

THE RIGHTS OF CHILDREN IN *ISLÂM*

By:

KHÂLID DHORÂT

STUDENT NO: 9440836

Dissertation

submitted in fulfilment of the requirements of the degree

Master Of Arts

in

Islâmic Studies, Faculty Of Arts

at the

Rand Afrikaans University of South Africa

J a n u a r y 1 9 9 6

Supervisors:

Professor A .R. I. Doi

Professor J .F. J. Van Rensburg

ACKNOWLEDGEMENTS

All praises are due to Allāh *Ta 'āla*, who inspired me to study the unique and distinguished religion *al-Islām*, and salutations and benedictions be upon his chosen and celebrated *Rasūl*, Muhammad bin 'Abdullah (SAW).

My heartfelt gratitude goes to my inspirational tutor, Prof. Dr. 'Abd al-Rahmān I Doi, for his invaluable guidance, practical suggestions and meaningful comments upon this dissertation. Also, to my second Professor, Prof. J F J Van Rensburg; who painstakingly went through this thesis with a fine tooth-comb, and made invaluable suggestions for its improvement. Many extended thanks to the board members of the *Dār al-Salām Islāmīc Research Centre*, Laudium for allowing me access to the Centre to utilise the computer and library facilities, especially to it's most devoted patron, Maulāna Ashraf Ebrāhim Dockrat

I fully appreciate the kind helping gestures of my fellow research-workers at the Centre for their assistance in operating the computer, Maulāna Mubīn Cassim and Maulāna 'Abdullāh Jeenah. To my computer specialist, Veresh Sita who aided me immeasurably whenever the computer and the disks gave problems.

Abundance of appreciation to my cherished and beloved wife, Farzānah bint Maulāna Rafiq Hathurani for her support, enthusiasm and for keeping vigil with me for the better part of many a night.

Lastly, I once again thank all the above as well as those whom I might have overlooked. May you attain the best of rewards in the Hereafter for your concern and interest in a project which is meant to create a better understanding of *Islām* in the eyes of all.

ABBREVIATIONS

<i>A.H</i>	After the year of the Hijrah of the Prophet.
<i>B.C</i>	before Christ, before the common era.
<i>C.E</i>	Christian era.
<i>Cf.</i>	Confer (= compare)
<i>d.</i>	died.
<i>ed.</i>	editor
<i>e.g.</i>	exempli gratia (= for instance)
<i>etc.</i>	et cetera
<i>f. (Pl. ff.)</i>	following page
<i>n.</i>	note
<i>n.d.</i>	no date
<i>q.v</i>	quod vide (= which see)
<i>s.a.w</i>	Allâh's salutation and peace be upon him.
<i>r.a</i>	May Allâh be pleased with him.
<i>s.v.</i>	sub voce (= under the word or title)
<i>S.</i>	Sûrah (Chapter)
<i>V./v</i>	verse.
<i>viz.</i>	Videlicet (= namely).

NOTES ON THE TRANSLITERATION OF ARABIC WORDS

The system of transliteration followed in this dissertation is as follows:

LETTERS OF THE ALPHABET:

- | | | |
|--------------------------|--------------------------|-------|
| 1) ʿ | 2) b | |
| 3) t | 4) <u>th</u> | |
| 5) j | 6) h with (.) below it | |
| 7) <u>kh</u> | 8) d | |
| 9) <u>dh</u> | 10) r | |
| 11) z | 12) s | |
| 13) <u>sh</u> | 14) s with (.) below it. | |
| 15) d with (.) below it | | |
| 16) t with (.) below it. | | |
| 17) z with (.) below it. | | |
| 18) ʿ | 19) <u>gh</u> | |
| 20) f | 21) q | |
| 22) k | 23) l | |
| 24) m | 25) n | |
| 26) h | 27) w | 28) y |

VOWELS AND DIPHTHONGS:

- 1) a (*fathah*)
- 2) u (*dammaḥ*)
- 3) i (*kasrah*)
- 4) à (for the : *alif mā qabl fathah*)

- 5) á (for the: *yâ' al- maqsûrah*)
 6) ù (for the: *wâw ma' dammah*)
 7) î (for the: *yâ' ma qabl kasrah*)
 8) aw (for the: *wâw ma qabl fathah*)
 9) ay (for the: *yâ ma qabl fathah*)

NOTES:

The *al-* of the article is always transliterated as *al-* whether it is followed by a “sun” letter or a “moon” letter, regardless of whether or not it is assimilated in pronunciation to the initial consonant of the word to which it is attached.

Rules of capitalisation of English are followed, except that the definite article *al-* is capitalised when the word to which it is attached by a hyphen is capital.

As against the *Encyclopaedia of Islâm*, the *tâ al-Marbûtah* (the rounded *tâ*), has throughout been retained and shown by the ending *t* or *h*, as the case may be.

Translations of verses of the *Qur'ân* were obtained from Pickthall's work *The Glorious Qur'ân*, and of the *Ahâdith*, it is reflected in the footnotes.

The word *he* reflects the masculine as well as the feminine gender, except when stated otherwise.

ABSTRACT

A child cannot be treated like an adult in many ways. Therefore, the approach towards children in all respects of human life are totally different from that of adults. In the field of rights too, the child is vulnerable and often is unaware of his rights given the age, let alone fighting for them. While an adult often fights for his rights, a child requires some sincere person in authority to identify the rights of children, and implement it for them. This thesis aims to introduce to the scholar the intricate and careful approach a society and an individual should have towards that sensitive child.

This being the case, children's rights are sometimes manipulated against them by their guardians or those having direct access or influence over them. The severity of this abuse can be gauged from the fact that, whereas the damage of an external attack can be ascertained, the damage left by internal abuse of children can never be ascertained, and is thought to leave lifelong physical as well as emotional scars. The need to protect children against such a background in this day and age is as acute as ever. The necessity of a work of this nature fills the void in the human rights arena towards defenceless children and provides ammunition to combat abuse, while not actually delving into the aspect of child-abuse.

The main thrust of this thesis is to highlight the attitude of *Islām* towards children from the pre-Prophetic times of the Holy Prophet of *Allāh*, Muḥammad ibn 'Ābdullāh *ṣallallāhu 'ālaihi wa ṣallam*, to modern times. To what extent has the *sharī'ah* of *Islām* attached importance to the identifying and implementing of children's rights, and for that matter, what is the true status of a child in *Islām* to be accorded with such numerous protection and rights.

It may be argued that this thesis would have been much more fruitful had the aspect of child-abuse been also included. In response, child-abuse is another dissertation of its own and by only educating on the rights of children, child-abuse can be easily identified if these are denied or withheld from any child.

It can be safely said that in this fast changing times, the adage of the jungle law *survival of the fittest* most aptly applies. Not so with the case of children, who have not the makings and capabilities of surviving in a world which they expect their very abusers to reveal to and make comfortable and safe for them. Those in authority got to protect them, and reveal a generation of children untarnished by an abusive background or badly illusioned mode of thinking.



TABLE OF CONTENTS

Acknowledgements.....	i
Notes on Transliteration of Arabic Words.....	ii
Abbreviations.....	iv
Abstract.....	v

CHAPTER ONE

INTRODUCTION AND ORIENTATION

1.1) Motivation for this Dissertation.....	1
1.2) Aims and Objectives.....	2
1.3) Methodology and Sequence of Chapterisation.....	4

CHAPTER TWO

THE POSITION OF CHILDREN IN *ISLÂM*

2.1) Position of Children in <i>Islâm</i>	7
2.2) Position of Children in the <i>Jâhiliyya</i> Period : pre- <i>Islâm</i> ic period.....	12
2.3) Prophetic reforms on the Treatment to Children.....	15
2.3.1) Exemplary Behaviour of the Prophet (ﷺ) Towards his Children.....	22
2.3.2) Exemplary Behaviour of the Prophet (ﷺ) Towards Children in General.....	25

CHAPTER THREE

OBLIGATIONS OF PARENTS AT CHILD-BIRTH

3.1) Expression of Happiness At Child-Birth.....	30
3.2) Reading Out The <i>’Adhân</i> And The <i>’Iqâmah</i>	32
3.3) <i>Tahnîk</i> : The Softening of Food.....	33
3.4) Shaving of the Hair	34
3.5) The <i>’Âqîqah</i> : Sacrificial Ceremony.....	35
3.6) <i>Tasmiyah</i> : Naming.....	37
3.7) <i>Khatnah</i> :Circumcision.....	42

CHAPTER FOUR

FUNDAMENTAL RIGHTS OF CHILDREN

4.1) <i>Radâ'âh</i> : Suckling.....	46
4.2) <i>Nafaqah</i> : Maintenance.....	51
4.2.1) Children's Obligation to Maintain their Parents.....	57
4.3) <i>'Ilm</i> : Education.....	60
4.4) <i>Nikâh</i> : Marriage.....	61
4.4.1) <i>Khiyâr al-Bulûgh</i> : Option of Puberty.....	62
4.4.2) <i>Wilâyat al-Ijbâr</i> : Power of Guardianship.....	68
4.4.3) <i>Nasab</i> : Establishing of Paternity.....	72
4.4.4) <i>'Iqrâr</i> : Acknowledgement of Paternity.....	88
4.4.5) <i>Hidhânat</i> : Custody of Children.....	94
4.4.6) <i>Laqîr</i> : The Foundling.....	106
4.4.7) <i>Wilâyat</i> : Guardianship.....	103
4.4.8) <i>Yatâmah</i> : Orphans and Their Status.....	114
4.5) <i>Mîrâth</i> : Right of Inheritance.....	122

CHAPTER FIVE

BIRR AL-WÂLIDAIN : THE RIGHTS OF PARENTS

5.1) Status of Parents in <i>Islâm</i>	125
5.2) Merits of Obedience to Parents.....	127
5.2.1) Justification for Disobedience to Parents.....	132
5.3) Abhorrence To Child Labour.....	136

CHAPTER SIX
CONTEMPORARY PROBLEMS REGARDING CHILDREN

6.1) Disciplinary Problems.....	138
6.1.1) The Holy Prophet's (saw) Method of Discipline.....	142
6.1.2) Correctional Procedures.....	146
6.1.3) Conditions For Corporal Punishment.....	155
6.1.4) Extreme Measures of Discipline.....	158
6.2) Sexual Morality And Sex Education.....	165
6.3) Criminal Accountability For Minors.....	169

CHAPTER SEVEN



CONCLUSION AND OBSERVATIONS

175

Bibliography.....	179
--------------------------	------------

CHAPTER ONE

INTRODUCTION AND ORIENTATION

1.1) MOTIVATION FOR THIS THESIS

One ponders over the design of the original sources of *Shari'ah* as to why the emphasis has been placed on the responsibility of children to their parents, in proportion to the duties of the parents towards their children in Islâm. The wisdom behind it is clear; The parents undergo untold difficulties in the rearing of that child; difficulties which a lifetime of service from their children will not be able to repay. Secondly, a child no matter how old, is still a child of his parents. It is only when he/she reaches the age of understanding that he/she will be able to understand the message of the Qur'ân and the *Ahâdith* with regard to obedience to parents. In this time, the parents would have aged considerably and would be most in need of their children's support and care. However, this discussion should not infer that the scriptures have neglected or outrightly ignored the aspect of the rights and duties of the parents, and hence the rights of children. The fundamental motivation of this dissertation is produce a substantial amount of authentic source material directly from the *musûs*: original texts on the subject

Unfortunately, situations have been noticed in this modern day of ignorance, that induces one to wonder if the treatment meted out to children in some cases is fair or not?. The issue of corporal punishment, child-care and welfare on all levels is plaguing the media continuously. Taking into cognisance the fact that a child is totally at the mercy of his parents, and often induced into silence by either threats of physical injury or even death, very little is reported, if not perceived.

2 Chapter One: Introduction and Orientation

Similar to many ancient ideologies, Islâm was perceived as barbaric, incoherent with human-rights, and averse to civilisation. The concept of slavery already being misunderstood and ill-conceived, the same analogy was applied to the case of children. This not only tainted the true image of Islâm, but it prevented many of those influenced by these sinister tactics from investigating and revealing the true, unbiased and factual standpoint of *Islâm* on these issues.

The issue of “children” has problematic connotations attached to it. Not one disciplinarian¹ is without a set of them. It is my endeavour to, firstly, identify all the difficult areas surrounding the *Tarbiyya*² of a child; then to provide a spirited solution to it; in one broad study, according to the noble *Shari'ah*.

1.2) AIMS AND OBJECTIVES

Child discipline does not exclusively need discipline to achieve its aim. It calls for the sciences of morality, social etiquette, education, psychology, physiology and language to be extensively applied in the process. Thus, when a child commits an offence, it is not the consequent disciplinary measures which only counts; rather it is the frame of mind at the time of committing the offence. When a parent complains of his child's behaviour, it directly reflects upon the upbringing that child received from his parents.

¹ The word *Disciplinarian* includes all those people who are directly involved in the teaching and character-building of a child. It would include parents, guardians, teachers and relatives.

² *Tarbiyya* is an Arabic word which has a broad meaning pertaining to the teaching of children. It implies the ability to inspire confidence. It embraces the courage to allow and promote creativity and innovation. It also includes the ability to trust and not to stifle. Caring for the spiritual welfare and social acceptance of the child is also included within the ambit of this word. The person in charge of *tarbiyya* is known as the *murabbi*. The English word “disciplinarian” would be used as its equivalent throughout this thesis.

A man came once to ‘Umar ibn al-Khattâb (*ra*), the mighty second caliph of *Islâm*, complaining of his son’s disobedience to him. ‘Umar (*ra*) summoned the boy and questioned him of his disobedience to his father and the neglecting of his rights.

The boy replied, “ O Amîr al-Mu‘minîn!, has not a child have rights over his father?”. “Certainly”, replied the great Caliph. “ What are they?”, enquired the boy. “ They are that the father should choose his mother, give him a good name and teach him the Qur’ân ”.

“ O Amîr al-Mu‘minîn!, my father did nothing of this . My mother is a *Magian*: fire-worshipper. He named me *Ju‘alân* (meaning a dung beetle or a scarab) and he did not teach me a single letter of the Qur’ân ”.

Turning to his father, the Caliph said, “ You have come to me to complain about the disobedience of your son. You have failed in your duty towards him before he has failed in his duty towards you; you have wronged him before he has wronged you”.

It is aptly said *One reaps what he sows*. This proverb mirrors upon the parent’s aptitude to make the child he desires. The Prophet of Allâh, Muḥammad bin ‘Abdullâh (*saw*) said “ Every child is born in a natural state of goodness; it is his parents who make him into a Jew, Christian or a Magian”. It¹ has been also narrated by Tirmidhî and Abû Dâ‘wûd on the authority of ‘Amr bin al-‘Âṣ that The Prophet of Allâh, Muḥammad bin ‘Abdullâh (*saw*) said, “ He is not of us, who is not affectionate to the young, and respectful to the elders”.

The message is clear: Your child would only become the coolness of your sight and apple of your joy if you make him such. The aim of this dissertation is to highlight the vital ingredients needed for a perfectly groomed child as found in the *Shari‘ah* before expecting preferential treatment from your child in return

¹ Nomâni, Mohd. Manzûr, *Meaning and Message of the Traditions*, Academy of Islâmic Research and Publications, Lucknow, India, 1989 4 volumes pp. 158-9

1.3) METHODOLOGY AND SEQUENCE OF CHAPTERIZATION

The methodology employed in this dissertation, is the direct approach on the subject from the original *nuṣūṣ* viz. The *Qur'ān* and the *Sunnah*. I have not taken into account local case studies, examinations of legal codes regarding minors in Muslim countries and empirical searches ; for this is not my intention. My intention is to produce the guidelines of the *Shari'ah* with regard to the many legal, social and moral rights that are due to them.

I have drawn extensively from the contemporary works of Muslim and non-Muslim social scientists alike, for the purpose of identifying problems regarding the child at home, in the classroom and in society at large. Extensive study of a few of the authoritative, legal treatises and tracts of *fiqh*, was also drawn upon to gain insight in the codification of laws regulating minors and the degree of their implementation in present times.

Needless to say, the orientation of this dissertation has been overwhelmingly dominated by the present chaotic state of affairs with regard to children. A kind of a “defensive front” has been applied in favour of children.

The sequence of Chapterisation follows a logical order. With **chapter one** being an introduction to the field of *Islâmic* sociology, the problems surrounding minors are identified; and the purpose and manner in which the problem are being dealt with; is ascertained. Motivation and relevance to practical application in modern day society can also be traced.

Chapter two, which is in reality, the first chapter of this dissertation, begins with the scenario of the behaviour and treatment to children in pre-Prophetic times. The indispensation of children is dealt with, before the aspect of the Prophetic revolution with regard to the attitude to children is put into perspective.

The behaviour of the noble Prophet of Allâh, Muḥammad bin ‘Abdullâh (ṣaw), towards his own children and to the children of the society is then analysed in the light of history and corroborated by the Prophetic Traditions itself. As a results of the children’s revolution wrought by the Holy Prophet of *Islâm*, a few incidents are quoted to portray the effect it had on their outlook towards *Islâm*

In chapter three, the obligations of parents upon child birth is discussed. Surely, the birth of a child should not herald an indifference in the attitude of the parents. Some ceremonies have been discussed where the wisdom of observing the same, amounts to the respect and dignity a child carries already after birth.

Chapter Four deals with the legal and fundamental rights of children, rights which can be established and forcefully enforced in an Islâmic judicial court of law. This chapter is arguably the essence and core of this dissertation. It is also the most extensive in substance and content. Starting from conception, the rights of the child have been explored in all possible domains of life, affecting his basic human-rights. All privileges due to him are discussed and how wrongful authority upon a child is corrected. Also, basic rights of identification of a child if he lacks one, and the status of the trampled orphan and the foundling, are also discussed with a view of injecting importance to the position of children in the *Islâmic* Judiciary and modern society.

This chapter ends with the eventual death of the child and his rights of inheritance is also discussed.

Chapter Five seeks not to undermine the authority of parents upon their children. It is the natural right of every parent to be accorded with the highest degree of respect, honour, dignity and service by their children. In the same vein, the instances where the child can justifiably oppose his parents and to what extent is child-labour allowed by parents.

Chapter six deals with technical problems normally encountered in the upbringing of a child. The common discipline problem faced by all disciplinarians; Corporal punishment, the much controversial subject; the viability of sex-education, is brought into focus as a disciplinary measure. Also, criminal accountability is brought in. As a measure of reflecting responsibility and consequence of actions upon children.

The **final chapter** of this dissertation, the conclusion, seeks to paint a conclusive portrait of how *Islâm* has treated children and what changes it brought in their favour. Also, a guideline is given in the direction of future researches to be conducted in the field.

This is then followed up by the customary bibliography and list of works consulted on the materialization of this thesis.



CHAPTER TWO

THE POSITION OF CHILDREN IN *ISLÂM*

2.1) SIGNIFICANCE OF CHILDREN IN *ISLÂM*

Every couple desires to have children, in order to create a pleasant and happy home atmosphere. Without them a home looks desolate and joyless. Almighty Allâh willed it as such to make this world survive. Otherwise, how this world would have proliferated?. Consequently, He had put it in the very nature of men and women to long for children. The tendency of love and protection has been placed naturally in the hearts of all parents. No wonder why the Qur'ân¹ has termed children as the beautification of this world. At another juncture in the Qur'ân, appreciation of children has been deemed *Wâjib*: Compulsory. The Qur'ân² says, “ And we helped you with wealth and sons, so that to increase your numbers”.

After getting married, the women in particular anxiously waits to become a mother. She feels elated to bear children and endures the terrible pains of childbirth, certainly knowing that this ordeal might be fatal for her. When she casts a glance at a new-born child lying beside her, she forgets all her worries and pains and is absorbed in service. She goes on bearing all sorts of pain and hardships for them throughout her life.

¹ Sûrah 15, Verse 46

² Sûrah 16, Verse 74

A Muslim woman bears all these pains and hardships for her children as her religious duty. According to *Islām*, this world is not an end in itself, rather it is a means of achieving the sublime aim of deliverance by ones virtuous deeds. Cherishment of children by the couple will acquire the bounties of Allāh, both in this world and in the Hereafter. That is why they will all the more, bear and cherish their children readily, selflessly and devotedly.

In fact, Allāh has made it easy upon the mother to bear children. He says, “¹From what were you created?, From a drop of sperm. We created you, then proportioned you, then we made the pathway (of your delivery) easy”.

Commentators have deemed childbirth nothing short of a ²miracle. From a derogative drop of sperm, a perfect, intelligent and beautifully³ moulded human being is formed. While in the mothers stomach already, the child’s limbs are perfectly proportioned and the blueprint of his entire life is already allotted to him. Such power of the Almighty is displayed, that the atheists would become convinced⁴ of a superior power.

The Holy Prophet, Muhammad bin ‘Abdullāh (*saw*) said, “When a woman is pregnant, she enjoys for the whole period of her pregnancy, the status of a fasting person, one who prays during most of the night, and obeys Allāh and fights for his cause.

¹ Qur’ān, Sûrah 80, verses 17-21

² Suyûti and Mahalli, *Jalalain al-Kalân Tafîr al-Jalâlain*, Qadîmî Kutub Khâna, Karachi, 1992 p.490

³ Shafi‘, Muhammad, *Ma‘ârif al-Qur’ân*, Idâra Ma‘ârif, Karachi, 1990, Vol. 8 pp. 669-676

⁴ ‘Uthmâni, Shabbir Ahmad, *Tafîr e ‘Uthmâni*, King Fahd Printing Press, Madinah al-Munawwarah, 1989, p.777

None can estimate the reward she earns from Allāh for the pains she endures while delivering the child. When she gives birth, she breast-feeds her baby, the reward she receives is like one who gives life to somebody. And when (after the specified period) she weans the child, an angel of Allāh places his hand on her shoulder with respect and affection, and says to her, “O (maid of Allāh) now be prepared for the next pregnancy¹.”

The parents should regard children as gifts and bounties from Almighty Allāh, otherwise they would remain unable to give them their due rights. Unless they do not realise the worth of their children, they would not be able to accord them sincere love, affections and to take pains and make sacrifices for them. *Islām* also gives the children the credit of being the best reward for their parents. They are the best helpers of the parents in carrying out the religious affairs and their best heirs after death. They are the custodians and upholders of religious beliefs and traditions of their parents. For this very reason the Prophet Ebrāhīm (*as*) prayed to Allāh², “O our Lord, grant us coolness of sight from our spouses and children”. By this he meant to have those children who would be his religious heirs and carry on the mission of their father. At another place, He prayed³, “O my Lord, give me an inheritor from You who may be my heir and may also inherit the inheritance of the children of Yaqûb”. Here he wanted to have children who keep the flame of his mission burning which was enkindled by Hazrat Ya‘qûb (*as*) and his family.

The disbelievers of Makka often taunted⁴ the Prophet (*saw*) that his posterity had been eliminated after his only son, Ebrāhīm (*ra*) had passed away. They had misunderstood that his divine mission would cease to continue without male issue of the Prophet (*saw*).

¹ Tirmidhî, *al-Jâmi‘ al-Tirmidhî*, Qadîmi Kutub Khâna, Karachi, Vol.2, Page 281.

² Qur‘ân, Sûrah 20, Verse 25

³ Qur‘ân, Sûrah 18, Verse 17.

⁴ Qur‘ân, Sûrah 108, Verse 3

It is for the very same reason that the Messenger Zakariyya (*as*) beseeched Allāh for a son in order to continue his mission. The Qur'ān¹ relates his anguish thus, “ He (Zakariyya) said, “ O my Lord!, verily my bones are weakened and my head glistens with grey hairiness, but never have I, in my prayer to you, O Lord!, been unblessed. And verily I fear my kindred after me and my wife is barren. So grant me from yourself, an heir who shall inherit me from the family of Yâ‘qûb, and O my Lord!, make him from amongst your favourites”.

Parents would be rewarded well, if they bear the loss of death of their children with patience and thankfulness by Almighty Allāh. They will get a castle built in paradise for them which will be called “The Castle of Gratitude” . Hazrat Abû Mûsâ ‘Ash‘arî (*ra.*) quotes the following Tradition in this context, “When the child of a person dies, Almighty Allāh asks his angels, “ Have you extracted the soul of my slave?” . The angel’s say, “yes”. Then. He again asks, “Have you extracted the soul of the part of his heart?”. The angels reply, “yes”. He then further asks, “ What my slave said?”. The angels reply, “ Your slave praised you and recited the following verse on this ordeal *innâ lillâh wa innâ ilayhi râ jûn*²”. Hearing this, Almighty Allāh commands the angels, “ Construct a castle in paradise for this slave of mine, and name it the “Castle of Gratitude”³.

According to another saying of the Holy Prophet (*saw*), narrated by Umme Habîba, “I was sitting with ‘Â‘ishâ (*ra*) when the Holy Prophet (*saw*) came there and said, “ If three children of a couple die without reaching the age of puberty, they will stay at the gate of Paradise on the day Resurrection.

¹ Qur'ān, Sûrah 04, Verse 47

² Meaning “Verily do we belong to Allāh, and surely will we return to him”. Muslims recite this incantation at the time of hearing any bad news or upon the death of a person.

³ Tirmidhî, *al-Jâmi‘ al-Tirmidhî*, Qadîmi Kutub Khâna, Karachi, Vol.2, Page 173.

When they will be asked to step in, they will reply, “ We cannot enter paradise unless our parent’s accompany us”. Then Allâh will tell them, “ Go you and your parents all to Paradise”¹.

The following tradition of the Noble Prophet (ﷺ) sums up the virtue and blessings a child could be for his parent’s. Imâm Ahmad (ra) narrates in his *Masnad* on the authority of ‘Uqbah bin ‘Âmir (ra) that the Holy Prophet (ﷺ) said, “ Whoever has three daughters, he is patient with them and feeds and clothes them with the best of his ability; they will be a barrier for him entering into Hell-fire”².

Children are a continuous source of reward for their parents. If the parents die before their children, they will continuously be rewarded after death on account of the virtuous deeds of their parents. Abû Hurairah (ra) narrates the following Tradition³, “ When a person dies, all of his activities comes to an end, except three virtuous deeds, through which he is continuously rewarded from Almighty Allâh till eternity, 1) Perpetual virtuous deeds. 2) The knowledge through which people have benefited. 3) Virtuous children who continue praying for him.



¹ Tirmidhî, *al-Jâmi‘ al-Tirmidhî*, Qadîmi Kutub Khâna, Karachi, Vol.2, Page 284.

² *ibid.*,

³ Tirmidhî, *al-Jâmi‘ al-Tirmidhî*, Qadîmi Kutub Khâna, Karachi, Vol.2, Page 276.

2.2) POSITION OF CHILDREN IN THE *JÂHILIYYÂ* PERIOD : PRE-ISLÂMIC PERIOD

The Qur'ân¹ says, “Observe justice, it is the closest form of piety”.

The Arabs of pre-Islamic Arabia, especially from the tribe of *Banû Tamîm*, were indisposed to having female issue. The Qur'ân² describes their attitude thus, “When if one of them receives tidings of the birth of a female, his face becomes darkened and he inwardly suppresses his wrath. He conceals himself from his folk because of the evil glad-tidings he received . (Asking himself) Shall I rear her in contempt or should I bury her ?. Verily, evil is their judgement”.

This cruel tradition of heartless parents who take the life of their own flesh was rampant in many countries before the advent of *Islâm*. Romans and Indian Rajput's frequently and openly killed their children³. The Pagan Arabs excelled all others in this inhuman practice. Usually, children were killed by their own parent's for one of three reasons:

1) Some illiterate and superstitious tribes did this as a ritual in order to please their gods and goddesses. They used to sacrifice their children so that their gods might be appeased and grant them rain, victory in war, health etc. Sometimes, they vowed to sacrifice their children at the altar if any supplication of theirs were fulfilled. Most surprisingly, the women were also a party to the execution of these heinous crimes.

¹ Sûrah 07, verse 8

² Sûrah 16, Verse 58-9

³ Lâri, Sayyid Mujtaba, *Western Civilization Through Western Eyes* Foundation of Islâmîc C.P.W, Iran, Page 38.

13 Chapter Two: The Position of Children in *Islām*

Unfortunately, this crime is still practised in the twentieth century. The *Satanic Cult* has been active world-wide in human sacrifice as a basic tenet of the cult. Until the ¹early nineteenth Century, children's rights were traditionally limited to English-speaking countries, because common-law common law treated children as the property ² of their parents. It was only in The following news appeared in *Daily Da'wat*, New Delhi, India on April 8, 1975:

“ A nine year old girl was sacrificed at the alter of goddess ³Lakḥsmi in the village of Warangi District, on March 24. The police have arrested a farmer and his 21 year old daughter on the charges of murder and have recovered from their possession the silver bracelets and gold earrings of the deceased ”.

The Qur'ân⁴ also indicates towards such persons and declared them losers, “Thus have their (so called partners to Allâh) made the killing of their children seem fair to many of the idolaters, that they may ruin themselves and make their faith obscure for them”.

2) People killed their children due to the financial burden attached to the upbringing of a child. Such parents think as children as an unnecessary burden upon their shoulders.

¹ The new Grolier Multi-Media Encyclopaedia PC., Creative Technology Software Toolworks Release 6. 1985 C.D. Entry on “Children's rights”.

² *Islām* regards children as a trust, for whom the parent's are responsible and answerable before Allâh. It is the divinely imposed duty of the parent's to rear the child, for which they are greatly rewarded. Neglect of their rights could lead to it's enforcement by a judicial *Islâmic* council and the perpetrators will be grievously punished in the hereafter if amends were not made for their wrong-doings.

³ Goddess of wealth, in Hinduism.

⁴ Sûrah 06, Verse 138

14 Chapter Two: The Position of Children in *Islām*

The Qur'ān¹ says, "Kill not your children for fear of poverty. It is we who provide for them and for you. Surely their killing is a great sin".

3) The third reason is most idiotic. Particularly the Arabs of the pre-*Islāmic* era thought daughters to be a disgrace. They buried them alive because of their false pride, egoism and conceit. They believed it to be extremely insulting and humiliating to have a son-in-law, who would possess their daughters as wives. Meanwhile, they totally forgot that they had somebody else's daughter as their wife.

Farzdaq, a famous poet of Arabia, was very proud of his paternal grandfather, Ṣa'sa'ah (*ra*) for saving many girls in a period when the Arabs felt humiliated even by imagining themselves to be a father of a girl. Ṣa'sa'ah (*ra*) narrates his own story in the following words², "Once I went in search of my two camels. On the way I spotted a kindled fire in the distance. It came to mind that the fire might have been lit in order to attract help. I started walking towards the fire with the intention of help. I made my camel trot faster and soon I reached the place where the fire was burning. It was in the precincts of the tribe of *Banū 'Ammār*. On reaching there, I saw an old man with shaggy hair sitting in front of his house in a pensive mood. Heart piercing cries were coming from a woman inside the house. After the exchange of compliments with the old man. I asked him as to what was the happenings. He told me that his wife was under going birth pains for the last three days. During the conversation someone said loudly from inside the house that the child was born. Immediately the old man cried, "It is all right if it is a boy, but I do not want to hear even it's voice if it is a girl. I will kill her instantly ". By the will of Allāh, it was a girl!.

¹ Sūrah 17, Verse 31

² Tufail, Muhammad *Nuqūsh*, Idārah Furūgh Urdu, Lahore, 1983 Vol. 6, page 124

I implored the old man meekly, “ O Sheikh!, please do not kill her, after all, it is your own child. As far as her sustenance is concerned, you should not worry at all, as Allâh is the only Sustainer. The old man did not pay attention to what I said, and again roared in anger, “No, never, I cannot leave her alive. I will not rest till I have killed her!”. I again beseeched him to spare the life of the innocent infant in a very humble tone. He frowned at me, and retorted, “ If your heart is bleeding so much for the child, why do you not purchase her and cherish her yourself”. I readily agreed to the proposal and, paying the demanded price of the infant, I brought her to my house in very high spirits. I promised the Almighty that I would bring up this child with immense love and kindness.. I also promised the Almighty that whenever some heartless person intends to kill an innocent girl, I will prevent him from doing so. I kept on fulfilling my promises until the Almighty made Muhammad bin ‘Abdullâh (*ṣaw*) his Prophet. By that time, I had saved ninety-four girls from being killed by their cruel fathers. Afterwards, the Holy Prophet (*ṣaw*), through his impressive preachings and strict forbiddings, got this inhuman tradition eradicated from the society, the world over ”.



2.3) PROPHETIC REFORMS ON THE TREATMENT TO CHILDREN

Once, a person told the Holy Prophet (*ṣaw*) his own true story¹ of the days of ignorance. The story was so pathetic, that it made the Holy Prophet (*ṣaw*) gloomy. He related, “ O Messenger of Allâh!, we were illiterate and possessed no knowledge and guidance. We worshipped idols and slew our children with our own hands. O Messenger of Allâh!, I had a charming little daughter.

¹ Tufail, Muhammad *Nuqûsh*, Idârah Furûgh Urdu, Lahore, 1983 Vol. 6, page 167

Whenever I would call her, she would run into my arms laughing with joy and pleasure. One day, I called her as usual and asked her to follow me. I was ahead of her and she was running after me with dainty and infirm steps. There was a deep well a short distance from my house. On reaching the well, I stopped and the child also caught up with me. O Messenger of Allāh!, I caught hold of her hand firmly and flung her into the well. The poor child kept on calling for me inside the well, “ Father, O my dear Father!”, O messenger of Allāh!, these were her last words.

When the man finished the heart-piercing story, tears were freely flowing out of the blessed eyes of the Noble Prophet of Allāh (*ṣaw*) out of sheer pity and grief for the child. One of the Companions reprimanded him that he made the Holy Prophet (*ṣaw*) sad by telling him the woeful story. To this the Prophet (*ṣaw*) replied, “Do not scold him, do not admonish him. He has come to me for the redressal of his sin.” Then addressing the person he asked him to repeat the painful story. The person retold the incident. While the person was repeating his touching story the Prophet (*ṣaw*) was so deeply moved that his beard wetted with tears. When the person finished repeating the unhappy incident, the Holy Prophet (*ṣaw*) told him, “By the virtue of embracing *Islām*, all the sins committed by you during your pre-*Islāmic* life are forgiven.”

