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Family

Certain animals such as ants, bees, termites and several species of monkeys are social, that is they live in communities. The social life of some of these gregarious animals is characterized by some very significant and interesting systems.

Man is also a social and gregarious animal that has the most varied and the most interesting social life that we know.

Society and its kinds

Social life usually originates from a set of natural or acquired ties which join together a number of individuals and turn them into a coherent community. This coherent community is called a society.

There are many kinds of society and from different angles it can be divided into various classes.

Some of these classes are limited and small, like family, and some of them are big and vast, such as tribe, clan; community, nation etc.

Family

The simplest, the smallest and the oldest form of human society is family which is comprised by wife, husband and children. A number of bonds and ties join the members of a family to each other.

Tribe

When the children of a family are grown up, they normally marry and produce children. Thus gradually from one family several coherent and inter_connected families are formed. They trace their descent

back to a common ancestor and form a bigger social unity called 'tribe'.

Clan

In certain parts of the world we come across another kind of relationship between the _individuals and the families. It originates from a mythical tie and these families, instead of tracing back their genealogy to a common human ancestor, attribute their descent to an animal, plant or something else of that sort and consider themselves attached to it in a mysterious way. This fictitious ancestor is called `totem' and the people attached to the same totem are known as a clan.

Nation

In more advanced societies we come across a bigger social unity called nation. A nation consists of a large number of individuals, families and tribes united by a common race, country, language and culture.

Other social groupings

There are various other kinds of social ties from which social groupings have originated, such as those of sex, class, religion and ideology.

Dogmatic and ideological society

One of the most progressive social ties is that of doctrine and dogma. The people who believe in one religion or one ideology are united by it and form one community, that is a society having a common goal and a common policy. An ideological tie may be so powerful and effective that it may overshadow all other ties. We will further elucidate this point later.

Out of all the social ties which we have mentioned Islam gives basic importance to two, namely the ideological and dogmatic tie and the family tie. We propose to discuss first the family tie.

Marriage

Nature has so arranged that man and woman are attracted towards each other. This natural attraction binds them together and leads them to live a common life and form a family. This natural tendency or the instinct of sex, like any other instinct, should be guided to the right direction so that it may be utilized in

the service of humanity.

Though common life of husband and wife originates from sex instinct, yet gradually it develops into a sort of deep spiritual and sentimental and social and economic relationship. That is what we call conjugal union or matrimony.

In the wake of keen desire to establish conjugal relations between themselves, man and woman enter into a contract known as marriage or matrimonial contract.

This contract has great importance in human life, for it unites the existence of two persons in many ways. It lays the foundation of the life of a human infant, and deeply influences his body, life, thought and future actions. That is why a marriage contract is regarded as sacred by various nations and enough attention has been paid in different legal systems to the questions connected with it.

Importance of marriage from Islamic point of view

Islam has also attached great importance to the question of marriage in its social system. In the holy Qur'an and the sayings of the holy Prophet and the Imams we find that marriage has been greatly encouraged. The holy Prophet has been reported to have said: "No institution of Islam is liked by Allah more than that of marriage".

Basic object of marriage

The basic object of marriage in Islam consists of:

- (a) Securing comfortable atmosphere for husband and wife
- (b) Producing a new generation and bringing up healthy, faithful and virtuous children.

With regard to the first object the Qur'an says:

"One of His signs is that He created for you spouses of your own species, so that you might find comfort with them, and He put mutual love and affection in your hearts. Surely in this there are lessons for the thinking people." (Surah al_Rum, 30:21).

A Muslim husband and wife who follow the Qur'an should always be a source of comfort to each other. Their mutual relations should be far above mere sexual enjoyment and should reach the stage of cordial friendship accompanied by mutual benevolence and fellow_feeling. (Ayatullah Ali Mishkini's "Marriage in

Islam" published by ISP).

On the basis of this verse the object of marriage should be the same as that of the creation of mates, that is husbands and wives. From the Islamic point of view marriage is not merely an instrument for legalizing sexual relations, but .it is an agreement which unites the very existence of the husband and wife and gives a new colour and a new rhythm to their life. It brings them out of real solitariness, turns them into a couple instead of single individuals and makes them complementary to each other.

With regard to the second object the Qur'an says:

"He is the Creator of the heavens and the earth. He has given you partners from among yourselves, and (similarly made) the cattle (also) males and females. That is bow He multiplies you. Nothing can be compared to Him. He is the All_bearing, the All_seeing". (Surah al_Shura, 42:11).

The Islamic traditions regarding the choosing of wife stress one point viz. the proposed wife should be capable of producing children and should not be sterile. According to a well_known hadith of his, the holy Prophet said: "Marry each other and produce new off_spring so that your number may increase".

Selection of a spouse one of the most critical questions connected with marriage and formation of a family is that of choosing the spouse. In this connection attention should be paid to the following points:

- Freedom in the selection of wife or husband.
- Equality between husband and wife, viz. each of them should be generally suitable to marry the other.
- The criteria which should be kept in view to deter mine such suitability.
- Persons between whom marriage is forbidden.
- Seeking the hand of the spouse in marriage.

Freedom in choosing husband or wife:

Freedom in choosing husband/wife is a principle to which Islam has paid much attention, for satisfactory conjugal life depends on intellectual, spiritual and moral compatibility between the two spouses. This compatibility can exist only if both the parties are free in their choice and choose each other of their own free will after careful study and without any coercion. Otherwise their conjugal life cannot be expected to be smooth and satisfactory.

According to the Islamic canon law the first condition of the validity of a marriage contract is that it should be proposed by the woman and accepted by the man and both of them should act freely in the matter.

The Imams on various occasions, especially when they were consulted about the selection of a wife or a husband, emphatically stressed that the main condition of the validity of a marriage is the free consent of both the parties. No imposition is allowed in this respect.

A young man complained to Imam al Sadiq (P) that his parents were compelling him to marry a girl whom he did not like, whereas he was interested in another girl. He then asked the Imam what he was required to do in that case.

The Imam said: "Marry the girl you like".

In this connection it may be remembered that the parents must not compel their children to marry against their will.

