



## A CONCEPTUAL CLARIFICATION OF SOME SALIENT TERMS IN ISLAMIC FAMILY LAW IN NIGERIA

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### **Abstract**

*One of the essential issues to consider at the commencement of a legal research is conceptual clarification of key terms used in the work. It is therefore important in every legal research work to clarify the key words and examine their conceptual meaning. This is to enable the readers understand what the writer has in mind and clearly perceive the intents and purposes of the research work. Conceptual analysis essentially involves the definition of the concepts used by the researcher in the course of writing his work. Since words are capable of having more than one meaning ascribed to them aside their natural meaning, it is apposite for the researcher to properly contextualize the words used in the work so as to aid comprehension and to enable readers understand the mind of the researcher and the message he is trying to pass across. In a topic related to Islamic family law, in general and the rights of spouse under it in Nigeria, there are several words that need this clarification. The aim of this article is to do so. It therefore examined some important words link for easy understanding of the rights of spouses as enshrined in Islamic family law in Nigeria. Priori / doctrinal research method was used. Thus, primary and secondary sources of Islamic law were used. Provisions of the Qur'an and Sunnah were cited. Explanations, from text books authored by Muslim scholars and legal sages were incorporated. Information retrieved from internet websites were equally utilized. It was found that words like right, spouse, polygamy, al-kafa'ah, shari'ah, fiqh and fatwah are all terms usable in a write up on the rights of spouses under Islamic family law in Nigeria. Some of these words were misconceived by many people. It therefore constituted an obstacle for understanding the rights of spouses under Islamic family law in Nigeria. It was therefore recommended that muslim scholars should embark on awareness programs to enlighten people on this issue.*

**Keywords: Polygamy, Al-kafa'ah, Shari'ah, Fiqh, Fatwah**

### **1.0 INTRODUCTION**

In Islam, marriage is a highly significant act, regarded as a religious duty, a moral safeguard, and a social commitment. It is highly valued as a way to fulfill a person's needs, protect them from



immorality, and build a stable family and community. It's seen as a foundation for a happy and righteous life, promoting love, companionship, and the continuation of the Muslim community. Marriage is also considered a means of achieving spiritual and emotional growth, fulfilling obligations to one's spouse and family, and earning reward from Allah.

The Holy Quran clearly provides that marry those among you who are single and those who are fit among your male slaves and your female slaves; if they are needy, Allah will make them free from want out of His grace; and Allah is Ample-giving, Knowing.<sup>1</sup>The Holy prophet (SAW) is reported to have said :“No house has been built in Islam more beloved in the sight of Allah than through marriage.”<sup>2</sup>It is also narrated that the messenger of Allah (SAW)stated that - the best people of my nation (*ummah*) are those who get married and have chosen their wives, and the worst people of my nation are those who have kept away from marriage and are passing their lives as bachelors.”<sup>3</sup>Imam ‘Ali (A.S.) stated: “Marry, because marriage is the tradition of the Prophet (SAW).” The Prophet (SAW) also said, “Whosoever likes to follow my tradition, then he should know that marriage is from my tradition.”<sup>4</sup>

Marriage is therefore very important in Islamic life of a person. It is normally discussed under Islamic Family Law. Rights and duties of spouses are part of essential matters treated under Islamic marriage. For proper understanding of this matter, it is necessary to make a clarification to some key terms normally used in research works in Islamic Family Law.

## 2.0 CONCEPTUAL ISSUES

In every research work, it is important to clarify key concepts as this will enable the readers to understand what the writer has in mind or what his intents and purposes are. Conceptual analysis essentially involves the definition of the concepts used by a researcher in the course of writing his dissertation. Since words are capable of having more than one meaning ascribed to them aside their natural meaning, it is apposite for the researcher to properly contextualise the words used in the research work so as to aid comprehension and to enable readers understand the mind of the researcher and the message he is trying to pass across. In Islamic family law, there are several terms that need to be clarified. These inter alia include Rights, Spouses, Polygamy,*kafa'ah*, *Shari'ah*, *Fiqh*, and *Fatwah*.

### 2.1 Conceptualising Rights

Conceptualizing the word “Rights” is not as easy as it seems. The word “Rights” basically entails all the privileges that inures to human beings, these privileges have been termed inalienable as such humans can't be deprived of them. Concepts such as Human rights, fundamental human rights all emanates from the notion that there are some inalienable rights that all men possess irrespective of their color, creed, gender, biological, social, cultural, economic and political orientations. Rights are referred to as fundamental human rights when they are recognized and provided for in the supreme law of any country, such as the Constitution. The 1999 Constitution of the Federal Republic of Nigeria (CFRN) as amended makes a comprehensive provision for all the fundamental human rights, civil and political as captured therein. To be specific, the entire

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<sup>1</sup>Surah an-Nur, 24:32

<sup>2</sup>Wasa'il ul-Shi'a, vol. 14, p. 3

<sup>3</sup>MustadrakulWasa'el, Muhaddith Noori, vol. 2, p. 531 quoted in A Gift for the Youth, Shabeeb Rizvi

