of monogamy, but actually they practise polygamy. No one is unaware of the past mistresses play in western society. In this respect Islam is a fundamentally honest religion, and permits a Muslim to marry a second wife if he must strictly forbid all secret amatory association in order to safeguard the moral polity of the community."

Westermarck quotes a number of writers in his book *Future of marriage in western civilization*, who advocate the legislation of polygamy on different grounds. He says: "Dr Cope sees no objection to voluntary polygamy or polyandry being permitted, if agreed to by all the parties. Under-ordinary circumstances, he says, very few persons would be willing to make such a contract. But there are some cases of hardship which such permission would remedy. Such for instance would be the case where the man or woman had become the victim of a chronic disease; or, where either party should be childless and in other contingencies which can be imagined. For the most part, he adds, the best way to deal with polygamy is to let it alone. So also, according to Mr. Southern, the preference that most people give to monogamy is no reason why the state should enforce it. So far as other forms of marriage can be practised by mutual consent, and without detrimentally affecting children, the state hasn't the ghost of a right to veto them. Dr. Norman Haire, who maintains that legalised polygamy would offer many advantage to the majority of people, argues that if the children are supported by the state, the need be no limit to the number of legal mates. Professor Dunlop think it may well be that certain individuals cannot attain complete satisfaction in monogamy, but may reach a highly satisfying adaptation in polygamous marriage, and that the system of the future will leave individuals free to form whatever types of matrimonial alliances are most advantageous to them..... In France, Dr. Le Bon has predicted that European legislation in the future will recognize polygamy..... A return to polygamy, the natural relationship between the sexes, would remedy many evils: prostitution, venereal diseases, abortion, the misery of illegitimate children, the misfortune of millions of unmarried women, resulting from disproportion between the sex's adultery and even jealousy, since the disregarded wife would find consolation in her cognizance of not being secretly deceived by her husband.... A radical champion of polygamy is professor Christian von ehrenfels; who regards it as necessary for the preservation of the Aryan race..... In Persia, according to Colonel Macgregor, only two per cent have a plurality of wives. In Pakistan and India the percentage is not higher. He further admits that man's taste for variety in sex experience is more intense than the woman's and this has led to the often repeated view that he is instinctively polygamous."

Hostile critics try to make out that polygamy is an institution started by the Holy Prophet (peace and blessings of Allah be upon him). This allegation is based on ignorance and wantonness. Polygamy is an institution as old as human race itself. Prior to Islam polygamy was widely practised in all parts of the world. It is customary with the non-Muslims specially European to hurl inadvertently criticism at polygamy with out considering the pros and cons of this custom. The main reason expostulated is that it is designed for the satisfaction of unrestrained lust. Nothing can be farther from the satisfaction of unrestrained lust. Nothing can be farther from the truth than this ill-founded and notorious notion, which is undoubtedly due to ignorance and sheer lack of knowledge of the circumstances under which polygamy is permitted and practised. Notwithstanding the restrictions and limitations imposed by the Divine Law, and the conditions under which a Muslim can justifiably have more than one wife, I take the liberty to explain the advantages and the convincing reasons in its justification.

I would discuss the natural aspect first. It is established by nature as regards mental capacity, physical strength and vitality. In everyday life we find heterogeneous and vastly different people. Ordinarily men and women are categorised as (i) normal and (ii) abnormal-physically, mentally and sexually. Again there are two kinds of abnormal people. i.e., excessively sexed and very meagrely sexed. It is not universally correct that men and women, who are bound together by matrimonial ties; are essentially at par and equal in every respect. In not many husbands and wives are, fortunately enough, nearly equally sexed and possess sufficiently equal physique and vitality. Thus for a man, who is by nature stouter, stronger and tougher than a woman, when endowed with abnormal vitality and sexual desire, it is not humanly possible to control himself and restrain the powerful instinct of mating. If such an abnormally sexed person were to try to do so, he would assuredly break his nerves and would go against the natural impulse, which has been generously awarded to him by nature, coupled with immense strength, abounding vitality and enormous energy. A man is a human being and not an angel; hence it is not possible for him to restrain himself to a great extent.

It is admitted that one should possess sufficient restraint and adequate self-control and should not allow lust and animal desires to overwhelm and overpower him, but at the same time he should not be expected to excruciate and torture himself in an attempt to restrain and pacify it. This would, undoubtedly, mean a perpetually recurring self mortification for the abnormal and powerful person. Thus it would prove, naturally, a sort of punishment for him and no reasonably just person can like to inflict it upon a man so constituted and built by nature, as long as he respects the codes of morality and does not indulge in hateful acts of immorality and immodesty which are forbidden by all the religions of the world. If such a strong man is deprived of or denied the right to marry an other young woman, he would be compelled to commit adultery and lead a life of debauchery, which is not only a great sin, as declared by the Holy Books, but also an illegal act and misdeed against all canons of morality. These detestable consequences are evident every where-particularly in Europe- where ever-increasing immorality is causing terrible headache for all the decency-loving and religious-minded sections of the European public.

It is indisputable fact that in the pretended monogamous society in the west, there is undoubtedly and in reality, polygamy being practised but without the requisite responsibilities and the rights thereof. A man keeps more than one woman but hypocritically declares that he is living faithfully with one only. He has not the moral courage to admit and take the responsibility of the others, with whom he enjoys and maintains conjugal relation, and in spoiling whose modesty and chastity he does not entertain any shame or fear. He is heedless of the consequences and reckless in the game or in the pursuit of endless pleasures. In Europe and America a mistress is cast off frequently, when then man become weary and tired of the easily gotten prey there is no other alternative for the poor and innocent creatures but to sink into "women of the streets", because their first lovers have no responsibilities whatsoever or binding for their future. They are thus unfortunately; a hundred times worse of than a sheltered, well-fed, and well-looked after wife and a happy mother in the polygamous home.

It is far better for a woman, happier for her, more respectful and more secure for a woman, in polygamy, wedded to one strong, well-to-do and God-fearing man, with the legitimate child in her arms and surrounded with respect, than to be reduced, cast out helplessly and dishonourably in to the streets, with an illegitimate child, unsheltered and uncared for. Such a woman is assuredly liable to fall a prey repeatedly to other passers-by, so many times, being deprived of honour. Many of them are rendered incapable of producing children. They are frequently victimized and are then

hated and despised by the society which wilfully neglected them. Then natural result is demoralisation and degeneration-horrible increase in the birth-rate of illegitimate children and abortions. It is no secret that corruption and immorality are adopting tremendous proportions in countries where the number of women is comparatively larger.

There is another important physical factor as regards a woman which cannot be ignored. Nature has assigned a woman the sacred task of producing children. She is frail, slender and rightly named as "weaker" and "fair sex". A woman takes pride in motherhood. Every time a woman gives a birth to a child she divides herself. After dividing herself again and again, her fires are slackened. But a man's fires burn on. An abnormal man cannot lead a happy life with a woman who becomes weak after successive births, whereas man remains still youthful and full of vigour and vitality. If he does not marry another young woman, he would tread the path of immorality and sin, as it is not conceivable that he can necessarily in controlling himself.

Now I take another aspect of the question. Marriage is not only the union of bodies but also that of the souls. Along with the satisfaction of passions and physical desires, the happiness of the couple is of vital importance, to achieve full happiness and contentment, it is a natural desire of husband and wife to have children i.e., their true copies and successors. It is a well-known saying that we live in our children. No couple can be happy until and unless they get a child, which is the coveted and cherished fruit of celestial love and natural instincts. If a woman ultimately proves to be barren and sterile, the unhappy man should not be penalized by identifying him the right of marrying another woman. In cases where the man is a big landlord, wealthy business man or industrialist, but his wife is barren, to compel him not to have another better – half is tantamount to tormenting an unfortunate and aggrieved person. It is really deplorable to deny a person his just right to enhance his happiness by leaving his legal heir to the hard-earned wealth. A barren wife cannot be passionately loved rather husband begins to hate and despise her. The souls are thus torn asunder and happiness vanished.

Like wise when viewed from the political point of view, it proved very advantageous. A Muslim ruler succeeded in uniting different states, clans or groups by contracting matrimonial with their women folk. In this diplomatic way they eradicated from the minds of rival and factious groups all the detestable prejudices and animosities with which they had been imbibed. It led to a no inconsiderable success of unifying the different tribes and communities.

After the bloody, ruinous and devastating wars, when thousands of young men are killed and disabled, and the equal number of women are left as widows the question of supporting these lonely women and millions of helpless orphans face the nation. It becomes all the more imperative to devise means of saving them from the clutches of starvation and misery. It is tremendously difficult for an already impoverished and wrecked government to bear the neck breaking burden of supporting these wretched millions.

Only well to do and tolerably rich and patriotic men can come to the rescue and share the responsibilities of affording them help. Under such circumstances if every wealthy and healthy man is allowed to marry a young widow, she would get not only reasonable financial aid but also would be saved from degeneration and embarking upon immorality – in another words she should not be compelled to become a prostitute. Here it can be said that she can earn her own livelihood by adopting some convenient profession or getting domestic employment somewhere. But she cannot be expected to go against the laws of nature and end her passionate instincts. After all woman is a human being and not an angel.

