

ANALYSING THE APPLICATION AND CONCEPT OF JUSTICE UNDER ISLAMIC LAW

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ABSTRACT

Injustice is very widespread on this earth. There can be no peace without the firm establishment of justice. The more you see injustice, the more you realize the importance of establishing justice in the land. Justice is the most important and influential fact in the life of a human being that can solve the problems of society in a peaceful manner and in Islam Justice is the fundamental principle of thought and practice. In Islam distinct laws have been set up based on justice for the diverse forms of crimes. Justice in Islam deals not only with human rights but has secured the rights of other creations as well. There is no place for violation, unjust, tyrannical attitude and oppression or repression in Islam. It emphasizes the whole humanity as a peaceful society and eliminates the perspectives and perceptions of social evils. Justice in Islam is thus all-embracing, free from restriction, and universal. Islam governs private and public life, denies deviation from justice, non-discriminative, and holds that all humans are equal before the law and are accountable for their deeds. It is universal because it is applicable to all who accepts its authority. It is based on the revealed guidance, thus for the introduction, implementation and promotion of these regulations Almighty Allah sent His Messengers to frame a society based on justice, fairness and obedience towards the Creator. Islam is the religion of peace that emphasizes on equality before law and promotes the notion of universal brotherhood to establish a peaceful and rewarding society. Islam teaches rectitude and never encourages its followers to vituperate and humiliate anyone in the society. It is against this background that the paper seeks to analyse the concept of justice under Islamic law with a view to find its application. A doctrinal method was applied. Having analysed same, it was found that concept of justice under Islamic law is a trust that has religious basis, it is obligatory, a divine commandment and its substantially applicable in countries like Saudi Arabia, Iran, Iraq etc, while it is partially applicable in the northern states of Nigeria. It was finally recommended that for efficient, just and impartial administration of justice under Islamic law the persons entrusted with its administration and enforcement must be competent according to the criterion laid down by Allah.

KEYWORDS: *Concept, Justice, Islamic Law, Qur'an, Sunnah*

1.1 INTRODUCTION

Justice is a goal of every race and nation. In the quest for justice, many theories are formed with frequent modifications and reviews until a presupposed idealistic interpretation of justice is achieved. However, their ideas of justice become relative, susceptible to changes in theory and practices and in accordance with the needs of a given society. Islam has laid down numerous principles that organize relationships among members of the society. One of the most important principles is justice. According to *Al -Qurtubi*¹ "Justice is the basis of all human relations and a foundation of Islamic rule."

The *Qur'an* and *Sunnah* have given clear concept of Islamic justice in order to safeguard the welfare of the *ummah* (citizens), the society far from differentiating between races, languages, beliefs, boundaries, politics and States.² Thus, the judiciary is the most important institution in a society and State. Its function is to uphold law and order and to ensure that the harmonious bond within the society is preserved. This is also to ensure that human rights are well protected, tyranny and favouritism are prevented. Where the law of *Allah* (God) is held sovereign, peace and tranquillity of the human races are assured. Therefore, to strengthen the judicial institution, the methods practised and taught by the Prophet Muhammad (peace be upon him) should be followed. Undoubtedly, the Shariah demands it and it is an obligation that cannot be neglected.³ It is against this back ground that the objective of the paper is to analyse the concept of justice under Islamic law with a view to find its application.

1.2. MEANING OF JUSTICE

In the Islamic worldview,⁴ justice denotes placing things in their rightful place. It also means giving others equal treatment. In Islam, justice is also a moral virtue and an attribute of human personality, as it is in the Western tradition. Justice is close to equality in the sense that it creates a state of equilibrium in the distribution of rights and duties, but they are not identical. Sometimes, justice is achieved through inequality, like in unequal distribution of wealth.⁵ While *Ladan, M.T.*,⁶ defines justice as the quality of being morally just and merciful in giving to everyman his due. Thus, justice represents moral rectitude and fairness, since it means things should be where they belong. This idea is expressed in the *qur'anic* verse:

Verily, Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice. Verily, how excellent is the teaching which He (Allah) gives you! Truly, Allah is Ever All-Hearer, All Seer.⁷

The Arabic word for Justice is *Aadl*, which literally means to act equitably, justly and rightly, to straighten and compare. It means he whom desire does not cause to incline, or decline, so that he

¹Khalid, H. (2019), Social Justice and Human Rights in Islam ,*Suraj Punj Journal for Multidisciplinary Research* Volume 9, Issue 4, p.132

² Jamal, J.(2012), Administration of the Islamic Judicial System: An Overview *Mimbar Hukum*, V. 22(3), <https://www.researchgate.net/publication/265068813>, Accessed on 25th September, 2019, at 1:00pm

³Khalid, H. (2015), Social Justice and Human Rights in Islam, Op. Cit., p.133

⁴ Abdullahi, M and Junaid, N.M.,(2015), Understanding the Principles of Islamic World-View, *The Dialogue* Volume VI (3), p.15

⁵Khan, M. Z. *The Concept of Justice in Islam*, *Bait-ul-Zafar*, www.alislam.org/the-concept-of-justice-in-islam, Accessed on 29th August, 2019 at 1: 30pm.

⁶ Ladan, M.T. *Introduction to Jurisprudence: Classical and Islamic* ,Malthouse Law Books, (2008), p.127

⁷Qur'an 4:58

should deviate from the right course in judgement.⁸ As *Ladan* puts it, things are known by their opposite. Justice is better known by that which is injustice.⁹ Similarly, the word *Aadl* can be better understood with its opposite term *Zulm*. It signifies putting a thing in a place not its own; putting in a wrong place, misplacing it, and it is by exceeding or by falling short or by deviating from the proper time and place.¹⁰ It also equates *Aadl* with *taqwa*, (Allah-consciousness),¹¹ it vehemently forbids any kind of consideration which may deviate a person from the path of justice, whether it be to oneself, to blood relations and tribal interest or any discrimination between a rich or poor,¹² because a person is born innocent, hence justice is his/her birthright. It prescribes a middle course in all human affairs avoiding two extremes¹³.

Justice in Islam also refers to equality in giving rights and in enduring by obligations without discriminations for any reason, either for religion, race or colour. The Prophet S.A.W (peace be upon him) declared about justice in Islam in a way.¹⁴ “There are seven categories of people whom God will shelter under His shade on the Day when there will be no shade except His. (One is) the just leader.” To this extent, justice as defined in the *Quran*, commands mankind to behave in a fair and just manner. *Allah* (S.W.A) has commanded believers to protect the rights of others, to be fair and just with people, to side with the one who is under oppression, to help and be fair with the needy and orphans, and to be just and not go beyond the boundaries set by Allah, even with our enemies. Muslims are required to be fair and just in all circumstances, and in all situations. We must establish justice in society. This is the law of our Creator.

