AN ANALYSIS OF THE APPROACH OF *SHARI'AH* COURT JUDGEMENTS TO THE DISSOLUTION OF MARRIAGE AND ITS IMPACTS ON THE LIFE OF MUSLIMS IN KADUNA STATE

BY

AINAU TANKON MAMA
MED/EDUC/2280/2011-2012 ISLAMIC STUDIES
P16EDAS8215

SUPERVISORS:
DR. MUHAMMAD YAHYA
PROFESSOR F.S.M KOYA

FACULTY OF EDUCATION
DEPARTMENT OF ARTS AND SOCIAL SCIENCE EDUCATION
(ISLAMIC STUDIES SECTION)
AHMADU BELLO UNIVERSITY,
ZARIA

AN ANALYSIS OF THE APPROACH OF SHARI'AH COURT JUDGEMENTS TO DISSOLUTION OF MARRIAGE AND ITS IMPACTS ON THE LIFE OF MUSLIMS IN KADUNA STATE

BY

Ainau TANKONMAMA
N.C.E 1998, B.ED ISS (ABU) 2005
MED/EDUC/2280/2011-2012
P16EDAS8215 ISLAMIC STUDIES

A DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILLMENT OF THE REQUIRMENTS FOR THE AWARD OF MASTER DEGREE IN EDUCATION (ISLAMIC STUDIES), DEPARTMENT OF ARTS AND SOCIAL SCIENCE EDUCATION, FACULTY OF EDUCATION, AHMADU BELLO UNIVERSITY, ZARIA, NIGERIA

DECLARATION

I declared that this research work titled "An Analysis of the Approach of *Shari'ah* Court Judgments to Dissolution of Marriage and its Impacts on the Life of Muslim in Kaduna State has been written by me. The information derived from the literature has been duly acknowledged in the text and list of references are provided.

_____ _____

Aina'u TANKONMAMA **Date**

CERTIFICATION

This thesis entittled "An analysis of the Approach of *Shari'ah* Court Judgments to Dissolution of Marriage and its Impacts on the Life of Muslims in Kaduna State by Ainau Tankonmama meets the regulation governing the award of the degree of Masters in Islamic Studies (M.Ed) of Ahmadu Bello University, Zaria and has approved for its contributions to knowledge and literay presentation.

_____ _____

Dr. M.Yahya
Chairman, Supervisory Committee

_____ _____

Prof. F.S.M Koya
Member, Supervisory Committes

_____ _____

Dr. A. Dalhatu
Head of Department

_____ _____

Prof. Z.S. Abubakar
Dean, School of Postgraduate Students

DEDICATION

This work is dedicated to my late father, Alhaji Tankonmama, my mother Hajiya Abu, my children and the entire Muslims *Ummah*.

ACKWOLDGEMENTS

All praises are due to the Almighty Allah for His infinite mercy and for given me the opportunity to complete this work. I wish to acknowledge the contributions of my supervisors, Dr. Muhammad Yahya and Professor F. S. M. Koya for their guidance, suggestion and advices that brought to a successful completion of this research work. I am specifically indebted and grateful to my Head of section, Dr. Muhammad Yahya. Similarly, my profound gratitudes also go to Dr. Abdullahi Dalhatu, Head of Department of Arts and Social Science Education, Professor A. A. Ladan, Dr. Abubakar Shika, Dr. Adamu Aliyu, Dr. A. A. wakili, Dr. Abubakar M. S. Birnin Kudu, Dr. A. l. Lamido, Mal. Abubakar Sabo Yusha'u, Mal. Lawal A.Tambaya, and Mal. Abdullahi Danyaro Murtala Ibrahim,Yahaya Jafar Shika, all from Islamic Studies Section of Department of Arts and Social Science Education for their guidance and advices.

I equally wish to acknowledge the support of My Internal superviser Dr (Mrs R.T.Umar and Dr Abdullahi Muhammad whose support and guidance helped in perfecting this work. Similarly, my children deserve mentioning for their patience, endurance contributions and advices offered to me during the period of my studies.

I am also indebted to those who responded to my questionnaire and gave me audience during the collection of Data to this research. I wish all Allah's guidance and blessings in this life and in the Hereafter.

ABSTRACT

This research work entittled "An analysis of the approach of Shari'ah court Judgements to dissolution of marriage and its impacts on the life of muslims in kaduna state" aimed at evaluating the problems and challenges of marriage, in Shari'ah court in Kaduna state, assessing the factor responsible for deterring reconciliation of marriage cases at home without going to the court, and to explain the general implications of termination of marriage by court. In order to attain the stated goals, the research adopted the descriptive survey method using questionnaires, and observations as tools of collecting information. A total of six hundred (600) questionnaires were distributed in some selected local governments within the three political zones of Kaduna state. Therefore, the selected local governments in Zone" A" is Zaria from zone 'B' Kaduna from zone 'C' Kachia. The questionnaire was distributed between three (3) categories of respondents' i.e court, Spouses and Public respectively. The five hundred and twenty (520) out of distributed questionnaire were successfully retrieved; the opinions of the respondents were gathered analyzed and presented with the use of Frequency tables and percentages. In respondent's Bio-data, while Z and T test were used in testing research hypothesis, More ever; the research find out the following : 1- When there is no possibility of reaching compromise between the marriage couple, according to majority of the respondents is the main reason that influence the court decision the fear of one party harming the other party- Majority of the public respondents do not consider intervention of court marriage cases will bring about peace in the marriage life of the couple - The impact between the spouses and their partner after dissolution of their marriage is not cordial. Lastly; the researcher call on the Spouses, courts judges and general public with the Following words - Spouses should endevour to solve their marriage crisis instead of reporting every problem to their parents or going to the courts.- The court should strictly base their judgement and report on sharia ruling and never allowed biasness or unnecessary intervention from any angle to interfere with their decision..

TABLE OF CONTENTS

Title page .... ……ii
Declaration.....iiii
Certification iv
Dedication.....v
Acknowledgements.....vii
Abstract.....viii
Table of content viii
Operational Definition of Terms…….x
Abbreciation……..xii

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study 1
1.2 Statement of the Problem.....5
1.3 Objectives of the Study.....7
1.4 Research Questions.....7
1.5 Research Hypothesis.....7
1.6 The Significance of this Study.....8
1.7 The Scope/ Delimitation of the Study.....9

CHAPTER TWO

REVIEW OF RELATED LITERATURE

2.1 Overview of Kaduna State.....10
2.2 Concept of Divorce in Shari'ah 12
2.3 Breach of Marriage Agreement *(Shiqaq)* 15
2.4 Legal Position of Divorce 16
2.5 Validity of Talaq.....17
2.6 Forms and Procedures of Dissolution of marriage 20
2.7 Types of Dissolution of marriage through *Tafwid*.....25
2.8 Distinction between *Tafwid* and *Tawkil*.....31
2.9 Annulment or Abrogation of Marriage *(Faskh)*.....32
2.10 Forms and Procedure of *Talaq* 34
2.11 Dissolution of Marriage by Mutual Consent 39
2.12 Period of Waiting *(Iddah)*.....41
2.13 The Kinds of period waiting (*Iddah)* 43
2.14 Awaiting period for unmarried women (*Istibra'i)*…… 45

2.15 Code of Conduct for a Woman in *Iddah*.....45
2.16 Treatment of Divorce Women during waiting period (*Iddah*).....47

CHAPTER THREE

METHODOLOGY

3.1 Research Design.....49
3.2 Population of the study 49
3.3 Sample and Size Sampling Techniques 50
3.4 Instrument for the Data collection 51
3.5 Procedure for data analysis 52

CHAPTER FOUR

PRESENTATION AND **DATA ANALYSIS**

4.1 INTRODUCTION 53
4.2 General Public Analyses..... 63
4.3 Analysis of Spouse Respondents 67
4.4 Impact of Shari'ah Courts Judgement on the Life of Muslims 75
4.5 Resuts and Findings..... 80

CHAPTER FIVE
SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary …….....84
5.2 Recommendations.....85
5.3 Conclusions.....86
5.4 Suggestions for Further studies.....86

BIBIOGRAPHY 87

APPENDIX.....89

OPERATIONAL DEFINITION OF TERMS

- **Amruki Biyadiki:** Your affair is in your hand
- **Aqil:** sane (person with a sound brain, not mad or mentally ill).
- **Baligh:** Matured person
- **Bid'ah:** Innovation
- **Da'wah:** Islamic preaching.
- **Darar:** Separation due to harm.
- **Faskh:** A legal procedure for declaring a marriage null and void (by judge).
- **Haram:** Prohibitation to offer divorce during wife menstruation cycle
- **Iddah:** Waiting period of a divorce woman
- **Ila':** Swearing to Allah by the husband not to hold sexual affairs with his wife.
- **Isar:** When the husband is in a difficult situation and he cannot fulfill his wife's obligation.
- **Istibra'i:** Awaiting period for unmarried women.
- **Ikhtariy Linafsiki:** Choose yourself (husband command)
- **Kafa:** compatibility or equality of status.
- **Khul:** A process of termination of marriage by a wife
- **Li'an:** Accusation of wife with zinah (adultery) by the husband
- **Mahzur:** forbidden that is a state of divorcing a wife in her monthly period
- **Makruh:** Disapproved
- **Mithaq:** Solemn convent
- **Mukhtar:** The freedom to decide what should be done in a particular situation
- **Nifas:** Menstruation after given birth.
- **Rajah:** Return that is reconciliation after divorce

- **Shiqaq:** Marital disagreement.
- **Tafwid:** Vesting the power of divorce to the wife by the husband.
- **Tafwid munajazz:** Unconditional delegation
- **Tahir:** Purity
- **Talaq Ba'in:** Irrevocable divorce
- **Talaq:** Divorce
- **Tawkul:** Delegation of power by wife or by some one.
- **Wajib:** Obligatory
- **Zihar:** The dissolution of .marriage in the situation where by the husband describes his wife as his mother.

ABBREVIATION

ANOVA	Analysis of Variance
CH	Chapter
L.G.	Local government
N.D	No date
NO	Number
PPMC	Peason Product moment correlation
Q	Qur'an
R.A	Radiyallahu Anhu
S.A.W	Sallallahu Alayhi Wassalam
S.W.T	Subhanahu Wa Ta'alla

CHAPTER ONE
INTRODUCTION

1.1 Background of the Study

In the name of Allah, the Most Beneficent, the Most Merciful. All thanks be to Allah (S.W.T) for his ultimate guidance. May the peace and blessings of Allah (S.W.T) be upon the seal of Prophets, Muhammad (S.A.W), his household and Companions. The religion of Islam is guided by rules and regulations (Shari'ah). The rules and the regulations serve as the basis of the religion and hence means of compliance to the conditions of faith. Thus, deliberate deviation from the said rules is tantamount to crime and invitation to the wrath of Allah (S.W.T).

The position of women was very degrading in the Jahiliyyah period before the coming of Islam. Indeed, it was a period when females were considered as a tool for entertainment and hence they can be discarded and embraced back at wish. Plurality of wives was the order of the day, women were generally denied the right to inherit from what their father left, and were also regarded as a property to be inherited. Thus, the women in pre-Islamic era had no status. Abdul rahim, (1992).

Likewise, in the *Jahiliyya* period before Islam, the Arabs used to divorce their wives at any time, for any reason, or without absolutely any reason whatsoever, they were also in the habit of revoking the divorce, and divorce again as many times as they liked. They could, if they were so inclined, swear by one of their idols that they would have no intercourse with their wives, though still living with them. They could arbitrarily accuse their wives of adultery, dismiss them and leave them with such notoriety as would deter other suitors, while they, themselves would go exempt from any formal responsibility of maintenance or legal punishment. The following narration from Imam Malik, in his Muwatta, has illustrated the situations, prevalent in the early days of Islam coming down from *Jahiliyyah* period:

وَحَدَّثَنِي عَنْ مَالِكٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، أَنَّهُ قَالَ كَانَ الرَّجُلُ إِذَا طَلَّقَ امْرَأَتَهُ ثُمَّ ارْتَجَعَهَا قَبْلَ أَنْ تَنْقَضِيَ عِدَّتُهَا كَانَ ذَلِكَ لَهُ وَإِنْ طَلَّقَهَا أَلْفَ مَرَّةٍ فَعَمَدَ رَجُلٌ إِلَى امْرَأَتِهِ فَطَلَّقَهَا حَتَّى إِذَا شَارَفَتِ انْقِضَاءَ عِدَّتِهَا رَاجَعَهَا ثُمَّ طَلَّقَهَا ثُمَّ قَالَ لاَ وَاللَّهِ لاَ آوِيكِ إِلَىَّ وَلاَ تَحِلِّينَ أَبَدًا . فَأَنْزَلَ اللَّهُ تَبَارَكَ وَتَعَالَى:(**الطَّلاَقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ**) فَاسْتَقْبَلَ النَّاسُ الطَّلاَقَ جَدِيدًا مِنْ يَوْمِئِذٍ مَنْ كَانَ طَلَّقَ مِنْهُمْ أَوْ لَمْ يُطَلِّقْ . إمام مالك: موطأ باب جامع الطلاق (29)

Related as from Malik from Hisham ibn Urwa that his father said, "It used to be that a man would divorce his wife and then return to her before her idda was over, and that was alright, even if he divorced her a thousand times. The man went to his wife and then divorced her and when the end of her idda was in sight, he took her back and then divorced her and said, 'No! By Allah, I will not go to you and you will never be able to marry again.' Allah, the Blessed, the Exalted, sent down, 'Divorce is twice, then honourable retention or setting free kindly.' People then turned towards divorce in a new light from that day whether or not they were divorced or not divorced." Imam Malik: V1:1247

Islam makes divorce obtainable by mutual consent or by the interference of the court on behalf of the wronged party. Thus, the religion stands firmly on guard for morality and human dignity. It does not force a person to suffer the injustice and harm of an unfaithful partner. It does not drive people to immorality and indecency. The Qur'an Instructed the believers that either you live together with your wives as dictated legally and happily or else you separate in a dignified and decent way. The Qur'an states:

وَإِذَاطَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِتَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوًا وَاذْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ يَعِظُكُمْ بِهِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ

And when you divorce women and they have (nearly) fulfilled their terms, either retein them according to acceptable terms or release them accourding to acceptable terms, and do not keep them, inted to harm to transgressAnd whoever does that has certainly wrong himself. And do not take the verse of Allah in jest.And remember the favour of Allah upon you and what has been revealed to you of book (i.e, the prophet,s sunnah) by which He instruct you. And fear Allah and know that Allah is knowing of all things. Q2:231

What is morally and humanly most remarkable about Islam in this respect is that it does not force any person to lower his or her dignity and degrade his morality just to obtain a divorce. It is not necessary for a Muslim to "separate" from his or her partner some years before divorce can be granted.

Aishah (R.A) narrated that a man used to divorce his wife at his will, and took her back at his will even though she was in *iddah, and* even if he divorced her hundred times or more. Doi (1984: 183). Similarly, the story was the same with that of the Romans who possessed the power to put his wife to death for committing an act like drinking wine and the wife had no right to sue for a divorce and, if she solicited separation, her temerity made her liable to punishment. (Gibbon 2006:12). Christianity has a unique system of divorce. It opposes the Jewish religion and declared divorce as unlawful, mainly attributed to the teaching of Jesus Christ. It went so far as declaring unlawful the second marriage by the person who divorce his wife as well as the women who was divorced by him earlier. The following quotation from Mathew -5:31-32 has been said:

> *whosoever put away his wife, let him give her writing of divorcement: but I say unto you, that whosoever shall put away his wife, saving for the cause of fornication, caused her to commit adultery: and whosoever shall marry her that is divorced committed adultery.*

However, with the advent of Islam it regulates the system of divorce by limiting it to three repudiations divorces at intervals. The husband has the right of revoking the divorce in the first two as long as her waiting period has not expired but has no such right after the third divorce. The Qur'an commands:

الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Divorce is twice. Then (after that), either keep (her) in an acceptable manner or release (her) with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not able to keep (within) the limit of Allah. But if you fear that they will not keep (within) the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limit of Allah, so do not transgresses the limits of Allah-it is those who are the wrongdoers (I,e, that unjust) Q;2;229

However, divorce in Islam remains a remarkable principles. Mates are commanded by Allah to be kind and patient and are reminded of how one may dislike something in one's mate but most likely Allah (s.w.t) has placed much good and virtue. The Qur'an states:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرْهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا)

O you who believe, it is not lawful for you to inherit women by compulsion. And do not make difficulties for them in order to take (back) part of what you gave them unless they commit a clear immorality(ie, adultery).and live with them in kindness .for if you dislike them-perhaps you dislike thing and Allah makes therein much good Q;4;19

Equally Abu Huraira (Allah be pleased with him) reported Allah's Messenger (ﷺ) says;

لاَ يَفْرَكْ مُؤْمِنٌ مُؤْمِنَةً إِنْ كَرِهَ مِنْهَا خُلُقًا رَضِيَ مِنْهَا آخَرَ "أَوْ قَالَ " غَيْرَهُ مسلم **(18)** باب الْوَصِيَّةِ بِالنِّسَاءِ.

A believing man should not hate a believing woman; if he dislikes one of her characteristics, he will be pleased with another .Muslim:1431A.H..461 Chapter: (18) Advice with regard to women

Husbands therefore, are assured Allah's help if they mean well with their marriage and stay in accordance to the dictate of Shari'ah. But if they must part by divorce, it is to be sought without intent of injury or harm. If they part gracefully and honorably, Allah (s.w.t) assures them of enrichment of his all-reaching bounty. The Glorious Qur'an states:

(وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلًّا مِنْ سَعَتِهِ وَكَانَ اللَّهُ وَاسِعًا حَكِيمًا

But if they separate (by divorce) Allah will enrich each (of them) from his abundance. And ever is Allah encompassing and wise.
Q4:130

The whole marital context, from beginning to the end, is centered around and oriented on the belief in Allah (S.W.T). The verses dealing with divorce are not dry legal stipulations; they commence and conclude with moral exhortations of high order. The moral commitments of the parties extend far beyond the divorce date. Indeed, the entire question is so incorporated into a highly moral system that divorce is rightly regarded as a moral act in the main.

