

Islam & Women
Misconceptions and Misperceptions

by

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Islam and Women

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The stance of Islam regarding certain issues relating to women has remained a hot subject of debate, especially in the last few centuries. 'The fatal point in Islam is its degradation of women' is what Edward William Lane, the famous nineteenth century lexicographer, once wrote. Although Islam does not support the basic tenets of the feminist movement, it must be conceded that this movement has served to create awareness in the educated Muslim women regarding some of the viewpoints that are presented to them by the clergy under the label of Islam.

A careful study of these issues would show that many controversies regarding the stance of Islam on women have arisen because of misunderstanding the view of Islam in this regard. In recent times, the works of Javed Ahmad Ghamidi, a meritorious religious scholar and president of Al-Mawrid Institute of Islamic Sciences, have attempted to clarify the stance of the Islamic *Sharī'ah* on various issues. His research has also been instrumental in clearing up misconceptions regarding women. The ideas presented in this issue of the journal draw almost entirely on his research and most of them are derived from his article '*Qānūn-i-Mu'āsharat*' (The Social *Sharī'ah* of Islam).

No research is final. Being a human endeavour, it can never be without blemishes. However, every new research needs to be given a serious thought. We would therefore request our readers to critically evaluate the ideas presented and weigh the arguments that are proffered in the light of reason and revelation.

Feature Article

Islam and Women: Misconceptions and Misperceptions

Shehzad Saleem

There exist a number of misconceptions regarding the stance of Islam on women. In this essay, an attempt, based on the views of Javed Ahmad Ghamidi, has been made to dispel some common misconceptions about Islam and women and to answer some nagging questions in this regard.

Before these misconceptions and misperceptions are discussed, it seems essential that some space be devoted to an age old question regarding women: What exactly is their role in the society? Many religious scholars argue that women should be confined to their homes and they should stick to serving the needs of their husbands and rearing the next generation. Modernists argue that women are seen to be simply wasting themselves in a typical eastern society. They have nothing to do except indulging in gossip and meaningless household problems. The majority have virtually killed their mental abilities and intellectual prowess. When we talk of boys, we discuss their careers; but when we talk of girls, we discuss their marriage.

In this regard, it needs to be appreciated that the role of women in the society can be understood if the following aspects are kept in consideration:

1. The *Sharī'ah* revealed by the Almighty is very brief and succinct. The thesis is that human intellect can itself discover the way out in most affairs. It is only at the crossroads where it is bound to falter that Islam interferes to guide it. In the sphere of gender and social interaction too – the sphere which one comes across so often – only certain guiding points have been given. In

this regard, as far as the *Sharī'ah* is concerned, broadly speaking, Islam has given principle guidelines in matters such as the formation and dissolution of a family; its organization under a head; the dress code and behavioral conduct in social contact.

2. While stating this *Sharī'ah*, there is a directive which the *Qur'ān* gives in this regard in its lofty style, the brevity of which touches sublimity. It says:

(:)

And 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. (2:228)

This divine directive – a mere few words – covers a world of wisdom and sagacity. Evidently, it ends once and for all the debate regarding the role of women. What is implied is very clear: it is the sound conventions and traditions of a society which govern the responsibilities and rights of women. In other words, it is the collective conscience of a society that determines them. Also, since the conventions and customs of different societies can be different, these rights and responsibilities can be different in different societies. Who should raise children and look after them, who should cook the food, who should clean the house are all matters in which we must look towards traditions and customs of a society. If they do not contradict the *Sharī'ah* and are also not against the universal norms of sense and reason, they should be adhered to.

3. Consequently, women have before them a whole arena of activities. They can do everything which is not against the healthy conventions of their society. They should educate themselves as far as they can and contribute positively in the society through their intellect, talent and ability. Earning for themselves is certainly not prohibited. They can pursue careers just as men can. However, as pointed out, they should always give due respect to the precepts of the *Sharī'ah*.

We now turn to the general misconceptions and some nagging questions that have arisen regarding Islam and women.

1. The Testimony of Women¹

Since the *Qur'ān* has in no way bound the Muslims to adopt a particular method in proving a crime, it is absolutely certain that a crime stands proven in Islamic law just as it is in accordance with the universally acceptable methods of legal ethics endorsed by sense and reason. Consequently, if circumstantial evidence, medical check-ups, post mortem reports, finger prints, testimony of witnesses, confession of criminals, oaths and various other methods are employed to ascertain a crime, then this would be perfectly acceptable by Islamic law.

It is to this fact that the following words of the Prophet (sws) allude to:

(:)

To substantiate a crime is the claimant's responsibility, and the person who refutes it will have to swear an oath. (*Tirmadhī*: No. 1261)

In the words of *Ibn Qayyim*:²

The word '*Bayyinah*' in the language of the *Qur'ān*, of the Prophet (sws) and of his Companions (rta) is the name of everything by which the truth becomes evident. Hence contrary to its connotations in the terminology of the jurists, it has a wider meaning because they only use it for two witnesses or an oath and a witness.

However, there are two exceptions to this:

Firstly, if a person accuses a chaste and righteous man or woman having a sound reputation of fornication. In this case, the

1. This part has been translated and adapted from *Ghamidi's 'Burhān'*.

2. *Ibn Qayyim, I'lāmu 'l-Muwwaqi'in*, 1st ed., vol. 1, (Beirut: *Dāru 'l-Jayl*, 1973), p. 90

Qur'ān stresses that the accuser shall have to produce four eye-witnesses. Anything less than this will not prove his accusation. Circumstantial evidence or medical examination in this case are absolutely of no importance. If a person is of lewd character, such things have a very important role, but if he has a morally sound reputation, Islam wants that even if he has faltered, his crime should be concealed and he should not be disgraced in the society. Consequently, in this case, it wants four eye-witnesses to testify and if the accuser fails to produce them, it regards him as guilty of *Qadhf*. The *Qur'ān* says:

(- :)

And upon those who accuse honourable women [of fornication] and bring not four witnesses as evidence [for their accusation], inflict eighty stripes, and never accept their testimony in future. They indeed are transgressors. But those who repent and mend their ways, Allah is Most-Forgiving and Ever-Merciful. (24:4-5)

Secondly, to purge an Islamic state from prostitutes who, in spite of being Muslims, do not give up their life of sin, the only thing required, according to the *Qur'ān*, is that four witnesses should be called forth who are in a position to testify that a particular woman is a prostitute. In this case, it is not necessary at all that they be eye-witnesses. If they testify with full responsibility that she is known as a prostitute in the society and the court is satisfied with their testimony, then they can be given any of the punishments fixed by the *Qur'ān* for habitual criminals. The *Qur'ān* says:

(:)

And upon those of your women³ who commit fornication, call

3. ie. Muslim women who habitually commit fornication.

in four people from among yourselves⁴ to testify over them; if they testify [to their ill-ways], confine them to their homes till death overtakes them or God formulates another way for them. (4:15)

Barring these two exceptions, the *Sharī'ah* does not in any way bind the court to follow any prescribed procedure to ascertain a crime. Consequently, in cases of *Hudūd* punishments or in those of evidence in any other crime, in the view of this writer, it has been left to the discretion of the judge whether he accepts someone as witness or not. In this regard, there is to be no discrimination between men and women. If a woman testifies in a clear and definite manner, her testimony cannot be turned down simply on the basis that there is not another woman and a man to testify alongside her. Likewise, if a man records an ambiguous and vague statement, it cannot be accepted merely on the grounds that he is a man. If a court is satisfied by the statements of witnesses and by any circumstantial evidence, it has all the authority to pronounce a case as proven and if it is not satisfied, it has all the authority to reject it even if ten men have testified.

Except in cases where the *Qur'ān* has used the words 'مِنْكُمْ' (*minkum*: from among you) as in 4:15 above, similar is the case with the testimony of non-Muslims: It is left to the discretion of a judge.

Here it should remain clear that our jurists hold a different view in this matter. *Ibn Rushd* has summed up the opinions of the jurists on this issue in his celebrated treatise *Bidāyatu'l-Mujtahid* in the following words:

:

:

:

4. ie. from among the Muslims.

There is a general consensus among the jurists that in financial transactions a case stands proven by the testimony of a just man and two women on the basis of the verse: ‘If two men cannot be found then one man and two women from among those whom you deem appropriate as witnesses’. However; in cases of *Hudūd*, there is a difference of opinion among our jurists. The majority say that in these affairs the testimony of women is in no way acceptable whether they testify alongside a male witness or do so alone. The *Zāhirīs* on the contrary maintain that if they are more than one and are accompanied by a male witness, then owing to the apparent meaning of the verse their testimony will be acceptable in all affairs. *Imām Abū Ḥanīfah* is of the opinion that except in cases of *Hudūd* and in financial transactions their testimony is acceptable in bodily affairs like divorce, marriage, slave-emancipation and *rajū’* [restitution of marriage]. *Imām Mālik* is of the view that their testimony is not acceptable in bodily affairs. There is however a difference of opinion among the companions of *Imām Mālik* regarding bodily affairs which relate to wealth like advocacy and will-testaments which do not specifically relate to wealth. Consequently, *Ash-hab* and *Ibn Mājishūn* accept two male witnesses only in these affairs, while to *Mālik Ibn Qāsim* and *Ibn Wahab* two female and a male witness are acceptable. As far as the matter of women as sole witnesses is concerned, the majority accept it only in bodily affairs, about which men can have no information in ordinary circumstances like the physical handicaps of women and the crying of a baby at

birth.⁵

The jurists have based their view upon the following verse of the *Qur'ān*:

(:)

And call in two male witnesses from among your men [over the document of loan]. And if two men cannot be found then one man and two women from among those whom you deem appropriate as witnesses so that if either of them gets confused the other reminds her. (2:282)

This view of our jurists concerning the testimony of a woman is not correct owing to the following two reasons:

Firstly, the verse has nothing to do with the bearing of witness to an incident. It explicitly relates to testifying over a document. It is very evident that in the second case witnesses are selected by an external agency, while in the first case the presence of a witness at the site of an incidence is an accidental affair. If we have written a document or signed an agreement, then the selection of witnesses rests upon our discretion, while in the case of adultery, theft, robbery and other similar crimes whoever is present at the site must be regarded as a witness. The difference between the two cases is so pronounced that no law about one can be deduced on the basis of the other.