Only Almighty Allāh knows how many innocent and helpless girls became the victim of this cruel and heinous crime and for how long daughters were being buried alive by their own fathers during the dark period of ignorance in the Arabian society. Though, even in those days there were some sensible and kind-hearted persons who did try their best to save the innocent little girls from this cruel and inhuman practice. But these individuals and solitary efforts could not eradicate this atrocious custom from the society.

It should never be forgotten that the birth of a male or a female child is beyond our control. We do not have any say at all in this matter. It is not the matter of our will, but the will of Almighty Allāh who himself controls this issue. Only he knows well who deserves a son and to whom suits a daughter.

We can only wish and pray to have a male or female child. But the decision rests with the Almighty Allāh who is the creator of all males and females at His own will. Only He may give us a boy or girl or even none at all, regardless of our wishes and desires.

According to the Holy Qur'ân,¹ "To Allāh belongs the sovereignty of the heavens and the earth. He creates what He wills. He bestows female offspring upon whom He wills, and bestows male offspring upon whom He wills. Or He mingles them males and females and He makes barren whom He wills. He is all-knowing, most-powerful".

Actually the human beings are totally helpless in this regard. Even the modern science and technology which have enabled man to temporarily inhabit the moon; to prevent disastrous epidemics and to produce Atom, Hydrogen, Cobalt and Neutron bombs, have not yet solved the mystery of birth and the determination of the sex of the embryo². Any physician, spiritualist or exorcist on earth can neither foretell³ the sex of an unborn child nor can make any barren woman capable of pregnancy. Moreover, we cannot know whether we would be benefited and comforted by the male and female children. It is often witnessed that a family in which there are many daughters and no son; is full of peace, satisfaction and other bounties from Allāh.

On the contrary; there are several homes which consist of several sons but no daughters. And these sons have proved to be a source of constant worry, anxiety and even humiliation for their parents. In several cases it is found that, after giving birth to several sons, a mother earnestly prays to Allāh to give her a daughter. But when her prayer is granted, that besought girl proved to be a constant menace and a stigma of shame and indignation.

¹ Qur'ân, Sûrah 42, Verse 49-50

² Bucaille, Maurice, *The Qur'ân, The Bible and Science*, Idârah Falâhi, Karachi, 1986, Page 34.

³ Qur'ân, Sûrah 31, Verse 34.

Still, there are homes where the sons break the hearts of their parents while the daughters are the boons to the parents, parents who are short of words to express their love, service and obedience to them. Only Allâh knows whether we deserve sons or daughters or none of them at all.

The wife of ‘Imrân¹, when she was pregnant, vowed that if a son was born to her, she would bequeath² him to Allâh. She prayed to the Creator to accept her humble offer. But He so willed that she give birth to a daughter. She was extremely pained and gloomy. Broken hearted, she moaned³, “ O Almighty Allâh!, I got a daughter (in place of a son. how will she serve the purpose for which I need a son and made my vow?). A female is very much different from a male. (She, due to some biological handicaps, unlike men, shall not be able to serve and worship you vigorously and consistently) And Allâh knows best what she had given birth to”.

But, she did not know that her wailings and remorse were baseless. She was blissfully unaware of the fact that the very girl will prove to be the source of reward, recompense and exaltation for her. That, due to the girl, her name will be mentioned in the Holy Scriptures and millions of people will read it till the end of the world. She will have the honour of becoming the maternal grandmother of the pious Messenger to whom Almighty Allâh will reveal the *Injil* (‘New-Testament’)⁴.

¹ She eventually gave birth to Miriam (*as*), who was responsible for the miraculous birth of ‘Îsâ’ (*as*). ‘Îmrân, her husband was the Imâm of al-Masjid al-’Aqsa‘ and a descendant of the Prophet Mûsâ (*as*).

² Qur’ân, Sûrah 3, Verse 34.

³ Qur’ân. Sûrah 3, Verse 36

⁴ Suyûtî and Mahalli, *Jalalain al-Kalân Tafsir al-Jalâlain*, Qadîmî Kutub Khâna, Karachi, 1992 p.178

The Qur'ân¹ describes this scene in the following words, “ And Allâh accepted her with full acceptance and vouchsafed to her a goodly growth. Whenever Zachariah (*as*) went into the sanctuary where she was, he found that she had food. He asked, “ O Miriam!, from where does this food come from?. She answered, “ It is from Allâh. He provides without stint to whom he wills”.

The Holy Prophet (*saw*) is reported to have said, “ Do not hate your daughters. I am also a father of several ”. According to another saying, “ Daughters are very loving and they are a potent source of affluence and welfare”. ibn Sa'ad (*ra*) narrates that once he heard the Holy Prophet (*saw*) saying, “ When a female child is born, Almighty Allâh sends his angels to that house and pray that there may be peace upon them. The angel's then cover the new-born girl under the shadow of their wings, and caressing the head of the baby with their hands say that this is a weak and frail person who is given birth to by a weak and frail person. Whoever will bear the responsibility of her cherishment, will go on having then blessings of Almighty Allâh as long as that person remains alive”².

Once a man was sitting with 'Abdullâh bin 'Umar (*ra*) who had several daughters. He exclaimed in anguish, “I wish all my daughters were dead!”. 'Abdullâh (*ra*) became heated up on hearing this, and he severely rebuffed the man with this query, “ Are you their sustainer?”³.

¹ Sûrah 7, Verse 37

² All the above Traditions extracted from the *Jâmi' al-Tirmidhî*, Vol. 2, Page 65-7

³ Tufail, Muhammad *Nuqûsh*, Idârah Furûgh Urdu, Lahore, 1983 Vol. 7, page 344

Imâm Bukhârî relates in his *al-Adab al-Mufrad* on the authority of ‘Ā‘ishq Siddiqah (*ra*) that once, a man named al-‘Aqra‘ bin Hâbis (*ra*) visited the Holy Prophet (*saw*), and was surprised to see him kiss his grand-sons, Hasan and Husain (*ra*). “Do you kiss your children?”, he asked, adding that he had ten children and never kissed one of them.

“ That shows that you have no kindness, tenderness and mercy. Those who do-not show mercy to other’s, will not have God’s mercy shown on them”, commented the Holy Prophet (*saw*).

Imâm Muslim (*ra*) relates on the authority of ‘Ānas bin Mâlik (*ra*) that the Holy Prophet (*saw*) said, “ Whoever brings up two daughters up, until they mature, they will be with me on the day of Resurrection like this. He then joined his two fingers to indicate the closeness. Humaidi (*ra*) has also narrated a similar tradition on the authority of Abû Sa‘îd (*ra*) that the Holy Prophet (*saw*) said, “ Whoever has three daughters or sisters; or two daughters and two sisters, and treats him well and is patient over them and fears Allâh with regard to them; he will enter Paradise ”. Imâm Ahmad bin Hanbal (*ra*) relates the following Tradition on the authority of Nu‘mân bin Bashîr (*ra*) that the Holy Prophet (*saw*) said, “ Be just towards your children, be just towards your children, be just towards your children!”.

Once a woman came to ‘Abdullâh bin ‘Ābbâs (*ra*) and said that she had vowed to sacrifice her child. He forbade her from doing so and asked her to give compensation for her misdirected vow¹.

The revolution towards children was so complete in the Prophetic Era, that by the time of His death, no trace at all was left as to any animosity and hatred towards them. The Holy Prophet (*saw*) would always be the first to greet a child, then fondly embracing and kissing him, he would say, “ No one knows what Allâh has in store for this child”. Instead, children were now sought in earnest and granted the highest honour and respect.

¹ *ibid.*, pp 333-9

Some persons who embraced *Islâm*, were unable to migrate to Madīnah al-Munawwarah¹ with the Holy Prophet (ṣaw). This happened due to the strong resistance from their family members who tolerated their acceptance of *Islâm*, but could not allow their departure from them. They yielded to this emotional pressure and postponed the *Hijrah*.

When, later, they reached Madīnah, they were pained to see that those who had migrated earlier, were far ahead of them in the field of learning and advancement. They felt that it was all due to the resistance from their wives and children. Being furious at this, they intended to take action against their dependants. On this occasion, the Holy Prophet (ṣaw) advised them not to do so as it was they, themselves who had made this decision and preferred to concede to their demands. They were advised that the Almighty Allāh does not like those who become rude, punish or avenge their family members.



¹ al-Kahlāni, Muhammad bin Isma'īl, *Subul al-Salām*, Cairo, 1960. Vol. 3, Page 100

2.3.1) EXEMPLARY BEHAVIOUR OF THE PROPHET (SAW) TOWARDS HIS CHILDREN

It is not surprising to note that throughout the whole sacred life of the Noble Prophet (saw), not a single incident is found about him being unkind, indifferent or even harsh to his children. Apart from his children, he behaved the same with his servants.

Anas bin Mâlik (ra)¹ relates, “ I served the Holy Prophet (saw) for ten years in Madīnah. At that time I was just a boy and often I was unable to serve him fully according to his requirements. But, during the whole span of these ten years, he never once scolded me or asked me why I did that or why did I not do it!.” ‘Ā’ishā (ra), his beloved wife, relates that the Holy Prophet (saw) never punished any slave male or female, and animals too. Whenever I entered the house, I found him smiling ”.

Children are a potent source of affluence and welfare. ibn Sa’ad (ra) narrates that once he heard the Holy Prophet (saw) saying, “ When a female child is born, Almighty Allāh sends his angels to that house and pray that there may be peace upon them. The angels then cover the new-born girl under the shadow of their wings, and caressing the head of the baby with their hands say that this is a weak and frail person who is given birth to by a weak and frail person. Whoever will bear the responsibility of her cherishment, will go on having then blessings of Almighty Allāh as long as that person remains alive² ”.

¹ Siddiqi, Safdar Hasan, *Muhammad, on Social Behaviour*, al-Amīn Publications, Delhi, 1992

²Tirmidhī, *al-Jāmi‘ al-Tirmidhī*, Qadīmi Kutub Khāna, Karachi, Vol.2, Page 197

Once a man was sitting with ‘Abdullāh bin ‘Umar (*ra*) who had several daughters. He exclaimed in anguish, “ I wish all my daughters were dead!”. ‘Abdullāh (*ra*) became heated up on hearing this, and he severely rebuffed the man with this query, “ Are you their sustainer ?”.

Imām Bukhārī relates in his *al-Adab al-Mufrad* on the authority of ‘Ā’ishq Sīdīqah (*ra*) that once, a man named al-‘Aqra‘ bin Hābis (*ra*) visited the Holy Prophet (*saw*), and was surprised to see him kiss his grandsons, Hasan and Husain (*ra*). “ Do you kiss your children?”, he asked, adding that he had ten children and never kissed one of them.

“ That shows that you have no kindness, tenderness and mercy. Those who do-not show mercy to others, will not have God’s mercy shown on them”¹, commented the Holy Prophet (*saw*).

Imām Muslim (*ra*) relates on the authority of Anas bin Mālik (*ra*) in his *al-Sahīh* that the Holy Prophet (*saw*) said, “ Whoever brings up two daughters up, until they mature, they will be with me on the day of Resurrection like this. He then joined his two fingers to indicate the closeness. Humaidi (*ra*) has also narrated a similar Tradition on the authority of Abū Sa’īd (*ra*) that the Holy Prophet (*saw*) said, “ Whoever has three daughters or sisters; or two daughters and two sisters, and treats him well and is patient over them and fears Allāh with regard to them; he will enter Paradise”. Imām Ahmad bin Hanbal (*ra*) relates the following Tradition on the authority of Nu‘mān bin Bashīr (*ra*) that the Holy Prophet (*saw*) said, “ Be just towards your children, be just towards your children, be just towards your children!”.

¹ *Usūl al-Shāshi*, Page 123

Once a woman came to ‘Abdullāh bin ‘Abbās (*ra*) and said that she had vowed to sacrifice her child. He forbade her from doing so and asked her to give compensation for her misdirected vow.

The revolution towards children was so complete in the Prophetic Era, that by the time of His death, no trace at all was left as to any animosity and hatred towards them. The Holy Prophet (*saw*) would always be the first to greet a child, then fondly embracing and kissing him, he would say, “ No one knows what Allāh has in store for this child¹ ”. Instead, children were now sought in earnest and granted the highest honour and respect.

Imām Bukhārī and Imām Muslim (*ra*) narrates on the authority of Anas bin Mālik (*ra*) that once we, alongwith the Holy Prophet (*saw*), went to the house of Abū Saif, the blacksmith. He was the husband of the woman who was the foster mother of the Holy Prophet’s son, Ebrāhīm (*ra*). The Holy Prophet (*saw*) took his son into his arms, kissed him and put his nose on the face of the child. After some time we saw that ‘Ibrāhīm (*ra*) was breathing his last and tears were rolling down the eyes of the Holy Prophet (*saw*). Seeing this, ‘Abd al-Rahmān bin ‘Auf (*ra*) said, “ Are you also weeping, Prophet of Allāh!”. He replied, “ O ibn ‘Auf (*ra*), these tears are a sign of love and kindness, though the heart bleeds and our eyes flow, but we only say (on such occasions) what our Allāh loves. O ‘Ibrāhīm!, we are very much grieved by your departure”.

The Holy Prophet (*saw*) is reported to have displayed similar proverbial love and affection on the occasion when his ²daughters, Umm al-Kulthūm, Zainab and Ruqayya (*ra*) had passed away.

¹ ‘Uthmāni, Shabbir Ahmad, *Tafsīr e ‘Uthmāni*, King Fahd Printing Press, Madīnah al-Munawwarah, 1989, p.357

² All the daughters of the Holy Prophet (*saw*) including his son, ‘Ibrāhīm (*ra*), passed away during his lifetime. Only Fātima (*ra*) passed away six months after the Prophet (*saw*) ‘s demise.

2.3.2) EXEMPLARY BEHAVIOUR OF THE PROPHET (SAW) TOWARDS CHILDREN IN GENERAL

Imâm Bukhârî (*ra*) relates on the authority of 'Anas bin Mâlik (*ra*), the most sincere and faithful servant of the Holy Prophet (saw) that, "I never saw anyone who could love members of his family more than the Holy Prophet (saw)".

On the authority of the above narrator, somebody asked the Messenger¹ Yâ'qûb (*as*) as to how he had lost his eyesight, and why was his back bent?. Yâ'qûb (*as*) replied that he had lost his eyesight as he had been weeping incessantly in the absence of his son, Yousuf (*as*), and his back was bent due to the shock of detention of his other son, Binyâmîn. Immediately, Gabriel, the powerful angel of Allâh came to him and said,

"Are you complaining against the Almighty Allâh?". He replied, "No. I am telling you my woeful tale to Allâh". The Angel Gabriel said that Almighty Allâh already knew. When Yâ'qûb (*as*) was alone in his room once again, he prayed, "O my Lord!, do you not pity an old man?. You have taken my eyesight and bent my back with grief!. O my Lord!, Give me back my flowers (sons) so that I may smell them only once, and then do whatever you like with me ". The Angel Gabriel came once again to him and told him, " Almighty Allâh sends blessings upon you. He says, O Ya'qûb!, be happy (with the greetings of giving you back your sons) , had your sons even been dead, we would have made them alive for the sake of your comfort and joy²".

¹ al-Manthari, 'Abd al-'Azîm, *Targhib wa Tarhib*, Hâfith 'Abd al-Salâm Publishers, Karachi, 1983 (6 Volumes).

² Shafi', Moḥammad, *Ma'ârif al-Qur'ân*, Idâra Ma'ârif, Karachi, 1990, Vol. 3 pp. 234--7

Some parents do not play, laugh and be merry with their children. They think, that, doing so, is against piety and self-respect. To their feeble mind, the more they would avoid being pleasant and friendly with their children, the more they will be respected. This attitude is neither required by *Islām*, nor by the normal norms of social behaviour. Moreover, this harsh attitude makes the children repulsive to their parents and unpopular amongst other children. They loose self-respect and confidence for the rest of their lives. In the end, a destructive distance is created in the child-parent relationship which is extremely hard to bridge. Parents who do not make their children believe, by their behaviour, that they love them sincerely, are on the one hand, creating socio-psychological problems for themselves and their children, and earning the displeasure of the Almighty on the other.

Once¹ a young man was asked, as to why he was not maintaining a pleasant relationship with his parents. He replied, “ My father is callous, overstrict and an aggressive type of a man. Since my childhood, I was always afraid of him. Due to his aggressive attitude, I tried my best to avoid him for fear of chiding, criticism and being rebuked. In the night, before going to sleep, I was always put to every type of humiliation and indignation for my faults which happened throughout the day. In the morning, I woke up prepared for the same treatment again. He practically mutilated my self-ego.

I can still remember the time when he told me to stand in the toilet for one whole afternoon and he told me that he would flush me down the pan. Due to his fear, I developed an impediment in my speech, and due to his lack of interest in my welfare, I have an inferiority complex which I am still struggling to overcome today. He deprived me of all the childhood happiness and activities.

¹ Statistics, *Jam ‘iyyat al- ‘Ulamā* Transvaal Helpline, (011) 834--2859

At times, he would beat me at simply my lack of interest in something. If he ever advised me, it was based on breaking ties with family or friends or creating enmity between them. He never approved of me having friends. I was never complimented or encouraged upon the smallest of achievements in my lifetime. My father worked me like a donkey and always, I had to live of the charity of others who would take pity upon my old and tattered clothing.. It was the rarest and luckiest day of my life during which I was scolded two or three times only. I anxiously awaited him going out and intensely dreaded his presence at home.

When I reached puberty, he dumped me in a boarding school and hardly visited me. I dreaded going home for holidays. Ultimately, he divorced my mother and, my only support at home was shattered. When I married eventually, he opposed me and cruelly disowned me. Whenever I came across boys whose father's are tender to them, I envied them and wished that I had such a father.

Now, I seeth in anger at the very thought of him and a picture of a fiery, monstrous dragon is painted in my mind whenever I think of him. Even today, he wouldn't return my greeting whenever I greet him and always tells me that I have dialled the wrong number whenever I phone him. He maliciously slanders me behind my back and takes great pains to disrepute me. I am no longer a normal person. In such circumstances, how could I be otherwise ?”

Relationship with children should be a matter of “ Give and Take”. Parents should treat their children exactly the way they want themselves to be treated by them.

Only then, will ones children be happy with you and sincerely pray to ¹Almighty Allâh, “O Lord!, have mercy upon my parents as they cherished me with love and kindness in my infancy and childhood”.

Almighty Allâh, in his Holy Book, stresses upon the parents to treat the children with love, affection and forgiveness. He dislikes parents who adopt harsh, aggressive and revengeful attitudes towards their children if they commit minor mistakes. He forgives and has mercy upon them only who treat their children and other members of the family with kindness and compassion.²

“ And if you forgive, overlook and cover-up (the ills of your wives and children) , then verily Allâh is oft-Forgiving, the most Merciful ”.

The Messenger of Allâh (*ṣaw*), has elaborately discussed about various aspects of the behaviour of parents towards their children. He regulated parental behaviour so that none of the parties may not be aggrieved, he even granted minors the right to complain against their parents!.

Although a daughter may not be a source of material benefit to her parents in this world, her parents will be fully benefited in the life hereafter on account of their pleasant and kind behaviour to her.

Imâm Bukhâri (*ra*) relates in his *al-Adab al-Mufrad* that a man came to the Holy Prophet (*ṣaw*) with his child whom he hugged warmly in his hands.

¹ Qur’ân, Sûrah 17, Verse 24. The Qur’ân does not expect a child to make such a prayer for his parents if the characteristic of Love and Kindness was not prevalent in his childhood.

² Qur’ân, Sûrah 64, Verse 14.

Seeing this, the Holy Prophet (*saw*) asked him, “ Are you doing this out of love and kindness?”. The man replied in the affirmative. He then told him, “ With whatever love and kindness you are treating this child, you will be favoured by the Almighty Allāh in a far greater degree, as his kindness overrides the kindness of all his creatures”.

Imām Bukhārī and Muslim (*ra*) have narrated in their *al-Jāmi‘ al-Ṣaḥīḥ* on the authority of Anas bin Mālik (*ra*) that the Holy Prophet (*saw*) said, “ I start with the *Ṣalāh*, and I intend to prolong it, when suddenly I hear the crying of a child. In this case I shorten the *ṣalāh*, well-knowing the effect of a crying child upon its mother ”.

Imām Muslim (*ra*) has also related in his *al-Ṣaḥīḥ* that whenever the first fruits of the season would be available, the people would bring it to the Holy Prophet (*saw*), who should hold it in his hands and make the following supplication, “O Allāh, grant us blessings in our fruits, and grant us blessings in our *mudd* and our *ṣa‘*”¹. Then the Holy Prophet (*saw*) would call the smallest child nearest to him and give him that fruit!².



¹ These were measurements used in those times.

² Imām al-Jazri, *Al-Ḥisn al-Ḥasin*, Translated by Moulāna Mohammad Rafique ibn Ahmed Hathurani, Deeni Publications, Johannesburg, 1995. Page 170

CHAPTER THREE

PARENTAL OBLIGATIONS AT CHILD-BIRTH

3.1) EXPRESSING OF HAPPINESS UPON CHILD-BIRTH

The birth of a child is an occasion of great joy, happiness and jubilation. All members of the family, community and friends should take part in the happiness and festive mood. The occasion of child birth should be an opportunity of once again bonding and strengthening relationship ties with everyone. As is the custom in certain communities to give presents, there is nothing wrong in this as it promotes love and unity amongst all. But, it should not be deemed compulsory.



The Qur'ân has also mentioned the birth of a child to be an event of rejoicing and happiness. One should accept the decree of the Almighty, The Most-Wise with supplication and fortitude, “And surely did the angels come to Abraham with glad tidings. They greeted and it was not long before a roasted lamb was offered to them. When Abraham noticed that their hands were not moving, he thought it strange and feared. They said, “Do not fear, we have been sent to the tribe of Lot. And his (Abraham’s) wife was standing and she laughed, and the glad tidings of Ishâq was given, and thereafter Ya‘qûb¹”

¹ Qur'ân, Sûrah 13, Verse 46

With regard to the story of Zakariyyâ (*as*), the Qur'ân says, “ The angels called out to him while he was performing his prayers in the *Mehrâb*: niche, verily Allâh has given you glad tidings of Yahyâ ¹ ”.

It has been reported in various books of *Sîrat*², the narration of the birth of the Holy Prophet (*saw*). Upon his blessed birth, the slave of Abu Lahab³, the Holy Prophet (*saw*) 's uncle, *Thûwaybah*, brought the news to her master. She said, “Last night, a son was born to ‘Abdullâh!”. Extremely jubilant at this news, he immediately freed *Thûwaybah*.



¹ Qur'ân, Sûrah 4, Verse 39

² For an authentic recording of the above incident, refer to: ibn Hishâm, *al-Sîrat al-Nabawiyah*, Mahmûd al-Nisâr al-Halabi, Cairo, 1955

³ *Abû Lahab* (Father of the flame) turned out to be one of the most staunchest enemies to the Holy Prophet (*saw*) and his mission. He did not tire in endlessly persecuting him and his followers until his terrible ending. Imâm Bukhârî (*ra*) narrates in his *al-Sahîh* that because of his happiness on the day of birth of the Holy Prophet (*saw*), Allâh has caused a tap to flow from between his thumb and forefinger in order to quench his thirst. According to a narration by Suhail (*ra*), it has been reported that ‘Âbbâs (*ra*) saw *Abû Lahab* in dream a year after his death. He said, “My condition is terrible, but on account of my happiness on the occasion of the Holy Prophet (*saw*) 's birth, every Monday, some portion of my punishment is decreased”.

3.2) READING OUT THE **'ADHÂN** AND THE **'IQÂMAH**

Immediately after the birth of a child, the **'Adhân** should be called out in the right ear of the baby and **'Iqâmat** in the left. From the six most authoritative compilations of Prophetic Traditions, Abû Dâ'wûd and al-Tirmidhî (*ra*) has narrated in their *al-Jâ'mi'* and *al-Sunan* respectively on the authority of Abu Râfi' (*ra*) that he saw the Holy Prophet (*ṣaw*) practising this in the house of his daughter, Fâtimah (*ra*) when Hasan (*ra*) was born.

Baihaqî and ibn al-Sunnî (*ra*) has both reported on the authority of Hasan bin 'Âli (*ra*) that the Holy Prophet (*ṣaw*) said, "Whenever a child is born to anyone, call out the **'Adhân** in the right ear and the **'Iqâmat** in the left, the child will be saved from the disease of *Umm al-Sibyân*¹".

ibn al-Qayyim al-Jowzî (*ra*) has recorded a few secrets of calling out the **'Adhân** and the **'Iqâmah** in the ears of a new born child in his *Tuḥfat al-Maudûd*. He says that when these high words of the greatness of the Almighty first enters the ears of the child, it is though he is initiated into *Islâm*. Although he does not understand the words, it has a positive effect on the heart and the future bearing of the child.

¹ Thought to be cancer or the evil effects of the envious eye.

The devil flees from the child upon hearing the mighty words of the *Adhān* and *Iqāmah*. He loses hope to take control of the child from birth. An invitation is given first towards the worship of Allāh before the devil can influence the child otherwise.

3.3) THE *TAHNĪK* : THE SOFTENING OF FOOD AND SHAVING OF THE HAIR

Tahnīk means to suck or soften a piece of date or any sweet substance and place it in the mouth of the child, rotating it gently, until it has been swallowed. It is preferable that a pious person perform the *Tahnīk* so that the child may acquire his blessings at a very early age.

One wisdom of *Tahnīk* is that the jaws, palate, mouth and veins are strengthened and the child gets accustomed to suckling very easily, in the natural way¹. The jurists are unanimous of the preferability, not necessity of *Tahnīk*.

It is recorded in the *al-Sahīh* of Muslim and Bukhāri (*ra*) on the authority of Abu Mūsa¹ Ashārī^c (*ra*) that he went to the Holy Prophet (*saw*) when a son was born to him. The Holy Prophet (*saw*) named the child Ibrāhīm, performed the *Tahnīk* with a piece of date and made a supplication of blessings for the child.

¹ Also narrated in *Tuhfat al-Maudūd* of Imām ibn al-Qayyim al-Jowzi, Beirut, 1983

The following story narrated on the authority of Anas bin Mâlik (ra), is found in the *al-Ṣaḥīḥ* of Bukhârî and Muslim (ra). The son of Abu Talḥah (ra) was sick. While on a journey, the child passed away. When he returned, he asked his wife Umme Sulaim (ra) as to how the child was feeling. She replied, “He is more at peace now”. His wife then fed him well, and after they had sexual-relations that night, Umme Sulaim told him that the child had passed away and his funeral and burial was arranged. The following morning, Abu Talḥah (ra) reported the matter to the Holy Prophet (ṣaw) who asked, “Did you have relations with your wife last night?”. He replied in the affirmative, whereupon the Holy Prophet (ṣaw) bade blessings for the husband and wife in their union.

When the baby was born as a result of that union, Abu Talḥah (ra) told Anas ibn Mâlik (ra) to take the baby to the Holy Prophet (ṣaw) with a few dates. The Holy Prophet (ṣaw) performed the *Tahnîk* with those dates and named the child ‘Abdullâh..



3.4) SHAVING OF THE HAIR

On the seventh day after birth, the child’s hair should be shaved from his head and weighed. Then, proportionate to the weight of the hair, the value of silver in monetary terms should be distributed amongst the poor. This distributing of money is a preferable act, and in no way compulsory.

ibn Qayyim al-Jowzî (ra) has recorded in his *Tuḥfat al-Maudûd* that the shaving of the head entails the child’s pores to open up and it benefits and grants strength to the eyes, ears and nose. It is also a means to aid the poor just as all other charities and an avenue to promote a healthier social environment.

Imâm Mâlik (*ra*) has stated in his *al-Mu'attâ* on the authority of Ja'far bin Moḥammad (*ra*) who narrates from his father, that Fâtima (*ra*) shaved the hair of her two sons, Ḥasan and Ḥusain (*ra*), and Zainab and Umme Kulḥûm (*ra*) weighed the hair and gave the equivalent of silver in charity. It was a *Dirham*¹ or a little less.

Yahyâ bin Bukair (*ra*) narrates on the authority of 'Anas bin Mâlik (*ra*) that the Holy Prophet (*saw*) ordered the shaving of the hair of his grandsons.

3.5) THE 'ÂQĪQAH CEREMONY : SACRIFICIAL CEREMONY

In terms of the *Shari'ât*, 'Âqīqah² means to “voluntarily slaughter on account of the child on the seventh day after birth, one animal on account of a girl and two on account of a boy”.

¹ A type of a currency available in those times. In modern terms, 3.06 grams of silver is equivalent to a *Dirham*. A *Dirham* was a silver coin, while a *Dinâr* a gold coin. The current rate of silver was R0.72 per gram as at the ending of September 1995.

² According to the dictionary, 'Âqīqah means to cut. The 'Âqīqah ceremony is *Mustahab*: preferable, not *Fardh*: compulsory. Undoubtedly, it an upheld practice of the Holy Prophet (*saw*) and should be duly observed if one has the means. This ceremony is by no means an occasion of pomp and show. It should be observed with utmost simplicity and respect it deserves, as a practice of the Holy Prophet (*saw*).

Imâm Bukhârî (*ra*) has narrated in his *al-Sahîh* on the authority of Salmân bin ‘Âmmâr al-Zabbi (*ra*) that the Holy Prophet (*saw*) said, “With every new-born child, accompanies an ‘âqîqah, so let blood flow on their account and remove the dirt of their bodies”.

All the compilers of the *al-Sunan* including Imâm al-Tirmidhî (*ra*) has narrated the following tradition on the authority of Samurah ibn Jundub (*ra*) that the Holy Prophet (*saw*) said, “Every child is mortgaged against his ‘Âqîqah, on the seventh day of his birth, an animal should be slaughtered, he should be named and the head should be shaved”.

Imâm Ahmâd and al-Tirmidhî (*ra*) has narrated then following tradition on the authority of ‘Â’ishâ (*ra*) that the Holy Prophet (*saw*) said, “On behalf of a boy, two sheep is enough and one on behalf of a girl”.

The majority of jurists are of the opinion that the ‘Âqîqah is preferable, and not compulsory. If it were compulsory, it would have been openly stated in the traditions. Imâm Mâlik (*ra*) has stated conclusively after judging all the Traditions that although it is preferable to perform the ‘Âqîqah on the seventh day, it could be done later at a time of convenience or when ones financial position allows it. The religion of Allâh is easy. Also, if one only affords the means to slaughter one animal on account of a boy, it has been permitted in the *Shari’ah*.

The wisdom of slaughtering two animals for a boy and only one for a girl shows the superiority which men enjoy over women in terms of physical strength, which enables them to fulfil their social and family responsibilities. The Qur’ân¹ has also indicated towards this reason, “Men are the overseers of women on account of their superiority which Allâh had granted some over the other and because of their spending from their wealth”.

¹ Sûrah 06, Verse 65

3.6) *TASMIYAH* : NAMING

The name has psychological effect upon the personality of an individual. His whole personality develops under the shadow of the meaning and impression of his name. Moreover it is obvious that we like the names which has pleasant side effects and nice meanings. Therefore we should always take care while giving names to our children. We should give them pleasant, short and meaningful names which should easily be understood and appreciated. Names were of much importance to the Prophet (*ṣaw.*)¹.

The Arabs loved names like ‘*Abd Manât* and ‘*Ūzza*, and all types of names which had bad connotations. He (*ṣaw*) had advised his followers to give good and meaningful names to their children. Several persons would come to the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) him asking to suggest names for their newly born babies. He would always suggest fair and meaningful names to them. He would never ask the person to help him who had a meaningless and ugly name².

The Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) would like people who had good names, would pray for them and readily ask them for assistance, if needed. He loved to hear names like *Nâjih*: The Successful, or *Rashîd* :The Righteous. Whenever he entered a new town, he enquired of it’s name, and was pleased with the fair name. He would provide a better one in case it’s name was unsuitable. He could not tolerate improper names of anything; be it a person, a town or a land.

¹ Doi, ‘*Âbd al-Rahmân*, Nigerian Muslim names: Their meanings and significance, Muslim Publishing House, Nigeria, 1975 pp. 1-5

² *ibid.*

There was a piece of land which was called *Huzrah*: Uneven and arid, which he changed to *Khudrah*: Verdurous and fertile. A valley which was called *Zallâh*: The valley of Astrays, the Holy Prophet (*saw*) changed it to *Shu'âb al-Hudâ*: The valley of guidance.

He also changed the names of many men and women. It is also said that those who insisted upon the former names and did not adopt those suggested by the Holy Prophet (*saw*) always remained in trouble¹.

Whilst selecting the names for children, the following points should be kept in mind:-

1. It should contain one of the names of Almighty Allâh, and should be prefixed by a word which shows submission to him. The Qur'ân says, "Allâh, there is no God but he, to him belongs the most beautiful names²".
2. It should be selected from the beloved names of the Holy Messenger's (*saw*) of Allâh.
3. Preferably, It should be adopted from the names of holy and pious persons.
4. Also, It should reflect the true Islâmic spirit and thought of the parents. Conforming to good habits, such as *Sa'id*: Lucky and Submissive.
5. It's meaning should be pleasant and virtuous.

¹ 'Ulwân, 'Abdullâh Nâsih, *Islâm aur Tarbiyat e Aulâd*, Dâr al-Tasnif, Jâmi'âh al-'Ulûm al-Islâmiyyah, Karachi, 1989 2 -volumes, Volume 2, pp, 138-44

² *ibid.*,

These characteristics should be avoided when giving names:

1. It should not be against the spirit and the tenets of *Islâm*. such as '*Âbd al-Rasûl*: The slave of the messenger.
2. It should not reflect bad habits like pride, haughtiness or hate. ibn 'Abbâs (*ra*) relates that the Holy Prophet (*saw*) changed his wife's name from *Barr*: Pious, to *Juwairiyah*. Names like *Shâhin Shah*: The king of Kings, *Mâlik al-Mulk*: The Emperor of Emperors, are the worst names!
3. Unislâmic ideas and inclinations should not be reflected.
4. Improper or bad meanings should not be conveyed, e.g. '*âsiyah*: The Sinner.
5. It should not be degrading and disgraceful.

The Holy Prophet (*saw*) said, "You will be called by your names, and the names of your father's; so give good names to your children"¹.

According to Abû Wahhâb (*ra*), the Holy Prophet (*saw*) said, "Give your children the names of the Prophets of Allâh. Almighty Allâh likes most of the names of '*Âbdullâh*: The Slave of Allâh, and '*Âbd al-Rahmân*: The Slave of the Merciful. *Hârith*: Cultivator or hand-labourer, and *Ham*: Determined, are also good names. The most detestable names are *Harb*: War and *Murrâh*: Bitter Taste".

