

THE STATUS OF WOMEN AND THE CONCEPT OF JUSTICE IN ISLAM

**A THESIS SUBMITTED TO GAUHATI UNIVERSITY FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY IN
PHILOSOPHY IN THE FACULTY OF ARTS.**



**SUBMITTED BY
SAJIYA SULTANA BEGUM**

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Self-Declaration

I hereby declare that the work contained in the thesis entitled “**The Status of Women and the Concept of Justice in Islam**” has been done by me under the supervision of Prof. Begum Bilkis Banu, Department of Philosophy, Gauhati University, for the award of the degree of Doctor of Philosophy. The thesis or any part of it has not been submitted elsewhere for any degree under any institution.

Date:

Sajiya Sultana Begum

Place:

Research Scholar,
Department of Philosophy,
Gauhati University.

Preface

The present research work is a study on the status of women and the concept of justice as found in the Quran and Hadith. Needless to say that women empowerment and gender equality are today very much in vogue. A society, denying women's rights and status, can never be termed as a just society. Justice prevails in a society when all members of the society enjoy their human rights and have a right to fair and equal treatment. Women's rights are also human rights by virtue of their humanity and hence, cannot be delinked from the concept of justice. In fact, the status of women is a significant indicator of social justice. Religion, moreover, is a strong cultural force and an important constituent of social consciousness and a significant determinant of women's status. Religion provides ideological and moral bases for the accorded status of women in a society.

The subject of women's status has acquired a great importance in the philosophical discussion of different religions. In every religion there are different factors which have direct or indirect bearing on the status of women. Thus, without analysing the rights and status accorded by a religion to women the study of the status of women in society will be incomplete. In the present research work an attempt is made to highlight whether or not justice is provided to women in Islam through the analysis of the rights and status of women in the light of Islam.

Islam is one of those religions that has granted several rights to women almost fourteen centuries ago pertaining to education, inheritance, marriage, divorce, mahr (bridal gift), maintenance etc. These conventional rights accorded on women by Islam not only uplift women's status and dignity in the society but also provide justice towards them in the qualitative sense. The rights granted to women in the Quran and also in the Sunnah of Mohammad are

obviously the great improvement in comparison to the condition of women prior to the advent of Islam. But after the death of Mohammad the condition of women in Islam began to decline. Though there are many rights accorded to women in the Quran equal to that of men yet the question of Muslim women's status still calls for a solution as there is very slow change in the status of women in the Islamic world as a whole. Here a question arises – why women are so lagging behind in the Islamic societies and appear to be subordinated to men? It is obviously due to patriarchal system which has distorted the truth of Islam and made Islam a means of keeping women in bondage. And since Muslim societies are generally lagging behind in educational development, patriarchy in those societies remains strong and finds justification under the grab of distorted interpretations which came into existence during that period to assert superiority of men over women. It is true that the Quran not only assigns equal status to both men and women in the normative sense but it also concedes a degree of superiority to men in its own social context. But the theologians ignored the context and made men superior in the absolute sense. But it is unfair to treat women in today's context in the same way as in the medieval ages. The medieval theologians framed Shari'ah laws keeping in mind ethos of their own times. These Shari'ah laws were essentially formulated by the theologians to understand the divine injunctions. But later on these laws were treated as divine and immutable, which were in essence a human effort to provide women secondary position as per the then prevalent social ethos. Today there is urgent need for radically re-thinking issues pertaining to women. A constructive critique of modernity and emphasis on values like justice and equality of all human beings and their dignity and worthiness is highly necessary.

In this study a humble attempt is made to highlight the misunderstandings and to analyse the controversies that exist against the status of women in Islam through the interpretations of

different relevant verses that occur in the Quran and Hadith. To make an elaborate discussion of the study the entire work is divided into five chapters. The first chapter intends to give a general introduction of the present study. The second chapter deals with the social order of Arabia before and after the advent of Islam. The third chapter discusses the concept of justice as upheld in the Quran and Hadith. The fourth chapter entitled “The Status of Women in Islam” attempts to throw light on the rights accorded to women under Islam. The fifth and the last chapter of the present study intends to give a critical analysis and a concluding remark on the basis of the discussion as developed in the preceding chapters with regard to the present research work.

In the completion of this work various helps, supports and suggestions from many people have been received by me without which I would not have reached my destination. Here a few of them had special mention to whom I would like to offer my heartiest gratitude for their encouragement.

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Content

	Page No.
Certificate	i
Self-Declaration	ii
Preface	iii-vii
Chapter – I	1-24
Introduction	
1.1 General Introduction of the Problem	
1.1.1 The Concept of Justice	
1.1.2 The Status of Women	
1.1.3 Relation between Justice and Women’s Status	
1.1.4 Influence of Religion on Justice and Women’s Status	
1.2 Justification of the Study	
1.3 Statement of the Problem	
1.4 Objectives of the Study	
1.5 Methodology of the Study	
1.6 Outlines of the Chapters	
Chapter – II	25-63
Early History of Islam	
2.1 History and Its Importance	
2.2 History of Islam	
2.3 Arabia during Pre-Islamic Period	

2.4 The Rise of Islam and the Reforms under Islam

2.5 The Period of Rightly Guided Caliphs

Chapter – III

64-119

The Concept of Justice in Islam

3.1 Meaning and Definition of Justice in Islam

3.2 Domain of Justice

3.3 Divine Justice in Islam

3.4 Distributive Justice in Islam

3.4.1 Aristotle's Theory of Justice

3.4.2 Rawls Theory of Justice

3.4.3 Islamic Theory of Distributive Justice

3.5 Conclusion

Chapter – IV

120-203

Status of Women in Islam

4.1 Right to Education

4.2 Right to Inheritance

4.3 Right to Marriage

4.3.1 Role of Guardian in Marriage

4.4 Right to Mahr or Dower

4.4.1 Types of Dower

4.5 Right to Divorce

4.5.1 Types of Divorce

4.6 Right to Maintenance

4.7 Right to Employment

4.8 Right to Decision Making and Mutual Consultation	
4.9 Status of Woman as a Mother	
4.10 Status of Women as a Wife	
4.11 Polygamy and Purdah – Two major issues of women’s status in Islam	
4.11.1 Polygamy	
4.11.2 Hijab or Veil or Purdah	
4.12 Conclusion	

Chapter – V	204-232
--------------------	----------------

Critical Analysis & Conclusion

Bibliography	233-247
---------------------	----------------

CHAPTER – I

INTRODUCTION

The title of the present research work is “The Status of Women and the Concept of Justice in Islam”. The proposed research work is a study on the status of women and the concept of justice as found in the Quran and Hadith. The present study in this connection also tries to find out whether or not justice has been given to women in Islam. The introductory chapter intends to give a general introduction with regard to the present work. It contains general introduction of the problem, justification of the study, statement of the problem, objectives of the study, methodology of the study and outlines of the chapters.

1.1 General Introduction of the Problem:

This section deals with what is the concept of justice, what is the status of women in society, the relation between justice and women’s rights, influence of religion in determining the status of women and in establishing justice in society.

1.1.1 The Concept of Justice:

Justice is the basis of human life and the cardinal principle along which human society operates, as it is a source of all noble traits. Justice can be defined as fairness in the treatment to all people assigning rights and duties, honour and opportunities etc. In essence justice means giving everyone what is his or her due. It is a fundamental concept to any ethical system and as such it is one of the most important moral and philosophical concepts. The word ‘justice’ comes from the

Latin word 'jus', meaning right or law. The Oxford English Dictionary defines the "just" person as one who typically "does what is morally right" and is disposed to "giving everyone his or her due," offering the word "fair" as a synonym. But philosophers want to get beyond etymology and dictionary definitions to consider the nature of justice as both a moral virtue of individual character and a desirable quality of society, as well as how it applies to ethical and social decision-making. Western philosophers generally regard justice as the most fundamental of all virtues for ordering interpersonal relations and establishing and maintaining a stable society. No virtue is of greater importance than justice, as it includes all other virtues. Aristotle in book V of his "*Nicomachean Ethics*" claims that justice in the broad sense is the whole of virtue as "in justice is every virtue comprehended and it is complete virtue in its fullest sense." ¹

The concept of justice evoked an endless debate among the scholars concerning what really is justice, its scope and how its standard is to be realized in society. Consequently various theories of justice propounded by various scholars came into existence. The two supreme minds of ancient Greek civilization, Plato and Aristotle, paid their greatest of attentions to this subject and perhaps they were the earliest philosophers who developed theories of justice. Plato composed his immortal work "The Republic" to deal with the question 'what is justice'. For Plato, justice is a supreme virtue establishing rational order and is the condition for the existence of other virtues like wisdom, courage and temperance. It is an ideal virtue according to Plato and as such its accurate form can be seen in an ideal society in which everyone performs his role appropriately according to his virtue and not interfering with the proper functioning of others – "that each individual

should pursue that work in this city for which his nature was naturally most fitted, each one man doing one work...that to mind one's own business and not be meddling is justice.”² Aristotle in his “*Nicomachean Ethics*” deals with the moral virtue of justice and asserts that justice consists in what is lawful and fair, fairness involves equitable distributions and the correction of what is inequitable. Aristotle said, “the lawless man was seen to be unjust and the law-abiding man just, evidently all lawful acts are in a sense just acts.”³ John Rawls drawing inspiration from Aristotle offers his theory of justice as fairness in his book “*A Theory of Justice*” which has been very favourably received by the people of the world. Rawls offers two principles of justice in which justice is analyzed in terms of maximum equal liberty regarding basic rights and duties for all members of society, with socio-economic inequalities requiring moral justification in terms of equal opportunity and beneficial results for all members of the society including the least advantaged.⁴ David Miller accepted the general formula of justice – ‘to each his due’.⁵ But he applied three criteria to this general formula of justice, i.e. ‘rights’, ‘deserts’ and ‘needs’. As a result, three different principles of justice offered by him – ‘to each according to his rights’, ‘to each according to his deserts’, ‘to each according to his needs’.⁶

1.1.2 The Status of Women:

The question of women's status is a fundamental question almost in all societies and in all communities. It is neither a new issue nor a settled one. Women were deprived of rights on the ground that women were supposed to be intellectually, physically and psychologically weaker than men, needing protection and support rather than equal treatment. Woman is defined as “wyf-man” which

means 'mate of man'.⁷ Patriarchal social order was the main reason for the weakening of the position of women all over the world. In patriarchal social system males were preferred to hold power, control and opportunities. In such a social system women were deprived of several rights and moreover, several sanctions and cruel practices were imposed on them. To deprive women of their human rights and of fair and equal treatment is to do injustice. Equality in all respects may not be possible. But equality to opportunity to women is desirable and possible and that is nearer to justice. Rawls also holds that rights and duties should be distributed equally among all the members of the society. For Rawls too, inequality in certain grounds is obvious. But social inequalities should be arranged in such a way so that everyone gets benefit. Inequalities between the members and classes of the society in certain grounds may not be used to prove the superiority of one over the other.

Women's rights are human rights and therefore, feminism cannot be delinked from human rights. The feminists raise the question about women's rights because women's rights have been violated since the beginning of human civilization. They have been violated not because women are physically and mentally weak but because of social structures framed by men and their attitudes towards women. In this regard Simone de Beauvoir in her book "The Second Sex" which is one of the most important works of feminist movement, said, "One is not born, but rather becomes, a woman. No biological, psychological or economic fact determines the figure that the human female presents in society; it is civilization as a whole that produces this creature, intermediate between male and eunuch, which is described as feminine."⁸

Besides, J.S. Mill also in his book “*Subjection of Women*”(1869) argued with great precision and logic that the subjection of women was the product of age-long custom and did not testify to any inherent inferiority in the female sex. He stated, “all women are brought up from the very earliest years in the belief that their ideal of character is the very opposite to that of men; not self-will, and government by self-control, but submission, and yielding to the control of others. All the moralities tell them that it is the duty of women, and all the current sentimentalities that it is their nature, to live for others.”⁹ Mill contended that the distinctions between men and women which went to show the inferiority of women were not natural but artificial, that is a product of subjecting environment. The education and external circumstances, in which women were being brought up, according to him, were responsible for their seeming inferiority.

Thus, it can be rightly said that women’s supposed inferiority is a social construct and their subordinate position in society is due to socio-cultural conditioning and patriarchy. Social structure and value systems are important determinants of women’s position in society. Main reason for the lower status of women in society and the barriers to change is attitudinal support in the absence of which the reforms to bring about improvement in the status of women have failed to make any definite impact.

1.1.3 Relation between Justice and Women’s Status:

A society, denying women’s rights and status, can never be termed as a just society. In fact, the status of women is a significant indicator of social justice. No subject is more closely connected with the concept of justice than human rights,

since justice would be meaningless if human rights are ignored and unrecognised by the society.¹⁰ David Miller maintains that there is an intimate connection between rights and justice. To him, “if justice is concerned with what is due to each person considered individually, it is hardly surprising that one of the facts about a person which determines what is due to him is the set of positive rights which he possesses.”¹¹ Meaning thereby, providing someone his or her rights and due is considered as just and violating someone’s rights is considered as unjust. Amartya Sen also admitted the relevance of human rights to the idea of justice.¹² Women’s rights are also human rights and hence, cannot be delinked from the concept of justice. Justice prevails in a society when all members of the society share a common humanity, enjoy their human rights and have a right to fair and equal treatment and a fair allocation of social resources.

1.1.4 Influence of Religion on Justice and Women’s Status:

Religion has a definite role to play in the crises of life. The primary requirement of a society is the possession of social values by which individuals can regulate the action of themselves and through which society is perpetuated. The reason why society needs religion is to regulate human behaviour through inculcating social virtues. Religion by inculcating social virtues, like truth, honesty, peace etc. among the members of a society helps people to become a moral and civilized citizen of the society and thus gives rise to the spirit of brotherhood and humanity and promotes justice in the society. Religion aims at the establishment of a just society.

Religion, moreover, is a strong cultural force and an important constituent of social consciousness and a significant determinant of women's status. Religion provides ideological and moral bases for the accorded status of women in a society. The social restrictions on women, and also the people's attitude about their proper roles in every sphere of life, are largely derived from the religious conceptions of a woman's basic characteristics, her assumed virtues and vices, her proverbial strengths and weaknesses regarding her nature and capacities. Thus, religion still plays a crucial role in determining women's status in the society.

1.2 Justification of the Study:

The subject of women's status has acquired a great importance in the philosophical discussion of different religions. The socio-religious practices of a society determine the status of women in that society. Any attempt to assess the status of women in a society might be influenced by the social framework which is mainly based on the religious traditions. The religious restrictions and injunctions play a vital role in determining the position of women in the society. In every religion there are different factors which have direct or indirect bearing on the status of women. The social restrictions on women are largely derived from the religious conceptions of woman's basic nature and characteristics.

Thus, without analysing the rights and status accorded by a religion to women the study of the status of women in society will be incomplete. In the present research work an attempt is made to highlight the status of women in the light of Islam. No understanding of any aspect of Islam is possible without

reference to the Quran and Hadith. The present study on the status of women and the concept of justice is based on the Quran and Hadith.

1.3 Statement of the Problem:

The issue of women's status in general and in Islam in particular is a much talked subject now and is highly controversial. Most of the revivalists maintain that the term feminism is in contradiction. For them feminism is against the teachings of Islam. It is a western phenomenon. However, this attitude is more because of strong influence on their minds of conservative Islam. The conservative ulama insist on assigning women subservient position to men. But a deeper examination of Qur'anic verses makes it clear that it upholds dignity of women. In fact, it was social environment in which Shariah formulations were made that affected Islamists' viewpoint about women in certain issues rather than the Quranic teachings.

Shariah law is considered quite central to Islam and its centrality and authority is unquestionable in Islam. Among the common Muslims there is general belief that the Shariah is divine and hence, immutable. It is often assumed by those who are not well versed in the origin and development of Shariah. The Shariah did not come into existence all of a sudden, it evolved over a period of time and much human efforts have gone into its evolution and being so there are difference of opinions seem to be existed among the jurists or fuqaha on several issues. As a result in early period of Islam several schools of law came into existence, for instance, four schools in the Sunni Islam, i.e. Hanafi, Maliki, Shafi'i and Hanbali and three schools in the Shi'a Islam, i.e. Ithna Ashari, Zaidi and Ismaili. In early

Islam many learned people who had adequate knowledge of Quran and Hadith, known as fuqaha, made attempts to solve many problems confronted by them in their lifetime according to their legislative acumen even though they differed from each other. Thus, needless to say these were the result of *ijtihad*. Dictionary of Islam defines '*ijtihad*' as 'exertion', the logical deduction on a legal or theological question by a Mujtahid or learned and enlightened doctor.¹³ The jurists had to admit the principle of *ijtihad*, i.e. creative interpretation and application of Islamic fiqh in the face of new circumstances.¹⁴

Today's social environment is radically changed and women awareness of their rights has increased phenomenally. The assumption that the Shariah is wholly divine comes in the way of any rethinking on issues regarding women's rights, which is quite crucial today. It is, therefore, important to understand the nature of Islamic Shariah and about its sources.

Islamic Law is known as the Shariah and covers every aspect of human life – all legal, moral and ritual matters.¹⁵ Regarding Islamic Law or Shariah John Alden Williams in his book "*Islam*" stated –

In Islam the concept of the Law follows naturally from the Quran, where God appears as commanding and forbidding, rewarding and punishing. In addition, there is the Hadith, and the belief, present from the earliest times, that rules of right behaviour may be found in the example of the Prophet... Muslims conceive of their religion as a community which says "yes" to God and His world, and the joyful performance of the Law, in most areas of the Islamic world, is looked on as a positive religious value. It is true

that important segments of the Community have registered from early times a protest against the activities of the lawyers because they felt that the spirit was in danger of being lost in the legalistic debates of the jurists; one must submit oneself to God, the mystics argued, not to the Shariah. The lawyers could reply, however, that God is made known by His Word, and right conduct by the sunna; the Shariah is only the explication of the Sacred Law contained in both... In later times, the Shariah is seen by Muslims primarily as an all-embracing legal system, which should ideally govern all phases of Islamic life – though for reasons of public welfare the legists grant the Muslim rulers the right of suspending the application of certain portions of the public law and substituting secular law; this has especially been true for the laws of punishment. Still, the Shariah is not thereby abolished or revoked.¹⁶

The Quran is the fundamental and major source of Islamic Shariah. Texts of the Quran connected with the rules of Islamic law which pertain to the following issues –

- a) Reform in unlawful customs and practices such as female infanticide, gambling, usury etc.
- b) Social reforms regarding the position of women such as education, marriage, divorce, inheritance and instructions relating to polygamy, veil or purdah etc.
- c) Criminal laws relating to punishment for theft, adultery, murder etc.
- d) Directions relating to the treatment of orphans, slaves, needy and the poor etc.

- e) Directions relating to the treatment of enemy, non-Muslims etc.
- f) Instructions for the protection of rights, duties and obligations of the believers etc. and many more.

In summary the Quran is addressed to all humanity and it seeks to guide human-beings in all walks of life, spiritual as well as material. It has directions for the conduct of the head of a state as well as the poor, for peace as well as for war etc.

Next to Quran, the Sunnah of the Prophet, i.e. Mohammad's sayings and doings, subsequently known as Hadith, comes in authority and importance and hence, becomes the another source of Islamic law. The sayings and doings of Mohammad were preserved by his followers and followed by the Muslims in their practical life without any doubt or question.

Besides these two principal sources of Islamic law, i.e. the Quran and Hadith, there are two other sources namely, *ijma*, i.e. consensus of opinion and *qiyas*, i.e. analogical deduction. After the death of Mohammad Muslims were confronted with various new problems which demand solutions and many of which had not been found in both the Quran and the Sunnah of Mohammad. These new problems continued to arise for variety of reasons mainly on account of spread of Islam to other areas outside the Arabian peninsula and the 'adat', i.e. traditions and customary laws of new people embracing Islam. When the guidance of the two principal sources of Islamic law was not available to resolve these new problems, other new sources, therefore, had to be devised to meet the new eventualities. Thus, the institutions of *ijma* and *qiyas* had to be used.

Immediately after the death of Mohammad the first and most important problem faced by the Muslims was, 'who should be the successor of Mohammad'. That was decided by the consensus of opinion, i.e. *ijma*, in favour of Abu Bakr. Hence, the election of Abu Bakr to the Caliphate by the votes of the people was the first instance of *ijma*.¹⁷ The most outstanding example of *ijma* is about the collection of Quran. Mohammad himself had not collected the Quran in the shape of a book. It was decided by the jurists of later periods through *ijma*.¹⁸

Thus, after the death of Mohammad when new problems arose, the Caliph would hold assembly of the companions and place the problem before it and tried to solve it either in the light of Quran and Hadith or in the absence of it through *ijma* and *qiyas*. The best example of *qiyas* is of punishment for drinking. The Quran does not prescribe the punishment for drinking and this problem arose during the Caliph of Hazrat Umar. When nothing was found in the Quran and the Prophet's Sunnah, Hazrat Ali suggested that eighty lashes should be given as a punishment for drinking and was accepted on the grounds that after drinking a person tends to make false accusation and the punishment for false accusation is eighty lashes.¹⁹ Thus, analogical reasoning or *qiyas* had to be used to prescribe punishment for drinking. In this way, many other problems arose from time to time and the assembly of the companions would resolve them either with the help of Quran and Hadith or with the help of *ijma* and *qiyas*.

In fact Mohammad himself had encouraged the faculty of thinking and reasoning among his followers. Injunctions to Mu'adh ibn Jabal whom Mohammad had appointed as governor of Yemen clearly shows how he approved analogical reasoning in deciding legal issues. Mu'adh had to face an interview with

Mohammad before he proceeded to Yemen. He asked Mu'adh, "How will you decide when a matter comes to you for decision? He replied: I shall decide according to the Book of Allah. He enquired: if you do not find it in the Book of Allah? He said: then according to the Sunnah of the Prophet. He enquired: if you do not find it in the Sunnah of the Prophet? He said: I shall decide according to my opinion."²⁰ This, thus, indicates that Mohammad himself encouraged private judgement or analogical deductions if anything is not found in the Quran and Hadith which are the primary sources of Islamic Law.

The faculty of reasoning or the exercise of private judgment, i.e. *ijtihad* has been recognised by the Quran also. The Quran emphasises reason as the best method of understanding. The Quran says –

*“Nay, here are Signs self-evident in the hearts of those endowed with knowledge: and none but the unjust reject our Signs.”*²¹

‘There are indeed Signs for men of understanding’ – this message is emphasised in many verses of the Quran, such as 3:190, 2:164, 30:21-24, 36:33-34 etc.

It is important to note that *ijtihad* is an accepted concept in Islam. No one even the most orthodox ulama can deny its legitimacy. Apart from the tradition of Mu'adh ibn Jabal, the governor of Yemen, mentioned above, there is another tradition which also approves *ijtihad* in which Mohammad says that “if one does *ijtihad* and makes a mistake he will have one reward and if he does it correctly he will get double reward.”²² This tradition also clearly shows the significance of *ijtihad* in Islam.

In a fast changing world recourse to *ijtihad* is a must. Dr. Muhammad Iqbal, in his book “*The Reconstruction of Religious Thought in Islam*” seems to be stated that “the principle of *ijma* should not reside on one individual, but in a body of learned Muslim scholars of advanced views, who may interpret the law so that it falls line, as far as possible, with modern legal and social ideas.”²³ The modern era in which the values of society are changing so fast, demands that Muslims of the world should constitute a body (Council or Assembly) at the international level which may consist of members, who are well-versed in the Islamic Jurisprudence and other allied Islamic sciences. This body may not only guide in interpretation and implementation of Islamic law keeping in view of the prevailing conditions without detracting from fundamental principles of Islamic law but also may present suggestions for co-operation in other fields of general welfare of the Muslims throughout the world.

As far as *ijtihad* is concerned it should be made clear that no one can change principles and values. *Ijtihad* could be done only in rethinking and reapplication of these values and principles in changing circumstances. As the present study is concerned with justice and women’s status, lets consider example from this area. For instance, justice in the Quran is a fundamental value. It is so fundamental that while permitting slavery in given circumstances, it is required in the Islamic Shariah that the slaves should be fed what master feeds upon himself and should be clothed in what master himself dresses in. It was rightly thought to be just behaviour in those circumstances. But now in the changed circumstances, the principle of justice, i.e. its reapplication requires that slavery be abolished. If

slavery is continued in today's circumstances it would be the violation of the principle of justice.

Similarly, today when women's rights are being universally accepted and the concept of sexual equality has come to stay, orthodox Muslim scholars refuse to rethink certain women's issues like, triple pronouncing divorce, polygamy, half witness of women etc. The concept of triple pronouncing divorce in one sitting is highly controversial and problematic, since such type of divorce is not supported by both the Quran and Hadith, yet still it is accepted by Shariah law. After the death of Mohammad during the period of second Caliph this form of divorce again came to be practiced. Those who support the triple pronouncing divorce maintain that the Quran has not laid down any specific method of divorce and though Mohammad expressed his anger against this form of divorce, he did not indicate that such type of divorce would not be valid. The Quran does not mention this form of triple divorce in one sitting at all. Rather the Quran repeatedly emphasised the period of waiting, i.e. iddah regarding divorce so that reconciliation between the husband and wife can take place and they can rethink on their decision. The Quran mentions that both man and woman appoint their arbitrators during iddah period to finalise whether or not divorce should take place. The Quran says –

*“When you divorce women, divorce them at their ‘Iddah’(prescribed periods) and count (accurately) their ‘Iddah’...”*²⁴

*“If you fear a breach between them twain, appoint (two) arbiters, one from his family and the other from hers; if they wish for peace, Allah will cause their reconciliation ...”*²⁵

Besides the Quran also requires two witnesses for divorce –

“Thus when they fulfil their term appointed, either take them on equitable terms or part with them on equitable terms; and take for witness two persons from among you, endued with justice, and establish the evidence (as) before Allah ...”²⁶

So, while practicing this form of triple pronouncing divorce in one sitting all these injunctions of the Quran are ignored and it goes against the spirit of Quran. Thus, there is strong argument for the abolition of triple divorce which is highly unjust to women.

Moreover, it is important to note that among the Muslims the Sunnis recognise this form of triple divorce in one sitting while the Shias do not recognise it. Besides, regarding the validity of this form of divorce there are many controversies among the scholars. For instance, ‘Imam ibn Hazm has given argument in favour of triple pronouncing divorce. On the other hand, Hafiz ibn Qayyim, who was a disciple of Ibn Taymiyyah, advances many other arguments on the basis of the Quran to disprove the validity of such a divorce.’²⁷

This difference of opinions among the fuqaha (jurists) of the classical period about the Shariah formulations indicates that Shariah is not as divine as the Quran. It is for this reason there are different schools of jurisprudence, which differ from each other on many issues. This difference of human thinking and approach which is reflected in different schools of law shows that the principle of *ijtihad* is incorporated in the Shariah formulations. It is also worthwhile to note that out of four sources two sources, i.e. the Quran and Hadith are divine and the other two

sources, i.e. *ijma* and *qiyas* are non-divine and part of human efforts to solve the new problems arising. Thus, it is very clear that the Shariah is not wholly divine, it is as much a result of human endeavour as of divine revelations.

Today circumstances and values of society are changing so fast. Therefore, there is urgent need to rethought women issues in the light of changed circumstances. For instance, the Quran had permitted polygamy after the battle of Uhud in which many Muslim males were killed, to provide security and shelter to the orphans and widows. Today such circumstances do not exist and hence, it would be unjust to take another wife in presence of one. Besides, the condition of justice or equal treatment to all wives was stipulated strictly in this regard without fulfilling which polygamy is never permissible and the Quran also declares that it is not an easy task to provide equal treatment to all wives how hard one may try. One can understand this message of the Quran when the two verses 4:3 and 4:129 read together. Thus, the Quran indirectly forbids polygamy. So, there is scope for the abolition of polygamy through the use of *ijtihad*.

It is true that the conservative Muslims are horrified by the very mention of the word 'change'. But change is the law of Universe. It is inevitable in human life. There is nothing permanent in this world. Everything is changing. Dr. Muhammad Iqbal, the noted poet also says, "it is only revolution which is permanent and everything else keeps on changing."²⁸ In this constant process of changing how can the religious law remain unchanged? Mohammad Abduh of Egypt was a great *mujtahid* (learned persons) and rose to be the Grand Mufti of al-Azhar, the premier institution of Islam. He was a disciple of al-Afghani and despite his orthodox training, he utilised his profound knowledge of Islam to rethink many issues

confronting the society. He also criticized the practice of polygamy which was rampant in Egypt in his time. He laid stress on dignity of womanhood and was in favour of entrusting them higher status. He also emphasised the necessity for their education.²⁹

Today all Islamic societies are experiencing fundamental social changes and rethinking on many issues has become very vital. Thus, there is nothing wrong in revisiting Shariah formulations regarding women today and attempt to reformulate issues in the light of contemporary social circumstances. But what is important to keep in mind is such reformulations or rethinking should be in the light of the Quran.

1.4 Objectives of the Study:

- To highlight the concept of justice in Islam as expounded in the Quran and Hadith.
- To highlight the status and rights of women as found in the Quran and Hadith.
- To analyse the controversies and inconsistencies that appear to be there in the Quran and Hadith regarding the status of women in Islam.
- To find out whether or not justice is provided to women in Islam.

1.5 Methodology of the Study:

The proposed research work is mainly based on the Quran and the Hadith. The present study is the understanding of the status of women and the concept of

justice through the interpretations of different relevant verses that occur in the Quran and Hadith in different contexts. Apart from these two primary sources various books, journals, articles, e-journals etc. are also consulted as far as possible to make the present study. In this study an attempt is made to analyse the problem philosophically. Different verses of the Quran and sayings of Mohammad of the concerned issues pertaining to women and justice are analysed critically to draw the conclusion of the study. The present study is an attempt to make a critical evaluation of the concept of justice as well as the position of women laid down in the Quran and Hadith.

1.6 Outlines of the Chapters:

The present research work is divided into five chapters including this introductory chapter. The second chapter entitled “Early History of Islam” attempts to throw light on the social order of Arabia before and after the advent of Islam. This chapter discusses the social, moral, economic, political and religious conditions of the people of Arabia in the pre-Islamic period and also discusses the rise of Islam and the reforms of various conditions of the people of Arabia after that. The people of Arabia during this period, which was known as ‘*Jahiliya Period*’, were steeped in vice, superstition and barbarism. Their social and moral conditions were of the worst order. The feeling of universal brotherhood and unity was absent among the pre-Islamic Arabs. The one and only thing on what they had their deepest belief was ‘tribal humanism’ and the one and only law followed by them was ‘*Might is right*’. So far as the economic condition was concerned various unfair trade practices such as practice of usury, share-cropping etc. were prevalent

among the pre-Islamic Arabs. Besides, so far as their religious life was concerned they were idolatrous and believed in multiple gods. Moreover, the condition of females during this period was unspeakable. At that time female child were used to be buried alive. During this Dark Age women were treated like material property. They were leading such a miserable life that they were even mortgaged to men. Besides, adultery, prostitution etc. were prevalent among the pre-Islamic Arabs. No rights and dignity were assigned to women. But after the rise of Islam Mohammad attempted to reform and remove all the evil customs and practices, like female infanticide, mortgaging women, adultery, usury, exploitation of the weaker sections etc. from the society with the help of the Revelations that he received from the Lord.

The third chapter is entitled as “The Concept of Justice in Islam”. In this chapter the Islamic concept of distributive justice that falls under the category of Divine justice is discussed with reference to Aristotle’s theory and Rawls’ theory of justice. This chapter discusses the concept of justice as upheld in the Quran and Hadith. The Quran representing the concept of justice commands mankind to behave in a fair and just manner, not to make discrimination among people because of their gender, race or socio-economic status. The Quran and Hadith emphasised the virtue of justice more than other moral virtues mainly as a reaction against the pre-Islamic social order which paid little or no attention to justice. The Quran aims at building a better social order and being so it lays emphasis on justice because it facilitates the establishment of social order and also enables people to develop their human qualities and high moral order among themselves and thereby can create a balance in his affairs and dealings with their fellow beings to establish justice.

Islamic conception of justice is mainly Divine justice as it is embodied in the Revelation. The Divine justice of Islam is all pervading and has to be manifested in every sphere of human life. A study of the Quran reveals that it contains many verses on different aspects of justice. References to the instances of the orphans, the needy and the poor, the workers, women, slaves etc., that are found in the Quran, reveal that justice in the Quranic sense relates to all domain of life. The Quranic verses on these issues show that like western philosophers Islam also lays emphasis on distributive justice. To understand the Islamic theory of distributive justice an attempt is made in this chapter to discuss it with the help of two other western theories offered by Aristotle, who first coined the term distributive justice and John Rawls, who offered the most important recent theory of distributive justice. This chapter is concluded with the assertion that though the term ‘distributive justice’ first coined by Aristotle yet it was used by him in the quantitative sense while Rawls’ theory and Islamic theory of distributive justice share a common goal in the sense that both discuss it in the social sense or both in the qualitative and quantitative sense.

