Chapter IV

THE INSTITUTION OF MARRIAGE
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1. Introduction
2. Historical Appraisal of the Marriage Institution
3. Sadiqa Marriage
4. Marriage of Capture
5. Shighar
6. Polyandry
7. Reforms implemented by Prophet Mohammad (SWA)
8. Marriage in Islam is a divine Institution
9. Husband and wife, as equal partners
10. Divorce in Islam
CHAPTER IV
THE INSTITUTION OF MARRIAGE

INTRODUCTION

One of the important and valuable contribution of Islam is the introduction of marriage institution and giving it a legal status. Islam advocates that marriage between male and female is one of the most sacred fundamental social institution which serves three important purposes.

1. It is a legal source of procreation, which means propagating of human population so that the human race could continue to grow and survive.

2. Cooperation and participation in the struggle of earning ones livelihood through legally acceptable means.

3. Educating the offspring, submission to Allah and the following of Islamic Shariat. Marriage in Islam is based on reality. It emphasises on women’s chastity and conjugal rights i.e. exclusive attachment of the wife to her husband. It cares for child legitimacy and their parentage. It is through this institution, parent have been given the responsibility of nursing and rearing up their children. The Offsprings of legally married couple inherit his parents property and maintains the values of the family. At the top of all under Islamic system, marriage has been considered as the only legal and honourable way of satisfying sexual
desire, and as such the union of husband and wife ensures the survival of the mankind. In short, marriage in Islam is 'sunnat' and is looked upon as an essential religious obligation for both men and women. The Muslim Marriage, in its real perspective, is purely a secular ceremony. There is nothing sacred about it, nor their is any mystical over-tones of two halves coming together to make a whole.

It is a contract between two concerning adults who join together as husband and wife. Both parties enjoy rights and share responsibilities. It is surely beneficial if they live in harmony. But, if such harmony could not be achieved, no censure is attached to separation and divorce. Although divorce should not normally be considered the easy way out. It is this provision which is unique in Islam and which makes the marriage institution most secular in character and practice.

The Prophet of Islam (SWA) himself, placed marriage over and above an ordinary union of two sexes or a mere means of producing progemy and assuming the continuance of human race. "Marry" 'he is reported to have said', "to enjoy their (women's) love and to legal children". Marriage thus, makes husband and wife, not only partners in the venture of raising a family but it also ensures full sexual partnership in giving and receiving pleasure§".¹
Historical Appraisal of the Marriage Institution

It has repeatedly been pointed out earlier that during pre-Islamic period the birth of a daughter was usually looked upon by the Arabs, and by other neighbouring nations, as a clamity and insult to the parents. Burying alive the female child was a common practice among them.

It is reported that Hilkrion warned his expected wife Allice in these words "If perchance you bear an offspring and it is a male, let him live and if it is a female, put it on the midden." ²

The Quran while speaking of the Jahilliyas says, "on hearing such news a father's face grew black and be choked with rage". This statement has appeared in Quran at two different places (Sura 16 Ayat 60 and Sura 43 Ayat 16). Robertson Smith, in his book, 'on kinship and Marriage in early Arabia', "says", that the practice of burying the female child had been common, among the Arabs before the advent of Islam.³ Another common practice was that, if a girl was allowed to live, she would have normally been married at an early age, the parents fearing that, otherwise she and they would be dishonoured. In those period of utter darkness and of barbarism, no social laws were observed. Children infanticide was common. According to Ghulam Ahmad, in his book, "The teachings of Islam" Rapine and incest raged supreme and not infrequently mother were taken as wives.⁴
Sirdar Ikbal Ali Shah, in his book, 'Mohammad the Prophet', has mentioned "Barring the love songs in praise of the beloved, which were the out-come of carnal east, women were accorded no better treatment than lower animals. There were no set principles and laws which could govern this system. As pointed out by 'Abul Faraq' the compiler of the book 'Kitabul Afghani'. The women in Jahalliya, used to divorce their husband very casually. The form of the dismissal was somewhat atypical. For example, If a woman living in a tent, had decided to divorce her husband, she would turn the tent round, so that if the door had faced east, it was now faced west and if it had faced yemen it would now face Syria. When the man (husband), saw this change, he would understand that, she had divorced him, and he would not enter, the tent.

Marriages were conducted in the simple ways involving not very high moral standard. No witnesses were required, nor was there any contract with the women's kinsmen. Such marriage were known as Sadiqa Marriage.

SADIQA MARRIAGE

As per tradition the perspective husband used to present himself before the women with the remark "Khitb" (I am suitor) and the women, on acceptance replied, "Nikha" (I wed). A woman so married was called Sadiqa, which means "friend" and the man was her sadiq. He gave her a present, as
a prize of her "Consent". In such marriage contacts the woman who received the gift, need to remain with his man upto the expiry of the specified period. The period might however, be extended with mutual consent. There were also instances of forced marriages during pre-Islamic period. Such marriage were known as marriage by capture.

Marriage by capture

This practice was common among the primitive Arabians and it continued upto the time of Mohammad (SWA). In this system women of strange tribes were exposed to peril. There can be little doubt, that the experience of marriage by capture were derogatory for women. After forcing a women to become wife of a man, from another tribe, they lost their identity. This inhuman custom made the Arab women very cheap and dishonoured. Captured women were often held to ransom, and it was a question of prestige for the tribes, whose women had been captived, to recover them, at very high cost. Another reason for the prevalence of this custom was, that the purchased price of a wife was often too high for the indigent Beduin. When other means failed to have a wife Beduins usually grabbed possession over a women by capture. The shortage of women due to female infanticide, was perhaps, one of the major causes of the popularity of this in-human practice.
Such type of marriage and similar other mal-practices degraded the status of women to a great extent. They tended to reduce the position of women to that of a cattle. They did not have any right to divorce, nor they had any right on their children. Men, usually had complete authority on them, on their children, and property. There were also customs of marriage by contract or by purchase.

Shighar was another form of marriage recognised in pre-Islamic times.

Shighar: In this system a man would contract the interested party to give his daughter, sister and other wards, in exchange of the payment of 'Mahar'. This amount would go directly to the father or brother, who possessed the women in his charge. Hazrat Mohammad (SWA) however, emphatically condemned this system, on the ground, that it deprived the women from her right on 'Mehar', which must go to her directly.  

