

The Social System in Islam

Taqiuddin an-Nabhani

Hizb ut Tahrir

4th Edition
1424 AH - 2003 CE
(Authenticated)

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

﴿ يَتَّيِبُهَا لِلنَّاسِ أَنْ يَقُولُوا رَبُّكُمْ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۗ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۗ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ﴿١﴾ ۖ وَآتُوا الْيَتَامَىٰ أَمْوَالَهُمْ ۖ وَلَا تَبَدَّلُوا الْخَيْرَ بِالْطَّبِيبِ ۖ وَلَا تَأْكُلُوا أَمْوَالَهُمْ إِلَىٰ أَمْوَالِكُمْ ۗ إِنَّهُ كَانَ حُوبًا كَبِيرًا ﴿٢﴾ ۖ وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ ۖ مَثْنَىٰ وَثُلثَ وَرُبْعَ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۗ ذَلِكَ أَدْنَىٰ ۖ أَلَّا تَعُولُوا ﴿٣﴾ ۖ وَآتُوا النِّسَاءَ صَدَقَاتِهِنَّ مِنْ حَيْثُ نَكَحْتُهُنَّ ۖ فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا ﴿٤﴾ ۖ وَلَا تَتَّبِعُوا السُّفَهَاءَ أَمْوَالِكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَمًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا ﴿٥﴾ ۖ وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ ۖ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا ۗ وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ ۖ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ۗ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ ۗ وَكَفَىٰ بِاللَّهِ حَسِيبًا ﴿٦﴾ ﴾

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

And give unto orphans their property and do not exchange (your) bad things for (their) good ones; and

devour not their substances (by adding it) to your substance. Surely, this is a great sin.

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

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

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

And try orphans (as regards their intelligence) until they reach the age of marriage; if then you find sound judgement in them, release their property to them, but consume it not wastefully, and hastily fearing that they should grow up, and whoever amongst you guardians is rich, he should take no wages, but if he is poor, let him have for himself what is just and reasonable. And when you release their property to them, take witness in their presence; and Allah is All-Sufficient in taking account." [An-Nisaa': 1 - 6]

Contents

Commencing Ayaat	1
Introduction to Social System.....	4
The View of Man and Woman	15
The Impact of this View on the Relationship between Men and Women.....	22
Regulating the Relations between Man and Woman.....	29
Private Life	38
Obligation of the Separation of Men and Women in the Islamic Life.....	45
Looking at Women	49
It is Not Obligatory for the Muslim Woman to Cover her Face	77
Men and Women before the <i>Sharee'ah</i> Commandments.....	108
The Activities of the Woman.....	123
The Islamic Community	142
Marriage.....	160
Women to Whom Marriage is Prohibited.....	187
Polygyny	196
The Prophet's (saw) Marriages	210
Married Life.....	226
Coitus Interruptus (<i>al-'Azl</i>)	238
Divorce	250
The Lineage (<i>An-Nasab</i>).....	266
The Imprecation (<i>al-Li'aan</i>).....	270
The Guardianship of the Father	276
Custody of the Child.....	277
Maintaining Ties of Kinship.....	285
Glossary	289

Introduction to Social System

Many people go beyond the meaning of the term 'social system' and apply it to all systems of life. This is an erroneous usage; given that the systems of life are better expressed as the 'systems of society' because that is what they are; they organise the relationships that arise between the people living in a particular society, regardless of whether they meet or not. It is not the meeting of people but the relationships (*'alaqaat*) which should be taken into consideration. Consequently, these relationships will be diverse and different. They would include economics, ruling, politics, education, penal code (*'uqubaat*), societal transactions (*mu'amalaat*) and the rules of (testimonial) evidences (*bayyinaat*) etc.

Thus, the application of the term 'social system' to all of these relationships is meaningless and inapplicable. Additionally, the word 'social' is a description of a system, thus the subject matter of this system should be the organisation of the problems arising from the meeting of people and the relationships that arise from people meeting together. The meeting of a man with a man and a woman with a woman does not require a system because no problems arise from it, and nor do relationships arise which require a system. Only the organisation of their interests requires a system in view of the fact that they live in the same country even if they did not meet. As for the meeting between men and women, it is from this meeting that problems and relationships arise which need to be organised by a system. Thus, this

meeting (*ijtimaa'*) is better referred to as the social system, because in reality it is this system which organises the meeting between men and women, and the relationships which arise from such meetings. That is why the social system is confined to the system which demonstrates the organisation of the meeting between men and women, and organises this relationship. Thus the social system addresses the relationships that result from men and women meeting and not from their interests in society and it clarifies all that branches out from this relationship. Thus, trade between men and women pertains to the systems of society and not to the social system, because it falls within the economic system. As for the prohibition of seclusion (*khalwah*) between men and women, or when a woman has the right to instigate divorce for herself, or who has the right of custody of a child, all of these issues pertain to the social system. Therefore, the social system is defined as: the system which organises the meeting between men and women and organises the relationship which results from their meeting and all that branches out from this relationship.

The perception of many people, especially the Muslims, of the social system in Islam became extremely confused. Their understanding became far removed from the reality of Islam due to their alienation from its thoughts and rules. They went to extremes, holding the view that a woman has the right to be in seclusion with a man as and when she wished, or that she can go out with her *'awrah* uncovered wearing whatever she pleased. Whilst others went to the other extreme taking the view that women do not have the right to engage in trade or meet with men under any circumstances, and viewed

the whole of the woman's body as *'awrah* including the hands and face. Due to these extreme positions there was a degeneration of morals and a stagnation of thinking. The result of all this was the break-up of the social aspect, unrest within the Muslim family, the prevalence of dissatisfaction and discontent amongst family members, and numerous disputes and divisions between them.

The need to unite the family and to ensure its happiness was felt by all Muslims, and the search for a solution to this serious problem occupied the minds of many people. Different attempts of various sorts appeared to present solutions. Many publications were written demonstrating the societal solution and amendments were made to the laws of the *Sharee'ah* courts and electoral systems. Many tried to apply their views on their families, on their wives, sisters and daughters. Changes were made to the school system with regards to the mixing of boys and girls. Such attempts at addressing the situation continued to appear in these and similar guises. However, none of them succeeded in finding a solution, or bringing forth a system, or finding a method to implement what they perceived as reform. This is because the issue of the relationship between the two sexes became obscure in the minds of many Muslims. They were unable to comprehend the way in which the two genders can co-operate with each other, even though the well-being of the *Ummah* stems from this co-operation. They were completely ignorant of the thoughts and rules of Islam, which relate to the meeting of the man and the woman. This led them to discuss and debate the means of treatment, avoiding the study of its

reality until, as a consequence of their attempts, anxiety and confusion increased. A chasm came to exist in society which gave rise to concerns for the entity of the Islamic *Ummah*, in its capacity as an *Ummah* with distinct characteristics. It was feared that the Muslim household would lose its Islamic character, and the Muslim family would lose the guidance of the enlightened thoughts of Islam and stray from valuing its rules and thoughts.

As for the cause of this confusion, and deviation from the correct understanding, it was due to the crushing onslaught of the Western culture. Western culture completely dominated our thinking and tastes; it changed our concepts about life, the criteria for things and our convictions which used to be deeply rooted within us, such as our fortification of Islam and our veneration for our sanctities. Thus, the victory of Western culture over us was comprehensive - encompassing all sectors of life, amongst which was the social aspect.

This happened because when the Western culture emerged in Muslims countries, together with its material forms and materialistic advancements, many were dazzled by it. Consequently they tried to adopt this culture because those material forms, produced by the followers and advocates of this culture, were seen as a sign of progress. That is why they tried to imitate Western culture without distinguishing between Western culture and its material forms. They did not comprehend that culture constitutes a set of concepts about life and a specific way of life while civilisation denotes the material forms or tangible objects in life, regardless of the concepts about life or the way of life. They did not realise that Western

culture was founded upon a basis which contradicts the basis of Islamic culture, and that it differed from the Islamic culture in its perspective about life and its understanding of the happiness which man strives to achieve. They could not see the inconceivability of the Muslim *Ummah* borrowing from the Western culture. Nor could they see the fact that it was impossible for any community of the Islamic *Ummah*, in any country, to adopt this culture and remain part of the Islamic *Ummah* or continue to be described as a Islamic community.

Their lack of awareness of the intrinsic difference between the Islamic and Western cultures led to transference and imitation. Many Muslims attempted to borrow Western culture without understanding it, like the one who copies a book confining himself just to writing the words and letters. Some began to imitate Western culture by adopting its concepts and criteria, without reflecting on the effects and consequences of such adoption. These people noticed that women in Western societies stood side by side with men, without discrimination and any concern for the consequences. They also noticed the material forms manifested in the Western woman, besides she came out in public life dressed up with Western material forms; so they imitated her or tried to imitate her without realising that these forms agreed with Western culture, its concepts about life, and its depiction of life – which contradict with the culture of Islam, its concepts about life, and its depiction of life. They did this without the slightest consideration for what these forms manifested in her implied, and their connection with a completely different viewpoint of life.

Instead, they witnessed this and consequently believed that Muslim women should stand alongside men in society and meet with them, regardless of the consequences. They thought that Western material forms should be manifested in the Muslim woman, irrespective of the problems and issues that this entailed. Therefore, they called for the securing of personal freedom for the Muslim woman and granting her the right to do whatever she wished. As a result, they called for the mixing of men and women even when no need existed, and they called for women to reveal their charms and beauty, and for women to hold positions of ruling. They viewed this as progress and as a sign of revival.

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

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

Indeed, those transferors and imitators did not consider the difference between the two societies and the huge disparity between the two positions, just as they did not consider what the Islamic life made incumbent on them and what the *Sharee'ah* rules demanded of them. They rushed headlong in the pursuit of transference and imitation until the call for women's revival became dressed with shamelessness and indifference to morally reprehensible behaviour. In this manner those transferors and imitators continued to destroy the social aspect in the life of Muslims in the name of reviving women and under the pretext of working to revive the *Ummah*. Initially,

such people were a minority and the *Ummah* did not accept their call. However, after the capitalist system was implemented in the Muslim countries and they were ruled by the disbelieving colonialists and then by their agents who blindly followed their direction, this minority was able to influence and bring the majority of those living in the cities, and some from the villages, to follow their path. They began to transfer and imitate Western culture until the Islamic character was wiped out from many quarters of Muslim cities. There was no difference between Istanbul and Cairo or between Tunis and Damascus. Nor was there a difference between Karachi and Baghdad or Al-Quds and Beirut. All of them followed the path of transference and imitation of Western culture.

It was natural for a group from amongst the Muslims to rise up and struggle against these thoughts. It was inevitable that a large number of people from the Muslims' countries would set about to fight these ideas. Groups were formed which called for the obligation of protecting the Muslim woman and safeguarding the virtues in society. However, they did this without understanding the systems of Islam and the *Sharee'ah* rules were unclear to them. They accepted interest (*maslahah*), as perceived by the mind, as a basis for study and as a criterion for judging ideas and matters. They also called for the preservation of customs and traditions. They called people to hold on to morals, without comprehending that the basis should be the Islamic '*Aqeedah* and that the criterion should be the *Sharee'ah* rules. Blind fanaticism concerning the *Hijaab* of women reached the point where they advocated restrictions over women by not giving them permission to leave the

house, fulfil their needs, or pursue matters themselves. The later jurists (*Fuqaha*) ascribed five types of *'awrah* to women: *'awrah* in prayer, *'awrah* when in the presence of male *mahrims*, *'awrah* when in the presence of foreign (non *mahram*) men, *'awrah* when amongst other Muslim women and *'awrah* amongst non-Muslim women. According to this, they called for the total segregation (*Hijaab*) of women preventing them from seeing or being seen by anyone. They called for barring women from pursuing life's activities. They maintained that she should be barred from practising the right to vote by excluding her from holding an opinion about politics, ruling, economics or society. They stood between her and life until they thought that some verses had come to address men to the exclusion of women. They gave misinterpretations to the *hadith* of the Prophet (saw) about his (saw) shaking the hands of women in the *bay'ah*, his *ahadith* about the *'awrah* of women and his (saw) societal transactions (*mu'amalat*) with women, that agreed with what they intended for women and not what was required by the *hukm shar'i*.

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

wealth of any other nation. This happened in spite of the abundance of books and valuable works in the possession of Muslims in their public and private libraries. None of this had any affect in deterring the the transferors and imitators, or in convincing the narrow-minded of the Islamic opinion which had been derived correctly by a *mujtahid*, so long as it disagreed with what they wanted women to follow. This is because for the people on both sides, amongst the imitators and the narrow -minded, the scholars and the educated were far from being what one would describe as thinkers. They did not understand the reality, or they didn't understand the *hukm* of Allah (swt). They did not study the *Sharee'ah* rules intellectually by accurately applying them to the reality so as to be in full agreement with them. Due to this, the society in Muslim countries continued to oscillate between two notions: imitation and rigid narrow-mindedness. The social aspect continued in a confused state until the Muslim woman became bewildered. On the one side she saw women who were anxious and confused, taking from Western society without understanding it and without being aware of its reality, or knowing the contradiction that existed between it and the Islamic culture; and on the other side she saw narrow-minded women who did not benefit themselves, nor the wider Muslims at large. All of this was due to a failure in studying Islam intellectually and not understanding the Islamic social system.

Therefore, we must study the Islamic social system comprehensively. We must study it deeply until we realise that the problem is the meeting between men and women and the relationship that results from their meeting and that which branches out from this

relationship. Also we need to understand that what is required is the treatment of this meeting and the resultant relationship and that which branches out from it. It should be understood that this solution is not dictated by the mind but by the *Shar'a*. As for the mind, its role is simply to understand the solution. This solution is for Muslim men and women to live a specific lifestyle which Allah (swt) has obliged them to live. They are obliged to restrict their living solely to the lifestyle Allah (swt) has commanded in the *Qur'an* and *Sunnah*, irrespective of whether it contradicts the Western lifestyle or disagrees with the customs and traditions of their own fathers and forefathers.

The View of Man and Woman

Allah (swt) said:

﴿يَتَأْتِيَ النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا﴾

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

He (swt) says:

﴿يَتَأْتِيَ الْإِنْسَانُ مَا عَرَّفَكَ بِرَبِّكَ الْكَرِيمِ﴾

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

He (swt) says:

﴿قَتِيلَ الْإِنْسَانِ مَا أَكْفَرَهُ ﴿٧﴾ مِنْ أَيِّ شَيْءٍ خَلَقَهُ ﴿٨﴾ مِنْ نُطْفَةٍ خَلَقَهُ ﴿٩﴾ فَقَدَّرَهُ ﴿١٠﴾﴾

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

Allah (swt) addressed humankind with obligations and He (swt) made humankind the subject of that speech and those obligations. He (swt) has revealed laws (*Shar'a*) to humankind, and He (swt) will resurrect humankind and account and admit them to Paradise or Hell. Therefore, He (swt) has made humankind - not men or women - the subject of the obligations.

Allah (swt) has created humankind, whether male or female, with a specific nature which is distinct from

animals. A woman is a human being just as a man is a human being, and they do not differ in their humanity. Nor is one distinguished from the other in any aspect of that humanity. Allah (swt) has prepared both of them as human beings, to go through life's struggles and live inevitably in the same society. He also made the survival of the human race dependent on their meeting together and their mutual presence in society. One cannot view them differently because, as human beings, they possess all human characteristics and the essential requirements of life. Allah (swt) has created within each of them a life force. He (swt) created within in each of them organic needs such as hunger, thirst and the need to relieve the call of nature. He (swt) also created in each of them a survival instinct, a procreation instinct and a sanctification instinct. These are the same organic needs and instincts that are present in both men and women. He (swt) has granted both of them the faculty of thought, thus intelligence is present in a man and it is the same intelligence that is present in a woman, since Allah created an intellect for humankind and not exclusively for a man or a woman.

The procreation instinct can be satisfied by a man with a man or an animal and so on. Or a woman can satisfy the instinct with a woman or animal etc. However, this will not serve the purpose for which the instinct has been created in humankind except in one case, which is if a man satisfies it with a woman and a woman satisfies it with a man. Therefore, the relationship of a man with a woman from the angle of instinctual sexuality is a natural relationship, free of any abnormality. It is the only genuine relationship by which humankind realises the purpose for which this instinct was created, and that is the survival of the

human race. So when a sexual relationship takes place between them, it is instinctive and natural, and there is nothing strange or odd about it. On the contrary, it is necessary for the survival of the human species. However, allowing this instinct free reign is detrimental to Man and his life in society. The purpose of its existence is to produce offspring for the survival of the species. Therefore, Man's view of this instinct must be orientated towards the purpose for which it is found in him, and that is undoubtedly the survival of the species without distinction between men or women. As for the pleasure and enjoyment which is obtained by satisfaction, that is natural and inevitable whether humankind considers it to be or not. Therefore, it is incorrect to say pleasure and enjoyment should be separated from the procreation instinct. Such a separation between them cannot take place since it is impossible. However, Man's view stems from his concept about this satisfaction, and the purpose of its existence. Mankind must generate a specific concept about this instinct and the purpose for which it exists in him. This will form within him a distinct view concerning the procreation instinct, so that he restricts it to the relationship of a man with a woman, and a woman with a man. It will also form in him a distinct view concerning the relationship between men and women in a sexual sense, such that it is directed according to the purpose for which it was created, i.e. the survival of the human race. Through this view, the satisfaction of the instinct is achieved as well as the purpose for which it was created. The community which adopts this concept and possesses this distinct view also achieves tranquillity. The view of the community - any human community - concerning the sexual relationship must be changed from a view focused on pleasure and

enjoyment, to one where pleasure and enjoyment are considered natural and necessary, but the view is orientated towards the purpose for which this instinct exists. This view maintains and discharges the procreation instinct according to the correct manner for which it was created, and gives Man the opportunity to carry out his other activities, as well as making him free to pursue the things that make him happy.

For this reason, people must possess a concept about the satisfaction of the procreation instinct and the purpose for which it exists. The human community must have a system that ensures co-operation between the man and the woman and eliminates from peoples' minds the dominance of the notion of sex, making it the overriding factor over all other concerns. This is because the community is of no worth without the co-operation between men and women, considering them as two colleagues who support each other in mutual love and kindness. For this reason, we must emphasise the importance of complete change in the community's outlook towards the relationship between men and women, which will end the dominance of the concepts of sex, turning it into a matter which is natural and necessary for satisfaction and ending the restriction of this relationship to pleasure and enjoyment. Instead, it will produce a view which seeks the good of the community, not one which is purely sexual, and it will be governed by the fear (*taqwa*) of Allah and not by enjoyment or lust. It is a view which does not deny a person the enjoyment of sexual pleasure, but makes it lawful, ensuring the survival of the human race and agreeing with the ultimate goal of a Muslim, which is to seek the pleasure of Allah (swt).

Verses in the *Qur'an* have come addressing the marital aspect, i.e. the purpose for which the procreation instinct was created. Thus, there are verses which make it clear that the creation of the procreation instinct, in origin, is for the purpose of marriage i.e. survival of the human race. In other words, Allah (swt) has created the instinct for the purpose of marriage. The verses clarify this using various styles and numerous meanings in order to ensure that the view of the community towards the relationship between the man and woman is a view which is focused on marriage and not on sexual intercourse.

Allah (swt) said:

﴿يَتَأْتِيَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً﴾

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

He (swt) says:

﴿هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا فَلَمَّا تَغَشَّهَا حَمَلَتْ حَمْلًا خَفِيفًا فَمَرَّتْ بِهِ فَلَمَّا أَثْقَلَتْ دَعَا اللَّهَ رَبَّهُمَا لَئِنْ ءَاتَيْتَنَا صَالِحًا لَنُكَونَنَّ مِنَ الشَّاكِرِينَ﴾

"It is He Who has created you from a single person, and He has created from him his wife, in order that he might enjoy the pleasure of living with her. When he had sexual relations with her, she became

pregnant and she carried it about lightly. Then when it became heavy, they both invoked Allah, their Lord: If You give us a good child, indeed we shall be amongst the grateful". [Al-'Araaf: 189]

He (swt) says:

﴿وَلَقَدْ أَرْسَلْنَا رُسُلًا مِّن قَبْلِكَ وَجَعَلْنَا لَهُم أَزْوَاجًا وَذُرِّيَّةً﴾

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

He (swt) says:

﴿وَاللَّهُ جَعَلَ لَكُم مِّنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِّنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً﴾

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

He (swt) says:

﴿وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِّنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً﴾

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

He (swt) says:

﴿فَاطِرُ السَّمَوَاتِ وَالْأَرْضِ جَعَلَ لَكُمْ مِّنْ أَنْفُسِكُمْ أَزْوَاجًا﴾

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

He (swt) says:

﴿وَأَنَّهُ خَلَقَ الزَّوْجَيْنَ الذَّكَرَ وَالْأُنثَىٰ ۗ مِن نُّطْفَةٍ إِذَا تُمْنَىٰ﴾

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

He (swt) says:

﴿وَخَلَقْنَاكُمْ أَزْوَاجًا﴾

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

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

The Impact of this View on the Relationship between Men and Women

When the instinct is aroused it will require satisfaction. If it is not aroused then it will not require satisfaction. When the instinct requires satisfaction, it will drive the human being to acquire that satisfaction. If it is not achieved then the human being will experience anxiety. Once it is pacified the anxiety will cease. The non-satisfaction of the instinct will not result in death or any physical, mental, or psychological harm. Harm will be only limited to frustration. Consequently the satisfaction of this instinct is not indispensable for life such as the fulfilment of the organic needs; rather it brings about tranquillity and comfort.

Two matters arouse the instinct:

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

At least one of these must be present for the instinct to be evoked. This means the instinct it is not agitated due to an internal drive, as is the case with the organic need, but rather from an external stimulus, namely the tangible reality or associated thoughts. This is true for all instincts: the instinct of survival, sanctification and procreation without any difference.

Since the procreation instinct, like other instincts, only requires satisfaction when aroused due to a tangible reality or associated thoughts, the human being is able to control this satisfaction. In fact, human beings are able to initiate this satisfaction, or to prevent it from taking place except in such a manner that it is geared towards preserving the human

race. Seeing the opposite sex or any tangible reality related to the procreation instinct will arouse the instinct causing it to require satisfaction. Consequently, reading sexual stories and listening to sexual ideas will excite the procreation instinct. Conversely, keeping away from the opposite sex, sexual ideas or anything related to sexual aspect will prevent the instinct from being aroused. This is because the procreation instinct cannot be aroused without a tangible reality or a sexual thought.

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

This is a clear indication of the extent to which the community's view of man-woman relations affects the direction of public life in the community and in

society. The Westerners who adopted the capitalist ideology and those in the East who adopted Communism viewed the male-female relations purely from a sexual viewpoint and not from the perspective of preserving the human race. Hence they deliberately worked to find tangible realities and sexual thoughts for men and women to stimulate this instinct, in order to satisfy it. They claimed that if this instinct is not satisfied, this will lead to suppression, which then leads to physical, psychological and mental harm. That is why in Western and Communist communities and societies sexual thoughts are to be found throughout their writing, poetry, and literature, etc. In these societies unnecessary free mixing is increased between men and women in their homes, parks, roads, and swimming pools, and the likes. This is because they consider these things a necessity which they purposely create. It is a part of organising their life and a part of the lifestyle that they lead.

As for Muslims who believe in the ‘*Aqeedah* of Islam, and the validity of its rules, carry a different point of view. Islam views the sexual aspect of the relationship to be for the preservation of the human race and does not focus solely on the sexual aspect. It considers the sexual aspect to be an inseparable part of satisfaction though it is not the primary motive. Consequently, Islam views the presence of sexual ideas and the tangible realities that excite the instinct as a cause of corruption and harm. Hence, it forbade a man from meeting a woman in seclusion (*khalwah*), the woman from showing her charms to non-*mahrams* and men and women from looking at each other from a sexual perspective. Islam has also defined the co-operation between men and women in public life and confined sexual relations between men and women to

two situations, namely marriage and possession of what your right hands possess.

Therefore, Islam works to prevent the procreation instinct from being aroused by anything in public life and works to confine sexual relations to specific situations. Contrary to Islam, Capitalism and Communism work to create situations that excite this instinct in order to satisfy it and to set it loose. Also, while Islam views the sexual relationship to be only for the purpose of preserving the human race, Capitalism and Communism view the man-woman relations purely from a sexual perspective. The gulf of difference between what Islam aims to achieve and what the other two ideologies are devoted to achieve is highly evident. This shows the Islamic point of view as being one of purity, righteousness and chastity, bringing about tranquillity of the human being and the continuation of his race.

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

mental and psychological illnesses occur when the procreation instinct is not satisfied is false, since it is only true for some individuals but not for all human beings at large. This shows that such illnesses do not happen naturally due to non-satisfaction but rather they are due to other factors. If such complications were a result of suppressing the instinct, it would have happened in every case of non-satisfaction according to the laws of nature, a matter which has never occurred and something they themselves admit. Therefore, such individual complications must be due to factors other than the suppression of the instinct.

This is from one aspect. However from another aspect; an organic need requires satisfaction naturally from within. It does not require an external stimulus, though an external stimulus incites it when the need is present. This is different from the instinct which does not require satisfaction naturally from within without the presence of an external stimulus. It is not stimulated internally unless an external stimulus exists, which results either from an exciting tangible reality or an arousing sexual thought, part of which is the association of arousing thoughts. When the external factor is absent, there will be no stimulation. This is true for all instincts with no difference between the instinct of survival, sanctification or procreation and with all their external manifestations. Therefore, if a stimulus for any one of these instincts is present, the person will be aroused and the instinct will require satisfaction. Once the stimulus is kept at bay or the person becomes occupied in something that is more important, the demand for satisfaction will disappear and he will calm down. This is different from the organic need which if agitated will not go away until satisfied.

This clearly demonstrates that if the procreation instinct is not satisfied then it does not result in physical, mental or psychological illness, since it is merely an instinct and not an organic need. What in fact happens is that once a person is confronted with an exciting tangible reality or sexual thought, which stimulates the procreation instinct, that person will be agitated and demand satisfaction. If the demand is not met with satisfaction, that person will only experience anxiety. However, if the stimulus is kept away or the person is kept occupied with something that dominates the instinct, the anxiety disappears. Therefore, suppressing the procreation instinct once aroused will result in discomfort nothing more, and if not excited, nothing will result, not even discomfort. Therefore, the proper solution is not to stimulate the instinct. This is achieved by preventing anything from stimulating it if satisfaction is not possible.

This shows the fallacy of the Western and Communist point of view, which made the community's view of men-women relations to be focused on the masculinity and femininity aspect. Consequently, it shows the falsehood of the treatment produced by this point of view with its stimulation of the instinct in men and women should be aroused through means such as free mixing, dancing, games, stories, etc. It also shows the correctness of the Islamic point of view which made the community's view of sexual relations focused on the purpose for which this instinct was created, namely preserving the human race. Accordingly, it shows the correctness of the solution produced by this view of avoiding any kind of stimulating tangible reality or sexual thought when legitimate satisfaction through marriage or what

their right hands possess is not available. Therefore, Islam alone is able to completely and correctly treat the corruption caused by the procreation instinct in the society and among the people. Such a treatment will result in righteousness and elevation in the society and the people.

Regulating the Relations between Man and Woman

The fact that women stimulate the procreation instinct in men and vice versa does not mean that the stimulation will inevitably exist whenever a man meets a woman. Rather, it means they can potentially stimulate the instinct in each other when they meet which may result in sexual relations. They may meet and not stimulate the instinct, such as when meeting for the purpose of trading, conducting an operation on a patient, or attending Islamic classes, etc. In all these cases and others, the possibility of stimulating the sexual instinct still remains. However, such a possibility does not mean stimulation is inevitable. Stimulation occurs when they view each other from the sexual angle instead of the viewpoint of preserving the human race. Therefore, the fact that men and women stimulate this instinct in each other should not be a reason for the total separating men and women. In other words, it is incorrect to make the possibility of arousing the procreation instinct a reason for preventing men and women from meeting together in public and from co-operating amongst each other. They should meet in public life and co-operate amongst each other, because their co-operation is essential for society and the public life. Such co-operation, however, cannot be achieved except through a system that regulates the relationships between them. This system must emanate from the view that the relationship between males and females is meant to preserve the human race. Through this system, the meeting of men and women in public life and co-operation between them can safely take place.

The only system that guarantees a blissful life and organises man-woman relations naturally is one whose basis is spirituality and whose criterion is the *ahkaam shar'iyah* (divine rules), and includes the rules that achieve the ethical value. This system is the Islamic social system. Islam views humans, whether men or women, as human beings with instincts, sentiments, inclinations and possessing a mind. The Islamic system permits man to enjoy the pleasures of life. It does not denounce him for taking from life the greatest share he can. It demands, however, that this be carried out in such a way that protects the community and the society, and enables the human being to achieve tranquillity. The social system in Islam is the only correct social system (assuming that other social systems exist). This is due to several reasons: the Islamic social system views the procreation instinct as being for the purpose of preserving the human race; it accurately organises male-female relations whereby it guarantees that this instinct proceeds only in its natural course, thus fulfilling the purpose for which Allah created the human. At the same time it organises the relations between men and women and makes the regulation of the masculine and feminine aspect a part of these relations, whereby it guarantees co-operation between men and women for the good of the community, society and the individual. At the same time, it guarantees the achievement of the ethical value. It makes the pleasure of Allah (swt), which is the highest ideal, the regulator of such co-operation. This ensures that piety and purity determine the method of interaction between the two sexes in this life, and ensures that the styles and means in life do not in any way contradict this method.

Islam restricts sexual relations between men and women to marriage and what their right hands possess. Any relationship outside of these two is considered a crime that must be punished severely. As for other kinds of relations which are external manifestations of the procreation instinct, such as parenthood, childhood, brotherhood, uncle hood - they are allowed and considered part of the unmarriageable kinship. Islam allowed activities for women just as it allowed them for men, such as engaging in trade or industry, farming, attending Islamic classes, praying, carrying the *da'wah*, etc.

Islam made co-operation a fact in all dealings between men and women in life's affairs and in the people's relations among themselves. All are the servants of Allah (swt) and all co-operate in goodness, and in fear and worship to Allah (swt). The *ayaat* came to address humans with regards to inviting them to Islam irrespective of whether they are men or women.

Allah (swt) says,

﴿ قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا ﴾

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

Allah (swt) says,

﴿ يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمْ ﴾

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

With regard to the rules of Islam, the verses addressed the believers (as a whole).

Allah (swt) said:

﴿يَتَأْتِيَ الَّذِينَ ءَامَنُوا أَسْتَجِيبُوا لِلَّهِ وَلِلرَّسُولِ إِذَا دَعَاكُمْ لِمَا يُحْيِيكُمْ﴾

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

The *ayaat* have been comprehensively and generally revealed to include men and women.

He (swt) said:

﴿كُتِبَ عَلَيْكُمُ الصِّيَامُ﴾

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

He (swt) said,

﴿أَقِيمُوا الصَّلَاةَ﴾

"Establish Salat," [Al-An'aam: 72]

﴿خُذْ مِنْ أَمْوَالِهِمْ﴾

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

He (swt) said,

﴿إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ﴾

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

He (swt) said:

﴿وَالَّذِينَ يَكْتُمُونَ الذَّهَبَ وَالْفِضَّةَ﴾

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

He (swt) said,

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ﴾

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

He (swt) said,

﴿يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَتَّخِذُوا ءَابَاءَكُمْ وَإِخْوَانَكُمْ أَوْلِيَاءَ إِنِ اسْتَحَبُّوا
الْكُفْرَ عَلَى الْإِيمَانِ﴾

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

These *ayaat*, among many others, are general, addressing men and women. Carrying out these commands may involve the meeting between men and women, including the commands that are performed individually, such as the *Salah*. This proves that Islam permitted men and women to meet to fulfil the rules they have been commanded with, and actions that they have to undertake.

However, Islam laid down certain precautions against anything that would lead to unlawful sexual relationships or divert men and women from the specific system assigned to control the sexual relationship. Islam stressed these precautions. Thus, it made chastity compulsory, and obliged the use of every method, style and means that would lead to the protection of chastity and morals. This is due to the principle that that which is necessary for the fulfilment of an obligation is an obligation. To achieve this goal, it outlined certain divine rules (*ahkaam shar'iah*). Numerous divine rules include:

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

Allah (swt) said,

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

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

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

Allah (swt) said:

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ﴾

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

He (swt) also said:

﴿يَا أَيُّهَا النَّبِيُّ قُلْ لَأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءِ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلْبَابِهِنَّ﴾

"Oh Prophet, tell your wives and daughters and the women of the believers to drape down their outer clothes (jilbaab)", [Al-Ahzaab: 59]

Which means they are not to show the places of charm, except that which is apparent i.e. the face and the hands. *Khimaar* is the head cover and *jayb* is the v-neck i.e. the shirt opening from the neck to the chest. In other words, they should place their *khimaar* over their necks and chests. As for draping of the *jilbaab*, it means to lower and loosen the dress down.

3. It forbade the woman from travelling for over one day and one night without a *mahram*. The Messenger (saw) said:

« لا يَحِلُّ لِمَرْأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُسَافِرَ مَسِيرَةَ يَوْمٍ وَلَيْلَةٍ إِلَّا وَمَعَهَا ذُو مَحْرَمٍ لَهَا »

“It is not permitted for a woman who believes in Allah and the Day of Judgement to travel one night and one day except with a *mahram*.”
[Reported by Muslim]

4. It forbade a man and a woman to be in seclusion (*khalwah*) except in the company of a *mahram*. The Messenger (saw) said:

« لا يَخْلُونُ رَجُلٌ بِامْرَأَةٍ إِلَّا مَعَ ذِي مَحْرَمٍ »

“No man should be in seclusion (*khalwah*) with a woman without her *mahram*.” [Reported by al-Bukhari]

Ibn Abbas reported that he heard the Prophet (saw) give a speech in which he said:

« لا يَخْلُونُ رَجُلٌ بِامْرَأَةٍ إِلَّا وَمَعَهَا مَحْرَمٌ، وَلَا تُسَافِرُ الْمَرْأَةُ إِلَّا مَعَ ذِي مَحْرَمٍ فِقَامَ رَجُلٍ فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّ امْرَأَتِي خَرَجَتْ حَاجَةً وَإِنِّي اكَتَبْتُ فِي غَزْوَةِ كَذَا وَكَذَا قَالَ: فَانْطَلِقْ فَحُجِّ مَعَ امْرَأَتِكَ »

“No man should be in seclusion (*khalwah*) with a woman except with her *mahram*. Also no woman is to travel but with her *mahram*.” Upon hearing this, a man stood up and said: "Oh Messenger of Allah, my wife is out to perform *Hajj* and I have been conscripted in such and such battle.” **The Messenger said: “Go and perform *Hajj* with your wife.”** [Reported by Muslim]

5. Islam forbade the woman from leaving her house without her husband's permission as this is his right over her. If she leaves her house without permission, she is considered disobedient and rebellious (*nashizah*), and consequently will not be entitled to financial support (*nafaqah*). Ibn Battah reported in his book, The Rules pertaining to Women, from Anas that a man travelled out of town and prevented his wife from leaving the house. Then her father became ill. She asked the Messenger’s (saw) permission to visit her sick father. The Messenger (saw) replied:

«اتقي الله ولا تُخالفِي زَوْجَكَ»

“Fear Allah and do not disobey your husband.”

Afterwards her father died and she asked the Messenger's (saw) permission to attend his funeral. He (saw) said:

«اتقي الله ولا تُخالفِي زَوْجَكَ»

“Fear Allah and do not disobey your husband.”

Then Allah (swt) revealed to the Prophet (saw) that:

«إِنِّي قَدْ غَفَرْتُ لَهَا بِطَاعَةِ زَوْجِهَا»

“I have forgiven her due to her obedience to her husband.”

6. Islam made the community of women separate from the community of men in the private life and in the Mosques, schools and the like. It stipulated that women live among women and the men among men. It also ensured that the rows of women are behind the rows of men in prayer, urged women not to mingle amongst the crowds of men in the streets and markets, and stipulated that women live only with women or a *mahram*. A woman can perform her public activities such as buying and selling and the like, as long as she goes back to live with women or a *mahram*.

7. Islam endeavoured to keep the co-operative relation between men and women of a public nature in all transactions. It did not allow such relation to be private such as exchanging visits among the non-*mahram* men and women and going out together. This is because the purpose of this co-operation is for the woman to fulfil her rights and affairs and to undertake her obligations.

With these *Ahkaam* (rules), Islam took precautions to prevent the meeting of men and women from turning into sexual encounters in order to maintain the co-operation and allow people to carry out their interests and perform their duties. Therefore, Islam treated the relations that result from the interests of individuals, men or women, when the two meet. It also treated the relations that result from the meeting of men and women, such as financial support, parenting, marriage, etc. Islam's treatment restricted the meeting to the relationship that necessitated the meeting and kept it from turning into a sexual encounter.

Private Life

The nature of the human being is that he lives a public and a private life. In his public life, he lives with other members of society in his tribe, village or city. In his private life, he lives at home and among his family members. For the private life, Islam laid down specific rules to treat the problems encountered by the human being whether male or female. One of the key rules that Islam brought is that the private life is exclusively under the control of that human. It forbade anyone to enter his house without his permission. Allah (swt) says:

﴿يَتَأَيُّهَا الَّذِينَ ءَامَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا

عَلَىٰ أَهْلِهَا ؕ ذَٰلِكُمْ خَيْرٌ لَّكُمْ لَعَلَّكُمْ تَذَكَّرُونَ ﴿٢٧﴾

"Oh you who believe! Enter not homes other than yours until you establish familiarisation and greet their inhabitants. This is better for you, so that you might remember". [An-Nur: 27]

Allah (swt) commanded people not to enter homes without the inhabitants' permission. He (swt) considered not seeking the permission as estrangement and seeking it as familiarisation. He (swt) said:

﴿حَتَّى تَسْتَأْذِنُوا﴾

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

This is a metonym (*kinaayah*) for seeking permission since familiarisation will not occur without it, i.e. until you seek permission of its inhabitants. At-Tabaraani reported on the authority of Abu Umamah that the Messenger (saw) said:

«وَمَنْ أَدْخَلَ عَيْنَيْهِ فِي بَيْتِ بَعْزِ إِذْنِ أَهْلِهِ فَقَدْ دَمَّرَ»

“Whoever peeps at a home without the permission of its people, it is as if he destroyed it.”

Abu Dawood reported:

«أَنْ رَجُلًا سَأَلَ النَّبِيَّ ﷺ: أَسْتَأْذِنُ عَلَى أُمِّي؟ قَالَ: نَعَمْ، قَالَ: إِنَّهُ لَيْسَ لَهَا خَادِمٌ غَيْرِي، أَسْتَأْذِنُ عَلَيْهَا كُلَّمَا دَخَلْتُ؟ قَالَ: أَتَحِبُّ أَنْ تَرَاهَا عُرْيَانَةً؟ قَالَ الرَّجُلُ: لَا، قَالَ: فَاسْتَأْذِنُ»

A man asked the Prophet (saw) if he should seek permission from his mother (when he enters her quarters) He (saw) said: **“Yes.”** He said: **“But there is no one to serve her except me. Do I have to seek permission every time I enter?”** The Prophet replied: **“Do you want to see your mother naked?”** The man said: **“No.”** He (saw) said **“Then seek permission.”** Therefore, Islam forbade anyone from entering a home other than one’s own without the permission of the inhabitants of the home. This includes the homes of both Muslims and non-Muslims. This is because while the speech regarding the seeking of permission is for Muslims, the word ‘homes’ (*buyout*) came in an unrestricted (*mutlaq*) and general (*aam*) form without any restriction (*taqyeed*) or specification (*takhsees*): therefore, this includes every home. This is recognition of the sanctity of the home and that the private life has specific rules such as the seeking of permission to enter someone's home. In the situation where the one seeking to enter a house doesn't find anyone in, they are not to enter until permission is granted. If they are told to turn back then they must turn back and are not allowed to enter.

Allah (swt) said:

﴿فَإِنْ لَمْ تَجِدُوا فِيهَا أَحَدًا فَلَا تَدْخُلُوهَا حَتَّىٰ يُؤْذَنَ لَكُمْ ۗ وَإِنْ قِيلَ لَكُمْ

أَرْجِعُوا فَأَرْجِعُوا ۗ هُوَ أَرْحَمُ لَكُمْ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ ﴿٢٨﴾

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

This means that you are not to persist in seeking permission, push back the screen nor stand by the door waiting. All these rules apply in respect to inhabited houses. As for houses which are not inhabited, they have to be examined. If the person wishing to enter has possessions inside, then he can enter without seeking permission, and these houses are exempt from the requirement of seeking permission. Allah (swt) says:

﴿لَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَدْخُلُوا بُيُوتًا غَيْرَ مَسْكُونَةٍ فِيهَا مَتَاعٌ لَكُمْ ۗ وَاللَّهُ يَعْلَمُ

مَا تُبْدُونَ وَمَا تَكْتُمُونَ ﴿٢٩﴾

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

The opposite meaning (*mafهوم al-mukhaalafah*) is that if you have no possessions inside then you are not to enter. So the exception is for the unoccupied house which contains possessions of the person who wishes to enter. The rule of seeking permission insures that the private life is protected from the inconvenience caused by those wishing to enter. Thus those inside would be able to live in peace, free of the interruption of outsiders.