The fourth chapter entitled “The Status of Women in Islam” attempts to throw light on the rights accorded to women under Islam. It also deals with certain controversial issues like polygamy, triple pronouncing divorce in one sitting, hallalah marriage, purdah etc. pertaining to women. Women constitute the half of humanity. Depriving half of humanity from their human rights, which has been done since the beginning of human civilization, means denying the overall progress of a society as well as humanity. It goes against the principle of justice. Justice prevails in a society when all members of the society share a common

humanity, enjoy their human rights and have a right to fair and equal treatment. Women's rights are also human rights by virtue of their humanity. A society, denying women's rights and status, can never be termed as a just society. In fact, the status of women is a significant indicator of social justice. To understand whether or not justice is provided towards women in Islam the various rights given to women under Islam such as right to education, right to property inheritance, right to marriage, right to divorce, right to mahr, right to maintenance etc. are discussed in this chapter. This chapter is concluded with the assertion that the rights granted to women in the Quran and Hadith not only uplifts women's status and dignity in the society but also provides justice towards them in the qualitative sense.

The fifth and the last chapter of the present study is "Critical Analysis and Conclusion". In this chapter several inconsistencies among the verses of the Quran and Hadith pertaining to man's superiority and women's inferiority are highlighted. Several controversies pertaining to divorce, polygamy, hallalah marriage, female's half share of inheritance, half witness of women which are the indicators of female inferiority in Islam are analysed critically in this chapter with the help of different relevant verses of the Quran and Hadith. This chapter is concluded with the remarks that certain Shariah law regarding women can be re-examined through the use of the principle of *ijtihad*.

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CHAPTER – II

EARLY HISTORY OF ISLAM

2.1 History and Its Importance:

History is regarded as a form of knowledge which deals with the past. It is such a discipline of knowledge which informs us about our heritage and also makes us aware of our origin. Technically speaking, history is a science which deals with the events and occurrences attached to Prophets, kings, conquerors and eminent personalities and significant events of the ages. These events enable us to know about the way of living, moral values and social learning of the past. Some people have defined history in a manner that people living together form a society and that collection of men gives birth to city and all the states and conditions, undergone by them put together take the shape of historical events, while collecting such events by the latter from the former and leaving them for the posterity as a model for learning lesson and benefiting from it, is called history.¹

Human nature has a particular kind of thirst and desire to know about the history of civilizations, history of religions, history of nations etc. Study of history produces in our mind blessed fervour by acquainting us with the living conditions of our elders and ancestors. Not only that it develops wisdom and insight sets farsightedness to grow and creates sense of caution and vigilance. In short, knowledge of history is a preacher of thousand preachers and the best source of learning lessons. By studying history, a man finds himself constantly in the

company of eminent scholars and wise men and benefits from the fountain of their knowledge, wisdom, excellence and virtues.

2.2 History of Islam:

In Islam the Arabic word ‘Tarikh’ which stands for the term history has been constructed by reversing the last constituent of the word ‘Takhir’, and “Takhir means to relate the past with the future; for instance, it is to tell that so-and-so religion or rule or battle occurred at such and such period.”² Thus, it is the only source of knowing what happened in a certain period. History is an interpretation of the interplay of social forces and events within a certain space time context.

The ongoing discussion now turns to the question ‘what is Islamic history?’ To understand the meaning and connotation of the term ‘Islamic history’, it needs some exposition and explanation. As stated by Adam J. Silverstein “Islamic history began in the 7th century... From the 7th century onwards, the history that is taken to be ‘Islamic’ is that in which Islam was a politically, religiously, or culturally dominant force.”³ If Islam is to be construed as a religion in the conventional sense then the term ‘Islamic history’ would connote the presentation of religious history only and such presentation would exclude social and political history. Islam is, however, not only a religion. It is a religio-politico-socio complex, comprehending and synthesizing all aspects of life, setting out ideals and aspirations and correlating the realities to ideals.⁴ ‘History of Islam’ is, thus, not mere religious history, it is a comprehensive and multi-dimensional history embracing all aspects

of life. History of Islam is a record of the impact of Islam on the people and their environments.

The religion of Islam, as recorded in history, was first originated in a city of Arabia, named, Mecca and was founded by Mohammad in the 7th century. To have an understanding of the early history of the religion of Islam, it is necessary to know something about the condition of the life of the people of Arabia at the pre-Islamic period and also the life of Mohammad. One also needs to know the basic problems of the Arabian society, that is, the social and political life of the Arabs at that time, their ethical or moral outlook, their economic condition, their means of livelihood and their religious beliefs and practices etc.

2.3 Arabia during pre-Islamic period:

The discussion of the historical and sociological background of the Arabian society starts with its geographical background first, along with other factors like political, economic and religious conditions.

Arabia, the birthplace of Islam, is the largest peninsula in the world and one of the hottest and driest countries of the world, consisting mainly of desert. One third of the country is covered by desert. In this regard, Prof. P. K. Hitti in his book "*History of the Arabs*" says, "This is why, the Arabs have escaped from foreign domination for centuries."⁵ On the map of Asia the Arabian Peninsula stands at the meeting point of three continents – Asia, Europe and Africa. It is bounded on the north by Jordan, Iraq and the Syrian desert; on the east by the Persian Gulf also known as the Arabian Gulf and the Gulf of Oman; on the west by the Red Sea and

on the south by the Gulf of Aden, the Indian ocean and the Arabian Sea (south-east). As the Arabian Peninsula is surrounded by water on three sides, that is why, it is called the 'Jazirat-al-Arab', i.e. the island of Arabia, by the Arabs.⁶ The Arabian Peninsula was, both in geographic and cultural terms, at a considerable distance from the cosmopolitan societies of Egypt, Syria and Iran, but the political, religious and commercial influences emanating from those regions into Arabia are clear.⁷

In the pre-Islamic period Arabia was divided into many provinces of which three regions, i.e. Hijaz, Najd and Yaman have come to the fore. Hijaz includes the western regions of the Peninsula, Najd is situated to the north of it and Yaman is situated to the southwest of it. Mecca, Medina and Taif are the three chief towns of Hijaz. Hijaz has attached importance of the researcher to a great extent due to the fact that Islam originated in this region.

The Arabian Peninsula is, being comprised of burning desert and barren land, also known as "Ar-Rub Al-Khali" (the Empty Quarter).⁸ The Arabian desert does not have a single river nor a dependable rainy season which causes the existence of a desert climate. The geographical and climatic conditions of the Arabian Peninsula, allows only desert life and desert life demands continuous movement, adoption of the camel as means of transportation and the pursuit of pasture which is nor sooner discovered than it is exhausted and then another movement becomes imperative. The areas lying along the seacoast alone are in a flourishing state with population. Scarcity of water has made human inhabitation and agriculture almost impossible in the middle areas. All the populated areas lie at the seacoast except Najd, which is situated to the north of Arabia and in the middle

of the country. Najd is actually a plateau, it is mostly desert. Yaman and Hijaz, situated on the coast of Red Sea, and thus are fresher and greener. Yaman, being fertile and rainy has always been developed in terms of agriculture and is the centre of main production. Due to the climatic condition Arabia, in the pre-Islamic period, was inhabited by two types of people, namely, settled people, i.e. the dwellers of the cities and nomadic people or the Bedouins, i.e. the dwellers of the desert. But most of the inhabitants of Arabia belonged to nomadic tribes, though there were some settled tribes. The city dwellers settled in one place and lived on agriculture. But the Bedouins, being nomads, wandered from one place to another in search of pastures. Life and livelihood of the nomads is particularly “revolved around seasonal migration and the breeding, selling and raiding of animals. This mode of socio-economic life is known as pastoralism.”⁹ Prof. P.K. Hitti, in this regard says, “The Bedouin is no gypsy roaming aimlessly for the sake of roaming. He represents the best adaptation of human life to desert conditions.”¹⁰

None can deny the fact that the geographical and climatic condition of Arabia had a significant influence on shaping the social life of its people during the pre-Islamic period. The pre-Islamic period is known as ‘Jahiliya’ period, i.e. the Age of Ignorance. The period was so called because the people of this Dark Age were steeped in vice, superstition and barbarism. Their social and moral conditions were of the worst order. The people had little social consciousness. The society was primitive in nature and the people were unconscious of the higher destiny of man. The pre-Islamic Arabian society mainly based on tribal tradition. Tribalism constitutes the chief feature of their social life.

Most of the inhabitants of the pre-Islamic Arabian society were the Bedouins which belonged to the nomadic tribes. The social structure within the nomadic life of the Arabs in the desert placed great importance to loyalty within the clan or the tribe. Each tribe was headed by a leader and he was respected by all the members of that tribe. Chiefs were usually selected on the basis of ability rather than seniority, and the successful chief demonstrated generosity, physical courage, and a sense of justice.¹¹ The chief or the leader of a tribe was called Sheikh. Each tribe had its own concept of law and order, its own code of honour and its own peculiar rules, consistent in itself and had a protective order. All activities were conceived within the framework of the tribe. The only thing that determined the social values of the pre-Islamic Arabs was tribal tradition established by the elder of the tribe.

The individuals could not survive in the desert without any clan protection. Violating the tribal order and law meant exclusion from the clan protection that was considered as the security of the desert life. During the Age of Ignorance tribal collectivism was strictly observed in a nomadic society. The Arabs lived with a collective consciousness as part of a tribe. They developed their own concepts of morality and virtue in the harsh conditions of the desert. "There was also what might be called a code of ethics associated with the tribal system. In this, a tribe or clan as a whole was held responsible for the misdemeanours of its members, and the principle of a life for a life was generally observed. This often led to serious and long-lasting blood feuds and these were one of the problems facing Mohammad. There was also an expectation that the leading men of a tribe would show some concern for the tribe's weaker members."¹² Loyalty to the tribe,

courage to fight with others to vindicate the honour of the tribe, the glorification of one's own tribe, absolute equality for all within the tribe and protection of the weak, patience in disaster, insistence on seeking revenge were regarded as virtues. Although all the virtues ensured a feeling of cooperation among the members within a tribe, it often led to inter-tribal rivalries and hostilities. So, the one and only thing on what they had their deepest belief might be called 'tribal humanism'.¹³ William Montgomery Watt, a noted scholar of Islam, said –

“The religion by which the Arabs really lived may be called tribal humanism. According to this, the meaning of life consists in the manifestation of human excellences, that is, all the qualities that go to make up the Arab ideal of manliness or fortitude. The bearer of this excellence is the tribe rather than the individual. If they are seen in the life of an individual, that is because he is a member of a tribe which is characterized by them. The thought that is uppermost in the mind of the individual is that of the honour of the tribe. Life is meaningful for him when it is honourable, and anything involving dishonour and disgrace is to be avoided at all costs.”¹⁴

Tribal humanism was, thus, deeply rooted in the minds of the people of a tribal society. The code of conduct followed by them though prevented conflict between individuals, but generated inter-tribal conflict. In a tribal society, since individualism is at a discount and collectivism reigns supreme, conflict between tribe and individual is minimized.

The people of Arabia during the Age of Ignorance were divided into many tribes and they were aware of only tribal humanism. They had no idea of any organized government. They never acknowledged any authority other than the authority of the chiefs of their tribes. This constitutes the most remarkable feature of the political life of the pre-Islamic Arabs. Since there was no government, there was no law and no order. The one and only law followed by them was 'Might is right'. The people at that time lived in the shadow of retributive justice. They repelled attack by attack, and they sought to prevent aggression by the fear of counter aggressions.¹⁵ So, the weak had no chance, only the strong could survive. The relation between the members of different tribes was very hostile but those who belonging to the same tribe were on friendly terms. Due to the absence of any centralized government and any systematic law inter-tribal wars often occurred at the slightest pretext, such as sometimes the tribal-feuds arose over grazing of cattle, the racing of horses, drawing of water and other trivial matters. Sometimes the wars between the conflicting tribes continued for many years and were kept alive for generations as a matter of tribal honour. Since the Arabs did not acknowledge the authority of any centralized government and since they were anarchists by instinct, therefore, they were locked up in ceaseless warfare.

Another important factor of the pre-Islamic period was the religious beliefs of the Arabs. During sixth and seventh century (i.e. at the time of the rise of Islam) Arabia was ruled by the two mighty empires – the Byzantine Empire and the Sassanian Empire. Byzantine Empire was also called the Eastern Roman Empire. It consisted of Syria, Palestine, Egypt and a part of Europe, While Iraq was a part of the Sassanian Empire. The Byzantine Empire continued Christianity in their reign.

On the otherhand, the Sassanids, in Persia and also in the Southern part of the Arabian Peninsula successfully promoted Zoroastrianism. Although, different faiths, such as Judaism, Christianity, Zoroastrianism and Hanafiyyah were common among the Arabs during pre-Islamic period, the most common religious belief was a form of paganism, the religion of its ancestors. The Arabs were happy with their paganism, contended to follow in the footsteps of their ancestors. Except the Jews and the Christians, the rest of the Arabs were idolatrous. Thus, idol worship continued to flourish among them since, it was the religion of their ancestors. In the pre-Islamic period the people of Arabia believed in multiple gods and goddesses. Each and every tribe had its own god. The Ka'bah, the centre of Arabian religious life or the centre of worship, was a great idol house where more than 360 idols from all tribes of Arabia were placed. These multiple deities or idols were not originated in Mecca. "Ibn Hisham, one of the early historians of Islam, tells us that idolatry, that is, the use of stone images carved to resemble human beings, was only introduced to Mecca from Syria in Mohammad's life time."¹⁶ Al-Hobal was the chief among these idols. It was the first idol brought to the Ka'bah from 'Belka in Syria into Arabia by Amru Ibn Lohai', one of the leaders of the Khuzaa tribe, 'pretending it would procure rain when required. It is interesting to note that Hobal was supposed to procure rain, a typical trait for a deity from an agricultural region.'¹⁷ Syria was located in the northern fertile region and had an agricultural base.

Three other most respected chief female deities (or idols) of the Ka'bah in Mecca were Al-Lat, Al-Manat and al-Uzza. Tor Andrae tells us that "their cult was of the greatest antiquity. Judging by her name, Manat, who was especially revered

by the warlike and poetic tribe of the Hudhail, south of Mecca, seems to have been a divinity of the very prevalent type of goddess of fate and fortune. She resembles the Greek Tyche Soteria, one of the Fates, a daughter of Zeus, the liberator and helper of man on the sea, in war, and in public assemblies. The second deity, Al-Lat, was known as early as Herodotus, who called her Alilat. Al-Lat actually meant 'the Goddess'. In the Nabataean inscriptions, too, the 'mother of the Gods' is called Al-Lat. Thus it can be assumed that in Arabic circles Al-Lat corresponded with the great Semitic goddess of motherhood, fertility and heaven, and especially with the form which she assumed in western Semitic regions. Thus it is clear that this deity also could not have originated in Mecca but was imported from the north. The third deity, Al-Uzza, received by the most worship of all the three goddesses in the Prophet's time. The name signifies 'the mighty' or 'the honoured one'. Al-Uzza's sanctuary was in Nakhala, a few miles north of Mecca."¹⁸

Besides the idol worship, they also worshiped the sun, the moon, the star. Fatalism and the star cult are closely connected throughout antiquity in Arabia.¹⁹ They also used to worship pieces of stone, tree and sand heaps. They did not believe in the oneness of God. They believed in ghosts and jinns and made offering to propitiate them. Thus, they were steeped in superstitions.

Another important factor which also influenced the social and moral life of the pre-Islamic Arabs was the economic condition. As already discussed that the pre-Islamic Arabia was inhabited by two types of people, i.e. the Bedouins and the settled people. The Bedouins engaged for economic reason in horse-breeding, hunting, camel raising etc. On the other hand, the settled people or the city dwellers engaged for economic reasons in agriculture and trade.

The practice of usury and other trade practices prevalent among the Arabs in the pre-Islamic period also characterized their economic life. Mecca, of course, had somewhat exceptional position in Arabia. Because, it was not only the centre at Arabian religious life but it was also the centre of economic life. Mecca was an important station on the caravan routes. Most of the people of Mecca were professionally merchants and traders. As most of the inhabitants of Mecca belonged to the tribe of Quraysh, so, the guardianship of the Ka‘bah was assigned to the Quraysh. The area around the Ka‘bah which was known as ‘Haram’ and also a wider area around Mecca had a degree of sacredness. Due to its sacredness the pilgrimage was performed at the Ka‘bah to which all people belonging to different tribes and cities, including nomads could also come. During the months of pilgrimage since, all the people, the merchants, the traders, the nomads etc. gathered altogether in Mecca, hence business transaction took place among them. As a result, Mecca became an important commercial centre where capital enjoyed active circulation. The businessman has a flair for hoarding and gathering wealth. Usury was the common trade practice and the rich made money at the cost of the poor. Most of the people were economically depressed, very few were economically better. The people of worst-off class often used to lend money from the merchants. This money lending process based on usury system. The merchants advanced money to the needy on credit or interest. They charged exorbitant rate of interest, dinar for dinar, dirham for dirham.

The manner in which ‘Riba’ or usury was acquired at Mecca by the merchants was quite similar to the compound interest. Among the Pagan Arabs if anyone owed something to another, the latter would demand repayment of his dues

at the fixed time. If the debtor had repaid his dues, he immediately discharged his debt, but if the debtor unable to pay his debt, then he would procure 'an easing-time' of another year for repayment of debt in the consideration of 'an additional sum' as a return for the 'easing time'. For instance, if the debtor be unable to pay the due at the fixed time he would be required to pay double amount in the next year, e.g.- if 100 rupees were due then in the next year the debtor would have to pay 200 rupees and in the third year he would have to pay 400 rupees and so on until he cleared his entire debt.²⁰

Another unfair trade practice prevalent among the Arabs in the pre-Islamic period was share-cropping which amounts to unearned income or profit to the merchants and also caused injustice to the poor section. Thus, through the unfair trade-practice like usury, share-cropping, the merchants enjoyed a greater part of the profits in the business without any active participation. In the process of acquiring wealth they had little consciousness of higher moral and social values and they neglected their traditional duties to look after the poorer and weaker members of their own clans. The people were addicted to drinking and gambling which led to debt and in this way usury was in vogue. All these vices degraded their moral standards.

Among all the conditions of the pre-Islamic Arabian society the most deplorable condition of that time was the condition of the females. In the Arabian society during the pre-Islamic period that is known as 'Jahiliya Period' (i.e. the age of ignorance) women were regarded as commodities known as chattels. A woman in those days had absolutely no independent existence. They were treated like material property. During this Dark Age women were suffered from great

injustices. They had no social respect and dignity, no rights in any sphere of life whether marriage, divorce, inheritance or any political rights. Regarding marriage and divorce women's consent was not considered as vital at all. Unchecked polygamy was prevalent among the Arabs with no restrictions as to the number of wives. A man could marry as many wives as he liked and could divorce at his will. Besides, women were given no share in inheritance either from the father or from the husband. Their condition as reflected through the social order and social system was extremely pathetic and unspeakable. During this Dark Age the birth of a daughter was considered as a matter of shame and disgrace. In many cases the newborn girl used to be killed or buried alive by the parents. Hence, female infanticide was in vogue among the Arabs. When a father was informed of the birth of daughter, his face would turn pale with grief and anger. This phenomenon has been described in the Quran as follows-

“When news is brought to one of them, of (the birth of) a female (child), his face darkens, and he is filled with inward grief! With shame does he hide himself from his people, because of the bad news he has had! Shall he retain it on (sufferance and) contempt, or bury it in the dust? Ah! What an evil (choice) they decide on?”²¹

Again, the feeling of the father during the ‘Jahiliya’ period at the news of the birth of a daughter has been described in another verse of the Quran as follows-

“What! has He taken daughters out of what He himself creates, and granted to you sons for choice? When news is brought to one of them of

(the birth of) what he sets up as a likeness to (Allah) Most Gracious, his face darkens, and he is filled with inward grief!”²²

The Quran refers to the idiosyncrasies of the people of the Days of Ignorance. On the other hand the pre-Islamic Arabs believed and worshipped the female deities and called them the daughters of God and on the other hand, they could not bear the disgrace of being called the fathers of daughters. This contradiction is pointed out in the Quran in the following manner-

“Has then your Lord (O Pagans!) preferred for your sons, and taken for Himself daughters among the angels? Truly you utter a most dreadful saying!”²³

Fathers considered the sons primarily the source of strength, they thought that the sons born were on account of their own glory. It is stated in the Quran as follows-

“And they assign daughters for Allah! –Glory be to Him! –and for themselves (sons– the issue) they desire!”²⁴

Such were the feelings and sentiments of the people towards those poor creatures or the female infant during the Age of Ignorance. It is easily comprehensible why the people of Dark Age often killed their daughters, to save themselves from disgrace. The Quran says about these hard-hearted people in this way-

“When the female (infant), buried alive, is questioned– for what crime she was killed?”²⁵

Besides, women were leading such a miserable life in the pre-Islamic period that even their chastity, and modesty were not respected and protected it was sold and purchased. During the Days of Ignorance women were mortgaged to men. In this regard, a tradition reported in ‘Sahih Bukhari’ is –

“Muhammad b. Musailama reported that when he went to Kab b. Al-Ashram and asked him to lend corn, he said: ‘Mortgage your woman to me’. (The borrower): ‘How can we do so when you are the most handsome of Arabs?’”²⁶

The above tradition shows the miserable condition of women in those days. It is a fact that no value was attached to the modesty and chastity of women during this Dark Age. Though the custom of marriage was in vogue, but the various forms in which it existed were nothing but short of adultery. People of those days had no understanding and realization of the real purpose and significance of marriage. The peace and happiness which conjugal life gives to the husband and wife were not enjoyed by them. The mutual love and understanding which bring the two souls and their two families so near and inculcates mutual love and cooperation between them, no longer existed, nor did there remain any good and wholesome influence from such marriages. Even modesty and chastity, which are the essence of marriage, were cast to the winds. Only the custom existed, but the real spirit and purpose of marriage did not exist. In a tradition reported by Ayesah, the wife of Mohammad, it was said that there were four types of marriage in vogue in the Jahiliya period and were as follows-

The first was similar to present-day marriage procedures, in which a man gives his daughter or the woman under his responsibility in marriage to

another man after a proposal and a dower (Mahr) has been agreed on. In the second, the husband would send his wife, after the menstruation period, to cohabit with another man in order to conceive. After conception, her husband, if he desired, would have a sexual intercourse with her. This type of marriage is called 'Nikah Istabda'²⁷, i.e. 'the marriage for the sake of getting seed'. The third kind was that a group of less than ten men would have sexual intercourse with a woman. If she conceived and gave birth to a child, she would send for these men, and nobody could abstain. They would come together to her house. She would say: 'You know what you have done. I have given birth to a child and it is your child' (pointing to one of them). The man meant would have to accept. The fourth kind was that a lot of men would have sexual intercourse with a certain woman (a whore). She would not prevent anybody. Such women used to put a certain flag at their gates to invite in anyone who liked. If this whore got pregnant and gave birth to a child, she would collect those men, and a seeress (or a physiognomist) would tell whose child it was. The appointed father would take the child and declare him or her his own.²⁸

Thus, it is clear from the above that in the Age of Ignorance, the modesty and chastity of a woman had no value in the eyes of the people. The odious attitude of the people of that time regarding women's modesty and chastity can be understood from the fact that the husbands voluntarily sent their wives to another man for getting offspring and this reveals that the husband treated his wife as his property which he could use as he wished. Except the first form of marriage which is same as the present Islamic marriage the other three forms of marriages are

nothing but the evil acts of adultery or fornication, called 'zina' in the Quran. 'Zina' means unlawful sexual intercourse between a man and a woman, who are not bound to each other by a legal marriage. So, it is clear that there was no ban on fornication and adultery in the pre-Islamic period.

Not only that during the Days of Ignorance on the death of the father the son inherited his step-mothers along with his other property, and could marry them. Besides, the pre-Islamic Arabs had no limited number of wives, they could marry two sisters at the same time. Women were leading such a disgraced life at that time.

Another most depressed class of the pre-Islamic society was the slaves. The condition of free women yet much better than the condition of the female slaves. The master enjoyed the right of life and death over his slaves. In the Age of Ignorance slaves were sold or purchased at the markets and also won as a prize in the battle. "When a man purchased a slave he would put a cord round his neck, and so drag him to his dwelling as though he were a horse. If the slave were a prisoner of war his forelock would be shorn off and deposited in a quiver till his ransom was paid. Slaves were given as presents, just as they were sold, and inherited among other property."²⁹ Thus, the slaves were treated most inhumanly. The slave girls served as the concubines of the master.

Thus, from the above discussions we can have a vivid picture of the Arabian society prior to the advent of Islam. In summary the pre-Islamic Arabian society was morally corrupt and was steeped in vice and barbarism.

2.4 The Rise of Islam and the Reforms under Islam:

When injustice and violence, oppression and torture, cruelty and barbarism, vices and immorality increase in a society, religion will become essential for a society. The reason why society needs religion is to regulate human behaviour. Religion can inculcate social virtues, like truth, justice, honesty, love etc. among the members of a society. By inculcating social virtues among the individuals religion gives rise to the spirit of brotherhood. Religion is the ultimate source of social cohesion. The primary requirement of a society is the possession of social values by which individuals can control the action of themselves and through which society is perpetuated. Science and technology cannot create these values in the minds of the people. Religion by upholding moral ideals and values can help people to become moral and civilized citizens of society. Thus, it can be said that for the better formation of a society, to establish brotherhood, peace, justice and equality in society religion is an essential element.

When the pre-Islamic Arabian society was also groaning under injustice and inequality, cruelty and barbarism, oppression and violence, vice and immorality, Mohammad appeared as a saviour to the Arabs with a new religion known as 'Islam'. William Montgomery Watt states that "Muhammad was both a social and moral reformer and he created a new system of social security and a new family structure, both of which were a vast improvement on what went before. By taking what was best in the morality of the nomad and adapting it for settled communities, he established a religious and social framework for the life of many races of men."³⁰ Before going to discuss how and what reforms brought by

Mohammad under Islam, it is necessary to throw some light on the early life of Mohammad and his receiving Prophethood.

Mohammad was born in 570 A.D. in Mecca, a city of Arabia. Mohammad belonged to Hashim clan, of which his grandfather, Abdul-Muttalib, was the chief. Mohammad's father Abdullah died before he was born and his mother Amina died when he was 6 years old. After his mother's death Abdul-Muttalib, his grandfather then took charge of the youth and died two years later. Then Abu-Talib, his uncle adopted young Mohammad to his family and raised him as his own son. When Mohammad was 12 years old, he was taken on a trading journey to Syria by his uncle Abu-Talib and experienced the world outside of Arabia for the first time. During his trading journeys to Syria he met a wealthy widow, named, Khadijah. She was a merchant. Once she commissioned Mohammad to look after her goods on a journey to Syria. She was satisfied with his work very much and she offered him her hand for marriage and he accepted. When Mohammad married Khadijah, he was 25 years old while she was 40 years old.

Mohammad was a thoughtful and religious person. He used to go to a cave of Mount Hira and spend there a month every year in meditation. He meditated on religious matters and on the social problems. At the age of 40, in 610 A.D., one day when Mohammad was meditating in the cave of Mount Hira, he heard a voice. The voice was of the angel Gabriel. The angel Gabriel said to him, "Iqra" which means "read" or "recite". Mohammad trembled with awe and replied, "I cannot read". But when the voice again ordered him to read, he responded, "What shall I read or recite." The voice went on, "*Recite in the name of thy Lord who created – created man from a blood clot. Recite for thy Lord is bountiful, who taught by the*

pen, taught man what he knew not.”³¹ The angel departed, leaving Mohammad in fear, doubt and anxiety. He was unable to clearly make out what it meant. He went home hurriedly and told the incident to Khadijah expressing his apprehensions. She expressing her trust on him said, “Be not afraid. God will not waste you away. You help the widow, support the orphan and assist the wayfarer.”³² Thus, this was the first revelation Mohammad received from Allah. Mohammad continued to receive revelations from Allah at different times of his life in different ways. These revelations at the first time were memorized by Mohammad. But later these revelations were collected and wrote down by Mohammad and his followers and constitute the Quran. Thus the Quran was first revealed to Mohammad and the month, when the Quran was revealed, later known as the month of Ramadan. Thus, the Quran is not a literary work of Mohammad; it is a direct revelation of the Lord. So, this is how, Islam for the first time was founded in 610 A.D. when Mohammad had that vision in the cave.

After receiving the revelation Mohammad first came to his wife Khadijah and shared it with her. Khadijah was the first person to profess faith on Mohammad and being so she became the first disciple and the first follower of Islam. Mohammad then decided to communicate the messages of Allah and started with his family first. As time went on Mohammad began to communicate the messages among his friends and acquaintances, but in private. He began to preach the messages publicly in 613 A.D., i.e., three years after he received the first revelation. Mohammad began to preach the messages of Allah among the misguided citizens of Mecca. He started proclaiming the message of believing in one God.

Mohammad was not only a religious preacher but also a great social reformer. He looked at the society in which he lived with great concern and preached against what he saw as the social evils. As already said, Arabia was divided into many tribes during the days of Mohammad and being so inter-tribal conflicts and blood-feuds among them occurred frequently which was the main barrier of the strong foundation of a society. Mohammad realized the truth well that the foundation of the Islamic empire would be very weak unless it was based upon the co-operation and support of all sections of people. That is why, Mohammad first attempted to abolish the tribal distinction and also attempted to bring all the tribes under one nation. Due to the absence of any centralized government or any systematic law and order tribal humanism existed among them. That is why, Mohammad granted a 'Charter' in 622 A.D. which is commonly known as the "Constitution of Medina".³³ It was constructed as a formal agreement between Mohammad and all the tribes of Arabia. The Charter was established with the explicit concern of bringing to an end the bitter inter-tribes fighting. To this effect it granted a number of equal rights and duties to all the people belonging to different tribes for bringing them within the fold of one nation. The Charter established- the security of the community, security of women, stable tribal relations, a judicial system for resolving disputes etc. By this Charter Mohammad attempted to bring tribal equality which led to the universal brotherhood.

To bring unity and also to bring all the tribes under one common platform or within the fold of one community Mohammad attempted to remove idolatry from the hearts of the people forever. The Arabs, as mentioned earlier, were idol-worshippers and believed in multiple gods. To bring all the tribes within the fold of

one community it was essential to convert their belief from polytheism to monotheism. That is why, Mohammad inspired the idol-worshippers with the idea of one God, that is the first pillar of Islam.

Mohammad not only improved the religious life of Arabs but even attempted to improve the social and moral life also. Of all the reforming activities initiated by Mohammad the removal of social inequality was the most significant one. When he found that poor and needy people were being exploited economically by the merchants and money-lenders who practiced usury, he declared it “haram” (forbidden) and introduced the system of tax like zakāt (poor-tax), sadaqāt (voluntary charity), bait-ul-mal (public treasury) etc.. Money-lenders charged 100 percent interest on their loans, i.e. they took a dinar for a dinar, a dirham for a dirham. The rates of interest they charged were exorbitant which made the rich more richer and richer and the poor more poorer and poorer. The Quran prohibits usury, the bad kind of circulation of wealth, in which a person takes the surplus of another’s wealth to increase his own wealth and permits zakāt and sadaqāt, the good kind of circulation of wealth, in which a person gives the surplus of his wealth to the poor and needy. Besides, the Quran also criticized the concept of compound interest by commanding the believers not to eat doubted or redoubled usury: The Quran says –

*“O you who believe! Eat not Riba doubled and multiplied but fear Allah that you may be successful.”*³⁴

Thus, through the prohibition of usury and the institution of zakāt and sadaqāt Mohammad attempted to minimize the socio-economic inequality in the society.

Another most important beneficial reform affected by Mohammad was the improvement of the condition of the females. To this effect Mohammad as a social reformer condemned the practices of female infanticide, adultery or fornication, prostitution etc.. Mohammad's condemnation of female infanticide was the key way of his attempts to raise the status of women. He stood strongly against this barbarous custom of killing daughters. Arabian society was a male-dominated society and the family structure was patriarchal in nature. It was supposed that men had absolute superiority over women. Men were regarded as the most important fighting components of the tribes in the harsh desert conditions, where physical strength had a great importance. That is why, it was important to have many boys to strengthen the family and also to raise the prestige of the tribe. For this reason, the Arabs at that time felt no harm in killing their newborn girls. Many fathers killed their female children not only under social pressure and disgrace but also for fear of poverty. Mohammad told those fathers that it was a great sin. The Quran says –

*“And kill ye not your children for fear of poverty. We provide them with livelihood and you also surely killing them is a heinous sin.”*³⁵

It is also prohibited at another place of the Quran as follows –

“Kill not your children on a plea of want; We provide sustenance for you and for them; do not come near to shameful deeds. Whether open or secret;

take not life, which Allah has made sacred, except by way of justice and law: thus does He command you, that you may learn wisdom.”³⁶

It has also been said in the Quran that anyone who killed his daughter will be accountable to God on the Day of Judgement. Says the Quran –

*“When the female (infant), buried alive, is questioned– for what crime she was killed?”*³⁷

Besides, after the rise of Islam the institution of marriage was also taken seriously. Women’s consent in marriage was considered as vital. Only the form of marriage, in which both the man and the woman entered with their mutual consent and an amount of mahr was fixed, which is in vogue today, was accepted and all the other forms of marriage, such as, ‘nikah istabda’ etc. That were prevalent in the Days of Ignorance, were banned, since these were nothing but sorts of adultery. Adultery or zina is prohibited in the Quran, since, it is regarded as one of the greatest sins. The Quran prohibits zina in the following manner –

*“Nor come near to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils).”*³⁸

The Quran also prescribes punishment for zina or fornication, since it is a crime against one’s honour and dignity. The punishment for adultery committed by an unmarried man and unmarried woman is one hundred stripes. On the contrary, the punishment for adultery committed by a married man and married woman is rajm, i.e. stoning to death. The Quran states the following –

*"The fornicatress and the fornicator, flog each of them with a hundred stripes. Let not pity withhold you in their case, in a punishment prescribed by Allah, if you believe in Allah and the Last Day. And let a party of the Believers witness their punishment. [This punishment is for unmarried persons guilty of the above crime (illegal sex), but if married persons commit it (illegal sex) the punishment is to stone them to death.]"*³⁹

A hadith reported in *Sahih Al-Bukhari* can also be referred to here in this regard –

*"Narrated Umar : no doubt Allah sent Mohammad with truth and revealed to him the Book (Quran) and among that which was revealed was the verse of Rajm (stoning the married adulterers to death)."*⁴⁰

Besides, the Quran also prohibits of marrying step-mothers and also marrying two sisters at the same time. The Quran says–

*"And marry not woman whom your fathers married, - except what is past: it was shameful and odious, - an abominable custom indeed. Prohibited to you (for marriage) are: your mothers, daughters, sisters; father's sisters, mother's sisters; brother's daughters, sister's daughters; foster-mothers (who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom you have gone in, - no prohibition if you have not gone in; - (those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-Forgiving, Most Merciful."*⁴¹

Changes occurred regarding divorce also. In the pre-Islamic period this right to divorce was exclusively belonged to the husband only. But after the rise of Islam this right was given to women also. The wife can also repudiate her marriage, if she is dissatisfied with it under a form of divorce known as 'khula'. The case of Jamilah, the wife of Thabit bin Qais as reported in Sahih Al-Bukhari can be referred to here in favour of this.

