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SOCIO-ECONOMIC IMPACTS OF THE PRACTICE OF POST-DIVORCE FINANCIAL GIFT (MUT'ATUL TALAO) AMONG MUSLIMS IN KADUNA STATE

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Abstract

This study assessed the practice of post-divorce financial gift (Mut'at-al-Talaq) among Muslims in Kaduna State and its socio-economic impact. The study was embarked on as a result of the fact that many divorcees suffer and face a lot of financial difficulties while the society fail to give proper attention to how divorcees live and cope with life. Thus, the research aimed to ascertain the level of Kaduna State Muslims' awareness of the ruling of post-divorce financial gift, assess the nature of its practice and examine its socio-economic impact among them. Survey method was adopted and the population was studied by sampling three local government areas which include: Makarfi, Zaria, and Kaduna South, dominated by Muslims and comprise of urban and rural areas, where 450 copies of questionnaires were distributed to divorcees, divorcers, house wife, parents and Islamic scholars. The research findings revealed that, the level of Kaduna state Muslims' awareness and understanding of Islamic ruling on post-divorce financial gift is low, and many divorcees face financial challenges and became burden and dependent on their family member, living on a bare minimum, while some involve in begging and fall victims of sexual harassments due to their financial deficiency. The practice of giving post-divorce financial gift is rare and its practice is poor as there is prevailing ignorance and negligence of the teaching. This account for the misery condition of many divorcees and persist as one of the barriers to poverty alleviation and economic independent among the divorcees. The study recommends that more oral lecture should be produced by scholars on post-divorce financial gift in English and Hausa language in order to encourage the practice of giving post-divorce financial gift, they should also preach and admonish on the negative effects of divorce and create rigorous awareness and enlightenment on guardians, elders and parental role in resolving marriage disputes. Divorcer should consider the welfare of the divorcee and her children before and after the divorce and endeavor to give post-divorce financial gift.

Keywords: Mut'atul Talaq (Post-divorce financial gift); Islamic divorce; Marriage; Iddah; Kaduna state Muslims

Introduction

Allah (S.W.T) has created mankind from a single person (Adam), and created from him his wife (Hawau) whereas they both procreated, so marriage is as old as humanity. Before the advent of Islam, different types of marriage practices existed among the Arabs which include: marriage by capture (As-Sabbiy), marriage of one's father's widow or divorcee (Maqt), temporary marriage (Mut'ah), exchange marriage (Shighar), sending ones wife to be impregnated by another man (Istibda'), marriage by dowry, agreement and witnesses (Ba'uwlah), etc. (Jawaad, 1980). Some of these kinds of marriage were also practiced among the Africans i.e. exchange marriage (Shighar). Among mosty of the nation, women were viewed to be possessions in marriage and the power of divorce possessed by the husband was inestimable as they recognized no rule of humanity or justice in dealing with their wives. Such was the degrading and humiliating position of the women before the advent of Islam.

With the advent of Islam, many customs and traditions on marriage was reformed and strict set of rules and regulations were put in place. Several chapters and verses from the Quran were revealed which banned many marriage practices. Islam now effected a revolution in the life of women and the way of marriage and divorce, by bringing drastic change in the prevailing system of marriage and divorce. Nevertheless, Islam always avoids divorce, but allowed it in such cases where peace or happy life became impossible for the parties and divorce became unavoidable. When divorce would be a relief and a good solution once there is no longer a benefit out of keeping the marriage tie. Even then, when divorce took place, Islam want husband and wife to act quietly, peacefully, and further encourage reunion of the marriage. In addition, the wife has a right to a post-divorce financial gift (Mut'atul Talaq) in the event of divorce caused by the husband as profoundly rooted in the Qur'an and Sunnah. However, the misconception of the concept of divorce in Islam has led to so many social rivals and the prevailing practice in Kaduna state where many divorcees do not spending their *Iddah* period in their matrimonial homes left much to be doubted about if actually they enjoy three months of spousal support during their *Iddah* period, talk less of a post-divorce financial gift (*Mut'atul Talaq*). Thus, the study finds out the level of Kaduna State Muslims' awareness of the Islamic ruling of post-divorce financial gift (*Mut'atul Talaq*), assess the nature of its practice and examine its socio-economic impacts among Muslims in Kaduna State. The study would improve the welfare of women generally and divorcees particularly in Kaduna state, as it encourage the practice of post-divorce financial gift (*Mut'atul Talaq*); in order for a divorcee to have a relatively good livelihood, stay out of social vices, and face less challenges before she gets married again.

Divorce in Islam

Divorce in Islam is known as *talaq*; a verbal noun from the Arabic verb *talaqa* which literally means to unties a knot, to release (an animal) from the tether, to let loose and to free something (Ibn Manzur, 1997). In this regard, the husband free his wife from the bondage and tether of marriage; she is release from the marriage-tie. Technically, *talaq* means repudiation of marriage by the husband, or termination of marital relationship (Sabiq, 2009). In Islamic law, it is a unilateral power vested in a Muslim husband to repudiate his wife and untie her marriage tether as and when he wishes (AbddulFattah, 2004). A Muslim husband has an unrestricted right to divorce his wife, though never been an absolute authority to be misused by him, if he exercises this right by pronouncing divorce, this is known as *Talaq*. It signifies dissolution of marriage, where a husband releases his wife from the marriage tie, by the pronouncement of certain words which does not require the wife's consent.

Husband is responsible for his wife, he is her maintainer, caretaker and leader who discipline her if she deviates. Thus, Islam gives the right of divorce only to men because they are the one who have the responsibility to perpetuate wedding, they have more patient mind and character to deal with women's temperament (Ibn Juzay n.d). More explicitly, Allah said:

The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness . . . (Q2:229).

