



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF ART AND SOCIAL SCIENCE

COURSE CODE: ISL 339

COURSE TITLE: ISLAMIC FAMILY LAW

**COURSE
GUIDE****ISL 339
ISLAMIC FAMILY LAW**

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Published by
National Open University of Nigeria

Printed 2013

Reprinted 2014

ISBN: 978-058-781-0

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INTRODUCTION

ISL 339 - Islamic Family Law is a two-credit, unit 300 level course that is available in the B.A. degree in Islamic Studies programme. It has 13 units comprising rules on marriage, divorce, family building, and inheritance. This course guide furnishes you with all you will need for your success in this course. This includes what you are expected to know in each unit, the types of course materials needed, and how to achieve maximum benefit from the course. You will also be acquainted with information on periodic tutorials and different types of assessment that are available to you in the course.

WHAT YOU WILL LEARN IN THIS COURSE

The general aim of this course ISL 339 is to introduce you to the way Islam addresses the concept of family, its maintenance and peaceful co-existence among members of the family. It is a course that will shed light on some basic Islamic rules on family matters. Among these are: marriage and its preliminaries, marriage as a contract, constituents of valid marriage, marriage impediments, concept of polygamy, headship of the family, parents' right in a Muslim home, family planning and birth control, guardianship and paternity, role of the man and woman in the home, fosterage and child upbringing (*al- Hadanah*), just and fair play by parent among their children, as well as inheritance.

At the end of this course you will be able to understand the essence of marriage in Islam and also be able to appreciate the contribution made by Islam to an ideal rancour-free human society.

COURSE AIMS

The overall aims of this course are to:

- acquaint you with the essence of marriage in Islam
- introduce you to what the Islamic family law really entails
- assist you build a better family
- acquaint you with the Islamic concept family relationship built on moral uprightness.

To achieve the general aims of this course, each unit of ISS 339 has specific objectives. It is strongly advised that you read them before you start studying each unit. Likewise, during the course of your study kindly refer back to these aims in order to check your progress.

COURSE OBJECTIVES

To get the best out of this course you are advised to read through the objectives of each course unit before the beginning of the class as well as during the course of study from time to time. The general objectives stated below are expected to be achieved at the end of all the units of the course. You should be able to do the following:

- identify the constituents of a valid marriage
- discuss what can invalidate a marriage contract
- analyse the basic and important preliminaries of marriage
- expatiate on the concept of polygamy in Islam as well as its conditions and restrictions
- explain the role of husband and that of wife in an Islamic home
- compare Islamic family law with any other family laws
- discuss the impediments of inheritance in Islam
- discuss family planning and birth control in Islam
- compare Islamic concept of family planning with what obtains in our contemporary Nigeria.

WORKING THROUGH THIS COURSE

This course is broken into four modules. Under each module there are a number of units. You are to read the units and related materials given at the end of this guide, including others that you might lay your hands upon. You will benefit a lot from this course if proper attention is given to the exercises and assignments given at the end of each sections and units respectively. Submission of each assignment is very important.

COURSE MATERIALS

The following materials are needed in this course:

1. Course Guide
2. Study Unit
3. Text books
4. Assessment File
5. Presentation Schedule

STUDY UNITS

The course consists of four modules broken into 13 study units as follows:

Module 1 Marriage in Islam (*an-Nikāh* or *az -Zawāj*)

Unit 1 Components of Islamic Family Law, the Purpose and Wisdom behind it

Unit 2 Marriage as a Contract and the Preliminaries of Marriage

Unit 3 Prohibited Degrees of Marriage

Unit 4 Marriage with non- Muslims

Module 2 Special Understanding on Marriage

Unit 1 Role of Husband and Wife in a Home

Unit 2 Parents' Rights in a Muslim Home

Unit 3 Polygamy: A restricted Opportunity

Module 3 Marriage and Building an Ideal Society

Unit 1 Guardianship and Paternity

Unit 2 Family Planning and Birth Control in Islam

Unit 3 Child Upbringing in Islam (*al- hadanah*), Breastfeeding (*al- rida 'ah*), Fosterage (*al- kafalah*), and Child Adoption

Module 4 Other Related Issues

Unit 1 Divorce Initiated by Husband (*at-Talaq*) and Divorce at the Instance of Woman (*Khul '*) in Islam

Unit 2 Waiting Period (*'Iddah*)

Unit 3 Law of Inheritance in Islam

TUTOR- MARKED ASSIGNMENT

An assignment is given out for every unit of the course. It must be submitted to the tutor for marking. Assessment will be based on four of these assignments while the best three performances will be used for 30% grading. The marks obtained in the best three assignments will be added to the final marks obtained at the final examination of the course. These will be used in computing the overall result.

Further information on assignment will be found in the assignment file. You must make sure that you submit each of your assignment to the tutor as early as possible.

SELF-ASSESSMENT EXERCISES

The self-assessment exercises and the tutor-marked assignments (TMAs) will help you in achieving the aims and objectives of the course in general. The self-test questions on the section you have covered assist in evaluating your progress and maximum understanding of the course.

REFERENCES/FURTHER READING

Text materials from NOUN are useful for you in this course. Each unit contains a list of references and other resources from which you can gain a lot. Materials written in Arabic on this course can assist as well. Resources are also available for you on the internet. With these materials your knowledge of the course will be enhanced. Try as much as possible to search through many materials on this course. A list of most of the books suggested as references is hereunder outlined.

Abu Bakr Jabir al-Jazairi (1995). *Minhaj al- Muslim*. Beirut: Dar El-Fikr.

Bakhtiar, L. (1996). *Encyclopedia of Islamic Law: A Compendium of the Views of the Major Schools*. Chicago: ABC International group Inc.

Doi, A. I. (1984). *Shari'ah: The Islamic Law*. London: Ta-Ha Publishers.

Hammudah 'Abd al 'Ati (1977). *The Family Structure in Islam*. American Trust Publications.

Maulana Muhammad Ali (1986). *The Religion of Islam*. New Delhi: Taj Company.

Shaykh Sayyid Sabiq (1997). *Fiqh as- Sunnah*. Beirut: Dar El- Fikr.

ASSESSMENT FILE

Your assessment will be done on both tutor-marked assignment and the written examination. Final marks will then be the total sum of the marks obtained from both of them. The tutor-marked assignment counts for 30% of your total score. This invariably means that you must submit your TMA(s) on time.

COURSE OVERVIEW AND PRESENTATION SCHEDULE

| | Title | Week | |
|-----------------|--|-------------|---------------|
| Module 1 | Marriage in Islam | | |
| Unit 1 | Components of Islamic Family Law, Purpose of Marriage and its Wisdom | Week 1 | Assignment 1 |
| Unit 2 | Marriage as a Contract and the Preliminaries of Marriage | Week 2 | Assignment 2 |
| Unit 3 | Prohibited Degrees of Marriage | Week 3 | Assignment 3 |
| Unit 4 | Marriage with non- Muslims | Week 4 | Assignment 4 |
| Module 2 | Special Understanding on Marriage | | |
| Unit 1 | Role of Husband and Wife in a Home | Week 5 | Assignment 5 |
| Unit 2 | Parents' Rights in a Muslim Home | Week 6 | Assignment 6 |
| Unit 3 | Polygamy: A Restricted Opportunity | Week 7 | Assignment 7 |
| Module 3 | Building an Ideal Society | | |
| Unit 1 | Guardianship and Paternity | Week 8 | Assignment 8 |
| Unit 2 | Family Planning and Birth Control in Islam | Week 9 | Assignment 9 |
| Unit 3 | Child Upbringing in Islam (<i>al-hadanah</i>), Breastfeeding (<i>al-rida'ah</i>) and Fosterage (<i>al-kafalah</i>), and Adoption (<i>at-tabanni</i>) | Week 10 | Assignment 10 |
| Module 4 | Other Related Issues | | |
| Unit 1 | <i>At-Talaq</i> (divorce at the instance of the man) and <i>al-Khul'</i> (divorce at the instance of the woman) | Week 11 | Assignment 11 |
| Unit 2 | <i>'Iddah</i> (Waiting Period) | Week 12 | Assignment 12 |
| Unit 3 | Law of Inheritance in Islam | Week 13 | Assignment 13 |
| | Revisions | Week 14 | Assignment 14 |

FINAL EXAMINATION AND GRADING

Your final examination constitutes 70% of the total course grade. It comes at the end of the course. Duration of the examination is between two and three hours. Make sure you cover all the areas of the course during your reading hours. For you to get good marks you are advised to revise all that you have come across in your assignment, all the thirteen units, as well as your materials.

COURSE GRADING

The breakdown of the course assessment marks can be seen in the table below.

| | |
|--|------|
| Assignment (The best three out of the four Tutor-Marked Assignments) | 30% |
| Final Examination | 70% |
| Total | 100% |

HOW TO GET THE MOST FROM THIS COURSE

The study units replace the university lecturer in distance learning. This is one of the great advantages of distance learning; you can read and work through a specially designed study materials at your own pace, and at a time and place that suit you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way, a lecturer might give you some readings to do, the study units tell you where to read, and which are text materials or set books to consult. You are provided with exercises to do at appropriate points, just as a lecturer might give you an in-class exercise. Each of the study unit follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then you will significantly improve your chances of passing the course. This will usually be either from your set books or from a reading section. The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutor. Remember that tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.

Read this course guide thoroughly, this is your first assignment.

1. Organise a study schedule. Design a 'course overview' to guide you through the course. Note the time you are expected to spend on each unit and how the assignment relate to the units. Whatever method you choose to use, you should decide on and write in your own dates and schedule of work for each unit.
2. Once you have created your own study schedule, do everything to stay faithful to it. The major reason students fail is that they get behind with their course work. If you get into difficulties with your schedule, please, let your tutor know before it is too late to help.
3. Turn to Unit 1 and read the introduction and the objectives for the unit.
4. Assemble the study materials. You will need your set books at any point in time. As you work through the unit, you will know the sources to consult for further information.
5. Keep in touch with your centre. Up-to-date course information will be continuously available there.
6. Well before the relevant due dates (about four weeks before due dates), keep in mind that you will learn a lot by doing the assignment carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the appropriate date.
7. Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study materials or consult your tutor.
8. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to pace your study so that you can keep yourself on schedule.
9. When you have submitted an assignment to your tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule.
10. When the assignment is returned, pay particular attention to your tutor's comments, both on the Tutor-Marked Assignment form and also the written comments on the ordinary assignments.
11. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objective (listed at the beginning of each unit) and the course objectives (listed in the Course Guide).

TUTORS AND TUTORIALS

Kindly utilise the guidance of your tutors judiciously. Among your tutor's responsibilities are to:

1. mark your assignment
2. assess your performance
3. comment on your assignment.

Having the name, phone number and address of your tutor at hand for easy contact is a wise act indeed. Don't skip any of your tutorials. The dates, times and locations of these tutorials will be made available to you. Discussing your difficulties with fellow students as well as with your tutor will surely put you on course in building a formidable confidence in what you know. You can gain tremendously from the course tutorials by trying as much as possible to draw questions before coming to the tutorial from the unit you are not okay with. Don't ever feel shy to put these questions before your colleagues and your tutor as well.

SUMMARY AND CONCLUSION

ISS 339: The Islamic Family Law is a course that provides you with the basic understanding of the family matters in the Islamic law. Its main objective is to shed light on the ways Islam handles family matters such as marriage and all what it entails, divorce, family building, as well as inheritance. Every system has its own way of dealing with family affairs. That of Islam is showcased in this course.

This course guide has been designed to ease your learning in such a way that both the aims and the general objectives are duly achieved. You are advised to make maximum use of the course guide. This will help you have the anticipated result.

Wishing you a successful study.



**MAIN
COURSE**

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MODULE 1 MARRIAGE IN ISLAM (AN-NIKĀH OR AZ-ZAWĀJ)

| | |
|--------|--|
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| Unit 2 | Marriage as a Contract and the Preliminaries of Marriage |
| Unit 3 | Prohibited Degrees of Marriage |
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UNIT 1 COMPONENTS OF ISLAMIC FAMILY LAW, THE PURPOSE AND WISDOM BEHIND IT

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| 3.0 | Main Content |
| 4.0 | Conclusion |
| 5.0 | Summary |
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1.0 INTRODUCTION

Islam, being a total way of life, has provided guidelines for both the spiritual and mundane needs of mankind in its entirety. This is spelt out in the Sharī‘ah. Every action in life has purpose(s) for its being carried out. Marriage in Islam has its own mundane and spiritual purposes. In this unit, the major components of the Islamic family law will be highlighted.

Likewise, reason the Creator instituted marriage among mankind in general and among the Muslim in particular will be treated as well as wisdom behind marriage.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- mention five components of the Islamic family law
- describe in brief, what marriage entails in Islam
- analyse the main purposes of marriage in Islam
- critically examine four divine purposes of marriage in life
- describe the ephemeral importance of marriage
- assess the wisdom behind marriage.

3.0 MAIN CONTENT

The Islamic family law is a law guiding relationships between a member of a family and another, most importantly, between husband and wife, father and children, and mother and children. Some of the areas touched by the Islamic family law are: marriage and its preliminaries, marriage as a contract, constituents of valid marriage, marriage impediments, marriage with a polytheist and with the people of the book, concept of polygamy, guardianship and paternity, parents' right in a Muslim home, headship of the family, *nafaqah* (the maintenance), child upbringing in Islam (*al- hadanah*), breastfeeding (*al- rida 'ah*), fosterage (*al- kafalah*), and adoption, family planning and birth control, role of man and woman in the home, just and fair play by the parents among their children, *talaq* and *khul'* (divorce at the instance of wife), *'Iddah* (waiting period) as well as inheritance. Some of these components of the Islamic family law will be dealt with here while others will be dealt with in subsequent units.

Islam enjoins marriage and strongly abhors celibacy. Marriage is a means to emotional and sexual satisfaction. That is, it gives room to individuals to gratify his/her sexual desire legitimately thus, preventing one from going into any extra-marital relationship which is unequivocally and categorically condemned by Islam. Marriage is also a mechanism of tension reduction where each of the parties will serve as 'shock absorber' or 'comforter' to each other in time of hardship and in need of companionship. Another wisdom behind marriage is that legitimate offspring will be produced into the community of mankind where love between the couple and their children, peaceful co-existence among the family members together with tranquility will prevail. Allah says in Q30:21:

ومن آياته أن خلق لكم من أنفسكم أزواجاً لتسكنوا إليها وجعل بينكم مودة ورحمة إن في ذلك لآيات لقوم يتفكرون.

Meaning:

- *And among His signs is that He created for you mates from among yourselves, that you may dwell (live) in tranquility with them, and He has put love and mercy between your hearts, undoubtedly, in there is signs for those who reflect.*

Marriage is also an approach to inter-family alliance where a member of a family will go into another family, thus, joining the two families together. This is testified to in Q25: 54:

وهو الذي خلق من الماء بشراً وصهراً وكان ربك قديراً

Meaning:

- *And it is He who has created from water (i.e., semen) a human being and made him (a relative by) lineage and marriage. And ever is your Lord competent (concerning creation).*

As a result of this, a kind of solidarity will emerge between the two families. It also gives sound health for gratifying state of mind. Above all, it is an act of worship (*Ibadah*); a religious commitment that attracts half of one's whole religion. This is as said by the Prophet:

إذا تزوج العبد فقد استكمل نصف الدين فليتق الله في النصف الباقي

Meaning:

- *When a man marries he has fulfilled half of his religion, so let him fear Allah in the remaining half.*

This is, in fact due to an embodiment of tolerance, patience and perseverance that it shoulders from both sides. In addition to this, for any Muslim to attain a complete believer's status he/she must follow this tradition of the Prophet, i.e. marriage:

النكاح سنتي ومن رغب عن سنتي فليس مني

Meaning:

- *Marriage is my tradition and whosoever keeps away from my tradition is not amongst my people.*

Marriage helps in the distribution of rights and obligations of both male and female members of the family. It is also a means of social placement. With marriage, human race will continue to live on earth and Muslim nation in particular in a chaos-free environment.

SELF-ASSESSMENT EXERCISE

- Mention seven components of the Islamic family law.
- Critically assess the purpose(s) of marriage in the Islamic law.

4.0 CONCLUSION

Without a rule and regulation guiding sexual relationship between male and female on earth there is no doubt that human society will look like that of animals and birds. The reasoning faculty endowed human beings makes it imperative for them to organise a system of coming together of opposite sex in terms of relationship. Different religions have different ways of life as far as marriage is concerned. However, the Islamic marriage institution possesses some distinguishing features that make it

exemplary in operation. You can take any other system of marriage side by side with the Islamic system of marriage and compare the differences.