Secondly, the context and style of the verse is such that it cannot relate to law or the judicial forums of a state. It is not that after addressing a court of law that it has been said that if such a law suit is presented before them by a claimant, then they should call in witnesses in this prescribed manner. On the contrary, this verse directly addresses people who borrow and lend money over a fixed period. It urges them that if they are involved in such dealings, then an agreement between the two parties must be written down, and to avoid disputes and financial losses only witnesses who are honest, reliable and morally sound should be

5. *Ibn Rushd, Bidāyatu'l-Mujtahid*, 1st ed., vol. 4, (Beirut: *Dāru'l-Ma'rifah*, 1997), p. 311

appointed. At the same time their personal involvement and occupations should be suited to fulfill this responsibility in a befitting manner. The verse should not be taken to mean that a law-suit will only stand proven in court if at least two men or one man and two women bear witness to it. It is reiterated that the verse is merely a guidance for the general masses in their social affairs and counsels them to abide by it so that any dispute can be avoided. It is for their own benefit and welfare that this procedure should be undertaken.

Consequently, about all such directives the *Qur'ān* says:

(:)

This is more just in the sight of God; it ensures accuracy in testifying and is the most appropriate way for you to safeguard against all doubts. (2:282)

Ibn Qayyim comments on this verse in the following manner:

It relates to the heavy responsibility of testifying by which an owner of wealth protects his rights. It has no concern with the decision of a court. The two are absolutely different from each other.⁶

2. Women are less Sensible than Men

The following *Ḥadīth* is generally presented to support the view that women are less sensible than men:

...

6. *Ibn Qayyim, I'lāmu 'l-Muwwaqī'in*, 1st ed., vol 1, (Beirut: Dāru 'l-Jayl, 1973), p. 91

(:)

Abū Sa'īd Khudrī narrates that the Prophet (sww) while once talking to a group of women on the occasion of *Eid ul Fiṭr* or *Eid ul Aḍḥa* said: '... and I have seen no one more than you rob even a resolute man of his senses in spite of being *Nāqīṣāti 'Aql wa Dīn*'. They said: 'O Allah's Messenger, what is this *Naqṣ* in religious and worldly affairs?' He said: 'Is not the evidence of a woman equal to half of a man's'. They said: 'Yes'. He said: 'This is their *Naqṣ* in worldly affairs'. He said: 'Is it not a fact that when they enter the period of menses they neither pray nor fast'. They said: 'Yes'. Whereupon he said: 'This is the *Naqṣ* in religious affairs'. (*Bukhārī*, No: 298)

This misconception has arisen because of a wrong translation of the Arabic phrase *Nāqīṣāti 'Aql wa Dīn*. The word '*Naqṣ*' has generally been translated as 'defective' keeping in view the Urdu meaning of the word. However, in Arabic, the verb ' ' (*Naqaṣā*) means 'to reduce' and the word ' ' (*'Aql*) here means 'worldly affairs' since it is used in conjugation with the word ' ' (religion). Keeping in view, both these aspects, the correct translation of the above phrase, if the context is also taken into consideration, is that women have been given a relief and reduction in their worldly and religious affairs.

The relief in worldly responsibilities, as is mentioned in this *Ḥadīth*, is that women have not been dragged in certain activities and spheres. For example, the *Qur'ān* urges men to testify on legal documents so that women are relieved of appearing in courts and wasting their precious time on affairs which others can handle. Only if men are not available should a society involve women in such affairs.

The relief women have been given in religious affairs is that they are not required to pray or fast during their monthly periods as is mentioned in this *Ḥadīth*.

So what must be kept in mind is the fact that the meaning of a word does not always remain the same in two different

languages. For example, the word ‘ثابت’ in Arabic means ‘firm’ while in Urdu it means ‘dirty’. Thus the *Qur’ān* (4:21) has referred to marriage as ‘ثابتاً’ (a firm agreement).

Moreover, people who think that women are less sensible than men on the basis of this *Ḥadīth* do not realize that the *Hadith* is not merely saying that women are *Nāqīṣāti ‘Aql*, it is also saying they are *Nāqīṣāti Dīn*. If *Nāqīṣāti ‘Aql* means that there is some defect in their ‘*Aql* (intellect), then by the same token, *Nāqīṣāti Dīn* should mean that there is also some shortcoming in the religion they follow! This of course is absurd and as referred to above is the result of keeping the Urdu meaning of the word in consideration.

3. The *Diyat* of Women

Diyat means a fine a murderer has to pay the family of the murdered person in case he or she is granted pardon. It is believed that if a lady is murdered the fine that would be given to her relatives would be half the amount of what would have been given in case a man had been murdered.

Consider now the verse of the *Qur’ān* which mention this issue:

(:)

Then for whom there has been some pardon from his brother, [the remission] should be followed according to the *Ma’rūf* and *Diyat* should be paid with goodness. (2:178)

It is evident from this verse that the *Diyat* should be paid according to the *Ma’rūf* of a society. *Ma’rūf* means the customs and conventions of a society.

In the times of the Prophet (sws), the *Ma’rūf* of the Arab society was that the *Diyat* of a woman was half that of a man. So while following the directive of the *Qur’ān* regarding *Diyat* the Prophet (sws) enforced the *Ma’rūf* of his society.

The *Ma’rūf* of different societies may be different and therefore the *Ma’rūf* of each society should be followed. In other words, Islam has not obligated us to discriminate in this matter between a man or a woman, a slave or a free man and a Muslim or a non-Muslim. It wants us to follow the *Ma’rūf* of our society. Scholars

have erroneously enforced the *Ma'rūf* of the Arab society of the times of the Prophet (sws). Since then, the wheel of fortune has revolved through fourteen more centuries and the tide of time has sped past innumerable crests and falls. Social conditions and cultural traditions have undergone a drastic change.

As per this *Qur'ānic* directive, every society is to obey its custom, and since in our own society no law about *Diyat* exists, those at the helm of affairs of our state can re-legislate in this regard. *Ibn 'Abidīn*, a celebrated *Hanīfite* scholar, writes:

It should be noted that juristic issues either stand proven by a categorical injunction which is the first type, or stand proven by *Ijtihād* and opinion [which is the second type]. Most issues of the second category are based by the *Mujtahids* upon the customs and traditions of a particular period in such a way that if they would have been present in this age which has a certain custom and tradition, they would have given a different opinion. Hence, about the conditions of *Ijtihād*, they also state the condition that it is necessary to have a clear understanding of the habits and common practices of the people because with the change in times a lot of the directives change. This may be due to a number of reasons. For example, a change in the general custom, requirement of a situation or a fear of disorder in the general condition of the people that if a directive is continued in its original state it might create difficulties for them or inflict a loss upon them; this would be against the principles of the *Sharī'ah* which are based upon facility,

comfort, and prevention of damage and disorder.⁷

4. Women must travel with a *Maḥram*

Most scholars are of the opinion that women cannot travel alone. They must be accompanied by a *Maḥram* (a relative with whom marriage is prohibited). Therefore, in journeys such as *Hajj* they do not allow women to travel alone. The following *Aḥādīth* are the basis of their view:

It is narrated by *Abū Hurayrah*:

(:)

‘It is not permissible for a woman who believes in Allah and the Last Day to travel a distance for one day and one night without a *Maḥram* with her’. (*Muslim*, No: 1339)

Abū Saʿīd narrates that the Prophet (sws) said:

(:)

‘A woman is not to travel a distance for two days except with her husband or *Maḥram* with her’. (*Muslim*, No: 827)

It needs to be appreciated that there are a number of *Aḥādīth* in which directives have been given by the Prophet (sws) for the well-being of the Muslims. However, if the circumstances in which such directives have been given change, then as is the case with all conditional directives such directives may no longer apply in the changed circumstances.

The directives given to Muslim women about travelling belong to the above mentioned category. To ensure a safe journey for a woman and to protect her moral character from any scandalous allegation in the strife ridden society of Arabia, the Prophet (sws) bade them travel with a *Maḥram* relation.

