

# The Social Shari‘ah of Islam

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## Translator's Introduction

The poise and balance of a society heavily depends on the poise and balance of the attitudes and tendencies of its people. Whenever human attitudes cross their natural limits, disorder and discord result. In particular, the stability of a society is threatened with dire consequences if people vested with moral authority misuse this sacred trust of Allah. A tyrannical husband soon encounters a defiant wife and oppressive parents inevitably groom rebellious children. It is thus necessary to curb this tendency of power to corrupt in order to build a healthy and prosperous society.

What then should be the guiding principles in human and social relationships? This question is as old as the advent of man on the face of this earth. Divine books have answered this question in detail so that man is able to create a healthy society on this earth suited to his natural urges and talents. This answer stands enshrined permanently in the Qur'an which now represents the final guidance of the Almighty to man regarding this social sphere of life and indeed all the other spheres of life in which man's intellect can falter or is deficient.

Javed Ahmad Ghāmidī has made an attempt to decipher this answer of the Qur'an<sup>1</sup>. His answer is by no means the final word; however, it represents a worthy effort made by human intellect to interpret the divine message regarding the social *Sharī'ah*<sup>2</sup> of Islam. This booklet is a translation of Ghāmidī's research on

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1. His original article in Urdu has been published in various episodes of *Ishrāq*, a monthly Islamic Journal, *Dāru'l Ishrāq*, Lahore 2002-03.

2. Here a distinction must be made between *Sharī'ah* and *Fiqh*. The former specifically refers to divine law and divine directives as stated in the original sources of Islam. The latter refers to edicts of the jurists about issues on which the *Sharī'ah* is silent.

this topic.

A brief summary of his views is presented below followed by the actual translation.

According to Gha#midi#, the fundamental premise on which Islam has based its Social *Sharī'ah* is that the institution of family is the basic unit of a society since it is the need of every individual if his life is viewed as a whole. A man and a woman enter into a marital bond to form this institution. Most social directives of Islam are given to safeguard this institution.

Before going further, it seems appropriate here to dwell in some detail on the afore-mentioned basic premise pointed out by Gha#midi#.

Man is basically a weak and an insecure being. He has spiritual as well as material needs. Just as he needs to develop a strong relationship with the Almighty to fulfill his spiritual needs, he also needs to develop a strong relationship with his fellow human beings to fulfill this material needs. It is because of these needs that Islam has prescribed the institution of family as the basic building block of the society. Each individual passes the first half of his life in transforming from a child to a mature adult and the second half in transforming from a mature adult to an old person. In the greater part of the first period, he needs the love and affection of his parents. As an infant “crawling and puking in the nurse’s arms”, his meek and helpless existence need the love and affection of a mother and a father. It is only proper parental care which makes him feel secure and confident. Since parents are the first seat of learning, the base they build in molding his character and instructing him plays a vital role in the later part of his life. Grandparents also have an all important role to play: They imbue their grandchildren with the priceless wealth of wisdom and experience which help them in traversing the rugged terrain of life. Brothers and sisters also make important contributions in developing his personality. The older ones are actually an extension of the parental role while the younger ones create in him an initial awareness of parenthood. Once a person reaches a mature age, certain other needs arise in him which must be fulfilled. It is at this stage that a man and a woman need each other to complement and complete one another. This relationship is the only means of providing emotional fulfillment and satisfaction to the spouses, which is the primary need that

brings them together and they now also assume the role of the progenitors of a new family to start the cycle once again.

In the second phase of life, an individual advances from the exuberant years of youth to the haggard years of old age. It is now that he needs the love and protection of his grown up children. In this state of "second childishness and mere oblivion", which is "sans teeth, sans eyes, sans taste, sans everything", it is only the set-up of a family which can properly support him. Without such a support, old age is the worst form of affliction. None except the children have a strong attachment to their parents. It is this attachment which urges them to return in some form the support and affection they had once received from their parents.

Besides these primary relationships, the secondary relationships like maternal aunts and uncles and paternal aunts, cousin brothers and cousin sisters, nieces and nephews perform in a wider perspective the same function as the primary ones. The components of a family thus constitute a small community which if administered properly by the head of the family makes the basic unit of a healthy society. Islam, therefore, according to Gha#midi#, has always insisted that the institution of family is the basic building block of the society and it is in the interest of humanity to adhere to a family-oriented society. Consequently, it has given a number of directives for the protection and preservation of the family. It has also laid out the procedure for husband and wife to separate from one another if after repeated tries marriage cannot be pulled along.

After dealing with this basic premise as highlighted by Gha#midi#, an attempt will now be made to summarize some of the other distinctive aspects of his interpretation regarding the *Sharī'ah* of social and familial relationships as put forth in the Qur'ān. Readers should consult his article, a translation of which follows, for details of the arguments on which he has based these conclusions. Arguments regarding some of these conclusions however have been briefly referred to here.

## **1. Regarding Family and Marriage**

### **i. Treatment of Wives**

Husbands often tend to forget the rights of their wives. The Qur'ān (4:19) stresses that a husband should deal with his wife

very affectionately and in a most befitting manner. So much so, if he does not like her in anyway, he must still always be kind and forbearing to her. He must not forget that being the weaker sex, she has been confined in his custody. A gentleman must always adhere to tolerance and magnanimity in dealing with his wife.

### ii. Organization of a Family Set-Up

For the two reasons stated in the Qur'an (4:34), husbands are the heads of a family set-up. Specifically stated, these reasons are: (a) husbands are entrusted with providing for the family, and (b) they are temperamentally and physically more suited to discharge this responsibility.

In this regard, however, it must remain clear:

a. As human beings, men and women are equal and deserve equal respect. However, they have been entrusted with different responsibilities in a family set-up which make them superior to one another in various respects. According to the Qur'an (4:34), as far as a husband is concerned one sphere of his superiority is his status as the head of the family alluded to in 2:228 with the words "husbands are one degree superior to their wives". There are certain spheres in which women by nature – physical, physiological as well as psychological – are superior to men and much more suitable to do certain tasks.

b. Islam does not forbid women to earn a living. It has only absolved them of the responsibility of earning, which lies upon their husbands. It also needs to be understood that the verse does not say that the one among the husband or wife who supports the family should become the head; husbands, whether their wives earn or not, are liable for this responsibility. A woman may earn if she likes or if some need arises, but since she has not been entrusted with this duty she has not been given the governing position in the family.

### iii. The Issue of *Mahr* (dower)

As per the Qur'an (4:25), the amount of *Mahr* (dower) should be fixed keeping in view the social customs and traditions of a society. Its quantity has not been ascertained by the Islamic *Shari'ah*. The basic philosophy of *Mahr* (dower) needs to be clearly understood: Islam has entrusted the husband with the responsibility of supporting his wife and children. It is he who

must earn to fulfill the requirements of the family. The *Mahr* money is only a token of this responsibility. In other words, when a man pays this sum, he makes a symbolic expression of the fact that he has taken the financial responsibility of the woman he intends taking as his wife. Consequently, it is in the spirit of this commitment that he pays the agreed sum before he takes home the bride.

#### **iv. The Right to beat Wives**

The right of a husband to punish his wife must be understood in its proper perspective:

a. Firstly, it can only be resorted to when a wife starts to challenge the authority of the husband and threatens to disrupt the family set-up. It is in fact a last resort to protect the institution of family from breaking up. It must not be resorted to in anything less in severity than a rebellious attitude from the wife. The Qur'ān has not used the word "disobedience". Any difference of opinion or altercation is not to be resolved by this procedure. Disagreements and disputes must be settled mutually. It is only when the wife stands up against the authority of her husband should this procedure be employed.

b. Before resorting to physical chastisement, the two previous stages mentioned by the Qur'ān (4:34) must elapse. The husband should first of all admonish his wife and convince her to give up her defiant behavior. He should exercise all the patience he can muster to urge and beseech her to change her stance. If after repeated pleas and continuous admonition in a considerable span of time, the wife continues to persist in her rebellious attitude, he has the authority to go on to the second stage by avoiding marital contact with her. This detachment, it is clear, is a form of reproof, and a very strong appeal to the wife to correct herself. Again, this attitude should continue for a substantial period of time so that the point is driven home. It is highly unlikely that most wives would persist in their arrogance after these two initial stages. In all probability, patience, forbearance, and restraint would have conquered their hearts. However, even after this stage, if a wife refuses to accept the authority of her husband, the husband has the right to finally resort to gentle physical affliction.

c. If the husband is left with no alternative but to physically punish his wife, he must be very careful in this regard and must

not wound or injure her. He should remember that this physical chastisement is similar to the one a mother gives to a rebellious son or the one a teacher gives to an unruly student. He must be aware that in case he misuses this authority in any way, he would be held responsible before the Almighty on the Day of Judgement. In this world also, his wife has the right to report his behavior to the authorities who can punish him for any misconduct in this regard.

#### **v. Polygamy**

It is incorrect to conclude that Islam has allowed a Muslim to keep up to four wives at one time since keeping four wives is a man's essential physiological and psychological need. In normal circumstances, a family comes into being through wedlock between one man and one woman. A subtle reference to this is made by the Qur'an (4:1) where it alludes to the fact that when the Almighty created Adam, he made Eve for him as his only wife. Naturally, had a man physically needed more than one wife, the Almighty would have created more wives for Adam instead of just one.

#### **vi. Marriage with the People of the Book**

It is clear from the context of the Qur'an (5:5) that it is desirable though not binding for Muslim men to marry women from among the People of the Book in areas where Islamic values reign supreme. It is evident that in such conditions and circumstances, there is virtually no possibility of the Muslims being influenced by their moral values and cultural traditions. Instead, there is a far greater possibility that such marriages will positively influence the women of the People of the Book by inducing them to accept Islam. Moreover, it should be realized that the permission has only been given as a second option because the danger in which a person puts his family's faith is extremely evident. Hence, only believing men have been given this permission; believing women, in no case whatsoever have been allowed to do so.

#### **vii. The Issue of *Wali* (Guardian) in Marriage**

The consent of the parents/guardians is not a legal requirement of marriage. The legal requirements are only two: the man and woman who intend to get married must be chaste and a man

must pay dower (*Mahr*) to his wife. However, the consent of the parents/guardians is a cultural and social requirement of marriage. It is actually a corollary of the social directives of Islam pertaining to the institution of family and is based on great wisdom. Since the preservation and protection of the family set-up is of paramount importance to Islam, it is but natural that marriage takes place through the consent of the parents who are the foremost guardians. It is obvious that a marriage solemnized through the consent of the parents shields and shelters the newly formed family.

However, there can always be an exception to this general principle. If a man and a woman feel that the rejection on the part of the parents has no sound reasoning behind it or that the parents, owing to some reason, are not appreciating the grounds of this union, they have all the right to take this matter to the courts of justice. It is now up to the court to analyze and evaluate the whole affair. If it is satisfied with the stance of the man and woman, it can give a green signal to them. In this case, as is apparent from a Ḥadīth, the state shall be considered the guardian of the couple. On the other hand, if the court is of the view that the stand of the parents is valid, it can stop the concerned parties from engaging in wedlock. However, no one has the authority to invalidate a marriage that has not been solemnized through the consent of the parents or the guardian.

#### **viii. Suckling in Mature Age (*Raḡā'atu'l-Kabīr*)**

It is erroneous to conclude that a mature child can be suckled and hence treated as a foster child. The misconception has arisen by generalizing a Ḥadīth of the Prophet (sws). As per the Qur'ān, a child can only be regarded as a foster child if he is suckled in infancy with a definite intention to the purpose. Suckling a child through chance happenings or through a few drops does not entitle him to fosterage rights.

#### **ix. Prohibition of Combining a Lady and her Niece in Marriage**

It is generally believed that a Ḥadīth, independent of the Qur'ān, has prohibited a Muslim man from simultaneously keeping a lady and her niece in marriage. Ghāmidī has shown that this Ḥadīth is actually based on a Qur'ānic directive. Hence, this instance does not challenge the all important contention that

a Ḥadīth cannot prohibit something independent of the Qur'ān.

#### x. Marriages of Muhammad (sws)

Most marriages of the Prophet Muhammad (sws) were conducted to help him in realizing his mission as a Prophet and a Messenger of God. He had been given special directives in this regard and as such his marriages should be viewed in the light of these directives.

#### xi. Consummation of Marriage with Minor Girls

It is erroneous to conclude on the basis of the Qur'ān (65:4) that Islam has allowed marriage and its consummation with minor girls. If the linguistic principles of the Arabic language are taken into consideration, this conclusion does not arise. The correct translation of the last part of this verse is:

And those women whose menstrual courses have not begun in spite of the fact that they have reached the age in which women normally have menses, their waiting period is three months as well. (65:4)

This translation stems from the fact that the Arabic particle used for negation in this verse is *Lamm* (لَمْ) and not *Mā* (مَا). The verse is generally translated by disregarding this subtle difference as:

And those women whose menstrual courses have not begun, their waiting period is three months as well. (65:4)

Consequently, it is generally construed that in this verse the *'iddat* (waiting period) of those divorced women (girls more so) is stated who have yet to reach the age of puberty. So the proponents of this view infer that Islam allows marriage with minor girls.

## 2. Regarding the Norms of Gender Interaction

### i. General Directives

i. It is only *Sūrah Nūr* in which these norms are mentioned. Some of the important facts that are evident from these directives are:

a. Muslim women are not required by the *Shari'ah* to cover

their faces.

b. Muslim women are not required by the *Shari'ah* to cover their heads. Covering the head, however, is a desirable Muslim tradition.

c. Muslim women should wear clothes that do not make their breasts prominent. This can be done by covering them or by any other means that serve the purpose.

d. The expression *Ghaḍḍ-i-Başr* used by the Qur'ān (24:30-1) does not mean that men and women have to stare at the floor. It means that they must guard their gazes from taking undue liberty.

e. While following the norms underlined in the *sūrah*, men and women can visit each other and sit and eat together if they want to.

## ii. Specific Directives

The directives mentioned in *Sūrah Aḥzāb* regarding gender interaction specifically pertain to the household of the Prophet (sws). It is evident from their context that they cannot be extended beyond this sphere. They were primarily given to check the subversive activities of the Hypocrites who had started a malicious campaign to scandalize the private lives of the Prophet (sws) and his wives. It is by not understanding this aspect that the following **misconceptions** have arisen:

a. The house is the centre of activities of a wife.

b. Muslim women must not speak in a polite tone with strangers.

c. Muslim women should be kept secluded except from their immediate relatives as outlined in 33:54-5

d. Muslim women must wear large cloaks (*jilbābs*) when they go out of their houses.

## 3. Regarding Divorce

### i. The Right to Divorce

Only the husbands have the right to divorce. Wives cannot divorce their husbands. They can only demand divorce from them.

### ii. The Procedure of Divorce

If husbands desire a separation from their wives, then they should do so according to the prescribed procedure mentioned in

the Qur'ān by uttering the divorce sentence once only. However, if someone who is ignorant of this procedure or owing to his own foolishness utters three divorce sentences in succession, then such a case should be decided by a court giving full allowance to his real intention.

### iii. The Reason for 'Iddat

It is evident from the Qur'ān (33:49) that the real reason for the 'Iddat is to ascertain whether a lady is pregnant or not. Consequently, if it can be determined with certainty that a lady is not pregnant she will not be required to observe this period.

### iv. Meaning of the word

The Arabic word means both the 'menstrual period' and the 'non-menstrual period of purity'. Hence, there exists a difference of opinion among authorities regarding the meaning of this word in the Qur'ān (2:228). The word according to Ghāmidī is conclusively used in this verse to connote "menstruation" because in the given context the real issue is to ascertain whether a lady is pregnant or not. It is the period of menstruation that determines this and not the period of purity.

### v. The Issue of Gifted Wealth

In no way is a husband authorized to take back the dower money from his wife in case he divorces her. He is also not authorized to take back any wealth or property gifted to her except in two specific cases mentioned in the Qur'ān (2:229; 4:19).

### vi. Ḥalālah

The concept of Ḥalālah has arisen because of not understanding a very subtle sentence of the Prophet (sws) in a Ḥadīth. If its text reported by *Bukhārī* is analyzed it is evident that a certain lady had married a person only to become legally permissible to marry her first husband. She demanded divorce from her second husband on the false grounds that her husband was sexually impotent. When the Prophet (sws) became certain of her scheme, he reprimanded her in very subtle words. He told her that she could only become permissible for the first husband after "tasting" her second husband. This of course was not a condition as has been generally construed: the implied meaning

being that if according to her, her second husband does not have the ability to copulate with her then she can only be divorced from him after he copulates with her – which of course he will never since, according to her, he is not capable of it. Thus if anything can be deduced from this Ḥadīth, it is prohibition of *Ḥalālah* and not vice versa. Hence it is absolutely prohibited and is tantamount to making fun of the law.

#### **vii. Residence and Maintenance after the third Divorce**

In case a husband exercises the option of divorcing his wife for the third time in his life, he will still have to provide residence and maintenance to her till the expiry of the *'Iddat* period.

#### **viii. Custody of Minors**

The custody of minors in case of divorce has been left to the discretion of a judge. No explicit law has been given in this regard.

### **4. Regarding Slavery**

#### **i. To Enslave or not to Enslave**

It is erroneous to believe that Islam permits its followers to keep slaves and have sexual contact with them. The notion of keeping slaves has arisen by not giving due allowance to the fact that Islam had adopted a gradual procedure in the time of the Prophet (sws) to eliminate this social evil because of its deep roots in the society.

#### **ii. The Qur'ānic Directive of Prohibition**

After a program of gradual eradication adopted by Islam in the time of the Prophet (sws), the Qur'ān (24:33) announced the final step in slave emancipation by giving them the authority to earn their freedom by showing that they would become responsible citizens of the society.

### **5. Regarding Widows**

#### **i. Reason for the Extended *'Iddat***

The *'Iddat* of a widow is forty days more than a divorced lady to make absolutely certain her state of pregnancy or other

wise. It is not because these forty days are meant to provide her with an extended period of mourning.

**ii. Provision for Widows**

A husband must make a will in favor of his wife that she be provided residence and maintenance for one year after his death. This is in accordance with the Qur'ān (2:140). It is incorrect to believe that the inheritance verses of *Sūrah Nisā* have abrogated this verse.

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2004

## II. The Social *Sharī'ah* of Islam

Man by nature likes to live in a community. The reason that the Almighty has bestowed him with this nature is that He does not create human beings in the prime of their youth. Similarly, human beings do not generally die in their youth without passing through old age. On the contrary, a human being is created as a feeble child in the womb of the mother who enters this world to be welcomed by her loving affection. He then grows being nurtured and nourished by others. At first, he drags himself and then crawls along his knees before he is able to stand on his feet. Even after this state, he needs the help of others at every step. Finally, after going through various phases of childhood and adolescence he enters the prime of his youth. This blooming period of his life also does not last more than twenty to thirty years. Then comes old age and in spite of attaining great heights in intellect in his prime, he once again has to turn to others to fulfill his needs like a frail child.

This life cycle of man entails that he live in a social set-up. From the very beginning of his life, this affinity towards a social set-up is fully found in his being. He does not need to find this tendency in his external world. When he enters this world, he brings with him all his internal urges and inner motivations and uses them to fulfill his needs wherever and whenever required.

The history of mankind shows that owing to this very aspect of human nature, Adam, the founder of the human dynasty was blessed with a wife from his own species – someone who was meant to be his companion. From these two sprang many men and women as their progeny. Gradually, a family, a tribe and finally a state came into existence. The resultant social set-up afforded man the opportunity to realize his hidden potentials and urges. While pointing out this fact, the Qur'ān says:

---

( : )

O mankind! Fear your Lord, Who created you from a single person, created, of like species his mate, and from these two scattered countless men and women [in this world], and fear Allah through whom you seek mutual help and fear breaking blood relationships. Indeed God is watching over you. (4:1)

A little deliberation shows that this verse embodies all the principles upon which the Almighty has based human society. Imām Amīn Aḥsān Iṣlāhī, while pointing out these principles writes:

Firstly, this world is not unattended; on the contrary, it has been created by the Almighty who is God of everyone. It is therefore unseemly for a person to create disorder in it and defy His authority. Everyone should remain fearful of the Almighty's grasp – the Almighty who is the Creator and Master of everyone.