1.2.1. Justice According to Qur'an

Al-Qur'an, considers justice to be a supreme virtue. It is a basic objective of Islam to the degree that it stands next in order of priority to belief in God's exclusive right to worship and the truth of Muhammad's prophethood.¹⁵ Thus, establishing justice is the law of *Allah* (S.W.A). It is part of the balance which *Allah* has created. *Allah* (S.W.A) describes how He has created a balance of justice, and why: “*And the Heavens He has raised high, and He has set up the Balance (of justice). In order that you may not transgress (due) balance. So establish weight with justice, and fall not short in the balance.*”¹⁶ Similarly, Allah has commanded in explicit words the importance of standing up for justice:

Oh you who believe! Stand out firmly for justice, as witnesses to Allah, even though it be against yourselves, or your parents, or your kin, be the rich or poor, Allah is a better protector to both (than you). So follow not your lusts, lest you may avoid justice, and if you distort your witnesses or refuse to give it, verily, Allah is ever well acquainted with what you do.¹⁷

This verse refers to the true test of justice when one whom you have to do justice belongs to the

⁸ Jamal, J.(2012), Administration of the Islamic Judicial System: An Overview. *Op. Cit.*, p.4

⁹ Ladan, M.T. *Introduction to Jurisprudence: Classical and Islamic*, *Op. Cit.*, p.130

¹⁰ *Ibid*, p.131

¹¹ Qur'an 5:8

¹² *Ibid*, 4:135

¹³ Jamal, J.(2012), Administration of the Islamic Judicial System: An Overview *Op. Cit.*, p.4

¹⁴ Abdullahi, M. and Junaid, N. M. (2015), Understanding the Principles of Islamic World-View, *Op. Cit.*, p.8

¹⁵ *Ibid*

¹⁶ Qur'an 55:7-9

¹⁷ Qur'an 4:135, Also See Qur'an 4:58

people who hate you or to whom you have aversion.¹⁸ To perfect the concept of justice, *Allah* (S.W.A) orders Muslims to stand firmly for that which is true, even in situations where their hearts will incline towards that which is unjust. Allah knows your natural inclinations, and thus firmly commanded Muslims to refrain from following their heart's desires, lest they avoid justice. Further, the centrality of justice to the *Qur'anic* value system is displayed by the following verses: "*We sent Our Messengers with clear signs and sent down with them the Book and the Measure in order to establish justice among the people...*"¹⁹

The phrase 'Our Messengers' shows that justice has been the goal of all revelation and scriptures sent to humanity.²⁰ The verse also shows that justice must be measured and implemented by the standards and guidelines set by revelation. The one and only purpose of sending the prophets was to establish justice in the world and end injustice.²¹ Furthermore, God declares in the *Qur'an* 16:90 "*God commands justice and fair dealing...*" And in another passage Qur'an 5:8 "*O you who believe, be upright for God, and (be) bearers of witness with justice! ...*"

From these verses, it can be concluded that *Allah* commanded Muslims to do justice and fair dealings in all aspects of life whether it's small or big matter.

1.2.2. Justice According to Sunnah

The Prophet of Islam who was endowed with a deep sense of justice, found widespread inequity and oppression in the society in which he had grown up and he sought to establish order and harmony within which a distinct standard of justice would be acknowledged. The idea of justice was of particular interest to him and he dealt with the problems of his day with uprightness, balance and fairness. Nor was he indifferent to discrimination and inhuman acts.²² He also valued certain virtues of his followers and he incorporated them in his teachings²³.

The Prophet asked to be just and kind. He always had to deal with people and their affairs as a supreme judge, reformer, apostle, and leader of Muslims. In conducting justice, the Prophet made no distinction between believers and non-believers, friends and foes, high and low. There are so many examples of justice from the life of Prophet from which people can get inspiration and can do justice in all their aspects of life. Here we will discuss some of them:

A woman of the *Makhzoom* family with good connections was found guilty of theft. For the prestige of the *Quraish*, some prominent people including *Usama Ibn Zayd*, may Allah be pleased with him, interceded to save her from punishment. The Prophet refused to forgive the crime and expressed displeasure saying: **"Many a community ruined itself in the past as they only punished the poor and ignored the offenses of the exalted. By Allah, if Muhammad's (My) daughter Fatimah would have committed theft, her hand would have been severed."**²⁴

Allah has commanded his messengers to establish justice and spoke to them in affirmative tone

¹⁸Ladan, M.T. *Introduction to Jurisprudence: Classical and Islamic*, Op. Cit.,p.130

¹⁹Qur'an 57:25

²⁰Abdullahi, M and Junaid, N. M. (2015), *Understanding the Principles of Islamic World-View*, Op. Cit., p.8

²¹Uthman, M. N. *Justice in Islam: Perspective from Quran and Sunnah*. (2018), www.quranreading.com/Justice-in-Islam-Perspective-from-Quran-and-Sunnah, Accessed on 24th September, 2019, at 6:48pm

²²Ladan, M.T. *Introduction to Jurisprudence: Classical and Islamic*, Op. Cit.,p.130

²³*Ibid*, 132

²⁴*Ibid*, P.134

as quoted in *Hadith* (saying of the Prophet)²⁵: **“O My slaves, I have forbidden injustice for Myself and forbade it also for you. So, avoid being unjust to one another.”** Similarly, Allah detests a ruler who has bestowed with supremacy yet is ignorant of justice. Allah will deprive him of His shade in His territory at the Day of estimation as Hadith narrates: **“There are seven categories of people whom God will shelter under the shade of His throne on the Day when there will be no shade except this. [One is] the just leader.”**²⁶ In another hadith Holy Prophet (SAW) stated that: **“People, beware of injustice, for injustice shall be darkness on the Day of Judgment.”**²⁷

1.3. IMPORTANCE OF JUSTICE AND ITS WISDOM

Societies develop based upon justice and there can never be any sustainable development where injustice prevails. According to *Al-Hashimi*.²⁸

The true Muslim society is a society in which there is absolute justice for all people, in which their dignity is preserved and wealth is distributed fairly, in which each person is given equal opportunity to work according to his ability and earn the fruits of his efforts without being afraid of those who could undermine him.

*Al-Qaradawi*²⁹ argued that the *Qur'an* and *Al-Hadid* had made the establishment of justice as the main objective for the revelation of divine messages. The establishment of justice is therefore, a fundamental Islamic principle. It may be explained that as the object of Islam is to bring about complete integration and planned development between all faculties and in all spheres, the sanctions and justice in respect of all action and conduct are not only material but also moral and spiritual.³⁰

In *Qur'an* 4:135 Allah explains the wisdom behind the command to establish justice in society in the following words: *“Oh you who believe! Stand out firmly for Allah, as just witnesses, and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety: and fear Allah. Verily, Allah is well-acquainted with what you do.”*

It shall be understood from the above verse that *Allah* (S.W.A.) has commanded Muslims to be just, because that is closer to piety or *Taqwa*. *Taqwa*, in its general meaning, is God-consciousness, or a state of submission. A person who has full *taqwacan* never stray away from being just. This consciousness and fear of *Allah's* displeasure and anger would prevent a person from being unjust in situations where serving justice becomes necessary, even when dealing with ourselves, with our family, with the rich or poor, even with an enemy. Only a person with full *taqwa* could practice complete justice like that.³¹

²⁵Uthman, M. N. (2018), Justice in Islam: Perspective from Quran and Sunnah. *Op. Cit.*, p.57

²⁶Abdullahi, M. and Junaid, N. M. (2015), Understanding the Principles of Islamic World-View, *Op. Cit.*, p. 8

²⁷Uthman, M. N. (2018), Justice in Islam: Perspective from Quran and Sunnah. *Op. Cit.*, p.59

²⁸ Muhammad, M.B. Social Justice in Islam and Its Relevance to Sustainable Development In Nigeria, *APaper Presented at 1st International Annual Conference of Nassarawa State University, Keffi Held between 21st to 23rd March, 2016 at SPS NSUK. Nasarawa State, p.10*

²⁹*Ibid*, p.13

³⁰Khan, M. Z. *The Concept of Justice in Islam, Op. Cit.*, p.78

³¹*Ibid*, p.80

1.4. SOME ASPECTS OF JUSTICE UNDER ISLAMIC LAW

In Islam, justice has religious basis. It is considered to be a trust from *Allah* (S.W.A.) and a religious duty imposed upon man to be discharged with utmost sincerity and honesty. Justice is said to be one of the underpinnings of the order that has been established by God. This reality is also a foundation of a healthy social order. However, neither in the *Qur'an* nor in the *Sunnah*(tradition and actions of the Prophet) are there specific measures to indicate what the constituent elements of justice are or how justice can be realised on earth. Thus, the task of working out what the standards of justice ought to be fell upon the scholars who sought to draw these elements from the diverse authoritative sources and the rulings and acts embodied in the works of commentators.³²In *Qura'an*2: 283-284