<sup>4</sup>Wasa'il ul-Shi'a, vol. 14, p. 3-4, 6



chapter four of the constitution was devoted for fundamental human rights. Rights to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination and right to acquire and own moveable property any where are all enshrined in the constitution.<sup>5</sup>

Human right is defined as *the rights of man, that one has because he is human*.<sup>6</sup>

Article 4 of the African Charter on Human and People's Rights states that;

Human Rights are inviolable. Every Human being shall be entitled to respect for his life and dignity of his person. No one shall be arbitrarily deprived of his life<sup>7</sup>

According to the United Nations Organization;

Human Rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion or any other status. These rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education...and everyone is entitled to access to these rights, without discrimination<sup>8</sup>

## 2.2 Spouses (Husband and Wife)

The term, a spouse is generally used to refer to a marriage partner. It is a person's husband or wife.<sup>9</sup> It is therefore synonymous to a wife or a husband.<sup>10</sup> Once a person is married, as a man, his spouse becomes his wife, while as the woman, the spouse becomes her husband.

Islamic law encourages marriage between persons of different sex i.e. male and female and as such abhors same sex marriage i.e. homosexuality, lesbianism etc. In other words, Shariah has only approved different sex (i.e. a man and a woman) to serve as spouses. Marriage is a sacred institution being bond between a man and a woman that religiously or culturally agree upon. It is only through this that the couple expect to beget children as the fruit of this religious union. The Holy Qur'an explained that "Your wives are a place of cultivation (i.e, sowing of seed) for you, so come to your place of cultivation however you wish and forth (righteousness) for yourselves"<sup>11</sup> Marriage of man to man can never yield children or kids. Marriage of woman to woman (as spouse) cannot produce any issue or offspring. Consequently, in Islamic law, the parties in the contract of marriage must be male and female as the spouses. Homosexuality or lesbianism is a

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<sup>5</sup>CFRN 1999 as amended Sections 33 – 43.

<sup>6</sup>Jack Donnelly, *Universal Human Rights in Theory and Practice*, ( 3<sup>rd</sup>edn, Cornell University Press, Ney York, 3<sup>rd</sup> Edition. 2013) <<https://www.degruyter.com/document/doi/10.7591/9780801467493-003/html?lang=en>> accessed 5 May 2023.

<sup>7</sup> African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria, 2004.

<sup>8</sup>United Nations definition of human rights, retrieved from <https://www.un.org/en/sections/issues-depth/human-rights/> last accessed on 5 January 2023.

<sup>9</sup>"Spouse." Cambridge Dictionary, <<https://dictionary.cambridge.org/dictionary/english/spouse>> Accessed 9 September 2023.

<sup>10</sup> A.S. Hornby. *Oxford Advanced Learner's Dictionary* ( 10edn. Oxford University Press - 2023)1511 ; "Spouse" Longman Dictionary of Contemporary English (New edn. Pearson Education Limited – England- 2009)1701.

<sup>11</sup>Surah Al- Baqarah:223.



dangerous devilish weapon against human race and humanity. It is a seed for the annihilation and eradication of human being on the Earth. It has therefore vehemently rejected and prohibited in Islamic law. A severe punishment has been prescribed on those convicted of the criminal offence of same sex marriage.

### **2.3 Polygamy**

This is one of the common myths that is associated to Islam as if it was only introduced by Islam or is the norm according to its teachings. While no text in the Qur'an or Sunnah states that either monogamy or polygamy is the norm, demographic data indicates that monogamy is the norm and polygamy is the exception. In almost all countries and on the global level the numbers of men and women are almost even, with women's numbers slightly more than men. As such, it is a practical impossibility to regard polygamy as the norm since it assumes a demographic structure of at least two thirds females, and one third males (or 80 percent females and 20 percent males if four wives per male is the norm!). No Islamic "norm" is based on an impossible assumption.<sup>12</sup>

Like many peoples and religions, however, Islam did not outlaw polygamy but regulated it and restricted it. It is neither required nor encouraged, but simply permitted and not outlawed. Edward Westermarck gives numerous examples of the sanctioning of polygamy among Jews, Christians, and others. The only passage in the Qur'an<sup>13</sup> which explicitly mentioned polygamy and restricted its practice in terms of the number of wives permitted and the requirement of justice between them was revealed after the Battle of Uhud in which dozens of Muslims were martyred leaving behind widows and orphans. This seems to indicate that the intent of its continued permissibility is to deal with individual and collective contingencies that may arise from time to time (i.e., imbalances between the number of males and females created by wars). This provides a moral, practical, and humane solution to the problems of widows and orphans who are likely to be more vulnerable in the absence of a husband/father figure to look after their needs: financial, companions, proper rearing, and other needs. Thus, it is provided that if you fear that you shall not be able to deal justly with the orphans marry women of your choice two or three or four; but if you fear that you shall not be able to deal justly (with them) then only one.<sup>14</sup>

In a nutshell, Islamic polygamy is used to address the social problems of prostitution and extramarital affairs. Instead of cheating Islamic law allows a man to marry more than one wife. However justice must be established among them.<sup>15</sup>

It should be noted that while the Qur'an allowed polygamy, it did not allow polyandry (multiple husbands of the same woman). Anthropologically speaking, polyandry is quite rare. Its practice raises thorny problems related to the lineal identity of children, and incompatibility of polyandry with feminine nature.

