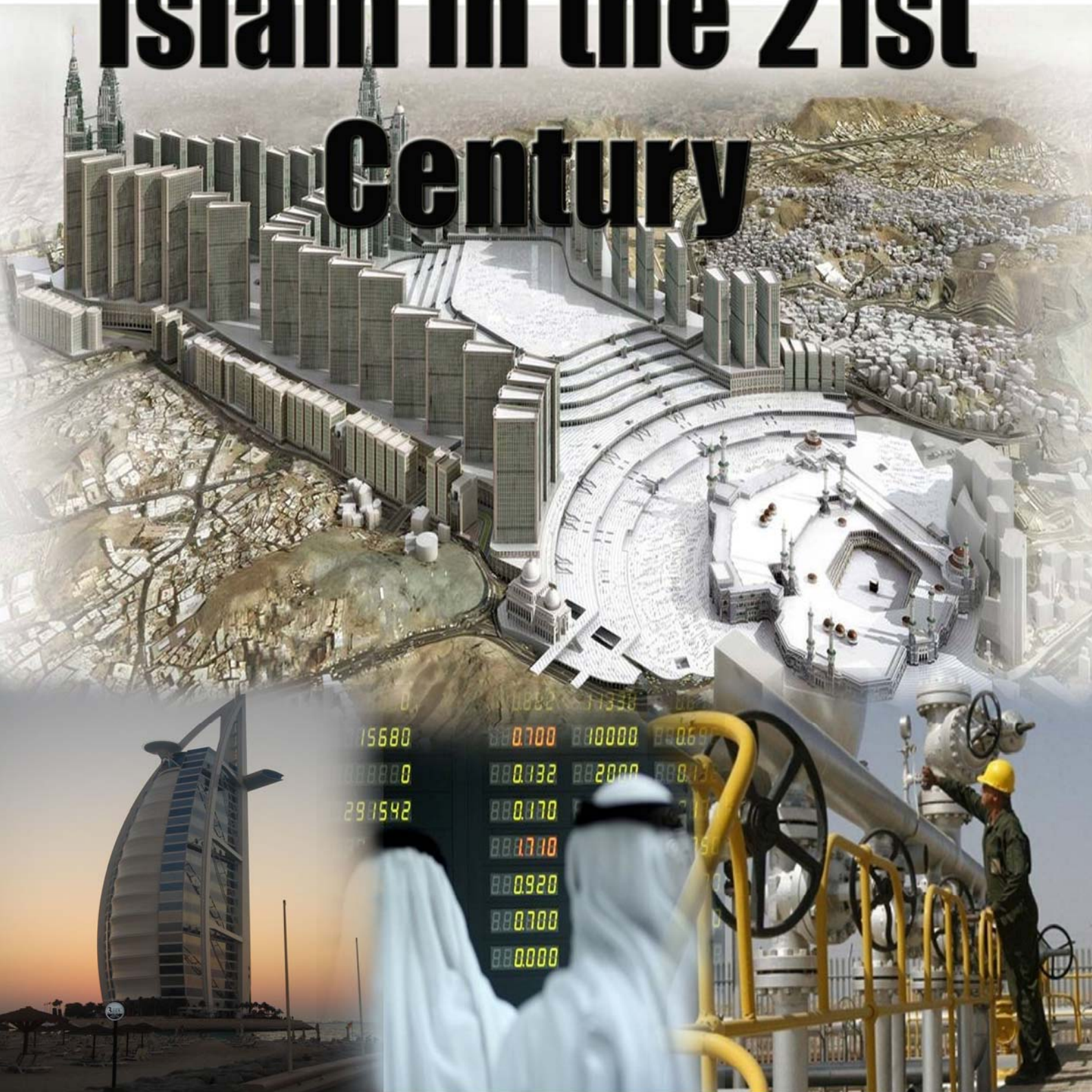


# Islam in the 21st Century



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الر كِتَابٌ أَنْزَلْنَاهُ إِلَيْكَ لِتُخْرِجَ النَّاسَ مِنَ الظُّلُمَاتِ إِلَى النُّورِ بِإِذْنِ  
رَبِّهِمْ إِلَى صِرَاطٍ الْعَزِيزِ الْحَمِيدِ

*“Alif. Lam. Ra. This is a book which we have revealed to you, [O Muhammad], that you might bring mankind out of darkness into the light by the permission of their Lord - to the path of the Exalted in Might, the Praiseworthy.” (Ibrahim, 14:1)*

# Contents

Introduction	4
Secularism	5
Shari'ah Law	8
Social System	11
Abortion	13
Homosexuality	15
Cloning	17
Drug Abuse	21
Defamation	23
Space Travel	25
Intercontinental Ballistic Missiles (ICBM'S)	26
Intellectual Property	28
Nanotechnology	33
Companies	34
Conclusion	37

## Introduction

Since the events of 9/11 and 7/7, Islam and Muslims have increasingly been on the receiving end of a barrage of criticism. Many of the Islamic thoughts and practices have come under unprecedented attack under the banner of Freedom. The caricatures of Prophet Muhammad (Sallallahu 'alaihi wa sallam) and the banning of the Hijab in France are just two examples of the attempts of western secular countries to actively malign Islam. This attack on Islam and Muslims is however not restricted to certain Islamic thoughts and practices. Rather the whole concept of *Shari'ah*, the Islamic legal System, is ferociously attacked. The media portrayal of life under Shari'ah where beating of women, beheadings and lashings are everyday occurrences, are now all too familiar images.

Since the demise of Islam at a state level, the *Shari'ah* has ceased to be the basis of legislation in the Muslim world. What remains of the *Shari'ah* in the Muslim world is only a few scattered laws that are applied haphazardly. This has erroneously given the impression of the unsuitability of *Shari'ah* in the 21<sup>st</sup> century to deal with new issues and to solve modern, day-to-day problems.

This booklet will explore and contrast some of the problems of the 21<sup>st</sup> century and compare the manner in which secularism and Islam attempt to solve them. This booklet will look at how the Shari'ah texts are capable of dealing with any issue, be they social, economic or international. The book will scrutinise the applicability of the shari'ah in the 21<sup>st</sup> century through looking at a variety of 21<sup>st</sup> century issues. A comparison will be made between the *Shari'ah* approach to tackling issues and the secular methodology and its effects.

26<sup>th</sup> September 2009

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## Secularism

The Enlightenment for the West is the equivalent of the revelation of the Qur'an for the Muslims. It was the period in which an intense struggle took place between the Christian Church and the European thinkers and philosophers who wanted the removal of the Church as an authority. It was also a period in which a number of scientific discoveries were made that directly challenged the fundamental teachings of the Church.

The intellectual revolution that took place in Europe eventually led to the complete separation of the Church from the State. Due to the efforts of the philosophers, writers and intellectuals, this struggle comprehensively transformed European thought. Many movements were established that played a great part in the emergence of new opinions about life. Some of the most significant events that occurred were the change of the political and legislative systems of nation states. The spectre of the despot monarchy gradually disappeared to be replaced by republican systems based on representative rule and national sovereignty. This had the effect of triggering the awakening of Europe from its slumber and marked the beginning of the Industrial Revolution.

The European philosophers made self-interest the primary motivation in life. After living under the arbitrary authority of the Church for centuries, man was finally free to live as he pleased. Naturally once freedom was attained, what else could act as a motivator except for benefit and self-interest (famously codified as 'Utilitarian Theory' by Jeremy Bentham).

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The thinkers who called for freedom argued that human beings should be free to pursue their own happiness without facing any form of coercion or undue influence. Historically, in the context of Europe, widespread coercion usually stemmed from a religious authority or a government. As political freedom meant people being free, particularly from religious and government influence, to maximise their personal benefit, it was only natural for a believer in freedom to seek to establish Secularism as the only form of legislation. Political freedom in Secular societies is therefore the right to legislate to maximise individual freedoms. In this case, the question of the existence of a Creator inevitably becomes irrelevant when it comes to politics and legislation.

The US Declaration of Independence of 1776 first established freedom (liberty) as its basis:

**“We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness”**

(The Declaration of Independence, 1776)

The Declaration then continues to elaborate on the principles of a secular government:

**“That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness”.**

(ibid.)

Thus, a government exists to secure the rights of the people. Its purpose is to facilitate their attempts to increase personal benefit (utility).

However, the dilemma secular legislators face is what is beneficial to one person is not necessarily beneficial to another. People’s interests overlap and as a result there exists a constant renegotiation of space, entitlement and privilege. More often than not, the underlying criterion for an action is self-gratification and fulfilment – ‘what’s in it for me?’ A society where an individualistic outlook is common can only decline into a virtual free-for-all, as everyone, including the government, would attempt to take full advantage of life. Freedom therefore leads to people seeking their own benefit and more often than not, those with political and/or financial clout have the upper hand. This produces a host of problems, not least the conflict of peoples’ freedoms.

