

"Imad El-Dein" A. Barakat: THE THEORY OF ECONOMIC SYSTEM  
ISLAM

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In The Name Of Allah, Most Gracious, Most Merciful

## ACKNOWLEDGEMENTS

First of all I should thanks Allah Almighty who gave me the strength to complete this thesis.

Then, I would like to thank Asst. Prof. Dr. Hüseyin Özde er to be my advisor. Under his guidance, I successfully overcome many difficulties and learn a lot about economy and the technical writing. In each discussion, he explained my questions patiently, and I felt my quick progress from his advises. Dr. Özde er, thanks for your continual support.

Special thanks to Asst. Prof. Dr. Okan afaklı & Asst. Prof. Dr. Erdal Güryay With They kind helps, and for They great effort with us, they are not only a teachers but also a very appreciating personality. My deep appreciation and respect for them.

I would like to thank all our teachers in Near East University, Student Advisors and all the Staff of the Economics and Business Administration Sciences Faculty for giving us the opportunity to experience this remarkable Institute that have showed us preliminary steps towards our professional carrier. Special thanks to my friend Bassam Abu-Kharmah who help me to pass this stage :frommy life,

Finally, many thanks to my parents for their encouragement and support during my study, and whose guidance and love made me a responsible man,

To all those who helped me in accomplishing this thesis,

To all of them, all my love and respect.

"Imad El-Dein" Barakat

19 Jun 2001

Nicosia



## ABSTRACT

The main purpose for choosing this subject is to illustrate the reality of the economic system of Islam the third economic system in the world after the capitalist socialist as well as the (communist) economic systems.

This thesis clarify how the economic system of Islam help to solve the economic problems and how at the same time it made it possible for each and every individual in society to live a decent life. In the economic introduction of this thesis discuss the reality of the capitalist economic system and work on the refutation explaining the defects and contradiction with the economic system of Islam.

This Thesis focus the light and analyze the reality of the economic system in Islam in a clear and obvious method and its explain the Islamic view towards economy and its objective. How to get (own) money and how to increase (multiply) it and how to spend and use it how to distribute it among the individuals in the society and establish balance within it.

Hoping that it will help in solving the economic problems which the capitalist socialist and (communist) systems were unable to solve. In addition, in the end of the thesis you will read the conclusions and recommendations based on the thesis.

Yours truly,

"Imad El-Dein" Barakat

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## I. INTRODUCTION

The Economic system of Islam is the third economic system in the world after capitalist socialist as well as the (communist) economic systems. This Thesis is a part from an MB.A. program, In Near East University in Nicosia the Capital of Turkish Republic of North Cyprus.

The main purpose for choosing this subject is to illustrate the reality of the economic system of Islam the third economic system in the world after the capitalist socialist as well as the (communist) economic systems.

This thesis clarify how the economic system of Islam help to solve the economic problems and at the same time it made it possible for each and every individual in society to live and work. In the economic introduction in this thesis discussed the reality of the capitalist economic system and work on the refutation explaining the defects and contradiction with the economic system of Islam.

This this thesis focused the light and analyze the reality of the economic system in Islam in a clear and obvious method. Its explained the Islamic view towards economy and its objective. How to get (own) money and how to increase (multiply) it and how to spend and use it how to distribute it among the individuals in the society and establish balance within it.

Also, Its showed the types of properties whether (private public or state) properties as well as the money due to bait al mal (The state treasury) and the areas over which it are spent.



This thesis discussed the law of lands (Ushriyyah or Kharajiyah) and what is due out of them from tithe (Ushr) or land tax (Kharaj) and how to exploit utilize and distribute them and how to transfer them from one owner to another the thesis will also speak about the different types of currencies (Nuqud) and what occurs in it of (Riha) and exchange and what is due from it as (Zakat). Finally, Its discussed the foreign trade; and its Jaws the sole source from which these laws were adopted is the book of Allah and the Sunnah Al-Mosharafah of his messenger (saw) and what they directed to namely analogy and unanimity of the (Sahabah) no other source was referred to in adopting these economic laws. Hoping that this thesis will have a great effect to make people in this world realize the efficiency of the economic system in Islam.

Hoping Jh.~t:it will help in solving the economic problems which the capitalist socialist...and>.(communist) systems were unable to solve. And in the end of the thesis you will read the conclusions and recommendations based on the thesis.

Yours truly,

"Imad El-Dein" Barakat

### 1.1. Introduction To Economic System:

Thoughts, in any nation, are the greatest fortune the nation gains in her life if the nation is newly bom; and they are the greatest gift that any generation can receive from the preceding generation, provided the nation is deep-rooted in the enlightened thought.

With regard to material wealth, scientific discoveries, industrial inventions and the like, all of these are of much lower importance than thoughts. In fact, to gain such matters depends on the thoughts, and preservation of these matters depends on the thoughts as well.

If the material wealth of a nation is destroyed, it is possible for it to be restored quickly as long as the nation preserves its intellectual wealth. However, if the intellectual wealth collapses and the nation retain only its materialistic wealth, this wealth will soon shrink and the nation will fall down into poverty. Most of the scientific achievements, which the nation once made, can be regained, provided<it does not>lose its way of thinking. Whereas, if it lost the productive way of thinking, it would soon regress and lose its discoveries and inventions. Therefore, it is necessary to take care of the thoughts first Based upon these thoughts, and according to the productive way of thinking, material wealth is gained, and the achievement of scientific discoveries, industrial inventions and the like is sought.

What is meant by thoughts is the existence, within the nation, of the process of thinking in it's life affairs, such that the majority of its individuals use the information that they have when facing events, so as to judge on them. This means that they have thoughts which they contrive to use in life, and by using these thoughts frequently and successfully, a productive way of thinking results<sup>1</sup>.

Today, the Islamic Ummalı (nation) is lacking in thoughts, so it is naturally deprived of the productive way of thinking. The present generation did not receive from its preceding generation any ideas, be they Islamic or non-Islamic and naturally; it did not receive a productive

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<sup>1</sup> Hafez Saleh, The Revival Beirut- Lebanon, Dar El-Nahdah Al-Eslamieh, 1998: P.35

way of thinking. Nor did it attain by itself any thoughts or a productive way of thinking. As a result, it is natural for this generation to be seen in poverty, despite the abundance of material resources in its lands. Likewise, it is natural to have no scientific discoveries and industrial inventions even though it studies the theories of these discoveries and inventions and is aware of them. This is because it is impossible to rush to gain them in a productive way, unless it possesses a productive way of thinking unless it has thoughts and it is creative in using their thoughts in life. Therefore, it is inevitable for the Muslims to establish for themselves thoughts and a productive way of thinking. Thereafter, they will be able to proceed, based on that, to acquire material wealth, make scientific discoveries, and industrial inventions. Unless they do this, they will not proceed a single step; rather they will continue to go around in a vicious circle, exhausting their mental and physical efforts, only to end up exactly where they began.

*The present generation of Muslims has not even adopted a basic thought which influences their ideology of Islam, which we aim to establish amongst them. If it had done so, it would have been able to fully comprehend the Islamic ideology given to it, because this comprehension would have resulted from a clash between the Islamic ideology and the one carried by this generation, making the Ummah (nation) realise the correctness of the Islamic ideology. Rather, the current Islamic generation is empty of any thought and of any productive way of thinking. Instead, it inherited the Islamic thoughts as an academic philosophy, in the same way that the Greeks inherited the philosophies of Aristotle and Plato. It also inherited Islam as rituals and religious dogma, in the same way the Christians inherited Christianity. At the same time, it became fascinated with Capitalism after witnessing its successes, and not through comprehending the validity of its thoughts; and from its submission to its rules, and not from comprehending how these solutions emanate from the Capitalist viewpoint of life. Therefore, the Ummah is devoid of the Capitalist thoughts intellectually, although it lives according to the Capitalist way of life. The Ummah also became devoid of the Islamic thoughts in practice, although it conducts some of its rituals and studies its thoughts.*

The tendency of this generation towards the Capitalist ideas went far beyond just reconciling Islam with the Capitalist laws and solutions. It has now reached such an extent that there is a feeling of Islam being incapable of solving contemporary problems of life, and there is

an urge to take Western laws as they are, without even reconciling them with Islam. The Ummah came to see no harm in giving up Islamic rules and adopting others, in order to progress with the civilised world, and catch up with the Capitalist and Socialist nations, considering them as progressed peoples. As for those who adhere to Islam, they have the same tendency towards the Capitalist thoughts, but they still try to reconcile them with Islam. However, those who try to reconcile Islam with other thoughts have no influence in life, nor do they have any presence in society, in the actual relationship that go on between the people.

Therefore, the delivery of the Islamic thoughts and rules, which solve problems of life, collides with minds, empty of thought and a way of thinking. Instead, it clashes with inclinations, from all the people, towards the Capitalist and Socialist thoughts, and with the way of life currently governed by Capitalism. Therefore, unless the given thought is strong enough to cause a shake-up in the hearts and minds, it will be impossible to move the people, nor even attract their attention to it.

Consequently, it is the duty of the investigator to expose the foundation upon which the Capitalist solutions are established, refute them, their falsehood and destroy them intellectually. He has to address the various new issues of life and show the Islamic solutions to these issues as divine rules, which must be followed, because they are rules derived from the Qur'an and Sunnah or from what these two evidences have directed to -which the muslims nation believe in them-, and not from the perspective of whether or not they are suitable for this time. That means they have to be taken based on the Aqeedah (dogma) and not based on their perceived benefit. Therefore, each rule has to be given along with the divine evidence from which it was derived or by explaining the divine reason (Allah) which the rule or the text brought.

The thoughts related to the ruling system and economics are the thoughts which most fascinated the Muslims, and made them suffer the severest tribulations in their lives. The Muslims generally admired these thoughts, and the West tries to practically apply these thoughts, and persists in its endeavours to implement them. Although the Ummah is theoretically governed by democracy on purpose by the western colonialists, in order to protect the Western system and colonisation, she is governed practically by the Capitalist economic system in all the economic

aspects of life. Therefore, the Islamic economic thoughts are those which will have the greatest influence in the economic life of the Islamic world, so much so that they will turn it upside down and they will be most opposed by the agents of the Western colonialist.

Therefore, it is necessary to give a clear picture of the Capitalist economic system, which classifies the basic thoughts upon which the political economy in the West is established, so that those who have become fascinated with the Western economic system can come to see the corruption of this system and its contradiction with Islam. They will then examine the Islamic economic thoughts which address the problems of economic life in the correct manner, and present them as a unique way of life which contradicts the Capitalist life in both its general principles and in its details.

### 1.1.1 The Capitalist Economic System

If we examine the Capitalist economic system we find that, in their view, it deals with man's needs and the means of satisfying those needs. It only addresses the materialistic side of man's life and it is established on three principles:

1. There is a relative scarcity of commodities and services in relation to needs. This means the insufficiency of commodities and services to meet the ever-increasing needs of man. This is the society's economic problem from their viewpoint<sup>2</sup>.
2. The value of a product which is the basis of most economic research and study<sup>3</sup>.
3. The price, and its role in production, consumption, and distribution. The price is the cornerstone of the Capitalist economic system<sup>4</sup>.

<sup>2</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.113

<sup>3</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.115

<sup>4</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.118

With regard to the relative scarcity of commodities and services, this situation exists because the commodities and services are the means which are used to satisfy man's needs. They satisfy man has needs that require satisfaction, so there must exist the means to satisfy them. These needs are purely materialistic; they are either tangible, such as the need for food and clothing, or they are needs which are sensed by man but are intangible, such as the need for the services of, for example, doctors and teachers. As for the moral needs such as pride and honour, or spiritual needs such as the sanctification of the Creator, they are not recognised economically, and are therefore disregarded and have no place in economic studies.

The means of satisfaction are called commodities and services. (Commodities are the means of satisfying the tangible needs, whereas services are the means of satisfying the intangible needs. What makes commodities and services satisfy the needs, in their viewpoint, is the benefit in these commodities and services. This benefit is an attribute which renders the thing desirable for satisfying a need. Since the need means the economic desire, then the economically beneficial thing is everything desired, whether it is essential or not, and even if some consider it beneficial and others consider it harmful. It is considered economically beneficial as long as there is someone who finds it desirable.<sup>5</sup> This makes them consider things as beneficial from an economic viewpoint even if the public opinion considers them of no benefit, or harmful. Thus wine and hashish are beneficial things to the economists since there are people who want them.

The economist looks upon the means of satisfaction, that is, the commodities and services, from the viewpoint that they satisfy a need, without taking any other factor into consideration. Thus, he looks at the needs and the benefits as they are, not as they should be. He looks at benefit as satisfying a need, without taking anything else into consideration. So he would look at wine in its capacity of having an economic value because it satisfies the needs of some people, and he perceives the wine maker as a person who provides a service, considering this service as having an economic value, because it satisfies the need of some individuals.

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<sup>5</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.113, 114

This is the nature of needs in Capitalism and the nature of the means of satisfying these needs. Hence, the economist does not care about the nature of society, but cares about the economic material resources (economic commodities), since they satisfy a need. Therefore, the function of the economist is to supply commodities and services to provide the means of satisfying man's needs, irrespective of any other consideration. Accordingly, the economist strives to make available the means of satisfaction. Since the commodities and services, which are the means of satisfaction are limited, they are not sufficient to meet all of man's needs, because these needs in their view are unlimited and constantly growing. This is because there are basic needs which man as a human must satisfy, and there are needs which increase in number as man proceeds to a higher level of urbanisation. These needs multiply and increase and they all need complete satisfaction, a situation which cannot be fulfilled no matter how much commodities and services increase. From here the basis of the economic problem emerged, which is an overabundance of needs and the shortage of the means of their satisfaction the lack of commodities and services to completely satisfy all of man's needs.

From this perspective, the society faces an economic problem, which is (The relative shortage of commodities and services. The inevitable result of this shortage is that some needs are either partially satisfied or not satisfied at all)<sup>6</sup>. Since this is the situation, it is necessary that the members of society agree on rules that decide which needs have to be satisfied and which needs are to be deprived. In other words, it is necessary to set a rule that decides the manner of distributing the limited resources over the unlimited needs. So the problem to address in their view is the needs and resources and not the man. Thus, the problem is to make available the resources so as to satisfy the needs, but not necessarily the needs of every individual. Therefore, it is necessary that the rules which are laid down; be rules which guarantee the achievement of the highest possible level of production, so as to achieve the highest supply of resources to supply the goods and services to the nation as a whole, but not necessarily to each individual. Therefore, the problem of distributing the goods and services is closely connected to the problem of production, and the objective of economic studies and research is to increase the goods and services which are consumed by the society. It is not surprising therefore, that the study of the

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<sup>6</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.115

factors which affect the size of the national production takes precedence over all economic studies. Because the study of increasing the national production is one of the most important studies to solve the economic problem, that is the scarcity of the commodities and services in relation to the needs. For they believe that poverty and deprivation cannot be solved except by increasing production. Therefore, solving the economic problem facing society is only by increasing production.

The value of the product means its degree of importance, whether relative to a particular person or relative to another thing. In the first case, it is called 'the value of the benefit'. In the second case, it is called the 'value of exchange'. The value of the benefit of a thing can be summarised as: (The value of benefit of any unit of a thing is evaluated by its marginal benefit by the benefit of the unit that satisfies the weakest need. They called this 'The Theory of Marginal Utility')<sup>7</sup>. This means that the benefit is not evaluated according to the viewpoint of the producer alone evaluated by the costs of its production, since this would mean consideration of supply without demand; Nor is it evaluated from the viewpoint of the consumer alone evaluated by its benefit and desirability, as well as looking at its relative shortage, because this would mean the consideration of demand without supply. In fact, they claim that benefit should be observed from the viewpoint of supply and demand together. Thus the benefit of a thing is assessed at the last point that satisfies the need at the minimum point of satisfaction. Therefore, the value of a loaf of bread is assessed at the minimum point of hunger not at its maximum, and at a time when there is an availability of bread in the market, not at a time when there is a shortage.

As for the value of exchange, it is an attribute which makes a thing suitable for exchange. The strength of exchange of a thing is measured relative to another, so the value of exchange of wheat relative to corn is estimated by the units of corn which should be conceded to obtain a unit of wheat (They refer to the value of the benefit using the term 'benefit' only, and refer to the value of exchange using the term 'value' only)<sup>8</sup>.

<sup>7</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.116

<sup>8</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.116



Exchange occurs between two commodities or services which are similar or close in their values. Hence, the study of value was necessary for economists; because it is the basis of exchange, and it is a utility which can be measured; it is a scale with which the commodities and services are measured and by which actions are judged as productive or not.

Production, in their view, is creating a benefit or increasing it, which is accomplished by work. So, to identify works as being productive or not, and to know which are of greater productivity, there must be an accurate scale for the various products and services. This scale is the societal value of the various products and services. In other words, it is the collective evaluation of the work spent and the service provided. Such an evaluation became necessary, because in the modern time, production for the purpose of exchange has replaced production for consumption. The situation now arises whereby virtually every person exchanges his production with other people's production. The exchange is achieved by the existence of compensation for the commodity or service, so there must be an estimation of the value of the commodity in order that it can be exchanged. Hence, knowledge of the value in terms of what it is, is an essential factor in production and consumption an essential factor towards satisfying man's needs, by using these means.

In modern history, this value of exchange has been identified by one of its values, and this type of value has become predominant. In developed communities, the values of commodities are not related to each other but are related to a certain commodity called money. The exchange ratio of a commodity or a service with money is called its price. The price therefore, is (The amount of exchange of a commodity or a service relative to money)<sup>9</sup>. Hence, the difference between the value of exchange and the price is that the value of exchange is the ratio of an exchange of one thing with another, whether that thing is money, commodities, or services; while the price is the exchange value of a thing with money. This means that it is possible that the prices of all goods rise at any one time, and all fall at any one time, whilst it is impossible that the exchange values of all commodities relative to each other rise or drop at any one time. It is also possible for prices of commodities to change without resulting in a change in their value of exchange. Therefore, the

<sup>9</sup> Sameeh Azain, Islam and humm culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.118

price of a commodity is one of its values; in other words it is the value of a commodity relative to money only. Since the price is one of the values, it is natural for price to be taken as a scale for deciding whether a thing is beneficial or not, and the degree of benefit of that thing. Therefore, the commodity or the service is considered as productive or beneficial if the society evaluates this particular commodity or service by a particular price. The degree of benefit of this commodity or service is measured by the price which the majority of the consumers agree to pay for possessing or utilising it, whether this commodity is an agricultural or industrial product, and whether the service is that of a trader, transportation company, doctor, or engineer.

As for the role which the price plays in production, consumption, and distribution, it is (The price mechanism that decides which of the producers will enter the production race and which will be excluded. In the same manner, price decides which of the consumers will satisfy their needs and which consumers will not be able to do so. The production cost of a commodity is the principal factor which governs its supply in the market, while the benefit of the commodity is the principal factor which governs the demand in the market for it, and both are measured by the price. Therefore; the study of supply and demand is the fundamental issue in the Capitalist economy). What is meant by the supply is the supply of the market, and what is meant by demand is the demand of the market. As demand cannot be defined without mentioning the price, supply too cannot be evaluated without the price. However, demand changes inversely proportional to the change in price i.e. if price increases, demand decreases, and if price decreases then demand increases. This is contrary to supply which changes directly proportional to the price i.e. the level of supply increases as the price increases and it drops as price decreases. In both cases, price has the greatest effect upon supply and demand, that is, it has the greatest effect upon production and consumption.

The price mechanism in the view of the Capitalists is the ideal method of distribution of commodities and services amongst individuals in society, since the benefits are the result of the efforts which man expends. So, unless the compensation is equal to the effort, then, no doubt, the level of production will drop. Therefore, the ideal method to distribute commodities and services

<sup>10</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.120

in a society is that which guarantees the highest possible level of production. This method is the price method which is also called the price system or the price mechanism. They consider that the price mechanism produces economic equilibrium automatically, since it gives the consumers the choice to decide for themselves the distribution of the resources owned by the society over the various economic activities, through the consumers demand for some commodities and their turning away from others. Hence they spend their income by buying what they need or what they like. Thus, the consumer who dislikes wine will abstain from buying it and spends his income on other things. If the number of consumers who dislike wine increased, or if all came to dislike it, then the production of wine becomes unprofitable due to decreasing demand. Thus, production of wine would stop naturally, and the same rule applies to other commodities and services. The consumers themselves define the level and kind of production by being left free to decide what to buy and what to leave. Via the price itself, the distribution of commodities and services occurs whether or not the price is available to the producers, and whether or not they give it to the producers.

The price mechanism is the incentive for production, it is the regulator of distribution, and the link between the producer and the consumer it is the means which achieves equilibrium between production and consumption.

The price mechanism is the incentive for production, because the principal motive for man to undertake any productive effort or sacrifice is his material reward. The Capitalist economists exclude the possibility that man expends effort for a moral or spiritual motive. The moral motive, when they do recognise it, is attributed to a materialist compensation. They consider that man expends his efforts to satisfy his materialistic needs and wishes only. This satisfaction is either through the consumption of commodities which he produces directly, or through receiving a monetary reward that enables him to obtain the commodities and services produced by others. Since man depends in satisfying most of his needs, if not all of them, on exchanging his efforts with others, then the satisfaction of needs is focused on obtaining a monetary reward for his efforts. This monetary reward allows him to obtain commodities and services, and accordingly he is not focused on obtaining the commodities which he produces. Therefore, the monetary reward, which is the price, is the motive for man to produce. Hence, the

Price is the means which motivates the producers to offer their efforts. Thus the price is the incentive for production.

The price is the means which regulates distribution, because man likes to satisfy all of his needs completely and he strives to obtain the commodities and services which satisfy these needs. Had every human being been left free to satisfy his needs he would not stop short of possessing and consuming whatever commodity he likes. Since every man strives for this same aim, everybody has to stop in satisfying his needs at the limit at which he can afford to exchange his efforts with others' efforts, that is at the limit of the monetary compensation which he receives for extending his effort at the limit of the price. Therefore, the price is the constraint which acts naturally to restrict man in his possession and consumption to a level which is proportional to his income. So the existence of the price makes man think, evaluate, and differentiate between his competing needs which require satisfaction, and he takes what he finds necessary, and leaves what he finds of less importance. Thus, the price forces the individual to settle for partial satisfaction of some of his needs, so as to be able to satisfy the other needs which he considers no less important.

So, the price is the tool which regulates the distribution of utilities required by individuals. The price also regulates the distribution of limited utilities amongst the consumers who demand these utilities. The disparity in income of the consumers makes the consumption of each individual confined to that which his income allows. This makes some commodities confined to only those who can afford them, while the consumption of other commodities would become common amongst people who can afford the lower prices. Therefore, the price will become the regulator in distributing utilities amongst consumers by setting a high price for some commodities and services and a low price for others, and also by the suitability of the price to some consumers more than others.

The price achieves equilibrium between production and consumption, and it is the link between the producer and the consumer, because the producer who fulfils the desires of the consumers is rewarded through profits. On the other hand, the producer whose products are not accepted by the consumers, would end up with losses. The method through which the producer

can detect the desires of the consumers is the price. If the consumers demand any particular commodity its price will increase; and the production of that commodity will increase, in fulfilment of the consumer's desires. If consumers turn away from buying a particular commodity, its price will drop in the market, and so production of this commodity will decrease. So, the resources assigned to production increase as the price increases, and decrease as the price decreases. In this way the price is the tool which achieves equilibrium between production and consumption, and it is the link between the producer and the consumer, and this process occurs automatically. Therefore, the price is the basis on which the economy is established in the view of the Capitalists, and it is the cornerstone of the economy to them.

This is a summary of the economic system in Capitalism, which is called the political economy. By studying it thoroughly, the falsehood of the Capitalist economic system can be shown from many aspects:

### *1. Mixing the Needs and the Means of Satisfaction*

Economy in Capitalism means to address man's needs and the means of their satisfaction. Hence the production of commodities and services, which are the means of satisfying the needs, together with the distribution of these commodities and services are considered in their view, one subject. The needs and the means of their satisfaction are considered to be interrelated such that they are one subject, inseparable from each other, as if one of them is included within the other. So, the distribution of commodities and services is included in the subject of the production of these commodities and services. Thereupon, they look at the economy from one angle which includes the economic commodities and the method of their possession, without separation between them and without differentiating one of them from the other. Thus, they hold one view towards the economic science and the economic system without differentiating between them. However, there is a difference between the economic system and economic science!<sup>11</sup>.

<sup>11</sup> Ahmad E'ateyaat, The Road, Beirut-Lebanon. Dar Al-Bayarek, 1996: P. 105

### 1.1.2. The Economic System versus Economic Science

The *Economic system* is that which determines how to distribute the wealth, how to possess it, and how to spend or dispose of it. This determination follows a particular viewpoint in life, or ideology. Therefore, the economic system in Islam is different from that of Socialism/Communism and that of Capitalism, since each of these systems follows its own ideological viewpoint of life. *Economic science* discusses production, its improvement, invention and improvement of its means. Economic science, as is the case with other sciences, is universal to all nations and is not associated with a particular ideology.

So for example, the view towards ownership in Capitalism differs from that of Socialism/Communism, and differs from that in Islam. However, discussing the improvement of production is a technical issue, which is purely scientific, and the same for all people, no matter what their viewpoint about life is.

This merger between the study of the needs and the means of their satisfaction, between producing the economic material and the manner of its distribution, and bringing them as one issue and one subject, is an error, which resulted in mixing and interference in the capitalists studies of economy. As a result the basis of the Capitalist economy is wrong.

#### 2. *Needs are only Materialistic*

The reference to the needs which require satisfaction as being purely materialistic is an error, and contradictory to the reality of needs. In addition to material needs there are moral and spiritual needs, each requiring satisfaction, and each requiring commodities and services for their satisfaction.

#### 3. *Commodities and Services are not related to the structure of the society*

The Capitalist economists look to the needs and benefits as they are, not as the society should be, which means that they look at man as a purely materialistic creature, empty of spiritual

needs, ethical thoughts, and moral objectives. Similarly they do not care about how the society should be structured in terms of moral elevation, by making the virtues the basis for society's relationships or what should prevail in the society by way of spiritual elevation making the realisation of man's relationship with Allah (realising the existence of Allah) the driving force behind all relationships, for the sake of attaining the pleasure of Allah. The Capitalist economist would not care for this since his interest is purely material in terms of what satisfies the materialistic needs. So, if man does not cheat in selling it is because he believes his trade will profit, while if he were to profit by cheating, then cheating would be legal for him. He does not feed poor people in response to the order from God for him to give charity, rather he feeds them so that they do not steal from him. If, however, their starvation increases his wealth then he would leave them to starve. Thus, the main concern of the Capitalist is to look for the benefit which satisfies a materialistic need only. The individual that looks at others based on his own benefit, and establishes economic life on this basis, is the most dangerous person to society and people.

This is from the aspect of needs and benefits. From the aspect of resources and efforts, which are called commodities and services, the individual strives for them to obtain them, so as to gain benefit from them. The exchange of resources and efforts among people creates relationships among them, according to which the structure of the society is formed. So it is necessary to look at what the structure of the society should be, both in general and in detail, when evaluating the resources and the efforts.

So caring for the economic commodity with respect to its fulfilling a need, without caring for what the society should be, is a detachment of the economic commodity from the relationship, which is unnatural. This economic commodity is exchanged among the people thereby creating relationships among them, and the relationships form the society, so the effect on society should be perceived when considering the economic commodity. Therefore, it is incorrect to consider a thing as beneficial just because there is somebody who likes it, whether it is itself harmful or not, and whether it affects the relationships among people or not, and whether it is prohibited or permitted in the belief of the people in the society. Rather things should be considered beneficial if they are really beneficial in respect of what the society should be. Therefore, it is incorrect to



consider cannabis, opium and the like as beneficial commodities and to consider them economic commodities just because there is somebody who wants them. Instead, the effect of these economic commodities on the relationships between people in society must be considered when considering the benefit of things when considering the thing as an economic commodity or not. Things should be viewed in relation to what the society should be. It is wrong to look at a thing merely as it is, regardless of what the society should be.

By including the subject of satisfying the needs within the subject of the means of satisfying needs, and by viewing the means of satisfaction only as satisfying a need, and not by any other consideration, economists concentrate on production of wealth more than distribution of wealth. The importance of distribution of wealth to satisfy the needs has become secondary. Therefore, the capitalist economic system has one aim, which is to increase the country's wealth as a whole, and it works to arrive at the highest possible level of production. It considers that the achievement of the highest possible level of welfare for the members of society will come as a result of increasing the national income by raising the level of production in the country, and in enabling individuals to take the wealth, as they are left free to work in producing and possessing it. So the economy does not exist to satisfy the needs of the individuals and to facilitate the satisfaction of every individual in the community, rather it is focused on the augmentation of what satisfies the needs of the individuals. It is focused on satisfying the needs of the community by raising the level of production and increasing the national income of the country. Through the availability of the national income, the distribution of income among the members of society occurs, by means of freedom of possession and freedom of work. So it is left to the individuals to obtain what they can of the wealth, everyone according to what he has of its productive factors, whether all the individuals or only some individuals are satisfied.

This is the political economy, the capitalist economy. This is manifestly wrong, and contradicts reality; it does not lead to an improvement in the level of livelihood for all individuals, and does not fulfil the basic welfare of every individual. The erroneous aspect in this view is that the needs which require satisfaction are individual needs, they are needs of a man; so they are needs for Muhammad, Salih and Hasan and not needs for a group of human beings, a group of nations, or a group of people. The one who strives to satisfy his needs is the individual,



whether he satisfies them directly such as eating, or he satisfies them through the satisfaction of the whole group such as the defence of the nation. Therefore, the economic problem is focused on distributing the means of satisfaction for individuals the distribution of the funds and benefits to the members of the nation or people, not on the needs which the nation or the people require without regard to every individual within the nation. In other words, the problem is the poverty which befalls the individual not the poverty which befalls the nation. The concern of the economic system must only be in satisfying the basic needs of every individual, not the study of producing economic commodity.

Consequently, the study of the factors that affect the size of national production differs from the study for satisfying all the basic needs of all individuals personally and completely. The subject of study must be the basic human needs of man, as a human being, and the study of distributing the wealth to the members of society to guarantee the satisfaction of all their basic needs. This should be the subject of study, and should be undertaken in the first place. Moreover, the treatment of the poverty of a country does not solve the problem of poverty for individuals, individually. Rather, the treatment of the poverty problems of the individuals, and the distribution of the wealth of the country among them, motivates all the people of the country to work in increasing the national income. The study of factors that affect the size of production and the increase of the national income, should be discussed as economic science, that is, in the discussion of the economic commodity and its increase, rather than in the discussion of satisfying the needs, which are regulated by the economic system.

The Capitalists claim that the economic problem which faces any society is the scarcity of commodities and services. They also claim that the steadily increasing needs, and the inability to satisfy all of them the insufficiency of commodities and services to satisfy all of man's needs completely, is the basis of the economic problem<sup>12</sup>. This view is erroneous and in fact contradicts with reality. This is because the needs which must be met are the basic needs of the individual as a human (food, shelter and clothing), and not the luxuries, although they too are sought. The basic needs of humans are limited, and the resources and the efforts which they call the

<sup>12</sup> Sameeh Amin, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.113

commodities and services existent in the world are certainly sufficient to satisfy the basic human needs; it is possible to satisfy all of the basic needs of mankind completely. So, there is no problem in the basic needs, quite apart from considering it the economic problem that faces society. The economic problem is, in reality, the distribution of these resources and efforts enabling every individual to satisfy all basic needs completely, and after that helping them to strive for attaining their luxuries.

With reference to the steadily increasing needs<sup>12</sup>, it is not a subject related to increasing basic needs, because the basic needs of man as a human do not increase; whereas, it is his luxuries which increase and vary. The increase in needs which occurs due to the progress of a human in his urbanised life is related to the luxuries rather than to the basic needs. Man works to satisfy his luxuries, but their non-satisfaction does not cause a problem; what does cause a problem is the non-satisfaction of the basic needs. Besides all of this, the question of the increasing luxuries is a question which is only related to some people who live in a certain country and not to all individuals of that country. This question is solved through the natural urge of a human to satisfy his needs. This urge, resulting from the increase in luxuries, drives man to work towards satisfying them, either by expanding the resources of his country, working in other countries, or through expansion and annexation of other countries. This is different from the issue of completely satisfying the basic needs of each and every individual in society. This is because the problem of distributing the wealth to each and every individual to satisfy his basic needs, and enabling every individual to satisfy his luxuries, is a problem related to the viewpoint in life, which is particular to a certain nation carrying a particular ideology. This is contrary to the question of increasing national income through increasing production, which is related to the situation of particular countries, and could be achieved through utilising the resources of the country, emigration, expansion, or merging with other countries. This issue of increasing wealth depends on the practicality of the solution, and is not related to a particular viewpoint, and not related to a particular nation or ideology.

<sup>12</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.114

The economic principles which have to be laid down are the principles which guarantee the distribution of the country's internal and external wealth to each and every individual of the nation, so that they secure the complete satisfaction of all basic needs for each individual, and then enable every individual to seek the satisfaction of the luxuries. However, raising the level of production requires scientific research, and its discussion in the economic system does not solve the economic problem, which is the complete satisfaction of the needs of each and every individual. An increase in the level of production leads to a rise in the level of the wealth of the country but does not necessarily lead to the complete satisfaction of all the basic needs of each and every individual. The country could be rich in natural resources, as in the case of Iraq and Saudi Arabia, but the basic needs of most of their citizens are not satisfied completely. Therefore, the increase of production by itself, does not solve the basic problem which must be treated first and foremost, which is the complete satisfaction of the basic needs of each and every individual, and following that enabling them to satisfy their luxuries. Therefore, the poverty and deprivation required to be treated is the non-satisfaction of the basic needs of man as a human being (food, shelter and clothing), not the increasing luxuries resulting from urban progress. Hence, the problem to be treated is the poverty and deprivation of every individual in the society, not the poverty and deprivation of the country measured as a whole. The poverty and deprivation from this perspective (for every individual) is not treated by increasing national production, rather it is treated by the manner in which the wealth is distributed to the individuals in society enabling complete satisfaction of all their basic needs, and then enabling the individuals to satisfy their luxuries.

Capitalism considers value as being relative and not real, and so it is treated as a subjective measurement. Hence, the value of a yard of cloth is the marginal benefit of it assuming its availability in the market. Its value is also the quantity of commodities and efforts that could be exchanged for it. The value becomes a price if what is obtained for the yard of cloth is money. These two values, in their view, are separate, and they have two distinct names; benefit and the value of exchange<sup>14</sup>. The meaning of value according to this definition is wrong, because the value of any commodity is the quantity of benefit in it, taking into account the element of

<sup>14</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.128

scarcity. So the real view towards any commodity is to observe its benefit whilst taking into account its scarcity, whether it is possessed by man from the start like from hunting, or by exchange like selling; and whether this was related to the person or related to the thing. Thus, value is a name for a designated thing which has a specific reality, and not a name for a relative thing, which applies to it in one respect and is not applicable in another. So the value is an objective measurement and not a relative thing. Therefore, the view of the economists towards value is wrong from its basis.

What is referred to as the marginal utility value is an estimation meant to concentrate production based on the worst case scenario of distributing the commodities. Thus the value of a commodity is estimated based on the lowest limit so that production proceeds on a guaranteed basis. The marginal utility is not really the value of the commodity, nor even the price of the commodity, because the value of the commodity should be estimated by the amount of benefit in it at the time of estimation, taking into account the element of scarcity at that time. Its value would not drop if its price decreases later on, nor would it rise if its price increases as well, because its value was considered at the time of its evaluation. Therefore, marginal utility theory is a theory for price and not a theory for value, and there is a difference between price and value, even in the view of Capitalist economists. What governs the estimation of price is the abundance of demand together with the shortage of supply or the abundance of supply together with the shortage of demand; these matters are related to the level of production of a commodity, and not related to its distribution. Whereas value is estimated by the quantity of benefit present in the commodity at the time of evaluation, bearing in mind the element of scarcity, without considering it as part of the estimation; so supply and demand do not utterly affect the value.<sup>15</sup>

Therefore, the subject of value is wrong from its basis, and any subject based on it is definitely wrong since the basic concept is false. However, if the value of the commodity was evaluated in terms of its benefit measured by the benefit of a commodity or an effort, then such an evaluation would be correct and would lead to much greater stability over the short term. If the value was estimated by the price, the evaluation would be relative not real, and it comes closer to

<sup>15</sup> Sameeh Azam, Is Jam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.128

changing every time according to the market. In this latter situation, it is false to refer to it as a value, and so the term value would not truly apply to it. It would rather become a means to obtain money according to the market and not according to what it possesses of benefits,

The Capitalists say that benefits are the result of the efforts which man expends. So, if the reward was not equal to the work then no doubt the level of production declines, and they conclude from this that the ideal method to distribute the wealth among the members of society is that which guarantees to achieve the highest possible level of production". This approach is totally wrong, since in reality the resources, which God has created, are the basis of the benefit in the commodities. And the expenses spent in increasing the benefit of these resources, or initiating a benefit in them together with the work, are that which made them in the form that provides a particular benefit. So considering the benefit as a result of the efforts only is completely wrong and it neglects the raw material and other expenses. For in some cases, these expenses could be a compensation for a raw material, and not for an effort. Thus, the benefit could be a result of man's efforts or could be a result of the existence of the raw material, or could be a result of both of them, but it is not only as a result of man's efforts.

As for the decline in the level of production, it does not result solely from a decrease in the reward for work, since it could also result from the depletion of the wealth of the country, or from war, or for other reasons. As an example, the decline of production in both Britain and France after the Second World War did not result from a reduction in the reward to work, it resulted from the shrinkage in their influence over their rich colonies, and their involvement in the war. The decline in production of the US during the Second World War did not result from a reduction in the reward to work, it resulted from its involvement in the war against Germany. The decline in the Islamic World today did not result from a reduction in the reward to work, it is as a result of the intellectual decline into which the whole Ummah fell. Therefore, the inadequacy of the reward to work is not the only reason for decline in production, and it is false to assume from this premise that the ideal method of distribution is to secure the raising of the level of

<sup>15</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.123

production. Arriving at the highest possible level of production has no relationship with the distribution of wealth amongst individuals.

The Capitalists say that the price is the incentive for production, because the motive for the person to expend any effort is his reward materially<sup>17</sup>. This view is incorrect and contradicts reality. Man often expends effort in return for a moral reward such as the attainment of a reward from God, or for the sake of achieving ethical merit such as returning a favour. The needs of man can be materialistic such as material profit, they can be spiritual such as sanctification, or moralistic such as praise. So taking into consideration materialistic needs only is incorrect. In fact, a man could expend resources in satisfying a spiritual or a moral need more generously than he spends in satisfying a materialistic one. Therefore, the price is not the only incentive for production. Accordingly a stonemason could designate himself to work for months in cutting stones for building a mosque, a factory may assign its production for some days of the year for distribution to poor people, and a nation could allocate some or focus all of its efforts on preparing to defend its territories. Such production is not motivated by price. Moreover, the materialistic reward itself is not confined to price, it could come in the form of other commodities or services. Hence, considering the price as the only incentive for production is incorrect.

One of the great anomalies of Capitalism is its consideration of price as the only regulator for distributing wealth amongst the members of society. They say that the price is the only constraint that forces the consumer in his possession and consumption to accept a limit comparable to his income, and it is the price which restricts the consumption of every individual in acceptance to what his revenues permit. Accordingly, through the rise in price of some goods and drop in the price of others, and in the availability of money to some people and its non-availability to others, the price regulates the distribution of wealth amongst consumers. Thus, every individual's share of the wealth of a country is not equal to his basic needs, but is equal to the value of the services in which he has contributed in producing commodities and services equal to what he owns of land or capital, or equal to what he carried out of work, and projects<sup>18</sup>.

<sup>17</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.118.

<sup>18</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.120.



From this principle, which makes the price the regulator of distribution, Capitalism has effectively decided that man does not deserve life unless he is capable of contributing to the production of commodities and services. The person who is incapable of contributing, whether he was born with a physical or mental disability, does not deserve life, and does not deserve to take from the wealth that which satisfies his needs. Also the person who was born strong in body or in mind, and who is more capable of creating and possessing wealth however he wishes, deserves to consume luxuriously and deserves to practice control and mastery over others with his wealth. Also the one whose motivation to seek material gains is stronger will exceed others in possessing wealth whereas, the one whose adherence to spiritual and moral values (which control him during the earning of wealth) is stronger, will have less than others in possessions or wealth. This approach excludes the spiritual and moral elements from life and produces a life built upon a materialistic struggle to gain the means of satisfying materialistic needs. This eventually occurs in all countries which adopt and apply Capitalism. The domination of Capitalist monopolies has developed in countries adopting Capitalism, with producers exercising control over consumers. A small group of people the owners of large oil, automotive, and heavy industry corporations, have come to dominate consumers, reigning over them by imposing certain prices for the commodities they produce. This has led to attempts to "patch up" the economic system. They did this by giving the State (government) the right to intervene in fixing the price (price control) in special circumstances to protect the national economy, to protect consumers, and to reduce consumption of some commodities, as well as limiting the authority of monopolies. They also included in the regulation of production certain public projects directed by the government. These measures contradict the basis of their economic system, which is economic freedom, and they are only applied in specific circumstances. Moreover, many Capitalists do not adopt this interventionist approach (Conservatives) and they scorn it, contending that the price mechanism alone is sufficient to achieve harmony between the interest of the producers and the interest of the consumers, without any need for governmental intervention. These patchwork solutions which are recommended by the supporters of intervention (Liberals), are only applied in certain circumstances and conditions, and even in these circumstances, the distribution of wealth amongst the individuals does not achieve the complete satisfaction of all basic needs for each and every individual.

The poor distribution of commodities and services, which resulted from the concept of freedom of ownership and from the concept of making the price the only mechanism for distributing wealth, will continue to dominate every society that applies Capitalism.

With regard to American society, many Americans had a sufficient share of the wealth of the country, to satisfy most of their basic needs completely, and to satisfy even some of their luxuries. This situation occurred due to the immense wealth of that country which had reached a level by which there was an opportunity for every individual to satisfy all of his basic needs and some of his luxuries. However, this was not due to making the share of the individual equal to the value of the services he contributed in production. Furthermore, putting the price mechanism as the controller of distribution has caused Capitalist monopolies in the West to look abroad to other countries for new markets, from which to gain raw materials and to sell their products. What the world suffers from, in terms of colonisation, regions of influence and economic invasion, is merely a result of these monopolies and making price a tool in the distribution of wealth. Thus, the resources of the world are accumulated on this basis into the hands of Capitalist monopolies. This is due to the false rules and principles established by Capitalism.

This is but a brief examination of the principles upon which the Capitalist economic system is established. From this examination the fallacies present in these principles are apparent. This is on the one hand; on the other hand, this system is contradictory to the Islamic method in addressing the problems and contradictory to Islam itself.

As to their contradiction to the Islamic method of solving the problems, one finds that the Islamic method in solving the economic problem is the very same method Islam uses in solving any of the other human problems. The common approach of Islam is to study the reality of the economic problem, understand it, and then deduce a solution for the problem from the Shari'ah texts after studying these texts, and to ensure that they apply to that particular problem. This is different from the Capitalist method. In Capitalism, the situation, which resulted from the problems, is used as a source for the solutions (pragmatism). This method is different to the method of Islam, so it is not allowed for a Muslim to adopt them.



The contradiction of the Capitalist economy to Islam is that Islam adopts its solutions as divine rules (Ahkam Shari'ah) derived from the legislative sources while the Capitalist economic solution is not divine rules, but it is from a western system. Judging on things according to this means ruling with other than what Allah has revealed, which is *ijma'*, allowed for any Muslim to adopt in any way, that because he believes in Allah and in the Islamic message.

THE THEME OF THE STUDY

**THE** ECONOMY IN HASHEMITE KINGDOM OF  
JORDAN

## II. THE THEME OF THE STUDY

### 2.1 A Political And Economical Glimpse About Jordan:

In June 1916 the Arabic Revolution broke out with the help of England to expel the Islamic Ottoman Khilafah out of the Arabic regions including Jordan, with the alibi of having independence from the Turks. Until then the Ottoman khilafah was implementing the Islamic laws (Sharia'a) and the Islamic economy all over the countries under its domain. The thing which no one can deny is that the Ottoman khilafah was able to be the most prominent country for over than 400 years, due to the implementation of the Islamic (sharia'a) But as a result of the intrusion of the English between the Arabs and the Turks and by trying to rouse the national differences between them, the Ottoman khilafah was expelled out of the Arabic regions and instead the English and French forces took place to occupy all these regions and to separate them from the mother country of the Ottoman khilafah in Turkey, and later to terminate the khilafah in Turkey and declare the Turkish Republic instead.

In 1921, Prince Abdallah Ibn Al-Hussein came to Amman, the capital of Jordan, and established the Emirate of Trans Jordan as a result of dividing Syria to four territories by the English namely (Syria, Lebanon, Palestine & Jordan). This emirate was established on the basis of the capitalist system and its laws whether having to deal with politics or economics.

In 1951, the Hashemite kingdom of Jordan was declared. It was based on the political and economical capitalist system of Britain and it is still implementing these laws and systems until now.

### 2.2. The Hierarchical Imbalance In The Jordanian Economy:

Jordan reached the beginning of the eighties and the features of an economical crisis began to show out on the surface having to do with finance, currency and hierarchy. The crisis grew worse over the years until it showed out clearly in the late 1988. Those in charge had to issue reformation decisions to remedy the hierarchical imbalance. The government then adopted a

number of capitalist economic policies to remedy the situation, but this step was not appreciated by international institutions (such as the World Bank and the international currency box) because these policies did not constitute a thorough program and did not adopt a suitable economic framework to guide the economic activity.

This led to the preparation of a thorough hierarchical reformation program based on the capitalist system as seen by the west with the approval of the world bank and the international currency box.

The first program was prepared for the period between (1989-1993); but the Gulf-war did not allow it to continue, so it stopped in 1990.

After the Jordanian economy proved to be able to absorb the Gulf crisis, it was newly agreed upon a new capitalist economic reformation program for the years (1992-1998). This program was mended twice, the last one in 1995. It was then called the expanded reformation program for (1996-1998).

It is worth pointing out here that the most important hierarchical imbalances in the Jordanian economy which led to the reformation program were:

- 1- The great retreat in the general growth of the local production.
- 2- The increase of the deficiency in the general budget.
- 3- The drawback in the standard of the general investment which constitutes a percentage of the local production.
- 4- The increase of the general consumption over the local production (negative saving).
- 5- The deterioration of the Jordanian payment balance.
- 6- The absence of the reserve currency in the central bank and the absence of opportunities for foreign laws.
- 7- The outer debts condition getting worse.

Besides that the government, and due to the depression which the country witnessed, tried to revive the national economy by adopting expanded financial policies to increase the expenditure

of the government by getting outer laws and then local laws because of the difficulty in getting outer finance. So the economic crisis was deepened and the burdens of the debts increased. The signs of the economic currency crisis began to show. Thus the outer laws in the late eighties reached about 8 billion U.S dollars, equal to 200% of the local production, knowing that the level acceptable for this percentage does not exceed 75%.

### 2.3. The Adopted Reformation Policies

The reformation procedures were adopted with the agreement of the international currency box and world bank, within policies aiming to put an end to or refrain the demand through strict financial and coinage policies, on the other hand there are policies aiming to revive the supply by improving the production efficiency and the general atmosphere for investment and savings, and adopting a policy for the rate of expenditure which increases the competition of the Jordanian exports and decreases the burdens of the outer debts.

The aim of the reformation programs (which Jordan adopted and still is) is summarized basically in performing continuous growing averages and decreasing the financial deficit to 52,5% by the end of 1998, and fighting the inflation so as not to exceed 2,5% by the end of the expanded programs. Also to decrease the deficit in the payment balance so as to reach 2% of the total local production. Also to increase the reserve of the kingdom of foreign currency to 950 million dollars, so that it could cover the finance of imports for 3 months instead of one and a half months, and decrease the size of outer debts and follow the policies of motivating the investment and the savings mutually. Adding to all of this renovation of financial, coinage and investment legislations.

The essential aim of the expanded program of 1996-1998 was to build the reserve of Jordan's foreign currency and increase the investment to reach by 1998 33,9% of the local production, giving special care to the kind of investment which allows variety of investment projects and not to be limited on special sectors.

The Jordanian government adopted the reformation programs which were all based on the capitalist economic system and executed it. The government raised the rate of interest to increase the savings and maintain the rate of 'dinar' change. It also headed the policies of exhibition in order to improve the efficiency of production and increase it on the long run. New legislation was produced to encourage investment and a number of taxes were adopted for the same reason. It also followed the financial policies which aim at decreasing the financial deficiency and foreign debts. In spite of all that, the economic problems are still over-whelming the Jordanian economy which is still deteriorating.

The question on which forces itself now on Jordan is: What is the economic plan which is capable of lifting the Jordanian economy from the deteriorating position it is facing now & raise it to go side by side with the economy of the great countries??

So any future strategy for a successive growth in Jordan is supposed to take upon itself preparing the Jordanian economy within the framework of new economic policies based on a new economic system (very far from the capitalist laws and systems) based on the Islamic economy as an alternative to the capitalist system bearing in mind the following:

***First: the social scope:***

There must be a study to how far there are social side effects for the reformation and what should be done concerning this issue, so that the common citizen doesn't feel that he's the only one who should bear the greater burden of the reformation.

***Second: the economic sectorial scope:***

Jordan has to study the phases of investment which lessens (decreases) the obvious concentration in economy in the (non-tradables) so as to vary the production and exportation basis of the country.

***Third: the legislative scope:***

There is a lasting need to put and renew legislation- on the basis of Islamic legislation (sharia'a) not human legislation-which suits the economic policies in Jordan. There is a need for legislations,which can deal with the new aspects that economy is facing.

***Fourth: the role of the government***

There is a need to specify the role that the government is expected to play in the economic process according to the Islamic political and economical laws and legislation. Bearing in mind that the private sector should be given the opportunity to play its role so that the government does not interfere except in the phases that the (sharia'a) legislation permits.

***Finally:***

Making a new strategic plan based on the Islamic economic system for a continuous or successive growth requires complete honesty in the informative sector. For how could the researcher put plans or help in making opinions in front of those responsible if he does not have the knowledge or information needed to work in that framework.

**2.4. The Summary:**

In this thesis we are going to give a detailed study of the Jordanian economic system which is based completely and in details on the capitalist economic system. Thus, we are going to give a detailed study of the capitalist economic system, then show how does the capitalist system deal with the economic problems and show how it fails to solve these economic problems and how at the same time it contradicts the Islamic economic system.

On the other hand, we will give a detailed study of the Islamic economic system and its efficiency and capability in solving these economic problems, which the capitalist system failed or was unable to solve.



### III. ECONOMY

The word economy (Iqtisaad) is derived from an old Greek term, which means the planning of home affairs, such that its active members associate in producing the commodities and performing the services, and all of its members share in enjoying what they possess. Through time, people extended the meaning of home until it meant the community which is governed by one State<sup>1</sup>.

It is not intended to use the word economy (Iqtisaad) in its linguistic meaning which is saving or to mean property. What is meant is the technical meaning of the word i.e. the management of property, either by its increase, and securing of its production which is discussed in economic science; or by the manner of its distribution, which is discussed in the economic system.

Though both economic science and the economic system deal with the economy, their respective meanings differ significantly'. The economic system is not affected by fluctuations in the amount of wealth. The fluctuations in the amount of wealth do not affect the form of the economic system. Therefore, it is a serious error to look at the economy as one subject, and to discuss it as one topic, as this leads to either error in understanding the economic problems needing to be solved, or misunderstanding the factors that increase the wealth in the country. This is because the management of the community's affairs in respect of the creation of wealth is one issue, and the management of the people's affairs in respect of wealth distribution is another issue entirely. So, the subject of managing the economic material must be separated from the subject of managing its distribution. The first is related to the means and the second is connected with the thought. The economic system must be discussed as a thought that is based upon the viewpoint of life (the creed of a particular ideology), and economic science must be discussed as a science that has no relationship with the viewpoint in life. The most important subject in this context is the economic system, because the economic problem revolves around mankind's needs, the means of their satisfaction, and utilising these means. Since the means are present in the universe, their

<sup>1</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.615.

<sup>2</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.615.



production does not cause an essential problem in satisfying the needs, but rather the needs drive man to produce these means. However, the real problem present in the relationships of people i.e. in the society, results from enabling or restricting people from utilising these means. This results from the subject of man's ownership of these means. This is the basis of the economic problem, which must be treated. So the economic problem results from the subject of possessing the benefits, not from producing the means which give the benefit.

### 3.1. The Basis of the Economic System

The benefit in a thing represents the suitability of that thing to satisfy a need of man. Benefit comprises two elements. One is the extent of desire for that particular thing felt by a human. The second is the merits existent in the thing and its suitability to satisfy human needs, as opposed to the need of a particular person. This benefit results from either human effort, the commodity, or from both of them. The form of human effort includes the intellectual and the physical effort which he expends to initiate a property (Maal) or a benefit from a property. The term commodity includes everything possessed for utilisation through buying, leasing or borrowing, whether by consumption, such as an apple or by usage such as a car; or through utilising it like borrowing machinery or leasing a house. Property (Maal) includes money such as gold and silver, commodities such as clothes and foodstuffs, and immovable properties such as houses and factories and all other things which are possessed. Since property itself satisfies human needs, and human effort is a means to obtain the property or its benefit, then the property is the basis of the benefit, whilst man's effort is only a means that enables him to obtain the property. Hence, man by his nature strives to obtain such wealth for possession. Therefore man's effort and property are the tools which are used to satisfy his needs, they are the property which man strives to possess. Therefore wealth is the property (Maal) and the effort together<sup>3</sup>.

The individuals' acquisition of wealth occurs either from other individuals, such as the possession of property in the form of a gift, or directly, such as the possession of raw materials. Acquisition of a commodity is for either:

<sup>3</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.617.

consumption, like possessing an apple,  
 utilisation, like owning a house,  
 possession of the benefit of the property, like leasing a house,  
 or possession of the benefit resultant from human effort, like an architect's blueprints.

Possession of wealth in all of its forms, is either through compensations such as selling and  
 buying property, and wages of the employee; or it is not compensation such as donations, grants,  
 inheritance or loans. However, the economic problem lies in the possession of wealth  
 not in the creation of wealth. The economic problem results from the viewpoint towards  
 ownership, from the ill disposition of this ownership, and from the maldistribution of the wealth  
 amongst people. The problem doesn't stem from any other matter, and therefore addressing this  
 aspect is the basis of the economic system.

The basis upon which the economic system is built constitutes three principles:

Ownership,  
 Disposal of the ownership,  
 The distribution of wealth amongst the people

### **The View of Islam towards the Economy**

The view of Islam towards wealth differs from its view of utilising it. Islam considers the  
 means that produce a benefit a subject different from the subject of possessing the benefit. So  
 property and human effort are the components of wealth, and they are the means which produce  
 benefit. Their position in the view of Islam regarding their existence in life and in regard of their  
 production differs from the question of using them, and from the method of possessing this  
 benefit. Islam interferes directly in the question of utilising some properties. So it prohibits the  
 use of some commodities such as wine and dead foodstuffs. Similarly, it prohibits benefiting  
 from some of man's actions, such as dancing and prostitution. It also prohibits the trade in  
 commodities that are forbidden to be eaten, whilst prohibiting the hiring actions that are  
 forbidden to be performed. This refers to the utilisation of the property, and man's effort.

However, regarding the method of possessing property and man's effort, Islam has put numerous laws regulating this ownership, such as laws of hunting and land reclamation, and the laws of leasing, manufacturing inheritance, donations and wills<sup>4</sup>.

This is regarding the utilisation of wealth and the manner of its initial ownership. Regarding generating the production of wealth, Islam encouraged that through motivating the people generally to earn. Islam did not interfere in defining the technical manner of increasing production, or the quantity of production, rather it left that to people to achieve as they like. Turning to the existence of property, it exists in this world naturally. Allah (SWT), has created it, and left it for man's disposal.

Allah (SWT)<sup>5</sup>:

"It is **He who** created for you all that exists on earth." <sup>6</sup>

And He (SWT) said:

"Allah **i.si** He Who put at your disposal the sea so that the ships may sail by His command, and so as **you** may seek His bounty." <sup>7</sup>

And He (SWT) said:

"He **put at** your disposal that which is in the heavens and that which is in the earth, all from Him." <sup>8</sup>

And He (SWT) said:

"Let **man** consider his food. How We pour water in showers, Then split the earth in **fragments**. And cause the grains to grow therein. And grapes and fresh vegetation. And

<sup>4</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar EI-Kitab Al-Lobnani, 2000: P.618

<sup>5</sup> SWT: Glory to Allah the Greatest.

<sup>6</sup> Qur'an. Al-Baqarah Sur~ Ayat: 29.

<sup>7</sup> Qur'an. Al-Jathiyah Surah. Ayat: 12.

<sup>8</sup> Qur'an. Al-Jadhiyah Surah. Ayat: 13.

rees and dates, and enclosed gardens, dense with lofty trees. And fruits and grazes.  
 provision for you and your cattle."<sup>9</sup>

and He (SWT) said:

And We taught him the art of making garments (of mail) for your benefit, to guard you  
 from each other's violence."<sup>10</sup>

and He (SWT) said:

And We sent down iron, in which is great might, as well as many benefits for mankind."<sup>11</sup>

Allah (SWT) illustrated in these verses and others, that He (SWT) created property and  
 created man's efforts, and He (SWT) did not discuss anything else that may be linked to them,  
 which indicates that He (SWT) did not interfere in the property or in man's effort, except that He  
 (SWT) showed that He (SWT) created them for people to utilise. He (SWT) also did not interfere  
 in the production of wealth; there is no Shari'ah text (divine legal text) which denotes that Islam  
 interferes in the production of wealth. On the contrary, we find the Shari'ah texts indicate that the  
 Shari'ah has left to the people the matter of extracting the property and improving man's effort: It  
 is narrated that the Prophet (SAW) said in the issue of manual pollination of date trees: "You  
 are more aware of the routine issues of your daily life (Amri Dunyakum)." It is also narrated that  
 the Prophet (SAW) sent two of the Muslims to Jurash of Yemen to learn weapons manufacturing.  
 These examples indicate that the Shari'ah has left the matter of production of wealth to the  
 people, to be produced according to their experience and knowledge.

From all of this, it is apparent that Islam focuses upon the economic system and not  
 economic science. It makes the use of wealth, and the method of possessing its benefit as its  
 subject. It does not address the production of wealth nor the means of the benefit at all

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Qur'an. Abasa Surah, Ayat: 24-32.

Qur'an. Al-Anbiya Surah, Ayat: 80.

Qur'an. Al-Hadid Surah, Ayat: 25.

### 3.3. Economic Policy in Islam

The economic policy is the objective of the laws which deal with the management of human affairs. The economic policy in Islam is to secure the satisfaction of all basic needs for every individual completely, and to enable him to satisfy his luxuries as much as he can, as a person living in a particular society, which has a certain way of life. So Islam looks at every individual by himself rather than the total of individuals who live in the country. It looks at him as a human being first, who needs to satisfy all of his basic needs completely, then it looks to him in his capacity as a particular individual, to enable him to satisfy his luxuries as much as possible. Islam looks to him at the same time, considering him a person linked with others by certain relationships run in a certain way, according to a particular fashion. The purpose of the economic policy in Islam is not to only raise the standard of living in the country without looking to secure the rights of life for every individual completely. Nor is it just to provide the means of satisfaction in the society, leaving people free to take from such means as much as they can, without securing the right of livelihood for each individual. Rather, it addresses the basic problems of everyone as a human being, who lives according to particular relationships, then enabling him to raise his standard of living and achieve comfort for himself, according to a particular fashion of life. As such it is different from all other economic policies.<sup>12</sup>

While putting the economic rules for the human being, Islam relates the legislation to the individual to secure the right of livelihood and to secure the luxuries, while it verifies that the society has a special way of life. So, it takes into consideration what the society should be, at the same time it seeks to secure livelihood and to enable satisfying luxuries. It makes its view towards what the society ought to be as a basis for its view towards the livelihood and prosperity. Therefore, one will find that the divine rules (Ahkam Shari'ah) have secured the satisfaction of all of the basic needs (food, clothing and housing) completely, for every citizen of the Islamic State. This is achieved by obliging each capable person to work, so as to achieve the basic needs for himself and his dependants. Islam obliges the children or the heirs to support the parents if they are not able to work, or obliges the State Treasury (Bait ul-Mal) to do so, if there is nobody to

<sup>12</sup> Abedilrahman Al-Maliki, The Ideal Economic Policy, Beirut - Lebanon, Dar El-Umrnah, 1963: P.35.

support them. As such, Islam requires that the individual secures for himself and his dependants the satisfaction of the basic needs adequate foodstuffs, clothing and housing. Islam then encourages the individual to secure the luxuries of life as much as he can.

Islam also prevents the government from taking property through the imposition of taxes, except in cases where it is obligatory upon all Muslims to care for e.g. famine or Jihad. Tax then is taken only on the wealth which exceeds that which each individual normally uses to satisfy his basic needs and luxuries. In this way, it achieves the right of livelihood for everyone individually, and facilitates the securing of the luxuries. At the same time, Islam sets certain limits within which the individual can earn in order to satisfy his basic needs and luxuries, and organises his relationships with others according to a particular fashion. So Islam prohibits the production and consumption of wine by Muslims, and it does not consider it an economic material. Islam prohibits the taking of riba (usury, interest, etc.) and its usage in transactions for everyone who holds Islamic citizenship. It does not consider Riba as an economic commodity, whether for Muslims or non-Muslims. So Islam considers what the society ought to be when utilising any property as a fundamental basis for utilising the economic commodity.

Islam did not detach the individual from being human, nor the human being from being a particular individual. Furthermore, Islam does not consider what the society ought to be separate from the issue of securing the satisfaction of the basic needs for every individual, and enabling him to satisfy his luxuries. Rather, Islam makes the satisfaction of the needs and what the society ought to be, as two inseparable matters from each other, but by making what the society ought to be as a basis for satisfying the needs. For the sake of satisfying all the basic needs completely, and to enable satisfaction of the luxuries, the economic commodity should be available to people, and it will not be available to them unless they strive to earn it. Therefore, Islam urges people to earn, seek the provision and strive. And it made striving to earn the provision compulsory.

Allah (SWT) said:

"So walk in the paths of the earth and eat of its sustenance which He provides."<sup>13</sup>

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<sup>13</sup>Qur'an. Al-Mulk Surah, Ayat: 15.



However, this does not mean that Islam interfered in the production of wealth, or that it demonstrated the technical matters related to increasing production, or the amount of production, because it has nothing to do with production. Rather it only encourages on working for the earning of property. Many Ahadith<sup>15</sup> came to encourage the earning of property. In one Hadith, the Prophet Muhammad shook the hand of Sa'ad ibn Mu'adh<sup>16</sup> (RA) and found his hands to be rough. When the Prophet (SAW) asked about it, Sa'ad said: "I dig with the shovel to maintain my family." The Prophet (SAW) kissed Sa'ad's hands and said: "(They are) two hands which Allah loves." The Prophet (SAW) said: "Nobody would ever eat food that is better than to eat of his own hand's work."

It was also narrated that Umar ben Al-Khattab<sup>17</sup> (RA) passed by some people, who were known as readers of the Qur'an. He saw them sitting and bending their heads, and asked who they were. He was told: "They are those who depend (Al-Mutawwakiloon) upon Allah." Umar replied: "No, they are the eaters who eat the people's properties. Do you want me to describe those who really depend upon Allah (Al-Mutawwakiloon)?" He was answered in the affirmative, and then he said: "He is the person who throws the seeds in the earth and then depends on his Lord The Almighty, The Exalted ('Azza wajalla)."

