Arbitration in Islam

From time to time differences arise on various questions between the people living together. Historical and personal experience shows that no society has ever existed, between the individuals or the social organizations of which there have never been any differences. Such differences have always existed in all societies from the primitive and semi-barbaric to the most advanced and civilized. Usually the differences and clash of interests arise between two individuals, two organizations, two classes or two nations, in one of the two ways.

In many cases the difference is due to wrong thinking, wrong behavior and unjust conduct of one or both the parties. In more or less every society there are individuals or groups which axe not spiritually and morally mature enough to be fair in all cases and not to violate the rights of others. Such people, if their personal interest demands, do not show any consideration for the rights of others. Their human sentiments are not strong enough to control their selfishness and greed. They neither possess noble moral character nor are they interested in seeking the pleasure of Allah. They do not fear the consequences of their misconduct in this world or in the next.

There is no doubt that lack or weakness of faith is the most common and the most effective cause of the differences. Anyhow, this cause is not peculiar to individuals. The same thing is true of classes and nations. We often find in social life that two faithful and pious persons differ on a certain point.

Here the difference is not due to their unjust behavior but is due to the difference in determining what is right. In such cases both the parties, according to their light believe that they are right, and each thinks that the other party is either involved in selfishness or is mistaken. Anyway, a pious man defends himself and what he believes to be his right with zeal and enthusiasm, but is never prepared to do a thing which he regards unjust and wrong.

It is a social duty to settle the differences

Any differences which may arise between individuals or social organizations should be settled as early as possible, for their continuance, whether they are due to any willful transgression or mere misunderstanding, always adds to the conflict between the parties concerned and culminates in ugly events or at least perpetuates some sort of hostility and malice between them. Anyway, to make effort to settle the differences is a social duty. The Qur'an urges the Muslims to try to adjust any disputes which may arise between them.

"Have fear o f Allah and resolve your differences" . (Surah al-Anfal, 8:1) .

In tradition also much importance has been given to this question. The holy Prophet is reported to have said: "To settle the differences is more meritorious than prayers and fasting".

Various ways of settling differences

People usually adopt one of the following methods to settle their disputes:

(1) Personal force: Use of personal force is one of the oldest methods of settling a dispute. When a person is unable to settle a quarrel amicably, he at once jumps to fight either individually or with the help of his friends and supporters. This is called the law of the jungle, according to which the stronger is always right.

(2) Shouting, abusing and vilification: Some times the two parties involved in a quarrel do not have the power or courage to stand up to each other and to fight a battle. They instead of fighting in the field resort to another kind of battle, viz. the verbal battle. Either face to face or behind the back they shout at each other, abuse each other and vilify each other, till one party is reduced to submission.

Normally the more evil-tongued and foul-mouthed comes out victorious in these verbal battles. Evidently this solution is of the same category as the first. It is even worse, because it shows the cowardice and faintheartedness of the parties concerned. Socially also it is more harmful. The Qur'an totally disapproves vilification, except in cases where a wrong is done to someone, and he does not find anyone to do justice to him. In this case the only reaction which he can show is to raise an outcry and expose the aggressor. "Allah does not like shouting o f evil words unless a man bas been wronged. Allah is All-Hearer, All-Knowing". (Surah al-Nisa, 4:147).

(3) Passage of time: Where the disputing parties are not in a position even to make an outcry, they leave the matter to the factor of time in the hope that with the passage of the time fairness of their position will be established and their right will be restored. This is mostly the solution of the weak, though it is sometimes adopted by the discreet and cunning among the strong also. Anyhow, it is a solution which seldom leads to the desired result.

More often than not it causes the right and the claimant both to be buried in the debris of history. Sometimes the passage of time merely means to give greater opportunity to the termites of dispute to eat up whatever social link exists between the disputants and turn them into absolute enemies of each other.

(4) Arbitration: When, with the social development of human life man reached a stage where he could understand social affairs better and could be benefited by his past experience to make a

better future, ground was prepared for submitting the dispute to an arbiter for his judgment instead of using physical force, vilification or leaving the matter to the passage of time. Did arbitration in the beginning have the form of intervention by the head of the family or the chief of the tribe?

