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A CRITIQUE OF CERTAIN ASPECTS OF ISLAMIC PERSONAL LAW IN NIGERIA:  
RE-EXAMINING THE JURISPRUDENCE OF WOMEN'S RIGHTS

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ABSTRACT

In spite of the dust raised by the recent adoption of sharia criminal justice system in most northern Nigerian states via legislations that are regarded by some scholars as unconstitutional, sections 262(2)<sup>1</sup> and 277(2)<sup>2</sup> of the Constitution of the Federal Republic of Nigeria 1999 (as amended) still restrict the jurisdiction of Sharia Courts of Appeal to issues of Islamic personal law. The personal law surely covers, to say the least, questions of Islamic marriage and its validity and dissolution; family relationship; *wakf*, gift, succession and inheritance; guardianship and maintenance of infants, persons of unsound mind, and of Muslims who are physically or mentally infirm. This paper critically examines some of the aspects of Islamic personal law in relation to the human rights of Muslim women within the context of Islamic family law. This study, however, shies away from very broad issues such as divorce and polygyny which discussions require elaborate treatment and which may clearly form the subjects of another paper. This present paper rather briefly concentrates on the anomalies found in Islamic family relationships, education of children, custody of infants, inheritance, dress code, domestic authority, and the like, in the light of women's right jurisprudence as enunciated in the primary and other sources of sharia. The relevance of the study hinges on the role of the family institution in societal and individual development. The paper ends on a note of suggestions for relevant reforms in view of better ordering.

*Keywords:* Islamic Personal Law, Nigeria, Jurisprudence, Women's Rights

1. INTRODUCTION

The adoption of an extended or expanded Sharia law has engendered a lot of controversy with regard to the rights, status and dignity of Muslim women in Nigeria. Certainly, it is the issue of rights of women specifically and human rights in general, more than any other matter, that draws the attention of the national and international communities and groups to Nigerian Islamic sharia practice recently. Not a few conferences, symposia and workshops have been organized on the implication of the adoption on the rights and status of women. While some participants in these conferences and other debating circles hold that Islam and Sharia do not regard and recognize the status and role of women folk, others strongly argue that it is even Islam that enhances the dignity of women more than any other structure. It is further maintained that it is socio-political and cultural factors rather than Islam that are responsible for the

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<sup>1</sup> For Sharia Court of Appeal of the Federal Capital Territory, Abuja.

<sup>2</sup> For Sharia Court of Appeal of a State of the Federation.

trampling on women's rights in Islamic nations. Nevertheless, several adultery cases together with the attendant procedural irregularities that often let off the hook the relevant male defendants constitute the trigger of the recent debates on women's rights in Nigerian Islam. Other relevant issues include segregation of sexes in buses, schools, and other public places, the *pudha* system, inheritance inequity, discouragement in political participation and public life, curtailed access to justice, education and job opportunities, and so on. It is however the task of this paper to investigate the extent and impact of some issues in Islamic personal law on the respect, or otherwise, for women's rights. The study will also do a critical juxtaposition of the theoretical framework with what obtains in Islamic practice in Nigeria today.

## 2. WOMEN'S RIGHTS IN THE SOURCES OF SHARIA

A study of the sources of Islamic law reveals that women are endowed with a lot of rights. Women share some of these rights with all human beings and all citizens of an Islamic state. Some of these common rights include the right to live and respect human life<sup>3</sup>, right to justice<sup>4</sup>, right to equality of human beings and freedom from discrimination<sup>5</sup>, right to freedom from slavery and inhuman treatment<sup>6</sup>, right to co-operate and not to co-operate, right to freedom from want and deprivation, right to freedom from slavery and inhuman treatment, right to co-operate or not to co-operate<sup>7</sup>, right from freedom from want and deprivation<sup>8</sup>, right to security of life and property<sup>9</sup>, right to honour, respect and chastity, right to privacy of life<sup>10</sup>, right to freedom from unlawful arrests or detention<sup>11</sup>, right to freedom of expression<sup>12</sup>, right to freedom of association, formation of parties or organization<sup>13</sup>, Ladan<sup>14</sup> argues that in addition to basic rights granted to all human beings and civil rights belonging to citizens in an Islamic state, women are under the sharia, guaranteed the following specific rights because of their special responsibilities and status in the eyes of Islam.

### 2.1 RIGHT TO EQUAL DIGNITY AND VALUE

It is a teaching of the Koran that women and men are all creatures of Allah, existing on a level of equal worth or value. Thus, according to the Koran, "male and female are created *min nafsini wahidatin* (from a single soul or self) to complement each other."<sup>15</sup> And also in terms of religious and ethical obligations, women and men are clearly equal. The Koran thus provides: "And who so does good works, whether male or female, and he or she is a believer, such will enter paradise and they will not be wronged the dint in a date-stone"<sup>16</sup>

### 2.2 RIGHT TO EDUCATION

<sup>3</sup> Koran 5:32; 6:15.

<sup>4</sup> *Ibid.*, 5:8; 4:135.

<sup>5</sup> Koran 49:13; See also the Hadith report by Al-Bayhaqi and Al-Bazzaz.

<sup>6</sup> See the Hadith report by Al-Bukhari and Ibn Majah.

<sup>7</sup> Koran 5:2.

<sup>8</sup> *Ibid.*, 51:19.

<sup>9</sup> *Ibid.*, 4:93; 2:188; See also the Prophet's Farewell Hajj.

<sup>10</sup> Koran 24:27;49:11-12.

<sup>11</sup> Hadith Report. Cited in I.K.E. Oraegbunam., *A Critical Analysis of Human Rights in Nigeria's Islamic Sharia Praxis: Implications for Constitutional Democracy (1999-2011)*, A Ph.D Thesis submitted to the Department of Religion and Cultural Studies, University of Nigeria, Nsukka, 2011, pp. 69-70.

<sup>12</sup> Reported by Imam Muslim as cited in M.T. Ladan, "Women's Rights and Access to Justice under the Sharia in Northern Nigeria" in J. Ezeilo and A.K. Afolabi (eds.), *Sharia and Women's Human Rights in Nigeria: Strategy for Action* (Abuja, 2002) p. 57.

<sup>13</sup> Koran 2:256.

<sup>14</sup> Ladan, *Op.cit.*, p.60.

<sup>15</sup> Koran 4:37.

<sup>16</sup> See Ibn Quidama, *Al-Mughni*, Ba 'b al-Hijr, Vol.4.

