

*According to the
Tahrir al-Wasilah
of
Ayatullah 'Uzma Imam Khomeini*

*Compilation, Translation and Commentary
in Persian by
Abdul Karim Biazar Shirazi*

*Translated into English
in Consultation with
Hujjat ul-Islam Salman Ghaffari*

*by
Laleh Bakhtiar*

SECOND VOLUME



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SECOND VOLUME

ECONOMIC ISSUES

Second in the Risalah-i-Novin-i-Imam Khomeini Series

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Bonyad Be'that, Foreign Department
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We are pleased to be able, by the Grace of God, to offer this English version of the second volume of the *Risalah-i-Novin-i-Imam Khomeini* series for every possible substantive use by interested readers abroad.

Bonyad-i-Be'that

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PART ONE: INTRODUCTION

I. THE HISTORY OF ISLAMIC ECONOMICS

With a glance at the history of Islamic civilization, we see that the religion of Islam was a religion of politics and rule. One of the most important and extensive programs dealt with economics and the establishment of a public treasury (*bayt al-mal*).

1. During the Time of the Prophet of Islam

The Prophet of Islam, from the beginning of the migration (from Makkah to Madinah) and from the moment he accepted the leadership of the people, turned his attention towards the establishment of a public treasury. Its budget was gathered from zakat¹, as well as the 20% tax (*khums*), public treasury (*anfal*), taxes from lands and properties conquered by Muslims and acquired as functioning entities (*kharaj*), the tax applicable to non-Muslims (*dhimmah*) like the Jews and Christians who remain under Muslim protection (*jaziyah*), that which is obtained from multitheists (*mushrikin*) without a war (*fai'a*) and that which Muslims obtain from war (*ghanayim*). These were spent for the needy of the Islamic society, for meeting damages and deficiencies and insuring unable and needy people.²

In Madinah, the Holy Prophet formed a contract of brotherhood among the Emigrants from Makkah (*muhajir*) and the Helpers or Muslims of Madinah (*ansar*). With this contract, Muslims became partners with one another as to the property and household goods. The Helpers gave half of their house and what they owned to the Emigrants, showing Islamic brotherhood and the Islamic virtue of giving away something which one needs (*ithar*).³

After the victory over the Qaridah and Nazir tribes, when their property was taken as spoils, the Holy Prophet said to the Helpers, "If you want to take back your houses and possessions you gave to the Emigrants, I will then distribute this property among them. If you desire to give your houses and possessions to the Emigrants, then I shall distribute this property among you all." The Helpers replied, "Let the

Emigrants keep what we gave them and also divide up this property among themselves.”⁴ The Holy Prophet lauded the sincere love of the Helpers for the Emigrants and their willingness to give away what they themselves needed.⁵

2. During the Period of the Caliphs

In the year 20 AH/641 AD, the second Caliph instituted a system of public stipends (*diwan*) through ‘Ammar Yasir, governor of Kufa and his deputy, b. Mas‘ud. According to this system, revenues were distributed to people who were organized on the basis of smaller groups and units. A person in each group was selected supervisor for the distribution. These groups were called *‘arrfah* and the responsible person in each group was called the deputy or *‘irrif*.⁶

Further, scales of payment were fixed and standards of entitlements were laid down, based on the relevant Islamic criteria. People of Kufa grouped under three major categories: The group of Emigrants and Helpers; the group who participated in conflicts against apostates and rebels; and people who went to Kufah after the Battles of Yarmuk and Qadisiyah. The annual rates of stipends were based on scales of 200-3000 dirhams and 200-150 dirhams.

In the year 21 AH/642 AD, in recognition of the extraordinary efforts and courage shown by the Islamic forces, a revision was made in the above scales and the salary of the third group reached the level of that of the Emigrants and Helpers.⁷

In the same year, ‘Uthman b. Hanif and Abu ‘Ubaydah were assigned the task of land surveys and demarcation of cultivable and arid plots on the basis of 36 jarib where one jarib is the equivalent of 1000 sq.m.⁸ and the people were asked to give proposals for as much land as they could cultivate.

During the period of the third caliphate, Abu Dharr was among who, based upon the Quranic verse, “...and those who hoard up gold and silver and spend it not in God’s Way, announce to them a painful chastisement.” (9:34)⁹, went through the streets and bazaars among the people announcing that holding basic necessities which were in excess to one’s needs would be considered as hoarding¹⁰ and it must be disbursed.¹¹ He continued to vehemently oppose people who took advantage of their power and position to gain material wealth and to live an ostentatious life and take wealth for their own exclusive use. He was finally exiled to Rabadhah.

3. During the Time of Hadrat 'Ali

Immediately after becoming Caliph, Imam 'Ali (ع), confiscated the property of people who had taken possession of it through their influence and position in the previous regime and distributed it among those who had been working upon it.¹² On the second day of his caliphate, he declared, "Every property allotted out of the material resources under the absolute Sovereignty of God and every entitlement that has been improperly acquired by transgression of any right, shall revert to the public treasury. This is notwithstanding any basic or multiple changes and any length of time that may have elapsed in a state of actual possession, including value of any assets utilized for marrying women and acquiring concubines."¹³

During this era, as a result of the freedom and multiple possibilities which the Muslim workers and farmers of Kufah had, many of the workers and farmers from Iran who had been freed from Sassanian feudalism went to Kufah with the permission of their Muslim rulers. They worked as artisans and tradesmen. In order to enable the newcomers to gather economic strength, they were exempted from the payment of the tax which Christians and Jews pay who live under Muslim protection (*jaziyah*). However, they were required to pay their land taxes and taxes on conquered lands (*kharaj*).¹⁴

During the caliphate of Hadrat 'Ali, the rates of land tax and taxes on conquered lands (*kharaj*) were reduced. This made the people inclined all the more to paying their taxes. The reduced rates ranged from one and one-half dirham per jarib for cultivable land to one dirham and two-third dirham for semi-cultivable and pastoral land respectively. Every jarib of grape cultivation was taxed 10 dirham per jarib.¹⁵

4. During the Period of the Umayyid Caliphs

The Umayyid Caliphs continuously increased the rate of taxation. Several provincial administrators committed excesses against the rights of Muslims and non-Muslims alike¹⁶ and extortion and overcharging became worse in the cities of Iraq, adversely affecting the mobile population, especially the pilgrims.¹⁷ However, during the rule of 'Umar b. 'Abd al-'Aziz, people fared well in benefitting from an Islamic economy reflecting the faith, brotherhood and also mutual spirit of sacrifice. This is born out by the following: "After his representatives collected *zakah* and *kharaj* from areas in (North) Africa, which was to be spent on the poor and needy of those lands, they asked 'Umar b. 'Abd al-'Aziz how their duty demanded the money be spent. The Caliph ordered them to purchase thousands of slaves with the money and then free them."¹⁸

5. During the Period of the Abbascid Caliphs

During the 500 year rule of the Abbascid Caliphate, even though Islamic taxation was not practiced as it should have been, it managed extensive lands.¹⁹

6. During the Time of Imam Sadiq (ع) *

During the period of Imam Sadiq (ع), Islamic jurists wrote many treatises and books on economics based on Quranic verses, Islamic Traditions and the Imam's lectures. It is said that the first basic book written on this subject was *Makasib wa Mubadilat* by Safwan Jamal, a student of Imam Sadiq (ع).²⁰ Other books were also written during this age on this subject, namely *Kitab al-Kharaj* by Abu Yusuf Ya'qubi b. Ibrahim, *Kitab al-Amwal* by Abu 'Ubayd al-Qasim b. Salam and *Kitab al-Kharaj* by b. Yahya Damishqi.

7. During the Occultation

During the occultation of the Imam of Time (عج) other books were written on economics such as *Kitab al-Siraj al-Wahaj fi Masa'lay al-Kharaj* by Fadil Ghatifi, *Kitab Kharajiyah* by Muhaqiq Ardibili, *Kitab Kharajiyah* by Muhaqia Sanai, *Kitab Makasib* by Shaykh Murtaza Al-Ansari, *Kitab Tijarat* by Shaykh Muhammad Hasan Jawahir and *Kitab al-Ijarah* by Mirza Habib Ullah Rashti.

During the current period of the occultation, many books have been written on economic problems. These include *Al-Makasib Al-Muharramah* (2 volumes) by Imam Khomeini, *Kitab al-Bii* (5 volumes) by Imam Khomeini, *Tahrir al-Wasilah* by Imam Khomeini, *Maliyat Dar Islam*, part of *Kitab al-Kashf al-Asrar* by Imam Khomeini, *Al-Masayil al-Mustahdathah*, appendix to *Tahrir al-Wasilah* by Imam Khomeini and *Iqtisaduna* by the martyred Ayatullah Sayyid Muhammad Baqir Al-Sadr (in 2 volumes).

The present book is a translation and elucidation on Economic Issues taken from volume 1 and 2 of the book *Tahrir al-Wasilah*, written by Imam Khomeini in Arabic during his exile to Turkey and Najaf, Iraq, imposed upon him by the despotic monarchical forces.

* (ع) May peace be upon him.

* (عج) May God expediate his manifestation.

II. THE SYSTEM OF ISLAMIC ECONOMICS

This system is based upon Islamic precepts and the Divine Law (*shar'iah*) which came to us through revelation to the Seal of the Prophet, Muhammad, peace and the mercy of God be upon him and his descendants. The word 'economics' (*iqtisad*) comes from the root word, *qasad*, which means 'moderation', not going beyond the limit. *Maqsud* means thrifty, economical and *iqtisad* means moderation, equilibrium.

The adjective, 'Islamic', qualifying 'economics', points to the fact that all the principles basic to Islam govern the socio-economic life of Muslims at the individual and societal levels, so as to ensure overall societal well-being through economic moderation. For instance, Islamic laws concerning public finance and claims for compensation or welfare payments, are part of the socio-economic system. These provisions are conducive to preventing socio-economic evils and malpractices in the process of ensuring justice and fairplay, as well as in the context of honoring the rights of one and all in an Islamic society. This is what is signified by *iqtisad*.

1. Economic Potential and Wealth

Economic potential is one of the necessities of life which a human being needs in order to provide himself or herself with food, clothing and housing. According to one interpretation of the Holy Quran, economic stability is rather fundamental to dignified or appropriate human living and the need for appropriate use of economic means is stressed in the Quran, "*Make not over your property...*" (4:5) and "*...Wealth and children are the adornment of the life of this world.*" (18:46)²¹

From the Islamic point of view, economic assets represent means and not ends in themselves. These are means for fulfilling human needs of the possessors and the others. These enable Muslims and non-Muslims alike to be magnanimous and helpful towards each other. According to the relevant Islamic teachings, the economic activities of people should aim at legitimacy according to the Divine Law in the acquisition of

wealth, so as to attain financial solvency and economic stability. Likewise, expenditure and investment is enjoined to be in the right and legitimate direction. Those who acquire and utilize wealth in the prescribed Islamic manner will deserve God's further blessings and appreciation of the people.

On the other hand, if a person makes the gaining of wealth and property the goal of life or become wealthy through ways which are forbidden (*haram*) or spends it in ways which are forbidden and therefore, illegitimate and corrupt (*fisad*) or holds back from paying the rights of society through *zakat* or *khums*, that person will be reproached by God and the people.

2. Work and Efforts

Work and efforts are vital for livelihood. Islam considers these to be very important. For instance, the Holy Quran says, *"He it is Who made for you the earth subservient, traverse you then its broad sides, and eat you of His provision; and unto Him (alone) is the return."* (67:15)²²

The foregoing Quranic teaching indicates that to obtain one's livelihood, work and efforts are essential. Every action which is legitimate according to the Divine Law, whether it be material or spiritual, is considered to be work from the Islamic point of view. Thus, society, from the Islamic point of view, consists of all of those who work and who are equal from the point of view of 'humanness' even though they may differ as to wages earned.

Unlike capitalist and communist regimes, Islam does not divide society into two groups of workers and employers, thus avoiding any antagonism or disputes and contradictions between them. Rather, in an Islamic society, all are workers whether one be a blacksmith and another, head of state. Living on illegitimate earnings or by begging, is negated in Islam. It is the responsibility of the government to provide for the handicapped from the public treasury and to help the unemployed until they find work.

Islam has always prompted Muslims and others to engage themselves in legitimate activities and in enhancing their efforts, especially in the context of the dignity of manual work, agriculture and commerce. The Prophet of Islam (ﷺ)* himself performed the work of a shepherd, as well as that of a trader and a construction worker in building the mosque at Madinah. Hazrat 'Ali (ع) proved his excellence at agriculture and irrigation.

* (ﷺ) May God send His blessings upon him and his decendents.

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3. The Importance of Work and Workers in Islam

The Holy Prophet said, "I kiss the hand of a worker." "A merchant is the beloved of God." "A trustworthy and truthful Muslim merchant will be among the martyrs on the Day of Judgment."²³

"Work resembles the manifestation of the Almighty..." Imam Khomeini said in a message following the victorious Islamic Revolution of Iran. "God, the Almighty, is the Source of work...The management of the country's affairs is in the hands of the workers and farmers. Islam treats you with great respect and it will return your rights to you."²⁴

a. Work and the Worker in the Macrocosm

"Work and the worker exist in all of the universes whether they precede nature or follow nature. All creatures of this universe, whether they precede nature, are part of nature or follow nature, all came into being through work. Work is like being which intercedes in all areas of the universe. The universe was created through God's activities and the elements of the universe through the activities or work that some creatures perform.

"God, the Almighty, is the Source of all work and all workers. The creatures of the unseen world were actualized through the unseen activities. Wherever you look, things of the world of nature, of whatever kind or kinds, whether it be a thing which we consider to be of the lowest level of creation like mines, earth or inanimate objects, or like those which follow this stage like plants, trees or things which are far above these like human beings, all of them are manifestations of work and all are workers, workers created them. Workers have preference over all creatures.

"In the meta-universe, heaven and hell appeared from work. Heaven and hell came into being through the work of human beings. It is good deeds which are the source for the realization of heaven and unworthy and corrupt deeds are the source for hell.

"Work resembles the manifestation of God Almighty which permeates all creatures. There is work in all creatures and they were made through work. All particles of existence are workers, even the particles of an atom which exist in the world of nature are workers and with awareness, all particles of the universe are active but we assume they are not aware."²⁵

b. Work and the Worker in the Microcosm

"God, the Almighty, is the Source of work. When we study work

and the worker from the microcosmic point of view, that is, creatures upon the earth, upon this small planet which is not even a drop when compared with all of the universe, that is, the material world is so extensive that, to date, that which humanity has come to know with its knowledge is very limited. Some have said that there are stars whose light takes 6 billion years to reach us. This is what is said, what has been discovered, but, beyond this, God Almighty knows. Thus the earth is but a very small thing in relation to such a great universe. Our sun and all of the planets round the sun are nothing but a small particle in comparison to the universe. All of the universe resembles a dot, a point in relation to the metaphysical world and all of the metaphysical world, whether it precedes or follows nature, is but a drop in comparison to the Will of Allah...

c. The Role of Workers in Politics

"These workers of ours are individuals who are managers of human society, managers of the affairs of the state, managers of countries, in the hands of farmers, in the hands of factory workers. It is they who manage the countries and because of this, they are managers of this world. This world of nature of the planet earth, which is only a little solar satellite, is run by workers; it is they who manage this world and enliven the country.

d. The Responsibility of Workers

"Thus, they (workers) are duty-bound in relation to a great affair. They are greatly respected and have great responsibilities. Whoever has more respect in this world is a person who is held in higher esteem before God, is the source of greater influence and is, therefore, more responsible. Our workers, whether they be from the farmers' class or workers in factories or other workers, all of their deeds and blessings that exist in a country are obligated to their existence and thus they have precedence over others, while the responsibilities entrusted to them remain more crucial than those of others.

"If a country achieves all-round progress, the beloved workers will progress and if a country faces decline and decadence, the responsibility lies with you. After all, not working, working less or remaining disinterested in work are factors which bring about the decline of a country.

"Today this country is yours. You are directly responsible for the country. If you do not endeavor towards fulfilling your responsibilities and do not give what is due to your country and Islam, you will be

responsible for that too. If, however, you put in appreciable efforts, setting the country's wheels in motion, you will be deemed precious before God, the Almighty. Islam will hold you in esteem and ensure your rights all the more. Islam stands for the rights of all workers, men and women, for all farmers, men and women. Let Islam be realized. Let the Islamic Republic be realized through the clear precepts of Islam.”²⁶

4. Achieving Efficiency

Muslim workers are religiously obliged to act and function with discipline, tack, elegance, appropriateness and perseverance, as indicated in the Quran. *“And the heaven, He did raise it high and He has set up the Balance (of justice).”* (55:7)²⁷ *“He Who made best everything which He has created...”* (32:7)²⁸ *“It is the work of God Who has made everything firm...”* (27:88)²⁹ *“Verily everything We have created a determined measure.”* (54:49)³⁰

The Prophet always stressed painstaking workmanship even the digging of a grave. Once he advises a grave digger to improve the alignment of a grave, saying, “God likes whoever does an act, to do so with unflagging determination, towards achieving perfection.”³¹

5. Working Conditions from the Islamic Point of View

According to Islam, every economic activity must be beneficial to the individuals concerned and the society, without any adverse consequences, as noted in the dictum, “There is no adverse or adversing results in Islam.”

In an Islamic government, Imam and the leadership of the religious jurisprudents (*vilayat faqih*) can offset any action or condition adversely affecting the general well-being of the society, or to relieve the hardship of people caused by wrong-doers.

For instance, towards relieving people from the unhealthy effects of air pollution caused by brick kilns, their removal from inhabited areas can be ordered. And, towards preventing any concentration of wealth, suitable taxation measures can be devised and ordered.

With suitable conditions, checks and balances, adherence to the straightforward Islamic line of socio-economic endeavor is promoted and ensured. This is done in order to avoid man's injustice to man, to bring about legitimate transactions between persons and to create mutually respectable conditions among people.

Islam expects people to exert themselves, individually and collectively, to the best of their ability and resourcefulness, in order to enhance the quantity as well as quality of work performance, so that the

results are beneficial to one and all. However, Islam does not envisage anything like the self-interest (profit motive) and monopolistic practices that are found in capitalistic regimes, which tend to make automations out of human beings. Islam endorses individual self-respect and freedom of beneficial action.

Islam seeks to optimize individual efforts at meeting one's own needs, as well as ameliorating the difficult conditions of fellow human beings, whose needs cannot be fulfilled without assistance from society. All this is required to be achieved in the light of Islamic teachings and morality.

In contrast, Marxist regimes do not allow the people to exert themselves according to their intrinsic best, so that they are unable to obtain what they deserve, in terms of benefits to themselves and others. This is contrary to the natural human condition in which individual (physical and intellectual) energy and talents differ in strength and quality. Incentive to perform as best and as competitively as one can, and to foster socio-economic growth and excellence would be lacking where equal wages are prescribed. Further, it would mean less than optimal social productivity, resulting in deteriorating conditions. The Soviet Union led Stalin to announce in 1931 that, "In seeking to achieve progress, we encountered human errors and slackness in the way we worked. If we want to achieve industrial power for ourselves, we must fix wages according to individual output and not according to what a worker needs."³²

The above basis of differential wages was formalized in the Soviet Union in 1936. In doing so, the Soviet Communist Party deviated from the famous Marxist principle that, "Everybody's wages according to his needs." This principle has been replaced by the legal requirement, "Everybody must work according to his or her ability and receive wages according to the output."³³ Lenin, too, differed from the Marxist interpretation of work and wages and did not recommend it.³⁴

In the above context, a religious edict (*fatwah*) issued by Imam Khomeini may be noted, "Partnership in work in that sense that several workers form a contract that the benefits of work undertaken or thing taken from nature like firewood, etc. is to be shared by all of them is not correct because every person is the owner of his (or her) work performed or owns that which he (or she) has attained."³⁵

6. Freedom in Choosing Work

From the Islamic point of view, individual capabilities and aptitudes differ and everyone is created to work and everyone is in need of

others. An Islamic government must provide an environment whereby each person can, in complete freedom, perform work which he or she desires and all work must be done under the auspices of a supervisor so that greater production and efficiency is achieved. This is indicated in the Holy Quran as follows, "...We have exalted some of them above others in degrees, that some of them may take charge of others and the mercy of your Lord is better than what they amass." (43:31)³⁶

That is, God in His Wisdom, created people differently in relation to ability to work in a way whereby each one works at some work which is needed by others and others undertake work which still others are in need of. In this manner, individuals not only need, but also serve each other. For instance, carpenters or bakers or blacksmiths need and engage teachers for their children's education and training. The teachers, too, need the others to fulfill their requirements, so that they all contribute towards meeting their comprehensive needs.

Islamic work ethics, such as indicated above, are meant to overcome any class differences, selfish motivations of individuals, and possible domineering tendencies of one group over another. Superiority of human beings lies in their consciousness of God (*taqwah*), integrity and trustfulness.

In such an environment, everyone can perform the work of his or her choice without sensing any deficiency or disgrace and give greater production and efficiency to society.

7. The Rights of Workers

With regard to safeguarding workers' rights, Islam traditionally insists on the following: Honest discharge of contractual obligations;³⁷ not taking the rights of others away from them;³⁸ and payment of wages to a worker as his right before his sweat dries up.³⁹

Aside from the foregoing requirements, functionaries of an Islamic government are duty-bound to bring about equity, that is, they should create an environment in which workers are able to obtain their rights.

In Islam, can the wages of workers as well as those of the employer or owner of a factory be determined by production instead of being determined beforehand?

Yes. In Islamic economics, there are three contractual relations, namely, *mudarabah*, *mazar'ah* and *musaqat*. These three types of contracts, which will be described in detail later on, relate to the participation of work with capital whereby the income of this company is divided among the parties according to the contract, 50-50 or in thirds. In this company, losses due to work are to be accounted for by the

workers and loss of capital is to be accounted for by the owner of the capital.

8. *The Ethical Bases of Islamic Economics*

Another of the most important advantages of Islamic economics in relation to work is the fact that it is based on ethics, faith, self-sacrifice, sincerity and brotherhood.

From the point of view of Islam and the Quran, work and actions must be integrated with faith and integrity, loyalty to one's contracts and promises and other ethical rules before one's actions meet the satisfaction of God and His people and be saved in this world and the next. If good deeds are not performed and through wastage of work, the rights of people are decreased or if cheating or trickery be made use of in work, that person will be among the losers.

As opposed to this is the system of capitalism which is not based on ethics and morality. We see that American capitalists earn money in any way possible including selling their reputation, dealing in illicit sex, buying and selling narcotics and the enslavement and exploitation of human beings, bribery, hoarding, etc. and every few areas are prevented by the law. And if they externally are kind, warm and friendly, it is not because they follow ethical and human principles, but rather to draw in customers.

We see how they produce arms in order to gain further wealth and property and how they cause wars among the deprived and weakened people.

Parallel to this regime of oppression and absolute individual freedom, its opposite, the system of communism comes into being which takes away all freedoms from human beings and what damage and harm this lack of freedom brings to individuals and society. It reached the point where the Soviet leaders have recognized their error and now give farmers permission to own their own small plot of land for cultivation, to own their house, cows, sheep and chickens. Workers are not allowed to sell their products and buy whatever they want and put their money in banks and receive interest on it. It was because of this that China condemned the Soviets for having deviated from the way of communism.⁴⁰

By studying these thoughts, we reach the conclusion that Western schools of thought, because of their limitations, have not attained the utopia that their schools of thought presented. In addition to the fact that their utopias were deficient, this failure is due to their disregard of ethics, self-sacrifice and Islamic brotherhood which guarantees the implementation of laws and individual and social freedom and the attain-

ment of the goal which is a safe, peaceful, pleasant and just environment in the real sense. They have been obliged to resort to coercion and dictatorship of the proletariat which they have used to replace faith and the elimination of freedom and individual personality. Instead of an environment of happiness, peace and self-sacrifice, they have developed into a static environment full of despair.⁴¹

9. Modern Economics

Murtaza Mutahhari, the martyred Islamic scholar, says, "One of the issues which must be studied with diligence in order to reach a decision about it (*ijtihad*) is the issue of modern capitalism which has developed in the last two or three centuries. Modern capitalism is an economic and social phenomenon which is a product of progress and advancement and a new tactic."⁴²

In the new economic order, the reasoning of socialists for the illegitimacy of modern capitalism is based on two principles: First, the value of a commodity is equal to the work done on it and secondly, surplus value which comes into being with modern capitalism only depends upon the work of workers and should not include the tools of production for surplus value. Now we will discuss value and surplus value to see what the evaluating factors are.

a. Value

Economic value consists of the existing worth of something and the monetary value of a material or spiritual thing or function (i.e. teaching).

The idea which Adam Smith and Ricardo expressed and Karl Marx chose is that the only source of value is work and the rate of evaluation also depends upon the amount of work which is done upon something. In other words, value equals work. This view can be criticized from several aspects.

1. With the arrival of new and first hand goods, the value of the old stock or old models comes down, even if the labor factor in both cases is comparable, for people always tend to value new items more than old ones.

2. Two individuals produce the same kind and quantity of product but differ in quality of work for reasons of personal innovation and good taste so that the product of one is accepted at a higher value than that of the other.

3. There are many commodities which require no work to be done upon them, yet they are valued like fish, timber, produce from dry far-

ming, etc. which are priced disproportionately in relation to the cost incurred to obtain them.

4. Sometimes for two products like wheat and barley, a similar amount of labor is involved, but their evaluation differs.

5. Those who believe in equating a product's value with that of its labor content evidently view work done from the materialistic standpoint of output and energy consumption only. They may consider even joint costs, such as animal energy and transportation. Viewed in this context, a farmer who uses his only cow for ploughing and levelling the ground, as well as stamping on the harvested crops, ought to consider the animal's share of labor to be greater than his own, although the initiative, planning and direction of the work has been undertaken by the owner.

Unfortunately, the above mentioned viewpoint does not take the spiritual aspects of human beings into consideration nor invention, intelligence, ability, aptitude and intricacy, resulting in better performance of work and rendering the products superior.

6. Evaluating products in the isolated context of labor is something based on historical materialism, which relies on the profit motive as the driving force behind every economic and industrial activity. Although economic reward is one of the motivations behind individual efforts, not all activities take place for monetary gain alone. For instance, functions of teachers, writers and guardians are not primarily oriented to amassing money, but because of the nobility and sacred quality of **their work** and their devotion to teaching, writing or guardianship.

7. If the determining factor in the evaluation of a project is labor, why should changes in its supply and demand cause fluctuation of the value?

8. If value is determined entirely by the extent of labor involvement, why do prices of gold or precious stones continue to rise? Gold which is the real money is the best example of why value is not equal to work.

Considering the above points, we may say that value of a product is not equal to the labor put in by workers. On the contrary, the human element of work or labor is one of the factors that create, or contribute, to the value of a product. Generally speaking, a product's value depends on: Its intrinsic worth and utility; the necessity for it; its extent of availability or scarcity and its susceptibility to monopolization.

b. Surplus Value

The second basis for the opinion of Marxists as to the invalidity

of capitalism is that the profit which an employer makes is a product of surplus value and wages and naturally belongs to the worker.⁴³ Capitalists take this for themselves without any right to do so.

Even though capitalism in our view is not the correct one, but just as we saw in the first principle, the value of something is not only and solely related to work done upon it. Rather, surplus value relates to first, the unfairness of wages and exploitation of workers. Secondly, the monopolization by capitalist of machinery and tools of production which belong to society. Thirdly, the exploitation of consumers.

From the Islamic point of view, the Imam and the leadership of religious jurisprudents (*vilayat faqih*) can supervise this affair in order to establish equity and justice and with the help of the government, prevent the exploitation of workers and consumers, determine the real wages of workers and fair prices for consumers and receive taxes for the means of production whether they be natural like the earth, the sea, etc. or artificial like machines, factories, etc. which belong to society and spend this on public needs and in the stage where, for instance, 20% does not bring about justice and equity, they can appropriate it.

c. Tools of Production

Surplus value in modern capitalism must be basically seen in techniques and industry. It is a capitalist society which spends enormous amounts of money on the establishment of colleges and universities. It provides millions of people with scholarships so that among them it can find the most intelligent, competent, inventive geniuses and with the scientific efforts of the men of the past and the contemporary ones, they build facilities and means of production which can produce work which is hundreds or even thousands of times the amount used in making them and employ nature.

A capitalist purchases a product of science which came into being through the efforts of a group of scholars and which helps in the advancement of society and which actually belongs to society. It does this by purchasing employment for an individual (for even a scientist cannot patent his discovery) and the capitalist himself then monopolizes the product and makes great profit.

Today machines and tools are used to save manual labor. These things are products of the human intellect and innovative efforts arising from social necessity. These manifest the historical evolution of human civilization and social progress. They result from great intellectual inputs and research contributions through thousands of years.

Unlike knives, which can result from any individual's own con-

scious use of his dexterity, machines that perform work instead of human beings, require joint efforts and costs at the social level. After all, appropriate promotion and facilitation of the development and use of machines and tools is a comprehensive work, which is best entrusted to a society as a whole, as it has been done through the centuries.⁴⁴

Imam and the leadership of the religious jurisprudents can intervene in the event of monopolistic practices concerning machinery and means of production. Then, the Islamic government concerned will be obliged to take steps in the public interest. Any monopolistic tendency on the part of the individuals and groups, or even the technological and scientific innovators or inventors and/or their financial and business associates can, thus, be prevented. Further, steps can be taken to appropriately compensate for the research and the development efforts and the relevant costs from the public treasury, in order to be fair to the researchers or inventors or others concerned.

In the above context, Imam Khomeini has laid down the basic principles of business ethics as follows:

1. "If it is customary for an inventor to patent his craft preventing others from imitating it or multiplying it, it has no effect as far as the Divine Law is concerned and it is not permissible to prevent others from imitating it or trading it.

2. "Also, the monopolization of trade of a product or goods by an organization or commercial institute is without effect according to the Divine Law, and cannot prevent others from trading or producing it if it is permissible for the public at large and putting it in the monopoly of persons.

3. "The Imam and the leader (*vali*) of Muslims can limit what is to the benefit of Muslims. For instance, he can determine a fixed price or patent a craft or trade, etc. which is to the betterment of society."⁴⁵

d. Examples of the Control of Educational Resources

The concept that the product of a college or university which belongs to society and should become the monopoly of an individual whether it be the scientist himself or the capitalist or the worker, is a concept which was commonly practiced among the Islamic scholars in the past.⁴⁶

The traditional Islamic centers of learning provide the basic necessities such as housing and allowances for the education of the students from the public treasury. But it is not the case that after they have received their education, they are free to make use of their knowledge, which occurred through funds from the public treasury or sell the pro-

duct of their education to a capitalist or a person with power who uses methods of coercion. Rather, after completing the cycle of education, that person is duty bound to serve the people and Islam for God. It is because of this that we see that the professors of the traditional centers of learning receive no payment for the lessons they teach. When they travel to various areas of the country to guide the people or undertake endeavors to have Islam be better understood or manage a mosque, they should not seek any payment from people. They are only allowed to meet their basic necessities from the public treasury and the funds which the people pay in order to improve the Islamic society.

Even though it may appear that it is possible that this concept may, in practice, be misused but an Islamic environment of justice, consciousness of God and faith, and total supervision prevents any possible misuse. We see that if a religious scholar wants to take more than to meet his basic necessities from the public treasury and he wishes to live in luxury, he loses his credibility among the people and people turn away from him.

e. Prevention of the Monopoly of Natural Resources

Among the important deeds which Islam has undertaken in preventing the monopolization of the public wealth of society, was to appropriate natural resources like mines, jungles, fallow lands, rivers, seas, mountain peaks, mountains, marine wealth, shores, etc.

f. Extension and Regulation of Ownership

On the other hand, the Islamic faith strengthens the character of its adherents and sustains their deep concern for human welfare. Thus, the affluent among Muslims are well-motivated for social work in the righteous path of God. They endow (*waqf*), donate (*vagodhari*), give gifts (*habebeh*), charity (*sadiqah*), vow (*nadhr*) and will (*wasiat*) their assets for common use and benefit. In this manner, they voluntarily avoid any monopolistic accumulation of wealth in their hands. In Islam, this philanthropy has been a remarkable tradition, in as much as every Muslim country or society where Islamic influence exists, maintains a specific Ministry or Department to administer Muslim trust properties and charitable institutions, as will be separately discussed later on in this book.

g. The Supervision of Society over the Property of an Individual

At the same time that the Quran upholds private ownership, Islam

assigns Muslim society the supervisory role for ensuring proper use and maintenance of the properties. Any mismanagement or misuse or neglect in this matter deliberate or through incompetence can be taken up by the Muslim beneficiaries at large and rectified. This complementarity of individual and collective interest and active concern for objective use and proper maintenance of property in the public interest calls for integrity of the natural and physical assets, as indicated in the Quranic verse, '*And do not give away your property which God has provided for you as a means of support to the weak, who lack comprehension, and maintain them out of the income derived from it and clothe them and speak to them words of honest advice.*'" (4:5) ⁴⁷ That is, the property which belongs to an individual, belongs to society and is used in support of the weak.

h. Imam Khomeini's Opinion on the Benefits of Tools of Production

Further, Islamic teachings and discourses concerning the foregoing will be discussed later. Here we note Imam Khomeini's illustration of a point concerning means and ends of work and their relative significance as follows, 'If one who owns a fishing net places it as the disposal of another, for catching fish and dividing the catch between themselves on a mutually agreed basis, it was not a *mudarabah* but a corrupt practice and whatever quantity of fish the user of the other's net originally intended to catch, can be legitimately taken by him, provided he pays only rent for the use of the net to its owner at an ordinarily applicable rate.'⁴⁸

This means that the participation in the means of production does not *ipso facto* entitle the owner to any share in the profits attained.