Secondly, the Almighty has created man from a single soul: Adam. Consequently, mankind is the progeny of one father. No one is superior to the other. Whatever their color, cast or creed, all human beings are equal.

Thirdly, just as mankind is the progeny of one father, their mother is also one: Eve. Hence, no one is superior to the other. One father and mother have created this global family. It is evident from the verse that Eve is of the same species as Adam. This further means that women are not inferior beings. As human beings, men and women are equal in status.

Fourthly, the bases of mutual help and co-operation in a society are three driving forces: unity of God, unity of ancestors and blood relationships. It is essential that every person realize the obligation these blood relationships entail and fulfill it. It is also his responsibility to safeguard

these relationships and be on guard that no slogan should be able to destroy these blood relationships and replace it with some sentiment of the age of ignorance. If such a thing emerges in a society, it should ring an alarm [in our ears] and it is the duty of every sensitive member of the society to do his utmost to impede its progress. The words:

(And fear Allah through whom you seek mutual help and fear breaking blood relationships) at the end of the verse sound this warning. Hence, according to Islam, it is these pillars on which stands the whole edifice of family, society and state. As long as these pillars are intact, this edifice is intact. If these become weak, the edifice would be endangered and if they are razed down, the edifice too would be demolished.<sup>1</sup>

In order to firmly establish a society on these fundamentals, an everlasting bond between the spouses is made essential in the religion of the Prophets. The Almighty has informed us that to fulfill this scheme both a man and a woman are innately equipped with all the necessary urges so that they are able to become true companions of one another and live as two souls united in one body:

( : )

And among His Signs is that He created for you mates from among your species that you may obtain comfort from them, and [for this purpose], He has put love and sympathy within you; surely, in this are signs for those who reflect. (30:21)

If the whole life of a human being – from childhood to old age – is kept in consideration, sense and reason endorse that to fulfill his physical, psychological and social needs an everlasting marriage bond between the spouses is essential. Consequently, the Almighty has given a detailed social law to man through His Prophets regarding the society which is established on this basis.

1. *Tazkiyah-i-Nafs*, 1<sup>st</sup> ed., vol. 2, (Lahore: Faran Foundation, 1989), p. 142

In the following paragraphs, an attempt shall be made to explain this law enshrined in the Qur'an and Sunnah as the eternal *Shari'ah* of God.

### ***Nikāh* (Marriage)**

( - : )

Marry those among you who are single, and those who have the capability for marriage among your slaves, male or female. If they are poor, Allah will give them means out of His grace: for Allah is ample-giving, and He knows all things. Let those who find not an opportunity for marriage keep themselves chaste, until Allah gives them means out of His grace. (24:32-33)

It is asserted with great stress and clarity that in the eyes of the Almighty there is only one legitimate way to satisfy one's sexual desire: marriage (*Nikāh*). If marriage is somehow not possible then this cannot become a license for gratifying one's sexual desire without entering into the marital bond. Consequently, the society is urged to wed people who as yet have not been able to marry. Marriage is an open declaration of a contract by a man and woman to live permanently as husband and wife. It is declared in the presence of people through a responsible personality with great solemnity and gravity after he delivers a sermon to counsel and guide them. It is evident from divine scriptures that this way was adopted from the very birth of man on this earth. Consequently, the Qur'an was not required to give a new directive in this regard. As an age old Sunnah of the Prophets, Muhammad (sws) passed it on to his *Ummah* thus keeping it intact. In the above quoted verses, besides urging people to follow this practice, they are given glad tidings that even if they are poor they should marry in order to protect themselves from immoral acts: hopefully, the Almighty will bless them with resources if they resolve to follow this practice.

Imām Amīn Aḥsān Iṣlāḥī, while commenting on this verse writes:

As long as a person does not have a wife, his life is more like a nomad and many of his abilities remain shrunk and dormant. Similarly, as long as a woman is unmarried she resembles a creeper which is not able to grow and flourish owing to want of support. But once a woman has a husband and a man has a wife their abilities develop and increase, and when both of them start to strive in life together the Almighty blesses them in their struggle and their circumstances also change [for the better].<sup>2</sup>

### Relations Prohibited for Marriage

( - : )

And marry not women whom your fathers married – except what has been done in the past: it was shameful and odious – an abominable practice indeed. Prohibited to you [for marriage] are your mothers, daughters, sisters, your maternal and paternal aunts, the daughters of your brothers and sisters; your mothers who have suckled you and your sisters through fosterage, the mothers of your wives, your step-daughters raised under you born of your wives with whom you have lain – no offence if you have not lain with

2. Iṣlāḥī, Amīn Aḥsan, *Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 5, (Lahore: Faran Foundation, 1986), p. 400

their mothers, and the wives of your real sons, and two sisters in wedlock at the same time, except for what has already happened. God indeed is Oft-Forgiving, Most Merciful. Also [prohibited are] women already married, except those whom your right hands possess; this is a written obligation upon you from God. (4:22-24)

The above quoted verse enlists women with whom marriage has been prohibited. The list begins with the step mother and ends with women who are married to someone. In between these two, the prohibited women mentioned are based on the three bases of relationship: Lineage, Fosterage and Marriage.

In certain sections of the Arab *Jāhiliyyah*, there was a tradition according to which a son inherited the wife of his father and he would feel nothing wrong with inheriting her. The Qur'an refers to it as open lewdness and a shameful and abominable practice. Consequently, it prohibited this practice and declared that whatever happened in the past shall be overlooked but in future no Muslim should perpetrate such an indecent act.

Similar is the case of the woman who is married to someone. No person has the right to marry her unless she is legally divorced from her husband. It is obvious that such a practice totally negates the very reason for which the institution of family has been set up. Consequently, it has been prohibited. However, ladies of those times who were made slaves were exempted from this rule because as soon as they married anew their previous marriage stood annulled automatically. The Qur'an has referred to this exception by the words

The matter of the remaining prohibitions shall now be taken up.

#### **Relationships by Lineage**

The verse first of all mentions the seven relations prohibited because of lineage viz. mothers, daughters, sisters, paternal aunts, maternal aunts and the daughters of the brothers and sisters (nieces). These relations possess such sanctity that a person whose nature has not been perverted cannot even think of any sexual inclination towards them. There is no doubt that it is this sanctity which is the fountainhead of the pure and unadulterated emotions of affection and gentleness. On such emotions is based the foundation of a community and it is these emotions which play a

primary role in the development of family. They are the source of a civilized and cultured society. The Almighty wants the gaze of a son for his mother, of a father for his daughter, of a brother for his sister, of a nephew for both his maternal and paternal aunts, of a maternal and a paternal uncle for their niece to remain free from the slightest trace of sexual leaning. Sense and reason also bear witness that any sort of sexual proclivity between these relations is devastating for human dignity and honour and is totally against the unadulterated state of chastity and purity that distinguishes man from animals.

The directive stated in the given verses regarding these relations is very explicit. However, three aspects about this directive should remain clear:

Firstly, the words used for these relations in Arabic entail that no distinction be made between step and real relations. Consequently, both a real mother and a step mother, a real sister and a step sister, for example, would equally be the addressees of this directive. Similar is the case for the real or step sister of a father and a mother. Likewise is the case of the daughters of brothers and sisters. Whether they are real or step, their daughters will be regarded as addressees of this directive.

Secondly, the word "mother" also connotes the "the mother's mother" and the word "father" connotes the "father's father". Likewise the word "daughter" also implies the "grand daughter". No discrimination can be made between them regarding this directive.

Thirdly, the sister of the maternal grandfather and the sister of the paternal grandmother are like paternal and maternal aunts respectively. Hence, they shall also be included on equal basis in the application of the directive.

#### **Relationships by Fosterage**

Foster relationships have a similar sanctity as the real ones. While commenting on this aspect Imām Amīn Aḥsān Iṣlāḥī, writes:

In our society, people do not consider foster relationships as strong as what the Arabs considered them to be. This is because of the difference in customs between their society and ours. The truth of the matter is that this relationship has deep resemblance with the maternal relationship. A mother

who suckles and brings up a child is his half-mother if not a full one. Moreover, how is it possible that a child not be influenced by someone whose milk has nourished and sustained him. An absence of such influence would mean that his nature has been perverted and it was necessary for a religion like Islam which conforms to human nature to reform such perversion.<sup>3</sup>

While explaining how exactly a foster relationship is formed, Imām Amīn Aḥsān Iṣlāḥī writes:

Such a relationship is not formed by some chance episode of suckling a child. The words of the Qur'ān stated in this verse clearly testify that this relationship is established only with the full intent of those involved. In other words, an accidental happening does not establish this relationship; it only comes into being after it is planned and is well thought of. Consequently, in the first place, the words used by the Qur'ān are (your mothers who have suckled you). Secondly, the word (*Radā'ah*) is used viz: . People conversant with the subtleties of the Arabic language know that (*Irqā'*) is from the *If'āl* category which in general has an element of emphasis in it. Moreover, the word (*Radā'ah*) is absolutely inappropriate to be used when a lady suckles a crying child to soothe him.<sup>4</sup>

The Prophet (sws) has also explained the above purport of the Qur'ān in the following words:

'*Ā'ishah* (rta) narrates from the Prophet (sws): If one or two drops are drunk by chance, then this does not prohibit a relationship.<sup>5</sup>

'*Ā'ishah* (rta) narrates: Once when the Prophet (sws) came over to my house, a person was sitting there. He disliked this situation and I could see a feeling of disgust on his face. I said:

3. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 2, (Lahore: Faran Foundation, 1986), p. 275

4. *Ibid*

5. *Muslim*, No: 2628



(your mothers who have suckled you and your sisters through fosterage). As stated, together with foster mothers, foster sisters are also regarded as relations prohibited for marriage. Had the directive ended with foster mothers, nothing further could have been understood from it; however, if the relationship of fosterage with a mother makes her daughter a foster sister, then it is but logical to regard other relations of the foster mother to be also included in this directive. If being suckled through the same mother can make someone a foster sister, why can't the sister of the foster mother be regarded as the maternal aunt, her husband as the father, the sister of her husband as the paternal aunt, her daughter's daughter and her son's daughter as nieces. Hence, it is obvious that all these relations are also prohibited in marriage. This indeed is the purport of the Book of God and the words testify to it. It is evident to any person of knowledge who deliberates on these words.

The Prophet (sws) is reported to have said:

( )

Every relationship which is prohibited [for marriage] owing to lineage is also prohibited owing to fosterage.  
(*Mu'attā*, No: 1102)

### Relationships by Marriage

After a mention of relationships prohibited for marriage on the basis of lineage and fosterage, relationships which are prohibited for marriage on the basis of marriage itself are mentioned in the verse quoted earlier. Such is the obviousness of the sanctity of these relationships in human nature that no reasoning is required. Consequently, the daughter in law is prohibited for the father, and the mother in law, the wife's daughter<sup>7</sup>, the wife's sister and both nieces<sup>8</sup> of the wife are all prohibited for the husband. However, since these relationships are formed through the husband and the wife, a degree of weakness is found in them. Owing to this reason, the Qur'ān has imposed the following three conditions on the prohibition of these relationships:

Firstly, only the daughter of that wife is prohibited with whom

7. This implies the daughter from her previous marriage

8. ie, both her sister's daughter and her brother's daughter.

one has had conjugal contact.

Secondly, only the daughter-in-law of a real son is prohibited.

Thirdly, the sister of a wife and her two nieces are only prohibited if the wife is in wedlock with the husband.

The first of the above mentioned conditions is referred to in the Qur'ān in these words:

(your step-daughters raised under you born of your wives with whom you have lain – no offence if you have not lain with their mothers). Here, together with the condition of conjugal contact, it is also said that step daughters who are raised under the guardianship of the husbands. It is evident that this last qualification is not a condition. While explaining this aspect, Imām Amīn Aḥsān Iṣlāḥī writes:

In the Arabic language, not every attribute is meant to impose a condition such that if the attribute does not exist, the directive would stand null and void. Intrinsic evidence and the context of the verse shows which attributes signify a condition and which merely portray a situation. In this particular instance, it is not only the context and intrinsic evidence but explicit words which testify that the daughter of a wife from the previous husband is only prohibited if the husband has had conjugal contact with the wife. It is thus evident that the real reason of prohibition for such a daughter is conjugal contact with her mother. If this is the case, then the husband cannot marry such a daughter whether she has been raised under his guardianship or not. It must be kept in consideration that in lofty classical Arabic especially that of the Qur'ān a negation after a positive assertion or vice versa is never without purpose: they are indeed very meaningful. Mostly, such a style is meant to remove ambiguity from a statement. Hence, the view of some people that marriage with only that daughter<sup>9</sup> of a wife [with whom conjugal contact is made] is forbidden who is raised by the husband is incorrect.<sup>10</sup>

9. This implies the daughter from her previous marriage

10. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 2, (Lahore: Faran Foundation, 1986), p. 276

The second condition stated in the verse is mentioned by the words (and the wives of your real sons). The reason for this condition of "real sons" is that in the time of the Prophet (sww) people would consider marriage with the wives of the adopted sons as prohibited. By imposing this condition, the Qur'an has elucidated the fact that mere adoption does not give the child the status of a begotten child and nor does this adoption entail any prohibition regarding marriage. The words of the Qur'an are:

( - : )

And He has not made your adopted sons your [real] sons. Such is your speech by your mouths and Allah says the truth, and only He shows the right way. Call them after [the names of] their fathers: that is more just in the sight of Allah. But if you know not their fathers, then they are your brothers in faith and your friends. (33:4-5)

The third condition is stated in the words: (and two sisters in wedlock at the same time). A little deliberation shows that this expression is of the same style as the one which has been discussed before under foster relationships. Although the Qur'an has only stated the prohibition of two sisters in simultaneous wedlock, it is evident that if combining two sisters in wedlock is a lewd thing as far as the relationship of marriage is concerned, then combining a lady with her brother's daughter in wedlock or with her sister's daughter in wedlock is like combining a mother and a daughter in wedlock. Hence, though the words used are: , the purport of the Qur'an no doubt is:

(and two sisters in wedlock at the same time and a lady with her brother's daughter at the same time and a lady with her sister's daughter at the same time). However, all these words are suppressed after because what is mentioned points towards this suppression as obviously understood. So obvious are the words of this suppression that no student of the Qur'an can err in

understanding them.

The Prophet (sws), consequently, is reported to have said:

( )

Neither can a lady and her paternal aunt nor can a lady and her maternal aunt can be combined in wedlock. (*Mua'ḥḥā*, No: 977)

### Requisites of *Nikāḥ* (Marriage)

( : )

And all other women except for those [specified] are lawful to you such that you seek [them through marriage] through your wealth, desiring chastity, not lust. [Consequently, if you have not paid their dowers as yet], pay them their dowers as [your] obligation for the benefit you have derived from them. If after a dower is prescribed, you agree mutually on something there is no blame on you and Allah is All- Knowing All-Wise. (4:24)

The requisites of *Nikāḥ* which this verse outlines are:

First, a *Nikāḥ* should be conducted through wealth – which here means dower. The Qur'ān emphasizes that the Almighty has ordained this payment as an essential pre-requisite of marriage. Consequently, it has directed Muslims to immediately complete this obligation if they have not yet done so. However, once a dower has been ascertained with the realization that it is an obligation of a Muslim husband, he and his wife can mutually change its amount as well as the time of its payment. Everyone must nevertheless know that the Originator of this law is All-Knowing and All-Wise. All His directives are based on flawless knowledge and deep wisdom. Hence neither should anyone attempt to disobey it nor dare change it in any way.

It needs to be appreciated that the dower has special significance: when a man and a woman pledge to marry, it is the

man who takes the financial responsibility of the woman he is bringing home. The dower is nothing but a symbolic expression of this responsibility. The Qur'ān uses the words (*Ṣadaqah*) and (*Ajar*) for it. Both words imply money which is given to a wife for her needs in return for her companionship. Like *Nikāh* and the *Nikāh* sermon, dower payment is an ancient practice that was in vogue in Arabia before the advent of the Prophet Muhammad (sws). It is mentioned in the Bible in similar terms.<sup>11</sup>

While commenting upon the importance of this age-old custom Imām Amīn Aḥsān Iṣlāḥī writes:

Matters in which payment of money is a pre-condition and the payment itself is not a favor but a duty such that it is understood even though it may not be mentioned and its payment is an obligation dependent on the social status of the lady – then such matters are serious ones both as regards the *Sharī'ah* and the norms of society. No sensible person will become party to such a contract unless after deep consideration, he prepares himself to fulfill its responsibilities – [it is] for these benefits that the payment of the dower has been made essential. Those who have overlooked these benefits deem that the payment of the dower money has relegated the status of a woman to a salable commodity. This of course is the result of not properly perceiving the underlying reason for the payment of the dower. The reason for this payment is to sound a warning to every person seeking to enter the sacred bond of marriage that he must think over the extent of responsibility this step will entail. Marital matters must be taken seriously. Even words said in a light-hearted manner in such matters have a solemn status. It is like walking on a sharp-edged sword.<sup>12</sup>

The *Sharī'ah* has not fixed any amount for the dower. It has been left to the norms and traditions of a society. Consequently, it can be fixed according to the social status of the woman and the financial status of the man who is to become her husband.

11. Genesis, 34:12, Exodus, 22:17

12. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 2, (Lahore: Faran Foundation, 1986), p. 278

The second requisite of marriage stated in the verse is chastity. No adulterer has the right to marry a chaste woman and no adulteress has the right to marry a chaste man, except if the matter has not gone to court and the two purify themselves of this sin by sincere repentance. The words point to this pre-requisite. At another place, the Qur'an says:

( : )

The man guilty of fornication may only marry a woman similarly guilty or an idolatress and the woman guilty of fornication may only marry such a man or an idolater. The believers are forbidden such marriages.<sup>13</sup> (24:3)

It is obvious from this verse and also evident from divine scriptures that fornication and polytheism are exactly similar to one another. Just as it cannot be acceptable in any way that a husband or wife commit marital unfaithfulness, similarly, it is totally unacceptable for a Muslim that someone else besides the Almighty be worshipped in his house. In fact, this is more detestable a sin than sleeping with some other woman. This similarity between fornication and polytheism could have been deduced; however, the following Qur'anic verse explicitly states it:

( : )

Wed not idolatrous women, unless they embrace faith. And [remember] a believing slave-girl is better than an idolatrous woman, although you may fancy her. Nor shall you wed your women to the Idolaters, unless they embrace faith. And [remember] a believing slave is better than an idolater, although you may fancy him.<sup>14</sup> (2:221)

13. Certain *Ahādīth* also clearly mention this aspect. See for example: *Abū Dā'ūd*, Nos: 2051-2

14. In 60:10, Muslims have been prohibited to marry the disbelievers

The Jews and Christians of the Prophet's times were also deeply incriminated with the filth of polytheism. However, since they were basically monotheists, the Almighty was lenient enough to Muslims to allow marriage with their chaste women:

( : )

[Lawful to you in marriage] are also chaste women from among the People of the Book before you – when you give them their due dowers and desire chastity not lewdness nor secret paramours. (5:5)

It is evident from the context of the above verse that this permission was granted when no confusion remained regarding *Tawhīd* (monotheism) and it prevailed over the polytheistic Arab society in every manner. The verse quoted above begins with the word (this day). This word shows that the permission given was also very much dependent on the circumstances of those times: It was expected that if Muslim men would marry among the People of the Book these women would be positively influenced by Islam. In this way not only would there be no clash with polytheism, but also there was a great chance that most of them would accept Islam.