5.0 SUMMARY

The Islamic family law has many components but each of them are inter-related. Some of them have been mentioned above. The knowledge of these would lead you to the knowledge of those not mentioned.

Generally, marriage has purposes in life. However, in Islam its purpose is more than mere acquisition of worldly gains. Islam considers it as part of one's religious duty that must be fulfilled to attain maximum piety.

Procreation of offspring in Islam is a means for increasing Allah's servants on earth other than for gaining any advantage in this world. Through marriage a Muslim can come closer to his Creator by performing certain marriage responsibilities, showing tolerance, patience, and other virtues in the relationship. Therefore, marriage in Islam is a means of emotional and sexual satisfaction. It is a mechanism of tension reduction, a means of legitimate procreation, social placement and an approach to inter-family alliance and group solidarity. Most importantly, it gives chance for acts of *Ibadah* and acts of piety.

6.0 TUTOR-MARKED ASSIGNMENT

1. Mention five components of the Islamic family law.
2. Discuss in brief, what marriage entails in Islam.
3. Critically examine four purposes of marriage in life.
4. Analyse the main purposes of marriage in Islam.
5. Compare and contrast the purpose of marriage in Islam and any other system.
6. Assess the wisdom behind marriage.

7.0 REFERENCES/FURTHER READING

- Abu Bakr Jabir al-Jazairi (1995). *Minhaj al- Muslim*. Beirut: Dar El-Fikr.
- Doi, A. I. (1984). *Shari'ah: The Islamic Law*. London: Ta-Ha Publishers.
- Hammudah 'Abd al 'Ati (1977). *The Family Structure in Islam*. American Trust Publications.

Laleh Bakhtiar (1996). *Encyclopedia of Islamic Law: A Compendium of the Views of the Major Schools*. Chicago: ABC International Group Inc.

Maulana Muhammad Ali (1986). *The Religion of Islam*. New Delhi: Taj Company.

Shaykh Seyyid Sabiq (1997). *Fiqh as- Sunnah*. Beirut: Dar El- Fikr.

UNIT 2 MARRIAGE AS A CONTRACT AND THE PRELIMINARIES OF MARRIAGE

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- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

In this unit, we shall deal with the concept of marriage as a contract as well as a religious sacrament in the Islamic law. Likewise, we shall look at the preliminaries of marriage and its requirements.

2.0 OBJECTIVES

At the end this unit, you should be able to:

- describe the contractual elements of marriage
- analyse the preliminaries of marriage
- evaluate the basic requirements of marriage.

3.0 MAIN CONTENT

The question of whether marriage is a sacrament or a contract seems hardly applicable in Islam. Rather, it has the element of being a contract and a religious sacrament. It is a divine institution. This is seen in a prophetic tradition narrated by Anas (among others):

"إذا تزوج العبد فقد استكمل نصف الدين فليتق الله في النصف الباقي"

Meaning:

- *When a man marries he has fulfilled half of his religion, so let him fear Allah in the remaining half.*

On the other hand, it is a solemn covenant between Allah and the human parties as well as between these parties themselves. Before the contract can be a valid one, certain conditions must be met. Some of these conditions relates to the contract itself; others to the personality of the contracting parties. The validity of marriage contract makes it legal to be consummated in the Islamic law. The conditions that make a marriage

contract valid in the Islamic law are seen as one of the preliminaries of marriage. A man must be competent enough to carry the responsibilities showered on him by marriage contract. This competence lies in being able to provide for his wife's needs; such as feeding, clothing, shelter, health care and above all security. It was narrated that the Prophet (SAW) says:

با معشر الشباب من استطاع منكم الباءة فليتزوج فإنه أغض للبصر وأحصن للفرج ومن لم يستطع فعليه بالصوم فإنه له وجاء

Meaning:

- *Oh you young-men, whosoever has the prerequisite of marriage among you should go ahead and marry, for that will help him to lower his gaze and guard his modest.*

Another preliminary matter is in the selection of a bride. The male is allowed, as recommended by the prophet, to see the intended bride, know her physical uprightness so that he will not make any mistake in judging any defect in her that can destroy their relationship or cause any hatred between them thereafter. It is enough for the man to look at both the face and hands of the woman or the lady critically. The would-be bride is also allowed to do the same. With this, he or she can have sufficient idea about her or his personality and beauty. A passionate gaze at the woman or lady or at the man is forbidden for both parties as cited by the Holy Qur'an, Q24:30-31.

However, beauty is not the utmost property one must search for in the bride to be. It is the religion of Allah and piety in that bride that must be the highest feature to look for in marriage; though beauty, wealth and nobility compliment these.

The Prophet says:

تتكح المرأة لأربع: لمالها ولحسبها ولجمالها ولدينها فاظفر بذات الدين تربت يداك.

Meaning:

- *Woman is married for four things: for her wealth, for her nobility (family lineage), for her beauty and for her religion (piety). It is better (for you) to look for a religious one (pious female) for you to gain (at last).*

According to different opinions of scholars and schools of thought, marriage may be a compulsory act (*Wājib*) on a certain male Muslims. It may also be a permissible act (*Mustahabb*) on other individuals. It may also be a detestable act (*Makrūh*) for certain group of people. Marriage

may also be an unlawful act (*Haram*) for another certain set of people according to the Islamic law.

For those individuals who have the means to cater for a wife and children and are afraid that they may transgress the boundary of Allah through illegal sexual act if they do not marry, marriage is compulsory (*Wājib*) for those set of people. Likewise is the case of a woman who sees marriage as the only option for her not to commit illegal sexual intercourse due to her strong sexual urge. Marriage is recommendatory (*Mandūb*) for a person who can control his sexual urge from being tempted by Satan but wishes to have children. A person who has the power to control his sexual urge, unwilling to have children and feels that marriage will not prevent him from performing his duties to his Creator marriage is superogatory (*Mubāh*) on this type of person.

Marriage is detestable (*Makrūh*) for a man who has no sexual urge at all and this will not hurt his wife or he has no love for children or sees that marriage would make him relent in his religious obligations. Marriage is a forbidden act (*Harām*) for an individual who has no sexual urge at all in which the woman can get any sexual satisfaction or has no means to maintain his wife and children or has a serious illness that can affect his wife and the children. Notwithstanding, the Prophet enjoins that piety and righteousness should be the utmost motive of marriage. He was reported to have said:

ثلاثة حق على الله عونهم: المجاهد في سبيل الله، والمكاتب الذي يريد الأداء،
والناكح الذي يريد العفاف

Meaning:

- *There are three persons whom the Almighty Allah has right to assist: He who fights in the cause of Allah, he who seeks to buy his freedom (from slavery), and he who marries with a view to secure his chastity.*

However, there are differences of opinions on the rules guiding marriage among scholars and different schools of thought. These differences can be seen in the references for further readings you are guided to in this course.

As far as the contract is concerned, it must be a type of marriage allowed by Islam and not a bad contract, that is, it must not be made on another valid marital contract. There should not be an iota of deceit in the contract and between the contracting parties. Likewise, the contract must not be between two parties whose marriageability is divinely illegal according to the Sharī‘ah. Such is marriage between blood siblings, between a man and his wife’s blood sister. There must be a direct,

unequivocal proposal and a corresponding acceptance (*Sīghah* or *al-Ījāb wa al-Qabūl*). This must be so explicit, devoid of ambiguity, oral - in case the contracting parties are present. There must be an unequivocal consent of the woman's guardian (*Waliyy*). This may be her father or any other male father's relative who can stand in place of her father. In case no father or a near relative, the leader of the Muslims can be the guardian. The Prophet says:

أيما امرأة نكحت بغير وليها فنكاحها باطل

Meaning:

- *Any woman who got married without the permission of her guardian, her marriage is null and void.*

There must be at least two male, freeborn, and honest witnesses. They must be Muslims. According to opinion of different scholars being a Muslim is a condition for witness when both parties are Muslims. However, there is a divergent opinion among the schools of thought that if the man is a Muslim and the woman is among the people of the book the two witnesses may differ in religious status - a Muslim and one of the people of the book.

In addition to this, dower (*Mahr* or *Sadaq*) is another basic requirement of marriage contract. It must be paid into the hand of the lady or woman. Its material varies. It may be in form of money or other valuable materials. The Prophet was reported to have said:

لا نكاح إلا بولي وصداق وشاهدي عدل.

Meaning:

- *Marriage is not valid except with a guardian, dower and two upright witnesses.*

Marriage feast (*Walimah*) is considered by the scholars of school of jurisprudence as *Sunnah Mu'akkadah*. It is a condition laid down by the Prophet. He was reported to have said while his daughter Fatimah was being married to 'Ali:

إنه لا بد للعرس من وليمة.

Meaning:

- *The bridegroom must prepare a marriage feast.*

Among the conditions that must be fulfilled by the parties themselves are:

- Each of them must be a sane person.
- Both of them must be matured persons. In case the female is not all that mature (i.e., she is a minor) her guardian must represent her.
- The male party must be a Muslim while the female must be a Muslim or a woman from the people of the book (Jews or Christian). If any of the two parties is a polytheist marriage between them is strongly forbidden as stated in Q2:221.

ولا تتكحوا المشركات حتى يؤمن ولأمة مؤمنة خير من مشركة ولو أعجبتكم ولا تتكحوا المشركين حتى يؤمنوا ولعبد مؤمن خير من مشرك ولو أعجبكم أولئك يدعون على النار والله يدعو إلى الجنة والمغفرة بإذنه ويبين آياته للناس لعلهم يتذكرون.

Meaning:

- *And do not marry polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men (to your women) until they believe. And a believing slave is better than a polytheist, even though he might please you. Those invite (you) to the fire, but Allah invites paradise and to forgiveness, by His permission. And he makes clear his verses (i.e., ordinances to the people) that perhaps they may remember.*

There must not be element of coercion upon the part of each party into the contract.

Your references/further readings will provide for you a comprehensive detail of these differences of opinion by the scholars and the schools of thought.

SELF-ASSESSMENT EXERCISE

Analyse the preliminaries of marriage and discuss the requirements of marriage.

4.0 CONCLUSION

The aim of the Islamic law as far as marriage is concerned is to build a family tie devoid of cheating and falsehood. Therefore, marriage is made a contract between two parties - male and female. When one says something is a contract, it means that there will be a laid down rules and regulation guiding such contract. The breach of any of these rules and regulation will render the contract null and void. Marriage is henceforth

not a do- or- die affair. It is legal and acceptable in as much as the terms of the contract are complied with and vice-versa. In addition to this, it is a covenant between the two parties and their Lord, Allah, whose rules and regulation must be followed in the marriage contract. Thus, it is a form of worship (*Ibadah*) in the religion of Islam.

5.0 SUMMARY

In this unit, we have treated the preliminaries, requirements, rules and regulations guiding marriage contract as well as the religious implication of marriage. You should be able to analyse these whenever you are asked to do so.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the contractual elements of marriage.
2. Analyse the preliminaries of marriage.
3. Evaluate the basic requirements of marriage strengthened with Qur'ānic verses and the prophetic traditions.

7.0 REFERENCES/FURTHER READING

- Abu Bakr Jabir al-Jazairi (1995). *Minhāj al- Muslim*. Beirut: Dar El-Fikr.
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UNIT 3 PROHIBITED DEGREES OF MARRIAGE

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Permanently Prohibited Degrees of Females
 - 3.2 Temporarily Prohibited Degrees of Females
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

There is a restriction to the type of female, a Muslim can marry. For any marriage to be a valid and legal one the woman must not be among the prohibited degrees of marriage. This prohibition may be caused by blood affinity (*an-Nasab*), in-lawship (*al-Muṣaharah*), breast-feeding (*ar-Radā`*) or certain conditions. The two types of the prohibitions are analysed in this unit.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- state the three causes of prohibitions on marriage with a type of female
- enumerate the women under the permanently prohibited degrees
- highlight the women under the temporarily prohibited degrees.

3.0 MAIN CONTENT

We have two types of prohibitions from marriage, namely: permanent degrees of prohibition (*al-Muharramat Mu'abbadan*), and temporary degrees of prohibition (*al-Muharramat Mu'aqqatan*).

3.1 Permanently Prohibited Degrees of Females (*al-muharramāt al-mu'abbadan*)

The set of females in this category that are forbidden for a man to marry are:

- The man's mother
- His step mother(s)
- His grandmother(s); however high

- His daughter(s); however down
- His sister(s); full or consanguine or uterine sisters
- His father's sister(s); including the grandfather's sister(s)
- His mother's sister(s) including the grandmother's sister(s)
- His brother's daughter(s)
- His sister's daughter(s)
- His foster sister
- His foster mother's sister(s)
- His wife's mother
- His step daughter (such a daughter should have been born to his wife with whom he has consummated his relationship. If they have not consummated the marriage there is no prohibition)
- His son's wife (this does not include wives of persons whom one adopts).

All these are expressed in Q4:22-24:

"ولاتنكحوا ما نكح آباؤكم من النساء إلا ما قد سلف إنه كان فاحشة ومقتا وساء سبيلاً. حرمت عليكم أمهاتكم وبناتكم وأخواتكم وعماتكم وخالاتكم وبنات الأخ وبنات الأخت وأمهاتكم اللاتي أرضعنكم وأخواتكم من الرضاعة وأمهات نسائكم وربائكم اللاتي في حجوركم من نسائكم اللاتي دخلتم بهن فإن لم تكونوا دخلتم بهن فلا جناح عليكم وحلائل أبنائكم الذين من أصلابكم اللاتي دخلتم بهن فإن لم تكونوا دخلتم بهن فلا جناح عليكم وحلائل أبنائكم الذين من أصلابكم وأن تجمعوا بين الأختين إلا ما قد سلف إن الله كان غفوراً رحيماً."

Meaning:

- *And do not marry those (women) whom your fathers married except what has already occurred (before Islam). Indeed, it was an immorality and hateful (to Allah) and was evil as a way. Prohibited to you (for marriage) are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your (milk) mothers who nursed you, your sisters through nursing, your wives' mothers, and your step-daughters under your guardianship(born) of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And (also prohibited are) the wives of your sons who are from your (own) loins, and that you take (in marriage) two sisters simultaneously, except for what has already occurred (before Islam). Indeed, Allah is ever forgiving and merciful.*

All the types of women forbidden for a Muslim permanently are expressed in these two verses and they are those women mentioned in this unit above.

3.2 Temporarily Prohibited Degrees of Females (*Muharramāt Mu'aqqatah*)

Temporary prohibition means that a man can still marry those women forbidden for him to marry when the circumstance surrounding the prohibition is lifted and removed. Those sets of women under this category are as follows:

- A sister to a man's wife who is still alive under the man's custody. As soon as the wife is dead her sister is no more prohibited for the man. This is evident in the second verse quoted above.
- A married woman whose marriage contract has not been terminated either by death of his husband or by a divorce. When his husband dies or he divorces her and her waiting period (*Iddah*) has lapsed the prohibition has ended.
- A woman in her waiting period (*Iddah*) is under temporary prohibition for marriage. This is seen in Q2 :235:

"... ولا تعزموا عقدة النكاح حتى يبلغ الكتاب أجله..."

Meaning:

- ...*And do not determine to undertake a marriage contract until the decreed period ('Iddah) reaches its end...*

A woman after the fourth wife in a man's house is prohibited. The prohibition is removed immediately a man's wives are less than four. This is because of the prohibition on a Muslim to marry not more than four wives.

SELF-ASSESSMENT EXERCISE

Evaluate and criticise the wisdom behind the prohibited degrees of marriage.

4.0 CONCLUSION

Prohibitions on certain set of women are bounds of Allah that must not be transgressed. The temporary ones are terminal while the permanent ones are till eternity. Any transgression to this provision renders such marriage illegal, null and void in the Islamic law.

5.0 SUMMARY

Prohibited degrees of marriage are of two types: permanent temporary prohibitions. Permanent prohibitions are caused either by blood affinity

(*an-Nasab*), or in-lawship (*al-Muṣāharah*), or breast feeding (*ar-Radā*) while temporary prohibitions are caused either by blood relationship between a woman and a man's wife who is alive, or valid marriage contract, or certain the Islamic rules regarding concept marriage; such as *'iddah* and restriction of man's wives to four. You should be able to enumerate the categories of women under this prohibition whenever you are asked to do so.