10. Ownership in Islamic Economics

Ownership represents that proprietary interest which evidences a legal relationship between a person and a real asset, entitling the former to the possession of the latter. Thus, within the limits of the Divine Law, an owner of a real asset can make use of it or benefit from it.

a. The Various Types of Ownership in Islam

Islam recognizes three kinds of ownership: Personal and private ownership of something derived from legitimate work and earning;

public ownership, by all members of a society, of resources such as water, land, energy and prizes of war and state ownership of things such as fallow lands, forests, rivers, marine and intracostal resources, minerals, mountainous terrain, unclaimed property, *zakah*, *kharaj*, *jaziyah* and similar other tax deposits in the *bayt al-mal*, all of which belong to the Islamic state and are utilizable for public expenditure, including socio-economic welfare requirements.

b. The Method of Ownership in Islam

Above all, the Quran lays down that the basic sovereignty over the earth and the heavens and whatever lies or functions therein belongs to God. This is specified in the Quranic verse, "*God's is the sovereignty of the heavens and the earth and what is in them; and He has power over all things.*" (5:120)⁴⁹

According to the Quran, man has been created by God to be His vicegerent on the earth. Then He entrusted mankind with His endowments manifest in the natural realm for beneficial use in the process of satisfying the intrinsic human needs. Any individual and/or collective efforts at misuse or undue exploitation of the natural resources at the disposal of mankind, so as to adversely affect each other's wholesome interests, are not allowed in Islam. On the contrary, every benefit that human beings avail from nature carries moral responsibilities to ensure its equality before God.

Based on the foregoing position concerning the All-pervasive sovereignty of God over His human beneficiaries of the earth, we may infer as follows:

1. Everything belongs to God, the Almighty, not to speak (only) of whatever the mundane world comprises.

2. Whatever is found, or yet to be discovered, without our world represents God's blessings and these worldly resources are at the disposal of mankind as trustees, so that human beings (as well as the other earthly creatures) can derive sustenance from the same and, at the same time, share the benefits in an appropriate manner.

3. Whereas humanity is ordained to be the vicegerent of God on the earth, it is incumbent upon human beings to evidence a sense of responsibility in harnessing the natural blessings in their common interest thus, the human society as a whole is made responsible in the Quran for safeguarding the interest of minors and the weak, who lack competence for properly managing whatever real assets they inherit, so that the society has to appoint a guardian trustee.

4. Ownership of goods or real assets does not necessarily mean

the owner as in any way respectable, other than what comes from moral strength and standing with regard to their individual rectitude.

5. Material possessions are means of fair and righteous living only, in this world and preparatory for the next, and these do not represent any ends in themselves.

In the above context, the Prophet of Islam is said to have observed that, "Whatever belongs to you is only what you have eaten and consumed, what you have worn and torn, and what you have contributed as charity to others and then remained for you."⁵⁰

c. The Way to Ownership

In an Islamic society, ownership is recognized in three different ways: Coming into 1)possession of something, which was not owned or utilized by someone else previously and which was not encumbered by any state or people, especially of land; 2)acquisition through transfer of possession of something from one person to another, as in the case of sale, purchase, donation, etc. (which transactions are discussed herein separately in the part concerning trade and commerce); 3)succession of persons into ownership such as in the case of inheritance."⁵¹

11. The Control of Wealth and Property in Islam

Islam grants ownership rights to people and permits them to transfer the same from one to another or to successors by way of inheritance. This is conducive to human society's progress in enhancing work and production. At the same time, Islamic regulation of wealth and ownership aims at preventing concentration of income among any vested interests such as evidenced in the capitalist system. These regulations are based on Islamic concepts such as:

1. One of the ways of multiplying and appropriating the centralization of wealth is through the expropriation of mines, jungles, seas, fallow lands and playing the stock market. Islam has removed them from private ownership. Called *anfāl* or acquisitions, they are under the authority of the 'just law' so that their benefits be used for the needs of society.

2.The infrastructure of private ownership is work and a person will own land if he works upon it.

3. Islam condemns the bourgeoisie character. Muslims do not have the right to put aside the surplus of daily expenses for himself and his family. He should recognize the fact that this wealth also belongs to society and it should be put into circulation for commerce, trade and greater production so that society also benefits from it. It is because

of this that the Holy Quran says, "...and those who hoard gold and silver and do not spend it in the Way of God; announce to them a grievous chastisement." (9:34)⁵²

As gold and silver have often been used as a means of exchange and the number of coins in use exceeded the gold or silver back up, it can be said that what is meant by hoarding gold and silver was the hoarding of money and income and wealth. Today paper money which is backed by gold and silver plays that very role which gold and silver did at the time when the verse was revealed. Because of this, commentaries have referred to the hoarding of dirhams and dinars such as "12,000 derhams is considered to be hoarding."⁵³ Thus, in Islam, hoarding of or leaving gold or silver or money stagnant, which is a means of transformation for the economy of a society, is strongly prevented in Islam.

4. What is more, Islam disapproves not only of hoarding or stagnation of wealth, but emphasizes avoidance of its waste on luxuries, including unnecessary expenditure on food, clothing and decorative items, beyond the limits of moderation in personal and family consumption of wealth. This is also specified in the Holy Quran, "*O children of Adam! Attend to your embellishments at every time of prayer and eat and drink and be not extravagant; surely He does not like the extravagant.*" (7:31)⁵⁴ Imam Sadiq, peace be upon him, explained this very Quranic verse as follows: "To think that God bestows on mankind every material source of sustenance and blessing because of His Generosity and that deprivation comes about because of His Wrath, is wrong. On the contrary, wealth belongs to God and He has given it in trust to individuals. He has given permission for it to be spent in fairness and equity for eating, drinking and marriage or to provide a means of transportation. Any surplus must be used to meet the needs of the faithful believers of society so that inequalities are eliminated. It is only in this case that whatever is used for eating, drinking, marriage and providing transportation is permissible. Otherwise, that wealth is forbidden unto him.

With reference to 7:31, Imam Sadiq adds the advice that people should not be extravagant and immoderate, since God dislikes wasteful consumers or users of His endowments.

The Imam illustrates this teaching by inviting people to realize the extravagance involved in a situation where, notwithstanding their trusteeship of God's endowments, they are called upon to buy, say a horse for ten thousand dirham when its real value is equivalent to no more than twentyderham.⁵⁵

5. "An Islamic government condemns deviationists and oppressors

and divests them of their undue affluence. For, instead of exerting themselves so that their economic and financial holdings in excess of their judicious needs are devoted for ensuring the well-being of others in the society, they misuse their surplus wealth, worldly status and the materialistic power derived from the same, by evidencing extravagance, corruption and socially harmful activities and tendencies.

6. "Islam prohibits buying, selling and use of household articles made of gold and silver. This applies to even golden rings and silken wearing apparel which are forbidden to men. Such extravagance results in misuse and stagnation of what is obviously surplus wealth and gives rise to undue pride and rivalry among the people.

7. "Islamic prohibitions on hoarding or usury, are yet another important means for controlling and preventing the accumulation of wealth.

8. "Taxation, collecting *khums* and *zakat*, receiving vows or charity and using them upon the way of the needy is another of the important factors in the distribution of wealth and spreading of property in society.

9. "When all the means of controlling wealth accumulation are operative and still cases of undue affluence and concentration of wealth occur from time to time, the public welfare authorities concerned can invoke Islamic laws and cause heavier tax incidence to occur on the excessively wealthy, so as to prevent further multiplication of holdings.

10. "Moral constraints, too, are applicable, so as to result in voluntary welfare contributions, interest-free loans or grants and similar other kinds of assistance to fellowmen, as often emphasized in the Quran, "*And in their wealth and possessions (was remembered) the right of he who asked and he who was prevented (from asking).*" (51:19)⁵⁶

Likewise, Islamic brotherhood entails three levels: Meeting the needs of brothers in faith and meeting one's own basic needs (*ihsan*); considering a Muslim brother to be equal with one's self as to needs (*musawat*); considering the needs of a brother in religion to be prior to one's own needs and meeting his needs before meeting one's own needs. (*ithor*)⁵⁷

11. "The judicial system of Islam provides for an administrative unit named *davarah hisbah*⁵⁸, the head of whom is called *muhtasab* or *sahib al-suq*.

a. Prohibiting earnings based on transactions conducted at places which encroach upon pedestrians.

b. Ensuring use of proper scales and standard weights and measures, as well as controlling prices.

c. Surprise raids and checks of sellers' premises or warehouses and opening of locks of hoarding storage areas when profiteering, hoarding

and similar other harmful activities, including artificial shortage of essential goods, is suspected.

d. Punitive measures against those who are found to use their religion to cheat members of the public through overcharging.

The aforementioned marketing control organization is always and everywhere crucial for ensuring a good Islamic system of government based on public service, the organizations can be established in urban and rural population centers, or areas with marketplaces, including newly developed settlements and commercially and economically significant localities. The supervisors of the organizations hold judicial or magisterial powers to make appropriate judgments on the spot, without undue delays, towards ensuring the economic well-being of the local inhabitants, irrespective of their social status.⁵⁹

NOTES TO PART ONE

1. Zakat is an annual alms or poor rate that is paid as a religious duty by Muslims and that is used for charitable and religious purposes.

2. Hasan Ibrahim Hasan, *Tarikh-i-Islam*, Cairo, 1964, p. 461 and 472.

3. Muhammad Husain Hikal, *Haiyat Muhammad* [Eng. trans.], 1976, p. 185.

4. *Tuhaf al-'Aqul*, p. 359.

5. *ibid.*, p. 360.

6. *Encyclopedia of Islam*, new edition, p. 629.

7. *Tarikh Tabari*, vol. 1, p. 2633 and S.H.M. Jaf'ari, *Origins and Early Development of Shi'a Islam*, Longmans, London, 1979, p. 110.

8. *Kharajiyah Muhaqiq Thani*, p. 29 and *Kitab Anfal* or *Thirwathayah 'Umu-mi*, p. 41.

9.

10. *Fath al-Qadir*, vol. 2, p. 356.

11. *Tafsir al-Alwasi*, vol. 1, p. 87 and *al-Ghadir*, vol. 8, p. 367.

12. *Malikiyat Dar Islam* by the late Ayatullah Taliqani.

13. *Nahj al-Balaghah* of Hadrat 'Ali.

14. S.A. Al'ali, *Kitab al-Tanzimat al-Ijtima'iyah wa 'l-Iqtisadiyah fi al-Basarah*, Beirut, 1969, p. 88.

15. *Anfal ya Thirwathayah 'Umu-mi*, p. 42.

16. Al-Baladhri, *Futuh al-Baladan*, p. 73.

17. *Tarikh al-Ya'qubi*, vol. 2, p. 348 and *The Orient Under the Caliphs*, p. 208.

18. *Tarikh Tamadun Islam* by Jurji Zidan, vol. 2 and *Tarikh Farhanq Islami*, p. 262.

19. Imam Khomeini, *Malikiyat Dar Islam*, p. 76.

20. *Goftarmah*, vol. 2, p. 283 and *op. cit.*, *Farhanq*, p. 262.

21.

الْمَالُ وَالْبَنُونَ زِينَةُ الْحَيَاةِ الدُّنْيَا.

22.

فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِنْ رِزْقِهِ

23. The Holy Prophet of Islam.

24. Imam Khomeini in a Message delivered on May 1, 1980.

25.

وَإِنْ مِنْ شَيْءٍ إِلَّا يُسَبِّحُ بِحَمْدِهِ وَلَكِنْ لَا تَقْهِنُونَ تَسْبِيحَهُمْ.

50. «لَيْسَ لَكَ مِنْ مَالِكَ إِلَّا مَا أَكَلْتَ فَأَنْتِيتَ، وَلَيْسَتْ فَأَبْلَيْتَ وَتَصَدَّقَتْ فَأَبْقَيْتَ»

51. A discussion of this appears in vol. 3 of this series.

52. وَالَّذِينَ يَكْتُمُونَ الذَّهَبَ وَالْفِضَّةَ وَلَا يَنْفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ

53. A Tradition of Imam Baqir quoted in the *Tuhft al-'Aqul*.

54.

سوره اعراف: ۳۱.

55. *Bahar al-Anwar*, vol. 75.

56.

وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌّ مَعْلُومٌ لِلسَّائِلِ وَالْمَخْرُومِ

57. Narrated in *Ihya' 'Ulum al-Din* of Ghazzali, the part on Islamic Brotherhood.

58. A law and order unit among people which does not require recourse to judicial authorities is called *hisbah*, the head of which is called the *vali* or leader of the *hisbah*. Affairs are handled by the *vali* and special supervisor who has the power to implement the decisions quickly and decisively.

59. See the *Muqaddamah* of b. Khaldun, p. 196, al-Mawardi's *al-Ahkam al-Sultaniyah*, p. 61-72, *Khatat al-Muqarizi*, vol. 1, p. 463-464 and *Tarikh al-Islam* Dr. Ebrahim Hasan, vol. 1, p. 489-490 and *Idalat va Qada dar Islam*, p. 159-168.

PART TWO: SOURCES OF WEALTH (GOD GIVEN RESOURCES)

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PART TWO: SOURCES OF WEALTH (GOD GIVEN RESOURCES)

I. ACQUISITIONS (ANFAL)

I. Introduction

"They ask you about acquisitions (anfal). Say acquisitions are for God and His Apostle. So be careful of (your duty to) God and His Prophet, if you are Believers." (8:2)¹

The Arabic word *anfal* is the plural of *nafl* which means 'bounty'. The word is used here to signify the Divine bounties, in terms of the natural and other material wealth or resources.

Natural wealth includes minerals, natural forests, pasture lands, coastal plains and similar others. Other material wealth includes fortuitous acquisitions, such as prizes of war and accessions. All the earthly resources and acquisitions or accessions represent God's bounties. They are meant for judicious utilization by mankind, in keeping with His benign purposes.

The Quran emphasizes utmost human care in discharging the Divine trust concerning acquisitions such as exemplified by the Prophet. For those responsible for acquisitions should be trustworthy before God. This is in the overall economic context of ensuring the well-being of Islamic society and peace and harmony among peoples, especially, the weak and the deprived.

Accordingly, no less an Islamic personage than a just Imam can be expected by people to supervise the utilization of acquisitions. This will be conducive to extending the benefit of acquisitions to the weak and the deprived among people. At the same time, it will ensure regular use of acquisitions for providing necessary financial and institutional support for popular Islamic learning. In this manner, Islam safeguards the pristine integrity of the natural wealth as well as the beneficial impact of other material wealth, by eliminating any possibility of monopolistic exploitation, such as induced by capitalism and by securing the interest of the

people at large.

The Islamic approach seeks to ensure the public interest. This reflection of God's bounteousness in common benefit of the people is something diagonally opposite to the nature and content of governments whose arrogant leaders rebel against God's Commands. The latter are geared to the perpetuation of vested interests, such as those of capitalists or ruling elite. They monopolize the natural resources and material wealth in their own and their associates' private interest, depriving the public of the naturally accruing benefits.

An Islamic government takes over the natural assets and extends their benefit to the society at large, especially to those who otherwise remain deprived. That wealth should not be monopolized by the rich is made clear in the Quran. *"Whatever has God bestowed on His Apostle from the people of the towns, belongs to God and for the Apostle and for his (the Prophet's) kindred, and the orphans and the needy and the wayfarer so that it may not circulate among the rich ones of you and whatever gives you the Apostle, you accept it and from whatever prevents it, you be away from it and fear you the wrath of God. Verily God is severe in retribution."* (59:7) ²

"Acquisitions (*anfal*) are property which are special to the Imam (ﷺ), just as they were part of the Divine Sovereignty of the Prophet (ﷺ). Acquisitions which are considered to be *anfal* consist of:

2. Acquisitions Muslims Attain Without War

"Whatever came into the possession of Muslims, without involving any war or military expedition. This includes land or anything other than land abandoned or gifted to Muslims by the owners." ³

3. Barren Tracts of Land

"Tracts of land unsuitable for cultivation, but useable for developmental and/or settlement purposes and other land-areas unusable due to the absence of water or even any submergence under water and similar other reasons. This is irrespective of whether or not the barren tracts of land were ever owned by some legal entity in the past and subsequently abandoned without leaving any trace of ownership." ⁴

4. Historical Ruins

"Land areas and settlements vacated by ancient peoples, which have since become historical ruins, such as of Babylon and Kufah and similar other places. These sites proper, the built-up areas around the same and the relevant archeological remains are all part of acquisitions." ⁵

5. Seas, Rivers and Islands

"The seas, rivers and streams and islands are all considered as part of acquisitions." ⁶

6. Jungles and Mountain Peaks

"Plateau mountains, vegetation, rocks and similar other geographic and geological features, as well as the natural wildernesses, forests, uncultivated or pasture lands are all part of acquisitions." ⁷

7. Possessions of Monarchs

"Whatever possessions have been monopolized by kings and their courtiers are all part of acquisitions." ⁸

8. Outstanding Acquisitions

"Rare and outstanding possessions such as horses of quality, ornamental robes, bejewelled swords or daggers, armor and similar others are considered as acquisitions." ⁹

9. Spoils of War

"All prizes of war, seized without consent of the Imam (ع) are acquisitions." ¹⁰

10. Inheritance of People Who Lack Heirs

The inheritance of a person who has no heirs. ¹¹

11. Mines

"Mines pertaining to lands other than private lands or mines which have not been revived by private initiative (like oil and gas) are part of acquisitions." ¹²

II. LAND AND WORK (REVIVAL OF BARREN LANDS)

*1. Introduction*¹³

Opponents of ownership of land believe that the very concept of land ownership came into being as a result of coercion which brought about an unfair division of land throughout history whereas land is natural wealth and the human being had nothing to do with its creation.

This issue in unhealthy societies which have moved away from primordial nature and have turned to materiality and corruption is such that throughout history, through the misuse of position and power and coercion and force, they begin to appropriate lands and gradually monopolized a great amount of lands.

Islam condemns this kind of land ownership and it believes this is one of the signs of the decline of civilization. Aristocrats became drowned in materiality and because haughty with power, they then monopolized lands and other natural resources which belong to God and the people. They did not allow the weak, poor and deprived to enter those lands and make use of the public water and pastures. They even killed the she-camel of the miracle of the Prophet Salih. (7:75-77)¹⁴

But in healthy societies which have not moved away from one's primordial nature, land is never distributed in such a way as to cause discrimination. Islam gives priority to a person who works land and revives barren land over the person who owns the land. At the same time, land ownership belongs to the public. Ownership is taken away from the person who owns it and given to those who will actually revive it.¹⁵

2. Barren Land

Imam Khomeini's explanations concerning barren land are as follows: "Barren waste land is one which has remained uncultivated or unused due to absence of water or submergence under water or flood or coverage by reeds, sand or gravel or bushes and trees among similar other natural phenomena of waste lands. Barren lands can be grouped into

two categories:

“(i) Barren virgin land which did not belong or pertain to anyone and which was not irrigated or about the ownership and past status of which nothing definitive has been established.

“(ii) Land which was developed and irrigated in the past and which subsequently became wasted and barren.”¹⁶

a. Problems Concerning Barren Land

Problematic aspects concerning waste land are discussed by Imam Khomeini as follows:

1. “Although virgin waste land is part of acquisitions, in the absence of the Imam (عج), anyone who proceeds with the work of irrigation or drainage of a tract of waste land for the explicit purpose of rendering it cultivable, will be entitled to own the same, provided he can fulfill the conditions to be mentioned subsequently herein. This is irrespective of whether or not the developer is a Muslim or among those who cover over the truth of religion (*kufar*).

2. “With regard to waste land which was previously owned and developed but its ownership and history of cultivation came to be obscure, this could be sub-categorized as under:

“(i) Land, the settlers of which migrated and with the passage of time, it came to be without any known owner, including any built-up land and structures in disuse, as well as dried up irrigation works, remnants of former settlements of unidentifiable people and obscure civilizations or of those known by name only.

“(ii) Land, the owners of which are known to exist but have not been specifically identified. They are called ‘unknown owners’.

“The first category above can be regarded as part of acquisitions of virgin waste land and anyone making proper use of it can become its owner. However, the second sub-category above involves the need to obtain permission of the *hakem shar'* (legal authority) and like other ‘unknown ownership’, one must first search for the owner and if the owner is not found, it may be purchased from the *hakim shar'* for the needy or rent it from the *hakim shar'*.

3. “An owner of a waste land which belongs to an unknown owner, if he has left it, may be cultivated by anyone, that person becomes the owner but if the owner has not left it alone in order to make use of it as a grazing area for his animals or to use it to sell the fodder, etc. much less an area which has more value as a waste land than a cultivated area in this case, no one may use the land without the permission of the owner of the land to cultivate it. But if by means of the revival by the owner of

a waste land and then he let it lie fallow, some believe it is possible for someone else to revive it and this has problems.

4. "Ruined and ancient villages, whose owners migrated and now are ownerless can be revived and used for pastures or as an area for grazing or housing, etc. Also, whatever remains from the past can be made use of like stones, wood and bricks.

5. "If a land had been endowed land and it has been destroyed and become a waste land, if it be among the ancient endowments whereby its type of endowment is unknown and we only know that it was an endowment among a group of the past, no name or effects of which remain or only the name remains, will be considered to be among acquisitions and it can be revived.

6. "A person who cultivates a waste land and turns it into a house, garden or pasture, etc., that amount of the waste land which is close to the area needed to benefit from the land (for instance, areas needed for coming and going or for transportation, etc.) will be considered to be property of that person and no one has the right to occupy it for cultivation without permission and if a person occupies it, it will be considered to be usurpation. The extent of the area depends upon the customs of the people.

Barren Types of Land

Originally barren¹

Subsequently barren



Owner untraceable²

Owner obscure³

Owner known



Owner relinquished ownership⁴

Uses land in its state of disure for other purposes⁵

Is in the course of reviving land and restoring the homestead.⁶

Is unmindful of the need to revive the land and rehabilitate the homestead while ownership is based on:

*Inheritance or purchase of land⁷

*Land's revival and resettlement⁸

Sub-items (1), (2) and (4) above represent conditions in which any newcomer can set out to revive the fertility of a land and to become its owner. In the case of (3) the Divine law prescribes the need to obtain authorization from an appropriate government functionary on the basis of confirmation of the untraceability of the original owner. In every case, (5), (6), (7), (8), the owner's permission is required before taking possession and reviving and resettling the land.

7. "In the above context, precincts of a house include its land, waterways, road and paths used by the owner, his family and the livestock and for his products. If the precincts of the wall are not part of the house or garden, it is the amount of earth needed to build or repair the house (or the amount needed to make lime, etc.). The embankment area of irrigation channels extends on either side to the ground necessary for maintenance, dredging or removal/replacement of silt and similar other unkept and repair work. There is need for determining the area of a well, underground water storage structure, water reservoir, water tank and similar others as well. The respective area is determined (notwithstanding any overlapping) by the plumbing and water supply network, including the built up area, water supply pipes and pumping station, if any.

"The area of a spring or fountain is determined by that of its direct users, including other local beneficiaries of any improvement in its availability, as well as any catchment area and access to maintenance facilities.

8. "A subterranean well, a waterspring and any qanat type irrigation structure attract other conditions, too. These include the prescribed limits within which no other well, fountain or qanat can be dug without permission from the owner of the existing ones.

Clearances and Limits of

Water Sources

Digging	Limited to	Remarks
beyond...zara* of an existing one		
(i) Another well	40 zara	for domestic animals
(ii) Another well	60 zara	for agriculture
(iii) For springs/qanat	500 zara	in hard/rocky soil
(iv) For springs/qanat	1000 zara	in soft/porous soil

"The above limits represent the minimum. In cases where these are found to be inadequate, so as to reduce normal supply of water from existing sources, these limits can be suitably extended further. The extension may depend on the need to maintain existing level of water availability and on mutual agreement with the owner (s).

9. "Any rural settlement or township or even an estate of houses built on waste land is entitled to its own boundaries. No outsider can legally occupy any part of the land within these boundaries. Even if he succeeds in making it productive, he cannot become its owner.

"The boundaries are determined by the genuine interests and needs of the local inhabitants. These include the area required for their moving to and from, maintaining irrigation and water supply arrangements, drainage system, dumping ground, space for community gatherings, graveyard, pasture land for domestic animals, among similar other provisions.

10. "Normal or usual limits of a village or any township or just an outlying housing estate are based on the spatial needs of the local population. Thus, any constriction of their normally used area will mean inconvenience to them. The nature and extent of their area will evidently depend on the size of the local population and even the number of their domestic animals.

11. "The determining factors mentioned above pertain to only some of the built-up areas of waste land. There is no provision for fixing boundaries between adjoining properties. If and when two neighbors choose to build a wall between their adjacent properties, neither of them will be necessarily limited by the same."¹⁷

b. Rights of a Neighbor

12. "One cannot ignore the seriousness of the need to recognize a neighbor's right to live in peace and tranquility. The inexorable Divine laws of Islam thoroughly prescribe due consideration for one's neighbors. The Islamic traditions emphasize complete avoidance of any kind of harassment or troublesomeness to one's neighbors.

"The Prophet of Islam is said to have referred to the need for respecting a neighbor's rights as a matter often emphasized by Gabriel. The emphasis was such as to give the impression that a neighbor could well deserve to be an inheritor of his neighbor's will.

"According to another Tradition, the Prophet advised Amir al-Mu'minin, Salman, Abu Dharr and another person who the Narrations surmise was Miqdad to make an audible announcement before a neighborhood gathering at the local mosque. This was to the effect that 'anybody with whom a neighbor is not at peace is devoid of faith.' This public

announcement was made thrice. Imam Sadiq (ع), too, made it clear that anyone mistreating his neighbor is not one of us.

“In the light of the Islamic teachings, everyone having faith in God, His Prophet and the Day of Judgment should refrain from anything and everything which may cause any inconvenience, trouble and harrassment of his neighbor. Examples of unneighborly acts to be shunned include opening a window that overlooks a neighbor’s and similar other misdemeanors or encroachments on other’s privacy. Also, one should not allow any foul smell, offensive smoke or disturbing noise from one’s side to inconvenience or detract his neighbor. Further, one should abstain from acts adversely affecting a neighbor’s normal and natural amenities involving access to air, light and similar others.”¹⁸

c. Demarcation of Land

13. “In the above context, it is notable that any one already demarcating a plot of land, in the actual process of undertaking to revive its productivity, is entitled to precedence in becoming its owner. No one else can legally encroach upon a demarcated plot. For this very fact of demarcation shows that the one who has done it intends to make the land fit for cultivation by removing rocky soil and improving it otherwise or by digging a well.

14. “Any earlier demarcation of a plot of non-productive land that shows an intention to make it productive should have been based on a proper earmarking of a specific area of land.

15. “Priority in establishing ownership given to someone who has already demarcated a plot of non-productive land with the intention of rendering it productive does not mean that he is a *de facto* if not *de jure* owner. This means that, according to prudence, he is not entitled to sell the plot to another.

16. “Demarcation of a plot of land remains binding, so as to preclude others from that plot as long as the demarcator carries out his intention to make it productive. If not, after considerable time elapses, the demarcation remains no longer effective. Others can take the plot for making it productive. Then the newcomer will become entitled to precedence with regard to eventual ownership of the plot.

“Also, if a person takes more land than he is able to revive, only that part of his demarcation is effective which includes the parts he can revive.

17. “If necessary, an intending cultivator may engage another person or attorney for the purpose of demarcating a plot of land to be rendered productive, instead of doing the demarcation himself.

18. "Before the work of preparing the ground for production commences, a demarcation marking may become obliterated or even washed away. In that event, the right of precedence of the intending developer or cultivator will be lost, too, so that the legal status of the plot of land will be the same as if it were not demarcated.

19. "Following demarcation of a plot of land, the intended developer or cultivator will be lost too so that the legal status of the plot of land will be the same as if it were not demarcated. Following demarcation of a plot of land, the intended development work for making it productive may be unduly or inordinately delayed or even neglected, resulting in the land remaining non-productive. If another person comes forward to undertake the necessary revival of the plot's productivity, he can approach the legal authority concerned, so that the latter notify the demarcator to either carry out his intended preparation of the land for cultivation or leave it so that another person may undertake to make it productive. The notification procedure mentioned above is to be followed wherever the negligent demarcator's lien on the plot will lapse if the land is kept in a non-productive condition over a long period, or three years, whichever is longer."¹⁹

d. Determining Revival of Non-productive Land

20. "A non-productive plot of land is said to be revived and developed when its former state of disuse and uselessness is replaced by its newly revived and thriving condition. This development may manifest itself in a flourishing plantation, garden or orchard, a farmhouse and/or cattle shed or any other useful installation for purposes such as drying out dates and stacking wood, among similar others.

"At this stage it can be said that the plot has been rendered productive, whereas at the earlier stages, the developer held only the right of precedence for demarcation and preparing the ground for cultivation and not for any outright ownership of the demarcated plot.

21. "Tilling and farming do not by themselves establish that a non-productive plot of land has been made productive. One who does no more than making the land arable will not be *ipso facto* entitled to its ownership. This means that he is expected to do more than levelling the land and tilling the soil. He should provide for regular supply of water, bringing into existence irrigation facilities, such as canals or (qanat) water reservoir and similar other works. Only then can it be said that the land has been made productive and capable of being owned."²⁰

NOTES TO PART TWO

1. يَسْأَلُونَكَ عَنِ الْأَنْفَالِ قُلِ الْأَنْفَالُ لِلَّهِ وَالرَّسُولِ فَأَتَقُوا اللَّهَ وَاصْلِحُوا
ذَاتَ بَيْنِكُمْ وَأَطِيعُوا اللَّهَ وَرَسُولَهُ إِنْ كُنْتُمْ مُؤْمِنِينَ.
2. كَيْلًا يَكُونُ دَوْلَةٌ بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

3. Imam Khomeini, *Tahrir al-Wasilah*, vol. 1, p. 367.

4. *ibid.*, vol. 1, p. 368.

5. *ibid.*

6. *ibid.*

7. *ibid.*

8. *ibid.*

9. *ibid.*

10. *ibid.*

11. *ibid.*

12. *ibid.*

مَنْ أَحْيَىٰ أَرْضًا مَيِّتَةً فَهِيَ لَهُ.....

15. Sayyid Muhammad Baqir Sadr, *Iqtisadina*, vol. 2, p. 111-114.

16. *op. cit.*, *Tahrir*, vol. 2, p. 195-208.

17. *ibid.*

18. *ibid.*

19. *ibid.*

20. *ibid.*

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PART THREE: THE GOVERNMENT BUDGET

I. TAXATION IN ISLAM

1. Introduction: Direct and Indirect Taxation

Pre-Islamic systems of government, the regime in pre-Revolution Iran and many of the oppressive types of arrogant leaders who rebel against God's Commands (*taghut*) and colonialistic rulers in the world caused a heavy burden to fall upon the poor and middle classes. The kings, the courtiers, the aristocratic nobility, the elite and similar others have had to bear either practically no tax burden or they could easily evade tax payments through loopholes in the relevant laws. The poorer sections remained so deprived as to be able to survive only in the service and interest of the ruling classes and the wealthy. The elite and the courtiers thrived on the sacrifices of the lower classes, only to enrich themselves and live luxuriously by virtually sucking the blood of the poor.

Islam has sought to reverse the unhappy trend towards aggravating economic injustice. For one thing, new kinds of tax concepts have been introduced. These require all affluent members of an Islamic society to contribute in economic and financial terms to the well-being of their less fortunate brothers and for bringing about eradication of poverty through economic justice. No modern school of economic thought is likely to offer any viably comprehensive alternative to the Islamic system of taxation.

Another distinguishing feature of the Islamic system of taxation is that their payment is motivated by being an important act of devotion to serving God. This results from an enhanced state of Islamic awareness induced by the relevant Islamic information services and the functional effectiveness of the propagation machinery. Public motivation in an Islamic society is based on the consolidation of individual faith and moral integrity which invariably ensures an active concern for the well-being of fellowmen and constant opposition to any inclinations towards luxurious living and extravagance. Thus, the well-to-do people in an

Islamic community often volunteer payment of taxes. Seldom does an Islamic government find it necessary to resort to stern measures for collecting taxes.

Islamic taxes are described by Imam Khomeini as follows:

“Islamic law provides for different kinds of taxes as outlined subsequently herein. Collection of some is prescribed to be compulsory. Payment of others is envisaged on a voluntary basis. Two kinds of Islamic taxes are collected as a matter of religious obligation:

- (1) “Ordinary taxes accruing annually and otherwise during peacetime, when there is neither external aggression from any side, nor any revolution affecting the internal conditions of a country.
- (2) “Extraordinary taxes collected during periods of disturbed conditions due to external or internal emergencies or revolutions, without any prescribed limit, so that these can be termed as unspecified taxes, which are determinable by an Islamic government.

“The extraordinary taxes are indirect taxes. They are necessitated in abnormal socio-economic conditions, when any collection of ordinary or direct taxes becomes difficult or disorganized. An Islamic government endeavors to make up whatever shortfall it faces in emergency conditions through extraordinary tax collections from the public. The extraordinary collections can be in terms of indirect taxes and floatation of loans, as well, according to any exigencies of circumstances. In any event, due consideration is given to the need for equitable distribution of the extraordinary or indirect tax burden.

“Sometimes an Islamic country’s very independence may be at stake. At such a critical juncture, a government may be obliged to mobilize every public and private asset and resource. This will enable an Islamic government to not only meet its emergent needs, but to ensure effective defense of the country’s independence. For, during national emergencies, the entire country is placed on a war footing, requiring the citizens to offer services and sacrifices at the warfronts as well.”¹

2. Direct Taxation

“The direct taxes are payable obligatorily by members of the public. They enable an Islamic government to meet its expenses for administration and to finance the costs of socio-economic security, including that of the military. These direct taxes are:

a. Kharaj

“Kharaj represents revenue from lands conquered by an Islamic

country and acquired as functioning entities. All of these lands belong to Muslims and must be used to the benefit of everyone and ultimately for the country itself. Accordingly, the modality of utilization and management of the lands and properties is decided at the government level. Then, they are made over to managing agencies, or the users, under appropriate contractual arrangements. Thus, the state retains its lien and control on these lands, properties and assets. No one else can sell, purchase or transfer these lands, properties and assets.