Divorce is part of life from the negative and hateful side having its type causes, period, stage and categories and other law. All these are fully explained in the Qur'an and Sunnah as well by scholars.

Islam has strong guidance to dispute resolution that will help to resolve complete disputes surrounding marriage and divorce. It is also important to keep in mind that although divorce is permissible but it is not encouraged. The Prophet (S.A.W) says:

أَبْغَضُ الْحَـلاَلِ إِلَى اللهِ تـعَالَـى الطَّـلاَقُ

> *The most abominable lawful, act (halal) in the sight of Allah is divorce; Abu Daud (Vol 2:No,6176:432.)*

Couples are strongly enjoined to pursue possible remedies whenever their marriage are deeply challenged. Islam treats divorce as something that is not recommended but permitted only when mutual good treatment is not possible and all reconciliation and mediation efforts have been exhausted. Of course the complexity nature of marriage could demand the intervention of court either to create atmosphere for reconciliation or terminate the continuation of marriage based on the necessity. In view of this, this research is designed to view the activities of Shari'ah courts in Kaduna state in relation to separation of marriage.

1.2 Statement of the Problem

The basic aim of marriage in Islam is to seek for the pleasure and acceptance of the Creator, Allah (S.W.T). Therefore, marriage as an act of Worship (Ibadah) is a medium through which love and peaceful coexistence is promoted among members of community. However, when there is breach of trust and love among the marriage couples, there will be a threat to either party in marriage and hence if reconciliation failed in such situation it will be better if the marriage is separated.

The challenges in marriage in the contemporary period appear to be severe, and hence in some cases it requires the intervention of courts. The courts in some situations nullify the marriage even when it is against the wish of either of the couples, mostly the husband. However, nullifying of marriages in courts is mostly when reconciliation failed at times through the influence of external forces. In most of the marriage cases, which invited courts intervention that leads to nullification of the marriage usually faced another crisis from either of the party who may later appeal the case in a more superior courts or the crisis remain within the two families. Therefore, to what extent separation of marriage in courts could be determined as correct and free from any influence in its decision making? The proliferation of marriage cases to courts is an indication that the marriages guardians are weak or incapable in controlling the marriage of their children or there was neglect of the basic requirements of marriage such as sincere love between couples before marriage. Of course the courts have the right to terminate marriage when only the couple, have vehemently violated the Shari'ah injunctions and are not ready to take correction, but what will be the position of the marriage that is unjustly terminated by courts? Can the unjust rulings of courts be disregarded? Who is responsible to champion the course of reconciliation when the matter is taken to court? These questions emanate from the problems that the current research seeks to address.

1.3 Objectives of the Study

The main objectives of this study are:

1. To examine the concept of divorce and other forms of separation in Islam
2. To evaluate the problems and challenges of marriage, in Shari'ah court in Kaduna state.
3. To assess the factor responsible for deterring reconciliation of marriage cases at home without going to the court.
4. To explain the general implications of termination of marriage by court
5. To proffer solutions to the problems and challenges of marriage separation in Shari'ah courts in the study area.

1.4 Research Questions

The study is out to find answers to the following research questions.

1 What are the concept of divorce and separation of marriage in Islam?

2 What are the problems and challenges of marriage separation in courts in Kaduna state?

3 What are the factors responsible for deterring process of reconciliation of marriage cases at home without resulting to court/?

4 What are the general implications of marriage termination in court?

5 How can the problems and challenges of marriage separation faced by Shari'ah courts in Kaduna state be tackled in line with Shari'ah provision?

1.5 Research Hypothesis;

The current research is set with the following hypotheses

HO1. There is no significant difference between the concept of divorce in Islam and the practice of divorce in *Shari'ah* courts.

HO2, There is no significant Relationship between the concept of divorce in Islam and the conduct of divorce in court in Kaduna state.

HO3 There is no significant difference between the process of Islamic concept of reconciliation *(sulh)* and the practice of courts in Kaduna state.

HO4, There is no significant relationship between the effect of marriage separation in court and increase in the number of divorce in Kaduna state.

HO5, There is no significant relationship between sharia'h mension and challenges of marriage separation in *Shari'ah* court, in Kaduna state.

1.6 The Significance of the Study

Marriage is rationally expected to be based on love and mutual confidence among the marriage couples. This research will therefore guide the couples to resolve their cases between them or through the assistance of marriage counselors. Similarly, court judges are expected to serve as arbitrators who seek as a mission to reconcile and promote love between the disputing lovers. However, in the recent periods marriage cases are always resolved to be taken to court and some judges allowed influence in their decisions as judges. In view of this, any research that seeks to investigate and carefully study the issues of marriage approach in courts with a view to improve it will not only be of significant to reconciliation process in the courts but it will as well guide the Muslims to understand the implications of raising issues of marriage to court. In addition, it will provide a guide, on the importance of making reconciliation instead of divorcing and hence this will reduce the rate of divorcee and likely crimes as a result of broken homes,And in turn, peace will be established which will assist the government in its developmental projects.

1.7 The Scope / Delimitation of the studys

This research revolved on the approach of *Shari'ah* courts in Kaduna State to marriage separations. Kaduna state is divided into three Zones, namely, zone 'A' with 8 local governments, which are ,Zaria L.G, sabon-Gari L.G, Kudan L.G, Makarfi L.G, Ikara L.G, Soba L.G, Lere L.G,and Kubau L.G.

Zone 'B' has 7 local Governments; these are Kaduna-North L.G, Kaduna-south L.G, Igabi L.G, Chukun L.G, Giwa L.G, Birnin-Gwari L.G and Kajuru L.G.

Zone 'c' includes Kachia L.G, Sanga L.G, Jaba L.G, Jema'a'L.G`, Kagarkos L.G, Zangon kafaf L.G and Kaura L.G. and kauru L.G Respectively. However, the research was restricted to three senatorial zones; where in each of the zone ones (1) local Government was selected. The selected local government therefore includes Zaria, Kaduna and Kachia while the research covers between the periods of 2010-2016.

CHAPTER TWO
REVIEW OF THE RELATED LITERATURE

2.0 Introduction

The means of dissolution of marriage in Islamic law is a fundamental issue that every Muslim should know, however, some Muslims proved to be ignorant or misinformed. Becourse of this ignourance, many are forced to live miserable life in their marriage because they are unaware of the various means *Shari'ah* sets for divorcing or dissolving marriage.This is true for both Muslim men and women. In view of this, this chapter elaborately reviewed the various means of terminating marriage in accordance with Shari'ah. However, before delving into the main stream of the discussion the research deemed it right first to present an overview of the research area.

2.1 Overview of Kaduna State

Kaduna State is one of the 36 states of the federation, whose name was said to be derived from River Kaduna which traverses the town. The River was said to have several crocodiles. As a result of that, the inhabitants nicknamed the town after the crocodile. The crocodile is translated as Kada (Kadana) meaning my crocodile. Kaduna according to Bello and Oyedele (1987:63) was the capital of former Northern Region of Nigeria which was created by Sir Fredrick Lugard, the first high commission on (January 1. 1900) at which Lokoja was the capital. Then he moved to Jabba and from Jabba to Zangero, in 1902. At last he moved to Kaduna.

On 27th May, 1967 twelve states were further created out of the former regions of the federation as a most equitable basis for the nation's political stability. The twelve State were; North West State with capital in Sokoto, North, Eastern State with Capital in Maiduguri, North Central State with Capital in Kaduna, Kano State with capital in Kano, Benue and

Plateau State with capital in Jos, Kwara State with capital in Ilorin. On the 17 March 1976, when general Murtala Muhammad administration created seven new more states, to make a total of 19 states all in Nigeria . The Kaduna as capital North Central State was made as an independent state with Kaduna town as the capital. Kaduna state therefore comprises of two provinces; Zaria and Katsina, However on 23rd September, 1987 during General Badamosi Babangida two more states were created Abuja and Katsina, Abuja as the federal capital territory. while Katsina was created out of Kaduna State which made the number to 21 states. On 27 August 1991, another 9 States were created, to make a total of 30 States and on 1st October, 1996, General Sani Abacha created 6 more States to make a total of 36 States across the federations.

Considering the Geographical location of Kaduna State, the peripheral boarder of the State as presented by the map of Kaduna State:- Birnin-Gwari and Chikun shares boarder with Niger State in the West and Lere Zangon Kataf and Kaura in the East with the Plateau State. While Makarfi, Ikara and Kubau with Kano State, in the North, Sanga and Jama'ah with Nasarawa State, in the South and Kagarko with Abuja the capital of Nigeria while Giwa with Katsina State in the North respectively.

According to Maman (1988:406) the 2006 National population census revealed that, Kaduna state got the aggregate data of 6,113, 503. The male population is 3,090438 while 3,023,065 are female. This population figure makes Kaduna State to rank the third most populous State across the country. The State is multiethnic group, and the major ethnic groups are; Hausa, Fulani, Adara, Gbagy, Bajju, Atyyab, and Jaba. Hausa is the most spoken language all over the state. In accordance with (1999) constitution of the Federal Republic of Nigeria, Kaduna State has 23 local government areas; they are:- Birnin-Gwari, chikun, Giwa,

Igabi, Ikara, Jaba, Jama'a, Kachia, Kaduna North, Kaduna South, Kagoro, Kajuru, Kaura, Kubau, Kudan, Lere, Makarfi, Sabon-Gari, Sanga, Zangon-Kataf and Zaria.

Kaduna State has a rich cultural heritage in terms of festivals, music, dance, drama, craft and even administration. Culturally, Kaduna State is the home of the internationally acclaimed NOK culture in NOK village in Jaba Local Government of the State. This is where the NOK Terracotta head was discovered dating as far back as 500BC. It has 32 autonomous traditional institutions in the form of Emirate councils mostly in the northern part and chiefdoms, in the southern part. The people of Kaduna State are highly religious; the major religions in the State are Islam and Christianity, with Islam predominantly practiced in northern part and Christianity in the southern part. Traditional religion is still practiced in some areas within the State side by side, the two orthodox religions.

2.2 Concept of Divorce (*Talaq)* in *Shari'ah*

Talaq literally means to set an animal free. It is used in *Shari'ah* to denote the legal method whereby a marriage is brought to an end. Abdulrahman (1982:245) viewed divorce as dissolution of the bond of marriage by a clear word. For example, saying, "you are divorced'', or the use of a suggestive statement with the intention of divorce, saying, 'Go to your family. Nchi and Muhammad (1999:78)

There is a time in a man's life when it becomes impossible to continue with cordial relationship with his wife and vice verse. At times good preaching and wise counsel also do not work. In such a situation marriage becomes impossible to work, and is then better to separate amicably rather than drag on indefinitely, making the family home a hell. In Islam marriage is a contract that should be made to work but not when it becomes humanly impossible. It is only in such unavoidable circumstances that divorce becomes necessary. When such circumstances arise, one must still keep in mind that marriage is a solemn

covenant *(mithaq)* and mutual trust, and hence it should be respected even at the point of separation, The Qur'an states:

وَأَخَذْ نَ مِنْكُمْ مِيثَاقًا غَلِيظًا

And they have taken from you a solemn covenanti (Q 4:21)

Although Islam allows divorce and there are sufficient grounds for it, yet the right is to be examined only under exceptional circumstance. The Prophet (S.A.W) says:

أَبْغَضُ الْحَلاَلِ إِلَى اللهِ الطَّلاَق

Of all things which have been permitted, divorce is the most hated by Allah (Abu Daud) Vol 2 :432

The above saying of the Prophet (s.a.w.) will always act as a strong check on the hasty recourse to wanton abuse of the permissibility of divorce. In yet another Hadith, the Prophet (S.A.W.) : Says:

تَزَوَّجُوا وَلاَ تُطَلِّقُوا فَإِنَّ الطَّلاَقَ يَهْتَزُّ لَهُ عَرْشُ الرَّحْمَن

Marry and do not divorce; undoubtedly the throne of the Beneficent Lord shakes due to divorce" (Abu Daud 13:3 also Sunan Ibn Majah (vol.1: 318).

The aim of the *Shari'ah* is to establish a healthy family unit through marriage, but if for some reasons this purpose fails, there is no need to linger on false hopes as is the practice among the adheres of some other religions where divorce is not permitted. Islam encourages reconciliation between spouses rather than severance of their relations. But where good relations between spouses become distinctly impossible, Islam does not keep them tied in a loathsome chain to a painful and agonizing position, it then permits divorce. This is made clear by the Holy Qur'an. As soon as differences between spouses take serious turn to endanger their contract, it ordains that arbiters be appointed to sort out these differences and bring about reconciliation between them. The Qur'an states:

(وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

If you fear a break between them twain, appoint, (two) arbitrators, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: indeed Allah is Ever All-Knower, Well acquainted with all things (Q 4:35).

According to Muhammad (nd: 277-278) in case the arbitrators are unable to settle the disputes between the spouses, the Qur'an permits such spouses to part away.

It says:

وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلًّا مِنْ سَعَتِهِ وَكَانَ اللَّهُ وَاسِعًا حَكِيمًا

But if they disagree and must part, Allah will provide abundance for all from His all-reaching bounty. For Allah is he who cares for al and is wise (Q 4:130)

However, if the arbitrators were successful in settling the disputes, the Qur'an enjoins upon husbands not to misuse or abuse their power or position in order to punish the wife, but rather to dispose of the matter in one way or the other. The Qur'an explains:

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِتَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوًا وَاذْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ يَعِظُكُمْ بِهِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ

And when you have divorce women and they are about to fulfill the term of their prescribed period, either take them back on reasonable basis or set them free on reasonable basic But do not take them back to hurt them. and to treat them unjustly and whoever does that, then he was wronged himself. And treat not the verses (Laws) of Allah as a jest, but . Remember Allah's Favors on you (ie, Islam),and that which He has set down to you of the Book(I e the Qur'an) and AL-Hikiimah (the prophet's sunnah-legal way_islamic jurisprudence) whereby He instructs you. And know that Allah is All-Knower of everything.(Q:2:231).

Likewise, husbands are not allowed to keep wife in a state of uncertainty by withdrawing from having marital affairs with her instead if he dislikes her he is commanded to divorce her. This is in refrernce to the following clause as in the immediate quoted verse:

..وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِتَعْتَدُوا..

Either take them back on reasonable basic or set them free (Q2:231).

2.3 Breach of Marriage Agreement :(*Shiqaq)*

Shiqaq or breach of the marriage agreement may arise from the conduct of either party. If either of the married partners misconduct himself or herself, or either of them is consistently cruel to the other, or, as may sometimes happen, that they cannot live together in marital agreement. The *shiqaq* in these cases is more expresseds, but still it will depend upon the parties whether they can pull on or not. The Quran states:

(وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا

إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللهَ بَيْنَهُمَا إِنَّ اللهَ كَانَ عَلِيمًا خَبِيرًا)

> *If you fear a braach between them twain (the man and his wife) appoint (two) arbitrators, one from his family and other from hers: if they both wish for peace,Allah will cause their reconciliation, Indeed Allah is Ever ALL-Knower,Well-Acquainted with all things Q4;35)*

Divorce must always follow when one of the parties finds it impossible to continue the marriage agreement and is compelled to break it off. The Qur'an explains:sss

(يَعِدُهُمْ وَيُمَنِّيهِمْ وَمَا يَعِدُهُمُ الشَّيْطَانُ إِلَّا غُرُورًا)

> *He (Shaitan (shaitan) makes promises to them, and arouses in them false desire: and shaitan's (shaitan) promises nothing but deceptions, (Q4:120)*

There may also arise cases in which the husband is imprisoned for life, or for a long period, or if he is absent and no news can be heard of him, 'or he is maimed for life and is unable to provide maintenance for his wife, it will be a case of *shiqaq* if the wife wants a divorce, but if she does not, the marriage will remain. In case the husband is aggrieved in a similar manner, he has the option of taking another wife. Abi zaid (1976:89-97)

If either of the couple apostatized, the marriage shall be legally dissolved by a divorce. But according to the views of some jurists, such a marriage is dissolved without a divorce. If a non-Muslim couple embraced Islam, their marriage shall continue to subsist. But if only one of them accepted Islam such a marriage is to be dissolved without a divorce. If it is the wife who embraces Islam and the marriage is subsequently so dissolved, and she stars

to observe the *Iddah;* but during the period the husband follows her in such situation the husband will have first claim to her. If the husband accepts Islam, while the woman is either a Jew or Christian, he has the permission to retain her. But if, the husband accepts Islam while the woman was a magician, and she, also immediately accepts Islam after him; they can then continue as husband and wife; but if she did not accept Islam, immediately, then they should be separated. [Abi Zaid 1976:89-97).

2.4 Legal Position of Divorce

The husband deserve the right to divorce his wife at his wish and the power to pronounce divorce (*Talaq)* may be one, two or three and when it reaches three it becomes irrevocable.

The basic aim of divorce is to remove harm and hardship in the life of couples. However, divorce is at the instance of the husband who is enjoined to be kind to the wife even at the period of the divorce. The permission granted to divorce is what explains its permissibility. The following Qur'anic verse substantiates the statement:

لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ *
وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللهَ سَمِيعٌ عَلِيمٌ.

Those who take an oath not to have sexual relation with their wives must wait for four month, then if they return (change their idea in period).verily, Allah is oft-Forgiving, Most Merciful And if they decide upon divorce then Allah is All-Hearer, All-Knower. (Q:2:226-227.)*

The above cited verse indicates the legal ground to divource marriage in Islam .However; the following verse explains the prerequisite conditions before divorce is meted:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

O prophet! When you divorce women, divorce them at their Iddah and count their Iddah. And have taqwa of Allah" your Lord and turn them not out of their hom toes nor shall they

leave, except in case they are guilty of fahishah mubayyina and those are the set limit of Allah, and who ever transgresses the set limits of Allah, then indeed he has wronged himself you know not, it may be that Allah will afterward bring some new thing to pass (Q: 65:1).