Consequently, Muslims today must necessarily take this aspect into consideration.

Similarly, it should be kept in mind that it is essential for the sanctity of the institution of family – the very institution marriage creates – that marriage takes place with the consent and presence of the elders of the family. There is no doubt about the fact that the decision of marriage is primarily taken by the concerned man and woman. However, if the marriage does not take place through the consent of the guardians or the elders of a family, then there must be a solid reason for this. In the absence of such a reason, a state has the authority to stop such a marriage

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(*Kuffār*) because of their polytheistic practices. It is evident from the verse that the *Kuffār* it mentions signify the Idolaters of Arabia of the Prophet's times.

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from taking place.<sup>15</sup> Narratives such as (No marriage should take place without the [permission of] the guardian)<sup>16</sup> and other similar ones actually allude to this aspect. Since the rebellion of a lady in this matter can cause great disruption in a family, the Prophet (sws) made it clear upon the guardians through both his words and the measures he took that they must not take any decision in this regard without her consent. If the lady wants, their decision can be revoked.

It is narrated by *Abū Hurayrah* (rta) that the Prophet (sws) is reported to have said: “A widow must not be married off without her consent and the consent of a virgin is [also] necessary”. People inquired: “How should her consent be obtained?”. The Prophet answered: “If she stays quiet it means that she agrees to it”.<sup>17</sup>

*Ibn ‘Abbās* narrates from the Prophet (sws): “A widow can take her decision herself and permission must be sought from a virgin”.<sup>18</sup>

*Binti Khudhām* says that when she became a widow, her father solemnized her marriage. She did not like the decision. So she came over to the Prophet (sws) and he gave her the permission to revoke her marriage.<sup>19</sup>

## Rights and Obligations of the Spouses

### I

( : )

Men are the guardians of women, because God has given the one more preference over the other, and because they

15. This does not mean that if marriage takes place without the consent of the parents, then it shall be declared illegal.

16. *Abū Dā’ūd*, No:2085

17. *Bukhārī*, No: 4741

18. *Muslim*, No: 2545

19. *Bukhārī*, No: 4743

support them. Consequently, pious women are obedient [to their husbands] and keep their secrets for Allah also keeps secrets. And as for those from whom you fear rebellion, admonish them [first] and [next] refuse to share their beds and [even then if they do not listen] punish them. Then if they obey you, take no further action against them. Indeed, Allah is Exalted and Mighty. (4:34)

In the preceding verses, the Almighty has made it clear that the real sphere in which one should strive in outdoing others is not the sphere of inborn abilities and characteristics because in this sphere some have been ordained to hold preference over others. The Almighty has created some people superior to others as regards their mental, physical, economic and social status. Similar is the case between a man and a woman. They have been created as counterparts such that one is by nature the active member and the other the passive. While the former trait needs domination, vigor and force the latter needs gentleness, subtlety and acquiescence. Viewed thus, each possesses relative superiority to the other. These are inborn characteristics and any effort to surpass one another in this area would be tantamount to waging war against nature. This would of course only leave them to mourn their own misfortune.

The Almighty has pointed out that in contrast to this sphere, there is another sphere in which people should strive to outdo one another. This is the sphere of earning reward for oneself through good deeds, high character and virtue. The Qur'an at various places has referred to this sphere by the comprehensive words "faith" and "righteous deeds". There is no restriction on anyone in striving to outdo others in this sphere; in fact, trying to surpass others in this sphere is as desired as it is condemnable in the sphere of innate abilities. Both a man and a woman will earn great reward if they strive and exert themselves in this area. It is open for every person whether a bondsman or a free man, a person of high social status or low, good-looking or ugly, blind or blessed with the faculty of sight. If a person does want to become superior to others, it is this sphere that he should select for all his efforts and endeavors. Wasting one's effort in the wrong sphere only brings into existence clashes and disputes which are of no avail. Consequently, if he really wants to test his

mettle and expend his energies, he must select the sphere of piety and virtue. The Qur'ān says:

( : )

And in no way covet those things in which God has bestowed His favors on some of you than on others: to men is allotted what they earn, and to women what they earn. And ask God of His bounty. For God has full knowledge of all things. (4:32)

This verse pinpoints the above stated premise as the guiding principle in the organization of a family set-up. A family is like a small state. Just as every state requires a ruler for its establishment and survival, this small state also requires someone to take charge of its helm. Either the husband could have been bestowed with this responsibility or the wife. The Qur'ān informs us that the husband has been entrusted with this responsibility. The expression has been used by the Qur'ān to convey this purport. In Arabic, when the preposition is used after the verb , the meanings of “protection” and “financial dependency” are incorporated in the verb. A person who is in charge is actually the protector and bread-winner of the members that are entrusted to him. The Qur'ān has given two reasons for this choice. While explaining these reasons, Imām Amīn Aḥsān Iṣlāḥī writes:

First, men have been granted superiority over women. There are certain innate abilities and traits in men which are more pronounced in him and because of which he has been made the head of a family unit. For example, a man is much more gifted innately to protect and to defend himself and to earn livelihood and to take the initiative than a woman. It should be appreciated here that the superiority men have over women is not absolute: it is only in certain spheres – spheres which entitle men to become head of the family unit. There are certain other spheres in which women are more superior to men but

they do not entitle them to become the head of family. For example, a man does not have the extent of ability a woman has to take care of household affairs and to look after children. That is why the superiority which is mentioned in the verse is alluded to in an implicit manner such that it can be concluded that both men and women are superior to one another in different spheres<sup>20</sup>; however, a man is superior a woman as far as becoming the head of family is concerned.

Second, a husband bears financial responsibility for the wife. It is his obligation to earn and fulfill the needs of his wife and children. Obviously, this responsibility has not been assumed as a coincidence or as a favor, but because of the fact that only he is fully capable of doing so. It is therefore befitting that he take this responsibility.<sup>21</sup>

After declaring that the husband should head a family, the Qur'an goes on to point out certain things to the wife for the smooth functioning of the institution of family. They are:

1. Wives should be obedient and adaptable to their husbands.
2. They should keep the secrets of their husbands and protect their honor and integrity.

The first of these things does not require elaboration. Without obedience and adjustment, no system can work whether it be a state or any other institution. This is the natural requirement of any system. In the absence of these attitudes, no system can function and will ultimately disintegrate by giving way to indiscipline and anarchy.

The expression  has been adopted for the second of these things. Generally, this expression has been taken to imply "guarding in absentia". This writer has taken it to imply "keeping of secrets", as this in his opinion is the correct connotation of the expression. While explaining the meaning of this expression Imam Amin Ahsan Islahi writes:

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20. Precisely for this reason, a mother occupies a higher status than the father.

21. *Ishlahi, Amin Ahsan, Tadabbur-i-Qur'an*, 2<sup>nd</sup> ed., vol. 2, (Lahore: Faran Foundation, 1986), p. 278

One reason for adopting this meaning is that the word is very commonly used to imply “secrets”. Second, here the nature of the expression is such that it cannot be taken to mean “guarding in absentia”. Third, guarding of secrets is one of the most important issues between a husband and wife. They are the natural protectors of one another in this regard. The position of the wife is more important in this regard. She has full knowledge of her husband’s weaknesses and strengths. She is well aware of what ensues in the house as well has full knowledge of the extent and nature of her husband’s wealth and property. His honor and integrity rest with her. If she decides to reveal all his secrets, she can totally disgrace him. For this reason, the Qur’ān has specially mentioned this attribute of a wife. The addition of the words is very meaningful and refers to the exalted status of this attribute: it is in fact a manifestation of a divine attribute in man. The Almighty also keeps secrets of His creatures. If He starts revealing their secrets every one would be totally humiliated.<sup>22</sup>

Thus the above verse outlines the attitude of pious wives. As a natural outcome of this directive, wives who adopt a rebellious attitude or reveal household secrets are not pious in the eyes of the Almighty.

The question arises whether a husband can punish a wife who becomes rebellious and persists to be so. The Qur’ān has replied to this question in the affirmative. The verse refers to the rebellion of a wife by the word . Literally, it means “to defy authority”; however, it is predominantly used for the utter defiance of authority a wife shows to the husband. Obviously, the word is not used for a blemish or for an instance of indifference by the wife. Similarly, it does not imply that a wife cannot express her opinion, taste or the various traits of her personality. It implies the behavior which a wife adopts when she seems inclined to challenge the authority of the husband and disrupt the discipline of the house. If the situation reaches this extent, the Almighty has given the husband three options:

First, he should urge his wife to mend her ways. The word

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22. Ibid., p. 292

used by the Qur'ān is which means that she can be admonished and also scolded to some extent in this regard.

Second, intimate marital relations with her should be suspended in order to communicate to her that if she does not mend her ways she might have to face severe repercussions.

Third, she should be punished physically. This punishment should obviously be similar to the one a teacher gives to a student or what a father gives to his children. The Prophet (sws) has used the words (mild) for such punishment (see *Abū Dā'ūd*, No: 1878).

It is evident from the style of the verse that a gradual sequence should be adopted in exercising these options. In other words, the second step after the first and the third after the second should only be adopted if the husband is convinced that there is no other option but to go on to the next step. These measures point to the utmost limit to which a husband can go regarding admonishing his wife. The Qur'ān says that if the wife mends her ways through these measures a husband should not look for revenge and vengeance. He is warned thus:

(Indeed, God is Exalted and Mighty). The implication is that if the Lord of the heavens and the earth forgoes the arrogance of His creatures and forgives them if they repent, His creatures should also not misuse their authority over others.

## II

( : )

O you who believe! You are forbidden to inherit women against their will. Nor should you treat them with harshness that you may take away part of the dower you have given them – except where they have been guilty of open lewdness; on the contrary, live with them according to the norms [of the society]. If you dislike them, it may be that you dislike a thing and Allah brings about through it a great deal of good. (4:19)

These verses mention the rights of women and instruct the society regarding the correct behavior to be adopted with them.

The first thing pointed out is that women are not animals which a person may inherit and then use them the way he likes. They too are human beings who have an independent personality. They are given free will which they can exercise in the limits set forth by the Almighty. The background of giving this directive is that in certain sections of pre-Islamic Arabia, the wives of a person were also transferred to his heirs like his wealth and animals would be, and if he had sons, they would even establish sexual relations with these step mothers without any hesitation. The Qur'an sought to put an end to this ignominious custom and stressed that women are fully free to make their decisions. Nothing can be imposed upon them without their consent.

The second thing stressed here is that even if a believer dislikes his wife he should not subject her to harsh treatment in order to recover any wealth or property that he has gifted her. Such an attitude can only be accepted if the wife is guilty of open sexual transgression. If the wife is not guilty of such behavior and is living as a faithful and obedient lady leading a virtuous life, it is totally against justice and decency for the husband to harass her merely because he dislikes her. No doubt if a wife shows moral misconduct then this is a detestable thing, but no husband is allowed to deprive her of a decent living because he does not like her looks or because her temperament is different from his.

The third thing emphasized here is that a husband who does not like his wife should still deal with her in accordance with the norms of justice and equity, graciousness and decency – to which his own nature testifies. The words used in the verse to convey this meaning are . The word implies good conventions and traditions of a society. In other words, the Qur'an instructs a husband to adopt a befitting attitude with his wife in accordance with the good traditions of the society whether he likes her or not. He is told that if he treats her nicely in spite of his aversion to her, he might win the blessings of the Almighty both in this world and in the Hereafter.

While explaining the words used to convey the above mentioned meaning, Imām Amīn Aḥṣān Iṣlāḥī writes:

Although the word used here is which in Arabic implies hope and expectation, those who are aware of the delicacies of the language know that when used on occasions such as this, it implies a promise from the Almighty. This reference points to the fact that those who give priority to higher human traits and values instead of appearance are promised great rewards from the Almighty for this sacrifice. Those who have actually embarked upon this track have borne witness to the veracity of this fact, and none other than God is the most truthful.<sup>23</sup>

It is obvious from the above discussion that if a husband is required to behave decently even if he dislikes the wife, he is all the more required to be decent when there is no cause for this dislike. A wrong attitude in this regard would earn great displeasure of the Almighty.

In the sermon of the last *Hajj*, the Prophet (sws) is reported to have said:

( : )

Indeed you have rights over women and they also have rights over you. You have the right that they neither permit into your homes nor sleep with anyone you dislike. Listen! their right upon you is that you feed and clothe them in the best way [you are able to]. (*Ibn Mājah*, No: 1841)

### **Polygamy**

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23. Ibid., p. 292

( - : )

And if you fear that you shall not be able to deal justly with the orphans, marry [their mothers] that are lawful to you, two two, three three, four four; but if you fear that you shall not be able to deal justly [with them], then only one, or those which your right hands possess. That will be more suitable to prevent you from doing injustice. And give these women their dowers also the way dowers are given; but if they, of their own good pleasure, remit any part of it to you, take it and consume it gladly. (4:3-4)

The addressees of the above quoted verses are the guardians of the orphans. They are directed to marry the mothers of the orphans that are lawful to them if they fear that they would not be able to do justice to the onerous responsibility of protecting the rights of the orphans and taking care of their wealth and property. In other words, if they decide that if the mothers of the orphans share with them this responsibility they would be able to discharge it in a better way, they should go ahead and marry them. The reason is that the extent to which mothers are attached to their orphaned children, no other person can ever be.

It is evident from this explanation that the above quoted verses were not primarily revealed to state any directive regarding polygamy. They were actually revealed to make use of the pre-existing practice of polygamy in Arabia for the welfare of the orphans. At other places, the Qur'ān has clearly alluded to the fact that as per the norms of human nature, the real benefits and advantages of the institution of family manifest themselves in a monogamous family. Consequently, it is stated in various verses that the father of mankind: Adam (rta) was blessed with one wife. It is basically social, psychological, political and cultural needs from which arose the need for polygamy. Such needs existed in various societies to different extents. To cater for these very needs the Almighty never forbade this practice in the *Sharī'ah* He gave in various periods of time. Here, in these verses, Muslims are directed to make use of this practice to solve a social problem that had arisen in the time of the Prophet (sws). However, it has been made conditional upon two things:

First, even for as noble an objective as the welfare of orphans,

a person cannot marry more than four wives.<sup>24</sup>

Second, if a person is not able to deal justly with all four wives he should not marry more than the number he can be just with. Justice is a value that has to be maintained at all costs and cannot be sacrificed even for such a noble cause.

What are the limits of this justice? If this means equality in a person's inner inclination and his outer behavior, then this is not possible for any person. If a person while being married to a wife he greatly loves marries a widow for the welfare of the orphans, it is impossible for him to show equal love and behavior for both these wives. Consequently, this very question had arisen in the period of the revelation of the Qur'an. So in 4:127-130 an answer was given to this question.

In these verses, it is first explained that whether marriage has taken place to protect the rights of the orphans or for some other purpose, payment of dower and discharging of justice are the rights of a woman and the former must be given with the willingness of the heart, as is also pointed out in 4:3. Women are then counseled that if they fear that husbands may show indifference to them or even think of parting ways with them because of their insistence to be treated equally, it is alright if a husband and wife settle for a compromise. The Qur'an says:

( : )

And if [any of these] women fears cruelty or desertion on her husband's part, there is no blame on the two of them if they arrange an amicable settlement between themselves and [they should consider that] such a settlement is best. And, [in reality], man is greedy by nature. But if you do good and practice self-restraint [you should know that] Allah is well-acquainted with all that you do. (4:128)

While explaining the above quoted verse, Imām Amīn Aḥṣān

24. It is narrated that *Qays Ibn Hārith* had eight wives. Once he accepted Islam, the Prophet (sws) owing to this very restriction asked him to divorce four of them. (For details see: *Abū Dā'ūd*, No: 2241)

Işlāhī writes:

This means that a wife may show lenience to her husband in her demand for justice as well as payment of dower and maintenance to her in order to dispense with the imminent fear of separation. The verse goes on to say that in settlements rest the welfare of all because it is in the interest of both husband and wife that this relationship once established should continue forever, even if a lot of sacrifice has to be made to keep it intact. Continuing with words of counsel, the verse says that greed is an evil found in human beings that affects mutual relationships; the remedy for this malady is that either both should get ready to make some sacrifice or if one of them is ill-enough by not be willing to do so, the other should take the initiative. So if the wife has to make some sacrifice to keep the family unit intact, it is better that she does so. In the end, the words “But if you do good and practice self-restraint” of the verse urge the husband to adopt the way of sacrifice and selflessness and it is only befitting that he show magnanimity and piety in this regard. He should live up to his traditions of grit and character and instead of being a “receiver” from the woman, he should let her be the “receiver”. The Almighty has knowledge of every deed a person does and He will greatly reward pious deeds.<sup>25</sup>

The next verses delineate the bounds of justice in the following words:

( - : )

And even if it is your ardent desire, you will never be able to be totally just between women; so it is enough if you do not completely incline yourself to a woman altogether, so as to leave the other aside. And if you come to a friendly

25. *Işlāhī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 2, (Lahore: Faran Foundation, 1986), p. 399

understanding, and fear Allah; Allah is Oft-Forgiving, Most Merciful. But if they disagree and [eventually] must part, Allah will provide abundance for each from His bounty. He is Bountiful and Wise. (4:129-130)

It is evident from the above quoted verses that the requirement of justice between wives does not mean justice between them regarding the husband's inner inclination or external behavior. It is humanly impossible to be just in this matter because one has no power over one's heart in such affairs. Therefore, in this regard the Qur'an requires of a husband to not completely lean towards one of the wives and show indifference to the other, as if she had no husband. Consequently, he is asked to show balance in his behavior towards them and in discharging their rights. In case of any fault or blemish in this matter, he should at once try to reform the state of affairs by making amends and should keep fearing the Almighty. If in spite of the effort some thing remains amiss, hopefully the Almighty will have mercy on him: Allah's mercy is all-embracing.