The numerous facts and abundant figures point out and clearly indicate the limited utility of monogamy when compared with the benefits of polygamy. In Europe the falling birth rate, the large increase of divorce and the innumerable cases of abortion, the endless instances of immoral deeds, prove abundantly that the principles of Islam can only save that society from the ignominious and disastrous end. All these social evils and immoral doings can be terminated if polygamy is encouraged in the west as well as in the East. The rich people can conveniently render help to reform and extricate the poor from the quagmire of poverty, ignorance and misery by coming into closer contact through matrimonial. It is, thus not wise to blindly criticise a system whose utility and usefulness has already been proved through practical experience all the time.

## **Divorce**

Marriage with all its sacredness is a civil contract in Islam and can be subjected to any reasonable and lawful stipulation. The Western world has realized the hardship of the unnatural and irrational dogma under which it is believed that human agency cannot separate what has been joined together by Allah. Divorce according to Islam, being a preventive measure against violation of peace, a device for securing an amicable settlement, and after all a salutary safeguard to protect the weaker sex from continuous ill treatment, due to disagreement or any other reason, has justly been provided as a dissolution of an unhappy marriage which may turn out to be a burden rather than an asset and, contrary to all expectations of happiness and help, may happen to be a horror and hindrance.

According to Hindu law of marriage, once performed cannot be dissolved under any circumstances. The right of divorce according to the Jewish law belongs to the husband who can exercise it at his own will. The Christian law recognizes the right of divorce only when there is faithlessness on the part of either of the parties, but the divorced parties are precluded from marrying again. Islam has effected several reforms in the law of divorce. It has restricted the husband's right to divorce and has given recognition to the wife's right to it. If the right is exercised by the husband it is called *Talaq* which carries the literal significance of "freeing or undoing of a knot," and in case it is claimed by the wife it is called *Khula'* which means "the putting off or taking off a thing." It is a kind of facility provided to the wife in securing divorce from her husband by returning a part or full amount of the *mahr* (dower)

Islam recognizes the necessity of divorce in cases when marital relations are poisoned to a degree which makes a peaceful home life impossible. But Islam does not believe in unlimited opportunities for divorce on frivolous and flimsy grounds, because any undue increase in the facilities for divorce would destroy the stability of family life. Therefore, while allowing divorce even on genuine grounds, Islam has taken great care to introduce checks designed to limit the use of available facilities. The French legists Planiol and Ripert have explicitly emphasized Islam's point of view in regard to divorce in these words:

"Divorce is a mischief. However, it is a measure that cannot be avoided for the welfare of the community, because it is the only remedy for another harm which may be more dangerous. The prohibition of divorce, whatever harm it may imply, is like the prohibition of surgery, because the surgeon is compelled to amputate some of the limbs of the patient's body. However, there is no danger, whatsoever, in legislating for divorce (in accordance with the practice established by Islam) since it is not divorce that spoils married life and dissolves its sacred tie but the misunderstanding that arises between the married couple and hinders the strengthening of this (union by marriage) and demolishes it. Divorce alone puts an end to the hatred that may occur between the husband and his wife before it is aggravated and becomes an intolerable mischief to society"

Divorce becomes a necessity when the husband and the wife are not pulling on well. It is a sheer foolishness to keep the tied up in matrimonial bond when it is unpleasant to both. It rather enhances the sufferings of the couple and their children rather than increase their happiness. Therefore, it is a natural law that the dissatisfied couple should be separated from the marriage tie for the welfare of the household, children and society. In instituting this doctrine of divorce, Islam did more good to women as men may take several wives in case of disagreement with the first wife but a woman cannot. If a husband is impotent, or if a wife or husband generally resorts to adultery, it is a nuisance to keep them tied up in marriage bond especially when all efforts to bring about a compromise prove unavailing. If the husband or the wife becomes permanently diseased or unfit for sexual intercourse, justice demands a divorce.

While permission has been given both to man and woman to obtain a release from the bond of marriage in cases of absolute necessity, the Messenger of Allah (peace and blessings of Allah be up on him) has made it clear that Islam does not regard it as desirable. Ibn Umar (Allah be pleased with him) reported that the Messenger of Allah (peace and blessings of Allah be up on him) said: of all the lawful things, divorce is the most detestable thing in the sight of Allah (Abu Dawud). In another tradition, he admonishes: "Contract marriages and do not give divorce, for Allah does not approve of pleasure seeking males and females".

The Holy Quran teaches that even if you dislike a woman, you should do your utmost to keep your marriage intact with her:

But consort with them in kindness; for if ye hate them it may happen that ye hate a thing wherein Allah hath placed much good" (4:19).

If the wife is not beautiful or has some other shortcoming that might not be to the husband's liking, it does not mean that he should make up his mind to get rid of her at once without any further consideration. He should behave patiently. She may have some other redeeming qualities that may be more conducive to a happy married life than beautiful looks. It is just possible that the discovery of those qualities might change his repulsion at first sight into attraction. In the same way sometime it so happens that in the beginning of married life the husband takes a dislike to some thing in the wife and feels a repulsion towards her but if he is patient with her and lets her show her better side fully, he himself realizes that her good qualities more that compensate for her shortcomings. Therefore it is not right for the husband to sever his relations with his wife without a great deal of thinking. Divorce is the very last thing to which one may resort as a necessary social surgery and that, too, only when it becomes absolutely inevitable and all efforts of peaceful living between the husband and wife miserably fail. Islam exhorts both the husband and the wife to think a hundred and one times before making the final decision of separation, and it has, therefore, afforded all possible opportunities for reconciliation and provided ample time to reflect calmly over the pros and cons of the matter. Remedies are therefore, suggested to avoid divorce as long as possible. The Holy Quran says:

And if you fear a breach between them twain (i.e. the husband and wife) appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment Allah will make them of one mind. Lo! Allah is ever knower, Aware" (4: 35).

It was due to such teachings of the Holy Quran that the Messenger of Allah (peace and blessings of Allah be up on him) declared divorce to be the most detestable of lawful things. And it

is due to this that, in spite of the facility with which it may be effected, divorce takes place only rarely among the Muslims, compared with the large number of divorce in Christian countries. The mentality of the Muslim is to face the difficulties of the married life along with its comforts, and to avoid disturbing the disruption of the family relations as long as possible, turning to divorce only as a last resort.

**Principle of Divorce:** the principle of divorce spoken of in the Holy Quran and which in fact includes to a greater or less extent all causes is the decision no longer to live together as husband and wife. In fact, marriage itself is nothing but an agreement to live together as husband and wife, and when either of the parties finds itself unable to agree to such a life, divorce must follow. It is not, of course, meant that every disagreement between them would lead to divorce; it is only the disagreement to live any more as husband and wife. In the Holy Quran such disagreement is called *shiqaq* (from the word *Shaqq* meaning breaking in to two). But not even the *shiqaq* entitles either party to a divorce, unless all possibilities of reconciliation have been exhausted.

An effort should be made to effect reconciliation before resorting to a court of law or making the final breach. The plan is to appoint one arbiter from the family of each spouse for the purpose. The two should probe into the real cause or causes of the dispute between the parties and then try to find a suitable way out of it. Of course, the relatives are best qualified for it, knowing as they do the true conditions of the spouses.

The above verse (4: 35) gives us not only the principle of divorce, which is *shiqaq* of a disagreement to live together as husband and wife, but also the process to be adopted when a rupture of marital relations is feared. The two sexes are here placed on a level of perfect equality. A breach between the two would imply that either the husband or the wife wants to break off the marriage agreement, and hence either may claim a divorce when the parties can no longer pull on in agreement. In the process to be adopted, both husband and wife are to be represented on a status of equality; an arbiter has to be appointed from his people and another from her people. The two are told to try to remove the differences and reconcile the parties to each other. If agreement cannot be brought about, a divorce will follow.

There is a difference of opinion regarding the powers of the arbiters, according to the Hanafi and Shafi schools of thought, the arbiters are not authorized to pass any final decree but may recommend measures for reconciliation, which may be accepted or rejected by the spouses. Of course, if the spouses themselves authorize them to effect divorce or *Khula'* or take any other measure, then they shall be bound to accept their decision. Hasan Basari, Qatada and some other jurists are of the opinion that the arbiters are authorized to enforce reconciliation but not separation. Ibn Abbas, Sa'ad and some other jurists are of the opinion that the arbiters have full authority to enforce their decision about reconciliation or separation whichever they consider to be proper.

Hadrath Uthman and Hadrath Ali (Allah be pleased with them) used to authorize the arbiters appointed by them with full powers to effect reconciliation or separation as required by the circumstances. For instance, when the case of *Aqil*, son of Abu Talib, and his wife Fathima, daughter of Utba bin Rabia', was brought in the court of Hadrath Uthman (Allah be pleased with him), he appointed as arbiter Ibn Abbas (Allah be pleased with him) from the family of the husband and Mua'viya (Allah be pleased with him) from the family of the wife and told them that they were authorized to cause separation between them, if required by circumstances. Likewise Hadrath Ali (Allah be pleased with him) appointed arbiters in a similar case and authorized them to effect

reconciliation between the spouses or separate them. This shows that the arbiters as such do not possess judicial powers, but if at the time of their appointment, the authority concerned empowers them with judicial powers, their decision shall be binding and enforced like other judicial decisions.

The breach of the marriage agreement may arise from many causes or from the conduct of either party; for instance, if either of them misconducts himself or herself, or either of them is consistently cruel to the other or; as may some time happen, there is incompatibility of temperament to such an extent that they cannot live together in marital agreement. At first sight it may look like giving too much latitude to the parties to allow them to end the marriage contract, even if there is no reason other than incompatibility of temperament, but this much is certain that if there is such disagreement that the husband and the wife cannot pull on together. It is better for themselves, for their offspring and for society in general that they should be strengthened rather than that they should be compelled to live together. No home is worth the name wherein instead of peace there is wrangling, and marriage is meaningless if there is no love between the husband and wife. It is an error to suppose that such attitude tends to destroy the stability of marriage, because marriage is entered into as a permanent and sacred relation based on love between a man and woman, and divorce is only a remedy when marriage fails to fulfil its object.

