

## The right to work and its legitimate and legal adjudication

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### الملخص:

يعتبر الحق في العمل من أهم صور الحقوق التي أقرها العهد الدولي للحقوق الاقتصادية والاجتماعية، ويشكل بصوره المتعددة رأس الجيل الثاني من الحقوق. ومن خلال هذه المداخلة يتم التعريف بالحق في العمل من خلال التعرض إلى مفهومه القانوني والشرعي، وبيان الضمانات المقررة لتحقيق أهدافه المتمثلة أساساً في النهضة الاقتصادية للإنسان. وقد اعتمدت في هذا المقال على مقارنة قانونية شرعية إسلامية.

### ABSTRACT:

Throughout this paper i expose that the work is a specific component of human existence, to achieve his self- realization, to live his life and to satisfy his needs, is also a source of personal dignity and social stability. The work has also the same importance in the rise of human civilization, its maintenance and its progress. It is one of the prerequisites necessary for the development and confrontation of poverty, stability, security and peace in the world.

In addition to these Islamic directives of work, we find that the texts of Islam refuses unemployment and begging, Islam is the religion of work and toil, and as far as working Muslim takes, as it instills enjoys the fruits, but idleness and failure to gain the project dependent upon the effort of others or counting on an easy profit without trouble, it is not the values of Islam, it is a contradiction of what he brought. The Prophet - peace be upon him - opened doors and creates work for those who want its means and exhorted it

The right to work is a basic guarantee for the continuation of human life on earth, because it represents a natural reaction to satisfy the human needs, and therefore it was necessary that man enjoy of this freedom to enable him to fill his needs in order to preserve his life on one hand, and to ensure decent living on the other.

The work is a specific component of human existence, to achieve his self-realization, to live his life and to satisfy his needs, is also a source of personal dignity and social stability. The work has also the same importance in the rise of human civilization, its maintenance and its progress. It is one of the prerequisites necessary for the development and confrontation of poverty, stability, security and peace in the world.

Work has been associated to social justice as a means of production and distribution at the same time, because it is a source of wealth, and its production and so the measuring of fairness distribution.

Out of this importance Islamic law has ensured the right to work, and accumulate public office within the Islamic State for all people living within the confines of this State, without distinction or discrimination on any grounds only considered as efficiency, competence and integrity, and that meant that everyone has the right to work consistent with his abilities and inclinations.

In addition to these Islamic directives of work, we find that the texts of Islam refuses unemployment and begging, Islam is the religion of work and toil, and as far as working Muslim takes, as it instills enjoys the fruits, but idleness and failure to gain the project dependent upon the effort of others or counting on an easy profit without trouble, it is not the values of Islam, it is a contradiction of what he brought. The Prophet - peace be upon him - opened doors and creates work for those who want its means and exhorted it.

The manual work or professional pursuit is the best type of gain in Islam as many of the religious texts and principles of jurisprudence have shown that. As the colloquy of the Prophet – May peace and blessing be upon him -: (Nobody has ever eaten a better meal than that which one has earned by working with one's own hands. The Prophet of Allah, Dâwûd used to eat from the earnings of his manual labor."). As reported by Abu Hurayrah - may Allah be pleased with him -: (that Dâwûd had to eat only from the earnings of his manual labor), the Prophet – May peace and blessing be upon him - commended to work by hand, and showed that the food resulting from the work of the hand is the best food ever. And the prophet of Allah Dâwûd may peace be upon him – ate only from the work of his hand. This is a great urge to work by hand and professionalism.

And wisdom in mentioning Dâwûd (David) that is confined to eat what he does with his hand was not because of need, since he was the successor in the earth as Allâh the Highest said:” 'O Dâwûd! Verily! We have placed you as a successor on the earth [26] (Sûrah38. Sâd. Part 23), but rather seeks a meal of by the best, and that's why The Prophet – May peace and blessing be upon him - cited his story in a position to be invoked that the best gain is from work with hand. Otherwise, the lives of the Messengers and prophets, replete with many practical illustrations and clear evidences of the value of work in the balance of the debt, thereupon, Adam was a plough-man, Noah was a carpenter, Idris was a tailor, Moses was a shepherd (herds-man), Dâwûd (David) was blacksmith, Zacharias was a carpenter, and Mohammad – may peace and blessing be upon him - a shepherd and a merchant.

In light of what we said and to focus on the concept of right to work and its place in Islam we will subject it to the following items:

- First: the concept of right to work.
- Second: The right to work status in Islam.
- Third: restrictions and controls the right to work in Islam.

**• First: the concept of the right to work:**

Work in the Arabic language in the sense of profession and action, and the plural AFÄL = ACTIONS (Ibn Manzur, 1997, Part1, Lissan al Arab, Alexandria, MUNSHÄT EL MÄREF, Part11, P 474). The enunciation of "to work" may be called on the human actions and behavior so we say: known work, or known behavior) Sherbasi, 1981, the Islamic economic lexicon, Beirut, Dar El Jil, 484).