- Is abortion murder or a women’s right? In this case the conflict of freedom is between the mother and her child.
- Should cannabis be legalised/decriminalised? In this case the conflict of freedom is societal.
- Is education a right or a privilege? Should students be asked to pay fees for University education? In this case the conflict of freedom is national.
- Should one nation invade another nation if it would guarantee oil reserves, a clear strategic advantage and multiple billion-dollar contracts for its industry? Should a dictator be sold arms if it will help boost domestic trade? In these cases the conflict of freedom is international.
- Is it acceptable for countries that aim to produce anti-retroviral drugs to combat HIV/Aids to be threatened with international sanctions if it harms the profits of conglomerates and multinationals? In this case the conflict of freedom is between corporate interests and millions of lives.
- Can there be any excuse for a country to ignore desperate warnings about global warming just because of the potential unpopularity, loss of jobs and economic downturn if significant action was to take place? In this case the conflict of freedom is global.

*Preservation of individual freedoms and ascertaining consent is the basis of Western legislation. Courts in the West are entrusted with preserving the rights of those who believe they have been wronged; the judiciary is entrusted with the responsibility of introducing bills which liberalise society - i.e. all the laws and new issues that contradict liberty are brought into line with the West’s liberal viewpoint.*

Despite the existence of all the conflicts, the preservation of individual freedoms and ascertaining consent is the basis of Western legislation. Courts in the West are entrusted with preserving the rights of those who believe they have been wronged; the judiciary is entrusted with the responsibility of introducing bills which liberalise society - i.e. all the laws and new issues that contradict liberty are brought into line with the West's liberal viewpoint.

## Shari'ah Law

The linguistic meaning of the word Shari'ah is a non-exhaustive source of water from which people satisfy their thirst. The linguistic significance of Shari'ah is that the Islamic laws are effectively a source of guidance. As water is the fundamental basis for life, the Islamic laws are an essential source for guiding human life. Shari'ah is composed of all the laws derived from the legislative sources of Islam. The term *Shari'ah* therefore refers to the all the rules derived from the legislative sources of Islam that cover every action performed by an individual or a society. The term Shari'ah is also a synonym for fiqh.

The discussion of the *Shari'ah* begins with its sources, which in origin is the *Qur'an*. The other legislative source is the sayings of the Prophet Muhammad (Sallallahu 'alaihi wa sallam) which are termed *abadith*. The *abadith* (singular - *hadith*) are a collection of around 600,000 authenticated narrations comprised of the sayings, actions and consent of Prophet Muhammad (Sallallahu 'alaihi wa sallam). A *hadith* is composed of two parts: the *matn* (text) and the *isnad* (chain of reporters).

With regards to specific solutions to problems, it needs to be understood firstly that the Islamic legislation does not proceed upon the same route as Western legislation, where safeguarding individual freedom's is considered the basis of legislation. The *Shari'ah* does not make freedom the subject of discussion; it does not recognise or reject freedom. Hence, the *Shari'ah* does not look at humans from the angle of them undertaking or not undertaking actions on the basis of freedom. Rather it makes the actions of human beings the fundamental subject of discussion. It considers actions to be the result of human beings wanting to satisfy their instincts and needs. Therefore, Islamic legislation has come to give guidance with regard to the actions of human beings.

The Islamic texts came to address men and women in accordance with their natural makeup, taking into account their instincts and organic needs. Whatever the time and place or their regional or racial origin, the nature of human beings remains the same in this respect. A person's innate needs, such as the need for food, clothing, shelter or the instinctual need for survival, justice and security remain constant throughout time, regardless of whether it is the 7th century, 14th century or the 21st century. Allah (swt) states in Qur'an,

اسْتِكْبَارًا فِي الْأَرْضِ وَمَكْرَ السَّيِّئِ وَلَا يَحِيقُ الْمَكْرُ السَّيِّئُ إِلَّا بِأَهْلِهِ فَهَلْ يَنْظُرُونَ إِلَّا سُنَّتَ  
الْأَوَّلِينَ فَلَن تَجِدَ لِسُنَّتِ اللَّهِ تَبْدِيلًا وَلَن تَجِدَ لِسُنَّتِ اللَّهِ تَحْوِيلًا

**“You will not find in the creation of Allah any alteration”** (Al-Fatir, 35:43)

It is also clear from numerous verses of the Qur'an that the issues concerning human beings 1400 years ago, are the same as those that are of concern today:



وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

**“Allah has permitted trade and forbidden usury”** (Al-Baqarah, 2:275)

وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنَّ قَتْلَهُمْ كَانَ خِطْئًا كَبِيرًا

**“Kill not your children for fear of want: We shall provide sustenance for them as well as for you: verily the killing of them is a great sin.”** (Al-Israa, 17:31)

The Prophet Muhammad (Sallallahu ‘alaihi wa sallam) said:

**“The son of Adam has no better right than that he would have a house wherein he may live and a piece of cloth whereby he may hide his nakedness and a piece of bread and some water”** (Tirmidhi)

Also, unlike Secularism which makes the reality and the issue at hand the basis of legislating, Islam makes the reality the subject of legislation; the actual rule is therefore not taken from the reality. All contemporary problems and their solutions are extracted using the existing *Shari’ah* sources. The Islamic legislative process has four fundamental stages:

1. Understanding the reality of the problem
2. Identifying the Islamic texts which address the relevant or similar subject matter
3. To analogise between the current issue and the relevant text to identify similarities and differences
4. The weighing of these differences and similarities to extract a rule for the contemporary problem

Each of these elements is progressively more detailed requiring expertise and experience in Islamic jurisprudence, Islamic sources, Islamic legal maxims, the Arabic language (both pre- and post-revelation), legal definitions and more. The *Qur’an* and *ahadith* were revealed in the form of broad guidelines even when focusing on specific details. The nature of these broad guidelines is that they give the *Qur’an* and *ahadith* general meanings within which collective and detailed issues can be included and from this arise an abundance of general meanings that contain real and perceptible issues. At the same time they are revealed to solve the problems of all humanity, and not of specific individuals. As such, there exist over three hundred general principles (*qawa’id ‘ammah*).

The *Shari’ah* can address an issue in a general manner which means the rule comes with a general meaning such as,

وَأَحَلَّ اللَّهُ الْبَيْعَ

**“...and Allah has permitted trade”** (Al-Baqara, 2:275).

Here the purchase or sale has not been restricted to a certain amount. The *Shari'ah* can also come in a specific manner where it can only be applied upon a reality and nothing more. An example is that of the verse on trade,

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

**“Allah permitted trade and forbade *riba* (interest)”** (Al Baqara, 2:275)

Much of the *Shari'ah* is of general import, but there are specific evidences which restrict the general rule. If something is not allowed it is mentioned in name or description, and if it is allowed it is mentioned generally rather than being listed. Thus Islam permitted the exchange of fruit, cars, chocolate as well as clothes. All these things fall under the original general ruling of trade. However, the trade in certain goods such as pork, alcohol and drugs have specific evidences that exempt them from the general rule of permissibility.

Islam and Secularism, fundamentally have two distinct views on how to deal with societal issues.

There is a general misconception among people that the *Shari'ah*, if applied today, will be unable to deal adequately with the issues of the 21<sup>st</sup> century. To clarify this misconception, what follows is a brief look at a selection of modern issues to highlight the suitability of the *Shar'ah* in the 21<sup>st</sup> century, or indeed in any century.

## Social System

All social systems are constructed to organise the relations between men and women. Whilst in the West, the struggle of women to attain equality with men has symbolized male-female relations, in Islam the relations between men and women are based on a completely different premise.

Western notions of male-female relations are rooted in the struggle the thinkers had with the Church. The Capitalist ideology was established on the ruins of the Feudal system and the traditions and culture upheld by the Church. Because it was impossible to change such traditions overnight, the nations that embraced Secularism and their legislators were (and still are) influenced by the public opinion at the time which means that all that is immoral and wrong in one time period can be completely changed in another period.

Secular ideas on male-female relations continue to be defined by the reality the Western legislators faced during the Enlightenment. This is because one group called for the immediate abandonment of Christian traditions, whilst another group called for removing the old traditions and culture gradually by taking into consideration the reality of the societies and the prevalent culture and traditions at the time. Those who called for the immediate practice of freedom were called Liberals, and those who called for the gradual application of freedom were called Conservatives. Another intermediate group has surfaced between these two groups who were called Moderates. This "Middle Group" was also divided; some of them were more inclined to the Conservatives and were called Rightists, and some of them were more inclined to the Liberals and were called Leftist. Secular societies still have these classifications of groups that continue to influence public opinion.

*Liberal thinkers argued that as long as consent existed between two willing participants then the state is duty bound to protect the individual freedoms being acted upon. It is upon such a basis that Western legislators continue to pass laws i.e. male-female relations are to be regulated by liberalising society through the removal all the Christian traditions that infringe on the right of one to choose how they wish to conduct a relationship with the other gender and now with the same gender.*

The 1960's is considered to be the liberal age as Europe went through an intense struggle to remove all remnants of Christian ideas, especially on social issues such as marriage, homosexuality, sex before marriage, contraception and abortion. Liberal thinkers argued that as long as consent existed between two willing participants then the state is duty bound to protect the individual freedoms being acted upon. It is upon such a basis that Western legislators continue to pass laws - i.e. male-female relations are to be regulated by liberalising society through the removal all the Christian traditions that infringe on the right of one to choose how they wish to conduct a relationship with the other gender and now with the same gender. This is the way Secularism attempts to solve the issue of relations between men and women.