Consent of father to the marriage of a girl

The teachings of Islam recommend that the daughters should marry with the consent of their fathers. Many of the Muslim jurists consider this consent to be an essential condition of the marriage of the girls. In this connection the following points may be noted:

- (1) As a marriage establishes social contact between two families both the boys and the girls have been advised to consult their parents in regard to the selection of their future wives and husbands. Such consultation means showing respect to the parents and the recognition of the trouble taken by them in bringing up their children. It is also conducive to better understanding among the relatives of both the sides. Above all that, this is an appropriate way of benefiting from the personal experience and social knowledge of the parents, in regard to the selection of the life partner and appropriate conjugal behavior.
- (2) The parents have been urged that while guiding their children, they should take into consideration their real requirements and the new conditions in which they will have to live. They should understand that marriage in the first instance, concerns their children and the future life of theirs and not themselves (i.e. the parents).

Hence at the time of such consultations, they should, in the first instance, pay attention to the basic and noble qualities, which the spouse of their child should possess, and not to those of the second or third degree, and should not be influenced by fictitious considerations like the wealth or the social position of

the family of the bride or the bridegroom.

- (3) The jurists who consider the consent of father to be an essential condition of marriage, hold this view only in respect of the virgins. Evidently they give importance to this condition only because in their opinion the intervention of a loving and experienced father is of great value.
- (4) Even in the case of the virgins they hold that the consent of father is essential only so long as he tries to safeguard the interests of his daughter and does not impose his own will on her even though it may be against her interests. If it is found that father is bent upon imposing his will against the interests of his daughter, it is the duty of the authorities concerned to take notice of the case and, by virtue of the powers vested in a just Muslim ruler, to take proper action to safeguard the interests of the girl.

Equality or general fitness for matrimonial alliance

The holy Prophet said: "Marry your equals; choose your partner in life from among them; and select best mothers for your offspring".

In the societies having a tribal system usually every tribe asserts that it has certain distinctions and on their basis it claims to be superior to others. These fictitious claims sometimes assume the form of racial discrimination, just as the whites believe in their superiority over the blacks or the red_skinned people and sometimes that of nationalism as found among certain nations of the modern world. In societies having class distinctions such claims are made by certain classes, such as the clergy, the military personnel, the businessmen, the politicians, the bureaucrats etc.

One of the effects of such a claim is that the members of a family, a trade or a class are always restricted to marry only within their own circle, the other party must belong to one of the prominent and well_known families.

Marriage between a white and a black is forbidden. A son or a daughter of a cleric or a military officer, a businessman or a bureaucrat cannot marry a daughter or a son of a worker or a farmer. This undesirable practice is still more or less prevalent among the so_called noble families. Such families are severely opposed to the marriage of their children to those belonging to low_income and under_privileged families not having a so_called high profession.

Islam denounces such discrimination. The holy Prophet is reported to have said: "The believers are equal to each other".

Imam al Sajjad (P) chose a woman to be his wife and married her. He had an Ansar (a descendant of the Madinite companions of the Prophet) friend, who felt uneasy on account of the Imam having married

a woman not belonging to any prominent family. But when on inquiry he found that she belonged to a respectable family of Bani Shayban, he was relieved of his worry. He came to the Imam and said:

"I felt unhappy and dejected on account of your having married this woman and said to myself: `The Imam had married a woman who was not respectable'. The other people were also saying the same thing. At last I had to make investigations till I found that she belonged to the tribe of Bani Shayban".

The Imam (P) said to him in reply:

"I had been under the impression that you were more intelligent than I find you now. Don't you know that Islam has come to uplift the lower classes of society and to remove all inequalities. Now no Muslim is mean or low".

As such in Muslim society descent, nationality, family position and similar other factors are no bar to the marriage between two Muslims who are otherwise fit to marry each other in accordance with the standards mentioned below.

Criteria of selection of a spouse:

(1) Faith

The first criterion of the selection of a husband or a wife is his or her faith _ faith in Islam and the way of life to which it has called humanity. Islamic society is an ideological one. In every such society faith in its ideology is the main orbit of its life. It is the motivating force which pushes that society toward the goals which it has _set before it. That is why while devising any social system or law it has to take into consideration all the factors which may strengthen or weaken faith in its ideology.

In our foregoing study we said that from the point of view of Islam the object of marriage is not merely sexual enjoyment, but is also the formation of a healthy family atmosphere so that:

- The husband and wife may live in mutual love, affection and understanding;
- They may create an appropriate environment for the birth and growth of the children who may prove more mature and active members of the ideological society of Islam.

It is evident that these two objectives can be achieved if both the husband and the wife believe in Islam and practice its teachings to the maximum extent.

Sometimes it is seen that some people tend to maintain in the name of broad_mindedness, liberality and tolerance, that disparity in religion should not be an obstacle in the way of marriage between a man and a woman. According to them why should there be an objection if a Muslim believer marries a woman who does not believe in Allah or in the Qur'an and the Prophet of Islam, or alternatively a Muslim woman marries an atheist or one who does not believe in Islam and the Qur'an?

Such questions instead of being a sign of broad_mindedness and liberality usually show that the people who raise them have no idea of the significance of marriage which we mentioned above, nor are they aware of the real import of religion, especially Islam.

If religion means, as the word itself signifies, a particular way of life, and if marriage is meant to be a heart_warming spiritual tie which may create an atmosphere of cordiality and coherence for both husband and wife, then how can it be possible that two persons believing in two different religions and two different ideologies should be able to create such a tie and such an atmosphere?

Practical experience has shown that marriages of this kind gradually end either in the slackness of both the spouses, or at least one of them, in the practice of their religion, or in the coolness and incompatibility of their mutual relations. In either case there is a great threat to an ideological society as well as to the happiness of the husband and wife concerned. Besides, there is a far bigger threat to the faith and prosperity of their children.

Really it cannot be expected that the children born and brought up in a bi_religious family will be true believers in the path of Islam.

(2) Morality

Unity _in faith of the husband and the wife is an essential condition of marriage, but is not the only condition. Attention should be paid to other questions also, especially to the moral aspects of the spouse.

