

تسهيل الفقه

TAS-HEELUL

FIQH

12

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"باسمه تعالى"

LESSON 1

ILM UL FARAA'ID / ILM UL MIRATH

INTRODUCTION

The Islamic Law of inheritance is known by the following two terms:- Ilm ul Faraaid and Ilm ul Mirath.

The term fraaidh is the plural of **فريضة** which implies that which is fixed and stipulated. Hence due to the shares of the respective shareholders being pre-determined and fixed by Shariah and not subject to the discretion of men, this branch of knowledge has become known as such.

The term Mirath on the other hand is derived from **وَرَثَ - يَرِثُ** (باب حسب) which means to transfer and pass on from one person to another. Hence, as this is that specialized branch of Muslims jurisprudence which deals with the transfer of the estate of the deceased to his legal heirs and related matters it became known by this name. Nevertheless, for the sake of brevity we will hereafter refer to it by its first name, namely Ilm ul Faraaidh.

The Importance Of Ilm ul Faraa'id

The importance of Ilm ul Faraa'id is understood from the following:

1. Rasoolullah (Sallallahu Alayhi Wa Sallam) said:
 "Learn the Faraa'id (the laws of succession) and teach it to the people because it is half of knowledge, it will be forgotten and it is the first thing that will be lifted from my Ummah". (Ibn Majah)

2. Sayyidina Abdullah bin Amr (Radhiyallahu Anhu) narrates that Rasoolullah (Sallallahu Alayhi Wa Sallam) said that true knowledge is of three types:
 - a. Knowledge of the Qur'aan
 - b. Knowledge of the Sunnah
 - c. Knowledge of the Faraa'id (the laws of succession).
 (Abu Daud, Ibn Majah)

Rasoolullah (Sallallahu Alayhi Wa Sallam) said: "Learn the Faraa'id (the laws of succession) and teach it to the people because it is half of knowledge, it will be forgotten and it is the first thing that will be lifted from my Ummah".

Allah Ta'ala says in the Qur'aan: "Unto the men (of a family) is a share of that which parents and relatives leave, and unto the women (of a family) is a share of that which parents and relatives leave, whether it be little or much – a stipulated share."

3. Sayyidina Umar (Radhiyallahu Anhu) used to tell the people: "Learn the Faraa'id because it is part of your Deen. (Daarmi, Mishkaat)

4. Sayyidina Abdullah bin Mas'ood (Radhiyallahu Anhu) used to tell the people: "Learn the Faraa'id, Talaaq and Haj because they are all part of your Deen. (Daarmi, Mishkaat)

The importance of abiding to the laws of Faraa'id

The importance of abiding to the laws of Faraa'id can be understood from the following:

1. Allah Ta'ala says in the Qur'aan: "Unto the men (of a family) is a share of that which parents and relatives leave, and unto the women (of a family) is a share of that which parents and relatives leave, whether it be little or much – a stipulated share. (Surah An - Nisaa, Ayah 7)

"a stipulated share" is the translation of the words

نصيباً مفروضاً (naseeban mafroodan). The meaning of this is that each individual's share has been stipulated by Allah Ta'ala. Thus contravening the laws of Faraa'id by depriving any individual of his / her share (whether completely or partially) is disobeying the command of Allah Ta'ala and hence a major sin. In fact rejecting these laws (calling them "out – dated" etc.) renders a person out of the fold of Islam.

After discussing the laws of Faraa'id, Allah Ta'ala says: "these are the laws of Allah Ta'ala. Whoever obeys Allah Ta'ala and His Rasool, He will enter him into gardens beneath which rivers flow (and) in which they will live forever. (This is glad tidings for those who distribute the estates of their deceased relatives according to the laws of Faraa'id). And whoever disobeys Allah Ta'ala and His Rasool and transgresses His laws, He will enter him into a fire in which he will remain forever. And for him is a disgraceful punishment. (This is a warning to those who reject the laws of Faraa'id). (Surah An - Nisaa, Ayah 13-14)

After discussing a few laws of Faraa'id in ayah 11 of Surah An Nisaa Allah Ta'ala terminates the ayah saying: "surely Allah Ta'ala is All – Knowing and All – Wise". The mufasssireen explain the reason for terminating the ayah in this manner is to

"Surely Allah Ta'ala is All – Knowing and All – Wise"

Due to gross ignorance of the laws of Faraa'id many people make wills that are incorrect (according to the Shari'ah).

remind us that whoever opposes or changes these laws is actually questioning the knowledge and wisdom of Allah Ta'ala.

Incorrect Wills

Due to gross ignorance of the laws of Faraa'id many people make wills that are incorrect (according to the Shari'ah). Below are some common errors people make in their wills:

1. The testator (person making the will) bequests shares according to his discretion and not according to the laws of Faraa'id.
2. For various reasons certain children are excluded from the estate.
3. The testator stipulates that after his death all his assets must go to his wife and after her death go to the children.

The Punishment For Incorrect Wills

Rasoolullah (Sallallahu Alayhi Wa Sallam) said: "A man or lady may obey Allah Ta'ala for sixty years. However, when death approaches them, they make incorrect wills. Thus the fire becomes necessary for them."

(Abu

Da'ud).

NOTE: 1

If the deceased left a will that contravenes the Shari laws of Faraa'id, it will be compulsory on the heirs to redress the inconsistencies. They will be obliged to forego their legal shares in favour of their Islamic shares.

NOTE: 2

In view of a hadeeth narrated by Sayyidina Ibn Umar (Radhiyallahu Anhuma) the Fuqahaa conclude that it is compulsory for a Muslim to keep records of the following:

- a. Debtors
- b. Creditors
- c. Amaanat – items entrusted for safe-keeping.
- d. Unfulfilled religious obligations – kafaarah, fidya.

NOTE: 3

The estate of the deceased person must be administered in the following order:

First: Payment of funeral and burial expenses

Second: Payment of debts

It is compulsory for a Muslim to keep records of the following: Debtors, Creditors, Amaanat-items entrusted for safe-keeping, Unfulfilled religious obligations – kafaarah, fidya.

“From what is left by parents and those related – there is a share for men and a share for women. - Whether the property be large or small. A share made FARD (COMPULSORY).”

Third: Payment of legacies up to a maximum of one-third of the remaining property after payment of funeral expenses and debts.

Fourth: Distribution to shar'ie heirs according to the laws of Faraa'id.

Islamic Principles And Legal Requirements Relating To Inheritance

“From what is left by parents and those related – there is a share for men and a share for women. - Whether the property be large or small. A share made FARD (COMPULSORY).”

(Qur'aan: Surah 4, Verse 7).

This verse lays down the general principles of the Islamic Law of Succession and makes mention of three pertinent facts.

1. “Those nearest related”

The criteria for determining the legal heirs and their proportionate shares is based on the law of “proximity of relation” to the deceased. This proximity is also determined by Allah Ta'ala and is not left to the fallible and subjective discretion of man. The Holy Qur'aan states: “Between your

fathers and sons, you do not know which of them is nearer to you in benefit. Allah Ta'ala is undoubtedly Most Knowledgeable and Most Wise" (Surah 4, Verse 11).

Allah Ta'ala has accordingly specified the shares of beneficiaries based on the law of proximity of relationship and not on the material needs of the beneficiaries. Financial needs are relative. A rich person may become poor, he could become incapacitated or terminally ill and likewise a poor person may become rich overnight.

2. **"A share for men and a share for women"**

During the days of "Jahiliyah" (pre-Islamic ignorance) only those who could fight and defend the family name were entitled to inherit. Women and children were thus naturally excluded from the estate. Even in contemporary law the "freedom of testation" allows an individual to benefit whoever he so wishes. Women are therefore not guaranteed a share

During the days of "Jahiliyah" (pre-Islamic ignorance) only those who could fight and defend the family name were entitled to inherit

In Islam, a woman retains total ownership of her property after marriage. Any income derived from her assets remains exclusively hers

from the estate. Islam, however guarantees the right of both women and children to inherit from the estate.

The protagonists of “reform” claim that Islam denies women their fair share of inheritance. They say that since she generally inherits less than her male counterpart she is denied equitable and fair treatment. This call for “abstract” justice may seem justified if the laws of inheritance are not studied within the broader context of the social value system of Islam. In Islam, a woman retains total ownership of her property after marriage. Any income derived from her assets remains exclusively hers. She is not obliged to maintain herself or her family even if she is wealthy. In contrast to these privileges a male has to maintain:

- a. Himself
- b. His parents
- c. His wife and children
- d. His poor relatives.

Considering these social responsibilities, it could be said that in real terms, a female, in fact, inherits more than a male, e.g. a hundred rands that a male inherits may have to be spent on five members of the family whilst the fifty rands a female inherits is over and above the maintenance she receives from her male guardian.

2. **“A share made compulsory”**

The Qur’aan has fixed the shares of each individual. These cannot be altered or changed by man. The shares of the heirs as determined by the Qur’aan are binding just as the number of rakaats are binding in salaah.

Some Common Errors

- a. A daughter is given a substantial gift at the time of nikah and is then excluded from the estate.
- b. A testator sometimes stipulates that all his assets go to his wife and after her demise to their children.
- c. A father may leave his business to a particular

The Qur’aan has fixed the shares of each individual. These cannot be altered or changed by man

A parent may for a valid reason (e.g. service to parents) during his lifetime donate a particular asset to one of his children provided that the purpose of the gift is not to cause harm to the remaining heirs.

son who works with him in the business and thereby excludes the others.

d. Parents for various reasons disown a particular son or daughter and thus exclude him/her from the will.

e. A testator determines his heirs and their respective shares according to his discretion and not in accordance with the injunctions of the Qur'aan.

A Gift During Your Life-Time

A parent may for a valid reason (e.g. service to parents) during his lifetime donate a particular asset to one of his children provided that the purpose of the gift is not to cause harm to the remaining heirs. Observing equality in parental gifts or grants to children is preferable but not binding.

If the parent elects to divide his estate in his lifetime solely to avoid a dispute between his heirs

after his death, then the lifetime transfers, will be regarded as gifts or grants, in which case he should preferably observe equality.

The Administration Of The Estate

The estate of the deceased must be strictly administered in the following order:

1. Payment of burial expenses.
2. Payment of debts.
3. Payment of legacies and bequeathed religious obligations up to a maximum of one third of the remaining estate.
4. Distribution to legal heirs according to the laws of the Shari'ah.

Payment Of Burial Expenses

Funeral expenses include cost of kafn, grave and all expenses directly related to the burial. It excludes feeding guests attending the funeral.

Payment Of Debts And Religious Obligations

Rasoolullah (Sallallahu Alayhi Wa Sallam) has said: "It does not befit a believer who is (obliged) to make a

The estate of the deceased must be strictly administered in the following order: Payment of burial expenses; Payment of debts; Payment of legacies and bequeathed religious obligations up to a maximum of one third of the remaining estate; Distribution to legal heirs according to the laws of the Shari'ah.

A testator also has the option of bequeathing a maximum of one third of his estate to persons who are not his heirs.

wasiyyah to spend (even) two nights without making a record thereof.” (Bukhari – Muslim).

A Muslim is obliged to keep a record of, and declare the following:

1. Creditors
2. Amaanat (Items entrusted to him for safe-keeping)
3. Unfulfilled religious obligations (eg missed salaah, fasting, sajda-e-tilawat, etc).
4. Debtors.

NOTE: This is a day to day document that has to be updated on a regular basis and does not form part of the will. See attached schedules.

Legacies

A testator also has the option of bequeathing a maximum of one third of his estate to persons who are not his heirs. However, if a bequest is made to an heir, it will be subject to the approval of the remaining heirs.

Note: This approval of the heirs refers to those that are Baaligh (Majors) who have the right to exercise their sole

discretion hitherto. However, if any one of the heirs is minor (na-Baaligh) then his/her approval will not be considered valid and hence his/her full share will have to be set aside and may not be diminished in any way.

Matrimonial Regime

Islamic marriages are governed by an antenuptial contract without the accurate system. Marriage in community of property is not consistent with the Islamic Law of Inheritance. Those married in community of property will have to change their matrimonial regime to facilitate an Islamic distribution of their estates.

Annuities And Life Policies

The aggregate amount of premiums paid will form part of the estate. The balance represented by the difference between the proceeds of the policy/cies and the total premium paid must be given to charity, being any deserving Muslim who is entitled to Zakaat, without the intention of reward as a compulsory distribution of an unlawful gain.

Marriage in community of property is not consistent with the Islamic Law of Inheritance.

The Consequences Of A Wrong Will

Rasoolullah (Sallallahu Alayhi Wa Sallam) has said: "A man or woman may devoutly obey Allah Ta'ala for sixty years. Yet when death approaches them, they act wrongfully (when making) their will, as a result the fire becomes binding for them." (Ahmad)

May Allah Ta'ala grant us the strength and courage to be submissive to His Word at all times. Ameen.

A man or woman may devoutly obey Allah Ta'ala for sixty years. Yet when death approaches them, they act wrongfully (when making) their will, as a result the fire becomes binding for them

LEGAL REQUIREMENTS (According to South African Law)

Execution Of Wills

The execution of wills is governed by the Wills Act 7 of 1953, as amended.

The testator or testatrix must sign it.

The testator or testatrix should sign the will with his / her usual signature.

Such signature must be made by the testator or testatrix in the presence of two or more competent witnesses present at the same time.

Such witnesses must attest and sign the Will in the testator or testatrix and of each other.

If the Will consists of more than one page, each page other than the page on which it ends, must also be SIGNED by the testator or testatrix and by such witnesses.

Every page of the Will must be signed by the testator or

The testator or testatrix must sign it. The testator or testatrix should sign the will with his / her usual signature.

Every page of the Will must be signed by the testator/testatrix as well as the same witnesses who attest at the end of the Will all being present.

testatrix as well as the same witnesses who attest at the end of the Will all being present.

If the Will consists of more than one page, each page other than the page on which it ends, must also be SIGNED by the testator/testatrix and by such witnesses.

Every page of the Will must be signed by the testator/testatrix as well as the same witnesses who attest at the end of the Will all being present.

If the Will is signed by the testator/testatrix by the making of a mark, a magistrate, justice of the peace, commissioner of oaths or notary public must certify at the end thereof that he/she has satisfied himself/herself as to the identity of the testator/testatrix and that the Will so signed is the Will of the testator/testatrix; if the Will consists of more than one page, each page other than the page on which it ends must also be signed by the magistrate, justice of the peace, commissioner of oaths or notary public who so certifies.

The Act does, however, prescribe that the certificate is to be at the end of the Will. It is suggested that the

certificate be placed as close as possible to the testator's/testatrix's mark on the last page.

Capacity To Make A Will

Any person of the age of puberty or over may make a Will. In the case of an Islamic Will, one who has matured before that will also be obliged to do so.

Witnessing A Will

Every person who is over the age of 14 years is competent to witness a Will. A witness cannot sign by making a mark. **NO BENEFICIARY MAY SIGN AS A WITNESS.**

Capacity To Benefit Under A Will

All persons including corporate bodies may benefit under a Will. The following persons are, however, disqualified from taking benefits:

A person who has unduly influenced the testator or testatrix to give him or her a benefit under the Will.

A person who has written the Will on behalf of the

Any person of the age of puberty or over may make a Will. In the case of an Islamic Will, one who has matured before that will also be obliged to do so.

A person who witnesses a Will or a person who was his or her spouse at the time of attestation cannot take a benefit under such a Will.

testator or testatrix cannot take a benefit under such a Will. Such a person cannot be appointed as Executor under the Will written by him or her.

A person who witnesses a Will or a person who was his or her spouse at the time of attestation cannot take a benefit under such a Will.

LAST WILL AND TESTAMENT

In the name of Allah Ta'ala The All Compassionate
The Most Merciful

THIS IS THE LAST WILL AND TESTAMENT OF:

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PRESENTLY RESIDING AT: _____

MARRIED TO: _____

ACCORDING TO:

(1) ISLAMIC LAW ☐ (2) ANTENUPTIAL CONTRACT ☐

(1)

Revocation Of Previous Wills

I, _____

Revoke, cancel and annul all previous wills, codicils and testamentary writings made or executed by myself and declare this to be my last will and testament.

AS WITNESSES:

1. _____

TESTATOR/TESTATRIX

2. _____

(2)

Nomination Of Executor(s)

I hereby nominate and appoint the following person(s) to be the
 Executor(s) and Administrator(s) of my estate:

.....

.....

In the event of any one or more of my said Executor(s) or
 Administrator(s) predeceasing me, or dying during his/her term of
 office or declining to act or vacate office for any reason
 whatsoever, then the remaining or surviving Executor(s) or
 Administrator(s) shall be authorized to act alone. I hereby give and
 grant to my Executor(s) and Administrator(s) such power and
 authority as is required or allowed in law and especially that of
 assumption.

(3)

Security

My Executor(s) and Administrator(s) shall not be required to file or
 provide any security to the Master of the Supreme Court for the
 administration of my estate in terms of the Administration of Estate
 Act 66 of 1965 as amended or any other law for the proper
 performance of their functions.

AS WITNESSES:

1. _____

 TESTATOR/TESTATRIX

2. _____

(4)

Discharge Of Debts And Obligations

- 4.1. My said Executor(s) and Administrator(s) shall firstly pay all my lawful obligations, and all my lawful debts contracted by me during my lifetime, including any Mahr (Dowry), (if outstanding) funeral expenses and expenses connected with the administration of my estate.
- 4.2. Thereafter my said Executor(s) and Administrator(s) shall endeavour to ascertain what amount, if any, is due by me in respect of my religious liabilities and obligations in accordance with the tenets of Islamic Law until the date of my death. I hereby direct that such amounts shall be paid as a first charge against my Estate, before distribution to my heirs, to such person(s) or institution(s) as my Executor(s) and Administrator(s), in their absolute discretion, shall determine to be entitled thereto according to the laws of Islam. The total amount payable under this clause shall not, however, exceed one third of the net value of my estate.

AS WITNESSES:

1. _____

TESTATOR/TESTATRIX

2. _____

(5)

Legacies (Wasiyyah)

I, hereby bequeath as free and absolute legacies (Wasiyyah) to the following person(s) or institution(s) the following:

Name of Legatee(s):	Amount or Description of Legacy:
---------------------	----------------------------------

Provided that the Legatee(s) named in this clause are not Person(s) who qualify as legal heirs according to the Islamic Law of Succession at the time of my death in terms of clause 6 thereof.

Provided further that the total value of such legacies does not exceed one third of the net value of my estate after the discharge of my debts. In the event that the total value of such legacies including my religious obligations in terms of clause 4.2. above, so exceeds one third of the net value of my estate, the amount thereof will abate proportionately.

AS WITNESSES:

1. _____

TESTATOR/TESTATRIX

2. _____

(6)

The Residue Of My Estate

I hereby bequeath the entire net residue of my Estate and Effects of whatsoever nature or kind where so ever the same may be situated, whether movable or immovable, corporeal or incorporeal whether in possession, reversion, remainder or expectancy to my lawful heirs and heiresses to be determined at the time of my death in accordance with and the proportions specified by the Islamic Law of Succession.

