"If first brick of the wall is placed topsyturby, the wall cannot be flat even if that reaches to the sky."
There is uproar and unrest everywhere in the world. Every person looks dissatisfied. Persons feel that something is there which hinders their progress and attainment of satisfaction. In order to erase that hurdle, there is strike, protest, terrorism, rebellion and aggression. Since law is to regulate the human society, the persons connected with legal fields are under duty to regulate it properly. For this they have to come forward. Sometimes a lawyer will do something decent, despite opposition of the persons e.g. in 1955-56 a number of laws were enacted to reform Hindu Law. Although there was opposition from the groups but finally a bold step was taken. In the similar way the Dissolution of Muslim Marriage Act was passed in 1939 although a section of scholars (Ulema) were opposing. The Muslim Women (Protection of Rights on Divorce) Act was passed in 1986, despite the opposition of the majority community. Law not only be enacted to regulate the society but it must be suited to the subjects also. Law is made for man. Man is not made for law.

There is an institution in Bihar named Imarate Shria, Bihar and Orissa. Muslims who comprise of more than 15% population of India and are the largest minority, appreciate it. The legal system established by the aforesaid institution is used by the Muslims of other states also. In the year 1993 the Muslim Personal Law Board passed a resolution to adopt the Imarate Sharia way all over the India. In response to the resolution of Muslim Personal Law Board, the establishment of legal system came into existence everywhere. Now the question arises as to why Muslims, despite
their personal law, established the alternative legal system. Is it a step of destabilizing the established system? If not what is the cause? Muslim intellectuals conveyed the message that in order to develop, strengthen and implement the personal law they are doing this. So this research is offered with certain questions.

1. Is an Imarat needed for Muslims to lead the Islamic life?
2. Is Imarate Sharia a fit case to be cited as an example of Imarat?
3. Has Imarate Sharia done enormous works in developing, strengthening and implementing the Muslim Personal Law?
4. Are there provisions of alternative settlement in India?
5. Is Court fee charged in the Indian legal system excessive?
6. Has Imarate Sharia provided the alternative remedy?
7. Is the alternative, provided by Imarat, effective, less time consuming and upto the satisfaction of the persons concerned?
8. Is the institution of Quza necessary to dissolve the marriage?
9. Is the future of Imarate Sharia bright in India?

The present thesis has tried to discuss and answer the above questions.

Muslims are fully woven with their faith that includes three things- Monoism, Prophethood & Accountability. According to their faith the Allah (SWT) is creator of universe including human being, and His

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1 Secretariat of Board, 'Gyarahwan Ijtias, All India Muslim Personal Law Board, Karwai Aur Tajwiz' (Patna: Imarat Building) pp. 14-17. 28-29.
2 One ness of Allah, Messengers and the Day of Judgment.
3 They believe that Allah is Almighty and does not suffer from any weaknesses and He is the Greatest of all.
guidance is itself an authority of reasonableness. The act of the Prophet (SAW) is in accordance with the guidance of Him.

Chapter one discusses the concept of Imarat and its place in sharia. The views of religious scholars, the qualifications of Ameer and the comparative study are also incorporated in this chapter. The Quran is believed to be Holy Book, being the wordings of Allah, which was revealed upon the Prophet (SAW) by the angelGabrial. There cannot be any alteration/adulteration in this Holy Book. If this book says that there is need of Imarat that is final. If a thing is not mentioned in the Holy Quran but the Prophet says to do, that is also a source of Islamic law. There are also some allied sources. So before saying that Imarat is necessary for Muslims one is to establish it through the Holy Quran, the Traditions, Ijma or by allied sources. The Holy Quran says -

“Follow Allah And His Prophet And those Charged With authority amongst you.”

Thus the Holy Book guides to follow the Ameer which is not possible unless and until there is any Ameer or Incharge. The Tradition of the Prophet (SAW) is also quoted by Abdus Samad Rahmani that there should be one Ameer. Where the Holy Quran and Hadith are unanimous there is no need to mention the other allied sources to establish its importance. Even then the history is relevant in Indian society. However the history is also witness of its importance. Right from the early age of Islam

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4 Sallallaho Aile Wasallam (SAW) i.e. Peace and Blessing be upon him. It is a pray, taught by Allah (SWT) to recite for the Prophet (SAW) Holy Quran S.33, A.56
5 It is a name of an Angel which is very close to Allah who brings the commandments of Allah to the Prophets.
6 For detail see Quran and Institution of Imarat. Infra Chapter 2.
7 For detail see Hadith and Institution of Imarat. Infra Chapter 2.
till this date no scholar has opposed its establishment. It is also continuing in India in one-way or the other. Arun Shourie has written a book namely ‘World of Fatwas’ in which he has tried to establish that the Ulema are having much sway over the Muslim masses. In the case of Imarat, Shah Abdul Aziz had given fatwa which is as follows -