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

Allah (swt) said:

﴿ يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لِيَسْتَعِذْنَ كُمْ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا
 الْحُلُمَ مِنْكُمْ ثَلَاثَ مَرَّاتٍ ۚ مِنْ قَبْلِ صَلَاةِ الْفَجْرِ وَحِينَ تَضَعُونَ ثِيَابَكُمْ مِنَ
 الظُّهْرِ وَمِنْ بَعْدِ صَلَاةِ الْعِشَاءِ ۚ ثَلَاثُ عَوْرَاتٍ لَكُمْ ۚ لَيْسَ عَلَيْكُمْ وَلَا عَلَيْهِمْ
 جُنَاحٌ بَعْدَهُنَّ طَوَافُونَ ۚ عَلَيْكُمْ بَعْضُكُمْ عَلَىٰ بَعْضٍ ۚ كَذَٰلِكَ يُبَيِّنُ اللَّهُ لَكُمْ
 الْآيَاتِ ۗ وَاللَّهُ عَلِيمٌ حَكِيمٌ ﴿٥٦﴾ وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمْ الْحُلُمَ فَلْيَسْتَعِذُوا

كَمَا أَسْتَعْدَنَ الَّذِينَ مِنْ قِيْلِهِمْ ۚ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ ۗ وَاللَّهُ عَلِيمٌ

حَكِيمٌ ﴿٥٨﴾

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

These rules protect the private life from outsiders who wish to enter, regardless of whether it is a stranger (*ajnabi*) or a close person whom marriage is prohibited (a *mahram*) or an in-law. In the private life, a woman will live with other women or her *mahram* men since they are the ones in whose presence she can show the parts of charms which she naturally shows in the private life. Apart from other women and her *mahram* men, the woman may not live with anyone else because she is not allowed to show parts of her body that are usually apparent when she does the housework, which exceed the hands and face. Thus, the private life is restricted to women and *mahram* men. There is no difference between Muslim or non-Muslim women since they are all women in spite of their religion. The fact that the woman is commanded not to show the parts of charm to people she can marry but allowed to show them to her

mahrams is clear evidence that the private life is restricted to the *mahrams* only. Allah (swt) said:

﴿ وَقُلِ الْمُؤْمِنَاتُ يَغْضُضْنَ مِنْ أَبْصَرِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا ۗ وَلَا يَضْرِبْنَ بِمُخْمَرِهِنَّ عَلَىٰ جُيُوبِهِنَّ ۗ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَاءِ بُعُولَتِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنَاتِ أَخْوَانِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّابِعِينَ غَيْرِ أُولِي الْإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَىٰ عَوْرَاتِ النِّسَاءِ ۗ ﴾

"And tell the believing women to lower their gaze, protect their private parts and not to show their places of charm in public beyond what may (decently) be apparent thereof; hence let them draw their head-coverings (khumur) over their necks and chests (juyoob). And let them not display (more of) their charms to any but their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women folk, their slaves, such male attendants as are beyond all sexual desire, or children that are as yet unaware of women's nakedness;" [An-Nur: 31]

Falling under the same rules of the *mahram* men are the slaves they own, and men who have no desire in women such as the elderly lacking any sexual capacity, castrated, eunuchs and the like. Such people may be present in the private life. Apart from them non-*mahram* men, even if they were relations, are not allowed to be in the private life. This is because the woman is not allowed to show before them the parts of her body which usually appear at home.

Thus, it is absolutely *haraam* for non-*mahram* men to meet women in the private life. Exceptions are only those which the Legislator defined such as for food and visiting relatives. Such exceptions, however, are allowed only if the woman is accompanied by a *mahram* man and has her entire *'awrah* covered.

Obligation of the Separation of Men and Women in the Islamic Life

The Islamic life in which Muslims live and conduct their general affairs, where men and women are separated from each other, is established by the *Qur'an* and *Sunnah*. Men are separated from women in the private life, such as in the homes and the like, and in the public life, such as the markets and the roads. Such a lifestyle is further established by the totality of the *Sharee'ah* rules, which address the men separately, the women separately and both of them together. It is also established by the fact that the *Qur'an* addresses women as women and men as men such as Allah's (swt) saying:

﴿وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّائِمِينَ وَالصَّائِمَاتِ وَالْحَافِظِينَ فُرُوجَهُمْ وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُم مَّغْفِرَةً وَأَجْرًا عَظِيمًا﴾

"The men and women who give charity and fasting men and women, and the men and women who guard their chastity and the men and women who remember Allah much Allah has prepared for them forgiveness and a great reward". [Al-Ahzaab: 35]

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

As for the evidences in their totality, we find that the Legislator obliged the woman to wear the *jilbaab* when she leaves her home. It declared the entire body of the woman as *'awrah* (which must be covered) except her hands and face. It forbade her from

revealing her charms to non-*mahram* men. It forbade men from looking at her *awrah*, even her hair. It forbade the woman from travelling, even to *Hajj*, without her *mahram*. We find that the Legislator also forbade people from entering homes without permission. The Legislator did not oblige the woman to attend the congregational prayers in the *masjid*, *Jumu'ah*, or to go for *Jihad* as the obligation for the man. We also find that it obliged the men, but not the women, to strive and earn their livelihood. All this is in addition to the fact that the Messenger (saw) himself separated men from women. He arranged the womens' rows in the *masjid* and in *salah* behind the mens' rows; al-Bukhari reported on the authority of Anas bin Malik that his grandmother, Mulayka, invited the Messenger of Allah (saw) for food that she had made and he ate some of it. Then the Messenger of Allah (saw) said,

"قوموا فَأُصَلِّ لَكُمْ ... إلى أن قال: فقام رسول الله ﷺ وصَفَّقْتُ أنا واليتيم وراءه والعجوز من ورائنا»

"Get up and I will lead you in prayer". Then Anas said: The orphan and I formed a row behind him, and the old woman stood behind us." The Prophet (saw) instructed the women to leave the *masjid* before the men in order to maintain the separation. Al-Bukhari reported from Hind bint al-Harith that Umm Salamah, the wife of the Prophet (saw), informed her that: **"In the time of the Messenger of Allah (saw) the women after completing the prayer with *tasleem*, they used to get up immediately and Allah's Messenger (saw) would remain at his place and so would the men who prayed with him. And when the Messenger**

(saw) got up to leave then the men would get up to leave.” Regarding his lessons a woman asked him: **“O Messenger of Allah! The men have dominated the other days so designate a special day for us.”** This has been reported by al-Bukhari on the authority of Abu Sa’eed al-Khudri. These *Ahkaam* (rules) and situations among many others show in their entirety, the manner in which the Islamic way of life is lived, and that it is one where men are separated from women. It also shows that this separation is general and includes the public as well as the private life. Men and women were separated from each other in both spheres in the Islamic life at the time of the Messenger (saw). There were no exceptions other than those the Legislator permitted, whether in the private or public life.

Upon studying the *Ahkaam* of Islam we find that the Legislator permitted women to buy and sell, to give and receive things, obliged the *Hajj* upon her, allowed her to attend the *salah* in *jama’ah* in the *masjid*, to fight the *kuffaar*, to own and invest her wealth, and allowed other matters to her besides these. Activities which the Legislator permitted or obliged the women to undertake may require meeting with men to accomplish them: in such cases a meeting is permitted, provided that the meeting is within the rules of Islam and required by the activity which she is permitted to perform. Examples for this are buying and selling, renting, education, medical treatment, farming, industry, etc. This is because the evidence which allows or obliges such activities includes the permission for them to meet together. However, if the activities do not require women to meet with men, such as walking in the street to go to the *masjid*, to the market, to visit the family, going out; or eating and

drinking, etc., then it is not allowed for men and women to meet. This is because the evidence for the separation of men and women is general, and there is no evidence to permit meeting in such cases. Also, these activities are not required to fulfil that which the Legislator permitted the woman to do. Therefore, meeting for such matters is sinful even if done in the public life. Consequently, separation of men and women in the Islamic life is an obligation. In the private life, separation must be complete except in the cases allowed by the Legislator. As for public life, separation is the norm. It is not allowed for men and women to meet in public life except for what the Legislator allowed, obliged or recommended for women to do, and at the same time, it requires meeting with men; whether this meeting is with separation such as in the *masjid* or with mixing such as in *Hajj* and trading.

Looking at Women

When someone wants to marry a woman, he may look to what is *mubah* (permissible) [the face and hands] with or without her permission, i.e. without her knowledge. It is also permissible to look to other than the face and hands with the aim of proposing, however without her permission or knowledge. This act of not lowering one's gaze at the woman is permissible as long as he is serious in seeking to propose.

The evidence for this is the *hadith* for Jabir said that the Messenger of Allah (saw) said:

«إذا خطب أحدكم المرأة فإن استطاع أن ينظر إلى ما يدعوه إلى نكاحها فليفعل.
قال: فخطبت امرأة فكننت أتخباً لها حتى رأيت منها ما دعاني إلى نكاحها
فتزوجتها»

“If a man proposes to a woman and he is able to look at whatever would encourage him to marry her, let him do so.” He said, "I proposed to a woman whom I used to look at from a hide out, I did this until I saw what invited me to marry her then I married her." [Reported by al-Haakim who said this *hadith* is sound (*sahih*) according to the criteria of Muslim].

From one aspect, this *hadith* indicates the permissibility of the one who seeks to propose may look to other than the *mubah* (face and hands), and not only to the *mubah* since the *mubah* is exposed to not only the person seeking to propose but also to everyone else. So making an exception, **“and he is able to, I used to look at from a hide out”**, for the one who is seeking marriage would be meaningless unless it means allowing him to see more than the face and hands.

From another aspect, the hadith indicates it is allowed for the one seeking marriage to look to other than the face and hands without her permission and without her knowledge. This is because the Prophet (saw) saying to look without restriction and in the *hadith* of Jabir it says **“and he is able to, I used to look at from a hide out.”** Moreover, a woman is not allowed to reveal any parts of her *awrah* except for specific people, and that does not include the one seeking marriage.

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ...﴾

"And let them not display their charms to any but their husbands..." [An-Nur: 31]

From a third aspect, the *hadith* indicates an exception is made for the one who is seeking marriage, for the blessed *ayah*,

﴿قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ﴾

"And command the believers to lower down their gaze"

This *hadith* is an exception to permit the one seeking marriage to aim his gaze to a woman whom he seriously seeks to propose marriage, i.e. it is permissible for him not to lower his gaze.

It is not allowed, however, to be in seclusion (*khalwah*) with her because the Prophet (saw) said:

«لا يخلون رجل بامرأة إلا ومعها ذو محرم منها فإن ثالثهما الشيطان» أخرجه

مسلم من طريق ابن عباس.

“Whoever believes in Allah and the Day of Judgement he should not be in seclusion with a woman without her *mahram* for the third (person)

that will be with them is the *Shaytaan*” (reported by Muslim from ibn Abbas)

It is allowed for the married couple to look at the entire body of each other. Bahz b. Hakeem reported from his father from his grandfather, he said:

«قلْتُ يَا رَسُولَ اللَّهِ عَوْرَتُنَا مَا نَأْتِي مِنْهَا وَمَا نَدْرُ؟ فَقَالَ لِي: احْفَظْ عَوْرَتَكَ إِلَّا مِنْ زَوْجَتِكَ. أَوْ مَا مَلَكَتْ يَمِينُكَ»

“I said, Oh Messenger of Allah, what should we hide and what should we show of our private parts?” He said to me “protect your ‘*awrah* except from your wife and what your right hand possesses.”

In addition, the man is permitted to see more than the hands and face and the places of charms (*zeenah*) of *mahram* women, be they Muslims or non-Muslims, without restriction to specific body parts. This is due to the unrestricted (*mutlaq*) text on the matter.

Allah (swt) says:

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَاءِ بُعُولَتِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ أَبْنَاؤَ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّابِعِينَ غَيْرَ أُولِي الْإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَاتِ النِّسَاءِ﴾

"And let them not display their charms to any but their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women folk, their slaves, such male attendants as are beyond all sexual desire or children that are as yet unaware of women's nakedness". [An-Nur: 31]

All these categories are allowed to see the woman's hair, neck and the places where she wears her upper arm bracelet, necklace, and anklet, as well as other places that fit the category of charms (*zeenah*). This is because Allah (swt) says:

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ﴾

“And let them not display their charms” i.e. the place of their charms (*zeenah*), except to those mentioned in the *Qur'an*. Such people are allowed to see what appears of her when she is wearing her house clothes. Ash-Shafe'i reported in his *Musnad* from Zaynab bint Abi Salamah that she was breast-fed by Asmaa, Az-Zubayr's wife. She said: “I used to see him as a father. He used to walk in while I was combing my hair - he would hold a lock of my hair and say come here.” It was also reported that Abu Sufyan upon coming to Madinah to renew the treaty of Hudaibiyyah, went to his daughter, Ummu Habibah, who was the wife of the Messenger (saw). Upon entering her house, she folded the Messenger's bed so that he would not sit on it. She did not cover up in his presence. She mentioned the incident to the Messenger of Allah who approved of her action and did not order her to cover up in her father's presence as he was a *mahram* to her even though he was a *mushrik*.

With regards to the person who is a non-*mahram* who is neither proposing and nor is he a husband, there are detailed rules that address his seeing of a woman. If there is a need for the man to look at the woman or the woman to look at the man, then it is allowed to look only at that part which is necessary. Other than that, he or she is not allowed to see more

than the face and hands. People who might have a need to look at such parts of the woman's body which the Legislator allowed them to see include the doctor, the nurse, the investigator and other such people who have a necessity to look to her her awrah or other parts. It was reported that when:

«أن النبي ﷺ لما حَكَّمَ سعداً في بني قُرَيْظَةَ كان يَكْشِفُ عن مُؤْتَرِهِم»

‘The Prophet appointed Sa’ad to give his verdict on Bani Qurayzah, he used to remove children's *izaar* (waist-wrap, a piece of cloth used to cover their private parts)’ [Reported by al-Haakim and Ibn Hibbaan on the authority of ‘Atiyyah al-Qurazi].

Also, Uthman, may Allah be pleased with him, was brought a boy who stole. Uthman said: “Look under his *izaar*.” They found no pubic hair and so did not cut his hand [Reported by al-Bayhaqi]. Uthman's action was with the full knowledge of the *Sahaabah* and none of them objected.

However, if there is no need to look at such parts, and the non-*mahram* man is not from the people who have no desire and ability for sexual intercourse, he is allowed to see the face and hands only and is forbidden to look at anything else due to the Prophet (saw) saying:

«إن الجارية إذا حاضت لم يصلح أن يُرى منها إلا وجهها ويدها إلى المِفْصَلِ»

“When a young girl begins to menstruate, it is not correct that anything should be seen of her except her face and hands up to the wrist.” [Reported by Abu Dawud] He pointed to his face and hands. The hands and face are the only exception

made by the *Qur'an* to the prohibition of showing the places of charm. Allah (swt) said:

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا﴾

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

Ibn Abbas, in explaining the above noble *ayah*, said this means the face and hands. The command to the woman not to show her charm is a command not to show her private parts (*'awrah*). The fact that it is prohibited for her to show them means it is prohibited for men to look at them. To make what is apparent an exception from the prohibition of showing them means it is an exception from the prohibition of looking at them by the necessary meaning (*al-iltizaam*). This means it is allowed to look at them. Therefore, a non-*mahram* man is allowed to look at the hands and face of a non-*mahram* woman. The look that is permissible is limited to that which would enable him to recognise her and distinguish her from other women whom he might testify for or against if required, to recognise her if he traded with her, rented to or from her, or to identify her if he borrowed from or lent money to her.

Similarly, the woman is allowed to look at the non-*'awrah* body parts of the man.

Aisha (ra) said:

«كان رسولُ الله ﷺ يسترني بردائه وأنا أنظرُ إلى الحبشة يلعبون في المسجد» متفق عليه.

The Messenger of Allah (saw) used to cover me with his garment while I was watching the Abyssinians in the *masjid*. [Agreed upon].

Also, when the Prophet (saw) finished the ‘*Eid Khutbah*,

«فَأَتَى النِّسَاءَ فَذَكَرَهُنَّ وَمَعَهُ بِلَالٌ فَأَمَرَهُنَّ بِالصَّدَقَةِ» أَخْرَجَهُ الْبُخَارِيُّ مِنْ

طَرِيقِ جَابِرٍ.

he went to the women with Bilal and preached to them and commanded them to give *sadaqa*. [Reported by al-Bukhari on the authority of Jabir].

It is clear from this that the Messenger (saw) approved the women to look at men. As for looking being restricted to the non-‘*awrah* parts, this is because Aisha was watching the Abyssinians playing, where she saw all of them except the ‘*awrah*. Looking was therefore not restricted, rather it was absolute. Also, Amru bin Shuayb reported from his father from his grandfather who said: The Messenger of Allah (saw) said:

«إِذَا زَوْجٌ أَحَدَكُمْ خَادِمَهُ عَبْدَهُ أَوْ أَجِيرَهُ فَلَا يَنْظُرُ إِلَى مَا دُونَ السُّرَّةِ وَفَوْقَ
الرَّكْبَةِ فَإِنَّهُ عَوْرَةٌ»

“When one of you marries his female servant to his slave or to his employee, he should not look at her private part below the navel and above the knees, for it is ‘*awrah*.” [Reported by Abu Dawud]. The *mafهوم* (implicit meaning) of this *hadith* is the permission to look at other than the ‘*awrah*. The permission is unrestricted (*mutlaq*) and thus includes men and women.

As for what was reported from Jarir bin Abdullah who said:

«سَأَلْتُ رَسُولَ اللَّهِ ﷺ عَنِ النَّظَرِ الْفُجَاءَةِ فَأَمَرَنِي أَنْ أَصْرِفَ بَصْرِي»

“I asked the Messenger of Allah (saw) about the sudden look, so he commanded me to look away.”

[Reported by Muslim] And what was reported from Ali who said: The Messenger of Allah (saw) said to me:

«لا تُتَّبِعِ النَّظْرَةَ النَّظْرَةَ فَإِنَّمَا لَكَ الْأُولَىٰ وَلَيْسَ لَكَ الْآخِرَةُ»

“Do not follow up the (first) glance with a second look. The first is permitted for you but not the second.” [Reported by Ahmad on the authority of Buraidah]

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

As for the saying of Allah:

﴿قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ﴾

“And command the believers to lower down their gaze”, it refers to lowering their gaze from that which is forbidden to look at, and restricting themselves to that which is allowed. It doesn't mean lowering the gaze absolutely. This is due to the fact that the Legislator has permitted looking at the *mahram's* body parts which are the areas of beautification such as the hair, neck, the area of necklaces, upper arm bracelets, anklets and feet. As for the non-*mahram* woman, he is allowed to see her face and hands. In addition, the word *ghadd ul basar* (lowering the gaze) is merely lowering one's sight. In *al-Qaamoos* (the dictionary) it is stated: “*ghadda tarfahu ghidaadan* and *ghaddan* and *ghadaadan* and *ghadaadatan*”, all of these expressions mean he lowered his gaze.

Therefore, it is allowed for the man and woman to look at each other as long as they are looking at other than each other's 'awrah and without the intention of lust and desire. The 'awrah of the man is the area between the navel and knees. The 'awrah of the woman is her entire body except her hands and face. Thus, her neck, hair (even one hair) and any side of her head are 'awrah. Anything other than that must be covered. This is indicated from the saying of Allah (swt):

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا﴾

"And they are not to show their charms except that which is apparent". That which is apparent are the face and the hands because they are the body parts that were shown by the Muslim women in front of the Prophet (saw) and to which he consented by his silence. Also, these are the parts of the body that are shown in worship and in *Hajj* and *Salah*, as well as being the parts which were usually shown at the time of the Messenger (saw), i.e. at the time of the revelation of the *ayah*.

Furthermore, there are other proofs confirming that the woman's 'awrah is her entire body while her hands and face are the only exception. The Messenger of Allah (saw) said:

«المرأة عورة»

“The woman is 'awrah.” [Reported by Ibn Hibbaan in his *Sahih* on the authority of Ibn Mas'ud].

He (saw) also said:

«إن الجارية إذا حاضت لم يصلح أن يُرى منها إلا وجهها ويداها إلى المِفْصَلِ»

“When a young girl begins to menstruate, it is not correct that anything should be seen of her except her face and hands up to the wrist.”
[Reported Abu Dawud]

These are explicit evidences that the entire body of the woman is ‘*awrah* with the exception of the hands and face, and that the woman is obliged to cover her ‘*awrah* i.e. her entire body with the exception of the hands and face.

As for the material used for covering the body of the woman, the Legislator did not specify a specific attire to cover the ‘*awrah*. The Legislation said:

﴿وَلَا يُبْدِينَ﴾

"And they are not to show their charms except that which is apparent".

«لَمْ يَصْلُحْ أَنْ يُرَى مِنْهَا»

“...it is not correct that anything should be seen of her.” Thus, any type of clothing that covers her entire body except her face and hands is considered a covering (*saatir*) whatever its shape. So, the long dress, the pants, skirt or the socks are all considered covering (*saatir*). This is because neither the type of clothes nor the shape of clothes has been specified by the Legislator. Therefore, every cloth that covers the ‘*awrah*, i.e. the ‘*awrah* is not seen through it, is considered legally valid to cover the ‘*awrah* regardless of its shape, type and number of pieces.

However, the Legislator stipulated that clothes must cover the skin. This means the clothes must conceal the colour of the skin, for example, it should not be identified as white, red or black, etc. In other words, whatever is used to cover the ‘*awrah* must do so in

such a way that the colour of the skin is not known. If the clothing is thin enough to let the colour of the skin be seen, then that clothing is unfit to cover the *'awrah*. The *'awrah* in such cases is considered to be revealed for the covering is not considered valid unless it conceals the skin. The evidence to show that the Legislator has obliged the covering of the colour of the skin is his (saw) saying:

«لَمْ يَصْلُحْ أَنْ يُرَى مِنْهَا»

“...it is not correct that anything should be seen of her.” This is a clear evidence to prove that the Legislator has stipulated that the *'awrah* be covered such that it cannot be seen through the clothes. I.e. the clothes should cover the *'awrah* and not reveal what is behind it. So it obligatory on the women to make sure that the garment by which she covers the *'awrah* is not thin i.e. does not describe what is behind it nor reveal what is under it.

This is the subject of covering the *'awrah*. This subject should not be confused with the woman's dress in public life, or the *tabarruj* (revealing the beauty) portrayed by some types of clothes. Even though a garment covers the *'awrah*, it does not mean that the woman is allowed to wear it in public, whilst in public a specific type of clothing has been specified by the Legislator. To merely use something that covers the *'awrah* while in public is not sufficient. So trousers, for example, do cover the *'awrah*, but still cannot be worn in public i.e. it is not proper to be worn in the public road. This is because the *Sharee'ah* has obliged a specific dress to be worn in the public road. If the woman disobeyed the command of the Legislator and wore clothes different from those determined by the Legislator, she would

have sinned. The issue of covering the *'awrah* therefore, must not be confused with the woman's dress in public. Similarly, the issue of covering the *'awrah* must not be confused with the issue of *tabarruj*, trousers for example, as long as they are not made of thin material, do cover the *'awrah*, but this does not mean that a woman can wear them in front of non-*mahram* men in such a way that she would be revealing her beauty and charm. While she would be covering her *'awrah* in this case, she would be in a state of *tabarruj*, which is forbidden by the Legislator. So, the fact that the woman has her *'awrah* covered, does not mean that her clothing prevents her from being in a state of *tabarruj*. Consequently, there should be no confusion between the issue of covering the *'awrah* and *tabarruj*. Each is a different subject from the other.

With regard to the woman's dress in public life, i.e. marketplace and roads, the Legislator (saw) has obliged her to wear a garment which conceals her (home) clothes when she leaves to the market or public places. It is obliged upon her to have a wrap or covering to be worn over her clothing that drapes down until it covers her feet. If she does not have such a garment *jilbaab*, she must borrow one from a neighbour, a female friend or relative. If she is unable to borrow one, she is not allowed to go out without such a garment. If she leaves without a wrap over her (home) clothes she would be sinful, for she would have abandoned an obligation from Allah. This is in reference to the lower portion of women's clothes. As for the upper portion, she must have a *khimaar* (head cover) or anything similar which covers the entire head, the neck and the opening of the garment on the chest. Such a *khimaar* should be available when she

goes out in public as this constitutes the upper portion of the woman's dress in public life. Once a woman has these two items of clothing, she is allowed to leave her home to the marketplaces, travel on the roads, i.e.the public life. If the woman does not have these two pieces of clothing, she is not allowed to leave no matter what. This is because the command to wear these two pieces is general ('*aam*) and it will remain so, since there is no proof of specification.

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

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ خُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ﴾

"and not to show off their adornment except only that which is apparent, and to draw their veils all over juyubihinna ..." [An-Nur: 31]

As for His (swt) saying regarding the lower half:

﴿يَا أَيُّهَا النَّبِيُّ قُلْ لَأَزُوجِكُمْ وَبَنَاتِكُمْ وَنِسَاءَ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلْبَابِهِنَّ﴾

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

Also, it has been narrated from Umm 'Atiyyah (ra), who said:

«أَمَرَنَا رَسُولُ اللَّهِ ﷺ أَنْ نُخْرِجَهُنَّ فِي الْفِطْرِ وَالْأَضْحَى، الْعَوَاتِقَ وَالْحَيْضَ وَذَوَاتِ الْخُدُورِ، فَأَمَّا الْحَيْضُ فَيَعْتَزِلْنَ الصَّلَاةَ وَيَشْهَدْنَ الْخَيْرَ، وَدَعْوَةَ

المسلمين. قلت يا رسول الله إحدانا لا يكون لها جلبابٌ، قال: لِثَلْبَسِهَا
أَخْتَهَا مِنْ جِلْبَابِهَا»

The Messenger of Allah (saw) ordered us to bring out the young women, the menstruating women and veiled women for the two 'Eid festivals. The menstruating women were to keep away from prayer, yet witnessing the goodness and the dawah (address) to the Muslims. I asked, "Oh Messenger of Allah, what about one who does not have a *jilbaab*?" He said: **“Let her use the *jilbaab* of her sister.”** [Reported by Muslim]

These evidences are explicit in their indication of a woman's dress when in public life. Allah has thus described accurately, completely and comprehensively in these above verses the clothing which He (swt) has obliged the woman to wear in public life. Allah (swt) has said with respect to the upper part of a woman's clothing:

﴿وَلْيَضْرِبْنَ كُحْمَهُنَّ عَلَىٰ جُيُوبِهِنَّ﴾

"Let them draw their head-coverings (*khumur*) over their necks and chests (*juyooob*)". [An-Nur: 31]

Meaning to drape their head-coverings over their necks and chests and to conceal the collar of the shirt and garment from the neck and chest. As regards the lower part of a woman's clothing, He (swt) said:

﴿يُدْنِينَ عَلَنَهُنَّ مِنَ الْجَلْبَابِ﴾

"...to draw their cloaks all over their bodies". [Al-Ahzaab: 59]

It means to drape their outer garments over their bodies and over their clothes when going out, that is

to wear a cover (*mulaa'ah*) or piece (*milhafah*) of cloth which is draped down. Concerning the general manner in which this clothing should be worn, Allah (swt) has said:

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا﴾

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

The objects of charm in terms of the parts of the body including ears, arms and lower leg should not be shown except of that which normally appeared of her at the time this verse was revealed, i.e. the hands and face. According to this precise description it is clear what the dress of the woman should be in public life. The *hadith* of Umm 'Atiyyah explains very clearly the obligation on the Muslim woman to wear a garment which covers her normal clothes when she goes out: when Umm 'Atiyyah said to the Messenger (peace and blessings be upon him): "Oh Messenger of Allah what about one who does not have a *jilbaab*?" The Messenger (saw) ordered her,

«لَتَلْبَسَهَا أُخْتُهَا مِنْ جَلْبَابِهَا»

"Let her use the *jilbaab* of her sister." When she replied to the Messenger that she did not have a garment to wear over her clothing so that she may go out, he (saw) ordered her to borrow one from her sister to wear over her clothing. This means that if she is unable to borrow one then it would not be lawful for her to go out. This is an indication (*qareenah*) that the order in this *hadith* constitutes an obligation (*wujoob*). It is obligatory, therefore, for the woman to wear a *jilbaab* over her clothes when she wants to go out. And when she does not wear it, she does not leave.

It is stipulated that the *jilbaab* is draped down to the floor until it conceals the feet because Allah (swt) says in the *ayah*:

﴿يُدْرِيْنَ عَلَيِّنَّ مِنْ جَلِيْبِيْهِنَّ﴾

"to draw their cloaks (*jalabeeb*) all over their bodies" [Al-Ahzaab: 59] i.e. they should drape their *jilbaabs* because the preposition, "من", is not partative here but explanatory. In other words, they should drape their cover (*mulaa'ah*) and sheet (*milhafah*) downwards. Since it has been narrated on the authority of Ibn Umar that the Messenger of Allah (saw) said:

«مَنْ جَرَّ ثَوْبَهُ خِيَلَاءَ لَمْ يَنْظُرِ اللَّهُ إِلَيْهِ يَوْمَ الْقِيَامَةِ فَقَالَتْ أُمُّ سَلَمَةَ فَكَيْفَ يَصْنَعْنَ النِّسَاءُ بِذِيْلِهِنَّ قَالَ يُرْخِيْنَ شِبْرًا فَقَالَتْ إِذَا تَنَكَّشِفُ أَقْدَامُهُنَّ قَالَ فَيُرْخِيْنَهُ ذِرَاعًا لَا يَزِدْنَ عَلَيْهِ»

“On the Day of Judgement, Allah will not look with mercy towards the one that trails his garment behind him/herself in haughty pride,” Umm Salamah asked: **“What are the women to do with the hems of their dresses?”** He answered: **“Let them increase their hems the length of a hand span.”** She enquired: **“Then their feet will be uncovered!”** He then replied: **“Let them increase a fore arm's length and no more.”** [Reported by at-Tirmithi] This *hadith* is *hasan sahih*. This clearly shows that the garment which is worn over one's clothes - i.e. the cover (*mulaa'ah*) and sheet (*milhafah*) - should be draped down towards the floor until it covers the feet. Even if the feet were to be concealed by wearing socks or shoes, that will not substitute the draping of the garment down towards the floor. It is not necessary to cover the feet (by the draping of the garment) if the feet are concealed (by

wearing shoes and socks) – but the draping of the garment must be done. The *jilbaab* must come down towards the floor in an obvious manner such that it is known that it is the dress of public life, which the woman is obliged to wear. The draping must be apparent in accordance with the saying of Allah (swt):

﴿يُذَنِّبُ﴾

"Draw down their *jilbaabs*". [Al-Ahzaab: 59]

It is shown from this that the woman is obliged to have a wide and loose fitting garment, which she wears over her clothes in order to go out. If she does not have such a garment and she wishes to go out then she should borrow one from her sister, i.e. any Muslim woman. If she cannot find someone to lend her one, she should not go out until she finds a garment to wear over her clothes. If she goes out wearing her home clothes without a wide and loose fitting garment which drapes down towards the floor, then she would be sinful even if her entire *'awrah* was covered since wearing a wide and loose fitting garment, which drapes down towards the floor until the feet, is obligatory (*fard*). If she does not wear this garment, she will be going against this *fard* and is sinful in the sight of Allah (swt). She will be punished by the state with a discretionary (*ta'zeer*) punishment.

Two issues remain to be discussed with regards to the woman looking at the man and the man looking at the woman. The first issue is the presence of male non-*mahrams* in houses with the permission of their occupants, and their looking at the women who are attired in their house clothes and looking to the parts of the woman's body which exceed the limit of the hands and face. The second is the issue of non-

Muslim and even Muslim women in public places who display more than their hands and face. These two issues are a reality and so is the reality of their affliction on Muslims. Therefore, the ruling of Allah (swt) with regards to these two issues must be clarified.

As for the first issue, there may be brothers or relatives living together in the same house with the wives of each appearing before each other in their home clothes, with their hair, neck, arms and lower legs showing as well as anything else the home clothes may reveal. Her brother-in-laws or her non-*mahram* relatives look at her in the same way as her brothers, father and other such *mahrms* look at her, even though her brother-in-law is a non-*mahram* like any other non-*mahram*. Similarly, relatives visit each other such as cousins (on the maternal and paternal sides), and other such non-*mahram* relations or non-relatives. They greet the women and sit with them whilst they are attired in their house clothes that show more than their hands and face such as their hair, neck, arms and lower legs. The non-*mahram* men interact with their uncovered female relatives as if they are *mahrms*. Sadly, this problem is widespread and most Muslims are afflicted by it, particularly in the cities, and most think it is permitted (*mubah*). The reality is that such a look is only permitted (*mubah*) by the *mahram* or those whom have no sexual desire. As for anyone else, it is not permitted for women to expose anything other than the face and the hands, and the detail of that is that Allah has absolutely forbidden the woman to be looked at or for sensual pleasure, and then made the sensual pleasure an exception for the spouses, then He made the beautification, in other words looking at the them, an

exception for the twelve categories of people, and those who are similar to them such as the maternal and paternal uncles, and then Allah made an exception for the woman to showing her hands and face to all men. The sensual pleasure, or in other words, the lustful look is completely *haraam* other than for the husband, while looking at the hands and face as a mere look (in other words without any lust) is completely permitted, and to look at more than the hands and face is completely *haraam* except for the *mahrams* whom Allah has mentioned.

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

﴿ يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لِيَسْتَعِذْنَ كُمْ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا
 الْخُلُمَ مِنْكُمْ ثَلَاثَ مَرَّاتٍ مِّن قَبْلِ صَلَاةِ الْفَجْرِ وَحِينَ تَضَعُونَ ثِيَابَكُمْ مِّنَ
 الظَّهِيرَةِ وَمِن بَعْدِ صَلَاةِ الْعِشَاءِ ﴾

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

Allah (swt) has ordered the boys who have not reached the age of puberty and the slaves not to call upon women at those three times. He then permitted

them to enter at other than those three times, as in accordance with His saying:

﴿ثَلَاثٌ عَوْرَتٍ لَكُمْ لَيْسَ عَلَيْكُمْ وَلَا عَلَيْهِمْ جُنَاحٌ بَعْدَهُنَّ طَوَّافُونَ

عَلَيْكُمْ﴾

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

It is explicit that, other than at those three times, young boys and the slaves of women can enter by women without their permission whilst the women are wearing their home clothes. So it is understood that the woman is allowed to reside in the house whilst attired in her home clothes, and it is permitted for her to appear in these clothes before young boys and her slaves. Thereupon, the woman is allowed to live in her house in her home clothes without any doubt, and she will not be committing any sin whatsoever. It is permissible for young boys and her slaves to enter her home without permission and to see her in such a condition, and there is no blame on her for this. She does not have to cover in front of them and nor do they need permission to enter: the text has stated that they can enter without permission except in the three times of privacy. One should not analogise between free servants and slaves due to the *'illah* that they move about attending to each other (*tawwaafoon*) since this *'illah* is non-extendable (*qaasirah*) as indicated by the fact that young boys have to seek permission when they have reached puberty (*baligh*) even though they move about each other (*tawwaafoon*).

As for those other than young boys, slaves and servants, Allah (swt) has revealed their *hukm* (ruling) in the private life as He ordered them to seek permission before they enter. Allah (swt) said:

﴿يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا
عَلَىٰ أَهْلِهَا﴾

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

Allah (swt) has commanded that the Muslim seeks permission (*isti`zaan*) for which He has used the word *isti`naas* meaning familiarisation, when he wishes to enter a house other than his own. When he wishes to enter his own house it is not necessary for him to seek permission. The cause of revelation (*asbab an-nuzool*) for this verse can be seen when a woman from the *Ansaar* said: "Oh Messenger of Allah! I live in the house in such a state (condition) that I do not wish anyone to see me, neither my father nor my son, but my father comes and enters my house. Menfolk from my family continue to enter whilst I am in such a state. So what shall I do?" It was then that the verse of *isti`zaan* (seeking permission) was revealed. If the cause of revelation is linked with the wording (*mantooq*) and meaning (*mafhoom*) of this *ayah*, then it indicates to us that the issue in the private life is not whether the *'awrah* is covered or not; rather, it is the woman's attire of her home clothes. Allah (swt) did not order the women not to wear home clothes, but rather ordered that men seek permission before they enter so that the woman can cover everything other than the face and hands in front of the non-*mahrams*. This is because the order to seek permission informs

us of the order to cover, as evidenced by the cause of revelation of the *ayah*. So if anyone visits a woman, he must seek permission to enter, whether he is a *mahram* or a non-*mahram*. The seeking of permission implies that she should cover herself from non-*mahram*.

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

﴿ قُلْ لِّلْمُؤْمِنِينَ يَغُضُّوْا مِنْ أَبْصَارِهِمْ ﴾

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

What is meant here is the lowering of the gaze from that which exceeds the hands and face as evidenced by the permissibility of looking to the face and hands. Al-Bukhari narrated: Said b. Abu al-Hasan said to al-Hasan: "The wives of the non-Arabs reveal their chests and heads." Al-Hasan responded: "Divert your gaze." In the *hadith* regarding the prohibition of sitting in the streets he (saw) said:

«غَضُّ الْبَصَرِ»

"Lower your gaze." [Agreed upon]

I.e. whilst in public, women might reveal more than their hands and face in which case men are commanded to lower their gaze and not look at all. When Allah forbade the look, He prohibited looking at that which exceeds the hands and face, which He defined as the deliberate look. As for the non-deliberate look, He did not forbid it or order its abstention but ordered that the gaze should be lowered as He (swt) says:

﴿يَغُضُّوا مِنْ أَبْصَارِهِمْ﴾

"To lower from (*min*) their gaze". [An-Nur: 30]

The preposition "من" is partative here, indicating that they should lower a portion of their gaze. So the implied meaning (*mafhoom*) is the permissibility of the partial gaze (that is the ordinary gaze) and not the premeditated look.

As for the second issue: Since the onslaught of the Western culture and the rule of the Muslim countries by the systems of *kufir*, non-Muslim women started to go out semi-naked, baring their chests, backs, hair, arms and legs. Some Muslim women began to imitate them and also going out in public attired in this manner, until a person could no longer differentiate between a Muslim woman and a non-Muslim woman when walking in the market or shopping for a certain item. The Muslim men who lived in these cities were unable to eradicate this *munkar* by themselves. It was impossible to live in these cities without looking at the *'awrah* of women. A man would inevitably look at a woman's *'awrah* due to the lifestyle and the type of houses in which they lived. No man could guard himself from looking at the *'awrah* of women; their arms, chests, backs, lower legs and hair, no matter

how much he tried not to look, except if he sat in his own house and didn't leave. A man could not remain at home as he had to engage in the social relationships in terms of buying, selling, leasing, work etc. He could not undertake such relationships whilst guarding his eyes from such 'awrah. However, the prohibition of looking at such women is clear in the *Quran and Sunnah*, so what should he do? This problem can be addressed in two situations:

Firstly, the sudden look (*nazrat al-fujaa'ah*) which is what he encounters whilst in public. This person is forgiven for the first unexpected look (at an 'awrah) but he must not look again as has been narrated from Jarir bin Abdullah, who said: "I asked the Messenger of Allah (saw) about the sudden look (*nazrat al-fujaa'ah*), so he instructed me to divert my gaze." [Reported by Muslim]

It has been narrated on the authority of Ali that he said: The Messenger of Allah (saw) told me:

«لا تُتَبِعِ النَّظْرَةَ النَّظْرَةَ فَإِنَّمَا لَكَ الْأُولَىٰ وَلَيْسَتْ لَكَ الْآخِرَةُ»

“Do not follow up the (first) glance with a second look. The first is permitted for you but not the second.” [Reported by Ahmad on the authority of Buraydah]

In another situation where a non-*mahram* man is talking to a woman whose head and arms are uncovered as well as other parts she has become accustomed to show, he must divert his sight and lower his gaze. This has been reported by al-Bukhari on the authority of 'Abdullah bin 'Abbas (ra): that al-Fadhil bin Abbas was the Prophet's riding partner at the time when a woman from Banu Khath'am came

seeking a *hukm* (ruling), so al-Fadh1 began to look at her and she at him, so the Messenger of Allah (saw) made him turn his face from her.

Allah (swt) has said:

﴿ قُلْ لِّلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ ﴾

"Tell the believing men to lower their gaze and protect their private parts". [An-Nur: 30]

What is meant by 'lowering the gaze' is to curtail it. The solution to this problem is that a man should lower his gaze whilst, for example, engaging in necessary conversations with a woman, travelling by car or sitting on a balcony due to the intense summer heat. These are part of the necessities of the public life for a man. He does not have the ability to repulse this affliction of women uncovering their '*awrah*' and so he is obliged to lower his gaze in accordance with the provision of the *ayah*; he is not permitted to do so whatsoever.

One cannot argue here: that this affliction has become widespread and it is difficult to guard against. Indeed, this principle contradicts the *Shar'i*. The *haraam* does not become *halaal* when it becomes an affliction and nor does the *halaal* become a *haraam* when it becomes an affliction. Nor can one argue that these women are unbelievers and so they should be dealt with in the same way as slave girls and their '*awrah*' is the same as that of the slave girl. This is not true because the *hadith* is general and applies to all women, not exclusively to Muslim women. The Prophet (saw) said:

«إِنَّ الْجَارِيَةَ إِذَا حَاضَتْ لَمْ يَصْلُحْ أَنْ يُرَى مِنْهَا إِلَّا وَجْهُهَا وَيَدَاهَا إِلَى الْمِفْصَلِ»

“When a young girl begins to menstruate, it is not correct that anything should be seen of her except her face and hands up to the wrist.” which is explicit in prohibiting looking at a woman whether she is Muslim or non-Muslim, and this is general applicable to all situations. The *kaafir* woman is not compared to the slave girl because the analogy is devoid of meaning.

Men who visit houses other than their own, where non-*mahram* women reside, should lower their gaze from that which exceeds the hands and face. Those living in the cities who are forced to interact in society or deal with *kaafir* women revealing their *‘awrah* in terms of buying, talking, renting, leasing or selling, should lower their gaze during that time. They should limit the encounter to that which is necessary.