Polyandry: It was another form of marriage in this system a group of kinsmen, might be several brothers, would unite to procure a women of another tribe, either by capture, or by purchase, and bring her to their home to serve as a wife to all of them.

It is clear that in such a state of affair, the paternity of the child remained doubtful, and in the case of
a polyandrous group, the real father of the child could not be known. Apart from this problem, unlawful system had an unending bearing on lowering down the status of women in the society and in her own eyes.

Reforms regarding marriage, implemented by Prophet Mohammad (SWA)

Our Prophet Mohammad (SWA) remained a close observer of the traditions and customs prevailed in Arabia for about forty years. At several occasions he was badly pained to witness the deteriorating condition of Arabian women.

Fully realising the importance of women in the human society he directed his efforts towards raising the status of women in the family and in the society. He therefore made concerted effort towards modifying most of the existing customs, and introducing new laws and conditions for the upliftment of women community and restoring their real position. In view of the Special needs of his time and the country, the Prophet of Islam (SWA) was undoubtedly an earnest champion restoring women's right. The form which his advocacy took place, resulted in slamming out the most abused custom of female infanticide. In his pursuit to raise the status of women in Islam, he laid down different restrictions on the earlier Arabs practices regarding marriage.
Marriage in Islam is a divine institution

It is Islam which gave the women the right to give their consent to choose their life partner. They were given absolute protection against gross tyranny. It was for the first time, that Islam legalised the right of women to demand separation from her husband, if the life of the partner become miserable. The divorce, or the dismissal of the marriage contact did no more remain an easy job. These and many other such reforms introduced by the Prophet of Islam certainly improved their lot. Women were sanctioned almost an equal status, as it was enjoyed by men, in every sphere of life. The reforms introduced by our Prophet Mohammad (SWA) were invariably revealed in the Holy Quran. Marriage has repeatedly been presented in the Holy Quran as a divine institution, legalizing sexual intercourse for the purpose of procreation. Quran says,

"Your wives are" your fields, go in therefore to your field as ye will, but do some act for your souls, good and fear ye God, and know that ye must meet Him and bear these good.

(S.2, A.223; and also S.30, A.2)

Although marriage has been obligatory to every muslim but there are certain concessions. Surely, the believers are directed to live a married life but, Quran says, If you are
poor and because of poverty you can not afford marriage. It is legitimate reason for not getting married.

"And let them be in continence, those find not means to marry until God out of His grace maketh them free from want".

(S.24, A.33)

In the same tone Quran promises that a rightful marriage is always liked by the Almighty. Since God is aware of all, what is right and what is wrong, He is all knowing, but at the same time all bounteous. He promises to take care of married couple even if they are not in a well to do position.

Quran reveals, 'And marry ye those among you who are single and those who are righteous one's your male slaves and your female slaves; If they be needy, God out of His grace will make them free from want, and God is all bounteous and All knowing'.

(S.24, A.32)

Islam wants every believer in God, men and women to lead a respectable married life. The sex urge in man and woman is a natural force, which is a God gift, to keep the processes of procreation of the species to continue, till the last day of judgement. If this urge is not properly controlled and duly sublimated it is liable to play havoc and
cause irrepairable damage to social health, harmony and happiness of the people. It may also degenerate the individuals resulting spiritual degradation. Islam always preached and commanded the rational and moderate movement in every walk of life, and had never encouraged extremist approach in religious, social economic and spiritual matters.

Islam recognizes Husband and Wife as equal partner

In Islam the equal status of both male and female sexes have not only been recognised but has emphatically been insisted upon. It may be said that if sex distinction due to biological reasons do not affect the spiritual status of the two sexes, how can it affect status in worldly affairs? Allah addressed both the sexes on equal terms in the Holy Quran.

"Never will I suffer to be lost the work of any of you, be they male or female, you are members one of another."

(S.3, A.194)

At another place the Holy Quran reminds that men and women are equal in the eyes of God. They are inter-dependent. It is their cooperation and mutual understanding that may rightly serve the very purpose of the creation of this universe.

In the eyes of Almighty there is no distinction of sex, so far reward for righteousness is concerned. A righteous
person shall be dully rewarded. This part of the verse indicates that men and women both are equally required to shun off evil and be righteous. Islam recognises perfect equality of both sexes as regards to their responsibility to be good. According to the natural assignment and native endowment, the status of men and women as a married couple is that "Ye are from one of another", reminds that men and women have equal status.

Surah 'Nisa' or the women, starts with the command from Allah to worship Him alone who created all the human being from a single soul Adam, and created the male and female of the same rank and nature, made them mate for each other; then Allah or dains that the human beings, in general, and the muslims in particular, on account of their faith, 'revere' the womb that bore them. The Holy Quran says

'O mankind! Reverence your Gaurdian-Lord, Who created you from a single Person, created of like nature his mate, and from them twain scattered (like seeds) countless men and women; - Reverence God, through Whom ye demand your mutual (right) and (reverence), the wombs (that bore you); for God ever watches over you".

(S.4, A.1)
This Ayat clearly indicates that Muslims have been enjoined to hold the women in the highest form of respect. They have been asked to 'revere' Allah who produced them, the mothers, who gave them birth and the wives, through whom they are expected to continue their linear succession.

The phrase "to revere the womb" is, perhaps, the most comprehensive phrase, in which men have been ordered and are expected to keep the women in greater respect. The respect to women-kind has perhaps, been the one of the main objectives of the Holy Quran. Islam respects and believes in the purity of sex and therefore, it gives honourable position to the institution of marriage. An Islamic marriage does not only mean the physical relationship between male and female, there is also an spiritual aspect in it, and it is because of this reason, the purity of sex has been given the highest priority in the Holy Quran.

Since sex bears the highest spiritual harmony in human life, it is feared that if the husband and wife belong to different faith, it might lead to some confusion and conflict between them. Such conflicts and differences between husband and wife may prove a barrier in the path of fulfilment of the objective of marriage. It is because of this fear the Holy Quran has forbidden marriage between the believers and the non-believers. The Holy Quran is very specific on this point. The Holy scripture commands.
"Do not marry unbelieving women, idolators, until they believe. A slave woman who believes is better than an unbelieving woman even though she allure you, nor marry (your girls) to unbelievers until they embrace Islam. A man slave who believes is better than an unbeliever even though he allures you.