O ye who believe! when you borrow one from another for a fixed period, then write it down. And let a scribe write it in your presence faithfully; and no scribe should refuse to write, because God has taught him, so let him write and let him who incurs the liability dictate; and he should fear God, his Lord, and not diminish anything there from. But if the person incurring the liability be of low understanding or be weak or be unable himself to dictate, then let someone who can watch his interest dictate with justice. And call two witnesses from among your men; and if two men be not available, then a man and two women, of such as you like as witnesses, so that if either of the two women shoulder in memory, then one may remind the other. And the witnesses should not refuse when they are called. And do not feel weary of writing it down, whether it be small or large, along with its appointed time of payment. This is more equitable in the sight of God and makes testimony surer and is more likely to keep you away from doubts; therefore, omit not to write except that it be ready merchandise which you give or take from hand to hand, in which case it shall be no sin for you that you write it not. And have witnesses when you sell one to another; and let no harm be done to the scribe or the witness. And if you do that, then certainly it shall be disobedience on your part. And fear God. And God grants you knowledge and God knows all things well. And if you be on a journey, and you find not a scribe, then let there be a pledge with possession. And if one of you entrusts another with something, then let him who is entrusted surrender his trust and let him fear God, his Lord. And conceal not testimony; and whoever conceals it, his heart is certainly sinful. And God is well aware of what you do.

Again in *Quran* 6:153:

And approach not the property of the orphan, except in a way which is best, till he attains his maturity. And give full measure and weight with equity. We task not any soul save according to its capacity. And when you speak, observe justice, even if the concerned person be a relative, and fulfil the covenant of God. That is what he enjoins upon you, that you may remember.

It will be seen that these two brief passages embody a variety of substantive procedural and evidential ordinances and rules. All contracts, save in exceptional cases, are required to be reduced to writing. The writing is to be at the dictation of the party assuming or undertaking the obligation and where such a party is not fully competent, at the dictation of his guardian. The

³²Ladan, M.T. *Introduction to Jurisprudence: Classical and Islamic*, Op. Cit.,p.135

scribe and the witnesses are put under obligation to write justly, to come forward to bear witness when required to do so, and to bear true witness³³.

To this extent, we shall discuss some aspects of Islamic Justice:

a. Legal Justice

Legal justice is justice in accordance with the law. The principles of justice in Islam are contained in the *Quran* and the *Sunnah*, whose teachings are absolutely binding on Muslims and cannot be amended or modified by any human being. The best of justice is therefore that done in accordance with the commandment of God as contained in the *Qur'an*. The authority for this can be gleaned from *Qur'an* 4:105 and *Qur'an* 57:25.

From the foregoing, it can be seen that the *Qur'an* has laid down grounds and philosophy of sound adjudication. Because justice is an integral part of Islam, it has been repeatedly stressed in various places that it should be done in conformity with the divine directives contained in the *Qur'an*.³⁴

Secondly, the verses convey a command from God to the prophet to adjudicate between litigants justly. **Similarly, when** *Mu'az Ibn Jabal* was sent by to Yemen as a governor and judge, the prophet asked him how he would decide matters referred to him. His reply was: According to the *Qur'an*. The Prophet then asked him 'What if you do not find a definite ruling in the *Qur'an*?' *Mu'az* replied, "I will look into the *Sunnah* of the Prophet." Once again, the Prophet asked, "What if you do not get a definite ruling there from?" *Mu'az* replied, "I shall do my best to form an opinion and spare no pains". The Messenger of *Allah* then patted him on the breast and said "Praise is to *Allah* to find a thing which pleases the Messenger of *Allah*."³⁵

b. Procedural Justice

Islam lay due emphasis on procedural justice. It believes in application of the principles of natural justice. It grants right to counsel. It commands that no one can be punished save as provided by law. It prohibits interrogation in custody and Islam is against preventive detention. A person can be detained for a short period of time during the trial only when there is fear that he might abscond. Islam enjoins for presenting the accused within the short possible time. It ordains for speedy justice.³⁶

c. Substantive Justice

Substantive justice is the internal aspect of the law and the elements of justice contained in the law constitute a declaration of "rights and wrongs." In the Islamic vocabulary the "rights and wrongs" are called the "permissions and prohibitions" and from the general and particular rules of the Islamic corpus jurist. The law does not specify under the categories of permissions and prohibitions what the measure which distinguishes just from unjust acts is; it merely states that believer must fulfil their duties under the first category and abstain from others under prohibitions.³⁷

³³Khan, M. Z. *The Concept of Justice in Islam*, Op. Cit., p.78

³⁴Ladan, M.T. *Introduction to Jurisprudence: Classical and Islamic*, Op. Cit.,p.135

³⁵ Jamal, J. (2012) Administration of the Islamic Judicial System: An Overview. *Op. Cit.*, p.8

³⁶Shafizini, A. B. *The Role of Justice In Islam*, <https://dx.doi.org/10.2139/ssrn.2183623>, Accessed on 25th September, 2019, at 2pm

³⁷ Ladan, M.T. *Introduction to Jurisprudence: Classical and Islamic*, Op. Cit.,p.140

d. Retributive Justice

Retributive justice works on the principle of punishment, the intent being to dissuade the perpetrator or others from future wrong-doing. The establishment of justice and the rule of law have been emphasised in the *Qur'an* repeatedly, because God loves those who judge in equity. God commands the believers not to take life, open or secret, except by way of justice and law.³⁸ The *Qur'an* also ordains life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal.³⁹ In these cases, it is the limit that God has determined not more. The observation of this limit and the equality of the retribution are, however, so important God is actually encouraging self-restraint and forgiveness.

Retaliation for wrongdoing is allowed, but the wronged person cannot do more harm than that received, better still to have patience and forgive, because God does not love the wrongdoers and will reward those who reconcile.⁴⁰ In case of retaliation, equality is the limit-injury inflicted must not exceed the injury received.

The observance of this limit is, however, so important that the *Qur'an* encourages forgiveness. The wronged people can take equal action, at best, against the wrongdoers or to forgive the wrongdoers. Worth noting, though, if the wronged person remits the retaliation by way of charity that will be an act of atonement, and if they fail to judge by what God has revealed, they are wrong doers.⁴¹

e. Relational Justice

Islam, a religion of peace through the submission to the will and laws of God, advocates the establishment of social justice in order to achieve peace. The Islamic society recognizes the equality of mankind, irrespective of gender, geographical, religious or ethnic affiliation. The *Qur'an* announced this universal brotherhood of mankind when He declared that: "*O people! We have created you from a male and female and made you into nations and communities that you may know each other. Verily the best of you in the sight of Allah are the most pious.*"⁴²

This Islamic criterion ensures harmonious co-existence, understanding and cooperation between members of the society. It lays the foundation for the enthronement and flourishing of social justice.⁴³ The *Qur'an* does not specify the basic features of social justice, but outlines the purpose and objectives of human life and human beings' inter-relationships and relationship to God. The *Qur'an* says, "[O] ye who believe! Fulfil obligations..."⁴⁴ A translator of and commentator on the *Qur'an*, Abdullah Yusuf Ali, provides a long explanation of this verse, and suggests that these obligations are varied. According to Yusuf Ali, it includes interconnected divine obligations guiding the individual, social, and public lives of Muslims, mutual obligations of commercial and social contracts, treaty-based obligation as citizens of states, and tacit obligations living in a civil society. These obligations are the bases of human relationships in Islam⁴⁵.