"These government properties are one of the important sources of income and they are not only sufficient, but more than enough. However extensive Islamic victories become and however great its needs, income from these sources can be increased. Elaboration of this fact can be found in Islamic history." ²

b. Khums

"The 20% tax is called *khums*. It is obligatory to be collected by the government. Very few people or entities in an Islamic society are exempt from the payment of the 20% tax. *Khums* is levied on every kind of income of people from every field of economic activity, such as:

1. Mines, including gold, silver, mineral oil, coal, bitumen, diamonds and other precious stones.

2. Treasures discovered in or on the ground through excavations

3. Things and catches obtained from the seas

4. Profits, advantages, benefits, emoluments, proceeds, dividends and similar others obtained from all kinds of business, trade, commerce and industry as well as agriculture and agriculture-oriented activities including subterranean water channels (*qanat*), income from reviving waste lands and similar others from which monetary or other gains are derived, with certain exceptions, under specific legal conditions.

5. Income derived from lands purchased by the Jews, Christians and Zoroastrians (*ahl al-dhimmah*) from Muslims, irrespective of whether or not these have been used for agriculture or plantations or for construction of buildings.

6. Religiously legitimate property (*halal*) mixed with the religiously illegitimate or forbidden (*haram*).

"The 20% tax is one of the greatest taxes in terms of income whereby if a person were to correctly take an accounting of the taxes of a commercial center like Tehran or an industrial city, it would be sufficient for half of a country like Iran.

"Clearly any effective collection of population-oriented *khums* taxes needs suitably designed and painstakingly collected statistical data

as to types of work and income. This is most important for Islamic countries, just as this need exists for determining indirect taxes.

"The 20% tax is applicable on all kinds of gainful or remunerative activity of various people and their economic enterprises. However, the relevant code prescribes levies in a just and fair manner so that the tax incidence is not heavy on the less well-off and weak sections of the population. Proportionately greater tax burden is carried by the well-to-do and the capital-intensive section of the society."³

c. Zakat

"The tax on commodities is generally known as zakat. It is applied without causing any heavy incidence upon the mostly agricultural taxpayers. The relevant law provides for due consideration of the payer's ability to bear the tax to be levied in their particular circumstances. Concessions of five or ten per cent may be judiciously granted on the merits of each case. For some produce like rice and cotton, no specific rates have been prescribed at all in view of their labor-intensive nature and other peculiarities of cultivation.

"For the same taxable agricultural produce, the actual cultivators may pay five or ten per cent as tax, whereas the landowner-agriculturist may pay twenty-five or thirty per cent in tax, under the relevant legal provisions. In the case of the latter, the amount includes the khums tax.

"The commodity tax is very important. Particular care is necessary with regard to ensuring proper registration of land and utilization of the records. An Islamic Ministry of Finance is duty-bound to post responsible officials wherever required for carefully implementing the tax laws.

"One notable feature of the commodity tax is that it is payable in cash and/or kind."⁴

d. Jiziyah

"Jiziyah is a tax applicable to non-Muslims (*ahl al-dhimmah*/the Jews and Christians who remain under Muslim protection).⁵ This tax is leviable on persons and lands of the dhimmah at the rates and in a manner determinable by an Islamic government."⁶

e. Inheritance without Heirs

"Inheritances left behind by deceased persons without leaving legal heirs or successors, constitute part of an Islamic Government's obligatory assets or receipts. This is irrespective of whether or not the deceased were Muslims. An Islamic government is responsible for taking unclaimed in-

heritances into its custody. Any subsequent disposal or utilization of the assets is made in order to benefit the people and the country.

"Islamic laws concerning inheritance provide for a compulsory payment of the relevant taxes. At the same time, the legal framework envisages an effective organization for promotion of Islamic awareness among the people and the country.

"Given popular Islamic orientation, members of the public themselves will come forward to entrust unclaimed assets, or to pay inheritance taxes. Where public co-operation is naturally forthcoming, there will be no need to resort to any compulsion on the part of an Islamic government. While an Islamic government is able to successfully promote the Islamic ideology by reflecting its salutary effects on the socio-economic conditions, it need not anticipate any tax evasions by any of the enlightened public."⁷

3. The Spending of the Government's Budget

"Islamic laws and criteria applicable to public welfare expenditure under an Islamic government budget are briefly explained as follows:

a. Allocations for the Poor and Needy

"The poor and the deprived are those who remain without means of living and who lack enough assets or resources to be able to sustain themselves through one year. They could be those who are unable to take up any trade or industrial activity. Also, they could be too old, or physically handicapped, to earn a living by work.

"The government should administer to the needs of the poor and the distressed in the country, in any manner deemed appropriate by it.

"The relevant procedure may involve organization of public houses for the poor and distressed (*dar al-ajaza*). Further, arranging efficient distribution of (ration) coupons may be necessary. Even ensuring regular bread supply through government-run bakeries may be worthwhile. Alternatively, welfare payments may be made to the poor and the distressed, on an annual basis, so that they can support themselves on their own.

"For the purpose of welfare payments, there is no need to distinguish Sadat (plural of Sayyid, descendant of the Prophet of Islam) from the non-Sadat Muslims. Actually, the Sadat are subject to legal constraints which revolve around two criteria mentioned below:

- (i) "The poor and the indigent among the Sadat are entitled to

annuities, or welfare payments, to the same extent and in the same manner as the non-Sadat. At the same time, the law expects the Sadat to be particular about refunding any undue or excess payment made to them. With regard to the non-Sadat, they are entitled to annual welfare payments which even exceed one year's expenses. Perhaps the reason why the law is harder on Sadat is so that those who criticize not assume that Islamic law is to the advantage of the Sadat. Whether or not a person is a Sadat, if he has means of his own and can work to make his livelihood, the government must force him to do so and he should not be paid anything from the government funds. If these sacred laws are enacted, there will be no poverty remaining.

(ii) "Another legal constraint in the case of the Sadat is that their welfare payments out of the public exchequer should come from the khums. Similar payments to the non-Sadat should come from the zakat."⁸

"In the above context, there are specific conditions governing utilization of welfare payments made out of tax collections from the public. One of the major conditions is to the effect that no government money should be used for any anti-Islamic activity or purpose.

"Where any illegal use of government money is suspected, any welfare payment for the person should be withheld. When any objectionable use of any funds, government or otherwise, becomes evident, it will be very difficult for an Islamic government to continue the payments to the guilty."⁹

b. As Insurance Against Bankruptcy, Bad Debts and Unforeseen Losses

"An Islamic government may consider reimbursing loans from zakat, repayment of which is found to have lapsed for reasons such as failure of a business enterprise and/or accidental loss of stock-in-trade and similar other factors beyond the affected party's control. The government can even give capital so that they may use it for trade on the condition that it not be used in a manner which is contrary to the laws of the country, like gambling, etc.

"Incidentally, it is notable that no descendants of the Prophet are entitled to any special consideration or to any predetermined share of government aid. The Sadat, as well as the non-Sadat, are entitled to equal opportunity and treatment. In the event of any one of them encountering bankruptcy, or requiring some financial support in reimbursing capital, the affected person can always expect appropriate consideration and as-

sistance from an Islamic government.”¹⁰

c. Meeting the Needs of the Country

Major allocations of expenditure include those pertaining to the following:

- *“Establishing administrative facilities for the country and an army.
- *“Providing appropriate facilities for government ministries.
- *“Developing education, culture and propagation facilities.
- *“Constructing suitable roads, bridges, hospitals, and schools.
- *“Maintaining and improving the military organization, including production and supply of military equipment, as deemed fit by the government.
- *“Developing anything related to the cultivation of the country

“In general, the needs of managing the internal and external affairs of the country must be supplied through the government budget. If an Islamic government’s budget is correctly managed and accounted for, it will be seen that it is sufficient to meet all of the needs of the country.

“Where public initiative in payment of taxes is lacking, the government may be obliged to enforce collection of any outstanding taxes. Aside from the government-public participation in the regular budget, members of the public affirm their interest in the common welfare by voluntary contributions to public funds from time to time. Public financing assumes manifold significance where Islamic propagation activities succeed in motivating the people towards common betterment.”¹¹

4. Questions and Answers

“In the above context, certain questions may be raised, which require clarification. These are dealt with one by one as follows:

Q: Are the Islamic taxes and voluntary contributions enough to cover the entire cost of running the country?

A. “An identical question is as to how an Islamic government can meet all of the costs of administering a country on the basis of khums and zakat tax collections alone?

“The above questions are posed often by those who have been least informed about the relevant Islamic laws, or who have only preconceived notions about them. In reply, it must be pointed out that an Islamic government’s revenue sources are not limited to khums and zakat. There are other sources, too, varied and sufficient enough to cover all public expenditure involved in running a country.

“Among revenue sources, other than khums and zakat, is income from state-owned lands and properties, capable of accruing to an extent greater than of any comparable non-Islamic government. Also, it is a popular misconception that khums is dependent upon profits and interests accumulated by traders, commercial entrepreneurs and industrialists. Actually, khums is applicable to every kind of income. Moreover, khums from mining and mineral sources can be very substantial.

“Islamic tax laws were operative to a significant extent in the widespread Abbasid caliphates for nearly five hundred years. The caliphates were able to meet the costs of running its vast economy, even within a rather incomplete Islamic legal framework.

“If Islamic teachings and economic laws are fully implemented in a country, it will become a model for the other countries of the world. This presupposes, of course, demonstration of an exemplary way of Islamic living and a socio-economically viable country in all respects. That Islam represents the Divine-inspired end of prophethood signifies its inviolate ideological comprehensiveness and effectiveness, so as to render it capable of adaptation as a socio-economic and legal framework for the entire humanity.”¹²

Q: How can zakat tax be levied on things which are no longer in use, such as gold and silver coins?

A: “In answer, it must be pointed out that the Islamic law prescribes its levy on zakat on the hoarding of gold and silver coins, not on gold and silver coins. Today, gold and silver are valued all the more and zakat receipts on this account alone can be substantial. With regard to any gold or silver coin transactions, the 20% tax is leviable on the same, while any hoarded gold and silver of any kind would require zakat.”¹³

Q: What about those items on which zakat is leviable, but they are either rare or not found in some countries, items such as camels, cows, sheep, wheat, barley, dates and raisins?

A: “One may as well counter the above question by asking, ‘Has Islam come to administer one region or one country only?’ In principle, tax receipts from various parts of an Islamic country, wherever and whatever it is, should be deposited into the State Treasury. Socio-economic needs of the country as a whole and of all and every people should be taken care of and financed by the government out of the same revenue collection.”¹⁴

Q: On what basis can the people of Mazandaran whose agriculture is confined to rice, pay the taxes?

A: “Landowners of Mazandaran are liable to pay the 20% tax in

so far as this item belongs to a majority of landowner categories. However, rice actually cultivated by the farmers themselves can be treated as a special case. Anyone with even a vague notion about rice cultivation would agree that it would not be just and fair to subject the actual cultivators to any indiscriminate levy of the taxes.

“For the actual cultivators of rice undergo sustained toil and demonstrate patience. They show particular diligence and care at the time of sowing in one field and transplanting well-nurtured saplings one by one into another suitably watered and muddied field. These crucial tasks are carried out mostly by the hardworking peasant women of Mazandaran and Gilan provinces (of Iran). These are followed by repeated weeding in muddy fields, which also calls for painstaking labor. Eventually, bundling of the harvested and carefully arranged rice stalks enables placement on suitable wooden scaffoldings in covered sheds, before drying the same by heating or smoking from a suitably burning furnace. Finally, the paddy is removed for thrashing and then milling.

“In the above context, considering the labor intensive nature of rice cultivation, it can be safely estimated that half of the rice produce derived in the aforementioned process is attributable to the toil of the cultivators themselves.

“Above all, Islamic tax laws anticipate intelligent and judicious enactment and application so as not to create any hardship for any toiling masses engaged in constantly producing in the interest of their own sustenance. In fact, the Islamic taxation system is flexible enough to allow a realistic application, as indicated above. In contrast, we come across cases of heavy tax incidence on the poor, toiling masses under some unjust and oppressive non-Islamic laws.”¹⁵

Q: What about Islamic taxation possibilities of commercial cities like Tehran and some industrial centers?”

A: “Commercial cities like Tehran and some industrial centers are capable of contributing a major proportion of the tax receipts. This is because these places attract mostly the 20% tax. Even Tehran area alone is capable of accounting for a sizeable portion of the country’s receipts. This will typify the importance and magnitude of Islamic taxes. With effective and full-fledged Islamic organizations and appropriate ideological promotion services, any tax evasions can be minimized.”¹⁶

Q: What about customs duties?

A: “An Islamic government can nominate customs stations for processing goods exchanged under government-to-government contracts,
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involving a mutual import permitting system. However, no customs duties are realizable from Muslims and from within an Islamic country. For Islamic Laws are quite distinct from those of nation states, in that the former are not specific to any particular country, so as to justify or feature any customs dues and border entry requirements. On the contrary, Islam seeks to remove national frontiers, by striving for a world government under one flag and one legal system.”¹⁷

Q: Some of the Imams in the past granted total exemption from the payment of khums to all concerned. Does this not mean that the law of khums has been held in abeyance or nullified?

A: “For the 20% tax on all profits, as prescribed in the khums law for utilization in the socio-economic interests of an Islamic country, is derived from the Quranic precept, *“And know (O believers!) that whatever of a thing you acquire a fifth of, it is for God, and for the Apostle and for the (Apostle’s) near relatives and the orphans and the needy and the wayfarer.”* (8:41)¹⁸

“No Imam, seeking to explain or nullify a law, has a right to cancel or overrule any Divine precept. So, whatever a past Imam did in the above context can only pertain to his own part during his own time. Amir al-Mu’minin’s saying to the effect that he remitted khums of his followers can be cited as evidence to substantiate the above reply. Furthermore, Imam Baqir (ع), Imam Sadiq (ع) and all the other Imams until Imam Zaman (ع) have approved of khums payments by Shi’ite Muslims and disapproved of transactions involving unpaid khums.

“Aside from the abovementioned Islamic Traditions, it is worthwhile to note about the possible consideration of the exemption. This could not have been related to any income earned by Shi’ite Muslims themselves. For the Imams’ endorsing the lawfulness of khums from Shi’ite Muslims would not have proceeded to contradict themselves by exempting the same. So it can be inferred that any exemption was possible only in cases of profits derived from transactions involving the assets of the others, on which khums did accrue without actual realization. The remissions could have been made in order to save the law-abiding believers from any other legal involvements arising from their transactions with the others.

“Accordingly, we all know that neither an Imam, nor anyone else has any right to supersede a Divine law. At the same time, it is notable that any exemption is not tantamount to annulment of any law.”¹⁹

Q: What does khums stand for – institutionalizing poverty or eradicating the same in the process of developing an Islamic society?

A: "In reply, it must be reiterated that the 20% tax of khums is a contribution to an Islamic state's expenditure towards serving the overall socio-economic interests of the country and its people. We must also point out once again that khums contributions accounted for a major proportion of budgetary receipts of the Islamic state during the time of the Prophet and the subsequent centuries of the Caliphate.²⁰

"We must emphasize, too, khums should not be paid to descendants of the Prophet or Sadat who are able bodied and/or financially capable of looking after themselves. On the contrary, khums should serve the vital purpose of rehabilitating the poor, who are unable to work and provide for their own sustenance, to an extent that is commensurate with their basic needs.

"Above all, we must say that it is up to an Islamic government to efficiently and purposefully manage khums and its utilization in an appropriate manner. This would mean suitable measures toward eradicating poverty which should be possible with effective organization and use of khums and zakat. After all, it is an Islamic government's major responsibility to provide gainful employment of the resources, including manpower, especially work for the able bodied, as well as to ensure appropriate help to those who are in dire need of it in circumstances beyond their own control."²¹

II. ZAKAT

1. Introduction

Contributing zakat²² (the poor-rate) is one of the essential requirements of Islam. At the same time, it is an important aspect of establishing devotion of one's own self to God, the Almighty. Wherever the Holy Quran emphasizes devotion and prayers to God, there is also an accompanying stress on zakat. This, for instance, is evident from the Quranic verse, "*So establish prayer and pay the poor-rate...*" (22:78)²³

Ritual prayers and zakat (charitable donations and payments in the way of God on a regular basis) are basic to achieving human brotherhood in Islam as indicated in the Holy Quran, "*But if they repent and establish prayer and give away the poor-rate, then they are your brothers in faith...*" (9:11)²⁴

Furthermore, in the sayings of the *ahl al-bayt* (the devoted ones of the family of the Holy Prophet), it is made clear that any withholding of zakat is not to be expected of Muslim believers.²⁵ Zakat represents promotion of human inclinations towards self-purification, by overcoming idol worship, selfishness or self-centeredness, miserliness, meanness, hard-heartedness, greed, jealousy and the like. As zakat reflects honesty, truthfulness and adherence to the faith, it is also called *sadaqah* (alms as a token of the said qualities). As the Holy Quran says, "*Take alms out of their wealth (and) you would cleanse them and purify them (thereby)...*" (9:104)²⁶

Zakat brings about not only individual self-purification and righteousness, but has a salutary effect on the society in that it helps in eradicating poverty and unemployment which lead to crime, violence and even corruption. Thus, zakat acts as an insurance against the aforementioned social evils.

In a Tradition of Hadrat 'Ali, zakat's importance can be seen: "Zakat, together with the ritual prayers are parallel starting points on the road to getting close to God. One who offers zakat purifies himself from the pollution of selfishness, miserliness, jealousy and similar other

negative traits. Zakat is meant to promote atonement of one's sins and it offers protection from any hazards in the future life.

"Accordingly, zakat should not occasion any evasion of its payment or elicit any complaint of hardship or make one feel sorry about the liability. For one who is unwilling to contribute zakat or pays it with an ulterior motive, such as the one involved in seeking undue advantage, would not be conforming to the Tradition of the Prophet. Instead, he will prove himself to be ignorant or foolish in foregoing spiritual reward or in allowing himself to go astray and in making himself liable to a protracted term of the subsequent repentance."²⁷

2. Who is the payment of zakat obligatory upon?

"Zakat is incumbent on people who fulfill the conditions noted below:

a. Physical Maturity

"Zakat is not obligatory upon minors but it is recommended. If one year is valid to pay the zakat, maturity is counted from the beginning of the valid year and otherwise before the time zakat begins."²⁸

b. Sanity

"Zakat is not obligatory for insane people and the sanity should have lasted during the whole year of the assessment unless any mental illness happened for only a short period during that year."²⁹

c. Free Person

"Zakat is payable only by free persons and not by slaves, even though he may own property."³⁰

d. Complete Ownership

"Zakat is not obligatory on things gifted away or loaned out until they are returned or the gifts are received. Likewise, an inheritor is called upon to pay zakat until after the death of the testator, beginning from the date of transfer of the assets to the complete ownership of the inheritor."³¹

1. "In the cases of endowments, mortgages, assets which have been stolen away or lost or otherwise encumbered, as well as assets inherited from an unknown testator, but not actually received by the inheritor or his attorney, no payment of zakat is obligatory. This is irrespective of any competence otherwise to pay the same.

2. "Assessment of zakat is normally for twelve consecutive months,

wherever this condition is applicable. During the assessment year, the assets are supposed to have remained under the complete control or at the disposal of the owner. Where any asset has been at the disposal of the owner for a period short of one year, any assessment for that curtailed year would be invalid. In the event of the owner regaining control of the assets subsequently, a new year of assessment will commence from the date of return of the assets.

“However, cases where the condition of one whole year cannot be ensured or authenticated will present considerable difficulties. These require careful consideration. Resolution of doubtful cases is strongly favored on the plausible basis of assuming the retention of ownership and use of the assets throughout the assessment year. At the same time, every care should be taken in exercising discretion in a prudent manner, i.e. in not treating this condition as necessarily an overriding one.

3. “If one buys cattle and/or sheep in taxable quantities, providing for the seller’s lien on the animals for a period of the contracted time, then the year of assessment of zakat will commence from the date of the formal agreement and not that of the expiry of the seller’s lien.

4. “Zakat accruing on loaned assets is payable by the user or debtor after lapse of one year of utilizing the same, from the time of obtaining the loan. With regard to the creditor or one who has loaned the assets, zakat will not accrue in his case until the loaned assets are returned and used by him for one year. This is irrespective of any possibility of evading zakat by loaning out the assets.

5. “If one can perform the hajj by utilizing the assessed amount of zakat, it remains obligatory for him to first pay the tax. This is subject to the usual condition that he should have retained the assets for one whole year before the last date of registration for the hajj, or the actual embarkation date, whichever is later. Hajj, too, will be incumbent on him in the event of any sufficiency of his residual assets for the purpose.

“On the other hand, if one year is not completed before departure of the hajj caravans, it will be necessary for him to first perform the hajj. Then, he would remain no longer liable to pay the zakat, which he should have paid had he not devoted the same for performing the hajj, after all, then he will resume the liability to pay zakat, as soon as the assets are determined to have been used for one year.

“In the event of co-incidence of dates of the assessment year’s completion and embarkation for the pilgrimage, the assessee will be under obligation to pay zakat first, instead of using it for performing the hajj.

6. “Payment of zakat is obligatory for those who deny the truth of religion and its realization is enforceable by the Imam or the Deputy

Imam.”³²

“The above conditions are applicable to the ten items mentioned below:”³³

Animal Husbandry			Agricultural Zakat				Cash Zakat		Personal Tax
camel	cow	sheep	wheat	dates	barley	raisens	gold	silver	fitriyah
1	2	3	4	5	6	7	8	9	10

3. Zakat on Animals

“Zakat is payable on animals owned during a year when:”³⁴

- (i) An owner has a prescribed number of animals of one specie;
- (ii) The animals have been allowed to graze freely;
- (iii) The animals have been neither used nor meant for work; and
- (iv) One year has elapsed in respect of (i), (ii) and (iii) above.”

a. Prescribed Rates/Ratio of Zakat Animals

Animal	Number	Zakat	Age
Camel	5	1 sheep	
	10	2 sheep	
	15	3 sheep	
	20	4 sheep	
	25	5 sheep	
	26	1 female camel	2 yrs. old
	36	1 female camel	3 yrs. old
	46	1 female camel	4 yrs. old
	61	1 female camel	5 yrs. old
	76	2 female camels	2 yrs. old
	91	2 female camels	4 yrs. old
	121+	1 camel per 50	4 yrs. old
		or 1 camel per 40	3 yrs. old
Sheep	40	1 sheep	
	121	2 sheep	
	201	3 sheep	
	301	4 sheep	
	301+	1 sheep per 100	

Cows/bulls	30	1 cow/bull	2 yrs. old
	40	1 cow/bull	2 yrs. old
	40+	1 cow per 40	2 yrs. old

b. Grazing Animals

- (a) "The animals should have been grazing freely during the entire year of assessment. This means that if and when the animals are tied up and fed, they no longer can be categorized as grazing animals, and, as such, do not obligate any zakat. This does not mean, however, the animals which are tied up for one or two days. On the contrary, they can be treated as grazing animals as long as they are allowed to take recourse to grazing freely in the pastures.
- (b) "The animals confined to the premises of an owner, or directly or indirectly allowed to be fed or taken out for occasional grazing, carry no liability to pay zakat. This does not mean, however, grazing animals confined because of the natural circumstances, such as snowbound pastures, no longer can be treated as grazing animals.

"In the case of domestic animals, it makes no difference whether or not their fodder, or grass has been cut or processed before the actual feeding. For grazing animals it is immaterial whether or not they are sent out to graze on the owner's private land or any freely available pasture lands. Zakat is leviable irrespective of private or common ownership of pasture lands. In the event of an owner of animals paying fees or tolls to an owner of the natural pasture lands, it will not exempt the former from payment of zakat applicable to grazing animals."³⁵

c. Completing the Assessment Year

"Zakat can be assessed for a whole year in the twelfth month. In other words, after eleven months, it accrues to the payee and any amount of this account is to be set aside for transfer to the latter within the twelfth month. Quantities earmarked for zakat should not be made use of for other purposes. Any irregular use of zakat, instead of discharging the same, will necessitate guarantee of the payment."³⁶

4. Non-working animals

"With regard to treatment of grazing animals as work animals, this will be in order if at any time during one year, the former are put

to some work or the other. In that case, no zakat will be leviable since it is meant only for those animals which have never been put to any work during the year of the assessment. This condition will not be fulfilled if and when the grazing animals fall into the category of work animals for which no zakat is leviable.’³⁷

e. Other Conditions

“Other conditions to be fulfilled before zakat is accepted in terms of animals are as follows:

1. ‘Sick or old or defective animals, from a herd or flock of generally healthy, young and well-formed ones, are not acceptable as zakat, irrespective of their belonging to one and the same taxable stock.

*“If, however, a disease is found to be common to all the animals, the payee is not obliged to buy or pay for a healthy animal; it is sufficient to give one of the sick animals as zakat.

2. ‘If any part of an animal stock to be taxed is sick, it will be in fitness of things to obtain zakat out of that part of the flock which is not sick.

3. ‘Young sheep, ranging in age from newborn to 15 days are not to be accepted for zakat, unless the entire taxable lot is of this age group. Also, sheep fattened for the meat consumption are not acceptable for the purpose of zakat.

4. ‘Sheep given as zakat for camels and sheep should have completed one year of their respective age and entered the second year. In case goats are offered for the purpose, they should have entered their third year.

5. ‘Anyone whose animals are scattered in different places can contribute zakat from among any one lot. For it is not imperative that the zakat animals should be from a particular stock or kind of animals. What is more, he has the alternative of paying in cash on basis of prevailing urban market prices or in kind other than animals, whichever is judged as suitable for the poor and the deprived.’³⁸

4. Zakat on Agricultural Produce

“In the context of zakat on agricultural produce, two important points must be taken into consideration:

(i) ‘Ownership of that which has been cultivated or transferred, together with the produce, including (fruit bearing) trees, if any, or simply the ownership status of the same before the question of payment of zakat has arisen.

(ii) ‘Whether or not the produce or fruits are in taxable quantities

for realizing zakat.”³⁹

a. Terms and Conditions of Zakat on Wheat, Barley, Dates and Raisins

1. “The chargeable weight is determined by weighing any of the above mentioned commodities after they are completely dried or processed. For instance, if some still-to-be-dried dates are found to weigh 847.207 kg. and after further drying, this weight becomes less, then, the producer will not be obliged to pay any zakat thereon.

2. “A farmer may own plots of cultivated land or vineyards in different places so that their respective produce does not materialize at the same time. The owner can pay zakat on a cumulative basis of successive harvests in chargeable quantities. If any produce is found to be less than the prescribed minimum quantity, he can wait till the subsequent harvest for adding up the quantities and paying zakat. If dates or grapes are produced twice a year, both the crops can be accounted for together for determining the necessary zakat.

3. Zakat accrues on wheat, barley, dates and raisins only when these commodities are fit to be named as such.

4. “Wheat and barley are fit for zakat after these are harvested and husked. Grapes and dates are suitable for assessing zakat after these become dry.

“In case a producer-owner fails to set aside the share of produce meant for zakat, he becomes liable to indemnify the same even in terms of paying it in other suitable kind.

“Any bonafide zakat collector can demand the payment at the appropriate time and the owner of the produce is bound to pay the assessed amount. If payment is demanded before it falls due, the owner-producer is not obligatory to pay.

5. “If an owner of wheat, barley or dates disposes of the same before these are dry enough to be assessed for zakat, it will be prudent for him to pay zakat in cash (at current urban market prices), or in kind out of the same produce, if it is dry enough to be assessed as a special case. Nevertheless, any disposal of produce before it is suitable for zakat assessment does not by itself make it obligatory for the owner to pay any zakat.

6. “An owner of fruit bearing trees has the choice of paying zakat in cash or in the same kind as long as the fruits remain unplucked.

7. “Liability for zakat on the part of a new owner of an agricultural plot (or vineyard) with standing crops of dates or grapes or wheat which are still untaxable, is limited to what is grown subsequent to his ownership.

*“On the other hand, the new owner would not be responsible for any zakat that might have fallen due, but not paid, before he took over the ownership. His predecessor would continue to remain liable for the payment. Accordingly, any sale of the produce for which no zakat has been paid will be invalid unless proper authorization is obtained beforehand from the revenue official concerned. This is so when it is duly established that the preceding owner has not paid the zakat at all. In case it is established to the contrary, or the probability is high that the zakat has been paid by the former owner, the new owner would not be expected to bear any vicarious responsibility in this connection.

8.“Any owner selling his agricultural produce without making sure as to whether or not zakat fell due before the proposed sale will remain liable for the payment. If zakat falls due later, the buyer will be under obligation to pay it. In case a seller is found to be genuinely unaware of any zakat payment, he cannot be held responsible for any outstanding payment after the sale. This is so if the time when zakat fell due could not be determined and the date of any such sale cannot be established. However, if the time when zakat fell due can be pinpointed, although the date of the sale cannot be ascertained, the seller remains liable to pay the zakat on the produce or fruits in question.

9.“If an owner dies after the zakat falls due on his produce, and before it is actually paid, the dues can be realized either from the produce, if available, or the equivalent in value from the other assets of the deceased. In any case, his heirs could pay the monetary equivalent of the zakat even if the produce was available for the payment in kind.

*“If, however, one dies before zakat falls due, it will be incumbent on his heirs to pay it when due, on the basis of their respective share of the produce, provided it is in a taxable quantity. If a share amounts to less than the minimum quantity for assessment and/or if there are other deficiencies in fulfilling the relevant conditions of assessment, the inheritor concerned is not obliged to pay the zakat. The only exception in the case is when an inheritor does not know the date of the death of the owner.

10.“Where a farmer-owner of dates or raisins dies without paying zakat that accrued earlier, it is necessary to realize the same from his assets even if it means offsetting the entire value of the latter.

11.“If any produce is really derived from joint efforts of a landowner and his working partner or contractor, in terms of *mazar'ah*⁴⁰ and *musafat*⁴¹ sko that the produce belongs to both of them, it will be necessary to account them together but it is better for each one of them to contribute zakat on the basis of their respective share, if this is in a

taxable quantity and fulfills the other requirements of assessment.

“In contrast, any tenant or leasehold of another’s land will be solely responsible himself for paying any zakat accruing on the produce. The landowner will not be liable to pay the same. This is irrespective of whatever consideration or rent or something derived from the zakat-bearing produce itself, may be received by the landowner.

12. “If a producer-owner of grapes or dates has them in different varieties (i.e. yellowish, black), these will be assessed separately on a proportionate basis. This method is considered to be rather a prudent one. However, it would seem all the more preferable to obtain the zakat from the superior kinds of the same kind, rather than the mixed or inferior ones.”⁴²

b. Deducting Taxes and Expenses

“Zakat on agricultural produce is leviable on a net basis. This means not only that the production costs, which can be allocated to the assessable quantity of produce, but any kharaj payments ⁴³ are deductible from the total quantity/value, for the purpose of assessing zakat on the net quantity/value.

1. “Some government officials responsible for ensuring legitimate assessment of taxes may over assess the same. Any illegitimate excess collection of taxes will be tantamount to an act of oppression against the genuine interests of all concerned. This is irrespective of whether or not the affected share is that of the poor or the tax-payer, who cannot be held responsible for the integrity of the share of the poor beneficiaries at large. However, if the excess collection is in cash or kind (other than that of the quantity assessed), it would seem prudent enough not to allow its undue incidence to fall on the share of the poor beneficiaries. In any case, the excess produce or the equivalent will be deducted from zakat since the latter is no more than what is legitimately assessed as such.

2. “All agricultural production costs and the relevant expenses, incurred before or during the period when zakat is assessed, can be recovered or deducted from the taxable gross quantity. Then, one-tenth or one-twentieth of the remaining produce or quantity will be payable as zakat.

3. “The relevant costs include those on account of purchase of seeds, growing of saplings, irrigation, drainage, allocations for amortization/depreciation of agricultural machinery (i.e. pumps, tractors) and wages of casual laborers. Other direct and indirect expenses concern preparing the fields for sowing/transplantation, protection of crops, including spraying with insecticides, harvesting, stacking, drying the stalks, trimming (in case of date palms) and dredging of the water supply or irrigation

ditches/channels.

"The other notable deductions include those on account of depreciation of water pump and similar other multipurpose agricultural (or the related) machinery, tools and equipment, considering their desirable life-spans of several years.

4. "There is need to apportion joint costs/expenses of agricultural produce, like the portion deducted on account of other taxes (kharaj is realizable on total produce) and the residual one on which zakat is assessed.

5. "In case of doubt as to whether any particular items of cost expenditure is deductible, there is no need to take that item into account at all. '44

c. Rates of Zakat on Agricultural Produce

"Zakat on agricultural produce from *dami* or wet land (watered by rainfall or canal or qanat irrigation) is chargeable at the rate of one-tenth of the net produce. Produce based on irrigation involving manual efforts and /or animal power, as in the case of drawing water from subterranean wells, or use of water pumps and similar other means, is chargeable at the rate of one tenth.

1. "Where the produce results from both the above mentioned types of irrigation, the predominant type will determine the chargeable rate. Where the two types are equally availed, the respective half of the produce will be charged at the rate of ten and the other half at twenty per cent.

2. "Normally, rainfall occurring in the course of an assessment year on otherwise dry land does not affect the zakat rate of twenty percent. This is so when the rainfall does not either preclude the need for manual (or animal) drawn water supply or fulfill the purpose of irrigation for some months during one year, while necessitating any artificial irrigation during the residual period. In the latter case, either ten or five per cent rate will be applied, as the case may be.

3. "Water drawn from subterranean wells (with or even without the use of water pumps or Persian wheels) for irrigating one's own agricultural field may sometimes be conducive to watering of the others' adjacent fields, too. Anyone, other than the well-owner, irrigating his agricultural field by availing the aforementioned possibility will be liable to pay zakat at the rate of ten per cent.

