

## The Binding Force Of Qur'anic Injunctions With Special Reference To Testimony (Shahadah)

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### Özet

#### **Kur'an Prensiplerinin Şahitlik Bağlamında Hukuki Müeyyide Olma Gücü**

İslam Hukuku (Şeriat), İslam Dini'nin cevheri (çekirdeği) olduğundan; zahiren teknik manada hukukun ilgi alanı dışındaki dini prensiplerinin, değerlerinin de, mümkün mer-tebe yansıtıldığı bir hukuk sistemi olarak değerlendirilmelidir. Zira İslam'da otoritenin kaynağı, yani Kanun Koyucu (Şari) Allah Tealadır.

En şamil manasıyla adaletin tesisi ve ircaı İslam'da ferdi ve toplumsal bir zarurettir, mesuliyettir. Şehadet (şahitlik) ise adaletin temininde temel bir unsurdur. Şehadet misa-linden hareket ederek, iman-amel, dünya-ahiret bütünlüğü- bazında, İslam hukukunun bu müstesna hususiyeti, hukukun diğer alanlarında da yansıtılmalıdır.

### Abstract

Since Islamic Law (*al-Shari'ah*) is the epitome of the Religion of Islam, it is, therefore, to be conceived as the legal system which accommodates and assimilates, as far as possible, seemingly non-legal (in its technical connotation) principles, norms and values of the *all-embracing way of life* into its domain. It is here that lies the peculiarity of Islamic Law. In order to reveal this peculiarity, it necessitates, naturally, a new approach to be taken in such a way that the legal system of Islam, while remaining to be an integral body of the Religion as the way of life, amalgamates those seemingly non-legal principles, norms and values, and moulds them as the legally binding injunctions whose source of authority is Allah, The Lawgiver (*al-Shari'*).

However, considering the fact that not all injunctions of Islam, as laid down, in the Qur'an and Sunnah are aptly expressible in legal statements, one should apply an approach through which the injunctions, are to be introduced to play their binding effects upon building a solid and sound basis for society, on which its legal system is based as the primary driving force. It is only through this process that the individuals as well as the societies concerned can attain salvation and prosperity in absolute state of equilibrium, the state which *Divine Guidance* aims at. Islam as the Divine way of life, having duly established an integrated background which buttresses and complements the vacuum (which might fall technically beyond the jurisdiction of the law proper), carries its all-embracing effects and dominating influence by means of comprehensive education onto its legal system. The degree of effectiveness is enhanced as legally binding injunctions and through these injunctions, the comprehensive and integrated process of creating law-abiding individuals as well as societies in true felicity is concluded.

One of the distinctive characteristics of Islam as the final and perfected form of Divine Message<sup>1</sup> is the comprehensiveness and permeability of its injunctions and principles into the minds and actions of the believers. (i.e. *mu'minun*). Its inextricably interwoven complexity and delicate harmony of the Qur'anic injunctions amongst themselves, manifest the uniqueness of Islam as the '*all-embracing way of life*'.

Since Islamic Law (*al-Shari'ah*) is the epitome of the Religion of Islam, it is, therefore, to be conceived as the legal system which accommodates and assimilates, as far as possible, seemingly non-legal (in its technical connotation) principles, norms and values of the *all-embracing way of life* into its domain. It is here that lies the peculiarity of Islamic Law. In order to reveal this peculiarity, it necessitates, naturally, a new approach to be taken in such a way that the legal system of Islam, while remaining to be an integral body of the Religion as the way of life, amalgamates those seemingly non-legal principles, norms and values, and moulds them as the legally binding injunctions whose source of authority is Allah, The Lawgiver (*al-Shari'*).

However, considering the fact that not all injunctions of Islam, as laid down, in the Qur'an and Sunnah are aptly expressible in legal statements, one should apply an approach through which the injunctions, are to be introduced

<sup>1</sup> This fact is pointed out in the following Qur'anic verses:

"This day have I perfected your religion for you, completed My favour upon you, and have chosen for you Islam as your religion ." al-Maidah:5/3; "The Religion before Allah is Islam." Al-i 'Imran:3/19

to play their binding effects upon building a solid and sound basis for society, on which its legal system is based as the primary driving force. It is only through this process that the individuals as well as the societies concerned can attain salvation and prosperity in absolute state of equilibrium, the state which ***Divine Guidance*** aims at.

So far as the ultimate objective of any legal system is concerned, it may confidently be stated that it is to attain social harmony through establishing, as far as possible, justice and equity together with the help of other consolidating values such as, honesty, sincerity, consciousness of Allah, generosity and sacrifice. In the attainment of this goal, of course, there are various important elements and factors, such as theory or ideology, relevant institutions that have executive power, that is to say, institutions or agencies that carry out the theory into practice. However, one factor, above all, may be seen as the most crucial one, in the process of attaining peace and the harmony in the societies, and that is man as an individual. Success or failure mainly depends on the individual. Basically, one must believe personally in those values, norms and rules, then one must also believe in common, interpersonal and inter-societal regulations, norms and values through which individual and collective harmony is attained. Absence or lack of confidence in the individuals will be a major obstacle for the regulation of social justice, peace and harmony in any society. Therefore, an attempt will be made here in order to illustrate how comprehensive and rich potentially the Qur'an is in the legal domain. The issue of testimony (***shahadah***) in general, that is, without delving into the detailed technical discussions, which fall beyond the subject matter of this study, has been chosen to elucidate these potentialities. The outlining reason in the choice of this issue is that testimony has always been an important factor in the achievement of justice (***adalah***) and social accord or otherwise in all societies throughout human history.