Islam has a completely different philosophy with regard to the topic in hand. The Islamic social system has not developed from a historical prejudice against women and neither is it influenced by public opinions and customs. Islam has a fixed basis upon which male-female relations can be organised.

Allah (swt) in many ayahs of the Qur'an addresses mankind with obligations and recommendations without differentiating between men and women. Islam recognizes that a society cannot continue without the meeting of both sexes and therefore it has institutionalized marriage, which is at the centre of the Islamic social system.

In Islam, marriage is the only relationship by which the survival of the human race is to be maintained. It views the allowing of the procreational instinct to run loose under the guise of individual freedom to be detrimental to humanity and societal life, as is the case in secular societies where there exists outright promiscuity and the statistics for sexual assault, paedophilia and rape are on the rise. The purpose of the procreational instinct in Islam is to produce offspring for the survival of the species. Therefore, the Islamic view of this instinct is oriented towards the survival of the species without any distinction being made between men or women. This is the way the *Shari'ah* views the instinct and it is upon this basis the Islamic social system has been established. Allah (swt) says:

هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا فَلَمَّا تَغَشَّاهَا حَمَلَتْ حَمْلًا خَفِيفًا فَمَرَّتْ بِهِ فَلَمَّا أَثْقَلَتْ دَعَوَا اللَّهَ رَبَّهُمَا لَئِنْ آتَيْتَنَا صَالِحًا لَنُكُونَنَّ مِنَ الشَّاكِرِينَ

***“It is He Who has created you from a single person, and He has created from him his wife, in order that he might enjoy the pleasure of living with her. When he had sexual relations with her, she became pregnant and she carried it about lightly. Then when it became heavy, they both invoked Allah, their Lord: If You give us a good child, indeed we shall be amongst the grateful.”*** (Al-Araf, 7:189)

In this *Qur'anic* verse the basis of the procreational instinct is clearly associated with the preservation of the human race. Islam has restricted sexual relations to marriage only. In this way rules to do with divorce, children, custody, guardianship and societal cooperation are all geared towards achieving the aim Allah (swt) has established for the Islamic social system.

## Abortion

Prior to the development of fertilisation, abortions were forbidden in the West and those who conducted them were considered criminals. The issue of abortion continues to be contentious till this day. Hence we still find that the laws on abortion vary across the Secular world. Even though abortion is easily accessible in the UK, there are many states within America where it is prohibited.

Abortion legislation centres broadly on the following two views:

- Pro-life: which seeks to abolish abortion as it is viewed as murder of an innocent foetus who has the right to life
- Pro-choice: which puts the mother's choice before the life of the foetus

Both views reflect the western value of personal freedom: pro-life focuses on the protection of the child's right to life, whereas the focus of pro-choice is on the mother's freedom to choose what happens to her body, and to the rest of her life.

Legislators in the West have been unable to come to a consensus on the fundamental issue of when the foetus is considered alive. There exist a variety of theories regarding at what point a foetus can be considered 'alive'. If this point was settled then the child's right to life through the idea of personal freedom could not be challenged. Consequently many varying ideas of what constitutes a human being continue to circulate, which include the ability to reason, communicate, to have self motivation and self awareness. It is believed that these aspects would prove the existence of life. Whilst others have contradicted this by stating that none of these would stand in the case of a comatosed individual whose brain and heart would be functioning despite being unconscious for an indefinite period of time.

Both these views reveal the conflicting nature of using the notion of personal freedom as the basis for legislation. Secularists are unable to present any real understanding of the issue and are also incapable of offering any form of justice when dealing with this subject.

In contrast, the Muslim jurists have defined abortion as getting rid of the foetus before completion of the duration of pregnancy. Societal continuance is the foundation of the Islamic social system and as a result, the Islamic perspectives on the termination of a pregnancy depend on the point at which the Ruh (soul) has been put into the foetus.

Imam Muslim narrates from ibn Mas'ud that he said that he heard the Messenger of Allah (Sallallahu 'alaihi wa sallam) saying;

**When 42 nights have passed on the nutfah (mixed male and female discharge of semen), Allah sends an angel to form it. He creates its hearing, vision, skin, flesh and bones. Then the angel says, O Allah! Male or female? Then it will be ordered..."** In another narration, 40 nights was mentioned instead of 42.

The hadith explains that the point at which the soul has been put into the body and therefore it is alive on either 40<sup>th</sup> or 42<sup>nd</sup> night. Subsequently, according to Islam it is forbidden to take the life of the foetus after this point; such as act would be classified as murder. Allah (swt) said:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ

**“And kill not anyone whom Allah has forbidden, except for a just cause.”** (Al-isra, 17:33)

And Allah (swt) said;

وَإِذَا الْمَوْءُودَةُ سُئِلَتْ  
بِأَيِّ ذَنْبٍ قُتِلَتْ

**“And when the female (infant) buried alive shall be questioned. For what crime was she killed”** (At-Takwir, 81:8-9)

In this way, Allah (swt) forbade the abortion of a foetus after a maximum of 42 days, thus ensuring societal continuance. The Islamic texts therefore have a definite answer to the dilemma faced by the Secular societies as to when to consider the foetus alive. As secularists reject the role of revelation in societal issues, they have relied on science to determine when the foetus is alive, however science has been unable to provide anything that can be considered conclusive.

*In this way Allah (swt) forbade the abortion of a foetus after a maximum of 42 days, thus ensuring societal continuance. The Islamic texts therefore have a definite answer to the dilemma faced by the Secular societies as to when to consider the foetus alive.*

Aborting the foetus before the completion of 40 days of pregnancy is Islamically permitted, and there is no punishment for it. This is because it has not yet become a foetus. Hence the *hadith* of aborting the foetus does not apply to it. Islam views the aborting of an embryo before it becomes a foetus as birth control to avoid pregnancy. It is however allowed to abort the foetus in the early stages of formation, or after the *Rub* is given to the foetus, if doctors decide that the continuation of pregnancy will lead to the death of the mother and the foetus. In this case, it is allowed to abort the foetus, and save the life of the mother. Saving lives is something that Islam calls for. This aborting is considered as a treatment, and the Messenger of Allah (Sallallahu ‘alaihi wa sallam) commanded people to seek treatment and cure.

## Homosexuality

Throughout the last 40 years the western world has legalised homosexuality due to the existence of consent and the state not interfering with the private lives of individuals, i.e. individual freedom of actions are matters of private morality. The sexual revolution in the 1960's was the period when many Christian laws inherited from the Church faced an intense attack from liberals who viewed them as being totally at odds with the needs of a post war Europe. Liberals argued that anti-homosexual laws were an infringement on the rights of individuals who chose to partake in such acts. Holland was the first nation to allow homosexual relationships and today a number of nations in Europe permit same sex marriages and their right to adopt children.

Whilst much empirical research has been carried out on homosexual behaviour, all of the justifications for homosexuality are highly disputed by the West itself and are largely speculative. Attempts at linking such behaviour to the biological make-up of humans rests on research conducted on fruit flies. Research into the influence of hormones on sexual orientation rests on tests carried out on animals. Research into innate sexuality has long been exposed as the experiments were carried out on sex offenders. The legalisation of homosexuality rests on the freedom of two consenting adults and for the state to not interfere in the private lives of individuals.

The Social System in Islam came to regulate the relationships between men and women. It organised the satisfaction of the procreational instinct in a manner ensuring that the reason for its creation is met, which is societal continuance.

The procreation instinct can be satisfied in many ways: a man with a women, a man with a man, a woman with a woman or an animal and so on. However, such attempts at satisfaction will not serve the purpose of continuation of human race for which the instinct has been created in humanity unless a man satisfies it with a woman and a woman satisfies it with a man. So the relationship of a man with a woman from the angle of instinctual sexuality is a natural relationship free from any abnormality in the eyes of Islam. It is the only relationship by which the survival of the human race is maintained.

Thus all the Islamic rules in regards to this instinct are oriented towards the survival of the species without making any distinction between men or women. Islam views the pleasure and enjoyment that is obtained by such satisfaction a natural and inevitable matter, whether humanity considers it or not. This is the way Islam views the instinct and it has laid down rules for both men and women upon this basis

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The *Qur'an* confirmed that the basis of the procreational instinct is the preservation of the human race. The result of this is that Islam restricted sexual relations between the male and females to marriage only.

هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا فَلَمَّا تَغَشَّاهَا حَمَلَتْ حَمْلًا خَفِيفًا فَمَرَّتْ بِهِ فَلَمَّا أَثْقَلتْ دَعَوَا اللَّهَ رَبَّهُمَا لَئِنْ آتَيْتَنَا صَالِحًا لَنُكُونَنَّ مِنَ الشَّاكِرِينَ

***“It is He who has created you from a single person, and He has created from him his wife, in order that he might enjoy the pleasure of living with her. When he had sexual relations with her, she became pregnant and she carried it about lightly. Then when it became heavy, they both invoked Allah, their Lord: If You give us a good child, indeed we shall be amongst the grateful.”*** (Al-Araf, 7:189)

Any relationship outside of this is considered a crime and therefore is prescribed a punishment. The other kinds of relations which are external manifestations of the procreation instinct, such as parenthood, childhood, brotherhood, uncle hood, are allowed and considered of the unmarriageable kinship.

The legalisation of Homosexuality in the Western world is based upon a completely different depiction. How male-female relations should be regulated, which gender should have leadership, who should have the right of custody in the case of divorce is not a discussion upon the reality i.e. understanding the reality at hand does not lead one to a conclusion. What would be considered a valid relationship and what type of creature of whichever gender one should sleep with can never be taken from the reality as the reality does not explain this. A man or a woman, when stripped down to their organic needs or atomic or biological structure, do not manifest in themselves with answers of who they have relations with or who they should sleep with. Neither is there any evidence that by looking purely at men and women, we would be able to discern how relations between them should be regulated. Therefore the answer must emanate from some point external to the reality i.e. a belief system or ideology.

Homosexual relations would not achieve the aims of the Islamic Social System (i.e. the continuation of human life) and as a result have been prohibited by Allah (swt).



## Cloning

Cloning is to make a duplicate copy of the original living thing such as a plant, an animal or a human. Human cloning is to make a duplicate copy of the human himself. A particular human can be duplicated by taking a living cell from that human, taking out the nucleus of that cell, and implanting it in a woman's egg after taking out the nucleus of that egg. This is done in a way similar to fertilisation or artificial insemination, by which the nucleus of the cell that was taken from the body of a particular person is inserted in the egg that was taken from a woman, by using special chemicals and a specific electric current to combine the nucleus of the cell with the egg. After they are joined together, the egg (that has the cell's nucleus) is implanted in a woman's womb so that it can reproduce, grow, and divide and form a complete foetus which is then born as in a natural birth.

Every human has billions of cells in his body. Every cell has 46 chromosomes, which is the genetic substance that carries all inherited characteristics of the person, besides the sexual cells, which come from the testicle of a man and the ovary of a woman. Each cell of the sexual cells in both man and woman has only 23 chromosomes, which is half of the total chromosomes in the body cells. In natural fertilisation, the spermatozoa of the man which has 23 chromosomes joins with the ovum of the woman which also has 23 chromosomes. Hence, a total of 46 chromosomes are there, half from the man and half from the woman and, therefore, the baby will take from the characteristics of both the man and the woman. In the cloning procedure, the cell which is taken from the body of a particular person, has 46 chromosomes, which includes all the inherited characteristics of that person. The baby, who is born as a result of the cloning procedure, inherits only the characteristics of the person whose cell's nucleus was used.

Cloning can be done with or without a male, by using body cells and not sexual cells. This can be done without a male, by taking a body cell from a female. The nucleus is extracted, which has 46 chromosomes, i.e. all the inherited characteristics. Then this nucleus is implanted in a woman's egg after the egg's own nucleus has been removed. The egg is then implanted in a woman's womb. After implanting this egg in the woman's womb, it starts to reproduce, divide, grow, and become a foetus. Then, it becomes a full being. When it is born, it will be a duplicate of the female from whom the cell was taken. Therefore, the cloning process in this case has been done in all of its stages without the need for a male.

The aim of cloning in plants and animals is to improve their quality and increase their productivity as well as to find natural cures for many common human diseases which would be more beneficial than relying on chemical drugs that have harmful side effects. The improvement in the quality of plants and animals and the increase of productivity is not prohibited from a *Shari'ah* perspective. Also, the use of plants and animal cloning to cure human diseases, especially acute ones, is allowed in Islam. It is even recommended because seeking a cure for illness is recommended and manufacturing medicine for curing is recommended. Therefore, it is allowed to use the cloning process to improve the quality of plants and to increase their productivity. It is also allowed to use the cloning process to improve the quality of cows, sheep, camels, horses, and other animals and to increase their productivity and to utilise this to cure many of the human diseases, especially the acute ones.

Imam Ahmad narrates from Anas that the Prophet (Sallallahu 'alaihi wa sallam) said;

**“Allah (swt) has created the illness and the cure. So seek a cure”**

Abu Dawud and Ibn Majah have also narrated from Usama bin Sharik, who said: I was with the Messenger when (Bedouins) came to him and asked: **“O prophet, should we seek a cure for our illness?”** He (Sallallahu ‘alaihi wa sallam) said: **“Yes. O servant of Allah, seek a cure. Allah Almighty did not create a disease without creating a cure for it.”**

The cloning of humans through the manipulation of cells has still not been achieved and much controversy surrounds whether such a development should be legalised. The arguments for cloning include the perceived benefits such as fertility treatment that allows parents who are both infertile to have children with at least some of their DNA in their offspring. Whilst those against cloning argue primarily from a religious perspective that cloning would distort generation lines and family relationships as well as limit genetic differentiation which ensures that human life is largely unique.

Whilst Islam looks upon the male-female relations from a societal continuance perspective, it does not allow this at any cost. Islam has regulated how this should be achieved. Whilst the process of cloning can increase the population extensively, cloned humans represent a number of problems.

1. This method contradicts the way Allah (swt) has chosen for mankind to produce their offspring.

Allah (swt) says:

وَأَنَّهُ خَلَقَ الزَّوْجَيْنِ الذَّكَرَ وَالْأُنثَى  
مِنْ نُطْفَةٍ إِذَا تُمْنَى

**“And that He (Allah) created the pairs, male and female. From Nutfah (drops of semen – male and female discharges) when it is emitted.”** (An-Najm, 53:45-46)

And He (swt) says;

أَلَمْ يَكُ نُطْفَةً مِّن مَّنِيٍّ يُمْنَى  
ثُمَّ كَانَ عَلَقَةً فَخَلَقَ فَسَوَّى  
فَجَعَلَ مِنْهُ الزَّوْجَيْنِ الذَّكَرَ وَالْأُنثَى

**“Was he not a Nutfah (drops of semen) poured forth? Then he became a clot; then (Allah) shaped and fashioned (him) in due proportion. And made him in two sexes, male and female.”** (Al-Qiyamah, 75:37-39)

2. The children who are born out of cloning females, without a male, have no fathers. In addition, they will not have mothers if the egg that was merged with the nucleus of the cell was placed in the womb of a female different from that female whose egg was used in the cloning process. This is the case because the female whose womb was used to implant the egg is no more than a place to house the egg. This will lead to the loss of that human, where he has no father and no mother. This contradicts the saying of Allah ta'ala,

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا  
وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

**“O mankind! We have created you from a male and a female.”** (*Al-Hujurat*, 49:13)

and also His (swt) saying;

ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ

**“Call them by the names of their fathers, that is more just in the sight of Allah.”** (*Al-Abzab*, 33:5)

3. Loss of kinship. Islam has obligated preserving affinity and maintaining it. Ibn Abbas said that the Prophet of Allah (Sallallahu ‘alaihi wa sallam) said,

**“Whoever claims relationship by birth to other than his father or elonged to other than those he belongs to, then the curse of Allah, the Angels, and all the people be upon him.”** (Narrated by Ibn Majah).

Abi ‘Uthman an-Nahri said that he heard Sa’d and Abu Bakrah each of them saying that they had heard and understood from Muhammad (Sallallahu ‘alaihi wa sallam) saying,

**“Anyone who makes a claim for somebody other than his father and he knows that he is not his father, then Paradise is forbidden for him.”** (Narrated by Ibn Majah).

Abu Hurayrah also narrated that he heard the Prophet of Allah saying (when the verse of cursing was revealed),

**“Any woman who introduced to some people an offspring that does not belong to them, then she has nothing to do with Allah and she will not enter Paradise; and any man who denies his son while looking at him, Allah will not reveal Himself to him and Allah will disgrace him in front of the first and last generations.”** (Narrated by Al-Darimi)

4. The cloning which aims at producing people who are outstanding in terms of their intelligence, strength, health, and beauty would mean choosing the people with characteristics among the males and the females regardless of whether they were married or not. As a result, the cells would be taken from the males who had the required characteristics, and the eggs would be taken from selected women and implanted in selected women. This would lead to the kinship being lost and mixed.
5. The production of children through cloning prevents applying many of the *Shari'i* rules, such as the rules of marriage, kinship, alimony, fatherhood, sonship, inheritance, custody, *Maharim* and *'Usbat* (forbidden degrees of consanguinity) in addition to many other *Shari'i* rules. The affinity would get mixed and would be lost. This goes against the natural way that Allah (swt) has created people, in terms of reproduction. This is an evil process and it would change the structure of society. Therefore, human cloning is *Haram* (forbidden) from a *Shari'i* perspective.