Ladan observes that “although the more specific commands for the equal rights of women and men to pursue education can be found in the Hadith literature, the Quran does at least imply the pursuit of knowledge by all Muslims regardless of their sex”<sup>17</sup>. Hence, the Koran repeatedly commands all readers to read, recite, to think, to contemplate, as well as learn from the signs of Allah in nature. Therefore, it is the duty of every Muslim and every woman to pursue knowledge throughout life. The Prophet even commanded that the slave girls be educated and he asked Shifa bint Abdillah to instruct his wife Hafsa bint Umar. Besides, lectures of the Prophet were attended by audiences of both men and women; and by the time of the Prophet’s death, there were many women scholars<sup>18</sup>.

### 2.3 RIGHT TO OWN AND DISPOSE OF PROPERTY

The Koran proclaims the right of every woman to buy and sell, to contract and to earn, and to hold and manage her own property and money. The Koran provides: “Unto men a fortune from that which they have earned, and unto women a fortune from that which they have earned...”<sup>19</sup>. The Koran grants a woman a share in the inheritance of the family, warns against depriving her of that inheritance, specifies that the dower (*mahr*) of her marriage should belong to her alone and never be taken by her husband unless offered by the woman as a free gift. The Koran 4:40 reads:

O you who believe, it is not lawful for you to inherit forcibly the women of your deceased kinsmen nor that you should put constraint upon them that you may take away a part of that which you have given them... But consort with them in kindness, for if you hate them it may happen that you have a thing wherein Allah has placed much good.

### 2.4 RIGHT TO MAINTENANCE

The Koran recognizing the importance of complementary sexual roles, grants a woman right to maintenance in exchange for her contribution to the physical and emotional wellbeing of the family and to the care that she provides in the rearing of children<sup>20</sup>. Thus, despite the fact that a woman has full legal capacity in proprietary matters, and the possibility that she may even be wealthier than her husband, the sharia provides that the husband has to maintain her to a reasonable standard taking into account her social position, the husband’s means and all other relevant circumstances. That is to say, this woman’s right to maintenance is absolute and does not depend on the wife’s means. If the husband becomes so indigent and unable to maintain her, then she becomes entitled to a divorce on that ground. Moreover, even when the marriage is dissolved, sharia requires the wife to wait for a period generally of three months before she remarries. During this period as a general rule, her former husband continues to maintain her and right to inherit him subsists so that if he dies before the end of the waiting period she can inherit him<sup>21</sup>. The purpose of the three-month waiting is to know whether the woman is pregnant for the husband. If so, maintenance continues until delivery.

### 2.5 RIGHT TO CUSTODY OF CHILDREN

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<sup>17</sup> Ladan, *Op.cit.*, p.61.

<sup>18</sup> Abdal ‘Ati, *The Family Structure in Islam* (Lagos: Islam Publication Bureau,1982) p.13.

<sup>19</sup> Koran 2:256;18:29; 14:46.

<sup>20</sup> Koran 31:34; 46:15.

<sup>21</sup> Ladan, *Op.cit.*, p.63.

Dissolution of marriage immediately raises the question of the right to the custody of the minor children of the marriage, if any. The rule under the sharia law is that the right belongs to the wife subject to certain conditions. If the wife is disqualified or if she dies, then the right is transferred to her mother, and failing, to her grand mother. In short the right belongs to the woman and her female relatives. The husband's mother, grand mother and the husband himself are only resorted to as the last resort<sup>22</sup>.

## 2.6 RIGHT TO BE TREATED JUSTLY

With respect to polygamy, the Koran stipulates: ...Marry women of your choice, two, three or four, but if you feel you may not be able to deal justly with them, then only one.... That is nearer to prevent you from doing injustice<sup>23</sup>. Thus, even though Muslims are permitted to marry as many wives as four, yet the condition precedent is that justice must not only be done but also seen to be done.

## 2.7 RIGHT TO RESPECT TO CHASTITY

Under the sharia, every woman has the right to protect her chastity from being violated. A woman's chastity has to be respected and protected under all circumstances and without distinction as to race, colour, religion, age or nationality. All promiscuous relationship has been forbidden to a Muslim, irrespective of the status of the woman, or whether the woman is a willing or an unwilling partner to the act. The Koran says: "Do not approach adultery." In fact, violation of chastity of a woman is a crime punishable under the sharia<sup>24</sup>.

## 3. WOMEN'S RIGHTS IN PRACTICAL ISLAM IN NIGERIA: A CRITIQUE

It is now appropriate to examine the practical situation in Nigerian Islam to see the extent to which the above rights guaranteed to women by Islamic law are respected. In what immediately follows, this paper will consider certain specificities of Islamic practice in Nigeria and how they negatively impact on women's rights in spite of clear provisions of Sharia sources to the contrary. This study approaches this task under the following subheads:

### 3.1 ABUSE OF WIVES

There is no doubt that Nigerian Islam, albeit by human positive law, allows the chastisement of wives. Sharia Penal Code Law 2000 of Zamfara State states that "nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done by a husband for the purpose of correcting his wife"<sup>25</sup>. This is equally contained, in similar wordings in the *Penal Code*<sup>26</sup>, which is the major legal framework governing substantive criminal jurisprudence in the Northern Nigeria, is traceable to Sharia sentiments. According to Okonkwo<sup>27</sup>, the *Penal Code Law 1959* which displaced the Criminal Code application in the North was based on the Muslim Code of the Sudan. Section 55 of the *Penal Code* provides:

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<sup>22</sup> See Kasani. Cited in *Ibid*.

<sup>23</sup> Koran 4:3.

<sup>24</sup> Ladan, *Op.cit.*, p.63.

<sup>25</sup> Section 76 (1) (d).

<sup>26</sup> Cap 89, Laws of Northern Nigeria, 1963. Section 55.

<sup>27</sup> C.O. Okonkwo, *Criminal Law in Nigeria*, 2<sup>nd</sup> Ed. (Ibadan: Spectrum Books Ltd. 2002) p.9.

Nothing is an offence, which does not amount to infliction of grievous hurt upon any person which is done by a husband for the purpose of correcting his wife, such a husband or wife being subject to native law or custom in which such correction is recognized as lawful.