Thus we find that the verses and the Ahadith encourage striving to seek provision, and working to earn property, just as they encourage the enjoyment of the property and eating of the good things.

Allah (SWT) said:

**"Say: who** has forbidden the beautiful gifts of Allah, which He has provided for His **servants, and** the things, deep and pure, (that He has provided)?"<sup>18</sup>

<sup>15</sup> Al-Ahadeeth: It's the Prophet Mohammad (SAW) Rules.

<sup>16</sup> Sa'ad ibn Mu'adh: He is one of Mohammad (SAW) Group.

<sup>17</sup> (RA): Radiya Allah Anho. Which mean: May Allah be pleased with him.

<sup>18</sup> Umar ben Al-Khattab: He is one of Mohammad (SAW) Group, And he is the second Khalifah of the Muslims.

<sup>19</sup> Qur'an Al-A'raf Surah, Ayat: 32.

And he (SWT) said:

"**And let** not those who are niggardly, who withhold the gifts which Allah has given them **from His** Grace, think that it is good for them. Rather it is worse for them. That which they **hoard** will be their collar on the Day of Resurrection. To Allah belongs the heritage of the **heavens** and the earth, and Allah is informed of what you do."<sup>19</sup>

And he (SWT) said:

"**O you** who believe! Spend of the good things which you have earned, and of that which We **bring forth** from the earth for you."<sup>20</sup>

And he (SWT) said:

"**O you** who believe! Do not prohibit the good things which Allah made halal for you."<sup>21</sup>

And he (SWT) said :

"**And eat** of that which Allah provided for you, halal and good."<sup>22</sup>

These verses, and the like, denote clearly that the divine rules (Ahkam Shari'ah) related to the economy, aim at acquiring property and enjoying good things. So Islam obliged individuals to earn, and ordered them to enjoy wealth that they earned, so as to achieve economic growth in the country, to satisfy the basic needs of every person, and to enable the satisfaction of his luxuries.

In order to facilitate the acquisition of property, we find that Islam puts the rules related to the manner of possessing wealth without any complications. So it made the manner of possessing property very easy. Thus, Islam defined the legal means of ownership, and it defined the contracts through which property ownership is exchanged, and left man free to develop the styles and means by which he earns, and it did not interfere in the production of the wealth.

<sup>19</sup> Qur'an Al-Imran Surah, Ayat: 180.

<sup>20</sup> Qur'an Al-Baqarah Surah, Ayat: 267.

<sup>21</sup> Qur'an Al-Ma'idah Surah, Ayat: 87.

<sup>22</sup> Qur'an Al-Ma'idah Surah, Ayat: 88.



Islam defines the legal means of ownership and contracts in general guidelines that include legal principles, and rules, under which numerous issues belong and against which numerous rules are measured by analogy (Qiyas).

Thus it obliged work, put its detailed rules, and left the person to work as a carpenter, manufacturer, technician, trader, etc. The gift is legislated in such a way that donation can be compared to it by analogy in terms of being a means of ownership. Employment was legislated in such a way that representation (Wakala) can be compared to it by analogy in terms of being entitled to compensation. Thus we find that the means of ownership and the contracts are detailed by Shari'ah in general outlines and set in such a way as to include any contemporary incidents; yet they do not allow for any new type of transactions. It is obligatory that people restrict themselves to the transactions that are defined by the Shari'ah, which apply to new incidents however numerous.

As such, the Muslim proceeds steadily in earning property, without being faced with obstacles, which prevent him from earning through Halal means. Thus, the satisfaction of all basic needs is possible for every person. Islam not only urges the individual to earn, it also requires the State Treasury (Bait ul-Mal) to be responsible for the support of all the citizens. So it made the support of the mentally or physically disabled as the State's responsibility, and it made the provision of the basic needs of the nation (Ummali) as one of its duties, because the State is obliged to look after the affairs of the Ummali.

The Prophet (SAW) said: "The Imam is in charge (ra'i) and he is responsible for his citizens."<sup>23</sup>

In order for the State to perform the duty placed on it by the Shari'ah, the Shar'a gave the State the authority to collect certain revenues such as the head tax (Jizya) and the land tax (Kharaj), with Zakat also to be collected by the State Treasury (Bait ul-Mal). The State also has

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<sup>23</sup> Bukhari: The Imamah chapter. Narrated from Ibn Umar.

the right to collect funds for those services which are a duty upon the Ummah, such as the repair of roads, building hospitals, feeding hungry people, and the like.

The Shar'yaa made the State responsible for the management of public property. The Shar'yaa prevents individuals from running public property on their own, because the overall responsibility is for the Imam<sup>2i</sup>, and none of the citizens is entitled to assume this responsibility unless he was designated by the Imam. The public properties of water, oil, iron, copper and the like, are properties which must be utilised in order to achieve economic progress for the nation (Ummah), because these properties belong to the Ummah, and the State is merely in charge of them for their administration and development. When the State supplies funds, and discharges its duty of looking after the affairs of the people, and when every capable individual earns property, then abundant wealth becomes available for the satisfaction of the individuals basic needs completely, and the luxuries.

However, the economic progress through motivating every capable individual to work, assigning properties to the State and the investing of public property, all that is a means to satisfy the needs, not for the sake of having property for itself nor for boasting, nor to spend it in sin, nor for arrogance and oppression. That is why the Messenger of Allah (SAW) said: "Whosoever sought the life (matters) legitimately (Halal) and decently he will meet Allah (SWT) with his face as a full moon; and whosoever sought it arrogantly and excessively he will meet Allah while He is angry at him."

The Prophet (SAW) also said: "Do you have, son of Adam, of your property except that which you ate and consumed, that which you wore and exhausted, and that which you donated and kept (for yourself)?"

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<sup>2i</sup> Al-Imam Or The Khalifah: The name of the president of the Islamic state.

Allah (SWT) the Supreme said:

**"Don't** commit Israaf (spending or going beyond the limits imposed by Islam); surely He **does not** like those who condone Israaf,"<sup>25</sup>

Islam made the aim of owning property a means towards satisfying the needs and not for the purpose of boasting. It also made managing the economy as a whole according to Allah (SWT) its orders obligatory. It ordered the Muslim to seek the Hereafter through what he earns and not to forget his share of this worldly life.

Allah (SWT) said:

**"But seek** the abode of the Hereafter in that which Allah has given you, and do not neglect **your** portion of worldly life, and be kind even as Allah has been kind to you, and seek not **corruption in the earth.**"<sup>26</sup>

The philosophy of Islamic economy dictates that all economic actions are according to the commands of Allah (SWT), based on recognising the relationship with Allah (SWT). The idea upon which the management of the Muslims' affairs in society is built, is directing the economic activities according to the divine rules (Ahkam Shari'ah), as a complete way of life (Deen). Similarly, the management of the affairs of the other (non-Muslim) citizens of the State restricts their economic activities according to the divine rules. It permits them whatever Islam has permitted, and it forbids them of whatever Islam has prohibited.

Allah (SWT) said:

**"And whatsoever** the Messenger gives you take it, and whatsoever he forbids you abstain **from it.**"<sup>27</sup>

<sup>25</sup> Qur'an. Al-Ar'af Surah, Ayat: 31.

<sup>26</sup> Qur'an. Al-Qasas Surah, Ayat: 88.

<sup>27</sup> Qur'an. Al-Hashr Surah, Ayat: 7.

and He (SWT) said:

**O mankind!** There has come unto you an exhortation from your Lord, a cure for that which is in the breasts."<sup>28</sup>

and He (SWT) said:

**And let those who withstand his (the Messenger's) order beware, lest some trial or painful punishment befall them.**"<sup>29</sup>

and He (SWT) said:

**And rule between them with that which Allah revealed.**"<sup>30</sup>

Islam secured the observance of these rules by motivating the Muslim to adhere to this economic policy through the fear of Allah (SWT) (Taqwa), and the abiding of the people, in general, to it through the legislated laws which the State implements upon the people.

Allah (SWT) said:

**O you who believe!** observe your duty to Allah and give up what remains (due to you) from **riba**, if you are (in truth) believers."<sup>31</sup>

and He (SWT) said:

**O you who believe!** When you contract a debt for a fixed term record it in writing."<sup>32</sup>

until He (SWT) says:

**...save in the case when** it is actual merchandise which you transfer among yourselves from hand to hand, in that case it is no sin for you if you write it not."<sup>32</sup>

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<sup>28</sup> Qur'an: Yunus Surah, Ayat: 57.

<sup>29</sup> Qur'an: An-Nur Surah, Ayat: 63.

<sup>30</sup> Qur'an: Al-Ma'idah Surah, Ayat: 49.

<sup>31</sup> Qur'an: Al-Baqarah Surah, Ayat: 278.

<sup>32</sup> Qur'an: Al-Baqarah Surah, Ayat: 282.

<sup>33</sup> Qur'an: Al-Baqarah Surah, Ayat: 282.

Islam thus explained the way in which these rules are implemented and the way in which people's adherence to these rules is guaranteed.

This demonstrates how the economic policy in Islam is built on satisfying the needs of every individual, as a human being who lives in a particular society, and on earning the wealth to provide that which satisfies the needs. The economic policy in Islam is also established on one idea, which is the implementation of all actions according to divine rules. It is implemented by every individual through motivating of his fear of Allah (SWT) and applied by the State through culturing the people and through implementing laws.

### 3.4. The General Economic Principles

From analysing, the divine rules related to the economy, it is evident that Islam addresses the issue of enabling people to utilise wealth. This is the Islamic view regarding the economic problem of society. When addressing the economy, it deals with the initial acquisition of wealth, its disposal and its distribution amongst the public. The rules that deal with the economy are thus based on three principles:

1. Initial ownership,
2. Disposal of the ownership, and
3. Distribution of wealth amongst the people.

With regard to the issue of ownership, it belongs to Allah, since Allah (SWT) is the Owner of all the Dominion (Malik al-Mulk). He (SWT) has stated in the texts that property (Maal) belongs to Him.

Allah (SWT) said:

**"And give them from the property of Allah, which He gave to you."**<sup>33</sup>

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<sup>33</sup> Qur'an. An-Nur Surah, Ayat: 32.

Property, therefore, belongs to Allah (SWT) alone. However, He has put mankind in charge of property, provided them with it, and has given them the right of owning it. Allah, the Exalted said:

"And spend from what He put you in charge of."<sup>34</sup>

And He (SWT) said:

"And He has provided you with properties and offspring."<sup>35</sup>

Clearly, when Allah (SWT) addresses the issue of the origin of property, He attributes its ownership to Himself, and says:

"...the property of Allah..."<sup>36</sup>

Allah (SWT) addresses the issue of transferring the property to human beings, He (SWT) attributes the property to them and says:

"Give them their properties."<sup>37</sup>

And:

"Take from their property."<sup>38</sup>

And:

"So for you is your principal sum."<sup>39</sup>

And:

"And property you possessed with hard work."<sup>40</sup>

<sup>34</sup> Qur'an Al-Hadid Surah, Ayat: 7.

<sup>35</sup> Qur'an Nejuh Surah, Ayat: 12.

<sup>36</sup> Qur'an An-Nur Surah, Ayat: 33.

<sup>37</sup> Qur'an An-Nissa Surah, Ayat: 6.

<sup>38</sup> Qur'an At-Tawba Surah, Ayat: 103.

<sup>39</sup> Qur'an Al-Baqarah Surah, Ayat: 279.

<sup>40</sup> Qur'an At-Tawbah Surah, Ayat: 24.

And He (SWT) said:

"And his property will do him no good."<sup>41</sup>

However, the right of ownership of property that came through its deputation (Istikhlaf) is general for all humans. This is not, however, the actual ownership, it is only the right of ownership. They are deputised to in terms of the right of ownership. Actual ownership by a particular person takes place when the Islamic conditions of ownership are met, such as obtaining the permission of Allah (SWT). The actual ownership of property thus takes place when an individual obtains the Legislator's permission to possess that property. This permission is a specific proof that the individual becomes the owner of that property. Assigning (deputising) all mankind for ownership (of property) is established by the general ('Aam) evidence, and this proves the right of ownership. Assigning an individual to the actual ownership (of a certain property) is made possible by the specific permission, which the Legislator gives to the individual.

The Legislator has stated that an individualistic type of ownership exists where each individual has the right to possess through one of the allowed means of possession. Abu Dawud narrated from the Sunnah that the Prophet (SAW) said: "Whoever surrounded a piece of land with a wall, then it becomes his." There is also a type of public ownership by the entire Ummah. Ahmad narrated from a man from the Muhajireen that the Prophet (SAW) said: "People share in three things: Water, Pasture lands, and Fire." There is also, in fact, State ownership. When a Muslim dies with none to inherit from him or her, then his or her property goes to the State Treasury (Bait ul-Mal). Whatever is collected of Kharaj or Jizya, also belongs to the Treasury. Anything that goes to the State Treasury, is for the State to decide upon except for zakat. The State has the right to deal with its property as it sees fit, according to the divine rules Islam has set the means through which the individual, the public and the State can possess property. Any means beyond these is forbidden.

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<sup>41</sup> Quran, Al-Lail Surah, Ayat: 11.



With regard to the disposal of the ownership, the State handles public property on behalf of the people, as it is their representative. Islam has however forbidden the State from exchanging or granting the deed or title of public property. Any disposal of public property, other than these two, are allowed and must be in accordance with the Divine Rules.

The State's and the individual's properties are disposed of according to the rules pertaining to the Bait ul-Mal and the rules of transactions, such as selling or pawning. Islam has allowed both the State and the individual to dispose of their properties by exchange or grant in accordance with the divine rules.

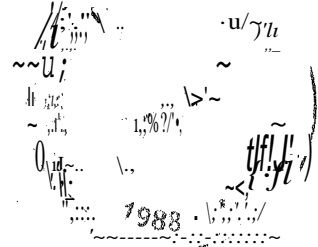
The distribution of wealth amongst the people is carried out naturally through the means of ownership and contracts. The natural differences among people in their abilities and in their tendencies to satisfy their needs result in variations in wealth distribution among them. This could result in the possibility of poor distribution where wealth is concentrated in the hands of the few, while the rest of the people are deprived of it. The hoarding of gold and silver, which are the standards of exchange could also occur. Islam has, therefore, forbidden the circulation of wealth amongst the wealthy only. Islam, in fact, obliged that wealth be circulated amongst all the people. Islam also forbade the hoarding of gold and silver, even if a portion of the individual's gold and silver had been given out as Zakat.



#### V. TYPES OF OWNERSHIP-PRIVATE OWNERSHIP

It is part of man's nature to work so as to satisfy his needs and to possess property in order to satisfy these needs and accordingly to strive for this possession. Satisfying man's needs is an inevitable matter that man cannot desist from. In addition to being part of man's nature, man's acquisition of wealth is thus an inevitable matter. Any attempt to prevent man from possessing wealth would be contradictory to his nature and any attempt to restrict his possession to a certain quantity would also be contradictory to human nature. It would, therefore, be unnatural to stand between man and his acquisition of wealth, or to stand between him and his efforts to achieve this acquisition.

This acquisition should not, however, be left to man to achieve, strive for, or dispose of as he wishes, as this would cause evil and corruption resulting in anarchy and disorder. This is inevitable due to the disparity between people in their abilities and in their needs for satisfaction. If they were left to their own devices, only the strong would acquire the wealth and the weak would be deprived of it; the sick and the incapable would perish and the greedy would be excessive. Enabling the people to acquire wealth and strive to achieve it must therefore proceed in a way that guarantees the satisfaction of the basic needs for all the people. It should also guarantee the possibility of people being able to satisfy their desire to acquire luxuries. It would, therefore, be imperative to confine this acquisition to a specific method, in which simplicity is achieved, so as to make the acquisition within reach of all people despite the disparity in their abilities and their needs. This method would also conform to human nature so as to satisfy the basic needs and enable people to fulfil their luxuries. It would thus be imperative for the ownership to be determined in quality and to resist the abolition of ownership, as this contradicts human nature. It is also necessary to resist the confinement of ownership to specific quantities, as this restricts man's striving to acquire wealth, thus contradicting his nature. The freedom of ownership should also be challenged as it causes evil and corruption resulting in chaotic relationships between people. Islam allows individual ownership and defines its method rather than its quantity, in accordance with human nature. It also organised the relationships between people and thus enabled man to satisfy all of his needs.



## 1. Definition of Private Ownership

Individual ownership is a divine rule estimated in terms of asset or benefit, which accordingly enables the owner to utilise the asset and to receive compensation for it. This could be in the form of a person's ownership of, for example, a loaf of bread or a house. He is able through his ownership of the loaf to eat it or to sell it. Similarly, through his ownership of the house, he is able to live in it or sell it. In both examples, the loaf of bread and the house are assets. The divine rule concerning them is the Law-Giver's permission for man to utilise them by consuming them, benefiting from them or exchanging them. The permission of utilisation entails that the owner is able to eat the loaf and live in the house, as well as being able to sell them. With regard to the loaf the divine rule is estimated by the asset, which is the permission to consume it. With regard to the house, the divine rule is estimated by the benefit, which is the permission to live in it. Ownership is thus defined as the Lawgiver's permission for utilising the asset. Accordingly, ownership is not established except when the Lawgiver allows it and allows its means. The right of owning the asset does not result from the asset itself, or from its nature by being either beneficial or harmful. Rather it results from the permission of the Lawgiver, and from His (SWT) allowing of the means that permits an asset to be legally owned. By this, the Lawgiver permits the ownership of some assets and prohibits the ownership of others. He also permits some contracts and prohibits others.<sup>1</sup> Thus, the Lawgiver prohibited the ownership of wine and pigs by Muslims, and prohibited the ownership of property acquired through usury and gambling by any citizens of the Islamic State. He permitted selling, thus making it Halal, and prohibited usury thus making it Haram. He permitted the company of 'Anan (partnership by body and finance) and prohibited co-operatives, joint stock companies and insurance.

Legal ownership has conditions and its disposal has constraints. Ownership should not interfere with the interests of the community or the interests of the individual who is part of a community and living in a particular society. Utilisation of the owned asset only comes about through the Lawgiver, Who grants it to the individual by following the divine means. Ownership

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<sup>1</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.620.

is the Lawgiver's assignment to an individual in the community of a particular thing, which he would not otherwise have the right to own.

However the ownership of an asset is ownership of the asset itself and of its benefit. The real aim of the ownership is to utilise the asset in a manner enjoined by the Shar'a.

In light of this definition of individual ownership, it can be understood that there are legal means of Ownership. It can also be understood that there are certain methods for the disposal of the ownership and a certain manner in which owned things may be utilised.

Incidents that are considered to be an aggression against the right of individual ownership may therefore be understood. Thus the true meaning of possession which the Lawgiver defined as the striving for a possession as well as its utilisation is understood as the true definition of ownership. In other words, the true definition of ownership indicates the true meaning of ownership.

## 4.2. The Meaning of Ownership

The right of individual ownership is a legal right of the individual who has the right to possess movable and immovable assets. This right is protected and determined by legislation and culturing. The right of ownership, besides being an interest of monetary (financial) value determined by Shar'a, indicates that the individual has control over what he possesses. He may dispose of it in the same way that he has control over his optional actions. The right of ownership is thus determined within the limits of the commands and prohibitions of Allah.<sup>2</sup>

The determination of ownership is evident in the legal means of possession by which the right of ownership is decided, and in the cases to which punishments may or may not be applicable. Examples of this are the definition of theft, the definition of robbery and the definition of illegal seizure. This determination is also evident in the right of disposal of the ownership,

<sup>2</sup> Sameeh AZain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.619.

where some cases of disposal are allowed, and some other cases are prohibited, and in the definition of these cases and the manifestation of their incidents. When Islam determines ownership it does not determine it by quantity but rather by its manner as shown in the following matters:

1. It determined ownership in respect of the means of possession and investing of the property, rather than in the amount of the property owned.
2. It determined the manner of disposal.
3. The fact that the Kharaj land title is owned by the State, not the individuals
4. The fact that individual property forcibly becomes a public property in certain cases.
5. The State grants amounts deemed necessary to those whose means of ownership are insufficient to cater for their needs.

It is inevitable that in order to ensure legal rights of ownership of individual property, a defined authority for him over what he owns should exist. Legislation makes the securing of the individual right of ownership a duty upon the State. It ensures the respect of ownership, its protection and non-aggression against it. Legislation incorporates deterrents in the form of punishments, which are enforced upon those who infringe on this right, whether by stealing, robbery, or in any other manner. During culturing, emphasis is placed to curtail the desires of people from longing for that which they have no right to own, and that which is owned by others. So the only legal (Halal) property is that which falls within the meaning of ownership. And the illegal (Haram) property is not considered ownership, nor does it fall within the meaning of ownership.

#### 43. The Means of Owning Property

Property is anything that can be possessed, whatever its nature. The means of its possession is the cause, which initiated the ownership of the property to the person in the first place. Exchange, in all its forms, is not considered as one of the means of possessing property. It is a means of possessing commodities through the exchange of a particular commodity of property, where the property was originally in possession, but some of its commodities were

exchanged. Investment of property such as the profit from trading, the rental of houses, and the harvest of crops, similarly is not considered as one of the means of possessing property. Though some property has been generated anew by this investment, it was initiated from another property, so investment is from the means of increasing the property, and not the means of possessing the property. The subject at hand is the initial possession of the property, in other words the acquisition of the original property.

The difference between the means of possession and the means of investing already owned property is that possession is the acquisition of the property initially, by acquiring its origin. Whereas investing an owned property is increasing the property that is owned. The property already exists, but is invested and increased. Shar'a put rules pertaining to both the owning of property and the investment of owned property. Contracts such as selling and leasing are rules pertaining to the investment of property, and work such as hunting and silent partnership are rules pertaining to the possession of property. Accordingly, the means of ownership are the means of possessing the original property. Whereas the means of investing the owned property are the means of increasing the property, which was already owned through one of the means of ownership.

In order to possess property there are divine causes, which the Lawgiver has confined to particular means. These causes must not be transgressed. The means of possessing property is therefore limited to what the Shar'a has laid down. The previously mentioned definition of property as a defined rule (Hukm Shar'i) estimated in terms of the asset or benefit, requires that there should be a permission from the Lawgiver in order that possession occurs. In other words, the means permitting possession to occur must exist within Shar'a. If the legal means of ownership exists, ownership of the property exists, and if the legal means of ownership are absent, then the ownership of property does not exist, even if an individual actually possessed it. Ownership is thus possession of property by divine means permitted by the Lawgiver. Shar'a has determined the means of ownership by specific cases which it made clear in a limited, rather than unrestricted form. Shar'a has laid down these means in clear general guidelines. These comprise numerous sections, which are branches of these means and clarifications of their rules. Shar'a did not characterise the means by certain general criteria, so no other general means can be

included through analogy. This is because the renewed needs are only in the generated properties not in the transactions; it is not in the system that governs the relationship, rather it is in the subject matter of the relationship. Therefore it is necessary to confine transactions to specific cases which apply to the renewed and various needs, and to the property as a property, and to the work as work. This approach determines individual ownership in a manner that agrees with man's nature and organises this ownership so as to protect the society from the dangers that would result from leaving it unrestricted. The desire to own individual property is an aspect of the survival instinct just as marriage is an aspect of the procreation instinct, and worship rituals are an aspect of the saactification instinct. If these aspects were left free to be satisfied in any way this would lead to anarchy and disorder and to abnormal or wrong satisfaction. It is necessary, therefore, to define the manner by which man acquires property to prevent a minority of the Ummah from controlling her by means of property, that the majority of people are not deprived of satisfying some of their needs: and that property is not sought for its own sake only, lest man loses the pleasant life, and also to prevent the obtaining of property for the purpose of hoarding. Accordingly, it is necessary to define the means of possession. Through examination of the divine rules (Ahkam Shari'ah) which allow man to possess property, it becomes apparent that the means of possession are limited to five which are:<sup>4</sup>

- a. Work.
- b. Inheritance.
- c. Obtaining of property for the sake of life.
- d. The State granting of its properties to the citizens.
- e. Properties which the individuals take without exchange of property or work.

<sup>4</sup> Saameh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.620.



### 43.1. The First Means of Ownership: Work ('Amal)

#### 43.1.1. The First Means of Ownership: Work ('Amal)

Close examination of any of the property assets, whether they exist naturally, like a mushroom or whether they exist by man's effort, such as a loaf or a car, clearly suggests that their acquisition requires work.

The term 'Amal (work) has a wide meaning encompassing numerous types and forms and has various results, therefore the Shar'a (divine legislation) did not leave the word 'Amal in its absolute form without definition. It also did not define 'Amal in a general form but mentioned certain specific forms of work. It demonstrated the types of work and those that are accepted to be means of ownership. By examining the divine rules that describe work, it appears that the types of legal work, which are a valid means of possessing property, are the following:

1. Cultivation of unused (dead) land
2. Extracting that which exists inside the earth, or in the air.
3. Hunting.
4. Brokerage (Samsara) and Commission Agency (Dalala).
5. Partnership of body and capital (Mudharaba).
6. Sharecropping (Musaqat).
7. Working for others for a wage.

#### 43.1.2. Cultivation of Barren Land: (ihya al-Mawat)

Barren land (Mawat) is land, which has no owner, and nobody benefits from it. Its cultivation means planting on it, afforestation or building upon it. In other words using it in any form that means cultivation (Ihya). The cultivation of land by a person makes it his property. The Messenger of Allah (SAW) said: "Whoever cultivated a dead land, it becomes his." He (SAW) also said: "Whoever encircled a land by a fence it becomes his." And he (SAW) said: "Whoever gives his hand over something ahead of any other Muslim, it is his." There is no difference in this matter between the Muslim and the Thimmi (Non-Muslim citizen of the Islamic State), because

the Ahadith are absolute in their form without restriction, and because what the Thimmi takes from inside the valleys, forests and the tops of the mountains is his property, and it is not allowed to be taken away from him. It is just as appropriate for the dead land to be his property. This is general in every land, whether it is Dar ul-Islam<sup>4</sup> or Dar ul-Harb<sup>5</sup>, and whether it was 'Ushri<sup>6</sup> or Kharaji<sup>7</sup> land. However, the condition of possession is to work upon the land within three years of taking possession of it, and to continue this cultivation by using the land. If someone did not use it at all during the first three years of his possession, or if he neglected it for three continuous years later on, then he would lose his right of its ownership. 'Umar ibn Al-Khattab<sup>8</sup> said: "The one who circles a land has no right in it after three years." 'Umar made this Statement and enforced it in the presence of the Sahabah, who made no objection, confirming their Ijma'a (consensus).

#### 4.3.1.3. Extracting that which exists inside the earth

Another type of work is extracting that which exists inside the earth and which is not one of the necessities of the community, namely the hidden treasure (Rikaz). This is not a right for Muslims collectively, as is stated in Fiqh terminology. The one who extracts a treasure possesses four-fifths of it and gives the other fifth as Zakat<sup>10</sup>.

However if it was of the community necessities and a right for the Muslims collectively, then it belongs to the public property. What defines this matter precisely is that if the treasure was hidden in the earth by man's action or if it was of too small a quantity to become a need for the community, then it would be a treasure (Rikaz). While that which exists originally inside the earth and is needed by the community is not Rikaz but it is a public property. That which exists

<sup>4</sup> Dar ul-Islam: The lands or areas, which are under the Islamic Rules.

<sup>5</sup> Dar ul-Harb: It is the same Dar Al-Kufur, It is the lands or areas, which are under the Kufur (Un-Islamic) Rules.

<sup>6</sup> Ushri: If the people of the country have embraced Islam in their land, like Indonesia, or the land which is part of the Arab Peninsula, then the neck of the land is owned by its inhabitants, and the land is considered 'Ushri land

<sup>7</sup> Kharajii: If the country, which includes this land, has been opened by conquest, then the neck of the land will be owned by the State, and the land would be Kharaji land, except if it were in the Arab Peninsula.

<sup>8</sup> Umar ibn Al-Khattab: He is one of Mohammad (SAW) Group (Companion of the prophet), and he is the second Khalifah of the Muslims.

<sup>9</sup> Fiqh: The Islamic Jurisprudence or the Islamic Doctrine.

<sup>10</sup> Zakat: The Islamic Almsgiving ~ Alms Tax.



originally inside the earth and that the community has no need for, such as stone quarries, from where building stones and other such things are produced, is not Rikaz nor a public property, rather it belongs to the individual property. The possession of the Rikaz and giving out a fifth of it as a Zakat, is proven in the hadith where 'Amr ibn Shu'aib narrated in al-Nisai<sup>12</sup> from his father, from his grandfather, who said: "The Prophet of Allah (SAW) was asked about Luqatah (a thing picked from the ground) and he (SAW) said: 'If it was picked from a used road or an inhabited village, you have to describe it and announce it for one year: If its owner identified it, it is restored to him, otherwise it is yours. But if it was not picked from a used road or an inhabited village, then you have to pay a fifth of it and of the treasure (Rikaz).'"

Extracting that which exists in the air, such as oxygen and nitrogen is treated as that which is produced from inside the earth. Anything created by Allah (SWT) which the Shar'yaa made Mubaah and did not restrict the use of it is also treated similarly.

#### 4.3.1.4. Hunting

Another type of work is hunting. Fish, pearls, corals, sponges and other prey are possessed by those who hunt them, as in the case of birds, animals and other things hunted on land, which are also the property of those who hunt them.

Allah (SWT) said:

"**Lawful to you** is (the pursuit of) water-game and its use for food-for the benefit of yourselves and those who travel, but prohibited is (the pursuit of) land-game as long as you are in a state of Ihram,"<sup>12</sup>

And He (SWT) said:

"**If you** broke your State of ihram you are allowed to hunt"<sup>13</sup>

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<sup>12</sup> Al-Nisai: A Hadeeth Book.  
<sup>13</sup> Qur'an. Al-Ma'idah Surah, Ayat: 96.  
<sup>14</sup> Qur'an. Al-Ma'idah Surah, Ayat: 02.

And He (SWT) said:

"**They** ask you what is lawful to them (as food). Say: lawful to you are (all) things good and **pure** (tayyebat), and what you have taught the beasts and birds of prey, training them to **hunt** in the manner directed to you by Allah. Eat what they catch for you, but pronounce **the name** of Allah over it."•"13

And Abu Tha'alaba al-Khashni<sup>14</sup> narrated, "I came to the Messenger of Allah (SAW) and said: 'O ~~Prophet~~ of Allah! We are in a hunting land, I hunt by my arrow and by my trained dog and with my untrained dog, so tell me which of these is allowed for me?' He (SAW) said: "As for what you mentioned, that you are in a hunting land, so what you hunted by your arrow and mentioned on it the name of Allah, eat of it, and what you hunted by your trained dog, and mentioned on it the name of Allah, eat of it, and that which you hunted by your untrained dog and you got it before its death and slaughtered it, eat of it". (narrated by An-Nisai and Tun Majah<sup>15</sup>).

#### 4.3.1.5. Brokerage and Commission Agency (Samsara and Dalala<sup>16</sup>)

A broker is a person who is employed by other people to buy and sell on their behalf. A commission agent is employed in the same way. Samsara (brokerage) is a type of work by which property is legally possessed. Abu Dawud, in his Sunan, related that Qais ibn Abu Ghurza al-Kanani<sup>17</sup> said: "We used to buy the Awsaq (loads or freight) in Madinah and call ourselves brokers. The Messenger of Allah (SAW) came and called us with a name which was better than ours. The Messenger of Allah (SAW) said: "O you merchants, trading is usually blemished with foolish talk and swearing, so blend it with sadaqah<sup>18</sup>". This means that the trader exceeds the limit<sup>19</sup> in describing his goods to the extent that he talks foolishly, and he may be at risk by swearing to promote his goods. It is therefore preferable to give sadaqah in order to remove the effect of his actions. The work of selling and buying which the person is contracted for, should be

<sup>13</sup> Qur'an. Al-Ma'idah Surah, Ayat: 04.

<sup>14</sup> Abu Tha'alaba al-Khashni: He is one of the prophet (SAW) groups (Companion of the prophet).

<sup>15</sup> An-Nisai and Ibn Majah: It is a book for hadeeth.

<sup>16</sup> Samsara and Dalala: It is an Islamic name.

<sup>17</sup> Qais ibn Abu Ghurza al-Kanani: He is one of the prophet (SAW) groups (Companion of the prophet).

<sup>18</sup> Sadaqah: Its kind of alms.

defined, whether by the goods or by the period. So if he hired a person to sell or buy for him a certain home or property, this would be legally valid, or if he hired him to sell or to buy for him during one day it would be legally valid as well. But if he hired him to do an unknown work it would be legally invalid,

Brokerage does not apply to the actions of some employees. For example, a merchant sends an agent to buy for him goods from another merchant, who gives him money in return for buying the goods from him. The agent does not deduct this amount from the price of the goods but rather takes it for himself as commission. This is not considered by Shar'yaa as brokerage, because the employee is an agent for the merchant who employed him, so whatever is reduced from the price is for the merchant, not the agent. It is thus prohibited for the agent to take it as it belongs to the buyer, unless he permits it, in which case it is allowed for him<sup>19</sup>.

Similarly if a person sent his servant or friend to buy something for him and the seller gave him some property, namely a commission in return for buying from him, he is not allowed to take it because it is not brokerage, but a theft stolen from the property of the man who sent him. This is because this property belongs to the person who sent him to buy, and not to the person who was sent.

#### 4.3.1.6. Al-Mudharaba<sup>20</sup>

Al-Mudharaba is where two persons (or more) participate in trading, where the capital comes from one of them and the work from the other. That is, the body of one person enters into partnership with the property of another person. This means that the work will be carried out by one of them and the other will provide the property. The two partners agree on a certain share of the profit. An example of this is when one of them provides one thousand pounds and the other person works with it, and the profit is divided between them. The money must be handed over to the body partner, who is given a free hand over the money, because Mudharaba requires the

<sup>19</sup> Sameeh Azain, Islam and h-tl.ture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.372.

<sup>20</sup> Al-Mudharaba: It is mean venture. But here, its where two persons (or more) participate in trading, where the capital comes from one of them and the work from the other.

handing over of the property to the body partner (Mudharib). The body partner has the right to stipulate upon the property owner that he has a third, or half of the profit, or whatever they may agree on together as a defined portion of the profit. This is because the body partner (Mudharib) is entitled to the profit due to his work. It is thus allowed for the partners to agree on the profit of the Mudharib whether it is little or great. So Mudharaba is a kind of work which is a legal means of ownership. The Mudharib thus possesses the property, which he profited from via Mudharaba due to his work in accordance with what was agreed.

Mudharaba is a kind of company, because it is a partnership of a body and property. The company is one of the transactions which the Shar'a has allowed. Abu Hurairah<sup>21</sup> (RA) said that the Messenger of Allah (SAW) said: "Allah says: 'I am the third of the two partners unless one of them betrays his companion, so if one of them betrays his companion (SAW) withdraw from them.'" The Prophet (SAW) said: "The hand of Allah is on the two partners unless they betray each other." Al-Abbas ibn Abdul-Muttalib<sup>22</sup> (RA) narrated that, when he handed a property as Mudharaba, he used to stipulate on the Mudharib not to travel with it by the sea, not to descend a valley nor to trade with live things, otherwise he would have to guarantee losses incurred. The Prophet of Allah (SAW) became aware of that and He approved of it. The companions (RA) have agreed unanimously that Mudharaba is allowed. 'Umar ibn Al-Khattab (RA) used to hand over the orphans' property for Mudharaba. Uthman ibn Affan<sup>23</sup> (RA) handed some property to a man as Mudharaba. So the Mudharib gains a property for himself by working with the property of another person. The Mudharaba by the Mudharib is thus work and one of the valid means of ownership. However for the owner of the property it is not a means of ownership, rather it is a means of investing the ownership.

#### 4.3.1.7. Share Cropping (Al-Musaqah)

One of the kinds of work is the MUSAQAT, where one person hands over his trees to another person in order to irrigate them and tend to them in return for a defined portion of their fruit. It

<sup>21</sup> Abu Hurairah: He is one of the prophet (SAW) groups (Companion of the prophet).

<sup>22</sup> Al-Abbas ibn Abdul-Muttalib: He is one of the prophet (SAW) groups (Companion of the prophet), and he is the prophet Muhammad (SAW) uncle.

<sup>23</sup> Uthman ibn Affan: He is one of the prophet (SAW) groups (Companion of the prophet).

was called Musaqt (literally meaning irrigation) because it is related to the work of irrigation, where the trees of the people of Hijaz mainly needed irrigation for which they used to draw water from the wells. Musaqt is one of the types of work which Shar'yaa allows. Muslim has narrated that Abdullah ibn 'Umar<sup>24</sup> (RA) said: "The Prophet of Allah (SAW) contracted the people of Khaybar over half of what they produce of fruit crops and plants." Musaqt is allowed in palm trees and vines on a known part of the crops, which are to be given to the worker. This applies only to the trees that have fruit. The trees which either have no fruit (crops) such as the willow, or have fruit not sought after as the pine and cedar, are not allowed for Musaqt, because Musaqt is for a part of the fruit (crops) and these type of trees has no fruit sought after. But those trees whose leaves are sought after such as the mulberry and the rose, Musaqt is allowed in them, because their leaves are equivalent to fruit. This is harvested annually and it is possible to collect it and enter into Musaqt for a part of it, thus invoking the same rule as fruit.

#### 4.3.1.8. Hiring/Employing an Employee (Worker)

Islam allowed the individual to employ employees and labourers i.e., workers to work for him.

Allah (SWT) said:

"It is We, who portion out between them their livelihood in this world, and We raised some of them above others in ranks so that some may employ others in their work,.." <sup>24</sup>

Ibn Shihab narrated that Urwah ibn Az-Zubair<sup>25</sup> said that Aisha (RA), the mother of the believers said: "The Messenger of Allah (SAW) and Abu Bakr<sup>26</sup> hired a man from Bani ad-Deel as an experienced guide when he was of the same deen as the kuffar of Quraish. They handed to him two female riding camels, and fixed an appointment with him to meet them at the cave of Thawr after three nights, at the morning of the third night with their two camels."

<sup>24</sup> Abdullah ibn 'Umar: He is one of the prophet (SAW) groups (Companion of the prophet), and he is the prophet Muhammad (SAW) Cousin.

<sup>25</sup> Qur'an. Az-Zukhruf Surah, Ayat: 32.

<sup>26</sup> Ibn Shihab and Urwah ibn Az-Zubair: They are from the prophet (SAW) groups (Companion of the prophet).

<sup>27</sup> Abu Bakr: He is from the prophet (SAW) groups (Companion of the prophet), and he is the first Khalifah for the Muslims Ummah.



Allah (SWT) also said:

"If they (the mothers) suckled for you, give them their wages" <sup>27</sup>

Bukhari narrated from Abu Hurairah who stated that the Prophet (SAW) said: "Allah azza wa jalla said, 'I will be the opponent of three (types of) people on the Day of Judgement: A man who *galʿ* (a word) in My name then he deceived, a man who sold a free person and devoured his price, and a man who hired a worker where he received (the work) from him in full and did not give him his wage.'" Hiring is delivering a benefit by the hired person to the employer and delivering property from the employer to the employed. It is thus described as a contract to provide a benefit in return for a recompense. The contract of hiring a worker is either based on the benefit of the work carried out by the worker or on the benefit of the worker himself. If the contract is based on the benefit of the work then the contracted matter is the benefit produced by the work, like hiring the craftsmen of certain works, such as hiring the cleaner, the blacksmith and the carpenter. However, if the contract is based on the benefit of the person himself, then the contracted matter is the benefit of the person, like hiring of servants and other similar types of workers. In such a contract the worker works for the employer only for a certain period of time, such as the person who works in a factory, a garden or a farmer, in return for a certain wage. Civil servants (Government employees) fall in this category. Alternatively, he may have a certain job for a time where he works in return for a wage for the work done. Examples of such jobs are carpenters, tailors and shoemakers. The first type of labour is private labour, while the second one is common labour.

#### 4.3.2. The Second Means of Ownership

##### 4.3.2.1. Inheritance

Another means of property ownership is inheritance, which is established by the definite (Qat'i) text of the Qur'an, and it has certain literal rules which are not subject to reasoning. Although the Qur'an has stated the details of inheritance, these detailed rules are general guidelines.

<sup>27</sup> Qur'an, Al-Talaq Surah, Ayat: 06.

Allah (SWT) says,

"Concerning (the inheritance) for your children: to the male is the equivalent of the portion of two females, and if they (children) were women more than two, then theirs is two-thirds of the inheritance".<sup>28</sup>

We understand many rules from His speech. We understand that the male child takes double that which the female child takes. We also understand that the child of the son is treated as the child in cases where there are no (living) children, because the children of the male child (son) are included in the word 'children.' This is contrary to the children of the daughter; who are not treated like the children of the son where there are no (living) children. Because the children of the daughter are not included linguistically in the word 'children.' We understand also that if the children were females, and more than two in number, then they share in two-thirds of the inheritance. The Prophet (SAW) made for the two females a portion equivalent to those who are more than two, and the Sahabah (companions) (RA) made Ijma'a (consensus) on that matter. So the rule in regard to the two females is the same rule for more than two females. These rules have been understood from the general meaning of the verse. According to these rules, the inheritor deserves his portion of the inheritance. Thus, one of the means of property ownership is the inheritance according to its rules, which are detailed in the Qur'an, Sunnah and the Ijma'a of the Sahabah (RA).

Inheritance is one of the means by which the wealth is broken up; though the breaking up of the wealth is not an Illah (reason) for the inheritance, rather it is a manifestation of its reality. Once the wealth has been allowed to be possessed, it may then accumulate in the hands of a few individuals/during their life. In order that such accumulation of wealth does not continue after their death; it is then necessary to have a means to divide the wealth amongst the people. It is observed in reality that the inheritance is the means of dividing this wealth naturally. Through examination, it is apparent that there are three cases of inheritance by which the wealth is broken

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<sup>28</sup> Qur'an. An-Nisa Surah, Ayat: 11.

- a. The first case is when the inheritors take the whole inheritance according to the laws of inheritance, whereby all the wealth is distributed amongst them.
- b. The second case is when there are no inheritors who are entitled to take the whole property according to the rules of inheritance. Such a case would be if a husband died leaving behind only a wife or a wife died leaving behind only a husband. In such instances the wife takes only a quarter of the inheritance, and the husband takes only half of the property, while the rest of the inheritance in both cases is left to the Bait ul-Mal.
- c. The third case is that when there is absolutely no inheritor at all, and in this case the whole property is put in the Bait ul-Mal, in other words it is left to the State.

The wealth is thus broken up and the property is transferred to the inheritors, where the exchange of the property resumes in an economic cycle amongst the people. The property is not kept in the hands of a particular person where the wealth accumulates.

Inheritance is a legal means of property ownership, so anybody who inherits a thing owns it legally. Thus the inheritance is one of the means of property ownership, which the Islamic Shari'ah has permitted.

### **4.3.3. The Third Means of Ownership**

#### **4.3.3.1. The need for Property for Sustenance**

One of the means of ownership is the need of property for sustenance. This is because sustenance is a right for every human being, so he must have sustenance as a right for him, and not as a grant or as a favour. The means by which a citizen of the Islamic State secures his livelihood is work. If it is difficult for him to find work, the State has to make it available for him, because it is the caretaker of the citizens and is responsible for supplying their needs. The Prophet (SAW) said: "The Imam is a caretaker (ra'i), and he is responsible for his subjects," narrated by Bukhari from Ibn Umar. If it was difficult for him to find work or he was unable to work due to sickness, old age or due to any reason of disability, then his sustenance becomes a duty upon those whom Shari'ah made responsible for financially supporting him. If there was no such



son, or there was one but he was unable to financially support him, then the Bait ul-Mal, or the state becomes responsible for providing the required support. Moreover, such a person has the right from the Bait ul-Mal, which is the Zakat.

Allah (SWT) said:

"And in their wealth there is a right acknowledged. For the beggar and the destitute".<sup>29</sup>

This right is obligatory upon the rich people who have to pay it. Allah (SWT) says in the Surah of Sadaqat:

"The rich are only for the poor and the needy... a duty decreed by Allah".<sup>30</sup>

An obligatory right. If the State neglected this right, and the Muslim community neglected it, the State to task and neglected to feed (support) the needy, though it is not expected that the Muslim community would neglect this, then this person has the right to take whatever he needs to support himself; from wherever he finds it, whether it was from an individual's property or a State property. In such a case a hungry person is not allowed to eat carrion, as long as there is food with any of the people, as he is not driven by necessity to eat carrion when there is food in the hands of the people of which he can eat. However, if he could not obtain the food, then he is allowed to eat carrion to save his life. This is because the sustenance is one of the means to obtain property. Shar'a did not consider the taking of food in the time of famine as theft for which the hand must be amputated. It was narrated by Abu Umamah that the Prophet (SAW) said: "There is no amputation in time of famine." The right of the person to own property for sustenance was secured by the Shar'a through legislation as well as through direction. Imam Ahmad narrated that the Prophet (SAW) said: "Any community, whosoever they are, if a person among them became hungry, they will be removed from the protection of Allah the Blessed, the Supreme." Al-Bazzar narrated from Anas that the Messenger of Allah (SAW) said: "The one who slept (satisfied) while his close neighbour was hungry, and he was aware of that, would not have believed in me truly."

<sup>29</sup> Surah Al-Ma'arij Surah, Ayat: 24-25.

<sup>30</sup> Surah Al-Tawba Surah, Ayat: 60.

#### 4. The Fourth Means Of Ownership

##### 4.1. That which the State gives of its Properties to the Citizens

Another means of property ownership is that property which the State gives from the Bait ul-Mal p, fopertiesto the citizens in order to meet their needs or to benefit the community by their ownership. With regard to the meeting of their needs, the State grants them properties with which they can cultivate lands or repay their debts. 'Umar bin Al-Khattab gave properties from the Bait ul-Mal to the farmers in Iraq, by which he helped them to plant on this land and to meet their needs without being reimbursed from them. Shar'a made for the debtors a right in the Zakat property, in which they are given to repay their debts if they were unable to do so.

h (SWT) said:

**and the debtors".<sup>31</sup>**

With regards to benefiting the community from the individual property, this occurs when the State grants to its citizens from its unused properties, such as the State giving land, which has no owner. As the Prophet (SAW) did when he gave Abu Bakr and 'Umar some land when he (SAW) emigrated to Madinah. He (SAW) also gave Az-Zubair a wide area of dead land of al-ree'a, as much as his horse could run in, and he (SAW) also gave him land which had trees and palms. Similarly the rightly guided Khulafaa after him gave lands to the Muslims. This land which the State gives to the person becomes his property through this granting. For the community is in need of the benefit of this property, of facilitating the individual to utilise this property, and of employing his mental and physical efforts for the benefit of the community by means of his ownership. This term of granting (Iqta'a) used here is linguistic and jurist one, and it has no relation with the known feudal (Iqta'a) system which Islam never acknowledged.

What the State distributes amongst the warriors from the booties, and what the Imam allows them to hold of the war spoils are also examples of what the State grants to the individuals for them to own.

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<sup>31</sup> Quran. Al-Tawba Surah, Ayat: 60.

### 3.5. The Fifth Means of Ownership

#### 3.5.1. The Property obtained by Individuals without exchanging Labour or Money

Another means of ownership is that which the individuals take from the properties of others without giving an alternate property or an effort. This means includes five types.

**Rewards** which the individuals give to each other. This could be in their lifetime such as a grant and a gift, or after their death such as the property of a will. An-Nisai and Ibn Ishaq narrated in the Seerah of the Messenger of Allah (SAW) from 'Amr ibn Shu'aib from his father, his grandfather that when the delegates of Hawazin came to the Prophet (SAW) and asked him to return to them the properties which he had gained from them as spoils, the Prophet (SAW) said: "The spoils which belong to me and to the sons of 'Abdul-Muttalib are for you," in other words they are a grant from me to you. Ibn 'Asakir narrated from Abu Hurairah that the Prophet (SAW) also said: "Exchange gifts amongst yourselves so that you love each other." It was narrated by Bukhari from Ibn 'Abbas that the Prophet (SAW) said: "We do not set the bad example; the one who claims back his grant is like the dog which returns back its vomit."

There is no difference between a disbeliever and a Muslim concerning the grant and the gift. Granting a gift to the disbeliever is permitted and accepting that which he gives is like accepting that which a Muslim gives. It is narrated from Asma, daughter of Abu Bakr, who said: "My mother visited me while she was still a polytheist (Mushrik), included in the covenant which the Messenger of Allah (SAW) had with Quraish (Treaty of Hudaibiyyah), so I consulted the Prophet, 'O prophet of Allah! My mother has love for me, should I give her a present?' He (SAW) said 'Yes.'" Bukhari narrated from Abu Hameed As-Sa'idi, who said that the King of Ayla gave the Prophet (SAW) a white mule and a dress as a gift.

As the grant (Hiba) and the gift (Hadiyyah) are the voluntary giving of property during lifetime, the property of the will (Wasiyah) is the voluntary giving of property after the death.

Allah (SWT) says:

"It is prescribed for you, when one of you approaches death, if you leave wealth, that it be bequeathed unto his parents and relatives."<sup>32</sup>

It was narrated by Bukhari that Sa'ad ibn Waqqas said: "I was ill once in Makkah to the point I was approaching death. The Prophet (SAW) came to visit me. So I said: 'O Messenger of Allah, I have great wealth, and nobody inherits from me except my daughter. Can I bequeath two thirds of my property?' He (SAW) said: 'No.' I said: 'Half of it?' He (SAW) said: 'No.' I said: 'One third of it?' He (SAW) said: "The third is big (enough). It is better to leave your children rich than to leave them poor and begging from the people".

Thus the person, by the means of the gift, the grant or the bequeathed property, is given ownership of the thing gifted, granted or bequeathed to him.

2. Property due to a person as a recompense for a harm which had befallen him, such as the blood money and the wound money.

Allah (SWT) said:

"He who has killed a believer by mistake must set free a believing slave and pay the blood money to the family of the slain."<sup>33</sup>

An-Nisai narrated that the Prophet (SAW) wrote a letter to the people of Yemen and he sent it with Amr ibn Hazin; it included "The blood money for the (killed) person is 100 camels." With regards to the wounds money, An-Nisai narrated from al-Zuhri from Abu Bakr ibn Mohammed ibn 'Amr ibn Hazin from his father from his grandfather that the Prophet (SAW) wrote to him a letter saying: "The blood money is paid in case of the amputated nose, the tongue, the two lips, the two testicles, the penis, the spine and the two eyes. Half the blood money is paid for one leg. For the wound, which reaches inside the head (even scraping the scalp) one third of

<sup>32</sup>Qur'an. Al-Baqarah Sinali, Ayat: 180.

<sup>33</sup>Qur'an. An-Nisa Surah, Ayat: 92.

the blood money, and for the wound which reaches inside the stomach, or inside any member of the body one third of the blood money. In the wound which breaks the bones 15 camels."

The blood money for the one slain intentionally is due to his inheritors from the killer. It is narrated by ibn Majah from 'Amr ibn Al-Ahwas that the Prophet (SAW) said: "The one who commits a crime does that on himself only." In case of the non-intentional killing, like the killing which appears like it is intentional or that committed by mistake, the inheritors of the slain are entitled to claim the blood money from the close relatives of the killer. Bukhari narrated from Abu Hurairah, who said: "Two women from Hudhail quarrelled; one of them threw a stone at the other and killed her and the embryo in her womb. They complained to the Prophet (SAW). He ruled that the blood money for the women's embryo was a slave (male or female), and he ruled that the blood money of the woman was for her close relatives ('Aqilah)."' 'Aqilah means the one who bears the 'Aqal, 'Aqal here means the blood money. 'Aqilah includes all the close relatives of the killer, fathers, sons, brothers, uncles (fathers' brothers) and their sons. If the killer has no 'Aqilah, the blood money is taken from the Bait ul-Mal because the Messenger of Allah (SAW) paid the blood money of the Ansari who was killed in Khaybar from the Bait ul-Mal. It was also narrated that a man was killed in a crowd at the time of 'Umar and his killer was not known so 'Umar said to 'Umar, "O Leader of Believers, no blood of a Muslim is wasted, so pay his blood money from the Bait ul-Mal."

Regarding wounds such as the breaks (fractures) of the head or the face, or the cutting (amputating) of a member of the body or a piece of flesh or, the disablement of a faculty such as the disabling of hearing, sight and mind where one of these wounds occurs to a person, then he deserves money on these wounds according to the detailed rules of each member in each case. By means of the blood money due to a person from the blood money of the slain or for the damaged member or for the faculty disabled, this person owns that money or property.

The marriage money and other additional things (such as a house, gifts) of the marriage contract due to the woman are owned according to the detailed rules of marriage. This property is not an exchange of a benefit because the couples mutually exchange benefit (satisfaction). It is rather due through the Statement of Shar'ah.



Allah (SWT) said:

"And give unto women (whom you marry) free gift of their marriage portions".<sup>34</sup>

-Willingly, and by taking the due money which Allah (SWT) prescribed. This money is a gift, because each of the couple enjoys his partner. Ahmad narrated about Anas who said: 'Abdurrahman ibn 'Awf<sup>35</sup> was wearing a dress of saffron so he (SAW) said: 'Are you passionately in love?' He said: 'O Messenger of Allah, I have married a woman.' The Prophet (SAW) said: 'What gift did you give to her?' He said: 'A date seed weight-of gold.' The Prophet (SAW) said: 'May Allah bless you. Make a feast even with one sheep.'

The picked up property (Luqatah). If a person found a lost thing, the matter has to be examined; If the thing could be saved and be described to people such as gold, silver, jewellery or clothes, and if was away from the area of the Haram (The Ka'bah) then it is allowed to be picked up for possession. This is because of what Abu Dawud narrated from 'Abdullah ibn 'Amr ibn al'Aas<sup>36</sup> that the Messenger of Allah (SAW) was asked about lost things picked up from the road and He said: "Whatever of it was found in a used road or a village, you have to announce its description for one year. If its owner came, it is his, otherwise it is yours, and there is duty on it on hidden treasure (one-fifth to the State)." If the found thing was found in the Haram it is not considered Luqatah because the Luqatah of the Haram is prohibited according to what came in the Hadith narrated from 'Abdurrahman ibn 'Uthman that the Messenger of Allah (SAW) forbade the Hajj (pilgrim) from picking such things. In that case it is not permitted to pick it except to protect it for its owner because the Messenger of Allah (SAW) said: "No one is allowed to pick a lost thing except the one who is looking for it," as narrated by Bukhari.

If the found thing was not of the kind that can be saved as it will not remain suitable, like for example, food such as a melon and the like, then the person has a choice between eating it and paying its price to its owner if found, or selling it and keeping its price for one year. All this is in the case of Luqatah (a picked thing), which would usually be claimed as it has a value and its

<sup>34</sup>Qur'an. An-Nisa Surah, Ayat: 04.

<sup>35</sup>Abdurrahman ibn 'Awf: He is one of the prophet (SAW) groups (Companion of the prophet).

<sup>36</sup>Abdullah ibn 'Amr ibn al'Aas: He is one of the prophet (SAW) groups (Companion of the prophet).

er would not have ignored it if it was lost. If it was of the trivial things such as a piece of fruit or a piece of food (mouthfuls worth) and the like, he does not need to announce its description as he may own it at once.

recompense given to the Khalifah<sup>37</sup> and those whose work is considered to be ruling. This is given to them in exchange for their work, but rather as a recompense for being prevented from practising their own business. These rulers own the property from the moment they take it because Allah (SWT) made it Halal for them. Abu Bakr took a property as a recompense for being prevented from trading when he was asked to exert all of his effort in taking care of the Muslims' affairs, and the Sahabah made Ijma'a on that.

All these five types of properties, the gift, recompense for damage, marriage money, Mahr and recompense to the rulers, in all cases are not possessed in exchange for another property or for an effort. Possessing the property in these cases is one of the legal means of ownership by which the person owns the taken property.

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<sup>37</sup>Khalifah: The name of the president of the Islamic state.



## V. WORKER (THE WORK OF EMPLOYEE)

### 51. Definition of the Work

Hiring involves utilising the benefit of the hired thing. With regard to the worker, hiring is utilising his effort. It is necessary in hiring a worker, to define the work, the period of work, the wage and the effort. The work has to be defined so as not to become unknown, because hiring based on unknown work is invalid (Fasid). It is also necessary to define the period of work, such as daily, monthly or yearly. Similarly, the wage of the worker has to be defined. Ibn Mas'oud<sup>1</sup> said: The Prophet (SAW) said: "If any one of you employed a worker then he has to inform him of his wage." It is also necessary to define the effort that the worker has to expend. Accordingly it is not allowed to demand of the worker work that is beyond his capacity.

Allah (SWT) said:

"Allah burdens not a person beyond his scope."<sup>2</sup>

The Prophet (SAW) said: "If I commanded you of something, do of it as much as you can", as narrated by Bukhari and Muslim<sup>3</sup> from Abu Hurairah. The worker should not be asked to undertake work except that which is within his ordinary capacity. As a real scale cannot measure effort, defining the number of working hours every day is the best possible measure. In addition the type of work has to be defined as well, such as digging hard or soft soil, forging a metal or moving stones. This also determines the amount of effort. The work would have thus been defined by stating its type, duration, wage and the effort spent in it. When Shar'a allowed employing a worker, it laid out provision for defining his work in terms of the type, duration, wage and effort. The wage received by the worker, in return for his execution of the work, is the property he earned as a result of the effort he spent.

<sup>1</sup> Ibn Mas'ud: He is one of the profit (SAW) groups (Companion of the prophet).

<sup>2</sup> Quran Al-Baqarah Surah, Ayat: 286.

<sup>3</sup> Bukhari and Muslim: They are from the Muslims who wrote Rasullah (SAW) Hadeeth.

## The Type of Work

It is permissible to be contracted to undertake every lawful (Halal) form of work. Examples are hiring for the purpose of trading, farming, industry (manufacturing), serving and consultation. In judicial matters one may be hired to convey the response of a claimant or defendant, collect the evidence and deliver it to the judge, claim rights or settle disputes among people. Also one can be hired for drilling wells, building, driving cars and aeroplanes, printing books, copying the Mushaf<sup>4</sup>, and carrying passengers, among other lawful works.

Hiring could be for a specific job, or for doing work of a specific description. If hiring is contracted for a particular job for a certain employee, for example if Hasan hired Mohammed to wear a particular dress or to drive a particular car, then Mohammed should do the work and he is not allowed at all to authorise another person to do the job on his behalf. If Mohammed became sick or was incapable of doing the work, no other person is allowed to do it instead of him because the employee had been designated. If the particular dress was destroyed or the specified car had broken down, Mohammed would not be obliged to work on other than those two, because the type of work had been defined.

However, if hiring was contracted over something, which is described in one's responsibility, or a described type of employee, or a certain job, the rule is different. In these cases, the employee can do the work and he is allowed to delegate a person to do the job on his behalf. If he becomes sick or is unable to do the work, he is bound to delegate a person to do the work instead of him. He is also under duty to drive any car or sew any dress provided by the employer as long the contract describes such work. This is because the definition was not for the work itself, but is for its type, so any work on anything is binding as long as it is of the same type as the contract specified. In this case its definition would be by description and not by naming it specifically, leaving the choice for the employee to perform anything of the contracted type.<sup>5</sup>

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<sup>4</sup>Mushaf: The Holy Qur'an.

<sup>5</sup>Abi Eddin Al-Nabahani, The Islamic Personality- Part 2, Beirut -Lebanon, Dar El-Ummali, 1994: P.327.

Defining the type of work includes describing the worker who will do the job so as to demonstrate the nature of his effort, such as an engineer. Its description also includes the work, which has to be performed. This explains the nature of the effort spent in it, such as in the example of drilling a well. Defining the work by such description is similar to defining it by naming it. It is, therefore, acceptable to define the work by describing it or to define it by specifically naming it. It is enough to be due in one's responsibility, though unseen, as if it is present and tangible. So, just as it is allowed to hire a named engineer, specifically defined, it is allowed to hire an engineer of a certain description. Similarly it is permissible to hire a tailor to sew a specific shirt and it is also allowed to hire a person to sew a shirt of a certain description.

If a person accepted to do some work, he is allowed to give it to another person with a lower wage and thus profit by the difference. This is because he is allowed to hire others to do the work for any wage. What business people, like tailors and carpenters, do in terms of hiring workers to work for them, and what contractors do in terms of hiring people to do work they themselves have been contracted to perform, are all allowed, regardless of what they pay their employees. This is still hiring whether for performing specific works or for a certain period. All hired workers are a type of private labour, which is lawful in Shar'a<sup>6</sup>

For a person to hire workers on condition that he takes a part of their wages, or appoints himself as a supervisor over them in return for a part of their wages, is not allowed. This is because he would have then usurped a part of the wages assigned to them. Abu Dawud narrated from Abu S'aid al-Khudri<sup>7</sup> that the Prophet (SAW) said: "Beware of the apportionment." When asked, "O Messenger of Allah, what is the apportionment?" He said: "A thing agreed among people, a part is reduced of it"; In another narration from Ataa, the Prophet (SAW) said: "That a person is in control over a group of people so he takes from their shares". So if a contractor made an agreement with a person so as to bring him one hundred workers each for one dollar a day, and he gave each of them less than one dollar, this would not be allowed. The amount which he was contracted for, is considered a defined wage for every one of them. If he deducted from it he

<sup>6</sup> Eddin Al-Nabahani, The Islamic Personality- Part 2, Beirut -Lebanon, Dar El-Ummah, 1994: P.328.

<sup>7</sup> Said al-Khudri: He is one of the prophet (SAW) groups (Companion of the prophet).

<sup>8</sup> He is One of the prophet (SAW) groups (Companion of the prophet).

ould have taken from their rights. If however, he was contracted to bring one hundred workers without mentioning their wages, then the person is allowed to give them less than the contracted amount because he would have not reduced their assigned wages.

It is also a condition to define the type of work in such a manner, that it becomes known, that hiring is concluded over a known thing. This is because hiring for unknown work is invalid. So if a person told a worker that he had been hired to carry some particular boxes of goods to Istanbul for ten dollars, then the hiring is valid (lawful). It is valid also if he said he had been hired to carry them for one dollar per ton, or if he had been hired to carry them, one ton for one dollar, and anything over that would be calculated. This will be valid as long as he used words that indicated that he should carry them all. But if he said to carry them, one ton for one dollar, and whatever is extra is to be calculated accordingly, meaning whatever extra was carried the remaining ones, this is not valid, because some of the contracted matter is unknown. However, if he asked him to carry every ton for one dollar, this is valid, just as if he had hired him to draw for him water, every centare for one pence, which is allowed. So it is a condition that hiring be about a known thing. If however ignorance is involved, the hiring becomes invalid.

### **Duration of the Work**

In some types of hiring, it is necessary to mention only the type of work hired for, such as driving, or driving a car to a named place, without mentioning a duration. In other types of hiring, it is necessary to mention only the duration of hiring, without mentioning the quantity of work. An example of this is to hire somebody for a month to dig a well or a canal, which does not need quantity defined, only that the digging should be done during this month, whether little or much. In other types, the duration and the type of work have to be mentioned, such as building a house, constructing an oil refinery and the like. So every work that needs the time period to be defined, the time period has to be mentioned, because the nature of the hiring has to be known. Not mentioning the time duration in some works makes the hiring unknown, and if the hiring is unknown it becomes invalid. If the hiring was contracted over a certain time period such as one month or one year, then no one of the two parties is allowed to break the contract of hiring until the time period has ended. If a worker was hired for a repeated time duration, such as twenty

lars monthly, then he has to be involved in the contracted work every month and the duration must be mentioned in the hiring contract. It is not necessary that the period of hiring (the month) is to start immediately after the contract. So it is allowed to hire a person in February to work in September. If the duration was mentioned in the contract or it was necessary to mention it so as to remove uncertainty, then this time period has to be defined in time units such as minutes, hours, weeks, months or years.

