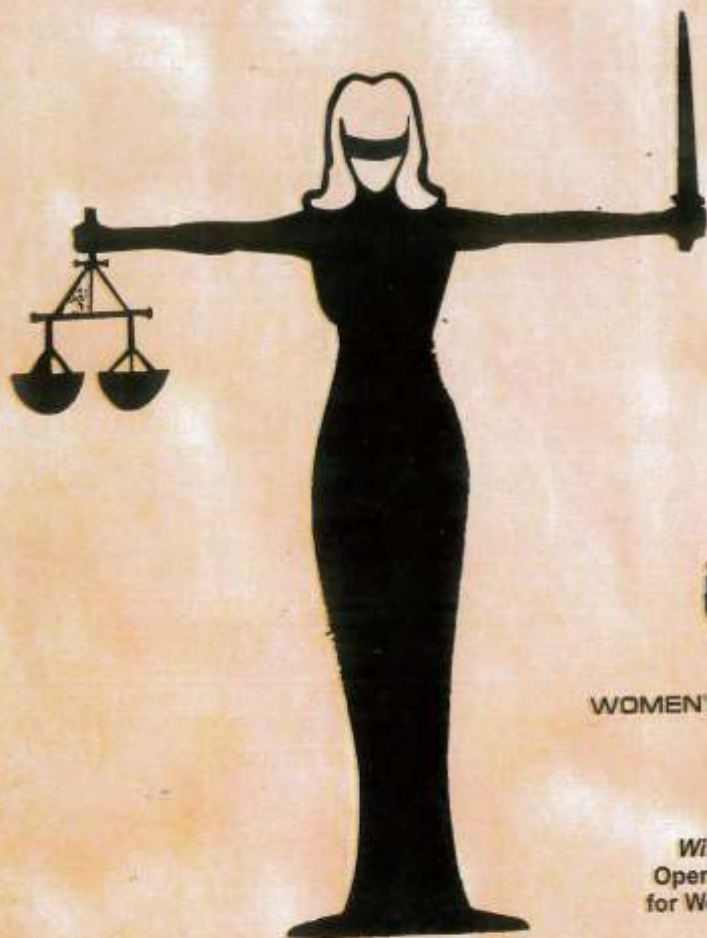


# **Child Abuse / Neglect:**

## **THE POSITION OF ISLAM**



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**WOMEN'S AID COLLECTIVE**  
**(WACOL)**

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**Open Society Initiative**  
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**CHILD ABUSE/NEGLECT:  
The Position of Islam**

***Published by:  
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## PREFACE

This book is meant to create awareness to the generality of the public, particularly Muslim parents that children especially the girl-child needs serious and adequate attention. The Shari'a has made adequate provisions for children right from the period of conception till they attain maturity. The Shari'a places high premium on human life as it strictly forbids abortion.

Today Muslim children are among the most abused worldwide. Children are often traumatized and abused right from home, school, by peer group, and the society at large. In the contemporary world today children are being sold into modern slavery. Child trafficking often results in child prostitution, child labour and even leads to the death of many children.

In some cases a girl-child may be forced to marry a man against her wish, and if she turns down the wish of her parents this marks the genesis of her predicament. It is sad to note that most of these violations are being done in the name of Islam or the Shari'a, whereas most of these things are being done in sharp contrast to the provisions of the Shari'a.

This book is divided into two parts, with part one discussing child abuse, and it commences by asking what child abuse is all about, whether it is Islamic or not? It also examines the various forms of child abuse, and it highlights the rights of a child under the Shari'a. Contemporary issues, views, and efforts being made worldwide to better the lot of children are also discussed for instance; reference is made to the child rights convention. Abortion is also discussed, with its permissibility under the Shari'a with juristic views as it affects the rights of a child.

The second part of this book is on child neglect and it starts with the definition of a child under the Shari'a, what constitutes child neglect, and how it occurs. Many parents often neglect their children today, especially as a result of conflicting opinion, for instance a girl may be asked to marry a particular person and if she turned down the offer, the next thing will be to send her out of the home, or the parents refuse to perform their duties to the child.

It is also pointed out in this book that despite the adequate and comprehensive provisions made for the child under the Shari'a which has no equal the world over, it has not bettered the lot of the Muslim child as it is still among the numerous children world wide suffering, constituting public nuisance, and becoming social miscreants, which is contrary to the provisions of the Shari'a. This is largely due to the ignorance and the lackadaisical attitude of Muslims, which they attribute to the Shari'a.

The rights of Muslim children until they attain maturity, which parents are duty bound to provide according to their means, are also enumerated.

It is highly hoped that the Muslims as well as non-Muslims benefit from this book insha Allah.

## INTRODUCTION

The essence of this treatise is to create awareness and enlighten the public in general and Muslims in particular of the provisions of the Shari'a which provide adequate care and protection to be accorded to a child, especially a girl-child, right from the day the child is born, through puberty, and to old age.

Today, what is witnessed concerning the treatment and care of a child particularly the girl-child is a sharp contradiction and deviation from the provisions of Shari'a. This is, however, due to the general ignorance of Muslims prevalent in our society today.