Islam however would permit foetal cloning if the sperm of the father and egg of the mother have been combined within the womb to create a zygote. When this zygote can be divided into many cells, where each cell is able to grow into a foetus, these cells would just be the exact copies of the original zygote. If this zygote is left within in the original mother's womb then it would be permissible. However, if it is implanted in another woman's womb it would be considered *Haram* due to the loss of kinship.

Although cloning would achieve the aims of the Islamic social system, it would be through the loss of kinship and for this reason Islam has prohibited this method of societal continuance, whatever the perceived benefits maybe.

## Drug Abuse

Drug abuse is a major problem across the world. Although debates regarding solutions continue to grow in the West, they ultimately lead to nowhere and the problem of drug abuse continues to increase. The problem lies in the conflict between the liberal assumption that no one has the moral right to decide what another person can and cannot do with his life and the reality of the problem of drug abuse that has forced secular governments to intervene by bringing in various pieces of legislation to deal with the issue. This conflict has led to differences in the drug abuse policy of various secular countries. In Germany in 1994, for example, the Federal Constitutional Court ruled that drug addiction was not a crime, as was the possession of “*small amounts*” of drugs for personal use. In 2000 the Narcotic Law was changed to allow for “*supervised*” drug-injection rooms. In Sweden, the drug policy has gradually turned from a policy of leniency of the 1960s towards a policy of zero tolerance against all illicit drug use. The official aim is to create a drug free society. Similarly the punishment attached to drug abuse differs from one secular country to another. Currently in the UK penalties for “possession” of Class A drugs may include up to seven years in prison or an unlimited fine, or both. Whereas penalties for “dealing in” Class A drugs can include up to life in prison or an unlimited fine, or both. In Sweden penalties range from fines for minor drug offences and up to a 10 year prison sentences for “aggravated” offences. The Secular Law with its concept of freedom has not been able to deal with the problem of drug abuse in society. The policies and laws of secular countries therefore are constantly being modified to deal with this problem that is only going to get worse.

In contrast, the *Shari'ah* replaces the notion of ‘freedom’ with the notion of responsibility and accountability. Allah (swt) states in the Qur’an:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ  
لَعَلَّكُمْ تُفْلِحُونَ

**“O You who believe! Intoxicants and gambling, (dedication of) stones and (divination by) arrows are an abomination of Satan’s handiwork. Avoid (such abominations) that you may prosper.”** (*Al-Maaida*, 5:90)

Allah (swt) thereafter states in the next verse:

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ  
وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ

**“Satan’s plan is to sow hatred and enmity amongst you with intoxicants and gambling, and to hamper you from the remembrance of Allah and from prayer. Will you not give up?”** (*Al-Maaida*, 5:91)

There are also numerous ahadith prohibiting the consumption of intoxicants. Ibn Umar (ra) reported that the Messenger of Allah (Sallallahu 'alaihi wa sallam) said, **“Every intoxicant is khamr (wine) and every intoxicant is Haraam (unlawful).”** (Muslim).

The *Shari'ah* also eradicates from the root the never-ending debate that exists in the secular societies with regard to the amount of drug intake that should be legalized as well as how best to classify certain drugs as being most/least harmful. Jabir (ra) narrated that the Messenger of Allah (Sallallahu 'alaihi wa sallam) said: **“Whatever intoxicates in a greater quantity is also unlawful in its smaller quantity.”** (Tirmidhi, Abu Dawood and Ibn Majah)

Umm Salmah (ra) narrated that the Messenger of Allah (Sallallahu 'alaihi wa sallam) prohibited every intoxicant and Mufattir (anything which excites and irritates the mind, body and heart). (Abu Dawood)

The scholars have also written extensively on the legal punishments related to the consumption of drugs. Imam Mawardee has stressed that by consuming plants, which cause over-excitement (intoxication), legal punishment of 80 lashes will become necessary. Similarly, Imam Shafee', Imam Malik and Imam Hanbal state that consuming anything intoxicating, however small the amount, will bring the legal punishment of 80 lashes to the person. Since it is the duty of the state to protect the minds of its citizens by outlawing substances that befog the mind, the state will enforce such punishments on those guilty of the crime regardless of whether they are Muslim or Non Muslim. The aim is to protect the individual as well as to eradicate the social problems that arise as a result of the consumption of intoxicants. The *Shari'ah* laws are explicit and consistent on the issue of drugs consumption and are not influenced or in any way shaped by the circumstances. Also there is no discrepancy as is the case with Secular Law, between the individual's viewpoint of personal freedom and the stand the state is forced to take on the issue to eradicate the problem.

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## Defamation

All societies require both men and women to cooperate and contribute towards the aims of the ideology adopted. Any lies or slander against any individual would have a detrimental effect on the person's standing in society and with others who doubt the person's sincerity.

Western legislation relating to defamation is derived from Roman jurisprudence, where it was deemed important to be able to discuss an individual's character but not to the point of needless pain or injury.

Current defamation laws fall into two categories:

1. Where an individual has been lied about through some kind speech, and
2. Libel where the lie was conducted through a written form.

Although Freedom of Speech is at the heart of Secular societies, we find that there are numerous limits that are placed upon it. Article 17 of the United Nations International Covenant on Civil and Political Rights, for instance, states that::

- 1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation, and
- 2) Everyone has the right to the protection of the law against such interference or attacks.

*The underlying tension between the principle of Freedom of Speech and the existence of defamation laws which are seen to limit free speech in society has led to Secular Law, when implemented, to shift from one stand to the other depending on the situation. So despite having racial and religious defamation laws, many Secular countries condemn justified criticism of the atrocities committed by the state of Israel against the Palestinians by referring to them as anti-Semitic and support publication of defamatory material against Islam and Muslims under the banner of 'Freedom of Speech'.*

Similarly, Article 10 of European Convention on Human Rights allows restrictions on Freedom of Speech which are necessary for the protection of the reputation or the rights of others.

This conflict between Freedom of Speech and the need for defamation laws has led to inconsistency in the way the Secular Law deals with defamation. Thus, compared to other secular countries such as the United Kingdom, the United States' defamation laws are considered less friendly towards the victim. This is mainly due to the protection offered to US citizens by the First Amendment of the constitution which guarantees free speech rights to all citizens and has led to restrictions in the legal options available to the aggrieved party. The British courts do not have such an amendment to consider and apply the way that the US courts do. Therefore, many questionable statements that would be actionable in the UK will not even be considered in the US. Also there exists a stark difference between the damage awards that are offered by different secular societies. Unlike other European countries, in UK all actions for defamation are tried with juries. The juries also decide the amount of damages to be awarded to the claimant. The relatively high damage awards available in English courts compared to awards given in Continental Europe is

due in large part to the jury system that is not used in such cases on the continent.

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In contrast, under the Shari'ah Law, clear defamation laws exist that are placed in order to preserve the society at large. Shari'ah Law protects the honour of its citizens, Muslims and Non-Muslims alike, by punishing those who spread slander against them. The concept of Freedom of Speech is not considered sacred per se and therefore protecting the honour of the citizens is given preference over Freedom of Speech without there being any ambiguity between theory and practice. Islam does not look at such an issue as a balance between good reporting and freedom of speech. Islam views defamation as when an individual's honour or dignity has been attacked. This form of attack can be done verbally ranging from a gathering to a TV discussion or in written form including letters to widely circulated mediums. Islam forbids all such acts for the protection of society and the honour of people. Islam prescribes severe punishments for such acts which include lashing or jail from a month to two years.

Those living under the *Shari'ah* in the Khilafah are free to express their views as long as this does not involve defamatory speech, racial incitement, insulting other people's beliefs or propagating issues forbidden by the *Shari'ah* such as pornography, adultery or the consumption of intoxicants. Therefore, the *Shari'ah* does not give anybody the right to use abusive and offensive language in the name of criticism. With regard to the beliefs of the Non-Muslims, the Qur'an states:

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِن دُونِ اللَّهِ

***"Do not abuse those they appeal to instead of God"*** (*Al-An'aam*, 6:108)

Similarly, the meaning of the Qur'anic verse:

لَا إِكْرَاهَ فِي الدِّينِ

***"There is no compulsion in religion"*** (*Al-Baqara*, 2:256)

ensures the right of Non-Muslims to practise their religion without being ridiculed is protected.



## Space Travel

Space travel began during the era of intense competition between the US and USSR when they were competing with each other for global supremacy. Whilst many movies have presented space as a fantasy in search for extra terrestrial life, the budgets of NASA and the ESA (European Space Agency) reveal a staggering \$17 billion dollars and 3 billion Euros in costs for what seems to be an expensive hobby.

Space, historically has played an important role in advancing technological development. Every day technologies such as weather forecasting, remote sensing, GPS systems, satellite television, and some long distance communications systems critically rely on space infrastructure. Of sciences, most notably Astronomy and Earth sciences (via remote sensing) have benefited from the developments and exploration of space.

Alongside this, life-saving items such as medical equipments (including pacemakers, miniature heart pumps, implantable insulin) and even fire alarms have been created to solve the problems that astronauts faced during space travel. This enabled the native companies to be at the forefront of technological advancements which can be made into an extremely profitable business, further boosting and even driving economies.