“Ibn Abbas narrated: The wife of Thabit bin Qais came to the Prophet and said “O Allah’s Messenger! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike to behave in an un-Islamic manner (if I remain with him). On that Allah’s Messenger said (to her), “Will you give back the garden which your husband has given you (as Mahr)?” She said, “Yes”. Then the Prophet said to Thabit, “O Thabit! Accept your garden, and divorce her once” ”⁴²

Thus, Khula or *“Al-Khul means the parting of a wife from her husband by giving him a certain compensation”⁴³* The case of Thabit-bin-Qais and his wife Jamilah is the first instance of khula recorded by Muslim historians. *“The Prophet ordered the wife of Thabit-bin-Qais to observe iddah of one menstrual period only”⁴⁴*

Besides, to abolish the concept of considering women as a social burden by the pre-Islamic Arabs Mohammad attempted to reform the rule of inheritance. Since women had no share in inheritance, hence, they had no value and status in the society. To uplift the social status of women, they were given a determinate

share in inheritance from her father and from her husband also. It is declared in the Quran as follows –

*“From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large – a determinate share.”*⁴⁵

Another improvement initiated by Mohammad in Islam was regarding education. Education or the pursuit of knowledge gets much importance in Islam. Mohammad realised that without removing the ignorance of the Arabs the effective reform of the social order of Arabia would become impossible, because education is a major instrument of social change and development. It generates new forces to bring about changes in the value structure of society. It reduces inequalities in the society and leads to equalisation of status between individuals, since it develops the personality and rationality of individuals which affects social change also. That is why, Mohammad emphasised on educating the Arabs in general and educating women in particular. He made education obligatory on everyone and educating girls was commended by him as a way to paradise. This message is clear in the following hadiths –

*“Search for knowledge is compulsory upon every Muslim male and female.”*⁴⁶

Drawing attention towards women’s education Mohammad declares it an act worthy of reward in the Hereafter. He said –

“The person who brought up three daughters, embellished them with education and training, married them off and remained benevolently inclined to them even after their marriage. (Allah willing) paradise is ensured for him.”⁴⁷

Regarding women’s education there is also a hadith that it is the duty of the father to make his daughter literate before her marriage. But if the father fails to do so and the girl gets married to a man remaining illiterate then it is the duty of the husband to make her literate. If the husband also fails to do so then it is the duty of her son to educate her. If a woman dies remaining illiterate then three persons will be made answerable on the Day of Final Judgment for her illiteracy, first her father, then her husband and then her son. Thus, making women literate there is a reward and if not so there is punishment in the Hereafter. Thus, from this also it can be understood that Islam attaches so much importance to female education.

Though he was an illiterate, he was an ardent advocate of the pursuit of knowledge and education. He always encouraged his followers to acquire knowledge. He was of the opinion that the ink of a learned man is purer than the blood of a martyr. The following hadith reveals this message –

“The Messenger of Allah also said: On the Resurrection Day, three (persons) will intercede, first the Prophets, then the learned and then the martyrs.”⁴⁸

His great interest towards education can also be known by the following event –

In 624 A.D. the battle of Badr, the first battle of Islam, took place between the Muslims and the Quraysh, who did not accept Islam. In that battle the followers of Mohammad won the battle. During that battle some Quraysh, were arrested by the Muslims and Mohammad ordered that they were to be released only on the condition that each of them would make at least ten Muslims literate.⁴⁹

Another important reform affected by Mohammad was the improvement of the condition of the slaves. The slaves were perhaps the most exploited and degraded class in human history. The long prevalent slavery was discouraged by the Quran and there is reward from Allah for freeing of slaves. It is commanded to the believers to treat the slaves fairly. Islam declared the emancipation of slaves as the most virtuous act, since righteousness consists in setting free of a slave. It is stated in the Quran as follows –

“It is not Al-Birr (piety, righteousness, and every act of obedience to Allah) that you turn your faces towards east and west (in prayers); but Al-Birr is (the quality of) the one who believes in Allah, the Last Day, the Angels, the Book, the Prophets and give his wealth, in spite of love for it, to the kinsfolk, to the wayfarer, and to those who ask, and to set slaves free, performs As-Salāt (Iqamat-as-Salāt), and gives the zakāt...”⁵⁰

The act of freeing slaves was declared by the Quran as an atonement for certain sins. One such verse revealing this message of the Quran is the following –

“...but He (Allah) will call you to account for your deliberate oaths: for expiation feed ten indigent persons, on a scale of the average for the food of your families; or clothe them; or give a slave his freedom...”⁵¹

In this verse it expresses that breaking promise is a sin and for its expiation it is commanded to set the slaves free. Freeing a slave of one's own free will is declared to be such a virtuous act that it will protect the believers, who set the slave free, from the hell-fire. In this regard a hadith can be referred to here –

“Abu Bakar Siddiq reported that the Messenger of Allah said: One who treats badly with those under his authority shall not enter paradise. They enquired: O Messenger Allah! Have you not informed us that this people will certainly be the foremost of the peoples in respect of slaves and orphans? ‘yes’ replied he, so honour them as you honour your children and give them food out of what you yourselves eat...”⁵²

By saying this Mohammad wanted to elevate and liberate the slaves and laid emphasis to assign equal rights and honour and opportunities to them. He actually intended to eliminate slavery from the root.

In this way Mohammad attempted to bring a thorough change over the social order of Arabia. Influencing by the messages of the Quran and also by the social reformative activities of Mohammad people began to convert to the new faith preached by Mohammad and accepted him as their Prophet, thus began to increase the number of followers day by day.

The rapid success of Mohammad became an eyesore to the Quraysh. The growing power of Mohammad and the gradual development of Islam aroused jealousy and enmity of the Quraysh towards the Muslims. As a result of the hostility of the Quraysh in 624 A.D. the battle of Badr, i.e. the first battle of Islam took place between the Muslims and the Quraysh. In this battle the Quraysh were defeated by the Muslims. This victory proves the triumph of truth over falsehood. If the Muslims could not achieve success in this battle, Islam might have been wiped out forever from the face of the earth. But after this battle the influence of Mohammad and the power of Islam began to increase.

The Quraysh could not forget their defeat in the Battle of Badr and to take revenge on Mohammad they again attacked the Muslims in 625 A.D. at the hill of Uhud. That was the second Battle of Islam, known as the Battle of Uhud, took place between the Quraysh and the Muslims. In this battle the Muslims were defeated. Many Muslims were killed in this battle. But Mohammad never lost his faith and confidence. He continued his mission with full confidence. After that a series of battles took place. As a result of the hostility of the Quraysh Mohammad and his followers were not allowed to perform the pilgrimage at Mecca for long years. But in 628 A.D. Mohammad decided to go to Mecca to perform the pilgrimage. But the Quraysh barred his way, they did not want to allow Mohammad and his followers to enter into Mecca. But at the end the Quraysh agreed to compromise and consequently a treaty was done, known as the Treaty of Hudaibiah, between the Quraysh and Mohammad. According to that Treaty, whoever wished to join Mohammad should have the liberty to do so and likewise, those who wished to join the Quraysh should also have the liberty to do so. But if

anybody joined Mohammad without the permission of his guardian he should be sent back to his guardian. On the contrary, if any of the followers of Mohammad returned to the Quraysh he should not be sent back. Some of the followers of Mohammad, though, reacted and expressed their dissatisfaction on it, Mohammad gave his consent on the Treaty. After the Treaty, Mohammad and his followers were permitted to perform the pilgrimage. Mohammad wanted to remove the idolatry system from the hearts of the people of Arabia forever. Keeping this aim in his mind Mohammad again in 630 A.D. along with 10,000 Muslim armies attacked on Mecca and was finally able to defeat the Quraysh. He then destroyed the idols lodged in the Kabah and promoted the belief in one God and converted most of the people of the Arabian Peninsula under the banner of Islam. Within a brief span of twenty three years of his life Mohammad able to effect a vast improvement on the social condition of Arabia in comparison to the condition of the Arabian society prior to the advent of Islam. This great man died in 632A.D.

2.5 The Period of Rightly Guided Caliphs:

The period from Mohammad's death until 661 A.D. was known as 'the four rightly guided caliphs' or Rashidun. The period was so-called because during this period Islam was practiced as per the guidance provided by Mohammad. The four caliphs respectively were Abu-Bakr (632 – 634), Umar (634 – 644), Uthman (644 – 656) and Ali (656 – 661).

After Mohammad's death the questions of succession and continuation were raised. Tensions grew over the question of who should be the successor of the Prophet or the first Caliph. After consultation it was decided that Abu-Bakr,

Mohammad's faithful friend, should be the successor of Mohammad. Thus Abu-Bakr was declared as the first caliph of Islam. But Abu-Bakr's rule lasted for only about two years from 632 to 634 A.D. . Abu Bakr came to power in the midst of a crises-loaded situation. The crises which he was called upon to encounter were multi dimensional, being psychological, political and religious in nature. At the time of his accession, Islam stood at the brink of a precipice and any wrong step on the part of Abu Bakr would have led to the disintegration of Islam. That is why, during his rule his chief concern was to control the revolts against the Islamic federation. These revolts are collectively known as the wars of the Ridda or Apostasy.⁵³ The suppression of Apostasy and the unification of Arabia were his main aims among others during his rule. He also improved the administration of military and state affairs.

Before his death in 634, Abu-Bakr recommended Umar ibn al-Khattab to become the second caliph. His recommendation was later confirmed by the companions and other elder members of the society and thus Umar was declared as the second caliph. The Caliphate of Umar lasted for ten years from 634 to 644 A.D. . He established an administrative system for the new provinces, and set up the 'Diwan' by which stipened were paid by the state to those serving in the armies.⁵⁴ He established 'Baitul Mal' (public treasury).⁵⁵ The establishment of 'Baitul Mal' was considered as a check against the system of usuary. Umar also continued the military expansion of the empire by defeating the Byzantine army near the Yarmuk River and the Persians in Qadisiya. He also captured Jerusalem. Under the rule of Umar the expansion into Syria, Egypt and Iraq gained momentum.

After Umar, another former companion of Mohammad, Uthman bin Affan was elected as the new caliph. His Caliphate lasted for twelve years from 644 to 656 A.D. . Under his reign, though he continued the expansion, the speed of expansion gradually slowed down. Opposition to some of his policies led to his assassination in 656 A.D.. Historians like Ameer Ali hold view against Uthman in the following way – “Hadrat Uthman, though virtuous and honest, was old and feeble in character, and quit unequal to the task of Government.”⁵⁶

Next to Uthman, Ali bin Abu-Talib, who was the cousin and son-in-law of Mohammad, was appointed as the new caliph. His Caliphate lasted from 656 to 661 A.D. The Encyclopaedia Britannica describes Hadrat Ali as “the last and worthiest of the primitive Muslims, who imbibed his religious enthusiasm from companionship with the Prophet himself, and who followed to the last the simplicity of his example.”⁵⁷ But his appointment was not wholeheartedly accepted by all. Mohammad’s widow Aisha headed a revolt along with two senior Meccan Muslims against Ali. But Ali was able to defeat Aisha. Ali had in a settlement with Mu’awiya, the governor of Syria. Many of Ali’s followers were disagreed with the settlement and left his party and thus creating a third party, i.e. Kharijites, who believed that the best Muslim should be the caliph. Eventually, Ali was killed by a kharijite and Mu’awiya named himself Caliph.⁵⁸

After the death of Ali the caliphate passed to the hands of Mu’awiya, belonged to the clan of Umayya. They were able to retain the title of Caliph until 750. They made Damascus their Capital and were known as the Umayyad dynasty. The Umayyads were overthrown by another Meccan clan, known as the Abbasids, who were the descendents of Mohammad’s uncle Al-Abbas and being so the

Abbasids belonged to Mohammad's clan. They moved the Capital from Damascus to Baghdad. But in the later ninth century the power of the Abbasids began to decline and in such situations though the Abbasids retained the title of caliph until 1258, at that time Baghdad was sacked by a non-Muslim Mongol army and the Abbasids were killed and thus the dynasty of the Abbasids came to an end.

The movement of Islam did not remain stop with Mohammad's death. Instead within half a century of the Prophet's death, Islam had spread with electrifying speed to three continents. Within a few years, a lot of people accepted the message of Islam. By the tenth century, Islam dominated the half of the world known at that time. During later centuries the Turks embraced Islam peacefully. In India as well as in the Malay-speaking world also Islam has spread. During the early Muslim caliphates, first the Arabs, then the Persians and later the Turks set about to create classical Islamic civilization. Later, in the 13th century, both Africa and India became great centres of Islamic civilization and soon thereafter Muslim kingdoms were established in the Malay-Indonesian world and throughout China also.

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CHAPTER - III

THE CONCEPT OF JUSTICE IN ISLAM

Justice is a moral virtue of individual character as well as a desirable quality of society. There is no virtue so truly great and godlike as justice.¹ Philosophers generally regard justice as the most fundamental of all virtues for ordering interpersonal relations and establishing and maintaining a stable society. For Rawls, “justice is the first virtue of social institutions.”² Justice plays an important role in man’s life and also in the society as a whole. It encompasses all the aspects of human life and enables one to live in peace and harmony with other fellow beings. Justice is the basis of human life, as it is a source of all noble traits. It is safe enough to say that justice is the basic element in organized social life. A society where life enjoys the beauty of justice finds the necessities of life, and therefore overcomes all its problems.

Justice can be defined as fairness in the treatment to all people assigning rights and duties, honour and opportunities etc. It demands equal treatment to all. It means placing things in their rightful place. The word ‘justice’ comes from the Latin word ‘jus’, meaning right or law. The Oxford English Dictionary defines the “just” person as one who typically “does what is morally right” and is disposed to “giving everyone his or her due,” offering the word “fair” as a synonym. In essence justice means giving everyone what is his or her due.

3.1 Meaning and Definition of Justice in Islam:

The concept of justice is fundamental to any ethical system, as such it is also fundamental to Islamic ethics. Justice, as expounded by the Quran, is one of the most fundamental virtues in Islam. No other moral virtues are more emphasized in the Quran and Hadith than justice mainly as a reaction against the pre-Islamic social order which paid little or no attention to justice. The Quran aims at building a better social order and being so it lays great emphasis on justice because it facilitates the establishment of social order and also enables peoples to develop their human qualities and high moral order among themselves and thereby can create a balance in their affairs and dealings with their fellow beings to establish justice. Islam is a religion which lays emphasis on every aspect of justice and enjoins on man to do all sorts of justice. For every aspect of justice there are several words like, 'adl', 'qist', 'mizan' etc. used in the Quran. But the most common word used in the Quran to refer to Divine justice is 'adl', which means fairness and equality. The meaning of 'adl' as equality may be expressed either in qualitative or quantitative terms. In qualitative sense 'adl' refers to the principle of equality, assigning equal rights to all. On the other hand, in the quantitative sense it refers to the principle of distributive justice.³ For the second sense the term 'qist' or 'mizan' is used in the Quran. 'Qist' carries the sense of equal distribution and 'mizan' means a scale of balance. 'Adl' is sometimes used as the opposite of the words 'zulm' or 'jawr' which means injustice, wrong doing and oppression. The literal meaning of 'adl' is thus a combination of moral and social values denoting fairness, equality, righteousness, balance etc. Hence divine justice would be a synthesis of all these values and virtues.

Justice, as defined in the Quran, commands mankind to behave in a fair and just manner, not to make discrimination among people because of their race, gender or socio-economic status. Allah has commanded the believers to protect the rights of others, to be fair and just with people even with our enemies, to side with the one who is under oppression, to help and be fair with the needy and orphans and not to go beyond the standard set by the lord. Believers are commanded to be fair and just in all circumstances, and in all situations to establish justice in the society. To rule with justice someone needs to set all his personal feelings and views aside and to side with what is right under all circumstances and not to deviate from the path of justice and righteousness. A just person must incorporate the values of the Quran in such a way that he may be able to maintain justice even if this harms his own interests. Under normal circumstances many people can be just. But Islam commands its followers to be just even in the face of strong conflicting emotions, i.e. love and hatred towards other fellow human beings cannot stand as obstacles in dispensing justice. The Quran says:

*"O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do."*⁴

In this verse, not only the meaning of justice has been explained, but all the conditions of the establishment of justice have been put forth. This verse highlights the need to practice justice in matters pertaining to our interactions and dealings

with others. Allah enjoins the believers to be firm in implementing justice and to be just, even if it is against one's narrowly defined self-interest or of those very close to them. Believers are commanded not only to establish justice but also uplift its banner where it is suppressed. Justice is to be given such importance in one's life that self-seeking considerations cannot influence it. People generally avoid justice when its implementation goes against them or their near ones like parents or relatives. But in this verse it is clear that our love to our closest cannot detract us to do justice. This verse upholds, in unambiguous terms an ideal vision of justice. It exhorts and enjoins man to stand firmly on the side of justice.

There is another verse in the Quran representing the another obstacle, i.e. hatred, of justice and it is the following:

“O you who believe! Stand out firmly for Allah as just witnesses; and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety; and fear Allah. Verily Allah is well-acquainted with what you do”⁵

What is emphasized in the above verses is that doing justice is obligatory to all believers in all circumstances. Ignorant people think that they are protecting their self-interest by being unjust to others. Again it is a natural tendency to treat the enemy unfairly. But believers are reminded in these verses that the real protector of interests of all people is Allah and He will protect us when we follow His command to be just. So, it is a command to the believers, with a reminder that Allah is watching you, that enmity of others cannot be used as an excuse for committing injustice against them.

Thus, it is clear from the above verses that to enjoin justice is obligatory to all believers in all circumstances without fear or favour. Besides while judging in a case the social or economic status of the parties concerned should not deviate one from doing injustice. The practice of justice also requires that we should not give undue importance to our ego, meaning thereby while judging we should not keep in mind our image in the sense that our decision may affect it in the eyes of others. If we practice justice considering our own personal interests or state the facts of the evidence vaguely and concealing some with a view to save someone then it becomes a means of injustice. We must be aware that our state of mind shall not be hidden from Allah and we will not be able to save ourselves from the evil consequences of our doings, because Allah is well-acquainted with what we do.

In short, it is essential for the quality of being just that the person dispensing justice should be free from all internal and external motivations which can influence a just decision. It is undeniable that justice is done when individuals are just. Peaceful life is possible only by being just in our thinking and activities.

3.2 Domain of Justice:

The concept of justice has various shades of meaning. It may be analyzed in different forms like legal, theological, social, ethical, political, criminal, universal, particular, Divine, retributive, reparative, distributive etc. Western philosophers generally recognize three main branches of justice, viz, - retributive, reparative and distributive. Retributive justice is concerned with the appropriate punishment of wrongdoers, while reparative justice is concerned with how to correct or rectify past wrongs and the distributive justice which has received more

attention from the western philosophers and also from the entire world is concerned with the fair distribution of social benefits and burdens among the members of the society as a whole.⁶ This distributive justice mainly involves justice to the weaker sections of the society.

On the other hand, Islamic conception of justice is mainly Divine justice as it is embodied in the Revelation. But the Divine justice of Islam is all pervading and has to be manifested in every sphere of human life. It includes the forms of legal, theological, ethical, social justice etc. and also includes, like western concept of justice, the forms of retributive, reparative and distributive justice. A study of the Quran reveals that it contains many verses on different aspects of justice. References to the instances of adultery, usury, gambling, theft and also the references to the orphans, the needy and the poor, the workers, women, slaves etc., that are found in the Quran, reveal that justice in the Quranic sense relates to all domain of life. Hence, it includes, like western concept of justice, the forms of ethical, social, retributive, reparative and distributive justice etc.. The Quranic verses regarding the weaker sections of the society show that Islam lays great emphasis on distributive justice. In Islam through the institution of zakāt, alms-giving, prohibiting usury or riba, law of inheritance etc. an attempt is made to prevent the accumulation of wealth by a few one and benefit the least advantaged members of the community. So, Islam pays great attention to the distributive justice. Like Aristotle, in Islam also we find two senses of justice, i.e. justice in the broad sense and justice in the narrow sense. Justice in the broad sense, in Islam, is Divine law-abidingness and is known as Divine justice and justice in the narrow sense includes all other forms, like retributive, distributive etc. that come under

Divine justice. Here, in this chapter, Divine justice and distributive justice are to be discussed, as the present study is concerned with women's status that falls under the category of distributive justice and distributive justice ultimately comes under Divine justice.

3.3 Divine Justice in Islam:

In Islamic theory God is the sovereign authority of all things. He is the ultimate ruler and legislator of the whole universe. In Islam God disclosed himself through the Revelation and Divine wisdom which is communicated to men through the Prophet Mohammad. The justice which flows from such a high divine source may be called Divine justice or Revelational justice in contrast with natural justice (or human justice or positive justice).⁷ Natural justice or jus-naturale is said to be rational justice in the sense that it is the product of reason and to which philosophers are concerned.⁸ On the other hand, Divine justice or jus-divinum is the product of Revelation and Divine wisdom and is closely interwoven with religion and ethics. It is worth to mention that Revelation is not in conflict with reason, rather justice embodied in the revelation can be obtained through reason and thus the two, reason and Revelation, must be in harmony. Hence, Divine justice coincides with reason and may fall in the category of natural justice. Aristotle used the term 'natural justice'. Following Aristotle, scholars often equated Divine justice with natural justice.⁹ Ya'kub al-Kindi from Basra, the first Arab philosopher, "began his work on a synthesis of Greek thought acceptable to Islamic premisses."¹⁰ Al- Kindi attempted "to discuss justice within the framework of both Greek and Islamic concepts."¹¹ But unlike philosophers, the advocates of

jus-naturale, who define justice not in accordance with the Revelation, but with reason, modern Muslim scholars very consciously attempt to harmonize reason with the Revelation to define jus-divinum or Divine justice. The concept of justice as embodied in the Quran evoked a debate among the Muslim scholars concerning the question as to whether or not the adoption of western concepts was consistent with Islamic traditions. Consequently, two schools of Muslim scholars are found on this question, namely the revivalists and the modernists.¹² The revivalists are those who never try to harmonize western tradition with Islamic traditions and the modernists, on the other hand, are those who without conflicting the Revelation very carefully attempt to harmonize the two. The modernists or the advocates of rational justice were criticized by the most theologians on the ground that their acceptance and dependence on reason lead them to go beyond the Revelation. There is a misbelieve among the revivalists that Divine injunctions and human interpretations cannot be equated. But the aim of modern scholars was not to question the authority of Revelation but to seek an understanding of justice as presented in the western philosophy and to make it intelligible to the believers without necessarily compromising the creed and the Revelation. They only made a concession to Revelation. The truth arrived at by reason is the same as that embodied in the Revelation. The controversy took place among the revivalists and the modernists not because the revivalists were against reason and western philosophy but because they thought that the modernists assign higher authority to reason than to Revelation which is not actually the case. Despite all the diversities and differences of opinion among the schools and scholars, all agreed that in its ideal form Islamic justice is an expression of Divine justice or jus-divinum.

The Revelation, transmitted in God's words, is to be found in the Quran and the Divine wisdom which was communicated to men through Mohammad in his own words is to be found in the Sunna which is subsequently known as the Hadith or the Prophet's traditions. The Quran and the Hadith are the primary textual sources in Islam consisting of the Revelation and the Divine wisdom in which all Islamic teachings and doctrines are developed. Hence, the concept of Divine justice in Islam is also enshrined in the Revelation and the Divine wisdom. So, the principles and maxims of justice as derived from the Revelation and the Divine wisdom are considered to be infallible and inviolable. This Divine justice is eternal irrespective of time and place and designed for universal application to all men.

Thus, Islamic conception of justice as embodied in the Quran is mainly divine justice and no other moral virtues are more emphasized in the Quran than justice which denotes fairness, equality, uprightness and balance. Some of the Quranic verses representing Divine justice, which emphasise justice as a fundamental virtue, are as follows –

“...Whenever you speak, speak justly, even if a near relative is concerned; and fulfil the Covenant of Allah...”¹³

“Verily, Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice...”¹⁴

“O you who believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety; and fear Allah...”¹⁵

“God commands justice (Al-Adl), the doing of good (Al-Ihsan) and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion...”¹⁶

In the last cited verse justice, i.e. ‘al-adl’ is associated with al-ihsan which means doing the utmost possible good and fine human behaviour towards the self as well as towards others. ‘Ihsan’ or doing of good is an individual act. Ordaining justice and ihsan is followed in the verse by forbidding shameful deeds, i.e. al-fahsha, all unaccepted deeds, i.e. al-munkar and all kinds of oppression, i.e. al-baghy.

God also commands his believers to do full justice when they judge between people. The following verse of the Quran says this –

“...And if you judge, judge with justice between them. Verily Allah loves those who act justly.”¹⁷

This verse directly indicates that God loves those who act justly and indirectly indicates that He does not love the wrong doers. The Quran considers justice to be a supreme virtue. From the above verses it becomes clear that in Islam justice is an obligatory and injustice is forbidden. The centrality of justice to the Islamic value system is displayed by the following verse –

“We sent aforetime our Messengers with Clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in Justice...”¹⁸

The above verse makes it clear that the sole purpose of sending the Prophets to this world is to establish Justice and end injustice in the society. The phrase ‘sent Our Messengers’ signifies that justice to humanity has been the goal of all Revelations. The verse also shows that justice must be measured and implemented by the standards and guidelines set by the Revelation. To guide the people, God sent down the Messengers with clear signs, the Book, and the Balance. The Book contains the revelations that explain what is fair and unfair or right and wrong. The Balance refers to our ability to measure and calculate so we can follow the path shown by the Book and explained by the Messengers. In Islam people are reminded again and again to maintain balance as that is the very basis of stability and durability of a social order. Thus the above verse clearly postulates that justice is to be done in such a way that it results in complete fairness and doing justice is the collective responsibility of the community as a whole. Every member of the community is involved in this process.

Furthermore, Mohammad was sent as a judge between peoples, and God commanded him to proclaim –

“...I believe in the Book, which Allah has sent down; and I am commanded to judge justly between you...”¹⁹

Another verse can be referred to here in this regard –

“Surely We have sent down to you (O Mohammad) the Book (Quran) in truth that you might judge between men by that which Allah has shown you (i.e. has taught you through Divine Revelation),...”²⁰

“Mankind was one single nation, and Allah sent Messengers with glad tidings and warnings; and with them He sent the Book in truth, to judge between people in matters wherein they differed;...”²¹

From the above verses it becomes clear that the Quran as a scripture mainly devoted to laying down the principles of justice and Mohammad was commissioned to administer justice among the peoples so that peace and harmony prevails in the society. God commands His Messengers to administer justice among peoples without considering their race, ethnicity, gender, social and economic status.

To the Quranic concept of Divine justice the principle of human equality is essential and fundamental. The Quran contains multiple verses that appear to call for an ideology of human equality and justice. Following are some of the verses from the Quran representing human equality without considering race, colour, nation etc.

“O mankind! Be dutiful to your Lord, who created you from a single person (Adam), and from him (Adam) He created his wife (Hawwa or Eve), and from them both He created many men and women; and fear Allah through whom you demand (your mutual rights),...”²²

There is another verse in the Quran in this regard and is as follows –

*“O mankind! We have created you from a male and a female, and made into nations and tribes, that you may know one another. Verily, the most honourable of you with Allah is that (believer) who has At-Taqwa (i.e. he is one of the Muttaqun or the pious). Verily, Allah is All-knowing, All-Aware.”*²³

Again the Quran says –

*“The believers are nothing else than brothers (in Islamic religion). So, make reconciliation between your brothers, and fear Allah, that you may receive mercy.”*²⁴

*“Mankind was one single nation...”*²⁵

*“Mankind was but one nation, but differed (later)...”*²⁶

Representing the concept of brotherhood an another verse can be referred to here –

*“And verily this Brotherhood of yours is a single Brotherhood and I am your Lord ... but people have cut off their affair (of unity), between them, into sects: each party rejoices in that which is with itself.”*²⁷

These verses reveal that all human beings are brothers to one another as they all are the descendants from one father (i.e. Adam) and one mother (i.e. Hawwa). Mankind was created into one nation but it was divided into many nations later by their own. Islam recognizes the unity and equality of mankind with regard to the source of creation, the original common parentage and the final destiny. The source of creation is God himself. As God creates everything so all

are equal in the sight of God. To Him social status, national supremacy and racial origin are insignificant. Before him all men are equal. The original common parentage is that of Adam and Hawwa or Eve. To this common parentage every human being belongs and being so all are equal and brothers of one another. The final destiny is also God, to whom all men shall return. After death everyone will find himself standing in God's court on the Day of Final Judgment where he will receive his rewards or punishments for his deeds. No one can escape from it. On that day everyone will be judged in accordance with their deeds, whether good or bad, not in accordance with their race, nation, social status etc. So, the Quran commanded his believers to put great attention in his dealings with others. Thus it is obvious that the Quran gives emphasis on doing of good actions and good dealings with others. To get rid of punishment from God one must avoid wrong doings to others. Thus the concept of accountability to God and social justice is interrelated. If everyone recognizes such accountability then social justice becomes a principal necessary for everyone.

Besides, the verse 49:13 asserts that the division of human beings into nations and tribes is not for the purpose of discrimination, but for identification. Men, in essence, are equal. What really distinguishes one man from another is purity of character their high morals and their faith and piety. In other words, the superiority of one man over another is only on the basis of God-fearing or God-consciousness (i.e. Taqwa) and not on the basis of race, colour, language and nationality etc.. Even this superiority based on piety or Taqwa and pure character does not justify that such people should assume superiority over other human beings. Nor does the righteous have more privileged rights over others, since this

counter to human equality, which has been laid down in the beginning of this verse as a general principle. So, the division of human race is neither meant for one nation to take pride its superiority over others, nor is it meant for one nation to treat another with contempt or disgrace or regard them as degraded race.

Mohammad holds the same view, as is found in the verse 49:13. He commanded his followers in his sermon of the last Hajj pilgrimage not to discriminate people on account of their race, colour or ethnic differences, because they are not important, what is important is that having faith and piety (i.e. Taqwa). He says in the following manner –

“No Arabian has any superiority over a non-Arabian nor a non-Arabian over an Arabian. No person of white complexion has any superiority over a black one, nor a black person over a white one, save for Taqwa or piety. You are all the offspring of Adam, and Adam was fashioned out of clay.”²⁸

So, this is clear from the words of the Quran and also from the words of Mohammad that all men as human beings are equal in status and rank in the sight of Allah.

Thus from the above discussions it becomes clear that racism is not allowed in Islam. One of the major problems facing mankind today is racism. The concept of human inequality was prevalent everywhere in the ancient times that gave rise to social injustice in every society. So, the justice to which Islam invites its followers is not limited only to the citizens of their own country or the people of their own tribe, nation or race, or the Muslim community as a whole, but it is meant for all the human beings of the world. People belonging to Islam, therefore, cannot be

unjust to anyone. If one ceases to be just to other people, he no longer deserves to be called a Muslim. Justice consists in doing no discrimination between a Muslim and a non-Muslim, the rich and the poor, the high and the low, the ruler and the ruled. In the Islamic value system all stand on the equal footing in the sense that no one, whether the ruler or the rich, can claim any immunity from the court appearance, nor can assume any privilege whatever rank they may be. In Islam, all are equal and everything is open to all and therefore, all are entitled to equal social status and equal rights since, no human being is superior or inferior to other.