6.0 TUTOR-MARKED ASSIGNMENT

1. State the three causes of permanent prohibitions on marriage.
2. Evaluate the women under the permanently prohibited degree.
3. Enumerate the women under the temporarily prohibited degree.
4. Highlight the causes of temporary prohibitions.

7.0 REFERENCES/FURTHER READING

Abu Bakr Jabir al-Jazairi (1995). *Minhaj al- Muslim*. Beirut: Dar El-Fikr.

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UNIT 4 MARRIAGE WITH NON-MUSLIMS

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Marriage with a Non-Muslim
 - 3.2 Marriage with People of the Book
 - 3.3 Marriage with Şābiūn and Majūs
 - 3.4 Marriage with Polytheists
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Marriage constitutes a very important aspect of religion in Islam. Therefore, it must not be treated with levity or be trivialised. With the religion of Islam, mankind is called into the way of Allah in its entirety. Marriage could help to sustain the answer to this call or otherwise. In this unit, we shall deal with the Islamic view on marriage with non-Muslims; either Jews, Christians, Şābiūn, Zoroastrians or Polytheists.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- evaluate the Islamic view on marriage of a male Muslim with a Christian or a Jewish female
- criticise marriage of a female Muslim with a non-male Muslim
- explain the Islamic view on marriage of a male Muslim with a polytheist female
- enumerate the advantages in a marriage between a male Muslim and a female Muslim.

3.0 MAIN CONTENT

3.1 Marriage with a Non-Muslim

A Muslim marriage with a non-Muslim can be of two types: a Muslim man married to a non-Muslim or a Muslim woman married to a non-Muslim. The non-Muslim may be people of the book or polytheist or those whose scholars differ on their religious status: whether they are people of the book or polytheist, marriage in Islam, among other things,

is supposed to be an institution where both husband and wife help each other to improve spiritually for success in the life after. This objective could not be achieved in a home where husband and wife hold different and opposing worldly views and perspective of truth and reality. And at the same time each party views the other as being on the wrong religious path.

3.2 Marriage with People of the Book (*AHLUL-KITAB*)

The people of the book (*Ahlul- Kitab*) are the Christians and Jews. A Muslim man is allowed to marry a Christian or a Jewish woman. This is permitted with a non-abrogated verse of the Holy *Qur'ān* and a consensus of opinion of the '*Ulamā*'. Q5:5 says:

اليوم أحل لكم الطيبات وطعام الذين أوتوا الكتاب حل لكم وطعامكم حل لهم
والمحصنات من المؤمنات والمحصنات من الذين أوتوا الكتاب من قبلكم إذا آتيتموهن
أجورهن محصنين غير مسافحين ولا متخذي أخدان...

Meaning:

- *This day (all) good foods have been made lawful, and the food of those who were given the scripture is lawful for you and your food is lawful for them. And (lawful in marriage are) chaste women from among the believers and chaste women from among those who were given the Scripture before you, when you have given them their due compensation, desiring chastity, not unlawful sexual intercourse or taking (secret lovers...).*

However, despite the fact that some of the companions of the Prophet and their followers (such as 'Uthmān, Talhah and Mujāhid married women of the Book) Ibn 'Umar disagreed with their decision. According to him, anybody who calls a Prophet of Allah, Lord is a polytheist. On this ground a Muslim should not marry them. According to the exercise of certain scholars marriage with a *Kitābī* woman is discouraged when there are many Muslim women yet to be married in the society. This is because they would not get married to *Kitābī* men; Muslim men are encouraged to marry them. There are different views from schools of thought regarding this type of marriage. None of them is compelled to a rule that must be followed in consideration of their religious belief. The Maliki says that marriage is detestable (*Makrūh*). The Hanafī school also disapproves of such marriages, most importantly when the woman is from a place of war (*Dār al-harb*). In addition to this, many scholars opine that, that type of marriage is detestable (*Makrūh*). This is with regard to some circumstances. The most essential of them is that the laws and rules guiding the types of food a Muslim should eat, the type of drink he should have, the ethical values that should be followed in a Muslim home is strongly and likely to be hindered by such marriage.

Many of the unlawful foods forbidden in Islam may be delicious to the Christian or Jewish woman living under a Muslim man. As a result of this, her children for the Muslim man may not be properly trained Islamically; thus, breeding mediocre Muslims/half-baked Muslims or non-Muslims out of a Muslim home.

It was recorded that those companions of the Prophet and their followers that were married to Christian or Jewish women were very strong and smart in handling the relationship. Consequently, their children were not influenced by their non-Muslim mothers. Unlike this present age when religion has become a burning fire stick that is very difficult to handle. Marriage to a Christian woman or a Jewish woman may cause a big problem in the home. In the same vein, female Muslims are more than enough in our communities now.

3.3 Marriage with Ṣābiūn and Majūs

Sabians are the communities who do not have any particular religion. Their beliefs fall in-between the belief of the Zoroastrians, Jews and the Christians. Ibn Kathīr, in his commentary of the *Qur'ān*, says that the Sabians lived in the vicinity of Iraq. They knew Allah and had their own *Sharī'ah*. They used to pray in the direction other than the *Qiblah*. They also used to worship angels. Abdur Rahman bn Zayd says that they lived in the Island of Mosul and used to say '*La ilaha illa Allah*' but they do not practice it, and they have no book or prophet. The polytheists in Makkah used to say to the companions of the Prophet that:

هؤلاء الصابئون يشبهونهم في قول لا غله إلا الله

Meaning:

- *These Sabians resemble them (companions) in saying La ilaha illa Allah.*

Al- Qurtubī says that some scholars consider them as monotheists and that they believe in stars and its effects. Ar- Rāzī opines that they are people who believe in and worship the planets.

Scholars have different history on the Sabians. Based on these different understandings on their essence, some scholars opine that they should be treated as people of the book whose book had been distorted. Thus, a Muslim is permitted to marry a Sabian lady. We have some scholars as well who have their doubts on marriage with them. This is because their belief in the real sense is not clear. They may be treated as the people of the book if the principle of their faith is the same with that of the Jews and the Christians. With this, marriage with them is permitted. Contrarily, if the principle of their belief is not the same with that of the

people of the book, they will then be considered as polytheists. On that basis marriage with them will not be permitted.

As far as Majūs, the worshipper of fire, (Zoroastrian) is concerned, Ibn an- Nadhir says that marriage with their ladies or eating meat of animals slaughtered by them is not forbidden. It was reported that Umar bn al-Khattāb once said:

ما أدري كيف أصنع في أمرهم

Meaning:

- *I do not know how to handle their (Majus) affair.*

Abdu `r-Rahmān bn Awf replied him that he heard the Prophet say:

سنوا بهم سنة أهل الكتاب.

Meaning:

- *Treat them in the same way as Ahl al- Kitāb.*

This is a proof that they are not among the people of the book. Abu Thawr opined that marriage with Zoroastrians is lawful. This is based on their affirmation of their religion tax payment just as the Jews and the Christians.

3.4 Marriage with Polytheists

Marriage between a Muslim and a Polytheist is strongly condemned in Islam. Either a male or a female Muslim, there must not be a marital relationship between him/her and a polytheist partner. The Qur'an in Q2:221:

ولا تتكحوا المشركات حتى يؤمنن ولأمة مؤمنة خير من مشركة ولو أعجبتكم ولا تتكحوا المشركين حتى يؤمنوا ولعبد مؤمن خير من مشرك ولو أعجبكم أولئك يدعون على النار والمغفرة بإذنه ويبين آياته للناس لعلهم يتذكروا والله يدعو إلى الجنة

Meaning:

- *And do not marry Polytheistic women until they believe. And a believing slave woman is better than a polytheist, even though she might please you. And do not marry Polytheistic men to your women until they believe. And a believing slave is better than a polytheist, even though he might please you. Those invite (you) to the fire, but Allah invites paradise and to forgiveness, by His permission. And he makes clear his verses i.e., ordinances to the people that perhaps they may remember.*

The reason for this is expressed in the verse: a Muslim woman assists in following the path of Allah, while the Polytheist will eventually lead astray or adulterate a Muslim's faith, thus, leading him/her into hell fire in the hereafter.

SELF-ASSESSMENT EXERCISE

What can you say on marriage of Christian's ladies by Muslim in this our age in Nigeria?

4.0 CONCLUSION

The essence of marriage in Islam is more than mere worldly comfort, it is significantly important in building a life that will eventually lead the home into the eternal comfort. This is a confirmation of spiritual essence of a marriage. Marriage with a Christian or Jewish woman is discouraged in this era; though the law that permits it is still binding. The opposite of this is vehemently forbidden, that is, a Muslim woman should not marry a man from both the Christian and the Jew's family. In the case of marriage with the polytheist, both the male and the female Muslims are forbidden to take a partner(s) among them.

5.0 SUMMARY

Non-Muslims who are treated in this unit are: The people of the book (Christians and Jews), the Sabians, the Zoroastrians, and the polytheists. Marriage with any of them needs an explanatory discussion as described above. A Muslim man or woman is forbidden to have any marital affair with a pagan fellow until he/she is converted into Islam willingly. In the case of marriage with people of the book a Muslim woman is forbidden to marry either a Christian or a Jew while a Muslim man is permitted by the law to do same but is discouraged from some certain circumstances that are liable to hinder the relationship religiously. As far as the Sabian and the Zoroastrians are concerned, marriage with their women advances different views.

6.0 TUTOR-MARKED ASSIGNMENT

1. Evaluate the Islamic view on marriage of a male Muslim with a Christian or Jewish woman.
2. Assess critically marriage of a female Muslim with a non-male Muslim.
3. Explain the Islamic view on marriage of a male Muslim with a polytheist female.
4. Enumerate the advantages in a marriage between a male Muslim and a female Muslim.
5. Describe Muslim marriage with the Sabians and Magians men/women.

7.0 REFERENCES/FURTHER READING

- Abu Bakr Jabir al-Jazairi (1995). *Minhaj al- Muslim*. Beirut: Dar El-Fikr.
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MODULE 2 SPECIAL UNDERSTANDING ON MARRIAGE

| | |
|--------|------------------------------------|
| Unit 1 | Role of Husband and Wife in a Home |
| Unit 2 | Parents' Rights in a Muslim Home |
| Unit 3 | Polygamy: A Restricted Opportunity |

UNIT 1 ROLE OF HUSBAND AND WIFE IN A HOME

CONTENTS

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1.0 INTRODUCTION

Marriage in Islam confers duties on each of the couple. Some of these duties are reciprocal while some are complementary. At the same time, some are unitarily handled by each party. The defect of a partner in dispensing his/her roles in a home will hinder the very meaningful life presumed by the marriage.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- state the reciprocal roles that are to be performed by the couple
- describe the roles of a wife in her husband's home according to the Islamic law
- explain the roles of a husband to his wife according to the Islamic law
- describe how these roles could be played by both parties to achieve the benefits of marriage in the Islamic law.

3.0 MAIN CONTENT

The rights of one partner in a marriage is another partner's obligations/duties and vice-versa. There are some rights that are shared by both parties likewise; there are duties that are shared by both of them.

3.1 Reciprocal Roles between the Couple

Some of the roles shared by both parties are that:

- Both of them should accord due respect and maximum honour to each other.
- Both of them are entitled to good marital relationship and sexual enjoyment from his/her partner.
- Each of them should give due honour and respect to the relative of his/her partner.
- Each of them is entitled to inheritance from the estate left behind after the death of his/her partner.
- Each of them should keep the secret of his/her partner.

3.2 The Role of the Husband in a Marriage

In an Islamic home the husband has some roles or duties that must be carried out as conferred on him by the law. Men are tagged as the “*QAWWAMŪN*” that is, the protectors and the maintainers of women, in the *Qur'ān*. This is due to the maintenance responsibility imposed on men by Allah. This can be seen in Q4:34:

الرجال قوامون على النساء بما فضل الله بعضهم على بعض وبما أنفقوا من أموالهم ...

Meaning:

- *Men are in charge of women by (right of) what Allah has given one over the other and what they spend (for maintenance) from their wealth.*

Some of these roles are done with materials while others are immaterial.

Among the material roles are:

- Giving the wife her dower (*Mahr or Ṣadāq*). This is one of the duties of the husband that must be fulfilled before the marriage could be considered legal. The dower is given in any materials the woman prefers. It may be money, jewelries, or other materials. Its mode of payment depends on the agreement between both parties. It may be paid in installments. It may also be deferred. The woman may also return part of the dower to his husband. At the same time it may be paid immediately before the

contract is sealed. Whichever way it takes it is a right of the woman and the duty on the man that must not be jettisoned. The Holy *Qur'ān* says:

وَأَتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِينًا مَرِيئًا.

Meaning:

- *And give the women (upon marriage) their (bridal) gift graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease.*

Maintenance (*An –Nafaqah*). It is the duty of the man to provide for the maintenance of his wife as spelt out in the aforementioned verse of the *Qur'ān*. This includes provision for her feeding, clothing, shelter, services, health care and all the expenses that corroborate the well being of the home. This is made obligatory on the husband by the *Qur'ān*, the Prophetic traditions and the consensus of the '*Ulamā*'. In *Qur'ān* 2:233:

. وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا..

Meaning:

- *...And upon the father is their (i.e. the mothers') provision and their clothing according to what is acceptable. No person is charged with more than his capacity.*

In another verse Q65: 6 Allah says:

أَسْكِنُوهُمْ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجْدِكُمْ وَلَا تُضَارِّهِمْ لِتَضْيِقُوا عَلَيْهِمْ وَإِنْ كُنَّ أَوْلَاتٍ حَمَلْنَ فَانْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ...

Meaning:

- *Lodge them (in a section) of where you dwell out of your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth...*

Among the traditions of the prophet in support of this maintenance are:

أحدنا عليه؟... قال: عن معاوية القشيري رضي الله عنه قال: قلت: يا رسول الله ما حق زوجة تطعمها ولا تقبح ولا تهجر إلا في البيت. " إذا طعمت وتكسوها اكتسيت، ولا تضرب الوجه

Meaning:

- *Related by Muawiyah al-Qushayri, may Allah be pleased with him, He said: I said oh the Messenger of Allah what is the right of our wives on us? The prophet said: You should feed her when you eat, you should clothe her when you clothe yourself, don't ever beat the face (of the wife), don't insult (her) and don't neglect her except in the house.*

Except the woman proves recalcitrant (*Nushūz*) to her husband for no cause should he leave her not catered for according to his capability. Failure to give all this provision intentionally amounts to sin before the wife and then before Allah.

Among the immaterial aspect of the obligations of the husband is just and fair play among the wives, provided they are more than one, as much as possible in terms of his material division among them; such as division of days of sleep, division of properties brought home, division of meal, quality of the cloth bought for each of them, accessibility to each wife, etc. A Muslim should be fair in handling this among his wives lest he falls into sin that attracts penalty alive and hereafter.

Among the penalty for that in this life is that the home may/will not know peace while among that of the hereafter is that the man would be resurrected as a deformed being as said by the Prophet. A husband is commanded by the law of Allah to treat his wife with equity, to respect her feelings, and show her kindness and consideration, especially if he has any other wife.

Nevertheless, the man may not be able to be fair and just in terms of love. This is because the control of the heart is in the hand of the Creator, Allah. He can twist it whichever direction He likes. The Prophet was reported that he used to distribute things among his wives in a just and fair manner. However, he used to pray to Allah to pardon him on what he did not have its control (i.e., his heart). The prayer of the Prophet on this goes thus

اللهم هذا قسمي فيما أملك فلا تلمني فيما لا أملك وتملك

Meaning:

- *Oh Allah this is my distribution on what I have power, I beseech you not to hold me responsible for what I have no power and you have power (on it).*

It was explained that what the Prophet referred to in this prayer as what he had no power over is the love for his wives. This is because human beings' hearts are controlled by their Creator to any direction He wishes at any point in time.

3.3 The Role of Wife in a Marriage

Among the duties of the wife which are the husband's rights in the Islamic home are as follows:

- She should always bring happiness to her husband always and should be a comforter also.
- The woman should not deny her husband sexual pleasure for no genuine reason.
- She should not disobey him in any way except that which runs against the will of Allah.
- She should protect herself from any illicit act as well as protect her husband's properties in the home.
- She should keep herself attractive always for her husband and keep her husband's house tidy always.
- She has to keep away from any work that can hinder the survival of her marriage.
- Anybody whose visit to their home is forbidden by her husband should not be entertained by the wife.