In the terminology, the word "work" has several concepts to people, the general concept of this word indicate everything issues as an act, a movement or a phenomenon for any object, whether with or without a will (Mahdi Saeed, AM, 1983, the concept of work and its provisions , Baghdad, the scientific culture foundation, 9) .

In philosophical terminology the word "work" is called on the human activity associated with voluntary effort, i.e. fatigue and hardship for useful purpose other than entertainment and amusement. (Mahdi Saeed, 1983, the concept of work and its provisions, Baghdad, the scientific culture foundation, 10).

In general economic terminology, the word "work" is called on the physical and mental effort that man provide in his life for making living and earning i.e. on every mental and physical effort that man provide in the economic activity in order to produce economic goods and services for the purpose of earning and living (Enadjar, S., 1972, History of Economic Thought, Beirut, Dar Al-Arab renaissance, 42).

Work is a human right, requires the opportunity for a person in order to earn his living, by work freely chosen or accepted (the United Nations, 1966, the International Covenant of Economic, Social and Cultural Rights, paragraph 1, Article 6 ).

Pursuant to this freedom, no person will preclude from practicing any business he wants alone or jointly with others, with the right to choice the domain and the time in which works, as well as this freedom requires preventing acts of forced labor and forcing someone to a work he dislikes.

**• Second: The position of the right to work in Islam:**

the Islamic law assured the right to work, to occupy public office in the Islamic State for all people living within the confines of this State, without distinction or discrimination on any grounds was only considered as efficiency, competence and integrity, and that meant that everyone has the right to work which is consistent with his abilities and inclinations.

Islamic Legislation tends to achieve a sound financial situation and a good life to each member of the community, as well as bridging the innate needs. Therefore, working in Islam is not just a right but is also one of its religious duties or tasks.

The Qur'an came replete with verses and meanings that call for action and emphasize that confirm its importance to the Community and its members, and fill impetus to every work that an individual engage in, no matter how this work is small or despised by some others.

And prefers to work no matter what would than the unemployment, laziness and living a burden at the expense of others.

- Allah the Highest said :( then when the (Jumu'ah) Salât (prayer) is ended, you may disperse through the land and seek the Bounty of Allah (by working, ect.), and remember Allâh much: that you may be successful) [Surâh 62. Part 28. Al Jumu'ah (Friday 10)], i.e.: Allah Almighty, commanded after the completion of the best prayer in Islam (Al Jumu'ah), to seek and to make every effort to work.

- Allah the Highest said: (others travelling through the land seeking of Allâh's Bounty) [Surâh 73, Part 29, Al-Muzzammil (the one wrapped in Garments), 20]. Ibn Ashur said: " seeking of Allâh's Bounty: is a metaphor for the work and the demand for earning a living") Ben Achour, 1997, liberation and enlightenment, Tunisia, the printing press of Tunisia, 20/101).

- Allah the Highest said :( and we taught him the making of metal coats of mail (for battles), to protect you in your fighting. Are you then grateful? ) [Surâh 21. Part 17Al Anbyâ (Prophets) 80] i.e.: Allâh taught his prophet Dâwûd (David) – may peace be upon him – making armors to avert his enemy while fighting. If Allâh Almighty legislated fighting to His Prophet, and bestowed and admitted His servants to make whatever they need to prevent the evil of their enemies.

- Allah the Highest said :( they worked for him as he desired, (making) high rooms, images, basins as large as reservoirs, and (cooking) cauldrons fixed (in their places). "Work you, O family of Dâwûd (David) with thanks! But few of my slaves are grateful). [Sûrah 34. Part 22, Saba (Sheba) 13]. The bestowed of Allâh Almighty to Solomon was showed on drudging the jinn to serve him in all what he wants from the business and industrial architecture on the legality of these actions for His servants), Ibn Kathir, 2004, the interpretation of Holy Qur'an, Beirut, the message foundation, 3/528 ).

- Allah the Highest said :( And (O Mohammed صلى الله عليه وسلم ) "Do deeds! Allâh will see your deeds, and (so will) His Messengers and the believers) [Sûrah 9. Part 11, At- Taubah, (Repentance) 105], i.e.: the order to work is absolute, it includes works of good pure acts of worship as prayer, fasting, etc., also includes works of great importance to acts of worship, as industry necessary for jihad (Holy war) in the name of Allâh, and like all other permissible actions that generate the money that is spent in the sake of Allah.

The Holy Qur'an emphasize that the concept of poverty means not get a work even the ability to do it, as Allah the Highest said:( (Charity) is for Fuqarâ (the poor), who in Allâh's cause are restricted (from travel), and cannot move about in the land (for trade or work). The one who knows them not, thinks that they are rich because of their modesty. You may know them by their mark, they do not beg of people at all.) [Sûrah 2. part 2, Al Baqarah, (the Cow) 273].