Children today no longer receive adequate attention and proper care needed to mold and shape their lives, so as to benefit not only themselves but also the society they live. Parents no longer perform their roles, as they should, as most children today are either forced into the Labour market at a very tender age, in order to make ends meet. Others, especially the girls resort to prostitution. Child abuse is when a child is being exploited, maltreated, or handled in such a way as to hurt the feelings of the child. Child abuse also includes using a child as house help, child neglect, and child trafficking, which is very rampant nowadays.

Child neglect on its own part is when a child is abandoned to its faith either by its parents, guardian, or the society at large. This practice deprives a child of physical, moral, social, and spiritual development, which enables the child to be productive and useful to the larger society. Today, as children are being neglected and abused in one form or the other, the result is that these children grow up to become social

*miscreants, nuisances and even constitute a threat to the society that has abuses and neglects them.*

This work is prepared as a reminder to Muslims to keep their duty and be conscious of it in order to prevent the current and future dangers being faced (by a child) or to be faced by a child, which exposes it to evil by putting up a character or behaviour that is very contrary to Islamic ethics. It is our hope that the general public and Muslims in particular, will benefit from this treatise, God Willing.



## **WHAT IS CHILD ABUSE?**

The treatment of a child with cruelty, ill feeling and in an improper manner is known as child abuse and may either be from the parents or guardian. According to Collins concise Dictionary<sup>1</sup>, "child abuse is physical, sexual or emotional ill treatment of a child by its parents or other adult responsible for its welfare."

However, Child Abuse under the Shari'a with the definition given above, includes child labour, forced marriage, orphan maltreatment, etc.

## **HOW DOES CHILD ABUSE OCCUR**

The occurrence of Child Abuse may be due to many reasons, some of which are ignorance, unwanted pregnancy, preference of a particular child (e.g. male to female) the Child's refusal to do a particular act, poverty etc.

### **Sexual Abuse:**

This is where a child especially the girl child's sexual right is undermined either by her guardian or any other person.

Ordinarily, under the Shari'a there is nothing like sexual abuse especially of a girl child because of the provisions the Shari'a has made for a girl child. However, where this occurs it is a serious crime, which the accused or perpetrator, if found guilty and convicted, attracts a severe penalty under the Shari'a.

Today, due to the level of moral decadence in our society, many girl children are often sexually abused, this at times leads to unwanted pregnancy, sexually transmitted infections and possibly, HIV/AIDS.

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<sup>1</sup> Collins concise dictionary 4<sup>th</sup> (ed) p.255

Furthermore, sexual abuse may also result from the parents' non-challant attitude and negligence.<sup>2</sup> This is because a child, especially the girl child is supposed to be properly educated, dress modestly, and she is not supposed to hawk or be sent to the market to sell, which is often the case this day. The prophet says in respect of a girl child –

***“One who is tried with daughters and treats them well and that they will become his shield from fire”***

It has been observed that today children are often abused sexually as there are a large number of them involved in the industry, particularly prostitution<sup>3</sup>. Article 34 of the Children's Rights Convention prohibits sexual exploitation and abuse of children, while article 19.1 in the same vein protects a child against all forms of physical or mental violence, injury, abuse, neglect or negligent treatment, maltreatment or exploitation, and sexual abuse.

Sexual abuse may also be caused by forced marriage, which is very wrong under the Shari'a. The father can marry his daughter to a righteous man once she gives her consent, but where she refuses, the marriage stands dissolved.

The prophet says:

***“A matron (divorcee) should not be given in marriage except after consulting her and a virgin should not be given in marriage except after her permission is sought...”***

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<sup>2</sup> Due to ignorance, parents often send their girl-children to hawk in the market, street, and do housemaid. These at times lead to child labour, child and sexual abuse.

<sup>3</sup> Children at work: Valentina Forasteri: International Labour Organization Publication: Geneva 1999. P.53

It was based on the above saying that the prophet annulled a forced marriage during his lifetime. The reason for annulling the marriage was to save the girl from being sexually and physically abused by the would-be husband, who may want to exercise control over the girl as husband, which would be resented, by the girl.

### **Child Labour:**

A child, especially the girl child is not supposed to be sent to work either as a maid, or to hawk in the street, sell in the market, or be put under someone's guardianship in exchange for money or loan.

Under the Shari'a poverty is not an excuse for abortion or killing a child, and once the child is born it must be properly taken care of. Child labour is not only a crime against the child, but also against the state, and it is punishable. This is why the parents especially the father have been commanded to cater for their children. It is not the duty of the child to assist its parent in the provision of money for its training.

The prophet says:

*"...Let charity begin at home, because the child says: You have to feed me or to whom do you abandon me?"*

However, where the man fails to perform his duty by maintaining and training his child, the duty falls on the mother as the holy prophet permitted Umm Salamah to take care of her children, rather than their becoming social miscreants and nuisances to the society. This is because both parents will be held accountable for what they have been commanded to do, but neglected.