### **2.4 Al-Kafa'ah (Equality)**

In Arabic the words al-kafa'ah is translated as compatibility, equality, equivalence and sameness. It is used to indicate that a man (i.e. prospective husband) is an 'equal' of the woman (i.e. prospective wife) in certain things such as religion, freedom, education, family origin and

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<sup>12</sup> Jamal Badawi, Polygamy. <<https://en.alukah.net/Shariah/23/4414/>> accessed 13 April 2025.

<sup>13</sup> Surah an-Nisa :3

<sup>14</sup> n. 11

<sup>15</sup> *ibid*



background etc. It is used to avoid dispute or conflict in marital life. In the context of marriage, it signifies a degree of compatibility between the couple that encourages stability and happiness. It is intended to guarantee the relation between a husband and his wife. The doctrine of *kafa'ah* emphasizes on balance and harmony particularly on the issue of religion, morality and devotional acts of worship.<sup>16</sup>

*Hanafi*, *Shafi'i* and *Hanbali* schools concur in requiring *kafa'ah* in religion (Islam), freedom<sup>1</sup> (i.e. in his not being a slave), profession and lineage. These schools differ regarding *kafa'ah* in prosperity and wealth. The Hanafi and the Hanbali schools recognize it, while the *Shafi'i* school does not.

*Imamiyyah* and the *Malikiyyah* schools do not accept the notion of *kafa'ah* except in religion, in accordance with a provision of a sunnah that when someone, whose faith and conduct is acceptable comes to you with a proposal, then marry him. If you don't, it will result in corruption upon the earth and great discord.<sup>17</sup> Therefore, the condition of *kafa'ah* in marriage must harmonize with the provision of the Qur'an that surely the most honorable amongst you in God's sight is the most pious amongst you.<sup>18</sup> More so, the condition of *kafa'ah* contravenes the well-known principle of *Shari'ah* which emphasises the non-superiority of an Arab over non-Arab except on the basis of *taqwah* (fear of Allah).

## 2.5 Islamic Law, *Shari'a*, *Fiqh* and *Fatwah*

The above terms are sometimes translated the same. All of them are taken by many translators as Islamic law. However, each of them is having a different meaning and scope of application even though they are inter-related. Therefore, there is a need to conceptualise each of them.

### a. **Islamic Law**

Attempting to define Islamic law is a very difficult work. This is because the nature of the law is dynamic which is coupled with the absence of a unified code.<sup>19</sup> There are several Arabic words translated as Islamic Law.<sup>20</sup> For instance, the Arabic word of *Sharia* is translated in English as Islamic law. The term *fiqh* is also translated as Islamic law. *Fatwa* is equally translated as Islamic law. Consequently, people often confuse them. They mix up between the clear provision the Qur'an or Sunnah and the principles of a particular school of law or the legal opinion or verdict of a particular jurist. For example, Qur'an provides for the duration of *iddah* (awaiting period) of a divorcee as three *Qurou'*. But jurist from various schools differed on the meaning of the term. Some opine that it refers to the time of her menstrual period. While others are of the view that it refers to the purity periods. Some people consider both the qur'anic provision and the jurisprudential theories of different school of thought as Islamic law. Books of *fiqh* such as

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<sup>16</sup>Abdul Hadi Ismail. *Kafa'ah in The Muslim Community Marriage : a Study of The Social History of Islamic Law.*(Indonesian Journal of Education, Social Sciences and Research {IJSSR} Vol. 1, No. 1, June 2020)

16~23<<https://jurnal.umsu.ac.id/index.php/ijessr/article/viewFile/4878/4299> > accessed 13 April 2025.

<sup>17</sup>Muhammad Jawad Magniyyah. *The Five Schools of Islamic Law* (1<sup>st</sup>edn, Ansariyan Publications, Qum, 1995) 297.

<sup>18</sup> Surah al-Hujrat(49):13.

<sup>19</sup>NesrineBadawi, Introduction to Islamic Law February 2009 <[https://hhi.harvard.edu/files/humanitarianinitiative/files/introduction\\_to\\_islamic\\_law.pdf?m=1614967781](https://hhi.harvard.edu/files/humanitarianinitiative/files/introduction_to_islamic_law.pdf?m=1614967781)> accessed 10 July 2023.

<sup>20</sup>Ayyu Ahmad. *What is the Difference between Sharia and Fiqh (from a Muslim who studies it)?*<<https://ayyuaahmed.medium.com/what-is-the-difference-between-shariah-and-fiqh-from-a-muslim-who-studies-it-444151ab0ff3>> accessed 20 November 2023.



*Mukhtasar al-Khalil*, the book of *Iziyyah* by *Al-azhary* are all tagged as Islamic law. The books contain fatwahas (legal opinion) of a particular Islamic scholar or rulings of an Islamic jurist are also translated as Islamic law.