For the purposes of giving effect to this clause, my Executor(s) shall file with the Master of the Supreme Court a certificate executed by an authorized official of the Jamiatul Ulama Transvaal or Jamiatul Ulama Kwa Zulu-Natal or their successors. The said certificate shall set out the full names of my lawful heirs and heiresses at the time of my death, and their respective shares in accordance with the rules of the Islamic Law of Succession.

AS WITNESSES:

1. _____

2. _____

TESTATOR/TESTATRIX

(7)

Minor Beneficiaries

The share of income or capital which may be payable to minors upon my death in terms of this Will shall not be paid into the Guardians Fund, but shall be held in trust by my Administrator(s) who shall have the right to invest such income or capital in such investments as they may in their sole discretion decide and shall further have the right to apply the whole or portion of the income or capital for the maintenance, education or other benefit of the minor beneficiary, provided that such investment is not in conflict with Islamic Law.

The share of income or capital of such minors shall be paid to such beneficiary upon the latter attaining the age of 25 (twenty five) provided that my Administrator(s) shall be entitled to pay a portion or the whole of such share to such beneficiary at any time before that, if they are of the opinion that such a minor has attained a degree of mental maturity which would enable such a minor to manage his or her own affairs without any detriment.

AS WITNESSES:

1. _____

TESTATOR/TESTATRIX

2. _____

My Administrator(s) shall keep full and proper accounting records relating to the trust and shall have annual financial statements prepared from the date of my death until the termination of the trust of such beneficiaries.

(8)

Married Beneficiaries

In the event of any of my heirs under this Will being married in community of property, or if their matrimonial regime is subject to the accrual system in terms of the Matrimonial Property Act of 1984, then I direct that his or her inheritance and income in terms of this Will shall be excluded from the joint estate arising from such community of property or from such accrual system and shall accordingly be the separate, sole and absolute property of such heir who shall have full power to dispose or deal with such inheritance without the assistance of the other spouse.

(9)

Powers Of My Executor(s) And Administrator(s)

For the purpose of winding-up of my estate and for the benefit of my heirs and beneficiaries, I hereby confer inter alia the following powers upon the Executor(s) and Administrator(s):

AS WITNESSES:

1. _____

TESTATOR/TESTATRIX

2. _____

- a. To sell, lease or alienate any assets of whatsoever nature whether movable or immovable, whether by public auction or by private treaty in their sole discretion for the benefit of the beneficiaries.
- b. To make interim payments for the maintenance and support of any beneficiary "on account" until the winding-up of my estate is completed and the estate is properly distributed.
- c. To continue any business carried on by me for the period as from the date of my death until the estate accounts are approved without objection and the estate is distributed to the entitled beneficiaries in accordance with the provisions hereof.

(10)

Arbitration

Should any dispute arise of any nature whatsoever in connection with my estate, such dispute shall be referred to arbitration. I hereby nominate the Jamiatul Ulama Transvaal or Jamiatul Ulama Kwa Zulu-Natal or their successors, to appoint such person or persons as they in their discretion deem fit to act as arbitrator(s). The decision of the arbitrator(s) shall be final and binding upon all the parties.

AS WITNESSES:

1. _____

2. _____

TESTATOR/TESTATRIX

(11)

I hereby reserve to myself the right at all times to make such alterations and/or additions to this my Last Will as I think fit, by a separate act or at the foot hereof desiring that all such alterations or additions so made under my own signature and duly witnessed, may be held valid and effectual as if incorporated herein.

In witness whereof I have hereunto set my hand at _____ (place) on this _____ day of _____ (month) _____ (year) in the presence of the undersigned witnesses, who in my presence and in the presence of each other, all being present at the same time have hereunto set their hands.

AS WITNESSES:

1. _____

2. _____

TESTATOR/TESTATRIX

SCHEDULE ONE
PERSONAL DEBTORS

Date	Name	Amount	Paid	Balance	Signature

SCHEDULE TWO
PERSONAL CREDITORS

Date	Name	Amount	Paid	Balance	Signature

SCHEDULE THREE
PERSONAL RELIGIOUS LIABILITIES

(Unpaid Zakah, Kaffarah, Fidya)

Date	Name	Amount	Paid	Balance	Signature

LESSON 2

SUCCESSIONAL LAW IN ISLAM

Islamic ruling on inheritance:

Inheritance implies the divine legal precepts pertaining to the distribution of the asset of a person who leaves it and dies, or pertaining to the execution of a bequest made by the deceased. The Qur'aan – e – Kareem sounded a warning against those people who shirk from enforcing it. It explicitly declares that devouring people's inheritance is tantamount to stuffing fire in the bellies. This is why Rasoolullah (Sallallahu Alayhi Wa Sallam) emphasized on the Muslims to learn the science of inheritance which in reality constitutes half of knowledge. So whosoever deprives his heirs from their inheritance will be deprived of his share in paradise.

Legacies And Bequests

In light of the Shar'iat inheritance signifies all such assets which was in a person's ownership at the time of his death, no matter how meager or great it may be. Therefore, properties, cash, jewellery and all other

The Qur'aan-e-Kareem explicitly declares that devouring people's inheritance is tantamount to stuffing fire in the bellies.

If the dowry was not paid by the deceased husband and neither did the wife waive it, then that too will be considered as a debt

goods fall under this category. Loans forwarded to someone, insurance premium, and unpaid dowry which was not waived by the wife are all calculated as inheritance, which has to be advanced towards the existing heirs. All our resources belong to Allah Ta'ala; therefore we are not free to spend and grant anyone at will. Bequest is executed after a person's death, therefore any bequest in favour of an heir in excess to the share allocated to him by the Shari'ah is impermissible. Again, in the state of terminal illness it is not admissible to extend any gift to one's heirs, but yes, bequest up to one third in favour of a non heir is admissible even in that critical state.

The expenses of the burial and fulfilling debts

It is not that the entire legacy goes to the heirs only, rather it is apportioned in the following sequence after setting aside the burial expenses, which should be of an average cost, the debts of the deceased should be discharged, if he was liable to any. If the dowry was not paid by the deceased husband and neither did the wife waive it, then that too will be considered as a debt. But if Hajj, Zakaat or an expiation on behalf of fasts,

Salaat, divine pledges or oaths is outstanding, they will not be taken as a debt; hence it will not be discharged from the total legacy. Yes, if the deceased had bequeathed for it or for any other course of a lawful nature, then it will be discharged from one third of the legacy. But if one third of the legacy turns out insufficient for the discharge of the bequest, then the balance of the bequest can be paid after receiving the consent of those heirs who are majors. It is not permissible to distribute the inheritance before the burial formalities have been accomplished. So the burial expenses will receive priority, second comes the discharging of debts, third comes the execution of the bequest up to one third and lastly will be the dispensing of the shares amongst the heirs.

The Shar'i Heirs

Close relatives surviving at the time of a person's death are his heirs, therefore if a child dies prior to the father's death, that child will not be considered as an heir to the father when the father dies, only the existing relatives and children will inherit. A surviving son will inherit even if he was disloyal to his father. If the father

Close relatives surviving at the time of a person's death are his heirs

A son who murders his father will be barred, a Muslim will not inherit from his non-Muslim father

bequeathed that so and so of his should be deprived of inheritance, such a bequest will be null and void.

Heirs Who Are Barred From Inheritance

Yes, in certain cases an heir is barred from inheritance. For instance, a son who murders his father will be barred, a Muslim will not inherit from his non-Muslim father, and vice versa. Then again, in some circumstances an heir of the first stage bars the heir of the second stage. For example, the paternal and maternal grandmother is barred from inheritance in the presence of the mother.

Those Heirs Who Are Entitled To A Pre-Determined Share

Yes, the son, daughter, parents, husband and wife are such heirs that provided they are not infidels or murderers to the deceased person, they will decidedly be entitled to some share or the other. Never will they be barred of their shares by any other heir. The share of the son is not fixed. Hence, in the instance where there are a large number of Ashaabul Furoodh, he may not get anything as well.

Types Of Wurathaa (Pl. Waarith)

In principle, there are three categories of heirs elected by the Shariah (Qur'aan, Hadeeth and/or Ijma').

- a. Qur'aanic heirs
- b. Agnates
- c. Uterine relatives

NB: The Shariah ordains that a sequence be maintained at the time of preparing the share portfolio. As a first discharge, the QUR'AANIC HEIRS should be allocated their affixed shares, and thereafter the residue would devolve upon the AGNATES. However, in the absence of AGNATES the residue would be re-allocated to the QUR'AANIC HEIRS (as per certain rules). If in the instance, the QUR'AANIC HEIRS and the AGNATES are not available then the estate would devolve upon the UTERINE RELATIVES. (More detail later on, Insha Allah).

There are three categories of heirs elected by the Shariah (Qur'aan, Hadeeth and/or Ijma').
Qur'aanic heirs, Agnates, Uterine relatives

There are twelve types of persons for this category. Four are males and eight are females.

The Qur'aanic Heirs (Dhaweel Furoodh)

The relatives whom the Qur'aan, Hadeeth and/or Ijma' have elected as the natural heirs of the deceased. Each of these natural and stipulated heirs has also been accorded a fix share by the Qur'aan, Hadeeth and/or Ijma'. The DHAWHEEL FUROODH are termed as 'THE FIXED SHAREHOLDERS'.

There are twelve types of persons for this category. Four are males and eight are females.

MALES:

- i. Father
- ii. Husband
- iii. Uterine brother
- iv. Paternal grandfather (however high)

FEMALES:

- i. Mother
- ii. Wife
- iii. Daughter
- iv. Granddaughter (Son's daughter, however low)
- v. True sister

- vi. Consanguine sister
- vii. Uterine sister
- viii. Paternal and Maternal grandmother (however high)

Women Are Entitled To A Definite Share In Islam

Of course, in the Islamic law of succession, there are determinate shares for women too. Those heirs whose shares are ordained in the Qur'aan are classified as Ashaabul Furoodh (Qur'aanic heirs). They are twelve in total. You will be surprised to know that eight of them are females and only four are males. The females are as follows: wife, daughter, granddaughter, mother, sister, maternal grandmother, paternal grandmother and uterine sister. Their shares vary from person to person. Sometimes 66.66%, sometimes 50%, sometimes 33.33%, sometimes 25%, sometimes 16.66% and sometimes 12.5%. In contrast to that, in certain cases the male is awarded only 4.16% the balance of it goes to the females. Besides that, the share of the son is not stipulated in the Qur'aan. Whereas the daughters shares are expressly stipulated. This signifies the assurance of women's shares in Islam.

In the Islamic law of succession, there are determinate shares for women too.

It is essential that the legacy be distributed in accordance with the legal statutes of Islam and each heir be rendered his due share.

The Share Of A Daughter Or Sister Does Not Fall Off If She Declares That She Is Not Interested In Taking Her Share

It is essential that the legacy be distributed in accordance with the legal statutes of Islam and each heir be rendered his due share. In the event that a female heir turns down her share she must firstly be given her allotted share. Once receiving her share, she is free to decide whether to utilize it herself or pass it on to someone else. Thus her declaration for not being interested in receiving her share is meaningless. In a like manner a minor's share does not fall off if he/she shows disinterest in his/her share.

The Legal Method Of Distributing The Legacy

The distribution of legacy in Islam is not an arduous task. Let's take note of a few principle points. Those relatives whose shares are recorded in the Qur'aan are known as Ashaabul Furoodh (Qur'aanic heirs) and those whose shares are not stipulated are called 'Asabah' (agnates). Once a person dies we should determine who amongst the heirs are of either of those two categories.

Give the Ashaabul Furoodh their shares first as allotted to them by the Qur'aan. The remainder of the assets will then go to the 'Asabahs' at a two over one ratio between the males and the females. Let's take for example, a person dies leaving behind his wife, mother, father, one son and two daughters; and his estate is worth a million rands. Now, as stated earlier on, only the wife and parents are the Qur'aan heirs, and the daughters will be regarded as Asabah (agnates) due to the presence of the son. The wife's share will be 12.5%, the mother's 16.67% and so is the father's share 16.67%. Hence 12.5% of the million rands, that is R125,000.00 goes to the wife; 16.67% of the million rands that is R166,666.67 will go to each of the parents leaving us with R541,666.67. This will now go to the son and daughters. Since the son will receive double the share to the daughters, he will be considered as if he represents two people, thus 2 shares will go to him and 1 each to the daughters. May Allah Ta'ala grant us all Taufeeq to prepare instantly the Islamic will based on the Qur'aan and Hadeeth, lest we delay and death makes its call, and we be answerable in the Court of Allah for the unjust distributions and careless maneuvering exercised by our heirs and trustees.

Give the Ashaabul Furoodh their shares first as allotted to them by the Qur'aan. The remainder of the assets will then go to the 'Asabahs' at a two over one ratio between the males and the females.

TABLE OF SHARES FOR ZAWIL-FUROOZ HEIRS

No	Heirs	Shares From 24	%	Conditions and Explanation
1	Husband	a. 12	50	When a child and son's child is not alive.
		b. 6	25	When a child or son's child is alive
2	Wife	a. 6	25	When a child and son's child is not alive.
		b. 3	12.5	When a child or son's child is alive
3	Daughter	a. 12	50	When one daughter is alive and not a son.
		b. 16	66.66	Two or more daughters are alive and no son.
		c. Residue		If a son is alive
4	Mother	a. 4	16.66	When a child or son's child or two brothers or two sisters or father and husband are alive.
		b. 6	25	When any of the clause (a) persons are not alive, but the father and the wife are alive.
		c. 8	33.33	When any of the above persons are not alive.
5	Father	a. 4	16.66	When a son or son's son is alive
		b. 4	16.66	When a daughter or son's daughter is alive and the son or son's son is not alive.
		& Residue		
		c. Residue		When any person of clause (a) and (b) is not alive.
6	Father's father	a. 4	16.66	When the father is not alive, but son or son's son is alive.
		b. 4	16.66	When a father, son and son's son are not alive, but the daughter or son's daughter is alive.
		& Residue		
		c. Residue		When any person of clause (a) and (b) is not alive
7	Son's daughter	a. 12	50	When she is one but neither of the son, daughter and son's son are alive.

		b. 16	66.66	When they are two or more with proviso clause (a)
		c. 4	16.66	When they are one or more with one daughter, but son and son's son are not alive.
		d. Residue		When no son is alive, but the son's son is alive.
		e. Deprived		When a son is alive or two daughters are alive, but the son's son is not alive.
8	Mother's mother and father's mother	a. 4	16.66	When the mother and father are not alive.
		b. Deprived		If the mother is alive, but in the instance where only the father is alive, his mother will be deprived.
9	Real sister	a. 12	50	When she is one, but neither the son, son's children, father, father's father and real brothers are alive.
		b. 16	66.66	When they are two or more, while taking the state (a) into account.
		c. Residue		When son, son's son, father, father's father are not alive, but daughter or son's daughter or a real brother is alive.
10	Paternal sister	a. 12	50	When she is one and the children, son's children, father, father's father, real sister and paternal brothers are not alive.
		b. 16	66.66	When they are two or more, while taking the state (a) into account.
		c. 4	16.66	When only one real sister is alive and the aforesaid relatives are not alive.
		d. Residue		When son, son's son, father, father's father, real brother and real sister are not alive, but the daughter or son's daughter or paternal brother is alive.

		e. Deprived		When the real sister becomes an asabah (agnate) or two real sisters are alive, but the paternal brother is not alive.
11 / 12	Maternal brother / sister	a. 4	16.66	When they are one or more with one daughter, but son and son's son are not alive.
		b. 8	33.33	When they are two or more, even though they are males or females, NB: In this instance the males share is equivalent to one female share.

ASABAH (AGNATES)

The relative whom the Qur'aan, Sunnah and/or Ijma' have elected as the natural heirs of the deceased and between them and the deceased no dependable female link intervenes. The 'ASABAT' are termed as 'RESIDUARIES'.

The 'ASABAAT (RESIDUARIES) are divided into two categories:

- a. Asabaat nasabiyyah
- b. Asabaat sababiyyah

'ASABAAT NASABIYYAH:

The 'ASABAAT NASABIYYAH denotes the BLOOD RESIDUARIES, whilst the 'ASABAAT SABABIYYAH refer to MOULA 'ITAAQAH, i.e.

The 'ASABAAT (RESIDUARIES) are divided into two categories: Asabaat nasabiyyah, Asabaat sababiyyah

the master who has emancipated a slave. There is no blood relationship in the latter case.

The 'ASABAAT NASABIYYAH is further subdivided into three classifications, viz.

1. 'ASABAH BI NAFSIHI
2. 'ASABAH BI GHARIHI
3. ASABAH MA'A GHAIRIHI

1. 'ASABAH BI NAFSIHI

They are the MALE residuaries. There are four classes of 'ASABAH BI NAFSIHI in order of sequence:

- a. Sons, son's sons – However low
- b. Father, father's father – However high
- c. Brothers, brother's sons – However low
- d. Father's brothers, their sons – However low

Entitlement to the estate in the case ('ASABAH BI NAFSIHI) is based on:

- i. PROXIMITY and,
- ii. STRENGTH OF RELATIONSHIP

They are the MALE residuaries. There are four classes of 'ASABAH BI NAFSIHI.

The 'ASABAH BI NAFSIHI are allotted whatever remains in the estate after the primary allocation of shares to the DHAWHEEL FUROODH.

i.

PROXIMTY

PROXIMITY means the closest 'ASABAH BI NAFSIHI to the deceased shall inherit whilst depriving the further/distant 'ASABAH BI NAFSIHI. E.g. The son is closest 'ASABAH of the deceased than the grandson and all the remainder of 'ASABAH BI NAFSIHI.

ii.

STRENGTH OF RELATIONSHIP

STRENGTH OF RELATIONSHIP is taken into account in the instance where two brothers (of the same proximity) become the 'ASABAH BI NAFSIHI of the deceased, (i.e. in the absence of the sons, grandsons – however low and father, grandfather – however high). E.g. A person leaves behind a true brother and a consanguine brother. The true brother will inherit whilst depriving his consanguine brother on the account of STRENGTH OF RELATIONSHIP.

NB: STRENGTH OF RELATIONSHIP applies to 'C' AND 'D' only.

NOTES:

1. The 'ASABAH BI NAFSIHI are allotted whatever remains in the estate after the primary

allocation of shares to the DHAWHEEL FUROODH.

2. If only one person is th 'ASABAH (from the category of 'ASABAH BI NAFSIHI) thenn he shall inherit the balance of the estate.
3. If the 'ASABAH BI NAFSIHI are more than one (and of the same level – proximity and strength of relationship) then the balance of the estate shall be divided equally among them.
4. At times due to certain factors a DHAWHEEL FUROODH relative can also become a 'ASABAH. E.g. The father becomes an 'ASABAH when his deceased son does not leave any children or son's sons (grandchildren).