These provisions are justified by the fact that Muhammad and his companions beat their wives. Green refers to the following Hadiths: "... He (Muhammad) struck me (Aisha) on the chest which caused me pain..."<sup>28</sup>. Here the Prophet is reported to have beaten his wife. His companions also did the same:

...(Umar) found the Prophet sitting sad and silent with his wives around him ... (Umar) decided to say something which would make the Prophet laugh, so he said, "Messenger of God, I wish you had seen the daughter of Kharija when she asked me for extra money and I got up and slapped her on the neck". God's messenger laughed and said, "they are around me as you see asking for extra money". Abu Bakr then got up, went to Aisha and slapped her on the neck, and Umar did the same to Hagsa<sup>29</sup>.

In fact, Umar reported the Prophet as saying, "A man will not be asked about why he beat his wife". Abu Dawud and Ibn Majah transmitted it<sup>30</sup>. Really, the Husband's right to beat his wife under Shariah law seems to be accepted by all Sunni schools as this appears to be sourced from the wordings of Koran 4: 34: "And those wives you fear may be rebellious admonish; banish them to the couches, and beat them". Again, the report of the injunction given by the Prophet to the father of Hakim Muawiya al-Qushairi not to strike his wife on the face clearly shows that wives can be struck by their husbands on places other than the face<sup>31</sup>.

It goes without saying, however, that these provisions and statements contravene section 34 of the constitution which prohibits inhuman and degrading treatment. The case of *Uzoukwu v. Ezeonu II*<sup>32</sup> is relevant in the definition of the key words of section 34. In this case, the Court of Appeal defines 'torture' to include mental harassment as well as physical brutalization while 'inhuman treatment' characterizes any act without feeling for the suffering of others. Again, 'degrading treatment' was articulated as the element of lowering the societal status, character, value or position of a person. Section 55 of *Penal Code* of the Northern States and section 76 (1) (d) of Sharia Penal Code Law of Zamfara State and the like are therefore inconsistent with section 34 of the Constitution. This is particularly true as it is trite that motive, even if that of correcting a wife, is irrelevant in law<sup>33</sup>. Besides, these legal provisions discriminate against women since they do not confer on them the same legal rights of chastising their husbands. This is despite the fact that the Koran<sup>34</sup> commands equality of human beings and freedom from discrimination. Thus, the freedom from discrimination envisaged also by section 42 of the Constitution is kept at bay by the aforesaid provisions. Besides, the Koran enjoins husbands to be loving and compassionate to their wives: "...and live with them (your wives) honourably. If you dislike them it may be that you dislike a thing and Allah brings through it a great deal of good"<sup>35</sup>. Similarly, Muhammad preaches: "you should not harm

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<sup>28</sup> S. Green, S., *The Status of Women in Islam: A Reply to Dr. Janal Badawi and Others*. Retrieved on 18/07/09 from <http://answering-islam.org/women/index.html.2009>. See also Muslim: Book 4, No. 2127.

<sup>29</sup> Mishkat Al – Masabih: Vol. 2: 690; Muslim: Book 9, No. 3506, Siddiqui.

<sup>30</sup> Green, *Op.cit.*

<sup>31</sup> Cited in *Ibid.*

<sup>32</sup> [1992] 5NWLR (pt.475) p.60.

<sup>33</sup> See section 6 of Torts Law of Anambra State, 1991.

<sup>34</sup> 49: 13.

<sup>35</sup> Koran 4: 19.

anybody, nor should you be harmed”<sup>36</sup>. Hence, such a yawning gap between theory and praxis can be closed by the abrogation of the relevant anti-women sharia legislations in northern Nigeria.

Further instances of abuse of wives in Islamic practice border on sexual activities. Koran<sup>37</sup> speaking figuratively urges men in relation to their wives: “women are your fields: go, then, into your fields whence you please”. The Prophet Muhammad equally gave stern warnings to women in that regard: “When a man calls his wife to satisfy his desire she must go to him even if she is occupied at the oven”. Again, if a man invites his wife to sleep with him and she refuses to come to him, then angels sent their curses on her till morning”<sup>38</sup>. Certainly, it is expressions like these which open a floodgate of debates on issues of ‘marital rape’ today<sup>39</sup>. Although ‘marital rape’ is not yet the law in Nigeria, consideration should be given to the necessity of the wife’s consent to sexual intercourse vis-à-vis the health and psychological conditions necessary for human sexual intercourse.

### 3.2 DRESS CODE

Another provision of the Koran and of Sharia which has significant implications for women’s right and status in Islam is the notion of *hijab* or veiling. Although this practice is for the purpose of modesty and chastity, yet further interpretations maintain that *hijab* means more than the fact of covering one’s face or body in a public place. Most of the verses of the recommending surah address women specifically and enjoin them to be reserved and to stay at home, that is, to abstain from public life<sup>40</sup>. Again, Koran 24: 30 – 31 addresses women on dressing:

Tell the believing women to lower their gaze and be modest, and to display their adornment only that which is apparent, and to draw their veils over their bosoms, and not to reveal their adornment save to their own husbands or father or husband’s fathers or their sons or their husbands’ sons or their brothers or their brothers’ sons, or sister’s sons, or their women, or their slaves, or male attendants who lack vigor, or children who know naught of women’s nakedness. And let them not stamp their feet so as to reveal what they hide of their adornment...

In the same vein, Koran 33: 59 instructs the Prophet Muhammad thus: “O Prophet! Tell the wives and the daughters and the women of the believers to draw their cloaks close round them when they go abroad...” Obi, however, describes the social implications of strict Muslim dress code for women:

There is the injunction that a married woman must conceal as much of her person as possible before she ventures out of her home. Thus, at the best of times, no more than the eyes, the nose and the feet are free of clothing. In many cases, a woman is nothing but a moving figure in opaque noon-descript clothing material. Well tailored, beautiful clothing and sparkling trinklets enhance a woman’s beauty and give

<sup>36</sup> Centre for Islamic Legal Studies (CILS), *Promoting Women’s Rights through Sharia in Northern Nigeria*. British Council: Department for International Development, 2005, p.9.

<sup>37</sup> 2:233.

<sup>38</sup> Cited in Green, *Op.cit.*

<sup>39</sup> C. Arinze - Umobi, *Domestic Violence against Women in Nigeria: A Legal Anatomy*. Onitsha. (Folmech Printing & Publ. Co. Ltd.,2008); C. Arinze-Umobi & O.V.C. Ikpeze, “Rape in Matrimony: Entrenched Global Disaster” in C. Arinze Umobi, C. & O.V.C. Ikpeze (eds.), *Gender Rights Law in Nigeria (1)*. (Onitsha: Folmech Printing & Publ. Co. Ltd, 2008) pp. 1 – 35.