(S.2, A.221)

It may be pointed out here that his command is very important from the point of view of sociology and human Psychology. It has been very aptly pointed out, that marriage is the most intimate communion, and the mystery of sex finds its highest fulfilment when intimate spiritual harmony is combined with the physical Truth. If religion, at all, has some impact on life, a difference in believes and faith must effect the life of both, more profoundly, than differences that might be due to birth, race, language or position of women in life. It is therefore, only justified that the parties pursuing matrimonial relationship should have same religious and spiritual outlook.

A Harmonious and pious married life is the "WILL of God"

The Holy Quran says, in regards to the position of husband and wife that, women shall have right similar to the right of men, but men have a degree (of advantage) over
women. The reason, why husband have been granted a little degree of advantage over the wives? According to the Holy Quran:

"Men are the protector and the maintainer of the women, because God has given the one of them more (strength) than the other, and because they (men) support them (women) from their means. Therefore, the righteous women are devoutly, obedient and guard in (the husbands) absence what God would have them asked to guard. As to those women on whose part ye fear disloyalty and ill conduct admonish them (first), (next), to refuse to share their beds and (last) beat them (lightly); but if they return to obedience; seek not against them means of (annoyance) for God is most High Great (above you all)".

(S.4, A.34)

The above Ayat throws light on two important facts of life. In the first place, it shows that the husband has an obligation to maintain his wife and the family, and the wife on her part, has got an obligation to guard her own virtue; the husbands reputation and his property. This part of the revolution of the Holy Quran based on the fact that mutual trust between husband and wife ensures love and affection between them. This relationship lays the foundation of a
civilized society. Certainly, the mutual rights and duties between husband and wife is the foundation of a happy family life, which definitely promises sound minded generation.

The second part, however, marks a provision between them, which is natural and can any time be expected from the human being. In view of this natural phenomena the Holy Quran says; that in case of fear of disloyalty and mis-conduct on the part of the wife, four steps have been suggested. First, it had been that the verbal advice or admonition may be sufficient. If it does not work, as a second step, it is suggested, that husband may suspend sex relation. Even if, that does not work as a third step, slight physical correction might be administered. It may be seen that these steps have been suggested in a very psychological way in ascending order. It would not be out of place to mention, that seldom there would be any need of going down to all the three steps, if men and women have started their relationship with real trust and understanding. Presumably, the first two steps would be sufficient to bring the mutual relationship back to normalcy between husbands and wife. Surely, if the third steps becomes necessary then the couple must be sure that they are not going to live a healthy married life. It has further been suggested, that if these steps did not lead to harmonious relations between the husband and wife and it is feared, that there might be a breach between them, then
two arbiters are to be appointed one from each side. These arbiters may help bring reconciliation between the couple and might enable them to lead an honourable, harmonious life. The same has been revealed in the Holy Quran in the following words.

"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, God will cause their reconciliation: for God hath full knowledge, and is acquainted with all things.

(S.4, A.35)

In fact, purity of sex has been commended both for men and women all the time, before and after marriage. From time immemorial, the sex offences have been considered as one of the major offenses. It is this fact, that might affect the spiritual life of the couple in the highest degree, and therefore, in such matters, there has been no difference between husband and wife.

The honour and respect of women and the significance of equal status between male and female are so important in the eyes of Allah, and before our Prophet Mohammad (SWA) that even minor happenings which might take place in a family between the husband and wife has been explained in the Holy Quran. For example, it has been revealed that "in the case of any one launching a charge of infidelity against his/her
spouse without any evidence, it has been ordained by 'Allah' that he or she will take an oath in the presence of Allah, four times, that the charge is correct and for the fifth time he/she will have to take an oath again in the presence of Allah that the curse of Allah be upon him/her if he or she is wrong.

Obviously, this very strict condition has been laid down for the proper social conduct of both the husband and wife. It can also be witnessed that both husband and wife have been given equal right and equal status, in proving his or her charge against the other. It has further been revealed 'If any one hesitates in doing so (taking oath) then the charge against him or her is proved. It is but natural that in either case, the marriage contract would be broken, because no party can live happily after such an incident. The same has been revealed in the following verse.

"And for those who launch charge against their spouses, and have (in support) no evidence but their own -- their solitary evidence (can be received) if they bear witness four times, (with an oath) by God, that they are solemnly telling the truth; and the fifth (oath) (should be) that they solemnly invoke the curse of God on themselves if they tell a lie. But it would avert the punishment from the
wife, if she bears witness four times (with an oath) by God, that (her husband) is telling a lie; and the fifth (oath) should be that she solemnly invokes the wrath of God on herself if (her accuser) is telling the truth.

(S.34, A.6-9)

And then Holy Quran proceeds further to add:

"If it were not for God's Grace and Mercy on you, and that God is Oft-Returning, Full of Wisdom, (Ye would be ruined indeed)"

(S.24, A.10)

The above surah, clearly negates the old traditions of Arabs 'Jahaliyas', when the separation of men from women and breaking up the matrimonial ties were just a fun, depending on the sweet will of either party. This further strengthens the view, that Islam is the first and the only religion which has been particular in raising the social status of women at the time when women were treated as cattles, and were used for the sexual pleasure of men.

Islam concerns towards women status in the society and its willingness to help people lead a pious a married life is very important. In so many words, it has been said, that who lay a charge against the chaste women and are not able to produce four eye witnesses, then for then 'Allah' have laid down strict punishment.
It must be noted, that in other cases only two witnesses are needed, but on the charge of infidelity against the chaste women, four eye witnesses have to be produced, and all of them must admit that they had seen the infidelity of women.

'Allah' has laid down severe punishment to those who fail to prove the cases of infidelity against women under Quranic laws. The Holy Quran says:

"And those who launch a charge against the chaste women, and produce not four witnesses (to support their allegations), -- flop them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors";

(S.24, A.4)

And in case the charge is proved against men or women before or after marriage, Allah has ordained for a very strict punishment to him or her, so that it becomes exemplary for the future. The Holy Quran says:

"The woman and man guilty of adultery, or fornication, flog each of them with a hundred stripes: let not compassion move you in their case, in a matter prescribed by God, if ye believe in God and the last Day: and let a party of the Believers witness their punishment".