3.4 Distributive Justice in Islam:

Social justice is often referred to as distributive justice. The form of social justice to which the Modernists and the Revivalists began to debate in the modern age is known to western thinkers as distributive justice. Distributive justice means fair distribution of social and economic benefits and burdens among the members of a community. It involves fair distributions of wealth, honour and income, protection of the weaker sections by providing basic rights of life to them and fulfilling the basic needs of them. The term 'distributive justice', coined by Aristotle, was not unknown to Muslim scholars. But the controversy or debate among the Modernists and the Revivalists centered on whether the Islamic standard is in conformity with distributive justice which has its origin in western tradition. The Modernists advocated distributive justice in accordance with western standards by harmonizing it with the Islamic standards, while the Revivalists advocated a form of social justice in accordance with Islamic standards. The Revivalists were not in agreement with the Modernists regarding the adoption of

western standards, because by adopting it, the Revivalists thought that the Modernists go beyond the Revelation.

To have an understanding of Islamic theory of distributive justice an attempt is made here to discuss it with the help of two other western theories offered by Aristotle, who first coined the term distributive justice and John Rawls, who offered the most important recent theory of distributive justice. Now let's proceed to discuss these theories one by one as given below –

3.4.1 Aristotle's Theory of Justice:

Aristotle's in his book V of "*Nicomachean Ethics*" deals with the moral virtue justice. Aristotle analyses it in terms of what is lawful and fair. Justice, as defined by Aristotle in his famous book "*Nicomachean Ethics*", means either what is lawful, or what is fair and equal. Aristotle said, "the lawless man was seen to be unjust and the law-abiding man just, evidently all lawful acts are in a sense just acts."²⁹ "The just, then, is the lawful and the fair, the unjust the unlawful and the unfair."³⁰ Justice is, no doubt, in conformity with law. What is in accordance with the law is thought to be just and conducive to common good. Hence, justice means either lawfulness or fairness and injustice means lawlessness and unfairness. The law encourages people to behave virtuously, so the just person who by definition is lawful, will necessarily be virtuous. But virtue is not identical with justice. While virtue deals with one's moral state, justice deals with one's relation with the others.

Aristotle talks about two senses of justice – justice in the broad sense and justice in the narrow sense. Justice in the broad sense, which is known universal

justice, according to Aristotle, is law-abidingness, because laws in his opinion, address all matters, aim at the common advantage of all, produce and preserve happiness for the community. Aristotle further claims in his book V of his “*Nicomachean Ethics*” that justice in the broad sense is the whole of virtue as “in justice is every virtue comprehended and it is complete virtue in its fullest sense.”³¹ It is complete because he who possesses it can exercise his all other virtues not only in himself but towards others also. What Aristotle means to convey when he says that justice in the broad sense is the whole of virtue is that just acts are not only just but also temperate, courageous and so on and every other virtue exercised for the good of the community is at the same time an act of justice.

Aristotle’s view of universal justice, i.e., justice is law-abidingness seems to be vulnerable to an obvious objection as it cannot provide standard of what is just. It generally believes that people should obey the law in order to be just. But if we obey the law we may be doing what is unjust and sometimes even if we disobey the law our actions may be just. So, the problem is that the law itself may be just or unjust in the sense of being unfair to some. For Aristotle, “the unjust and injustice in the sense of the unfair are not the same, meaning thereby, all that is unfair is unlawful, but not all that is unlawful is unfair.”³² Thus, Aristotle complements the meaning of justice as law-abidingness by another meaning of justice which is known as particular justice. It is the meaning of justice in the narrow sense. Justice in the narrow sense means fairness or equality. These two meanings collectively constitute the whole meaning of justice, i.e. justice is law-abidingness on the part of the citizens and the laws of the state that the citizens are asked to abide by are fair. Fairness involves the following forms –

First, laws are fair means that they ensure equitable distribution of the goods of life, honour, income and all other things that fall to be divided among those who have a share in that. Secondly, laws are fair means that there is adequate provision for compensation of the losses suffered by the victims of injustice. Thirdly, laws are fair means that they ensure fair exchange of the goods, services etc. So these are the forms of fairness.

Aristotle divides particular justice into two types, viz., distributive justice and rectificatory or remedial or corrective justice. Distributive justice, according to Aristotle, “is that which is manifested in the distributions of honour or money or other things that fall to be divided among those who have a share in the constitution (for in these it is possible for one man to have a share either unequal or equal to that of another).”³³ In other words distributive justice involves distribution of benefits and burdens, honour and wealth fairly among the citizens of a society. On the other hand, rectificatory justice remedies unequal distribution of gain and loss between two people. Thus remedial or corrective justice requires that in some circumstances we try to restore a fair balance in interpersonal relations where it has been lost. If a member of a community has been unfairly benefited or burdened with more or less than is deserved in the way of social distributions, then corrective justice is required.

Thus justice, according to Aristotle, is based on a two-fold ideology-first, that everybody should get what is his right or what is his due and second, that every wrong should be properly remedied. Both right or due and remedy have reference to law and accordingly, justice consists in determination of the rights and remedies as the law provides.

Aristotle also considers justice in relation to equality. But the concept of human equality is something different to him. He does not consider all human beings are equal as human being. “Aristotle regards human society as inevitably and naturally hierarchical: he assumes as self-evident that the male’s abilities are superior to the female’s, and the master’s to the slave’s, and that Greeks are superior to non-Greeks.”³⁴ Accepting human inequality as natural Aristotle holds that some are superior intellectually and fit to rule from birth, while others are inferior and marked from birth to be ruled by others. As Aristotle maintains that male and master are superior to female and slave respectively and being so the former is fit to rule and the latter to be ruled.

Like his teacher Plato, Aristotle also stands for a society divided into various classes like the rulers, the warriors and the workers. This division is made on the basis of virtue possessed by the citizens. Those citizens who possess reason and wisdom are characterized as the rulers and those who possess courage are characterized as the warriors and those who possess appetites are characterized as the traders or artisans or workers. Meaning thereby, according to Aristotle, position of authority is not open to all. It is open to only the virtuous and wise citizens as they are guided by reason. But women, slaves, workers etc. are not regarded by Aristotle as citizens and hence, are not fitted to rule. In Aristotle’s view “a citizen is one who ‘participates in giving judgment and holding office’...even in a Greek democracy, a very large proportion of the population was excluded from office, notably women and slaves.”³⁵ According to him, “citizens are a particular class of men, to which no one who is constantly engaged in commercial or manual labour can belong, at any rate in the ‘best’ state. Such people simply do not have the time

and opportunity to fulfil the essential function of a citizen, to rule (while holding office)...”³⁶ Here, a question necessarily arises to Aristotle – who are then fit to rule or to hold office or positions of authority. He holds “that the state should confer political power, privilege and status in proportion to ‘value received’, i.e. in proportion to the contribution men make to the total purpose for which the state exists, the good life, which entails the exercise of all the distinctly human virtues. Such a distribution would be ‘just’ in a complete sense... he puts good birth and ownership of property on the list, and the moral qualities of justice and courage; a high level of culture and education too will be a token of merit in one who is to take part in the working of a state which aims at securing the good life. Men are not equal in these respects, and any state which ignores this fact and thinks in terms of absolute equality must be one of the wrong types, a ‘deviation’. The upper groups will always be superior in education and ability.”³⁷ Aristotle considers democracy as the worst form of government as it considers all human beings are equal. According to him, aristocracy is the best form of government in the sense that it is the rule by a few wise rulers who are superior in virtue and wisdom to other citizens belonging to other classes.

Hence, according to Aristotle, justice involves equality not for everyone, only for equals. Aristotle in his “*Nicomachean Ethics*” said that “the same equality will exist between the persons and between the things concerned; ...if they are not equal, they will not have what is equal.”³⁸ He again said “what is just in distribution must be according to merit.”³⁹ He believes that certain goods such as wealth, honour and opportunity should be distributed among different individuals in accordance with worth or merit. This view is called ‘proportional equality’,⁴⁰

“i.e. greater shares for greater merit, as distinct from identical shares irrespective of merit.”⁴¹ If people are equal in worth their shares of the relevant goods will be equal, however, if their worth is unequal their share also be unequal that matches the difference in worth.⁴² Since, the most virtuous people make the most significant contribution to the state, hence, they have the right to receive greatest honour. As women, slaves and workers are unable to make essential contribution to the state, hence, are less virtuous, according to Aristotle, so they will necessarily receive lesser share of wealth and honour. Justice is that virtue of the soul which is distributive according to desert.⁴³

According to Aristotle, a sort of social reciprocity among the citizens is necessary but it must be proportional rather than equal. Proportional equality involves the “intermediate” position between someone’s unfairly getting ‘less’ and unfairly getting ‘more’ than is deserved. So, justice must be distributed proportionately. For instance, a shoemaker and a farmer cannot exchange one shoe for one harvest, since shoes and harvests are not of equal value. Rather, the shoemaker would have to give a number of shoes in exchange to the proportional value of the crops that the farmer provides.

In sum and substance Aristotle’s principle is, “what the just is – the proportional; the unjust is what violates the proportion.”⁴⁴ Aristotle articulates a principle of justice, called merit or virtue that transcends gender, race etc. Despite granting that Greeks and non-Greeks, slaves and masters as well as men and women are all human beings, Aristotle justifies the alleged inequality among them based on worth or merit or desert.

Aristotle's theory of justice has been criticized on the ground that it is unjust and unfair to discriminate people on account of their race, gender or ethnicity. If women, workers and non-Greeks are given opportunities, they can also prove themselves to be significantly equal. Hence, Aristotle fails to have an account of the conception of human rights as such. He also fails to establish a universal perspective that will respect equal dignity of all humans. Thus, his theory like Plato's, fails adequately to respect all persons as free and rational agents.

3.4.2 Rawls' Theory of Justice:

The most widely discussed theory of distributive justice in the past four decades has been proposed by John Rawls in his book "*A Theory of Justice*". The concept of justice has several shades of meaning and one of them is that of fairness. Rawls claims that his theory of justice captures the meaning of justice as fairness. It is worthwhile to note that when he talks of justice as fairness, he is not saying that justice is fairness. His theory is a theory of justice as fairness. Although various notions of justice are known to exist in the society, yet most of them seem to revolve around the two major schools — the utilitarian and the social contract. Rawls makes it clear that his theory of justice is a social contract theory. It is worth mentioning that the most important recent theory of justice in which the social contract theory is revived and refined is Rawls theory of justice. Rawls develops his theory of justice around the social contract approach which is an improvement over the utilitarianistic approach. Rawls was dissatisfied with the traditional view of utilitarianism which holds that societies should pursue the greatest good for the greatest number. One of the major objections against this approach is that it gives

priority to the majorities over the minorities. On the contrary, Rawls attempts to develop his account of justice within the social contract approach which holds that a society is an agreement among the members within that society and every member enters into this agreement to follow certain rules for the betterment of everyone.

Rawls' theory of justice as fairness involves the idea of the original position, the veil of ignorance and the derivation of two principles of justice. Rawls describes the concept of justice as fairness through the use of a device which he calls "the original position". It is said that persons in hypothetical initial situation, i.e. in the original position are given the task of selecting the principles of justice and these "principles of justice are chosen behind a veil of ignorance."⁴⁵ This veil is that which essentially blinds people to all facts about themselves. Persons in the original position do not know their social status or their position in the society and also do not know their fortune in the distribution of natural assets and abilities like their intelligence, strength etc. Persons in the original position are called original person.⁴⁶ It is a hypothetical position, where everyone is under a veil of ignorance. Under the veil of ignorance they are deprived of all knowledge of their conception of their good.⁴⁷ In the original position people do not have any knowledge of their social goods, such as rights and liberties, powers and opportunities, income and wealth.

Rawls claims that persons in the original position would adopt two such principles which would govern the assignment of rights and duties and regulate the distribution of social and economic advantages across society. In the words of

Rawls, “the first requires equality in the assignments of basic rights and duties, while the second holds that social and economic inequalities, for example, inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society.”⁴⁸

Rawls lays great emphasis on equality and believes that all men are created equally. He never encourages to discriminate people on account of their gender, race, ethnic identity, level of intelligence, physical strength etc. He makes it clear that his theory which he calls “justice as fairness” considers persons as free and equal, morally autonomous and rational beings. Rawls theory of justice can be understood by his two principles of justice and they are as follows —

“First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”⁴⁹

Rawls arranges the principles in lexical or serial order. The first principle, which requires equality of rights and duties for all members of society, is lexically prior to the second, which specifies how socio-economic inequalities can be justified. Just as the first principle is lexically prior to the second, Rawls also maintains that second part of the second principle, i.e. 2.b., known as fair equality of opportunity is lexically prior to the first part of the same, i.e. 2.a., known as the difference principle. Rawls point is that the original person gives priority to the

first principle over the second. Thus the order in which they were stated is indeed the order in which the original person would choose his principles. In other words, the second principle cannot be justified until the first has been met fully.

In his book “*A Theory of Justice*”, Rawls attempts to solve the problem of distributive justice. These two principles of justice offered by Rawls constitute the essence of his theory of distributive justice. Rawls applies his two principles to the basic structure of society. As the formulation of these principles presuppose that the basic social structure can be divided into two parts, one is political that is related to the assignment of rights and duties and the other is economic that is applied to regulate the distribution of social and economic benefits.

Now, let's proceed to the principles of justice in details. The first principle is a strict egalitarian principle and is known as equal liberty principle since it assumes the equal liberties of citizenship. In this principle, Rawls maintains that basic rights and duties should be distributed equally among all the members, whether more advantaged or least advantaged, of the society without considering their race, gender or ethnic identity. The basic liberties of citizens are – political liberty of the right to vote and to be eligible for public office (or and hold public office), freedom of speech, freedom of assembly, freedom of conscience, freedom of the right to hold personal property, freedom from arbitrary arrest and seizure etc. These liberties should be granted to all equally as the first principle requires, since the members of a just society possess the same basic rights.

Now the second principle, as Rawls points out, has two ambiguous phrases, one is “everyone's advantage” which signifies the difference principle and the

other is “equally open to all” which signifies the principle or condition of “fair equality of opportunity.” As already mentioned above, the second principle is applied to the fair distribution of income and wealth among the members of a community and also to the design of social institutions or offices in which the hierarchies of authority and responsibility, i.e. the order of ranks one above another in offices, occurs. Hence, the second principle requires the distribution of social and economic advantages among the members of the society. Social and economic inequalities that exist in the society is an undeniable fact. But what is emphasized in the first part of this principle by Rawls is that these inequalities should be arranged in such a way that every member, including the person ranked lowest, of the society must be benefitted. Rawls maintains that “the distribution of income and wealth need not be equal, it must be to everyone’s advantage.”⁵⁰ Equal distribution of income and wealth is not possible and this inequality meaning thereby the gulf between the rich and the poor cannot be removed totally from the society, but it can be minimized through proportional distribution of income and wealth which makes benefit the least advantaged persons. Thus the first part of this principle is not egalitarian but it makes benefit everyone. According to Rawls, it is the duty of every people to assist those peoples who are living under unfavourable condition and it is the demand of justice.

The second part of the second principle is also quite egalitarian, since it distributes opportunities to be considered for offices and positions in an equal manner. This part contains the condition of “fair equality of opportunity”. Rawls conjoined his difference principle with the principle of equality of opportunity. In this part of the second principle Rawls asserts that positions of authority and

offices must be accessible to all and thus he encourages fair equality of opportunity. Fair equality of opportunity rules out formal discrimination on grounds such as a person's gender, race, ethnicity etc. There are some factors or elements, such as gender or race over which people have no control and hence, a society in which people's race or gender have fundamental effects on their lifetime economic prospects treats people unfairly. In such societies, whether people were born as the favoured gender or race, and hence were favoured economically, would simply be a matter of luck. Rawls claim is that structuring a society in this way that this 'natural lottery' has such fundamental effects on people's lives is immoral whereas we have the option to structure it another way, with a system of fair equality of opportunity. This kind of reasoning makes Rawls arguments very interesting as it leads to much stronger requirements for establishing social justice.

In the second part of this principle Rawls discourages the existing system of holding positions of authority as it is hierarchical in nature. According to him, positions of authority and offices should be equally open to all that everyone should get the chance to hold positions.

Thus these two principles which are the special cases of the general conception of justice can be expressed as follows —

“All social values — liberty and opportunity, income and wealth, and the bases of self-respect — are to be distributed of any, or all, of these values is to everyone's advantage.”⁵¹

The above statement makes it clear that unlike utilitarianism, Rawls is not in agreement with the principle that maximum benefit of the maximum number.

Rather, he is in favour of the principle that maximum benefit of everyone. He holds that all social primary goods should be distributed equally and this is the general conception of justice. However, if certain inequalities regarding income and wealth and holding positions benefits everyone then it resembles the general conception of justice. As Rawls points out, “the general conception of justice imposes no restriction on what sort of inequalities are permissible; it only requires that everyone’s position be improved.”⁵² In essence Rawls never overlooks the worst-off or the least advantaged group of the society in comparison to the well-off group of the society.

3.4.3 Islamic Theory of Distributive Justice:

Like John Rawls, Islamic theory of Distributive Justice also involves the principle of equality and fairness. As Rawls said, according to Islam, also all men as human beings are equal and therefore, all rights and duties should be distributed equally to all. What Islam prescribes for human equality is already discussed above (i.e. in the section 3.3). Now, the principle of fairness. As mentioned above, distributive justice means fair distribution of social and economic resources, rights and duties, wealth and honour among the members of a community. It mainly involves justice towards the least advantaged or worst-off members of a community. To provide justice or to benefit the worst-off members of the society, social and economic inequalities that exist among the people should be minimized. One of the important reasons of these inequalities is the accumulation of wealth or the concentration of wealth in just a few hands. So, social and economic inequalities can be removed effectively only by preventing the concentration of

wealth in a few hands and ensuring the fair distribution of wealth and income among the weaker sections of the society. But social and economic inequalities that exist in the society is an undeniable fact. It is true that Islam also accepts this unequal distribution of wealth as natural but it does not allow wide disparities in the distribution of wealth and income. The distribution of wealth, according to Islam, need not be equal in the strict sense, but it must be in such a way that it benefits the weaker sections of the society. If the distribution of wealth among the people of a community is unfair and unequitable, then it creates a class conflict between the rich and the poor. For bridging the gulf between the rich and the poor and to prevent the concentration of wealth in few hands and to ensure just and fair distribution of economic resources and wealth, Islam provides certain effective measures such as Zakāt (the poor tax) , Alms giving (Voluntary charity), prohibition of Riba (usury), law of inheritance etc.

Justice towards the weaker sections (called *musadi'fun*) is found in the teachings of the Quran. Quran lays great emphasis on doing justice and being just in dealing with the orphans, the needy and the poor. It condemns the concentration of wealth in a few hands. There are many verses in the Quran which create awareness among the believers about distributive justice. The Quran is in favour of leading a need based life and opposes ostentatious life. Islamic economic system guarantees basic human needs to the needy and the poor people. Islam enjoins upon the rich and the wealthy people of the society to fulfill the needs of the poor and the destitute. According to the Quran, the poor and the needy have share in the wealth of the rich. It clearly enjoins to give away what is left with one (the rich) after fulfilling one's basic needs. The Quran says –

“And those in whose wealth there is a recognized right for the beggar who asks, and for the unlucky who has lost his property and wealth (and his means of living has been straitened).”⁵³

Now, the question is how much wealth should be spent by the rich for the cause of the poor. In this regard the Quran says –

“... And they ask you what they ought to spend. Say: ‘That which is beyond your needs.’...”⁵⁴

Thus the Quran enjoins upon the rich to spend their surplus wealth for the needy and the poor. Abu Zarr Ghaffari, a close companion of Mohammad, who is a great supporter of social justice, holds the view that it is unlawful to keep any surplus wealth after meeting one’s own needs and therefore, the surplus must be spent on satisfying the needs of the deprived members of the community. So long as there is even one poor person who is unable to meet his basic needs of life, surplus wealth of the rich must be collected by the state and spent on the poor. A Hadith in this regard is as follows –

Abu Saeed Khudhri reported that the Holy Prophet said, “Anyone who possesses goods more than his needs, should give the surplus goods to the weak (and poor); and whosoever possesses food more than his needs should give the surplus food to the needy and the destitute.”⁵⁵

References to justice in the Quran also occurs in the context of orphans, another economically exploited class in society, as their property is generally devoured by their guardians and near kindered. Islam has declared devouring the

property of the orphans as a major sin. The Quran warns the devourers of orphan's property in these words —

“Verily, those who unjustly eat up the property of orphans, they eat up only fire into their bellies, and they will be burnt in the blazing Fire!”⁵⁶

Regarding the just treatment of orphans and their property there are many verses in the Quran. God commands that the property of orphans should be managed in the most just manner until they grow old enough to manage in themselves. In Sura An'am, God commands —

“And come not near to the orphan's property, except to improve it, until he (or she) attains the age of full strength; and give full measure and full weight with justice...”⁵⁷

In many other verses God reminds people not to dissipate the property of orphans before they reach maturity and to act in a just way. One such verse is as follows:

“And try orphans (as regards their intelligence) until they reach the age of marriage; if then you find sound judgment in them, release their property to them, but consume it not wastefully and hastily fearing that they should grow up and whoever (amongst guardians) is rich, he should take no wages, but if he is poor, let him have for himself what is just and reasonable (according to his labour). And when you release their property to them, take witness in their presence; and Allah is All-Sufficient in taking account.”⁵⁸

Those who consume the property of orphans unjustly and spend it unfairly and try to exchange the orphan's good property with their bad ones are considered of committing a great sin and are warned of a punishment which will last for all eternity. In the following verses it is stated —

*“And give unto orphans their property, and do not exchange (your) bad things for (their) good ones; and devour not their substance (by adding it) to your substance. Surely, this is a great sin.”*⁵⁹

*“Verily, those who unjustly eat up the property of orphans, they eat up only fire into their bellies, and they will be burnt in the blazing Fire!”*⁶⁰

The following is a hadith encouraging good treatment towards the orphans-

*“Ibn Abbas reported that the Messenger of Allah said: whoso gives shelter an orphan with his food and drink, Allah will guaranty him Paradise...”*⁶¹

The Quran says –

*“Therefore, treat not the orphan with oppression.”*⁶²

There is another chapter in the Quran in which ill treatment towards the needy and the orphan is considered as a sign of disbelief.

*“Have you seen him who denies the Recompense? That is he who repulses the orphan (harshly). And urges not the feeding of Al-Miskin (the poor)”*⁶³

In these verses the Quran says that those who do not take care of orphans and needy are in fact not in the path of Allah. Those who pray and neglect the needy and poor are in fact praying to show off. Their prayer is not real prayer.

Mohammad said that feeding a hungry widow is more meritorious than praying whole night. Thus services to poor and needy are service to God. In this regard a hadith can be referred to here –

“Abu Hurairah reported that the Messenger of Allah said: One who strives for the widows and the poor is like one who fights in the way of Allah...”⁶⁴

Economic justice in Islam consists in giving zakāt and alms-giving to the needy and the poor. Prohibition of the accumulation of wealth in the few hands and leading a life of ostentation are related to economic justice.

The Quran condemns the accumulation of wealth in the following manner –

“... And those who hoard up gold and silver (Al – Kanz: the money, the zakāt of which has not been paid) and spend them not in the way of Allah, announce unto them a painful torment. On the Day when that will be heated in the fire of Hell and with it will be branded their foreheads, their flanks, and their backs, (and it will be said unto them): “This is the treasure which you hoarded for yourselves. Now taste of what you used to hoard.”⁶⁵

It is clear from the above verse that the Quran wanted to promote social and economic justice by prohibiting hoarding and accumulation of wealth. It is possible only when all sections of a society can fulfil their basic economic needs. But if wealth is concentrated in a few hands and the rich spend their wealth on their undue comforts and the poor and the needy are deprived of their basic needs and thus an imbalance is created then to talk of social and economic justice is

meaningless. On the basis of such Quranic verses Mohammad even prohibited men to wear silken clothes and to eat and drink in golden and silver vessels and to wear gold ornaments. These were the signs of ostentation.

The following is a hadith of Mohammad in this regard –

*“Do not wear silk and Dibaj, nor eat or drink from utensils made of gold and silver.”*⁶⁶

In Islam, believers are told that after fulfilling their basic needs the surplus wealth should be distributed among the needy people. It will create a balance in the society and lead to the establishment of social justice.

Since, the Quran attempts to achieve social justice in terms of distribution of wealth and income, it emphasizes on giving charities or sadaqāt to the needy people. The most important means to achieve this goal is the institution of zakāt which is known as poor-tax and the other is alms-giving i.e. voluntary charity. The rationale behind zakāt and other charities is that the wealth should neither be concentrated nor circulated among the rich alone. In this regard a hadith can be referred to here –

*“Take from the rich and distribute among the poor and the needy.”*⁶⁷

Islam, by recognizing zakāt as the third pillar of Islam, has made it compulsory for all believers. Like income tax, zakāt is also a tax, since, 2.5% of yearly earning or annual income should be distributed among the worst-off or least-advantaged members of the society. In other words, it is a compulsory tax or poor-tax that is imposed upon the rich for the protection of the poor.

Since the Quran wants to bring about just distribution of wealth it encourages the institution of zakāt, which means purification. Thus, it is only through distribution that wealth can be purified and only purified wealth can bring happiness to all on earth. Mohammad himself was a role model in this respect. Whatever he received from the rich always he distributed it among the hungry and the believers. He also instituted the concept of ‘fitrah’ i.e. to spare something for the poor and the needy on the occasion of Eid so that the poor could also share happiness. Giving ‘fitrah’ is the sunnah of the Prophet. Thus Eid cannot be celebrated by the rich without sharing its joys with the poor. Giving zakāt in Islam is so important that every verse in the Quran about salāt i.e. prayer mentions zakāt. Some such verses are as follows –

*“It is not Al-Birr (piety, righteousness, and every act of obedience to Allah) that you turn your faces towards east and west (in prayers); but Al-Birr is (the quality of) the one who believes in Allah, the Last Day, the Angels, the Book, the Prophets and give his wealth, in spite of love for it, to the kinsfolk, to the wayfarer, and to those who ask, and to set slaves free, performs As-Salāt (Iqāmat-as-Salāt), and gives the zakāt...”*⁶⁸

*“And perform As-Salāt (Iqāmat-as-Salāt), and give Zakāt...”*⁶⁹

*“... And Allah said: “I am with you if you perform As-Salāt (Iqāmat-as-Salāt), and give Zakāt and believe in Messengers; honour and assist them...”*⁷⁰

“...those who perform As-Salāt (Iqāmat-as-Salāt), and give Zakāt, and they are Raki’un (those who bow down or submit themselves with obedience to Allah in prayer).”⁷¹

Thus there cannot be real prayer without giving zakāt on one’s earnings. The poor tax is must for every Muslim. Zakāt, thus, has central importance in Islamic society.

The Quran encourages to spend charities or zakāt for the social and economic upliftment of the weaker sections of the society. The charity given to the needy and the poor, according to Quran, is a virtuous act. Now, to the question that to whom charity may be bestowed, the answer is obviously to the least-advantaged members or the weaker sections of the society which includes the following – the poor, the needy, the orphans, the collector of zakāt, those whose heart is reconciled to truth, slaves who are in bondage, the debtors and the wayfarer or the traveller. The Quran says –

“Alms are for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to truth); for those in bondage and in debt in the cause of Allah and for the wayfarer: (thus it is) ordained by Allah, and Allah is full of knowledge and wisdom.”⁷²

Moreover, as the Quran clearly indicates that one of its objectives is to prevent accumulation of wealth and just distribution of it among the needy, so, alms is stipulated *“...In order that it may not (merely) make a circuit between the wealthy among you...”⁷³*

Islam approved and encouraged alms giving to establish peace and justice in the society by reducing economic inequality among the people. Alms are supposed to be given in various ways – by supporting relatives and helping the needy in general. It may also take the form of good deeds or kind words. There is a hadith in this regard –

*“Jaber and Huzaifah reported that the Messenger of Allah said: Every act of kindness is charity.”*⁷⁴

There is an another hadith representing the same message in the following way –

*“Abu Hurairah reported that the Messenger of Allah said: ...Doing justice between two men is charity and assisting a man is charity and assisting a man (to ride) upon his animal that it may carry him or lifting up his luggage upon it is charity and a good word is charity and every step which he takes towards prayers is charity and removing harmful things from pathway is charity”*⁷⁵

In Islam alms-giving is considered as a duty for every Muslim even though he may have nothing. The Prophet says, “The giving of alms is a duty for every Muslim. They asked him, ‘O prophet of Allah, what of him who has nothing?’ He replied: ‘Let him turn his hand to labour, and thus profit himself, and then let him give his alms.’ They said, ‘And what if he can find nothing to do?’ He answered: ‘Let him find some unfortunate soul who is in need.’ They said, ‘Suppose he cannot find such a one?’ He replied: ‘Then let him do some one a service, or let him restrain someone from evil, and that shall be his alms.’ Thus, all men have an

equal opportunity for generosity, each according to his means, and each according to his ability.”⁷⁶

Riba or usury, which is another important concept of economic system, is connected to socio-economic justice or distributive justice. Islamic concept of riba or usury, which the Revelation and Traditions introduce, is considered by most Muslim scholars to mean only ‘interest’. Muslim scholars often equated interest with usury and insisted that it should be prohibited. But there is a controversy among the scholars regarding the meaning of usury, which also means ‘increase’. This meaning of usury as ‘increase’ would include all kinds of business transaction involving unearned and unjust growth of income (may be understood as profit). Since, there is the possibility of profit in all business transactions, which is obviously a kind of increase from selling or trading, therefore, the meaning of usury as ‘increase’ must be categorized in a different kind and must be distinguished from other kinds. Generally the concept of usury was constructed by many Muslim scholars to mean ‘increase’ only in lending transactions and not in other kinds. To have a better understanding of riba some Quranic verses on it are given below –

“Those who eat Riba will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitān (Satan) leading him to insanity. That is because they say: ‘Trading is only like Riba,’ whereas Allah has permitted trading and forbidden Riba. So, whosoever receives an admonition from his Lord and stops eating Riba, shall not be punished for the past; his case is for Allah (to judge); but whoever returns (to Riba), such are the dwellers of the fire — they will abide therein.”⁷⁷

“O you who believe! Eat not Riba doubled and multiplied, but fear Allah that you may be successful.”⁷⁸

“Allah will destroy Riba and will give increase for Sadaqāt (deeds of charity, alms). And Allah likes not the disbelievers, sinners.”⁷⁹

“O you who believe! Be afraid of Allah and give up what remains (due to you) from Riba (from now onwards), if you are (really) believers.”⁸⁰

The above verses make it clear that riba is prohibited in the strict sense in the Quran. In the verse 2:275 the concept of trading through using usury is criticized and clearly stated that trading is permitted and so is lawful and riba is forbidden and so is unlawful. According to this verse, trading is not like riba. Besides, in the verse 3:130 the concept of compound interest is criticized by commanding the believers not to eat doubled or redoubled usury. In the remaining verses on riba, mentioned above, a comparison is made between riba and sadaqāt which includes the deeds of charity like alms and zakāt. In sadaqāt a person gives the surplus of his wealth to the needy, on the other hand, in riba a person takes the surplus of another’s wealth to increase his wealth. Apparently it appears that interest adds to the wealth of the creditor and sadaqāt reduces the giver’s wealth. But really speaking the case is opposite. Ultimately sadaqāt adds to one’s wealth, while the ultimate end of usurers is poverty. In essence, Allah discourages the practice of usury and encourages the spirit of charity. It is stated in the following verse in this way –

“That which you lay out for increase through the property of (other) people, will have no increase with Allah: but that which you lay out for

charity, seeking the countenance of Allah, (will increase): it is these who will get a recompense multiplied.”⁸¹

In the above verse it is stated that those who pay sadaqāt or charity will get in return redoubled compensation for it. This return may be in terms of blessing and happiness. By giving charity one can purify his wealth and only that wealth may bring happiness. In other words, giving a portion of one’s income is a gain and not a loss. This subtle and profound message is intelligible to those persons who are blessed with knowledge and understanding. Allah is the creator of everything in Earth and Heaven and being so all wealth and property belongs to Him. The Quran states –

“He it is who created for you all that is on Earth...”⁸²

“No doubt, surely, all that is in the Heavens and Earth belongs to Allah...”⁸³

So, Allah is the real owner of the property of which men are only the trustees and He has granted men only the right to enjoy the property. The Quran states –

“See you not (O men) that Allah has subjected for you whatsoever is in the heavens and whatsoever is in the earth...”⁸⁴

“Believe in Allah and in his Messenger and spend of that whereof He has made you trustees...”⁸⁵

Hence, the wealth possessed by men is given by Allah and whoso spent it in the name of charity will seek the countenance of Allah and thus pleased with his

deeds of charity Allah will give him more. This principle can be better understood by an example of our day to day life, e.g. a father is the real owner of the property in a family, but it is enjoyed by all members of the family. If the members spent it in right way then if he is pleased, he may give more to them. But if they spent it in the wrong way then naturally he will be depressed and may stop giving to them.

Riba or usury is divided into two types, “one is Riba An-Nasihah, means interest on lent money and the other is Riba Al-Fadl, which means taking a superior thing of the same kind of goods by giving more of the same kind of goods of inferior quality, e.g., dates of superior quality for dates of inferior quality in great amounts.”⁸⁶ So, the unequal exchange of same thing is also condemned as Riba which also leads to exploitation. The same species of food grains or metals should be exchanged in the same measure, neither more nor less, as for example, exchange of same amount of gold for gold, wheat for wheat etc. However, many modern thinkers consider that Riba should not be taken to mean interest only but exploitation in general. Any practice which leads to exploitation, including unjust profit, is to be treated as riba.