<sup>40</sup> Koran 33:30, 31, 51, 53

her self confidence. Women love them, whatever their calendar says. To a woman, to be denied these fineries is to be condemned to drab existence, not to live. These restraining factors, we are told, are Koranic injunctions. They are the wishes of Allah, the supreme deity, and were revealed to man through his last Prophet, Mohammed. They are therefore not subject to planned, conscious change by man...However, there are human standards that are set in such mundane documents as the UN Declaration of Human Rights, our 1999 Constitution and others...By these standards, it is not humane, benevolent or fair for women to be subject to a host of restraining factors which tend to keep them virtually invisible and inaudible in the society of which they are supposed to be members...However, Almighty Allah appears in recent times to be working in mysterious ways, his shackles to remove. Hundreds of thousands of the younger generation appear to have received some inspiration that leads them progressively to reject the old ideas and practices that kept their mothers and grandmothers practically in perpetual seclusion, out of sight and out of hearing. We thank heaven for these little mercies....<sup>41</sup>

Although, in Nigeria as in Niger there is no legally specified form of dressing under the Muslim personal laws, there is still in many Nigerian Islamic enclaves increasing pressure from religious extremists for women to dress more restrictively<sup>42</sup>. This is happily unlike in Sudan and the Taleban Afghanistan where the state prescribes a strict dress code for women and enforces same. The Nigerian Muslims may imitate their counterparts in Bangladesh and Pakistan for whom there is no legislation about dress code even as it is tacitly understood that a woman must dress in an acceptably modest fashion<sup>43</sup>.

### 3.3 EDUCATION OF A GIRL-CHILD

The educational right of a girl-child has often been violated in most of the Muslim North. Either parents completely refuse to send their daughters to school or, by sending them into the streets to hawk, prevent them from attending classes. Often this is depictive of the spirit of anti-intellectualism that is often associated with practical Islam. It is not uncommon to get impressions from some Muslim quarters which glory in the fact that Prophet Muhammad was illiterate by virtue of which he could not have altered the letters of the Koran. This illiteracy is frequently alluded to in order to prove the divine purity, inerrancy and inspirational dictation of the Koran. Yet, the Koran is not devoid of passages that strongly encourage the pursuit of knowledge and education regardless of gender. The wordings of Koran 39: 9 are illustrative: "Say unto them Muhammad: Are those who know equal with those who know not? But only men of understanding will pay heed". It is also provided in Koran 58: 11: "Allah will raise up to suitable ranks and degrees those of you who believe and who have been granted knowledge and Allah is well acquainted with all ye do". The study carried out by the Center for Islamic Legal Studies further reveal that West African Jihad leaders of the 19<sup>th</sup> century condemned the hypocritical practice of some of the Ulama (scholars) of that time, who spent most of their time teaching other people, while at the same time leaving their wives and female children in

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<sup>41</sup> S.N.C. Obi, S.N.C., *Human Rights at the Grass Root in Nigeria (With Special Reference to Women's Rights)* (Onitsha: Mas Founders Publications Ltd.) pp. 39-40.

<sup>42</sup> A.M. Imam, M. Fijali & H. Akilu-Att (Compilers), *Women's Rights in Muslim Laws: A Resource Document*. (Lagos: BAOBAB for Women's Human Rights, 2005), p34.

<sup>43</sup> *Ibid.*

ignorance. It is equally reported that the Prophet used to hold classes for women at their request<sup>44</sup>.

However, Imam, Fijabi and Akilu-Atta still report that “in Nigeria, the decision to educate Muslim girls varies from one community to the other by which in many parts of the North girls are often withdrawn at different levels of education for marriage or not sent to school at all”<sup>45</sup>. This Nigerian Islamic standard is only little better than Indian and the Gambian where education of girls including Muslims is still being questioned on the belief that girls need only learn how to be good wives<sup>46</sup>. It is strongly recommended for Nigerian Muslims to borrow a leaf from Tunisia and Malaysia where education is greatly encouraged for children of both genders<sup>47</sup>. This will surely bring Nigerian Muslims to be in tune with the educational objectives of the 1999 Constitution<sup>48</sup>.

### 3.4 ABUSE AND VIOLENCE AGAINST THE GIRL-CHILD

As in many other patriarchal cultures, the Nigerian Islamic tradition records high level of abuse and violence against the girl-child both within and outside the home. This abuse comes in several forms: psychological abuse, sexual exploitation, excessive beatings or showing of preferential treatment for male children. It is observed that “preferential treatment for male children is still largely the case in Muslim Northern Nigeria”<sup>49</sup>. This is surely one of the factors that lead to polygyny in Islam. Similarly, male preference in Islam is ostensibly linked to competition over inheritance as the male child’s share is double that of a female. This discriminatory attitude in relation to sex is further strengthened by the Arab practice of burning female children alive in the name of saving the family honour<sup>50</sup>. Yet replete are instances where the primary sources of sharia condemn such barbaric attitude:

When news is brought to one of them of the birth of a female child, his face darkens, and he is filled with inward grief with shame does he hide himself from his people, because of the bad news he has had. Shall he retain it on sufferance and contempt or bury it in the dust? Ah! What an evil choice they decide on?<sup>51</sup>

Similarly, Koran 42: 49-50 states:

To Allah belongs the kingdom of the heavens and the earth. He creates what He wills. He bestows female upon whom he wills and bestows male upon whom He wills. Or He bestows both females and males and He renders barren whom He wills. Verily He is the All-knower and He is able to do all things.

In line with this Koranic provision, Muhammad said “Do justice among your children”. In another occasion he said: “fear Allah and treat your children with equality and justice”. Surely, the contrary practice by most Nigerian Muslims is a contravention of section 42 of the

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<sup>44</sup> Centre for Islamic Legal Studies (CILS), *Promoting Women’s Rights through Sharia in Northern Nigeria*. British Council: Department for International Development, 2005, p.9-10.

<sup>45</sup> Imam et al, *Op.cit.*, p.73.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> See section 18.

<sup>49</sup> See CILS, *Op.cit.*, p.12.

<sup>50</sup> *Ibid.*

<sup>51</sup> Koran 16: 58 – 59.