2. 'ASABAH BI GHARIHI

They are those FEMALE residuaries who BECAUSE (by virtue) of being together with their BROTHERS shall inherit 2:1 in the balance of the estate. In other words, the brothers will inherit double the share of their sister. For example, a person leaves behind a brother and a sister. The estate will be divided into THREE parts. TWO parts for the brother and ONE part

They are those FEMALE residuaries who BECAUSE (by virtue) of being together with their BROTHERS shall inherit 2:1 in the balance of the estate.

They are thos FEMALE Qur'aanic heirs (DHAWHEEL FUROODH) who become residuaries DUE to the presence of other FEMALES.

to the sister. These females are those, whose Qur'aanic shares are either $1/2$ or $2/3$. There are four in number mentioned hereunder in order of sequence.

- a. Daughter together with the son.
- b. Granddaughter with grandson
- c. True sister with true brother
- d. Consanguine sister with the consanguine brother

NOTE:


Those women who are not classified as Qur'aanic heirs, whereas their brothers have become 'ASABAH, will not become 'ASABAH themselves. Therefore they shall not inherit from the estate. Eg. The paternal uncle together with his sister (the paternal aunt). In this case the entire estate (or, the residue) will be allocated to the paternal uncle and will not be shared with his sister.

3. 'ASABAH MA'A GHARIHI

They are thos FEMALE Qur'aanic heirs (DHAWHEEL FUROODH) who become residuaries DUE to the presence of other FEMALES. These females are:

- i. Son's daughter together with daughter.
- ii. True sister together with consanguine sister.
- iii. True sister together with daughter.
- iv. Consanguine sister together with daughter/s.

FIXED SHARES OF THE ASHAABUL FUROODH

No.	MALES	1.	2.	3.	4.
1.	FATHER	1/6 in the presence of son/s or son/s son/s...	1/6 in the presence of daughters/s and son/s daughter/s son/s son/s plus residue	Residuary in the absence of children/son/s' children	
2.	TRUE PATERNAL GRANDFATHER	"	"	" <div style="text-align: center;">  </div>	Excluded in the presence of the father
3.	UTERINE BROTHER-FAMILY	1/6 if alone	1/3 if two or more	Excluded in the presence of children, son/s children, father and grandfather & brother/s	

4.	HUSBAND	$\frac{1}{2}$ in the absence of child/ren, son/s' children....	$\frac{1}{4}$ in the absence of child/ren, son/s' children....			
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NB: A TRUE PATERNAL GRANDFATHER is he in whose link to the deceased there is no dependable female.

No	FEMALES	1.	2.	3.	4.	5.	6.	7.	8.
1.	WIFE/ WIVES	$\frac{1}{4}$ in the absence of children, son's children	$\frac{1}{8}$ in the presence of a child, son's children						
2.	DAUGHTER	$\frac{1}{2}$ if alone	$\frac{2}{3}$ if two or more	2:1 in the presence of son/s (residuary)					

3.	SON'S DAUGHTER	"	2/3 if two or more in the absence of the daughters	1/6 in the presence of one daughter (to total 2/3)	Excluded in the presence of two or more daughters	Residuary (2:1) in the presence of son's son's, despite the presence of two or more daughters. The grandchildren will share 2:1 of the residue.	Excluded in the presence of son/s	
4.	REAL SISTER	"	2/3 if two or more in the absence of the daughters	Residuary (2:1) in the presence of real brother/s	Residuary (take remainder) in the presence of daughters	Excluded in the presence of father, grandfather and sons		
5.	CONSANGUINE SISTER	"	2/3 if two or more in the	Residuary (2:1) in the presence of	Residuary (take remainder)	Excluded in the presence of	1/6 in the	Excluded in the presence of

				absence of two or more real sisters	consanguine brother/s	in the presence of daughters, grand daughters	the son/s, father, grandfather and real brother/s	pres ence of one real siste r (to total 2/3)	of two or more real sisters	the pres ence of the siste r/s if she is/th ey are resid uary to the daug hter/ s
--	--	--	--	--	--------------------------	--	---	--	--------------------------------------	--

6.	UTERINE SISTER	1/6 if alone	1/3 if two or more	Excluded in the presence of the children, father, grandfather and brother/s					
7.	MOTHER	1/6 in the presence of child/ son's child, two or more brothers and sisters-3X	1/3 of the entire estate in the absence of these people	1/3 of whatever remains after allocating the share of the surviving spouse in the event when the deceased leaves behind both parents and a spouse					

8.	TRUE GRAND MOTHER (MATERNAL/ PATERNAL)	1/6 if one or more (if they are of the same level)	Excluded in the presence of the mother	All Paternal G.Mothers are deprived in the presence of the father and the G.father except the fathers mother... who shall inherit in the presence of the paternal G.father. the closest excludes the further one.			
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TARTEEB (SEQUENCE OF DEVOLUTION)

1. Firstly, pay for burial expenses from the estate.
2. Now settle all outstanding debts from the remainder of the estate.
3. Thirdly, if the deceased person made a will, then fulfill it from 1/3 of the balance of the estate.
4. Thereafter, whatever remains should now be distributed among the deserving heirs according to the shares.

For example, if the deceased person leaves behind R10 000.00

- His burial expense is R1000.00
- He has debts of R3000.00
- He made a Wasiyyah (Will) 1/3 of his estate for charity purposes.

Calculate as follows:

R10 000.00	(Estate)
- <u>R 1 000.00</u>	(Burial)

Firstly, pay for burial expenses from the estate. Now settle all outstanding debts from the remainder of the estate. Thirdly, if the deceased person made a will, then fulfill it from 1/3 of the balance of the estate. Thereafter, whatever remains should now be distributed among the deserving heirs according to the shares.

Only after fulfilling the first three sequences of distributing the estate do the surviving heirs become the rightful owners of the balance of the estate.

$$\begin{aligned}
 &= \text{R } 9\,000.00 \\
 &- \text{R } 3\,000.00 \quad (\text{Debts}) \\
 &= \text{R } 6\,000.00 \\
 &- \text{R } 2\,000.00 \quad (1/3 \text{ of Bal.} - \text{R}6\,000.00 = \text{R}2000.00) \\
 &= \text{R } 4\,000.00 \quad (\text{Heirs})
 \end{aligned}$$

Notes:

- The family should not be extravagant or miserly with regard to the burial needs of the deceased.
- Only after fulfilling the first three sequences of distributing the estate do the surviving heirs become the rightful owners of the balance of the estate. They are not entitled to the estate prior to fulfilling these three sequences (if applicable).
- It is necessary to carry out the Wasiyyah if the testator made a will. If he did not make a will it is optional for the surviving heirs to give charity from their allocated shares.
- Wasiyyah cannot be made to one's heir. If a person made a Wasiyyah to his heir it is considered as null and void in terms of the Shariah.

RULES TO BE OBSERVED BEFORE SHARING THE NETT BALANCE AMONG THE HEIRS

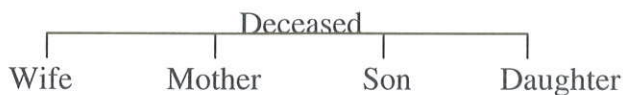
Ascertain who are the family members of the deceased person. A note should be made of all his ascendants and decendants, his brothers and sisters, uncles and aunts.

1. First ascertain who are the family members of the deceased person. A note should be made of all his ascendants and decendants, his brothers and sisters uncles and aunts.
2. Thereafter, ascertain who are qualified as his rightful heirs in the terms of the Shariah.
3. Now ascertain each one's stipulated share in terms of the Shariah.
4. Calculate and balance the fractions by using the mathematical formular of inheritance.
5. Distribute the nett estate among the deserving heirs in accordance to their shares.

LESSON 3**PROCEDURE OF DETERMINING THE SHARES OF THE HEIRS.**

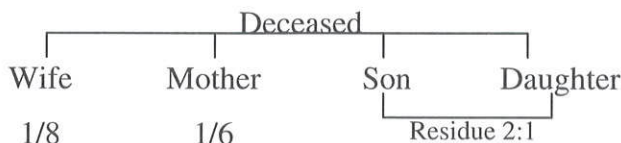
Step 1: Check the table carefully in order to discern between the Ashaabul Furoodh.

Example:



Step 2: Write down the shares of every Ashaabul Furoodh below their names as stated above in the table.

Example:



Step 3: Now, add the shares and then subtract it from 24. This amount will be written below the Asabah as a whole.

Step 4: Multiply the share of each Ashaabul Furoodh by the assets (i.e. by the entire amount left by the deceased), then divide it all by 24.

Step 5: The same procedure should be exercised with the Asabah as well. It is true that the shares of all the Asababs are equal, yet we should not lose sight of the fact that the male's share is double that of the female. Therefore, if they are all males or all females, their shares will be divided equally among themselves, but if the Asababs are both of the male and female categories, then each male will be assumed as if two females.

Example: If there are two male and three female heirs and the remainder of the asset after awarding the Ashaabul Furoodh their shares was R1 400, we have $(2 \times 2) + 3 = 7$, seven people i.e. seven shares. Now R1 400, should be divided by 7. Thus each female will receive R200, and each male will receive R400, i.e. $2 \times R200 = R400$. $7 \times 200 = R1\ 400$.

General Example 1:

A man passed away leaving behind a wife, mother, father, son and 2 daughters. After paying the burial expenses, debts and the bequest of one-third, his assets equal R1 000 000. Now in line with the above table we arrive at the following conclusion:

if the Asababs are both of the male and female categories, then each male will be assumed as if two females.

One son represents two daughters, i.e. two shares.

Father	Mother	Wife	<u>Son</u>	<u>2 Daughters</u>
4	4	3		13
= 24				

The father's share is: $4 \times 1\,000\,000 / 24 = R166\,666.67$

The mother's share is: $4 \times 1\,000\,000 / 24 = R166\,666.67$

The wife's share is: $3 \times 1\,000\,000 / 24 = R125\,000.00$

The Asabah's share is: $13 \times 1\,000\,000 / 24 = R541\,666.66$

Note:

One son represents two daughters, i.e. two shares. Son when he is one, and the daughters are two, it will be assumed as if they are 4 persons in total. Hence, the share of each daughter is: $R541\,666.66 / 4 = R135\,416.66$.

The share of the son is: $R135\,416.66 \times 2 = R270\,833.33$

N.B. If the sum of the shares for the Ashaabul Furoodh exceeds 24, then divide it by that amount.

General Example 2:

Husband	2 Daughters	Father	Mother
6	16	4	= 30

Assets = R30 000

In this case the husband receives: $6 \times 30\,000/30 = R6\,000$.

The 2 daughters receive: $16 \times 30\,000/30 = R16\,000$
therefore 1 daughter's share is R8 000.

The mother receives: $4 \times 30\,000/30 = R4\,000$.

The father receives: $4 \times 30\,000/30 = R4\,000$.

This is a simple explanation. For further details, please consult an Aalim.

There are other methods of distribution as well which may be employed. This is merely a basic guideline.

May Allah Ta'ala grant us the taufeeq to understand and execute these rules on our assets while we are in good health and sound mind, so that our assets as Muslims may be the means of our salvation in the Aakhirat as well; unlike the non-Muslims who are living to merely produce and consume for the

This is a simple explanation. For further details, please consult an Aalim. There are other methods of distribution as well which may be employed. This is merely a basic guideline.

pleasures of this transitory life, having no interest in securing the eternal abode. Aameen.

ما هي الا حياتنا الدنيا و ما نحن
بمبعوثين

“Life is only that of this world and we are not to be resurrected.”

In contrast to that our faith is:

و ان الدار الآخرة لهي الحيوان

“And the latter abode is indeed the real life”.

LESSON 4**MEDICAL ISSUES****I. Tran-sexuals:**

Trans-sexuals are such people who believe in their mind that they are trapped within the bodies of the opposite sex. Those who are physically males/females believe in their minds that they are actually females/males and they want to be females/males physically and demand operations to change their sex organs to suit their mental feelings. Many of them commit suicide if they do not have the necessary sex organ change operations.

Answer:

In terms of Islamic Shar'ie Principles, there is no way that woman or man (irrelevant of whether medical science classifies such people as trans-sexuals or whatever) would be permitted to undergo a sex-change operation in order to change his/her Allah-given gender status to that of the opposite sex.

Allah Ta'ala has created each human as a member of a

Is it permissible for them to undergo these sex change operations? Is it permissible for Muslim physicians to perform these operations?

“Rasoolullah (Sallallahu Alayhi Wa Sallam) cursed those men who emulate women and also those women who emulate men.”

specific gender, male or female. If he/she now undergoes an operation to transform him/herself into a member of the opposite sex, he/she would be flagrantly violating many injunctions and commandments of the Qur’aan and Hadeeth.

In order to protect and preserve the identity of each gender, Shari’ah has gone to the extent of even prohibiting males and females from merely emulating members of the opposite gender, in their dress and appearance, etc. How then would Shari’ah tolerate complete sex-change operations? Hadhrat Mufti Mahmood Hasan Saheb Gangohi (Rahmatullah Alayh) has emphatically mentioned its prohibition (see Fataawa Mahmudiyya, Vol. 5, Page 163).

The following Hadeeth is also noteworthy in this regard: “Rasoolullah (Sallallahu Alayhi Wa Sallam) cursed those men who emulate women and also those women who emulate men.” (as narrated by Bukhari, Mishkaat – Page 380).

Furthermore, undergoing a sex-change operation would

tantamount to altering the natural and normal features, organs and attributes given to a person by Allah Ta'ala. Altering and tampering with the creation of Allah Ta'ala for the sake of undergoing a sexual transformation would hence be totally forbidden. The prohibition of altering Allah-given normal features and attributes is labelled by the Qur'aan as being a ploy of Shaytaan, as the following Aayah of Surah Nisaa illustrates:

Translation: (Shaytaan said): "And I will mislead them, and I will create in them false desires; I will order them to slit the ears of *cattle and to deface features and attributes created by Allah Ta'ala*" (Allah Ta'ala then warns people who fall prey to the ploys of Shaytaan): "Whoever, takes Shaytaan as a friend, while forsaking Allah, has surely suffered a loss that is manifest". (Al-Qur'aan – 4:119).

"And I will mislead them, and I will create in them false desires; I will order them to slit the ears of *cattle and to deface features and attributes created by Allah Ta'ala*"

Is it permissible for Muslim physicians to engage in such conversations? During therapy sessions explicit video films with sexual acts between male and female may be shown to the patients.

II. Sexual Therapy

1. Many patients have problems with their sex lives and seek the help of doctors. In such cases the problem is psychiatric and sex counseling is recommended for treatment. This involves engaging in explicit sexual talks with the patients concerned, who may be of the opposite sex.

Question: Is it permissible for Muslim physicians to engage in such conversations?

Answer:

No, engaging in such sexual therapy whereby patients are required to explicitly divulge the sexual encounters that they have with their spouses will not be permissible in terms of Shari'ah. First of all, if a husband and wife are experiencing problems in their sexual lives, each of them would refer the matter to doctors of their own sex and not to doctors of the opposite sex. Secondly, when consulting with such doctors, they should then give a broad outline of the problem/s that they are experiencing and not go into

the finer details of their sexual encounters. For instance, the husband could explain to the male doctor his complication/s with regard to erectile dysfunction's or premature ejaculation, etc. Similarly, the woman could explain to a female doctor her problems with regard to painful penetrations, frigidity, etc. This type of exposition of their problems should be sufficient for the doctor to be able to diagnose their problems and prescribe some appropriate medical solution. Western/Secular sexual therapy that requires the spouses to explain the nitty-gritty and finer details of their sexual encounters and performances in bed, has no place in Shari'ah. Such vivid and detailed description would be tantamount to having sex in full view of the doctor. A Hadeeth of Rasoolullah (Sallallahu Alayhi Wa Sallam) warns:

“Amongst the worst grade of people on the Day of Qiyaamah will be that man who has intercourse with his wife in privacy, but then goes and divulge its intimate details (to others).” (Sahih Muslim, Vol. 1 – Page 464).

Commenting on the above Hadeeth, Allamah Nawawi (Rahmatullah Alayh) writes:

“Amongst the worst grade of people on the Day of Qiyaamah will be that man who has intercourse with his wife in privacy, but then goes and divulge its intimate details (to others).”

“Do you know what such behaviour is akin to? It is like a female Shaytaan meeting a male Shaytaan in an alley and indulging in sexual intercourse in full view of the public!”

“In this Hadeeth man has been prohibited from divulging and vividly describing the details of the intimate contact that he has with his wife.” (Ibid)

In a Hadeeth of Abu Dawood, Rasoolullah (Sallallahu Alayhi Wa Sallam) once asked the Sahabah (Radhiyallahu Anhum): “Is there any man from amongst you who, when he goes to his wife and closes the door behind him, enjoys the privilege of being intimate with this wife in such complete secrecy that he is also blessed with a curtain of concealment by Allah Ta’ala?” The Sahabah (Radhiyallahu Anhum) replies, “Yes!” Then Rasoolullah (Sallallahu Alayhi Wa Sallam) asked: “Is there any such man who then sits (with other people) and (divulging details of his intimacy with his wife). Says that ‘I did this and that (in the bedroom)?’” The men (amongst the Sahabah Radhiyallahu Anhum) all remained silent. So then Rasoolullah (Sallallahu Alayhi Wa Sallam) posed the same question to the women that “Is there any woman amongst you that divulges these secrets to others?” The women too, remained silent. Then, one lady got the courage to speak and (drawing the attention of

Rasoolullah Sallallahu Alayhi Wa Sallam), she said, “The women talk of these things and so do the men!” Rasoolullah (Sallallahu Alayhi Wa Sallam) then said, “Do you known what such behaviour is akin to? It is like a female Shaytaan meeting a male Shaytaan in an alley and indulging in sexual intercourse in full view of the public!” (Abu Dawood, Vol.1 – Page 296)

On the basis of the above Ahaadeeth, neither would it be permissible for a person to explicitly divulge the intimate sexual encounters that he has with his/her spouse in the bedroom, nor would it be permissible for the Muslim doctor to pry into a couple’s private lives to fish out such explicit details. In the same vein, it would also be prohibited for a patient to view and for a Muslim psychiatrist to show as part of their “therapy” (sic) – such videos to patient that depict explicit sexual acts. Furthermore, as a general rule, Shari’ah has forbidden us from deploying Haraam means as a “cure” for problems and ailments. Hence a Hadeeth of Rasoolullah (Sallallahu Alayhi Wa Sallam) states:

“Do not treat your ailments with Haraam”. (Abu Dawood, Vol. 2 – Page 185).

“Do not treat your ailments with Haraam”.

Can Muslim psychiatrists show such films to the patients as part of the therapy programmes.

2. During therapy sessions explicit video films with sexual acts between male and female may be shown to the patients.

Question: Can Muslim psychiatrists show such films to the patients as part of the therapy programmes.

Watching such explicit sexual acts being performed on video can never be condoned in Shari'ah, and no amount of "therapy" arguments can ever legalize it. Sometimes these so-called western/secular "therapy" procedures even defy common logic! Watching such videos would result in a combination of many sins; for instance watching the private parts of strangers, watching such sexual acts being performed that are meant to be confined to the bedroom, etc.