¹ al-Nawawi, Muh al-Dîn Abû Zakariyya, *Riyâd al-Sâlihîn min Kalâmi Sayyad al-Mursalîn*, Dâr al-Shu'âb, Cairo, 1970

Yahyâ ibn Sa'îd (*ra*) relates that once the Prophet (*saw*)¹ wanted someone to milk a she-camel. He asked the people who were present at that time, "Who will milk the camel?" A person stood up and offered his services. He (*saw*) asked him his name, he replied *Murrâh*. The Holy Prophet (*saw*) bade him to sit down. Another man came forward to do the job. He too was asked to say his name, he replied *Harb*. The Prophet (*saw*) asked him to take his seat, and repeated the question for the third time. The third person who eagerly stood up to get the honour, his name was *Ya'îsh*: Living Long. He was permitted to milk the camel.

Imâm Mâlik (*ra*) has reported in his *al-Mu'attâ* on the authority of Yahyâ ibn Sa'îd (*ra*) that Once 'Ûmar (*ra*) asked the name of a person. He replied *Jamarah*: Fire. When asked his father's name, he said *Shihâb*: Flame. When asked the name of his tribe, he said *Hurqah*: The Burning . He then asked about his locality, he said *Hutamat*: The Hillock of Fire. 'Ûmar (*ra*) further asked, "Which hillock of fire?". The man replied, "On the hillock of flaring fire". Hearing this 'Ûmar (*ra*) said, "Rush home as all the persons of your house have been burnt to death". When he reached home, he found out that the message of 'Ûmar (*ra*) was true.

Imâm Bukhârî (*ra*) has quoted a few Traditions in his *al-Adab al-Mufrad* concerning the Holy Prophet (*saw*)'s particularity regarding correct names. Abu Râfi' (*ra*) quoted the Holy Prophet (*saw*) as saying, "When you name someone Muhammad, neither beat him nor deprive him". Similarly, 'Ûmar (*ra*) relates that the Messenger of Allâh admonished, "Do you name your children Muhammad , and then you rebuke them too!"

¹ al-Nawawi, Muḥ al-Dīn Abū Zakariyya, *Riyâd al-Ṣâlihīn min Kalâmi Sayyad al-Mursalīn*, Dâr al-Shu'âb, Cairo, 1970

41 Chapter Three: Parental Obligations at Child-Birth

Yusuf, son of ‘Âdullâh bin Salâm (*ra*) tells that his name was given by the Holy Prophet (*saw*) who took him in his lap and caressed his head with his hand after his birth. Abû Musâ’ (*ra*) relates that when his first son was born, the Holy Prophet (*saw*) named him Ibrâhîm and prayed for him.

The name could be kept immediately upon birth or a few days thereafter, preferably on the upon the seventh day.

It is preferable for the elderly people of the family to decide upon a name, but in the case of an argument, the father has got the first right to name the baby¹. This has been the practice of the Holy Prophet (*saw*) and also established in the Qur’ân², “Call them, relating them to their fathers, this is the just course in the sight of Allâh”.



¹ ‘Ûlwân, ‘Âdullah Nâsih, *Islâm aur Tarbiyat e Aulâd*, Dâr al-Tasnîf, Jâmi‘âh al- ‘Ûlûm al-Islâmiyyah, Karachi, 1989 2 -volumes, Volume12, pp, 78-81

² Sûrah 23, Verse 47

3.7) ***KHATNAH* :CIRCUMCISION**

Circumcision¹ means to, “surgically remove the excess flesh of a man found upon the “helmet” of the sexual organs”.

Circumcision was observed by all the Messengers of the Almighty, and it is also an *Islâmic* principle. Imâm Ahmad (*ra*) has narrated in his masnad on the authority of Ammâr bin Yâsir (*ra*) that the Holy Prophet (*saw*) said, “Natural human tendencies (instinctive behaviour) are the gargling of the mouth; cleaning of the nose; trimming of the moustache; making *Miswâk*²; pairing of the nails; tugging at the hair below the armpits; shaving the pubic areas and circumcision”.

Regarding the ruling of circumcision, there has been a degree of variance. According to the Hanafi's and some Hanbali scholars, it is *Sunnat*: Commendable. This Tradition of the Holy Prophet (*saw*) is utilised in supporting their view, “Circumcision is a *Sunnah* for the males and a means of deriving pleasure for the females³”.

¹ The Arabic word is *khatnah*. The place of *khatnah* plays an important role in jurisprudence. When the two *khatnahs* of a man and his wife meets, the *ghusl*: ceremonial bath becomes incumbent, whether ejaculation occurred or not.

² The cleaning and the brushing of teeth by means of a *miswâk* or a twig acquired from a few selected trees. The benefits of the *miswâk* have been proven in science to contain cleansing bodies which aid in eliminating tooth decay, strengthening the gums, maintaining fresh breath, ensuring enamel whiteness and scores of other medical benefits. For a true believer, the most he can hope for in the constant use of the *miswâk*, is the recitation of the *Shahâdah* at the time of death as promised in the Prophetic Traditions.

³ ‘Ulwân, ‘Abdullah Nâsih, *Islâm aur Tarbiyat e Aulâd*, Dâr al-Tasnîf, Jâmi‘âh al- ‘Ulûm al-Islâmiyyah, Karachi, 1989 2 -volumes, Volume1, pp, 89-98

Ḥasan Basrī (ra) says that many a people from different nationalities entered into the fold of Islām at the hands of the Holy Prophet (ṣaw), but he did not enquire into the matter of circumcision.

The Shā‘fi‘ī, Mālikī and the overwhelming Hanbali scholars have deemed circumcision to be *fardh*: compulsory. Theirs is a strong case which has substantial proof and basis for this ruling.

Imām Abu Dā‘wūd and Ahmad (ra) relate a Tradition on the authority of ‘Athim bin Kulaib (ra) who reports from his father who in return reported from his father that he came into the presence of the Holy Prophet (ṣaw) and expressed the intention of embracing *Islām*. The Holy Prophet (ṣaw) told him, “ Shave your hair which comes from a state of disbelief and circumcise yourself ”.

Ḥarb (ra) reports in his *Masā‘il* on the authority of al-Zuhri (ra) that the Holy Prophet (ṣaw) said, “Whoever embraces *Islām* should circumcise, even if he be an adult”. ‘Āllamah Khattābi (ra) has said that although some jurists term circumcision as only *sunnat*, but the majority of them has deemed it as *Wājib* : compulsory, because it being one of the *Sha‘ā’ir*: symbols of *Islām*. It differentiates between a believer and a non-believer and if circumcised man is found on the battle ground amongst the bodies of believers, it would be taken that he is a believer and buried according to *Islāmic* rites.

An uncircumcised persons leading of prayer is not accepted, as always the possibility remains of the presence of accumulated impurities below the uncircumcised foreskin¹.

However, circumcision should be observed with due importance and significance. He will be a sinner who does not have himself circumcised before attaining puberty without a valid excuse. It is however profitable if the circumcision of a child is carried out in the early stages of life as to delay it until the child reaches the age of understanding, causes unnecessary anguish and embarrassment. The Holy Prophet (saw) is reported to have had the circumcision of his grandsons done seven days after their birth according to Imâm Baihaqî (ra) on the authority of Jâbir bin 'Âbdu'llâh (ra).

Circumcision is only necessary upon males and not upon females, except in one of the weaker rulings of the Hanbli's², circumcision for women is also necessary. The practice upto this day has been according to the vast majority who contend that circumcision is only for males.

Circumcision in the case of females is for a totally different purpose from that in the case of males. The methods and concepts are totally different. Females may have circumcision in the case of increasing her sexual enjoyment, but it would serve no other further purpose of significance, import nor benefit.

¹ 'Ulwân, 'Âbdu'llah Nâsih, *Islâm aur Tarbiyat e Aulâd*, Dâr al-Tasnîf, Jâmi'âh al- 'Ûlûm al-Islâmiyyah, Karachi, 1989 2 -volumes, pp, 128-43

² Sijistâni, Sulaimân bin Ash'ath, *Kitâb Masâ'il al-Imâm Ahmad* Dâr al-Ma'rifat, Beirut, Lebanon, Page 234

45 Chapter Three: Parental Obligations at Child-Birth

Medically, there exist numerous benefits of circumcision, It is more clean, decent and beautiful looking. It creates an equilibrium in the passion, libido and sexual-drive of a man. It also prevents many diseases¹ :

- 1) Filth does not accumulate beneath the foreskin, stickiness is not experienced and there is no chance of an ill odour emanating from the penis.
- 2) There is no fear of the testicles becoming entrapped in the foreskin when it expands.
- 3) The disease of *sartân*² is hardly found in uncircumcised people.
- 4) If a child is circumcised early in age, it prevents urination in bed.



¹ An Indian Doctor, Dr. Sabri al-Qabâni has enumerated numerous benefits in his book *Hamârî Jinsî Zindagî*, Bombay, 1987

² Thought to be a type of a fatal disease affecting children, some say it could be the evil effects of the *djinn*: evil spirit.

CHAPTER FOUR

FUNDAMENTAL RIGHTS OF CHILDREN

4.1) *RADĀ'AT* : SUCKLING

Shouldering the responsibilities of pregnancy, child-birth and suckling the child for his survival are the natural responsibilities of a mother. Suckling is a right of the child. It is also an age old tradition of society.

According to the Qur'ân¹, “And mothers should suckle their children for two complete years whose father’s so desire to complete the suckling ”. This verse in particular is meant for those women who have separated from their husbands through divorce.

To be suckled² by the mother is the natural right of the child which should not be abhorred and neglected, while to suckle the child is the religious duty of the mother.

¹ Sûrah 3, Verse 89

² To suckle children is a generally acceptable tradition of human society. This natural urge is not only found in humans, but in animals too. Allâh thought it sufficient to command, praise and elaborate its importance only, while leaving out its legal position. It is enough to motivate any woman to suckle her children readily as this deed has been praised in the Holy Book. It is all the more consoling that the Holy Prophet (*saw*) has given the glad-tidings of entry into Paradise for this commendable deed. Here it should also be kept in mind that there is much difference in the properties of the mother’s milk and that of anyone else.

If divorced mothers have a right to fulfil towards their child, mothers in an intact marriage need no further prompting. The Almighty did not mention the need of suckling the child for a woman who is living with a husband because there is absolutely no need for it at all. Indescribable sensations of love, pleasure and relief and satisfaction fills the heart of a woman when she suckles her innocent baby. Though the above verse seemingly makes it incumbent upon the mother to suckle their babies, but it is not so. This command is given to show that this act is liked by the Almighty Allâh and such mothers will earn his pleasure.

This interpretation is authenticated by another verse of the Qur'ân which runs, "So if they (the mothers) suckle (your babies) according to your wish, give them their recompense. This shows that suckling a child is left on the will of the mothers and they are not bound to do so. Moreover, the Holy Qur'ân has permitted the parents to get their babies suckled, if they so desire, by some other woman or wet-nurses with appropriate remuneration, in the following words, " But if you decide to engage a wet nurse for your children, there shall be no blame on you provided you pay what you promise in fairness ¹".

Recompense for the women who suckle their children is to be paid by the father. If the husband has divorced the wife, it is better that the child be suckled by the mother herself. The mother should not also deprive the child of her milk which is really his right. It is the duty of the father in such cases that he should bear the expenses of the mother of the child without failure. If due to some unfavourable conditions, the mother is unable to suckle her child or the father due to some reason only known to him, wants to get the child suckled by another woman, it will be the religious duty of the father of the child to bear all the expenses of that woman.

¹ Sûrah 3, Verse 89

In the case that the father is unable to pay due to death or insolvency, the grandfather or the new guardian has to recompense the woman concerned¹.

According to the Holy Qur'ân, "And the mothers shall suckle their children for full two years, If the father desires to complete the term of suckling; and on the father shall be their sustenance and their clothing in fairness; burdened not is any soul save to the extent of his individual ability; neither will the mother be made to suffer any difficulty or loss on account of her child nor a father because of his child; and in the absence of the father, upon the heir devolves a similar responsibility; and if both parents decide on weaning, by mutual consent, there shall be no blame on them; but if you decide to engage a wet-nurse for your children, you shall not be blameworthy provided you promise and remunerate in fairness; and fear Allâh and know that he sees all of what you do".

The above mentioned verse contains seven basic principles on suckling the child:

1. Normally mothers should suckle their children within a period of two years.
2. Mothers who are divorced from the fathers of their children, should also suckle their children in the case the father of the child wants them to do so.
3. During the suckling period, the child and mother's personal expenses should be borne by the father of the child.
4. In case of the absence of the father, the paternal grandfather or the guardian of the child has to pay the recompense to the suckling woman.
5. There should be no exploitation from either side. Neither should the father be unfair to the mother thinking that she is compelled by her natural urge and love to suckle her child, nor the wife should demand unfair payment from the father.
6. It should be a fair proposition to both parties. If the father and mother agrees by mutual consultation, then the baby could be weaned even before two years.

¹ Ludhyânwi, Mohâmmad Yousu, *Âp ke Masâ'il Aur Unke Hall* Maktabah Bayyinât, Karachi, 1991. 3 Volumes-, Volume 2, Page 251

49 Chapter Four: Fundamental Rights of Children

7. If for any reason, the mother does not want to suckle the child or the father does not wish to get the child suckled by the mother; a wet nurse should be arranged by the father.
8. The payment should be settled by mutual consent in advance according to the prevailing conditions or standard rate of payment and living..

However, here it should be taken into consideration the motives of engaging a wet nurse and what are the reasons of decline of the mother. Whether these motives are acceptable to the *Sharî'ât* or not. Serious consideration should be given to the rationality of the motives through which a mother declines to suckle her baby herself.

According to the Qur'ân, “ His mother bore him with pain and delivered him in pain; and bearing him and weaning him is thirty months¹ ”.

Generally mothers should suckle their babies for full two years, but due to some unavoidable reasons, babies can be weaned even earlier. Ailing and weak mothers are allowed not to suckle their babies. But denying the right of the child to be suckled without any fair and potent reason, is unjust and below the dignity of the mother. Mothers who do not suckle their children due to fear of losing their beauty and shape, are the most ruthless ones who do not deserve to be called *mothers*. There is no alternative to the milk of the mother².

The Holy Prophet (*saw*) has reprimanded and warned such heartless women against the terrible punishment to be meted out to them by the Almighty Allâh.

¹ Sûrah 23, Verse 10

² Bakar, Osmân, *Tawhîd and Science* Secretariat for Islâmîc Philosophy and Science, Kuala Lumpur, Page 126

Describing the events of the night of Ascension, he narrated, “Then they took me further ahead and I saw some women whose breasts were being continuously bitten by snakes. On asking about their identity, I was told that these were the women who did not suckle their children¹”.

If another woman suckles the child, called fosterage in English, she nearly becomes the mother of the child. This relationship is not only limited to the woman concerned, but her husband and her children also attain the status of father, brothers and sisters respectively. They cannot inter-marry. The Qur’ân² says, “And (Forbidden to you are) your foster mothers and sisters”. It means that all restrictions imposed on real relations also apply to foster relations.

It is reported in the *al-Sahîh* of Imâm Muslim (*ra*) that the Holy Prophet (*saw*) said, “Allâh has forbidden relations between persons related to each other by *Radâ‘at* (suckling) like those who are related by blood”.

This relationship is given so much importance by *Islâm* that if two foster persons unknowingly get married to each other, they will be commanded to get separated without losing a single moment after they have been alerted of the fact³.

¹ Kandhlawi, Ya‘qûb, *Sîrat al-Mustapha*, Idârah Maktabah Deoband, India, Vol.2, Page 56

² Sûrah 3, Verse 75

³ Ludhyânwi, Mohammad Yousu, *Âp ke Masâ’il Aur Unke Hall* Maktabah Bayyinât, Karachi, 1991. 3 Volumes-, Volume 3, Page 331.

Imâm Bukhâri (*ra*) has narrated in his al-Ṣaḥīḥ one story in this regard. ‘Aqaba’ ibn Hâbis (*ra*) married a woman. Thereafter, one woman came forth and claimed that she had suckled both of them. ‘Aqabah (*ra*) tried to ascertain the truth of the matter from the relatives of his wife, but they expressed their ignorance in this matter. After much investigation, he went to the Holy Prophet of Allâh, Muḥammad bin ‘Abdullâh (*saw*) and narrated the matter to him. After hearing the case, the Holy Prophet of Allâh, Muḥammad bin ‘Abdullâh (*saw*) asked ‘Aqabah (*ra*) to divorce his wife. He obeyed and the woman then married elsewhere.

In view of the extraordinary importance, physical and socio-psychological benefits, the Holy Prophet of Allâh, Muḥammad bin ‘Abdullâh (*saw*) had sternly warned the mothers who do not suckle their children without any potent reason. On the other hand, He has advised them to do so with the tidings of being fairly rewarded in this world and in the next by the Almighty Allâh.

In some developed countries, it has been noticed that the standard of mental and physical health is falling due to the avoidance of suckling. Breast milk contains colostrum which contains a high degree of vitamin A, which aids growth and helps resist external as well as internal infections to which all babies are susceptible. Most babies who die within one month of birth, have been found to be lacking in this vital vitamin¹.

4.2) NAFAQAH : MAINTENANCE

Though according to the belief of all Muslims, the Almighty Allâh is the only sustainer, but he has created means and sources through which this task is accomplished. Bearing the expenses of children is the second most important task of the parents².

¹ Maudûdi. Abû al-‘Âlâ *Purdâh and the Status in Islâm* Markazi Maktaba Islâmi, Delhi, 1979. Page 127.

² Nasr, Sayyad Hoosain, *Islâmic Spirituality Foundations* Crossroad, New York, 1987. Page 147.

Especially men have been selected for this job due to their physical strength and courage. Maintenance means bearing all the expenses of a child from birth till adulthood, by the father. It is *Wājib*: incumbent, the religious as well as the responsible duty of the father to meet the expenditure involved in the birth, feeding, clothing, education, health and all other expenditure related to the cherishing of the child. Moreover, if he can afford, he also has to mete out non-obligatory duties like *‘Āqīqah* or *Sadaqat al-fitr*.

Allāh says with regard to maintenance to children, “And upon the father is their sustenance and clothing according to the normal standards¹”.

When Ibrāhīm, the only son of the Holy Prophet of Allah, Muḥammad bin ‘Ābdullāh (*ṣaw*) was born, the good news was brought to him by his servant Abū Rāfi (*ra*). The Holy Prophet of Allah, Muḥammad bin ‘Ābdullāh (*ṣaw*) was overwhelmed by happiness and set a slave free. On the seventh day after the birth of the child, the *‘Āqīqah* was performed, the head shaved and the equivalent of silver in weight of the hair was given in charity. Several women from the *Anṣār* offered to suckle the child. The Holy Prophet of Allah, Muḥammad bin ‘Ābdullāh (*ṣaw*) selected Khaulah (*ra*), the daughter of Abu Zaid *Anṣārī*² (*ra*) for this privilege. In recompense, he gave her some date trees³.

¹ Sūrah 3, Verse 47

² Medinites. They were known as *Anṣār* because of the help they rendered to the early emigrants of Islām when they came to their city. *Anṣār* is an Arabic word which means help, succour, relief and assistance.

³ Nadwi, Sayyid Suliman, *Sīrat al-Nabi Deeni Kutub Khāna*, Lahore, 1975. Vol.3, page 463

The Holy Prophet of Allah, Muḥammad bin ‘Ābdullāh (ṣaw) had advised the seeing to the needs of children, even before charity. Even after a divorce, the children are the first and foremost beneficiaries of the earnings of the parents. Alms given to the extent that ones family is neglected and their needs being unfulfilled, is a vain exercise.

Imâm Muslim¹ (ra) has also recorded in his *al-Ṣaḥîḥ* the following tradition of the Holy Prophet of Allah (ṣaw), “If you spend one *Dinâr* in the path of Allah, another towards the freeing of a slave, another as charity to the poor and one on your family; out of these four avenues, the most rewarding is the one spent on your family and children”.

Financial neglect of a father to his children can assume several forms:

1. Spending for show and vanity, but ignoring the rights of family members.
2. Spending on his own comfort and pleasure, while ignoring his family.
3. Lavish spending in alms while depriving the family of their due rights. Not working to support his family without any tangible excuse.
4. Laziness, carelessness and treating children to be a burden. Any excuse whatsoever that deprives his dependants of their dues.

Islâm has not burdened mothers with the problem of earning for the maintenance of children. This job has been entrusted to fathers only. This demarcation of the fields of both father and mother was necessary so that both may put in their best efforts and fulfil their duties satisfactorily in their respective fields. It does not infer that if a mother were to contribute towards the maintenance of the children, she will not be rewarded.

¹ Abul Husain Muslim bin al-Hajjâj al-Qushairi al-Nisâbûri, commonly known as Imâm Muslim (ra). Born in 816 AD. His best collection of Prophetic traditions is known as the *al-Ṣaḥîḥ* in which over 30 000 personally collected Traditions are recorded. Died in 875 AD.

In cases where the husbands are poor or invalid, the wives who earn for maintaining their children is indeed commendable.

Ummi Salmâh¹ (*ra*) narrates that once she asked the Holy Prophet of Allah, Muhammad bin ‘Âbdullâh (*saw*), “Shall I be rewarded for spending upon the sons of Abu Salamah?. I cannot leave them in want and hunger wandering like beggars from door to door. After all, they are my sons. The Holy Prophet of Allâh (*saw*) said, “Yes, you will definitely be rewarded for whatever you spend on them²”.

A man who is able to procure sustenance for his family is bound to support them, although he may be in straitened circumstances. In case the father wilfully neglects his children, he is liable to punishment at the discretion of the judge³.

¹ Ummi Salamah (*ra*) had two sons and two daughters from her first husband, Abu Salamah (*ra*). The couple embraced Islâm in the very beginning and emigrated to Abyssinia. When they returned, they settled in Madînah with the Holy Prophet of Allâh, Muhammad bin ‘Âbdullâh (*saw*) . Abû Salamah (*ra*) received a fatal blow in the battle of ‘Uhud in 3 A.H but it healed a bit. In 4 A.H , the Holy Prophet of Allâh, Muhammad bin ‘Âbdullâh (*saw*) sent him on an expedition, but when he returned , the old wound opened in all its fury. Eventually he passed away due to loss of blood on the 8th of *Jamâdil âkhir*, 4 A.H. At that time, his wife was pregnant with their fourth child. Ummi Salmah (*ra*) was then proposed for by the Holy Prophet of Allâh, Muhammad bin ‘Âbdullâh (*saw*) himself, and she had the good fortune of being included in his household as his wife in the end of *Shawwâl*, 4 A.H.

² Nadwi, Sayyid Suliman, *Sîrat al-Nabi Deeni Kutub Khâna*, Lahore, 1975. Vol.3, page 469

³ Under the code of criminal procedure in India, the magistrate has the jurisdiction to order maintenance in the case of both legitimate and illegitimate children. When the children are illegitimate, the refusal of the mother to surrender them to the father, would not justify the refusal of an order for their maintenance. According to the *Fatâwa ‘Âlamgîri*, Vol.1, Page 750, difference of faith of the creed between father and child makes no difference in the obligation of the father to maintain the child.

Among the Hanafi's, if the father is poor and the mother rich, the liability to maintain the infant children falls on her, with an eventual right of recovery against her husband, even though the children may have a rich paternal grandfather¹.

When the father and mother are both poor, the grandfather who is possessed of means, is liable to maintain his infant grandchildren, with a right to recover all money spent on them from the father. But if the latter be infirm, the grandfather would have no right of recovery against him for any debt incurred for the maintenance of the grandchildren²

4.2 A) MAINTENANCE OF MALE AND FEMALE CHILDREN

The obligation of maintaining the male children lasts until they arrive at puberty. After this, a father is not bound to maintain his male children, unless they are incapacitated from work through some disease or physical infirmity, or are engaged in study. When male children are strong enough to earn their own livelihood, though not actually adult, the father may set them to work for their own subsistence, or hire them out for wages³.

If the male children are actually able to work, but the employment found for them is unsuitable or improper for their rank in life, they would be placed on the same footing as children labouring under some infirmity. Ability to work, must, in such cases be considered with reference to the social position of the children, as well as the parents; so

¹ *Fatâwa 'Âlamgîri*, Vol. 1, Page 752

² *ibid*, Page 753

³ *ibid*, Page 753, *Fatâwa Qâdi Khân*, *in loco*

• •

that a father occupying a respectable position , in which the children have been brought up delicately, must not hire them out for work which is degrading in its nature.

A father is bound to maintain his female children until they are married, if they have no independent means of their own. He cannot hire them out to work or send them into service of any male person not within the prohibited degrees of marriage.

Marriage does not necessarily absolve the father from the obligation of maintaining his daughter¹. Should he contract a daughter in marriage to a man, concealing the fact that she was suffering from a disease which furnishes the husband with legal grounds for dissolving the marriage, he would be liable for her maintenance in case where the marriage is dissolved.

Children possessed of private property are to be maintained out of it from the time they are weaned. Until then, the father is bound to support and provide suitable attendance for them².

A father is bound to support his son's wife, when such a son is young, or infirm, or engaged in study³.

When a man is absent, but has left available property , the judge may order maintenance out of the same for the following persons, provided they are poor, viz., (a) the wife; (b)

¹ *Hidâya*, Vol. 1, Page 410 ; *Fatâwa 'Âlamgîri*, Vol. 1, Page 752 ; *Radd al-Mukhtâr in loco*.

² *Fatâwa 'Âlamgîri*, Vol. 1, Page 753

³ *ibid.*, Page 754

the male children, if young; or if adult, unable to earn their own livelihood; © the female children, whether young or adult (if unmarried); and (d) the parents.

A woman may compound with her husband for the maintenance of her minor children, but if such composition proves prejudicial to their interests, it would not be binding on the mother. In the same way, if a woman, on separating from her husband, were to agree to take charge of the children of the union and support them without requiring any assistance, and if she were to discover subsequently that she was unable to do so from poverty, the law would compel the husband to support his children, in spite of the stipulation entered into at the time of separation¹.

4.2.1) CHILDREN'S OBLIGATIONS TO MAINTAIN THEIR PARENTS

When children have means, they are bound to maintain their parents if they be in difficult circumstances, and it makes no difference in their liability whether the parents are Muslims or non-Muslims.

¹ A child who unjustifiably keeps away from his father's house, has no right to separate maintenance. Nor is the father bound to maintain the children to whose custody he is entitled if they are deliberately kept away from him.

Even should the parents be able to eke out a livelihood by manual labour, the children, if they have means, would not be absolved from the obligation of helping to maintain them¹.

When the children are in straitened circumstances themselves, they are not bound to maintain their parents unless they are absolutely infirm and unable to obtain a livelihood, even by manual labour. In such cases, the children are required to share their food with their weak and infirm father or mother, or with both.

Under the Hanafi law, a person is bound to maintain his grandparents, his infant male relations within the prohibited degrees, if they are in poverty; all female relations within the same degrees, whether infants or adults, when they are in necessity; and also, all adult male relations within the same degrees, if they are blind or disabled, and, at the same time poor. But, with the exception of the grandparents, the support of these relations is only *quasi-legal* obligation².

Daughters as well as sons are liable for the maintenance of their poverty stricken parents³. When a mother is poor, and a son is able to work for his livelihood, he is bound to support her according to his means, though he may be in straightened circumstances himself.

¹ *Hidâya*. Vol. I, Page 411. It further says, “ It is incumbent upon a man to provide maintenance for his father, mother, grandfather and grandmother, if they should be in necessitous circumstances, although they be of a different religion.....but their poverty is a condition for the obligation”.

² *Fatâwa ‘Âlamgîri*. Vol. I, Page 756

³ *ibid.*

When a son is able to maintain one parent or grandparent only, the mother or the grandmother, as the case may be, has the preferential right. When a man has both parents and an infant child dependant on him, and has not the ability to support all of them, his child has the first claim on him.

When there are several persons on whom the liability of maintaining a particular individual devolves, the Hanafi's hold that the liabilities should be apportioned according to the shares to which such persons would be entitled in the inheritance in the one whom they are required to support¹.

When a particular sum is agreed upon between the person who is liable, and the person to whom maintenance is due, or when the judge has ordered a specific sum to be paid periodically, should a change occur in the circumstances of the parties, such change would justify a re-adjustment of the liability. If the liability has been fixed by an order of a judge, it is in his discretion, upon a proof of a change of the circumstances of the parties to modify his order to suit the new requirements of the case.

If the person against whom an order is made, fails to comply with it, satisfaction of the debt may be obtained either by an attachment and sale of his goods, or he may be imprisoned for contumacy.

A mere plea of poverty would not absolve an individual from the obligation of maintaining his wife and children. If the man is able to work for his livelihood, if he be not a cripple or

¹ *Hidâya*, Vol. 1, Page 412 ; *Fatâwa 'Âlamgîri*, Vol.1, Page 752. For example, if a man who is poor has a son and a daughter, both possessed of sufficient competency, the son will have to contribute two thirds of the maintenance and the daughter, one third.

so infirm that he cannot do anything to earn a living, he is bound to provide for their maintenance.

4.3) *'ILM* : EDUCATION

It is the natural desire of every parent to educate his children to the best of their capabilities. Education starts from birth, rather the first few years are extremely important and are rightly called the “formative years of life”.

Though an infant cannot speak, but he definitely learns through hearing and sight. It is for this reason, that the first words a child should be taught must be the *kalimah*: Fundamental belief of the unity of Allâh, as ordered by the Holy Prophet of Allâh, Muhammad bin ‘Abdullâh (*saw*).

The Prophet Zakariyyâ (*as*), after begging the Almighty for a son at a very late age in life, was granted the glad-tidings of Yahyâ in the following words, “And we granted him wisdom while yet a child, and tenderness of heart from ourselves and purity. And, he is pious and dutiful towards his parents, and not haughty and rebellious”¹.

A guardian or parent is pressed by the *Sharî‘âh* to adequately provide their children or wards with knowledge which does not only entail success in this world, but also such knowledge which will save him from doom in the Hereafter. The Holy Prophet of Allâh, Muhammad bin ‘Abdullâh (*saw*) is reported to have said, “One who is made the guardian of more or less children, will be questioned by Allâh *Ta‘âla* on the day of Judgement whether his subordinates followed the path of *Islâm*, or he ruined them?²”.

¹ Qur‘ân, Sûrah 19, Verse 12-4

² *ibid.*,

4.4) *AL-NIKÂH* : MARRIAGE OF CHILDREN

As soon as the children cross the age of childhood and reach adolescence, the parent's responsibilities and anxieties take a new turn. The parents of fully grown up sons start dreaming of a house full of happiness, as their sons will bring in daughter-in-laws; and, in the case of daughters, they become worried and perplexed at the prospect of their daughter to belong to another household for ever, and of finding a good husband to look after her just as they had done. The marriage of children by their parents is a social, legal responsibility on the shoulders of the parents, as well as their natural desire.

Islâm strongly advises to arrange the marriage of eligible and responsible children as soon as a suitable match is found for them. Ages may vary according to place, times and climes. The only reason for the delaying of marriage for a normal and healthy child, should be that a suitable match is not found or the child is not yet capable of supporting a family. Unnecessary delay in this matter and negligence in a matter as important as this, can have serious social problems and irreparable damage to the *imân*:faith and corruption of dignity of that child and his entire family.

The Holy Prophet of Allâh, Muhammad bin 'Âdullâh (*saw*) had Said, "One who is bestowed with children by the Almighty Allâh, should give them good names, fine training and education and get them married when they gain adulthood. In case if they are not married, and they transgress the limits of virtue, the father will be held responsible".

In another tradition, the last Messenger of Allāh (*ṣaw*) is reported to have said, “ It has been ordained in the *Torah*: old-Testament, that a father, whose daughter reaches the age of twelve, and due to the delay in marriage, indulges in wrong behaviour, will bear the responsibility of that sin”¹.

4.4.1) KHIYĀR AL-BULŪGH : OPTION OF PUBERTY IN MARRIAGE

4.4.1 a) Preliminary

A minor cannot legally enter into a binding contract nor is a contract entered in to by a guardian on his or her behalf binding on a minor. The minor can, on attaining majority, ratify such a contract if he or she so chooses. A Muslim marriage is normally governed by the same principle of law as applied to contracts entered into on behalf of minors. This right of dissolution of marriage on attaining majority is called Khiyar al-Bulūgh or option of puberty.

¹ Olga, Mūsā' Aḥmad, *Upbringing of Children*, Madrassah Banāt al-Sālihāt, Isipingo Beach Durban, South Africa, 1993 pp. 154-7.

When finding a suitable match, take into consideration the following Tradition, and not rush into a matter which entails lifelong commitment. It is narrated on the authority of Abū Hurairah (*ra*) in the *mishkāt al-Maṣābiḥ* that the noble Messenger of Allāh said, “ A woman may be married for four reasons: for her wealth ; her status; her beauty and for her piety. Try to marry a pious girl, and prosper”. A pious wife is termed as “ The best object of benefit in this world ” by the last and noble Prophet (*ṣaw*). He also been reported to have said, “ Marry loving and fertile women, for indeed I will envy you for your numerical superiority (to other nations on the day of reckoning) ”.

In Muslim Law, an adult husband is considered to have an absolute legal right to the dissolution of his marriage, hence it is the wife who stands mostly in need of help for the dissolution of marriage and the doctrine of option of puberty comes to her aid. Option of Puberty Provides Safeguard

The option of puberty is one of the safeguards which the Muslim Law provides against an undesirable marriage. The basic law underlying this doctrine is to protect a minor from an unscrupulous or undesirable exercise of authority by his or her guardian for marriage. The right has been given to the minors to dissolve the marriage on attaining majority where the guardian showed a want of affection and discretion by contracting the minor in an undesirable marriage.

4.4.1 b) Religious Sanction

ibn ‘Abbâs (*ra*) reported that a virgin girl came to the Holy Prophet of Allâh, Muhammad bin ‘Âdullâh (*saw*) and said that her father had given her in marriage, which she disliked. The Holy Prophet of Allâh, Muhammad bin ‘Âdullâh (*saw*) then gave her an option .