In Islam, man is demanded to spread in the ground and asking Allâh's bounty, because the work is essential to reclaim land and fill public and private needs. The scholars have already noticed that, and they motivated the performance of multiple jobs needed, such as the need for farming, knitting, and building, because people need food to eat, clothes to wear and a suitable place to live in) [Ibn Taymiyyah, GS, 1994, computation in Islam, Damascus, Dar El Fikr, 19-22]

The Sunnah is replete of facts, confirm how Islam honored the work, and raise the owner of any type of work, as long as within the limits of the law of Allâh. The ahhadith mentioned in this context are as follows:

- Narated By 'Abd-Allaah ibn' Umar - may Allah be pleased with them - " the Prophet – may peace and blessing be upon him – was asked about the best gain," He said: (the work of a man

with his hand, and every blessed sale) Ibn Hanbal, 1984, El Musnad , Beirut, Dar Salafia, 28/502.

This haddith shows the legitimacy of the work, wherein the Prophet – may peace and blessing be upon him - made a man working with his hand, as a best work gain to get the please of Allâh.

- Narrated by El Mikdam - may Allah be pleased with him - said: The prophet – may peace and blessing be upon him - said: ((Nobody has ever eaten a better meal than that which one has earned by working with one's own hands. The Prophet of Allah, Dâwûd (David) used to eat from the earnings of his manual labor) [al Bukhari, 1987, Al Jamî Essahih, Cairo, Dar Al-Nahda, 2/730]. In the report of Abu Hurayrah - may Allah be pleased with him -: (that (Dâwûd) David had to eat only from the earnings of his manual labor) [Al Bukhari, 1987, Al Jamî Essahih Cairo, Dar Al Nahda, 2/731]. The Prophet – may peace and blessing be upon him - commends to work by hand, and showed that the food resulting from the work of the hand is the best food ever. And the prophet of Allah Dâwûd– may peace be upon him – ate only from the work of his hand. This is a great urge to work.

Wisdom in mentioning Dâwûd (David) that is confined to eat what he does with his hand was not because of need, since he was the successor in the earth as Allâh the Highest said:” 'O Dâwûd (David)! Verily! We have placed you as a successor on the earth [26] (Sûrah38. Sâd. Part 23), but rather seeks a meal of by the best gain , and that’s why The Prophet – may peace and blessing be upon him - cited his story in a position to be invoked that the best gain is from work with hand (Ibn Hajar, 2004, Feth El Beri, Beirut, Eressala Foundation, 4/307).

Otherwise, the lives of the Messengers and prophets, replete with many practical illustrations and clear evidences of the value of work in the balance of the debt, thereupon, Adam was a plough-man, Noah was a carpenter, Idris was a tailor, Moses was a shepherd (herds-man), Dâwûd (David) was blacksmith, Zacharias was a carpenter, and Mohammad – may peace and blessing be upon him - a shepherd and a merchant (Ibn Hajar, 2004, Feth El Beri, Beirut, Eressala Foundation, 4/307).

- Narrated by Zubayr ibn al- Awwam - may Allah be pleased with him - said: the prophet – may peace and blessing be upon him –said: "No doubt, it is better for a person to take a rope and proceed in the morning to the mountains and cut the wood and then sell it, and eat from this income and give alms from it than to ask others for something." [Al Bukhari, 1987, Al Jamî Essahih Cairo, Dar Al Nahda, 2/535]. The Prophet – may peace and blessing be upon him - urges to work, any work, even bringing a bundle of firewood dispense with all people and no doubt, as we understand from this haddith that all work beyond that is best.

- Narrated from Abu Hurayrah - may Allah be pleased with him - said: prophet – may peace and blessing be upon him – said: (A strong believer is better and more beloved to Allah than the weak believer and there is good in every one, (but) cherish that which gives you benefits (in the Hereafter) and seek help from Allâh and do not lose heart). [Muslim, 2001, 1<sup>st</sup> edition, Essahih, Beirut, Eressala foundation, 8/56]. In this haddith, a great urge of the strength of the believer in all things. The strength in this haddith is absolute and includes the power of faith, good work on different ways, the strength of the body, the power of money, and all other forces. There is a lot of goodness from the strong believer, in all fields, and the weak believer does not result in anything but weak and few, and he is useless nor on life or religion. As Allâh the Highest said about the girl of Shoaib – may peace be upon him – who spurred her father to Moses – may peace be upon him -: (And said one of them (the two women) “O my father! Hire him! Verily, the best of men for you to hire is the strong, the trustworthy”) [ Sûrah 28. Part 20, Al Qasas (stories) 26]. In the haddith an urge to work on different types and purposes. There is no power without work.

- Narrated by Hakim Ibn Hizam - may Allah be pleased with him - the Prophet – may peace and blessing be upon him - said: ("The upper hand is better than the lower hand (i.e. he who gives in charity is better than him who takes it). One should start giving first to his dependents. And the best object of charity is that which is given by a wealthy person (from the money which is left after his expenses). And whoever abstains from asking others for some financial help, Allah will give him and save him from asking others, Allah will make him self-sufficient." [Al Bukhari, 1987, 1<sup>st</sup> edition, El Jamî Essahih, Cairo, Dar Al-Nahda, 2/518] (.The upper hand is that of the giver and the lower (hand) is that of the beggar (take without working).