#### 4. Wage for Work

It is stipulated that property paid in return for hiring should be known by such witness and description so as to remove any uncertainty about it. Because the Prophet (SAW) said: "Whosoever hired a person he has to inform him about his wage". Recompense for hiring is allowed to be monetary, non-monetary, property or a benefit. Anything that is allowed to be a recompense is allowed to be recompense, whether it was a commodity or a benefit, on condition that it is known; but if it was unknown it would be invalid. So if a person was hired to reap a harvest for part of the reaped harvest as a wage it is not allowed because the wage is unknown. While if he was hired for one Sa'a (a cubic measure) or two, it is allowed. The worker is allowed to be hired for his food and clothing, or can be given a wage together with his food and clothing, because this is allowed in the case of the woman who suckles the infant.

Allah (SWT) said:

**The duty of feeding and clothing and nursing mothers in a seemly manner is upon the father of the child"**<sup>9</sup>

So they were entitled to their provision and clothing as a wage for suckling. If this was allowed in the case of the nursing mother then it is allowed in other cases because such cases are considered as questions of hiring.

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<sup>9</sup> Quran Al-Baqarah Surah, Ayat: 233.



In short, the wage should be defined in a manner that removes any ignorance about it, so that it can be duly fulfilled without dispute, because all contracts are originally laid down to remove disputes among people. Before starting the work, the wage has to be agreed upon, and it is disliked (Makruh) to use a worker before agreeing with him over his wage. If the hiring over a work was contracted, the worker is appropriated the wage by the force of the contract, but it is not obligatory to hand it over to him until the work is finished. Thereafter, it should be immediately handed over to him, due to the saying of the Prophet (SAW): "There are three persons of whom I am their opponent on the Day of Judgement: A man who gave (a word) in my name then he deceived, a man who sold a free person and devoured his price, and a man who hired a worker where he received (the work) from him in full and did not give him his wage", narrated by Bukhari from Abu Hurairah. But if there was a condition to delay the wage, then it should be delayed to its fixed time. If the condition states that the wage is in installments daily, monthly, or less, or more than that, then the fixed time is that which the two parties agreed upon. It is not necessary that the employer actually receives the benefit in full rather it is enough that the worker makes himself available to be used, so that the wage becomes due from the employer. So, if a person hired a private worker to serve him in his house, and the worker came to their house and put himself at his disposal, then he deserves the wage by the end of the time period in which he could have been used by the employer. Even though the contract is for a service which may not have been fully received by the employer, enabling the employer to receive it even if he did not, this is enough for the worker to deserve the wage. This is because the shortcoming is from the side of the employer rather than the employee.

However, for the common employee, if he was employed to work on a certain thing, then he would either do it while it is kept under his authority, like the painter who paints in his own shop, and the tailor who works in his own shop. So his responsibility to do the work will not finish until he has handed it back to the client, and he does not deserve his wage until he has handed it over after completion. This is because the thing contracted upon is under his authority, and he would not be cleared of responsibility until he hands it over to the client. Likewise, the work may be contracted to be done within the domain of the employer, for example if the employer brought the tailor or the painter to his house to sew or paint for him, then the employee would be cleared of the responsibility of the work and deserve his wage once he had finished it,

cause he was under the authority of the employer, and thus the work was handed over immediately.<sup>10</sup>

### **The Effort Spent in the Work**

The contract to hire an employee applies on the benefit of the effort he expends; and the wage is evaluated in terms of this benefit. The effort itself is neither the measure of the wage, nor the measure of the benefit, otherwise the wage of the stonemason would be greater than the wage of the engineer because the stonemason's effort is greater; and this is contrary to the reality. Therefore, the wage is a recompense for the benefit and not for the effort. Besides that, the wage varies and changes according to the type of employee, and it also changes for the same employee according to the difference in the standard of the benefit, but not according to differences in effort. The contract in both cases was over the benefit of the employer, not over the employee's effort. So what does matter is the result, whether it was of different employees in different works, or of different employees in the same work; and there is no consideration given to the effort at all. It is true that the result of the work is the fruit of the effort, whether it was in different works, or the same work done by different people, but what is intended is the result, not only the effort, even though this is noticed in the evaluation of the wage. So if a person was hired for building, the wage should be evaluated by the time or by the work. If it was evaluated by the work, the benefit will obviously be manifested in the location of the building, its length, width, fineness and the material of the building etc. If the work was evaluated by time, then the benefit of the work usually increases as the time increases, and decreases as the time decreases. Thus the description of the work together with the mentioning of the time is the measure of the benefit. If it is evaluated by time, the person should not work more than his usual capacity, and should not be obliged to do unusually hard labour.

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<sup>10</sup> Eddin Al-Nabahani, The Islamic Personality- Part 2, Beirut -Lebanon, Dar El-Ummali, 1994: P.329.



## The Rmīn<sup>2</sup> Regarding Hiring Over Prohibited Benefits

In order that hiring be legally valid, the benefit must be permitted (Halal) in nature. So the employee should not be hired for doing something which is prohibited. Accordingly a worker should not be hired to carry alcohol to one who buys it, or to press it. Nor should he be hired to buy pigs or carrion. At-Tirmidhi<sup>11</sup> narrated from Anas ibn Malik<sup>12</sup>, who said: "The Messenger of Allah (SAW) cursed ten types of people regarding alcohol: its presser, the one who asks for it to be pressed, its drinker, its carrier, the one to whom it is carried, the one who serves it, its seller, the one for whom it is sold, its purchaser and the one for whom it is purchased". Hiring is also not allowed over any work of usury (Riha'), because it is a hiring over a prohibited benefit, and because ibn Majah<sup>13</sup> narrated from ibn Mas'oud<sup>14</sup> that the Prophet (SAW) cursed the one who practices usury, his agent, its two witnesses and its recorder (clerk). The employees of banks and exchange (minting) departments and all the organizations that deal with usury have to be terminated. If the work they were hired to do is a part of the usury work, whether the usury is the product of that work exclusively, or whether it is produced by that work along with others, Muslims are prohibited to perform such works. This includes the manager, accountants and clerks and every work that provides a benefit connected with usury, directly or indirectly. But works that are not connected with usury directly or indirectly, such as the porter, the guard, the cleaner and the like, these works are allowed, because such work is hiring on an allowed benefit, and because what applies on the recorder and the witnesses of usury, does not apply to them. Similar to the employees of banks are government employees who are involved in deals of usury, such as employees who work in preparing loans with interest to farmers, and treasury employees who are involved in usury works, and the employees of the orphanage departments which lend property with interest. All these are prohibited jobs; anyone who is involved with them is committing a great sin, because it applies to him since he is the recorder or the one who witnesses usury. Similarly it is prohibited upon a Muslim to engage in any work prohibited by Allah (SWT).

<sup>11</sup> At-Tirmidhi: He is one of the writer for Rasullah (SAW) Hadeeth.

<sup>12</sup> Anas ibn Malik: He is one of the prophet (SAW) groups (Companion of the prophet),

<sup>13</sup> Ibn Majah: He is one of the writer for Rasullah (SAW) Hadeeth.

<sup>14</sup> Ibn Mas'oud: He is one of the prophet (SAW) groups (Companion of the prophet).

With regard to the work, whose profit or association in it, is prohibited because it is invalid such as insurance companies, share holding companies and co-operative associations and the like, they have to be examined. If the work that the employee performs is invalid, or it is of an invalid (Batil) or defective (Fasid) contract, or results from them, a Muslim is not allowed to handle it, because a Muslim is not allowed to deal with invalid or defective contracts or with the actions which result from them. He is not allowed to deal with any contract which disagrees with the Hukm Shar'i (divine rule), so it is prohibited for him to be involved in them. This is like the employee who records insurance contracts though he makes them, the one who negotiates the insurance terms, or the one who accepts the insurance. Similarly in the case of the employee who distributes the profit of the co-operative associations according to the member holdings, the employee who sells company shares or who works in the stock accounting, and also the employee who advertises for the co-operative associations and the like. All employees of companies, whose work is legally allowed to be performed, are allowed to be employed in such positions.

If a person is not legally allowed to perform a work for himself then he is not allowed to employ a person to do it, and he is not allowed to be hired to do it. So actions which are prohibited if conducted, the Muslim is prohibited from hiring others to do it or to be hired, himself, to do it.

### **The Rule of Hiring Non-Muslim**

With regard to the employer and the employee, it is not a condition for either of them to be a Muslim. So a Muslim is absolutely allowed to hire a non-Muslim, by the evidence of the actions of the Prophet (SAW) and the consensus of the Sahabah<sup>16</sup> at the hire of non-Muslims in a legal (Mubah) action, including the works of the State. The Prophet (SAW) hired a Jew as a clerk, and another Jew as an interpreter, and he hired a polytheist (Mushrik) as a guide. Abu Bakr and Umar<sup>16</sup> hired Christians as accountants for the funds. As it is allowed for the Muslim to hire a non-Muslim, the Muslim too is allowed to be hired by a non-Muslim to perform a

<sup>16</sup>Sahabah: Companion of the prophet.

<sup>17</sup>Abu Bakr and Umar: the first and second Khalifah of Muslims.

missible action. But prohibited work must not be performed whether the employer is a Muslim or a non-Muslim. So the Muslim is allowed to be hired by a Christian to work for him. This must include work where a Muslim is being subjugated to the Kafir in order for him to be humiliated. Rather it is the hiring of himself to another person which is a matter that is allowed, without belief in Islam being a condition for the employer or the employee. Ali (RA)<sup>17</sup> hired himself to a Jew for drawing water for him at a wage of one date for every bucket of water, and informed the Prophet (SAW) about it, and he did not prohibit it. Also because hiring is a contract of exchange that does not include the humiliation of the Muslim.

However, for work which is meant to bring us nearer to Allah the Supreme, it is a condition that the person hired be a Muslim. Examples include leading the prayer, performing the Hajj<sup>18</sup>, pilgrimage, distributing Zakat and teaching Qur'an and the Hadith. Because these are legally valid except from a Muslim; so no one is hired to perform them except a Muslim. The reason (Ellah) in these actions is that they are not valid except from a Muslim. But if the works which are meant to bring us nearer to Allah (SWT) are valid to be performed by a non-Muslim, then it is valid to hire him for doing them. In summary: if the works are considered by the employer as a sort of seeking the nearness to Allah, but are not considered as such by the employee then they have to be examined. If they are not valid except from the Muslim such as ritual acts (Qada'a), then the non-Muslim is not allowed to be hired for performing them. But if they are valid for the non-Muslim such as fighting, then he is allowed to be hired for doing that. So the Thimmi<sup>19</sup> (non-Muslim) is allowed to be hired for fighting and his wage is paid from the Bait ul-Mal<sup>20</sup>.

### **Hiring Someone to perform Worships and Public Services**

The definition of hiring as a contract stipulating the recompense for the fruits of labour, stipulating that the benefit is something the employer can receive fully, leads us to understand that hiring is allowed for every benefit which the employer can receive from the

<sup>17</sup> Ali Ben Abi Talieb: The Fourth Khalifah Of Muslims Ummah.

<sup>18</sup> Hajj: Call to prayer.

<sup>19</sup> Thimmi: It is the name of the non-Muslims who living under Islamic authority.

<sup>20</sup> Bait ul-Mal: The state treasury.

employee fully. This could be the benefit of a person like a servant or the benefit of the work of a craftsman, unless a divine evidence has been mentioned that prohibits such benefit. This is because things are originally allowed and benefit is one of those things. It is untrue to say here that this is a contract or a transaction which should be originally restricted by Shari'a rather than allowed. This is untrue because the contract is the hiring itself, not the benefit. The benefit is the matter over which the transaction is concluded and over which the contract is applied, and thus the benefit is not a transaction or a contract. Therefore, hiring is allowed over all benefits when there is no prohibition mentioned regarding them, whether there is a text allowing them or not. So the person is allowed to hire a man or a woman to type for him on a typewriter, certain pages for a certain wage because this is a hiring over a benefit for which no prohibition is mentioned. So hiring over it is allowed, even though there was no mention of a text to allow it. It is also allowed to hire a person who measures and weighs for a certain work in a certain time-period. Abu Dawud<sup>21</sup> narrated in the hadeeth of Suwaid ibn Qais<sup>22</sup>, who said: "The Prophet (SAW) came to us (in the market) and he bartered with us and we sold to him. And there was a man who was weighing for a wage. The Prophet (SAW) then said: Measure and out-weigh (the scale of balance)". So this hiring is allowed and there is a text that allows it. But as for the worships, whether they are Fard<sup>23</sup> or Nafilah<sup>24</sup>, they have to be examined. If their benefit does not extend to other than the person who performs them, such as performing the pilgrimage for himself and paying his own Zakat, then he is not allowed to receive a wage for it because the wage is a recompenser for a benefit and there is no benefit in these matters for other than himself. Accordingly, hiring him on these matters is not allowed, because they are Fard upon him. But if the benefit of the worship goes beyond the one who performs it, then hiring over it is allowed. Examples include making Athan for others and leading the others in prayer or hiring a person to perform Ha'i on behalf of a dead person or a person to pay his Zakat on his behalf. All these things are allowed because it is a contract over a benefit for recompense. The wage in these matters is recompense for benefit, which was accomplished by another person, so the hiring was allowed. In regard of what At-Tirmithi narrated from Uthman ibn Aby al A'as<sup>25</sup>, he said: "The

<sup>21</sup> Abu Dawud: He is one of the writer for Rasullah (SAW) Hadeeth.

<sup>22</sup> Suwaid ibn Qais: He is one of the prophet (SAW) groups (Companion of the prophet).

<sup>23</sup> Fard: Perhaps.

<sup>24</sup> Nafilah: Donation, not necessary, extra.

<sup>25</sup> Uthman ibn Aby al A'as: He is one of the prophet (SAW) groups (Companion of the prophet).

thing the Prophet (SAW) commanded me to do is to use a Muathin<sup>26</sup> who does not take a wage for performing his athan". In this Hadith the Prophet (SAW) forbade using the Muathin who takes a wage as a Muathin for him, but he did not forbid the Muathins from taking a wage. This indicates that there are Muathins who take a wage and others who do not take a wage. So the Prophet (SAW) forbade him from taking a Muathin from those who take a wage. This prohibition indicates alienation from taking a wage over Athan, which implies the dislike of taking a wage over Athan. However, this does not indicate the prohibition of taking a wage over Athan; rather it indicates that it is allowed but with dislike.

With regards to education, a person is allowed to hire a teacher to teach his children or himself or to teach anyone he likes. This is because, teaching is an allowed (Mubah) benefit, for which it is allowed to take recompense for, so hiring for it is allowed. And Shari'a has allowed taking a wage for teaching the Qur'an, so taking a wage for teaching other than the Qur'an is allowed by greater reason. Bukhari narrated from ibn Abbas from the Prophet of Allah (SAW) that he said: "The most worthy thing to take a wage for is the Book of Allah".

Bukhari also narrated from Sahl ibn Sa'ad As-Sa'idi<sup>27</sup> that the Prophet (SAW) married off a woman to a man for what he knew of the Qur'an, to teach her what he knew of the Qur'an. There was a consensus of the companions as well that it is allowed to take a provision from Bait al-Mal for teaching; therefore it is allowed to take a wage for it.

It was narrated from Ibn Aby Sheeba from Sadaqa al-Dimashqi from Al-Wathiya ibn' <sup>28</sup>, that he said: "There were three teachers in Madinah who used to teach the youngsters, Umar ibn Al-Khattab used to provide every one of them with fifteen (Dinars) every month." This indicates that taking a wage for teaching is allowed. With respect to the Ahadith which are in this regard to discourage taking a wage, they were focused on discouraging the taking of a wage for teaching the Qur'an, rather than denying the hire of people to teach it. They all indicate the dislike of taking a wage for teaching the Qur'an, rather than forbid the hiring to teach

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<sup>26</sup> Muathin: Caller to prayer.

<sup>27</sup> Sahl ibn Sa'ad As-Sa'idi: He is one of the prophet (SAW) groups (Companion of the prophet).

<sup>28</sup> Al-Wathiya ibn' Ata'a: He is one of the prophet (SAW) groups (Companion of the prophet).



like of taking the wage does not deny its permissibility, so it is disliked to take a wage for doing Qur'an, yet it is allowed to hire people for doing so.

Concerning the hiring of the doctor, it is allowed because it involves a benefit which the employer can receive, but it is not allowed to hire him for curing, because that would be hiring for an unknown matter. It is allowed to hire the doctor for examining a patient because this would be a known benefit, and it is allowed to hire the doctor for serving the patient during his days, as this would be a defined work. It is also allowed to hire the doctor to treat the patient, because his treatment is known in a manner that removes ignorance, even if the type of disease is not known, since it is enough for it to be known that the patient is sick.

The permissibility of the hiring of a doctor is established because medicine is a benefit which the employer can receive, so hiring over it is allowed. Also, it was mentioned that the Prophet (SAW) indicated the allowance of hiring for medicine. Bukhari narrated from Anas that he said: "The Prophet (SAW) called Abu Tae'ba<sup>29</sup> to cup/bleed<sup>30</sup> (Ihtajama) him then he gave him two Sa'a (cubic measures) of food and he recommended to his master to reduce work on cupping at that time, was a medication with which people were treated, so taking a wage for doing it indicated the allowance of hiring a doctor. In regard of the saying of the Prophet (SAW) which Tirmidhi narrated from Rafi'a ibn Khadeej<sup>31</sup> that: "The earning of the cupper is (Khaibeeth)", this does not indicate the forbiddance of hiring a cupper. Rather it indicates the dislike of earning by cupping, though it is Mubah (allowed) by the evidence that in the Hadith narrated by Muslim from M'adan ibn Ahi Talha<sup>32</sup>, the Prophet (SAW) described garlic and onion as haram, though they are allowed. All this is in regard of the worker whose service is private.

But regarding the worker whose benefit is common, his services are considered to be of public interests which the State has to supply for the people. This is because every service whose benefit goes beyond the individual to the community, and the community was in need of it, then that service would be of the public interests which the Bait ul-Mal has to make available for all of

<sup>29</sup> Abu Tae'ba: A doctor in that time.

<sup>30</sup> Cup/bleed (Ihtajama): A kind of Medicine.

<sup>31</sup> Rafi' ibn Khadeej: He is one of the prophet (SAW) groups (Companion of the prophet).

<sup>32</sup> M'adan ibn Ahi Talha: He is one of the prophet (SAW) groups (Companion of the prophet).

people, An example of that is when the ruler hires a person to judge among the people on a daily basis, or such as the hiring of employees for departments and services, and the hiring of dhins and Imams. Amongst the services for which the State has to hire employees in order to provide for the people are education and medicine. In regard to education this is the case, due to consensus (Ijma'a) of the companions on giving provision to the teachers by a particular amount as a wage for them from the Bait ul-Mal. Also because the Prophet (SAW) assigned the ransom of the captives (of Mushriks) as being to teach ten Muslim children, while this ransom was of the booties, which are property belonging to all the Muslims. In regard to medicine, this is because the Prophet (SAW) was given a doctor as a gift to him, whom he assigned to the Muslims. The fact that the Messenger (SAW) received the gift and did not dispose of it, nor take it but rather assigned it for the Muslims, is an evidence that this gift belongs to the Muslim public, and not to him. Since the Prophet (SAW) had received a gift and He put it for all the Muslims, this indicates it is one of the things which belongs to the Muslim public. Therefore, the provision to the doctors and teachers is from the Bait ul-Mal. Nonetheless, the individual himself is allowed to hire a doctor and hire a teacher. But the State is obliged to make medicine and education available for all citizens, with no difference between the Muslim and the Thimmi between the rich and the poor. This is because these are like the Adhan and the judiciary, which are of the matters whose benefit extends beyond the one himself, and the people need them, so they are of the public services which have to be made available for all citizens, and the Bait ul-Mal has to secure them.

### Who is the Employee?

The Islamic Sharia'a defines the employee as every person who works for a wage, whether the employer is an individual, or a group, or a State. So the term employee applies to anyone who works in any type of work, with no difference in the divine rule between the employee of the State and the employee of others, So concerning the employee of the State, the employee of the group, and the employee of the individual, each of them is a worker, and the rules of labour apply on them, In other words each of them is an employee and the rules of hiring apply on them. So the farmer is an employee, the servant is an employee, the workers in factories are employees, the clerks of merchants are employees, the civil servants are employees, and



any one of them is a worker. This is because the contract of hiring is over the benefits of the assets, the benefit of the work or the benefit of the person. If this were to be applied on the benefits of the assets then the subject of the employee is not included in it, as he has no relation with it. If it were to be applied on the benefit of the work such as hiring a craftsman for certain works, or if it applies on the benefit of the person such as hiring servants and workers, then these relate to the employee, and this is what the subject of employment applies upon.<sup>33</sup>

### 10. The Basis upon which the Assessment of the Wage is Established

Hiring is a contract over a benefit in return for a recompense. The first condition for the validity of the contract of hiring is the legal competence of the two contractors, such that each of them has reached the age of maturity. Another condition for its validity is the consent of the two contractors. Moreover the wage should be known, due to the saying of the Prophet (SAW): "If anyone of you hires a worker, he has to inform him of his wage", narrated by Ad-Daraqumi<sup>34</sup> and Ibn Mas'oud. Also due to the Hadeeth narrated by Ahmed from Ahi Sa'id<sup>35</sup> that the Prophet (SAW) forbade hiring a worker without explaining to him his wage. However, if the wage was not defined, the hiring would be contracted and valid (legal). In case of dispute over the wage, reference is made to the equivalent wage. So if the wage was not defined at the time of the contract and if the employer and the employee then dispute over the wage, then the equivalent wage is adopted. The equivalent wage is adopted by analogy with the disputed marriage money (Dowry), which is decided by referring it to the equivalent dowry if it was not mentioned before, or if a dispute over the named amount occurred. This is due to what Ahmed narrated that Abdullah ibn Mas'oud<sup>36</sup> (RA) judged in the case of a man who passed away before sleeping with a woman, whom he had married without naming the dowry. He said: "She deserves the dowry of an equivalent woman, and she has to do the Eddah<sup>37</sup> and she deserves to inherit from him".

<sup>33</sup> Eddin I. Nabahani, The Islamic Personality- Part 2, Beirut-Lebanon, Dar El-Ummah, 1994: P.328.

<sup>34</sup> Ad-Daraqutni: He is one of the writer for Rasullah (SAW) Hadeeth.

<sup>35</sup> Said Al-Khodari: He is one of the prophet (SAW) groups (Companion of the prophet).

<sup>36</sup> Abdullah ibn Mas'oud: He is one of the prophet (SAW) groups (Companion of the prophet).

<sup>37</sup> Eddah: Its an Islamic word which mean, waiting period for the next marriage.

Abul ibn Sinan<sup>38</sup> said: "The Prophet (SAW) has judged to Bārwa'a daughter of Washiq one of the people, as you judged". The meaning of saying that she deserved the dowry of her equivalent men means a dowry identical to the dowry of equivalent women. So Shari'a obliged giving the equivalent dowry to the one whose dowry was not named. The same judgement is given in the case where a dispute occurs over the named dowry. Since the dowry is a recompense in the marriage contract, then recompense of any contract can be measured with it. Thus it is judged by the equivalent recompense in case the recompense was not mentioned in a contract, or in the case of a dispute over the named recompense. Therefore, it is judged by the equivalent wage in the hiring and by the equivalent price in the trading (selling) in the case where the price was not named in the contract, or there was a dispute over the named price. Therefore the equivalent wage resolves the case in a dispute between the employee and the employer over the named wage, and in the case where the wage was not mentioned. So, if the wage was mentioned in the contract then the wage would be the named one. But if it was not mentioned or if a dispute occurred over the named wage, then the equivalent wage would be judged as the wage. Thus, the wage is of two different kinds: A named wage and the equivalent wage. The condition for considering the named wage is its acceptance by the two contractors. So if the two contractors accepted a certain wage, then this wage will be the named one, and the employer would not be obliged to pay more than it, nor would the employee be obliged to take less than it, rather it is the legal wage. The equivalent wage is the wage for equivalent work, or of the equivalent worker if the contract of the hiring had been concluded over the benefit of the work. The equivalent wage would be the wage of the equivalent worker only if the hiring contract was concluded over the benefit of the hired person.

Those who are considered to estimate the wage are the experts in defining wages, not the traditions of the population. Rather they are the experts on the wage for the relevant type of work, or the wage for the type of workers for whom the wage is intended to be estimated.

The basis upon which the experts estimate the wage is the benefit, whether it was for the worker or the employer. Because the hiring contract is based on the benefit, it becomes the basis upon

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<sup>38</sup>Abul ibn Sinan Al-Ashja'i: He is one of the prophet (SAW) groups (Companion of the prophet).

the wage estimation is built. Thus the wage is not estimated by the production of the worker or by the lowest standard of living among his community. There is no consideration to the production of the worker nor to the high standard of living in its estimation, rather its estimation is related to the benefit. The experts estimate the wage of the worker according to the value of the benefit in the society in which they live. When the experts estimate the wage for the work of the worker, they consider the value of the benefit in the community, so they estimate it by the value of the benefit produced by the worker, or benefit of the work. If a dispute arises over the estimation of the benefit in the community, then it should not be estimated by evidence and proof. Rather it is enough to take the opinion of the experts, because the question is to estimate the value of the benefit and not to establish an evidence about its amount.

Thus, the basis upon which the estimation of the wage is built is the benefit according to the estimation of the experts. But when the experts estimate the equivalent wage, they have to consider not only the wage of the work or the worker alone, because the wage varies with the worker, time and place. Rather they are obliged to look to the person who is identical to the worker doing the same work, which is to look to the work, the worker, and at the same time, they have to look at the time and place of work, because the wage differs with the work, worker, the time and the place.

The contracting parties, that is the employer and employee, originally select the experts to estimate the wage or the equivalent wage. If they did not select the experts or differed over the selection, then the court or the State is the competent authority to appoint these experts.<sup>39</sup>

### Estimating the Employee's Wage

Man rushes naturally to spend effort in producing the property by which he fulfils his needs. Man's needs are numerous and he cannot meet them in isolation of other people. Therefore, it becomes inevitable that man lives in a society in which he exchanges with others the products of their efforts. Therefore, man who lives in a society spends his effort to produce both

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Abdullah Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.375.

for his direct use (consumption) and for exchange. Because his needs are numerous, he does not spend all his efforts for his direct consumption only, for he is in need of properties which he does not have. It becomes necessary for him to benefit directly from the efforts of others, as in his need for education and medicine and the like.

Therefore, the types of properties which man produces, however different and numerous they are, are not enough to fulfil all his needs. This is because he cannot produce by his own effort the things that fulfil all his needs. Rather he must depend on the efforts of others. So he has to exchange his effort or his property with the fruits of the others' efforts. Therefore, the exchange of people's efforts is necessary. Since these efforts may be recompensed by another effort or property it becomes necessary to have a measure that defines the values of all the fruits of efforts, relative to each other, in order that they may be exchanged. This defines the values of properties, so that they can be exchanged with each other or for labour. Therefore it is necessary that the measure used to define the value of efforts, and the measure used to define the value of properties be the same, so as to enable the exchange of properties with each other, the exchange of property with effort and the exchange of effort with effort.

Accordingly, people agreed upon a monetary reward that enables them to obtain the properties and the labour necessary for the fulfilment of their needs. This monetary reward, concerning commodities is the price, and concerning labour is the wage. This is because, in the exchange of commodities, it is a recompense for the commodity itself, and in the exchange of labour it is a recompense for the benefit of the effort spent by man. Thus, trade transactions and hiring deals are indispensable for man, though there is no connection between trading and hiring except that they are transactions between individuals amongst human beings. So hiring does not depend on selling (trading), nor does the wage depend on the price. Therefore the estimation of the wage is different from the estimation of the price, and there is no relationship between them. This is because the price is a recompense for property, so it is inevitably a property in return for a property, whether the property was estimated with the value or the price. The wage is the recompense for an effort, which does not necessarily produce a property; rather it may or may not produce a property. The benefit from effort is not restricted to the production of property, as there are benefits other than property which result from labour. Accordingly, the efforts spent in

ing, trading and industry, whatever their kind, and whatever their amount, produce property this directly increases the wealth of the country. But the services, provided by the doctor, the lawyer, the solicitor, the teacher, and other similar services, do not produce property nor directly increase the wealth of the nation. If a manufacturer took a wage he would have taken it in exchange for a property he produced, but if an engineer took a wage, he would have not taken it in exchange for a property, because he did not produce any property. Therefore the estimation of the price is ~~incorrectly~~ in return for a property. This is contrary to the estimation of the benefit from effort, which is not a return of property but rather a return of benefit, which may or may not be a property. In this way, selling is different from hiring an employee, and the price is different from the wage regarding the actual estimation.

However, the difference of selling from hiring, and of price from wage, does not mean the existence of a relationship between them. Rather their difference means that hiring is not to be based upon selling or selling upon hiring. So the estimation of the price is not based upon the estimation of the wage, nor is the estimation of the wage based upon the estimation of the price. This is because establishing one of them upon the other leads to the prices of commodities which the worker produces, controlling the wages he receives, whereas the prices of the commodities are controlled by the employer, not the employee. If the prices were left to control the employee then this would lead to the employer controlling the employee, thus he may reduce and increase the wage whenever he likes, under the pretence of the decline and increase of the prices, a matter that is not justified. This is because the wage of the employee is in return for the benefit of his work, so his wage equals the value of his benefit, and it should not be linked to the prices of the commodities he produces. It is untrue to claim that forcing the employer to pay the estimated wage, when the price of the commodity falls, leads to his loss, and accordingly leads to making the worker abundant. This only occurs when the prices of the commodity fall down in the whole market. Therefore, this matter is left to the estimation of the experts for the benefit of the worker and not to the employer. This is because the experts consider the whole benefit of the labour in general, and do not consider one case only. Therefore, the estimation of the wage is not based on the price of the commodity but decided by the estimation of the experts.



Moreover, building hiring upon selling, and selling upon hiring leads to the prices of commodities needed by the worker controlling his wage, though the prices of his needed commodities should control the sustenance of the worker, and not his wage. So if the prices of the commodities needed by the labour were given control over his wage, it would make the sustenance of the worker a duty upon the employer, which he has to secure. However, the sustenance of every person is a part of his affairs which have to be cared for by the State, not by the employer. It is also not allowed absolutely to link the sustenance of the worker with his production, as the worker could be of a delicate body and not able to produce but a little, which is not his need. So if his wage is linked to that which he produces then he will be deprived of a livelihood, a matter which is not allowed. Thus the right of livelihood has to be secured to every person of the citizens whether he produces much or little, and whether he was able or unable to produce. Therefore, his wage is assessed by the value of his benefit, whether his wage is enough to meet his needs or not.

In this way, it is wrong to estimate the wage of the worker by the prices of the commodities that he produces, or by the prices of the commodities that he requires. So it becomes wrong to build the hiring upon selling and selling upon hiring; it is not allowed to build one of them upon the other. Therefore, it is not allowed to build the wage upon the price, nor the price upon the wage. This is because the estimation of the wage is a matter different from the estimation of the price; and each of them has particular factors and special considerations, which are under the control over the estimation. The wage is estimated by the benefit that the effort produces, so the estimation is only by the benefit and not by the effort, though the benefit produced is due to the effort spent by the person. The experts estimate the wage by this benefit; according to its estimation. The estimation of the wage is not permanent; rather it is linked to the period agreed upon or to the job which is agreed to be performed. Once the period finished or the work is accomplished, a new estimation of the wage starts, whether by the two contracting parties or by the experts, in estimating the equivalent wage. The period could be daily, monthly or annually.

The price is the ratio of exchange between the quantity of money and the quantity of equivalent goods (commodities). So the price is the money given in return for a unit of a certain commodity at a certain time. In regard to its estimation, it is decided naturally by the market

ed upon the need of the people for that commodity. It is true that the price could be estimated the extent of the need of the buyer for the commodity, so he takes it whatever its price. It could also be estimated by the amount of the need of the seller, so he sells it whatever its price. However this is not allowed; it is dangerous for the society and it is not permitted. This is called Ghuban (fraud). Therefore, what matters in this situation is what the sellers and buyers in the market decide and not what the (particular) contracting seller and buyer agree upon. In other words, the price is the value of the commodity estimated by the market. So the acceptance of the price defined by the market is compulsory, and the acceptance of the price defined by the seller of the price defined by the market is compulsory. The matter that defined this price and led the seller and the buyer to accept it is the demand for the benefit of the commodity in the society in which it was sold, irrespective of its production costs. Therefore, the estimation of the price differs from the estimation of the wage, and there is no relationship between the two estimations. So, the estimation of the wage is not based on the estimation of the price. The price is only defined by the demand for the commodity, taking the shortage of the commodity in the market as a factor in this estimation. The price cannot be measured by the cost of production, as the price may not be equal to the production costs, since it could be less or could be more according to the circumstances in the short term. But in the long term, a balance occurs naturally between the price defined by the market and the production costs. However this does not make the wage linked to the commodity's price, as the buyers and the sellers, in the short and long terms, do not look at the cost of the commodity when they trade it. Rather its price in both cases is defined by the demand for the commodity, taking into consideration the factor of its scarcity in the market.

Fact is that the value of any commodity is the amount of its benefit, taking into consideration the factor of its scarcity (shortage). Though work is a means to obtain this benefit, as a means to produce it, it is not considered at all when this commodity is exchanged with another, nor when using it. Therefore the true view for any commodity is the view of its benefit, taking into consideration the element of its shortage, whether this commodity was possessed by man initially like from hunting, or by exchange like trading. There is no difference regarding this matter in the society of Moscow, the society of Paris and the society of Al-Madinah Al-Munawarah. This is because man everywhere, when he strives to obtain a commodity assesses



amount of benefit that exists in it, taking in to account its shortage in the market. This is the value of the commodity as men view it, which is its true value.

But the actual value of the commodity is estimated by the amount of its exchange with other things, whether a commodity or money. This value, by this sense, remains constant despite the change of time, place and circumstances. With regard to the price of the commodity, it is the amount of money which is given in exchange of one unit of this commodity in a certain place and in certain circumstances. This amount changes as the time, place and circumstances change. In other words, the price is the ratio of exchange between the amount of money and the equivalent amount of commodities.<sup>40</sup>

So if a person married a woman and made, as a part of her dowry, a certain described cupboard, and he mentioned its value as fifty dollars, and he eventually handed it to her, then the value of the cupboard had been designated through her receiving it as a commodity. If he later took it from her and she brought a lawsuit against him over it, then he has to hand over to her the cupboard itself not its price. If the cupboard was proved to be damaged, or he alleged that it was damaged, then he should pay her fifty dollars, because this is the value of the cupboard whether the identical cupboard at that time of the court case was more or less than fifty dollars, because this is its actual estimated value. The price of an identical cupboard is not considered. This is different than the case if it were mentioned in the marriage contract that the price of the cupboard is fifty dollars and the husband eventually handed the cupboard to his wife. Then if he took it from her and she brought a lawsuit against him over it, he would have the choice to hand the cupboard to her or to pay her its price (fifty dollars), or to buy her another cupboard with fifty dollars (whether the cupboard at the time of the court case was more or less than fifty dollars.) So he is obliged to hand to her a cupboard whose price is fifty dollars at all times.

This is because the value does not change but the price changes. So the actual value of the commodity is the amount of its exchange at the time of estimation, and the price of the commodity is the amount of money paid in the market as an exchange for it. This differentiation

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Abdihrahman Al-Maliki, The Ideal Economic Policy, Beirut-Lebanon, Dar El-Ummah, 1963: P.139.

between the value and the price applies in trading and the different types of exchange. But the wage of an employee is the amount at which the benefit of his effort is estimated, at the time of contract. It is, estimated again at the end of the hiring period. Thus it appears that there is no relationship between the wage of the worker and the value of the commodity or between the wage of the worker and the costs of production, nor between the wage of the worker and the standard of living. It is a different matter; it is the worth of the benefit which his employer receives. The estimation of this benefit is not left to the employer but to his need for this benefit. The unit of estimating of the worker's wage is the described benefit. This wage differs according to the type of work, and varies with the degree of perfection in the same work. So the wage of an engineer differs from that of a carpenter, and the wage of a skilled carpenter differs from that of an ordinary carpenter. The wage of people who do the same work increases according to their perfection in their effort's benefit. This is not considered a promotion to them, rather it is their wage which they deserve as they improved the benefit of their effort.

## THE WAY TO DISPOSE OF PROPERTY

### Right of Disposal

Ownership has been defined as a divine rule concerning an object itself or a benefit, a which requires that its owner is entitled to use the thing and receive a recompense for it. the ownership is the divine rule estimated in terms of object or benefit; in other words it is a permission of the Lawgiver. The disposal (of the owned objects) is a matter, which therefore results from this divine rule, namely from the permission of the Lawgiver that entitled the owner to use the object and be compensated for it. The disposal of the owned thing is thus restricted by the permission of the Lawgiver because the ownership itself is the permission of the Lawgiver to use the object, and disposal is equivalent to using the object. Since property belongs to Allah (SWT), and He (SWT) appointed man to use this property with permission from Him (SWT), the individual's ownership of a property is similar to a job he performs to use the property to invest it, rather than owning it. This is because when the person owns a property he does not benefit from it, and he is restricted in that by the limits of the Sharia'a and not left free in his methods of utilization. He is also not free in his disposal of the object itself even if he owned it. The evidence for this is that if he disposed of it by using it illegally such as using it foolishly or carelessly, the State has to deny him access to the property and prevent him from disposing of it, thus denying him the responsibility for disposal which had been granted to him. Therefore, the disposal of the object and its usage is a matter which is implied by its ownership, or it is the effect of this ownership. The disposal of the owned thing includes the right of increasing (investing) the property and the right to spend it for living expenses and for giving gifts.

### Increasing Property (Investment of Property)

The increase of property is related to the styles and means used to produce it. However, increasing ownership of this property is related to the manner by which the person increases this ownership. The economic system has nothing to do with the increase of property; rather the system is involved with the increase of ownership. Islam did not interfere with the increase of property, and it left man to increase property by the styles and means, which he considers suitable.

for doing so. Islam does however interfere with the increase of ownership of property and has explained its rules. The increase of ownership is restricted by the limits given by the Lawgiver, which may not be transgressed. The Lawgiver has placed general guidelines to determine the manner by which ownership may be increased, and He (SWT) left the scholars (Mujtahideen) to deduce the details of these guidelines from them based on their understanding of the incidents. However, the Lawgiver did prevent certain manners. Thus He explained the transactions and contracts with which ownership may be increased and those with which the person is prevented from increasing the ownership.

Upon examination, one finds the properties in this worldly life to be limited to three things which are: land, property which results from the exchange of things, and property which results from transforming things from one form to another. Things which man deals with to obtain property or to increase it are agriculture, trading, and industry. In this way, the manners by which the person increases his ownership of property must be a subject of discussion in the economic system. Agriculture (farming), trading and industry are styles and means used to produce property and the rules related to them show the manner by which the person increases his ownership of property.

Sharia'a explained the rules of farming by manifesting the rules of land and that which is related to it. It also explained the rules of trading by manifesting the rules of selling and companies and related matters. It also explained the rules of industry by manifesting the rules of the labourer and manufacturing. With regard to the products of industry, they are included in trading. Increase of ownership is thus restricted by the rules of the Sharia'a, which are the rules of lands and related matters, selling and companies and matters related to them and also the rules of the labourer and manufacturing.

## THE RULES OF LANDS

Land has a neck (the land itself) and a benefit. Its neck is its origin, and its benefit is its use in farming and other uses. Islam allows the ownership of the neck of the land as it allows the ownership of its benefit, and has put rules for each of them. With regard to the ownership of the neck of the land this has to be examined. If the country which includes this land has been opened by conquest, then the neck of the land will be owned by the State, and the land would be Kharaji land, except if it was in the Arab Peninsula.

If the country was opened peacefully, then this is also to be examined. If the peace treaty stated that the land belongs to the Muslims, and the State settled the people in their land in return for a Kharaj they pay to the State, then this Kharaj remains permanent. The land of such a country remains Kharaji land until the day of Judgement even if its owners embraced Islam or its ownership was transferred to Muslims through sale or in any other way.<sup>1</sup>

However, if the peace treaty stated that the land belongs to them and it remained in their hands and they settled upon it, in return for a certain Kharaj imposed upon them, then this Kharaj is considered like Jizya. Such Kharaj is abolished once they embrace Islam or if they sold the land to a Muslim. In contrast, if they sold the land to a disbeliever the Kharaj remains without being abolished, because the disbeliever is subject to Kharaj and Jizya.<sup>2</sup>

If the people of the country have embraced Islam in their land, like Indonesia, or the land which is part of the Arab Peninsula, then the neck of the land is owned by its inhabitants, and the land is considered 'Ushri land.

The reason for this treatment is that land is a form of property taken as booty in war. It is Halal (allowed) and it is the property of the Bait ul-Mal. Hafs ibn Ghiath narrated from Abu Sa'ib from Zuhri who said: "The Messenger of Allah (SAW) accepted the Jizya from the fire-worshippers (Majus) of Bahrain. It was accepted from any one of its people who embraced Islam,

<sup>1</sup> Akki'Eddin Al-Nabahani, The Islamic Personality - Part 2, Beirut - Lebanon, Dar El-Ummah, 1994: P.247.

<sup>2</sup> Al-Jizya: It's the tax that the rich non-Muslims people pay it to live under the Islamic state rules.



his life and his property would be protected, except his land which is considered as booty for Muslims, because he did not accept Islam initially when he was under no threat." The difference between the land and the other booties is that other booties can be disposed of by giving them amongst the Muslims, but the neck of the land is kept under the disposal of the Bait ul-Mal from the legal point of view although, practically, it remains in the hands of its inhabitants who can benefit from it. Keeping the neck of the land with the Bait ul-Mal and giving the people to benefit from it means that it is a public booty for all Muslims, whether they exist at the time of conquest or they come later on.

As for the Arab Peninsula, all of its land is 'ushri land, because the Messenger of Allah (SWT) opened Makkah by force and he left it to its people and did not put Kharaj on it. Moreover, since the Kharaj on the land is similar to the Jizya on the person, it does not apply to the land of the Arab Peninsula as the Jizya does not apply on the necks of its inhabitants. This is the case because the condition for imposing the Kharaj on the land is that its inhabitants are left what they believe in and what they worship, as was the case of the land of Iraq. While the polytheists of the Arab peninsula had no choice except to embrace Islam or to fight.

(SWT) said:

**When** the sacred months have passed, slay the polytheists wherever you find them, **capture them (captive)**, besiege them and prepare for them each ambush. But if they repented and **established the prayer and paid the zakat** then leave their way free".<sup>3</sup>

(SWT) also said:

**We will be called** against a folk of mighty powers, to fight them or they surrender (declare submission)".<sup>4</sup>

As long as no Jizya was taken from the Arab idolaters, then no Kharaj is to be taken from their land.

<sup>3</sup> At-Tawba Surah, Ayat: 05.

<sup>4</sup> Al-Fatih Surah, Ayat: 16.

In all the countries opened to Islam by conquest or opened by peace treaty on condition that the land belongs to the Muslims, the neck of the land is a property of the State. It is then, considered Kharaji land whether it is still under the authority of the Islamic Ummah like Egypt, India and Turkey, or it came under the authority of the disbelievers like Spain, Ukraine, Yugoslavia and others. Every country whose inhabitants declared Islam by themselves without conquest, like Indonesia and all the Arab peninsula, their land is owned by the inhabitants and considered Ushr land.

With regard to the benefit of the land, it is considered a personal property, whether it was Kharaji land, 'Ushri land, whether it was given to the people by the State, they exchanged it between themselves, they reclaimed it or they secluded it. This benefit gives the person who possesses the land rights similar to those given to the owners of the neck of the land. So this person has the right to sell it, grant it or leave it behind so as to be inherited from him. This is the case because the State has the right to grant lands to individuals, whether the land is 'ushri or Kharaji. Granting the Kharaji land is appropriating <sup>the</sup> benefit of the land, while keeping its neck in the Bait ul-Mal. In the case of the 'ushri land granting is appropriating the neck of the land and its benefit.

The difference between 'Ushr and Kharaj is that 'Ushr is taken from the harvest of the land. This means that the State takes from the land's farmers one tenth of the real production of the land if it is irrigated naturally by rain water, and it takes half of the tenth of the real production if the land was irrigated artificially by a waterwheel or other similar means. Muslim narrated from Jabir that the Messenger of Allah (SAW) said: "One tenth is put on what is irrigated by the rivers and rain and half of the tenth is put on what is irrigated by the waterwheel." One tenth is considered a Zakat and is put in the Bait ul-Mal, and it is not paid except to one of the eight categories mentioned in the Qur'anic verse: "Zakats are only for the poor, and the needy, and those who collect them, and those whose hearts are to be reconciled and to free the slaves, and the debtors, and for the way of Allah (Jihad) and for the wayfarers; a duty imposed by Allah".<sup>5</sup>

<sup>5</sup> At-Tawba Surah, Ayat: 60.



akim, Al-Baihaqi and At-Tabarani reported through the Hadith of Abu Musa al-Ash'ari and th<sup>7</sup> that when the Messenger of Allah (SAW) sent them to Yemen to teach people the deen, (SAW) said: "Don't take zakat or charity except from these four things: Barley, wheat, raisins and dates".

However Kharaj is that which the State takes from the landlord; a certain quantity which is estimated according to the usual estimated production of the land, rather than its actual production. Kharaj is estimated on the land by as much as can be afforded from it, without causing any injustice, neither to the landlord nor to the Bait ul-Mal. It is collected every year from the landlord whether it was planted upon or not and whether it was fertile or barren. Abu Yusuf reported in Al-Kharaj from Anas bin Maymun and Haritha bin Mudhrab: "Umar bin Al-Khattab ordered Uthman ibn Hanif to the land of Iraq and he ordered him to survey it. On each Jareeb (a unit of arable land) whether it was cultivated or overflowed with water, but could be usually cultivated, he put one Dirham and one Qafeez" (about 16kg). Abu Yusuf also reported in the same work Al-Kharaj narrating from Al-Hajjaj bin Artat'a who narrated from Ibn 'Awf who said that Umar bin Al-Khattab surveyed the land beyond the mountain of Halwan (in Iraq), and on every Jareeb, whether it was cultivated or overflowed with water irrigated by a bucket or something else, and whether it was planted or neglected, he levied a Dirham and one Qafeez." Kharaj is collected in the Bait ul-Mal in a section other than that of zakat. It is spent on all the aspects which the State decides, in the same way as the other properties of Bait ul-Mal.

Concerning the land which was opened by force and upon which Kharaj was imposed, its Kharaj continues forever. If its inhabitants embraced Islam or they sold it to a Muslim, its Kharaj is not abolished, because its character as being opened by force remains for all time. Accordingly, new (Muslim) landlords have to pay the 'Ushr and the Kharaj. This is the case because the Kharaj is a right due on the land, while the 'Ushr is a right due on the production of land owned by a Muslim, a matter established by the verses and the Ahadeeth. There is no contradiction between the two rights, as each one of them is established by its own evidence. With regard to the Ahnaf chose in not combining the 'Ushr and the Kharaj on the same land, referring to a

<sup>7</sup> Hakim, Al-Baihaqi, At-Tabarani: They are writers for Rasullah (SAW) hadeeths,

<sup>8</sup> Abu Musa al-Ash'ari and Mu'adh ben Jabal: They are from the prophet (SAW) groups (Companions of the prophet).

from the Messenger of Allah (SAW): "Ushr and Kharaj do not add together upon a land by a Muslim"; this saying is not a Hadith, and the collectors of Ahadith (Huffadh) did not say that the Prophet (SAW) said it.

As for the collection of the Kharaj and 'Ushr, it is started with collecting of the Kharaj. If what is left after paying the Kharaj, of plants and fruits amounts to the Nisab, then the Zakat is taken from it. However, if that which is left after paying the Kharaj is less than the Nisab, then there is no Zakat upon it (no 'Ushr).

### **Cultivation of Barren Land**

The dead land is that land upon which there are no signs of ownership such as fencing, habitation or the like. Cultivation of land means making it suitable for farming at once. A piece of dead land once cultivated by a person becomes his ownership. Thus the Shari'ah gives it to the one who cultivates it. This is according to what Bukhari related from 'Aisha (RA) the Messenger of Allah (SAW) said: "Whosoever cultivated a land that is not owned by anyone, then he deserved it more." Abu Dawud narrated that the Messenger of Allah (SAW) said: "Whosoever fenced a (dead) land it becomes his" and Bukhari narrated from Umar (RA) the Messenger of Allah (SAW) said: "Anyone who cultivated a dead land it becomes his." Muslims and the Ahl al-Bayt<sup>8</sup> are equal in this matter, because the Hadeeth is general in its words.

Cultivation is a different matter to the State granting of land. The difference between them is that the cultivation is related to the dead land upon which there is no apparent ownership and there are no signs of fencing, planting, building or the like. Cultivation of such land means to make it with anything that indicates inhabitation. The granting of land however, is giving of land that is inhabited and is suitable for farming immediately. This is the land that shows signs of previous ownership. Fencing the land is similar to its cultivation. This is due to the saying of the Messenger of Allah (SWT), "Whosoever fenced a land with a wall then it becomes his" and his (SAW) saying, "Whosoever fenced anything with a wall, it becomes his thereby."

<sup>8</sup> Al-Thimmah: The name of the non-Muslims, who lives in the Islamic state.

Also his (SAW) saying, "Whosoever reached a thing first that no other Muslim reached before, he deserves it more."

Thus by fencing, the fencer gains the right of disposal of ~?~ land as the Hadith stated. The fencer also has the right to prevent anyone who wanted to from cultivating that which he has fenced. If another person overpowered him and managed to inhabit the land that he had fenced, he would not own that land and it would be returned back to the original fencer. Fencing is also the cultivation with regard to the disposal of the land and possession of it. If the person who fenced a land later sold it he owns its price, because the land is a right that can be recompensed with property, so it can be exchanged. If this person died, the ownership of this fenced land is transferred to his inheritors like any other of his properties and they gain the right of disposal over it and it is divided amongst them according to the divine rules like other inherited properties. However, fencing a land does not mean just putting stones around it, it is rather putting anything around it which indicates holding a hand over it, which indicates ownership. Fencing could be by placing stones around the land, putting dry branches, clearing it, burning the thistles, cutting the reeds and grass, or placing other such items around it to prevent people entering it. It could also be by preparing the canal even if one did not irrigate it, or any other similar thing.

From the Hadith, it is clear that fencing like cultivation must only be with regard to the dead land, and it would not be for other than that. The saying of Umar (RA) "a fencer has no right after three years" referring to the fencer has no right in the dead land. The non-dead land cannot be possessed by fencing nor by revival, it is rather possessed by granting from the Imam. This is because revival and fencing came connected with the dead land. The Messenger of Allah (SAW) said "Whoever revived a dead land.." The word 'dead' is an adjective, so it has a concept that is applicable as a restriction on the word land. (This means that the land that is other than dead land cannot be owned by walling or revival). Al-Baihaqi also narrated from Amir ibn Shuaib, "that Umar made fencing for three years." If he left it (the land) for three years and another person cultivated it then he becomes more deserving of it. This means that the non-dead land is not owned by fencing or cultivation.

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Amir ibn Shuaib: He is from the prophet (SAW) groups (Companion of the prophet).

This differentiation between the dead and used land indicates that the Messenger of Allah (SAW) allowed the people to own the dead land by habitation and fencing. So it became of the Mubah things. Therefore, it does not need permission from the Imam for habitation or fencing, because the Mubah things do not need permission from the Imam.

However, the lands which are not dead are not owned unless the Imam granted them because they are not of the mubah things. They are rather the lands on which the Imam put his hand and which are called the lands of the State. The matter which proves this case is that Bilal al-Muzni asked the Messenger of Allah (SAW) to grant him a land, and he did not own it except for the Messenger of Allah (SAW) granted it to him. If the dead land could be owned by habitation or fencing Bilal would have encircled it by any marks which denote his ownership, and he would have owned it without asking the Messenger of Allah (SAW) to grant it to him.

Whoever cultivates a dead land of the 'Ushri land, he owned its neck and its benefit, whether he is Muslim or non-Muslim. For such land, the Muslim landlord is obliged to pay the Zakat ('Ushr) of the plants and fruits which are entitled for Zakat once the amount of the harvest reaches the Nisab. As for the non-Muslim landlord of such land, he is not obliged to pay either Zakat or Kharaj, because he is not one of those who are subject to pay Zakat and because there is no Kharaj on 'Ushri land.

Whoever cultivates a dead land in Kharaji area where no Kharaj has been put over it before, he owns its neck and its benefit if he is Muslim. If he is non-Muslim he owns its benefit only. The Muslim landlord of such land is obliged to pay the 'Ushr with no Kharaj on him. While the non-Muslim landlord has to pay the Kharaj, similar to that put on its kuffar inhabitants at the time of its conquest.

Whoever cultivates a dead land in Kharaji area where Kharaj has been levied before it became dead, he owns its benefit only without owning its neck, whether the landlord is Muslim or non-Muslim. Such a landlord is obliged to pay the Kharaj because it is a conquered land. Therefore, the Kharaj remains on it at all times, whether owned by a Muslim or non-Muslim.

This is the case if the land was cultivated for farming. If, however, the land is cultivated for the purpose of housing, industry, stores or sheds, then no 'Ushr or Kharaj is due, whether it was originally 'Ushri or Kharaji land. This is the situation because when the Sahabah (conquered) Iraq and Egypt they built Kufa, Basra and Al-Fustat and they lived there at the time of Umar ibn Al-Khattab. Other people {Muslims and non-Muslim} joined them in these areas. Yet Kharaj was not levied on them, nor did they pay Zakat, because Zakat is not due on houses and buildings.

### Disposal of Land

Every landlord is obliged to use his land. The owner, who is in need of help for using the land, is helped by the Bait ul-Mal. If he neglects the use of the land for three continuous years it is taken from him and given to another person. 'Umar ibn Al-Khattab said: "The one who fences (something) has no right in it after three years." Yahya ibn Adam reported from Amru ibn al-Mu'adhib, who said: "The Prophet (SAW) granted land to some people from Mazina or Johaina<sup>10</sup> and they neglected it. Other people came and cultivated it. 'Umar said: 'If the land was granted by me or by Abu Bakr, I would have returned it back (to those people). But since it was granted by the Messenger of Allah (SAW) I would not.' And he said: 'Whoever neglected a land for three years without using it and another person came and used it, it becomes his.'" What is meant by the words of 'Umar is that the land was not used for more than three years. If it was a grant from Abu Bakr, then less than three years had passed and if it was from 'Umar, less than three years had passed as well. As a grant from the Messenger of Allah (SAW), however more than three years had passed, so it could not be returned back to those who were given the grant.

Abu Ubayd reported from Bilal ibn al-Harith al-Muzni that the Prophet (SAW) had granted him all of al-Aqeeq. He said that during the time of 'Umar, he ('Umar) said to Bilal, "The Messenger of Allah (SAW) did not grant you the place to fence it against the people but to use it. Take of it as much as you can afford and return the rest of it." Therefore it is Ijma'a of the

<sup>10</sup> Mazina or Johaina: Area names.



that whoever neglected his land for three years, would have the land taken away from him and given to another person.<sup>11</sup>

In this way the landlord is allowed to plant upon his land by use of his tools, seeds, animals and labour; and he has the right to employ labourers to work on it. If he cannot use it the State may help him. If the landlord does not do this he has to give it to another person, to plant upon it, as a grant without recompense. If he does not do this and he keeps hold of it he is given a period of three years. If he neglects it for three years, the State will take it from him and give it to someone else. It is narrated by Yahya ibn Adam in the book of Al-Kharaj that Yunus narrated from Muhammad ibn Ishaq from 'Abdullah ibn Abu Bakr, who said: "Bilal ibn al-Harith al-Muzni<sup>12</sup> came to the Messenger of Allah (SAW) and asked that he grant him a certain land; the Prophet (SAW) granted him a large piece of land. When 'Umar took the authority he said to Bilal, 'O Bilal you asked the Messenger of Allah (SAW) to grant you large land so he granted it to you, and the Messenger of Allah (SAW) was not used to holding back anything he was asked to give and you can't manage this land.' Bilal said: 'Yes.' 'Umar said: 'So look at the part which you can manage and hold it, and the part which you are not able to use give it to us so as to divide it amongst Muslims.' Bilal said: 'I swear by Allah (SWT) will not do that to a land the Messenger of Allah (SAW) gave to me.' 'Umar said: 'By Allah you must do it.' So 'Umar took from him the land he could not use and divided it amongst the Muslims." It is quite clear that the person who owns land but cannot plant upon it and who neglects it for three years, will have it taken from him by the State and given to another person, as 'Umar ibn al-Khattab had done with Bilal al-Muzni with regard to the land of the mines of al-Qabliyah<sup>13</sup>".

In conclusion, land is owned by fencing, by granting from the Khalifah<sup>14</sup>, by cultivation, inheritance and by trading. The texts, which came concerning taking the land from the one who neglected it for three years, have mentioned the one who fenced the land, and the one who was granted the land by the Khalifah. They did not mention other types of landlords, such as the landlord, the one who cultivates the land and the buyer. So, does ignoring any land for three

<sup>11</sup>Abi Ubaid Al-Kaserm, The Book of Currency, Beirut - Lebanon. Dar Al Kutub Al Elmieh, 1986.

<sup>12</sup>Bilal ibn al-Harith ibn al-Muzni: He is from the prophet (SAW) groups (Companion of the prophet).

<sup>13</sup>al-Qabliyah: The name of Bilal's (RA) land.

<sup>14</sup>al-Khalifah: The president name of the Islamic state.



owned by a person allow the Khalifah to take it from him and give it to another? Alternatively, is this specific to the one who fenced a dead land, and the one who was granted the land by the Khalifah? To answer this question we notice that fencing of the land is like buying it or inheriting it or any other means of ownership from the angle of disposal of the land, and possession of it. If the one who fenced the land sold it he would own its price because it is a right in exchange of property, so it is allowed to be recompensed for it. In addition, if the one who fenced the land died, the ownership of the land is transferred to his inheritors like the rest of the properties which they dispose of, and they are divided amongst them according to the Shari'ah rules. This is also similar to the one to whom the Khalifah grants a piece of land. Therefore, the one who fences a land and the one who is granted a land, do not have any specific merit that distinguishes them from the other landlords, which would make taking the land from them, if it was neglected for three years, specific to them to the exclusion of the rest of the landlords, who own the land through other means of ownership. Nor do they have that merit that makes the fencing and the granting of land as a constraint for taking the land if it was neglected for three years. With regards to the argument that the texts specifically mentioned them alone, this does not indicate constraint, because this is not a description, which means that taking the land from the one who neglects it, is only because he owned it by fencing or granting. It is rather a text that stated one single member of the Mutlaq (unrestricted), where land is taken from one type of owner if he neglects it. The text is general and mentioning ownership by fencing and granting is just a mention of one member of the Mutlaq (unrestricted) not a restriction that excludes other than them. However, if the text came regarding an incident, it has to be examined. If it included reasoning, then it becomes a general text in the reasoned matter. The text in question indicates reasoning, which is, taking the land after three years because of neglecting its farming. The neglect of the land for three years is the reason (Ellah) for taking it. The reason for taking the land from the one who fenced it is thus because he neglected it for three years, not because he is an owner by fencing, or because he is an owner by fencing who neglected the land. Fencing of the land does not indicate it is the reason for taking it, neither by itself (fencing) nor by combining it with neglecting. Rather neglecting alone is the matter which indicates the reason (Ellah) for taking it. Thus neglecting the land is a reason (Ellah) which revolves with the reasoned rule, in existence and absence. Wherever neglecting of the land by its owner for three years occurred, it would be taken from him whether he owned it by fencing or by granting or by

ance or by any other means. If the owner by fencing did not neglect his land for three years, it could not be taken from him.

In addition, fencing of the land as mentioned by 'Umar (رضي الله عنه) in the Hadith of the Messenger of Allah (SAW): "Anyone who fences a land (Muhtajir) has no...." is an indirect expression of its ownership; as it is usual that the owner of the land fences the land by encircling its borders with stones, so as to be known as his property, and be differentiated from the property of others. It is not a condition that he puts stones around it so as to be called a fencer. Rather, to plant trees or dig a ditch, or carry out any work which indicates that he possesses it, all this is called (Ehtijar), and the one who does that to a land is called a fencer (Muhtajir). The Messenger of Allah (SAW) says in another Hadith that is narrated by Abu Dawud: "Whoever encircled a land by a fence..." The Hadith implies that walling (fencing) of the land is an indirect expression of its ownership, according to the linguistic meaning of the word "fenced." Linguistically, the word Ehtajara refers to something one puts in one's lap or embraces. Ehtajara (walled) with respect to a land, means one embraced it, meaning ownership of it. Therefore the meaning of the Hadith will be that whoever embraced a land (fenced it), has no right after three years, whether he put stones on its borders, or he encircled it with a fence, or he did anything that indicates his ownership of it.

This is the argument with regard to the text. However, with regard to what 'Umar ordered, and the rest of the companions kept silent on, 'Umar ordered that the land which the Messenger of Allah (SAW) granted to Mazina which others cultivated, be given to those who cultivated it, and he prevented Mazina from taking it. He also said: "Whoever neglected a land for three years without cultivating it, and some other person cultivated it, it would be his." This statement of 'Umar is general, as he said: "Whoever neglected a land..." He also said to Bilal ibn al-Muzni "The Messenger of Allah (SAW) did not grant you land to fence it against the people, rather he granted it to you to use it, so take the part which you can manage, and return the rest of it." He actually took from him that which he was unable to use. Limiting this decision to the land alone without a clear evidence of specification is not allowed, rather it should stay general. The fact that the incident occurred with the person who was granted the land is just an expression about an incident, and is not limited to that incident.

Therefore, every landlord who neglects the land for three years has his land taken from him and given to another, whatever his means of ownership of the land was. What matters is the neglecting of the land and not the means of its ownership. It is not true to say that this means taking the property of people without right. This is because Sharia'a gave land ownership a meaning different to that of the ownership of moveable properties or the ownership of buildings: it made land ownership for cultivating it. If it was neglected for the period determined by the Sharia'a, then the landlord would have ignored the meaning of its ownership. Sharia'a has made the ownership of the land for farming whether by cultivation, granting, inheritance, buying or other means. It also made the stripping of the ownership of it, by negligence. This is all for the purpose of continual farming and use of the land.

### 11. Preventing the Leasing of Land

A landlord is absolutely not allowed to lease his land for farming, whether he possessed it in full and benefit, or he possessed its benefit only, whether the land was 'Ushri land or 'Ujaji land and whether its rent was money or something else. He is also not allowed to lease the land for a part of its food production or for something else other than the food, or for any other thing which it produces at all, because this is considered leasing, and leasing land for farming is absolutely not allowed. It was narrated by al-Bukhari that the Messenger of Allah (SAW) said: "Whoever has land let him plant upon it or grant it to his brother. If he declined let him hold his land." Muslim also narrated, "The Messenger of Allah (SAW) forbade a rent or a share to be taken for the land." The Sunan of An-Nisai states: "The Messenger of Allah (SAW) forbade leasing the land. We said, 'O Prophet of Allah, can we then lease it for some of the produce?' He (SAW) said, 'No.' We said, 'We used to lease it for the straw.' He (SAW) said, 'No.' We said, 'We used to lease it in return of that on the irrigating Rabee'a.' He (SAW) said, 'No, do not lease it or grant it to your brother.'" What is meant by Rabee'a is the small stream, that is to lease in exchange for planting the part which is alongside the water. It was soundly narrated that the Messenger of Allah (SAW) forbade a rent or a share to be taken for the land, or to be leased for a third or a fourth of its harvest. Abu Dawud has narrated from Rafi'a ibn Khadeej<sup>15</sup> that the

<sup>15</sup>Rafi'a ibn Khadeej: He is from the prophet (SAW) groups (Companion of the prophet).