Abu Dâ‘wûd (*ra*) reported that the father of Khansâ (*ra*) gave her in marriage while she was not a virgin. She did not like the match and so she came to the Holy Prophet of Allâh, Muhammad bin ‘Âdullâh (*saw*). He annulled her marriage.

4.4.1 c) Discussion

The following matters have to be taken into consideration in respect of the exercise of the option of puberty:

(a) Capacity; (b) Subsistence of marriage; (c) Right of the minor; (d) Waiver; and (e) Time of exercise.

Capacity: The capacity to exercise this right occurs only when a minor attains puberty.

Subsistence of marriage: The option of puberty can be exercised only when a valid marriage is subsisting between the parties. It is necessary that there should be a marriage which is binding on the husband and the wife

Right of minor: The minor can, on attaining puberty, exercise the option of puberty as a matter of right. It has been held in a case that the right can be exercised even when a girl had herself contracted the marriage during her minority with the consent of her father but the father had not actually contracted the same.

Here the Hanafi's have made a distinction between marriages contracted by his or her minor by her father or paternal grandfather on the one hand ; and those by any other guardian on the other. Marriage by guardian other than father or paternal grandfather. A minor can dissolve a marriage in this case on attaining puberty. This is his or her right.

Marriage by father or paternal grandfather: A marriage contracted by these two was generally considered binding on the minor. Mâlikites confine this rule to the father alone. This distinction observed by the Jurists in the right to exercise an option when the marriage by the father or paternal grandfather on the one hand and other guardians on the other, is based on a presumption that a father and a grandfather cannot, on account of their natural love for the minor, act against his or her interests and contract an undesirable marriage for them.

But, if it established that they had ignored the interests of the minor or that the marriage is in manifest as to the minor's disadvantage, then the minor is entitled to exercise this option in the following cases:

- 1) If the father or the grandfather has ignored the interests of the minor or had acted fraudulently or negligently and the marriage is to the manifest disadvantage of the minor as when a girl has been married to a lunatic or the husband is suffering from some serious diseases or has a grave physical deformity. A mere disparity in the ages of the husband and the wife is not glaring and does not constitute a manifest disadvantage.

If the husband's worldly position is such that the change from the father's house to that of the bridegroom would be one attended by material discomfort to her.

- 2) If the father or paternal grandfather marries his minor boy to a girl belonging to a very low family such as the daughter of a slave, than the marriage will be binding upon the boy according to the opinion of Imam Abû Hanîfa (ra). Abû Yousuf and Muḥammad (ra) however still assert that the boy is entitled to his right of dissolution.

- 3) If the father or grandfather gives the boy or the girl in marriage for a dower which is highly excessive in the case of the boy and grossly inadequate in the case of the girl. Dower is considered in this light when it is more than the customary dower or less than half of the dower usually fixed according to the custom of the boy's or girl's family.
- 4) When the father or the grand father is known to have a depraved character and notorious for their greed,
- 5) or, Is a profligate and notorious for lack of worldly discretion.
- 6) If the father or grand father was drunk at the time of contracting the marriage

Waiver: A minor can on attaining puberty waive her right and submit to the marriage. Anything done by the minor during the period of minority would not destroy the right which accrues to her only on the attainment of puberty.

Cohabitation during the period of minority with or without the girl's consent does not destroy her right. A minor is not capable of giving consent to any act. The option of puberty will be considered to have been waived by allowing the marriage to be consummate only if it is done after the girl has attained majority and she had consented to it wilfully. The consummation of the marriage must be proved as a fact and the mere refusal of the girl to have herself examined by a lady doctor cannot be taken as a proof of the consummation of marriage.

Time of exercise: The law in respect of the time when the option is to be exercised by a boy or by a non-virgin girl and a virgin, is separate, as follows in the first instance, the ratification of the marriage must be express and they retain the right to dissolve the marriage till they assent to it by express declaration or conduct.

They can express their dissent any time after attaining puberty; and the right will not be lost by simple delay in expressing it. It shall subsist until the boy or the girl submits or dissents to the marriage as by allowing consummation or demanding dower or maintenance by a girl after attaining majority. It is also not necessary that the declaration be made in the presence of witnesses. In the instance where the girl is a virgin, the rule is very stringent. She has to make her option as soon as puberty is developed and on failure to do so, she loses her right to cancel the marriage.

Thus, if she was sitting somewhere when the signs of puberty became apparent, she must express her disapprobation then and there. Her mere silence is sufficient to deprive her of this right because her silence is presumed to imply her consent. This is based on the analogy of a tradition that the Holy Prophet of Allâh, Muḥammad bin ‘Âbdullâh (ṣaw) said, “A virgin shall not be married till her consent is sought”¹, the surrounding companions asked, “How shall be her permission?”, He said,- “If she remains silent”.

A girl shall still be considered to be a virgin if she loses her hymen due to accident, disease, operation rape or adultery. The same result will follow if she had been married, but the marriage was dissolved before consummation.

¹ Châtgâm, ‘Âbd al-Hamîd, *Tanzîm al-Ashtât*, Bangladesh Printing works, 1978, Vol.2, Page 12

If the husband of a minor girl should be intimate with her during her minority, then the option of the minor shall not be lost. But, for the purpose of expressing her dissent, she shall be treated as a non-virgin so that her mere silence at the time when she attains puberty shall not be considered tantamount to consent.

Ignorance: As regards the minor's ignorance of the fact of her marriage, the law is that he minor retains the option of repudiating the same until she becomes aware of the fact. As regards as to the ignorance of a minor about her legal rights to dissolve the marriage on attaining puberty. This opinion is based on a rule that ignorance of the law is no excuse. Also, on the grounds that according to the dictates of the Holy Prophet of Allâh, Muhammad bin 'Âbdullâh (*saw*), it is the duty of every man and woman to acquire knowledge.



4.4.2) WILÂYAT AL-'IJBÂR : THE RIGHT OF GUARDIANSHIP FOR MARRIAGE

4.4.2 a) Preliminary

The right of guardianship for marriage or the *Wilâyat 'Ijbâr* is founded on the original *patria potestas* which existed among the Arab tribes from the earliest times. Among them, the father had the right of compelling his sons to marry until they were capable of bearing arms, and the daughters until their emancipation by marriage or otherwise from his control.

Among the Jews, the father could give his daughter in marriage without her consent as long as she was a minor, that is, had not attained the age of twelve.

Under the *Shari'ah*: Islâmic Law, according to all the schools of thought, the power of the father to give his children in marriage without their consent, can be exercised in the case of sons until they have attained majority, when they are emancipated, so far as their personal rights are concerned, from the *patria potestas*¹, and are at liberty to contract themselves in marriage.

As regards female children, there is several divergence among the differing schools of thought. Persons not *sui juris*², labour under the same legal disabilities as in other systems of law. They cannot enter into any contract or legal transaction without the consent of their natural guardians. The want of capacity which results from minority, is founded on the principles of right reasoning and the desire to protect people not competent to exercise sound discretion in the affairs of everyday life, from the consequences of their own acts.

An infant, accordingly, is incompetent to enter into a contract of marriage without the consent of his or her guardian. A marriage contracted by a minor, who is possessed of *rushd*: understanding, is not absolutely invalid.

¹ The rights enjoyed by the head of a Roman family over his legitimate children. It was acquired by ,1) Birth, 2) Legitimation, 3) Adoption. It was lost by death of the paterfamilias, by loss of status of parent or child, by promotion of the son to the *patriciate* and by emancipation.

The concise Law Dictionary by P.G Osborn, Sweet & Maxwell, London, 1964, Page 216.

² One of full legal capacity. An independent person not subject to any of the three forms of authority, potestas, manus, mancipium. In English Law, a person who can validly contract and bind himself by legal obligation uncontrolled by any other person.

The concise Law Dictionary by PG Osborn, Sweet & Maxwell, London, 1964, Page 305.

It's validity, like that of any other act committed or contracted into by an infant, is dependant on its ratification by the guardian, or by the person who stands in loco parentis. Right of *Jabr*: force, ends with puberty.

The power vested in the father of imposing the status of marriage on his minor children, is in principle, absolute and unlimited. But the power is surrounded by so many conditions and formalities, that the mischief, which otherwise might arise from it, rarely occurs in practice. The right of *Jabr* in its harsher form, terminates practically with puberty.

In the case of the Hanafi's, the right of *Jabr* in the case of males and females, continues until they have arrived at the age of puberty.

The followers of Imâm Mâlik and Shâ'fi'î(ra) on the other hand, are of the opinion that the exceptional right of *jabr*, in the case of females, continues in force until they are married, and consequently emancipated from parental control. These schools of thought also hold that this right does not cease when a girl is a *safihah*: devoid of intelligence, or when she has been married whilst yet a minor, and has been divorced before arriving at maturity.

4.4.2 b) Limitations to the right of *Jabr*

Though the right of *Jabr* is theoretically an absolute right; in practice, there are numerous conditions attached to its exercise. The father, without any difference amongst the Jurists, is prohibited from marrying his child to those who are diseased, to slaves, idiots and other ineligible persons.

Imâm Abû Hanîfa and his two disciples (*ra*) differ on how far a marriage contracted by a father on behalf of a girl for less than a proper dower is valid in law. Imâm Abû Hanîfa (*ra*) appears to think that inadequacy of consideration is no grounds for holding the marriage to be valid. His two disciples, however, are of the opinion that when the dower is out of proportion to her proper or customary dower, the contract is not valid.

There seems to be a general consensus of opinion among all the Jurists, that when the father has acted wickedly or carelessly, the marriage is invalid.

If a man should agree on behalf of his minor son to pay a dower in excess of the infant's means, or of the wife's proper dowry or marry him to a woman of low position, the marriage would similarly be invalid.

4.4.2 c) The Discretion of the Judge

The law is particularly attentive to the interest of the child. It takes care that the right of *jabr* should not be exercised to the prejudice of the infant; any act of the father which is likely to injure the interests of the minor is considered illegal, and entitles the Judge to interfere in order to prevent the completion of such an act, or, if complete, annul it.

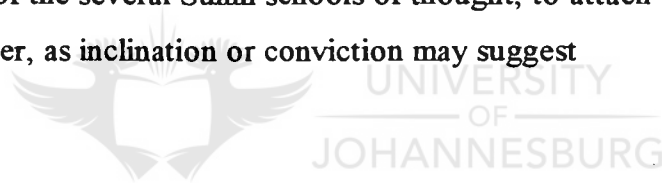
Nor can the father indefinitely abuse his authority by systematically refusing his consent to the marriage of his children. Such cases are necessarily rare; the *Islâmic* system being opposed to monasticism and celibacy¹; still, as cupidity may prompt a father to refuse successive suitors for his daughters hand, the Judge is allowed to interpose, provided on enquiry, he finds sufficient and reasonable cause for doing so.

¹ see Sûrah 28, Verse 54

Among the Hanafi's, the children are emancipated from the right of *jabr* on attaining puberty; an abuse of the paternal authority among the followers of this sect is impossible where the children are adult and discreet. Should a father persist in refusing his consent to the marriage of his adult daughter, she can validly enter herself into a contract of marriage, even against his will and without his consent.

If the marriage contracted by her is unequal, that is, should she contract herself in marriage to a person far inferior in rank and position, the father would have a right to object, but such objection must be urged before a Judge.

Among the Shâfi'î and the Mâlîki's, a girl is not absolutely emancipated from the *patria potestas* until she is married; the abuse of the paternal authority is probably more frequent. The hardships occasionally entailed by this doctrine are obviated by the facility accorded to the followers of the several Sunni schools of thought, to attach themselves either to one school or the other, as inclination or conviction may suggest



4.4.3) NASAB : ESTABLISHING PATERNITY OF A CHILD

4.4.3 a) Preliminary

It is necessary for various purposes such as guardianship, maintenance, inheritance etc. To ascertain the person who can be considered to be the father of a certain child. Different nations have made their own rules to determine this fact. Thus, in one system, parenthood to a child is attributed to that person who is actually responsible for its conception after his marriage with the child's mother. This is the view adopted by Muslim Law under which stress is laid on the time of the conception and is an essential condition that it should be conceived by the purported father after his marriage with the child's mother.

Under a second system , as under strict English Law, a child shall be deemed to be the lawful issue of that person who marries the child's mother before it's birth regardless of the fact as to he is actually responsible for the conception of the child and whether the conception occurred before or after marriage. All that is necessary is that the child must have been born after the man's marriage with the child's mother, regardless of the time limit between the marriage and the child's birth can be. Under a third system, that person shall be deemed to be the father who marries its mother even after its birth.. This system does not take any notice of the fact as to who was actually responsible for the conception of the child nor to the time of its birth. Paternity under this system may be the result of artificial insemination or relationship created by law.

Under some systems, the relationship of parenthood can be created artificially, that is, by adoption of a child belonging to another man and also by legitimation. of a child belonging to another man and also by legitimation.

There is a difference between legitimacy and legitimation. The former is a status which results in certain circumstances while the latter is a proceeding which creates a status which did not exist before. The doctrine of legitimation *per subsequente matrimonium* (That is, legitimation of a bastard by a subsequent marriage of its mother) is not recognised in *Islâm*. Also, adoption is not recognised in *Islâm*, though it was common amongst the Arabs in the pre-*Islâmic* times.

This rule is based on the following verse of the Qur'ân¹, "Nor has he made your adopted sons your real sons; call them by their father's names, that is more just in the eyes of Allâh; but if you do not know their fathers, then they are your brothers in religion and your clients".

4.4.3 b) Muslim Conception

Under Muslim Law, the presumption of paternity from marriage follows the bed, that is, the paternity of a child born in lawful wedlock is presumed to be in the husband of its mother if certain conditions are satisfied.

No doubt, the conditions attached to legitimacy² are more strict under Muslim Law than under any other system.

¹ Sûrah 23, Verse 44

² The condition of being born in lawful wedlock. Every child born of a married woman during the subsistence of the marriage is presumed to be legitimate, but this presumption may be rebutted. By the Legitimacy act of 1926. Where the parents of an illegitimate person marry or have married one another, if the father was at the date of the marriage domiciled in his native country, it renders that person, if living, legitimate from the commencement of the act, or from the date of the marriage, whichever last happens, unless the father or mother was married to a third person when the illegitimate child was born. By the

But, on the other hand, it is very reluctant to stigmatise a child as fatherless and no presumption is drawn against its legitimacy as far as possible. It refuses to declare a child a bastard except on the clearest and the most positive proof of illegitimacy and refuses to admit illegitimacy when legitimacy can be inferred. Muslim Law considers a child to be the legitimate offspring of a person in every case when it is humanely possible that the man can be the father of the child, and that there might have been a marriage between him and the mother of the child.

It can be inferred from the number of problems stated in *Radd al-Mukhtâr* that even the slightest ground is worthy of consideration, that is, is sufficient to establish the legitimacy of the child. This explains for a large number of cases in which a child is considered to be legitimate even when the surrounding circumstances point out against its legitimacy on the grounds that adultery cannot be presumed.



Legitimacy act of 1959, s.1, however, the provisions of the 1926 Act were extended to cases where either or both of the parents were married when the child was born.

A Legitimated person is, after his legitimation, in the same position as if he had been legitimate when born. In regard to property however, his spouse or issue may only claim if their title is subsequent to the date of legitimation. An illegitimate child and the mother are entitled to succeed to each others property on intestacy.

Where a decree of nullity is granted in respect of a voidable marriage, the legitimacy of a child is not affected by the annulment of the marriage of its parents (Matrimonial Causes Act, 1950, s. 9). The child of a void marriage is treated as the legitimate child of his parents if at the time of intercourse resulting in the birth, or at the time of the celebration of the marriage, if later, both or either of the parties reasonably believed that the marriage was valid (Legitimacy Act, 1959,s. 2)

4.4.3 c) Determination of Paternity

To determine the legitimacy of a child, the following matters have to be taken into consideration:

(1) The status of the parents of the child; (2) The conduct of the alleged father; (3) The nature of the marriage; (4) The period of gestation.

1) *Status of parents:-* The first thing to be considered in considering the legitimacy of a child is to see if it was at all possible that it could have been conceived during the subsistence of a valid marriage of the child's mother with the person alleged to be its father. It is an essential condition of legitimacy that the child must have been conceived in wedlock, or, the person who is responsible for its conception should be the lawful husband of a child's mother at the time of its conception.

The disinclination of the Jurists to bastardise a child has sanctioned the presumption of legitimacy from even slight evidence of marriage or lawful consort. The presumption of legitimacy is so strong that it is only when a man has no right or even the semblance of a right in a woman that their offspring is considered a bastard.

The Muslim Law presumes legitimacy of a child from circumstances without a proof, or at least, without any direct proof of marriage. When a child is born, there is a presumption in favour of a marriage having taken place between its mother and her husband if there had been a mere casual concubinage, but a more permanent connection, and where there is no insurmountable obstacle to such a marriage.

When it is proved that a man and a woman lived together for a long time as a man and wife, there is a strong presumption in favour of marriage having taken place between them. This rule holds good with still greater force when the alleged marriage took place so long back that it is difficult to obtain a trustworthy account of what really occurred and when the conduct of the parties is shown to be compatible with the existence of the relationship of husband and wife.

If there is a dispute between a man and his wife about the legitimacy of the child when the husband alleges that he was married to her only a month back while the wife says the marriage took place a year, or even only six months back, then her statement will be accepted and the child shall be held to be legitimate. It is obvious that there should not be any impediment to a lawful marriage which negates the idea of a lawful marriage. Thus, the subsistence of a former marriage between the woman and another man at the time of the child's conception or the fact that the woman was prohibited to the man on account of some reason or other will negate the legitimacy of a child alleged to be born of that man.

If the parties of a marriage believe in good faith that there is no impediment to their marriage, it shall be deemed valid for all purposes far as the parties are concerned. If it be found subsequently that there was such an impediment, the marriage shall be null and void, but the children born of such a marriage shall be held to be legitimate. Moreover, divorce cannot be presumed for long separations between the parties to a marriage.

Hence, where a wife was proved to have resided a few times with her husband while there was no proof of absence of opportunity of access to each other; legitimacy of a child born during such separation cannot be doubted. But mere continued cohabitation

for a long period in the absence of proof of marriage is not sufficient to proof marriage, particularly when the woman was a prostitute before the alleged marriage.

It was stated in a case that evidence of intimacy and very close intimacy alone cannot establish a marriage between the parties. There are cases where marriage was presumed from continuous and prolonged cohabitation, but, in this case, the duration of cohabitation is only for a period less than a year ”. Presumption of there being a valid marriage was not drawn under the circumstances.

Child born of a woman who is not a wife : Under Muslim Law, sexual intercourse of a man with a woman who is not his wife is unlawful and absolutely prohibited. When there is neither the validity nor the semblance of such a relationship between the parties, their intercourse is termed as *Zinâ*:¹ adultery, and the offspring of such a union is called *Walad al-Zinâ*:¹ child of fornication, who shall be deemed to be illegitimate. If it be established that there did not subsist at the time of the child’s conception, a valid or under the Ḥanafi, Mâliki and Ḥanbli laws, even a *fâsid*: irregular, marriage between its mother and the alleged father, then the child cannot be considered to be illegitimate.

Similarly, if a person is to be proved not to be the husband of the child’s mother at the time of its conception, than the child shall be deemed to be illegitimate, unless if it is possible that the child might have been conceived after the marriage, when under certain circumstances it may be presumed to be legitimate.

The descent of an illegitimate child is not established in the husband of its mother in any case. If a woman should become pregnant by illicit intercourse and the seducer subsequently marries her, then a child born to her in less than six months of the marriage shall not be considered legitimate. But if that person should acknowledge it to be his lawful child and he does not make any mention of his adultery or the

illegitimacy of the child, and nothing is known to hold the child to be illegitimate, it may be held to be legitimate under certain conditions.

This rule is based on the idea that nothing being known against the legitimacy of the child, a presumption would be drawn in favour of the legitimacy. This is only, as pointed out by the Jurists, to help the child and it is obvious that if it is not known that if he is not legitimate, then such a presumption cannot be drawn.

If a husband accuses his wife of unchastity by denying a child born to her, the Judge has, after the proceedings of *liâ'n*: mutual swearing on oath to negate legitimacy, to annul the marriage and he shall in such a case declare the child to be illegitimate and order it to be left in the custody of the child's mother.

- 2) *Conduct of the alleged father*: The second thing to be considered is the conduct of the alleged father as to whether he has admitted expressly or implied that the child is his. The conduct of the alleged father is important in the determination of legitimacy. The failure to deny his parentage of the child when it is legally open to him to disown it constitutes an implied admission that the child belongs to him. It is open to a person to disown a child to a wife at the time of its birth or within the time the father usually and customarily receives felicitations.

This period of time is considered to extend upto forty days according to Abû Yousuf and Muḥammad (*ra*). Imâm Abû Ḥanîfa (*ra*) says that such a period extends to seven days. According to *Radd al-Mukhtâr* this period extends from three days to one week.

- 3) *Nature of marriage*: The Muslim law generally draws a presumption of legitimacy in favour of a child born to a man and a woman lawfully married. The Jurists, particularly the Hanafi's have tried their best not to consider a child illegitimate as far as possible.

They hold that every child born of a *fâsid*: irregular marriage, is legitimate, although the marriage itself will not be tolerated. Here the ruling is in favour of the child.

Where a man marries a woman out of genuine misapprehension of the fact that the woman was not permissible to him, paternity is established for that child, which emerges as the result.

The following passage from a learned judgement of a division bench of the Calcutta High Court will be found interesting in this connection,:- “The punishment for adultery and fornication under the Mohammedan Law - Death by stoning - was so severe and the natural objection to bastardise offspring was so strong, that it was probably a desire to mitigate the vigour of the Law in these respects which led to the distinction in the Mohammadan Law between void and invalid marriages.

Abû Hanifa (*ra*) as is well known, went so far as to hold that consummation was sufficient to legalise any marriage as to dispense with the necessity of inflicting *hadd*: punishment, or for adultery and to establish the legitimacy of the children. He was of the opinion that women was always a fitting subject, inasmuch as all the daughters of Adam were qualified for procreation, which is the primary object of marriage.

This broad doctrine, however, was not accepted by his disciples, Abû Yousuf and Muḥammad (*ra*), who held that a marriage with a prohibited women was void and the fruit of it, illegitimate, and that a person contracting such a marriage was liable to *hadd* if he were aware of the illegality. The severity of the punishment of *hadd* also doubtless, led to the doctrine of semblance of doubtful marriages”.

When the connection between a man and a woman was unlawful in its inception, it is very difficult to infer subsequent marriage from the fact of mere exclusive cohabitation for a long time.

- 4) *Period of gestation:* To determine the legitimacy of a child, The Muslim Jurists have laid down some general rules for guidance. They have given the periods of time, both minimum and maximum during which a fully developed child could be born. These rules are mostly based on their experience. It is also important to note that they have not based these periods on probability, but on possibility.

Their aim is to save a child from the stigma of illegitimacy and so they have tried to bestow legitimacy on every child when it is physically possible, though not probable that the child could have been the result of lawful union between a man and his wife. They thus apply the rule to every conceivable case including rare and abnormal cases.



4.4.3 d) Minimum and Maximum Period

The Muslim Jurists hold that a fully developed child cannot be born before six months. They have based this rule on two grounds, namely, experience and upon an inference drawn from two verses from the Qur'ân. In one verse, the combined period of gestation and weaning is given in two years and a half, while in the other, the period of suckling is mentioned at two years. From these two verses, they have arrived at the figure of six months for the shortest period of gestation.

Hence, a child will be considered legitimate if it is born at or beyond six months of a marriage. But, if a fully developed child be born within six months of a marriage, it will not be considered legitimate on the grounds that the minimum period of gestation being six months, the child must have been conceived before the marriage, and so, not legitimate. It can be rendered legitimate under the doctrine of acknowledgement

Commencement of time: The period of six months shall be counted from the period of a valid marriage. In the case of a *fâsid*: irregular marriage, there is a difference of opinion amongst the Ḥanafî scholars. Abû Ḥanîfâ and Yousuf (*ra*) are of the opinion that it commences from the date of the marriage, while Muhammad (*ra*) holds the view that it commences from the time of consummation, actual or implied, of the marriage. This is generally accepted as the correct view.

Maximum Period of Gestation: The Ḥanafî's fix it at two years. They contend that it cannot exceed this limit, in this they cite a Tradition of the beloved wife of the Holy Prophet of Allâh, Muḥammad bin 'Âbdullâh (*ṣaw*), 'Âi'sha (*ra*) that the child cannot be contained in the body of its mother for longer than two years.

The Mâliki's have fixed it at four years on the bases of an allegation that Dahhâk bin Muhâzim (*ra*), a great commentator of the Qur'ân, was born four years after his conception. The Shâfi's and also the Ḥanbli's have fixed the period at four years on the strength of the case of one Muḥammad bin 'Âjlân, whose wife delivered children every time at four year intervals¹.

¹ The balance of the three Imâms have based their views on rare occurrences which occurred in their times. It could be argued that their argument holds no weight, as the time of conception could not have been determined, thus to only take the time of gestation from one birth to another is invalid. Instances can be found in modern times where pregnancies last well over the nine month periods and this ruling would

The author of *Radd al-Mukhtâr* has explained himself that certain diseases produce the same symptoms as are indicated in pregnancy and that a tumour and even wind inside the belly may be mistaken for pregnancy.

4.4.3 e) Cases of illegitimacy

Cases of illegitimacy may be divided under the following heads:-(1) Child of a prostitute conceived or born of intercourse in a brothel; (2) Child of incest; (3) Child of adultery; (4) Child of an idolatress; (5) Child of a fifth wife; (6) Anti-Nuptial child, when there was no legal bar to marriage before conception and birth; (7) Child born out of wedlock where there is no legal bar on the marriage.

be much appreciated in the undeveloped and remote corners of the world where medical sciences has not been heard of.

Ibn 'Âbidîn al-Shâmi, *op. cit.*, Vol. 2, Page 639 .

English and American laws fix the period of gestation on probability and not possibility. Moreover, no minimum period of gestation is fixed under those laws, but medical experts stated in a case that in actual foetus of 28 weeks seems to be the minimum period of gestation. The usual maximum period of gestation is fixed at 275 to 280 days. It is however, realised, that the period of gestation may exceed this limit in certain cases (Gaskill Vs. Gaskill (1921) Page 425; (1921) 2 All. ER, 415.)

Medical science now affirms that it is possible, though not probable, that a child may be born beyond the period of nine months and ten days. It was stated in a case that to prove that a period of so many days between fruitful coitus and the time of delivery is, in a scientific sense, an impossibility. The utmost that a court of law can demand is that it would be established beyond all reasonable doubt that a child conceived so many days after a particular coition cannot be the result of that coition. (Preston Jones Vs. Preston Jones (1951) 1 All, E.R 415).

In the case of (1), the child is of spurious birth. In cases (2), (3), (4) and (5) there was a legal bar to a valid marriage, and therefore, even if marriage did take place, it would be illegal. In cases of (6) and (7), there could be no cogent disproof of marriage except evidence bearing on the probabilities of the case. In the case of concubinage with regard to the birth of children, there is a strong semblance to marriage. In the present case, mere disproof of marriage was not by itself sufficient to establish illegitimacy. It will be necessary for the respondent to prove that there is no semblance to marriage.

To the above list may be added another class, namely, the children born of a void marriage. A marriage is void when the spouses are within the prohibited degrees of marriage, whether on account of birth, fosterage, when the wife is the wife of another person or she is the fifth wife or when she is an idolatress and all other such circumstances.

4.4.3 f) Other cases



The Muslim Jurists have been anxious to save a child from the stigma of illegitimacy. This will be fully borne out by some cases discussed below :

Child born after divorce: If a child has to be born after its mother has been divorced, then the legitimacy of the child shall be presumed if it can be possible that it could have been begotten by the alleged father. If it was born within six months of the dissolution of the marriage, there can be no doubt of its legitimacy.

If the marriage is dissolved by a revocable divorce, then it is open to the husband to be intimate with the wife within the period of the '*iddah*': ceremonial waiting, which is three months, and so a child born within nine months of the divorce can also be presumed to be the lawful child of its mother's husband.

This rule seems to be based on the ground, that adultery of the wife cannot be presumed and it will be deemed that the husband might have had access to the wife.

A child born within two years and three months of a revocable divorce shall be presumed to be the legitimate child of the husband according to Imâm Abû Hanîfa (ra). This rule is subject to the condition that there is no apparent impediment to the legitimacy of the child. Moreover, this rule will not apply if access to the wife was absolutely impossible as when she was never sent to the husband.

In the case of an irrevocable divorce, the period of *'iddah* cannot be taken into consideration as intimacy of husband and wife is not allowed during this period, and so the maximum period shall only be two years.

If the marriage has not been consummated and the husband divorces his wife who has not attained puberty but can admit carnal connection, then a child born of the wife shall be considered legitimate if it is born within six months of the divorce. It is immaterial whether the divorce is revocable or irrevocable, because every divorce before consummation amounts to an irrevocable divorce. The husband cannot be intimate with the wife after an irrevocable divorce, while no *iddah* is imposed upon the wife, and so no more time will be taken into consideration and only the period of six months is taken into account. Hence, a child shall be considered legitimate only if it is born within six months of the divorce.

Illicit Intercourse: If a man has illicit intercourse with a woman and then becomes pregnant, and afterwards, marries her and then she gives birth to a child, if such a child is born after the expiration of six months or more, his descent is established.

But, if she gives birth in less than six months, descent is not established, unless he claims it and he does not say that the child is the result of illicit intercourse. If he says that the child was born of her with the result of illicit intercourse, the descent is not established and the child will not inherit from him.

If a man marries a woman within the prohibited degree, and a child is born to her, then according to Imâm Abû Hanîfah (*ra*), the child would be considered the lawful issue of that person. Abû Yousuf and Muḥammad (*ra*) differ with him and hold that the child shall be considered to be illegitimate. This difference of opinion is due to the fact that Abû Hanîfah (*ra*) considers a marriage of a person with a woman within the prohibited degrees to be *fâsid*: irregular, while the other two Imâms hold that it is *bâtil*: void. The latter opinion is considered to be correct.

Death of Minor Husband: If a minor husband, who is capable of intimacy, should happen to die and should a child be born of the marriage within six months of the death of the husband, then it shall be presumed to belong to the deceased husband.

This rule is based on the reasoning that adultery of a wife cannot be presumed and the period of six months is fixed on the grounds that the husband must have been intimate with her before his death and that he must be the father of the child.

This rule is subject to the condition that the husband must be capable of intimacy. If he is of such a tender age that intimacy is not possible then the legitimacy of the child born of the wife, shall not be established in him.

Child born to an eunuch: If the husband of a woman is a *majbûib*: eunuch, and she gives birth to a child, the child shall belong to him, when he acknowledges it to be his child or does not disclaim it.

This rule seems to be based on the principle that an acknowledgement or the absence of a disclaimer obviates any investigation about his physical condition. If the marriage is dissolved after valid retirement and a child is born to her, then according to Abû Yousuf (*ra*), the child shall belong to him if born within six months of the dissolution of the marriage. According to Imâm Abû Ḥanîfa (*ra*), the child shall belong to him if born within two years of the separation. This is subject to the condition that in both the cases he should claim the child to be his.

Child born to an impotent husband: If the husband be impotent, then the same rule as applied to eunuchs shall govern the case.

Time in case of husband's death: According to the Ḥanafi's, if a child is born within two years of the death of the husband of the child's mother, it shall be presumed to be the legitimate child of that man.

If it is born beyond two years of the alleged father's death, then it shall not be counted as to be the legitimate child of that husband, because the longest period of gestation being two years, and the child having been born after two years of the person's death; it is clear that it could not have been conceived during the subsistence of the marriage. In the case of the Ḥanbali's, Mâliki's and Shâfi'î's, the case will be four years instead of two.



If a child is born after the period of two years of the husband's death, and should the heirs of the deceased husband deny the legitimacy of the child, then its legitimacy shall have to be proved by evidence like any other fact, unless it can be presumed by an admission of the husband that the woman was impregnated by him or if the woman's pregnancy was apparent at the time of his death.

If the husband of a minor wife dies, and she declares during the period of her *'Iddah* that she is pregnant, the child born to her shall be presumed to be legitimate, provided it is born within two years of the husband's death in the case of the Hanafi's. In the absence of any such declaration, the legitimacy of the child shall be presumed only if it is born within ten months and ten days of the husband's death because her failure to declare her pregnancy shows that she was cognisant of her not being pregnant at the time of the husband's death.

But, if a child is born to her within six months of the husband's death, then it shall be presumed that the deceased person was responsible for the conception of the child.

This rule is based on the principle that the minimum period of gestation is six months, while a widow cannot marry another person during the period of her *'iddah*, which in case of the husband's death, is four months and ten days, hence it is presumed that the child must have been begotten by the deceased.

6.4.4) 'IQRÂR : ACKNOWLEDGEMENT OF PATERNITY

6.4.4 a) Preliminary

'Iqrâr: acknowledgement, means to give information as to the right of a person enforceable by his own self against the acknowledge, that is, the person who gives such information. In the absence of direct proof of marriage between the parents of a child, a child may be affiliated to a man by an admission that the child is his.¹

Acknowledgement, is based on the notion that the burden of obligation in respect of a child, rests particularly on the father, and his acknowledgement affects him personally and it must be so accepted without verification.

4.4.3 b) Religious Sanction

Religious sanction can be found in the following verse of the Qur'ân², "Call them (by the names of) their fathers".

Muslim Jurists state that maternity admits of positive proof, because the separation of the child from it's mother can be seen, but paternity does not admit of a positive proof because the connection of a child to its father is secret. But the absence of direct evidence

¹ 'Âli, Syed Ameer, *Mahommedan Law*, Law Publishing Company, Lahore, 1928, Volume 2, Page 209. Also look in ibn 'Âbidîn al-Shâmi, *op. Cit.*, Vol. 2, Page 641 and Burhân al-Dîn al-Marghinâni, *al-Hidâya*, Delhi, 1978, Vol. 2, Page 176

² Sûrah 23, Verse 45

to establish paternity of a child can be secured by an admission or acknowledgement of paternity by the husband of its mother.