³⁸Qur'an 6:1151

³⁹*Ibid*, 5:45

⁴⁰*Ibid*, 42:40

⁴¹Ladan, M.T., *Introduction to Jurisprudence: Classical and Islamic*, Op. Cit.,p.140

⁴²Qur'an 49:13

⁴³Muhammad, M.B. Social Justice in Islam and Its Relevance to Sustainable Development In Nigeria, A Paper Presented at 1st International Annual Conference of Nassarawa State University, Keffi Held between 21st to 23rd March, 2016 at SPS NSUK. Nasarawa State, p.12

⁴⁴Qur'an 5:1

⁴⁵Hassan, S. Islamic Concept of Social Justice: Its Possible Contribution to Ensuring Harmony and Peaceful Coexistence in a Globalized World, *Op. Cit.*, p.94

According to the teachings of the *Qur'an* and the traditions of Prophet (S.A.W.), justice is a prerequisite for peace, and peace is a prerequisite for human development. This makes clear that peace and justice are comprehensive concepts with deep implications. Apart from submitting to the will of God and praying, the believers are also advised to do good to parents, kinsfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side, the wayfarer, and what your right hands possess' to serve God.⁴⁶ The long list of people that a person can do good to, in the final analysis, includes the whole of humanity.⁴⁷

Sayyid Quṭb in his *Tafsīr* (translation of *Qur'an*) says that there is no need for any division among the people. We are all of the same origin and therefore we need to be united. The only difference between us in the sight of Almighty *Allah* is how much someone is God-fearing person. Therefore, he says that, "A single banner is raised so that all compete to line up under it. This is the banner of fearing God alone. This is the banner raised by Islam in order to save humanity from the evil consequences of fanatic bonds of race, homeland, tribe, clan, family, etc."⁴⁸

Allah does not forbid you as regards those who did not fight you on account of faith, and did not expel you from your homes, that you do good to them, and deal justly with them. Surely Allah loves those who maintain justice."⁴⁹

Elaborating above-mentioned verse from the glorious *Qur'an*, *Maulānā Mufti Muḥammad Shafi* says that, the verse direct that justice and good behavior should be maintained with those unbelievers who did not fight the Muslims. As for justice, it is obligatory to maintain with every non-Muslim, whether he is a citizen of an Islamic State, or the Muslims have peace agreement with him, or a citizen of an un-Islamic State, even though he is at war with the Muslims. Rather, Islam enjoys upon Muslims to do justice even to animals. This verse proves that optional charities may be spent on non-Muslim citizens of an Islamic State and on non-Muslims with whom the Muslims have a peace pact. It is, however, forbidden to spend on non-believers who are at war with Muslims.⁵⁰

The Islamic code of human relationships also encourages good manners, and emphasises on sustaining mutual respect among people although coming from different religions. The virtues and philosophy (*Akhlaq*) of the Prophet towards the followers of other religions should be an example on the multi-religious aspect. For example, the Prophet's (S.A.W.) *Hadiths* narrated by *Jabir bin Abdullah* (May God be pleased with him): "Narrated *Jabir bin 'Abdullah*: A funeral procession passed in front of us and the Prophet stood up and we too stood up. We said: O Allah's Apostle! This is the funeral procession of a Jew. He said: Whenever you see a funeral procession, you should stand up."⁵¹ Thus, based on this *hadith*, it is clear that Islam strongly

⁴⁶Q4:36 and Qur'an 57:23

⁴⁷Hassan, S. *Islamic Concept of Social Justice: Its Possible Contribution to Ensuring Harmony and Peaceful Coexistence in a Globalized World*, *Op. Cit.*, p.95

⁴⁸Sejo, S. The Universality and Scope of Justice in Islam, www.academia.edu/33102397/the-universality-and-scope-of-justice-in-islam.docx, Accessed on 25th September, 2019 at 4pm

⁴⁹Qur'an 60:8

⁵⁰Sejo, S. The Universality and Scope of Justice in Islam, *Op. Cit.*, p.48

⁵¹Hanapi, M.S. The Wasatiyyah (Moderation) Concept in Islamic Epistemology: A Case Study of its Implementation in Malaysia, *International Journal of Humanities and Social Science*, Vol 4, No. 9(1), July 2014, p.29

encourages its followers to show respect and act humanely to other although of different religions.

Prophet Muhammad (S.A.W.) took the responsibility of administering socioeconomic and security issues of the people and framed the first written constitution of the world, the Medina Charter, in the year 622 CE.⁵² *Caliph Umar* at the capitulation of Jerusalem in 638 CE granted to all the non-Muslims, security for their lives, their possessions, their churches and their crosses, and for all that concerns their religion. Muslims were not allowed to dispossess any non-Muslims of their property, even by purchase, during the time of the first *Caliphs*. Islamic law suggests that if a *Zimmi* (a non-Muslim living in a Muslim community) is killed by a Muslim the killer has to face the same punishment as it would be in the reverse case.⁵³ During the reign of *Caliph Al-Rasydin* the non-Islamic community was exempted from paying alms but had to pay taxes called *Al-Jizyah*. The aim was to ensure the safety and protection for them against outside threats.⁵⁴ In order to create an understanding and forge closer ties among the society, relational plays a significant role.

f. Restorative Justice

The concept of restorative justice is regarded as the most prevailing and effective mechanism in eliminating and preventing crime whilst at the same time intended to restore the emotional and material loss of the victims and their family. In contrary to the retributive justice which more focused on the criminal act of the offender, restorative justice process actively involved the offender, victims and society in the criminal process as both victims and society are affected with the crimes committed by the offender.⁵⁵ In other words, restorative justice indirectly lays on the concept of restitution where the offender not just accountable for his act or offence, but also responsible to remedy the injury or restore the condition as before the crime is committed.

The imposition of *Hadd*, across the capital punishments and the close study of their impact on a society, in protecting the victim and punishing the offender, by the contemporary scholars have prompted the use of the term 'restorative justice' as in assessing the corrective and rehabilitant effects of those processes in expressing the true meaning of Islam and the grand objective of Islamic Law widely known as the *Maqāsid Al-Shari'ah* (purpose of Islamic law) and particularly in the modern times.⁵⁶

g. Distributive Justice.

Distributive justice also referred to as social justice or economic justice is one of the most important aspects of Islamic justice. Islamic view on distributive justice emphasizes its humanistic concerns. It accepts merit as the basis of resource distribution yet adopts measures to

⁵²Hassan, S. *Islamic Concept of Social Justice: Its Possible Contribution to Ensuring Harmony and Peaceful Coexistence in a Globalized World*, *Op. Cit.*, p.98

⁵³*Ibid*, p.97

⁵⁴Hanapi, M.S. The Wasatiyyah (Moderation) Concept in Islamic Epistemology: A Case Study of its Implementation in Malaysia, *Op. Cit.*, p.8

⁵⁵Muhammad, R.W. and Salam, K. (2018), The Concept of Retributive and Restorative Justice in Islamic Criminal Law with Reference to the Malaysian Syariah Court, *Journal of Law and Judicial System*. Vol, 1, Issue 4, p.68