(S.24, A.2)
Once again, it can be said that equal punishment has been prescribed by 'Almighty' for both men and women without any discrimination. Allah has repeatedly condemned those who laid down accusation against the chaste women. In the words of Holy Quran:

"Those who slander chaste women, indiscreet but believing, are cursed in this life and the Hereafter: for them is a grievous Penalty",

(S.24, A.23)

The marriage institution has been given a very significant place in the Holy Quran. Since it lays a foundation of a family it should be considered, as the most pious and honourable institution. Best efforts have been made to safeguard its sanctity and honour.

The Holy Quran says:

"O, children of Adam! we have bestowed upon you garment to cover you shame and to be an adornment to you and the garment of righteousness, that is the best"

(S.7, A.26)

In other words, a healthy union of husband and wife may be a source of everlasting happiness for them and for their family. If this union is developed on mutual trust and respect and they have firm belief in 'Allah', in His Heavenly book, and in the supremacy of the Holy Prophet then they will be able to discharge all the duties and
responsibilities gracefully. They will surely win God's favour.

Importance of the consent of the Girl in choosing her husband

Consent of Girls in choosing their husband is a necessity in Islam.

In pre-Islamic days the Arabs as well as non-Arabs including Jews and Christians, considered fathers to have full authority over their daughters, their sisters and in most of the cases, even over their mothers, in the choice of their husbands.

For them these women were not given any liberty to give their own consent or decision about their likes and dislikes. It was considered to be the sole authority and function of the father, brother or the uncle, to give them in marriage to any body whom they liked. In some cases these women might be sold, exchanged or even given as a gift to the person whom their guardians decide. Islam was the first religion which has broken this in-human custom. Islamic laws about the consent of women regarding her marriage is considered very important. There are certain Ahadith which can be quoted here that the Holy Prophet had very emphatically, practiced this natural Islamic law himself. Infact, Islam did the greatest service to the female sex by giving them the right and freedom to make a choice for their life partner without accepting any external pressure.
Shahid Athani the Great Fuquha (Islamic law scholar) and the writer of 'Jawahar lul Kalam', reveals in Masalick, that, a young girl came before the Prophet (SWA) and complained that her father had given her into the marriage of her nephew without seeking her consent, but "I do not like him, so I can not be a wife of a person whom I dislike". The Prophet (SWA) in the first place, with all sincerity, advised the girl to agree with the decision of her father, but the girl did not agree. So, the Prophet (SWA) willingly allowed her to make a choice of her own. However, the girl finally accepted that she, very much likes her cousin, and wanted to live with him as a wife. She said "I was against the marriage simply because, it was done by my father without my consent". It was at this moment that Holy Prophet (SWA) declared" Inform all women that hence forth father have no right to take a decision on their own and give their daughter to any one they like".  

There is another authentic A-Hadith which explains the circumstances when the Holy Prophet (SWA) had to give injunction against the decision of the father about the marriage of his daughter. It is reported, that during the last pilgrimage of the Holy Prophet, a man came before him and complained", "Many years ago, "he said, 'during the Jahalliya, I and Tariq Ibne-Marqa, had taken part in battle". Tariq was badly in need of a spear and declared,"if any body
gives him the spear he would give him as reward, the first daughter born to him" I accepted the offer, and handed over my spear to him" After many years I discovered a daughter had been born to Tariq and that she was of a marriageable age". "I went to Tariq" and reminded him about his offer", but Tariq had broken his words of honour and now he asks for a dower for his daughter" Now I have come to you for justice and to know is justified between I and Tariq"? The Prophet (SWA) enquired about the age of the girl and when he came to know that she was a grown up lady, he answered" "According to what you asked me", "neither you nor Tariq are right". Go back and look after your own affairs and leave the poor girl to look after herself.  

Islam vehemently opposed and condemned such customs. It is another successful effort of Islam towards restoring women's respect and valuing their will, in the selection of their husbands. It has been reported, that the Holy Prophet himself gave his daughter A Zehra (SA), liberty of choosing a husband for herself. On the occasion when Ali-Ibne-Abi Talib (AS) presented himself to the Prophet and asked for the hand of Az-Zehra (SA), the Holy Prophet said", "several persons had come to me to ask the hand of Az-Zehra, but by the displeasure of her countenances, she had refused them". "I shall inform her of your request". It is further added that "The Holy Prophet went to his daughter and put the offer before her". Az-Zehra did not turn her face away in
disapproval this time, and by being silent and undisturbed, she expressed her consent”. The Holy Prophet, “reciting Takbir came back to Ali (AS) and congratulated him”. 10

Similarly, the Holy Prophet gave several other daughters in marriage, but never he deprived them of their right to choose their husband. In fact, for our Holy Prophet the consent of girl for their marriage was considered something very important. It does not mean, that the fathers do not have any right on their daughters, but surely, her willingness should be sought and it should be given due consideration, this is the spirit of Islam, in support of the above facts the Holy Quran says:

"It is not lawful to inherit women against their will ..."

(S.4, Ayat 19)

It was the custom in the pre-Islamic Arabia that when a man dies his elder son inherited his widowed step mothers as his wives. The same was strictly prohibited by Islam.11

According to Murtada Muthari, under Islamic laws sons and daughters are independent so far the disposal of their property is concerned, provided they have reached the age of maturity, and are in possession of sound state of mind. He say, that "fathers, mother or any body else, do not have any right to interfere in the economic matters or in the matters related to property dealing." Although, he agrees, that there
is some difference of opinion between sons and daughters, in case of marriage. Where as a matured son has full right to select his wife for himself, but in case of daughters, if they are virgin then the father may have certain rights, but that too, to a very limited extent. So far the absolute authority of father is concerned there are difference of opinion between scholars in this regard. There are "fuqahas" who believe that the necessary condition in the marriage of the daughter is to get the approval of his father, while other group of Fuqahas' are of the opinion that fathers approval is no a necessary condition.12

However, the point, on which both the group agree, is that if the father does not give his approval, then he should give a convincing reason for his disapproval. In case father fails to convince and fails to give a genuine reason for his disapproval, then he forfeits his rights. almost all Fugahas of Islam agree, that in such case the daughter has complete freedom in choosing her husband. However, on the safer side it is better that 'parents approval should also be sought if the daughter is going to be married for the first time. In case of remarriage of windows there is no such restriction.13

All these facts show the concern of Islam in restoring and maintaining the social status of women. Giving women the right which she had never enjoyed before the advent of Islam, is a unique character of Islam. These facts may confirm that
the reforms introduced by Islam and practiced by our great Prophet Mohammad (SWA) were all directed towards raising the social status, respect and prestige of women community.