This verse abrogated the *Jahiliyyah* period practice, where man had the right to take back his divorced wife even if he had divorced her a hundred times. The pronunciation of divorce is permissible thrice, where the husband is allowed to take back his wife after the first and the second divorce (as long as she is still in her *Iddah*) and the divorce becomes irrevocable after the third divorce, unless if she married another man and get divorced (Ibn Katheer 1401 A.H.), In fact there is a complete chapter devoted to divorce (i.e. *Suratut - Talaq*, Q65); the Qur'an treats divorce as something permitted but not laudable.

Divorce can be in written or verbal, all that is necessary is that the husband pronounce *talaq*; how he does it, when he does it, or in what way he does it is not very essential, he can uses the words "I divorce you", it can be through unclear or allude word (*kinaya*) i.e. you are a free woman. The basic aim of divorce is to remove harm and hardship in the life of couples. However, the prerequisite conditions include: the divorcer should be adult, sane (divorce by a person in a fit of anger is valid), free consent, and the wife should be in state of purity. Also, she must observe a waiting period of approximately three months to be sure that she is not pregnant; then she is free to remarry. During the waiting period, the husband has the right to take her back unless it is the third of such divorce (Abu Zahra, 1995). Furthermore, divorce is obligatory (*wajib*) if the two arbitrators (from his side and her side) decided in regard to a breach between the couple, and that if their continuity (as husband and wife) could lead to committing or violating the laws of *Shariah*, such a marriage is therefore obligatory to terminate it, after all means of correction are exhausted. It was viewed as forbidden (*haram*) when it was pronounced on no reason, for it is against the intent of *Shariah*, it harm the wife and it is a kind of extravagant. Divorce is also regarded as permissible (*mubah*) when there is need for it particularly when wife's character change to be bad and thus some harm is expected through the continuation of the marriage. It is also recommended (*mandub*) when the wife is not fulfilling the essential rights of Allah that are made obligatory on her, i.e. refusal to observe the five daily prayers (Sabiq, 2009).

The Philosophy of Divorce in Islam

Islam has taken all possible measures to keep marriage a happy and lasting relationship, rights and duties are automatically confer upon the parties which both must remain mindful of these duties. The Qur'an and the *Ahadith* have stressed that both partners should act kindly and fairly with each other. However, for married couples to have

disagreements now and then is quite natural and unavoidable. In case a serious disagreement occurs, procedure is recommended in Islam to help reconcile the situation before a divorce. It is reported that:

The most hateful of lawful things to Allah (Exalted be He) is divorce. (Abu Dawood, Hadith no: 2178).

Although majority of the Scholars consider the above hadith to be *Mursal*, but its meaning is sound; divorce is lawful when it becomes necessary and hateful when it is unnecessary. Allah hates divorce, but He does not forbid it, if there is a legitimate reason for divorce, then it permissible and depend on the likely outcome of keeping the marriage. If keeping the marriage will lead to something that is contrary to the Islamic law (*Shari'ah*) which cannot be avoided except by divorce, such as if the woman is lacking religious commitment or chastity, and the husband cannot set her straight, then it is better to divorce her (Ibn Taymiyyah, 2015).

Islam from the beginning realized the situation and granted freedom of divorce in some situation, when it is a suitable remedy to disastrous and insoluble marriage problems. Nevertheless, the Qur'anic message is very explicit about divorce, it leans more towards safeguarding marriage rather than dissolving it abruptly. Divorce is permitted as the last option when the couple are unable to continue their marital life smoothly. The husband and wife have certain rights and responsibilities toward each other, but when they are unable to fulfil these rights and responsibilities toward each other, they are advised to reconcile, and divorce is allowed only as the last option. The Qur'an is filled with numerous example for reconciliation between husband and wife. Allah say:

Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means. Therefore the righteous women are devoutly obedient (to Allah and to their husband), and guard in the husband's absence what Allah orders them to guide. As to those women on whose part you see ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly, if it is useful); but if they obey you, seek not against them means (of annoyance). Surely, Allah is Ever Most High, Most Great (34). If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the 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 (35). Q4:34 – 35.

According to Al-Maududi (1999), An effort should be made to effect a reconciliation before resorting to court of law or making final breach. The plan is to appoint one arbiter from the family of each spouse for this purpose. The two should probe into the real cause(s) of the dispute and then try to find a way out it. The arbitration procedure and steps before the actual termination of marriage as outlined in the above verse are:

i- The two parties must try to settle their differences on their own i.e. the husband should admonish her first, then if her ill-conduct persists, he should refuse to share bed with her, and their after he can beat her lightly, if the beating will be useful. Although, she would not be beaten on the face, cruelly, or with anything which might leave mark on the body. In the case of the ill-conduct of the husband Allah says:

And if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves; and making peace is better. And human inner-selves are swayed by greed. But if you do good and keep away from evil, verily, Allah is Ever Well-Acquainted with what you do. (O4:128).

- ii- If they fail in settling their differences on their own, after the teachings of the first step have taken place, then two arbitrators, one from the husbands relatives, and one from the wife's relatives, must be appointed to try to make peace and to settle their differences for reconciliation.
- iii- If the above step also fails to yield and resolve the problem, then the husband or the wife may seek a divorce, dissolution of the bond of marriage, preferable a revocable divorce.

iv- And in case divorce is served, a reconciliation and reconsideration time of three months is also available (except if the parties have divorced each other for the third time), Allah says:

And divorced women shall wait (as regards their marriage) for three menstrual periods, and it is not lawful for them to conceal what Allah has created in their wombs, if they believe 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 they (women) have rights (over their husbands as regards living expenses) similar (to those of their husbands) over them (as regard obedience and respect) to what is reasonable, but men have a degree (of responsibility) over them. And Allah is All-Mighty, All-Wise. (Q2:228)

v- And if the above time limit (of three menstrual periods) expires and no reconciliation occurs, then the divorce becomes operative and marriage is terminated.