**Procedure of Divorce:** Divorce may be given orally or writing, but it must take place in the presence of witnesses: Then, when they have reached their turn, take them back in kindness or part from them in kindness, and call to witness two just men among you, and keep your testimony upright for Allah" (65:2)

It may be done orally or by writing attended with actual utterances of divorce. Whatever the actual words used, they must expressly convey the intention that the marriage tie is being dissolved.

Divorce, if given at all, should be pronounced when the woman is in a state of purity. The Holy Quran says: "When ye divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods. And fear Allah, your Lord". (65:1).

According to the above verse, the first principle is that the divorce should be pronounced in the period of purity when menses are over. It has two important reasons. Firstly, during menstruation women become irritable and tense due to physiological changes. It is forbidden to divorce a wife in consequences of marital rift arising during her menstruation. Secondly, during the period of menstruation the marriage partners are cut off from that physical intimacy which is the main source of their mutual attraction and adhesion. When the difficult period is over, it is possible that with the resumption of sexual relations tender emotions will prevail and the resentment which inclined the husband to divorce will melt away.

The second point is that the pronouncement of divorce should be spread over three periods (three monthly courses) and then the final decision should be made whether one is prepared to take her back or one has decided to bid her good – bye for ever.

It appears from the above verse that if a divorce takes place, it becomes irrevocable only after the prescribed time and that no divorce is valid if not made revocable within the prescribed time. In other words, a wife can be taken back for sexual embrace within the prescribed time but no beyond it. It is also clear that before the expiration of the fixed time, no divorce is irrevocable. Now what is the time prescribed for making a divorce irrevocable? It is three courses in case of menstruating and consummated women. The Holy Quran says:

"And the divorced women shall keep themselves in waiting for three courses" (2:28).

This period of waiting is prescribed for women so that the state of pregnancy should become clear and no doubt is left in regard to the fatherhood of the new born child. Secondly both the parties should be given a time limit to reconsider the consequences of permanent separation within this time of three monthly courses and ponder hundred and one time before taking the final step. This period of three monthly courses is prescribed for those mature women who are free and their husbands have cohabited with them. If a woman is of very advanced age and she does not menstruate, her period of waiting is three months. In case of pregnancy this period extends to delivery no matter it is one day of nine months. There is no *Idda* for that woman with whom her husband has not cohabited.

Just differ in the interpretation of this verse. The Hanafi jurists are of the opinion that the husband retains the right of reunion up to the time of purification of the wife by a bath after the third monthly course. This is the opinion of Hadrat Abu Bakr, Umar, Ali, Ibn Abbas, Abu Musa Al – Asha'ri, Ibn Masu'd (Allah be pleased with them) and some other companions of the first rank. The Shafi'i and Maliki jurists however are of the opinion that the husband forfeits the right of reunion as soon as the wife has a discharge of the third monthly course. This opinion is held by Hadrath A'isha, Ibn Umar and Zaid bin Thabith (Allah be pleased with them). It must, however, be clearly understood that the husband retains the right of reunion only in that case when he has pronounced one divorce or two divorce, but he forfeits the right of reunion when he pronounces three divorces.

The prescribed period is three months in case of women whose menstruation has stopped or the time up to delivery in case of pregnant woman. The Holy Quran says: "And for such of your women as despair of menstruation, if ye doubt, their period of waiting shall be three months, along with those who have it not. And for those with child (pregnant women), their period shall be till they bring forth their burden" (65: 4).

What does the prescribed time of waiting mean? It is merely a period of temporary separation during which conjugal relationship may be re- established. Thus the period of waiting is only a chance given to the couple for reunion and to make divorce revocable before the prescribed time is reached. This is corroborated by other verses of the Holy Quran as follows: "And their husbands would do better to take them back in that case if they desire a reconciliation" (2:228).

Here it has been distinctly stated that the divorce is recoverable within the prescribed time. It has been corroborated by another verse: "Divorce must be pronounced twice and then (a woman) must be retained in honour or released in kindness" (2: 229).

It means that the husband must make his decision final after the completion of the two divorces and before the completion of the third divorce, within which he should take back his wife. That is only possible in case there is time of two courses or two months to consider. In case of Talaq Bida' (divorce by immediate utterances of the divorce formula three times) there is no time for consideration and hence it is against the spirit of the Holy Quran and Ahadith. The Holy Quran rather warned the people not to adopt this method saying: "And do not play with Allah's commandments." (2: 231)

The Messenger of Allah (peace and blessings of Allah be up on him) condemned it. Mahmud bin Labeed (Allah be pleased with him) reported that the Messenger of Allah (peace and

blessings of Allah be up on him) was informed about a man who gave three divorces at a time to his wife. Then he got up enraged and said: Are you playing with the Book of the Almighty and glorious Allah while I am (still) among you? So much so that a man got up and said: shall I not kill him? (Nasa'i).

The Hadith records that "Abdullah bin Umar (Allah be pleased with him) divorced his wife when she was having her monthly course. This was reported to the Messenger of Allah (peace and blessings of Allah be up on him), who was exceedingly displeased and observed "Order him to take her back and divorce her when she is in a pure state after menstruation". In another tradition it is reported that the Messenger of Allah (peace and blessings of Allah be up on him) admonished Hadrat Ibn "Umar (Allah be pleased with him) on this act and taught the procedure of divorce thus: "Ibn Umar, you acted in the wrong manner. The correct way is to wait for the period of purity and when the third period has arrived, either pronounce a final or keep her". Hadrath Ibn Umar (Allah be pleased with him) submitted: "If I had pronounced divorce thrice, would I retain the right of taking her back". No she would be cut off from you and it would have been a sin". (Darqutni and Ibn Abi Sahiba).

The above discussions make it clear that a simultaneous pronouncement of three divorces is a sin. The object of Shariah, as has been explained above, is to maintain as far as possible the matrimonial tie: but if it is broken it should be done when all chances of healing the rift and bringing about reconciliation have been exhausted. From what has been stated above, the following conclusion is drawn. Every possible attempt must first be made for reconciliation between the married couple before the completion of the prescribed period. The judges from the parties should arrive at a compromise for domestic peace.

If the husband dislikes a wife, he was commended by Allah not to dislike her. If still after that, there is disagreement, then he may divorce her. In order to check hasty action and leave the door open for reconciliation at many stages, the right method of pronouncing divorce as taught in the Holy Quran and the Traditions is this: if and when it becomes inevitable it should be pronounced only when she is not in her menses and even if a dispute arises during the monthly period, it is not right to pronounce divorce during that condition, but he should wait for her to cleanse herself and then may pronounce a single divorce, if he so likes. Then he should wait for her next monthly course to pronounce the sec, if he so wishes. Then he should wait for the next Monthly Course to pronounce third and final divorce after she is cleansed. It is, however, better to wait and reconsider the matter after the first and second pronouncement for in the case of two divorces, the husband retains the right to take her back as his wife after their expiry. But if divorce is pronounced for the third time, the husband forfeits the right to take her back no can the couple remarries.

As for those ignorant people who pronounce divorce thrice at one and same sitting, they commit a heinous sin against the law. The Messenger of Allah (peace and blessings of Allah be up on him) has very severely denounced this practice.

### **Comprehension**

1. In what position women lived in different civilizations in the history?
2. Give a brief note on women's position in the following civilizations
  - a. Greek civilizations

- b. Chinese civilizations
  - c. Hinduism
  - d. Buddhism
  - e. Judaism
  - f. Christianity
3. Discuss the condition of women before Islam
  4. Discuss the status of women in Islam
  5. Discuss sex equality in Islam
  6. What are the objectives of marriage in Islam?
  7. Which Arabic word stands corresponding to Dower?
  8. What does dower mean in marriage ceremony?
  9. Discuss importance of Marriage in Islam
  10. Which Arabic word stands corresponding to Marriage in Islam?
  11. What does the Dowry mean in marriage?
  12. Discuss Polygamy system prevailed in different communities in history
  13. Discuss Polygamy in Islam
  14. What are the procedures of Divorce in Islam?
  15. How does Islam consider Divorce?



## Part – IV

### ISLAMIC ECONOMIC ORDER

The basic principle with which Islam starts is the faith in Allah and His worship and complete submission to His will and plan. All bounties are from Allah. They may be physical gifts the wealth and other worldly possessions. We are all asked to use them in humility and moderation indicated the need to identify the areas of the Quran and the Sunnah dealing mainly with economic aspect.

Social order conceived of by Islam is mainly based on the teachings of Holy Quran and the saying and the practices of the Holy Prophet (peace be upon him). It is neither capitalistic nor communistic, but it stands on its own and combines all the good features of a healthy and balanced society. In fact this is the system based on equality, liberty and justice. Islam has already provided such fundamentals in its economic system whereas free enterprise and ownership of private property are allowed and accumulation of wealth in a few hands and exploitation of poor by the rich are prohibited.