DIVORCE IN ISLAM

The efforts of Islam in extending protection to women does not end here. The Holy Quran has suggested many provision if married life becomes miserable to either member of the party and they wish to break this matrimonial ties. From time immemorial, man had been enjoying the privilege of divorcing or setting aside their wives, on one or the other pretext. No religion before the origin of Islam could restore the right of women to challenge men's autocracy. Islam is the first religion which has given the women a right to seek separation from her husband if there exists an impatchable conflict between them. If their life becomes miserable and separation between husband and wife remains the only solution.

It has already been pointed out, that the institution of marriage is a sacred one. Apart from leading a harmonious life between the husband and wife, Islam demands from a believing man and a believing women to lead a pious married life with peace and tranquility so that the happiness which exists in the family should be helpful in bringing up their children on the righteous path.
Says the Holy Quran in the following words:

"Among His signs is this, that We created for you maids from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts) verily in that are signs with those who reflect".

(S.30, A.21)

Inspite of this fact Islam has never made the matrimonial ties between husband and wife a contract which can not be broken. In other words, it has not been asked that the husband and wife must remain tied together irrespective of the fact whether they can live together happily within the code as ordained by Allah. The situation in which the husband and wife live in a state of continuous conflict, or there develops some misunderstanding between them which might adversely effect the family environment and the proper mental and physical development of children. Under such circumstances Islam has taken maximum precautions and suggests that all possible steps should be taken to remove the conflict and normalize the relationship between them. However, if all possible efforts of reconciliation fail then there is the provision of separation, under very specific conditions. In fact, separation or divorce is, after all, an act which is not liked and pleasing to God. Our Prophet, said
that "of all things permitted by law, divorce is the most hateful in the sight of God".\textsuperscript{14}

Seemingly, no religion has shown so much disregard to divorce as it has been under Islamic laws. Divorce has been vehemently discouraged, and preventive measures have been advised to avoid divorce. As a matter of fact, the provision of divorce in Islam is not a rule but it is a remedy of any possible social evil. Divorce has been recommended when both parties fail to reconcile and their remains no alternative except separation. Those who marry one women after another and divorce them, in quick succession, have been condemned in Islam. They Prophet Mohammad (SWA) was always unhappy at such occasions. It has been reported that one of his followers, divorced three wives one after the other. When Prophet Mohammad (SWA) came to know this fact, he showed his displeasure in the following words:

"Allah considers as his enemy and damns the man who relishes changing wife one after another, and the women who delights in changing the husband one after anothers".\textsuperscript{15}

In Islam, divorce is considered as a sin if it has taken place without any genuine reason. Once, the Holy Prophet, was informed that Abu-Ayyub-Al Ansar was determined to divorce his wife. On bearing this, the Prophet said varily, "the divorce of women is a great sin".\textsuperscript{16}
In the same context Imam Jafare Sadiq (AS) quoted the Holy Prophet as saying, 'To God, no house is dearer than the house where there is union of marriage, and no house exists which deserves this wrath more than that in which the union of marriage is broken by divorce'.

At another place, Imam Jafare Sadiq said, "No lawful thing is the object of so much wrath and hate in the eyes of allah, as divorce is. Allah considers the man who repeatedly divorces as his enemy".

The above Ahadith show that the union of man and women for a sound purposeful end is the supreme objective of Islam and also a thing of pleasure to God. The separation and divorce, on the other hands, is not only disliked by Him and by the Holy Prophet (SWA), but it is also disgraceful. The above Ayats and Ahadiths help us to derive the following inferences:

(1) Islam preaches healthy union of husband and wife as a matter of great pleasure to God and His Prophet (SWA).
(2) Divorce, not supported by genuine reason and valid causes is considered as sin.
(3) The allegation against Islam that it has made divorce an easy process is based on simple ignorance and prejudices.
(4) Of all evils, unjustified divorce is the most condemned act in Islam.
However, there might be certain situations when ill feelings and some conflict might develop between husband and wife. These conflicts, may, some time become very serious and may effect their relationship, that the union of the couple might became intolerable. Under such circumstances, a forced union of husband and wife, might be a cause of great damage to the children and to the family as a whole. Even under this situation the couple has been advised by the Holy Quran in the following words:

" .............. And live with them (on a footing of kindness and equity, and even if ye hate them, it may be that ye hate a thing while Allah hath placed in it a great deal of good.

(S.4, A.19)

Islam has thus enjoined couple to have patience and tolerance in manifestation of their temper. They must be tolerant to each other and try to hide their weaknesses. These all efforts have been directed towards one end i.e. as for as possible, the permanent separation should be avoided.

Undoubtedly, the growing conflict between husband and wife is one of the important factor which may lead to a temporary or permanent separation or divorce. Such conflicts might be developed under three possible situations.
In the first place, the husband might be at fault. Secondly, the wife might be at fault and finally both the husband and wife might be at fault. Under all the three situations, the Holy Quran suggests remedies. It is argued that the husband's fault might be of such a type that he was neglecting his duties towards his wife and children. He might be working against the prescribed Islamic laws, or he would be engaged in adultery, or Inspite of his capabilities he was not fulfilling his duties and responsibilities towards his children and wife. He might be drunkard, gambler or might be involved in antisocial and criminal activities etc. All these activities of the husband are potent enough for the development of conflict between husband and wife. Under such circumstances the Holy Quran suggests:

"And if a wife fears cruelty or negligence on her husband’s part, there is no blame on them if they arrange an amicable reconcilement between themselves, and the reconcilement is best"

(S.4, A.128)

It can be seen from the above verse that even under these circumstances the wife has been advised not to go straight for separation but different measures of reconciliation have been suggested.
It is also suggested that even if the matter is not settled then the wife has a right to put the problem before Qazi or Mujtahid, who has every authority to settle the dispute in a respectful manner.