Above all, it is noteworthy that the mere name of the Religion (i.e. ***Islam***) implies beforehand one's wholehearted submission to the Will of Allah. The root form of the word means to be safe and sound, unimpaired, blameless etc. Paradise is called Dar Al-Salam<sup>2</sup>; and more importantly Al-Salâm is one of the

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2 "For them will be a Home of Peace in the Presence of their Lord." al-An'am:6/127 Vide: Yunus:10/10

attributes of Allah<sup>3</sup>, that is, The source of Peace and Perfection. Even the daily exchange of greetings, which appear to have no relation with the Religion or with its Law is, in Islam an important statement that has religious, moral and legal connotations. The statement salâm in fact is exchanged in the form of mutual prayer, and this formula is the same that will be exchanged amongst those who are rewarded with Paradise in the Hereafter.<sup>4</sup>

Thus it may be concluded that any one who, knowingly and willingly submits himself to the Will of Allah ( in the way that is stated in the Qur'an and further explained and lived in the Sunnah) attains, in advance, overall state of security and peace which is further strengthened through living in accordance with the Divine injunctions and principles.

Since theory and practice (i.e. *iman* and *'amal*) in Islam are inseparable entities, every action of a believer may be thought to have been done out of religious obligation<sup>5</sup>.

It should be noted, however, that the concept of *'love'* in Islamic legal sense precedes and overshadows the concepts of *'fear'* and *'force'*; the latter, as may be seen particularly in man-made laws, as the driving force of the relevant legal system. The name of the Religion alone is a sufficient evidence for that. However, with regard to this matter there exist numerous Qur'anic verses, out of which, it will suffice mentioning only the following:

“But those of Faith are overflowing in their love for God”<sup>6</sup>

And:

“Thou wilt see them bow and prostrate themselves, seeking Grace from God and (His) Good Pleasure”<sup>7</sup>

Therefore, an ordinary exchange of greetings with the specified formula carries moral, social and even implicitly legal bearings. If we take into account the fact that man is a social being; lives in a society; and in an Islamic

3 “God is He, than whom there is no other god; The Sovereign, The Holy one, The Source of Peace (and Perfection), The Guardian of Faith, The Preserver of Safety, The Exalted in Might, The Irresistable, The Supreme.....” al-Hashr: 59/23

4 “This will be their cry therein: Glory to Thee, O god! And “Peace” will be their greeting therein....” Yunus:10/10

5 The Qur'an often makes this clear that Belief per se is not enough and it should necessarily be accompanied by a righteous behaviour. Vide: al-Baqarah:2/177; al-Tin:95/6; al-'Asr: 103/3.

6 al-Baqarah:2/165.

7 al-Fath:48/29.

society the exchange of '*salâm*' may be conceived to be an open declaration of peace, security and harmony to one another.<sup>8</sup> The establishment of individual and social peace, security and harmony is the ultimate objective of any social or legal system.

In Islam, therefore, it is secured right from the beginning with mere exchange of greeting through the specific formula, before coming to other essential legal and social principles. To read between the lines, the exchange of *salâm* connotes a mutual accord like:

“Let you be assured that no harm will come to you from my part as I invoke peace and blessings of Allah upon you!” When this mutual exchange is completed with such a will and consciousness (i.e. *niyyah*), it becomes a powerful element for rapport with some degree of legal connotations in carrying out the '*testimony*' which is an essential harmony i.e. felicity and prosperity (*al-falah*).

In fact, testimony (shahadah) is one of the most significant means of determining a matter in dispute in the court of law or elsewhere. The subject of testimony in its technical sense has already been amply dealt with, in the classical *fiqh* books. The objective of this study is, therefore, is not to take up the same subject again, as it would not lead to findings much different from what the existing works had arrived at, but, as it has been pointed out above, to treat the subject merely as an example to illustrate a new wholistic approach. This approach explains that Islamic Law (*al-Shari'ah*) is an inseparably an integral component of the Religion which encompasses not only the legal sphere but also all other constituents that a believer will have abide by in order to be a '*God-conscious*' man where ultimate objective is nothing but to attain the pleasure of Allah. Thus the scope of love in the Islamic perspective appears to be wider than that of other legal systems whether religious or man-made.

Therefore, the way that the subject is treated in what follows will naturally be somewhat different from the methodology of other legal systems, which

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8 It should be noted that frequently repeated words or actions tend to be viewed, after some time, as automatic actions which lack will and determination. In Islam there exists an effective measure that prevents frequently practised deeds or actions from falling into the category of automatic actions and that is 'intention' (*niyyah*). *Niyyah*, simply means consciousness of what one says or does. It is the essence of every action ranging from obligatory worship, transactions of all kinds, testimony to ordinary activities of daily life such as exchange of *salam* etc. The very first Tradition in al-Buhkari's *al-Sahih* is about this essential matter: “All deeds require intention or are judged according to the intention.

consider non-legal principles, norms and values as falling outside sphere of law proper; and deal with them as subsidiary or supporting secondary values that might play an indirect role in the execution of the Law proper.