This is with respect to looking. As for the ruling on the handshake between a man and a woman, it is permitted without a barrier between them due to what has been established in *Sahih Al-Bukhari* on the authority of Umm ‘Atiyyah who said:

«بَايَعْنَا النَّبِيَّ ﷺ فَقَرَأَ عَلَيْنَا أَنْ لَا يُشْرَكَنَّ بِاللَّهِ شَيْئاً وَنَهَانَا عَنِ التِّيَاحَةِ، فَقَبَضَتْ امْرَأَةٌ مَنَا يَدَهَا»

“We gave our *bay’ah* to the Messenger of Allah, so He recited to us they should associate none with Allah and he forbade us from wailing (for the dead). A woman among us withdrew her hand....” and the pledge used to be taken by the shaking of hands. She withdrew her hand and retracted it after

extending it to take the pledge. Also the implied meaning (*mafهوم*) of

«فَقَبَضَتْ امْرَأَةٌ مِّنَا يَدَهَا»

“A woman among us withdrew her hand...” is that the others did not withdraw their hand which means they took the pledge by shaking hands. Also we can see the implied meaning (*mafهوم*) of the saying of Allah (swt):

﴿أَوْ لَمَسْتُمُ النِّسَاءَ﴾

“Or you have touched the women” [An-Nisaa` 43] this *ayah* with its general wording, which includes all women regarding the invalidation of *wudu`* due to touching, indicates that the rule (of touching) should be confined just to the invalidation of *wudu`*, as long as the touching was without desire. Therefore, handshaking (like touching) is not *haraam* either. And not to mention the fact that a woman's hand is not *'awrah* and can be seen without desire and therefore handshaking cannot be forbidden either.

The permissibility of the shaking hands is different to the act of kissing. A man kissing a (non-*mahram*) woman and vice versa is forbidden because it is a prelude to fornication (*zina*). It is the nature of such a kiss that it would normally act as a prelude to *zina*, even if there was no actual desire in it and did not lead to *zina*. The Prophet (saw) said to Maa`iz, when he came to him demanding that he be purified because he had committed fornication;

«لَعَلَّكَ قَبَّلْتَ..»

“...perhaps you kissed...” [Reported by al-Bukhari on the authority of Ibn ‘Abbas] This indicates that such kisses are a prelude to *zina*. The verses and *ahadith*, which prohibit *zina*, include the prohibition

of all the preludes to it even the touching, if by its nature it constitutes a prelude to *zina*. Such preludes take place if a person who has designs on a woman, wishes to seduce or kiss her, hold her tightly, or embrace her similar to what takes place between some of the youth today. This kind of kiss is prohibited even if it was for the purpose of greeting someone on return from a journey as the nature of such a kiss between young men and women is that it acts as a prelude to *zina*.

It is Not Obligatory for the Muslim Woman to Cover her Face

The view that the niqab (referring to the face covering) has been made compulsory for women in Islam (by which their faces, excluding the eyes, should be covered) is an Islamic opinion. Some *Mujtahid-Imams* from the *mazaahib* (schools of thought) have taken this view. Another Islamic opinion is that the niqab has not been made compulsory for women in Islam and that their faces do not have to be covered under any circumstance. This view has also been held by some *Mujtahid-Imams* from amongst the *mazaahib*. This is one of the important social problems as the adoption of either of these two opinions will affect the Islamic lifestyle; therefore, a comprehensive exposition of the *Sharee'ah* evidences relating to this problem, by its study, pursuance and application to the problem is imperative. This is so that the Muslims can adopt the strongest opinion in terms of the evidence and in order that the Islamic State adopts the strongest opinion according to the preponderance of the evidence.

Indeed, for nearly half a century discussions concerning women have taken place. These discussions were generated by the disbelieving colonialists in the minds of those infatuated by the West, and smitten by its culture and viewpoint about life. They attempted to introduce un-Islamic opinions into Islam and corrupt the '*Aqeedah* of the Muslims. The colonialists introduced the idea of whether there should be veiling (*Hijaab*) or unveiling (*sufoor*) of women. The intellectuals amongst the scholars did not challenge these people. It was left to authors,

literati and narrow-minded educated people who confronted them, which led to strengthening the views of those impressed by Western culture. This made their thoughts the subject of study and discussion despite the fact that they were Western thoughts which were initiated to attack Islam, corrupt the Muslims and cause doubt concerning their *Deen*. Indeed, these discussions took place and their remnants and effects are still present today. However, they do not merit study or reach the status of a legislative and societal discussion. The correct discussion only concerns the *Sharee'ah* rules derived by the *mujtahidin* in which they relied on a *daleel* or probable evidence (*shubhat ad-daleel*) and not the study of the views of writers, designations of agents, the sophistry of the deceived, and the lies of the ones enamoured by the Western culture. As for what the *mujtahidin* have deduced from the *Sharee'ah* evidences, this is what should be made the subject of study and discussed from the legislative viewpoint. In addition to the views of *mujtahidin*, the views of certain *fuqaha*, *sheikhs* and those partisan to the niqab will be studied in order to eliminate any doubt from their minds. The views of the *mujtahidin* and their evidences will be examined until the strongest view is apparent. Whoever finds this view to be preponderant is required to act according to it and work to apply it.

Those who advocated *Hijaab* took the opinion that the '*awrah* of the woman, which includes the whole body except the hands and face, only applies for prayer. Aside from prayer however, they said that her whole body is '*awrah*, including the hands and face. They based this view on the *Quran* and *Sunnah*.

As for the *Quran*, Allah (swt) says:

﴿وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَسْأَلُوهُنَّ مِنْ وَرَاءِ حِجَابٍ﴾

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

The verse is clear in terms of imposing the use of a screen. Also Allah (swt) says:

﴿يَا أَيُّهَا النَّبِيُّ قُلْ لَأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءِ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلْبِيبِهِنَّ ذَلِكَ أَدْنَى أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ﴾

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

They maintained that the meaning of 'to draw their cloaks all over their bodies' is that they should cast it over their persons and conceal their faces and figure. They thought that women in the early period of Islam followed the custom in *Jahiliyyah*, thus indecently wearing a chemise and a *khimaar* (head cover), with no difference between a free woman and a slave girl. The devious amongst the youth (of Medina) used to molest the slave girls when they used to go out through the palm trees in the fields to answer the call of nature. Sometimes they would molest free women and claim that they were slave girls: they would say "we thought that so and so is a slave girl". Free women were thus ordered to differ in their attire from the clothing of slave girls by wearing a loose outer garment (*ardiya*) and cover (*malaahif*), and by covering their heads and faces in order to look modest and walk briskly so that the lustful do not desire

anything of them. This was considered more appropriate so that they are recognised and not exposed to harm. Some of them said (with respect to the part of the verse); that they should be known that there is an elision of the *laa* (of negation). In other words it is more appropriate that they are not recognised whether they are attractive or not, so that they are not abused. Allah (swt) also says:

﴿وَقَرْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُولَىٰ﴾

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

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

As for the *Sunnah*, they base their opinion on the narration that the Prophet (saw) said:

«المرأة عورة»

“The woman (herself) is ‘awrah.” [Reported by Ibn Hibbaan in his Sahih on the authority of Ibn Mas’ud], and because of the Prophet (saw) saying:

«إذا كان لإحدائكم مكاتب فملاك ما يؤدِّي فلتحتجب منه»

“If anyone of you (the women) has a (male) slave who wants to free himself (by buying himself) and he possessed the price, you should seclude yourself from him.” [It is reported by at-Tirmizi on the authority of Umm Salamah]. And due to what has been narrated from Umm Salamah who said:

«كنت قاعدة عند النبي ﷺ أنا وميمونه فاستأذن ابن أم مكتوم فقال النبي

ﷺ: احتجب مني. فقلت يا رسول الله إنه ضريز لا يبصر، قال: أفعمياوان

أنتمما لا تبصرانه»

Hafsah and I were sitting with the Prophet (saw) when Ibn Umm Maktum asked permission to enter. So the Prophet said: “**Seclude yourselves from him.**” So I said "Oh Messenger of Allah. He is blind, he cannot see". He (saw) said: “**Are you both also blind? Can you not see him?**” [It is reported by Abu Dawud]. And due to what al-Bukhari narrated from ‘Abdullah bin ‘Abbas that:

«كَانَ الْفَضْلُ رَدِيفَ رَسُولِ اللَّهِ ﷺ فَجَاءَتْ امْرَأَةً مِنْ حَتَّعَمَ فَجَعَلَ الْفَضْلُ يَنْظُرُ إِلَيْهَا وَتَنْظُرُ إِلَيْهِ وَجَعَلَ النَّبِيُّ ﷺ يَصْرِفُ وَجْهَ الْفَضْلِ إِلَى الشَّقِّ الْأَخْرَ» وَعَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ قَالَ: «سَأَلْتُ رَسُولَ اللَّهِ ﷺ عَنْ نَظَرِ الْفُجَاءَةِ فَأَمَرَنِي أَنْ أَصْرِفَ بَصَرِي»

Al-Fadhil bin Abbas was the Prophet's riding partner when a woman from Banu Khath'am came seeking a hukm. Al-Fadhil began looking at her, and she at him, so the Messenger of Allah made al-Fadhil turn his face away from her. Jarir bin Abdullah narrates: “I asked the Messenger of Allah about the sudden glance (*nazrat al-fujaa'ah*), so he instructed me to look the other way.” [Reported by Muslim] It has been narrated from Ali (ra) that he said: The Messenger of Allah (saw) told me:

«لَا تُتَّبِعِ النَّظْرَةَ النَّظْرَةَ فَإِنَّمَا لَكَ الْأُولَىٰ وَلَيْسَتْ لَكَ الْآخِرَةُ»

“Do not follow up the (first) glance with a second look. The first is permitted for you but not the second.” [Reported by Ahmad on the authority of Buraydah]

These are the evidences of those who advocate *Hijaab* and say that a woman's entire body is *'awrah*. These evidences however do not apply to the issue for which they are quoted, because none of them relates to the subject at hand. As for the *ayah* of *Hijaab* and the verse:

﴿وَقَرْنَ فِي بُيُوتِكُنَّ﴾

"stay in your houses", there is absolutely no connection to the wives of the Muslims, as it is explicitly for the wives of the Messenger (saw).

As for the verse of *hijaab*, it is explicit in it being specific for the wives of the Messenger, and this is clear from the verse if it is read in full. It constitutes a single verse interlinked by words and meanings. The (full) text of the *ayah* is:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَدْخُلُوا بُيُوتَ النَّبِيِّ إِلَّا أَنْ يُؤْذَنَ لَكُمْ إِلَىٰ طَعَامٍ غَيْرٍ نَّظِيرِينَ إِنَّهُ وَلَكِنَّ إِذَا دُعِيتُمْ فَادْخُلُوا فَإِذَا طَعِمْتُمْ فَانْتَشِرُوا وَلَا مُسْتَعْسِفِينَ لِحَدِيثٍ إِنَّ ذَٰلِكُمْ كَانَ يُؤْذَى النَّبِيَّ فَيَسْتَجِئُ مِنْكُمْ ۗ وَاللَّهُ لَا يَسْتَجِئُ مِنَ الْحَقِّ ۗ وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَسْأَلُوهُنَّ مِن وَرَاءِ حِجَابٍ ۗ ذَٰلِكُمْ أَطْهَرُ لِقُلُوبِكُمْ وَقُلُوبِهِنَّ ۗ وَمَا كَانَ لَكُمْ أَنْ تُؤْذُوا رَسُولَ اللَّهِ وَلَا أَنْ تُنكِحُوا أَرْوَاجَهُنَّ مِنْ بَعْدِهِ أَبَدًا ۗ إِنَّ ذَٰلِكُمْ كَانَ عِنْدَ اللَّهِ عَظِيمًا ﴿٥٣﴾﴾

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

The above verse is a text concerning the wives of the Prophet (saw) and is specific only to them. It has no connection to the wives of the Muslims or to any woman other than the wives of the Messenger (saw). Supporting this fact is the narration from 'Aisha (ra) who said:

«كُنْتُ آكُلُ مَعَ النَّبِيِّ ﷺ حَيْسًا فِي قَصْعَةٍ، فَمَرَّ عُمَرُ فَدَعَاهُ فَأَكَلَ، فَأَصَابَتْ إصْبَعُهُ إصْبَعِي، فَقَالَ عُمَرُ: أَوَاهُ، لَوْ أَطَاعُ فَيَكُنُّ مَا رَأَيْتُكَ عَيْنًا، فَنَزَلَ الْحِجَابُ»

I was eating food (Hais) with the Prophet in a dish. Umar passed by so the Prophet (saw) invited him in and he ate. His finger touched mine. Umar said: “Had my view about you (the Prophet’s wives) been taken, no one should have seen you,” then (the ayah of) *Hijaab* was revealed.” [Reported by al-Bukhari]

This is also supported by the narration that Umar said:

«قُلْتُ: يَا رَسُولَ اللَّهِ، يَدْخُلُ عَلَيْكَ الْبُرُّ وَالْفَاجِرُ فَلَوْ حَجَبْتَ أُمَّهَاتِ الْمُؤْمِنِينَ. فَأَنْزَلَ اللَّهُ آيَةَ الْحِجَابِ»

“O Messenger of Allah, the righteous person and the *faajir* one are admitted to you. Have you not secluded the mothers of the believers?” Then Allah revealed the verse of *al-Hijaab* [Reported by al-Bukhari]

Also it was narrated that Umar passed by the Prophet's wives while they were with the women in the Mosque and said: “If you secluded yourselves you would have status over the women as your husband has the status over the men.” Zainab (may Allah be pleased with her) said “Oh son of al-Khattab! Indeed

you are more concerned about us while the *wahy* (revelation) descends to our houses.” It was not long after that, that the *ayah* of *Hijaab* was revealed. [Reported by at-Tabaraani]

Therefore, the text of the *ayah* and these *ahadith* are definite in meaning that they were revealed regarding the wives of the Prophet (saw) and for none other.

As for the verse:

﴿ وَقَرْنَ فِي بُيُوتِكُنَّ ﴾

"And stay in your houses". It is also specific to the wives of the Messenger (saw). The following is the complete text:

﴿ يٰۤاَيُّهَا النِّبِيُّ مَنْ يٰۤاتِ مِنْكُنْ بِفَحِشَةٍ مُّبِينَةٍ يُضَعَفْ لَهَا الۡعَدَابُ ضِعْفَيْنِ ؕ وَكَانَ ذٰلِكَ عَلٰى اَللّٰهِ يَسِيْرًا ﴿٦٦﴾ * وَمَنْ يَفۡتُنْ مِنْكُنَّ لِلّٰهِ وَرَسُوۡلِهٖ وَتَعَمَّلَ صٰلِحًا نُّوٓتِهَا اُجْرَهَا مَرَّتَيْنِ وَاَعْتَدْنَا لَهَا رِزۡقًا كَرِيۡمًا ﴿٦٧﴾ يٰۤاَيُّهَا النِّبِيُّ لَسۡتُنَّ كَاۡحِدٍ مِّنَ النِّسَاۡءِ ۚ اِنۡ اَتَقَبۡتُنَّ فَلَا تَخۡضَعۡ بِالۡقَوۡلِ فَيَطۡمَعِ الَّذِيۡ فِيۡ قَلۡبِهٖ مَرَضٌ وَّقُلْنَ قَوۡلًا مَّعۡرُوۡفًا ﴿٦٨﴾ وَقَرْنَ فِيۡ بُيُوتِكُنَّ وَلَا تَبَرَّجۡنَّ تَبَرُّجَ الْجَاهِلِيَّةِ الۡاُولٰٓئِؕ وَاَقِمْنَ الصَّلٰوةَ وَاِتِينَ الزَّكٰوةَ وَاَطِعْنَ اَللّٰهَ وَرَسُوۡلَهٗ ۗ اِنۡمَّا يُرِيۡدُ اَللّٰهُ لِيُذۡهَبَ عَنۡكُمُ الرِّجۡسَ اَهۡلَ الْبَيْتِ وَيُطَهِّرَ كُمۡ تَطٰهِيْرًا ﴿٦٩﴾ ﴾

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

you, Oh members of the household (of the Prophet) and to purify you with a thorough purification". [Al-Ahzaab: 32-33]

Thus, it is clear that the verse was specifically revealed concerning the Prophet's wives because the speech is addressed to them and is specific to them;

﴿يٰۤاَيُّهَا نِسَاۗءُ النَّبِيِّ لَسْتُنَّ كَاٰحَدٍ مِّنَ النِّسَاۗءِ ۗ﴾

"Oh wives of the Prophet! You are not like any other women." There can be no text more informative and indicative of the fact that this verse was revealed only concerning the Prophet's wives and is specific to them. Based upon this, the part

﴿وَقَرْنَ فِي بُيُوْتِكُنَّ﴾

"and stay in your houses" which they use as evidence is specific to the wives of the Prophet..

This has also been confirmed by the verse that directly follows it. After His (swt) saying:

﴿تَطَهِّرَاۗءُ﴾

"to purify you with a thorough purification," Allah (swt) says:

﴿وَاذْكُرْنَ مَا يُتْلٰٓىٰ فِي بُيُوْتِكُنَّ مِّنْ اٰيٰتِ اللّٰهِ وَالْحِكْمَةِ ۗ اِنَّ اللّٰهَ كَانَ

لَطِيْفًا خَبِيْرًا﴾

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

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

These two verses are clear in that they concern the Prophet's (saw) wives and that they are specific to the Prophet's wives. There is no indication in any of the two verses that the command is intended for Muslim women other than the Prophet's (saw) wives. Not only that, there are other verses which are specific for the wives of the Messenger (saw) such as the saying of Allah (swt):

﴿وَلَا أَنْ تَنْكِحُوا أَزْوَاجَهُمْ مِنْ بَعْدِهِمْ أَبَدًا﴾

"And nor that you should ever marry his wives after him". So it is not permitted for the Prophet's wives to marry after him contrary to the example of Muslim women who may marry after the death of their husbands. Both verses of *Hijaab* are specific to the Prophet's wives, just as the verse which prohibits their marriage after the Prophet (saw).

It is not correct to claim in this context that what matters is the generality of the expression and not the specificity of the cause. Nor is it correct to claim that though the cause (*sabab*) of the revelation of the verses is the Prophet's wives, these verses are general (*'aam*), and hence apply to Prophet's wives and others. This is not true, because the cause of revelation is an event that has happened. Thus, the event is the cause (*sabab*) of revelation. With regards to the situation here, the wives of the Messenger (saw) do not constitute an event that has happened; rather it is a case of a specific text that has been revealed concerning specific persons whose identity has been stated. Thus, Allah (swt) said:

﴿يٰۤاَيُّهَا نِسَاۤءُ النَّبِيِّ لَسْتُنَّ كَاٰحِدٍ مِّنَ النِّسَاۤءِ﴾

"Oh wives of the Prophet! You are not like any other women". He (swt) also said:

﴿وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا﴾

"And when you ask them (*sa`altumoohunna*) for anything you want". The personal pronoun 'them' (*hunna*) specifically refers to the Prophet's wives. And that is followed by Allah's saying:

﴿وَمَا كَانَ لَكُمْ أَنْ تُؤْذُوا رَسُولَ اللَّهِ﴾

"And it is not (right) for you that you should annoy Allah's Messenger," which informs us of the reason ('illah) why they should be behind a screen (*Hijaab*).

All of this indicates that the two verses are texts that have come concerning the wives of the Messenger (saw). Therefore, the principle: 'What matters is the generality of expression and not the specificity of the cause (*al-'ibra bi 'umum al'lafz laa bi khusus as-sabab*)', does not apply to these two verses.

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

Messenger (saw) they are not an object of emulation because Allah (swt) says:

﴿لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ﴾

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

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

Likewise, it should not be said that since they are the wives of the Messenger and they are pure, and since the revelation has been recited in their houses and they have been required to seclude (*Hijaab*) themselves, then other Muslim women by greater reason (*min bab awla*) should be required to stay in seclusion (*Hijaab*). This cannot be claimed for two reasons:

Firstly: this judgement is not by way of greater reason because the (principle) of greater reason is that Allah forbids a small issue which then becomes prohibition of a large issue by greater reason, such as the saying of Allah (swt):

﴿فَلَا تَقُلْ لَهُمَا أُفٍّ﴾

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

Thus, by greater reason a person should not beat his parents. The principle of greater reason is understood

from the context of the statement such as the saying of Allah:

﴿ وَمِنَ أَهْلِ الْكِتَابِ مَنْ إِنْ تَأْمَنَهُ بِقِنطَارٍ يُؤَدِّمَهُ إِلَيْكَ وَمِنْهُمْ مَنْ إِنْ تَأْمَنَهُ بِدِينَارٍ لَا يُؤَدِّمَهُ إِلَيْكَ ﴾

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

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

Secondly: those two verses are a command to specific persons who have been identified by their particular attributes. The command, therefore, can be at no time for people other than them, nor can it be for people superior or inferior to them, because it is a specific description. It is a command to the wives of the Messenger (saw), as they are not like any other women and because this action harms the Messenger.

If the application of the principle: '*The consideration is for the generality of expression and not the specificity of the cause*' has been negated as well as the question of emulating the wives of the Messenger (saw). Additionally the consideration of people other than the Prophet's wives by greater reason has also been refuted, and it has been established that the text is definite in its reference to the wives of the Messenger (saw). It follows, therefore, that those two verses are specific to the wives of the Messenger (saw) and they do not include Muslim women in any way whatsoever. From this, it can be established that *hijaab* is specific to the wives of the Messenger (saw) and the order to remain in the house is also specific to them. And the reference is negated by the fact that the *hijaab* has been made a command for Muslim women.

As for the second verse,

﴿يُدْرِينَ عَلَىٰ مِنَ جَلْبَابِهِنَّ﴾

"*Let them draw their cloaks (jalabeeb) all over their bodies,*" it does not indicate veiling the face, whether in terms of its uttered (*mantooq*) or implicit meaning (*mafhoom*). Nor is there a word which indicates this, whether on its own, or as part of a sentence, assuming that the cause (*sabab*) of revelation is correct. The verse says:

﴿يُدْرِينَ عَلَىٰ مِنَ جَلْبَابِهِنَّ﴾

"*Let them draw their cloaks (jalabeeb) all over their bodies*". Its meaning is that women should cast their cloaks over their persons and the preposition "من" is not used partatively here but only to explain (*lil-bayaan*) that they should cast it over their persons. To lower the covering means to let it drape down. To

lower the clothing means to let the clothing drape down and they lowered their clothing means they let it drape down. The *jilbaab* is a cover (*milhafah*) used to conceal a dress and other items of clothing. It can also be clothing which covers the entire body. It is stated in the *al-Qamus al-Muheet* that the *jilbaab* is in the form of the *sirdaab* or the *sinmaar*, which is the gown or a loose garment for women without the cover (*milhafah*), or that which conceals her clothing like a cover (*milhafah*). Al-Jawhari stated in *as-Sihah* (another dictionary) that the *jilbaab* is the cover (*milhafah*) and some say it is a sheet (*mulaa`ah*). *Jilbaab* has been mentioned in the *hadith* with the meaning of *mulaa`ah* (sheet) which the woman wrapped over her clothes. It has been narrated on the authority of Umm ‘Atiyyah (ra.):

«أَمَرَنَا رَسُولُ اللَّهِ ﷺ أَنْ نُخْرِجَهُنَّ فِي الْفِطْرِ وَالْأَضْحَى، الْعَوَاتِقَ وَالْحَيْضَ وَذَوَاتِ الْخُدُورِ، فَأَمَّا الْحَيْضُ فَيَعْتَزِلْنَ الصَّلَاةَ وَيَشْهَدْنَ الْخَيْرَ، وَدَعْوَةَ الْمُسْلِمِينَ. قُلْتُ: يَا رَسُولَ اللَّهِ، إِحْدَانَا لَا يَكُونُ لَهَا جِلْبَابٌ. قَالَ: لِتَلْبِسْهَا أَخْتَهَا مِنْ جِلْبَابِهَا»

We were ordered to bring out our menstruating women and veiled women in the religious gatherings and invocation of Muslims on the two 'Eid festivals. These menstruating women were to keep away from prayer, witnessing the blessing and call to the Muslims. I asked: “Oh Messenger of Allah! What if one of us does not have a *jilbaab*?” He said, “**Let her wear the *jilbaab* of her sister.**” [Reported by Muslim] This means that she did not have a garment to wear over her clothes to go out in; so the Prophet ordered her to borrow one from her sister. The verse makes it clear that Allah (swt) has requested the Prophet (saw) to tell his wives, and the wives and daughters of the Muslims, to loosen their garments

worn over their clothes which drape down as evidenced by the narration of Ibn Abbas: “The *jilbaab* is the *ridaa`*” (large sheet of cloth) which covers from top to bottom”.

So the verse indicates that the *jilbaab*, which is a loose garment, should be draped down to the bottom and does not indicate anything other than this. If this is the case, how is it possible to understand that to cast their outer garments (*jalabeeb*) over their persons means to cast their garments over their faces? No matter how much the word *yudneena* (to drape down) or the word *jilbaab* is interpreted within the limits of the linguistic (*ma'na lughawi*) and *Sharee'ah* meaning, the verse stipulates the draping down of the garment. Draping can only mean draping it down to the bottom (feet) and not raising it to the head. Therefore, there is no evidence in this verse to prove *nikaab*. Nor is there even the probability of evidence (*shubhat ad-daleel*) by any stretch of the imagination. The words and sentences of the *Qur'an* are interpreted according to their linguistic and *Sharee'ah* meanings: it is incorrect to interpret them in any other way. The linguistic meaning clearly indicates that women have been ordered to cast their outer garments (*jalabeeb*) over their persons, to let them lower their garment over their clothes to the floor until the feet are covered. This meaning, in terms of letting the *jilbaab* drape down, is found in the noble *hadith*. It is narrated on the authority of Ibn Umar that the Messenger of Allah (saw) said:

«مَنْ جَرَّ ثَوْبَهُ حِيَلَاءَ لَمْ يَنْظُرِ اللَّهُ إِلَيْهِ يَوْمَ الْقِيَامَةِ فَقَالَتْ أُمُّ سَلَمَةَ فَكَيْفَ
يَصْنَعْنَ النِّسَاءُ بِذُيُولِهِنَّ قَالَ يُرْحَبْنَ شَبْرًا فَقَالَتْ إِذَا تَنَكَّشَفُ أَقْدَامُهُنَّ قَالَ
فَيُرْحَبْنَ ذِرَاعًا لَا يَرُدَّنَّ عَلَيْهِ»

“On the Day of Judgment, Allah will not look with mercy towards the one who trails his garment behind him in haughty pride.” Umm Salamah asked: “What are the women to do with the hems of their dresses?” He (saw) answered: **“Let them increase their hems the length of a hand span.”** She rejoined: “Then their feet will be uncovered!” He then replied: **“Let them increase a forearm's length and no more.”** [Reported by Tirmidhi and it is said to be *hasan saheeh hadith*]

This is with respect to the verses that are used as evidence by those who claim that *niqaab* for Muslim women has been decreed by Allah. As for the *ahadith* which are used to prove *niqaab* they do not indicate this. So the *hadith* about the “slave who wants to free himself (by buying himself) and he possessed the price, you should seclude yourself from him,” this *hadith* is specific to the wives of the Messenger. This is supported by another *hadith* narrated by Abu Qilabah who said:

«كان أزواج النبي ﷺ لا يَحْتَجِبْنَ مِنْ مُكَاتِبٍ مَا بَقِيَ عَلَيْهِ دِينَارٌ»

“The wives of the Prophet (saw) did not seclude themselves from a slave even if he had only one dinar left to pay.” [Reported by al-Bayhaqi] So there is no indication in the *hadith* that the Muslim woman must seclude herself. As for the *hadith* of Umm Salamah where the Messenger (saw) asked her and Maymuna to seclude themselves; this *hadith* is specific to the wives of the Messenger (saw).

And the narration mentions Umm Salamah and Maymuna, the text being on the authority of Ibn Shihab on the authority of Nabhan Mawla Um Salamah:

«كُنْتُ عِنْدَ رَسُولِ اللَّهِ ﷺ وَمَيْمُونَةُ، فَبَيْنَمَا نَحْنُ عِنْدَهُ أَقْبَلَ ابْنُ أُمِّ مَكْتُومٍ فَدَخَلَ عَلَيْهِ وَذَلِكَ بَعْدَمَا أُمِرْنَا بِالْحِجَابِ، فَقَالَ رَسُولُ اللَّهِ ﷺ: "اِحْتَجِبَا مِنْهُ. فَقُلْتُ: يَا رَسُولَ اللَّهِ أَلَيْسَ هُوَ أَعْمَى لَا يُبْصِرُنَا وَلَا يَعْرِفُنَا. فَقَالَ رَسُولُ اللَّهِ ﷺ: أَفَعْمِيَاوَانِ أَنْتُمَا أَلَسْتُمَا تُبْصِرَانِ»

Maymuna and I were sitting with the Prophet (saw) when Ibn Umm Maktum asked permission to enter. So the Prophet said: **“Seclude yourselves from him.”** So I said “Oh Messenger of Allah. He is blind, he cannot see.” He (saw) said: **“Are you both also blind. Can you both not see him?”** [It is reported by al-Tirmizi and it is *hasan sahih*]. As for what has been narrated that Aisha said:

«كَانَ الرُّكْبَانُ يَمُرُّونَ بِنَا وَنَحْنُ مَعَ رَسُولِ اللَّهِ ﷺ مُحْرِمَاتٍ فَإِذَا حَادَى بِنَا سَدَلْتُ إِحْدَانَا جِلْبَابَهَا مِنْ رَأْسِهَا عَلَى وَجْهِهَا فَإِذَا جَاوَزْنَا كَشَفْنَاهُ»

“The horseman used to pass by us while we were with the Prophet (saw) wearing *ihraam* clothes (of *Hajj*). If one came near one of us, we would draw our *jilbaabs* from our head down to our face. Once he walked past, we would uncover our (face).” This conflicts with what has been narrated by al-Bukhari on the authority of Ibn Umar that the Prophet (saw) said:

«لَا تَنْتَقِبُ الْمَرْأَةُ الْمُحْرِمَةُ وَلَا تَلْبَسُ الْقَفَّازِينَ»

“**The *muhrimah* (a woman in the state of *ihraam*) should not cover her face, or wear gloves.**” Ibn Hajar, in *Fath al-Baari* has stated: “The veil (*niquaab*) is the *khimaar* which is fastened from the nose or below the eyes.” So the *hadith* of ‘A’isha (ra) states that women in the state of *ihraam* had covered their faces when a group of horsemen passed them. The *hadith* of Ibn Umar indicates the prohibition of wearing a *niquaab*, which only conceals the lower half

of the face. How can this be reconciled with respect to completely covering the face, by lowering the garment over the face? With respect to the two *ahadith*, it becomes clear that the *hadith* of ‘A’isha has been declared defective, in that the narration is of Mujahid from ‘Aisha. Yahya bin Said al-Qattaan, Yahyah bin Ma’een and Abu Haatim ar-Razi have mentioned that Mujahid did not directly hear from ‘Aisha. But there are those that expect that Mujahid heard (*hadiths*) from ‘Aisha such as ‘Ali bin al-Madeeni who said: ‘I do not deny that Mujahid could have met a group of the *Sahaabah* and that he has heard (*hadiths*) from ‘Aisha.’ And like those who explicitly stated that Mujahid heard from ‘Aisha in another *hadith* in al-Bukhari but Abu Dawud remained silent after reporting the *hadith* of the horsemen. It is known that when Abu Dawud remains silent over a *hadith* he has reported that means he considers the *hadith* can be deduced as proof unless a more authentic *hadith* contradicts it, in which case it will be abandoned. Since the *hadith* of Ibn ‘Umar is *sahih* (sound) and has been reported by al-Bukhari it is stronger than ‘Aisha’s *hadith* in the best line of transmission. ‘Aisha’s *hadith*, therefore, is abandoned, because it conflicts with an authentic *saheeh hadith*. Hence it is not used as evidence. As for the *hadith* in which al-Fadhl bin al Abbas is present, there is no indication in it to make *niqaab compulsory*, because the *Khath’ami* woman was asking the Prophet about a matter whilst her face was unveiled. This is evidenced by the fact that al-Fadhl was looking at her as we can see in another variant of this *hadith*:

«فَأَخَذَ رَسُولُ اللَّهِ ﷺ الْفَضْلَ فَحَوَّلَ وَجْهَهُ مِنَ الشَّقِّ الْآخَرَ»

“Thus, the Prophet took hold of al-Fadh1’s (beard) and turned his face away from the other side.” This story has been narrated by Ali b. Abu Talib who adds:

«فقال له العباسُ: يا رسولَ الله، لِمَ لَوَيْتَ عُنُقَ ابْنِ عَمِّكَ؟ قال: رأيتُ شاباً وشابةً فلم آمنُ الشيطانَ عليهما»

Al-‘Abbas said to the Prophet: “Oh Messenger of Allah, why did you turn your cousin’s neck?” He (saw) replied: **“I saw a young man and a young woman in such a situation that I feared what effect Shaytan might have upon them.”** The *hadith* of the *Khath’ami* woman is an evidence for the absence of niqaab not an evidence for it. This is because the Prophet (saw) was looking at her whilst her face was uncovered. As for the Prophet’s diverting of al-Fadh1’s gaze away, this is because he noticed that he was looking at her, and she at him, with desire as evidenced by the narration of Ali:

«فلم آمنُ الشيطانَ عليهما»

“I feared what effect Shaytan might have upon them.” Therefore, he (saw) diverted al-Fadh1’s sight because he was looking at her with desire and not merely looking. The desiring look, even if it is at the face and hands, is *haraam*. As for the sudden look (*nazrat al-fujaa’ah*) the Prophet ordered Jarir to turn his gaze or lower it. This is the type of lowering of the gaze which is mentioned in the *Qur’an*:

﴿قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ﴾

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

What is intended here is the sudden look at other than the hands and face which constitutes the *‘awrah* and not looking at the hands and face. This is because

looking at the hands and face is permitted whether it is sudden or not, as evidenced by the permissibility of looking at a woman in the aforementioned *hadith* about the woman from *Bani Khath'am*. This is also proven by the fact that the Prophet (saw) used to look at the faces of women when they gave *bay'ah* to him and when he preached to them. All of which indicates that what one needs to be careful about is the sudden look at other than the hands and face. As for the *hadith* of Ali:

«لا تُتَّبِعِ النَّظْرَةَ النَّظْرَةَ»

“Do not follow up the (first) glance with a second look.” This is a prohibition from looking repeatedly and not from the mere look.

Thus, no *daleel* can be found to oblige the *niquaab* in the *ahadith* quoted by those who claim that Allah (saw) has legislated the *niquaab*. Therefore, it becomes clear that there is no evidence to say Allah (swt) has made the *niquaab* obligatory for Muslim women or that the hands and the face should be considered as *'awrah* whether inside or outside prayer. The evidences which they quote have no compelling reason to conclude that the *niquaab* is compulsory.

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

As for the *Qur'an*, Allah (swt) says:

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ﴾

"And they do not show off their charm (zeenah) except only that which is apparent and let them draw

their head coverings (khumur) over their necks and chests (juyooob)". [An-Nur: 31]

Allah (swt) forbade believing women from displaying their charms (*zeenah*) i.e. forbade them from showing the place of their charm (*zeenah*), since this is what the prohibition refers to. He excluded from the places of charms that which is normally shown, and this is a clear exception. This means that there is a part of the woman's charm which is shown, which is not under the (general) prohibition of women displaying the places of their charms. Nothing more remains to be said about this as the point is clear. So, Allah has forbidden women from displaying their *zeenah* except that which is apparent from it. As for which parts are intended in the verse:

﴿إِلَّا مَا ظَهَرَ مِنْهَا﴾

"*except only that which is apparent from it*" [An-Nur: 31], its interpretation must be referred to two matters. First, to the transmitted tafseer and secondly to what was understood from the expression:

﴿مَا ظَهَرَ مِنْهَا﴾

"*that which is apparent from it*"; and its application to what the Muslim women used to display in the presence of the Prophet (saw), in his time and in the time of the revelation of this verse.

As for what has been transmitted, it is narrated that Ibn 'Abbas in the *tafseer* of this verse took (the expression) "*that which is apparent from it*" to mean the hands and face. This opinion became commonly held by the *mufasssireen* (interpreters). Imam Ibn Jarir at-Tabari says: "The strongest and most accurate view is that which says that the exemption refers to the face

and the hands,” and Qurtubi said: “Since what was mostly seen is that a woman’s face and hands are revealed by the force of habit and for worship, as this is required in *salah* and *Hajj*, then it is appropriate to say that the exemption applies to these.” Imam al-Zamakhshri said: “A woman is forced to deal in commodities with her hands. She is compelled by genuine need to expose her face especially at the times of giving evidence, litigating in court, and marriage. She is compelled to walk the streets and expose her feet, especially the poorer women. This is the meaning of "*that which is apparent from it*", that is, what the situations of ordinary life compel her to expose.” This is the meaning of:

﴿إِلَّا مَا ظَهَرَ مِنْهَا﴾

"except that which is apparent from it"

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

1. Jabir bin Abd Allah said: “I attended prayer on ‘*Eid* day with the Messenger of Allah (saw). He commenced with the prayer, before the *khutbah*, without any *aqaan* or *iqaamah*. Then he rose, leaning on Bilal and addressing those present before him, commanded them to fear Allah and exhorted them to obey Him. He further admonished and warned them. Then he moved

on until he came to the women whom he addressed saying:

«تَصَدَّقْنَ فَإِنَّ أَكْثَرَكُمْ حَطَبٌ جَهَنَّمَ، فقامت امرأة من سِطَةِ النساءِ سفعاءُ الخدَّينِ، فقالت: لِمَ يا رسولَ اللهِ؟ قال: لأنَّكُمْ تُكْثِرْنَ الشَّكَاةَ وَتَكْفُرْنَ العَشِيرَ»

“Give charity, for verily most of you are fuel for the hellfire,” whereupon there arose from among the middle ladies congregation, a dark-cheeked woman who said: “Why is that, Oh Messenger of Allah?” He replied: **“Because you women make too many complaints, and you refuse to acknowledge your husband's good treatment.”** [Reported by Muslim] Upon hearing this, the women began tossing their jewellery in charity upon Bilal's (outspread) cloth.

2. Narrated by ‘Ataa bin Abu Rabaah who said: Ibn Abbas said to me: “Shall I show you a woman who will go to Paradise (*Jannah*)?” I said: “Yes.” He said: “This black woman came to Prophet (saw) and said:

«إني أُصْرَعُ، وإني أُنْكَشِفُ، فادعُ اللهُ لي. فقال لها: إن شئتِ صَبَرْتِ ولكِ الجنةُ، وإن شئتِ دعوتُ اللهُ أن يعافيكِ. فقالت: أَصْبِرُ. فقالت: إني أُنْكَشِفُ فادعُ اللهُ لي أن لا أُنْكَشِفَ. فدعا لها»

'I have epilepsy and I get uncovered, so make *dua* to Allah for me'. So he (saw) said to her: **“If you will be patient the Paradise (*Jannah*) shall be yours. And if you want I will make *dua* to Allah to cure you.”** So she said: “I will be patient.” She said: “I get uncovered so make *dua* to Allah that I don't uncover myself.” So he (saw) made *dua* for her. [Reported by at-Tabaraani in *al-Kabeer*]

3. What indicates that the hand is not part of the 'awrah is the Prophet's handshaking of women in the *bay'ah*. Umm 'Atiyyah said:

«بَايَعَنَا النَّبِيُّ ﷺ فَقَرَأَ عَلَيْنَا أَنْ لَا يَشْرِكَنَّ بِاللَّهِ شَيْئاً وَنَهَانَا عَنِ النَّيَاحَةِ، فَقَبَضَتْ امْرَأَةٌ مِنَّا يَدَهَا فَقَالَتْ: فَلَانَهُ أَسْعَدْتَنِي وَأَنَا أُرِيدُ أَنْ أَجْزِيَهَا. فَلَمْ يَقُلْ شَيْئاً فَذَهَبَتْ ثُمَّ رَجَعَتْ»

“We gave our *bay'ah* to the Messenger of Allah, so he recited to us they should associate none with Allah and he forbade us from wailing (for the dead). A woman amongst us withdrew her hand saying: ‘so and so woman has made me happy and I want to reward her’, he said nothing, the woman went, then came back.” [Reported by al-Bukhari] This *hadith* indicates that women used to give *bay'ah* by hand because this woman withdrew her hand after extending it for the *bay'ah*. The fact the *hadith* states that the woman withdrew her hand when she heard the terms of the pledge (*bay'ah*), demonstrates clearly that the *bay'ah* used to take place by hand and that the Prophet (saw) used to take the pledge by his noble hand. As for what has been narrated about 'Aisha (ra) that she said:

«وَمَا مَسَّتْ يَدُ رَسُولِ اللَّهِ ﷺ امْرَأَةً إِلَّا امْرَأَةً يَمْلِكُهَا»

“The hand of the Messenger of Allah did not touch the (hand of) any woman other than his own wives.”[Agreed upon] This is an opinion of Aisha and an expression of the limit of her knowledge. If we compare 'Aisha's statement with this *hadith* of Umm 'Atiyyah then the latter's *hadith* is preferred. This is because it specifies an action which happened in the presence of the Messenger (saw) and indicates an action of the Messenger (saw), which is most likely to be an isolated opinion of 'Aisha.