LESSON 5**III. Sterilization of mental patients:**

1. Mentally retarded patients with very little insight into life often fall victims to unscrupulous people and have sex with them. It is not always possible to police such patients.

Question:

Is it permissible for these patients to be sterilized so as to prevent them from falling pregnant?

Answers:

Due to the fact that unscrupulous people do tend to sometimes take advantage of mentally retarded people by having sex with them, yes, it would be permissible to deploy certain preventive measures whereby the risk of them thus falling pregnant could be reduced. Due to their mental state, they would not be able to care for such children that are born out of such pregnancies. However, in order to alleviate and curb this problem, it would be permissible to only implement reversible methods of contraception such as usage of pills etc. It would not be permissible to deploy irreversible methods

Would it be permissible to castrate them or administer drugs to them in order to curb or suppress these urges?

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such as sterilization, etc. The reason is that sterilizing the woman would mean virtually cutting off any future hope of pregnancy. As cure is in the Hands of Allah Ta'ala, a mentally retarded woman could be blessed with a cure of her mental illness at a later stage of her life and be capable enough to bring up a child. Sterilizing her would mean putting an end to any hopes that she may harbour (after being cured of her mental illness) of bearing children.

2. Some mental patients are over precocious and have extra urge to engage in indiscriminate sexual encounters.

Question: Would it be permissible to castrate them or administer drugs to them in order to curb or suppress these urges?

No, it would not be permissible to castrate such mental patients. It would however, be permissible to administer medication that would hopefully curb and suppress their sexual urges.

IV. Homosexuals:

1. According to some recent studies there is a suggestion that trait homosexuality is genetically inclined.

Question: If it is true that recent studies suggest that trait homosexuality is genetically inclined, what would the position of the Shari'ah be towards them?

2. Also homosexuals do approach psychiatrists in order to discuss their condition. Many a time they do so not because they want to be helped, 'but to be made to feel comfortable about their feelings and actions'.

Question: What should the Muslim psychiatrist do? Should he still try to dissuade them or should he try and make them accept their actions and feel comfortable?

Answers:

This is merely a ploy of the Shaytaan and his kuffaar underlings that a false notion has been created in western/secular society of trait homosexuality being "genetically inclined. The object is to make the

What should the Muslim psychiatrist do? Should he still try to dissuade them or should he try and make them accept their actions and feel comfortable?

The duty of a Muslim psychiatrist would still undoubtedly be to dissuade such people from the Haraam acts that they are indulging in. No amount of western/secular medical research can change the law of Hurmat (prohibition) attached to the act of homosexuality.

horrendous evil of homosexuality more “acceptable” in the warped western/secular society that we are living in.

Shari’ah’s stance in this matter would still be that of total condemnation of the homosexual tendencies and acts that are portrayed by such misguided individuals. The duty of a Muslim psychiatrist would still undoubtedly be to dissuade such people from the Haraam acts that they are indulging in. No amount of western/secular medical research can change the law of Hurmat (prohibition) attached to the act of homosexuality. Acts of homosexuality have been harshly condemned in the Qur’aan and Ahaadeeth.

V. **Brain-Stem Death**

1. Brain-stem death is now generally accepted in the medical field to be the moment of death of a person. Traditionally doctors have always been entrusted to certify a person dead.

Question: Should this right not be returned to the doctors, who can then certify a person dead if that person is brain dead? Can Muslims accept brain-stem death to be the death of a person?

2. Organs retrieved from brain-stem death persons are considered to be the most viable organs for transplantation.

Question: Would the Shari'ah permit the organ from a brain-stem dead Muslims to be removed in order to be transplanted into someone else?

Answer:

In terms of Islam, a person will be considered dead only when his Rooh (soul) departs from the body. Amongst the signs of the Rooh having departed from the body is

Should this right not be returned to the doctors, who can then certify a person dead if that person is brain dead? Can Muslims accept brain-stem death to be the death of a person?

Man has been accorded such a lofty rank and status by Allah Ta'ala that desecrating any organ of his body in this manner would undermine his status and nobility. In fact, we have been forbidden from even desecrating the bones of a dead man.

that the body becomes cold and stiff and, if left alone for a period of time, the body starts to decompose. Thus, if these signs are found, a person would be considered to be dead in terms of Shari'ah, otherwise not.

5.2 It is basically irrelevant whether a brain-stem dead person is considered as truly dead or not, in either case it would be prohibited to remove organ/s of his body for transplantation purposes.

Man has been accorded such a lofty rank and status by Allah Ta'ala that desecrating any organ of his body in this manner would undermine his status and nobility. In fact, we have been forbidden from even desecrating the bones of a dead man.

Hence, Rasoolullah (Sallallahu Alayhi Wa Sallam) is reported to have said that the breaking of the bone of a dead person is equivalent (in transgression) to the breaking of the bone of a living person. (Sunan Abu Dawood, Vol. 2 – page 102 and Muatta Imaam Maalik – page 90).

Furthermore, the organs and limbs bestowed to man by Allah Ta'ala are not the property of man. They are merely given to man as a trust, entrusted to him for purposes of fulfilling his needs of the world. Thus, it will not be man's prerogative to decide as to whom he wishes to donate these organs to.

In our daily mundane lives too, we appreciate the importance of goods entrusted to us by fellow human beings and we do not go about giving those goods to whomsoever we wish, because we know that the goods belong to another. Similar is the case with human organs; that they are not our property and we thus have no right to give it to whom we wish. In fact, the sanctity of human organs and limbs is such that even in a life-threatening situation, if a fellow human being is dying of hunger and the only option of survival is of eating human limb and another human being gladly offers one of his limbs for the dying man to devour, then too, it will not be permissible for the dying person to devouring the donated limb. This is borne out by the following text from Fataawa Aalmgiriyyah:

“A ‘mudhtar’ (one who is starving to death) does not find a dead animal (to alleviate his intense hunger) and fears losing his life. Another person readily tells him that, ‘cut my hand and eat it’, or he says that ‘cut a piece (from my body) and eat it’, then too, the starving person will not be allowed to eat that limb and the second person’s instructing him to do so will also be incorrect

Translation: “A ‘mudhtar’ (one who is starving to death) does not find a dead animal (to alleviate his intense hunger) and fears losing his life. Another person readily tells him that, ‘cut my hand and eat it’, or he says that ‘cut a piece (from my body) and eat it’, then too, the starving person will not be allowed to eat that limb and the second person’s instructing him to do so will also be incorrect. In the same vein, it will also be incorrect for the starving person to cut off a piece of his own body and eat it.” (Fataawa Aalamgiriya, vol. 5 – page 338).

The trend of organ donation in the world has led to the establishment of world wide Organ Banks, which in turn has led to the perpetration of horrendous acts against innocent victims many of them mere children! Newspaper reports have indicated that for the purposes of supplying organs to such organ banks, children in Brazil were kidnapped and then taken to places like Mexico and Thailand where they were murdered in such a way to keep their vital organs (such as livers, kidneys, corneas etc) intact. These organs were then sold to hospitals and Organ Banks

for exorbitant amounts. One example of this crime was exposed by a Christian organization called “World Vision”, where a child was murdered and his kidneys sold for seven thousand dollars. His lungs or/and bones were sold for a hundred thousand dollars! Sometimes the organs of these innocent children fetch upto a million dollars! In places like India, human organ trading has become a lucrative business. Wealthy people in need of organs, appoint agents (some of whom are unscrupulous doctors out to make a fast buck) whose job is to hoodwink poor-class people into selling vital organs of their bodies for paltry sums. (Ref: “Mawjooda Zamaane Ke Masaa’il Ka Shar’ie Hal” by Moulana Burhaanud Deen Sambhali).

This is all a result of organ transplantation, which is touted as a scheme that is supposed to save lives; yet it is also snuffing out the lives of innocent children; in fact probably resulting in the loss of more lives than it saves! Organ transplantation has led to the proliferation of all these evils.

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In conclusion, it will not be permissible to donate human organs or to have organ transplants done

In conclusion, it will not be permissible to donate human organs or to have organ transplants done. Further proofs and references may be found in Fataawa Mahmoodiyah, Vol. 12, page 432 & Vol. 14 – Page 429 and also Fataawa Rahimiyyah, Vol. 6, page 262 & Vol. 6 – page 285.

LESSON 6**VI. The Living Will**

In western countries there exists such a document which is known as the “Living Will” i.e. a person agrees that in the event of his death, his organs may be donated for transplantation.

Question: Would this will be valid in terms of the Shari’ah?

The reply to this query is evident from the discussion mentioned under (5.2) above; that when it is not permissible to donate one’s organs, it follows that it would also not be permissible to prepare a “Living Will” document whereby one leaves instructions for one’s organs to be donated. Such a Will would thus not be valid in terms of Shari’ah. If permission were to be granted for a “Living Will”, its horrendous consequences would be mind-boggling in the least. Man would then perhaps donated his entire body for medical research and other uses. Apart from his organs that would be transplanted into another human, other

Would this will be valid in terms of the Shari’ah?

One of the dreadful results of a "Living Will" could be that once everyone begins to donate parts of his/her body, there would be hardly anything left to bury in the grave!

parts of his body would also be put into use by unscrupulous people. What would stop someone from then tanning his skin and using it for making shoes and bags? His fat would perhaps be used by someone else to manufacture soaps and shampoos! There would be no end to it! In fact, as long as man is alive, the limbs and parts of his body are entrusted to him on a usufruct level only. After his demise, even the usufruct right terminates. What right does he then have of donating something that is now totally out of his jurisdiction? One of the dreadful results of a "Living Will" could be that once everyone begins to donate parts of his/her body, there would be hardly anything left to bury in the grave!

VII. Experimenting drugs on captives

In certain countries, prisoners, especially those who are condemned to death are often used as guinea pigs in order that the effects of certain drugs on the human body may be realized.

Question: What would the position of the Shari'ah be in this regard.

Answer:

In terms of Shari'ah, it would not be permissible to use death-row prisoners (or any prisoners for that matter) as guinea pigs for testing the effects of certain drugs on humans. This is because such tests are being conducted without the consent of these prisoners. Yes, if the prisoners are apprised of the situation that doctors wish to test these drugs on them and the drugs are such that have been developed as a potential cure for certain ailments (and they are not of a destructive, harmful nature) and furthermore, the drugs do not contain any ingredients that are considered Haraam in Shari'ah, then it would be permissible to test the drugs on them provided that they give their consent.

What would the position of the Shari'ah be in this regard.

VII. Foetal Tissue Transplants

Experiments are being conducted whereby tissues are being transplanted from aborted embryos into adults whose organs may have failed e.g. pancreas diabetics.

Question:

Would it be permissible to use foetal tissue for transplantation.

Answer:

As the transplantation of foetal tissue also entails usage of human parts of the body, it too will not be permissible, just as organ transplantation is not permissible.

Would it be permissible to use foetal tissue for transplantation.

IX. Organ Transplantation

In the event that a child needs bone-marrow transplant, it is advisable that such transplantation be from the child's sibling.

Question:

- (a) Would it be permissible for parents of the child to plan to have another child from whom the marrow would be taken to the existing sick child.
- (b) If the answer is in the affirmative, what about consent of the newborn sibling in allowing the tissue to be taken from his body?

Answer:

The tissue of organ transplantation has been already dealt with above under 5.2. On the basis of that discussion, it can be deduced that bone-marrow transplant will also not be permissible.

Would it be permissible for parents of the child to plan to have another child from whom the marrow would be taken to the existing sick child.

Would it be permissible to give them pain-killers with the knowledge that a little extra dosage would hasten their deaths?

X. Euthanasia

Terminally ill patients do suffer a lot of pain. Doctors normally administer pain-killers to them in order to relieve them of their agony. An increase in the dosage can lead to hastening their deaths.

Question: Would it be permissible to give them pain-killers with the knowledge that a little extra dosage would hasten their deaths?

Answer:

No, it will not be permissible for a doctor to increase the dosage of the pain-killing drugs to a terminally ill patient whilst knowing that this could hasten his death; as this would also be a form of active euthanasia which is prohibited in Shari'ah.

XI. Contagious Diseases

Doctors feel safer if their patients have the tests for any contagious diseases, e.g. Aids. In the westerns/secular culture tests for Aids can only be performed with the consent of the patient.

Question: (a) Would it permissible in Islam to carry out the tests without the consent of the patients?

Answer:

No, it would not be permissible to carry out tests to determine if the patient has a disease like Aids without his/her consent.

No, it would not be appropriate to refuse to treat such a patient especially since seeing that the temperament of Islamic Shari'ah is to attend to and help anyone in distress especially when he/she comes to seek one's assistance

Would it permissible in Islam to carry out the tests without the consent of the patients?

(b) If the patient is positive for HIV, would it be appropriate for Muslim doctors to refuse to treat such patients, since there is a chance that the doctor himself may get infected from his patient?

(b) If the patient is positive for HIV, would it be appropriate for Muslim doctors to refuse to treat such patients, since there is a chance that the doctor himself may get infected from his patient?

Yes, it would be permissible for the doctor to take necessary precautions that are the norm in the medical fraternity when treating such patients, such as using surgical masks, gloves, etc.

X11. Clinics

1. At the clinics the majority of patients that are seen there are non-Muslims. Many mothers come with their teenage daughters requesting that they be provided with contraceptive devices.

Question: Would it be permissible for us to accede to their requests?

2. Part of our programme at the clinics is to engage in social work. We therefore receive funds from various sources, including Zakaat.

Question: (a) Would it be permissible to use Zakaat to buy the medicines for the children (i.e. non-adults) since Rasoolullah (Sallallahu Alayhi Wa Sallam) is reported to have said that all children are born on fitrah?

Answer:

- 1.1. No, it would not be permissible to provide unmarried teenage girls with contraceptive devices, whilst knowing that their motive is to indulge in illicit relationships.

Would it be permissible for us to accede to their requests?

(b) Can zakaat money be used for other adult patients since the Qur'aan tells us that zakaat can be used "towards softening the hearts of the people towards Islam"?

- 1.2. (a) This is true that Rasoolullah (Sallallahu Alayhi Wa Sallam)'s Hadeeth states that all children are born on "fitrah". However, that does not mean that all laws applicable to Muslims will also be automatically applicable to non-Muslims children. Thus, in the matter of zakaat for instance, such children will be considered subordinate to their parents. Just as zakaat cannot be tendered to their non-Muslim parents, similarly zakaat cannot be given to these non-adult children too.
- ..3. (b) No, zakaat cannot be used for non-Muslim adult patients. The portion of the Qur'aanic verse alluded to by you, wherein there is mention of the permissibility of spending zakaat funds "towards softening the hearts of the people towards Islam" was only practiced during the initial period of Islam. This portion of the Aayah was then abrogated during the lifetime of Rasoolullah (Sallallahu Alayhi Wa Sallam) and hence is no longer applicable.

X111. Blood Transfusion

Question: What is the ruling of blood transfusion?

Answer:

The basic principle that governs the permissibility of blood transfusion in Shari'ah is that there must exist a real and extreme necessity before such transfusion can be sanctioned. Extreme necessity entails that a patient would (in the view of a medical expert) lose his life if he were not given a blood transfusion and that, that is the only alternative for treating his particular ailment. If there is another alternative or, in the absence of an alternative, there exists no extreme necessity for a blood transfusion, then it would not be permissible to either accept or donate blood.

Although here too (in the case of a blood transfusion) a human ingredient is being used, it will be permitted, contrary to organ transplantation, which, is mentioned above, will not be permissible. The reason is that blood in its liquid form is analogous to breast-milk which is also a liquid that a mother feeds to her baby (in spite of the milk too being part of the human body). Thus, just as feeding breast-milk to a baby is permissible due to

What is the ruling of blood transfusion?

One difference is that in organ transplants, the sanctity of the human body is disregarded by way of mutilating and chopping up the body, whereas in blood transfusion, no mutilating and cutting takes place.

the necessity, so too would it be permissible to undergo a blood transfusion. In fact, the Fuqahaa (Jurists) have even given permission for breast-milk to be used as medication for adults, if necessity warrants this. This permission is based on the same analogy of the breast-feeding mother who is, after all feeding her baby with a constituent of her own human body. Similarly, permission will be granted for blood transfusions too, at times of necessity.

Furthermore, there are a number of differences between organ transplantation (which is not permissible) and blood transfusion (which is permissible in cases of extreme necessity). One difference is that in organ transplants, the sanctity of the human body is disregarded by way of mutilating and chopping up the body, whereas in blood transfusion, no mutilating and cutting takes place. Another difference is that the blood that is extracted from the human body is replenished with new blood in its place as the body continues to produce blood (just as breast milk too continues to get replenished) whereas organs taken from the body cannot be replaced.

LESSON 7**XIV. Birth Control / Contraception**

Question: What is the ruling of birth control / contraception?

Answer:

Birth control by way of contraceptive devices would be analogous to “azl” (Azl is the withdrawing of the male sexual organ from the vagina before emission of semen). Just as Azl is not permissible without a valid excuse, so too would be the ruling with regard to contraception. When Rasoolullah (Sallallahu Alayhi Wa Sallam) was asked about Azl, he compared it to “burying a foetus alive” and then he cited the aayat concerning the evil of burying someone alive. (Mishkaat – page 276, as reported from Sahih Muslim).

Sheikh Abdul Haq Muhaddith Dahlawi (Rahmatullah Alayh) writes in his kitaab “Lam’aat” that the hideous practise of azl also falls under the scope of this verse (in which burying alive has been mentioned). (See the footnote of Mishkaat – page 276).

What is the ruling of birth control / contraception?

Another unacceptable (in terms of Shari'ah) "excuse" for implementing birth control is what the media generally bombards us with; which is the "global population explosion" scare.

Some women cite the flimsy excuse of wanting to "maintain their figures" as a basis for practising birth control. This would in no ways be considered to be a valid excuse in terms of Shari'ah.

Another unacceptable (in terms of Shari'ah) "excuse" for implementing birth control is what the media generally bombards us with; which is the "global population explosion" scare. Western/Secular Media is very subtly indoctrinating minds of naïve people to think that if the growth of world population is not curbed and stifled, the world could be shortly facing a food shortage crisis.

As Muslims, we cannot ratify and accept the so-called "foregone conclusions" and "projected forecasts" in the media that "ominously" warns us about the world population reaching 10 billion in the next 40 years and then increasing in leaps and bounds to reach alarming and astronomical proportions in years to come. The reason for this is obvious to a Muslim; it is our belief that Allah Ta'ala alone knows exactly what the future holds for mankind at large. It does not necessarily mean

that because the world population has doubled in the last 40 years, it HAS to increase two or three fold within the next 40 yeas as well. Some catastrophic event could occur that stuns the growth of the population. We don't have to look too far to see this: During the Second World War in a matter of about 5 years, millions of lives were extinguished. Today, hundreds of thousands of our Muslim brothers and sisters are being annihilated and mercilessly butchered in war ravaged areas such as Bosnia – Hercegovina, Kosova, Afghanistan, etc. Many more human beings have died right on our doorstep in places like Somalia and Ethiopia and Rwanda. Add to this the escalation of violence all around the world that is snuffing out human lives like that of flies.