Man is an exalted creature over all others:

“We have honoured the sons of Adam .....”<sup>9</sup>

Believing man (*Mu'min*) is the one who testifies that “there is no god but Allah and Muhammad is the Messenger of Allah (i.e. *double testimony-- Kalimah al-Shahadah*). The Qur'an states:

“And when they listen to the revelation received by the Messenger, thou wilt see their eyes overflowing with tears, for they recognize the truth: They pray: “Our Lord! we believe; write us down among the witnesses.”<sup>10</sup>;

“Our Lord! we believe in what Thou hast revealed, and we follow the Messenger; then write us down among those who bear witnesses.”

Testimony is treated in the Qur'an as an important element on which God has made on earth:

“By the sky (displaying) The Zodiacal signs, By the promised Day (of judgement), By one that witnesses and the subject of the witness.”<sup>11</sup>

One of the names or attributes of the Prophet mentioned in the Qur'an is *Shahid*:

“O Prophet! Truly We have sent thee as a Witness, a Bearer of Glad Tidings, and a Warner - and as one who invites to Allah's (Grace) by His leave, and as a Lamp Spreading Light.”<sup>12</sup>

And finally *Al-Shahid* is one of the ninety-nine attributes of Allah:

“And He is Witness to all things.”<sup>13</sup>

Allah, as the Lawgiver (*al-Shâri*) enjoins testimony obligatory (*wâjib*) upon the believers who know any truth of any kind to bear witness:

“And establish the evidence (as) before Allah.”<sup>14</sup>

and likewise:

“And those who stand firm in their testimonies.”<sup>15</sup>

9 al-Isra: 17/70.

10 al-Maidah: 5/83.

11 al-Buruj: 85/1-3.

12 al-Ahzâb: 33/45,46; see also: al-Fath- 48/8; al-Muzzammil: 73/15.

13 as-Saba': 34/47 and in many other verses.

14 al-Talâq: 65/2.

15 al-Ma'arij: 70/33.

It should be noted here that for carrying out testimony the term *iqamah* has been used. This term has already been used in the Qur'an repeatedly for the performance of five obligatory prayers, and this usage has generally being interpreted as the performance of the prayer in its perfection externally as well as internally.

In other words the term '*iqamah al-salah*' implies the performance of prayer with its true spirit with such an effect that, as the relevant verse states,<sup>16</sup> its performers would attain the level of maturity that restrains them from all kinds of shameful and unjust deeds. '*Iqamah al-Shahadah*' may likewise be conceived to mean performance of testimony, imbued with zeal of religious consciousness, that is, in the spirit of the performance of prayer. Relationship between *iqamah al-salah* and *iqamah al-shahadah* is in fact made clearer in Surah al-Ma'arij (:70/23-35), when the description of those who are steadfast in prayer is given in a number of clauses that follow:

“Those who remain steadfast to their prayer....; And those who respect their trusts and covenants; and those who stand firm in their testimonies; and those who guard (the sacredness) of their worship, such will be the honoured ones in the Gardens (of Bliss).

The believers are enjoined to bear testimony for the sake of God alone.<sup>17</sup> Therefore, it is firmly established that in the declaration of testimony, even it happens to be against the interest of the witness relatives and even of his ownself, the believer is enjoined to establish it in the most appropriate and just manner. This point has been made explicit in this Qur'anic command:

“O ye who believe! Stand out firmly for justice, as witness to Allah even as against yourself, or your parents, or your kin, and whether it be (against) rich or poor: For Allah can best protect both. Follow not the lusts(of your hearts), lest ye swerve, and if ye distort(justice) or decline to the justice, verily Allah is well-acquainted with all that ye do.”<sup>18</sup>

Establishment of justice (*'adl*) is one of the sublime objectives of Islam.<sup>19</sup> It may best be achieved by sincere and wholehearted adherence to the prin-

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16 al- Ankabut: 29/45.

17 See: al- Talâq: 65/2 mentioned above.

18 al-Nisa: 4/135.

19 “Allah commands justice, the doing of good, and liberty to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition.” al-Nahl: 16/90.

ciples and tenets (legal or ethical) that are laid down in the Qur'an. Hence, testimony plays an exceedingly important role in the establishment and maintenance of justice.

Another criterion of being just ('adil) in carrying out testimony is stated thus in the Qur'an:

“O ye believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety: and fear Allah. For Allah is well-acquainted with all that ye do.”<sup>20</sup>

To do justice and act righteously in establishing testimony on something in which the witness himself is not involved or the parties concerned of which he has no relationship is commendable enough. However, when the testimony concerns, directly or indirectly, the witness himself or his kith and kin and appears not to the facts; and moreover, when the witness happens to find himself testifying about someone who is his adversary and this too, cannot make him stray from the bare truth, then the most sublime qualities would have been attained. The attainment of such an exceptional quality, however has been considered a natural phenomenon in Islam; since these are enjoined as religious obligations, adherence to which brings the believer even closer to Allah, The Lawgiver.<sup>21</sup>

Giving testimony on one's own initiative without any court or official appeal is a rare phenomenon in the modern systems of law. Long and exhausting bureaucratic procedures, especially in the law-courts; fear of being publicized unnecessarily, in the society, and even the fear of putting one's life into danger by coming forward as a witness for a criminal case and the like may be counted among other reasons as the potential hindrances that prevent the witness from carrying out his testimony.

Due to the absence or non-availability of witnesses about certain cases on trial, the relevant courts of law or official institutions make public appeals, through the media or even issue decrees for those who may have any information about the issue in question, to come forth and appear personally

<sup>20</sup> al-Maidah: 5/8.