The work of the prophet – may peace and blessing be upon him-:

The Prophet – May peace and blessing be upon him –was an ideal; he tended sheep before his Holy mission. Narrated by Abu Hurayrah - may Allah be pleased with him - from the Prophet – may peace and blessing be upon him - said: ("There was no prophet who was not a shepherd."), said his companions: and you? He said: (Yes, I tended it with carats (karats) for the people of Mecca) [Al- Bukhari, 1987, edition1, El Jamî Essahih, Cairo, Dar Al-Nahda, 2/789] (and he traded in money of Khadija – May Allah be pleased with her -. Ibn Isaac said: "Khadija Bint Khuwaylid was a woman of honor and merchant capital. hires men of her own money and speculate in exchange giving them some and the Quraish folk were traders; when she heard of the Prophet – may peace and blessing be upon him - about his sincerity, his honesty and generosity, she sent to him and asked him to trade in her money to El- Sham, and gave him the best that she gave to other traders with her foot-man named Maysara, and the prophet – may peace and blessing be upon him – accepted him., and depart with her own money, accompanied by her foot-man until they reach El-Sham .. ..") [Ibn Hisham, 1987, edition 1, Biography of the Prophet, Alexandria, Munshât El Mâerif, 1/187]

After the Holy mission, he took part – May peace and blessing be upon him - in the work with his companions, collecting firewood with them, carrying stones, and participated in digging the trench....

The companions and the successors received the directions of the prophet –may peace and blessing be upon him- in exhorting work, rejecting unemployment, laziness and dependency and expressed or gave a visible form through their actions and statements. We review examples, through the following:

- Narrated that 'Umar ibn al-Khattab - May Allah be pleased with him - met people from Yemen, he said: who are you? They said: We are El MUTAWAKILUN (the ones who entrust their soul to Allah), he said, no you are El AIMUTAKILUN (dependent), because el Mutawakkil, who cast his seeds in the ground and puts his trust in Allah ") [by al Bayhaky, 2004, 1<sup>st</sup> edition, Branches of faith, Beirut, Dar Al-Nahda, 2/81]. And this context is a denial to leave work and ordering to seize upon opportunities.

-Narrated that- Umar - may Allah be pleased with him - that when he saw a man full-time in the mosque for prayer, and does not work and does not seek his living, he beat him, and ordered him to go out and earn a living and work, and said: "Do not stop for earning your living, and say God bless me, and you know that the sky does not rain gold or silver ") [Al-Ghazali, A., 1994, 1<sup>st</sup> edition, IHYÄ ULUM EDDINE (the revival of religious sciences), Oman, Dar Ihyâ el Tourat, 2/63]

- Narrated by Abdullah bin Mas'ud - may Allah be pleased with him -: "Any man who brought something to one Muslim' cities and be patient and hopeful and sells it at his day's price was for Allah, like the martyrs." Then he recited :( others travel trough the land seeking of Allah's bounty) [Sûrah 73. Part 29 al-Muzzammil (The one wrapped in Garments) 20] ) (

El- Qurtuby, 2003, 1<sup>st</sup> edition , El Jamî Li Ahkam KORÄN, Beirut, El Ressala Foundation, 19/56)

- Narrated By 'Aisha : (The companions of the prophet- may peace and blessing be upon him- used to practice manual labor, so their sweat used to smell, and they were advised to take a bath) [al-Bukhari, 1987, 1<sup>st</sup> edition, Essahih El Jamî, Cairo, Dar Al-Nahda, 2/730]. Aisha - may Allah be pleased with her- Tell that the Companions - may Allah be pleased with them - work on their own hands, and not an easy business, but a work that make them sweat, because is a hard labor.

- Narrated by Abdullah bin Omar - may Allah be pleased with them - "There is no death created by Allah after death for the sake of Allah dearer to me than to die travelling and seeking Allah's bounty) [Al- Qurtuby, 2003, 1<sup>st</sup> edition , El Jamî Li Ahkam KORÄN, Beirut , El Ressala, 19/56 ).

-Narrated by Ahmad ibn Hanbal that : "entrusting ones soul to Allah is good, but man should not be burden on people, he should work to enrich himself and his dependents, and never leaves work") [Ibn al Juzy, 1997, edition 1, (telbis iblis) coating the devil, Oman, Dar Ihyâ turat (House of Heritage Revival 253]

The wisdom of work legislation is the benefit that gain the usufructuary and other persons and refraining from unemployment which lead to curiosity, self-humiliation and abstaining from begging) [ Al- Manaawi, 2003, edition 1, Faydh el Qadeer, Damascus, Dar El Fikr, 2/372].

Thus, the work in Islam is one of the basic necessities of life, Islam sanctifies work at all levels, starting by manual work till all types of business forms, wherein it did not appear in the Islamic heritage any separation between mental and manual labor, or rather good work was counted absolute and constrained only by conditions of legitimate an legal adjudication and Public Benefit, as well as the manual labor gain people's respect and appreciation in the same degree as intellectual work in the contrary of what claim some other philosophies.

