

CHAPTER VI

SYRIA

I

ENACTMENT OF A NEW LAW OF PERSONAL STATUS

The *Ottoman Law of Family Rights* enacted in Turkey in 1917 and later enforced in various parts of the erstwhile Ottoman Empire survived in Syria till 1953 when a new law of personal status *al-Qānūn al-Huqūq al-Āila* replaced it.¹ The background which led to the enactment of this law in Syria was similar to that of the codification of Islamic family law in other Middle Eastern countries separated from the Ottoman Empire during the current century.

The *Qādī* of Damascus, Shaykh 'Alī al-Tantwī, prepared a comprehensive treatise on the personal laws, based on those principles of the various schools of Islamic law which were found more suitable to the changed social conditions in the country. After the publication of this work, the Government of Syria set up a Commission for drafting a code of personal laws. The Commission, while deriving its principles mainly from the aforesaid work of Shaykh al-Tantwī, also consulted the *Ottoman Law of Family Rights*, 1917 and the various family laws enacted in Egypt between 1920 and 1946.² On the basis of the draft prepared by the Commission, the new *Syrian Law of Personal Status* was enacted in September 1953. The Islamic basis of the new law was repeatedly stressed by the Syrian Government in the Statement of Objects issued with it.³

The *Syrian Law of Personal Status*, 1953 was the first comprehensive code enacted in the world of Islam, apart from the *Turkish Civil Code* of 1926, embodying legal principles relating to personal status, family relations and intestate and testamentary succession. Nevertheless the framers of this law did not regard it exhaustive. Article 305 of the Syrian law, therefore,

1. *Decree Law No. 59 of 1953*

2. See the *Official Statement* issued with the Syrian law, as quoted in Anderson, 'Syrian Law of Personal Status', 17 *Bull. of S.O.A.S.* (1955), 25-59 at 35

3. *Ibid.*

provided that in the matters in regard to which there was no relevant provision in it, the "most authoritative doctrine of the *Hanafi* School" would be applicable. The new law was, however, quite bulky⁴ and hardly left out any important aspect of the fields covered by it.

The decree under which the Commission for drafting the new law was set up had made it clear that none of its provisions were to be based on a source contrary to the law of the *Shari'a*.⁵ Accordingly, most of the newly enacted provisions under the Syrian law find parallels in the *Ottoman Law of Family Rights*, 1917 as now applicable in Lebanon, in the various Egyptian enactment relating to family law and succession, and in the *Jordanian Law of Family Rights*, 1951. It also, however, has a few provisions of its own not found in any of the laws which preceded it. The latter, too, were based on juristic opinion within the framework of Islamic jurisprudence. A summary of the outstanding provisions of the Syrian law is given below.

II

MAJOR SYRIAN REFORMS

A—LAW RELATING TO MARRIAGE, ETC.

STIPULATIONS IN MARRIAGE CONTRACT

The Syrian law deals at unusual length with the freedom of parties to an intended marriage to stipulate conditions in the marriage contract. It permits any stipulation which is not opposed to the nature and purpose of the marriage-contract and does not violate the *Shari'a*. If a marriage-contract is coupled with such a condition, the marriage shall be operative but the condition shall have no effect.⁶ It is further specified that a stipulation for the wife's benefit which, although not forbidden by the *Shari'a*, affects the legal rights of the husband or a third person cannot itself be enforced, but the wife can demand dissolution of her marriage if the husband violates such a stipulation.⁷

CAPACITY TO MARRY

Puberty and sanity are two essential conditions for marriage. The Court can permit the marriage of an insane on medical advice.⁸ The normal age of marriage is eighteen years for men and seventeen years for women. A man of fifteen and a woman of thirteen years can, however, be permitted by

4. It consists of 308 articles arranged into six Books.
5. The *Official Statement op. cit.*, note 2 at 36.
6. Article 14(1).
7. Article 14 (2) & (3).
8. Article 15(2).

the Court to marry, if he or she has attained puberty and the father or the grandfather, if living, has given his consent.⁹ In the case of disparity of age between the parties to a marriage, the Court can prohibit it unless it involves any benefit.¹⁰