Did it then take the form of settlement of disputes by the priest etc. and lastly did it develop into the present form? Did the weak first use this solution to protect themselves against the dishonest contrivances of the strong? Or did the strong feel that they could achieve their objects more easily with the help of a judge hand-picked by them? Or was it the mental growth which persuaded society to devise such a means of settling disputes as might be accept able to all?

Or is it an invention of the intellectuals to solve a problem faced by society? Or is it a remedy suggested to society or its social leaders by their love for justice and defense of the oppressed?

Or has it some other origin? To study the origin and development of arbitration the reader may refer to the books and articles written specially on this subject. For the present it is enough to say that there can be two real motives of referring a dispute to an arbiter: (1) Natural instinct of man to defend himself and his rights, an instinct which is shared by other living beings also; (2) Love of the virtue of justice and a desire of mitigating social hardships.

Administration of Justice in Islam

In the social system of Islam utmost importance has been given to arbitration, to an arbiter and to their role in the security of society. 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 judgment is given by the arbiter, should be accepted unconditionally.

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 any dislike o f what you decide, and submit (to your judge ment) without reservation ". (Surah al-Nisa, 4:65). In an Islamic society the judicial and executive systems should be at the service of those whose rights have been violated. "Allah does not favor a society with virtuousness and purity in which there is no arrangement for defending the rights of the weak against the strong". (Mustadrak, vol. 2).

Who is fit to hold the position of an arbiter?

Soundness of arbitration mostly depends on the fitness of the arbiter. The Commander of the Faithful, Imam Ali wrote to Malik al Ashtar as under:

"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".

Heavy responsibilities 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 he will be a source of trouble to himself as well as to others.

Addressing Justice Shurayh, Imam Ali (P) 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". (Wasail al-Shi'ah, vol. 18 p. 7).

Imam Ja'far ibn Muhammad al Sadiq (P) 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 judgments are impartial. Such a person can only be either a prophet or his nominee ". (Wasail al-Shi'ah, vol. 18, p. 7).

Adherence to the Divine law

A judge must pronounce his judgment in accordance with the Divine law which covers all aspects of justice. Anyone who pronounces judgment 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. "Those who do not judge in accordance with what Allah has revealed are wicked indeed". (Surah al-Maidah, 5:47). Imam Muhammad al Baqir (P) is reported to have said:

"There are two kinds of judgment: Divine and pagan. He who deviates from the Divine judgment, automatically pronounces the pagan one. Anyone who pronounces a judgment

contrary to what Allah has commanded, is an unbeliever, though his judgment be in a case involving two dirhams only". (Wasail al-Shi'ah vol. 18 p. 18).

Behavior towards litigants

Behavior of a judge towards the litigants should in every respect be the same, even in the way he addresses them and looks at them. "It is your duty to give the same treatment to both the parties of a case even in the matter of looking at them. You should not look at one party longer than at the other". (Nahj al-Balaghah)

Independence and Immunity of judiciary

In the social system of Islam whenever a heavy duty or duties are placed on the shoulders of anyone, he is allowed to have certain privileges also. The same general rule applies to the judges also. As a judge has to undertake heavy duties, his position is quite strong. In Islamic society the independence of a judge is truly respected. Even the head of Muslim society should show full respect to the independence of judiciary. Those who have to forego their unlawful gains consequent upon the just judgment of a judge should not be allowed to think that they could shake the confidence of the head of society in a judge or could damage the prestige of the judiciary.

"Protect the position of a judge so that others, specially those who are closer to you, may not be tempted to disturb him. Let him be satisfied that nobody can 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". (Nahj al-Balaghah). The judge also has a reciprocal duty. He is strictly forbidden to accept any gift from the litigants.

"Rufa'ah! Avoid every temptation; suppress base desires; do not be dejected and be careful not to accept any bribe". (Epistle of Imam Ali (P) addressed to Rufa'ah, his judge in Ahwaz).

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.

Relations of the Muslims with Others

We know that the Muslim ummah has come into existence on the basis of a particular system of doctrines and actions, and its continuance depends on the preservation of its ideology and the stability of its social set up.