LESSON 8**ADOPTION**

Some people who do not have children, and even some who do, take a child from one of their relatives, or an orphan from an orphanage, and bring him/her up as their own.

Bringing up a child, seeing to its education and training, and being good and kind towards him/her is very commendable and earns great rewards (thawaab). If the child is orphaned and has no support, then the reward is so much more. But it should always remain clear that according to Shari'ah when adopting, the lineage of the adopted child does not become established with that of the adoptive parents, and the adopted child can not be classified as their biological child. This is the fundamental ruling and the effects of this are apparent in the following cases. It is of utmost importance to take this into consideration.

1. Changing the 'lineage' of an adopted child and substituting the names of its real parents with the

According to Shari'ah when adopting, the lineage of the adopted child does not become established with that of the adoptive parents, and the adopted child can not be classified as their biological child.

adoptive parents' names is not permissible, and haraam. Therefore it is important that whenever the need arises to give details of the parents of the child, the child's real parents' name should be given. The child should always be "attributed" to the real parents so that it becomes common knowledge amongst the people who the parents of the child are, and the child should also know this. Allah Ta'ala has said: "....."

2. If the adoptive mother breastfeeds the adopted child, then it becomes their foster child and foster sibling to their biological children. In that case with regards to the rules of nikaah and hijaab with this family, this child will be in the same category as the real children, i.e. this child would not be able to marry the foster parent, nor any of the foster parents' children. But with regards to inheritance, it will not be given the same consideration as a real child, and it will not inherit from this family.
3. If the adoptive mother does not breastfeed the adopted child, then the relationship of fosterage will not be established and this will have an effect on the rulings of nikaah and hijaab. An adopted child can

With regards to inheritance, it will not be given the same consideration as a real child, and it will not inherit from this family.

It is imperative that they follow the rules of hijab. People are quite negligent about this

marry the adoptive parents' biological children. Also an adopted daughter is haraam on her adoptive father, and an adopted son is haraam on his adoptive mother or the wife of the adoptive father. It is imperative that they follow the rules of hijab. People are quite negligent about this, and this gives rise to great evils and harm.

Nabi Kareem (Sallallahu Alayhi Wa Sallam) adopted Zaid bin Haarithah (Radhiyallahu Anhu) and the Sahabah would refer to him as Zaid bin Muhammad. When the ayah of the Qur'aan mentioned previously was revealed, he reverted to being called Zaid bin Haarithah. Also when Sayyidina Zaid divorced his wife Zainab bint Jahsh, after the expiry of her iddat, Nabi Kareem (Sallallahu Alayhi Wa Sallam) married her. This was not withstanding the fact that she was the divorced wife of his adopted son Zaid, and it is known that marrying one's biological son's wife is haraam. But because an adopted son does not become a biological son, this nikaah took place. Thus the wrong notion that had become prevalent that one cannot marry the wife of one's adopted son was refuted. The details of this marriage is found in Surah Ahzaab.

4. Being an adopted child does not mean one will

inherit from one's adoptive parents, and to regard an adopted child as a real child in the matter of inheritance is incorrect. It is a totally different matter if the child inherits on the basis of being related in another way, e.g. if the adopted child is the adoptive parent's brother's son then he can become an heir in certain circumstances. Elaboration of this should be sought from an aalim when the need arises.

If an adopted child does not become an heir, then a wasiyyat (bequest) can be made. If the real heirs of the adoptive parents are alive, viz children, parents, siblings, spouses etc. then it would not be permissible to make a wasiyyat (bequest) of more than one third of the estate for the adopted child. If the real heirs are not alive then a bequest of more than one third can be made.

The adopted child will only have a right in the wealth of the adoptive parents if he/she is an heir, or there is a wasiyyat (bequest) made for him/her, or he/she is a relative of the adoptive parents like sister's son, sister's daughter, brother's daughter, etc. Besides these cases, the adopted child has no right over the wealth of the adoptive parents.

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After adopting a child, it is necessary to allow the child to meet its real parents, and not to create any obstructions or obstacles in the way of these meetings.

5. After adopting a child, it is necessary to allow the child to meet its real parents, and not to create any obstructions or obstacles in the way of these meetings. If the child is not allowed to meet its real parents and siblings, then this will be considered to be zulm (oppression).
6. It is also important to display good conduct and behaviour towards adopted children, and not to discriminate against them, especially if they are orphans and have no other support. In this case they deserve more attention and affection. If a person cannot conduct himself properly with an adopted child or orphan, then he should not adopt, otherwise he will earn punishment instead of good.
7. If the adopted child or orphan is not baaligh (mature), then his/her property should be kept safe and it should not be spent on the child at all. If the adoptive parents are poor, then according to necessity, the adopted child's money can be utilised for the child's food, clothes, etc. and for looking after the child,

but extreme caution has to be exercised in this.

Allah Ta'ala says in the Qur'aan: "....."

Therefore if a nabaaligh adopted child's money has to be spent, it should be spent according to the necessity with equity. Useless things should not be purchased, and if something has to be purchased there should be no extravagance in it. The adoptive parents can not take any loans from the adopted child's money, nor give loans from it. Charity, etc. too can not be given from that money. The child's money should also not be used in business. When the adopted child becomes mature and gains a sense of discernment and insight, then his/her money should be handed over to his/her, or put into the child's saving account. After maturity zakaat also becomes payable on the adopted child's property. Upon attaining maturity the adopted child can on its own accord or after consultation (mashwarah) with the adoptive parents, invest the money in business or give it in charity. The adoptive parents should always give the adopted child good advice regarding his/her money and should never put forward any option wherein the child's wealth might be lost.

The adoptive parents can not take any loans from the adopted child's money, nor give loans from it.

When the adopted child reaches marriageable age, then a suitable spouse should be sought.

8. When the adopted child reaches marriageable age, then a suitable spouse should be sought. No effort should be spared in choosing a suitable match, especially for an adopted daughter or orphan girl. For some personal benefit or greed they should not be married off when they are too young or to an unsuitable person. In the same way, out of greed for their wealth, etc. their nikaah should not be delayed too long either. An adopted daughter should not be married off without her permission nor against her will.

In conclusion, adopting a child is a very great responsibility. Adopted children are entitled to be treated better than one's own children. If someone has adopted a child and has fulfilled all the conditions and duties, then there is great reward, but if the conditions were not fulfilled and taken care of, then the punishment will be very severe.

LESSON 9**ABORTION**

The Ahadeeth of Rasoolullah (Sallallahu Alayhi Wa Sallam) warn us of grave battles that will take place before Qiyaamah in which entire families, clans and nations will be wiped off from the face of earth.

If, for argument's sake, we assume that the Western/Secular World's forecasts do perhaps turn out to be correct; then too as Muslims, we firmly believe that this does not automatically signal our impending doom in terms of "critical food shortages, quality of life deteriorating, sanitation, hygiene and transport services being burdened, etc." As Muslims, we do not behave like cowards and take cover under the umbrella of birth control, family planning and abortion.

The family-planning policies of countries like America and its ilke stink of hypocrisy. On the one hand, they are concerned that if the population growth is not stifled, there will not be enough food and funds to feed the masses. Yet on the other hand, they have no scruples at

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Our firm belief is that figures are irrelevant. Not matter what the number, Allah Ta'ala is the Sole Provider; hence He provides for all.

squandering millions of dollars on missiles that are utilized to bombard innocent defenseless citizens in countries like Iraq, Afghanistan. Wouldn't those same dollars have sufficed for feeding millions of hungry mouths? The prime reason for the Western/Secular World advocating so-called "solutions" such as birth control, family planning, abortion, and other "preventive" measures is their hypocritical concern at the impending critical shortage of foodstuff.

As Muslims, it is our firm conviction that provision is not dependant on population figures. A Muslim cannot harbour the notion that "if there is a certain curtailed and controlled number of human beings then only will there be sufficient to go around, otherwise not!" Our firm belief is that figures are irrelevant. Not matter what the number, Allah Ta'ala is the Sole Provider; hence He provides for all. He has taken it upon Himself to provide for every living creature:-

"There is no living creature on earth but its sustenance depends entirely upon Allah Ta'ala." (Al-Qur'aan – 11:6)

Our duty is to become law-abiding servants of Allah Ta'ala and then have faith and trust in Him that He will create and provide enough food for all. Allah Ta'ala says in the Qur'aan:-

“And if anyone puts his trust in Allah, sufficient is Allah for him.” (65:2,3)

Islam in fact teaches us to practice the exact opposite of birth control and family planning. In a Hadeeth Rasoolullah (Sallallahu Alayhi Wa Sallam) has encouraged us to increase our progeny:-

“Marry those women who show great affection and who are highly fertile; for surely I shall feel honoured (on the Day of Qiyaamah) due to your large numbers.” (Mishkaat – Page 267).

An inquiring mind may raise the question that if we are going to increase our progeny, where are we going to get food for the extra mouths? The solution to that question has also been provided by Rasoolullah (Sallallahu Alayhi Wa Sallam):-

“Marry those women who show great affection and who are highly fertile; for surely I shall feel honoured (on the Day of Qiyaamah) due to your large numbers.”

“Sustenance is provided for you due to the Barakah (blessings) of your innocent and weak subordinates”

“Sustenance is provided for you due to the Barakah (blessings) of your innocent and weak subordinates” (Al-Hadeeth).

In other words, the more dependants one has, the more Allah Ta’ala increases sustenance.

As far as the Western/Secular World’s so-called “solution” of abortion is concerned, such a callous step would be tantamount to murdering one’s own offspring.

The Qur’aan says:

“Kill not your children for fear of want; We shall provide for them as well as for you. Surely, killing them is a great sin.” (Al-Qur’aan – 17:31).

In a similar vein, birth control has also been likened to burying a child alive (as was quoted earlier on from a Hadeeth of Mishkaat), because one is basically “killing” the sperm that has the potential of initiating conception in the womb of the mother.

Hence, to resort to birth control and abortion merely due to the fear that one will not be able to provide for the extra mouths is something that is severely condemned and shunned by Islam.

Islam does not provide solutions in the guise of barbaric and nonsensical theories such as unwarranted abortions and birth-control policies. Islam's solutions are simple and forthright and those are that we should:

1. Strengthen our Imaan and carry out the commandments of Allah Ta'ala, thereby attracting His mercies and Bounties.
2. Continue to increase the numbers of the Muslim Ummah.
3. Make the effort on our part in earning income from Halaal sources.
4. Place our trust in Allah Ta'ala that He will give Barakah in our earnings and allow it to suffice for all our dependants.
5. Utilize whatever is left over in channels of Zakaat and Lillah so as to assist those who are less fortunate.

Hence, to resort to birth control and abortion merely due to the fear that one will not be able to provide for the extra mouths is something that is severely condemned and shunned by Islam.

“He who fears Allah Ta’ala, for him He prepares a way out, and He provides for him from sources he could never imagine.”

‘we were to implement this five-point strategy, we would Insha Allah bring about a better world to live in and there would be little or no starving mouths left to feed.

Allah Ta’ala says in the Noble Qur’aan:-

‘He who fears Allah Ta’ala, for him He prepares a way out, and He provides for him from sources he could never imagine.” (65:2).

Look at the unique power of having trust in Allah Ta’ala, as extolled in the following Hadeeth:

“Surely if you will trust Allah Ta’ala as you really ought to, then He will provide for you in the same way as He provides for the birds who rise and leave early in the morning with hungry stomachs but return in the evening fully nourished and satiated.” (Mishkaat – page 452).

It is said that when the eggs of crows hatch, the young emerge with white feathers on their bodies. The parents look at them and initially feel that these are not their children; otherwise they would have been black like them. The result is that the parents ignore them and do

not feed them until such a stage that their feathers eventually turn black. In the interim, Allah Ta'ala, in a most unique way, makes arrangements for their provision: when these young crows open their beaks, Allah Ta'ala commands the wind to blow insects into their mouth! Will that Being who causes sustenance to be conveyed to crows, allow His obedient servants to starve to death? Never! Allah Ta'ala is that Powerful Being who feeds a babe even in its mother's womb; and then before it enters in the world, its mother's breasts are already bursting with milk for its nourishment.

In a nutshell, if we build our Imaan and place our trust fully in Allah Ta'ala, then thoughts of birth control, abortion and the like would not even cross our minds.

The western/secular world probing into the future and sounding ominous warnings of population explosions and food shortage is merely a futile attempt at predicting the future. Islam condemns such attempts at predicting the future; whether it be in the guise of

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Islam condemns such attempts at predicting the future; whether it be in the guise of fortune telling, throwing of bones etc or whether it be based on mere speculation.

fortune telling, throwing of bones etc or whether it be based on mere speculation. The analogy of Sayyidina Yusuf (Alayhis Salaam) predicting a seven year famine in Egypt during his time cannot be used to substantiate probing into the future, as he was a Prophet of Allah Ta'ala whereas we are ordinary human beings. Whatever he prophesized about the future was through Wahi (Divine Inspiration) and not an achievement of his own. Allah Ta'ala taught him the art of interpreting dreams and his interpretations turned out to be accurate because he was guided by Allah Ta'ala. In other words, even his interpretations were a form of Divine Revelation. Allah Ta'ala instilled into his heart the fact that the Egyptian King's dream of seeing seven lean cows being eaten by seven fat ones meant that there were seven years of drought ahead and that he should store grain away for the years ahead. This interpretation turned out to be accurate as it was a form of Divine Revelation.

Similarly, whatever Rasoolullah (Sallallahu Alayhi Wa Sallam) prophesized with regard to events of the future, i.e. the Signs of Qiyaamah etc was also done by means

of Divine Revelation and not by probing into the future. The Qur'aan says:

“These are events of the Unseen which We reveal by inspiration unto thee.” (Al Qur'aan, Surah Yusuf – 12:102).

Let us rather ponder over the imminent signs of Qiyaamah so that we can prepare ourselves adequately for the Akhirah. The Western/Secular World's “probing” into the future is based merely on speculation which creates unnecessary panic and pandemonium and causes the masses to indulge in Haraam acts such as unwarranted birth control exercises, abortions etc.

Yes, if a reliable Muslim doctor however, advises a woman to deploy temporary methods of contraception due to health reasons (i.e. due to the woman not being healthy and strong enough to endure a pregnancy), then in such cases it would be permissible for her to use contraceptives until such a stage that the doctor feels that she is strong enough to carry a child.

If a reliable Muslim doctor however, advises a woman to deploy temporary methods of contraception due to health reasons (i.e. due to the woman not being healthy and strong enough to endure a pregnancy), then in such cases it would be permissible for her to use contraceptives until such a stage that the doctor feels that she is strong enough to carry a child.

Abortion after the soul enters the body is tantamount to cold blooded murder as it results in the snuffing out of an innocent life.

Some Ulama also give leeway for practising contraception for purposes of spacing of the children; i.e. to allow enough “breathing space” for the upbringing of the previous child until the parents feel that they are ready for another child. However, due to the fact that this reason could be abused (as the criterion for spacing and upbringing of the children could differ from parent to parent) and contraception could be prolonged unnecessarily, other Ulama use a more cautious approach and refuse to accept spacing of the children as a valid reason for using contraceptives. According to these latter Ulama, the permissibility should be based on health reasons only.

What is the ruling of abortion?

In terms of Shari’ah, it is not permissible to abort a foetus, whether it is prior to the souls enters the body or after.

If abortion is done after the soul enters the body, then there is no doubt about its prohibition, which is why all the scholars of Islam have unanimously condemned such a ghastly act. Abortion after the soul enters the

body is tantamount to cold blooded murder as it results in the snuffing out of an innocent life. The following extract from Fataawa Ibne Taymiyyah corroborates this:-

“Aborting a foetus has been declared Haraam (prohibited) with the consensus of all the Muslim scholars. Abortion is similar to burying an infant alive as referred to by Allah Ta’ala in the verse of the Noble Qur’aan: ‘And when the female infant, buried alive, will be questioned as to what crime she was killed for.’ (Surah Takweer – 81:8) (Fataawa Ibne Taymiyyah – Vol. 4 – page 217).

Prior to the soul entering the body, although one may argue that abortion of the foetus can not be equated with taking a life, it will still not be permissible in terms of Shari’ah to carry out an abortion, unless there is a valid Islamically acceptable reason/basis for doing so: for instance if the pregnancy was precipitated by rape or if continuing the pregnancy endangers the life of the mother.

Aborting a foetus has been declared Haraam (prohibited) with the consensus of all the Muslim scholars.

The foetus is considered to be part and parcel of the mother's body as long as it remains in the womb.

The reason why (under normal circumstances), abortion prior to the soul entering the body will not be permitted is that, although there may not yet be life in the foetus, that foetus is considered to be part and parcel of the mother's body as long as it remains in the womb. Thus, just as one's very life and also all the limbs and organs of the human body are an Allah-given trust (i.e. one is not the owner of these limbs and organs), so too is the foetus also a trust given to the mother by Allah Ta'ala. Thus, she will have no right to carry out an abortion.

In fact, the Jurists of Islam have written that once some of the limbs of a foetus begin to appear, then even though the foetus is still incomplete and even though the soul has entered the body as yet, then too, if a person has to strike a woman's stomach causing a miscarriage, that person will have to compensate for the loss by paying the same amount of blood-money that is normally due for causing the miscarriage of a completely-formed foetus. The following extracts from the books of Fiqh confirm and corroborate this:-

“The status of a partially formed foetus is akin to that of a completely-formed foetus.” (As-Shaami, Vol. 5 –

Page 519; Durarul-Ahkaam Li-ibnil-Hazm, Vol. 12 – page 378).

“If a person strikes the stomach of a pregnant women in a way that causes a miscarriage, then whether the foetus is partially or completely formed, all the scholars agree that the perpetrator will be held liable for the loss of the foetus and will have to compensate by paying its blood-money. This is due to the fact that he has extinguished the progress of a foetus that had the potential of life. (Jadeed Fiqhi-Masaa’il, Page 161 quoting from Fataawa Qadhi Khaan).

Just as a person striking a woman’s stomach is obliged to compensate for the loss of the aborted foetus, similarly too will a woman advertently aborting her own foetus also be liable for compensation. The following text bears this out:-

“If a women uses medication or other means with the express intention of aborting her foetus, she will be liable to pay its compensation in the form

If a person strikes the stomach of a pregnant women in a way that causes a miscarriage, then whether the foetus is partially or completely formed, all the scholars agree that the perpetrator will be held liable for the loss of the foetus and will have to compensate by paying its blood-money.

Whether the soul entering the body has taken place or not, in both cases, Shari'ah would forbid the abortion of the foetus. The only difference would be in the level and degree of the sin incurred by the act of abortion.

of blood-money.” (Fataawa Qadhi Khaan, Vol. 4 – page 392).

It can be deducted from the above that, as the foetus is an Allah-given trust, neither is a woman permitted to abort her own baby, nor has she the right of permitting a medical practitioner to carry out the abortion. Even though it may be argued that prior to the soul entering the body, there is no human life, one has to acknowledge that the potential and seed of life is being extinguished from the foetus.