Taking riba in this sense, Islam also forbids all forms of unearned income and stresses the concept of Kasb-i-halal, i.e., legitimately earned income. It prohibits, buying food grains unripe in the fields (Muhaqala) and unripe fruit on trees (Muzabina) as it amounts to exploiting the peasants. Islam also prohibits mukhabirah, i.e. share cropping as it amounts to unearned income and Mohammad was of the opinion that land to be possessed only by actual tillers not by actual owners as share-cropping is the backbone of feudal system and fountain-head of all kinds of injustices.

Thus Islam strictly prohibited riba which not only means usury or interest but all forms of unjust and unearned income. Like zakāt and alms-giving, prohibition of usury is also the ground of attaining socio-economic justice, since the practice of usury also leads to human exploitation and to the accumulation of wealth. So, zakāt, alms-giving and prohibition of usury are connected to each other in establishing economic balance among the people and thereby helped to achieve justice.

Thus the Quran is not only against accumulation, in the sense of not spending on the needy, poor, widows and the orphans, but it also positively against ostentation in the sense of spending on oneself for undue comforts and luxury at the cost of the needy. Just society is that in which one does not have more than what is needed for one's basic needs. The surplus is to be distributed among the needy whose basic needs are not fulfilled. Thus, the Quranic sense of justice is distributive in nature.

Islam also stresses dignity of labour. The Quran urges the proper treatment and respect towards the workers as the Quran calls on all of humanity to stand for justice and to work together to ensure that people are treated fairly. In Islam labourers or workers are protected from the exploitation by the capitalists by providing them the fair wages for their service before their sweat dries up. Islam would not have left capitalism to preclude any exploitation which might result from ill-will on the part of the employers. Islamic principle which is laid in this regard provides the worker to share the profit equally with their employers. Since the employer provides all capital and the worker does the work, so the two efforts

are equal and accordingly they are entitled to have an equal share in the profit. Thus such principle shows Islam's great concern with the establishment of justice.

Following are some verses regarding the dignity of labour —

*"... Nor shall we deprive them (of the fruit) of any of their works: (Yet) in each individual in pledge for his deeds."*⁸⁷

In the Quran the dignity of labour is encouraged irrespective of any differences i.e., class, race and gender. The Quran says —

*"... For men there is reward for what they have earned, (and likewise) for women there is reward for what they have earned..."*⁸⁸

In the Quran, dignity of labour is encouraged in such a way that,

*"That man can have nothing but what he strives for."*⁸⁹

So, according to the Quran, only that which is earned by one's own efforts is legitimate. By this declaration Quran criticized capitalism.

Like orphans and workers, slaves are another economically exploited class in the society. So, references to justice also occur in the context of slaves. Slavery was prevalent in most ancient societies, like Roman Empire, Greece, Arabia before the advent of Islam. The slaves at that time enjoyed no rights and had no dignity. The slaves were not considered as human beings but as mere commodities. The slaves were the most degraded class in human history. Islam by conferring equality of status elevated the slaves to a higher position. As Allah created all men and all are the descendents of one common parentage, i.e. Adam and Hawwa,

stated in the verse 4:1(mentioned in the section 3.3), so, all men are brothers of one another, stated in the verse 49:10 (mentioned in the section 3.3). According to the teachings of the Quran, no discrimination is to be made between master and slave in matters of rights and honour. It is commanded to the believers to treat the slaves fairly. Islam declared the emancipation of slaves as the most virtuous act, since righteousness consists in setting a slave free as it is stated in the verse 2:177 (mentioned above relating to zakāt). So, the Quran enjoins its believers to set the slaves free because freeing slaves means an expiation of some of their sins. In the following verse of the Quran it is stated in the following manner –

“...but He (Allah) will call you to account for your deliberate oaths: for expiation....give a slave his freedom...”⁹⁰

In this verse it expresses that breaking promise is a sin and for its expiation it is commanded to set the slaves free. Freeing a slave of one’s own free will is declared to be such a virtuous act that it will protect the believers, who set the slave free, from the hell-fire. In this regard a hadith can be referred to here –

“Abu Bakar Siddiq reported that the Messenger of Allah said: One who treats badly with those under his authority shall not enter paradise. They enquired: O Messenger of Allah! Have you not informed us that this people will certainly be the foremost of the peoples in respect of slaves and orphans? ‘yes ‘ replied he, so honour them as you honour your children and give them food out of what you yourselves eat...”⁹¹

Thus to elevate and liberate the slaves emphasis was given to the assignment of equal rights and honour and opportunities to them.

References to justice also occur in the context of women's status, because women were deprived of rights since the beginning of human civilization on the ground that they were supposed to be intellectually, physically and psychologically weaker than men, needing protection and support rather than equal treatment. Equality in all respects may not be possible and not desirable too. But equality to opportunity to women is desirable and possible and that is near to justice. According to Rawls also, rights and duties should be distributed equally among all the members of the society.

Most of the Islamists or revivalists maintain that the term feminism is in contradiction. For them feminism is against the teachings of Islam. It is a western phenomenon. However, this attitude is more because of strong influence on their minds of conservative Islam. The conservative ulama insist that women's position is subservient to men. But the Quran upholds dignity of women as that of men. By restoring equal rights to women like men, the Quran provided the scope for elevation of the status of women and provided justice to them. The rights given to woman in Islam are right to education, right to inheritance, right to marriage, right to divorce, right to mahr, right to maintenance, etc..

In brief, Islamic theory of distributive justice can be summarized as follows-

Though the Quran does not consider equality being achieved through a uniform economic system yet it insisted on an individual's right to secure livelihood, right to equal access to resources and right to opportunities of progress. Islam transcends all forms of racial or class distinctions and advocates equality in

all walks of life, attempts to remove obstacles created by the better-off classes in the way of success and prosperity of the weaker sections of the society, prevents the accumulation of wealth by the rich and ensures its distribution among the needy and denies any privileges to the wealthy and also elevates the status of slaves and women. Above all, Islam lays emphasis on spending charity and preventing the practice of usury, besides, it enjoins the better-off sections of the society to share their fortune with the weaker sections. Hence, this is, in essence, the social order encouraged by Islam.

3.5 Conclusion:

From the above discussion of these theories it can be concluded that though the term 'distributive justice' first coined by Aristotle yet it was used by him in the quantitative sense and not in the qualitative or social sense while Rawls' theory and Islamic theory of distributive justice share a common goal in the sense that both discuss it in the social sense or both in the qualitative and quantitative sense. Justice in the quantitative sense refers to the principle of distribution and in the qualitative sense it refers to the principle of equality. Aristotle maintained that distribution must be according to 'merit or worth', to have equal share must be equal in worth, that is called proportional equality and it signifies the quantitative sense. On the other hand, according to both Rawls' and Islamic theory of justice, distribution must be to 'everyone's advantage' or 'everyone's position be improved' and both hold that rights and duties should be distributed equally and thus it signifies the qualitative sense.

It can be concluded that there is one common point on which all these three theories are in agreement and that is, social and economic inequalities among the people that exist in the society is undeniable and cannot be removed totally, but it can be minimized through the distribution of social goods, i.e. wealth, honour and opportunity. They are also in agreement that equal distribution of social and economic resources is not possible. However, there are differences among them. While according to Aristotle, the criteria of distribution is 'worth' or 'merit', according to Rawls' theory and Islamic theory, the criteria of distribution is 'everyone's position be improved'. Aristotle maintains that who makes more contribution enjoys more privileges and who cannot, enjoys less privileges, while both Rawls' theory and Islamic theory of justice aim to assist and benefit the weaker sections of the society.

Besides, Rawls' theory and Islamic theory of justice share many things in common. Both are in agreement with the assignment of basic rights and duties to all without considering any discrimination on the basis of race, gender, merit etc. Both these two theories hold the view that it is the duty of the every rich people to assist and share their fortune with those people who are living under unfavourable condition.

However, though Rawls' theory and Islamic theory of distributive justice are in agreement in many respects yet there are certain differences between them. The connection between justice and fair distribution has been well discussed by Rawls. But as Amartya Sen pointed out, what we need is not the ideal principles of justice in an ideal situation in Rawls' sense, but an actual or practical implementation of these principles in the real world. Amartya Sen remarked that a

theory of justice must include ways of judging “how to enhance justice and reduce injustice”.⁹² But Rawls fails to do so as he does not offer any effective measures for achieving this goal. He fails to give an account of the problems like, how to prevent accumulation of wealth, how to minimize social and economic inequalities etc. But on the contrary Islam gives certain measures such as zakāt, alms-giving, prohibition of usury and law of inheritance (discussed in the next chapter in the section 4.2) for fair distribution of wealth and income and to minimize social and economic inequalities.

Besides, there are certain fundamental differences between these two theories on epistemological, ontological and teleological grounds. In the epistemological ground both the theories differ from each other in the sense that Rawls’ theory of distributive justice falls under the category of natural justice or human justice since the source of it is reason and human experience, while Islamic theory of distributive justice belongs to Divine justice since the source of it is divine revelation. In Rawls view a rational man would eventually want to have certain primary social goods, such as, rights, liberties, opportunities, income and wealth, availability of which would eventually ensures justice for him. In Islam people are commanded to ensure justice in accordance with the commandment of the Quran and Hadith, fulfilment or obedience of which will qualify him for a reward in the hereafter or akhriah. It is believed that obeying commands of divine revelation is to be just and moreover it will ensure justice to mankind in the world hereafter. Thus, justice in Islam is also defined in the context of success in hereafter life. This signifies the teleological nature of the Islamic theory of divine justice, as upheld by the divine revelation. Hence, any violation of divine

command or law is to be unjust and an unjust man has no place in Jannah (heaven) but as punishment will be thrown to hellfire. This belief in accountability in hereafter prevents the believers to cause harm to others rights. This kind of belief that advancement of justice will ensure success in hereafter, makes Islamic concept of justice teleological from philosophical perspective.

On the other hand, Rawls theory of justice as fairness is a deontological one in the sense that it is related to moral obligations only. It believes in success in this world and holds the view that a society is an agreement among all those within that society and people freely enter into this agreement to follow certain rules for the betterment of everyone, without considering the implications of these rules for their own selfish gain. According to Rawls, this kind of agreement among the members of the society is necessary to assure social justice and to ensure a just order society.

The ultimate objective of Islamic theory of justice is submission to the Divine Will and of Rawls' theory of justice is to attain primary social goods and all socio-economic and political functions in both are meant to ensure freedom and liberty, betterment of everyone in this world and thereby making the gap between the rich and the poor, the most privileged and the least privileged less and less and to ensure a just society. However, the theory of justice given in Islam is a kind of Divine justice because the theory of justice is a revealed theory. It has references to Divine Will and submission to Divine Will.

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CHAPTER - IV

STATUS OF WOMEN IN ISLAM

This chapter attempts to throw light on the rights accorded to women under Islam and on two major issues – polygamy and purdah. Women were supposed to be subordinate to men and deprived of rights since the beginning of human civilization. Aristotle said, “the female is a female by virtue of a certain lack of qualities, we should regard the female nature as afflicted with a natural defectiveness.”¹ St Thomas pronounced woman to be an ‘imperfect man’, an ‘incidental’ being.² Thus it becomes a natural tendency to suppose women weaker than men, needing protection and support rather than equal treatment. In this regard J.S. Mill made a significant remark “the subjection of women to men being a universal custom, any departure from it quite naturally appears unnatural.”³ Simone de Beauvoir in her book “*The Second Sex*” stated, “man defines women not in herself but as relative to him; she is not regarded as an autonomous being...She is defined and differentiated with reference to man and not with reference to her; she is the incidental, the inessential as opposed to the essential. He is the Subject, he is the Absolute – she is the Other.”⁴

Humanity is a two winged bird. Women constitute the half of humanity. Depriving half of humanity from their human rights, which has been done since the beginning of human civilization, means denying the overall progress of a society as well as humanity. It goes against the principle of justice. As remarked by David Miller, justice is concerned with ‘what is due to each person’? This question gives

rise to another question - what is his or her due? The due to each person is the set of positive rights possessed by him or her.⁵ Now what is positive right? A positive right is that which is constituted by its social recognition.⁶ Thus, positive rights are conventional rights since these rights are accorded on men and women by the human society or by the will of a legislator, being so they differ from society to society, nation to nation. Right to education, right to property, right to marriage, right to employment, cultural and religious rights etc. are considered as conventional rights. Conventional human rights are actually claim rights because the human rights from the point of view of social justice are nothing but social and economic claims. An examination of the rights mentioned in the Universal Declaration of Human Rights document expresses that these are claims since they are directed towards providing a minimum standard of decent living for each person. Hence, conventional or claim rights are obviously of central importance to social justice.

Human rights are universal since it applies to every individual by virtue of their humanity. Thus, women's rights are also human rights by virtue of their humanity. A society, denying women's rights and status, can never be termed as a just society. In fact, the status of women is a significant indicator of social justice as well as of social, cultural and economic development of a society. But women's conventional rights also differ from context to context, society to society, community to community and the rights accorded on women by a society or a nation or a community or a religion ultimately indicate to the level of justice that is given to women by that society or nation or a community or a religion.

On the similar ground mentioned above whether or not justice is provided towards women in Islam can be understood from the conventional rights accorded on them by the Islamic Law. Some of the rights given to women under Islam almost fourteen centuries ago are right to education, right to property inheritance, right to marriage, right to divorce, right to mahr, right to maintenance etc. These rights are discussed below in brief –

4.1 Right to Education:

Education is one of the processes of modernisation which generates new forces to bring about changes in the value structure of society. Education itself is a value, since it develops the personality and the rationality of individuals. Here, the assumption is that society, recognizing the innate value of rationality accords a high status to the educated. Besides providing an opportunity for the development of the personality of an individual, education makes it also possible to acquire financial independence. It is also an important channel of upward mobility in modern society. Education is a major instrument of social change and development. It reduces inequalities in society and leads to equalisation of status between individuals. From the point of view of the individual, education provides the necessary qualification to fulfill certain economic, political and cultural functions and consequently improves his socio-economic status. So, depriving someone of education means keeping an individual out of a variety of opportunities. Considering this the Universal Declaration of Human Rights included education as one of the basic rights of every human being in 1948.

Education is not only a right in itself but is also a way to empower individuals to enjoy all of their human rights.

Traditionally women's role is considered in the restricted realm of family and nothing more and women's education is considered to be of marginal importance. But the denial of education prevented the development of the personality and rationality of women which affects social change also. As a result from the very beginning the movement for improving women's status all over the world shows emphasis on education as the most significant instrument for changing women's subjugated position in society. Amartya Sen remarked "female education strengthens women's agency and also tends to make it better informed and functionally more powerful."⁷ If women are not equipped with knowledge and education then they lag behind in the struggle of life. Without knowledge and education they can neither elevate themselves in thought nor can they make any progress in various fields of life.

Not only that besides developing the personality and rationality of an individual in attaining the material aim of life, education also helps individuals in attaining the spiritual aim (i.e. the ultimate end) of human life. From the philosophical point of view the ultimate end of human life is salvation. The path of knowledge or *jñānamārga*, as considered in the *Bhāgavadgītā*, is one of the ways to attain salvation. To attain salvation ignorance must be removed and through knowledge only ignorance can be removed. Like *Gītā*, in Islam also the path of knowledge or *jñānamārga* is emphasised as a way to Allah and an expiation of past sins. This can be understood from the following hadith –

*“Whoso goes out in search of knowledge, he is actually in the path of Allah till he returns. Whoever searches after knowledge, it will be expiation for his past sins.”*⁸

So, education provides opportunity for the development of the personality and rationality of an individual as a whole to fulfill both the spiritual and material aspects of life. So, depriving women of education means keeping them in the darkness of ignorance and deprive them from various opportunities. Realising the importance of education for developing the personality and rationality of women and also for affecting social change and development Mohammad made seeking knowledge compulsory for both man and woman –

*“Search for knowledge is compulsory upon every Muslim male and female.”*⁹

So, from the hadith it is clear that education is a right given to both men and women and it is their duty to acquire knowledge and education. But till now by acquiring knowledge and education many Muslims understand to acquire religious knowledge only. In many Muslim families no formal education is imparted to the girls, they are traditionally either taught the Quran at home or sent to the Arabic madrassas. Islam encourages its followers to enlighten themselves not only with the knowledge of their religion but other branches of knowledge as well. Mohammad always encouraged his followers by saying –

*“Search knowledge though it be in China.”*¹⁰

By encouraging to go to China to acquire knowledge Mohammad definitely did not mean to acquire only religious knowledge. At that time China was a developed country in both education and technology. By this saying Mohammad also meant that knowledge, wherever it is found should be acquired. He encouraged the followers to go far out of their houses, if necessary, to acquire knowledge. It holds the person who seeks knowledge in high esteem and has exalted his position. That is why, he exhorted his followers to search knowledge though they have to go as far as China for this purpose. In a hadith it is reported as follows –

“Ayesha reported that the Messenger of Allah said: The superiority in education is better than superiority in Divine service.”¹¹

In another hadith it is reported –

“Ibn Abbas reported that the Messenger of Allah said: A learned theologian is stronger than a thousand of pious worshippers.”¹²

There is another hadith in this regard –

“The Messenger of Allah said: The superiority of the learned man over the pious worshipper is like my superiority over the meanest of you.”¹³

“The Messenger of Allah also said: On the Resurrection Day, three (persons) will intercede, first the Prophets, then the learned and then the martyrs.”¹⁴

Thus, in all the above cited hadiths the superiority of the learned man is emphasized. Mohammad was of the opinion that the ink of a learned man is purer than the blood of a martyr.

Again it is worth noting that the first revelation from the Lord to Mohammad is the word 'iqra' which means 'read'. So, the Quran first revealed with the word 'read'. Hence, how much importance the Quran gives to education and learning that can be understood from the first few verses through which Mohammad was instructed to read, though he was an illiterate. The Quran says –

“Read! In the Name of your Lord Who has created. He has created man from a clot (a piece of thick coagulated blood). Read! And your Lord is the Most Generous. Who has taught (the writing) by the pen. He has taught man that which he knew not.” ¹⁵

In these verses the three words, i.e., 'read', 'teach' and 'pen' are used which implies that the Quran gives importance on reading, writing and teaching. So, the entire aim of the Divine Revelation and the sending of Prophets to humankind is to teach and to impart knowledge among the common people. The Prophets leave their knowledge as their inheritance. Learned people are regarded as the inheritors of that Prophetic wisdom.

Initially, the learning process of the Muslims started with Mohammad who himself used to teach his companions the principles of Islam. When he migrated to Medina, he immediately started the process of eradicating illiteracy. Though Mohammad was an illiterate, yet he had a great interest towards education and this can be known by the following event that occurred in the history of Islam –

In 624 A.D. the battle of Badr, the first battle of Islam, took place between the Muslims and the Quraysh, who did not accept Islam. In that battle the Muslims, the followers of Mohammad won the battle. During that battle some Quraysh, were arrested by the Muslims and Mohammad ordered that they were to be released only on the condition that each of them would make at least ten Muslim literate.¹⁶

So, from the above event we can understand that Mohammad was so interested in making the Muslims literate. He could have released the Quraysh on other conditions also like money or something else. But he did not do that, because he knew it and understood it well that education is more essential than money or any other thing.

Another event reported in a tradition of Mohammad can be referred to here which also shows his interest of making Muslims literate. Once a man expressed his wish to marry a woman. Then Mohammad asked –

“Have you got with you anything to give her as dower? He said: I have got nothing but this lower garment. He said: Seek though it be a ring of iron. Then he searched but did find nothing. The Prophet asked: Do you know any portion of the Quran? ‘Yes’ said he, ‘such and such verse’. He said: I give her in marriage to you for what is with you from the Quran...So, teach her something from the Quran.”¹⁷

In the first event teaching ten Muslims was declared as a condition for the release of the arrested Quraysh. In the second event teaching some verses of the Quran to the wife was declared as the mahr given by the husband. From these it

can be easily understood that Mohammad gave much importance on acquisition of knowledge and on imparting education.

There are many verses in the Quran which praise learned people and encourage to seek knowledge. In the Quran Allah commands His believers to pray Him in these words –

*“... O my Lord! Advance me in knowledge.”*¹⁸

In another verse of the Quran it is said –

*“He grants wisdom to whom He pleases; and he to whom wisdom is granted receives indeed a benefit overflowing; but none will grasp the message but men of understanding.”*¹⁹

Allah will give high ranks and rewards to those who have acquired knowledge and learning. The Quran praises the learned man in the following words-

*“...Allah will exalt in degree those of you who believe, and those who have been granted knowledge...”*²⁰

The Quran praises the learned man because only they can understand the message of the Lord and can apply it properly in their life and can also stand firmly on justice. That is why, the Quran encourages the believers to advance themselves in knowledge. Knowledge is the only way through which ignorance can be removed. Without removing ignorance the realization of the ultimate truth is not possible.

Islam highly appreciates and encourages women's education also. In Islam, for every good act the person is worthy of reward in the Hereafter. To educating a woman is to perform a good act and declared to be an act worthy of reward in the Hereafter.

“The person who brought up three daughters, embellished them with education and training, married them off and remained benevolently inclined to them even after their marriage. (Allah willing) paradise is ensured for him.”²¹

In Islam, since, educating a woman is considered as an act worthy of reward in the Hereafter, failing to perform this act is considered as an act worthy of punishment in the Hereafter. In a hadith it is asserted that if a woman dies remaining illiterate then three persons will be made answerable on the Day of Final Judgment for her illiteracy, first her father, then her husband and then her son. Thus, making women literate there is a reward and if not so there is punishment in the Hereafter.

Thus from the above discussions it is clear that no discrimination was made between men and women in Islam so far as knowledge and education is concerned. Along with men women had also contribution in various fields of knowledge. There was no limitation placed on women's education. The wives of Mohammad, specially Ayeshah, were the great ideals for female education. Many of Mohammad's companions and followers learned the Quran, Hadith and Islamic jurisprudence from Ayeshah. In spite of all these, the illiteracy of Muslim women reached a peak and consequently they remain ignorant not only of the outside

affairs but also of their rights concerning marriage, divorce, dower, inheritance, adultery etc. Due to their ignorance of these rights they are deceived and misled very often and are remained subordinate. This situation is continued up to recent times. If women are educated properly only then she can become a good wife, good mother and a good citizen. An educated woman can not only radiate her moral qualities in the environment of her home but also can have an active role in the fields of social, economic and political development.

4.2 Right to Inheritance:

Just as education paves the way for the upliftment of women's status so also their property rights can make them financially secure. Discrimination between men and women in granting property rights is the root of social discriminations. To deprive a woman of her property rights is to make her powerless, weak and shorn of individual decisions and thus to hinder her economic and social development. According to Amartya Sen, "the ownership of property can also add to the influence and power of women in decisions within the family and beyond."²² He also asserted "the absence of claims to property can not only reduce the voice of women, it can also make it harder for women to enter and flourish in commercial, economic and social activities."²³

Traditionally in our societies the practice of patrilineal inheritance is found, where only sons are considered as the heirs of the deceased's property, to daughters no share is given. This is generally seen in old world cultures, but it continues in many societies till now. In modern times various laws are enacted to employ egalitarian rules of succession. In egalitarian inheritance no discrimination

is made based on gender. Though several legal reforms have taken place regarding equal share of daughters in the property, yet equal status remains illusive.

In the socio-economic situation prevailing in our society, the contribution of the wife to the family's economy is not recognized. A large number of them participate in the family's effort to earn a livelihood as unpaid family workers. Most married women do not have any independent source of income. Therefore, they are economically dependent on their husbands.

Needless to say without any financial power women are always dependent on their husbands and become burdens for the husbands and as a result their social status remain inferior to their husbands. So, to abolish this attitude of considering women as burden and to improve the socio-economic status of women the right to inherit the property is given to women also in Islam. The Quran says –

“From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large – a determinate share.”²⁴

This verse establishes a general inheritance rule for both men and women. In this verse it is clearly stated as man, woman also has a determinate share in the inheritance of property of her parents and also that of other near relatives such as of her husband's property and her son's property. Let us consider the following verse on inheritance which fixes various shares in the property of a deceased person.

“Allah (thus) directs you as regards your children’s (inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sister) the mother has a sixth. (The distribution in all cases is) after the payment of legacies and debts. You know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-knowing, All-wise.”²⁵

The shares of inheritance as prescribed in the above verse of the Quran can be categorized as follows-

1. (a) The first and foremost share holder of the deceased property is his children which includes both boys and girls. So, regarding inheritance not only the sons have the exclusive right to it but also the daughters have their share in it. The sons inherit twice the share of the daughter. Suppose, the deceased has a boy and a girl. The property left by him shall be divided into three equal portions, one third of the portions goes to the daughters and two third of that goes to the son.

(b) Again if there are two daughters and one son, then the property shall be divided into four equal parts, two fourth of the portions or half of the property goes to the two daughters or to each one fourth and the remaining half or the twice of the daughters goes to the son.

(c) Another situation, mentioned in the above verse, is that if there are no sons but more than two daughters then the daughters shall get two third of the property, meaning thereby, the whole property will be divided into three parts and two parts of that will be equally divided between them. If there are three daughters, that two parts ($2/3$) will be divided into three equal portions and if there are four daughters, that two parts ($2/3$) will be divided into four equal portions. Here the issue of more than two daughters is mentioned, but if there are two daughters then also their portion remains the same, i.e- two thirds, (one third to each).

(d) If there is no son but only one daughter, then she will inherit the half of the total property and the rest being divided among other relatives. This leads us to the point that if there is only one boy then he must get the whole property since his share is twice that that of the daughter.

2. After the children the parents have the priority in the matter of rights to inherit the property of the deceased. In the absence of the children only the parents inherit the property of the deceased, the father and the mother will inherit one third of that. But if the deceased has no children but has brothers and sisters then the mother will get one sixth of the property and if the deceased has children then also her portion remains same.

Besides, regarding the shares of husband and wife in inheritance it is declared in the Quran in the following way –

“In what your wives leave, your share is a half if they leave no child; but if they have a child, you get a fourth; after payment of legacies and debts. In what you leave, their share is a fourth, if you leave no child; but if you leave a child, they get one eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by Allah; and Allah is All-knowing, Most Forbearing.”²⁶

This verse brings out the following principles of inheritance regarding the share of husband and wife, brothers and sisters –

1. The husband gets half of the inheritance of his wife’s property if she has no children. But if she has children then the husband will get one fourth of the wife’s property. On the other hand, the wife gets one eighth of the husband’s property if there are children and one fourth of the same if there are no children.
2. The children, parents, husband and wife are the inheritors in every case. It is worth mentioning here that “in matters of inheritance Abu Bakr, the first Caliph of Islam, used ‘*qiyas*’ (analogical deduction). The Quran prescribes the share of the father. But Abu Bakr by using *qiyas* extended this right to the father’s father also (grand-father).²⁷ In the above verse ascendants involves grand father and grandmother along with the parents of the deceased. Again, there is ‘*ijma*’ (concensus or collective opinion of jurists) on it that progeny or descendants involve grandsons and grand-daughters

also along with the children of the deceased. Hence, grand-father and mother, grand-sons and daughters are also the inheritors of the deceased's property.

3. But in the absence any of ascendants or descendants the brother and the sister of the deceased will be the inheritors and each of them will get one sixth share of the deceased's property. If they are more than two then they all will be entitled to one-third equally. There is no difference in the share of brother and sister.

After observing the prescribed shares of son and daughter, husband and wife in inheritance there appears an inconsistency since, the son gets the double share of inheritance to that of the daughter and the husband also gets double share to that of the wife. So, after the discussion of the shares of inheritance it seems that the share of a male is equal to the share of two females. From this rule of inheritance it follows that women are discriminated and not treated equally with men in Islam. It seems that in Islam in matters of inheritance men are superior to women. The issue of inheritance regarding the share of females to that of males undoubtedly offers the reason to show the inferiority of women in Islam. But on the basis of this rule of inheritance it is wrong to consider females as inferior to males. Because, before drawing any criticism in this regard it is necessary to know in what context this revelation came and it is also necessary to understand what is the underlying wisdom of this rule.

Let us first consider the context of the revelation of the verses 4:11-12 –

“Al-Razi tells us about the context of the revelation of this verse, i.e. verse 4:11. According to him, when S’ad bin Rabi’ was martyred he left behind him his wife, two daughters and a brother. The brother took away the entire wealth of his deceased brother, leaving the wife and daughters high and dry. The wife went to the Prophet and complained about her husband’s brother appropriating all his wealth. The Prophet sent her away saying Allah would decide the matter. After some time she again went to complain about it. It was then that this verse (4:11) was revealed. The Prophet ordered S’ad’s brother to pay two thirds of the property to the daughters and one eighth to their mother. He could keep the rest.”²⁸

Thus, seen in this context also, it becomes clear that when this verse was revealed women were given no share in inheritance. At that time women had no financial security at all. In such a situation the Quran by ensuring a determinate share in inheritance to woman, as a daughter, as a wife and as a mother, elevated their status from nothing to something. If we consider other financial rights of women ensured by the Quran, such as maintenance and mahr from the husband then also it becomes clear that woman’s position was made much more secure financially through these rights. So, it can be said that enough scope was given through the religion of Islam to uplift the status of women.

Now, let us consider the rationale behind the rule of inheritance prescribed in the verse 4:11-12.

A criticism is brought against the right to inheritance that women are inferior to men because they get half share of what men get. However, this

criticism is not valid because the rule of inheriting that a female gets half share to that of a male's share is not a general rule which can be applied in all cases that pertain to women. It is only prescribed for daughter and son and husband and wife. It cannot be generalized to all men and women, since there are different cases where men and women get an equal share of the inheritance. For instance, both the father and the mother get the same share of their son's property i.e. one sixth to each if there are children. Similarly, the share of the brother and the sister is same, i.e. one sixth to each, if the deceased leaves neither ascendants nor descendants.

This rule of inheriting a share that is equal to half a male's share is only applied to the shares of inheritance. This rule does not apply to gifted property, as it is permissible that the father can gift his daughter an equal share to what he gifts to his son during the father's lifetime. It is prohibited to favor a son over a daughter. The Prophet said, "*Treat your children fairly regarding gifts. If I were to favor someone, I would have favored women.*"²⁹

Moreover, it is said in the Quran that all the distributions of the shares of inheritance of a deceased will be made after fulfilling his legacies and debts that he may have. The Quran says –

*"...(The distribution in all cases is) after the payment of legacies he may have bequeathed or debts..."*³⁰

The above instruction points to the fact that it is permissible for a person to write a will to bequeath equal shares to their heirs whether male or female.

Now we will try to focus on the underlying reason behind the differences of shares of inheritance made between sons and daughters or husband and wife. This share is determined according to the responsibilities and economic burdens that each one of them has to shoulder. According to Islamic Shariah, man are obliged to shoulder all the financial responsibilities of a family, such as a man has to provide financial support to his wife and children and he has to support his parents and also he has to help his brother and sister and some other relatives in need of help, whereas woman has been exempted from all such financial obligation. Woman gets her share of inheritance as a daughter, as a wife and as a mother. Not only that she is also entitled to receive her nuptial money or mahr at the time of marriage from her husband, which is exclusively her property and she can demand whatever amount she wants which her husband is obliged to pay to her. Besides, it is a well-known principle of Islamic Shariah derived from the Quran that the husband is obliged to provide maintenance to his wife. The wife is to be looked after by her husband even if she possesses a great deal of wealth. The husband is also obliged to provide maintenance to his wife even after divorce until she remarries. But the woman is not burdened with such obligatory duties. Thus, the man whatever he gets through the shares of inheritance and whatever he earns has to spend it not only on himself but also on performing all financial responsibilities that he had towards his family. On the contrary, all the wealth that the woman receives through inheritance, mahr, maintenance etc. is her own property and can spend it in her own way without any interference of her father or husband. But if she wills, she can help her husband in his need and support her family, though it is not obligatory to her.

Again, even if the husband wants to remarry after his wife's death then he will have to pay mahr to his second wife also and take over the responsibility of her maintenance. But if the widowed wife intends to remarry she will get her mahr from the second husband and he will have to maintain her also. To understand the problem of unequal share of inheritance between male and female one example can be cited here, e.g., if the son gets 1 lakh from his father and the daughter gets 50 thousands. She will get another 50 thousands at her marriage as mahr from her husband that makes her share 1 lakh, whereas when the son will marry he will have to give 50 thousands from his share to his wife as her mahr that shall leave with him half of what his sister has received.

Hence, differences in shares are due to the differences in responsibilities attributed to both male and female. By lightening the burden of women in the matter of financial responsibilities, in the matter of inheritance woman's share has become reduced to half of that of man. Inheritance depends very much on a social and economic structure and the function of particular sex within it. Women had a different role to that of man in the society. If for some reason the share given in inheritance to one is less or more, it does not imply that the recipient of the lesser share is considered to be inferior. So, it is wrong to argue on the basis of share of inheritance that men are superior to that of women.

From the above discussions it can be said that the rule "to the male, a portion equal to that of two females" is quite justified. The whole fact is just one of a simple reckoning, i.e. on the whole woman gets one third of the inherited property to spend it on her own, having no burden of financial responsibilities, whereas man is given two thirds of it to discharge his financial obligations towards

his family including his wife. Thus, the financial burdens that are incurred by man according to Shariah are the reasons behind the differences in inheritance share. Thus when this right to inheritance is interpreted in this way then it seems that the objection that women are treated unfairly in their right to inheritance seems to be invalid. It cannot be said that justice has not been done to women so far as the distribution of share of inheritance is concerned. Initially it appears that the distribution is not proper. Women seem to get less than men. But this inconsistency seems to disappear when we understand its underlying wisdom and the context in which it was revealed.