POLYGAMY

Article 17 of the Syrian law authorises the Court to refuse to a person who is already married permission to marry another woman, if it is established that he cannot maintain two wives. This was the first statutory provision made in the Arab world restricting a man's power to contract a bigamous marriage. According to the interpretation given by the *Shāfi'i* school, the *Qur'ān* subjected the permission for plurality of wives to the condition of the husband's financial capability to provide maintenance to more than one wife. The *Shāfi'i* view represented in a particular form the basic and essential nature of the policy of Islamic law towards bigamy which it rather permitted as a remedial measure with a view to avoiding greater social evils.¹¹ Article 17 of the Syrian law authorises the *Qādī* to decide, on the basis of evidence, the question of financial capability of a person to maintain two wives, and in case he is not so capable, to refuse permission for the second marriage. As stated in the Statement of Objects cited earlier this restrictive provision was based on the *Qur'ānic* Verse of Polygamy itself.¹²

RIGHTS OF WIFE UNDER AN IRREGULAR MARRIAGE

The Syrian law recognises the *Hanafī* distinction between a void (*bātil*) and an irregular (*fāsīd*) marriage, the former being absolutely invalid and the latter being invalid due to a reason which can be lawfully removed. An irregular marriage does not give, under the *Hanafī* law, to the wife the right to maintenance. On this subject the Syrian law provides that if a wife is unaware of the fact that her marriage is irregular she shall be entitled to her maintenance so long as she remains so unaware.¹³

MAINTENANCE OF WIFE

The right of a lawfully married wife to receive maintenance from the husband is dealt with at length by the Syrian law. Article 72(1) provides that even if the spouses differ in religion, the wife shall have the right to maintenance. Arrears of accumulated maintenance can be claimed by the

9. Article 18.

10. Article 19.

11. For a discussion of the nature relating to the Islamic law of bigamy and the opinions of various jurists of Islam on it, see Tahir Mahmood, 'Dissuasive Precepts in Muslim Family Law,' 2 *Alig. L.J.* (1965) 122-126; also by the same author 'Control of Polygamy: Islamic Doctrines', *Radiance Viewsweekly*, Delhi, 15 Aug. 1971, 33.

12. The *Statement of Objects*, *op.cit.*, note 2, at 36.

13. Article 51 (3).

wife for a period of four months only.¹⁴ If the husband is unable to provide maintenance, the Court may direct the person who would be liable for her maintenance if she did not have a husband to advance money to her. Such money shall have to be re-imbursed by the husband.¹⁵ During the pendency of a suit for maintenance, the Court can by a temporary injunction direct the husband to pay to her one month's maintenance-allowance.¹⁶

DIVORCE

The Syrian law permits a husband who has completed eighteen years of age to pronounce a divorce. The Court may, however, allow a man below the said age to divorce his wife if the proposed divorce involves any benefit.¹⁷

In certain circumstances a divorce shall have no effect in Syria, *e.g.*, when the husband is drunk, under duress or out of his senses,¹⁸ or when the divorce is conditional or is used only as an inducement or threat,¹⁹ or when it is metaphorically expressed without a real intention to dissolve the marriage.²⁰ A divorce coupled with a number, expressly or otherwise, shall effect only a single divorce.²¹

COMPENSATION FOR DIVORCEE

If the Court is satisfied that the husband has divorced his wife without any lawful reason and that the wife has thereby become destitute, it can direct him to pay to her a compensation. The amount of compensation shall be fixed having regard to his financial condition and the injury suffered by the wife, and can be directed to be paid either in a lump sum or in instalments.²²

DIVORCE WITH CONSIDERATION (*khul'*)

The Syrian law incorporates the Islamic doctrine of *khul'* under which a wife can persuade the husband to divorce her by accepting a consideration. In respect of a contract of *khul'*, the offer can be made by either spouse. Article 96 of the Syrian law provides that an offer itself shall not operate as *khul'* and that it can be withdrawn before it is accepted by the other spouse. During the period of *'idda* following the dissolution of marriage by *khul'*, the husband shall be liable to provide maintenance, unless agreed otherwise in the contract of *khul'*.²³