From the foregoing discussion, it is manifest that the impermissibility of abortion is not dependent upon the soul entering the body of the foetus. Hence, whether the soul entering the body has taken place or not, in both cases, Shari'ah would forbid the abortion of the foetus. The only difference would be in the level and degree of the sin incurred by the act of abortion. If the soul has entered the body has taken place already, it would be tantamount to taking human life and if the soul has

not entered the body, it would mean violating the rights of a human organ entrusted to the mother by Allah Ta'ala.

Thus, the discussion of the soul entering the body or not entering the body of the foetus would only come under the spotlight when the degree of the sin is being evaluated. The accepted view amongst the Ulema is that the soul entering the body takes place at 120 days (4 months) from conception. Thus, abortion after this period would be a very grievous sin and would be tantamount to cold-blooded murder. Although the degree of sin in carrying out abortion prior to 120 days may not be as serious, it will still nevertheless be a major sin and hence condemned and prohibited.

It is pertinent to point out here too, that there are certain extreme circumstances wherein Islam would permit abortion; such as for instance, when a woman conceives after being raped or if a major complication occurs during her pregnancy that puts her very life in danger. However, such permission

The accepted view amongst the Ulema is that the soul entering the body takes place at 120 days (4 months) from conception. Thus, abortion after this period would be a very grievous sin and would be tantamount to cold-blooded murder.

would only be permitted before the soul enters the body (i.e. before 120 days) and not thereafter. After the soul enters the body it will not be permissible to abort the baby if the baby is alive in the womb, as one cannot take one life in order to save that of another. Yes, if for some reason, the baby has died in the womb, then it would be permissible to abort the baby in order to save the mother's life. The following text bears this out:-

“If a complication occurs with the baby in its mother's womb, and the complication is of a nature that endangers the mother's life, then, it will have to be seen; if there is no other way of removing the baby except by removing it bit by bit (which is normally the inhumane abortion procedure), then if the baby is already dead in the womb, it will be permissible to abort the baby. If on the other hand, the baby is alive, then it will not be permissible to take an innocent life (that of the baby) in order to save life (that of the mother). (Fataawa Qadhi Khan, Vol. 4 – Page 369).

What Is The Ruling Regarding Genetic (Engineering) Counselling?

Genetic Counselling is also something not to be taken too seriously in terms of Shari'ah. Professionals in this field generally prescribe contraception, sterilization, etc. merely on the premise that a couple may have previously had a child with mental deformities and medical complications. They then assume that the danger of having another child with the same complications is increased; whereas such theories have been proved false time and again. Whatever illness or deformity, (that a child is born with) is solely because of the decree of Allah Ta'ala. To attribute deformities and illnesses directly to genetic "disorders" in parents and forefathers is something totally in contrast to Islamic Beliefs and teachings. Only that happens that is ordained by Allah Ta'ala.

Many times it happens that there is no historical evidence of a certain ailment in a family, yet a child is born with that particular ailment. Conversely, we find past generations having a certain ailment, yet

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Professionals in the field of Genetic Counseling are also found to advise people not to get married to very close family members such as first cousins, etc, claiming that such inter-family marriages (to a spouse of similar genes) could result in deformed children being born. Such advice has no basis in Shari'ah.

future progeny is born with a 100% clean health sheet.

Professionals in the field of Genetic Counseling are also found to advise people not to get married to very close family members such as first cousins, etc, claiming that such inter-family marriages (to a spouse of similar genes) could result in deformed children being born. Such advice has no basis in Shari'ah. In fact, such marriages are encouraged by Shari'ah. Rasoolullah (Sallallahu Alayhi Wa Sallam) demonstrated its permissibility by marrying his first cousin, Sayyidatina Zainab bint-e-Jahsh (Radhiyallahu Anha).

PURCHASING UNIT TRUSTS

Unit trusts can be compared to a fund wherein capital raised from the public is deposited. Each denomination is referred to as a unit. Instead of this capital being used directly for trade, it is used through an intermediary, i.e. this capital is used in profitable ventures, usually buying and selling of shares. The profits made are distributed amongst the unit holders according to the ratio of their units purchased.

To administrate all this, a trust is formed. This trust works with the permission of and under the supervision of the government so that they do not deceive the public and abscond (with the public's money). The object of unit trusts is to put the combined savings of the individual capital contributors to use and pass on the benefits to them.

The administrators of the trust become agents between the public and the business concerns. Using profits as an attraction, they convince the public to hand over their money to them, then start trading in shares, or they hand over the capital to businessmen in other

The object of unit trusts is to put the combined savings of the individual capital contributors to use and pass on the benefits to them.

If the above three conditions are in conformity with the Shari'ah then it would be permissible to buy these unit trusts and receive profits from them,

profitable businesses and collect the profits from them. The Intizaamia (administration) then deducts their expenses and share of the profits and distribute the remainder amongst the unit holders.

To ascertain the Shar'ie ruling of the unit trusts, three things have to be considered:

1. Under what category of transaction the intizaamia (administration) took the money from the public.
2. Under what category of transaction the intizaamia (administration) gave the capital to the businessmen and collected profits from them.
3. Whether the business of those who received the capital or the company in which shares were purchased is Halaal and permissible or haraam and impermissible, i.e. what their means of income is.

If the above three conditions are in conformity with the Shari'ah then it would be permissible to buy these unit trusts and receive profits from them, and if any one of these three are not in conformity with the Shari'ah then

it would not be permissible to buy those unit trusts, nor receive profits from them. The details are as follows:

1. If the intizaamia (administration) obtain the capital from the public on the basis of Mudaarabah or Wakaalat then it is permissible. Mudaarabah is where the public and the intizaamia (administration) go into a financial agreement and decide that after the intizaamia take their expenses, the profits will be shared between the intizaamia (administration) and the public according to a specific ratio, e.g. 80% for the public and 20% for the intizaamia. The capital of the public will be an Amaanat with the intizaamia (administration). If there are no profits then the public will not receive anything.

Wakaalat is where those purchasing the units make the intizaamia (administration) their wakeels (representatives) and the intizaamia (administration) do business on behalf of the unit-holders. From the profits realized, the intizaamia (administration) take their expenses, including the wages of their labourers

Wakaalat is where those purchasing the units make the intizaamia (administration) their wakeels (representatives) and the intizaamia (administration) do business on behalf of the unit-holders.

That profitable business concern to which the capital is handed over on the basis of mudaarabah or wakaalat should be conducting business which is permissible and Halaal.

(employees) etc. and distribute the remainder among the unit-holders.

2. If the intizaamia (administration) do not conduct the business themselves, instead they hand the capital over to some profitable business concern, then too it should be handed over on the basis of mudaarabah or wakaalat which was mentioned in point No. 1. If the intizaamia (administration) choose to deal in shares, they should be particular to conduct their dealings in the method of dealing in shares which the Shari'ah has declared permissible.

3. That profitable business concern to which the capital is handed over on the basis of mudaarabah or wakaalat should be conducting business which is permissible and Halaal.

If the intizaamia (administration) of the Trust operate under the above 3 conditions, then it will be permissible to buy unit trusts and collect profit from them.

If any one of these conditions are not fulfilled then it will not be permissible to buy unit trusts or collect profits from them, eg the intizaamia (administration) and the unit holders, or the intizaamia (administration) and business concern which takes the capital enter into an agreement that profit equivalent to a certain percentage of the capital has to be given by the intizaamia (administration) to the unit holders or by the business concern to the intizaamia (administration), or if any loss is sustained they would not be liable for it, or having capital guaranteed, or both the transactions themselves are in conformity with the Shari'ah, but the business is haraam, e.g. dealing in liquor, or if shares are purchased in a company whose business is haraam, e.g. bank, insurance, gambling, manufacture of liquor or in a company which sells liquor, etc. In short if the source of income is haraam, purchasing of the unit trusts will be impermissible and whatever profits are received from these are haraam.

If any one of these conditions are not fulfilled then it will not be permissible to buy unit trusts or collect profits from them, eg the intizaamia (administration) and the unit holders

USE OF MEDICINES AND PERFUMES THAT CONTAIN ALCOHOL.

The use of haraam alcohol in perfumes is also not permissible. If this type of alcohol touches anything, that object or body will become impure and najis and in that condition salaah will not be correct

Alcohol extracted from grapes, raisins and dates is haraam and impure. Under normal circumstances using this sort of alcohol in medicines is impermissible and haraam. If however an expert religiously inclined Muslim doctor says that there is no other cure/alternative for a particular ailment except a certain medicine containing alcohol, then according to the instructions of the doctor, that amount of medicine containing alcohol will be allowed as is necessary.

The use of haraam alcohol in perfumes is also not permissible. If this type of alcohol touches anything, that object or body will become impure and najis and in that condition salaah will not be correct.

For alcohol not produced from grapes, raisins or dates, but from other fruits or grains such as wheat, barley, etc or figs or produced synthetically, the ruling is, that its drinking is not permissible, it is

If this sort of alcohol is used in perfume or any other commodity, then with regard to this perfume etc. the fatwa is that it is not impure. Therefore it would be permissible to apply this perfume to the body or anything else. However, if a person refrains from this out of taqwa, then this is commendable.

haraam even if it does not intoxicate. If it does intoxicate, then under all circumstances it is haraam. If this sort of alcohol is used in medicines, and it does not intoxicate, then it is permissible to use this sort of medicine. If it does intoxicate, then it will only be permissible under the conditions laid out previously.

If this sort of alcohol is used in perfume or any other commodity, then with regard to this perfume etc. the fatwa is that it is not impure. Therefore it would be permissible to apply this perfume to the body or anything else. However, if a person refrains from this out of taqwa, then this is commendable.

This ruling applies to tinctures and spirits as well.

PURCHASE AND SALE OF SHARES.

Purchasing of shares implies co-ownership of the assets of the company, and selling of shares implies withdrawing from it (i.e. ownership).

A share is a representation of co-ownership of the assets of a company. For example, if the total value of a company's assets is R10 000 000 and a shareholder has shares with a face value of R500 000 then this means that he owns 5% of everything in this company.

The value at which the company initially issues its shares is referred to as face value, and the value of the shares on the Stock Exchange is referred to as Market Value. These are 2 main categories of shares:

1. Ordinary Shares
2. Preferential Shares.

Sometimes when a company issues shares initially, its assets consists of cash only. The company does not have any land, buildings, furniture, machinery etc. These items are bought later on.

Purchasing of shares implies co-ownership of the assets of the company, and selling of shares implies withdrawing from it (i.e. ownership). Every shareholder

is a partner in the dealings of the company, is a supporter of the company, and has a share in the profit or loss of the company.

Some companies deal in Halaal (permissible) things and some in haraam (forbidden) things. In the same way sometimes companies take interest based loans from the bank to expand their business, and all the shareholders receive some of these profits. Sometimes companies deposit their excess money into an interest account at a bank, and whatever interest accrues from there gets added to the profits of the company and reaches the shareholders.

Shares are purchased for one of two reasons:

1. Saving/investing to gain from the profits of the company i.e. buying shares and keeping them so that after 6 months or a year when the company declares dividends one can earn profits. Simply put, purchasing shares to collect the dividends.
2. To trade with the shares i.e. to purchase shares, keep them until their value increases, then sell them. Sometimes shares are sold on the very

Some companies deal in Halaal (permissible) things and some in haraam (forbidden) things. In the same way sometimes companies take interest based loans from the bank to expand their business

So it has been established that purchasing or selling shares does not just imply the purchasing or selling of the share voucher or certificate, but it implies acquiring or withdrawing from co-ownership of the assets of the company

same day (i.e. the day of purchase) and sometimes after a few days. Here the object is not to collect dividends, and the shares are regarded as stock. This is called purchasing shares for capital gain.

So it has been established that purchasing or selling shares does not just imply the purchasing or selling of the share voucher or certificate, but it implies acquiring or withdrawing from co-ownership of the assets of the company, viz. cash, furniture, machinery, buildings, trading stock, etc, and the voucher is just a representative of this ownership.

The purchasing or selling of shares is usually conducted at the Stock Exchange, or under its supervision, and every purchase or sale is recorded. Nobody can, after carrying out a transactions, refute that transaction. When a person sells his shares, his ownership terminates immediately and he is not entitled to any benefits from them, as they are transferred immediately to the purchaser. Once a person has sold his shares in a company, whatever

profit or loss that company encounters depend upon the buyer, not the seller, even if the share voucher is still in the possession of the seller, and the shares are still registered in his name. Whoever purchases shares is responsible to pay them off in full. These points are well-known and prevalent on the Stock Exchange.

Now that the above-mentioned points relating to shares have been clarified the Shar'i ruling of the purchasing and selling of shares will be dealt with:

1. Purchasing and selling of preferential shares is not permissible because it goes against the Shari principles of partnerships.
2. In the purchase and sale of ordinary shares some elaboration is necessary:
 - 2.1 If a company has not come into existence as yet, but it is already provisionally listed on the Stock Exchange and its shares are already on the market, then it is not permissible to purchase or sell those shares.

Purchasing and selling of preferential shares is not permissible because it goes against the Shari principles of partnerships.

Selling shares without having purchased them, which is referred to as Short sale is not permissible, because this is selling something which is not in one's possession.

- 2.2 Selling shares without having purchased them, which is referred to as Short sale is not permissible, because this is selling something which is not in one's possession.
- 2.3 It is not permissible to purchase or sell shares in a company that deals in haraam e.g. banks, insurance and alcohol beverage companies etc.
- 2.4 Forward sales or future sales are not permissible. An example of this is one person telling another "Today, 1st January I am selling you 500 shares of such and such company for so much for delivery on the 10th of January" i.e. The transaction took place today, but he will only be entitled to the delivery of the shares on the 10th January, and they will automatically enter his possession on the 10th January without another transaction or agreement. Sometimes the changes in the value of the shares are also taken into account e.g. on the 1st January the value was R5000 and on the 10th January it is R7000. So the seller just gives the purchaser R2000 and nothing is taken from him. And if the value drops to R4000,

then the purchaser gives the seller R1000 and does not take the shares from him. Purchasing and selling shares like this is not permissible.

- 2.5 If a company's capital assets are only in the form of cash i.e. they don't have buildings, furniture, machinery, etc then to purchase or sell their shares lower or higher than the face value is not permissible.
- 2.6 If a company's assets are not only in the form of cash, but they also have other things such as buildings or machinery etc then it is permissible to purchase and sell them at market value.

NOTE: If the shares are purchased for saving, i.e. as an investment, to receive the dividends, then more conditions apply.

1. If the company takes interest-based loans, they should be stopped from this, and this is how it can be done. Write a letter to the company saying "There is no permission from me for the company to take interest-based loans and I am not happy with this action". Then at the AGM he has to get his opposition to interest recorded.

If a company's capital assets are only in the form of cash i.e. they don't have buildings, furniture, machinery, etc then to purchase or sell their shares lower or higher than the face value is not permissible.

If a person finds out that of the amount of money set aside by the company for dividends, 10% is interest, then he should give 10% of his dividends away as charity.

2. If the company collects interest and includes it in the dividends, then calculate, after reference to the Income Statement, what percentage of the dividend is interest and give that amount away as sadaqah without the intention of getting any thawaab (reward). For example, if a person finds out that of the amount of money set aside by the company for dividends, 10% is interest, then he should give 10% of his dividends away as charity

THE RULES OF ZAKAAT ON SHARES.

Those shares purchased for trading, i.e. for capital gain, are considered to be stock. Zakaat is waajib on the market value of those shares. So if a person bought 500 shares for R5000, then their value increased, and on the day zakaat was waajib their value was R10 000, then zakaat on R10 000 is waajib.

If shares are purchased for investment purposes i.e. to get the dividends, then too zakaat is waajib on their market value, but here there is some elaboration necessary.

If from the balance sheet of the company or by contacting the company one comes to know what percentage of the total assets the total cash, stock and raw materials constitute, then zakaat on that percentage of the market value of the shares is waajib.

So let us assume a person has shares in a company with a market value of R10 000 on the day zakaat becomes waajib. If he contacts the company and comes to know that of the total assets of the company,

If a person bought 500 shares for R5000, then their value increased, and on the day zakaat was waajib their value was R10 000, then zakaat on R10 000 is waajib.

the combination of cash, stock and raw materials constitutes 45%, then the zakaat waajib on him is 45% of R10 000 i.e. R4 500.

If it is not possible to ascertain all this, then zakaat in the total value of the shares i.e. R10 000 is waajib.

EVASION OF GOVERNMENT TAX

The Shari'ah has made certain nafaqaat (maintenance) waajib, such as zakaat, ushr, khiraaaj, jizya, 1/5 of the booty collected in Jihad, material benefits gained with Sulah etc. and it has commanded the Haakim to collect this nafaqaat (maintenance) and use them for reasonable government expenses and such projects from which the whole Muslim Ummah benefits, viz. defence, a police force for peace and security, building of roads and bridges, administration of schools and madrasahs, the court, health care centres, parks and other recreation places, expenses of orphans, widows and other ma'zoor people etc.

If, however, the nafaqaat (maintenance) are not sufficient to cover the expenses of all these projects, then the Haakim is at liberty to stipulate an amount to be collected as tax from the public, according to the need, and taking the condition and ability of the public into consideration, monthly or annually, as long as this is spent with due care and propriety on the expenses of the people. The Haakim should not spend lavishly and extravagantly on himself and his

If, however, the nafaqaat (maintenance) are not sufficient to cover the expenses of all these projects, then the Haakim is at liberty to stipulate an amount to be collected as tax from the public

ministers for their amusement, entertainment and frivolous pursuits.

If all these conditions are met, then according to the Shari'ah, this tax is waajib and it is necessary to pay it and it is not permissible to try to evade it. But if the Haakim stipulates tax unnecessarily or beyond the ability of the public or instead of spending it in the correct avenues he spends it on his and his ministers comfort and luxury, entertainment and amusement, or in such things which do not benefit the public, then it will be permissible to devise a scheme to evade the tax, because this tax is considered zulm, and it is permissible to devise a scheme to prevent zulm.

LESSON 10**USING INTEREST**

It is impermissible and haraam for a Muslim to accept interest and to take benefit from it, so when a Muslim does not have any interest money with him, how can he use it to pay tax, etc.

If a Muslim receives interest from a non-Muslim, e.g. if he lives in a non-Muslim country and out of necessity he opens a bank account, and all the directors of the bank are non-Muslims, then too a group amongst the Fuqahaa (jurists) and Ulama hold the view that to accept interest money from a bank, etc. is not permissible, and that if anybody takes it, he will be a sinner.

Another group of Ulama hold the view that to leave the interest money in a non Muslim bank is not correct, because they will use it in anti-Islamic activities. So this interest money should be removed from the bank with the understanding that it is haraam, and should not be mixed with other Halaal money. This interest money should be spent amongst the poor without the hope of

This interest money should be spent amongst the poor without the hope of getting thawaab (reward).

getting thawaab (reward). It should be made clear that this interest money cannot be used on oneself, i.e. for food, clothes, conveyance etc nor can it be used in a masjid or madrasah, nor can it be utilized for the printing of Quraans and religious books. Therefore it is necessary to avoid it.