Prophet (SAW) also said, "Whoever has land, he has to plant upon it or let his brother plant upon it and he cannot lease it for its third or fourth or a specified food." Bukhari narrated from Nafi'a, who said, "'Abdullah ibn 'Umar was told from Rafi'a ibn Khadeej, who had said that the Messenger of Allah (SAW) forbade the leasing of land, So 'Abdullah ibn 'Umar went to Rafi'a and I went with him to ask Rafi'a who said: The Messenger of Allah (SAW) had forbidden the leasing of land." Nafi'a also mentioned that 'Abdullah ibn 'Umar had given up the leasing of the land.

These Ahadeeth explicitly show that the Messenger of Allah (SAW) forbade leasing of land. Although forbidding means the order to leave only, there is an indication (Qareena) that this is decisive; since they said to the Prophet r, "We lease for part of the grains." He (SAW) said, "No." Then they said to him, "We used to lease it for the straw." He (SAW) said, "No." Then they said, "We used to lease it for the Rabee'a." He (SAW) said, "No." Then he confirmed by saying, "Plant it or grant it to your brother." His insistence in forbidding is clear here which denotes the confirmation. Moreover, confirmation in the Arabic language is either literal, by repeating the word or by meaning. In this Hadeeth, the word was repeated which means confirmation.

With regard to leasing the land of Khaybar<sup>16</sup> in return of its half, this is not part of this subject, because the land of Khaybar was planted with trees and not smooth (empty of trees). The evidence for this was narrated by Ibn Ishaq in his Seerah of the Messenger of Allah (SAW) from 'Abdullah ibn Abu Bakr, "The Messenger of Allah (SAW) used to send 'Abdullah ibn Ruwahah to the people of Khaybar to estimate the fruits between Muslims and Jews, so he estimated their fruits. After 'Abdullah ibn Ruwahah was martyred at Mu'tah, Jabir ibn Sakhr ibn Umayyah ibn al-Sa'la, brother of Bani Salama, used to estimate<sup>17</sup> the fruits of Khaybar." It is clear that the land of Khaybar was planted with trees and not smooth land. The plants, which it contained, were of a lesser size than the area of the trees, so the planted part follows the trees part in its identity.

<sup>16</sup> Khaybar: Arabic Name in the Hijaz (Saudi Arabia).

<sup>17</sup> Estimation is to determine the value of the fruits on the trees before it is collected.

The land of Khaybar was therefore not subject to a matter of leasing; it was rather cropping (Musaqat), which is allowed. Furthermore, after the prohibition by the Messenger Allah (SWT), the Sahabáh abstained from leasing land, including 'Abdullah ibn 'Umar, which indicated that they understood the prohibition of leasing the land.

However, the prohibition of leasing the land is only if it is for farming. If its lease is for other than farming, it is allowed. A person is allowed to lease the land as a day pasture or a grazing place (for cattle) or a warehouse for his goods, or to use it for anything other than farming. This is because the prohibition of the leasing of land is focused on its lease for farming, as is understood from the sound Ahadeeth. These rules of land and what is connected with it, explain the manner by which the Shariah restricted the Muslim when he works to increase his ownership through farming.



## II. TRADING AND MANUFACTURING

### Trade

Allah (SWT) made the property a means to establish the interests of human beings in this (worldly) life and He (SWT) allowed trading as a way to gain these interests (Masalih). It is to say that what everybody wants is not available in every location and that taking something by force and overpowering is corrupt. Thus, there should be a system that enables everybody to take that which he needs without resorting to force and strength. Trading is that system, and there are rules of selling.

Allah (SWT) says,

**"O you who believe! Squander not your wealth among yourselves in vanity, except it may be trade by mutual consent" .1**

Trading is of two types; that which is allowed (Halal) and is called selling (Bai'a) in Arabic and that which is forbidden (Haram) and is called usury (Riha). Each of these is trading. Allah has informed us about the disbelievers that they rejected'rationally the (existence of a) difference between trading and usury.

Allah (SWT) says:

**"It is because they say: Selling is just like usury" .2**

Allah (SWT) then differentiated between them through Halal and Haram by saying:

**"Whereas Allah permitted selling and prohibited usury" .3**

We understood from this that each of them is trading, and the one, which is permitted by Allah, is selling. Two parties conclude the selling process. One of them gives the offer (Ijab) and the other accepts (Qabool). These are expressed with the word "I sold" and "I bought" or any

<sup>1</sup> An-Nisa Surah, Ayat: 29.

<sup>2</sup> Al-Baqarsh Surah, Ayat: 275.

<sup>3</sup> Al-Baqarsh Surah, Ayat: 275.



on, which hold these meanings. The owner of the commodity has the right to carry and to deputise somebody as an agent or as a messenger to execute the selling on his behalf, on his wage is defined. If he employed someone for profit, he would be a partner and the rule of the partner rather than the employee will be applied upon him. He is allowed to buy the property himself or through his agent, his representative or to hire a person to buy for him. In summary, trading is allowed. It is a form of increasing the wealth and it is evident in the laws of selling and company (partnership). Trading came in the Hadith.

said:

**In the case** when it is actual trading which you transfer among yourselves from one person to another, **In that case** it is no sin for you if you write it not".<sup>4</sup>

Abu Sa'id narrated that he went out with the Messenger of Allah (SAW) to the prayer place to see the people trading. The Messenger of Allah (SAW) said, "O traders!" They responded to the Messenger of Allah (SAW) and raised their necks and eyes towards him. He (SAW) said, "You will be resurrected on the Day of Judgement as fujjar (wrongdoers) except those who are honest and honest." Al-Tirmidhi reported that Abu Sa'id narrated that the Messenger of Allah (SAW) said: "The honest trustworthy merchant will be resurrected with the prophets, the apostles and the martyrs." Trading is of two types, domestic and foreign. Domestic trading is the trading which occurs among the people over commodities, whether they are of their own agricultural or industrial, or of other peoples' products, where they are circulated in the country. Domestic trading is allowed without constraints, except by those rules of selling. With regard to the commodities, their types, and their transfer inside the country from place to place, it is left to every merchant to trade within the rules of Shar'a. The only thing to do with the domestic trading except through supervision only. Regarding foreign trading it is the purchase of commodities from abroad, whether such commodities were agricultural or industrial. This type of trading is subject to the direct supervision of the State, so it

<sup>4</sup> Surah Surah, Ayat: 282.

y supervises the import and export of these commodities and supervises the belligerent and  
ful (those bound by treaties) merchants.<sup>5</sup>

## Manufacturing

Manufacturing is where a person requests another to manufacture for him a vessel, a car  
thing that is included in industry. Contracting manufacturing is allowed and proved in the  
h. The Messenger of Allah (SAW) requested the manufacture of a seal (the ring used for a  
r a stamp). Anas said that the Messenger of Allah (SAW) manufactured a ring. Bukhari  
ed from Ibn Masoud who said that the Messenger of Allah (SAW) manufactured a ring of  
The Messenger of Allah (SAW) also requested the manufacture of the minbar (pulpit).  
ri reported that Sahl said that the Messenger of Allah (SAW) sent to a woman to and said:  
r your servant, the carpenter, to make me some board to sit on" Bukhari narrated: "People  
to manufacture at the time of the Messenger of Allah r, and he kept silent about this," so his  
e and action is his r agreement regarding manufacturing. The agreement and the action of  
Messenger of Allah (SAW) are divine evidences like his sayings. The matter contracted for  
facturing is the manufactured thing such as the seal, pulpit, cupboard, car and the like. From  
ngle, manufacturing is a form of selling not hiring. However, if someone were to bring the  
material to the manufacturer and ask him to manufacture a particular thing, then this would  
form of hiring.

Industry, by itself is an important pillar of the economic life in any nation and to any  
e in any society. Industry drive, in the past, was limited to the manual factory alone. When  
started using steam to move machines, mechanical factories started to gradually replace the  
al ones. When the new inventions came about a great revolution in industry occurred, thus  
ction increased beyond expectation, and the mechanised factory became one of the pillars  
nomic life.

<sup>5</sup> Eddin Al-Nabahin, The Islamic Personality- Part 2, Beirut -Lebanon, Dar El-Ummali, 1994: P.295.

Rules pertaining to the mechanised and manual factories are rules of partnership, hiring, and foreign trade. With regard to establishing the factory, it could be by an individual or by partnership, which happens rarely, but is more generally by the property of many individuals who establish it. Therefore, the rules of Islamic companies apply upon it. However, with regard to the work in the factory whether in management, manufacturing or other than these, the rules of hiring apply to it. With regard to the distribution of its production, the rules of selling and trade apply to it. In this way, cheating, fraud and monopoly are prevented, as is the fixing of prices, as well as the other rules of selling. With regard to making orders for the production of a factory, whether little or great, before it is made, the rules of manufacturing apply to it. Shar'a should be consulted regarding whether the client is obliged or not of what was manufactured for

## THE LAWS OF PARTNERSHIP (COMPANIES)

### The Company (Partnership) in Islam

Company (Ash-Sharika) linguistically means mixing two or more shares together such that they can be distinguished from the other. Company in Sharia'a is a contract between two or more persons, in which they agree to perform financial work with the intention of making profit. The contract of the company requires the existence of both offer and acceptance, as is the case with all Islamic contracts. An offer occurs when one party says to the other: 'I entered into partnership with you in such and such' and the other party replies by saying, 'I accepted.' These words are not necessary but the meaning is. There must occur in the offer and acceptance something that indicates that one of the parties addressed the other orally or in writing on the subject of partnership over something, and the other accepted. Therefore, an agreement on partnership only does not represent a contract. An agreement to pay money or property for partnership is also not considered a contract as well. Rather, the contract must include the concept of partnership in something. The condition of validity of the partnership contract in Islam is that the contracted matter be a right of disposal and that this right of disposal, over which the company contract is concluded, is suitable for representation (Wakala) such that what is disposed of by the disposal is shared between the two partners.

Partnership is allowed in Islam because when Muhammad (r) was sent as a Messenger, the Muslims were dealing with companies and he (SAW) did not forbid this. Al-Bukhari narrated that Al-Bara ibn 'Azib said: "I and my partner bought something in cash and credit. Al-Bara ibn 'Azib told us so we asked him about this. He said: 'My partner, Zaid ibn Al-Arqam, and I did the same and we asked the Prophet (SAW) about this.' He (SAW) said: 'That which is in cash you return and that which is in credit you return it back.'" Ad-Daraqutni narrated from Abu Hurairah that the Prophet (SAW) said: "Allah the Supreme said 'I am the third of the two partners as long as one of them does not betray his companion. If he betrayed, I would withdraw from them'."

Partnership is allowed amongst Muslims, Thimmis (non-Muslims living under Islamic rule), and between Muslims and Thimmis. So, it is allowed for a Muslim to enter into

partnership with a Christian, a fire-worshipper or other Dhimmis. Muslim narrated from Abdullah ibn 'Umar who said: 'The Prophet (SAW) dealt with the people of Khaybar, who were for half of the land production of plant or fruit.' In another narration by Bukhari from 'The Prophet (SAW) bought food from a Jew in Madinah and he deposited his armour with him as security.' At-Tirmidhi narrated from Ibn 'Abbas who said 'The Prophet (SAW) passed while his armour was left as a security in return for twenty cubic measures (Sa'a) of food. He took for his family.' At-Tirmidhi narrated from Aisha that 'the Messenger of Allah (SAW) sent for a Jew asking him for two garments (and to wait) until (the time of) prosperity.' Entering into partnership with Jews and Christians (An-Nasarah) and other Thimmis is therefore allowed, as dealing with them is permissible. However, Thimmis are not allowed to sell alcohol or pork while acting as partners with Muslims. Before forming a partnership with a Muslim, a Thimmi may have sold alcohol, the proceeds of which would be Halal for the company. Partnership is only valid between people whose right of disposal is allowed, for it is a contract upon the disposal of property. It follows that it is invalid to form a company with a person who is prevented from disposal of property. It is also not allowed to enter into partnership with a person who is placed under guardianship, or a person whose right of disposal is not allowed.

Partnership is either a partnership of properties or a partnership of contracts. The company of properties is a company of assets, such as partnership in a property that has been bought, bought or gifted. The company of contracts is the subject of discussion regarding the sharing of ownership. From the examination of partnership, contracts in Islam, and the divine laws (Ahkam Shar'iyah) related to them it can be concluded that there are five types of company in Islam. These are Al-Inan (equal), Al-Abdan (bodies), Al-Mudharaba (two or more), Al-Muwadha (faces) and Al-Mufawadha (negotiation).

#### **The Company of Equal (Al-Inan)**

This is two bodies (Abdan) associating with their properties. Namely, two persons associate with their properties and share the work dividing the profit between them. It is called a



any of 'Inan because they are equal in their right of disposal where 'Inan means two riders in  
 e if their horses are equal and their race is equal, so their bridles ('Inan) are equal. This form  
 mpany is allowed by the Sunnah (of the Prophet) and Ijma'a of the Sahabah (consensus of  
 ompanions). People have entered into this form of partnership since the time of the Prophet  
 ) and the Sahabah.

In this type of company, the capital is represented by money, because money represents  
 value of the properties and the sales. It is not allowed to enter into partnership over  
 andis unless it was evaluated in monetary terms at the time of contract. Its value at this  
 represents the capital. It is a condition that the capital be defined and disposable. The  
 rship is thus not allowed to be formed over an unknown capital, absent property or a debt  
 e capital has to be referred to at the time of division and because the debt cannot be disposed  
 immediately and this is the aim of the company. It is not necessary that the two property  
 s are equal or of the same kind. However, they must be evaluated by one measure so that  
 shares become one property. It is, therefore, valid to become partners with, for example,  
 an and Syrian money, but these should be evaluated by one value so that there is no  
 ence between them and they become one of the same kind. It is a condition that the capital  
 e company be one property and common for both such that neither partner can differentiate  
 property from the other's. It is also conditional that the two partners have authority over the  
 l. The 'Inan (equal) company is based on delegation and trust. The partners trust each other  
 gh handing over properties, and by delegating permission to each other to dispose of  
 ty. Once the company has been formed it becomes one entity. It is obligatory for the  
 rs to start work themselves as the company is established upon their bodies. Neither of  
 is allowed to delegate another person to work for the company on his behalf. The company  
 whole employs whom it wants and uses the body of whom it likes as its employee not as an  
 yee fgr one of the partners.

It is allowed for any of the two or more partners to trade in whatever way he feels is  
 ficial to the company. Each of the partners is also allowed to collect the price and make  
 ases, to litigate for and request payment of debt, to remit and accept remittance, and to  
 faulty goods. Each is allowed to hire and lease the capital of the company, as the benefits



the company are as good as the commodities, in a similar way to selling and buying. Each partner would be allowed to sell an item like a car for example, or to lease it in its capacity as a commodity for sale. The benefit to the company becomes like the commodity itself and is as good as this.

It is not conditional that the two partners have equal shares, but it is necessary that they be equal in the right of disposal. With regard to the capital, it is valid that the partners have different or equal shares, while the profit is divided as they stipulate. It is thus valid to stipulate equality in the profit or to give preference. According to what 'Abdurrazzaq narrated in Al-Jami', (RA) said: "The profit is according to what they stipulated". With regard to losses in the 'Inan company, it is according to the capital share only. If their shares are of equal value then the loss between them is divided equally, and if the capital is divided in thirds then the loss is divided in thirds. If they stipulated other than that, no value will be given to their stipulations. The rule on this is then executed without regard to their stipulations, by dividing the loss based upon the ratio of their capital shares. This is because the body does not lose property; rather it loses the spent property only. The loss is thus carried on the capital and it is distributed according to the shares of the partners. This is because a company is a form of representation (Wakala). The rule is that the company is not held responsible for the loss but the loss is carried upon the property of the managing person. Abdurrazzaq narrated in Al-Jami' from 'Ali (RA): "The loss (Al-Wadhi'a) is carried on the capital and the profit is according to what they stipulated".<sup>2</sup>

### The Company of Bodies (Al-Abdan)

This is two or more persons participate by their bodies only, without their capital in this company. They share in that which they gain by their labour of whether an intellectual or physical nature. Examples of such labours are by craftsmen who share in work using their craft and divide that which they profit amongst themselves such as engineers, doctors, fishermen, carpenters, car drivers and the like. It is not necessary that the partners be of the same craft nor that they are all craftsmen. It is allowed that craftsmen of different crafts associate in an

<sup>2</sup> Meeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.228.

able (Halal) form of profit. Their partnership is valid (Sahih) just as if they were of the same. It is acceptable for the partners to perform a particular role in the company, so that one manages the company, another receives the money and the third works by his hands. This is that it is allowed for labourers in a factory to enter into partnership together, whether or not all of them understand the process of manufacturing. They can associate with other men, labourers, clerks and guards, and they can all become partners in the factory. However, it is stipulated that the work they associate together in for the purpose of making a thing be Halal. If the type of work is Haram, then to form a company undertaking such work is hidden.

The profit in the company of bodies is distributed according to the agreement of the partners, whether equally or preferentially. For it is that which produced the profit and since it is allowed for the partners to differ in work, it is allowed that they differ in profit which is derived from the work. Each of the partners has the right to collect all of their wages from their employer, to demand the price of the goods they manufactured from prospective purchasers. Similarly, the one who employed them or the one who bought goods from them has the right to pay all wages or to pay the whole price of the goods to anyone of them. He will be cleared of responsibility once he has made the payment to any one of them. Even if only one of the partners worked, the income is still divided amongst all of them, because the work is guaranteed by all of them together, and through their joint responsibility for the work. The wage in other words, has to be shared. In other words, the wage is for all of them as the responsibility is carried by all of them. None of them is allowed to deputise on his behalf a person as partner in the company or to employ a person to do the work on his behalf as a partner. He himself must be the one who handles the work directly as the contract stipulates this in this type of company. However, each partner is allowed to hire employees and such hiring would be by the company for the company, even if only one of the partners handled the employment. The employee must then not be that partner's own deputy, agent or employee. The disposal of each partner must be on behalf of the company, and every one of them is bound by the work accepted by his partner.

This form of company is allowed due to what Abu Dawud and al-Athram<sup>5</sup> narrated from Ubaydah<sup>4</sup> from his father, 'Abdullah ibn Mas'ud, who said: "I shared with 'Ammar ibn Yasir and Sa'ad ibn Abu Waqqas in whatever we gained at the day of Badr. Sa'ad came with two slaves, while 'Ammar and I brought nothing" and the Messenger of Allah (SAW) consented to both of them. Ahmad ibn Hanbals said: "The Messenger of Allah (SAW) associated them together." This Hadeeth is an explicit evidence about the partnership of bodies of a group of the Sahabah to perform an action, which was fighting against the enemies, and to divide amongst themselves that which they gained in terms of booty if they won the battle. With respect to the rule of the booties being in disagreement with this partnership, this is not relevant to this Hadeeth because the rule of the booties was revealed after the battle of Badr. When this company of bodies occurred there was not yet any rule of booties. In addition, the rule of booties, which was revealed after the battle, did not abrogate the company, which occurred before. Rather it clarified the shares of the benefactors, and the rule of the company of bodies remains as established by this Hadeeth.<sup>6</sup>

#### The Company of Body and Capital (Mudharabah)<sup>7</sup>

This is called loaning (Qiradah), and it is the partnership of a body with property. It is that one pays his property to another person so as to trade with it for him and the resulting profit is divided amongst them according to what they stipulated. The loss in the Mudharabah is subject to the agreement of the partners but rather to that, which came in the Sharia'a. This is defined by Sharia'a to be only on the property; none of it is upon the body (Mudharib). If the capital partner and the mudharib were to agree that the profit and loss is divided amongst them, the profit would be between them while the loss is only on the property. This is because the company is similar to representation (Wakala) and the agent (Wakeel) does not guarantee. The loss is upon the principal (Muwakkil) only. This is due to what 'Abdurraziq narrated in Al-Jam'i from 'Ali (RA): "The loss (Al-Wadia'a) is on the property and the profit is

<sup>5</sup> Dawud and al-Athram: They are from the Muslims who wrote Rasullah (SAW) Hadeeth,

<sup>4</sup> Ubaydah: He is one of the prophet (SAW) Group, (Companion of the prophet).

<sup>6</sup> Hanbal: He is one of the Muslims who wrote the prophet (SAW) Hadeeth.

<sup>7</sup> Meh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.229.

<sup>8</sup> Meh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.231.

according to what they stipulated". The body however does not lose property, it loses what it put of effort only and the loss remains on the property.

Mudharaba would not be valid until the property is given to the worker ('Amil) and he is given a free hand over it, because Mudharaba requires handing over the property to the Mudharib. In Mudharaba, the share of the worker must be defined and the property used in the Mudharaba contract must be of a defined amount. It is invalid for the owner of the property to deal with the Mudharib, even if he stipulated to do so. This is because he has no right to dispose of the property that belongs to the company, on the company's behalf. It is the mudharib who manages and works, and he has full control over the property. This is because the contract of the company was concluded on the body of the Mudharib, and the property of the partner. It is not concluded on the body of the owner of the property, who is like a foreigner to the company and does not have the right to dispose of anything, which belongs to the company. However, the Mudharib is restricted in his disposal to that with which the owner of the property permitted. He is not allowed to disagree with him because he disposes by permission. If he permitted him to deal with wool only or he prevented him from shipping the goods by sea, the owner has this right to restrict him in these matters. However, this does not mean that the owner of the property disposes in the company. Rather it means that the Mudharib is restricted within the limits defined by the owner of the property. Despite this, the disposal in the company is confined to the worker (Mudharib) only, and the owner of property has no right of disposal.

One form of Mudharaba is where two properties (of two persons) enter into partnership on the body of one of them. So if two persons had between them three thousand of something, one of them having two thousand and the other one thousand, and the owner of the two thousand permitted the other to dispose of the capital so that the profit is divided between them by halves, the company would be valid. The worker would be the owner of the one thousand of the items as Mudharib to the owner of the two thousand, and would be his partner. Similarly, Mudharaba could be through the partnership of the capital of two persons and the body of a third person. All these are forms of the Mudharaba.

Mudharaba is allowed by Sharia'a due to the narration that "Al-Abbas ibn 'Abdul-Muttalib<sup>8</sup> used to pay the property of the Mudharaba and put certain conditions on the Mudharib." This (information) reached the Messenger of Allah (SAW) and he consented to it. The consensus of the Sahaba<sup>9</sup> was established that the Mudharaba is allowed. Ibn Abu Sheeba narrated from 'Abdullah ibn Hameed from his father from his grandfather that 'Umar ibn Al-Khattab gave the property of an orphan as a Mudharaba so he worked with it and gained a profit, and he divided the surplus with him." Ibn Qudamah narrated in Al-Mughni from Malik ibn al-Ashjar from 'Abdurrahman from his father from his grandfather that "Uthman loaned him property as a Mudharib," (Qaradh)". It was also narrated from ibn Mas'oud and Hakeem ibn Hizam that 'the two of them entered into loan (Qaridha).' All of this occurred with the knowledge of the Sahaba and none was reported to disagree with the proceedings or deny their validity, confirming their validity on the Mudharaba.

### **The Company of Reputation Faces (Wujooh)<sup>10</sup>**

This company is an association of two bodies with the property of a third, namely a person gives his property to two persons or more as a Mudharaba, so the two mudharibs are partners in the profit through the property of another person. They may agree to divide the profit equally, to each mudharib a third and to the owner a third. They may also agree to divide it in shares, where the property takes a fourth, one of the mudharibs takes a fourth and the other takes a fourth. Or they may agree on conditions other than these so that it is possible that there are preferential shares of the profit between the two workers. Their claim to preferential shares of profit is based on the reputation (Wajaha) of one or of both of them, whether in regard of their profession in work or of their skills in disposal and management, despite the fact that the right of disposal they have in the property is equal. This company is therefore different from the company of Mudharaba, although in reality it reverts to Mudharaba.

<sup>8</sup> Al-Abbas ibn 'Abdul-Muttalib: He is one of the prophet (SAW) groups (Companion of the prophet), and he is the prophet Muhammad (SAW) uncle.

<sup>9</sup> Consensus of the Sahaba: Consensus of the Companions of the prophet (SAW).

<sup>10</sup> Sheikh Azaili, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.230.



Among the companies of Wujooḥ is when two or more persons associate in what they buy the trust of merchants in them, and the reputation that is based on this trust, without having property. They would agree that they own the property they bought in halves, thirds, fourths, or like, and they sell that property. What they gain of profit is divided between them in halves, thirds or fourths or whatever else they agree, and not based on the previous agreement of the share of ownership. However, the loss is in proportion of their shares of the purchased goods, these shares represent their property and not according to what they may agree about the loss, nor according to their share of the profit, whether the profit was divided between them according to the value of their purchases or otherwise.

Thus, the company of the Wujooḥ with its two forms is allowed. This is because if the persons associated with the property of another person it is like the Mudharaba Company, which is confirmed by the Sunnah and Ijma'a. If, however they associated with what they take from the property of another person, by buying goods through their reputation and the trust of the merchants in them, then it is like the company of Abdan, which is also confirmed by the Sunnah. The Sunnah and Ijma'a thus confirm the company of Wujooḥ.

However, it is necessary to know what is meant by trust in this regard. When trust is mentioned in the matters of trading and company matters and the like, it is meant to be the trust of payment, which is the financial trust, not notability nor esteem. Therefore, a person may be a notable person yet he is not trusted to pay, so there is no financial trust in him and thus there is no trust in him in the subject of trading and partnership. He could be a minister, a rich man or a great merchant, but if he is not trusted to pay, there is no financial trust in him nor is he trusted in trading. Therefore, he cannot buy any goods from the market without paying its price. Yet he could be a poor person, but if the merchants trust him to pay his debts, he can buy goods without paying their price immediately. In the company of Wujooḥ, the trust is thus focused on payment of notability. What occurs in some companies is that a minister of the government is included as a member in the company and assigned a certain share of the profit, while he contributes no property nor participates with any effort. He is associated as a partner due to his standing in society so as to facilitate the dealings of the company. This is not considered as a wujooḥ company nor does the definition of a company in Islam apply to it. This type of partnership is not



allowed and such a person is not a partner and he is not allowed to take anything from such a company.

What happens in some countries like Saudi Arabia and Kuwait is that the non-Saudi or the non-Kuwaiti person is not allowed to have a license for trading or working so he includes a Saudi or Kuwaiti person in Saudi Arabia or a Kuwaiti in Kuwait as a partner. He assigns to him a share of the profit, while the Saudi or Kuwaiti person does not contribute any property or his body to the company, rather he is considered a partner because the licence is issued in his name and he is given a share in the profit in return for this. This type of company is also not considered of the company of wujooh, as it is not allowed by Sharia'a. Such a Saudi or Kuwaiti is not considered a partner and it is not allowed for him to take anything from the company, because he does not fulfil the conditions, which the Sharia'a requires in the partner in order to become a legal partner. These conditions include associating in the property or by his body or by the trust in payment, so that he works with the goods he takes through this trust.

#### **Company of Negotiation (Mufawadha)<sup>11</sup>**

This is where two partners share in all the types of companies mentioned before, like a combination between the companies of 'Inan, Abdan, Mudharaba and Wujooh. For example, a person may contribute some property or capital to two engineers in partnership with their properties so that they build houses to sell. The two engineers agree to work with property greater than that which they hold, so they start to take goods without paying for them immediately, based on the traders' trust in them. Thus, the partnership of the two engineers together with their bodies is a company of bodies. With regard to their craft and paying for property with which they work, it is a company of 'Inan (equal). The fact that they take property from other people means it is a company of Mudharaba. As they share in the goods, which they buy, based on the trust of the traders in them means it is a Wujooh company. This company has therefore combined all the types of companies allowed in Islam. It is valid because each type of these companies is allowed by itself and they are valid together. The profit is according to their agreement. It is allowed to

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<sup>11</sup> Mech Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.232.

it proportional to the two properties. It is also allowed to make it equal even if the properties are different. And it is allowed to make it preferential even if the properties are equal.

This type of company of negotiation is allowed, because the Shari'ah text allows it. Some students have, however, mentioned other types of Negotiation Company, where two persons share, such that they are equal in their property, their right of disposal and their debts and of them can deputize for his colleague in absolute terms. This type of company is absolutely prohibited. There is no Shari'ah text that is a proof for it. As for the Hadeeth which they quote to 'If you negotiate then improve the negotiation' or the Hadeeth, 'Negotiate as it is more beneficial,' neither of these two Hadeeth have proven to be valid (Sahih), even assuming that their meaning is correct. Moreover, this company is a partnership of unknown property and unknown partners, which is enough by itself to make the company invalid. Additionally, included in their share is the inheritance, which is given to them after the death of an inheriting person, and one of the partners could be a Thimmi (non-Muslim). How then could he receive a share of the inheritance? Further, it is not allowed, because the company includes deputation, which is not allowed over unknown things. All this indicates the invalidity of this type of Negotiation Company.

### Dissolving the Company

The company contract is one of the contracts, which is allowed by Sharia'a. It becomes void by the death of any partner or his becoming insane or if he was declared incompetent and under guardianship, if it is a company consisting of two persons. Dissolution of the company by one of the two partners is valid because it is a permissible contract, which is annulled in the same way as deputation (Al-Wikala). If one of the partners dies leaving behind a mature son, he has the option to continue with the company and his partner has to permit him to do so (Tassaruf) in the company. However, he also has the option to demand dissolution of the company. If one of the partners demands dissolution of the company then the other partner must grant his request. If they were more than two partners, and one of them demanded the dissolution of the company and the rest were happy to continue with the company, then the company would be dissolved and renewed between the remaining partners. However,

There is a difference between the Mudharaba Company and the other types of companies regarding the dissolution. In the Mudharaba Company, if the worker demanded the sale of the company and the Mudharib demanded division, then the demand of the worker will be accepted because his right is in the profit which will not be known except when selling. However, in the other types of company, if one partner demanded division and the other demanded sale of the company, the demand of division is accepted rather than that of sale.

## PITALIST COMPANIES

company in the Capitalist system is a contract according to which two persons or more associate in a financial project by providing a share of property or work, so as to share themselves the profit or loss which may result from this project. It is of two types: companies of people and companies of properties.

In regard to the companies of people, they are those in which the personal element has an effect upon the company and in assessing the shares. This is like the companies of joint liability and the simple limited partnerships. This type is different from companies of properties where the personal element does not exist, nor does it have any effect. Rather, it is based on annulling the existence of the personal element, and only the financial element in the establishment and performance of the company, like stock (share) companies and the limited (share) companies.

### Commercial Company of Joint Liability (Unlimited Liability Company)

This is a contract between two persons or more, in which they agree to trade together under a certain name. All its members bind themselves towards the debts of the company with all their property, with joint liability, and without any limit. Therefore, no partner of the company can transfer his rights in the company to another person without the permission of the remaining partners. The company is dissolved by the death of any of the partners or by his incompetence, or insanity, unless there is an agreement, which prevents this. The members of this company are liable jointly towards its commitments to others by fulfilling all the contractual obligations of the company, and their responsibility in this matter is unlimited. Every partner is liable to discharge all the debts of the company, not only from the property of the company but if necessary from his own property. He has to pay from his property what is left of the debts of the company after its property runs out. This company does not allow the continuation of the project. The company is formed from a few people, who trust each other and

ain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P. 179.

ain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.180.

each other well. The main element considered in this company is the personality of the partners, not by being people only but with regard to their standing and influence in the society.

This company structure is invalid, because the stated conditions disagree with the conditions of companies in Islam. For the divine rule (Hukm Shar'i) places no condition upon the partner except that he is allowed to dispose and the company should have the option of expanding its activities. If the partners agree to expand the company by either increasing their capital or by adding other partners to them, then they are free to do what they like. The partner is also not liable, personally, in the company except in proportion to his share in it. He has the right to leave the company at any time he likes without the need for the approval of the other partners. In addition, the company is not dissolved by the death of any of the partners, or due to incompetence, rather his partnership alone is dissolved, while the partnership of the other partners remains if the company is formed of more than two persons. These are the Shari'ah conditions. The conditions of the joint liability company as stated earlier differ, and even conflict with these divine conditions, thus making it an invalid company and it is not permitted for a person to associate with (or becoming a partner) in it.

### **Joint-Stock Company (Share Companies)<sup>3</sup>**

Share Companies are companies formed of partners who are unknown to the public. The partners of the Share Company are all of those who signed the initial contract of the company. The initial contract is the one, which initiates between its signatories a commitment to work for achieving the common aim, which is the company. Subscription in the company is undertaken by the commitment of the person to buy one share or more in the proposed company in exchange for the nominal value of the share. This form of company is one of the forms of disposal by an individual will where it is enough for the person to buy the shares so as to become a partner, whether the other shareholders accept him or not. Subscription occurs in two ways. In the first way, the Shares of the company are restricted to the founders who distribute them amongst themselves without offering them to the public. This is done by writing the constitution, which

<sup>3</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.181.



the company and includes the conditions upon which the company proceeds, then among themselves. Everyone who signs the constitution is considered a founder and a and once they all have signed, the company is founded. The second way of subscription which is most prevalent in the world, where a few people establish the company and lay constitution. Then the shares are offered to the public for general subscription in the When the time of subscription expires, the constituent assembly of the company will meet to review the system of the company for agreement and to appoint its board members. Every shareholder, irrespective of the number of shares he holds, has the right to the constituent assembly, even if he owns only one share. The company commences its once the time of subscription expires.

Both of these means represent one form which is to pay for the properties. The company cannot be considered as established except by completing the signature of the founders in the method, and by the expiry of the subscription time in the second one. So the contract of the company is a contract between properties only.

There is absolutely no personal element in it. Thus the properties, rather than their owners, are the partners. These properties are entered into partnership together without the aid of any person. Accordingly, there is no authority for any partner, no matter how many shares he holds, to take charge of the activities of the company in his capacity as a partner. He has no right to work in the company or to control any of its functions in his capacity as a partner. Rather, the one who takes charge of the activities of the company, works in it, controls it and supervises all of its work is called the Managing Director who is appointed by the board of directors. This board of directors is elected by the general assembly, in which every person has a vote equal to his shares, not according to his personality, for the real partner is the capital and it is the capital which defines the number of votes. So every share has a vote and not every person has a vote. Thus, there is no consideration to the subscribing person but the consideration is for the capital only. Moreover, the share company is considered to be permanent, and it is not restricted by the life of the shareholders. The shareholder may die and yet the company is not dissolved and does not become incompetent and still remain a partner in the company. With regard to the capital of the company, it is divided into equal-valued shares, which are called stocks. The shareholder is



partner whose personal merits are not thoroughly investigated, and his responsibility is determined by his share in the company capital. In addition, the partners are not bound by losses incurred by the amount of their stocks in the company. A partner's share is liable to circulation, so he is allowed to sell it, or associate other people in his shares, without the permission of the remaining partners. The stocks owned by every person are currency notes, securities or bonds that represent the capital. These stocks may be for the bearer (anonymous bonds) or designated to a holder where their ownership moves from person to person. The investor who subscribes by buying stocks is obliged only to pay their nominal value. Therefore, the stock is a part of the assets of the company, and it is indivisible but it is not a part of its capital.

The stock notes are considered as registration papers in this share, and their values are not the same, but change according to the profits or losses of the company. This profit or loss is not the same every year but it can differ. The stocks therefore do not represent the capital contributed at the time of establishing the company; they represent the capital of the company at the time of issue, namely at a specific time. They are like paper currency whose value falls if the stock market declines and increases when the stock market rises. The value of stocks declines when the company makes losses, and increases when the company profits. The stock after the company is formed thus ceases to be a capital and becomes a currency paper of a specific value that rises and falls according to the market, the profitability of the company or according to the degree of interest or otherwise of the people in it, for it is a commodity subject to supply and demand. Stocks transfer from one hand to another similar to how bank notes move among people, without any clerical measures in the company records if the stocks are for the bearer (anonymous) and through such measures if they bear their holders' names.

The company is considered in profit if the value of the assets of the company is greater than the value of its liabilities at its annual inventory. Profits are distributed annually at the end of the financial year of the company. If the value of the company's assets increased due to unexpected conditions without there being profits, nothing prevents the company from distributing this excess. However, if the contrary occurred, and the value of the assets declined and the company made profits, but the total of its profit and value of its assets was not greater than its liabilities, then it could not distribute the profits. At the time of distribution of profits, a

is assigned to the reserves and that which remains is divided among the shareholders. The company is considered as a corporate entity, which has the right to sue and be sued in its own name in the courts. It also has its own residence and particular nationality (country of incorporation including where its head office may be registered). Neither a shareholder nor any member of its management, in his capacity as partner or in his personal capacity, fills its place. The one who has this right is the one who has been authorised to speak on behalf of the company. The one who has the right of disposal is the company, the corporate personality, rather than any person who disposes directly.

This is the stock company and it is a void company in Shar'a. It is one of the transactions which a Muslim is not allowed to participate in. The reason of its invalidity, and the prohibition of dealing with it, appear clearly from the following points:

*Definition of company in Islam is as follows: it is a contract between two or more persons in which they agree to carry out financial work with the intention of gaining profit. It is a contract between two or more persons, so an agreement from only one side is not valid. Rather, it is necessary that the agreement occur from two or more sides. The work of the company must be focussed on performing financial work with the aim of making profit and not on paying the capital. It is also not enough that the aim be partnership only. The work is the basis of the company contract, and financial work has to be by the contractors, or by one of them together with the capital of the other. A contract between two persons in which a person other than these two contractors (signatories) carries out financial work is illegitimate and no one is bound by it. This is because it is only the contractor who is bound by the contract; it applies to his own disposal (dealings) and not on others. So carrying out the financial work must be limited to the contractors, either by both of them or by one of them with the capital of the other. The necessity of carrying out financial work by one of the signatories is a condition in order that the company is legally established makes it inevitable that there must exist in the company upon which the contract is concluded. In Islam it is, thus, a condition that the body must exist in the company, and it is a fundamental element in concluding a company. If the body does not exist, the company will be established and if the body does not exist in the company, then the company is not established and does not exist in the first place.*

Capitalists define the joint stock company as a contract according to which two or more persons contribute to a financial project by providing a share of capital in order to divide the profit or loss that may result from the project. It appears, from this definition and from the reality forming the company by the aforementioned two methods, that it is not a contract between two or more persons according to the divine law (Shari'ah). This is because legally, a contract is an offer and acceptance between two parties of two or more persons. There must be two sides in the contract. One of them is entrusted with the offer by speaking first with the offer of the contract. The statement could be something like 'I married to you or I sold to you', or 'I leased to you', or 'I associated with you', or 'I granted to you.' The other side is entrusted with the acceptance, such as to say 'I accepted', or 'I agreed', or the like. If the contract is devoid of the existence of two sides or an offer and acceptance, then it would not be established, and accordingly it would not be a divine contract.<sup>4</sup>

In the joint stock company, the founders agree on the conditions of partnership. They are directly and actually involved in the partnership when they agree on the conditions of the company, rather than they only negotiate and agree on the conditions. They then draw up a document, which represents the constitution of the company. «This document is then signed by everyone who wishes to enter into the partnership, the signature being considered as an acceptance. Once a person does this, he is then considered as a founder and a partner. In other words his partnership is established once he put his signature or when the subscription period comes to an end. In this case it is evident that there are no two sides who concluded the contract, nor is there an offer and acceptance. Instead, there is one party who agrees on the conditions, and by its acceptance becomes a partner. It can be seen that the joint stock company is not an agreement between two parties, rather it is an agreement of one party on certain conditions. Thinkers on the Capitalist economy and Western law say that the commitment in this type of company is a type of obligation by individual will. The individual will occurs when any person commits himself with a certain matter from his side towards the public or another person, irrespective of the acceptance or non-acceptance of the public or the other person, such as a promise to give a prize. The joint stock company, in their view and in reality, is where the shareholder or the founder or any person

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<sup>4</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.184.

signs a document, commits himself with the conditions contained in the document regardless of the acceptance or non-acceptance of the others. Thus, they consider it as a type of disposal by individual will. The contract of the joint stock company by the individual wills is invalid (Batil) in Shar'a because a contract in Shar'a is the linking of an offer originating from one of the contractors with the acceptance of the other contractor in a way that reveals its effect in the issue in which the contract is concluded. This does not occur in the contract of the share stock company as no agreement between two or more persons occurs in the contract. Rather, one person commits himself, according to this contract, to share in a financial project. Regardless of the number of contractors and partners who committed themselves to that project, the one who committed himself is still considered as one person.

It may be argued that the partners agreed together on the conditions of the company, so their agreement is considered to be an offer and acceptance, and that the writing of the document is just a formal matter to record the contract which they agreed upon. So why is this not considered a contract? The answer to this question is that the partners agreed together on the conditions of the company. However, according to their agreement, they did not consider themselves actually partners, and they did not commit themselves by such an agreement to the conditions of the company. It is allowed for any of them to withdraw and not to associate after their agreement on the conditions has been made and after the document has been written. None of them is committed to their agreement over the conditions, according to their technical terminology, except after he signs the contract. Once he signed the contract, he becomes committed, while before that he is not committed to or bound by anything. Therefore, their agreement on the conditions before signing the contract is not considered, in their view and in the view of the Shar'a, as a contract. This is because the agreement over the conditions of partnership, and over the partnership, is not considered a company contract. According to their agreement, they are not considered obliged to it before the signing, whereas the contract is that the two contracting sides are obliged with. Therefore, their agreement on the conditions of the company and on partnership is not considered offer and acceptance. It is not considered, according to the divine law and even in their own view as a contract.

It may also be said that the acceptance of the partner to sign the contract should be considered as an offer from his side towards the others and the signature of the next person is considered as acceptance. It may be asked why offering the document detailing the contract is not considered an offer and its signing not considered acceptance. The answer is that every partner who signed the contract has only accepted, but the offer did not originate from any particular person. There is no offer, either from the founders or from the first signatory; there is only acceptance from every partner. Thus the signatory accepts and commits himself with the conditions without them being presented as an offer of disposal from anyone, without anyone offering to him: 'I shared with you.' The action of giving him the document for signature is not considered an offer. The reality of the share stock company is that every partner has only accepted, and acceptance added together with acceptance is not considered a contract in Shar'a. There must exist an offer in words which indicates offer not acceptance. The acceptance then comes after that in words, which indicate this explicitly. Nobody who signed the company document is therefore considered as an offerer; they are all acceptors. Thus, only acceptance without offer has originated in the share stock company, so the company is not concluded.

The Capitalists call the document of the company its constitution and consider this as a contract. They also say that the contract was signed. However, in Shar'a, this document is not considered a contract for a contract is an offer and an acceptance between two parties. The share company is therefore not considered a contract in Shar'a.

In addition, there is no agreement in the contract to undertake financial work for the purpose of gaining profit. Rather the founder or the subscriber agrees to pay money into a financial project, so it is devoid of the element of an agreement to carry out work. Instead it only contains the individual commitment from the person to provide property, without any reference to the work in that commitment. Only carrying out the financial work rather than partnership is the aim of the company, and so the absence of agreement to carry out work in the contract invalidates the contract. A company does not, therefore, merely exist because there is an agreement to contribute capital only, as there is no agreement to carry out the financial work. From this discussion it can be concluded that the company is invalid (Batil).



It can be argued that the document of the company may have included the type of work, which the company carries out, such as production of sugar or trading. There was, therefore, an agreement to carry out financial work. However, the type of work mentioned is the work, which the company may carry out and no agreement existed on the part of the partners that they will carry it out. They only agreed on being partners and on the conditions of the company conducting the work was left to the corporate personality, which the company would have its establishment. Thus, no agreement occurred between the partners to carry out any financial work themselves.

In addition to this, it is necessary that the body (Badan) which is the disposing person in the company in Islam. What is meant by the body (Badan) in the company, in trading (selling), hiring and the other contracts is the disposing person, not the physical body or effort. The existence of the body is an essential element in establishing the company. If the body did not exist, the company could not have been established. The share stock company has no body (Badan) at all, and in fact it intentionally removes the personal element from the company. The nature of the share stock company is a contract between properties only. The personal factor does not exist as the properties alone and not their owners are associated with each other.

In other words, the properties associate with each other without the existence of a body. The absence of an associating body means the company is not established and it is invalid in view of the Shar'a. Shar'a dictates that the body is the disposer of the property, and the disposal of the property depends upon it alone. If the body does not exist, then disposal cannot exist.

The people who own the capital are the ones who directly agree on the subscription of the shares, and they elect the board of directors who carry out the work in the company. However, this still does not mean that there is a body in the company, for their agreement is upon electing the property as a partner rather than themselves as partners. So the property and not its owners is the partner. With regard to their election of the board of directors, this does not mean that the boards are their deputies. Rather their property has been represented by deputies (the boards) selected by them, and no deputation was made on their own behalf. The evidence for this is that the shareholder has votes equal to his shares, so the person who has one share would have



one vote or one deputy. The person who has one thousand shares would have one thousand votes; there is one thousand deputies. So the deputation is on behalf of the property and not the person. This indicates that the element of the body is missing from the company, which is composed of the element of property only.

The definition of the share stock company thus indicates that it does not contain the necessary conditions required for establishing a company according to Islam, as no agreement exists between two or more persons. Rather it is a commitment made by an individual will from one side. Furthermore, no agreement has occurred to carry out a work; instead, one person commits himself to offer property. There is also no body, which practises the disposal in his personal capacity; rather it is only property without a body. The contract of the share stock company is thus invalid. It is invalid, because it was not established as a company, as defined by Islam.

The company is a contract over the disposal of property. Thus, the increase of the property by forming a company is an increase of ownership. Increasing ownership is one of the disposals allowed by Shari'ah. All the Shari'ah disposals are verbal disposals, which originate from a person and not from property. The increase of the ownership must result from the one who can dispose, that is, from a person and not from property. The share stock company assumes the increase of property by itself without a partner, which is a body, and without a disposing person endowed with the right of disposal. Instead, it assigns the disposal for the property, because the share stock company consists of properties gathered together and got the right of disposal. The company is accordingly considered a corporate personality, which alone has the right of legal disposal like selling, buying, manufacturing and suing. The partners do not have a legal right of disposal; rather the disposal is confined to the personality of the company. In the Islamic company, the disposal originates only from the partners, and each one of them disposes by permission of the others. The property of the partners as a whole does not have the ability of disposal; disposal is confined to the person of the partner. The actions, which originate from the company in its corporate personality are therefore invalid in the view of Shar'a. This is because the disposal should originate from a certain person and this person should be one of those who has the right of disposal (partners), a matter which is not fulfilled in the share stock company. It

incorrect to say that those who carry out the work are the hired labourers and that are employed by the shareholders who are the owners of the capital. And that the ones who handle the administration and disposal are the director and his board, who are deputies of the shareholders. This is because the partner is designated personally into the company, and the contract of the company was concluded on him personally so he is not allowed to deputise somebody to carry out the activities of the company on his behalf, nor to hire somebody to carry out the activities of the company on his behalf. He must carry out the activities of the company by himself. Therefore, if partners are not allowed to employ labourers to carry out the work on their behalf, nor to deputise a board of directors on their behalf. Also, the board of directors is not a deputy of the shareholders, it is merely a deputy of their properties, because the person who is elected to the board is elected by the votes which are according to the amount of shares in the company not the shareholders. Moreover, the director and the board of directors do not have the right of disposal in the company for the following three reasons:

Firstly, they act as deputies for the shareholders, who are the partners by electing them. A partner should not deputise for himself: because he is the one on whom the company was concluded. This is similar to the fact that it is also not allowed for somebody to deputise another person to marry on his behalf. He is, however, allowed to deputise somebody to make the marriage contract on his behalf. Similarly, he is not allowed to deputise somebody to enter into partnership on his behalf. However, he is allowed to deputise somebody to conclude the company contract on his behalf, but not to be a partner on his behalf.

Secondly, the shareholders who are also the partners have deputised the board on behalf of their properties not on behalf of themselves. The evidence for this is that the election votes themselves are considered for deputation, and these votes are considered according to the quantity of shares and not according to the shareholders. The deputation is thus on behalf of their properties and not on behalf of their persons.

**Thirdly**, shareholders are partners of property only and not partners of body. The partner of property has absolutely no right of disposal in the company. It is not valid for him to deputise anybody to dispose in the company on his behalf. Thus, the disposal of the company's manager and the board of directors is considered invalid in Shar'a.

The fact that the stock company is permanent contradicts Shar'a. The company is legally of the type of permissible contract which becomes null by the death, insanity or the incompetence of one of the partners and by dissolution requested by one partner when it is formed of two partners. If the company was composed of more than two partners, then the partnership is dissolved if a partner dies or becomes insane or is judged as incompetent. If one of the partners dies and he has a person to inherit from him, then the matter is examined. If the inheritor is not mature, he has no right to continue in the company. If he is mature, he has the choice to endorse the company and the other partner gives him the permission of disposal, or to demand the dissolution of the company. If the partner was judged incompetent, the company is dissolved, because it is necessary that the partner has the ability of disposal. If the share stock company is permanent, and it continues to function despite the death or the incompetence of any of the partners, then it is invalid (Fasid). This is because it included an invalid condition which is related to the continuity of the company and the nature of the contract.<sup>6</sup>

In summary, the share stock company is not established as a company in the first place, those who exist are partners of property only and there is no partner of body. The presence of a partner of body is an essential condition, for the company is established as a company by him. Without him, it would not have been established. In the share stock company however, the partnership in the view of those who form it, exists by the presence of partners of property only. The company functions and conducts activity without the existence of a partner of body. It is an invalid company, as it was not established as a company according to the Shar'a. Those who carry out the actions in the company are the board of directors who are deputies for the shareholders that is for the property partners. The partner is not allowed, in Shar'a, to deputise anybody with the right of disposal in the company on his behalf whether he was a property

<sup>6</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P. 186.

partner or a body partner. The contract of the company is concluded on him personally, so he has to act by himself. It is incorrect to deputise or hire somebody who takes charge of disposal and representation in the company on his behalf. From Shar'a view, the partner of property only has no right of disposal in the company, nor has he the right to work in the company as a partner in any way. The right of disposal and to work in the company is confined to the partner of body only. Moreover, the share stock company becomes a corporate personality which has the right of disposal. However, these actions are only accepted in Shar'a from a person who has the competence to dispose and is mature and sane, with a discerning mind. Any action that does not operate in this sense is invalid from the viewpoint of the Shar'a. Entrusting the disposal to a corporate personality is thus not allowed; rather it should be referred to a human being who has the competence of action. It can be concluded that the share stock companies and their actions are invalid. All the properties earned through them are invalid properties, which were earned by invalid actions, so they are not allowed to be owned.

### 3.1 Shar'ah of the Share Stock Company<sup>7</sup>

The shares of this type of company are currency notes which represent the value of the company at the time of its evaluation not the capital of the company at the time of its establishment. The share is an indivisible part of the entity of the company and it is not a part of capital. It is a form of security paper representing the value of the company's assets. The value of the share is not fixed and can change according to the profits or losses of the company. It is not fixed for many years but can change. The share stocks do not therefore represent the capital paid at the time of the establishment of the company but the capital of the company at the time of trading at a certain time. It is like the currency paper or bank note whose value falls when the market declines and rises when the share market rises. The share thus ceases to be capital after the company starts its work; rather it becomes a currency note which has a certain value.

The divine law (Hukm Shar'i) with regard to currency notes must be examined. If they are currency notes which include sums of Halal money like the currency notes which are backed by

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<sup>7</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.187.

ent amount of gold or silver or the like, then buying or selling them is allowed (Halal) if the property they include is Halal. However, if they were security notes that represent Haram property like bonds of debt in which the property is invested by usury, or bank and the like, then their trade is prohibited (Haram) as the property they represent is Haram. If the stock companies are security notes, which include mixed sums of Halal capital and profit through a contract and transactions, which are considered invalid in Shar'a, there is no distinction between the original property and the profit. Each security note represents a share from the assets of the invalid company. These assets have been earned by an transaction forbidden by Shar'a, so this property is Haram. The stocks of the share stock company thus, include sums of Haram property. Consequently, these currency notes, which are Haram property, and are forbidden to be sold, purchased or dealt in.

The above discussion raises questions about the Muslims who buy shares of these companies, associate in establishing them, or hold shares due to their subscription in. such companies. Was their action Haram, even though they were ignorant of the divine law (Hukm Shar'i) at the time of their subscription into these companies? Or if some scholars, who did not know the reality of the share stock company, gave them a fatwa (of permission) with regard to them, are these stocks and shares which are owned by them Halal properties, even though they were earned by a void transaction in Shar'a? Or are they Haram, and accordingly not owned by them? And are they allowed to sell these shares to other people or not?

The answer to these questions is that ignorance of the divine law (Hukm Shar'i) is not an excuse because it is compulsory upon every Muslim to learn about that which he needs in his life according to the divine laws (Ahkam Shari'ah) so that he can carry out all his actions according to the law. If that law is one of those laws, which are usually unknown for such persons, then he is excused for that action and it would be a valid action for him, even though it is invalid in Shar'a. This is because of the narration: "the Messenger (SAW) heard Mu'awiya ibn Al-Hakam narrate for someone who sneezed while he was in prayer. After they finished the prayer, the Messenger of Allah (SAW) taught him that speaking during the prayer would nullify it, and that for the one who sneezes nullifies the prayer, but he (Messenger of Allah (SAW)) did not require him to perform the prayer again." This is the meaning of what was narrated by Muslim and



from 'Ata'a ibn Yasar. This is because the rule (not talking during the prayer) was unknown to such a person and so the Messenger of Allah (SAW) excused him and considered his prayer valid. The prohibition of the share stock companies in view of the Shar'a is of the rules whose like is unknown to many Muslims and so their ignorance can be excused. The action of those who took partnership in them is considered valid, though the companies are like the prayer of Mu'awiya ibn al-Hakam, which is considered valid though he did something in it that invalidates it, as he did not know that talking during prayer invalidates it. The opinion given by the scholars also takes the rule of ignorance with respect to the one who seeks the opinion. However, the scholar who gives the opinion is not excused because he did not exhaust his effort to understand the reality of the share stock companies before he gave an opinion about them. With regard to the ownership of the shares by the shareholders, it is a valid ownership and the shares are Halal properties so long as Shar'a judged that their action was valid. It is not allowed as they are excused for being ignorant of its invalidity. Selling these shares to Muslims, however, is not allowed, because in Shar'a they are invalid currency notes and the allowance of their ownership is incidental, i.e. based upon ignorance of the hukm that was excused. When the law about it becomes known, then it becomes a Haram property that is not allowed to be bought, nor can one delegate to other Muslims to sell it for him.

The way to dispose of these shares, which were owned due to the ignorance of the divine law, is to dissolve the company or transform it into an Islamic company. Alternately one can find a Muslim who considers the shares of the share stock company allowed and delegate him to sell the shares on his behalf and then receive the subsequent proceeds. It was reported from 'Umar ibn al-Ghafala<sup>1</sup> "that Bilal said to 'Umar ibn al-Khattab: "Your administrators ('Ummal) are selling wine and pigs as Kharaj." He said, "Don't take (these things) from them, but delegate them to sell them and take their price" narrated by Abu 'Ubayd in Al-Amwal. No one denied this action of 'Umar, though it would have been denied if it disagreed with Shar'a, so it became Ijma'a. Wine and pigs are of the properties of the Thirnmis and cannot be properties for Muslims. When they wanted to give them to Muslims in exchange for Jizya, 'Umar ordered Muslims not to accept them but to delegate them to sell them and take the proceedings. Since shares are of the

<sup>1</sup> Mu'awiya ibn al-Hakam: He is one of the prophet (SAW) Group, (Companion of the prophet).

<sup>2</sup> 'Umar ibn al-Ghafala: He is one of the prophet (SAW) Group, (Companion of the prophet).



properties and cannot be of the properties of Muslims, and they were passed to their hands, so it is not valid for Muslims to take them. Instead, they have to delegate to them. Just like the right of Muslims in Jizya and Kharaj has been confirmed in wine and pigs, Umar allowed them to let the Thimmis sell them on their behalf, it is also the right of Thimmis in these shares that they are allowed to delegate the Thimmis to sell the shares for them.

### Co-operative Societies<sup>10</sup>

A Co-operative is one kind of share stock company. It is a company even if called a Co-operative. It means participation between a group of people who agree amongst themselves to work according to their individual activities.

The Co-operative originates in the usual trading form aiming to help its members or to protect their defined economical interests. Thus; the Co-operative is a corporate body regarding its rights and duties; although it differs from the other Co-operatives, which are not economically oriented. The Co-operative works to increase the profit of its members, not the interests of others, which requires establishing a strong linkage between its economic activity and the business activity (business) of each of its members.

A Co-operative is formed between as many as seven or more members or as few as three, but cannot be less than that. Co-operatives may be of two types: One is a company with established shares where any person in the company may be considered a partner by virtue of owning shares. The second is a company with no established shares, where joining the company is achieved through paying an annual fee decided at the annual general meeting.

Conditions must be fulfilled in the Co-operative<sup>11</sup>

**Firstly:** Freedom of joining the Co-operative. Subscription stays open for everybody, according to the same conditions that applied for preceding members. Where the Co-operative

<sup>10</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.195.

<sup>11</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.196.

and reservations are applied on the new members, whether these laws were of a local nature like those for the people of a village, or they were of professional nature like those for hairdressers (Hairdressers) as an example.

**Secondly:** Co-operative members have equal rights, particularly the right of voting, thus every member is given one vote.

**Thirdly:** A specified profit is assigned for the shares. The Co-operative pays to its shareholders a certain profit, provided the profits of the company allow.

**Fourthly:** The surplus profits of the investment are repaid, where the net profits are shared amongst the members in proportion to the transactions they carried out with the Co-operative, such as purchases or use of the utilities and facilities of the Co-operative.

**Fifthly:** Crediting the reserve funds must form a Co-operative fund.

The authority, which runs the Co-operative through its management and carries out its business is the board of directors elected at the annual general meeting and formed from the shareholders, where every shareholder has a vote irrespective of the number of his shares. So one hundred shares is no different from a shareholder with one share, and each of them has an equal vote in electing the directors.

Co-operatives are of many kinds, like professional Co-operatives, the consumer Co-operatives, agricultural Co-operatives, and production Co-operatives. These Co-operatives, as a whole, are divided into consumer Co-operatives, where profits are divided according to purchases, or production Co-operatives, where the profit is divided according to the production.

This describes the Co-operatives, which are invalid and contradict the principles of Islam according to the following:<sup>12</sup>

The Co-operative is a company, so it should fulfil the conditions of a company as stated by the scholars in order to be valid. The company in Islam is a contract between two or more persons, in which they agree to run an economic project for the purpose of achieving a profit. Therefore, there must be a body so that partners carry out the activity of the company. In other words, the company should include a body (partner) that has a share in the company to be legal. Thus if there did not exist a partner in the company who has shares in it and additionally runs the work with the company was established for, then no company exists. If we apply these conditions to Co-operatives, we find that they are not legally valid companies, because they are built upon capital (capital) only. They are not based on an agreement to carry out work; the agreement is to provide capital and establish a management that will run its activities (work). Therefore, the people who subscribed to the companies only associate together via their properties (capital); the company does not have a body. Accordingly, the Co-operative does not represent a legal company, as it does not include a body. It is considered non-existent in the first instance as the company is a contract to manage capital, and this action requires a body. When a company has no body it fails to be a company from the Shar'a point of view.

Furthermore, distributing profits proportional to purchases or according to production, rather than relative to the capital or relative to the work is not allowed. If the company was concluded on the basis of capital then the profit should be determined by the capital, and if it was concluded on the basis of work it should also be determined by work. So the profit follows either the capital or the work, or both of them. But to stipulate the distribution of the profit according to purchases or according to production is not allowed, because this contradicts the contract in the opinion of the Shar'a. And every condition that contradicts what is required by the contract or it is not for the fulfilment of the contract, is an invalid condition (Fasid). Distributing the profit according to purchases or according to the production contradicts what is required by the contract, because the contract in the view of the Shar'a, applies upon the property (capital) or the work, so the profit

<sup>12</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.196.

be in proportion with the capital or the work. If it is stipulated according to purchases, or production, it would be an invalid (Fasid) condition.

### **Insurance (Ta'meen)<sup>13</sup>**

Insurance whether on life, goods, property or any of its numerous types is a contract. It is a contract between the insurance company and the insuring person in which the latter asks the insurance company to give him a promise that it will compensate him for that ('Ayn) which is destroyed or for its price with regard to goods or property, or a certain sum of money with regard to life and the like. This takes place if the accident occurs within a defined period, in exchange for a certain amount of money (premium); and the (Insurance) company accepts this.

Based upon this offer and acceptance, the insurance company undertakes to compensate the insuring person, within certain conditions approved by the two sides, either for the thing lost or its price when an accident occurs, or a sum of money which they have agreed upon. In the event of his goods being destroyed, his car being damaged, his house being burnt, his property being stolen, him dying or the like occurred during a certain period of time, he is compensated, in exchange for a certain amount of money (premium) which the insuring person pays to the company during that defined period of time.

It appears from the above that insurance is an agreement between the insurance company and the insuring person over the type of insurance and its conditions, so it is a contract. However, according to this contract which was concluded between the two sides the agreement, the company gives an undertaking to compensate or to pay a certain amount of money within the defined conditions. So if an accident occurred to the insuring person upon which the terms of the contract apply, then the company becomes obliged to compensate him for the destroyed thing or according to the market price at the time of the accident. The company is free to pay the compensation or to compensate for the loss to the insuring person or to others. This compensation is a right due to the insuring person, in the company's responsibility (Thimma) once the

<sup>13</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.188.

mentioned in the contract has occurred, provided the insurance company is convinced that it or if the court gave such a verdict.

The term 'insurance' has been used in this matter. Insurance could be to the benefit of the insuring person, or to the benefit of others such as his children, wife, inheritors, or any other person or group (beneficiary) assigned by the insuring person. Calling this contract 'life insurance', or insurance on goods, the voice or any other asset is aimed to market this transaction to the people. Otherwise, the fact of the matter is that the insuring person does not insure his life. Rather, he insures that a certain sum of money will be paid to his children, wife or inheritors or any other named beneficiary designated by him, when his death occurs. Similarly, he does not insure his goods, car, property etc: rather, he insures so as to be compensated for the insured or its price in case it is injured or damaged. So it is, in fact, a guarantee (Damaan), for him to obtain a certain sum of money or compensation if something occurred to him that was his life or damaged his property, and therefore it is not a guarantee for his life or his property. This is the reality of insurance. The accurate study of it shows it to be invalid [Batil] in two angles:<sup>14</sup>

**Firstly:** It is a contract because it is an agreement between two parties, and it includes offer and acceptance, where the offer is from the insuring party and the acceptance is from the insured party. So in order that this contract be legitimately valid from the Shar'a (divine revelation) point of view, it must contain the Shar'a conditions of the contract. If it contains such conditions, it becomes valid; otherwise not. From the Shar'a point of view, the contract should apply upon an object or a benefit. So if it did not either apply upon a thing or benefit it would be invalid, because it would not apply upon a matter that makes it a legitimate contract. This is so because a legitimate contract applies either to a thing in exchange for something else as is the case with forward buying/advance sale (Salam), company and the like; or it applies upon a thing in exchange like the gift; or it applies upon a benefit in exchange for compensation like insurance or to a benefit without compensation like lending. Thus, the legitimate contract must be upon something.

<sup>14</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.190.