The nations that developed space programmes have ensured that space based technology filters down to consumer industries. This has led to the development of satellites which are widely used to provide support for military or security related activities. Developing satellites helps navigate guidance based weapons systems and aids the development of telecommunications. Such developments act as a strong deterrent to other nations who have designs on other parts of the world.

Islam, like any other comprehensive ideological worldview, has a view towards science as the *Shari'ah* texts came to deal with all types of matters that humans face. Islam views technology, industry and material tools as a universal matter - i.e. it is something which is common to all people and does not change according to the existence of different beliefs, places or times. Islam views all tools, techniques and inventions as something that can be adopted because it is not a result of any foreign thought, but rather is a result of material progress. For this reason, Islam not only permits space travel but also encourages it.

## Intercontinental ballistic missiles (ICBM's)

Rockets were initially developed and used for great destruction by the Nazis. When WW2 ended, the USSR, Britain and the US scrambled across German territory to acquire all Nazi technology they could get their hands on. The same rockets that were designed to rain down on Britain were then used by scientists as research vehicles for developing the new technology further. The V-2 evolved into the American Redstone rocket used in the early space program. The space race resulted in more powerful rockets being developed where targets could be hit from large distances and today are critical as forms of deterrents.

The initial view in Islam is that in generality all objects are permitted. However, their use has been restricted as all actions require a *Shari'ah* evidence. Although Intercontinental Ballistic Missiles (ICBMs) are allowed in Islam, how they are to be used would require knowledge of the *Shari'ah* rule. ICBMs could be used for reasons ranging from legitimate deterrent measures to the illegitimate killing of innocent civilians. Islam permits the study and use of medicine, engineering, maths, astronomy, chemistry, physics, agriculture, industry, communications including the internet, and the science of navigation and geography. This includes what results from them such as industry, tools, machinery and factories. Also included in this would be industries, whether military or not, such as heavy industry (manufacture of tanks, aeroplanes, rockets, satellites, nuclear technology, hydrogen, electronic or chemical bombs, tractors, lorries, trains and steamships) as well as consumer industries and the manufacture of laboratory instruments, medical instruments, agricultural tools, furniture, carpets and consumer products such as the TV, DVD and Playstation etc. The point being illustrated here is that all objects we know of past, present and future are allowed without restriction unless *Shari'ah* evidence exists to definitively disallow it.

Islam views all the material matters which include the sciences, technology and industry, as merely the study of the reality and a study of how matter can be manipulated to improve the condition and living standards of humanity. This is the view of Islam on science and all its branches. The *Shari'ah* addressed this via numerous verses.

هُوَ الَّذِي خَلَقَ لَكُمْ مَّا فِي الْأَرْضِ

***“It is He Who created for you all that is in the earth.”*** (Al-Baqarah, 2:29)

and

أَلَمْ تَرَوْا أَنَّ اللَّهَ سَخَّرَ لَكُمْ مَّا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَأَسْبَغَ عَلَيْكُمْ نِعْمَهُ ظَاهِرَةً وَبَاطِنَةً  
وَمِنَ النَّاسِ مَن يُجَادِلُ فِي اللَّهِ بِغَيْرِ عِلْمٍ وَلَا هُدًى وَلَا كِتَابٍ مُّنِيرٍ

***“Do you not see how Allah has made serviceable to you whatsoever is in the skies and whatsoever is in the earth, and He has loaded you with His favours, both the open and the hidden.”*** (Luqman, 31:20)

and

الَّذِي جَعَلَ لَكُمُ الْأَرْضَ فِرَاشًا وَالسَّمَاءَ بِنَاءً وَأَنْزَلَ مِنَ السَّمَاءِ مَاءً فَأَخْرَجَ بِهِ مِنَ الثَّمَرَاتِ رِزْقًا لَكُمْ فَلَا تَجْعَلُوا لِلَّهِ أَنْدَادًا وَأَنْتُمْ تَعْلَمُونَ

*“Who has appointed the earth a resting-place for you, and the sky a canopy; and caused water to pour down from the sky, thereby producing fruits as food for you.” (Al-Baqarah, 2:22)*

and

وَنَزَّلْنَا مِنَ السَّمَاءِ مَاءً مُبَارَكًا فَأَنْبَتْنَا بِهِ جَنَّاتٍ وَحَبَّ الْحَصِيدِ وَالنَّخْلَ بَاسِقَاتٍ لَهَا طَلْعٌ نَضِيدٌ رِزْقًا لِلْعِبَادِ وَأَحْيَيْنَا بِهِ بَلَدَةً مَيِّتًا كَذَلِكَ الْخُرُوجُ

*“And We send down from the sky blessed water whereby We give growth to gardens and the grain of crops. And lofty date palms with ranged clusters. Provision (made) for men...” (Qaf, 50:9-11)*

These texts allow the general use of objects and materials that are found on or in the earth. From this is derived the Islamic *qaida* (principle): *“All objects are allowed unless Shari’ah evidence prohibits it.”*

## Intellectual Property

The Industrial Revolution in the 18<sup>th</sup> century was a significant landmark for the elevation of the Western ideological nations. Advances in technology, engineering, medicine, and science influenced all aspects of life, symbolising the transformation of industry and the transition of an artisan society towards one of mass production.

The idea of protecting intellectual property arose in the shade of the Industrial Revolution. The industrialist nations concluded the Paris Agreement for the protection of intellectual property in 1883, and the Bern agreement of 1886. Following them were no less than twenty other agreements. Then the World Intellectual Property Organisation (WIPO) was founded to oversee these agreements and guard them. In 1995 the World Trade Organisation adopted the idea of protecting intellectual property and so WIPO became part of the WTO. Thus, the WTO stipulated to the states that wished to join it that they must comply with the protection of intellectual property and pass laws binding on their citizens so as to protect the intellectual property in their lands.

In the words of the WIPO itself:

*“The need for international protection of intellectual property became evident when foreign exhibitors refused to attend the International Exhibition of Inventions in Vienna in 1873 because they were afraid their ideas would be stolen and exploited commercially in other countries”* (<http://www.wipo.int>)

Essentially the question that arose was related to the apparent plagiarism of someone's idea. In other words, does an idea belong to anyone? Can someone benefit from someone else's idea? Is there any inherent value in an idea? Can any individual control the use, or non-use of an idea or invention?

The laws protecting intellectual property, up until now, give the individual the right to protect an invention and grant power of disposal and prevent others from using this invention without permission. The governments of all nations undertake the protection of this right and punish anyone who may transgress it during the lifetime of the individual, or even tens of years after the inventor's death. The protection laws also include the 'inventor' companies.

In the context of intellectual property, what is meant by the 'invention' is the idea or knowledge that one's mind has arrived at which has not been discovered by anyone before. The most significant inventions are regarding knowledge used in the manufacture and production of goods and services, or simply 'technology'.

The laws of intellectual property, very broadly, embody the legal rights that result from intellectual activity in the industrial, scientific, literary and artistic fields. The laws of protecting intellectual property give the individual the right to protect an invention, granting the power to dispose of it and prevent others from using this invention without permission. This means that another person cannot come along and take science forward from where it is. A newcomer has to re-design and re-invent from scratch, rather than build on what already exists. As an example, only Microsoft can further develop 'Windows' (the operating system of the majority of personal computers on the planet). No one else can

collaborate and build on the innovations and code already there, hence, there is greater interest in 'Open Source' software.

This can also be seen if a person buys a book or a movie that is copyright protected or if a life-saving anti-retroviral drug for HIV is discovered. All rights belong to the patent-holder who alone has the right to impose restrictions on the sale, consumption, or utilisation of the product.

Intellectual property is divided into two categories:

- a. Industrial property: This includes inventions (patents), trademarks, industrial designs, etc.
- b. Copyright: This includes literary and artistic works such as novels, poems and plays, films, musical works, etc.

### **Inventions (patents)**

A patent is a monopoly given by a government that confers exclusive rights upon the creator of an invention the sole right to make, use, and sell that invention for a set period of time.

It is intended to prevent mechanical inventions, chemical processes etc. from being copied. A patent allows the holder to exclude anyone else from making, using or selling the 'invention' for up to twenty years, although this can be, and often has been, extended by clever manoeuvring for up to thirty years or even longer.

A patent provides protection for the invention to the owner of the patent. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. These patent rights are usually enforced in a court, which, in most systems, holds the authority to stop patent infringement.

A patent owner has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms.

### **Trademarks**

A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise.

The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets the consumers' needs.

A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorise another to use it in return for payment. Trademark protection is enforced by the courts, which in most systems have the authority to block trademark infringement.

## Copyright and Related Rights

Copyright is a legal term describing rights given to creators for their literary and artistic works. It deals with printed publications, sound and television broadcasting and even computerised systems for the storage and retrieval of information. The original creators of works protected by copyright, and their heirs, have certain basic rights. They hold the exclusive right to use or authorise others to use the work on agreed terms.

