

## **BREASTFEEDING (RADA'AH): AN APPRAISAL OF THE LAW GOVERNING MUSLIMS IN MALAYSIA AND SEVERAL MUSLIM COUNTRIES**

**AZIZAH MOHD<sup>1</sup>  
SITI ZAINAB BINTI ABDUL RASHIF**

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*Breastfeeding is a common practice, rights and duties involving group of people in many ways. It is known in every human practice as well as many legal systems that emphasize on infants' health physically, spiritually, psychologically, emotionally, etc., as well as their mothers. Apart from the significance of breastfeeding, Islamic law imposes a duty to breastfeed on parents as one a means to provide maintenance to children in their infancies. This paper examines the concept of breastfeeding governing Muslims in Malaysia, with a comparative overview with several Muslim countries. Our analysis will focus on the adequacy of provisions for breastfeeding governing Muslims in Malaysia, in particular under the State enactments. Our examination of the provisions of the law on breastfeeding in Muslim countries is to provide a sample of laws and best practices relating to breastfeeding in another jurisdiction.*

### **BREASTFEEDING (RADA'AH) IN ISLAMIC LAW**

*Rada'ah* refers to an act of sucking milk from the breast.<sup>1</sup> It is legally affected when woman's milk or anything that is originated from human's milk reaches the infant's stomach or his brain by means of mouth or nose, under certain conditions.<sup>2</sup> The general concept of *rada'ah* in Islamic law is rooted in the *Qur'an*. For example, the *Qur'an* states to the effect: "The mothers shall give suck to their offspring for two whole years, if the father desires to

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1 Professor, Islamic Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, Kuala Lumpur, Malaysia, Email: azizahmohd@iiu.edu.my

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2 PhD Candidate, Islamic Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, Kuala Lumpur, Malaysia.

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complete the term...”.<sup>3</sup>

The above verse commands mothers to breastfeed their infant,<sup>4</sup> and indicates the importance of breastfeeding.<sup>5</sup> The other Quranic ruling provides that when a divorced mother performs her duty to breastfeed her infant, the father is dutybound to provide her with maintenance for her service. The *Qur'an* states to the effect:<sup>6</sup> “... And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable. And if ye find yourselves in difficulties, let another woman suckle (the child) on the (father's) behalf”.

Thus, apart from affirming the legality of breastfeeding, this verse in general also provides a rule that the divorced mother is permitted to ask for payment unless in exceptional circumstances<sup>7</sup> for breastfeeding. If the mother cannot breastfeed or refused to do so, it is permissible to hire a wet nurse to breastfeed the infant. Thus, hiring and paying the wet nurse in the above verse substantiates the legality of hiring and nursing the infant.<sup>8</sup>

The legality of breastfeeding has also been supported by the *Sunnah* of the Prophet (pbuh) when the Prophet (pbuh) postponed the punishment for al-Ghamidiyyah to enable her to breastfeed her infant. This happened when a woman came to the Prophet and asked the Prophet (pbuh) to purify her as the Prophet (pbuh) had done to Ma'iz. However, the Prophet (pbuh) did not punish her until after she has delivered the baby and until the infant is weaned. Then only did the Prophet (pbuh) punish her.<sup>9</sup> This *hadith* clearly signifies that breastfeeding is upon the mother despite her conditions (as in this case, the mother is due to be punished for her sin after her confession), but the postponement by the Prophet (pbuh) implies her duty to breastfeed her infant.<sup>10</sup>

The Muslim jurists are also in agreement (*ijma'*) that breastfeeding is a religious duty on the mother to feed the baby whether in the connubial relationship, or after divorced based on *Surah al-Baqarah*, verse 233.<sup>11</sup>

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As regard rational (*ma'qul*), one of the principles of *Maqasid al-Shari'ah* is to protect the soul (*nafs*). It is subsequent to protecting the religion, as in proactive way by guaranteeing anything that can protect the soul and as in reactive way by eliminating anything that inconsistent or damaging the soul.<sup>12</sup> In the case of breastfeeding, the infant acquires their first food by means of breastfeeding which usually came from the mother's breast milk. Naturally, the mother's milk grows with the infant's development simultaneously until it became content with nutrient.<sup>13</sup> However, in the event of the mother's death, or suffers a disease that prevents her from breastfeeding her baby, or the infant refuses her breast, then Islam, in protecting the baby, allows wet nurse to nurse the infant as the baby is incapable of eating foods on their own.<sup>14</sup>

#### **BREASTFEEDING AND THE LAW IN MALAYSIA**

Malaysia is a federation, and the supreme law is the Federal constitution. As a federation, matters of Islamic law, with exception to the Federal Territories of Kuala Lumpur, Putrajaya and Labuan, placed in the State List.<sup>15</sup> The Ninth Schedule List II State List of the Federal Constitution sets out among others the following as the powers on the State List: "Except with respect to the Federal Territories of Kuala Lumpur and Labuan, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship...".