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The insurance is not a contract that applies upon an object or a benefit; rather it is a contract that applies upon a pledge guarantee (Damaan). The pledge or the guarantee does not have an object for it cannot be consumed or its benefit be used; nor does it represent a benefit because no benefit derives from that guarantee itself either by leasing or by lending. As money is based upon this guarantee, this is not considered its benefit; rather it is a benefit of a transaction. Therefore, the insurance contract is not considered to apply upon a thing of benefit, and it does not include all of the conditions required by the Shar'a in a legitimate contract, so it is void.

**Secondly:** The Company gives a pledge to the insuring person within certain conditions, in the form of guarantee (Damaan). Accordingly, the conditions required by Shar'a in relation to a guarantee have to be applied to the insurance contract so as to be considered a legitimate contract. If it contained these conditions, it would be legitimate, otherwise not. Referring to the above, we find:

The guarantee is where the guarantor (Daamin) joins his responsibility (Thimma) to the responsibility of the person guaranteed for (Madhmoon 'Anhu) in committing oneself to a certain contract (Taqq). So it must include joining one's responsibility to another's responsibility; also there must be a guarantor, a person guaranteed for and a person guaranteed (Madhmoon Lahu). Therefore, the guarantee is the mandatory commitment (Eltizam) of a right as one's responsibility for compensation. A condition of the guarantee's validity is that it should be with regard to a right which is already due (for repayment) or which will become due. Therefore, if the contract was not in respect of a due right or a right that will become due, the guarantee is not valid. So because a guarantee is the joining of one's responsibility to another's responsibility in relation to its fulfillment, so if there is no right in the responsibility of the person guaranteed for, there is no joining of responsibilities. This is quite clear in the due right.

As for the right which will become due later, as for example when a man says to a woman 'Marry this person and I guarantee your dowry', the guarantor has joined his responsibility to the responsibility of the person guaranteed for such that the guarantor will be like the guaranteed for, and that which is proved in the responsibility of the guaranteed for



proved in the guarantor's responsibility. Whereas, if there is no right due upon anyone that will become due later, then there is no meaning to the guarantee as there is no responsibility; such a guarantee therefore is not valid. Therefore, if the right was not on the neck of the person guaranteed for or it does not become due later, the guarantee is valid. This is because it is a condition that the person guaranteed for has a guarantor for an item that is damaged or destroyed, or he is responsible for a debt whether the matter is actual in the case where the right was due and proved to be his responsibility or he is potentially responsible in the case where the right will become due later. So, if the person guaranteed for was responsible, whether immediately or potentially, the guarantee is invalid because whatever is due upon the person guaranteed for is not due upon the guarantor. So, for example, in the case of a person who receives clothes from (a cleaner), and somebody told another person: 'Send your clothes to him and I will guarantee them.' If the clothes were then damaged, would the guarantor be responsible for the price of the clothes on behalf of the person who received them? The answer follows: If the clothes were damaged without his (the cleaner's) action or negligence, then the guarantor guarantees nothing because, in the first place, the person guaranteed for (the cleaner) bears no responsibility for the damage. Since the principal (Aseel) is not liable for the damage, then, with greater reason, neither is the guarantor. Therefore, there should be a right due upon the person guaranteed for from other people, or it will become due later, in order that the guarantee becomes valid. So establishing the right for the person guaranteed for, whether immediately or potentially, is a condition for the validity of the guarantee. However, it is not a condition that the person guaranteed for (Madhmoon 'Anhu) nor the guaranteed person (Madhmoon Lahm) be named; thus the guarantee will be valid if these were unknown (i.e. not named). So if a person said to another: 'Give your clothes to a cleaner,' and the latter said: 'I am responsible that he will damage them.' Then the former responded: 'Give your clothes to a cleaner and I will guarantee them if they are damaged' without specifying the cleaner, the guarantee is valid. So if the person guaranteed for was a cleaner and they were damaged, the guarantor would be responsible even if the person guaranteed for was not named. Similarly, if he said: 'so and so is a good cleaner, and I will guarantee him against any damage for any person who gives to him his clothes,' the guarantee is valid though the guaranteed person is unknown.<sup>15</sup>

<sup>15</sup> Azain, IsJam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P. 191.

It is clear in the evidence of the guarantee that there is a joining of one's responsibility to another's responsibility, and it is a guarantee of a right due upon the responsibility (Thimma). It is clear that there is a guarantor, a person guaranteed for and a guaranteed person. It is also clear that it is given without compensation, and that the person guaranteed for and the guaranteed person could be unknown. The evidence for that is what Abu Dawud narrated from Jabir who said that the Prophet (SAW) would not pray over any person who died while indebted. A dead man brought. He (SAW) said: 'Is he indebted?' They said: 'Yes, two dinars.' He (SAW) said: 'Pray over his companion.' Abu Qatadah al-Ansari<sup>iii</sup> said: 'O Messenger of Allah, they are upon me.' The Messenger of Allah (SAW) then prayed over him. When Allah (SWT) opened the land (for the Messenger of Allah (SAW)), he (SAW) said: 'I am more entitled to (the right due for) every believer than his own soul. So if anyone leaves a debt it is upon me to pay and whoever leaves wealth it is for his inheritors.' It is clear in this Hadeeth that Abu Qatadah had joined his responsibility to the responsibility of the dead man in committing a right due upon the debtor. And it is clear in the Hadeeth that the guarantee includes a guarantor, a person guaranteed for and a guaranteed person; and the guarantee which each of the dead person and the guarantor: guaranteed to pay was a right due upon the responsibility (of the deceased) and it was given without compensation. It is also clear that the person guaranteed for i.e. the deceased and the guaranteed person the owner of the debt were known at the time of the guarantee. So the Hadeeth contained the conditions for the validity of the guarantee, and the conditions for its contracting (Shoroot Al-En'iqad).

This is the guarantee in view of the Shar'a. By applying the pledge of insurance, which is a guarantee, upon it, we find that insurance is devoid of all the conditions, which the Shar'a enunciated regarding the validity and contracting of the guarantee. In insurance, there is no joining of a responsibility to a responsibility in any way. The insurance company did not join its responsibility to the responsibility of another to commit itself in paying money due to the insured person so there is no guarantee; thus the insurance is void. In insurance, there is no right due to the insuring person from anyone that the insurance company committed

<sup>iii</sup> Abu Qatadah al-Ansari: He is one of the prophet (SAW) groups (Companion of the prophet).

to pay. This is because the insuring person has no financial right against anyone that the company guaranteed, so insurance is devoid of the financial right. So the insurance company did not commit itself to any financial right so as to validate it as a guarantee in Shar'a. Moreover, the company was committed to pay of compensation, price or money, was not a right due to a guaranteed person from other people at the time of concluding the insurance contract, whether immediately or potentially, so as to validate it as a guarantee. So the insurance company has not guaranteed that which is not due either immediately or potentially, making the guarantee invalid. The insurance consequently becomes void. Furthermore, insurance does not include a person guaranteed for, because the insurance company did not guarantee for anyone a right due upon him as to be called a guarantee; thus the insurance contract was devoid of an essential element required to exist in the view of Shar'a, namely the presence of the person guaranteed for. This is because it is essential that there should exist in the guarantee, a guarantor, a person guaranteed and a guaranteed person. Since the insurance contract did not include a person guaranteed, it is void. Additionally, when the insurance company pledged to compensate for the object or its price if it was damaged, or pay money in case an accident occurred, it pledged to make a payment in return for a certain amount of money (or premium). So this is a commitment made in return for compensation which is not allowed, as one of the conditions for the validity of a guarantee is that it is without compensation. Thus the presence of compensation (premium for the insurance company) invalidates it.<sup>17</sup>

This clarifies the extent to which the contract of insurance is devoid of the conditions of a guarantee, which Shar'a has stated, and its failure to satisfy the conditions for concluding the contract and the conditions for its validity. Therefore, the pledge document (Sanad), which the insurance company gives, guaranteeing thereby compensation and price or guaranteeing property is void on this basis, such that insurance, in its totality, is void in the view of Shar'a.

Therefore, Shar'a prohibits insurance in its totality, whether it is insurance on life, goods, or any other thing(s). The reason for its prohibition is that its contract is void in the view of Shar'a and the pledge, which the insurance company gives according to this contract, is void.

<sup>17</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.194.

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ing to Shar'a. So taking money because of this contract and this pledge is prohibited, and it  
sidered to be the earning of money illegitimately which is included as illicit money (Mal as-

## THE PROHIBITED METHODS OF INCREASING OWNERSHIP

The Islamic Shar'a made the increase of ownership restricted with limits, which are not to be violated. Hence, a person is prevented from increasing ownership in certain ways, which are:

### Gambling<sup>1</sup>

Shar'a prevented gambling absolutely, and it considered the property earned by this means as haram (forbidden) and not owned.

(SWT) said:

**O you who believe!** Verily khamr (alcohol/intoxicants) and gambling and idols and arrows are only an infamy of Satan's handiwork. Leave them aside in order that you may succeed. Satan seeks only to cast among you enmity and hatred by means of his arrows and games of chance, and to turn you away from remembrance of Allah and from His prayer. Will you then stop (doing that)?"<sup>2</sup>

Prohibition of intoxicants and games of chance was emphasised in this verse in many ways of which the verse was started with 'Inna' which is an article of emphasis; and they were linked with the worshipping of idols, and considered filth (Rijs).

(SWT) said:

**Do not approach** the filth (rijs) of idols".<sup>3</sup>

Moreover, they were made of Satan's handiwork, and nothing comes from Satan except complete evil; and they were ordered to be avoided; and in avoiding them is the success, and if committing them is a success, committing them is a failure and destruction. It was also mentioned

<sup>1</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.400.  
<sup>2</sup> Al-Ma'wah Surah, Ayat: 90-91.  
<sup>3</sup> Al-Hafu, Surah, Ayat: 30.



which occurs of them of harm (evil), which is the hostilities and hatred that happen between people, of wine and gambling, and what they lead to in turning away from remembrance of (SWT) and from observing the prayer times. His (SWT) saying: "Wm you then stop (that)?" is one of the most eloquent forms of banning. This form of speech is like saying: "I have been recited upon you what wine and gambling have of distractions and prohibitions, so why are you not giving (them) up, after these distractions and prohibitions?" One form of gambling is chess, whatever is its type and whatever reason it was made for. Another type of gambling is betting on horse races. The property earned by gambling is Haram and not allowed to be owned.

#### Interest/Usury (Riba) 4

Shar'a prohibited usury absolutely, regardless of its percentage, whether it was high or low. The usury gain is definitely Haram; nobody has the right to own it, and it has to be returned to the original owners if they were known.

(SWT) said:

Whoever who devour (take) interest (riba) cannot stand except as the one whom the Satan, by his touch, drives him to madness. That is because they say: Trade is just like riba, whereas Allah permitted trade and forbade riba, The one to whom an admonition from his Lord comes and he refrains (in obedience thereto), he shall keep (the profits of) that which is his and his affair (henceforth) is with Allah. As for him who returns (to usury), such are the owners of the fire, They will abide therein eternally".<sup>5</sup>

(SWT) said:

O you who believe! Observe your duty to Allah, and give up what remains of your demands for usury, if you are (in truth) believers. And if you do not, then take notice of war (against you) from Allah and His Messenger. And if you repent then you have your capital (without interest), Deal not unjustly, nor be dealt with unjustly".<sup>6</sup>

<sup>5</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.203.

<sup>6</sup> Al-Baqarah Surah, Ayat: 275.

<sup>7</sup> Al-Baqarah Surah, Ayat: 278-279.



The true reality of usury is that the interest which the usurer takes is an exploitation of the people, and it is a recompense without spending any effort; and because the money which usury is taken is of secured interest, not subject to any loss, is a matter which disagrees with the general rule which states: 'Loss goes with the gain.' Tuerkmenistan, investing the property by Mudharaba and sharecropping within their conditions is allowed as the community benefits from them and the effort of other people is not exploited, but they are rather a means which enables them to benefit from their own effort, and this investment is subject to loss as it is not a profit, a matter which is different than usury. However, prohibiting the usury was by Allah which was not reasoned, and the Ahadeeth of the Messenger of Allah (SAW) explained the commodities in which usury (increase or decrease) is prohibited. Anyhow, it may occur to the person who possesses a property will keep it for himself, and he may not be willing enough to lend it to the needy in order to meet their needs. Such need will press on the person, so there should be a means to meet such need. Moreover, the needs, nowadays, have become numerous and varied, and usury became the foundation of trading, agriculture and industry. Therefore, banks were established to deal with usury, and there is no way other than that there is no way other than usurers to meet the needs.

The answer to this is that we talk about the society in which the whole of Islam including economic aspects, is applied, not about the society in its current situation. This is because the current society is run according to the Capitalist system; therefore, the bank emerged in it as one of its necessities. So the owner of the property who sees himself free in his ownership, and he is himself free to exploit by cheating, monopoly, gambling, usury and such like, without restriction from a government or restriction by a law no doubt, considers usury and the bank to be his necessities.

The current economic system has to be changed completely and to be replaced, radically and completely, by the Islamic system of economics. If this system was removed and the Islamic system was applied, then it will appear to the people that in the society in which Islam is applied, there does not appear to be necessary, because the one who needs to borrow, needs that for either trading or farming. In regard to the first need, Islam meets it by securing the livelihood for every person. As for the second need, Islam meets that by lending to the needy without usury, Ibn

narrated from Ibn Mas'oud that he said that the Messenger of Allah (SAW) said: "Any Muslim who lends (to) another Muslim twice, surely it would be counted as one charity." Lending to the needy is recommended and borrowing is not disliked, it is rather recommended because the Messenger of Allah (SAW) used to borrow. And since borrowing exists; and it is recommended for the borrower and the lender, then it became apparent that usury is one of the severe harms to economic life. It rather became obvious that it is necessary to eliminate it and to establish thick barriers between it and the society by legislation and direction in accordance with the system of Islam.

If usury was eliminated then there would be no need for the banks, which exist today. The Bait ul-Mal (treasury fund) will remain the only lender of property without interest after removing the possibility of benefiting from the property. 'Umar ibn al Khattab gave the farmers in Iraq properties from the Bait ul-Mal to (help them) use their land'. The divine law (Shari') states that the farmers are given from the Bait ul-Mal properties which help them use their land, until the crops are collected. Imam Abu Yusuf said: 'The needy is given a property as a loan from the Bait ul-Mal which he needs in order to work in his land.' As the Bait ul-Mal lends to farmers for agriculture, it lends to others like the craftsmen who carry out manual work or things they may need to maintain themselves. 'Umar gave to the farmers because they were in need to meet their own livelihood; so the rich farmers would not be given anything from the Bait ul-Mal to increase their production. By analogy with farmers, any other people similar to them in need for meeting their own livelihood are provided for. The Messenger of Allah (SAW) gave a man a rope and an axe to cut wood for gaining his food.

However, avoiding usury is not subject to the existence of the Islamic society, or the existence of the Islamic State, or the existence of the one who lends the property, rather usury is avoided and it must be avoided whether there is an Islamic State or not, and whether there is an Islamic society or not, or there are those who lend property or not.<sup>7</sup>

<sup>7</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.205.

## Criminal Fraud

Fraud, linguistically means deceit, so if it is said that he defrauded him in selling and means that he deceived him, and subdued him.. Deceiving in the price means to sell for more or less, than it is worth. Criminal fraud is prohibited in Shar'a because it was in the authentic Hadeeth that deception is forbidden decisively. Bukhari narrated from Muhammad ibn 'Umar that a man mentioned to the Prophet (SAW) that he deceives in trading; the Messenger of Allah (SAW) said: "If you entered into trading say there is no deceit (khilaba)." Muhammad ibn Hanbal narrated from Anas "that a man at the time of the Messenger of Allah (SAW) was trading while he was mentally weak; his relatives came to the Messenger of Allah (SAW) and said "O Prophet of Allah, declare so and so person as legally incompetent (prevent him from trading) because he trades while he is feeble minded; so the Prophet of Allah (SAW) invited him and forbade him from selling; he said: 'O Prophet of Allah, (SAW) cannot bear not to trade.' The Messenger of Allah (SAW) said: "If you are not going to stop trading, say: look at this look at that, there is no deceit". Al-Bazzar narrated from Anas that the Messenger of Allah (SAW) forbade selling animals left unmilked (as deception).

These Ahadeeth demanded giving up deception, which indicates that forbidding of the deception was decisive. Therefore, deception is Haram (prohibited). But in fact, the deception that is Haram is the criminal (excessive) deception (or fraud), because the reason for prohibiting it is that it was a deception in the price; but this would not be called a deception if it was as it would then be a form of skill in negotiation. So deception is only considered fraud if it is excessive. If fraud was proven, the deceived person has the choice to abrogate the sale or to conclude it if fraud appeared in the sale then the deceived person has the choice to return the commodity and take the commodity if he was the seller, and to return back the commodity and take the money if he was the purchaser. But he is not allowed to take the indemnity i.e. the difference between the actual price of the commodity and the sale price. This is because the Messenger of Allah (SAW) gave him the choice either to abrogate the sale or to conclude. Ad-Daraqutni narrated from Muhammad ibn Yahya ibn Hibban that he said that the Messenger of Allah

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Yahya ibn Hibban: He is one of the prophet (SAW) Group, (Companion of the prophet).

He said: "If you purchased say there is no deception, then in every commodity you purchased have the choice after three nights to accept (the commodity) and thus hold it or to return it to its owner." This indicates that the deceived person has the choice; but the choice is based by two conditions: the first is the lack of knowledge of the price at the time of contract (or at the time of contract) and the second is the excessive increase or decrease with which people do not involve in the market at the time of contract. The criminal fraud is that which the traders consider as being not assessed by one third or by one fourth of the price, but it is rather left to the discretion of the traders in the town at the time of concluding the contract; because the amount of increase and decrease differs according to the types of commodities and the markets.

### Deceit in Trade

The sale contract is originally binding. So once the contract by the offer and acceptance between the seller and the purchaser was completed, and the meetings of sale finished, then the contract becomes binding and the two sides have to execute it. But because the contract of sale must be completed in a manner which eliminates disputes amongst the people, it is made haram (prohibited) for the people to deceive in trading, and it made the one who deceives haram whether he was the seller or the purchaser, and whether deception was in the commodity or in the currency; all of this is prohibited (Haram), since deceit could occur from the seller or from the purchaser.

The deceit of the seller regarding the commodity is by hiding the defect from the purchaser, while he knows about it; or by covering the defect from the purchaser in a way which leads to the purchaser that there is no defect, or by covering the commodity in a way which makes it appear that it is good. Deceit by the purchaser in the price is by counterfeiting the currency or by passing a forgery while he was aware of it. The price (of the commodity) could vary according to the sold (commodity) because of the deceit in it; and the purchaser may be encouraged to buy a commodity because of the deceit in it. Such deceit, in all its types, is Haram according to what Abu Hurairah narrated from the Messenger of Allah r, who said: "Do not tie the order of the camels and sheep, and whoever purchased it after doing that, he has the choice whether he milked it either to hold it if he liked it or to return it back together with a sa'a (a cubic

of dates." And also due to what Ibn Majah narrated from Abu Hurairah, who said that the Messenger of Allah (SAW) said: "Whoever bought a camel or a sheep with a tied udder, he has the choice to return it within three days together with a sa'a of dates or wheat" (which represents the price of the milk he has gained). Al-Bazzar narrated from Anas from the Messenger of Allah (SAW) that he prohibited the selling of animals that are left not milked. So the Ahadeeth are clear in forbidding the tying of the udders of camels and sheep, and forbidding the selling of an animal after it was left unmilked till its udder became large to the extent that it is 'a dairy cattle, because this is deceit and is prohibited (Haram). Similarly, any transaction that covers the defect or hides it is considered deception and is prohibited, whether it was in the commodity, or the currency, because it is fraud. A Muslim is not allowed to deceive in the commodity or the currency. Rather he has to show the defect in the commodity, and explain the defect in the currency. He is not allowed to deceive in the commodity so as to circulate it or to sell it with a higher price. Nor is he allowed to deceive in the currency so that it would be accepted as a price of a commodity. This is because the prohibition of the Prophet (SAW) regarding that was decisive. Ibn Majah narrated from 'Uqbah ibn 'Amir from the Prophet (SAW) that he said: "The Muslim is the brother of the Muslim, and it is not allowed for a Muslim to buy anything from his brother without him being shown that fault." Bukhari narrated also from 'Abdullah ibn Hizam<sup>1</sup> from the Prophet (SAW), that he (SAW) said: "The two traders (the seller and the purchaser) have the choice (to conclude or cancel the deal) before they departed (from each other). If they were honest and explained (the commodity and the currency), their sale will be blessed. But if they hid (the defect) and lied (to each other) the blessing of their sale will be withheld." The Prophet (SAW) also said: "No one of us is allowed to deceive", as narrated by Ibn Majah and Abu Dawud from Abu Hurairah. And whoever earned something through deceit and cheating would not (legally) possess it, because deceit is not one of the means of ownership, and it is of the prohibited means, and thus it (the thing obtained by deception) is a prohibited and illegal (Suhi) property. The Prophet (SAW) said: "Any (human) flesh that grows from illegal property will not enter paradise, then the Hellfire deserves it more", narrated by Ahmad and Jabir ibn Abdullah. If fraud occurred, whether in the commodity or the currency, then the person has the choice either to dissolve the contract or to carry it out, without more

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<sup>1</sup>Abdullah ibn Hizam: He is one of the prophet (SAW) Group, (Companion of the prophet).



So if the purchaser wished to keep the defective commodity and take the indemnity the difference in the prices of the not defected and defected commodities, he has no right to do so, because the Prophet (SAW) did not allow the taking of the indemnity; rather he gave the choice between two matters: "If he wished he could keep (the commodity) or return it back", as narrated in Bukhari from Abu Hurairah.

It is not a condition that the salesman knew about the fraud or the defect (in the commodity) for the choice to be made. Rather, the choice is given to the cheated person once the fraud was proved, whether the salesman knew about it or not. This is because the Ahadeeth are general (in their sense) and because the reality of the sale is that it happened with that which was forbidden. This is in contrast with deceit (Ghubn), which is proven once it is known. This is because if he was not aware (of the deceit) then he would not really be a deceiver unless the right of the deceived is proven. For example, when the market price decreases while the salesman is unaware of that when he sells (a commodity) but then realises that he has sold it for a price which is more than it is worth. This example is not considered deceit, and the purchaser is not given the choice, because the salesman is not considered as a deceiver when he was not aware of the fall in price.

## Monopoly

Monopoly is prevented absolutely, and it is forbidden in Shar'a due to the decisive prohibition of it that came explicitly in the Hadeeth. S'aid ibn Al-Musayyab narrated from Mu'ammara ibn Abdullah Al-'Adawi in Bukhari that the Prophet (SAW) said: "No one monopolizes except the wrongdoer." Al-Athram narrated from Abu Umamah, he said: "The Messenger of Allah (SAW) forbade that a foodstuff be monopolized". And Muslim narrated through his chain of narrators from S'aid ibn Al-Musayyab that Mu'ammara said: "The Messenger of Allah (SAW) said: 'Whoever monopolized is a wrongdoer.'" The prohibition in the Hadeeth indicates the refrain and the dispraising of the monopolizer by describing him as a wrongdoer, however the wrongdoer means the disobedient. This is a concatenation which indicates that this prohibition is decisive. Thereupon, the Ahadith indicated that monopoly is Haram. The monopolizer is the one who hoards the commodities until the price rises so as to sell them



such that it becomes difficult for the citizens to buy them. As for the meaning of the monopolizer (Muhtakir) as being the one who hoards commodities waiting for their price to rise, because the word monopolized (Ihtakara) linguistically means to gather something and holding it until it becomes expensive and then sell it for a high price. It also means holding back (hoarded) the goods so that they are sold expensively. As for the condition of monopoly that it should reach a limit at which it becomes difficult for the citizens to buy the monopolized commodity, this is because the reality of the monopoly is not conceived to happen in such a situation. If it did not become difficult for the people to buy the commodity then it would not have been gathered nor held back to be sold expensively. Therefore, the condition of monopoly is not only to purchase the commodity; rather it is gathering it and waiting for its price to rise so as to sell it expensively, which is considered monopoly. This applies whether the monopolizer compiled it through purchase, or from the harvest of his large land because he is the person to plant such type of harvest or for such type, because of it being rarely planted or he compiled it from his factories, as the sole manufacturer, or because of the shortage in this type of commodity as is the case with the capitalist monopolies, who monopolize manufacturing a certain commodity by eliminating other factories and thereby monopolize the market. All these forms are monopoly because they fit exactly to the linguistic meaning of the word monopolized (Ihtakara), which again means holding the commodity from sale and waiting for its price to rise and then sell it expensively.

Monopoly is prohibited (Haram) in all things without a difference between the human foodstuff or animal foodstuff, a foodstuff or not a foodstuff, and of the people's necessities or luxuries. This is because the linguistic meaning of the word monopolized (Ihtakara) is to compile or hold in its absolute sense (without specification). The word monopolized did not come in the context of compiling the foodstuff or the people's necessities, rather compiling the thing, so it should not be confined to other than its linguistic meaning. And also because the explicit meaning of the Ahadeeth that came in the subject of monopoly indicate the prohibition of monopoly in everything. This is clear because the Ahadeeth came absolute without qualification, and without specification; so they have to stay absolute and general.

With regard to what came in some of the Ahadeeth narrations concerning limiting the monopoly to foodstuffs only, like the Hadeeth: "The Messenger of Allah prohibited monopolizing the foodstuffs", and other narrations. In this regard, mentioning of foodstuffs in the text does not make monopoly confined only to foodstuffs. As well, it is not true to say in this text that prohibition came as unqualified (Mutlaq) in some narrations, and came as qualified (Muqayyad) to foodstuffs in others. So the unqualification (Mutlaq) should be explained according to the qualified (Muqayyad). This is not true because the word foodstuff (Ta'am) mentioned in some narrations is not fit for qualifying the unqualified (Mutlaq) narrations, it is not a specific mentioning of one of the individual things which the unlimited (Mutlaq) covers. This is because excluding other than the foodstuffs from the divine rule of prohibiting monopoly is based on using the meaning of the title (Mafhum al-Laqaab), a matter which is not valid (is invalid); accordingly, the meaning of the title is not fit for qualification nor for restriction. Thus; mentioning the foodstuffs in some narrations of the Ahadeeth of monopoly is not designating one of the types of monopoly as an example, not as qualifying monopoly in itself nor as a description which has a meaning that has to be used; it is rather a rigid (Jamid) word for a specified thing, that is to say it is a title not a description, so its meaning is not used. The word which fits to qualify or specify the rule is that which has a meaning (Mafhum) that can be used as a matter, which does not apply in this case. This indicates that the narrations, which forbid monopoly, even those that mentioned the foodstuffs, are unqualified (Mutlaq) and general. Thus they include the prohibition of the monopoly in everything absolutely.

The reality of the monopolizer is that he monopolizes the market; and imposes upon people whatever price he likes by holding the commodity as a monopoly, so people will be forced to buy it from him at a high price, for it is not available other than to him. Thus the monopolizer who wants to increase the price for the Muslims, a matter which is Haram, due to what was reported from Ma'akal ibn Yasar<sup>10</sup>, that he said that the Messenger of Allah (SAW) said: "Whoever was involved in any of the prices of the Muslims, so as to increase it for them it will be due to Allah to place him in a great fire at the Day of Judgement."

<sup>10</sup> Ma'akal ibn Yasar: He is one of the prophet (SAW) Group, (Companion of the prophet).

### Price-Fixing (Tas'eer)

Allah (SWT) has left to everybody the right to sell his commodity at the price he likes. Allah has narrated from Abu S'aid, that he said, the Messenger of Allah (SAW) said: "Trading is by consent." Nevertheless, because it is possible that the State (government) might price over the people, Allah (SWT) prohibited it to set certain prices for commodities to force people to trade (selling and buying) according to them; therefore, price-fixing was

Price-fixing is where the ruler or his deputies or anyone who holds any authority upon the orders the traders (merchants) not to sell commodities except with a specified price. They are prevented from increasing the prices so they do not raise them up, nor are they allowed to trade with less than these prices so that they do not compete with others. That is to say they are prevented from increasing or decreasing the stated price for the people's interest. This means that the State intervenes in the prices and puts certain prices for the commodities or for some of them, and prevents anybody from selling with higher or lower than the stated price, as it considers this to be for the public interest. Islam prohibited pricing, due to what Imam Ahmad narrated from Anas who said: "Prices increased at the time of the Messenger of Allah (SWT), so they said, O Messenger of Allah, we wish you would price the prices." He (SAW) said: "Indeed Allah is the Creator, the holder (Qabidh), the Opener (Basit), the Provider (Raziq), the Pricer (who fixes prices); and I wish I will meet Allah and nobody demands (complains) of me for unjust act I did against him, neither in blood or property."

In addition, Abu Dawud narrated from Abu Huraira, he said, "A man came and said, O Messenger of Allah, fix prices. He (SAW) said: "Rather Allah reduces and increases." These indicate that pricing is prohibited and is an unjust act against which a complaint is made to the ruler to remove it. And if the ruler himself did pricing he would be sinful in the sight of Allah (SWT), because it is a prohibited (Haram) act. Every person of the citizens would have the right to complain to the Court of the Unjust Acts (Mahkamat Al-Mathalim) against the ruler

pricing, whether he was a governor (Yil'ali) or Khalifah. He complains to this court in order to judge against him and remove this unjust act (Madhlama).

Prohibiting pricing is general for all commodities, so there is no difference between the and others. This is the case because the Ahadeeth forbid pricing absolutely, so they are (A'am) Ahadeeth and there is nothing that qualifies them with the foodstuffs or others; so pricing is general, which thus includes the pricing of anything.

The reality of pricing is that it is a grave Haram upon the nation under all circumstances, in the situation of war or peace, or as it opens a hidden market in which people trade by the government and away from its supervision; a market which is called the black market. Therefore, the prices increase such that the rich people would possess commodities to the detriment of the poor. Moreover, pricing would have an effect on consumption, thereby affecting production, and may lead to an economic crisis. Furthermore, people have control over their property, because ownership of property means that they have control over it whereas, pricing is forcing interdiction (Hajr) over them, a matter which is not allowed except through a text which does not exist in this case. So it is not allowed to force interdiction (Hajr) over people by putting specific prices for their commodities and preventing them from trading with or lower than that.

In regard to the prices that rise at the time of war, or during a political crisis, this results either from the non-availability of the commodities in the market because of their being hoarded in monopoly or because of their shortage. If their absence was due to monopoly, monopoly was prohibited by Allah (SWT), and if it was due to their shortage in the market, then the Khalifah, who is ordered to look after the affairs of the nation, must strive to make them available in the market by bringing them from other places, and thus he would prevent the prices from rising.

In the famine year, which was called Ramada'a (ashes) year, when famine occurred only in Hijaz due to food shortage in that year and thus food prices increased, 'Umar ibn Al-Khattab did not fix the prices of the foodstuffs. Rather he ordered supplies of foodstuffs from Egypt and Sham to be sent to the Hijaz; thus prices dropped without the need for pricing.

## RIGHT OF DISPOSAL TO SPEND IN GIFTS AND MAINTENANCE

One of the rights of disposal is spending. Spending a property means granting it without while granting a property for something in return is not called *sprifitfuig* (Infaq).

(SWT) says:

and in the way of Allah".<sup>1</sup>

(SWT) said:

of that which We provided to them, they spend";<sup>2</sup>

(SWT) also said:

the one who is able to spend, spend the best he can".<sup>3</sup>

Islam follows its own way, so it defined the ways of spending (Infaq) and put checks for ways. It did not leave the property owner free in his disposal, in a way that he can spend his as he likes. It rather determined the way of disposal of his property both during his life and after his death.

The individual's disposal of his property through transmitting his ownership to another without return, could be through giving it to people or through spending it upon himself upon those he is responsible to support them financially. Spending could be done during his life by granting, gifting, charity, financial support and Nafaqah". It could also be after his death, by will. Islam intervened in this spending, in such a way that it prevented the Muslims from giving or a gift given to the enemy, in case of war, in anything that strengthens them against Muslims. It even prevented Muslims from giving charity to the enemy in that case. Islam also prevented the Muslim from giving grants, donations or gifts unless he keeps for himself and for his family that which keeps them satisfied and free from dependency upon others. If he did

<sup>1</sup> Al-Baqarah Surah, Ayat: 195.

<sup>2</sup> Al-Baqarah Surah, Ayat: 03.

<sup>3</sup> At-Talak Surah, Ayat: 07.

<sup>4</sup> Expense.



wise, then his gift and grant would be cancelled. The Messenger of Allah (SAW) said: "The charity (is) that which leaves you not needy, and you start by giving charity to those whom (financially) support", narrated by Bukhari from Abu Hurairah. Ad-Darimi narrated from Ibn Abdullah that he said: "While we were with the Messenger of Allah a man came to him, bringing an egg-like piece of gold, which he gained in one of the battles. Ahmad said, it was in one of the mines, which is true. The man said, 'O Messenger of Allah, take it from me as charity. Allah (SWT) have no property other than it.' The Prophet turned his face away from him. Then the man came from the left of the Prophet, and said as before, then he came from the front and repeated it again. The Prophet then said angrily, 'Let me have it', and he threw it at him in such a way that if it had touched him it would have hurt or wounded him, and said, 'Does one of you (people) deliberately give away his property as charity, when he has something other than it, and then he sits to beg from people? Indeed charity is out of sufficiency. Yours, for we have no need for it.' The man took his property."

The sufficiency which *thei* person leaves for himself and his family is that which meets basic needs; that is the foodstuff, dress, home including the luxuries which are considered necessary for him according to his usual standard of living. That is the amount of property which suffices him according to the usual standard known amongst people of his like. This is assessed according to his usual needs, maintaining the standard of living at which he, his family and other people live. In regard with what Allah (SWT) says:

**but prefer** (the Emigrants) over themselves, though poverty was their lot".<sup>5</sup>

This does not mean that even if they were in poverty as it might be thought. It rather means, even if they had a need for more than their basic needs. The evidence for that is that the Prophet (SAW) gave charity for those who were in poverty, and he did not exclude from giving charity except those who had no need for property. The word Khasasa in the verse, linguistically refers to the Khasas of the house which are the gaps or openings in it. So the entire verse is:

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in Al-Hasher Surah, Ayat: 09.



and entertain no desire in their hearts for things given to the (emigrants), but give them preference over themselves, even though poverty was their own lot ...".<sup>6</sup>

What is meant by the prohibition of giving charity in the things of the Prophet (SAW): "Property is out of sufficiency", and "(Why) does one of you (people) deliberately give away his property as charity, when he has nothing other than it, and then he sits to beg from people", both in a Hadeeth narrated by Ad-Darimi, is that the poor person who does not fulfil his basic needs is not allowed to give in charity things necessary for meeting his basic needs. Because charity must be out of sufficiency that which keeps him in no need to people for satisfying his basic needs. But as for the person who has property in excess of his basic needs, and after satisfying his basic needs he sees that he is in need to satisfy more than his basic needs, like luxuries, it is preferable for such a person to prefer the poor people over himself, by giving that excess of property as charity to the poor though he needs such property to satisfy his luxuries.

Islam also prevented the person from granting, gifting or giving as a will when he is dying. In the case where he gives a grant, gift or will when he was dying, then only one third of what he gave is actually executed. Ad-Daraqutni narrated from Abu Ad-Dardaa that he said: The Prophet of Allah (SAW) said: "Allah allowed you one third of your property (to distribute) at the time of dying to increase in your good things (Hasanat), so as to make it an increment in your good deeds." Imran ibn Hussain<sup>7</sup> narrated "that a man from the Ansar set free his six slaves when he was dying, while he had no property other than them. The Prophet (SAW) called them, divided them into three equal parts and drew lot on them thus setting free two of them and keeping four as slaves." So if setting slaves free, a matter, which Shar'a encouraged, was not prohibited, then other actions are even more so similarly considered.

All this is in regard to the disposal of the property by giving it to people. Nevertheless, as for the disposal of property through spending it upon oneself and upon those he is responsible to and on, Islam addressed this matter and outlined a proper way for it. Accordingly, it prohibited a person from certain things, as follows:

<sup>6</sup> Al-Hasher Surah, Ayat: 09.

<sup>7</sup> Imran ibn Hussain: He is one of the prophet (SAW) Group, (Companion of the prophet).

It prohibited the person from being prodigal (excessive) in spending, and it considered that as a business (Safah) which requires preventing the foolish person and squanderer from disposal of property by restricting him (making Hajr on him) and appointing a guardian over him to take care of his properties in his interest.

Allah (SWT) said:

**"Do not squander your wealth, which Allah has assigned to you to manage; but feed and clothe them from it".<sup>8</sup>**

So Allah (SWT) prohibited the right of disposal of property to the foolish and He gave only the right to be fed and clothed from it.

Allah (SWT) also said:

**"If he who owes the debt was foolish or weak or unable himself to dictate, then let the guardian of his interests dictate in (terms of) equity".<sup>9</sup>**

So Allah (SWT) made guardianship upon the foolish a duty (Wajib). Al Mughira ibn Yaqub narrated that the Messenger of Allah (SAW) "prohibited wasting the property", a part of which is narrated by Ad-Darimi, Bukhari and Muslim.

Prodigality (israf) and squandering (Tabdheer) are two words that have linguistic and Shar'i meanings. The linguistic meaning prevailed amongst the people, and became detached from the divine meaning. Therefore, they started to interpret these two words in a manner other than that intended by Shar'a. As for their linguistic meaning, prodigality means exceeding the limit of moderation, which is the opposite of the middle course. As for squandering, it means wasting and eliminating the property. Concerning the divine (Shari') meaning of the two words, prodigality and squandering mean spending money (property) on things prohibited by Allah (SWT). So anything spent the way Allah (SWT) allowed or recommended would not be considered prodigality or squandering, whether it was little or great.

<sup>8</sup> Surah An-Nisa Surah, Ayat: 05.

<sup>9</sup> Surah Al-Baqarah Surah, Ayat: 282.

anything spent the way Allah (SWT) forbids would be prodigality and squandering, it is little or great. It was narrated that Az-Zuhri used to say in explaining the words of (SWT):

**Do not your hand be chained to your neck, nor open it with a complete opening".<sup>10</sup>**

He said: "Don't stop spending it upon something right (Haqq), nor spend it on a false thing." The word prodigality was mentioned in the Qur'an in several verses:

**those who when they spend are neither prodigal nor niggardly, and there is ever a balance between the two".<sup>11</sup>**

So prodigality here means to spend on sin, while spending on the things which bring one to Allah (SWT) has no prodigality. So the meaning of the verse is: Do not spend your money on the sins, and do not be niggardly even in spending it on the allowed things, rather it is for you to spend it on more than the allowed things (Mubahat), that is in charity. So prodigality on the forbidden things is dispraised and stinginess in the allowed things is praised as well. What is praised is to spend on the allowed things and the charities.

(SWT) said:

**Do not be prodigal (when you spend), surely He (Allah) does not like those who are prodigal.<sup>12</sup>**

This is censure by Allah (SWT) of prodigality, which is spending on sins. The word Musrifeen (Musrifeen) came to mean those who are turning away from remembrance (Dhikr) of Allah (SWT).

<sup>10</sup> Al-Isr'a Surah, Ayat: 29.

<sup>11</sup> Al-Furqan Surah, Ayat: 67.

<sup>12</sup> Al-An'am Surah, Ayat: 141.

(SWT) said:

**When We had relieved him of his misfortune he went his way as though he had not seen Us for the misfortune that afflicted him. Thus do the deeds of the (transgressors) seem fair in their eyes".<sup>13</sup>**

This means that Satan presents favourably, through his insinuation, what the prodigals do of turning away from Allah's remembrance and following their whims. So Allah (SWT) **and those who turn away from the remembrance of Allah as prodigals.**

The word 'prodigals' came also to mean those whose wickedness exceeded their goodness.

(SWT) said:

**And, that to whom you call me has no claim in the world or in the Hereafter, and our will be to Allah, and the prodigals will be the people of the fire".<sup>14</sup>**

It was narrated from Qatadah that he said the meaning of prodigals here is the Mushrikeen (who associate partners with Allah). Mujahid said that the prodigal here means those who shed blood. It was said also that it means those whose wickedness exceeded their

The word prodigals came also to mean the corrupters (Mufsideen).

(SWT) said:

**Before keep your duty to Allah and obey Me. And obey not the command of the prodigals. Who spread corruption in the earth and do not reform".<sup>15</sup>**

So in all these verses, the word prodigals (Musrifeen) absolutely does not carry its basic meaning; it rather has divine (Shar'i) meanings, And when it is mentioned in

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1 Yunus Surah, Ayat: 12.  
2 Ghafir Surah, Ayat: 43.  
3 As-Shu'ara Surah, Ayat: 151-152.

with spending it is meant to be the spending of property sinfully (in disobedience). So its linguistic meaning is invalid, because Allah (SWT) intended for it a divine meaning.

**Squandering** (Tabdheer) has a divine meaning, which also means spending on the Haram

(SWT) said:

**squander not** (your wealth) in wantonness. Lo! The squanderers were ever brothers of devils".<sup>16</sup>

This means that the squanderers are like the devils in their wickedness, which is the rebuke because there is none more 'devilish' than Satan, and squandering means here to spend the property on forbidden matters. It was narrated from Abdullah ibn Mas'oud that he said: "Squandering means to spend the property on other than its right" Mujahid said also: "If a Mudd (measure = 18 litres) was spent unrightfully it would be squandering". It was narrated that Abbas said that the squanderer is the one who spends unrightfully. Qatadah said: "Squandering is spending sinfully (in disobedience of Allah), not on the right thing and in the manner (Fasad);" These meanings have been mentioned by at-Tabari in his tafseer. All this shows that what is meant by prodigality and squandering is the spending on what is prohibited (SWT): So spending on anything prohibited by Shar'a is considered illegal (unrightful) and requires declaring the doer as incompetent. And regarding the one who is declared incompetent, his charity, selling, gift and his marriage are all not executed. Any loan he took is not to be duly repaid nor would he be convicted for not repaying it. But the actions he did before the declaration of his incompetence are implemented until a judge declares his incompetence.



with what Allah (SWT) says:

**not y~mr hand be chained to your neck nor open it with a complete opening lest down rebuked, derided".<sup>17</sup>**

The prohibition here is the complete opening not the opening. So Allah (SWT) did not mean a high level of spending on the Halal things. opening the hand. What is forbidden is the complete opening of the hand, which is spending on the Haram. Not forbidding the opening of a high level of spending (because this is what is meant by hand opening) is an evidence that means spending on the Halal. Focusing the prohibition on the total opening of the hand is evidence that the forbiddance is focused on that which exceeds the allowed hand opening, thus the prohibition is focused on spending on the Haram.

This is in regard to the evidence. With regard to the reality of spending, and the fact that a person overspent or not, this depends on the standard of living in his country. In countries where the individuals do not satisfy their basic needs completely, one's spending on luxuries would be considered a high level of spending, as it is the case in many Islamic countries. But there are countries in which the individual satisfies his basic needs completely, and satisfies his luxuries, which with the advancement in urbanization have become, basic needs like the fridge, washing machine, car and the like. So his spending on these luxuries cannot be considered a high level of spending. Therefore, using prodigality and squandering in linguistic meaning would mean that the divine rule considers any spending in excess of basic needs as Haram. Thus buying a fridge, a washing machine or a car is Haram since it is in excess to the basic needs. Or the divine rule would consider spending on these luxuries as Haram in some countries or on some people and Halal in some countries or on some people. This means that the divine rule changes in the same case without a reason (Allah), which is not as the divine rule of the same issue should never change. Moreover, when Allah (SWT) is using and consuming things, He defined this in absolute terms without restricting the spending to being little or great. So how then can a high level of spending be considered Haram? Allah (SWT) prohibited high levels of spending in the Halal things, and had He made these

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<sup>17</sup> Al-Isr'a Surah, Ayat: 29.



halal, this would mean that He had allowed and prohibited the same thing at the same

This would mean that Allah (SWT) had allowed using a private plane, but He prohibited it if its purchase by a person was considered a high level of spending. This would be a transaction which is not allowed. Therefore, the explanation of prodigality and squandering by linguistic meaning is not allowed, they should rather be explained by their divine (Shar'i) meaning which came in the verses through the interpretation of some of the Companions and scholars.

Allah prohibited the individual from luxury, considered it a sin and He warned the luxurious with torture.

(SWT) said:

**those of the left hand:** What of those of the left hand? In scorching wind and scalding and shadow of black smoke. Neither cool nor refreshing. For they were, before that, **in sinful** **immoral**.<sup>18</sup> They were arrogant, who do what they wish.

(SWT) also said:

**when We** grasp the (town's) luxurious ones with punishment, behold! They started to **rate**.<sup>19</sup> The luxurious ones here mean the arrogant tyrants.

(SWT) said also:

**We sent** not unto any township a warner, but its luxurious ones declared: Lo! We are **ever in that** which you bring to us".<sup>20</sup> The luxurious ones are those who are haughty towards the believers because of their high level of wealth and children.

1 Al-waqi'a Surah, Ayat: 41-45.  
2 Al-Mu'minun Surah, Ayat: 64.  
3 Saba'a Surah, Ayat: 34.

Allah (SWT) said:

"The **wrongdoers** followed that by which they were made surrounded with luxury".<sup>21</sup> What is meant by those who were surrounded with luxury is that they turned towards their whims. They followed their whims.

Allah (SWT) said:

"And when We would destroy a township We send commandment to its tyrant folk (the **unjust ones**) and afterward, they commit abomination therein".<sup>22</sup> What is meant by tyrant folk is their tyrants who live at ease.

Allah (SWT) said:

"We made them luxurious in the worldly life".<sup>23</sup> That is we made them insist on their tyranny and their arrogance. We made them arrogant.

**Luxury (Taraf)** linguistically means vanity and arrogance due to living a life of ease and comfort. When we say wealth made somebody luxurious, we mean it made him arrogant and haughty. That the person became luxurious means that he insisted on tyranny. He also became arrogant and became haughty. Thereupon the luxury (Taraf) which the Qur'an condemned, Allah (SWT) prohibited and considered a sin is the Taraf that linguistically means arrogance and arrogance due to ease of living, but not the ease of living itself. Therefore it is wrong to interpret Taraf as enjoying the wealth and ease of living by that which Allah (SWT) prohibited because ease of living and enjoying the provision of Allah are not condemned by Allah.

Allah (SWT) said:

"Who has forbidden the adornment of Allah which He has brought for His servants to enjoy the good things of His provision?".<sup>24</sup>

<sup>21</sup> Hud Surah, Ayat: 116.

<sup>22</sup> Al-Isr'a Surah, Ayat: 16.

<sup>23</sup> Al-Mu'minun Surah, Ayat: 33.

<sup>24</sup> Al-A'raf Surah, Ayat: 32.

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At-Tirmithi narrated from Abdullah ibn Amr who said: "The Prophet said, "Allah likes to see the signs of His favour (bounties) on His servant". He loves for His servants to enjoy His wealth and enjoy the good things He has provided for him. But Allah (SWT) hates the haughtiness, arrogance and transgression that may result from a life of ease. So Allah (SWT) hates the life of ease if it produced haughtiness, transgression, arrogance and tyranny. Since a life of ease and comfort by the abundant wealth could lead some people to arrogance, tyranny and haughtiness; that is it creates Taraf in them, Islam prohibited that type of luxury. So Islam prohibited corruption if it resulted from the abundance of wealth and children, making people arrogant and tyrannical. Islam prohibited that strongly. So when it is said that Taraf is Haram it does not mean the life of ease is Haram, it rather means that arrogance, which results from the use of wealth, is Haram, as Taraf would mean linguistically, and as luxury (Taraf) would come from the verses of the Qur'an.

Islam prohibited the individual from being niggardly towards himself and preventing himself from legal enjoyment. It also made Halal the enjoyment of the good provision and the use of valuable ornaments.

Allah (SWT) said:

**and let not your hand be chained to your neck, nor open it with complete opening lest you be rebuked, derided".<sup>26</sup>**

Allah (SWT) said:

**and those who, when they spend, are neither prodigal nor miserly, and there is ever a firm line between the two (situations)".<sup>27</sup>**

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<sup>26</sup> Taraf: Luxury.

<sup>27</sup> Qur'an. Al-Isr'a Surah, Ayat: 29.

<sup>28</sup> Qur'an. Al-Furqan Surah, Ayat: 67.

Allah (SWT) said:

Who has forbidden the adornment of Allah which He has brought for His servants the good things of His provision".<sup>28</sup>

The Prophet (SAW) said: "Allah loves to see the sign of His favour on His servant",  
narrated by At-Tirmidhi.

The Prophet (SAW) said also: "If Allah gave you property, let Him see the sign of His  
and dignity on you", narrated by Al-Hakim from the father of Abu Al-Ahwas. So if  
has property and was miserly when spending on himself, he would be sinful in the sight  
of Allah. But if he was miserly towards those he is responsible to support, then beside his sin in  
of Allah, he must be obliged by the State to spend on his relatives whom he is  
able to spend on, and to make sure that his spending on them is ample so that they are  
with a good standard of living.

Allah (SWT) said:

the wealthy (person) spend out of his capacity".<sup>29</sup>

Allah (SWT) said:

do not oppress them where you dwell, according to your wealth, and harass them not so as to make  
harsh for them".<sup>30</sup>

If the person was miserly towards those whom he was responsible to support, then those  
are entitled for financial support (Nafaqah<sup>31</sup>) have the right to take from his property the  
which normally meets their needs. Bukhari and Ahmad both narrated from Aisha that  
the Prophet (SAW) said: "O Messenger of Allah, Abu Sufyan is a miserly person, and he does not  
me that which is enough for me and my children except that which I take without his  
knowledge." The Prophet (SAW) said: "Take that which is normally enough for you and your

<sup>28</sup> Al-A'raf Surah, Ayat: 32.

<sup>29</sup> At-Talaq Surah, Ayat: 07.

<sup>30</sup> At-Talaq Surah, Ayat: 06.

<sup>31</sup> Nafaqah: Expense.

So the Prophet (SAW) made it a right for her to take that Nafaqah by herself without knowledge if he did not give it to her, because Nafaqah is a duty upon him. And the judge is to assign to her this Nafaqah. As it is obligatory that the person who is responsible to pay Nafaqah, it is likewise obligatory upon the one who takes the Nafaqah to spend it on the persons for which it was paid. So if the Nafaqah was decided to the children, and it was paid to the guardian, whether a mother, grandmother or others, then she has to spend it on them; and if she did not do that then the judge would oblige her to spend it for that purpose.

### **Poverty (Al-Faqr)**

Poverty linguistically means need. So the verb Faqara (he became poor) is the opposite of Ghina (not in need of). The verb Iftaqara means needed. The singular noun is Faqir (poor) and plural is Fuqara'a (poor people). Afqarahu (made him poor) is the opposite of Aghnahu (made him wealthy). Al-faqr (poverty) is opposite to Al-Ghina (richness), which means that the person who is needy he does not have that with which he satisfies himself. Faqir in Shar'a is the needy who is in a weak situation and who does not beg.

It was narrated by Mujahid who said: "The poor is the one who does not beg." Ikrimah said: "The poor is the weak."

(SWT) the Supreme said:

**Lord I** am (in need) for whatever good You send down to me"<sup>32</sup>, I am Faqir (needy) for whatever good, whether little or great that you send to me.

(SWT) said:

**I feed** therewith the unfortunate (al ba'is), the poor".<sup>33</sup> The unfortunate (Al-Ba'is) is the one who is afflicted with Bu's (hardship), and the Faqir (the poor) is the one who is weakened by the use of need. The verses and the narrations from the linguists indicate that Faqr (poverty) is need. It is necessary to explain in detail what is meant by 'need'.

<sup>32</sup>an. Al-Qasas Surah, Ayat: 24.

<sup>33</sup>an. Al-Hajj Surah, Ayat: 28.



In the Capitalist economic system, poverty is considered a relative matter, and not a name specific thing, which is constant and does not change. Therefore, it is said that poverty is the inability to satisfy the needs with the required commodities and services. Moreover, since the needs increase and renew as urbanization progresses, the satisfaction of the needs accordingly varies between people and nations. In declined nations, the needs of the citizens are limited, so they can be satisfied with the minimum necessary commodities and services. But in the highly progressed, highly urbanized and civilized nations, their needs are many, and thus their satisfaction requires more commodities and services; so the poverty there, is considered different from that in the declined countries. For example, the non-satisfaction of the luxuries in the United States and America is considered as poverty, while the non-satisfaction of the luxuries in Egypt is not considered as poverty once the basic needs have been satisfied. This view in the Capitalist economic system is wrong, because it views the issue in relative terms rather than real terms. This concept is wrong because the matter at hand has a true reality, so it has to be judged by its reality. It is also wrong because the legislation revealed to man does not make the needs differ according to individuals as it came for man as a human being and not as an animal. Accordingly, if the State governs citizens in Spain and others in Yemen, it is appropriate that its view towards poverty in one country differs from its view in another country, because the individuals in each country are human beings for whose problems solutions are sought and down.

Islam considers poverty as one matter for a man in any country and any generation. Poverty in the view of Islam is the non-satisfaction of the basic needs in a complete way. Shar'a has defined these basic needs in three things, which are food, clothing and accommodation.

(SWT) said:

"The duty of feeding and clothing nursing of mothers in a seemly manner is upon the father and the child".<sup>34</sup>

34. Ali. Bagarah Surah, Ayat: 233.



Allah (SWT) said:

**Give them where you dwell, according to your wealth".<sup>35</sup>**

Im Majah narrated from Abu Al-Ahwass that he said, The Messenger of Allah said: **Their right upon you is to provide them their clothes and food seemly.**" This indicates the basic needs, whose non-satisfaction is considered as poverty, are food, clothing and habitation. With regards to the other additional needs, these are considered as luxuries. One is not considered poor if after satisfying his basic needs, he did not satisfy the luxuries. Poverty as defined in Islam, which is the failure to satisfy the basic needs, is considered one of the factors that caused the decline and destruction of the Ummah. Islam made poverty one of its promises.

Allah (SWT) said:

**The devil promises you destitution (poverty)".<sup>36</sup>**

Islam considered poverty to be a weakness, and it ordered the caring for the poor people.

Allah (SWT) said:

**When you reveal your almsgiving, it is well, but if you hide it and give it to the poor (people) it is better for you".<sup>37</sup>**

Allah (SWT) said:

**And feed them with the unfortunate (al ba'is), the poor".<sup>38</sup>**

Islam made the satisfaction of these basic needs and their provision a right for the person who cannot afford them. If the person provided himself with them then it would be well, but if he did not do that because he did not have sufficient property available to him or because of his inability to obtain the required property, then Shar'a made helping him a duty upon others until

<sup>35</sup> At-Talaq Surah, Ayat: 06.

<sup>36</sup> Al-Baqarah Surah, Ayat: 268.

<sup>37</sup> Al-Baqarah Surah, Ayat: 271.

<sup>38</sup> Al-Hajj Surah, Ayat: 28.

basic needs are satisfied. Shar'a has explained in detail the ways in which an individual helped to satisfy his basic needs. Shar'a made this help a duty on his unmarriedable (Mahaarim).

(WT) said:

uty of feeding and clothing nursing of mothers in a seemly manner is upon the father child. No one should be charged beyond his capacity. A mother should not be made to because of her child, nor the father because of his child. And on the father's heir is ent the Ukeof that (which was incumbent on the father)".<sup>39</sup>

That is to say that the inheritor (the heir) is like the father to whom the child is born, in if provision and clothing. What is meant by the inheritor is not the one who really inherits but the one who is entitled to inheritance. If he had no relatives who are obliged to support him, then his financial support (Nafaqah) will be carried out by the Bait ul- the Zakah. Abu Hurairah (RA) said, The Prophet (SAW) said: 'Whoever leaves after wealth, it belongs to his inheritors and if he left weak (Kall), they will be of our ability', narrated by Muslim. Al-Kall is the one who has no son and no father.

(WT) said:

ms are only for the poor and the needy." <sup>40</sup>

If the alms in the Bait ul-Mal are not enough to meet the needs of the poor and the needy, he is obliged to spend on them from the other revenues of the Bait ul-Mal. If there were no the Bait ul-Mal, the State would have to impose taxes upon the wealth of the rich people to collect from them in order to spend on the poor and the needy. Spending (Nafaqah) is the the relatives, if there were no relatives then the Nafaqah is a duty on the revenues of the Bait ul-Mal. If there were no alms revenue then it is a duty on other revenues of the Bait ul-Mal. If there were no revenues in the Bait ul-Mal then it is a duty on all Muslims. The Prophet

Al-Baqarah Surah, Ayat: 233.

Al-Tawbah Surah, Ayat: 60.

"  
 (SAW) said, "In any local community, if there became amongst them a hungry person, Allah has something to do with them", narrated by Ahmed

The Prophet (SAW) said narrating from his Lord, "He would not have believed in me, the one who slept with his stomach full when his neighbour on his side was hungry and he knew it", narrated by Al-Bazzar from Anas.

Allah (SWT) said:

"In their wealth is a due right to the beggar and the deprived".<sup>41</sup>

And the Prophet (SAW) obliged the helpers (Ansar) to spend (Nafaqah) on the poor migrants (Muhajiroon), which indicates that it is a duty upon all Muslims until the needs are satisfied. Regarding the duty placed on all the Muslims, the Khalifah, as the one responsible for looking after the affairs of the Ummah, has to collect the property from Muslims in order to supplement that which is a duty upon them. Thus the duty is transferred from the Muslims to the Bait ul-Mal which performs it by feeding the poor and needy.

This is in regards to the poor and needy person who requires Nafaqah. He is originally obliged to acquire it by himself, if he cannot, then his Mahram (unmarried relatives) are obliged to spend upon him provided they are of that degree of relative mentioned in the Qur'an bearing the duty of Nafaqah. If the relative was unable or there was no relative, then nafaqah becomes a duty upon Zakat from the Bait ul-Mal, then upon all revenues of the Bait ul-Mal, then upon all Muslims until revenue sufficient for all the poor and needy is collected.

With regard to those of the relatives who are obliged to pay the nafaqah of the poor and needy, it is not imposed except on the one who is not in need of others. Such a person is the one whom it is demanded to pay Sadaqah (charity), while the one who is forbidden from paying Sadaqah is not obliged to do so. Bukhari narrated from Said ibn Al-Musayyeb that he heard Abu Hurairah (RA) say, the Prophet (SAW) said: "The best sadaqah is that which (was given) out of

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<sup>41</sup> Qur'an. Az-Zariyat Surah, Ayat: 19.

iciency (Ghina)". Sufficiency (Ghina) here means the amount which the person requires to his needs. Jurists say Ghina (sufficiency) is that which provides the livelihood of the and his family to such a degree of satisfaction as is enjoyed by those who are like him, with their clothes and accommodation, in addition to a mīl (camel) and a uniform dress) commensurate with those who are in his situation. This is what is linguistically "sufficiency", because he is not in need of help from other people.

There upon Nafaqah (financial support) is not due to the poor and needy except from who are better off not in need of others.

(SWT) said:

him who has abundance spend of his abundance, and he whose provision is measured spend of that which Allah has given him".<sup>42</sup>

Muslim also narrated from Jabir that the Prophet (SAW) said, "Start with yourself and charity for it, and if anything is left give it to your family, and if anything is left after that to your relatives, and if anything is left after that, do it like that, and that to that in front of your right hand and at your left hand.", Nafaqah {financial support} of the person upon himself is satisfying his needs, which requires more than only feeding of his basic needs. This is Shar'ah made it obligatory upon him to support his wife in a seemly manner (Bil-Ma'ruf), was explained as being according to her situation and those who are like her.

(SWT) said:

duty of feeding and clothing nursing mothers in a seemly manner".<sup>43</sup>

So his support to himself would be also in an equitable manner (Bil-Ma'ruf), and not what is enough for him. The Prophet (SAW) said to Hind, the wife of Abu Sufyan, "Take which is enough for you and your children in an equitable manner", narrated by Bukhari and He did not only say "what is enough for you"; rather he added the words "in an equitable

<sup>42</sup> At-Talaq Surah, Ayat: 07.

<sup>43</sup> Al-Baqarah Surah, Ayat: 233.

" (Bil-Ma'rouf) which indicates that what is meant is that which is enough for her to what is known of her and her children's needs according to their situation and the of those similar to them. So his sufficiency (Ghina) which must be fulfilled in order that after that to provide the due support, is not estimated as that which satisfies his basic only, rather it is that which satisfies his basic needs and the other needs which are accepted the people as being of his needs. This sufficiency is not estimated by a certain amount, it is left to the person based on the standard of living that he lives by. Some jurists held that the needs beyond which a person is considered better off concern five matters, are food, dress, accommodation, marriage and a mount (camel) which he needs to ride in functions. But this was not mentioned explicitly in the texts, rather it was of what was as "equitable manner" (Bil-Ma'rouf). The sufficiency (Ghina) is considered as that which the fulfilment of his needs in a seemly manner (Bil-Ma'rouf). If his wealth exceeded that, Nafaqah (financial support) is obliged upon him to the poor and needy, and if it did not that, financial support is not obliged upon him.

In conclusion, the poor one who is entitled to Nafaqah (financial support) is the one whose basic needs are not satisfied the one who needs food, dress and accommodation. While the person, upon whom Nafaqah (financial support) is due, and who is obliged of the financial due upon all Muslims, is the one who owns in excess of what is needed for satisfying his in a seemly manner (Bil-Ma'rouf), not only his basic needs, and this is estimated according situation and the situation of the people who ate of similar circumstances.



## PUBLIC PROPERTY (Al-Milkiyyah Al-Ammali)

Public property, is the permission of the Lawgiver to the community to share the use of the assets which are public property are those which the Lawgiver stated that as belonging to the community as a whole, and those which He prevented the individual from possessing any of regularly. This is categorized in three types:

which is considered a public utility, so that a town or a community would disperse in it if it were not available.

countable stores of minerals.

which, by their nature, would prevent the individual from possession.

With regard to the public utilities, they are everything that is generally considered as a by the people. The Prophet (SAW) explained them in the Ahadeeth by their description than by enumerating them. Ibn 'Abbas narrated that the Prophet (SAW) said: "Muslims are (associates) in three things: in water, pastures and fire", reported by Abu Dawud. Anas from Ibn 'Abbas adding, "and its price is Haram (forbidden)." Ibn Majah narrated from Hurairah (RA) that the Prophet (SAW) said: "Three things are not prevented from (the water, the pastures and the fire." This is evidence that people are partners in water, pastures and fire, and that the individual is prohibited from possessing them. But it is noticed that the Hadith mentioned them as three, and they are Jamid (non-derived) and there was no mentioning of Ellah (reason) in the Hadith. The Hadith did not include (reason), and this could imply that these three things are the only ones which represent property with no consideration given to their depiction for the community's need for them. If one scrutinized the issue he would find that the Prophet (SAW) allowed the possession of water in At-Tair<sup>1</sup> and Khaybar<sup>2</sup> by individuals, and they actually possessed it for the purpose of irrigating their plants and farms. Had the sharing (association) of water been just because it is water and not because of the consideration of the community's need for it, then he would not have allowed individuals to possess it. So from the saying of the Prophet (SAW),

<sup>1</sup> is a city in Hijaz (Saudi Arabia).

<sup>2</sup> It is a city in Hijaz (Saudi Arabia).



Muslims are partners (associates) in three things: in water, pastures and fire" and from his permission to individuals to possess the water, it can be deduced that the Allah (reason) of partnership in the water, pastures and fire, is their being of the community utilities that are indispensable to the community. Therefore, the Hadeeth mentioned the three (things) but they are reasoned as being community utilities. Therefore, this Allah (reason) goes along with the reasoned (rule) in existence and in absence. So anything that qualifies as being of the community is considered a public property, whether or not it was water, pasture or fire whether it was specifically mentioned in the Hadeeth or not. If it ceased to be of the community utilities, even if it was mentioned in the Hadeeth like the water it would not be a community utility, it would not be of the things, which can be possessed individually. The criteria for determining things to be a public utility is that it is anything which, if not available to the community, whether the community was a group of Bedouins a village, city, or a State, would cause them to disperse in search of it, then it would be considered of the community utilities, like the water sources, forests and firewood; pastures of livestock and the like.