It is clear that Islam encourages reunion of the two disputing parties and considers it meritorious to cancel divorce during the reconciliation and the three menstrual periods. Phrases such as: "if they both wish for peace, Allah will cause their reconciliation"; "and making peace is better"; "and their husbands have the better right to take them back in that period, if they wish for reconciliation", are used in the Qur'an when discussing about divorce. Thus, it is clear that Islam permits divorce only when it has become impossible for the parties to live together in harmony and all attempts to make peace have failed. Then, divorce would be a relief and a good solution once there is no longer a benefit out of keeping the marriage tie.

Furthermore, in order for the institution of marriage to fulfill its goals as described earlier, divorce must be allowed in certain situations. Religions and/or societies which deviated and imposed the fiction of "forever, till death" in all cases have been responsible for untold human misery and sin. Such community that prohibits divorce always suffer many serious social problems such as the spread of suicide, crime, and corruption of family life (Dogarawa, 2009). Islam therefore permits divorce and makes proper rules to regulate it in order to achieve the desired interests and repel any possible evil. Even then, when divorce took place, Islam want both of them to act quietly and peacefully, as reunion is always encourage. Allah says:

Then when they are about to attain their term appointed, either take them back in good manner or part with them in a good manner. . . . (Q65:2).

Thus, divorce should not be ugly when it becomes necessary, it should be done with consideration, dignity and kindness. To this end, Islam has indeed facilitate marriage and set up rules and regulations whereby Marriage is indeed a sacred bond that brings together a man and a woman by virtue of the teachings of the Quran and *Sunnah*. A man must not divorce his wife to bring harm upon her, as this breaks the woman's heart, and possibly separates the woman from her children without genuine reason. In fact, divorce has been generally frowned upon in Islam, hence it is imperative that we exhaust every steps of resolution and reconciliation.

Prescribed Waiting Period of Divorce ('Iddah) in Islam

The word 'Iddah (العدة) is derived from the Arabic word (العدة) meaning number and counting, a woman count and calculate days of her menstruation and purity. In the terminology of the Shariah, it means a period of waiting from re-marriage after the death of a woman husband or separation or divorce (Sabiq, 2009). Is the period a wife must observe after the death of her husband or after a divorce, during which she will not marry another man. The Muslim jurists have unanimously agreed on its essentiality (compulsory), while the injunction of the Qur'an is quite explicit on the subject, Allah says:

O Prophet (S.A.W)! When you divorce women, divorce them at their prescribed periods and count (accurately) their waiting periods (*iddah*). And fear Allah your Lord. And turn them not out of their (husband's) homes nor shall they (themselves) leave, except in case they are guilty of some open illegal sexual intercourse. And

those are the set limits of Allah. And whosoever transgress the set limits of Allah, then indeed he has wronged himself. You (the one who divorces 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 first or second divorce). (Q65:1).

Therefore, the prescribed period of waiting after divorce has been enjoined to give room and time for rethinking, reconciliation and reconsideration within three months, most especially in the interests of the family and children, and most important to remove any doubt as to the paternity of a child born after the divorce or death of the prior husband. She will observe the waiting period ('*iddah*) in her matrimonial home and she is entitled to his maintenance during this period, the husband is obliged to provide maintenance during the '*iddah* period (except in the case of widow). It is reported that the Prophet (S.A.W) commanded Fariy'atu bint Malik when her husband was killed, saying:

"Stay in your house until what is written reaches its term". She said: "So I observed my '*Iddah* there for four months and ten (days). (Tirmidhi, hadith no: 1204).

Staying in the house of the husband is applied to both death and divorce waiting period ('*iddah*). However, the length of divorce waiting period of a woman that menstruates is three menstrual periods. But if the marriage has not being consummated there is no '*iddah* on her to be observed in regard to divorce, Allah says:

Furthermore, the prescribed waiting period for a divorcee whom is pregnant is until she gives birth and three months for a divorcee who does not menstruate for her oldness or youngness, Allah says:

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ۈۈ ۋ ۋ ۋ و و ۋ ۋ ي ي ب ب بد ئا ئا ئە ئە ئو ئوئۇ ئۇ ئۆ ئۆ ئۈ ئۇ ئى ئى ئى سورة الطلاق: 4.
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And those of your women as have passed the age of monthly courses, for them the 'Iddah' (prescribed period), if you have doubt (about their period), is three months; and for those who have no courses (i.e. they are still immature) their 'Iddah (prescribed period), is three months likewise, (except in the case of death). And for those who are pregnant (whether they are divorced or their husbands are dead), their 'Iddah' is until they lay down their burden; and whosoever fears Allah and keeps his duty to Him, He will make his matter easy for him. (Q65:4).

Allah also savs:

And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten (days), then when they have fulfilled their term, there is no sin on you if they (the wives) dispose of themselves in just and honorable manner (i.e. they can marry). And Allah is well-Acquainted with what you do. (Q2:234).

Scholars consider this directive to be a balance between mourning of husband's death and protecting the widow from criticism that she might be subjected to from remarrying too quickly after her husband's death. This is also to ascertain whether a woman is pregnant or not, since four and a half months is half the length of a normal pregnancy. In short, 'Iddah is observe as follows:

- 1. 'Iddah of divorced woman who still menstruate: three menstruation.
- 2. 'Iddah of a divorce women who have passed or yet to menstruated, as they are still immature: three months.
- 3. 'Iddah of woman whose husband died (non-pregnant): four months and ten days.
- 4. 'Iddah of pregnant woman (divorcee or widow): until she delivers
- 5. A woman whose marriage is not consummated: there is no 'Iddah on her.

During the 'Iddah period, the woman cannot marry another man, while the woman should not be turned out of her husband house. Nevertheless, the wisdom behind 'Iddah are to give the husband a chance to return to his wife after rethinking and reconsideration without cost, if she is a revocable divorced woman. So also to determine whether the divorcee is pregnant or not with the aims of reserving family tree. In fact, this period of waiting removes all doubt about any existing pregnancy and make it known if 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.