These three incidents are well established in the *ahadith* which unambiguously indicate that what was shown of women is the hands and face i.e. the exception in the *ayah*:

﴿إِلَّا مَا ظَهَرَ مِنْهَا﴾

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

is the hands and face. This shows that the hands and face are not part of the '*awrah*' whether in or outside prayer because the verse is of general import ('*aam*):

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا﴾

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

As for the verse which comes after, its implicit meaning (*mafهوم*) also indicates that the hands and face are not part of the '*awrah*'. Allah (swt) says:

﴿وَلْيَضْرِبْنَ خُمُرَهُنَّ عَلَىٰ جُيُوبِهِنَّ﴾

"And let them draw their head-coverings (*khumur*) over their necks and v-neck (*juyooob*).". [An-Nur: 31]

Khumur is the plural of *khimaar* and it is used to cover the head. *Juyooob* is the plural of *jayb*. It is the v-neck. Thus, Allah (swt) has ordered that the *khimaar* should be worn round the neck and chest. This indicates the obligation to cover both areas. But did not order that the *khimaar* should be worn over the face, thereby indicating the face is not part of the '*awrah*'. *Jayb* does not mean the chest as some would assume. Rather it is the v-neck, the opening which is

around the neck and the upper portion of the chest. Wearing the *khimaar* over the *jayb* means wearing it around the shirt collar from the neck and chest. So, by ordering the covering of the head, which includes the neck and chest, this excludes the face, indicating that it is not part of the *'awrah*. Consequently, there is no such thing called *niquaab* (the veil); and Allah (swt) did not legislate it.

This is in terms of the evidences from the *Qur'an*. In addition these are evidences from the *hadith* which show that Allah (swt) has not legislated the *niquaab* and that the hands and face are not part of the *'awrah*. This is due to what Abu Dawud narrated on the authority of Qataadah that the Prophet (saw) said:

«إن الجارية إذا حاضت لم يصلح أن يُرى منها إلا وجهها ويدها إلى المِفْصَلِ»

“When a young girl begins to menstruate, it is not correct that anything should be seen of her except her face and hands up to the wrist.” This *hadith* is clear in that the hands and face are not part of the *'awrah* and that Allah (swt) has not legislated the covering of the hands and face, and He has not legislated the *niquaab* (the veil).

Thus, the above evidences from the *Kitaab* and *Sunnah* clearly and unambiguously show that the Muslim woman used to go out to the market with her face and hands uncovered and conversed with non-*mahram* men whilst her face and hands were revealed. And she made all lawful transactions with people such as buying, selling, renting, leasing, right of pre-emption, representation, whilst her hands and face were uncovered. They also show that Allah (swt) has not legislated *niquaab* except for the wives of the

Messenger (saw). Even though the view concerning the *niqaab* is an Islamic opinion because it has a semblance of an evidence (*shubhat ad-daleel*) and *Mujtahid-Imams* amongst the *mazaahib* have taken this view, however the semblance of *daleel* they cite is untenable without any apparent credible reasoning.

What remains is an opinion which some *Mujtahidin* held: namely, that the *niqaab* has been legislated for women due to the fear of temptation (*fitnah*). They say that the woman has been forbidden from revealing her face not because it is *'awrah* but due to the fear of causing temptation (*fitnah*). This view is not valid from a number of angles:

Firstly for the prohibition of unveiling the face due to the fear of *fitnah*, there is no *Sharii* provision whether in the *Kitaab, Sunnah, Ijmaa'* of the *Sahaabah* and nor is there a *Shar'a* provision from a *Sharee'ah* reason (*'illah Shar'iyyah*) according to which an analogy could be made. Consequently, this opinion has no *Sharee'ah* value nor is it considered a *Sharee'ah* rule (*hukm shar'i*), because a *Sharee'ah* rule is the speech of the Legislator, but the prohibition of unveiling the face is not included in the speech of the Legislator. It is also known that the *Sharee'ah* evidences have come in complete contradiction to it, and that the *ayaat* and *ahadith* unconditionally permit the uncovering of the face and hands without being restricted by something, nor being specified by a particular circumstance. Thus, the opinion that showing the face is forbidden and it is obligatory to conceal it is an opinion which prohibits that which Allah permitted. It is an obligation that Allah the Lord of the Worlds has not decreed. Far from being

considered as a *Sharee'ah* rule, it actually invalidates the *Sharee'ah* rules established by the clear text.

Secondly, considering the fear of temptation (*fitnah*) is the reason ('*illah*) for prohibiting the unveiling of the face and the reason for the obligation to conceal it is an opinion for which there is no *Sharee'ah* text whether explicitly (*saraahatan*), by indication (*dalaalatan*), extraction (*istinbaatan*) or by analogy (*qiyaasan*). Therefore, under no circumstances can it be considered a *Sharee'ah* reason ('*illah shar'iyyah*). Rather it is a rational reason ('*illah 'aqliyyah*) which is of no bearing in regards to the *Sharee'ah* rule. However, what is considered is the *Sharee'ah* reason ('*illah Shar'iyyah*) and nothing else. Accordingly, no weight is given to the argument of the fear of *fitnah* in legislating the prohibition of showing the face or obligating its concealment because it is not present in the *Sharee'ah*.

Thirdly, the principle of: 'the means to a *haraam* is (itself) prohibited' (*al-waseela il al-haraam muharramah*) does not apply here to prohibit the showing of the face due to fear of temptation (*fitnah*). This is because this principle requires the fulfilment of two conditions. Firstly, the means (*waseelah*) must lead to a *haraam* by being the most preponderant (*bi ghalabat az-zann*). Secondly, there must be a text prohibiting what the means (*waseelah*) leads to, and it should not be something that the mind determines. This is not present with regards to showing the face in fear of temptation. Consequently, showing the face due to the fear of temptation does not apply to the principle of forbidding the cause of a *haraam*; assuming that the temptation is prohibited by the *Sharee'ah* for the one tempted by it, because it does

not definitely lead to it. Also, there is no text making the fear of temptation *haraam*. On the contrary, the *Shar'a* did not make the temptation itself *haraam* for the one who is the object of temptation of people. Rather, the *Shar'a* prohibited the one who looks from watching with temptation, and it did not prohibit it for the one who is looked at.

Al-Bukhari reported from ‘Abdullah bin ‘Abbas (ra) that

«كان الفضل رديف رسول الله ﷺ فجاءت امرأة من خثعم فجعل الفضل ينظر إليها وتنظر إليه وجعل النبي ﷺ يصرف وجه الفضل إلى الشق الآخر»

Al-Fadhl bin Abbas was the Prophet's (saw) riding partner at the time when a woman from Banu Khath'am came seeking a *hukm* (ruling), and al-Fadhl began to look at her and she at him so the Messenger of Allah (saw) made him turn his face from her. Meaning, he turned the face of al-Fadhl away from her, as evidenced by another variant of this *hadith*:

«فأخذ رسول الله ﷺ الفضل فحوّل وجهه من الشق الآخر»

Thus, the Prophet (saw) took hold of al-Fadhl's beard and turned his face away from the other side. This story has been narrated by Ali bin Abu Talib to which he adds:

«فقال له العباس: يا رسول الله، لِمَ لَوَيْتَ عُنُقَ ابْنِ عَمِّكَ؟ قال: رأيت شاباً وشابة فلم آمن الشيطان عليهما»

“Abbas said to the Prophet: ‘Oh Messenger of Allah, why did you turn your cousin’s neck?’ He replied: ‘I saw a young man and a young woman in such a situation that I feared what effect Shaytan might have upon them.’ It is clear from this that the Messenger (saw) turned the face of al-

Fadh'l away from the *Khath'ami* woman. He did not order her to cover her face. Her face was visible to him. If temptation was *haraam* for the one who was the object of temptation then the Messenger (saw) would have ordered the *Khath'ami* woman to veil her face after al-Fadh'l had looked at her with desire. He (saw) did not order her to do this but he turned the neck of al-Fadh'l, which indicates that the prohibition is for the one who is looking and not for the one who is looked at.

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

Men and Women before the *Sharee'ah* Commandments

When Islam came with the *Sharee'ah* commandments (*takaleef shar'iyah*), which it obliged on men and women, and when it clarified the *Sharee'ah* rules which treat the actions of each of them, it did not give the issue of equality or superiority any attention or consideration. Rather, it viewed that there was a specific problem which required a solution. So, it treated it in its capacity as a specific problem regardless of whether it was a problem pertaining to a man or a woman. Thus, the solution was for the action of a human, for the issue, and not for the man or woman. Therefore, the question of equality or the lack of equality between men and women is not the subject of discussion. Such an expression does not exist in the Islamic legislation. Rather, the standpoint is that there is a *Sharee'ah* rule for a given incident resulting from a certain human being whether they are a man or a woman.

Hence, equality between men and women is not an issue for discussion, nor is it an issue which forms a subject in the social system. The woman being equal to the man or the man being equal to the woman is not a significant matter which has influence over the societal life, nor is it a problem which is likely to occur in the Islamic life. It is but a phrase found only in the West. No Muslim holds this view except those imitating the West, which violated the natural rights of the woman in her capacity as a human being. Hence, she called for the restitution of these rights. This demand used the discussion about equality as a means to obtain these rights. As for Islam, it has nothing to do with these terms because it has

established its social system on a firm basis which ensures communal and societal cohesion and elevation. And it secured for the man and woman true happiness which befits the dignity and honour of humankind whom Allah (swt) has honoured in His (swt) saying:

﴿وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ﴾

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

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

﴿يَتَأْتِيَا النَّاسُ اتُّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا

وَبَنَىٰ مِنْهَا رِجَالًا كَثِيرًا وَنِسَاءً﴾

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

The *Sharee'ah* commandments (*takaleef shar'iyyah*) have been legislated upon this basis, and according to it, the rights and obligations of men and women have been assigned. When the rights and obligations are for the human, i.e. the obligations (*takaleef*) which relate to the human in his capacity as a human, then you will find equivalence in these rights and obligations, i.e. you will find the equivalence in the commandments (*takaleef*). Thus, the rights and obligations will be for all, and assigned to all men and women as one, without difference or disparity. Hence, you will find that Islam did not differentiate between men and women when it invited people to the *Imaan* (belief). Nor did it differentiate between men and women in the command to carry the call to Islam. It made the commandments relating to worships such as prayer, fasting, *Hajj* and *Zakat* the same in terms of their legal obligation. And it made the moral characteristics which have come with the *Sharee'ah* rules as morals for men and women without distinction. It also made the rules of societal transactions (*mu'amalaat*), such as buying, renting, representation, guardianship and other such societal transactions relating to mankind, the same for men and women. And it imposed punishments for breaching the rules of Allah such as the determined punishments (*hudood*), criminal laws (*jinayaat*) and discretionary chastisements (*ta'zeer*) on men and women without discrimination in their capacity as humans. In addition, Islam made learning and teaching an obligation for Muslims with no difference between

men and women. In this manner, Allah (swt) has legislated all the rules pertaining to humans in their capacity as humans, the same for men and women without distinction. So the commandments from this perspective are all the same, and the rights and obligations are also the same. The verses and *ahadith* containing such rules have come in a general form ('*aam*) and inclusive of all humans in their capacity as humans, and for the believers in their capacity as believers. There are many verses which state that the legal obligation (*takleef*) is for both the male and female. Allah (swt) said:

﴿ إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَانِتِينَ وَالْقَانِتَاتِ وَالصَّادِقِينَ وَالصَّادِقَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَاشِعِينَ وَالْخَاشِعَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّائِمِينَ وَالصَّائِمَاتِ وَالْحَافِظِينَ فُرُوجَهُمْ وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُمْ مَغْفِرَةً وَأَجْرًا عَظِيمًا ﴾

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

Also Allah (swt) said:

﴿ وَمَا كَانَ لِمُؤْمِنٍ وَلَا لِمُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ ﴾

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

He (swt) said:

﴿ مَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيٰوةً طَيِّبَةً ۖ وَلَنَجْزِيَنَّهُمْ أَجْرَهُم بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ ﴿٩٧﴾ ﴾

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

And He (swt) said:

﴿ وَمَنْ يَعْمَلْ مِّنَ الصَّالِحَاتِ مِمَّنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَأُولَٰئِكَ يَدْخُلُونَ الْجَنَّةَ وَلَا يُظَلَّمُونَ نَقِيرًا ﴿١٢٤﴾ ﴾

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

And He (swt) said:

﴿ فَاسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أُضِيعُ عَمَلَ عَمَلٍ مِّنْكُمْ مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ ۖ ﴾

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

And He (swt) said:

﴿لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا﴾

"There is a share for men and a share for women from what is left by parents and those nearest related, whether the property be small or large - a legal share". [An- Nisaa` : 7]

And He (swt) said:

﴿لِّلرِّجَالِ نَصِيبٌ مِّمَّا كَسَبُوا^ط وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا كَسَبْنَ وَسَأَلُوا﴾

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

Thus we find that all the *Sharee'ah* rules relate to humans as humans, however disparate and numerous they may be. Allah has legislated them as one and the same for the man and woman. This should not be taken as equality between men and women. Rather, they are rules legislated for human beings, for the man and woman without distinction because each one is a human. These rules are a speech from Allah (swt) relating to the actions of human beings.

When these rights and obligations and these *Sharee'ah* commandments relate to the nature of a female, in her description as a female, and they relate to the nature of her position in the community and her place in society, or when they relate to the nature of the man in his description as a male, and they relate to the nature of his position in the community and his place in society: then these rights and obligations i.e. these commandments will be disparate between men and women. This is because they are not a general

solution for humans but a solution for this type of human whose attribute of human nature is different from the other. Therefore, there must be a solution for this type of human, not for all humans. Hence, the testimony (*shahaadah*) of two women is equal to the testimony of one man in actions which take place amongst the male community and in the public life. Such as the woman's testimony concerning rights and societal transactions (*mu'amalaat*). Allah (swt) said:

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

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

The testimony of women is accepted on its own, in matters which take place amongst the female community, where there are no men present, such as a crime which is committed in the ladies' quarters. The testimony of one woman is sufficient regarding matters with which only women are familiar, such as their testimony regarding questions of virginity, matronhood and suckling. This is because the Messenger (saw) accepted the testimony of a single woman with regards to suckling. Al-Bukhari reported via 'Uqbah bin al-Harith who said:

تزوجت امرأة فجاءت امرأة فقالت: إني قد أرضعتكما. فأتيت النبي فقال: «وكيف وقد قيل؟ دَعَهَا عَنْكَ، أَوْ نَحْوَهُ». وفي رواية «فنهاه عنها»

"I married a woman and another woman came to us and said: 'I suckled you and your wife. So I came to the Messenger (saw) who said to me:

“How (can you keep your wife) after it has been said (that both of you were suckled by the same woman)? So leave her.” In another narration he said: ‘So he (saw) forbade him from her’.”

And in certain cases Islam made the share of inheritance of the woman half the share of the man. Allah (swt) said"

﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ﴾

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

This is in connection to the agnates (*asabaat*) such as sons, full brothers and half brothers through the same father: the reality of the female is that her financial maintenance (*nafaqah*) is the obligation of the brother if she is poor, even if she was able to work. In certain cases Islam made the share of the woman the same as that of the man. Allah (swt) said:

﴿وَأِنْ كَانَ رَجُلٌ يُورَثُ كَلِئَلَةً أَوْ امْرَأَةً وَوَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ ۚ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثَّلَاثِ ۚ﴾

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

This verse was revealed in respect to the half brothers through the same mother because the *kalaalah* is the one cut off without descendants, ascendants, full brothers or half brothers through the father. The reality of the female in this regard is that

her financial maintenance (*nafaqah*) is not an obligation on her half brother from the same mother because even though he is a *mahram*, he is however not from those upon whom her maintenance has been made compulsory.

And Islam has ordered that the attire of women be different from men, just as it has ordered that the attire of men should be different from the attire of women. It forbade the one from resembling the other in attire, and from resembling what is particular to one gender which distinguishes it from another, such as adorning certain parts of the body. It has been narrated from Abu Hurayrah (ra) that he said:

«لَعَنَ رَسُولُ اللَّهِ ﷺ الرَّجُلَ يَلْبَسُ لِبْسَةَ الْمَرْأَةِ، وَالْمَرْأَةَ تَلْبَسُ لِبْسَةَ الرَّجُلِ»

“The Messenger of Allah (saw) cursed the man who wears the clothing of women, and the woman who wears the clothing of men.” [Reported by al-Haakim who declared it authentic (*sahih*)] It has been narrated from Ibn Abu Mulayka that he said:

قيل لعائشة رضي الله عنها: «إن المرأة تلبس النعل؟ فقالت: لعن رسول الله

ﷺ الرَّجُلَةَ مِنَ النِّسَاءِ»

“It was said to A'isha; ‘Did the women wear shoes?’ She said: ‘The Messenger of Allah (saw) cursed the manliness amongst the women’.” [Reported by az-Zahabi who said its chain of transmitters (*isnad*) is *Hasan*]. It has been narrated that 'Abd Allah bin 'Amr said:

«ليس منا من تشبه بالرجال من النساء»

“I heard the Messenger of Allah (saw) saying ‘Women who imitate men don't belong to us’.” [Reported by at-Tabarani] And Ibn 'Abbas said:

«لَعَنَ النَّبِيُّ ﷺ الْمُخَنَّثِينَ مِنَ الرِّجَالِ وَالْمُتَرَجِّلَاتِ مِنَ النِّسَاءِ»

“The Prophet (saw) cursed the effeminate amongst men and the manly amongst women.”
And he (saw) said:

«أَخْرِجُوهُمْ مِنْ بَيْوتِكُمْ»

“Expel them from your houses.” And he (Ibn 'Abbas) said: “so the Prophet (saw) expelled so-and-so out and 'Umar threw out such and such person.”
And in another variant by al-Bukhari:

«لَعَنَ رَسُولُ اللَّهِ ﷺ الْمَتَشَبِّهِينَ مِنَ الرِّجَالِ بِالنِّسَاءِ وَالْمَتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ»

“The Messenger of Allah cursed the men who seek to resemble women and the women who seek to resemble men.” [Reported by al-Bukhari]

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

﴿وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا﴾

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

The meaning of "*nihlatan*" (i.e. give with a good heart) is that it is a gift since the bridal dower is a gift. It is not in exchange for the consummation of the marriage as some would imagine. And He (peace and blessing be upon him) said to the *Sahaabah* who married the woman who offered herself in marriage:

«هل من شيء تُصدِّقُها؟ فالتَّمَسَ ولم يجدْ قال: اِلْتَمَسْ ولو خاتماً من حديدٍ. فلم يجدْ شيئاً. فَرَوَّجَهُ إياها بما مَعَهُ من القرآنِ»

“Do you have anything to give her?” He looked around but did not find anything. So the Prophet said **“look for even an iron ring.”** But he did not find anything so the Prophet gave him in marriage to her with what he memorised from the *Qur'an* that he could teach her with as dower. [Reported by al-Bukhari on the authority of Sahl b. Sa'd as-Saa'idi]

Allah (swt) made working for one's livelihood an obligation (*fard*) on the man but did not make it obligatory for the woman. Rather it is permitted her to work or not to work if she wishes. Allah (swt) said:

﴿لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ﴾

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

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

﴿وَعَلَىٰ أُمُوتٍ لَهُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ﴾

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

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

And Islam has assigned to the man the guardianship (*qiwaamah*) over women. It also gave them the right to lead, to order and to prohibit. Allah (swt) said:

﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالَّذِينَ حَقَّتْ عَلَيْهِمْ حِفْظٌ لِلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۗ﴾

وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ

فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ﴿٣٤﴾

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

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

﴿بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ﴾

"Because Allah has made one of them to excel (*fadl*) the other". [An- Nisaa` : 34]

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

﴿وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ﴾

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

Also, the man has been given the right to discipline his wife through friendly exhortation, separating from her in bed or beating her lightly (without harm) as much as the offence warrants. That is, when she is rebellious, i.e. disobeys her husband and rebels against him. Islam gave the woman the right of custody over the minor, boy or girl, and barred the man from this custody. Islam also gave the woman the right to manage the expenditure for the children if their father delays their expenses or is miserly towards them. The man is prevented in this case from managing the expenses. Hind came to the Messenger of Allah (saw) and said

«يا رسولَ الله، إن أبا سفيانَ رجلٌ شحيحٌ، وليسَ يُعطيني من النَّفَقَةِ ما يكفيني وولدي. فقالَ: خُذي ما يكفيكِ وولدكِ بالمعروفِ»

“O Messenger of Allah! Indeed Abu Sufyan is a miserly man. He does not provide me with the maintenance that my children and I need.” So the Messenger of Allah told her “**Take that which suffices you and your children in a fitting manner (bil ma'roof).**” [Agreed upon, narrated on the authority of ‘Aisha (ra)]

The judge will force him to provide her with *nafaqah* (expenditure) and give her the right to manage it and he will not be allowed to control the expenses in this case.

Thus, Islam came with various rules, some of which are particular to men and some of which are particular to women. It differentiated between men and women with regards to some of these rules and ordered them

to accept what Allah (swt) has specially assigned for them. Also, He forbade them from envying each other, and from desiring things which Allah (swt) has preferred for one over the other. And He (swt) said:

﴿ وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضَكُمْ عَلَى بَعْضٍ ۗ لِلرِّجَالِ نَصِيبٌ مِّمَّا

اَكْتَسَبُوا ۗ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا اَكْتَسَبْنَ ۗ ﴾

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

This specification does not mean inequality. Rather it is a solution for the actions of the female in her capacity as a female, as well as a solution for the actions of the male in his capacity as a male. All of these actions have been addressed in the speech of the Legislator which relates to the actions of the humans. If all of their realities are studied, it becomes clear that the solution is for the problem of a particular type of human in its capacity as a certain type, and it should differ from the solution which is for a human in his/her capacity as a human. The perspective of equality or inequality is not considered because it is not the subject of study. What is noted is the fact that it is a specific solution for a specific human. And this is the nature of the disparity in the rules concerning the men and women with respect to the disparate rules that have been mentioned. In any case, they are a solution for the problem of a human, whether it is the same solution for both the man and the woman such as seeking knowledge, or it is disparate between them such as the disparity concerning the definition of the 'awrah for men and women. This does not mean

discrimination between humans or that it is a discussion about equality or inequality. As for what is mentioned in the narration that women are deficient intellectually and in terms of their *Deen*, what is meant is the resultant effect, with regards to the mind and *Deen*. It does not mean there is a deficiency in their intellect or in their adherence to the *Deen* since the intellect is the same in terms of the natural characteristics (*fitrah*) of men and woman, and adherence to the *Deen* is also the same in terms of the belief and action of the men and the women. The deficiency that is intended in this report is in terms of the testimony of the woman, by making the testimony of two women equal to that of one man. It also refers to the deficiency in the number of days the woman prays, because of her abstention from prayer during her days of menstruation (*hayd*) each month and in the postnatal period (*nifaas*). And it also refers to her abstinence from fasting during menstruation and after childbirth (*nifaas*) in *Ramadhan*.

This is the subject of the rights and obligations, i.e. the *Sharee'ah* commandments, which Allah has legislated for the human being in his capacity as a human and for each gender whether male or female. Legislating in this regard has been on the consideration that he has a certain gender and is a human at the same time. It is not intended to distinguish one from the other, just as there is no consideration for issues of equality or inequality.

The Activities of the Woman

The nature of Islam determines that the actions which humans perform in their capacity as humans are permissible for each man and woman without distinction, discrimination or differentiation. It also determines that these actions are made obligatory (*wajib*), forbidden (*muharrama*), disliked (*makrooh*) or recommended (*mandoob*), without discrimination or differentiation. As for the actions that a male undertakes in his capacity as a male and as a human, or the actions that a female undertakes in her capacity as a female and as a human: Allah has distinguished both of them in this regard and differentiated between them with respect to each other, whether in terms of obligation (*wujoob*), dislike (*karaaha*), recommendation (*nadb*) or permissibility (*ibaaha*). Accordingly, we find that the *Sharee'ah* has invested ruling and authority with the man as opposed to the woman. We also find that it has entrusted the custody of the children, whether sons or daughters, with the women to the exclusion of men. Therefore, it was inevitable that actions which relate to the female in her capacity as a female should be entrusted with the woman, and actions which relate to the male in his capacity as a male should be entrusted with the man. Since Allah (swt) created the male and the female and He knows best the situation of the man and the woman, then we must limit ourselves to the rules which He has legislated and not overstep them. This always applies, whether these rules are intended solely for the men, exclusively for the women, or for humans irrespective of their being men or women: because He (swt) knows best what is suitable for the human. Therefore, attempting to use the mind to deprive the woman from performing certain actions

under the pretext that she has nothing to do with them, or to give her activities which are specific to men, under the assumption that this dispensation is in fairness to her and realises justice between her and the man- all of these are transgressions against the *Sharee'ah*, a complete mistake and a cause of corruption.

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

mother and a housewife (responsible over the household).

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

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

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

And He (swt) said:

﴿وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا﴾

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

However, at the same time He (swt) has created her to be active in the public life as she is active in her private life. Thus, He (swt) has obliged her to carry the Call (*da'wah*), seek knowledge with regards to the actions that are incumbent on her in her life, and He (swt) allowed her to trade, lease and delegate, and forbade her from lying, treachery and betrayal. Just as He (swt) has obliged, allowed and forbade the man from these things. Allah (swt) gave her the right to work in agriculture or industry just as she practises trade. He (swt) gave her the right to form contracts, own all types of property and invest her wealth. He

(swt) also gave her the right to look after her own affairs by herself, become a partner or employee, employ people, lease property and things, and undertake the rest of the societal transactions (*mu'amalaat*). This is due to the general import of the Legislator's speech and the absence of prohibitions specific to women. However, it is not permitted for the woman to take up positions of ruling whether as leader of a state, his *Mu'aawin* (assistant), *Waali* (governor), *'Aamil* (district governor) or any other activity considered as ruling. This is due to what has been narrated by Abu Bakrah that he said: When the news reached the Messenger of Allah (saw) that the people of Persia had appointed the daughter of Chosroes (Kisra) as queen over them he (saw) said:

«لَنْ يُفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ»

“People who appoint a woman to run their affairs shall never succeed.” [Reported by al-Bukhari] This is clear in its prohibition of women assuming the position of ruling and in its censure for those who appoint a woman to run their affairs. And the person in authority (*wali al-amr*) is the ruler. Allah (swt) says:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾

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

Thus, the authority of ruling is not permitted for the women. As for positions other than ruling, the woman is allowed to undertake them. Therefore, women can be appointed to government civil-servant positions because they do not constitute ruling, rather they fall under employment. An employee is a private

government worker. They are like the employee of any other individual or company. It is allowed for a woman to assume the position of judge because the judge is not a ruler but settles disputes between people and informs the disputants of the rule for the purpose of enforcement. Therefore, the judiciary (*al-aadaa*) can be defined as the delivering of the verdict for the purpose of enforcing it. So the *Qaadi* is an employee and not a ruler. He is a government employee like the rest of the workers. It has been reported from 'Umar bin al-Khattab that he appointed al-Shifa - a woman from his folk - as a market judge (inspector) i.e. a judge of *Hisbah* who passes judgement on all violations. However, the permissibility for a woman to be a judge, relates to the text of the *hadith* and its applicability to the reality of the function of a judge. If the *hadith* which forbids the appointment of women over peoples' affairs is applicable to the judiciary, then appointing them as judges would not be permitted. And if the *hadith* does not apply, then it cannot be used as an evidence to prevent women from being appointed to the judiciary. Looking at the *hadith*, we find that the Messenger (saw) dispraised the people who appointed a woman over their affairs in response to the news that reached him that the people of Persia had appointed a woman as queen. It is, therefore, a comment on a piece of news, and in of the form of a response to a question. It is specific to the topic of the report and to none other. The subject matter of the news is the rule (*mulk*) i.e. the leadership of the state. The comment was on this topic and it is specific to the issue of state leadership and whatever is related to that, which is governance. This is from one perspective. From another angle we see that the prohibition is directed towards the general authority

because it is the authority over the affairs (of people). This is what the *hadith* means and this is what it indicates. As for the role of a judge, it is different to the role of the *Khaleefah* or the *Waali*. The role of the *Khaleefah* and the *Waali* is the execution of the rule directly by themselves, regardless of whether a case has been raised to them or to a *Qaadi* or if no case has been raised at all, but he views the issue to have contravened the *Sharee'ah*. So the ruler judges against the transgressor without the presence of a claimant and he applies the ruling on him.

As for the *Qaadi*, he cannot pass a judgement without the presence of a case, i.e. that a case is referred to him and there are two claimants present. So he passes judgement when there is a case, but he has nothing to do with it if no one initiates a legal action. In the event of looking into the case, he informs the people of the *shar'i* ruling with regards to the case in a manner that is binding. He has no authority of execution, unless if he is appointed as judge and ruler. Then, he will execute the rules in his capacity as a ruler and pass judgement in his capacity as a judge. The reality of the judiciary is different to the reality of ruling and therefore the *hadith* does not apply to the judge. Moreover, the judiciary is not part of authority. The *Qaadi* does not have authority over any people of a country in which he has been appointed, even over claimants. Obedience to him is not obligatory; rather, it is obligatory to implement his ruling when he passes a judgement on a case because it is the ruling of Allah and not because the *Qaadi* ordered it. His ruling is not considered a ruling of a judge unless he passes judgement in the judicial court. Therefore, his witnessing of an event or his hearing of it in other than the judicial court does not

permit him to pass judgement on what he has witnessed or heard as long as it did not take place in the judicial court. This differs from the ruler who must be obeyed in every situation and he does not need a specific court for the passing of a ruling. Rather, he can pass judgement in his own house, street or the state capital, and in every place. Obedience to him is obligatory. The Prophet (saw) said:

«وَمَنْ يُطِيعِ الْأَمِيرَ فَقَدْ أَطَاعَنِي»

“Whoever obeys the Ameer, he has obeyed me.” [Agreed upon- [Narrated on the authority of Abu Hurayrah] Therefore, the *hadith* which prohibits the appointment of women as rulers does not apply to the function of the *Qaadi* and so the post of judge cannot be prohibited for the woman by this *hadith*. The reality of the *Qaadi* is that he is an employee of the ruler whom he has employed for a certain salary to do a certain job. The word 'employee' (*ajeer*) is mentioned in the authentic *ahadith* which include all employees for all types of jobs. Since the Messenger (saw) considered the Qur'anic teacher an employee, he (saw) said:

«إِنْ خَيْرَ مَا أَخَذْتُمْ عَلَيْهِ أَجْرًا كَتَابُ اللَّهِ»

“Indeed, the best action which you deserve a wage for is the teaching of the *Qur'an*.” [Reported by al-Bukhari on the authority of Ibn ‘Abbas] Indeed, the *Qaadi* is also considered an employee and whatever he takes from the treasury (*bayt al-maal*) is considered a wage. No one should say that the *Qaadi* is an assistant to the ruler and so he should be considered a participant in ruling, because the *Qaadi* is only an employee of the ruler and not his assistant. His function is to understand the reality of a problem between two disputants and examine the application

of legal laws in the case of adopted rules, or the application of *Sharee'ah* rules in the absence of an adoption, upon whom the judiciary finds guilty or not guilty. Therefore, they are employees hired for a certain salary to do a certain job.

This is with regards to the judge and the *Qaadi* of *Hisbah*. As regards the *Qaadi* of the court of unjust acts (*Mazaalim*), it is not allowed for this *Qaadi* to be a woman. The woman is not permitted to assume the post of the judge of *Mazaalim* because it is ruling. Its reality is that of ruling and the *hadith* is applicable to it. This is because the unjust acts that take place via the ruler on the people are raised whether someone has made a claim or not. The judge does not need to call in the defendant (eg an official) when someone claims a case of injustice. However, it is allowed for the judge to call him to sit in his presence or not to call him, because the issue is not to pronounce a verdict over a case. Rather, it is to lift the injustice that occurs from the rulers upon the people. Therefore, the equivalent reality of the judgement of the *Mazaalim* is that of ruling. Therefore, it is not allowed for the woman to assume such a position.

Still remaining is the issue of whether a woman can be a member of the *Majlis al-Ummah* or not, had one existed. This issue is not altogether clear for some people who say it is not permitted by comparing the *Majlis al-Ummah* in Islam to the parliament in democracy. The truth is that there is a difference between parliament in the democratic system and the *Majlis al-Ummah* in Islam. The parliament is part of ruling because, according to democracy, it has the powers of ruling since it is the parliament that elects the president and removes him, and it is the

parliament which gives the cabinet the vote of confidence or withholds it, thereby depriving it of power at once. The reality of a parliament is that it undertakes three functions. Firstly, it accounts the government and monitors it. Secondly, it passes laws. Thirdly, it appoints rulers and removes them from office. Accounting the government and monitoring it is not considered part of ruling, but legislation, removing rulers and installing them is considered part of governance. This is contrary to the *Majlis al-Ummah*. Its reality is that it accounts the ruler and monitors him, and it shows its discontent whenever required. This includes the shortcoming in looking after the affairs of the people, complacency in the application of Islam or neglecting to carry the Islamic Call (*da'wah*) etc. However it does not enact laws, nor does it appoint or depose rulers; therefore, it is different from the parliament. Accordingly, it is permitted for a woman to be a member of the *majlis al-Ummah* since they are not rulers, but it is not allowed for the woman to be a member of parliament as long as it is considered part of ruling unless she restricted her entrance for the sake of accounting, observing and carrying the *da'wah*. Likewise it is not permitted for a man to become a member of parliament unless they restricted their entrance to accounting, observing and carrying the *da'wah*. This is because even though he is permitted to be a ruler, it is only permitted to rule by what Allah has revealed, and the parliament rules according to the capitalist system.

However, the fact that a woman is not allowed to be a ruler does not mean she is not allowed to elect the ruler, since the prohibition of her ruling comes from the explicit prohibition regarding that, . Al-Bukhari

reported on the authority of Abu Bakra that the Messenger (saw) said:

«إِنْ خَيْرَ مَا أَخَذْتُمْ عَلَيْهِ أَجْرًا كَتَابُ اللَّهِ»

“People who appoint a woman to run their affairs shall never succeed.” But this is different to her electing the ruler because she is not placed in a position of ruling. She is given the right to elect the person who will rule over her. The *Shar’a* has permitted the woman to elect the ruler and to select any man for any action of ruling because it is allowed for her to give *bay’ah* to the *Khaleefah* and elect him. It is narrated from Umm ‘Atiyyah that she said:

«بَايَعْنَا النَّبِيَّ ﷺ فَقَرَأَ عَلَيْنَا أَنْ لَا يُشْرِكَنَّ بِاللَّهِ شَيْئًا وَنَهَانَا عَنِ النَّيَاحَةِ، فَقَبَّضَتْ امْرَأَةٌ مِنْ يَدِهَا فَقَالَتْ: فَلَانَهُ أَسْعَدْتَنِي وَأَنَا أُرِيدُ أَنْ أَجْزِيَهَا. فَلَمْ يَقُلْ شَيْئًا فَذَهَبَتْ ثُمَّ رَجَعَتْ»

“We gave our *bay’ah* to the Messenger of Allah (saw), so He (saw) recited to us "*they should associate none with Allah*" and he forbade us from wailing (upon the dead). A woman among us withdrew her hand saying: so and so woman has made me happy and I want to reward her. He (saw) said nothing, the woman went then came back.” [Reported by al-Bukhari] The *bay’ah* to the Prophet (saw) was not on the basis of Prophethood but in obedience to the ruler. So this *hadith* shows that the woman can give *bay’ah* to the *Khaleefah* and elect him. In the same manner, she can be a part of the *majlis al-Ummah*, since it is a council for consultation, and it has no authority to rule. The *Majlis* does not elect a ruler except if the *Ummah* has delegated it to do so, nor does it remove the ruler or enact laws. All of its work relates to the giving of opinions. The function of the *Majlis al-Ummah* is that the state refers to it to seek its opinion with regards to

what it wishes to see implemented in terms of the internal policies and to account what it has undertaken of the internal and external actions. In addition, the *Majlis* itself will submit opinions about matters which are internal and external. It is also part of its work to give opinions with regards to candidates for the post of *Khaleefah*, as well as to make known their grievances concerning *Waalis* and *Mu'aawins* - this also constitutes putting forward an opinion. All of this falls within the presentation of opinions which point to an action. Its work also includes consultation, which the *Khaleefah* is not obliged to adhere to, such as expressing its opinion concerning the rules which the *Khaleefah* has adopted. All of these matters are merely opinions and not ruling. Therefore, its task relates only to opinions and none other.

The members of the *Majlis al-Ummah* are themselves representatives of the people only with respect to opinions and nothing else. They are not representatives of the people in ruling or in the appointment of a ruler, except if the *Ummah* delegates this responsibility to them, and they do not represent the people in the removal of a ruler. Even when they show their disapproval of *Waalis* and *Mu'aawins* (assistants), such people are not automatically discharged because of their opinion: rather the *Khaleefah* dismisses them according to their opinion. This is contrary to parliament, where the cabinet is dissolved the moment the confidence of the parliament is withdrawn and without the need of the president to dismiss it.

As long as the members of the *Majlis al-Ummah* represent the people in their opinions, the woman has the right to air her political, economic, legislative or

other opinions. She also has the right to delegate anyone she wishes to put forward an opinion, or she can be delegated to put forward this opinion for whom she wishes. Islam has given her the right to put forward her opinion just as the men would put forward their opinions. Consultation (*shura*) in Islam is the right of the man and woman without differentiation. He (swt) says:

﴿وَشَاوِرْهُمْ فِي الْأَمْرِ﴾

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

And He (swt) said:

﴿وَأْمُرْهُمْ شُورَىٰ بَيْنَهُمْ﴾

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

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

He (swt) said:

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْعُرْفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ﴾

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

And the Prophet (saw) said:

«مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ»

"Whoever of you sees a *munkar* let him change it." This is a general text which includes men and women. So accounting the rulers is obligatory upon

both the man and the woman. The giving of advice (*an-naseehah*) has been prescribed for men and women. When the Prophet (saw) said:

«الدينُ النصيحةُ، قيلَ لِمَنَ يا رسولَ الله قالَ اللهُ ولِرَسُولِهِ ولِأُمَّةِ الْمُسْلِمِينَ وعامَّتِهِمْ»

“**The Deen is to give advice (naseehah).**” It was asked “to whom O Messenger of Allah?” He replied “**To Allah, His Messenger, to the rulers of the Muslims, and the Muslims at large.**” [Reported by Muslim on the authority of Tameem ad-Daari] He (saw) did not confine the giving of advice to the man. Rather, the Muslim has the right to give advice to the leaders of the Muslims and the general public, irrespective of whether the one who puts forward the opinion is a man or woman. Since women used to discuss with the Messenger and ask him questions, this means that a woman has the right to discuss with the *Khaleefah* and put questions to him. It has been narrated

«مَضَى حَتَّى أَتَى النِّسَاءَ فَوَعظَهُنَّ وَذَكَرَهُنَّ وَقَالَ تَصَدَّقْنَ فَإِنَّ أَكْثَرَكُنَّ حَطْبُ جَهَنَّمَ فَقَامَتْ امْرَأَةٌ مِنْ سِطَّةِ النِّسَاءِ سَفَعَاءُ الْخَدَّيْنِ، فَقَالَتْ لِمَ يَا رَسُولَ اللهِ؟ .. الحديث»

that the Messenger (saw) after preaching to the men on the day of *'Eid* moved on until he came to the women, whom he preached to and admonished and warned saying: “Give charity, for verily most of you are fuel for the hellfire,” whereupon there arose from the middle ladies’ congregation, a dark-cheeked woman who said “Why is that, O Messenger of Allah?” [Reported by Muslim on the authority of Jabir]. This shows that the woman discussed with the Messenger and asked him questions when he said something pertaining to them. Also we have the story of Khawla bint Tha'laba when

she approached the Messenger asking him about the issue of her husband's divorce of her by way of *zihaar* (swearing that she is like his mother to him). He replied that it was not in his power to do anything, so she argued with him (saw). It is a well known story which Allah (swt) has alluded to in the *Qur'an*. Thus, He (swt) said:

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

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

This clearly shows that women did discuss with the Messenger and hence no more needs to be said about the fact that a woman is permitted to present her view in all matters and discuss it. No one (in the past) doubted this matter and accordingly an *Ijmaa'* (consensus) has taken place on the issue.

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

Since the *Majlis al-Ummah* is an assembly for the airing of opinions and its members represent others in expressing opinions, it is permitted for the woman to elect and be elected in the *Majlis al-Ummah*, i.e. she has the right to represent others and delegate others to express opinions. Furthermore, we know that in the thirteenth year of the Prophethood, the year in which the Prophet (saw) made the *Hijrah*, he (saw) was met by seventy three men and two women (of the *Ansaar*). The two women were Umm 'Umara bint Kalb, a woman from *Bani Maazin*, and Asma bint 'Amr bin 'Addi, who was from *Bani Salamah*. The Messenger arranged to meet them at *al-'Aqabah* and so they set off in the middle of the night. All of them climbed the mountain including the two women. The Messenger (saw) told them:

«أُبَايِعُكُمْ عَلَى أَنْ تَمْنَعُونِي مَا تَمْنَعُونَ بِهِ نِسَاءَكُمْ وَأَبْنَاءَكُمْ»

“I take a pledge from you that you protect me as you would protect your women and children.”
[Reported by Ibn Hibbaan in his *Sahih* on the authority of ‘Awf b. Malik]

«بَايَعْنَا عَلَى السَّمْعِ وَالطَّاعَةِ فِي عُسْرِنَا وَيُسْرِنَا وَمَنْشَطِنَا وَمَكْرَهِنَا، وَأَنْ نَقُولَ بِالْحَقِّ أَيْنَمَا كُنَّا، لَا نَخَافُ فِي اللَّهِ لَوْمَةً لَائِمَةً»

Their pledge was that they should say 'We made the pledge (*bay'ah*) that we would hear and obey, in ease or difficulty, whether we liked or disliked it. And that we should say the truth wherever we may be, we should not fear, for the sake of Allah (swt), the blame of anyone. [Reported by Ahmad an-Nasaa`I on the authority of ‘Ubadah bin as-Samit] This is a political pledge, and since the woman is allowed to give a political pledge it is allowed for her to elect and be elected, because the pledge and election are of the same issue: which is, the selection

of a ruler and obedience to him. The evidence to say that the *bay'ah* and the election are of the same issue is that if the *Khaleefah* does not receive a pledge then he cannot lawfully become *Khaleefah*. What makes him *Khaleefah* is the pledge (*bay'ah*). Therefore, its reality is that of electing a *Khaleefah*, and as an oath to hear and obey him. It is not true to say that the *bay'ah* is an oath to hear and obey only, since this applies to those who have given the pledge after the appointment of the *Khaleefah*. However, the initial *bay'ah* is for election, and then an oath to hear and obey the *Khaleefah* is given. It is stipulated that such a pledge is based on consent because it is an oath of consent. Therefore, the *bay'ah* and election are of the same issue. The election of someone who will represent the woman in an opinion in the *Majlis al-Ummah* is established by way of greater reason (*min baab awla*) since, if she is allowed to elect the *Khaleefah*, and he presides over the highest position of ruling, then by greater reason she is allowed to elect someone of lesser position. Therefore, it becomes clear that the woman's electing of members of the *Majlis al-Ummah* is permitted by the *Sharee'ah*.