This can be understood in many traditions of the prophet. Among them:

خير النساء من إذا نظرت إليها سرتك، وإذا أمرتها أطاعتك، وإذا غبت
وإذا دعوتها إلى فراشك أبرتك عنها حفظتك في نفسها ومالك

Meaning:

- *The best of the women is the one when you look at her you get joy, when you command her she obeys you, when you are not with her she protects you in herself and in your property and when you invite her to your bed she does well.*

SELF-ASSESSMENT EXERCISE

Evaluate the role of a husband as the protector and the maintainer 'Qawwām' of the house.

4.0 CONCLUSION

In this unit we have been able to discuss issues on the roles of each party in a marriage contracted in the Islamic law. The rights given to women in Islam are more and better than what other systems or religions might give to their women fold. If each part plays his/her roles with the fear of Allah which is the ultimate goal in keeping a home, the resultant effect of this would be a better society groomed for the attainment of everlasting bliss in the hereafter.

5.0 SUMMARY

Islam divides roles between a man and his wife. It also makes the role complimentary in many cases. The right of a party confers an obligation on the other and vice versa. This shows how far Islam respects women in the community of mankind and makes their impact a must -be-felt in the society. Men are not given absolute power in their home. Women also enjoy some power that can check that of the man in spite of the appellation given to man by Allah (*qawwamun*) that is the poles. This is epitomised in the life of the Prophet with his wives. He used to help them in carrying out house works as well as give them honour that is rightly due.

6.0 TUTOR-MARKED ASSIGNMENT

What are the roles of a wife in her husband's house under Islamic law?

7.0 REFERENCES/FURTHER READING

Bakhtiar, L. (1996). *Encyclopedia of Islamic Law: A Compendium of the Views of the Major Schools*. Chicago: ABC International Group Inc.

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UNIT 2 PARENTS' RIGHTS IN A MUSLIM HOME

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 4.0 Main Content
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Islam enjoins each individual to respect the rights of his/her neighbour; Muslim or non-Muslim. Just as the children have rights that must be delivered by their parents as obligations, the parents also have rights which are the children's obligations as emphasised in the law. In this unit we shall look at these rights and Islamic law stipulations on them.

2.0 OBJECTIVES

At the end this unit, you should be able to:

- examine the texts that listed the obligation children have to their parents
- evaluate the rule that says that disobedience to parents are grave sins because of what the parents went through in the child's upbringing
- compare and contrast the parents' rights on their children in both the Islamic system and the western system.

3.0 MAIN CONTENT

Naturally, it is obvious or believed that the elderly ones demand respect from the younger ones while the younger ones deserve kindness and care from the elders. However, Islam makes it as an obligation on both the parents and the children to discharge their individual duty as complementary to each other. It is rather a religious duty than a social one on the child to give their parents their due rights. This is because of the physiological natural tendency for the parents to grow older and older in such a way that they are bound to be physically weak and mentally feeble. It is a condition that is prone to impatience, energy lost, great sensitivity, and at time, misjudgment. Children, at this period in the life of the parents, may not be able to cope with this condition. For the parent not to be at the receiving end at that point in time Allah

commands (and not just ordinary advice) that they should be taken care of by the children. Notwithstanding, either the parents reach this stage of old age in life or not children, minor or matured, are enjoined to obey their parents in all commands except that one that has negative impact on the spiritual aspect of child's life. That is, any command that calls the child to having other god(s) with the Supreme Being. Since the individual is directly responsible to the Supreme Being, he must make his religious choice independently without regard to anyone else, his parents inclusively. The ordinance on the right of parents is seen in some Qur'ānic verses such as: Q6:151, 31:14-15, and 17:23-24. In Q17:23-24, Allah says:

وقضى ربك ألا تعبدوا إلا إياه وبالوالدين إحساناً إما يبلغن عندك الكبر أحدهما أو كلاهما فلا تقل لهما أفٍ ولا تنهرهما وقل لهما قولاً كريماً, اخفض لهما جناح الذل من الرحمة وقل رب ارحمهما كما ربياني صغيراً.

Meaning:

- *And your Lord has decreed that you not worship except Him, and to parents, good treatment. Whether one or both of them reach old age (while) with you, say not to them (so much as), "uff" (an expression of disapproval or irritation) and do not repel them but speak to them a noble word. And lower to them the wing of humility out of mercy and say, "My Lord, have mercy upon them as they brought me up (when I was) small.*

Some Prophetic traditions are in support of this. One of them says:

" اجتنبوا سبع موبقات: الإشراف بالله، عقوق الوالدين....."

Meaning:

- *Refrain from seven destroyers: Worshipping other deities with Allah, sinning against the parents*

Another tradition says:

"..رغم أنف رجل رغم أنف رجل أدرك أحد أبويه أو كلاهما عنده الكبر ولم يدخل الجنة".

Meaning:

- *Shame on a person, shame on a person, shame on a person who witnesses his parents' old age and does not enter the paradise (through that).*

From the above texts from the *Qur'ān* and *Hadīth*, it is obvious that doing goods to one's parent is more of a religious act than being a social/moral norm. How a child should handle his/her parent when they

are old is explicitly explained in the above verse of the *Qur'ān* while that prophetic tradition describes the reward for doing that in the hereafter.

Moreover, there is a clear demarcation between Allah's right and that of the parents upon a child. Parents are not entitled to impose their religious convictions upon their wards; though they deserve mercy, compassion, consideration, kindness and reverence from the children. Each individual is answerable to his Lord/Allah. No matter how big, powerful and influential one of the parents is or the two of them, sentiment should not be used in religious affair. This can be seen in some of the verses of the *Qur'ān*. Among them are: Q4:135, 9:23-24, 28: 22, 31:33. Whenever there is an uncompromising conflict between Allah's right and parents' right that of Allah must overrule.

In addition to the aforementioned, the *Ihsan* mentioned in the *Qur'ān* connotes that which is right, good, appreciable, admirable and beautiful. This, to the parents may be kindness, conscientiousness, compassion, charity, obedience, support, maintenance, comfort, health care among other things. After the parents' demise the *Ihsān* still continues in Islam. A prophetic tradition addresses this as follows:

"عن أبي سئل وهو مالك بن ربيعة الساعدي قال: بينما أنا جالس عند رسول الله صلى الله عليه وسلم إذ جاءه رجل من الأنصار ، فقال: يارسول الله ، هل بقي علي من بر أبوي شيء بعد موتهما أبرهما به؟ قال: نعم خصال أربع : الصلاة عليهما والاستغفار لهما وإنفاذ عهدهما وإكرام صديقهما وصللة الرحم التي لا رحم لك إلا من قبلهما فهو الذي بقي عليك من برهما بعد موتهما".

Meaning:

- *Narrated by Abu Sayl, Mālik bn Rabi'ah as- Sa'idiyy who said: I was sitting with the Messenger of Allah when an Ansar man came to him. He asked (the Prophet): Oh he Messenger of Allah, is there any (parents' good/right) remaining upon me to be done after their demise? He (the Messenger) said: Yes, it is four things (you should do after their demise): Prayer for them, seeking (Allah's) forgiveness for them, fulfilling their promise, honouring their friends, and joining the (relative) cords which you would not have had save them. This is what is remaining upon you after their death.*

The prophet told the man in the above tradition four acts that should be done for the demised parents: prayer for them as it is done while they are alive, seeking from Allah forgiveness for them, respecting and honouring their friends and intimates, as well as tying the blood relations left behind by the parents. All of these are parents' rights and invariably child's obligations.

SELF-ASSESSMENT EXERCISE

Compare and contrast the importance of parents' right and child right with proofs from the texts (Quran and Hadith).

4.0 CONCLUSION

Every right owner imposes a duty on another person and vice-versa. Parents' rights are somehow majestic due to its place in the *Qur'ān*. It always comes directly after forbidding of polytheism, which is Allah's right. Likewise, the rigorous stress passed through by the parents since the conception till the time the child becomes matured and is able to cater for himself/herself can never be over-emphasised.

6.0 SUMMARY

It is an obligation on the children to obey their parents provided the parents' command do not go against the worship of Allah only. Parents are also to enjoy their children mercy, compassion, charity, goodness, conscientiousness, maintenance, above all, all that *ihsan* entails. The parents' rights on their children transcend the ephemeral life. Rather, it continues after their death.

6.0 TUTOR-MARKED ASSIGNMENT

1. Examine the texts that command as obligation on children to obey their parents.
2. Evaluate the rule that says that doing bad to one's parents and disobedience to them is a grave sin as a recompense for what the parents have encountered while preparing for the birth of the child and during his/her upbringing till his/her maturity.
3. Compare and contrast the parent's rights on their children in both the Islamic system and the Western system.

7.0 REFERENCES/FURTHER READING

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The Glorious Qur'an.

UNIT 3 POLYGAMY: A RESTRICTED OPPORTUNITY

CONTENTS

- 1.0 Introduction
- 3.0 Objectives
- 3.0 Main Content
 - 3.1 What is the Concept of Polygamy in the Islamic Law?
 - 3.2 Conditions that Can Call for Polygamy in Islam
 - 3.3 Reason for the Type of Polygamy Practised by the Prophet
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Different religions and different systems have different types of marriage practised by their adherents. Some are monogamous, while some are polygamous. It is not a new idea with Islam. Islam allows marriage with more than one wife with conditions and strongly restricted it while polyandry is illegal. This unit takes a look at the concept of polygamy in the Islamic Family Law.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the wisdom behind the permissibility of polygamy in the Islamic law
- define the type of polygamy allowed in Islam
- describe conditions that may call for more than one wife in Islam
- justify the reason for the polygamy practised by the Prophet as opposed to the false allegation leveled against him by the enemies of Islam tagging the Prophet a promiscuous fellow.

3.0 MAIN CONTENT

3.1 What is the Concept of Polygamy in the Islamic Law?

When a man marries more than one wife, it is a phenomenon called polygyny. It is a practice pre-Islamic Arabs were known for as well as other Abraham's faithful before the coming of Islam, Jewish religion and Christianity. All the Prophets mentioned in the Talmud, the Old Testament and the holy *Qur'ān* practised it. The ancient great nations, such as the Persians, the Babylonians and the Greeks practised

polygamy. It is also a practice rampant among different tribes in Africa. However, the way these nations deal with women shows that women are treated in an unequal status with men, just like a property one can handle anyhow or like a slave that can be dealt with according to one's whims and caprices in the society.

Islam came to abolish this type of unequal and unfair treatment of women. It also came to handle human beings in an objective manner to what their needs really are. Hence, it establishes a restricted polygamy or what we would call tetragamy as an alternative to and with a view to solving some significant problems in an Islamic home.

Islam checkmated the unlimited polygamy practised in Arabia before Islam and restricted it to maximum of four wives for a man. It also prohibited polyandry that was practised by women (most especially, the slave girls with the authority of their masters) in Arabia before Islam where a woman would go and co-habit with many men and later impose the pregnancy from such obnoxious act to one of those men thereafter.

The argument that Allah has condemned polygamy in another verse of the Holy *Qur'ān* is not substantial. Islam understands the needs of the people and thus objectively provides for this need without impeding the human nature as it is embedded in sexual matters. The only verse that supports restricted polygamy goes thus (Q4:3):

إن خفتم ألا تقسطوا في اليتامى فانكحوا ما طاب لكم من النساء مثنى وثلاث ورباع فإن خفتم ألا تعدلوا فواحدة أو ما ملكت أيمانكم ذلك أدنى ألا تعولوا.

Meaning:

- *And if you fear that you will not deal justly with the orphan girls, then marry those that please you of other women, two or three or four. But if you fear that you will not be just, then (marry only) one or those right hands possess (i.e. slaves). That is more suitable that you may not incline (to injustice).*

The Prophet was reported to have told Hārith bn Qays when he latter embraced Islam, the following statement when he asked the Prophet concerning his wives:

قال أسلمت وعندني ثمانى نسوة فذكر ذلك للنبي صلى الله عليه وسلم، فقال: اختر منهن أربعاً "

Meaning:

- *He said I accepted Islam while I have with me eight wives. He told the Prophet about this, may the peace and blessing of Allah be upon him. The Prophet said: Choose four among them.*

The same command was given to Ghaylan bn Salamah when he embraced Islam and with him were ten wives. The prophet told him that:

" أمسك منهن أربعاً وفارق سائرهن".

Meaning:

- *Hold from them four and release the rest of them.*

3.2 Conditions that Can Call for Polygamy in Islam

Islam does not make polygamy a binding law that must be strictly followed by every Muslim. Rather, it is an alternative to conflict in an Islamic home in particular and in the society in general. Justice and fair play must be ascertained in any deal a Muslim is contracting in, for a man to be just to himself, his wife(s) at home, as well as the community of Muslims there may be a need for another wife. Some of those circumstances that can call for this are as follows:

- When the wife at home is unable to bear a child after a reliable diagnosis from a reliable medical centre. As a result of this, the husband can get another wife who may procreate children for the family.
- If the wife at home is critically ill or suffering from a contagious disease that makes her weak in taking care of the husband and children as well as the up keeping of the home. As a result of this, the man can look for another woman that can feel all the loopholes in the home. Insofar as marriage is not just for procreation but for comfort, happiness and building a viable family as well.
- When the woman at home is old enough to rest more than being active. Consequently, the home will suffer for this her old age. The husband can take another wife in to redress all the areas that need to be taken care of.
- Strong sexual capacity can also lead to having more than a wife. If the man is very sexually capable in such a way that he cannot withstand the patience of coming down to the level of his wife's sexual urge that is so weak, and after medical treatment and spiritual, the case remains the same, he can go ahead and have another wife to complement his thirst for sex.
- At a time when women are many in the Muslim community and no one to take care of them as supporter, a man with a wife can

go ahead to take another wife(s). As a result of this, the society will not suffer the consequences for leaving those women, either widow or divorcee or engaged ladies, not catered for.

- When a wife is wicked and very difficult to redeem, his husband can go ahead to have another woman.
- If a man desires for more children whom his wife at home could not afford to bear he can take another woman in.
- A Muslim can also have another wife in other to redress the weakness he knows in his wife as far as religion is concerned as well as her unsound mind. With another wife, he may acquire the support in piety he desires in his home in building a virile family strengthened with strong faith and piety.

None of the circumstances above should be seen as an opportunity for having another wife without recourse to the conditions guiding it. This is spelt out in the verse that permits polygyny (Q4:3). That is, if you fear that you cannot be just among the wives as far as material distribution among them is concerned and not financially and psychologically buoyant to take another one in, desist from doing it and stay with the one you have only.

3.3 Reason for the Type of Polygamy Practised by the Prophet

The Prophet was both the political and spiritual head of state during his time. He got married at a youthful 25 to a widow who was older than him by 15 years. He maintained the marriage for many years (about 25 years) till the death of his first wife. It was after her death that he could desire to have another woman. Actually, it is obvious that a man is, at most of the time, sexually engrossed while he is young than when he is old and as well be able to play with a young lady with enjoyment much more than at the older period. The prophet that used to advise some of his companions to get married with younger ladies whom they can play with and vice versa did not follow the suit. This is a justification that he was not promiscuous as claimed by the enemies of Islam and the Islamic Family Law. He had his first marriage with a widow older than him at a time his age group would have to marry younger women.

The Prophet later had another wife at the age of fifty while the total number of his wives before his death was eleven. He married all of these women for reasons that must be considered by any head of a community or state or nation. Many of his wives were elderly widows. His marriage with these wives is for various purposes, some of which are:

- To concretise the social and the political bonds between him and some of his companions. This was the case with Abu Bakr (Aishah's father) and Umar (Hafsah's father).

- For humanitarian assistance. This was the case for most of his wives who were largely elderly widows, such as Ummu Salamah, Thuwaybah, Sawdah bint Zam‘ah and Juwayriyyah.
- For political expediency with other tribes. Example of this was Mariyah al- Qibtiyyah an Egyptian Copt, the mother of Ibrahim.
- For the establishment of new legislative matters. Example of this is his marriage to Zaynab bint Jahsh, the former wife of the Prophet’s foster son, Zayd. With this marriage Allah ruled out the law amongst the Arabs that a foster child is like one’s own child whose wife must not be married by his foster father.
- The Prophet was later commanded by Allah not to have more wives with and should not release or divorce any of them (his wives) at the time the law was revealed to restrict polygamy.

SELF-ASSESSMENT EXERCISE

Discuss the circumstances that can propel a man to have more than one wife.