⁵⁶Sherif, V. and Adam, Y. (2002), Restorative Justice in the Discourse of Shaykh Abdullah Bn Foduye: A Critical Analysis from Islamic Perspective, p.167

minimize inequalities.⁵⁷

Islam, being religion of nature, understands that human beings are born with varying gifts. As they differ in their bodies and their features so they differ in their mental and other capabilities. Their environment, their circumstances and their hereditary gains also differ. In this situation there can be no possibility of economic equality. Thus, the existence of economic inequalities among human beings is but natural. It is also there because Islam allows individual initiative in earning wealth and gives right of private ownership of property.⁵⁸ Moreover, existence of inequalities in economic and social life is a part of divine scheme whereby God tests and tries the people to know who are good and who are bad.⁵⁹ To this fact, the glorious *Qur'an* refers when it says: "*He is who hath placed you as viceroys of the earth and hath exalted some of you in rank above others, that He may try you by (the test of) that which He hath given you.*"⁶⁰

However, despite recognising inequalities as natural and part of divine world order, Islam permits differences in wealth within reasonable limits only. It does not tolerate that these differences should grow so wide that some people live their life in absolute luxury while millions are left to lead a life of abject poverty and misery. In other words, Islam does not believe in equal distribution of economic resources and wealth among the people rather it believes in equitable, just and fair distribution. It bridges the gulf between the rich and the poor by taking very effective measures to modify the distribution of wealth in favour of the poor. Imam *Al-Mawardi*⁶¹ has summarized the social implications of distributive justice in the following way:

One of the things that reforms worldly affairs is the principle of distributive justice. It facilitates amicable relations between people, engenders obedience to the Divine Law, and brings about the prosperity of countries. It is the basis of a thriving economy, strong families, and stable government. Nothing devastates the land nor corrupts the mind as quickly as tyranny. That is because there are no acceptable limits [to regulate tyranny].

Thus, distributive justice according to Islamic conception includes three elements, explained as follows:

(i) Fair and equitable distribution of wealth: No doubt Islam accepts unequal distribution of wealth as natural and part of divine scheme of world order, yet it does not allow existence of wide disparities in distribution of wealth. If distribution of wealth in a community is unfair and unequitable, social peace in that community is always at stake and conflict between the poor and the rich is bound to result in war and class struggle. Islam being religion of peace is against such class conflict. It establishes fraternity and brotherhood in the ranks of the members of Islamic community and, therefore, ensures fair and equitable distribution of income and wealth among them. To achieve this, Islam has taken very effective measures. Some of the positive measures taken by it are *Zakat* (charity) and *Sadaqat* (assistance for the sake of God), laws of inheritance

⁵⁷ Ahmad, H. and Hasaan, A. (2000), Distributive Justice the Islamic Perspective, *Intellectual Discourse*, Vol. 8, No. 2, Pp.159-172

⁵⁸ Ahmad, K. Social Justice in Islam, www.pja.gov.files/social-justice-in-islam, Accessed on 24th September 24, 2019 at 8:0pm

⁵⁹ *Ibid*

⁶⁰ Qur'an 6:165, Also See Qur'an 16:71 and Qur'an 43:32

⁶¹ Khalid, H. (2019) Social Justice and Human Rights in Islam, *Op. Cit.*, p.4

and bequest, monetary atonements, voluntary charities and compulsory contributions in the form of taxes and various levies. To prevent concentration of wealth in few hands, Islam has taken some prohibitive measures also. These include abolition of interest, prohibition of acquisition of wealth through illegal and unfair means, prohibition of hoarding of wealth, etc⁶².

(ii) Provision of basic necessities of life to the poor and the needy: Islamic economic system guarantees basic human needs to all the citizens of the Islamic state. Islam enjoins upon the well-to-do to fulfil the needs of the poor and the destitute. According to *Al-Qur'an*, the poor and the needy have share in the wealth of the rich. The *Qur'an* says: And in whose wealth there is a right acknowledged for the poor beggar and the destitute.”⁶³

(iii) Protection of the weak against economic exploitation by the strong: Elimination of economic exploitation of the weak by the strong is another element of Islamic social justice. Many steps have been taken by Islam in this direction. *Riba* (usury) is one of the worst instruments of human exploitation and this has been abolished root and branch. Other means of human exploitation such as bribery, gambling, speculative transactions, fraudulent practices, prostitution, embezzlement, etc. have also been prohibited in Islamic society⁶⁴. Islam has declared devouring the property of the orphans a major sin.⁶⁵

The slaves were perhaps the most exploited class in human history. Islam declared the emancipation of slaves as the most pious act and enjoined upon its followers to set the slaves free and thus earn God's pleasure. The *Qur'an* has made emancipation of slaves an expiation of some kinds of sins of the believers.⁶⁶

1.5 THE PRINCIPLES OF THE ADMINISTRATION OF JUSTICE UNDER ISLAMIC LAW

From the birth of justice in Islam, three judicial institutions emerged. These are the *Qadla* (the administration of justice), the *Mu'alim* (ombudsman) and the *Hisbah* (municipal civic judicial authority for the promotion of justice and establishment of religious duties). In view of their common goal, that is the dispensation of justice, they are referred to as the triangle of Islamic judicial network. Each institution has its own judicial authority based on set jurisdiction and an organised working system fulfilling the judicial needs of different sections of the community.⁶⁷

The most important of which is the *Qadla* or the administration of justice. In the context of the enforcement of the *qadla* the main objective is to ensure justice.⁶⁸ Administration of justice means management of the judicial system. The objective of it is to guarantee the individuals freedom and to give protection to their rights. Advancement and progress of every society depends upon the good administration of justice. Where administration of justice is destroyed the society perishes in no time. To provide justice to its citizens is the basic responsibility of the State. To achieve this, each State is to establish institutions to run its affairs. One such institution

⁶² Ahmad, K. Social Justice in Islam, *Op. Cit.*, p.9

⁶³ Qur'an 70:24-25

⁶⁴ Ahmad, K. Social Justice in Islam, *Op. Cit.*, p. 9

⁶⁵ Q 4:10

⁶⁶ *Ibid*

⁶⁷ Jamal, J (2012) Administration of the Islamic Judicial System: An Overview, *Op. Cit.*, p.19

⁶⁸ *Ibid*

is the Judiciary,⁶⁹ it is established to administer justice among the people. The *qur'an* insists that justice must be imposed upon people by force. *Allah says: "Verily, we have sent our messengers with clear signs, and revealed with them book and the scale so that people may be firm in justice, and we provided iron wherein is mighty power and many uses for mankind, and that Allah shall know who will help him and his messengers in the unseen."*⁷⁰

1.5.1. The Judiciary

The judiciary is one of the most important institutions in Muslim society. Its concern is with the administration of justice, *Qadla*, being the reason why the Prophets were dispatched and sacred texts revealed. The administration of justice is the objective and principle underlying the entire judiciary system. A judge is the person tasked with achieving the supremacy of law and legislations which govern the lives of people. He is granted the wisdom to adjudicate and teach the people.⁷¹ God the Almighty says:

Now then, for that (reason), call (them to the Faith), and stand steadfast as thou art commanded, nor follow thou their vain desires; but say: "I believe in the Book which Allah has sent down; and I am commanded to judge justly between you. Allah is our Lord and your Lord: for us (is the responsibility for) our deeds, and for you for your deeds. There is no contention between us and you. Allah will bring us together, and to Him is (our) Final Goal."⁷²

The judge is the protector of the rights of both the accused and the victim alike; it is better for him to err on the side of pardon than on the side punishment. Aisha also related that the Prophet (s) said: "Stave off the penalties from the Muslims as much as you can, and if any leeway is found then release the detainee. Truly it is preferable for the ruler to pardon mistakenly than to punish mistakenly."⁷³ *Imam Al-Mawardi* is quoted as saying, "A country's welfare is not established except by six [matters]: a followed religion, a strong ruler, comprehensive justice, public security, permanent prosperity, and ample hope."⁷⁴

Therefore, one of the primary responsibilities of the State is to depute judges throughout its realm to undertake settlement of disputes and compel the disputants to comply with their judgments.⁷⁵ Islam considers it to be a part of faith to refer a dispute to a competent arbiter. A person who has a legal dispute should try to settle it by negotiation, and if a result is not obtained this way, he should refer it to an arbiter, competent in accordance with Islamic standards. Whatever judgement is given by the arbiter should be accepted unconditionally.⁷⁶ In this respect the *Qur'an* says:

By your Lord! (the fact is) that they will not be true believers until they make you judge in what is in dispute between them and then do not find in themselves

⁶⁹ Mughal, M. Comparative Study of Administration of Justice in West and in Islam, <http://ssrn.com/Author=1697634><http://ssrn.com/Author=1697634>, Accessed on September 25th September, 2019

⁷⁰ Qur'an 57:25

⁷¹ Muhammad, M. Justice in Islamic Legislation, www.dar-alifta.org, Accessed on 25th September, 2019 at 2pm.