"Likewise, ten percent zakat will apply in case anyone digs well-

b. Assessment Year

“Zakat on gold and silver necessarily accrues when these are owned in chargeable quantities and in an intact condition for a complete period of eleven consecutive months. In the event of any reduction in their quantity during the eleven months, or their conversion into other commodities, or any change in their engravings, this will preclude zakat to the same extent.”⁴⁸

c. Other Conditions

“However different Iranian or non-Iranian coins may be with regard to the nomenclature, weight or quantity or custom, all the different coins are subject to accounting together. If zakat is paid in the predominant coinage, so much the better, even from the spiritual point of view. If not, the payment can be effected in proportion to the respective coinage or if this is impossible, in any one available coinage for the whole amount of zakat.

“Anyone may pay the zakat on pure and /or unalloyed coins in alloyed coins only, provided the aggregate purity of the latter covers the amount of zakat on that of the former. If not, it will be necessary to determine the actual extent of their metallic (gold/silver) purity so as to ensure that any assessable zakat is in the same ratio.”⁴⁹

6. Utilization of Zakat⁵⁰

“The Quran in 9:60 provides a framework for the utilization of zakat. This can be diagrammatically represented as follows:

Item	Quranic	
	Arabic	Verse 9:60
1	أبناء الصدقات	Intended Social Benefits
2	للغراء	Alleviating/Eradicating Poverty/Misery
3	والمساكين	Health/Social Insurance of the Weak
4	والمعلمين علانها	Maintaining Public Services/Officialdom
5	والمؤمنة فاعولهم	Promoting genuine human concern for world peace/security
6	والمزاداب	Securing Freedom from Bondage/Defense
7	والمزاداب	Insuring Economic Credit-worthiness
8	وفي سبل الله	Investment in Manpower/ Public Works in the Way of God
	والمزاداب	Insuring Travellers/ Helping the Stranded

a. The Poor and Needy

“The poor could be self-respecting persons who work and earn something insufficient for their personal and family maintenance through one year. Their inadequate budgetary ability may be due to temporary availability of work or limited scope for earning. Furthermore, their pecuniary inability may have arisen from unforeseen and/or unavoidable circumstances, such as personal and family displacements, or need to support many dependents. The deprived are mainly those who are not able bodied or who are too sick, or too old to go out and perform any remunerative work. They are unable to look after themselves and their dependents in a reasonable manner of their annual maintenance.”⁵¹

b. Criteria for Assisting the Poor

1. “Zakat is not payable to one who is able bodied and strong but becomes poor when, due to laziness or slowness at work, the person’s earnings remain at an insufficient level.

2. “Although one’s total capital or wealth is sufficient to cover his and his family’s expenses for one year or more, but his revenue/income itself is inadequate for economically supporting himself and his family, he should not be treated as one who is without any need for assistance. On the contrary, he is entitled to seek an allocation from zakat funds for covering any reasonable shortfall in his annual domestic budget.

3. “Prudence lies in not paying or obtaining zakat for covering expenses over a period exceeding one year.

4. “Zakat is not ruled out in case one has genuine needs for, and opportunities of, owning a residential house, having domestic servants and even a personal transport.

“Likewise, zakat is not disallowed in case one who can afford suitable winter, summer and travel clothing, a carpet, crockery, utensils and the like, once he can justify his application. However, zakat can be refused if what he owns or possesses represents acquisitions beyond his normal earning capacity or obvious means or if these evidence the possibility that he is actually capable of incurring his annual expenses without any support from zakat funds.

5. “One who is unable to make his living from physically arduous work, such as that of a woodcutter or firewood seller, because of his (newly) enhanced prestige or due to old age or sickness, can also avail of zakat. Likewise, people in trades, occupations and even in industry may come to need assistance from zakat. This may be due to any adverse circumstances in which their income becomes inadequate to support themselves such as lack of demand or inadequate means to keep up pro-

duction. They, too, are entitled to zakat assistance.

6. "A person may not yet have established himself as a tradesman or professional or a small-scale producer of goods, as the case may be, according to his own interest and aptitude. In other words, he is still under-studying or learning a trade or occupation or business even without any great effort on his part. In these circumstances, he would not give up his training or apprenticeship and seek to live on zakat, which he is entitled to as a trainee or apprentice.

7. "A student, who is capable of suitable remunerative work, but by doing so, he or she becomes unable to continue his or her formal education, is entitled to zakat assistance in the way of God. This is irrespective of whether or not one's pursuit of a course of learning (1) fulfills an essential need of society (*wajib 'ayini*), (2) is rather independent of any social need or obligation (*wajib kafaii*) and (3) is simply of a recommendatory nature (*mustahab*).

8. "If a person is doubtful as to whether or not his funds will be sufficient to cover all his expenses through a year, he cannot obtain zakat assistance unless his pecuniary insufficiency has been borne out by his former circumstances and whatever savings he has been able to accumulate since then have fallen short of his actual requirements.

9. "If one is obliged to borrow by force of circumstances or due to sheer poverty, he can seek to offset his borrowings against zakat assistance.

10. "If one claims to be poor and is known to be so, he can be paid a zakat grant. If his poverty is not corroborated by others, but his background circumstances indicate the same, then, too, he can avail zakat assistance. However, if there is nothing even in his background to confirm his poverty, it will be prudent to obtain reliable evidence of his pecuniary status.

11. "It is not necessary to announce or stipulate to a poor beneficiary that he is being paid out of zakat funds. For, even zakat assistance can be offered in the manner of a sincere gift.

12. "If zakat is paid to one on the ground of his poverty, which turns out to be baseless, its refund can be demanded. If the payee has already utilized the zakat assistance to him and is unable to refund the same, while he has actually or probably known that the payment was one of zakat, he remains liable to produce guarantee of the refund. If the payment has been made without specifying it to be zakat, he will not be liable to guarantee the refund.

"In any case, if no refund is obtainable at all, the one who has made

the undue payment can be asked to make good the same, except when the disbursement has been made under the Divine Law after proper authorization. If a religious jurisprudent whose opinion on religious dictates is followed (*mujtahid*) has authorized the payment, without any faulty or unreasonable processing of an application, no reimbursement of what turns out to be an undue disbursement can be expected of him.

"No reimbursement is called for even in a case where any undue disbursement came out of zakat funds placed at the disposal of a religious jurisprudent whose opinion on religious dictates is followed, with the specific understanding that the latter would see to the proper allocations to the poor, the weak and the deprived.

"Yet, sometimes, an undue payment might have resulted from an ill-motivated placement of funds by the owner at the disposal of a religious jurisprudent whose opinions on religious dictates is followed as zakat. The malafides are proven when the funds are offered as zakat in the context of any extraneous consideration for any advocacy or legal support received or expected of the *mujtahid*. In that case, he could become liable to make good any wrong payment of zakat out of such funds."⁵²

c. Administrators of Zakat

"Executive appointments of zakat fund administrators are made under powers delegated by the Imam or his Deputy. They are responsible for safe custody and proper accountal of zakat funds. They are entitled to remuneration, out of the zakat, for their services, even if they are not otherwise in need of the same.

"The Imam (ع) or his Deputy can authorize any engagement of competent persons as zakat administrators, on either a contractual basis, providing for remuneration commensurate with their respective quantitative output, or fixation of a salary on a periodical basis."⁵³

d. Creating and Sustaining Interest in Islam

"Zakat funds may be allocated to a reasonable extent for creating/sustaining interest in Islam among non-Muslims, including in any emergent jihad or jihad-like situation, as well as in promoting better understanding and enthusiasm among Muslims themselves, so as to be better able to cope with the present-day problems."⁵⁴

e. Setting People Free from Bondage

"Zakat funds can be utilized to set people free from bondage. This

is irrespective of whether or not they have ever been recipients of zakat allowances. For, notwithstanding any zakat payment, they may be found to be suffering from undue hardship and oppressive conditions, in their poverty and/or helplessness. They may seek zakat aid to set themselves free after paying the requisite cost.”⁵⁵

f. Settling Burdensome Debts

“People could be in straitened and defeated circumstances, burdening themselves with debts (not arising from any sinful activity or prodigality on their own part). When they continue to be unable to overcome their debt burden by themselves, they may seek to offset the same by an allocation from zakat funds. This is irrespective of whatever resources they may have to meet their routine expenses.”⁵⁶

g. In the Way of God

“A portion of zakat can be earmarked for utilizing in the Way of God, in the overall interest of Islam and the Muslims. Disbursements in the Way of God can finance not only scholarships (as mentioned earlier), but any emergent public works, including construction/repair of canals and other types of irrigation systems, as well as public thoroughfares and highways. All these investments should reflect the Islamic concern for the maintenance of public facilities and common weal. Further, zakat allocations under this head of account can serve the purpose of bringing about unity between conflicting groups of Muslims, while securing peace and well-being for the Muslim community and the Islamic society as a whole.”⁵⁷

h. Helping Stranded People

“Travlers, not involved in any objectionable incident en route, may find themselves stranded in a strange town or place. They may not have enough monetary resources to pay their costs of return journey or onward journey to their hometown or destination. They can be provided with necessary amounts out of zakat funds, so as to enable them to reach their own town, when a loan cannot be arranged, despite their credit-worthiness, if any, back home.”⁵⁸

i. Persons Entitled to Zakat Assistance

“Conditions governing personal entitlements, or otherwise, include the following:

1. "Persons who are devout Muslims are, in principle, entitled to zakat aid.

"Non-Muslims, or non-believers, are not entitled to zakat assistance, except when they evince genuine interest in Islam.

2. "Zakat payments are not made to persons who consume alcoholic drinks or those who indulge in similar other sins.

3. "Father, mother, offspring, spouse and similar other givers of zakat are not entitled to receive zakat assistance, except for purposes of children's education or marriage, when they may be paid suitable grants out of allocations under the head, upon the Way of God if these can justifiably be made under this head.

4. "The Sadat cannot be given assistance out of zakat funds, except when it is borne by a zakat-giver who is himself a Sayyid or when emergency-like conditions warrant payment to the latter, as when one's daily sustenance is involved."⁵⁹

7. Other General Provisions Concerning Zakat

Other terms and conditions concerning zakat and its payments be stated as follows:

1. "The above mentioned socio-economic areas of utilization of and entitlement to zakat payments represent broad heads of allocation, especially recommendable when funds are available in plenty to justify the specific as well as comprehensive allocations.

"However, the recommendations are not to be construed as a general requirement that the zakat funds should be invariably allocated under all the eight divisions, or areas of socio-economic benefits, or against every possible kind of beneficiaries under each.

"At the same time, it is necessary to provide for priorities of allocations and the relevant beneficiaries.

2. "The act of contributing zakat is one of becoming closer to God, as in one's prayers. Accordingly, it should always be preceded by one's intention which should evidence one's wholehearted and deeply felt sense of commitment to the good act.

"Any undue delay in payment of zakat should be avoided as something unlawful.

4. "It will be appropriate to entrust zakat contributions to the local religious jurisprudent for effectively directing their use. This will be in the interest of Muslims and the Islamic society as a whole. The contributors could be followers of the religious jurisprudent or others.

5. "In making zakat payments, it is recommendable that due priority be given not merely to the deserving and self-respecting persons among the poor and the needy (who may seem reluctant to seek to avail zakat), but to dependents among one's relatives, the virtuous, the learned and the wise.

6. "If anyone incurs a loss after making any commercial use of a assets earmarked for paying zakat, it will be borne by himself. In case of any gain, it will be for the benefit of the poor. For, any investment of a zakat portion in a business must conform to the ultimate purpose of zakat so as to be permitted by the highest Islamic authority). Otherwise, if he uses any zakat on his own, it will not only involve complications, but the prospect of being considered illegitimate.

7. "Zakat payment accruing in one's own place can be transferred to another place, at the cost of the one requesting the transfer. In the event of any lapse, or loss, the defaulter will be required to guarantee, or indemnify, the same at the original place.

8. "Wages of labor and similar other costs, including that of weighing and carrying at the time of assessing and paying zakat, will be borne by the owner, at his own risk and responsibility.

9. "Anyone approaching death, while owing zakat, should necessarily provide for settlement of zakat dues in his will.

10. "It will be undesirable and disapproved in case anyone buys back whatever zakat he has already paid to a poor man ." 60

8. Personal Zakat (*fitriyah*)

Personal zakat or *fitriyah* is complimentary to the fast of the holy month of Ramadhan. The relevant questions are discussed in this section. These questions are:

- (1) For whom is *fitriyah* necessary?
- (2) With what can one offer it?
- (3) What amount is payable?
- (4) What can it be used for?

a. For whom is it necessary?

"Payment of per capita zakat or *fitriyah* is incumbent on every adult, who is of sound mind and body, is free (not in bondage) and has means. This means no *fitriyah* is payable by minors, insane persons, individuals who happen to fall unconscious on the eve of the festival marking the end of the fast of Ramadhan (*id al-fitr*), slaves or bondsmen, the poor

and those with insufficient income.

“The conditions mentioned above are valid as on the eve of the festival. If these are not met at the prescribed time, it does not fall due. If these are satisfied, then, it becomes due and payable. Once these conditions are fulfilled, the person complying with the same pays it on behalf of his own person and also for those who he maintains and provides sustenance, irrespective of whether or not they are Muslims, freemen, old or young. The payment is necessary in case of infants born, or other persons who become dependents or guests of the one responsible for the payment, before sighting of the new moon of the month of *Shawwal*, even if the guests have not consumed any food at their host’s house.

“Fitriyah does not fall on one for whom another person is responsible for paying it even if he himself is capable of satisfying the conditions and paying it on his own. This is so until and unless the dependents or guests become aware that their guardian, or host, has not paid, or has not remembered to pay the same. In the latter case, it will be prudent for the affected person to offer fitriyah on his own.

“Anyone living away from his home and family remains liable to pay the fitriyah for his dependents. This is so unless he makes some reliable arrangement with the latter for paying their respective fitriyah out of his own assets entrusted to them.

“Payment of fitriyah by a Sayyid for a non-Sayyid is prohibited.

“Fitrayah, like the other forms of devotion to God, must begin with the relevant intention, to grow closer to God.”⁶¹

b. With what can one offer fitriyah?

“It is not a far-fetched idea to suggest that fitriyah items can legally be the same as the one or more staple foods of different people and places. For instance, in many parts of Iran, wheat and rice, as well as barley, are staple, within and around the country’s Gilan province, rice is the staple. In the case of the desert areas of Najd and Hijaz (in the Arabian peninsula), dates have been traditionally considered as staple food.

“Nevertheless, on the whole, the possibility of facilitating compliance becomes stronger when fitriyah is duly offered in terms of wheat, barley, dates and raisins. If these are not staple items in a given place, then it would seem expedient to offer any local equivalent of the same, such as corn.

“If suitable alternatives are not at hand, it will be prudent to make

fitriyah payments on the basis of the four food items specified above, i.e., wheat, barley, dates and raisins. In this context, one has an option to pay the monetary equivalent of the above mentioned items on the basis of their local prices as on the eve of the *id al-fitr*.

“Furthermore, any payment of fitriyah in kind or in cash should be correct, intact and valid. It should not be defective or mixed with something defective. On the contrary, the fitriyah offerings should be made by selecting the very best and useful means and mode of payment.”⁶²

c. Rates of fitriyah

“Fitriyah is payable in terms of the aforeindicated foodstuff, or the equivalent including milk, at the rate of 3 kilograms per person.”⁶³

d. When does fitriyah become due?

“Personal zakat or fitriyah is payable from the evening of the *Shawwal* moon or that preceding the day of *id al-fitr*, until noon of the day of *fitr*. The fitriyah is to be set aside before the *id* prayer. Once this is done, the disbursement can be made subsequently to the persons concerned. While the fitriyah remains to be transferred from one's possession or to be delivered to the right person, it will be prudent for the giver to uphold his original intention of seeking to become close to God, rather than concentrating on the pros and cons of the question of parting with the items already set aside.

“Any haste in giving away fitriyah before the month of *Rama dhan*, rather before the due evening of *id al-fitr*, will be unlawful. However, some of the provisions for it can be ‘loaned’ to the poor who are in urgent need of the same, and the loaned quantity can be adjusted at the time of the actual disbursement of it or deducted from the personal zakat.”⁶⁴

e. For what purposes can fitriyah be used?

“Fitriyah or personal zakat serves the same eightfold purposes as indicated for the other forms of zakat. These are especially meant for the benefit or use of the devout among the poor and the needy and their children, even if this gives rise to a sort of positive discrimination. If there are not enough devout Muslims among the poor and the needy, it can be distributed among the other less devout but faithful Muslims and also non-Muslims who are weak and helpless.

“It will reflect adequate care if any poor and deserving person is not given anything in kind, which weighs less than three kilos, or less than any equivalent value in cash. This should be so even when it may be possible to help many deserving persons by lessening the amount distributed. At the same time, anyone deserving can be paid fitriyah, the quantity or value of which may be sufficient enough for one’s annual expenses or needs. Anything in excess of this, however, ought not to be paid to any eligible person.

“It is recommendable that fitriyah be paid especially to one’s own relatives, neighbors, the emigrants seeking to join a congenial society, Islamic scholars, persons accomplished in secular learning, among similar others, who may actually be in genuine need of help.

“As in the other cases of zakat, fitriyah should not be given to persons who are used to alcoholic drinks, any blatantly sinful ways of living and to similar other immoral and detestible malpractices. In other words, persons who are likely to misuse fitriyah for immoral and objectionable purposes should not be given the same.”⁶⁵

III. KHUMS

1. Introduction

In this section, it is proposed to examine in detail the Islamic law concerning the 20% tax or khums, including its applicability and distribution process of utilization. The law concerning khums has been applied with significant results during the early period of Islam and currently, in the revolutionary context of Iran.⁶⁶

One of the most significant benefits of the Islamic law concerning khums has been evidenced in the self-supporting economic status of the traditional Islamic centers of learning. These institutions have shown exemplary resilience throughout their independent existence, in successfully coping with hostile pressures exerted by colonialistic superpowers and their local counterparts, or any oppressive regime of the day. No wonder enemies of Islam have always tried to strike at the very roots of the institutional support of the Muslim combatants, by proposing to nullify – or set aside – the law concerning khums as if it was too conservative, if not reactionary, to be capable of implementation today.

Imam Khomeini's answers to questions concerning khums have been presented in an earlier section. In this section, the discussion is focused on the rules and practical implications of the 20% khums tax.

2. Items Which Require Khums

“The 20% tax is obligatory on the seven items mentioned below:

- (1) Spoils and accessions
- (2) Mines
- (3) Treasure
- (4) Precious things obtained from diving in the sea
- (5) Savings after meeting one's annual expenses
- (6) Land purchased by the *ahl al-dhimmah*
- (7) Earnings that may have a forbidden component.⁶⁷

a. Spoils of War and Accessions

“Things acquired by Muslims in wars, irrespective of whether or not these are seized weapons or territory or some other asset, are treated as prizes of war or war acquisitions. Twenty per cent of their value is realizable as khums tax provided the war has been fought with the Imam’s permission.

“If the war took place without the Imam’s permission, any acquisition or accession resulting from it will be treated as *anfal* (which has been dealt with in Part Two). This is the case if the Imam has been present and available.

“In the absence of the Imam, or his non-availability for obtaining sanctions for the war, the levy of the khums on the consequent acquisitions or bounties would appear to be obligatory, especially when the war was an invitation to Islam.

“Likewise, khums could be applicable on acquisitions by defending Muslims, even if these were seized in the absence of the Imam.

“With regard to war acquisitions, or bounties, one condition is applicable. That is, there should be no usurpation, extortion or misappropriation concerning whatever may belong to Muslims or non-Muslims under their formal and honorable protection.”⁶⁸

b. Mines

“The twenty per cent tax on mines is leviable on extracted/processed items of gold, silver, copper, iron, lead, various precious stones (i.e. turquoise, agate), bitumen, oil, sulphur, sulphate, coal, rock salt and similar others. If necessary, the levy of the tax can be judiciously extended to gypsum, lime, chalk and red clay. In the case of doubt concerning the exact nature and content of a mineral substance, no levy of the tax is warranted.

“The twenty per cent levy is necessarily on the cost-price of the items, minus expenses in connection with their extraction and reprocessing, or refining, as the case may be. For the purpose of applying the tax, items should have value equivalent to (or more than): 20 dinars or 200 dirhams; 105 mithqals (or ordinary silver coined prices), 15 mithqal (or ordinary gold coined prices) or prices at par with the same.”⁶⁹

Some practical aspects concerning assessment of khums on mines (and precious stones) are notable as follows:

1. “In case the price of any mineral, or mineral-based substance or

item is found to vary or fluctuate, the minimum value of assessment (mentioned above) will be applicable.

2. "Price ex-mine or after extraction, should be taken into consideration. This does not mean any price based on a single extraction (when continuous mining or extraction is possible). If any quantity resulting from a single extraction is insufficient for assessing khums, then, it will be necessary to wait for further extractions so as to obtain enough to make the total chargeable at the rate of twenty per cent.

4. "Separate assessment of khums on mines (or precious stones) extracted by any individual participation in the relevant enterprise would appear to be strongly recommendable. This is subject to the condition that the share of each partner should be quantitatively enough to be at par with the prescribed minimum value for charge or its quantitative equivalent.

"At the same time, the foregoing manner of assessment is notwithstanding any need to carefully weigh the possibility and necessity of combining the quantities extracted by all the partners, so as to be able to realize khums on the total product of the joint efforts, once the same reaches (or exceeds) the chargeable quantity/value.

5. "Sometimes minerals (or precious stones) are found to be of different kinds. In this case, too, the twenty per cent assessment is possible, when their combined value is at par, or in excess of the prescribed minimum for charge.

"However, if their mineral content varies and a part of the collection is not taxable, it will be necessary to avoid combining the same.

6. "In so far as payment of khums is concerned, it makes no difference whether or not the minerals (or precious stones) are extracted from freely accessible territory or privately owned land or whether or not the extracted quantities belong to the miners or extractors or the landowner.

7. "In case the extraction is from private land with the owners permission, khums is realizable after deduction of the relevant costs, including the miners wages.

8. "If any extraction has taken place without the landowner's permission, the quantity extracted will be subject to khums without any deduction of costs or extraction borne by the extractor or someone else. The landowner will not be responsible for paying the khums.

9. "Also, it makes no difference with regard to realizing khums, as to whether or not the miners or extractors were Muslims. In other words,

the authority concerned may require payment of the twenty per cent tax from non-Muslims, too, if the latter are subject to his jurisdiction.”⁷⁰

c. Treasure

“Things not owned by any recognizable owner are customarily accounted for as treasure. This is irrespective of whether or not any place, barren land or part of ruins, where the treasure may have been found has been under Islamic jurisdiction or evidences any trace of Islam. In any case, treasures found belong to the one who has found them and the twenty per cent tax is realizable on the treasure from the finder.

10. “However, anyone finding a treasure within his land which has been acquired from former owners cannot at once become entitled to it. First, he must try and ascertain or exhaust any possibility or probability that it could not have belonged to the former owners. Coming to own the treasure in this manner, he will be called upon to pay the twenty per cent tax or khums on the same.

11. “If any treasure like thing is found in the stomach of an animal purchased by the finder, it will be treated in the same way as treasure, provided the seller of the animal is found to be unable to account for it. It will be subject to the twenty per cent tax, whether or not its quantity/value conforms to the minimum charge.

12. “However, if the thing happens to be found in the stomach of a fish, there is no need to ascertain about it from the fisherman or seller (unless there is a probability that the thing of value may have belonged to the seller).”⁷¹

d. Precious Things Obtained from Diving in the Sea

13. “Divers sometimes bring up from the sea precious treasure-like things, including pearls. Whenever these things are worth one dinar a piece, or more, twenty per cent tax is payable on their value as khums. This is irrespective of whether or not these are homogeneous or have been extracted together at one time or after several efforts or these are products of joint efforts by divers, in which case they will be charged in the same manner as for minerals.

“If diving equipment is used with or without divers to extract the previous things, then, too, the twenty per cent tax will be leviable on the same as a matter of prudential necessity.

“For the purpose of khums on precious things extracted from

diving, it makes no difference as to whether or not the diving has taken place in any sea or river.”⁷²

14. “If some people collect ‘gifts’ from the sea shores without any need for diving, and habitually sell the same, then these will be treated as merchandise so that the relevant procedure of realizing khums is applied.”⁷³

15. “However the twenty per cent tax is payable irrespective of whether the quantity/value of the ‘discoveries’ fulfills the prescribed minimum. Moreover, the tax is applied after deducting the annual expenses of the seller.

16. “If non-traders come across the gifts, their value will be added to their income for the purpose of taxing the latter.

17. “Something of value may have been lost at sea and not found by its owner. Subsequently, if a diver finds the same, it will become his property and as such will be subject to the khums tax, provided it can be treated as a treasure-like thing.

18. “Ambergris found by divers is subject to the 20% tax.

“If the same is found on the sea-surface, or along a sea coast by people involved in this kind of economic and commercial activity, then it will be subject to the khums according to the procedure applicable to traders. On the other hand, if it is accidentally found by someone, it will become part of his personal income for which a separate procedure for realizing khums is prescribed.”⁷⁴

“Note: All precious things extracted from the seas, minerals or precious stones and treasure are subject to khums after deducting the cost of extraction, diving, excavation, melting or moulding and similar others, as the case may be, including that of the relevant tools and equipment used. It will be strongly recommendable to base the assessment on the net value rather than on the gross one.”⁷⁵

e. Savings after Meeting One's Annual Expenses

“Any net income remaining after meeting the earner's own annual costs and expenses, as well as those of the family/dependents, is necessarily liable to the twenty per cent tax. This taxable net income may be based on:

- (1) Income from individual investment or activities
- (2) Agricultural income
- (3) Income from trade and commerce

(4) Other incomes, including those derived from real estate transactions or personal and family possessions such as land, orchards and the relevant produce, as well as that based on price increases of consumer and other goods.”⁷⁶

1) Punctilious Application of Khums

19. “It is only right that, in order to be careful about any possible use or consumption, khums is paid on gifts, awards, donations and grants and similar others received by a person. This is notwithstanding any strong possibility that without net profits, khums does not accrue in a given year.

2) Khums on Inheritance/Dowery

20. “The stronger opinion is that khums is not due on inheritance and the dowery given to a bride by her husband (*mahriyah*) but caution is better.

3) Khums on Net Income from Annuities

21. “That which a person receives from khums or zakat does not require khums to be paid upon it even if his yearly income increases but whenever he intends to keep it to benefit and profit from it, zakat is payable.

4) Speculative Buying and Khums

22. “Goods which a person purchases not with the intention of commerce or capital but rather for saving and benefitting from the resource and its benefits and growth, khums does not accrue upon it or if the khums upon it has been paid, if its price on the market increase, khums becomes obligatory upon the increase in price after the passing of one year if the owner has the possibility to sell it at the increased price. Otherwise, the increased amount will be accounted for in the profits of the next year (the year in which the owner of the goods has the ability to sell it).

23. “If at the end of the year from the goods used in trade and the price of some of them increased and the rest is with the people, if some of the existing goods be sold or the possibility to sell them exists and the cost of them be received, 20% must be paid or the increased amount must be paid but the amount which is with the people, if he is certain that whenever he wants, he can cash it, he must pay 20% of the amount of

increased capital. If he is not certain that he can cash it in, it will be delayed when it is received, and whenever sold, the profit made will be added to his yearly profit.

24. "Khums will be accountable on this part, after deducting losses and monies spent on trying to obtain a benefit and profit, to the amount which exceeds his expenses. In other words, the costs and expenses incurred in trade like renting a means of transportation and the losses suffered are part of the yearly expenses."

6) Deductible Annual Expenses

a) Personal/Domestic/Working Expenses

"Whatever a person spends on his own self and his family or dependents constitutes his annual expenses.

"Money spent on pilgrimage, alms, rewards, gifts, extending hospitality to people or costs incurred at the place of one's work, including any necessary payment of wages or as vowed and others incurred by way of expiation, are part of the above mentioned personal expenditure. Likewise, money spent as living expenses, including those in travel, transportation, carpets, furniture, books, children's marriage, etc. are all part of one's annual expenses.

"However, in incurring the above mentioned expenses, the cannons of financial propriety should be taken into consideration. In other words, each item of expenditure should be justifiable in itself, and be appropriate to one's economic and financial, as well as social standing. If anyone shows extravagance or lack of justification in his ways of expenditure, the amount that cannot be justified will not be included in the annual expenses. So, only moderate expenditure and reasonable expenses are appropriate for the purpose of arriving at one's deductible annual expenses and net income.

"Only those expenses which are actually incurred and not any proposed commitments are taken into account for the purpose of determining one's annual expenses. But whatever one should have spent on the hajj or for religious purposes, during the year, which were obligatory, but consciously or inadvertently were not paid, are not included in the expenses of that year.

b) Combining Accounts from Various Sources

31. "It is not necessary to separately account for expenses incurred

in case one's income is derived from multiple sources (or occupations), involving simultaneous activities relating to commerce, agriculture, arts and industry, etc. The respective accounts can be combined so that the tax is assessed on the total net income that may materialize in a year, instead of opening separate khums accounts for each.

c) Income Lined to Augment Capital

32. "Most comprehensive, rather, stronger is that capital is from profit and benefit came from trade, even if it be needed, it is not accounted for in the yearly expenses and its 20% must be paid unless it is required by him to preserve his self-respect and reputation and is consistent with his position in society. For instance, by paying the 20% of the capital earned, his work goes through a shaky time which is not suitable to his reputation and social position or by paying this, his expenses cannot be met but when a trader has no money and through rent, etc. being paid to him, he attains cash and he wants to use that as capital for trade or trade itself is obligatory that he pay the 20% tax. This also applies to an owner who personally made use of profits to make use of that income.

d) Imam's Religious Edicts Concerning Khums on Possessions

33. "A person who owns property such as an orchard, animals (or machines), and does not require khums because these have been inherited in certain other cases, it may have accrued and been paid, one of the three alternatives mentioend below applies:⁷⁷

Applicability of Khums		
Possessions kept for (1) Making commercial use or gainful employment.	Examples Trees, kept for their timber/ fruits.	Imam's fatwa The gain derived from wood/timber, as well as the fruits, if any, will be subject to pay- ment of khums.
(2) Making commercial use of what the possessions produce	Animals kept for their milk/wool	Khums is not leviable on any gain from their meat. It is leviable only on their produce
(3) For domestic consump- tion, or personal use of the produce.	Fruit-bearing trees kept for domestic con- sumption of their fruits.	Khums is applicable on the quantity/value re- maining after the do- mestic consumption.

34. "An entrepreneur may make use of his capital in one kind of business, making regular purchases and sales during one year. Further, he may have profited from some transactions while he may have had losses from others. For the purpose of khums, the profits and losses will be balanced. If both these are equal, there will be no question of any net gain for taxation. However, in case of any net profit, the same will be charged at the rate of twenty per cent.

"Various kinds of commercial goods may be traded at one market-center, as is common nowadays in many cities and towns, and with many commercial establishments, if different kinds of commercial goods may be traded not only at a central store, but at its branches or they may all deal in one specialized kind or a particular area of business in several branches. While operating separately, the individual accounts of the branches may be combined at their central office so that losses or shortfalls of one may be offset by any gain of another. For the question of any overall balancing of profit and loss accounts of business does not arise when these are represented by small independent units, rather than large organizations concentrating on diverse businesses at various centers. It can be said that the criteria is the independency of the trade not having various types.

35. "A person may use business profits for one's provisions (food, oil, wheat, etc.) for one's domestic use during the year, he may not have some left over. In that case, he should pay khums on the savings, irrespective of their quantity.

"In case business profits have been used to buy utensils or domestic appliances, personal transport and the like, which are used as part of his capital assets on a continuing basis, these may not seemingly attract khums. Unless these no longer be necessary, in which case the 20% tax is obligatory.

36. "A person may be in need of a house to live in and it may not be possible for him to buy it, except with the income from some business he may have in the course of a few years. Then he may be able to buy a plot of land in one year, building materials in the next year and subsequently undertake the building construction. Alternatively, he may be constrained to buy even land (or an existing house) by arranging to pay for it in installments over a few years. In all these cases, the relevant payments can be treated as part of the annual expenditure. However, if he wants to save until he accumulates enough money to build or purchase

a house, he will be required to pay khums.

37. "A person may collect wool of sheep over a period of years for the purpose of making a carpet or any necessary (winter) clothing, and he does this of unavoidable necessity. The relevant cost can be treated as part of his annual expenses for the purpose of any levy of khums.

38. "The purchasing of a dowry for one's daughter from the profits of several years in a way whereby every year some things are purchased, are included in yearly expenses, but if money be put aside to later purchase the dowry, it is not included in yearly expenses.

39. "A person borrowing money in the beginning of an assessment year for meeting his personal (and domestic) expenses can be allowed to deduct the same from his trading or commercial earnings. So will be any person obtaining necessary provisions on credit or any person obliged to spend part of his capital for meeting his (and his family's) living expenses.

40. "Irrespective of anyone wanting to pay khums only at the end of an assessment year, there is actually no need to wait for the year to (almost) pass. A trader for instance can pay khums at any time during the year, as soon as he decides to pay the same, on the basis of cumulative net earnings, or net income."⁷⁸

f. Land Purchased by the ahl al-dhimmah

"If an *ahl al-dhimmah* buys land from a Muslim, he is liable to pay khums on it. If he chooses not to pay the same, the khums due, if any, can be recovered from him in a compulsory or forcible manner.

"The foregoing is irrespective of whether or not the land is agricultural or it bears an orchard or a house, a bathing place or a commercial building. Since buying and selling activities are always possible over Muslim lands purchased by the non-Muslims who live under Muslim protection, the relevant transactions attract the khums tax. However, if any transactions involve both land and buildings, or if the buying and selling of the land covers its building as well, the land component will not be taxed.

"The twenty per cent tax law is applied ⁷⁹ on the basis of *raqabah* 'zamin'."

g. Earnings Mixed with the Forbidden (haram)

"Property mixed with something forbidden, if the owner is in no way clear and the amount of it is not known, the 20% tax is applicable.

But if the forbidden amount is known, if the owner is also clear, it must be paid to the owner and no khums is applicable to it.

43. "In case any specific amount or asset is found to have been from an illegitimate means employed by one out of an accessible group of persons, they should be called upon to name the owner. If they fail to identify him, recourse is necessary to fix the ownership by lottery.