Post-Divorce Financial Gift (Mut'at-al-Talāq) and its Ruling

Literally, according to Ibn Manzur (1997), *mut'ah* is a derivative word -verbal noun- (*masdar*) of the word (– متعة – متعة), which means to offer fun, pleasure or enjoyment. Thus, linguistically, it means something responsible for enjoyment and happiness, and beneficial to one, such as food, clothing, home, money and so on.

Technically, post-divorce financial gift (Mut'at-al- $Tal\bar{a}q$) according to Ibn Katheer (1401A.H) while commenting on Qur'an 2 verse 236, it is something paid by the husband to his divorced wife, according to the husband's means, so as to compensate the divorcee for what she lost due to the divorce. It is also defined as a valuable gifts given to the wife after the happening of a divorce that can bring joy (Ibrahim, et al., 1972). Post-divorce financial gift is a gift of the former husband to his divorced wife in the form of money, goods, and so forth that will eradicate the negative impact of the social and economic challenges associated with divorced woman.

It is a rights that the husband has to give to his divorced wife in order to ensure that justice is upheld and he does not persecute his ex-wife. Thus it is a symbol of Islamic concern for the fate of women. Other rights after divorce include the dowry if not settled during the marriage, *iddah* maintenance, etc. whereas the accumulated wealth of the household, she was part and a full partner in ownership. However, this gift must be valuable and enjoyable to the wife such as food, property, clothing, vehicle, accommodation, etc. (Abdul Karīm, n.d.). The Qur'an has addressed this topic in its several verses and confirmed in the tradition of the Prophet (S.A.W) during his lifetime, that of his companions, and the successors, Allah says:

There is no sin on you, if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed to them their dowry. But bestow on them (a suitable gift - *Mut'at-al-ṭalāq*), the rich according to his means and the poor according to his means, a gift of reasonable amount is a duty on the doers of good. O2: 236

Allah (S.W.T) also says:

And for divorced women, maintenance (should be provided) on a reasonable (scale). This is a duty on the pious. Q2: 241

It was reported that prophet Muhammad (S.A.W) married a woman from the tribe of *Kilab*, before consummation of the marriage she was divorced, the prophet (S.A.W) paid her what was due to her according to post-divorce gift and sent her back to her family.

عن عباس بن سهل عن أبيه وأبي أسيد قالا: "تزوج النبي
$$\rho$$
 أميمة بنت شراحيل، فَلَمَّا أدخلتُ عليه بَسَطَ يَدَهُ إليها، فَكَأَنَّهَا كَرِهَتْ ذلك، فَأَمَرَ أبا أسيد أن يجهزها ويكسوها توبين رازق يين" (البخاري، حديث رقم: 5256).

Narrated by Abbas the son of Sahl from his father and Abu Usaid: The Prophet (S.A.W) married Umaima bint Sharahil, and when she was brought to him, he stretched his hand towards her. It seemed that she disliked that, whereupon the Prophet (S.A.W) ordered Abu Usaid to prepare her and to provide her with two white linen dresses. (Bukhari, hadith no: 5256.

In the above prophetic practice we learned that despite the short time Umaima bint Sharahil spent in the prophet's house, he granted her post-divorce support. In another Hadith, a man from Al'ansar divorced his wife before consummation of the marriage, the prophet (S.A.W) directed the husband to pay her post-divorce financial gift and many among the predecessors, including Uthman bin affan, Abdur Rahman Ibn Auf, the judge shuraih, and Hasan Ibn Abi Talib give *mut'at-al-ṭalāq* to their divorced wives (Abdul Karīm, n.d.). The wife right to *mut'at-al-ṭalāq* in the event of divorce caused by the husband has been agreed upon by the jurists, such as divorce through *talaq* and the

husband impotence. Thus, the divorce must be initiated by the husband, if initiated by the wife i.e. Khul', the wife does not entitled to mut'at-al-talāq.

In the Qur'an, there are four verses that prove *Mut'at-al-Talāq*, the verses are as follows, Allah (S.W.T):

There is no sin on you, if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed to them their dowry. But bestow on them (a suitable gift - Mut'at-al-talāq), the rich according to his means and the poor according to his means, a gift of reasonable amount is a duty on the doers of good. Q2: 236

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Allah (S.W.T) also says:

its glitter; then come! I will make a provision for you and set you free in handsome manner (divorce), (O33:28).

Allah also says:

At-Tabari (1996) in his commentary on the foregoing Qur'anic verses, he strongly advocated for women's rights to (mut'at-al-talāq) and sturdily defended his belief that payment of (mut'at-al-talāq) to a divorced woman is an obligation on the husband by the virtue of the aforementioned Our'anic verses. While after reporting different opinions of the jurists on this matter, he said: "I believe what represents the truth among all of the above jurists' arguments is the argument of those who say that post-divorce financial gift is mandatory for all divorced women, because Allah has said: 'for all divorced women post-divorce financial gift (mut'ah) is a duty on the pious". Al-Qurtubi (2006), another renowned commentator, although a Maliki School of Jurisprudence disciple, but depart from prevailing fetters of the Mālikī School with regard to women's post-divorce right to post-divorce financial gift (mut'ah) According to Imam Malik, the post-divorce *mut'ah* is not mandatory but recommendable. Al Qurtubī (2006) quoted Abdullah ibn Umar, 'Alī ibn Abi Ṭālib, Sa'īd ibn Jubair', and other prominent scholars among the successors who hold that the rule of mut'at-al-talāq came in the form of a command and therefore is a binding rule (wājib), although Mālik, Judge Shuraih, and other jurists hold it as a non-binding Islamic rule, saying it is just a recommendable rule. Furthermore, Al-Qurtubī (2006) said that, the supporters' argument is based on the Qur'anic wording; an imperative and binding command from Allah, while the second party did not deny that the word is a command, but based its understanding on the recipient of the said command, claiming the verse addresses the good doer (muhsinīn) and the pious (muttaaīn) only, so it is binding only upon the righteous people (muhsinīn) and the pious (muttaqīn). They also said that, if ut 'atal- talāq were a binding Islamic rule, it would have been imposed on all people, not only on righteous and pious people.