The Holy Quran has ordered upon the Believers not to love the wealth that they possess, nor should they be extravagant or the misers but spent in a balanced way in Islam absolute ownership of everything belongs to Allah. The sovereignty of heaven and the earth and all that is between them belongs to Allah. It follows that proprietorship of all free gifts of nature, land, water and their wealth does not belong to any individual. Mankind holds them jointly in trust. The trust is conditional in the sense that men benefit themselves equally and not to exclusion of anyone, not for enriching one's self or exploiting others or holding others in subjection. Thus Islam allows private ownership of property, but subjects the owner to restriction preventing him from using property except to the common good. Islam allows the individual to promote his own good and it does not permit him spend extravagantly and unnecessarily.

The Holy Quran says: The mutual rivalry for piling up (the good thing of this world diverts you (from the more serious things), until ye until the granes (11:1-2) In the light of above mentioned discussion, now we will see the functioning of Islamic economic institutions.

#### **Consumption, Production, and Ownership in Islam**

Consumption is to demand as production is to supply. The consumer's wants present and anticipated, are the chief incentive for his own economic activities. Islam does not recognize the pure materialistic bent of modern pattern of consumption. The ethics of Islamic economics sought to reduce man's present excessive material needs in order to release human energy for spiritual pursuits.

The first rule regarding conception is contained in the verse of Holy Quran: "O men, eat the lawful and good things out of what is in the earth" (2: 168)

This condition carries the double significance of earning lawfully and not having been prohibited by law. In the matter of good and drinks the prohibitions are: blood, the flesh of an animal that has died of itself, the flesh of swine, and the flesh of an animal on which the name of

other than Allah has been invoked meaning thereby sacrifices made to idol or other gods, and offering to saints or any being other than Allah (2:174, 5:4). Food should be good or fit for eating not unclean that offense the taste. No food should be used in excess. There is neither haram nor sin in eating and drinking of good things provided by God out of his beneficence, so long as the objective is that life may be sustained and health promoted for the purpose of carrying out God's will through firm faith in the guidance that He has provided and righteous action in accordance therewith, which ensures formity to all His commandments (5:94). That which is in the whole harmful is prohibited altogether. The last, not the least, principle regarding consumption is condition of morality. This is significant because Islam stands for happy blending of material and spiritual values of the life.

The basic principle of consumption must be reflected in the production means creation of utilities, just consumption is a destruction of the same. Production does not imply the physical creation of something out of nothing, since nobody can create matter.

The fundamental principle which is to be kept in view in the process of production is the manifestation of the principle of the economic welfare which involves the question of morality, education, religion and many other things. It is for the maximum utilization of resources both human and material as well as through the participation of the maximum number of people in the productive process. Thus, improvement in income which can be measured in terms of money but also improvement in maximizing our satisfaction at minimum efforts keeping in view the injunctions of Islam on consumption. Attempts should be made to produce goods as cheaply as possible and exploit resources both material and human so that full employment of the same can be achieved. Because, wastage of resources in any form is condemned in Islam. Lastly, an Islamic state will not merely be interested in increasing the volume of production but also in ensuring participation of maximum number of people in the productive process.

In Islam the legitimacy of ownership depends on the moral sign attached to it, just as a mathematical quantity depends on the algebraical sign attached to it. The Quran the base of all Islamic law, categorically states that absolute ownership of everything belong to Allah alone (3:190). Man is simply the vicegerent on earth. What Allah has created belongs collectively to the whole human society. Legal ownership by individual "that is to say, the right of possession, enjoyment and transfer of property is recognized and safeguarded in Islam, but all ownership is subject to the moral obligations that in all wealth all sections of society, and even animals, have the right to share(2:20)

The non use of property is not allowed in Islam. Since the non use of property is wasteful for the owner as well as the community as a whole, the Islamic state can intervene and deprive them of ownership by paying suitable compensation. Islam stands not only for balanced growth but also for balanced distribution for wealth. The owner must pay Zakath in proportion to the property owned.

The conduct of the owner of private property gives emphasis to the beneficent use of property which means utilization of wealth "in the way of god", which, in its turn, means all causes beneficial to the community as a whole and conducive to its prosperity and welfare.

When Islam gives emphasis to the beneficent use of property it imposes upon the owner of property the duty not to use it in such a way as to cause harm to others or to community. Islam

promotes this basic moral conscience by the fear of God which in practice means scrupulous avoidance of anti-social behaviour in all shapes and forms. All such unlawful means acquiring property are prohibited as those in the end harm one particular party. The owner should use the property in balanced way. That is, the owner of the property should be neither prodigal nor parsimonious in its use.

Sharia gives emphasis to the use of property for the purpose of securing for the owner, due benefits. The law would guarantee economic, social and political freedom and not subject to financial control. The due interest of the living will have to be secured by putting the Islamic laws. Considering all these factors it may be repeated that the uniqueness of Islamic concept of property lies in the ethical and moral injunction attached to it. The religion of Islam contains principles which, if properly understood and applied, can be the best possible solution to the evils of both capitalism and communism and ensure happiness and property, order and justice.

### **Factors of Production**

While Islam recognize land as a factor of production, it recognizes the creation of only those utilities which can maximize the economic welfare of community- a welfare which take into account the basic principle of economic ethics.

Both the Quran and Sunnah lay much emphasis on the proper cultivation of the land. Thus the Holy Quran drawn attention to the necessity of turning wasteland into gardens by making arrangements for watering it, and growing good crops. Islam has attached great importance to irrigation for increasing agricultural production, even more than fourteen hundred years ago Islam did realize the need for balanced growth – a balance between agricultural and industrial development.

The law of Quran regarding ownership of land is unequivocally in favour of pleasant proprietorship. According to the law of Quran, land is to be shared by all to the maximum good of human society, therefore, such ownership and control over land as limits the benefits to a few, to the exclusion of majority of the people, is contrary to the spirit of Quranic law. In Islam nobody can claim absolute ownership of land because it belongs to Allah.

### **Place of capital in Islamic socio-Economic Set-up**

From the social point of view, all things, other than land, which yield income, are to be regarded as capital, including things in public ownership. Private capital is anything from which the individual expects to derive income. Capital has occupied a special place in Islamic economics. Here we are inclined to consider capital “produced means of production” not as fundamental factor of production, but as an embodiment of past land and labour. In fact, capital is produced by the expenditure of labour and the use of natural resources.

Capital can grow in an interest free society. Islam allows profit which also acts as an incentive to save. Islam safeguards the interest of the poor by improving moral responsibility upon the rich to look after the poor and, secondly, while recognizing the system of private property in a restricted way, any tendency towards undue accumulation of wealth in the hands of few is condemned in Islam. Thus the Holy Quran tries to impress upon the rich that they should spend for beneficial purposes of the society.

Islam does not recognize the exploitation of labour by capital, nor does it approve of the elimination of the capitalistic class and establishment of the classless society. Islam recognizes the diversity of capacities and talents resulting in the diversity in earning and material reward (4:33). It does not approve of a dead level equality in distribution of wealth as that would defeat the very purpose of diversity.

Islam has tried to bring about a lasting compromise between labour and capital by giving the whole question of relationship a moral bent and by making moral obligation on each other as part of the faith. Here also Islam proves superior to secularism which has not succeeded in harmoniously fitting labour and capital in a social mosaic.

### **Distribution of Income and Wealth in Islam**

The economic welfare of masses depends vitally upon the manner in which the total national income is distributed among the people. The theory of distribution should deal with the problem of distribution of national income among different classes of people.

There is no clear tradition in regards to the concept of rent in Islam. But it could be a kind of surplus of profit on a particular land, labour, capital, entrepreneurship and a thing. There is no reason to suppose that rent is associated with land alone. Since there is no clear tradition as regards payment of rent, all questions pertaining to rent will have to be X-rayed through the application of the dynamic of Islamic law. The generally accepted theory of wages is the Marginal Productivity theory, according to which wages are determined by the equilibrium between the forces of demand and supply.

The exploitation of labour by the employers is foreign to the Islamic faith. The prophet (peace be upon him) is also reported to have said: the wages of laborer must be paid to him before the sweat dries upon his body". "It is the duty of the employers to take only such works from their employees which they can easily do. They should not be made to labour so that their health is hold upon". The fact is that in a scheme of Islamic society decent wage is not a concession, but a fundamental right, enforceable with all the might of the state.

In Islam the prohibition of Riba means prohibition of all types of excess over borrowed capital whether we call it usury, interest or earning of the capital.

Islam does recognize capital and its role in the process for production. Islam recognizes its share in national wealth only to the extent of its contribution, to be determined as a variable percentage of the profit earned rather than a fixed percentage of the capital itself. Islamic theory of capital is more realistic, more comprehensive and more ethical than the modern theories of capital.

In fact, economic values of Islam have not been given any fair trial by the modern world. But it has lost none of its cogency with the passage of time, because Islam is timeless. Thus while the fundamentals of Islamic economic value will remain valid for all age, the detail may change through exercises of *Ijthihad*. Therefore it is my conviction that even today it is quite possible to have an interest-free economic set up, a set up which will be definite improvement over the so-called capitalistic economic system. Once a Muslim State is in a position to inculcate the Islamic spirit and its life philosophy, it may go ahead with the implementation of the scheme of an interest-free economic system. Because the interest-free economy, as advocated by Islam is the only solution to mitigate the sufferings of the degraded humanity of capitalistic economic system.

The Islamic law of inheritance has brought about a revolution in whole philosophy of distribution of wealth and introduced a new technique, unheard of before, of increasing national wealth through participation of women in economic activities. Islamic law of inheritance is at present a fixed, scientific and beautifully harmonious system.