This is the history and reality of intellectual property. Therefore what is required is the *Shari'ah* rule for ownership of sensed and tangible goods such as a trademark and a book and the non-tangible such as a scientific theory and an idea of an invention stored in the mind of a scientist. That is to say, what are the *Shari'ah* rules relating to the private ownership of assets and thoughts?

Islam has organised ownership by considering it an aspect of the survival instinct. Thus, it legitimised ownership for the Muslim to satisfy this instinct, which will ensure survival and a respectable life. Therefore, it allowed him to own most assets such as cattle, houses and the produce of the land. It forbade him from owning certain assets such as whisky, bacon and crack cocaine. Similarly, Islam encouraged him to use his intellect and seek knowledge and permitted him to receive payment for teaching others. It legislated means that permit ownership such as selling, hiring and inheritance. It forbade him from utilising other means such as usury and gambling.

Ownership in Islam is the permission given by the Legislator to people to benefit from the asset. As for the private ownership, it is a *Shari'ah* rule valued by the asset or the benefit ascribed to the individual, thus enabling him to benefit from the asset itself or taking a compensation for it. Private ownership in Islam cannot be asserted as valid unless proven by the *Shari'ah* rule, and approved of its means of ownership. Thus, the right to own a thing does not arise from the thing itself or from the fact that it is beneficial. Rather it only arises from the permission of the Legislator to own it by one of the legitimate means of ownership, such as selling or receiving a gift.

Islam has given the individual the authority over the thing that he owns. It enabled him to freely dispose of it and benefit from what he owns according to the *Shari'ah* rules. It also obliged the Islamic State to protect private ownership. It laid down punishments to deter those who infringe upon the ownership of others.

In regards to intellectual property specifically, there are two types of private ownership. One of them is sensed and tangible such as a trademark and a book. The second is sensed but not tangible such as a scientific theory or an idea of an invention stored in the mind of a scientist. The ownership of the trademark is allowed, thus an individual can own it and benefit from it by utilising it or selling it. The Islamic State is obliged to protect this right of the individual. One will be able to freely dispose of it, and others will be prevented from infringing upon this right. This is because the trademark has a material value in Islam since it is part of the trade allowed by the *Shari'ah*. The trademark is an invented sign placed by the trader or manufacturer on products to distinguish them from the products of others, which assists the purchasers or consumers to recognise them. This definition does not include the trademarks that have not been used yet. This is different from Legislation in Europe, which have defined them as: "Any mark that was used or was intended to be

used". This is because the value of the trademark results from it being part of an existing trade. If one sells it to someone else, its benefit and rights of disposal are transferred to the new owner. The ownership of a scientific theory or an idea of an invention where the owner has not written down on paper or recorded on a disk/cassette, is initially the ownership of its owner. It is allowed for one to sell it or inform someone else about it if it has a value in Islam. If one does that then it is allowed for the one who then possesses it to legitimately dispose of it without any restriction from the first owner according to the rules of the *Shari'ah*. This rule also applies to anyone who buys a book, disk or cassette, which contains an intellectual subject, whether scientific or literary. One also has the right to read it and benefit from whatever information that may be in it. One has the right to dispose of it by copying, selling or donating it to someone. However, one is not allowed to ascribe the scientific subject to anyone other than the one who originated it, otherwise one would have made a lie and forgery both of which are prohibited by Islam. Thus, respecting intellectual property is an ethical right, which is realised when the thought is ascribed to the one who originated it and not by preventing others from using it without permission.

As for the conditions which have allowed the authors of books, programs, and inventors to stipulate in the name of intellectual protection such as the publishing rights, and the patent on an invention; these are not *Shari'ah* conditions. This is because the requirements of the contract of sale in Islam are different: just as it gives the purchaser the right to own it, it also gives the right to dispose of what is owned. Any condition that contradicts the requirements of the contract of sale, the purchaser is free not to observe it, even if there are a hundred conditions. As long as the conditions of protecting intellectual property make the use of the sold asset restricted to one sort of benefit to the exclusion of another, then they are invalid conditions and contrary to Islam. This is because it contradicts the requirement of contracts in Islam of selling, which enables the purchaser to freely dispose of, and benefit from, the asset in any legitimate manner such as selling, trade, gift etc. Therefore, there is no such thing in Islam as protection of publishing rights, copyrights and patents. Rather they are permissible rights. Thus, the thinker, scholar or inventor of a program owns his knowledge as long as his knowledge is with him and he has not taught it to others. However, once the knowledge goes out to others through teaching, selling, etc., then the knowledge is no more the thinker's property. This is because it went out from ownership once sold. So the thinker does not possess the right to prevent others from freely disposing of it after its ownership has been transferred to them.

In summary:

- Ownership in Islam is the permission of the Legislator for one to benefit from an asset. Private ownership is determined by the *Shari'ah* rule; this ascribes an asset or a benefit to an individual, thus enabling one to benefit from the asset itself. Thus, the right to own a thing does not arise from the thing itself or from the fact that it is beneficial as in the Capitalist model.
- Ownership in Islam means the right of disposal. The individual has authority over the thing that he owns. Islam enabled him to freely dispose of it and benefit from what he owns according to the *Shari'ah* rules. It also obliged the Islamic State to protect private ownership and laid down punishments to deter those who infringe upon the ownership of others.

- Thoughts are not subject to ownership. However every idea originates from a mind, hence the mind is the initial 'home' for any particular thought from the perspective of reality. Thus one can ignore it or dispense of it seeking a material value. However, once dispensed it cannot be subjected to copyright (as this is an invalid contract) or patent (as this is not subject to ownership according to Islam.)
  
- On the other hand, trademarks are sensed, tangible and have a material value because they are a component of a trade. Therefore, it is allowed for an individual to own it and the Islamic State is obliged to protect this right of the individual who will be able to freely dispose it, and others will be prevented from infringing upon this right.



## Nanotechnology

Nanotechnology is the development and production of artefacts in which a dimension of less than 100 nanometres (nm) is critical to functioning (1 nm =  $10^{-9}$  m/40 billionths of an inch) (atom 0.1 nm, DNA (width) 2nm, Protein 5 - 50nm, virus 75-100nm, bacteria 1,000 - 10,000nm, white blood cells 10,000nm). Nanotechnology holds out the promise of materials of precisely specified composition and properties, which could yield structures of unprecedented strength and computers of extraordinary compactness and power. Nanotechnology may lead to revolutionary methods of atom-by-atom manufacturing and to surgery on the cellular scale.

On December 29, 1959, the American physicist Richard Feynman gave a seminal lecture to the American Physical Society entitled "There's Plenty of Room at the Bottom". In his address, he presented the benefits to society that would accrue if it were possible to manipulate matter and manufacture artefacts with precision on a scale of only a few atoms across, which corresponds to a dimension of about 1 nanometre. He foresaw the impact that miniaturisation would have on the capabilities of electronic computers. He also predicted the development of methods that are now used to make integrated circuits and the emergence of techniques for writing extremely fine patterns with beams of electrons. He also mentioned the possibilities of making machines at the molecular scale, which would enable the manipulation of chemical and biological molecules.

George W. Bush, in his 2005 budget provided \$1 billion for the multi-agency National Nanotechnology Initiative (NNI) to ensure US leadership in Nanotechnology as it viewed this to be the next Industrial Revolution.

Although Nanotechnology is in its early stages it can be seen that technology at a nano-reality will mean an unprecedented leap in technology. Therefore, molecular structures could be mobilised in their billions as programmable robots to assemble anything from jets, engines, consumer products to glass. Applications for nano-scale machines can be released into the body to detect and repair damage to cells.

This is the reality of Nanotechnology. As mentioned before, the Islamic ruling on all objects is that in origin they are all permissible. The study, research and development of such objects is allowed for all Muslims to undertake. Its use and the manner in which it can be deployed is however restricted. Therefore, the uses of Nanotechnology would require an evidence for it to be used in a specific manner. It would not be permissible to use Nanotechnology to create objects and material where the domestic population could be spied upon as this is something Islam condemned. However Islam has made it obligatory for the Islamic State to have industry in order for machines and heavy industrial goods to be produced. This can be for war purposes or domestic purposes. For war, the Islamic State can produce all the latest weaponry (conventional, biological, nuclear or chemical) for deterrent purposes. It is not allowed to wipe out the enemy by using Nanotechnology as well as by any other technology, as the message of Islam needs to be spread to all humanity and this cannot be achieved if the other 'side' is wiped out. In sum, Nanotechnology is perfectly permissible in many areas including, but not specific to, the areas of medicine and biology as well as optics and aeronautics.

## Companies

Companies have today become part and parcel of modern life. Companies such as Coca Cola, McDonalds, ExxonMobil and General Electric represent awe inspiring success stories. Their global reach with thousands of workers and the ability to mobilise resources and people who churn out billions in profits every year makes such structures central to any economy.