**b. Shari'ah**

It is true that Islamic law is the laws of Islam. It is equally true that the laws of Islam are the rules and regulations that govern the affairs of *Muslims* as directed in the religion of Islam. However, these rules and regulations are having two limbs, divine and human aspect. The divine aspect is the total collection of the rules and regulation revealed by Almighty Allah to His prophet (SAW) either in the Qur'an or in an authentic sunnah as a guide to believers. This is called Shariah. On the other hand, there is a human aspect of the law. These are rules and regulations deduced from the provisions of the Qur'an and sunnah or understood by an individual jurist or his view in response to any matter or question raised to him. A collective opinion of group of jurist may be called *Fiqh*. An individual opinion of a jurist may be called fatwah.

**c. Fiqh**

The word *fiqh* is an Arabic term meaning "deep understanding" or "full comprehension". Technically it refers to the body of Islamic law extracted from detailed Islamic sources (which are studied in the principles of Islamic jurisprudence) and the process of gaining knowledge of Islam through jurisprudence.<sup>21</sup> It is described as the human understanding and practices of the *Sharia*. it is a human understanding of the divine Islamic law as revealed in the Quran and sunnah.

It should be noted that *fiqh* expands and develops Shariah through interpretation (*ijtihad*) of the Quran and Sunnah by Islamic jurists. It is implemented by the rulings (fatwa) of jurists on questions presented to them. Consequently, sharia is considered immutable and infallible while *fiqh* is considered fallible and changeable. To shed more light on the term *fiqh*, there is a need to understand that the studies of *fiqh*, are traditionally divided into *usul al-fiqh* and *furu' al-fiqh*. *Uşūl al-fiqh* which is literally translated as roots of *fiqh*. It is technically defined as the principles of Islamic jurisprudence. It is used to refer to the methods of legal interpretation and analysis. *Furu' al-fiqh* is literally translated as the branches of *fiqh*. It is technically defined as the elaboration of rulings on the basis of these principles of Islamic law or jurisprudence. It is a product of the application of *uşul al-fiqh* and the total product of human efforts at understanding the divine will.<sup>22</sup> In other words, *fiqh* is a huge collection of juridical opinions that were given by various jurist from multiple schools of thought, in regards to the application of *Shar'iah* to their real-life situations after the death of the prophet (SAW). *Fiqh* is the human understanding of *Sharia* and implemented by the rulings (*fatwa*) of jurists. What this essentially means is that, whereas sharia is considered immutable and infallible, *fiqh* and fatwah are considered fallible and changeable. This is one of the reasons that led to having so many different opinions in schools of Islamic law.

**d. Fatwa**

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<sup>21</sup> Wikipedia <<https://en.wikipedia.org/wiki/Fiqh#:~:text=8%20External%20links-.Etymology,knowledge%20of%20Islam%20through%20jurisprudence.>> accessed 2<sup>nd</sup> February 2024.

<sup>22</sup>*ibid.*



The Arabic word fatwa can mean “explanation” or “clarification.” It refers, in simple terms, to an edict or ruling by a recognized religious authority on a point of Islamic law. It is a formal ruling or interpretation on a point of Islamic law given by a qualified legal scholar. It is a legal ruling on a point of Islamic law (sharia) given by a qualified Faqih (Islamic jurist) in response to a question posed by a private individual, judge or government.<sup>23</sup> Thus the process of issuing a fatwa usually begins when a Muslim, confronted with a problem of life. It is therefore issued in response to questions from groups of people or individual persons. In other words, before a fatwa is issued there must be an inquirer who must formulate a question. The scholar giving the fatwa must consider four elements in his ruling. These are the time, place, people, and prevailing conditions.<sup>24</sup>

It should be noted that fatwa is generally not treated as binding judgments. A person may seek another fatwa from another jurist if he is not convinced by the fatwa.<sup>25</sup> To sum up, the difference between *Sharia* and *fiqh* and *fatwah* are *Shariah* is broad and general while *Fiqh* focuses on narrow and specific issues. *Shariah* cannot be changed. But *Fiqh* can change based on new information. *Shariah* comes from the Quran and Sunnah. *Fiqh* comes from the *Shariah*.<sup>26</sup>

A question may be posed of whether Islamic law in Nigeria is the same as customary law. In the case of *Alkamawa v. Bello & Another*,<sup>27</sup> it was held that “Islamic law is not the same as customary law. This is because Islamic law does not belong to any particular tribe. It is a complete system of universal law, more certain and permanent and more universal than the English Common Law.<sup>28</sup> For instance, the principle of judicial precedents or ratio decidendi is applied in English common law. However, in Islamic law scholars rejected the application of this doctrine in Islamic law matters as the court did in the case of *Karimatu Yakubu Paiko v. Yakubu Paiko*.<sup>29</sup> The Court of Appeal Kaduna, relied on the decision of Niger State Sharia Court of Appeal in deciding on the right of father to *Ijbar* on his daughter after giving her option to choose a suitor. Jurisprudentially, this attitude of the Court of Appeal in relying on an earlier decision in reaching its own decision have been criticized by Professor A. H. Yadudu<sup>30</sup> and Professor M. T. Ladan<sup>31</sup> as a practice unknown to administration of justice under the Sharia.