It is stated in *al-Kifâya*, the celebrated magnanimous commentary of the authoritative text of *al-Hidâya*, that acknowledgement of paternity by a person is considered sufficient, because the burden of the obligations in respect of the child rests especially on the father, and the acknowledgement of the latter affects him personally, so, his acknowledgement would be accepted without any confirmation from the mother of the child. This is also the view corroborated by other scholars. The Muslim law refuses to declare a child a bastard, except on the clearest and most positive proof of the child's illegitimacy.¹

4.4.3 c) Nature

The doctrine of acknowledgement is not a rule of evidence, but a rule of substantive Muslim law. The effect of acknowledgement of paternity by a father that a child is his, establishes the legitimacy of the child, unless the marriage was not possible. Legitimacy may be proved without direct proof of marriage under certain circumstances.

The doctrine of acknowledgement applies only to cases of uncertainty as to legitimacy. In such a case, acknowledgement has an effect, but the effect always proceeds upon the assumption of a lawful union between the parents of the acknowledged child. Where direct proof is available to establish that marriage was impossible, no presumption of marriage of account of an alleged acknowledgement can arise.

¹ *Fatâwa 'Âlamgîri*, Volume 1, Page 377; *Kanz al-Daqâ' iq* ; *Jamî' al-Sihhat* : *al- Hidâya*, Volume 1, Page 96; and *Fatâwa 'Âlamgîri* Volume 1, Page 399.

Difference with Adoption: The rule of Muslim Law as to acknowledgement is quite different from adoption, as understood by the Hindus and as it was practised among the Romans. According to them it was intimately connected with religious ideas “having relations to the repose of the souls of the departed and the preservation of the household divinities”. It existed also among the pre-*Islâmic* Arabs, and no doubt, had a similar origin.

The Holy Prophet of Allâh, Muhammad bin ‘Âbdullâh (*ṣaw*) appears to have recognised the custom of adoption at the time he adopted Zaid, the son of Hârith (*ra*). Later when he had weaned the idolatrous tribes from the revolting practices to which they were addicted, and had given them higher ideas about domestic relationship; he explained in fuller terms that adoption similar to what was practised in the days of *Jâhiliyyâ*: ignorant pre-*Islâmic* days, created no such tie between the adopted and the adopting as resulted from blood relationship.

Muslim law does not recognise the validity of any mode of filiation where the parentage of the person adopted is known to belong to a person other than the adopting father. An adopted child has no rights in the estate of his or her adoptive parents.

The only form of filiation which is recognised by Muslim Law is that of acknowledgement of parentage. It proceeds upon the theory of actual descent of the acknowledged child from the person who acknowledges it, such descent being the result of legitimate intercourse between the child’s parents. Adoption under other laws has no reference to the natural descent of the adopted child from the adoptive father, but it is established by a gift from the real parents of the child to the adoptive parents.

Similarly, acknowledgement differs from the law of legitimation. Other laws proceed upon the principle of legitimating children whose illegitimacy is proved and admitted; while the doctrine of acknowledgement proceeds upon the assumption that the acknowledged child is not only the offspring of the acknowledge, but also the lawful issue of a valid union

between him and the child's mother. No acknowledgement by a person that a child, proved to be illegitimate, is his child, can make that child his legitimate issue.

According to Muslim law, a valid acknowledgement does not merely provide *prima facie* evidence, but establishes the fact acknowledged. A mere recognition of paternity is not equivalent to a recognition of legitimacy. Hence, an acknowledgement by the person of a paternity of a child who is proved to be born of adultery cannot make the child legitimate.¹

4.4.3 d) Conditions of valid Acknowledgement

In order to render the acknowledgement valid and effectual in law, four conditions must be fulfilled:

- (1) The acknowledge and the acknowledged must be of such ages respectively as would admit the possibility of their standing in the relation of parent and child to each other. For example, a man cannot establish a relationship of father and son unless he is at least twelve and a half years older than the son he intends to filiate or acknowledge.²
- (2) The person acknowledged must be of unknown descent. If the parentage is known to belong to somebody else, no ascription can take place to the acknowledge. This ruling is based on the principle that if there was no bar to a lawful connection between the parents and they had lived for a long time together as husband and wife acknowledging each other as such, the mere absence of direct proof of marriage would invalidate an acknowledgement of sonship.

¹ Burhân al-Dîn al -Marghinâni, *al-Hidâya*, Delhi, Vol. 2, Page 410-3 and ibn 'Âbidîn al- Shâmi, *Radd al-Mukhtâr*, Cairo, 1318 A.H, Vol. 2, pp. 639-40

² Burhân al-Dîn al -Marghinâni, *op. Cit.*, Vol. 2, Page 410

- (3) The acknowledged must believe himself to be the acknowledger's child, or assent to the fact.
- (4) The acknowledgement should clearly indicate the child in respect of whom it is made, so that there should be no doubt about the identity of the child ¹

4.4.3 e) Capacity to Acknowledge

An acknowledgement can take place only when the person acknowledging possesses the legal capacity of entering into a valid contract. The person must be an adult, sane and free. An acknowledgement made by an infant, under duress or by an insane one, is totally void.

Regard must always be paid to the fact that when an acknowledgement is in favour of a child or an insane person who cannot assent to the relationship so created, the interest of such a child or such a person should not in any way be affected.

The rule relating to the legitimating of children by acknowledgement is based on the assumption of legitimacy and its establishment by the avoidance of the hypothesis of unlawful relationship between parents.

¹ 1. The *Hidâya* with reference to this latter condition says, "It is also a condition that the boy verify the acknowledgement, because he is considered to be his own master, as he is supposed to be able to give an account for himself. It would be otherwise if the child could not explain his condition". This rule applies to both male and female children. Refer to *Hidâya*, Book 15, Chapter 3, Pages 168-9. "An infant who is too young to understand what the relationship implies, or to give an account of himself, is not required to agree to the acknowledgement; nor is his assent a condition precedent to the validity of an acknowledgement, as it is in the case of an adult".

The acknowledgement of legitimacy proceeds upon the basis of a prior lawful relationship between the parents. If the marriage, however, is alleged and disproved, the effect of an implied acknowledgement as deducible from mere treatment is minimised.

This devolves on the principle that an acknowledgement to be effective, must directly or indirectly point to the children as the legitimate issue of the acknowledger.



6.4.5) HIDHÂNAT : THE CUSTODY OF CHILDREN

6.4.5 a) Preliminary

The word *Hidhânat* in Arabic means “custody over children or the women to whom belongs the rearing up of a child”. The condition of custodianship are that the custodian should be free, an adult, trustworthy, capable of bringing up a child and not married to a stranger¹.

The mother is of all persons the best entitled to the custody of her infant child during the connubial relationship as well as after its dissolution².

In *Radd al-Mukhtâr* it is stated that the right of the mother to the custody of her child is established, whether she is a Muslim, a Christian or a Jew or even a Magian; even though she be separated from her husband. But, it does not belong to one who is an apostate³.

¹ ibn ‘Âbidîn al-Shâmi, *Radd al-Mukhtâr*, Lucknow, Vol.2, Page 1042. The *Radd al-Mukhtâr* is an extremely valuable and authoritative work on Islâmic Law. It purports to be a commentary of the *Durr al-Mukhtâr*, which again is a gloss of the *Tanwîr al-Absâr*. The texts quoted in the *Radd al-Mukhtâr* are chiefly from the latter, whose author is referred to as the mentator. The *Radd* represents to a large extent the developed Hanafî principles. At the same time, it must not be supposed that the doctrines it expounds are accepted in their entirety.

² Fatâwa ‘Âlamgîri, Vol.1, Page 728

³ An example of a Magian mother is given in this way that both parents were magians and the father embraced Islâm, while the mother remained a Magian. Still, the mother would be entitled to the custody on the basis of her maternal love to the child.

It will thus be seen that this right belongs to the *qua*¹ mother, and nothing can take this right away except her own misconduct.

The paternal power over the infant is based on the assumption that it is based on their benefit. Similarly, when the tenderness of their age, or the weakness of their sex, renders a mother's care necessary, the Islâmic Law supports the mother's natural right to the custody of her children and allows it to take precedence of the paternal right for a certain specified time.

When the children are no longer dependant on their mother's care, the father has a right to educate and take charge of them, and is entitled to the guardianship of their person in preference to the mother.

Among the Hanafi's, the mother is entitled to the custody of her daughter until she arrives at puberty, among the Mâliki's, Shâfi'i's and Hanbli's, the custody continues until she is married².

An analysis regarding the difference of opinion between the schools of thought reveals that it is not that far apart.

¹ In the capacity of; as.

² The *Radd al-Mukhtâr* says: " According to Faqîh Abû al-Laith, a mother and a grandmother are entitled to the custody of a girl until puberty; but an aunt only upto nine or eleven, for she cannot exact the same amount of respect when teaching manners. According to Zaila'î, owing to the evil times, this rule should also apply to a grandmother. As regards to her mother, this refers to a woman who has been divorced.

The *Fatâwa 'Âlamgiri* which gives the opinion of several jurists, points that the right of custody terminates when the girl is of marriageable age. The Mâliki's hold that it should continue until the girl actually gets married¹; while the Hanafi's rule that it terminates upon puberty.

6.4.5 b) Sequence of Custody

The Mâliki's differ to some extent from the Hanafi's in respect of the order in which the right of custody is possessed by the various relations. They hold that, failing the right of the mother, the right passes to:

1. The Maternal Grandmother, if failed, then by.....;
2. The Great Grandmother;
3. The Maternal Aunt and Grand-Aunt;
4. The Full Sister;
5. The Uterine Sister;
6. The Consanguine Sister;
7. The Paternal Aunt;
8. When there no relations to these degrees, or none qualified or willing to exercise the right of *Hidhânat* , it passes to the father, and failing him, his son, his nephew, his uncle and his cousin.

According to the Hanafi's, the order runs thus:

¹ As in Eastern countries, girls are generally contracted in marriage as soon as they are marriageable, and occasionally, even before they have arrived at maturity.

1. The Mother, if failed, then by.....
2. The Mother's Mother, no matter how remote;
3. The Father's Mother, no matter how high;¹
4. The Full Sister;
5. The Uterine Sister;
6. Full Sister's Daughter;
7. Uterine Sister's Daughter;
8. Consanguine Sister;
9. Full Maternal Aunt;²
10. Uterine Maternal Aunt;
11. Consanguine Maternal Aunt;
12. Consanguine Sister's daughter;
13. Brother's Daughter;
14. Full Paternal Aunt;
15. Uterine Paternal Aunt;
16. Consanguine Paternal Aunt;
17. Mother's Maternal Aunt of the full blood;
18. Mother's Uterine Maternal Aunt;
19. Then the Consanguine;
20. Father's Maternal Aunt of the Full blood;
21. Then the Uterine;
22. Followed by the Consanguine;
23. Mother's Paternal Aunt of the full blood;
24. Then the Uterine;

¹ If the minor's mother has lost her right by remarriage, the mother's mother has a right preferential to the father's mother.

² A maternal aunt has a preferential right to the custody of a minor over the father's step-mother. Rights of female relations of the mother cannot be taken away by the father's will.

25. Followed by the Consanguine;¹

26. Father's Father's Sisters.

The general principle upon which the right is founded is common to both the schools, *viz.*, that the custody of an infant belongs by right to the mother's relations, and those connected through her are those preferred to those connected to the child on the father's side only².

According to the Hanafi's, if there be no female relations, or if none of them be legally qualified to exercise the right, it passes to:

1. The Father, if failed, then by the
2. Paternal Grandfather;
3. The lineal male ascendant of the third degree or higher;
4. The Full Brother;
5. The Consanguine Brother;
6. The Full Brother's Son;
7. The Consanguine Brother's Son;
8. Full Paternal Uncle;
9. Half Paternal Uncle on the Father's side;
10. To the Son of the Paternal Uncle in the same order. Among these relations, also, the nearer always excludes the more remote .

No male has a right to the custody of a female child unless he is a *Mahram*³, that is , stands to her within the prohibited degrees of relationship, and cannot, under any circumstance marry her.

¹ *Fatâwa 'Ālamgîri*. Vol. 1, pp. 728-9

² *Radd al-Mukhtâr*. Vol.2, Page 1050

³ Being one who is a stranger of the opposite sex, which is within the prohibitive degrees of marriage

Though a boy may be entrusted to the care of the Paternal Uncle's son, a girl cannot be placed under his guardianship, he not being a *Mahram* to her. The son's of Aunts and Uncles has no right to the custody of a female child not being within the prohibited degrees. Nor is an '*Āṣabah*'¹ who is profligate entitled to the custody of a female child².

When there are no '*Āṣabah*' qualified to take charge of the child, then the male uterine relations are given the charge. If there are several male uterine relations entitled to the custody of the child, then the one who most tenderly looks after the child's interests is entitled to preference, to the one most virtuous or senior in age.

This principle is not restricted to the male uterine relations only, for it is explicitly enunciated that when there are several relations of the same line of degrees, all equally qualified and willing to take charge of the child, the custody should be entrusted to the one who shows the greatest tenderness to it³.

In the absence of the natural guardians, or when none of them are willing or competent to take charge of the minor, the custody of the child devolves on the judge, who should place the infant in the care of a trustworthy person of the same sex of the infant⁴.

¹ Agnatic Heirs , heirs of the second degree and not mentioned explicitly in the Qur'ân, the degrees of inheriting being four.

² *Fatâwa 'Ālamgîri*, Vol. 1, Page 730. The sons of uncles and aunts have no title to *Hidhânat*.

³ The *Radd al-Mukhtâr* as also corroborated by the *Fatâwa 'Ālamgîri* states thus, " When there are several persons equally entitled to the *hizânat*, as full brothers, or full paternal uncles, then the most virtuous amongst them should be given the charge , and if all are equally virtuous, then the most senior in age amongst them would be given preference.

⁴ *Radd al-Mukhtâr*, Vol.2, Page 1051

4.4.5 c) Qualifications Necessary For Custody

The qualifications necessary for attaining custody of a child, are as follows:

1. The custodian should be of sound mind;
2. The custodian should be of such an age which would qualify her to bestow upon the child the care which it may need;
3. The custodian should be of good moral conduct;
4. The infant should be kept in a place where it may not undergo any moral or physical risk..

The right of custody is lost by:

1. Subsequent marriage with a person not related to the infant within the prohibited degrees¹;
Through misconduct²;

¹ This presumption of the law being that a woman entering a new family will not have the same love or affection for the child as before. If the custodian were to marry a relation of the infant within the prohibited degrees, the right of custody would not be forfeited. Although ordinarily, the woman entitled to the custody of a child forfeits her right on contracting a marriage with a stranger; special considerations regarding the interest of the child may require that its custody may be retained by her. For example, if a woman separated from her first husband, were to marry a second time in order to secure for her infant child, better and more secure living, she would not forfeit her right of custody.

² If she is found leading an immoral life or frequenting company of ill-fame. A woman who habitually leaves her home, neglects her children and allows them to starve, would not be considered to be trustworthy.

2. By changing her domicile so as to prevent the father or tutor from exercising the necessary supervision over the child¹;
3. Through abjuration of *Islām*;
4. By neglect or cruelty to the child.

The mother is entitled to the custody of a minor married daughter in preference to the daughter's husband until the girl attains the age of puberty².

If a mother were not to agree to nurture an infant without remuneration, and the father is not in a position to remunerate, and some other stranger applies to rear the child free of charge, the custody will be given to that of the latter.



¹ This rule is subject to qualification. When the change of residence is caused by unavoidable exigencies, or when it has been made for the benefit of the child, the right of custody is not lost. The frequent change of residences resulting from the necessity of employment, will not lead to her forfeiture to custody. The onus is upon the father to establish the true facts before applying to the judge to remove the infant from the custody of its custodian. The *Hedāya* has explained this point in the following words:- “ To the propriety of the woman carrying her child from one place to another, two points are essentially necessary, first, that she be a native of that place, and secondly, that her marriage took place there. Nor is there any objection to her removing from the village to a city or a chief town of a district, as this is no respect injurious to the father, and is advantageous to the child.....but the reverse (removal from city to village) would be injurious to the child ”. According to the Māliki doctrines if they be so near that the father may go to see his child, and return the same night, there is no objection of the wife going to that place : and this distance varies according to times, places and sizes of towns.

² *Radd al-Mukhtār*. Vol.2, Page 1056

4.4.5 d) Custody of a Male Child

The Mâliki's rule that the custody in respect of a male child continues until such time as he arrives at puberty. The Hanbli's and the Shâfi'î's allow the boy at the age of seven, the choice of living with either of his parents. Should he prefer to continue with his mother, he is allowed to do so until he reaches the age of puberty, when he has no option and the guardianship devolves up[on the father.

According to the Hanafi doctrines, even when a boy has attained puberty, the father may insist of his remaining in the paternal care if he be thoughtless or likely to go wrong. If the father is covetous of the wealth or earnings of his son, the judge would appoint a trustee.

The principle of the mother's custody devolves on the principle that the custody of a male child ends with the completion of the seventh year. The *Fatâwa 'Âlamgîri* states that the mother and the grandmother are entitled to the custody of the boy until he is independent of their care, that is, the age of seven. *Qudûri* has declared that the custody remains until the boy is able to eat and drink and perform the necessary ablutions himself. Abû Bakr al-Râzi has put the limit to nine years, but the former opinion is preferred.

4.4.5 e) Custody of Female Child

After the child has been weaned, its custody devolves upon the father if the infant be a male; and upon the mother, if it be a female. The mother's custody of a female child terminates at her seventh year.

After this, the father is entitled to her custody in preference to the mother.; but if the father allows the mother to retain the custody of her daughters or sons beyond the specified period, she may do so.

It will be found, that although the periods differ amongst the schools of thought, the general principle which governs its duration is founded on the interests of the child.

4.4.6) *LAQÎT* : THE FOUNDLING

4.4.6 a) Preliminary

A foundling is called a *laqîit*, something taken up from the ground, and according to *Radd al-Mukhtâr*, “ is an infant who has been thrown away or abandoned by his parents, or one of them, either from want, or to conceal the shame of adultery”.

Anyone who finds a foundling, and does not pick it up, allowing it to die, commits a major sin; and he who picks it up will surely be abundantly rewarded by Allâh Ta‘âla. To pick up a foundling is *fardh al-kifâyah*¹ if it is certain that it will die. If he be the only person there, picking up the foundling would be *fardh al-‘ain*² on him. Allâh says, “ He who has saved a life, has saved the entire human race”³.

¹ Obligatory upon one person of the community, if discharged by one, the entire community is absolved of the duty and the onus of negligence.

² Compulsory upon every person.

³ Sûrah 4, Verse 56

The foundling would be a free person, enjoying all the privileges of being a Muslim. All his expenses will be met by the *Bait al-mâl*¹ public treasury. When he grows up, he will be contracted in marriage by the then ruler and the dower paid out from the public treasury.

If the foundling has any property, its expenses will be paid out from the same, or if any relation of his is discovered anywhere, such expenses will be paid by such a relation.

It is not lawful for anybody to take the child away from the finder. If the finder were to sue in such a case, the foundling would be restored to him. If he had made over the child wilfully and voluntarily to the person he now sues, he will not be granted back the child.

4.5.6 b) Custody

When two persons claim for a foundling, it will be given to him who has preference over the other. A Muslim would be preferred to a Christian. If both of them are equal in status, it will be left to the discretion of the judge. If any one of them claims to be a father of the child, paternity would be established from him. If the child be dead, he will have to establish it by proof².

It is stated that according to the Hanafi's, if more than two persons claim the paternity of a child, it may be adjudged to them all if they are not more than five. All of them would have to contribute to its support.

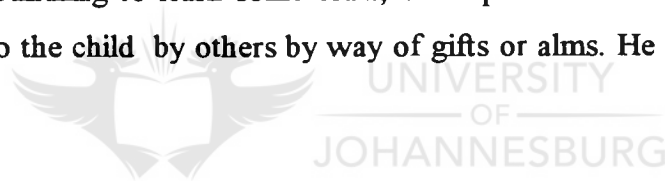
¹ The public treasury in an *Islâmic* state.

² Because when the child is alive, any property found on him will be applied to his needs. In case of it being dead, it is possible that the person alleging to be his father may do so from greed. Hence, the necessity of proof.

If a married women were to claim a foundling to be her child, her claim would be valid, if her husband affirms the statement or if the midwife proves the birth, or one man and two women establishes the same. If the woman has got no husband, she may establish her claim by the evidence of two males.

When two women are rival claimants to a foundling, the one who establishes her claim by evidence, will get the child. If they both produce evidence, the child will be adjudged as the child of both. If one is able to describe some special marks on the person or clothing of the child, then the judge may give the child to her, unless there are reasons in the evidence of the other to counter balance the weight of her case.

If a child were to be found in the quarters of the Muslims, or at the door of a *Masjid* or any place chiefly frequented by Muslims, it will belong exclusively to *Islâm*. The finder can apprentice the foundling to learn some craft, or to put him in school and take charge of anything given to the child by others by way of gifts or alms. He can take him from place to place.



4.4.7) *WILĀYAT* : GUARDIANSHIP

4.4.7 a) Preliminary

Guardianship or tutelage comprehends, (a) the direction or care of the infant, this arises when the *Hidhānat* and the guardianship are vested in one person. (b) a simple supervisory direction over the infant, when the *Hidhānat* is vested in another person; and (c) the administration and care of the property of the minor.

In pre-Islamic times, the preservation and management of goods of the minors were confided to tutors or guardians taken from among the members of the family; but, in the absence of all public authority to exercise a salutary control over them, cases of misappropriation and embezzlement were so frequent that it necessitated the introduction in the Islamic legislation the most stringent of rules for the protection of minors.

The Qur'ān teems with denunciations against the gross malpractices frequent throughout the Arabian Peninsula at the time of the Holy Prophet of Allāh, Muhammad bin 'Abdullāh (*saw*); and the rules contained in it furnished the foundation of the Islamic law regarding guardians and wards. The following passage from the Qur'ān¹ contains some of the rules bearing on the subject, and throws considerable light on the standard of morals in Arabia about the sixth and seventh century of the Christian era, " Restore to the orphans when they come of age, their substance; do not substitute bad for good²; nor devour their substance by adding it to your own, for this is an enormous crime".

¹ Sūrah 04, Verses 04

² According to the *Tafsir al-Baidāwi*, it means that take not what you find of value and quality among and substitute it with inferior quality or worse stuff.

This verse also forbids the wastage of the property of wards by their guardians¹, and directs that the tutors may take a reasonable and moderate gratuity from their labour, but not more. “ Let him who is rich, abstain entirely from the estate of the orphan, and let him who is poor take thereof according to what shall be reasonable ²”.

It further imposed on the guardians the duty of rendering accounts, “ And when you deliver unto your wards their property, call witnesses thereof in their presence . Surely, they who devour the possessions of orphans unjustly, will swallow fire in the Hereafter ³”.

It was also ordained that the judge should maintain a vigilant supervision over the guardians in the management of their ward’s property.

Guardians are either *natural, testamentary or appointed*.

4.4.7 b) Father’s Guardianship

The first and primary natural guardian is the father. Among the Hanafi’s, when the father is death, the guardianship of his minor children devolves upon his executor. When he has died without appointing an executor, but his own father is alive; the tutelage of the minor children is allowed to the grandfather. When the grandfather is also dead, the guardianship devolves on his executor. In default of the natural as well as the testamentary guardians, the obligation of appointing a curator or a tutor, for the preservation as well as the management of the minor’s property, rests on the judge as the representative of the government.

¹Qur’ân, Surâh 04, Verse 156

² As in *Tafsir al-Baidâwi*, no more than what will be sufficient recompense for the trouble of education and pupilage.

³ Qur’ân, Sûrah 04, Verse 06

Among the Hanafi's if a person sufficiently qualified to undertake the guardianship of the minors, can be found among the male agnates of the deceased father, such a person should be appointed by the judge in preference to a stranger, but no relative other than the father or grandfather has any right to interfere in any way with the property of the minor, unless appointed by the judge¹.

The father has, at all times, the amplest power to make by will, such dispositions as he may think best relative to the guardianship of his minor children and the protection of their interests.

In order to be valid, the appointment of an executor or a testamentary guardian must be made by a father at a time when he is in full possession of his senses. If, at the time of making the appointment, he was in a state of imbecility, or had been in for a long time unable to conduct his business owing to mental deficiency, the appointment would be invalid.

Whether a minor who is appointed a guardian, and is not removed from his office by order of the judge, would validly exercise the rights of guardianship on attaining maturity, is a question on which there seems to prevail great divergence of views. Abû Ḥanîfa (RA) replies in the negative. Imâm Yusouf and Muhammad (*ra*) hold a contrary view, and think that if the minor is not removed from the guardianship before attaining majority, the power granted by the testator re-vests in him.

A *Ḥarbî* (a non-Muslim native of any hostile country at war with the country of the testator) can, under no circumstances, be appointed the guardian of Muslim children, or the children of non-Muslim subjects in an *Islâmic* state.

¹ *Fatâwa 'Âlamgiri*, Vol. 1. Page 223

The position of a *Dhimmi*, or a non-Muslim subject to the same sovereign as the testator, is different. Under the Hanafi law, if a *Dhimmi* is appointed a guardian, he can validly exercise his authority and the powers given to him by the deceased, until he is removed by the judge. It is in the discretion of the judge whether he should be removed or not, though it is recommended in the interests of the minor that he should be removed. All acts committed by him in exercise of his power are lawful, until the appointment is cancelled by the judge¹. According to the mâliki's and Shâfi'î's, a *Dhimmi* may lawfully be appointed the guardian of the property of minors, though not as the guardian of their person.

The appointment of a profligate, that is, a person who bears in the public walks of life, a notoriously bad character from whom danger may be apprehended to the interest of the minor, is invalid and liable to be set aside by the judge. But, all acts committed by such a person before cancellation of his appointment are lawful if not contrary to the interests of the minor². Subject to the foregoing conditions, the father can appoint at his discretion a man or a woman, a relative or a stranger, to be the guardian to his minor children. His choice cannot be impugned, except on the ground that the tutor so appointed is acting prejudicially to the interest of the minors.

When the judge has appointed a curator to take charge of the property of the minors, and it subsequently appears that the father had confined the guardianship by his last will and testament to another person, the appointment made by the judge should be withdrawn, and the father's choice upheld. If a judge, not knowing that the deceased had appointed an executor, appoints another, the executor of the deceased is the lawful executor, and not the nominee of the judge³.

A verbal appointment of an executor, if supported by sufficient testimony, is valid in law.

¹ *Fatâwa 'Âlamgîri*, Vol 4, Page 214

² *Fatâwa 'Âlamgîri*, Vol, 4, Page 212

³ *ibid.*,

4.4.7 c) The Mother's Guardianship

A mother is not a natural guardian. Unless she is appointed by the father as the guardian of his minor children's estate, or is so appointed by the judge, she has no power to meddle with their immovable property. She may sell or pledge their goods for their maintenance. If they have no means of support except immovable property, she must apply to the court for sanction in order to deal with the property.

A mother, whether Muslim or not, can be validly appointed executrix of the father, and when so appointed, is entitled to exercise the rights and powers which the law vests in testamentary guardians. The mother has no right to appoint a guardian for her minor children in respect of property received by them from their father. In the case of legitimate children, the power of appointing a tutor to take charge of their property belongs exclusively to the father; in the case of illegitimate children, the judge. But, when the mother acts as the general executrix of the father she may validly leave, by will, the charge of the children to her own executor. Or, when the property is her own which devolves on the children, she has a right to make any disposition she chooses as to its curatorship during their minority.

When, however, an executor has been appointed by the mother to take charge of her minor children, and also of movable and immovable property left by her, such executor has no power to sell anything that the minors may have inherited from their father, whether real or personal, or whether the property was involved in debt or not.

But he may lawfully dispose of, for the benefit of his wards, the movable property inherited by them from their mother, but not the immovable property¹.

¹ *Fatâwa 'Ālamgīri*. Vol, 4, Page 223, it also adds: "Nor lawfully buy anything but food and clothing".

If the estate left by her is involved in debt, and the debt is such as to absorb the whole estate, he is authorised to sell the entire property, but not otherwise¹.

When a guardian has been appointed by a court of justice, or there is a testamentary guardian, neither the mother nor any other relative has any right to interfere with the administration of the estate of the minor. She is at all times, however, entitled to institute a suit in her own name for the protection of the interests of her children. When, therefore, a guardian is dealing fraudulently with the property of the minors, or is embezzling or wasting their estate, she has a right to ask for the assistance of the judge to remove or restrain him.

Among the Hanafi's, if a person sufficiently qualified to undertake the guardianship of the minors, can be found among the male agnates of the deceased father, such a person should be appointed by the judge in preference to a stranger. If he considers that the interest of the minors will be best promoted by the mother, he has the power to appoint her in preference to any of the deceased's agnates.

4.4.7 d) The Powers of a Guardian

A guardian is authorised to sell the movable property of his ward for an adequate consideration, and invest the proceeds in a profitable undertaking for the benefit of the minor. A guardian may sell or purchase movables on account of his ward, either for an equivalent or at such a rate as to occasion an inconsiderable loss, but not at such a rate so as to make the loss great and apparent, because the appointment of an executor being for the benefit of the orphan, he must avoid losses in a greater degree as possible.

¹ *ibid.*,

But with respect to an inconsiderable loss, as in the commerce of the world is often unavoidable, it is therefore allowed to him to incur it, as otherwise a door would be shut to the business of purchase and sale¹.

Inadequacy of consideration, which on the face of it bears the marks of fraud, or when the inadequacy is so considerable as to occasion serious injuries and detriment to the interests of the minor, or when it is the result of culpable negligence on the part of the guardian, will avoid any transaction entered into by him on behalf of the ward, and make him liable for its consequences. It remains, however, for the judge in his discretion to consider whether a particular transaction shall be held to be prejudicial to the interests of the ward or otherwise. If the transaction, though violable, has been entered into *bona fide* with due care and attention, the guardian would not be held responsible for any untoward consequences which may have resulted from it, contrary to his expectation and forecast.

A guardian is allowed to borrow money for the support and education of his ward, even if he has to pledge the minor's property. All debts contracted validly and *bona fide* for that purpose forms a charge on the minor's estate and have to be paid out of the same.

4.4.7 e) Restriction on the Powers of a Guardian

A guardian is bound to keep his accounts separate from those of his ward, when the capital of both is engaged in the same trade or business.

A testamentary guardian, or a curator appointed by a judge, is not allowed to pledge the goods of his ward into his own hands on account of a debt due to himself, nor into the hands of any person over whom he exercises control or parental authority; for a guardian, being merely an agent, cannot have a double capacity in contracts².

¹ *Hidāya*, Vol.4, Page 553. Similar views have been also expressed in the *Radd al-Mukhtār*.

² *Hidāya*, Vol. 4, Page 214. It also states on the following page, " A father may pledge the movable property of his minor child to himself for a debt due from his child to himself, or he may pledge it to

Other jurists seem to disagree with the author of *Hidâya* in this latter view. According to them, the father stands in the same position as any other guardian; that is, it is not lawful either for him or for his tutor to pay off his own personal debts with the goods of the minor, or to pledge them on account of his debts¹.

Some jurists think that it is lawful for the father to pledge the goods of his son for a debt jointly incurred by father and son. If, therefore, the pledged goods be lost, a father is bound to compensate his son by the payment of a sum equivalent to his own share of the debt. Abû Yousuf (*ra*) and others have doubted the correctness of this view, holding that the father has no right to mix up his own property with that of his child, or to pledge the latter for a debt due from both, as this is likely to lead to confusion.

These principles have reference to movable property alone. With reference to immovable property of the ward, the powers of guardians are more limited and circumscribed:

- a) A guardian may not sell his ward's property into his own hands or into the hands of any one connected with him, under any circumstance.
- b) He may sell it to a stranger for double its value, or where it is to the manifest advantage of the ward.
- c) He may also sell it when there are some general provisions in the will of the testator, which cannot be carried into effect without sale of the property.
- d) When the property is required to be sold for the purpose of paying off the debts of the testator, which cannot be liquidated in any other way.
- e) When the income accruing from the estate is not sufficient to defray the expenditure incurred in its management and the payment of the land-revenue.

another on account of a debt of his own, remaining, however, always liable for the value of the goods to the child ”.

¹ *Durr al-Mukhtâr*. Vol.4, Page 846

- f) When it is in imminent danger of being destroyed or lost by decay.
- g) When the minor has no other property, and the sale of it is absolutely necessary for his maintenance.
- h) When it is in the hands of a usurper, and the guardian has reason to fear there is no chance of restitution¹.

In other words, even a guardian, like his father or his executor, cannot sell the immovable property of the minor without absolute necessity, or unless it is to the manifest or evident advantage of the minor.

If the movable property of a minor is sold *bona fide* for an adequate consideration, with the object of investing the proceeds safely and for an increased income, its sale would be held valid upon a liberal construction of the law².



6.4.8) YATĀMAH : ORPHANS AND THEIR STATUS IN ISLĀM

6.4.8 a) Preliminary

In Arabic, the word Orphan is known as *Yatim*. This word is derived from the root word *yatāma*, which means “to be or to become an orphan”. Reference to orphans is made in the Qu’rān twenty-three times in various³ forms. As such, one can appreciate the

¹ *Fatāwa ‘Ālamgiri*, Vol.4, Page 222 ; *Durr al-Mukhtār*, Vol. 4, Page 846

² *ibid.*,

³ al-yatīm: 5 times.
Yatīman: 3 times.
Yatīmayni: 1 time.

importance of orphans in the society and accordingly, one realises the wisdom of Allâh in mentioning the word *Orphans* twenty-three times in different contexts in the Qur'ân.

Before we consider the status of orphans in Islâm, it is imperative that we examine the condition and position of orphans prior to the advent of *Islâm* and the prophethood of the Holy Prophet of Allâh, Muhammad bin 'Abdullâh (*saw*).

During the days of ignorance, the worst position in society was held by the orphans. Their rights were completely overlooked and their wealth was devoured by those who had power and authority. Orphans had no rights over the wealth of their parents. The strong in the community, finding them without any support, tormented them, and did not care for their education and training. They felt it an insult to have them in their company. There was no one to claim for their rights or to reduce their lot of misery. The female orphans were far worst off and their condition more deplorable. People preferred their animals over the orphan



With the advent of *Islâm*, the position of orphans drastically changed. Not only was their status recognised, but virtue was accredited to the proper caring of the orphan.

6.4.8 b) Kindness to Orphans

Muslims are commanded to behave with courtesy and politeness towards orphans in particular.