14. Article 78(2).

15. Article 80.

16. Article 82(1).

17. Article 85.

18. Article 86.

19. Article 90.

20. Article 93.

21. Article 92.

22. Article 117.

23. Article 101.

DISSOLUTION OF MARRIAGE DESIRED BY WIFE

The Court can, on the application of wife, dissolve a marriage on the following grounds :

- (i) affliction of the husband with a disease preventing cohabitation, from which the wife herself is not suffering and which she was neither aware of at the time of marriage nor overlooked thereafter,²⁴
- (ii) insanity of the husband, with the same conditions as under (i) above,²⁵
- (iii) disappearance or imprisonment of husband for more than three years, one year having already elapsed,²⁶
- (iv) failure of husband to provide maintenance²⁷, and
- (v) injury caused by the husband.²⁸

When either spouse alleges injury on the part of the other resulting into a rift between the spouses, the Court shall, if the allegation cannot be proved, appoint arbitrators to settle the dispute. They can decree a divorce if a reconciliation is not possible.²⁹ Dissolution of marriage granted on grounds (i), (ii) and (v) above shall effect an irrevocable divorce, while that on the remaining two grounds will effect a divorce which can be revoked during the period of *'idda*.³⁰

PERIOD OF GESTATION

Article 128 of the Syrian law provides that 180 days shall constitute the minimum and one solar year the maximum period of gestation. A child born after the expiry of one hundred and eighty days from the date of marriage shall be regarded as legitimate unless there has been no contact between the spouses during the said period; in the latter case the husband can, however, acknowledge the child.³¹

B—LAW OF SUCCESSION

VALIDITY OF CONDITIONAL BEQUEST

The Syrian law deals at length with testamentary succession. Most of the provisions in this part of the Syrian law have been adopted from the

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- 24. Article 105(1), 106.
 - 25. Article 105(2), 106.
 - 26. Article 109.
 - 27. Article 110.
 - 28. Article 112.
 - 29. Articles 112-115.
 - 30. Articles 108, 109(2), 111, 112(2) and 114(2).
 - 31. Article 129.

Egyptian Law of Bequests, 1946. There are, however, certain features in the Syrian law which do not have parallels in the said Egyptian law. Thus, article 210 provides that a conditional bequest shall be valid not only if the condition is not merely opposed to or forbidden by the *Shari'a* but only if, in addition, it involves some 'lawful benefit' in favour of the legator, the legatee or a third person.³²

OBLIGATORY BEQUESTS

As stated earlier in the chapter on Egypt, in a case of inheritance under the traditional Islamic law, if there are any grandchildren of the propositus whose link-parent had died before the opening of the succession, they are not included among heirs in the presence of a son or daughter of the propositus, as the case may be. For the benefit of such grandchildren, the *Egyptian Law of Bequests*, 1946 introduced the principles of obligatory bequest.³³ The same principle has been adopted by the Syrian law under review with two significant points of distinction. First, under the Syrian law, the newly introduced right shall be available to the issue only of a predeceased son or son's son how low soever—and not to the children of a predeceased daughter as well, as under the Egyptian law.³⁴ Secondly, whereas under the Egyptian law the whole share of a predeceased child would go to his or her issues, the Syrian law gives to the child of a predeceased son only the share which such child would have received in its father's presumptive share in the estate of the propositus. It has been observed that due to these distinguishing features the Syrian law of obligatory bequests is :

More consistent with the Islamic system of inheritance as a whole, than the Egyptian provisions.³⁵

INHERITANCE

Book VI of the Syrian law deals with intestate succession. Its provisions are generally based on the traditional *Hanafī* system of inheritance. Like the *Egyptian Law of Inheritance*, 1943, the Syrian law, too, has set aside the juristic controversies in certain special case of inheritance by enforcing either one of the conflicting opinions or a new rule evolved by synthesizing two or more of them. The following are more important among such provisions shared by the laws in both the countries :