The last part of the verse stresses that one should try everything to save the family from dismemberment. This is what Allah wants. However, if owing to compelling circumstances, separation does take place, one should hope for the best from the Almighty. It is He who provides sustenance to His creatures and assists them in hardships. He would fully help them and fulfill their needs through His grace. Imām Amīn Aḥsān Iṣlāḥī writes:

The implication being that efforts that reflect selflessness and sacrifice are required from both the husband and wife in order to keep this relationship intact; however, this restoration must be done with honor and integrity: just as it is not permissible for either the husband or wife to show vanity in this regard, it is also not permissible to show accommodation beyond a certain point. Although the words used are general, it is evident from the context that the wife is encouraged to adjust and adapt to the situation as much as is possible and also show selflessness to achieve this end. However, she should rest assured that if in spite of her efforts the family does not remain intact, the Almighty is the one who provides and sustains all. He will

completely fulfill her needs from His treasures.<sup>26</sup>

Here, it should be kept in mind that the Prophet (sws) was exempted from the above mentioned restrictions so that he could discharge certain responsibilities that were entrusted to him in his capacity as the final messenger of God. The Prophet (sws) had wedded together his paternal cousin *Zaynab* (rta) and his liberated slave and adopted son *Zayd* (rta) in order to raise the status of slaves in the society. However, when this marriage could no longer be pulled along, the Almighty bade the Prophet (sws) to marry her to comfort and solace her and to put an end to the evil social custom according to which a person could not marry the wife of his adopted son. At that time, the Prophet (sws) already had four wives. The Prophet himself thought that perhaps marrying *Zaynab* (rta) was the only way out because of what ensued between her and *Zayd* (rta), but he never expressed these thoughts. The Almighty revealed these inner thoughts and told him that the messengers of Allah do not care about the reaction of people while discharging their responsibilities. Consequently, the Prophet's marriage with *Zaynab* (rta) was proclaimed by the Almighty Himself in the Qur'an:

( : )

And remember [O Prophet!] when you were repeatedly saying to one who had received the favor of Allah and your favor: "Retain your wife, [in wedlock] and fear Allah". And you were hiding in your heart that which Allah was about to make manifest: you were fearing the people, but it is more fitting that you should fear Allah. Then when *Zayd* broke his relationship with her, We joined her in marriage to you in order that in future there may be no difficulty on the believers in the matter of marriage with the wives of their adopted sons when the latter have dissolved their

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26. Ibid., p. 400

relationship [of marriage] with them. And this command of Allah had to be fulfilled. (33:37)

Right after this proclamation, the Almighty revealed detailed directives specifically for the Prophet (sws) regarding marriage and divorce. In these directives, the above quoted conditions for polygamy were repealed but certain other restrictions were imposed on him, which were not imposed on other Muslims:

( - : )

O Prophet! We have made lawful to you the wives whom you have paid their dowers and free women whom [you have gained in a military campaign] and the daughters of your paternal uncles and aunts and the daughters of your maternal uncles and aunts who migrated [from *Makkah*] with you and any believing woman who gifts her soul to the Prophet on the condition that the Prophet wishes to marry her. This directive is specifically for you alone and not for the believers. We very well know what We have imposed on them as obligations regarding their wives and slave girls – [a special directive for you] so that that there be no difficulty for you [in discharging your duties] and [and in case of any blemish], Allah is Forgiving and Merciful. You have the authority to keep any of them away from you and keep any of them near you and it is

lawful for you to bring any of them near you whom you have kept away. There is no blame on you in this regard. This [explanation] is more proper so that they be contented and not be sorrowful – that they may feel satisfied with whatever you give them. And Allah knows what is in your hearts and Allah is All-Knowing and Most Forbearing. All other women besides these are not lawful for you nor can you change them for other wives, even though their beauty attracts you. Slave-girls, however [are still] allowed to you. And [in reality] Allah does watch over all things. (33:50-52)

The statutes on which this group of directives is based are:

Firstly, after contracting marriage with *Zaynab* (rta), the Prophet (sws) could marry further for the following objectives:

- i. To honor free women who were caught as captives in some military campaign.
- ii. To show kindheartedness to women who wanted to marry him just for the sake of associating themselves to him, and for this they were ready to gift themselves to him.
- iii. To console and sympathize with his maternal or paternal cousin sisters who had migrated with him from *Makkah* and left their houses and relatives merely to support and back him.

Second, since these marriages of the Prophet (sws) were to be contracted only to fulfill certain religious obligations, he was not required to deal equally between the wives.

Third, except for the women specified, he was prohibited to marry any other lady<sup>27</sup>; he could also not divorce any of his wives nor bring a new one in her place however much he liked her.

Consequently, the Prophet (sws) married *Jawayriyyah* (rta) for the first objective outlined above, *Maymūnah* (rta) for the second and *Ummi Ḥabībah* (rta) for the third.

It is also pointed out in these verses that the wives of the Prophet (sws) are the mothers of the believers; consequently, marriage is eternally prohibited with them. No Muslim should

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27. Consequently, because of these restrictions, the Prophet (sws) could not marry *Māriyah* (rta) and she remained in his house as a slave lady.

even think of marrying them after the Prophet's death:

( : )

The Prophet is closer to the believers than their own selves, and his wives are their mothers. (33:6)

( : )

Nor is it right for you that you should marry his widows after him at any time. Truly such a thing is abominable in Allah's sight. (33:53)

It is evident from this discussion that these marriage directives were given to Muhammad (sws) as a religious obligation in his capacity as Prophet and Messenger of God. He followed these directives and there was no element of personal desire in these marriages. Consequently, the need arose to make these directives an exception to the general ones given to the Muslims in this regard.

### **Etiquette of Sexual Intimacy**

( - : )

And they ask you about menstruation. Tell them: It is a kind of impurity. So keep away from women during their menstrual periods and do not approach them until they are in a state of purity. Then when they are clean after having bathed, go to them from where God has enjoined you. Indeed, God loves those who constantly repent and keep themselves clean. These women of yours are your cultivated land; go, then, into your lands in any manner you please [and through this] plan for the future<sup>28</sup> [of

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28. The implication being raising children that become an asset for their parents in this world and in the Hereafter. The reason for

both this and the next world] and remain fearful to God. Bear in mind that you shall meet Him [one day]. And [O Prophet!] Give good tidings [of success and salvation] to the believers [on that Day]. (2:222-223)

Sexual relations between a man and a woman stem from their instincts and they do not need any external guidance in this matter. However, can a husband and wife have sexual intercourse when the wife is passing through her menstrual or puerperal cycle? It is evident that the answer to this question should be in the negative because the very objective of religion is *Tazkiyah* (purification). Consequently, all divine religions prohibit sexual relations during this period. Under the influence of the religion of Abraham (sws), the Arabs of pre-Qur'anic times also considered this relationship to be prohibited. Their poetry mentions this relationship covering a number of aspects. There was no difference of opinion in this matter. However, there were lots of extremes regarding the limits of physical interaction during the time a lady was passing through her menstrual cycle. When people started asking about these limits, the Qur'an answered the question in the above quoted verses of *Sūrah Baqarah*. While explaining these verses, Imām Anīn Aḥsan Iṣlāḥī writes:

The extent to which a husband has been stopped from going near his wife in this period is evident from the Qur'anic words mentioned subsequently

(and do not approach them until they are in a state of purity; then when they are clean after having bathed, go to them from where God has enjoined you). Only sexual intercourse is prohibited with the wife during this period. It should certainly not be the case that a woman be considered untouchable in this period, as was the case in certain other religions. Some *Aḥādīth* also elucidate this fact.<sup>29</sup>

It is narrated about 'Ā'ishah (rta) that during her menstrual

this directive is to create awareness among parents of the great responsibility of a new child so that they may plan properly.

29. *Iṣlāḥī, Anīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 526

cycle she would comb the hair of the Prophet (sws) when he would be offering *A 'tikāf* in the mosque.<sup>30</sup>

It is further narrated from her that the Prophet (sws) would read the Qur'ān while placing a pillow in her lap.<sup>31</sup>

In another Ḥadīth narrated from her she says that when any of the wives of the Prophet (sws) would be undergoing her menstrual cycle and the Prophet (sws) wanted to be intimate with her, he would direct her to tie a loin cloth on the lower part of the body and he would then approach her.<sup>32</sup>

She further narrates that when she would drink water in her menstrual cycle and then give the same water to the Prophet (sws), he would put his lips on the same place [on the vessel] from which she had drunk. Similarly, when she would chew and suck on a bone and then give it to the Prophet (sws), he would place his lips on the same part of the bone where she had placed them.<sup>33</sup>

Imām Amīn Aḥsān Iṣlāḥī writes:

(*tuhr*) means the end of the state of impurity and the termination of blood while (*taṭahhur*) means the state of purity a lady enters into after the ceremonial bath. The verse regards (*tuhr*) as a condition for intercourse with the wife and it also says that once a lady has entered the state of purity only then should the husband approach her for this purpose. It emanates from this that though the basic reason for this prohibition is blood and once the blood stops this prohibition is lifted, however the desirable way in this regard is to have intercourse after she has bathed.<sup>34</sup>

It is also explained in the above quoted verses that after the ceremonial bath, sexual intercourse with the wife should be done in the way prescribed by the Almighty. The Qur'ānic words are:

30. *Bukhārī*, No: 296

31. *Bukhārī*, No: 297

32. *Bukhārī*, No: 302

33. *Bukhārī*, No: 300

34. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 526

(go to them from where God has enjoined you). This guidance is ingrained in human nature and from this aspect it, no doubt, is a directive of the Almighty. If a person violates this directive he in fact violates a very obvious directive of the Almighty, and, as a result, will have to face punishment from Him.

The metaphor of “cultivated land” is employed by the Qur’ān to explain what is stated in the previous verses. Imām Amīn Aḥsān Iṣlāḥī comments on this in the following words:

One very apparent reason for using this metaphor is the fact that just as for a cultivated land it is essential on the part of the harvester that seeds be sown in the appropriate season at the right time and that they be sown within the fields and not scattered outside them, similarly it is a norm of human instinct that one should not approach a lady for sexual intercourse during the menstrual cycle or from the anal side because the period of menses is a time during which women are frigid and not inclined, while anal intercourse is a painful and wasteful activity. Therefore, people who have not perverted their nature cannot indulge in such an activity.<sup>35</sup>

While explaining the expression (go then, into your lands in any manner you please), *Iṣlāḥī* goes on to write:

[This] alludes simultaneously to two things: On the one hand, it refers to the liberty, freedom and free manner with which a farmer approaches his land, and on the other hand refers to the responsibility, caution and care which he must exercise in approaching his land. The word refers to the former and the word to the latter. It is both this liberty and caution which ascertain the correct behavior of a husband with his wife in this regard.

Everyone knows that the real bliss of married life is the freedom a person has in intimate affairs barring a few broad restrictions. The feeling of this freedom has a great amount of euphoria around it. When a person is with his

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35. Ibid., p. 527

wife in intimate moments, Divine will seems to be that he be overcome with emotions but at the same time it is pointed out to him that he has come into a field and an orchard; it is no wasteland or a forest. He may come to it in whatever manner and in whatever way whenever he pleases, but he must not forget that he has landed in his orchard. The Qur'ān has no objection on the discretion, choice and majesty with which he approaches his field if he knows full well where he is going and in no way is oblivious of this reality.<sup>36</sup>

The importance of all these directives is pointed to by the Qur'ān in the words . While explaining the importance of these words in the eyes of the Almighty, *Iṣlāhī* writes:

If one deliberates on the essence of *tawbah* and *ṭaṭahhur*, one comes to the conclusion that while the former means to cleanse one's inner self from sins, the latter means to cleanse one's outer self from filth and dirt. Viewed thus, both are similar in their essence and the Almighty holds both these traits in great admiration. On the other hand, people who lack these traits are disliked by the Almighty. It is evident from the context of this verse that those who do not refrain from intercourse with their wives during their periods of impurity and violate the limits ingrained in human nature in satisfying their sexual urge are detestable in the eyes of the Almighty.<sup>37</sup>

*Īlā*

( - : )

Those who swear to abstain from their wives must wait four months. If they change their mind, Allah is forgiving and ever-merciful; but if they decide to divorce them, [they

36. Ibid., p. 527

37. Ibid., p. 526

should know that] He hears all and knows all. (2:226-227)

These verses of *Surah Baqarah* mention the directive of  $\text{!}$ . This is a term of the Arab *Jāhiliyyah* society which means to swear an oath to sever sexual relations with one's wife. Such an oath leaves the wife in an indefinite state and is as such against virtue and piety. Consequently, the Almighty has fixed a four month period after which a husband must decide to either resume the marital relationship or to divorce her.

About the first situation, the Almighty says that He is forgiving and ever-merciful. The implied meaning being that although this oath was sworn to usurp rights and it is not lawful to swear such oaths, but if a person mends his ways the Almighty shall forgive him.

In such a case, the husband would of course have to atone the termination of his oath in the way prescribed by the *Sharī'ah*.

Regarding the second situation, the Almighty says that He hears all and knows all. In other words, what is implied is that if a person decides to divorce his wife then he must abide by the rules and regulations that the Almighty has prescribed in this regard. Allah hears and knows everything. Excesses committed against someone else will not remain concealed from Him.

It is evident from this directive that it is not allowed to sever sexual relations from one's wife without a valid reason. So much so, if a person swears such an oath, he must break it. Such relations are the right of a wife and if a husband does not fulfill them, then he can be regarded a criminal both in the eyes of the law and before the Almighty in the Hereafter.

In return, the wife also does not have the right to refuse compliance to these relations without a valid reason. The Prophet (sws) is reported to have said:

When a husband calls his wife to bed, and she refuses and [as a result] the husband spends the night in anger, then angels curse the wife all night till dawn. (*Bukhārī*, No: 3065)

*Zihār*

( - : )

Those commit *Zihār* with their wives, they [–these wives–] cannot become their mothers: none can be their mothers except those who gave birth to them. And in fact they say something very immoral and false. And truly Allah is forgiving and merciful. And [in this matter the directive is that] those who do *Zihār* with their wives then wish to go back on the words they uttered – then a slave should be liberated before they touch each other. Thus are you admonished to do and Allah is well-acquainted with all that you do. And if a slave is not available to a person, he should fast for two months consecutively before they touch each other. And if he is unable to do this even, he should feed sixty indigent ones. This is because you may show your faith in Allah and His Messenger. Those are limits set by Allah; [only the rejecters of Allah and His Messenger cross them]. And there is a grievous punishment for such rejecters. (58:2-4)

The above quoted verses spell out the directive of *Zihār*. Like <sup>1</sup>, this was also a term of the Arab *Jāhiliyyah* society. It meant that a husband had uttered the following words for his wife:

(If I touch you it would as if I touched the back of my own mother). These words in those times would amount to giving such a divorce to the wife after which a wife had to be separated from her husband. The Arabs would think that by saying such words a husband is not only severing marital ties with his wife, he is also prohibiting her for himself like his own mother. Consequently, though after divorcing a wife a husband had the right to revoke it, but after doing *Zihār* there was no chance left for him for any revocation<sup>38</sup>.

38. Dr *Jawwād 'Alī, Al-Mufaṣṣal fī Tārīkhi'l-'Arab Qabla'l-Islām,*

The Qur'ān here mentions this very directive.

The first thing which is stated in the above quoted verses is that if a person is unseemly enough to regard his wife as his mother or likens some limb of his wife to that of his mother, then such an utterance does not make the wife his mother and neither is she endowed with the sanctity a mother has. To be a mother is a reality since she has given birth to a person. The sanctity in relationship she is invested with is because of this very fact. This is an eternal and natural sanctity which only a real mother has. No other lady who is called by this name in such a manner can ever possess this sanctity. Consequently, such an utterance neither breaks marital ties nor does a wife become prohibited for a person like his mother. The Qur'ān, at another place, points to this aspect in the following words:

( : )

And Allah has not made your wives whom you divorce by *Zihār* your mothers. (33:4)

The second thing which the verses of *Sūrah Mujādalah* quoted above point out is that if a person utters such a sentence then he should know that these are very indecent and fallacious words, which no civilized person can ever think of let alone uttering them. Such a person could have been heavily taken to task by the Almighty, but He is most gracious and most merciful. So if a person overcome by anger says these false and abominable words and then realizes his mistake, then he shall be forgiven by the Almighty.

The third thing emphasized in the verses is that a person who utters these words shall not be allowed to go scot-free. Such loose talk gravely affects the social life, and thus it is essential that such a person be punished for this unbecoming behavior so that he is careful in future and others also learn a lesson from this. Consequently, it is decreed that he must atone his sin before going near his wife in the following manner:

A slave-woman or a slave-man should be set free.<sup>39</sup> If slaves

<sup>2nd</sup> ed., vol. 5, (Beirut: *Dāru 'l-'Ilm Li'l-Malāyīn*, 1986), p. 551

39. The Arabic word used is ' ' which means 'neck'. This means that the gender of the slave does not matter. Whoever is available can

are not available, he should fast consecutively<sup>40</sup> for two months. If this is also not possible, he should feed sixty indigents.

### Divorce

( - : )

O Prophet! When you people divorce your wives, divorce them according to their waiting periods, and count

be liberated to atone for the sin. This is one of the measures prescribed by Islam for the emancipation of slaves. Thus it has been set forth as the foremost option. After the abolishment of slavery only the last two options can now be availed.

40. The Arabic word used is ' ' (consecutively). This means that if a person goes to his wife before he completes these fasts, then he must start afresh and finish the count.

accurately this waiting period, and fear God your Lord. [During this waiting period] turn them not out of their houses, nor should they [themselves] leave, except in case they are guilty of some open lewdness. And [remember] these are the bounds set by Allah and those who transgress the bounds of Allah, it is they who wrong their own souls. You know not that God might thereafter create new circumstances. [Divorce your wives in this very manner]. Thus when they approach the end of their waiting period, either take them back on equitable terms or part with them on equitable terms. And [whether you want to keep them or part with them, in both cases] call to witness two honest men among you. And [O you witnesses] establish this testimony for God. It is this thing to which those are exhorted who believe in God and in the Last Day. And [if] those who fear God [encounter any difficulty], God will find a way out for them and will provide them from where they cannot even imagine. And those who put their trust in God, for them Allah is enough [to help them]. God is sure to bring about His designs. And God has set a measure for all things. And those of your women who have ceased menstruating and they also who have not menstruated [in spite of reaching its age], if you have any doubts about them, then their waiting period is three months. And the waiting period of pregnant women is till they deliver the child. God will ease the hardship of [those among you] who fear Him. Such is the directive of God He has revealed to you. He who fears God, God shall brush away his sins and shall richly reward him. [During the waiting period], lodge these women in your homes according to your means. And do not harass them to make life intolerable for them. And if they are pregnant, maintain them until they deliver the child. And if they suckle your [child], give them their remuneration and decide this matter according to the custom after mutual consultation. And if you find yourselves in difficulty, another woman can suckle [the child]. Let the man of means spend according to his means and he whose resources are restricted, spend according to what God has given him. God does not burden a person with more than He has given him. [Rest assured], after

some difficulty, God will soon grant relief. (65:1-7)

If it becomes impossible for a husband and wife to get along with one another, there exists in divine religions the option of separation from one another. In religious parlance, this separation is called (*ṭalāq*: divorce). As per the traditions of Abraham's creed, the Arabs were fully aware of it in the *Jāhiliyyah* period. No doubt certain deviations and innovations had found way in their concept, however, a study of their history reveals that the law of divorce that existed in their society was almost the same as what Islam presented.<sup>41</sup> In the above quoted verses of *Sūrah Ṭalāq*, the Almighty has revived with certain additions and amendments that very law. Certain details of this law are also mentioned in *Sūrah Baqarah* and *Sūrah Aḥzāb*, but a little deliberation shows that the basic verses in this regard are those of *Sūrah Ṭalāq* stated above.

#### **Before Divorce**

Before circumstances reach an extent that divorce remains the only option, it should be the intense desire of every person to keep intact the marital relationship as far as possible. On these very grounds, in *Sūrah Nisā* the Almighty has permitted the husband to reprimand his wife if she is guilty of challenging his authority. However, if all efforts of reformation fail and it becomes evident that this relationship cannot remain intact, the Almighty has asked Muslims to make a last ditch effort: the relatives of the couple, their clan and tribe and other well wishers should come forward and use their influence to set right the situation. The procedure outlined by the Qur'ān in this regard is that one arbitrator should be appointed from the husband's family and another from the wife's family. Both of these arbitrators should try to reconcile the two in the hope that what the husband and wife could not accomplish themselves would be accomplished by the elders and well wishers of the two families. The Qur'ān says:

41. Dr Jawad Ali, *Al-Mufaṣṣal fī Tārīkhi'l-'Arab Qabla'l-Islām*, 2<sup>nd</sup> ed., vol. 5, (Beirut: *Dāru'l-'Ilm li'l-Malāliyyīn*, 1986), p. 548

( : )

If you fear a breach between them two, appoint [two] arbitrators, one from his family, and the other from hers; if they wish for peace, Allah will create harmony between them: for Allah has full knowledge, and is acquainted with all things (4:35)

The last words of the verse subtly urge the couple to benefit from this scheme. If, instead of severing ties, they wish to create harmony among themselves they should keep in mind that the Almighty is benevolent. He will help them in redeeming the situation.