The work, both manual and intellectual is an essential part of the Islamic Creed of the Nation and its philosophy, and that's why it is linked to highest principles in the Islamic Creed and the legitimacy of the work, is associated with the extent of what it yields under the "halal" and "haram", and without prejudice to the social values and religious values. Therefore, work is honest as long as the intent and approach of production and manners of treatment are honest.

Islam makes of work a human right and a duty at the same time to earn his living so he will be not a burden on the people. It said of the young brave and strong man that companions wished if his youth and strength were for the sake of Allâh, the prophet – may peace and blessing be upon him- said : (if he came out for his old parents, then his act is for the Sake of Allâh, and if he came out for his young children, then his act is for the sake of Allah, and if he came out seeking to prevent himself from begging, then his act is for the sake of Allâh) [El Byhaki, 1987, 1<sup>st</sup> edition , Sunan El Kubra, Alexandria, Munshât El Mâaref, 7/479].

In addition to these directives Islamic to work, we found that the texts of Islam refuses unemployment and begging. Islam is the religion of work and toil, and as far as working Muslim takes, as it instills enjoys the fruits, but idleness and failure to gain the project dependent upon the effort of others or counting on an easy profit without trouble, it is not the values of Islam, it is a contradiction of what he brought. The Prophet – may peace and blessing be upon him - opens doors and creates work for those who want its means and exhorts it.

As narrated by Abu Hurayrah - may Allah be pleased with him - that the prophet – may peace and blessing be upon him - said: "No doubt, it is better for a person to take a rope and proceed in the morning to the mountains and cut the wood and then sell it, and eat from this income and give alms from it than to ask others for something." [Ibn Hanbal, 1984, 4<sup>th</sup> edition, Al Musnad, Beirut, Al Dar Salafia, 16/271]. Narrated by 'Abd-Allah Bin' Umar - may Allah be pleased with them - said: The Prophet – may peace and blessing be upon him - said: "A man keeps on asking others for something till he comes on the Day of Resurrection without any piece of flesh on his face." [Al-Bukhari, 1987, 1<sup>st</sup> edition, the Essahih Al Jamî, Cairo, Dar Al-Nahda, 2/536]. Narrated by Hakim Bin Huzam - may Allah be pleased with him - from the Prophet - may peace and blessing be upon him - said: (the upper hand is better than the lower hand) [Al Bukhari, 1987, 1<sup>st</sup> edition , Essahih Al Jamî, Cairo, Dar Al-Nahda, 2/518]. As follow, El Ansari offered to his brother's Al Muhajir half of his money and this latter thanked him by saying: "I am a merchant, show me, O my brother, the way of the market" [Al-Bukhari, 1987, 1<sup>st</sup> edition , Essahih Al Jamî, Cairo, Dar Al-Nahda, 2/519]. The Universal Declaration of Human Rights in Islam has confirmed through Article 13 what has been confirmed by the previous texts that: "Work is a right guaranteed by the State and society for all who can afford it, and for man the freedom to choose the work by which will realize his interest and the interest of the community, and the worker (employee) has right to security and safety and in all other social guarantees. It is not permitted to make excessive demands on someone, to compel him, use him or harm him and has the right without discrimination -between male and female- to get a fair salary for his work without any shortage of payment and he has the right also of a raise and his difference account, and he is demanded to be loyal and accurate, and in case of a conflict between the employee and the employer, the State has to interfere for conciliation and prevent the injustice ,to approve justice and compel justice fairly”.

As confirmed article 14 of the same Declaration that: “man has right in honest fruits, without monopolization, deceit, or damage to himself or another person and usury is certainly forbidden”.

### **Third: restrictions and adjudication of the right to work in Islam:**

freedom of work in particular, or economic freedoms in general, don't intend the deliberation of freedom from any restrictions, but are intended to freedom within parameters and adjudication set by members of the community in ways that they see realize the public and the private sectors interests, in way that agree with the highest values, which members of the community persist to show them into forms of legislative and legal principles, and gratified to practice their economic freedom within it.

The biggest defenders of economic freedom in positive traditional thought which is "Adam Smith" did not see that freedom is void from any restrictions, but he considered it as the proper framework for increasing wealth, and when this goal is threatened by any reason, it does not hesitate to deviate from this framework to maintain the public interest, thus "Adam Smith” did not hesitate to confirm the right of the State to interfere in the organization of the core professions and determining the conditions of its activities, or in the organization of banks and its control [Enadjar. S., 1972, 1<sup>st</sup> edition, History of Economic Thought, Beirut, Dar Al- Nahda Al Arabia 127], then Adam Smith interrupt his colloquy of absolute freedom by agreeing to a framework founded by State representing the group which applies it for the purpose of economic freedom, wherein he says: "The task of the state is limited to the supervision of the functioning of the economic system as a whole"), [Enadjar, S., 1972, 1<sup>st</sup> edition , History of Economic Thought, Beirut, Dar Al Nahda Al Arabia, 128].