Evidently the individuals and nations not subscribing to Islamic ideology, being beyond its doctrinal pale, cannot be considered to be members of the Muslim ummah. They are aliens,

but the degree of their alienation will be judged by these two considerations:

(1) How far they share the ideology of Islam?

(2) To what extent they are hostile to the Muslims? As regards (1) above

(a) Islam believes that the whole world and all its phenomena. depend on an absolute truth which transcends matter, viz. Allah. The whole world, including man has been created and is being maintained by Him.

(b) From the Islamic point of view man, in order to know the true nature of the world and to become aware of his own relation with Allah, should turn to revelation, which is a great source of knowledge. As such, belief in the Prophets and their invisible contact with Allah is a part of Islamic Cosmology.

(c) Next to the belief in Allah and revelation there is a question of doing good deeds, which include all individual and collective efforts for human welfare and development.

Islam has a close relation with all other systems which are also based on these three principles. But it has no relations with the materialistic and polytheistic ideologies and systems.

On this basis, Islam will have especially close relations with a system which believes in the Unity of Allah in its true Islamic sense. If a system also believes in true Divine revelation, in the Prophets and- the Divine Scriptures, Islam's relation with it will naturally be deeper. The Qur'an has repeatedly referred to this natural affinity between various Divine systems.

It considers their origin and their basic principles to be common and coherent. Of course, this does not mean the endorsement of the present beliefs of the followers of these religions or of the contents of their existing religious books. This is only a recognition of the Divine origin of these religions. The Qur'an draws the attention of the followers of these religions to their deviations and wants to reform them.

(2) The hostility which others show to Islam has several degrees:

(a) Sometimes they oppose the Muslims formally. They either actually launch an attack against the land of the Muslims, their life and property or their religion, or at least have an intention to do so. In this case they will be regarded as invaders and aggressors. It is but logical that the life, property and the land of an invading enemy is not to be respected, and so long as he is at war, friendly contact or co-operation with him is not allowed. This is the case in which the question of jihad, defense and their relevant rules arises.

(b) A nation which has no intention to attack and betray the Muslim ummah or a Muslim

country and is not intriguing against them, will not be considered to be an aggressor: If it enters into a peace treaty with the Muslims or a pact of non-aggression and reciprocal respect of the borders and the rights of each other, such agreement will be respected, whether it is concluded direct between the Muslims and a non-Muslim country or both of them join a common world covenant resulting in an undertaking of mutual respect and preservation of the borders of others.

In this case the non-Muslim country or nation will be in peaceful treaty relations with the Muslims and the agreement concluded with it will be respected so long as it does not visibly or invisibly violate it by hatching an intrigue or launching an aggression. If it is found to be intriguing against the Muslims it will, of course, be regarded as an enemy.

In history we find that wherever the interest of the Muslim ummah demanded, the holy Prophet concluded a treaty of peace and non-aggression even with the polytheists. We see that in the sixth year of the Hijri era he signed a treaty with the polytheists of Mecca. He respected it and scrupulously implemented every clause of it, till the enemy himself practically abrogated it.

It was only then that the Prophet decided to take action against the enemy for being guilty of violating the treaty. Thus the way was prepared for the conquest of Mecca, which was conquered in 8 A.H. We find that during the madinite period of his life the holy Prophet concluded a number of treaties and pacts.

(c) The third class consists of those non-Muslims who live under the protection of the Muslim government. They are called zimmi and their life, property and even religious rites are respected, provided they abide by their covenant and pay the capitation tax. They can live peacefully along with the Muslims and enjoy all human rights. With this brief explanation of the relations of the Muslims with the non-Muslims we can understand all the basic teachings of Islam having a bearing on the foreign policy of Muslim society.

In this connection one of the most important questions is that of jihad. The importance which Islam attaches to it has unfortunately given a weapon in the hands of the opponents of this Divine system to project the valuable teachings of Islam in a distorted form and to launch an attack against the Qur'an and Islam by declaring in their writings and speeches that Islam is a religion of sword. In our opinion the best way to enable you to understand the correctness or otherwise of this assertion is to acquaint you further with the salient features of jihad in Islam.