After discussing the above opinions, al-Qurtubī (2006) strongly endorsed the first party's opinion that mut 'at-al-talāq is obligatory. He added that the second party's argument is indefensible, because the contextual indication and the understanding thereof show the command of mut 'at al- talāq referred to the divorcees, and the preposition letter ($l\bar{a}m$) in the word (المطلقات) is a possessive letter and an indicative element that gives divorced women an undeniable right to their post-divorce financial shares. Al-Qurtubī (2006) also pointed out that muḥsinīn and muttaqīn emphasize and further assure the right of divorced women to post-divorce mut'ah, because being a muhsin and a muttaqī is a duty on all Muslims. In addition, he stated that in accordance with Ibn Abbās, Ibn Umar, Jābir b Zaid, al-Hasan, 'Atā' ibn Rabāḥ, Ishāq, Imām al-Shāfi'ī, Imam Aḥmad, and their opinion adherent jurists, mut'at-al-ţalāq is mandatory only

for the divorced woman who has been divorced before the consummation of the marriage and whose dowry was not fixed, and that it is only recommendable for all other divorcees.

According to the understanding of al-Rāzī (1981) in his commentary, both Imām Abū Ḥanīfa and Imam al-Shāfi'ī support the opinion that *mut'at-al-ṭalāq* is obligatory on the husband. His inclination to consider divorced women can be summarized to three categories:

- i- Women who are divorced before the fixation of their dowry and before the consummation of their marriages. For them the *mut* 'ah is mandatory on their divorcing husbands.
- ii- Women who are divorced after the fixation of their dowry and before the consummation of their marriages. For them there will be no *mut 'ah* but they are entitled to 50 percent of the fixed dowry.
- iii- Women who are divorced after the fixation of their dowries and consummation of their marriages. For them *mut'at-al-talāq* is mandatory.

Imām al- Rāzī quoted Abdullah ibn Umar saying that Mut 'at-al- $tal\bar{a}q$ is prescribed for all divorced women. Al-Rāzī did not hesitate to support his argument by the same points made by al-Qurtubī, as mentioned above, then added that the preposition letter ' $Al\bar{a}$ in Arabic indicates that the matter in question is neither optional nor recommendable, but rather is obligatory. It is remarkable that most of the classical commentaries of the Qur'an are mostly identical, not only in terms of meaning and concepts but also on many occasions in the words they use. The Prophet (S.A.W) paid Umaima bint Sharahil post-divorce gift.

عن عباس بن سهل عَنْ أبيه وأبي أسيد قالا: "تزوج النبي ρ أميمة بنت شراحيل، فَلَمَّا أدخَلت عليه بسط يده إليها، فَكَأَتُهَا كَرِهَتْ ذلك، فَأَمَرَ أبا أسيد أن يجهزها ويَكْسُوهَا توبين رازق يّين" (البخاري، حديث رقم: 5256).

Narrated by Abbas the son of Sahl from his father and Abu Usaid: The Prophet (S.A.W) married Umaima bint Sharahil, and when she was brought to him, he stretched his hand towards her. It seemed that she disliked that, whereupon the Prophet (S.A.W) ordered Abu Usaid to prepare her and to provide her with two white linen dresses. (Bukhari, hadith no: 5256.

During the time of the successors, it was also reported that

كانت عائشة الخثعمية عند الحسن بن علي بن أبي طالب، فَلَمَّا أصيب علي وبُويعَ الحسن بالخِلافة قالت عائشة الخلافة يا أمير المؤمنين: فَقَال يقتل علي وتظهرين الشماتة: اذهبي فَأَنت طَالق تَلَاثًا. قال فتلفعت بساجها وقَعَدَتْ حتى أنقضت عدتها، فبَعَثَ إليها بِعَشْرَةِ آلاف متعة وبقية ما بقي مِن صداقها، فقالت: متاع قليل من حبيب مفارق. (الطبراني، المعجم الكبير، حديث رقم: 2691).

A'ishah al-Khath'amiyyah was with al-Hasan ibn 'Ali (R.A), when 'Ali (R.A) was killed, she said: "May you take joy in the caliphate!" He said: "You are expressing glee over the death of 'Ali?! Go, for you are divorced" meaning "thrice." He said: So she covered (herself) with her garment and she sat (in waiting) until her waiting period ended, and then he dispatched to her the leftover which remained of hers from her dowry, and ten thousands (coins) as divorce gift. When the messenger came to her, she said: "A small commodity from a parting lover." (At-Tabarani, hadith no: 2691).

The above hadiths confirmed the practice of $mut'at-al-tal\bar{a}q$ during the life time of the Prophet (S.A.W) and during the period of the tabiun (successors). However, jurists differ in opinion regarding the law of $mut'at-al-tal\bar{a}q$. According to majority of jurist mut'atud- dalaq is obligatory upon fulfilling the condition. This is clear from the commentaries of the verses that command giving $mut'at-al-tal\bar{a}q$, has revealed above. The Hanafi School of Law opined that it can be either compulsory or depending on the circumstances of wives during divorce. It is mandatory $(w\bar{a}jib)$ when a woman married without fixation of dowry and divorced before the consummation of the marriage. Secondly, a divorced woman whose dowry was fixed but who was divorced before the marriage was consummated as stated in the Qur'an 33 verse 49. However, the Hanafi position is not precisely clear with regard to divorce women in other situations. According to majority of their jurists, post-divorce support is just recommendable (al-Zarkashi, 1331).