The prophet says:

*“Every one of you is a steward and is accountable for what is committed to his charge... a man is a steward in respect of his household, a woman is a steward in respect of her husband’s house and his children...”*

According to Valentina “In the modern world today it has been found that many children are not only in the sex industry and prostitution, but are also in bounded labour and child trafficking, with about 1 million-child prostitutes under the age of 18 worldwide, and this even is a guesstimate”<sup>4</sup> Similarly, it has been found that children are often the victims of occupational accidents, which is said to be in about 1 in 5-10 yearly.<sup>5</sup>

### **Force/ Early Marriage:**

Can a girl child be married to someone because of money, or without her consent and without education? Shari’a frowns at this attitude; some scholars said that if a girl is given in marriage either by her father or grand father without her consent she couldn’t repudiate the marriage. Others postulate that any body that gives a lady in marriage without her consent, she has the right to repudiate the marriage.

A girl child should be properly educated, properly trained in morals and manners, and not to be married to somebody against her wish, and where this is done she can repudiate the marriage.

The prophet says:

*”A matron (divorcee) should not be given in marriage except after consulting her and a virgin should not be given in marriage except after her permission ...”*

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<sup>4</sup> Ibid pp.53-54

<sup>5</sup> Ibid p. 56

*According to Maulana Abu Ala Mawdudi, the ruling that a minor (girl) is under the inexorable thumb of the father or the grandfather and has no right, on attaining majority, to disprove of the marriage tie, solemnized by her father has no support from the Quran or any Hadith<sup>6</sup>. This is in sharp contrast as observed in some quarters that forced marriage enjoys the legal backing of Shari'a<sup>7</sup>*

The prophet {SAW} said the permission of a lady must be sought before giving her in marriage, and once she disapproves such a marriage, it becomes invalid, unlike the belief that under the Shari'a the father has the right to give her daughter in marriage regardless of her age and without her consent.<sup>8</sup> Muslim jurists aver that nobody could prevent a lady from marrying a man of her choice except those within the prohibited degree

**Quran2: 221** says: “...*And give not your daughter in marriage to Al-Mushrik {idolater} till they {idolater} believe {in Allah alone} and verily, a believing slave is better than a free Mushrik, even though he pleases you...*”

A lady whose permission is sought to be given in marriage but withholds her consent cannot be forced or compelled to marry a man who is not her choice, otherwise the marriage will crumble. According to Dr Saalih ibn Ghaahim Al-Sadlaan, one of the causes of marital problems is forcing a young lady to marry a man that she has no fondness for, or to someone she is not pleased with. The father or the guardian

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<sup>6</sup> Abul' Ala Maududi: The Laws of Marriage and Divorce in Islam: Islamic, Book Publishers: p.

<sup>7</sup> Beast of Burden: Theresa Akumadu: The Women's Right Project, Civil Liberties Organization 1998 p. 19

<sup>8</sup> Reproductive Rights 2000: Center For Reproductive Law and Policy: New York p.52

of the lady does this, not because of any legal backing, but for economic gains, personal benefits, or custom.<sup>9</sup>

From this it should be noted that forced marriage is totally prohibited by the Shari'a and those who do it, either based on custom as pointed out above, or act recklessly disregarding their limits as the Shari'a permits the father to give his daughter in marriage, which is called the power of *Ijbar*. However, this power or right is subject to the approval of the daughter, and once she withholds her consent, she can not be forced otherwise, else the marriage will be null and void.

However, giving a girl in marriage at tender age though not forbidden in Islam once the girl has reached a marriageable age, or if such marriage would prevent the child from being promiscuous should not be done at the expense or jeopardy of the interest of the girl, as this is also a compulsory act under the Shari'a.

Furthermore, a father who intends to give his daughter in marriage at a tender age must be ready to bear the cost, which includes maintenance of the girl until she attains puberty. Abdul-Rahman Doi is also of the same view when he says: if the wife is a minor, she is maintained by her father or guardian.<sup>10</sup>

### **Child Orphanage:**

Who is an orphan? Under the Shari'a once a child loses its father it becomes an orphan. Who takes care of the orphan child? Anybody within the family or the mother, if she has the means to train the child. The property of the orphan child

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<sup>9</sup> Dr. Salih ibn Gaahim As-Sadlan: *An-Nushooz (Marital Discord)* p.34

<sup>10</sup> Abdul-Rahman Doi: *Women in Shari'a* Al-Hidayat Publication Somolu, Lagos p.106

should be kept as a trust and whoever takes it for personal use commits a crime.

**Quran 4:10** says: *Verily those who unjustly eat up the property of orphans they eat up only fire into their bellies and they will be burnt in a blazing fire"*

**Quran 6:152** says further." *And come not near to the orphan's property, except to improve it, until he {or she} attains the age of full strength..."*

*The prophets said eschew the seven fatalities ...devouring the property of the orphan".*

*The only way a guardian is permitted to use the property is as an investment on behalf of the orphan.*

**Quran 2: 220** says: "And they ask from thee concerning the orphans say: The best is to work honestly in their property and if you mix your affairs with theirs, then they are your brothers. And Allah knows him who means mischief from him who mean good..."

However, where the orphan child is a girl, such a girl should not be married with force in order to take over her property, except where the man will be just with her.

**Quran 4:3** says:"And if you fear that you shall not be able to deal justly with the orphan girls then marry (other) women of your choice..."