Allâh has mentioned the rights of orphans alongside other beneficiaries to kindness in the Qur'ân¹, "And worship Allâh, and do not join aught with him: and to parents, show kindness, and also to kinsmen and *orphans* and the needy, the near neighbour, the distant neighbour, the companion by your side, the wayfarer and those whom your right hand possesses. Surely Allâh does not love the vainglorious and boastful".

Muslims are also urged to treat the orphans with kindness. Allâh² says, "Therefore, treat not the orphans with harshness".

Also, there are several *Aḥādīth* of the Holy Prophet of Allâh, Muḥammad bin 'Abdullâh (*saw*) which refer to the importance of showing compassion and munificence towards orphans.

Abû Hurairah (*ra*) reported that the Messenger of Allâh said, "The best home of Muslims is one wherein there is an orphan who is treated well; and the worst home of Muslims is one wherein there is an orphan who is treated badly".³

Abû 'Umâmah (*ra*) reported that the Messenger of Allâh said, "Whoso passes his hand over the head of an orphan, not rubbing it but for the pleasure of Allâh; shall gain merits for every hair over which his hand passes; and who shows kindness to an orphan girl or a boy under his care, I and he shall be in Paradise like these two".

¹ Sûrah 04, Verse 36

² Qur'ân, Sûrah 93, Verse 09

³ Karîm, F, *al-Hadîs*, Lahore, The Book House, n.d., Vol. 1, Page 331.

Then the Holy Prophet of Allâh, Muḥammad bin ‘Abdullâh (*saw*) joined together his index and middle fingers of his right hand.¹

Sahl bin Sa‘âd (*ra*) reported that the Messenger of Allâh (*saw*) said, “ I and he who takes charge of an orphan, whether his or others, shall be in Paradise like this ”. He pointed out with his forefinger and middle finger leaving no space in between.²

6.4.8 c) Charity to Orphans

Since orphans are generally weak, ill-treated and oppressed, the majority of them do not possess anything and are generally poor. Here again, the collective aspect is enjoined on all and commanded to give charity to the orphans, see to their welfare and thereby rescue them from destitution and misery. Allâh says in the Qur’ân³, “ They ask you as to how they will spend. Say, whatever you spend of wealth, let it be for parents, kindred, *orphans*, the needy and the wayfarer. And whatever good you do, surely Allâh is the knower thereof”.



The Qur’ân⁴ further says, “And they feed for the love of him, the indigent, the *orphan* and the captive”.

Ibn ‘ÂbbÂs (*ra*) has reported that the Holy Prophet of Allâh, Muḥammad bin ‘Abdullâh (*saw*) has said, “ Whoso gives shelter to an orphan with his food and drink, Allâh will grant him Paradise unless he has committed a sin which cannot be pardoned.....”⁵

¹ Ibid, Page 256

² Ibid, Page 258

³ Qur’ân, Sûrah 2, Verse 215

⁴ Sûrah 76, Verse 08

6.4.8 d) Justice To Orphans

The essence of Islâm is to serve Allâh and to do good to fellow creatures in a practical way. Muslims are enjoined to treat orphans scrupulously and to establish them successfully in society. This can only be possible by insisting upon the dispensation of perfect justice in all matters concerning them.

The Holy Prophet of Allâh, Muḥammad bin ‘Abdullâh (*saw*) was questioned regarding orphans, in response the following verse was revealed in the Holy Qur’ân¹, “ And they ask you of orphans, Say: To set their affairs in order for them is best; f you mix with them, then they are your brothers in religion; Allâh knows the foul-dealer from the fair-dealer. Ann had Allâh so willed, he could have afflicted you; Surely he is Mighty, the Wise”.

The Qur’ân² further says, “ And they ask your instruction concerning women. Say: Allâh decrees to you concerning them and so do the revelations that have been recited to you in the book, concerning the orphan woman that you do not give what is prescribed for them and yet desire to marry them; and concerning the oppressed children; and this that you will deal with the orphans in equity; and whatever good you do, surely Allâh is ever aware of it”.

Orphan girls in the time of ignorance, were regarded as the general property of the people. They were categorised in two classes: The beautiful or not. If beautiful, their guardians used to demand their dower in full. If not, their guardians, in order to benefit from the assets of their wards, prevented them from seeking a husband elsewhere.

⁵ Karîm, F. *op. Cit.*, Page 258

¹ Sûrah 2, Verse 220

² Sûrah 4, Verse 127

With one stroke, *Islām* did away with this dual injustice¹.

6.4.8 e) Share in *Islāmic* Treasury

Orphans also receive revenues from the spoils of war. Allāh says in the Qur'ān², “ And know that whatever of spoils you get, then verily to Allāh belongs one-fifth thereof, and to the Messenger, to his kindred, the *orphans*, the needy and the wayfarer”.

Four-fifths of the total spoils of war are to be equally divided among the warriors; and only one-fifth is to be given to the above mentioned categories of people in the verse³.

The Qur'ān⁴ further says with reference to booty, “ What!, Allāh has bestowed on his Apostle (and taken away) from the people of the townships; (booty) belongs to Allāh, to his Apostle and to his kindred and the orphans, the needy and the wayfarer: in order that it may not merely make a circuit between the wealthy amongst you.....”.

¹ Daryābādi, A.M, *Tafsīr al-Qur'ān*. Academy of Islāmic Research and Publications, Lucknow, 1981, Vol. 1, Page 371

² Sūrah 08, Verse 41

³ Since the demise of the Holy Prophet (*ṣaw*) , neither his share nor that of his relatives holds good any longer. These shares are now to be allotted to the orphans, the needy and the wayfarer. Refer to Daryābādi's *Tafsīr al-Qur'ān*. Vol. 2, Page 195

⁴ Sūrah 59, Verse 07

The above verse not only informs us that part of the booty is for the orphans, but also provides us the reason and wisdom behind this: that the wealth should not only remain with the wealthy, but it should also circulate throughout all the sectors of the community.

6.4.8 f) Orphans and Inheritance

The Qur'ân has also directed its attention towards inheritance with regards to orphans. The Holy Prophet of Allâh, Muhammad bin 'Abdullâh (saw) had also taken particular care that the rights of orphans were not usurped in any way.

They should receive their inheritance as soon as they reach the age of puberty without delay. Allâh says in the Qur'ân¹, “ And give to the orphans their substance, and do not substitute the bad for the good; and do not devour their substance by adding it to your substance, surely that is a great crime”.

It is a great sin to unlawfully consume the wealth of an orphan. In this regard, Allâh says in the Qur'ân², “Verily those who devour the property of the orphans wrongfully, only devour fire into their bellies, and soon they will roast in the Blaze”.

Another important fact mentioned in the above mentioned verse is that our wealth should not be mixed with that of the orphans, nor should their wealth be devoured for our personal benefit. If the guardian himself is in straightened circumstances, and is not in a position to support himself, let alone the orphan, then he will be allowed to spend from the wealth of the orphan on condition that there is no extravagance.

¹ Sûrah 04, Verse 02

² Sûrah 04, Verse 10

Referring to this, Allâh says in the Qur'ân¹, “ And test the orphans until they reach the age of understanding, if you perceive in them discretion, hand over to them their property and do not consume it extravagantly or hastily for fear that they may grow. And whoso is wealthy, let him abstain; and whoso is needy, let him take from there honourably. And when you hand over their property to them, call witnesses in their presence, and Allâh suffices as a Reckoner”.

‘Âmr bin Shu‘âib (*ra*) reports from his father who in return reported it from his grandfather that a man came to the Holy Prophet of Allâh, Muḥammad bin ‘Abdullâh (*ṣaw*) and said, “ I am a poor man and have nothing; but I have an orphan”. The Holy Prophet of Allâh, Muḥammad bin ‘Abdullâh (*ṣaw*) said, “ Eat of the property of your orphan, neither extravagantly, nor hastily, nor by hoarding”.²

Allâh even suggest that Muslims should adopt means to improve the wealth of the orphans which would certainly be in the interest of the orphans themselves. This could be done by investing their wealth in some profitable venture .

Having traced the status of orphans prior to the advent of *Islâm* and the subsequent reforms brought about by *Islâm*, one cannot fail to acknowledge that *Islâm* indeed succeeded in restoring to the orphans respectability, appreciation, recognition and honour in the society.

¹ Sûrah 04, Verse 06

² Karîm, F, *op.cit.*, Volume 2, Page 256

4.5) MĪRĀTH : INHERITANCE

Inheritance is divinely ordained right which none can deprive the other from¹. In no circumstances other than these four circumstances, will any Muslim be deprived of inheriting :

- 1) Slavery;
- 2) Homicide, whether intentional or unintentional
- 3) Difference of religion, a Muslim is not entitled to inherit from a non-Muslim, and vice versa.
- 4) Difference of country².

Allâh says in the Qur'ân³, “ Allâh commands you concerning (the provision of) your children : for the male, there is a share equivalent to two females”.

Jâbir bin 'Âbduġlâh (*ra*) that a certain person came with her two daughters to the Holy Prophet of Allâh, Muġammad bin 'Abduġlâh (*saw*) and said, “ O Prophet of Allâh, these two daughters are of Thâbit bin Qais who was martyred in the battle of 'Uhad, their uncle has taken away the entire property and has left nothing for them. It is not possible to get them married without any property. The Holy Prophet (*saw*) said, “Allâh alone will decide”.

¹ I shall not delve into the legal portions of children in their different contexts. This information can be obtained from any book on inheritance in detail. The purpose of this chapter here is only to state the undeniable and unequivocal right of children in inheritance and to impress its importance; a right which can be rightfully claimed and legally demanded if not granted.

² This rule only applies to *Dâr al-Harb*: A country where one's religion is suppressed.

³ Sûrah 4, Verse 11

Thereafter, the Qur'anic verse was revealed in Sûrah Nisâ' *yû şî kumullâhu fî aawlâdikum* concerning inheritance. The Holy Prophet (*şaw*) sent for the women and the uncle and told him to give two-thirds to the daughters and to take for himself the residue"¹.

Abû Hurairah (*ra*) is reported to have narrated the Holy Prophet of Allâh, Muḥammad bin 'Abdullâh (*şaw*) said, " We are nearer to the believers than themselves; whomsoever dies and leaves property, it is for the '*âsabah*: residuaries".

Even a baby who is born alive, inherits. Jâbir bin 'Âbdullâh (*ra*) relates that the Holy Prophet of Allâh, Muḥammad bin 'Abdullâh (*şaw*) said, " When a child is born alive, it inherits "².

Bequest is only allowed in one third of the estate. The balance of the estate should be distributed equally amongst the rightful heirs and none should be deprived. Abu Sa'îd bin al-Waqqâs (*ra*) narrates that the Holy Prophet of Allâh, Muḥammad bin 'Abdullâh (*şaw*) came to visit me when I was ill in Makka, I did not like to die at that place, so, I migrated. The Holy Prophet of Allâh, Muḥammad bin 'Abdullâh (*şaw*) said, " Allâh be kind to the son of 'Âfra' ". I asked, " O Messenger of Allâh, can I bequeath as legacy, my whole property?". The Holy Prophet of Allâh, Muḥammad bin 'Abdullâh (*şaw*) said, " No". I said, " Then half?". He said, " No". I said, " Then, one third". He said, " One third, and that is also too much, for it is good that you should leave your heirs well provided for, rather than in need and in want"³.

¹ Abû Dâ'wûd, Tirmidhî, Bukhâri and ibn Mâjah

² Abû Dâ'wûd

³ Narrated by the *Sihâh Sittâh*

With a view of all heirs receiving their equal dues, not more, so as none of the other inheritors has a short in his share, the Holy Prophet of Allâh, Muhammad bin ‘Abdullâh (saw) is reported to have said, “ Allâh has given the right to all deserving persons, but there is no legacy for an heir ”.



CHAPTER FIVE

BIRR AL-WĀLIDAIN : THE RIGHTS OF PARENTS

5.1) STATUS OF PARENTS IN ISLĀM

The biggest right over mankind is that of Almighty Allāh. Faith in, and obedience to him is the foremost duty of every Muslim. After these, are the responsibilities of domestic life. Fulfilment of these responsibilities by trying to correct and construct the domestic life is a social need as well as a religious duty. In domestic life, parents are entitled to the highest place and priority in fulfilling their rights.

This can be substantiated by the following verse in the Qur'ān¹ “Your Lord Allāh has decreed that you worship none but him, and that you be kind to parents; whether one or both of them attains old-age in your life, say not to them a word of contempt nor repel them, but address them in terms of honour; and out of kindness to them, lower to them the wings of humility and say, “ My Lord!, bestow on both of them your mercy, as they cherished me in my childhood”.

¹ Sūrah 17, Verses 23-4. This verse makes one ponder over several issues, (1) Parent's rights are next to those of Almighty Allāh; (2) When parents become old, their temperament changes, and they become irrational and easily irritated. Children should understand this and exercise patience; (3) Parents should be respected throughout their lives, particularly in their old age; (4) Children should be humble before their parents. They should serve them like obedient servants; (5) Children should recall their days of infancy when they were completely dependent on their parents.

There are fourteen verses in the Qur'ān which reflect upon the rights of parents and more than sixty *Aḥādith* Traditions of the Holy Prophet of Allāh, Muḥammad bin 'Abdullāh (*ṣaw*) on the subject.

In another place in the Holy Qur'ān, it is stated, “ And we have enjoined on man, goodness to his parents. His mother bore him in pain and she delivered him in pain”¹.

And in another place, “And we have stressed upon man concerning his parents, whom his mother bore with pain after pain; and his weaning is in two years, so, thank me and your parents”².

“ And I am virtuous to my mother, and he has not made me from the arrogant, unfortunate”³.

Abū Umāmah (*ra*) narrates that once a person asked the Holy Prophet of Allāh, Muḥammad bin 'Abdullāh (*ṣaw*) of the rights of parents, he replied,:- “ The parents are the heaven or hell of their children”⁴.

This tradition shows that none can belittle the importance or status of parents.

¹ Sūrah 46, Verse 15

² Sūrah 31, Verse 14

³ Sūrah 19, Verse 32. In this verse, Allāh himself expressed the observance of parental rights through the tongue of Yaḥyā' (*as*). In this verse, the utterance of 'Īsā' (*as*) was, “ I am a servant who fulfils the rights of his mother”

⁴ ibn Mājah and Mishkāt

5.2) MERITS OF OBEDIENCE TO PARENTS

‘Ābdullāh ibn ‘Āmar (*ra*) relates that the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) said,:- “ The pleasure of Allāh lies in the pleasure of the father, and the displeasure of Allāh lies in the displeasure of the father ” .

Mu‘āwiyah (*ra*) once came to the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) and sought his advice about taking part in *jihād* : holy-war. The Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) asked him if his mother was still alive?, he replied in the affirmative , upon which the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) instructed him to return to his home, saying, “ Go back home and serve her, as heaven lies under her feet”¹.

Abū Hurairah (*ra*) reports that the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) said, “ The love, care and hardships (faced during the upbringing of children) of parents, can hardly be compensated; even by freeing them from the bondage of slavery if one finds them in such a situation”².

¹ *ibid.*, “Heaven under her feet”, is a comprehensive expression which warrants extreme respect, submission and selfless devotion and sacrifice for the sake of the mother. This meaning is corroborated by another Tradition of the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) which is recorded in the *al-Ṣaḥīḥ* of Imām Muslim (*ra*), narrated by Abū Hurairah (*ra*) that he said,:- “ The Holy Prophet (*ṣaw*) cursed that person three times who found his parents, whether both or one of them, and (by not serving them) did not enter heaven”.

² Muslim, Tirmidhī and Abū Dā‘wūd

The same narrator relates that once ‘Abdullāh ibn ‘Ūmar (*ra*) saw a Yemenite circumbulating the Holy *Ka‘bah* with his mother on his back, and was enthusiastically reciting the following couplets, “I am a camel acting on the impulses of the rider, and when other camels become uncontrollable and run astray, I do not”.

Seeing ‘Abdullāh ibn ‘Ūmar (*ra*), he asked him had he not compensated for the rights of his mother, by carrying her on his shoulders and enabling her to perform the *Hajj*?, he replied, “It is not even the compensation for a single birth-pang of your mother!”.

ibn ‘Abbās (*ra*) narrates that the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) said, “The virtuous children who once looks at their parents with love, Almighty Allāh gives them the reward of one accepted *Hajj*”. Somebody asked, “O Prophet of Allāh!, if one looks at his parents a hundred times a day?”, He replied, “Yes, Allāh is far greater (than your imagination and generous in rewarding) and infallible”¹.

Once a man complained to the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) about his father who took away his belongings whenever he liked. The Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) called the father, who was, incidentally, a very old and frail man, and asked him about the details of his case. He said, “O Messenger of Allāh!, there was a time when my son was weak, helpless and barehanded; while I had strength and wealth. I never hesitated to spend on him whenever he was in need. Today I am weak, frail and barehanded, while he is rich, and he still keeps his belongings away from me”.

Hearing this, tears flowed freely from the eyes of the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*), and he said, “You and your belongings belong to your father, you and your belongings belong to your father”.

¹ Khatīb Tabrezi, *Mishkāt al Masābih* Kutub Khāna ‘Āziaia, Delhi, 1990, Vol.2, Page 354

In the days of ‘Uthmān (*ra*), the third caliph of *Islām*, the price of dates shot up due to a drought. During this period, people saw the caliph extracting the juice from a date tree by incising it with a knife. People surprisingly asked as to why he was destroying a tree which was so precious and costly in these hard times. He replied that he was doing so in order to carry out the wish of his mother who had asked for some date-juice. “How can I disregard this desire of my mother?”, he said.

‘Ābdullāh ibn ‘Āmr (*ra*) quotes the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) as saying:- “ To abuse ones parents is also a major sin”. The listeners, astonishingly asked, “ O Messenger of Allāh!, can one abuse his own parents?”, He replied, “ Yes, when one abuses the father of the other, in turn the other abuses his father. He calls bad names to the mothers of others, in turn they call bad names to their mothers!”¹.

Abū Hurairah (*ra*) reports that the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) said, “ Maintain your chastity and refrain from other people’s wives, your wives will remain chaste. Observe good behaviour unto your fathers, your sons will observe good behaviour unto you”².

It has also been reported on the authority of Abū Bakr (*ra*) that the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) said, “ The person who visits the grave of one or both of his parents every Friday and recites Sūrah Yâ‘sîn at their graveside, will be forgiven”, and according to another narration, “ Allāh will forgive a sin in lieu of every letter he recites”³.

¹ Muslim, Bukhāri and Tirmidhî

² Mustadrak e Hākīm, Vol. 4, Page 54

³ Kanz al-‘Ummāl

‘Ā‘isha (*ra*) narrated that the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (SAW) said, “ As I entered paradise, I heard the recitation of the Qur‘ān, I asked, who is reciting?”. The angels replied, “ He is Hāritha ibn Nu‘mān. This is the reward and compensation for those who do good unto their parents. This is the remuneration of those who are courteous to their parents”¹.

‘Ābdullāh ibn ‘Ūmar (*ra*) states that a person hailing from one of the nomadic tribes met him on the road to Makka. ‘Ābdullāh (*ra*) greeted him, seated him on his donkey and made over the turban which he was wearing over to him. Upon this, ibn Dīnār (*ra*) remarked to ‘Ābdullāh ibn ‘Ūmar (*ra*), “ May Allāh have mercy on you!, these are nomads, they are satisfied with very little”. ‘Ābdullāh (*ra*) said, “ His father was a close associate of my father, ‘Ūmar ibn Khattāb (*ra*). I have heard the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) saying that the most commendable of all deeds, is that a person maintains good relationship with his father’s close friends”².

‘Ābdullāh ibn ‘Āmr (*ra*) narrates that the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (SAW) said, “ The pleasure of the Lord lies in pleasing the father, and the anger of the Lord lies in displeasing the father”³.

¹ Mishkāt al-Masābīh

² al-Sahīh al-Muslim

³ Tirmidhī and Kanz al-‘Ūmmāl

Abū Bakrah (*ra*) narrates that the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) said, “ Allāh postpones the punishment for one’s sins until the day of judgement if he so desires, but he awards the punishment for disobeying parents already in this life, before he dies”. The Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*) also said, “ There are three sins which nullify all other virtues; (1) ascribing partners to Allāh; (2) disobedience to parents¹; (3) and fleeing from the battlefield”.

¹ The following is a brief guideline offered by Muhammad Mu‘in al-Dīn Ahmad in his book “ The rights of Parents” on the relationship one should have with one’s parents. 1) Never be disrespectful to them nor say a harsh word to them. 2) Even if parents are unjust, it is not lawful for children to ill-treat, disobey or displease them. 3) Obey them in all lawful things. If they instruct you to do anything wrong, kindly and politely offer an apology and decline. Never be blunt and rudely argue with them. 4) When parents scold, abuse or beat their children, they should submit to such treatment with humility. Never should they complain or display signs of anger and disgust. Rather, make *du‘ā* for their rectification. 5) Assist them in all lawful ventures, even if they may be non-Muslims. 6) Whenever you see them, greet them with a smile. 7) If you are living with them, take permission from them before leaving and inform them of your whereabouts. 8) If you are engaged in non-compulsory prayers and if they happen to call you, break your call even if there is no urgency in their beckoning. If you are engaged in compulsory prayers, break your call only if you detect urgency in their call. 9) Do not call them by their names, address them with a title of respect and honour. 10) After their death, pray for their forgiveness and within your means, practice virtuous deeds and bestow the reward to them. 11) Pay their debts after their death. 12) If they had made any lawful bequest, fulfil it if you have the capacity to do so. 12) Be kind, helpful and respectful to their friends. 13) When their private rooms, seek permission before entering. 14) Always be cheerful in their presence. 15) When speaking to them, keep your gaze low, do not stare at them straight in the face, be humble in their presence and do not raise your voice above theirs. 16) When accompanying parents on a walk, walk slightly behind them, not in front of them nor on neither of their sides. 17) Do not give preference to the wife over them, except when a wrong command is issued to you. 18) When asking you something, do not delay in answering them or completely refrain from answering them. 19) If, at any time you were disrespectful to them, hasten to make amends, regret for your action and obtain their pardon.

5.2.1) JUSTIFICATION FOR DISOBEDIENCE TO PARENTS

Despite the emphasis laid upon the obedience and gratitude to parents in social life, there are certain situations in which one can, and should disobey their parents. In *Islām*, obedience is the basic right of Almighty Allāh and his beloved Prophet, Muḥammad bin ‘Ābdullāh (*ṣaw*). Their obedience overrules all others, even that of parents.

The Qur’ān is very explicit on the matter, “And if they (parents) force you to associate partners with me that which you know not; do not obey them, and stay with them in this world with peace; and towards the path which leads towards me”.

The Holy Prophet of Allāh, Muḥammad bin ‘Ābdullāh (*ṣaw*) has also reported to have said, “There is no obedience for the creation, when there is disobedience to the Creator”.

A famous companion of the Holy Prophet of Allāh, Muḥammad bin ‘Ābdullāh (*ṣaw*), ‘Ābdullāh ibn ‘Ūmar (*ra*) had a wife whom he loved fervently and adored. His father, ‘Ūmar (*ra*) asked him to divorce her, but he refused to obey his father. His father then went to the Holy Prophet of Allāh, Muḥammad bin ‘Ābdullāh (*ṣaw*) and related this to him. The Holy Prophet of Allāh, Muḥammad bin ‘Ābdullāh (*ṣaw*) then told ‘Ābdullāh (*ra*) to divorce her, which he consequently did.

No doubt this narration, recorded by almost all of the *Ṣiḥāḥ Ṣittāḥ*: six most authentic canonical works in *Islām*, does call upon children to obey their parents readily, but it is not in any case mean that the children should do so beyond their limitations.

By the explicit wordings of this Tradition, people often get misled about its implicit meaning. To think that parents can order their children to divorce regardless of any Islāmic sanction, is a total misrepresentation.

This incident happened to the well known Caliph of *Islām* who is celebrated for his justice. His son too, was an upright and scrupulous person well versed in the *shari'ah*. He refused to comply with his father's demands as he was not aware; in his learning capacity, as to the religious, ethical and social justifications, ramifications and implications of such an act. His father did not rebuke him for his disobedience, but rather referred the matter to the Holy Prophet of Allāh, Muḥammad bin 'Ābdullāh (*ṣaw*) himself for judgement.

It goes without saying that the Holy Prophet of Allāh, Muḥammad bin 'Ābdullāh (*ṣaw*) would have only ordered a divorce if he was satisfied with the justness of the fathers reasons. Consequently, we come to the conclusion that the children are not bound to obey the seemingly untoward orders of their parents unless they are not absolutely convinced by the exactness and intensity of the reasons given for those commandments.

This interpretation is supported further with another narration quoted by Abū Dardā (*ra*) by ibn Habbān (*ra*) in his *masnad*. A man came to him and said that his father insisted on him marrying a particular girl and is now ordering him to divorce her. He replied, "I would only answer as I once heard the Holy Prophet of Allāh, Muḥammad bin 'Ābdullāh (*ṣaw*) saying, "A father is the best door to heaven. So, it is upto you to either reserve it or discard it".

The most considerable point of this incident is that Abu Dardā' (*ra*) did not blindly advise him to disobey his father. Instead, he abstained from favouring or disfavouring the issue.

If the obedience to parents would have been unconditional, he would have most definitely counselled the man to divorce his wife.

While some children are completely heedless to the disobedience to parents, others are excessively enthusiastic and fanatical to fulfil any whim and desire of their parents, even at the expense of disregarding their dependants. Many a time they do not wish to leave anything out, they make the non-obligatory commands obligatory upon themselves and ultimately make life difficult for themselves.

Here we should draw a clear distinction as to the obligatory rights and non-obligatory rights of the parents :¹

1) Those things which are ordained by Allāh and his beloved Prophet (ṣaw) and are of the category of *Wājib*: compulsory, the children should not obey anyone in contravening them. If the husband is not financially secure; and if he spends on his parents which results in the neglect and deprivation of the essential rights of his family, then it would not be lawful for him to spend upon his parents.

If the wife requests her husband to accommodate themselves separately from her father and mother in-law, it will not be lawful for the husband to force his wife to stay with his parents. He would be compelled to arrange separate accommodation for his family.

¹ All the legal rulings and principles are derived from the Qur'ân and the Sunnah. It had been interpreted by the reformer of the 20th century, Moulâna Ashraf 'Âli Thânwî (ra) and compiled in a booklet called *Ta'dîl Huqûq al-Wālidain* (Balance in the Obedience to Parents). This book has been summarised and added as a second appendix in a book compiled by Mufti Mohammad 'Âshiq Ilâhî (ra) titled *Huqûq al-Wālidain*, Shamsi Publishing House, Karachi, 1397 A.H, pp.132-6.

- 2) If the parents refuse to allow the children from performing their *Hajj*: The obligatory Pilgrimage or from seeking necessary education; it would not be allowed to obey them.
- 3) If parents order a person which is Islāmically prohibited, following their instructions would not be allowed.
- 4) If the act is permissible and the parents order its doing or not doing then, If by not complying, then, a danger remains to the parents or the parents would suffer; then to refuse would be wrong, e.g. The son seeks permission to undertake a lengthy journey or to participate in a battle which is not necessary for him, and by going, there would be none to look after them nor has he enough money to arrange for a maid, then he would have to stay.

If the parents are not in any type of danger or they are well cared for; then even if the request of the child is of an unnecessary nature; he/she can go notwithstanding the refusal of the parents.



Upon these two principles , all other cases will be judged e.g. If the parents order a divorce for their son, it will not be adhered to because by not doing so, no harm will be done to the parents in any way. Or, if the parents order that their child surrender all their wealth to them, it will not be obeyed. If they force him into doing so, they will be sinners.

If the parents have to take from the wealth of their children in excess of their needs. Their children can demand for it in this world. If it is not paid, it would be forcibly extracted of them in the hereafter.

5.3) ABHORRENCE TO CHILD-LABOUR IN *ISLĀM*

Children are a trust in our hands, similar to students who are placed in the trust and care of a tutor. By no means, can they be regarded as the servants and slaves of their tutor. The following is the gist of the boundaries which one can observe when extracting work from a minor:¹

- 1) A teacher cannot extract any sort of service from a mature person unless a contract exists. In the case of a minor, it is permissible at all to extract services from him/her. ‘Āfi (*ra*) had said, “Whoever taught me a word, he is my master”. This demonstrates the personalised relationship between a teacher and a student.
All forms of services rendered to a teacher should be on a voluntary basis. This is aptly demonstrated by the actions of ‘Ānas bin Mālik (*ra*), a minor companion of the Holy Prophet, in connection with the services he rendered to the Holy Prophet of Allāh, Muḥammad bin ‘Abdullāh (*ṣaw*).
- 2) A parent can extract services from his children *bil ma’rūf* : according to equity, moderation and capability, and only in permissible matters.
- 3) The only service that a relative can extract from a child is *ṣilāḥ rahmī*- cordial relationship. A relative can extract service from a mature child if a contract exists between them or through understanding.

¹ This is the product of various summaries of *fatāwa* received from various higher institutions of learning in South Africa. The views of the *Dār al-‘Ulūm* Newcastle features a prominently in it.

- 4) A stranger has no right of extracting any service from a minor, unless it is with the explicit permission of the parents. However, if the child is mature, then a contract, verbal or written, should exist between both parties.

Besides these forms of child labour, all other forms are totally forbidden in Islām and regarded as an opprobrious, outrageous and flagrant abuse of parental authority.



CHAPTER SIX

CONTEMPORARY PROBLEMS REGARDING CHILDREN

6.1) DISCIPLINARY PROBLEMS

In the new South-African context, the “discipline”¹ problem has visibly perplexed educationists, teachers, psychologists, sociologists, disciplinary² councils and directly, the parents. All are seeking urgent guidance in a matter which seems to be slipping through their hands. How should disciplinary measures tie up with transgression?, does society has a scale of correctional or disciplinary measures and procedures to correlate with the transgression?.

The answer is sure to be found with the Creator of the human-being himself. No human scale would be able to accurately draw up such a scale.

¹ The words “Disciplinary or correctional procedures” are used in the case of a child, while words like “punishment” and “chastisement” are used in the case of adults.

² It is important to distinguish between “authoritarian” and “persons of authority”. An authoritarian exercises authority to gratify his own love of power while a person of authority exercises it in the interests of the other person or community. “Values” can be briefly defined as a set of enduring beliefs or categorical moral standards which an individual holds that relates to his or her life-goals and modes of behaviour. Vice versa, “attitudes” can be defined as superficial favourable or unfavourable responses to ideas, situations, objects, other people and ideologies. It very often changes according to trends and times. Also refer to : Hughes, A G, Learning and Teaching: An introduction to psychology and Education, Longmans, Great Britain, 1962 pp.190-213.

For Muslims to appreciate this idea, the general moral behavioural pattern of the Prophetic era should be first analysed, as it is the general environment which affects the eventual outlook of the child's life.¹

No one expects a young child to have a finely developed character as his behaviour is determined largely by his instinctive impulses. There is at first no question of right and wrong about his actions. He is neither moral nor immoral; he is a creature of impulse. Very soon, that some actions have painful effects; the floor is hard and fire burns. He then prudently begins to control his natural impulses; he is learning the first type of moral control- *control through fear of physical consequences*. Actions have their respective effects immediately or later. For disrespect for parents, he might receive an immediate pinch, for cheating and speaking lies, this immediate pinch should be followed with a another to indicate the consequences it has on his spiritual well-being and accountability in the hereafter too.

The Holy Prophet, Muḥammad bin ‘Ābdullāh (ṣaw) is reported to have used the element of fear at this stage in the spiritual development of the child. The Holy Prophet, Muḥammad bin ‘Ābdullāh (ṣaw) said², “Observe ‘*‘āqīqah*’ the birth ceremony, on the seventh day, give him a name and remove from him impurities. When the child is six years old; teach him good manners, when nine; separate his bed and, beat him when thirteen for observing prayers and get him married when sixteen. Then tell him while catching his hands, I have taught you good manners, I have given you education and I have seen to your marriage, now I pray to Allāh that he saves you from the dangers, difficulties and punishment of the Hereafter ”.

¹ Izethogovic, Alija ‘Ālī, *Islām Between East and West*, pp. 144-5

² Ghazālī, (Imām), *Ihyā al-‘Ulūm al-Dīn* (translated by Fazl al-Karīm), Book Lovers Bureau, Lahore, 1971 vol. 4 pp. 169-70

The child now finds that his actions are either met with adult approval, which is pleasurable, or disapproval, which results in painful results.

He now begins to learn another type of moral control- *control through submission to personal authority*. It is at this juncture when the child's frame of mind is permanently moulded and the strongest disapproval should be displayed against flouting of moral values and standards. This is perhaps the most mature time in a child's life to realise the consequence to his actions. He should be taught personal responsibility, morality¹ and spirituality are essentially personal concepts.

As his social circle widens, he becomes conscious of himself as a member of a group, he finds that he should control some of his actions if he is to retain the satisfaction that he finds in group membership. He is learning a third type of control- *control in deference to group opinion*. They control their impulses with the help of fear and the pressures of authority and public opinion. At this stage, he should learn the concepts of human dignity, respect, honour and nobility of character. Mutual dealings and relations should be taught to him and the rights of other people should be impressed upon his mind. The realisation of dishonour for his bad deeds in the eyes of people in this world should impress upon him the greater disgrace which awaits him in the hereafter.

¹ A moral sense is traditionally considered a unique attribute of the human personality. The transformation from a purely biological organism to a socially responsible individual, is the hallmark of the development of the personality. It is also a shared social development necessary for a viable human society. The study of moral awareness belonged exclusively to philosophy until about 1920 in the Western world. In *Islām*, moral performance does not vary according to a social context; that either reinforces or undermines it. It is supposed to be consistent with the moral fabric outlined 1400 years ago in the Prophetic era.

A person of mature character is able to ultimately exercise a personal control over his impulses. Thus, character-building is a result of growth with consequent moulding. We must be content to see pupils develop according to their age, ability and aptitude. To sum up: It is important to let young children experience the results of unwise actions towards people as well as their Lord, so far as no serious bodily harm is caused to them.

Children need the support and help of adult authority, and spiritual supervision wisely exercised. The need for the exercise of adult authority and spiritual accountability is reduced as children learn to respect worthy public opinion. Every possible opportunity should be taken of giving children experience of personal responsibility for their own conduct.

Thus it can be safely said that the entire character building process is a learning experience. A disciplined child is a learner and a winner¹. The proper conduct and example of parents are crucial in the upbringing of children. Parents who expect their children to be disciplined should be disciplined themselves. It is important to remember that the treatment given to children in the early years of their lives can have far reaching effects on their mental and emotional state later on in life.