7. *Ibn ʿAbidīn, Rasāʾil Ibn ʿAbidīn*, 1st ed., (Damascus: *al-Maktabah al-Hāshimiyah*, 1325 AH), p. 125

Thus, all tours and journeys etc in which the above two bases still exist, the condition of a woman travelling with a *Mahram* must be followed. However, with the changed circumstances of modern times, travelling has become a lot different from what it used to be in previous days. There are some travels in which safety both physical as well as moral is ensured. So, in such cases, the *Mahram* condition no longer applies. As far as the decision as to which journeys have become safe is concerned, the traveller must decide for herself.

5. Women can't become Heads of State

A vast majority of Muslim scholars believe that women cannot become heads of state. Many of them base their view on the following *Hādīth*:

(:)

Abū Bakrah reports: Allah has given me the benefit of a word – which I heard from the Messenger of Allah – during the days of [the battle of] *Al-Jamal*, when I was about to join the people of *Al-Jamal* and fight alongside them: When the Messenger of Allah heard that the people of Persia had appointed the daughter of Chosroes (*Qisra*), he said: ‘People who appoint a woman as their leader will never succeed’. (*Būkhārī*, No: 4163)

This *Hādīth* suffers from the following flaws:

1. It is evident from the very text of the narrative that it was never known until the battle of *Jamal* took place in 36 AH. It was brought forward only after *ʿĀ'ishah* (rta) faced *ʿAli* (rta) in battle. Before that it was never heard of – which of course is quite strange.
2. One of the narrators is *ʿAwf Ibn Abī Jamīlah* about whom scholars of *Rijāl* know that he used to give preference to *ʿĀ'ī*

(rta) over 'Uthmān (rta) and it is also known that since Ā'ishah (rta) sided with 'Uthmān (rta), a group of the followers of 'Ālī (rta) targeted her to besmear her character. Moreover, the *Ḥadīth* can never be applied to the case of Ā'ishah (rta) since she never claimed to be the ruler of the Muslims.

3. It is a *Gharīb Ḥadīth*. In *Ḥadīth* parlance, a narrative which has just one narrator in any section of its chain is called 'Gharīb'. It makes the narrative quite weak. It is only *Abū Bakrah* who is reporting this narrative at the top of this chain. The nature of the narrative is such that other companions too should have reported it from the Prophet (sws) but we find none.

4. If the content of the *Ḥadīth* is analyzed, one can easily conclude that the Prophet (sws) could never have uttered these words. After all, success in this world was attained by many nations who had women rulers until the time of the Prophet (sws) and even after him.

5. Last but not the least, this *Ḥadīth* is against the *Qur'ān*. It is the purport of the *Qur'ān* (42:38) that anyone who enjoys the confidence of the majority is eligible to become the ruler of the Muslims:

(:)

And their system is based on their consultation. (42:38)

Nowhere does the *Qur'ān* exclude women from this general principle.

6. Men are Superior to Women

It is argued by some people that men are superior to women. They present the following verses in support of their view:

(:)

Men are the guardians of women, because God has given the one more preference over the other, and because they support them. (4:34)

(۲۲۸:۲)

And the husbands hold a degree of superiority over them.
(2:228)

As per the *Qur'an* (see, for example, 3:195 and 4:1), men and women as human beings 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. Thus 4:34 speaks of the relative superiority of a husband to his wife – that too in responsibility and status – in just one sphere and cannot be generalized to men and women.

Two reasons have been given in 4:34 for granting the husband this status: Firstly, because they are physically and temperamentally more suited to this task and secondly, because they have been entrusted with the responsibility of earning for the family. It also needs to be appreciated in this regard that Islam does not forbid women to earn a living. It has only relieved 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.

Here it would be appropriate to analyze another concept which has also contributed to the notion that men are superior to women. As per a *Hadith*, a woman is created from the rib of man referring to the fact that Eve was created from Adam's rib and thus was a secondary being. The text of the *Hadith* is:

(:)

Abū Hurayrah reports that Allah's Prophet said: Treat women nicely, for a woman is created from a rib, and the most curved portion of the rib is its upper portion; so, if you should try to straighten it, it will break, but if you leave it as it is, it will remain crooked. So treat women nicely. (*Bukhārī*, No: 3135)

It needs to be appreciated that according to the *Qur'ān*, Eve was not created from Adam's rib. The first verse of *Sūrah Nisā* explicitly states that the first man and woman (Adam and Eve) were created directly by the Almighty:

(:)

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)

Some people translate this verse as 'It is he Who has created you from a single person (Adam) and then He created from him his wife (Eve)'. They explain this verse by saying that Eve was created from the rib of Adam. This misleading translation has probably arisen because of a literal translation of the Arabic words ' ' viz. 'and created from him [-the initial soul-] his wife'. Actually the word ' ' (from the soul) does not imply that 'Eve was made from Adam'; it rather implies that Eve was made from the same species as Adam. A similar verse points to this interpretation:

(:)

It is God who has made from your species your mates.
(16:72)

A literal translation of the words ‘*anfus*’ of the above quoted verse (which are similar to ‘*anfus*’) would mean ‘it is God Who has created your mates from you’ implying that every wife is made from her husband as Eve was. This of course is incorrect; the word *anfus* (plural of *nafs*) in this verse means ‘genre’, ‘species’ and not ‘physical being’.

As far as the actual *Ḥadīth* quoted above is concerned, it needs to be appreciated that in Arabic the words ‘created from’ do not necessarily refer to the substance of creation; they can also refer to the nature of something. For example the *Qur’ān* says: ‘Man has been created from hastiness’ (21:37). This does not of course mean that man’s substance is hastiness; it only refers to his nature.

Secondly, if all the textual variants of the *Ḥadīth* are collected and analyzed, it becomes evident that the Prophet (sws) has compared the nature of a woman with a rib. The comparison subtly alludes to the fact that a woman’s nature is very delicate and tender as well as a bit adamant. The Prophet (sws) has advised men to treat them tactfully keeping in view this nature. Instead of forcing them to accept a particular point of view, men should try to convince and persuade them.

7. Female Circumcision

It is believed by some people that like the male children, female children must also be circumcised. They base their opinion on the following *Ḥadīth*:

(:)

‘*Umar* and ‘*Uthmān* and *Ā’ishah*, the wife of the Prophet, used to say: ‘When the circumcised part touches the circumcised part, the ceremonial bath becomes obligatory’. (*Mua’ṭṭā*, No: 102)

This misconception has arisen because of a literal translation of the above *Ḥadīth*.

If linguistic principles are given due consideration, the Arabic word *Khitān* used in the *Ḥadīth* and translated as ‘the circumcised part’, actually implies the male and female reproductive organs.

In the Arabic language, there is a style called *Mujānasah* which means using similar words such that the second used word does not do the job of conveying its original meaning but rather being of the same genre and category as the previous one. We have examples of such usage in the *Qur’ān* also. For example a verse says:

(:)

The recompense of evil is similar evil. (42:40)

Here, the word evil used second is merely for *Mujānasah* ie. it does not do convey its original meaning; it is only of the same genre. Of course, the reward of evil is not a similar evil for the reward is a just act which the perpetrator of evil deserves; this act of justice cannot be called evil in the literal sense.

8. *Mahr*: the Price of owning a Wife

Mahr is a sum of money which a husband is required to pay to his wife at the time of marriage or make a commitment that it shall be paid later. It is erroneously believed by some that *Mahr* (dowry) is the price of owning a wife.

In reality, the payment of *Mahr* has a deep symbolic significance: 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 pay the agreed sum before he takes home the bride.

It would not be out of place to mention that the amount of the *Mahr* money, as the *Qur’ān* asserts, should be fixed keeping in view the social customs and traditions of a society :

(:)

... and pay them their dowers according to the custom. (4:25)

Also, as mentioned above, it is in the fitness of things that the amount be paid to the wife as soon as possible since it symbolizes one of the primary responsibilities of the husband.

9. Women Outnumbering Men in Hell

The following *Hadīth* is often presented to support the view that women will outnumber men in Hell:

(:)

Abū Sa'īd Khudrī reported: Allah's Messenger (sws) went out to the place of worship on the day of *'Idu'l Aḍḥā* or *Fiṭr* and he passed by the women and said to them: 'O Women, give charity for I have been shown the majority amongst you as the inmates of Hell'. They said: 'Allah's Messenger, wherefore?' He said: 'It is because you curse one another very much and show ungratefulness to your husbands'. (*Bukhārī*, No: 298)

This inference is incorrect and has arisen by not properly appreciating a particular style of communication used in certain *Aḥādīth* which depict dreams of the Prophet (sws). Such dreams are a source of revelation for the Prophets of Allah and in them they are shown certain images by the Almighty for the purpose of educating Muslim men and women. As a principle, all such dreams are not to be interpreted literally; they contain realities which are depicted in symbolic form.

Symbolic representation is a very subtle and powerful way of expression: Facts seem veiled yet for him who pauses to ponder they are the most evident. They move a person in the manner poetry does. They ignite in a person the spark to look behind the apparent. They urge him to reflect and to meditate and then to

discover and to infer. They educate him without rousing his prejudices. The Prophets of Allah (sws) have effectively employed this technique of communication. The words and discourses of the Prophets Joseph (sws) and Jesus (sws) for example are full of powerful parables and subtle symbolism. The dream of the Prophet Joseph (sws) and the way he interpreted it is mentioned in the *Qur'ān* also. If he saw in his dream that the sun and the moon and eleven stars were bowing before him in prostration, he knew that these heavenly bodies symbolized certain personalities.