<sup>21</sup> al-Layl: 92/19-21, amongst other similar ones states the general stand of the believers towards God: “And have in their minds, no favour from anyone for which a reward is expected in return; but only the desire to seek for the countenance of their Lord Most High; and soon will they attain (complete)satisfaction.”



in the court of law in order to substantiate the fact or issue in question so that the final verdict may be reached. In certain modern industrialized countries, lack of substantiating evidence, particularly about criminal cases in the courts of law has led to the establishment of special branches of investigation within the relevant security forces to gather evidences for the courts of law. Furthermore, there arose even private investigation bureau for the same purpose that usually take up unsubstantiated matters or issues which await further evidences in the relevant courts.

Such private institutions have already become an important means of living for a considerably high number of people.

The main task of such official, semi-official or private institutions is to gather evidences that are needed. Whereupon, they seek and find usually either reluctant or indifferent witnesses; then, they try every possible means, some of which may be through enticement in various forms or even to convince them to appear in the court of law. However, in the Islamic legal system such time-consuming costly socio-legal complications of the modern societies may occur only rarely due to the fact that giving testimony is religious obligation; important as the obligatory prayers which constitute the basis of Religion. In addition to those mentioned above, the following verse, because of the clarity of its statement, makes its legally as well as morally binding influence felt by those who have something to testify:

“Conceal not evidence, for whoever conceals it his heart is tainted with sin, and Allah knoweth all ye do.”<sup>22</sup>

The subject matter of testimony presupposes it to be based on facts and certainty; Any slightest doubt or conjecture invalidates its evidential value, as the Qur'an lays down the principle that no judgement may be based upon conjecture:

“And conjecture avails nothing against Truth.”<sup>23</sup>

There exist in the Qur'an some concepts which help in creating a suitable background whereby all preventive measures against inaccuracy or distortion of testimony gain further emphasis in their refraining characteristics: ‘*Kidhb*’ (Lie, deceit, falsehood, untruth) of any kind is already condemned

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22 al- Baqarah: 2/283.

23 al-Najm:53/28; see also: Yunus: 10/36.

and prohibited categorically. It denotes exactly the opposite of the truth( *haqq* or *Sidq* ) which is the main characteristic of the overall message of Islam. *Kidhb* may be considered the prime source of what is called in the Qur'an as *al-Munkar* and *al-Fahsha* (i.e. two broad terms that connote everything that sound minds consider bad) which must be replaced, in any Muslim society, by *al-Ma'ruf* and *al-Ihsan* (i.e. everything that sound minds consider good, that is to say antonyms of *munkar* and *fahsha*). In fact, in a Muslim society where *al-Munkar* and *al-Fahsha* are eliminated, and where *al-Ma'ruf* and *al-Ihsan* prevail, there exist a solid, secure and pure background upon which the sublime and sacred values of Islam are embellished. Therefore, the emphasis given in the Qur'an to the testimony may well be seen further in the resolve of Muslim societies in the establishment and enhancement of justice which is the core and kernel of *al-Ma'ruf* or *al-Ihsan* as against *Kidhb*.

On the other hand, there is a close relationship between *hypocrisy* (*ni-faq* or *munafaqah*) and false testimony. The issue of hypocrisy and of the 'hypocrites' (*munafiqûn*); their wiles and mischief have been dealt with in the Qur'an persistently that there is even a whole chapter (*surah*) with this name (*surah al-munafiqûn*), wherein the hypocrites and their salient characteristics are dealt with. Frequent references are made to them in many Madinan Surahs.

The hypocrites are described in the Qur'an as those who have disease in their hearts.<sup>24</sup> And Allah testifies that they are indeed liars.<sup>25</sup> Therefore, they are going to be punished severely.<sup>26</sup> And a well-known tradition ascribed to the Prophet states the signs of hypocrites: "The sign of the hypocrites are three; when he talks, he lies; when he promises, he fails to keep his promise; and when he is entrusted with something, he betrays."<sup>27</sup>

It becomes evident, then that false testimony in every respect falls into the river of the hypocrisy. Therefore, a mere thought of a Muslim to be categorized, possibly because of the way he conducts his testimony, amongst the hypocrites, would play as sufficiently effective role to make him treat

24 "In their hearts is a disease." al-Baqarah:2/10; al-Anfal:8/49.

25 "And Allah bears witness that the hypocrites are indeed liars". al-Munafiqûn:63/1.

26 "The hypocrites will be in the lowest depth of the fire; no helper wilt thou find for them." al-Nisa:4/145.

27 Bukhari, İman, I/14, Istanbul n.d., p. 18.

the matter with extreme caution and scrutiny. We are of the view that such a resemblance drawn between hypocrisy and false testimony will immensely increase the binding force of the injunctions with regard to the establishment of testimony which has already been enjoined as obligatory (i.e. *wajib*)

In addition to the emphasis in the Qur'an about bearing testimony which is transmitted generally into legal term as obligatory (*wajib*); and strict and strong precautionary measures that are expected to play their deterrent role in its conduct; one should also take note of the frequent use of '*concluding statements*' of the relevant verses already mentioned above, namely:

"Allah is Witness to all things"<sup>28</sup>

"And Allah knoweth all ye do."<sup>29</sup>

"Verily Allah is well-acquainted with all that ye do."<sup>30</sup>

And: "Verily Allah is well-acquainted with all that ye do."<sup>31</sup>

These statements appear to have given more emphasis in the form of reminders (or warnings) about the preceding issues, which may be translated to mean: "...mind you that ....; Bear in mind the fact that .....; Remember that .....; Don't forget the fact that .....etc.)"<sup>32</sup>

Since testimony, as pointed out above, is an integral element and a primary means of making justice prevail over the relevant societies, it has been treated in the Qur'an in an exceptionally comprehensive manner that not only could one derive legal judgments (*ahkam*) from them but one also finds vast relevant values, norms, promises, admonitions and warnings pertaining to this world and the Hereafter. All these, in their sheer congruity with the legal connotations constitute a vigorous body of duties and responsibilities in its exterior and interior wholeness. Hence, legal statements are seen no more as dull and insipid rules and regulations, but emanating from a suitably inspiring background, ornamented by other inner religious and moral injunctions which already have bearings on the believers; and which enable

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28 as- Saba': 34/47.