¹ On morning news on *SKY Television*, Friday, 21st of September, it was reported that students had to be expelled from their classrooms forcefully from a few schools in the United Kingdom due to lack of discipline. This was leading to a security threat for the balance of the school students. Teachers blamed this phenomenon on the parents who do not discipline their children. It was also reported that a boy at the age of four was also expelled.

6.1 .1) THE PROPHET (SAW)'s PROCEDURE OF DISCIPLINE

a) Guidance

Imâm Bukhârî (*ra*) relates on the authority of 'Umar bin Abû Salamah (*ra*) that he said, "I was a young boy living under the care of the Prophet, Muḥammad bin 'Abdullâh (*ṣaw*), I would always rotate my hand around the whole eating utensil at meals, the Prophet, Muḥammad bin 'Abdullâh (*ṣaw*), kindly admonished me, "O boy!, take the name of Allâh, and eat with your right hand, and eat of the portion nearest to you".

Notice the beautiful way how the Prophet, Muḥammad bin 'Abdullâh (*ṣaw*) guided and corrected his eating etiquette's.

b) Mild Admonition

Imâm Bukhârî and Muslim (*ra*) both narrates on the authority of Sahl bin Sa'îd (*ra*) that one glass was brought to the Prophet, Muḥammad bin 'Âbdullah (*ṣaw*), He drank from it. Sitting on the right of the Prophet, Muḥammad bin 'Âbdullâh (*ṣaw*), were a few youngsters, and to his left were a few aged, noble Companions.

The Prophet, Muḥammad bin 'Âbdullâh (*ṣaw*) asked those youngsters (with the intention of teaching them), "Do you give me permission to first pass this glass to those on my left?". Here the Prophet, Muḥammad bin 'Âbdullâh (*ṣaw*), subtly taught those youngsters the etiquette of respecting their elders and giving them preference by asking their permission to pass the glass to them first.

c) Indication Towards Wrong

Imâm Bukhâri (*ra*) narrates on the authority of ‘Âbdullah ibn ‘Abbâs (*ra*) that Fadhl ibn ‘Abbâs (*ra*) was riding behind the Prophet, Muḥammad bin ‘Âbdullah (*ṣaw*) on a horse, when suddenly a strange young woman approached the Prophet, Muḥammad bin ‘Âbdullâh (*ṣaw*) . Fadhl ibn ‘Abbâs (*ra*) started looking at her and she at him. The Prophet, Muḥammad bin ‘Âbdullah (*ṣaw*) turned his face away from her with his blessed hands.

It can be ascertained from this incident how the Prophet, Muḥammad bin ‘Âbdullah (*ṣaw*) remedied the situation in a very sagacious and prudent manner.

d) Scolding



Imâm Bukhâri (*ra*) narrates on the authority of Abû Zarr (*ra*), he says, “I vilified one person and verbally abused his mother, and I told him , “O son of a black woman!”. The Prophet, Muḥammad bin ‘Âbdullah (*ṣaw*) then told him, “O Abû Zarr (*ra*)!, did you disgrace him on account of his mother!, you are such a person who still has the effects of the time of *Jâhiliyya*. They are your brothers and helpers, whom Allâh *Ta‘âla* has placed in your control. Hence, whom so ever of you has one of these helpers under his control, he should feed him what he eats; he should clothe him with the garments he wears and do not force him to do such work which is beyond his capacity, and if such a work has to be done, then help him do it”.

In this incident, the Prophet, Muḥammad bin ‘Ābdullāh (ṣaw) used severe words on his beloved companion as per the severity of the offence.

e) Temporarily Breaking Ties

Imām Bukhārī and Muslim (ra) both have narrated on the authority of Abu Sa‘īd Khudhrī (ra) that the Prophet, Muḥammad bin ‘Ābdullāh (ṣaw), forbade us from throwing stones, he explained the reason thus, “No animal is hunted through it and nor is an enemy wounded by it, yes, an eye can be injured and a tooth can be broken by it”.

When the Prophet Nūḥ (as) was ordered to board the ark and take all the believers with him, his son was barred from entering the ark. The Qur’ān describes this scene in the following words, :- “And Nūḥ proclaimed to his Lord, and said, “O my Lord!, my son is from my household and surely your promise is the truth and you are the best of judges. The Lord said, “O Nūḥ!, he is not from your household, verily his actions are unscrupulous, so do not question me on a matter upon which you have no knowledge of; I admonish you not to be of the ignorant”.

Imām Bukhārī (ra) narrates that when Ka‘āb bin Mâlik (ra) lagged behind from the expedition of *Tabūk*, the Prophet, Muḥammad bin ‘Ābdullāh (ṣaw), forbade everyone from speaking to him. This boycott lasted for a full fifty days and only stopped when the announcement of the acceptance of his repentance was revealed in the Qur’ān. Ka‘āb ibn Mâlik (ra) relates that at the time of the acceptance of my repentance, I came to the Prophet, Muḥammad bin ‘Ābdullāh (ṣaw), and noticed that his face was glittering in joy and exuberation, over the acceptance of my repentance, as though it were a portion of the full moon.

When the disciplinarian gathers, that his punishment, in whatever form administered has worked; he should be joyous and re-adopt his disposition of affection, love and kind-heartedness. This proves that the punishment was for discipline only. The child thereafter will not fall prey to the disfigurement of his character and will not fall into the trap of evil in future.

‘Allamah Suyûti (*ra*) narrates that ‘Âbdullah ibn ‘Ûmar (*ra*) refused to speak to his one sons until he died, because of him not practising upon one of the traditions of the Prophet, Muḥammad bin ‘Âbdullah (*ṣaw*).

From these incidents, one finds how the Prophet, Muḥammad bin ‘Âbdullah (*ṣaw*), rectified the actions of his beloved companions by severing ties with them until he was sure that they had rectified themselves.

f) Corporal Punishment



“And those whose disobedience you fear; first admonish them then separate them from your beds then hit them. If they obey you then do not seek advantage over them”.

Nasa‘î and Abû Dâ‘wûd in Ḥâkim (*ra*) narrates on the authority of ‘Âbdullâh ibn ‘Ûmar bin ‘Âṣ (*ra*) that the Prophet, Muḥammad bin ‘Âbdullah (*ṣaw*), said order your children to perform *ṣalâh* when they are seven years of age; and beat them upon not performing it when they are ten years old”.

From the above quotations, we find that Islâm has retained the institution of corporal punishment to a certain degree. Corporal punishment is the measure which is used in the last resort. It should however be born in mind that the Prophet, Muḥammad bin ‘Âbdullâh (*ṣaw*), never lifted his hands on any of his wives, nor his children

g) Whipping

Allah says in the Qur'ân¹,:- “Flog the fornicator and the fornicators, a hundred lashes and do not be lenient in enforcing the laws of the religion of Allâh if you believe in him and the hereafter. And make a group of believers witness to this punishment”.

The effect of punishment before a large crowd of people is very beneficial in the rectification process. Moreso, it serves as an example and a deterrent from the heinous immorality of fornication. The element of “fear” and “disgrace” is firmly imbedded in minds and hearts of all with regard to this act.

6.1.2) CORRECTIONAL PROCEDURES AND PUNISHMENTS

Discussion of this subject often arouses strong feelings. But, whatever our personal views may be, we must admit that punishment has some place in the discipline of our children. It may vary from being a mild expression of displeasure; it may be an angry exclamation; it may take the form of deprivation of some privileges; in the last resort, it may also mean corporal punishment. None the less, whatever form it assumes, it should always aim at making the child a better member of the society, which he will eventually join in later life.

Punishment should in fact be looked upon as a reaction to society , designed to preserve his own well-being.

¹ Sûrah 17, Verse 05

If this principle is observed, it will prevent us from using punishment in unworthy ways, like a form of retribution for what we perceive to be an affront to our personal dignity.

It is, indeed doubtful whether punishment alone is ever really efficacious, and a wise disciplinarian will discreetly follow it up by unobtrusive influences, designed to help the offender to choose and follow the right path. The main intention of punishment should be remedial and corrective, but, it may also have secondary effects. It may act as a deterrent, and it may be looked upon by children as a form of retribution.

Anger to children is a very human quality, and one that they understand. On suitable, rare occasions, it should be used as a healthy form of expression, rather than a display of pious grief. If angry words should be rare, corporal punishment ought to be still rarer. Its use should always be recognised as a sign of failure, though it is not suggested that under present conditions such failure could always be avoided. It need hardly be added that regulations regarding corporal punishment should always be scrupulously observed, for they are made in the interest of both the child and the disciplinarian. An irregular angry blow may cause serious physical harm, and disciplinarians should well opt for the army rule that *even the slightest touch constitutes an assault and is forbidden*. On the rare occasions when corporal punishment is deemed necessary, and it should be reserved for serious offences, it should be administered in an approved way.

As Nunn¹ says:- “The conviction, once so deeply rooted in the teaching profession, that punishment and the fear of it are the natural foundations of school government, is gradually being recognised as merely a barbarous superstition”.

¹ Nunn, H, *Education*, p.252

Bertrand Russell's¹ description of the modern parent expresses adorably the qualities of a real disciplinarian, "He wants his children to be as unconstrained in his presence as in his absence; he wants them to feel pleasure when they see him coming; he does not want a fictitious Sabbath calm, while he is watching, succeeded by pandemonium as soon as he returns".

Islâm has placed the mother as the child's primary disciplinarian. Modern civilisation has disgraced motherhood in particular. It has preferred the calling of a salesgirl, model, teacher of other people's children, secretary, cleaning woman and so on, to that of a mother. It has proclaimed motherhood to be slavery and promised to free woman from it.

The *Islâmic* method for the punishment and correction of children, is that firstly, a mild, kind and soft-hearted approach should be used.

Imâm Bukhârî (*ra*) has reported the following tradition of the Prophet, Muḥammad bin 'Âbdullâh (*ṣaw*), in his *al-Adab al-Mufrad* with reference to the kind treatment to children, "Adopt a kind and warm disposition, avoid vulgarities and unrefined words". And "Teach, but do not be harsh".

Imâm Muslim (*ra*) has also related a tradition on the authority of Abu Mûsâ Ash'arî (*ra*), that the Prophet, Muḥammad bin 'Âbdullâh (*ṣaw*) instructed Muâz bin Jabal (*ra*) in these words when he sent him to Yemen as a governor, "Create easiness and convenience, do not be severe; teach the people, and do not evoke disliking and disinterest".

¹ Russel, Bertrand, *On Education*, Allen and Unwin, London, 1926 p. 67

Similarly, Imâm Baihaqî (*ra*) has reported this tradition of the Prophet, Muḥammad bin ʿAbdullah (*saw*), “Teach, but do not be severe; because the student is superior to a harsh disciplinarian”.

Children vary largely in their nature. Some can be rectified by a mere sharp gaze, while some might need some sort of admonition. Some may require a scolding or reprimand while some may need corporal punishment for their rectitude. Renowned Muslim Sociologists, Historians and Disciplinarians; amongst which the likes of ibn Sîna, Imâm Râzi and ibn Khaldoun are included, are unanimous of the fact that discipline and child character- building is a gradual process. Corporal punishment should only be resorted to as a last option. This would be more beneficial for their character building.

Imâm ibn Khaldoun has written in his *Muqaddamah*, The Prolegomena, “A child who is constantly subjected to harshness, severity and corporal punishment is likely to become cowardly in his later years and unable to fend for himself and challenge and overcome the harsh realities of this world. His enthusiasm, excitement and initiative for life is dulled and he becomes lazy and lethargic. This, then leads to cheating, deception, trickery and speaking of lies so that harshness could be averted from him. Eventually, he becomes someone else’s burden because he is incapable of defending and upholding his own dignity and that of his family.

He is stripped naked of all the qualities of self-esteem, intelligence¹, bravery, pride, dignity and expression. The vital ingredients which makes up morality and good-character are missing, and he is prevented from reaching the heights of civility”.

¹ The Arabic word *al-ʿAql*, especially as used by Imâm Ghazâlî is more comprehensive than the English word “intelligence”. He has traced four elements in intelligence as it develops in man: 1) An undeveloped primitive rational faculty. 2) Self evident truths. 3) Knowledge. 4) a highly developed faculty in man

Imam Ghazâli¹ (*ra*) contends that the example of a disciplinarian is that of a physician. He is not allowed to only use one method of cure for all his patients. One punishment for one child cannot be expected to yield the same results for the other.

Punishment or fear of punishment is temporary. That same misdemeanour is likely to be repeated again once the punishment or the fear thereof has worn out. Consequently, one needs to continue punishing to suppress a behaviour over a period of time, and the mere fact of repeating the punishment is likely to lessen its effectiveness, possibly precipitating the escalation to more severe punishments.

One often wonders, why the continuance of a method which has so many drawbacks?. One possibility is that disciplinarians continue to punish because occasionally, in the past, punishment has led to the immediate (but temporary) cessation of an unwanted behaviour. As this reinforces the disciplinarian, although temporarily, the disciplinarian and the child are thus, literally, involved in a vicious circle.

capable of understanding the ultimate realities. Intelligence or human understanding is an ability by which man can know anything from the simplest objects of sense to the ultimate realities.

Ma'sûmi, M S H, *'ilm al-Akhlâq* (translation of Imâm Râzi's work), Kitab Bhavan, New Delhi, 1981

¹ Abu Hâmid al-Ghazâli is unquestionably one of the greatest theologian of Islâm and one of it's noblest and original thinkers. The *Ihyâ al-'Ulûm al-Dîn*, his masterpiece, heralded a new era of thought which is still in effect today. Born in 1058 AD in *Tûs* and died in the same place in 1111 AD.

Delivering punishment also has another danger: it paves the way for shaping up other unwanted behaviour by means of negative reinforcement. By definition, nobody likes punishment. The disciplinarian might find the child avoiding him or a classroom situation or running out on him if he is continually punished. Rather, the emphasis should be placed on positive reinforcement in order to maintain an efficient and effective learning agency, which will, as a result, also be a happy one. As a proscript to this section, it appears that finally corporal punishment is making their way out of all learning institutions.

The following is a legal verdict quoted verbatim from a prominent Muslim Institution of South Africa:

“Corporal punishment in the classroom is something that is not exactly encouraged in Islâm. Therefore, the old adage of “Six of the best” in schools, and in madrassahs, the father telling the teacher “It’s your skin and our bones”, are definite no no’s. In terms of beating a child, the most which has been prescribed by experts of Islâmic law; is using the hand to slap the child on the neck or back, and that too, with certain limitations: Not more than three slaps at a time; the child should not be slapped across the face; no instrument such as a cane should be used, and when using the hand, no physical injuries and fractures should be caused.

The author of Radd al-Mukhtâr, the renowned reference work on Islâmic Jurisprudence, writes: “A teacher is permitted to hit a child for disciplinary reasons”. But, as ‘Âllâma Târtopsi (ra) says, such beatings shall be confined to three beatings at the most, without employing the use of an instrument that causes physical injury.

‘Âllâmah Shurumbulâla (ra) further elaborates that the child should be beaten by hand, not with a cane, and not more than three slaps should be administered. Hadhrat Mufti

Mahmūd al-Ḥasan (ra), the grand Muftī of India¹, in reply to the question of Corporal Punishment, summed up the issue beautifully. Both the questions and answers are related hereunder:-

Question:- To what extent is a teacher allowed to beat a child?. Has Islāmic Law prescribed a limit?, I have heard some Islāmic teachers saying that it is not permissible to give more than three cuts with a cane and exceeding this limit will tantamount to oppression. I, however ask that, if a child does not learn even after getting three cuts and does not leave his mischievous ways, then with noble intent and keeping in mind the welfare of the child, if the teacher gives the child more than three cuts, just that the child learns his work and corrects his behaviour, can that also be termed as injustice?.

Answer:- One is allowed to hit a child with the hand only, not with the cane, and that too, only upto three slaps, taking into account at the same time, the capacity of the child to withstand the punishment. The slaps should be administered on the neck or back and not on the head or face. It will not be permissible to exceed these limits, otherwise these children will demand retribution and vengeance from the teacher on the Day of Judgement.

Children have to be tutored with love and understanding. The days of severe corporal punishment have virtually lapsed. The results are not pleasant at all as children develop a disliking for acquiring knowledge. They become immune to the beating and still they do not learn their work. Infact, due to the severe beatings, many children eventually leave studies and become drop-outs.

¹ For a more descriptive account of his views, refer to *Fatāwā-Mahmūdiyya*, Volume 16, pp. 101-3

There may have been a time where corporal punishment in the classrooms helped in curbing the behaviour of mischievous and ill-mannered children. But now, experience shows that excessive usage of the cane for disciplining children does not always have the desired affect. In many instances it has an adverse affect in that, it hardens the attitude of the child and as he becomes immune to the "cuts" he actually looks forward to the receiving of more beating in order to portray a "macho" image to his peers in the classroom.

Hence, in this day and age, the need has arrived for teachers to be more diplomatic by using means other than caning for disciplining the children¹. One method could be that of depriving the child of his freedom by detaining him after classes. This will cause him embarrassment because a child does not like to be cooped up while his friends are out playing. Another effective way would be to make him catch his ears and go up and down in front of the whole class. The embarrassment caused by this action would also hopefully deter him from miscreant behaviour. The latter method has a two fold benefit in that, while serving as punishment, it is also a strenuous exercise at the same time.

In a Madrassah² environment, another method of disciplining the child, could be to order him to perform fifty or hundred rakâ'ats³ of nafl salâh. While serving as a disciplinary

¹ In South Africa too, the trend has now been reversed. Corporal Punishment is now been seen as a taboo method of discipline and any teacher administering it indiscriminately, is severely rebuked. In extenuating circumstances, legal proceedings could be served upon the perpetrator.

² *Madrassah* is an *urdû* word denoting all institutions or organisations which impart elementary *Islâmic* teachings and education to children. The Arabic equivalent is *Makâtib*. In South-Africa, *Makâtib* are common in all settlements where a notable Muslim population is to be found. They play an important role in the primary outlook of a child's life in a diverse society. In the above context, *Dâr al-'Ûlûms*, institutions or universities which disseminates higher *Islâmic* studies to students wishing to become authorities in *Islâm*. South Africa boasts at least five prominent *Dâr al-'Ûlûms*, besides a few minor ones.

measure, the child also gets the reward of worship. Performing so many rakâ'hs of prayer, will be burdensome on the rebellious nature of the child's carnal self.

AND ALLÂH KNOWS BEST, Stamped with the official stamp of the Institution¹

At this stage, a clear distinction should be made between the methods of discipline in correlation to the age factor. While the element of fear and limited and harmless physical punishment would auger well for a minor who knows no other language other than that of fear, to which the well-known English adage aptly applies, "Spare the rod, spoil the child". On this level, no remorse should be felt by either the child or the parent at a later stage.

At the age of ten, the parents are duty bound to punish the child, as per injunction of the Holy Prophet (saw). This punishment can regulate the rest of a child's life. This nature of "Beating" has been referred to in one of the maxims of *Luqmân*, the wise :-

"The beating of the father could be compared to rain from the skies for productivity of a field"²



³ *Rakâ'ats* is the genuflexion or bowing position in *Salâh*. One *rakâ'âh* denotes one complete unit of *salâh*.

Supererogatory or optional prayers. *Nafil* is a technical term denoting all *salâh* besides the obligatory (*Fardh* and *Wâjib*).

¹ The above is a *fatwâ* or legal juristic verdict of the *Dâr al-'Ulûm* Azaadville, South Africa; in response to a popular question from various educational institutions on the issue of Corporal Punishment. It was officially issued on the 16th of August 1995. It should be borne in mind, in order to appreciate the contents of this verdict, that the above *Dâr al-'Ulûm* is being administered to date, with the rigid teaching methodologies of the orthodox Indo-Pak Subcontinent.

² *The Hundred counsels of Hadhrat Luqmân*, A.H Minty, Nelspruit, South Africa, 1983 . Also see, Qâdri, Sayyed Saâ'dat 'Âli, *Good behaviour*, al-Qadri Islâmic Publications, Netherlands, 1988. pp.30 - 42. "And surely we had granted *Luqmân* wisdom" (*Qur'ân* 31:19). *Luqmân*, according to a narration on the

On another level, to apply the same method to children of well understanding age , would simply yield disastrous results

6.1.3) CONDITIONS FOR CORPORAL PUNISHMENT

- a) The disciplinarian should only use corporal punishment after he has exhausted all other avenues of discipline and correction.
- b) The disciplinarian should never inflict punishment in a state of anger, so that the child is not unnecessarily maimed or injured.
- c) Punishment should not be inflicted on sensitive parts of the body, like the face, stomach, head and chest.

Abu Dâ'wûd (*ra*) has narrated a tradition of the Prophet, Muḥammad bin 'Âbdullah (*ṣaw*), in his *al-Sunnan* that the Prophet, Muḥammad bin 'Âbdullâh (*ṣaw*) forbade from hitting on the face.

More clarification can be obtained on this matter when the Prophet, Muḥammad bin 'Âbdullâh (*ṣaw*) ordered the adulteress woman of Ghâmidî to be pelted with stones to death.

authority of Wahab bin Munabbih (*ra*), was the nephew of the Messenger of Allâh, Ayyûb (*as*), and according to Muqâtil, the latter.

He first picked up a stone the size of a date-pit and pelted her with it. He then ordered the others to start pelting her but to avoid the face. If in the case of death, the Prophet, Muḥammad bin ‘Ābdullāh (ṣaw) forbade from hitting on the face, to a greater extent it should be avoided in less serious punishments.

- d) The initial stages of corporal punishment should be mild. A small child should not be beaten more than three times.
- e) If the child is quite big, and the disciplinarian realises that three shots would be of no avail he could increase it to ten. The reason for this is found in a tradition of the Prophet, Muḥammad bin ‘Ābdullāh (ṣaw) narrated by ‘Āllāmah ibn Taymiya (ra) and verified by the authors of *al-iqnā’* and *al-Mughni* that the Prophet, Muḥammad bin ‘Ābdullāh (ṣaw) said, :-”No-one of you should administer more than ten shots, unless it is in the enforcement of one of the *ḥudūd* (divine punishments prescribed by the *Shari‘āh*)
- f) If the child has committed an offence on the first occasion, he should be granted respite and his excuse should be accepted. He should also be prompted to appoint somebody to intercess on his behalf to avoid punishment. Thereafter, a pledge should be extracted of him that he will not repeat his misdemeanour again.
- g) The disciplinarian should administer all punishments on his own, he should not hand this task over to others
- h) If the disciplinarian apprehends that ten shots will not be sufficient for a child who has matured, he could increase it upto the extent where he feels it would have the effect of correcting his ways.

- i) The disciplinarian should administer punishments on the opportune moments. He should be harsh and severe on the right time and mild and compassionate on the correct moments too



6.1.4) EXTREME MEASURES OF DISCIPLINE

a) Cursing And Verbal Abuse

Parents should not resort to such extreme measures of rectification which brings remorse to them and their children later, when the disastrous results have unfolded. One such despicable habit, is that of cursing ones children. According to a Tradition reported by Imâm Bukhârî and Muslim (*ra*) in their *al-Ṣaḥîḥ*, the Holy Prophet (*ṣaw*) said that the supplication of a parent (in favour or not in favour of a child) is readily accepted. Parents should calculate their actions wisely and apply a profound sense of discretion when taking action against their children.

‘Allâma Zamakhshari (*ra*) was a well known scholar. Both of his legs were cut off. When someone asked him the reason for this, he replied that it was due to the curse of his mother. He further explains that when he was a child, he once caught a little bird. He tied the legs of the bird tightly and made it fly from his hand. The bird lodged itself into a hole, and when I pulled the string, the legs of the bird broke loose. When my mother saw this, she was very angry, and cursed me, “Let Allâh cut your legs as you have cut the legs of this bird!”.

After some time, the ‘Allâma had to undertake a journey in the pursuit of knowledge. At one place, he fell from his conveyance and was seriously injured, such was the extent of the injury, that the physicians had to amputate both his legs. This is when he remembered the curse of his mother.

The displeasure and curse of the mother of ‘Alqamah (*ra*), a famous, pious and gallant companion of the Holy Prophet (*ṣaw*), as illustrated here, shows how it almost resulted in him leaving this world in the worst form of disgrace- without reciting the creed of *Islām*.

Once he became seriously ill, and his wife, in great distress, went to the Holy Prophet (*ṣaw*) and said, “ My husband is critically ill and I want to tell you of his condition, O Messenger of Allāh (*ṣaw*)! ”.

The Holy Prophet (*ṣaw*) summoned a few of his trusted companions and ordered them to go to ‘Alqamah and prompt him to recite the *Shahādah*. They went and found him in a critical state, and tried to make him say the *Shahādah*, but the words would surprisingly not emerge from his tongue. They reported this to the Holy Prophet (*ṣaw*), who then asked, “Is any of his parents alive?”.

He was informed that his mother was, but that she was very old. The Holy Prophet (*ṣaw*) asked someone to call for her if she could; if however if she was unable, he himself would go to her. Her immediate response, showing how much she respected the Holy Prophet (*ṣaw*) was, “By my life!, I am the one who should go to him!”. Slowly, with her walking stick, she proceeded to the Holy Prophet (*ṣaw*) and greeted him and returning the greeting of peace, he said, “Tell me the truth, how has your son ‘Alqamah been....?”.

“O Messenger of Allāh!”, she replied, “He performs much *ṣalāt*, fasts and gives a great deal in charity”.

“And how are you to him?”, enquired the Messenger of Allāh (*ṣaw*). “O! Messenger of Allāh (*ṣaw*), I am angry with him!”. “Why?”, asked the Holy Prophet (*ṣaw*), “ O! Messenger of Allāh (*ṣaw*), he preferred his wife over me and disobeyed me!”.

Thereupon, the Holy Prophet (*saw*) said:- “The anger of ‘Âlqamah’s mother has certainly prevented his tongue from uttering the *Shahâdah!*”¹. He then asked Bilâl (*ra*) to gather a huge bundle of firewood.

“O! Messenger of Allâh (*saw*)!, what will you do?”, asked the mother, “I will burn him in the fire right in front of you!”. “O Messenger of Allâh!, My son!, my heart cannot bear that he should be burnt before my very eyes”. “ O Mother of ‘Âlqamah, The punishment of Allâh is more severe and long-lasting. If you really want Allâh to forgive him, than you become pleased with him. By him in whose hand is my soul!, ‘Âlqamah will not benefit from his prayers , his fasting and his charity so long as you remain angry with him.”.

O Messenger of Allâh!, I call Allâh to witness and the angels and those Muslims who are present here with me, that I am pleased with my son ‘Âlqamah”.

Thereafter, ‘Âlqamah’s tongue was released and he repeated the words of the *Shahâdah*. That very day, he passed away and the Holy Prophet (*saw*) led his funeral prayer.

b) Physical And Sexual Abuse

Physical infliction includes all types of mishandling of the child; in the form of fisting, kicking, over-caning and using such instruments which inflict grievous bodily harm. Besides these methods being utterly cruel and inhuman, it does not bring about the desired results.

Pain and hurt is never inductive to correction. Rather, the opposite result is established.

¹ The *Kalimah* or *Shahâdah* (Proclamation of Faith), *Lâ ilâha illallâhu Muhammad Rasûl Allâh*, meaning that, there is no deity besides Allâh, and Muhammad is his Messenger. All Muslims are required to recite the above at the time of death. This indicates his confirmation of faith *’Imân*, upon death and is a passport to eternal bliss. Failing to recite the above, is sign of failure, loss and perfidy in the eyes of all Believers and the Lord. For more details, see the commentary of the Qur’ân, Sûrah 16, Verse 90.

The Holy Prophet (ﷺ) has warned not to hit on the face and to avoid more than three beatings¹. Even when a fornicator was to be lashed, The Holy Prophet (ﷺ) made sure that there is no harmful objects protruding from the whip which could inflict unnecessary harm; and even on the occasion of slaughtering of an animal, He (ﷺ) advised to do it with care and goodness.

With regard to children, the Holy Prophet (ﷺ) had never lifted his hand on neither his wives, or his children and grandchildren.

Sexual abuse, is to approach the child in a way he/she feels uncomfortable . Sexual abuse as a means of punishment or in any other form it takes; can never be condoned in Islâm, by normal ethical standards and by society at large.

The psychological trauma and aftermath of extreme physical abuse and even mild sexual abuse is indescribable. The child eventually withdraws from society and becomes withdrawn within himself. His mental development and physical faculties are impaired. In some cases, speech impediments have also been recorded!. He develops phobias and complexes which require intensive lifelong counselling to overcome. In his later life, he becomes reactionary and rebellious to any form of authority. His family life would not be a normal, one and he would not be able to cope with the normal pressures of everyday life.²

¹ al-Manthari, 'Âbd al-'Âzîm, *Targhib wa Tarhib*, Translated from Arabic into Urdû by 'Âbd al-Qahhâr bin 'Âbd al-Wahhâb in 6 volumes, *Ishâ'at al-Kutub wa Sunnah*, Karachi, 1983 Vol. 5 pp. 265-78. Also see Qur'ân, Sûrah 4, Verse 23 ; Sûrah 02, Verse 233. Also, Nawawi, Yahya bin Sharf, *Riyâd al-Sâlihîn*, Mustafa al-Bâbi al-Halabi and Sons, Cairo, 1976, Page 152.

² Wheldall, Kevin and Riding, Richard, *Psychological effects of learning and teaching*, Croom Helm, London and Canberra, 1983 pp. 24 -7

In cases like these, it naturally follows, that the parent or the disciplinarian should not expect any service from their children in their old age or whenever they need it. They had wilfully abused their position to humiliate their children. In the Hereafter, they would be first questioned regarding their behaviour to their children; before their children would be reckoned with, regarding their non-fulfilment of their duties towards them. If you neglect a fruit tree, do not expect fruits. For people like these, their children would become a means of their damnation and failure in this world and the next.

The Prophet (ﷺ) is reported to have said, addressing Nuâim bin ‘Âbdullâh (ra), after he had preferred one of his children over another with regard to a gift, “Do you want to be treated by your children all alike?”, when he replied in the affirmative, the Holy Prophet (ﷺ) said¹, “Then you should not do like this! (injustice)”. Here the Holy Prophet (ﷺ) inferred that the result of mistreatment to children, backfires upon the parents in this worldly lifetime.



The incident is common on the tongue of Eastern scholars, where a young man was found dragging his father through a dump. When reaching a certain point, the father shouted, “Stop, O my son!, I only dragged my father upto this point, please do not go further”².

¹ al-Sijistâni, Sulaimân bin ‘Âsh‘ath, Sunan Abû Dâ‘wûd, Maktab e Imdâdiyyah, Multan, Pakistan, 1990 pp. 678-9

² ‘Âbd al-Wahhâb bin Muḥammad, *Masâil al-Jâhiliyyah*, Muḥammad al-Shukri al-Âlousi, University of Madina Publications, 1395 A.H. Look also Qur‘ân, Sûrah al-Aḥzâb, Verse 05 and Sûrah 2, Verse 233.

In extreme cases of child- abuse or sexual-abuse, the parent could lose custody over his child and placed in the care of ones who love him or in an environment where he is not subjected to any abuse.

c) Psychological Abuse

A child always measures himself in ability and personality with his parents or those in direct contact, having a degree of influence over him. If he is injected with the idea that, "You cannot be", he develops an inferiority complex. An inferiority complex comes about when a number of things are done to the child:

- a) Ignoring the child for lengthy periods of time.
- b) Berating, insulting and being sarcastic to the child privately, before his/her relatives, family and close associates, and more dangerously, in public.
- c) To imbue continuous psychological guilt to the child for his/her misdemeanours, e.g. to confess by writing the misdeed a hundred times, remembering or calling that child by his misdeed or by having him publicly apologise and being sneered, laughed and mocked at.
- d) Threats. Confinement to a limited space, e.g. Toilet.
- e) Not to take an interest in a child's achievements, nor to encourage, advise and instil confidence in his ability or aptitude to do things.
- f) Not to respect or have an unkind attitude or cold disposition towards him/her.
- g) Setting a bad example or decadent behavioural pattern. The child is at a loss as to the concept of morality, and he is torn between the teachings of his learning institution and the example found at home. Cases have been recorded where the child has had to witness the sex of his parents with strangers
- h) Not properly maintaining, feeding or adequately loving the child.

- i) Keeping the child dirty, denying him his/her freedom and not decently clothing the child. This presents a *Vagabond* image of the child in the eyes of the people, hence, eligible for their charity.
- j) All acts calculated or which brings about a flaw in the self-esteem, confidence, respect and conviction of the child.

Nevertheless, it is extremely difficult to prove the severity of psychological abuse. It could be easily passed off as “disciplinary measures”. It is the right of the child to have a healthily cultivated mind, ready to explore and gain insight into all forms of knowledge and experience. Psychological abuse can have the same effects as described in physical and sexual abuse.

d) Total Rejection

Totally rejecting¹ ones child has got no legal basis in the *shari'ah*. Disowning of a child by parents, simply denotes their utter loss of hope in a grown up son or daughter who justifiably or unjustifiably disobeyed, troubled or harassed their parents. In the eyes of the parent, his child is now beyond redemption and not worthy of his fatherhood anymore.

Disowning is nothing more than a portrayal of the parent's fragility or lack of confidence in the handling of a situation. It is a cowardly gesture of shirking his responsibilities to the child in a most dramatic manner.

¹ Disowning or *'āq* as in the Eastern Countries. A common practice amongst the ignorant masses of the East.

However, ties of kinship or relationship can never be broken by the law of nature. It is not in our control to choose our children, relatives or family. The child will still be eligible of his rights, especially that of inheritance unless he turns renegade from Islâm or murders one or both of his parents.

6.2) SEXUAL MORALITY AND SEX EDUCATION

Because of the grave dangers that children and others are now more and more exposed to from an early age, it is important to pay attention to the aspect of sex education and morality. Appropriate sex education at the appropriate time and in a manner appropriate to Islâmic ideals is not only desirable but necessary. It is especially necessary because of the destructive trends in the world today.¹

Sex education is to be taught within the framework of religious obligations. A mother or female teacher would naturally be the best person to teach a daughter and the father or a male teacher, a son. Children are to be taught what is permissible and what is forbidden with reasons and consequences. No immoral or dissolute person is therefore allowed to teach. All teaching is to be imparted within the limits of modesty and chastity and no encouragement should be given to lewdness and experimentation

The Qur'ân has also mentioned on numerous occasions verses regarding the sexes and sexual education.