## **Trade and Commerce in Islam**

The Holy Quran says: “when the prayer is finished, then disperse ye through the land and seek the bounty of God”. (12:10)

The Prophet said: “Earning for lawful livelihood is a duty only next in importance to the duty (of prayer). Again He said: “When you finish your morning prayer do not sleep until you strive for your livelihood”.

Therefore, Islam recognized all legitimate economic activities of men activities which are consistent with spirit of Islam. Trade, commercial partnership, cooperatives, joint stock companies all are legitimate activities and operations. Islam does, however, lay down regulation with regard to commercial activities designed to ensure that they will be carried on honestly, faithfully and beneficially.

### **Basic Principles**

The basic principles which Islam has prescribed concerning trade and commerce are high standard of straight forwardness, reliability, and honesty; many of the present day market, imperfection would have been eliminated if these principles were adopted by the business community of civilized nations of the world. Islam has condemned all business transactions where businessmen resort to false oaths. Islam laid a great emphasis on the utility of giving correct weights and measures fourteen hundred years ago. Islam has laid emphasis not only on giving full weight and measure but also creating goodwill in business transactions which are considered to be the very foundation of the present-day business.

So trade and commerce in Islamic state differ fundamentally from the modern conception of trade and commerce; while the former is linked up with moral and ethical values of life, the later is not. The Islamic state has every right to curb any such transactions or practices which seek to take advantage of the need or distress of the poor people.

Islam has also recognized barter-trade subject to the injunction in the Quran and the Sunnah. In fact Islam has tried to impress upon the traders that defective and worthless goods or articles should not be given in exchange for goods one (4:3). If there is defect in thing sold it must be made manifest to the purchaser. Goods and commodities for the sale should go into the open market and the seller or his agents must be aware of the state of the market before proposal are made for the purchase of goods or commodities in bulk.

Islam does not allow monopoly and we could find that the idea of monopoly is against the spirit of Islam. Monopoly can ultimately lead to under utilization of resources and creation of unemployment. Islam has also condemned speculative business. By speculation we mean essentially the phenomenon of buying something cheap at one time and selling the same dear at another time or in future. In so far speculation renders social service by helping production and controlling the sudden fluctuation of prices, it is in conformity with the spirit of Islam. It is a

verdict of history that Islam has encouraged international trade, not only for economic cooperation, but also for establishing a universal brotherhood through mutual exchange of ideas and knowledge. If Islamic principles of trade and commerce are adopted by the traders and industrialists of the world, the weaker groups of the community would be saved from disastrous repercussion of the trade cycles a common feature of modern economy.

### **Economy in Islamic legal system**

Economics is the social science that constitutes an integral part of the ideology which prevails in a certain society. It is dangerous to adopt an economic system that does not emanate from and correspond with the ideology; in fact such a trial is doomed to be a failure. Thus, there is no “Islamic economics” space unless there is an Islamic ideology prevailing and applied in Muslim community.

In a so-called free economy or capitalist economy, money has acquired a privileged status over all other commodities. By the definition arbitrarily given to it, it has become superior to man himself, it implies some qualifications that are not supposed to be within its jurisdiction and which have evolved and become as if they were really genuine, despite the fact that they have no physical existence.

We have no monetary theory in Islam. Allah in Quran and Muhammad (peace be upon him) in the Tradition never analyzed the meaning of money or defined its functions. They did not explain to us why interest had been so strictly forbidden that the meanace directed to those Muslims who would commit others sin.

“ O ye believe! Observe your duty to Allah and give what remaineth (due to you) from usury, if you are (in truth) believers. And if you do not, then be warned of war (against you) from Allah and His Messenger. And if ye repeat then ye have your principal (without interest). Wrong not, and ye shall not be wrong” (2: 278-279)

Following are the features of the Islamic economic system. On the basis of these features we do not find such values in the capitalistic or the communistic economic system. Islamic economics is concerned not only with the material causes of welfare but also with moral and ethical considerations.

### **Banking and interest in Islam**

Islam is not only a religion but a complete social system, a composite code, a civilization of which religion is a part. The Quran and Sunnah- strictly forbid interest for tyranny (ref. Surahs “Muzzammil” and “Baqarah”). As a matter of fact, there is no difference between interest and usury or Riba. Islam definitely prohibits all sorts of interest whatever high sounding and persuasive names we may give it. In capitalistic economy interest is the centre round which the banking system resolves. Islamic idea of interest free banking system is superior to modern banking. Islamic banking is based on universally recognized principles of shirakah (partnership). That is, the whole system of banking in which the shareholders, the depositors the investors, and the borrowers participate on partnership basis. This works through the application of the eternal principle of Mudarabah, where labour and capital is combined together as partner for work.

## **Early Islamic banking**

The banking practices were well known in the early period of Islam. They grew naturally out of the needs of commerce and administration of finance in that age and were developed gradually. The banking laws were in accordance with social ideals of Islam. The two most distinctive features of economic system of Islam are the abolition of interest and the institution of Zakat. The objective of this is to harmonize the relation between the people and institutions with the requirements of Islamic ideals of social and economic life.

Towards the end of the 9<sup>th</sup> century A.D the Muslim caliphate had changed over entirely to the gold standard, replacing the silver dirhams of the previous days. By the same time the maintenance of the prescribed standards of the finances and quality of gold content and the equivalence of various currencies had become an important function of the state treasury. The functionary who specialized in the job was designated jahbadh (Arabicised form of the Persian Kahbad). We first hear of Jahbadh during the time of al-Mansur (754-55), but it was only in later times that the office and its functions were clearly defined and became a regular feature of financial administration. A full fledged Diwan al-Jahbadh came into being and Jahbadh was put in charge of each province. The Jahbadh was like an authorized bank to collect the revenue of the province allotted to him. Every Jahbadh has to furnish detailed statements (Khatmat) to the government. Usually the Jahbadh was a commercial magnate (Thajir) who owned capital of his own and was able to advance money to the government when the treasury was empty, which case was not so infrequent. The Jewish tujjar were best suited to advance huge sum to the government because they commanded vast capital resources of their own and could also rely on the resources of their coreligionists in the various parts of the caliphate. These loans, which the governments often resorted to, were negotiated for interest, the usual rate being one dirham per dinar. The governments also found it expedient to maintain the stability of the office of the Jahbadh in the same way as the governments guarantee the solvency of the bank today. Bankers at that time provided real and much needed services to depositors and business men and charged a legitimate fee or discount for the same. Apart from the incidental immorality involved in helping the corrupt officials to conceal their back money, they could be no objection from the Islamic view point to the growth of the services as such. The Muslim also figures a money changers and operators of remittances but they were greatly handicapped in the banking business because of their inability to make advance on interest. On the whole Muslims have observed more strictly the prohibition against taking interest than against paying interest on banks. This practice by the banks was of course, fraudulent and according to Islam, the gains acquiring there from are illegal gains. Investment in business should be with the consent of depositor and on conditions prescribed for the Jahbadh. The relationship between an Islamic bank and its depositors, and amongst depositors themselves, has usually been formulated on the Jahbadh (Contract).

## **Interest**

Islam's attitude to interest is clear and unambiguous. Quran says: Those who (in charity) spent of their goods by night and by day, in secret and in public, have their reward with their Lord: On them shall be no fear, no shall they grieve. Those who devour usury will not stand except as stands one whom the evil One by his touch hath driven to madness. That is because they say: "Trade is like usury", but God hath permitted trade and forbidden usury. Those who after receiving directions from their Lord, desist, shall be pardoned for the past: their case is for God (to judge): but those who repeat (The offence are companions of the fire): they will abide therein. God will

deprive usury of all blessing, but will give increase for deeds of charity: for he loveth not creatures ungrateful and wicked. (2: 274-76)

The original word which is translated here as usury is 'riba'. 'Riba' literally means as an excess or addition. With reference to debts, it means any excess above the principal. Therefore, it includes both interest and usury. The purpose of the abolition of riba is to eliminate all forms of extortion in financial transaction. It was to put an end to the exploitation of the poor at the hand of rich people.

Interest is the outcome of the unjust distribution of wealth. The strong ones took possession of the properties and deprived the weak of their share. Consequently, the weak and poor had to depend upon the rich to save their lives. The rich enslaved them and started squeezing the fruit of their hard toil. This is how interest came into existence. Some Muslims, blinded by the superficial charm of the European civilization, say that what Islam prohibits is usury and not interest. They consider that interest paid on banks for investment in productive activities would not contravene the law of Quran for it refers only to usury on non-productive banks which prevailed in pre-Islamic societies when people were not familiar with productive, loans and their influence on economic development. In this the proponent of theory of interest would appear to have overlooked that the Quran the last of the divine message of human guidance, legislated for all ages, and that God's knowledge as embodied in it could not be substituted by economic practice of interest of productive loans known to this or any other age. In fact, the difference between productive and so-called unproductive loans is difference of degree, not of kind, calling usury of riba by the name of "interest" will not change its character since interest is nothing but an addition to the borrowed capital, which is usury in both spirit and Islamic code of law. As a matter of fact, there is no difference between interest and usury or riba. Islam definitely prohibits all sorts of interest whatever high-sounding and persuasive, names we may give it. But in capitalistic economy interest is the centre round which the banking system revolves. Without interest it is argued the banking system will become lifeless and the whole economy will be paralyzed. But Islamic is a dynamic and progressive free, and it is quite possible to prove that the Islamic conception of interest free banking system is superior to modern banking. The modern conception of planning which refers to the utilization of resources of the country to attain certain objectives is recognized in Islam. Economic planning in Islam nothing but a synthesis of planning by inducement and planning by direction. Various injunctions by Holy Quran and saying of Prophet (Peace be upon him) have confirmed it. Cooperation between public and private sectors is the basis of economic planning. The objective of economic planning in Islam is relative to the needs of community, and this can be changed with the changing circumstances subject to the injunctions of Holy Quran and Sunnah. The soundness of its objective can be judged by the principles of beneficence and care for the have-nots. The execution of planning will be made through the participation of public and private sectors on partnership basis which will work through the application of principle of Mudarabah. It is because of this that there will be little chances of loss and little possibilities of depression under the Islamic system of planning.