Constitution which prohibits discrimination against an individual on the basis of sex and circumstances of birth.

### 3.5 POVERTY OF MUSLIM WOMEN

Many women in the North-West zone of Nigeria, otherwise known as the core sharia states, are among the people in Nigeria who are abjectly poor. Bande observes thus:

...The incidence of poverty, ignorance, disease, squalor, poor diet and poor shelter is more pronounced in this zone than in all other zones of Nigeria. The poverty level is also striking.... Unemployment figure is also high while majority of the inhabitants of the zone are peasant farmers with many not actually able to produce enough for their subsistence...<sup>52</sup>.

There is no gainsaying that gender disparities in economic power sharing are an important contributing factor to the poverty of women in the zone. While poverty affects households as a whole, because of gender division of labour and responsibilities for household welfare, women bear a disproportionate burden, attempting to manage household consumption and production under conditions of increasing scarcity. Therefore, poverty is particularly acute for women in this zone. This *feminic* poverty is clearly directly related to the absence of economic opportunities and autonomy, lack of access to economic resources including credit and land ownership. All these go to show that even when the Koran<sup>53</sup> provides for everyone's right to freedom from want and deprivation, what really obtains in practice is quite different. But this also contravenes section 16 of the constitution, which provides for equal economic opportunity for men and women. Hence, one of the elements of the multiplier effects of women poverty is that apart from the consequent discrimination meted against women in this regard, they cannot also have access to justice for the enforcement of their rights.

### 3.6 INHERITANCE

The Koran secures for Muslim women the right to inherit. The Koran states that "there is a share for men and a share for women whether the property be small or large"<sup>54</sup>. Indeed, it has been argued that, contrary to many dissenting views, the Koran and Islam recognize more than any other holy book or religion the right of women to inherit. Yet, the mode of distribution of the property of the deceased between male and female inheritors is far from equitable. The Koran states: "God directs you as regards your children's (inheritance), to a male, a portion equal to that of two females"<sup>55</sup>. Sometimes, this unfair practice is defended with the argument that men should inherit more property because of their greater responsibilities in the family and the society. This may be sustainable in the Mohammedan era but not in the modern society of today when economic responsibility is determined by many factors and variables other than the needs of the family. Hence, in Nigerian Islam just as in many Nigerian and African cultures, women are maneuvered out of inheriting property especially realties. Therefore, it can rightly be argued that the inequitable inheritance in the Koran based on gender is clearly opposed to

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<sup>52</sup> Cited in Ladan, *Op.cit.*, p.64.

<sup>53</sup> 51:19.

<sup>54</sup> 4: 7.

<sup>55</sup> 4: 11.

freedom from discrimination on the basis of sex as enshrined in the 1999 Constitution<sup>56</sup>. It is equally no thanks to gender discrimination in the question of inheritance that the court decision in the case of *Muojekwu v. Muojekwu*<sup>57</sup> prohibits the denial of inheritance to women under the Nnewi customary law, a practice which is manifestly incompatible with the plain wordings of section 42 of the constitution and article 2 of the *African Charter of Human and Peoples Rights* which has been domesticated and incorporated into Nigerian body of laws<sup>58</sup>. The inheritance practice in Nigerian Islamic scenario falls short of the equitable standards maintained, for instance, in Pakistan and Turkey, countries with even higher Muslim population density. In Pakistan, courts have consistently upheld women's rights to inheritance of both moveable and immovable property. Also in Turkey, the principle of equal shares in inheritance for females and males has been adopted. This is done on the grounds that the proper relations and customs of the 7<sup>th</sup> century tribal Arabia which followed Koran 4: 11 no longer hold today. These are quite appropriate options for Nigerian Islam.

### 3.7 ADJUDICATION AND RULES OF EVIDENCE

A clear reading of Koran 2:282 reveals that the general tradition imposed on all testamentary evidence in Islam is that the evidence of a woman is half the evidentiary value of one man. The verse states:

When you contract a debt for a fixed period, write it down... and get two witnesses out of your own men... and if there are no men available, then a man and two women so that if one of them errs, the other can remind her....

It has however been argued that this evidentiary rule is primarily restricted to cases of business transactions, civil debts and contracts, which constitute areas where women in those days were regarded as lacking in experience and requisite skills. Yet it is the truth that in modern society, Muslim women desire and indeed find themselves in the labour market where they can no longer be described as inexperienced and completely lacking in skills. Therefore, the Islamic practice in this regard which has continued up till today is at variance with the provisions of not only section 42 of the Constitution which prohibits gender discrimination but also of section 17 (2) (a) thereof which provides for "equality of rights, obligations, and equal opportunity before the law".

By extrapolation, this practice perhaps degrades the human status of women folk albeit by making two women equal to one man. Hence, this unfair gender equation collides with the provisions of section 34 of the Constitution which prohibits human degradation. Besides, Nigerian adjectival laws regard everybody as equal irrespective of gender as a competent witness in court proceedings except, in the consideration of the court, one is prevented from understanding the questions put to one, or from giving material answers to those questions by reason of tender years, extreme old age, disease whether of the body or mind, or any other cause of the same kind<sup>59</sup>. Thus, nowhere is the court's consideration based on gender. Yet in Nigeria today, as in Pakistan, sharia courts have insisted on two women as being equivalent to one man. This has even been made statutory in some of the Sharia Penal Codes. This is unlike in Turkey and Tunisia where no such requirements exist as jurists have argued that this evidentiary practice pertained to the time when women did not commonly participate in

<sup>56</sup> Sections 17 (1) (2) & (3) and 42.

<sup>57</sup> [1997] 5 NWLR (pt.542) p.283. See also *Muojekwu v. Ejikeme* [2000] 5 NWLR, pt. 657, p.402; *Muojekwu v. Iwuchukwu* [2004] 11 NWLR, pt. 883, p.196.

<sup>58</sup> See African Charter on Human and Peoples' Right (Ratification and Enforcement) Act, cap A9, Laws of the Federation of Nigeria, 2004.

<sup>59</sup> Evidence Act 2011, section 175 (1).

commerce and the like and not to contemporary times. Again, unlike in Indonesia and Pakistan where there are a good number of Muslim women judges in Muslim Family and High Courts, no woman has been appointed a judge in a shariah court in Nigeria even as there are Muslim women judges in British-style courts in Nigeria. This is in spite of the agreement by jurists like Ibn Tabari, Ibn Jarir and Abu Hanifa that a woman can be a judge in all matters in which her witness is accepted<sup>60</sup>. However, reluctance to appoint women judges seems to be based on the fact that Muhammad's pronouncements about judges were made using masculine pronouns. But this is only a mode of speech obtainable in many jurisdictions even up till today, namely, using masculine pronoun in a generic sense to cover both male and female.