**A- The work should be legal:** Muslim should abstain from any work which the consuming wealth unlawfully, including:

- Prohibition of usury: the legislator has absolutely prohibited the usury and made it clear that who eat usury will stand on the day of resurrection such an insane, and that there is no benediction in the money of usury, and who eat usury is cursed by Allah and His prophet- may peace and blessing be upon him- , and eating usury is one of the grievous sins, and who eat usury and his client, his writer and his witnesses all the same cursed. Allah the Highest said: (those who eat Ribâ (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shâitân (Satan) leading him to insanity. That is because they say: "trading is only like Ribâ (usury)" whereas Allâh has permitted trading and forbidden Ribâ (usury).) [Sûrah 2. Part 3 al-Baqarah (The Cow) 275]. The prophet – may peace and blessing be upon him – said: "Avoid the seven great destructive sins." The people enquire, "O Allah's Messenger! What are they?" He said, "To join others in worship along with Allah, to practice sorcery, to kill the life which Allah has forbidden except for a just cause, (according to Islamic law), to eat up Riba (usury), to eat up an orphan's wealth, to give back to the enemy and fleeing from the battlefield at the time of fighting, and to accuse, chaste women, who never even think of anything touching chastity and are good believers.) [Al- Bukhary 1987 , 1<sup>st</sup> edition, El Sahih El Jamî, Cairo, Dar Al-Nahda, 1/64].

-Narrated by Jabir - may Allah be pleased with him - said: (The prophet- may peace and blessing be upon him – cursed the eater of usury, his writer and his witnesses and said: they are all the same) [Muslim, 2001, 1<sup>st</sup> edition, Essahih, Beirut, Eressala Foundation, 5/50].

- Prohibition of gambling: the Allah Almighty has prohibited gain through gambling, he said: (O you believe! Intoxicants (all kind of alcoholic drink) and gambling, and Al-Ansâb and Al-Azlâm (arrows for seeking luck or decision) are an abomination of Shaitan's (Satan) handiwork. So avoid (strictly all) that (abomination) in order that you may be successful) [Surâh 5. Part 7 El- Mâi'dah (Table) 90].

- Prohibition of Monopoly: Monopoly (ihtikar) is collecting and controlling goods, in an effort to anticipate the need for price increases .The prophet – may peace and blessing be upon him - said: (Only a sinner monopolizes) [Muslim, 2001, 1<sup>st</sup> edition, Essahih, Beirut, Eressala Foundation, 5/56].

And he said also: (who monopolizes food forty will be disown (acquitted) by Allah) and the Governor is able to force the monopolist to sell what he has with the actual price if people need it) [Ibn Kayim, 2004, 1<sup>st</sup> edition, turuk el hakima, Oman, Dar Ihyâ Turath, 222 ]. That is because monopoly leads to restriction on people, and damage to them, and the Prophet -my peace and blessing be upon him –said:( no harm or bane) [Malik, 2004, 1<sup>st</sup> edition, Muwatta, Riyadh, the printing press of Salafia, 2/745].

He also said: (Whoever causes a loss (to people) will be made by God to sustain a loss, and whoever is hard on people will be treated harshly by God) [Ibn Majah, 1987, 1<sup>st</sup> edition, Sunan Ibn Majah, Cairo, Dar Al-Nahda, 2/785 ].

**B-Advice to the Muslims:** obeying the words of the Prophet – may peace and blessing be upon him -: "The deen (religion) is naseehah (advice, sincerity)", so that means that worker (employee) has adhere to advice, honesty and trust in his work, Allah the Highest said: (those who are faithfully true to their Amanât (all the duties which Allah has ordained, honesty, modern responsibility and trust and to their covenants) [ Sûrah 23. Part 18. Al- Mu'minûn (the believers) 8], and to avoid all banes as following:

- Fraud: as the Prophet – may peace and blessing be upon him - said: (Whoever deceives us does not belong to us) [Muslim, 2001, 1<sup>st</sup> edition, Essahih, Beirut, Eressala Foundation, 1/69]. As narrated Abu Hurayrah - may Allah be pleased with him -: The prophet –May peace and blessing be upon him- came across a man selling dates, and upon placing his finger into the

pot containing it, he found that it was wet under the top layer? He said 'what is this, O owner of this food?' His response was 'the sky has damaged it' (i.e. the rain has damaged some of my goods). So he said 'do you not place it at the top of this food so that the people may see? Whoever deceives me is not from me (or in another narration: whoever deceives us is not one of us)' [Muslim 2001, 1<sup>st</sup> edition, Essahih, Beirut, Eressala Foundation, 1/61] (it is the duty of the employee to inform the employer about any damage happened or is about to occur, and this employee is required to be honest in his work without deceive or deception. Therefore, legislator prohibited all what is tricked as:

-Almuhakalah: selling vegetations by wheat.

-El mulamassa (sale of contact): contact of touching, it means selling something when is touched -when something is touched it becomes sold.