29 al-Baqarah: 2/283.

30 al-Nisa: 4/135.

31 al-Maidah: 5/8 and in so many verses.

32 In fact, the concluding statements such as these, in the Qur'an need to be studied first in the context of their immediate precedents, and then in general broader context, Meticulous examination of these statements appears to open new horizons in carrying the inner aspects of the Qur'anic injunctions into legal sphere, where upon, the generally insipid characteristic of legal statements might be enlivened.

the believers acknowledge and appreciate the wisdom (*hikmah*) behind the relevant legal injunctions.

In the integrated process of imbuing indispensability of testimony in all respect (i.e. legal, moral, religious, exterior and interior) into the consciousness of the believers, the Qur'an enjoins 'oath' (*yamin* or *qasam*) as the final and a decisive means of abstinence from any possible falsehood, lest facts are misled. 'Yamin' (*oath*) literally means force and power. In its legal sense, it is to make Allah Witness for one's statement that it is true. In other words, one gives force and buttresses the trustfulness of his statement by making Allah, All-Knowing (*Al-Alim*) as witness to it.

In the contemporary societies where affairs of the state are divorced from the Church (as in the case of many Western Countries) when the witnesses are asked to appear in a court of law and testify, they, before the testimony, are required to make an oath on the sacred scripture,<sup>33</sup> in which the witnesses concerned believe. On the other hand, in countries where secularism (or laicism) is interpreted and applied as the state of non-interference or indifference of the State with Religion or the vice-versa; (as in the case of Republic of Turkey)<sup>34</sup>; the witnesses, prior to giving testimony, are invited to make an oath on sublime values or concepts that man consider with high esteem, namely: "honour" and "dignity" (*Tur. namus ve seref*). Although religious and moral values do not fall into the realm of Law directly; it is understood, through oath in this respect, that accuracy and soundness of testimony might, to a certain extent, be secured. This very matter however, constitutes the core of testimony and naturally of Law in Islam; so much so that 'yamin', because of its strong effect on the Muslim's words and deeds, is considered quite conclusive particularly in the case whereby the very fact or point at issue cannot, due to the insufficiency of the evidences, be concluded. For a Muslim who is

33 It should be noted here that in Islamic viewpoint, such ceremonial formalities are not necessary, since mere pronouncement of the specific formulae of oath (*yamin* or *qasam*) constitute it to have taken place. These formulae are as follows:

*Wa'llahi!*

*Bi'llahi!*

*Ta'llahi!*

34 Upon the abolition of Islamic Law (*al-Shari'ah*) in the Republic of Turkey, which was built on what was left from the Great Ottoman State (i.e. *Devlet-i 'Aliyye-i Osmaniyye*) after World War I., Swiss Civil Code was almost literally adopted and introduced in 1924.

knowledgeable enough to appreciate the religious consequences of giving evidence on oath, that is to say, to take Allah on his side as the witness about the accuracy and truthfulness of his testimony it is a heart-shaking phenomenon. If the bare fact happens to be otherwise or different, it would be tantamount to ascribing falsehood to Allah or Allah's name for his falsehood; and this will cause him to end up in nothing but heresy, into which no conscious Muslim would ever wish to fall. This is why, when a testimony is given on oath by a Muslim, its truthfulness, under normal circumstances, ought to be considered beyond doubt, and be admitted as evidence.

In addition to the religious injunctions with this respect in varying degrees of accountability (*mas'uliyah*) (i.e. *wujûb, nadb, tahrîm, karâhah*); commendations and good-tidings, particularly on the Day of Judgement for accurate and just testimony; and warnings, admonitions and reminders of unfavourable consequences, again especially on the Day of Judgement, for twisting the facts in giving testimony, and the immensely emphatic effect of oath (*yamin* or *qasam*) on the witnesses to make them stick to the truth alone at any cost, all constitute, the most suitably integrated background, the overall reflection of which is situated in the centre as binding legal statements. There exist another significant element which enhances, further, permeability of binding force of the religious injunctions on the believers in the attainment of justice and this is the prohibition of intoxicating beverages. One may safely draw a conclusion that this prohibition, since its introduction at the time of Prophet Muhammad (S.A.W.) has proven to be the most effective measure for the Muslims to abstain, to a great extent, from intoxicating beverages.

It is factual phenomenon that the use of intoxicating drinks (not to mention alcoholism as one of the chief social problems in contemporary societies particularly of the West.) creates serious problems and complications particularly in the establishment of justice in the relevant societies. Homicide, suicides, theft and robbery and false testimony under influence of intoxicating beverages have already gone beyond social and legal control that the societies suffering with such ailments seem to have found no effective legal solutions expect to appeal to common sense as well as religious and ethical values of the people.