44. "If it was possible to identify an illegitimate amount of money, but not the person who earned it, or if it had belonged to one of an inaccessible group of persons, who could not be specified, then the same can be used for charitable purposes, after obtaining permission from the hakim shar' ⁸¹

45. "If an owner of an illegitimate component of money or asset is known, but not its exact amount or quantity, the owner should be consulted forthwith." ⁸²

The above position is summarized below:

Actions Concerning Mixed (legitimate-forbidden) Earnings

<i>Position</i> Concerning the forbidden amount	Concerning the owner of the for- bidden amount	Action prescribed under the Divine Law
(1) Known	Known	The forbidden part should be returned to the owner (without deducting khums)
(2) Unknown	Known	The owner should be consulted about the forbidden quantity.
(3) Known	One of an accessible group	If the group fails to identify the owner, recourse should be taken to ownership by lottery.
(4) Known	One of an inaccessible group	It should be used for charity, after obtaining necessary permission.
(5) Unknown	Unknown	Khums should be realized.

46. "A person may come to know about the owner of any unknown illegitimate component of his 'mixed' income after he has paid khums on the same. In that event, he should ascertain the extent of the illegitimate component and return the same to the owners.

47. "A person may come to know about the extent of an illegitimate component of his mixed income, after he has paid khums on it. If the size of the illegitimate component is found to be less than that of the khums paid, the excess of the latter will not be necessary. If it is to the contrary, that the property is greater than the khums, caution prescribes that the excess amount be donated and if the excess amount is not clear, it is not obligatory to pay the excess."⁸³

3. Commencement of Fiscal Year for Khums

"In the case of a trader or merchant, the fiscal year begins from the time of his first commercial transaction leading to gradual day-to-day recycling of this earnings or accumulation of income while incurring expenses through the year.

"In the case of one who is not a trader or merchant, the fiscal year begins from the time he receives his first income or monetary gain. For example, an agriculturist earns money only after he is able to dispose of his produce. So his fiscal year commences once he has converted his produce into money. For an orchard owner, it begins at the time of plucking the fruits.

"However, if any agricultural produce or fruit crop is sold in advance, the fiscal year for the respective crop will commence from the time of receiving payment for the same."⁸⁴

4. Distribution of Khums

(according to the Quranic verse 8:41)⁸⁵

وَأَعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ			Socio-economic Result
1	فَإِنَّ لِلَّهِ خُمُسَهُ	In Way of God	At the disposal of Shar'i authority for Islamic societal benefit and further orientation to Islam on the part of Muslims and others in the context of their overall economic well-being.
2	وَلِلرَّسُولِ	For Prophet	
3	وَلِذِي الْقُرْبَىٰ	For Imam	
4	وَالْيَتَامَىٰ	For Orphans	Personal/family's social security and insurance.
5	وَالْمَسَاكِينَ	For the Needy	Unemployment insurance
6	وَابْنِ السَّبِيلِ	For the Stranded	Travel insurance

Distribution of Khums⁸⁶

“Khums is divisible into six shares as follows:

- (1) Upon the Way of God
- (2) Upon the Way of the Prophet
- (3) Upon the way of the Imam
- (4) For the Orphan
- (5) For the Needy
- (6) For the Stranded

5. Entitlement for Payment from Khums

“Those who receive khums payments are under the following obligations:

(1) “All those entitled to receive khums should be steadfast in their faith (although their sense of justice is not invoked as a condition)

(2) “Khums is not payable to one who is disrespectful to his religion or who is in the habit of committing significant and cognizable sins, as it will not be cautious to do so.

(3) “Payment of khums should not lead to or result in abetting sinful acts, supporting hostility (against Islam and Muslims), and/or debasing activities.

(4) “Attention of the religious jurists whose opinions on dictates of religion are followed and prominent Islamic personalities is desirable but not absolutely necessary.

(5) “Khums is payable to an orphan only when he is poor.

(6) “Khums is payable to a traveler who needs the same in the place where he happens to be stranded, provided he has not committed any crime or sinful act enroute to that place. This is irrespective of any situation concerning his financial and social circumstances or standing in his hometown.

(7) “A spouse should not be one of the dependents to whom their maintenance expenses are given by way of khums.

(8) “The allocation in the name of the Prophet may be utilized for his household, descending from the side of this father, Abdul Muttalib.

(9) “Mere claims of belonging to the Household of the Prophet are not sufficient to entitle one to khums from the relevant share. One should be customarily known as such and none should have disproved his claim.

(10) “Khums payment should not exceed the amount of one’s

annual expenses and the payee is under obligation not to receive what he does not need.”⁸⁷

6. Utilization of Khums

“Administrative responsibility concerning the second half of khums (payments on account of orphans, the needy and the stranded) devolves on the authority of the hakim shar‘. Accordingly, the relevant payments should be made to him and /or be utilized with his permission.

“The hakim shar‘ is responsible also for the first half of khums (payments in the way of God, His Prophet and Imam which has come to be known as the share of the Imam (ع) . The relevant payments are to be made over to the same authority for ensuring their proper use under his (direct) supervision and any necessary religious edicts or the amounts should be utilized with his permission for specific purposes once these are predetermined.

1. “Payment from khums by a religious jurisprudent whose opinions on religious dictates is followed to a person who is not his follower may involve some difficulty. However, if the prospective payee intends to utilize the payment for the same purpose as envisaged on the part of the religious jurisprudent or in a manner as advised by the latter, the procedural difficulty can be overcome.

2. “Khums can be transferred from one place to another. Exigencies of circumstances may sometimes necessitate that the payment be made to a beneficiary in a place other than his usual one. This is done at his risk, in case of loss. Payments can be transferred also in the case of a payee’s nonavailability at his usual place and likelihood of his not returning to his hometown or if it is ordered by the religious jurisprudent whose opinions on religious dictates is followed.

3. “If a fully qualified religious jurisprudent (*mujtahid*) is in a town other than his usual place, the share of the Imam (ع) should be sent to him there.”⁸⁸

NOTES TO PART THREE

1. Imam Khomeini, *Kashf al-Asrar*, written in 1942, p. 255-270.

2. *ibid.*

3. *ibid.*

4. *ibid.*

5. It is important to note that the *jizayah* tax which is payable by the *ahl al-dhimmah* (Jews, Christians, etc), is levied, not because they are non-Muslims or may deal in usury or are colonialists. But rather, the levy is in order to provide them with overall protection and social security, in the same way as Muslims are entitled to on the basis of an identical tax. Moreover, it takes into consideration the exemption of non-Muslims from any military or defense undertaking. Thus, the *jizayah* tax is designed to be commensurate with the overall responsibilities of Muslims and the Islamic government in regard to their non-Muslim fellow citizens. As pointed out by Dr. Jani-yah in his book *al-Qanun al-Duwali al-'Am*, "The world at present bears witness to the unfair exploitation of small and weak countries by the superpowers, in different ways, including formal or legal contracts! Under one pretext or another, or through manipulation of the regional developments or the local scenes, the superpowers make the weak countries participate in their collective security plans. In contrast, the *jizayah* system represents the most fair and humane method of promoting overall security and peace among peoples."

6. Imam Sadiq also emphasized the need for Islamic leadership of a country to fix the rates of *jaziyah* according to the concerned peoples' ability to bear it. See *Wasa'il al-Shi'ah*, chapter 68.

7. Imam Khomeini, *Kashf*, *op. cit.*

8. *ibid.*

9. *ibid.*

10. *ibid.*

11. *ibid.*

12. *ibid.*

13. *ibid.*

14. *ibid.*

15. *ibid.*

16. *ibid.*

17. *ibid.*

18. See *Wasa'il al-Shi'ah*.

19. *op. cit.*, Imam Khomeini, *Kashf*.

20. See *Tarikh Tamadun Islam*.
21. *op. cit.* Imam Khomeini, *Kashf*.
- 22.
23. وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ
24. فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَأِخْوَانَكُمْ فِي الدِّينِ
25. Imam Khomeini, *Tahrir al-Wasilah*, vol. 1, p. 311.
- 26.
27. See Sermon 199 of the *Nahj al-Balaghah*.
28. Imam Khomeini, *Tahrir*, vol. 1, p. 312-315.
29. *ibid.*
30. *ibid.*
31. *ibid.*
32. *ibid.*
33. *ibid.*
34. *op. cit.*, *Tahrir*, vol. 1.
35. *ibid.*, vol. 1, p. 319-320.
36. *ibid.*
37. *ibid.*
38. *ibid.*, vol. 1, p. 321-322.
39. *ibid.*, vol. 1, p. 318.
40. *Mazar'ah* represents a contractual arrangement between an owner of agricultural land and a landless or other cultivator or contractor, under which the latter shares the produce with the former.
41. *Musaqat* is a contractual arrangement between an owner of an orchard and a garden for regularly watering the trees and sharing the fruit.
42. *op. cit.*, *Tahrir*, vol. 1, p. 326.
43. *Kharaj* is a tax based on the area of cultivated land which an Islamic government conquers.
44. *op. cit.*, *Tahrir*, vol. 1, p. 332.
45. *op. cit.*, *Tahrir*, vol. 1, p. 333.
46. *op. cit.*, *Tahrir*, vol. 1, p. 322.
47. *op. cit.*, *Tahrir*, vol. 1, p. 323.
48. *ibid.*
49. *ibid.*
50. *ibid.*
51. *op. cit.*, *Tahrir*, vol. 1, p. 334.
52. *op. cit.*, *Tahrir*, vol. 1, p. 338.
53. *ibid.*
54. *ibid.*
55. *ibid.*
56. *ibid.*
57. *ibid.*

58. *ibid.*

59. *op. cit.*, *Tahrir*, vol. 1, p. 341.

60. *ibid.*

61. *op. cit.*, *Tahrir*, vol. 1, p. 350.

62. *ibid.*

63. *ibid.*

64. *ibid.*

65. *ibid.*

67. *op. cit.*, *Tahrir*, vol. 1, p. 352.

68. *ibid.*

69. *op. cit.*, *Tahrir*, vol. 1, p. 355.

70. *ibid.*

71. *ibid.*

72. *ibid.*

73. *ibid.*

74. *op. cit.*, *Tahrir*, vol. 1, p. 356.

75. *ibid.*

76. *ibid.*

77. *op. cit.*, *Tahrir*, vol. 1, p. 364.

78. *ibid.*

79. *ibid.*

80. *Raqabah' al-mal* refers to the main resource which gives natural wealth and *raqabah' zamin* is the land in which the resource exists.

81. *op. cit.*, *Tahrir*, vol. 1, p. 364.

82. *ibid.*

83. *ibid.*

84. *ibid.*

85.

86. *op. cit.*, *Tahrir*, vol. 1, p. 365.

87. *op. cit.*, *Tahrir*, vol. 1, p. 365-366.

88. *ibid.*

PART FOUR: DISTRIBUTION AND REGULATION OF SOCIETY'S WEALTH AND SAFEGUARDING IT

I. DISTRIBUTION OF SOCIETY'S WEALTH

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PART FOUR: DISTRIBUTION AND REGULATION OF SOCIETY'S WEALTH AND SAFEGUARDING IT

I. DISTRIBUTION OF SOCIETY'S WEALTH

1. Introduction

Islam, in addition to collecting taxes like zakat and khums from the wealthy to the benefit of the deprived and for the betterment of society and by appropriating natural resources to the advantage of the public at large, through its great spiritual influence, also provided for acts of worship such as endowment (*waqf*), donation (*vogodhari*), gift (*habah*), charity (*sadiqah*), vow (*nadhr*) and will (*wasiyat*). By raising the level of faith and the love of humanity, instead of selfishness and the worship of ostentation and the desire to monopolize, the wealthy are encouraged to, in complete freedom and with great desire, remove any property which is not needed forever from private ownership and monopolization to be used upon God's way by one's family or needy or the general public and society. We see how successful Islam has been in this area. As a result of the Divine Grace within these acts of worship, thousands of schools, colleges, mosques, gardens, roads, bridges, husainiyahs, centers for propagation, hospitals, etc. have fallen into the public sector in Islamic countries. These have greatly helped the people, in particular, the deprived, served them and guided them.

That an Islamic government should be able to promote voluntary social benefits, as indicated above, is emphasized by Imam Khomeini:

"If Islamic propagation/information services of the government were to become current, one would see how these vows, wills and endowments serve the country and the masses. Half the cost of essential public welfare activities comes from them and bequests by well-motivated and responsive members of the public. As it is said, Islamic propagation, as the religion has commanded, should become prevalent so that services become productive to be able to promote individual and group motivations towards good deeds, and to avoid dissipation of efforts and resources

into futile channels.”¹

2. Endowment (waqf) or Distribution of Wealth

a. Description of an Endowment

Waqf means relinquishing one's private/personal ownership of something capable of public use and benefit upon the way of God. Depending upon the person making the endowment, it may be of two kinds: public or private.

b. The Importance of Endowment

“Endowing is an act that represents a major virtue and carries spiritual rewards. In a collection of Islamic Traditions, it is assigned the importance of one of the three qualities that survive one's death.”²

c. The Conditions for an Endowment

1. “It can be accomplished by word of mouth in any language applicable for the purpose.

2. “Anyone constructing a building intended for a mosque, caravan-sarai, or a bridge, or a road, or similar other public facilities can accomplish an endowment of the same by just placing the completed structure at the disposal of the public, and its subsequent public use will confirm it as endowed property.

3. “An endowment of something must be followed by its handing over to a custodian or an authority. However, if a person dies before making over the property or asset as endowment, the relevant arrangement becomes invalid and the property or asset in question becomes part of inheritance.

4. “An endowment should always be made on a permanent, and not a temporary basis and the permanence of the endowment necessarily implies change of ownership.

5. “Endowments made over to a person or authority who no longer could retain its custody due to extraneous circumstances, such as the overthrow of the custodians or authorities, may continue to remain valid as an interrupted endowment (*waqf munqatah*). After the extinction of the owner, it will be returned to the endower or his or her heirs.

6. “If a person endows something upon the condition that if needed, it will be returned, it is correct.

7. “According to precaution, an endowment should be conclusive and not conditional.

8. “An endowment should be for others, not for oneself.

9. "Making an endowment out of a leased property will be valid and the leases will remain valid, too.

10. "A person who makes an endowment should have attained the age of majority, or puberty, and he or she should be intelligent, of sound mind, as well as capable of exercising free will and in possession of unencumbered right to that which is intended or proposed to be treated as an endowment.

11. "A person making an endowment need not be a Muslim. The endowment of a person who covers over the truth of religion is also valid.

12. "That which is to become an endowment should have been in legitimate ownership of the prospective endower, both the thing which is to become an endowment and its derivatives or uses should be legitimate according to the Divine Law and by making use of its benefits, the principle of ownership will be in effect. It must be something the endower could give and it is not necessary that it be profitable at the time of the endowment.

14. "The party to whom a private endowment is proposed to be entrusted should be present in person at the time of completion of the relevant formalities and in the case of a public or general use endowment, the receivers of the same could be represented by an authorized representative or a public functionary, those to whom any kind of wealth is intended to be endowed should be capable of undertaking the responsibility that goes with it. One or more persons to whom something is proposed to be endowed need not be Muslims. They could be Jews and Christians living under Islamic protection, as well as other non-Muslims and even the less devout from among known Muslim families.

15. "Once a deed of endowment is completed, the endowers cannot alter it or its applicability or its formal significance.

16. "Sale and transfer of endowed charities, public and private, is not legal, except in the cases mentioned below:

— "The property is in a dilapidated condition and it is not possible to restore it to its original condition so that its sale is justified in carrying out the endowment's obligations on the basis of a similar property purchased with the sale proceeds.

— "If the endowment obligations and purposes can be maintained and improved upon by purchasing a new property, the old dilapidated and almost unusable property can be sold and its sale proceeds utilized for buying a suitable property, which is capable of serving the endowment purposes, like a house or orchard.

— "If the endower provides in the deed that the endowed property/asset can be sold in the event of imperative need, or in compelling circum-

stances, there is nothing to prevent the sale, if necessary.

— 'If serious differences, among maintainers of the endowment may sometimes continue to adversely affect the lives and properties involved, so that the only alternative left to resolve the uselessness of the endowment is by selling the same and dividing the proceeds among the beneficiaries.

17. "An endower can provide for his or her nominee's custodianship of that which is to be endowed through a deed. Alternatively, he can stipulate that he shall have a right to depose any custodian appointed under a deed of endowment.

"If the deed does not provide for appointment of a custodian, then the functions of a custodian will devolve upon the public endowment administration based on the Divine Law and its public or official representative will become the custodian of the endowed property or asset. In a private endowment, decisions made by a public custodian are binding on the beneficiaries.

18. "An endower can provide for a salary of a custodian of the endowment out of the earnings of the latter. In that case, the custodian will be entitled to payment of the salary, as provided for. If no fixed amount of salary has been mentioned in a deed, then it can be based on the amount usually paid to any other incumbent of a comparable office. A custodian is not entitled to transfer or handover his post to anyone of his choice, unless this is provided for in the deed, or at the time of his appointment.

19. "That a property or asset has been an endowment can be evidenced by people's recognition or acceptance and assertion of the same, based on traditional knowledge or fame. Its verification can be based also on a claim by those who may have been customarily benefitted from the same, including tenants and inheritors, as well as on the fact of its coming upon purview of the 'Uqaf (Endowments) Office. The circumstantial evidence is in addition to any direct evidence in accordance with the relevant legal provisions under the Divine Law."³

3. Donations (*vagodhari*)

20. "A person can bestow his property in order to fulfill the same purposes as an endowment in the sense that its benefits be used for charity. If it is ceded for good and forever, it cannot revert to his ownership and cannot be inherited by his legal heirs, or successors. If the cession is temporary, it will revert to the owner, or his successor, on expiry of the stipulated period.

"If the benefits of a ceded property/asset are meant for any specific

persons, they will enjoy the same as long as the cession is valid, in case of fixed-period bestowals. Where a cession has no fixed duration, it shall be deemed to be the residual life of the assignor, so that his heirs may inherit the same.”⁴

4. Gift (*habah*)

“*Habah* is something gifted away from one’s ownership of it, so as to let it come under the ownership of another person without any cost to the latter or his offering anything as consideration. This, too, is a kind of contract, which requires definition of the purpose of the donor in gifting and specification of the willingness to accept on the part of the receiver.”⁵

a. Conditions

1. “Both the intending donar and prospective recipient should have reached the age of maturity, attained a reasonable level of intelligence and be capable of decision, as well as free to do so.

2. “A giver’s disposibility of a gift should not have been in any legal dispute or encumbered in any way.

3. “A receiver should have the capability of owning that which is gifted to him.

4. “That which is to be gifted should be a real asset and not any possible income/advantage from it, or its useability.

5. “A gift should have materialized on the side of the recipient for it to be considered as *habah*; if one of the parties dies before the actual transfer of possession, the contract will become invalid.”⁶

b. When a Gift Cannot Be Taken Back

1. “After the gift has been made over to the receiving party, irrespective of whether or not it has been handed over to the receiving party’s family (father, mother, offspring, etc.). If however, the gift has been routed through a person unrelated to the family of the one to whom it is meant, then, it can even be recalled, so long as it remains under the intending owners’ ownership and control.

2. If a gift is in exchange for something (*habah m’audah*), in that the prospective receiver is supposed to do something or offer any payment or compensation in return and if the receiver fulfills his part of the agreement, then the giver has no right to take back the gift.

3. “After a gift is made, if one of the parties dies, no heir or inheritor of the donor has any right to obtain return of the thing already gifted.

4. “A donor cannot obtain return of his gift, if it has been lost while

in the custody of the recipient.”⁷

c. The Importance of a Gift

“For God has strictly enjoined compassion and peace, particularly among the members of the same family. At the same time, He has severely disapproved of any breaking of family ties.

“Imam Baqir (ع) attributes to Hadrat ‘Ali the saying to the effect that a person who harbors three negative traits is bound to suffer punishment for the same before he dies. These negative traits are: (1) rebellion, (2) suppression of compassion and (3) false promises. Of these, the most significant manifestation of obedience and closeness to God and one of the most valued qualities deserving of His blessings is that of showing compassion and a spirit of conciliation among people.

“Among family members, parents have precedence over the others. Between parents, the mother has a greater right to the other's consideration and acts of goodness. As Imam Sadiq (ع) conveyed it, someone had approached the Prophet with a question as to whom he should do good to first. The Prophet replied in favor of the mother. The questioner then asked as to whom he should be good to next. The Prophet's reply was the same. When the questioner repeated the reply was again the same. However, when asked for the fourth time, the reply mentioned the father.

“Discrimination between children in the matter of gifts is undesirable (*makruh*). It is to be even prohibited in serious matters for all the ill-will, conflict, enmity and jealousy and wickedness it can give rise to. On the other hand, any preferential treatment based on qualitative achievements of some deserving the same is good.”⁸

5. Charity (*sadiqah*)

“According to a Tradition, *sadiqah* has important virtues. It can save one from a nightmare of God's Wrath. It can atone for many a sin. It can ease the strain of the Day of Reckoning. Charity can render one's affluence meaningful and beneficent. It can prolong one's life. There is nothing more disconcerting to satan than deeds of charity. In short, one's charity to another human being can be construed as something handed over through Divine intervention or with His blessings.

“Charity is governed by the following conditions:

1. “It should be given with the sole intention of seeking proximity to God.

2. “A person who traces his ancestry to the Prophet or a Sayyid Hashimi is ruled out for the purpose of a non-Sayyid's offering him charity. However, a charity is well received when given by one Sayyid to

another.

3. "Buying charity given to a poor man is extremely undesirable.

4. "Ignoring a poorman's need for charity, irrespective of whether or not it is possible or probable that it is indeed a genuine one, is deplorable.

5. "Begging is abominable in itself, irrespective of one's dire need for it. If there is no need for begging, it is all the more loathsome to do so. In fact, caution demands that it be treated as religiously prohibited."⁹

6. Last Will and Testament (*wasiyat*)

"It is prescribed for you when death approaches anyone of you, if he leaves behind any assets, that he make a bequest to parents and the nearest kinsmen – according to reasonable usage – (to fulfill a duty) incumbent upon the pious." (2:180)¹⁰

"*Wasiyat* means a person's last will and testament. It represents one of the salutary traditions of Islam for ensuring a judicious reallocation of one's wealth in both public and private interests. The very first allocation of one-third of one's assets is earmarked for the benefit of the poor and for public welfare. This is according to the relevant provisions of the Holy Quran and the Divine Law. The one-third allocation to poor individuals or charitable organizations has priority over that concerning one's legal heirs, after paying of his debts, if a bequest is made.

"Aside from earmarking of one's estate and wealth for the poor and for public welfare purposes, a will should provide for the following:

– "Earmarking some of the income of a dying person which may accrue after his/her death, as regular contribution for ensuring the welfare of the poor and the needy in specific cases or through some charitable institutions."¹¹

a. Types of Will¹²

1	2	3	4
tamiliki	haqi	'ahdi	fakri
Willing that a part of one's property be given to the needy after one's death.	Willing that a part of one's salary be given to a needy person.	Willing that burial expenses and hajj and other religious duties not performed, be paid	Willing that property be freed from a lien to a bank or a person.

b. Clarifications

1. "A person is made aware of approaching death by the relevant signs (of physical failure). Then a person anticipating death should arrange, as a matter of religious duty to (1) return things in his or her possession or control to the owners concerned, (2) to complete performance of his or her other religious duties including prayers, and (3) delegate duties and obligations, which he or she could not perform himself or herself for the reasons of physical incapacity, to another person (or beneficiary) in the will.

2. "A will can be expressed in any language as long as the words convey the person's intended meaning, but it is best to be in written form.

3. "An adult who is sane and at liberty or unrestrained by law in the disposal of his or her assets, can legitimately write his or her will.

4. "A ten year old person can legitimately execute a will, in so far as it is conducive to people's welfare and serves the interest of common good. (?)

5. "Any beneficiary of a will should be a person in existence, even if it means as an embryo.

6. "A beneficiary of a will may pass away during the lifetime or after the death of the testator, without accepting or passing on whatever benefit has been provided for in the will. In that case, the benefit would accrue to the legal heir of the deceased beneficiary.

7. "If a person dies and someone other than his or her legal heir is called upon to arrange the funeral, although the deceased is not the latter's parent or guardian, it should be considered prudent to obtain concurrence of the person legally responsible.

8. "Normally a testator can leave instructions of his own concerning not more than one-third of his estate. This limit can be exceeded only when the legal heirs agree to it.

9. "Any will drawn up by a person intending to commit suicide would be invalid.

10. "A person can nominate another person to carry out his will.

11. "To be so authorized, a nominee should be an adult Muslim who is sane and reliable as well as (for the sake of precaution) fairminded.

12. "If a person chosen to be executor of one's will is his own son, it will be prudent for the latter to carry out his father's will.

"Any person other than one's own son, who may be nominated to act on behalf of the testator, is not under any legal obligation to accept the nomination. If it is decided not to accept the assignment, and if the testator is alive, the nominee concerned may inform the testator that he is unable to accept the nomination.

13. "In the event of a testator's nominee evidencing betrayal of the trust, the legal authority concerned can intervene and replace the nominee with another person who is really trustworthy.

14. "As long as a testator remains alive, his or her will can be altered or changed by him or her." ¹³

7. Vow (*nadhr*)

"As to the righteous, they shall drink of a cup mixed with camphor, a fountain where the devotees of God so drink, making it flow in unstinted abundance. They perform (their) vows and they fear a day whose evil flies far and wide. And they feed for the love of God, the indigent, the orphan and the captive, (saying), 'We feed you for the sake of God alone. No reward do we desire from you, nor thanks. We only fear a day of distressful wrath from the side of our Lord.'" (76:5-10)¹⁴

a. Types of Vows

"*Nadhr* is yet another traditional form of a Muslim's commitment to God in the interest of their materially deprived poor fellowmen. This is evidenced through charities dedicated to God and given to the poor and the needy in one's society, as a token of one's adherence to the righteous path of God. In effect, it serves the purpose of bringing about an equitable redistribution of wealth in the interest of societal well-being.

"*Nadhr* arises from one's religious beliefs. It represents one's vow of dedicating something (precious) to God so as to donate it on occasions such as any 'prayed for' improvement in one's personal or domestic or social condition, or recovery from an illness , or simply as a thanksgiving act of faith. A specific portion of one's wealth is, thus, given away towards serving the Will of God in ameliorating the conditions of the poor, the indigent, orphans, the enslaved or captive people and for similar other charitable purposes of ensuring human well-being. The sublime religious motivation is evident from the Quranic verse mentioned above.

b. Clarifications

1. "*Nadhr* represents a distinctive way of undertaking to do something as a matter of one's avowed responsibility, for the sake of (or love of) God, on accomplishment or avoidance of something else.

2. "One who commits something as a vow to God must be an adult, a sane person, free and determined to make and honor a commitment, so that he is least hesitant and encumbered in dedicating something for the purpose.

3. "A woman who makes a vow which her husband forbids is not

correct. It must be with his permission.

4. "A vow without any specific dedication to something is called a *nadhr tabra'* or spontaneous vow, such as involved in saying, "It is my responsibility to do that thing for the sake of God." A *nadhr tabra'*, too, holds good as a promise to be honored.

5. "Anything of value offered as a condition of a vow should be (1) within the power and competence of the offerer, (2) amendable to compliance or recommendable for implementation or use and, above all, (3) reliable as a genuine and worthwhile proposition.

6. "If something is dedicated in the Way of God for upkeep and improvement of holy places, whatever is to be given should be utilized in the interest of those places for the purposes of maintenance repair, illuminations, carpeting and cleansing. It will be prudent neither to undermine, nor exaggerate fulfillment of these needs and purposes.

7. "In the event of one's utter inability to fulfill a vow, it will no longer be binding on him or her.

8. "If a vow is not kept as promised, for reasons of one's forgetfulness or under compelling circumstances or due to sheer ignorance, or unforeseen emergency, it does not become invalid. The promise can be honored subsequently if there is still time to do so.

9. "If a vow is deliberately allowed to become invalid, the person concerned becomes liable to expiation.

10. "To make amends for breaking one's vow, the expiation to be performed is equivalent to one extra day of fasting for each day of Ramadhan (i.e. 60 days of fasting, of which 31 days should be consecutive or feeding 60 destitutes or freeing 60 bondsmen)."¹⁵

c. Types of Vows ¹⁶

Type/Description	Example
1. A promise of charity following a prayer for God's blessings in this world or in the next. (<i>nadhr berr</i>)	"I ...promise...(to offer something to be specified as good and beneficial)...If God blesses me with a child", or "...if my efforts for accomplishing the hajj become successful."
2. An offer to perform any charitable act towards obtaining God's help and protection in warding off any feared calamity or serious eventuality. (<i>nadhr istdfa'</i>)	"...I vow to God that I shall (do the proposed good) if my patient regains his/her health." (Once the prayed for Divine protection materializes, <i>nadhr istdfa'</i> like

3. A vow to 'pay' for any failure on one's part in maintaining personal integrity, or in safeguarding oneself against any religiously prohibited or abominable act as a self-inflicted punishment. (*nadhr zajar*)

4. A spontaneous offer of one's commitment to do good in the Way of God, without involving any material condition. (*nadhr tabra'*).

nadhr birr will signify thanks-giving).

"I solemnly offer to pay...(a specific amount as charity) if I ever indulge in lying."

"I vow to God that I shall keep the fast tomorrow."

8. Expiation (*kafarat*)

In Islam, expiations have been prescribed for certain offenses, sinful acts and irregularities in one's performance of his religious duties and obligations. These are designed to act as deterrents, as well as contribute to the well-being of the poor and the weak. Their application warrants carefulness as to their total, optional, sequential and optional-cum-sequential nature, as explained in the table below:

Types of Expiation¹⁷

Type	1	2	3	4
Kind	Times	Makirah	Makhirah and Martabah	Jam
Descri-	One of the 3	One of the 3	To begin with,	The 3 kinds
ption	kinds of expia-	kinds of expia-	one of the 3	of expiation,
	tion in the fol-	tion as choice.	kinds and if	all together.
	lowing order.		inability arises,	
			number 4.	
Issue		1.Breaking the	1.Breaking the	1.Wilful and
		fast in Ramadhan	promise made	cruel murder
				of a believer.

Expiation	First, freeing a slave and if not able to do so, 2 months fasting or feeding 60 needy.	2.Breaking a vow	2.A woman who who at the moment of tragedy, dishevels her hair.	2.According to caution, breaking the fast in Ramadhan thru a forbidden act.
		3.Breaking a promise	A man who while in mourning for his wife or child, tears his clothes.	
		4.A woman who at the moment of tragedy, dishevels her hair.		
		same	Having the option between freeing a slave feeding or clothing 10 destitutes and if not possible, fasting for 3 days.	Freeing a slave as well as fasting for 2 consecutive months and feeding 60 destitutes

II. SAFEGUARDING SOCIETY'S PROPERTY

1. Introduction

"And give not away to the weak in mind your property which God has made for you (a means of) your sustenance, but maintain them therewith, and clothe them and speak to them with kind words for their good." (4:5)¹⁸

A keyword in the Quranic verse cited above is *al-sufaha* or weak minded people. The Holy Quran, in another verse describes the *sufaha* as people with negative traits and attitudes: (2:9-20)

1. "And of the people who say, 'We believe in God and the Last Day, while they are not of the believers,

2. "they deceive not God and those who believe while they deceive only themselves and

3. "perceive, they do not.

4. "In their hearts is a disease so God increased their disease.' And for them is a painful punishment because they lied.

5. "When it is said to them, 'Believe as the people believe,' they say, 'Shall we believe as the fools believe?' Beware. They themselves are the fools but they do not know.

7. "And when they meet those who believe, they say, 'We believe.' But when they are alone with their satans, they say, 'Surely, we are with you. We are only mocking.' God mocks them and leaves them wandering in their rebellion.

8. "These are they who have bought error at the cost of guidance

9. "God took away their light and left them in darkness.

10. "They do not see. Seaf, dumb and blind, so they shall not return

11. "Or like a rainstorm from heaven, where in is darkness, thunder and lightening.

12. "And lightening almost snatches away their sight; whenever it flashes, they walk in it and He would have taken away their bearing and their sight, surely God is Powerful over everything."

The economic system in Islam is based not only on the Muslims' steadfast adherence to their faith, but on their individual and collective sense of mature intellectual responsibility. This is stipulated as part of every Islamic transaction or contract. The same criteria determine, at the individual and the societal level, the modality of controlling accumulation of private wealth.

At the individual level, the necessary control is voluntarily exercised by devout and responsible Muslims, through transfer of assets by way of *waqf*, *nadhr*, *wasiyat*, *habah*, *sadiqah* and similar other charitable acts and social benefits. They tend to place surplus wealth at the disposal of the less fortunate members of the public. This they do in the way of God so as to promote economic well-being in this world and to provide for spiritual solace in the Hereafter.

With regard to less conscientious Muslims, who persist in their egotistic or self-centered interaction with their fellowmen, their unwholesome impact on others remains to be controlled at the societal level. This is necessary not only to check their selfish motivations and tendencies towards extravagance, hoarding and even corruption in the interest of the others, but to safeguard human and material resources from wastage.

The Quranic teachings recommend that the devout Muslims should not allow persons with morbid tendencies, such as indicated above, a free hand in matters of property and wealth, in order to safeguard their own and society's interests.

Specifically, in the verse cited above (4:5), two significant points are discernable in the precept "And give not away to the weak in mind, your property (wealth)..." and in the elaboration, "property (wealth) which God has made for your sustenance."

The first point is implicit in the occurrence of the word, 'your assets' or property as distinct from 'their assets'. The Quranic precept is addressed to Muslims both individually and collectively. Accordingly, the responsibilities that go with an asset's ownership involve not only the individual owner, but the society at large. This is understandable since individuals can hardly safeguard their own assets without societal protection, especially from any undue exploitation or damage by weak minded or unscrupulous persons. After all, not only individual but group sustenance may be at stake.