With regards to minerals; they are of two kinds: one is of a limited quantity that is not considered significant. The other is of an uncountable quantity. As for the first type it can be an individual property, owned singularly and treated like the hidden treasure (Rikaz) where a fifth of it is paid to the Bait ul-Mal. Amr ibn Shua'ib narrated from his father, from his grandfather that the Prophet (SAW) was asked about the Luqatah<sup>1</sup> he said: "That which was picked from the publicly used road, or the village, you have to announce it for one year, if anyone demands it, give it to him, and if not, it would be yours; but if it is found in sites of ruin, then a fifth of it and of the hidden treasure (Rikaz) has to be paid to the Bait ul-Mal", narrated by Abu Dawud.

As for the uncountable quantity which cannot be normally depleted, it is a public property and should not be possessed individually due to what At-Tirmithi narrated from Abyadh ibn al-Mal that he came to the Prophet (SAW) and asked him to grant him a salt laden land, and he granted it to him. In addition, when he left, one person in attendance with the Prophet (SAW) said, "Do you know what you granted him? You granted him the uncountable water (Al-'udd)".

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<sup>1</sup>Luqatah: Article picked from the road.

(SAW) then took it away from him." He compared it (in this Hadeeth) with the uncountable ('Udd) water because it does not deplete. So this Hadeeth indicates that the Prophet (SAW) granted the salty mountain to Abyad ibn Hammal, which means that it is allowed to grant a salt mine. However, when he realized that it was of the permanent or continuous mines which are non-depletable, he reversed his grant and took it back thereby prohibiting its ownership by individuals as it is a public property. What is meant here is not the salt, but rather the salt mine. The evidence for this is that when he knew it was non-depletable he prohibited its private ownership, despite the fact that he knew it was salt and that he had initially granted it. So its prohibition was due to its being non-depletable. Abu Ubayd said, "With regards to his (the Prophet) granting to Abyad ibn Hammal of the salt (found) in Ma'reb, then taking it away from him he did it considering it as a dead (unused) land which Abyad was going to revive and cultivate. When the Prophet (SAW) realized it included uncountable ('Udd) water, which contains non-depletable material like the water of the springs and wells, he revoked it, because it is the property of the Prophet (SAW) in relation to pasture, fire and water, for which people are all associates in possession. So he disliked the limiting of possession to one person to the exclusion of others." Since salt was of the minerals, the Prophet (SAW) change of mind about its granting to Abyad is considered a reason. (Allah) for the prohibition of its ownership by individuals, that it is an uncountable ('Udd) mineral mine, not because it comprised uncountable ('Udd) salt. It appears from examining this Hadith that the reason (Allah) for preventing the grant of the salt mineral mine is because it was uncountable ('Udd) not depleted. It appears from the narration of Ibn Qais that the salt in this incident is a mineral (mine) because he said, "the mine (mineral) salt". It appears from the words of the jurists, that they considered the salt of the minerals, so the Hadeeth would be related to minerals and not to salt specifically.

With regards to Abu Dawud's narration that the Prophet (SAW) granted Bilal ibn Al-Muzni the minerals (mines) of the Qabalah; and also what Abu Ubaid's<sup>4</sup> narrated from the Prophet (SAW) that he said: "The Prophet (SAW) granted Bilal such a land from such a place to such a place, and that which existed in it of mountains or minerals", this Hadeeth does not contradict the Hadeeth of Abyad. This Hadeeth is rather to interpret that these minerals which the Prophet

<sup>4</sup>Abu Ubaid Al-Kaserm, The Book of Currency, Beirut - Lebanon. Dar Al Kutub Al Elnieh, 1986.

granted to Bilal were limited, and thus allowed to be granted, as the Prophet (SAW) did. The first granted the salt mineral to Abayd. This Hadeeth should not be interpreted as a permission to grant such minerals in absolute terms, because it would then contradict with what the Prophet (SAW) did when he took back the minerals which he granted when he realized it was not a mineral ('Udd), and not normally depleted. Therefore, the minerals, which the Prophet granted, are to be interpreted as being limited and they (easily) deplete.

This rule, that the uncountable and undepleted minerals are considered a public property, includes all minerals, whether they are on the surface of the earth where people may reach and use without great effort, such as salt, coal, sapphire, ruby, and the like. Or whether they were of subsurface minerals, which are reachable only with work, like the minerals of gold, silver, copper, lead and the like. And also whether they are solid like crystal, or fluid like oil. All of these minerals, which are included within the meaning of the Hadeeth.

As for the things whose nature prevents them from coming under the domain of public ownership, they are the assets, which consist of the public utilities. Although they fall in the first category because they are from the community utilities, they differ however from the first category in respect of their nature which prevents them from being possessed by individuals. Water, for example, could be possessed by individuals, but this is prohibited if the community cannot live without it, unlike the case with roads which certainly cannot be owned by any individual. Therefore, although the evidence for this category is that the divine reason (Allah) is the basis for it and that it is from the community utilities, however its nature indicates that it belongs to the public property. This category includes roads, rivers, seas, lakes, public canals, straits and the like. Also included are things like Masjid, State schools, hospitals, and others etc.<sup>5</sup>

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<sup>5</sup> E'ateyaat, The Road, Beirut - Lebanon. Dar Al-Bayarek, 1996: P.202.

## STATE PROPERTY

There are properties that do not fall under public property; rather they are included in the ~~personal~~ property, because they are things, which can be owned by individuals, like land and ~~movable~~ property. However, the Muslim populaces have a right in connection to them. ~~Therefore~~, these things are not from the individual property, nor are they from the public ~~property~~. Thus, they are State property. The State property is that property in which the Muslims ~~have~~ have a right, and its management is left to the Khalifah who may assign some of it to ~~him~~ according to what he deems as appropriate. What is meant by his management of this ~~property~~ is that he has the authority over it to dispose of it. This is what is meant by ownership; ~~because~~ the meaning of ownership is that, the individual has an authority over that which he ~~owns~~. Thus, every property whose expenditure is subject to the opinion and Ejtihad<sup>2</sup> of the ~~State~~ is considered as State property. The Law Giver has made certain funds State property, ~~where~~ the Khalifah has the right to dispose of them according to his opinion and Ejtihad, such as ~~the~~ ~~various~~, Kharaj (land tax), Jizya (head tax) and the like; this is because the Shar'a did not ~~define~~ the area in which they may be spent. But where the Shar'a determined the funds ~~shall~~ be spent, and did not leave it to the Khalifah to decide according to his opinion and ~~then~~ then this property does not belong to the State; rather it belongs to the area specified by ~~the~~ Shar'a. Therefore, the Zakah is not considered a State property. It is rather the property of the ~~various~~ categories assigned by the Shar'a. The Bait ul-Mal is the place where the funds will be kept ~~and~~ be spent on the designated areas.

Although the State manages the public properties and State property, there is a difference ~~between~~ them. With regards to those, which belong to the public property, the State has no right ~~to~~ or give its origin (body) to anyone, though it has the right to allow the people to take of ~~based~~ upon an arrangement, which enables all of them to benefit from it. This is different from ~~the~~ State property, where the State has the right to give it all to certain individuals and not give to ~~others~~ and it can prevent all individuals from having it, if it viewed that caring for their affairs ~~is~~ that it is not given to them. So the water, salt, pastures and town parks are not

<sup>2</sup> Muhammad E'ateyaat, *The Road*, Beirut-Lebanon. Dar Al-Bayarek, 1996: P.203.  
<sup>3</sup> *Islamic Jurisprudence*.

to be given to individuals absolutely, although all peoples can benefit from them, such benefit will be for all of them without specifying anyone in particular to the exclusion of others. Al-Kharaj could be spent only on the farmers to the exclusion of others, so as to solve the matters. The State is also allowed to spend it on buying weapons only, where it does not anybody anything of it. In this way, the State dispenses of it as it views to be in the citizens' (Imamah's) interest.



## NATIONALISED PROPERTY IS NEITHER PUBLIC NOR STATE PROPERTY

Nationalization is one of the practices of the Capitalist system, which is the transfer of individual property to State property, if the State viewed that there was a public interest which required the ownership of this property (by the State), which is originally owned by individuals. The State is not obliged to undertake nationalization; rather it is free to nationalize if it chose to, or to leave the property as it was without nationalization. This behaviour is different from that of public property and State property, which are according to the rules of Islam, determined with the nature of the property and its description, and it is so, irrespective of the view of the State. Thus, the reality of the property has to be examined; if there was a right of all individuals in it, then it would be a State property and she should own it. However, if all the individuals had no right in it, then it remains an individual property, which the State should not nationalize. And if the property is of the community utilities or of the minerals, or its nature does not allow individual ownership, then it becomes naturally a public property and the State cannot nationalize it as an individual property. If such property was not of the category of public property, then it should remain as an individual property, and the State absolutely cannot nationalize it, nor can it take it against the will of its owner, unless he accepted to sell it to the State as he would sell to an individual, and the State bought it from him as any individual would buy it. Thus the State cannot own the properties of individuals by force, under the pretence of the public interest, even if it paid its price; this is because the individual's properties have to be respected and protected, and no one is allowed to commit aggression with regards to them even if it was the State. If this were the case, the aggression would be considered eligible to be a subject of complaint, which the individual owner could submit to the Mahkamat al-Mathalim', allowing his complaint to be heard (and the unjust act removed). This is because the Khalifah has no right to take anything away from the authority of anybody, except by a known and confirmed right. The State also cannot keep any part of the public or State properties in the hand of an individual under the name of the public interest, because the Shar'a has determined the interest of the properties and has identified the public property, State property and the individually owned property.

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at al-Mathalim: Court of unjust acts



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Thus, it becomes clear that property owned by nationalization is not considered to be of public property, nor of the State property, or is it of the divine rules; it is rather one of the rules of the capitalist system.

## EXCLUDING (Himaa) THE PUBLIC BENEFITS / UTILITIES

There is a right for all the people to benefit from the public utilities, for the purpose for which they are designated. They should not be used except for the purpose for which they are designated. Thus, it is not allowed to use a road for the purpose of a recess (parking for a break), parking to trade, nor anything that the road did not exist for. This is because the road exists for the purpose of traveling upon it; unless it were to be used in such a way that does not interfere with traveling; and this marginal use is evaluated as that which does not cause harm or difficulty to passers by. Rivers also should not be used for other than the matter, which they exist for. So if a river exists for irrigation, as would be the case for example with a small river, then it should not be used for navigation (shipping), while if it exists for both matters, like the Nile and Tigris, it can be used for both.

In addition, no one is allowed to designate for himself anything from the public utilities, such as the pastures, Masjid and seas. The Prophet (SAW) said: "There is no seclusion (Rima) except for Allah and His Messenger," narrated by Abu Dawud through Ass'ab ibn Jaihamah'. The meaning of seclusion (Rima) to the Arabs was that their chief, when he camped in a fertile place, would let a dog bark at the top of a high place, and wherever the voice of the dog reached on all sides that area would be protected for him, and no one would be allowed to send his cattle to graze inside it, while he was still able to graze his flock with other people in other places. So the sanctuary (Hima) is the protected place, and it is different from the allowed (halal) place. Thus, Islam prevented people from secluding any of the public things for their private use to the exclusion of the others. Accordingly, the meaning of the Hadeeth is that no one is allowed to protect (for one's use) any of those things, which belong to all Muslims, except Allah and His Messenger, for only they have the right to protect any of these things they deem appropriate. The Messenger of Allah (SAW) acted in accordance with this, so he protected some places. It is narrated from Ibn 'Umar, "that the Prophet (SAW) protected the (land of) Naqee'a for the horses of the Muslims," narrated by Abu Ubayd", the Prophet (SAW) protected a place called Naqee'a a land which was thoroughly soaked with water and was therefore fertile, it was 20

Abu Jathama: He is one of the prophet (SAW) groups (Companion of the prophet).

Abd Al-Hassim, The Book of Currency, Beirut - Lebanon. Dar Al Kutub Al Elrniah, 1986.

from Al-Madina. So people were prohibited from inhabiting this dead (uncultivated) land, thus the pastures could grow, and special flocks were allowed to graze whilst others were reserved. What is meant here is that he reserved it for the horses used in Jihad in the way of Allah. The Khulafaa of the Prophet after him also protected land - 'Umar and 'Uthman protected the public places, and this matter became known to the Sahabah and none of them denied it became an Ijma'a-as-sahaba (consensus of the companions). It was also narrated from 'Ubaydullah ibn az-Zubair from his father, that he said: "A Bedouin came to 'Umar and 'Umar, O Ameer of the believers, this is our country on which we fought in jahiliyyah (days of ignorance) and became Muslims on it, so why do you protect it?' 'Umar bowed his head and began to blow and twist his moustache, as he used to twist his moustache and blow when something worried him. When the Bedouin saw him doing that, he repeated what he had said to him. Then 'Umar said: "The property (Mal) belongs to Allah, and the human beings are servants of Allah. By Allah had I not been charged with that in the way of Allah (Feesabeellillah) I would not have protected one handspan of the land," narrated by Abu Ubayd.

The prohibited protection mentioned in the Hadeeth includes two matters: the first is the (uncultivated) land, which is allowed for the person to inhabit and take from. And the second is the protection of the things which the Prophet (SAW) made the people associates in, such as the water, pastures and fire; for example where someone designates a canal of water to irrigate his plants and prevents others from doing the same. Ahmed narrated from Iyas ibn Abdur-Rahman he said: "Do not sell the excess water as the Prophet (SAW) forbade selling water." Hisham narrated from Al Hassan, that the Prophet (SAW) said: "Whoever prevented the excess water to be used with it the excess pasture, Allah will prevent him of His bounty on the Day of Judgment", narrated by Abu Ubayd. Thus it becomes clear that the State is allowed to protect the dead (uncultivated) land, and that which enters into the public property, for anything that it is considered to be in the interests of the Muslims, on condition that it does not cause harm to anybody.

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<sup>3</sup> a measure of length.

## FACTORIES<sup>1</sup>

The factory, in its essence, is one of the individual properties. It is one of the things, ~~is allowed~~ to be owned by individuals. It has been confirmed; i.e. individuals used to own ~~at the time of the Prophet (SAW), such, as those for manufacturing shoes, dresses~~ (SAW), swords and other goods. The Prophet (SAW) consented to them and he had the Minbar ~~constructed~~ by them, which indicates that the individual ownership of factories is allowed. But ~~the~~ <sup>the</sup> ~~rule~~ (divine rule) of the factory is decided by the nature of the material which it ~~constructs~~ <sup>produces</sup>, and the evidence of this is that the Muslims are prohibited to possess factories that ~~produce~~ <sup>produce</sup> wine, according to the Hadith which states that Allah (SWT) cursed the one who presses ~~to make~~ the wine and the one who orders this to be done. So the prohibition of pressing ~~is~~ <sup>is</sup> not prohibition of pressing as such, rather it is prohibition of pressing wine specifically. ~~Pressing~~ <sup>Pressing</sup> is not Haram (prohibited), rather it is the pressing to produce alcohol which is the ~~(prohibited)~~ <sup>(prohibited)</sup> matter. Accordingly, the prohibition of the alcohol factory results from the ~~nature~~ <sup>nature</sup> of the materials it produces. In this way, it appears that the rule of the factory is the ~~rule~~ <sup>rule</sup> of the material it produces. Therefore, factories have to be examined: if the materials ~~used~~ <sup>used</sup> by them are not of the public properties, then these factories are of the individual ~~properties~~ <sup>properties</sup>, such as the factories of sweets, textiles, carpentry and the like. However, if the ~~factories~~ <sup>factories</sup> were for manufacturing materials which are of the public property, such as the factories ~~which process the uncountable (undepleted) minerals, then it is allowed for them to~~ <sup>which process the uncountable (undepleted) minerals, then it is allowed for them to</sup> ~~be used publicly, due to the material which the factory produces, be it gold, silver, iron, copper~~ <sup>be used publicly, due to the material which the factory produces, be it gold, silver, iron, copper</sup> ~~or oil (oil), in the same way that the rule of the alcohol factory follows the rule of alcohol in~~ <sup>or oil (oil), in the same way that the rule of the alcohol factory follows the rule of alcohol in</sup> ~~production. These factories are also allowed to be owned by the government, since the State is~~ <sup>production. These factories are also allowed to be owned by the government, since the State is</sup> ~~to produce these minerals on behalf of the Muslims, for the purpose of their interest.~~ <sup>to produce these minerals on behalf of the Muslims, for the purpose of their interest.</sup> ~~Factories are also allowed to be owned by individuals, where the State can hire them for a~~ <sup>Factories are also allowed to be owned by individuals, where the State can hire them for a</sup> ~~sum of money, which is agreed upon. However, the ownership by individuals, of the tools and~~ <sup>sum of money, which is agreed upon. However, the ownership by individuals, of the tools and</sup> ~~machines does not allow them to use them in producing these uncountable (undepleted) minerals~~ <sup>machines does not allow them to use them in producing these uncountable (undepleted) minerals</sup> ~~themselves, because these minerals are public properties for all the Muslims. Nor is any~~ <sup>themselves, because these minerals are public properties for all the Muslims. Nor is any</sup> ~~individual allowed to own them to the exclusion of others, but they are allowed to rent them to~~ <sup>individual allowed to own them to the exclusion of others, but they are allowed to rent them to</sup>

<sup>1</sup>rahman Al-Maliki, The Ideal Economic Policy, Beirut - Lebanon, Dar El-Ummali, 1963: P.70.

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State for a certain defined amount, where the State uses them to produce these minerals. As the factories which treat iron and transform it to sheets, the car factories and the like, whose materials are of the individual ownership, any individual is allowed to own them, because the materials which they produce are not from the materials of the public property. Therefore, every factory whose manufactured product is of the public property, is allowed to be owned publicly, or the State or by individuals from whom the State is allowed to hire. Likewise, every factory whose manufactured product is of the private property, is allowed to be owned by individuals because this is from the individual ownership.

## III. BAIT UL-MAL (THE STATE TREASURY)

The Bait ul-Mal is the authority responsible for every income (revenue) or expense, which Muslims are entitled to. Therefore, every property (Mal) that the Muslims are entitled to; and the owner is not assigned, is assigned to the Bait ul-Mal, even if its owner as a category was not. Once the property was received, then by its receipt it is added to the rights of the Bait ul-Mal, whether the property actually entered into its possession or not, because the Bait ul-Mal is an authority and not just a place. Moreover, every right, which is due to be spent on the Muslims' interests, is a right upon the Bait ul-Mal. If it was spent in its specified area then it is added to the expenses of the Bait ul-Mal, whether it left its hold or not. Because that it reached the governors of Muslims, or is spent by them, then the law of the Bait ul-Mal applies to it, whether as revenue or expenses.

### Revenues of the Bait ul-Mal

The permanent revenues of the Bait ul-Mal are: Booties (Fai'), Spoils (Ghana'im), Land (Kharaj), Head Tax (Jizya), the different types of public property revenues, the revenues of State properties, the tithes (Ushr), the fifth of the hidden treasure (Rikaz), the minerals, and the properties of Zakat. But the Zakat properties are kept in a special place in the Bait ul-Mal, and are not spent except for the eight categories mentioned in the Qur'an, and nothing of them should be spent for other than the eight categories, whether the State affairs or the Ummah's interests. But the Khalifah is allowed to spend them, according to his opinion and Ejtihaad, for what he sees fit of the eight categories. He has the right to give them to one or more of these categories, or to all of them. The revenues of the public properties are also kept in a special place in the Bait ul-Mal, and are not mixed with others, because they are owned by all the Muslims, from whence the Khalifah spends them, within the Shari'ah rules, in the interest of the Muslims according to his opinion and Ejtihaad.

The other properties, which belong to the Bait ul-Mal, are all gathered together, and spent on the affairs of the State and the Ummah, on the eight categories and on anything that the State



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es. If these properties meet the needs of the citizens, that is well and good; otherwise the levies taxes upon the Muslims in order to accomplish what is required of it in terms of after their affairs. In regards to the way these taxes are enacted, it should be done according to the obligations which the Shar'a put upon the Muslims. So concerning duties which obligatory upon Muslims to carry out and which require expenses from the State for their execution, the State has the right to levy taxes from the Muslims so that it can execute them. As for those issues which are not duties upon the Muslims, such as the repayment of the debts of the dead, the State is not allowed to levy taxes in order to pay them off. If it had funds available in the Bait ul-Mal then it would carry this out, otherwise the State is not obliged to do so. Therefore, the State has the right to collect taxes in these instances, in which case it has to be as follows:

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to meet the expenses due upon the Bait ul-Mal for the poor, the needy, the wayfarer and in the carrying out of Jihad.

to meet the expenses due upon the Bait ul-Mal as compensation, such as the expenses of the employees and the provision of the army and the like.

to meet what is due upon the Bait ul-Mal in the form of services and utilities, such as the construction of roads, production of water, building of mosques, schools and hospitals and other establishments whose establishment are considered necessary for the Ummah and without which she would be harmed.

to meet the expenses due upon the Bait ul-Mal that arise in the form of necessity, such as (emergencies) incidents like famine, floods, earthquakes, an attack by an enemy and the like.

to levy taxes to meet debts, which the State incurred in order to carry out an obligation, due to all the Muslims, from any of the four cases mentioned above or whatever may have resulted in them, or any matter obliged upon the Muslims by Shar'a,

Other revenues which are kept in the Bait ul-Mal and spent upon the affairs of the citizens the tenth (customs) collected from the citizens of countries at war with the Muslims, or which are treasuries, and the properties which are of the public property or the State property, or the property which is inherited from those who had no inheritors.

Concerning the revenues of the Bait ul-Mal which exceeds the expenses due upon it; if the excess came from booties then it is spent as grants which are given to the people. If the extra comes from Jizya or Kharaj, it is kept to meet the requirements of any emergencies which may arise upon the Muslims, and it should not be waived from those who are obliged to pay, because the divine law has put the Jizya on everyone (non-Muslim male, mature and able to pay), and the Kharaj on the land according to its capacity. If the extra came from Zakat it is kept in the Bait ul-Mal until any of the eight categories has demands upon it, whereupon it is spent on them. If the extra came from that which is due upon Muslims, then it would be dropped and they are excused from paying.

#### **The Expenditures of Bait ul-Mal**

*The expenditures of the Bait ul-Mal are based upon six principles:*

The expenditures for which the Treasury acts as custodian, and these are the Zakat funds. These will be paid to those eligible subject to availability. If the funds were available to the Treasury in the Zakat section, they would be paid to those among the eight categories mentioned in the Qur'an as their right. These funds must be paid to them. However, if these funds were not available to the Treasury, this waives their payment to those eligible; if the funds were not available to the Treasury in the Zakat section, then none of the eight categories would be given any money from Zakat fund and the State would not have to borrow any money pending the levying of Zakat.

The expenditures which are due on the Treasury by way of "T'alah" financial support and with regard to undertaking the duty of Jihad; such as spending on the destitute, the indigent and the traveler, and such as the spending on Jihad. The eligibility of this expenditure is not subject to availability, for it is a right that must be fulfilled whether funds were available to the Treasury or

Hence, if the funds were available, they must be paid at once. However, if the funds were not available and if it were feared that delaying the payment would cause a serious hardship, the State could borrow the money at once, pending its collection from the Muslims, and then pay it back. If it were not feared that a hardship would be caused, then the principle: "It is delayed to the time of ease" would apply. Hence, payment would be deferred until the funds are levied and then they would be paid to those eligible.

The expenditures which are due upon the Treasury by way of "Badal" recompense or reward, meaning that the funds are owed to people who rendered a service to the State, they are not subject to availability; such as the salaries of soldiers, civil servants, judges, teachers and so on. Hence, such payments are also not subject to availability. These are rights that must be paid regardless of availability or scarcity whether the funds were available in the Treasury or not. If the funds are available, they should be paid immediately; if they are not available, the State would be obliged to make them available by taking whatever is needed from the Muslims. If it were feared that delaying the payment would cause a serious hardship, the State should borrow money at once, pending its collection from the Muslims and then pay it back. If it were not feared that a hardship would be caused, then the principle: "It is delayed to the time of ease" would apply. Hence, payment would be deferred until the funds are levied and then they would be paid to those eligible.

The expenditures that are due on the Treasury, and whose payments are due by way of "Irfah" welfare and "Irfah" public utilities, however without recompense; in other words the payments are spent on a host of utilities without any returns or revenues, such as roads, water supply, mosques, schools, hospitals and any other similar utility whose availability is considered necessary and whose non availability would cause hardship to the Ummah. Hence, the payment for these utilities is not subject to availability of funds. Rather they are an obligatory liability regardless of availability or scarcity. So, if the cash were available to the Treasury, it should be spent on these utilities; and if it were not available in the Treasury, the onus would be shifted to the Ummah; thus whatever is required for such projects in terms of finance would be collected from the Ummah in order to meet the costs, then the Treasury would spend on these projects. Hence, because any expenditure by way of welfare and without a return, and whose non-payment

could cause a hardship would be a binding expenditure whether the funds are available or not. If the cash was available to the Treasury, it becomes a duty upon the State to spend on these utilities and the duty would be waived off the Muslims. But if it was not available, then the onus would be on them to provide it for the Treasury and consequently it becomes a compulsory expenditure on the Treasury.

The expenditures that are due upon the Treasury, and whose payments are due by way of *"Islaha"* welfare and *"Irfaq"* public utilities, and *without* recompense; however, the scarcity of cash would not cause hardship to the Ummah, such as the building of another road while a road exists, or the building of a hospital while another exists and is capable of providing adequate care, or the building of a road for which people can find an alternative road nearby or anything else. In this case, the spending on such projects would be subject to availability only. Hence, if funds were available to the Treasury, they should then be spent on such projects; otherwise, the duty of such expenditure on the Treasury would be waived and the Muslims would not be required to meet the costs of such projects, because in essence, they are not obligatory upon the Muslims.

The expenditures that are due upon the Treasury by way of emergency, such as famine, flood, earthquake or attack by an enemy. The payment of such expenditure is not subject to availability; the onus is upon the State to provide such money regardless of availability or scarcity. If cash is available, it should be paid immediately, and if it was not, then the obligation would be on the Muslims; in this case the money should be levied from the Muslims at once and it should be placed in the Treasury in order to spend on them. If it was feared that a delay in levying money could cause hardship, the State must in this case borrow the necessary money and place it at the disposal of the Treasury, then pay out the money at once to those eligible and pay the debt from what it collects from the Muslims later.

### 3. The State Budget<sup>7</sup>

Each year, the democratic states draw up a general budget for their State. The reality of the budget in the democratic State is that the budget itself is issued in the shape of a law known as the Budget Bill or Law for such and such year, which Parliament then approves and enacts it as a law. Once it has been debated, including the appropriations of the Budget one by one, and the amounts assigned to each item. Each appropriation is in fact an integral part of the Budget and these are voted on as a whole, and not individually. Hence, Parliament can either accept or reject it outright, even if it reserves the right to debate it item per item and sum per sum at the debating stage. The law of the Budget is formed of several articles, one of which is drawn up to show the amounts that are earmarked for the State's upcoming expenditure in the financial year for which the budget has been drawn up. Another article is drawn to show the State's estimates with regard to the revenues of the coming financial year. Other articles are drawn in order to earmark the expenses of certain institutions, while yet other articles are drawn in order to estimate the revenues of certain institutions. Also, certain articles are drafted in order to give the Chancellor a list of mandatory powers. In each article a reference is made to a table that includes the sections of the Budget, outlining what each article contains in terms of expenditures and revenues, then in each column the items of the section are listed; then the overall sums of each item in the section are listed in the table. It is on this basis that the Budget is drawn up each year, with slight variations introduced each year, according to the various events. There are also a host of peripheral changes in the budget of each democratic State, and this is also according to the various events.

As for the Islamic State, she does not draw up an annual budget because the matter does not require a specific law for the budget each year. The budget does not get proposed to the Council, nor is the Council's opinion sought. This is because the budget with all its sections, and the funds included in each of them, is law in the democratic system. It is a law for one single year. The law in the democratic system is enacted by Parliament, and that is why the matter is required to be proposed to Parliament for ratification. The Islamic State does

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<sup>7</sup>Adilrahman Al-Maliki, The Ideal Economic Policy, Beirut - Lebanon, Dar El-Ummah, 1963: P.224.

eed this, because the Treasury's revenues are levied according to the Shari'ah rules stipulated in the text and they are paid out according to the Shari'ah rules stipulated by text. All of these are determined by Shari'ah rules; hence, there is absolutely no room for opinion seeking with regard to revenues and with regard to the expenditures. The sections in the budget are formed of permanent sections that have been determined by permanent Shari'ah rules. This is as far as the permanent sections are concerned; as for the appropriations of the budget and the amounts included in each appropriation as well as the matters for which these amounts are allocated in each appropriation, all of this is down to the opinion and the Ejti'had of the Khalifah. This is because it is the duty of looking after people's affairs, which Shari'ah had conferred upon the Khalifah to decide upon what he deems fit; and his order is binding and must be executed.

Therefore, there is no room in Islam for the State to draw up an annual budget, as is the case in the democratic system, whether this is with regard to its sections, its appropriations or the amounts required for each item or each appropriation. This is why no annual budget is drawn up for the Islamic State, though she has a permanent budget for which the Shar'a has determined its sections for both revenues and expenditures. The Khalifah reserves the right to determine the appropriations and their items/ whenever it is required without linking that to a particular period.

### **Zakat**

Zakat funds are one of the funds that are placed in the Treasury. Zakat is different from other funds in regards with its collection, in regards of with its collected amounts and in regards with it is spending.

In regards with its collection, it is collected from the properties of the Muslims only and not from the non-muslims. It is, as well, not a general tax, rather one of the pillars of Islam. Besides that, it is a property, paying of which achieves a spiritual value, like the prayer, fasting and the hajj, and it is an individual obligation paid by the Muslim.



Yet the levying of Zakat does not proceed in conformity with the needs of the State, nor with the interest of society, as is the case with all the other types of funds levied from the State. It is rather a specific type of fund that must be paid to the Treasury, whether there is a need for it or not. The Muslim is not absolved of the duty to pay the Zakat when it becomes a part of his wealth. Its payment is obligatory on the Muslim who owns the Nisab (minimum amount eligible for Zakat), after deducting his debts and his needs. Zakat is not an obligation on the non-Muslim. It is however an obligation upon the adolescent and the insane, because Ibn al-Qayyim reported on the authority of Abdullah Ibn Anas that the Messenger of Allah (SAW) said: "He who acts as guardian for an orphan who has property, let him trade in that property and give it until the Sadaqah devours it", meaning that he should not leave it until it all perishes without paying Zakat upon it. As Zakat is an obligation upon the wealth owned by the individual, it is therefore a monetary worship and not a physical worship.

As for the amount levied, this is a specific amount, which does not increase or decrease. It has been determined as a quarter of the tenth (2.5%) in gold and silver and the commercial commodities. The amount is levied from a specific sum, which is the Nisab or over. The Nisab is 200 silver either Dirhams or 20 gold Miskals. The gold Miskal is equal to a Shari'ah weight of Dinar, whose weight is 20 carats, which is equal to 4.25 grams of gold. Hence, the Nisab of gold would be equal to 85 grams of gold. As for the silver Dirham, it is equal to 2.975 grams, hence the Nisab of silver would be 595 grams of silver. If the amount was less than the Nisab, Zakat would be taken from it. As for the Rikaz (ore etc.), its Zakat is a fifth. For cereals, such as wheat and the like, and cattle, such as camels, cows and sheep, the Scholars have explained the amount of their Nisab and what should be taken from them in detail.

As for the disposal of Zakat and the areas of its expenditure, these have also been determined by a specific limit; thus it could not be paid except for the eight categories Allah (T) mentioned in the Qur'an.

(SWT) says:

alms are only for the poor, and the needy, and those who collect them, and those whose hearts are to be reconciled and to free the slaves, and the debtors, and for the way of (Jihad) and for the wayfarers".<sup>2</sup>

As for the poor, they are those who have money, but their expenses are higher than what they own. The needy are those with no money and no income.

(SWT) says:

the indigent (miskeen) in the dust".<sup>3</sup>

As for those employed for it, they are those who levy and distribute the Zakat. Those whose hearts have been reconciled are those the State deems appropriate to give them from the Zakat as an incentive to establish them firmly in Islam. Those in bondage are the slaves; they are given money so that they can be freed. This category is not existent today. Those in debt are those who are unable to pay off their debts. In the way of Allah means Jihad; whenever "in the way of Allah" is mentioned in the Qur'an, coupled with spending, its meaning is Jihad. The traveler is the traveler who has been cut off. It is forbidden to pay off from the Zakat funds to anyone other than from these eight categories, and it is forbidden to spend it upon the economic development of the State. If none of the eight categories can be found, the Zakat fund should still not be spent on any other area; rather it should be kept in the Treasury and then paid out to the eight categories whenever the need arises. The Zakat should be paid to the Imam or his deputy, for

(SWT) says:

the alms from their properties so that you might purify and sanctify them",<sup>4</sup>

In addition, because Abu Bakr demanded Zakat from them; the Sahabah agreed with him and he did not ask them whether they were paying their Zakat to the poor or not. When they refused to pay Zakat to him, he fought them. It is the Imam who pays it to those eligible,

<sup>2</sup> n. At-Tawbah Surah, Ayat: 60.

<sup>3</sup> n. Al-Balad, Ayat: 16.

<sup>4</sup> n. At-Tawbah Surah, Ayat: 103.

the governors are unjust, Zakat should be handed to them. It has been reported on the authority of Suhayl Ibn Abu Salih that he said: "I came to Sa'ad Ibn Abu Waqqas and said to him: 'Give me some money on which I must pay Zakat, and these people are as you can see, so what do you suggest I do?' He said: 'Pay it to them.'" So I went to Ibn Umar and he said the same; then I went to Abu Hurayra and he also said the same thing. Then I went to Abu Sa'id and he also said the same thing.<sup>5</sup> Zakat must never be given to a Kafir whether he were a Thimmi or a Mawali, because the Messenger of Allah (SAW) said to Mu'ath Ibn Jabal when he dispatched him to Yemen: "Inform them that Allah has imposed upon them a Sadaqah in their wealth, to be taken from their rich and rendered to their poor," narrated by Bukhari on the authority of Ibn Umar. Hence, the Messenger of Allah (SAW) had specified that it should be spent on their poor, not that it has been imposed upon their rich. It is, however, permitted to donate to the Kafir a voluntary Sadaqah, for Allah (SWT) says:

"And they give the food, despite their need of it, to the indigent (miskeen), the orphan and the captive".<sup>6</sup> and all the captives at the time were Kuffar.

### The Head Tax (Jizya)

The Jizya is a right that Allah (SWT) enabled the Muslims to take from the Kuffar (Non-Muslims) as a submission from their part to the rule of Islam. It is a general fund that can be used for the welfare of the subjects as a whole. It becomes due every year and cannot be demanded beforehand. The Jizya is established through the text of the Qur'an.

Allah (SWT) says:

"And they pay the Jizya with willing submission (from their hands) and feel themselves secured".<sup>7</sup>

<sup>5</sup> Mentioned by the writer of Al-Mughni.  
<sup>6</sup> Surah Al-Insan Surah, Ayat: OK  
<sup>7</sup> Surah At-Tawbah Surah, Ayat: 29.

Abu 'Ubayd<sup>8</sup> has reported on the authority of Al-Hassan ibn Mohammed who said: "The Messenger of Allah (SAW) wrote to the Magi of Hajar calling them to Islam: 'He who embraces Islam will be accepted from him, and he who does not, the Jizya will be imposed upon him, no slaughtered meat of his is to be eaten and no women of his is to be wed.'" The Jizya is levied from the Kuffar as long as they remain in Kufr; if they embrace Islam, it will be waived from them. The Jizya is imposed on the head and not on the wealth; thus, it is collected from the individual from the Kuffar, and not on the basis of the wealth. The word Jizya is derived from "Al-jazaa" (retribution). Hence, it is taken as a retribution for being Kuffar and this means it cannot be waived unless they embraced Islam. In addition, the Jizya cannot be waived from the Kuffar who take part in fighting, as it is not levied as a retribution for protecting them. It is levied from the individual who is capable of paying it, because Allah (SWT) says: "With willing submission (from their hands)",<sup>9</sup>

Meaning with capability; thus it is not levied on the invalid. The Jizya is only imposed on men; thus, it is not levied from women nor is it levied from children, nor is it levied from the insane. Even if a woman came to live in Dar al-Islam and offered to pay the Jizya in exchange for the right of abode, she is allowed in Dar al-Islam and would be given leave to reside and no Jizya will be levied from her. No fixed amount is estimated for the Jizya; rather it is left to the discretion of the Imam and his own Ejtihaad, provided that the amount set by the Khalifah is no more than the payer could bear. Bukhari extracted that Abu Najeesh reported: "I said to Mujahid: 'What is with the people of Ash-Sham? They have to pay four dinars, while the people of Yemen have to pay only one dinar?'" He said: "This was determined according to prosperity." If the Jizya is due on a capable Kafir and he could not pay it, it will remain a debt on his neck and he will be treated like the indebted facing difficulty, thus he would be given time to pay it.

#### **The Land Tax (Kharaj)**

The Kharaj is a right that Allah (SWT) enabled the Muslims to take from the Kuffar. It is imposed on the neck of the land that has been conquered from the Kuffar by way of war or

<sup>8</sup> Ubaid Al-Kaserm, The Book of Currency, Beirut-Lebanon. Dar Al Kutub Al Elmieh., 1986.  
<sup>9</sup> Surah At-Tawbah, Ayat: 29.

ay of peaceful agreement, provided that the peace agreement stipulates that the lands is ours (belonging to the Muslims) and that they will continue to farm the land in exchange of a Kharaj that they should pay to the State. The Kharaj in the Arabic language means the rental and harvest or the crop. Each land conquered from the Kuffar after declaring war against them is considered Kharaji land, and even if they embraced Islam after the conquest, the land remains Kharaji. Abu 'Ubayd<sup>10</sup> reported on the authority of Al-Zuhri: "The Messenger of Allah (SAW) exempted the Jizya from the Magi of Bahrain." Al-Zuhri said: "He who embraced Islam he (SAW) exempted it from him and his Islam ensured that his life and his wealth were safe, save for the land. That land became a booty for the Muslims because he had not embraced Islam in the first instance when he was in a position of strength", meaning when he was beyond the reach of the Muslims. As for the amount of the Kharaj imposed on the land, this is estimated according to the potential of the land. When 'Umar (RA) imposed the Kharaj, he took into consideration the potential of the land, without unfairness to the owner and without any prejudice against the owner. In some areas, he imposed upon every Jareeb<sup>11</sup> a Qafeez and a Dirham and he imposed in other areas a different amount, and in the lands of Ash-Sham he imposed yet another. It was known that he took into consideration the potential of the land. If the Kharaj is determined according to the potential of the land, it will be levied according to the manner in which it was used. If the Kharaj were imposed over the area of the land annually, the land would then be levied at the end of the lunar year, because it is the year recognized by Shar'a. However, if the Kharaj is imposed upon the farmed area of the land, the Kharaj will be levied at the end of the solar year because it is the year related to the rainfalls and to the sowing of the crop. If the Kharaj is imposed by way of sharing if a specific estimate is set according to what the land annually produces, the Kharaj will be levied as and when the crop is ripe and when it has been harvested. The Imam reserves the right to estimate the Kharaj, while taking into consideration the appropriate way with regard to these three aspects, either on the area of the land, or the area of the planted part, or by way of estimating the produce. If improvements are introduced to the land and this resulted in an increase in the produce, or if the lands have been subjected to a hostile element that led to a decrease in the amount of produce, then the situation must be examined. If the increase was the result of an action undertaken by the farmer, such as the digging of a well

<sup>10</sup> Ubaid Al-Kaserm, The Book of Currency, Beirut - Lebanon. Dar Al Kutub Al Elmieh, 1986.  
<sup>11</sup> Jareeb: A patch of amble land.

canal, then the Kharaj would not be increased. If, however, the decrease was as a result of by own doing, such as the destroying of a canal or the neglect of a well, then the Kharaj would be redneed and they would be ordered to repair the damage they had caused. If the increase or decrease was caused by the State if the State were to dig a well or if on the other hand she were to neglect the repair of the wells and the canals, in this case she reserves the right to increase the Kharaj and she has also to reduce it when the produce decreases. If the decrease or the increase occurs due to natural elements, such as the uprooting of trees by a hurricane or the drying of the canals due to a torrent, in this case the land will be levied according to its initial state lest the farmers are wronged. The Kharaj should be estimated for a specific and known period of time and it should not be permanently fixed. This estimate changes when the period expires and a new estimate will be fixed according to the potential of the land at the time of valuation for the new period.

## Taxes

The revenues of the Bait-ul-Mal as decided by Shar'a are enough to manage the affairs of the citizens and to look after their interests. The matter does not require the imposition of direct taxes. Yet Shar'a, as a precaution, classified the needs of the Ummal into two parts: one part of these needs the Shar'a obliged on the Bait ul-Mal on the permanent revenues of the Bait-ul-Mal. Concerning the other part of these needs, Shar'a obliged it on all the Muslims, and the State the right to collect funds from them to meet these needs. Therefore, taxes are of two kinds: permanent revenues, which Allah (SWT) placed on the Muslims so as to discharge their interests. And Allah (SWT) made the Imam a guardian over them, where he collects these funds and spends them in the way he decides fit. It is proper for these collected funds to be called a tax and to be considered a due fund or called otherwise. No taxes are taken other than those revenues which Allah (SWT) obliged and Shar'a stated, such as the Jizya and Kharaj, and those which Allah (SWT) obliged the Muslims to fund their expenditure, such as roads and schools. So no fees are taken for the courts, the State departments, or for any other service. As for the customs taxes, they are not considered to be part of the collected taxes, they are rather dealing with other states the same way we deal with us, and they are not a tax to meet the expenses of the Bait ul-Mal, and Shar'a has prohibited them Mukus (customs), and it prohibited that they are collected from Muslims and



Other than the taxes that Shar'a prescribed, absolutely no tax should be taken, because not allowed to take from the Muslim funds anything without a divine right, which the Shar'a evidences, explained. Moreover, there is no evidence indicating the permissibility of any tax from any Muslim, except those mentioned earlier. As for the non-Muslims, no taxes are taken from them, as the discharging of the needs of the citizens, which the Shar'a laid upon Muslims only, so taxes are only taken from Muslims. No tax is taken from Muslims other than the Jizya alone; and the Kharaj is taken from the Muslims and non-Muslims on the Kharaji land. As for how the tax is taken from Muslims, it is taken from that which exceeds their expenditure (Nafaqah), and from that fund which is legally considered to be out of sufficiency (Ghina).

What is considered to be out of sufficiency is that which exceeds the satisfaction of one's needs and one's luxuries in a seemly way, because the Nafaqah (financial support) of the individual upon himself is to meet all his needs which require satisfaction in a seemly way, and according to the standard of living with which he lives in the community. This amount is not fixed with a specific amount for all the people, rather it is estimated for every person according to his standard of living. If he was of those who need a car and a servant then the amount is decided as that which exceeds this. Moreover, if he needed a wife, the amount is estimated as that which exceeds his marriage requirements, and so on. If what he owned exceeded these needs, a tax is collected from him, and if it did not exceed that, no tax is collected, so he would not be free of want.

When taxes are imposed, they should not be aimed at preventing the increase of wealth of individuals, nor preventing people from becoming rich, because Islam does not prohibit one from becoming rich. No other economic factor is considered for collecting the taxes; rather the tax on lands is taken on the basis that the funds available in the Bait ul-Mal have to be enough to meet the needs required of it. So taxes are taken according to the needs of the State for its expenses, and nothing is considered in that case except the needs of the citizens and the ability of Muslims to pay the taxes. Tax is not estimated according to increasing or decreasing (or stable) ratios. Rather it is estimated with one ratio upon all Muslims regardless of the amount of funds from which it is taken. When the ratio is estimated, justice amongst Muslims has to

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saved, so it is not taken except out of sufficiency, and it is taken from the whole amount  
needs the needs, and not from the income only, with no difference between capital, profit  
me, so it is taken from all the funds. The production tools necessary for work in industry  
ing, nor land, or immovable property are considered part of the capital.

## DIS,TRIBUTING WEALTH AMONG THE PEOPLE

Islam allows individual ownership, but has determined the manner of ownership. It has left the individual to freely dispose of what he or she owns, but it has also determined the manner of disposal. Islam has taken into account the disparity in the physical and mental abilities of the humans; therefore it has made provision to help the weak and the needy, by obligating the wealthy to give to the poor and needy. Islam has also made the utilities, which by their nature are indispensable to the community, a public property for all Muslims, and has forbidden any person from privately owning or protecting for himself or for others such utilities. Islam has also delegated the responsibility of providing the wealth, either as commodities or as services, to the State, and it has also permitted the State to exclusively acquire certain properties.

Islam has therefore guaranteed the livelihood for each citizen of the State, and ensured that the community does not fragment but rather remains cohesive. Islam has also protected the rights of the individuals and guaranteed the management of the community affairs, and the integrity of the entity of the State, which has been delegated with the necessary mandatory powers to carry out her economic responsibilities. This, however, could only be achievable if the State maintained a pattern, which enables the wealth to reach each individual within the community, and if in turn the individuals within the society were collectively adherent to all of the Islamic rules. However, if the society were based on flagrant disparities, as is the case nowadays in the Islamic world, then a balance through a new process of distribution must be struck between the State and the individuals in order to bring about a rapprochement in the provision of basic needs.

Furthermore, if people's minds were to suffer deviation in the implementation of the Islamic rules, due to misconception, or an incidental corruption; or if the State were to neglect its duties or abuse its powers, then they would go astray and society would deviate from the right path. This would lead to egoism, selfishness and mismanagement of the individual ownership, which would in turn lead to the misdistribution of wealth among people. That is why a balance between the State and individuals must be maintained, and were it to be lacking, it must then be generated.

Two matters could lead to the misdistribution of wealth among people. The first would be the circulation of wealth exclusively among the rich; and the second would be to deprive from that wealth, and to prevent them from acquiring the means of circulation of that wealth. Islam has solved these two matters by decreeing a host of Shari'ah rules designed to ensure that the wealth is circulated among all people with no exception. Islam has also decreed Shari'ah rules which prevent the hoarding of gold and silver, for they represent the means of exchange, and which ensure their circulation within the society among all individuals. This would redress the corrupted society, and the deviated or the society likely to deviate and it would be providing the wealth to all the citizens, one by one until each individual has his basic needs fully satisfied, and each individual has been enabled to acquire as much of the luxuries as

### **Economic Equilibrium in Society**

Islam has made the circulation of currency between all citizens an obligation, and it has forbidden the restriction of such circulation to a certain group of people to the exclusion of

(SWT) says:

**It circulates solely among the wealthy from amongst you".<sup>2</sup>**

If there were an excessive disparity between individuals within society in terms of the needs, and if society needed to be rebuilt anew, or if this disparity was caused by the indifference in the implementation of the Islamic rules, the State would be under obligation to redress the situation by handing out financial assistance to those in need, until these needs were satisfied, and until a balance in distribution was struck. The State should be required to provide both movable and immovable commodities, for its aim should not only be to temporarily fulfil one's needs, but also to provide the means which would assist the individual in the best way to fulfil his own needs over the long term. If the State were short of funds, and if its

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<sup>2</sup> Al-Hasher Surah, Ayat: 07.

...s were insufficient to generate such a balance within society, it would be wrong for it to taxes on its citizens for the sake of bringing about such balance, for this matter is not the of all the Muslims; it should rather endeavor to generate funds from sources other than such as the war booties and public properties in order to bring about the balance re, whenever the State feels that there is a disparity in the economic balance within it should address this disparity by handing out financial assistance from the treasury to need, provided funds gained from booties and public properties were available.

When the Messenger of Allah (SAW) realized that there had been a disparity in wealth in the Muhajireen and the Ansar, he (SAW) divided the booty gained from Bani Nadeer evenly among the Muhajireen, in order to generate an economic balance. It has been reported that when the Messenger of Allah (SAW) peacefully conquered Bani Nadeer and then drove the Jews from it, the Muslims asked the Messenger of Allah (SAW) to divide the booty among them; so Allah (SWT) revealed the following verses:

"Allah has bestowed on His Messenger from them, for this you have made them a nation".<sup>3</sup>

So Allah (SWT) had placed the wealth gained from Bani Nadeer exclusively at the disposal of the Messenger of Allah (SAW), to spend in whichever way he deemed fit. The Messenger of Allah (SAW) divided it among the Muhajireen and did not give any of it to the Ansar except to Abu Dajana Sammak ibn Kharsha and Sahl ibn Haneef who both were at that time poor just like the Muhajireen. It has been reported on the authority of Ibn Abbas that the Messenger of Allah (SAW) said to the Ansar: "If you wish I could ask you to share your homes and your wealth with the Muhajireen and divide among you this booty, or if you wish you could share your homes and your wealth and I shall not have to give you anything from this booty." This the Ansar said: 'We would rather share our homes and wealth with our brothers and let them have the booty as well.'

<sup>3</sup> Al-Hasher Surah, Ayat: 06.



(SWT) then revealed:

they give them preference over themselves even though poverty was their own lot".<sup>4</sup>

more, Allah (SWT) saying:

that circulates solely among the wealthy from amongst you".<sup>5</sup>

Means lest it circulates only amongst the rich. The Arabic word "Doola" means the object circulates or changes hands amongst people; it also refers to the circulated wealth; this means the booty, which by right should be granted to the poor to help them secure a living, should not be exclusively circulated amongst the rich.

The booty of Bani Natheer, which is part of the funds of the Bait ul-Mal that belonging to Muslims, was exclusively shared among the poor while the rich were excluded, in order to maintain a balance in the provision of the basic needs within the society. Handing out financial aid from the treasury is performed by the State, provided these funds have not been collected from Muslims, but rather from the war booties and the public property revenues. If the funds have been collected from the Muslims, it should not be spent on generating such a balance. This should be followed at all times, for the precept lies in the generality of expression not in the particularity of the cause. Therefore, the Khalifah must ensure that the economic balance is maintained by handing out financial assistance exclusively to the poor from the treasury's funds, which belong to all the Muslims, thereby ensuring that economic balance is maintained. (This is not considered to be part of the fixed expenditure of the treasury, but rather a specific situation from specific funds.)

#### ~e Prohibition of Hoarding Gold and Silver

The phenomenon of misdistribution of wealth among individuals all over the world is one that is reflected clearly in all aspects of daily life, to the extent that this does not require evidence to be proven, and what people suffer due to the flagrant disparity in meeting their

~; -Hasher Surah, Ayat: 09.

4[ -Hasher Surah, Ayat: 07.



cannot be over-emphasized. Capitalism had attempted at tackling this phenomenon but to

When the capitalist economists study the theory of income distribution, they completely ignore the unequal distribution of individual income, and become contented with the publication of statistics without offering a solution and without any comment.

Apart from the quantitative restriction of ownership, the Socialists have not been able to propose a solution to this phenomenon. As far as the communists, their solution was the abolition of ownership. Islam on the other hand has ensured the effective and efficient distribution by determining the means of ownership and the method of disposal, and also by providing the needy financial assistance which secures for them a relative parity in meeting their needs with other members of society. Islam has therefore provided a solution to the phenomenon of income distribution.

However, despite the relative parity among people as far as the basic needs are concerned, there may be some very wealthy individuals in the society; Islam has not imposed the parity on wealth, but rather obliged that every individual is independent from others in his ordinary life. Bukhari reported that the Messenger of Allah (SAW) said: "The best Sadaqa is that which is given out of one's wealth after sufficiency." These large amounts of wealth prepare the ground for the rich to save, and help them acquire large incomes. Therefore, the wealth remains concentrated in the hands of a few, and wealth generates wealth, although personal effort plays a part in gaining such wealth and in generating the opportunities to invest the wealth. This does not pose a danger to the community; on the contrary, it helps increase the economic wealth of the community as well as the standard of living. The danger lies in the hoarding of monies by some individuals with very large wealth, leading to the fall in the standard of income and causing wide unemployment thus plunging people into poverty. It is therefore essential to tackle the hoarding of monies. Money is the medium of exchange between two properties; or between a property and a service, or between a service and a property, hence it acts as a measure to this exchange. Therefore, when money becomes scarce and people are unable to obtain it, the exchange vanishes and the economic wheel comes to a halt. The more that money changes hands, the more economic activity proceeds.

This is because every person or company's income must originate from another person or company. Funds levied by the State are regarded as income to the State and an expense to the individuals, and the monies spent by the State on employees, projects and servicemen's salaries are in fact incomes to those people and an expense to the State; the monies spent by the employee, the serviceman, among others are incomes to those who sell their goods and services to these people, such as butchers, grocers, landlords, traders etc. Therefore, people's incomes and overall spending would be constantly circulating. If a person were to hoard a sum of money, it would in fact be withdrawing it from the market, and this would lead to a decrease in spending and a decrease in the income of persons who would have had dealings with that person had he hoarded that money. This in turn would lead to a decrease in their production, for the demand for goods decreases, thus leading to unemployment and an overall economic decline. Therefore, hoarding of money leads definitely to unemployment and to economic decline due to the decrease in people's incomes.

It should however be made clear that this damage to the economy emanates from money hoarding and not from saving; saving does not halt the employment cycle whereas hoarding does. The difference between hoarding money and saving is that the former means accumulating money without purpose. It means taking money away from the market, whereas, after saving, means accumulating money for a purpose, such as saving to build a house, or wedding, or to set up a business etc. This type of money accumulation does not affect the economy nor does it affect the employment cycle, for it does not lead to taking money from the market, rather it means saving a sum in order to spend it at a given time, thus the money will be spent again once it is invested, there is therefore no harm in saving, unlike hoarding the money for no real purpose.

Islam has made it lawful to save gold and silver, for it means the accumulation of money for a purpose. Islam has permitted the Mukatib<sup>6</sup> to work and save money in order to pay for his freedom; Islam has also permitted a man to save money in order to accumulate a dowry for a wife he wishes to marry, or to save money in order to go to Hajj etc. The saver would only

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<sup>6</sup> Mukatib: Contracting slave.

to pay the Zakar due on the accumulated money if it reached the Nisab and remained U: this session for a full year. When the verse was revealed prohibiting the hoarding of gold and silver, these two metals represented at the time the units of exchange and measure of the effort (in work) and the units of value put on goods, services and properties, whether these were hoarded or not; the prohibition was therefore directly linked to the fact that they represented the units of exchange.

The hoarding of gold and silver was prohibited explicitly in the Qur'an. Allah (SWT) says: "And let those who hoard gold and silver and do not spend them in the way of Allah know that a severe and painful punishment is awaiting them", "

This warning of severe punishment for those who hoard gold and silver serves as a clear evidence that the Law Giver has decisively ordered us to refrain from doing so; it is therefore forbidden to hoard gold and silver.

*Evidence of the fact that the verse has conclusively forbidden the hoarding of gold and silver is reflected in the following:*

The generality of the verse: The text of the verse in Mantuq (words) and in Mafhum (meaning) serves as evidence about the clear-cut prohibition of hoarding gold and silver. To say that the hoarding of gold and silver is permitted once the Zakat has been paid would mean abandoning the rule of the verse, which is clearly indicated. This cannot be deduced from the verse unless there were another evidence, independent from this verse, leading to such an understanding or negating the rule of the verse. And there is no such sound text to lead us to understand otherwise what the verse clearly indicated, nor is it likely that such an evidence exists to avert its meaning, for the verse is conclusive in meaning. The other possibility would be that the verse has been abrogated, and there is no evidence to suggest that it has been abrogated. As for the verse where Allah (SWT) says:

from their wealth a Sadaqah that would purify them".<sup>8</sup>

This verse was revealed in the second year of Hijra when the Zakat was made obligatory, whereas the verse of the Kanz (hoarding) was revealed in the ninth year of Hijra; earlier-revelation does not abrogate the later revelation. As for the Ahadeeth relating that wealth whose Zakat has been paid is not regarded as a hoarded wealth, these Ahadeeth have a proven sound (Sahih) except the Hadeeth reported by Al-Daraqutni and Abu Dawud on the authority of Umm Salama; as for the other Ahadeeth in relation to this matter, they are rejected and refuted in narration and in meaning in Sanad (chain) and in Main (content). As for the Hadeeth of Umm Salama, it cannot abrogate the verse even if it were Mutawatir, for the verse cannot abrogate the Holy Qur'an, even if these were Mutawatir, for the verse is definite in text, and we worship Allah (SWT) with the Qur'an in words and in meaning, whereas the Mutawatir Hadeeth is only definite in meaning, and we do not worship Allah (SWT) with the words of the Hadeeth, so the Qur'an cannot be abrogated by the Ahadeeth even if these are Mutawatir. So how could the individual report, such as that of Umm Salama, abrogate a verse that is definite in text and definite in meaning?

Abu Umamah<sup>9</sup> extracted in his commentary on the authority of Abu Umamah Al-Bahili who said: "From the people of the Suffa (poor) died and a dinar was later found in his garment, upon which the Messenger of Allah (SAW) said: 'That is a branding (bum).' Then another man died and two dinars were found in his garment, and upon this the Messenger of Allah (SAW) said: 'That is two brandings.'" This was because the two men were living off the Sadaqah while they had gold. One dinar or two do not reach the Nisab in order to say that Zakat is taken out of them. So when the Messenger of Allah (SAW) said about them "a branding and two brandings", he (SAW) was referring to them as hoarding, even though the amount is not liable for Zakat. He (SAW) was referring to the verse of the hoarding where Allah (SWT) says: "On the day their wealth will be heated in hell fire, and with which their foreheads, flanks and backs will be branded".<sup>10</sup>

<sup>8</sup> At-Tawbah Surah, Ayat: 103.  
<sup>9</sup> He is a commenter for the Holy Qur'an.  
<sup>10</sup> At-Tawbah Surah, Ayat: 35.

the text of the verse contains a warning against two matters: The first is against the hoarding of money, and the second is against not spending in the way of Allah those who hoard gold and silver and do not spend them in the way of Allah, a punishment would be awaiting them. This indicates that he who does not hoard money and does not spend in the way of Allah is not sinful and he who hoards and does spend in the way of Allah is also sinful. Al-Qurtubi said: "He who does not hoard and does not spend must be like that (sinful) as well". What Allah (SWT) means by "in the way of Allah" is 'Jihad'; for it is linked to spending. The phrase "in the way of Allah" means Jihad if it is linked to spending. It came in the Qur'an with this meaning alone, and elsewhere; this phrase does not appear in the Qur'an linked with spending without it meaning Jihad.

Abu Tharr reported on the authority of Zayd Ibn Wahab who said: "I passed by Abu Tharr in Al-Madinah so I asked him: 'What brought you here?' He replied: 'We were in Ash-Sham where I

those who hoard gold and silver and do not spend it in the way of Allah, then tell them that a painful punishment is awaiting them".<sup>11</sup>

Mu'awwiyah said: "This does not concern us, it only concerns the people of the book" Abu Tharr said: "It does indeed include us and them." This was also reported by Ibn Jarir on the authority of Ubaydullah ibn Qasim from Hassam from Zayd Ibn Wahab from Abu Tharr: "The matter was mentioned and it was added: The argument about the matter between Mu'awwiyah and I became heated so he wrote to Uthman complaining about me. Then Uthman wrote to me summoning me to him, so I went to him. When I reached Madinah<sup>12</sup> people overwhelmed me they hadn't see me before, so I complained about the matter to Uthman, he said to me: "Refrain yourselves slightly (away from Madinah)", so I said: "By Allah I shall never abandon what I have been saying." Therefore, the argument between Abu Tharr and Mu'awwiyah was regarding whom the verse referred to, and not regarding its meaning. Besides, had there been a verse at the time stating that the money for which its Zakat has been taken out would not be considered as hoarded wealth, then surely Mu'awwiyah would have used it to argue his case and

<sup>11</sup> At-Tawbah Surah, Ayat: 34.

<sup>12</sup> Madinah: Rasullah (SAW) City.

Abu Tharr. It is likely that such Ahadeeth have been fabricated after the Abu Tharr and it has also been confirmed that such Ahadeeth are not classified as Sahih.

Historically, Al-Kanz (hoarding) means piling up money, and hoarded money means stored money. Kanz also means anything piled up and hidden underground or over ground. Words of the Qur'an can only be explained with the linguistic meaning, unless a Shari'ah meaning to such words is mentioned, in which case they would then be explained with the meaning. It has not been established that the word Kanz has had a Shari'ah meaning, so it must be explained with its linguistic meaning only, which is to hoard money and pile without purpose. This hoarding is abhorred and it is the one which Allah (SWT) warned and for which He promised the perpetrators a severe punishment.



## RIBA AND CURRENCY EXCHANGE (SARF)

**Riba** (usury) is the practice of taking property for another property of the same type. The money exchange (Sarf) is the practice of taking a property for another property of gold and silver of the same type equally or of two different types equally or preferentially. Exchange can only take place in trade, as for 'usury', it can only happen in a trade (Bay'u) or in a loan (Qardh) or in a Salam (forward buying). Trading (Al-Bay'u) is the practice of exchanging property for property resulting in an exchange of property; this is permitted for Allah (SWT) says:

Allah has made trading lawful".<sup>1</sup>

And because Bukhari reported on the authority of Hakeem Ibn Hizaam that the Messenger of Allah (SAW) said: "The two trading parties possess the right of withdrawal (from the deal) if they separate." As for the Salam, this means handing over a commodity immediately for a commodity, which is to be handed over at a specific time in the future (Ajal). Salam also includes Salaf (credit). It is one type of trading and it is contracted in the same way as the Salam but with the wording of Al-Salam. This is permitted for Allah (SWT) says:

If you contract a debt for a fixed period, write it down".<sup>2</sup>

Ibn Abbas said: "I bear witness that the guaranteed Salaf (borrowing), to a fixed future, has been made lawful and allowed by Allah "Azza Wa Jail", then he recited the verse:

If you contract a debt for a fixed period, write it down".<sup>3</sup>

Also because the two Sheikhs (Bukhari & Muslim) reported on the authority of Ibn Abbas that the Messenger of Allah (SAW) arrived in Madinah while people were lending and borrowing dates over two or three years, so he (SAW) said: 'If any of you lends anything, let it be on a known measure or a known weight and for a known period of time.' As for the Al-Kard, it is a type of Salaf, which is to give property to someone in order to restore it from him

<sup>1</sup>Al-Baqarah Surah, Ayat: 275.

<sup>2</sup>Al-Baqarah Surah, Ayat: 282.

<sup>3</sup>Al-Baqarah Surah, Ayat: 2282.

and this is lawful. Muslim reported on the authority of Abu Rafi'i "that the Messenger of (SAW) borrowed a young camel from a man, then he received-Sadaqah in the form of . Therefore, he (SAW) ordered Abu Rafi'i to give the man his young camel, Abu Rafi'i back to him and said: 'I only found a four year old camel.' Upon this he (SAW) said: 'give it for the best people are those who pay back their debt in the best manner'" Ibn Hibban and on the authority of Ibn Mas'oud that the Messenger of Allah (SAW) said: "No Muslim give another Muslim a loan twice, except that one would be written for him as charity:" because it has been established that the Messenger of Allah (SAW) used to borrow.