### **The Right to Divorce**

The *sūrah* begins with the words: (when you [people] divorce your wives). In this verse, in the subsequent ones also and in other verses of the Qur'ān where the directive of divorce is mentioned, the husband has been regarded as the initiator of divorce. Moreover, in 2:237, the words (in his hands is the knot of marriage) are used for the husband. These words bear clear evidence to the fact that the *Sharī'ah* has granted the husband the right to divorce. The reason for this is quite obvious. A husband has always been charged with the responsibility of protecting his wife and providing for her because God has given him the natural ability to fulfill these responsibilities. On these very grounds, the Qur'ān has regarded him to be the *Qawwām* (head of the family) and explicitly stated:

(and the husbands hold a degree of superiority over them). Consequently, both the nature of the responsibility and the regard for his position entail that he be given the right to divorce. It is an understood fact that the institution of family is an essential requirement of a human being. Just as entrusting two parties with different responsibilities but granting them equal rights to establish an organization or to dismantle it cannot keep that institution intact, the familial institution also has similar requirements. If a lady, in lieu of her own protection and subsistence and those of her children, has given herself in the custody of a man through a contract, then the right to annul this contract cannot be given to the lady without the permission of

the husband. This is in accordance with justice and fairness. If any other option is adopted, then this would be against justice, and would inevitably result in the dismemberment of the institution of family.

As a consequence of the above analysis, if a wife wants to separate from her husband, she cannot divorce him; on the contrary, she will demand divorce from him. In general circumstances, it is hoped that every gentleman, seeing that there is no other way out, would accept this demand. However, if this does not happen to be the case, a wife can turn to the court of law. When the state of affairs deteriorates to this extent, then there is a precedence set by the Prophet (sws) in this regard for the judicial forums: if it becomes certain that a wife has great aversion to her husband and does not want to live with him any more, then the court should order the husband to divorce her and if he wants he can take back all the wealth and property that he gifted to her except the *mahr* (dower).

*Ibn 'Abbās* narrates that the wife of *Thābit Ibn Qays* once came to the Prophet (sws) and said: "O Messenger of Allah, I do not have any complaint regarding his character and person; however, I fear that I will lose my faith"<sup>42</sup>. When the Prophet heard this complaint, he said: "Would you return his orchard?". She showed her consent. At this, the Prophet (sws) directed *Thābit* to accept the orchard and separate her by pronouncing one divorce sentence.<sup>43</sup>

#### Procedure of Divorce

Whether a husband divorces his wife because of his own decision or does so at the demand of his wife, in both cases the procedure of divorce prescribed by the *Shari'ah* is as follows:

1. Divorce should be given keeping in consideration the *'Iddat*. This means that it is incorrect to divorce a wife in a manner that separates her instantaneously. In all instances, it must be given

42. The meaning of this sentence as understood from other narratives in which this incident has been reported is that she did not like the looks of *Thābit* and that if in spite of that she persisted to live with him, she would not have been able to follow the directives the Almighty has given a Muslim wife viz: being faithful to her husband and guarding her own chastity.

43. *Bukhārī*: No. 5273

so that it becomes effective after a specific waiting period. 'Iddat in religious parlance means the period in which a divorced or widowed lady cannot marry any other person. Since this period has been primarily fixed in order to ascertain whether a lady is pregnant or not, therefore it is necessary that divorce be given after a lady has completed her menstrual cycle in that period of cleanliness in which the husband did not have any sexual intercourse with his wife. Every Muslim should be fearful of his Lord about emotions of anger which on such instances do arise against the wife. Consequently, when the Prophet (sww) was told that 'Abdullāh Ibn 'Umar (rta) had divorced his wife during her menstrual cycle, he was really annoyed and remarked:

( : )

Ask him to take her back and keep her in wedlock until she is through with her menstrual cycle and then once again passes through this cycle and then is through with it. After this, he can either detain her [in wedlock] or divorce her before having sexual intercourse with her. Because it is this beginning of the 'Iddat keeping regard of which the Almighty has directed [believers] to divorce their wives. (Bukhārī, No: 5251)

The Almighty has directed Muslims to carefully keep count of the period of 'Iddat. Since divorce is a matter of great consequences, and a lot of legal issues arise for the man, the woman, their children and their whole family, it is essential that the time and date of divorce be properly accounted for. Moreover, it is essential that at the time of divorce, the state of the woman, the date when the 'Iddat commenced and the date when it will end be kept track of. Whether the whole issue is ultimately settled within the family or has to be taken to court for settlement, in both cases it is this period of 'Iddat which dictates the time span within which a husband can revoke his decision and take back his wife (*rujū*). Similarly, it is this period which will determine the time for which the husband is liable to keep

his wife in the house and provide for her. Likewise, the time when the inheritance is to be given to her and the time when the divorce process is complete and the lady is free to marry again shall be ascertained from the *'Iddat*.

2. Until the *'Iddat* period expires the husband has the right to take back his wife. The Qur'ānic words:

(thus when they approach their term appointed, either take them back on equitable terms or part with them on equitable terms (65:2)) refer to this fact. The Almighty has explained in *Sūrah Baqarah* that just as the right to give divorce rests with the husband, the right to take back the wife also rests with him so that he be granted a superior status in administering the institution of family which is necessary to maintain order in it.

This of course does not mean that only husbands have rights and wives have none. People must be aware that just as wives have certain duties regarding their husbands, they also have some rights. Mankind has never been ignorant of these rights; they are well aware of them. Consequently, it is the obligation of the husbands that besides asking their wives to fulfill their obligations towards them, they must also keep in mind their rights:

( : )

And if their husbands wish to reform affairs, they [— the husbands—] have greater right to take them back [in this waiting period] should they desire reconciliation. And [this is because there is no doubt that] just as according to [society's] norms these women have obligations [towards their husbands], they also have rights, although men [as husbands] have a status above women. [This is the directive of Allah] and Allah is mighty and wise. (2:228)

Since there is a high probability that in such affairs one is bound to be governed by emotions and extreme reactions and as a result may commit one blunder after another, these two attributes – Mighty and Wise – mentioned at the end of the verse serve a special purpose. While referring to this purpose, Imām

Amīn Aḥsān Iṣlāḥī writes:

The Almighty is 'Azīz (Mighty); hence, it is only His right to give this directive and He is also Ḥakīm (Wise); hence, whatever directive He gives is based on wisdom. Men should always submit to His directives without any hesitation whatsoever. If they oppose His directives, this would amount to challenging His honor and only hasten to invite His wrath. Similarly, if they are naive enough to think that they are more wise and sagacious than the Almighty, they will be responsible for ruining the law and system of the society with their very own hands.<sup>44</sup>

3. If the husband does not take back his wife within the 'Iddat period, then once this period expires the relationship of wedlock will cease to exist. Consequently, the husband is directed to make up his mind once this period is approaching its end. He should decide if he has to revoke his decision and take her back or is to persist with his decision and sever his relationship with her. In both cases, the Almighty has directed him to follow the *ma'rūf* (good conventions) of the society. The Almighty comforts them by saying that those who remain fearful of Him should rest assured that they will be worthy of His help if they encounter any difficulty.

It is pointed out in *Sūrah Baqarah* that if the husband decides to revoke his decision and take back his wife, then this should not be with the intention of hurting or harassing her. The verse of *Sūrah Baqarah* quoted above refers to this aspect in the words

. The revocation should not be to satisfy one's desire by tormenting the wife. In fact, the underlying reason for this revocation should be to lead a congenial marital life, otherwise this would just be an act of oppression which shall greatly displease the Almighty in the Hereafter:

44. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 533

( : )

And when you have divorced your wives and they have reached the end of their waiting period, either retain them with kindness or let them go with kindness. But do not retain them with the intention of harm so that you commit excesses against them. And [you should know that] whoever does this wrongs his own soul. Do not make a mockery of Allah's commandments. Remember the favors He has bestowed upon you and the Law and the wisdom which He has revealed, of which He instructs you. Fear Allah and know that He has knowledge of all things. (2:231)

While explaining this verse, Imām Amīn Aḥsān Iṣlāḥī writes:

In the previous verses, the implied meanings were stated positively, but here they are stated negatively in order to caution cruel husbands who could abuse the right of divorce as well as the right to revoke it in the *'iddat* period. Such an attitude, of course, is outright injustice and amounts to playing with the *Shari'ah*. Those who are bold enough to do this may think that they are oppressing their wives; however, in fact, they wrong their own selves. This is because those who toy with divine directives and exceed the limits set by the Almighty shall have to face a grievous punishment.

In the end, a reminder is sounded regarding the blessings of the Almighty: He has made Muslims a chosen *Ummah* and sent a Prophet to them from among them to guide them. He has also blessed them with a book to guide them regarding good and evil. It is composed of the precepts of faith and law. If they repay this great favor by violating the limits of the Almighty and toying with His *Shari'ah*, then they should contemplate the consequences of such a behavior. The verse goes on to warn Muslims to remain fearful of the Almighty and to keep in mind that He has knowledge of all their deeds. In other words, He is granting respite to people in spite of their mischief.

However, once He decides to catch them, no one will be able to run away from His grasp.<sup>45</sup>

Similarly, if a husband decides to part ways with his wife he is directed to do so in a befitting manner. The words used in 2:220 are . In this regard, the following directives have been given:

Firstly, whatever amount of wealth, property, clothes, jewelry and other items that have been gifted to the wife by the husband, they should not be confiscated by him. Here it should be clear that the verse is not referring to the *Nafqah* (maintenance) and *Mahr* (dowry), which are the absolute rights of a wife and confiscating them is unthinkable. What is emphasized is that a husband should not take back any gifts he may have given her.

There are two exceptions to the above mentioned directive:

First, if it is no longer possible to keep a marriage intact according to the limits set by Allah, and the family elders and society also supports the annulment, but a husband is unwilling to divorce his wife simply because he is concerned about losing wealth, property or other gifts he has given his wife, then the issue can be resolved in the following manner: the wife can give back part or all of the wealth gifted to her to relieve herself of her marital contract. In such cases, it would be lawful for the husband to accept these returned gifts.

Second, if the wife is guilty of open sexual misconduct. Since such a behavior destroys the very basis of the marital relationship, it is lawful for the husband to take back any gifts or wealth given to her.

The Qur'ān says:

( : )

And [if you decide to depart from them, then on this occasion] it is unlawful for you to take back from them anything you have given them unless both husband and

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45. Ibid., p. 539

wife fear that they may not be able to keep within the bounds set by Allah. Then if you also feel that they will not be able to remain within the bounds set by Allah, there shall be no offence for either of them [regarding the gifts given by the husband] if the wife seeks divorce [by returning them to him] in ransom. These are the bounds set by Allah; do not transgress them. [And you should know that] those who transgress the bounds of Allah are wrongdoers (2:229)

....

( - : )

And do not treat them with harshness that you may take away what you have given them – except where they have been guilty of open lewdness... And if you decide to take one wife in place of another, even if you had given the latter a whole treasure of wealth take not the least bit of it back: Would you take it by slander and usurping [her] rights? And how could you take it when you have lain with each other and [at the time of marriage] they have taken from you a solemn covenant? (4:19-21)

For this second situation, a person has been warned not to dare take back by slander any wealth gifted to his wife. Imām Amīn Aḥsān Iṣlāḥī writes:

It is absolutely against the decency and integrity of a man to slander and accuse a lady with whom he had pledged to live forever under a firm marriage contract. It was she who had unveiled herself totally to him and both lived intimately and in great harmony with each other. How unseemly it is on the part of the husband that when relations had to be severed with her he should try to extract from her what he so willingly spent on her and should go as far as to malign and accuse her for this base purpose.<sup>46</sup>

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46. Ibid., p. 271

Secondly, the husband shall not be responsible to give the dower if the wife is divorced such that the husband has not touched her or her dower had not been fixed. However, if the dower had been fixed but a lady was divorced before having sexual relations with the husband, then the husband is liable to pay half the amount of the dower fixed except if the wife willingly forgoes the total amount or the husband pays the full amount. The Qur'ān says:

( - : )

There is no blame on you in the matter of dower if you divorce women before touching them or before fixing their dower and if you divorce them before touching them but after the fixation of a dower for them, then the half of this fixed dower should be given to them, unless they forgo it or he forgoes it in whose hands is the marriage knot; and if you [men] forgo your right, it is nearer to piety. And do not forget your superiority among yourselves. For Allah sees well all that you do. (2:236-237)

While commenting on this verse, Imām Amīn Aḥsān Iṣlāḥī writes:

Although the fact that the husband has divorced the wife before conjugal contact was made is one motive for the wife to forgo her right, the Qur'ān here has urged the husband with regard to his honor and forbearance and his status as a husband to not desire from his wife to forfeit her share. Instead, he should show magnanimity in paying her the full amount. The Qur'ān has appealed to him on three grounds to make this sacrifice: Firstly, the Almighty has given him the right to untie the marital knot just as he had the right to tie it. Secondly, it is more befitting for the stronger sex to show sacrifice and selflessness – the

manifestations of true piety. Thirdly, the one degree of superiority a husband has been blessed with by being made the head of the family unit since he was naturally suited for this task requires that he take into account this aspect while dealing with the weaker sex. Its natural requirement is that he should be on the giving end rather than being on the receiving end.<sup>47</sup>

Thirdly, a wife at the time of parting should be given some resources of life. The Qur'an says that this is an obligation of those who fear God and those who are righteous. If a lady is divorced even without going near her, a husband is exhorted to fulfill this obligation. The Qur'an says:

( : )

And divorced women should also be given some resources according to the norms of the society when they are sent off. This is an obligation on those who are fearful of God. (2:241)

In *Sūrah Ahzāb*, the words (But give them some resources [of life] and part with them in a befitting manner) are used to convey this meaning. In *Sūrah Baqarah*, this same directive has been given to husbands for wives whom they divorced without touching them or without fixing their dower. According to the Qur'an, the amount of these resources should be ascertained keeping in view the norms of the society and the financial status of the husband:

( : )

And bestow on them some resources of life, the wealthy according to his means, and the poor according to his means. This is an obligation on those who are righteous. (2:236)

It is evident from these words that this is an obligation on the

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47. Ibid., p. 548

husband. If a person does not fulfill it, he might not be liable to any legal action because this is something which pertains to a person's inner piety and virtue, but he would definitely be held liable in the Hereafter before his Lord, and in the Hereafter the weight and import of his virtuous deeds would suffer.

4. If a husband revokes his decision within the *'Iddat*, the lady will continue to remain his wife, but does this mean that a husband can divorce his wife repeatedly in this fashion whenever he wants and then revoke the decision within the *'Iddat*? The Qur'an has answered this question by saying that a person can only twice exercise this right of divorcing his wife in the *'Iddat* and then revoking the decision in his marriage with a lady. The words used are:

(This divorce may be pronounced twice, and then a woman must be retained with kindness or allowed to go with kindness). That is if a person divorces his wife and revokes his decision within the *'Iddat*, then he can exercise this right one more time in his life in his marriage. However, once he has used this authority twice, he can no longer use it again the third time. In such a situation, his wife would be permanently separated from him except if she marries some other person and he then also divorces her:

( : )

If a husband divorces his wife [for the third time], he cannot marry her until she has wedded another man. But if this [second husband] also divorces her, it shall be no offence for either of them to return to each other, if they think that they can [now] keep within the limits set by Allah. Such are the bounds of Allah. He makes them clear to men who want to gain knowledge. (2:230)

In case the same husband and wife want to remarry one another, the Qur'an has imposed three restrictions on them:

Firstly, the wife should formalize her *Nikāh* (marriage contract) with someone else.

Secondly, the second husband divorces her because for some reason the marriage cannot be pulled along.

Thirdly, the two think that after re-marriage the two would be able to remain within the bounds set by the Almighty.

In the first and second conditions, the word “*Nikāḥ*” only implies the legal marital knot and the word “divorce” implies the divorce that one gives one’s wife when it is no longer possible to keep the marriage intact. Imām Amīn Aḥsān Iṣlāḥī writes:

The real thing is that *Nikāḥ* is a known term referring to a marriage contract which takes place between a man and a woman with the intention of living together forever in the bond of matrimony. If this intention does not exist in a *Nikāḥ*, then in reality it is not a *Nikāḥ*; it is more of a plot conspired by a man and a woman. The option of divorce in marriage, upheld by the *Sharī‘ah*, is not part of the original scheme; it is only a last resort to deal with insolvable situations. Consequently, the true nature of a *Nikāḥ* is that it should be solemnized with the intention of living together as husband and wife permanently. If a person honors a *Nikāḥ* only for a certain fixed period, then this is called “*Muta‘h*”, and it is totally prohibited in Islam. Similarly, if a person solemnizes a *Nikāḥ* with a lady and then divorces her just to provide her with a legal excuse to marry the first husband, then in religious parlance this is called “*Ḥalālah*” and, like “*Muta‘h*,” it is also totally prohibited in Islam. A person who does such a despicable thing is like a pimp or pander or as a Ḥadīth says that such a person plays the role of “a rented out bull for breeding” and a person who does this and he who has it done are cursed by the Almighty’.<sup>48</sup>

The third condition has been imposed in order to make divorce a very serious affair so that people do not carelessly indulge in it. They should only divorce their wives while remaining fearful of the Almighty and when they think that there is no possibility of keeping the marriage intact. Similarly, when they embark upon marrying someone, they should do so with sincerity of purpose and with the intention of creating a harmonious relationship. It is not befitting for a believer to adopt an attitude contrary to this.

Our jurists add to the above mentioned three conditions and say

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48. Ibid., p. 537

that a lady can only be divorced from this second husband once the two have had sexual intercourse. Without this, she is not legally allowed to become the wife of her first husband. They generally present the following three reasons in support of their view:

Firstly, the verb (she marries) has been used by the Qur'an. In this verb, the act of marriage has been attributed to the lady. However, since a lady does not contract marriage, rather a man does, so, here necessarily imply sexual intercourse.

Secondly, the word (another husband) are used after . The word is clearly pointing to the fact that the marriage has already been taken place; hence, it is imperative that here necessarily imply sexual intercourse.

Thirdly, it has been reported that once the Prophet (sws) stopped a lady from marrying her first husband by saying that she is not legally allowed to marry him until she has had sexual intercourse with the first.

The answer to the first and the second of these arguments is clearly given by the Qur'an:

( : )

And when you have divorced your wives and they have reached the end of their waiting period, do not prevent them from marrying their future husbands. (2:232)

It is evident from this verse that the act of marriage has been attributed to the lady and the word are used in the same sense as , but it is obvious that the words refer to the marital knot and cannot in any way be construed for sexual intercourse.

Moreover, it is quite strange to contend that the act of marriage cannot be attributed to the lady. One might dare ask that if this is not possible, then can sexual intercourse be attributed to her. Viewed on similar grounds, it is a man who in fact does it and not a woman.

As far as the third argument is concerned, it has arisen because of not understanding a Hadith. The way Imam *Bukhārī* has narrated it in his *Ṣaḥīḥ* clearly shows that the lady had gotten married only to become legally permissible for the first husband. Consequently, when she lied by saying that her husband was unable to establish marital contact with her, the Prophet (sws)

scolded her and told her that she could now only go back to her first husband after tasting her second husband. This of course is not a condition that he imposed but it is the case of stating an impossibility: the implied meaning being that if according to her, her second husband does not have the ability to copulate with her then she can only be divorced from him after he copulates with her – which of course he will never since, according to her, he is not capable of it. Thus if anything can be adduced from this Ḥadīth, it is prohibition of *Ḥalālah*. It does not in anyway support the view of the jurists.