Abdurrahman (1968: Vol 2: 247), explained that, *shari'ah* view divource to either of the following:

1- Obligatory *(wajib): if* marriage could leads to committing or violating the laws of Shari'ah such a marriage is therefore obligatory to terminate it if all means of corrections are exhausted. The aim of marriage is to attain the pleasure and acceptance of Allah (SWT) hence Islam prohibits what deliberately leads to violation of shari'ah. The Prophet (S. A.W) says:

لاَ طَاعَةَ لِبَشَرٍ فِي مَعْصِيَةِ اللهِ إِنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ

Obedience may not be offered to a human being if it involves disobeying Allah.Obedience should only be in good things: Bukhari Vol5: 7520)

2-*Makruh* (disapproved): Divorce becomes disapproved *(makruh)* when there is no harm anticipated either to one of the spouses and there is still some hope of reconciliation of their differences. This is in accordance with the Following Qur'anic instruction:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرْهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللهُ فِيهِ خَيْرًا كَثِيرًا.

.O you who believe you are forbidden to inherit women against their will; and you should not treat them with harshness,that you may take away part of the Mahr you have given them,unless they commit open Fahishah (illegal sexual intercourse or disobey their husband); and live with them honourably, If you dislike them,it may be that you dislike a thing and Allah brings through it a great deal of good. (Q:4:19)

3-Divorce is Permissible (*Mubah):* When there is need for it, particularly when wife's character changed to bad and thus some harm is expected through the continuation of the marriage.

4-Divorce is Recommendable (*Mandub)* when the wife is not fulfilling the essential rights of Allah that are made obligatory on her such as refusal to observe the five daily prayers, or if she happens to be unchaste.

5-Divorce is Forbidden *(Haram)* when it is given during the days of her monthly period.

2.5 Validity of Talaq

If one, due to extreme circumstance, has to pronounce divorce, the following conditions must be satisfied for a divorce to be valid:

1. He should a Muslim, adult and sensible; any divorce from a husband which lacks any of the said conditions is null and void.
2. He should not be minor*:* Any divorce by a mad person or minor is not binding.However, divorce issued by a lunatic during his lucid intervals, shall be valid and binding. (Abdulkadir 2007:50)
3. He should have his own discretion *(Mukhtar)*: A divorce is either explicit or allegorical, but once it is intend; it becomes, binding. It will also be binding whether one pronounces divorce or jorkingly or jestingly. Therefore, and divorce pronouncement that is not intended by the utter, e.g through slip of tongue or pronounced in a language the meaning of which is not known to the one who uttered it, but was accidently released, shall not be binding on him. Similarly, the following people according to Abdulkadir Orire (2007:52) there pronouncement of divorce will have no binding effect on them such people:

a- A person at a point of death who knows not what he is saying

b- A person who got drunk by *halal* substance like milk, honey, medicine e.t.c

c- A person who takes small quantity of drug, marijuana and seductive drug for medical purpose only but later got drunk

d- A person who divource under duress.

4- Divorce by someone who is compelled to subject the divorce of his wife to a condition i;e Taaliq Talaq e.g he was forced to say "If Yusuf arrives I would divorce my wife". Of course points enumerated by Abdulkadir as highlighted are in comformity with the following saying of the Prophet Muhammad (SAW):

إِنَّ اللهَ تَجَاوَزَ لِأُمَّتِي عَنْ ثَلَاثٍ؛ عَنِ الْخَطإِ وَالنِّسْيَانِ وَمَا اسْتُكْرِهُوا عَلَيْهِ

Allah Has forgiven my people upon three acts: upon mistakes, upon what they have forgotten and what they are force to do. ImamZahabi: (2744)

However the point three as enumerated requires further elaboration, this is because whatever has the elements of intoxicants such as mariguana and wine should not be taken as a medicine. The Prophet (SAW) says:

إِنَّ اللهَ أَنْزَلَ الدَّاءَ وَالدَّوَاءَ وَجَعَلَ لِكُلِّ دَاءٍ دَوَاءٌ فَتَدَاوَوْا وَلَا تَدَاوَوْا بِحَرَامٍ

Surely Allah has descended sickness and cure (Medicine), and He assigned for every sickness a cure (medicine), so, seek for medicine (in a legal way) and do not seek for medicine through illegal ways. Sunan Abu Dawud (3876)

Though if husband drinks any intoxicant such as alcohol intentionally and becomes intoxicated and in that mood divorces his wife the divorce shall be obliged upon him, unless he takes it unintentional. The following narration buttresses the point:

وَكُلُّ الطَّلَاقُ جَائِزٌ إِلَّا طَلَاقُ الْمَعْتُوهِ.....

And every divorce is considered as effective except the divorce given by intoxicated person. (*Bukhari,* Vol. 3: 480).

2.6 Forms and procedure of Talaq

Among the several forms of divorce recognized in Shari'ah the one that bears the impression of the Holy Prophet's sanction and approval is the *"Ahsan"* type of *Talaq*" al Shafi'i (1969: 63) state that this form of repudiation involves the following conditions, each of which is really intended to prevent a permanent breach. Hamid; 1969:63)

a. The husband, in the first place, must pronounce only one *Talaq* (repudiation), the object of this limitation is that he may subsequently, when better sense prevails, revoke the repudiation if he has pronounced *Talaq* from caprice or in a moment of excitement within the period of the wife's *Iddah* which begins after the pronouncement of divorce.
b. The *Talaq* if necessary is to be pronounced when the wife is in a state of purity *(Tuhur)* and there is no bar to sexual intercourse. It is declared unlawful to pronounce repudiation when she is in menses. As can be seen on the below cited evidence from hadith.
c. The husband should abstain from intercourse with his wife after pronouncing *Talaq* for the period of three months, the period of her *Iddah*.

There is a tradition of accepted authenticity that throws countable light on the wisdom underlying the last two restrictions. 'Abdallah bin Umar divorced his wife while she was in her menses; and the matter was reported to the Prophet (S.A.W) who, much exasperated at his conduct, said:

"مُرْهُ فَالْيُرَاجِعْهَا حَتَّى إذا طَهُرَتْ، وَحَاضَتْ وَطَهَرَتْ، ثُمَّ إنْ شَاءَ طَلَّقَهَا وَإنْ شَاءَ تَرَكَهَا" رواه البخاري.

L*et him take her back and retain her till when she becomes pure and again have her courses and again gets pure. Then, thinks it prudent, let him divorce her, but he should do so when clean and has not been approached; and this is the period of which Allah has ordered for divorce*. (*Bukhari* vol.7:178).

Some learned observed in connection with this tradition. The purpose of this condition is, to avoid a rush and hasty procession in the part of the husband, through aversion arising from the impurity, and, by fixing a long period of abstinence, to give opportunities to reconsider his decision about the divorce, so that he may repent, and exercise the right of return before the end of the period of *Iddah.*

During this period of retreat, the marriage subsists between the wife and the husband retains his marital authority over his wife. Therefore, has access to the wife even without her permission; treat her as his wife, but this would actually amount to his right of *Rajah* (return). During the *Iddah,* the husband is under an obligation to lodge the wife in his house in an apartment, and maintain her. The injunctions of the Qur'an are on this point.

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللهِ وَمَنْ يَتَعَدَّ حُدُودَ اللهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا

O prophet when ye divorce women, divorces them in their appointed time, and computes the term exactly, and fears Allah. Oblige them not to go out of their apartment nor allow them unless they be guilty of some open illegal sexual intercourse. And those are the set limits of Allah, and then indeed he has wronged himself. You (the one who divorce his wife) know not it may be that Allah will afterward bring some new thing to pass (I.e. to return her back to you if that was the first or second divorce)-Q: 65 verse 1).

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأْتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُ أُخْرَى

House the divorced, as you house yourselves, according to your means, and distress them not, by reducing them to straits". And if they are pregnant, then bear charges for them, till they are delivered of their burden; and they suckle your

children, then pay them their remuneration; consult among yourselves, and act generously" (Q: 65.6)

The obligation to lodge the divorce wife provides the husband the right to bring her back at his wish as instructed in the following Qur anic text:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ

And if he has divorce her (the third time) then she is not lowful to him thereafter until she has married another husband.Then, if the husband divorces her,it is no sin on both of them that they reunite, provided they feel that they can keep the limits ordained by Allah.These are the limits of Allah,which He makes plain for the people who have knowledge. (Q 2:230)

Jurists however, differ in the interpretation of the above quoted verses of *Rajah.* The Hanafi jurists are of the opinion that the husband retains the right of reunion up to the time of the purification of the wife by a bath after the third monthly course. The same as the opinion of Sayyidna Abu Bakar, Sayyidna Ali, Abdallah bin Abbas, Abu Musa al-Ash'ari, Abdallah bin Mas'ud and some other Sahabah. (Abdulrahman1980:256.)

The jurists of Maliki and Shafi'i schools, however, are of the opinion that the husband forfeits the right of reunion as soon as the third menstruation circle is discharged. This opinion is based on the opinions of Aishah, Abdallah bin Umar and the companions like Zaid bin Thabit. .It is a unanimous view of all jurist based on the Qur'an that the husband retains the right of *Rajah* or reunion only when he has pronounced one divorce or two repudiaton, but he forfeits the right of reunion when he pronounces three repudiationss. (Abdulrahman 1980:258)

Furthermore, if the husband divorces his wife three times, it will not be lawful for him to take her as a wife again unless she marries another husband, the second marriage is consummated and then she is divorced again. A triple divorce (i.e. three divorces at one and the same time) is regarded as an undesirable innovation *(Bidah).* If pronounced, however, it

shall remain binding upon the husband. The lawful divorce decreed by the *Shari'ah* is for the husband to divorce his wife when she is free from menstruation, and the pronouncement shall be once only. Having done that, the husband must desist from pronouncing another divorce until the period of her retirement '*Iddah'* expires. (Zaid 1976:89-97)**.**

A husband has the right to take back his wife, who still menstruates, as long as she has not yet entered her third menstruation in course of the *Iddah* retirement;-third in the case of free woman, and second menstruation in the case of slave woman. (Zaid 1976: 89-97)

Divorce is of two types: *Talaq al Rajah* and *Talaq al-Ba'in.* The first two pronouncements of divorce followed by the periods of retreat from the wife with whom marriage is consummated are called *Talaq al-Raji* in which return to the conjugal relationship is still possible. When the third divorce is pronounced it becomes *Talaq al-Ba'in.*

Talaq al-Raji is based on the following Qur'anic injunctions:

الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ.

> *A divorce is only permissible twice; after that the party should either hold together on equitable terms or separate with kindness.Q:2:229*

This is a safety measure provided in the matrimonial relationship, where divorce for mutual incompatibility is allowed there always remains a danger that the parties might act hastily then reconcile and then again wish to separate. To prevent a repetition of such capricious actions, this limit is prescribed by the Holy Qur'an. Divorce with the possibility of reconciliation is allowed only for two occasions. After that the parties must definitely make up their minds either to dissolve their marriage permanently or to live honorably together in mutual love and forbearance neither party worrying the other nor grudging nor evading duties and responsibilities of marriage. (Yusuf nd: 90**).** In the *Talaq al-Raji* the spouse can still enjoy the usual benefit from each other since the marital relationship has not disappeared. If

one of them dies, the other will inherit from him or her; as the case may be. Maintenance will still remain available to the wife and children. The *Rajah* or the return is the right of the husband. The Qur'an says:

....وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ
الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللهُ عَزِيزٌ حَكِيمٌ

> *And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree over them and Allah is exalted in Power, Wise. Q2:229.*

It will suffice just to utter the words like "I take you back" or the return can be affected through action like resuming sexual relation kissing each other. According to Imam Shafi'i the return cannot be possible except by uttering a specific word. According to Imam Malik it is not permissible to be in privacy with the divorced wife or to have sexual relationship with her without her permission; but there is no harm in eating with her. Till when you get her back**. (**Abdul rahman 1980:261).

Talaq al-Ba'in is divorced with three pronouncements or divorce before the consummation of marriage. There is no possibility of return to the conjugal relationship when the three repudiations are completed. There are two kinds of *Talaq al-Ba'in: Baynunah Sughra and Baynunah Kubra.* The *Baynunah Sughra* decreases the conjugal rights of the husband. In the event of the death of one of the parties, the other will not inherit from him or her as the case may be. While in *Baynunah Kubrah* all the conjugal rights cease. The former husband cannot even re-marry the former wife unless she marries another man and he voluntarily divorces her without any intention of separation *(Tahlil).* (Bin Isa1382 A.H:9:25)**.**

Talaq becomes irrevocable as soon as it is pronounced. It happens this way; the husband utters the formula "I divorce you; I divorce you; I divorce you! In one sitting or

conveys it to the wife in writing. This form of divorce leaves no room for reconsideration and no change for repentance. This is usually done by ignorant Muslims to satisfy their selfish motives. When these ignorant people pronounce divorce thrice at once at the same sitting, they commit a heinous sin against the precepts of the Shari'ah. The Prophet (S.A.W) had severally denounced this practice and Sayyidna Umar used to whip the husband who pronounced divorce thrice, at one and the same sitting. (Ibn Hajr 1993:469).

2.7 Types of Talaq through Tafwid

Where the wife, acting upon the power to divorce herself vested in her by her husband, this is considered as one single divorced. This is the view of Umar bn al-Khattab, Abdullahi bn. Mas'ud, Sufyan ath-Thawri, Shafi'i and Ahmad (RA). (Sadiq 1977:242).

It was reported that a man come to Abdullah bn Mas'ud (RA), and said, "something that normally happens between people (i.e. conflict), happened between me and my wife and for that reason she said to me, "if my affair which is in your hand were in my hand, you would know what I would do". So I said to what is in my hand is (now) in your hand, she thus said, (to herself), 'you are divorced. (On hearing this) Ibn Mus'ud said, "I consider this as one single divorce". And you are more entitled to have her (as your wife) than any other man, as long as her *Iddah* has not expired. However, I will meet Amirul Muminin Umar (and inform him). Thereafter, he met Umar and narrated to him the story, and he asked him, 'what then did you say about that" I replied, 'I said I considered that as one single divorce and that he (the husband) was more entitled to have her (as his wife) than any other man. Umar said, "That is also my view and has it been that you had a contrary view, I would have know that you were wrong". (Ibn –Rushd: nd,vol,11:61)

Hannafi jurists are of the view that such divorce is, legally speaking, one single irrevocable divorce, because vesting the power (to divorce) in the wife (by the husband)

implies the forfeiture of the husband's right and power (to divorce her). Thus if she accepts this (vesting of power) it must then be transferred from him which is only possible if the divorce is irrevocable. (Sabiq1977:453).

Malik is of the view that the divorce that takes effect, where the wife has been given choice (between subsistence of the marriage and divorce), or where she has been given the right to divorce herself, is triple divorce. (Sha'aban 1971:454).

Tawfid is vesting the power by the husband in the wife to divorce her self, which is usually done through one of the following expressions:

1. *Ikhtariy Nafsaki* (choose yourself). The majority of Muslim jurists agree that *Talaq* can be affected by means of this expression, because it has been legally accepted to be one of the formulae of *Talaq*. This is by virtue of chapter 33 verses 28 – 29 of the Qur'an where Allah (S.W.T) says:

> يَا أَيُّهَا النَّبِيُّ قُلْ لِأَزْوَاجِكَ إِنْ كُنْتُنَّ تُرِدْنَ الْحَيَاةَ الدُّنْيَا وَزِينَتَهَا فَتَعَالَيْنَ أُمَتِّعْكُنَّ وَأُسَرِّحْكُنَّ سَرَاحًا جَمِيلًا. وَإِنْ كُنْتُنَّ تُرِدْنَ اللَّهَ وَرَسُولَهُ وَالدَّارَ الْآخِرَةَ فَإِنَّ اللَّهَ أَعَدَّ لِلْمُحْسِنَاتِ مِنْكُنَّ أَجْرًا عَظِيمًا
>
> *O prophet! Say unto they wives: 'if you desire (but) the life of this world and its chasing – well, then, I shall provide for you and release you in a becoming manner. But if you desire God and His Apostle, and (thus the good of) the life Hereafter, then (know that), verily for the doer of good among you God has readied a mighty reward". (Q33:28).*

When, immediately after the revelation, the Prophet (S.A.W) recited the above two verses to his wives, all of them emphatically rejected all thought of separation and declared that they had chosen "God and His Apostle and the (good of the) Hereafter". This implies that had they chosen themselves, it would have been effective divorce. Asad (1980:644)

Zahiri jurists, on the other hand, do not agree with this interpretation. Thus the implication, according to them, is that: had they chosen themselves, the Prophet (S.A.W)

would have divorced them and not they were divorced by merely choosing themselves". (Sadiq 1977: 243).

Where the wife chooses herself, the majority of jurists (who accept that divorce can be affected by means of the expression *"Ikhtariy Nafsaki"* have divergent views as to the type of divorce that comes into effect. Thus some of them hold that it is one single revocable divorce. This is what was reported from Umar, Ibn Mas'ud, Ibn Abbas, Umar bn Abdul-aziz, Ibn Abi Layla, Sufyan, Shafi'i, Is'haq, Abu Ubaydah and Abu Thawr. (Ibn Quddamah nd:,vol:7:142).

Some other jurists, on the other hand, are of the view that if the wife chooses herself, then it is one single irrevocable divorce. This view was reported from Aly bn Abi Talib (R.A), and Hannafi jurists subscribe to it. (Ibn Qudamah nd:vol:7).