### 1.2.6 Nature of Islamic Law

<sup>23</sup> Wikipedia <<https://en.wikipedia.org/wiki/Fatwa>> accessed 2<sup>nd</sup> February 2024.

<sup>24</sup> What is a fatwa? A religious studies professor explains (The Conversation, August 17, 2022) <[<sup>25</sup> \*Britannica\*, fatwa : Islamic law <<https://www.britannica.com/topic/fatwa>> accessed 2<sup>nd</sup> February 2024.](https://theconversation.com/what-is-a-fatwa-a-religious-studies-professor-explains-188866#:~:text=The%20Arabic%20word%20fatwa%20can, is%20unsure%20what%20to%20do.></a> accessed 2<sup>nd</sup> February 2024.</p></div><div data-bbox=)

<sup>26</sup> What is the difference between Sharia and fiqh (from a Muslim who studies it)? <<https://ayyuaahmed.medium.com/what-is-the-difference-between-shariah-and-fiqh-from-a-muslim-who-studies-it-444151ab0ff3>> Accessed 10 July, 2023.

<sup>27</sup> [1998] SC 293/ 1991 ; (1998) 6 SCNJ 127

<sup>28</sup> *Ibid*.

<sup>29</sup> CA / K / 805 / 85.

<sup>30</sup> Yadudu, A.H., Colonization and the Transformation of Islamic Law in Nigeria, *Journal of Legal Pluralism and Unofficial Law*, (1992) vol. 35, pp.131-134

<sup>31</sup> Ladan, M.T. *Introduction to Jurisprudence Classical and Islamic*, (Malthouse Press Ltd., 2006), pp.202-295



There is no universally accepted definition of Islamic Law (Sharia). But generally speaking, based on our consideration in this research work, Sharia simply means the Islamic legal system, it is the law that regulates the conducts of the adherents of the Islamic faith or religion. M.A. Ambalirstated that-

The word “Shari’a” is adopted by jurists of Islamic law for the Ordinances that Allah ordains for His worshippers so that they may be faithful and striving towards where lies their salvation here in this life and hereafter<sup>32</sup>.

According to Encyclopedia Britannica, Sharia of Islamic Law is explained as;

The religious law of Islam is seen as the expression of God’s command for Muslims, and in application, constitutes a system of duties that are incumbent upon all Muslims by virtue of their religious belief...the law represents a divinely ordained path of conduct that guides Muslims towards a practical expression of religious conviction in this world and the goal of divine favor in the world to come<sup>33</sup>

Furthermore, Islam is a complete way of life for Muslims, it is a way of life that is predicated on total submission to the will of Allah as reflected in the Glorious Quran and taught by Prophet Muhammed (SAW). The Scope of Islamic Law or Sharia covers *ibadat* (relationship between man and his creator) and *muamalat* (relationship between man and other creations).

## 2.7 Sources of Islamic Law

The word source is defined as a place, person, or thing from which something originates or can be obtained.<sup>34</sup> Sources of Islamic law is therefore a phrase used to indicate the origins of sharia. in other words, sources of Islamic law refer to things from which Islamic law and its principles came.

Sources of Islamic law are mainly classified into two. These are the primary sources and the secondary sources. Primary sources are first-hand or contemporary account of an event or topic. They are therefore, original materials, regardless of format for they are the most direct evidence of a time or event and they offer original thought that have not been modified by any interpretation.<sup>35</sup> The primary sources of Islamic law are Qur’an and Sunnah.

The Qur’an is the first primary source of Islamic law. its contents are proved and unanimously accepted by muslims as the most authentic book in the world. However, there are some minor differences among the scholars in the interpretation of some of its provisions. The legal or practical contents of the Qur’an (*al-ahkam al-‘amaliyyah*) constitute the basis of what is known as *Fiqh al-Qur’an*, or the *Juris corpus* of the Qur’an. There are close to 350 legal verses in the Qur’an, most of which were revealed in response to problems that were encountered. Some were revealed with the aim of repealing objectionable customs such as infanticide, usury, gambling and unlimited polygamy. Others laid down penalties with which to enforce the reforms that the

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<sup>32</sup> M.A. Ambali, *The Practice of Family Law in Nigeria* (Tamaza Publishing, 1998) 2.

<sup>33</sup> Ahmed El-Shamsy “Sharia” Britannica <<https://www.britannica.com/topic/Shariah>> accessed on 9 November 2022.

<sup>34</sup> “Source” Dictionary.com <<https://www.dictionary.com/browse/source>> accessed 14 October 2023.

<sup>35</sup> Primary Sources - *An Introductory Guide*. (University Library. Seton Hall University). <<https://library.shu.edu/primarysources>> accessed 12 March 2023.



Qur'an had introduced. Overall, the Qur'an confirmed and upheld the existing customs and institutions of Arab society and only introduced changes that were deemed necessary.