INSURANCE

Definition and Historical Background

It is an agreement ensuring cover for any loss experienced. This agreement is drawn up between two parties – the party that seeks cover against risk or loss, referred to as the Policy Holder or the Beneficiary, and the party that takes the responsibility of providing cover, i.e. the Insurance Company. According to the agreement, the policy holder is liable for a specified amount referred to as the premium. The insurance company takes the responsibility to provide cover for a specified period, and the amount to be paid out in the event of any loss is also specified. If, within the specified period, some loss is experienced, the insurance company will compensate the policy holder for the amount lost according to the agreement, even if this amount is more than what he has contributed as premiums. On the other hand, if no loss is experienced during that specified period, then the amount contributed as premiums belongs to the insurance company and the policy holder does not get anything back. If he again

If, within the specified period, some loss is experienced, the insurance company will compensate the policy holder for the amount lost according to the agreement, even if this amount is more than what he has contributed as premiums.

The origins of insurance date back very far in history. It is said that in 3000 BC, Babylonian's businessmen were acquainted with insurance.

seeks cover against any future losses a new contract / agreement will have to be drawn up, and he will have to resume paying the premium, and this cover too will be for a specific limited period only.

The origins of insurance date back very far in history. It is said that in 3000 BC, Babylonian's businessmen were acquainted with insurance. That was the case with the Romans, Greeks and Indians as well. Before the time of Sayyiduna Isa (Alayhis Salaam), people took out insurance for their sea voyages. In the 16th century CE, a company was established specifically for sea voyage insurance. Gradually the scope for insurance increased, and insurance for different dangers and losses came into existence. Different societies, called guilds, were formed for the shroud and burial expenses of the poor and the slaves. They would cover the shroud and burial expenses of their members and pay out a Death Benefit too. Generally this was popularized amongst the poor out of sympathy and as a means of helping them, the wealthy people were not in need of this. In 1666 CE a huge fire broke out in London. As a result of this fire

insurance came into existence. Subsequently many companies were formed which called themselves Insurance Companies, but instead of carrying out their actual function, they began deceiving the people. In the 2nd half of the 18th century, many such incidents took place and this period was referred to as the "Bubble Period".

To put an end to this fraud and deception, a law was formulated, called the "Bubble Act". From that time onwards, Insurance Companies had to follow set rules and regulations, and the government had to give permission for an insurance company to be formed. In this way those fake and fraudulent companies were eradicated and came to an end, and from then on the insurance market has flourished.

There are many types of insurance available today, but with regard to their *modus operandi* (mode of operation), they fall into 3 categories:

People who have the same risk start a fund and whichever member experiences any loss gets compensated by the fund. Monies are only collected from the members, and only the members are compensated for their loss.

1. **Mutual Insurance**

People who have the same risk start a fund and whichever member experiences any loss gets compensated by the fund. Monies are only collected from the members, and only the members are compensated for their loss. At the end of the year a full account is taken and if it is found that the amount paid out by the Fund is more than the total contributions of the members, then the difference has to be made up by the members. If it is found that there is still money left at the end of the year then the remainder is divided amongst the members or will be taken as part of their contribution for the next year.

This type of insurance is permissible according to the Shari'ah and this is one form of mutual help and assistance. Those Ulama who have mentioned the benefits and importance of Insurance and have declared it permissible refer to this type of insurance.

2. **Group Insurance or Social Security.**

This is where the government facilitates individuals forming a group to compensate for any losses incurred by them or as a means of them gaining some benefit e.g. a small part of the employees salaries/wages is set aside in a fund, then when any employee passes away, or something happens (accident etc) then a large payout is made to his heirs or himself as the case may be.

There are many different types of group insurance and it is difficult to give one ruling for all of them because the ruling for every type would be different, but if it is run like mutual insurance then it would be permissible.

3. **Commercial Insurance**

This type of insurance is the one described initially in the definition of insurance. This type of insurance is common today and it is as if it has become a type of business.

the government facilitates individuals forming a group to compensate for any losses incurred by them or as a means of them gaining some benefit

Some of them are made compulsory by the government e.g. when getting a car licensed it is compulsory to take out a third party insurance.

Commercial Insurance has 3 main types:

i. Third Party Insurance

This insurance is taken out in order to be saved from any liability one might incur in the future e.g. if a motor accident took place and somebody else's car got damaged, that person will get compensated from this insurance. Third party insurance has many applications. Some of them are made compulsory by the government e.g. when getting a car licensed it is compulsory to take out a third party insurance.

ii. Goods Insurance

As the name suggests, this type of insurance is to compensate for any loss to goods. Nowadays there are many different types of goods insurance. This all started off as insurance for ships, now referred to as "Maritime Insurance". After that, insurance to cover loss through fire was started, called Fire Insurance. This type of insurance is available to cover all sorts of losses.

iii. Life Insurance

Here the insurance company and the client have a contract that if the client dies within a specified time period, the insurance company will pay out an amount to his heirs, which is more than the amount he had paid as premiums. If that time period expires and he has not passed away then the company returns all the money he had paid as premiums plus an additional sum. In some cases no time period is set, instead the insurance lasts as long as he is alive.

The difference between "Goods Insurance" and "Life Insurance" is that in "Goods Insurance" if no loss is incurred and the time period ends, then the client does not get his premiums back, while with "Life Insurance", when the time period ends, the clients gets back what he had paid and an additional sum as well.

Insurance is also taken out to cover medical expenses. This is referred to as "Medical Aid". This works in the same way as, and falls under the same ruling as "Commercial Insurance".

If the client dies within a specified time period, the insurance company will pay out an amount to his heirs, which is more than the amount he had paid as premiums.

Shar'ie Ruling:

There is a possibility that he will get it back together with an additional sum, or that he will not get anything at all.

From the definition and Modus Operandi and after studying the different types of commercial insurance, the following points become clear.

1. Here there is reinsurance that any future losses will be covered.
2. The occurrence of any loss is not certain, and if any loss does occur, the extent of it is unknown.
3. There is a contract between Insurance company and the client.
4. The client pays a certain amount: there is a possibility that he will get it back together with an additional sum, or that he will not get anything at all.
5. The insurance company collects a certain amount: it might happen that it will have to pay out more than it collected, or it might happen that it will not have to give anything back to the client, in which case whatever it has collected becomes the property of the company.
6. The benefit of the company is the benefit of these

few people not the benefit of the whole nation or all the policy holders.

As far as the first point goes, there is no Shar'ie abomination in it. According to the Shari'ah it is permissible for a person or a group of people to devise a scheme whereby they would have a way out or a solution to a problem or compensation for some loss that might occur. In this way if something does happen they will not find it so difficult. During peace time to keep the army prepared, having them train (drill), having them guard the borders, keeping fire engines etc ready, arranging protection against natural disaster such as floods and hurricanes, keeping specialized medication and ambulances, etc ready, all these things are included here. This does not contradict Tawakkul (trust in Allah), actually this is considered Husn-e-Tadbeer (Good planning). But to attain this through commercial insurance will not be corrected because some of the other points are not in accordance with the Shari'ah, and they amount to gambling, interest and risk.

To attain this through commercial insurance will not be corrected because some of the other points are not in accordance with the Shari'ah, and they amount to gambling, interest and risk.

The insurance company will pay out to the policy holder more than the premiums he had paid. This excess is Riba (interest), the prohibition of which is very clear.

The details are as follows:

1. The insurance company does not know how much they will have to pay because of this contract, because the amount of the loss is unknown. This is called Gharar (risk) and Rasoolullah (Sallallahu Alayhi Wa Sallam) has prohibited a contract with Gharar (risk).
2. Sometimes the policy holder pays all the premiums, but because nothing happens he does not get it back. In this way what ever he has contributed is lost. On the other hand if something does happen then the Insurance company will pay the policy holder much more than the premiums he paid. So at the time of the agreement neither (party) knew who would lose out and who would gain. This is gambling, and gambling is haraam.
3. In life Insurance the agreement is that if the period of the policy expires (i.e. the policy matures) then the insurance company will pay out to the policy holder more than the premiums he had paid. This excess is Riba (interest), the prohibition of which is very clear. Allah Ta'ala has said:

interest, risk and gambling are all impermissible and illegal ways of earning money and Allah Ta'ala has prohibited this.

Based on the above mentioned reasons, notwithstanding the benefits of insurance, the majority of the Fuqahaa (jurists) have classified all forms of Commercial Insurance as impermissible and haraam. The Aalimi Majlis, Fiqhi Islam under the auspices of Raabitah al Aalam al Islami, after much deliberation and introspection, passed the resolution at their meeting in Makkah Muharramah (1398 A.H.–1979 C.E.) and that all types and categories of Commercial Insurance are haraam, whether they have to do with Life Insurance or Trading Goods or anything else.

In December 1983 Pakistan's Islaami Nazriyaati Council, based on the opinion of the majority, gave this decision – “All forms of Insurance Policies are impermissible, invalid, wrong and not binding”. (Report Islaami Nizaam Beema P. 14 – Islaami Nazriyaati Council, Government of Pakistan).

All forms of Insurance Policies are impermissible, invalid, wrong and not binding

Third Party Insurance is also not permissible, but where it is necessary and unavoidable e.g. when one needs to obtain a vehicle license then one can take out this insurance

If a person steals and usurps wealth to help the poor person, nobody will say it is good and permissible, although helping the poor is a good action. It is exactly the same thing with insurance. Those Ulama who praised insurance or extolled its benefits actually praised the objectives of insurance and expressed the desire that they (the objections) would come into existence, or they praised Mutual Insurance. If Commercial Insurance is run like Mutual Insurance and not as a business (i.e. for profit) then it too, together with all its types would be permissible.

Note: Third Party Insurance is also not permissible, but where it is necessary and unavoidable e.g. when one needs to obtain a vehicle license then one can take out this insurance, but should not take any benefits from it.

(Extracted from: (1) Islaam Aur Jadeed Ma'eeshat Wa Tijaarat—Mufti Taqi Uthmaani Saheb

(2) Report—Islaami Nizaam (Insurance)—Islaami Nazriyaat Council—Government of Pakistan).

LESSON 11**PENSION AND PROVIDENT FUND**

Pension and Provident Funds normally operate thus: A portion of the employee's wages or salary is put aside each month into some profitable investment scheme. Eventually, on his death or retirement, a substantial amount is given to his heirs or to him (as the case may be). If this is the case, then there is a bit of explanation necessary with regards to its being Halaal or haraam.

If employment in that company and the work they do is permissible then:

1. If the company places the money into some other permissible investment (company etc) then whatever payout is received will be Halaal, even if that company records it as interest. In the same way if the company uses some impermissible method to increase that money, but the employee has no choice in the matter, and the company gives the employee the money from its account, then that money will also be Halaal.

If the company places the money into some other permissible investment (company etc) then whatever payout is received will be Halaal

If the company invests the money in some impermissible way with the permission of the employee, then whatever he receives more than he had contributed is haraam.

2. If the company invests the money in some impermissible way with the permission of the employee, then whatever he receives more than he had contributed is haraam. To take it and use on himself is not permissible. It is only permissible for him to take that money which he had given. If the employee had not given his permission and the company pays him from its account, then to take the excess is makrooh, and if he goes to get it himself from where it was invested, then taking the excess is haraam.

In the case where the company gives the amount to the employee's heirs (i.e. when he passes away) and it is permissible for them to take it according to the explanation then to determine/ascertain whether it would form part of his inheritance or not. The following has to be taken into consideration:

If money was set aside from the employee's wage/salary then the final payout would be part of

his estate, and would be distributed amongst his heirs according to Shar'ie principles, even if he has named one of his heirs specifically as his beneficiary (in the company records) and if the company sets aside this amount from their side and don't take any portion of the employee's salary/wage then this will be considered a gift from the company and it would be permissible for the person the employee has named as beneficiary to take the money and the rules of meerath (inheritance) would not apply.

If the employee told his company to invest that money for him in a certain place, then from that point onwards he will be regarded as the owner of the money, even though it has not come into his possession as yet.

THE RULING OF ZAKAAT

In the case where it is permissible to accept the payout of the Provident Fund, the following rules apply:

1. If the employee told his company to invest that money for him in a certain place, then from that point onwards he will be regarded as the owner of the money, even though it has not come into his possession as yet. So if he was Saahib-e-Nisaab from before, or because of this amount of money he became Saahib-e-Nisaab, then he will have to give zakaat from this amount as well. It is not right to wait till the end and get the whole lump sum first then pay zakaat. If the employee did not pay zakaat for the money which was accumulating in the fund, for the duration of his employment then when he gets the lump sum it will be waajib for him to pay zakaat for all the years he missed, and if he does not pay it and his death approaches then it is waajib for him to make wasiyat (bequest) for the zakaat of the money from the fund to be paid. If he does not make wasiyat he will be sinning.

2. If the employee did not tell the company anything with regard to the money in the Fund, then he will not be regarded as the owner of that money as far the rules of zakaat go. Therefore he will not have to pay zakaat for the money in the fund. He will not have to add this amount to his zakaatable wealth. If he passes away before being paid out by the fund, then it will not be waajib for him to make wasiyat for the zakaat of the money from the fund.

However from the time he receives his payout after retirement, he will be liable for zakaat on that amount. If he was already Saahib-e-Nisaab, then the amount he receives from the fund will be added to his other zakaatable wealth. If he was not Saahib-e-Nisaab because of the amount received from the Fund, then the day he receives it would be the first day of his zakaat year.

Here is an example of the first case:

A is Saahib-e-Nisaab, and he had his Fund money invested in a particular place, the value of which is

If the employee did not tell the company anything with regard to the money in the Fund, then he will not be regarded as the owner of that money as far the rules of zakaat go.

R600. He calculates his zakaat on the 1st Rajab. If on the 1st Rajab he has R5000 worth of zakaatable wealth then he has to add R600 to it and pay zakaat on R 5600. In the same way he should ascertain the amount he has in the fund and every year pay the zakaat due on it.

Example of the second case.

B did not invest the money he has in the Fund on his own accord. His account with the fund has R600 and he has R 3000 of zakaatable wealth. So he only has to pay zakaat on R 3000. Upon retirement he gets R 25000 and a year passes on his zakaatable wealth and he calculates his zakaat on 1st Safar. At that time if he has the full payout from the fund, and R 5000 of other zakaatable wealth as well, then he has to pay zakaat on R 30 000. If he was not Saahib-e-Nisaab from before, but became Saahib-e-Nisaab when he received his payout from the Fund on the 1st Muharram, then after one year, on the 1st Muharram if he still has some wealth, then he has to give zakaat on whatever he has at that time.

PURCHASING FOREIGN CURRENCY

Hadhrat Mufti Taqi Uthmani has mentioned that the purchasing of foreign currency in exchange for the local one, will NOT fall under the ambit of a “Sarf” transaction. Instead (he states), it will be classified as a transaction wherein the local currency tendered to the bank will be deemed to BE the commodity for sale and the foreign currency will be the price of the commodity. In other words, this will be a credit sale. He goes on to explain that, as the currency involved from both sides (Rands and Dollars for instance) does not fall under the ambit of gold and silver, it is NOT, by nature (in its original context), classified as Thaman.

On the basis of Hadhrat Mufti Saheb’s deduction, since seeing that the foreign currency transaction is NOT a “Sarf” transaction, it follows that taking physical possession of BOTH currencies in the same majlis will NOT be a prerequisite. Yes, it will however be necessary to take possession of at least ONE of the two currencies in the sale majlis, to avoid the complication of.

Taking physical possession of BOTH currencies in the same majlis will NOT be a prerequisite.

In a Hadeeth, Rasoolullah (Sallallahu Alayhi Wa Sallam) has cursed those who consume interest, PAY interest, prepare interest documents or become willful witnesses to interest transactions

BUYING A HOME WITH A BANK LOAN TO AVOID LAND TRANSFER TAX:

Usury and interest have been strictly prohibited and condemned in the Qur'aan and Ahaadeeth. The following verses of the Noble Qur'aan are forthright in their condemnation of transactions involving usury and interest:

“And Allah has permitted trade but prohibited usury.”
(Al-Qur'aan – 2:275)

“O ye who believe! Devour not usury double and multiplied, but fear Allah Ta'ala, so that you may really prosper.” (Al-Qur'aan – 3:130).

In a Hadeeth, Rasoolullah (Sallallahu Alayhi Wa Sallam) has cursed those who consume interest, PAY interest, prepare interest documents or become willful witnesses to interest transactions (Mishkaat – Page 244).

On the basis of Islamic injunctions such as those mentioned above, a Muslim must, as far as possible, avoid any and all forms of interest-related

transactions, whether they involve the consumption or paying of interest.

Although there is an Islamic Principle that states:

i.e. "Necessity warrants the permissibility of prohibited things"; but this necessity refers to a really helpless situation.

In the inquired case, there is no real necessity of taking out a loan because of the fact that the person involved in this case does have sufficient money available in his bank account. He should use that clean money to purchase the home, even though it means that he will have to pay the land-transfer tax. Evasion of the land-transfer tax is not a valid excuse or any such necessity that can justify willfully contracting and entering into a (Riba) transactions.

Thus, taking a loan on interest from the bank in the inquired case, will NOT be permissible.

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Using interest to pay income-tax would be permissible PROVIDED THAT interest money derived from Government Banking

PAYING GOVERNMENT TAXES WITH INTEREST MONEY:

A Muslim who, while remaining within the perimeters of Shari'ah adopts tax-avoidance procedures whereby he does not pay the full amount of oppressive taxes imposed upon him by a government, will Insha Allah not be committing a sin. However, this must be done in a tactful way so as not to tarnish and harm the image of Islam, for instance, he could show a lesser turnover in his books whereby he would then be submitting less income-tax. Or he could for instance pay VAT to the government in the guise of income-tax. In other words, instead of submitting it in the name of VAT, he submits it as income-tax. The end result is the same, as the money still ends up in the government's coffers.

Using interest to pay income-tax would be permissible PROVIDED THAT interest money derived from Government Banking Institutions, is utilized for this purpose. Government Banking Institutions would mean for instance, the Reserve Bank or the Post Office Savings Division. As far as the Reserve Bank is concerned, that would be out of the question, as the

ordinary man in the street cannot do his banking there which is why he does it in privatized Commercial Banks, such as the Standard Bank, Nedbank etc. The interest derived from these Commercial Banks CANNOT be used to pay income tax.

As far as the Post Office is concerned, if a person HAD an account there with interest accumulated over the years, he CAN utilize that interest to pay and offset his income tax. However, this does not imply that a Muslim is allowed to deliberately now go and open an interest-based saving account at the Post Office with the express intention of earning interest in order to pay his income tax. It also does not mean that if he already had an interest generating account with the Post Office, he should continue to operate that account for the purpose of deriving interest to pay his income tax (a Muslim is supposed to immediately close such accounts as it is not permissible to bank on interest). What is meant is that if there was interest lying in the Post Office from an old account (which he previously had opened and which by now should have been closed), and he did not discharge that interest as yet in the proper channels, then he

Interest derived from these Commercial Banks CANNOT be used to pay income tax.