Malik is of the view that if the wife chooses herself, then it is regarded as triple divorce. But if she chooses her husband, then it is one single (revocable) divorce. However, this view is contrary to the clear precept of the Hadith narrated by Bukhari, Muslim, Abu Dawud, Tirmidhi, Nisa'i and Ibn Majah, on the authority of A'ishah (R.A) who said

> The Apostle of Allah g*ave us the right to choose (between ourselves and him) and we choose him. But he did not consider this anything (i.e. he did not consider it a divorce). In another version narrated by Muslim, it was reported that the Apostle of Allah gave his wives the right to choose (between him and themselves) but this was not considered as divorce. (Sabiq vol, 11:242).*

11 *Amruki biyadiki*: (Your affair is in your hand). This is where the husband entrusts his power of divorce to the wife, who is legally capable of exercising it, just like the husband. Where the husband entrusts the power to the wife, the power is considered to have been vested in her, provided the following conditions have been fulfilled: Cited by Musa (1958:285-286).

a. That is must be established that the intention of the husband, in the circumstance, is to divorce (the wife). This is because the expression is *Kinayah* (implied) by which *Talaq* cannot be effective unless and until the husband intends it to be so.

b. That the wife must be aware of the fact that the power to pronounce *Talaq* has been vested in her by the husband. Thus, if she is aware of this fact, then the power will be in her and accordingly, entitled to divorce herself, provided the vesting of the power by the husband has not been tied to a specified period, or it has been so tied but the period has not expired. But if it has expired, then she is not entitled to divorce herself whether she is aware of the fact that she has been vested with the power before or after the expiration of the specified period or not. Musa (1958:286)

This type of *Tawfid* may be *Munajjaz* (unconditional), or *Mu'allaq* (conditional, subject to the occurrence of certain thing at a future time), or *Mudaf* (suspended to a specified future time). (Musa1958:285)

iii *Tafwid Munajjaz* (unconditional delegation) may be tied to a specified period of time and it may not be so. Where it is not so tied to a specified period of time, such as where the husband says to his wife, "your affairs is in your hand", then the power to divorce herself is considered to be in her hand as long as she remains at the place (where she has been vested with the power). Thus if she leaves the place without choosing to divorce herself, or she declines to show her acceptance, then the *Tawfid* is void. (Musa1958:285)

But if it has been tied to a specified period of time, such as where the husband says to his wife, your affairs is in your hand, today", or "this month", or "for one year" then she is entitled to make up her mind (as to whether to divorce herself or not) within the specified time. And if she choose to divorce herself (and actually did so), within the specified time, then she is not entitled to effect another divorce (even if the period has not expired).

iv. Where *Tawfid* is *Mu'allaq,* such as where the husband says to his wife, "if so and so person returns from his journey, then your affair is in your hand", then the wife is entitled to choose between the marriage and divorce, when the person returns and she is aware of that. Where *Tafwid and Mu'allaq* is tied to a particular period of time, such as where the husband says to his wife, "if so person returns from his journey, then you affair is in your hand on the day he returns", then she has the right to choose (to divorce herself) whenever she becomes aware of his return throughout the day (of his return), right from the very moment he returns. (That is within twenty four hours). (Musa 1958:285-88)

V. Talliqiy nafsaki (divorce yourself): Hanafi jurists are of the view that where the husband say to his wife, "divorce yourself", without the intention to effect divorce or with the intention to effect one single divorce, and the wife says, "I divorce myself", it is considered as one single divorce. And where she affects triple divorce and the husband has intended this, and then it will be considered as such.

Where he says to her, "Divorce yourself", and she says "I have chosen myself", then she is not, legally speaking, considered as divorced", and where he says to her, "Divorce yourself whenever you want", she is entitled to divorce herself during and after the meeting". (Sabiq 1977:344). This is what is called *Takhyir, which* is to delegate the power to effect triple divorce, to the wife; by giving her right to choose between the marriage and divorce. The husband usually does so by saying to the wife, "choose me or choose yourself", while *Tamlik* is to vest the right to affect *Talaq* (triple *Talaq,* in most cases) in another person (especially the wife). One of the formulae of this type of delegation is where the husband says to his wife, "I put your affairs (or "your divorce") in your hand". (Sha'aban 1971:448).

Revocation of Tafwid: Ibn Qudamah is of the view that where the husband, (after vesting his wife with the power to divorce herself) revokes the power vested in her, or says, "I revoke what I have vested in you", then the *Tafwid* (under the circumstances) becomes

invalidated. This is the view of Ata, Mujahid, Nakha'i, Awza'i and Is'haq. Sha'aban (1971:454).

Zahiri, Thawri, Malik and Hanafi jurists, on the other hand, hold that the husband has no right to revoke the power vested in the wife by him. (Ibn Qudamah nd:vol,vii:142).

Ibn Qudamah (nd:149) is also of the view that where the wife, voluntarily gives up the power to divorce vested in her, then the *Tafwid* is also considered to be invalidated.

Tafwid does not, however, forfeits the husband has right to divorce. Accordingly, the husband, after vesting the power to divorce his wife, can still affect divorce on her. Whichever comes after will be counted as the second or third respectively. Thus it is like any other *Tawkil* (agency).

Time of *Tafwid: Tafwid*, according to the Hanafi jurists, can be made at the times of contracting the marriage or any time after it. The example of *Tafwid* made at the time of contracting the marriage is where the woman (who is the prospective husband, "I marry you on condition that the issues of my divorce is in my hand, so that I may divorce myself whenever I want", and the man accepts. Sha'aban (1971:454).

However, Hanafi jurists stipulate a condition for the validity of *Tafwid,* made at the time of contracting the marriage that the offer must emanate from the woman or her representative. Thus where the man makes the offer accompanied by *Tafwid,* such as where he says to her, "I marry you on condition that your affair (of divorcing you) is in your hand, so that you may divorce yourself whenever you want, "and the woman accepts, then the marriage is valid but the *Tafwid* is ineffective. This is so because in such a circumstance, the husband had vested the power in the wife to divorce her, before the marriage was concluded. And the husband then had no such power to divorce and since he did not have that power he cannot, therefore, alienates it to the wife or any other person. (sha'aban1971:454).

2.8 Distinction between Tafwid and Tawkil

Tafwid and *Tawkil* are, according to the Hanafi jurists, the same in that neither of them forfeits the husband his right to divorce, they, however, differ in the following respects.

a. That after making *Tafwid*, the husband is not entitled to revoke it, while in the case of *Tawkil* the husband is entitled to revoke it, provided the *Tawkil* (i.e. the agent) has not executed what he has been delegated to execute.

b. That in *Tafwid*, the *Mufawwad* (i.e. the authorized person) acts in accordance with his will because the *Mufawwid* (i.e. the husband) has subjected the issue of *Talaq* to his will. Accordingly, he possesses this power to divorce vested in him which he can exercise anytime he wants. But in *Tawkil*, the *wakil* has only been vested with the power to divorce according to the directions given to him by the *Muwakkil* (i.e. he husband) and thus he cannot act ultra vices. This is because a *wakil* cannot legally be considered as his principal agent unless he executes what he has been authorized to do by his principal, according to the principal's direction. (Ahmad1996).

c. That where *Tafwid* is *Mutlaq* (unspecified), then it will be specified in the *Majlis* (that is the meeting place where the *Tafwid* has taken place), excepts where it has been made at the time of contracting the marriage, in which case it will not be specified in the *Majlis. Tawkil,* on the other hand, is not generally, specified in the *Majlis*. Thus the *wakil* can affect the divorce either at the *Majlis* or at any time after it, if the *Tawkil* is no restricted to a particular period of time (that is if it is general). (Sha'aban 1971:445-6).

d. *Tafwid* cannot be invalidated due to the subsequent insanity of the husband because it is legally like *Talaq* which also cannot be invalidated as a result of the husband's subsequent insanity. But *Tawkil* becomes invalidated as a result of husband's insanity.

This is because the moment he becomes insane, he loses his legal capacity. And once (in *Tawkil* or *wikalah*) the *wakil* or *muwakkil* looses his legal capacity, the *wikalah* becomes invalidated. (Sha'aban 1971:445-6)

Ibn Hazm (nd :vol.x:216) has a different view from the above juristic views, on the issues of delegation of power to divorce. Thus, according to him, it is not legally permissible for the husband to vest in the wife the power to divorce her. And if he does so, it is not binding on him and even if the wife divorces herself, the divorce is ineffective, because Allah (S.W.T) has vested the power to divorce in the husband and not in the wife. *Wikalah* in *Talaq* is also, according to him, not permissible, because there is no any authority, either in the Qur'an or in the *Sunnah* to the effect that someone can affect divorce on behalf of another. *Tawkil* in *Talaq* is, therefore, *batil* (invalid).

2.9 Faskh: Annulment or Abrogation of Marriage

Like divorce, *Faskh* also brings an end to marriage. It literally means "to annul a deed" or rescind a bargain. It is decreed by the *Qadi* after the careful consideration of an application made to him by the wife. The *Qadi* if satisfied that the woman is prejudiced by a marriage, he will annual the marriage. The conditions governing *Talaq* (divorce) and *Faskh* are given details by jurists of the four school of Islamic law.

It is *Talaq* in the following cases according to the Hannafi School. Muhammad (Vol 3: 114).

a. Pronouncements of divorce by husband

b. Illa

c. *Lian*: Mutual imprecation

d. Khul;

e. Separation because of sexual defect *(aib Jinsi)* in the husband

f. Separation due to denial of Islam by the husband.

It will be *Faskh* in the following cases according to the Hannafi schools as in Abdulrahman (1970: vol 2, p, 27).

a. Separation due to apostasy of the spouses.
b. Separation to spoiling *(fasad)* of marriage.
c. Separation due to lack of equality of status *(kafa)* or lack of compatibility of the husband.

It will be *Talaq* according to the Shafi'i and the Hanbali schools with the following conditions:

a. Pronouncement of *Talaq* by the husband
b. Khul
c. Declaration of *Talaq* by the *Qadi* of the husband's refusal to give divorce because of *Ila*.

It will be *Faskh* according to the Shafi'i and Hanbali schools with the following conditions:

a. Separation due to defect in one of the spouse.
b. Separation due to difficulties *(isar)* of the husband.
c. Separation due to *lian* _
d. Separation due to apostasy of one of the spouses
e. Separation due to spoiling of marriage.
f. Separation due to lack of equality of status *(kafa)* of the husband.

It will be *Talaq* according to the Maliki School of thought as cited by Abdul-rahman (vol 2: 43**).** In the following cases:

a. Pronouncement of *Talaq* by the husband
b. Khul

c. Separation due to defect in one of the spouses.

d. Separation due to difficulties *(Isar)* of the husband from providing maintenance to his wife.

e. Separation due to harm *(darar)*

f. Separation due to *Ila*

g. Separation due to lack of compatibility or equality of status (*Kafa)*

It will be *Faskh* in the following cases**:**

a. Separation due to the process of *lian*

b. Separation due to spoiling of marriage *(Fasad)*

c. Separation due to the denial of Islam by one of the spouses.

2.10 Forms of Dissolution of Marriage:

i- ***Ila'I*** which means literally swearing signified technically the taking of an oath that one shall not have sexual relation with one's wife. In the pre-Islamic days the Arabs used to take such oath frequently, and as the period of suspension was not limited, the wife had sometimes pass her whole life in bondage, having neither the position of a wife, nor that of divorced woman free to marry elsewhere. Ibn Hajr (1993:497).

After the advent of Islam, the situation was corrected through the divine revelation commanding that if the husband did not re-assert conjugal relations within the period of four months the wife should be divorced.

لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

In the case of those who swear that thy will not go into their wives, the waiting period is four month then if they go back, Allah is surely forgiving, merciful, and if they resolve on divorce, then Allah surely hearing, knowing. (Q2:226)

Illa'I in reality was meant to trouble a woman by keeping her hanging in the air. Sayyid (1968: vol, 7:137)

Although it is true that relations between husband and wife do not always remain cordial, yet Allah's law does not allow that the strained relation should continue indefinitely therefore it lays down the maximum period of four month for separation in which they legally remain husband and wife but practically live separate lives without any conjugal relation between them. Such separation called *illa* in Shari'ah. During this period, they must either make reconciliation between themselves or part for good so that they may be free to marry a suitable person of their liking. Sayyid (1968: vol 7:137).

From the words of Allah

(لِّلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةُ أَشْهُرٍ فَإِنْ فَآءُو فَإِنَّ اللهَ غَفُورٌ رَّحِيمٌ)

"*For those who take oath not to have sexual relationship with their wives: ...* (Q2:226)

The jurist belonging to the Hannafi and Shafi'i schools of thought concluded that this period of four month applies only to those cases of separation which are made on oath if they remain separate for any length of time without an oath, this law would not apply to them. On the other hand, the Maliki jurists are of the opinion that the maximum period of four month applies to all cases of separation; Imam Ahmad bin Hanbal also supports this opinion. Sabiq (1968: vol 7:137).

Ali, Ibn Abbas and Shaikh Hassan al Basri are of the opinion that this law applies only to the case of separation which is the result of strained relations, and does not apply to the case in which husband and wife agree to discontinue conjugal relation with mutual consent for some common good and at the same time keep cordial relation. There are other jurists who are of the opinion of law of *Illa'i* would apply to every case of separation made on oath irrespective of the fact whether their relations remain good or bad, hence it should not

go beyond the prescribed term of four months. According to majority he may decide bring her back Allah is oft forgiving. (Ibn Hajr 1993:479)**.**

Some jurists interpret this to mean that if they break their oath within four months and re-establish conjugal relations in that case there would be no expiation (Kaffara) for the said oath; Allah will forgive the breach of their oath without expiation. But the majority of the jurists are of the opinion that expiation must be made in any case. Allah is forgiving and merciful does not mean that the expiation will be remitted. It merely means that Allah will accept the expiation and forgive the wrong done against each other during their separation. (Ibn Hajr 1993:479).

According to the verdict of Caliph Othman, Abdullah bin Mas'ud, Zaid bn Thabit (RA) and some other jurists; they can re- unite only within four month. The expiry of this term itself is a proof that the husband decided upon *Talaq* (divorce). Hence after it expiry, divorce will automatically take place and the husband will forfeit the right of reunion. If, however both of them agree they may remarry. There is a verdict to the same effect from Sayydina Umar, Ali Abdullah bin Abbas and Abdullah bin Umar (RA) and the jurist of Hannafi School have accepted the same on the other hand. Aisha, Abd Darda (RA) and many other jurist of Medina are of the opinion that after the expiry of four months, the case should be taken to a court so that the judge may order the husband either to reunite with the wife or divorce her. (Sayyid 1968:7:280).

ii- Zihar: This is another form of marriage dissolution by the Husband it is the situation where by the husband will say to his wife *anti alayya', Ka-Zahr'ummi* i.e. "you are to me as back of my mother". Doi (1980:274) if this word pronounced, then the relation between husband and wife would come to an end in the case of divorce, but the woman was not at liberty to leave the husband house and had to drag on as a deserted wife, the Shari'ah prohibits this ugly practice of the *Jahiliyya* society, one of the Muslim, Aus Ibn Samil treated his wife Khaulah in a similar manner Khaulah came to the Holy Prophet (saw) and complained of her husband's ill treatment, the Holy Prophet (saw) hold her that he was unable to interfere she went back disappointed and it was then that the Prophet (s.a.w) received the revelation contained in verse 1- 2 in surah Mujadillah. (Ibn kathir 2003: vol 9:512)

قَدْ سَمِعَ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي زَوْجِهَا وَتَشْتَكِي إِلَى اللهِ وَاللَّهُ يَسْمَعُ تَحَاوُرَكُمَا إِنَّ اللَّهَ سَمِيعٌ بَصِيرٌ

That Allah indeed knows the plea of her. Who pleads with thee about her husband and complains to Allah, and Allah knows the contention of both of you, surely Allah is hearing and seeing" (Q 58:1)

الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مِنْ نِسَائِهِمْ مَا هُنَّ أُمَّهَاتِهِمْ إِنْ أُمَّهَاتُهُمْ إِلَّا اللَّائِي وَلَدْنَهُمْ وَإِنَّهُمْ لَيَقُولُونَ مُنْكَرًا مِنَ الْقَوْلِ وَزُورًا وَإِنَّ اللَّهَ لَعَفُوٌّ غَفُو

Those among you who make their wives unlawful to them by Zihar (to separate) they cannot be their mother none can be their mother except those who gave birth. And verily they ulter an ill word and lie and verily Allah is oft pardoning off forgiving (Q 58:2)

*T*he man who resorted to this practice was ordered to free slave or if he could not find one, then fast for two successive months and if unable to do that, to feed sixty poor people.

The Qur'an condemns such evil act of *Zihar.*

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِنْ قَلْبَيْنِ فِي جَوْفِهِ وَمَا جَعَلَ أَزْوَاجَكُمُ اللَّائِي تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ

Allah has not made any man who two hearts in his own body nor has He made you wives whom you divorce by Zihar your mother: nor has He made your manner of speech by your months. But Allah tells you the truth and He shows the light way. (Q 33:4)

This was in fact an evil custom, through which the husband selfishly deprived his wife conjugal right and yet kept her tied to himself as a slave without her being free to remarry, through this practice once pronounced words implying that she was not like mother, she could not demand conjugal rights but was not yet free from control and could not contract another marriage. The Shari'a condemned *Zihar* in the strongest terms and punishment is provided for it, similarly, the Qur'an further clarifies on the practice of *Zihar* in the following

الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مِنْ نِسَائِهِمْ مَا هُنَّ أُمَّهَاتِهِمْ إِنْ أُمَّهَاتُهُمْ إِلَّا اللَّائِي وَلَدْنَهُمْ وَإِنَّهُمْ لَيَقُولُونَ مُنْكَرًا مِنَ الْقَوْلِ وَزُورًا وَإِنَّ اللَّهَ لَعَفُوٌّ غَفُورٌ

If any among you divorce their wives by Zihar (calling them mother, they cannot be their mother: one can be their mother except those who gave them birth. And in fact they use words (both) iniquitous and false: but truly God is one that blots out (sin, and forgives (again and again). (Mujadilah Q 58:2)

The immediate occasion as we have noted was what happened to Khaulah bint Tha'labah wife of Aus, son of Samit though in Islam, he divorce her by an old pagan custom, such a custom was in any case degrading to a woman. It was particularly hard on Khaula for she loved her husband and pleaded that she had little children whom she had no resources herself to support and who under *Zihar* her husband was not bound to support, she urged her to the Prophet (saw) and in prayer to Allah. Her just plea was accepted, and this iniquitous, based on false words, was abolished, if anyone found guilty of this practice had a heavy penalty to pay as mentioned in the following Qur'anic verses:

وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَّا ذَلِكُمْ تُوعَظُونَ بِهِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ

But who divorce their wives by Zihar then wish to go back the words they uttered, it is ordained that such a one, should free a slave before they touch each other, this are admonished to perform and God is well-Aquainted with what you. do. (Q58:3)

If one does not find means to free a slave as a *Kaffarah*. Then he should observe the following. Alternative

فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَتَمَاسَّا فَمَنْ لَمْ يَسْتَطِعْ فَإِطْعَامُ سِتِّينَ مِسْكِينًا ذَلِكَ لِتُؤْمِنُوا بِاللهِ...