This verse abrogated the practice of the Arabs who married orphan girls whose late parents were rich and had left vast estates for these girls to inherit. After the consummation of the marriage the husband will divorce the girl and claim the property as his own, as the girl will be forced to leave the matrimonial home without being allowed to take any of her property.

**Quran 4:2 says further" *And give unto orphans their property and do not exchange (your) bad things for (their) good one; and devour not their substance (by adding it) to your substance surely, this is a great sin"***

The orphan should be treated with kindness and should not be deprived of his right of inheritance .

The prophet [SAW] says:

***"Allah, I declare sinful any failure to safeguard the right of two weak ones an orphan and women"***

Anybody that treats an orphan with cruelty and harshly is regarded as a sinner and an evildoer

*Quran: 107: 1 – 2 say:*

***"Have you seen him who denies the recompense? That is he who repulses the orphan (harshly)."***

Training and maintenance of an orphan is meritorious and rewardable that whoever takes the pain and burden of training an orphan will be rewarded spiritually this is why the prophet [SAW] said:

***" I and the person, who looks after an orphan and provides for him, will be in paradise like this, putting his index and middle fingers together."***

## **RIGHT OF A CHILD**

A child is taken care of right from the first day it was conceived in its mother's womb (i.e. as a foetus) and once conceived, abortion becomes illegal, especially at the 4<sup>th</sup> month, this is the view of the Muslim jurists who averred that the fetus also has right to life, and that the Quran had warned against killing one's children.



The father cannot use poverty as an excuse for abandoning his children under the Sahari'ah, according to Maliki, once implantation has taken place in the ovum and is 40 days, abortion is illegal but, according to majority view, abortion would not be illegal, unless the pregnancy is 4 months old.

**Quran 17: 31** States: *“Do not kill children for fear of want we shall provide for them as well as for you, surely the killing of them is a great sin”.*

According to Abdur-Raliman Doi-, Islam forbids abortion completely in family planning, and it is considered a murderous crime<sup>11</sup>.

In order to ensure the survival of a child as a foetus, Shari'a makes it mandatory (*Wajib*) for the would be father to take proper care of his wife during pregnancy, even if he has divorced the woman.

**Quran 65:6** States

*Let the woman in “Iddah live in the same style as you live, according to your means. Trouble them not in such away as to make things difficult for them. And if they are pregnant, then spend your substances on them until they deliver (the baby)—.”*

The reason for this is that the foetus has right to life: according to some jurists it can inherit or be inherited once successfully delivered. After a successful delivery the maintenance of the child and its mother continues, this being an obligatory act on the father until the child is weaned, or upon attainment of puberty.

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<sup>11</sup> Abdur- Rahman Doi: Women in Shari'a: Al-Hidayat PublicationCentre: Somolu, Lagos p.133

**Quran 2:233** states:” *Mothers shall suckle their child for two whole years, but the father of the child shall bear the cost of the mother’s food and clothing on a reasonable basis...*”

However, if the man has divorced the woman, he will still maintain the child by paying maintenance allowance to the mother.

**Quran 65:6** states:

”— *And if they give suck your children for you, give them their due payment, and let each of you accept the advice of the other in just way. But if you make difficulties to one another, then some other women may give suck for him {the father of the child}.*”

According to the verse, if the mother cannot breastfeed the baby, may due to circumstances beyond her control, or they could not reach a compromise in respect of the allowance to be paid to the mother for breastfeeding the child after the couple have been divorced, it is the duty of the father to provide for a wet nurse or other means with which the child can be fed.

The Muslim jurists of all schools of Islamic jurisprudence agree in accordance with the Quran and the Sunnah that it is *wajib* {obligatory} on the father to maintain his children and their mother. While supporting the jurists, Abdur-Rahman Doi says, that it is the duty of the husband to maintain his wife, even if the wife happens to be rich or wealthy, unlike what obtains in the western countries nowadays. The husband should supply his wife and children with food, clothes, medicine and shelter other essential services according to his means and standard of living.<sup>12</sup>

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<sup>12</sup> Abdur-Rahman Doi: *Women in Shari’a*: Al-Hidayat Publication Centre: Somolu, Lagos p.

A child is entitled to be educated morally, religiously, and socially. The prophet says: Acquisition of knowledge is compulsory for Muslim male and female.

The prophet went further by laying emphasis on educational and moral upbringing of a girl child

***“He who brings up two girls through their childhood will appear on the day of judgment attached to me like two fingers of a hand”.***

Muslim jurists agree that nothing should hinder the educational rights of a child, until such a child comes of age (i.e. puberty)

A child also has a right to inherit either from its mother or father, the woman as mother has been given the duty of training her child, and on no account should any other duty conflict with or take this duty away from her, otherwise she will be liable

The prophet says: ***“Everyone of you is a steward and is accountable for what is committed to his charge... a man is a steward in respect of his household, a woman is a steward in respect of her husband’s house and his children...”***

In the same vein commenting on the rights of a child, Abdel Rahman Omran said there were ten cardinal rights of a child in Islam and they are as follows.<sup>13</sup>

1. The right to genetic purity
2. The right to life
3. The right to legitimacy and good name
4. The right to breast-feeding, shelter, maintenance and support, including health care and nutrition.