⁷² Qur'an 42:15

⁷³ Zoli, C, Bassiouni, M. *et al.*, *Concept of Islamic Law*, Oxford Press, London, (2006), p.23

⁷⁴ *Ibid*, p.27

⁷⁵ Mughal, M. Comparative Study of Administration of Justice in West and in Islam, *Op. Cit.*, p.63

⁷⁶ Administration of Justice In Islam, www.sibtayn.com/administration-of-justice-in-islam, Accessed on 25th September, 2019 at 2:30 pm

any dislike of what you decide, and submit (to your judgement) without reservation.⁷⁷

This verse lays down, first, the obligation that disputes must be judicially determined; then the moral duty that once the judicial process has terminated in a final decision, the decision must be accepted· without leaving a trace of resentment or demur in the minds of the parties' whichever way the decision may have gone, and finally that it should be submitted to and carried out to the full. This verse is thus emphatic in making obligatory the determination of disputes through judicial process and complete submission to the final judgement in not merely carrying *it* out, but in reconciling oneself to the judgement in one's mind so that no resentment or sense of privation is left behind.⁷⁸ "In an Islamic society the judicial and executive system should be at the service of those whose rights have been violated."Allah does not favour a society with virtuousness and purity in which there is no arrangement for defending the rights of the weak against the strong."⁷⁹

1.6. WHO IS FIT TO HOLD THE POSITION OF A JUDGE?

A judge must realize that in reality he is a refuge for the people against every injustice and excess. If he does not feel that he is competent to hold this position, he must not accept it. Otherwise, it will be a source of trouble to himself as well as to others. Addressing Justice *Shurayh*, *Imam Ali* said: "Shurayh! you are occupying a seat which should be occupied by a Prophet or his nominee. Otherwise, it is a seat of a wretched man." *Imam Ja'far Ibn Muhammad Al-Sadiq* is reported to have said: Avoid being a judge, for judgeship is a position which should be held only by a person who knows how to administer justice and whose judgements are impartial. Such a person can only be either a prophet or his nominee.

Soundness of arbitration mostly depends on the fitness of the arbiter. The Commander of the faithful, *Imam Ali* wrote to *Malik Al-Ashtar* as under⁸⁰:

Select, as your chief judge from the people, one who is by far the best among them, one who is not obsessed with domestic worries, one who cannot be intimidated, one who does not err too often, one who does not turn back from the right path once he finds it, one who is not self 'centered or avaricious, one who will not decide before knowing the full facts, one who will weigh with care every attendant doubt and pronounce a clear verdict. after taking everything into full consideration, one who will not grow restive over the arguments of advocates and who will examine with patience every new disclosure of fact and who will be strictly impartial in his decision, one whom flattery cannot mislead, one who does not exult over his position. But such people are scarce".

The Prophet Muhammad said to the effect:

Judges are of three kinds, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgement accordingly; but a man who knows what is right and acts tyrannically in his judgement will go to hell; and a man who gives judgement for people when

⁷⁷Qur'an4:65

⁷⁸Khan, M. Z. *The Concept of Justice in Islam, Op. Cit.*, p.78

⁷⁹Jamal, J (2012) Administration of the Islamic Judicial System: An Overview *Mimbar Hukum, Op. Cit.*, p.23

⁸⁰*Ibid*

he is ignorant will go to Hell.⁸¹

Since the function of the judiciary is a delicate exercise which is liable to be influenced by bias and prejudices, it has been utmost concern of the *Shari'ah* to lay down certain rules for the judges in the discharge of their judicial functions. According to *Shah Waliullah*, the foremost principle in this behalf is that the expression of the wish to be appointed to a judicial office constitutes a disqualification because self-candidature may at times stem from a selfish desire of wealth, prestige or satisfaction of a personal grudge or vendetta against some adversary.⁸² The Messenger of *Allah* also said: Whoever seeks a judicial office and demands it for himself, he is left to himself [i.e. he is left without any support from God]. But he who is compelled to perform this duty, God sends down an angel to help him discharge it.⁸³

Since the *Shari'ah* lays great emphasis on a high level of integrity and competence for a judge, only those who are preeminent on account of being free from the element of bias and wrongdoing and possess adequate knowledge and understanding of the divine law, particularly in the field of judicature, are qualified to hold judicial office. There are specific criteria for a judge applying for a position in the Islamic judicial system. The applicant must be mature, sane, mentally capable and healthy in order to surmount the difficulties and challenges of this job. He must be well educated and informed about the *Shari'ah* (Islamic rulings and the principles of lawful and unlawful in Islam), as well as be well aware of mundane affairs so as not to be deceived or misinformed. He should have the ability to give verdicts in both worldly and religious spheres. He must be honourable, dignified, honest and with high moral character. He should be a man of upright conduct so that his judgments are well accepted by the parties in dispute⁸⁴.

Emphasizing the psychological aspect of this question *Shah Waliullah* says that a judge is required to be of sound and resolute mind, should have a fine intellectual and balanced temperament, and should not be prone to fury and anger in his judgements. For shortness of temper blurs a man's vision and clairvoyance distorts his objective and impartial perception of the reality and hampers a cool and detached deliberation over intricacies of jurisprudence and law. It also prevents a clear and comprehensive grasp of facts and circumstances involved in the case brought up for judgement. Moreover, no judgment should be pronounced in any dispute without full opportunity of defence being afforded to the defendant, as has been clearly laid down in the Prophet's command which *Shah Waliullah* quotes⁸⁵.

1.6.1 Adherence to the Divine Law

A judge must pronounce his judgement in accordance with the divine law which covers all aspects of justice. Anyone who pronounces judgement in accordance with any other law not conforming to the divine law and based on personal or class interests, is a deviator and a sinner.⁸⁶ Allah says: "*We have revealed to you the scripture with the truth that you may judge between*

⁸¹ *Ibid*, p.21

⁸² Mughal, M. Comparative Study of Administration of Justice in West and in Islam, *Op. Cit.*, p.65

⁸³ Ibn Majah, Sunan, Vol.2, p.776.

⁸⁴ Basheer, A. (2003), The Judicial System in Islam, www.humanrightsinislam.com/the-judicial-system-in-islam.html, Accessed on 25th September, 2019 at 2:45 pm.

⁸⁵ Mughal, M. Comparative Study of Administration of Justice in West and in Islam, *Op. Cit.*, p.66

⁸⁶ Jamal, J (2012) Administration of the Islamic Judicial System: An Overview *Mimbar Hukum*, *Op. Cit.*, p.25

people by what God has taught you.”⁸⁷ Similarly, in Chapter 38:26 God says: [We said] “O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your own] desire, as it will lead you astray from the way of Allah.” In addition, the Prophet is asked to administer justice according to the *Kitab of Allah* (the book of Allah): “Indeed, We have revealed to you, [O Muhammad], the Book in truth so you may judge between the people by that which Allah has shown you. And do not be for the deceitful and advocate.”