Imam Maliki and majority of his disciples stated that *mut'ah* is merely a payment, consolation or courtesy as a repetition of sympathy from the husband to the divorced wives. The husband is not obliged, but is only encouraged

to pay or give *mut'ah* to the wives. (Ibn-Rushd, 1970). According to them, it is not mandatory at all but is instead recommendable for all divorced women except the ones with fixed dowries and who were divorced before the consummation of the marriage. The argument provided by the Mālikī school to justify the dispensability of post-divorce support is based on the words *muḥṣinīn* and *muttaqīn*, which say *mut'at* is mandatory only upon these two categories of people. According to Hambaliyyah, *mut'ah* law is obligatory in the event of a divorce before the occurrence of intercourse and the marriage is not yet determined. If the dowry is called after the contract and there is a divorce before intercourse, the wife is entitled to *mut'ah*. (Ibn-Qudamah, 1981). However, the Ḥambalī jurisprudential position towards post-divorce support is almost the same as those of the Shafī'ī schools. Shaikh-ul-Islām Imām ibn Taymyah in his famous *Majmū' Fatawā*, said that Abdullah ibn Omar, Imam al-Shāfī'ī, and Imām Aḥmad ibn Ḥambal all consider post-divorce support (*Mut'at*) to be mandatory for every divorced woman, except those who were divorced after the fixation of dowry but before consummation of the marriage. For such divorces with a fixed dower, no post-divorce support is required.

In the light of the above scholars' opinions, the researcher convinced that post-divorce financial gift is highly recommendable, most especially in this our contemporary society that experience economic hardship. Today, in many cases, the divorced woman has no place of resort and no financial means to support herself and her children. Thus *mut'at-al-ţalāq* should be considered as obligatory. Shafi'is opined that any divorced woman who is not the direct reason for the divorce is entitled to post-divorce gift (Shahbūn, n.d.). Though a woman has no right to *mut'at-al-ṭalāq* under the issue of *faskh* that has to do with her fault.

The Rate of post-divorce financial gift ($Mut'at-al-tal\bar{a}q$) in Islam

Post-divorce financial gift (*Mut'at-al-ṭalāq*) rate is not specified whether in the Quran or Hadiths. The determination of the rate and the principle that determines the amount is based on the verses, which only stated that, the amount should be reasonable, the rich according to his means and the poor according to his means. However, it is reported that Abdullah ibn 'Abbās determined the amount of mut'at-al-ṭalāq saying:

مُتْعَةُ الطلاق أَعْلاهُ الخَادِمُ ودون ذَلِك الورق، ودُون ذَلِك الكِسْوَة (البخاري، حديث رقم: 5193). The higher rate is a servant, next to this is paper note (cash) and the least is pieces of clothing. (Al-Bukhari, hadith no: 5193)

This should be in accordance with the husband financial ability. The clothing comprise of a vest, a head scarf, a blanket, and a dress, excluding a pair of shoes and underwear as further explained in other narrations.

According to Imam Malik, the above verse is a powerful evidence that Allah S.W.T does not set *mut'ah* rates with certain values or rates. It is only stated in general, according to the ability of a husband whether poor or rich. If the husband is rich, his *mut'ah* rate should be appropriate to his wealth. On the other hand, for the poor husband, his *mut'ah* rate is only to the extent of his ability (Ibn-Qudamah, 1981). This is due to the fact that the *mut'ah* rate to be given is not set by *Hukum Sarih* (clear and precise injunction), but is left to the current situation and condition, therefore, it may requires *ijtihad*. In this regard, Imam al-Shafi'i stated that for a person who is rich *mut'ah* rate is a slave, for the middle class, its value should not less than 30 dirhams and for those who cannot afford, is enough according to their ability. However, based on the opinion of Imam Ahmad bin Hanbal, the minimum rate for *mut'ah* should not less than 30 dirhams. While the maximum rate cannot be more than the value of a servant (Shahbūn, n.d.).

Other jurist are of the view that, *mut'ah* is anything that has value and no determination at its maximum. *Mut'ah* rates should be based on the husband's position in terms of poverty and richness (Ibn Juzay, n.d). They also agrees that there are two principles in relation to the determination of *mut'ah* rate:

- i- Seen on the ability of the husband as well as based on the *nasab* and the nature of the divorced wife. If the husband is a wealthy and high income group, then raise the value of *mut'ah* so that it can be a slave or equivalent. If the husband is of a middle class that is neither rich nor poor, then his *mut'ah* rate is moderate enough as a piece of clothing or its worth. Furthermore, if the husband belongs to the poor, then his *mut'ah* rate is sufficient only for his ability.
- ii- Returning to Judgment as it requires *ijtihad*, in the event of a dispute, the Judge must determine the rate based on the circumstances of both husband and wife. The determination of *mut'ah* rate is measured based on the ability of the husband and the *nasab* and the nature of the wife. The Judge's decision must be fair with regard to the circumstances of both parties.

In conclusion, post-divorce support was high pressing in this our present time than before and particularly our

country Nigeria, in which many divorced woman has no place of resort and no financial means to support herself and her children. Furthermore, when it comes to the verses found in the Quran, hadiths and *ijtihad* of the fuqaha', it is concluded that the *mut'ah* rate is not clearly defined and absolute. Therefore, the ideal rate is the reasonable amount agreed or favored by both parties. A divorced woman whose husband is wealthy can be entitled to a house to shelter her and her dependents for the rest of her life and be inherited by her children after her death. The husband can also provide a source of income for her through investment and alike according to his ability as earlier stated.