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

«أَخْرِجُوا لِي مِنْكُمْ اثْنَيْ عَشَرَ نَقِيبًا يَكُونُونَ عَلَيَّ قَوْمَهُمْ بِمَا فِيهِمْ كُفْلَاءً»

“Bring forth from amongst you twelve chiefs (Naqibs) who will be responsible for their people including themselves.” [Reported by Ahmad] This is

an order of the Prophet (saw) to all the people to elect from the people present. It is general: the Messenger did not specifically mention the men, nor did he exclude the women, either from those that were electing or from those that were being elected. The general import of a text is applied in its generality as long as there is no evidence of specification. Since the Prophet (saw) did not specify, his order is inclusive of all men and women without distinction, whether they are in the process of electing or are being elected.

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

No one doubts that consultation (*shura*) is a right of the man and the woman, and that accounting the ruler is obligatory upon the man and the woman, and that commanding the good (*ma'roof*) and forbidding the evil (*munkar*) is compulsory upon the man and the woman. The advice (*naseehah*) has been legislated for men and women, and the representation of people's views (*wakaala*) is permitted for the man and the woman. The woman has the right to hold and air this opinion. There is no difference whether this opinion is political, legislative or any other type of opinion: the activities of the *Majlis al-Ummah* are confined to consultation (*shura*), accounting the ruler, commanding the good (*ma'ruf*) and forbidding the evil (*munkar*) and advice (*naseehah*) to Imams of the Muslims, all of which relate to opinions and does not involve ruling. This demands that there should be no

doubt about the permissibility of the woman being a member of the *Majlis al-Ummah*, or about the permissibility of the woman electing a member of the *Majlis al-Ummah*. Despite this, some doubted the permissibility of her electing members in the *Majlis al-Ummah*, because the *bay'ah* was considered an oath of hearing and obedience and not for the purpose of election, and hence they did not see it as an evidence for election. However, since it has been established that the *Majlis al-Ummah* is only for the purpose of airing opinions and that the woman has the right to delegate whoever she wishes to present her opinion, there should be no doubt over the permissibility of the woman electing members of the *Majlis al-Ummah*. Besides, the pledge initially is an oath of consent, and thus is considered an election of the *Khaleefah* by the contracting parties and not only a contract of obedience. Therefore, the oath of consent and the election are of the same issue, which is the selection of the *Khaleefah*. So the woman has the right to elect and select the ruler as the established *hadith* of the *bay'ah* of the women (*bay'at an-Nisaa`*) indicates. Hence, by greater reason, it is allowed for her to elect the members of the *Majlis al-Ummah*. Also, some doubt the legality of the woman being a member of the *Majlis al-Ummah* because of its similarity with parliament, even though it has been established that the *Majlis al-Ummah* is different to parliament. The *Majlis al-Ummah* is for the purpose of airing opinions whereas the parliament is for ruling. One does not resemble the other. Therefore, there should be no doubt as to the admissibility of the woman being a member of the *Majlis al-Ummah*, because any doubt over whether the *Majlis al-Ummah* is equivalent to Parliament has been removed. Thus, no doubt remains over the permissibility of the

woman to be a member of the Majlis al *Ummah* and to elect the members of the Majlis al *Ummah*, except for the most stubborn and unreasonable.

The Islamic Community

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

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

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

The response to such questions is that the social system in Islam is a set of diverse *Sharee'ah* rules linked with each other. The requirement to follow one of its rules does not mean the abandonment of another. Rather, the Muslim man and woman should adhere to all of the *Sharee'ah* rules so that there are no contradictions within a single person; otherwise, discrepancies would appear in the *ahkaam*. Islam does

not intend, by permitting the woman certain activities, that she should go to a government building and work as an employee, even as a nurse in a hospital after she has adorned herself with ornaments and dressed in a manner as if she is a bride in procession, showing men her alluring charms, and inciting their desires for her. Nor does Islam intend that she goes to the store wearing such adornments, or selling a product in a state of softness and seductivity, using a manner of speech which tempts the buyer to enjoy chatting with her during the haggling, thereby increasing the price of the commodity or enticing him to make a purchase. Nor does Islam intend that she works as a clerk for a lawyer or as a secretary for a businessman leaving her alone with him whenever the job necessitated *khalwah*, wearing for him such clothes that reveal her hair, bosom, back, arms and lower legs and displaying what he desires from her naked body.

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

sliding into a sex-orientated outlook whilst living in the community.

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

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

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

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

The lowering of the gaze by every man and woman is the true protection for each of them. That intrinsic protection prevents a person from involving in *haraam*, because the sight is the effective means to fall in *haraam*. When the gaze is lowered then the *munkar* is prevented.

2. Islam ordered the man and the woman to fear Allah (swt). He (swt) said:

﴿ يَا أَيُّهَا الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا ﴿٧٠﴾ ﴾

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

He (swt) said:

﴿وَأَتَّقِينَ اللَّهَ إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا﴾

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

And He (swt) said:

﴿وَالْعَاقِبَةُ لِلتَّقْوَىٰ﴾

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

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

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

«إن الحلالَ بَيْنَ والحرامِ بَيْنٍ، وبينهما مُشْتَبِهَاتٌ لا يعلمهن كثيرٌ من الناسِ، فمن اتقى الشُّبُهَاتِ فَقَدْ اسْتَبْرَأَ لدينه وعِرْضِه، ومن وَقَعَ في الشُّبُهَاتِ وَقَعَ في الحرامِ، كالراعي يرعى حول الحمى يوشكُ أن يقعَ فيه. ألا وإن لكلِّ مَلِكٍ حِمَى، ألا وإن حِمَى اللَّهِ محارمُهُ»

“Both *halaal* and *haraam* are evident but in between them there are doubtful things and most of the people have no knowledge about them. So

whoever saves himself from these doubtful things, he would save his religion and his honour. And whoever indulges in these doubtful things would fall into *haraam* like a shepherd who grazes (his animals) near the *hima* (private pasture) of someone else and at any moment he is liable to fall into it. Oh people! Beware! Every king has a *hima* and the *hima* of Allah on the earth is what he declared as *haraam* things.” [Reported by Muslim on the authority of an-Nu'man b. Basheer]

The doubt here occurs in three cases:

Firstly: He doubts whether a thing is prohibited or permissible (*mubaah*) or, concerning an action, whether it is obligatory (*fard*), prohibited (*haraam*), disliked (*makrooh*), recommended (*mandoob*) or permissible (*mubaah*). The existence of such doubt concerning the description of a thing or the ruling of an action does not permit him to approach it until the *shar'i* ruling concerning it becomes clear. This means that he approaches it with the least amount of doubt, trusting that it is the ruling of Allah (swt). This is irrespective of whether it was his own *ijtihaad* or after becoming aware of the *shar'i* ruling concerning it, either from a *mujtahid* or from one who is aware of the ruling, even if he be a *muqallid* or lay follower (*'aammi*). This is so long as he trusts his *taqwa* and knowledge of the ruling rather than in his general knowledge.

Secondly: He suspects that he will commit a *haraam* through a *mubaah* action because of its closeness to the *haraam* and because of the possibility that it might lead to it, such as depositing money in a bank which deals with interest, or selling grapes to a trader

who owns a brewery, or teaching girls regular lessons etc. Such actions are *mubaah* and allowed for him to do, but it is better for his integrity if he does not do them by way of piety.

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

a. The thing that people doubt as being *haraam* or *makrooh* is actually *haraam* or *makrooh* in the *Sharee'ah*. By the person performing a *mubaah* action people understand that he has performed a prohibited action. In this situation, the person should avoid the *mubaah* action in case people think badly of him or he should explain himself to them.

«عن علي بن الحسين أن صفيّة بنتَ حبيّ زوجِ النبيّ ﷺ أخبرته أنها جاءت رسولَ الله ﷺ تزوره وهو مُعْتَكِفٌ في المسجدِ في العشرِ الأواخرِ منَ رَمَضانَ فتحدّثتْ عندهُ ساعةً منَ العِشاءِ ثم قامتْ تَنقَلِبُ فقامَ معها النبيُّ يَقْلِبُها، حتى إذا بلغتْ بابَ المسجدِ الذي عندَ مسكنِ أمِّ سلمةَ زوجِ النبيِّ ﷺ مرَّ بهما رجلانِ منَ الأنصارِ، فسلما على رسولِ الله ﷺ ثم نَقَدا، فقال لهما رسولُ الله ﷺ: على رِسلِكُما إنما هي صفيّةُ بنتُ حبيّ. قالَا: سبحانَ الله يا

رسول الله وكبر عليهما ما قال. قال: إن الشيطان يجري من ابن آدم مبلغ الدم. وإني خشيت أن يقذف في قلوبكما»

It has been narrated on the authority of Ali bin al-Husayn that Safiyyah bint Huyai (ra), the wife of the Prophet (saw), told him that she went to the Messenger of Allah (saw) to visit him in the Mosque while he was in *i'tikaaf* in the last ten days of *Ramadhan*. She spoke to him for a while after '*ishaa*', then she got up in order to return home. The Prophet (saw) accompanied her. When she reached the gate of the Mosque, opposite the door of Umm Salamah the wife of the Prophet (saw), two *Ansaari* men were passing by and they greeted the Messenger of Allah (saw) and continued on. He told them: **“Wait a little!”** and said, **“She is (my wife) Safiyyah bint Huyai.”** Both of them said, “Subhan Allah, how dare we think of any evil O Messenger of Allah,” and they felt hurt that they would think such a thing. The Prophet (saw) said (to them): **“Shaytan reaches everywhere in the human body as blood reaches in it. I was afraid lest Shaytan might insert an evil thought in your minds.”** [Agreed upon] It is understood from this *hadith* that the Messenger dispelled the doubt which may have arisen in the minds of his two companions, even though he (saw) is beyond all doubt and suspicion.

b. The case when a thing is suspected by people of being prohibited, but in reality it is permitted. However, in case people say that he has committed a prohibited action, he avoids it - not because it is prohibited but because of what people would say. It is not permitted to keep away from such types of suspicion; rather, he should undertake it according to the manner the *Sharee'ah* has instructed and not

according to the estimation of the people. AllahI has mildly reproached the Messenger for that. He (swt) said:

﴿وَتَخَشَى النَّاسَ وَاللَّهُ أَحَقُّ أَنْ تَخْشَاهُ﴾

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

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

If the man and woman stay away from these suspicions which the *Shar'a* has forbidden then it will protect them from disobedience to Allah (swt) and enable them to be characterised by moral excellence.

4. Islam encourages marriage at an early age so that it begins to restrict the sexual activity of a man and a woman to marriage from an early age. Thus one is brought up in this atmosphere and one is protected by restricting the sexual activity to marriage when the sexual instinct begins to be agitated. He (saw) said:

«يا معشرَ الشبابِ، من استطاعَ مِنْكُمْ البَاءَةَ فَلْيَتَزَوَّجْ»

“O you who are young! Whoever amongst you who can afford to marry he should marry.”
[Agreed upon. Narrated on the authority of ‘Abdullah b. Mas’ud] Marriage has been made exceptionally easy by urging the reduction of the bridal dowry (*mahr*). He (saw) said:

«أَعْظَمُ النِّسَاءِ بَرَكَةً أَيْسَرُهُنَّ صَدَاقًا»

“The one (amongst you, women) who receives the least amount of *mahr* is the most blessed

(*barakah*).” [Reported by al-Haakim on the authority of ‘Aisha]

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

﴿وَلَيْسَتَعَفِيفِ الَّذِينَ لَا سِيْدُونَ نِكَاحًا حَتَّى يُغْنِيَهُمُ اللَّهُ مِنْ فَضْلِهِ﴾

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

And they have been ordered to fast as a treatment for the sexual or procreation instinct, so that they seek recourse to the worship of fasting in order to overcome it and occupy themselves with that which is more sublime and noble i.e. the strengthening of their relationship with Allah (swt) by way of pious deeds. He (saw) said:

«يا معشر الشباب، من استطاعَ مِنْكُمْ البَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصْرِ، وَأَحْصَنُ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ، فَإِنَّهُ لَهُ وَجَاءٌ»

“O you who are young. Whoever amongst you can afford to marry should marry, because it will help him refrain from looking at other women, and guard his modesty (i.e. private parts from unlawful sex). And whoever is not able to marry he should fast because it will protect him.” [Agreed upon] Fasting is not there to suppress the procreation instinct but to generate concepts linked to the instinct of sanctification by which he will be distracted from the concepts of the procreation instinct: thus it will not agitate him and cause him anxiety and pain. Fasting is not intended to weaken the body because eating at night and taking enough nutrients serves as a

substitute for eating during the day. So debilitation by way of fasting is not realised, but what is realised is the presence of spiritual concepts through such optional fasting.

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

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

1. The private meeting between a man and a woman alone is prohibited. *Khalwah* is the meeting of a man and a woman in a place where no one is able to enter

except by their permission. An example is such as their getting together in a house or in an open space remote from public access. So the *khalwah* is the meeting of two people in isolation, secure from the presence of others. This *khalwah* is corruption itself: therefore, Islam has categorically prohibited it between a man and woman who are not *mahram* to each other, whoever these two persons may be and whatever this *khalwah* may be. The Prophet (saw) said:

« لا يَخْلُونَ رَجُلًا بِامْرَأَةٍ إِلَّا وَمَعَهَا ذُو مَحْرَمٍ »

“Whosoever believes in Allah and the Last Day, let him not be alone with a woman who has not a *mahram* with her. Indeed, the third (person) is al-Shaytan!”[Reported by Muslim on the authority of Ibn ‘Abbas] By preventing *khalwah*, the *Shar’a* took the necessary safeguards between the men and women. The reality of *khalwah* is that it makes the man and woman more sexually agitated. And by prohibiting this solitary privacy (*khalwah fardiyya*), the causes of corruption are eliminated because the *khalwah* is one of the direct means to corruption.

2. The woman has been forbidden from displaying her charms (*tabarruj*) from the time when Allah (swt) prohibited it. He (swt) said:

﴿ وَالْقَوَاعِدُ مِنَ النِّسَاءِ الَّتِي لَا يَرْجُونَ نِكَاحًا فَلَيْسَ عَلَيْهِنَّ جُنَاحٌ أَنْ يَضَعْنَ ثِيَابَهُنَّ غَيْرَ مُتَبَرِّجَاتٍ بِزِينَةٍ ﴾

"And as for women past childbearing who do not expect wed-lock, it is no sin on them, if they discard their (outer) clothing in such a way as not to show their charms". [An- Nur: 60]

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

He (swt) said:

﴿وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ﴾

"And let them not stamp their feet so as to reveal what they hide of their charms". [An- Nur: 31]

Examples such as these are considered *tabarruj*. *Tabarruj* is the showing of the charms (*zeenah*) and beauty (*mahaasin*) to non-marriageable men (non-*mahrams*). It is said the woman adorned (*tabarrajat*) herself, meaning she displayed her charms (*zeenah*) and beauty (*mahaasin*) to non-marriageable men (non-*mahrams*). There are a number of *ahadith* which prohibit what is considered to be *tabarruj*. It has been narrated by Abu Musa al-Ash'ari that the Messenger of Allah (saw) said:

«أَيُّمَا امْرَأَةٍ اسْتَعْطَرَتْ فَمَرَّتْ عَلَى قَوْمٍ لِيَجِدُوا مِنْ رِيحِهَا فَهِيَ زَانِيَةٌ»

“Any woman that uses perfume and walks past men in order for them to smell her fragrance; she is a fornicator.” [Reported by al-Haakim and Ibn Hibbaan] Meaning, she is similar to the fornicator in terms of the sin. And he (saw) said:

«صِنْفَانِ مِنَ أَهْلِ النَّارِ لَمْ أَرَهُمَا، قَوْمٌ مَعَهُمْ سَيَاطٌ كَأَذْنَابِ الْبَقَرِ يَضْرِبُونَ بِهَا النَّاسَ، وَنِسَاءٌ كَاسِيَاتٌ عَارِيَاتٌ مُمِيلَاتٌ مَائِلَاتٌ، رُؤُوسُهُنَّ كَأَسْنِمَةِ الْبُخْتِ

المائِلة، لا يَدْخُلْنَ الجَنَّةَ، ولا يَجِدْنَ رِيحَهَا، وإنَّ رِيحَهَا لِيُوجَدُ من مَسِيرَةِ كَذَا
وكذا»

“Two categories of *ahl-nar* (group in the Fire) (saw) has not seen them (yet): some people who hold whips like the tails of the cows by which they lash the people; and women who wear (clothes) but (are) half-naked, bending (their bodies) and bending the sight of the men to them. Their heads are like the tilted humps of the camels. These women will not enter the paradise nor will they experience its smell (odour), though its odour is felt at a distance of so and so (days).” [Reported by Muslim on the authority of Abu Hurayrah] All of these evidences are very clear in their prohibition of *tabarruj*, and therefore *tabarruj* is *haraam*. Consequently, every unusual *zeenah* which draws the attention of men and reveals the beauty (*mahaasin*) of the woman is *tabarruj* if the woman appears like this in the public life, or if she appears like this before non-*mahram* men in the private life. Example includes using perfume, make-up, wearing wigs without a *khimaar*, or wearing trousers without a *jilbaab* when she goes out into the public life.

The reality of *tabarruj* is that it incites both men and womens' emotions and agitates the procreation instinct for sexual intercourse. It invites man's solicitation of a woman causing their association to be based on attraction, and this makes their relationship of a sexual nature. This corrupts co-operation between them. It makes the co-operation not-conducive to building a community, but rather leads to its destruction. This *tabarruj* acts as an obstacle to the true association, whose basis is purity and *taqwa*. Without due care, it can also fill the great void in

one's life by agitating the emotions and inciting the procreation instinct. Life should not be filled except by great responsibilities and serious concerns, nor should it be spent in satisfying bodily desires, including the desires incited by *tabarruj*. With this understanding there would be a defined barrier between man and woman, leading to the successful fulfilment of his/her mission in life. This mission is carrying the Islamic Call and undertaking *Jihad* for raising high the Word of Allah (swt). Therefore, we must appreciate the danger of *tabarruj* to the Islamic community and appreciate what *tabarruj* is, in which the female displays herself to the male, inciting him: thus, it is a danger to the community and its relationships. This is the *tabarruj* which Islam has prohibited, and this is its reality and what it contains in terms of a danger to an Islamic community. As for displaying the charms and adornment in the house and in the private life, this is not considered *tabarruj*, nor does *tabarruj* apply to it.

3. Islam has prohibited every man and woman from pursuing occupations which endanger morals and cause corruption in society. Hence the woman is prohibited from performing jobs which aim to exploit her femininity. Raaf'i bin Riffaa'ah (ra) narrates:

«نَهَانَا ﷺ عَنْ كَسْبِ الْأُمَّةِ إِلَّا مَا عَمِلَتْ بِيَدَيْهَا. وَقَالَ: هَكَذَا بِأَصَابِعِهِ نَحْوِ الْخَبْرِ وَالغَزْلِ وَالنَّقْشِ»

“The Prophet (saw) forbade us from the earnings of the slave-girl except that which she earned with her own two hands.” [Reported by Ahmad] And He (saw) said indicating with his fingers to mean baking, spinning yarn, and engraving. So the woman has been forbidden from working in shops where the aim is to attract customers because of her sex or to work in

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

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

He (swt) said:

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

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

And He (swt) said:

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

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

And the Messenger of Allah (saw) said:

«اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ، قالوا: وما هنَّ يا رسولَ اللهِ؟ قال: الشركُ بالله،
والسحرُ، وقتلُ النفسِ التي حَرَّمَ اللهُ، وأكلُ الربَا، وأكلُ مالِ اليتيمِ، والتولِّي
يومَ الزحفِ، وقذفُ المحصناتِ المؤمناتِ الغافلاتِ»

“Avoid the seven great destructive sins.” The people enquired, “O Allah's Messenger! What are they?” He (saw) said: **“to associate partners along with Allah, to practice sorcery, to kill the life which Allah has forbidden, to eat up Riba (usury), to eat up an orphan's wealth, to retreat in front of the enemy at the time of fighting, and to accuse chaste and unaware women believers.”** [Agreed upon and reported on the authority of Abu Hurayrah] What is meant by chaste women here are the modestly attired women? Defamation of a modest woman is prohibited. By prohibiting the accusation of chaste women, the *Shar'a* has silenced the tongues of those which have become accustomed to speak badly of people and slander people - those who wish only to defile the honour of people - so that evil gossip and rumours do not spread in the Islamic community and false accusations are not made. In this is a protection for the Islamic community.

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

Through this, it is possible for a person to visualise what the Islamic community is and to comprehend what the Muslim woman is. He can realise that the woman's performance of actions in the public life which the *Shar'a* has permitted her will not result in corruption, nor lead to any harm. He can see it is necessary for the public life and elevation of the community. Therefore, Muslims must adhere to the rules of *Shar'a*, whether they are in *Dar al-Islam*, *Dar al-Kufr*, in an Islamic or non-Islamic country, amidst

a Muslim community or non-Muslims. They must undertake the activities the *Shar'a* has permitted for the women, and they should not fear any blame from it. Indeed, acting according to the *Shar'a* rules is a protection for the woman, elevation for the community, and obedience to the orders and prohibitions of Allah (swt). The *Shar'a* is the best in informing us of what will suit man as an individual, or a community in the private and public life.

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

ramifications, they are part of the systems of society, and they are studied under that category of societal transactions (*mu'amalaat*).

Marriage

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

However, marriage is the origin of all these relationships, and all of them branch out from it. If marriages were not to take place, then there would be no fatherhood, sonship nor motherhood etc. Accordingly, marriage is their origin and all of them branch out from it in terms of the need for organisation. Yet, the feeling of such needs erupts naturally in order to satisfy them the same way the feeling of the need for sexual association does. The instinct demands satisfaction, which is caused by the agitation of motherhood or sonship manifestations, just as the instinct demands satisfaction due to the

agitation of the manifestations of the sexual association. This is because marriage, motherhood, fatherhood and sonship, are all manifestations of the procreation instinct. Their feelings are also feelings of the procreation instinct. The inclination towards any of these manifestations is formed by the reality of the procreation instinct linked with the concept about that manifestation, a matter that applies to all the manifestations of the procreation instinct.

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

Islam has encouraged marriage and ordered it. Ibn Masud narrates that the Messenger of Allah (saw) said:

«يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصَرِ وَأَحْسَنُ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وِجَاءٌ»

“O you youngsters. Whoever amongst you who can afford to marry, should marry, because it will help him more to lower his gaze, and guard his modesty (i.e. private parts from unlawful sex). And whoever is not able to marry he should fast, because it will be protection for him.” [Agreed upon]

Qataadah narrated from al-Hasan who narrated from Samurah that he said

«أَنَّ النَّبِيَّ ﷺ نَهَى عَنِ التَّبَتُّلِ»

‘The Prophet (saw) forbade us from celibacy’
[Reported by Ahmad]. Qataadah quoted the verse:

﴿وَلَقَدْ أَرْسَلْنَا رُسُلًا مِّن قَبْلِكَ وَجَعَلْنَا لَهُمُ أَزْوَاجًا وَذُرِّيَّةً﴾

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

The meaning of celibacy is abstention from marriage and what follows that of retreating to worship. Abu Hurayrah (ra) narrates that the Prophet (saw) said:

«ثَلَاثَةٌ حَقٌّ عَلَى اللَّهِ إِعَانَتُهُمْ، الْمَجَاهِدُ فِي سَبِيلِ اللَّهِ، وَالنَّاكِحُ يَرِيدُ أَنْ يَسْتَعِفَّ، وَالْمَكَاتِبُ يَرِيدُ الْأَدَاءَ»

“Three (persons) have a right from Allah to be helped: the *mujaahid* in the way of Allah, the seeker for marriage who wishes to guard his chastity and the slave who seeks funds to free oneself.” [Reported by al-Haakim and Ibn Hibbaan]

Islam encouraged marrying virgin women, who are able to bear children and those possessing Islamic character. Anas (ra) narrates that the Prophet (saw) used to order people to marry and strictly forbade them from celibacy. He (saw) used to say:

«تَزَوَّجُوا الْوُدُودَ الْوُلُودَ فَإِنِّي مُكَاتِرٌ بِكُمْ الْأَنْبِيَاءَ يَوْمَ الْقِيَامَةِ»

“Get married to the tender and fertile (women), for indeed I will vie with the Prophets in your great numbers on the day of judgement.”
[Reported by Ahmad] M'aqal bin Yasar (ra) narrates: A man came to the Prophet (saw) and said:

«جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ فَقَالَ: إِنِّي أَصَبْتُ امْرَأَةً ذَاتَ حَسَبٍ وَجَمَالٍ
وَأَنَّهَا لَا تَلِدُ أَفَأَتَزَوَّجُهَا؟ قَالَ لَا ثُمَّ أَتَاهُ الثَّانِيَةَ فَنَهَا، ثُمَّ أَتَاهُ الثَّلَاثَةَ فَقَالَ:
تَزَوَّجُوا الْوُدُودَ الْوُلُودَ فَإِنِّي مُكَاثِّرٌ بِكُمْ الْأُمَمَ»

“I have found a woman who is beautiful and of noble descent but she cannot bear children. Shall I marry her?” He (saw) said: “No.” Then he came to him again for the second time and he (saw) prevented him. Then he came to him a third time, so the Prophet (saw) said: “**Get married to the tender and fertile (women) for indeed I will vie in your great numbers.**” [Reported by Abu Dawud]. Jabir narrates that the Prophet (saw) said to him:

«يا جابرُ تزوجتَ بكراً أم ثيباً؟ قال ثيباً، فقال: هلا تزوجتَ بكراً ثلثيها
وثلثيها»

“O Jabir, did you marry a virgin or a non-virgin (divorcee or widow).” He replied: “a non-virgin.” So the Prophet (saw) said: “**Why did you not marry a young girl so that you may have enjoyment with her and she has with you?**” [Agreed upon] Abu Hurayrah (ra) reported that the Prophet (saw) said:

«تُنكحُ المرأةُ لأربعٍ لِمَالِهَا وَلِحَسَبِهَا وَلِجَمَالِهَا وَلِدِينِهَا فَاظْفَرْ بِذَاتِ الدِّينِ
تَرَبَّتْ يَدَاكَ»

“A woman is married for four things: her wealth, lineage, beauty and Islamic character (*Deen*). So gain success with the one who possesses a good character (*Deen*).” [Agreed upon] So it is preferred for a man to choose a virgin woman (for marriage) and someone who is known to be fertile according to the knowledge of her mother, maternal and paternal aunts. Also he should choose someone who is of good *Deen* (character) and also beautiful in order to remain chaste. It is preferred that she is of noble descent i.e. brought up in beneficence, *taqwa* (God fearing) and

distinction. But that does not mean they are stipulations for marriage, rather they are recommended and preferred. Otherwise, a man has the right to choose the wife he pleases and the woman has the right to choose the husband she pleases.

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

﴿إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقَدُّكُمْ﴾

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

The Prophet (saw) gave his cousin Zaynab bint Jahsh (ra), who was from the exalted people of the Quraish, in marriage to Zayd bin Haritha (ra), who was a freedman.

وعن عبد الله بن بريدة عن أبيه قال: «جاءت فتاة إلى رسول الله ﷺ فقالت: إن أبي زَوْجَنِي ابْنَ أَخِيهِ لِيَرْفَعَ بِي خَسِيْسَتَهُ. قَالَ فَجَعَلَ الْأَمْرَ إِلَيْهَا فَقَالَتْ قَدْ أَجَزْتُ مَا صَنَعَ أَبِي، وَلَكِنْ أَرَدْتُ أَنْ أُعْلِمَ النِّسَاءَ أَنْ لَيْسَ إِلَى الْآبَاءِ مِنَ الْأَمْرِ شَيْءٌ»

Abdullah bin Burayda (ra) narrates on the authority of his father that a young girl came to the Messenger of Allah (saw) and said: **“My father married me off to his nephew in order to raise his lowly status.”** So the Prophet (saw) gave her the right to repudiate the marriage. She responded: **“I accept what my father has done, but I wanted to inform the (other) women that fathers do not have any authority to give their daughters in marriage against their wishes.”** [Reported by Ibn Maajah] The meaning of her statement: 'in order to raise his lowly status' is that her father wanted to raise his nephew's social standing by marrying her to him. This means that the father gave her in marriage against her wish because she did not consider him suitable for her, not because she thought he was not a match for her - indeed he was her cousin - but because she did not agree to the marriage. Abu Hatim al-Muzani reports that the Messenger of Allah (saw) said:

«إِذَا أَتَاكُمْ مِنْ تَرْضَوْنَ دِينَهُ وَخُلُقَهُ فَأَنْكِحُوهُ، إِلَّا تَفْعَلُوا تَكُنْ فِتْنَةً فِي الْأَرْضِ
وَفَسَادٌ كَبِيرٌ. قَالُوا: يَا رَسُولَ اللَّهِ، وَإِنْ كَانَ فِيهِ؟ قَالَ: إِذَا جَاءَكُمْ مِنْ تَرْضَوْنَ
دِينَهُ وَخُلُقَهُ فَأَنْكِحُوهُ. ثَلَاثَ مَرَّاتٍ»

“When someone whose character and morals are agreeable to you approaches you for marriage give your daughter to him in marriage. If you do not then there will be tribulation and immense corruption in the earth” They said: “O Messenger of Allah, even if he has some deficiency?” He said: **“When someone comes whose character and morals are agreeable to you approaches you for marriage, give your daughter to him in marriage.”** He said this three times. [Reported by at-Tirmizi] At-Tirmizi also reported this *hadith* on the authority of Abu Hurayrah with the following wording: The Messenger of Allah (saw) said:

«إِذَا خَطَبَ إِلَيْكُمْ مَنْ تَرْضَوْنَ دِينَهُ وَخُلُقَهُ فَرُؤُوحِهِ. إِلَّا تَفْعَلُوا تَكُنْ فِتْنَةٌ فِي الْأَرْضِ وَفَسَادٌ عَرِيضٌ»

“When someone proposes for your daughter and his character and morals are agreeable to you, then give to him in marriage. If you do not there will be tribulation and immense corruption in the earth.” And this *hadith* has been narrated through other lines of transmission as well. Abu Hurayrah (ra) narrated that Abu Hind cupped the Prophet (saw) from the crown of his head (for treatment). The Prophet (saw) said:

«يَا بَنِي بَيَّاضَةَ أَنْكِحُوا أَبَا هِنْدٍ وَأَنْكِحُوا إِلَيْهِ»

“O sons of Bayadha, marry Abu Hind (one of your women) and seek a woman for his marriage.” [Reported by al-Haakim] Hanzalah bin Abu Sufyan al-Jumahi (ra) narrates that his mother said: “I saw the sister of Abdur-Rahman bin Awf as a wife to Bilal” [Reported by ad-Darqutni]. All of these evidences clearly show that matching between spouses has no consideration or value. Any woman who consents to a man becoming her husband can marry as she wishes, and any man that consents to a woman becoming his wife can marry without considering the issue of matching. As for what has been narrated from Ibn Umar that the Prophet (saw) said:

«الْعَرَبُ أَكْفَاءُ بَعْضُهُمْ لِبَعْضٍ قَبِيلَةٌ لِقَبِيلَةٍ، وَحَيٌّ لِحَيٍّ، وَرَجُلٌ لِرَجُلٍ، إِلَّا حَائِكٌ وَحَجَّامٌ»

“The Arabs are equal to each other: Tribe to a tribe, a family to a family and a man to a man except a weaver and or a cupper (*hajjaam*).” This *hadith* is a lie, baseless and false. Ibn Abu Hatim said: “I asked my father about this *hadith*. He replied: it is rejected and fabricated.” As for what Al-Bazzar has recorded of the *hadith* of Mu'adh:

«العربُ بعضهم أكفأءُ بعضٍ، والموالي بعضهم أكفأءُ بعضٍ»

“The Arabs are a match to each other and the freedmen (non-Arab patrons) are a match to each other.” The narration of this *hadith* is weak. As for the *hadith* of Bareerah related to the Prophet’s (saw) saying to her;

«أن النبي ﷺ قال لبريرة لما عتقت: قد عتقتِ بضعتكِ معكِ فاختراري»

“When you had been freed, that part of you (i.e. being wife to a husband) has been freed.” [Reported by ad-Darqutni on the authority of ‘Aisha] This does not indicate matching because her husband was a slave and when a slave-girl who is married to a slave becomes free she can choose to remain married to the slave or annul her marriage. There is no indication in this *hadith* of matching. The evidence that Bareerah's husband was a slave is what Al-Qasim has narrated from Aisha (ra), that Bareerah was married to a slave man when she (Aisha (ra)) helped to free her. The Messenger of Allah (saw) told her:

«اختراري فإن شئت أن تمكثي تحت هذا العبد، وإن شئت أن تفارقيه»

“Choose, if you wish to remain married to this slave or separate from him.” [Reported by Ahmad] There is another evidence narrated in Muslim by ‘Urwah on the authority of Aisha (ra) that Bareerah was freed whilst her husband was still a slave. So the Prophet (saw) allowed her to choose (either to stay married to him or annul the marriage). If he was a free man then he would not have given her the choice. As for what has been reported from the Prophet (saw) that he said:

«لا تنكحوا النساء إلا من الأكفأء، ولا تزوجوهن إلا من الأولياء»

“Do not marry women except those that are your match and do not marry them to men except those who are friends.” It is weak (*da’eef*) and baseless.

Hence, it becomes clear that there are no texts to indicate conjugal suitability (as a condition), and the texts cited by the proponents of matching are all false or lack any angle of deduction. The stipulation of suitability contradicts the saying of the Messenger (saw):

« لا فَضْلَ لِعَرَبِيٍّ عَلَى عَجَمِيٍّ إِلَّا بِالتَّقْوَى »

“An Arab is not better than a non-Arab except in taqwa (God fearing).” [Reported by Ahmad]

And it contradicts the definite text of the *Qur'an*:

﴿ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ اتَّقَىكُمْ ﴾

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

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

﴿ الْيَوْمَ أُحِلَّ لَكُمْ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حَلَلٌ لَكُمْ وَطَعَامُكُمْ حَلَلٌ لَهُمْ وَالْخَصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْخَصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ مُحْصِينَ غَيْرَ مُسْفِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ ﴾

"It is made lawful to you, this day, all kinds of halaal (lawful) foods, and the food of the people of the Scripture (Jews and Christians) is lawful to you

and yours is lawful to them. It is lawful to you in marriage the chaste women from the believing women and from those who were given the Scripture (Jews and Christians) before your time, when you have given them their due (bridal-dower) with intention to preserve their chastity rather than in lewdness and nor for taking them as lovers". [Al- Maidah: 5]

So the *ayah* is clear in that, chaste women (*muhsanaat*) from amongst those who have received the Scripture are legal (allowed) for the Muslims, and their dues are their bridal-dowries. Acting in accordance with this verse, it is permitted for a Muslim man to marry a Christian or Jewess woman. Since the verse mentioned that chaste women (*muhsanaat*) from amongst those who have received the Scripture are allowed for the Muslims i.e. marrying them is permitted for you. As for a Muslim woman marrying a Jew or Christian, that has been prohibited by the *Shar'a*. It is absolutely forbidden. If the marriage takes place then it will be null and void and it will not be concluded. The prohibition of a Muslim woman marrying a Jewish or Christian man is established in the clear text of the *Qur'an*. Allah (swt) said:

﴿ يَتَأْتِيهَا الَّذِينَ ءَامَنُوا إِذَا جَاءَكُمْ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَأَمْتَحِنُوهُنَّ ۗ اللَّهُ أَعْلَمُ
بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَّهُمْ
وَلَا هُمْ يَحِلُّونَ لَهُنَّ ۗ ﴾

"Oh you who believe! When believing women come to you as emigrants, examine them, Allah knows best as to their Iman (belief), then if you ascertain that they are true believers, send them back not to the disbelievers, they are not lawful (wives) for the

disbelievers nor are the disbelievers lawful (husbands) for them". [Al- Mumtahinah: 10]

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

﴿ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ ۚ ﴾

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

He used the word *al-kuffaar* (the disbelievers) and not *al-mushrikeen* (idolaters) in order to include all types of disbelievers, whether they are idolaters or from the people of the Book. As for the people of the Book (Jews and Christians) being disbelievers (*kuffaar*), that is established in the text of the *Qur'an*. He (swt) said:

﴿ مَا يَوَدُّ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَلَا الْمُشْرِكِينَ أَنْ يُنَزَّلَ عَلَيْكُمْ مِنْ خَيْرٍ مِنْ رَبِّكُمْ ۗ ﴾

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

The preposition *من* is explanatory (*lil-bayaan*) here, and not partative (*lit-tab'eed*). And He (swt) said:

﴿ إِنَّ الَّذِينَ يَكْفُرُونَ بِاللَّهِ وَرُسُلِهِمْ وَيُرِيدُونَ أَنْ يُفَرِّقُوا بَيْنَ اللَّهِ وَرُسُلِهِمْ وَيَقُولُونَ نُؤْمِنُ بِبَعْضٍ وَنَكْفُرُ بِبَعْضٍ وَيُرِيدُونَ أَنْ يَتَّخِذُوا بَيْنَ ذَلِكَ سَبِيلًا ﴿١٥١﴾ أُولَٰئِكَ هُمُ الْكَافِرُونَ حَقًّا ۗ وَأَعْتَدْنَا لِلْكَافِرِينَ عَذَابًا مُّهِينًا ﴿١٥٢﴾ ﴾

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

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

﴿ لَقَدْ كَفَرَ الَّذِينَ قَالُوا إِنَّ اللَّهَ ثَالِثُ ثَلَاثَةٍ ﴾

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

He (swt) said:

﴿ لَقَدْ كَفَرَ الَّذِينَ قَالُوا إِنَّ اللَّهَ ثَالِثُ ثَلَاثَةٍ ﴾

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

And He (swt) said:

﴿لَمَرِيكُنَ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَالْمُشْرِكِينَ﴾

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

The preposition **من** is explanatory here and not partative.

He (swt) said:

﴿إِنَّ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ وَالْمُشْرِكِينَ﴾

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

The preposition **من** is again explanatory here, and not partative.

He (swt) said:

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

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

He (swt) said:

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

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

From these verses, it is evident that the people of the Book are disbelievers, owing to the clear text of the *Qur'an*. Therefore, the saying of Allah (swt):

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

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

It is clear that Muslim women are not permitted to marry a man from the People of the Book, because the people of the Book are, undoubtedly, disbelievers.

As for the *mushrikin* (polytheists) - such as the Magians, Sabceans, Buddhists, idol worshippers and others – they are not from the People of the Book. It is not permitted to marry them. It is absolutely not permitted for a Muslim man to marry an idolatrous woman, nor is it at all allowed for a Muslim woman to marry an idolater man. This is mentioned in the clear and definite text of the *Qur'an*. He (swt) said:

﴿وَلَا تَنْكِحُوا الْمُشْرِكَةَ حَتَّىٰ يُؤْمِنَ ۚ وَلَا مَؤْمِنَةً خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَا أَعْجَبَتِكُمْ ۗ وَلَا تَنْكِحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا ۚ وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَا أَعْجَبَتْكُمْ ۗ﴾

"And do not marry (idolatresses) till they believe. And indeed a slave woman who believes is better than a (free) idolatress, even though she pleases you. And give not (your daughters) in marriage to idolaters till

they believe, and verily a believing slave is better than a free idolater, even though he pleases you." [Al-Baqarah: 221]

This verse has only one meaning, which is the unequivocal prohibition of an idolatress woman marrying a Muslim man and vice versa. If such a marriage took place, it would be void and it would not be contracted. Al-Hasan bin Muhammad (ra) narrated:

«كُتِبَ رَسُولُ اللَّهِ ﷺ إِلَى مَجُوسِ هَجَرَ يَدْعُوهُمْ إِلَى الْإِسْلَامِ فَمَنْ أَسْلَمَ قُبِلَ مِنْهُ، وَمَنْ لَا ضَرِيَّتَ عَلَيْهِ الْجَزِيَّةُ فِي أَنْ لَا تَتَوَكَّلَ لَهُ ذَبِيحَةٌ وَلَا تُنكَحَ لَهُ امْرَأَةٌ»

The Messenger of Allah (saw) wrote to the Magians of (Hijr) inviting them to Islam. **“So whoever embraces Islam he would be accepted into the fold, and those who reject, *jizyah* would be imposed on them, their slaughtered animals would not be eaten and nor their women are married.”** [Reported by al-Bayhaqi]

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

As for the woman who is engaged but her marriage contract has not yet been concluded, her matter

should be looked into. If she or her guardian had assented to the proposing man, or she had given permission to her guardian to accept engagement or to conclude the marriage, whether that was explicitly stated or by hint: then it is forbidden for others to make a proposal of marriage to her. This is due to what has been narrated by 'Uqba bin 'Amir (ra) that the Messenger of Allah (saw) said:

«المؤمنُ أخو المؤمنِ فلا يحلُّ للمؤمنِ أن يبتاعَ على بيعِ أخيه، ولا يخطبَ على خطبةِ أخيه حتى يدَرَ»

“A believer is a brother to another believer. It is therefore not lawful for him to outbid his brother in buying something or to propose to a woman when his brother has done so, unless he gives him permission.” [Reported by Muslim] So it is not allowed for a believer to bargain a deal already agreed upon between some other persons (by offering a greater price), nor should he propose marriage to a girl who is already engaged to his Muslim brother (unless he withdraws). Abu Hurayrah (ra) narrates that the Prophet (saw) said:

«لا يخطبُ الرجلُ على خطبةِ أخيه حتى ينكحَ أو يتَرَكَ»

“A man should not make proposal of marriage whilst she is engaged to his Muslim brother till he gets married or withdraws his proposal.” [Reported al-Bukhari] But in case the girl rejected the proposal for marriage, or she had not yet answered, or has started enquiries about him: then it is permitted for a man to propose to her. She will not be considered engaged to either of them due to what has been narrated by Fatimah bint Qays (ra): that she went to the Prophet (saw) and mentioned that Mu'awiyah and Abu Jahm had both proposed to her. The Messenger of Allah (saw) said:

«أما معاويةُ فصعلوكٌ لا مالَ له، وأما أبو جَهمٍ فلا يَضَعُ عصاهُ عن عاتِقِهِ،
انكحني أسامةُ بنَ زيدٍ»

“Mu'awiyyah is a miser and he has no money. As for Abu Jahm he does not put down his staff from his shoulder for a moment). Marry Usama bin Zayd!” [Reported by Muslim] So the Prophet (saw) proposed to her on behalf of Usama after she had informed him of Mu'awiyyah and Abu Jahm's proposal.