And if any has not (the where withal) he should fast for two months consecutively before they touch each other. But if any if unable to do so, he should feed sixty indigent one's this that he may show your faith in Allah. (Q58:4)

Apart from *Kaffarah* (expiation), she can sue for maintenance for herself and her children, but her husband could not claim his conjugal rights. If it was a hasty act and he repented fromo it, he could not Yet claim his conjugal right until after the performance of his penalty as mentioned above. If she loved him, as in Khaulah's case, she could also herself sue for conjugal right in the legal sense of the term and compel her husband to perform the penalty and resume marital relations.Ibn kathir (2003:vol 9:512)

2.11 Dissolution of Marriage by Mutual Consent

The mutual consent may come in two ways**:**

1. ***Khul*** is derived from *khul'al thaub* releasing or removing the dress from the body because a woman is a dress of a man and vice verse as described in the Qur'an.

...هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ..

The women are your dress and you are their dress Q2:182

Just as *Shari'ah* provides for a husband to divorce his wife, the wife can also ask for divorce if sufficient ground exists for it. If the husband is cruel, she can ask for divorce *khul,* and is not forbidden to tolerate what seems to be intolerable for her.

The Qur'an injunction makes it clear that a wife is entitled to ask her husband for a divorce (khul) or call for reconcilliation if she fears cruelty or desertion from him, it lay down.

وَإِنِ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even through man's souls are swayed by agreed. But if you do good practice self restraint, Allah is well acquainted with all that you do Q 4:128

In another verses, if reconciliation fails, and they opt for separation, there is no blame.

وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلًّا مِنْ سَعَتِهِ وَكَانَ اللَّهُ وَاسِعًا حَكِيمً

But if they separate (by divorce) Allah will provide abundance for every one of them from His bounty. Allah is ever All-sufficient for His creature, need all-wise.

The following narration as from the Prophet (s.a.w).Further bultress as the point:

"أَتَتِ امْرَأَة النَّبِيَّ صلى الله عليه وسلم فقالَتْ: "يَا رَسُولَ اللهِ ثَابِتُ بْنُ قَيْسٍ مَا أَعْتُبُ عَلَيْهِ فِي خُلُقٍ، وَلاَ دِينٍ وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الإِسْلاَمِ"، فَقَالَ رَسُولُ اللهِ صلى الله عليه وسلم أَتَرُدِّينَ عَلَيْهِ حَدِيقَتَهُ قَالَتْ نَعَمْ قَالَ رَسُولُ اللهِ صلى الله عليه وسلم : اقْبَلِ الْحَدِيقَةَ وَطَلِّقْهَا تَطْلِيقَةً"

A Woman came to the prophet (S.A.W) and said; I hate my husband and like separation from him" the prophet asked; would you return the orchard that he gave you as dower? She replied; "Yes, even more than that' the Prophet (S.A.W) 'You should not return more than that. Al Baihaqi (vol:7:313)

Thus, when the wife become apprehensive that her husband fails to observe the bounds prescribed by the Shari'a that is, cannot perform the duties imposed on him by the conjugal relationship, she can release herself from the tie, by giving up whole or some.

فالمشهور هو أن يخلعها الزوج، فإذا فعلا ذلك، حدث بينهما طلاق غير رجعي بمعرفتهما. ولكن إذا عجزت المرأة إعطاء المال أو المطلوب، فهناك طريقة أخرى لنقض الزواج" سنن البيهقي، ج 7، ص: 313.

Properly in return in consideration of which the husband is to give her a khul and when they have done this, an irreversible divorce would take place with consent of each other,. But if the wife fails to pay the compensation there is yet another means to dissolve the marriage through. (Sunan al Baihaqi, vol. 7, p. 313)

The Maliki jurist defined *khul* as *Talaq bil iwad* or divorce and the Hanafi jurists say that it is by giving something in return end of martial relationship with consent either with the utterance of the word *khul* or something that means the same. (Ibn Rusd nd: vol 2:51)

The Shari's jurist say that it is a separation sought with something given in return and with pronouncement of the word divorce or *khul* it can be achieved through mutual agreement of the two parties or through the order of the *Qadi* on payment by the wife to the husband a certain amount that does not exceed what was given to her. **(**Malik 1301 A.H: vol, 2:406**)**

The entire jurists agreed on the legality of *khul*. Imam Malik says that if husband forced his wife to enter into a *khul* the wife is entitled to get back dowry, but the separation will be valid under Shari'ah. The only jurist who does not agree with the legality of *khul* is Bikr bin Abdullah Aimuzni, a famour Tabi'i scholar. According to Shaukani, his view falls out of consensus (*Ijma).* Ali (1935: vol,1 :213-214) , also see (Al-Mughnind : 8, 174).

2.12 Iddah: Period of Waiting

The word *Iddah* is derived from the Arabic word *al-Adad* meaning the number, in the terminology of the Shari'ah; it means a period of waiting from re-marriage after the death of her husband or her separation or divorce from her. The Muslim jurists have unanimously

agreed on its essentiality *(wujub).* Sayyid (1968: vol, 8:177). Since the injunction of the Quran is quite explicit on the subject.

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ...

The divorced women shall wait concerning themselves for three monthly periods" (Q 2:228)

The prophet (s.a.w) commanded.

عْتَدِّى عِنْدَ ابْنِ أُمِّ مَكْتُومٍ"

Complete your Iddah period in the house of Abdullah ibn Ummi Maktum"Sayyid (1968: vol 8)

The Shari'ah emphasizes on reconciliation as a better course than divorce for the married partners and gives them opportunity to mend their relations if they have gone sour. Therefore, the Holy Qur'an prescribes a period of waiting after divorce has been pronounced so that a spell of temporary separation and suspension of conjugal relations may give the spouses time for rethinking and reconsideration in the interests of family and children, if any of the question whether divorce should be revoked or made final and irrevocable. The *Iddah* has another very important object to serve that is it may make it known whether the woman is having a child of the former husband in her womb so that there may be no confusion about the paternity of such child if the woman seeks to remarry. The Qur'an says

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what God has created in their wombs, if they have faith in Allah and the last day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable but men have a degree (of advantage) over them. And God is exalted in power, wise Q2:28

2.13 The Different Kinds of Iddah

The duration of Iddah is prescribed by the Holy Qur'an as follows

وَاللَّائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَاللَّائِي لَمْ يَحِضْنَ وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا

Such of your women as have passed the age of monthly course, for them the prescribed period, if you have any doubts is three months, and for those who have no courses (it is the same): for those who carry life (within their wombs), their period is until they deliver their burdens: and for those fear God, He will make their path easy (Q 65:4)

The Qur'an directed that there shall be no Iddah for a woman who is divorced by her husband before he has consummated his marriage with her. It says:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا فَمَتِّعُوهُنَّ وَسَرِّحُوهُنَّ سَرَاحًا جَمِيلًا

O you who believe: when you marry believing women, and then divorced them before you have touched them, no period of Iddah has you to count in respect of them: so give them a present, and set them free in a handsome manner Q 33:49)

But in case of termination of marriage, due to death of husband, the widows shall have an *Iddah* of four months and ten days. The extra period of forty days seems to have been added to pride for mourning by the widow. The Qur'an says:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلَا جُنَاحَ عَلَيْكُمْ فِيمَا فَعَلْنَ فِي أَنْفُسِهِنَّ بِالْمَعْرُوفِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ

If any one of you die and leaves widows behind him they shall wait concerning themselves for four months and ten days: when they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner. And God is well acquainted with wshat you do (Q 2:234)

The different kinds of *Iddah* as viewed by Ali ((nd: vol.vi:306-307) can be summed up as follows:

1. *Iddah* of women who still menstruate: Three menstruations
2. *Iddah* of women who have passed the age of menstruation: Three months
3. *Iddah* of woman whose husband died: Four months and ten days.
4. *Iddah* of a pregnant woman: Until she delivers a child.
5. No *Iddah* for a woman whose marriage is not yet consummated.

Some of the scholars like Ibn Abbas are of the opinion that, since Allah has made it obligatory for a woman whose husband dies to wait for four months and ten days, and has specified the period of waiting for the pregnant (woman) to last until she has been delivered, (it follows that) if the husband dies and the woman is pregnant she is bound by the two periods concurrently just as she would be bound to fulfill any other two duties combined together.

According to Imam al-Shafi'i, in Idris (nd:168) the Messenger of Allah said to Subay'ah, daughter of al-Harith, who gave birth to a child a few days after her husband's death: "You are lawful (for marriage) and you may get married", Ali(nd:vol,vi:306-307) this indicates that the *Iddah*, whether in the case of death or divorce, is to be fulfilled by `the expiration of the required months – was intended to bind women who are not pregnant, but if they are pregnant the *Iddah* is dropped. Idris (1969: vol, 11:205-206) and Autar (nd: vol, 6:305).

According to the majority of the Muslims, the term for the wife in the case of *khul* is the same as that of divorce. But Abu Daud, Tirmidhi and Ibn Majah and other have related Ahadith to the effect that the Holy Prophet (SAW) prescribed only one month course as term for the wife after the divorce and caliph Uthman decides as case in accordance with this. (Ibn Kathi.

2.14 Waiting Period for Unmarried women (*Istibra'*)

Istibra' Iddah is also incumbent on a wife for having sexual intercourse with a man (other than her husband) Where the inter course is manifestly illicit (ie Zina) the same rule applies where a ravisher (ghasis) or captor (sabiy) has gone off with a wife during such a period as arender the occurrence of inter course, possible even through the women claims that no inter course has taken place,however Malik jurist do not refer to such waiting period as *iddah,*they Rather refer to it as istibra, Kamal:1989

According to imam Shafi'I was of the view of her waiting period is one mouth ie. A single menstruation will allowed her to attain her istibra this is because of the. Hadith which says:

قال النبي صلى الله عليه وسلم: "لاَ تُوطَؤ الْحَامِل حَتَّى أَنْجَبَتْ، وَذَلِكَ اسْتِبْرَاؤهَا"

A pregnant woman should not be met untill she deliver and that is her istibra'(waiting period).

قالَ رُوَيْفِعُ ابْنِ ثَابِتٍ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ يوْمَ خَيْبَرِ: "مَنْ كَانَ يُؤمِنُ باللهِ وَالْيَوْمِ الآخِرِ فلَا يَطَأ جَارِيَةً مِنَ السِّبَى حَتَّى يَسْتَبْرِئَهَا بِحَيْضَةٍ" رواه الأثرم.

And also reported on the authourity of Ruwafi'I bn Thabit who said, I heard the messenger of Allah (SAW) on the day of Khaibar, Saying: "He who believe in Allah and the last day should not inter course with captivated girl until she attaind her istibra with a mstruatin period- Ibn Qudamah (P.501-502).

2.15 Code of Conduct for a Woman in *Iddah*

The jurists have different opinions about the giving out of the house of woman in *Iddah.* The Hanafi jurists say that it is not lawful for a woman who is given the first and

second divorce (*Rajah*) nor for a woman who is serving *Iddah* for *'Ba'in*' form of *Talaq* in '*Ba'in*' there is no place for her hence its irrevocable she may go out of the house either during the day time or at night. But a widow can go out during the day time or at certain time at night, but must not spend the night anywhere except in the house. The difference is that in the case of a divorce, she has the right to be maintained from the property of the husband, and hence it is not allowed for her to leave the house of the husband as a wife. But, in the case of a widow, she is not entitled for the maintenance; hence she can go out better her lot. According to the Hanbali jurists, she can go out during the day time whether she is in *Iddah* of divorce or as a widow. Jabir reported that his aunt was divorced three times, and then she went out to cut the fruits of her date-palm. Someone met her and told her not to do so. She came to the Prophet and reported the matter to him. The Prophet replied:

اخْرُجِى فَجُدِّى نَخْلَكِ لَعَلَّكِ أَنْ تَصَدَّقِى مِنْهُ أَوْ تَفْعَلِى خَيْرًا

> *You may go out to cut the fruits of you date-palm so that you may give charity out of it or do something good with it (Narrated by Abu Daud andNisa'i)*

As a precaution, she should not go out at night without any necessity because many evils do happen in the dark hours of night, while during the day time she can go out to fulfill her necessities and buy whatever she needs. Idris (1969: vol, 11)

She must not remarry during the period of *Iddah. Ahadith* give clear instructions that widows should not wear ornaments and colored and showy dresses, nor adorn themselves with any kind of make-up during this period. Awtar (nd: vol,vi: 306)

According to Imam Abu Hanifah, she will have the right to her maintenance and a dwelling place during the period of *Iddah* of irrevocable divorce just as during the *Iddah* of return, *(Raj'i)* but in that case she will have to spend the period of *Iddah* in the matrimonial home. The maintenance will be considered like a debt at the time of divorce. Imam Malik and Imam Shafi'i say that she will only be entitled to the dwelling place but not the maintenance

except when she is pregnant. Imam Ahmad bin Hanbal, on the contrary, says that she would have neither right to maintenance nor a dwelling. (Hamid: 1956: vol. 3)

2.16 Treatment of Divorce Women during *Iddah*

The Holy Qur'an prescribes the time when divorce shall be pronounced and the treatment that shall be given to the divorced woman during *Iddah.* It says:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللهِ...

O prophet, when you do divorced women, divorce them at their prescribed periods, and count accurately their prescribed periods; and fear Allah your Lord; and turn them not out of their house, nor shall they themselves leave, except in case they are guilty of some open lewdness. Those are limits set by Allah (Q 65:1).

فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّه...

Thus when they fulfill their term appointed (Iddah) either take them back on equitable terms or part with them on equitable terms; and take for witness two persons among you, endued with justice, and establish the evidence for Allah (Q 65:2)

Thus, the divorced woman should live in the house of the husband until she finishes the *Iddah.* It is not lawful for her to leave it, nor must the husband divorce her away from it. Even if she was not present in her matrimonial home at the time of the pronouncement of divorce or separation, it is essential for her to return to the house of the husband. Allah (swt) commands:

لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَة

And turn them not out of their houses, nor shall they themselves leave, except in the cases they are guilty of lewdness Q 65:1.

There is however difference of opinion as to whether a widow should pass the term in the house of the deceased or not. Sayyidna Umar, Sayyidna Othman, Abdullah bin Umar, the four Imams and many other great jurists are of the opinion that she should reside in the house of the deceased husband. While Sayyidah Aisha, Ibn Abbas, Sayyidina Ali and some other great jurists are of the opinion that she is free to pass the period wherever she likes.

CHAPTER THREE
RESEARCH METHODOLOGY

This chapter explained the various Methods techniques and procedure which the researcher employed in order to collect the data for the research.

3.1 Research Design

The current study employed descriptive survey research design. This is because the research aimed at soughing responded opinions on issues, problems and prospects of a given phenomenon. Hence, Survey design attempts to picture or document current condition or attitude.

3.2 Population of the study

The population of the study comprised of all the upper *Shari'ah* and *Shari'ah* courts in Kaduna state, the total number of these courts according to court statistic (diary) obtained from *Shari'ah* court of appeal diary (2015) are 96. There are 13 upper *Shari'ah* court and 83 *Shari'ah* court. In addition, the population includes all the Muslims communities residing in the three senatorial zones and this was divided into those in marriage bond and those whose marriage were divorced or separated.

Table 3.2.1 population of courts, judges and registrars:

Division	Categories of Courts	No of Courts population	No of Judges	No of Registrars
Kaduna	Upper *Shari'a*	4	4	4
division	Shari'a court	15	15	15
Zaria division	Upper Shari'a	3	3	3
	Shari'a court	19	19	19
Kafanchan	Upper Shari'a	1	1	1
division	Shari'a court	8	8	8
Saminaka	Upper Shari'a	1	1	1
division	Shari'a court	10	10	10
Kahia division	Upper Shari'a	1	1	1
	Shari'a court	10	10	10
Ikara division	Upper Shari'a	2	2	2
	Sshari'a court	13	13	13
BirninGwari	Upper Shari'a	1	1	1
division	Sharia court	8	8	8
TOTAL		96	**96**	**96**

The 3.1 above explained the distribution of courts, judges and registrars found in seven divisions of this state. The total population arrived at is courts which comprises of upper Shar'i'ah and Shari'ah courts have a total of 96, the judges are 96, while the registrars are 96 persons also.

3.3 Sample Size and Sampling Techniques

Sampling procedure: The Kaduna State which is divided into three senatorial Zones. Zone A, B and C. The court divided into seven (7) Division**s:** Namely**:** Kaduna division, Zaria division, Kafanchan division, Saminaka division, Kachia division, Ikara division, Birni Gwari division. The selection of sample of individual or measurement from the total population to be studied. In this, study the population is one hundred and ninety two (192). Looking at the

sample size of the population being large, the research intends to use the sample size of One hundred and four (104) which are selected from the three divisions that comprises Kaduna, Zaria and Kachia division out of the seven divisions in the (3) senatorial zones .This was gotten through cluster sampling technique, as the respondents are selected by the divisions available. The following table represents a sample distribution of such data. Table 3.3.1 sample size of the study.