-Almunabazah: to discard something in way to make it sold.

-Almuzabana: Selling dry dates in exchange of RUTB (date left for a time till it becomes ripe) and selling grapes in exchange of raisin, and selling fruits before ripeness. [Shawkaani, 1994, 1<sup>st</sup> edition, Nayl Al Awtaar, Beirut, Dar Sadir, 5/212], and selling birds in the air (free birds) and selling without a stating price and many others, as narrated by Abu Hurayrah-May Allah be pleased with him- : (the prophet – may peace and blessing be upon him – prohibited the sale of the stone (selling dependent on chance, luck, or an uncertain outcome)) [Muslim, 2001, 1<sup>st</sup> edition, Essahih, Beirut, Eressala Foundation, 5/3]. Anas bin Malik - may Allah be pleased with him - said: (the prophet- may peace blessing be upon him – prohibited Almuhakalah , Almuksadharah ,El Mulamassa, Almunabazah and Almuzabana) [Al Bukhary, 1987, 1<sup>st</sup> edition, the El Jamî Essahih, Cairo, Dar Al-Nahda, 2/762].

- Atefif: (giving less in measure and weight) and is a general phenomenon in diminution in the quality of work made intentionally by the employee (worker) and it is not limited only on measure and weight, but includes all services so both employer and employee are responsible for the performance of their work in concordance with what was agreed in the contract. Allah the Highest has threatened El Mutaffifin (those who give less in weight and measure) and said: (Woe to Al- Mutaffifûn (those who give less in weight and measure) those who, when they have to receive by measure from men, demand full measure. And when they have to give by measure or weight to (other) men, give less then due) [Sûrah 83. Part 30 Al- Mutaffifin (those who deal in fraud) 1-3].

**C- Perfection:**the prophet –may peace and blessing be upon him- said :( Allah will be pleased with those who try to do their work in a perfect way) [El Bayhaki, 2004, 1<sup>st</sup> edition, Beirut, Dar Nahda, 4/334]

## 2-Work prior to adulthood (maturity):

The general rule: no burdening before adulthood whatever is the nature of this burdening, as narrated by Aisha, Ummul Mu'minûn "the mother of believers" - may Allah be pleased with her - from the Prophet – may peace and blessing be upon him - said: (There are three (persons) whose actions are not recorded: a sleeper till he awakes, an idiot till he is restored to reason, and a boy till he reaches puberty.) [Ibn Hanbal, A, 1984, 4<sup>th</sup> edition, Beirut, Dar Salafia 41/224]. By the consensus of scholars, Ibn Rushd said: ".....and the consensus, did not convey the difference of opinion") [Ibn Rushd, 1984, 1<sup>st</sup> edition, the beginning of the industrious and the end of the economizer, Beirut, Dar Sader, 1/8]. Because puberty means perception and understanding of the religion duties, thereby burdening is associated to adulthood, and the specification of adulthood is: "attaining puberty - Reaching sexual maturity-) [Alkasany, 2004, 1<sup>st</sup> edition, Badaa'î Sanaa'i, Beirut, Eressala Foundation, 2/266].

There is no difference in the condition of burdening in adulthood either in status of acts of worship –Ahkam Shari'a- or Ahkam al mu'amalat (It deals in part with economic functions in an Islamic society but not comprehensively with factors impacting upon

economic behaviour since it is concerned solely with legal relationships between members of the society), and thereby scholars agreed of the invalidity of the actions of the boy who does not distinguish between sale and purchase..... etc.; because his actions and decisions are not valid by the cult, so there will be no Disciplinary punishment and no act will be approved either sale or purchase. [Ibn Juzy, 1996, 1<sup>st</sup> edition, laws of jurisprudence, Beirut, heritage, 3/109].

As for the boy who can distinguish, scholars entertained contradictory views. Al Hanafi and Al Maliki said according narrated Ahmad that his actions are approved with the permission of his Guardian) [El Hattab, 1997, 1<sup>st</sup> edition, Mawahib El Jalil, Alexandria, Munasha (at El Ma'arif, 6/29)]. Shafi'i and Ahmad said, according to another narration that the conduct of a boy who can distinguish is not approved in reason for incompetence; and because their prerequisite is adulthood [Al-Ghazali, 2004, 1<sup>st</sup> edition, Almustacefy, Beirut, Eressala Foundation, 1/54].

The spell of rights of children in Islam has corroborated on protecting children from work risks (the Organization of the Islamic Conference, June, 2005, the spell the Rights of Children, Sana'a, articles 26) ,wherein Article 18 - paragraph 1 – provided that "the child does not practise any profession involves risks or thwart his upbringing or his education, or be at the expense of his health or physical and spiritual growth, "and paragraph 2 of the same article", necessitated to put by-laws of each State, a minimum age for employment, its hours and conditions, and inflict a penalty on any contravener. "

### 3. Prevent acts of forced labour:

Meaning by forced labour, all works or services which are inflicted from any person under threat to do unpleasant or unwanted work, involuntary (International Labour Organization, June 1930, the Convention of forced labour, Genève, session 14). In view of what represent forced labours as humiliation of human dignity, International and Regional Organizations has banned them.