It would be permissible to utilize the interest acquired from the Government itself to offset these oppressive taxes, as one is thereby returning the interest to the same party from where it came

would be allowed to utilize that interest to offset his income tax.

The reason for the difference between Government Banking Institutions and Commercial Banks in that the former's interest can be used for paying such taxes and the latter's cannot, is as follows:

As certain taxes imposed on private individuals by many governments are a form of oppression and injustice, it would be permissible to utilize the interest acquired from the Government itself to offset these oppressive taxes, as one is thereby returning the interest to the same party from where it came (i.e. to the Government), albeit in the guise of income tax etc. In the Commercial Bank scenario, the interest is acquired from one source (Commercial Private Banks) and channelled to another source (i.e. to the Government in lieu of income tax), hence that would not be permissible.

However, a businessman cannot utilize interest money to pay VAT collected from his customers as this is a tax that is collected on the government's behalf from customers. The VAT paid by a customer is basically an Amaanat (trust) given to the businessman to tender to the government. Thus, he cannot pocket the VAT collected from a customer and replace it with interest for tendering to the Government.

A businessman cannot utilize interest money to pay VAT collected from his customers as this is a tax that is collected on the government's behalf from customers.

the retailer (shopkeeper) becomes a link in an interest-based transaction. This is due to the fact that he hands his customer over to the Consumer Credit who in turn charges that customer about 9.5% interest on the amount owing.

LINKING ONE'S BUSINESS TO COMPANIES SUCH AS CONSUMER CREDIT

It appears that the *modus operandi* of the Consumer Credit Organization is in conflict with Islamic Shari'ah. First of all, the retailer (shopkeeper) becomes a link in an interest-based transaction. This is due to the fact that he hands his customer over to the Consumer Credit who in turn charges that customer about 9.5% interest on the amount owing. Although they sometimes term this as "finance charges" it boils down to interest; the only difference is that it is in a different guise, with a fancy name. Secondly, the Consumer Credit Company also levies a further percentage charge (other than the 9.5% interest) onto the gross invoice value which also goes into its coffers. The higher the sale, the greater the benefit for the Consumer Credit. This also basically boils down to an illegal gain. Why should the Credit Corporation get a profit from every sale transaction of the retailer when it has no share or partnership in his business?

Furthermore, the operation of the Credit

Corporation is basically what is termed in Shari'ah as "Hawalah" i.e. an agreement whereby the debtor (the customer) hands over the responsibility of his debt to a third party (in this case, the Consumer Credit), with the understanding that the third party will settle the debtor's debt promptly and then recover it later from him. In Hawalah, the "Muhtaal Alaih", i.e. the third party that takes responsibility of settling the debt (in this case the Consumer Credit) can recover from the "Muheel" (the debtor) only that amount which the "Muhtaal Alaih" (Consumer Credit) settles and pays to the retailer on his (the customer's) behalf, not a cent more. In this case, the "Muhtaal Alaih" (Consumer, Credit) is taking from the "Muheel" (Customer, debtor) subsequently more than the original debt, i.e. the 9.5% interest plus an extra levy. This type of Hawalah will be illegal and the shopkeeper will be party to it. Hence, such a system will not be acceptable in Shari'ah.

If a woman's husband is found to be impotent from the very onset of the marriage, she is entitled to ask for a divorce. If the husband refuses to grant divorce, she may request a qadhi (where a Shar'ie court exists) to annul her marriage. However, in the case where the husband was not impotent from the very beginning and only developed this problem in later life, then the wife does not have any valid grounds to ask for divorce or dissolution of her marriage.

The fact that the wife has given birth to her husband's children, proves that her husband was not initially impotent. Thus, she does not have the right to request for divorce or annulment. She should exercise patience and curb her desires by keeping nafl fasts. According to Hadhrat Moulana Thanwi (Rahmatullah Alayh's) "Al-Heelatun Naajizah", such a woman cannot ask for divorce or annulment of her marriage.

However, Hadhrat Mufti Abdur Raheem Saheb Lachpuri (Rahmatullahi 'Alaihi) has given some leeway in the situation where the wife is a young woman who, in spite of fasting, etc still cannot control her sexual desire and there is genuinely a strong risk of her committing zina. in such a case, the learned Mufti Saheb recommends that the wife should first give her husband some grace to go for treatment and see if he can be cured. If he refuses to go for treatment or, he does go for treatment but it is to no avail, she will then have the right to ask for divorce. If he refuses to give divorce, she should try to tempt him with money by way of Khula, or try other means to procure divorce from him. Refer to Fataawa Rahimiyya, Vol. 5 – Page 251.

SUICIDE

Even though a person has committed suicide which constitutes a major sin in Shari'ah, he will be accorded full burial rites meaning that he will be given a Ghusal (bath), shrouded and salaate-janaazah will also be performed upon him.

Even though a person has committed suicide which constitutes a major sin in Shari'ah, he will be accorded full burial rites meaning that he will be given a Ghusal (bath), shrouded and salaate-janaazah will also be performed upon him.

The person who commits suicide will be buried in a Muslim cemetery and janaazah salaah will be performed upon one that commits suicide.

It is categorically stated in Fataawah Shaami, Vol. 2 – page 211:

“He who kills himself (i.e. commits suicide), even though it be done intentionally, he will be accorded ghusal and salaatul janaazah will also be duly performed upon him.” This is the preferred view for purposes of Fatwa.

It is further stated in Fataawah Aalamghiri: Vol. 1 – Page 163

“And he who takes his own life with pure intent in doing so, he too will be accorded full burial rites and

janaazah salaah will also be performed upon him.” This is the view of Imaam Abu Hanifa (Rahmatullah Alayh) and Imaam Muhammed (Rahmatullah Alayh) and this is the most authentic view.

SUICIDE BOMBINGS

Suicide bombing is not permissible whether on the battlefield to protect the Muslim Army or whether it is carried out targeting civilians.

It is a transaction of twofold benefit wherein the seller is guaranteed full payment of his commodity and the buyer too is given the advantage of purchasing the item of his choice in installments convenient to him.

THE SHAR'IE METHOD OF LAY-BYES

A lay-bye sale is one in which the buyer and seller engage in a business transaction whereby the seller agrees to accomplish the deal on a credit basis with the buyer on condition that the item/commodity purchased will remain with the seller until complete payment thereof. The advantage to the buyer is that he is assured the item of his choice and easy terms of payment as per his convenience.

Hence, it is a transaction of twofold benefit wherein the seller is guaranteed full payment of his commodity and the buyer too is given the advantage of purchasing the item of his choice in installments convenient to him.

Therefore, such a transaction will be considered valid on condition that it has no other Shuroot-e-Faasid (unconditional clauses) attached to it which will undermine the validity of the transaction.

NOTE:

A clause generally attached by certain traders of a limited time period after which the buyer will forfeit his contributions made to date and in turn loose his claim in the item purchased. This will hence not be valid and nullify the legality of such a transaction.

This initial amount taken will not fall in the category of goodwill as the landlord has the right to stipulate any amount and in whatever proportion whether monthly, annually etc as the rental charges for his premises which need not be a fixed rate.

KEY-MONEY, TRADE-NAMES, ROYALTY, LICENSES:

If a landlord, at the time of hiring his premises to a tenant to conduct business therein, takes an initial sum of money which is over and above the monthly rental and in excess of the premiums to be paid, in which will constitute first payment or partial first payment and thereafter stipulates a monthly rental and/or an annual sum that will be due for renting the property (with a probable yearly percentage escalation), then this will be permissible. This initial amount taken will not fall in the category of goodwill as the landlord has the right to stipulate any amount and in whatever proportion whether monthly, annually etc as the rental charges for his premises which need not be a fixed rate. Hence, the initial amount taken will imply first full/partial payment of the amount due as rental for the premises irrespective of what the amount may be, with a lesser amount then stipulated for the months to follow. Therefore, the landlord is entitled to propose such terms of agreement for letting out his property.

It should however be borne in mind that if a tenant/lessee decides to vacate the premises or let out the premises he is occupying to another lessee (i.e. sub-letting), then he will not be entitled to claim an excess amount from him in the name of goodwill or charge and impose an amount that will be over and above the actual rental charged to him.

Nevertheless, if he has made any modifications to the business or spent in improving the image of the business in some way or the other, then he may claim an amount in lieu of that, irrespective of what it may be named or called.

Taking of royalties for trade-names is not permissible. A trade-name is an intangible right i.e. that it is from amongst the **الحقوق المج** for which no physical monetary gain may be claimed or attributed to.

Furthermore, it is not permissible to sell a trade license.

Taking of royalties for trade-names is not permissible

THE STATUS OF SOFTWARE COPYRIGHT IN ISLAM:

Once he becomes the owner, he now has the right to do whatever he wishes to do with it.

The Shar'ie rule that is applicable to copyright of literature and written material should be applicable to the copyright of software as well, which is that when a person buys a book or software product, he would (in terms of Shari'ah) become the owner of it, notwithstanding the fact that the Software Developers and Publishers do not regard the purchaser as the owner of their software. Once he becomes the owner, he now has the right to do whatever he wishes to do with it. He may use, scrap it, make copies for others if he wishes, or even resell it.

This view is based on the conclusions of eminent Ulema such as Hadhrat Mufti Mahmood Hasen Saheb Gangohi (Rahmatullah Alayh) who, amongst others, has opted for the view that copyright is connected with intellectual property which is something intangible and therefore cannot be given the same status as tangible property. Thus, neither will it be permissible to enforce copyright on a product nor will it be permissible to sell copyright and nor will there be any Shar'ie infringement if one

violates the Copyright Law by printing or making copies of the copyrighted product. (Refer to Fataawa Mahmudiyya, Vol. 15 – Page 370). Hadhrat Moulana Thanwi (Rahmatullah Alayh), Hadhrat Mufti Muhammed Shafi Saheb (Rahmatullah Alayh) and Hadhrat Shaikhul Hadeeth Moulana Muhammed Zakariyya (Rahmatullah Alayh) were also opposed to implementation of copyright.

Some Ulema of the Indo-Pak subcontinent are of the view that Copyright Laws should be recognized and implemented on the basis of Shari'ah as well, because the work produced by the author or developer involves hours and hours and sometimes years of arduous labour and much financial investment before it reaches fruition.

Some support for the permissibility of copying software (in spite of the software publisher prohibiting it), can be gleaned from the example of the permissibility of transmitting a Hadeeth acquired from an Ustaadh/Shaiikh who has expressly forbidden his student from narrating the Hadeeth to others. Hence,

it would be preferable (though not entirely forbidden) to abide by and toe the line of government copyright laws by abstaining from the copying of software without prior permission from the developer or publisher.

it is mentioned on page 71 of Muqaddamatu-Ibnis-Salaah towards the end of the book that even if a Shaikh forbids his students from narrating a particular Hadeeth by categorically saying, “You have no permission to narrate this Hadeeth”, then too, it would be permissible for the student to narrate the said Hadeeth. This citation illustrates that one cannot place a restriction and clampdown on intellectual “property”.

This however, is a separate issue that, when the software developer registers his end-product with the government, the person violating the copyright conditions can be prosecuted in terms of government regulations. Due to these constraints, a Muslim should not blemish the name of Islam by openly violating the terms of the copyright law, but should do it discreetly in order to avoid tainting the honour of the Muslim fraternity. On the basis of this factor, it would be preferable (though not entirely forbidden) to abide by and toe the line of government copyright laws by abstaining from the copying of software without prior permission from the developer or publisher.

RASOOLULLAH (SALLALLAHU ALAYHI WA SALLAM)'S PRAYER ACCORDING TO THE HANAFI MATHAB:

The position of the hands in Qiyaam:

Abi Juhaifa narrates that Hadrat Ali (Radhiyallahu Anhu) states: “To place one palm over the other, beneath the navel is from the Sunnah of Salaat.” (Sunan Abi Dawood page 72 – this narration is in the famous edition of Ibn A’rabi reference I’la’us Sunan page 166; Dare Qutni page 286.)

To say Bismillah silently:

Sayyidina Anas (Radhiyallahu Anhu) narrates that: “I read salaah with Rasoolullah (Sallallahu Alayhi Wa Sallam) and Abu Bakr and Umar and Uthman (Radhiyallahu Anhum) and I did not hear any of them read Bismillah loudly. (Al-Rahmaan al-Raheem – Muslim Vol. 1 – page 172).

Not to recite Fatihah behind the Imaam:

Sayyidina Abu Hurairah (Radhiyallahu Anhu) is narrated to have said that Rasoolullah (Sallallahu Alayhi

Abi Juhaifa narrates that Hadrat Ali (Radhiyallahu Anhu) states: “To place one palm over the other, beneath the navel is from the Sunnah of Salaat.”

The Imaam has been appointed to be followed. Thus, when he says the takbeer, you also say it, when he recites, remain silent and when he says, 'Samiallahu liman hamidah', say 'Rabbana lakal hamd'

Wa Sallam) said: "The Imaam has been appointed to be followed. Thus, when he says the takbeer, you also say it, when he recites, remain silent and when he says, 'Samiallahu liman hamidah', say 'Rabbana lakal hamd'" (Nasai Vol. 1 – page 146).

Sayyidina Abu Moosa Ash'ari (Radiyahallahu Anhu) narrates: Rasoolullah (Sallallahu Alayhi Wa Sallam) delivered a sermon in which he outlined our sunnah for us, taught us our salaah and instructed, 'When you perform your salaah straighten your rows then one of you lead the rest in prayer. When he says the takbeer you also say it, when he recites, remain silent and when he reaches 'Ghayril maghdubi alyhim waladhaaleen' say Ameen and Allah will accept your plea" (Muslim Vol. 1 – page 174).

The saying of Aameen silently:

Sayyidina Waa' – il ibn Hajr (Radhiyallahu Anhu) narrated that he performed salaah in the company of Rasoolullah (Sallallahu Alayhi Wa Sallam) who, when reaching 'Ghyril maghdhubi alayhim waladhaaleen', said Aameen keeping his voice

subdued. (Musnad Ahmed Vol. 4 – page 316; Dare Qutni Vol. 1 – page 334).

**Raising the hands only whilst saying takbeer
tahrimah:**

Sayyidina Alqama (Radiyallahu Anhu) reports that Abdullah Ibn Mas'ood (Radhiyallahu Anhu) said: "Shouldn't I perform Rasoolullah (Sallallahu Alayhi Wa Sallam)'s prayer for you? He performed the salaah and did not raise his hands except at the first takbeer." (Nasai Vol. 1- page 158)

**Not to do Jalsa-e-istrahat (rest for a while) between
two rakaats:**

Sayyidina Abu Hurairah (Radhiyallahu Anhu) narrates that Rasoolullah (Sallallahu Alayhi Wa Sallam) used to stand from the sajdah on his feet. (Tirmidhi Vol., 1 – page 64).

To sit on the left foot and to prop up the right:

Sayyiditina Aisha (Radhiyallahu Anha) says that Rasoolullah (Sallallahu Alayhi Wa Sallam) started his salaah with the initial takbeer (she mentions the whole

Sayyidina Abu Hurairah (Radhiyallahu Anhu) narrates that Rasoolullah (Sallallahu Alayhi Wa Sallam) used to stand from the sajdah on his feet.

Sayyidina Abu Saeed Khudri (Radhiyallahu Anhu) narrates: "I heard Rasoolullah (Sallallahu Alayhi Wa Sallam) saying, "There is no salaah after the morning prayer until sunrise and there is no salaah after Asr until sunset."

procedure then) and he sat on his left foot and propped upon his right. (Muslim Vol. 1 – page 194/5).

The sunnah rakaats of Fajr:

Sayyidina Abu Saeed Khudri (Radhiyallahu Anhu) narrates: "I heard Rasoolullah (Sallallahu Alayhi Wa Sallam) saying, 'There is no salaah after the morning prayer until sunrise and there is no salaah after Asr until sunset.'" (Bukhari Vol. 1 – page 82/3)

To read Fajr in the light:

Rafi' Ibn Khudaij (Radhiyallahu Anhu) narrates that he heard Rasoolullah (Sallallahu Alayhi Wa Sallam) say, "Read the Fajr prayer in the light, because doing so has an enormous reward." (Tirmidhi – Page 40).

The Witr Salaat:

Abdullah ibn Abbas (Radhiyallahu Anhu) narrated that Rasoolullah (Sallallahu Alayhi Wa Sallam) would perform three rakaats witr. In the first rakaat he would recite, 'Sabbihisma rabbikal a'ala (Surah A'ala)', "Qul ya ayyuhal kafiroom (Surah

Kafiroon)", in the second and "Qul huwallahu ahad (Surah Ikhlāas)" in the third. (Tirmidhi Vol. 1 – page 106; Nasai Vol. 1 – page 249; Ibn Majah Vol. 1 – page 82).

Not to perform Nafl Salaah before Maghrib:

Sayyidina Ta'oos reports that Sayyidina Ibn Umar (Radhiyallahu Anhu) was asked about the two rakaats before Maghrib. He said, "I have not seen anyone at the time of Rasoolullah (Sallallahu Alayhi Wa Sallam) read them." (Abu Dawood Vol. 1 – page 182).

Not to combine prayers except in the period of Hajj:

Ibn Mas'ood (Radhiyallahu Anhu) narrates: "I never saw Rasoolullah (Sallallahu Alayhi Wa Sallam) perform any salaah out of its time except at Muzdalifah. He joined Maghrib and Esha together and performed Fajr salaah of the next day before its (normal and more preferable) time (his usual habit was to perform it just before sunrise, but here he performed it earlier while it was still dark)." (Bukhari Vol. 1 – page 227; Muslim Vol. 1 – page 417; Tahawi Vol. 1 – page 164).

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The rakaats of Taraweeh:

Yazid Ibn Ruman narrates that the people would perform twenty three Rak'aats (i.e. 20 Rak'aats Taraweeh and 3 Witr) during Ramadhaan in the time of Sayyidina Umar (Radhiyallahu Anhu). (Bayhaqi Vol. 2 – page 496; Muwattah Al Imaam Malik Vol. 1 – page 71).

Six extra Takbeers in the Eid prayers:

Saeed Ibn Al-Aa's asked Abu Moosa Al Ash'ri and Huzaiyfa (Radhiyallahu Anhum), "How many takbeers did Rasoolullah (Sallallahu Alayhi Wa Sallam) do in salaah Al Adha and salaah Al Fitr?"

Abu Moosa (Radhiyallahu Anhu) replied, "He used to do four takbeers in each rakaat the same amount like in salaatul janaazah." (In the first rakaat three optional and one takbeer tahreemah, and in the second rakaat three optional and takbeer for going into ruku). Sayyidina Huzaiyfa (Radhiyallahu Anhu) said, "I verify this". (Abu Dawood Vol. 1 – page 163).

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