Table 3.3.1 sample size of courts, judges and registrars

Division	Categories	No of Courts population	No of Judges	No of Registrars
Kaduna division	Upper Shari'ah	4	4	4
	Shari'ah court	15	15	15
Zaria division	Upper Shari'a	3	3	3
	Shari'ah court	19	19	19
Kachia division	Upper Shari'a	1	1	1
	Shari'a court	10	10	10
			52	52
			Total	**104**

The Table above showed the result obtaind from the selected three zones of research from Upper Shari'ah Court and Shari'ah court from the three (3) Senatorial Zones of Kaduna state. The major respondents of the courts are classified into three; the Public, the Spouses and the court. The three divisions selected were because they have Muslims as pre-deominant settlers and this is in harmony with the objectives of the research.

3.4 Instrument for the Data collection

A research of this nature being an opinion seeking used a self structured questionnaire and interview. It is a fixed response question aimed at eliciting respondent opinions on issues raised in the research questions. Questionnaire is found to be relevant to this study because it will make the data collection easy and respondents free to, respond by ticking the appropriate options provided without over burdening them. Thus, one hundred and four (104)

questionnaires will be produced and administered by the study. The questionnaire comprises of two major sections. Section 'A' requires the bio-data of the respondents while section 'B' is the designed questions. The questionnaire is both open and closed ended questionnaire.

3.5 Procedure for Data Collection

The questionnaires were distributed by the researcher and his research assistant who assisted in the distribution. Since most of the respondents could not understand English language in which the questionnaire was written, interpretation into local languages was offered to allow the respondents to make an independent selection or expression.

Similarly, an interview was administred with some selected judges and they were allowed to make their open expression in line with the objectives of the research.

3.6 Procedure for Data Analysis

Procedure for data analysis, data collected from the respondents was analyzed using frequency counts and simple percentages. To test the hypothesis set for this research, analysis of variance (ANOVA) was employed. Where significant difference exists in the opinions of the respondents, T.Test was employed to determine the level of differences.

CHAPTER FOUR

4.0 Introduction

This research is titled ‘An Analysis of the Approach of Sharia Court Judgement to Dissolution of marriage and its impact on life of Muslims.in Kaduna state’. The respondents are categorized into courts, spouses and public. A total of 520 respondents who duly responded to the instruments were used as respondents in this study. The statistical package of version IBM 23 was used for the data analysis. A total of 366 public respondents returned their questionnaire while 81 court respondents and 73 spouses returned their questionnaire. The analysis is presented in phases on the basis of Court respondents, Public respondents and Spouses respondents. The summary of findings from each of the three categories is presented, including the general answers to questions raised. The inferential statistic of Pearson Product Moment Correlation (PPMC) is used to determine the impact. Each hypothesis is tested at 0.05 level of significance. The conclusions as well as recommendations are also included at the end of this analysis

4.1 Court Analysis:

Table 4.1a:

Location of the Respondents

Place	Frequency	Percent
KADUNA	30	37.0
ZARIA	33	40.7
KACHIA	18	22.2
Total	81	100.0

Table 4.1a above showed the location of the court respondents. A total of 30 or 37.0% are from Kaduna while 33 or 40.7% are from Zaria and the rest 18 or 22.2% are from Kachia

Table 4.1b

Age Range of Respondents

	Frequency	Percent
18 - 40Yrs	50	61.7
41 - 60Yrs	27	33.3
61 - 90Yrs	4	4.9
Total	81	100.0

Table 4.1b above is on the age of the respondents from the court, according to the table, 50 of them are between the age of 18-40yrs, 27 of them are between 41-60yrs and the rest 4 of the respondents are within the ages of 61-90yrs. Therefore, most of the respondents are between ages18-40.

Table 4.1c

Genders of Respondents

	Frequency	**Percent**
Male	66	81.5
Female	15	18.5
Total	81	100.0

The table 4.1c is on the gender of the respondents; 66 of the respondents are males and the remaining 15 of them are female. Hence majority of the respondents are males

Table 4.1d

Marital Status of the Respondents

	Frequency	Percent
Married	67	82.7
Single	14	17.3
Total	81	100.0

The table 4.1d above is on the marital status of the respondents in the court, according to the table,67 or 82.7% of the respondents are married and the rest 14 or 17.3% of them are single. In conclusion, most of the courts respondents are married.

Table 4.1e

Educational Qualification of the Respondents

	Frequency	Percent
No response	4	4.9
Allo school only`	4	4.9
Ilmi/Allo school only	3	3.7
Primary school cert only	2	2.5
secondary school cert only	8	9.9
Diploma	12	14.8
Degree	41	50.6
Masters	4	4.9
P.HD	3	3.7
Total	81	100.0

The table 4.1e above is on the educational qualification of the courts respondents, From this table 4 of the respondents gave no response, while another 4 of them possess Alloschool only as against 3 or 3.7% that possess Iimi/Allo school only, while 2 others have only Primary school cert qualification, while 8 of them had secondary school cert only, another 12 of them have only diploma,41 of them have their degree,4 of the them have their masters and the rest 3 of the respondents have their PHD results;This shows that most of the courts respondents have their degree or Diploma qualification.

The following tables represent the questions of the questionnaire and the response of the respondents in the courts.

Table 4.1f

Please which of the following sources you received cases of marriage crises in your court

	Frequency	Percent
Complain from husband	**12**	**14.8**
Complain from wife	**43**	**53.1**
Joint complain between wife and husband	**16**	**19.8**
Complain from the husband parents	**1**	**1.2**
Court intervention	**2**	**2.5**
All of the above	**1**	**1.2**
None of the above	**6**	**7.4**
Total	**81**	**100.0**

The table 4.1f above is on the sources of cases of marriage crises received in your court, 12 representing 14.8% admitted that they received their case from the husband,43 or 53.1% received their case from the wife,16 of 19.8% received their case from both the wife

and husband,1 of 1.2% said they received their case from the husband's parents, 2 or 2.5% recieved their marriage crisis by court intervention, 1 of 1.2% are from all of the listed sources and the rest 6 of 7.4% have choosen none of the sources but could not explain further. Therefore, majority of the respondents said that the major sources of marriage crises taken to court are from complain from the wife which has 53.1%.

Table 4.1g

Which of the following process your court followed in addressing the crisis of marriage reports

	Frequency	Percent
Listening from the spouses (Husband and wife	48	59.3
Mandating the two parties to reconcile outside the court	8	9.9
Inviting the parents of the couples to handle the case for reconciliation	12	14.8
Passing judgment base on hearing from the two parties (husband & wife)	10	12.3
All of the above	3	3.7
Total	81	100.0

Table 4.1g above shows the method that was mostly followed in addressing the crisis of marriage reports in courts. Thus, the process of listening from the spouses (Husband and wife) appears to carry the majority view of the respondents, this is because 48 or 59.3% are of such opinion. The next process in number was addressing the crisis of marriage reports through invitation of the parents of the couples to handle the case for reconciliation. This opinion has 12 or 14.8% of respondents. On the other hand, 10 or 12.3% of the respondents passed their judgment base on hearing from the two parties (husband & wife) and while 8 or 9.9% gave mandate to the two parties to reconcile outside the court. 3 or 3.7% appropriate as

a process. Therefore, the main processes the court followed in addressing the crisis of marriage are listening from the spouses (Husband and wife) and inviting the parents of the couples to handle the case for reconciliation.

Table 4.1h

Is your court ever passed judgment against the wish of the two parties (husband/wife)

	Frequency	Percent
Yes	42	51.9
No	39	48.1
Total	81	100.0

Table 4.1h shows a total of 42 or 51.9% of the court respondents said they sometimes passed judgment against the wish of the two parties (husband/wife), while the rest 39 or 48.1% said they do not pass judgement against the wish of the two parties. This shows that majority of the courts used to judge against the wish of the two parties (husband/wife).

Table 4.1i
If 'yes' which of the following reasons influenced your court to take such decision

	Frequency	Percent
There is no possibility of reaching compromise between the marriage couples	24	29.6
There is fear of one party may harm the other party	16	19.8
The marriage couple may likely cause security challenge in the community	12	14.8
Resistant and unbending attitude of the parents of the wife	13	16.0
Resistant and unbending attitude of the parents of the husband	4	4.9
Fear of likely effect on either (husband/wife religious faith)	2	2.5
All of the above	7	8.6
None of the above	3	3.7
Total	81	100.0

When there is no possibility of reaching compromise between the marriage couples, according to majority of the respondents numbering 24 or 29.6% is the main reason that influences the court decision, likewise the fear of one party may harm the other party have 16 or 19.8% opinion as to what influences of the courts decision to terminate the marriage. Another reason that represent the influences of the court decision on marriage crisis is resistant and unbending attitudes of the parents of the wife which has 13 or 16% respondents, while 12 or 14.8% resulted to termination of marriage by court base on fear of the marriage couple may likely cause security challenge in the community. In another likely influence of the court decision is, fear of likely effect, on either the husband or the wife, this has 2 or 2.5% respondents opinion. However, 7 or 8.6% consider all the five opinions may have such influence and 3 or 3.7% could not chosed any and could not explain.

Table 4.1j

Does your court clearly mentioned to the couples at the end of its judgment the right to appeal their case to the more superior court if they wish

	Frequency	Percent
Yes	54	66.7
NO	18	22.2
Undecided	9	11.1
Total	81	100.0

The table 4.1j explain the approach in court after its judgement and hence or 66.7% are of the opinion that courts offered to the couples chance of approaching to a more superior courts. On the other hand, 18 or 22.2% of the respondents expressed a negative answer to the question, meaning that the courts never express the chance of appealing ther case to more superior courts.

Table 4.1k

Which of the following reasons in your view lead to appealing of marriage case to other courts?

	Frequency	Percent
Feeling of unjust judgment by either of the parties	40	49.4
Doubting the competence of the judge	16	19.8
Promoting of selfish interest	6	7.4
All of the above	5	6.2
Non of the above	12	14.8
Others	2	2.5
Total	81	100.0

The table 4.1k above is on the reasons leading to appeal cases to other courts .According to the table,40 of 49.4% of the respondents said that it was because of their feeling of unjust judgment by the courts, 16 or 19.8% of the respondents they doubt the competence of the judge,6 or 7.4% they blamed the judges for Promoting their selfish interest, 5 or 6.2% of therespondents said that it was due to all of the above cases ,12 or 14.8% could not agree with the cited options and the rest 2 or 2.5% are for other factors, but could express themselves. Hence, most of the respondents picked Feeling of unjust judgment by either of the parties as the main reason leading to appeal cases to other courts

Table 4.1l

Which of the following could be considered as the source of guidance and influence to your court decision

	Frequency	Percent
Shari'ah ruling only	39	48.1
Government policy	23	28.4
Discretion of the judge	4	4.9
Traditional and custom of the people	3	3.7
Educational awareness of the community	1	1.2
Political influence	7	8.6
All of the above	3	3.7
None of the above	1	1.2
Total	81	100.0

The table 4.1l is on the factors that could be considered as the source of guidance and influence to court decision, 39 or 48.1% are for Shari'ah ruling only, 23 or 28.4% of the respondents have their opinion on Government policy while 4 or 4.9% of the respondents said it is based on the discretion of the judge,3 or 37% of the respondents considered traditional and custom of the people,1 or 1.2% of the respondents believe on the Educational awareness of the community,7 or 8.6% of the respondents considered Political influence,3

or 3.7% of the respondents considered all the cited options and 1 or 1.2% of the respondents considered none of the above and could not further explain. Thus, most of the respondents believe that Shariaah ruling and government policy are the main sources of guidance and influence to court decision

Table 4.1m

Which of the following explains the reaction of either of the two parties (Husband/wife) after the decision of the court

		Frequency	Percent
	Agreement and satisfaction with the court judgment	39	48.1
	Objection and forwarding the case to the most superior court	23	28.4
	Declining from the court judgment to reconciliation at home	7	8.6
	Violence and clashes between the couples and their relations	9	11.1
	None of the above	3	3.7
	Total	81	100.0

The table 4.1m above is on the reaction of either of the two parties (Husband/wife) after the decision of the court 39 or 48.1% of the respondents are of the opinion that there was agreement and satisfaction with the court judgment 23 or 28.4% of the respondents are of the opinion that there was objection and forwarding the case to the most superior court while 7 or 8.6% respondents decline from the court judgment to reconciliation at home and 9 or 11.1% respondents are expressed to violence and clashes between the couples on their relation and 3 or 3.7% respondents chosed none of the above without further explannation. This shows that the main reactions of the two parties after most decision of the courts

include either agreement/ satisfaction with the court judgment or Objection and forwarding the case to the most superior court.

4:2a Public Analyses:

Age Range of the Respondents		
	Frequency	Percent
18 - 40Yrs	266	72.7
41 - 60Yrs	91	24.9
61 - 90Yrs	9	2.5
Total	366	100.0

The age range of the above respondents from the public showed that 266 or 72.7% are between 18-40yrs, while 91 or 24.9% are between 41-60 years and the rest 9 or 2.5% are from 61 years or above.

Table 4.2b

Gender of the Respondents

	Frequency	**Percent**
Male	288	78.7
Female	78	21.3
Total	366	100.0

The gender of the public respondents showed that 288 or 78.7% are males the rest 78 or 21.3% are females

Table 4.2c

Marital Status of the Respondents

	Frequency	Percent
Married	254	69.4
Single	112	30.6
Total	366	100.0

On the marital status of the public respondents, 254 or 69.4% are married and the remaining 112 or 30.5% are single

Table 4.2d

Educational Qualification of the Respondents

	Frequency	Percent
No response	1	.3
Allo school only	4	1.1
Islamiyah school only	20	5.5
llmi/Allo school only	12	3.3
Primary school only	11	3.0
Secondary school cert only	41	11.2
Diploma	129	35.2
Degree	128	35.0
Masters	6	1.6
P.Hd	14	3.8
Total	366	100.0

The educational qualification of the public respondents were that only 1 or 3% had no response 4 or 1.1% attend Allo school only 20 or 5.5% attend Islamiyah school only and 12 or 3.3% attend Imi school only 11 or 3.0% attend primary school only 41 or 11.2% attend went to secondary school cert only 129 or 35.2% had diploma 128 or 35.0% had degree, 6 or 16% had masters and 14 or 3.8% had Ph.D.

The following questions are from the questionnaire and the response of the respondents

Table 4.2e

Have you ever witnessed or experienced separation of marriage by court order

	Frequency	Percent
Yes	155	42.3
No	206	56.3
Undecided	5	1.4
Total	366	100.0

According to the question 'have you ever witnessed or experience separation of marriage by court order' 155 or 42.3% of the respondent said yes and 206 or 56.3% said no. This implies that over 42% of the public respondents have at one time or the other experienced separation of marriage by court

Table 4.2f

Have you ever witnessed case of marriage in court

	Frequency	Percent
Yes	197	53.8
No	167	45.6
Undecided	2	.5
Total	366	100.0

According to the question have you ever witnessed case of marriage in court 197 or 53.8% of the respondents said yes 167 or 45.6% said no and 2 or 0.5% were undecided.

Edited Table 4.2g

If 'Yes' which of the following explains your feelings about dealing with marriage case in court

	Frequency	Percent
Excellent	77	21.0
Good	123	33.6
Poor	62	16.9
Fair	30	8.2
None of the above	74	20.2
Total	366	100.0

According to the question If Yes' which of the following explains your feelings about dealing with case of marriage in court 77 or 21% of the respondents said it was excellent 123 or 33.6% said it was good. 62 or 16.9% said poor, while 30 or 8.2% said it is fair and the ret 74 or 20.2% said none of the above. This implies that most public respondents believe the feelings about dealings with case of marriage in court is good

Table 4.2h

Which of the following in your own suggestion you consider better in solving marriage cases

	Frequency	**Percent**
In court	37	10.1
Between the couples	173	47.3
Involvement of the parents	126	34.4
Intervention of the responsible members of the community	16	4.4
None of the above	11	3.0
Others	3	.8
Total	366	100.0

According to the public in response to the above question on better way in solving marriage cases, 37 or 10.1% said in court, while 173 or 47.3% said between couples, as against 126 or 34.4% said involvement of the parents, while another 16 or 4.4% said intervention of the responsible members of the community while 11 or 3% said none of the above and the rest 3 or 0.8% had other ways, but could not explain. This shows that the public respondents feel that the best way of solving marriage cases should be between the couples or by the involvement of their parents in solving the case.

Table 4.2I

Location of the respondents

Place	Frequency	Percent
Kaduna	130	35.5
Zaria	182	49.7
Kachia	54	14.8
Total	366	100.0

The table above is on the place of the respondents with 130 or 35.5% of respondents who live in Kaduna, 182 or 49.7% of respondents who live in zaria, and the remaining 54 or 14.8% who live in Kachia.

4:3 ANALYSIS OF SPOUSES RESPONDENTS

Table 4.3a

Male spouses

Age Range

	Frequency	Percent
18 - 40Yrs	31	73.8
41 - 60Yrs	10	23.8
61 - 90Yrs	1	2.4
Total	42	100.0

The male spouses as reported above showed that 31 or 73.8% of them are 18-40 years while 10 or 23.8% are 41-60 years range and only 1 is above 61-90 years

Table 4.3b

Educational Qualification of the Respondents

	Frequency	Percent
Allo school only	2	4.8
Islamiyyah school only	3	7.1
ilmi/Allo school only	3	7.1
Secondary school cert only	10	23.8
Diploma	9	21.4
Degree	11	26.2
Masters	2	4.8
P.Hd	2	4.8
Total	**42**	**100.0**

Most of the male spouses numbering 11 or 26.2% are degree holders while 10 or 23.8% posses secondary school as against 9 or 21.4% posses Diploma, while others posses qualifications such as Allo school only, Islamiyya, Ilmi Allo and others. It was also noted that 2 of each of the male spouses posses Masters Degree and Ph.D.