The text of the Ḥadīth is as follows:

( : )

*'Ikramah* narrates that *Rafā'ah* divorced his wife. Thereafter she married *'Abdu'l-Raḥmān Ibn Zubayr Qurẓī*. *'Ā'ishah* says that she came to her wearing a green cloak and complained of her husband and showed her her bruises – women do help one another – so when the Prophet (sws) came by, *'Ā'ishah* said: “I have only seen Muslim women being treated in such a way. Her skin is greener than her cloak”. *'Ikramah* says that when her husband came to know that she had complained to the Prophet (sws), he also came over to the Prophet (sws)

along with his two sons from his other wife. Upon seeing her husband, she got hold of the end of her cloak letting it hang from her hand and remarked: My only complaint is that whatever he has is no more than this [soft cloth]. At this, *'Abdu'l-Rahmān* said: "O Prophet (sws) of Allah she has told a lie! I am very strong and can satisfy her; the truth of the matter is that she is disobedient and wants to go back to *Rafā'ah*". When the Prophet (sws) heard this, he said: "If this is the case then you shall not be permissible for *Rafā'ah* unless *'Abdu'l-Rahmān* tastes you". Then, upon seeing the sons of *'Abdu'l-Rahmān*, the Prophet (sws) remarked: "Are these your sons?" When he replied in the affirmative, the Prophet said: "Do you tell such lies [O *'Abdu'l-Rahmān's* wife]. By God, these [young boys] resemble *'Abdu'l-Rahmān* more than a crow resembles another crow. (*Bukhārī*, No: 5377)

5. Whether the husband decides to divorce his wife or to take her back, in both cases the Qur'ān directs him to call in two Muslim witnesses on his decision. The witnesses are directed to remain steadfast on the evidence they give. The reason for this directive is to ensure that either of the parties is not able to refute a decision made and to resolve any other dispute that may arise in this regard. Moreover, this would make the matter very transparent for the people and settle doubts and confusions that may surface.

The above paragraphs explain the correct way of divorce. If a person divorces his wife according to this prescribed way or takes her back during the *'Iddat* period, then his decisions shall stand legally implemented. However, if divorce is given in violation of the prescribed way, then this is a legal case that would require a court ruling. Two similar cases of importance which came before the Prophet (sws) are as follows:

The first of these is the case of *'Abdullāh Ibn 'Umar* (rta). When he divorced his wife during her menstrual cycle, *'Umar* (rta) presented his case before the Prophet (sws). The Prophet (sws) expressed great anger when he was informed of these details and said: 'Ask him to take her back and retain her in wedlock until she enters her period of purity and then again passes through her menstrual cycle and is pure again. Then, if he wants, he can permanently retain her or divorce her without

having intercourse with her because this is the beginning of 'Iddat' keeping regard of which the Almighty has directed a husband to divorce his wife.<sup>49</sup>

The second case is that of *Rukānah Ibn 'Abdi Yazīd*. By gathering all the narratives of this case, the whole situation that comes to light is that he had divorced his wife three times in one go. He then felt ashamed and presented his case before the Prophet (sws). The Prophet (sws) inquired: "How did you divorce her?" He replied: "I divorced her three times in one go". The Prophet (sws) again inquired: "What was your intention?" He answered that he wanted to divorce her once only. The Prophet (sws) told him to reply on oath which he did and then said: "If this is the matter, then take her back. Only one divorce has been implemented". *Rukānah* remarked: "O Prophet of Allah I had divorced her three times". The Prophet said: "I know, take her back and this is not the proper way of divorcing a wife. The Almighty has said that if one must divorce his wife, he should do so keeping in consideration the 'Iddat'.<sup>50</sup>

The foundations on which the decisions of the Prophet (sws) are based in both the above quoted cases are:

i. If divorce is not given according to the prescribed procedure but there is a possibility to make amends for the violation, then the sanctity of the law demands that amends be made.

ii. A person has the right to explain his statements. If he says that a particular statement was uttered by him without any intention or with full intention, his explanation can be accepted. The following words of the Prophet (sws) also relate to this very foundation: "Divorce given in a state of rage is not to be legally enforced and neither is the decision to liberate a slave in such a situation" (*Abū Dā'ūd*, No: 2193).

iii. If a person says that he has divorced his wife three times, then this can mean that he has in fact divorced her three times and this can also be a statement that portrays the severity and intensity of his decision. Since both these possibilities exist when these words are said, hence any explanation of the speaker regarding the meaning in which he used them should also be

49. *Bukhārī*, No: 5251; *Abū Dā'ūd*, No: 2182

50. *Abū Dā'ūd*, No: 2196, 2206; *Ibn Mājah*, No: 2051; *Tirmadhī*, No: 1177, *Musnad Aḥmad*, No: 2383

acceptable. However, this does not mean that if there exists evidence contrary to the explanation made, then such an explanation be accepted. A court has full authority to reject such an explanation if it is not satisfied. Consequently, when 'Umar (rta) observed that people were no longer careful in uttering the divorce sentence he declared that he would not even accept a statement of explanation from the husband and three divorces pronounced would be counted as three.<sup>51</sup>

#### The Directive of 'Iddat

*Sūrah Ṭalāq* says that divorce should be given keeping in view the 'Iddat. At another place, the Qur'ān has explained that the period of 'Iddat is three menstrual cycles:

( : )

And divorced women must keep themselves waiting for three menstrual cycles. (2:228)

In this verse, the Arabic word is the plural of . In Arabic, this word means both the "menstrual period" and the "non-menstrual period of purity". While presenting his research on this word, Imām Amīn Aḥsān Iṣlāḥī writes:

After much deliberation on the root of the word and its derived forms, I have come to the conclusion that its real meaning is that of "menstruation". However, since every menstrual period is followed by a period of purity ( ), the word is also used in this meaning. This is similar to the usage of the word "day" for "night" and vice versa. Every language has such words.<sup>52</sup>

The word in the opinion of this writer as well means "menstruation" because in these verses the real issue is to ascertain whether a lady is pregnant or not. It is the "period of menstruation" which actually ascertains this and not the "period of purity". Moreover, women are asked to wait in this period and this waiting period can only be ascertained through the menstrual

51. *Muslim*, No: 2689

52. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 532

cycle because its beginning can be known with certainty.

In normal circumstances, the *'Iddat* is three menstrual cycles; however, if a woman does not menstruate because of advancing age or in spite of reaching puberty<sup>53</sup>, then the Qur'ān has specified in *Sūrah Ṭalāq* that this period would be three months. It has also been stated that the *'Iddat* of a pregnant lady extends to childbirth. In *Sūrah Ṭalāq*, for women who do not menstruate because of old age, there also exists the condition of (if you are doubtful). While explaining this condition, Imām Amīn Aḥsān Iṣlāḥī writes:

It seems to me that the condition of (if you are doubtful) is to differentiate between a lady who does not menstruate because of age but has had sexual intercourse with her husband and a lady in similar state but who did not have sexual intercourse with her husband. For if a lady who does not menstruate because of age has had sexual intercourse with the husband there might be a chance of pregnancy if her state was temporary for some reason. A similar situation may arise for a lady who has not menstruated in spite of reaching the age and she has sexual intercourse with her husband ... It is possible that the question may arise in the mind of a person that if this was the case, then why did the Qur'ān not explicitly state that the *'Iddat* of a lady who does not menstruate because of age and who has had sexual intercourse is three months. The answer to this question is that such a statement of the Qur'ān would not have pointed to the underlying reason of *'Iddat* – which was essential to be highlighted. This underlying reason is not merely the fact that whether a lady has had sexual intercourse or not: it is the possibility that she may be pregnant.<sup>54</sup>

53. The Qur'ānic words are ' . In the Arabic language the word ' ' is used for total and strong negation. Hence the expression cannot connote those girls who have not started to menstruate; it can only connote girls who have not menstruated in spite of reaching the age.

54. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 8, (Lahore: Faran Foundation, 1986), p. 442

( : )

O you who believe! when you marry believing women, and then divorce them before you have touched them, no period of *'Iddat* have they for you which you can ask them to complete. (33:49)

The directives of *'Iddat* which are mentioned in the relevant verses of *Sūrah Ṭalāq* are as follows:

Firstly, during *'Iddat* neither should a wife leave her house nor is the husband authorized to turn her out from her house. Living together might hopefully be beneficial for both and they might reconcile and thus save a family from breaking. The Qur'ānic words (You know not that God might thereafter create new circumstances) point to this very aspect. Further, a warning is sounded that the directives mentioned are the bounds set by Allah and any one who tries to exceed them would not harm Allah in any way; on the contrary, he would only harm his own well-being. It is not that the Almighty has set these bounds for His own benefit. It is for the welfare of His creation that He has set them forth; so any one who violates them only wrongs his own soul.

The only exception to the above directive is if the basis on which a divorce has been given is open lewdness which the Qur'ān has termed as . In the Arabic language, this expression implies fornication and other lesser forms of sexual contact. Obviously, in such a situation neither is it proper to demand from the husband to keep the wife in the house nor can the benefit be attained for which this directive had been given.

Secondly, it is stated that a husband should provide residence and maintenance to his divorced wife according to his status. After divorce, a husband can be very stingy in this regard. Consequently, he has been directed not to provide for her in a manner that damages her self-esteem. He should provide according to his resources and the social status he is maintaining. It is further stated that in this period a husband should in no way try to make life difficult for his wife so that she is forced to leave her house herself.

It is obvious that after the pronouncement of the third divorce also, a husband shall be responsible to provide residence and maintenance to the divorced wife. The reason is that a lady

accepts to remain in *'Iddat* only to ascertain whether she is the mother of his child or not. It is to protect his lineage that she undertakes this wait. The words (no period of *'Iddat* have they for you which you can ask them to complete) of the above quoted verse of *Sūrah Ahzāb* clearly point to the fact that if pregnancy is a possibility then observing the *'Iddat* is an obligation imposed on the wife from the husband. Indeed, after the third divorce, a husband does not have any right to revoke his decision and take back his wife; however, as a result of this, the only thing that can be revoked is their living together. In no way can the responsibility to provide her with residence and maintenance be revoked. Consequently, this is absolutely certain that whether *'Iddat* is three menstrual cycles, three months or extend to the birth of the child, a husband is liable to provide her wife with residence as well as maintenance.

Here some people may object to the above view of this scribe by presenting the case of *Fāṭimah bint Qays*. It is narrated that her husband *Abū 'Amr* had already divorced her twice. Then when he was sent to Yemen with *'Alī* (rta), he sent her the third divorce pronouncement as well. During her *'Iddat*, when she demanded residence and maintenance, the relatives of the husband refused this demand. At this, she came to the Prophet (sws), who decided that she has neither the right to be given residence nor any maintenance.<sup>55</sup>

The above referred to narrative is quoted in some books of Ḥadīth, but it is evident from certain other narratives that when her case was presented before the Caliph *'Umar* (rta), he too refused her demand by saying that he could not accept the verdict of a lady which is against the Book of God and the Sunnah of his Prophet (sws).<sup>56</sup> When in the time of *Marwān Ibn Ḥakam*, this case came into discussion for a third time, *'Ā'ishah* (rta) severely criticized this narrative. *Qāsim Ibn Muḥammad* inquired from *'Ā'ishah* (rta): “Are you not aware of the case of *Fāṭimah bint Qays*”. She replied: “It is better if you do not mention her matter”.<sup>57</sup> In another narrative, *'Ā'ishah*'s words are: “What has

55. *Muslim*, No: 2715; *Abū Dā'ūd*, No: 2290

56. *Muslim*, No: 2719

57. *Bukhārī*, Nos: 5321-2

happened to *Fāṭimah*; does she not fear God.”<sup>58</sup> A third narrative is from *‘Urwah Ibn Zubayr*. He says that *‘Ā’ishah* said: Nothing will benefit *Fāṭimah* if she narrates this Ḥadīth.<sup>59</sup> In still another narrative, *‘Urwah* says that *‘Ā’ishah* expressed her anger for *Fāṭimah* and said: “She was in an empty house where none whom she knew lived and hence the Prophet (sws), for her own protection, had directed her to change her residence”.<sup>60</sup>

This is the real background of the narrative; hence, no one should consider it worthy of any importance.

Besides the above mentioned directives, the Almighty has given a further directive in *Sūrah Baqarah* that no lady should try to conceal her pregnancy during her *‘Iddat*. It has been indicated a number of times earlier that the very directive to observe the *‘Iddat* has been given for ascertaining whether a lady is pregnant or not. Consequently, it is an essential outcome of this directive and the Almighty has forcefully directed us to observe it:

( : )

And divorced women must keep themselves waiting for three menstrual courses. And it is unlawful for them, if they believe in Allah and the Last Day to hide what He has created in their wombs. (2:228)

#### After Divorce

Once a divorce is actualized, one issue that can become a source of dispute is suckling of young children. In the under discussion verses of *Sūrah Ṭalāq*, the Almighty has said that if their mother is willing to suckle them, then the husband shall pay her for this service and this remuneration shall be ascertained through mutual consultation and in a befitting manner. If such an agreement is not reached between the parents, then according to the Qur’ān any woman can be asked to feed the children. It is also told that a rich person should spend according to his means and resources and a poor one according to his. Neither is it

58. *Bukhārī*, Nos: 5323-4

59. *Bukhārī*, Nos: 5325

60. *Bukhārī*, Nos: 5326

permitted for the rich person to deal with others in a manner that is below his status and neither should a poor person be burdened beyond his means. The Almighty holds a person responsible to obey His directives according to his capacity and status.

In *Sūrah Baqarah*, this directive has been mentioned in detail:

( : )

And [after divorce also] mothers shall suckle their offspring for two whole years, for those who desire to complete the term. And the child's father [in such a case] shall have to bear the cost of their food and clothing according to the norms. No one should be burdened beyond his capacity. Neither shall the mother be treated unfairly because of her child, nor the father on account of his child – and an heir shall be accountable in the same way – But if they both decide on weaning by mutual consent and after due consultation, there is no blame on them. And if you decide to engage someone else to suckle your offspring, there is no blame on you, provided you pay [the mother] in accordance with the norms [of the society] what you promised. But fear Allah and know that Allah sees well what you do. (2:223)

Imām Amīn Aḥsān Iṣlāḥī, while summarizing the directives of suckling that these verses mention, writes:

- i) It is the responsibility of a divorced lady to suckle her offspring for two full years in case the husband wants her to complete the total suckling period.
- ii) During this period, it is the responsibility of the father

to provide his divorced wife with food and clothing, keeping in view the norms of the society. In other words, the status of the husband, the needs of the divorced wife and her own status shall be kept in consideration while providing her this maintenance.

iii) Neither of the parties shall be burdened beyond their capacity. Neither the mother shall be harmed in any way by taking advantage of the fact that she is the mother of the child nor the father be unduly pressurized in any way on the pretext that he is the father of the child.

iv) If the father of the child is dead, his heirs will be responsible for all the above mentioned rights and obligations.

v) If through mutual consent and consultation, the estranged husband and wife decide to terminate the suckling period before two years, they can do so.

vi) If the child's father or, in his absence, the heirs of the child want to suckle the child through some other lady instead of the mother, they are authorized to do so provided what has been agreed with the mother regarding her maintenance is fully honored.<sup>61</sup>

The second thing which can become a source of dispute is the husband's attitude of hindering further marriage of his former wife. This attitude whether in the form of open forbiddance on his part or in the form of covert and stealthy schemes has been strictly prohibited by the Almighty in *Sūrah Baqarah*. He has counseled people that once a lady has been divorced, her former husband has no right to cause hindrance in any decision she makes. She has the liberty to marry whoever and whenever she wants. If her decision to marry is in accordance with the norms of the society, it cannot be objected to in any way. The Qur'an uses the word *haram* to convey this meaning. This word implies that though a man and a woman are totally free to take their

61. *Işlālī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 545

decision, they must remember not to do anything that is against the norms of decency and which may damage the honor and repute of the former or future husband or of the family of the woman herself. The Qur'an says:

( : )

And when you have divorced your wives and they have reached the end of their waiting period, do not prevent them from marrying their future husbands if they have come to an agreement according to the norms [of decency]. These words of advice are given to every one of you who believes in Allah and the Last Day; this is more decent for you and more chaste. And [in reality] Allah knows, but you do not. (2:232)

While explaining the last part of the verse Imām Amīn Aḥsān Iṣlāḥī writes:

These sound words of advice are being given to those who believe in Allah and the Last Day. In other words, those who have belief in Allah and the Last Day should follow what is being advised since this is the outcome of true belief. Such an attitude is more pure and seemly. If a lady is impeded in anyway to re-marry, this may result in great evils in the family and society. It is from here that back doors to clandestine relations and fornication are opened, eventually bringing great disrepute to those whose false pride induces them to obstruct natural emotions through worthless customs. The words “And Allah knows, but you do not”, at the end imply that man’s knowledge and vision is very limited. He cannot fully grasp the ups and downs of life; therefore, he should follow what the Almighty is directing him to do.<sup>62</sup>

Besides the above mentioned two issues, a third matter that can

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62. Ibid., p. 544

cause dissension between the divorced couple is the custody of children. The *Shari'ah* has not given any directive in this regard because this matter can only be decided keeping in view the welfare of the children and the circumstances of the parents, which of course vary a lot. However, those in authority can obtain a lot of guidance in this regard from the various cases decided by the Prophet (sws). Following is an account of some of them.

*'Abdullah Ibn 'Umar* (rta) narrates that a lady came to the Prophet (sws) and said: "For this son of mine, it is only my belly which was his abode, and my breasts which were his vessel and my lap which was his dwelling place. Now his father has divorced me and wants to take him away from me". The Prophet replied: "You are more entitled to keep him until you marry again".<sup>63</sup>

*Abū Hurayrah* (rta) narrates that in his presence once a lady came to the Prophet. I heard her saying: "My husband wants to take away from me this child even though he has brought over water for me from the well of *Abū 'Anbah* and given me a lot of benefit". The Prophet replied: "Both of you can cast a lot on this". [Upon hearing this], the husband said: "Who will quarrel with me regarding this son of mine". The Prophet asserted: "O son! This is your father and this is your mother; grasp the hand of the one you want to hold". The child grasped the mother's hand and she took him away.<sup>64</sup>

### Directives relating to Widows

( - : )

And those of you who die and leave widows behind, they

63. *Abū Dā'ūd*, No: 2276

64. *Abū Dā'ūd*, No: 2277

should keep themselves in waiting for four months and ten days. Then when they have fulfilled their term, there is no blame on you about what they do with themselves in accordance with the norms [of society]. And Allah is well acquainted with what you do. And there is also no blame on you if you tacitly send a marriage proposal to these women or hold it in your hearts. Allah knows that you would definitely talk to them. [Do so] but do not make a secret contract. Of course you can say something in accordance with the norms [of the society]. And do not decide to marry till the law reaches its term. And know that Allah has knowledge of what is in your hearts; so be fearful of Him and know that Allah is Most forgiving and Most Forbearing. (2:234-235)

The above quoted verses of *Sūrah Baqarah* mention the directive of *'Iddat* for widows.

The first thing mentioned is that the *'Iddat* of a widow is four months and ten days.<sup>65</sup> In contrast to the *'Iddat* of a divorced lady, the *'Iddat* of a widow has been extended by forty days. The reason is that while a husband has been asked to divorce his wife in the period of purity (in which he has had no sexual intercourse with her), obviously no such requirement can be proposed in the case of a widow. It is to exercise care that forty days have been added by the Qur'ān to the waiting period of a woman who loses her husband.

The second thing stated is that after the waiting period expires, the wife is free to do whatever she deems appropriate for herself. However, she should follow the norms of the society in this matter. In other words, she should not indulge in any activity which damages the repute, honor and integrity of the family nor

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65. Since the reason to observe the waiting period for a divorced lady and a widow is the same, all the exceptions that have been stated in the directive of divorce for a divorced lady shall also hold in case of the waiting period of a widow. Consequently, there shall be no waiting period for a widow with whom the deceased husband has had no intercourse. Similarly, the waiting period of a pregnant widow shall extend till childbirth. It is narrated in *Bukhārī* (No. 5320) that when a pregnant widow *Sabī'ah* (rta) presented her case before the Prophet (sws), her case was decided on these very grounds.

the conventions of a society. If all this is kept in consideration, then no blame can be cast on her or her guardians. Writes Imām Amīn Aḥsān Iṣlāḥī:

What is implied is that one should not blame and censure one another without any reason by equating all un-islamic customs with Islam. On the one hand, a situation should not develop where the guardians of the widow or the heirs of the deceased husband are censured due to the implication that they got tired of the wife [thus letting her leave] much before she could fully mourn the loss of her husband. On the other hand, circumstances should not deteriorate to where the widow herself is censured simply because she became interested in re-marrying soon after her husband's death. In all cases, only the bounds of the Almighty should be observed and one should remember that the Almighty is aware of all the deeds of His creatures.<sup>66</sup>

The third thing stated is that if a person wants to marry a widow, then it is according to the norms that he takes this decision in his mind during her waiting period or inform her of his intentions in a very tacit manner. However, it is not permitted that he, without considering the sentiments of the affected family, send a marriage proposal to the widow or make some hidden agreement with her. On such occasions, whatever is said must never exceed the bounds of sympathy and expression of condolences. Consequently, the verses forewarn a person that since it is definite that he would express his intention in such a situation, it should not be in the form of a marriage proposal or some hidden or open agreement. This intention should be expressed in a manner that is befitting to the situation and in accordance with the norms of the society. Of course, once the waiting period expires, a person can decide to marry such a lady. At that time, he cannot be blamed in any way.