4.3 Right to Marriage:

Universal Declaration of Human Rights includes in it the right to marriage as one of the fundamental rights, asserting that man and woman attaining maturity have the right to marry and to form a family. They are entitled to equal rights in case of marriage. It also asserts that marriage is to be entered into only with the free and full consent of the intending spouses.

Marital right is another important indicator of women's status in a society. Marriage (Nikah), according to Islamic Law, is contractual in nature. It is a contract between two consenting adults who come together as husband and wife. In other words, both the bride and the bridegroom can stipulate conditions for marriage. So, both man and woman are equal parties regarding marriage. The Islamic law holds that a woman is a free agent in marriage, that her consent is essential to validate the marriage contract. It is directed in Islam that woman's

consent regarding marriage must be respected. In fact, no marriage under Islamic law can be solemnized without her consent.

There is a hadith in this regard –

“Abu Hurairah reported that the Messenger of Allah said: A woman without her husband shall not be married till she gives consent nor a virgin be married till her consent is sought. They asked: How shall be her permission? He said: If she remains silent.”³¹

So, in this Hadith it is clearly stated that no woman whether a widow or a virgin should be married without her consent and her consent is her silence. Even after marriage if she declares that she did not give her consent to it, the marriage is dissolved. Islam has certainly attached importance to the guardian in the case of a woman's marriage, but it has not withheld from her the right of final acceptance or rejection. It is also hold that while a woman consults her guardians, she is not under any obligation to abide by their decision so far as marriage is concerned. If a guardian of a woman gives her away in marriage and she disapproves of it, it would stand null and void. A Hadith can be referred to here –

“Khansa'a – bn – Khezam reported that her father gave her in marriage while she was a woman previously married. She disliked it, and so she came to the Prophet. He annulled this marriage.”³²

So, in the above hadith, we find that when Khansa'a – bn – Khezam was given in marriage against her will, she complained it to Mohammad and he nullified the contract.

*“Ibn Abbas reported that a virgin grown-up girl came to the Messenger of Allah and narrated that her father had given her in marriage against her will. The Messenger of Allah gave her option.”*³³

In the above hadith it is mentioned that on hearing the complain of the virgin Mohammad gave her option to retain or repudiate her marriage. Similarly, in another case when a girl complained to Mohammad that her father married her to his wealthy nephew he said –

*“If you do not like this marriage then you are free. She said: I uphold my father’s decision but I complained to you to tell other girls and women that their fathers have no right to marry them against their will.”*³⁴

Thus in Islam women’s consent is obligatory in marriage. If a minor girl is given in marriage by her guardian then after attainment of maturity she may retain or reject it at will. Above all no marriage in Islam can be accepted as valid without a women’s consent whether a widow, or a virgin or a minor girl.

However, Islam permits a divorcee or a widow to remarry. The Quran says-

*“And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten days, then when they have fulfilled their term, there is no sin on you if they (the wives) dispose of themselves in a just and honourable manner (i.e. they can marry).”*³⁵

In ancient Arabia widow marriage was not permissible. But with the rise of Islam widow marriage was allowed. Mohammad himself married his first wife

Khadijah, who was a widow and thereafter he married Umm Salmah, Zaynab etc, who were also widows. So, the Muslim Law recognizes widow marriage.

4.3.1 Role of Guardian in Marriage:

Traditionally the women herself is not allowed to negotiate her marriage. She is given into marriage by her guardian (Wali) i.e, generally by her father. In the absence of father her grandfather or brother act as the guardian. It is true that her guardians can make a better selection of the partner for her life. But guardians are to select the life partner in accordance with her will. If they give her in marriage against her will, the marriage will be invalid and void. In the ancient time even in the medieval period it was the father or grandfather or brother who decided her marital fate. However, as far as the Quran and Hadith are concerned, a girl's right to accept or refuse a marriage proposal is undeniable. Neither her father nor anyone else can, compel her to accept a proposal.

Imam Malik and Imam Shafi'i, the founders of two schools of Islamic jurisprudence, hold that a guardian for marriage is essential in the case of both virgin and minor girls in the sense of an agent for setting terms between the bride and bridegroom. In this sense no doubt a guardian is important, but it cannot be said that a marriage is valid or invalid without the consent of the guardian if the virgin consents. Islamic jurists make a distinction between a virgin or a minor and a widow or a divorcee in case of marriage. A virgin and a minor is required to appoint a guardian, while in the case of a widow guardian's consent is not necessary. The reason for this is that a young unmarried girl is not experienced enough in matters of marriage. It is best for her to leave them to her elders who

could make the right decision, though finally it is she who approves or disapproves it. On the other hand, the widows or divorcees have experiences in such matters and hence they can give their own judgment. But the permission and presence of guardian in case of a marriage of a minor is necessary. There is a Hadith –

“Abu Musa reported that the Prophet said: There is no marriage without guardian.”³⁶

In case of a minor without guardian’s permission marriage is not possible. Besides, a guardian can give his daughter in marriage with her consent and consent is given in the presence of two witnesses. As marriage is a kind of contract in Islam, therefore, two witnesses are necessary to solemnize it. Without witnesses marriage contract in Islam is merely invalid but not void. The witnesses must be present when the proposal and acceptance are made and consent is given. The following is a hadith expressing the importance of witness in marriage. –

“Ibn Abbas reported that the Prophet said: The fornicatrices are those who marry by themselves without witnesses.”³⁷

So, witnesses are necessary in marriage for the purpose of security so that no problem can arise regarding the validity of marriage. These measures provide a respectable status and security to women. A woman in Islam is given full autonomy in matters of marriage.

4.4 Right to Mahr or Dower:

The right to mahr is a unique right given to women in Islam among other rights. Mahr means ‘free bridal gift’, which must be given by the husband to the

wife at the time of marriage. Mahr is an essential part of Islamic marriage. In Islam a marriage cannot be considered to be legal and complete unless and until mahr has been specified. Dower money or mahr must be paid or fixed before the solemnization of a marriage. It is the woman or the bride who has the exclusive right to demand any amount of dower money or mahr. No maximum or minimum limit has been fixed by the Quran. Mahr is a property which belongs to the wife alone. Neither her father nor her husband nor anybody can claim it. She can enjoy it in her own way as she likes.

Introduction of the right of mahr in Islam is significantly important. In the pre-Islamic period women had no financial security and were always considered by men and also by the family or the society as a burden. This right is introduced as a future security of woman after marriage. Mahr often acts as a security against divorce. It is a kind of great check on the arbitrary exercise of the power of divorce by the husband. Again, it restrains a person to indulge in polygamy. Besides, it would work as an obligation upon the husband to respect his wife and to realize her value. According to Mohammad, mahr is a token of the man's respect for his wife and it is meant to give her status and to raise her esteem in the eyes of her husband and society.

The concept of mahr had its origin in the pre-Islamic period and that time it was practiced as bride-price which was given by the husband to the guardian of the bride. The guardian of the bride regarded her dower as his own property. From this point of view it was a source of happiness to them that her dower would increase their wealth. That is why, they called the daughter 'Al-Nafijah', i.e. the means of

increase.³⁸ To prevent this custom of the pre-Islamic Arabs Islam elevated it from being merely a bride-price to being a token of love, truthfulness and sincerity. In Islam, this right of mahr is exclusively given to woman alone and not to her parents or guardians and it is a kind of financial security given by Islam to women.

However, in the Quran the word mahr is not used. The Quranic words are ‘saduqatun’ or ‘ujurun’ etc.. Saduqatun is derived from ‘sadaqa’ which means truthfulness, sincerity and a gift given as an act of virtue. The word sadaqa being used for mahr is very meaningful. It has been used for mahr since it implies a unique kind of relation between the husband and the wife and is a proof of the fact that they are at heart bound. Thus, it would be seen that according to the Islamic law, the bridegroom must pay to the bride some amount or dower money as a token of his love, truthfulness and sincerity. Another word used for dower in the Quran is ‘nahlah’, which means given something without any expectation in return, i.e. purely out of love and regard. So, mahr is what is given purely for love, not for any return. The amount of money given to women as mahr once cannot be taken back. The Quran says-

“But if you decide to take one wife in place of another, even if you had given the latter a whole treasure for dower, take not the least bit of it back: will you take it by salinder and manifest wrong?”³⁹

In the above verse it is stated that if a husband decides to give his wife the whole treasure, meaning a heap of gold, as dower on marriage then he cannot take it back, if he does so then he will be accountable for it. But if the wife willingly

gives the share of her mahr to her husband then he can enjoy it, otherwise he cannot. The Quran says –

*“And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer.”*⁴⁰

Thus mahr is a free gift to the wife and the husband can enjoy it only if the wife permits it, otherwise not. It is the wife who fully owns the amount of bridal money or mahr and it is for her to allow her husband to enjoy a part of it if she agrees to remit it.

The quantum of mahr is also an issue for consideration. The Quran has not prescribed any limits on the quantum or the amount of mahr and leaves it to the circumstances of every age, the social and economic condition of the husband and wife, their family traditions, their mutual relations and trust. It is a right of the bride to demand as much as she desires. It could be nominal or it could be quite substantial. If the husband is unable to pay, it could be as nominal as an iron ring or teaching something. Also it could be quite substantial, i.e. a heap of gold, if the woman insists on it. There is no limit to it. It can also be increased or brought down after marriage by mutual agreement of the husband and wife, according to the financial status of the person or the husband. If the financial status of the husband after marriage upgrades then the amount of dower money may be increased and if the financial status of him degrades then mahr may be decreased. So, the amount of dower is such that the man can easily afford it. It can not be beyond his capacity because in that case it becomes a burden for him which is

morally wrong and it will be like doing injustice to him. Though the traditions have not prevented people from fixing higher quantum of mahr, yet people have been persuaded to keep them low or moderate. One such tradition is as follows –

*“The most blessed nikah is that which does not involve heavy burden”*⁴¹

There is also a hadith in this regard -

*“Abdullah-ibn-Abbas reported that the Prophet said the best women is one whose dower is the easiest to pay.”*⁴²

It is true that Islam permits woman to demand any amount of mahr. But that does not imply that the woman can demand beyond the capacity of the man. Any amount of mahr does not always mean a higher amount. It may also be a small amount like an iron ring, a pair of shoes, a single cloth etc. It may sometimes also include teaching her something, if the husband has nothing to give her. This message is clear in the following hadith –

“Shahl-B-Sa’ad reported that a woman came to the Messenger of Allah and said: O Messenger of Allah, I offer myself to you. She then kept standing for a long time. A man got up and said: O Messenger of Allah! Marry her to me if you have got no need of her. He (the Prophet) said: Have you got with you anything to give her as dower? He said: I have got nothing but this lower garment. He (the Prophet) said: Seek though it be a ring of iron. Then he searched but did find nothing. The Prophet asked: “Do you know any portion of the Quran? ‘Yes’ said he, ‘such and such a

verse'. He said: I give her in marriage to you for what is with you from the Quran. So teach her something from Quran."⁴³

In the above reported case the teaching of some verses from the Quran by the husband to the wife was declared to be mahr for the bride. So, mahr may be of various forms. Following are some hadith representing the various forms of mahr –

*"Anas reported that the messenger of Allah emancipated Safiyyah and married her and made her emancipation a dower..."*⁴⁴

In this case Mohammad himself married Safiyyah accepting her emancipation as her dower. Again in another hadith it is stated-

*"A'mer - b – Rabiah reported that a woman of Banu Fajarah was married for two shoes. The Holy prophet asked her : Are you satisfied with yourself and your property for two shoes? 'yes', said she. Then he gave him permission."*⁴⁵

In this case a pair of shoes is accepted as an amount of mahr. Besides, in another case a woman named Omme Solaim agreed to marry a man, named Abu Talha on the condition that he should accept Islam. He fulfilled the condition and his acceptance of Islam was declared to be mahr of Omme Solaim.⁴⁶ So, there is no hard and fast rule laid down by the Quran and Hadith regarding the amount of mahr. It should be according to the social and economic position of the husband. It depends entirely upon the mutual understanding of the contracting parties entering in the marriage. The Quran says –

“There is no blame on you if you divorce woman before consummation or the fixation of their dower; but bestow on them (a suitable gift), the wealthy according to his means, and the poor according to his means; - a gift of a reasonable amount is due from those who wish to do the right thing.”⁴⁷

Thus the Quran repeatedly emphasizes to give mahr to the bride by the bridegroom, whatever is possible for him according to his means or capacity. But it is must for the man to give the women something as her free bridal gift. It may be an iron ring or a pair of shoes or even a heap of gold or it may even be fixed on condition of accepting the religion of Islam, etc. It is worthwhile to note that when it is said, ‘it may be an iron ring’, it does not mean that an iron ring can become the dower of a woman in every situation. The underlying idea of it is that whatever can be given as mahr to the bride should be given as a sign of his love, truthfulness and sincerity. So, Islam by introducing the concept of mahr and giving the right of demanding any amount of mahr not only do justice to woman but also by prescribing the basic criteria that the amount of mahr should be according to one’s capacity or ability to do justice to the man also.

Though the Quran does not put a limit on mahr the jurists differ on the issue of fixation of the minimum amount of dower. The Hanafite School of jurisprudence fixes 10 dirhams as the minimum dower and not less than that but specifies no maximum amount. The Maliki school has fixed three dirhams as the minimum dower. The Ithna Ashari law, on the otherhand, fixes no minimum but 500 dirhams as the maximum dower. But Imam Shafi’i and his followers did not support to fix the amount of dower as it is against Quranic teachings.

“ ... give them their mahr as prescribed; but if after a Mahr is prescribed, you agree mutually (to give more), there is no sin on you. Surely, Allah is Ever All-Knowing, All-wise.” ⁴⁸

This verse shows that mahr is a gift and should be settled by mutual consent. If the amount of mahr is fixed or prescribed before any mutual agreement then Quran’s purpose shall be defeated. Besides, when Umar, the second rightly guided Caliph, once harangued to the Muslim gathering about not fixing very high amount of mahr and wanted to fix it to four hundred dirhams, a woman in the audience raised the objection to his suggestion, saying that he had no right to any such decision as it went against the definite teaching of the Quran. Then she recited the relevant Quranic verse, i.e. *“...if you had given the latter a whole treasure for dower, take not the least bit of it back...”*⁴⁹ (4: 20). Hazrat Umar on hearing this from her withdraws the proposed ceiling on mahr and remarked that the woman was right and his decision was erroneous. From this verse (i.e. 4:20) the jurists of Islam have deduced that the right of a woman to demand any amount of dower as a condition of her agreeing to marriage is not restricted by the Islamic Law.

The Quranic verse, i.e. 4:4 (mentioned above) clearly indicates that mahr is the property of woman alone. She cannot be compelled to forgo her claim to it. She can also utilize it freely. If she of her own accord agree to remit the whole or a part of their dower then the husband can enjoy it cheerfully. But if she remits it in full or a portion of it under coercion or fear of oppression or tyranny on his part then it would not be lawful for him to enjoy it. Some ulama like Hazarat Umar and Qazi Shuraih are of the opinion that if after remission of mahr the woman later demands it then the husband shall be compelled to return it, since it is a pointer to the fact

that she had not cheerfully remitted it. One event in this regard can be referred to here –

“Shabi says that a woman came to Qazi Shuraih with her husband. She had given him (husband) some gift which she now wanted to be returned to her. Qazi Shuraih directed the husband to give it back to her. But the husband with reference to the verse (i.e. 4:4) said that after giving it away she had no right to demand its return. Qazi Shuraih told him that the Quran has laid down the condition of her cheerfully gifting it and only then it can be enjoyed. Now, in your case, if she had cheerfully done so, she would not have demanded its return.”⁵⁰

Thus, the husband cannot take back mahr which he has given to his wife at the time of divorce. It can be taken back only when the wife wishes to give it back to her husband on her divorce called ‘Khula’. The Quran says –

“The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you (men) to take back (from your wives) any of your Mahr... then there is no sin on either of them if she gives back (the Mahr or a part of it) for her ‘Al-Khul’ (divorce)...”⁵¹

So, if the wife wants divorce from her husband and wishes to return her mahr or a part of it to her husband then there is not morally wrong for the husband to take it back.

Besides, if the husband divorces his wife before the consummation of the marriage or before fixing the amount of mahr, then also he is directed to offer her a suitable gift as her dower according to his means. The Quran says –

*“There is no blame on you if you divorce woman before consummation or the fixation of their dower; but bestow on them (a suitable gift), the wealthy according to his means, and the poor according to his means; - a gift of a reasonable amount is due from those who wish to do the right thing.”*⁵²

Again if the husband divorces his wife before the consummation of marriage and after fixing the amount of mahr then he is bound to pay half of the amount of mahr which has been fixed. The husband does not need to pay the entire amount that fixed as mahr. But the Quran exhorts him to forgo his half too as it is his generosity in giving her full dower which is nearer to piety (At-taqwa). The Quran says –

*“And if you divorce them before consummation, but after the fixation of a dower for them the half of the dower (is due to them), unless they remit it or (the man’s half) is remitted by him in whose hands is the marriage tie; and the remission (of the man’s half) is the nearest to righteousness...”*⁵³

Thus, we see that the Quran shows maximum consideration to woman and tries to safeguard their rights in every possible manner.

4.4.1 Types of Dower:

There are two ways of presenting mahr to the bride. The dower which is payable on demand or immediately paid at the time of marriage is known as “prompt dower” i.e- *mahr-i-mu’ajjal*. On the other hand, the part of dower which is payable at later period or on the dissolution of marriage by death or divorce is known as “deferred dower”, i.e- *mahr-i-mu’wajjal*. The jurists are of the opinion

that the wife can refuse to perform her marital obligation unless prompt dower is paid. The system of dower favored by the Shariah entails immediate handing over of mahr. This was the practice followed by the prophet and his companions. Deferred dower is an alternative, but is not ranked equal in merit of a prompt dower. It is simply a form of concession made to those who are unable to meet the requirements of mahr at the time of marriage.

If the amount of dower is fixed in the marriage contract, the dower is called specified dower. But if the amount of dower is not fixed, the wife is entitled to what is known as proper dower or customary dower, i.e. *mahr-i-mithl*. The wife is entitled to *mahr-i-mithl* even if the marriage was performed with a condition that she should not claim any dower. The proper dower or *mahr-i-mithl* (an equivalent amount of mahr) is fixed taking into consideration the amount of dower given to other female members of the wife's family.

4.5 Right to Divorce:

Divorce is a natural corollary to the concept of marriage. When the parties concerned to the marriage, i.e. the husband and wife find it impossible to lead a peaceful and happy life and when all the efforts for their reconciliation have failed and there are no chances left for them to live together amicably only then they are allowed to break the tie. It is a sheer foolishness to keep them tied up in marital bond when it is unpleasant to both. It rather enhances the sufferings of the husband and the wife and their children instead of increasing their happiness.

In Islam marriage is a civil contract entered into by mutual consent of the bride and bridegroom and as such it can be dissolved either by mutual consent or by either party to the contract. The dissolution of marriage is only possible in a contractual form of marriage, but not in its sacramental form of marriage. Hence, divorce is permissible in Islam.

Under Islamic Law divorce may be affected by both the husband and wife. When the husband repudiates the wife and effects a separation it is called 'talaq'. On the contrary, the wife can also repudiate her marriage, if she is dissatisfied with it under a form of divorce known as 'khula'. In talaq the husband has to give her mahr and in khula the wife has to forgo her mahr. Besides, there are some other forms of divorce also under which a woman can repudiate her marriage, such as, lian, ila, zihar etc.. These forms of divorce are discussed in details later in this section.

Despite that Islam permits divorce, it is strictly forbidden in Islam to use this right of divorce in haste as the matter pertains not only to two individuals and but also other members of the family. That is why, it is ordered in the Quran to observe the period of iddah (waiting) regarding divorce. Though in certain extreme circumstances it becomes absolutely necessary, it is to be avoided as far as possible. The Messenger of Allah said –

*“With Allah the most detestable of all lawful things is divorce.”*⁵⁴

It is commonly believed that in Islam a woman can be divorced by her husband by pronouncing the word 'talaq' thrice in one sitting. Even if the word 'talaq' is pronounced thrice in the state of anger or by way of fun, divorce would

be considered to be valid. In this form of divorce the husband need not state any reason to his wife. It is the privilege of the husband. But this form of divorce has become a cause of great suffering for Muslim women. But this form of divorce was not supported by the Quran and Hadith. This form of divorce was practiced by the Arabs during the Jahilliya Period. Mohammad expressed his anger on such form of divorce. This form of divorce is condemned by Mohammad. In a tradition it is reported as follows –

“Mahmud-b-Labeed reported that the Messenger of Allah was informed about a man who gave three divorces at a time to his wife. Then he got up enraged and said: Are you playing with the Book of Almighty and Glorious Allah while I am (still) amongst you?”⁵⁵

But the practice of such form of divorce came back after the death of Mohammad, though it is discouraged by him. The Quran emphasizes that divorce should not be a hasty act, but should be finalized only after a period of waiting for three months that is called ‘iddah’. During this period of iddah two arbitrators from both sides are appointed to bring about reconciliation between the husband and wife. Thus, the couple is counseled by their family members and given a chance to rethink on their decision. If reconciliation takes place then the marriage is saved. This form of divorce is called ‘talaq-i-sunna’. The Quran approves of this form of divorce. The Quran says –

“If you fear a breach between them twain, appoint (two) arbiters, one from his family and the other from hers; if they wish for peace, Allah will cause their reconciliation ...”⁵⁶

There are many other verses in the Quran which emphasizes that divorce becomes irrevocable only after the prescribed time and no divorce is accepted, according to the Quran, as valid within the prescribed time. Now, the question is what is the prescribed time for making a divorce irrevocable? It is a period of three menstrual courses in case of a consummated woman or it is a period of three months (or 90 days) in case of those women whose menstruation has stopped. But the period of iddah or prescribed time for the pregnant women is different from others. In case of the pregnant women the period of iddah is upto the delivery of a child. During pregnancy no divorce can take place. For a widow the period of iddah to remarry is four months and ten days. The following are some verses from the Quran emphasizing the period of waiting –

*“And divorced women shall wait (as regards their marriage) for three menstrual periods, ...”*⁵⁷

*“And those of your women as have passed the age of monthly courses, for the ‘Iddah’ (prescribed period), if you have doubt (about their periods), is three months;... and for those who are pregnant, their ‘Iddah’ is until they lay down their burden...”*⁵⁸

*“And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten days, then when they have fulfilled their term, there is no sin on you if they (the wives) dispose of themselves in a just and honourable manner (i.e. they can marry).”*⁵⁹

If divorce takes place before being touched or before consummation then there is no need to observe the period of waiting. But the husband has to free her in a good manner by giving her a gift (mahr). The Quran says –

*“O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no ‘iddah’ have you to count in respect of them. So, give them a present, and set them free (i.e. divorce) in a handsome manner.”*⁶⁰

During this period of Iddah the divorced woman is not permitted to go out of her husband’s home and also to remarry. The Quran says –

*“O Prophet! When you divorce women, divorce them at their ‘Iddah’ and count (accurately) their ‘Iddah’. And fear Allah your Lord. And turn them not out of their (husband’s) homes nor shall they (themselves) leave ... Then why they are about to attain their term appointed, either take them back in a good manner or part with them in a good manner. And take as witness two just persons from among you. And establish the testimony for Allah ...”*⁶¹

So, the prescribed period of waiting means a period of temporary separation during which conjugal relationship may be re-established. During this period there would be enough opportunity for reconciliation if divorce had been pronounced in a state of anger or due to temporary conflict between husband and wife. So, the primary purpose of this waiting period is that the couple is given an opportunity to resolve their differences and reconcile themselves. Hence, it is clear that divorce is revocable within the prescribed period or ‘Iddah’. But if the period

of iddah is over (i.e. after the third menstrual course) or after the third pronouncement of divorce, divorce becomes irrevocable. That is why the Quran says –

*“The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you (men) to take back (from your wives) any of your Mahr...”*⁶²

From the above verse it becomes clear that the husband must make his decision final after the completion of two divorces and before the completion of third divorce. This is possible only if the period of iddah is observed. But in case of triple pronouncing divorce in one sitting no period of iddah is observed, there is no time for consideration and there remains no opportunity for reconciliation. It becomes valid immediately after the pronouncement of divorce three times, and therefore, it is against the spirit of the Quran and Hadith. Practicing this method of divorce means nothing but taking the verses of Allah as a mockery. The Quran warns in the following way –

*“And when you have divorced women and they have fulfilled the term of their prescribed period ...And treat not the verses (Laws) of Allah as a jest ...”*⁶³

Hence, in case of triple pronouncing divorce the period of iddah is ignored. To ignore the prescribed period means to ignore the command of Allah and thus it is sinful. Hence, the Quran attempts to save the marriage in every possible manner, since divorce is the most unpleasant thing in Islam. There is a hadith in this regard reported in Abu Daud –

*“Ibn Omar reported that the apostle of Allah said: The most detestable of lawful things near Allah is divorce.”*⁶⁴

It is also worthwhile to note here that at the time of divorce the husband is bound to give his wife her mahr if not paid already. Even during iddah period the husband is bound to provide maintenance to his wife. The Quran says—

*“For divorced woman Maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous.”*⁶⁵

4.5.1 Types of Divorce:

Talaq or divorce in its literal sense is “the taking off any tie or restraint”⁶⁶ and in law it signifies dissolution of a marriage contract. It may be effected either by the husband or wife, or by mutual agreement or by operation of law. The procedure for the dissolution of marriage in Islam is entirely different for men and women. Husbands use ‘talaq’, while wives take recourse to ‘khula’. Dissolution of marriage by mutual consent is called Mubarat and a marriage which can be dissolved in court is known as ‘faskh’. So, there are different types of divorce supported by the Quran and Hadith and various schools of Islamic jurisprudence. The jurists have classified divorce under two sub-divisions, i.e.,

(i) Talaq-i-Sunnah

(ii) Talaq-i-Biddah

This form of divorce, i.e. Talaq-i-Sunnah is accepted by all schools of Islamic law belonging to both Shia and Sunni groups. But Talaq-i-Biddah is

accepted by Sunni school only and not permitted by Shia school. Talaq-i-sunnah has again two forms, i.e.,

(a) Talaq-i-Ahsan and

(b) Talaq-i-Hasan

So, there are three principal forms of divorce and they are as follows–

(1) Talaq-i-Ahsan: This is the most approved form of divorce. It is said to be the best form of divorce. This form of divorce is also called the proper or the most laudable divorce. In this form of divorce the repudiation takes place by making a single pronouncement of divorce by the husband in the period of tohr or purity followed by abstinence from sexual intercourse during the prescribed time and the woman is left to observe her iddah or waiting period. Tohr is a period between the two menstrual courses. During menstruation divorce is not valid. In this divorce if physical intercourse is resumed during iddah, then divorce become invalid.

(2) Talaq-i-Hassan: This form of divorce is also called the laudable or proper divorce. But it is not accepted as the best form as talaq-i-Ahsan. It is a good form of divorce. In this form of divorce the husband pronounces divorce in three successive tohrs or in different tohrs and during waiting period the couple can have physical intercourse. The Hanbali sunni School gives it more importance than other types of divorce.

These two types of divorce are revocable, since in both iddah is observed. During iddah period the marriage is not dissolved and so, two arbitrators are

appointed from both sides to bring about reconciliation between the husband and wife. If reconciliation takes place then the marriage cannot be dissolved.

(3) Talaq-i-Biddah: It is a sinful method of divorce though it is in vogue, since it goes against the rules laid down by the Quran. In this form of divorce no period of iddah is observed. It is effected immediately after the pronouncement of divorce three times in one sitting or in immediate succession by the husband whether the wife is either in a state of tohr or in a state of menstruation. This form of divorce is not supported by the Quran and traditions of Mohammad. It is irrevocable. It is not accepted by the Ithna Asheries, Bohras, Khojas etc. belonging to Shia school . It is sanctioned by the Hanafis belonging to Sunni school.

Thus in Ahsan form divorce becomes complete and irrevocable after the completion of iddah, in Hassan form it attains finality after the third pronouncement of divorce and in Biddah it becomes irrevocable immediately.

There are some other forms of divorce. The above three forms of divorce belong exclusively to the male. Islam gives the right to claim divorce to woman also. A woman can get release from her husband by the following means –

(1) Khula: In Islam woman can repudiate her marriage if she is dissatisfied with it under the form of divorce, known as ‘Khula’. When khula is sought by a woman, her husband is given compensation to release her from the marriage tie. It becomes irrevocable immediately after paying the compensation or return the mahr or a part of mahr to her husband. It has been referred to in the Quran as follows –

*“The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you (men) to take back (from your wives) any of your Mahr... then there is no sin on either of them if she gives back (the Mahr or a part of it) for her ‘Al-Khul’ (divorce)... ”*⁶⁷

Thus, the husband cannot take back mahr which he has given to his wife at the time of divorce. It can be taken back only when the wife wishes to give back it on her divorce called khula. So, if the wife wants divorce from her husband and wishes to return her mahr or a part of it to her husband then there is no blame on the husband to take it back. Thus, in talaq a man has to give mahr to his wife while in khula a woman has to forgo her mahr. The case of Jamilah, the wife of Thabit bin Qais as reported in Sahih Al-Bukhari can be referred to here to prove this.

*“Ibn Abbas narrated: The wife of Thabit bin Qais came to the Prophet and said “O Allah’s Messenger! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike to behave in an un-Islamic manner (if I remain with him). On that Allah’s Messenger said (to her), “Will you give back the garden which your husband has given you (as Mahr)?” She said, “Yes”. Then the Prophet said to Thabit, “O Thabit! Accept your garden, and divorce her once” ”*⁶⁸

Thus, Khula or *“Al-Khul means the parting of a wife from her husband by giving him a certain compensation.”*⁶⁹ The case of Thabit-bin-Qais and his wife Jamilah is the first instance of khula recorded by Muslim historians. *“The Prophet ordered the wife of Thabit-bin-Qais to observe iddah of one menstrual period only”*⁷⁰

(2) **Mubarat:** In this form of divorce the husband and wife agree to dissolve the marriage by mutual consent. Here the consent of both is equally necessary. This divorce becomes irrevocable immediately after the consent takes place. Mubarat is accepted by both the Sunni and Shia schools.

(3) **Talaq-i-Tafwiz:** It is also a form of divorce in favor of women. In this form of divorce the wife can pronounce divorce if the husband has delegated the power of divorce to his wife and she can exercise the delegated power when any of the conditions of the martial contract are violated. This delegated right to divorce is very useful to the wife, if the husband commits polygamy or does anything which she dislikes, she can use it. She can also stipulate it as one of the conditions of marriage. From this it can be seen that in addition to the Quran Muslim jurists have also taken care to protect women's rights and interests.

(4) **Lian:** When the husband falsely accuses his wife of adultery and can produce no witnesses in favor of his allegations, the wife has the right to sue him to obtain divorce. This form of divorce is known as lian. The Quran says –

“And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allah that he is one of those who speak the truth. And the filth (testimony should be) the invoking of the Curse of Allah on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allah, that he is telling a lie. And the filth (testimony) should be that the Wrath of Allah be upon her if he speaks the truth.”⁷¹

(5) Ila: Ila means taking oath or vow or swearing. When a husband swears that he will not have sexual intercourse with his wife for a period of four months or more than that and within this period if he neither asserts his conjugal relationship nor divorces her then the wife after four months can claim divorce or the wife would be divorced. *“Al-Ila means the oath taken by a husband that he would not approach his wife for a certain period.”*⁷²

The Quran says –

*“Those who take an oath not to have sexual relation with their wives must wait for four months, then if they return (change their idea in this period), verily Allah is Oft-Forgiving, Most Merciful. And if they decide upon divorce, then Allah is All-Hearear, All-Knower.”*⁷³

(6) Zihar: Zihar is another form of divorce mentioned both in the Quran and the Traditions. The word ‘zihar’ (derived from the word zahr, meaning ‘the back’) signifies the pronouncement of a man who compares his wife with his mother or any other female within such prohibited degrees as renders marriage with them illegal as though he were to say, *“You are to me like the back of my mother (i.e. unlawful for me to approach)”*⁷⁴ and thus separate her for an unlimited period. Those who separate his wife by zihar he must undergo a penalty to make lawful his wife to him. In order to make an expiation of his such behaviour or deed he has to set free a slave or to fast for two successive months or to feed sixty poor people if unable to fast. It is stated in the Quran in the following manner –

“Those among you who make their wives unlawful to them by Zihar (i.e., by saying to them: “You are like my mother’s back”) they cannot be their

mothers. None can be their mothers except those who gave them birth. And verily, they utter an ill word and a lie ... and wish to free themselves from what they uttered, (the penalty) in that case is the freeing of a slave before they touch each other. That is an admonition to you (so that you may not repeat such an ill thing) ... And he who finds not (the money for freeing a slave) must fast two successive months before they both touch each other. And he who is unable to do so, should feed sixty Masākin (poor) ...”⁷⁵

From the above verse it is clear that after undergoing this penalty mentioned in the above verse he is entitled to touch his wife. In default of expiation by the penalty the wife has a right to apply to court for judicial divorce.