Table 4.3c

Which of the following leads your marriage case to court?

	Frequency	Percent
I personnaly presents the case to the court	6	14.3
Both of us husband/wife submitted the case to the case	9	21.4
Our parents submitted the case to the court	2	9.5
Husband's parent submitted the case to the court	2	4.8
Wife's parent submittd the case to the court	17	40.5
None of the above	2	4.8
Others	2	4.8
Total	42	100.0

Majority of the male spouses numbering 17 or 40.5% said their wife's parents submitted their case to courts. Another 9 or 21.4% said both of them (wife and husbands)

submitted their case to courts. Another 9 or 14.3% said they personally presented their case to the courts. Therefore, majority of the male spouses said that their wife's parents are the ones who submitted their case to courts.

Table 4.3d

Are you satisfy with the judgment passed by the court

	Frequency	Percent
Yes	24	57.1
No	15	35.7
Undedicded	3	7.1
Total	42	100.0

A total of 24 or 57.1% said they are satisfied with the judgement of the court while 15 or 35.7% said they are not as against 3 or 7.1% said they are undecided about thee courts judgmement. Therefore most of the male spouses are satisfied with the court judgment.

Table 4.3e

If "No" which of the following reasons made you not to be satisfied with the judgment

	Frequency	Percent
There is clear injustice in the judgment	14	33.3
The judgment contradicts shari'ah	13	31.0
The judge was biased	6	14.3
All of the above	3	7.1
None of the above	5	11.9
Others	1	2.4
Total	42	100.0

Table 4.3e shows the reason why the male spouses are not satisfied with the judgment 14 or 33.3% said there is velar injustice while 13 or 31.0% said the judgement contradicts shari'ah as against 6 or 14.3% who said the judge was biased. While 3 or 7.1% of the respondents all of the above and 5 or 11.9% of the respondents have not selected any of the options and has not provide any other information.

Table 4.3f

If "Yes" which of the following reasons made you to be satisfied with the judgment?

	Frequency	Percent
The judgement adhered with the shari'ah guidance	18	42.9
The judgement was in accordance to my wish	12	28.6
We have no alternative	6	14.3
None of the above	5	11.9
Others	1	2.4
Total	42	100.0

Table 4.3f shows the reason why the male spouses are satisfied with the judgmenet, 18 or 42.9% of the respondents are of the opinion that the judgment adhered with the shari'ah guidance, while 12 or 28.6% said the judgment was in accordance to their wish as against 6 or 14.3% that said they have no alternative as against another 5 or 11.9% that none of the above reasons. Therefore, adherence to shari'ah is the main reason why the male spouses are satisfied with the judgment.

Table 4.3a

Female Spouses Frequency Table

Age Range

	Frequency	Percent
18 - 40Yrs	28	90.3
41 - 60Yrs	3	9.7
Total	31	100.0

On the female spouses age group, a total of 28 or 90.3% are between 18.40 years while the rest 3 or 9.7 of them are from 41-60years. Most of the female spouses are between 18-40 years.

Table 4.3b

Educational Qualification of the Respondents

	Frequency	Percent
No response	2	6.5
Allo school only	1	3.2
Islamiyyah school only	2	6.5
Ilmi/Allo school only	2	6.5
Primary school cert. only	3	9.7
Secondary school cert only	4	12.9
Diploma	1	3.2
Degree	13	41.9
Masters	2	6.5
P.Hd	1	3.2
Total	**31**	**100.0**

The female spouses educational qualification showed that majority of them numbering 13 or 41.9% posses Degree while 4 or 12.9% posses secondary school while 3 posses primary school. Others posses either Allo school, Islamiyya, Ilmi/Allo. Interestingly 1 or 3.2% off the female spouse's posses Ph.D. while another 2 or 6.5% of the female spouses posses Master degree.

Table 4.3c

Which of the following leads your marriage case to court?

	Frequency	Percent
I personnaly presents the case to the court	5	14.3
Both of us husband/wife submitted the case to the case	7	21.4
Our parents submitted the case to the court	3	9.5
Husband's parent submitted the case to the court	1	4.8
My parent submittd the case to the court	15	40.5
Total	31	100.0

On the reasons that lead their marriage case to court, majority of the female spouses numbering 15 or 48.4% said their parents submitted the case to the court, while 7 or 22.6% said both the wife and husband submitted the case to court as against 5 or 16.1% who said they (the wife) personally presents the case to the court. Another 3 or 9.7% said the parents of both wife and husbands submitted the case to court and only 1 or 3.2% of the female spouses said their husbands submitted the case to court. This implies that majority of the female spouses said their parents (wife's parents) submitted the marriage case to court.

Table 4.3d

Are you satisfy with the judgment passed by the court

	Frequency	Percent
Yes	24	77.4
No	4	12.9
Undedicded	3	9.7
Total	42	100.0

On if the female spouses aare satisfied with the judgement with the court, a total of 24 or 77.4% said they are, while 4 or 12.9% said they are not and the rest 3 or 9.7% of the female spouses are undecided. Most of the female spouses are satisfied with the court judgement.

Table 4.3e

If "No" which of the following reasons made you not to be satisfied with the judgment

	Frequency	Percent
There is clear injustice in the judgment	13	41.9
The judgment contradicts shari'ah	8	25.8
The judge was biased	5	16.1
All of the above	1	3.2
None of the above	4	12.9
Total	31	100.0

On why the female spouses may not be satisfied with the judgement 13 or 40.9% believe there is clear injustice in th justice while 8 or 25.7% said the judgement contradicts shari'ah as against 5 or 16.1% that said the judges are biased. Most of the female spouse who was not satisfied with the court judgement believes that there is clear injustice in the justice.

Table 4.3f

If "Yes" which of the following reasons made you to be satisfied with the judgment?

	Frequency	Percent
The judgement adhered with the shari'ah guidance	18	58.1
The judgement was in accordance to my wish	7	22.6
We have no alternative	4	12.9
None of the above	2	6.5
Total	42	100.0

On why the female spouses are satisfied with the judgegement, a total of 18 or 58.1% said the judgement adhered with the shari'ah guidance, while 7 or 22.6% said the judgement was in accordance to my wish as against 4 or 12.6% that said they have no alternative and the rest 2 or 6.5% of the female spouses said none of the above reasons but could not explain further. Most of the female spouses who are satisfied with the judgement said the judgement adhered with the shari'ah guidance.

4.4 Impact of Shari'ah Courts Judgement on the Life of Muslims

This section carefully studies the impact of separation of marriage by the court. The opinion of the couples and public was sought.

Table 4.4.1

How do you rate your relationship with your partner after the dissolution of marriage by the court

	Frequency	Percent
Very cordial	10	23.8
Not cordial	18	42.9
Undecided	14	33.3
Total	42	100.0

Table 4.4.1 shows that 10 or 23.8% said they are very cordial as against 18 or 42.9% who said it is not cordial and the rest 14 or 33.3% said undecided. This implies that most male spouses' relationship with their spouse after the dissolution of marriage by the court is not cordial

Table 4.4.2

Are you blessed with children with your partner, before the separation of marriage by the court?

	Frequency	Percent
Yes	35	83.3
No	7	16.7
Total	42	100.0

The table 4.4.2 was asked to male spouses and at the of separation of their marriage a total of 35 or 83.3% of the male spouses had children with their spouses while the rest 7 or 16.7% said they do not. Majority of the male spouses had children with their spouses.

Table 4.4.3

If' Yes' how do you rate the relationship of your partner with the children after the separation of your marriage?

	Frequency	Percent
Excellent	8	19.0
Very good	8	19.0
Good	18	42.9
Fair	5	11.9
Poor	3	7.1
Total	42	100.0

On the rate of relationship of the couples with children after the separation of their marriage 18 or 42.9% said it is good while 8 or 19% each said it is either excellent or very good as against 5 or 11.9% who said fair and the rest 3 or 7.1% said poor. Most of the male spouses rate as good relationship of your partner with the children after the separation

Table 4.4.4

Which of the following explains your experience about the decision of court on separation of marriage?

	Frequency	Percent
Violence between couples	161	44.0
Cordiality between couples	78	21.3
None of the above	46	12.6
All of the above	73	19.9
Others	8	2.2
Total	366	100.0

The table 4.4.4 explains the response of the public respondents on their experience about the deceision of court on separation of marriage, 161 or 44.0% saod they witnessed violence between the couples, while 78 or 21.3% said cordiality between couples, as against 46 or 12.6% that said none of the above, while 73 or 19.9% said all of the above ad the rest 8. Or 2.2% had other experiences but could not explain. In summary most of the public respondents believe that their main experience about the decision of court on separation of marriage is that one that concerns violence between the couples.

Table 4.4.5

In your opinion do you consider intervention of court into marriage cases will bring about peace into the marriage life of the couples?

	Frequency	Percent
Agreed	141	38.5
Disagreed	181	49.5
Undecided	44	12.0
Total	31	100.0

The table 4.4.5 explains the views of public in the intervention of courts in marriage cases, thus a total of 141 or 38.5% of the public agreed the intervention of court into marriage cases will bring about peace in the marriage life of the couples, while another 181 or 49.5% disagreed and the rest 44 or 12.0% were undecided. This shows that majority of the public

respondents do not agree with the intervention of court into marriage cases will bring about peace in the marriage life of the couples.

Table 4.4.6

If "Disagreed" which of the following reasons made your decision

	Frequency	Percent
Biasness of judge	90	24.6
Corruption among the judge	76	20.8
Incompetency	52	14.2
None of the above	66	18.0
All of the above	71	19.4
Others	11	3.0
Total	31	100.0

On why the public respondents do not consider intervention of court into marriage cases will bring about peace in the marriage life of the couples include biasness of the judges according to 90 or 24.6% of the respondents, while 76 or 20.8% hinge their decision on corruption among the judges, as against 52 or 14.2% that believe in the incompetency of the court, while 66 or 18.0% said none of the above reasons as against 71 or 19.4% that all the above and the rest 11 or 3.0% had other reasons but could noy explain further. Therefore, the main reason why the public respondents do not consider intervention of court into marriage cases will bring about peace in the marriage life of the couples include biasness of the judge and the corruption among the judge.

HYPOTHESES OF TESTING

Hypothesis One: The null hypothesis states that there is no significant difference between the concept of divorce in Islam and practice of divorce in shari'ah courts.

Table 1: Non parametric test of differences between the concept of divorce in Islam and practice of divorce in shari'ah courts

Ranks	N	Mean Rank	Sum of Ranks	Z score	P
Concept of dirvoce in Islam	266	22.52	720.50	4.679	0.001
Practice of dirvoce in shari'ah courts	266	20.04	720.40		

The none parametric test of Wilcoxon test showed that significant differences exist between the concept of divorce in Islam and practice of divroce in shari'ah courts. This is because the calculated p. value of 0.001 is lower than the 0.05. The computed mean rank is 22.52 and 20.04 in their understanding of concept of divorce in Islam and Traditional pactice of divorce respectively. This shows that concept of divorce in Islam is higher than traditional practice of divorce. The null hypothesis which states that there is no significant difference between the concept of divorce in Islam and practice of divorcein shari'ah courts is hereby rejected.

Hypothesis Two: The null hypothesis state that there is no significant impact between concept of divorce in islam and conduct of divorce in court in Kaduna state.

Table 2: Pearson Product Moment Correlation Statistics on impact between concept of divorce in Islam and conduct of divorce in court in Kaduna state.

Ranks	N	Mean	Std. Dev	Correlation index r	Df	P
Concept of dirvoce in Islam	266	8.7037	3.07183			
				0.698	264	0.002
Conduct of divorce in court	266	9.5062	4.02531			

**Correlation is significant at the 0.01 level (2-tailed)

Results of the Pearson Product Moment Correlation (PPMC) statistics showed that significant impact exist between concept of divorce in Islam and conduct of divorce in court in Kaduna state. The computed P. value of 0.002 is lower than the 0.05 alpha level of significance at a correlation index r level of 0.698. This shows that their level of concept of

divorce in islam has effect on the conduct of divorce in the court. Therefore, the null hypothesis which states that there is no significant impact between concept of divorce in Islam and conduct of divorce in court in Kaduna state is hereby rejected.

Hypothesis Three: The null hypothesis states that there is no significant impact between process of Islamic concept of reconciliation (Sulh) and the practice of courts in Kaduna state.

Table 3: Pearson Product Moment Correlation Statistics on impact between process of Islamic concept of reconciliation (Sulh) and the practice of courts in Kaduna state

Ranks	N	Mean	Std. Dev	Correlation index r	Df	P
Process of Islamic concept of reconciliation (Sulh)	266	10.685	3.0415	0.788	264	0.001
Practice of courts	266	11.5002	4.415			

**Correlation is significant at the 0.01 level (2 tailed)

Results of the Pearson Product Moment Correlation (PPMC) statistics showed that significant impact exist between process of Islamic concept of reconciliation (Sulh) and the practice of courts in Kaduna state. The computed P. value of 0.001 is lower than the 0.05 alpha level of significance at a correlation index r level of 0.788. This shows that their level process of Islamic concept of reconciliation (Sulh) and the practice of courts in Kaduna state. Therefore the null hypothesis which state that there is no significant impact between process of Islamic concept of reconciliation (Sulh) and the practice of courts in Kaduna is hereby rejected.

Hypothesis Four: The null hypothesis state that there is no significant relationship between the effect of marriage separation in courts and increase in the number of divorce in Kaduna state.

Table 4: Pearson Product Moment Correlation statistics on impact between the effect of marriage separation and Muslim Ummah in shari'ah court in Kaduna state

Ranks	N	Mean	Std. Dev	Correlation index r	Df	P
Effect of marriage separation	266	11.0102	4.2101			
				0.809	264	0.004
Increase in the number of divorce in Kaduna	266	10.9849	3.564			

**Correlation is significant at the 0.01 level (2 tailed)

Results of the Pearson Product Moment Correlation (PPMC) statistics showed that significant impact exist between the effect of marriage separation and Muslim Ummah in shari'ah court in Kaduna state. The computed P.value of 0.004 is lower than the 0.05 alpha level of significance at a correlation index r level of 0.809. this shows that the effect of Marriage separation and the increase in the number of divorce is significantly related. Therefore the null hypothesis which state that there is no significant impact between the effect of marriage separation and Muslim Ummah in shari'ah court in Kaduna state is hereby rejected.

Hypothesis Five: The null hypothesis state that there is no significant relationship between shari'ah provision and challenges of marriage separation in shari'ah court in Kaduna state.

Table 5: Pearson Product Moment Correlation statistics on impact between possible solution to the effect of marriage separation and Muslim Ummah in Kaduna state

Ranks	N	Mean	Std. Dev	Correlation index r	Df	P
Possible solution to effect of marriage separation in shari'ah	266	12.7037	3.128			
				0.777	264	0.027
Challenges of marriage separation in shari'ah court in Kaduna state	266	12.6649	3.224			

**Correlation is significant at the 0.01 level (2 tailed)

Result of the Pearson Product Moment Correlation (PPMC) statistics showed that significant relationship exist between shari'ah provision and the challenges of marriage separation in shari'ah courts in Kaduna state. The computed P. value of 0.027 is lower than

the 0.05 alpha level of significance at a correlation index r level of 0.777. This shows that the solution to effect of Marriage separation and the Muslim Ummah in shari'ah is significantly related. Therefore the null hypothesis which states that there is no significant relationship between shari'ah provision and the challenges of marriage separation in shari'ah courts in Kaduna state is hereby rejected.

4.5 Results and Findings

i- Court Analysis

1. The main processes the court follow in addressing the crisis of marriage include listening from the spouses (Husband and wife) and inviting the parents of the couples to handle the case for reconciliation. This is indicated in the analysis; 59.3% and 14.8% respectively as the highest opinion.
2. The major sources of marriage crises are complaints from the wife as indicated as the highest opinion with 53.1%.
3. Majority of the courts believe that they have often passed some judgments that were against the wish of the two parties (husband/wife). 51.9% are on the opinion of the passed judgement that was against the wish of the spounses.
4. When there is no possibility of reaching compromise between the marriage couple, and the fear of one party harming the other party according to majority of the respondents is the main reason that influences the court decision, this indicated in the analysis of court influence is about 29.6%. because of the fear in harming one partner
5. Most of the respondents agreed that the court clearly mention to the couples at the end of its judgment the right to appeal their case to the more superior court if they so wish, about 66.7% ae on the opinion to appeal the case.

6. Feeling of unjust judgment by either of the parties is the main reason leading to appeal cases to other courts, this indicated 49.4% are unsatisfied with the court judgement.
7. Shariaah ruling and government policy are the main sources of guidance and influence to the court decision. 48.1% considered court as a source of guidance.
8. The main reactions of the two parties after most decision of the courts include either agreement/ satisfaction with the court judgment or Objection and forwarding the case to the most superior court, it is indicated that 48.1% are satisfied with the court judgement.

ii- Public respondents Analysis

1. Over 42% of the public respondents have at one time or the other witnessed court cases on marriage crisis.
2. The public respondents feel that the best way of solving marriage cases should be between the couples or involvement of their parents to solve the case, where 47% went for the resolution between couples and 34.4% of the total respondents went for the involvement of parents in solving marriage cases.
3. Most of the public respondents believe that their main experience about the outcome of decision of courts on separation of marriage is violence between couples. The result shows 44% of the respondents with the opinion of violence occurrence between the couples.
4. Majority of the public respondents do not consider intervention of court in marriage cases to bring about peace in the marriage life of the couple, where 49% of the respondents have this view.