When a woman is asked for marriage, she has the sole right to accept the marriage or to reject it. None of her guardians (*awliyaa*) or any body else has a right to marry her off without her permission or prevent her from marrying. It has been reported from Ibn 'Abbas that he said that the Messenger of Allah (saw) said:

«الثَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا، وَالْبِكْرُ تُسْتَأْذَنُ فِي نَفْسِهَا وَإِذْنُهَا صُمَاتُهَا»

“A woman who has been previously married (*thayyib*) has more right to her person than her guardian. And a virgin should also be consulted, and her silence implies her consent.” [Reported by Muslim]

Abu Hurayrah (ra) also narrated that the Messenger of Allah (saw) said:

«لا تُنكحُ الأَيِّمُ حتى تُسْتَأْمَرَ، ولا البِكْرُ حتى تُسْتَأْذَنَ. قالوا: يا رسولَ اللهِ، وكيفَ إِذْنُهَا؟ قال: أن تَسْكُتَ»

“A woman without a husband (or divorced or a widow) must not be married until she is consulted, and a virgin must not be married until her permission is sought. They asked the Messenger of Allah (saw): How her (virgin's) consent can be

known? He (saw) said: That she keeps silent.”
[Agreed upon]

Ibn 'Abbas narrates:

« أن جاريةً بكرًا أتت رسولَ الله ﷺ فذكرت أن أباهَا زَوَّجَهَا وَهِيَ كَارِهَةٌ،
فخَيَّرَهَا النَّبِيُّ ﷺ »

That a young virgin came to the Messenger of Allah (saw) and mentioned that her father had given her in marriage against her wishes. So the Prophet (saw) gave her the choice of repudiating the marriage. [Reported by Abu Dawud]

Khansa bint Khizam *al-Ansaariyah* (ra) narrated:

« أن أباهَا زَوَّجَهَا وَهِيَ نَيْبٌ فَكَرِهَتْ ذَلِكَ فَأَتَتْ رَسُولَ اللَّهِ ﷺ فَرَدَّ
نِكَاحَهَا »

Her father gave her in marriage when she was a matron and she disliked the marriage. So she went to Allah's Messenger (saw) and he annulled her marriage. [Reported by al-Bukhari]

These *ahadith* clearly show that if a woman does not give permission for her marriage then that marriage is not concluded. If she rejects the marriage or she was forcibly married, the contract becomes void, except if she returns and consents to it.

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

﴿ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكَحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ ﴾

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

It is also established by the authentic *hadith* of Ma'qil bin Yasar (ra). He said:

«زَوَّجْتُ أُخْتًا لِي مِنْ رَجُلٍ فَطَلَّقَهَا حَتَّى إِذَا انْقَضَتْ عِدَّتُهَا جَاءَ يَخْطُبُهَا
فَقُلْتُ لَهُ زَوَّجْتِكَ وَفَرَشْتِكَ وَأَكْرَمْتِكَ فَطَلَّقْتَهَا ثُمَّ جِئْتَ تَخْطُبُهَا لَا وَاللَّهِ لَا
تَعُودُ إِلَيْكَ أَبَدًا وَكَانَ رَجُلًا لَا بَأْسَ بِهِ وَكَانَتِ الْمَرْأَةُ تُرِيدُ أَنْ تَرْجِعَ إِلَيْهِ فَأَنْزَلَ
اللَّهُ هَذِهِ الْآيَةَ: ﴿ فَلَا تَعْضُلُوهُمْ ﴾ فَقُلْتُ الْآنَ أَفْعَلُ يَا رَسُولَ اللَّهِ قَالَ

فَزَوَّجَهَا إِيَّاهُ» وفي رواية قال: «فَكَفَّرْتُ عَنْ يَمِينٍ وَأَنْكَحْتُهَا إِيَّاهُ»

“I married a sister of mine to a man then he divorced her. When her *iddah* ended, he came to propose marriage to her again. I said to him, ‘I married her to you, I was kind and I honoured you, then you divorced her, and now you come proposing marriage again! No, by Allah, she will never go back to you.’ There was nothing wrong with the man, and she wanted to go back to him. Then Allah revealed the verse:

‘Do not prevent them from marrying their (former) husbands, if they mutually agree on reasonable basis.’ [al-Baqarah 2:232]

I said, ‘Now I will do that O Messenger of Allah.’ So he married her to him.” **And in another narration he said:** “I made expiation (*kaffarah*) for my oath and then married her to him again.” [Reported by al-Bukhari]

The meaning of ‘*adhl*’ in the verse is to prevent a woman from marrying when she requests it. It is *haraam*, and the one guilty of such a practise is a *faasiq* (transgressor). Whoever bars a woman from marrying will become a transgressor by this action. The jurists have stipulated that a man will become a

transgressor (*faasiq*) if he commits *'adhl*. When the woman is asked for marriage or she requests to be married, then she is the only one who has the right to act, whether to consent to or reject the proposal.

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

As for the civil marriage it is an agreement concluded between a man and a woman on intimate companionship, divorce, and what results from that in terms of financial maintenance and rights of dispense, leaving the house, her obedience to him and vice versa. It also includes terms of parental rights as to who shall have custody over the son and who shall have custody over the daughter. In addition, it consists of terms of inheritance, and whatever matters depends on the intimate association or on the termination of this association, according to certain conditions which they both agree on and adhere to. The civil marriage is not just an agreement of

marriage; rather, it also includes matters that result from this marriage in terms of relationships, financial maintenance, inheritance etc. It also includes cases where both or any one of the spouses can leave the other: that is, it includes divorce. Moreover, it grants the man the freedom to marry any woman and for the woman to marry any man, based on the agreement to which they have mutually consented, allowing them to do whatever they desire according to the agreement. Consequently, the civil marriage is not permitted by the *Shar'a*. By no means should it be viewed as an agreement of marriage, nor considered a contract of marriage, because it has no value in the eyes of *Sharee'ah*.

The marriage is contracted by legitimate proposal and acceptance. The proposal is what originates initially from the statement of one of the two contracting parties. The acceptance is what originates secondly from the statement of the other contracting party, such as when the betrothed woman says to the suitor 'I have married you' and the suitor replies 'I have accepted', or the suitor offers first and she accepts. Just as the offer and acceptance can take place between two fiancées, it can also take place between their representatives (guardians) or between one of them and the representative (guardian) of the other. It is stipulated in the offer that the wording should be of marriage and matrimony, but that is not stipulated in the acceptance. Rather the condition is the consent of the other (contracting party) to this offer, by any wording that indicates the consent and acceptance of marriage. The offer and acceptance must be worded in the past tense such as 'I have married you' and 'I have accepted'. Or the first must be in the past tense and the second in the future tense.

For marriage is a contract, and its wording must indicate that it certainly happened: that is, in the past tense. The sound contracting of marriage stipulates four conditions:

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

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

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

The fourth condition is that the *Sharee'ah* has allowed the marriage of one contracting party to the other, such as when the woman is a Muslim or from the People of the Book and the man is a Muslim and nothing else.

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

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

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

The third condition is the presence of two sane, mature Muslim witnesses who hear the statements of the two contracting parties and understand that the purpose of the offer and acceptance statements is to contract in marriage. When the contract satisfies these conditions it will be correct. If any of these conditions

are lacking, the marriage will be improper (*faasid*). However, it is not stipulated that the marriage contract be in writing or be registered as a document. The mere occurrence of the offer and acceptance from a man and a woman, whether verbally or in writing, which satisfies all the conditions, will ensure that the marriage contract is correct regardless of whether it was written down or not.

As for the marriage not being complete without the offer and acceptance, this is because it is a contract, by its very nature, between two parties.. The reality of the contract is that it will not be complete without the offer and acceptance and nor will it be considered to be a contract. As for the stipulation that the wording of the offer be that of marriage or matrimony, this is because the text has mentioned it. He (swt) said:

﴿ زَوَّجْنَاكَهَا ﴾

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

He (swt) said:

﴿ وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ ﴾

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

In addition to this, the *Ijmaa'* (consensus) of the *Sahaabah* has taken place on this. As for the stipulation that the offer and acceptance be combined in the same sitting, this is because the ruling of the sitting is a ruling on the situation of the contract. If they part before the acceptance, the offer is void, since the acceptance has no meaning, because turning away from the offer has been expressed by departing, so it would not be considered an acceptance. The

same goes if they engage themselves with something that suspends the acceptance, because he also turned away from the contract by being distracted from the acceptance. As for the condition that the contracting parties should hear each other and understand what is said i.e. know that what is meant is to contract the marriage according to this expression, this is because that is what makes the acceptance a response to the offer; because the offer is a proposal of one of the contracting parties to the other, awaiting an acceptance. If he did not understand what was said, the proposal will not place, and the acceptance of this proposal is also deemed to not have taken place. Therefore, its reality is that it is neither an offer nor an acceptance. As for the condition of the absence of objections in the acceptance to the offer, this is because it will not be considered a proper acceptance unless it indicated an approval of the whole offer. If the acceptance differed, it will not be considered an agreement to what has been mentioned in the offer. Thus, it will not be considered a proper acceptance. As for the condition that the *Sharee'ah* must give permission for one contracting party to marry the other, that is because prohibition of certain contracts can be found in the *Shar'a* and these are not allowed to be conducted.

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

women and prohibited the combining of some women in one marriage, such as by marrying two sisters at the same time. If the contract was concluded over someone who is forbidden for contracting, then the contract will not be correct (*sahih*). As for the marriage not being correct without a guardian (*wali*), this is due to what has been narrated by Abu Musa from the Prophet's (saw) saying:

«لا نِكَاحَ إِلَّا بِوَالِيٍّ»

“There is no marriage without the permission of a guardian (*wali*).” [Reported by Ibn Hibbaan and al-Haakim] As for the woman not possessing the right to give herself or give others away in marriage, nor possessing the right to delegate anyone other than her guardian to give her in marriage, this is due to what 'Aisha reported from the Prophet (saw)

«أَيُّمَا امْرَأَةٍ نَكَحْتُ بِغَيْرِ إِذْنِ وَلِيِّهَا فَبِكَاحِهَا بَاطِلٌ»

«بَاطِلٌ»

“Any woman who gets married without the permission of her guardian (*wali*), her marriage will be void, her marriage will be void, her marriage will be void.” [Reported by al-Haakim] And also due to what Abu Hurayrah has reported that the Prophet (saw) said:

«لَا تُزَوِّجُ الْمَرْأَةَ الْمَرْأَةَ وَلَا تُزَوِّجُ الْمَرْأَةَ نَفْسَهَا فَإِنَّ الرَّائِيَةَ هِيَ الَّتِي تُزَوِّجُ نَفْسَهَا»

«نَفْسَهَا»

“A woman shall not give another woman in marriage, nor should a woman give herself in marriage. Indeed only the fornicatress shall give herself in marriage.” As for the stipulation that there be two Muslim witnesses, this is because the *Qur'an* has stipulated that there be two Muslim witnesses in taking back the divorcee from a revocable divorce back into wedlock. He (swt) said:

﴿ فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَىٰ

عَدْلٍ مِّنكُمْ ﴾

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

Al-Hassan said, i.e. Muslims, since the return to one's wife after divorce – which is a continuance of the contract of marriage – is stipulated to have two Muslim witnesses, the initiation of matrimony, that is, the initiation of the contract of marriage should, by greater reason, be required to have two witnesses. Moreover, the contract of marriage and the continuation of the contract of marriage are one issue, and therefore, they are like the same rule.

Women to Whom Marriage is Prohibited

The origin for the women with whom marriage is prohibited, has to be, and is clearly mentioned, in the *Quran* and *Sunnah*. As for the *Quran*, Allah (swt) says:

﴿ وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ

فَبِحِشَةٍ وَمَقْتًا وَسَاءَ سَبِيلًا ﴿٢٢﴾

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

And He (swt) said:

﴿ حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ

الْأَخِ وَبَنَاتُ الْأَخِ وَالْأَخْتِ وَأُمَّهَاتُكُمْ أَلَّتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمْ مِمَّنْ أَرْضَعْتِ

وَأُمَّهَاتُ نِسَائِكُمْ وَرَبِّبَاتِكُمْ أَلَّتِي فِي حُجُورِكُمْ مِمَّنْ نَسَأْتِكُمْ أَلَّتِي دَخَلْتُمْ

بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلْتِلْ أَبْنَائِكُمُ الَّذِينَ

مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ ۗ إِنَّ اللَّهَ كَانَ

غَفُورًا رَحِيمًا ﴿٢٣﴾ * وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ ۗ كَذَبَ

اللَّهُ عَلَيْكُمْ وَأَحَلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ ۗ ﴿٢٤﴾

"Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your foster mother who gave you suck, your foster milk suckling sisters, your wives' mothers, your step-daughters under your guardianship, born of your wives to whom you have

gone in - but there is no sin on you if you have not gone in them (to marry their daughters), the wives of your sons who (spring) from your own loins, and two sisters in wedlock at the same time, except for what has already passed; verily, Allah is Oft-Forgiving, Most Merciful. Also (forbidden are) women already married, except those (captives and slaves) whom your right hand possesses. Thus has Allah ordained for you. All others are lawful". [An- Nisaa` : 23-24]

As for the *Sunnah*, Abu Hurayrah has reported that the Messenger of Allah said:

« لا يَجْمَعُ الرَّجُلُ بَيْنَ الْمَرْأَةِ وَعَمَّتَيْهَا، وَلَا بَيْنَ الْمَرْأَةِ وَخَالَتَيْهَا »

“A man should not be married at the same time to a woman and the sister of either her father or her mother.” [Agreed upon]

Muslim narrates that 'Aisha (ra) said that the Messenger of Allah (saw) said:

«إِنَّ الرِّضَاعَةَ تُحَرِّمُ مَا تُحَرِّمُ الْوِلَادَةُ»

“Suckling makes unlawful what birth makes unlawful (in terms of marriage).”

Thus, the marriage to mothers is absolutely forbidden. The mothers are everyone to whom you are related by childbirth. This is true whether the one whom you are related to qualifies for the true word 'mother', which is the one who gave birth to you, or she is a mother in a metaphoric sense i.e. is the one who gave birth to the one who gave birth to you (and even if she is higher (in the line of descent) and beyond). Therefore, your grandmothers (your mother's mother and your father's mother), the grandmothers of your mother and father, and the grandmothers of your grandmother and grandfather

and even higher, irrespective of whether they are entitled to inheritance from you or not, are all metaphorical mothers to whom marriage is prohibited.

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

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

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

Marriages to maternal aunts, the sisters of the mother from three directions, are forbidden; also sisters of grandmothers and whosoever is higher in the line of descent, because every grandmother is a mother, and likewise every sister of a grandmother is considered a maternal aunt to whom marriage is prohibited.

Marriage to nieces and any woman who is related to the brother by birth is forbidden; so the daughter of a brother is forbidden, from whatever direction the

brother may be. The daughters of the sister are likewise forbidden.

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

Marriage to the mothers of wives is forbidden. When one marries a woman, everyone who is a mother to her by lineage or suckling, whether close or distant (in relation), becomes forbidden to him by the existence of a mere contract, irrespective of whether he has consummated the marriage or not. This is due to His (swt) saying:

﴿ حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُ مَن لَّيْتُمْ أَرْضَعْتُمْ وَأَخَوَاتُكُمْ مِّنَ الرُّضَعَةِ وَأُمَّهَاتُ نِسَائِكُمْ ﴾

"Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your foster mother who gave you suck, your foster milk suckling sisters, your wives' mothers". [An- Nisaa` : 23]

Marriage to daughters of wives with whom he has consummated the marriage is forbidden. They are the

stepdaughters. They are not forbidden except by consummation of the marriage with their mothers. They include every daughter of the wife by lineage, suckling, close or distant (in relation), whether inheriting or not, according to what has been mentioned concerning the daughters. If the marriage is consummated with the mother, then the daughters become forbidden for him, whether they were under his guardianship or not, because the statement:

﴿الَّتِي فِي حُجُورِكُمْ﴾

"Your step-daughters under your guardianship" [An- Nisaa` : 23] is a description of their general state and it is not mentioned as a condition. As for the statement:

﴿مِنْ نِسَائِكُمُ الَّتِي دَخَلْتُمْ بِهِنَّ﴾

"born of your wives to whom you have gone in" [An-Nisaa` : 23]. This comes in the form of a condition, due to what is clearly mentioned after it:

﴿فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ﴾

"... But there is no sin on you if you have not gone in them (to marry their daughters)". [An- Nisaa` : 23] Therefore, if he has not consummated the marriage with the woman, then marriage to her daughter is not prohibited.

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

Marriage to one's step-mothers is forbidden. Therefore, a man is forbidden from marrying the wife

of his father whether he is a close or distant relation, whether he is entitled to inheritance or not, and whether he is related by lineage or suckling. An-Nasa'i reported that al-Barra' bin 'Azib said:

«لَقِيتُ خَالِي وَمَعَهُ الرَّايَةُ فَقُلْتُ: أَيْنَ تُرِيدُ؟ قَالَ: أَرْسَلَنِي رَسُولُ اللَّهِ ﷺ إِلَى رَجُلٍ تَزَوَّجَ امْرَأَةً أَبِيهِ مِنْ بَعْدِهِ، أَنْ أَضْرِبَ عُنُقَهُ أَوْ أَقْتُلَهُ»

“I came across my maternal uncle who was carrying a (war) banner. I said: 'What do you wish to do?' He said: ‘The Messenger of Allah ordered me to go to a man who had married his father's wife after his death, in order to strike his neck (i.e. kill him).” [Reported by al-Haakim]

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

It is also forbidden to be married to a woman and her paternal or maternal aunt at the same time. This is because of what has been narrated by Abu Hurayrah that the Messenger of Allah said:

«لَا يُجْمَعُ الرَّجُلُ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا وَلَا بَيْنَ الْمَرْأَةِ وَخَالَتِهَا»

“One cannot be married to a woman and her paternal aunt, or a woman and her maternal aunt at the same time.” [Agreed upon] And in the narration of Abu Dawud:

«لا تُنكحُ المرأةُ على عَمَّتِها، ولا العَمَّةُ على بنتِ أخيها، ولا المرأةُ على خالَتِها، ولا الخالَةُ على بنتِ أُختِها، لا تُنكحُ الكُبْرَى على الصُّغْرَى، ولا الصُّغْرَى على الكُبْرَى»

“A woman and her paternal aunt a paternal aunt and her brother's daughter, or a woman and her maternal aunt and a maternal aunt and her sister's daughter cannot be married to the same man at the same time. Neither the older after the younger nor the younger after the older can be combined in marriage.” [Reported originally in the *Sahihayn* i.e. al-Bukhari and Muslim]

In addition, it is also forbidden to marry women that are already married. Allah has called them '*al-muhsanaat*' (chaste women), because they have protected their private parts (from *zina*) through marriage.

Suckling prohibits that which lineage prohibits. Every woman that is forbidden due to lineage is also forbidden due to suckling. This applies to mothers, daughters, sisters, paternal and maternal aunts, and nieces (daughters of the brother and sister). They are forbidden in the same manner as in the prohibition of lineage due to the saying of the Prophet (saw):

«يُحْرَمُ مِنَ الرَّضَاعِ مَا يُحْرَمُ مِنَ النَّسَبِ»

“What is forbidden by lineage is likewise forbidden by suckling.” [Agreed upon]

And in the narration of Muslim:

«الرَّضَاعُ يُحْرَمُ مَا تُحْرَمُ الْوِلَادَةُ»

“Suckling makes unlawful what birth makes unlawful (in terms of marriage).”

Bukhari extracted that 'Aisha (ra) narrated that:
 إِنَّ أَفْلَحَ أَخَا أَبِي الْقُعَيْسِ اسْتَأْذَنَ عَلَيَّ بَعْدَ مَا نَزَلَ الْحِجَابُ، فَقُلْتُ: وَاللَّهِ لَا آذُنُ
 لَهُ حَتَّى اسْتَأْذِنَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَإِنَّ أَخَا أَبِي الْقُعَيْسِ لَيْسَ هُوَ
 أَرْضَعَنِي، وَلَكِنْ أَرْضَعَنِي امْرَأَةُ أَبِي الْقُعَيْسِ، فَدَخَلَ عَلَيَّ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ
 وَسَلَّمَ فَقُلْتُ: يَا رَسُولَ اللَّهِ، إِنَّ الرَّجُلَ لَيْسَ هُوَ أَرْضَعَنِي، وَلَكِنْ أَرْضَعَنِي امْرَأَتُهُ؟
 قَالَ: «إِذْنِي لَهُ، فَإِنَّهُ عَمُّكَ تَرَبَّتْ يَمِينُكَ»

“Aflah, the brother of Abu al-Qu'ays, asked me permission (to enter the house) after the partition (Hijaab) was revealed. So I said: 'By Allah, I would not admit Aflah unless I have asked the opinion of Allah's Messenger (saw) on this matter, for the brother of Abu al-Qu'ays has not suckled me but it was the wife of Abu al-Qu'ays who suckled me', when Allah's Messenger (saw) came, I said: 'O Messenger of Allah! It was not the man who suckled me but it was his wife' He said: Allow him to enter for he is to you a (paternal) uncle, you may have perished, had you not asked.” [Extracted by Muslim and others] The prohibiting factor in suckling is the milk. So both the possessor of the suckled milk and the one who made suckling are prohibited to the person who was suckled, whether the possessor of the milk was a man or a woman, and whether the one who was suckled was child for whom he suckled from or not. Consequently, it is allowed for a person to marry his foster brother's sister but not allowed to marry his/ her foster brother or sister. So, if a person was breast fed from a woman, this woman will be his foster mother and her husband will be his/her foster father. Their children (both sons and daughters) will be his foster brothers and sisters, while the brothers of the person who was suckled are not brothers and sisters of his/her foster brothers and sisters. Therefore, they are allowed to marry the foster

brothers and sisters of their brother. Thus the prohibiting factor is the milk.

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

This is due to His (swt) saying:

﴿وَأَحِلَّ لَكُمْ مَا وَرَاءَ ذَٰلِكُمْ﴾

"All others are lawful (for marriage)". [An- Nisaa` : 24]

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

Polygyny

Allah (swt) has said in His Noble Book:

﴿فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنًا وَثُلَاثًا وَرُبْعًا فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا

فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَدْبَارُ أَلَّا تَعُولُوا ﴿٣﴾﴾

"Marry women of your choice, two or three, or four but if you fear that you shall not be able to deal justly (with them), then only one or what your right hands possess. That is more fitting so that you do not deviate from the right course". [An- Nisaa` : 3]

This verse was revealed to the Prophet (saw) in the 8th year of the *Hijrah*. It was revealed to limit the number of wives one can marry to four. At the time of revelation of this verse, there was no limit to the number of wives one could marry. On reading and understanding the verse, it becomes clear that it was revealed to limit the number of wives to four. The meaning of the verse is: marry of the women, two, three or four who are permitted and agreeable to you. Twos, threes and fours are mentioned instead of repeated enumerations i.e. marry the women of your choice from these mentioned numbers twos, threes and fours. The speech is addressed to everybody; therefore, there has to be a repetition so that each suitor who wishes to marry a number of women can choose whatever he wants of number, on condition that the combination he desires is restricted to this number. In other words, each suitor who wishes to marry more than one woman can marry as many as he likes from the number that is made optional for him. Just as we would say to a group: distribute this

money. Let's say there was a thousand dinars for example. We would say: distribute *dinars* by twos, threes and fours. If you made your statement in the singular form then it would have no meaning. So the expression twos, threes and fours is inevitable so that each individual can choose what he wants from the specific number in the expression. So, when Allah (swt) says 'each one of you can marry the woman of his choice two, three or four', this effectively means: marry all of you twos, threes or fours i.e. each of you can marry two, three or four.

As for the meaning of His (swt) saying:

﴿ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً ﴾

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

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

«أن لا تعولوا: أن لا تجوروا»

“So that you may not deviate (from the right course): so that you do not make injustice.”
[Reported by Ibn Hibbaan in his *Sahih*]

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

Indeed, it should be known that the justice mentioned here is not a condition for marrying more than one wife. Rather, it is a ruling for the man who wishes to marry a number of wives that he must observe in the event of marrying more than one wife, and an exhortation to restrict himself to one wife if he fears he will not be able to deal with them justly. This is because the meaning of the sentence is completed in the verse by His (swt) saying:

﴿فَأَنكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبْعًا﴾

"Marry women of your choice, twos or threes, or four" [An- Nisaa` : 3] This means there is an absolute permissibility of marrying more than one wife. Thus, the meaning of the sentence is completed. In another statement, He (swt) said:

﴿فَإِنْ خِفْتُمْ﴾

"But if you fear". The phrase:

﴿فَإِنْ خِفْتُمْ﴾

"But if you fear" cannot result in being a condition because it is not linked with the first verse as a conditional clause. Rather it is a resumption of a new statement. If Allah (swt) had wished to make it a condition then he would have said: Marry women of your choice, twos or threes, or fours if you can deal

with them justly, but that is not the case, so it is established that justice is not a condition, rather it is another *Shar'a* ruling different to the first ruling. So firstly, He (swt) permitted the plurality of marriages up to four, then He came with another ruling, which is that it is better to restrict oneself to one wife when one believes that marriage to more than one wife will make him incapable of dealing with them in a just manner.

From the above it becomes clear that Allah (swt) has permitted polygyny without restriction, condition or any recourse to any justification. Rather, every Muslim has the right to marry two, three or four wives of his choice. That is why Allah (swt) says:

﴿ مَا طَابَ لَكُمْ ﴾

"...women of your choice," [An- Nisaa`: 3] which means: those women whom you find agreeable to you. It is clear that Allah (swt) has ordered us to be just between our wives and exhorted us that, if we fear we will not be able to do justice between our wives, we should restrict ourselves to just one wife, because the restriction of marrying one wife will make us more likely not to commit injustice.

As for what constitutes the desired justice between wives, it is not 'absolute justice'. Rather, it is justice in the marital life between wives which is within the ability of the man since Allah does not impose on man that which he cannot bear. He (swt) said:

﴿ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا ﴾

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

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

﴿ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا ﴾

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

This encompasses all aspects of justice, but this general order has been specified in another verse to capability. Thus, Allah (swt) said:

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

﴿ فَتَذَرُوهَا كَالْمُعَلَّقَةِ ﴾

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

Allah (swt) has clarified in the verse that it is impossible to achieve justice and equality between wives, where the husband would not be inclined to one of his wives or where there is no increase or decrease in what is obligatory to provide for them. Due to this, He (swt) has lifted from us the complete and full extent of justice and He (swt) has not imposed on us except that which one can bear, on condition that we exert our utmost effort and energy. For the imposition of what one is not able to do is tantamount to oppression:

﴿ وَلَا يَظْلِمُ رَبُّكَ أَحَدًا ﴾

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

And He (swt) says:

﴿فَلَا تَمِيلُوا كُلَّ الْمَيْلِ﴾

"So do not incline completely to one of them". [An-Nisaa` : 129]

As a comment on His (swt) saying:

﴿وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ﴾

"You will never be able to do perfect justice". [An-Nisaa` : 129] and as a reference for it, is an evidence that its meaning is: you will never be able to deal with them justly and equally with regards to love. The implicit meaning (*mafهوم*) is that one can be just in all things except love. This is what the previous verse obliges, as it has specified the desired justice to be other than love, and made love and sexual intercourse excluded from justice, because it is not obliged in these two issues, since a human is not able to be equal in his love. This meaning is supported by what has been reported about 'Aisha (ra) that she said:

«كان رسول الله ﷺ يَفْسِمُ فَيَعْدِلُ وَيَقُولُ اللَّهُمَّ هَذَا قَسَمِي فِيمَا أَمْلِكُ فَلَا تَلْمَنِي فِيمَا تَمْلِكُ وَلَا أَمْلِكُ»

"The Messenger of Allah (saw) used to distribute things and do justice to all and used to say, **"Oh My Lord, this is my distribution of what is in my control, but do not blame me for what is in Your control and over which I have no control."** i.e. his heart. [Reported by al-Haakim and Ibn Hibbaan]

It has been narrated from Ibn 'Abbas (ra) concerning the saying of Allah (swt):

﴿وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ﴾

"You will never be able to do perfect justice between wives" [An- Nisaa` : 129]. He said "this is with regards to love and sexual intercourse". Allah (swt) has

ordered us to abstain from completely inclining towards one wife. This means He has permitted the inclination because the prohibition of the complete inclination indicates the permissibility of some inclination. An illustration of this is the prohibition of unrestrained and excessive generosity mentioned in His (swt) saying:

﴿وَلَا تَبْسُطْهَا كُلَّ الْبَسْطِ﴾

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

Which means it is permitted to stretch your hand by giving to the needy. Therefore, Allah (swt) has permitted the husband to incline towards some of his wives to the exclusion of others. However, He has forbidden this inclination to include all matters. Rather, the inclination should be to whatever it applies, which is the love and desire. So the meaning of the verse is: refrain from the absolute inclination towards a wife, because if the complete inclination occurs from you, it will leave the other wife suspended, i.e. one who is neither divorced nor possessing a husband. It has been narrated by Abu Hurayrah (ra) that the Prophet (saw) said:

«مَنْ كَانَتْ لَهُ امْرَأَتَانِ يَمِيلُ لِإِحْدَاهُمَا عَلَى الْأُخْرَى جَاءَ يَوْمَ الْقِيَامَةِ يَجُرُّ أَحَدَ شَقِيئِهِ سَاقِطًا أَوْ مَائِلًا»

“Whosoever has two wives and he inclines towards one to the exclusion of the other, he will come on the Day of Judgement with half his body dropping or bending down.” [Reported by Ibn Hibbaan in his *Sahih*]

Thus, the justice which is obligatory upon a husband is the equality between his wives in that which he has

control over such as staying overnight, providing food, clothing and lodging etc. As for what falls under the meaning of inclination, which is love and desire, it is not obligatory to be just in these aspects because that is impossible, and so they are excluded by the *Qur'an*.

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

﴿ مَا طَابَ لَكُمْ مِّنَ الْيَسَاءِ ﴾

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

Therefore, we must stop at the limit of the *Shar'i* text and at what is derived from it in terms of *Sharee'ah* ruling. It is not permitted to justify this ruling with any reason (*'illah*), or justify it with justice, need or anything else, because the text did not bring *'illah* for the ruling, nor can any reason (*'illah*) be found in any other *Shar'a* text. The reason (*'illah*) of the ruling should be a *Shar'a* reason i.e. there must be a text to mention it so that the ruling which is derived from it can correctly be considered a *Shar'a* ruling. If the reason is rational or not mentioned in any text, then the ruling which is derived by means of it will not be a *Shar'a* ruling. Rather it will be a man-made law and it will be *haraam* to adopt and apply.

This is because it will be a *kufr* ruling, since any ruling which is not a *Shar'a* ruling is a *kufr* ruling. However, since the definition of the *hukm shar'i* (*Sharee'ah* ruling) being 'the speech of the Legislator' makes it inevitable that the ruling is derived from the speech of the Legislator, either explicitly mentioned in the text, or from its meaning, or by indication, or due to the presence of a sign (*amaarah*) in the text which points to the *Shar'a* ruling, such that every ruling which has that sign (*amarah*) will be a divine ruling. This sign (*amaarah*) is the *Shar'a* reason (*'illah Shar'iyyah*) which is mentioned in the text either explicitly, or by indication, inference or analogy. And if this sign (*amaarah*) i.e. this *'illah*, is not found in the text, it has no value. Consequently, it becomes clear that it is not allowed to justify polygyny with reason (*'illah*), since no *'illah* is to found for it in the speech of the Legislator. An *'illah* has no value in making a ruling into a *Shar'a* ruling except when it is found in the speech of the Legislator.

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

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

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

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

fatherhood present in the procreation instinct. Therefore, it is essential that such a spouse is given the opportunity to marry another wife in addition to the existing wife, so that he can have the offspring which he desires.

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

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

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

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

Because Allah (swt) says:

﴿فَأَنكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبْعًا﴾

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

And He (swt) said:

﴿مَا طَابَ﴾

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

Islam as opposed to other religions, has portrayed marriage to more than one wife as a hideous and repugnant practice and depicted it as a deficiency and a source of shame in the *Deen*. The motive for this is not because a defect has been noticed in the laws of Allah (swt) but in order to disparage Islam, and there is no motive for it other than this. This propaganda has greatly affected Muslims, particularly the ruling faction and the educated youth. This drove those who were moved by Islamic emotions to stand for Islam. Such Muslims adopted false interpretations to forbid polygyny, as they were actually influenced by the false propaganda circulated by the enemies of Islam.

That is why we must warn the Muslims that pretty actions (*hasan*) are what the *Shar'a* deems to be pretty (*hasan*), and ugly actions (*qabeeh*) are what the *Shar'a* deems to be ugly (*qabeeh*), and whatever the *Shar'a* permits is pretty (*hasan*), and whatever the *Shar'a* forbids is ugly (*qabeeh*). Also we must warn the Muslims that polygyny- whether it has a tangible good effect or not and whether it solves problems which have occurred or not- the *Sharee'ah* has permitted, and the *Qur'an* has stated that clearly. Therefore, it is a pretty action, and the prohibition of polygyny is ugly because it is a *kufr* ruling.

It must be made clear that Islam did not make polygyny *fard* on the Muslims, nor *mandoob* (preferred). Rather, it made it one of the *mubaah* (permissible), which is allowed for them to do if they wished to do so. The fact that Islam made it permissible means that it has placed before the people a solution that they can use whenever it is necessary to do so, and it has permitted them not to deprive themselves from the women of their choice if in their

view they were to incline towards them. Thus, permitting polygyny and not making it obligatory is what makes it one of the most effective solutions for humans in the community and society.

The Prophet's (saw) Marriages

Allah (swt) revealed His saying:

﴿فَأَنْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبْعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا

فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۗ﴾

"Marry women of your choice, two or three, or four but if you fear that you shall not be able to deal justly (with them), then only one or what your right hands possess. That is more fitting so that you do not deviate from the right course". [An- Nisaa` : 3]

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

allowed to emulate the Prophet (saw) in an action in which there is a different order to the *Ummah*. However, the Prophet's marriage to more than four wives and allowing them to offer themselves to him in marriage etc., have been demonstrated by the verses of the *Qur'an*:

﴿ يَتَأْتِيهَا النَّبِيُّ إِذَا أَحَلَّلْنَا لَكَ أَزْوَاجَكَ الَّتِي ءَاتَيْتَ أَجُورَهُنَّ وَمَا مَلَكَتْ يَمِينُكَ مِمَّا آفَاءَ اللَّهِ عَلَيْكَ وَبَنَاتِ عَمَّتِكَ وَبَنَاتِ خَالَكَ وَبَنَاتِ خَالَاتِكَ الَّتِي هَاجَرْنَ مَعَكَ وَأَمْرًا مُؤْمِنَةً إِنْ وَهَبَتْ نَفْسَهَا لِلنَّبِيِّ إِنْ أَرَادَ النَّبِيُّ أَنْ يَسْتَنْكِحَهَا خَالِصَةً لَكَ مِنْ دُونِ الْمُؤْمِنِينَ ۗ قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْهِمْ فِي أَزْوَاجِهِمْ وَمَا مَلَكَتْ أَيْمَانُهُمْ لِكَيْلَا يَكُونَ عَلَيْكَ حَرَجٌ ۗ ﴾

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

This verse says:

﴿ خَالِصَةً لَكَ مِنْ دُونِ الْمُؤْمِنِينَ ۗ ﴾

"a dispensation for you only, not for the rest of the believers." The word '*khaalisah*' (dispensation) in the verse is a verbal noun which confirms whatever

preceded it, i.e. a dispensation has been made for you by permitting what We have made lawful for you specifically. The evidence to say that it includes all that precedes it and that it is specific to the Messenger of Allah (saw) is that it came after the four permissible matters which are the non permissibility of marrying wives, captives directly from the *fey'*, daughters of his relatives who have been mentioned amongst those that migrated with him, and a woman that directly offers herself for marriage, beside the fact that this was stated in an emphatic manner. This is supported by the fact that at the completion of His (swt) saying:

﴿ مِنْ دُونِ الْمُؤْمِنِينَ ۗ ﴾

"not for the rest of the believers", His (swt) saying came:

﴿ قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْهِمْ فِي أَزْوَاجِهِمْ وَمَا مَلَكَتْ أَيْمَانُهُمْ ﴾

"Indeed We know what We have enjoined upon them about their wives and what their right hands possess". So, it means this is not what We have enjoined on them; that is why after all of this, He (swt) said:

﴿ لِكَيْلَا يَكُونَ عَلَيْكَ حَرَجٌ ۗ ﴾

"in order that there should be no difficulty on you", i.e. so that there is no hardship for you.

Therefore, the marriages of the Prophet (saw) should not be taken as an example to emulate, nor as a subject of legislative discussion, because it is unique to him (saw). Not to mention that the reality of his marriages indicates that they were marriages of a Prophet (saw) and not the marriages of a man marrying for sex and satisfaction of the procreation

instinct, in terms of the male-female aspect. By returning to the historical reality, we find that he (saw) married Khadijah (ra) while he was twenty-three years of age, and Khadijah (ra) herself remained as a spouse for twenty-eight years. She died in the eleventh year of the Prophethood i.e. two years before the *Hijrah*, a few months after the rescission of the boycott document and shortly before his visit to *Taa`if* in the year 620 CE, at the age of fifty. From the time he married Khadijah (ra) until her death he did not contemplate the prospect of marrying more than one wife, and this was at a time when polygyny was a widespread practise amongst the Arabs. Before he was sent with the Message, he spent seventeen years with Khadijah sharing a quiet and tranquil life. He lived with her approximately eleven years after the Prophethood (*bi'tha*), in a life of *da`wah* and struggle against the *kufir* thoughts; in spite of this he did not consider marrying again. It was not known of him during his life with Khadijah (ra) or before his marriage to her that he was one of those tempted by the alluring charms of women in an age where the *tabarruj* of the *Days of Ignorance* used to tempt the people. It is not natural for us to take the view that after passing the age of fifty a sudden change took place in him which did not allow him to be content with one wife but going on to marry until he had taken ten wives. Within five years in the sixth decade of the Prophet's life he had more than seven wives, and in the remaining seven years of the sixth decade and beginning of the seventh, the Prophet had nine wives. At such an age, can these marriages be attributable to a desire for women or to sexual motives linked to satisfying the procreation instinct? Or were there other motives, which were occasioned by the type of life which the Prophet (saw) was

engaged in, i.e. the life of the Message which he had been ordered to convey to the people? In order to understand this issue, let us examine the incidents surrounding the Prophet's (saw) marriages.

In the eleventh year of the Prophethood, i.e. the year Khadijah (may Allah be pleased with her) died, the Prophet (saw) considered getting married. He was fifty, so he proposed to 'A'isha, the daughter of Abu Bakr, his friend and the first one who believed in his Prophethood from the men. When she was just a child of six he contracted a marriage with her but did not consummate it for a period of three years until she was nine, which was after the *Hijrah*. However, at the time in which he contracted the marriage with 'A'isha he married Sawdah bint Zam'a. Sawdah was a widow of al-Sukran bin 'Amr bin 'Abd Shams, who was one of the Muslims who had migrated to Abbysinia but died on his return to Makkah. Sawdah had embraced Islam with her husband and she had migrated with him. She had suffered the same difficulties and hardships he suffered and faced the same harm he had faced. After the death of her husband he (saw) married her. It has not been reported that Sawdah was beautiful, or that she possessed wealth or social standing, that would make any of the worldly aspects influence the Prophet's marriage to her. Since the Prophet (saw) had married her after the death of her husband, the only thing we can deduce from this is that he married her to support her and raise her to the position of the mother of the Believers. When he migrated, he made the house of Sawdah close to the Mosque. This was the first house the Prophet (saw) built for any of his wives.