(7) Judicial Divorce: A Muslim woman can also obtain judicial divorce from her husband under the dissolution of Muslim Marriage act, 1939, on the grounds mentioned in that act.

It is also worthwhile to mention that when the wife is irrevocably divorced and the husband wants her back, their remarriage is directly not possible. She cannot come back to him until she has married another man and also divorced by the second husband, only after that the first husband can marry her or take back her. The Quran says as follows –

“And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband. Then, if the other husband divorces her, it is no sin both of them that they reunite, provided they feel that they can keep the limits ordained by Allah...”⁷⁶

If the reconciliation between the husband and wife takes place before the third pronouncement of talaq, there is no need to remarry. But after the third pronouncement if the couple decides to remarry then the wife has to marry another man and obtain divorce from him, then only they can remarry. This is called halala marriage. This is done to prevent the husband from giving divorce too easily but the Quran further indicated –

“And when you have divorced women and they have fulfilled the term of their prescribed period, either take them back on reasonable basis or set them free on reasonable basis. But do not take them back to hurt them, and whoever does that, then he has wronged himself. And treat not the verses of Allah as a jest ...”⁷⁷

From the above verses it can be said that after divorcing a wife it is not so easy to get her back. As already said, divorce is the most unpleasant thing to Allah and it should be avoided as far as possible, though in certain unavoidable or urgent extreme situations it is permitted, one must think again and again to perform it. That is why it is ordered in the Quran to observe the period of iddah, during which one can rethink on his decision. After that also if someone commits it and gets separate each other then the question of remarriage or reunion between the divorced couple does not arise. But if it arises or if they want to reunite then they must go through the above process mentioned in the above verse. Without adopting this tedious course they cannot revert to their former relationship of husband and wife. It is like a punishment so that such an evil thing should be prevented from performing. The Quran says –

“... do not prevent them from marrying their (former) husbands, if they mutually agree on reasonable basis. This (instruction) is an admonition for him among you who believes in Allah and the Last Day...”⁷⁸

However, there is controversy whether three divorces could be pronounced in one sitting or such pronouncements could occur on three different occasions. Triple pronouncing divorce is not lawful to Ahl-e-Hadith school, while for Hanafi School it is lawful.

4.6 Right to Maintenance:

It is also another important right enjoyed by woman in Islam. Generally after entering the tie of wedlock the woman devotes herself to maintain the conjugal life, to maintain the household works and also to take care of children and other family members. She does all these as her responsibility. In return to this man undertakes the responsibility of her maintenance. This responsibility lasts so long as they are bound together by the marriage tie. But when divorce snaps this tie, the maintenance of the wife comes into question. Is the husband on his part after divorce released from providing economic co-operation to his wife? After divorce the woman may not be prepared to cooperate with the man, likewise man naturally is desirous of throwing away the burden of his responsibilities relating to her. If even after divorce the economic responsibility of the women remains resting on him then abstaining from divorce would be more useful to him. Instead of divorcing and yet remaining burdened with woman's responsibilities it is better for him to keep her with him. Because if even after divorcing her he has to bear the burden of the divorced wife then the husband can hardly effort for the second

marriage. This is the underlying wisdom of introducing the right of maintenance to woman in Islam so that divorce and polygamy can be prevented and at the same time women's position can be elevated from neglected to respected position in society.

Now, the present study attempts to focus on what is prescribed for maintenance in the Quran. In Islam the husband is under obligation to treat his wife with kindness and provide her with maintenance. The Quran puts the entire burden of maintenance of the wife on the husband. The husband is bound to provide maintenance to his wife even after divorce also until she remarries. Hence, maintenance can be categorized into two types i.e.,

(a) Maintenance as a wife and

(b) Maintenance as a divorcee.

Maintenance as a wife means that the husband is the maintainer of the wife and he must provide her all facilities or comforts like fooding, clothing, lodging etc. A well to do husband is also to provide for his wife's personal attendants if necessary. He is the protector of the wife. It is stated in the Quran as follows –

*“Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means ...”*⁷⁹

The husband is obliged to provide maintenance to his wife even if she possesses her own wealth and income according to his capacity. On the contrary,

the wife is not obliged to give her husband anything from her income. Though the husband is poor and the wife is wealthy yet the husband must give her maintenance according to his means. There are different verses in the Quran on maintenance of the wife. The Quran says –

*“Let the rich man spend according to his means; and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him. Allah will grant after hardship, ease.”*⁸⁰

Thus from the above verse it is clear that a man who has abundant means must spend abundantly on his wife and who has limited earnings he should spend accordingly, but he must provide maintenance to his wife as per his capacity. The Quran also indicates that no one should be charged beyond his capacity.

Duty of providing maintenance to women in Islam is so important that the husband is bound to provide maintenance to his wife even after divorce also. The Quran ordains that the divorced woman is entitled to maintenance during the period of iddah, because during this period the wife cannot be thrown out of his house. It is stated in the Quran as follows –

*“ ... When you divorce women, divorce them at their ‘Iddah’ ... And turn them not out of their (husband’s) homes nor shall they (themselves) leave ... ”*⁸¹

Another verse of the Quran says –

*“Lodge them (the divorced women) where you dwell, according to your means and do not harm them so as to straiten them (that they be obliged to leave your house)...”*⁸²

The above verses make it clear that during iddah period the husband must provide fooding, clothing, lodging to his wife. Besides, if the wife is pregnant then her iddah period is upto delivery of the child and being so she is entitled to maintenance till her delivery. The Quran says –

*“... And if they are pregnant, then spend on them till they lay down their burden ...”*⁸³

Not only that if she suckles the child then her entitlement of maintenance would be upto the expiry of suckling period. The Quran says –

*“... Then if they give suck to the children for you, give them their due payment...”*⁸⁴

In another chapter of the Quran it is said –

*“The mothers shall give suck to their children for two whole years, for those (parents) who desire to complete the term of suckling, but the father of the child shall bear the cost of the mother’s food and clothing on a reasonable basis. No person shall have a burden laid on him greater than he can bear...”*⁸⁵

It may seem odd that the mother should be paid for suckling her own child. But for suckling she needs extra energy which can come only from better and richer food and hence she should be compensated by her husband for that. The

suckling period is two years and if the parents want to complete it then the husband must provide maintenance for that for the whole two years. The Quran also indicates that it should not be a burden for the husband that he cannot bear it. It should be according to his capacity, whatever he can provide he must provide for the suckling of the child. Not only that the Quran also makes provision for woman if she cannot complete the suckling period either because of physical deficiency or because of inadequate recompense or for any other reasons then either she can stop suckling (or weaning) by the mutual consent of both (the parents) or the husband can employ some other woman or foster suckling-mother for their children. This is the ultimate provision in the concept of the maintenance of a wife. The Quran says in the following manner –

“...Then if they give suck to the children for you, give them their due payment... But if you make difficulties for one another, then some other woman may give suck for him.”⁸⁶

Again in another place the Quran says –

“...If they both decide on weaning, by mutual consent, and after due consultation, there is no sin on them. And if you decide on a foster suckling-mother for your children, there is no sin on you, provided you pay (the mother) what you agreed (to give her) on reasonable basis...”⁸⁷

Besides, providing maintenance to the nursing mother of the child is so obligatory or important that if the father of the child is dead then it becomes the responsibility of the heir of the deceased to provide maintenance to the nursing mother. As the Quran says –

*“... And on the (father’s) heir is incumbent the like of that (which was incumbent on the father) ...”*⁸⁸

The obligation of providing maintenance to the wife is not only during the iddah period but even after divorce also (i.e. after the completion of iddah also). The Quran makes it a obligatory duty of the righteous to make some provision for the woman who has been divorced by him. The Quran says –

*“For divorced women maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous.”*⁸⁹

Thus from the above discussions it can be said that the Quran broadened the concept of maintenance for wife in every possible manner. In Islam woman’s right to receive maintenance form her husband is absolute, even if she is very rich and owns a lot of property. The quantum of maintenance has not been fixed by the Quran, but indicated that it should be according to one’s capacity. There are differences of opinion among the jurists regarding the amount of maintenance. The Hanafi law prescribes that the maintenance should be determined in accordance with the social status of both the husband and wife. But the Shafis maintain that the position of the husband alone should be considered. On the other hand, according to the Shia law, the amount of maintenance should be according to the requirements or needs of the wife.

4.7 Right to Employment:

In Islam woman has the right to hold a job as man has. Islam has granted the woman freedom of economic pursuits by taking any profession of the public

services like, teaching, medicine or medical service, writing, law, journalism etc. She is also permitted to involve herself in trade and commerce. For this purpose she is permitted to work outside her home and earn a living, but without affecting her personal life and she should also protect her chastity and modesty. The Messenger of Allah explicitly permitted this in these words –

*“O women! You have been allowed by Allah to go out for your needs”*⁹⁰

Holding profession does not mean only earning money. Through it one can express his or her talents. Women, in Islam by giving the right to hold a profession, are given opportunity to express their talents as well as to utilize it for the sake of the welfare of the family and the society. The Quran does not forbid women from earning to support the family through lawful means. No discrimination is made between man and woman regarding earning and their wages. The fruits of labour belong to the one who has worked for that regardless of man and woman. The Quran says –

*“...to men is allotted what they earn, and to women what they earn: but ask Allah of his bounty. For Allah has full knowledge of all things.”*⁹¹

The Quran also always encourages legitimate earning. According to the Quran, only that is legitimate which is earned by one’s own effort. The Quran says–

*“That man can have nothing but what he strives for; that (the fruit of) his striving will soon come in sight: then will he be rewarded with a reward complete;”*⁹²

Hence, what a man does he enjoys only the fruit of that and that is legitimate. Here the word man stands for both man and woman. So, what a woman earns by her own effort is legitimate. Many Muslims have a misbelief that woman's earning is not permitted in Islam, since they have to live in Purdah. But this shows their ignorance of the Quranic spirit.

In the early period of Islam the wives of Mohammad and other women showed their talents in various fields like, jurisprudence, medicine, teaching, poetry, art and literature etc. and set an ideal and example for others. . For example,

In jurisprudence, Ayesha had few equals. She was one of the leading jurists. She is fourth among the narrators of Hadith. The total number of Ahadith reported by her is 2210. Again, in subject of speech, Asma' bint Sakan was famous and in interpretation, Asma bint Umis was well-known. Besides, in medicine and surgery Rufadah Aslamiyah, Umm Atiyah, Umm Muta, Umm Kabshah and many others were well known. In poetry Khansa, Su'da, Safiyah, Ruqaiyah etc. are very famous, but Khansa was unparalleled among women in the art of poetry.⁹³

During that period women helped their husbands in their agricultural field works. Ayesha used to taught the Quran not only to woman but man also. Mohammad allowed women to render service in wars also, like, providing food and water, nursing the wounded etc. Following are some haidth in this regard –

“Tha'iba bin Abi Malik narrated: ... Umm Salit was amongst those Ansari women who had given the Baia (pledge) to Allah's Messenger. Umar said,

she (i.e. Umm Salit) used to carry the water-skins to water us on the day of Uhud.”⁹⁴

*“Narrated Ar-Rubai’ bint Mu’awwidh: We used to take part in holy battles with the Prophet by providing the people with water and serving them and bringing the killed and the wounded back to Al-Madina.”*⁹⁵

Thus it becomes clear that during that period women often participate in outdoor works. Hence, it can be concluded that women can work as teachers, doctors, lawyers etc.

Dr. Hamidullah, a noted scholar of Islam, in “Introduction to Islam” writes:

“In every epoch of Islamic history, including the time of the Prophet, one sees Muslim women engaged in every profession that suited them. They worked as nurses, teachers and even as combatants by the side of men when necessary, in addition to being singers, hair-dressers, etc. Caliph Umar employed a lady, Shifa’ bint ‘Abdallah, as inspector in the market at the capital (Madinah), as Ibn Hajar (Isabah) records. The same lady had taught Hafsa, wife of the Prophet, how to write and read. The jurists admit the possibility of women being appointed as judges of tribunals, and there are several examples of the kind. In brief, far from becoming a parasite, a woman could collaborate with men, in Muslim society to earn her livelihood and to develop her talents.”⁹⁶

4.8 Right to Decision Making and Mutual Consultation:

All the rights discussed above given to women in Islam imply that woman has the right to make decisions in every sphere of her life. Education helps to develop her decision making ability. Regarding marriage her right to choose her spouse also shows that she can take decision about her own life of her own free will. Not only that she is the owner of that property which she has received through inheritance, mahr and maintenance and being so it is exclusively her decision in what way she would like to spend and maintain her property. Regarding divorce also she has the right to decide to repudiate the marriage if she is dissatisfied with her marriage. So, whether the matter related to marriage or divorce or to hold and maintain property she has the right to take decision of her own free will.

As mentioned earlier, in the pre-Islamic period women were not treated as human beings like men. Even their existence was not to be counted. In such a situation their participation in any consultation was very far from expectation. But with the rise of Islam like other rights women had also got the right of mutual consultation as men have. They were also given opportunity to participate and to offer their opinions in public affairs. In this regard an event may be mentioned that occurred at the time of Hazarat Umar, the second Caliph of Islam. Once Hazarat Umar was discussing with his companions about the amount of mahr and decided to put a ceiling on the amount of mahr. But a women reminded him the verse, i.e. 4:20 of the Quran – “...*you have given one of them a heap of gold, take nothing from it....*” and prohibited him to do so, saying that you had no right to give any such decision as it went against the definite teaching of the Quran. After hearing

that Hazarat Umar surrendered himself before the woman and accepted that his decision was wrong. This event proves that women in Islam have the right to offer their opinions. In addition, the Quran says to take decisions through mutual consultation which is applicable in every sphere of our life starting from family life to state affairs. In a verse of the Quran it is said –

“...who (conduct) their affairs by mutual consultation...”⁹⁷

In the early period of Islam, Ayesah, Umm Salamah, the wives of Mohammad gave many legal decisions and their decisions were respected and accepted. For example, in jurisprudence, Ayesah had few equals. She was one of the leading jurists. She is fourth among the narrators of Hadith. The total number of Ahadith reported by her is 2210.⁹⁸ Umm Salmah, another wife of the Prophet, also gave many decisions in matter of law. She had complete knowledge of hidden knowledge, e.g. – “the wives of the Prophet are given the status of mothers of Muslims. The word ‘Ummul-Muamineen’ refers to mothers of male alone. But by analogy (Qiyas) she said that she was the mother of females also.”⁹⁹ It was the hidden knowledge deduced by her. Thus, it can be said that women in Islam has the right of decision making and mutual consultation.

4.9 Status of Woman as a Mother:

The place of mother in Islam is next to Allah and His apostle. Mothers are assigned a high degree of honour and respect in Islam. This may be understood by the following declaration of Mohammad, “*Paradise lies under the feet of mother.*”¹⁰⁰ The Quran instructs man to give just and fair treatment to both father

and mother and commands him to be obedient and kind towards them, because both of them confer benevolence on him and bear a lot in bringing up of him. The Quran says –

“And your Lord has declared that you worship none but Him. And that you be dutiful to your parents. If one of them or both of them attain old age in your life, say not to them a word of disrespect, nor shout at them but address them in terms of honour. And lower unto them the wing of submission and humility through mercy, and say: “My Lord! Bestow on them Your Mercy as they did bring me up when I was young.” ”¹⁰¹

These verses of the Quran lay great emphasis or stress regarding obedience and respect to parents. But among parents mother’s place in terms of obedience, respect and fair treatment has been emphasized much above father as mother bears major portion of pain in giving birth and bringing up of a child. The Quran expresses the great services and benevolence of the mother more evidently and prominently in the following manner –

“And We have enjoined on man (to be dutiful and good) to his parents. His mother bore him in weakness and hardship upon weakness and hardship, and his weaning is in two years - give thanks to Me and to your parents. Unto Me is the final destination.”¹⁰²

There is another verse in the Quran in this regard which also says –

*“And we have enjoined on man to be dutiful and kind to his parents. His mother bears him with hardship. And she brings him forth with hardship, and the bearing of him, and the weaning of him is thirty months...”*¹⁰³

It is to be noted that these verses while enjoining upon man to be good and dutiful towards his parents but have made special reference to the mother’s great services in bringing up and bearing of a child. No doubt that the father also bears hardships with mother in bringing up the child like feeding, nursing, education and training etc. But the role played by the mother is much higher than that of the father. Because it is only the mother who bears all the pains and troubles of pregnancy and delivery alone. She carries the child in her womb for nine months. She suffers from a great pain to give birth a child and her suckling of the child for two whole years for which she sacrifices her sleeps at night. To bear all these pains and hardships is not an easy task. Father does not bear all these pains and hardships. Therefore, the mother deserves the higher degree of obedience and respect in comparison to the father. Mohammad told that to mothers respect and fair treatment to be offered three times more than that of the father. In a tradition of Mohammad it is narrated as follows –

“Abu Hurairah reported: A person came to Messenger of Allah and asked, “Who among people is most deserving of my fine treatment?” He said, “Your mother.” He again asked, “Who next?” “Your mother”, the Prophet replied again. He asked, “Who next?” He (the Prophet) said again, “Your mother.” He again asked, “Then Who?” Thereupon he said, “Then your father.””¹⁰⁴

So, from this hadith it can be understood that mothers are given priority over fathers three times more so far as respect and good treatment is concerned.

Besides, mothers are assigned so high status and so high degree of respect that can be understood from the following hadiths –

*“Ibn Omar reported that a man came to the Prophet and said: O Apostle of Allah! I have committed a great sin. Is there any repentance for me? He enquired: Have you got mother? ‘No’ replied he. He asked: Have you got mother’s sister? ‘Yes’ said he. He said: Then accord her good treatment.”*¹⁰⁵

*“Muawiyah-b-Ja’hemah reported that Ja’hemah came to the Messenger of Allah! I intend to join a battle and have come to you for consultation. He enquired: Have you got mother? ‘Yes’ replied he. He said: Then keep near her, because Paradise is at her feet.”*¹⁰⁶

*“Asma’-bint Abu Bakr As-Siddiq said: My mother came to me while she was still a polytheist, so I asked Messenger of Allah “My mother, who is ill-disposed to Islam, has come to visit me. Shall I maintain relations with her?” He replied, “Yes, maintain relations with your mother.”*¹⁰⁷

In the first reported case of the above mentioned three traditions it is stated that good treatment to the mother and in the absence of mother to the mother’s sister is an expiation of a great sin committed by a man. In the second reported case it is ordered to keep one’s mother near with him and offer her good treatment, it is much essential than that of participating in a battle, because paradise lies under

her feet. In the third reported event fair treatment towards mother is encouraged even if she is a polytheist or she is not a follower of Islam.

From all these it can be concluded that a woman, as mother, is assigned a high status and enjoys a highly respectable position in Islam. By declaring ‘paradise lies under the feet of mother’, ‘good treatment to mothers is an expiation of one’s great sin’ and ‘mothers should be respected three times more than the father’, mothers are given a high degree of honour and dignity in Islam.

4.10 Status of Women as a Wife:

Maulana Fazlul Karim in his “Al-Hadith” writes, “The ideal of wifehood in Islam is love and affection and not subordination and servitude. She is regarded as the safeguard for husband against sin.”¹⁰⁸ After marriage the personality of a woman neither gets dissolved in the personality of her husband nor does she become his subject of domination or servant, since woman possesses an independent entity of her own. A Woman as a wife in Islam enjoys many privileges, such as, she is entitled to mahr from her husband at her marriage, she is entitled to full maintenance from her husband even if she is wealthy and she is also entitled to inherit the property of the husband. All these are discussed in details in the previous sections of this chapter. Not only that she also enjoys a high status of honour and respect as wife. Mohammad declared, “*The best among you is he who treats his wife best.*”¹⁰⁹ Allah bestows His mercy on those who treats his wife in the best and proper manner. Islam exhorts man not only to discharge the legal rights of his wife but to behave with her decently and justly. It is not sufficient on the part of the duty of the husband to give mahr and to provide maintenance only

to his wife. The duty of a husband is more than that. He is required to treat his wife nicely in every circumstance. Sometimes it is happened that the husband does not like the face or temperament or habits of his wife which affects their relationships. In such situations man is instructed to consider the better aspects of his wife. Because, it is the demand not only of morality and nobility but also of wisdom and sagacity. Sometimes, a certain thing appears unpleasant to man, but may be there are innumerable aspects of goodness in it. So, the man should not spoil the cordial relationship with his wife. In this regard the Quran says –

“... On the contrary live with them on a footing of kindness and equity. If you take a dislike to them it may be that you dislike a thing, and Allah brings about through it a great deal of good.”¹¹⁰

This verse enjoins the believers to accord good treatment to their wives and also says that if a man dislikes his wife, means that he dislikes a thing in which Allah has bestowed abundant good. There is a beautiful commentary on this verse reported in a hadith and that is as follows –

“The Messenger of Allah said: Let no believing man hate a believing woman. If he hates one trait of her character, he shall be pleased with another that is within her.”¹¹¹

The relation of husband and wife is, in fact, the relation of love, affection and intimacy. Marital bond or the relation of love and affection between the husband and wife is recognized in the Quran as one of Allah’s signs and it is described in the Quran in the following manner –

“And among His Signs is this, that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your (hearts): Verily in that are Signs for those who reflect.”¹¹²

What is stated in the above verse is that the relation of husband and wife is a relation of love, affection and tranquility. Regarding the relationship of husband and wife there is another beautiful description in the Quran and it is as follows –

“... They are your garments and you are their garments...”¹¹³

This verse implies that just as the clothes protect a person, so, like clothes, husbands are the protectors of wives and wives are the protectors of husbands. The inward meaning of garment here is peace and security. Meaning thereby the relation of husband and wife, as each other’s garments, is of mutual support and mutual protection.

4.11 Polygamy and Purdah – Two major issues of women’s status in Islam:

4.11.1 Polygamy:

It is true that the Quran permits polygamy. One can marry up to four wives. But this is not enough to say like this. There is much more that needs to be understood or explained properly regarding polygamy. What was permitted in certain social context was taken by men as license to marry up to four women. But it is very far from the Quranic spirit. Actually polygamy was permitted in Islam after

the Battle of Uhud, the second battle of Islam that took place between the Muslim and the Quraysh. In that battle many Muslim males were killed and as a result the problem of widows and orphans arose. To solve this problem the Quran had permitted four marriages, but at the same time it is strictly indicated in the Quran to do justice or to provide equal treatment to the wives. And it is also indicated that if anybody feels that he cannot do justice with his wives then he should marry only one that is better to prevent from doing injustice. So, polygamy has been permitted by the Quran only in order to do justice to the widows or to the orphans. This message is clear in the following verse of the Quran:

“If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; but if you fear that you shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice.”¹¹⁴

This verse unambiguously permits marriage with more than one woman. But it is very clear in the words of this verse that polygamy is permitted only in the context of orphan girls or widows and the primary concern is justice both to the orphans and to the co-wives. The orphans were weak and subjected to injustice in respect of themselves and their properties. In order to ensure justice to the orphans Allah permitted men to marry up to four either from amongst these orphans or their mothers (widows) so that they and their properties would be looked after properly. If one does not have any such problem of looking after orphans, the question of taking more than one wife does not arise at all. Orphans had to be taken care of and in the

prevalent social context this could be best done by allowing Muslim males to marry widows or orphans, but strictly on the condition that they would do justice to all of them and provide equal treatment to all the wives and if they were not capable of doing so then they should not marry more than one women.

There is another verse in the Quran dealing with polygamy and it is as follows –

*“You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them so as to leave the other hanging...”*¹¹⁵

The above cited verses (i.e. 4:3 and 4:129) unambiguously assert that justice to the orphans and widows and also to the co-wives is the primary consideration of polygamy. The verse 4:129 with clear warning and admonition that no man can deal equally with two or three or four wives, how hard he may try, indirectly forbids the plurality of wives. Thus, on the observance of the cited verses with regard to polygamy it is found that monogamy is encouraged more than polygamy, while monogamy is ideal, polygamy is an exception or contextual means.

Besides, it is also worthwhile to note that in the pre-Islamic period almost in all societies polygamy was prevalent without having any restrictions as to the number of wives. The pre-Islamic Arabs used to take any number of wives without taking into consideration for justice to them. To prevent this custom the Quran restricted the number of wives upto four only on the condition that they should be treated justly. So, instead of saying that in Islam it is permitted to marry upto four, it

is better to say that it is restricted to four. Mohammad, as a social reformer, attempted to bring about gradual change instead of complete change in marital relationship. Viewed from this perspective, it would seem that the Revelation concerning polygamy sought to reform the practice of it as far as possible by restricting the number of wives rather than to ratify it. The Quran, thus, was not intended to encourage polygamy but to legitimize monogamy.

The permission to practice polygamy in Islam was not given to men in order to satisfy their personal desires. One of the reasons for the institution of polygamy was the surplus of helpless women. Polygamy was introduced in order to give shelter to the helpless widows and to take care of the orphans, by marrying the widows and keeping their orphaned children under their guardianship. Thus, polygamy cannot be considered as a general rule. Rather it is recognized as a solution to certain social problems. In essence monogamy is the general rule, while polygamy is a reservation for certain urgent circumstances with the provision of just and equal treatment to the co-wives. For example, if the wife constantly falls sick and unable to give birth a child then a man can marry another wife but with the permission of the first wife. If he remarries another woman without her consent then it will be injustice to her which is strictly forbidden in the Quran.

Maulana Maududi commenting on the verse, i.e. 4:3 of polygamy says – “It should also be noted that this verse restricts polygamy with the provision of justice to all the wives; therefore whoso abuses this permission without fulfilling the condition of justice and marries more wives than one tries to deceive Allah.”¹¹⁶

Parvez, a noted commentator of the Quran, commenting upon polygamy says –

“It would be seen that the permission for more than one wife is contingent on two conditions:

- (1) If there is an excess of single or husbandless women in society and there is no other reasonable solution possible, then exception could be made to the rule of monogamy and one would marry these (husbandless) women.
- (2) This permission is also conditional on justice being done to all individuals in the family. Also, it should be possible for an individual to bear the burden of all the children begotten by the wives. It should not become an unbearable burden on him.”¹¹⁷

Thus, polygamy is permitted keeping in view the social context. But it is a matter of sorrow that it is misused and misunderstood by many. Many people are aware of marrying four wives but not aware of the condition of doing justice and providing equal treatment to all wives.

4.11.2 Hijab or Veil or Purdah:

Hijab or veil is one of the most important concepts in Islam. This concept of veil or purdah is the central cause of the discriminatory ideas about women in Islam. Islam is generally thought to be a religion in which women are nothing but a strictly controlled entity and have to live in purdah or veil and confined themselves within the four walls of their homes. But this is quite wrong. It is true that in Islam

women are ordered to protect their modesty and chastity and for that purpose women are advised to observe hijab. But it is a matter of disgrace that the observance of hijab is understood by many to keep women away from the outside affairs of the world. But this is not the Quranic spirit. It is worthwhile to note that hijab is not only applicable to women but is applicable to men also and this message is clear in the following verse of the Quran –

*“Say to the believing men that they should lower their gaze and guard their modesty: that will make for greater purity for them: and Allah is well acquainted with all that they do.”*¹¹⁸

This verse shows that the Quran makes it obligatory to men also to keep their modesty as it is for the women. This is a command to Muslim men that they should cast down their looks or restrain their gaze and avoid looking at women or at the satar (private parts) of others intentionally or purposely. In other words, they should not lustfully look at women and in order to prevent any possibility of temptation, they are required to cast their glances downwards. This is known as “hijab of the eyes.” Here the satar of a man is from naval to knee and the satar of a woman is the entire body except her face and hands. The satar of both man and woman should not be exposed.

Similar command regarding the hijab of the eyes is given to women also, as it is stated in the following verse –

*“And say to the believing women that they should lower their gaze and guard their modesty...”*¹¹⁹

In this verse women are commanded to cast their glances downwards and they should not gaze or look at men with a bad intention or at the satar of others. Women are also commanded to keep their modesty.

So, observance of modesty is obligatory for both men and women. To guard modesty man should guard their satar (private parts). By guarding private parts means they should not indulge in unlawful activities like, fornication, adultery etc. and secondly, they should abstain from exposing their private parts before others. In other words, men should also keep chastity and modesty.

Similarly, women are also commanded to protect their modesty and chastity. To guard their modesty women should also cover their satar. How to protect modesty and chastity of a woman is described in the Quran in the following manner –

“... and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof; that they should draw their veils over their bosoms and not display their beauty except to their husbands, their fathers, their husband’s fathers, their sons, their husband’s sons, their brothers or their brother’s sons, or their sister’s sons, or their women, or the slaves whom their right hands possess, or male servants free of sexual urge or small children who have no sense of the shame of sex; and that they should not strike their feet in order to draw attention to their hidden ornaments...”¹²⁰

There are many controversies regarding the hijab or veil of a woman among the scholars or the theologians. The orthodox theologians say that women

must cover their whole body including their faces. But in the above verse regarding the hijab of woman nowhere it is mentioned to cover the faces also. What is emphasized in this verse is that women should dress in a dignified manner, so that the ill-conduct or ill-desire towards women that leads to corruption of society can be prevented. During the pre-Islamic period there was so much violence against women. To protect themselves and to prevent violence against them women were advised to dress in a dignified manner when they came out of their homes. It is clearly stated in the above verse that women need not draw veil in the presence of certain categories of men, like husband and to whom marriage is prohibited, such as father, father-in-law, brothers, sons and some others whom can be trusted or those who have not achieved puberty and who have no knowledge of sex or shame or those who are beyond sexual urge. These instructions mentioned in the above verse clearly indicate that women should not display their charms and beauty before strangers and that is why they are advised to cover their body properly and draw veils on their bosoms when they come out of homes. The normative concept behind the restrictions imposed on women in the above verse is to protect their chastity and not to confine them to the four walls of their homes or to compel them to wear a traditional kind of veil as insisted upon by many or most of the theologians. Interpreted in a broad way (or broadly speaking), this is imposed to save women from becoming mere objects of lust and thus losing their individual dignity.

Besides, the phrase ‘except what (must ordinarily) appear thereof’, (or which is displayed of itself) mentioned in the above verse have always generated a lot of controversy among the scholars and jurists. According to Ibn Abbas, ‘what

appears thereof’ means all those parts of the body which normally remain exposed like hands and face. So, according to him, hands and face need not be covered and can be kept exposed. On the other hand, Hadrat Abdullah-bin-Masud and his followers hold that hands and face should also be covered and cannot be exposed. The followers of Hanafi school of Islamic jurisprudence accepted the view of Ibn Abbas and hold that women can keep uncovered their face and hands.¹²¹

The interpretation that the face and hands can be kept uncovered is based on a tradition of Mohammad found in Abu Da’ud, in which it is stated that once Asma bint Abu Bakr, sister of Ayesha, came to Mohammad wearing very thin clothes and then he turned away his face from her and said, “*O Asma when a girl attains maturity it is not proper that anything on her should remain exposed except this and this. He hinted on her face and hands.*”¹²²

There is another verse in the Quran regarding hijab and that is as follows –

*“O Prophet! Tell your wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): that is most convenient, that they should be known (as much) and not molested...”*¹²³

In this verse also nowhere it is mentioned to cover the face of women. This verse encourages the believing women to put on an outer garment to cover their body properly when they go out of homes (abroad) so that molestation against them can be prevented. The Arabic word for the outer garment used in this verse is ‘Jalabeeb’, which is the plural form of Jilbaab, meaning an over-all outer garment. So, the sole purpose of observing veil is to save women from molestation or ill

looks that may have towards them. This can be again clarified by observing another verse of the Quran –

*“Such elderly women as are past the prospect of marriage, there is no blame on them if they lay aside their (outer) garments, provided they make not a wanton display of their beauty: but it is best for them to be modest...”*¹²⁴

In this verse of the Quran the old women, who are past the prospect of marriage and no longer capable of exciting the passions of men, are exempted from observing purdah or veil. So, all these make it clear that the only purpose of commanding women to draw veil is to prevent the possibility of any temptation and to protect them from lustful looks. It cannot be denied that female modesty and chastity is such a precious thing that all the wealth of the world put together cannot take its place. So, it must be protected.

Dr. Asghar Ali Engineer, a noted scholar of Islam, in his book “Rights of Women in Islam” writes –

“To argue that purdah is no longer needed is not to argue that chastity too can be dispensed with. Chastity is the norm while purdah was a contextual means to achieve it. A woman can protect her chastity without observing purdah. Thus, if our concept of morality is sufficiently dynamic and creative, we will not resist attempts to give purdah a new form, discarding the old one and, circumstances permitting, doing so without sacrificing the essential norm. In other words, the sociological and empirical should be as

important to us as the theological. This balance should never be lost. It is a requirement of the moral dynamics of a society.”¹²⁵

Thus, from the above discussions it can be concluded that the emphasis is given on decent wearing. Hijab or veil never be a barrier for women in Islam in her way of progress. It is only a means to achieve chastity and modesty and not to confine themselves within the four walls of home. The purpose and meaning of hijab is great and broad, but its application is narrow. Hijab includes the way a person talks, looks and thinks. All of it should be done modestly and applied to both man and woman.