‘When the governance of an area falls in the hands of non Muslims, the Muslims, became under obligation to elect any body as an Ameer amongst themselves. If there is any nominee made by the non Muslim King, he will be incharge of the tasks assigned to the Ameer. Where there is no nominee, Muslims have to elect any body who is the most righteous, who will be the incharge of Juma prayer, nikah of teenagers having no guardians, protection of the property of orphans, distribution of shares of inheritors who are fighting for their shares and all of this will be made without making any interference in the political affairs of the country’.

Shah Abdul Aziz further said:

“Delhi is no more governed by Muslims. Christians are dominating over here and they destroy the mosques. No body is free for visiting Delhi and the nearby places, without the permission of the Christians. The Government of the Christians is continued from Delhi to Calcutta. The India is just like Bani Yarhua, which was a non-Muslim country, in the Caliphate of Abu Bakr, where the performance of Idain and Juma etc was continued.”

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8 For detail please see Historical development and Institution of Imaarat. Infra Chapter 2.
9 For detail please see Chapter 2
10 Ibid
Not only the Muslims were demanding and trying to establish Imarat but also the Britishers were fully aware with this fact. W.W. Hunter had written in detail about this.

In this background one Mr. Abul Mahasin Sajjad founded Imarate Sharia in 1921 and functioning till date. Under its jurisdiction the State of Bihar, Orissa and some part of Bengal are given.

But the question arises whether it is a legal entity. Has its established system been treated as an alternative remedy? Moreover is there provision of alternative settlement in our system? When these questions are raised one will reach at the conclusion after long discussion of law as well as fact.

Chapter two consists of the concept of alternative settlement. Historical background of alternative legal system, its validity and practicability of the alternative in Indian system is also discussed. In ancient India there was alternative system. Right from the age of Shastras down to the Rajputs there was provision of alternative system. In the medieval period no abolition of this system could be possible. Not only Khalji dynasty, Slave dynasty and Tughlaq dynasty but the entire Sultanat period including Mughals and Shivaji have provided the alternative remedies. Thus we see that the history of alternative remedy is dignified. The Britishers to some extent unified the judicial system but the village folk were still playing a dominant role in settling the issues. Prem Chand in his famous book Mansarovar has written a story entitled ‘Panchayat’ is evidence of this fact.

11 For detail please see Chapter 3 infra.
Apart from this the alternative system is recommended due to adversarial system and reactive mobilization of Indian legal system. In reactive mobilization the subjects are to initiate the legal proceedings. The time taking process of our system is another ground of its recommendation. The delay may be caused by executive, mismanagement of the Court work or due to bar. Ultimately that hampers the judicial work. The Court Fee system is another cause of the demand of alternative remedies. The critics say that the fee charged from the poor litigants is not only enough to meet the judicial expenses but it is appropriated in general revenue also. From its very inception even Lord McCauley, the Britisher, has severely criticised it. The law commissions have also advised to reconsider this system. Some others criticise that this system is developed by the colonial lords for their subjects. It is the irony of the fate that we are embracing a system of Colonial Masters although we have rejected them. Even the independence of judiciary is doubted. The former S.C. Judge Justice V.R. Krishna Iyer writes much about this in his book ‘Justice at the Cross Roads’. The demand of the public may also not be denied. There is persistent demand of alternative system. Moreover, the constitution, which is, treated supreme in India talks about alternative. Article 40 says - “The state shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

Here the organisation of village panchayat is nothing but an alternative remedy. The organisations of Lok Adalats are also the alternative provisions. The Arbitration and Conciliation Act is also of same effect.

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13 Esp. 14th law commissions Report please see Chapter 3 infra.
At international level, the alternative system is adopted with regard to the commercial transaction. The UN has passed a model code, which is known as UN CITRAL model rule to which most of the countries have ratified and modified their laws in conformity with that code including India. The courts themselves are encouraging the alternative provisions to the affected persons. In Jamal Ahmad Siddiqui V. A.M.U. (20282 of 1999), Zakir V. A.M.U. (3118 of 1992), Hashim Ali Khan V. A.M.U. (41481 of 1999), Dr. Mohd. Zulkefle V. A.M.U. (44601 of 1999), S. Nazeer Mehdi V. A.M.U. (41482 of 1999), Dr. Anwer Alam V. A.M.U. (37654 of 1999) and Ms Raihan Raza V. A.M.U. (38841 of 1997) the Allahabad High Court has held that in presence of the alternative remedy, the High Court need not be approached.