### 3.8 DOMESTIC AUTHORITY

Plain wordings of the main sources of sharia law forbid women from assuming positions of authority and leadership in a Muslim community. The Koran says: "men are in charge of women"<sup>61</sup>. Thus, in Islamic family law, men exercise their full authority on women and on their children as long as they are married. In Islamic marriage, a wife and her co-spouses owe their husband submission and fidelity<sup>62</sup> who also has the right to punish them for disobedience when necessary. In practice and in most interpretations of Koran and the sharia, it means that many constitutional rights, namely, the rights of women to economic, political and social participation as provided for in chapter two of the constitution are, under a religious garb, trampled upon. It means also that the rights for physical integrity as well as reproductive and sexual rights of women depend on men's approval. More so, a legal system that permits men to marry as many as four women<sup>63</sup> without a reciprocal guarantee to women is clearly not only discriminatory but also regards women as mere chattel.

### 3.9 MARRIAGE CONSENT

Some Islamic studies demonstrate the agreement between Islamic jurists that seeking of the consent of the girl before she is given in marriage is recommended and always necessary. It is claimed that nowhere does the Koran or the hadith speak with approval of coercive authority. In fact it was shown that Muhammad gave certain girls forced into marriage by their parents option to revoke the marriage<sup>64</sup> at their majority. Hence, many are the hadiths depicting Muhammad's insistence on the consent of the female in marriage<sup>65</sup>. In spite of this, the sharia dogma that had persisted in many jurisdictions on the basis of the jurisprudential ruling of Imam Malik to the effect that the male guardian, in the exercise of the power of *Ijbar*, may give her away in marriage without her consent irrespective of her age. The case of *Kekurah v. Matthew*<sup>66</sup> is quite illustrative. In the instant case, Mr. Matthew is the father of a girl called Keturah. He was a Christian in Tiwugu in Niger state. Before Keturah reached puberty, she had been betrothed to a Muslim called Mohammed Jiya. When she reached the age of maturity, Mohammed made moves to marry Keturah. She refused on the grounds that as a Christian, she would not marry a Muslim in keeping with the biblical injunction of 2 Corinthians 6: 14-18. But because her father, Mr. Matthew, was bent on giving her away to Mohammed, she filed a suit against him in Area Court at Bida. The court ruled in favour of her father, that he had the

<sup>60</sup> Imam et al, *Op.cit.*, p.50.

<sup>61</sup> 4:34.

<sup>62</sup> Koran 4:19.

<sup>63</sup> Koran 4:33.

<sup>64</sup> CILS, *Op.cit.*,p.15.

<sup>65</sup> M. Uwais, "A Search for Decency and Human Dignity: Women's Right under Islamic Law" in *Vanguard*, Sept 3, 2004, 26.

<sup>66</sup> Reported in D. Byang, *Sharia in Nigeria: a Christian Perspective* (Jos: Challenge Publishers, 1988) pp.10-12.

right to give her away in marriage to any man of his choice. It was the Sharia personal law that was applied in judging the case. On appeal to the Upper Area Court at Bida, the decision of the lower court was overruled. However, in subsequent appeal by the father to the Sharia Court of Appeal in Minna, the verdict of the court of first instance was returned thus denying Keturah the marriage consent that should belong to her as a fundamental right. It was only by extra-judicial circumstances that Keturah later married another Christian of her own choice.

From the above facts, it is crystal-clear that even though Mr. Matthew professed to be a Christian, he was largely a Muslim at heart insisting as he did to exercise his power of *ijbar* under Sharia personal law. In the considered view of this researcher, this practical Muslim denial of the female marital consent tantamount to an infringement on the female's right to freedom of thought, conscience and religion as enshrined in section 38 of the Constitution. This is particularly true as consent has to do with thought and conscience, which are often molded by one's religion. Therefore, in *Keturah* as in many other cases where Sharia personal law was applied, females were often denied of their inalienable rights to self-determination in marital life. This idea of forced marriage consequent upon the power of *Ijba* is often justified on the principle that public morality and the individual's own integrity take priority over personal freedom when they come into conflict<sup>67</sup>. Clearly, under section 3 (1) (d) (i) (ii) (iii) of the Matrimonial Causes Act, 1970<sup>68</sup>, a marriage is void if the consent of either of the parties is not a real consent.

### 3.10 MUSLIM GIRL-CHILD EARLY MARRIAGES

There is no doubt that under Sharia compliant jurisdictions as in Northern Nigeria, many young girls are married off from ages between 7 and 16 years. The notion that marriage to a girl-child is permissible stems from the fact that Prophet Mohammed is believed to have married a girl of tender years, Aisha, and his second wife Umm Rumann, a fact which Muslims regard as part of the practices of the Prophet which constitute an important aspect of the Sunna.

It also goes without saying that apart from the consequent emasculation of the girl-child's educational opportunities in contravention of section 18 of the Constitution, practice of girl-child marriages is often dangerous to the psycho-somatic health of the child. In addition to being mentally unprepared to take on the onerous duties that attach to the matrimonial caring, the child bride has no knowledge of family planning and is under pressure to become pregnant immediately. Again, many of these unfortunate child brides are prone to the horrible VVF (vesico-vaginal fistula) condition not only because of the relatively immature size of their pelvis, but also because of the lack of adequate nutrition and basic health care at the actual time of delivery. The continued practice of this would be inconsistent with section 17 (3) (d) of the Constitution which enjoins adequate medical and health conditions and facilities for all persons.

### 3.11 PROCEDURAL IRREGULARITIES IN SHARIA COURTS

Assuming without conceding to the constitutionality of criminal jurisdiction of Sharia courts in Nigeria, yet in all the notorious criminal cases decided by the Sharia trial court judges since 2000 in respect of adultery or fornication (*zina*), women have always been victims of judicial disregard to the constitutional safeguards on fair hearing as provided in section 36 of the constitution. These constitutional safeguards or procedural guarantees are mainly the basic rights of an accused person before, during and after trial. Hence, in the cases of *The State v. Safiyatu Tudu*<sup>69</sup> and *The State v. Amina Lawal Kurami*<sup>70</sup>, the procedural guarantees were not

<sup>67</sup> Centre for Islamic Legal Studies (CILS), *Promoting Women's Rights through Sharia in Northern Nigeria*. British Council: Department for International Development, 2005, p.11.