In the second situation, when the wife is at fault that she neglects her duties towards her husband and children or instead of being a source of comfort to them, is a cause of trouble for the husband, then the Holy Quran prescribed three measures to be taken against her step by step.

"....... And so to those women on whose part ye fear disloyalty and ill conduct, admonish them, and (then) refuse to share heir beds, and (lastly) beat them. Then, if they returns to obedience, seek not against them means (of annoyance), for Allah is most high great (S.4, A.34).

All the three steps suggested here in the surah are natural and do have significant psychological impact on the wrong doer. In the last line of the surah it has clearly been mentioned that if these steps remove the cause of complaint, the husband should at once start gentle and fair dealing with her. This is what is meant by the last sentence of this ayat which says.

".......Then if they return to obedience, seek not against them causes of annoyance".
Under the third situation, when both are at fault, that is to say, if both neglect their duties toward each other and there is a reign of doubt, and disobedience between them, then there is a need of the services of a third party known as an 'arbitrator'. This arbitrator will act as an helping hand to end the dispute or conflict between them. The same has been revealed in the Holy Quran in the following words:

"...... And if ye fear a breach between the two then appoint two arbiters, one from his own family and other from the family of the wife. If they wish for concealment and peace Allah will cause their reconciliation, for Allah is omniscient, all knowing (S.4, A.35).

However, if the reconciliation between husband and wife does not take place and the husband is determined to give divorce, then after saying one's, 'I give you divorce' A waiting for fourth month is ordained by 'Allah'. Upto four months, they may live in the same house with respect, for each other and Allah has given the time for them, to decide whether his intention to divorce is firm or flexible. During this period if they change their opinion and repent on their decision, there is no harm if they start to live together a normal life. In such case there is no need of formal 'Nikah'.

In case, if they think that there was no possibility of compromise and the husband is determined to give divorce to
his wife, then there is the provision of separation. Yet, in Islam divorce is regarded a bitter medicine which should not be applied, except in extreme cases. If divorce becomes the only solution, then Islam has put very hard conditions and careful observance of the rights of both parties, Quran addresses both the parties in the following words:

"..... And when you divorce women and they reach their prescribed period then (either) retain them in fairness or set then free, liberally, and do not retain them for injury, that ye may transgress.

(S.2, A.231)

The above surah clearly shows, inspite of the fact, that the men have been given the right to divorce their women under certain specified conditions but they have been advised, not to hurt their feelings or insult them. He has to retain them in good condition, he has to bear her expenditure during this period. If he can not fulfill this conditions he has to set her free with honour and respect. If under any circumstances a person fails to fulfill these conditions, he will be treated as a sinner and he will have to pay heavily for this crime. In the same verse it has been emphatically pointed out:

"..... And who so ever does this, he indeed is unjust to his own soul; and do not take commandments of Allah as a mockery and remember the favour of Allah upon you and what He
hath send down unto you of the Book ad Wisdom, admonishing you there by; and be careful (of your duty) to Allah, and know that Allah is the knower of all things": (S.2, A.231).

Divorce has been revealed in the Holy Quran in (S.2 Ayat 226, 227, 228, 229, 230, 231, 232). The above ayats contain instruction and warnings for both man and women regarding their responsibilities if they decide to divorce. According to the Quranic laws divorce is not an easy job. The husband may give divorce second time but again it as obligating on him to keep his wife for complete four months with the same respect and honour as they used to live during married life.

It has further been ordained, that after two divorces, during the period of waiting, if the husband wishes to take his wife back, then it is necessary that he should take her back on equitable terms without any intention of causing any injury to the wife, and if he decides to set her free, then it should be done with kindness, without taking any undue advantage from her. We can see that men have repeatedly been warned to restrain themselves from doing any injustice to the women whom they wish to divorce. Allah has totally forbidden such behaviour and asked a righteous muslim to provide for her, maintenance exactly in the same way and with the same standard of living as he himself has. The Quranic instruction do not end here. In addition to these conditions. Allah has
ordained men to have sex relations with his wife. If during the wailing period they have sex, then it is incumbent upon a muslim to keep his wife with him till the child is born. Even, after the birth of the child, if no compromise develops between them, the nursing of the child and the care of the mother remains the responsibility of the husband. The condition is applicable even after the third and the final divorce had taken place. During the period of the rearing up the child, there must be mutual adjustment between them with all trust and sincerity. The same has been revealed in the Holy Quran in the following words.

"...... let the women live (in Iddat) in the same style as ye live, according to your means: annoy them not, so as to restrict them, And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden: and if they suckle your (off spring), give them their recompense: and take mutual council together, according to what is just and reasonable. And if ye find your-selves in difficulties, let another women suckle (the child) on the fathers behalf."

(S.LXV, A.6)

From the above ayat it can be inferred that under Quranic society a muslim should spend money for nursing of
the child and for the welfare of the mother according to his means. However, even if a mother agrees to feed their children, she can claim a reward for her service from the father.

The same has to been pointed out in the following words,

"..... Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what God has given him. God puts no burden an any person beyond what He has given him. After difficulty, God will soon grant relief."

(S.LXV, A.7)

Coming back to the original discussion about divorce, it may be pointed out, that before implementing the irreversible or the total divorce, Islam suggests a specific gap of four months between first and second divorce, with the hope that separation between husband and wife for such a long period, might remove the causes of their differences, and might soften their hearts to recall the good days of happy life. This may lead the couple to rethink of their decision of complete divorce. This step of Islam is based on human psychology of forget and forgiveness. Practically it has been observed, that in certain cases, the reunion could
become possible and the couple had been found living a life full of joy.

Islam, the protector of women's right.

Although it is the man, who has been given the right to divorce his wife but to safeguard women's prestige, respect and social status they have not been ignored under Islamic law: This has been revealed in the following word in the Holy Quran:

"... O man, live with your wife in kindness and equity. If you hate them, it may be that you hate a thing while God hath placed in it abundant good.