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<sup>13</sup> Abdel Rahim Omran: Family Planning in the legacy of Islam: Routledge, London/ New York p.32

5. The right to separate sleeping arrangement for children.
6. The right to future security.
7. The right to religious training and good upbringing.
8. The right to education, and training in sports and self-defense.
9. The right to equitable treatment, regardless of gender or other factors.
10. The right to that all funds used in their support comes from legitimate sources.

All these rights as enumerated by Abdel Rahim have basis from the Glorious Quran, the Sunnah, as well as the consensus opinion of the scholars.

Similarly, it has been observed that girls are often discriminated against, whereas article 2 of the UN convention on the right of the child prohibits discrimination against children on whatever ground. It is said that many societies prefer male to female child and girls are less valued than boys for cultural, religious, social, and economic reasons<sup>14</sup> UNICEF reports that of the children enrolled in the primary school boys are 10% more than girls, while in secondary school it is 30% more boys than girls in many of the African/Asian countries.<sup>15</sup>

## **ABORTION**

This is the operation or procedure to terminate a pregnancy before the fetus is viable either by spontaneous means or induced expulsion of a non-viable fetus from the uterus

### **Causes For Abortion**

1. Rape

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<sup>14</sup> A Girl's Right to Development, Equality and Peace: The international save the children alliance: p.9

<sup>15</sup> *ibid*

2. Life of a pregnant woman in danger
3. Self induced abortion
4. Complications

### **View of the Muslim Jurists:**

Muslim jurists view abortion as a punishable crime. It is agreed upon virtually by all the jurists that once abortion occurs, those responsible should pay *Diyya* (blood money) to those that will inherit the foetus.

For instance, if a husband beats his wife, and she miscarries he will be liable to pay *Diyya* (blood money) to those that will inherit the foetus like the mother, brother or sister, but excluding the man (i.e. the husband whose beating induced the abortion).

If abortion is induced by a doctor intentionally, the jurists are of the view the doctor pays *Diyya* (blood money) to the relation of the foetus but if unintentional, then *Diyya* will be paid by his relation (i.e. Doctor's Relation) to the family of the foetus.

However, in a situation where the abortion is induced by the woman herself, she will pay blood money (*Diyya*) to those entitled to the foetus, excluding herself.

### **Is Abortion Permissible Under The Shari'a?**

Despite the fact that abortion is seen as a crime, under the following situations abortion will be legal because of the Shari'a principle that says "*Necessity abrogates illegality.*"

#### **1. Life of existing child in danger:**

It is agreed by jurists that a child that is being breastfed, who cannot take anything except breast milk, should another pregnancy threaten its life; abortion will be permitted because the child's life is more important than the foetus.

## 2. A Pregnant Woman:

Whenever the life of a pregnant woman is in danger as a result of the pregnancy, jurists agree that abortion is permitted under this circumstance to save the life of the woman whose life is more important now than that of the fetus.

## 3. Rape:

According to the Muslim jurists rape is not enough to abort a pregnancy, the only way out for a victim is to do a comprehensive medical test and get herself treated before pregnancy attributable to the rape occurs.

Abul Fadil Mohsin Ebrahim says Al-Qurtubi held the view that the semen is not something definite and certain (*Yaqinan*) and that a woman may get rid of it before it settles in the womb.<sup>16</sup>

This means that if the rape victim fails to take any step before pregnancy occurs abortion will become illegal after pregnancy.

However, according to majority of the jurists once a pregnancy is four months old abortion becomes illegal. A rape victim can still avail herself of the opportunity before the 4<sup>th</sup> month of the pregnancy.

## ABORTION AS A CONTRACEPTIVE

Abortion as a means of contraceptive is strictly forbidden under the Shari'a, except as discussed above i.e. under a stringent condition

***Quran 29:31 say; "And kill not your children for fear of poverty. We shall provide for them as well as for you. Surely the killing of them is a great sin"***

<sup>16</sup>Abul Fadl Ebrahim: Abortion, birth Control and Surrogate parenting an Islamic perspective: American Trust Publication. Pp.82-83

Those who kill a foetus or child for being female, is a practice by the Arabs before Islam will be punished not only in this material life but also hereafter as mentioned by the Quran

**Quran 81:8-9** say: *“And when the female (infant) buries alive {as the pagan Arabs used to do} questioned? For what sin, was she killed?”*

The prophet {SAW} echoes the warning further when he says: *“Allah forbids for you... to bury your daughters alive”*

This verse forbids and makes a crime female infanticide for any Muslim. From the foregoing, abortion is strictly prohibited under the Shari’a, most especially when it is self-induced, except in stringent and serious cases.