¹ Hamîd, 'Âbdul Wahîd, *Islâm, the natural way*, M E L, London, 1989 pp. 77-9

“ And those who safeguard their private parts; except from their wives and slave maiden, in that they are not blameworthy; whoever seeks beyond that is from the transgressors”¹. And, ” And we have made it (sexual union) lawful for you on the nights of fasting”². Also “ They ask you regarding menstruation, say it is filth; so stay away from woman in their menstrual cycles; and do not (sexually) approach them until they are pure, when they are pure, approach them (in sexual union) in whichever posture you like”³.

In still another place, “Your women are your tilths; so approach them in whichever position you like”⁴.

And also, “We have created man from clinging mud; then we transformed it into a sperm in a secure place”⁵.

The Qur’ân on sexual advice, “And do not approach near to fornication; verily it is a disgrace and an evil road”⁶.

Also, in the following verse, Allâh has been quite open as to the approach, “And when Lot asked his tribe, You perpetrate such indecency which was never practised before in this world?, surely you have desires for men, leaving out the woman; but you a damned nation”⁷.

¹ Sûrah 19, Verse 4

² Sûrah 3, Verse 45

³ Sûrah 4, verse 123

⁴ Sûrah 3, Verse 46

⁵ Sûrah 15, Verse 132

⁶ Sûrah 16, Verse 93

⁷ Sûrah 13, Verse 172

Sex education is imparted in stages according to the natural, physical and emotional development of children. Surely, the curiosity of every child is aroused at his changing biological body and mysterious feelings of sensation and passion.

1. The ages given below for each stage is approximate and may vary slightly from child to child: *The age between seven and ten, called the age of discretion*, at which training is given, for example in the etiquette of asking permission to enter rooms and in the etiquette of looking at others. Significantly, a child is recommended to begin performing *Ṣalâh* from the age of seven. This requires the proper etiquette of maintaining personal hygiene, including the washing of the private parts after going to the toilet. The context in which private parts are discussed allows the subject to be mentioned openly and naturally and without any unhealthy secretiveness or coarseness.
2. *The age between ten and fourteen, known as the age of puberty*, in which the child is prepared for the next stage but trained to keep away from all sexual passions. A child is trained to perform *Ṣalâh* regularly from the age of ten. One of the purposes of regular *Ṣalâh* according to the Qur'ân, is that it keeps one away from all that is shameful and bad.
3. *The age normally between thirteen and sixteen, known as the age of maturity*, at which the child now turns adult and is taught the etiquette of sexual behaviour in preparation for marriage. A person is taught to practice chastity and self-restraint until marriage or if for whatever reason he or she is unable to marry.

At the first stage, as soon as the awareness of the opposite sex become apparent, children are taught to seek permission before entering rooms and that they are not allowed to look at the private parts of another, including someone of the same sex. It is not natural or necessary, for example that they be taught details of copulation at this stage.

At the age of discretion, children need to be prepared for the stage of puberty so that when physical changes occur they would know how to react, how to clean themselves, how to prepare for the obligatory Prayer and other related matters.

At the age of puberty, when males produce semen and females start their monthly reproductive cycles, everyone becomes *mukallaf* of majority age, and all the obligations of adulthood devolve on them, - the duty to have a bath when necessary and desirable, to make Salâh, to fast, to preserve their chastity and to keep their private parts covered. They need to be taught explicitly what is lawful and what is unlawful.

At the stage of preparation for marriage, they need to know the rights and obligations of husband and wife to each other. These include the etiquette of sexual contact and behaviour and the need for spouses to have physical and emotional satisfaction in marriage.

Both the Qur'ân and the Sunnah are explicit on matters of sex and sex education. The object is to create an open, balanced and responsible attitude based on knowledge. Islâm is opposed to treating sex as a completely taboo subject, which gives rise to feelings of guilt. It is also opposed to treating it in a completely casual and immoral manner without the due regard to modesty and respect that something as intimate and personal as sexual life demands

6.3) CRIMINAL ACCOUNTABILITY OF MINORS

The *Islâmic Shari'âh* is the first law of the world to draw a definite line of distinction between children and grown up people. In the unprecedented law in the history of mankind wherein such perfect principles of children's accountability have been laid down, that they have remained unchanged after the lapse of more than thirteen hundred years.

Some of the modern laws began to adopt the share principles of children's accountability after the French Revolution. With the evolution of the sciences of medicine and psychology, these laws continued to develop gradually. But inspite of their progress, they have not been able to add any extra to the principles of the accountability to minors.

This distinction of the *Islâmic Shari'âh* may well be realised when we take stock of the position of children in the laws that were in force at the time of the revolution of the *shari'âh*. The most important of those laws was the Roman, which constitutes the basis of the man made laws today, and which doubtless was outstanding among the ancient laws. In Roman law too, there is very little difference between the accountability of minors from majors. According to this law, a child whose age was over seven years was accountable on criminal grounds and one under seven was treated as unaccountable when he committed an offence for the purpose of doing harm to some one.

Criminal Accountability in the *Shari'ah* rests on two aspects: (a) Understanding and (b) Choice. For this reason the injunction of the *shari'ah* regarding children vary with different stages from birth to puberty; and the growth of understanding and freedom of choice.

Man is incapable of perceiving and choosing at the time of birth. Subsequently, his perception and capacity to choose grows gradually till a stage is reached at which he is capable of understanding things. Although he is weak of understanding at this stage, yet his mental development continues steadily till he becomes capable of apprehension.

The *Shari'ah* has laid the principles of criminal accountability in consideration of this mental process of growth. Thus, when the faculty of apprehension is lacking altogether, there can be no criminal accountability; when it is weak accountability, it is disciplinary and when the child grows to be an adult, he is convicted on criminal grounds.

So, a child passes through three stages of development from birth to puberty. At the first stage, he is devoid of apprehension and is, therefore an indiscreet child.

At the second stage, he is a child of weak understanding, but is perceptive, all the same, having the capacity to apprehend.

At the third stage, he comes of age with fully mature understanding.

First stage - Lack of Understanding. This stage begins with the birth of a child and continues upto the seventh year. The Jurists are unanimous on this point. At this stage the child is treated as indiscreet and devoid of understanding.

Really speaking, no definite age could be fixed for the attainment of discernment by a child. The capacity of perception and discretion may be developed before or after the age of discretion according to a child's environment as mental and physical capacities vary. But the Jurists have fixed an age limit keeping in view the circumstances of children in order to maintain uniformity and ward off discontent among them at the time of passing judgement as also to enable the court to ascertain without difficulty if the condition of awareness and perceptiveness is present or not. The limit of seven years is a concrete yardstick to ascertain this.

Therefore, if a child under seven commits an offence, he will neither be punished on criminal grounds nor as a disciplinary or reformatory measure. Thus if he commits any one of the crimes falling in the category of *hudûd* like theft, he will not be subjected to the amputation of a hand.

Nevertheless, the exemption from criminal accountability does not exempt him from civil accountability as well. He will have to compensate the loss in terms of life or property out of his own possessions. The reason for this is that the *shari'âh* guarantees the security of life and property and nobody is allowed to infringe the right of life and property of another person without justification. Even an excuse under the *shari'âh* cannot prejudice the security so guaranteed, although punishment may be waived.

Second Stage - Weak Understanding. This stage begins with the seventh year and culminates in maturity. The Jurists generally fix the age of puberty at fifteen years, even if he does not come of age.. Imam Abû Ḥanîfa (ra) personally fixed the age of puberty at eighteen years, and according to another view, it is nineteen years for a male and seventeen years for a female.

The oft-quoted view of the Mâliki's accords with the position of the Hanafi's.

According to all Jurists, the determination of the age of puberty owes its origin in the following Tradition of the Holy Prophet of Allāh, Muḥammad bin ‘Ādullāh (*ṣaw*), “Three persons are not responsible; A child until he attains the age of puberty, An insane person until he regains his normal senses and a sleeping individual until he awakens”¹.

In this edict, nocturnal pollution has been indicated as the sign of the end of the child’s irresponsibility. As a matter of fact, responsibility begins after puberty. At this stage, man is capable of using all his complete organs, and this perfection is manifest in the wake of nocturnal pollution.

As the sign of puberty is nocturnal pollution, an adolescent boy coming of age is known by his potency to impregnate a woman and the discharge of semen. Similarly, a girl’s puberty is known by her menstruation, nocturnal pollution and pregnancy. Since these signs may appear in advance or be delayed, it has been deemed necessary to fix an age limit.

Most of the Jurists have fixed it at fifteen. They argue that it is *reason* that is really efficient and which constitutes the basis of accountability and whereupon all the relevant injunctions lie. Nocturnal pollution does not occur later than fifteen years of age. If it does not occur at this stage, there must be some physical defect in the child. But physical awareness does not affect the consummation of reason. As the reason is fully developed, man will be treated as coming of age and all injunctions will start applying to him.

¹ ‘Asqlāni, ibn ḥajar, *Bulugh al-Marām*. Dār al-Fikr, Beirut, 1986. Page 145

The Jurists who fix the age of puberty at eighteen or nineteen; argue that since applicability of injunction and responsibility according to the *shari'âh* rests on the occurrence of nocturnal pollution, the basis of injunction must be nocturnal pollution. The injunction will be invalid when non-occurrence of nocturnal pollution is certain and the hope of its occurrence is abandoned. Despair on this account is possibly caused when the body's age exceeds eighteen or nineteen without nocturnal pollution. It will therefore be wrong to suspend the applicability of the relevant injunction on account of doubt. Hence, in spite of prospects of nocturnal pollution, the injunction validated by its occurrence cannot be treated as final as against the period whereafter there is no possibility of its occurrence.

Imam Abû Hanîfa (*ra*) says that his view accords with the principle of *shari'âh*. For instance, menstruation is the essential condition laid down in the injunction pertaining to the women's coming of age, but if the menses stop, it ought to be awaited till the age of despair, as it is possible that menstruation starts again. Similarly, separation between an impotent man and his wife is disallowed unless copulation could not take place in different seasons of the year. If there is no hope of his recovery of potency to copulate after the lapse of a year, then verdict will be given for the separation of the couple. In the same way Allâh enjoins that the disbelievers should be invited to accept Islam until there is no hope of their responding to the call. Fighting against them is prohibited unless the Muslims are despaired of their embracing Islâm.

At this stage, the perceptive child is not immediately accountable on criminal grounds and will not be subject to the *Hudûd: shari'* punishment laid down for theft and adultery; nor will he be amenable to *Qisâs*: for homicide and infliction of injury.

Disciplinary action is also punishment for the crime itself, but it is not criminal punishment. The effect of disciplinary punishment would be that the child will not be treated as a habitual offender, and will as such be liable to only those penal punishments that aim at warning and admonition. In all cases, the child will have to be accountable on civil grounds.

Third Stage - Full Mature Understanding. With puberty, the age of discretion begins. At his stage, he is criminally convictable for any offence committed by him. All the *hudûd* and *qisâs* would now apply to him/her.



CHAPTER SEVEN

CONCLUSION AND OBSERVATIONS

Not a day passes without the electronic media and the paper media not depicting some form of abuse in one form or the other - to children. Just as many perverted forms of sex, such as homosexuality, lesbianship, sodomy, masturbation, prostitution, heterosexuality are now becoming an accepted part of society; child-abuse, and more alarming, child sexual-abuse stands to also become an accepted part of our modern derailed society. Purdefiles are taking proudly to the streets in an alarmingly brave manner, and are confident of themselves achieving their goals more than often.

The abuse of loaned property is indeed despicable. The despicability can be heightened as per the status of the loaner. Abortion is indeed highly offensive as life is the property of Allâh - the highest form of proprietorship. Similarly, child-abuse is direct abuse on the property of Allâh. There can be no greater or more vile abuse than that the molestation and defilement of innocent, helpless and unsuspecting children. Yet, the trend continues to escalate and is slowly taking on the shape of a pandemic.

Challenging the bad trends of modern-day society is a difficult and arduous task. There seems to be a vital ingredient lacking in all perpetrators of bad - the conviction and hope in Allâh. Unless perpetrators are made to realise they owe a debt to humanity, no good can be expected of them. The Islâmic Judicial system is designed in exactly the same fashion. With the enforcing of laws, the individual is made to sense the responsibility he owes to humanity, and the damage wrought when one ignores or breaks a natural law.

In the new South Africa, the battle road to achieve moral sanity is even more tough. With institutions like gambling, drinking, abortion, smoking and homosexuality/lesbianship being legal, coupled with a judicial system full of loopholes for the criminal, tendencies for more problems to be created, are greater than the same to be stifled. Thus, one stands on an ascent already. The steams and pressures of modern-day living are being frequently directed on the younger generation without any realisation or understanding of destabilising the future generation.

Muslims barely represent 1% of the total population of South Africa. It is unlikely that the Islâmic Judicial system in its entirety will be enforced in this country. The practicality and effectiveness of the Islâmic judicial system should be impressed in case studies and its results proven statistically, in order to gain support, credibility and applause to the system.

As this dissertation has conclusively pointed out, the following reforms are said to have been brought about by Islâm in favour of children:-

- 1) Children have been come to be known as a trust in our hands. A trust is not the owner's. All matters pertaining to it will have to be answerable to the Almighty on the day of Judgement.
- 2) All types of abuse is not tolerated in Islâm at all. Strict limits to disciplinary measures have also been laid down, so as to prevent extremity in the process of discipline.
- 3) The notion of criminal liability and civil liability has given a new revolutionary dimension to common law, which has not been able to be improved for over 1400 years since it was implemented by the Muslims.

4) The importance of finding a child a decent home, and establishing paternity for a child on the most remote of grounds; points towards the hesitancy the *Shari'ah* adopts to stigmatise any child with the label of illegitimacy and the tendency of protecting its citizens. This can be largely noticed where the orphan has been granted a high agenda on the welfare list of the Muslim state.

5) Measures and decisions which were taken on behalf of a child can be accepted or revoked by the child upon arriving at puberty. This is in the case of property, life and marriage. According to Islâm, as soon as the child reaches the age of majority, and has *rushd*: intelligence, he is a free person to do anything he likes. All the privileges of a major are now applicable to him. He is accorded the due respect of being an adult and treated as such.

6) Children have been granted the right to complain against their parents on justifiable grounds. Where a child has been denied his rights of inheritance when even in the womb of his mother, he can fight for it on attaining age.

7) The balance between the parent-child relationship in Islâm, is so well proportioned that there will hardly arise a time where an argument or a situation may arise which cannot be easily and speedily settled.

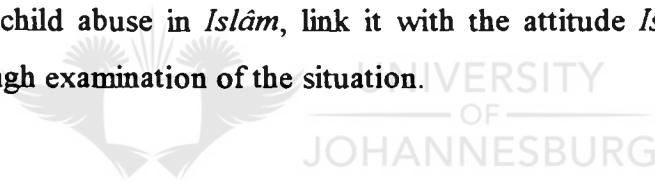
8) The stress Islâm has placed on the proper upbringing of children and of their spiritual welfare, has made it an obligatory duty of each parent to satisfactorily see to the spiritual as well as the material welfare of children.

If a child suffers unduly, when that suffering could have been averted; or if a child commits fornication due to the neglect of parent's arranging his marriage; or if he is deceived in the world due to the parent's neglect of exposing him to the practical sciences of living; or, if he fails in his spiritual mission in life due to neglect of education on the parent's part - in all these respects, the parents of the child will be held responsible for it.

Measures of solving problem areas would be to educate the masses on the viability of implementing this system under general connotations i.e. not stating that this is the *Islâmic* view point. Also, the “demanding” and “intensity” connotations associated with the word “Rights ” should be set aright. Rights should be understood in terms of basic privileges due to one, to be demanded rightfully upon the deprivation whereof. Rightfully demanding does not mean unethical or violent demanding, but a descent procedure should be adhered to.

Fortunately, the problem of child-abuse has not surfaced in the Muslim public. This can be the reason attributed to the lack of literature focusing on combating child-abuse in particular, in the *Islâmic* world.

The way ahead for further researches into the field of children would be to unearth the phenomenon of child abuse in *Islâm*, link it with the attitude *Islâm* has towards it and conduct a thorough examination of the situation.



BIBLIOGRAPHY

ENGLISH REFERENCES

- 1.1) Aḥmad, Moḥd. Mu‘în al-Dîn, *The Rights of Parents* Madrassah ‘Arabiyya Islâmia Azaadville, South Africa, 1993.
- 1.2) ‘Âzamî, Iqbâl Aḥmad, *Muslim Manners* U.K Islâmic Academy, Leicester, 1991
- 1.3) ‘Ali, Sayyed Amîr, *Mahommedam Law* Law Publishing Company, Lahore, 1928.
- 1.4) Aḥmad, K.N, *The Muslim Law of Divorce* Kitâb Bhavan, New Delhi, 1971.
- 1.5) ‘Ali, Moḥammad Yusuf, *The Holy Qur‘ân: Text, Translation and Commentary* Amana Corporation, Maryland, U.S.A, 1989.
- 1.6) Abû Sulaimân, ‘Abd al-Hamîd A, *Towards Islamisation of Disciplines* The International Institute of Islâmic Thought, Virginia U.S.A, 1987.
- 1.7) ‘Alwânî, Tâhâ Jâbir, *Outlines of a Cultural Strategy* International Institute of Islâmic Thought, Virginia U.S.A, 1987.
- 1.8) ‘Attâs, Muḥammad al-Naqîb, *Islâm and Secularism* Hindustân Publications, Delhi, 1984.
- 1.9) Best, Wifred D, *The Student's Companion* Longman, Essex, England, 1990.

179 Bibliography

- 1.10) Bemat, Ahmad Ebrâhîm, *The Right of Children on Their Parents* Madani Kutub Khana Tadkeshwar, **India**, 1974.
- 1.11) Choonâra, Mohammad Farîd, *The Status Of Orphans in Islâm* Africa Muslim Agency Fordsburg, **South Africa**, 1989.
- 1.12) Doi, A.R.I, *Shari'ah, The Islâmic Law* A.S Noordeen Publishers, Malaysia, 1990
- 1.13) Doi, A.R.I, *The Western Civilisation, Islâm and the Muslim Youth* Muslim Publishing House, **India**, 1987
- 1.14) Husain, Akhlâq, *Golden Tales* International Islâmic Publishers, **Karachi**, 1988.
- 1.15) Husain, Akhlâq, *Muslim Parents; Their rights and Duties* Adam Publishers and Distributors, **Delhi**, 1992.
- 1.16) Hamîd, 'Abd al-Wâhid, *Islâm: The Natural Way* M.E.L.S. Hendon, **London**, 1989
- 1.17) Hart, Micheal, *The 100 Top Most Influential Persons in History* Carol Publishing Group, **New York**, 1978.
- 1.18) Iqbâl, Afzal, *The Culture of Islâm* Mohammad Ahmad Idâra 'Adabiyyat I Delhi, **Delhi**, 1967.
- 1.19) Jameelah, Maryam, *Islâm and Western Society* Mohammad Yousuf Khân Sant Nagar, **Lahore**, 1976.

180 Bibliography

- 1.20) Karîm, Fazlul, *Imâm Ghazzâlî's Ihyâ al-'Uhm al-Dîn* S.H Muḥammad Ashraf, **Lahore**, 1990.
- 1.21) Kaysi, Marwân Ebrâhîm, *Morals and Manners in Islâm* The Islâmîc Foundation, **Leicester**, 1986.
- 1.22) Khân, Majîd 'Alî, *Muḥammad The Final Messenger* Da'wah Academy International Islâmîc University, **Islâmabad**, 1983.
- 1.23) Karîm, Fazlul, *The Ideal World Prophet*, The Book House, **Lahore**, 1935.
- 1.24) Lings, Martin, *Muḥammad: His Life Based On The Earliest Sources* Foundation For Traditional Studies, A.S Noordien, **Kuala Lumpur**, 1983.
- 1.25) Lâri, Sayyed Mujtabâ Musâvi, *Youth and Morals* Islâmîc Culture Development Office, **Tehran**, 1990.
- 1.26) Nomâni, Mohammad Manzûr, *What is Islâm?* Haji Arfeen Academy, **Karachi**, 1980
- 1.27) Nomâni, Mohammad Manzûr, *Meaning and Message of the Traditions* Academy of Islâmîc Research and Publications, **Lucknow**, 1982.
- 1.28) Nadwî, S Abû al-Ḥasan, *Muḥammad Rasûl Allâh* Academy of Islâmîc Research and Publications, **Lucknow**, 1982.
- 1.29) Nasr, Sayyed Hossein, *Ideals and Realities of Islâm* Suhali Academy, **Lahore**, 1994.

181 Bibliography

- 1.30) Qardawî, Yusuf, *The Lawful and the Prohibited in Islâm* Muslim Youth Movement, South Africa, 1960.
- 1.31) Qâdri, Sayyad Sa'âdat 'Alî, *Good Behaviour* al-Qadri Islâmîc Publications, South Africa, 1989.
- 1.32) Salejee, E.M.H, *Sunnats Sirât al-Haq* Publications Estcourt, South Africa, 1989
- 1.33) Shahâid, 'Abd al-Qâdir 'Ûdah, *Criminal Law of Islâm* International Islâmîc Publishers, Karachi, 1991. (3 volumes)
- 1.34) Şiddîqî, Safdar Hasan, *Muhammad, Messenger of Allâh on Social Behaviour* al- Amîn Publications, Delhi, 1992.
- 1.35) Schimmel, Annemarie, *And Muhammad Is His Messenger* The University Of North Carolina Press, Chapel Hill and London, 1985.
- 1.36) *The New Encyclopaedia Britannica* William Benter Publishers University of Chicago, Geneva, 1943-73. (Thirty Volumes)
- 1.37) *The World Book Encyclopaedia* World Book inc. A Scott Frazer Company, Toronto, 1985. (Twenty-two Volumes)
- 1.38) Thânwi, Ashraf 'Alî, *Âdâb al-Mu'âsharat* Young Mens Muslim Association Benoni-South, South Africa, 1990.
- 1.39) 'Umari, Akram Diyâ, *Madînan Society at the Time Of the Prophet* The International Institute of Islâmîc Thought, Virginia, USA 1991.

2) ARABIC AND URDU REFERENCES

- 2.1) ‘Abd al-Bâqî, Moḥammad Fu‘âd, *al-Mu‘jam al-Mufahras li alfâz al-Qur‘ân* Dâr al-Hadîth Jâmia al-Azhar, **Cairo**, 1987.
- 2.2) ‘Âsqalâni, Aḥmad bin ‘Alî bin Ḥajar, *Lisân al-Mîzân* Majlis Dâr al-Ma‘ârif Hyderabad, **India**, 1971. (Seven Volumes)
- 2.3) ‘Asqalâni, ibn Ḥajar, *Bulûgh al-Marâm min ‘Adillat al-Aḥkâm* al-Maktaba al-Fadîlah, **Makkah al-Mukarramah**, 1990.
- 2.4) ‘Asqalâni, ibn Ḥajar, *Tahzîb al-Tahzîb* Dâr al-Fikr, **Beirut**, 1987 (Twelve Volumes)
- 2.5) ‘Âzâd, abû al-Kalâm, *Tarjumân al-Qur‘ân* Sahitya Academy, **New Delhi**, 1964. (Four Volumes)
- 2.6) Abul Barakât, ‘Âbd al-Ra‘ûf, *Asaḥ al-Siyar* al-Maktaba al-Nûriyya, **Delhi**, 1932.
- 2.7) ‘Adabî, Moḥammad Bashîr, *al-Mutla‘ ‘âlâ Abwâb al-Muqna‘* al-Maktab al-Islâmi, **Damascus**, 1981 (Eleven Volumes)
- 2.8) Bukhâri, Moḥammad bin Ismâ‘îl, *al-Târikh al-Kabîr* Majlis Dâr al-Ma‘ârif Hyderabad, **India**, 1962. (Twelve Volumes)
- 2.9) Bukhâri, Moḥammad bin Ismâ‘îl, *al-Adab al-Mufrad* Majlis Dâr al-Ma‘ârif Hyderabad, **India**, 1961.

- 2.10) Chatgâm, Abul Hasan Mohammad, *Tanzîm al-Ashtât* Kutub Khâna Ishâ'at e Islâm, **Delhi**, 1982.
- 2.11) Chahmarâh, Mohammad Ramdân, *Dars e Qur'ân* Idârah Ishâ'at wa Tabligh, **Lahore**, 1979. (Eight Volumes)
- 2.12) Gangohî, Mohammad Hanîf, *Hâlât al-Musannifîn*, Dâr al-'Ishâ'at, **Karachi**, 1987.
- 2.13) Gangohi, Rashîd Ahmad, *Fatâwâ Rashîdiyya* Sa'îd Company, **Karachi**, 1967.
- 2.14) Haqqâni, Mohammad Pâlan, *Shari'at yâ Jahâlat* Idâra Da'wat al-Islâm, **Karachi**, 1975.
- 2.15) Hashpati, 'Abd al-Halîm bin 'Abd al-Rahîm, *Mirqât al-Mafâtîh Sharh Mishkât al-Masâbîh* Maktaba Imdâdiyya, **Multan**, 1979. (Eleven Volumes)
- 2.16) Kifâyat Allâh, Mohammad, *Kifâyat al-Muftî* Central Book Depot, Urdu Bazaar, **Delhi**, 1977 (Nine Volumes)
- 2.17) ibn Hishâm, *al-Sîrat al-Nabawiyah* Mustafa al-Bâbi al-Halabî and sons, **Cairo**, 1965 (Six Volumes)
- 2.18) ibn Qudâmah, *Mu'jam al-Mughni fi Fiqhi al-Hanbli* Dâr al-Fikr, **Beirut**, 1989. (Twelve Volumes)

- 2.19) ibn Hummâm, Kamâl al-Dîn Moḥammad, *Takmilah Sharh Fath al-Qadir* Dâr al-Fikr, **Beirut**, 1977. (Ten Volumes)
- 2.20) ibn Nujaim, Zain al-Dîn, *al-Bahr al-Râ'iq* al-Maktaba Rashidiyya, **Pakistan**, 1979 (Eight Volumes)
- 2.21) 'Ilâhi, Moḥammad 'Âshiq, *Mâ Bâq ke Huqûq* **Shamsi Publishing House, Karachi**, 1981.
- 2.22) Islâhi, Moḥammad Y usuf, *Âdâb e Zindagi* Markazi Maktaba Islâmi, **Delhi**, 1986.
- 2.23) Jassâs, Abu Bakr Aḥmad 'Alî al-Râzî, *Ahkâm al-Qur'an* Dâr al-Kitâb al-'Ârabi, **Beirut**, 1335 AH (Five Volumes)
- 2.24) Jûmi, Abu Bakr Muḥammad, *Radd al-Ath'hân ilâ Ma'âni al-Qur'an* Muassasa Ghumbi lit Tijârah, **Nigeria**, 1987 (Six Volumes)
- 2.25) Kândhlawi, Moḥammad Idrîs, *Sirat al-Muṣṭafâ* Maktaba 'Uthmâniyya, **Lahore**, 1985 (Three Volumes)
- 2.26) Kândhlawî, Moḥammad Y usuf, *Hayât al-Sahâbah* **Shamsi Publishing House, Karachi**, 1972. (Three Volumes)
- 2.27) Kahlâni, Moḥammad bin Ismâ'il, *Subul al-Salâm* Mustafa al-Bâbi al-Halabî and Sons, **Cairo**, 1960. (Seven Volumes)
- 2.28) Karîm, Fazlul. *al-Hadîs* The Book House, **Lahore**, 1975. (Four Volumes)

- 2.29) Mantharî, ‘Abd al-‘Azîm, *Tarḡhib wa Tarḥîb ‘Îshâ‘at al-Kutub wa Sunnah*, Karachi, 1975. (Six Volumes)
- 2.30) Mâ‘sumî, M.S.H, *‘Îlm al-Akhlâq* Kitâb Bhavan, New Delhi, 1992.
- 2.31) Muslim, Hajjâj bin Kaushâd, *al-Sahîh al-Muslim* (English rendering by ‘Abd al-Hamîd Şiddîqî), S.H Muhammad Ashraf Kashmîri Bazaar, Lahore, 1976. (Four Volumes)
- 2.32) Maudûdî, Abu al-‘Alâ, *Tafhîm al-Qur‘ân* Idârah Tarjumân al-Qur‘ân, Lahore, 1979 (Six Volumes)
- 2.33) Nomâni, Moḥammad ‘Abd al-Rashîd, *Lughât al-Qur‘ân* Maktaba Nu‘mâniyya Deoband, India, 1964. (Twelve Volumes)
- 2.34) Nîmwî, Moḥammad bin ‘Alî, *‘Âthâr al-Sunan* Maktaba Husainiyya Gojaraniwalah, Pakistan, 1991.
- 2.35) Nawwawî, Abû Zakariyya Yahyâ bin Sharf, *Riyâd al-Sâilhin* Qasr al-‘Ainî, Cairo, 1977.
- 2.36) Saurah, Moḥammad bin ‘Îsâ, *al-Jâmi‘ al-Sahîh al-Sunan al-Tirmidhî* Mustafâ al-Bâbi al-Halabî and Sons, Cairo, 1978. (Four Volumes)
- 2.37) Saura, Moḥammad bin ‘Îsâ, *Shamâ‘il al-Tirmidhî* (Translated by Muhammad bin ‘Abd al-Rahmân Ebrâhîm into English), ‘Ilmi Publications, Johannesburg, 1990
- 2.38) Sâbûnî, Moḥammad ‘Alî, *Tafsîr ibn Kathîr* Dâr al-Qur‘ân al-Karîm, Beirut, 1981.

- 2.39) Shaukâni, Muḥammad Bin ‘Alî Muḥammad, *Nail al-Autâr Mustafa al-Bâbi al-Halabi and sons*, Cairo, 1967. (Seven Volumes)
- 2.40) Shafi’, Moḥammad, *Ma’ârif al-Qur’ân Idâra Ma’ârif*, Karachi, 1982. (Eight Volumes)
- 2.41) Saifi, Raḥîd Ashraf, *Dars e Tirmidhî* Anvar Book Traders Deoband, India, 1982. (Three Volumes)
- 2.42) ‘Uthmâni, Shabbîr Ahmad, *Tafsîr e ‘Uthmâni Idâra Ishâ‘at e Diniyyât*, New Delhi, 1992 (English translation in three volumes done by Moḥammad Ashfaq Ahmad)
- 2.43) ‘Ulwân, ‘Abdullâh Nâsiḥ, *Islâm aur Tarbiyat Aulâd Jâmia ‘Ulûm e Islâmiyya*, Binnori Town, Karachi, 1988. (2 Volumes)



3) SOCIOLOGICAL AND OTHER NON-RELIGIOUS REFERENCES

- 3.1) Bellah, R.N, *New Religious Consciousness and the Crisis in Modernity* Glock and Bellah, London, 1976
- 3.2) Bettelheim, B, *The Children of the Dream* Thames and Hudson, London, 1969
- 3.3) Budd, S, *Sociologists and Religion* Collier-Macmillan, London, 1973

187 Bibliography

- 3.4) Douglas, J.D *Understanding Everyday Life* Routledge & Kegan Paul, London, 1971
- 3.5) Douglas, J.W.B, *The Home and the School* Macgibbon & Kee, London, 1964
- 3.6) Hughes, A.G, *Learning and Teaching*, Longmans, **Great Britain**, 1962
- 3.7) Haralambos, M, *Sociology: Themes and Perspectives* Unwin Hyman, **London**, 1980
- 3.8) Parsons,T *Family, Socialisation and Interaction Process* The Free Press, **New York**, 1955
- 3.9) Parsons, T, *The Evolution of Societies* Prentice-Hall, **Englewood Cliffs**, 1977
- 3.10) Schneider, David J, *Social Psychology* Addison Wesley Publishing Company, **Sydney**, 1976.
- 3.11) Vogel, E.F, *The Emotionally Disturbed Child as the Family Scapegoat* Bell & Vogel, **London**, 1968

4) JOURNALS AND MAGAZINES

- 4.1) *Journal Institute of Muslim Minority Affairs*, **King Abdulaziz University**, Jeddah, Saudi Arabia
- 4.2) *Journal for Islâmic Studies*, **Rand Afrikaans University**, Melville, South Africa

- 4.3) *The Middle East Journal*, **Middle East Institute**, Washington DC, USA
- 4.4) *Nigerian Journal of Islâm*, **Conference of Muslim Lecturers and Administrative Staff of Nigerian Universities**, Ibadan, Nigeria
- 4.5) *Journal of Islâmic Studies*, **Oxford Centre for Islâmic Studies**, Oxford, England
- 4.6) *The American Journal of Islâmic Social Sciences*, **The Association of Muslim Social Scientists and the International Institute of Islâmic Thought**, Herndon, USA
- 4.7) *The Search: Journal for Arab and Islâmic Studies*, **Centre for Arab and Islâmic Studies**, Miami, Florida
- 4.8) *Dirâsât Ifriqiyya*, **Islâmic African Centre**, Khartoum, Sudan
- 4.9) *al-Tawhîd*, **Sazman e Tablighat e Islâmi**, Tehran, Iran
- 4.10) *Islâmika*, **Sarjana Enterprize**, Kuala lampur, Malaysia
- 4.11) *al-Ittihâd*, **Muslim Students Association of the United States and Canada**, Plainfield, Indiana
- 4.12) *Awake to the Call of Islâm*, **Young Mens Muslim Association**, Benoni, South Africa
- 4.13) *The Muslim Digest*, **Makki Publications**, Durban, South Africa
- 4.14) *Al-Nasîhah*, **Madrasah Arabia Islamia**, Azaadville, South Africa

189 Bibliography

4.14) *The Truth Revealed*, **The Izharul Haq**, Lenasia, South Africa

4.15) *Muslim Education Quarterly*, **The Islâmic Academy**, Cambridge, England

4.16) *Al-'Ilm*: Journal of the Centre for Research in Islâmic Studies, **University of Durban-Westville**, South Africa

4.17) *Impact International*, **News and Media Ltd**, London, England

4.18) *The Journal: Rabetat al-'Alam al-Islâmi*, **Muslim World League; Makkah al-Mukarramah**, Saudi Arabia

4.19) *Al-Farooq*, **Jamia Farooqiyya Islâmiya**, Karachi, Pakistân