The point concerning sustenance is indicated in the second part of the verse mentioned above. Like 'your assets', 'your sustenance' refers to one and all Muslims. Their crucial relationship lies in the possibility of endangering sustenance, by misusing assets or resources. If wealth is al-

lowed to stagnate at the hands of the weak-minded, the unscrupulous or the incompetent, the very foundations of the society (geared to human sustenance) will be endangered and not to speak of economic chaos and discontent. Moreover, undue concentration of wealth attracts evil and undesirable influences from abroad.

With ill-gotten wealth, the least conscientious owners are prone to make regular trips abroad to foreign countries, even for depositing their moveable assets there. While abroad, they could indulge in pursuit of sensuous and hedonistic activities, even as playboys and pleasure-seekers, availing the secular opportunities unscrupulously provided in some places for attracting foreign wealth. Even some offspring of respectable families 'at home' may not remain immune to temptations for squandering parental wealth, in the name of education abroad. Instead of developing their critical faculty based on wholesome education, they often become victims of debased thinking and mechanical-mindedness.

No doubt, it is the duty of an Islamic society or government to effectively manage and control wealth, so as to offset any tendencies towards hoarding, extravagance, wastage and corruption.

2. Prohibited Expenditures (*hajr*)

"The dictionary meaning of the Arabic word, *hajr*, is 'prohibition' or 'prevention'. In the Islamic legal terminology, it means 'preventing indiscriminate spending, on the part of a well-to-do person.'¹⁹ The *hajr* provisions of the Divine Law cover: A minor (*saqhir*), a mentally deranged person (*diwanah*), a mentally weak person (*sufaha*), an insolvent or indigent person (*muflis*) and a dying person (*muhtadar*).

a. A Minor

"A minor or person who has not yet become an adult, is legally prohibited from appropriating or expropriating or disposing of his or her wealth (under inheritance). Any purchase or sale of property or conciliatory deal (involving material considerations), giving away, lending and or borrowing on the part of a minor is considered ineffective under the Divine Law, except it is anticipated in the relevant will and for small and unimportant purchases.

"In deciding about a young person's legal status (according to the relevant provisions of the Divine Law), it is necessary to ascertain whether or not (1) the young person has grown up with signs of physical maturity, such as pubic hair, (2) any nocturnal (or other) emission has occurred in his case and (notwithstanding the preceding considerations), (3) he has attained the age of fifteen years or she is already nine years old."²⁰

"The overall responsibility for taking due care of a minor's genuine interests, with a view to promote and ensure his or her well-being and good reputation devolves successively on the following: (1) his or her own father or (2) his or her paternal grandfather or paternal great-grandfather or (3) the guardian appointed by (1) or (2) above in the absence of the latter or (4) the hakim shar' in the absence of his or her own father, paternal grandfather/ great grandfather or any guardian appointed by one of them and (5) a mature person with good reputation based on tested sense of responsibility and justice, in the absence of the father, paternal grandfather or great grandfather, guardian or hakim shar'."21

b. A Mentally Deranged Person

"Whatever has been provided for in the case of a minor holds good for a mentally deranged person, too, except when the latter becomes an adult and his care and supervision will be the exclusive responsibility of the hakim shar', not the father, nor paternal grandfather or great grandfather, nor a guardian representing any one of them. However, it is best to consult with and obtain the concurrence of the father, paternal grandfather or great grandfather, as the case may be."22

c. A Mentally Weak Person

"A *safih* is one who is intellectually aberrant or weak and, as such, is not in a position to safeguard his or her interests and to realize what he or she is doing. They are prone to unnecessary and unwarranted expenditure. Their mismanagement of resources is aggravated by their susceptibility to deceptions in their transactions, which they tend to take for granted.

"They are a type intuitively or consciously recognized by wise and knowledgeable persons as one restrained by the Divine Law from consuming their capital so that any transaction involving the wealth at their disposal is considered to be ineffective.

"A weak minded or even mentally retarded child is to be taken care of by his or her father or paternal grandfather or great grandfather or a representative appointed by the former or the hakim shar' as the case may be. Once the child, or ward becomes an adult, the responsibility for his or her supervision would pass to the hakim shar'."23

"So long as any improvement in a *safih*'s intellectual deficiency remains to be determined, it is legally permissible to surrender any wealth to him or her.²⁴ Any claim of improvement in his or her critical faculty should be borne out by specific tests and experiments."²⁵

d. An Insolvent/Indigent Person

"A *mufilis* is a person whose own assets can be estimated to have a value amounting to less than his total debts. A person facing bankruptcy is not prohibited or prevented from incurring any normal expenditure or making any payment or commitment on the basis of his own assets. This is irrespective of the amount of his debts. Accordingly, any agreement or contract he may enter into with others, such as creditors, will normally remain valid.

"At the same time, an insolvent person will not be legally free to dispose of his assets in any way, when: (1) the persons indebtedness is proved beyond doubt; (2) the assets, including cash money, accrued profits and recoverable loans, but excluding any value attributable to appropriate exceptions, are found to be worth less than the amount of liabilities; (3) loans (to be included in the liabilities mentioned above) should have already become due for repayment, i.e. loans repayable later on are not to be taken into account (for determining insolvency); (4) all or a few of the creditors approach legal authorities for the seizure of the entire or some of the assets.

"When the conditions of (1), (2), (3) and (4) lead to seizure of the assets, by order of the competent authority, the insolvent person cannot appropriate or expropriate the same.

"The competent legal authority, after duly selling the confiscated assets, should divide the sale proceeds among the creditors in proportion to their dues. For this purpose, net sale proceeds will be utilized after deducting the cost of maintenance of the bankrupt person and his dependents, to be met until the date of liquidation of assets. In the event of the insolvent person's death, in the meantime, the funeral costs, too, will be deducible from the sale proceeds.

"The disbursement on account of the insolvent person's maintenance, or funeral expenses, will have priority over those to the creditors."²⁶

e. A Dying Person

"In the event of a person dying, his or her last will can effect the disposal of not more than one-third of the assets. This limitation however does not extend to the person's specifying any beneficial arrangements, contractual or otherwise, involving his assets as a whole. The legal possibility of using discretion is all the more strong in the case of voluntary and spontaneous donations, in terms of *habah*, *waqf*, *sadiqah* and the like. This is irrespective of whether or not the aforementioned limit of one-third is exceeded."²⁷

NOTES TO PART FOUR:

1. Imam Khomeini, *Kashf al-Asrar*, p. 278 and 289.
2. Imam Khomeini, *Tahrir al-Wasilah*, vol. 2, p. 61.
3. *ibid.*
4. *ibid.*
5. *ibid.*
6. *ibid.*
7. *ibid.*
8. *ibid.*
9. *op. cit.*, *Tahrir*, vol. 2, p. 90-92.

10. كُنِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ

11. (مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ زَيْنٍ).

12. *op. cit.*, *Tahrir*, vol. 2, p. 94.

13. *ibid.*, vol. 2, p. 102.

14.

إِنَّ الْأَبْرَارَ يَشْرَبُونَ مِنْ كَأْسٍ كَانَ مِزَاجُهَا كَافُورًا
عَيْنًا يَشْرَبُ بِهَا عِبَادَ اللَّهِ يُفَجِّرُونَهَا تَفْجِيرًا
يُوفُونَ بِالنَّذْرِ وَيَخَافُونَ يَوْمًا كَانَ شَرُّهُ مُسْتَطِيرًا
وَيُطْعَمُونَ السَّعْيَاءَ عَلَى حُبِّهِ مِسْكِينًا وَيَتِيمًا وَأَسِيرًا

15. *op. cit.*, *Tahrir*, vol. 2, p. 123.

16. *op. cit.*, *Tahrir*, vol. 2, p. 116.

17. *op. cit.*, *Tahrir*, vol. 2, p. 117.

18.

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ. وَاکْسُوهُمْ وَقُولُوا
لَهُمْ قَوْلًا مَعْرُوفًا

19. *op. cit.*, *Tahrir*, vol. 2, p. 18-24.

20. *ibid.*

21. *ibid.*

22. *ibid.*

23. *ibid.*

24. *ibid.*

25. *ibid.*

26. *ibid.*

27. *ibid.*

PART FIVE: PRODUCTION COMPANIES

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PART FIVE: PRODUCTION COMPANIES

I. A COMPANY

"A company means a business organization in which two or more people contract or agree to participate. It has a fixed aspect such as that of capital. It reflects common interests, including those of a religious character. It can also imply regular employment, wages and salary conditions. At the same time, it can signify the participant's mutual benefit or advantage.

"A joint enterprise may come about in any one of the five circumstances mentioned below:

*"Inheritance (*irth*): It is only natural for heirs or successors to continue running whatever company they may have inherited.

*"Contractual Business (*payman qaradad*): For example, a partnership may come about when two persons jointly purchase or rent some property or business.

*"Possession (*hayazai*): As when two persons carry together each time and in the same container their respective water supply from a well, tank or river.

*"Combined Ownership of Asset (*amikhitan*): As when two persons jointly own assets, due to natural or deliberate reasons or by choice.

*"Sharing One's Capital with Another (*tashrik*): Sometimes a company is formed on the basis of a contract (memorandum of association or articles of association). It can be for the purpose of trading. A joint stock, or trading company's assets are jointly owned by the stockholders, who share its profits (dividends), as well as any losses, in proportion to their respective holding of stock or shares."¹

1. "No shareholder or partner can on his own, appropriate, expropriate or dispose of all or any of the jointly owned assets, without the agreement of all the other shareholders. Once all the shareholders or partners agree to permit one of them to appropriate, expropriate or dispose of any commonly owned assets, one can do so only to the extent of his own share or holding."²

1. Conditions of Contractual Participation

2. "Contracts underlie all business transactions or exchanges, which commonly evidence the general conditions of a contract. The conditions include offer and acceptance (of business proposition and the relevant consideration, involving signatures in the case of agreements in writing). Further, the intents and purposes of the contract are to be specified or evidenced. Provisions concerning participants' options and executive powers, such as affecting accretion or diminution of capital, or one's right to dissociate, among similar others, are also part of the general conditions. All these are applicable to Contractual Participation.

"Under the provisions indicated above, two or more persons can agree to conduct a business jointly organized by them. Thus, they can share their business profits, or losses in proportion to their respective investment of capital."³

2. Applicability of Contractual Participation

3. "Contractual participation is applicable to participation in capital only and not in labor. For instance, even skilled workers (like tailors and weavers) will find it manifestly wrong just to 'participate' in each other's skills or just for the sake of holding each other's earnings in common.

"Likewise, it will not be right for two or more persons to enter into an agreement for mutually sharing each others product of labor. This is so even if the products are obtained (as when something is appropriated from nature by dint of labor alone), like firewood collected from a forest.

"Through participation based on labor alone, a company is not established. On the contrary, whatever product, or remuneration one is able to obtain by means of one's own labor, rightfully belongs to him alone. However, it will not be wrong if each shall be given to the other for a fixed period of, say, one or two years. Accordingly, their agreement will entitle the parties to an equal share of their individual collections and earnings during the period of contract.

"Further, it will be wrong for any two persons without necessary capital to set up a business partnership merely on the basis of any local influence or goodwill. Likewise, it will be inappropriate to enter into any mutual commitment of an extraordinary nature, in which the parties agree to sharing each other's inheritance."⁴

3. Summing Up the Position of Contractual Participation

"The position concerning contractual partnership can be summed up as under:

*"Participation in trade and commerce with a view to sharing profits and losses. This kind of a business contract is lawful. (*shirkat 'anan*)

*"Sharing one's collections or earnings with another for a fixed period. This is valid. (*shirkat wa masalahah*)

*"Mutual participation in labor (doing each other's work), so as to share income and losses. This is not valid. (*shirkat va abadan*)

*"Doing business without capital and relying on partner's influence, weight or goodwill in a particular group or society. This is not valid. (*shirkat wajuh*).

*"Mutual commitment of and entitlement to each other's profits or losses in trade, commerce, agriculture or assets and liabilities and inheritances. This is not valid. (*shirkat mufawadah*)."⁵

4. Carrying Out and Termination of a Contract

4. "A party to an agreement who is charged with carrying out its provisions, in terms of management, administration, employment or trade, based on utilization of the capital assets of the company is entitled to the same legal safeguards as prescribed for a trustee (*amin*). He will not be called upon to be a guarantor (*damin*) against any loss, wastage or discrepancy, unless he is found to have committed any excess or neglect of duty or responsibility devolving on him.

5. *"A contract is terminable by either party and the share entitlement of each is returnable.

6. *"Even when a contract provides for a specific duration of a joint enterprise, any party to it can ask for its termination before the date of expiry, unless it has been stipulated to the contrary at the time of making provisions in the agreement, in which case every and all parties concerned remain bound to honor the same.

7. *"Whenever any invalidity of a contract becomes known or is established, any transaction carried out until then will be deemed to have been legally authenticated."⁶

II. DIVISION OF SHARES

“A partner or shareholder (dissociating from a joint enterprise) is entitled to obtain separation of his share from that of the others, in a just and equitable manner. The division can be carried out in three possible ways: (1) through a quantitative apportionment of divisible items (*qismat afraz*); (2) by adjusting the monetary equivalent of priced items suitable for the purpose (*qismat t'adil*) and (3) through balancing any two shares by allowing upward revision of the lower value of one (*qismat rad*).”⁷

1. The Basis and Means of Division

a. Divisible Items (*qismat afraq*)

“In case of a divisible item, a share is quantifiable through measurement, weight, allocation of identical units of the same item or linear measurement. This possibility extends to bulk and liquid items like cereals and oil, as well as to cloth and land, among similar other items. This applicability is based on standard units of weights and measurement.”⁸

b. Adjustable Items (*qismat t'adil*)

“Where an item cannot be physically divided, its value can be adjusted or apportioned in monetary terms. For example, two persons sharing three sheep, priced differently, could adjust the value of the third sheep, so as to equal the average of the other two sheep.”⁹

c. Balancing Value of Shares (*qismat rad*)

“Where a division equal or proportionate to one's actual share is not possible, it may be necessary to balance the monetary values of shares by adding the difference between shares to the one with the lower amount of value. For instance, if two sheep, evaluated at 500 and 400 tomans, respectively, are to be shared equally, the one obtaining the sheep worth 400 tomans will be entitled to an additional credit of fifty tomans (debitable to the other shareholder).”¹⁰

2. *Applicability of the Division of Shares*

“Balancing of value of shares is possible in different kinds of companies. All the three kinds of divisions mentioned above are applicable to any company provided the partners and shareholders concerned agree upon their suitable application. However, where division of the first and second kind (*qismat afraz* and *qismat t'adil*) is possible, application of the third type (*qismat rad*) will not be correct, unless the partners or shareholders concerned mutually deem it advisable.

2. “A partner or shareholder may demand application of one of the above mentioned three types of division. If what he prefers is the third method, and its application is likely to be disadvantageous to the other partners or shareholders, the latter may object to the same. In that event, the proposed division cannot take place while the objection is taken into consideration (*qismat tarad*). However, if a partner or shareholder does not seek application of the third method and the others are not subjected to any loss, the latter's objection, if any, shall not be upheld. On the contrary, the objecting partners or shareholders will be obliged to carry out the proposed division (*qismat ijbar*).

“Where it is possible to apply only one of the first two kinds of division, there should be no difficulty. In cases where both kinds are applicable, and a partner demands the second type of division, the other partners and shareholders can decide to reject the same. However, if application of the first type of division is sought, the others have no choice, but to carry out the same.

3. “If two persons share one house with two portions, including one more desirable than the other, and they want to divide the same, they can do so on the basis of the first type of division mentioned above, i.e. physical apportionment. They can divide it into two portions, ensuring that the desirable part is shared, as well. They can also divide it on the basis of the second method, i.e. on the basis of evaluation. Furthermore, they can choose to divide on the basis of the existing desirable and undesirable portions.

“If a co-owner wants division of the house on a physical basis, without involving any disadvantage to the other, the latter is bound to accept the same kind of division.

“If, however, a co-owner wants division according to the last two kinds mentioned above, the other party is not bound to accept the same.

“In case the first kind of (physical) division is found impracticable, while the remaining two methods are equally practicable, the second method shall have precedence over the third method, unless the second one is also found to be impracticable, or fraught with relatively greater disadvantage.

4. "A residential-cum-commercial building, housing offices of several professionals, too, may be sought to be divided by some of its co-owners. The proposed division is possible if it is not disadvantageous to some or all of the other co-owners, as when the number of the building's residential units and offices is less than the number of co-owners.

5. "An orchard, sought to be divided by some of its owners, attracts the second method of division, based on evaluation. All concerned are obliged to accept the same method, if it is to be implemented. For, no single co-owner can force the others to divide an orchard on physical area basis (with trees and all). If he wanted to do so, it will be an objectionable case of division likely to cause a stalemate until all the co-owners agree on the same procedure.

6. "Jointly-owned agricultural land can be partitioned on demand of a co-owner. It is compulsory that land and the crop, if any, or produce should be separately divided. This is irrespective of whether or not the produce has already been harvested or the standing crop is ripe.

"The divisions should be carried out with the general agreement of all the owners. No co-owner should be compelled to accept any division, if it is to his disadvantage or if it makes him dependent on another.

"The foregoing requirement of separate division of land and crop is applicable only when there is a standing crop. Otherwise, even when any cultivation has yet to result in growth above ground, the land itself can be divided, leaving the potential crop in common ownership.

"A co-owner of a house with one-twentieth share, rather unsuitable for residential purpose, or otherwise disadvantageous when divided and allocated to him, but without any disadvantage to the nineteenth owner, can still demand separation of his share, and the other party is bound to agree to the same. However, the nine-tenth owner cannot compel the one-tenth owner to agree to any division of the commonly held property.

8. "For the purpose of avoiding any division, possibility of loss or disadvantage to a party is determinable on the basis of whether or not the proposed division causes the value of the property itself, or its benefits, to fall, in which case it will be beyond the limits of tolerance. This is notwithstanding any normal fluctuations in the overall viability of the property.

9. "In dividing a jointly-owned asset, the first requirement is to separate its components according to the number of shares, equally or through adjustment of the equivalent value, leaving any residual quantity or amount to be allocated on the results of lottery.
to be allocated on the results of lottery.

10. "Drawing a lottery does not require any elaborate procedure. The

participants can mutually arrange it, using notations on rolled pieces of paper or chips or leaves, among similar others. Nevertheless, whatever may be the adopted means of drawing a lottery, they should be effective in avoiding the human element and in leaving the result to fate.

11. "After distribution of residual components of an asset among the co-owners, on the basis of the lottery, the process of division will come to an end, and general agreement of partners and shareholders will no longer be necessary, even if the division involved eventual balancing of share values.

12 "A partner may demand his share of any profit derived from a jointly-owned asset. He may otherwise seek any alternative utilization of, say, a residential building, every other month, or to occupy downstairs or upstairs of it, as the case may be. All these (and similar other extraordinary) proposals are not binding on the other partners or shareholders, who cannot be compelled to accept a proposal, such as mentioned above, in case of a dispute, except on orders of a legal authority.

13. "Sometimes it may be necessary to decide ownership of an asset (or portion thereof) on the basis of lottery. Once this is done, it is obligatory to transfer what is due to a winner, without allowing any cancellation.

14. "Division of unrealized dues inherited as part of a will among the successors is not correct. Their joint entitlement to the dues will, however, continue until their realization.

15. "Division of endowed property among beneficiaries is inadmissible, except when it is found to be the only way out of a legal dispute. Even so, the division will be effective only in the case of the disputant generation of beneficiaries and not applicable to the subsequent generations who are also covered by the same endowment."¹¹

III. RIGHT OF PRE-EMPTION (*shuf'ah*)

"One in a partnership of two may have decided to sell his share to a third party. In that case, the other partner can act as a *shafi'* in exercising his right of pre-emption, by purchasing the share himself, even from the third party. The right of pre-emption is, however, subject to the conditions mentioned below.

1,2.*"The joint property involved should (ordinarily) be immovable and also be suitable for division, as in the case of land or an orchard.

3.*"If it is movable (i.e. wearing apparel or a boat), or immovable, but not divisible (i.e. tree, bathroom), it will be prudent for one exercising the right of pre-emption to first obtain the agreement of the proposed buyer and for the latter to agree to resell to the partner with the right of pre-emption.

4,5.*"A partner wanting to exercise the right of pre-emption should himself be in a position to make full payment to the third party for his partner's sold-out share. This amount should be the same as that paid by the outsider to his partner. It is not obligatory to include any commission paid by the third party.

6. "The right of pre-emption is applicable in case of a property owned by no more than two persons.

7. *"A partner exercising his right of pre-emption should deal with the other's share in its entirety and not in part.

8.*"A partner exercising the right of pre-emption should be a Muslim, in case the third party is a Muslim.

9.*"The right of pre-emption is applicable to the sale of any part of a joint property, which is at the common disposal of the two partners. It does not apply in the case of a neighbor.

10.*"The right of pre-emption is not applicable in case a partner transfers his share of a property to another person by way of dowry (*mahriyah*), legal settlement (*sulh*) or bequeathal.

11.*"Once a partner comes to know that his counterpart has already sold his (the latter's) share, and he wants to invoke his right of pre-emption, he should take immediate action to do so. In case of any inor-

dinate or unreasonable delay or his making a plea untenable under the Divine Law (or other ordinary) laws, his right of pre-emption will lapse.

12. *"A partner may have already sold out his share to an outsider. The latter, in turn, may have resold it to someone other than the second partner. In that event, too, the second partner can invoke his right of pre-emption by contacting the first buyer and paying him whatever he may have paid to the first partner for the share. The first buyer can then pay back the resale price to the second buyer and take back the share for the purpose of making it over to the second partner."¹²

IV. COLLABORATION BETWEEN LABOR AND CAPITAL

1. Introduction

Mudarabah, *muzar'ah* and *musaqat* are three economic concepts derived from Islamic jurisprudence (*fiqh*). These are related to productive activities in the field of trade and commerce, agriculture and horticulture, respectively. Specifically, these focus on contractual arrangements between those who undertake to work and produce and those who place their capital, including cultivable land or orchard, equipment and seeds, at the disposal of the farmers. The consideration revolves around equitable division of the produce between the two parties.

The above mentioned contracts enable participation between labor and capital on a just and equal basis. The contractual arrangements also signify dignity of labor, in that any casual laborer or agricultural worker can assume the responsibility of a partner in a joint enterprise, rather than allowing himself to remain just a wage-earner. What is more, he participates in the income derived from capital investment or the profits on a regular and formal basis.

The above contracts are designed to provide institutional support of a practical kind to the underprivileged and ill-equipped laborer or farmer. At the same time, they are conducive to overcoming any feudalistic and capitalistic tendencies, by virtue of their explicitness.

An Islamic government is duty-bound to be thorough in ensuring that the Islamic people suffer no internal or external exploitation of any kind. They are required to curb any overall tendency towards polarization of the society between the haves and the have nots.

In the above context, the role of the existing owners of capital resources in promoting economic growth should not be understated. The need for promoting collaboration between private owners of capital resources and those with labor potential should be given due importance. If laborers and farmers wish to acquire their own capital resources and means of production, it is not possible for them and if the government wishes to provide them with capital and means of production, these very

workers and farmers, in a very short period of time, will become feudalists and capitalists.

If an Islamic government makes the country's economic sectors dependent upon it for capital inputs, there is every danger of its assuming the role of the great feudalists and capitalists. Experience has shown that where private capital investment is replaced by government investment, the productivity of the undertaking suffers, due to slakening of efforts, so that an establishment used to making profits may turn into a losing concern.

Unfortunately, some have misconstrued Islamic laws of economic significance. They tend to lose sight of the overall purpose of these laws, which is to administer Islamic justice. They evaluate Islamic laws with the exploitative environment of capitalism and as a result, their views reflect the very same deficiencies of a capitalistic regime.

They treat *mudarabah* and *muzar'ah* as if these were detrimental to the interest of laborers or producers themselves. This is in spite of the fact that the Islamic laws pre-suppose an appropriate economic environment. In it, a man becomes capable of investment by virtue of money and capital acquired by work and efforts and land through work and reviving barren lands, not by way of coercion and exploitation, in an environment where land is not monopolized by any privileged few and every farmer, intending to revive and cultivate a plot of land, is encouraged to do so but it prefers him to work with the person who owns the land or cultivated it or made it into an orchard.

In actual practice, participation between a landowner, who has successfully established a farm or an orchard, and another farmer, who is landless or capital-less, means continued efforts on either side. One's earlier efforts, resulting in provision of cultivable land and capital, continue in the direction of meeting any losses, paying khums and other revenue taxes. The other's efforts are aimed at cultivation, irrigation and trading harvests or produce, in the process of collaborating with the former. ¹³

2. Partnership of Capital and Trade (*mudarabah*)

"*Mudarabah*, sometimes known as *qarad* is a commercial agreement between two parties. It is based on a mutual arrangement in which one party takes the responsibility for capital investment and the other party for making profitable use of the same. It provides for sharing of the profits between the two partners.

1. "Like any other contract, *mudarabah* requires verbal or written specifications of offer and acceptance, on either side. It stipulates that

the parties should bring into play their resourcefulness for developing business, decision-making ability and skills to make proper use of the resources and powers specified in the contract.

“Furthermore, the amount of capital and profit-sharing ratios (i.e. 1/2:1/2 or 1/3:1/3) are also specificable in the contract. Then, the party investing the capital places the same at the disposal of the other party making use of the same in trade. The latter commits his effective working capacity to do business with the capital.

2. “*Mudarabah* is ordinarily applicable for the purpose of financing activities concerning trade and commerce. Investment, with a view to share agricultural produce, or industrial produce or profit from either, as a dormant partner, cannot be established as correct according to the criteria of *mudarabah*.

3. “To illustrate the above point, an owner of a fishing net hands it over to a fisherman on consideration that the latter will share half of any catch with the former. This contractual arrangement does not fulfill the requirement of *mudarabah*. On the contrary, it is indicative of a corrupt transaction.

“In the above example, any portion of a catch intended to be retained by the fisherman, would represent his actual need and, as such, it may legitimately be kept by him. With regard to the residual portion, its legal status would remain ambiguous, for it cannot be legitimately handed over to the owner of the fishing net, as originally intended. This means, the latter can rightfully claim no more than normal rent for the use of his fishing net.

4. “Likewise, *mudarabah*, does not take place if one man gives another money to buy date palms or sheep to be reared with a view to share the eventual produce or benefit between the two. On the contrary, the transaction can be regarded as corrupt. Any produce or benefit is derived from the financier. Accordingly he should make ordinary payment of remuneration (*ijarat al-mithl*) to the other man, making sure that the amount is commensurate with the work performed by him.

5. “*Mudarabah* can be lawfully based on jointly-owned capital, as well as separately owned one. For example, if two persons jointly owned a deposit of one thousand tomans with a trader, one of them can invest his share (say half) of the amount through *mudarabah*.

6. “One investor may enter into a *mudarabah* contract with several others, offering their services, on the basis of equal or unequal remuneration and irrespective of whether or not their individual performance is of comparable quality or magnitude. Similarly, several investors can enter into a *mudarabah* deal with one work performer.

7,8. "A *mudarabah* contract is terminable by either party before or after commencement of the work and before or after obtaining the benefits. It ceases to be valid in case of death of any party.

9,10. "A party undertaking work on the basis of a *mudarabah* contract does so as a trustee. He could not be held responsible for any loss of, or damage to, property entrusted to him, until and unless the same is found to have arisen due to any excess or neglect on his part. Any responsibility for guaranteeing against trading losses would not devolve on him. Trading losses are borne by the capital-owner as part of the risks undertaken by him.

11,12. "Once a *mudarabah* contract is signed, the party undertaking the work should proceed to carry out his duties and responsibilities. Even in case his powers under the contract are not limited by any condition, he should nevertheless carry out the trading activities in a competent and unimpeachable manner.

13,14. "A working partner cannot undertake trips to other cities or countries, on behalf of and at the expense of, the *mudarabah* partnership without the consent of the owner of the capital. The consent implies chargeability of the travel expenses, including cost of obtaining travel documents, purchasing return tickets, daily expense out-of-town, and similar others in connection with the business, to the owner of the capital. However, any cost of diversionary trips, shopping, and similar other personal and private expenses and or costs of staying away longer than required for business purposes, should be borne by the traveler himself.

"In case a partner conducts business for two investors or more, or in his own and other's interests, the travel costs will be divided among all concerned.

16. "A working partner cannot appoint a representative to do business for him, without obtaining permission from the owner of the capital, except at the time of carrying out some preliminary works.

17. "Where *mudarabah* capital is adversely affected by losses, these can also be offset by any subsequent profits.

18. "In case a person makes use of another's capital in a *mudarabah* type transaction, it will remain ineffective, in the absence of authorization by the owner, or without any supervision on the part of the latter. With proper authorization by the owner, any profits resulting from the transaction will be shared between them. Even so, the active partner would remain responsible for any losses incurred by him earlier.

19. "In case of dispute between an owner and user of capital in a *mudarabah* based enterprise, concerning the amount of capital used, or the extent of actual profit or loss, and no reason is given, the specifica-

tions by the active partner would be given prior consideration over those of the owner.

"In case of dispute concerning the ratio in which the active and dormant partners would share profits, the specification of the ratio by the owner of the capital as to $1/3$ or $1/2$, will receive preferential treatment, in the absence of any documentary evidence in this regard.

20. "A father or a paternal grandfather can do *mudarabah* with the capital or property of their minor, as long as it does not involve any corrupt or undesirable interest or practice. In doing so, they should invariably show every consideration to the overall interest of the minor.

"Likewise, a legal guardian or an executor of a will, or any competent legal authority, can undertake *mudarabah* with the capital, property or assets at their disposal, with due regard to the beneficiaries' interest and without liability for any losses."¹⁴

3. Partnership in Agricultural Production (*mazar'ah*)

"*Mazar'ah* refers to a contractual arrangement or partnership between a landowner and farmer. It is arranged as follows:

1. "Landowner places a specific area of his land at the disposal of a particular tenant for the purpose of the latter's raising crops over the same.

2. "The produce is divided between the landowner and the farmer on a specific ration (i.e. $1/2:1/2$ or $1/3:2/3$) basis.

3. "Any losses connected with the land, land rent, khums and taxes will be the responsibility of the landowner or his representative, authorized to place the land at the disposal of the farmer.

4. "The time period should be specified according to month or year.

5. "The land for the partnership for agricultural production should be specified.

6. "The type of crops should be specified.

7. "The responsibility for the costs and expenses for seed and other items should be specified between the parties."¹⁵

1. "Both parties to a *mazar'ah* agreement should have attained physical and intellectual maturity, including the ability to exercise free will and take sound decisions, in the interest of overall growth of their enterprise, as well as be free to invest or use their capital resources, assuming that all of these are susceptible to use.

2. "Produce resulting from the *mazar'ah* should belong to both the parties in common.

3. "For the purpose of *mazar'ah* it is not a pre-requisite that the land to be cultivated should actually be owned by a party. It is sufficient for

one in possession of the same to have acquired it on rent or lease from the owner (as in the case of *kharaj* lands), whether it was leased from the government or the hakim shar' and the leasee or hakim shar' did not make it a condition that only he could work the land.

"Accordingly, if one has not acquired any right to freely cultivate a plot of land (as in the case of land remaining fallow), any *mazar'ah* arrangement will be out of the question. However, the developer can be joined with agricultural production, sharing the resultant produce, too.

4. "In case of joint agricultural production, any division of work between two partners, such as one taking responsibility for looking after the land and cultivation, while the other is taking care of the seeds and similar other inputs, will be in order.

5. "A *mazar'ah* partnership is not restricted to two persons. It could be among more than two partners, with one responsible for land the others for seeds, cultivation and similar other works, respectively.

6. "A *mazar'ah* agreement is binding on both the individual or parties so that all concerned are responsible for its implementation. Any one-sided attempt to revoke the contract will be invalid, unless the contract is so revocable.

7. "A *mazar'ah* agreement does not become invalid when one of the parties dies. Successors to the deceased can carry out the latter's part of the contract"¹⁶

4. Partnership in Orchards and Irrigation (*musaqat*)

"*Musaqat* is an agreement between an owner of an orchard and another person, who undertakes to water the trees so that over a specific period the produce can be shared between them."¹⁷

a. Conditions Governing *Musaqat*

1. "*Musaqat* agreement, too, pre-supposes an offer and acceptance.

2. "Normal conditions governing a seller and a buyer, including their physical and intellectual maturity, decision-making ability, free will and freedom to use capital resources, are applicable to *musaqat*, as well.

3. "A party who is in possession of an orchard should himself own, or have a rightful interest in, the trees, or have been authorized to use the same.

4. "Trees to be dealt with under *musaqat* should be well rooted. Plants requiring transplantation or the creepers (like those of melons and cucumbers) are not suitable for inclusion in a *musaqat* contract.

6. "The period during which trees are to be watered, in months or years, should be specified. A minimal period could be until the trees

bear fruit in one year.

7. "It is necessary to determine the ratio in which produce is shared by the parties, in terms of, say $1/2:1/2$ or $1/3:2/3$, or similar others. A fixed quantity for one, and the rest for the other, will not be a valid condition. Also, division on the basis of trees will not be in order."¹⁸

b. Some Practical Considerations

1. "Watering of trees before any manifestation of produce can be without any restriction. After the trees produce yet-to-be-ripe fruits, water (irrigation or drainage) work can be carried out, provided it helps the growth and enhances the quality of the product.

2. "Trees that are not likely to bear fruit are not suitable for any *musqat* agreement.

3. "In the case of plants, which are likely to bear fruit only after some years, a *musaqat* agreement can apply, provided its duration is long enough to cover the period until the plants bear fruit, say five or six years, or more.

4. "Where natural precipitation, or moist soil, obviates the need for regular watering of trees, while the related work is required to be maintained in the interest of overall growth of the trees and improvement in their produce, there can be a *musaqat* agreement.