The *Aḥādīth* which depict more women in Hell should also be interpreted keeping in view this basic principle. These *Aḥādīth* do not delineate the population of women in Hell since this would be a literal interpretation; on the contrary, they just caution them that there are certain deeds which they do a lot and which, therefore, would be more instrumental in taking them to Hell; so they should avoid them. In other words, the symbolism is causative in nature. In the above quoted *Ḥādīth*, the cause has been symbolized to warn women of something which they often do.

10. Sex with Female War Captives

Among many other misconceptions about Islam is the notion that it gives sanction to slavery and permits its followers to enslave prisoners of war, particularly women and establish extra-marital relations with them. The fact is that Islam has not the slightest link with slavery and concubinage. On the contrary, it completely forbids these practices. It is quite outrageous to associate such barbarities with a religion revealed to upgrade humanity.

The point which needs to be appreciated and which, perhaps, is the real cause of the misconception is that Islam had adopted a gradual process to abolish the institution of slavery because of the social conditions prevalent in Arabia at that time. It must be kept in mind that slavery was an integral part of the pre-Islamic Arab society. There were scores of slave men and women in almost every house. This was largely due to two reasons: First, during those times, the standard practice of dispensing with prisoners of war was to distribute them among the army which captured them. Second, there were extensive slave markets in

Arabia in that period where free as well as men and women of all ages were sold like commodities.

In these circumstances, in which slavery had become an essential constituent of the Arab society, Islam adopted a gradual way to eliminate it. An immediate order of prohibition would have created immense social and economic problems. It would have become impossible for the society to cater for the needs of a large army of slaves, who were, otherwise, dependent on various families. Also, the national treasury was in no position to provide them all on a permanent basis. A large number among them were old and incapable of supporting themselves. The only alternative left for them, if they were instantly freed, would have been to turn to beggary and become an economic burden on the society. The question of slave girls and women was even more critical, keeping in view their own low moral standards. Freeing them, all of a sudden, would have only resulted in a tremendous increase in brothels.

Perhaps, the reason behind this gradual eradication can be understood better if one considers the position which interest occupies in the economy of Pakistan today. No one can refute Pakistan's national economic structure is interest oriented. How the parasite of interest has crippled the national economy is apparent to every keen eye. However, there is no denying the fact that without it our present economic system cannot sustain itself. Every reasonable person will acknowledge that today if a government wishes to rid the economy of this menace then, in spite of its utter prohibition in Islam, it will have to adopt a gradual methodology. During this interim period interest-based deals will have to be tolerated and temporary laws will have to be enacted to handle them, just as the *Qur'an* had given certain provisional directives about slaves during the interim period of their gradual eradication. An alternative economic framework will have to be steadily incorporated in place of the existing one. A sudden abolition, without another parallel base, will only hasten the total collapse of the economic system, which, of course, will be disastrous for the country.

To avert a similar disaster and to ward off a similar catastrophe, Islam had adopted a progressive and a gradual scheme, fourteen hundred years ago, to do away with the inhuman institution of slavery.

Various 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:⁸

1. In the very beginning of its revelation, the *Qur'ān* 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 ‘*at-talīq*’ (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'ān* – that it has regarded this virtue to be the first as well as the greatest step in pleasing God.⁹

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’¹⁰.

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 to end. 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’¹¹.

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’¹².

Ibn ‘Umar (rta) narrates from the Prophet (sws): ‘Whoever slapped a slave or beat him up should atone this sin by liberating him’¹³.

8. Translated and adapted from *Ghamidi's ‘Qānūn-i-Mu‘āsharat’* (The Social *Sharī‘ah* of Islam).

9. The *Qur'ān* 90:30

10. *Muslim*, No: 1509

11. *Muslim*, No: 1662

12. *Muslim*, No: 1661

13. *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".'¹⁴

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'.¹⁵

3. In cases of un-intentional murder, *Zihār*, and other similar offences, liberating a slave was regarded as their atonement and *ṣadqah*¹⁶.

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.¹⁷

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:

...

14. *Muslim*, No: 1659

15. *Abū Dā'ūd*, No: 5164

16. The *Qur'ān*: 4:92, 58:85, 5:89

17. 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 ‘*ḥalāl*’ (for [freeing] necks) was instituted so that the campaign of slave emancipation could receive impetus from the public treasury.¹⁸

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.¹⁹

8. People were told that they were all slaves of Allah and so instead of using the words ‘*ḥalāl*’ (slave-man) and ‘*ḥalāl*’ (slave-woman), the words used should be ‘*ḥalāl*’ (boy/man) and ‘*ḥalāl*’ (girl/woman) so that the psyche about them should change and a change is brought about in age old concepts.²⁰

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.²¹

10. Finally the following directive was given:

18. The *Qur’ān*, 9:60

19. See: Islamic Punishments, Monthly Renaissance, Sep2002, *Dāru ’l-Ishrāq*, Lahore

20. *Muslim*, No: 2249

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

(:)

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*’. It is 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.

11. Prohibition of Plucking Facial Hair

On the basis of the following *Ḥadīth*, it is believed that women are not allowed to pluck their facial hair:

]

[

‘Abdullāh Ibn Mas‘ūd has reported: ‘Allah curses those ladies who practice tattooing and those who get themselves tattooed, and those ladies who remove the hair from their eyebrows and faces and those who make artificial spaces between their teeth in order to look more beautiful whereby they change Allah’s creation’. His saying reached a lady from *Banī Asad* called *Ummi Ya‘qūb* who came [to *‘Abdullāh*] and said: ‘I have come to know that you have cursed such-and-such (ladies)?’ He replied: ‘Why should I not curse those whom Allah’s Apostle has cursed and who are [cursed] in Allah’s Book!’ *Ummi Ya‘qūb* said: ‘I have read the whole *Qur‘ān*, but I did not find in it what you say’. He said: ‘Verily, if you have read it [i.e. the *Qur‘ān*], you have found it. Didn’t you read: And whatsoever the Apostle gives you take it and whatsoever he forbids you, you abstain (from it), (59:7)’. She replied: ‘Yes, I did’. He said: ‘Verily, Allah’s Apostle forbade such things’. She said: ‘But I see your wife doing these things?’ He said: ‘Go and watch her’. She went and watched her but could not see anything in support of her statement. On that he said: ‘If my wife was as you thought, I would not keep her in my company’. (*Bukhārī*, No: 4604)

One must always keep in consideration two fundamental principles while studying and interpreting *Aḥādīth*:

Firstly, to determine, as far as possible, the context and the background, all *Aḥādīth* on a particular subject should be collected and then analyzed as to ascertain the overall picture which emerges.

Secondly, they must be related to the *Qur‘ān* and *Sunnah*. This means that they must have a base in these two primary sources of Islam. They cannot and must not be taken independently.

Applying these principles to the above quoted *Ḥādīth* shows that there were a number of practices (only some of which have been mentioned in this *Ḥādīth*) which the Arab ladies used to undertake which entirely changed their natural physical appearance and some of which actually gave a false impression of their outward looks.

Almost all the major books of *Ḥadīth* mention the various texts in which these practices have been narrated. The initial part of the *Ḥadīth* mentioned above ‘... whereby change Allah’s creation’ itself suggests the relationship of this *Ḥadīth* with the *Qur’ān*: Verse 31 of *Sūrah Rūm*, reads thus:

(:)

Follow the nature upon which Allah has created mankind. It is not proper to change this nature. (30:30)

It is in accordance with this principle mentioned in the *Qur’ān* that the Prophet (sws) forbade a number of such practices. In other words, the nature – physical as well as spiritual – of a human being must be preserved in the shape Allah has created. Consequently, anything which may become a means of changing or modifying this nature is undesirable. However, a fine distinction exists between beautification to quench one’s aesthetic sense and alteration, the former being a permissible thing.

These *Aḥādīth* also mention a practice called ‘*Tannamus*’, which means removing the hair which extends on to the forehead in a particular style. This again was forbidden by the Prophet (sws). The *Ḥadīth* you have mentioned contains this word; however it has been erroneously translated as ‘to remove hair from the face’.

In the light of this analysis, it is evident that removing hair from the face is something which the Prophet (sws) never forbade.

12. Going out without the Husband’s Permission

There is a *Ḥadīth* which says that a lady must seek permission from her husband for going out:

(:) ...

Ibn ‘Umar reports from the Prophet that once a lady came to the Prophet and asked him about the rights of a husband on his wife. He replied: ... she should not leave his house

without his permission. (*Sunan Bayhaqī*, No: 14490)

It needs to be appreciated that a family by analogy is similar to a state. All citizens of a state are expected to abide by the rules and regulations of the country they live in. They are expected to adopt an attitude of adjustment and harmony with the country. This, of course, does not mean that they cannot differ with its policies. They have the inalienable democratic right to differ and present their differences in a befitting manner. This submission is actually an essential requirement for discipline and order without which anarchy may result. Similarly, in the case of a family set up, it is essential that the person who is its head be shown obedience. In other words, submission to authority is not specific to the gender of the authority. Whoever is the authority, must be submitted to. Gender does not dictate submissiveness – it is authority which does. It is common knowledge that in different sphere of activities people have different abilities and justice entails that a person be made responsible according to his or her abilities and given authority on that basis. We have been informed by divine revelation that it is the husband who is more suitable to be the head of the family. Owing to this relative superiority, women are directed to submit to men not because men are superior human beings, but because in this particular case it is the men who have been vested with authority in accordance with 4:34. If women had been more suitable for the task of heading a family, men would have been similarly directed to adopt this attitude of adjustment.