The Islamic stand which prohibits abortion unless it will endanger the life of the woman or her child if she is a nursing mother, is contrary to the international treaties and other instruments which has given rights like right to physical integrity and right to decide freely (e.g. article 4 of Banjul charter and article 16{1}{e} of women’s convention), based on these provisions it has been said that women should be allowed to freely decide when to be or not to be pregnant, or the number of, and spacing of one’s children, or in case of unwanted pregnancy, women should be allowed to decide whether or not to carry the pregnancy, since it is within the domain of private decision-making as guaranteed by article 2 of the Universal Declaration of Human Rights.<sup>17</sup>

It is said that about 41% of the world’s population live in 50 countries like China and South Africa where abortion is

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<sup>17</sup> Reproductive Rights 2000 opcit pp.25-26

*permitted without restriction, and a woman may have an abortion without any justification.*

Similarly, 21% live in 14 countries like Britain and Zambia, abortion is permitted on social and economic reasons, a woman who intends to carry out abortion will have to show that the pregnancy will cause her social and economic hardship should she carry the pregnancy to the term. While 13% live in 53 countries like Peru and Malaysia where abortion is only permitted as a necessity, especially when the pregnancy is a threat to the health of the woman. Lastly 26% live in 74 countries like Nigeria and Brazil where abortion is either permitted when the life of the woman is threatened, or abortion prohibited on all grounds in countries like Chile.<sup>18</sup>

It should be noted that the Shari'a gives value and sanctity to human life, that is why it prohibits abortion either for economic or social reasons or otherwise. This could be abused and could cause havoc to those involved, as many have lost their lives today as a result of abortion.

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<sup>18</sup> Ibid pp.27-28



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**Part Two**

**Child Neglect**

## WHO IS A CHILD

A child, according to Shari'a is a person, either a boy or a girl, who has not attained puberty. Puberty (i.e. *Bulugh*) is referred under Shari'a as the attainment of a particular age (e.g. 18 years as recognized under the Nigerian law).

The reasons for puberty under Shari'a are that, its attainment differs from one child to another. For instance, a girl child may experience menstrual discharge at the age of 12, 13 and 14 years etc. while this may be delayed in another, who may be older, and yet no changes has occurred in her physical build and sense of reasoning.

Similarly, a boy -child falls in the same category, i.e. changes in physical structure, and other biological features that may be found in an adult, once the boy possesses it he becomes an adult.

It is based on the above reasons that the prophet (SAW) said that ***"The pen has been raised for three (i.e. persons) a person who is sleeping until he wakes up; a person who is insane until he becomes sane; a minor until he reaches puberty"***. The meaning of this is that these three categories of persons cannot be guilty of any crime in their present state.

This is because it is possible a child may have mental infirmity or retardation, which may impair the child's reasoning and hinders its attainment of puberty, or results in the child having a stunted growth. This is why the Muslim jurists agree that a child who has not attained puberty cannot be punished for the commission of a crime because of this prophetic saying.



{training}, which is compulsory on the father and education, which may include moral, religious and social education. When a man (i.e.Father) fails to provide all these to his child, it amounts to child neglect.

Child neglect today is rampant not only among Muslims parents, the father may abandon the child for its mother, or where the child is a girl, he may say should he train her; the girl will take the glory to another man hence his refusal to take care of the girl. While some may force their daughter into marriage in order to avoid performing their duty on the girl, or for some economic or material gain. Today the condition of the girl child is devastating with reports showing that 2/3 of the world's illiterate people are females, also it is said that of every primary school enrollment there are 10% boys more than girls and of every secondary school enrollment it is 30%boys more than girls.<sup>5</sup>

Similarly, child neglect often forces children into child labour, as many children would want to meet up with the obligation their parents have failed to do. It is said that both boys and girls work; a factor in family survival in many countries. ILO statistics shows that 56% of all working children of between 10 and 14 years are boys, while 90% of all domestic workers are females.<sup>6</sup>

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<sup>5</sup> Ibid p.17

<sup>6</sup> Abdul Rahman Omran: Family planning in the legacy of Islam: Routledge, London. pp.32-38

## HOW DOES NEGLECT OCCUR?

Child neglect occurs in these ways:

### **Lack of Parental Care:**

The father is duty bound to maintain his family economically and socially should he refuse to make provision for his family, this amounts to neglect of his duty to which the father is answerable not only before the state, but also before Allah. This is because *nafaqah* {maintenance} is *wajib* {obligatory} on the father as this is the first duty he owes not only his child but also the family as a whole.

The prophet (SAW) said: *“Everyone of you is a steward and is accountable to what is committed to his charge... a man is a steward in respect of his household.*

Where a child becomes a nuisance, or social miscreant, or constitutes social menace, the father may be liable for his (Child's) shortcoming.

It was narrated that a man brought his child to the second caliph, Umar (RA), and said oh commander of the faithful, this my son is a thief, to which Umar asked the child why did you do that? The child replied “my father neglected me, and failed to take care of me”, Caliph Umar then told the father go and take care of your child. The father came the second time and made the same complaint and caliph Umar asked the child why? And he gave the same answer, caliph Umar then cautioned the father saying “go and take care of your child should you come with similar complaint the third time I would chop off your own hand rather than your child's.