(S.IV, A.19)

At the same time in the same Surah (4 vers 128) the Holy Quran says,

"If a wife feareth ill treatment or disertion from her husbands, then shall it be no fault on the twain if they effect compromise (Peace), between them two amicably; for compromise (peace) is good; and Avarice is made to be present in (people's) minds; and if ye do good and guard yourselves (against evils) then verily God is All-Aware of what ye do".

(S.IV, A.128)
INFERENCE

(i) Once again, the main thrust is, on living amicably settled happy married life.

(ii) It may further be inferred that the prohibition and limits prescribed in the Holy Quran are in the interest of a harmonious and honourable life for both husband and wife.

(iii) In case the wife fears threat to her social, economic or personal life from her husband, and she, on her own, decides to have separation from her husband, then it is permissible for wife to give some material goods to husband for her freedom. The Holy Quran says:

... Except when both parties fear that they would be unable to keep the limits ordained by God. If, ye (Judges) do indeed fear, that they would be unable to keep the limits ordained by God, there is no blame on either of them, if she gives some thing for her freedom. This type of divorce is called Khula.

(S.2, A. 228)

In the case of 'khula' it has further been suggested in the Holy Quran, that it is better to have an amicable settlement with her husband if it is possible. Although khula has also been disliked by Islam. In so many words, it has been pointed out in the book 'Mustadarak' (Volume 3 page 2),
"Any woman who seeks to be divorced from her husband, save in cases of extreme necessity, falls out of the grace and Mercy of the Lord." Again in the 'Vassael' (Volume 3 page 144). The warning has been given in the following words. "Enter upon matrimony; but do not divorce your wife since divorce shakes the very throne of God".

In spite of all these measures, if it is found that sound marital relationship becomes impossible and the efforts of relatives and the arbitrators fail to bring about any sort of reconciliation, then Islam recommends that each party should be allowed to select their own way of life, the Holy Quran says:

"Two just persons from amongst yourselves shall bear witness to the evidence before God, when the divorce is settled"

(S.LXV, A.2)

Such a divorce then becomes irrevocable; and thereafter, the husband can not take her back as his wife. However, if after sometime the husband again wants to keep that lady as wife, then there are certain conditions. The wife should marry to another person and if the second husband gives her divorce then the former husband and wife would be wedlocked again, provided they promise to fulfil the limits ordained by 'Allah'. Such limits as ordained have been laid down in the Holy Quran in the following verse.
"So if a husband divorces his wife (irrevocably), he cannot, after that, remarry her until after she has married another husband and he has divorced her. In that case there is no blame on either of them if they reunite, provided they feel that they can keep the limits ordained by God. Such are the limits ordained by God, which he makes plain to those who understand".

(S.2, A.230)

Before proceeding further, it seems reasonable to highlight certain important inference in connection with this highly disliked and highly condemned counter productive action of married person as divorce.

**INFENCES**

1. It has emphatically been stated that irrevocable divorce must take place in the presence of two just persons as witnesses. In the absence of these two witnesses the legal divorce will not take place. A simple advantage of this condition is that these persons who have been appointed as witnesses may, as a last resort, exert every pressure of affection and wisdom to avert their decision of divorce. It is quite possible that the parties may agree to select a better course of action.
2. Secondly, it has been laid down that no divorce may be absolute, saved after the women's periods of purification (after menstruation) or child birth is completed.

It appears that maximum precautions and provision have been taken under Islamic laws to avert this unholy action of divorce.

3. It is under this balanced relationship the caravan of life moved smoothly and their offspring grow in an atmosphere of trust, faith, contentment and satisfaction. The children born in such a family get true love and sincere attention of their parent. It is the time when the great role is played by women as a wife, a mother of the child. A woman is expected to devote herself completely to the worthy and difficult task of raising children with predetermined objectives only when she is honoured, respected and protected by her husband, by other members of the family, and by the society.

4. There is also a provision of remarriage, after irrevocable divorce, shows that after the final divorce, if the man repents about his action and shows his willingness to remarry the same woman, he can do it, but at this moment, the man has to pay a heavy penalty for his stupidity and hasty step. Remarrying of a divorced women with another person, before coming back to her first husband, might be a great shock to the husband's ego. In order to avoid such a shock,
maximum precautions have been suggested, for a person, who decide to take divorce. In order to protect social and personal status of women's Islam also protects women's right and saves her from living in an unhappy environment. Many beneficial measures have been proposed in this regard. For example,

1. The wife can insert a clause in the marriage contract ensuring, that if any of the following conditions is broken, she would have the right to obtain a divorce from her husband through the court:

1. Incompatibility of temperament,

2. Maltreatment of the husband,

3. The husband's refusal of maintenance,

4. Under taking long journey without announcement, and lastly,

5. Marring any other women and bring her as a second wife without her consent. These conditions have been explained in the Islamic sharah. It is certain, that, if they are strictly followed, the possibility of any misunderstanding and bitterness between husband and wife could never take place.
Polygamy

Polygamy is one of the few radical reforms introduced in Islam, which is highly abused and criticized. It is said, that by allowing polygamy, Islam has degraded the status of women in the society as well as in her own eyes. It appears, that it is Islam which has introduced polygamy among muslims, which is absolutely an incorrect assumption. Moreover, all the criticism against polygamy is based on mere ignorance about the Islamic approach to life. In the first place, it may be stated with authentic evidences that Islam never introduced polygamy. In fact, what the great Prophet and the Holy Quran have done, is to put a limit on the number of wives, a man can have. Secondly, the polygamy which is accepted in Islam, can take place, only, under very specific condition and unusual circumstances.

There are historical evidences which show, that before the rise of Islam, the tribes used to keep unlimited number of wives. During those days the plurality of wife was considered as status symbol. Most of the religions had officially permitted the plurality of wife in ancient time. In China the Li-Ki law, gave every man the right, to have upto one hundred thirty (130) wives. Charle-Magne had four hundred wives. Ardeshir Babekan had about the same number of wives'. 22 No religion had ever put any limit on the number of wives a person could have. As a result, the second half of
the eight century (816) A.D. polygamy was a common feature in Europe, and till then it was not condemned by the Church. However, after some times the Church promulgated a decree throughout Christiandom which compelled them to divorce all the wife except one. Although christian obeyed the orders, but at the same time, they adopted a greater evil of adultery and prostitution. Polygamy was also practiced among Arabs. They might keep as many women as they wanted in their haram. These women did not have any right whether financial or otherwise over the property of the husband. They did not have the right to challenge their ill treatment. Islam took drastic steps against this custom and strictly limited the number of wives to a maximum of four.