One of the companions of the tenth Imam says:

I wrote a letter to Imam Abu Ja'far, asking him some questions about marriage.

In his reply the Imam wrote:

"The holy Prophet has said: As soon as a suitor, who is religious and with whose manners you are satisfied, comes to you asking for matrimonial alliance take action to accomplish marriage with him. If

you will not do so, you will have deviated from the right path and may be faced with a great crisis".

Another companion of the Imam wrote to him on this very subject. In reply the Imam wrote back:

"If you are satisfied with the religiousness and uprightness of a suitor, do marry. Otherwise ".

In two other narrations Imam al Sadiq (P) has stressed the chastity and continence of the spouse.

(3) Financial competence

A Muslim man has to provide means of living to his wife and children. Hence it is essential that he should have enough means beforehand to discharge this responsibility.

Imam al Sadiq (P) is reported to have said:

"A suitable husband is he who is chaste and has financial competence".

(4) Compatibility

Compatibility and similarity in the ideas and wants of the husband and the wife is one of the most effective factors in making a marriage successful. With compatibility there is little chance that any serious differences will arise between them. If on any occasion there should be a difference in their views they can sort out the problem easily. As such it can be hoped that their married life will be happy and satisfactory. Otherwise a marriage accompanied by permanent clash between the husband and the wife, can ruin not only their life, but also that of their children and close relatives.

Only those husbands and wives live a satisfactory and happy married life who:

- Realize the concept of human marriage;
- •Are not only partners in life, but are also benevolent friends and faithful associates;
- Deem it necessary to co_operate with each other in every respect;
- Refrain from every kind of arrogance and haughtiness in their mutual dealings;
- Respect their reciprocal rights and try to please each other.

How to select a suitable spouse

There is no doubt that it is essential to make enough investigations about a prospective husband or wife to ensure that he or she is fit in every respect to conclude a strong everlasting contract.

A hasty action impelled by the impact of the emotions of youth or imposed by the pressure of the relatives is likely to cause inconvenience and trouble subsequently. Anyhow, useful and reasonable investigations should not be mixed up with the wanton custom of courtship. Such unrestrained intimacy, howsoever an enchanting name may be given to it, cannot be allowed, for mostly it does not aim at marriage and formation of a family.

In this respect a middle course, removed from the two opposite extremes, must be adopted and that is the course which has been recommended by Islam.

A man asked Imam Ja'far al Sadiq (P):

"Is it permissible that one should see the woman he wants to marry and look at her hair and other charms?" The imam answered:

"Yes there is no objection provided there is no lustful intention".

Persons between whom marriage is forbidden

A person who cannot enter into marital relations with a person of the opposite sex in deference to the relationship already existing between them is called *mahram*.

Perhaps the idea behind this rule is that family relations at certain level, such as those between brother and sister, father and daughter or son and mother, should be kept absolutely apart from the field of sex.

Mahrams whose inter_marrying is not valid are generally divided into three categories:

- (1) Those having blood relationship are consanguineous *mahrams*.
- (2) Those having relationship in virtue of nursing which is established on fulfilment of some special conditions and is in fact a sort of acquired blood relationship are foster *Mahrams*.
- (3) Those having relationship in virtue of a marriage are *mahrams* on the ground of affinity.

Rules regarding the prohibition of marriage on the grounds of consanguinity and affinity exist with certain

variations

either in the law codes or conventional customs of all nations. Only some communities for certain special reasons, such as maintaining the purity of their blood and preserving their family or racial characteristics, have recommended inter_marrying among close relatives, but nowadays such instances are extremely rare.

Consaguineous mahrams

Seven categories of persons are debarred from intermarrying on the ground of blood_relationship. The details are as under:

A man cannot marry his:

Mother (includes grand_mother)

daughter (includes her descendants)

Sister

Sister's daughter and her descendants

Brother's daughter and her descendants

Paternal aunt (include aunts of father)

Maternal aunt and mother

A woman cannot marry her:

Father (includes grand_father)

Son (includes his descendants)

Brother

Brother's son and his descendants

Sister's son and his descendants

Paternal uncle including uncles of father

Maternal uncle and mother.

Foster_mahrams

Fosterage under specified conditions induces the same limits of relationship prohibitive of marriage as consanguinity.

Mahrams on account of affinity

Five categories of persons are debarred from intermarrying on the ground of affinity or relationship created by marriage. The details are as under:

A man cannot marry his:

Mother_in_law
Daughter_in_law
Step_mother
Step_daughter
Wife's sister

A woman cannot marry her:

Father_in_law

Son_in_law

Step_father

Step_son

Sister's husband

A man is debarred from marrying his wife's sister only so long as the other sister continues to be his wife. If that relationship terminates as the result of death or divorce, there is no objection to his marrying a sister of his former wife. Hence in this case prohibition is not permanent. That is why wife's sister is not regarded as *mahram* for the purpose of looking at her or meeting her.

Contracting marriage

According to the Islamic canon law the parties concerned can, in the presence of all other essential conditions, contract marriage direct and exchange the formula prescribed for this purpose, provided they are adult, mature and of good judgment. For marriage it is not essential to appoint an attorney if the parties themselves can contract it properly.

After a complete agreement is arrived at in regard to conditions etc, a marriage contract is normally initiated by the woman. This shows that a Muslim woman is fully free in choosing her husband and it is up to her to contract marriage. Then the man (husband) accepts marriage with the conditions agreed upon. At first the woman proposing the contract of marriage, says to her future husband:

[&]quot;I gave myself in permanent marriage to you with the dower fixed (according to the conditions agreed

upon)". The same may be expressed in Arabic thus:

"Ankahtoka nafsi alas_sidaaqilma`loom"

or

"Zawwajtoka nafsi alas_sidaaqilma`loom"

Then the man announces his acceptance and says "I accepted" or "Qabil tun nikaha" or "Qabil tut tazwija".

As already pointed out, a girl cannot be given in marriage against her will nor can she be compelled to say "Yes" by force, threat or holding out a bait. Similarly a boy also cannot be forced to marry any girl whom he does not like. As a rule any contract concluded through force or compulsion is void.