This means that the father will be punished for the crime committed by his son, due to his (father's) neglect of the child. The child under the Shari'a has enormous rights, which are

obligatory on the parent, and according to Abdel Rahman Omran, there are ten cardinal rights of a child.<sup>7</sup>

## THE RIGHTS OF A CHILD

**These Rights of a Child are:**

### **1. Right to Genetic Purity:**

Islam does not want the father to be neglectful of this right because children are seen as a treasure and gift from the Creator Allah (SWT) and must be born without any genetic disorder. The prophet (SAW) said in a hadith quoted by Abdel Rahman Omran which was reported by Ibn Madja, that: “ *Choose where you deposit your sperm, for the line of descent is conducive.*”

It is for this reason that the would-be couple are enjoined to disclose the state of their health before entering into a marriage union, as this would tell on their children. The prophet {SAW} once said to a man who was intending to marry “have you looked at the woman you intend to marry” The man said no to the prophet {SAW}. He then said “go and look at her for the Ansar women have some spots on their face”. The would-be child must be protected from repeated consanguinity in a family susceptible to genetic disorder. The prophet {SAW} once advised a man whose family was having a genetic disorder to “marry outside your family,” as this would rectify the genetic disorder. It is an open secret that there are contagious diseases, which may be passed from either parents to their child, for instance, a woman infected with gonorrhea that is not properly cured may cause the child to be born blind, while some other STDs could result in a child having brain impairment etc.

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<sup>7</sup> Layi Erioso et al: Women Empowerment Reproductive Health:book craft Ibadan. P.31

*In the world today, HIV/AIDS is a dreaded disease that is posing a threat to human existence and one of the easiest means of transmission is sex, and an infected woman may pass it to the foetus in her womb. This is called "mother- to- child transmission", it could also be-passed during breast feeding, as well as during delivery. It is because of all these that parents must not be neglectful of their duties to their children in order for them to live a crisis free life.*

## **2. Right to life**

A child's right to life is fundamental, even right from the period of conception, which is why abortion is prohibited, except in stringent situations. Poverty or bearing of only girl-children is not an excuse for abortion, as this act is condemned by Quran 6:151 and Quran 81:8-9.

## **3. Right to equitable treatment regardless of gender or other factors:**

It is to be noted that one of the reasons for child neglect is gender, as most families prefer the boy-child at the expense of the girl-child. The prophet {SAW} says in and as quoted by Abdel Rahman Omranand, authenticated by al-Suyuti that: *"Be equitable in dealing with your children just as would like them to be equitable in dealing with you."* As explained above, female children are educationally disadvantaged, and they are often neglected due to the fact that they will be married to someone else and will assume the name of the man. D.A Adekilekun says according to Professor H.A. Karim, that there is only one female science Professor in the whole of southern Nigeria and this does not mean that women cannot make it intellectually, but because they are not given the chance.<sup>8</sup>

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<sup>8</sup> Abdel Rahman Omran opcit. P.35



#### **4. Right to education and training**

This is also a fundamental right under the Shari'a the Prophet {SAW} said that the acquisition of knowledge was compulsory for both male and female children. That of female children is said to be important, and that if the parents are neglectful, the duty falls on the husband and if the husband also fails to perform this duty, the Muslim jurists unanimously say that the wife should go out in search of the knowledge without let or hindrance by the husband.

#### **5. Right to maintenance**

This also a compulsory duty of the parents, more especially the father. Where he cannot perform this may due to death or poverty, the duty falls on the mother.

#### **6. Right to legitimacy of source of maintenance**

The parents are enjoined to provide for their children from a lawful source and not through stealing, embezzlement etc.

#### **7. Right to legitimacy and good name**

Islam frowns at parents having bastard children, which it forbids as *Zina* {adultery and fornication}, and it attracts stiff punishment for the guilty. According to the Shari'a a bastard child is only attributable to the mother and cannot inherit from the father, and this amounts to discrimination against the child who was innocent of the crime committed by its parents.

Similarly, a child must be given a good name by the parents so the child would grow up to like such name and if the name is bad the child can change such name when she/he grows up. The Prophet {SAW} said "give your child a good name, for this has effect on the child", and the Prophet {SAW} was reported to have changed some of the names of his companions bearing bad names during his life time.

### **8. Right to separate bed and room**

The prophet {SAW} said: "*instruct your children in prayer at the age of seven, punish them if they fail {to practice it} at the age of ten; and let them sleep separately from one another*".<sup>9</sup>

It should be noted that separate sleeping arrangements especially that for the girl, is important, and the parents must not be neglectful of this.

### **9. Right to future security**

The parent must ensure that right from the day the child is born, adequate provision is made for its security. Today children get missing on a daily basis and some are trafficked for prostitution and other forms slavery Muslim parents must ensure the security of their children. This also covers making adequate provision for their future needs.

### **10. Right to breast to breast-feeding and health**

The suckling and weaning period is two years, though completion of the term is not compulsory The father must be ready to bear the cost by ensuring the child receives adequate care and the health of the child must not be endangered because of the parents act. Similarly, the child must be given serious attention as far as its health is concerned, as this would enhance its growth and proper development.

### **Lack of Education**

The holy prophet (SAW) says:

*"Acquisition of knowledge is compulsory on every Muslim male and female".*

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<sup>9</sup>Dr. Yusuf Quaradawi: Status of Women in islam: p.51

Today, Muslim parents have neglected or failed to perform this duty that is *tarbiyah* {training} of their children, and this has led to increase in ignorance among the Muslim youths. However, some parents prefer to educate a boy rather than the girl-child whereas the Prophet said acquisition of knowledge was compulsory on both male and female children and going by this saying, both of them need to be properly educated without any preference.