<sup>68</sup> Now cap M7, Laws of the Federation of Nigeria 2004.

<sup>69</sup> (Unreported). Case No. USC/GW/CR/F1/10/01; judgement delivered on 9/11/2001.

observed in favour of the accused persons, thereby resulting to denial of justice and violation of fundamental rights. Ikpeze observes too that in the judgement of the trial courts, the male partners in the adultery / fornication cases were not found guilty<sup>71</sup>. One wonders whether the court decisions conformed to the equality cause of section 14 of the constitution and non-discrimination provision of section 42 thereof. It took only the judgment of the Sokoto State Sharia court of Appeal in the case of *Safiya Husseini V. A. G. Sokoto*<sup>72</sup> to enunciate the importance of procedural guarantees. In the instant case, the court unanimously allowed the appeal of Safiya and quashed her conviction of stoning to death on grounds of procedural irregularities. Ladan observes that this miscarriage of procedural justice is partly due to the absence of Sharia Criminal Procedure Codes in many Sharia states<sup>73</sup>.

Moreover, most sharia court judges were appointed to man these Sharia courts without any training in comparative human rights and administration of justice in Nigeria. The effect is that the patriarchal propensity inherent in these untrained judges is allowed to bear on their judgments thereby resulting to denial of justice and violation of human rights generally and women's right in particular.

### 3.12 MOVEMENT AND ASSOCIATION

In many sharia jurisdictions including Nigeria, Many women are subjected to several forms of exclusion and seclusion. Muslim women are generally excluded from decision making at the family and community levels. Husbands do not generally consult their wives on matters that may concern them or their children. In fact, a woman is at best heard not seen. There is also the practice of seclusion whereby husbands restrict their wives' movements<sup>74</sup> such as happens in Iran, Egypt, Sudan, Morocco and Saudi Arabia. Men's guardianship of women can amount to infringement on women's rights of movement and association by giving men a more or less high degree of control over women's public activities. In Sudan, for instance, the right of women to freely travel and move is limited by the institution of the *muharram* whereby women are always accompanied by a man with whom they have blood relations who accompanies them and acts as their guardian.

In the same vein, sharia is opposed to men and women mixing up in public places which practice is difficult in the modern globalized world. This makes it impossible for women to have professional jobs in the civil service or in the private sector, as well as to participate in national political affairs. This is also the effect of the *puddha* system which confines Muslim women and secludes them from public life. All these result to the denial of women's fundamental rights to movement and association as provided for in sections 40 and 41 of the Constitution. Although in Nigeria today as in Pakistan, Senegal, Sierra Leone and Philippines women's seclusion is becoming less restrictive as a result of socio-economic factors, yet the situation in Fiji and Lebanon can be desirable examples to copy. In Fiji, equal rights of consortium also include non-restriction of wives' movement by the husband. In Lebanon too, women enjoy unrestricted freedom of movement the result of which is the strong presence of women in almost all of the public places<sup>75</sup>.

<sup>70</sup> (Unreported). Case No. 9/2002, Sharia Court Bakori, Katsina State; judgement delivered on 20/03/02.

<sup>71</sup> O.V.C. Ikpeze, O.V.C., *Position of Women in Sharia Jurisdictions*. Lecture Note in Women and Minority Rights Law. Faculty of Law, Nnamdi Azikiwe University, Awka, 2005.

<sup>72</sup> Cited in Ladan, *Op.cit.*, p.80.

<sup>73</sup> Ladan, *Op.cit.*, p.81.

<sup>74</sup> CILS, *Op.cit.*, p.12.

<sup>75</sup> Imam et al, *Op.cit.*, p.75.

### 3.13 MONETARY COMPENSATION (DIYA)

Under the law of retaliation (*qisas*) demanding that the author of a violent crime pays compensation to the victim's surviving relatives, the required compensation is smaller when the victim is a woman<sup>76</sup> It is on the basis of such a principle that in some Arab countries such as Yemen and Iran, insurance companies pay half of the premium when victim of an accident is a woman.

### 3.14 CHILD CUSTODY AND GUARDIANSHIP AND MAINTENANCE

There is no gainsaying that sharia law gives custody of minor children to the mother: girls until they marry and boys until they reach the age of puberty<sup>77</sup>. This is the effect of a combined reading of the Koran, the hadith and juristic opinions. Koran 2: 233 states that "Mother shall suckle their children for two whole years; for those who wish to complete their suckling". Again, on a case that was brought before Caliph Abubakar by a grandmother challenging the attempts of Umar to take his child away from her, Caliph Abubakar decided in her avour adding that "the hugs and kisses of that old woman to the child are more important and valuable than whatever material wealth you (Umar) can offer the child". In fact according to juristic opinions, in the order of priority outlined under the sharia, the father is fifth in line of eligibility to custody. Surely, under the Maliki jurisprudence operative in Nigeria, the mother and then other women relatives on the mother's side, followed by other women relatives on the father's side, is supposed to take custody of the child.

However, in practice in Northern Nigeria, the mother is most often denied custody of and even access to the children. Besides, mothers who managed to get custody are frequently forced to give up same due to lack of maintenance by the fathers. Although legal actions can succeed as in the cases of *Abubakar Aajam v. Hauwa Haladu*<sup>78</sup> and *Jatau v. Mamman Hajiya*<sup>79</sup> where the courts respectively gave custody to the mothers and ordered paternal maintenance, yet enforcement of child maintenance payments is difficult. The practice is quite desirable in Turkey where both women and men statutorily have corresponding rights and duties when it comes to child custody and maintenance. Thus, the mother is given priority when deciding on custody while the husband is considered the chief financial supporter. This situation is very much better than what obtains in Senegal, Sudan and India where either the father is given custody (Senegal) or the father is given less responsibility even if custody goes to the mother (Sudan and India)<sup>80</sup>.