Matters relating to breastfeeding are part of Muslim Personal Law, governed by Islamic law. Legislation relating to Islamic law has been enacted by many of the States, including the Federal Territories for example the Administration of Law Enactment and the Islamic Family Law Enactment.<sup>16</sup> Breastfeeding is one subject mainly governed by the Islamic Family Law Enactment for the states, and Islamic Family Law Act for the Federal Territories. However, for the purpose of discussion, the Islamic Family Law Act (Federal Territories) 1984 (Act 303) -hereafter will be referred to as the IFLA-, Islamic Family Law (Sarawak) Ordinance 2001

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(SWK. CAP. 43), Islamic Family Law (Kedah Darul Aman) Enactment 2008, and Islamic Family Law (State of Penang) Enactment 2004, will be referred to as the rest of the States' Enactment applies the same provision.<sup>17</sup>

Basically, the law on breastfeeding governing Muslims in Malaysia merely provides for provision on prohibition of marriage between foster relatives. Section 2 of the IFLA defines breastfeeding or fosterage (term used in the IFLA) as: "The suckling of a baby up to sufficiency by a woman who is not its natural mother for at least five times during the first two years of its life".

Further provisions on breastfeeding focus on the effect of breastfeeding on marriage prohibition. The IFLA provides that: "No man or woman, as the case may be, shall, on the ground of fosterage, marry any woman or any man connected with him or her through some act of suckling where, if it had been instead an act of procreation, the woman or man would have been within the prohibited degrees of consanguinity or affinity".

In the state enactment, section 8(3) of Sarawak's Islamic Family Law Ordinance 2001 provides that: "No man or woman, as the case may be, shall, on the ground of fosterage, marry any woman or any man connected with him or her through some act of suckling where, if it had been instead an act of procreation, the woman or man would have been within the prohibited degrees of consanguinity or affinity".

In Kedah, the law provides that:<sup>18</sup> "No man or woman, as the case may be, shall, on the ground of fosterage, marry any woman or any man connected with him or her through some act of suckling where, if it had been an act of procreation and not fosterage, the woman or man would have been within the prohibited degrees of consanguinity or affinity".

While in Penang, the law provides that:<sup>19</sup> "No man or woman, as the case may be, shall, on the ground of fosterage, marry any woman or any man connected with him or her through some act of suckling where, if the connection had been through an act of procreation and not through fosterage, the woman or man would have been within the prohibited degrees of *nasab* or affinity".

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The above provisions were based on the *hadith* of the Prophet (pbuh) to the effect that 'fosterage makes unlawful what consanguinity makes unlawful'.<sup>20</sup> Thus, the law that governs Muslims in Malaysia also applies the law pertaining to marriage prohibition through breastfeeding. Nevertheless, these are the only provision that deal with breastfeeding. It seems that the law in Malaysia remains silent in matters pertaining to breastfeeding as a right of the infant to be performed by the parents and its details.

In 2011, Malaysian National Fatwa Committee has issued a fatwa regarding breastfeeding an infant who is not biologically related to the nursing mother. The fatwa decreed that any women, regardless their marital status who has reached the age of puberty and using drugs or injections to stimulate breast milk are permitted to do so, provided that the drug does not contain any element of *najasah* or harmful. This permission does not subject to any man who has undergone sex change to woman.<sup>21</sup>

As breastfeeding creates certain degree of relationship which leads to marriage impediment, this permission also applies the same conditions. Therefore, the breastfeeding session must be five times and the milk reached the infant's stomach in which the breastfeeding must take place during the first two years of the infant's age. Any man who married a woman who has breastfed her foster son/daughter will become the infant's foster father as marriage impediment takes effect by the marriage to the foster mother.<sup>22</sup>

### **BREASTFEEDING AND THE LAW IN OTHER MUSLIM COUNTRIES**

According to Jamal J. Nasir (2002), the majority of modern Arab Islamic states still formally applied *Shari'ah* law entirely in most Arab Gulf states, Saudi Arabia, Yemen, Libya, and Sudan<sup>23</sup> yet there is no legislative enactment on personal status, as the *Shari'ah* law, is compiled in the traditional legal manuals. Therefore, it can be said that the majority of Arab Islamic States still apply the *Shari'ah* law in its entirety, with selected rules of a specific doctrine, e.g. the Hanafis in Syria and the Malikis in Morocco.<sup>24</sup> Although

there will be a difference in opinion, which leads to slight difference of laws in Muslim countries, the difference also occurs in the form of the said law, i.e. the length or the details of certain matters, including breastfeeding.