4.0 CONCLUSION

Polygyny is a restricted alternative in Islam which must not be bastardised. It is problem-solving to the day-to-day chaos which is experienced in human society. The numerical strength of women over men as a result of many incidents and circumstances poses threat on the security and protection of the women fold. Many are left without socio-economic care and support. Islam has found a practical solution to this and thus, polygamy may be viewed as a right and provision for women rather than being an advantage for men.

6.0 SUMMARY

Islam permits restricted polygamy (for a man to have maximum of four wives) in certain circumstances with conditions that should be fulfilled before it is done while polyandry is strongly prohibited. *Sharī‘ah* prescribes polygamy for the purpose of achieving peaceful co-existence, harmony, comfort as well as an ideal family build-up that ends ultimately in the eternal bliss. An exemplary life style of the Prophet as far as marriage is concerned where women were considered as precious stones that must be kept well and catered for is an epitome of the type of life the *Sharī‘ah* is calling the Muslims to.

6.0 TUTOR-MARKED ASSIGNMENT

1. Explain the wisdom behind the permissibility of polygamy in the Islamic law.
2. Define the type of polygamy allowed in Islam.
3. Describe conditions that may call for more than one wife in Islam.
4. Justify the reasons for the polygamy practised by the Prophet as opposed to promiscuity leveled against him by the anti-Islam elements.

7.0 REFERENCES/FURTHER READING

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MODULE 3 MARRIAGE AND BUILDING AN IDEAL SOCIETY

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UNIT 1 GUARDIANSHIP AND PATERNITY

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1.0 INTRODUCTION

Guardianship (*Waliyy*) is one of the conditions that must be in place for the validity of marriage in Islam. Marriage contract may be null and void if it is not approved by the guardian in certain circumstances. Paternity is a right that must be enjoyed by every child from his father. It is also a right of a husband whose wife conceives through his semen/spermatozoa. In this unit, more light would be shed on both course and rules guiding them.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define guardianship and paternity
- explain conditions for guardianship
- state the reason for guardianship in marriage as well as the reasons for paternity
- enumerate types of females whose guardianship is important in Islam and the type whose guardianship is not necessary in Islam
- describe what can impair a man from having his paternal right on a child.

3.0 MAIN CONTENT

3.1 Guardianship

Guardianship is of two types: The general one and the particular one. The particular guardianship is the one over a person and over property. The one under study right here is over person(s) which is in marriage contract. Marriage guardianship (*Waliyy*) can be defined as the authority which is legally conferred on a wholly qualified and fully competent person to protect another person who is not independently capable to protect his/her rights and interests. This is the right of the father of the person or nearest male relative to him/her.

There are certain conditions that should be met by a guardian. The guardian must be an adult, free-born, and sane person. These are binding on both the guardian and the guarded. A slave or an insane person or a minor cannot be a guardian. The reason for this is that the latter has no guardianship on him/her not to talk of having it over another person.

In addition to this, the guardian must also be a male relative of the person. However, if the person who is to be guarded happens to be a Muslim, another condition ensues. That is, the guardian must also be a Muslim. Allah has emphatically said in Q4: 141 that:

" ولن يجعل الله للكافرين على المؤمنين سبيلا "

Meaning:

- *And never will Allah give the disbelievers over the believers a way (to come over them).*

Uprightness (*al- 'adālah*) is not considered a condition that must be met by a guardian. This is because immorality cannot deprive a guardian from enjoying the right he legally possesses except if the immorality is so shameful. At this stage, the right would be withdrawn from the person. He cannot be entrusted with the life of the guarded lest he misleads him/her. A guardian must also be of sound mind and of good character.

Different schools of law have different position on type of person that should have a guardian in marriage. The purpose of guardianship clarifies it that it is for the protection of the interests and rights of the guarded. This implies that the types of people that are in need of guardianship are unable to or incapable of protecting themselves and their rights independently without the support of their people. Such people are: the minor, the insane, as well as the inexperienced persons. In marriage, men are more relatively favoured in this regard than

women. Most of the men usually marry women who are younger. In the same vein, men are relatively more experience than women in practical affairs. Minor girls and indeed, the virgin among them are in this category. Not every woman is of this lower character in the real sense. Some women can safeguard their personal interest and individual rights by themselves. Adult female, adult widow, major divorcee are not legally compelled to have guardian when contract marriage with qualified men.

Different opinions regarding what constitutes a woman's lack of experience and what endangers her moral integrity has led to different views on the conditions under which a woman needs a marriage guardian. Her womanhood per se disqualifies her from being a guardian to herself and to other person as well according to a view. A view opines that immaturity of a minor disqualifies her from being a guardian to herself. Therefore, she needs someone to guard her. Another view opines that her social status (nobility and wealth), at times, intensifies are need for a guardian. Each side supports its position with the *Qur'ān* and other principles of law.

The scholars who insist on marriage guardianship consider it a duty rather than a right of the guardian or at least a synthesis of both. Though, the guardian has the right to negotiate and conclude a marriage on behalf of his ward and to give his consent or object to her unwise choice; he should do all this in her best interest. If the guardian acts against the interests or the wishes of the ward, she, provided she is an adult, has a religious- legal right to override his decisions. She can request the legal authorities to annul any marital deal contracted against her wills, wishes or interests.

There is consensus among schools that those actions from a guardian which are for the good and welfare of the ward are valid while those which are at her detriment are invalid. As far as those actions which are neither advantageous nor detrimental to her interest and welfare carry different views from the scholars.

The Shafi'i, Maliki, and Hambali schools are of the opinion that the guardian has the authority in marriage of his sane and major female ward, if she is a virgin. However, if she is a widow or a divorcee his authority is subject to her consent and subservient under her will. The Hanafis are of the view that no one has any authority over a sane, grown-up female irrespective of her being a virgin or a non-virgin. This is binding provided she chooses her equal and does not demand less than a proper dower (*Mahr*) for her marriage. In the case of a minor, insane, and an idiot, the scholars agree that the guardian is authorised to contract marriage on his/her behalf. The Shafi'i, and Hambalī limits this

authority to the case of a minor- virgin or non- virgin. While the Shāfi‘ī and the Ja‘farī considers only the father and the paternal grand-father as competent to contract marriage on behalf of a minor ward, the Mālikī and the Hambalī further limits it to the father and the Hanafī school extends it to other relatives. This includes brothers and uncles. In addition to this, the Hanafī and Shāfi‘ī schools regard a contract of marriage with a mentally retarded person as invalid without the consent of his/her guardian, at the time the Mālikī and the Hambalī schools consider it valid without the consent of the guardian.

3.2 The Order of Priority in Guardianship

There is superiority in the cadre of guardianship of a person among his/her relatives. Schools of thought differ in this regard. The Shāfi‘ī prioritises the father in dispensing the duty of a guardian on his daughter over anyone else. After the father comes the paternal grand-father, then the full brother, then the paternal half-brother, then the brother’s son, then the paternal uncle, followed by the paternal uncle’s son, and so on in the descending order. It is after no one could be traced among the male member of the family that the right goes to the judge.

The Mālikis give priority to the father to be the guardian of his daughter. After him comes the executor of the father’s will, then the son- with no regard to that son’s status in the society. That is, he might either be a legitimate one or an illegitimate one. The brother to the female is next in priority to the son, then, the brother’s son, then the paternal grandfather, the paternal uncle and so on in the descending order. The judge will be saddled with this responsibility if the qualified relatives of the female are exhausted.

The Hanafīs prioritise the son of a female as her guardian, irrespective of his status by being a legitimate son or illegitimate one, after the son comes the son’s son, then the father of the woman, then the paternal grand-father, then the full brother, then, the paternal half-brother, then, the full brother’s son, then, the half- brother’s son, then the paternal uncle, then the paternal uncle’s son, and so on. The executor of the ward’s father’s will have nothing to do with marital guardianship whatsoever according to the Hanafī school of thought.

The Hambalīs gives the father priority over any one else as a guardian in marriage contract. After the father comes the turn of the executor of the father’s will. After this, the turn of other members of the relative in order of the pattern of inheritance ensues. If they are all exhausted, the judge then takes the baton and acts as the guardian to the female.

3.3 Paternity

Paternity is both the father's obligation to and right upon the child. It is the basis on which various legitimate claims may be made by both the father and the child. It is highly consequential relationship with far-reaching implications together with lineage. This makes it imperative to be firmly placed where it actually and rightfully originates. Above all, it cannot entirely rest on individual whims if it is to be effected.

In Islam, child has an inalienable right to legitimacy. Every child is entitled to a father and one father only. It is only in certain abnormal circumstances that this right is hampered. The principle of legitimacy in Islam accords a father to every child in which once the paternity is established it is done irrevocably. This is done for many vital reasons: lineage, marriage, inheritance, provisions, maintenance, social status etc.

The Prophet warned that any woman who misplaces a child's legitimacy by relating its descent to someone who is not responsible for its conception has committed a grave sin alienated herself from Allah and will be denied the bliss of the eternity. Likewise, a father who obscures his child's legitimacy by denying his responsibility for its conception has sinned against Allah and inflicted upon himself universal disgrace.

In Islamic jurisprudence, what may sound unusual or extreme measure in order to ensure the child's right of legitimacy is adopted. This can be seen in the conception-birth span set by various schools of law. The minimum is six lunar month while the maximum is four years. A child born within this range would be regarded as legitimate child of its parents: both the father and the mother, even, after widowhood, divorce or separation and before remarriage and within the four years the infant shall be a legitimate one to the parents. Another point is that if the child is born before six month or after four years before remarriage and the husband still recognises it as his own, the child is still a legitimate one. However, if any infant is born out of wedlock or through adultery or fornication the father would be denied its paternity as a punitive measure for his illicit act as said by the Prophet:

الولد للفراش وللعاهر الحجر

Meaning:

- *The child is to the owner of the bed (that is, the real husband) while the stone is to the adulterer.*

In this case, the child will be ascribed to his/her mother's descent. The denial of an adulterous father his paternity right is considered a punishment to him. It may also be seen as a punishment to the mother

for her snaring in the illicit act. The child is related to her because her maternal right is not questioned. Unfortunately, this denial of paternity right may have psychological implications on the child in the future.

Another action through which legitimacy of a child is denied and the husband's paternity is at the same time denied is in the case of *Li'ān*. It is a phenomenon whereby a man accuses his wife of infidelity and thus swears by Allah four times and invokes the curse of Allah on himself (*La'anatul-llah*) in the fifth time should he be a liar, (Q24: 6- 7). The wife will also be requested to do the same thing four times while she will invoke the wrath of Allah (*Ghadabul-llah*) on herself should she be a liar, (Q24: 8- 9). After this they will be separated irrevocably and the child's paternity to that man will be denied forever while the child's lineage will be joined to her mother's own.

Marriage with a pregnant woman or with a newly acquired slave is discouraged until the former gives birth and the latter is proven to be free from pregnancy. This is to avoid any confusion of lineage and misplacement of legitimacy.

SELF-ASSESSMENT EXERCISE

Through your course of studying this unit draw some inferences on what you think both the lack of guardianship as well as legitimacy for a child can cause in this our contemporary age.

4.0 CONCLUSION

Both the guardian and paternity aim at safeguarding rights and interests of the wards. Islam condemns deceit, falsehood, cheating and any other wrongful act that can emanate from any marital relationship as a result of improper concretisation of the contract which its negative effects are so devilish. For this not to happen, guardianship is established. Likewise, for the human society to be rancour-free paternity is also given a strong support in Islam.

5.0 SUMMARY

There are different types of guardianship; the general one and the particular one. Marriage guardianship falls under the particular guardianship. The unit you studied right now aimed at unveiling issues surrounding marriage guardianship and paternity in Islamic law. Marriage guardianship can be defined as the authority which is legally conferred on a wholly qualified and fully competent person to protect another person who is not independently capable to protect him/herself right and interest in marriage.

In the same vein, paternity is a right of the real man from whose semen a woman conceives the pregnancy in her womb. Paternity of a man whose act toward the impregnation of a woman is considered illegal is denied in Islam. Likewise, a man who goes through the process of *Li'an* also forfeits his own paternity right.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define both guardianship and paternity.
2. Explain conditions for both guardianship and paternity.
3. State the reason(s) for guardianship in marriage.
4. Enumerate types of females whose guardianship is important in Islam and the type whose guardianship is not necessary in Islam.
5. Describe what can impair a man from having his paternal right on a child.
6. Discuss different views hold by schools of thought on the order of priority in guardianship.

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UNIT 2 FAMILY PLANNING AND BIRTH CONTROL IN ISLAM

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 5.0 Main Content
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

There are some mischievous set of people who see Islam as a religion that never plans for the well being of its adherents and thus, alleges Islam as a religion that encourages uncontrolled birth to many children without any consideration. Some of the scholars take extreme position in their judgement for this while some scholars also take an extreme position in judging against it. In this unit, family planning and birth control shall be discussed in accordance with the Islamic law.

2.0 OBJECTIVES

At the end this unit, you should be able to:

- explain what family planning and birth control really look like in Islam
- describe the ways family planning and birth control is done in Islam
- compare the works of the scholars for and against family planning and birth control in Islam.

3.0 MAIN CONTENT

It seems somehow paradoxical to say that Islam does not allow birth control and what we see in our society is where an average Muslim has children more than his non-Muslim neighbour in an average means. Islam discourages killing of a human being. It also discourages abortion of a formed foetus that has passed one hundred and twenty days and thus passes verdict on it as illegal (*Haram*). This is considered to be synonymous with killing a living being. Evidence from both the Qur'an and the traditions of the Prophet that considers it a grave sin however, there are different opinions on this. For example when the mother's life is at stake/danger; should the life of the mother be protected or that of

the unborn baby? There are different opinions on whether an unformed pregnancy could be aborted or not. Some scholars consider it as a detestable act (*Makruh*) for no essential reason. At the same time, other scholars consider it, an illegal act/forbidden (*Haram*) because the child has the right to life and security from the womb. This is why Allah has condemned the intentional killing of a child either before birth or after birth.

In spite of the fact that Islam encourages procreation of many children to enhance numerical strength of the Muslim *Ummah* as said by the Prophet:

تزوجوا الودود الولود فإني مكاثر بكم الأمم يوم القيامة.

Meaning:

- *Marry a loving and fertile (woman), because I will be boast of you (your population) among nations in the day of resurrection".*
It discourages what can endanger one's life, (Q2:195):

... ولا تلقوا بأيديكم إلى التهلكة.

Meaning:

- ... *And do not throw (yourselves) with your (own) hands into destruction...*

Any action that is liable to taking life is strongly abhorred with reference to the above verse of the Holy *Qur'ān*. Family planning and birth control can be viewed with this lens. Though, family planning and birth control is a relatively modern phenomenon which came about as a result of several interrelated factors. Family Planning may be seen as a way of planning the period of child birth between one child and another. Birth control may be seen as a way of preventing pregnancy –when the couple is not ready to have a baby at a particular time for personal reasons.

There must be a clear-cut clarification between taking family planning as a societal compulsory law and individual voluntary measure. Making it the former goes against the divine rule while the latter is allowed by the law. The permission given by the law to the latter can be inferred in the following Qur'ānic verse (Q2: 233):

والوالدات يرضعن أولادهن حولين كاملين لمن أراد أن يتم الرضاعة....

Meaning:

- *Mothers may nurse (i.e., breastfeed) their children two complete years for whoever wishes to complete the nursing (period).*

The law extends the lactation/nursing period up to two full years. The Prophet was reported to have warned against suckling the child by its pregnant mother. By inference, one can combine the Qur'anic verse and the Prophetic tradition and come to the conclusion that Islam calls for some checks on irregular conception and indirectly requires the use of some measures of contraception as far as both the husband and wife are not forbidden from having their sexual enjoyment during the nursing period of their child. There is an agreement among the jurists that married couple may prevent conception by mutual consent, temporarily or permanently, if the prospective child is likely to be vulnerable to any hereditary disease.