Financial independence of woman

We know that in the social system of Islam women like men are financially independent. They can earn money by lawful means. They have full control over their property and can dispose off the same as they like.

The Qur'an says:

"..... The men shall have the benefit of what they earn and the women shall have the benefit of what they earn ". (Surahal_Nisa, 4:32).

As for what domestic work the women do in the house of their husbands, it depends entirely on their own will, desire and inclination. From religious and legal point of view there is no compulsion.

The Qur'an says in the Surah al_Nisa: "Give the women their dowry as a free gift". (4:4).

In the marriage contract the husband undertakes to present a suitable gift to his wife. This gift is not to be regarded as a price of the woman's body nor has the characteristic of a recompense for her services in the household, or something to fall upon in future in the case of separation or death. It is just a gift and if she so desires, it may be presented to her forthwith. That is why in the verse quoted above it has been expressed by the word, 'nihlah; that is, free gift. In the Qur'an the word. 'Sadaaq' has been used for dower. This expression implied that dower is a sign of man's sincerity in love and in his offer of marriage. The dower is in fact a means of showing man's respect to his future wife.

Lightness of dower

The leaders of Islam have emphatically recommended that the amount of dower should be kept light and the other marital conditions easy. The women who demand heavy dower and are not willing to enter into a marriage contract without stipulating strident financial conditions, have even been described as inauspicious and unlucky (*Man la yahzaruhul Faqih*) because the moral significance of dower as a symbol of man's interest and love is far higher than its financial and material value.

Note: Immediately on the conclusion of marriage contract whatever has been fixed as dower becomes the property of the wife. If it is a piece of land, a garden or a sum of money, its benefits accrue exclusively to her. Only with the wife's consent it can remain in the custody of the husband and the benefits accruing from it can be utilized for conducting their common life.

Obligations of husband and wife

After describing the concept of marriage from Islamic point of view and the rituals prescribed in connection with it, let us now refer to the obligations which it imposes on the two parties. These obligations include financial and human responsibilities.

Financial responsibility

(*Nafaqah*) maintenance is a legal responsibility in the Islamic family system. Generally speaking it is of two kinds:

- (1) Maintenance conditional on the pecuniary condition of a person having a right to it: For example children have a right to maintenance against their father (or mother) or the aged parents who are unable to meet their expenses have a right against their children.
- (2) Maintenance not conditional on the pecuniary condition of a person having a right to it, as wife is entitled to be maintained by her husband. Maintenance includes all necessary and conventional expenses. In the case of wife the husband is responsible to provide food, clothing, accommodation and all that is necessary for her comfort and running the household. Of course the financial competence of the husband is to be taken into consideration in the implementation of these responsibilities.

Maintenance of wife has the following distinctive features: The maintenance of the wife is technically a debt of first liability and its payment should be accorded top priority.

Her right to maintenance has an aspect of the right to demand, and it is not like maintenance of the first

category mentioned above so that it may have only an aspect of a duty which if not performed for some time may lapse.

Maintenance of the wife is obligatory on the husband even if she is well_off, whereas in the case of the children and the parents it is conditional on their being poor and financially unable to meet their personal requirements.

In case a husband, in spite of his financial competence, does not provide the necessities of life to his wife, it is a duty of the governmental authorities to order him to do so and , if necessary, pass a decree of separation.

Maintenance of Children and the Responsibility of Guardianship

With the birth of a child in a family new duties and responsibilities devolve on both the father and the mother. As the child is related to both, each one of them has to shoulder a responsibility commensurate with his and her natural, sentimental, and social conditions.

As the women have been naturally provided with a system of bearing and suckling the children, they, with the birth of every child, have to undergo for about three years the rigours of pregnancy, delivery and the upkeep of the new born. During pregnancy and nursing they have a special responsibility to look after the infant. It is evident that even after this period a child requires a constant care and correct physical and moral fostering.

In most cases he cannot attain the required spiritual growth and physical and mental development except under the caressing care of the mother. It is mother's deep love and tender affection accompanied by her self_sacrifice which responds to the requirements of the child and nurtures his natural talents and faculties. Mother's lap is the first institution where a child receives his education. The first few years of the life of the children are the most impressionable age during which the foundation of their personality is laid under the care of the mother.

All spiritual, scientific, literary and social achievements are mostly the fruits of the first seeds sown by the mothers in the impressionable minds of their children. If mother has to bear such a stupendous responsibility of the care and basic training of the child, will it be reasonable to expect her to undertake lucrative jobs and outdoor work also on equal footing with man and to struggle for meeting the economic needs of the family? Will such an expectation not be an injustice to her? Or will it be proper to take off the responsibility of bringing up the children from her shoulders and ask her to earn her livelihood even during the lifetime of her husband?

Will it not be better that the means of living are provided to her in a respectable way and she is given an

opportunity to devote her full time to the all_round care of her child.

Will not this equitable division of work between husband and wife in a way commensurate with their physical and spiritual potentialities, be a more respectable method of meeting the family requirements?

Anyway, it is to be remembered that the question of maintenance, in the context of the family system in Islam, does not mean that woman is a parasite or that food, clothing, accommodation and other means of life are provided to her in consideration of her services to her husband. It is just a question of equitable division of work and duties based on the principle of joint efforts. That is why in case the husband is not competent to earn enough means of living; family sentiments and the spirit of cooperation demand that the wife should not spare any lawful effort in co-operating with him in managing the affairs of their common life.

A good deal of the instances of such co_operation are seen in Islamic society, especially among the low_income groups. Similarly it is not enough for the husband to provide merely the material means of life to his wife. In the absence of the spirit of sympathetic benevolence, joint effort and co_operation the marital life will be but dull and dry.

It may be mentioned here that the husband being in_charge of family affairs, bears a grave responsibility, which like other similar responsibilities requires a sort of self sacrifice. For example, in the case of the administration of a country the presidential position is not meant to meet the personal requirements of the president, but is designed to ensure the smooth administration of the national affairs. It is necessary to obey him mainly because he pays. attention to his responsibilities as well as to the duties and responsibilities of his aides.