As Malaysia, many Muslim countries adopted the provisions on breastfeeding as to create marriage prohibition. It seems to be the most essential rule pertaining to breastfeeding i.e. it establishes marriage prohibition upon foster relatives, namely foster mother, foster sister, etc.<sup>25</sup> This provision was adopted by all school of *fiqh* and therefore, applied by the majority of modern Arab legislation on personal status, i.e., Tunisia,<sup>26</sup> Morocco,<sup>27</sup> Jordan,<sup>28</sup> Kuwait,<sup>29</sup> Emirates,<sup>30</sup> Syria,<sup>31</sup> Yemen,<sup>32</sup> Sudan,<sup>33</sup> Iraq,<sup>34</sup> Algeria,<sup>35</sup> Qatar<sup>36</sup> and Bahrain.<sup>37</sup> However, Iraq and Emirates applied exception for the general rule without elaborating in details, save for Syrian<sup>38</sup> and Jordanian<sup>39</sup> law. For example, in Tunisia, article 17 provides that “*what is unlawful by reason of consanguinity is unlawful by reason of fosterage*’. In Syria, article 59 of Syrian Personal Status law provides that “*what is unlawful by reason of consanguinity is unlawful by reason of fosterage*’.<sup>40</sup> It is clear that these countries apply the same provision on the marriage prohibition in breastfeeding.

The effect of breastfeeding that establishes foster relationships was adopted as well by the law of Tunisia,<sup>41</sup> Morocco,<sup>42</sup> Syria,<sup>43</sup> and Algeria<sup>44</sup> which stated “only the suckling baby, excluding his brothers and sisters, shall be deemed a child of a foster mother and her husband”. However, for breastfeeding to take effect and establishing marriage prohibition, certain condition shall be accounted too.

The condition of breastfeeding requires five times feeding and completed in two years’ time to establish certain marriage prohibition adopted by the law of Kuwait,<sup>45</sup> Emirates,<sup>46</sup> Syria,<sup>47</sup> Yemen,<sup>48</sup> Qatar,<sup>49</sup> Bahrain,<sup>50</sup> Jordan<sup>51</sup> and Sudan.<sup>52</sup> The Jordanian law stipulates further that the breastfeeding sessions in five separate times must be on the infant’s own free will, regardless the quantity of the milk that the infant’s took.<sup>53</sup> However, the law in Tunisia,<sup>54</sup> Morocco<sup>55</sup> and Algeria<sup>56</sup> adopted only the length of breastfeeding period, which is two years, and left the provision on the number

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of breastfeeding session. Perhaps it comes with clear inference that in two years' time, breastfeeding sessions will be more than five, which is more than enough in establishing marriage prohibition.

Breastfeeding also creates prohibition by reason of affinity due to the reason they are unlawful by reason of consanguinity. This provision was adopted by the law in Tunisia,<sup>57</sup> Morocco,<sup>58</sup> Kuwait,<sup>59</sup> and Syria,<sup>60</sup> where each of the law laid in detail pertaining to the categories of these prohibited degrees.<sup>61</sup>

Many Muslim countries also highlight both the father's and the mother's duty in breastfeeding their infants. In Tunisia for example, art. 48 stated that it is the father's duty in taking care of matters required in breastfeeding according to custom and practices whenever the mother is unable to feed the infant. Similarly, the law in Morocco only provides that breastfeeding is a right that must be performed by the parents towards the infant and it depends on the willingness of the mother in doing so.<sup>62</sup>

Jordanian Personal Status Law provides a bit detail of law pertaining to breastfeeding as it makes breastfeeding as sole responsibility for the mother, and she may be forced in doing so under certain circumstances, i.e.: when the father has no property, or the father is unable to find another woman to nurse, or voluntary wet nurse, or the infant refuses to suckle from other women.<sup>63</sup> If the sole responsibility is not upon the mother, and she herself refused to breastfeed the infant, then the father shall hire a wet nurse provided that the wet nurse will have to stay at the mother's home during feeding time.<sup>64</sup> The law also provides that the mother is entitled to receive payment for breastfeeding after the expiry of the *'iddah* of irrevocable divorce.<sup>65</sup> Therefore, no payment will be made during marriage or during the *'iddah* of a revocable or irrevocable divorce as the mother is entitled to maintenance. Upon the payment, the mother shall receive the wages for the equal, which shall be commensurate with the condition of the person who is responsible to pay, if the mother did not ask for more wages. The wages become incumbent upon the mother from the beginning of breastfeeding period to the extent of two years unless the infant weans before the maximum period ends.<sup>66</sup>

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In Kuwait, the law provides that it is the mother's duty to breastfeed her own infant if it is impossible to feed him except with her milk.<sup>67</sup> During the continuation of marriage, the mother shall not entitle to any form of payment for breastfeeding, or during the *'iddah* of a revocable divorce as she is entitled to maintenance.<sup>68</sup> The payment itself cannot be settled except by payment or discharge<sup>69</sup> and shall be payable for a maximum of two years.<sup>70</sup>

In Emirates, the law only provides that it is the father's duty in breastfeeding whenever the mother is unable in doing so. It is considered as a form of maintenance towards the infant.<sup>71</sup> No further details on how the father should carry out the task or option that he has.