- (i) the *Shāfi'ī-Mālikī* ruling in respect of the circumstances termed as the *Himārīya* case.³⁶

32. Cf. the *Egyptian Law of Bequests* 1946, articles 3-4 *supra*, 56.

33. Articles 76-79 *supra*, 57-58.

34. Article 257(1)(c).

35. Anderson, 'Syrian Law of Personal Status, *op. cit.* note 2, at 47.

36. Article 267(2); cf. the *Egyptian Law of Inheritance*, 1943, article 10 *supra*, 54.

- (ii) Caliph 'Alī's verdict in the case of grandfather's right to inheritance when in competition with brothers and sisters,³⁷
- (iii) the right of the surviving spouse to share the residue of the estate, along with other *Qur'ānic* heirs, under the *Doctrine of Return*,³⁸ and
- (iv) the scheme of Imām Shaybanī for the distribution of estate among uterine heirs.³⁹

The details of all these cases have been discussed in the chapter on Egypt and are not, therefore, being repeated here.⁴⁰

37. Article 279; *cf.* the *Egyptian Law of Inheritance*, 1943 article 22.

38. Article 288; *cf.* the *Egyptian Law of Inheritance* 1943, article 30.

39. Articles 290-297; *cf.* the *Egyptian Law of Inheritance*, 1943, articles 41-45.

40. See, chapter III, *supra*, 48-63 at 54-55.

APPENDIX TO CHAPTER VI

TEXT OF THE SYRIAN LAW OF PERSONAL STATUS, 1953*

(Extracts**)

MARRIAGE

MARRIAGE AND ENGAGEMENT

1. Marriage is a contract between man and woman with the purpose of creating a life in partnership and perpetuation of lineage.
2. An engagement, a promise to marry, recitation of *Fātiha*, transfer of dower, or acceptance of presents shall not effect a marriage.
3. The parties to a marital agreement may retreat it.

ELEMENTS AND CONDITIONS OF A MARRIAGE-CONTRACT

5. A marriage shall take place through offer by one party and acceptance by the other party to the contract.
6. Offer and acceptance shall take place through words which literally or customarily effect a marriage.
7. The offer or acceptance can be made through a letter if either of the parties is absent from the place of marriage.
10. If a person is unable to speak, offer or acceptance can be made in writing or, if he or she is illiterate, by known signs.
12. The marriage must be contracted in the presence of two men or one man and two women who are Muslim, sane and major and hear the offer and acceptance and understand their implication.
13. A marriage cannot be suspended to a future time or made conditional with an uncertain event.
14. (1) Where a marriage contract is coupled with a condition which is opposed to the essential nature or the purpose of marriage, or which makes obligatory something forbidden by the *Shari'a*, the condition shall be ineffective while the marriage shall be valid.
(2) Where a contract is coupled with a condition which stipulates something for the benefit of the wife, it shall be valid and binding on the husband, provided that it is not for-

*This English translation of the extracts from the *Syrian Law of Personal Status*, 1953 has been prepared by the author of the present book on the basis of an official Arabic text.

**Provisions of the *Book of Inheritance* of the Syrian law omitted from the translation are almost identical with those of the *Egyptian Law of Inheritance*, 1943 surveyed in chapter III. *supra*, 48-63,

bidden by the *Shari'a*, does not affect the rights of a third person, and also does not take away from the husband any of his legal rights.

(3) Where the wife stipulates a condition in the marriage-contract, which takes away any such right of the husband, or adversely affects a third person's rights, the condition, although not binding on the husband, shall be enforceable to the extent of giving the wife a right to seek dissolution of her marriage, if it is violated by the husband.

CAPACITY

15. (1) Sanity and puberty are essential for capacity to marry.

(2) The *Qādi* can permit the marriage of an insane or an imbecile if doctors certify that marriage shall be helpful in his treatment.

16. A male shall attain capacity to marry on the completion of eighteen years and a female on that of seventeen years of age.

17. The *Qādi* can refuse to a married man permission to marry another woman if it is proved that he is not capable to maintain two wives.