However, Muslim societies, wherein the injunctions of Islam in their entirety pervaded amongst the people, they appear to be quite immuned against

such social disorders. As far as the topic of this study is concerned, the state of being intoxicated is itself a legally punishable act and the testimony of people in all respect of law is considered null and void. Therefore in an appropriate Islamic environment the courts of law and other institutions likewise will appear to have not been burdened with negative consequences of intoxication and its other disagreeable concomitants.

In fact the Muslims consciousness of Allah (i.e. *taqva*) is a continuous state of remembrance of Him (al-*dhikr*), out of genuine love (al-*hubb*) not only in the performance of formal obligatory worship but, further, in their struggle to do '*the good*' and to abstain from '*the bad*' as they have been laid down in the Text.

Therefore, even the slightest act of unfavourable consequence, such as deviating from the truth in the performance of testimony for some apparent or unknown reasons may be anticipated to be minimized (if not totally eliminated) by the awareness of the believers that every relevant organ of man will bear its testimony in the Day of Judgement to reveal the bare truth for Divine Verdict:

“On the Day when their tongues, their hands, and their feet will bear witness against them as to their actions.”<sup>35</sup>

The Qur'an, while stating the exalted status of man amongst other creatures of Allah (i.e. vicegerence and nobility), it also points out the fact that man, by nature, is a weak creature<sup>36</sup>, thus he tends to act in such a manner that reveals the characteristics of weakness (i.e. impatience<sup>37</sup>; fretfulness<sup>38</sup>; niggardliness<sup>39</sup>etc.)

The salient quality of man by being created as the vicegerent of Allah on earth is that he was given the power of will or choice (*al-iradah*). Allah laid down in the Qur'an the right and the wrong in their comprehensive outlines, however, it is up to man, with his free will, to adopt whichever action he wishes. The very existence of free will makes man accountable to Allah for his deeds. Since the Qur'an is the final embodiment of Divine Guidance, its overall injunctions and principles when they are adopted as the way of life, in

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35 al-Nûr: 24/24.

36 al-Nisa: 4/28 (“Man was created weak”)

37 al-Ma 'arij: 70/19 (“Truly man was created very impatient.”)

38 Ibid./20 (“Fretful when evil touches him.”)

39 Ibid./21 (“And niggardly when good reaches him.”)

all respects, constitute the only means of attaining and preserving the role of vicegerency of Allah, therefore all the deeds that are against or incongruous to the principles of Divine Guidance, that is by the use of free will and discretion wrongly, relegate the exalted status of man as low as to the status of “*the lowest of the low*” (*asfal al-safilin*).

Therefore, due to certain inherent characteristics of man, as well as some reasons, apparent or hidden; and unwittingly or somewhat beyond his power, one may anticipate wrong or incongruous deeds to occur on the part of believers.

As to our particular study (i.e. *testimony*) one may not always expect even from amongst the believers to be upright or accurate about the very fact or point at issue. This might consequently lead to further complications or wrong conclusions while in the establishment and preservation of justice (*'adl*) and equity (*qist*) every possible measures has to be taken to ascertain the accuracy of the testimony by taking into account all relevant information and data with regard to the reliability and competence of witnesses. In legal terminology of Islam this is called “*collective obligation*” (*wujub kifai*) that is, all accountable Muslims are equally responsible in carrying out that obligation. In other words, every accountable individual in a society has to be aware of his responsibility and play his part within the limits of his best capacity, to help justice and equity prevail. Since this is the only way for the discharge of one's obligation, naturally one will commence with oneself to put into practice every precautionary measures and not to hinder the prevalence of justice and equity.

It should be noted here, however, that the ultimate responsibility is placed on the shoulders of those who are entrusted with authority and power (i.e. *ulu'l-amr*)<sup>40</sup>, that is, with respect to our particular study, on the shoulders of the constitutional, executive and administrative head(s) as well as of judges (*qâdis*) and jurist consults (*muftis*)<sup>41</sup> and of administrative executives who are delegated by the head(s) to act within the limits of the given authority of the law.

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40 al-Nisa: 4/59.

“O ye believe! Obey Allah, and obey the Messenger, and those charged with authority among yourself..”

41 Since *qadis* and *muftis* are to be appointed from amongst jurists (*fuqaha*) in Islamic Law, the concept of responsibility and of authority should be conceived in its comprehensive sense so as to include *fuqaha* too.

In the following Qur'anic verse it appears that the believers in general (*amm*), and the authorities concerned in particular (*khass*), are taken as the addressees of the Divine command:

“O ye who believe ! If a wicked person comes to you with any news, ascertain the truth, lest ye harm people unwittingly, and afterwards become full of repentance for what ye have done.”<sup>42</sup>

It is apparent that the command “ascertain the truth” (*fatabayyanû*) concerns particularly the witnesses who have information or knowledge about a fact or incident or any matter, irrespective of whether the subject-matter of testimony has been brought to the relevant court of law or not. Therefore, the persons in charge, namely *qâdis* and *muftis* and the others with delegated authority have been entrusted with the task of safeguarding the establishment of justice and equity in their respective societies, by means of painstaking efforts to verify the fact or matter at issue with the help of relying, primarily, on highly commendable level of God-consciousness of the community of Muslims. However, in the efforts of ascertaining the truth, the addressees of the command are presumed to have had the necessary qualities and abilities to know who the ‘wicked person’ (*fasiq*) is.