In Syria, Chapter Four of Syrian Personal Law provides that if the mother cannot feed the infant with food other than her milk, or the infant refuses breastfeeding from wet nurse, or the father has no property and there is no other person in taking care of the infant's maintenance, than the mother is responsible to breastfeed the infant.<sup>72</sup> Payment for the infant who had no property shall be payable by the person who is responsible to provide maintenance and it is considered as an exchange for the infant's diet and nutrient.<sup>73</sup>

Similar to Kuwait and Jordan, Syrian law also adopted the law which provides that the mother is not entitled to any payment during the continuation of marriage, during the *'iddah* of revocable or irrevocable divorce<sup>74</sup> except after the expiry of the *'iddah* of irrevocable divorce, or the *'iddah* of the death of the husband, for a maximum of two years after giving birth.<sup>75</sup> During or after this period, if the mother asks for payment, her claim shall be granted.<sup>76</sup> However, the woman who breastfeeds a child other than her own is entitled for wages in any case and events.<sup>77</sup> If the mother asks for wages and the father is a destitute, a voluntary wet nurse shall have priority to breastfeed and shall be placed at the father's home.<sup>78</sup>

The law also provides that the nursing wages shall be a valid debt on the father and shall be settled only through payment or discharge.<sup>79</sup> In the event of death of the mother, and the failure of



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the father to settle the payment, the mother's heir may claim the payment as part of the mother's estate.<sup>80</sup> Similarly, in the event of the death of the father before the payment settled, the payment will be taken from the father's estate, as it takes the same condition with the other creditor.<sup>81</sup>

In Yemen, the law provides that it is the mother's duty to breastfeed her infant if it is impossible for another woman to breastfeed him, and shall have priority to breastfeed her baby unless she demands higher wages than normal for her class and that of a child. If the child is breastfed by another woman, and unless the mother has lost her right in custody, then the breastfeeding will take place at her home.<sup>82</sup> The law also provides that a woman who breastfeeds a child other than her own child is entitled to maintenance and attire that fits her class from the provider, according to his class as well, for a period not longer than two years from the birth of the child. Failure in paying the wages will transform the payment into a debt which shall not lapse except by payment or discharge.<sup>83</sup>

In Iraq, the law imposes the duty to breastfeed on the mother unless pathological conditions prevent her in doing so.<sup>84</sup> Any demands of payment for breastfeeding shall be paid by the person responsible, in exchange for the infant's diet and nutrient.<sup>85</sup>

The same provision adopted by Qatar where the law provides that it is the father's duty in providing expenses of breastfeeding whenever the mother is unable to perform it, and it is considered as an exchange for the maintenance.<sup>86</sup>

Eventually in Sudan, the law provides that a breastfeeding divorcee is entitled to receive payment for a maximum period of two years from the birth of the child, which starts after the expiry of the *'iddah* of revocable or irrevocable divorce.<sup>87</sup> Furthermore, the father is also having responsibility in breastfeeding as part of maintenance whenever the mother is unable to discharge her duty.<sup>88</sup>

### **BREASTFEEDING AS A RIGHT OF THE INFANT**

From the above-mentioned laws, some of the legislation applied only a single subject pertaining to breastfeeding as a right upon

the infant. The law in Sudan,<sup>89</sup> Tunisia,<sup>90</sup> Emirates,<sup>91</sup> and Qatar<sup>92</sup> provides that it is the father's duty in breastfeeding if the mother is unable to breastfeed the infant, save for Tunisia who considers it as a form of maintenance for the infant. Similarly, the law in Morocco<sup>93</sup> provides that breastfeeding is a right to be performed by the parents provided that the mother is willing to do so.

As breastfeeding might be the mother's sole responsibility, only Jordan Personal Status Law provides such provision and grants power to the court to force the mother in breastfeeding on certain circumstances.<sup>94</sup> Conditions such as the father and the infant being in poverty, the unavailability of voluntary wet nurse – save for the mother – or the infant itself refuses other's breast, contribute to the mother's sole responsibility in breastfeeding her infant.<sup>95</sup>

Similarly, the law in Syria adopts the same approach except it provides that it is the duty of the mother to breastfeed her own infant whenever the infant is impossible to be fed except by her mother's milk, or refuses other's breast, or the father is destitute.<sup>96</sup>

The law in Kuwait, Yemen and Iraq as well codify breastfeeding as a duty for the mother. In Kuwait,<sup>97</sup> it became the mother's duty if the infant cannot be fed except by her mother's milk, while in Yemen,<sup>98</sup> it is impossible for another woman to breastfeed it. Iraq, on the other hand, makes it the duty of the mother except when pathological conditions prevent her from doing so.<sup>99</sup> Whatever the reason is, the essence of the provision indicates that it is the mother's duty in breastfeeding whenever certain circumstances come to pass, which cannot be interfered with.