Thus Islam requires that the wife adopt an attitude of adjustment and harmony with the husband and the husband is required to be affectionate and accommodating as far as possible to the needs of his wife. He must not impose any undue restrictions on her for this will ignite the wrath of God upon him.

With regard to a wife seeking her husband's permission before leaving the house, the proper perspective must be understood. In general circumstances of mutual trust, there is no need for a wife to ask permission from her husband to go out. However, in certain circumstances in which the husband genuinely considers that going out might disrupt the family in any way, he has the authority to exercise his right of stopping her and in these circumstances, she should always ask permission to leave the house. In this regard, the husband must remember that if he

imposes himself without any sound and justifiable reason, he would be crossing the bounds and invoking the displeasure of the Almighty. His wrong behavior may even lead the wife to abandon him for which he would be solely responsible.

13. 'Iddat Restrictions

It is generally held that divorced or widowed women must spend their 'Iddat while being permanently stationed in their houses and wearing white clothes. Moreover, the 'Iddat period is generally not spent at the husband's house.

In this regard, the following points must be clearly understood:

Firstly, the basic reason for observing this period is to ascertain whether a lady is pregnant or not. It is to protect the lineage of the husband that she undergoes this wait. The words ‘

’ (no period of 'Iddat have they for you which you can ask them to complete) 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. Consequently, if a lady is past her child bearing age or if it can be determined through scientific means that a lady is not pregnant she will not be required to observe the 'Iddat. On these very grounds, the *Qur'ān* has exempted newly married women who have not gone near their husbands from 'Iddat:

(:)

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)

Secondly, 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 only exception to this is that if a wife is guilty of fornication in which case 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.

Thirdly, as far as the restrictions of *'Iddat* are concerned, all of them are based on protecting the lineage of the child that a widow or a divorced lady might be carrying. She can go out for any purpose which includes activities as austere as the *Hajj* and as light as an amusement park if she has made sure that this basic objective is not sacrificed.

Fourthly, for a widow, the *'Iddat* has its own sanctity and she should observe this period with solemnity and austerity. So natural is this observance that widows are not required to be told to dress and behave in accordance with the norms of the circumstances that face them.

14. Marriage with Minor Girls

There are some scholars who make the fourth verse of *Sūrah* 65 of *Sūrah Ṭalāq* as basis of their opinion that Islam has allowed marriage and its consummation with minor girls. This is an erroneous conclusion. Marriage with minor girls is an issue which has not been discussed by the *Qur'ān* at all.

However, the referred verse has nothing to do with this issue. If the linguistic principles of the Arabic language are taken into consideration, the correct translation of the last part of this verse is:

(:)

And those of your women who have ceased menstruating 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* () and not *Mā* (). The verse is generally translated by disregarding this subtle difference as:

(:)

And those of your women who have ceased menstruating 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.

15. Refusing Sex to the Husband

On the basis of the following *Ḥadīth*, it is generally understood that if a wife refuses sex to her husband she will be cursed by the angels:

(: ,)

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)

In order to understand this *Ḥadīth*, the following points need to be understood:

Firstly, a husband and wife safeguard the chastity of one another by providing one another a legitimate means of satisfying the sexual urge. This protection of chastity is essential for the preservation of the family unit – the very institution on which the stability of a society hinges. Hence anything which puts chastity in jeopardy is disliked by the Almighty.

Secondly, a man is an addressee of the directive mentioned in this *Ḥadīth* on an equal basis. This is evident from the directive of *Ilā* mentioned in the *Qur'ān* (2:226-7) in which the Arabs of the pre-Islamic period would swear to sever sexual relationship with their wives because of anger. Although the husbands were prescribed a period of four months to decide the fate of their wives by either resuming these relations or divorcing her, it is evident from the directive that in normal circumstances a

husband is not allowed to sever sexual relations from his 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.

Thirdly, the basis of refusal by the husband or wife must also be taken in consideration. If either of them is tired, sick or simply not in the proper mood and in the appropriate frame of mind then it does not entail any wrath of the Almighty. It is only when a spouse starts to deliberately evade such natural needs of the other that the attitude becomes questionable.

16. The Right to Beat Wives

The right given by the *Qur'an* to the husbands to physically punish their wives in certain circumstances is a thorny issue in the modern mind. The issue needs to be understood in its true perspective. The *Qur'an* says:

(:)

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)

The following implications of this verse need to be understood in their proper perspective:

a. Firstly, this measure 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. This rebellious attitude is termed as ‘*Nushūz*’ by the *Qur'an*. It 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 that 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 over 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.

17. The Daughter's Share in Inheritance

Why is the share of a daughter one half that of a son? Does this mean that sons occupy more importance than daughters? This issue too needs to be understood in its proper perspective.

It is a universally acknowledged fact that the extent of help and co-operation which a person receives from his parents, children and other similar relations has little chances of being paralleled by any other association. Undoubtedly, the world has always

considered the kith and kin of a deceased as the rightful beneficiaries of the wealth he has left behind. But certain issues in this regard have always remained unresolved; for example, who among the kindred is nearest with respect to the benefit he holds for the deceased? And how should the inherited shares be ascertained on this basis? In this matter, the extent to which the human mind has faltered and stumbled can be seen from the frequent history these blunders have continued to make. It is not that human endeavour in this regard has fallen prey to any lack of application; rather it is due to certain inherent limitations of the human mind which have made the task itself beyond its reach. Love, hatred, prejudice and other emotions have made it impossible for human intellect to come to grips with this challenge. Consequently, the Almighty Himself has guided mankind in this affair to relieve an Islamic society from the disorders which have originated on this account:

(:)

You know not who among your children and parents are nearest to you in benefit. This is the law of God. Indeed, God is Wise and all-Knowing. (4:11)

It is clear from the above quoted verse that the law of inheritance as stated in the *Qur'ān* is based on the underlying cause of 'the benefit of kinship', as indicated by the words ' (you know not who among your children and parents are nearest to you in benefit). Consequently, the directive in reality does not pertain to the relatives but is related to the underlying cause present in this relationship, which actually entitles them to become the heirs.

Thus the basic reason why the share of a son is more than that of a daughter is the fact that in the life of parents the son is usually more beneficial to them than the daughter. This is so simple a fact that it can be easily understood in societies where the institution of family is still very strong and has deep roots. In a family system, parents become dependent on the children as they grow old. The ease and comfort they feel in living with a son is much more than what they feel while living with a daughter. The simple reason is

that a son is independent in taking decisions while a daughter, once she gets married, is actually more dependent on her own husband and is not so independent. The modern western mind feels averse to this distribution because the family system is dwindling in their society.

One thing which may be worth mentioning here is that there may be cases even in societies having a strong family system where a daughter may prove more beneficial to her parent(s) than the son; similarly, there may be cases in which a daughter may require more monetary help because of her circumstances. This can of course be true for a son as well. In such cases, as per the following verse there is a provision that a daughter or a son be given more wealth through a will made in their favour:

(2 : 1)

When death approaches any one of you and you are leaving behind some wealth, it is incumbent upon you to make a will in favour of your parents and relatives according to the conventions [of society]. This is an obligation imposed upon the God-fearing. (2:180)

As per another provision in Islamic law, a parent in his lifetime can gift as much wealth as is deemed necessary to a child.

In short, the 2:1 ratio pertains to normal circumstances; in exceptional ones there exist remedies in the Islamic law – some of which have been explained above.

Lastly, this difference of share is among the children only since the difference in benefit exists. On the other hand, as far as receiving the inheritance of a child is concerned, in most cases stipulated by Islamic law, both the mother and the father receive an equal share (ie one sixth) because for a child the benefit from a mother and a father is equal.

18. Polygamy

Some people are of the opinion that Islam has allowed a Muslim to keep up to four wives at one time since keeping four wives is a man's essential physical and psychological need. This

inference is not correct. 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'ān* (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.

In this regard it should be understood that the issue of polygamy has been mentioned in the *Qur'ān* as a means to make use of this pre-Islamic practice to solve a certain social problem that had arisen in those times: Many men were martyred in various battles leaving behind orphaned children. The *Qur'ān* appealed to men of that society to come forward to help these orphaned children by marrying their mothers, since these mothers if supported would be in the best position for their upbringing. In other words, the view of the *Qur'ān* is that people were taking to polygamy for various reasons and they would do a great service if they marry to solve the plight of these orphans. The *Qur'ān* says:

(- :)

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)

It needs to be appreciated that it was 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).

The next thing that a person should know is that as per the *Qur'ān* if a person cannot maintain justice between his wives in this regard he should not marry more than one even for a purpose as noble as supporting the orphans. One can be more attached to one wife than the others. This is but natural and to demand justice in this matter is injustice itself. What is required from the husband as verse 4:3 points out is that as far as the rights of the wives are concerned, he must always deal fairly and equally among them. The *Qur'ān* has further clarified this issue 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 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)

There is another issue here that needs clarification since women often ask the reason for forbidding them to marry more than one husband. In this regard it needs to be understood that if a family is to come into being not only should there be only one head but also one person should not be placed under the command of multiple heads otherwise, great anarchy would result. So, just as a state cannot have more than one ruler, a family cannot have more than one head. Since, in the family set-up envisaged by Islam, husbands are to head the family, if a wife has multiple husbands, she would be placed under the authority of many husbands at the same time.