Since the study is confined to the working of Imarate Sharia Bihar the view of Imam, regarding marriage, dower, divorce and dissolution is to be minutely observed and analysed.

Chapter three talks about marriage and view of Imamate Sharia. Marriage is the union of two opposite sexes, which is the necessary incident of Islam. The Holy Quran says:

و أَداْكُحُوا الَّذِينَ لَا يَدْهَقُونَ مِنكُمَ ۚ وَالْمُكَفَّرُونَ مِنْ عَبَاءِكُمْ وَإِنْ آيَتُكُمْ ۖ إِنَّكُمْ بِهِمْ لَمَّا كُنْتُمْ أَضْعَفْتُمْ عَلَيْهِمْ

"And marry such of you as are solitary and the pious of your -selves and maid servants. If they be poor Allah will enrich them of His bounty. Allah is of ample means, aware."14

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14 M.M.Pickthall, Holy Quran'S 24 A 32
He further revealed,

وَإِنَّ حَفْظًا مَا تَفَسَّّبُوا فِى الْيَدَانِمَنْ فَانْدِعْوَانَ مَا طَابَ لَكُم

"And if ye fear that ye will not deal fairly by the Orphans, marry of the women, who seem good to you."

The Traditions of the Prophet (SAW) also show the importance of the marriage. Prophet has said -

"There are three persons whom the Almighty Allah himself has undertaken to help, first he who seeks but his freedom, second, he who marries......"

It is also said that there is no act of devotion that has remained prescribed for us, since the time of Adam (AS) up to this moment and will be continued in paradise except marriage and faith.

The nature of the marriage is of a sale or ordinary contract will be discussed. However the Holy Quran has termed this contract as pious one.

**Chapter fourth** contains the concept of dower and view of Imarate Sharia. In this chapter a discussion on dower debt is incorporated. In the matter of quantum of dower there is difference of opinion amongst the scholars. According to some, it may be fixed but according to others it may not be so. Thus the divergence of opinion about the amount of dower is also worth discussion which has been made and all the views including

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15 Ibid A.3

the opinion of Imarate Sharia has been discussed and analysed at appropriate place. The deferred and prompt dowers are also picked-up for discussion. The term dower debt is also very common and Imarate Sharia has often used this term. So the same will be examined at its appropriate place.

This chapter also contains the concept of divorce and view of Imarate Sharia. In this chapter a discussions on taqul bidai is incorporated. Though the divorce is most abhorred act in Sharia but at the same time it is the most burning topic of Muslim Personal Law. The right of divorce is given to the husband. The use of husband's right whether checked or not is complex question. The question why women are not provided this right? However they have been given the right of Khula. The legislation in India also provides them certain grounds for dissolution of the marriage. Imarate Sharia is at par in this and it provides more grounds than that of the D.M.M. Act 1939. One more interesting topic is divorce. Whether triple divorce is valid divorce or not. There is legislation to this effect in several countries. So a thorough discussion has been made about that.

Chapter fifth and sixth consist of grounds for dissolution of marriage. The scholars suggest several grounds for dissolution of marriage but Imarate Sharia follows the following grounds.

Untraceability is ground of dissolution of marriage. Some scholars suggest very tough conditions to dissolve the marriage on this ground while others are comparatively very lenient. The Imarat has further

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17 For detail see chapter infra.

18 1.Untraceability.2. Inability of the husband to maintain the wife. 3. The neglect of the husband. 4. Impotence of the husband. 5. Insanity. 6. Virulent and Venereal diseases. 6. Kafat. 7. Option of puberty. 8. The enmity between the spouses. 9. Cruelty.
eased it and with the help of other grounds the marriage is dissolved without fulfilling the tough and lenient conditions i.e. of 70-80 years waiting or 4 years waiting after applying to the Qazi.