1.6.2. Equality in Justice and Behaviour Towards Litigants

Judges have been commanded to perform their duties impartially.⁸⁸ The obligation to do justice is absolute and is not subject to any limitation or modification with reference to the parties to a dispute, or with reference to their being Muslims or non-Muslims, or their being in conflict with the Muslims or in alliance with them.⁸⁹ The *Qur’anic* standards of justice transcend considerations of race, religion, colour, and creed, as Muslims are commanded to be just to their friends and foes alike, and to be just at all levels.⁹⁰

According to another *Qur’anic* passage: “Let not the hatred of a people swerve you away from justice. Be just, for this is closest to righteousness...”⁹¹ With regards to relations with non-Muslims, the *Qur’an* further states: “God does not forbid you from doing good and being just to those who have neither fought you over your faith nor evicted you from your homes...”⁹²

The scholars of the *Qur’an* have concluded that these rulings apply to all nations, followers of all faiths, as a matter of fact to all humanity.⁹³ In the view of the *Qur’an*, justice is an obligation. That is why the Prophet was told: “...If you judge, judge between them with justice...”⁹⁴

To render justice is a trust that God has conferred on the human being and like all other trusts, its fulfilment must be guided by a sense of responsibility beyond mere conformity to set rules.⁹⁵ The reference to justice which immediately follows a reference to fulfilment of trusts indicates that it is one of the most important of all trusts. Behaviour of a judge towards the litigants should in every respect be the same, even in the way he addresses them and looks at them.

1.6.3. Independence and Immunity of judiciary

In Islamic society the independence of a judge is truly respected. The dignity of the judicial office has always been fully safeguarded in Islam. Complete independence of the judiciary was established at the very beginning. Even the head of Muslim society should show full respect to the independence of judiciary⁹⁶.

Protect the position of a judge so that others, especially those who are closer to you, may not be tempted to disturb him. Let him be satisfied that nobody can

⁸⁷Qur’an 4:105

⁸⁸*Ibid*, 4:47

⁸⁹Khan, M. Z. *The Concept of Justice in Islam, Op. Cit.*, p.77

⁹⁰Qur’an 4:135

⁹¹*Ibid*, 5:8

⁹²*Ibid*, 60:8

⁹³Justice In Islam, www.islamreligion.com/justice-in-islam , Accessed on 25th September, 2019 at 2:55 pm.

⁹⁴Qur’an 5:42

⁹⁵*Ibid*, 4:58

⁹⁶Khan, M. Z. *The Concept of Justice in Islam, Op. Cit.*, p.9.

hatch an intrigue against him. Be very careful in this respect, for this religion was previously in the hands of the wicked who used it for self 'aggrandizement'.⁹⁷

The judge also has a reciprocal duty. He is strictly forbidden to accept any gift from the litigants. Administration of justice based on such a strong foundation can provide best solution to the disputes of the members of a nation and can be a source of strength for their social ties.

1.7. HOW TO JUDGE BETWEEN PEOPLE?

In Chapter 38:26, *Allah* (S.W.A.) tells us the story of *Daawud* (peace be upon him), and when Allah tested him to see how he would judge between two people. We can take good lesson from it. Allah (S.W.A) says:

Oh Daawud! Verily, we have placed you a successor on the earth; so judge you between men in truth (and justice), and follow not your desire – for it will mislead you from the path of Allah. Verily, those who wander astray from the path of Allah (shall) have a severe torment, because they forgot the Day of Reckoning.

It is deduced from these verses the importance of hearing both sides. In order to pass a fair judgment, one must listen to both parties, evaluate the situation, and then, come to a conclusion. The Messenger of *Allah* also said: “When two parties submit any matter before you for judgment, you should not decide in favour of either of them unless you hear the contention of the other. In this manner, it is more probable that you will reach the right decision.”⁹⁸

This is a fundamental crux for judging between two or more people or groups. The Messenger of Allah said: “An Arbitrator should never decide anything between two parties, while he is overcome with fury.”⁹⁹ Therefore, a judge's love or hatred for the accused must not affect his decision. If a culprit's guilt has not been proven, the judge's hatred for him does not establish or refute the crime. Otherwise, a judge would base his decisions on personal inclinations with injustice, contradicting the commands of God and our Prophet (peace and blessing be upon him).¹⁰⁰ According to Islam, all the parties in a dispute are charged with the obligation of upholding justice and rendering it to the rightful person. It is not considered a success if it merely displaces justice from the person entitled to it. The *Qur'an* says: “And let not the witnesses refuse when they are called upon.”

1.8. SOURCES OF JUSTICE UNDER ISLAMIC LAW

(a) *Revelation or Authoritative Sources*: There are two primary or authoritative sources of Shariah based on divine revelation: Qur'ān and Sunnah.

(i) QUR'AN

The Qur'ān is held by all Muslims as the ultimate source of law, being revealed from Allah to the Prophet Muhammad (S.W.A.), and therefore perfect and infallible. The Qur'ān contains broad, general rules that are immutable, not unlike societal rules of today, the sanctity of life,

⁹⁷Jamal, J (2012) Administration of the Islamic Judicial System: An Overview *Mimbar Hukum, Op. Cit.*, p.23

⁹⁸ Ahmad Ibn Hanbal, Musnad, Vol1, pp. 143

⁹⁹Sahih Bukhari, Vol. 2, p.2616

¹⁰⁰Khan, M. Z. The Concept of Justice in Islam, *Op. Cit.*, p.16.

security and freedom of expression, and the inviolability of these rights. Much of the Qur'ān was revealed through actual events encountered by the Prophet (s), and questions asked and answered by him. The Prophet (s) also used the Qur'an as a basis of his own teaching and adjudication. Nevertheless, the Qur'ān is neither a legal nor a constitutional document, although legal materials occupy a small portion of its text; less than three percent of the text deals with legal matters. The legal contents of the Qur'ān were mainly revealed following the Prophet's migration from Mecca to Medina, where he established a government and the need therefore arose for legislation on social and governmental issues.¹⁰¹ Allah has commanded him to decide and judge between people by the *Qur'an* and to implement justice. Quran 6:155 says: "*And this [al-Qur'an] is a Book We have revealed [which is] blessed, so follow it and fear Allah that you may receive mercy.*"¹⁰²

Hence, the function of the *Shariah* is to ensure justice by making divine revelation a unique source of legislation.¹⁰³ Once Allah has ruled on a certain issue, there is no longer room for human speculation.

(ii) SUNNAH

The *Sunnah* is the second main source of law after the *Qur'an*. The *Sunnah* comprises the sayings of the Prophet, his deeds and his tacit approval i.e, actions of others he approved or did not rebuff.¹⁰⁴ To the *Ulama* (scholars) of *ahadith*, the *Sunnah* refers to all that is narrated from the Prophet, his acts, his sayings and whatever he has tacitly approved, plus all the reports which describe his physical attributes and character.¹⁰⁵ It is consensus of scholars that the *Sunnah* is accorded the status of revelation,¹⁰⁶ according to the explicit Qur'ānic text: "what the Prophet gives you, take and what he forbids, cease therefrom."¹⁰⁷

The *Sunnah* is not only explanatory of the text of the *Qur'an* but also complementary to it.¹⁰⁸

(b) Reasoning or Supplementary Sources

The *qiyas* or reasoning is the extension of the *Shariah* law from an original case to a new case. Recourse to analogy or reasoning is only warranted if the solution of a new case cannot be found in the *Qur'an*, the *Sunnah* or the *Ijma'*. Hashim Kamali¹⁰⁹ states that the non-revealed sources of *Shariah* are generally founded in juristic reasoning (*ijtihad*). This reasoning may take a variety of forms, including analogical reasoning (*qiyās*), juristic preference (*istihsān*), considerations of public interest (*istiṣlāḥ*), and even general consensus (*ijma*) of the learned, which basically originates in *ijtihad* and provides a procedure by which a ruling of juristic reasoning can acquire the binding force of law. Analogy and consensus have been generally recognized by the vast majority of *ulama*¹¹⁰.