The type of birth control practised by some companions of the Prophet was “*Azlu*” meaning withdrawal method. This was reported by a companion called Jabir:

كنا نعزل على عهد رسول الله - ﷺ - والقرءان ينزل

Meaning:

- *We practiced the withdrawal method during the period of the Messenger of Allah – may the peace and blessing of Allah be upon him – and the Qur'an was still being revealed.*

This means that the revelation was still coming for the Prophet and this act was not forbidden for us with any verse of the revelation. In another tradition which says:

كنا نعزل على عهد رسول الله - ﷺ - فبلغ ذلك رسول الله - ﷺ - فلم ينهنا

Meaning:

- *We practiced the withdrawal method during the period of the Messenger of Allah – may the peace and blessing of Allah be upon him – and the Prophet was informed of this, – may the peace and blessing of Allah be upon him – and he did not forbade us (from doing so).*

It was on this many scholars, including some of the companions, (the likes of Sa'd bn Abi Waqas, Zayd bn Thabit, and Ibn 'Abbas) and the Mālikī and Shāfi'ī schools of thought see no harm in using withdrawal method as preventive means of conception. The Hanafites permit it with the consent of the wife. If she does not consent to it, it is considered a detestable act (*Makruh*). By extension, in this contemporary period using any other method cannot be harmful to the health of the mother for birth control is not disallowed. The use of contraceptives, withdrawal

method, sheath and other means serves the same purpose and thus, not disallowed in the Islamic law.

The Zahirites look at ‘*Azl* (withdrawal method) as a forbidden act (*harām*) through a Prophetic tradition that labelled the act as a hidden infanticide:

عن جذامة بنت وهب: أن أناساً سألوا رسول الله صلى الله عليه وسلم عن العزل فقال: " ذلك هو الوأد الخفي".

Meaning:

- *Judhāmah bint Wahab narrated that: Some people asked the Messenger of Allah – may the peace and blessing of Allah be upon him- about the withdrawal ‘method’? He said; “that is a hidden infanticide”.*

This view was negated by some scholars such as Imām Al- Ghazālī who said that tradition does not forbid the act but rather made it a detestable one (*Makruh*) as it makes someone sitting inside the mosque not for worship sake, abhorrent.

Thus, Islam does not abhor birth control and family planning with any unharmed means in some certain circumstances. This may be because a man with more children finds it difficult with a low income to cater for them and also give them proper education and training. When the wife is not healthy to bear children this can also call for birth control through the use of contraceptives or any other means. It may also be through abortion of a foetus, if the delivery is medically diagnosed to be dangerous for the woman. Likewise, when a man is so indigent, poor and has so many children, this may complicate his penurious status. He can agree with his wife to apply any birth control method of choice.

SELF-ASSESSMENT EXERCISE

Family planning and birth control is a controversial issue in Islam. Discuss.

4.0 CONCLUSION

Islam is a total way of life that takes a middle course in addressing any issue concerning the life of mankind. It neither takes an extreme hard line nor an extremely soft line. Family planning and birth control are commendable at the time its need is felt and condemnable when resorted to for no important reason.

7.0 SUMMARY

Family planning is a way of planning the period of child birth between one child and the one that follows it while birth control, is a way of preventing pregnancy as a result of non-readiness to have a baby at a particular point in time. They are modern terms whose rules can be deduced from certain texts in Islam. Different schools have different views on the terms. These views are those you passed through in the main content.

6.0 TUTOR-MARKED ASSIGNMENT

1. Expatiate on the terms family planning and birth control in Islam.
2. Discuss ways of family planning and birth control according to Islamic tradition.
3. Compare the views of various schools of Islamic law on family planning and birth control.
4. Write a critical account of the modern system of family planning and birth control.

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UNIT 3 CHILD UPBRINGING IN ISLAM (AL-HADANAH), BREASTFEEDING (AL-RIDA 'AH), FOSTERAGE (AL-KAFALAH), AND CHILD ADOPTION

CONTENTS

- 1.0 Introduction
- 4.0 Objectives
- 3.0 Main Content
 - 3.1 Child Upbringing in Islam
 - 3.2 Breastfeeding and Fosterage
 - 3.3 Adoption
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

After the first man and woman on earth, human beings began to multiply through child-birth. The society is made from human beings and all their belongings; natural and artificial. The state of any society depends on the type of people living there. No human being is born with innate acquired skills, they are rather after-birth acquisitions. For an ideal society free from inhuman characters Islam has set down a universal standard by which children should be brought up. In this unit, we shall discuss Islam's guidelines for handling child upbringing.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- describe child upbringing mechanism in Islam
- compare child upbringing mechanism in Islam with other system
- give reasons why a male Muslim should prefer a female Muslim in marriage as it relates to child upbringing
- write a critical assessment of child-adoption as practiced in the Western system
- enumerate the reasons Islamic guidelines on breastfeeding and fosterage should be adhered to.

3.0 MAIN CONTENT

3.1 Child Upbringing in Islam

Child upbringing encompasses many areas before and after marriage. It starts with what the husband should do as a preliminary before marriage up until the time the children are old enough to stand by themselves. It is incumbent on the parent to nurse their child(ren), train them in accordance to Islamic guidelines, and see to their welfares until they are matured enough and able to dispense these activities by themselves. These are the duties imposed on parents and their children. Some of these duties are social, economical, psychological, physiological, emotional, intellectual, and spiritual, these duties commence with the father choosing a well-behaved mother for his children. That is, he should search for a woman who is mentally, morally and spiritually well to bear his children. Caliph Umar was reported to have said:

تَزَوَّجُوا فِي الْحَجْرِ الصَّالِحِ فَإِنَّ الْعِرْقَ دَسَّاسٌ

Meaning:

- *Marry from a righteous compartment, (because) certainly, trace elements are hereditary.*

The Prophet advises his *Ummah* to choose a woman who is religious rather than any other types of women in marriage. Children's right to legitimacy should be upheld. This will not put the child into any type of social problems in the future, such as inferiority complex, insult/assault from the community, underestimation, that might lead to psychological oppression and what have you. Should the paternity be denied according to the Islamic law based on an illicit act that may precede his birth such as adultery or fornication, the child is not the one to suffer the consequence. The welfare of the child is to be taken up by his/her mother or his maternal relatives or the Muslim community if the child is left with no parent or any caring relative.

After this, the husband should heed the advice of the Prophet before cohabitation occurs with his wife. That is, he should initially and always supplicate to Allah before having sexual intercourse with his wife. With this, Satan will not have power over the child if the union results in pregnancy thereafter. Proper medical and spiritual care should be taken during the pregnancy up till the time of delivery, so that any spontaneous abortion will not occur. A child has the right to life and security from the womb. This is why Allah has condemned the intentional killing of a child either before birth or after birth.

However, all of the schools of thought and the scholars generally condemn intentional killing of a child after birth as indicated in the

Qur'ān and the traditions of the Prophet that consider it, a grave sin. Notwithstanding, there are different opinions on the type of foetus that should not be terminated. Some scholars condemn termination of any form of foetus; either developed or undeveloped, while some opine that the undeveloped ones may be terminated for medical reason in order to save the life of the mother or for other justified reasons.

After the delivery, another phase of child upbringing mechanism in Islam continues. The prophet says that the child should be given a good name on the seventh day, his head shaved and the hair should be weighed. The weight of the hair in gold or silver should be given away in charity and appreciation to Allah. The equivalent of the gold or the silver may be given in one's national currency. In addition to this, his/her ' *'aqiqah* should be slaughtered on that seventh day except for a cogent reason should the ' *'aqiqah* be delayed. It should be distributed among the poor:

" الغلام مرتين بعقيقة تذبح عنه يوم السابع ويسمى فيه ويحلق رأسه".

Meaning:

- *The fate of the child is hanging until a ram slaughtered on his behalf in the seventh day, and he is given name (on that seventh day) as well as shaving his head (at that seventh day).*

Circumcision is a right that should be enjoyed by a new born baby in Islam. This is done in accordance with the sex of the child. It is among the five natural thing (*fitrah*) mentioned by the Prophet to get rid of (*al-Khittan and al-Istihdad*). The feeding and maintenance required by this child should all be taken care of by the father while in the custody of the mother or the nursing/foster mother. This is an injunction from Allah in Q2:233:

" والوالدات يرضعن أولادهن حولين كاملين لمن أراد أن يتم الرضاعة وعلى المولود له رزقهن وكسوتهن بالمعروف لا تضار والدة بولدها ولا مولود له بولده وعلى الوارث مثل ذلك فإن أراد فصلاً عن تراضٍ منهما وتشاور فلا جناح عليهما وإن أردتم أن تسترضعوا أولادكم فلا جناح عليكم إذا سألتم ما أتيتم بالمعروف واتقوا الله واعلموا أن الله بما تعملون بصير".

Meaning:

- *And mothers may nurse (i.e. breastfeed) their children for two years for whoever wishes to complete the nursing (period). Upon the father is their (i.e., the mothers') provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the (father's) heir is (a duty) like that (of the father)". And if they both desire weaning through mutual consent from both of them and*

consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is seeing of what you do.

The above verse clarifies that the duty of maintenance is upon the father in accordance with his income. There is also a room for the parent to hire a nursing mother for their child. The father is not given the absolute power to determine the affairs of the offspring without a mutual agreement after due consultation between the two partners. If consultation is prescribed by the divine law in a mere matter of weaning then in other affairs of the child, it should take a stronger preference.

When the child starts growing, it is an obligation on the parents to provide maximum security and protection against all that could harm him in the general sense. In spite of that, parents among the believers were enjoined to protect their wards and households from hell fire; it further implies that they should be protected from all danger that can be inflicted on their household. Hell fire being the greatest of this danger.

Tender cares should also be shown to the wards so that they can feel a sense of affection from their parents. The love and affection which Allah has put between the parents (as stated in Q30:21) should be manifested in the upbringing of the children.

"..وجعل بينكم مودة ورحمة..."

Meaning:

- .. and He has put between you love and mercy.

They should enjoy the parental love. Consequently, they will have confidence in their parents' security.

The parents should desist from any act which the children can emulate from them unconsciously such as cruelty, foul talks, assaulting, insulting and cursing each other, telling lies, dishonesty etc. At the age of seven, the children should be taught how to observe prayer (*Salat*) and they should be directed to do so. The Islamic etiquettes on how to deal with many of our day to day activities such as the ethics of eating, drinking, sleeping, greeting, dealing with one's parents, dealing with one's siblings, dealing with one's neighbours (Muslims and non-Muslims) dealing with the elderly ones should be taught step by step and gradually in conformity with their age needs, and in an integrated manner in the house initially before going out for any formal education. The parents

may employ an Islamic tutor to handle the Islamic teachings if they are not competent to handle it by themselves.

At the age of ten, if the child refuses to observe the *Salat* he/she should be punished by a mere harmless beating. When they are growing they should be separated from sleeping in the same place most importantly, if they are of different sexes. The Prophet says:

عَلِّمُوا الصَّبِيَّ الصَّلَاةَ لِسَبْعِ سِنِينَ وَاضْرِبُوهُمْ عَلَيْهَا وَهُمْ أَبْنَاءُ عَشْرِ وَفَرِّقُوا بَيْنَهُمْ فِي الْمَضَاجِعِ.

Meaning:

- *Teach your wards (how to observe) Salat at the age of seven and (if they do not observe it) beat them at the age of ten, and separate their beds.*

It is the responsibility of the parents to give their children the Islamic/Qur'anic education for them to live up to spiritual standard expected of an ideal Muslim. This will also assist them in living God-fearing lives. It is also an obligation on the parents to give their children all the types of education, skill and training that will assist them in making their livelihood easy and better. Proper monitoring should always be given to the children in all their affairs. The types of friends they are going out with should also be assessed lest they learn bad habits outside their parents' home.

In addition to this, the parents have it as an obligation on them to play justly among their children. They should not show love to one at the expense of the others. They should not distribute things among them unjustly. The Prophet was reported to have said:

ساووا بين أولادكم في العطية ...

Meaning:

- *Do equality among your children in gift....*

The parents' responsibility for the child's welfare remains binding as long as the child is a minor or incapable of taking care of itself including its security. The child's socialisation to the Islamic environment will in all probability be successful when both parents are Muslims fulfilling their parental obligations Islamically, normally and adequately.

The growth of the children in an ideal environment will help a lot in shaping the lives of their children. They will eventually develop a soul free from evil, and a mind filled with contentment and kindness and a selfless life style embedded with community interest and concern. When the children reach a marriageable age, one of their rights at that

period is that the parent should guide them in choosing a life partner. A female child needs proper care so that she can protect her chastity till the time she gets married. The Prophet was reported to have said:

من عال جاريتين حتى تبلغا أنا وهو كهاتين في الجنة وأشار بأصبعي
ه (صلى الله عليه وسلم)

Meaning:

- *Whoever nurses two female children till they reach puberty He and I will be like this in the paradise. And he demonstrated it with his two fingers.*

This implies that Islam wishes for every Muslim lady to leave her parents' home to her husband's house still a virgin. If it happens to be a male the father will assist him in securing a good wife. The parents' obligations to their children persist till the time they are a full-fledged man or woman that can live and support themselves in all what their parents are taking responsibilities of.

3.2 Breastfeeding (*A'r- Radū'Ah*) and Fosterage (*Al-Kafālah*)

Breastfeeding is encouraged, in Islam, to be given to a new-born baby within two years (*hawlayni kāmilayn*). This is a good advice given to the parents by the Divine Being Who knows what is better for mankind. This is seen in Q2:233: quoted earlier on.

The verse enjoins the parent on a better way of caring for their child in terms of feeding. It clearly explains responsibility of each of them (the father and the mother). However, they can also agree on hiring a wet nurse to do this on behalf of the mother for one reason or the other. The term of agreement between the parents and the nursing mother should be clearly stated. Certain conditions must be considered when a third party is responsible for breastfeeding the baby. These are very important. The nursing mother must be healthy enough to carry out the task. She must be free from any infectious disease. She must be of good character. She must be sane, and of sound mind. The Prophet warns against hiring a woman of low IQ or an idiot or an imbecile to suckle one's child for her imbecility could be transferred onto the child. Above all, after the suckling, there must not be a marital relationship between the wet nurse, the weaned baby, and the children of the wet nurse or her consanguine relatives. This is a decree made by the Law Maker (ALLAH) in the Islamic law that you should marry neither your nursing mother nor your sisters who are nursing.

.. وأمهاتكم اللاتي أرضعنكم وأخواتكم من الرضاعة..

Meaning:

- *(It is prohibited for you to marry) your (milk) mothers who nursed you, your sisters through nursing.*

There are some Prophetic traditions in support of this prohibition. Among them are:

" يحرم من الرضاعة ما يحرم من النسب "

Meaning:

- *That which becomes unlawful due to consanguinity becomes unlawful due to breastfeeding (al- rida ').*

Thus as close relation can cause prohibition of marriage so also is the nursing relation. By extension, according to the tradition above, breastfeeding also prohibits marriage between members of the same weaning mother. Therefore, according to the consensus of schools of laws, any female who as a result of nursing/breastfeeding becomes one's foster mother, or one's foster aunt (both paternal and maternal) or one's foster niece, or one's foster daughter or foster sister has become prohibited for oneself to marry.

Different schools hold different views on the type of breastfeeding that can prohibit marriage relationship among members of the same suckling mothers. The Hanafī and the Mālikī regard either more or less breastfeed or even a drop as a type in establishing prohibitive relationship among members of the same suckling mothers. The Shāfi'ī and the Hambalī considers five breast-feedings as the minimum. According to them, if it is more than five, marriage relationship is henceforth prohibited among them. A tradition from the Prophet opines another view as thus:

انظرن من إخوانكم، فإن الرضاعة من المجاعة

Meaning:

- *(Women) look at those who are your brothers, verily (the real) suckling is the one out of hunger).*

This tradition is followed by the Jafarī whose view is that the suckling that can prohibit relationship should be the one from which the child gets fed and thus build his body (grow or develop). Any other one other than this does not prohibit relationship. In support of this stand there is another tradition that says:

" لاتحرم المصّة والمصّتان "

Meaning:

- *A suckling or two does not prohibit (relationship).*

With this tradition Hanafī and the Mālikī views are out of context while that of the Shāfi'ī and the Hambalī may still have a stand.

Breastfeeding is also used during the time of the Prophet to allow a child enjoy some opportunity. Example of such is opportunity to enter into a woman's house just as that woman's consanguine relatives. It was related that Aishat said:

قالت: جاءت سهلة بنت سهيل فقالت: يا رسول الله، إن سالمًا مولى أبي حذيفة معنا في بيتنا وقد بلغ ما يبلغ الرجال فقال: "أرضعيه تحرمي عليه"

Meaning:

- *Aishat said: Sahlah daughter of Suhayl (came to the Prophet and) said: O the Messenger of Allah, verily, Salim the servant of Abu hudhayfah is with us in our house. And he has, surely attained puberty. The Messenger of Allah said: "suckle him you will be prohibited for him".*

Scholars argued on this tradition on whether it is binding and particularly on Salim alone or generally on every other person. The majority of the disciples of the Prophet, their followers and the scholars of jurisprudence opine that the type of suckling that prohibited is the one given to a baby within the first two years or before weaning.