Among these legislations, only Jordanian law provides solution for the father when the mother refuses in breastfeeding in the situation when breastfeeding is not the sole responsibility of the mother. Therefore, the father shall hire a wet nurse who will feed the infant at the mother's home,<sup>100</sup> as the mother's refusal to feed the infant does not deprive her of the right of custody.

The law in Muslim countries provide to the extent of wages to the mother for breastfeeding e.g. in the event of divorce. The law among others provides that the mother is entitled for payment after the expiry of the *'iddah* of irrevocable divorce, and this provision

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has been adopted by Jordan,<sup>101</sup> Sudan,<sup>102</sup> Kuwait<sup>103</sup> and Syria,<sup>104</sup> save for Syria that added another category, which is the *'iddah* of the death of the husband. Therefore, the mother shall not receive any payment during the continuation of marriage or during the *'iddah* of revocable divorce or irrevocable divorce as they are entitled for maintenance. The payment shall be payable for maximum of two years period from the date of birth of the infant.<sup>105</sup> In other words, a breastfeeding divorcee is entitled for breastfeeding payment after the expiry of the *'iddah* (whether it is the *'iddah* of revocable or irrevocable divorce, or the *'iddah* of the death of the husband) until the infant reached the age of two years. The benchmark for the beginning of the payment is the date of the infant's birth.

Provision which provides that the nursing payment shall be a valid debt on the father and only can be settled through payment or discharge adopted by the law of Kuwait,<sup>106</sup> Syria<sup>107</sup> and Yemen.<sup>108</sup> However, no further details on how the debt should be settled or what step should be taken in case of the father's failure in payment.

Jordan<sup>109</sup> and Yemen<sup>110</sup> also provide that the mother shall have priority in breastfeeding her infant and is entitled for wages if the payment requested is reasonable for the provider according to his class.

Among the similarities of certain provision, there are certain matters in the Syrian Personal Status Law that distinguished them from the other. For instance, only Syrian law provides matters pertaining to the priority of the voluntary wet nurse over the mother who asks for payment when the father is in destitute.<sup>111</sup> Furthermore, the mother's requests for payment shall be granted after the expiry of the *'iddah* of irrevocable divorce.<sup>112</sup> In addition, if the woman breastfeeds a child other than her own, she is entitled for payment in any events.<sup>113</sup> Should the father failed in paying the wages and the mother died, the payment will be the mother's inheritance, and her heir may claim it from the father.<sup>114</sup> Similarly, in the event of the father's death before the payment, it will be taken from his inheritance, similar to the case of the other

creditor.<sup>115</sup>

To sum up, the law pertaining to breastfeeding has been applied and implemented in some Muslim countries in which the object is to protect the interest of the infant which will not deprive them from the benefit of the mother's milk.

## CONCLUSION

Breastfeeding is a process where the infants gain their very first and foremost food and nutrition into their body, especially colostrum. This is important since Islam highly recommends mothers to perform breastfeeding towards their infants; albeit this duty is only optional upon them. This, of course, with the infinite object, to protect the infant from any harm, as in this case, not only physically, but also spiritually where the mother, by performing breastfeeding, will raise and care their infant with love and compassion, which are exceptionally good and give a greater impact on the baby's development and growing. Islam also encourages the father to find wet nurse to breastfeed the infant, to ensure that the infant will gain benefit from the physical and mental nourishment through natural breastfeeding. The Islamic ruling on breastfeeding is further adopted and emphasized by many Muslim countries by providing detail provisions on breastfeeding. This seems to ensure that the infants are not deprived of their rights to breastfeeding. As compared to the provisions on breastfeeding in Muslim countries, Malaysia provides lesser provisions and limited only to provisions on suckling that creates marriage prohibition especially in cases where an infant is breastfed by a foster mother. Looking at the importance and significance of breastfeeding both to mothers and infants, it is timely for Malaysia to take a step further in revising the provision on suckling in Islamic Enactment and introduce additional provisions on breastfeeding. It is hoped that this will raise awareness and provide information on parental duties and infant's rights on breastfeeding.