Hence if he exceeds his limits and wants to misuse his position, he will have no right to expect others to have any regard for him. In the case of family affairs also the husband has been given certain rights, for example the right of the guardianship of the children till they attain puberty and that of giving consent to the marriage of his virgin daughter in addition to some other rights in connection with the management of domestic affairs. But he has been entrusted with all these responsibilities only to ensure the smooth running of the family affairs and to prevent the dissolution of family structure. Hence if the husband violates the limits in any matter, his powers will be reduced and he will not have that influence which he should have if he plays his role properly.

Anyway, the principle, that the necessities of life are to be provided by the husband, is an important factor in bringing comfort to woman and relieving her of earning her livelihood. It gives her an opportunity to play her part in arranging the domestic affairs more effectively and comprehensively. The principle should not be construed to justify man's unrestrained domination over his wife and children.

Moral and human responsibilities

Besides such normal commitments as the financial responsibility of the husband and the joint efforts of the husband and wife to satisfy the sexual needs of each other in a lawful manner, there are certain other basic and important principles which deeply affect the marital life. In fact its success depends on their observation. They give a special charm and delightful character to the conjugal relations which otherwise have a material and dry form of give and take. In the Islamic teachings these principles have been summed up in the following two maxims:

- (1) Mutual trust, the practical manifestation of it being the co_operation between the husband and the wife in making their common life easy and smooth.
- (2) Abstinence from everything that may disturb their mutual confidence.

According to the Islamic tradition the best wife is she who is sincerely affectionate and, according to the Islamic expression, *wadud*, that is one who co_operates with her husband through the thick and thin of life and is helpful to him in all material and spiritual affairs. She should in no case add to his worries.

Divorce or Dissolution of Marriage

As pointed out in the previous pages marital life ought to begin with earnestness and should continue happily under the shadow of love, tolerance and self_sacrifice. But practically speaking marriage contract and conjugal relations do not in all cases continue to exist till the end of life. In certain cases it becomes impossible for the two parties to live together in peace and harmony for various reasons such as the emergence of deep rooted differences and the like. In such circumstance there must be a suitable way of dissolving marriage legally, otherwise if the parties are forced to continue to live together, their life is likely to become unbearable, and in many cases the consequences may be most regrettable and even tragic.

Anyway, it is evident that as marriage in itself is a social need, in certain circumstances its dissolution is also a social necessity. The social compulsions have forced even the Christians to frame and enforce laws concerning divorce, though their present religious book forbids it except in the case of unchastity and though their Church has for long opposed it vehemently. "But I say unto you, That whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry her that is divorced committeth adultery". (Matthew, V:32).

Recently the divorce act has been passed even in Italy, which is the seat of the Pope.

Divorce in Islamic law

Dissolution of permanent marriage resulting in the end of all responsibilities of the husband and the wife in regard to the rights and obligations connected with it, is called divorce.

From the Islamic point of view the disintegration of family bond is very undesirable on principle. It is the worst and the most detestable act in the eyes of Allah.

The holy Prophet has said:

- "The most detestable thing before Allah is divorce".
- "Allah likes most the house which is inhabited in the wake of marriage and dislikes most the house which is abandoned in the wake of separation".

In fact divorce may be regarded as an unpleasant and bitter pill which has to be taken in the case of need. Resort to it should not be made unnecessarily and for the sake of caprice. Islamic traditions have described unnecessary divorce as a cause of remoteness from the blessings of Allah. (*Mustadrak al-Wasail*, vol. 3, p. 2).

Islam has suggested certain precautionary measures to ward off divorce as far as possible. For example:

- Much stress has been laid on the careful selection of wife.
- Repeated recommendations have been made to treat her well and connive at her minor mistakes which are common in life.
- Self_control against sudden outbursts of rage and hasty actions.
- Formation of an internal family court to resolve the differences arising between husband and wife.

It is possible that the relations between the husband and the wife might sometimes become strained consequent on differences and scolding remarks. Islam suggests that in such cases a suitable way should be found at the earliest to resolve the differences and there should be no talk of separation so easily. All cases of strained relations are not such that we should be disappointed of the restoration of love and affection. In most cases it is possible to rectify the position.

Whenever it is not possible for the husband and wife to sort out their differences themselves, their case

should be considered by a family court consisting of two arbiters, one selected from the family of the husband and the other from that of the wife. The arbiters should be sympathetic and experienced so that they may listen to the point of view of both the parties, and try to reconcile them.

In this respect the Qur'an says:

"If you fear a breach between the two (husband and wife, appoint an arbiter from his people and another from hers. If they desire amendment, Allah will Make them of one mind". (Surah al_Nisa, 4:35).

Obviously an arbiter should be a trust worthy person, a good conversationalist and fit for making a just arbitration. The two arbiters are to be selected from among the members of the two families because as such they are expected to have a knowledge of the temperament of the husband and wife as well as of their domestic affairs; and also because they will normally be interested in settling their differences.

Effects of divorce

From the psychological, legal and social point of view, divorce produces varied effects, some of them being related to the husband and wife themselves and some of them to their families. If there are children, separation between their parents will affect their position also in many ways.

In view of these results, special conditions have been visualized for divorce so that it may be warded off as far as possible, for if it is taken easy, the future of children will certainly be threatened.

What should be the condition of a woman to be divorced

- Her periods must not be on.
- After the last sexual intercourse, she must have had her periods at least once.
- If the woman having been pregnant has been delivered of a child, her rest period after delivery (ceremonial purification from child birth) must have come to an end.

Of course if a woman is pregnant or does not menstruate, the above conditions do not apply to her. In cases other than these two, the question of divorce should be postponed till these conditions materialize.

Conditions of the effectiveness of divorce

Divorce is valid and operative only if the following conditions are fulfilled:

- The husband who divorces must be of mature age and must be possessed of understanding. Divorce pronounced by a minor, a lunatic or an idiot is invalid.
- The husband must be exercising his own free will. Divorce under compulsion is not valid.
- Presence of two witnesses.

According to the Shiah school of thought and as expressly mentioned in the Qur'an (second verse of Surah al_Talaq), divorce must be pronounced in the presence of at least two trustworthy and righteous witnesses.