As far as fosterage (*al- kafalah*) is concerned, that is, taking care of a child in the custody of somebody else, it is an act that has been in operation before Islam. It was done for the mother of prophet 'Isa, Maryam, by Prophet Zakariya':

..وكفلها زكريا ..

Meaning:

- *..And Zakariyya' took care of her.*

Likewise, Prophet Muhammad was taken care of under the custody of Halimah as- Sa'diyyah, then his grandfather, Abdu `l-Mutallib, and after his death his uncle, Abu Tālib took the baton.

This act is not disallowed or prohibited in Islam. A Muslim child can be taken care of by another person whether the parents are alive or not. This can be done for compensation or voluntarily for charity. However, for both purposes, the foster man or woman must fulfill some conditions. Initially, a mother is saddled with the responsibility of taking

care of her child or children. It is after her and after women among her relatives and female relatives of her husband such as his mother, husband's sister's and husband's aunt, that the husband takes the responsibility. Women are preferred to men in this regard. The turn of the grandfathers, brothers, uncles, etc. comes after the father. People from the child's relatives are preferred to others provided there is no barrier that can hinder them from pedaling the task. Such barriers will be mentioned below. Its relatives are on the first cadre because they are the first set of people to love it and its rights and interests and that will be ready to lead it aright. When they are all exhausted, the judge will then vest the authority to choose a qualified person to shoulder this responsibility.

The foster man/woman must be an adult, a sane, a healthy and an able person. He/she must be trustworthy and of commendable good character. He must be a Muslim lest he/she brings up the child in his/her faith or religion. He/she must be married and must be a free person (not a slave).

3.3 Adoption (*At- Tabannī*)

Adoption was a widely known practice among the Arabs before Islam. It continued in the Islamic era until the time it was later banned. Though, Islam encourages kindness and generosity to all and sundry; not to the extent of taking strange blood into one's family as a member of that family. Adoption is the taking of a child of known parentage by a person and training him. Islam does not allow adoption but enjoins general kindness and caring of children and younger ones. Some of the resultant effects of adoption are:

- It can cause upset in the structure of kinship as regards inheritance, provisions, solidarity and mutual chances.
- It can also tamper with the order of the society by obstructing natural relatives from their God-given rights or prevent them from carrying out their God-ordained duties.
- It can also create uncertainty in the mind of some potential heirs and rightful claimant.
- It can also give room for substitution of natural parents and relatives thus, causing confusion on the long run.
- It can also hurt other adopted children's relatives in their legitimate interests or affect the kin's mutual obligations.

Adoption was illegalised by Allah by exemplifying the Prophet's life in this regard. The Prophet adopted son, Zayd bn Harithah was used as an example to abrogate the act. To this effect the following verses were revealed, Q33: 4- 5.

.. وما جعل أدياءكم أبناءكم ذلكم قولكم بأفواهكم والله يقول الحق وهو يهدي السبيل. ادعوهم لأبائهم هو أقسط عند الله فإن لم تعلموا آباءهم فإخوانكم في الدين ومواليكم..

Meaning:

- ...And He has not made your claimed (i.e. adopted) sons your (true) sons. That is (merely) your saying by your mouths, but Allah says the truth, and he guides to the (right) path. Call them by (the names of) their fathers; it is more just in the sight of Allah. But if you do not know their fathers- then they are (still) your brothers in religion and those entrusted to you...

These verses abrogate adoption as a practice in Islam. Children under one's custody should be called by their biological father's names and not with by the foster or custodian's names.

There is another verse with which a legal ruling was given on permissibility of marriage with one's adopted son's divorced wife.

Q33: 37 says:

وإذ تقول للذي أنعم الله عليه وأنعمت عليه أمسك عليك زوجك واتق الله وتخفي في نفسك ما الله مبديه وتخشى الناس والله أحق أن تخشاه فلما قضى زيد منها وطراً زوجناكها لكي لا يكون على المؤمنين حرج في أزواج أدعيائهم إذا قضوا منهن وطراً وكان أمر الله مفعولاً.

Meaning:

- And (remember, O Muhammad) when you said to the one on whom Allah bestowed favour and you bestowed favour, "keep your wife and fear Allah" while you concealed within yourself that which Allah is to disclose. And you feared the people, while Allah has more right that you fear Him. So when Zayd had no longer any need for her, We married her to you in order that there not be upon the believers any discomfort (i.e. guilt) concerning the wives of their claimed (i.e. adopted) sons when they no longer have need of them, and ever is the command (i.e. decree) of Allah accomplished.

With this, the paternal relationship between the adopted child and the adopted father was abrogated and annulled out-rightly. Child may be kept under one's custody for fostering but not as an adopted child.

SELF-ASSESSMENT EXERCISE

- Evaluate your own personal upbringing, is it in conformity with the Islamic way and the reasons for the abrogation of adoption.
- What is the essence of breastfeeding and fosterage in line with the Islamic guide-lines in a child's life?

4.0 CONCLUSION

A ward's training in Islam encompasses both the spiritual and temporal aspects. Every Muslim child is entitled to this training which imposes a duty on the parents. The human society is assured of decorum, peace, harmony, love and tranquility if the Islamic child upbringing mechanism is adhered to by the Muslims or borrowed by other systems.

In the same sense, breastfeeding and fosterage in line with the Islamic guidelines facilitates the better living for the parents, the foster mother as well as the child, while adoption is very liable to distort the family structure and cause mayhem in the society at large.

7.0 SUMMARY

You have seen in the main content that child upbringing starts from the preliminaries of marriage, what to be done when foundation of a new family is being laid and what should be done during pregnancy period and after delivery. It entails both the formal and informal types of education given to the children as well as religious and non-religious training. The methodological framework to be taken by the parents to enhance the better growth and development of their children psychologically, physiologically, spiritually, mentally, morally and socially are all explained from the Islamic point of view. The rules guiding breastfeeding and fosterage are also explained together with the reasons for the abrogation of adoption.

6.0 TUTOR-MARKED ASSIGNMENT

1. Explain the reason religious training is so important in the upbringing of wards.
2. Should adoption be legalised? Why?
3. Enumerate the reasons Islamic guidelines on breastfeeding and fosterage should be adhered to.

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MODULE 4 OTHER RELATED ISSUES

| | |
|--------|---|
| Unit 1 | Divorce Initiated by Husband (<i>at-Talaq</i>) and Divorce at the Instance of Woman (<i>Khul'</i>) in Islam |
| Unit 2 | Waiting Period (<i>'Iddah</i>) |
| Unit 3 | Law of Inheritance in Islam |

UNIT 1 DIVORCE INITIATED BY HUSBAND (AT-TALAQ) AND DIVORCE AT THE INSTANCE OF WOMAN (KHUL') IN ISLAM

CONTENTS

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| | 3.1 <i>A`ṭ-Ṭalāq</i> (Divorce at the Instance of the Man) |
| | 3.2 <i>Al-khul-'u</i> (Divorce at the Instance of the Woman) |
| 4.0 | Conclusion |
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1.0 INTRODUCTION

Islam, together with marriage aims at building a healthy family unit that combines with another unit to form a human community devoid of rancour and chaos. At times, when marriage cannot help in achieving this goal, the Islamic law allows for dissolution of the marriage. Though, marriage dissolution is generally frowned at; it may be the last resort in achieving a peaceful environment between couples. We shall look at marriage dissolution at the instance of the husband as well as at the instance of the wife in this unit.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the causes of *a`ṭ-Ṭalāq* (divorce)
- state the procedure of *at-Ṭalāq* (divorce) in the Islamic law
- differentiate between *at-Talaq* and *al-Khul.'*

3.0 MAIN CONTENT

3.1 *A`ṭ-Ṭalāq* (Divorce at the Instance of the Man)

A`ṭ-Ṭalāq is an Arabic word is derived from the word *al- Itlaq* this literally means setting free, as it is in setting a camel free (*aṭlaqa` n-Nāqah*) or setting a slave free (*aṭlaqa al-Asīr*). Technically, it means the dissolution and unknotting of a marriage contract as well as putting an end to marital relationships orchestrated by the husband. It is an act that is considered detestable (*Makruh*) by the law Maker (Allah) according to a popular tradition related to the Prophet. Islam aims at building a healthy human environment which will facilitate the dispensation of one's duty to the Supreme Being, Allah, as well as mankind. This cannot be achieved in an atmosphere where conflict is the order of the day. In order to achieve this aim, a conflicting couple is given a chance to untie the knot they have entered into and go their separate ways peacefully.

However, there are certain circumstances that can call for divorce at the instance of the husband after which all available means to settle the couple could prove abortive. When a wife transgresses the bounds of decent behaviour, the husband is enjoined to take some steps which may lead to correction. This is contained in Q4:34:

..والتي تخافون نشوزهن فعظوهن واهجروهن في المضاجع واضربوهن
فإن أطعنكم فلا تبغوا عليهن سديلاً ..

Meaning:

- ... *But those (wives) from whom you fear arrogance first advise them; (then if they persist), forsake them in bed; and (finally), strike them. But if they obey you (once more), seek no need against them.*

The three methods to correcting a woman when she transgressed the bound of decency to her husband according to the *Qur`ān* are: by giving her admonition, by boycotting her bed, and by beating her in such a way that no harm will be inflicted on her neither should she be beaten on the face. The first method alone may be enough to redress the anomaly. In cases whereby it is not enough, the second method may be applied. If this is also not yielding result, then the third method may be used. An arrogant and stubborn wife might not be curbed by all these. There is another method which is prescribed by the Law Maker in Q4: 35:

وإن خفتن الشقاق بينهما فابعثوا حكماً من أهله وحكماً من أهلها
إن يريدوا إصلاً يوفق الله بينهما..

Meaning:

- *And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desired reconciliation, Allah will cause it between them.*

It is after the failure of the arbitration that dissolution is later allowed. So far that the discord cannot be reconciled by both the husband and the wife (without any third party), at the same time, third parties have no influence in settling the discord, dissolution will probably or eventually proffer peace.

Before a divorce can be valid certain conditions must be met. The husband must be an adult whose sanity is unquestionable. The divorce must be freely accepted by both parties.

Meanwhile, *A`ṭ-Ṭalāq* is of two kinds: Sunnatic divorce (*talaq sunni*) and innovated divorce (*talaq bidai*). Sunnatic divorce is the one that takes place in conformity with the dictate of the Shari'ah. That is, the pronouncement of first time divorce on a woman whose marriage has been consummated in her state of purity which her husband has the right to cohabit with her in it. After this, it happens like that in the second period and later the third one. With this third pronouncement the woman has become illegal for the man unless she gets married to another man and later divorces. It is after the dissolution of the latter marriage that the first husband can remarry her.

فإن طلقها فلا تحلّ له من بعد حتى تنكح زوجاً غيره ...

Meaning:

- *And if he has divorced her (for the third time), then she is not lawful to him afterward until (after) she marries a husband other than him.*

The first and the second pronouncements are called *A`ṭ-Ṭalāq ar-Raj`I* while the third one is called *A`ṭ-Ṭalāq al- Bā`in*. *A`ṭ-Ṭalāq ar-Raj`ī* is that one where the husband can take the wife back. It is the first two divorce pronouncement. *A`ṭ-Ṭalāq al- Bā`in* is the one where the husband has no legal right to recall the wife back to him. It is on this that Q2: 229 says:

الطلاق مرتان فإمساك بمعروف أو تسريح بإحسان..

Meaning:

- *Divorce is twice. Then (after that), either keep (her) in an acceptable manner or release (her) with good treatment.*

During the waiting period of the first pronouncement the couple can enjoy sexual intercourse. With this, the discord is settled and the waiting period expires. At the second pronouncement, as the case may be, the couple can still enjoy themselves sexually and put an end to the waiting period with that or with any other form of reconciliation. However, this is not allowed in the third time. The husband has lost his legal right as the husband of that woman. During the first two waiting periods, the husband is responsible for the provision and the maintenance of the wife while this is not the case in the third one.

Looking deeply into the wisdom behind the first two pronouncements and the waiting period therein, one would see that Islam does not encourage divorce. It believes that the angry husband may overlook the shortcomings of the woman in this period and eventually forgives her or settle the quarrel between them wisely. On the contrary, the third pronouncement illegalises the woman for the man. One of the wisdom behind this is that the divorce pronouncement should not be taken for granted. It should not be seen as a statement or a declaration a man can just give for fun without seriousness. Therefore, men should be cautious in handling matters that can eventually lead to divorce between them and their spouse.

The second type of divorce is innovated divorce (*Ṭalāq bid-‘ah*). It is the one that does not follow the laid down rules of the *Sharī‘ah* with regard to divorce ordinance. An instance of this is when a husband divorces his wife with three pronouncements at one sitting to represent three pronouncements at different three sittings or to use a single pronouncement in place of three. Another example of this is when a woman is divorced during her menstrual period or child–birth blood.

This is considered invalid or syncretised and thus considered illegal. Any divorce process that follows the underlisted protocol is acceptable as *talaq hasan* (good divorce).

The pronouncement must be three times following one after another successively at different periods. These pronouncements must be made during three consecutive periods of purity (*tuhur*). The husband should not cohabit with the woman during any of these three periods of purity. The divorce is redressable not until the third pronouncement is made.

There are different ways of uttering divorce statements. It can be through a direct statement to the woman; such as “you are a divorcee you are returned back to your (father’s) house” or any other utterance that can imply this. It can also be in a written form. This should not contain any ambiguity just as the utterance should not be ambiguous. It

can also be through sign language for a man who can neither talk nor write. In the same vein, divorce can also be implemented in proxy.

Another point that must be mentioned is that certain circumstances can make divorce a compulsory act. An instance of this is when a husband accuses his wife of infidelity openly (*al-Li'an*) and thus swears in the name of Allah four times and invoke the curse of Allah (*la'nah*) on himself in the fifth time should he be lying. The wife is also asked to do the same but swear the wrath (*Ghadab*) of Allah on herself in the fifth one should she be a liar. In this situation, divorce is irrevocable. This is contained in Q24-6- 9. Any child whose paternity is denied by the husband will be attributed to the mother. And its maintenance will be upon the mother.

Meanwhile, there are different opinions among the schools of thought on this type of separation whether it is a *ṭalāq* or a *faskh*. *Faskh* is a separation between a man and a woman usually done by the judge in a *Sharī'ah* court.

3.2 *Al- Khul-'u* (Divorce at the Instance of the Woman)

Al- Khul-'u is a type of divorce where the woman happens to be the one that requests for the dissolution of the marriage in the Islamic court of law for an unbearable reason or the other which is genuinely justifiable under the *Sharī'ah*. The woman might be tired of the marriage or no longer loves her husband. She might also be experiencing ill treatment and torture from him. Likewise, it may be as a result of the inability of the husband to fulfill the terms of the marriage contract between them, husband's insanity, incurable impotence, among other reasons.

There are certain conditions that must be fulfilled in order to effect *Khul-'u*. The woman should be ready to return the whole bride gift (*mahr*) given to her by her husband or part of it in consideration of which the husband is to release her. If the wife could not pay the dowry back to his husband the marriage can be dissolved through "*Mubaara'ah*". With this, both of them will consent mutually and nothing is paid back to the husband. Both parties are allowed by the law to reach an agreement that will assist them in unknotting the contract peacefully.

4.0 CONCLUSION

The Islamic way of life encompasses every sphere of life. No other system possesses the type of rules guiding divorce accurately as that of the Islamic law. Likewise, it shows one of the characteristics of Islam as a problem solving mechanism together with the recognition of the

dignity, respect and solemnity in marriage. As the husband has the right to divorce likewise the woman. No sex has supremacy over another sex in this sense. Any of the couple can feel s/he is being cheated or tortured.

5.0 SUMMARY

Divorce at the instance of a husband (*A`ṭ-Ṭalāq*) is a detestable act that may be used as a tool to find a lasting solution to a discord between conflicting couple.

It takes its course after the failure of every other conflict resolution strategies. The type of divorce initiated by the woman is called *Khul-u*.