### *Notes*

1 Kamal-ad-Din, Muhammad Ibn 'Abdul-Wahid al-Siwasi, Ibn al-Hamam

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- al-Hanafi, Sharh Fath al-Qadir 'ala al-Hidayah li al-Kamal, (Bayrut: Dar al-Kutub al- 'Ilmiyyah, 1995), vol. 13, p. 418.
- 2 Ibn al-Hamam, *ibid.*; Muhammad Ibn Ahmad Ibn 'Arfaḥ al-Dusuqi al-Maliki, Hashiyah al-Dusuqi 'ala al-Sharh al-Kabir, (Bayrut: Dar-al-Kutub al-'Ilmiyyah, 2003), vol. 3, 467-468; Al-Sharbini, Muhammad ibn Ahmad, al-Khatib, Mughni al-Muhtaj, (Dar al-Ma'rifah: Bayrut, 1997), vol. 3, p. 534; Mansur Ibn Yunus Ibn Idris al-Bahuti, Kashshaf al-Qana' 'an Matni al-Iqna', (Bayrut: 'Alam al-Kutub, 1997), vol. 4, 385.
  - 3 Surah Al-Baqarah: 233.
  - 4 Muhammad Ibn Jarir Ibn Yazid Ibn Kathir al-Tabari, Jami' al-Bayan fi Ta'wil al-Qur'an, (Bayrut: Mu'assasah al-Risalah, 2000), vol. 2, 490; Muhammad Rashid Rida, Tafsir al-Manar, (Misr: al-Hai'ah al-Masriyyah al-'Ammah li al-Kitab, 1990), vol. 2, 409; Al-Qurtubi, Abu Abdullah, Muhammad ibn Ahmad ibn Abi Bakr ibn Farah al-Ansari, Shams-ud-Din, al-Jami' li Ahkam al-Qur'an, (Bayrut: Mu'assasah al-Risalah, 2006), vol. 4, 107.
  - 5 'Abdullah 'Abdul-Mun'im 'Abdul-Latif Al-'Usayli, Al-Rada' al-Muharrim fi al-Fiqh al-Islami, (Al-Qahirah: Dar Ibn Jawzi, 2005), 52.
  - 6 Surah Al-Talaq: 6.
  - 7 Al-Razi, Al-Fakhr Muhammad Ibn 'Umar Ibn al-Husayn, Tafsir al-Kabir, (Bayrut: Dar al-Fikr, 1981), vol. 30, 37. Sole responsibility means: The mother is responsible (in breastfeeding her infant) since no other woman will take her place to breastfeed the infant. See: Muhammad Samarah, Ahkam wa Athar al-Zawjiyyah, (al-Quds: Jam'iyyah 'Ummal al-Matabi' al-Ta'awuniyah, 1987), vol. 1, 365. See also: Al-'Usayli, 74.
  - 8 Shams-ad-Din, Abu Bakr, Muhammad Ibn Abu Sahl al-Sarakhsi, al-Mabsut, (Bayrut: Dar-al-Fikr, 2000), vol. 15, 119; 'Ala-ad-Din al-Kasani, Badai' al-Sana'i fi Tartib al-Sharai', (Al-Qahirah: Dar al-Hadith, edn. 2004), vol. 4, 41; Al-Mawardi, Abu al-Hasan 'Ali ibn Muhammad ibn Habib, (1994). al-Hawi al-Kabir, (Bayrut: Dar-al-Fikr, 1994), vol. 11, 238; al-Sharbini, Mughni al-Muhtaj, vol. 5, 188.
  - 9 Muslim, Sahih al-Muslim, (Bayrut: Dar Ihya' al-Turath, 1392H), vol. 3, 1321.
  - 10 Al-'Usayli, al-Rada' al-Muharrim, 60.
  - 11 Ibn al-Hamam, Sharh Fath al-Qadir, vol. 3, 304; 'Abdullah Ibn Al-Sheikh Muhammad Sulayman, Majma' al-Anhar fi Sharh Multaqa al-Abhar,