19. Marriage with the People of the Book

It is generally understood that Islam unconditionally allows Muslim men to marry Jewish and Christian women. However, the placement and context of the *Qur'anic* verse which permits such marriages show that it is desirable that certain conditions be met if such a marriage is to take place. Needless to say, the *Qur'an* has been revealed as a coherent Book. It is not a disjointed collection of verses as is generally believed. There is profound structural and thematic coherence in it. Each verse has a definite context and until and unless this context is carefully kept in consideration, the true implications of a verse can usually not be ascertained. Disregarding the context of a verse often leads to serious misinterpretations which distort the stance of the *Qur'an*. It is therefore of paramount importance that each verse be interpreted in the light of its context.

Consider now the context of the related verse. The following verse immediately precedes it:

(:)

This day the disbelievers have abandoned all hope of vanquishing your religion. Have no fear of them: fear Me. This day I have completed your religion for you and completed My favour upon you and have chosen for you Islam as your religion. (5:3)

Consider next, the verse under consideration:

(:)

This day all things good and pure are made lawful to you. The food of the People of the Book is lawful to you, and yours to them. Lawful to you are the chaste among the believing women and the chaste women among the People of

the Book, provided that you give them their dowries and desire chastity neither committing fornication nor taking them as mistresses. (5:6)

It is clear from the above mentioned verses that these directives pertain to the period when the supremacy of Islam had been established in Arabia – when the disbelievers had lost all hope of overcoming the Islamic forces and the Muslims had become an unconquerable force. It was in these circumstances that the Muslims were permitted to marry Jewish and Christian women. Moreover, it is evident from the verse that only virtuous and upright women among the People of the Book were allowed to be taken in marriage. It is evident that in such conditions and circumstances, there was virtually no possibility of the Muslims being influenced by their religions directives and cultural traditions. Instead, there was a far greater possibility that such marriages would positively influence the women of the People of the Book by inducing them to accept Islam.

By analogy, therefore, such marriages today seem desirable only in societies where the cultural traditions and legal injunctions of Islam hold sway.

20. The Issue of *Wali* (Guardian) in Marriage

Is it imperative to seek the consent of the parents or guardians in a marriage? This question has assumed great importance in this era since some marriages are taking place against the wishes of the parents and guardians.

In this regard the stance of Islam is that 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. Narratives like ‘
(No marriage should take place without the [permission of] the guardian)²² and other similar ones actually allude to this aspect. They are a corollary of the social directives of Islam pertaining to the institution of family and is based on great wisdom. Since the

22. *Abū Dā'ūd*, No:2085

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 *Hādīth*, 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.

21. Three Divorce declarations

Most people are ignorant of the proper way of divorcing wives. It is generally thought that a wife stands separated from her husband if the divorce is declared thrice. This notion is against the *Qur'ān* which says that a lady must be divorced by just one declaration to the effect.

Moreover, there are many other misconceptions regarding divorce giving rise to the following questions:

- i. Do women have a right to divorce?
- ii. Should the wife pay money for seeking divorce?
- iii. What is the correct way of divorce?
- iv. How should wrongly given divorces be tackled?
- v. In whose custody should the children be given?

i. The Right to Divorce

When a man and a woman marry each other, it is their utmost wish to remain in this relation of wedlock forever. They are desirous of the fact that the change in times not change their commitment to each other and only death separate them in this

world. But then, sometimes there does arise a situation when part they must. Differences become so pronounced that it becomes necessary to sever this relationship. If such circumstances do arise that a husband and wife must separate permanently, Islam lays down a specific procedure for this separation. In Islamic terminology this dissolution of marriage is called divorce. It says that both a man and a woman have an equal right to it. The only difference is that a man divorces a woman while a woman demands a divorce from her husband. The *Qur'an* explicitly states that it is the husband who has the right to divorce:

(:)

In his hands, is the tie of marriage. (2:237)

Women, however, can seek divorce if they want to. If the husband refuses, she has all the right to take the matter to the court. The matter will then be decided by the ruling of the court.

This prerogative, sense and reason demand, should go to the head of the family. Since, according to the *Qur'an*, it is the husband who is the head of a family, therefore, he has been given this right. In other words, this right is not 'gender specific' it is 'authority specific': whoever is entrusted with the authority of being the head should possess this right. Had women been more suitable to head a family, they would have been given this right.

ii. Should the Wife pay money for seeking Divorce?

A common misconception when a woman seeks divorce from her husband is that she must give some wealth to her husband on this occasion of separation. This has no basis in the *Qur'an*; on the contrary, the *Qur'an* says that it is not at all permissible for the husband to demand anything from his wife on this occasion. However, there are two exceptions to this:

Firstly, if a husband has gifted a lot of wealth and property to her wife and is afraid that in divorcing her he would lose all his riches, the *Qur'an* says that she can forgo some or all of her share and return it to her husband to end the whole affair. It is clear that this is only an exception and not a general principle as is generally held and practiced. It is allowed when only wealth is the husband's reason for not divorcing his wife. The *Qur'an* 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 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)

Secondly, if the wife is guilty of open sexual misconduct. Since such a behavior destroys the very foundation of marriage, a husband has been allowed to take back any gifts or wealth given to her. The *Qur'an* says:

....

(- :)

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 a 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)

ii. The Procedure of Divorce

If a husband has decided to divorce his wife, he should first

wait until she has completed her menstrual cycle and then desisting from any further carnal relationship, he should utter the divorce sentence just once. The wife, after she has been divorced in this way, must stay in her husband's house for a period of three menstrual cycles. This period is called *'Iddat*. If a woman does not have menstrual cycles owing to age, disease or any other reason, and still there is a chance of pregnancy, then she must wait for three months. For a pregnant woman this period is up to the birth of the child, while for a newly married couple who have had no contact, divorce does not entail any period of *'Iddat* for the wife. According to the *Qur'an*, there is one basic reason for this waiting period: to ascertain whether a wife is pregnant or not so that the lineage of the child does not remain a matter of doubt. Another thing which is achieved through it is that it affords the husband and other family members a chance to rectify the situation, for matters in which emotions and feelings run high, sometimes only time is needed for recovery.

During this *'Iddat* period:

- (a) The husband cannot turn his wife out from the house except if she is guilty of adultery, nor should she leave the house herself.
- (b) The wife, if she is pregnant, must not hide her pregnancy.
- (c) The husband should continue to provide for her.
- (d) A husband, if he changes his mind, can revoke his decision.

The only thing required, according to the *Qur'an*, is that he should call in two persons to testify to his decision²³.

If after this period of *'Iddat*, a man is still firm in his stance, his wife shall be considered as separated permanently. She is now a free woman and if she wishes to marry some other person, she has all the right to do so and must not be inhibited in any way. If circumstances change, she can even remarry her former husband. Furthermore, the *Qur'an* stresses that on this occasion of parting it is not at all lawful for a husband to take back any property or asset gifted to her²⁴. This, it must be kept in consideration, does not

23. This testimony, as is evident from the *Qur'an*, is not a legal requirement. It is only a sound piece of advice for the welfare of the spouses.

24. The only exceptions to this rule are when the wife is guilty of committing adultery, in which case a husband can take back all the wealth and property gifted to her.

pertain to *Mahr* (dower) only, but to every type of gift given to the wife. Not only should a husband not take back these gifts, he should, in fact, give her something on this occasion of separation. Even if her *Mahr* has not been fixed, it is better for him to give her something. If the *Mahr* has been fixed but the divorce occurs before the husband and wife have had contact, he must return half the money, unless the wife even forgoes this. In this case also, though it is better that he should give her the whole money.

However, in case the husband revokes his decision during the 'Iddat period, there is no need for re-marriage. The two shall be considered as husband and wife once again. If after annulment of this divorce, due to some reason, the untoward situation arises a second time that the husband intends to divorce his wife, the *Qur'an* says that the husband can exercise his right of divorce for the second time as well. He should pronounce just one divorce sentence to repudiate his wife. Again, the post-divorce period shall be observed in the manner just described. Once again, if the husband wishes, he has the chance to revise his decision during this period, in which case the divorce shall be considered null and void and the two shall once again become husband and wife. If, unfortunately, for the third time, the situation arises that divorce becomes inevitable, the *Qur'an* says that a husband can exercise his right for the third time as well and pronounce the divorce sentence. After the expiry of 'Iddat during which a husband will have to support and provide shelter to his wife (though the two are not required to live together), the wife shall be permanently separated from him. After divorcing his wife for the third time, he cannot re-marry her now, unless and until, the wife marries some other person and owing to some reason gets divorced from him – not under a planned strategy, but on account of naturally arisen circumstances. This last measure, actually, is meant to prevent this affair from becoming mere child play.