### **Mechanism of Islamic banking**

The mechanism of Islamic banking which is based on the principle of partnership is free of interest. Therefore, the question of paying an interest to depositors or charging any interest from clients does not arise. It can be with new private banks by the people or by government under the Islamic scheme of banking, there may be two types of depositors. The first type of depositor, who

can deposit their surplus funds, may be allotted to withdraw their funds any time without any notice. This type of deposits is for safe depositing only, not for investment in any productive activity where risk is involved. In the case of such deposits, the bank may recover zakt and service charges from Muslim and non Muslim depositors respectively. This taxation on idle funds is justified, because it checks the tendency to hoard cash in idle form and provides a stimulus for investing in productive activities.

The second type of depositors will not be in a position to withdraw their funds without notice. Their surplus funds may be invested in productive affairs on a short term basis. The bank will not charge anything from these depositors; rather, they will be allowed to share the profit or loss of the bank proportionately at the end of the financial year in a form similar to that of dividends. The Islamic bank, however can raise funds, if need be, by inviting investment for a period of one year to five years or more. In an Islamic state these investors will be eligible to share the profits of bank proportionately in the form of dividends which may be worked out at the end of the financial year. Obviously, the Islamic bank cannot issue debentures for fund raising, as it involves paying of fixed rate of interest.

These are two fundamental sources for financing a development plan. One is internal or domestic resources and the other foreign assistance. Internal finance may take two forms: private saving and public saving. H.G. Wells has remarked: "Islam has created a society more free from widespread cruelty and social oppression than any society had ever been in the world before". As a matter of fact, the Islamic concept of the welfare state is based not only on the manifestation of economic values but also on moral and spiritual, social and political values of Islam. Islamic concept of welfare state is also concerned with the fostering social values which are so comprehensive in nature that they regulate one's behaviour and code of conduct with regard to one's family life, one's servant, one's neighbor, one's management of orphan's property and what not. The object of all these instructions as laid down in the Quran and the Sunnah is to set up a healthy society based on the lasting welfare of mankind.

### **Advantages of interest free banking**

The Quran, the cast of divine messages for human guidance, legislated for all ages, and that God's knowledge as embodied in it could not be substituted by economic practice of interest on productive loans known to this or any other age. In fact, the difference between productive and so-called unproductive loan is difference of degree, not of kind. Calling usury or riba by the name of interest will not change its character since interest is nothing but an addition to the borrowed capital, which is usury in both spirit and Islamic Code of Law. It is found by modern research that interest has to nothing to do in influencing the volume of saving. Practically it is the rate of investment that determines the rate of saving, Islam prohibits interest but encourages investments. Islamic system of Zakath is the uncompromising enemy of hoarding. It checks the tendency hoard idle cash resources and provides a powerful stimulus for investing these idle stocks.

The mechanism of Islamic banking which is based on the principle of partnership is free of interest. Therefore, the question of paying an interest to depositors or charging any interest from clients does not arise. The bank may recover Zakat and service charges from Muslim and non Muslim depositors respectively. The short term financing of industry, trade and agriculture may be made by Islamic bank on partnership basis. Islam allows the financing of trade or industry or credit.

In Islamic social set up the state is to tax all deposits and credit balances to meet its charges. People do not find it difficult to bear this burden of taxation since, an account of free service, trade, commerce and industry will flourish. As a result, the economic resources will be exploited, the problem of unemployment will be solved and the national income will increase in the Islamic State.

The bank in each financial year would compile a balance sheet of all such profits and losses, and the ultimate balance remaining after the bank's general expenses are met, including salaries, wages and reserves, will be shared between the bank and the depositors in line with the relevant agreement. The bank's own share will then be distributed to the shareholders in proportion to their respective shares.

However, "if no profit or loss is suffered, the capital shall be restored to the bank intact, but in case of losing business, the loss shall be exclusively born by the bank; should an entrepreneur (operator) be guilty of detrimental acts that damaged part of the capital, he shall be held responsible for damages"

The modern banks place their own interest above the interest of industry as they have no real share in it. So banks of capitalistic economy encourage unhealthy investment. But banks in an Islamic state being partner in industry can never encourage unhealthy investment. As a result of happy marriage between finance and industry, the onward march of economic progress will continue. Industry will flourish and national income will increase.

Islam prohibits interest because interest has nothing to do in influencing the volume of saving because it make depression chronic, because it aggravates the problem of unemployment and it encourages unequal distribution of wealth. The institution of Zakat is an element in Islam socialism. Zakat is in fact a tax which the rich have to pay towards the common welfare of the nation as a whole. It intends "to take wealth from the rich and to turn it to the poor". In short, banks are regarded by Islam as one of the boldest means of the economic prosperity of a nation. Thus one has to conclude that Islamic banks are superior to the capitalistic conception of banking.

### **The meaning of zakat and its importance**

Zakat is the Fourth Pillar of Islam. It is an obligation (Fard), prescribed by God on those Muslim men and women who possess enough means, to distribute a certain percentage of their annual savings or capital in goods or money among the poor and the needy. Zakat is assessed once a year on both capital and savings from income.

The literal meaning of the word zakat is 'purity'. The Prophet (peace be on him) has said: "God has made zakat obligatory simply to purify your remaining property." There is no equivalent practice in other religions. Hence, while terms such as 'charity " poor-tax', 'alms-tax' and 'poor-due' have been coined by various translators, none of these terms actually conveys the true sense of the word zakat. Zakat is not a tax levied by a government, nor is it a voluntary contribution. It is first and foremost a duty enjoined by God and hence a form of worship. In Qur'an the payment of zakat is frequently mentioned in the same sentence or verse as the establishment of salat (prayers). "Lo! Those who believe and do good deeds and establish salat and pay zakat, their reward is with their Sustainer; and no fear shall come upon them, nor shall they grieve." (2:277)

"These are verses of the Book full of wisdom, a guide and mercy to the doers of good -those who establish salat and pay zakat and have the assurance of the Hereafter. These are on guidance from their Sustainer, and these are the ones who will prosper." (31:1-5)

Thus, while salat is an act of worship through words and bodily action, zakat is a devotional act through one's wealth. Without the spirit of submission to God and love of Him, both acts are without spiritual and moral significance.

From a practical point of view, it is the duty of an Islamic state to collect zakat from every Muslim who meets the requirements for paying it. The first Caliph, Abu Bakr Siddiq, declared war on those tribes which refused to pay zakat while still professing Islam and observing daily prayers.. He reasoned that the Divine law (Shari'ah) cannot be divided and that one cannot follow part of the Holy Book and cast aside other parts.

However, in a non-Islamic state it is up to the individual Muslim to be conscientious enough to voluntarily fulfil this duty to God and to his community, and it is up to his brother Muslims to remind him of this duty.

### **The Spirit of Zakat**

In the Holy Qur'an, wealth is referred to as God's bounty (fadl). God, as the Creator and Sustainer of the universe, is also the Owner of all things, including all the things which man possesses and uses. "Who has created the heavens and the earth and sends down rain for you from the sky? With it We caused to grow orchards full of loveliness; it is not in your power to make trees grow in them." (27:60)

Since God is the true Owner of all things and we are merely His trustees, wealth is to be produced, distributed, acquired and spent in a way which is pleasing to Him. The acquisition of wealth is not an end in itself, nor is wealth to be squandered for meaningless or wasteful purposes, and above all it is not to be used in order to gain power over other people through exploitation or control of the means of livelihood. Qur'an and Hadith make it very clear that any form of gain which results in some injustice or harm to others is an act of disobedience to God. On the other hand, Qur'an tells us that next to purity of faith, the most pleasing thing in the sight of God is kindness and charity, forbearance and forgiveness, and doing well to others.

"Those who spend in charity whether in prosperity or adversity, who restrain anger and pardon people; for God loves those who do, good to others." (3: 134)

Thus, God enjoins on us humility before the Creator and His creatures, moderation in the satisfaction of our legitimate needs and desires, control of our appetites, and a spirit of generosity and charity, while He asks us to shun pride in ourselves and contempt for others, self-indulgence and pleasure seeking, and greed for material things and worldly power. We find, therefore, that prayers (salat) are made obligatory to purify our hearts from every kind of pride; fasting (seeyam) controls our appetites, and zakat to overcome our greed. The spirit behind all these acts of worship ought to be the spirit of submission to God, gratitude for all His bounties, and hope for His forgiveness and mercy.

In particular, it is with utmost gratitude and joy that a Muslim who possesses enough means that zakat is obligatory for him should fulfil his obligation gratitude for the bounties which God has

showered upon him and joy in being able to help others. Because the payment of zakat is a duty to God, no one should ever think of it as a favour done to the person who receives it. In fact, it is his right to receive it and the obligation of the giver to give it. Like any other act of worship in Islam, in giving zakat it is necessary that the intention of the giver and receiver be pure and honest.