### **Riba (Interest/Usury)**

Usury does not take place in the Bay'a (trade) and the Salam (advance sale) except in six only, and they are: dates, wheat, barley, salt, gold and silver. As for the Kard (loan), usury takes place in all its types in everything; it is forbidden for a person to lend something to and to expect more or less: for it, or to receive something different in return. The same and the same type of good should borrow the settlement, of the loan or anything else. The difference between the trading and the Salam, on the one hand, and the Kard on the other, is that the former can be exchanged for a different type or for the same type, whereas the latter can only be exchanged for the same type and nothing else. As for the evidence that it can only take place in the six mentioned items, this is derived from the general consensus of the Sahaba and because Muslim reported on the authority of Obada ibn a Samit that the Messenger of Allah (SAW) said: "The gold for gold, the silver for silver, the wheat for wheat, the barley for barley, the dates for dates and the salt for salt; like for like, measure for measure and hand (immediately) and if they differed sell as you wish if it was hand to hand." The consensus of the Sahaba and the Hadeeth have mentioned that specific things are subject to Riba, thus it cannot occur except within these things. The Shari'ah principle stating that: "All things are originally permitted unless there is evidence about the prohibition" applies to the things in which Riba occurs. Evidence has not been established regarding any other things except these which are mentioned; therefore Riba only occurs in them. Things, which are from the same category and things which fit the description, as the six mentioned, are included and they follow the rule, but nothing else. As for the reason (illah) behind prohibiting these things, there is no

h text to that effect, therefore no reason must be deduced in this instance, simply because son must be a Shari'ah one and not rational; and if the reason cannot be deduced from a cannot be recognised.

As for the analogy of the reason, this also cannot be deduced in this instance, for the on of making analogy in the reason itself must be the presence of a dear and understood tion in order that analogy can be made to it. If there were no clear description to be found, can be no reason behind the rule of prohibition; and things like a primary noun (not derived a verb form) and a vague description cannot be regarded as divine reason, and analogy be made from it. For instance, when the Messenger of Allah (SAW) said, as reported by jah on the authority of Abu Bakra: "A judge must not sit to pass judgement between two ng parties when he's in a State of anger." Anger was considered as, the reason for ng the passing of judgement; this is because it is clearly understood that anger is the ve factor, thus it was an "Ella" (reason); the reason itself was deduced from the nding of the text, which is that the prevention was because of it. This understanding that the mind is confused; therefore analogy can be made to anger or anything similar to ade anger as the reason (Ella); it would cause the mind to be in a state of confusion, such ere hunger for instance. In such cases, it would be right to make analogy with the anger on ng else, for the expression of "anger" is a description which explains the prevention of g judgement. This is unlike Allah's saying: "The which is... the which is... the which is..."

Carrion is not an explanatory description of prohibition, therefore, analogy can not be to it and the prohibition would in this case be restricted to the carrion meat. Also if usury een prohibited on wheat, it cannot be used as analogy for anything else, for wheat is a y noun, and not an expression that carries an understanding. It would be wrong to say that has been forbidden in the wheat because it is food, for it is not an expression that carries an nding, thus it cannot be considered as a reason for the prohibition and it cannot be used analogy on other things.

As for the Messenger of Allah (SAW) Hadeeth reported by Muslim on the authority of Umar ibn Abdullah: "The food for food, in equal quantities", and the Hadeeth reported by An-Nisai on the authority of Abu Sa'id Al-Khudri "that the Messenger of Allah (SAW) divided them into different types of food, some of which was better than the other, so he said: 'We are bidding amongst ourselves so the Messenger of Allah (SAW) prohibited us from doing so and ordered us not to trade in it except by measure for measure with no increase whatsoever'. As for the Hadeeth reported by An-Nisai on the authority of Jabir that the Messenger of Allah (SAW) said: "A heap of food must not be traded for another heap of food, nor the heap of food for a fixed measure of food." All these Ahadeeth do not indicate that the reason of prohibition is the food. Rather they merely indicate that usury does occur in the foodstuffs, therefore it is in all types of foodstuffs, which makes it a general rule; then came the Hadeeth of the Messenger of Allah (SAW) to specify the types of food in which usury occurs. This is so because there are many other types of foodstuffs where usury, if it occurred, would not be forbidden, such as courgettes, courges, carrots, the sweet, peppers, garlic and grapes are foodstuffs. Usury does occur in them according to Ijma'a of the Sahaba, despite the fact that the expression of food does not apply to them, for they are edible things; and because Muslim reported on the authority of Umar (RA) that the Messenger of Allah (SAW) said: "Istis'ana prayer when food is ready", the food is ready to eat. Therefore, if usury occurred in every type of food; the above mentioned foods have been the subject of usury; this indicates that the Hadeeth of food is general and usury is in the types specified by the Messenger of Allah (SAW) in his saying: "The wheat for wheat, the barley for barley, the date for dates...". And just as the Hadeeth can specify the Qfir'an, another Hadeeth specifies the Hadeeth. Therefore, usury in the trading and the Salam occurs in the six types mentioned in the Hadeeth.

Furthermore, it would be wrong to claim that usury has been forbidden in gold and silver because they are estimated in weight, making the reason of prohibition the fact that they are weighed items. And it would be wrong to say that usury in wheat, barley, dates and salt is forbidden because such items are estimated in volumetric measure, thus making the reason of prohibition the fact that such types of foodstuffs are estimated in volumetric measure, this is not because the weight and measure were mentioned in the Hadeeth as a description of those foodstuffs and not as a reason. An-Nisai reported on the authority of Ubada Ibn as-Samit

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the Messenger of Allah (SAW) said: "Gold for gold, ore and coins alike, weight for weight, silver for silver, ore and coins alike, weight for weight, and salt for salt, dates for dates, wheat for wheat, barley for barley, equally and similarly; so he who were to increase or take an excess, he would fall into usury." The Hadeeth has explained the situation in which prohibition is, which is the difference of weight in gold and silver, and the difference of volumetric measure in wheat, barley, salt and dates. This shows the way of exchange the trading takes place, a reason for the prohibition. Therefore, usury does not occur in every measured or weighed item but only in the six types mentioned above in weight for gold and silver, and in measure for others.

As for lending and borrowing (Kard), this is permitted in the six types mentioned, in other and in any other thing that can be subject to ownership and whose ownership is lawfully transferable. Usury in this case can only occur if it is stipulated for a higher return or a lower return or if a condition is laid for lower quality than what has been loaned.

## 2. Currency Exchange (Sarl) R

*If we examine the trade contracts of a financial nature that exist in world markets, we find that purchase and sales transactions occur in six types:*

The exchange of a currency with the same type of currency, such as the exchange of old Turkish Lira notes for new notes.

The exchange of one currency for; another currency, such as the exchange of sterling for dollars.

The purchase of certain goods with a certain currency and the purchase of that currency with another currency, such as the purchase of aircraft with dollars and the exchange of those dollars for Turkish Liras in one single deal.



The sale of usurious goods in sterling and then exchanging them for dollars

The sale of certain bonds with a certain currency.

The sale of stocks in a certain company, with a certain currency.

These six transactions are trade contracts of a financial nature. As for the purchase and the sale of bonds and shares, this is categorically forbidden under the Shari'ah rules, for the bonds bear a determined rate of interest thus usury occurs in them; it is even in itself, a usurious transaction. A stock represents a part ownership in a company that is unlawful in the first place, thus trading in stock is forbidden, and it is also forbidden to deal in the stock of all the companies, whether these were companies that deal in lawful trade, such as the industrial and commercial public companies, or companies that deal with unlawful trade such as the banks'. As for the purchase of goods with a certain currency, the exchange of that currency for another, or the sale of certain goods for a certain currency, and exchanging that currency for another currency; these represent two transactions of exchange. Therefore, they follow the rules of exchange. And they are subject to the rule of the separation of the deals.

The sale of one currency for the same or a different currency is a transaction of exchange, and it is permitted. This is because exchange is the swapping of money for money, of gold and silver either equally in the same type, or differently and equally in the different types. The exchange takes place in the money as it takes place in gold and silver, for the description of gold and silver applies to it in its quality as a currency. Money is not analogous to gold and silver but one of its forms, for it is based on either of them in their monetary valuation. So if a person were to purchase gold for silver, coin for coin, by saying for instance: "I sold to you this gold coin for these silver Dirhams", by naming them while present at the time of sale, or if he were to purchase gold for silver while not present such as when signing a contract over a described monetary item while not being present, and he says: "I sold to you these American dollars for ten Dirhams". These examples are permitted, for the monies are determined in the contracts by



them, thus the ownership of their assets is established. Therefore, trading gold for silver is permitted, whether this was pounds for Dirhams, silverjewellery or for Niqar (silver dust). The silver equivalent of Tibr (gold dust). It is also permitted to trade silver for gold, jewellery, bullion or gold dust. However, all such trade must be conducted hand to hand as described; either equally or unequally, weight for weight, or known quantity (Jizaf) for known quantity, or weight for known quantity in all the mentioned types, provided the exchange is between two different types, for if they were from the same type, they can only be equal and must not be unequal. Gold could be traded for gold, whether this were Dinars, jewellery, bullion, ore, or for weight, described asset for described asset, hand to hand, and in principle no difference is permitted. Silver could also be traded for silver, be it Dirhams, jewellery or Niqar, for weight, described asset for a described asset, hand to hand, and no difference is allowed in principle. Therefore, the exchange between the same types of currency is permitted, provided that it is equal, hand to hand and a described asset for a described asset. The exchange between two different currencies is also permitted and in this case, the condition of equality and parity does not apply, but this must be exchanged hand to hand, and a described asset for a described asset. Evidence for the permissibility of exchange is derived from the Hadeeth reported by At-Tirmithi on the authority of Ubada ibn As-Samit who said: "The Messenger of Allah (SAW) said: 'You may trade gold for silver as you wish, hand to hand.'" Muslim also reported on the authority of Ubada ibn as-Samit who said: "I heard the Messenger of Allah (SAW) for the exchange of gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates; salt for salt, unless this was in equal quantities and described asset for a described asset. He who increases or takes an increase would fall into usury (Riha)." Muslim also reported on the authority of A. bu Bakra who said: "He (SAW) has ordered us to buy gold for silver as we wished, to buy silver for gold as we wished. A man asked him so he said: 'Hand to hand'. He said: 'That is how I heard it.'" At-Tirmithi reported on the authority of Malik Ibn Aws Al-Madani who said: "I came asking who would exchange some Dirhams, whereupon Talha Ibn Abdullah as he was sitting with Umar ibn al-Khattab, said: 'Show us your gold,' and then came at a later time, when our servant would come we would give you your silver (Dirhams)."

In this Umar said: "No by Allah, you shall give him his silver coins or return his gold to him, the Messenger of Allah (SAW) said: 'Exchange of silver for gold has an element of Riha in it unless it is exchanged hand to hand, wheat for wheat is Riha unless it is hand to hand, barley for

is also Riha unless it is exchanged hand to hand and dates for dates is also Riha unless it is hand to hand." It is therefore forbidden to trade gold for silver except hand to hand, for if the two parties parted company before they exchanged hand to hand, the exchange would be unlawful. Bukhari and Abu Dawud reported on the authority of Umar that the Messenger of Allah (SAW) said: "Exchanging gold for silver is riba except hand to hand."

It is conditional that the two contracting parties cash in at the place of the deal, for once separated prior to the cashing in, the sale would not lawfully be considered to have taken place. This is because the exchange is the inter-trading of prices, and to cash in at the place of the deal is a prime condition for the exchange to be valid. Bukhari reported on the authority of Malik and Aws who said: The Messenger of Allah (SAW) said: "Trading gold for silver is Riha unless it is hand to hand." At-Tirmithi also reported that the Messenger of Allah (SAW) said: "Trade gold for silver as you wish, as long as it is hand to hand."

The Messenger of Allah (SAW) prohibited the trading of gold for silver in credit; and also prohibited the trading of an absent asset for a present one. Therefore, the exchange must take place at the place of the deal, for: if the contracting parties separated before cashing in, the exchange would be invalid due to the non-fulfilment of one of its main conditions. If however, the deal was exchanged at the place of the deal, the deal would then be valid in the part which was exchanged, and, its equivalent on the recompense and it would be invalid for the remainder of the deal and its equivalent part of the deal. This is because it is permitted to divide the deal into parts. For instance, if a person exchanged one Dinar for ten Dirhams with a person who has only five Dirhams, it would be invalid for them to separate before the full ten Dirhams were cashed in. If the five Dirhams were cashed in and they separated, the exchange would be valid for half the Dinars and valid for the other half, which is equivalent to the five Dirhams which have been cashed in. This is because it is permitted to divide the deal of sale. If the person who has the five Dirhams borrowed the remainder of the money from the other person or a third person to complete the deal, the exchange would be valid, as long as the borrowing was not a condition in the deal, for if it was a condition in the deal, the deal would be invalid.

## Exchange Transactions<sup>6</sup>

No matter how numerous and varied the transactions of exchange are, they would always be confined to the trading of one currency for another of the same type, or the trading of one currency for another of a different type. The transaction only occurs either between ready cash and ready cash, or between a Thimma (credit) for another credit. The exchange cannot take place between cash and a credit. When the exchange transaction takes place, it becomes effective as soon as the contracts and the cashing in have taken place; and neither of the two contracting parties can go back on his word, unless it became established that there had been a case of serious fraud or defect, in which case it is permitted for one of the contracting parties to withdraw from the transaction. If, for instance one of the contracting parties found a defect in that which he had purchased, for example he found that the silver he had bought contained copper, or that the silver turned out to be base metal, he has the option to return the goods he had bought or to accept them based on the agreed price at the time of the transaction. This means that the returning of goods is allowed as long as it is at the same rate as the time of the transaction. If one of the contracting parties accepted the goods, the transaction would be valid, and if he decided to return them, the deal would be cancelled. If, for instance one bought 24 carat gold for 24 carats, and if he found that the gold was only 22 carats, this would be considered fraud, and in this case he would have the choice of either accepting the deal at the agreed price of exchange at the time of the transaction; or rejecting it. If the person who exchanged the gold for gold decided to accept the gold with its defect at a lower price, this would not be allowed because there would be a higher value placed on one of the commodities, and there is an absence of equivalence which is a condition of a deal of the same type.

Another example would be if an indebted person said to his debtor: "Reduce some of my debt and I will hurry in repaying the remainder of the debt." This is also not allowed because it would be the trading of a ready sale for a future sale without equivalence i.e. it is as if the indebted person sold his debt "promptly" to his debtor for less than the original transaction, thus creating a disparity which is Riha. Likewise, if the debtor said to the indebted: "I would give you

<sup>6</sup> Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.208.

Dirhams if you accelerated the repayment of the 100 you owe me", this is not allowed because there would be a disparity in the value which is Riha. Muslim reported on the authority of Sa'id Al-Khudri that the Messenger of Allah (SAW) said: "Trade gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt like for like, and hand for hand for whoever increases or takes an increase will fall into riba, for the taker and the giver."

Another example would be if one person owed another gold and the latter owed the former silver, and they exchanged what each owed the other if the former settled what he owed in silver, and with what he is owed in silver, this type of exchange would be lawful, for the immediate payment of debt is like the immediate payment of goods. Also, if a person bought goods in gold, the seller cashed the value of the goods in silver, this type of transaction would be permitted, it would be permitted to pay off one of the currencies by another currency, and this deal would be an exchange with an asset and debt (credit). This is because Abu Dawud and Al-Tirmidhi reported in their "Sunan" Oil: the authority of Ibn Umar who said: "I used to trade in the Baaqe', so I would sell in Idmascand get paid in Dirhams, or sell in Dirhams and get paid in Dinars. I would take this from that and give this from that, so I went to the Messenger of Allah (SAW) at Hafsa's house, and I said: 'O Messenger of Allah (SAW) please listen, I want to ask you something. I sell camels in the Baaqe', I sell in Dinars and get paid in Dirhams, I sell them in Dirhams and get paid in Dinars. I take this from that and give this from that'. The Messenger of Allah (SAW) answered: 'There is nothing wrong in this as long as you trade according to the market value of the day and as long as you do not part company from the other with something still outstanding between the two of you.'"

Also, if a person bought from another a genuine Dinar for two fake Dinars, this would not be allowed. However, if he bought a genuine Dinar for silver Dirhams, then bought with the same two fake Dinars, this would be allowed whether he bought them from the same person or from another. This is so because Muslim reported on the authority of Abu Sa'id who said: "I came to the Messenger of Allah (SAW) with some Barni (fine quality) dates, so the Messenger of Allah (SAW) enquired: 'Where did this come from?' Bilal replied: 'These are dates of inferior quality we had for some time, and I exchanged two sa'as of inferior quality for one sa'a

quality as food for the Messenger of Allah (SAW)."" Upon this the Messenger of Allah said: "Woe! this is real Riha so do not do that. If you wish to buy dates (of superior quality) you could sell the dates (of inferior quality) in a separate bargain and then buy the (superior quality) dates." Also, Abu Sa'id and Abu Hurairah reported an "agreed upon" Hadith that the Messenger of Allah (SAW) appointed a man as a tax collector over Khaybar, so he came one day with some fine quality dates called Janeeb. Upon this the Messenger of Allah said: 'Are all the dates of Khaybar like this?' He said: 'No, by Allah, O Messenger of Allah, we buy one Sa'a of these fine quality dates for two Sa'as of inferior dates and also two Sa'as of it for three Sa'as.'" Upon this the Messenger of Allah (SAW) said: "Do not do this; rather use the inferior quality of dates you have for dirhams and then buy the Janeeb dates with the use of dirhams."

Here, the Messenger of Allah (SAW) did not order the man to sell his dates to a person other than the one he would buy them from, and if the selling of dates to the same person he buys from was Haram then the Messenger of Allah (SAW) would have explained this to his tax collector. It was therefore permitted because he sold one type of good (dates) for another type of good without any preconditions or secret agreement (concealment) so it is allowed, as if he had bought it from another person. Likewise, it would be permitted to sell gold for silver, and then buy silver with gold. However, if this were subject to a prior arrangement and secret deals, it would not be permitted, and it would be regarded as a prohibited ploy. This is because any type of trickery is prohibited and unlawful in Islam any attempt to portray a contract as legitimate with the intent to commit a forbidden act using deception. This includes soliciting an action that Allah (SWT) has prohibited, neglecting an action that Allah (SWT) has commanded, suppressing a right etc. This is because whatever leads to Haram is itself Haram, and because Ahmed reported on the authority of Imam Ibn As-Samit that the Messenger of Allah (SAW) said: "A group from my ummah will consider 'khamr' (intoxicants) lawful after they give it a different name." Ahmed also reported on the authority of Abu Malik Al-Ashja'i who said that he heard the Messenger of Allah (SAW) say: "People from my Ummah will drink alcohol (Khamr) while giving it a different name."



Therefore, exchange is one of the lawful transactions in Islam according to specific rules determined by the Shar'a. It can be conducted in local transactions as well as foreign. Just like the exchange of gold for silver and silver for gold of the same currency of the country, this can also be performed in a foreign currency, whether at home or abroad, and whether the exchanges were monetary or commercial as well as where the exchange of a currency for another is involved. In order to elaborate on the foreign exchange between various currencies, we need to study in depth the nature of money.



## MONEY / CURRENCIES (An-Nuqood)

Money is the standard by which we measure the benefit found in the commodity and in effort i.e. goods and services. Therefore, money is defined as being the medium by which all goods and services are measured. Hence the price of a commodity and the wage of a worker for his service, each represents the society's estimate of the value of that commodity and the effort of the worker. Bonds, shares and the like are not considered money.

Units in all countries, express this estimation of the value of goods and services. These become the measure by which the benefit obtained from a commodity and the benefit obtained from a service is measured. These units would act as a medium of exchange, and these are money.

When Islam decreed the rules of trading and hiring, it did not determine any specific item which the exchange of goods, services and benefits had to be compulsorily conducted. Islam rather given the human being the choice to conduct the transactions of exchange with whatever medium he chooses, as long as mutual consent prevailed in the exchange. It is, therefore permitted for a man to marry a woman by teaching her the Qur'an, just as it is permitted for a person to buy a commodity by working for its owner for a day, or to work for someone for a certain amount of dates etc. The exchange could therefore be conducted whatever people wished. However, when it comes to exchanging a commodity with a monetary unit, Islam has guided us to the monetary unit by which the exchange is to take place. It has restricted the Muslims to a specific type of money, which is gold and silver. Islam has left it to society to express its own estimation of the measure of benefit drawn out of goods or services, by either fixed or variable monetary units, which society could manage as it wished. Islam has rather specified these monetary units by which society expresses the values i.e. the values of goods and services.

*This specification could be deduced from several matters and these are as follows:*

When Islam prohibited the hoarding of wealth, it specifically prohibited the hoarding of gold and silver despite the fact that wealth includes any property that can be owned. Wheat for instance is a type of wealth, so are dates and money. However, hoarding is reflected in money, in the goods and services. The prohibition in the verse refers to the hoarding of money, for it is the generally accepted medium of exchange, and because the hoarding of money is the one that produces the effect of the prohibition restricting circulation. As for other commodities, their accumulation would not be known as *Kanz*, (hoarding), but as *Ilitikar* (monopoly). Hence the verse which prohibits the hoarding of gold and silver in fact refers to the hoarding of money. The verse has specified the money which Allah (SWT) has prohibited us to hoard which is gold and silver.

(SWT) says:

And those who hoard gold and silver and do not spend them in the way of Allah, let them know that a severe punishment is awaiting them.<sup>2</sup>

Therefore, prohibition is focused upon the monetary medium of exchange, thus the hoarding of gold and silver is forbidden, whether it was minted or not.

Islam has linked gold and silver to a set of fixed rules. Hence, when it imposed the *Diyyah* (blood money); it specified a fixed amount of gold. In addition, when it decreed the penalty of cutting the hand of the thief, it specified the minimum value of gold that is stolen which would warrant the cutting of the hand. In his letter to the people of the Yemen, the Messenger of Allah (SAW) was reported by An-Nisai on the authority of Amru Ibn Hazin to have said: "The blood money for one soul would be 100 camels..and for those who deal in gold it would be 1000 dirhams." Bukhari also reported on the authority of Aisha (RA) that the Messenger of Allah (SAW) said: "The hand is cut for the theft of one-quarter dinar and upward." Therefore, this fixing of certain rules by the Dinar, the dirham and the Mithqal, would make the Dinar with its weight in gold, and the dirham with its weight-in-silver a monetary unit by which the values of goods and services are measured. This monetary unit would be the money, which is the basis of the

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<sup>2</sup> At-Tawbah Surah, Ayat: 34.

Therefore, the fact that Islam has linked the Shari'ah rules to gold and silver by text, and these rules are related to money, serves as evidence that the currency is solely restricted to gold and silver.

The Messenger of Allah (SAW) has determined that gold and silver be used as money, and he has made them the monetary measure to evaluate goods and services, and ensured that all transactions be conducted with them as their basis. He (SAW) also established the units of this money, which are the ounce, Dirham, Daniq (equal to 1/6 Dirham), Carat, Mithqal and Dinar. These units were well known and widespread during the lifetime of the Messenger of Allah (SAW) and they were widely used by all people. It has also been established that the Messenger of Allah (SAW) approved of them. All trade and marriage transactions were conducted in gold and silver, in their quality as money, and this has been established in the Sahih Ahadith. The Messenger of Allah (SAW) has determined the weight of gold and silver with a specific weight, which was the weight of the people of Makkah. Abu Dawud and An-Nisai reported on the authority of 'Umar that the Messenger of Allah (SAW) said: "The weight should be that of the people of Makkah." When reviewing the monetary weights in Islam, we would conclude that the ounce would equal 40 Dirhams, the dirham would be 6 Daniqs, the Dinar would equal 24 dirhams and every 10 Dirhams would equal 7 Mithqals. The weights of Madinah were established according to this order.

When Allah (SWT) decreed the Zakat of money, He (SWT) made it obligatory in gold and silver, and He (SWT) determined a Nisab for the Zakat in gold and silver. Therefore, to consider the Zakat of money as being gold and silver would establish the money as being gold and silver.

The rules of exchange listed under the monetary transactions only, have come in gold and silver alone. In addition, all the financial transactions mentioned in Islam were reported to have been conducted in gold and silver. Exchange is the trading of one currency for another. It would be either trading of one currency with the same type, or trading of one currency for another type. In other words, exchange would be the swapping of one currency for another. The fact that Shar'a has determined the exchange, which is purely a financial transaction, linked to nothing else, but money by gold and silver serves as clear evidence that money should be in gold, silver, and

else. At-Tirmidhi reported that the Messenger of Allah (SAW) said: "Trade gold for as you wish, but hand to hand (without delay)." Bukhari also reported that the Messenger of Allah (SAW) said: "Gold for silver would be Riba, unless it was hand to hand {without

Therefore, money is considered one of the issues, which Islam has laid down rules for and an issue subject to opinion and consultation, nor subject to the requirements of economic financial life. The attribute of money as a specific type and unit of currency is rather defined by a Shari'ah rule. If one were to ponder over the above-mentioned five points, one will find a host of Shari'ah rules has been related and linked to the money in Islam. Therefore, prohibition of its hoarding, the obligation of Zakat on it, the decreeing of the rule of exchange, the approval of the Messenger of Allah (SAW) of dealing with it, the linking of the Diyyah (blood money) and the cutting of the hand in theft to it makes the opinion in such a matter subject to Shari'ah text only. The fact that Shar'a has expressed through rules which are related exclusively to money in gold and silver, or are linked to it, serves as a clear evidence that the currency should be gold and silver, or gold and silver. Therefore, the type of currency defined by the Shari'ah rules must be adhered to; thus, money in Islam should be gold and silver.

However, to exclusively determine gold and silver as money would not necessarily mean it would be forbidden to conduct any exchange in other than gold and silver. The issue of currency in this regard would be other than that of exchange, it would rather be the issue of minting a currency. Therefore, despite the fact that it would be permitted for people to exchange anything they wished, the monetary measure for exchange and for anything other than exchange must be in gold and silver, for money in Islam is gold and silver.

The Messenger of Allah (SAW) made various types of gold and silver as money, whether these were minted or not. He (SAW) did not mint a specific money, with specific and fixed features, rather the units of gold and silver were Roman and Persian coins, both small and large coins along with silver coins which were neither minted nor engraved, as well as unminted coins. All of these coins were in use widely without exception. However, these coins

not considered by their number or whether they were engraved or not; they were only considered according to their weight. The piece of gold could be the size of an egg, and people could still deal with it. Thus, the definition was by specifying gold, silver, and specifying the weight for each of them. Therefore, the rights of Allah (SWT) such as Zakat, the rights of the people such as debts, as well as the prices of goods and services, were related to Dirhams and Dinars to gold and silver, evaluated by weight.

This State of affairs continued throughout the lifetime of the Messenger of Allah (SWT), and of the four Khulafaa Al-Rashideen<sup>1</sup>, and the beginning of the era of Bani Umayyah, until the time of Abdulmalik Ibn Marwan<sup>2</sup>, who deemed it appropriate to transform all the gold and silver that was in use at the time, minted and non minted alike, into an Islamic coinage and inscription, and gave it a standard and invariable weight, thus doing away with the need to make reference to their weight. Therefore, he collected the largest and the smallest of coins and minted them according to the weight of Makkah. Abdulmalik minted the Dirhams in silver and the Dinars in gold in the year 75 AH, and ever since that time, Islamic minted Dirhams and Dinars in circulation the currency of the Islamic State became distinguished, having the same invariable form. Therefore, the basis of the monetary standard in Islam was gold and silver. As for size, coinage, form and inscription, these are all part of the style. Therefore, the words of gold and silver, when mentioned in the Shari'ah terminology and evaluation, would apply to two matters: The money which is in circulation, whether it is copper or paper money as long as it has an equivalent (from gold and silver), and the two metals of gold and silver. Any money that is made of gold or silver would thus be considered, and any paper or copper money or the like, which could be transferred into gold or silver would also be considered.

### III. The Gold Standard<sup>3</sup>

A State would be following the gold standard if it used gold currency in its foreign and domestic transactions, or if it used domestically a paper money, which could be exchanged for

<sup>1</sup> Khulafaa Al-Rashideen: They are the fourth presidents of the khilafah state after Rasullah (SAW).

<sup>2</sup> Abdulmalik Ibn Marwan: He is one of Kholafa'a Bani Umayyah (The Second Islamic State).

<sup>3</sup> Sheikh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.215.



This paper money could be either for domestic use and for making payments abroad or solely for making payments abroad, on condition that this exchange has a fixed price. In other words, it would still be following the gold standard on condition that the paper unit can be exchanged for a specific quantity of gold, at a fixed price and vice-versa. It would, be natural in this case for the value of the currency in the country to remain solidly linked to the value of gold. Therefore, if the value of gold rose in comparison with other commodities, the value of the currency in comparison with other commodities would rise as well. If the value of goods increased in comparison with commodities, the value of the currency would also decrease.

Money based on gold has a special characteristic, reflected in the fact that the monetary unit is linked to gold in a specific amount. In other words it would, by law, consist of a specific weight of gold. The import and export of gold would be freely conducted, and people would be able to freely acquire currencies, gold bullion, or gold dust and be able to export them.

Since gold in this instance would move freely between various countries, every person has the choice of either buying foreign currency, or transferring (settling in) gold; a person would however opt for the cheaper method. Therefore, since gold, the cost of its transfer would cost more than the price of the foreign currencies in the market, it would then be sensible to use foreign currency instead. However, if the exchange rate exceed that figure, it would be best to use the gold out of circulation and settle with it.

## 12. Benefits of the Gold Standard"

If the benefits of the gold standard were to be compared with the fiat (paper currency) standard and other standards, it would be inevitable that the monetary gold standard would become a global standard. These benefits would not allow any other monetary standard to become established. Throughout the history of money and up until the First World War, the whole world operated the gold and silver standards. No other standards were known to the world until then. However, when the colonialists mastered the various styles of economic and financial



alism, and began using currency as a means of colonialism, they established different monetary standards. They considered bank deposits and non exchangeable banknotes, which had no reserve of gold or silver, as money, along with gold and silver. Therefore, it is necessary to maintain the benefits of the gold standard, the most important of which are:

The gold basis necessitates the free circulation, import and export of gold, which leads to monetary, financial and economic stability. In this case, transactions of exchange would only be made from foreign payments to meet the cost of commodities and the salaries of workers.

The gold standard ensures the stability of exchange rates between various countries, and the stability of the exchange rates in turn leads to a boom in international trade, for traders would no longer fear the expansion of foreign trade, and the uncertainty of exchange rate instability.

If the gold standard was employed, central banks and governments would not be able to limit the issuance of banknotes, for as long as the banknote remains non exchangeable with gold at a fixed rate, the authorities would fear that if they exceeded limits in issuing banknotes, the demand for gold would increase and they would not be able to meet this demand. Therefore, they would always tend to maintain a reasonable ratio between what they issue in banknotes and gold reserves.

Each of the currencies used, all over the world would be fixed by a specific amount of gold. As a result, the movements of commodities, money and people from one country to another would be easier, and the problems of hard currency would disappear.

The gold standard would help each country preserve her gold, for there would be no gold flowing from one country to another, and countries would not need to exercise control in order to protect their wealth, for gold would only leave the country for legitimate reasons as prices for commodities or salaries for workers.

These are some of the benefits of the gold standard, and they all make it necessary that the world operates this standard. Therefore, it comes as no surprise to learn that the whole world up until the First World War was indeed operating the gold standard.

At the start of the first world war, the most prevailing monetary system in the world was based on the gold standard, and money in circulation at the time was in fact gold coins and money readily exchangeable for their equivalent value in gold. The silver standard also existed alongside the gold standard. The implementation of this standard led to the establishment of the most productive economic relations. However, when the First World War was declared in 1914, the warring countries undertook certain measures which led to disorder in the gold standard. Some countries cancelled the liability of exchanging their currencies to gold, while others imposed harsh restrictions on the export of gold, while others put obstacles in the way of importing it. This continued until 1971 when America declared that she had put an end to the operation of the gold standard and that she intended to sever the link between gold and the dollar. Since then, gold has had no relation with the currency, but rather has become like any other commodity. America's intention was to establish the dollar as the monetary basis worldwide so that it could control and dominate the international money market. Therefore, the gold standard no longer operated throughout the world and this disturbed the monetary system and the value of exchange fluctuated. Since then, obstacles and difficulties in the transfer of currencies, goods and services have appeared.

### 1.1 Problems facing the Gold Standard"

When the gold standard was applied throughout the whole world, it did not experience any problems. However, problems arose when the superpowers opted to fight their enemies using money, by introducing alongside the gold standard the non exchangeable (compulsory) paper money standard. For this reason, Western colonial powers established the International Monetary Fund and the USA introduced the U.S. dollar as the basis for the new monetary standard. Hence,

State operating the gold standard would be faced by certain problems, which need study in order to solve and overcome them. These problems are as follows:

The concentration of gold in countries whose level of production, their ability to compete in foreign trade and the professionalism of their scientists, experts and industrialists have all increased. This would lead to the flow of gold into these countries either as a price for commodities or as salaries for the workforce i.e. experts, scientists and industrialists. Therefore, a large part of the existing reserves of gold worldwide would accumulate in these countries, causing an imbalance in the distribution of gold among various countries. This would also lead to countries restricting the transfer of gold for fear of losing their reserves, thus bringing their foreign trade to a grinding halt.

Gold could flow into some countries due to the balance of trade being in their favour. However, these countries could prevent this gold from influencing the local market and from causing an increase in the level of prices by flooding the market with a large number of bonds. This could be sufficient to lead to a withdrawal of money equal to the gold they had received, so that such countries end up retaining the gold and preventing it from returning to the country of origin, which would suffer from the use of the gold standard as a result.

The widespread use of the gold standard has always been linked to the concept of international free trade in various areas of production and to international free trade. However, a powerful tendency toward the protection of industry and agriculture in these countries has emerged, which has led to the introduction of tariff barriers, thus erecting an obstacle in the face of goods imported to these countries and making it difficult for the transferring of gold out of these countries. Therefore, the trade of the country that operates the gold standard would suffer, for if its goods did not reach other countries' markets at the normal price, she would either be forced to raise the level of her commodities' prices further in order to overcome the tariffs and quotas or to export her goods in the first instance, and in both cases, her trade would suffer.

These are the main difficulties, which the gold standard could face if operated by a single country or several countries. The way to overcome such difficulties would be to adopt a policy of

...sufficiency and to make workers' salaries performance-related rather than estimated in relation to the price of the commodities they produce or manufacture, or their standard of living. No consideration should be paid to shares and government bonds as commodities owned by individuals, and there should be no over-reliance on exports as a source of clyyylopuigwealth. A country should rather aim at generating her wealth, within her own boundaries, by exporting her goods and services abroad, which would help her do away with trade barriers imposed by other countries. Once a country adopts such a policy, she would have nothing to fear from the gold standard, and instead, would reap all its benefits, avoid all its disadvantages and not suffer setback from it at all. On the contrary, it would be in her interest. So it is inevitable for her to follow the gold and silver standard to the exclusion of all other standards.

### "The Silver Standard"

When we talk about the silver standard (the silver basis), what is meant is that silver is the basis of the monetary system, the quantity of coinage and is an unrestricted legal tender. This standard was well known in the past, and it was operating in the Islamic State alongside the gold standard. Some countries operated it as a fully proprietary standard. The silver standard continued to be operated in Indo-China until 1930 when the silver piaster was replaced with a golden one.

The silver standard is just like the gold standard in all its details. Therefore, operating the gold standard alongside the silver standard in the one State is a simple matter. The Islamic State operated the standards of gold and silver together since the Messenger of Allah (SAW) emigrated from Madinah. This monetary policy should continue to be based on both the gold and the silver standard. Money should be in gold and silver, whether the circulation of this money is in real gold or silver or in banknotes backed by reserves of gold and silver wherever these notes are circulated.

## 1.5. Metallic Money<sup>9</sup>

Economists divide the types of metallic currencies in to two main types: the single metallic standard and the dual metallic standard. The first is where the main currencies are restricted to one single metallic coinage. As for the latter the dual standard, both the gold and silver coins represent the main currency.

*The dual metallic standard requires the existence of three qualities:*

1. Gold coins must have an unrestricted legal tender (no fixed purchasing power).
2. There should be no restriction on minting from the bullion of both metals.
3. An official rate between the values of the gold and silver coins must be established

The dual metallic standard is characterised by the huge amount of money it puts into circulation, due to the simultaneous use of the metallic coins as main currencies. Therefore, prices remain high and this would lead to an increase in production. This would also make the value of money more stable and prices would be likely to undergo major fluctuations, which usually leads to economic unrest. It is therefore clear that operating a dual metallic standard is better than the single metallic standard.

## 1.6. Paper Money<sup>10</sup>

*Paper money consists of three types, these are:*

**Intrinsic paper money:** These are bank notes representing a certain amount of gold and silver, either coined or in bullion; deposited in a specific place, which have a metallic value equal to the nominal value held by these notes, and can be exchanged on request. In such a case, the circulation in real terms is like that of metallic money, with the paper money circulating as a substitute for metallic money.

<sup>9</sup> Neeh Azaii, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.219.

<sup>10</sup> Neeh Azaii, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.220-226.

**Fiduciary paper money:** These are "convertible" notes where the undersigned promises to pay bearer on demand a certain sum of metallic money. The value of these fiduciary notes when in circulation, would be subject to the trust, people at large, in the undersigned, and on ability of the undersigned to fulfil the promise. If he were trustworthy and reliable then it would be easy to use this fiduciary paper money just like coins.

The main type of this money is the bank notes issued by well-known banks and trusted by public. However, the issuer of these bank notes i.e. this fiduciary paper money, be it a bank or State's treasury, maintains an exact amount of gold equal to the value of the bank notes, as is the case with the intrinsic paper money. It usually maintains gold reserves in its vaults equal to a certain percentage of the issued bank notes value, which could amount to three quarters, two thirds, a third, or a specific percentage. Therefore, the quantity of bank notes which is backed by exactly equal value of metallic reserves is considered intrinsic paper money, whereas the rest of the quantity which is not backed by a reserve would be considered fiduciary paper money, which derives its power of circulation from the trust which people have in the undersigned. For instance, if an issuing house, be it a bank or government treasury, would keep a metallic reserve in its vaults worth 20 million Dinars, and issues paper money worth 40 million Dinars, then the 20 million of bank notes paper money which is not backed by a metallic reserve would be considered fiduciary paper money and the twenty million Dinars worth of paper money, which is backed by a metallic reserve, equal to its value, would be considered as intrinsic paper money.

Therefore, for the State that holds reserves of gold and silver exactly equal to the value of paper money it issues, its money would be considered as intrinsic paper money and fully backed money. Whereas, for the State that holds a value of either gold or silver, which is not equal to the full amount of paper money, but is only partially covered, its money would be considered as fiduciary paper money.

**Inconvertible paper money:** These are known as compulsory bills legal tender with enforced acceptability, and are also commonly called paper securities. They are issued by governments and established as main currencies. They cannot be exchanged to gold or silver, nor are they backed



a reserve of gold, silver or bank notes. However, they are backed by government legislation exempting the issuing house from their exchange against gold or silver.

## 1.7. Issuing of Currency

The price is the society's estimate of the value of goods and the wage is the society's estimate of the value of services. Money is the medium by which this estimate is expressed. It is a medium which enables us to measure various goods and services and refer them to one common basis, thus facilitating the process of making a comparison between various goods and between various services by referring them to one general unit which serves as the general standard. Prices are paid for goods and wages are paid for workers on the basis of this unit.

The value of money is estimated by its purchasing power by how much a person could acquire with it in terms of goods or services. Therefore, the medium by which the society estimates the value of goods and services must have a purchasing power in order to qualify as money. It must have a power with which any person could acquire goods and services.

This medium must originally have an intrinsic power, or be dependent on an intrinsic power. It should itself have a value recognized by the public, in order to be considered as money. However, in reality the issuing of money differs among the various countries of the world. Some countries have made their money an intrinsic power or dependent on an intrinsic power, while others have made their money a conventional money (inconvertible). They have agreed upon a common unit to be considered as money and they gave it a buying power.

When issuing money, countries may either adopt the gold and silver standard, or the non-convertible paper money. As for the countries which operate the gold and silver standard, they follow two methods of issuing: the metallic money method, either the single/dual metallic standard or the paper money method. The metallic method is where gold and silver coins are issued by minting pieces of gold or silver to represent various values, but based on one monetary unit to which all the various values of money and goods would be referred. Each piece would be based on this unit, and these pieces would be circulated as the country's currency.

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The paper method used in the countries which operate the gold and silver standard means simply that a country would use paper money paper currency that can be exchanged to gold and silver on demand. Two methods can be used in operating such a standard; the first method is when a country makes the paper money represent a certain amount of gold and silver denominated in a specific place as money or bullion. In this case, this amount would have a metallic value equal to the nominal value which the paper money holds and the notes can be exchanged on demand; this is known as intrinsic paper money. As for the second way, this would be used when a country decides that the paper money should represent a document in which the undersigned, promises to the bearer on demand a certain amount of money. This paper money would not in this case represent the amount of gold and silver which has a metallic value equal to the issued nominal value; the issuing house, be it a bank or a government treasury, would however maintain a lesser amount of gold and silver than its nominal value, for example, three-quarters of the value, two-thirds, one third, a quarter or any other percentage of the nominal value. For instance, a bank or State's treasury would issue paper money worth 500 million Dinars and maintain in its safes 375 million Dinars worth of gold and silver bullion. This type of paper money is known as fiduciary paper money. The metallic reserve is a gold reserve or gold cover. In any case, a country which issues money under the exchangeable paper money standard, in fact, is operating the gold standard,

This demonstrates that the media which possess an intrinsic power, gold and silver, are in themselves money and are the basis upon which money is based. However each country chooses its own specific method, shape, weight, mint, etc. so that she can distinguish it from other money. A country may also agree on an intrinsic paper currency based on gold and silver either circulating in the country and abroad, or used only in foreign exchanges. A country could also operate upon fiduciary paper money, backed by gold for a certain amount of its nominal value it would have a gold reserve less than its value in gold. These papers would have a specific shape and print so that they become the currency of the issuing country and so that they are distinguished from other currencies.

As for the countries who operate a non-exchangeable paper money standard, they issue bills which are not exchangeable to gold or silver or any precious metal with a fixed rate. Therefore, the institution which issues these bills is not liable to exchange these bank notes for

at a specific price on demand. Gold in such countries is treated just like any other commodity whose price fluctuates from time to time according to supply and demand. These notes are not backed by a metallic reserve, nor are they exchangeable to metallic money. They only hold a legal value and do not possess an intrinsic power, nor do they depend on an intrinsic power. They merely represent a unit that has been agreed upon as a means of circulation. It is the law that gives it the power to become a means of circulation, with which a person can acquire goods and services. Its power is derived from the power of the State who issues it and who uses it as her currency.

Since money is issued in the above mentioned ways, any country could therefore agree on something which expresses the society's estimate of goods and services, as long as this has purchasing power with which a person could acquire goods and services from that country. Therefore, any country could issue a currency that has a fixed and a distinguished value, which expresses the society's estimation of the value of goods and services a money with which any person could acquire goods and services in the issuing country, according to the value of that money. It is the issuing country which forces other countries to recognize her currency so that these countries could acquire from her goods and services.

A country would not need to depend on the International Monetary Fund, the World Bank, a central bank or any other institution. The strength of the unit in obtaining goods and services would be sufficient to turn it into a currency either by itself, such as gold and silver, or its dependence on gold and silver e.g. intrinsic paper money which represents its nominal value in gold and silver, or through having a certain amount of gold and silver held in reserve, as in the case with fiduciary paper money. This may also be due to it being a legal tender with forced acceptability which allows a person to acquire with it goods and services, such as the exchangeable paper money the banknote.

Countries in the past used to deal in gold and silver, whereby each country would agree on a specific fixed character for her gold and silver in order to distinguish her money from other countries' money. Each country would then issue alongside the gold and silver paper money with a fixed distinguished character. Then the country would agree upon the issuing of paper

while maintaining gold and silver reserves. There was therefore three types of money in the world: metallic money made of gold and silver, intrinsic paper money and non-exchangeable notes.

Since the end of the Second World War and until 1971, the whole world used to operate with three types of money, the metallic and the paper money with its three types. However, since the whole world began operating exclusively the non-exchangeable paper money standard legal tender with enforced acceptability, until the U.S. president Nixon declared the Bretton Woods Declaration null and void, thus severing the link between the dollar and gold.

### Exchange Rate of Currencies

Exchange is the conversion of one currency for another the interchange of one currency for another. This would be either exchanging one currency for another of the same type, such as the exchange of gold for gold, and silver for silver, or the exchange of one currency for another of a different type, such as the exchange of gold for silver, or vice versa. As for the exchange of one currency for another currency of the same type, this necessitates equality between the two and differences are absolutely prohibited since this would be Riba which is forbidden, such as the exchange of gold for gold, or the exchange of intrinsic paper money which can be exchanged for its value in gold for gold. Therefore, the exchange rate does not apply in this case.

As for the exchange of one type of money or one currency for another of a different type, such as the exchange of gold for silver, or the exchange of pounds sterling for the U.S. dollar or the exchange of a ruble for a franc, this is permitted, provided the exchange takes place on the spot. The exchange rate would be the rate of one currency in ratio to the other, in other words the exchange rate would be the ratio of exchange between two different currencies.

What prompts people to exchange is the need of one of the exchanging parties for the currency of the other party. As for the exchange taking place between people in the currency

ulating in one particular country, such as the exchange of silver for gold, of gold for silver, is straightforward and would be between gold and silver, because the country would be operating both the gold and the silver standard and the exchange rate would be fixed between the currencies, according to the market rate. There would be no harm if the exchange rate fluctuated between the two types of currency used in one country, because this would be just like fluctuation in the commodities' prices.

As for the exchange between two different currencies of two countries or more, this is regarded as a source of problems. It would therefore be appropriate to investigate its reality and verify the Shari'ah rule regarding it and regarding the exchange rate as such.

As for its reality, this is reflected in the fact that countries operate different standards and the position of countries who operate the gold standard differs from those who operate the non-changeable paper money standard. Therefore, when several countries operate the gold standard, the exchange rate between these countries or the ratio of exchange between their currencies would consequently remain almost stable. This would be so if they were operating the metallic standard, because in fact, one would not in this case be exchanging two different currencies where the value of each one of them may alter with regard to the other in accordance with the level of supply and demand related to each of them. Instead, one would be exchanging gold for gold, and the only difference would be the fact that gold in one country has been coined in a different shape and stamped with a symbol different to that used in the other country. The exchange rate would then be determined by the ratio between the weight of the net gold to be found in the currency of one country and the net weight of gold to be found in the currency of the other country. The exchange rate between the countries who operate the gold standard would fluctuate within two specific margins which would be dependent on the transfer charges of gold between them. This is known as the gold limits (Haddi Thahabiyy). Since these charges are minimal, we can say that the exchange rate between countries operating the gold standard is relatively stable. Furthermore, if a country operated the intrinsic paper money standard, it would be in exactly the same position as a country that operates the metallic standard, because the real circulation taking place is that of the metallic money. The only difference would be that the metallic money itself circulates, whereas paper money circulates in lieu of it, for it acts as

representative to it. Therefore, the intrinsic paper money would be dealt with in exactly the same way as far as the exchange rate is concerned. In fact the value of intrinsic paper would in all respects be the same as metallic money.

However, if a country operated fiduciary paper money i.e. banknotes, the gold in this case would only be covering some of the fiduciary money's value and not all of its value, even though the country would be operating the gold standard. Therefore, the value of the fiduciary paper money would differ according to the gold reserves covering it, and this would determine the exchange rate between them. This exchange rate would however remain stable and easy to maintain, for it would depend on the percentage rate of gold reserves whose quantities would be fixed.

However, if a host of countries were to operate the non-exchangeable paper money standard, the issue of fixing the exchange rate between these countries would then arise. This is the case when the exchange of currency for gold at a fixed price becomes impossible, then the problem facing these countries operating the non-exchangeable paper money standard is the way to fix the exchange rate between them.

Solving this problem lies in the fact that the various types of paper money are considered commodities which are exchangeable in the international money market. They in fact do not buy commodities for their own worth, but for their ability to purchase other commodities in their countries of origin. Therefore, the ratio between two paper currencies, or the exchange rate between them, would be determined according to the purchasing power of each paper money in its respective country of origin.

Therefore, the exchange rate would be determined by the ratio between two currencies. If for instance, Egypt and Italy were operating the paper money standard, and the Italian lira would purchase in Italy 10 units of commodities, whereas the Egyptian pound would purchase in Egypt 1 unit of commodities, the ratio between these two currencies would be 1 Egyptian pound for 10 Italian liras. However, the exchange rate could fluctuate because the paper currencies are in fact commodities which people exchange and trade in the international money market; they do



buy them for their own worth, but for their ability to purchase goods and services from the countries which issued them. Their value would therefore increase when the prices of commodities decrease in their respective countries of origin, and decrease when those prices increase. Therefore, the benefit that one makes from a foreign currency depends on its purchasing power. If this power increases the benefit we gain, our willingness to pay more with our own currency in order to obtain an equivalent amount of that foreign currency would also increase. On the other hand, if the purchasing power diminishes then the benefit obtained from that currency would also diminish, and our willingness to pay more with our own currency in order to obtain an equivalent amount of that foreign currency would also diminish. This is because that foreign currency could no longer purchase in its country of origin the same units of commodities it used while our currency would still maintain its value.

Let us suppose that in a specific year, the level of prices in Egypt and England were 100 in both countries, and that the exchange rate between them was 1.00 Egyptian pound for £1.00 sterling. In this case the exchange rate would be equal, and since the incentive to exchange is to achieve a sufficiency in the need for English goods; therefore, no great demand for, nor turning away from pounds sterling would occur in Egypt. However, if the price level were to rise in Egypt to 200, the pound sterling value would double in Egypt, and the exchange rate would become 1 Egyptian pound for £0.50 sterling. Therefore, a demand for sterling pounds would be generated due to the relative price decrease in England whereas, the demand for the Egyptian pound would diminish due to the relative price increase in Egypt. This would entail a decrease in the demand for the Egyptian pound by the English, and their demand for Egyptian goods would increase, and they would inevitably prefer their own goods with their present prices because the prices of Egyptian goods would have doubled while their own prices remained the same. Therefore, the exchange rate would change according to changes in the commodity prices of the country which had issued the currency. If the price level in one country rises as far as another country is concerned, due for instance to the increases in money supply, the exchange rate between these two countries would inevitably change, leading to a decrease in the foreign value of the country in which the prices had risen.

The exchange rates between the currency of one country and foreign currencies would be in line with the relationship established between the other foreign currencies' exchange rates themselves. In other words, if for instance the Iraqi Dinar equalled 100 Iranian riyal, 200 Italian liras or 400 French francs, the exchange rates between the foreign currencies would therefore be, in Iran, 1 Iranian riyal for 2 Italian liras or 4 French francs, and in Italy it would be 1 Italian lira for 2 French francs or 0.5 Iranian riyal and so on. This is in fact what would happen if every country left the foreign value of her currency to fluctuate according to the fluctuation of price levels, without imposing heavy restrictions upon international trade and upon the transfer of foreign currency into local currency or local into foreign currency. However, a country may attempt to sustain the foreign value of her currency despite high prices at home, by restricting the local importers' demand for foreign goods by reducing the number of import licences, for instance. In such a case, the harmony between the various exchange rates in the various countries would be disturbed. This difference between the exchange rates in different countries could not occur unless some countries attempt to impose restrictions on their foreign currency transactions. Because if there were no restrictions, any man would be able to exchange the currency and make a profit. Thus other people would be able to seize this business opportunity and do the same, which would in turn lead to the establishment of harmony between the various exchange rates once again.

These restrictions imposed upon exchange transactions have become a widespread phenomenon in many countries in wartime and at times of severe economic unrest. We find that at such times, the value of the local currency in a country who subjects her monetary transactions to such restrictions would vary from one country to another according to the monetary system applied in each country. Therefore, in a country where the uniform exchange rate is applied, the official exchange rate between the currency of such a country and the country mentioned earlier would remain stable, for the currency would be purchased by the central bank and the banks which are licensed to undertake foreign currencies transactions at a fixed rate and sell these currencies at a fixed price.

For countries who operate the uniform exchange rate system and whose central banks do not undertake to buy or sell foreign currencies at a specific price, the prices of foreign currencies

would fluctuate from time to time according to supply and demand. This exchange rate system in a country, which allows the fluctuations of foreign currencies according to supply and demand, is described as the variable exchange rate system. It is noticed that in a country practicing such a system, the exchange rate would not stem exclusively from the fluctuation in price levels between her and other countries, it could also stem from restrictions imposed on international trade, or from a deficiency in the balance of trade, experienced by various countries for whatever reason. The variable exchange rate system in some countries be legitimate, as is the case in Lebanon, where the government allow the fluctuation in exchange rates according to the daily fluctuations of supply and demand. In other countries, the variable exchange rate system could be illegal, but despite this, some transactions would take place between individuals, which include the purchase and the sale of currencies, or foreign accounts, at prices completely different from the official prices.

This is regarding the exchange rate throughout the world. The Shari'ah rule concerning exchange is as follows: The Islamic State operates the gold standard, regardless of whether it is a paper money standard (which would have gold and silver backing equal to its nominal value) and regardless of whether she adopted a specific fixed distinct feature or not for the money. She is obliged to do so by this standard because it is a Shari'ah rule upon which many Shari'ah rules depend. Exchange between two units of the same type within the Islamic State must be equal, and it would be forbidden to have a disparity. Likewise, exchange between two currencies of the same type would follow exactly the same rule outside the Islamic State. The Shari'ah rule is one and does not change. As for the exchange between two different standards, it is permitted to have equality as well as disparity, such as with the exchange between gold and silver, on condition that the hand-over takes place on the spot "han al-jah" in gold and in silver. There is no difference here between the transactions of exchange at home or abroad, because the Shari'ah rule is the same and does not change. Just as disparity in the exchange between gold and silver (on the spot), would be allowed at home, so would it be allowed abroad. The same rule would apply in the exchange between the Islamic State's currency and other countries' currencies for both metallic money and the intrinsic paper money the money that is backed by an amount of gold and silver exactly equal to its nominal value. Disparity in these transactions would be

permitted if the standards were different, only on condition that the hand-over is on the spot in gold and silver. However, disparity would not be permitted when the currencies are of the same standard. Equality must be observed, for disparity in this case would be Riba and that is forbidden from a Shari'ah viewpoint.

As for fiduciary paper money, which is partially backed with a reserve that is less than its nominal value, the monetary value of this currency would be considered only up to the amount of reserves it holds. It would be exchanged against the Islamic State's currency on this basis. Consequently, this currency would be valued on this basis and according to such valuation it follows the same Shari'ah rule as that applies to the exchange between gold and silver metallic money, with only the value of the reserve considered when evaluating the exchange.

As for non-exchangeable paper money, which does not act as a substitute for either gold or silver, nor is it backed by gold or silver, its rule according to Shari'ah would be the same as that of the two currencies of different types. Therefore, it is permitted to have in such transactions both equality and disparity, but they must be traded on the spot.

Therefore, exchange between the Islamic State's currency and the currencies of other countries are allowed, just like the exchange between her local currencies. It is also permitted for the exchange to include a disparity because they are of two different standards, on condition that the hand-over is on the spot ("hand to hand") as far as gold and silver are concerned.

The ratio between gold and silver, or the exchange rate between them would not be totally stable. It would rather fluctuate according to the gold and silver market prices, with no difference between the local or the foreign exchange. The same would apply to the Islamic State's currency and the currencies of other countries; i.e. it would be permitted for the exchange rate between them to fluctuate. However, *the exchange rate between the Islamic State's currency and the currencies of other countries would not have an effect upon the Islamic State for two reasons:*

The Islamic lands possess all the raw materials that the Ummah and the State need. Therefore, the need for other countries' commodities would not be essential or necessary. She is self-sufficient of her local goods, thus not affected by exchange fluctuations.

The Islamic lands possess commodities which all other countries need, for example, oil. The Islamic State could restrict the sale of such commodities unless they are paid for by gold. Thus, the Islamic State could do away with other countries' commodities by relying solely on her own. Commodities, and who ever owns commodities that all other peoples need, could not in any way be affected by the fluctuation of the exchange rate. It is she who could control international markets, with none able to control her currency.

## XXII. FOREIGN TRADE

Since trade transactions moved from the bartering of commodities to using money as a medium of exchange, business between individuals flourished and grew. Work became more specialized at an individual level, at a national level as well as internationally. This marked the end of an era when the individual used to live by himself. It also marked the end of the era when generations in each nation or people lived within a nation in isolation from other nations and peoples, and domestic and foreign-trade have therefore become one of life's necessities worldwide.

There is a difference between domestic and foreign trade. Domestic trade represents the trade transactions, which are undertaken by individuals belonging to a particular nation. This type of transaction should follow the rules of trade mentioned by the jurists. It does not require any initiation from the State, nor does it require direct supervision, but rather a general supervision aimed at enforcing the trade rules of Islam upon people and punishing those who violate these rules, just like any other transaction, such as hiring, marriage etc. Foreign trade reflects the trade transactions undertaken between peoples and nations, not between individuals of the same State, whether this was between two states or between two individuals who each belong to different states and where each is buying commodities with the aim of transferring them to his own country. All such transactions form part of the rules governing the relationship of one country with another.

Therefore, "the State would undertake export sanctions on certain domestic goods and allow others, and would also licence all traders whether belligerent or under covenant. So, the State controls all aspects of trade and the issue of all foreign traders. As for her citizens, it would be sufficient to supervise them in their foreign trading just like she would do in their domestic trading, for the rules governing their actions fall under those of the domestic relations.



Foreign trade between states used to be conducted through individual traders. A trader would travel to another country, buy a commodity and transfer it back to his country, or he might take a commodity to another country to sell it and bring the money or another commodity back to his country. In all such cases, the State would organize the aspects of this trade and directly monitor it. She would have control centers at the frontiers; the jurists refer to these centers as Masalih. The Khalifah should have these control centers (Masalih) on all the routes, which give access to non-Muslim countries. People manning these centers would check all the traders. The centers would therefore directly control the imports and exports control all the traders, buyers and sellers alike. These control centers at the frontiers organize trade control directly the movements of traders and the currencies being brought into the State or taken out via her frontiers.

Since the Shari'ah rules are defined as being the speech of the Lawgiver related to the actions of the humans, the Shari'ah rules related to foreign trade have been revealed with regard to individuals, and the Shari'ah rules on wealth are related to wealth as far as its individual owners are concerned. Therefore, the rules of trade are connected to the traders not to the type of wealth. Accordingly, the rules related to foreign trade are in fact rules related to individuals from a Shar'a viewpoint concerning them and their wealth concerning the rule of Allah (SWT) on them and the rule of Allah (SWT) on the wealth they own.

Therefore, the Shar'a rules concerning foreign trade are not related to the traded material nor to its place of origin, but to the trader, because the rules concerning wealth follow the owner of wealth, accordingly they apply to both. Therefore, any rule which relates to the owner would automatically relate to the wealth he owns. This would be in contrast to the capitalist system, where the rules of foreign trade pertain to the wealth and not to the owner, so, it is the place of origin of the wealth that matters rather than the trader himself.

This is the difference between the capitalist viewpoint and the Islamic viewpoint. Since the capitalist system considers the wealth according to its place of origin, it gives a verdict on the origin. Islam considers the owner of the wealth the trader, regardless of the origin of the wealth. Capitalism considers the wealth, whereas Islam considers the individual. It is true that the wealth with which one trades would have an effect when judging whether the trade is permitted or

forbidden, but this is connected to the description of the wealth, as to whether it is harmful or beneficial, not regarding the origin of the wealth. Therefore, the rule is connected to the individuals who own the trade or the business the trader, and not the trade. The traders who enter or leave the Islamic State are of three types. They are either citizens of the State, whether Muslims or Dhimmies, those under treaty of belligerent (Harbi).

As for the traders who are citizens of the Islamic State, they would be forbidden from exporting to the belligerent countries any commodity, which may assist or aid the enemy's war effort, such as weapons. In other words, they would be forbidden from exporting any strategic materials, which are effectively used in war, from the Islamic State, for this would mean supplying the enemies and helping them in their fight against the Muslims. This would be considered a co-operation on sin, because it would be a co-operation with the belligerent against the Muslims.

Allah (SWT) says:

"And do not cooperate in sin".<sup>2</sup>

Therefore, no person, Muslim, or non-Muslim, should export commodities from the Islamic State where the exporting of such commodities would assist the belligerent disbelievers in their war against the Muslims. However, if it does not assist them against the Muslims, exporting to them would be allowed. As for the export of other commodities such as clothing and foodstuffs or any such commodity, this is permitted because the Messenger of Allah (SAW) ordered Thaqama to supply the people of Makkah with provisions while they were belligerent enemies to him, and he used assisting the enemies in their war effort did not apply in such areas. Also, because Muslim businessmen used to travel to the belligerent countries to trade with them in the times of the Sahaba, their presence and with their full knowledge. The Sahaba did not object nor did they criticize such actions, despite the fact that they would not have been expected to keep silent over such an action had it been unlawful. Therefore, their silence over this, with their full knowledge of it, could only be considered as a silent consensus.

<sup>2</sup>Qur'an, Al-Ma'idah Surah, Ayat: 02.

the Muslim and the Thimmi traders would therefore be allowed to export foodstuffs and goods, if these are needed by the community due to their shortage, in which case their export would be allowed.

This is as far as the trade with the belligerent country who is not effectively at war with the Islamic State, is concerned. However, if the belligerent country were that of an actual belligerent enemy, such as Israel for instance, trade with such a country is categorically forbidden, whether in weapons, food or any other commodity, because this would help the enemy resist against the Muslims and it would become a co-operation with them in sin and in aggression, and is thus prohibited.

This would be as far as exports outside the Islamic State were concerned. As for the imports, Allah (SWT) says:

**...and Allah has permitted trade**<sup>3</sup>

This verse is general comprising domestic trade and foreign trade. There is no other Qur'anic text preventing the Muslim or the Thimmi from importing wealth into the country. Therefore, the verse would remain in its generality, and accordingly it would be permitted for the Muslim to import into the country any type of commodity, and he would not be forbidden from importing any commodity, which the Muslim or any person is allowed to possess, without restrictions.

As for the traders under covenant (with the State), they would be treated in accordance with the foreign trade clauses of the treaty, which the State has signed with them, whether in imports or exports. However, they would not be allowed to purchase any weapons or any other military hardware that may be used in the war effort. If they bought such commodities, they would be prevented from exporting them abroad, for this would assist them, and although they are traders under covenant, this would not alter the fact that they could one day become belligerent enemies. Any other commodity, which is not deemed an aid in their war effort, is

<sup>3</sup>Surah Al-Baqarah Surah, Ayat: 275.

allowed to be exported. Furthermore, if it were in the Muslims' interest to supply them with certain weapons, those considered non-effective and which do not reach the level of military assistance, they would also be allowed to be exported. This is because the Shari'ah reason (Allah) prohibiting the sale of weapons or any other military hardware, used as war aid, is to prevent the supply and help of the enemy. Therefore, if the reason vanishes, the rule would not apply.