Methodology and Data Collection

The research design was descriptive survey research design and The population of this study includes all the Muslims in Kaduna State within its twenty-three (23) Local Government Areas, while three Local Government Areas dominated by Muslims and comprise of urban and rural areas was sampled. 450 respondents from these three local government areas which comprise of divorced women, men that divorced, House wife, parents, staff of *Shari'ah* court and Islamic scholars were given a well-structured and constructed research questionnaire. 405 out of the 450 questionnaires administered were duly completed and retrieved for the purpose of this analysis. The descriptive statistical method of frequency and percentages was used

Major Findings of the Study

- 1- The level of Kaduna state Muslims' awareness and understanding of Islamic ruling on post-divorce financial gift (*Mut'atul Talaq*) is low. Many are not aware of the teaching, thus giving post-divorce financial gift is not common due to ignorance of the teaching. Besides, there are no sufficient oral lectures in Kaduna State on its ruling.
- 2- Many divorced Muslim women face financial challenges in Kaduna state, as they became burden and dependent on their family member, mostly live on a bare minimum, while some involve in begging, fall victims of sexual harassments due to their financial deficiency as financial maintainace of the children is left to her.
- 3- Giving post-divorce financial gift is rare and its practice is poor among the Muslims of Kaduna State as there is prevailing ignorance and negligence of the teaching, while many believe that giving post-divorce financial gift (*Mut'atul Talaq*) is not emphasized in Islam.
- 4- The positive socio-economic impact of the practice of post-divorce financial gift in Kaduna State is low due to its poor practice. Many divorcees remained economic-dependent and experience financial challenges due to lack of financial support after divorce. Therefore, the poor and low practice of post-divorce financial gift account for the misery condition of many divorcees and persist as one of the barriers to poverty alleviation and economic independent among the divorcees.
- 5- The proper practice of Islamic teaching on divorce waiting period ('iddah) and post-divorce financial gift (Mut'atul Talaq) will probably reduce the rate of divorce among the Muslims in Kaduna State, divorcees and their children will be saved from divorce trauma, they will became economically independent, it will help in children-upbringing and enhance social harmony among the Muslims.

Discussions of the Findings

In regard to the level of Kaduna state Muslims' awareness of the Islamic ruling of post-divorce financial gift (*Mut'atul Talaq*), it is discovered to be low, many are not aware of the teaching. Whereas, Islamic teaching on post-divorce financial gift (*Mut'atul Talaq*) is intensely rooted in the Qur'an, elaborated and practiced in the *Sunnah*, and further explained in books of jurisprudence. To this end, it can be said that, many fail to learn this teaching, as most people now a days are less concern with seeking religious knowledge and understanding Islamic teachings. As result of this, they remained unaware of this teaching, while it practice was not also common in the society. Those that are aware of the teaching rarely practice it, thus, the most pronounced practice in the society is divorce not post-divorce financial gift. Meanwhile knowledge need to be accompanied with practice, in fact, putting knowledge into practice is the most effective way of pronouncing, disseminating and propagating it. Ibn Rajab said (Al-Baghdadi, 1401)

"العلم شجرة والعمل ثمرة، وليس يعد عالما من لم يكن بعلمه عاملا".

Knowledge is a tree and action (i.e. practicing the knowledge) is a fruit, he who does not practice his knowledge is not considered as a scholar.

Furthermore, the research also discovered that there are no sufficient oral lectures on the Islamic ruling on post-divorce financial gift (*Mut'atul Talaq*) in Kaduna state, most especially in English or Hausa language. Therefore, poor financial status of Kaduna state Muslims was not the barrier to the practice of post-divorce financial gift (*Mut'atul Talaq*), but ignorance and negligence of the teaching.

The discovered challenges face by Muslim divorcees in Kaduna State include financial difficulties and economic hardship, as they became burden and dependent on their family member, live mostly on a bare minimum, while some involve in begging and fall victims of sexual harassments due to their financial deficiency. These is in line with the findings of Rafatu and Imam (2018), that the negative effects of divorce on the Muslim woman in Northern Nigeria include sending them out from their matrimonial home before the completion of their divorce waiting period ('Iddah), economic hardship, psychological trauma, difficulty in remarrying and cultivation of immoral behavior. In Kano state, thousands of divorcees have being arrested by Hisbah for improper dress, indecent mixing of sexes and prostitution, among other vices. This is one of the reason why Islam frown at divorce and set different measures and steps in order to avoid it because it result to undesirable situations. Knowing this, when divorce became necessary, Islam also recommended another teaching i.e. providing for the divorcee by the divorcer during divorce waiting period ('Iddah) and thereafter, giving post-divorce financial gift (Mut'atul Talaq), these will probably prevent and alleviate unwanted situation after the divorce.

Furthermore, the research discovered that, the practice of giving post-divorce financial gift is rare and poor among the Muslims of Kaduna state as there is prevailing ignorance and negligence of the practice, while many believe that giving post-divorce financial gift (*Mut'atul Talaq*) is not emphasized in Islam. However several verses in the Qur'an has made mentioned of this, likewise the tradition of the Prophet (S.A.W). Not even the post-divorce financial gift, many divorcees in Kaduna do not observe their divorce waiting period (*iddah*) in their husband accommodation. They left their husband residence immediately after the divorce and the husband seize to take her financial responsibilities. Whereas providing place to live, clothing and feeding to divorcees during the '*iddah* period is obligatory, unless the ex-wife has been divorced irrevocable (*ba'in*) and she is not pregnant. Also the cost of maintaining and nurturing (*hadanah*) for their children who have not reached the age of maturity (Zuhaili, 2010). Fatimah bint Qais when she was divorced three times, the Prophet (S.A.W.) decided the case by not having a right to maintenance, it is narrated:

"أتيت النبي صلى الله عليه وسلم فقلت: أنا بنت آل خالد، وإن زوجي فلانا أرسل إلي بطلاقي، وإني سألت أهله النفقة والسكنى فأبوا على! قالوا: يا رسول الله! إنه قد أرسل إليها بثلاث تطليقات، قالت: فقال رسول الله النبي صلى الله عليه وسلم: إنما النفقة والسكنى للمرأة إذا كان لزوجها عليها الرجعة". (النسائي: 3403)