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- (Bayrut: Dar Ihya' al-Turath, n.d.), vol. 1, 375; Ibn Rushd, Abu al-Walid, Muhammad Ibn Ahmad Ibn Muhammad al-Qurtubi, *Bidayah al-Mujtahid wa Nihayah al-Muqtasid*, (Al-Qahirah: Dar al-Hadith, 2004), vol. 2, 72; al-Sharbini, *Mughni al-Muhtaj*, vol. 3, 414; Al-Sharbini, al-Khatib, Syams-ad-Din, Muhammad ibn Ahmad, *al-Iqna' fi Halli Alfaz Abi Shujja'*, (Bayrut: Dar al-Fikr, n.d.), vol. 3, 125; Mansur Ibn Yunus Ibn Salah-ad-Din Al-Bahuti, *Al-Rawd al-Murbi' Sharh Zad al-Mustaqni'*, (Bayrut: Mu'assasah al-Risalah, n.d.), 381; Ibn Qudamah, 'Abdullah ibn Ahmad ibn Muhammad, *al-Mughni*, (Riyad: Dar 'Alam al-Kutub, 1997), vol. 11, 152; 'Ali Ibn Ahmad Ibn Sa'id Ibn Hazm al-Zahiri, *al-Muhalla bi al-Athar*, (Bayrut: Dar al-Fikr, n.d.), vol. 10, 7; Al-Shawkani, Muhammad ibn 'Ali ibn Muhammad ibn 'Abdullah, *al-Sayl al-Jarrar al-Mutadaffiq 'ala Hada'iq al-Azhar*, (Bayrut: Dar ibn Hazm, n.d.), vol. 2, 465. See also: Jamal Mahdi Mahmud al-Akshah, *Bunuk Laban al-Rada'*, (al-Azaritah: Dar al-Jami'ah al-Jadidah, 2008), 20.
- 12 Ahmad al-Raysuni, *Nazariyyah al-Maqasid 'inda al-Imam al-Shatibi*, (Virginia: al-Ma'had al-'Alami li al-Fikr al-Islami, 1416H), 19.
  - 13 Abu Zahrah, Muhammad, *Khatam al-Nabiyyin* (pbuh), (Qatar: n.p., 1979), vol. 1, 148.
  - 14 Al-'Usayli, 54.
  - 15 Ahmad Mohamed Ibrahim, *The Administration of Islamic Law in Malaysia*, (Institute of Islamic Understanding Malaysia, 2000), at 22.
  - 16 *Ibid.*, 23-24.
  - 17 For example, section 9(3) of Selangor's Islamic Family Law Enactment (2003) provides that "no man or woman, as the case may be, shall, on the ground of fosterage, marry any woman or any man connected with him or her through some act of suckling where, if it had been instead an act of procreation, the woman or man would have been within the prohibited degrees of consanguinity or affinity". See also: Section 8(3) of Terengganu's Administration of Islamic Family Law Enactment 1985 (En. 12/1985); Section 9(3) of Islamic Family Law (Perlis) Enactment 2006 (Enactment 7); Islamic Family Law (Perak) Enactment 2004 (En. 6/2004); Islamic Family Law (Pahang) Enactment 2005 (Enactment 3); Islamic Family Law (Negeri Sembilan) Enactment 2003 (En. 11/2003); Islamic Family Law (State of Malacca) Enactment 2002 (En. 12/2002); Islamic Family Law (State of Johor) Enactment 2003 (En. 17/2003); Islamic Family Law (Kelantan) Enactment 2002 (En. 6/2002); and Islamic Family Law (Sabah)

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Enactment 2004 (En. 8/2004).

- 18 Section 9(3), Islamic Family Law (Kedah Darul Aman) Enactment 2008 (Enactment 11).
- 19 Section 9(3), Islamic Family Law (State of Penang) Enactment 2004 (Enactment 3)
- 20 The Annotated Statutes of Malaysia, Islamic Family Law (Federal Territories) Act 1984 (Act 303), Lexis Nexis, 2010, at 108.
- 21 “Hukum Wanita Menyusukan Anak Angkat”. Published on November 15th, 2011. <<http://www.e-fatwa.gov.my/fatwa-kebangsaan/hukum-wanita-menyusukan-anak-angkat>> (Accessed 31 January 2013)
- 22 Ibid.
- 23 Jamal J. Nasir, the Islamic Law of Personal Status, 3rd Edition, Kluwer Law International, 2001, at 35.
- 24 Ibid., 42.
- 25 Under the Quranic verse: “... foster mothers (who gave you suck), foster sisters ...” (4:23), and the Prophet’s (pbuh) saying: ‘what is unlawful by reason of consanguinity is unlawful by reason of fosterage’.
- 26 Art. 17, Tunisian Personal Status Code, 1956.
- 27 Art. 38, Moroccan Personal Status Code, 2004.
- 28 Art. 27, Jordanian Personal Status Law, 2010 (Law no. 6 of 2010).
- 29 Art. 16(a), Kuwaiti Personal Status Law, 1984 (Law no. 51 of 1984).
- 30 Art. 46, Emirati Personal Status Law, 2005 (Law no. 28 of 2005).
- 31 Art. 59, Syrian Personal Status Law, 2007 (Law no. 2437 of 2007).
- 32 Art. 25, Yemeni Personal Status Law, 1992 (Law no. 20 of 1992).
- 33 Art. 17, Sudanese Personal Status Law, 1991 (Law no. 1991 of 1991).
- 34 Art. 16, Iraqi Personal Status Law, 1959 (Law no. 188 of 1959).
- 35 Art. 27, Algerian Family Law, 1984 (Law no. 11-84 of 1984).
- 36 Art. 23, Qatari Family Law, 2006 (Law no. 22 of 2006).
- 37 Art. 9, Bahraini Rule of Family Law 2009 (Law no. 19 of 2009).
- 38 Art. 59, Syrian Personal Status Law, 2007.
- 39 Art. 27, Jordanian Personal Status Law, 2010.