On the ground of inability of the husband to maintain the wife the different opinions are there. However Imarate Sharia has adopted the opinion of those scholars who are in favour of dissolution. But why it is so? It will be discussed. The neglect of the husband is another ground of the dissolution. The Indian legislation provides 2 years time for it but Imarate Sharia is of the view that even in lesser time the marriage may be dissolved provided the situation is grim. Regarding the impotence of the husband, the wife has right of dissolution. However the opinion of the scholars about the consent of the wife and opinion in the same sitting is not followed practically. Inspite of it that wife has consented the marriage; she can get the dissolution effected. In the similar way the insanity also occasions for dissolution. Although the opinions of the scholars are divided, the Imarat has adopted the liberal view favouring dissolution.

Virulent and Venereal diseases are another ground of dissolution of marriage. There are certain diseases, which ail others. In such circumstances if a wife wants not to live with her husband, despite the morality does not allow it, she has legal right to get the marriage dissolved. In this matter the Imarat has adopted the views of Imam Mohammad and other scholars of Sunni School. One more ground of dissolution of marriage is Kafat. Where the wife comes from the higher order may face the problems if forced to adjust in a lower order. But Imarate Sharia does not accept this ground for lineage saying in non-Arab territory there is no option of kafat on lineage. In the matter of option of puberty a wife should
have right to correct the mistakes of her guardians. However it is seen that
the marriage made by the father and grandfather held valid despite that the
wife opts her option to repudiate it. One interesting topic in dissolution is
physical contact. The Shafeyees have taken a liberal view while the Hanifis
have taken a tough stand. However after discussion it will be commented
whether seeing with lust may occasion prohibition and marriage should be
considered dissolved. About the cruelty some scholars have taken the tough
stand. They say that even once beating to the wife may occasion
dissolution. While others have adopted a liberal view. However it would be
better to adopt a way in between two. The enmity between the spouses will
also occasion the dissolution. It is a natural phenomenon that the person
who is aggrieved with other will see him with doubt and to live with him
becomes impossible. So there is no alternative other than the dissolution.

**Chapter seventh** talks about the working of Shariat Court under
Imarate Sharia. The best way of comparing with the Regular Courts is to see
the time, money, expenditure, appeal and implementation of the decisions.
For the cases decided by the Imarat Sharia and Patna High Court are to be
compared. It is also to be discussed here whether Muslims are under duty to
opt Shariat Court.

**Chapter eighth** talks about the future of Imarat Sharia. To see
the future of Imarat Sharia, the works done by the Imarat Sharia is to be
minutely observed. What services Imarat has done in the past? How it is
serving the society in the present day scenario? What has it planned in the
future? and moreover what is its image in the different segments of the
society? On the basis of the study it will be seen as to what role has been
played by Imarat in developing and strengthening of Muslim Personal Law.
Chapter nine analyses the role of Imarate Sharia in developing and strengthening the Muslim Personal law. An important question is also to be discussed here i.e. is Imarate Sharia a real Imarat or not?

Before appendix, there is conclusion, which consists of the inference of the study. On the basis of which some suggestions have been made which may be treated as crux of the study.

In the last the appendix is attached which consists of the cases of the Imarate Sharia published in the various magazines and list of the cases opted for the study. The questionnaire used in the survey along with the legislations made in the various countries, concerning personal law is also incorporated here.
1. INTRODUCTION:

This chapter deals with the historical perspective of Imarat Sharia. Before that, it is necessary to know the meaning and place in Quran and Hadith of Imarat. The view of the religious leaders about Ameer and his qualifications are also incorporated here. The historical developments of the institution of Imarat and practical aspect of Imarat Sharia (Bihar & Orissa) will also be discussed in this chapter.

2. THE HOLY QURAN AND INSTITUTION OF IMARAT:

It is the basic principle of Islam that it emphasises unity of Ummat and discourages disunity. Allah has revealed¹-

وَأَعَظِمُواْ بِحَبْلِ اللَّهِ جَمِيعًا وَلَا تَفَرَّقوْنَ وَأَذِيَّكُمْ وَيَعُمْنَ اللَّهُ عَلَيْكُمْ إِذِّنَ كُنَّتمْ أُمَّادًا فَأَلْقَيْتُ بَيْنَ فَلُوْيَكُمْ فَأَصْبَحْتُمْ بِيَمِينَ يَمِينَكُمْ إِخْوَاً وَكَنْتُمْ عَلَىٰ صَفٍّ حَكِيمٍ فَأَنْقَدَّكُمْ مِنْ آنِٰةٍ فَأَغْفِلْهُمْ مِنْهَا كَذَٰلِكَ بَيْنَ اللَّهِ لَكُمُ إِنَّهُ يَسِيرُ لَكُمُ ۖ تَجْزَأُونَ

"And hold fast,

¹ Holy Quran S 3 A 103