4.12 Conclusion:

This chapter can be concluded with the assertion that the above discussion reveals that several conventional rights are accorded on women in Islam which not only uplifts women’s status and dignity in the society but also provides justice towards them in the qualitative sense. Most of the revivalists maintain that the term feminism is in contradiction with the teachings of Islam, as for them it is a western phenomenon. But feminism is after all about women’s rights. The Quran is so much concerned about women’s rights that it will not be wrong to say that the Quran preaches feminism, though it is not an old Shariah term. The rights granted to women in the Quran and by Mohammad are obviously the great improvement in comparison to the condition of women prior to the advent of Islam. But after the death of Mohammad the condition of women in Islam began to decline. When Islam passed through the feudal period veil system and polygamy came to be practiced widely and rigidly than the other rights and as a result women remained

subordinate to men and thus Islam lost its original spirit. So, religion is not the main culprit, male chauvinism is the main culprit. It is patriarchal system and male chauvinism which distorted the truth of Islam and made Islam a means of keeping women in bondage. That is why, the concept of gender justice is thought to be non-existent in Islam. But if the Quranic teachings are understood and practiced in its true spirit, it will make clear that gender justice is not denied in the Quranic teachings. There are many verses in the Quran in which it is stated that man and woman are equal and they receive just and equal treatment from Allah. One such verse is as follows –

“For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give charity, for men and women who fast (and deny themselves), for men and women who guard their chastity and for men and women who engage much in God’s praise, - for them has God prepared forgiveness and great reward.”¹²⁶

So, the above verse says that in the sight of Allah both man and woman are equal and they will get reward and punishment equally from Him for their deeds. The great damage done to the Muslim women’s status today is mainly due to the lack of understanding of the Quranic teachings and also due to the ignorance of Muslim women of their rights prescribed in the Islamic scriptures for them. So, it must be admitted the fact that though it is unpleasant, women’s rights are not only

violated by men only but also are violated by women themselves as they are not aware of their rights and their subordinate position.

Islam as a religion tries to restore the dignity of women by giving many rights to them and uplifts the status of women. Though there are provisions in Islam for women empowerment yet their position still remain backward. It is mainly due to their ignorance and lack of knowledge and lack of that education they are misled and deceived easily. Therefore, to make them aware they must be educated. Besides, Muslim women themselves must also be conscious of their rights and also have knowledge of Islamic Law so that they cannot be deceived in the name of Islam. It is due to women's ignorance that injustices against them have not stopped.

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CHAPTER – V

CRITICAL ANALYSIS & CONCLUSION

From the discussion of the preceding chapters it seems that several reforms for the improvement of the society and humanity in general and for the improvement of women's status in particular have been brought about in Islam. Though there are many rights accorded to women equal to that of men in the Quran yet the question of Muslim women's status has been found to be not satisfactory. There are obviously some grounds, such as, a man may be polygamous upto four wives, but a woman cannot marry more than one man at a time, a man can divorce his wife at his will in one sitting but a woman cannot, a daughter gets half share to that of a son in inheritance, a women's testimony is counted as half to that of a man and even a man can beat his wife if founds disloyal to him but she cannot etc. are some of the teachings of Islam which recognize male superiority and thus goes against the spirit of gender equality. One such verse of the Quran in this regard which is often cited to establish male superiority over women is as follows –

“Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore, the righteous women are devoutly obedient and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part you fear disloyalty and ill-conduct, admonish them (first), (next) refuse to share their beds, (and last)

beat them (lightly); but if they return to obedience, seek not against them means (of annoyance): for Allah is Most High, great (above you all).”¹

The above cited verse necessarily and sufficiently assigns superiority to men over women on the ground that they are declared as the protectors and the maintainers of the women as they provide maintenance to support their women from their earnings and wealth and hence, women are commanded to be obedient and loyal to their husbands. In any case if the woman is found to be disloyal to him then the man is given the authority to warn her first, then also if she does not return he is instructed to avoid her or separate her bed, if it also does not work then he is allowed to beat her. The concept of wife-beating definitely goes against the feminist spirit. It goes against the dignity of women. This verse of the Quran lays emphasis on domination and control of women by men. Women are described as being in need of protection of men and men are described as the protectors and providers of women. This is offered as the primary justification for men being in charge of women, because they spend their wealth for the support of women. This verse, if literally taken into consideration, leaves no room for women's freedom and equality of man and woman in Islam. The institution of wife beating can never be a solution to wife's disobedience. Women may disobey, as stated by the above cited verse, only on the pain of being punished by their husbands. In this regard Ausaf Ali in his book *“Modern Muslim Thought”* stated –

“Political and organization theory is agreed upon the necessity of someone being in charge of a given human entity, organization, system or grouping and the further necessity that person's authority) be respected and obeyed. In case of disobedience the person who disregards and disobeys the

authoritatively laid down orders and instructions must be somehow punished. Islam puts the man of the house in charge of the entire household including the woman of the house and everyone else—male or female. There can be no objection to this on any grounds. It is one way of clearly laying down the lines of communication and authority in the family organization and this is Islam's way.”²

Since, the concept of equality of male and female is challenged by this verse, hence, to comprehend the reason underlying this verse it is important to know in what context it was revealed. Zamakhshari, a noted commentator, in his “Kasshaf” describes the context in which the above mentioned verse was revealed. It is said that Habiba bint Zaid (an ansar lady) complained to Mohammad that her husband sa'd bin Rabi' slapped her. Mohammad told her to retaliate. But this caused serious problem among men as they would not accept retaliation from their wives and hence they complained to Mohammad and then this verse, i.e. 4:34 was revealed.³

From the story of Habibah bint zaid it is clear that Mohammad himself was inclined to give the right to retaliate to the wife, but he could not give this right as Allah's revelation willed otherwise. After the revelation of this verse Mohammad, according to Zamakhshari, said that we wanted it one way but Allah wanted it the other way.⁴ In “Riyad-us-Saliheen” Al-Imam Abu Zakariya Yahya referred to a hadith on wife beating which contradicts the verse 4:34. The hadith is as follows—

Iyas bin Abdullah reported: Messenger of Allah said, “Do not beat Allah's bondwomen”. When 'Umar came to Messenger of Allah and complained

*saying : “The women have become very daring towards their husbands,”
He gave permission to beat them. Then many women went to the family of
the Messenger of Allah (wives) complaining of their husbands, and he (the
Prophet) said, those who do so, that is, those who take to beating their
wives, are not the best among you.”⁵*

Hafiz Salahuddin Yusuf in *Riyad-us-Saliheen* commenting on this Hadith said that “those who take to beating their wives are not perfect people.”⁶

A major inconsistency is found regarding wife-beating between the teaching of the Quran and the tradition of Mohammad. For Mohammad wife-beating was not a sign of best behaviour. If it is true then how the Quran, the Divine Book, permits wife-beating and at the same time holds that those who beat their wives are not perfect people. However, this inconsistency seems to be an apparent inconsistency and it would not be inconsistent provided we try to understand the whole thing in a slightly different way. Though beating of wives is permitted yet one can avoid beating one’s wife by making her understand or accept the fact that what she has been doing is not right. He must be able to bring about a change in her, if he so feels, not through physical punishment but by proper mental guidance. Thus, it implies that though wife-beating is permitted yet it can be avoided by adopting some non physical means. And one who can bring about a mental change in the wives without taking the means of physical torture is regarded as a perfect man. Thus if we try to interpret the whole thing in this light then it seems that no inconsistency remains. Besides, Mohammad himself first ordered the women to retaliate, but when problem arised he again gave men the permission to beat their wives, again when women complained he declared those

who beat Allah's handmaiden are not perfect. Thus, this sort of inconsistency is found in his teachings. This inconsistency indicates the fact that Mohammad was unable to overlook the demand of social circumstances.

There is another verse found in the Quran in which the superiority of man over woman is emphasized. The following is the verse which rightly states—

“... And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And Allah is Exalted in power, wise.”⁷

Again an inconsistency is found in this verse. This verse while stating that ‘women have similar rights to those of men’ establishes the fundamental equality of men and women. On the contrary while it states that ‘men are a degree above women’ it again seems to accept the fundamental inequality of men and women. Men are seen as degree above women. This verse is found to be controversial and hence, unclear. Maulana Abul Kalam Azad, commenting on this verse says that –

The Quran through these four words—lahunna mislul-lazee ‘alayhinna (i.e. women have similar rights to those of men) have made revolutionary declaration of equality of men and women. According to him, these four words have given women all that was their right but they had never got them. These four words lifted women from the dust of deprivation and humility and made her sit on the throne of dignity and equality. He holds that the expressions “men are a degree above women” is to be taken in the sense that men earn and feed women. Azad strongly claims that men do not get any distinction by birth over women. If women earn and run the family

women would also have distinction of being a degree above men. Thus, the statement of Quran “men are a degree above women” is functional and not biological, in any way.⁸

Another critical remark that has been raised in support of superiority of male over female in Islam is that a male gets double share in inheritance to that of a female. Regarding inheritance the Quranic regulation is found in the following verses –

“Allah (thus) directs you as regards your children’s (inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth (the distribution in all cases is) after the payment of legacies and debts. You know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-knowing, All-wise.”⁹

The shares of inheritance as prescribed in the above verse of the Quran can be described as follows—

If the deceased has one boy and one girl then the boy or the son will get two third (2/3) of the property and the daughter will get one third (1/3) of the same. Besides, if there is no son but only one daughter, then she will inherit the half of the total property and the rest will be divided among other heirs, such as,

deceased's wife, parents etc. Another situation, mentioned in the above verse, is that if there are no sons but more than one daughter – two or three daughters then the daughters shall get two third of the property, meaning thereby, the whole property will be divided into three parts and two parts of that will be equally divided between them.

In sum and substance the share of the son in inheritance is half ($1/2$) and the share of the daughter is two third ($2/3$). But in the absence of the son the daughter's share is half ($1/2$).

Father and mother of the deceased have also share in his property. Both father and mother as class II heirs will receive one sixth ($1/6$) share of the inheritance, if the deceased has children or class I heir. But in the absence of children a mother as class I heir received one third ($1/3$) share of the inheritance. But “the father as class I heir receives one sixth ($1/6$).”¹⁰

Another verse of the Quran regarding the law of inheritance which describes the share of husband and wife, brother and sister is the following –

“In what your wives leave, your share is a half if they leave no child; but if they have a child, you get a fourth; after payment of legacies and debts. In what you leave, their share is a fourth, if you leave no child; but if you leave a child, they get one eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies

and debts; so that no loss is caused (to any one). Thus is it ordained by Allah; and Allah is All-knowing, Most Forbearing.”¹¹

The husband of the deceased wife gets one fourth (1/4) share in what is left by her if she has left children and if there are no children left by her then the husband gets half share (1/2) of the inheritance. On the contrary, the wife of the deceased gets one eighth (1/8) share in what is left by him if there are children and one fourth (1/4) if there are no children left by him.

Again the shares of brothers and sisters as described in the verse 4:12 are equal, i.e. one sixth to each of them if there is one brother and one sister and if there are more than two then they will be equally entitled to one third.

Moreover, the instruction mentioned repeatedly in the above two verses i.e. ‘the distribution in all cases is after the payment of legacies he may have bequeathed or debts’ indicates that it is permissible for a person to write a will to bequeath equal shares to the heirs whether male or female.

In sum and substance a male does not get double share to that of female in all cases, since, the share of female as mother and sister seems to be equal to that of their male counterparts. But the share of female as daughter and wife is half to that of their male counterparts. The underlying logic behind the principle of double shares of son and husband to that of their female counterparts is due to the financial burdens and responsibilities attributed to them and it does not imply any discrimination done against women. According to Islamic Shariah, a man is obliged to shoulder all the financial responsibilities of a family such as, he has to provide financial support to his wife and children and also to his parents, whereas a

woman has been exempted from all such financial obligation. Besides receiving her share of inheritance a woman is also entitled to receive her nuptial money or mahr at the time of marriage from her husband, which is exclusively her property. Not only that she is also entitled to maintenance from her husband which is obligatory on his part. Hence, a female apart from her inheritance share receives additionally or will receive mahr and maintenance from her husband while her male counterpart has to provide mahr and maintenance from his wealth to his wife. It is because of this difference in financial burdens differences in shares seem to have existed.

This underlying logic of the Quranic verses regarding inheritance is supported by many scholars like, Mumtaz Ali Khan, Asghar Ali Engineer etc.. Thus it seems that to say that justice has not been meted out to the woman regarding inheritance on the basis of share of inheritance is not proper. Rather in order to ensure justice to woman regarding inheritance the above cited verses, i.e.- 4:11-12 were revealed.

“Al-Razi tells us about the context of the revelation of this verse, i.e. verse 4:11. According to him, when S’ad bin Rabi’ was martyred he left behind him his wife, two daughters and a brother. The brother took away the entire wealth of his deceased brother, leaving the wife and daughters high and dry. The wife went to the Prophet and complained about her husband’s brother appropriating all his wealth. The Prophet sent her away saying Allah would decide the matter. After some time she again went to complain about it. It was then that this verse (4:11) was revealed. The Prophet

ordered S'ad's brother to pay two thirds of the property to the daughters and one eighth to their mother. He could keep the rest."¹²

Thus, seen in this context, it becomes clear that when this verse was revealed during that time women had no share in inheritance. In such a situation the Quran by ensuring a determinate share in inheritance to woman as a daughter, as a wife and as mother, elevated their status from nothing to something. This right to inheritance gives women ample opportunity to empower themselves.

The fact that woman's testimony counts as half to that of man is another instance of inequality of man and woman found in Islam. In a verse of the Quran it is stated that the testimony of two women is equal to that of one man, which tries to assert the deficiency and mental inability of women. The following is the verse—

“O you who believe! When you deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write: as Allah has taught him, so let him write. Let him who incurs the liability dictate, but let him fear His Lord Allah, and not diminish anything of what he owes. If the party liable is mentally deficient, or weak, or unable himself to dictate, let his guardian dictate faithfully, and get two witnesses, out of your own men, and if there are not two men, then a man and two woman, such as you choose, for witness, so that if one of them errs, the other can remind her. The witness should not refuse when they are called on (for evidence)...”¹³

The above verse gives rise to a question ‘why did the Quran require two women in place of one man?’ With regard to this question two reasons are found in the above verse. One is that the Quran requires two women for testimony because if one of them errs then the other woman can remind her (the first woman). If this statement is observed deeply, it is found that though two female witnesses in place of one male witness is recognized, only one would bear witness, the other’s function is nothing more than reminding her if she makes any mistake due to lack of experience in financial matters since the witness is in reference to financial contracts.

As discussed by Gail Minault, Mumtaz Ali Khan also points out that this verse in the Quran refers specifically to business matters, in which women are less experienced. But their lack of experience is a product of social conditions, not an inherent defect. In testimony over marriage, divorce, adultery— matters where women are just as experienced as men—the Quran makes no distinction. Mumtaz Ali cites a hadith in support of his argument that there are cases in which one woman’s testimony can be decisive, for example: the case where a woman served as wet nurse to a boy and a girl who later married. Only she would be in a position to confirm that the marriage was incestuous in Islamic Law. Hence, to say that a woman’s testimony is unequal to that of a man is a misreading of Islamic Law and deprives half of humankind of legal rights.¹⁴

There is a reason that lies behind the statement “The witnesses should not refuse when they are called on (for evidence).” And the reason is that business contracts are generally made for a definite period and during that period or at the end of that period if the witnesses are required then they are to be available if

necessary. Mumtaz Ali Khan offers another argument in this connection. He was an advocate of women's rights in Islam and holds that two women are recommended for testimony because often women have certain problems like menstruation or pregnancy or delivery of child and cannot go to bear witness. In such situations the other woman can testify in her place.¹⁵

However, the Quranic teachings in matters of witness are not uniform in all cases. There are some verses in the Quran regarding witness in which no gender has been specified. One such verse is as follows—

*“Thus when they fulfil their term appointed, either take them on equitable terms or part with them on equitable terms; and take for witness two persons from among you, endowed with justice, and establish the evidence (as) before Allah ...”*¹⁶

In the above verse the witnesses of two persons regarding divorce are recommended, but no gender has been specified, it may be two male, or two female or one male or one female.

Again, regarding adultery the Quran prescribes four witnesses and no gender has been mentioned. The Quran says –

*“And those of your women who commit illegal sexual intercourse, take the evidence of four witnesses amongst you against them...”*¹⁷

*“And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their witnesses forever...”*¹⁸

In the absence of four witnesses the husband and the wife themselves need to testify four times. The Quran says—

“And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allāh that he is one of those who speak the truth. And the fifth (testimony should be) the invoking of the curse of Allāh on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allāh, that he (her husband) is telling a lie. And the fifth (testimony) should be that the Wrath of Allāh be upon her if her speaks the truth.”¹⁹

In the above verses it is clear that the former principle, i.e. ‘a female’s testimony is half’, is not counted as half, as the wife is not asked to bear witness eight times, rather both the husband and the wife are asked to bear witness four times.

The superiority of man over woman in Islam is clear in case of divorce in general and triple pronouncing divorce in particular. Though women are given the right to divorce under certain conditions yet men enjoy more privileges than women. As discussed in the preceding chapter there are references of many forms of divorce in Islamic Law. In every form of divorce except ‘*Khula*’ and ‘*Mubarat*’ it seems that the husband enjoys the absolute privilege. In the forms of divorce, i.e. ‘*talaq-i-ahsan*’ and ‘*talaq-i-hasan*’ the husband has the right to pronounce divorce, the wife does not have it, she has a passive role in this regard. She has nothing to do except observing the period of *iddah*. In the form of divorce, i.e. ‘*talaq-i-*

biddah’, or triple pronouncing divorce the husband can divorce his wife without assigning any reason to her in one sitting but the wife cannot. In other forms of divorce also such as ‘*zihar*’, ‘*ila*’, ‘*lian*’ etc. the husband plays the active role and the wife remains passive. In a form of divorce known as ‘*talaq-i-tafwiz*’ the wife can pronounce divorce to her husband only when the husband has delegated the power of divorce to her. It again indirectly depends at the will of husband. If he delegates the power then only she can pronounce divorce to him, in case if he is found to be disloyal to her or violated the conditions of marital contract.

Besides during the period of *iddah* if the husband wants reconciliation then he has the right to decide to take her back, but she does not have the right to decide to take him back. In a verse of the Quran it is stated in the following manner—

*“Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what Allah has created in their wombs, if they have faith in Allah and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation...”*²⁰

However, if the reconciliation between the husband and wife takes place before the third pronouncement of *talaq*, the question of remarriage or reunite does not arise. But when the wife is irrevocably divorced but after sometime the husband wants her back, their remarriage is directly not possible. The divorced wife is required to marry another man who is to consummate the marriage and then divorce her so that she could become *hallālāh*, i.e. permissible for her former

husband. This is known as '*hallālāh marriage*'. The Quranic verse in this regard is the following—

*“And if he has divorced her (the third time), then she is not lawful unto him thereafter until she has married another husband. Then, if the other husband divorces her, it is no sin on both of them that they reunite, provided they feel that they can keep the limits ordained by Allāh...”*²¹

Without adopting this tedious process, i.e. *hallālāh* marriage mentioned in the above verse women cannot revert to their former relationship of husband and wife. It is a punishment to the husband in the sense that after divorcing a wife once it is not easy to get her back. But this process is more humiliating for a woman than for a man since, the woman needs to marry another man in order to become permissible or lawful for the former husband. This process of *hallālāh* marriage lowers the dignity of woman in general.

But one important thing is to be pointed out here that divorce is possible without the consent of the wife but *hallālāh* marriage is not possible without the consent of the wife. Mutual agreement of both the husband and wife is essential in this regard. The Quran asserts it in the following way—

*“Do not prevent them from marrying their (former) husbands, if they mutually agree on reasonable basis. This (instruction) is an admonition for him among you who believes in Allāh and the Last Day...”*²²

Thus, the wife has the right to refuse for *hallālāh* marriage, since, a woman, according to Islamic Law, cannot be married without her consent. Hence, the

husband can divorce her easily but cannot take her back so easily and cannot force her for *hallālāh* marriage.

Polygamy is another instance of inequality. In Islam men are allowed to marry upto four wives, but a woman cannot. She, of course, can remarry another man but only when she is a widow or a divorcee. She cannot marry more than one husband at a time. The Quranic verses dealing with the issue of polygamy are the following –

“If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; but if you fear that you shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice.”²³

“You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them so as to leave the other hanging...”²⁴

The above cited verses unambiguously assert that justice to the orphans and widows and also to the co-wives is the primary consideration of polygamy. As already mentioned in the preceding chapter polygamy was permitted in Islam after the Battle of Uhud, in which many Muslim males were killed and as a result the problem of widows and orphans arose. To provide security and safety and also to ensure justice to the orphans and widows the Quran permits polygamy. But at the same the Quran strictly indicates that if anybody fears that he is unable to treat the co-wives justly and equally then he cannot marry more than one. The Quran also

indicates that it is not easy to provide equal treatment or justice to the co-wives. The verse 4:129 clearly indicates that equal justice is to be given to all the wives, but it is humanly impossible to give justice to all equally. Thus indirectly forbids the plurality of wives. Hence, monogamy is encouraged more than polygamy. Monogamy is ideal while polygamy is allowed only in exceptional cases that too under the condition that equal justice be given to all the wives.

The above discussion shows that in certain respects male superiority over women is recognised in Islam. But at the same time it must also be admitted that there is no dearth of verses in the Quran which shows the equality of man and woman in certain respects. As the verse 4:34 asserts that men are the protectors of women, in contrast with this verse there is another verse in the Quran which asserts that men and women are the protectors of one another and thus establishes the equality of both. The verse is—

“The Believers, men and women, are protectors, one of another : they enjoin what is just, and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Apostle. On them will Allah pour His mercy: for Allah is Exalted in power.”²⁵

Likewise the following verse of the Quran establishes the fundamental equality of men and women —

“For Muslim men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in Charity, for men and women who fast (and deny themselves), for men and women who guard their

chastity, and for men and women who engage much in Allah's praise, —for them Allah has prepared forgiveness and great reward."²⁶

The above verse indicates that in the sight of Allāh both man and woman are equal and they will get reward and punishment equally from Him for their deeds. Another verse of the Quran which establishes the equality of man and woman in the sight of Allāh is as follows—

*“And their Lord has accepted of them and answered them: “Never will I suffer to be lost the work of any of you, be he male or female: you are members, one of another...”*²⁷

However, the above verses clearly mention that no discrimination will be made between male and female by God in giving rewards and punishments for the same kinds of deeds performed by them. These verses seem to give some kind of hope for equal treatment to be meted to both man and woman by God in the life after. This does not imply the equality of man and woman in real life.

However, as discussed in the preceding chapter it can be said that no discrimination is made between male and female regarding education or acquiring of knowledge. “Search for knowledge is compulsory upon every Muslim male and female.”²⁸ Again, in case of marriage, according to Islamic Law, both man and woman are considered as equal parties. Apart from these, mahr and maintenance are privileges enjoyed by female over male.

Thus, from the above discussion it is obvious that the equality of man and woman is also not totally denied by the Quran in certain respects. But it is also

equally true and undeniable that in certain other areas the Quran seems to uphold the superiority of male in the verses like 4:34, 2:228 etc.. Hence, on the basis of the instances cited in the preceding discussions in support of both the equality and inequality of man and woman, it can be rightly said that the Quranic teachings are not supportive either of the equality of man and woman or of the inequality of man and woman categorically. Hence, an inherent inconsistency seems to be there regarding gender equality. However, it is actually due to its social context that the Quran speaks of man having a slight edge and social superiority over women. Dr. Asghar Ali views – “the social structure in the Prophet’s time was not such as to admit complete sexual equality. One cannot take a purely theological view in such matters. One has to adopt a socio-theological view. Even a revealed scripture comprises both the contextual and the normative. No Scripture, in order to be effective, can totally ignore the context.”²⁹

Moreover, without considering the context if the verses of the Quran are interpreted then sometimes it may lead to misunderstanding. Again sometimes, interpreting a verse separately from the others may give one meaning and when that verse is interpreted along with some other preceding or succeeding verses of the Quran it gives a different meaning. For instance, regarding the testimony of women when the verse 2:282 is interpreted alone, it leads to the principle that the testimony of two women is equal to that of one man. But when it is interpreted along with some other verses like 65:2, 24:6-9 etc. it becomes clear that that principle cannot be generalized.

It can be said that whatever reason there may be for the recommendation of two female witnesses in place of one male witness, it ultimately goes against the

dignity of women. Today women are sufficiently experienced in business matters also, and women today specialize in finance. So, in today's context it would be wrong to maintain that a woman would not be able to bear witness properly and would need the other to remind her. This verse is not applicable to women of today, because in 21st century women are far more educated and experienced and can handle financial transactions also by themselves. Therefore, the recommendation of two female witnesses in place of one male witness in today's society is not applicable.

In this regard Asghar Ali makes a remark — “The meaning of the scripture reveals itself differently in different cultures and social conditions...Thus the interpretation of the Quran should not be static leading to freezing of Quran's meaning in one particular age. While we should not fault the interpretations of eminent jurists and ulama of earlier periods, we should not surrender our own right to understand and interpret the Quran under our own circumstances. Thus our struggle is against the status quoist approach to the Quran and it is our duty to develop a new hermeneutics of the Quran which takes into account the economic and social needs and functions of our own times. Women are playing very vital role in our society and have even become economic leaders and managers. Thus the old hermeneutics cannot take us very far today.”³⁰

As it is often contended and also asserted in the previous chapter that neither Islam made any discrimination between man and woman to seek knowledge and education, nor does the Quran put any restriction on the decision of a Muslim woman to pursue a career for herself and to own property, to choose spouse for herself of her own free will, nor does the Quran require that Muslim

women should cover their faces, what it requires is modesty and chastity i.e. modest clothing and decency, nor are men under any lesser obligation than women to be chaste and modest—immorality being forbidden to both. All of these endue us with the reason that Muslim women without any discrimination can go for education, professional training, employment and cultural participation in the society. The mere declaration of women's equal rights is not enough. Muslim women have to fight for their rights especially the rights that are given to them through the religion of Islam. Otherwise they will remain always under the veil and their progress will remain as a dream forever which will affect the progress of Muslim community as a whole.

The ongoing discussion can be concluded with the assertion that mere equality in the sight of Lord in the absence of social and economic equality is not sufficient. In this regard it can be rightly said that male chauvanism is the main obstacle in the way of gender equality and justice, which is deep rooted in the human mind. Besides, lack of awareness of Muslim women of their rights and status and their passivity in itself is also, the cause of great damage to them and it works as a hindrance in the progress of Muslim women in particular and of Muslim community in general. To this effect one must be able to overcome the inconsistencies as well as controversies found in the teachings of Islam and also in the interpretations made by classical and modern scholars through one's own rational application, only then the guidelines provided by the Revelation can be applied properly in real life. It is only through reason the Revelation can be understood in its true spirit. The Revelation itself emphasises on the faculty of reason –

“Nay, here are Signs self-evident in the hearts of those endowed with knowledge: and none but the unjust reject our Signs.”³¹

“In the creation of the heavens and the earth, and the alternation of Night and Day, - there are indeed Signs for men of understanding.”³²

“Invite (all) to the way of your Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious...”³³

“He grants wisdom to whom He pleases; and he to whom wisdom is granted receives indeed a benefit overflowing; but none will grasp the Message but men of understanding.”³⁴

The Quranic invitations to look into the universe to discover its laws are directed to man’s rational faculties in the expectation that he will consider, search for and discover the truth, so that his religious conviction might be rational and truly supported by the facts. There are many verses in the Quran, e.g. 2:164, 30:21-24, 36:33-34 etc. which call upon the people to reflect deeply and to think with their own intellect and not merely follow blindly the traditions of their forefathers. The Quran itself gives the example of Prophet Abraham, i.e. in the verses 21:51-66, who refused to follow his forefather’s traditions and reflected deeply over movements of stars and laws of nature and acquired knowledge of creator of this universe. Revelation is the guideline for us, how to follow and how to apply these guidelines in the struggle of life should be determined through reason.

Finally, the whole discussion of the present study comes to an end with the question whether or not justice is provided to women in Islam? As Rawls points

out, “the general conception of justice imposes no restriction on what sort of inequalities are permissible; it only requires that everyone’s position be improved.”³⁵ Taking into account Rawls’ general conception of justice it can be said that so far as the conventional rights, i.e. right to education, right to inheritance, right to marriage etc. accorded to women in Islam are concerned, justice is provided to them in the qualitative sense, since, through these rights their position is improved in comparison to that of their prior status.

Besides, regarding the difference in shares of inheritance it is stated in the verse 4:12 - ‘so that no loss is caused (to any one)’. This instruction is in agreement with Rawls’ view that “the distribution of income and wealth need not be equal, it must be to everyone’s advantage.”³⁶ Rawls also maintains that socio-economic inequality is undeniable and cannot be removed totally, but can be minimized through proportional distribution. It is justice in the quantitative sense. Moreover, if the matters related to half share, half witness of women are considered from Aristotle’s point of view then it can be said that it is justice in the quantitative sense. Aristotle stated, “what the just is – the proportional; the unjust is what violates the proportion.”³⁷ For instance, a shoemaker and a builder cannot exchange one shoe for one house, since shoes and house are not of equal value.³⁸ So, to be just according to Aristotle, goods must be distributed proportionately, “i.e. greater shares for greater merit, as distinct from identical shares irrespective of merit.”³⁹ According to Aristotle, “male’s abilities are superior to the female’s.”⁴⁰ Hence, males are fitted to enjoy more share or benefit than females in Aristotle’s sense. Taking into account this principle of Aristotle it can be argued that since men are declared by the Quran as the maintainers of women as well as the family

and to them financial responsibilities attributed, but women are not declared so and exempted from financial responsibilities, therefore, men are given more share to release his duty and women are given less share. Hence, it is proportionately equal. This principle of justice is also found in the matter relating to witness. Since, women were supposed to be less experienced in business matters than men, therefore, their testimony was counted as half in that matter. Both Aristotle's principle and the Quranic principle of justice in this regard are contextual, since women, today, are more educated and more experienced in every sphere and are able to handle family as well as business by themselves, hence, this principle of justice cannot be applied in today's context of society. It would be injustice in today's context to consider female's abilities inferior to male's and thus give less share and opportunities to them.

However, it can be said that certain kind of injustice done towards women is found in the Islamic Law in the matters related to triple pronouncing divorce, *hallālāh* marriage, polygamy etc.. All such Shariah laws regarding women can be re-examined in the light of new consciousness. Though polygamy was introduced as a solution to the problem of widows and orphans, in today's context of society for the security of widows and orphans marriage cannot not be a solution. They may be helped or secured by other means like, jobs or earning etc. However, it can be said that the process of marrying widows cannot provide them security and safety. If they are to be made secured financially and socially then they must be provided financial security to make them live independently. Financial security gives women social security. A person who is already married and has a wife who is alive and sane marries a widow to give her security then in giving justice to one

he is being unjust to his existing wife. It creates numerous problems. So, marriage is not a solution. Polygamy in the name of giving justice to women or widows can under no circumstances be accepted. It is not a solution of a problem but it is the starting of a problem. Besides, the Islamic Law regarding the punishment of adultery, i.e. stoning to death must also be abolished. Definitely stoning to death and killing an erring human being rather than giving him or her a chance to repent or reform goes against certain fundamental values like, benevolence, compassion, justice, forgiveness etc. This kind of punishment goes against the human rights or is violation of human rights. Therefore, there is need for Muslim jurists to give a rethinking to such punishments. It may be possible to reformulate many of these provisions specially with regard to women, since, Shariah law is not only based on the Quran and the traditions of Mohammad it is also based on '*ijma*' (consensus of opinion), '*qiyas*' (analogical deduction) and '*ijtihad*' (consensus or exertion to properly interpret in keeping with the situation). Thus, the Shariah has components, both divine as well as human. It is the latter component which, with the change of circumstances, stands in need of change as the great jurists themselves had used their human judgment for compilation of Shariah in their own circumstances. That is why, there are many differences between different schools of law. For instance, the Shia school does not recognise triple divorce, whereas the Sunni school recognise it and even among the Sunnis Ahl-e-Hadith school reject this concept. One can hardly ignore the fact that in a male dominated society jurists could not but give more benefits to men while using their opinion on various matters pertaining to women. To this effect women's awareness of their rights and status is very much essential. If Muslim women are aware of their rights given in

Islam and fight for their rights and can enjoy these rights then only their status as women will be elevated.

Today circumstances and values of society are changing very fast. Therefore, there is nothing wrong in revisiting Shariah formulations regarding women today and attempt to reformulate issues in the light of contemporary social circumstances. But such reformulations or rethinking are to be in conformity with the essence of the Quran. Thus, with the change of circumstances certain changes inevitable which one must be brought through the use of '*ijtihad*' based on Quran. *Ijtihad* is important as a legal device in effecting legal reforms within an Islamic framework. In fact, without *ijtihad* the striving to interpret the Quran and Hadith in the light of today's social context will leave the Quran and the essential message of Islam in the past with little or nothing to say to guide today's Muslims. Judge Mohammad Shafi, in *Begum v. Din* (Pakistan High Court) stated that "Reading and understanding the Quran implies the interpretation of it and the interpretation in its turn includes the application of it which must be in the light of the existing circumstances and the changing needs of the world."⁴¹ If the interpretation of the Quran by the jurists in the early centuries after the death of Mohammad is to be considered as the final and binding word then Islam would have no place in modern times and would cease to fulfil its role as a universal religion and restricted to when and where it was revealed.

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