### **The Benefits of Zakat**

The moral and material benefits of zakat are obvious giving zakat purifies the heart of the giver from selfishness and greed for wealth and develops in him sympathy for the poor and needy. And receiving zakat purifies the heart of the recipients from envy and hatred of the rich and prosperous, and fosters in him a sense of good will towards his brother Muslims who although they are better off, have shared their wealth with him for the sake of God.

God says in Qur'an:

"To Him belong the keys of the heavens and the earth; He enlarges or restricts the sustenance to whom He wills, for He knows full well all things." (42:12) .

"He has raised some of you in ranks above others that He may try you in the gifts He has given you." (6: 165)

Thus, a Muslim, whether prosperous or needy, considers his condition in this world as a test from God. Those who have wealth have the obligation to be generous and charitable and to share the bounties of God with their brothers, while those who are poor have the obligation to be patient, to work to improve their situation, and to be free of envy .Qur'an tells us that it is not a man's wealth or position but his God-consciousness, the quality of his character, and the manner in which he uses whatever is given to him by God which determines his ultimate destiny in the Hereafter. The economic objective of Islam is just and humane distribution of wealth, as stated in Qur'an: "...so that this (wealth) may not circulate solely among the rich from among you." (59:7) Thus, Islam neither approves of hoarding and unlimited building up of capital, nor of compulsory equal distribution of wealth, as both are unjust. Its teaching encourages the earning of a livelihood and acquisition of wealth by lawful, honest and productive means, and enjoins the just sharing of the acquired wealth among the workers, the investors and the community at large. The community's share in the produced wealth is zakat and sadaqah (charity), the first an obligatory and the second a voluntary contribution from individuals. Zakat , when honestly practiced, results in freeing the society from class distinctions, rivalries, suspicion and corruption. It produces a community of people who love and respect each other, and who have sympathy and concern for each other's welfare. Giving zakat is not a matter of pride. It is a devotional act, like salat, on the completion of which the contributor should be thankful to God for the fulfilment of his obligation and pray for the forgiveness of his sins.

### **Kinds of Property on Which Zakat is Obligatory**

Zakat is compulsory on cash, cattle and crops. The regulations differ for each of these categories. As the detailed system of computation in the last two categories is rather complicated, it will not be discussed here. Such information is available in standard books on Islamic jurisprudence.

For cash, the minimum rate is two and half percent (2.5%). Zakat should be given only on the net balance after all lawful expenses have been met at the end of the year. The rate mentioned above is only a lower limit. There is no upper limit, except that one should not deprive himself and his dependents from meeting their lawful necessities. Beyond these obligations, the more one gives, the greater the benefit on both the giver and the recipient.

### **Recipients of Zakat**

Those who are eligible to receive zakat are mentioned in the Holy Qur'an. "The alms are only for the poor, the needy, those who collect them, those whose hearts are to be reconciled, to free the captives and the debtors, for the cause of God, and for the travellers; a duty imposed by God. God is All-Knowing, All-Wise." (9:60)

It should be remembered that these categories of persons who are to be helped by zakat were laid down fourteen hundred years ago. They are equally applicable to our own time.

1. The poor: Those who does not have anything to support themselves.
2. The needy: Those people who have some income or earnings but it is not enough to provide them with basic needs.
3. Zakat collectors: The salaries of these workers may be paid from this fund.
4. Converts: Those people who have embraced Islam and attempts should be made to settle them in a normal life.
5. People who are not free: This category would include payment of ransom for freeing Muslim slaves from slavery from their owners.
6. Debtors: People who are unable to pay debts incurred due to pressing lawful needs.
7. Wayfarers and travellers: Those people who are rendered helpless out side their city.
8. In the Cause of Allah

In the wider sense, this channel of distribution covers all methods of promoting the Islamic faith, whether through Jihad, propagating the enactment of the Islamic legislation or defending Islam through the intellectual confrontation against its opposing hostile trends.

### **This channel of distribution includes the following:**

- a. Financing Jihad activities to spread Islam and repel enemies' attacks against Muslim countries.
- b. Supporting fruitful individual and collective efforts aiming at spreading Islamic rule, establishing Islamic law, and resisting plans to marginalize Islam and its law.
- c. Financing the Islamic centers and mosques established in non-Muslim countries, directed by faithful men with the aim of adopting valid methods to spread Islam in these countries.
- d. Financing the serious efforts exerted to support the Muslim minorities under non-Muslim rule.

### **Some Regulations Concerning Zakat**

The legal dependents of the contributor may not receive zakat from him. Money exceeding the recipient's requirements is not to be given, nor may the recipient accept more than enough to meet his requirements. Taxes which are paid to the government are not included in the category of zakat .

The contributor should not indulge in pride nor seek fame by carrying out this duty, but if the mention of his name is likely to encourage others to pay zakat, it is permissible to give his name. It is not necessary to tell the recipient that he is receiving, zakat money. If there are reserving persons who will not accept the money if they know it is zakat, it can be given without specifying its source. The contributor, however, still gives it as his zakat payment.

Zakat may be distributed directly to the individuals or organizations mentioned above. The contributor should use his best possible judgment to find the most deserving beneficiaries." In the past, when there were legally constituted Islamic governments, zakat was collected through official channels and its distribution was the function of a special department of the government. In the present day, however, especially in non-Muslim countries, giving zakat is an obligation for which each Muslim adult must take responsibility each year himself. In this country, Muslims may give their zakat directly to some deserving needy person, of whom there are many in every community, or he may give it for use as zakat to some Islamic organization.

### **Sadaqah (Charity)**

Zakat is an obligation on Muslim men and women who are better off financially. Sadaqah(charity) refers to any other act of charity. Charity -an essential part of righteousness: To give to help others from one's possessions, no matter whether they are many or few, is a necessary part of a Muslim's sense of submission to God and his concern for his fellow human beings. God says in Qur'an : "You shall not attain righteousness unless you spend on others of that which you love, and whatever you spend, verily God has knowledge of it." (3:92)

The Holy Prophet (peace be on him) has said: "Son of , Adam! To give away what is beyond your needs is better for you and to withhold it is worse for you, but you are not blamed , for having sufficiency. Give first to those who are dependent on you."

What to spend in charity: God says in Qur'an:

"They ask thee what to spend ( in charity) .Say: What is beyond your needs." (2:219) "O you who believe! Spend of the good things which you have earned, and of that which We bring forth from the earth for you, and do not seek to give the bad things (in charity) , when you would not take them for yourselves except with disdain." (2:267)

The Prophet (peace be on him) exhorted: "Spend; do not calculate and so have God calculating against you; do not hoard and so have God hoarding from you; but give such small amounts as you can."

How to give charity: The best charity is that which is given in secret, in order to respect the dignity of the recipient and to keep the motives of the giver free of pride or desire for praise.

Qur'an says: "O you who believe! Do not cancel your charity by reminders of your generosity or by injury, like those who spend their substance to be seen men but do not believe either in God or in the Last Day." (2:264). ("Kind words and the covering of faults are better than charity followed by injury. God is free of all wants and He is most forbearing." (2:263)

The Prophet (peace be on him) has said: "The best charity is that which the right hand gives and the left hand does not know of it."

Recipients of charity: Charity starts with one's own family and dependents and extends to relatives, to the poor and the needy of the community, to widows and orphans, debtors, travellers, those who strive or who migrate in the cause of God, and finally to any others in need.

Qur'an says: "They ask thee what they should spend (in charity) .Say: What ever of your wealth you spend shall be for the parents and for the near of kin and the orphans and the needy and the traveller; and whatever good you do, verily, God has full knowledge of it." (2:215; also 9:60) "(Charity is) for those in need, who, in God's cause are restricted. (From travel) and cannot move about in the land, seeking (for trade or work) .The ignorant man thinks, because of their dignity, that they are free from want. You shall know them by their mark: they do not beg from people at all. And whatever of good you give, be assured that God knows it well." (2:273)

Finally, in a broader sense, it is important to stress that the meaning of charity is not confined to money or things given to help someone in need. It includes everything we do or say to help others -our time, our energy, our concern, our sympathy, our attitude of support, our words of kindness, our prayers. To care for the needs of a neighbour, to minister to the wants of a child, to visit the sick, to go the funeral of an acquaintance, to console the bereaved all these are acts of charity. There are many hadiths (saying of the Prophet) which emphasize clearly how broad the meaning of charity is, among which are the following: "When you smile in your brother's face, or enjoin what is reputable, or forbid what is objectionable or direct someone who has lost his way, or help a man who has bad eyesight, or remove stones, thorns and bones from the road, or pour water from your bucket into your brother's, it counts to you as charity ," and "Every act of kindness is charity ." May God Most High guide each of us to do our utmost, in the true Islamic spirit of brotherhood, in charity.

### **'Riba' or interest**

In the Arabic Language the word 'Riba' means an increase. The Holy Quran which was revealed in the Arabic Language uses the word 'Riba' and its derivatives in the same way. Before the advent of Islam the practice of charging interest on loans prevailed throughout Arabia and two major money-markets developed and flourished at Makka and Taif. Arabia had been a barren country mostly, with out any agricultural produce worth its name. Food, clothing and other necessities as well as luxuries of life had to be imported from the adjoining fertile land of Syria and Yemen. Commerce and Trade were thus imposed by nature on the Arabian people, to be adopted as their major occupation.

But trade needed sufficient capital, which most of the people did not possess. Therefore there was no alternative left but to borrow capital for trading as interest bearing loans.