As for the warring belligerent, they are those with whom the State has no treaty and they are not citizens of the Islamic State, regardless of whether there is combat between them and the State or not. In the view of Muslims, they would be considered as warring belligerent. If the state of war between us and them effectively existed, they would be considered just like any enemy we happen to meet on the battlefield. We would take their prisoners, slay anyone we overpower unless he had been given protection, and seize their properties. If the war did not effectively exist, none of this would be violable except for the one who enters our land without protection, whether he or his property entered; he would be treated as a warring belligerent, as would his wealth. It could be on this basis that the warring/belligerent traders, buyers and sellers alike, would be treated. *The Shari'ah rule on this subject summarized as follows:*

A warring belligerent could not enter the Islamic household unless he is given protection or special entry visa. Giving him protection means a permission to enter. If he entered without protection it has to be examined. If he entered with commodities to sell in the Islamic land, and if the State's common practice happened to allow traders to enter without protection, they would not be harmed, but their commodities would be subjected to the same restrictions and levies imposed on all foreign commodities; these would be based on what they impose on our traders; in other words, they would be treated the same way they treat our traders. Those who enter would be allowed to trade according to the common practices, as is the case for instance with those who are near the State's frontiers. These traders would be allowed to enter without an entry visa i.e. without protection. However, if there were no prior common practice allowing them to enter as traders, or such common practice were in force but a person happened to enter with no intention of trade, he would be treated like the non-trading warring belligerent, and his blood and his wealth would not be protected within the State's territories. If he claimed to have come seeking protection, this would not be accepted of him. This is because giving protection to the belligerent

is a condition for him to deserve the safeguarding of his blood and wealth in our land, so if he were not given protection, the State would not be responsible for his Safety. Protection would be given based on the common practice in force concerning and exclusively for the traders, provided they were carrying goods they intended for trade. Giving the belligerent protection would also entail protecting his wealth. If he decided to settle in the Islamic State and were given the right of abode, then he decided to leave to the belligerent country, leaving his wealth behind for a Muslim or for a Thimmi to look after, or lending it to either of them, it would in this case have to be examined as to the reasons why he left. If he left for personal reasons, or as a trader, an envoy/ambassador or for a pressing matter, and returned to the Islamic land, then the protection he had been given to his person and his wealth would remain in force. This is because if he left to the belligerent country, but with the intention to remain as a resident of the Islamic State, he would be treated like the Thimmi who leaves to the belligerent country, therefore the same rule would apply to both. His leave to the belligerent country would not nullify his protection as long as his intention is to reside in the Islamic land. However, if he returned to the belligerent country as a resident, his protection for himself would be nullified, and if he wished to return to the Islamic land, he would require a new application for protection. As for the protection given to his wealth, this has to be examined. If he had left it behind in the Islamic land, by leaving it in the care of a Muslim or a Thimmi, then his wealth would remain protected. This is because once he had reached the Islamic land and was given protection, this protection would cover both his person and his wealth. If his wealth was left behind and he returned by himself to the belligerent country, the protection given to him would be nullified once he reached the belligerent country, but the protection given to his wealth would remain valid for that which he had left in the Islamic land, due to the fact that the nullifying factor would be restricted to his person only. So if he died, his wealth would be transferred to his heirs; because the protection is a binding duty related to the wealth. Therefore, if this wealth was transferred to his heirs, so too should the right to protection be given to his heirs. However, if he took his wealth with him, he would lose the protection given to both himself and to his wealth.

Therefore, the trading commodities of the belligerent should not enter our land without a protection given to the owner, and his protection extends to the protection of his trade. If the belligerent wanted to bring his trading commodities in without however entering himself, a

protection to his trading commodities may or may not be given, because in this case the protection, which may be given to the commodities; could be separated from the protection given to his person. For if the belligerent person entered our land, and he were given protection for himself, this protection would automatically be extended to his commodities which he brings with him, but not to the wealth he didn't bring with him to the Islamic land. If he departed the Islamic land and left his commodities behind in the Islamic land, the protection given to his commodities would remain in force within the Islamic land, and the protection he had been given to himself would be terminated. Therefore, it would be permitted for the Khalifah to give protection to the trading commodities of the belligerent to his commodities, if this wealth were to reach the Islamic household without its owner. If protection to his wealth trading commodities was granted, he would be allowed to transport this trade with an agent, an employee or otherwise. This indicates that for the wealth of the belligerent to enter the Islamic land, it would require protection, just like the entry of the belligerent person. Therefore, foreign trade requires protection for it to enter the Islamic land it requires a permit from the State. If a permit were given, then the State would have to protect this wealth just like any other wealth belonging to her citizens. If it entered without protection without a permit, it would be a violable property, which the State could seize. However, this would only occur if the commodities were the property of the belligerent traders. Whereas, if these commodities were purchased by a trader who happened to be a citizen of the Islamic State, whether Muslim or Thimmi, and he wanted to import the goods to the Islamic State, he would not in this case require a permit. This would be on condition that the commodities happened to be his property, and that the transfer of ownership had been completed in all its aspects. For if the transfer of ownership were not yet completed, because the deal was not completed, but just happened to be in process, as is the case in most business deals at present, where for instance the buyer would not be committed to the sale until he receives the shipping documents, or where the goods are yet to be received although they had already been bought, these goods would in this case be considered the trading commodities of a belligerent, and their entry to the Islamic land would require protection a permit. If the receipt of goods took effect once they have left the factory or the warehouse, or once they have been shipped, then the goods would be considered as being the trading property of the Muslim or the Thimmi. However, if the handover did not take effect until the goods reached their destination, in this case they would be considered as the property of a belligerent.



This is as far as the trade of the belligerent and the entry of the belligerent are concerned. As for the exit of the belligerent's trade out of our land the purchase by the belligerent of our local goods, this has to be examined: if the goods were of a strategic nature/such as weaponry or any other war aid that may be used in the war against the enemy, he would be prevented from purchasing such commodities, and if he had already purchased them, he would be prevented from exporting them. As for other types of commodities such as foodstuffs, consumables and others, the belligerent who had been given protection would be allowed to purchase, transport and export such commodities from our land, as long as these are not among the necessities of the citizens because of their scarcity, in which case an export ban would apply due to the citizens' need for them. The Muslim and the Thimmi traders would also be prevented from exporting such commodities, the Shari'ah reason (Allah) being the need of the citizens for such commodities.

This is as far as the movements of traders and trading commodities in and out of the Islamic land are concerned. As for the levies imposed on these commodities, the Shari'ah rule varies according to the traders; and according to the types of trading commodities. Because Islam does not view the trading commodities as being merely a property, nor does it view them in relation to their origin, but rather to the fact that the trading commodities are owned by individuals. Therefore, levies imposed on the trading commodities would depend on the traders themselves, regardless of the origin of goods and regardless of their type. Therefore, if the trader were a citizen of the Islamic State, Muslim or Thimmi alike, no 'Ushr customs would be imposed on his business whatsoever. This is because Ad-Darimi, Ahmed and Abu 'Ubayd reported on the authority of 'Uqbah ibn 'Amir that he heard the Messenger of Allah (SAW) say: "He who imposes maks (custom duty) would not enter paradise." Abu Mohammed said: "He (SAW) means the 'Ushr customs, and the one who collects the tithe on imported commodities". Muslim and Muisbih reported that he once asked Ibn 'Umar: "Did you know that Umar took from the Muslims the tithe?" He said: "No, I did not". Ibrahim Ibn Muhajir reported: "I heard Ziyad Ibn Hadeer say: 'I was the first to collect the tithe in Islam'. I asked: "Whom did you use to levy the tithe?" He replied: 'We never used to levy the tithe on a Muslim or a covenantor (Thimmi); we collected the tithe from the Christians of Bani Taghlib.' 'Abdurrahman Ibn Ma'qal reported: "I asked Ziyad Ibn Hadeer: Whom did you use to levy? He replied: 'We never used to levy a Muslim or a covenantor.' So I said: "then whom did you levy?" He replied: 'the belligerent

traders, for they used to levy us when we went to them on-business.' Ya'aqub Ibn 'Abdurrahman Al-Qarri reported on the authority of his father who said: Umar Ibn Abdul-Aziz wrote to 'Uday Arta'ah the following: "Remove from people the burden of Fidyah (redemption), the burden of giving to provide food as atonement, and also remove the burden of Makh (i.e. customs duty), it is not customs duty but the withholding of people's due, in which Allah (SWT) says: **And withhold not the things which are people's due** and commit no evil on the earth: the intent of being mischievous~'.<sup>4</sup>

...he who brings to you charity (Sadaqah), accept it from him; and he who does not, Allah would then adequately account him. Kariz Ibn Sulayman said: "Umar Ibn Abdul-Aziz wrote to Abdullah Ibn 'Awf Al-Qarri the following: "Ride to the house which is in Refah called the house of Makh, demolish it, then take it to the sea and throw it in, leaving no trace of it." Abu 'Ubayd reported these five narrations. Abu 'Ubayd said: "The meaning of these reports in which we mentioned the ushr, the disliking of qist (duty) and the harsh warning against it, has its roots in the days of ignorance. (Jahiliyyah) before it was the practice of Arab and non-Arab kings to impose on the traders 'a tithe' of their property if they happened to pass by their lands. This is illustrated in the letters dispatched by the Messenger of Allah (SAW) to other provinces such as Haqef, Bahrain, Dumat, al-Janda] and others among those who embraced Islam, in which he (SAW) wrote: "That they should not be pressed nor should they be levied on." Therefore, we gathered from this that it was a customary practice of the days of ignorance (with many tales about it reaching us) until Allah (SWT) abolished this practice when He (SWT) sent His Messenger (SAW) with Islam" it was the customary practice of the days of ignorance to impose the tithes customs duties (Makh), so Allah (SWT) abolished this by Islam.

This reported Hadeeth of the Messenger of Allah (SAW), as well as the reports from Umar Ibn al-Khattab and Umar Ibn Abdul-Aziz, indicate that no customs duty should be taken from the Muslim or the Thimmi on their trading commodities, be they imports into the Islamic land or exports to the belligerent household. Umar Ibn al-Khattab adhered to this and never took customs duty from the Muslim and Thimmi traders, and the Sahabah approved of this, therefore it

<sup>4</sup>Qur'an, Houd Surah, Ayat: 85.

<sup>5</sup>Abi-Ubaid Al-Kasem, The Book of Currency, Beirut - Lebanon. Dar Al Kutub Al Elmieh, 1986.

indicates silent consensus a Shari'ah evidence. The customs duty is the money taken on the trading commodities, which pass through the State's frontiers either in or out of the country. The house erected on the frontiers for this purpose is called Bait ul-Maks. The customs duty on goods is either money that was taken in the days of ignorance from the salesmen in the markets, or specific items taken by the State's officials upon the sale of commodities, or upon their entry into the cities. The plural of customs duty is Mukus. It is said: Makasa he collected the money of customs duty. Therefore, it is specifically applied to the levy taken on trade. The prohibition of taking the customs duty is general, comprising the Muslim and the Thimmi,

As for the Hadeeth reported by Abu 'Ubayd<sup>6</sup> on the authority of Harb Al-Thaqafi on that of his maternal grand-father that the Messenger of Allah (SAW) said: "No tithe (ushr) should be imposed upon the Muslims, but they should be imposed upon the Jews and the Christians." This Hadeeth has been reported through three chains, two of which narration was made from an unknown, and the narration of Harb Ibn 'Ubaydullah Al-Thaqafi, which he reported on the authority of his maternal grandfather, on which the Hadeeth narrators did not comment on and remained silent about. Besides, none of the scholars (Mujtahideen) adopted it, and no reports whatsoever reached us stating that, someone has used it as evidence, whether from among those who say that nothing should be taken on the trade, or from those who say that a-quarter of the tithe should be imposed upon the Muslim's trade as Zakat and half of the tithe on the Thimmi as a political responsibility. If the report had been confirmed as being sound, it would have surely been adopted and used as evidence. So the Hadeeth has not been judged to be sound by anyone, and thus must not be used.

As for what has been reported that 'Umar used to take a quarter of the 'Ushr (tithe) from the Muslims and, the from Thimmies half of the 'Ushr (tithe) and from the belligerent the 'Ushr (tithe), this should be linked to the rule concerning purchase and sale transactions undertaken by the Muslim, the Thimmi and the belligerent. As for the Muslim and the Thimmi, the Ahadeeth have been explicit about the prohibition of imposing anything upon them when they stated in general terms, the prohibition of Maks, which is the taking of 'Ushr on trade. Therefore, what

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Abi-Ubaid Al-Kaserm, The Book of Currency, Beirut - Lebanon. Dar Al Kutub Al Elmieh, 1986.

ar had taken from the Muslim would have been Zak.at, and what he had taken from the  
 gerent would have been based on reciprocity, for they used to impose the 'Ushr (tithe) on our  
 ers, and what he had taken from the Thinni would have been in accordance to what he had  
 ed with them as a peace settlement. What he had therefore ~dfir, from the Thimmies would  
 e been within the remit of the peace treaty and not a Maks, because Allah.(SWT) has only  
 osed the Jizya on the disbelievers. Therefore, if half of the 'Ushr (tithe) were taken from  
 n, within the terms of the peace treaty, together with the Jizya, it would then be a correct and  
 d treaty. Otherwise, it would be unlawful to take anything from their wealth once the treaty  
 he Thinnima has been soundly concluded with the Jizya and the submission, and as long as  
 did not violate the treaty. Abu 'Ubayd said: "What I found difficult to perceive was his  
 ag (meaning: 'Umar) from the people of the Thinnima (half-tithe), so I kept saying: They are  
 Muslims, in order to take from them Sadaqah (Zak.at), nor are they belligerent in order for us  
 treat them with reciprocation. So I did not realise what it was until I studied one of his reports,  
 found that he had struck a peace deal with them on this basis (i.e. to pay half an 'Ushr (tithe),  
 addition to the Jizya (poll tax) and the land tax of the two lands."

This is as far as the Muslim and the Thinni (traders) are concerned. As for the trader under  
 y, he would be levied according to the text of the treaty concluded between them and us. If  
 treaty had stated that he should be exempted, he would then be exempted, and if it stated that  
 certain surr must be imposed, it would then be collected from him, thus implementing upon  
 what the treaty had stipulated.

As for the belligerent trader, the Shari'ah rule is to impose upon him the same levy  
 posed by his country upon the State's traders. So if a belligerent trader entered the State's land  
 protection, the State would impose upon him what is imposed upon the traders of the Islamic  
 e, whether they were Muslims or Thinni, for Abu Qudamah mentioned in his book "Al-  
 ghni" that Abu Majlaz Laahiq Ibn Hameed said: "They said to 'Umar: 'How much should we  
 from the belligerent people if they came to our land?' He asked: 'How much do they take  
 from you?' They said: 'The 'Ushr (tithe)'. He said: 'So take the same from them.'" 'Abu Ubayd

reported that Ziyad Ibn Hadeer said: "We never used to levy 'Ushr (tithe) on a Muslim or one under treaty. I asked: 'On whom did you use to levy 'Ushr (tithe) on then?' He said: 'The traders from the belligerent people, just as they used to levy (the tithe) on us when we went to them with our trade.' Umar ibn al-Khattab did so in the presence of the Sahaba, and no Sahabi rebuked him for this"; they all kept silent and therefore it was a general consensus (Ijma'a). However, to impose on the belligerent traders a levy equal to that they impose on the State's traders is permitted, and not compulsory it would be at the State's prerogative, and not an obligation upon her to impose a levy. It would be permitted for the State to exempt the belligerent of the Maks (custom duty), or to impose a lower Maks than that imposed on it. However, the State is not allowed to impose a higher Maks than that imposed upon it. This is because imposing Maks is not designed for the collection of revenue, but is based on the principle of reciprocity. When adopting such a policy, the Khalifah would consider the interests of the Muslims. Abu 'Ubayd reported in "Al-Amwal" that Salim b. 'Abdullah ibn Umar reported on the authority of his father who said: "Umar used to impose half-tithe on oil or wheat brought in by the Nabatean traders, in order to encourage imports into Mada'inah, and he used to impose the tithe on textiles." The tithe was what they used to levy on our traders at the time? Therefore, the customs duty taken from the belligerent would depend on what the interests of the State entail. The customs duty could therefore either be imposed or waived; it could also be either high or low, provided that it does not exceed what the belligerents impose upon the State's traders.

## 22.1. The Reality of Foreign Trades

International trade yields a tremendous benefit due to the high real profits which are generated from it. What adds to a person's conviction about the importance of international trade is the ferocious fighting and fierce competition between the superpowers over the acquisition of new markets and the protection of old markets, to which their merchandise is disposed of, and from which they import raw materials without obstacle. International trade has a host of distinguishing features, merits and shortcomings. The main reason behind the establishment of international trade is the disparity in the proportional costs of commodities between one country

\* Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.237.

and another. It would therefore be in the interest of all countries to establish international trade between them once the proportional costs differed in each country.

## 2.2. Balance of Trade

The balance of trade is the difference in total value between the visible imports and the visible exports over a period. If we were to calculate the total value of the imports on one side and the total value of exports on the other, we would be able to work out the balance of trade. Therefore, if the value of our exports exceeded that of our imports, the balance of trade would, in this case, be in our favour, because other countries owe to the State the difference between the value of the exports and imports.

Therefore, foreign demand for the State's currency to pay for commodities from the State would exceed the State's demand for foreign currency to do the same. However, the balance of trade would not reflect the true picture of the state of the national economy. Because the national income is not only generated from foreign trade; other sources of income would also be considered. The balance of trade does, however, reflect the real picture concerning the state of our foreign trade. It would, however, be insufficient to maintain the balance of trade tipped in favour of the State at all times. This is because the State may have other designs related to her ideology, or to the propagation of that ideology, or related to industrial development, or to fulfilling her needs, or to political issues concerning the stance of a country with whom she has trade relations and how she aims to shape that stance. It could also be related to the international situation and what may influence it. In this context, the State's intended designs would override either to achieve a favorable balance of trade.

Therefore, although the commercial perspective would be based on profit, it should at the same time be from the State's perspective, not from an individual's, thus the objective and the policy of the State should override any commercial gains.



### 22.3. Currency/Monetary Relations Between Countries<sup>11</sup>

Foreign trade generates a monetary relationship between countries, because a country would have to pay the price of commodities with the currency of the country it is imported from or with a currency acceptable to that country.

A country would also have to receive payment for commodities she sells in her own currency or in the currency of her choice. This is what generates a monetary relationship between various countries.

There is also the exchange of commodities or visible imports and exports. Additionally there is the exchange of services or what are known as invisible imports and exports, these include all types of transport, such as cargo and passenger transport, international shipping and air freight, postal charge, telegram and telephone costs, all types of commercial services, and all the services of the tourist industry. When a tourist spends some of his income there, he would also be taking some of his property with him. He would however, be taking from his country that which would enable him to spend in the country. He is either, by prior arrangement to spend a specific amount of that country's currency, or he would undertake to cover with her own currency, or an arrangement to spend a sum of a currency that is acceptable to that country, subject to the availability of such a currency in his country.

In order to pay for the country's imports, we may either offer our local currency in order to buy foreign currency, or compensation may be offered in foreign countries in order to obtain their currencies. The acquisition of foreign currency is therefore essential for the State in order to generate trade relationships, or economic relations with other countries.

However, the state's currency should not be jeopardized by making it susceptible to instability, or by undermining its credibility, just for the sake of establishing trade or economic

<sup>11</sup> Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.219.

relationships. Rather our control over foreign economic relationships, whether these were trade relationships or otherwise, should be one of the fundamentals of these monetary relationships. This would facilitate the preservation of the state's currency and, at the same time, our acquisition of the foreign currencies that are needed. In order to help achieve such a policy, the State ought to avoid taking up short or long term loans, for it would be one of the main causes that cause instability in its currency market and may decrease the value of its currency.

#### 4. Foreign Trade Policy<sup>11</sup>

Foreign trade is the relationship of the State with other states, peoples and nations from a commercial angle. In other words, it is the management of the Ummah's commercial affairs from a foreign angle. This policy should be based on specific fundamentals, and it should adhere to the nations' viewpoints about foreign trade. They vary according to the various viewpoints they hold about life, and each nation would therefore determine her relationships with foreign nations accordingly. A nation's viewpoint about foreign trade could also vary according to her viewpoint about her own economic interests, and her economic gain.

We note therefore, that to the Socialists, the foreign trade relation is based on their socialist viewpoint about developing the world. For, although they observe economic gains, they classify the commodities according to the countries they deal with. They would attempt to sell to Britain for instance, farming equipment, fertiliser, medicines, industrial equipment for manufacturing of consumable goods, such as cheese and clothing, as well as ploughing equipment and the like. This, in their view, would help the progress towards capitalism. If they exported any commodities, they would only import that which improves the production, and that which they need, although this practice is at present, diminishing. This in fact is in contrast to the policies of the capitalist countries, such as Britain for instance, who always looks for material gain, placing the concept of expediency at the heart of her foreign trade policy. She would sell commodities to all peoples and nations as long as it achieves economic gain. As for the American policy of restricting trading with Russia and China to specific types of commodities and of a total

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<sup>11</sup>amech Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.238.

can on other types, this is not related to the viewpoint, rather to her war policy. This is because she considers these two countries potentially belligerent states, even though they are not effectively at war with her. Apart from this, the American trade policy is based on expediency.

*However, western economists have held different viewpoints about foreign trade and as a result, various schools of thought have emerged/some of these are the following:*

### 1. Free Trade:

The theory of free trade states that trade transactions between countries should be conducted without restrictions, customs duties or any obstacle to imports. This school of thought champions the abolishment of the State's control. The State would no longer be obliged to control imports and exports, because the equilibrium between imports and exports would be achieved by natural forces. Therefore, the equilibrium would occur naturally and automatically.

This theory contradicts Islam, because foreign trade is one of the relations between the State and other states, peoples and nations. These relations are all controlled by the State and it is the State who would organise and directly supervise such relations, whether these were relations between individuals, or economic or trade relations. Therefore, it would be totally wrong to adopt the theory of free trade, for the Islamic State would prevent the export of certain commodities while permitting others. She would also handle the issue of the belligerent traders and the covenantors, though she would only supervise her citizens in their foreign trading the same way as in their local trading.

### 2. Protectionism:

The protectionist theory requires that a State interferes in order to achieve equilibrium in foreign trade. The purpose of protectionism is to influence the balance of trade and redress the deficit, because the spontaneous balance between exports and imports would not be able to achieve equilibrium, nor would it be able to redress a deficit. Therefore, protectionism would be necessary, and that is why custom duties as well as export and import restrictions would be imposed.

This theory as it stands is limited, because it restricts the State's powers to interfere merely to achieve a foreign balance of trade or to redress the deficit. This would be wrong because the Islamic State interferes in order to deal with the other states with reciprocity, to provide the country's needs to generate monetary gains and foreign currencies and, most importantly, to carry the call for Islam. Therefore, it would be wrong to confine the interference of the State to achieving equilibrium in trade transaction and to redress the deficit. Rather, her interference should be for political, economic and commercial aims and for carrying the Islamic Message.

#### 1. National Economy:

The theory of national economy is linked to the concept of "cultural protection" derived from the theory of heavy industry. The champions of the theory of national economy deem that the economic growth of a nation must aim at providing her with political power as well as economic power. They deem that the growth of any country would undergo three stages: The pastoral/agricultural stage, the agricultural stage, then the agricultural/industrial trading stage. A country would not acquire power unless she acquired a navy, colonies and populations with various skills. Furthermore, it would be essential for the productive forces and economic growth to be in harmony, and this would serve as a fundamental condition for political power. They also deem that although international associations would benefit from free competition, this would depend on all competing countries reaching perfection in developing their powers; and in order to stimulate this development, industry must be protected. As for agriculture, it would not enjoy any protection and it would be permitted to export all kinds of produce without restriction or conditions, and their prices would be set according to the free market. Therefore, the theory of national economy would be in essence industry orientated. It states that the nations who aim towards being powerful should be eager to pass the agricultural stage to industry, because in the agricultural country, a large size of the productive forces the workforce, as well as a considerable size of the natural resources the raw materials, would remain unemployed and unexploited. Therefore, in order to invest in the workforce and the natural sources, an industrial programme should be initiated alongside agriculture. A country who establishes her economy solely based on agriculture would not possess the economic capability and the standard of living which an agricultural/industrial based country would have. The theory

of national economy necessitates the presence of industry alongside agriculture in order for the country to be able to stand on its own feet economically. Therefore, the concept of national economy in fact applies protectionist theory on industry, thus imposing the appropriate restrictions and tariffs exclusively on industrial imports and exports, whilst at the same time, it applies free trade theory on agriculture making it free of any trade restrictions.

Islam is averse to such a theory, preferring leaving the foreign agricultural trade free of control means that the state should not control the foreign trade of agricultural products. It is forbidden, for the State organises all agricultural, industrial, or any other commodity which enters or leaves the country; she could ban the export of some commodities, while permitting the export of others. She would deal directly with the issue of belligerent and traders under treaty, while attempting to merely supervise her own citizens. As for the State's interference in industrial matters in accordance with the country's interest in order to boost the economy, this would form part of her duty to manage the affairs of the land. This is commanded by Islam. However, all this would be restricted to the needs of the country (çarpajning for Islam), together with the industrial development, not just for industrial development. This illustrates that, although the theory of national economy, which is based on the management of the country's affairs, is part of the management of the country, it is not in accordance with Islam because they are not linked to the interests of the country. The whole theory contradicts Islam due to the total freedom given to agriculture, therefore Muslims would not adopt such a theory.

#### Policy of Self-Sufficiency:

The policy of self-sufficiency means that a country aims towards being self-sufficient and forms a closed economic unit which survives on its own. This country would not import nor export any commodities. Her aim would, in this instance, go beyond the protectionist theory, differ from the theory of national economy. It contradicts the free trade theory.

The theory of self-sufficiency which has been implemented between the last two world wars has been highlighted in two forms: Isolationist self-sufficiency and expansionist self-sufficiency. Nazi Germany represented a model of a country which adopted a self-sufficiency

policy, it was, for her, a measure triggered by Germany's home and foreign policies, which no longer fitted with the rules of international trade.

Although the policy of self-sufficiency represented in fact a host of measures which had political aims, the champions of such policy deem that it represents a fundamental economic basis, which is summarised in the fact that a country who possesses raw materials-chemicals, machines and manpower, should be able to survive. The point at hand would be organisation. As for capital, this is secondary. It is the government which chooses for itself a political program, to which they submit the economic and financial management. In order for the policy of self-sufficiency to achieve its aim, which would be to render the local economy able to be self-sufficient, the government should be prepared to manage without many of its needs; because the policy of self-sufficiency would make a country unable to fulfil all her needs. What is important for this policy is to be able to fulfil the basic needs of the individual, the nation and the State while relying exclusively on the local economy, in a manner that would set her in an upward trend. Therefore, the State which pursues a policy of self-sufficiency in foreign trade would be obliged to annex the countries she would need in order to acquire raw materials, markets, manpower, and experts etc. This annexation would either take the form of a direct merger, or that of commercial treaties. As for the abolition of economic frontiers, this would mean annexing the country abolishing the political borders, for it would be impossible to abolish economic borders without the abolishment of the political borders. If the State could not annex the countries that she needs in order to acquire the materials she lacks, she should in this case persevere without fulfilling some of her needs, while aiming to avoid a shortage of basic necessities, for in such a case she would not be able to persevere, whereas lacking non basic necessities could be afforded.

This is a summary of the isolationist and expansionist self-sufficiency policies. The isolationist is where the basic needs are available; whereas the expansionist policy, within a specific scope, is achieved by annexation or treaties in order to provide all the necessities, be they basic or luxuries. If one were to look closer at the policy of self-sufficiency, one would realise that it does not rise to the level of being a commercial or economic solution. It is merely a temporary preventive measure which the State would undertake against a potential foreign economic or commercial siege. Therefore, it is not a remedy for foreign relations, but a reactive



measure that a country may undertake if she were subjected to a foreign economic or commercial embargo. Therefore, it would form part of the styles and means and not the rules. It would therefore be wrong to ask what the Shari'ah rule is concerning this policy. It would also be wrong to say that it contradicts or differs from Islam, for it is merely a style that might be adopted. Therefore, this policy could be taken as a style if it were to have a practical reality if a country were under siege and it were possible to rely solely on the home economy to meet its basic needs. This policy would not be adopted if it had no reality and it was impossible to be self-efficient regarding the basic needs of the State, the Ummah and the individuals.

This policy is part of the management of affairs undertaken by the Khalifah and which Shar'a has allowed him to opt for, in whichever style he deems appropriate and in the interest of the Muslims.

## A COMPARISON BETWEEN THE TWO ECONOMIC SYSTEMS (THE ISLAMIC AND THE CAPITALIST) IN DEALING WITH SOME ECONOMIC PROBLEMS

## XXHI. A COMPARISON BETWEEN THE TWO ECONOMIC SYSTEMS (THE ISLAMIC AND THE CAPITALIST) IN DEALING WITH SOME ECONOMIC PROBLEMS:

This part of the thesis discusses some of the economic problems and how each of the Islamic economic system and the capitalist economic system remedied them.

### 23.1. Ownership<sup>1</sup>

It is part of man's nature to work so as to satisfy his needs and to possess property in order to satisfy these needs and accordingly to strive for this possession. Satisfying man's needs is an inevitable matter that man cannot desist from. In addition to being part of man's nature, man's acquisition of wealth is thus an inevitable matter. Any attempt to prevent man from possessing wealth would be contradictory to his nature and any attempt to restrict his possession to a certain quantity would also be contradictory to human nature. It would, therefore, be unnatural to stand between man and his acquisition of wealth, or to stand between him and his efforts to achieve this acquisition.

This acquisition should not, however, be left to man to achieve, strive for, or dispose of as he wishes, as this would cause evil and corruption resulting in anarchy and disorder. This is inevitable due to the disparity between people in their abilities and in their needs for satisfaction. If they were left to their own devices, only the strong would acquire the wealth and the weak would be deprived of it; the sick and the incapable would perish and the greedy would be excessive. Enabling the people to acquire wealth and strive to achieve it must therefore proceed in a way that guarantees the satisfaction of the basic needs for all the people. It should also guarantee the possibility of people being able to satisfy their desire to acquire luxuries. It would, therefore, be imperative to confine this acquisition to a specific method, in which simplicity is achieved, so as to make the acquisition within reach of all people despite the disparity in their abilities and their needs. This method would also conform to human nature so as to satisfy the

<sup>1</sup>Jašaneh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.617.

basic needs and enable people to fulfil their luxuries. It would thus be imperative for the ownership to be determined in quality and to resist the abolition of ownership, as this contradicts human nature. It is also necessary to resist the confinement of ownership to specific quantities, as this restricts man's striving to acquire wealth, thus contradicting his nature. The freedom of ownership should also be challenged as it causes evil and corruption resulting in chaotic relationships between people. • Islam allows individual ownership and defines its method rather than its quantity, in accordance with human nature. It also organised the relationships between people and thus enabled man to satisfy all of his needs.

Ownership in Islam is of three Parts:

1. Private Ownership.
2. Public Property.
3. State Property.

### 3.2. The Proletarian Problem (Unemployed)

What is called proletarian problems doesn't exist in the Islamic economy. This problem arose because the wages were estimated according to the minimum/standard of living. Practically, the workers got only what could keep them alive. The employers were tyrants and the workers faced exhaustion and bad treatment. The workers began to complain and the idea of socialism appeared to bring justice for them by limiting the work hours, the rate of payment, and their welfare. This forced the capitalists to make alterations on the theory of free ownership and free work, and not estimate the wages of the workers according to the minimum standards of living.

Some laws which were introduced to the contract aimed at protecting the workers and giving them more rights which they were denied before, such as the freedom of assembly, making associations and going on strikes.

They were also given pension and allowances, the right for increase in payment, sickness, and medical care.

So the current proletarian problem was a result of the basis upon which the capitalist system is built, that is the freedom of ownership and the freedom of work as well as estimating the wages according to the minimum standard of living. This problem will remain as long as the relationship between the employer and the employee is based upon this system. These alterations were made to silence the workers and face the enticements of the socialists. This alteration is natural in such a situation in order for the capitalist system to survive.<sup>2</sup>

Such things do not occur in Islam, because there is no freedom of ownership or work but permission of ownership and work and there is a vast difference of both.

Freedom of ownership is to set man's hand free to own no matter how, but permitted ownership is permitting the basis of ownership. Ownership is a deed of human beings and it is with permission. Each muslim can own, but how to own is tied by certain reasons stated in Share'a, such as hunting, commission and others. So permission is only for the basis of ownership not for ownership no matter how. Also developing what one owns is tied by certain laws such as trade and selling. This is unlike the freedom of ownership which gives one the freedom to own no matter how. The same thing applies to work, which is also a deed of humans and its law is with permission. Each muslim has to work but how he does the work in order to get money is tied by certain laws. This is also unlike the freedom of work which gives the people the freedom to work in any field and the freedom to do that work however he wishes.

Here we can observe the great difference between (permitted ownership and work) and (freedom of ownership and work). So the problems which occur in the capitalist economic system don't occur in the Islamic economic system, because ownership is tied by certain reasons, and if increasing it is also tied by certain laws; work as well is tied by the kind of work allowed and by certain rules of how to do this work.

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Abedilrahman Al-Maliki, The Ideal Economic Policy, Beirut- Lebanon, Dar El-Ummah, 1963: P. 149.

Thus, ownership and work are tied by rules that stop dispute from the basis, so these problems do not occur. Neither the employer nor the employee are in need of certain ties, because there is no freedom of ownership or work to be in need for such ties, to mend the system of liberty. What is there is permission of work and ownership.

The basis upon which the wages are estimated in the Islamic economy is the benefit of the effort executed by the worker in the general market of this benefit and not the minimum standard of living as is the case in the capitalist economy. So the employer doesn't enslave or use their efforts or make use of their efforts. So the worker and government employee are alike, and the worker get his wages as is estimated to any other person in the society.

As for the rights given by the alteration in the capitalist system to the workers, assembly for example was permitted to all the community whether workers or not, as for having associations there is no such thing in Islam, because the running of the people's affair is restricted to the state, and no one but the head of the state (Khalifa) has the right to run these affairs whether partially or completely.

Associations however, run the affairs of those who are members in it only and this is not fair. As for the right of strike neither the worker nor the employer can cancel the contract. The worker has to fulfill what he was appointed for, and if he doesn't he won't be paid, so he has no right to go on strike.

Pension and allowances were introduced to lessen the tyranny of the capitalist system, because the Islamic system gives the right to the incapable to take their need from the state, so there is no need for pension and allowances.

Covering the basic needs of the incapable is the duty of the state and not the employer. This also applies to the health insurance and education for the workers and their families. The state is also responsible for ensuring their basic needs in case they quit their jobs, by finding other jobs for them. If the state fails to do so, then they have to be paid by it.



So all what was discussed concerning the proletarian problems in the capitalist system such as the current problems in the factories is unlikely to happen in the Islamic system due to the difference of the basis upon which the wages of the workers is estimated, as well as the party responsible for looking after the poor and incapable and finding jobs for the unemployed, and also due to the different concept of the state in Islam to that in the democratic state. In Islam it is one institution running all the affairs of the people; while in the democratic state there are multiple institutions run by the government.

So Islam permitted employment, and allowed the contractors to put whatever conditions they want according to the prophet saying: "Muslims are tied by their conditions." The wages were estimated upon the basis of the benefit of the effort, if the contractors happened to dispute then they have to abide by what the market applies according to the estimation of the experts. This led to the absence of dispute in all the employment contracts and allowed the employer and employee to make unlimited activeness in production.

### 23.3. The State Budget

Each year, the democratic state draws up a general budget for the State. The reality of the budget in the democratic State is that the budget itself is issued in the shape of a law known as the Budget Bill or Law for such and such year, which Parliament then approves and enacts it as a law once it has been debated, including the appropriations of the Budget one by one, and the sums assigned to each item. Each appropriation is in fact an integral part of the Budget and these are voted on as a whole; and not individually. Hence, Parliament can either accept or reject it outright, even if it reserves the right to debate it item per item and sum per sum at the debating stage. The law of the Budget is formed of several articles, one of which is drawn up to show the funds that are earmarked for the State's upcoming expenditure in the financial year for which the budget has been drawn up. Another article is drawn to show the State's estimates with regard to the revenues of the coming financial year. Other articles are drawn in order to earmark the expenses of certain institutions, while yet other articles are drawn in order to estimate the

revenues of certain institutions. Also, certain articles are drafted in order to give the Chancellor a host of mandatory powers. In each article a reference is made to a table that includes the sections of the Budget, outlining what each article contains in terms of expenditures and revenues, then in each column the items of the section are listed; then the overall sums of each item in the section are listed in the table. It is on this basis that the Budget is drawn up each year, with slight alterations introduced each year, according to the various events. There are also a host of peripheral changes in the budget of each democratic State, and this is also according to the various events.

As for the Islamic State, she does not draw up an annual budget because the matter does not require a specific law for the budget each year. The budget does not get proposed to the Ummah's Council, nor is the Council's opinion sought. This is because the budget with all its articles and sections, and the funds included in each of them, is law in the democratic system. It is a law for one single year. The law in the democratic system is enacted by Parliament, and that is why the matter is required to be proposed to Parliament for ratification. The Islamic State does not need this, because the treasury's revenue are levied according to the Shari'ah rules stipulated by text and they are paid out according to the Shari'ah rules stipulated by text. All of these are permanent Shari'ah rules; hence, there is absolutely no room for opinion seeking with regard to the revenues and with regard to the expenditures. The sections in the budget are formed of permanent sections that have been determined by permanent Shari'ah rules. This is as far as the Budget sections are concerned; as for the appropriation of the budget and the amounts included in each appropriation as well as the matters for which these amounts are allocated in each appropriation, all of this is down to the opinion and the Ejti'ah of the Khalifah. This is because it is part of looking after people's affairs, which Shari'ah had conferred upon the Khalifah to decide based on what he deems fit, and his order is binding and must be executed.

Therefore, there is no room in Islam for the State to draw up an annual budget, as is the case in the democratic systems: whether this is with regard to its sections, its appropriations, its items or the amounts required for each item or each appropriation. This is why no annual budget is drawn up for the Islamic State, though she has a permanent budget for which the Shar'a has determined its sections for both revenues and expenditures. The Khalifah reserves the right to

determine the appropriations and their items, whenever it is required without linking that to a particular period.<sup>4</sup>

#### 23.4. Developing Economy and Growth Production:

##### 23.4.1. The Economic Policy:

The growth production is based on the developing economy and the later is based on the economic policy. So if the policy is rightful the economic construction will be rightful, and if the later is rightful then this will lead to the growth of production in all aspects.

The economic policy for any country is a result of the general concept of the universe, mankind, and life. So if any country follows this general concept and runs its life affairs accordingly then it is said to be a conceptional country, such as Russia, America and Europe.

But if a country doesn't follow a general concept about the universe, mankind, and life, such as India, or if it follows a general concept but doesn't run its life affairs accordingly, such as Jordan, then each of these two countries will not have a stable and genuine economic policy.

It, therefore, draws its economic policy upon the current conditions, and change this policy accordingly. So those who speak about the economic policy which is supposed to be drawn for their country, have to realise the present condition of the country and how it should acquire permanent peace and decent living.

So if the reality of any country is that it doesn't follow a general concept, then they have to draw an unstable economic policy because they don't have a general concept form which they can get the stable and genuine economic policy.

But if the reality of any country is that it follows a general concept about universe, mankind, and life, but doesn't run the life affairs accordingly then such a country doesn't have

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Sameeh Azain, Islam and human culture, Beirut-Lebanon, Dar El-Kitab Al-Lobnani, 2000: P.237.

the right to draw an unstable economic policy, because it will be unprofitable, and doesn't remedy the current problems. At the same time, such a country is unlikely to draw an economic policy resulting from a general concept other than the general concept followed by the country itself, because it would be difficult to implement except by force.

So it is inevitable for a country/which its people follow a general concept about the universe, mankind, and life, but to draw for itself the economic policy which is a result of the general concept it follows.<sup>5</sup>

The Islamic countries including Jordan follow a general concept about the universe, mankind, and life, which is Islam, but it doesn't run its life affairs accordingly. So it is unprofitable for it to draw the unstable economic policy, and it is unlikely to draw for itself a witalist economic policy, not a socialist economic policy, because both of them is the result of a general concept different from the one it follows. So it has to draw for itself an economic policy ~sulting from the general concept it follows which is Islam. Therefore, the economic policy for muslim countries, including Jordap, must have legislative laws taken from the holy Koran and unnah. Any other policy it implements will lead to the increase of the economic problems, for overtly and continuous confusion and anarchy,

Economic policy is the target which the laws dealing with the affairs of mankind is concerned with. The economic policy in Islam ensures the fulfilling of all the essential needs for every individual and enables him to fulfill the luxuries needed as much as he could, baring in mind that he lives in a society which has a special aspect of living.

Islam considers each individual apart and not the community living in the country as a whole. It looks at this individual first as a person whose needs have to be fulfilled completely and then as a person who is concerned about himself by enabling him to fulfill his luxurious needs as far as he could. At the same time, he is treated as someone who is tied to others by certain relations going on according to special aspects.

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Abdelrahman Al-Maliki, The Ideal Economic Policy, Beirut - Lebanon, Dar El-Ummali, 1963: P.35.

Taking these four issues into consideration is the basis of the Islamic economic policy:"

1. Considering each individual, so it is individualistic in fulfilling the needs.
2. Considering to fulfill the essential needs completely, it is therefore humanitarian in guaranteeing all what is needed to keep the live of each individual.
3. Considering the permission of looking for work and equality in this aspect in order to allow each individual in the society to obtain what he wants from wealth so it leads to welfare.
4. Considering the sovereignty of high morals upon the relationship among these individuals.

So the economic system in Islam isn't for improving the standard of living in the country, increasing the original income is not its basic concern, nor does it provide what brings welfare to the people and give them the liberty to take as much as they could from it, as is the case in the capitalist economic system. Which allows the free [ ] of ownership and work.

It is however concerned with treating the basic problems of the individual as a human being and enabling him to improve the standard of his living. It enables each person to reach welfare and allows him to get the share he wants. The Islamic economic system also made the high virtues dominate the relationship between the individuals.

#### **23.4.2. Resources of Economy:**

The essential resources of economy in any country are four, no matter what kind of system is implemented in the country, and whether the country is a leading country such as America and Russia, or a deteriorating country such as Yemen & Ethiopia. These four resources are:

1. Cultivation
2. Industry

3. Trade
4. Human resource.

As for what is called the invisible income in the capitalist system, such as tourism, and transportation, they are not essential economic resources, and they are not available in each country, and they are in no need for separate laws and remedy other than the four essential sources. So they are not considered as an independent source of economy. The economic remedy however, is centered on the main four resources whether it aimed at making the increase the civil income the basis, as is the case in the capitalist economy, or made the distribution of civil income among the people the basis, as is the case in the Islamic economy and the socialist economy. Because there are no other main economic sources than these. The remedy before, is centered on the ownership and work, the capitalist system make its increase the basis of the system and give the individuals the freedom of ownership and work in regard of these resources. Socialism and communism claim to cancel ownership completely or partially and giving people to work. Islam calls for Permissibility of ownership and work. So dealing with the four resources of economy is considered the most important, in fact, it is the basic remedy of economy, apart from that is either built on it or comply with it. Its contents, 7.

#### Globalisms

Globalism is a word coined in English and French about ten years ago. It is used not to describe a thing as international due to its presence or realisation in most parts of the world but to imply that a doer or doers wish to make the thing international. An example would be a company would adopt a policy of production which looks at the whole world as being suitable for selling its goods. Then in actual fact it pursues its production in any state or states whose production costs are less than anywhere else. Then it will be said that the company has globalised its production. Similar things are said about other activities of this company or others as when it adopted the policy of 'globalisation' and pursued it in marketing its goods,

dilrahman Al-Maliki, The Ideal Economic Policy, Beirut - Lebanon, Dar El-Ummali, 1963: P.34.

dilkareem Ashami, Dangerous Concepts- Globalism. Beirut- Lebanon, Dar El-Ummali, 1963: P.50.



advertising them, searching for a new product and developing it, in employing workers, experts and in attracting investors who would give loans to finance its operations or any other activity.

The first time the word 'globalism' was applied was in describing the activities of the large American companies starting in the mid-eighties. That is because when Reagan became the president of America in 1981 he employed bold policies in international relations, economic and political, and won the strong support of American financial circles. Part of this was the use of the policy of the strong dollar to attract financiers/wealthy outside the country to invest their money in the (Santander) money markets which circulate in it in order to finance his program of arming America and ruin the Soviet Union at that time in an arms race. This is what actually led to the economic collapse of the Soviet Union in 1989.

This policy of the strong dollar led to consecutive sharp rises in its value in the years following his first term in office. One of the negative effects of the policy of the strong dollar is that profits of many American companies decreased due to foreign goods competing with American goods which are priced in dollars. These companies were compelled to decrease the price of their commodities then to seriously look at ways to cut costs, especially the cost of American manual work. A group of university professors at that time suggested the idea of 'restructuring' these companies by a fundamental review of their work whether in production or marketing etc. This idea became widespread amongst the rich and employers. Its implementation led to the practical closure of a number of factories and branches of American companies. And it led to a number of their employees and workers from being discharged from work all at one time, like the job losses announced by General Motors, one of the biggest car companies in America when it discharged 74 thousand employees at one go. And the IBM company which is one of the biggest computer companies which discharged 60 employees in three waves within a short period of time.

These companies recovered, after restructuring, the production of the factories they closed down or parts of which they sold in America by alternative production from new small companies which pay low wages to its workers. Especially those hit by the discharges/job losses due to restructuring. And by establishing alternative factories and branches outside America. And

one of the side effects of the strong dollar is that prices and wages have become very meager outside. The companies concentrated on poor and heavily populated countries like Pakistan, Indonesia, Philippines, Thailand, India, where the monthly wages of a worker hardly reaches the wage of one or two hours of the American factory worker. This is not confined just to the manual workers but includes the educated and people of expertise like engineers and computer programmers where they may be, as long as their wages are lower than what it is in America and they need work and wages.

They caused a political outcry in America regarding the process of restructuring and discharging of workers in a collective manner and in startling numbers. Many Americans viewed the export of work outside depriving them of this work as an attack on their livelihood and that the motive of the companies was nothing but capitalist greed. The companies reported that they were forced to do what they did because of intense 'international' competition, and that they had no choice but to compete on the international level and 'globalise' their operations. The committee of the council of senators held meetings open to the public to investigate the globalisation of American companies the first of which was held in 1987 and the last was in 1992. These investigations led to the term 'globalisation' (became) publicised, and then the committee fixed its use when it placed it in the headings of its reports, which was in 1987 and in subsequent years. This was the first time the expression 'globalisation' was used in the title of any book or report published in English. Then followed the publication of books on the subject of globalisation until the published material in English reached 260 books, most of which was published in the nineties during Clinton's term in office.

However, the effect of these investigations just gave vent to the political congestion against the job dismissals of the companies and their exporting of work outside of America as a justification of what they did and elimination of the hostile media. The investigations ended in 1992. Then after Clinton came to power Congress agreed to the NAFTA agreement which Bush signed with Canada and Mexico, even though the agreement enabled American and Canadian companies to manufacture whatever commodity they want in Mexico where the wages of workers is extremely cheap. Then it would be sold in American and Canadian markets. This fixed

what the workers unions and other American political factions which opposed the companies and accused them of exporting work used to fear.

Therefore, the political outcry and the political conflict in America itself which accompanied it regarding the mass job dismissals and the export of work outside of America, is what publicised its name afterwards as globalisation. It practically came to an end in 1992. It was ended for the benefit of financial circles and companies under their control. All of this led to the formation of public opinion which said that work requiring high qualification and experience for which high wages are paid shall not leave America. And thing exported will be the work which only contained physical work which is exhaustingly monotonous and with low wages. It is something that they do not want for themselves anyway. And when these expectations are realised then the benefits will return to all Americans because it will lead them to specialise in advanced industries and highly qualified, experienced and paid work. Consequently the work that is exported will mean that the work collected and manufactured by cheap foreign hands outside the country will return to America at low prices.

The resolution of this political issue and the Clinton's assumption to power in 1993 led to the change in the American foreign and economic policy. His predecessor Bush used to adopt the policy of promotion export goods and sponsoring the establishment of the World Trade Organisation instead of GAT to open the doors wide before these export goods. However the business and American financial circles took the view that more important than the promotion of export goods is the need to complete which they had began in the early part of the eighties by a comprehensive restructuring of the the companies to strengthen them so that they are more able to gain profit. And they took the view that this restructuring should lead to the export of a lot of the work not just the goods only. And it should lead to them plunging into a fierce competition with non-American companies.

The businessmen put forward other ideas which they wanted Clinton to adopt. They said that for many years America has been bearing/shouldering the burdens of the Cold War and other international burdens on account of which Europe and Japan were becoming stronger economically they had become a danger to the vital interests of America. Now that the Cold war

is over America must regain its ability to compete with Europe and Japan. And resume competing with them in a strong manner and not be bound to any compliance with their interests as she used to do in the past, according to their claim, until they even called for American secret service to be used in economic spying on Europe and Japan and their companies after her preoccupation with the Cold War and other problems of the world decreased.

In response to the thoughts and opinions of Clinton and his treasury secretary (which was one of the biggest posts in Wall Street) adopted the call to the opening of world markets, not only to sell American goods only but to enable American companies to produce goods wherever the cheap labour was available. And to market their services and manufactured goods in America or any other country wherever she wished in the markets of the world. The most important of these was her adoption of which are the banks, insurance companies and brokerage houses of American markets, in storming money markets outside America. This was a new matter since these companies did not go outside before and hence was not welcomed in many countries due to danger of their actions. That is because financial companies by their very nature work attract peoples' money such as trusts, insurance premiums, shares and bonds. Thus, a huge amount of money is concentrated in their hands which enables them to administer it how they want.

The businessmen were concerned about the idea put forward immediately after the end of the Cold War which is that the world is inevitably divided into the three biggest economic regions: firstly, it includes the whole of Europe and it is controlled by western Europe. Second it contains most of Asia; it is dominated by Japan and third includes the two American continents which are restricted to the United States. They feared that this idea may become a reality, thus they opposed it vehemently and described it as regionalism. They alluded to the fact that Europe and Japan are behind in promoting the idea. They offered an alternative to this idea which is that the world should be open to everyone. No one should have a monopoly over any one part but it is for everyone to compete in many places. They promoted this idea through concentrated media campaigns and the Clinton administration adopted and many books were published regarding it. And from these were the books which talked of globalising the activities of companies.

That media campaign ended in America after the Clinton administration adopted the idea at the beginning of the term, and moved outside of America sponsored by the American administration and its state apparatus. Particularly, in what are known as the developing countries the media campaigns were concentrated to preoccupy the people of those countries with shallow and deceptive thoughts, weak and translated expressions, cheap and strange sophistry. Many were completely bewildered by them. Despite the silly nature of these thoughts which the campaigns called, however they were, planned and concentrated to produce specific results which is to form and gain public opinion for opening the doors wide before the activities of American companies in a comprehensive attack to pick the fruits of winning the Cold War. And to monopolise it to the exclusion of European and Japanese companies. Unfortunately, it seems that these campaigns have achieved their aims and enables rulers smitten by the West to drug their peoples before the new American onslaught and attack on their country, to open their markets to their goods and employ their cheap labor in their factories and to attract people's saving to their finance companies and to use their money markets to speculate.

The following are some of the thoughts hidden under the cover of globalisation which she has directed outside, especially to the countries of the third world:<sup>9</sup>

- immediately after the fall of the Soviet Union there remained in the world, only the western economic system which they called the free market system instead of its true name which is Capitalism, a name which reminds us of its greed and ugliness. And all the countries in the world are either implementing it or desiring or striving to implement it.

- the world of money has become one because its proponents can now transfer it to any country and utilise it in any investment whose returns will be greater than other investments. And the transfer of money is done at exceptional speed, made easy by fast means of communication. And this money will not be invested in a country which places obstacles before it.

<sup>9</sup> Abedilkareem Ashani, Dangerous Concepts- Globalism, Beirut- Lebanon, Dar El-Ummali, 1963: P.61.

the world of work has become one as well. So the companies which they called multi national ignore the fact they are not multi national. This is because its mother company follows only one country and has only one nationality. These companies have the ability to manufacture and market products on a world level which makes any country wishing to develop welcome these companies and employ the people or sell its products. Otherwise the companies will go to another country.

The means of communication, getting to all corners of the world has become comprehensive and is linked to the extent that it prevents any one direction from controlling it. And this link has led to becoming one. It has led to views and even tastes that are almost in agreement with each other,

these are some of thoughts of globalisation which are being promoted in the countries of the world. What is meant by its promotion is that based on this one must welcome foreign money and work and to adopt the advice of its advocates in terms of the changes to the laws of a country and privatization of state institutions to enable them to buy them. And there is no alternative to this if we want to join the procession in a world which has come together on the globalisation of money and work, otherwise we will remain backward. No one shall be saved from the effect of these claims, propagandist sophistry and the cover of globalism which it reveals itself in a country where there are few aware officials. And its people depended on the opinion of their views from the media apparatus which has been aimed at them. That is why it is strange that we compare these claims of globalisation with the missionary invasion of the last century. This onslaught may be more dangerous than the one that came before because this time does not carry the cover of religion, though it is more detestable.



#### XIV. CONCLUSION

From what has been previously mentioned, the summarize of the study that the capitalist economic system failed to remedy the economic problems for various reasons which were thoroughly discussed in the thesis.

At the same time the thesis clarified how the Islamic economic system was able to remedy these economic problems from the point of view of Islam. That is the system of God (Allah) who made it to mankind to adopt and follow. Because Allah (SWT) is aware of the needs and requirements of mankind, more than man himself, because Allah created us and is more aware of our needs than ourselves.

Fulfilling the basic needs for each and every one and for all the community is the most important thing in Islam. Unlike the capitalist system, for the essential thing for them is increasing the original income.

When the faults due to implementing the system began to appear, a few laws were issued for the workers, employees and the needy, to lessen some of the injustice that fell upon them. Thus guaranteeing the basic needs for the individual in the capitalist economic system is not fundamental in the system, but it is an emergent law that has been added to it.

Islam focused on the basic needs of mankind and divided it into two parts:

The First Part: **providing the basic needs for each** and every individual.

The Basic needs for each one of the community (whether Muslim or not who live under Islamic state), these needs are:

- a) Food
- b) Clothing
- c) Residence.

If these were available, then there are no more basic problems. The evidence for these three things to be of basic needs is the different-text from the Holy Koran and the (Sunneh) which stress on food, residence and clothing to be the basic needs which have to be provided for each and every individual. Any thing besides these three things is an accessory. Those who spend on these basic needs are mentioned clearly in the Islamic (sharia'a) they are the relatives -the well off kin and the rich. If one of these is not available or is unable to spend due to poverty or illness, then the Islamic sharia'a made it the duty of the state to spend on these people.

The Second Part: providing the basic needs for all the community.

The Islamic sharia'a made it the direct duty of the state to provide the basic needs of the community. These are unlike the basic needs of the individual which are covered by the capable relatives, in case these relatives are incapable then the state will cover these needs.

The Islamic Sharia'a made the state directly responsible for the basic needs of the whole community, so Islam made the following the basic needs for the community:

- 1) security
- 2) health
- 3) expenditure
- 4) education.

This is the guarantee of Islam to fulfill all of the basic needs to all the individuals of the community. Also providing the basic needs needed to all people, by finding jobs for the capable and providing expenditure for the poor and incapable. Thus, by fulfilling the basic needs for every individual in the community, the Islamic economic system is realized.

If we look at the reality of the Jordanian economy since the declaration of the kingdom after the termination of the Islamic Ottoman state, we realize that this economy is deteriorating and is incapable to depend on itself. The needs of the individuals and the community aren't guaranteed by the state. Poverty and de-employment and hunger are spread all over the country, all due to the adoption of the capitalist economic system in Jordan.

Finally, we realize that the capitalist economic system failed to remedy the economic problems in Jordan, while the Islamic economic system is capable of solving all these problems from the roots and transfer the whole society obviously to welfare and to self-dependence.

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## V. RECOMMENDATION

In this part of this thesis, we would like to recommend who would like to conduct this in the Islamic economy system and the Arabian economy as follow:

This thesis explained the Islamic economic system and the basis upon which it is built, and how it deals with the economic principles. This respect mention three examples for the strength of industry in the Islamic state (when it implemented the Islamic economic system) throughout the period of its domination, before the Islamic Ottoman state was terminated.

1. The prophet (SAW) immigrated to Madina and built the first Islamic state there. Although weapon at that time was simple and could be bought, the prophet (SAW) sent two of the muslims to Jarash in Yaman to learn this industry of making weapons and bring it to the Islamic state. Soon after the third year of Hijrah, the prophet was able to use the mangonel to attack the walls of Al-Ta'ef. At that time, this weapon was considered one of the heavy war industry, the muslims learned how to make and produce it.
2. In the reign of Haron el-Rasheed in the Abassyite Islamic state, he sent a clock as a gift to Charleman, the most prominent ruler in Europe at that time. When the clock began to toll its bells in the chamber of Charleman, the men around him thought there were devils in the clock and some of them ran away. This is how the muslims were and that was how the rest of the nations were.
3. During the reign of Sultan Mohammad Al-Fatih (peace be upon him) in the Ottoman Islamic state, one of the military inventors exhibited his war inventions to the kings of Europe who neglected it and was even considered by the Pop and the church men as nonsense.

Mohammah Al-Fatih heard about this man and sent after him, he paid him generously to promote his industry. He made huge cannons, one of which weighs 700 tons and its projectile weighs 12 thousand pounds, it is driven by 100 bulls with the help

of 100 mighty-men. The sound of its explosion was heard from the distance of 13 miles and the projectile could go far to one mile then dive into the ground to the depth of 6 feet. This cannon was used to destroy the walls of Constantinople (Istanbul) when invaded by Mohammad Al-Fatih (peace be upon him).

The Muslims used to plan and execute in order to maintain leading economy and industry to be followed by other countries (and follow and be tied by the industry of others, as is the case now).

They used to adopt Industry lords not only those of their own nation but brought scientists from other countries as is the case now with the countries that have leading industry.

This is how the Islamic state was until the Islamic Ottoman state was defeated after the First World War.

Hence, the western colonial countries began to use methods in order to stop us from becoming industrial countries so that they can dominate and influence our countries. They were able to use some rulers in the Arab countries and some investors who were directed by the western countries in their economic and industrial policies. They also prevented the third world countries and especially the Islamic countries from implementing the Islamic economic system instead of the capitalist system, and also from introducing heavy industry, so that these third world countries remain dependent on the western countries; which will invest their raw materials and use them for producing their products instead of becoming competitor.

From what has been previously mentioned, it is the duty of the policy makers in Jordan to realize this issue and work hard to replace the capitalist economic system prevailing now, by the Islamic economic system which is capable in solving all the economic agony which the Jordanian economy is suffering from and which is also capable of transferring Jordan from a dependent satellite country to an industrial productive country.

So any future strategy for a successive growth in Jordan is supposed to take upon itself preparing the Jordanian economy within the framework of new economic policies based on a new economic system (very far from the capitalist laws and systems) based on the Islamic economy as an alternative to the capitalist system bearing in mind the following:

*First: the social scope:*

There must be a study to how far there are social side effects for the reformation and what should be done concerning this issue, so that the common citizen doesn't feel that he's the only one who should bear the greater burden of the reformation.

*Second: the economic sectorial scope:*

Jordan has to study the phases of investment which lessens (decreases) the obvious concentration in economy in the (monopolies) so as to vary the production and exportation basis of the country.

*Third: the legislative scope:*

There is a lasting need to put and renew legislation – on the basis of Islamic legislation (sharia'a) not human legislations which suits the economic policies in Jordan. There is a need for legislations, which can deal with the new aspects that economy is facing.

*Fourth: the role of the government*

There is a need to specify the role that the government is expected to play in the economic process according to the Islamic political and economical laws and legislation. Bearing in mind that the private sector should be given the opportunity to play its role so that the government does not interfere except in the phases that the (sharia'a) legislation permits.

*Finally:*

Making a new strategic plan based on the Islamic economic system for a continuous or successive growth requires complete honesty in the informative sector. For how could the researcher put plans or help in making opinions in front of those responsible if he does not have the knowledge or information needed to work in that framework.



## XXVI. REFERENCES

1. Al-Qur'an Al-Kareem.
2. Abdelmui'z, Waleed. How to Change the Capitalist Companies to Islamic Ones. Al-Kadisyieh Institution, 1991. Jerusalem - Israel.
3. Adoh, Ghanem. Rescission of Marxian Socialism. Dar El-Ummali, 1981. Beirut -Lebanon.
4. Assadder, Mohainnad. Islamic Economy. Dar Al-Ta'afur. 1991. Beirut - Lebanon.
5. Al-Badri, Abdel Aziz. The Opinion of Islamic in Socialism. The Scientific Library. 1983, Saudi-Arabia.
6. Al-Da'our, Moḥammaa'. The Opinion of Islamic in Bank Profits and Interests. Dar El-Nahdah Al-Eslamieh. 1992. Beirut - Lebanon.
7. Al-Fira, Mohammad. The Sultanic Rules. Dar Al-Fiker, 1994. Beirut – Lebanon.
8. Al-Kasem, Abi-Ubaid. The Book of Currency. Dar Al Kutub Al Elmieh, 1986. Beirut - Lebanon.
9. Al-Maliki, Abedilrahman. The Ideal Economic Policy. Dar El-Ummali, 1963. Beirut - Lebanon.
10. Al-Nabahani, Takki'Eddin. The Opinion of Islamic in the Capitalist Companies. Dar El-Ummali, 1992. Beirut -Lebanon.
11. Al-Nabahani, Takki'Eddin. An/Introduction to the Islamic Constitution. Dar El-Ummali, 1992. Beirut -Lebanon.

2. Al-Nabahani, Takki'Eddin. The Islamic Personality- Part 2. Dar El-Ummal, 1994. Beirut Lebanon.
3. Azain, Sameeh. Islamic and Human Culture. Dar El-Kitab Al-Lubnani, 2000. Beirut - Lebanon.
4. Azain, Sameeh. Culture and Islamic Culture. Dar El-Kitab Al-Lubnani, 1992. Beirut - Lebanon,
5. Begg David, StanleyFischher, Rudiger Dornbusch. Economics.) ixthEdition. 1989.
6. C.Eferguson, S.Charlos Maurice, Owenr Phlips. Economics and Analysis Theory and Application. Forth Edition. 1996
7. E'ateyaat, Ahmad. The Road. Second Edition. Dar Al-Bayarek, 1996. Beirut – Lebanon.
8. Eller Miller, Stephen Dobson, G.S Maddala. Micro Economic. USA. 1998.
9. Hawwa, Saeed. Al-Islam. Dar Al Kutub Al Elmieh, 1979. Beirut - Lebanon.
10. Khaldi, Mamoud. The Sociology of Islamic Economy. The library of Al-Risalah Al-Haditha, 1985. Amman-Jordan
11. Khaldi, Mamoud. Alms Giving (Zakah) of Contemporary Paper Money. The library of Al-Risalah Al-Haditha, 1985. Amman-Jordan.
12. Khaldi, Mamoud. The Capitalist Economy in the Islamic View. Al-Muhtaseb Library, 1984. Amman-Jordan.
13. Loucks. William N. Comparative Economic System. Sixth Edition. Harber and Row Publisher. USA 1983.

24. Layrd P.R.G. Microeconomic/Theory The. London School of Economics. The Jopkins University. 1991.
25. Mcconnell. Campbell- R. Economics (principle,problems and policies). 12 Edition. Stnley L.Brue. USA. 1994.
26. Michael Parking. Economics. International Edition. Fifth Edition. Copyright. USA. 2000.
27. Moore Basil J. An Introduction To Modern Economic Theory. Collier-Macmillan Publishrs, London. 1992.
28. Robert and Meyer. Microeconomic Decisions. University of California. Berkeley. Copyright by Hollghton Mifflin Company 1976.
29. Saleh, Hafez. Democracy in the Islamic View. 3<sup>rd</sup> Edition. Dar El-Nahdah Al-Eslarnieh. 1992. Beirut - Lebanon
30. Saleh, Hafez. The Revival. 3rd Edition. Dar El-Nahdah Al-Eslamieh. 1998. Beirut - Lebanon.
31. Shackelford Jean, Stamos Steven, Riddell Tom Economics (A Tool Forunderstanding Society). Second Editioni,1996.
32. Zalourn,, Abiedé.lka<leem. Finance in the State of Islam. Dar El-Elim for Millions. 1983. Beirut- Lebanon.