



Contemporary Issues in Islamic JURISPRUDENCE

A Book Published in Honour of the
Chief Justice of Nigeria-Honourable
Justice Idris Legbo kutigi, CON, GCON, FCI Arb.

Edited by:
Mohammed Lawal Ahmadu (PhD)
Mansur Ibrahim Said (PhD)
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Part 6

**ISLAMIC LAW AND
PERSONAL STATUS**

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CHAPTER 17

'IDDAH' (WAITING PERIOD) UNDER THE MARRIAGE ACT

Ijaiya Leke Bashir and Yusuf Abdul Rasheed Musa

Introduction

This chapter examines the meaning of 'iddah' (waiting period) under the Islamic law for a divorced woman before she re-marries. It also discusses the significance, the mode of observance, the non-consideration of 'iddah under the Marriage Act and the resultant consequences thereof.

A period when the husband and wife will no longer be able to unite one another is a turbulent period in the married life of couples: this is because peace and harmony would elude them in the matrimonial home. Thus when a marriage is said to have broken down irretrievably, the best option opens to the couples is to call it quit so as to allow each party to live a new life.

Therefore, 'iddah (waiting period) is one of the guiding principles of marriage under Islamic law. It is a period stipulated for a divorced woman to wait before she re-marries particularly in her matrimonial home for a period of three months immediately after the marriage has been pronounced dissolved. The law is to the effect that, 'iddah should be observed in the matrimonial home of the husband so as to achieve the aims for which 'iddah is prescribed. Thus, it is intended to examine in this paper the non-consideration of this principle under the Marriage Act and the resultant consequences.

Meaning of 'Iddah and Its Significance

Under Islamic Law, 'iddah is described as a certain period of days a woman is mandated to wait and observe either as a result of the

death of her husband or as a result of the separation with her husband.¹ In the case of **Salimotu Akanke & Another V Abdul Karim Atanda**,² the Court of Appeal Kaduna, described 'iddah as a period when a woman who has been repudiated or released or who has become a widow, must undergo a term of probation before she can remarry. The object of this term is to make sure whether the woman is pregnant or not. The length of the term is that of three periods of purity that is she must need to observe three menstrual periods before she is free to remarry. Also the Court of Appeal in **Aishetu Mayaki V Muhammed Ndagi** stated that 'iddah literally in Arabic means numbers, is the term of probation incumbent upon a woman in consequence of dissolution of marriage either by divorce or death of her husband. It is for three months on case of divorce and four months and ten days after the husband's death. The wife will remain under the maintenance of the husband till the end of her waiting period. Further, it was also stated in the same case that, after either party has obtained a judicial divorce, it becomes mandatory for the wife to observe a waiting period of three months (otherwise known as the period of 'iddah) before final severance of the marital tie between the parties.

The concept of the 'iddah as a post-divorce reconciliatory measure is clearly stated by the Almighty God in the Holy Quran thus:

Their husbands are best entitled to take them back as their wives during this

waiting period if they desire reconciliation.⁴

'Iddah has been classified into four namely:

- a) 'iddah of a menstruating woman (which is three days waiting period);

1 Sabiq S.S (1998) *Fiqh-S-Sunnah*; Dar- I- Fikr, Beirut, Lebanon. pp..218.

2 CA/K/4S/88.

3 (2002) S.M.C. P101.

4 Quran 2 Verse 288.

iddah of a woman divorced by her husband (which is three months waiting period);
'iddah of an unpregnant woman whose husband dies (which is four months and ten days waiting period); and
'iddah of a pregnant woman whose husband dies (there is no specific period for this type of 'iddah as her 'iddah ceases immediately she is delivered of the baby.⁵

It is pertinent to note that from the classifications above, the kind of 'iddah that is relevant to our discussion is the second type which bothers on the 'iddah of a woman whose relationship with her husband has been severed. But, it needs to be borne in mind that, the purport of all the classifications is to achieve the same objectives that is to ascertain that a woman while caught by any of the circumstances that warrant 'iddah is absolutely free to the extent she is not pregnant for her husband or for any or other man should in case there is denial from the husband. Thus, 'iddah for a repudiated woman is seen as a measure put in place by the Islamic Law to guide against given to another what actually does not belong to him.

The purport of 'iddah (waiting period) is seen in ensuring that a repudiated woman is not pregnant at the time she is being repudiated. This is done in order to guide against a miscarriage of justice whereby what does not belong to the subsequent husband shall not be given to him. It is the belief that a repudiated woman who observes 'iddah for a period of three months, if at all she is pregnant for her husband under whose or at the instance of whom she is observing 'iddah must have been manifested, thereby making it easy to ascertain the paternity of the unborn child.⁶ Further, it is also the law that if after accomplishing the 'iddah a repudiated woman or a widow remarries, and has a child within

⁵ Sabiq S.S.Op Cit P218.