For importing commodities, particularly victuals and other food stuffs, the Arabs had to depend on the seasons of their produce and accordingly they went in caravans to the adjoining fertile lands. They traveled north to Syria and south to Yamen twice a year both in summer and winter. The sale and distribution of the imports was done on public gatherings either at the Hajj ceremony or at commodity distribution bazzars held at various places like the bazaar of Ukkaz. The capital used on imports had thus to remain locked up till its realization through sale proceeds. This natural monetary cycle necessitated borrowing from such affluent who were more interested in lending than in commerce.

The money markets of Makka and Taif were under the control of the Quresh, but besides them there were also Jew's money markets at Yasrib. The Jews of Yasrib owned fertile lands at Khaiber which produced bumper crops of victuals, dates, olives and grapes, like the vineyards of Taif. The Jews economically dominated over the Arab tribes living in Yasrib, and they had developed a money market of their own to lend money on interest, which they called 'Riba'.

The Quresh indulged in both lending on interest as well as in the trade and commerce and that they regarded both these operations as equally productive is evident from the fact that when Islam prohibited usury and permitted trade, it surprised them since they could see no discriminating feature between the two and asserted that trade and usury were alike.

The pre- Islamic society of Arabia carried out usurious operations in two forms:

On cash Loans. They would lend money on interest for stipulated period, counting loan inclusive of interest for the period as the amount lent. The borrower would pay the interest either in installments or as a lump sum on the expiry of the stipulated period. If he failed to do so the lender would extend the period and enhance the rate of interest two fold or would receive double the installments thereof.

On credit sales. The merchandise was sold on credit. If the sale price, as marked up with interest for stipulated period, was not paid by the purchaser in time, the seller would mark up the sale price further to include interest for the extended period. There were two reasons for credit sales. One was the purchaser's inability to make a cash purchase, while he wanted to indulge in trading as a means of livelihood. The second was that the imports of wholesale purchasers have invested borrowed funds intending to refund them at the expiry of the promised period. As that period approached nearer, all the stocks had to be disposed off by clearance sale. So the unsold stock was sold on credit to avoid shouldering additional burden of interest. As the market values depended on demand and supply as well as on the purchasing power of the customers, the above stated method was adopted to balance the two operative forces.

So far as we have recorded the meanings of the word 'Riba' as found in Arabic dictionaries and the Holy Quran, and also as confirmed by practices in vogue in Arabia during the period prior to the arrival of Islam. How far the spectrum of the prohibited 'Riba' is wide and which practices it enfolds, will be dealt with in detail after this.

### **The Holy Quran on 'Riba'**

Without trying to beat about the bush, let us straightaway read and scrutinize to comprehend all the Quranic verses about 'Riba'. The word 'Riba' as an economic practice occurs at four places only in the Holy Quran. One of such place is a casual mention of this practice indulged in by the Jews. Due to its casual nature we will record it first. Out of the remaining three places, the one which is in Sura Room will be taken up next due to the fact that Sura Room was revealed at Makka, some six or seven years before the Muslims were forced to migrate to Madina in 615 or 616 A.D. It was a period when in the Quresh were molesting and torturing the believers for having accepted Muhammed as a true Prophet of Allah. The economic philosophy revealed at such an early stage deserves a prior mention:

"For the inequality of the Jews for taking 'Riba' (Usury), which they had been forbidden to do, and for devouring other peoples wealth wrongfully, we have prepared for such of them who reject Faith, a grievous punishment" (Sura Nisa, verse:161).

Do they not see that Allah enlarges the provision and restricts it to whomsoever He pleases? Surely in that are signs for those who believe. So give what is due to kindred, the needy, and wayfarer. That is best for those who seek the countenance of Allah, and it is they who will prosper. And what you give by way of 'Riba' (interest) for bringing about an increase in the wealth of people, the increase does not take place according to divine reckoning; and what you give by way of Zakat (charity), seeking the countenance of Allah, will increase. It is these who will get a recompense multiplied" (Makka Sura Rum, verse: 37 to 39).

"O you who believe, do not devour usury doubled and multiplied and fear Allah so that you may prosper" Sura Ali – I – Imran, verse: 130).

Those who spend their wealth in charity, by day and by night, in secret and in public, have their reward with their Lord: on them shall be no fear, nor shall they grieve. Those who devour 'Riba' (Usury) do no stand but like one whom the Evil one has driven to madness by his touch. That is why they say that 'trade' is like 'Riba'. But Allah has permitted trade and forbidden 'Riba'. After receiving direction from their Rabb, those who desist shall be pardoned for the past, and their case is to be judged by Allah. But those who repeat the offence are companions of the fire; they will abide in it for ever" "Allah exterminates 'Riba' and promotes charitable practices; and Allah does not love ungrateful and wicked people. Those who believe and do deeds or righteousness, and then establish regular prayers and regular charity will have their reward with their Rabbi: on them shall be no fear, nor shall they grieve. O you, who believe, fear Allah and give up what remains of your demand for 'Riba', if you are really believers. If you turn back and desist, you will have your capital sums. Thus neither you will be unjust difficulty, grant him time till it is easy for him to repay. But if you remit it by way of charity it will be best for you, if you only knew" (Sura al-Baqara, verse 274 to 280)

### Comprehension

1. Discuss consumption, production and ownership in Islam
2. In Islam nobody can claim absolute ownership of land – why?
3. Discuss the distribution of income and wealth in Islam?
4. How does Economy work in Islamic legal system?
5. Discuss banking and interest in Islam?
6. Explain the mechanism of Banking in Islam
7. What are the advantages of interest free banking?
8. Define 'Zakath' and discuss its importance in Islam
9. What are the benefits of 'Zakath'
10. What are the kinds of property on which 'Zakath' is obligatory?
11. Who are the recipients of 'Zakath'?
12. What are channels of 'Zakath' distribution?
13. What does 'Sadaqah' or charity mean?

14. How does 'Zakath' differ from 'Sadaqah' or charity?
15. What is 'Riba'? - explain
16. Quote a Quranic verse on 'Riba'

**For Additional Reading:**

1. Economics in Islamic law, Wazir Akhthar, Kithab Bhavan, New Delhi
2. The penal law of Islam, Muhammed Iqbal Siddiqi, International Islamic Publishers, New Delhi
3. Social Justice in Islam, Shaikh Mahmud Ahmad, Adam Publishers, Delhi
4. Capitalism, Socialism and Islamic economic order, Syed Muhammed Ismail, Oriental Publications.
5. The family laws of Islam, Muhammed Iqbal Siddiqi, International Islamic Publishers, Delhi
6. Women in Islam, Muhammed Mazharudheen sidheeqi, Adam Publishers, Delhi.

**Appendix**

**Syllabus**

AR5D01 Socio Economic Concept of Islam

**Unit – I**

- a) Family laws of Islam
- b) Position of women under different Civilisation and Religions
- c) Conditions of women before Islam
- d) Status of women in Islam

**Unit – II**

- a) Importance of Marriage in Islam
- b) Marriage Psychology and objectives
- c) Equality between sects
- d) Dower and Dowry
- e) Polygamy in Islam
- f) Divorce

**Unit – III**

- a) Laws of inheritance in Islam
- b) Islamic concept of crime and Penal laws
- c) Islamic economic order
- d) Distribution of Income and Wealth in Islam
- e) Trade and Commerce in Islam
- f) Economy in Islamic Legal system

**Unit – IV**

- a) Capitalism – Communism – and Islam
- b) Importance of Zakath and Sadaqa in Islamic economic system
- c) Mechanism of interest free banking
- d) Riba – Usary and interest

**Model Question Paper**

**I. Answer all questions.**

**Choose the most appropriate from the brackets, then fill the blanks:**

1. ....is the complete code of life given by the God (Quran/ Prophet/ Khilafat)
2. Islam aims at creating a ..... Society (Caste free/ interest free / Dowry free)
3. The non Muslims in an Islamic state are ..... to follow their own religious practices ( restricted / permitted / prohibited)
4. Islam considers mankind as..... (one family / different classes / two classes)

**Put True or False marks against the each sentences:**

5. The objective of punishment in Islam is to prevent the culprit from repeating the crime. ( )
6. Adl and Ehsan are the main pillars of the Islamic system ( )
7. Literal meaning of the term Zakat is donation ( )
8. Islam refuses all profitable, productive activities ( )

**Match the following**

- |            |           |
|------------|-----------|
| 9. Nikah   | Mercy     |
| 10. Sadaqa | Community |
| 11. Ehsan  | Charity   |
| 12. Millat | Marriage  |

**II. Answer the following Questions in 1 – 3 sentences:**

13. What are the three essential elements of an Islamic state?
14. What does Mahar mean?

15. How does the Shura system function?
16. What is the meaning of Hadd?
17. How does an Islamic bank functions?
18. What does the term 'Zakat' denote?
19. What type of equality does Islam offer between men and women?
20. Who cones as the central figure in the Islamic government?
21. The political parties can't exist in the Islamic state. Why?

**III. Attempt any 5 of the following in a paragraph each:**

22. Essential economic functions of the Islamic welfare state.
23. Political structure of an Islamic State.
24. Advantages of interest free banking.
25. Financial resources of Islamic State.
26. Polygamy in Islam.
27. Recipients of 'Zakat'
28. Objectives of Marriage in Islam

**IV. Attempt any 2 of the following:**

29. Describe Islamic concept of marriage and related issues.
30. Discuss the Islamic principles of Economics.
31. Examine the statues of women in Islam comprising other civilizations and religions.