As it is hardly conceivable that any one who comes with any news to be reported (to the authorities concerned) will state at the same time that he is *fasiq*, it should be the task of the relevant authorities to scrutinize both the competency and reliability of the hearer of information as well as the authenticity and accuracy of his statements. The above-mentioned verse further implies that every possible means, however costly or time-consuming it may be should be taken into consideration prior to reach a definitive conclusion, by which the possibility of falling into error is minimized or even eliminated. It is evident that the verse bears more comprehensive implications so as to include testimony in the court of law. However, one may draw, out of this verse, a general rule that all Muslims, individually as well as collectively are to be awake and watchful and not be naive, that is to say not to be the laughing stock of non-Muslims in personal and international relations.

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42 al-Hujurat: 49/6



Injunctions of the Qur'an and Sunnah, in their entirety are first aimed at the believers' individual consciousness. Based, firmly, on the willing and total submission to the principles of tawhid (expressed in the *kalimah al-shahadah*); through obligatory worship, namely, prayers, fasting, almsgiving and pilgrimage to Ka'ba. In their complete outer and inner connotations, these are further strengthened through all kinds of commendable and, praiseworthy deeds (like establishment of testimony for the sake of Allah alone, truthfulness, generosity, trustworthiness, mutual love and care etc.) which fall within the boundaries of *al-ma'rûf* and *al-ihsân*. Through these, Muslims as individuals, organize and harmonize their relationship with Allah, The Omnipotent.

Establishment of sound relationship between individual believers and the Creator constitutes solid basis for an Islamic society. The very individuals, whose identities and salient characters are attained out of Divine Guidance with the inspiring source and the driving force of their consciousness of Allah (*taqwa*), form the society. Further based firmly upon the same principles and values that already moulded the personality of the believers as individuals, in the social context, they give special attention and emphasis to collective and social implications of these injunctions and principles; and establishment of justice and equity; readiness in enjoining what is '*good*' and preventing what is '*bad*'. Again, through the cultivation of knowledge and annihilation of ignorance; and struggling for the sake of Allah in establishing the will of Allah on earth (*al-jihâd*), Muslim societies, having organized unimpaired relationship amongst themselves, form and develop '*collective*' or '*social accord*' that leads them into prosperity materially as well as spiritually (*al-falâh*)<sup>43</sup>, which elevates such societies to the pinnacle of the state of *social equilibrium* as described in the Qur'an:

“Allah well-pleased with them, and they with Allah: That is the great Salvation. (The fulfillment of all desire).<sup>44</sup>

Islam, because of the all-embracing characteristics of its injunctions and principles over the believers both individually and at societal levels, creates and moulds its own society. Only in such societies can the legal system of Islam properly flourish and develop and be put into practice in its entirety.

43 See: al-Mu'minûn: 23/1 and the following.

44 al-Maidah: 5/119.

However, proper appreciation of the Islamic legal system in its full power of binding effect on Muslim societies presupposes that the Muslims have to attain thorough knowledge of it together with its inseparable complementary basis and consider it as the integral core of the Religion as a whole.

It is stated in the Qur'an:

“Those truly fear Allah, amongst His servants who have knowledge”<sup>45</sup> that knowledge enables the believers understand Divine Injunctions thoroughly, together with, as far as possible, the wisdom (*hikmah*) behind them. Seeking knowledge therefore, in its original status, is an individual obligation (i.e. *wujûb aynî*). The following tradition ascribed to the Prophet makes the stand of the

Qur'an crystal clear:

“Seeking knowledge is obligatory upon every Muslim man and woman.”<sup>46</sup>

To what extent it is obligatory may vary from one to another since not everyone has equal capabilities and opportunities in the pursuit of knowledge. Further to the individual responsibility (*wujûb 'aynî*), we notice in the Qur'an that the quest of knowledge becomes a collective obligation (*wujûb kifâ'i*):

“Let there arise out of you a hand of people inviting to all that is good, enjoining what is right, and forbidding what is wrong; they are the ones to attain felicity.”<sup>47</sup> This and various other verses<sup>48</sup> imply that pursuit of knowledge is a collective obligation, that is, a group of people within the Muslim society should arise, after having thorough and in depth knowledge of the principles and injunctions of the Divine Message to enable them carry out the duty of guidance and leadership for the society as a whole. Therefore, seeking knowledge in Islam is a kind of an act of “worship”, and the relationship as such seems to be peculiar to Islam. In this context, every Muslim, having endeavored through all the ways and means to carry out his individual responsibility (*wujub 'aynî*), naturally, out of religious considerations, will remember his further responsibility (i.e. *wujub kifâ'i*); because in collective obligation every accountable believer is equally addressed and is expected to carry out the said responsibility.

However, individual efforts to obtain knowledge is bound to be limited. Therefore, relevant authorities of the Muslim Societies have to undertake the

45 al-Fatir: 35/28.

46 Ibn Mâce, Muqaddima, I/81, Beirut n.d.

47 Al-i Imran: 3/104,110.

48 See Vide: al-Tawbah: 9/112.

task of education in its integral and wholistic sense starting from kindergarten up to the University and Postgraduate levels; And it is through this systematic and comprehensive process of education that the governments concerned are expected to have helped their people to attain knowledge for the sake of carrying out their religious obligations.

Since the aim of education is to bring up new generations in Muslim societies, Islamic values and concepts must be taken as the central elements of this long and consistent process of education, keeping up, of course, with contemporary needs and issues. Islam views the believing man as the noblest of all creatures; thus all necessary measures for the betterment of generations must be adopted and financial restraints should not be put forward as an excuse to reduce educational expenditures to the extent that it undermines positive improvements and developments.