This condition automatically implies that two righteous persons should become aware of the decision of the spouses to dissolve marriage. In many cases their intervention and help may save the situation, and they may find a suitable way of reconciling the husband and wife. Further, their knowledge and presence may be helpful in settling financial and other questions and finding a most appropriate arrangement for looking after the children.

Kinds of divorce

After the enforcement of divorce it is possible to resume conjugal relations in some cases without contracting marriage anew. In some other cases a fresh marriage is required before the resumption of these relations. Hence divorce is of two kinds; revocable and irrevocable.

In the case of revocable divorce if the man regrets and wants to resume conjugal relations, the tie is automatically restored and there is no need of contracting marriage again, provided he revokes his act within the period of probation (*iddah*) which is normally three months.

In the case of irrevocable divorce it is not possible to resume conjugal relations in this way.

Kinds of irrevocable divorce

There are several kinds of irrevocable divorce.

- (1) If the husband agrees to dissolve the marriage at the request of the wife, it is called *khul'a*.
- (2) If the marriage is dissolved because both the husband and the wife have asked each other to terminate it, it is called *mubarat*, that is mutual release.
- (3) The divorce pronounced by the husband on his own is regarded as irrevocable in the following circumstances:
- (a) If the dissolution of marriage has been brought about before its consummation.
- (b) If the divorcee is a girl whose periods have not commenced or an old woman who does not menstruate, because she has reached the age of menopause i.e. is no longer capable of bearing children.
- (c) If the divorce has been pronounced for the third time.

In all these cases if the two parties decide to resume conjugal partnership, they should remarry, for the first marriage is no longer effective.

Notes:

- (1) Remarriage with a woman, who has been divorced three times, by her former husband who divorced her is possible only on the condition that she is married to another man first and that such second marriage is terminated after consummation. (This condition precedent to reunion has been laid down to deter and discourage the people from taking the question of divorce too easy). (If divorces take place between the husband and wife time and again (till nine times) they cannot remarry under any circumstances. This restriction also ensures that as far as possible divorces on frivolous grounds may be avoided.)
- (2) In the case of *khula* and *mubarat* reunion is possible only if the woman demands back what she had surrendered to the husband. Such demand must be made before the expiry of the period of probation.

In other cases if they are inclined to resume conjugal partnership, they should remarry in accordance with the conditions they agree to.

Iddah of divorce

In the case of separation between the husband and the wife an important question is to find out whether she is pregnant by her former husband To ascertain this point the Islamic law has laid down that during a period of probation the woman should not marry another person. This period is called *iddah*.

Period of Iddah

The period of *iddah* for a woman who is not pregnant is the period covered by three menstrual courses, which is normally about three months. The *iddah* of a pregnant woman is till she is delivered.

Rules regarding the period of iddah

During the period of *iddah* the woman cannot take a new husband, and nobody should make an offer of marriage to her. She is to be maintained by her former husband like a married woman.

In the case of revocable divorce if the husband or the wife dies during the period of probation, the survivor will inherit the deceased.

Right of guardianship of children

One of the important questions that crop up on the dissolution of marriage is that of the guardianship of the children which is called the right of *hizanah*.

The Islamic law gives the custody and care of the children in the early years of their life to the mother, even if the father is competent enough and willing to look after them. The limit for a boy is two years and for a girl seven years.

In case mother is not capable or fit to take care of the child, the responsibility of guardianship devolves on the father. In both the cases the father has to bear the expenses of the child. As the right of guardianship is recognized solely for the benefit of the infant, it should be in the custody of the person who can look after it the best. On this principle the Islamic law has given priority in the matter to the mother in the first years of the life of the child. If both the parents are unable to look after it, some other suitable arrangements should be made to ensure its welfare so that if the father and the mother agree, the infant may be given in the custody of a third person under whose guardianship it can, in their view, make proper physical and spiritual progress.

Fixed Time Marriage

Sexual problem of the youth

There is no doubt that the sexual instinct should normally be guided in the direction of permanent marriage and formation of a family. But as all young men at the threshold of puberty and at the time of the outburst of sexual desire are not in a position to contract permanent marriage, they are often involved in perversion and sexual deviation.

In all human societies, of course with some variations, there are many young men and women who, under the impact of sexual urge and being deprived of the blessing of a spouse, waste their energies and talents and instead of concentrating on positive and constructive affairs run into perversion with bitter and unpleasant consequences for themselves as well as for the society. Thus very often the best period of their youth turns into the most bitter period of their life.

Solution of sexual problem

The Islamic teachings which do not ignore any natural desires and the different physical and mental faculties of the individuals and take into consideration all possible social needs, have realistically suggested a via media to solve this problem. The solution proposed by Islam is in conformity with the realities of life and at the same time saves society from an oppressive turmoil which may throw

the family system into disarray. In view of the fact that sexual urge is one of the most irresistible desires of the individual, it is evident that, if a right and lawful way to satisfy it is not found, corruption and perversion are inevitable. The Islamic teachings have shown a practical way to resist passions, to keep away from the external forces, stimulating sex and to use the physical and mental faculties in a constructive way commensurate with human life. In view of the fact that everybody has not the power to resist passions and that such resistance sometimes produces undesirable effects, Islam has given a lot of instructions to facilitate marriage, such as those regarding lessening dower, keeping the marriage expenses to the minimum and avoiding unnecessary ceremonies. Thus it has removed many hurdles. Even the students and apprentices before they are self_supporting can contract marriage in a simple manner and need not wait till they are 3 0 or 3 5 years old when they complete their higher education or specialize in a particular branch of learning. At this age they usually lose the fervour of the youth and marry simply to get rid of suspense and unsettled life.

Further, with a view to solve the sex problem in the cases where man and woman or boy and girl find no way to permanent marriage, the law of Islam has suggested a sort of non_permanent marriage, called mut`ah.

In this kind of marriage the aim is not to form a family. It is only to have legal sexual relations during a period mutually agreed. That is why the agreement in this respect should be very clear and definite.