5. The main reasons why the public respondents do not consider intervention of court marriage cases to bring about peace in the marriage life of the couples include biasness of the judge and the corruption among the judges. The result showed 24.6% of the total respondents with the mind that biasness of the judges and 20% with the opinion that corruption among judges is the reason for their dislike for court intervention.

iii- Spouses Analysis

1. Most divorce cases that happen in the court are caused by the parents of the wife or by both husband and wife who submit the case to the court. 14.3% of the respondents have the opinion that either of the spouses presents the case to the court while 21.4% of the respondents believed that both of them submit the case to the court.
2. Most of the spouses respondents are satisfied with the judgement of the courts where the result showed 57.1% of the respondents with this view.
3. Most of the spouses who are not satisfied with the judgement of the courts believe that there is clear injustice in the judgement passed on. 33.3% of the respondents belived in this opinion.
4. Majority of the spouses respondents who are satisfied with the judgement of the courts believe that the judgement is adhered with the shari'ah guidance, where 42.9% of the total respondents went for this opinion.
5. The impact of court decision between the spouses after dissolution of their marriage is not cordial. Ofcourse, because 42% of the total respondent have this opinion.
6. Majority of the spouse's respondents have children with their partners. Indeed, the result showed 83.3% of respondent with this opinion.

7. The spouse's respondents rate the impact of their partner with the children after the separation as being good; yes ofcourse, since 42.9% of the respondents are with this opinion.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary

This research entitled ‘An Analysis of the Approach of Shari’ah Court Judgements to Dissolution of Marriage and its Impacts on the Life of Muslims in Kaduna State is motivated as a result of influx of marriage cases to courts. Therefore, in order to carefully understand the challenge. It is divided into five chapters. The chapter one which is the introduction aims at providing a general study of the topic and hence it comprises of the background to the study, the statement of the problems, the objectives, research questions, the significance of the study, the hypothesis and the scope of the study.

The chapter two is the literature review where important issues that could lead to clarification and explanation of some of the research question were reviewed and deliberated. The chapter therefore comprises the following issues: the concept of (Talaq) in shariah, Breach of marriage agreement (Shiqaq), Legal position, Validity of Talaq, Form and procedure of Tallaq, Types ofTalaq through Tafwid, Distiction between *Tafwid* and*Tawkil*, *Faskh* Annulment or Abrogation of marriage, Forms of dissolution, Dssolution of marriage by mutual consent, Iddah period of waiting, Different kinds of iddah, Code of conduct for a women in iddah, Treatment of Divorce during iddah.

The chapter three, the methodology, explained the procedure adopted in collecting data for the research as well as the procedure for the analysis of the data in chapter four. In this regard, the population of the study, sample and sampling procedure, the instruments of research were all identified and elaborately discussed.

The chapter four is the data analysis, it concentrated on analyzing the data collected and at the end of the analysis the results and the findings of the research were highlighted.

Finally the chapter five concentrated on the summary, conclusion and recommendations. The Bibliography and appendixes ended the research.

5.2 Conclusions

The essence of marriage in Islam is to create relationship that promotes consciousness of Allah and establishes moral and cordial society. In view of this, Islam is highly sensitive with marriage institution by providing outstanding rules and regulations to guide all problems and challenges of marriage.

The most outstanding means of reconciling marriage crises when it fails to be resolved between the marriage couples is through the intervention of parents or relatives of both couples. However, when it fails then the intervention of authority, the court, has to be resorted to.

In the contemporary Kaduna state there is the proliferation of marriage cases to courts, which mostly after the judgements hardly the crisis is exterminated instead it excavate to another dimension of problems. Most at times those that the judgement is not in their favour accuse the courts with either biasness or injustice in their rulings, which the case may not actually be truth. Of course it has revealed that most couples could neither fully exhaust the procedure of reconciliation in Shari'ah or their uncompromising situation lead them to court and which eventually lead to the discussion of court.

If people should adopt Shari'ah method of resolving marriages crisis there will be less marriage cases in courts and there will also be less termination of marriage by courts. However, the courts should always consider themselves as ambassadors of Shari'ah and therefore their actions have a strong bearing on the Shar'iah and any deliberate deviation from shariah guides to selfish interest it will not be forgiven by Allah.

5.3 Recommendations

Based on the findings from this study, the following recommendations are hereby supplied

1. Spouses should endeavour to resolve their marriage crisis between them at home instead of reporting every problem to their parents or going to the courts.
2. The courts should strictly base their judgement and reports on Sharia rulings and never allowed biasness or unnecessary interventions from any angle to interfere with their decisions.
3. Compromising that could lead to reconciliation not distortion of shari'ah guidance should be promoted among marriage couples.
4. Judges are to contribute toward Recouncilliation rather than Separation.
5. The Islamic preachers (Daa'awah) should put more effort in their preaching season toward recouncilliation rather than dissolution of marriage.

5.4 Suggestions for Further studies

This study is by no means exhaustive, further studies would be carried out on the influence of socio-economic and cultural background on the marriage crisis of Muslim Marriages in Kaduna state,

- The same topic could also be researched on covering another state in Nigeria.

Bibiography

Abi Bakr, A. A. (1355 A.H) Al *Hidayyah Sharh al Bidayah al mubtadi* Egypt;Cairo, Islamic Publishers

Abdulrahman, A. (1968) *Mada Hurriyah al Zaw jain fil Talaq* Labanon;Dar al-Kotob al-llmiyah Publishers.

Abdulkadir Orire (2007), *Shari'ah; A misunderstood legal system*, Nigeria – Kaduna, Sankore Educational Publishers, Samaru, Zaria.

Abdulrahman,A.(1968) *Mada Hurriyah al Zawjain fil Talaq* ;U.S ;Bereau Publication.

Abdulrahman,A.(1965) *AZawaj wal talaq* Syria;Aleppa Publication.

Al Shafii,A.A (1393 A.H) *Sahih Muslim bi Sharh al Nawawi*. Eqypt;Cairo: Dar Ashuruq Publication.

Ali,A.M. (1935) *Faith al qadir Bulaq* :Egypt:Cairo:Dar ashuruq publication.

Abdul alsalim, A.S.(ud) *Jwahar al iklil Sharh mukhtasar al khalil*; Eqypt;Cairo;Dar ashuruq Publication.

Abi zaid,A.A (1976) *Risalah* Kaduna; Zaria; Gaskiya cooperation publication

Al Hussain,A.A Al *sunna al kubra wal sughra* :Telangana: Hyderabad:Darul Ishaat publishers.

Al Hafiz, I. (ud) *Al qur'an al Azim*: Egypt:Cairo,Hindawi publication.

Ali, A.M. (ud) *Nail Autar* Egypt:Cairo,Darulfikir /publication

Al malik, .A.M.(1301 A.H) *Hashiyyah al Dasuqi*. Egypt, Darusalm publication.

Asad,M. (1980) *The message of the Qur'an*, New York,ifrad,Islamic publication.

Ahmed,I.(1996) *Termination of Marriage*,Kaduna,Zaria,Printing press.

Al-Bukhari, (2004) *Sahihil Bukhari*, Cairo,Dar-Alfajir,Lit-Twrath,Al-Azhar Publishers.

Ibrahim,A.A.(1956) *Dissolution of Marriage*,an article in Islamic qurtely publish

Isa, A.m.(1382 A.H) *Sunnah al Tirmidhi*, Egypt:Cairo,Dar- ushshurooq/publication.

Ibn Najim (ud) *Bahr al Rai'q* ,Egypt,Cairo,Dar-us-Salam poblicatio.

Ibn Qudamah (ud) *almugniy*, Maktabajamhuriyyah Al-Arabiyyah publication.

Ibn Hajir,A.(1993) *English translation*, Labenon,Darulfikir publication.

Ibn Rusd (ud) Bidayatul *mujtahid*,Egypt:Al-maktabatul tijarariyya al kubra publication.

Ibn Qudamah A. (md) Al mugniy li'ibni Qudama: Riyadh: Maktab Riyadh al – Hadithah P. 501 – P 502

Khalifah,H.(1941) *Kash al zanun*,Turkish,Istanbul,Dar- us-salam publication.

Muhammad,A.A.(ud) *Muhammad Ahwal alshaksiyyah*:Egypt: Cairo:Darufikir publication.

Musa, M.Y. (1958). Ahkamul-Ahwalish shakhsiyyah, Ifra, Egypt; Filfighil islamiy,Darulkitab al arabiy publication.

Muhammad,A. (ud) *Ahkam usrah* Egypt,Cairo,Dar-Fatimiyah, publication.

Majid, K.(1961) . *Shafi'I Risalah*: U.S, Baltimore Publication.

Malik I. A. (2005) ***the Muwatta***. Pakistan, Ilimi Graphics Darul-Ishaat urdu bazarkarachi-1. First edition 2005

Nchi.A. (1996) *Islamic Law,* Nigeria, Kaduna,Zaria:Tamaza Publishing Company.

Sha'aban, Z.D. (1971). *Al-Ahkamush-shariyyah*, Ifrata, Darulfikir publication.

Sabiq, S. (1977).*Fighu sunnah*, Infra, Drussalam publication.

Syed, A.A (1965) .*The spirit of Islam*,U.K .london Islamic publication.

Sayid,S. (1968) *Figh al sunnah* Kwait,Darussalam publication.

Shamsudeen, A. (1292A.H). *Nihayah al muhtaj ila sharl al minhaj;*Cairo;Egypt.Bulaq publication.

Sayyid, S. (1965) *Figh al sunnah*;Kuwait, Dawlat al kuwayt publication. Sai'd, S. (ud). *Al mudawwanahal kubra li figh* Imam malik,Cairo,Egypt;Darusalam publication.

Yusuf, A. *The Hoiy Qur'an:Traslation and commentary*,Bairu,Darul Kutubul Limiyyah.

APPENDIX

FAULTY OF EDUCATION
DEPARTMENT OF ART AND SOCIAL SCIENCE EDUCATION
ISLAMIC STUDIES SECTION
AHMADU BELLO UNIVERSITY, ZARIA

I am a postgraduate student of the above address. I am conducting a research on "An Analysis of the Approach of Shariah Court Judgment to Dissolution of Marriage and it impacts on the life of Muslims' in Kaduna State" the research is part of the requirements of the programme. I therefore wish your sincere cooperation in responding to the questions that appear in the questionnaire. All your responses shall be strictly used for the purpose of the research and you are assured confidentiality in your responses. Please tick ( ) the appropriate box of your choice

SECTION A: BIO DATA

Please tick where necessary

1. Age range 18 – 40 [ ] 41 – 60 [ ] 61 – 90 [ ]
2. Status: Male [ ] female [ ]
3. Marital Status: Married [ ] Single [ ]
4. Education qualification:
   a. Allo school only [ ]
   b. Islamiyyah school only [ ]
   c. Ilmi/Allo school only [ ]
   d. Primary school cert. only [ ]
   e. Secondary school cert. only [ ]
   f. Diploma [ ]
   g. Degree [ ]
   h. Masters [ ]
   i. P.hD [ ]

Court

1. Please which of the following sources you received cases of marriage crises to your court?
   a. Complain from husband [ ]
   b. Complain from wife [ ]

c. Joint complain between wife and husband [ ]
d. Complain from the husband parents [ ]
e. Court intervention [ ]
f. All of the above [ ]
g. None of the above
h. Others, please specify …….

2. Which of the following process your court followed in addressing the crisis of marriage reports?
   a. Listening from the spouses (Husband and wife) [ ]
   b. Mandating the two parties to reconcile outside the court [ ]
   c. Inviting the parents of the couples to handle the case for reconciliation [ ]
   d. Passing judgment base on hearing from the two parties (husband/wife) [ ]
   e. None of the above [ ]
   f. None of the above [ ]
   g. Others, please specify ……..
3. Is your court ever passed judgment against the wish of the two parties (husband/wife)?
   (a) yes [ ] (b) No [ ]
4. If 'yes' which of the following reasons influence your court to such decision
   a. there is no possibility of reaching compromise between the marriage couples[ ]
   b. there is fear of one party may harm the other party [ ]
   c. the marriage couple may likely cause security challenge in the community [ ]
   d. resistant and unbending attitude of the parent's of the wife [ ]
   e. resistant and unbending attitude of the parent's husband [ ]
   f. Fear of likely effect on their (husband/wife) religious faith [ ]
   g. All of the above [ ]
   h. None of the above [ ]
   i. Others, please specify
      ……. ……
5. Does the court clearly mentioned to the couples at the end of its judgment the right to appeal their case to the more superior court if they wish
   (a) Yes [ ] (b) No [ ] (c) undecided [ ]
6. Which of the following reasons lead to appealing cases to other courts?
   a. feeling of unjust judgments by either of the party [ ]
   b. doubting the competence of the Judge [ ]

c. promotion of selfish interest [ ]

d. all of the above [ ]

e. none of the above [ ]

f. others, please specify……..

6. Which of the following could be considered as the source of guidance and influence to your court decision
   a. Shari'ah rulings only [ ]
   b. Government policy only
   c. Shari'ah and Government policy [ ]
   d. Discretion of the judge [ ]
   e. Traditional and custom of the people [ ]
   f. Educational awareness of the community [ ]
   g. Political influences [ ]
   h. All of the above [ ]
   i. None of the above [ ]
   j. Others, please specify ……..
7. Which of the following explains the reaction of either of the two parties (husband/wife) after the decision of the court?
   a. Agreement and satisfaction with the court judgment [ ]
   b. Objection and forwarding the case to the most superior court [ ]
   c. Declining from the court judgment to reconciliation at home [
   d. Violence and clashes between the couples on their relation [ ]
   e. None of the above [ ]
   f. Others, please specify

……..……

SECTION A: BIO DATA

Please tick where necessary

5. Age range 18 – 40 [ ] 41 – 60 [ ] 61 – 90 [ ]
6. Status: Male [ ] female [ ]
7. Marital Status: Married [ ] Single [ ]
8. Education qualification:
   a. Allo school only [ ]
   b. Islamiyyah school only [ ]
   c. Ilmi/Allo school only [ ]

d. Primary school cert. only [ ]
e. Secondary school cert. only [ ]
f. Diploma [ ]
g. Degree [ ]
h. Masters [ ]
i. P.hD [ ]

Spouses who happen to resolve case in court

1. Which of the following leads your marriage case to court
   a. I personally presented the case to the court [ ]
   b. Both of us (husband/wife) submitted the case to the court [ ]
   c. Our parents submitted the case to court [ ]
   d. Husband's parent submitted the case to court
   e. wife's parent submitted the case to court [ ]
   f. None of the above
   g. Others please specif

   ……
2. Are you satisfy with the judgment passed by the court

   (a) Yes [ ] (b) No [ ] (c) undecided [ ]
3. If 'No' which of the following reasons made you not to be satisfied with the judgment
   a. There is clear injustice in the judgment
   b. The judgment contradicts Shari'ah [ ]
   c. The judge was biased [ ]
   d. All of the above [ ]
   e. None of the above [ ]
   f. Others please specify

   ……
4. If 'Yes' which of the following reasons made you to be satisfied with the judgment
   a. The judgement adhered with the Shariah guidance [ ]
   b. The judgment was in accordance to my wish [ ]
   c. We have no alternative [ ]
   d. None of the above [ ]
   e. Others please specify

   ……

5. How do you rate your relationship with your partner after the dissolution of marriage by the court
   a. Very cordial [ ]
   b. Not cordial [ ]
   c. Undecided [ ]
6. Are you blessed with children with your partner?
   (a) yes [ ] (b) No [ ]
7. If 'Yes' how do you rate the relationship of your partner with the children after the seperation
   (a) Excellent [ ] (b) Very good [ ]
   (c) Good [ ] (d) Fear [ ]
   (e) Poor [ ]

SECTION A: BIO DATA

Please tick where necessary

9. Age range 18 – 40 [ ] 41 – 60 [ ] 61 – 90 [ ]
10. Status: Male [ ] female [ ]
11. Marital Status: Married [ ] Single [ ]
12. Education qualification:
    a. Allo school only [ ]
    b. Islamiyyah school only [ ]
    c. Ilmi/Allo school only [ ]
    d. Primary school cert. only [ ]
    e. Secondary school cert. only [ ]
    f. Diploma [ ]
    g. Degree [ ]
    h. Masters [ ]
    i. P.hD [ ]

Public Resolution

1. Have you ever witnessed or experienced separation of marriage by court order
   (a) Yes [ ]
   (b) No [ ]
   (c) undecided [ ]
2. Have you ever witnessed case of marriage in court?
   a. Yes ( )

b. No ( )

c. Undecided ( )

3. If 'yes' which of the following explains your feelings about dealing with case of marriage in court?

   a. Excellent ( )
   b. Good ( )
   c. Poor ( )
   d. Fair ( )
   e. None of the above ( )
   f. Others, please specify _____

4. Which of the following in your own suggestion will consider better in solving marriage cases

   a. In court ( )
   b. Between the couples ( )
   c. Involvement of the parents ( )
   d. Intervention of the responsible members of the community ( )
   e. None of the above ( )
   f. Others please specify _____

5. Which of the following explains your experience about the decision of court on separation of marriage

   a. Violence between couples ( )
   b. Cordiality between couples ( )
   c. None of the above ( )
   d. All of the above ( )
   e. Others, please specify……..……

6. In your opinion do you consider intervention of court in marriage cases will bring about peace in the marriage life of the couples

   a. Yes ( )
   b. No ( )
   c. Undecided ( )

7. If 'yes' which of the following reasons made your decision

a. Biasness of judge

b. Corruption among the judge

c. Incompetency

d. None of the above

e. All of the above

f. Others please specify …….

SECTION A: BIO DATA

Please tick where necessary

13. Age range 18 – 40 [ ] 41 – 60 [ ] 61 – 90 [ ]

14. Status: Male [ ] female [ ]

15. Marital Status: Married [ ] Single [ ]

16. Education qualification:

a. Allo school only [ ]

b. Islamiyyah school only [ ]

c. Ilmi/Allo school only [ ]

d. Primary school cert. only [ ]

e. Secondary school cert. only [ ]

f. Diploma [ ]

g. Degree [ ]

h. Masters [ ]

i. P.hD [ ]