It should be reiterated here that the process of education is an integrated phenomenon; it involves all relevant factors and elements. Thus, formal education through schools, though indispensable, should not be conceived independent of other integral elements of the whole process of the *'bringing up'* the generations. The family institution therefore, particularly prior to and during early stages of formal school education becomes extremely important, and the significance of this institution continues with varying degrees, to make itself felt throughout the process of overall the education of the people in accordance with Islamic teachings and values.

Furthermore, the objective of education in Islamic context should be to achieve not only instilling knowledge but also, and more importantly, help create and develop critical and ever-functioning minds<sup>49</sup>, norms and values in

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49 Numerous Qur'anic verses state the significance of knowledge, thought and contemplation etc., in relation to Divine Message as a whole. Almost all available Arabic words with regard to *'knowing, thinking, seeing, contemplating* etc. with their various derivatives, have been used (i.e. *those who know, think, contemplate, see* etc.) to state the good qualities and characteristics of the believers; and ironically, the same words have been used in their negative forms to describe salient characteristics of the disbelievers and hypocrites (i.e. *those who do not know, think, contemplate, see* etc.) Therefore, we draw a conclusion that having sound mind is not sufficient for real accountability (*al-taklif*), but having *'fully-functioning sound mind'*, that is critical watchful mind is.

See: among so many others:

al-An'am: 6/98 Yunus: 10/24 al-Anfal: 8/68

al-Tawbah: 9/122 al-Ra'd: 13/4 al-Rum: 30/30 and 8

al-Fussilat: 41/3 al-Hashr: 59/21 and al-Hashr: 59/14

legal formulae on Islamic Law (al-Shari'ah or Fiqh), together. Hence they are adopted as natural effective values of everyday life, and thus are complementary to the '*forum externum*' of the legal system. In other words, appreciation of '*forum externum*' of the injunctions of Islam can be attained only through proper and comprehensive education.

In well-established Islamic societies, whose individuals have been brought up in genuine Islamic environments, provided and shaped principally through an all-rounded education; injunctions of Divine Guidance are thought to have permeated effectively not only in the minds and hearts but also in actual deeds of the individual [i.e. integration of theory (*iman*) and practice (*'amal*)] in carrying out their relevant social duties and responsibilities. These also emanate from the sources of Religion, ranging from the most private religious duties to the most complex social and legal fields, and yet maintaining interrelationship in their entirety. In such a society we endeavor to verify our assertion by measure of illustration (about) the establishment of '*testimony*'; that the individuals concerned constitute a guarantee for the realization of justice in their respective societies, and may not be conceived to undermine the realization of justice with false testimony in particular, and in the attainment of physically and spiritually balanced society in general.

Thus, an individual Muslim, who is a member of a well-established Islamic society, having been made aware of his role and responsibilities in relation to Divine injunctions, laid down primarily in the Qur'an and Sunnah:

- Submits himself willingly and consciously to the will of God:
- considers himself accountable to God in carrying out Divine injunctions in their integrated entirety:
  - does the good deeds and abstains from the bad ones not primarily because of reward or punishment but merely out of 'Love for God; However he
  - has full confidence that good deeds would bring him reward, and bad ones would cause him trouble and punishment;
  - is fully aware of the inevitability of the Day of Judgement that, when it happens that he finds himself on the brink of falling into the ditch of inaccurate or false testimony, the strength of his consciousness of the Day of Judgement and eternal life in the Hereafter (Paradise or Hell) would be strong enough to pull him off the danger zone;

- is sure of the fact that telling a lie is essentially one of the salient characteristics, of disbelievers, and false testimony particularly is of the hypocrites, thus the horror of being associated, even in the least, with those people would make him extremely careful in his testimony;

- is mindful that the subject matter of testimony has to be based not on presumptions but on clear facts; Therefore,

- exceedingly determined and confident in his testimony that even when he is asked by the judge or the relevant authorities to make an oath (**yamin**) that what he testifies is the truth nothing but the truth, he pronounces the oath without hesitation, as it is inconceivable for him invoke Allah as the witness to justify his testimony which (in fact) might be doubtful or false. Hence the binding force of the legal injunctions of Islam that keeps the true believes to hold on firmly to the truth, as in this particular case and in all other cases, takes its roots in such most suitably ornamented background.

What has been discussed so far might seem to be somewhat Utopian for those who have no insight into the all-encompassing effect and influence and binding force of the injunctions of Islam upon its followers. Indeed, it should be admitted to a certain extent, that it is impossible to create and envisage impeccable individuals and perfect societies. However, once the ultimate objective is determined and all necessary measures are concentrated towards achievement of that goal; the typical example of which may be seen in the extensive and complex process of building an Islamic personality and consequently an Islamic society, these efforts will eventually eliminate, as far as possible, **'the bad'** and make **'the good'** prevail over the society. This thus brings its overall level to the closest possible point of perfection. The paper has sought to explain that **testimony** is an important element in the establishment of justice in any system of law in particular; and in the attainment of almost perfect societies in general. We have endeavored to point out the enormous capability that Islam, as the Divine way of life, having duly established an integrated background which buttresses and complements the vacuum[ which might fall technically beyond the jurisdiction of the Law proper], carries its all-embracing effects and dominating influence by means of comprehensive education, onto its legal system. The degree of effectiveness is enhanced as **'legally binding injunctions'**, and through these injunctions, the comprehen-

sive and integrated process of creating ‘*law-abiding*’ individuals as well as societies in true felicity is concluded.

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