6.0 TUTOR-MARKED ASSIGNMENT

1. What is *A`ṭ-Ṭalāq* and what are its causes?
2. Highlight briefly the various kinds of divorce.
3. State the procedure of *at- Talaq* (divorce) in the Islamic law.
4. Describe the types of *at- Talaq* (divorce) in the Islamic law.
5. Differentiate between *at-Talaq* and *al-Khul- 'u*.

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UNIT 2 WAITING PERIOD ('IDDAH)

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 6.0 Main Content
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Marriage in Islam is a covenant that should not be broken for no justifiable reason. Divorce is a given right for both the man and the woman should any condition call for it. However, the way it is practiced in every other system and religion is clearly different with what is obtainable in Islam. The case of the waiting period is one of the distinguishing factors between divorce in Islam and in other religions or system. We shall look at the concept of *'Iddah* in the *Sharī'ah* in this unit.

2.0 OBJECTIVES

At the end this unit, you should be able to:

- define *'Iddah* (waiting period)
- describe how it is observed
- state the types of *'Iddah* in the Islamic law
- explain its essence after a divorce and during widowhood.

3.0 MAIN CONTENT

'Iddah (waiting period) is an Arabic word that is taken from *'adad* (number) and *iḥṣā'* (counting/calculation). Technically, it is the name given to the period a woman is waiting and not allowed to remarry (till the expiration of the period) after the demise of her husband or a divorce pronounced over her. It has its basis in the texts of the *Qur'ān* and *Hadīth* and consensus of the Muslim scholars. *Qur'ān*65:1.

يَأَيُّهَا الَّذِينَ ءَامَنُوا إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ..

Meaning:

- *Prophet, when you (Muslims) divorce women, divorces them for the commencement of their waiting period and keeps count of the waiting period.*

In the above verse Allah commanded the believer to let their women observe the waiting period when they are divorced. This is a command from the Creator. In another verse He mentioned the duration of period. One of them is Q. 2: 228 says:

والمطلقات يتربصن بأنفسهن ثلاثة قروء

Meaning:

- *Divorced women remain in waiting (i.e. do not remarry) for three periods.*

The *Quru'* mentioned in the above verse means two things according to the scholars of jurisprudence and exegetes of the *Qur'an*. It may be interpreted as the period of purity or the period of menstruation. Hence, it implies that three purity periods is counted as a waiting period or three menstrual periods.

One of the prophetic traditions in support of this is the command of the Prophet to Fatimah bint Qays:

اعتدي في بيت ابن أم مكتوم

Meaning:

- *Observe your waiting period in Ibn Umm Maktum's house.*

It was also reported that when Abdullahi bn Umar divorced a wife of his while she was on her menstrual period, the Prophet instructed Umar to inform his son, Abdullah, as follows:

مره فليراجعها ثم ليمسكها حتى تطهر ثم تحيض ثم تطهر ثم إن شاء أمسكها وإن شاء طلق قبل أن يمس، فتلك العدة التي أمر الله سبحانه أن تطلقها النساء.

Meaning:

- *Instruct him to return her to himself until she is pure. After that she does another menstrual period and later gets pure. Then, if he likes he can hold her back or he divorces her before he touches her. And that is the waiting period which Allah commands that the women are to be divorced in it.*

There are four types of waiting. These are as follows:

- Waiting period for a divorcee that can still bear a child. That is, she is still menstruating. Her waiting period is three menstrual or three purities.
- Waiting period for a woman that can no longer bear children. That is, she has reached menopause. Her waiting period is three months.
- Waiting period for a non-pregnant widow is four months and ten days.
- Waiting period for a pregnant widow lapses when she delivers her baby.
- A yet to be consummated marriage attracts no waiting period for a woman under such circumstance.
- All the above stated categories of waiting women are explained in the following verses of the Qur'an: Q2:228, 65:4, 2:234, and 65:4 respectively.

Some of the wisdom behind waiting period is: It shows how solemn, essential, exorbitant, honourable and dignified marriage is in Islam. It is not just an institution one can trivialise. People have to gather together (no matter how few their number) before its contract is signed. Therefore, it has to take a certain period before it is wholly unknotted.

In the case of *Iddah* in divorce, it gives room for both parties to reconcile and come together as couple provided they see future in it. During the period, there would be knowledge of the state of the womb of the woman. Has she got impregnated or not? With this, she would not carry a family's blood into another family where a bastard child will be provided for and maintained unknowingly. In the case of an *Iddah* of widowhood, it is used to mourn her husband with the relative of the husband and to determine her status i.e. whether she is pregnant or not.

During *'Iddah* period, the divorcee or widow is expected to behave moderately and must not remarry at that period. She should also desist from any form of dressing or make-up that can attract men to her during widowhood in *Iddah*.

Observance of waiting period of a non-Muslim wife who is from the people of the book (Jews and Christian), is controversial among the schools of thought. The Mālikī, Shāfiī, and Hambalī opine that the waiting period is obligatory on her. Nevertheless, these three schools do not see *al-Hidāḍ* compulsory for her while observing the waiting period of widowhood. *Al-Hidāḍ* is a situation where a bereaved woman will do away with cosmetics, elegant looks and make-ups after the death of her husband for a period of time. The Hanafī school of thought is of the

opinion that a non-Muslim woman married to a non-Muslim man is not obliged to observe any waiting period.

As far as provisions and maintenances for a woman in her waiting period is concerned, the schools of thought also differ in some areas. There is agreement among them that a revocable divorcee will observe the waiting period at the husband's home. The husband should not evict her out of his house during her stay while she also is not allowed to leave the husband house for another place during that period. If it is an irrevocable divorcee, the four famous schools of law, Mālikī, Shāfiī, and Hambalī and Hanafī agree that it is the same thing with the revocable divorcee. They support this view with Q.65:1. On the other hand, the Jafarī opines that the woman is free to observe the waiting period anywhere she likes. This is because the marital bond between her and her husband is no more there.

The provision and maintenance rights of a revocable divorcee rest upon the shoulders of the husband. This is a consensus among the schools of thought and the scholars. There is also a consensus on a woman whose husband is dead that she has no right of maintenance while she is in her waiting period. This included whether she is pregnant or not. However, the Mālikī and the Shāfiī go further to view that she is entitled to shelter only. The Shāfiī says that if there is a separation between them while she is pregnant and the husband dies in that period, her maintenance shall not cease. But according to the Hanafī, if a woman is in her revocable divorce and the husband dies during the waiting period, that divorce waiting period will be changed to death waiting period. With this, her maintenance will cease except in case the court asks her to borrow for her maintenance which she actually did. The maintenance shall not cease in this situation.

In case of irrevocable divorce, different opinions come to play. The Shāfiī, and Hambalī opines that if she is pregnant she is entitled to maintenance and if she is not, no right of maintenance for her.

According to the Shāfiī, this maintenance is on a condition that she does not leave her waiting period house for no reason. The Hanafī opines that she is entitled to maintenance, whether pregnant or not and regardless of the numbers of time the divorce pronouncement has been made on her. This is on condition that she does not leave the place provided for her by the husband to observe the waiting period. The Mālikī says that she is entitled to full maintenance when she is pregnant, even when she leaves her waiting period place for another place. This is because the maintenance is meant for the child in the womb and not for the mother. In contrary to this, if she is not pregnant she is only entitled to housing and nothing more.

SELF-ASSESSMENT EXERCISE

- i. State the reasons behind a waiting period mentioned in this unit.
- ii. Give other reasons you think waiting period is laid down as an ordinance for Muslims to observe.

4.0 CONCLUSION

Waiting period is one of the characteristic features of concept in marriage and divorce in Islam that showcases Islam as a complete way of life in all its spheres. No other religion or system of law has this respect for marriage.

Even, widows are not allowed to remarry in many other faiths and religions unlike in Islam where life still continues after the death of a partner in marriage.

No room for 'for better for worse' or 'until death do us apart' in Islam. Suffering and smiling syndrome in many other religions are not acceptable in Islam because this might make peace and tranquility difficult to attain in a home in particular and in the society at large.

8.0 SUMMARY

'Iddah (waiting period) is the name given to the period in which a woman is waiting and not allowed to remarry (till the expiration of the period) after the demise of her husband or a divorce pronounced over her. It is of different types with regards to different types of women involved. The wisdom behind its observance is quite justifiable socially, emotionally and religiously.

6.0 TUTOR-MARKED ASSIGNMENT

1. Define *'Iddah* (waiting period).
2. Describe how it is performed and support your points with relevant references to the *Qur'ān* or the *Hadīth*.
3. State the types of *'Iddah* in the Islamic law.
4. Explain the essence and importance of *'Iddah* (waiting period) after a divorce.
5. Discuss different opinions of the schools with regard to maintenance of a woman in her waiting period.

7.0 REFERENCES/FURTHER READING

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UNIT 3 LAW OF INHERITANCE IN ISLAM

CONTENTS

- 1.0 Introduction
- 5.0 Objectives
- 3.0 Main Content
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Death is an inevitable occurrence which man must experience and when this happens he leaves all his properties behind little or big to be inherited. In this unit we shall look into the Islamic law of inheritance and some of its components in brief leaving the details of its sharing formula for further discussion in another course.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- state the essentials of Islamic law of inheritance
- describe conditions for eligibility of a heir
- highlight the impediments to inheritance
- evaluate the position of the wife in particular and women in general in inheritance according to the *Sharī'ah*.

3.0 MAIN CONTENT

The law of inheritance in the *Sharī'ah* is that which provides rules and regulations on how to distribute the estate of a deceased person, who is to inherit the deceased, the type of people that should inherit as well as the shares that should be allotted to each heir. Thus, a standard of measure is laid down by the Shari'ah with which individuals could achieve his/her right from another person or share in an estate.

This law transfers some of the rights enjoyed by the deceased while he was alive to some of his close relatives. Instances of this are: rights to inherit property, right to compensation of lost incurred bloody and non - bloody compensations, and right to debt acquisition from the debtors. In the same vein, the heirs are also responsible for settling any compensation over the deceased, pay his debt, and return strange

properties under the deceased custody while alive to their rightful owners.

In Islam, every individual who has property that can be inherited has the right to write his will and give out at most one-third of the property, the rest is left to be shared among those who are by reason of consanguinity or marital relations have strongest claim in the estate.

Both male and female have right to succession to the deceased unlike what was in operation during the pre - Islamic Arabia and among some other peoples and nations? It is stated in Q4: 7:

للرجال نصيب مما ترك الوالدان والأقربون وللنساء نصيب مما ترك الوالدان والأقربون مما قلّ منه أو أكثر نصيباً مفروضاً.

Meaning:

- *For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share.*

The above verse makes it clear that inheritance is for both men and women. It also applies to all kind of properties left behind by the deceased; be it static or movable, small or big. And that it should be distributed among the nearest relative with regard to their level of closeness or nearness. That is, a son is closer and nearer than a brother, a father is closer and nearer than a grandfather, etc.

Moreover, the husband can inherit from the estate of his wife and vice - versa. This can be seen in Q. 4: 12. Likewise, parents can inherit from the estate of their children and vice - versa. This can also be seen in Q4: 11. Brothers and sisters can also inherit one another (Q4: 12). Inheritance among the aforementioned set of people is subject to some conditions which will later be discussed.

The three essentials of inheritance are: a deceased person, availability of the heir(s) and property/estate to be inherited. There are also three conditions that must be met before inheritance can be effected. These are:

- There must be no doubt in the death of the properties' owner. In another word, his death must be confirmed.
- The heirs must be alive during the death of the deceased.
- There must be a relationship which can justify inheritance between the deceased and the heir. This may be consanguinity, parental, children, marital or *walā'* (the right enjoyed by someone who frees a slave over the slave in the slave's estate after his (slave) death).

Impediments to Inheritance: If a heir is found guilty of any of the following impediment, his/her right to inheritance is forfeited. These are:

- Homicide: any heir who is guilty of killing for no Islamically justifiable means has forfeited his/her right to inheritance. Your reference or further readings shall provide a detail over scholars' discourses on this.
- Difference of religion: People of different faiths cannot inherit from one another in Islam. A Muslim cannot inherit from a Christian or a Jew or a Polytheist and vice versa.
- Slavery: Being a slave has automatically impeded one from inheritance.
- Illegitimacy: In Hanafī law, a bastard cannot inherit from the father. A bastard child follows the lineage of its mother and can, thus, inherit through his mother's descent.

The proportion on which different heirs have their share in an estate left behind by a deceased is explained both in the *Qur'ān* and the *Hadīth* of the Prophet.

Deductions from the estate: It is after the deductions of certain rights from the estate of the deceased that the distribution of the residue is implemented. Such deductions may include debt owed by the deceased and expenses on the funeral of the deceased. These are the expenses of bath ablution for the dead, shrouding, carrying the body, and digging the grave. Another deduction that should be made before the distribution is the will made by the deceased in respect of not more than one-third of his/ her property.

There are variant opinions on the order of priority in these deductions. All the schools of law have preference for debts to other items of the deductions from the estate. The Mālikī, Hanafī, Shāfī'ī and some Ja'farī scholars prioritise debts related to specific items of the estates over funeral expenses while the Hambalī and some Ja'farī scholars prioritise funeral expenses over all other claims and debts.

If the estate is not enough to cater for these deductions, the more important ones will be preferred to the lesser important ones, then, follows the one in order of importance. If the deductions exhaust the estate and still remain some deductions, this will be inherited by the heirs in order of the proportion of the share to be taken by each of them. But when the deductions leave some of the estates, the remains will be distributed among the heirs in due proportion.

Fixed shares: There is agreement among the schools that the distribution of the estate starts with the shares that have been fixed and determined by the *Qur'an*. These shares are six in numbers. $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{8}$, $\frac{1}{3}$, $\frac{2}{3}$, and $\frac{1}{6}$.

They are contained mostly in Q.4:11-14 which goes as follows:

- يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِن لَّمْ يَكُن لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِّنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا
- وَلَكُمْ نِصْفُ مَا تَرَكَ أَرْوَاجُكُمْ إِنْ لَمْ يَكُن لَّهُنَّ وَلَدٌ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلِكُمُ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُن لَكُمْ وَلَدٌ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثَّمَنُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِن كَانَ رَجُلٌ يُورِثُ كَالْأَلَةِ أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِن كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ
- تِلْكَ حُدُودُ اللَّهِ وَمَنْ يُطِعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ذَلِكَ الْفَوْزُ الْعَظِيمُ
- وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مُّهِينٌ

A paraphrase of the translation of those verses of inheritance is hereby presented as follows.

Half is the share of the only daughter if there is no son sharing with her. Half is also given to the only sister, either full or half on the father's side, if there is no brother sharing with her. Half is also the share of the husband if the wife dies without leaving any issue to inherit from her.

Should the wife have a descendant the husband will get a quarter of the estate left by the wife. Likewise, the wife gets a quarter of the estate of the husband if the husband left no descendant. But if the husband has a descendant the wife will get one eighth of the estate. Two or more daughters in the absence of a male child as well as two or more sisters, full or consanguine, that have no brother to share with them will get two thirds of the estate. The mother gets one third share from the estate if the deceased has no male descendant or has no brother(s) that can prevent the mother from inheriting one third. Two or more blood brothers and sisters will also get one third from the estate. If the deceased left children behind, each of the parents will inherit one sixth from the property. If the dead has brothers, their mothers will inherit one sixth of the estate. A single blood brother or sister also gets one sixth. These fixed shares were later added to by different schools of thought.

SELF-ASSESSMENT EXERCISE

Compare the law of inheritance in Islam and that of your tribe highlighting features of each of them.

4.0 CONCLUSION

Islam forbids cheating and underestimation of fellow Muslims. The law of inheritance is among the Islamic theory that displays this. Every sex has a right to inheritance in Islam and women are not deprived from inheriting from their husband's and parents' estate.

8.0 SUMMARY

The law of inheritance is a branch of the Islamic family law that provides rules and regulations on how to distribute the estate of a deceased person, who is to inherit the deceased, the type of people that should be inherited as well as the shares that should be allotted to each heir.

6.0 TUTOR-MARKED ASSIGNMENT

1. Examine the essentials of inheritance.
2. Discuss conditions for the eligibility in inheritance.
3. Critically analyse the impediments to inheritance.
4. Describe the fixed shares and their sharers.
5. Evaluate the position of wife in particular and women in general in inheritance according to the *Sharī'ah*.

7.0 REFERENCES/FURTHER READING

- Abu Bakr Jabir al-Jazairi (1995). *Minhaj al- Muslim*. Beirut: Dar El-Fikr.
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