In the words of the *Qur'an*:

(:)

This divorce [in which the husband can revoke his decision in the 'Iddat period] is permitted twice only, and then a woman must be retained with kindness or allowed to go with kindness. (2:229)

It is evident from these details that the *Qur'ān* only prescribes one divorce sentence and stresses that a husband has the right to divorce her wife three times in one marriage contract. It does not at all approve the utterance of three divorce sentences in one go. Consequently, it is clear from these details that the two prevailing procedures of divorce ie (1) pronouncing three consecutive divorces in one instance, and (2) pronouncing each of the three sentences in three months are not at all prescribed by the *Qur'ān*. When the Prophet (sws) came to know that a certain person had divorced his wife by pronouncing three divorce sentences one after the other, he stood up in anger and said:

(:)

In my presence, such playful attitude has been adopted with the Book of Allah. (*Nisā'i*, No: 3401)

iii. Tackling wrongly given Divorces

Mentioned above is the *Sharī'ah* as far as the concept of divorce is concerned. However, as does happen with prescribed laws and procedures, situations arise in which a person is guilty of breaching the law and deviating from the right course. Human nature is prone to extreme emotional conditions in which it deviates from the path set forth by the Almighty. These deviations, it is extremely evident, are not part of the *Sharī'ah*; they fall into breach of law category and it is up to the legislature of a country to enact laws about such departures. At times, such cases are even left to the discretion of the judge and at other times the judge himself is bound by the legislation done in this regard by the parliament.

In case of divorce, keeping in view various precedents, this deviation is generally of two types:

- i) A husband divorces his wife during her menstrual period, or divorces her after he has had contact with her in her period of purity.
- ii) A husband divorces his wife by pronouncing the divorce sentence thrice.

As far as the first deviation is concerned, an Islamic government can ask the husband to revoke his decision and carry it out in the proper manner at the proper time. The Prophet (sws) in his own times dealt with the case of *'Abdullāh Ibn 'Umar* (rta)

in a similar manner. When he 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)

In case of the second deviation, a deliberation on the injunctions of divorce, particularly on their linguistic aspects, reveals that there are three possible solutions:

(a) The husband can be called to court and asked to testify to the nature of these pronouncements: if he testifies that he had pronounced the three sentences in anger to only strongly assert his decision or that he had thought that pronouncing three sentences was the correct procedure of divorce, the court, if satisfied by his statement, can re-unite the husband and wife. In this case, it shall be clearly spelt out to the husband that he now has exercised one of his three chances to repudiate his wife. If on the other hand, a person testifies that he had consciously uttered the three sentences knowing that he was exercising his three rights in one time, the wife, of course, shall be divorced from him. The case of *Rukāna Ibn 'Abdi Yazīd* (rta) was decided in a similar manner by the Prophet (sws).

(b) A second possible solution in this regard is that a state, while observing that people have adopted a carefree attitude in following this procedure, legislates that three divorce sentences shall be considered as three whether pronounced in anger or in a normal emotional state. A precedent of this solution can be found in the times of the Caliph 'Umar (rta). He himself, in the capacity of a ruler in consultation with the members of the *shūrā*, upon seeing that people had adopted a very careless attitude in

this regard, as a punishment, promulgated three divorce sentences as final.

(c) A third possible solution in this regard is that the state while observing the fact that people are mostly ignorant of the correct procedure and in their ignorance think that the correct way of divorce is to pronounce the sentence three times, legislates that the three pronouncements shall be considered as one.

Any of these three ways can be adopted keeping in view the welfare of the Muslims. However, in adopting the second or third solutions, it is necessary that a legislation has been done in their favour, but as far as adopting the first solution is concerned, no prior legislation is needed and the matter can be left to the discretion of the judge.

iv. The Custody of Minors

In post-divorce scenarios, the matter of the custody of minor children has not been touched upon in the *Sharī'ah*. In other words, it has been left to the welfare of the children. In case of a dispute, a judge should make this ruling after analyzing the situation of a case in the light of this principle

Perhaps the reason for which nothing has been fixed in the *Sharī'ah* in this regard is the varying circumstances which may be found in different cases.

22. The Issue of *Ḥalālah*

The concept of *Ḥalālah* is one of the ugliest and shameful of issues of Islamic jurisprudence. According to the *Sharī'ah*, if a man divorces his wife for a third time in his life, the two cannot re-marry unless the wife marries a second person and then that person due to some reason divorces her. In order to fulfill this legal requirement, subterfuges have been devised and marriages are planned with the understanding that a person will divorce the wife in order to make her legal to marry the first husband. In this regard, the jurists also impose the condition that before he divorces his wife he must have sexual intercourse with her. In religious parlance, this subterfuge in which a lady is made legally allowed for her first husband by marrying another person and then being divorced from her after having sexual intercourse with him is called *Ḥalālah*.

Needless to say, that all subterfuges amount to playing with the Islamic law and its spirit. Moreover, the condition of sexual intercourse imposed has arisen because of not understanding a very subtle comment of the Prophet (sww) in a *Hādīth*. 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 (sww) 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 *Hādīth*, it is prohibition of *Ḥalālah* and not vice versa. Hence it is absolutely prohibited and is tantamount to making fun of the law.

The text of the *Hādīth* 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 *'Ā'ishah* 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-Raḥmān* 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-Raḥmān* tastes you'. Then, upon seeing the sons of *'Abdu'l-Raḥmān*, 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-Raḥmān's* wife]. By God, these [young boys] resemble *'Abdu'l-Raḥmān* more than a crow resembles another crow. (*Bukhārī*, No: 5377)

23. The Etiquette of Sexual Intimacy

The issue of sexual intimacy between a husband and wife has given rise to many confusions. It needs to be appreciated that in this regard, the *Sharī'ah* has explicitly prohibited two things:

1. Intercourse during menses.
2. Anal intercourse.

These restrictions are mentioned in the following verse of the *Qur'ān*:

(:)

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. (2:222)

This means that, barring these two restrictions, everything else has been left to the taste and inclination of the husband and wife. The freedom they have in this regard is very aptly expressed in the following verse:

(:)

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 [of 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]. (2:223)

The portion of the verse: ‘So come to your cultivated land in whatever manner you want to’ refers to the liberty and freedom with which a person is allowed to come close to his wife. It is similar to how a farmer approaches his land. While explaining the expression ‘ (go then, into your lands in any manner you please), *Imām Amīn Aḥsan Iṣlāḥī* writes:

[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 latter and the word ‘ ’ to the former. 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 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'an* 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.²⁵

One aspect of the husband and wife relationship is that while fulfilling many other needs, it is also a means of satisfying the sexual urge. If this urge is satisfied between them, it secures their modesty and curbs sexual anarchy. However, if this urge is not quenched between the two, it might lead to grave deviations. It is because this relationship shields a husband and wife from any deviations that they are called each other's robes:

(:)

They [your wives] are [like] a robe for you and you [like] a robe for them. (2:187)

One can construe in the light of what has been said above that Islam has neither imposed any restriction on the position or posture for sexual intimacy nor explicitly stopped the couple from orally stimulating the sexual organs. However, a person must always bear in mind that Islam is a religion that stands for purification and cleanliness – both physical and spiritual. A person's own nature, if it is not perverted, guides him to be selective and refined in exercising this discretion. He may have the liberty to do anything in this regard, but he should always remember that the spirit and essence of this liberty dictate that he should not become an animal. Consequently, cunnilingus and fellatio may not be prohibited by the *Sharī'ah* but they seem to

25. Ibid., p. 527

be against the norms of a refined taste ingrained in human nature that has not been perverted.

It also needs to be appreciated that during menses, only sexual intercourse is forbidden as is evident from 2:222 quoted above. Other forms of sexual intimacy are allowed. *Anas Ibn Mālik* reports in the *Saḥīḥ* of *Imām Muslim*:

]

[

(:)

Amongst the Jews, when a woman menstruated, they did not dine with her nor did they live with her in their houses. So the companions of the Prophet asked him and Allah revealed ... (See 2:222 above). The Prophet then said: ‘You can do everything except having intercourse with her’. (*Muslim*, No: 302)

24. Misinterpretation of some verses of *Sūrah Aḥzāb*

There are certain directives about women which have been erroneously derived from some verses of *Sūrah Aḥzāb*. These can be enumerated as follows:

- i. Women must cover their faces and wear large cloaks (*jilbābs*) when they go out of their houses.
- ii. Women must not speak in a polite tone with strangers.
- iii. Women should primarily be confined to their homes.
- iv. Women should be kept secluded except from their immediate relatives.