During the medieval ages as long-distance trade grew, new forms of commercial organisations appeared. At first, informal associations gave way to legal partnership. After the 16<sup>th</sup> century, the chartered company replaced the temporary partnership as the customary way for merchants to organize their affairs. These companies, created by the state - but privately owned and managed - held national monopolies over trade with certain regions. These first corporations were not-for-profit but for building institutions, such as hospitals and universities, for the public good. They had constitutions detailing their duties that were overseen by the government. Straying outside these duties was punishable by law.

The first of such companies was the East India Company that was set up by the British merchant adventurers and was granted the Royal Charter of Queen Elizabeth I in 1600. Partners combined their personal stock, turning it into company stock to create the world's first commercial corporation. It shipped out gold and silver to Asia in return for spices, textiles and luxury goods. The East India Company expanded into a vast enterprise, conquering the Al Hind region (India) with a total monopoly on trade and all the territorial powers of a government. At its height, it ruled over a fifth of the world's population with a private army of a quarter of a million.

Today companies have evolved into numerous different structures that generate much wealth for their domestic economies. Western secular democracies have defined the company contract as the Solitary Will. The Solitary Will is where an individual agrees to the written constitution of a company by purchasing its shares with no formal offer from anyone. This is termed as the Individual Will whereby shares could be exchanged very quickly without the need for two people to continuously come together and have a formal offer and acceptance. Hence a company is defined as a contract according to which two or more persons contribute to a financial project by providing a share of capital in order to divide the profit or loss that may result from the project.

When a company becomes a statutory business, its partners become separate to the company and the company becomes 'a legal entity in its own right.' In 1886, a landmark decision was made by a US court recognizing the company as a 'natural person' under law. The 14<sup>th</sup> amendment to the Constitution: 'no state shall deprive any person of life, liberty or property' - adopted to protect emancipated slaves in the hostile South - was used to defend corporations and strike down regulations. Relying on the Fourteenth Amendment, added to the Constitution in 1868 to protect the rights of freed slaves, the Court ruled that a private corporation is a *natural person* under the US Constitution, and consequently has the same rights and protection extended to persons by the Bill of Rights, including the right to free speech.

Hence, according to corporate law in the West, once a company has fulfilled all the legal requirements, it is then established and the partners become separate to the company as the company become 'a legal entity in its own right.' This means a company is a physical person and liable to pay its own taxes and

can be taken to court and sued. This evolved from a number of incidents that occurred in history, but fundamentally if one was to take McDonalds to court, the wealth of the shareholders, the employees or the directors will not be held in contempt, since it would be this intangible person called McDonalds who would be on trial.

Islam has laid down rules for ownership and designated various rules for when individuals come together and distribute profits amongst themselves. This is different to employment (*Ijara*) where one is compensated for the use of their skill or labour in the form of wages or a salary.

In the Khilafah State (i.e. the Islamic State), companies will operate in pre-determined spheres of the economy, due to Islam designating any utility regarded as indispensable for the community, such that its absence would require people to search far and wide for it, as a public property. This means the utilities would be publicly owned and the revenue generated would be administered for the benefit of all citizens. This is derived from the hadith of the Prophet (Sallallahu ‘alaihi wa sallam):

**“Muslims are partners in three things: in water, pastures and fire.”**

This means ownership of key utilities will always remain with the state; however the extraction, development, refining or construction can be undertaken by companies who will be paid for such a contract. This will ensure that the Khilafah becomes self sufficient and is not reliant on foreign companies.

In all the other sectors of the economy, companies can operate freely without any intervention by the state. Individuals can come together to fulfil any need in the economy. A Company (*Sharikah*) is essentially a contract where people come together and instead of paying themselves a salary, they distribute the profits amongst themselves. In origin, a company is a contractual matter and Islam has laid out detailed rules for contracts. In Islamic contracts there must be an offer and acceptance between partners over something (i.e. over the thing they will trade in). Thus, there are always two parties or more in the formation of a company. The work they do forms the subject matter of the contract because this is the reason they have come together. One of them as a minimum must be able to dispose on behalf of the company (i.e. make purchases, dispose of assets etc) and as a result, Islamic companies came to be defined as the following:

1. **The Company of Equals (*Al-'Inan*)** this is where both partners put their money into a business and work with it. Both partners would have the right to buy and sell and take the company forward, hence all partners are all equal in their deposit.
2. **The Company of Bodies (*Al-Abdan*)** this is where two or more people come together with their skills such as a consultant, doctor or craftsmen. Although they use their money, the skill they have is what constitutes the basis of the company.
3. **The Company of Body and Capital (*Mudharaba*)** this is where one funds the capital of the business and the other partner works with it. The partner who provides the capital element is a silent partner and takes no part in the running of the business. The other partner buys and sells on behalf of the company.

4. **The Company of Reputation (*Wujooh*)** this is a company similar to madharabah but the capital is provided by a silent partner who has respect and standing and based upon this the company trades. The partner could be a rich merchant, which would mean debts will always be paid by this company as they are backed by a wealthy individual.

5. **Company of Negotiation (*Mufawadha*)** this is any combination of the above.

Hence the *Sharika* (Company) is an agreement between two or more people to do some type of work in order to make profit. So, one partner usually provides the capital and the other works with it. Sole proprietors are allowed in Islam and this would be the investing of an individual's wealth. The Company and its partners are one unit, not separate; it is their personal wealth which is the capital of the business, and upon this the contract is formed. The profit distribution ratio can be decided according to what is agreed in the contract, i.e. 50/50, 40/60 etc. whilst the loss is distributed relative to the amount each partner invests in the business. Therefore, if only two people owned a company, and the company failed with debts of \$15 billion, the partner who contributed 40% of the capital would need to pay 40% of this debt. A partner's liability will not be limited to the amount put in; thus there is no limited liability in Islam.

## Conclusion

The Islamic method of solving problems rests on extracting the solutions from the *Shari'ah* texts. Due to this, the Islamic solutions generally do not change from time and place unless the basis of the ruling disappears. This gives Islamic solutions much consistency, unlike secularism which has the constant struggle of juggling individual freedoms. As secularism looks at protecting freedom, it generally legalises problems rather than solves them. Hence prostitution was legalised due to the right of individual prostitutes to earn a living, pornography was legalized as those involved in the acts are above the age of consent and have consented to engage in such acts, and those who watch such acts have the individual right to do so and the state's job is to protect the right of those who choose to.

Secular Law is laden with ambiguity due to the contradictions that exist between the notions of freedom that it holds sacred and the reality of society which requires laws that limit freedom in order to preserve society at large. This has led to inconsistency in the way it deals with societal problems. The *Shari'ah* has no such ambiguities since it is not based on the illusive concept of freedom. Among other issues, the *Shari'ah* aims to protect and secure the mind and honour of all its citizens, Muslims and Non Muslims alike. To safeguard these aims, the Islamic texts have laid down specific rules to restrict freedom of speech and individual freedom as espoused by Secular Law. It acknowledges the fact that a society is not just made up of individuals and what an individual does will have an impact on the society at large. Therefore, *Shari'ah* is consistent in the way it deals with societal problems and is therefore able to offer clear solutions to the social evils that currently plague the world.

Hence the long term effects of laws are not an issue for secular legislators; for them the removal of all obstacles to personal freedom and the protection of individual rights whatever the effects of such acts is the issue.

The *Shari'ah* texts (the *Qur'an* and *ahadith*) are of the most detailed in thought, the widest in scope for generalisation and the most fertile ground to cultivate general principles. In themselves they are suitable as legislative texts for all peoples and nations. This is because they cover all kinds of relationships, whether between individuals, the state and its citizens, or between states, peoples and nations. However new and multifarious these relationships may be, new thoughts can be deduced from the *Shari'ah* texts. Islam has the broadest scope for generalisation, which can be seen from the grammar, sentences, words, style of expressions in terms of covering the wording (*mantooq*), meaning (*mafhum*), indication (*dalalah*) reasoning (*ta'leel*) and *qiyas* (analogy) based on the *Shari'ah* reason (*illah*) which makes deduction feasible, continuous and inclusive. This ensures the *Shari'ah* is able to encompass any issue or problem at all times and ages. As for being the most fertile ground for cultivating general principles, this is clear from the abundance of general meanings contained within these texts. This is because the *Qur'an* and *hadith* were revealed in the form of broad guidelines even when focusing on specific details. The nature of these broad guidelines is that they give the *Qur'an* and *hadith* general meanings within which collective and detailed issues can be included, and from this arise an abundance of general meanings. These general meanings contain real and perceptible issues and not hypothetical ones. At the same time they are revealed to solve the problems of all humanity, and not of specific individuals. As such, there exist over three hundred general principles (*qawa'id 'aammah*). This enables the *Shari'ah* to be equally suitable for all times, regardless of whether it is the 7<sup>th</sup> century or the 21<sup>st</sup> century, or indeed any other century.

The Islamic system has all the necessary ingredients to solve the problems and issues of any society. Secular societies are drowning in a sea of misery and social issues due to the freedom to fulfil ones desires in any way one deems fitting. The lies and propaganda against Islam are in reality the last vestiges of secularisms attempting the defend itself.