The holy prophet was reported to have said that parents should educate their daughters and not leave them in ignorance. Similarly, Dr. Yusuf Qudarawi quoted a hadith reported by Ibn Abbass *"Whoever had a female who was not buried nor insulted by him, and had not preferred his male children to her, Allah admits him to paradise"*.<sup>10</sup>

Muslim parents should wake up from their slumber and give their children proper and adequate *tarbiyah* {training} which include moral, religious, social, and economic education. This is because these children would on the Day of Judgment pray Allah to double the punishment of their parents for their failure to properly guide them to the right path

Quran33: 67-68 states

*"And they will say: our lord, verily we obeyed our chiefs and our great ones, and they misled us from the {right} way. Our Lord: Give them double torment and curse them with a mighty curse"*

*It has been pointed out earlier that the child is often neglected by its parent especially the girl-child which account for the child girls poor attendance in school and sometimes lead to child labour.*

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<sup>10</sup> A Girl's Rights opcit p.9

## ABANDONED CHILD

This is a situation where the parents abandon their child; it may be as a result of divorce that the father abandons the child for its mother, or as a result of the wife's continuous bearing of female children or some other conflicts, which the couple are unable to resolve.

### **Quran 6:152 States**

*"And when the news of (the birth) of a female (child) is brought to any of them (i.e. fathers) his face becomes dark, and he is filled with inward grief .he hides himself from the people because of the evil of that where of he has been informed shall he keep her with dishonors or bury her in the earth? Certainly, evil is their decision".*

This verse was revealed to correct the bad notion/practice of the pre- Islamic Arab society where a woman was regarded as nonentity and once a female child was born it would either be buried alive by the father or treated with cruelty in order to avoid shame and embarrassment from the community. This practice condemned by Islam almost 14 centuries ago still abounds till today not only among Muslims but non-Muslims alike. It is reported that many societies prefer male children to female children for cultural, religious, social, and economic reasons, hence when sex-determination tests are conducted which indicate female foetuses, they will be terminated. Also mortality rates are higher in girls between zero and five years<sup>11</sup>. This attitude shows the preference many societies have for male children at the expense of the female children, which is why female children are often neglected.

### **Quran 81: 8-9 State Further**

*"And when the female (infant) buried alive shall be questioned for what sin was she killed". Islam not only condemned this practice but also made it a crime.*

The father has no right to either neglect or abandon his child for its mother. Where he has divorced the woman and she is a nursing mother it is incumbent upon the father to provide for their maintenance until the child is weaned

**Quran States: 65:6**

*“Lodge them {the divorced women} where you dwell, according to your means, and do not harm them so as to straiten them {that they be obliged to leave your house} and if they are pregnant then spend on them till they lay down their burden. Then if they give suck to the children for you, give them their due payment, and let each of you accept the advice of the other in a just way. But if you make difficulties to one another, then some other women may give suck for him {the father of the child}.”*

According to Abdul-Rahman Doi, maintenance of wife and children by the husband continues even in divorce, this means he cannot abandon his child or wife on whatever ground but according to the law, nor can he treat her unfairly or with cruelty.

**Quran 2:233 says**

*“...No mother shall be treated by unfairly on account of her neither child nor father on account of his child, and they shall be chargeable in the same way”.*

Shari'a provides that a child is weaned at two years, and it may be less or more, according to Muslim jurists.

**Quran 2:233 States:** *“The mother shall give suck to their children for two whole years”*

In this regard, it is a sin for a mother to abandon her child, even in the case of divorce; custody of a child is given to the mother, so long as she does not remarry.

*From the foregoing, child neglect can also come from the mother in a situation where she leaves or abandons her primary duty, which is to take care of her matrimonial home and train her children.*

*The prophet (SAW) is reported to have said: "Everyone is a steward and is accountable for what is committed to his charge... a man is a steward in respect of his household, a woman is a steward in respect of her husband's house and his children".*

Muslim jurists all agreed that under the Shari'a, the duty of the husband and the wife have been divided; while the husband's duty is to maintain his family, the wife has been charged with a domestic role the training of her children, and seeing to their well being..

However, modern socio-economic challenges have contributed to child neglect, as both men and women seek for greener pasture. The child is often abandoned with little or no care, and adequate training, while both parents are in search of economic affluence.

It should however be noted that economic rights of women are guaranteed under the Shari'a, and they are allowed to seek for it within the limit permitted by the law, but where this right is inconsistent with her primary duty, the primary duty prevails.

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## **ABOUT WACOL**

**Women's Aid Collective (WACOL)** is a non-governmental, non profit making organization registered as a company limited by guarantee with Corporate Affairs Commission (No. RC. 388132) and has an observer status with the African Commission on Human and People Rights. WACOL is committed to promoting human rights of women and young people. We are gender conscious and work towards gender equality and human rights for all. Our vision is a society free from violence, all forms of abuses, where human rights of all, in particular women and young people are recognized in law and practice.

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