Formula of fixed_time marriage

The formula is actually a text of the agreement concluded between the parties. It is usually pronounced in Arabic.

The woman says:

Zawwajtoka nafsi fil muddatil ma'loomati alas sidaaqil ma `loom

And the man says: `Qabiltu" Or for example the woman says in English: "I gave myself in marriage to you for the period (as fixed) for the dower (as fixed)" and the man says: "I accepted".

It is to be remembered that the children begotten out of this non-permanent wedlock enjoy all the rights and privileges of the children of the permanent marriage and in this respect the family system of Islam presents no problem.

Contrary to the conception of those who hold that the legalization of non-permanent marriage may give currency to free and unlimited relations and thus promote immorality, this scheme is an effective factor in checking debauchery and the consequent disruption of the families. It may be seen in practice that consequent on the confining of legal marriage to the permanent union only and ignoring other individual and social needs, free sexual relations, with all their undesirable effects, exist with some variation in all societies. Those who criticize this sort of marriage, have practically put and are still putting it into practice in some other way. (For details a reference may be made to "The Shia' – Origin and Faith", ISP, 1982).

Now let us see what is the difference in the rules of the permanent and fixed_time marriages.

Rules of fixed_time marriage

Besides the specification of the period of marriage and the amount of dower, there are certain other rules in regard to fixed_time marriage which may be noted:

- (1) As the main aim of this kind of marriage is not the formation of a permanent family and shouldering the onerous responsibility of rearing up children, each of the parties can take steps to prevent the birth of a child, whereas in the case of permanent marriage that is possible only by the mutual agreement of the husband and wife.
- (2) If a child is born from fixed_time wedlock, the man is responsible to maintain him and provide

enough means for his bringing up.

- (3) In the case of fixed_time marriage the husband is not responsible to maintain his wife, unless there is an agreement in this respect.
- (4) In this sort of marriage the husband and the wife do not inherit each other.
- (5) The rule regarding the prohibition of establishing sexual relations with others during the period of contract is the same as in the case of permanent marriage.
- (6) After the expiry of the period of contract the husband and the wife are automatically separated and there is no need of divorce. *Iddah will* be imposed only if there has been consummation. It has been ordained with a view to ascertain the paternity of the child that may be born after the termination of marriage. The period of probation in this case is the period covered by two menstrual courses, that is about 2/3 of the *iddah* of the permanent marriage.
- (7) In this sort of marriage, the man and the woman may stipulate a condition that their sexual relations will be of limited nature, and, for example, they will not have intercourse. The man is obligated to abide by the condition agreed upon. Hence such a marriage can be useful during the period of engagement and may be a sort of courtship and trial without a feeling of sin before contracting a permanent marriage.

Anyhow, even in this sort of marriage the wife can stipulate at the time of contracting marriage that she will be entitled to any or all the benefits to which a wife is entitled in case of permanent marriage.

Basic differences between permanent and fixed_time marriages If we go through the rules of the fixed_time marriage we can observe that it differs from the permanent marriage in the following points:

In this marriage the responsibilities which normally go with the formation of a family do not exist. The husband is not required to provide the means of living of his fixed_time spouse or to bear the expenses of her daily life.

Each of the parties can take contraceptive measures. In the case of permanent marriage birth control can be resorted to only with the consent of both the parties.

There is no moral or legal difficulty in separation at the termination of this marriage, whereas in the case of divorce after contracting permanent marriage there is usually a feeling of anxiety about the future of the other party or of the children.

This kind of union being lawful, there should be no feeling of sin, no twinge of guilt and no conscience

prick. That is not the case with illicit relations.

In the case of the possible birth of a child the responsibility to be borne by the husband is clear.

After separation the woman cannot remarry within the period of probation if consummation has taken place.

Fixed_time marriage prevents free sexual relationship and guards against immorality and unchastity.

If we go into these points, it will be clear that Islam has introduced a reasonable and ingenuous method of meeting the problem. This method is still a part of the Shia'h canon law.

Fixed_time marriage from the point of view of others

Those who have looked at this question from a realistic angle, admit that a sort of non_permanent marriage is a reasonable and scientific way of lessening the pressure of sexual urge and preventing it from flowing into a dangerous course. It also saves one from the mental distress caused by a feeling of committing a sin and digressing from the moral principles and legal provisions.

Fixed_time marriage has attracted the attention of a number of Western thinkers. The well_known British philosopher of the 20th century, Bertrand Russell, says: Can the young persons be told to be ascetic and monkish? Is there any asSurance that in spite of having free and unlimited sexual relations these young persons will _be chaste and faithful after they choose a spouse and marry? Can the increase of the illegitimate children and their impact on the general conditions of the society be over—looked?

How can this problem be solved? What solution does social experience suggest? Note what the same thinker adds: Judge Lindsey who served for a long time at the Denver Court of justice had an ample opportunity to observe facts. He proposed that there should be an arrangement called companionate marriage. Unfortunately he had to lose his official job, because it was observed that he was interested in the well_being of the youth rather than creating a sense of sin in them. The Catholics and the Ku_klux_klan left no stone unturned to secure his dismissal. Lindsey noticed that the basic problem of marriage was lack of money. Money is required not only on account of possible children, but also because it is not proper that women should provide means of living. As such he concludes that young persons should resort to companionate marriage which is different from normal marriage in three ways:

Firstly, this marriage does not aim at producing progeny. Secondly, so long as the wife does not conceive and does not give birth to a child, divorce will be available with the consent of the parties. Thirdly, in the case of divorce the wife will be entitled to alimony.

There can be no doubt about the effectiveness of the Lindsey proposal. Had the law accepted it, it would have had great impact on the improvement of morals.

Polygamy

Polygamy or plurality of wives is one of the controversial questions connected with the family system of Islam. In this connection a few points are worth consideration:

(a) Natural and social pre_requisites of polygamy

It is evident that the question of polygamy arises when:

- The number of women eligible for marriage is more than the number of marriageable men.
- There are women who are willingly prepared to marry a man already having a wife and consider such a marriage to be in their interest.