5. "If an orchard contains more than one kind of fruit-bearing tree, the contract can provide for different shares for each kind, such as one-half of produce for date-palms, one-third for grapes and one-fourth for pomegranates

6. "An orchard, its trees and their watering requires: (1) clearing out sediment from the bottom of water-supply channels, weeding out fallen leaves and any obstructive grass-like plant growth, fertilizing the soil, and similar other maintenance works, which are repeated in the course of one year; and (2) ordinarily non-repetitive capital works, such as digging of a water supply channel, provision of a wall or a pump and similar others.

"In case the relevant *musaqat* agreement does not specifically allocate responsibility to either side with regard to the maintenance and capital works mentioned above, the latter works would be deemed to be the responsibility of the orchard owner, while maintenance works would be carried out by a party according to local custom.

7. "An agreement to water trees in an orchard is binding on either side. It cannot be revoked unilaterally; it can be cancelled only by mutual consent, unless the contract provides to the contrary. In the event of death of any party, the agreement does not become invalid, and successors

of the deceased can take over the latter's responsibilities and entitlement. This is so unless the agreement specifically confines its implementation to the parties themselves.

8. "In a *musaqat* agreement, any provision for supervision does not represent a necessary condition. One who is responsible for an orchard can engage wage-earning daily laborers, or free and voluntary helpers, for performing essential works.

9. "There is nothing in a *musaqat* contract to prevent one in possession of an orchard from increasing the share of the working partner, even through supplementary payments in cash. In fact, this can be provided for in the contract.

10. "If an agreement for watering an orchard is invalidated, the subsequent crop will be the property of the orchard owner, and his erstwhile partner can receive wages at the same level as that of similar other workers.

11. "If a party who carries out work in an orchard dies, after the trees begin to fructify, and before the produce is ripe for division between him and the orchard owner, his share can be inherited by his successor. Actually, this entitlement to a share, materializes right at the time the trees begin to fructify.

12. "Taxes pertaining to an orchard, which are usually levied by a government on *kharaj* lands, are payable by its owner or possessor, unless a *musaqat* contract makes the other partner responsible for the same.

c. Agreement of Tree Plantation

"One may place his land at the disposal of another for tree plantation. The relevant agreement may seek to divide the eventual trees between the two parties. Alternatively, the trees may belong entirely to one or the other party. Also, it may envisage division of the land on the basis of the apportioned trees, or land may be owned by one and trees by the other. All these proposed arrangements are not tenable. An agreement providing for one or all of the same will be invalid.

"Once tree plantation work is completed, the plants belong to the one who owns (or ought to) own them. If they belonged to the landowner, it could be so only after he had paid wages to the planter. If they belonged to the planter, it could be so only after he begins to pay rent for the land. If the landowner becomes unwilling to continue the arrangement, if any, he can ask the planter to remove his trees. But, then, he will be responsible for compensating any damage to the trees in the process of removal." 19

5. Lease (*ijarah*)

a. Description of a Lease

"A lease agreement is meant to allow a person to use the property of another over a fixed period, in consideration of payment of a mutually agreed amount of rent. The one whose property is leased is called the *mu'ajar* and the one to whom it is leased is known as *musta'jir*. The amount of rent is called *mal al-ijarah*, while the thing leased is named *'ayn musta'jir*.

b. The Subject of a Lease

"The thing to be leased could be real estate like a residential building or apartment, an orchard, a machine, an animal, an item of goods, clothes, and similar others.

c. The Lease Contract

"A lease agreement entitles one to the benefit or use of property, or to keep a product of labor, against payment of rent or wages. Acceptance of rent, or wages, or a signed receipt on payment of the same, implies acknowledgement of the entitlement of the payer to become master of the property, or product of labor, and the relevant benefits.

"A lease is binding on both the parties. Unless the contract provides to the contrary, it cannot be revoked without mutual consent."²⁰

d. Conditions Governing the Lease Agreement

"All the conditions governing a buyer and seller, like the requirements that they should be physically and intellectually mature, capable of sound decisions, determination, freewill and freedom to transact, are also applicable to a lessor and lessee.

f. Conditions for the Owner

1. "The subject of a lease should be specified. It is not sufficient to state, for example, 'one of the two houses'.

2. "Further, its attributes or facilities should be perceivable and specifiable.

3. "Surrender of a leased property should be within one's power and practicable.

4. "Use of a leased property should not lead to its going out of existence, like bread when consumed and candles or firewood when lit.

5. "A leased property should be fit for beneficial use. It should not represent a case of leasing out a piece of land without water for culti-

vation.

6. A lessee should make use of the subject of lease, or avail its facilities and benefits for himself or herself.

7. It will not be right for a lessee to sublet another's property without the owner's permission.

g. Conditions of the Property's Interests

1. Whatever use is made of a leased property should be legitimate. Whatever benefit or advantage is derived from it should also be lawful. Accordingly, use of rented premises should be of permissible purposes only. For example, it is not permissible to use rented premises for dispensing alcoholic drinks.

2. "A tenant or lessee should be able to spend money to the extent necessary, so as to benefit from his leased property.

3. "Where a lessee, or the leased object has various uses, a lease agreement should specify a particular use, or uses. (For instance, in renting a motor vehicle, its route, nature of use, in terms of private or public carriage, and the like, are specificable in part, or as a whole.

"Consideration for lease can be quantified in terms of, say, one year's lump-sum rent, or a certain number of dresses produced.

4. "Fixing rent for land to be utilized for cultivating wheat and barley, in proportion to the respective productions, will not be correct.

5. "Any rent or consideration for lease should be in terms of a known and fixed quantity."²¹

h. Conditions for the Amount of Rent

1. "The thing to be leased must be specified.

2. "The amount of lease must be specified.

i. Some Clarifications

1. "Sale or purchase transactions do affect ownership of a property, but not its lease, if any.

2. "Death of lessor or lessee does not make a lease invalid.

3. "A guardian's beneficial act of renting out a ward's property may sometimes extend for a period beyond his or her attaining maturity. In that case, the erstwhile minor has the option to terminate the lease.

4. "If a property is found to be in a damaged state, adversely affecting its intended usefulness to the latest lease holder, the latter can cancel the lease.

5. "If a lessor or lessee has reason to believe that he or she has been defrauded, then the whole transaction can be nullified.

6. "As soon as a lease is signed, a lessee becomes master of a house or real estate, or of another's services, and a lessor becomes entitled to rent or wages, as the case may be. As soon as things or services are placed by one at the disposal of another, the consideration (rent or wages) can be demanded.

7. "Surrender of property implies surrender of one's advantages attached to or derived from it. Placement of one's services at the disposal of another is accomplished on completion of the work or job. Accordingly, it is right to demand payment of remuneration before completion of one's work. Once work is completed, or rent falls due, there should be no delay in payment of remuneration or rent.

8. "A lessee, who takes possession of a property and does not make use of the same until the rent falls due, remains liable to pay the same.

9. "Sometimes a rented property may get damaged by fire, or otherwise be rendered unusable. If it happens before taking the same into possession, or prior to the date when its rent falls due, the lease becomes null and void. If it happens later on in a case where rent has been paid in advance, its unaccrued portion will be refundable.

"However, refund of unaccrued rent in a case where seasonal variation in rent charged exists will be on a proportionate basis. For instance, rent of a property in summer is double that in other seasons. If a lessee for six months actually uses it for three months, prior to the quarter of summer, he will be entitled to refund of two thirds of the six months' rent.

10. "A lease can cover joint property. A shareholder in a joint property can rent out his portion and hand it over with the consent of his partner. Even a property's sole proprietor can rent out a portion of it on a basis of its joint ownership.

11. "Two persons can jointly rent a house or apartment and mutually agree to live together there.

12. "Where a lessor does not specify as to who should make use of a property, the lessee can sublet it to a third party at a different or higher rent. This provision does not apply to residential accommodation, commercial premises and personnel services or work contracts, except where the property is renovated or repaired or otherwise improved, so as to enhance its value."²²

j. Continuance of Tenancy Beyond the Original Lease

1. "Mere renting of property (a house or a shop or any other place) does not give a tenant any right to overstay any period specified in the lease agreement on the assumption that the owner cannot evict him on expiry of the lease period. Likewise, any *de facto* continuance of tenancy

beyond the original period of lease, for reasons of business (i.e. future commitments involving credit transactions and goodwill) or similar others, does not by itself give a tenant any right to continue his tenancy indefinitely.

2,3. "On the contrary, he remains liable to vacate the rented place and return it to its owner. Instead, if he continues to occupy it without the owner's consent, he will be treated as an obstinate usurper. In the event of any loss or damage, even when arising from any act of God, the tenant himself will be liable for the same. At the same time, he remains liable to pay the usual rent as long as the property remains at his disposal. In case he sublets it, charging key money and rent, all these transactions will be unlawful (*haram*) and he will remain liable to make good loss or damage arising from the same."²³

6. Key Money

4. "A place of business taken on long-term lease of, say, twenty years, may have been permitted by the owner to be sublet. Its long duration involves fluctuations in monetary value from time to time. The leaseholder can sublet by charging the same rent as he is liable to pay, and obtain a reasonable amount in addition, as key money, with the actual agreement of the parties.

5. "That rent will not be increased and the lessee will not be evicted as long as he remains in the leased property can be provided for in the lease, where a lessee enjoys these privileges and he is subsequently called upon to vacate, he can receive compensatory payment in the manner of key money from the lessor or another person, for foregoing the privileges.

6. "Likewise, if a lease stipulates that the lessor will have no right to rent out the leased premises to a person other than the lessee, the latter can surrender this privilege on payment of the key money by the lessor or another person.

7. "An owner can demand and receive key money from a lessee, just as the latter, if authorized to sublet, can, within the duration of the of the lease, demand and receive key money from a third person to whom the property is sublet."²⁴

7. Employment Contract

"Employment means renting one's services to another, for the performance of a specific job, and in consideration of receiving a mutually agreed amount of salary or wages.

13. "An employment contract must stipulate that the party offering his

services should perform the job himself. Where the aforementioned condition does not exist, the party who offers services can employ a third person to perform the job in his place. But, then, he should pay the third person remuneration to the same extent as he himself would receive under the contract, or even more and not less, except where he has done some of the work.

14. "An employee or worker should engage himself or herself, in work pertaining to his or her employer only during the period fixed for performance. It will not be permissible for him or her to work for his or her own private self or for others during the period of his or her commitment of services to an employer, except for acts like lunching, which are not incompatible with the work contract.

15. "If an employee or work is hired not on the condition that he or she will personally do the work or without the stipulation of a time period, it is possible that before undertaking that work, to perform one's personal work or the work of others.

16. "If an employee or worker be hired for a specific task, but he performs something else (for instance, one has been hired as a driver to take a package from Ja'far to his home and he takes Ahmad's package), he or she will be entitled to remuneration from neither Ja'far nor Ahmad.

17. "If an employer engages a person for some work, but does not actually provide him with the same, the latter remains unentitled to salary, wages or payment, irrespective of whether or not the employee was idle or busy at some other work.

18. "A female can be employed as a nurse (or a wet nurse) for a specific period, without obtaining consent of her husband, provided her work does not prevent her carrying out her duties as a housewife for her husband, a husband cannot (then) object to her working.

19. "Obtaining employment and wages for work which one already is under religious obligation to perform, is not lawful.

20. "Engaging a watchman for goods, or for night vigils in residential areas, orchards and the like, during a prescribed time, is lawful. It is equally lawful to hold a watchman or guard responsible for safety of goods or property. In case of theft, pilferage, loss or damage, his responsibility is like that of a bailee.

21. "A person obtaining something on rent should maintain it as in trust. In case of any loss or damage, or deficiency, the lessee may not be held responsible, unless it has been due to neglect or duty or any excess on his part. For example, a piece of cloth entrusted to a tailor for making a dress is subsequently lost or damaged, due to no fault on his part. In this case, the tailor cannot be held responsible. However, if a tailor's

dress-making proves to be faulty, resulting in loss or damage, then he can be held responsible for the same. This position is not affected by whatever expertise, or qualifications, the tailor may possess, or in whatever circumstances the work turned out to be bad.

“In short, any employee or worker, undertaking work, performs the same badly, can be held responsible for the defect, loss, damage or deficiency.

22. “Occasionally, a doctor takes on the responsibility of treating a patient on his own. In that case, his responsibility can be that of one who stands surety for the medical treatment of a patient. This is so unless his prescription of medicine is given by way of a proposal, saying that the proposed medicine is good for a certain disease he has diagnosed in the patient, or saying, ‘This is the medicine for you’. In other words, if the doctor does not make taking of the medicine compulsory, then, his responsibility will not be that of a surety.

23. “A person carrying a load stumbles, breaking or damaging the load. In that case, his responsibility will be the same as that of the surety. A beast of burden (or a road vehicle with four wheels or more), hired to carry a load from one place to another, damages the same in a faltering movement. If so, its driver cannot be held responsible like a surety, unless the damage is found to be due to negligent driving, or taking the load over a bumpy or unsafe road.

24. “It is not permissible to load any means of transporting goods to an extent more than its fixed or usual carrying capacity. If overloaded or overused, it will attract the provisions concerning the responsibility of a surety.

25. “If one is hired to watch over goods and in the course of this duty, the goods are stolen, the question of fixing responsibility on him does not arise, unless the theft is found to be due to his neglect, or the employment contract made him stand surety for the goods.

26. “An owner of a public bath cannot be held responsible for any theft of customers’ clothes, unless the clothes have been entrusted to his care and he is found to have neglected his duty, or failed to do justice to the need for taking care of the clothes.”²⁵

NOTES TO PART FIVE

1. Imam Khomeini, *Tahrir al-Wasilah*, vol. 1, p. 624, 626 and 627.

2. *ibid.*

3. *ibid.*

4. One of the contracts in pre-Islamic times, which was common among the Arabs was called *wala'*. It was a contract between friends whereby one became partners in all areas of life including profits and losses, inheritance, etc. See *Tafsir Tabari*, vol. 8, p. 275. Until the revelation of verse 34:4 at the beginning of Islam, this contract was practiced and they shared in 1/6 of each other's inheritance. But after the migration of Muslims to Madinah and the joining of families (75:8), it was abrogated and according to 33:7, the giving of 1/6 of one's inheritance took the form of a charitable act alone. See (33:7).

5. *op. cit.*, *Tahrir*, vol. 1, p. 624, 626 and 627.

6. *ibid.*

7. *ibid.*, vol. 1, p. 627.

8. *ibid.*

9. *ibid.*

10. *ibid.*

11. *op. cit.*, *Tahrir*, vol. 1, p. 633.

12. *ibid.*, vol. 1, p. 558-559.

13. See *Kitab al-Iqtisad al-Mukaran al-Hakim*, published in Qum, 1400 AH, p. 62.

14. *op. cit.*, *Tahrir*, vol. 1, p. 621.

15. *ibid.*, vol. 1, p. 638.

16. *ibid.*

17. *ibid.*, vol. 1, p. 645.

18. *ibid.*

19. *ibid.*

20. *ibid.*, vol. 1, p. 572 and 583.

21. *ibid.*

22. *ibid.*, vol. 1, p. 58.

23. *ibid.*, vol. 1, p. 615.

24. *ibid.*

25. *ibid.*, vol. 1, p. 584.

PART SIX: EXCHANGES OF WEALTH

I. INTRODUCTION

Trade and commerce involves exchange of goods on the spot or between places. The relevant transactions imply agreement to sell and buy goods. The necessity for trade arises from the fact that people cannot by themselves satisfy all their requirements of goods and services; they need to exchange what they produce with what others produce, in terms of different commodities. This is how trade and commerce, invention of money, banks and similar other facilities for transactions become necessary.

Islamic jurisprudence extends to regulation of trading, commercial, monetary and banking transactions, as well. The aim is to promote honesty, rectitude, justice and harmony in the aforementioned dealings. This is with a view to taking care of the well-being of the people concerned and the wholesomeness of the society at large by preventing any malpractices.

There are Islamic laws governing trade and commerce, which are binding on those Muslims in an Islamic society who are active in these fields. These enable identification of the correct business practices, and avoidance of the corrupt and, as such, prohibited ones, such as transactions involving usury or those manifestly harmful to people.”²

According to Islamic laws, trade and commerce can be of five different kinds, namely: (1) obligatory, like trading and commercial activities to meet one's personal expenses and the expenses of those who it is obligatory upon one to support; (2) recommended like those activities which are carried out for the general benefit of one's family and that of society; (3) disapproved like activities of selling cloth for wrapping the dead as a trade; (4) trading and commercial deals neither catering to any specific need of, nor causing any loss or harm to, people or society, which are ordinarily lawful; (5) religiously prohibited transactions like the sale or purchase of harmful, impure and ceremonially unclean things, including narcotics, wine, gambling, and alcoholic drinks.

1. Trade and Surplus Wealth

It would appear that a trader's function of a middleman, between the producer/manufacturer and buyer/consumer, is an extension of the work of producing and marketing goods. Irrespective of whether or not transfer of goods is vertical, as in extraction of minerals, or horizontal, as in surface transportation, these processes are directly or indirectly related to the production of goods to cater to the needs of people and society. Accordingly, the role of a trader in the Islamic context involves not merely transfer of ownership of goods, but functioning as part of the production and distribution processes.

At the same time, it is notable that some of the trading and commercial practices have been adversely affected by the profit motive of capitalism. Capitalistic trading involves no more than the change of ownership of goods. It does not take into consideration the relevance or otherwise of the transactions to the people's or societal interests and needs, including that of production.³

Islam condemns activities governed by profit motive. It is incompatible with the socio-economic needs of an Islamic society. Hadrat Ali (ع), in his letter to Malik Ashtar, Administrator of Egypt, said, "Be considerate towards those who are active in local production and foreign trade, doing business at home, or transacting the same often abroad. For, they cater to the needs of the people."

In the above mentioned directive, Imam 'Ali (ع) treated industrial producers and traders at par. Both the groups have been viewed as useful and deserving of attention. In this context, trading community's respectability in Islam is emphasized.*

This is because of their valuable and painstaking services in arranging to fulfill the economic needs of the people, beyond any transportation overland, overseas and across mountains merely for transferring the ownership of goods.

In a religious edict of Imam Khomeini, any overtaking of a 'caravan' of goods for buying things at cheap prices and selling the same to the consumers at higher prices, making undue gains without actually rendering any useful services to people in the process, is condemned to the point of religious prohibition.

2. The Value of Exchange and its Control

On what basis can a trader or merchant obtain profit on goods he sells? Is there a law in Islam against economic oppression and extortion, or injustice, on the part of traders and merchants, especially those who have been adversely influenced by capitalistic practices?

Answers to the foregoing questions are completely positive, when the salutary Islamic laws are actually implemented in an Islamic State charged with creating an environment which debars the oppressive and extortionist practices of capitalism. The answers are indicated in the religious edicts of Imam Khomeini as noted below:

"Monopoly in trade and industry in the private sector is not allowable."⁴

"Collusion among traders to fix prices against the interests of consumers is forbidden.

"In support of the deprived and weaker traders or the bankrupt, commercial competition is increased and it is then natural that with the intelligent increase of competition, prices will, of and by themselves, decrease.

"The Imam (ع) and the leader of Muslims can prescribe Islamic measures to safeguard the interest of Muslims. For instance, he can intervene to bring about stability of prices by prescribing an appropriate system of price control. He can also prescribe due registration and reporting on the part of industrial production units and commercial dealers, as well as otherwise regulate socio-economic activities in the ultimate interest of the Islamic society."⁵

"Hoarding of goods and valuables is religiously prohibited in Islam."⁶

"Usury or interest is religiously prohibited. So are the undue advantages that profiteers derive from access to huge amounts of bank credits or guarantees for economic exploitation of people through the sheer force of capitalism, provided by banks."⁷

"Obtaining interest on money by seemingly legitimate ways, but actually determinable as against the Divine laws, is prohibited."⁸

"Giving and taking of bribes is prohibited in Islam and by eliminating these things (usury, bribery, etc.) many of the methods used by exploiters and capitalists will be blocked.

"*Hisbah* inspectors employed in market places and trading centers, as envisaged in Islam, can prevent malpractices in trade and commerce and take steps against profiteers on the spot and in public. If the leadership of the religious jurisprudents deems it advisable, prices of goods can also be fixed to the advantage of consumers.

"Public vigilance in the context of everyone's religious duty to command to good and forbid evil, which is one of the specific features of an Islamic society is necessary.

"Above all, Islamic teachings are predicated on deep faith in the same and active concern for fellow human beings. These basic require-

ments leave no scope for any selfishness and materialistic attitudes to prevail. These can be instrumental in eradicating mal-practices, involving explicit or implicit exploitation of man by man, socio-economic injustice and total disregard for the ultimate interests of people and society. Then, an Islamic society's members will try to excel each other, following the dictum: 'Set yourself as an example to others.'⁹

"The producers and traders, too, would not practice or do something which they do not want others to do to them. They will not be motivated by greed and cravings for easy money and undue advantages. Their transactions will not be arbitrary; these will be satisfactory to both the parties. All these are achievable under an Islamic order, so that none will seek anything in excess of what they work for and deserve."

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III. OCCUPATIONS DISAPPROVED OF IN ISLAM

“Islam does not approve of the following: (1) money changing for profit; (2) dealing in shrouds for dead bodies, trafficking in human beings or selling persons, which is the worst possible occupation ; (3) slaughtering or sacrificing animals (as a profession), and phlebotomy. These occupations are considered all the more abominable when pursued exclusively and continuously.

IV. BUSINESS ETIQUETTE

“The most important aspects of business manners are noted below:

“Moderation and concern for economy in realizing income from business, so as to place the businessman neither in straitened circumstances, nor in a position to give freeplay to any baser motives of greed or exploitation on his part.

“Taking back something sold from one who regretted buying the same.

“Treating the buyers equally so that one does not sell at a lower price to someone who proves himself or herself as a shrewd bargainer and at higher prices to another. One could as well sell at a lower price to someone who is learned in secular and religious matters.

“Giving more value for money or paying more (in qualitative terms) than receiving (in qualitative terms).”¹¹

II. RELIGIOUSLY PROHIBITED ECONOMIC ACTIVITIES

Activities harmful to individual and collective well-being of people are prohibited in Islam. These include the following:

1. Transactions Involving Harmful and Ritually Unclean Things

“Pursuits, traffic and trade concerning harmful and or unclean things, including alcoholic drinks, pork, meat of animals found dead and those slaughtered by machine without the method prescribed in Islam for slaughtering animals, are all prohibited. On the other hand, sale and purchase of human blood for transfusion among the sick and injured, are not forbidden, provided safety is insured in the process.

2. Sale and Purchase of Equipment Useable for Activities Forbidden in Islam

“Sale and purchase of equipment meant for purposes forbidden in Islam, including gambling, are strictly prohibited.

3. Fraudulent Transactions

“Cheating or fraud in commercial or other transactions, including use of counterfeit or those involving spurious instead of genuine articles, or malpractices like adulteration of milk and animal oil with vegetable oil, are prohibited in Islam.

4. Activities Harmful to Society

“Activities harmful to society, like sale of firearms to enemies fighting Muslims and /or thieves and highway robbers, are prohibited in Islam.

5. Sale and Purchase of Uninspiring Music

“Engaging oneself in listening to and dealing in (recorded or taped) music or songs of uninspiring and unimaginative nature and content, is forbidden. In this context, ‘music’ refers to modulated (vocal) sound reminiscent of minstrels, who amused a hedonistic gathering, such as

many musical tunes and songs of an uninspiring nature produced during the era of the arrogant ruler who rebelled against God's Commands in Iran. However, musical compositions, which inspire listeners to culturally higher or revolutionary activity like the one dedicated to Mutahhari, carry no objection."¹⁰

6. Transactions that Aid Oppressors

"All transactions that directly or indirectly help oppressors are invariably prohibited. As emphasized by the Prophet of Islam, 'Anyone who proceeds to help any oppressor, knowing that the latter is unjust and cruel, does so at the risk of excluding himself from Islam.'

7. Sale and Purchase of Misleading Publications

"Keeping, printing, reading/reciting and teaching or learning from, as well as the sale and purchase of books with a misleading nature and content, is forbidden according to Islamic teachings. Their use is restricted to the need to criticize and correct their misleading nature and content, including suitable answering of any questions arising from the same. Otherwise, their use by impressionable people at large is prohibited.

8. Activities Capable of Inducing Hallucinogenic and Narcotizing Effects

"Activities capable of inducing hallucinogenic or spellbinding effects are forbidden in Islam. The prohibition covers any witchcraft, black magic, casting of spells, use of hallucinogenic drugs, or any other act involving articles, inscriptions, incantations, smoking, blowing and similar other acts seeking to undermine or overcome a person's psychosomatic integrity or self-control in an unnatural manner, for evoking undesirable (lustful, illusionary or inimical) feelings.

9. Exorcising Spirits

"Summoning jinns or fairies and acts purporting to exorcise evil spirits are prohibited in Islam."

10. Jugglery

"Activities of magicians, jugglers and those who practice sleight-of-hand, as professionals, are banned in Islam. These activities are defined as those purporting to show something real, whereas actually nothing really exists, often through sleight-of-hand.

11. Fortune Telling

"Divining about the future, as if it were possible with the assistance

of jinns, is prohibited, too.

12. Phemonology

“Any speculation about a person’s facial resemblance or otherwise with another, as when telling about a child’s resemblance or otherwise to a parent on alleged basis of facial traits, marks, or signs, is forbidden in Islam.

13. Astrology

“A forecast of future events, in terms of good harvests, drought, propitious or adverse timings and the like, is sometimes attributed definitely to the changing formations of stars and planets. The underlying assumption is that stars can independently, or through the divine Will, affect worldly life and events. Except for astronomical forecasts based on irrefutable logic and evidence, such as governing predictions of eclipse of the sun and moon, the perigee and apogee of celestial bodies and phases of the moon, independent or in cooperation with God is forbidden or believing God has given these effects to them.

14. Receiving Monetary Payments for Obligatory Work

“A physician employed by the government is duty-bound to attend to patients visiting him at his normal place of work. If he charges any fee of his own for seeing patients, it will represent a malpractice prohibited in Islam. However, if he is required to visit a patient at the latter’s home, then he has a right to charge a reasonable amount as fee for visiting, though not for accomplishing the principle of rendering medical aid.

15. Usury

“Transactions involving usury are religiously prohibited.

V. TRANSACTIONS UNDESIRABLE IN ISLAM

“According to the Divine Law, some economic and commercial dealings are considered undesirable:

- (1) Undue praise and exaggerated advertisement of one's goods
- (2) Negative reaction on the part of some customers who unjustifiably find fault with the goods praised by sellers, so as to curtail their real value
- (3) Swearing an oath at the time of the sale or purchase
- (4) Selling things by hiding their faults, or when their faults have not been exposed.
- (5) Making profit out of a believer's purchases to an extent beyond necessity, except when the purchase are meant for business (resale) or when the value of things sold exceed 100 dirhams¹² so that the seller can allow himself a margin of profit commensurate with his expenses for the day's food.
- (6) Taking undue advantage of another's promise of help, as when it is not really called for.
- (7) Relentlessly presenting goods to potential customers from sunrise to sunset.
- (8) Arriving first at and leaving after everyone else from a bazaar.
- (9) Business transactions with people who do not give importance to their own words and promises.
- (10) Making a plea for reduction of price after a deal is concluded.
- (11) Overbidding or overtaking a buyer, except in case of an auction.
- (12) Overtaking incoming goods (as in contacting a supply caravan en route), or seeking undue influence with and or undue advantage from (wholesale) suppliers, especially in cases where it would not have been prudent to do so.”

“Hoarding foodstuff or similar other necessities of Muslims, with a view to create artificial scarcity and push the prices up, is prohibited in Islam. A hoarder of the kind www.nehzatetajome.ir should be compelled to

sell the hoarded goods. The seller's price should not be so high as to amount to extortion of the consumers. In case of extortionate prices, the seller should be warned to bring down the same. If, inspite of warnings, prices remain exorbitant, authorities concerned should intervene to control the same."¹³

VI. CONDITIONS OF SALE AND PURCHASE

1. Conditions Based on Exchange

"Exchange, or sale and purchase of goods is deemed to take place on the basis of a bilateral agreement. It reflects agreement on the part of either party to effect the transaction in a mutually agreed manner. The agreement can be verbal or in writing or just implicit in the exchange of goods and money. The explicit or implicit contract is valid. The Holy Quran says, "*O Believers! Honor your agreements.*" (5:1)

2. Conditions Pertaining to Buyers and Sellers

"Buyers and sellers should fulfill the conditions mentioned below:

"They should be physically and intellectually mature and capable of sound decisions.

"They should have the intention to effect the transaction.

"They should have the power and freedom to effect a transaction.

"They should be in legal possession of the means of exchange, as owners, guardians, or inheritors, or as their authorized representatives.

"They should not have been legally restrained from effecting a transaction."¹⁵

3. Conditions Pertaining to Money and Goods

"Money and goods to be exchanged are governed by the following condition:

"The thing to be sold should actually exist as a separate entity. The seller or his representative should have been holding the same in trust or as a bailee, if not dealing with it as an owner.

"A thing to be sold should not constitute any interest or profit accruing from it.

"The items and quantity to be sold should be specified. Mere identification by sight is not enough.

"Identification of a thing to be sold should include a description of its qualities, which account for any difference in prices.

"A thing to be sold should be real now and not anything anticipa-

ted in the future. Accordingly, sale of water of non-productive land, before providing means to make it productive, will not be correct.

"A seller should be capable of physically transferring possession of goods sold to the buyer. He cannot sell, for instance, birds in the air or fish in water unless the buyer himself has the power or means to catch the same.

"Sale and purchase of lands conquered from those who cover over the truth of religion, which may have been flourishing at the time of conquest, are prohibited. These lands belong to all Muslims. They should be maintained in their original and flourishing condition on behalf of the conquering Muslims. What is more, the custodians should see to proper development and care of the lands and also collect the relevant taxes, in the interest of the socio-economic well-being of the Muslims in general."¹⁶

VII. CANCELLING SALE AGREEMENTS

“As mentioned earlier, sales and purchases entail an agreement that is bound to be carried out. However, the agreement can be set aside or cancelled in the following cases:

1. Spot Cancellation

“A seller and or a buyer can cancel their agreement soon after concluding the same and before parting from each other and in the same meeting.”¹⁷

2. Agreements Concerning Animals

“An agreement to sell or buy animals can be cancelled by the customer within three days of reaching the same, as a matter of right.”¹⁸

3. Agreements Providing for Cancellation

“Sale purchase agreements can provide for their cancellation by either party or a third party. Under a provision for cancellation, the agreements can indeed be set aside or cancelled.”¹⁹

4. Cancellation After Discovery of Fraud

“Where it is found that fraud or blunder preceded conclusion of a sale or purchase agreement, then the entire contract can be revoked. If a blunder concerns pricing, the seller concerned can make a new offer of a correct price. On acceptance of the same, the modified agreement can be carried out.”²⁰

5. Cancellation Due to Delay in Purchase

“A customer may have made a down payment or an advance on some goods with a view to completing the deal subsequently. This arrangement can remain valid for three days only. If the intending buyer does not turn up with the money for the payment of the residual amount for collection of the goods set aside for him, then the seller can cancel the agreement on expiry of the time-limit of three days.”²¹

6. Cancellation due to Sub-standard Goods

"A customer may have purchased goods without actually verifying their specifications. If he subsequently finds the goods to be sub-standard, he has the right to cancel the deal. The same position holds good for orders placed on the basis of samples seen, including in catalogues, resulting in sub-standard supplies."²²

7. Cancellation Due to Faults

"If and when a customer, after purchasing something, finds it to be deficient or faulty, he can cancel the transaction, or obtain a concession in its price to compensate for the deficiency or fault."²³

VIII. USURY

1. Introductory Remarks

Unlike ancient Medes, who condemned buying and selling activities and upheld usury, Islam proclaimed trade to be lawful and prohibited usury. The Holy Quran says, "...and God has allowed trading and forbidden usury..." (2:275) ²⁴

In the Islamic context, money or wealth represents a kind of trust in the hands of the owner. As a Muslim imbued with charity and fellow-feeling, and with the requisite capacity to help his brother in need, an affluent person treats his wealth as God's or the people's resources-in-trust, utilizable for the common good of human society. It is a sin not to help the needy and deserving, even by way of a loan repayable without any extra payment (i.e. an amount equal to the principal or that of a loan, without adding any interest).

The Quranic teachings foster a deep sense of human brotherhood, equality, spiritual contentment, mutual concern and kindness among people, consideration for the weak and depressed among similar other humane qualities. At the same time, these depreciate any tendencies towards selfishness, materialistic outlook, malice towards others, exploitation and similar other negative traits, which are sustained by malpractices such as usury. This position is amply illustrated by the Quran. "But if you do not (relinquish usury and what remains due from it), then be appraised of war from (the side of) God and His Apostle; ...neither shall you make (a debtor) suffer loss,..." (2:279) ²⁵ "And if the debtor is in (financial) straits, then let there be postponement until the situation eases; and...remitting it as alms is better for you, if you knew." (2:280) ²⁶

a. The Differences between Trade and Usury

Those who say trading is only like usury (2:275) are manifestly wrong. Trade requires work and efforts on the part of a competent person. It can result in not only gains, but losses. The risk involves loss or damage. The efforts and risk undertaken by a trader justify a commen-

surate gain.

In contrast, a moneylender is not required to make any effort or run any risk. He parts with some of his capital by making sure that its repayment will make him richer. In this manner, the idol investors of money and capital become richer day by day, while their poor and weak customers become poorer and weaker. Eventually, the big capitalists/ interest-earners are able to expand their activities in the manner of colonialists, exploiting country wide areas and further victimizing and weakening sizable populations. No doubt, usury or interest sustains colonialistic expansion and capitalistic exploitation of people.

b. Hoodwinking or Circumventing Laws

Recorded history gives many examples of hoodwinking or circumventing extant laws. These cases represent vain attempts by some vested interests to perpetuate the status quo ante concerning laws that have been positively changed. This ulterior motive is discernible, irrespective of whether or not the deviations occurred under the purview of the ancient Roman Empire or the contemporary British courts of law.