It needs to be appreciated that all the above directives have a specific background and cannot be taken as general directives regarding women. It is imperative that this background be understood: When the Islamic message gained acclaim in *Madīnah*, the hypocrites started to tease Muslim women and scandalize the lives of the Prophet’s wives. They would try as much as they could to disparage the Prophet’s personal life and those of his wives. It was in this period when the incident of *Ifk*

took place. *Ā'ishah* (rta), the illustrious wife of the Prophet (sws), was dragged into a scandal by these mischief makers. While referring to this general attitude of the hypocrites, the *Qur'ān* says:

(- :)

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)

The above verses also shed light on one of their subversive activities: They would tease and torment believing women and when they would be called to account, they would say that they did not know that these were believing women. While explaining the background of this verse *Ibn Kathīr*, the celebrated commentator of the *Qur'ān*, records the opinion of *Suddī* in the following words:

The mischief-mongers among the people of *Madīnah* would come out on the streets at dusk and get after the women of the *Ansār*. The houses of the people of *Madīnah* [in those days] were very small in size and at nightfall the women would go out on these streets [making their way to the fields] to relieve themselves. These evil people would tease these women. If they saw a woman who would be wearing a cloak they would

say she is a free woman [and not a slave] and would abstain [from any evil activity] and if they saw a woman who would not be wearing a cloak [in the way prescribed by the *Qur'ān*] they would pounce on her by saying that she is a slave woman. (*Ibn Kathīr, Tafṣīr al-Qur'ān al-Azīm*, vol. 3, [Beirut: *Dāru'l-Ahyā wa al-Turāth al-'Arabī*, 1969], p. 518)

He then records the opinion of *Mujāhid* in the following words:

These women would wear cloaks [in the way prescribed by the *Qur'ān*] so that it be known that they are free women and the mischief-mongers would not then harm or tease them. (*Ibn Kathīr, Tafṣīr al-Qur'ān al-Azīm*, vol. 3, [Beirut: *Dāru'l-Ahyā wa al-Turāth al-'Arabī*, 1969], p. 519)

Evidently, in order to curb this prank of theirs, the Almighty directed believing women to make themselves distinct in appearance from other women so that these people could have no excuse to tease them. This distinction in appearance was to be made by drawing a part of their cloaks in front of them so that it protruded over their bodies.

Moreover, people who have derived the veil from these directives have translated the relevant part as: 'O Prophet! tell your wives and daughters and the wives of the believers to draw a part of their cloaks over them'. 'To draw cloaks over their faces' is an erroneous translation. The directive means that Muslim women should draw a part of their cloaks on them so that these cloaks should dangle in front. Nowhere does the verse says that the face should be covered. In fact, the verse is devoid of the word 'face'. If the face was required to be covered, words to this effect should have been present: ' (yughafīna wujūhahunna: they should cover their faces).

It is thus evident from this discussion that the directive given in the verse regarding cloaks and seemingly covering the face has no bearing in any way to directives in general. They only prescribe a way to deal with a particular situation that had arisen in the times of the Prophet (sww).

After dealing with the first question, the following questions which remain are answered through excerpts taken from Javed Ahmad Ghamidi's '*Qānūn-i-Mu'āsharat*' (The Social *Sharī'ah*

of Islam):

- i. Women must not speak in a polite tone with strangers.
- ii. Women should primarily be confined to their homes.
- iii. Women should be kept secluded except from their immediate relatives.

A deliberation on the contents of *Sūrah Aḥzāb* 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 (sws) 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 (sws) in order to obtain the comforts and luxuries of the Hereafter. They were then informed that if they decided to stay with the Prophet (sws), 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 (sws) 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'ān* says:

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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 mannerisms 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 (sws). 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. Anyone 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:

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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. (33:53-5)

25. Misconceptions regarding Marriages of the Prophet (sws)

The marital life of the Prophet (sws) has generally been

misinterpreted by the critics of Islam. In this regard, unfortunately, the real stance of the *Qur'an* has often been misconceived even by some Muslim scholars. The following questions have been raised in this regard:

- i. Why was the Prophet (sws) allowed to marry more than four wives?
- ii. Why did the Prophet (sws) marry the wife of his adopted son?
- iii. Why did not the Prophet (sws) marry his slave girl: Maria the Coptic?

In the following paragraphs, the *Qur'anic* viewpoint on these questions shall be explained.

The two initial marriages of the Prophet (sws), it is obvious, were solemnized in a normal perspective and on customary footings. He first of all married a widow, *Khadījah* (rta), when he was about twenty five years old, while she was almost forty years old. For the next twenty five years, the couple remained happily married and the Prophet (sws) during this period was seen in the role of an ideal husband, something which he maintained throughout his marital life. At the death of *Khadījah* (rta), the Prophet (sws) was left with small children. Consequently, he married a widow, *Sawdah* (rta), then fifty three years old. The need for this marriage like the previous one, it is obvious, arose from perfectly natural needs.

In the year 622, the Prophet (sws) migrated to *Madīnah* as its undisputed ruler. His marriage with *Ā'ishah* (rta) the daughter of his dear Companion, *Abū Bakr* (rta) was consummated two years later²⁶. The marriage had been legally solemnized a couple of years before migration. It seems that this marriage was, in fact, a divine selection, for the services rendered by *Ā'ishah* (rta) for the cause of Islam stand unparalleled. She was, perhaps, the greatest authority on Islam after the Prophet (sws). All the illustrious Companions of the Prophet (sws) consulted her for

26. Recent researches have established beyond doubt that *Ā'ishah* (rta) at the time of the consummation was in her twenties. The *Aḥādīth* which report her age to be eight or nine years at the time of marriage are absolutely baseless. For further details see Hakim Niaz Ahmad's '*Tahqīq 'Umr i 'Ā'ishah (rta) Ṣiddīqah*' (An Inquiry into the age of *Ā'ishah* (rta)) published by the Mashkoor Academy in Karachi)

religious guidance. The Prophet's marriage with *Ā'ishah* (rta) and later with *Ḥaḥḥah* (rta) daughter of *Umar* (rta), also proved instrumental in the strengthening of ties with his two close Companions.

Now, within the first few years after migration, many Muslim women were widowed particularly, because their husbands had been killed in the battles of *Badr* and *Uḥad*. A large number of them including their children were left helpless. The opening verses of *Sūrah Nisā* came to their rescue and suggested a way out to deal with their apathy. The custom of polygamy which was prevalent in Arabia was utilized to solve this problem. The *Qur'ān* urged the Muslims to marry them if they could be just to all their wives and at the same time this number should not exceed four. Since the Prophet (sws) was to set an example in this regard, he took lead and married two widows *Zaynab binti Khuzaymah* (rta) and *Ḥaḥḥah binti Umar* (rta). At this stage, he had four wives *Ā'ishah* (rta), *Sawdah* (rta), *Ḥaḥḥah* (rta) and *Zaynab binti Khuzaymah* (rta). A few months later, *Zaynab binti Khuzaymah* (rta) died and the Prophet (sws) married *Ummi Salamah* (rta) whose husband had been martyred in the battle of *Uḥad*. Her deceased husband *Abū Salamah* (rta) had rendered meritorious services for the cause of Islam.

The Prophet (sws), while discharging his duties as the final *Nabī*, next married *Zaynab binti Jaḥash* (rta) in the fifth year after migration. The reason for this marriage must be understood in the light of some important details: Islam inherited the inhuman institution of slavery. There were scores of slave men and women in every house. Instantly freeing them, it is clear, would have resulted in a lot of social and economic problems. Islam, therefore, adopted a gradual methodology to do away with slavery. It undertook various measures in this regard. However, freeing these slaves was not the only problem which was to be tackled. An even more important problem was to blend and graft them within the normal social structure of the society once they had been set free. Keeping in view the great sense of superiority the Arabs had over slaves, this was an extremely uphill task. Consequently, the Prophet (sws) in order to make them acceptable as normal members of a society took a very radical step. He persuaded his cousin sister *Zaynab binti Jaḥash* (rta) to marry *Zayd Ibn Ḥārthah* (rta), a slave boy he had set free and brought up as a son. The marriage took place, but, unfortunately,

it could not continue due to certain reasons and *Zayd* (rta) had to divorce his wife. After this unfortunate dissolution of marriage, the only thing which could console *Zaynab* (rta) was if the Prophet (sws) married her. Furthermore, it was necessary to reform a social custom concerning some erroneous concepts about an adopted son. According to this custom, the Arabs regarded the adopted sons and foster sons equally in all respects. This, of course, is against human nature and as such had to be abrogated. However, as a social custom, it was so deeply rooted in the Arab society that it could only be the Prophet's personality which could abolish it. Consequently, on the Almighty's bidding²⁷, the Prophet (sws) married her to sympathize with her and to reform this custom.

Also, with this marriage, the normal law of keeping four wives was extended by the Almighty for the Prophet (sws) so that he could effectively discharge his responsibilities as a *Nabi* and a *Rasūl*.

The *Qur'ān* says:

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27. In the words of the *Qur'ān*: 'And when *Zayd* divorced his wife, We gave her to you in marriage in order that there may be no difficulty to the believers to wed the wives of their adopted sons if they divorced them'. (33:37)

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-girls²⁸ however [are still] allowed to you. And [in reality] Allah does watch over all things. (33:50-2)

While analyzing the statutes on which this group of directives is based, Javed Ahmad Ghamidi writes²⁹:

Firstly, after contracting marriage with *Zaynab* (rta), the

28. The case of Maria the Coptic, a maiden gifted by *Maqawqus*, the king of Egypt, to the Prophet (sws) must be understood in the proper perspective: The Prophet (sws) could not marry her, since, according to the *Qur'ān* (33:49-52), the Prophet (sws) could only free and marry slave girls who were made prisoners in war. He was not allowed to marry gifted slave women that had been set free. Returning a royal gift, of course, would be against courtesy; secondly, an example needed to be set as to how Muslims should treat their slave girls – who in those times were treated very badly.

29. *Ghāmidī*, Javed Ahmad, *The Social Sharī'ah of Islam*, 1st ed., (Lahore: Shirkat Printing Press, 2004), pp 43-4.

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.

Secondly, 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.

Thirdly, except for the women specified, he was prohibited to marry any other lady; 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 even think of marrying them after the Prophet's death:

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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.

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