18. (1) If an adolescent boy who has attained fifteen years of age or an adolescent girl who has attained thirteen years of age claims to have attained puberty and wants to marry, the *Qādi* can give permission to do so on the proof of the claim and of their physical maturity.

(2) If the father or the grandfather is the guardian of such person, his consent shall be necessary.

19. Where there is disparity of age between the parties to a marriage and no benefit is involved in it, approval of the *Qādi* for the marriage must be obtained.

GUARDIANSHIP IN MARRIAGE

21. The guardian in marriage shall be one of the 'agnates in their own rights' in the order of right to inheritance, provided he and the ward are within prohibited degrees of marriage.

23. Where a nearer guardian is absent and the *Qādi* realizes that if his opinion is waited for some benefit in the marriage may be lost he can transfer the right to the next person in order.

24. The *Qādi* shall be the guardian of a person who has no guardian.

EQUALITY IN MARRIAGE

26. It is essential for the enforceability of a marriage-contract that the man should be an equal of the woman.

27. Where a major girl contracts herself into marriage without her guardian's consent, the marriage shall be binding if the husband is her equal; if he is not, the guardian can demand dissolution of the marriage.

29. Only a woman and her guardian can object to a marriage on the ground of inequality of spouses.

30. If the wife has become pregnant, the right to annul the marriage on the ground of inequality shall be extinguished.

31. Equality shall be ascertained at the time of marriage; its subsequent disappearance shall have no effect.

KINDS OF MARRIAGE AND THEIR EFFECTS

47. Where all the elements of a marriage-contract are present and all the conditions for its solemnization have been fulfilled the marriage shall be valid.

48. Marriage of a Muslim woman with a non-Muslim man shall be void.
50. A void marriage shall not have any of the effects of a valid marriage even if consummated.
51. (1) An irregular marriage, if not consummated, shall be like a void marriage;
 (2) If it is consummated it shall give rise to the following:
 (a) the proper or the specified dower whichever is less,
 (b) legitimacy of children with its effects laid down in article 133 of this Law,
 (c) bar of affinity, and
 (d) 'idda of divorce if the husband pronounces a divorce or dies, and maintenance during 'idda, but not mutual rights to inheritance.
- (3) The wife shall be entitled to maintenance so long as she is unaware of the marriage being irregular.
66. The wife must, after receiving her prompt dower, reside with her husband.
67. The husband cannot accommodate with his wife in one and the same house a co-wife without the former's permission.
68. In case of plurality of wives, the husband must treat them equally in respect of residence.

MAINTENANCE

72. (1) Maintenance of wife shall be binding on the husband from the time of marriage even if the wife is a follower of a different religion and even if she is living with her people, except when the husband asks her to shift to his place and she refuses without any right to do so.
 (2) The wife shall have the right of refusal if the husband has not paid the prompt dower or provided a residence as required by law.
76. The scale of wife's maintenance shall be fixed with regard to the financial condition of the husband provided that it shall not be as low as not enough to provide to her the basic necessities of life.
78. (1) The *Qādī* can grant a decree of maintenance in favour of wife with effect from the date when the husband failed to provide it.
79. The amount of maintenance fixed by the *Qādī* or agreed upon by the spouses shall not lapse except by payment or release.
82. (1) When proceedings for the realisation of maintenance are pending, the *Qādī* may, after the scale of such maintenance has been fixed, direct the husband to pay to the wife by way of credit an amount not exceeding one month's maintenance, during the pendency of the proceedings, and may also renew such a direction.
 (2) Such a direction shall be executed forthwith.
84. Maintenance during 'idda shall be like the maintenance during marriage. It shall be ordered from the date when 'idda became obligatory, but shall not be paid for more than nine months.

DIVORCE

85. (1) A man shall be competent to divorce his wife after the completion of eighteen years of age.
 (2) In a case where a man has married before attaining the age of eighteen years, the *Qādī* may permit a divorce, or confirm it after it takes place, if it involves some benefit.
86. The object of divorce can be either a lawfully married wife or a wife revocably divorced and observing 'idda, it is not valid for any other woman,

87. A divorce shall take place either by words or by a letter or, in the case of a person unable to speak, by known gestures.