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

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

During the battle of *Banu Mustaliq*, in the fifth year of the *Hijrah*, he (saw) married Juwayriyyah bint al-Harith ibn Abi Diraar. The reason behind his marriage to her was to draw her father closer to the Prophet (saw) and to raise her position. Juwayriyyah was from the captives of *Banu Mustaliq* and had fallen in the hands of one of the *Ansaar*. She was the daughter of

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

In the seventh year of the *Hijrah*, after the victory of Khaybar, he (saw) married Safiyyah, daughter of Huyai ibn al-Akhtab, who was one of the leaders of the Jews. The story of his marriage to her began when she was taken along with other captives the Muslims seized from the fortress of Khaybar. Some of the Muslims advised the Prophet (saw): "Safiyyah is a noble lady of Banu Qurayzah and Banu Nadhir. She is not suitable for anyone other than you"; hence the Prophet (saw) freed and married her. This was therefore done for her protection and to free her from the bondage of slavery, as well as to raise her status. It has been narrated that Abu Ayyub Khalid *al-Ansaari* feared that Safiyyah harboured hatred against the Messenger (saw) who had killed her father, husband and people. For this reason he spent the night, girded with his sword, around the tent in which the Messenger (saw) consummated the marriage with Safiyyah on the way back from Khaybar. When the

Messenger (saw) woke up in the morning he noticed him outside the tent and asked him: “What is the matter?” He replied: "I feared for you from this woman. You have killed her father, husband and her people and she has just recently come out of kufr." So the Messenger (saw) set Abu Ayyub's mind at rest, and Safiyyah remained loyal to the Messenger (saw) until Allah (swt) took his soul.

Later, in the eighth year of *Hijrah*, he (saw) married Maymunah, the sister of Umm al-Fadhl, the wife of al-'Abbas bin 'Abd ul-Muttalib. He married her at the end of the pilgrimage [*Umra al-Qadaa*]. The account of his marriage to her began when Maymunah was twenty six years of age and she had delegated her sister Umm al-Fadhl to find a suitor for her; but when she saw the predicament of the Muslims at the pilgrimage, she herself yearned for Islam. Then, al-'Abbas proposed to his nephew, namely our Master Muhammad on her behalf. He proposed to the Prophet at her behest and the Messenger agreed to marry her. The three days which the treaty of Hudaibiyah had stipulated had expired, but the Messenger (saw) wished to use his marriage to Maymunah as a means to increase the understanding between himself and the Quraish. When Suhayl bin 'Amr and Huwayteb bin 'Abd ul-'Uzzah came to him representing Quraish, they said to Muhammad (saw): "Your time in Makkah has expired, so leave us". He (saw) said to them: **“What is the matter with you? Why do you not leave me? I will hold a wedding feast amongst you. We will prepare food for you so why not attend it?”** Their response to him was: “we have no need of your food so depart from us”; the Messenger (saw) did not hesitate; he left along with the Muslims behind him.

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

As for his marriage to Umm Habibah bint Abu Sufyan (ra), this was a marriage to a believing woman who had migrated to Abyssinia fleeing with her *Deen* intact. She had remained patient on the path of Islam after her husband had apostatised. That is because this Umm Habibah was Ramlah, the daughter of Abu Sufyan, the leader of Makkah and head of the *Mushrikin*. She was the wife of a cousin (son of a paternal aunt) of the Messenger of Allah (saw), 'Ubayd Allah bin Jahsh al-Asadi. 'Ubayd Allah embraced Islam with his wife Ramlah whilst her father was still upon *kufr*. She was afraid of hurting her father so she migrated, encumbered by her pregnancy, with her husband to Abyssinia. There, in the place of refuge, Ramlah gave birth to her daughter Habibah bint 'Ubayd Allah, by whom she was named. So she came to be called Umm Habibah although her husband 'Ubayd Allah bin Jahsh did not take long before he left the fold of Islam and professed his belief in Christianity, the religion of the Abyssinians, and tried to take his wife Ramlah away from Islam - but she patiently persevered in her *Deen*. Then the Messenger of Allah (saw) sent for the Negus, delegating him to perform the marriage of Umm Habibah to the Messenger of Allah (saw). The Negus informed Umm Habibah of this, so she delegated Khalid bin Sa'id bin al-'Aas to give her in marriage, and her marriage contract with the Messenger (saw) took place. Khalid undertook the marriage contract on her behalf and the Negus for the Messenger of Allah (saw). When the *Muhajirin* of Abyssinia returned to Madinah after the battle of Khaybar, Umm Habibah returned with them and entered the house of the Messenger of Allah (saw). Madinah celebrated the wedding of the Messenger to Umm Habibah and she remained in his house.

As for his (saw) marriage to Zaynab bint Jahsh, its purpose was to enact a number of issues. It was legislation to demolish what was called *kafaa`ah* (matching) between the man and the woman, in marrying a cousin (daughter of his paternal aunt), and who was from *Bani Asad* from the leaders of the Quraish, to a former slave that had been freed. Also it was legislation to destroy a practise which had become established amongst them in *Jahiliyah*, in that adopting a son is like one's own son, so one cannot marry his wife. Muhammad (saw) married the wife of his freedman (Zayd) whom he had freed, after her divorce from him (Zayd), in order to destroy those customs. The account of the Messenger's marriage to Zaynab bint Jahsh was that Zaynab bint Jahsh was a daughter of Umaymah bint 'Abd al-Muttalib, the paternal aunt of the Messenger (saw). She was raised under his care and attention and because of that, she was to him like a daughter or a younger sister. He used to know her and knew whether she was attractive or not before she had married Zayd, and he had seen her from the time she was an infant crawling, until her childhood and through to her adolescent years. She was not a stranger to the Messenger (saw), but rather she was similar in position to his daughter. He (peace and blessings be upon him) proposed to her on behalf of his freed slave Zayd but her brother 'Abd Allah bin Jahsh refused for his sister, who was from *Bani Asad* in addition to being a daughter of the aunt of the Messenger of Allah, to be the bride of a slave bought by Khadijah and later freed by Muhammad. He felt that this was a great shame for Zaynab as it used to be a great dishonour for the Arabs, as daughters of the nobility did not marry slaves even if they were given their

freedom. But Muhammad (saw) wanted these considerations which existed within people, solely on the basis of tribalism, to be erased, and for them to comprehend that there is no superiority of an Arab over a non-Arab except in *taqwa*, and to understand Allah (swt)'s saying:

﴿إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقَىٰكُمْ﴾

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

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

﴿وَمَا كَانَ لِمُؤْمِنٍ وَلَا لِمُؤْمِنَةٍ إِذَا قَضَىٰ اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ﴾

﴿مِنْ أَمْرِهِمْ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُّبِينًا ﴿٦٥﴾﴾

"It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they

should have any option in their decision. And whoever disobeys Allah and His Messenger, he has indeed strayed in a plain error". [Al- Ahzab: 36]

Hence, nothing remained for 'Abdullah and Zaynab other than to submit to Allah's will, so they said: 'We consent O Messenger of Allah (saw).' Zayd consummated his marriage with Zaynab after the Prophet had sent her the dowry. However, married life between Zayd and Zaynab was not good; on the contrary, from the start it was unsettled and embittered and continued in this way. Zaynab herself was not happy with this marriage after it had taken place, even though it was a command from Allah and His Messenger. She did not obey her husband, and she did not soften in her approach towards him. Rather, she used to boast to Zayd that the bondage of slavery had not befallen her and she made life difficult for him. Zayd complained to the Prophet (saw) on numerous occasions and explained to him about her bad treatment of him. He sought permission from the Prophet (saw) a number of times to divorce her. The Prophet used to reply hold on to your wife. Allah (swt) revealed to the Messenger that Zaynab will be one of his wives. This was distressing for the Prophet (saw), who feared that people will say that Muhammad has married his son's wife and will censure him for that since he (saw) had adopted Zayd as a son. Therefore, he did not want Zayd to divorce her, but Zayd urged the Prophet to allow him to divorce her. Despite the fact that the Prophet knew that she would be one of his wives as Allah (swt) had informed him by way of revelation, he still said to Zayd:

﴿أَمْسِكْ عَلَيْكَ زَوْجَكَ وَاتَّقِ اللَّهَ﴾

"Keep your wife to yourself, and fear Allah". As a result, Allah reproached him since He told him that he had informed him that He would marry him to her and that he was concealing within himself that which Allah will make known.

This is the meaning of His (swt) saying:

﴿ وَتُخْفِي فِي نَفْسِكَ مَا اللَّهُ مُبْدِيهِ ﴾

"But you did hide in yourself that which Allah will make manifest". [Al- Ahzab: 37]

The matter that he concealed was the knowledge that Zaynab will be his wife even though she was the wife of someone he had adopted. This is what Allah would make manifest afterwards, which was his marriage to a divorcee of someone he had adopted as his son. The reason for the Messenger's concealment of this marriage, which Allah later made manifest, is that it was the custom of the Arabs to keep their adopted sons/daughters in their houses and maintain links with their relations. They used to give the 'da'iyy' i.e. the person who is adopted, all the rights of a son. All the rules of a son were applied to them even in inheritance and the esteem of lineage. So when Allah informed the Messenger that Zaynab, the wife of his freed slave whom he had adopted, will be his wife, he hid this knowledge and strictly insisted that Zayd hold on to his wife and not to divorce her, despite Zayd's insistence, his complaints about her, and the lack of harmony between them and concord in their marital life ever since he married her. However, Zayd insisted on divorcing her so the Messenger gave him permission, and he eventually divorced her without any knowledge that the Messenger would marry her and without Zaynab herself knowing that

the Messenger would take her as his wife. This is illustrated by what Ahmad, Muslim and an-Nasaa'i have reported via Sulayman b. al-Mughira on the authority of Thabit that Anas said:

«لما انْقَضَتْ عِدَّةُ زَيْنَبَ، قال رسولُ الله ﷺ لِزَيْدٍ: اذْكُرْهَا عَلَيَّ. قال: فانْطَلَقْتُ فقلتُ: يا زَيْنَبُ، اُبْشِرِي، ارْسَلِ رسولُ الله ﷻ يَذْكُرْكَ. فقالتُ: ما انا بصانِعَةٍ شيئاً حتى اُؤامِرَ رَبِّي، فقامتُ الى مَسْجِدِها، وَنَزَلَ القُرْآنُ وجاءَ رسولُ الله ﷺ حتى دَخَلَ عَلَيْها بِغَيْرِ اِذْنٍ، حينَ اُنزَلَ اللهُ تعالى قوله ﴿ فَلَمَّا قَضَى زَيْدٌ مِّنْهَا وَطَرًا زَوَّجْنٰكُمَا لِكَيْ لَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي اَزْوَاجِ اَدْعِيَابِهِمْ ﴾»

“When the 'iddah (waiting period after divorce) of Zaynab was over, Allah's Messenger (saw) said to Zayd to mention him to her. So I (Zayd) went to her and said: “O Zaynab, rejoice! Allah's Messenger sent me to propose to you on his behalf.” She said: “I do not do anything until I see what my Lord orders me.” So she stood at her place of worship and Allah's Messenger came to her without permission when the verses of the *Qur'an* (pertaining to her marriage) were revealed:

﴿ فَلَمَّا قَضَى زَيْدٌ مِّنْهَا وَطَرًا زَوَّجْنٰكُمَا لِكَيْ لَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي اَزْوَاجِ اَدْعِيَابِهِمْ ﴾

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

If either she or Zayd had known, then he would not have said to her 'rejoice,' nor she said 'until I see my Lord order me' i.e. she left the matter to Allah to

guide her in this marriage. The '*illah* of this marriage is to make it clear that there is no sin on the believer in marrying the wife of someone they had adopted.

This is the account of the Messenger's marriages to his wives. It is clear from the account of the marriages that each one was for an objective other than the mere aim of marrying. The reason of the Prophet's marriage to more than four wives and why this number is unique to him from the rest of his *Ummah* becomes clear. The fact that the objective was not the agitation of the procreation instinct of a man who had passed the age of fifty is quite evident, since he was a man who was busy with the *da'wah*, engaged in conveying the Message of his Lord to the world so that he may revive a people and mould them into an *Ummah*, whose only aim in life was to carry the Message of Allah to the world. His aim was to build the society anew after he had demolished the previous edifice, and to establish a state pushing ahead the world before it, in order to carry the Call of Islam to the people. Anyone who's mind is occupied with the revival of an *Ummah*, the establishment of a state, the building of a society, and the carrying of the Message to the world cannot be preoccupied by women devoting himself to them and marrying one every year. Rather, he carried his *da'wah* and he enjoyed a normal married life like any other human.

Married Life

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

﴿هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا﴾

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

And He (swt) said:

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

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

The dwelling (*sakan*) is the tranquillity i.e. so that the husband finds peace and tranquillity in his wife and his wife finds peace and tranquillity in him and that each one inclines to the other rather than shuns each other. So the basis of marriage is tranquillity, and the basis of marital life is tranquillity and peace of mind. So that this relationship between the spouses

becomes one full of comfort and tranquillity, the *Sharee'ah* has clarified the rights of the wife over the husband and the rights of the husband over the wife. Verses and *ahadith* have come clearly to explain these issues. Allah (swt) said:

﴿وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ﴾

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

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

﴿وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ﴾

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

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

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

﴿وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ﴾

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

And He said:

﴿فَامْسَاكٌ بِمَعْرُوفٍ﴾

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

Companionship is both intimacy and mixing, meaning to live together. Thus, Allah (swt) has ordered men to have good relations with their wives, so that intimacy and intermixing between them grows to perfection. This brings in tranquillity and comfort in life. The relationship between men and women is more than just fulfilling her right by paying her Mahr and maintenance. Rather, he must not frown at her for no reason, and he must be cheerful when speaking to her and not rude, harsh or displaying any inclination to other than her.

Also the Messenger (saw) has ordered men to treat their women well. It has been reported by Muslim in his *Sahih* on the authority of Jabir that the Messenger of Allah (saw) said in his speech at the *Hijjat-ul-wida'* (farewell *Hajj*):

«فَاتَّقُوا اللَّهَ فِي النِّسَاءِ فَإِنَّكُمْ أَحَدْتُمُوهُنَّ بِأَمَانَةِ اللَّهِ، وَاسْتَحَلَلْتُمْ فُرُوجَهُنَّ بِكَلِمَةِ اللَّهِ، وَلَكُمْ عَلَيْهِنَّ أَنْ لَا يُوطِئَنَّ فُرُوشَكُمْ أَحَدًا تَكْرَهُونَهُ، فَإِنْ فَعَلْنَ ذَلِكَ فَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبْرِحٍ، وَلَهُنَّ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ»

“Fear Allah concerning women! Verily, you have taken them on the security of Allah, and intercourse with them has been made lawful unto you by the word of Allah. You too have rights over them, they should not allow anyone to sit on your bed whom you do not like. But if they do that you can chastise them but not severely. Their rights upon you are that you should provide them with food and clothing in a fitting manner.”

And it has been narrated from the Prophet (saw) that he said:

«خَيْرُكُمْ خَيْرُكُمْ لِأَهْلِهِ، وَأَنَا خَيْرُكُمْ لِأَهْلِي»

“The best amongst you is the one who is best to his wives and I am the best of you to my wives.”
[Reported by al-Haakim and Ibn Hibbaan on the authority of ‘Aisha (ra)]

And it has been narrated from him (saw) that he had a beautiful relationship with his wives: he would play with them, be mild-mannered toward them, and have fun with them to the extent that he used to race with 'A'isha (ra), the mother of the believers, and with that win her love. She said: "Allah's Messenger (saw) raced me and I beat him - that was before I gained weight. Later I raced him when I had put on some weight, so he beat me and said:

«هذه بتلك»

“This was (in return) for that (time when you had beaten me).” [Reported by Ibn Hibbaan in his *Sahih*]

The Prophet (saw) after praying *'Ishaa*, would spend a short part of the evening chatting with his wives before sleeping, thereby creating a friendly atmosphere. Ibn Maajah reported that the Prophet (saw) said:

«خَيْرُكُمْ خَيْرُكُمْ لِنِسَائِهِمْ»

“The best amongst you are the ones who are best to their wives.”

All of this indicates that husbands should have good relations with their wives. Since things may happen in married life that may disturb the order, Allah has

granted the leadership of the home to the husband over the wife, i.e. he has been made a guardian over her. He (swt) said:

﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ﴾

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

And He (swt) said:

﴿وَهُنَّ مِثْلُ الَّذِي عَلَيْنَّ بِالْمَعْرُوفِ وَاللرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۗ﴾

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

He (saw) also enjoined the woman to obey her husband. He (saw) said:

«إِذَا بَاتَتِ الْمَرْأَةُ هَاجِرَةً فِرَاشَ زَوْجِهَا لَعَنَتُهَا الْمَلَائِكَةُ حَتَّى تَرْجِعَ»

"If a woman spends the night away from her husband's bed then the Angels curse her until she returns." [Agreed upon, reported on the authority of Abu Hurayrah]

And He (saw) said to a woman:

«أَذَاتُ زَوْجٍ أَنْتِ؟» قَالَتْ: نَعَمْ، قَالَ: «فَإِنَّهُ جَنَّاتُكَ وَنَارُكَ»

"Do you have a husband?" She replied: "Yes." He said: **"Then he is your Paradise (Jannah) and your Hellfire (Naar)."** [Reported by al-Haakim on the authority of the the paternal aunt of Husayn b. Muhsan]

Al-Bukhari reported that the Prophet (saw) said:

«لَا يَحِلُّ لِلْمَرْأَةِ أَنْ تَصُومَ وَرَزُوجَهَا شَاهِدٌ إِلَّا بِإِذْنِهِ وَلَا تَأْذَنَ فِي بَيْتِهِ إِلَّا بِإِذْنِهِ
وَمَا أَنْفَقَتْ مِنْ نَفَقَةٍ عَنْ غَيْرِ أَمْرِهِ فَإِنَّهُ يُؤَدَّى إِلَيْهِ شَطْرُهُ»

“It is not allowed for a woman to fast without the permission of her husband whilst he is present, nor admit someone to his house without his permission, and whatever she spends of his wealth (on charitable purposes) without his permission, half the reward will go to him.”

Ibn Battah has reported in his book *Ahkaam an-Nisaa`* (The Rules pertaining to Women) on the authority of Anas that a man had gone on a journey and forbade his wife from going out. Her father became ill so she asked permission from Allah's Messenger (saw) to visit her father. The Messenger of Allah (saw) said:

«اتقي الله ولا تُخالفِي زوجك»

“Fear Allah and do not disobey your husband.”
Her father then died. So she asked permission from Allah's Messenger (saw) to attend his *janaazah* (funeral prayer). He told her:

«اتقي الله ولا تُخالفِي زوجك»

“Fear Allah and do not disobey your husband.”
So Allah revealed to the Prophet (saw):

«إني قد غَفَرْتُ لَهَا بِطَاعَةِ زَوْجِهَا»

“I have forgiven her sins due to her obedience to her husband.” (*Hadith qudsi*) The *Shar'a* has given the man the right to prevent his wife from leaving the house, whether she wishes to call on or visit her parents, or for a thing she needs, or just for recreation. It is not, therefore, allowed for her to go out without his permission. However, the husband should not prevent his wife to call on and visit her parents, because that will create a rift between them and lead

his wife to disobey him. Allah (saw) has ordered them to live together honourably. Preventing her from visiting her parents is not living honourably. Nor should the husband prevent her from going to the Mosque, since it has been narrated from the Prophet (saw) that he said:

« لَا تَمْنَعُوا إِمَاءَ اللَّهِ مَسَاجِدَ اللَّهِ »

“Do not prevent slave girls of Allah (women) from going to the Masajid of Allah.” [Agreed upon and reported on the authority of ‘Abdullah bin ‘Umar] If the wife rebels against her husband, Allah has given him the right to discipline his wife. He (swt) said:

﴿ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ طَءً فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ ﴾

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

The beating mentioned here should be light i.e. not severe. As the Messenger (saw) explained in the farewell *Hajj* when he said:

« فَإِنْ فَعَلَنْ ذَلِكَ فَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبْرَحٍ »

“But if they do then you can chastise them but not severely.” [Reported by Muslim on the authority of Jabir] The husband has been given the authority to punish his wife if she does wrong because he is the guardian in running and looking after the affairs of the house. In things other than what Allah (swt) has obliged her to undertake, the husband is absolutely not allowed to harass her about it. He (swt) said:

﴿ فَإِنْ أَطَعْتُمْ فَلَا تَبْغُوا عَلَيْهِمْ سَبِيلاً ﴾

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

Rather, he should be a friend to her, and kind when he requests something of her, to the extent if he desires her, he should choose the best situations and conditions suitable for her. He (saw) said:

« لَا تَطْرُقُوا النِّسَاءَ لَيْلاً حَتَّى تَمْتَشِطَ الشَّعِثَةَ، وَتَسْتَحِدَّ الْمُغِيبَةَ »

“Do not approach wives at night until the wife with dishevelled hair has it combed and the one whose husband has been away has cleaned her private parts (of hair).” [Agreed upon, reported on the authority of Jabir]

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

what He has revealed, and gave them a share.” He said: “It so happened that I was thinking about some matter when my wife said: ‘I wish that you had done so and so.’ I said to her: “It does not concern you, and you should not interfere in what I intend to do.” She said to me: ‘How strange is it that you, son of Khattab, do not like anyone to answer back to you whereas your daughter answers back Allah's Messenger (saw) until he spends the day in vexation.” Umar said: “I took hold of my cloak, then came out of my house until I visited Hafsah and said to her: Oh daughter, (I heard) that you answer back to Allah's Messenger (saw) until he spends the day in vexation.” Hafsah said: ‘By Allah, we do answer him back’. I said: ‘be careful, my daughter, I warn you against the punishment of Allah and the wrath of His Messenger (saw). You may not be misled by the one whose beauty, and the love of Allah's Messenger (saw) for her have fascinated her (meaning A'isha). I ('Umar) then visited Umm Salamah because of my relationship with her and I talked to her. Umm Salamah said to me: 'Umar bin al-Khattab, how strange it is that you interfere in every matter to the extent that you intend to interfere between Allah's Messenger (saw) and his wives.’ This perturbed me so much that I refrained from saying what I had to say, so I left her.” [Agreed upon] Muslim narrates in his *Sahih* that Abu Bakr came and sought permission to see Allah's Messenger (saw). It was granted to Abu Bakr and he entered. Then came Umar and he sought permission and it was granted to him and he found Allah's Messenger (saw) sitting sad and silent with his wives around him. Umar said:

“I wanted to say something which would make the Prophet (saw) laugh, so I said: 'Oh Messenger

of Allah, I wish you had seen the daughter of Kharijah when she asked me for maintenance (*nafaqah*), and I got up and slapped her on her neck'. The Messenger of Allah (saw) laughed and said:

"هُنَّ حَوْلِي يَسْأَلْنِي النَّفَقَةَ"

“They are around me as you see, asking for maintenance (*nafaqah*)” From this it becomes clear that the meaning of the man's guardianship over the woman is that the command should rest with him, but it should be a command borne out of companionship and not domination and control. Thus she can answer back to him and discuss with him.

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

In short, any work that needs to be carried out inside the house the woman must undertake whatever is the type of work. Any work that needs to be carried out outside the house the man must undertake. This is due to what has been narrated from the Prophet (saw) in the story of 'Ali and Fatimah (may Allah be pleased

with them): He (saw) imposed on his daughter Fatimah the duty of working in the house and imposed on 'Ali whatever was outside the house in terms of work. Allah's Messenger (saw) used to order his wives to serve him. He said:

«يا عائشة اسقينا يا عائشة أطعمينا يا عائشة هلمّي الشفرة، واشحذها
بِحجر»

“Oh 'A'isha, bring us some water. Oh 'A'isha, bring us food to eat. Oh 'A'isha, bring me the razor and sharpen it against a stone.” It has been reported that

«أن فاطمة أتت رسول الله ﷺ تشكو إليه ما تلقى من الرّحى، وسألته خادماً
يُكفيها ذلك»

“Fatimah came to the Prophet (saw) complaining to him about her difficulty in working a handmill, and she asked if she could get a servant to save her from that.” [Agreed upon, and reported on the authority of 'Ali] All of this indicates that serving the husband in the house and looking after the house is one of the obligations of the wife which must be undertaken by her. However, the performance of such work is subject to her ability. If there is a lot of work to be done which would put her in hardship, then it is incumbent on the husband to provide her a servant that will enable the work to get done, and she has the right to demand this. However, if the work is not overwhelming and she is capable of doing it, then the husband is not obliged to provide a servant. In this case, she is required to undertake the work by herself as evidenced by what the Messenger of Allah (saw) imposed on his daughter Fatimah in tending to the house.

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

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

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

Coitus Interruptus (*al-'Azl*)

'*Azl* is when the man withdraws when close to ejaculation in order to discharge outside the vaginal canal. '*Azl* is permitted by the *Shar'a* i.e. it is allowed for a man when he has sexual intercourse with his wife to discharge his semen, when close to ejaculation, outside the vaginal canal. Al-Bukhari has reported on the authority of 'Ataa` from Jabir that he said:

«كُنَّا نَعْزِلُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ وَالْقُرْآنُ يَنْزِلُ»

“We used to practise '*azl* in the time of the Messenger of Allah (saw) while the *Qur'an* was being revealed.” It has also been narrated on the authority of 'Ataa` that he heard Jabir (ra) saying:

«كُنَّا نَعْزِلُ وَالْقُرْآنُ يَنْزِلُ»

“We used to practise '*Azl* while the *Qur'an* was being revealed.”[Agreed upon] And in Muslim:

«كُنَّا نَعْزِلُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَبَلَغَهُ ذَلِكَ فَلَمْ يَنْهَنَا»

“We used to practise '*Azl* in the time of Allah's Messenger (saw), he knew of it and he did not forbid us from it.” This is the decision of Allah's Messenger (saw) on '*azl* which indicates its permissibility since, if it was *haraam*, he would not have remained silent. The *hukm* of '*azl* has been related by the *Sahaabi* to the time of the Prophet (saw), and because of this it becomes a *hukm* ascribed to him (saw), since it is apparent that the Prophet knew about it and assented to it, due to the numerous occasions where they put their questions to him about the rules. With regards to the permissibility of '*azl*, there are also a number of authentic *ahadith* regarding

it. Narrated by Ahmad, Muslim and Abu Dawud on the authority of Jabir:

«أَنَّ رَجُلًا أَتَى النَّبِيَّ ﷺ فَقَالَ إِنَّ لِي جَارِيَةً هِيَ خَادِمَتُنَا وَسَانِيَتُنَا فِي النَّحْلِ وَأَنَا أَطُوفُ عَلَيْهَا وَأَنَا أَكْرَهُ أَنْ تَحْمِلَ فَقَالَ: اعْزِلْ عَنْهَا إِنْ شِئْتَ فَإِنَّهُ سَيَأْتِيهَا مَا قُدِّرَ لَهَا»

“A man came to the Messenger of Allah (saw) and said: 'I have a slave girl who is our servant. She carries water for us. I have intercourse with her, but I do not want her to become pregnant'. He (saw) said: 'Practise 'azl, if you like. But what is decreed for her will come to her.'” Muslim reports on the authority of Abu Sa'id:

«خَرَجْنَا مَعَ رَسُولِ اللَّهِ ﷺ فِي غَزْوَةِ بَنِي الْمُصْطَلِقِ فَأَصَبْنَا سَبِيًّا مِنْ سَبِيِ الْعَرَبِ فَاشْتَهَيْنَا النِّسَاءَ، فَاشْتَدَّتْ عَلَيْنَا الْعُزْبَةُ وَأَحْبَبْنَا الْعَزْلَ فَسَأَلْنَا عَنْ ذَلِكَ رَسُولَ اللَّهِ ﷺ فَقَالَ: مَا عَلَيْكُمْ أَنْ لَا تَفْعَلُوا فَإِنَّ اللَّهَ عَزَّ وَجَلَّ قَدْ كَتَبَ مَا هُوَ خَالِقٌ إِلَى يَوْمِ الْقِيَامَةِ»

“We went out with the Messenger of Allah (saw) on the expedition of *Bani al-Mustaliq*. We took as captive some beautiful Arab women. We desired them, for we were suffering from the absence of our wives. We wanted to practise 'azl, so we asked Allah's Messenger (saw) about it. He said: 'What prevents you from doing so? Since Allah has ordained whom He has to create until the Day of Judgement.'”

Abu Dawud narrated on the authority of Jabir who said: "A man from the *Ansaar* came to the Messenger of Allah (saw) and said:

«إِنَّ لِي جَارِيَةً وَأَنَا أَطُوفُ عَلَيْهَا وَأَنَا أَكْرَهُ أَنْ تَحْمِلَ فَقَالَ: اعْزِلْ عَنْهَا إِنْ شِئْتَ فَإِنَّهُ سَيَأْتِيهَا مَا قُدِّرَ لَهَا»

“I have a slave girl. I have intercourse with her but I do not want her to become pregnant.” He (saw) said: “Practise 'azl, if you like. But what is decreed for her will come to her.”

'Azl is absolutely permitted whatever the intention of the one who practises it. Whether it is for the intention of not having offspring, having fewer children, or in sympathy for the wife because she is weak and it is difficult for her to bear or give birth to children, or for any other reason.

The husband has the right to practise 'azl regardless of his intention. That is because the evidences concerning it are unrestricted (*mutlaq*), and under no circumstances are they restricted; and they are general (*'aamm*) without any specification (*takhsees*). Thus, they remain unrestricted and general. It should not be said that 'azl constitutes killing the child before its creation. There are clear *ahadith* which reject this. Abu Dawud has reported on the authority of Abu Said that a man said:

«أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ إِنَّ لِي جَارِيَةً وَأَنَا أَعَزُّ عَنْهَا وَأَنَا أَكْرَهُ أَنْ تَحْمِلَ وَأَنَا أُرِيدُ مَا يُرِيدُ الرَّجَالُ وَإِنَّ الْيَهُودَ تُحَدِّثُ أَنَّ الْعَزْلَ الْمَوْءُودَةَ الصُّغْرَى. قَالَ: كَذَبَتْ يَهُودُ لَوْ أَرَادَ اللَّهُ أَنْ يَخْلُقَهُ مَا اسْتَطَعَتْ أَنْ تَصْرِفَهُ»

“O Messenger of Allah (saw) I have a slave girl and I practise 'azl with her. I do not want her to get pregnant but I desire what men desire. The Jews say that 'azl is the minor live burial of children.” He said: **“The Jews have lied. If Allah wanted to create a child you could not stop Him.”** The text came to permit 'azl for the intention of not having children.

Ahmad and Muslim have narrated on the authority of Usama bin Zayd that:

«أن رجلاً جاء إلى النبي ﷺ فقال إني أعزّل عن امرأتي. فقال له: لِمَ تَفْعَلُ ذلك؟ فقال له الرجل: أشفقُ على ولدها، أو على أولادها فقال رسولُ الله ﷺ: لو كان ضاراً ضرّاً فارسَ والرومِ»

A man came to the Prophet and said: I do 'azl with my wife. Thereupon Allah's Messenger (saw) said: **“Why do you do that?”** The man said: “I pity her child or her children.” Thereupon the Messenger of Allah (saw) said: **“If that were harmful it would have harmed the Persians and the Romans.”** Here the Messenger (saw) said “Why do you do that?” He did not say ‘Do not do that.’ It is understood from this *hadith* that he agreed upon it; but he informed him that having children one after another does not cause harm as the evidence for that is by what Muslim reported in the *hadith* of Usama bin Zayd when a man came to Allah's Messenger (saw) and said:

«إني أعزّل عن امرأتي شفقةً على ولدها فقال رسولُ الله ﷺ إن كان كذلك فلا، ما ضرَّ ذلك فارسَ ولا الرومِ»

“I practise 'azl with my wife pitying her child.” The Messenger of Allah (saw) said: **“If it is for that reason, then no. It did not harm the Persians or the Romans.”** and it is also narrated in Muslim from Abdul-Rahman bin Bishr from Abu Said: “Fearing that pregnancy will harm the child being suckled.” Consequently, since the Messenger allowed 'azl in order to avoid pregnancy, even though the suckling infant is not harmed, it applies on 'azl to prevent pregnancy for the purpose of avoiding a large family or avoiding having children in the first place etc. Because if Allah (swt) knew that the child will be born, then the child will be born whether the (husband) practiced 'azl or not. Thus, Ibn Hibbaan reported in

the *hadith* of Anas that a man inquired about 'azl. The Prophet (saw) said:

«لو أن الماء الذي يكون منه الولد أهرقتُه على صخرة لأخرج منها ولدًا»

“If the semen from which a child comes is spilled on a rock, He will bring forth from it a child.” It cannot be said that limiting offspring goes against the Prophet's (saw) encouragement to have many children when he said:

«تَنَاجَحُوا تَنَاسَلُوا تَكْثُرُوا»

“Marry, have offspring and multiply”, this is not true because permitting 'azl does not contradict the encouragement to have many children. On the one hand, there is exhortation to have a lot of offspring, and on the other, there is a permission to practise 'azl. As for what Ahmad has reported from Judhamah bint Wahb al-Asadiyyah that she said: “I was present with the Messenger of Allah (saw) among the people. He (saw) was saying:

«لَقَدْ هَمَمْتُ أَنْ أَنْهِيَ عَنِ الْغَيْلَةِ فَنظَرْتُ فِي الرُّومِ وَفَارِسَ فَإِذَا هُمْ يَغِيلُونَ
أَوْلَادَهُمْ فَلَا يَضُرُّ أَوْلَادَهُمْ شَيْئًا، ثُمَّ سَأَلُوهُ عَنِ الْعَزْلِ. فَقَالَ رَسُولُ اللَّهِ ﷺ:
ذَلِكَ الْوَأْدُ الْحَفِيُّ وَهِيَ: وَإِذَا الْمَوْءُودَةُ سُئِلَتْ»

“I wanted to forbid sexual intercourse with mothers who are giving suckling to their children, but I have seen that the people of Persia and Rome do that and their children are not harmed at all.” Then he was asked about 'azl. The Messenger of Allah (saw) said: **“That is the concealed burial. It is (and he recited the verse):”***When the female (infant) buried alive (as the pagan Arabs used to do) shall be questioned.*” [At- Takwir:8-9] This *hadith* contradicts the clear and authentic *ahadith* which permit 'azl. When a *hadith* conflicts with another *hadith* which has more chains of transmission, then the latter is preferred and the singularly transmitted *hadith* is

rejected. Accordingly, this *hadith* is rejected because it contradicts what is stronger than it and has more chains of transmission.

It should not be said that the reconciliation of this *hadith* with the *ahadith* which permit *'azl* is that this *hadith* is taken to mean dislike for *'azl*. This would have been possible if there was no clash in the Messenger's (saw) negation in the other *hadith* to the same meaning which came in this *hadith*. So the *hadith* which Ahmad and Abu Dawud reported on the authority of Abu Said:

«وَأَنَّ الْيَهُودَ تُحَدِّثُ أَنَّ الْعَزْلَ الْمَوْءُودَةَ الصُّغْرَى. قَالَ: كَذَبَتْ يَهُودُ»

“The Jews say that *'azl* is the minor live burial of children.” He (saw) said: “**The Jews have lied.**” and the *hadith* of Judhama says:

«ذَلِكَ الْوَأْدُ الْخَفِيُّ وَهِيَ: وَإِذَا الْمَوْءُودَةُ سُئِلَتْ»

“**That is the concealed burial.**” It is “**When the female (infant) buried alive shall be questioned.**”

Thus, it is not possible to reconcile these two *ahadith*. Either one of them is abrogated or one of them is stronger than the other so the weaker *hadith* is rejected. Since the chronology of the two *ahadith* is unknown and the *hadith* of Abu Said is supported by numerous *ahadith* and through numerous chains, while the *hadith* of Judhamah has come isolated and it is not supported by anything, it is therefore rejected and the *hadith* which is stronger than it is preferred. Therefore, *'azl* is definitely allowed without any dislike whatever the person intends from the practising of *'azl*, due to the general nature of the evidences. The man does not need to even ask permission from his wife to practise *'azl* because the issue relates to him and not to her. It should not be

said that intercourse is her right, so the semen is also her right, thus he cannot discharge it outside the vagina without her permission. This is a rational justification and not one from the *Shari'ah* so it accordingly has no value. And furthermore it is nullified because intercourse is her right but not the discharge of semen as evidenced by the impotent man who if he entered the wife but did not discharge, he is considered to have fulfilled her right by the entering. She does not have then a right to the repudiation (*faskh*) of marriage. As for what Ibn Maajah has reported on the authority of Umar bin al-Khattab who said: "Allah's Messenger (saw) forbade the practise of '*azl* with a free woman without her permission," it is a weak *hadith* and in the isnad there is Ibn Lahee'ah and (much) has been said about him. Therefore, the *ahadith* remain unrestricted in their permissibility of '*azl*.

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

This permission to prevent pregnancy is specific to the temporary prevention of pregnancy. As for the permanent prevention of childbearing or causing sterility, it is *haraam*. So the use of medicines which irrevocably prevent pregnancy and terminate the

chance of having offspring, or the undergoing of surgical operations which permanently halt pregnancy and terminate procreation, are all prohibited. This is so because they are a type of castration, so they fall within its category and take its ruling. This is because these practices terminate procreation just as castration terminates procreation. A clear prohibition has been made with regards to castration. Reported by Sa'ad bin Abi Waqqas: “The Messenger of Allah (saw) rejected (the idea) of Uthman bin Maz'un living in celibacy (saying): And if he (saw) had given me permission we would have got ourselves castrated.” [Agreed upon] Uthman bin Muzun came to the Prophet (saw) and said:

«يا رسولَ اللهِ إني رجلٌ يشقُّ عليَّ العزوبَةُ فأذنْ لي بالاختِصاءِ، قال: لا، ولكنْ عَلَيْكَ بالصِّيَامِ»

“O Messenger of Allah (saw), I am a man suffering from having no wife. Permit me to castrate myself.” He (saw) said: “**No! However, you should fast.**” And in different wording he said:

«يا رسولَ اللهِ، أتأذنْ لي في الاختِصاءِ؟ قال: إن اللهَ أبدلنا بالرهبانِيَّةِ الحَنيفِيَّةِ السَّمْحَةَ»

“O Messenger of Allah will you permit me to castrate myself?” He (saw) said: “**Allah has substituted for us monasticism with the True Religion.**” Narrated about Anas that he said:

«كَانَ النَّبِيُّ ﷺ يَأْمُرُنَا بِالْبَاءَةِ، وَيَنْهَى عَنِ التَّبَتُّلِ نَهْيًا شَدِيدًا، وَيَقُولُ: تَزَوَّجُوا الْوُدُودَ الْوُلُودَ فَإِنِّي مُكَاتِّرٌ بِكُمْ الْأُمَّمَ يَوْمَ الْقِيَامَةِ»

"The Prophet used to order us to marry and strictly forbade us from celibacy. He used to say: “**Get married to the tender and fertile for indeed I like my Ummah to outnumber others on the Day of Judgement.**” [Reported by Ahmad]

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

﴿وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً﴾

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

The Legislator has made the having of many children *mandoob* and encouraged people towards it and praised the one who does it. It was narrated by Anas that the Prophet (saw) said:

«تَزَوَّجُوا الْوُدُودَ الْوُلُودَ فَإِنِّي مُكَاتِّرٌ بِكُمْ الْيَوْمَ الْقِيَامَةَ»

“Get married to the tender and fertile for indeed I like my *Ummah* to outnumber others on the Day of Judgement.” [Reported by Ahmad]

Abdullah bin Umar narrated that the Messenger of Allah (saw) said:

«انكحوا أمهات الأولادِ فإنني أباهي بكم يومَ القيامةِ»

“Marry the mothers of children so that I can vie with other peoples by your great number on the Day of Judgement.” [Reported by Ahmad] Ma'qal bin Yasar narrated:

«جاءَ رجلٌ إلى رسولِ اللهِ ﷺ فقال: إِنِّي أَصَبْتُ امْرَأَةً ذَاتَ حَسَبٍ وَجَمَالٍ وَإِنَّهَا لَا تَلِدُ أَفَأَتَزَوَّجُهَا؟ قَالَ لَا، ثُمَّ أَتَاهُ الثَّانِيَةَ فَنَهَا، ثُمَّ أَتَاهُ الثَّالِثَةَ فَقَالَ: تَزَوَّجُوا الْوُدُودَ الْوُلُودَ فَإِنِّي مُكَاتِّرٌ بِكُمْ»

“A man came to the Prophet (saw) and said: “I have found a woman who is beautiful and of noble descent but she cannot bear children. Shall I marry her? He (saw) said: “No.” Then he came again and he (saw)

prevented him. Then he came for the third time, so the Prophet said: **“Get married to the tender and fertile for indeed, I like my Ummah to outnumber others.”** [Reported by Abu Dawud]

Allowing temporary control of birth through 'azl or through any other method of birth control does not mean permissibility of abortion. So when the soul (secret of life) has been breathed into the foetus, its abortion is *haraam*, whether the abortion was brought about through the administration of medicine, violent movements or medical operation. This applies whether it was performed by the mother, father or doctor, because it is an aggression on a human soul whose blood is sacrosanct. It is a crime for which blood money (*diyyah*) has to be paid, the value of which is to free a male or female slave. Its amount is one tenth of the blood money for an adult. He (swt) said:

﴿وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ﴾

"And kill not anyone whom Allah has forbidden, except for a just cause". [Al- Anam: 151]

Al-Bukhari and Muslim reported from Abu Hurayrah (ra) who said:

«قَضَى رَسُولُ اللَّهِ ﷺ فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ سَقَطَ مَيِّتًا بَغْرَةَ عَبْدٍ أَوْ
أَمَةٍ»

“Allah's Messenger gave a verdict regarding an aborted foetus of a woman from Bani Lihyan that the killer (of the foetus) should give a male or female slave (as a Diyya).” And the minimum age of the foetus which requires blood money is when it appears to have some human features such as a finger, hand, feet, head, eyes or fingernail".