Hence the question of polygamy does not arise firstly if the number of marriageable women is less than that of eligible men and secondly if the women are unwilling to marry a man having another wife. Now let us see in the case of the existence of the two conditions mentioned above, as to what can be the most reasonable and practical way of preserving the family system and safeguarding the interests of such women.

Here another question arises and that in itself is worthy of taking into consideration. It is the question of the disparity between men and women in the age of fecundity which has two aspects;

- (1) Marriage age or puberty mostly commences earlier in girls than in boys.
- (2) The power of procreation of women cease at a certain age, after which they become pregnant in very rare cases, whereas there is no such fixed age for men.

(b) Polygamy before Islam

It should be remembered that the custom of polygamy existed before the advent of Islam among the Jews, the Arabs, the Persians and many other peoples of the world. All that Islam has done is that it has

restricted it.

During the Middle Ages it was propagated in Europe that the practice of polygamy was first introduced by Islam. Will Durant has denied this charge. He in his book, History of Civilization (vol. I p. 61), says:

The clerics in the Middle Ages thought that polygamy was an innovation of the Prophet of Islam. But that is not the case. As we have seen, it has been practiced in most of the primitive societies.

Without paying attention to its natural or social causes the Europeans over many centuries tried to describe polygamy as a big weakness of the Islamic teachings. At last some scholars exploded this myth and showed how topsy turvy is the picture painted of this custom and how unjust is its attribution to Islam.

The French historian Gustave Le Bon in his book, says:

In Europe no Eastern custom has been so much criticized as polygamy and Europe has also not gone so wrong about any usage as about it. The European writers have considered polygamy to be the foundation of Islam and have described it as the root cause of the spread of this religion as well as of the decline of the Eastern people. If the readers of this book cast off their European prejudice for a while, they will admit that polygamy is a good custom as far as the social system of the East is concerned. It has enabled the people by whom it is practiced to strengthen and invigorate their family relations. Thanks to this custom the woman enjoys more respect in the East than in the West. Before adducing our arguments to prove what we say, we have to mention that polygamy has not been first introduced by Islam, for this custom was prevalent among the pre_Islamic people of the East, including the Jews, the Persians, the Arabs etc. Even in the Western countries, though the climate of none of them is conducive to such a custom, monogamy is a thing which is found only in the legal books. I do not think that it can be denied that in actual practice monogamy does not exist in our society. I wonder how and why the legalized polygamy of the East is inferior to the clandestine polygamy of the West. (*Tamaddun_i Islam wa Arab*).

Polygamy and its conditions in Islam

Islam allows polygamy on three basic conditions:

- (1) Preservation of the purity and cordiality of family life so that it may not become the cause of disruption of the family affairs.
- (2) Number of wives not to exceed four.

(3) Equitable treatment of all the wives.

Now let us see what the Qur'an says in this respect: `Marry women of your liking, two, three or four, and if you fear that you shall not deal justly with so many then (marry) only one". (Surah al_Nisa, 4:3).

As we have mentioned earlier, prior to Islam there existed no limit as to the number of _wives. It was Islam which restricted it and prevented the formation of *harems* found in the lives of the wealthy persons, rulers and sultans.

Furthermore, Islam has emphasized that taking advantage of this permission is conditional on the observance of complete equitability between the wives. This precondition requires the presence of a special spirit in the man. If he lacks it, he is .not allowed to take more than one wife.

In the end, it is to be pointed out that the basic objective of conjugal life in Islam being the contentedness of the family members and mutual love and benevolence of the husband and wife, the best and the most satisfactory form of marriage is naturally monogamy. Hence the men should avail themselves of the permission of polygamy only in very exceptional circumstances and that too on the condition that they find themselves competent enough to satisfy all the material and moral needs of their wives and treat them equitably.

Family Manners

The holy Prophet has said:

"The best men among you are those who are the best husbands of their wives". (*Man la yahauruhul Faqih*).

The best of your women are those:

- Who are loving and kindly;
- Who look after their chastity;
- Who are not arrogant or disobedient to their husband:
- Who are faithful to their husbands in their absence. (Wasail al Shia'h vol. 14, p. 14).

Imam Ali (P) has said:

- "Be kind to your wife and 'treat her well. Kindness will change her for the better, will keep her satisfied and will preserve her health and beauty".
- "Do not stop your wife from spending and being generous in the house. Do not be stingy in this respect".
- "By your chastity protect your wife from casting an evil eye on others stealthily and entertaining an idea of sin".
- "Your behavior to her should be such that she may not think of unlawful means to satisfy her lawful desires".
- "Do not behave towards her in such a way that she may notice when you are despondent and sexually exhausted". (*al_Kafi*, vol. 5, p. 51).

Some reciprocal responsibilities of parents and children

The parents and the children have reciprocal rights and responsibilities so that if either of them fails to recognize those responsibilities or to discharge them he is unjust or technically speaking *Aaq* vis_a_vis the other.

The Prophet and his family have pointed out that just as a disobedient and irreverent child is guilty of a crime, similarly negligent and careless parents are also atrocious and wicked.

In the capacity of being the first guardians of their children the parents should be careful of their own conduct and behavior so that they may not set a bad example to them. They must be very cautious, for their behavior is bound to have a direct effect on the formation of the habits and character of their children.

To the best of their ability and social consciousness they must do their utmost to promote and nurture the talents of their children and should not hesitate to make sacrifice for teaching and educating them, because that is one of the most effective ways of bringing them up.

They should bring up their children as dignified and self_respecting persons and not as cowards who may acquiesce in every insult.

The parents should ensure that their children become physically and spiritually strong. The children

should be provided a sound atmosphere where they attain a healthy physical growth and receive correct moral training.

The Qur'an, laying stress on the rights of the parents, says:

"Your Lord has ordained that you worship none save Him and that you show kindness to parents
". (Surah Bani Israel, 17:23).

Again it says: "We have enjoined on man kindness to parents". (Surah al_Ankabut, 29:8).

In connection with the behavior towards children it has been recommended that a promise made to them should be scrupulously fulfilled.

The holy Prophet has said:

- "If anyone of you makes a promise to his child he must fulfill it".
- "Treat your children equally in the matter of presenting gifts to them".

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