88. The husband can delegate the right to divorce to a third person or may authorise the wife to divorce herself.

89. (1) No divorce shall take place when the man is drunk, out of his senses, or under duress.

(2) A person is out of his senses when due to anger, *etc.* he does not appreciate what he says.

90. A conditional divorce shall have no effect if not actually intended and used only as an inducement to do or abstain from doing something or as an oath or persuasion.

91. The husband can pronounce a divorce thrice.

92. If a divorce is coupled with a number, expressly or impliedly, not more than one divorce shall take place.

93. A divorce shall take place by express words or by customary expression if not unintended, and by metaphorical expressions it shall take place only if actually intended.

94. Every divorce shall be revocable except a third divorce, a divorce before consummation, a divorce with a consideration, and a divorce stated in this Law to be irrevocable.

KHUL'

95.(1) It is essential for the validity of a *khul'* that the husband must have capacity to divorce and the wife should be the object thereof.

(2) Where a woman who has not reached the age of majority enters into an agreement of *khul'*, the stipulated consideration shall be enforceable only with the consent of her guardian for property.

96. Either party can retract the offer of *khul'* before it is accepted by the other party.

101. Maintenance of *'idda* shall not lapse; neither shall the husband be relieved of it, unless there is an agreement to the contrary in the contract of *khul'*.

DISSOLUTION OF MARRIAGE

105. A wife can demand dissolution of marriage in the following circumstances :

- (1) where he is suffering from a disease preventing cohabitation, or
- (2) where he becomes insane after marriage.

106. (1) The right to claim dissolution of marriage on account of diseases as mentioned in the foregoing article is extinguished if the wife knew of the disease before marriage or overlooked it after knowing it.

(2) The right to seek dissolution on the ground of impotency shall not so lapse.

107. If a disease mentioned in article 105 seems to be incurable, the *Qādi* shall dissolve the marriage forthwith and if it can possibly disappear, he shall postpone the case for a suitable period not exceeding one year and if it does not disappear after that period the marriage will be dissolved.

108. A decree for dissolution of marriage granted on the ground of a disease shall effect an irrevocable divorce.

109. (1) If the husband is absent without any reasonable excuse or is sentenced to imprisonment for more than three years, his wife can, after the expiry of one year from the date of absence or imprisonment, demand from the *Qādi* dissolution of marriage, even if there is property from which she can get maintenance.

(2) This shall effect a revocable divorce and so if the husband returns while the wife is observing *'idda*, he shall have a right of restitution.

110. (1) The wife can demand dissolution of marriage when her husband refuses to provide maintenance to her and it appears that he has no known property although his inability to do so is not proved.

(2) Where his inability is proved or where he is absent, the *Qādī* may give him a period of respite not exceeding three months and if he does not provide maintenance after its expiry, the marriage will be dissolved.

111. A dissolution of marriage on the ground of want of maintenance shall effect a divorce revocable during *'idda*, if it is proved that the husband is willing to provide maintenance.

112. (1) When either spouse alleges injury on the part of the other claiming that it renders the continuity of marital life impossible, such a spouse may demand dissolution of marriage.

(2) If the injury is proved and the *Qādī* is unable to effect a reconciliation, he can grant a decree for dissolution of marriage effecting a divorce which shall be irrevocable.

DIVORCE

117. Where a person divorces his wife, the *Qādī* may, if satisfied that he has arbitrarily done so without any reasonable cause and that as a result of the divorce the wife shall suffer damage and become destitute, give a decision, with due regard to the husband's financial condition and the amount of wife's suffering, to the effect that he should pay to her a compensation, not exceeding one year's maintenance, in addition to maintenance payable during the period of *'idda*. It may be directed to be paid either in a lump sum or in instalments, as the circumstances of a case may require.

118. (1) A revocable divorce shall not terminate the marital bond and the husband can revoke it during the period of *'idda* by words or by conduct; and this right shall not lapse by renunciation;

(2) The woman shall be free to marry another person and the former husband's right of revocation of divorce shall be extinguished after the expiry of the *'idda* of a revocable divorce.