⁶ Yahaya. M. (1993) Sharia Law Report: Spectrum Law Publishing, Lagos Nigeria. P.194.

six months, the child is affiliated to the husband for whom she kept the 'iddah, and her second marriage is voided by judicial decree.⁷

It is to be further noted that, under Islamic law, the minimum period a child could be delivered is six months and the maximum is five years⁸. Thus, by this rule, there is a presumption in favour of a husband whose wife is delivered of a child six months after the dissolution of the marriage that the child belongs to the first husband. The legal presumption that a child born to a married woman is legitimate child of her husband is based on the Arabic maxim "Al-walad- li-firash" which means that "the child belongs to the marriage bed", it will be observed that the emphasis of Islamic law is on the date of conception and not on the date of delivery hence the presumption operates only within the limits of what the law recognises as the minimum and maximum period of gestation. Thus, the minimum period of gestation according to all the Islamic school of thoughts is six months⁹.

The Court of Appeal in the same case referred to above had stated that, the attributes to the husband the paternity of a child born to his wife not less than six months of marriage and within not more than seven years of the termination of the marriage provided, of course, that in the latter case the birth of the child represents the end of the wife's 'iddah period. It is necessary to observe here that the 'iddah of a divorced pregnant woman ends with the birth of the child under the traditional Islamic law and not three months after the termination of the marriage.

It is also to be noted further that, it is to guide against the controversy that Islamic law has made the observance of this rule

7 Mamman Abubakr. D.M. (1990) Islamic Law Reports, Gaskia Corporation Ltd, Zaria. Kaduna. P.94

8 As per Uthman Mohammed J. C. A in Salimotu Akanke & Another V. Abdul Karim Atanda, CA/K/4S

9 As per M. A. Okunola J. C. A in Aishetu Maiyaki V. Mohammed Ndagi (note 3 above) P.101.

story for every woman seeking her release or being
by her husband. Therefore, the observance of 'iddah is
as any marriage contracted subsequent upon the failure
it shall be a nullity and the child or children born
shall be declared as those of the first husband. This
has been held to be repugnant to natural justice, equity
and conscience in many English case laws in Nigeria.¹⁰
The Holy Quran has made the following prohibition as
to wives observing 'iddah.

do not make a secret contract with them except in terms
able, nor resolve on the tie of second marriage till the term
is fulfilled"¹¹

of the Marriage Act on Iddah

out of place to unequivocally state that, there is no
whatsoever in the Marriage Act where mention is made
of 'iddah or its equivalent requiring a woman to wait
specific period of time pursuant to the dissolution of her
with her husband before she re-marries. This is
to the position of Islamic law and it is to be noted that
been envisaged could only find its root firmly in the
Thus, it is envisaged that, the non-consideration of
under the Marriage Act poses some danger for a man
illegitimate child with the belief that, he is actually
on his legitimate child. It is the procedure under the
once the marriage has broken down irretrievably, the
no option than to declare the marriage dissolved and
is done; a woman is free from bondage of observing
and has liberty to re-marry immediately. There is hardly
any for either the court or parties concerned to ascertain

¹⁰ Essien (1932) 11 N. L. R. P.47, Mariyama V. Sadiku Ejo (1961) N.R.N.L.R.P.81.
¹¹ Verse 235.

¹² Section 15 (1) & (2) of the Matrimonial Causes Act Cap 220, Laws of the Federation of Nigeria, 1990.

the position of the woman at the time of the dissolution of the marriage.

The only position in the Marriage Act that is nearly analogous to the 'iddah (waiting period) are provided in Sections 57, 58, 59 and 60 of the Act. Specifically, Section 57 of the Act provides that:

Where there are children of the marriage in relation to whom this section applies; the decree nisi shall not become absolute unless the court, by order, has declared-

- (a) that it is satisfied that proper arrangement in all the circumstances have been made for the welfare and, where appropriate, the advancement and education of those children; or
- (b) that, there are special circumstances that the decree nisi should become absolute notwithstanding that the court is not satisfied that such arrangements have been made.

Also, it is the understanding of section 58 of the Act that, the decree nisi shall only become decree absolute by force at the expiration of a period of three months from the making of the decree; or a period of twenty-eight days from the making of an order whichever is the latter; and that the provision of Section 57 does not apply as decree nisi shall become absolute by force of upon the expiration of three months from the making of the decree. More importantly, Section 60 specifically states that the court may, at any time before the decree becomes absolute, upon the application of either of the parties to the marriage, rescind the decree on the ground that the parties to the marriage have become reconciled. Thus, there is tendency for the woman to have been pregnant before she divorces her husband and this may not be easily ascertained as who actually owns the child.

the position of Islamic law and the present discovery of scientists with regard to the fact that a child may be born in a period of six months may negative the exposition above and will save the couples and the society from been suspicious and which may eventually breed enmity. What is been said is that, it has been proved scientifically and also supported by Islamic law that a child may be born within six months and survive, thus it is possible for a woman to get married within six months and be delivered of a child.

Conclusion

It is evidently clear from the above that there is significant and sufficient reasons while 'iddah is made mandatory by Islamic law for a divorced woman before she re-marries. It is not to be taken all as an act of keeping a woman in bondage or to deprive her fundamental rights but to guide and guard our society from facts that may likely endanger its peaceful co-existence.

When a man whose wife divorces him and later discovered that the wife was pregnant for him before she leaves his house may not quarrel lightly with the wife and even the new husband. In order to avoid any acrimony and enmity amongst the citizenry, it is hereby recommended that a provision that will take care of a similar situation as provided under the Islamic law be put in place in the Marriage Act. This will go a long way in ascertaining the paternity of most children been born out of the home of the real, legitimate and biological father.