"(Fatimah bint Qais said) "I came to the Prophet (S.A.W) and said: 'I am the daughter of Ali Khalid and my Husband, so and so, sent word to me divorcing me. I asked his family for provision and shelter but they refused. They said: 'O Messenger of Allah, he sent word to her divorcing her thrice'. She said: 'The Messenger of Allah (S.A.W) said: 'The woman is still entitled to provision and shelter if the husband can still take her back (An-Nisai: 3403)

Base on the above hadith, divorcee is entitle to subsistence during 'iddah period of revocable divorce. Even when the divorce is irrevocable, jurist have different opinions regarding 'iddah maintenance. According to Hanafi the wife still has the right to receive 'iddah maintenance whether she is pregnant or not, on condition that the wife does not leave the husband's residence during the time of 'iddah. Maliki is of the opinion that she can only get a place to live unless she is pregnant, then she will be provided with everything. Shafi'i and Hanbali argue that a wife is not entitled to a living and a place to live except when she is pregnant (Ibn Qudamah, 1981). Subsequence to failure to observe 'iddah at matrimonial home, thus not enjoying the 'iddah maintenance, eighty-eight percentage (88%) of the respondents didn't know any Muslim divorcees in Kaduna state that do received post-divorce financial gift (mut'atul talaq). as discovered, failure to give post-divorce financial gift (Mut'atul Talaq) according to his ability no matter how poor he is. The poor is expected to give according to his means and the rich according to his wealth. Allah says:

تے نے نے گ گ ک ک و و و و و و و و و ع سورة البقرة: ۲۳۱ Bestow on them (a suitable gift – Mut 'at-al- $tal\bar{a}q$), the rich according to his means and the poor according to his means, a gift of reasonable amount is a duty on the doers of good. Q2: 236

The divorcer may give her a house to stay in part of it and collect a rent fee for the remaining part, he may establish a business for her, he give her money to establish on her own, he may buy car or motorcycle for her for commercial purpose, etc.

In regard to the socio-economic impact of the practice of post-divorce financial gift (*mut'atul talaq*) in kaduna state, the positive socio-economic impact of the practice is low as the practice is rare and poor. therefore, many muslim divorcees in kaduna state remained economic-dependent and experience financial challenges due to lack of financial support after divorce. the failure to properly practice the islamic teaching on post-divorce financial gift (*Mut'atul Talaq*) account for the misery condition of many divorcees and persist as one of the barriers to poverty alleviation and economic independents among the divorcees. If divorcees are given the post-divorce financial gift, they can use it to start a business or prepare for the post-divorce financial challenges.

In line with the wisdom behind the legislation of divorce waiting period ('iddah) and post-divorce financial gift (Mut'atul Talaq), if both were properly practice, they will probably reduce the rate of divorce among the Muslims in Kaduna state, divorcees and their children will be saved from divorce trauma, became economically independent, help in children-upbringing and enhance social harmony among the Muslims. Most especially, in this our present society where many divorcees became helpless, they have no place of resort and no financial means to support herself and her children.

Conclusion

The level of Kaduna state Muslims' awareness and understanding of the Islamic ruling of post-divorce financial gift (*Mut'atul Talaq*) was low despite the fact that Islamic teaching on this is intensely rooted in the Qur'an, elaborated and practiced in the *Sunnah*, and further explained in books of jurisprudence, but many fail to learn this teaching, while those that are aware of the teaching rarely practice it. Thus, the most pronounced practice in the society is divorce not post-divorce financial gift. The various challenges face by Muslim divorcees in Kaduna state emerged as many fail to stick to Islamic teaching on marriage life and divorce. Most especially observing the divorce waiting period at matrimonial home, providing for the divorcee by the divorcer during the waiting period and thereafter, giving post-divorce financial gift (*Mut'atul Talaq*).

The practice of giving post-divorce financial gift is rare and poor among the Muslims of Kaduna State as there is prevailing ignorance and negligence of the teaching. Subsequence to failure to observe 'iddah at matrimonial home as enjoined by Islam, therefore not enjoying the 'iddah maintenance, aalso most of the divorcers do not give post-divorce financial gift. As a result, the positive socio-economic impact of the practice is low as the practice is rare and poor, while many Muslim divorcees remained economic-dependent and experience financial challenges due to failure to properly practice the Islamic teaching on post-divorce financial gift. This accounted for the misery condition of many divorcees and persist as one of the barriers to poverty alleviation and economic independents among the divorcees. However, if divorce waiting period ('iddah) and post-divorce financial gift (Mut'atul Talaq) are properly practice, probably the rate of divorce among the Muslims in Kaduna State will reduce, and divorcees and their children will be saved from various challenges.

Recommendations

On the basis of the findings of study, the following recommendations are made.

- 1. Scholars in Kaduna state should produce more oral lecture on post-divorce financial gift (*Mut'atul Talaq*) in English and Hausa language in order to encourage the practice.
- 2. Spouse should try as much as possible in performing their marital obligations and duties, adhering strictly to Islamic teachings on marital life, reconciliation of marital dispute and divorce.
- 3. Scholars should preach and admonish on the negative effects of divorce and the need for endurance and perseverance in the marital life, and create rigorous awareness and enlightenment on guardians, elders and parental role in resolving marriage disputes.
- 4. Divorcer should consider the welfare of the divorcee and her children before and after the divorce and endeavor to give post-divorce financial gift (*Mut'atul Talaq*) and other necessary support.
- 5. The Muslim women association should agitate for a law that will encourage or mandate the giving of post-divorce financial gift (*Mut'atul Talaq*) and take care of divorcees and their children.

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