119. An irrevocable divorce, except a third one, shall terminate the marriage bond immediately, but shall not operate as a bar to re-marriage.

120. A third divorce shall terminate the marital bond immediately and shall operate as a bar to re-marriage unless the conditions mentioned in article 36 of this Law are fulfilled.

BIRTH AND ITS RESULTS

128. One hundred and eighty days shall constitute the minimum and one solar year the maximum periods of gestation.

129. (1) The child of a wife shall be regarded as her husband's child on the following conditions:

(a) the minimum period of gestation must have expired since the date of marriage, and

(b) non-access between the spouses should not have been proved, *e.g.*, when the husband was imprisoned or was far away for a period longer than the period of gestation.

(2) Where either of these conditions is contravened, the legitimacy of a child shall not be established except by an acknowledgement.

(3) Where both these conditions are fulfilled, the paternity of a child shall not be questioned except by imprecation (*li'ân*).

132. (1) The issue of an irregular marriage which has been consummated shall, if born after the expiry of one hundred and eighty days or more from the date of marriage, be regarded as the child of the husband.

(2) If it is born after separation or divorce, its paternity shall not be established if one year has elapsed from the date of separation or divorce.

ACKNOWLEDGEMENT OF PATERNITY

134. (1) Acknowledgement of paternity, even if made during death-illness, shall establish the acknowledger's paternity provided the difference of age between the acknowledger and the child does not negative it.

(2) Where the acknowledger is a married or divorced woman, her husband's paternity for the child shall be established only by this confirmation or by evidence.

BEQUESTS

209. It is essential for the validity of a bequest that it should not involve anything which is forbidden by the *Sharī'a*.

210. A condition attached to a bequest shall be effective only if it involves some lawful benefit to the legator, the legatee, or a third person, and also is not forbidden by or opposed to the purposes of the *Sharī'a*.

219. If a person has, by will, distributed the various items of his estate among his heirs legally entitled to inherit to such estate, so long as the rule of *bequeathable third* is not violated by such distribution, it shall be valid and binding. But if it violates the said rule, any excess over the *bequeathable third* shall be governed by the normal law relating to bequests in favour of heirs.

223. A legatee shall be disqualified to take the benefit under the bequest if he has been guilty of intentionally killing the legator, whether as principal or as accessory, if the act was committed without any legal excuse and the legatee was sane and not under the age of fifteen years. False testimony leading to the testator's death shall be tantamount to intentional killing.

227. The legatee may reject the bequest after the testator's death and within thirty days of the date thereof or from the date when the legatee first heard of the legacy. In other cases, or if the legatee dies within such period without accepting or refusing the legacy, his acceptance shall be presumed and the legacy shall pass on to the heirs of the legatee. •

OBLIGATORY BEQUEST

257. (1) If a person dies leaving children of a son who had died before or with such person, his or her grandchildren shall be granted a bequest out of the *bequeathable third* of such person's estate in accordance with the following conditions:

(a) The obligatory bequest shall be equal to the amount which such a grandchild would have shared in what its deceased father would have inherited from the propositus if he had died just after the latter; provided that such a bequest shall not exceed the *bequeathable third* of the estate.

(b) The grandchildren shall not be entitled to any obligatory bequest if they

otherwise inherit from their father's ascendants, nor if any of them left a legacy or a gift *inter vivos* equal in amount of to that of the obligatory bequest, in favour of such grandchildren. Where an amount less than that due under obligatory bequest has been so left for them, the balance shall be made up; and where an amount greater than that of the obligatory bequest has been so left, the excess shall be governed by the law relating to optional bequests. Where only some of the grandchildren entitled to an obligatory bequest have received such an amount, the rest of them shall be given their proper share.

- (c) The obligatory bequest shall be granted to the son's children and son's son's children, how low soever, one or more, in accordance with the rule of 'a double share for the male'; each ascendant shall exclude his own descendant only and each descendant shall take only his own ascendant's share.
- (2) The obligatory bequest shall take precedence over optional bequests in payment out of the *bequeathable third* of the estate.