There are estimated 140 verses in the Qur'an on devotional matters such as Salah, *Zakah* (legal alms), Siyam (fasting), the Pilgrimage of hajj, jihad, charities, the taking of oaths and *kaffarat* (penances). Another seventy verses are devoted to marriage, divorce, 'iddah (the waiting period), *raj'ah* (revocation), dower, and maintenance, custody of children, paternity, inheritance and bequest. Rules concerning *mu'amalat* (commercial transactions) such as sale, lease, loan and mortgage, constitute the subject of another seventy verses. There are about thirty verses on crimes and penalties such as murder, *hirabah* (highway robbery), adultery and false accusation (*qadhf*). Another thirty verses speak of justice, equality, consultation and the rights and obligations of citizens. There are about ten verses relating to economic matters regulating relations between the poor and the rich, workers' rights and so on.

*Sunnah* is considered the second source of Islamic law. It literally means a pathway, behaviour or conduct. Allah says in the Quran that is the sunnah (the way) of Allah in the case of those who passed away of old, and you will not find any change in the way of Allah. Sunnah presents more specific meaning in technical terms. It refers to the model conduct of the Prophet Mohammad (SAW) . It represents Prophet Mohammad's (SAW) all utterances, actions and agreements during his prophecy. An additional meaning of Sunnah in Islamic jurisprudence is that the rule derived from the Prophet's sayings, acts as an approval of other actions. In the school of Ahl-Bayt, prophet SAW is infallible. The designated Imams after him are also regarded as infallible. Thus, sunnah in the school is defined as the sayings, actions or reaction of an infallible towards others sayings or actions. This means that the concept of sunnah in the school of Ahl-Bayt is extended to the sunnah of Imams. This is based on the ground that the Sunnah of the infallible Imams (AS) is the sunnah of the Prophet (SAW) without any difference. This means that the sunnah of Imam is not standing independently on itself. It is rather part and parcel of the sunnah of the prophet (SAW). Many narrations from Imams proved this. For instance, it was reported to have stated to a man asked him on the status of his Hadiths that - "All the answers I give you are based on the words of the Messenger of Allah (SAW) and we do not say anything of our own."<sup>36</sup>He also declared that –

My hadith is my father's hadith, and my father's hadith is my grandfather's hadith, and my grandfather's hadith is al-Husayn (AS) hadith, and al-Husayn's hadith is al-Hasan's hadith, and al-Hasan's hadith is the Commander of the Faithful's hadith, and the Commander of the Faithful's hadith is the Messenger of Allah's hadith (SAW), and the Messenger of Allah's hadith is from Allah, the Honorable and Glorious.<sup>37</sup>

In the same vein, Imam Muhammad al-Baqir (AS) told Jabir (ibn 'Abd Allah al-Ansari)that :

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<sup>36</sup>Jami' Ahadith ash-Shi'ah, vol. 1, p. 129.

<sup>37</sup>Ibid., p. 127.



My father narrated to me from the Messenger of Allah (SAW), and he (narrated) from Jibra'il (Archangel Gabriel), and Jibra'il from Allah, the Honorable and Glorious, and all my narrations are based on this chain of transmission.<sup>38</sup>

The second ground on which Shia school based their interpretation of the sunnah to include that of the infallible Imams (AS) is the Hadith of Thaqaalayn( two weighty things). The hadith was narrated by multitude individual and groups of people. As an example, Jabir ibn 'Abd Allah al-Ansari narrated that the Messenger of Allah (SAW) said– O people! I am leaving behind two things, which if you hold fast to, you will never go astray: the Book of Allah and my progeny, the members of my Household."<sup>39</sup>

Furthermore, it was also reported that the prophet (SAW) stated that –

Verily, I am leaving among you two weighty things, which if you hold fast to, you will never go astray; one is greater than the other: the Book of Allah, which is a cord extending from the heaven to earth. The other is my progeny, the members of my Household. These two will never separate from each other until they meet me at the Pond {hawd} (of Kawthar). Be careful how you will behave with them when I leave you.<sup>40</sup>

Additionally, he declared –

“O people, I am a human being. I am about to receive a messenger (the angel of death) from my Lord and I, in response to Allah's call, (would bid goodbye to you), but I am leaving among you two weighty things: the one being the Book of Allah in which there is right guidance and light, so hold fast to the Book of Allah and adhere to it.” He exhorted (us) (to hold fast) to the Book of Allah and then said: “The second are the members of my Household. I remind you (of your duties) to the members of my family.”<sup>41</sup>

*Sunnah* is the second authoritative source of Islamic law. This authority derives from the Qur'an, which has stressed the obedience to the Prophet Mohammad (SAW). For instance, it is provided that “He who obeys the Messenger has indeed obeyed Allah.”<sup>42</sup> In another place the Qur'an puts emphasis on the rules of Qur'an and Sunnah, both are compulsory and no one of the believers has a choice not follow them. thus it states that -

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<sup>38</sup>Ibid., p. 128.

<sup>39</sup>Sahih Tirmidhi (Beirut), “Kitab al-Manaqib,” “Bab Manaqib Ahl Bayt an-Nabi,” vol. 5, p. 662, hadith 3786.

<sup>40</sup>Ibid., p. 663, hadith no. 3788.