But if the abortion took place before the soul was breathed in it, it has to be examined: if the abortion takes place after forty days from the beginning of the pregnancy when the formation of the foetus starts: Muslim reported on the authority of Ibn Mas'ud who said: I heard the Messenger of Allah (aw) say:

«إِذَا مَرَّ بِالنُّطْفَةِ ثِنْتَانِ وَأَرْبَعُونَ لَيْلَةً بَعَثَ اللَّهُ إِلَيْهَا مَلَكًا فَصَوَّرَهَا وَخَلَقَ سَمْعَهَا وَبَصَرَهَا وَجِلْدَهَا وَلَحْمَهَا وَعِظَامَهَا ثُمَّ قَالَ: يَا رَبِّ أَدْكُرُّ أَمْ أُنْثَى فَيَقْضِي...»

“After the sperm has been [in the uterus] forty-two days, Allah sends it an angel that gives it form and fashions its hearing, sight, skin, flesh, and bones. Then the angel says: My Lord! Is it male or female?” Then Allah makes it male or female.’ And in another narration it says ‘forty nights’. When the development of the foetus begins it will take the *hukm* of aborting a foetus after the soul (secret of life) has been breathed into it which is that it is *haraam* and one would be obliged to pay blood money. That is because when the development of the foetus begins and some limbs appear, it becomes certain that it is a living foetus on its way to becoming a complete human. So, it will be an aggression against a human life whose blood is sacred and it will be like burying it alive, a matter which Allah (swt) has forbidden. He (swt) said:

﴿وَإِذَا الْمَوْءُودَةُ سُئِلَتْ بِأَيِّ ذَنْبٍ قُتِلَتْ﴾

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

So the abortion of the foetus after forty days from the beginning of pregnancy is forbidden for the mother, the father or the doctor. Anyone who aborts

after forty days will be committing a sin and a crime for which blood money of an aborted foetus must be paid, which is the giving of a male or female slave as mentioned in the *hadith* reported by al-Bukhari and Muslim.

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

Divorce

Just as Allah (swt) legislated marriage, He also legislated divorce. The basis of its legitimacy is the Book, *Sunnah* and *Ijmaa'*. As for the Book, Allah (swt) said:

﴿الطَّلُقُ مَرَّتَانٍ طَّ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحُ بِإِحْسَانٍ طَّ﴾

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

﴿يَتَأْتِيَ النَّبِيَّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلَّقُوهُنَّ لِعَدَّتِهِنَّ طَّ﴾

"O Prophet, when you [Muslims] divorce women, divorce them for [the commencement of] their waiting period". [At-Talaq: 1]

As for the *Sunnah*, it has been narrated on the authority of Umar bin al-Khattab that the Prophet (saw) divorced Hafsa then took her back.

«أَنَّ النَّبِيَّ ﷺ طَلَّقَ حَفْصَةَ ثُمَّ رَاجَعَهَا»

[Reported by al-Hakim and ibn Hibban]

And it was narrated on the authority of Abdullah bin Umar who said:

«كَانَتْ تَحْتِي امْرَأَةٌ أَحِبُّهَا وَكَانَ أَبِي يَكْرَهُهَا فَأَمَرَنِي أَنْ أُطَلِّقَهَا فَأَبَيْتُ فَذَكَرَ

ذَلِكَ لِلنَّبِيِّ ﷺ فَقَالَ: يَا عَبْدَ اللَّهِ بْنَ عُمَرَ، طَلِّقْ امْرَأَتَكَ»

“I had under my charge a wife whom I loved but my father did not like her so he ordered me to divorce her. I refused.” He then mentioned it to the Prophet (saw). He (saw) said: **“Oh Abdullah bin Umar, divorce your wife.”** [Reported by at-Tirmithi and al-

Haakim] The *Sahaabah* had *Ijmaa'* on the legitimacy of divorce.

Divorce is an annulment of the contract of marriage i.e. the knot of marriage. The permissibility of divorce has no *Sharee'ah 'illah* (reason). The texts which allow it do not include any '*illah*, whether in the text of the *Qur'an* or the *hadith*. It is allowed because the *Shar'a* permitted it and not for any other reason. The *Shari'* divorce consists of three pronouncements, one after another. If a man divorced his wife once, then that constitutes one pronouncement. It is allowed for him to take her back during the '*iddah* (waiting period) without a new contract of marriage. If he divorced her the second time, then the second pronouncement has taken place. It is permitted for the husband to take her back during the '*iddah* without a new contract. When the '*iddah* has been completed in those two cases and he has not taken her back, then she will become irrevocable (*baa'in*) to him, this being the lesser irrevocability (*baynunah bughra*). He is not permitted to take her back except with a new contract and dowry. If he divorced her a third time then three pronouncements have taken place, and she will become irrevocable to him, this being the greater irrevocability. It is not allowed for him to take her back except after she marries another person and he consummates the marriage with her and she completes her '*iddah* from him. Allah (swt) said:

﴿ الطَّلُقُ مَرَّتَانٍ ۖ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ ۗ وَلَا يَحِلُّ لَكُمْ أَنْ

تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ ۗ فَإِنْ خِفْتُمْ أَلَّا

يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيهَا إِذَا افْتَدَتْ بِهِ ۗ تِلْكَ حُدُودُ اللَّهِ فَلَا

تَعْتَدُوهَا ۖ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ ﴿٢٢٩﴾ فَإِنْ طَلَّقَهَا فَلَا
 تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ ۗ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ
 يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ ۗ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ



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

So in the *ayah*, Allah (swt) has taught the Muslims how to divorce. He (swt) said:

﴿ الطَّلُقُ مَرَّتَانٍ ۖ ﴾

"The divorce is twice". Then He gave them the choice after teaching them (the manner of divorce), either to hold onto their wives and live with them honourably and discharge their obligations to them, or

release them in a pleasant manner, which is incumbent upon them. Then He (saw) said:

﴿ فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ ۗ ﴾

"And if he has divorced her (the third time), then she is not lawful to him thereafter until she has married another husband"; i.e. if he divorced her a third time after the two previous times, it is not allowed for him to marry her until after she had married another husband. Then He said:

﴿ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا ۗ ﴾

"Then, if the husband divorced her, it is no sin on either of them that they reunite"; i.e. if the other husband divorced her, then it will be allowed for the first husband to take her back with a new contract and *mahr* (dowry). The subject of the second word 'He divorced her' refers to the closest person mentioned which is the expression:

﴿ زَوْجًا غَيْرَهُ ۗ ﴾

'another husband' i.e. the second husband. And the subject of *s* refers to the first husband i.e. there is nothing to prevent each of them from returning back to his/her companion by marriage. Therefore, the man has the authority of three pronouncements of divorce over the woman, two of which allow him to take her back and the third of which does not allow him to take her back until she has married another husband.

Divorce is in the hands of the man rather than the woman; so the man alone has the power to divorce, a power she does not have. As for why the man has that power, this is because Allah (swt) has put it in his hands. No reasoning can be found for it in the *Shar'a*. Accordingly no reason (*'illah*) should be sought for it.

Indeed, reflecting on the reality of marriage and divorce, one notices that marriage is the beginning of a new marital life, where the man and the woman cooperate in choosing each other as the spouse whom they respectively wish to marry. Each one has the right to marry or to refuse marriage with whomever he/she wants. However, once the marriage actually takes place, the man is given the leadership of the family and he is given guardianship over the woman. It is then inevitable that divorce too be the prerogative of the man, or his right, because he is the head of the family and head of the household. The sole responsibility and the duties of the house have been placed on him. Therefore, only he should have the authority to untie the knot of marriage. The authority is commensurate with the responsibility, and separation between the spouses is in the hands of the one who has guardianship over the other. However, this is a description of the existing reality and not a reasoning for the *Shar'a* rule, because the '*illah* of the *hukm shar'i* is not allowed to be other than a *Sharee'ah 'illah* found in the *Shar'a* text.

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

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

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

3. If it became apparent to the wife before or after intercourse that the husband had a certain disease that

does not permit her to reside with him without fear of harm, such as leprosy, burs, syphilis or tuberculosis, or like these illnesses, she can refer to the judge and demand separation. Her request would be granted if the existence of this illness was established and there was no possibility of a cure within a specified period of time. Her choice is permanent and not temporary due to the principle of harm (*darar*) and isti`naasan (check) what has been mentioned in the Muwatta on the authority of Malik that Said ibn al-Musayyab said: **“If a man married a woman, and he was insane or had a physical defect, she has the right of choice. If she wished, she could stay, and if she wished, she could separate from him.”**

4. If the husband became mentally insane after the contract of marriage the wife has the right to refer to the judge and demand separation from him. The judge would delay the separation for the period of a year. If his insanity did not cease in this period and the wife was insistent, then the judge would give a verdict of separation. This is according to what was mentioned in the previous point.

5. If the husband travelled to a place either distant or close, and failed to return back home; besides no news about him then obtaining maintenance becomes impossible. In such circumstances, she has the right to demand separation from him after trying her best to search for him and making inquiries about him. That is due to the saying of the Messenger (saw) (about the wife who said to her husband),

«أَطْعِمْنِي وَإِلَّا فَارِقْنِي»

“Give me (something) to eat or divorce me.”
[Reported by ad-Darqutni and Ahmad] He made the absence of feeding the *illah* of divorce.

6. If the husband stopped maintaining his wife and he is wealthy, and it became impossible for her to reach his wealth for the purpose of maintenance in any way whatsoever, then she has the right to demand divorce and the judge is obliged to divorce her from him at once without delay. This is because the Messenger (saw) said:

«امْرَأَتُكَ مِمَّنْ تَعُولُ تَقُولُ أَطْعِمْنِي وَإِلَّا فَارْقِنِي»

“Your wife whom you support should say: give me (something) to eat or divorce me.” [Reported by ad-Darqutni and Ahmad] And because Umar (ra) wrote to those who were absent from their wives and ordered them to give them their maintenance or divorce them.

The *Sahaabah* knew this and they did not go against his decision, which means it is *Ijmaa'* (consensus).

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

﴿ وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا ۗ ﴾

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

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

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

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

﴿الطَّلُقُ مَرَّتَانٍ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ﴾

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

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

﴿ وَعَاشِرُهُمْ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُمْ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ

اللَّهُ فِيهِ خَيْرًا كَثِيرًا ۝ ﴿١٩﴾

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

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

﴿ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ

وَأَضْرِبُوهُنَّ ۝ ﴿٣٤﴾

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

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

﴿ وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ

يُرِيدَ إِصْلَاحًا يُوَفِّقُ اللَّهُ بَيْنَهُمَا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿٣٥﴾

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

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

﴿ وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلًّا مِّنْ سَعَتِهِ ۗ وَكَانَ اللَّهُ وَاسِعًا حَكِيمًا ﴿٣٦﴾

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

However, in this issue of divorce an opportunity has been left for the spouses to reunite, in a way that the separation between them is not definite. They have been given the right to go back a first time and a second. The first and second divorce might cause the spouses to return to marital life, for a second time after the first pronouncement of divorce, and for a third time after the second pronouncement of divorce. Therefore, we find that the *Shar'a* made divorce in three stages:

﴿الطَّلُقُ مَرَّتَانٍ ۖ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ ۗ﴾

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

In this way, each one of the spouses has the opportunity to take the other back and return to the *taqwa* in Allah which is entrenched in his/her heart. Thus, they may attempt to go back again and try to have a marital life and attain marital tranquillity, and ease or peace of mind which they could not attain before. Consequently, we find that Islam permitted the husband to take back his wife after the first and second pronouncement of divorce. Thus, *Shar'* has legislated something that will assist the spouses to take each other back and review the matter and reconsider it more seriously than they had done before. Islam made the period of the *'iddah* after divorce into three menstrual cycles which is approximately three months or until the time of delivery, (in the case of a pregnant woman) and imposed on the man the duty of providing maintenance to the divorcee and housing her throughout the period of the *'iddah*, and prohibited the man from expelling the woman that is observing her *'iddah* until she completes it. This is for the purpose of bringing about reconciliation between them and making room for an opportunity by which they can take each other back and resume a new and peaceful life. In this respect, a clear admonition has been given in the *Qur'an*. He said:

﴿وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ ۖ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ ۖ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا ۗ وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ ۗ﴾

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

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

He (swt) said:

﴿فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ﴾

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

The husband has been absolutely forbidden to take back his wife after the third divorce until she has lived with another husband other than him who consummates the marriage with her,

«حتى تَذُوقَ عُسَيْلَتَهُ وَيَذُوقَ عُسَيْلَتَهَا» **“until she tastes his honey and he tastes hers”** i.e. to have sexual intercourse with him, in order to experience the marital union completely. If she tries another marital union with someone else naturally, and she does not find ease and peace of mind in this second marital union and

separation takes place between her and the second husband, it is then possible for her to return to marital union with the first husband because she has passed the second attempt of a marital union with the second husband and she has compared between the two. Then, when she chooses to return, she does so with a better awareness. Consequently, we find that the Legislator permitted her to return to her first husband who divorced her three times after her marriage to another husband. He (swt) said:

﴿ فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ ﴾

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

Then after that He (swt) immediately said in the same verse:

﴿ فَإِنْ طَلَّقَهَا ﴾

"And if he has divorced her" i.e. the second husband and not the first:

﴿ فَلَا جُنَاحَ عَلَيْهِمَا ﴾

"It is no sin on both of them" i.e. the first husband and the woman who has been divorced for the second time:

﴿ أَنْ يَتَرَاجَعَا ﴾

"That they reunite" i.e. each one returns to the other in marriage.

This is what the procedure of divorce legislation alludes to. Thus, it appears that what is contained in the legislation of divorce, the procedure of its legislation and the manner of its occurrence, has a far-reaching wisdom and is an accurate view towards the

social life, so as to ensure a peaceful comfortable life in a way that brings tranquillity. If this comfort is lost and there is no hope to restore it, then it is inevitable that the spouses should separate. That is why Allah (swt) has legislated divorce in the form which we have clarified.

The Lineage (*An-Nasab*)

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

The shortest duration of pregnancy is six months; in the majority of cases, it is nine months. Regarding the husband, when his wife gives birth to a child, it is possible that it is from him if she gave birth to it after more than six months from the date of marriage. The child is his due to the saying of the Prophet:

«الْوَلَدُ لِلْفِرَاشِ»

“The child belongs to the one on whose bed it is born (*al-walad lil-firaash*)” [Agreed upon. Narrated on the authority of ‘Aisha (ra)] In short: As long as the woman is married to the husband and she gives birth to a child after six months from marriage, it is definitely the child of the husband.

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

First: The child that he disowns as his must be born alive. He cannot disown the lineage of the child if it is

born dead because there is no divine rule pertaining to the disowning of a still born child.

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

Third: That the disowning of the child should be at particular times and in particular situations. These are the time of delivery or time of buying the necessary things for it, or the time when he knew that his wife had given birth if he was absent. The lineage of the child cannot be disowned at other than these times and situations. When his wife gives birth to a child and he remains silent, not disowning it even though he had the opportunity to do so, then its lineage is related to him and he will not have the right to disown it after that. The choice is determined according to the place at which he came to know of and his ability to disown it. If he had known about the child and it was possible for him to disown it but he did not disown it then its lineage is established because the Messenger of Allah (saw) said:

«الْوَالِدُ لِلْفِرَاشِ»

“The child belongs to the one on whose bed it is born (*al-walad ll-firaash*).” If he claims he did not know about its birth, then it is possible to trust his words if he was at a place that makes the birth concealed to him; for example, if he was at another place or in another country. The decision in this case is his together with his oath, because originally he does not know. If it is not possible to believe him because he was with her in the house, his claim is not

accepted because it is not possible that it was concealed from him, it may occur that he says "I knew about its birth but I did not know I had the right to disown it, or I did not know I had to disown it instantly". If the matter is usually not known to the ordinary people, this saying is accepted of him because this *hukm* is not known by the ordinary people. This is applicable to the situation of a person who had just recently become a Muslim. The ignorance of any *hukm* the like of which is unknown to some one like him is excused, as is in the case of one who is a new Muslim. If the example of such a *hukm* is not unknown to such a person as him, then his ignorance is not excused.

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

When these four conditions have been fulfilled, then the child is disowned and given to the wife. Ibn Umar reported that

«أن رجلاً لآعن امرأته في زمن رسول الله ﷺ وانتفى من ولدها ففرق رسول الله بينهما، وألحق الولد بالمرأة»

"A man imprecated his wife in the time of the Messenger of Allah (saw) and her child was disowned so the Messenger of Allah (saw) separated them and gave the child to the wife." [Reported by al-Bukhari] If the conditions of the disownment of the child are not fulfilled then it is not disclaimed and its paternity is ascribed to the husband and all the rules of fatherhood will be binding on him. This is if the dispute over the birth originated from

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

The Imprecation (*al-Li'aan*)

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

﴿ وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَدَتْ أَحَدِهِمْ

أَرْبَعُ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ﴿٦﴾ وَالْخَامِسَةَ أَنَّ لَعْنَتَ اللَّهِ عَلَيْهِ

إِنْ كَانَ مِنَ الْكَاذِبِينَ ﴿٧﴾ وَيَدْرُؤُا عنها الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعُ شَهَدَاتٍ بِاللَّهِ

إِنَّهُ لَمِنَ الْكَاذِبِينَ ﴿٨﴾ وَالْخَامِسَةَ أَنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ



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

Abu Dawud reports through his *isnad* (chain of transmitters) on the authority of Ibn Abbas (ra) who said: "Hilal ibn Umayyah was one of three people whose repentance was accepted by Allah. One night he returned home from his land and found a man with his wife. He witnessed with his eyes and heard with his ears. He did not stir him till the morning. Next day

he went to the Messenger of Allah (saw) in the morning, and said:

«يَا رَسُولَ اللَّهِ إِنِّي جِئْتُ أَهْلِي فَوَجَدْتُ عِنْدَهُمْ رَجُلًا فَرَأَيْتُ بَعْضِي وَسَمِعْتُ بِأُذُنِي
فَكَرِهَ رَسُولُ اللَّهِ ﷺ مَا جَاءَ بِهِ، وَاشْتَدَّتْ عَلَيْهِ فَنَزَلَتْ ﴿ وَالَّذِينَ يَرْمُونَ
أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلَّا أَنْفُسُهُمْ فَشَهَدُوا أَحَدِهِمْ ﴾ « الْآيَتَانِ
كِلَاهُمَا. فَسُرِّيَ عَنِ رَسُولِ اللَّهِ ﷺ فَقَالَ: "أَبَشِرْ يَا هِلَالُ قَدْ جَعَلَ اللَّهُ لَكَ
فَرْجًا وَمَخْرَجًا. قَالَ هِلَالُ: قَدْ كُنْتُ أَرْجُو ذَلِكَ مِنْ رَبِّي تَبَارَكَ وَتَعَالَى. فَقَالَ
رَسُولُ اللَّهِ ﷺ: أَرْسَلُوا إِلَيْهَا. فَأَرْسَلُوا إِلَيْهَا. فَتَلَاهَا عَلَيْهَا رَسُولُ اللَّهِ ﷺ
وَذَكَرَهُمَا وَأَخْبَرَهُمَا أَنَّ عَذَابَ الْآخِرَةِ أَشَدُّ مِنْ عَذَابِ الدُّنْيَا. فَقَالَ هِلَالُ
وَاللَّهِ لَقَدْ صَدَقْتُ عَلَيْهَا. فَقَالَتْ كَذَبَ. فَقَالَ رَسُولُ اللَّهِ ﷺ: لَاعِنُوا
بَيْنَهُمَا"

“O Messenger of Allah (saw)! I came to my wife at night and found a man with her. I saw with my own eyes and heard with my own ears'. The Prophet of Allah (saw) disliked what he described and he took it seriously. There upon the following Qur'anic verse came down: "And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them..." Then the Messenger of Allah (saw) was relieved and said: 'Glad tidings for you, Hilal. Allah, the Exalted, has made an easy way out for you'. Hilal said: 'I expected that from my Lord'. The Messenger of Allah (saw) said: 'Send for her'. She then came. The Messenger of Allah (saw) recited (the verses) to them that the punishment in the next world was more severe than that in this world. Hilal said:'I swear by Allah, I spoke the truth against her'. She said: 'He told a lie'. The Messenger of Allah (saw) said: 'Apply the method of invoking curses between them'. Hilal was told:

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

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

﴿وَيَدْرُؤُا عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَدَاتٍ﴾

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

The punishment that will be averted from her is the *hadd* of adultery, because when Hilal bin Umayyah accused his wife of fornication and came to the Prophet (saw), he told him to send for her and he made them invoke curses upon each other. This is one of the specific cases in which fornication is proven, i.e. the case in which the husband accuses his wife of fornication and proves it by invoking curses upon her and she does not. If she invoked curses upon him then it is not proven. Her refusal to invoke curses proves fornication and obliges the imposition of the punishment on her due to his *li'aan*.

If they both invoked curses upon each other, the judge will separate between them (terminate the marriage) and they can never come together again. She is forbidden for him forever because the Prophet (saw) separated the two cursing parties. Malik reports from *Naafi'* from Ibn Umar that

«أَنَّ رَجُلًا لَاعَنَ امْرَأَتَهُ فِي زَمَنِ رَسُولِ اللَّهِ ﷺ وَانْتَفَى مِنْ وَلَدِهَا فَفَرَّقَ الرَّسُولُ بَيْنَهُمَا فَأَلْحَقَ الْوَلَدَ بِالْمَرْأَةِ»

“A man accused and made *li'aan* to his wife in the time of the Messenger of Allah and rejected her child so the Messenger separated them and granted the child to the woman.”

Sahl bin Sad reported that:

«مَضَتْ السُّنَّةُ فِي الْمُتَلَاعِنِينَ أَنْ يُفَرَّقَ بَيْنَهُمَا ثُمَّ لَا يَجْتَمِعَانِ أَبَدًا»

“The *Sunnah* with respect to the two cursing parties used to make separation between them, and they shall never get married together again.”

[Reported by Abu Dawud]

This separation by imprecation (*li'aan*) constitutes an annulment (*faskh*) of the marriage contract, because this type of separation requires prohibition of marriage forever. It is not allowed for him even if he declares himself to have lied. However, if he returns and admits to lying then she has the right for the punishment to be imposed on him. And the child's paternity will be ascribed to him whether he admitted to lying before or after the imprecation.

The imprecation which absolves the husband from the punishment and obliges it to be imposed on the wife if she refuses to invoke curses is that the husband should say in the presence of the judge; 'I bear witness by Allah that she has committed fornication' and he points to her. If she is not present, he mentions her name and lineage until he repeats it four times and then at the fifth time he stops. It will be said to him fear Allah this is the deciding one, for the punishment in this world is easier than that in the next world. If he refuses to stop he should say; (in the fifth) 'The curse of Allah is on him if he was one of those who told lies in regards to his accusation that she committed fornication'. And she should say: 'I bear witness that he has lied' (four times) and stops at the fifth. She will be told to fear Allah as the man was told. If she refuses to stop she should say (in the fifth): 'Allah's wrath is on her if he was telling the truth' with respect to accusing her of fornication. If they have a child then the child is mentioned in the *li'aan*. When he said: 'I bear witness she has committed fornication' he should say: 'and this child is not mine'. And she should say: 'By Allah he has lied, and this child is his'.

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

The Guardianship of the Father

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

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

Custody of the Child

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

With regards to gaining custody of the child, this has to be examined. If the child is at the age of distinction and is able to comprehend things and understand the

difference between the conduct of his mother and the conduct of his father, as when he is over the age of weaning, he will be allowed to choose between his parents. He will be given to either of the two he chooses, due to what was reported by Ahmad and Abu Dawud that Abdul Hamid ibn Ja'far reported from his father on the authority of his grandfather Raafi' ibn Sinan:

«أَنَّهُ أَسْلَمَ وَأَبَتْ أَمْرَانَهُ أَنْ تُسَلِّمَ فَأَتَتْ النَّبِيَّ ﷺ فَقَالَتْ: ابْنَتِي وَهِيَ فَطِيمٌ أَوْ شِبْهَةٌ. وَقَالَ رَافِعُ ابْنَتِي. فَقَالَ النَّبِيُّ ﷺ: أُقْعِدْ نَاحِيَةً. وَقَالَ لَهَا: أُقْعِدِي نَاحِيَةً. وَقَالَ: أَدْعُواهَا. فَمَالَتْ الصَّبِيَّةُ إِلَى أُمِّهَا. فَقَالَ النَّبِيُّ ﷺ: اللَّهُمَّ اهْدِهَا. فَمَالَتْ إِلَى أَبِيهَا فَأَخَذَهَا»

“That he (Raafi' ibn Sinan) embraced Islam and his wife refused to embrace Islam. She came to the Prophet (saw) and said: My daughter; she is weaned or about to wean. Raafi' said: My daughter. The Prophet (saw) said to him: **‘Be seated on a side.’** And he said to her: **‘Be seated on a side.’** He then seated the girl between them, and said to them: **‘Call her.’** The girl inclined to her mother. The Prophet (saw) said: **‘O Allah! Guide her.’** The daughter then inclined to her father, and he took her.” This *hadith* has been reported by Ahmad and an-Nasaa'i with different wording but with the same meaning present in this narration.

If the child is under the age of distinction and does not comprehend things and does not realise the difference between the conduct of its mother and its father in, such that he is still at the age of suckling or weaned or beyond, he is not given a choice but is united with his mother. That is according to the understanding of the aforementioned *hadith* of Raafi' b. Sinan, and because it has been proven that the

mother is more entitled to custody of the child and there is no text that prohibits her from gaining custody. It should not be said here that custody (*hadaanah*) is guardianship (*wilaayah*) so a *kaafir* cannot have custody over a Muslim. Because the reality of custody is that it is (child) raising and service, and not guardianship. Thus, the rules of guardianship do not apply to it.

The mother is more entitled to have custody over the child and over the insane when she becomes divorced. This is due to what Ahmad and Abu Dawud have reported on the authority of Abdullah bin Amr bin al-As that a woman said:

«أَنْ امْرَأَةً قَالَتْ يَا رَسُولَ اللَّهِ إِنَّ ابْنِي هَذَا كَانَ بَطْنِي لَهُ وَعَاءٌ، وَتَدْيِي لَهُ سِقَاءٌ وَحِجْرِي لَهُ حِوَاءٌ، وَإِنَّ أَبَاهُ طَلَّقَنِي وَأَرَادَ أَنْ يَنْزِعَهُ مِنِّي. فَقَالَ رَسُولُ اللَّهِ ﷺ أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي»

“O Prophet of Allah, my womb is a vessel to this son of mine, and my breasts are a water-skin for him, and my lap is a guard for him, yet his father has divorced me, and wants to take him away from me.” The Prophet of Allah (saw) said: **“You have more right to him as long as you do not marry.”**

Ibn Abi Shayba reported on the authority of Umar that he divorced the mother of Asim. Later he visited her and Asim was on her lap. He wanted to take him from her. They pulled him back and forth until the boy began to cry. So they went to Abu Bakr who said:

"مَسْحُهَا وَحِجْرُهَا وَرِيحُهَا خَيْرٌ لَكَ مِنْكَ حَتَّى يَشِبَّ الْغُلَامُ فَيُخْتَارَ لِنَفْسِهِ"

“Her wiping, her lap and her smell are better for him than yours until he grows up so that he can choose for himself.” If the mother is not a custodian because she does not meet the conditions mentioned

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

the mother is not entitled to custody. If they are absent then it passes to the grand aunts (maternal) through the mother, and then to the grand aunts (maternal) through the father, and then to the grand aunts (paternal) through the father. The grand aunts (paternal) through the mother are not entitled to custody because they are related to the mother's father and he has no right to custody.

Custody does not pass from one that is entitled to the next entitled except in the event of his/her absence or in the event of incapacity (*'adm ahliyyah*). However, if the one with the right of custody abandons custody of the child, then custody does not pass to the next custodian unless they are capable of custody. Because custody, even though it is the right of the custodian, is also at the same time an obligation upon him/her and a right for the child. So to relinquish custody is not possible except if someone who is qualified undertakes the obligation. Only then does custody pass to whoever is closest to the custodian who has relinquished his custody, according to the above order. If the one who has relinquished the right to custody wishes to demand that right again, and their capacity to take custody still exists, then they maintain that right and the child is returned. Likewise, if the mother remarried and her right to custody is nullified, but if she was divorced, then her right to the custody of the child reverts back to her. Similarly, for any relative who is entitled to custody but is prevented by an impediment, if the impediment ceases then their right to custody returns because the reason for custody still exists.

If a group of people dispute over which of them is more entitled to the custody of a child, the descendent

of the one who is more entitled to custody is preferred. It is narrated by al-Barra bin 'Azib that 'Ali, Ja'far and Zayd disputed about the daughter of Hamza. Ali said; "I am more entitled to take custody of her because she is the daughter of my paternal uncle." Ja'far said: "She is my cousin and her aunt (maternal) is my wife." Zayd said: "Hamza is my nephew." The Messenger of Allah passed judgement in favour of her aunt (maternal). He (saw) said:

«الخالة بمنزلة الأم»

“The maternal aunt is in the position of the mother.” [Reported by al-Bukhari]

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

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلاً﴾

"And Allah will never allow an authority to the disbelievers over the believers". [An- Nisaa` : 141]

And because of his (saw) saying:

«الإسلامُ يعلو ولا يُعلى عليه»

“Islam will always dominate and nothing shall dominate over it.” [Reported by ad-Darqutni] The

speech is general, nothing has come to specify it and the specific discussion of upbringing does not apply to him for he is in no need for upbringing. But if those entitled to custodianship and guardianship are Muslims, such as when the father and mother are Muslims, then the boy or the girl i.e. young boy or girl, will be given the choice between the father and mother. Whichever one they choose they will be joined to, due to what Ahmad, Ibn Maajah and al-Tirmidhi have reported on the authority of Abu Hurayrah,

«عن أبي هريرة أن النبي ﷺ خَيَّرَ غُلاماً بين أبيه وأُمِّه»

“That the Prophet (saw) gave a boy the choice between his father and mother.” And in the narration of Abu Dawud: that a woman came to the Prophet of Allah (saw) and said:

«أن امرأةً جاءتْ فقالت: يا رسولَ اللهِ، إن زوجي يُريدُ أن يذهبَ بابني، وقد سَقاني من بئرِ أبي عَنبَةَ، وقد نَفَعَنِي، فقال رسولُ اللهِ ﷺ: استهما عليه. فقال زوجها: مَنْ يحاقني في وُلدي، فقال النبي ﷺ: هذا أبوك، وهذه أُمُّكَ فَخُذْ بيدِ أيِّهما شِئْتَ. فَأَخَذَ بيدِ أُمِّهِ فأنطَلقتُ به»

“My husband wishes to take away my son, O Prophet of Allah, and he drew water for me from the well of Abu ‘Inabah and he has been good to me.” The Prophet of Allah (saw) said: **“Cast lots for him.”** Her husband said: “Who is disputing with me about my son?” The Prophet (saw) said: **“This is your father and this is your mother, so take the hand of whomever you wish. So he took his mother's hand and she went away with him.”** Al-Bayhaqi has reported from Umar that he (saw) granted the boy the chance to choose between his father and mother. He also mentioned a report from Ali that he (saw) granted Amara al-Jizzami the right to choose between

his mother and paternal aunt when he was a boy of seven or eight years of age. These *ahadith* are clear and there is evidence within them, that if the father and mother dispute over their child, then it is obligatory to give the child the choice; and they will go with whoever is chosen. As for the casting of lots mentioned in the narration of Abu Dawud, it is not mentioned in the narration of an-Nasaa'i nor in the other narrations. It is understood to refer to a situation where the child did not choose either of them. The granting of choice is not restricted to a specific age. Rather, it is referred to the judge to decide what he deems correct according to the estimation of the experts. If they say he does not require custody, i.e. upbringing, and the judge is convinced of that, then he will grant him the choice. Otherwise, he will leave him with the one who has the right to raise him. This differs according to the children. A child may not be in need of custody when he is five years old, another child may not need it when he is nine. The consideration is the age of the child in terms of whether he is in need for custody or not.

Maintaining Ties of Kinship

When Allah (swt) forbade the tribalism of *Jahiliyyah*, He only forbade that tribalism should be the bond between the sons of the *Ummah*, and He forbade that it controls the relationships amongst the Muslims. However, He ordered people to maintain ties with relatives and show kindness to them. Al-Haakim and Ibn Hibbaan reported on the authority of Tariq ibn Al-Muharibi said that the Messenger of Allah (saw) said:

«يَدُ الْمُعْطِي الْعُلْيَا وَابْدَأْ بِمَنْ تَعُولُ، أُمَّكَ وَأَبَاكَ وَأُخْتَكَ وَأَخَاكَ، ثُمَّ أَدْنَاكَ
أَدْنَاكَ»

“The one who gives has the upper hand. Start with those whom you have to support; your mother and father, sister and brothers, then the nearest, then the nearer (of your relatives).” Also it has been narrated that Asmaa bint Abu Bakr said:

«أَتَنِي أُمِّي وَهِيَ مُشْرِكَةٌ فِي عَهْدِ قُرَيْشٍ وَمُدَّتِهِمْ إِذْ عَاهَدُوا النَّبِيَّ مَعَ ابْنِهَا
فَاسْتَفْتَيْتُ النَّبِيَّ ﷺ فَقُلْتُ: إِنَّ أُمِّي قَدِمَتْ وَهِيَ رَاغِبَةٌ. قَالَ: نَعَمْ صِلِي
أُمَّكَ»

“My mother, who was a pagan, came to see me during the period of the treaty between the Muslims and Quraish. I went to seek the advice of the Prophet (saw) saying: “My mother has arrived and she is hoping (for my favour).” The Prophet said: “Yes, be good to your mother.” [Agreed upon]

Islam has divided the relations into two categories; firstly, the relations from whom it is possible to inherit when they die, and secondly, the relatives from the maternal side (*ulu al-arhaam*). As for the ones who have the right to inherit, they are the ones entitled to a statutory portion of inheritance (*ashaab*

al-furud) and the agnate relations (relatives on the paternal side) (*'asabaat*). As for relatives on the mother's side (*alu al-arhaam*), they are different from the former: they are not the ones who have a share in the inheritance, nor are they from the agnate relations. They include ten categories: the maternal uncle (*khaal*) and aunt (*khaala*), maternal grandfather, son of the daughter and son of the sister, daughter of the brother, daughter of the paternal uncle and paternal aunt, and the half paternal uncle, son of the half brother and whoever declares to be one of them. Allah (swt) did not give those people any share in the inheritance of the person, nor is their maintenance an obligation on the person. However, Allah (swt) ordered the maintaining of good relations and being kind to all the relatives. Jabir (ra) narrated that the Prophet (saw) said:

«إِذَا كَانَ أَحَدُكُمْ فَقِيرًا فَلْيَبْدَأْ بِنَفْسِهِ فَإِنْ كَانَ لَهُ فَضْلٌ فَعَلَى عِيَالِهِ فَإِنْ كَانَ لَهُ فَضْلٌ فَعَلَى قَرَابَتِهِ»

“If any one of you is poor let him start with himself and if any one of you has surplus (wealth) let him spend on his family, and if any of you has further surplus let him spend it on his relatives.”

[Reported by Ibn Hibbaan and Ibn Khuzaymah]
Narrating Abu Ayyub:

أن رجلاً قال: «يا رسولَ الله، أخبرني بِعَمَلٍ يُدْخِلُنِي الْجَنَّةَ. فَقَالَ الْقَوْمُ: مَا لَهُ، مَا لَهُ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: أَرَبَّ مَا لَهُ. فَقَالَ النَّبِيُّ: تَعْبُدُ اللَّهَ لَا تُشْرِكُ بِهِ شَيْئًا وَتَقِيمُ الصَّلَاةَ وَتُؤْتِي الزَّكَاةَ وَتَصِلُ الرَّحِمَ»

A man said to the Prophet (saw), **“Tell me of such a deed as will make me enter Paradise.”** The people said, **“What is the matter with him? What is the matter with him?”** The Prophet (saw) said, **“He has something to ask.”** The Prophet (saw) said: **“(In order to enter Paradise) you should worship**

Allah and do not ascribe any partners to Him, offer prayer perfectly, pay the Zakat and keep good relations with your Kith and kin.” [Reported by al-Bukhari] Thus, he ordered the keeping ties of kinship. It may be asked: Who are the relations meant in these *ahadith*? Are they only the maternal side (*ulu al-arhaam*) or anyone related to the *rahm* of the person! The *ahadith* indicate that keeping ties of kinship include all the relatives whether they are relatives from the unmarriageable degrees (*mahram*), a *non-mahram* from the *‘asabah* (relations on the paternal side/agnates) or the relatives from the maternal side. There exist a number of *ahadith* concerning the keeping of ties of kinship (*silat ar-rahm*). He (saw) said:

«لا يدخل الجنة قاطع رحم»

“The one who severs ties with the relations will not enter Paradise.” [Reported by Muslim on the authority of Jubayr b. Mut’im] It was narrated by Anas b. Malik that the Messenger of Allah (saw) said:

«من أحب أن يبسط له في رزقه وينسأ له في أثره فليصل رحمه»

“Whoever loves that he is granted more wealth, and that his lease of life is prolonged, then he should keep good relations with his kith and kin.” [Agreed upon]

It is narrated by Abu Hurayrah that the Prophet (saw) said:

«إِنَّ اللَّهَ خَلَقَ الْخَلْقَ حَتَّى إِذَا فَرَغَ مِنْ خَلْقِهِ قَالَتْ الرَّحْمُ هَذَا مَقَامُ الْعَائِدِ بِكَ مِنَ الْقَطِيعَةِ قَالَ نَعَمْ أَمَا تَرْضَيْنَ أَنْ أَصِلَ مِنْ وَصَلِكَ وَأَقْطَعَ مَنْ قَطَعَكَ قَالَتْ بَلَى يَا رَبِّ قَالَ فَهُوَ لَكَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَاقْرَأُوا إِنَّ شَيْئَكُمْ فَهَلْ عَسَيْتُمْ إِنْ تَوَلَّيْتُمْ أَنْ تُفْسِدُوا فِي الْأَرْضِ وَتُقْطَعُوا أَرْحَامَكُمْ»

“Allah created His creation, and when He finished it, the womb got up and said, I seek refuge with you from Al-qatia (ties being severed with me).” On that Allah (swt) said: “Don't you accept that I bestow my favours on him who keeps your ties, and withhold My favours from him who severs your ties?” On that it said, “Yes, Oh my Lord!” Then Allah (swt) said: “That is for you.” Then the Messenger of Allah (saw) said: **“If you wish, you can recite: *Would you then if you were given authority, do mischief in the land and sever your ties of kinship?*”** [Muhammmad: 22] [Agreed upon, above wording is from al-Bukhari]

He (saw) said:

«لَيْسَ الْوَاصِلُ بِالْمُكَافِي وَلَكِنَّ الْوَاصِلَ الَّذِي إِذَا قُطِعَتْ رَحْمُهُ وَصَلَّهَا»

“The *al-waasil* (the one who keeps good ties with kith and kin) is not the one who recompenses the good done to him by his relatives, but Al-wasil is the one who keeps good relations with those relatives who had severed the bond of kinship with him.” [Reported by al-Bukhari from Abdullah bin Amru]

The maintaining of ties of kinship (*silat ar-rahm*) indicates the importance of what Allah (swt) has legislated regarding the keeping of good and friendly relations within the Islamic community, in the maintaining of good relations and co-operation between relatives, and the extent of the *Sharee'ah's* concern to organise the meeting of men and women and organise what results from this meeting in terms of the relationships (*'alaqaat*) and whatever branches out from it. Hence the Islamic *Shar'a*, through the rules which it legislated for the social aspect in the

society, provides the best social system for humankind.

Glossary

Ahkam Sharii': Rules set by the Legislator, Allah (swt) deeming whether an act is permissible or prohibited.

'awrah: Those parts of the body which the *Sharee'ah* has generally obliged to be covered in front of non-*mahrms*. For the man it is from the naval to the knee and for the woman it is the whole body except the hands and face.

bay'ah: It is the pledge given to elect a *Khaleefah*.

hijaab: The word *hijaab* means a screen or barrier. In the Qur'an it specifically refers to the complete seclusion of the wives of the Prophet (saw) from all non-*mahram* men. In modern times the word is also used to refer to the headscarf (*khimaar*) worn by Muslim women.

'iddah: It is the waiting period a woman needs to observe before she can remarry after divorce or death of her husband.

'illah: An *'illah* is the reason stated in the text for the legislation of a *Sharee'ah* rule.

jilbaab: It is the loose outer garment flowing from the shoulders to the feet which Muslim women are obliged to wear when they go out. If the feet are covered by wearing socks then it is enough for the *jilbaab* to reach the ankles. If the feet are not

covered then the *jilbaab* needs to be of a length which will insure the feet do not become exposed.

khalwah: It is when two non-*mahram* man and woman are in seclusion together secure from the intrusion of others.

khimaar: The headscarf which the *Sharee'ah* has obliged a woman to wear to cover her head and chest.

mafhoom: The implicit meaning of a *Sharee'ah* text understood in its various forms and ways.

mahr: The dower a husband is obliged to give to the wife.

mahram: They are those men women are permanently forbidden to marry.

makrooh: An action the *Sharee'ah* has discouraged us to do but undertaking it does not entail punishment or sin.

Mandoob: an action encouraged by the *Sharee'ah*. Performing the action entails reward but abstention is not sinful.

mantooq: The meaning understood from the explicit utterance of the *Sharee'ah* text.

mubaah: An action which is permitted by the *Sharee'ah*.

nafaqah: It is the adequate financial support a husband is obliged to provide for his wife and children.

niqaab: The *niqaab* is a veil which is fastened from the nose or below the eyes to cover a part of the face.

shubhat ad-daleel: The probability that a particular view is sanctioned by the text and hence one can say it has a probable evidence.

tabarruj: To draw attention to the charms of women.

zeenah: The word *zeenah* or charms refers to the places of charms i.e. the places where a woman wear her jewelry and ornaments.