Since the nomad desert society of Arabs were initially busy in business and most of the time they were away from their home, for a long period, it was difficult for them to be contented only with one wife. Similarly it was next to impossible for an Arab women to live a life without the company of men during those difficult days. Polygamy, therefore, was made convenient for men and separation was made comparatively easy for women. In practical life Arabs used to go out in business for off places and usually takes years to come back to their own tribes. Such a long absence was creating inconvenience and hardship for both husband wife. Such a socio-economic structure gave rise to many ill
practices, such as adultery and prostitution. It was, therefore, felt by the Prophet Mohammad (SWA) to introduce such laws which could protect them from ill practices of adultery and prostitution. It was, rather unwise and illogical for Islam to put a stop on this deep rooted ill-practice. Islam, therefore, put a specific limit on the number of wives a person can have.

It may pointed out here, that the law permitting four wives was not a command. On the contrary, if a person confined himself to only one wife and remains contented with her, actually pleaseth God. It may be remembered, that during those days, there were frequent wars between the believers and non-believers. In war most of the men were killed and their women become widow. In order to provide moral and material support to grief stricken widows and also to provide them and their children shelter and security, many arrangements were made. Polygamy i.e. to allow the fellow comrades to marry the widows of their fellowmen, who sacrificed their lives in the holy wars, was one of them. Polygamy as such was a compassion for those bereaved women. According to, Mujtaba Rukni, several of the Prophet wives were the widows of the comrades, who were slain in the Islamic battle.22 There is no doubt, that such a compassion for the widows of the faithful commanders saved their lives from being ruined. Apart from this fact, there are certain
other factors of vital importance, which made polygamy a necessity in Islam. The Holy Quran says:

"If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, ---"that will be more suitable to prevent you from doing injustice".  

(S.4, A.3)

The above ayat shows that the order contained the essential condition of doing justice and equity in all worldly matters. Although the general permission of having upto four wives, with the condition of justice and humanity with all of them, was given by the Holy Quran fourteen hundred years back, but the significance and importance of such provision can be felt, with the same intensity, even today. Polygamy has been a target of unqualified attack from the people of different religion for the last several centuries, because of lack of reasons and correct knowledge of what Islam has actually done. Be it is known and remembered by critics that Islam had never introduced polygamy. What Islam has done, is that it has restricted and controlled the unrestricted and uncontrolled the time old institution of wrong practices.
A sincere look into the human problems, based on individual differences, will convince that polygamy has been allowed as a remedy for several ills and malpractices, which would otherwise be more harmful and terrifying for human beings.

The circumstances, which may force a healthy man to look for another wife, in the presence of first wife, may be more than one. For example, a wife has fallen victim of some incurable disease or illness. May be her illness is of such a nature which is contagious and infectious. Further, might be having physical relation with such a woman is injurious for the husband himself, or because of some accident, the woman has become completely invalid. Under all these circumstances, the husband is left, but, with a few alternatives. He would divorce the women, and the poor women would become a burden on the society, or should marry another woman for maintaining his own self, the family, and continues caring the ailing wife or in order to fulfill his sexual desire adopts illegal means. Definitely 'the first' and 'the last' decision would be against the humanity and are disliked by 'Allah' and its 'messenger'. The last course of action, in such a situation, would therefore be, the best to keep the first wife at her place and keep on helping her in all possible ways, and for the sake of his own self and for the welfare of the whole family, he could marry with another women as a second wife. Similarly if the wife is not able to bear the child for her
husband and she is physically declared non-productive. There is always a natural urge of a man to have his own children.

Again, either the husband should decide to kill his natural urge for ever, and keep on cursing his fate for the whole life, or he should marry with another women, and live a happy and a contented life.

These and similar other cases are very common in our society. Polygamy under similar situation is the best possible course of action and the same has been approved in the Holy Quran. It may, however, further be recalled, that inspite of these facts the last phase of the same ayat emphasizes. "If we fear that ye shall not deal justly (with them), ... then only one".

It may, once more, be pointed out here, that Although husband’s have been granted the right to marry, they have, again and again, been warned to be just, humane, and honest to their wives. But at the same time the right of wife to challenge the ill treatment of her husband has not been withdrawn. Instead, she has been given full right to seek separation from her husband if she finds that her husband is not doing justice to her, in his treatment and behaviour.

If we read (S.4 Ayat 128) with (S.4, A.130) the spirit of the statement may be more clearly understood. The Ayat commands:
"And if they separate God will render each free from want out of His abundance; and God is Omniscient wise."

(S.4, A.130)

Based on the above discussions the investigator is in a position to draw the following inferences:

INFERENCES

1. Islam did not introduce polygamy but instead, it has emphatically imposed strict limitation on the ill practice of marrying several wives, simply for the sake of pleasure during pre-Islamic period.

2. The permission to have two, three or four wives have been given in an extraordinary unavoidable circumstances.

3. Persons marrying more than one wife have been warned to do justice and have equal treatment with all of them as had been shown by the great Prophet (SWA) himself and his Wasi Ali Ibne-Abi-Talib (AS).

4. Having more than one wife is never a command rather it is simply a provision which could be used under certain specific conditions.

5. Since perfect equality in affection, love and material things is not possible by human being towards all his wives, because, one might be very rich while the other might be
poor, one might be beautiful more charming and attractive, than the other or similarly there might be some intra-individual differences between the wives and so on so forth, then it is better for a man to be contended with only one wife.

6. Monogamy, instead of polygamy is more favourable to Allah and the Prophet of Islam (SWA).

7. Women have never been denied to use their right of justice from men. Ill treatment and disregard from the side of husband can always be challenged by a women.

Last but not the least it may be inferred, that inspite of the fact that polygamy in a strictly limited form has been permitted in Islam, it is only "convenience"
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