<sup>41</sup> Sahih Muslim (Egypt), vol. 7, “Bab Fada'il 'Ali ibn Abi Talib, pp. 122-123; Sahih Muslim, vol. 4, p. 1803, hadith no. 2408 ('Abd al-Baqi Edition).

Abdul-Hamid Siddiqui (trans.), Sahih Muslim (English Translation), vol. 4, hadith no. 5920. {Trans.}

<sup>42</sup> Surah an-Nisa' (4):80 ; *Mus-haf al-Madinah al-Nabawiyyah. Al-Qur'an Al-Kareem – Arabic Text-* (Mujamma' al-Malik Fahad Li tiba'ah al-Mushaf al-Shareef – Al- Madinah al-Munauwarah- 1420 AH) 91; A. Serdar Ozturk (tr) Translation of the Qur'an (OkyanusYayincilik- 2000) 49;



When Allah and His messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His messenger, he has indeed strayed in a plain error.<sup>43</sup>

It is also provided that obey Allah and the messenger, but if they turn away, then Allah does not like disbelievers.<sup>44</sup> Another provision also said that - whatsoever the messenger gives you, take it, and whatsoever he forbids you, abstain (from it).<sup>45</sup>

The above provisions clearly show that *Sunnah* is in conformity with the *Qur'an*. However, if a conflict between these two sources appears, it needs first to be reconciled, otherwise the *Qur'an* overcomes. This is because the *Qur'an* has priority over the *Sunnah* which is clearly shown in the Hadith of sending Muadh bin Jabal to Yemen, when the Prophet had asked Muadh bin Jabal, before he sent him to the Yemen as a judge: “on what basis would he judge if he was confronted with a problem?” Muadh responded that he would judge on the basis of the *Qur'an* and then on the *Sunnah*, and finally, he would use his own judgment. In Islamic jurisprudence, *Sunnah* as a source is divided into three main sections: verbal, actual and tacitly approved. The verbal *Sunnah* is a major part of this source, which consists of the statements of the Prophet Mohammad (SAW) on any topic.

The second category of the sources of Islamic law is secondary source. They are *Ijma'* and *Qiyas*. This category usually uses primary sources and offer interpretation, analysis, or commentary. These resources often present primary source information with the addition of hindsight or historical perspective.<sup>46</sup>

*Ijma* is the verbal noun of the Arabic word *Ajma'a* which has two meanings: to determine, to agree upon something.<sup>47</sup> It is technically defined as unanimous agreement of muslim jurists of any period after the prophet (SAW) on a rule of sharia.<sup>48</sup> *Ijma* is considered the third source and proof of sharia.

As a source of Islamic law, *ijma'* is based on the provision of the *Qur'an* which stated that:

Anyone splits of from the Messenger, after the guidance has become clear to him and follows a way other than that of the believers we shall leave him in the path he has chosen and land in hell. What an evil refuge!<sup>49</sup>

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<sup>43</sup> Surah al-‘Ahzab (33):36 ; *Mus-haf al-Madinah al-Nabawiyyah. Al-Qur'an Al-Kareem – Arabic Text-* (Mujamma' al- Malik Fahad Li tiba'ah al-Mushaf al-Shareef – Al- Madinah al-Munauwarah- 1420 AH) 423; A. Serdar Ozturk (tr) Translation of the *Qur'an* (OkyanusYayincilik- 2000) 209.

<sup>44</sup> Surah ‘Ali-Imran (3): 32; *Mus-haf al-Madinah al-Nabawiyyah. Al-Qur'an Al-Kareem – Arabic Text-* (Mujamma' al- Malik Fahad Li tiba'ah al-Mushaf al-Shareef – Al- Madinah al-Munauwarah- 1420 AH) 54.

<sup>45</sup> SuratulHashari (59): 7 ; *Mus-haf al-Madinah al-Nabawiyyah. Al-Qur'an Al-Kareem – Arabic Text-* (Mujamma' al- Malik Fahad Li tiba'ah al-Mushaf al-Shareef – Al- Madinah al-Munauwarah- 1420 AH) 546

<sup>46</sup> Abdurrahman I. Doi. *Shari'ah: The Islamic Law* (Taha Publishers , London, 1984) 64-78.

<sup>47</sup> Husain, A.A, (2010) *Alwajiz fi- Usul Al-fiqhwatarikh al-tashri'* ( DarulArqam bn AbilArqam, Beirut) 25

<sup>48</sup> Yahaya Y. Bambale. *An Outline of Islamic Jurisprudence.* (Malthouse Press Limited. 2007). 65.

<sup>49</sup> Surah an-Nisa' (4): Verse 115; *Mus-haf al-Madinah al-Nabawiyyah. Al-Qur'an Al-Kareem – Arabic Text-* (Mujamma' al- Malik Fahad Li tiba'ah al-Mushaf al-Shareef – Al- Madinah al-Munauwarah- 1420 AH) 97; A. Serdar Ozturk (tr) Translation of the *Qur'an* (OkyanusYayincilik- 2000)51.