However, it is necessary to distinguish between “TASKHIR” which is a religious law of Allah to His creation, and come into the mutual benefits between people and serve each other, and “TASKHIR” which means exploitation and compulsion, including the injustice of man by man, and belittle him.

Allah Almighty explained that “TASKHIR” which is the mutual benefit between people and effect on the social strata by the Rivalry for precedence, is in fact a sign of Allah’s mercy. Allah the Highest said: (and we raised some of them above others in ranks, so that some may employ others in their work. But the mercy (paradise) of your Lord (O Mohammed ( صلى الله عليه و سلم ) is better than the (wealth of this world) which they amass) [Sûrah 43. Part 25. Az-Zukhruf (decoration) 32], and the meaning of “some may employ others in their work “is: serving each other, and working for each other, so one is reason for other’s livelihood. [Al-Baghawi, 2004, 1<sup>st</sup> edition, Ma'alim Tanzil, Beirut, Eressala Foundation, 7/212].

This is one of religious law of Allah to His creation, and that "because the order of the world in this life “EDUNYA” depends on it. It is His wisdom, almighty, to make this man poor even being strong but able to work, and that man rich, weak and not able to work, so Allah Almightyly disposes money to rich so he can hire the poor strong man in the way that they make use of each other. Allah Almighty has made it clear the wisdom of this rivalry for precedence, in livelihood, fortunes, the strengths, weaknesses, and so on..... [Shanqeety, 1996, 1<sup>st</sup> edition, Adwa' Al Bayan, Beirut, Dar Sader, 7/112].

This "TASKHIR" approved by Islamic law and compatible with the laws of the universe is not derogation or landed for human dignity, if both parties undertake Principles and adjudications of Islam. Al- Alusi says - in the meaning of the verse: - "to use each other in their interests, in their professions and in their labours in order that they coexist, assist one other and to reach their private ends ") [Al- Alusi, 1987, 1<sup>st</sup> edition, Rouh El Ma'ani "the spirit of meanings", Dar Al-Nahda, Cairo, 25/78]. It is also a wisdom and mercy of Allah Almighty, because money given for rich people and used to hire poor ones is in fact a mutual benefit, and a Division from Allah to His servants. Ibn Ashur says: "Allah Almighty gave everything to His creation and made for things facts and scales". [Ben Achour, 1997, 1<sup>st</sup> edition, Tahrir wa Tanwir "liberation and enlightenment", Tunisia, the printing press Tunisian 25 / 203].

But "TASKHIR" by coercion, exploitation and compulsion is prohibited in Islam, including all the legitimate texts that prevent coercion and burdening with intolerable tasks, especially when it comes to hire people. [The Ministry of Awqaf, 1996, 4<sup>th</sup> edition, Jurisprudence Encyclopedia, Kuwait, 1/289]. Allah the Highest said: (Allah burdens not a person beyond his scope) [Sûrah 2. Part 3. Al- Baqarah (the cow) 286], was narrated that Abu Dharr - may Allah be pleased with him - about the Prophet – may peace and blessing be upon him - said: (Yes, they (slaves or servants) are your brothers, and Allah has put them under your command. So the one under whose hand Allah has put his brother, should feed him of what he eats, and give him dresses of what he wears, and should not ask him to do a thing beyond his capacity. And if at all he asks him to do a hard task, he should help him therein.) [Al Bukhary, 1987, 1<sup>st</sup> edition, Essahih El Jamî, Cairo, Dar Al-Nahda, 5/284]. Narrated Abu Hurayrah - may Allah be pleased with him - from the Prophet – may peace and blessing be upon him - said: ("A slave (MAMLUK) has his food and clothing in the normal manner, and he is only obliged to do such work as he is capable of doing.") [Muslim, 2001, 1st edition, Essahih, Beirut, Eressala Foundation, 5/93]. Al Quraafi has transferred the consensus of scholars that the burdening is inadmissible in Islamic law. [Al Quraafi, 2006, 2<sup>nd</sup> edition, Anwar El Buruk Fi Anwâ El Furuk, Beirut, Eressala Foundation, 2/106].

Scholars consensus that every contract of any kind is subject to be based on consent [the Ministry of Awqaf, 1996, 4<sup>th</sup> edition, Jurisprudence Encyclopedia, Kuwait, 43/13], because the basic principle in the contracts is mutual consent, as Allah the Highest said: (O you who believe! Eat not up your property among yourselves unjustly except it is trade amongst you, by mutual consent) [Sûrah 4. Part 5. An-Nissâ' (women), 29].

Scholars did not stipulate type of services in the assigning of the employee, but they stipulated in the absence of assigning, to be fit for both the tenant and the hired. [Alkasana, 1997, 1<sup>st</sup> edition, Badaa'i Sanaa'i, Cairo, the Renaissance, 6/127]

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