Thus, while the *Qur'an* is a complete guide for everything much was left to the reasoning, or

¹⁰¹Zoli, C, Bassiouni, M. et al. (2006), *Concept of Islamic Law*, Op. Cit., p.77

¹⁰²Qur'an 6:155

¹⁰³Zoli, C, Bassiouni, M. et al. (2006), *Concept of Islamic Law*, Op. Cit.p.79

¹⁰⁴*Ibid*, p.80

¹⁰⁵Jamal, J (2012) Administration of the Islamic Judicial System: An Overview *Mimbar Hukum*, Op. Cit., p.40

¹⁰⁶Zoli, C, Bassiouni, M. et al. (2006), *Concept of Islamic Law*, p.84

¹⁰⁷Qur'an 59:7

¹⁰⁸ Jamal, J (2012) Administration of the Islamic Judicial System: An Overview op cit

¹⁰⁹Zoli, C, Bassiouni, M. et al. (2006), *Concept of Islamic Law*, p.84

¹¹⁰*Ibid*, p.85

ijtihad, of the Muslims. *Ijtihād*, or juristic reasoning through analogy (*qiyās*) is a principle explicitly founded in the authentic Sunnah of the Prophet (S.A.W.) in the famous hadith of Mu'az. It is reported that the Prophet asked *Mu'az Ibn Jabal*, upon his appointment as a judge to the Yemen, how he would decide matters referred to him. His reply was: According to the *Qur'an*. The Prophet then asked him 'What if you do not find a definite ruling in the *Qur'an*?' *Mu'az* replied, "I will look into the *Sunnah* of the Prophet." Once again, the Prophet asked, "What if you do not get a definite ruling there from?" *Mu'az* replied, "I shall do my best to form an opinion and spare no pains"¹¹¹.

Thus, when the necessary requirements of *ijtihad* are present, the result is always meritorious and never blameworthy. The prophet is reported to have said that: "When a ruler (or a judge) gives a decision having tried his best to decide correctly and his decision is right, he will have double reward; and when he gives a decision having tried his best to decide correctly and is wrong, he will have a single reward."¹¹²

1.9. THE DISTINGUISHING FEATURES OF ISLAMIC LAW OF JUSTICE.

(a) Justice and the Self: The *Qur'anic* concept of justice also extends justice to being a personal virtue, and one of the standards of moral excellence that a believer is encouraged to attain as part of his God-consciousness. God says: "*Be just, for it is closest to God consciousness.*"¹¹³ Justice is one of the noblest act of devotion, as practicing virtues is nothing but submission to *Allah* (S.W.A.). It is, in fact, *ibadah*, according to *Shafizini*¹¹⁴ to render justice constitutes one of the best acts of devotion. *Kasani*¹¹⁵ also says that it is one of the best acts of devotion and one of the most important duties, after *iman* (believe in God). However, every act has to be tested on the *niyah* (motive) of the man *Allah* categorically says: "Be just: that is next to piety." The Prophet himself also instructed: "*Be conscious of God and be just to your children.*" The *Qur'an* tells the believers: "...*When you speak, speak with justice, even if it is against someone close to you...*"¹¹⁶

(b) Islamic law is comprehensive: It takes into consideration all the small and large aspects of man's life and put them in a set of clear and constant rules, principles, and theories. Islamic law does not neglect any of man's actions, whatever their significance, without giving explicit evidence from the *Qur'an* and Prophetic traditions or giving clear indications alerting him to the permissibility or prohibition of acts. God the Almighty says: "*We have sent down to thee the Book explaining all things.*"¹¹⁷

(c) Immutability and stability: This is of utmost importance for the dispensation of justice not only on the individual and group levels but also on the temporal and spatial levels. The texts of Islamic law do not accept time-induced changes or alterations while its flexibility admits *ijtihad* and renewal with respect to its comprehension and interpretation, thereby preserving its validity for every age and place.

¹¹¹Jamal, J (2012) Administration of the Islamic Judicial System: An Overview *Mimbar Hukum*, Op. Cit., p.41

¹¹²*Ibid*, p.21

¹¹³Qur'an 5:8

¹¹⁴Shafizini, A. B. The Role of Justice In Islam, <https://dx.doi.org/10.2139/ssrn.2183623>, Accessed on 25th September, 2019, at 2pm.

¹¹⁵*Ibid*, p. 17

¹¹⁶Qur'an 6:152

¹¹⁷*Ibid*, 16:89

(d) Flexibility, capaciousness, and consideration of the realities and conditions of the time:

Islamic law therefore tackles unprecedented matters and problems in a just and definitive manner. The scholars of Islam recognized this dichotomous balance of flexibility and realism, and so did not cease in their *ijtihad* to understand the developments and changes that occur in people's livelihoods, morals, and sciences.

(e) Respect for the supremacy of law and restricting a ruler's power in matters requiring *ijtihad* and issuance of rulings: In another precedent for Islamic law, it was the first to restrict the power rulers exercised over their subjects and hold them accountable for any wrongs or mistakes. The sovereignty of rulers in Islamic law is not absolute; they are considered members of the community who are chosen to lead it and consequently have certain rights and responsibilities. The power a ruler enjoys extends only to the extent that allows him to fulfil his obligations towards the community and meet his rights. In performing his duties and fulfilling his rights, he is bound by the texts and spirit of Islamic law in accordance to the words of God Who says, "*Judge thou between them by what Allah hath revealed*"¹¹⁸ and "*Then We put thee on the (right) way of religion: so follow thou that (way), and follow not the desires of those who know not.*"¹¹⁹

1.10. Applicability of Islamic Concept of Justice

The concept of Islamic Law is very much applicable today. In countries like Saudi Arabia, Iran, Iraq etc, it is fully operational. While it is partially applicable in the northern states of Nigeria.

1.11. CONCLUSION

It is clear from above discussion that the concept of justice under Islamic law is a trust that has religious basis, it is obligatory, a divine commandment. Thus, doing justice with God, with himself and with His creations and imparting justice between litigants are considered to be noble act of carrying out the 'Trust' from *Allah* (S.W.A.).

The ideas of equality before law, independent judiciary and procedural justice are also deeply rooted in the religion. Islam notion of justice in general and social justice in specific are more suited to Muslim Counties. We can conclude that, in Islam, the concept of justice is more comprehensive, vital, and sacred than in any other system of life. It is of the fundamental objectives of the Islamic state to provide justice. Islam subscribes to the idea of universality irrespective of creed, religion or ethnicity.

In Islam, justice may only be realised through efficient, just and impartial administration of the judicial system. Therefore, the persons entrusted with its administration and enforcement must be competent according to the criterion laid down by *Allah*, and *Allah* also commands that those parties, who are involved in a dispute, act honestly while giving evidence in order to secure or deny claim. Such persons must consider themselves as witnesses on behalf of *Allah* and His Messenger because Islam requires the parties to render justice to those who are entitled to it.

¹¹⁸ Qur'an 5:49

¹¹⁹ *Ibid*, 45:18