It stems from this directive that the behavior of the widow should also be befitting to the situation she finds herself in. On these very grounds, the Prophet (sww) directed such women to spend their 'Iddat in the house of their deceased husband in a state of mourning and to refrain from embellishing themselves.

66. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 546

He is reported to have said:

( : ' )

A widow should not wear colored clothes, neither golden nor red nor ochre. She should not adorn jewelry nor put on henna or stain her eyes with antimony. (*Abū Dā'ūd*, No: 1960)

Should such a wife be provided with residence and maintenance during this period? The Qur'ān has answered this question further down in the *sūrah*: husbands should make a will in favor of their wives for the provision of one year's residence and maintenance, except if the wives themselves leave the house or take any other similar step<sup>67</sup>:

( : )

And those of you who die and leave widows should bequeath for their widows a year's provision and [bequeath] that [in this period] they shall not be turned out of their residences; but if they themselves leave the residence, there is no blame on you for what they do with themselves according to the norms of society. And Allah is Exalted in Power, Wise. (2:240)

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67. Most commentators consider the directive stated in this verse to be abrogated from the verses of inheritance that *Sūrah Nisā* mentions. This, I am afraid, is not the case. The verse has not been abrogated by any other Qur'ānic verse. Quite obviously, it is an extension of another Qur'ānic directive: the directive given to the husband to provide for and give shelter to his wife in his lifetime. The verse says that even after his death she should be provided with these services for a year. If it is for the husband that she accepts the restriction of the *'iddat* period, then she should necessarily be given more time to decide for her future. This is the wisdom behind the directive and bears no relation to the directive of distribution of inheritance.

### Norms of Gender Interaction

( - : )

Believers! Enter not the houses other than your own until you have introduced yourselves and wished peace to those in them. That is best for you that you may be heedful. If you find no one in the house, enter not until permission is given to you. If you are asked to go back, go back, for it is purer for you. Allah has knowledge of all which you do. It is no sin for you to enter non-residential places in which there is benefit for you. And Allah has knowledge of what you reveal and what you conceal. [O Prophet!] tell believing men to restrain their eyes and guard their private parts [if there are women present in these houses]. That is purer for them. And Allah is well aware of what you do. And tell the believing women to restrain their eyes and to guard their private parts and to display of their ornaments only those [which are worn on limbs] which are normally revealed and to draw their coverings over their bosoms.

They should not reveal their ornaments to anyone save their husbands or their fathers or their husbands' fathers or their sons or their husbands' sons or their brothers or their brothers' sons or their sisters' sons or other women of acquaintance or their slaves or the subservient male servants who are not attracted to women or children who have no awareness of the hidden aspects of women. They should [also] not stamp their feet in order to draw attention to their hidden ornaments. Believers turn to Allah in repentance that you may prosper. (24:27-31)

In order to protect the society from moral misconduct and to safeguard the sanctity of personal relationships, the above quoted verses outline the norms and etiquette of gender interaction. They are stated in *Sūrah Nūr* with the warning that these norms of social interaction and communal contact must be adhered to in order to maintain the purity of heart and are the most appropriate set of principles in this matter. If people follow these norms, they will obtain the great blessings and favours they entail. However, to obtain these, it is essential that they follow these norms while regarding the Almighty to be all embracing in knowledge and always remain aware of the fact that the Almighty is not only aware of their deeds but also the intentions and motives behind them.

These norms are:

1. If friends, relatives or acquaintances visit one another, they should follow a certain decorum. Suddenly barging into a house without introducing one's self is improper. The visitor should first of all properly introduce himself by paying salutations to the residents of the house. This will make the residents aware of the visitor, provide them with the opportunity to determine the purpose of his visit and whether it is appropriate for them to let him in. If the visitor hears a reply to his salutations and is given permission, only then should he enter. If there is no one present in the house to give him permission or if someone is present and the visitor is told on his behalf that meeting him is not possible, he should retreat without any feelings of ill-will.

In this regard, while explaining this directive, the Prophet (sws) has directed the visitor to seek permission three times and if he

hears no reply even after his third call, he should turn back.<sup>68</sup>

Similarly, the Prophet (sws) is reported to have said that the permission to enter must not be sought by standing right at the front door of the house and while peeping in because the very reason for seeking permission is that the visitor should not catch a glimpse of the residents.<sup>69</sup>

2. In case the visited place is non-residential, no formal permission is required. The Qur'an uses the words for such places. They include hotels, rest houses, guest houses, shops, offices and meeting places. A person can enter such places because of some need without seeking permission as per the dictates of this verse.

3. In both types of visited places, if women are present then the divine directive is that both the men and women present should restrain their gazes. The words used for this directive are

. If there is modesty in the gazes, and men and women refrain from feasting their eyes on the physical attributes of one another and ogling each other, then no doubt the purport of the directive stands fulfilled. The expression does not mean that men and women have to constantly stare at the floor while interacting with one another. It means to guard one's gaze from taking undue liberty and to refrain from staring at one another. If this vigil on the eyes is not kept, then in the words of the Prophet (sws), this would be tantamount to adultery of the eyes. Once a person indulges in it, his sexual organ either fulfills the ultimate objective of what his eyes initiated or is unable to do so.<sup>70</sup> It is regarding this first accidental gaze about which the Prophet (sws) has directed the believers to turn away.

*Barīdah* (rta) reports that the Prophet (sws) told 'Ali (rta): "O 'Ali! One must not follow up one's first glance by a second one because the first glance shall be forgiven while the second not".<sup>71</sup>

*Jarīr Ibn 'Abdullāh* reports that he asked from the Prophet (sws): "What if such a glance takes place suddenly?". The Prophet (sws) replied: "Immediately turn it away or lower it".<sup>72</sup>

68. *Bukhārī*: No. 6245

69. *Bukhārī*: No. 6241

70. *Bukhārī*: No. 6343

71. *Abū Dā'ūd*: No. 2149

72. *Muslim*: No. 2159

Once during the Prophet's farewell pilgrimage when a lady from the *Khath'am* tribe stopped the Prophet (sws) on his way, *Faḍl Ibn 'Abbās* started to stare at her. When the Prophet (sws) saw him, he caught hold of his face and turned it to the other side.<sup>73</sup>

4. One must properly cover one's sexual organs on such occasions of interaction. The expression employed by the Qur'ān is . At various instances in the Qur'ān, this expression is used to connote "abstinence from indulgence in inappropriate sexual activity". However, it is evident from both the context in which it is used and the way it is used that in the above quoted verses this expression implies that men and women must properly cover their sexual organs. The purpose of the directive is that on occasions of gender intermingling body parts which need to be covered must be covered even more carefully. The primary way to achieve this end is to wear decent clothes. Men and women should wear such clothes which not only hide the ornaments worn but also the sexual organs. Moreover, on such occasions, care should be taken that a person does not expose his sexual organs. This is the very objective of *ḥifzu'l-furūj*. The Qur'ān wants that believing men and women besides restraining their eyes also observe this norm of modesty.

5. It is necessary for women in particular not to display any of their ornaments except before their close relatives, attendants and people of acquaintance. However, exempted from this are ornaments adorned on limbs which are generally never covered: ie, the ornaments worn on the hand, the face and the feet. In the opinion of this writer, the correct meaning of the Qur'ānic words used to indicate this meaning is the one pointed out by *Zamakhsharī* in the words:

Except limbs which a person does not cover generally and instinctively and they are always left bare.<sup>74</sup>

Therefore, barring the ornaments worn on these places,

73. *Bukhārī*: No. 1513

74. *Zamakhsharī, Kashshāff*, 1<sup>st</sup> ed., vol. 3, (Beirut: *Dār al-Aḥyā al-Turāth al-'Arabī*, 1997), p. 236

women must hide the ones worn in all other places. So much so that they should not walk by striking their feet in a manner which draws attention to any hidden ornaments they may be wearing. On these very grounds, the Prophet (sww) bade women not to use strong perfumes when they go out.<sup>75</sup>

Relatives and people of acquaintance before which the above mentioned display of ornaments is not forbidden are:

- i. Husband
- ii. Father
- iii. Father-in-law

For the latter two relations, the word used by the Qur'an is (*āba*). This word not only implies the father but also the paternal and maternal uncles and grandfathers. Therefore, a lady can display her ornaments before adults of both her maternal and paternal family and those of her husband's just as she can before her father and father-in-law.

- iv. Sons
- v. Sons of the Husband
- vi. Brothers
- vii. Brothers' Sons
- viii. Sisters' Sons

The word "son" implies the grand and great grand sons, both maternal and paternal ones. The same implies for the sons of brothers and sisters. In these relations also, the sons of real, step and foster brothers and sisters are understood to be included.

- ix. Women of acquaintance and Maids

It is evident from these words that unknown women should be treated the same way as men and a Muslim lady should be very careful in displaying her concealed ornaments before them. The reason is that this can result in both moral and financial afflictions, and in some cases a careless attitude in this regard may invite even graver dangers.

- x. Slaves

The institution of slavery existed in Arabia in the times of the Prophet Muhammad (sww). The words used in the above quoted verse while referring to this institution are . Some jurists have understood this expression to only mean "slave-women". However, there is no reason for this exception. Writes

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75. *Abū Dā'ūd*: No. 7143

Imām Amīn Aḥsān Iṣlāḥī:

Had only slave-women been implied by this expression then the appropriate words would have been . A common expression that connotes both slave-men and slave-women would never have been used. Moreover, the verses already mention the category which as, has been explained, includes both women with whom one is generally acquainted as well slave-women and maidservants. After a mention of this category, an independent mention of slave-women is needless.<sup>76</sup>

xi. People who live in a house as dependents and because of their subservience or owing to any other reason are incapable of feeling any attraction towards women.

xii. Children who are as yet unaware of sexual matters.

6. Since the chest of women is a means of sexual attraction, and there also may be jewelry worn in the neck, they are directed to cover their chests with a cloak. In this way, the neckline shall also be covered as much as possible. If by some other means this purpose is achieved, then this cannot be objected to either. The real objective is that women must not reveal their chest and neckline before men; on the contrary, these should be concealed in a manner that they do not become prominent in any way.

The *sūrah* also mentions certain other clarifications regarding these norms.

Firstly, slave-men and women and sexually immature children who generally frequent a house are not required to take permission every time they enter private rooms. They are just required to seek permission in three particular times of the day: before the *Fajr* prayer when the residents are generally in bed, during the nap in the afternoon when they may not be wearing proper clothes and after the *'Ishā* prayer when they go off to bed for sleep. These three periods of time require privacy. If someone suddenly enters a private room in these times, he may see the residents in an inappropriate state. Barring these three times of the day, sexually immature children and slave-men and women can enter the private rooms and other areas of the house without taking any permission.

76. *Amīn Aḥsān Iṣlāḥī, Tadabbur-i-Qur'ān*, 4<sup>th</sup> ed., vol. 5, (Lahore: Faran Foundation, 1991), p. 398

This then cannot be objected to. However, in the above mentioned three times, they must seek permission when they want to enter a private room. Also, children of other houses, once they reach sexual maturity, must seek permission at all times. The fact that they have been frequenting the house ever since their childhood is not reason enough for them to continue with the exception granted to them. Consequently, once they reach this age, they must follow the regulations that pertain to all:

( - : )

Believers! let your slave men and women and those who are under age ask your permission on three occasions when they come in to see you: before the *Fajr* prayer, when you have put off your garments in the heat of noon and after the *'Ishā* prayer. These are the three occasions when none may intrude upon your privacy. At other times, it shall be no offence for you or them, [because you] go around visiting one another. Thus God explains to you His verses and God is all-knowing and wise. And when your children reach the age of puberty, let them still ask your permission as their elders do. Thus God explains to you His verses and God is all-knowing and wise. (24:58-59)

Secondly, the directive of covering the chest and the neckline does not pertain to old women who are no longer of marriageable age on the condition that they their intention is not to display their ornaments. It is not necessary for a woman to cover her chest and neckline in the age in which she generally loses her sexual urge and in which a man feels no attraction for her. So, old women can dispense with the cloth that covers the stipulated area. However, what is more pleasing in the sight of Allah is that even in this age they be careful and not dispense with this garment:

( : )

And it shall be no sin for aged women who have no hope of marriage to discard their cloaks on the condition that they do not display their ornaments. Better if they do not discard them. God hears all and knows all. (24:60)

Thirdly, it is explained in these verses that there is absolutely no harm if people and their relatives who are disabled or impaired in any manner come and visit one another and whether men and women among them eat together or separately in their own houses, of their children's, of their fathers', mothers', brothers' and sisters', of their paternal uncles' and aunts', maternal uncles' and aunts' and of people who are financially dependent on them. Indeed, when they enter such houses they must greet the residents in the prescribed way. The Muslim religious greeting (*al-salāmu alaykum*) is in fact a beautiful invocation to the Almighty to strengthen personal relationships. The norms of social interaction that are outlined in these verses are not meant to deprive people of mutual support or to curtail their social freedom. If people show prudence, they can maintain all these relationships even after following these norms. They must not think that these directives are meant to put them through difficulties. The Almighty does not intend to prohibit social interaction in any way:

( : )

There is no harm if the blind, the lame, and the sick eat at your table nor if you eat in the houses of your own children, your fathers', your mothers', your brothers' and your sisters', your paternal uncles', your paternal aunts', your maternal uncles', your maternal aunts', or your friends' or of those who are [financially] dependent on you. There is no harm if men and women eat together or apart. [However, this much you should do that] when you enter a house, say "peace to you" – an invocation fixed by God, and let your greeting be devout and kindly. Thus God explains to you His revelations, so that you may grow in wisdom. (24:61)

These are the norms of social interaction in general circumstances. However, in the age of the Prophet (sws) in *Madīnah* when some miscreants started teasing and besmearing the characters of Muslim women, the Almighty in *Sūrah Ahzāb* bade the wives of the Prophet (sws), his daughters and other Muslim women to draw over them any of the shawls they have when they go out to places which were insecure. Such dressing-up would distinguish them from women of lewd character and they would not be teased on the pretext of being outwardly similar to such women. It is reported in various narratives that when Muslim women in the dark of night or in the dim light of dawn would go out to relieve themselves, these miscreants would get after them and when they would be called to account they would say that they actually thought that they were talking to slave-women<sup>77</sup>. The Qur'an says:

77. *Ibn Kathīr, Tafṣīr al-Qur'ān al-Azīm*, vol. 3, (Beirut: *Dāru'l-Aḥyā wa al-Turāth al-'Arabī*, 1969), p. 518 / *Zamakhsharī, Kashshāff*, 1<sup>st</sup> ed., vol. 3, (Beirut: *Dār al-Aḥyā al-Turāth al-'Arabī*, 1997), p. 569

( - : )

And those who harass believing men and believing women unjustifiably shall bear the guilt of slander and a grievous sin. O Prophet! Enjoin your wives, your daughters, and the wives of true believers to draw over them a shawl [they may have when they go out]. That is more proper, so that they may be distinguished [from slave-women] and not be harassed. God is ever forgiving and merciful. If [after these measures also] these hypocrites and those who have the ailment [of jealousy] in their hearts and the scandal mongers of *Madīnah* do not desist, We will rouse you against them, and their days in that city will be numbered. Cursed be they; wherever found, they would be seized and put to exemplary death. (33:58-61)

It is evident from the words \_\_\_\_\_ and the context in which they are used that the directive mentioned in the preceding verses was not of permanent nature. It was a temporary measure adopted to protect Muslim women from the evil of lecherous people. Owing to similar reasons, the Prophet (sws) also forbade Muslim women from traveling alone on long journeys and from walking on pathways within a crowd of men<sup>78</sup>. Consequently, if today Muslim women are faced with similar circumstances, they can adopt a similar measure to make themselves distinct from other women.

The *sūrah* also mentions certain directives that are specific to the Prophet Muhammad (sws) in his capacity of a Messenger of God. They bear no relation to other people; however, since certain scholars have extended their sphere of application to all Muslims, their explanation seems appropriate here.

A deliberation on the contents of the *sūrah* reveals the fact that when the hypocrites and miscreants mentioned above embarked upon a campaign to scandalize the private lives of the wives of the Prophet (sws) to make the common man averse to them and to damage the moral repute of both Islam and the Muslims, the Almighty took certain measures to curb this evil: First, He gave the noble wives the choice to leave the Prophet

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78. *Bukhārī*: No. 1088 / *Abū Dā'ūd*: No. 5272

(sww) and live the life of common Muslim women enjoying its luxuries and comforts or to once again decide with full awareness to live forever as the wives of the Prophet (sww) in order to obtain the comforts and luxuries of the Hereafter. They were then informed that if they decided to stay with the Prophet (sww), then they must realize that their status as his wives entailed great responsibility. They are not like common women; they are like the mothers of the believers. Therefore, if they remain faithful to Allah and His Prophet (sww) and do righteous deeds with full sincerity, they will earn a two-fold reward. Likewise, they will be worthy of a two-fold punishment in relation to other women if they commit a sin. Their inner purification is beyond doubt; however, the Almighty also wants to morally cleanse them in the eyes of the people so that no one is given a chance to even cast slight aspersions on their characters. This is a requisite of their status and they must adopt certain things in their daily lives to achieve this purity.

Firstly, if they are fearful of the Almighty they should not be kind and affectionate in speech to every person who enters their house. Though in normal circumstances, one must be gentle and kind when he speaks to others, but, in the circumstances they are facing, such an attitude would only embolden the miscreants and the hypocrites around them to take undue advantage of them. Such an attitude of kindness would create in them the expectation of success in their mission – the mission of whispering evil in people's hearts. So if ever they have to talk to such people they must speak in clear and simple tones so that those among their addressees who intend evil realize that they cannot achieve their objective. The Qur'an says:

( : )

Wives of the Prophet, you are not like other women. So, if you fear God, do not be too complaisant in your speech, lest the lecherous-hearted should lust after you. Talk with such people in plain and simple words. (33:32)

Second, they should remain in their homes in order to protect their rank and status. All their attitudes and mannerism should be

in accordance with the status that the Almighty has conferred upon them. So if they have to go out to meet some compelling need, they must not go out displaying their ornaments and finery – something which was the way of women of the age of ignorance. Both their status and responsibility entail that they remain in their houses and diligently pray and spend in the way of Allah as much as they can and with full sincerity spend their time in obedience to the Almighty and His Prophet (sww). However, if due to some unavoidable reason they must leave their place, then they should do so in the most befitting of manners exemplifying the culture and tradition of the Muslims and not let any hypocrite to even cast an aspersion on them:

( : )

And abide still in your homes and do not display your finery as women used to do in the days of ignorance. Attend to your prayers, pay *Zakāh* and obey God and His Messenger. O women of this house, the Almighty wants to cleanse you from the filth [these hypocrites want to besmear you with] and to fully purify you. (33:33)

Thirdly, they should try to communicate the verses of the Qur'ān as well as the beliefs and moral teachings of Islam to people who come and visit them and refrain from other general gossip. It is for this very objective that the Almighty has chosen them. Their purpose of life now is the dissemination of the message of Islam and not indulgence in the luxuries of life:

( : )

And Communicate [to your visitors] what is taught to you of the verses of God and the wisdom revealed by Him. The Almighty is very discerning and all-knowing. (33:34)

It seems that even after all these measures, the miscreants did not mend their ways. Consequently, the Almighty gave some

more directives to Muslims which were to be strictly followed.