It has also been provided that remain firmly together to Allah's rope and do not separate.<sup>50</sup> It is clear from the above verses that muslims are warned against following any other way of life contrary to the way of believers. Their way here refers to their agreement and consensus opinion on a legal matter. This is *ijma'*. Thus it is prohibited for muslims to separate away from the *ijma'* concluded by muslim jurists. In the Sunnah it is also provide that Allah will not let my community agree upon an error.<sup>51</sup> This also shows the significance of *Ijma'*.

It is important to state that, *ijma'* is concluded as the result of compiling the opinions of various individual jurists. Consequently, it validates individual *ijtihad* and eliminate personal value judgment. It ensures correct interpretation of the provisions of Qur'an and becomes an authority on its own once it is validly exercised.

*Qiyas* is another source of Islamic law. It is the fourth source of *Shari'a*. in English it can be translated as judicial reasoning or analogical deduction. Linguistically, the term has two meanings; comparison and measurement. Technically, the word means extension of a *Shari'a* ruling to a new situation since the latter has the same effective cause as the former. In other words, it is he extension of a *Shariah* ruling from an original case to a new case because the new case has the same effective cause as the original case. It is a process of deducing a rule from the earlier sources.

It is only used when a matter has never been discussed under the Qur'an, Sunnah or *Ijma'*.

It is therefore a form of *Ijtihad* which is validated by the provisions of Qur'an and Sunnah.<sup>52</sup> For instance, it provided that –

O you who believe, obey Allah and obey the Messenger and those in authority from among you. If you differ about anything from among yourselves refer it to Allah and the Messenger if you believe in Allah and the last day. This is best and most commendable in the end.<sup>53</sup>

It can be seen from the above that any disputable matter not clearly resolved in the Qur'an or Sunnah is resolved by making *ijtihad* and deducing the ruling on the new matter by reference to Qur'an and Sunnah. This process of *ijtihad* is referred as *Qiyas*.

In the sunnah it was narrated that when Prophet (SAW) sent Muadh Bin Jabal to Yemen as a judge he declared that he would use his faculty and exercise *ijtihad* so as to arrive at the sharia ruling in a matter which is not expressly and explicitly stated in the Qur'an and sunnah. This was confirmed by the prophet SAW.<sup>54</sup>

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<sup>50</sup> Surah Ali Imran (3): Verse 102; *Mus-haf al-Madinah al-Nabawiyyah. Al-Qur'an Al-Kareem – Arabic Text-* (Mujamma' al- Malik Fahad Li tiba'ah al-Mushaf al-Shareef – Al- Madinah al-Munauwarah- 1420 AH) 36; A. Serdar Ozturk (tr) Translation of the Qur'an (OkyanusYayincilik- 2000) 63.

<sup>51</sup> Ibn Majah, Muhammad Ibn Yazid al-Qazwini. Sunan Ibn Majah. (Vol.11, CagriYayinlari, Istambul ) 1303.

<sup>52</sup> ILC Sources of Islamic Law (Centre for Labour Research. 2023) <<https://islamiclabourcode.org/sources-of-islamic-law/>> accessed 17 July 2023.

<sup>53</sup> Surah an-Nisa'(4): 59; *Mus-haf al-Madinah al-Nabawiyyah. Al-Qur'an Al-Kareem – Arabic Text-* (Mujamma' al- Malik Fahad Li tiba'ah al-Mushaf al-Shareef – Al- Madinah al-Munauwarah- 1420 AH) 87.

<sup>54</sup> Sunnah, The Office of the Judge (Kitab Al-Aqdiyah), <<https://sunnah.com/abudawud:3592>> accessed 2<sup>nd</sup> February 2024.



In the Shia school of Islamic law, *Aql* (which is literally interpreted in English as reasoning ) is considered the fourth secondary source of law, alongside the Quran, Sunnah, and Ijma (consensus of the scholars). This plays a crucial role in interpretation and application of Islamic law, particularly in cases where specific legal rulings are not found in the primary sources or where ambiguity exists. However, a critical look at the term ‘*Aql* may reveal that it is not an independent source of new laws or legal principles. It is rather used to serves as a tool for understanding and application of existing principles of Islamic law. It is one of the fundamental equipments for *Ijtihad*.

It should be noted that apart from the above sources, there are other subsidiary sources used as legal proofs under Islamic law. These inter alia include *Istishab* (presumption of continuity), *Istihsan* (juristic preference ), *Istislah* (Consideration of public interest), *Urf* (Custom) and *Sad al- Dharee’ah* (blocking the means leads to illegality) and *Fatwa* of *Sahabi* (Companion of prophet – SAW-).<sup>55</sup>

### 3.0 CONCLUSION

It is clear from the forgoing that words like right, spouse, polygamy, *al-kafa’ah*, *shari’ah*, *fiqh* and *fatwah* are all terms usable in a write up on the rights of spouses under Islamic family law. Some of these words were misconceived by many people. This some obstacles for understanding the rights of spouses under Islamic family law in Nigeria. Consequently, it is recommended that muslim scholars should embark on awareness programs to enlighten people on this issue.

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<sup>55</sup>Bambaleop.cit 79-93.