A historical case in point is that of non-observance of the sabbath by some of the Bani Israel, mentioned in the Holy Quran, *"And (O Our Apostle) ask them about the town which was beside the sea...when their fish did come unto them on the day of their sabbath, appearing on the surface of the water; and on the day they observed not the sabbath, they (the fish) did not come unto them; thus did We try them... So when they did forget what they were warned with, We delivered those who forbade evil and overtook those who were unjust..."* (7:163-165)²⁷

Islamic laws, too, have been subjected to trickery and self-deception. Application of some of the laws depends on the fulfillment of certain conditions on the part of individual observers. If the prescribed conditions are not met, or could not be fulfilled, then the laws are not applicable. Sometimes, the human element can alter the conditions so that the laws become susceptible to ulterior motivations and even trickery.

For instance, the pilgrimage entails attendance at five places of traditional religious significance. Some pilgrims, lacking in either stamina or determination, may find it easier to confine themselves to Jeddah by offering oblations there instead. Likewise, Ramadhan fasting is not compulsory for a traveler. This legal provision may be misused by some by undertaking travel at the beginning, or towards the end of the month of Ramadhan.

Some people may try to hoodwink and circumvent laws in a man-

ner of transgression. They apparently respect the law, but try to flout it in actual practice. For instance, some observe the prohibition of usury or interest in a devious fashion. They offer something of nominal value (even a matchstick) as if the extra payment (interest) can be deemed to be payment for that thing. They deceive themselves by thinking that interest can be transformed into purchase value just like that. Other cases include one in which a person 'buys' a check for, say, one hundred thousand tomans by actually paying ninety thousand tomans only!

In his religious edicts, Imam Khomeini affirmed the total illegitimacy of the above mentioned acts of trickery and deception, including those concerning interest and promissory notes. Those who indulge in tricks and deception ought to realize that Islam does not aim at ostentatious adherence. The Islamic laws' real significance lies in their implementation in letter and spirit, in the interest of individual and collective betterment.

Accordingly, all sincere Muslims should understand and implement Islamic laws according to their intrinsic meaning and significance, and not by following the form and ignoring the substance.

2. Interest or Usury-oriented Business Transactions and Lending with Interest

"That interest or usury is prohibited in Islam is already established on the basis of the Holy Quran, the Traditions and the consensus of Muslims. Activities involving interest or usury are counted among the major sins. These activities can be of two kinds: (1) interest or usury-oriented business transactions and (2) extending loans with interest."²⁸

"Interest-oriented business deals refer to exchange of two homogenous goods by assigning a higher (artificial) value to one, so as to derive interest-like extra payment in kind or cash. For instance, anyone selling one kilogram of wheat in anticipation of two kilograms of the same commodity is indulging in an interest-oriented business deal.

"This is so irrespective of whether or not the seller receives extra payment in cash or kind or on a credit basis, and similar other variations reminiscent of a peaceful settlement. In any case, interest-oriented business deals are unlawful under the conditions mentioned below:

(1) When the goods to be exchanged are homogenous and of comparable quality according to the applicable legal classification. If these are not alike and comparable (as in the case of wheat and lentils), then, any normal extra payment for one over the other will not be objectionable.²⁹

(2) The two goods to be exchanged should be weighable or measur-

able and not countable (in terms of identical units), or not identifiable only visually.

“In the above context, I have reviewed any waiver of the prohibition of interest in the relevant books. I have found that in no circumstances can the exemption from the ban on interest be legally obtained. Even an exchange of two varieties of goods, with the difference in their qualities or values offset by adding something extra to the deficient part, does not actually circumvent the ban. It will be unlawful as any similar other tricks of trade.”³⁰

a). Loaning with Interest

“Loans with interest are those which a person with capital lends to another who is in need of the same, on the explicit or implicit condition that the amount of loan will be subsequently reimbursed together with an extra payment. These kinds of loans are strictly forbidden in Islam.”³¹

b). Some Clarifications

“A person in need may return a loan obtained without condition of an extra payment by adding an extra payment as a gift, in token of his appreciation of the lender’s kindness in fulfilling the borrower’s need. This gesture on the borrower’s part is indeed commendable. Nevertheless, it will be prohibited for the creditor to receive the gift in addition to the principal at the time of repayment.

“One who extends a loan may do so on the basis of a mortgage or surety or other conditions which may not be to his material advantage, but which may represent something advisable (in terms of precaution).

“Obtaining a loan when one does not actually need it is a forbidden act. The lesser the need for a loan, the greater is the disapproval of the same. On the other hand, in case of vital necessity (as for survival, or safeguarding one’s honor and similar other reasons), obtaining a loan is a religious duty.

“Extending a loan to a believer is one of the emphatic recommendations, especially when the person is not only deserving but in actual need.

“A loan transaction between two persons is based on a contract. The general conditions applicable to the parties of a contract, including those of physical or intellectual maturity, free choice, intention and the like, are applicable in the case of loans as well.

“Anything loaned should be either money or in kind, so that its ownership can be legally transferred. It being so, loaning, demanding a

loan or profiting from things, the owning of which is repugnant to Islam, such as alcoholic drinks, will not be in order.

“Anything to be loaned should be clearly specified and not ambiguously indicated (i.e. one of two things). Moreover its amount or quantity or weight or measurements should be specified.

“Until a loaned amount of quantity or item is actually delivered to and received by the borrower, the loan transaction is not accomplished.

“A loan agreement is legally enforceable and a debtor cannot unilaterally cancel the same.

“If duration of a loan is prescribed in the relevant agreement, this condition will remain valid and its compliance will be necessary. On the other hand, the lending party cannot demand its repayment until the due date...”³²

X. BANKING

1. Introductory Remarks

A bank can be a commercial organization set up under laws of banking to transact monetary and financial business. Banks collect people's savings as deposits. The deposits enable the banks to provide credit facilities for trade, commerce and personal purposes, as part of a country's efforts to run its economy.

Historically the need for moneychangers and banks arose simultaneously with the use of money as a medium of exchange. In the capitalist countries, banks represent one of the means of exploiting the savings of the economically, financially and socially weak people. They make enormous profits by utilizing the savings for providing credit facilities.

In our country (Iran) , under the influence of the wrong economic policies formulated by those who served the interest of global imperialism, the banks traditionally served the vested interests of a handful of capitalists and monopoly-seekers. The people at large served the banks by depositing their lifetime savings, which at times, meant earnings over a period of ten to twenty years.

Banks in Iran made huge profits by continuously increasing the rates of interest charged on loans. Consequently, people who were obliged to borrow became more or less permanent debtors. The excessive profits led to further nefarious exploitation by the capitalists who opened tens of private banks within short periods of only a few years. These banks had the participation of European and American business interests, who reaped enormous profits, too.

Now with the nationalization and increasing Islamization, the banks have begun to serve the people instead of the latter serving them.

2. Banking Transactions

"The religious instructions noted below cover all banks, international and intranational, government-owned or private."³³

a) Loans, Credits and their Legitimacy

"Loans or credits received from banks in accordance with the

Divine Laws are supposed to be derived from legitimate resources. If it is found that a loan or credit is entirely or partly based on some illegitimate collateral, its use is not religiously permissible.

"The question of legitimacy or otherwise is, however, specific to whatever one has obtained as loan or credit. Any general supposition that the lending bank has gotten illegitimate money, which may adversely affect one's loan or credit, should not, by itself, render the utilization of the loan or credit as unlawful or ineffective."³⁴

b) Banking Transactions as with a Muslim

"All legitimate transactions with a Muslim, according to the Divine Law, are valid. Accordingly, an Islamic Society's bank transactions, too, should be legitimate and valid."³⁵

c) Use of Interest-free Deposits

"Deposits or valuables may be entrusted to a bank as loans that necessitate collateral or guarantee and without the prohibited interest and (usurious) profit. Only then the receiving bank can appropriately utilize the same."³⁶

e) Interest-free Loans and Extra Payment to Banks

"In case of a deposit with or loan from a bank, which transactions are not governed by interest as a condition, any spontaneous (i.e. without prior agreement) payment of extra money to the lending bank can be treated as lawful."³⁸

f) Use of Assets Held in Trust by Banks

"If money or valuables or assets are deposited by the owners, so that the accepting banks are especially entrusted with the same, then the banks cannot make use of these deposits for its own purposes, without the permission of the owners concerned."³⁹

g) Prizes and Awards Offered by Banks

"To promote or expand business, banks and other organizations may offer prize certificates or awards to depositors or buyers. Alternatively, these may be drawn on the basis of lottery. These are not objectionable in themselves."⁴⁰

h) Foreign Exchange Transactions

"Buying and selling foreign exchange, or money exchanges (involving coins and paper currency of the equivalent or discounted value) are permissible, except where these are transacted with a view to circum-

vent interest.”⁴¹

i) Letters of Credit

“One of the important functions of a commercial bank is to provide credit facilities to a trader. This involves a trader’s deal with a foreign exporter or supplier, after complying with the prescribed local formalities. Then, he approaches a bank for opening a letter of credit in favor of the foreign supplier. For this purpose he makes a part-payment on account of the cost of goods to be imported. The bank makes payment in full to the foreign supplier for the goods. Once the goods reach the destination, the bank arranges the clearance in its own name, and then informs the trader about the arrival of goods.

“On receipt of the arrival notice, the trader arranges payments of the cost of the import, minus the amount paid earlier in advance. In addition the pays the bank’s extra charges for services rendered, plus interest on the credit made available from the date of payment to foreign supplier until its local reimbursement in full by the trader.

“In case the trader fails to make payment in full, the bank will not hand over the goods to him. Instead, it can initiate sale of the goods for recovering its dues.

“In the above case, a question arises as to whether or not the above mentioned bank charges, including interest, are legitimate.

“In reply, it can be stated that so far as bank charges cover specific services, including registration fee, customs levies and transportation and warehousing costs, these are legitimate dues. The component of interest on credit for the duration of actual payment to foreign supplier and its full reimbursement by the local trader is illegitimate, since it ought to represent a loan (without interest) to the trader.

“A bank’s right to disposal of goods in case of failure on the part of the trader to claim the same by paying the dues is validated by a provision to this effect in the relevant agreement. It serves as a power of attorney to the bank, so that others can lawfully buy the goods from it.”⁴²

j) Charges for Bank Guarantee

“One of the routine functions of a bank is to suitably provide, at the request of its customers, a bank guarantee. The need for it arises, for instance, when a customer engages a building contractor to construct a house. He gives the contractor a written undertaking that the construction costs and the relevant bills will be paid by him in due course.

“The undertaking may be required to be supported by a bank

guarantee to the effect that in case of non-payment by the customer, the bank will be liable to pay up to a specified amount. For this, the bank may demand service charges. In principle, any guarantor, who renders a service to another, can choose to ask for some wage. A guaranteeing service of this kind is apparently correct. In any case, the fact remains that wages can legitimately be demanded for legitimate services, such as arranging registration, bank guarantee and similar others.”⁴³

“On the other hand, in case a bank is called upon to honor its guarantee, it can legitimately demand indemnity from the customer in whose favor the guarantee has been arranged. The customer cannot refuse to indemnify the bank in this regard.”⁴⁴

k) Commission on Bank Transfer or Drafts

“Transfer of money from one place to another, and money orders or drafts issued for this purpose, are services which a bank renders on payment of commission. Banks can demand remuneration commensurate with the actual services rendered. This is subject to the condition that under no circumstances any bank should use these charges to circumvent the ban on interest.”⁴⁵

l) Checks

“Bank checks, like other negotiable instruments, are financially significant only in so far as they specify an amount payable (under certain conditions) by a bank. Buying and selling checks is not lawful.”⁴⁶

m) Mortgage Banks

“Mortgage-oriented banks offer loans against collateral and charge interest on them, too. In other words, they mortgage people’s real assets to provide for recovery of loans in case of default, and gain excess amounts as interest as well. The principal amount of a loan can be legitimately recovered, even through mortgage, but not interest or anything extra.”⁴⁷

n) Bank Charges

“Banks can lawfully charge for services rendered (as remuneration for banking payments), provided their charges are not meant to serve the purpose of interest.”⁴⁸

3. Joint Enterprise (mudarabah) with Banks

a) Introductory Remarks

Use of funds collected from depositors for investment by banks in

joint enterprises has been proposed. The investments could be in the fields of trade, industry and agriculture. Returns on capital invested resulting from efforts or the supervision of banks, are shared with depositors, crediting the latter's account. This proposal has been approved in principle by Imam Khomeini as detailed subsequently under 'Insurance'.

X. PROMISSORY NOTES

"A *suftah* is a promissory note by which a debtor undertakes in writing to pay a specific sum of money to the creditor or his nominee within a prescribed time. There are two kinds of promissory notes:

(1) A promissory note signed by a debtor and (2) a promissory note signed on behalf of a debtor. Each kind is governed by specific conditions.

"A creditor, obtaining a promissory note signed by a debtor, may sell it to a third party for a sum of money lower than that specified in the document. There is no objection to it provided:⁴

(1) The transaction is confined to the sale or purchase of the deed committing the debtor to repayment of the amount specified in it.

(2) It does not involve goods necessitating their evaluation by measurement or weighting.

(3) It is not used as a cover for interest on loans.

1. *Types of Promissory Notes*

a. *Suftah Haqiqi*

"Sometimes an intending borrower may ask his locally influential friend to give him a promissory note. The resultant promissory note can be bought and sold, subject to the following conditions:

(1) When the promissory note can be interpreted to mean authorization by the giver to the intending borrower (his friend) to sell the same to a lender, so that the person who gives the promissory note becomes directly responsible or liable to the creditor. This is irrespective of whether or not the creditor has actually paid the debtor more or less than the amount specified in the promissory note. However, the transaction should not involve measurable or weighable goods.

(2) Obtaining a promissory note from a friend can mean the same thing as borrowing from the latter, so that there should be no

provision for payment of interest if and when it results in a loan. On the other hand, any gratuitous extra payment can be treated as a charitable act. Where a third person extends a loan on the basis of the promissory note, he can refer to the signatory of the promissory note for repayment of it, if necessary, since the latter is bound by an implicit agreement concerning repayment of the loan.”⁴⁹

b. Suftah Dustanah

(3) A promissory note obtained from a friend may be accepted by a bank or a third person in which case the first person who has signed it becomes a debtor to the bank or the third person, on the basis of his credit-worthiness.

(4) Signing a promissory note can well mean undertaking an obligation to pay the specified amount to the bank or the third person in the event of the second person failing to repay the loan.

(5) In case the second person actually fails to repay the loan and his friend honors his commitment in the promissory note, the latter can call upon the second person, his friend, to reimburse his payment as per the promissory note.”⁵⁰

2. Compliance with Banking Laws

“Banking laws and regulations require that once debt repayment falls due, the seller of a promissory note is called upon to make the repayment. In the event of the debtor failing to repay, signatory of the relevant promissory note is notified for payment. This procedure is implicitly recognized by the concerned parties. Accordingly, the legal proceedings in the matter are observable. This is necessarily binding on those who are explicitly or implicitly involved in the transaction concerning promissory notes, if not on others who may not be familiar with the banking laws and procedures.”⁵¹

3. Penalizing for Delay

“Any demand for extra payment on the ground of delayed repayment, by way of penalty or otherwise, is prohibited, even when banks and creditors and the debtors are willing to effect the same.”⁵²

4. Monetary Value

“Promissory notes and similar other negotiable instruments are not counted as money.”⁵³

XI. LOTTERY TICKETS

1. Introductory Remarks

In the past, some unscrupulous people used to exploit the credulous among passers-by, inviting them to try their luck by picking up sealed canisters on payment of a fixed price. Some greedy persons could not help trying, thinking that the canisters may well contain something valuable. The canisters may not be found empty, but partly stuffed with cheap things like peanuts!

Later on the exploiters of some people's naivete changed their method of operation. They began to use a sizeable container for putting rolled slips of numbered paper, which are then intermixed by the operator before allowing the participants to pick up from the container any slip that comes to their hands. The number hardly meant a windfall to every participant.

Lottery ticket operations such as mentioned above brought unearned profits in sizeable amounts to the operators. However, their customers soon became wiser and rarer.

In time, even policy makers at the government level recognized the scope for amassing money by giving lottery a veneer of respectability. They formulated prize tickets numbered in different series, and provided for attractive 'fortunes' (i.e. a hundred thousand for a ticket of just two toman). They gave the government-sponsored prize-tickets a country-wide publicity through various media and at great expense.

As a result of extensive publicity, the sponsors of 'try-your-luck' price tickets were able to collect hundreds of millions of rials every week before drawing the lottery. Most of the collections were from people who could not really afford the same, but who were induced to participate. Soon, the number of objecting Muslims who thought better of joining the racket, increased.

To give an impression that the try-your-luck tickets did not represent gambling, the sponsor renamed the whole thing as national lottery. The implication that national purposes, such as that of supporting the Red Lion and Sun Society, required charity was, thus, added to the possibility

of making some of the poor millionaires overnight! Furthermore, the national lottery began to employ handicapped persons to sell the tickets in place of the able-bodied. The value of prizes was also increased five-fold, adding brand new cars, and further expanding the publicity. All these could not alter the fact that the national lottery was basically no different from try-your-luck tickets.

2. In the Quranic View

"Intoxicants and games of chance and (sacrifices or dedications to) stones (idols) and (divination by) arrows are only an abomination (representing) satan's handiwork; shun it therefore so that you may be successful." (5:90) ⁵⁴

Imam Reda, peace be upon him, in one of his Traditions, says, "Anything on which betting and gambling takes place can be reckoned as *misir*. The word *qumar* is identical in meaning with *qimar*, thus, lottery tickets, which are a kind of betting is gambling and forbidden."⁵⁵

However, it may be argued that lottery tickets do not in themselves represent the physical means of gambling. Perhaps, there is only a remote possibility of generalizing gambling so as to include lottery. Yet the fact remains that betting is involved in lottery. Accordingly, it should be treated as something to be shunned, considering that its effects are similar to those of gambling and that its regulations are like those of betting. We may cite the example of beer to illustrate this point. Beer has been described as *kumar* (an intoxicating drink). this does not alter the fact that it is a malt liquor and, as such, different from wines and spirits.

In his book, *Al-Mukasib al-Muhramah*, Imam Khomeini has given a detailed explanation of the Quranic precept mentioned below:

"...Consume not your wealth (in vain) among yourselves; (but invest it) in trade by mutual consent..." (4:29) ⁵⁶

In the above quotation, futile dissipation of wealth has been enjoined against and investment in a joint commercial venture has been recommended. ⁵⁷ It signifies also the fact that parties in a futile activity obviously do not give their unconditional consent, such as that given in a legitimate business enterprise. For instance, a buyer of try-your-luck lottery tickets does so in anticipation of winning a prize, albeit in an equivocal manner, as in gambling.

In view of the foregoing explanation, it can be concluded that any gambling or betting or try-your-luck transaction is as invalid as any business deal not based on absolute consent of the parties. It being so, not only the business of lottery tickets, but its resultant incidence of prizes will be invalid.

3. In the View of the Traditions

One of the reliable Traditions of Imam Sadiq, peace be upon him, had been mentioned in his lectures. The former was asked about chess and similar other games. In reply, a counter question was put. He was asked to which group games like chess would belong if God were to separate everything lawful from everything else that is unlawful. Then, the Imam confirmed the answer that the above mentioned game and similar others would belong to the category of unlawful or futile things, since these beget no benefit or blessing to people.⁵⁸

In the above context, Imam Sadiq, peace be upon him, advised that one should exercise one's own critical faculty in deciding whether or not something is worthwhile.⁵⁹ So let us ask ourselves whether or not try-your-luck tickets are part of things worthwhile and lawful. Evidently, it is not right to lure millions from the poor people and spend the same on prizes and other dubious purposes. Everyone can realize that there is really no blessing or common good arising from it.

Even if one cannot prove the respectability or vileness of the lottery ticket transactions, it is sufficient to invoke the people's economic well-being as a reason for prohibition of lottery on the part of the religious authorities.

4. Imam Khomeini's Advice on the Controversy

"...The issue concerning try-your-luck tickets is relevant to the problems dealt with in Islamic Jurisprudence, in terms of a thorough exegesis. Controversy may arise in this process, such as the one highlighted by the exegesis of the late Ayatullah Khansari and the late Mirza Sayyid Yunus Ardibili, may they rest in peace, to the effect that try-your-luck tickets are lawful. Their decision led the government to authorize try-your-luck tickets.

"It caused an intensification of the controversy regarding the above mentioned tickets. However, one has to be very careful in matters of direct or indirect significance in the context of Islamic jurisprudence. Due care is necessary, especially in the choice of words, lest, God forbid, a lip of the tongue causes irreparable loss of grace and estrangement from genuine pursuit of knowledge if not deviation from the straight path of righteousness..."⁶⁰

5. Directives Concerning Try-your-luck Tickets

"Sale and purchase of try-your-luck tickets and acceptance of prizes resulting from lottery are all unlawful. One who receives prize money becomes guarantor of reimbursement of the same to the real

owners.

"If one wins a lottery prize and receives the same, he should return it to the real owners, if he knows them. If not, the prize money will be part of assets, the ownership of which is ambiguous. In that case, he should give it to charity on behalf of the unknown owner. Before giving charity, it will be prudent to obtain permission from the religious authorities concerned.

"It will not be appropriate and prudent for any recipient of prize money to give it to charity in favor of himself or herself as a poor person. He or she should act on behalf of the real owner, so as to donate it to the poor.

"A winner of prize money should not stipulate retention of a portion at the time of donating it to the poor person. The poor recipient, too, cannot lawfully agree to the condition. However, there can be no objection if the poor recipient on his own pays something to a deserving donor, in the absence of a condition to that effect.

"An entity promoting and conduction try-your-luck tickets business cannot assume legitimacy by just renaming itself as a National Lottery Organization, without evidencing basic or substantial changes in the nature, content or modality of its operations.

"There can be no objection if a company is formed to cater for public interest in welfare projects and it promotes collection of funds through lottery-oriented prize bonds or certificates with the explicit knowledge and co-operation of the participants, including the matter of utilization of the collections."⁶¹

XII. INSURANCE

1. Introductory Remarks

Insurance covers risks of total or partial loss of, or damage to, goods in transit. The risks could arise from, say, fire or sinking of a ship. These could even lead to bankruptcy of a trader. Traders protect themselves against the risk by paying a premium, based on the value of goods and the nature of risk, to an insurance company. In return, an insurance company undertakes to compensate for any actual loss or damage, so that both the insurant and the insured (cargo) are protected.

Cargo insurance business, in the modern sense, was initiated by Lloyds of London in the fifteenth century.⁶² Even in the ancient times, trade agreements provided for coverage of loss or damage to cargo shipments. The ancient Greeks imposed surcharges on goods sold and scheduled for shipment. They made a pool of these extra collections, so as to collectively pay for any loss or damage to goods in transit.

With increasing mechanization of the means of transportation, the need for accident and fire insurance, too, came to be recognized in the mid-19th century.

2. Islamic Provisions for Insurance

“Islamic ideology provides for safeguards against several kinds of socio-economic insecurity and hazards. The overall aim is to promote a deep and lasting sense of individual and societal well-being brought about by efforts oriented also to human dignity and brotherhood in a practical manner. Above all, human expectations reach beyond mere achievement of a materialistic nature towards the Divine Guidance and Beneficence in this world and in the next.

“The Holy Quran envisages insurance against poverty, unemployment, insufficient financial resources consequent upon any inadequacy of income, bankruptcy, losses, damages, including fire, theft, flood, piracy and the like, as well as hardships from failure of society’s institutions and services, travel hazards and for the helpless or the stranded, among similar others. (See 9:59) For orphans and families of martyrs, too,

insurance is called for. (See 8:42)

"In addition, insurance coverage of khums and zakat extends to education of those who cannot afford the same as well as marriage and medical expenses of the poor and the needy."⁶³

The insurance cover indicated above is based on the budgetary sources of income such as: (1) khums, (2) zakat, (3) kaffarat, (4) waqf, (5) nadurat, (6) unclaimed inheritance, (7) donations of gifts (*ihsan*), (8) acquisitions (*anfāl*), (9) feeding the destitute (*at,am*), sacrifices (*ithar*) and interest-free loans (*qard al-hasanah*).

c. Features Distinguishing Islamic Insurance from Others

"Islamic insurance is part of a public financing system, unlike the western type of insurance based on voluntary or compulsory premia. Islamic insurance requirements do not envisage collection of taxes or premia from poor people. The European system does not distinguish the rich and the poor.

"Insurance companies in the West lend or invest their collections of premia without discriminating between the affluent and the needy. In Islam, funds are provided to those in genuine need of the same, or to the financially and socio-economically weak.

"Profits from and increases in insurance premia are appropriated by a handful of capitalists. In Islam, these are deposited in the public treasury for the benefit of the people at large, including for economic uplift.

"Insurance companies in the West serve limited purposes. In contrast, Islamic insurance cover extends to practically every need for offsetting losses, deficiency or limitation of people, to a reasonable and satisfactory extent.

"Islamic safeguards are rendered permanent by the inculcation of the qualities of moral rectitude and a deep faith that makes a believer. In this context, a Tradition may be cited which describes the believer as one who represents a sort of insurance for people's lives and property."⁶³

"Another Tradition is recalled to the effect that one who can afford to sleep after a sumptuous meal, while his neighbor remains hungry, does not really belong to the faithful.

Western Type of Insurance from the Islamic Point of View

In the above context, the Western type of insurance can be analyzed within the framework of Islamic jurisprudence, in terms of the principles and the problems involved on one hand, and the corrupt manifes-

tations, including amassing of unearned profits by a conglomerate of capitalist investors, on the other. The latter comes under the purview of an Islamic government and the scrutiny of the exegesis of Islamic jurisprudence. They may well choose to nationalize private insurance companies. As for the basic principles and problems, these are discussed in Imam Khomeini's elucidations cited below.

d. Imam Khomeini's Clarifications

The first question arises from the possibility that insurance was not in vogue during the periods of the Prophet and the Imams. If so, would it not be difficult to treat insurance in the same way as sale, purchase, rental and the like? The reply of Imam Khomeini highlighted two points. Firstly, there is an implication of guarantee in an insurance transaction and guarantee like many other aspects of business today, has had antecedents traceable even to the early days of Islam.

However, the traditional stipulations did not signify that every business could be adjudged right away as correct or otherwise. The Divine Law deemed every contract made between two persons as effective, irrespective of whether or not there had been a precedent, except where reasons to the contrary existed.

The second question arises from the possibility that the things insured against risks are often found intact, which makes an insurance company a profitable enterprise. Those who do insurance business know that the probability of risks actually materializing is rather insignificant. Accordingly, can it be argued that one who pays insurance premium often does not get anything in return?

In reply, Imam Khomeini stated that a transaction does not necessarily imply exchange of material things or benefits. For instance, one may retain a house for rent without actually availing of the benefit of living in it. The question of insurance, too, involves an intellectual consideration. Irrespective of whether or not one's apprehension or risk becomes real, the precaution itself remains valid.⁶⁴

"Insurance is a contract between an insurant and insurer, in which the latter commits himself to make good any loss or damage to a thing insured, if at all. This he does in consideration of a premium received from the insurant, the amount of which is fixed by mutual agreement.

"Like other contracts, an insurance contract is based on an offer by one party and its acceptance by the other party. This does not, however, necessarily mean a verbal or written offer from an insurer, saying that he would underwrite a risk, provided a certain amount of premium is paid. It can as well be an offer from the insurant that he would pay a

certain amount of premium, if the insurer to whom the offer is made undertakes to insure something. In either case, irrespective of the language used, the contract is valid.

“All the conditions ordinarily applicable to contracts or transactions are relevant to an insurance agreement. These include: Physical and intellectual maturity, absence of any legal restraint concerning something to be insured, free choice, intention to carry out the agreement. In other words, insurance transactions involving children, insane persons, prohibited things, and those which are not really intended will not be effective.

“Aside from the conditions mentioned above, a few others are applicable to insurance:

- *“Specifications concerning the parties to an insurance contract and the insured object (cargo or the means of transportation).

- *“Specification of the amount of premium.

- *“Specification of the nature and content of insurance and the risks covered, such as fire, voyage, theft, health, death and similar others.

- *“Period covered by insurance and the periodicity of payment of the premia, if any.

“It is not always necessary to fix the amount payable by an insurer as a precondition. It will be sufficient if a cargo policy states that in the event of loss or damage to the insured property, the same will be assessed and paid by the insurer to the insurant.

“Insurance contracts that fulfill the above conditions are correct. This is irrespective of whether or not an insurance policy covers life, a motor vehicle, an aircraft, a ship, agricultural or other produce/product, company or government employees, a family, a city, or the insurant is head of a company, government, head of a family or a mayor. A government might as well insure citizens in an urban area or the country as a whole.

“In the above context, a question may arise as to the free and reciprocal nature of an insurance contract. Whatever may be the extant rules applicable to an insurance agreement, these may not be entirely without any doubtful application. The doubts may be similar to those involved in the apparent one-sided nature of conciliatory agreements, expiatory offerings and guaranteeing something by way of *quid pro quo*.

“However there is a strong probability that any constraint such as indicated above does not limit or cause any deficiency in an insurance contract. This position is strengthened by the nature and content of an insurance deal in which the insurer commits himself to offset any loss or damage to the insured property. This is notwithstanding its resemblance

to a unilateral commitment or agreement involved in a conciliatory deal, offering or a guarantee in return for a consideration.

"In any case, irrespective of whether or not an insurance contract is sustainable by itself, or deficient (in its seemingly one-sided nature) in the manner of a conciliatory deal, it is not only tenable, but an enforceable contract.

"Mutual insurance, too, is *prima facie* correct, in that the risks are jointly undertaken by insurer in collaboration with investors of capital.

"An insurance company can lawfully utilize premia collections plus capital plus capital contributions, including from insurants, in profitable ventures of a commercial nature. The resultant profits and losses are jointly shared by the direct or indirect participants in the commercial ventures. Where premia payments have been offset by an insurer's reimbursement of loss or damage, there is no question of investing them in anything else. Any participant insurant is entitled to the insurance policy payment only, in consideration of the relevant premia.

"Also, if some participants in the above mentioned investments or joint ventures offer no capital contribution, but their working ability only, then their participation will be valid on the basis of an investment in commercial projects.

"If an insurer pays a bonus over and above any payment as per an insurance policy, as in the case of life insurance policy, providing for an endowment, it will be lawful, too. It may well represent an incentive offered by an insurer for promoting life insurance. The excess payment cannot be construed as any usurious loan. This is because premia are not loaned. An insurance agreement is independent of any loan. The condition of premium is a lawful as well as enforceable one.

"There cannot be any objection to an insurance company insuring itself with a bigger company of its kind."⁶⁵

NOTES TO PART SIX

- 1.
2. Imam Khomeini, *Tahrir al-Wasilah*, vol. 1, p. 500.
3. Ayatullah Sayyid Muhammad Baqir Sadr, *Iqtisadina*, vol. 2, p. 303-304.
4. *op. cit.*, *Tahrir*, vol. 2, p. 626.
5. *ibid.*
6. *ibid.*, vol. 2, p. 501.
7. *ibid.*, vol. 2, p. 617.
8. *ibid.*, vol. 1, p. 538.
- 9.
10. A Message of Imam Khomeini on May , 1981.
11. *op. cit.*, *Tahrir*, vol. 1, p. 500.
12. 100 ddirhams is the equivalent of 7.5 mithqal gold.
13. *op. cit.*, *Tahrir*, vol. 1, p. 501.
- 14.
15. *op. cit.*, *Tahrir*, vol. 1, p. 517-518.
16. *ibid.*
17. *op. cit.*, *Tahrir*, vol. 1, p. 529.
18. *ibid.*
19. *ibid.*
20. *ibid.*
21. *ibid.*
22. *ibid.*
23. *ibid.*
- 24.
25. «أَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا»
«وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ»
26. «فَأَنْ لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ»
«وَأَسْأَلُهُمْ عَنِ الْقَرْيَةِ الَّتِي كَانَتْ حَاضِرَةَ الْبَحْرِ إِذْ يَعْدُونَ فِي السَّبْتِ إِذْ تَأْتِيهِمْ حِثَانُهُمْ
يَوْمَ سَبْتِهِمْ شُرْعًا وَيَوْمَ لَا تَسْبِتُونَ لَا تَأْتِيهِمْ كَذَلِكَ نَبْلُوهُمْ بِمَا كَانُوا يَفْسُقُونَ»
- 27.
28. *op. cit.*, *Tahrir*, vol. 1, p. 538.
29. *ibid.*

30. *ibid.*
31. *ibid.*, vol. 1, p. 653-655.
32. *ibid.*
33. *ibid.*, vol. 2, p. 616 and 619.
34. *ibid.*
35. *ibid.*
36. *ibid.*
37. *ibid.*
38. *ibid.*
39. *ibid.*
40. *ibid.*
41. *ibid.*
42. *ibid.*
43. *ibid.*
44. *ibid.*
45. *ibid.*
46. *ibid.*
47. *ibid.*
48. *ibid.*, vol. 2, p. 610.
49. *ibid.*, vol. 2, p. 613.
50. *ibid.*
51. *ibid.*
52. *ibid.*
53. *ibid.*

54. ١ - إِنَّمَا الْخَمْرُ وَالْمَيْسِرَ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

55. *Wasa'il al-Shi'ah*, the book on *tijarat*, section 130, tradition 5
- 56.

«وكل ما قورم عليه فهو ميسر»

57. See the discussion of Imam Khomeini about the above verse in *Kitab al-Makasih al-Mahrimat*.

58. *op. cit.*, *Wasa'il*, section 102.
- 59.

ذَا مَرَّ اللَّهُ الْحَقُّ وَالْبَاطِلُ مَعَ آيِهِمَا تَكُونُ؟

60. Notes from Imam Khomeini's classes. 1963.
61. *op. cit.*, *Tahrir*, vol. 2, p. 620.
62. 'Issa 'Abdah, *al-Ta'mim al-Asil wa l-Badil*, printed in Beirut, 1392.
63. *ibid.*
64. Notes from Imam Khomeini's classes, 1963.
65. *op. cit.*, *Tahrir*, vol. 2, p. 610-611.