Muslims were told that no one should enter the house of the Prophet (sws) unless he was called. If people are invited to have food at the house of the Prophet (sws), they shall come right at the time of food. They shall then disperse immediately afterwards and not keep talking to one another.

The wives of the Prophet (sws) shall be secluded from the Muslims and except for near relatives and women of their acquaintance no one shall come in front of them. Any who wants something from their private places must ask for it from behind a veil.

The wives of the Prophet (sws) shall be the mothers of the believers. Those Hypocrites who have the desire to marry them should know that even after the death of the Prophet (sws) they cannot marry them. They are eternally prohibited for marriage after him. Consequently, every believer should honor and respect them the way he honors and respects his own mother. The Prophet (sws) is greatly distressed by the wrong attitudes of these miscreants. They must know that bothering the Prophet (sws) is not something trivial. A person may fashion out an excuse for his misdemeanor in this world but he would not be successful in justifying it before the Lord of the worlds who is aware of what is in the hearts:

( - : )

Believers! do not enter the houses of the Prophet for a meal without waiting for the proper time, unless you are

given leave. But if you are invited, enter and when you have eaten, disperse. Do not engage in familiar talk, for this would distress the Prophet and he would feel shy to bid you go; but of the truth God does not feel shy. If you ask his wives for anything, speak to them from behind a curtain. This is more pure for your hearts and their hearts. You must not speak ill of God's Messenger, nor shall you ever wed his wives after him; this would surely be a grave offence in the sight of God. Whether you reveal or conceal them, God has knowledge of all things. It shall be no offence for the Prophet's wives to come before their fathers, their sons, their brothers, their brothers' sons, their sisters' sons, their women of acquaintance, or their slave-girls. [O] women [of the household of the Prophet!], have fear of God; surely God observes all things. (33:53-55)

#### Directives relating to Parents

( - : )

We enjoined man to show kindness to his parents, for with much pain his mother bears him and he is not weaned before he is two years of age. We said: "Give thanks to Me and to your parents. To Me shall all things return. But if they press you to serve besides Me that of which you have no knowledge, do not obey them. Remain kind to them in this world, and turn to Me with all devotion. To Me you shall all return, and I will declare to you everything you have done". (31:14-15)

All divine scriptures instruct man to show kindness to the parents. Various verses of the Qur'an also direct the believers to be well-behaved to the parents<sup>79</sup>. The above quoted verses

79. See for example 17:23-4, 29:8 and 46:15

however specifically determine the limits of good behaviour with the parents. The details of this directive as stated in these verses are:

1. It is the parents who bring into existence a new life and become the means to nourish it. No doubt, the care and affection of the father is quite a lot, however the hardships a mother encounters in bringing up the child starting from her pregnancy, to childbirth and then breast feeding the child are unmatched and no child can repay her for this great service. On these very grounds, the Prophet (sws) has regarded the right of the mother as three times that of the father.<sup>80</sup> Consequently, the Almighty exhorts man to be the most grateful to his parents after his Lord. This gratitude must not be expressed merely by the tongue. It should manifest in good behaviour towards them. He should respect them and never become fed up of them. He must not utter a single word of disrespect to them. Instead, he should be soft, sympathetic, loving and obedient to them. He should listen to them and be caring and affectionate to them in the tenderness of old age. The Qur'ān says:

( - : )

Your Lord has enjoined you to worship none but Him, and to show kindness to your parents, If either or both of them attain old age in your presence, show them no sign of impatience, nor rebuke them; but speak to them kind words. Treat them with humility and tenderness and say: "Lord, be merciful to them the way they nursed me when I was an infant". Your Lord best knows what is in your hearts. If you remain obedient, He will forgive those that turn to Him. (17:23-25)

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80. *Bukhārī*, No: 5971

*Ibn Mas'ūd* (rta) narrates that he asked the Prophet (sws): “Which deed does God like the most”. The Prophet (sws) replied: “To say the prayer on time”. I inquired: “After that”. He replied: “To be well-mannered with the parents”.<sup>81</sup>

*Abū Hurayrah* (rta) reports from the Prophet (sws): “Humiliation to that person, humiliation to that person, humiliation to that person”. “For whom”, asked the people. He replied: “Whose parents or any one of them reached old age in his presence and he in spite of that could not enter Paradise”.<sup>82</sup>

*‘Abdullāh Ibn ‘Umar* (rta) says that once a person asked the Prophet (sws) to participate in *Jihād*. At this the Prophet (sws) inquired: “Are your parents alive?” The person replied in the affirmative. The Prophet (sws) then remarked: “Keep serving them. This is *Jihād*”.<sup>83</sup>

*Abū Sa‘īd Khudrī* (rta) says that a person from the people of Yemen migrated and came to the Prophet (sws) in order to participate in *Jihād*. The Prophet (sws) asked: “Do you have any relative in Yemen?” He replied that he had his parents there. The Prophet (sws) remarked: “Did you ask their permission?” He said: “No”. The Prophet (sws) then said: “Go back and seek their permission and if they grant permission then only should you take part in *Jihād*, other wise keep serving them”.<sup>84</sup>

*Mu‘āwiyah* narrated from his father *Jāhimah* that he came to the Prophet (sws) and said: “O Messenger of God! I would like to participate in *Jihād* and have come to consult you [regarding this]”. The Prophet asked: “Is your mother alive?” He said: “Yes”. At this, the Prophet said: “Stay with her and serve her because Paradise is beneath her feet”.<sup>85</sup>

*‘Abdullāh Ibn ‘Umar* (rta) narrates from the Prophet (sws): “The pleasure of the Almighty resides in the pleasure of the father and the wrath of the Almighty resides in the wrath of the father”.<sup>86</sup>

*Abū Dardā* (rta) says that he heard the Prophet (sws) saying

81. *Bukhārī*, No: 5970

82. *Muslim*, No: 4627

83. *Bukhārī*, No: 5972

84. *Abū Dā‘ūd*, No: 2530

85. *Nasā‘ī*, No: 3104

86. *Tirmadhī*, No: 1899

that the best door to Paradise is the father; so, if you want you can waste him and if you want you can protect him.<sup>87</sup>

'Umar Ibn Shu'ayb narrates from his mother who narrates from her grandfather that once a person came to the Prophet (sws) and said: "I have some wealth and I also have children but my father needs this wealth". The Prophet (sws) replied: "Both you and your wealth belong to your father".<sup>88</sup>

2. In spite of the status that Islam confers upon parents, they do not have the right to force their children to baselessly associate someone with the Almighty. The Prophet (sws) has said that showing disobedience to parents is the greatest sin after polytheism<sup>89</sup>; however, the above quoted verses of *Sūrah Luqmān* say that the children should openly disobey their parents with regard to polytheism and should follow the way of those who follow God. Any calls to evade the Almighty must not receive any positive response even if it is the parents who are giving the call. On these very grounds, the Prophet (sws) is reported to have said: "No one can be obeyed if he calls to disobey the Almighty; one can only obey what is good", (*Bukhārī*, No: 7257).

Consequently, all other directives of the Almighty shall also be considered subservient to this directive, and one cannot disobey these directives if the parents ask them to do so.

3. Even if the parents force their children to commit a sin as heinous as polytheism, they must always be treated in a befitting manner. Their needs should be met as far as possible and a prayer of guidance be continued to be made for them. This is what the words (Remain kind to them in this world) of the verse quoted above entail. The children may have a right to disobey their parents if they insist upon disobedience to the directives of religion but they must still not be slack or indifferent, in any way, to their duty towards their parents.

The last part of the verses caution a person that one day he has to return to the Almighty to give account of his deeds. While commenting upon this part of

87. *Tirmadhī*, No: 1900

88. *Abū Dā'ūd*, No: 3530

89. *Bukhārī*, No: 5976

the verse, Imām Amīn Aḥsān Iṣlāḥī writes:

This part of the verse addresses both the parents and the children and carries both a warning and an assurance. One day, each person will have to return to the Almighty. Whatever he would have done would be brought before him. If some parents had violated the rights given to them regarding their children by making them deviate from the path of the Almighty, they will have to face punishment for this attitude and if children duly recognized the rights of the Almighty together with those of their parents, as well as remaining steadfast in following the obligations these rights entail, they will be rewarded for their perseverance.<sup>90</sup>

#### **Directives relating to Orphans**

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90. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 6, (Lahore: Faran Foundation, 1986), p. 130

( - : )

Give the orphans the wealth which belongs to them. Do not exchange their valuables for your worthless ones nor devour their wealth by mixing it with yours. Indeed, this is a great sin. If you fear that you cannot treat orphans equitably, then you may marry [their mothers] who are lawful to you: two, three, or four of them. But if you fear that you cannot maintain equality among them, marry one only or any slave-girls you may own. This will make it easier for you to avoid injustice. Give these women also their dowry the way it is given; but if they choose to give to you a part of it, you may consume it willingly. [If the orphan is I and mentally immature as yet], do not give to these feeble-minded the wealth with which Allah has entrusted you for their sustenance and support; but feed and clothe them with its proceeds, and give them good advice. Take care of these orphans until they reach a marriageable age. If you find them capable of sound judgment, hand over their wealth to them, and do not devour it by squandering it and consuming it hastily fearing that they would soon come of age. Let the [guardian of the orphan] who is rich not touch his wealth and [the guardian] who is poor eat from it [in lieu of his service] according to the norms [of society]. When you hand over their wealth to them, call in some witnesses; [Even though] Allah alone suffices to take account of all your actions. Men shall have a share in what their parents and kinsmen leave and women shall have a share in what their parents and kinsmen leave whether it be little or much, an ascertained amount. However, if relatives, orphans, or needy men who happen to come by at the division of an inheritance, give them, too, a share of it, and speak to them kind words. And those people should fear that if they themselves would have left their young children after their own death, they would have been very anxious. Let them fear Allah and speak for justice [in every matter]. Indeed, those who unjustly devour the

wealth of orphans swallow fire into their bellies; soon they shall burn in the flames of Hell. (4:2-10)

The Qur'ān has referred to the welfare of the orphans and to the attitude of kindness and affection that should be adopted towards them at various places. In the above quoted verses of *Sūrah Nisā*, certain specific directives are given about them. They can be summarized as follows:

1. Guardians of the orphans should return their wealth to them and should not think of devouring it themselves. They should know that unjustly consuming the wealth of orphans is like filling one's belly with fire. Furthermore, this will lead them to the fire of Hell in the Hereafter. So no one should try to swap his poor merchandise and assets for their good ones. Neither should a person try to benefit from their wealth while mixing it with his own feigning administrative ease. If such intermingling needs to be done, then it should only be for the orphans' welfare and well-being and not to usurp their wealth.

2. Protecting the orphans' wealth and safeguarding their rights are significant responsibilities. If it becomes difficult to fulfill these responsibilities alone, and people think that ease and facility can be created by involving the mothers of the orphans, then they can marry the lawful among them. Their number should not exceed four. However, such multiple marriages should only be resorted to if a person is able to deal justly with the wives. If they think that they would not be able to do so, then even for an objective as noble as welfare of the orphans they should not marry more than once. Justice should always reign supreme. Moreover, while entering into marriage, the mothers of the orphans should also be given *mahr* (dower) just as other women are given<sup>91</sup>. The pretext that marriage has been contracted with them for the welfare of their own children is not acceptable in this regard. However, if such a mother gladly forgoes a portion or the total *mahr* amount, then of course this generosity can be benefited from.

3. Wealth is a means of sustenance and subsistence for people. It should not be wasted. Consequently, the directive of returning to

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91. The questions which arise on these conditions are answered by the Qur'ān in 4:127-30.

orphans their money should be carried out when they reach maturity and are able to properly manage their wealth. Prior to this, it should remain in the protection of their guardians, who should continue to judge the orphans regarding their ability to manage and handle daily affairs. In this interim period, however, the orphans' needs and welfare should be provided for. The guardians should not hastily consume the wealth of the orphans fearing that they will lose access to this wealth because the orphans will soon reach maturity. In addition, the guardians must take note to speak very affectionately to the orphans.

4. If a guardian is well-off, he should not take anything from the orphans in return for his service, and if he is poor, he can take his due according to the norms of the society. *Imām Amīn Aḥsan Iṣlāḥī* writes:

“Norms” ( ) means to benefit from the wealth of the orphans in a way that is congruous with the nature of obligations, status of the property, general circumstances and the standard of living of the guardian. It should not be the case that a sane person should start speedily devouring and consuming the wealth of an orphan thinking that he would soon reach the age of maturity.<sup>92</sup>

5. When the time comes to hand over an orphan his wealth, some trustworthy and reliable people should be made witnesses in order to avoid any misconceived notions and dissensions. One should also remember that one day this account shall be presented before the Almighty. He sees and knows all things and nothing can be hidden from Him.

6. Although the shares of the heirs to a deceased are fixed, yet if at the time of distribution of inheritance some close relatives, orphans or poor people happen to come by, then even though they may not have any legal right in the inheritance, they should be given something and be spoken to in a befitting manner at their departure. On such occasions, a person should always keep in mind that his own children can become orphans and he may one day have to similarly leave them at the mercy of others.

92. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2<sup>nd</sup> ed., vol. 2, (Lahore: Faran Foundation, 1986), p. 255

## Slavery

( : )

And if any of your slaves ask for *Mukātabat*, give it to them if you know any good in them and [for this] give them out of the wealth which Allah has given to you. (24:33)

The above quoted verse of *Sūrah Nūr* mentions the directive of “*Mukātabat*”. At the time of the revelation of the Qur’ān, the institution of slavery was as essential to the economic and social needs of the society as the institution of interest is considered in present day societies. In markets, slave-men and slave-women were bought and sold, and affluent houses had slave-men and slave-women of all ages. In such circumstances, a sudden directive for their emancipation would have resulted in many evils: for livelihood, men would have been forced to resort to beggary and women to prostitution. For this very reason, the Qur’ān adopted a gradual way to eradicate this evil from the society and after many gradual measures of eradication, the above quoted verse revealed a directive for their liberation. The word “*Mukātabat*” used in it as a term which means that a slave make a contract with his master according to which he would be required to pay a certain sum of money in a specific time period or would carry out a specific service for his master; once he successfully fulfills either of these two options, he would stand liberated. In the above quoted verse, the Almighty has directed the Muslims to necessarily accept this contract made by a slave if he wants to make it and has the required ability to become financially independent. It is further stated that a Muslim government should spend money from the public treasury, which here is called the treasury of God, in helping such slaves. It is evident from the words of the verse that just as this right of “*Mukātabat*” was granted to slave-men, it was also granted to slave-women. This, in other words, was in fact a declaration that slaves could now be masters of their destiny and could obtain

liberation whenever they wanted.

The above stated verse is the last directive regarding slavery. Prior to this, various other directives were given at various stages because of which it gradually became possible for this evil to be eradicated from the society. These are summarized below:

1. In the very beginning of its revelation, the Qur'an regarded emancipation of slaves as a great virtue, and urged people in a very effective way to do so. The tremendous appeal found in the words it adopted (release the necks) can be well imagined by a person who has flare for the language. It is evident from the context of such expressions – wherever they are found in the Qur'an – that it has regarded this virtue to be the first as well as the greatest step in pleasing God.<sup>93</sup>

In a similar manner, the Prophet (sws) also urged Muslims to liberate humanity from the yoke of slavery in the following words: “Whoever liberated a Muslim slave, the Almighty in return for every limb of that slave would shield every limb of that person from Hell”<sup>94</sup>.

2. People were urged that until they free their slaves they should treat them with kindness. The way their masters had total and unchecked control on them in the age of ignorance was put an end to. They were told that slaves are human beings too, and no one should in any way violate the rights they possess as human beings.

*Abū Hurayrah* (rta) narrated from the Prophet (sws): “Slaves have a right to food and clothing and he shall not be asked to carry out an errand that is beyond him”<sup>95</sup>.

*Abū Dharr Ghaffārī* (rta) narrates from the Prophet (sws): “They are your brothers. The Almighty has made them subservient to you. So whatever you eat, feed them with it, whatever you wear, clothe them with it and never ask them to do something which is beyond them and if there is such a task then help them out with it”<sup>96</sup>.

*Ibn 'Umar* (rta) narrates from the Prophet (sws): “Whoever slapped a slave or beat him up should atone this sin by liberating him”<sup>97</sup>.

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93. The Qur'an 90:30

94. *Muslim*, No: 1509

95. *Muslim*, No: 1662

96. *Muslim*, No: 1661

97. *Muslim*, No: 1657

*Abū Mas'ūd* (rta) says: 'Once when I was beating my slave I heard a voice from behind me: "O *Abū Mas'ūd* you should know that the Almighty has more power over you". When I turned back, I found that it was the Prophet. I immediately remarked: "O Messenger of God, I release him for the sake of God". The Prophet said: "Had you not done this you would have been given the punishment of the Fire".'<sup>98</sup>

*Ibn 'Umar* (rta) narrates that once a person came to the Prophet (sws) and asked: "How many times should we forgive our servant". [At this], the Prophet kept quiet. He asked again and the Prophet again kept quiet. Upon being asked the third time, he answered: "Seventy times in a day".<sup>99</sup>

3. In cases of un-intentional murder, *Zihār*, and other similar offences, liberating a slave was regarded as their atonement and *ṣadqah*<sup>100</sup>.

4. It was directed to marry off slave-men and slave-women who were capable of marriage so that they could become equivalent in status – both morally and socially – to other members of the society.<sup>101</sup>

5. If a person were to marry a slave-woman of someone, great care was exercised since this could result in a clash between ownership and conjugal rights. However, such people were told that if they did not have the means to marry free-women, they could marry, with the permission of their masters, slave-women who were Muslims and were also kept chaste. In such marriages, they must pay their dowers so that this could bring them gradually equal in status to free-women. The Qur'ān says:

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( : )

98. *Muslim*, No: 1659

99. *Abū Dā'ūd*, No: 5164

100. The Qur'ān: 4:92, 58:85, 5:89

101. The Qur'ān: 24:32-3

If any of you have not the means wherewith to wed free believing women, he may wed believing girls from among those whom you own: and Allah has full knowledge about your Faith. You are one from another: wed them with the permission of their owners, and give them their dowers, according to the norms; [the only condition is that] they should be kept chaste, neither being lustful, nor taking paramours ... This permission is for those among you who fear sin; but it is better for you that you practice self-restraint. And Allah is Ever-Forgiving, Most Merciful. (4:25)

6. In the heads of *Zakāh*, a specific head (for [freeing] necks) was instituted so that the campaign of slave emancipation could receive impetus from the public treasury.<sup>102</sup>

7. Fornication was regarded as an offence as a result of which prostitution centers that were operated by people on the basis of their slave-women were shut down automatically, and if someone tried to go on secretly running this business, he was given exemplary punishment.<sup>103</sup>

8. People were told that they were all slaves of Allah and so instead of using the words (slave-man) and (slave-woman), the words used should be (boy/man) and (girl/woman) so that the psyche about them should change and a change is brought about in age old concepts.<sup>104</sup>

9. A big source of the institution of slavery at the advent of the last Prophet (sws) was the prisoners of war. The Qur'ān rooted this out by legislating that prisoners of war should be freed at all costs – either by accepting ransom or as a favour by not taking any ransom money. No other option was available to the Muslims.<sup>105</sup>

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102. The Qur'ān, 9:60

103. See: Islamic Punishments, Monthly Renaissance, Sep2002, *Dāru'l-Ishrāq*, Lahore

104. *Muslim*, No: 2249

105. The Qur'ān, 47:4; for further details see: The Islamic Law of *Jihād*, Monthly Renaissance, June2002, *Dāru'l-Ishrāq*, Lahore