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- 40 Ibid.
- 41 Art. 17, Tunisian Personal Status Code, 1956.
- 42 Art. 38, Moroccan Personal Status Code, 2004.
- 43 Art. 61, Syrian Personal Status Law, 2007.
- 44 Art. 28, Algerian Family Law, 1984.
- 45 Art. 17, Kuwaiti Personal Status Law, 1984.
- 46 Art. 46, Emirati Personal Status Law, 2005.
- 47 Art. 60, Syrian Personal Status Law, 2007.
- 48 Art. 25, Yemeni Personal Status Law, 1992.
- 49 Art. 23, Qatari Family Law, 2006.
- 50 Art. 9, Bahraini Rule of Family Law, 2009.
- 51 Art. 27, Jordanian Personal Status Law, 2010.
- 52 Art. 17, Sudanese Personal Status Law, 1991.
- 53 Art. 27, Jordanian Personal Status Law, 2010.
- 54 Art. 17, Tunisian Personal Status Code, 1956.
- 55 Art. 38, Moroccan Personal Status Code, 2004.
- 56 Art. 29, Algerian Family Law, 1984.
- 57 Art. 17, Tunisian Personal Status Code, 1956.
- 58 Art. 38, Moroccan Personal Status Code, 2004.
- 59 Art. 16(b), Kuwaiti Personal Status Law, 1976.
- 60 Art. 62, Syrian Personal Status Law, 2007.
- 61 Art. 16 Tunisia, 37 Morocco, 14 Kuwait, and 58 Syria.
- 62 Art. 54, Moroccan Personal Status Code, 2004.
- 63 Art. 166, Jordanian Personal Status Law, 2010.
- 64 Art. 167, Jordanian Personal Status Law, 2010.
- 65 Art. 168, Jordanian Personal Status Law, 2010.
- 66 Art. 169, Jordanian Personal Status Law, 2010.
- 67 Art. 186, Kuwaiti Personal Status Law, 1984.
- 68 Art. 188(a), Kuwaiti Personal Status Law, 1984.



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- 69 Art. 187, Kuwaiti Personal Status Law, 1984.
- 70 Art. 188(b), Kuwaiti Personal Status Law, 1984.
- 71 Art. 89, Emirati Personal Status Law 2005.
- 72 Art. 329, Syrian Personal Status Law, 2007.
- 73 Art. 330, Syrian Personal Status Law, 2007.
- 74 Art. 331, Syrian Personal Status Law, 2007.
- 75 Art. 332, Syrian Personal Status Law, 2007.
- 76 Art. 335, Syrian Personal Status Law, 2007.
- 77 Art. 333, Syrian Personal Status Law, 2007.
- 78 Art. 334, Syrian Personal Status Law, 2007.
- 79 Art. 336(a), Syrian Personal Status Law, 2007.
- 80 Art. 336(b), Syrian Personal Status Law, 2007.
- 81 Art. 336(c), Syrian Personal Status Law, 2007.
- 82 Art. 136, Yemeni Personal Status Law, 1992.
- 83 Art. 137, Yemeni Personal Status Law, 1992.
- 84 Art. 55, Iraqi Personal Status Law, 1959.
- 85 Art. 56, Iraqi Personal Status Law, 1959.
- 86 Art. 77, Qatari Family Law, 2006.
- 87 Art. 60, Sudanese Personal Status Law, 1991.
- 88 Art. 83, Sudanese Personal Status Law, 1991.
- 89 Ibid.
- 90 Art. 48, Tunisian Personal Status Code, 1956.
- 91 Art. 89, Emirati Personal Status Law, 2005.
- 92 Art. 77, Qatari Family Law, 2006.
- 93 Art. 54, Moroccan Personal Status Code, 2004.
- 94 Art. 166, Jordanian Personal Status Law, 2010.
- 95 Ibid.
- 96 Art. 329, Syrian Personal Status Law, 2007.
- 97 Art. 186, Kuwaiti Personal Status Law, 1984.

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- 98 Art. 136, Yemeni Personal Status Law, 1992.
- 99 Art. 55, Iraqi Personal Status Law, 1959.
- 100 Art. 167, Jordanian Personal Status Law, 2010.
- 101 Art. 168, Jordanian Personal Status Law, 2010.
- 102 Art. 80(b), Sudanese Personal Status Law, 1991.
- 103 Art. 188(b), Kuwaiti Personal Status Law, 1984.
- 104 Art. 331, Syrian Personal Status Law, 2007.
- 105 Art. 169 Jordan, 188(b) Kuwait, 332 Syria, 137 Yemen, and 80(a) Sudan.
- 106 Art. 187, Kuwaiti Personal Status Law, 1984.
- 107 Art. 336(a), Syrian Personal Status Law, 2007.
- 108 Art. 137, Yemeni Personal Status Law, 1992.
- 109 Art. 169, Jordanian Personal Status Law, 2010.
- 110 Art. 136, Yemeni Personal Status Law, 1992.
- 111 Art. 334, Syrian Personal Status Law, 2007.
- 112 Art. 335, Syrian Personal Status Law, 2007.
- 113 Art. 333, Syrian Personal Status Law, 2007.
- 114 Art. 336(2), Syrian Personal Status Law, 2007.
- 115 Art. 336(3), Syrian Personal Status Law, 2007.



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