## 4. CRITICAL RESPONSES

Generally, the idea of human rights in Islam is a subject of intense debate. This is because not all the sources and interpretations of sharia are in sympathy with the guarantee of specific human rights. There are not less than eight sources of Islamic Law whether it be revelations to and traditions of Prophet Muhammad (Koran and Sunna), or immediate consensus and deductions from the primary sources (Ijma and Qiyas), or by way of juristic reasoning, preferences and usages in the case of subsidiary sources. Again, there are not less than four schools of Islamic Jurisprudence. All these individual sources and schools of sharia are not unanimous with regard to the question of human right. Mayer observes thus:

I do not pretend to know what should be deemed as the 'present' version of sharia or what constitutes the definitive Islamic doctrines in

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<sup>76</sup> Koran 2:173.

<sup>77</sup> CILS, *Op.cit.*, p.13.

<sup>78</sup> Suit No. 62/ 95, Maiduguri Upper Area Court.

<sup>79</sup> Suit No. KAS/ SCA / CV/ M 95, Bauchi Sharia Court of Appeal.

<sup>80</sup> Imam et al, *Op.cit.*, p.76.

the area of human rights. I look at what Muslims say and on matters relating to human rights, I observe that there is nothing like an Islamic consensus. There is no one authoritative version of Islamic law that can be said to qualify in all Muslim's eyes as the correct form of sharia, only competing interpretation of Islamic requirements. Some are compatible with human rights and some are not<sup>81</sup>.

The effect of this lack of unanimity in connection with human rights issues in Islam is not difficult to see. Varieties of experience in various Islamic Jurisdictions and among scholars can be quite illustrative. At one extreme, the Taleban in Afghanistan holds, according to Mayer that "sharia requires the most repressive and cruel abuses: stoning adulterers, flogging any woman caught without being swathed in a concealing burqa, depriving girls of all education, and precluding women from obtaining health care or working outside the home, etc"<sup>82</sup>. But at the other extreme, there are "Muslim human rights activists who see human rights as natural outflowings of the teachings of the Quran and who support human rights as complementary to their Islamic faith"<sup>83</sup>. Perhaps the reasons for these divergences of attitudes to human rights are, according to Uwais, "as a consequence of the intellectual efforts of Islamic scholars to relate the basic principles enunciated therein, to their peculiar realities and in the context of their times"<sup>84</sup>. In practice, therefore, one can argue that there is no monolithic and one authoritative version of Islamic law that dictates how Muslims respond to human rights issues.

It is worthy of note that the above observation in relation to human right attitude in Islam is no less relevant to the question of women's rights in particular under the sharia. Hence, recent discussions on the challenging topic of the dignity and rights of women in Islamic law would always contrast the presently perceived and limited rights yielded to women under the patriarchal perception of Islamic law against the rights which Muslim women could and should have under the primary sources of sharia, namely, the Koran and the Sunna. Uwais has argued that it is important to make the above distinction primarily because in the development of Islamic law (Fiqh), women's rights have been whittled down tremendously, mainly as a consequence of the intellectual efforts of Islamic scholars to relate the basic principles enunciated in the primary sources to their peculiarities and in context of their times<sup>85</sup>. Consequently, much of what even women themselves believe and accept today to be women's rights under the sharia although derived from these primary sources, are doctored and influenced by the backgrounds, experiences, and even customs of the scholars of Islamic law in their own times. This underscores the reason why, according to Mayer, recent developments have consisted of 'challenges to the authority of the medieval Jurists, combined with a return to the text of the Quran and the example of the Prophet are the true sources of Islamic law, and the growth of new interpretations of Islamic requirements by Muslim women and enlightened scholars'<sup>86</sup>. These challenges are no doubt directed *inter alia* to the beliefs and dogmas which convey rigidly-held anti-women positions which, according to Uwais, "are especially glaring in Northern Nigeria where culture and religion are intermingled and intertwined."<sup>87</sup>

Fortunately, new perspectives in the understanding of Islam now point to compatibility between sharia and human rights. In particular, feminist interpretations are showing "that there is much in the sources that supports the notion that Muslim women were intended to be equal with their male co-religionists"<sup>88</sup>. These proponents argue that the medieval Jurists were

<sup>81</sup> A.E. Mayer, *Islam and Human Rights: tradition and politics*, 3<sup>rd</sup> Ed. (Boulder. Westview, 1999) p. 46.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> M.Uwais, *Op.cit.*, p.26.

<sup>85</sup> *Ibid.*

<sup>86</sup> Mayer, *Op.cit.*, p.46.

<sup>87</sup> Uwais, *Op.cit.*, p.26.

<sup>88</sup> Mayer, *Op.cit.*, p.47.

strongly influenced by patriarchal traditions when they interpreted the Islamic sources and that they thereby corrupt the original egalitarian message of Islam. This predominance of patriarchy in the interpretation of sources of sharia is largely due to the reality that it has been developed over the centuries mainly from the viewpoints of men.

However that may be, the rights and status of women still constitute a matter for contention among Islamic and non-Islamic scholars vis-à-vis the sources of sharia. Ladan argues that “as human beings, women are entitled to certain basic rights under the sharia”<sup>89</sup>. According to him, “under the sharia, every person irrespective of his/her country of origin, religion, sex, age, race or colour has some basic human rights simply because he/she is a human being who should be respected by every Muslim”. In other words, for Ladan, the fact that the sources of sharia adequately provides for the need to respect the rights of women is not in dispute. No wonder Abdalati writes that “the status of woman in Islam constitutes no problem”<sup>90</sup>. Mayer (1991: 323) observes that it is actually patriarchal attitudes and misreading of Islamic sources, not Islamic tenets that inspire the patterns of discrimination against women”<sup>91</sup>. No wonder Salman believes “it is academically inaccurate to attribute certain male – female inequalities to Islam”<sup>92</sup> and hence, agrees with Dalacoura “that Islam as a religion is not independent of surrounding social, cultural and political factors”<sup>93</sup>. It is therefore agreed by these scholars that a large majority of inhumane practices meted to women have strong cultural or tribal origins and do not necessarily represent religious precepts of Islam. It is strongly indicated too that Islamic sources preach the illegitimacy of any unequal treatment and maintain an absence of any restrictions on women. Positions are therefore galore that in the history of early *ummah*, there are proofs that Prophet Muhammad strove to enhance the position of women in society<sup>94</sup>. This divide between *theoria* and *praxis* in relation to women’s right in Islam is particularly articulated by Safi:

When we turn to examine the attitude towards women in historical Sharia we find that the situation here is more perplexing. For on the one hand, one can see clearly that sharia considers women as autonomous persons with full legal capacity; they enjoy full control over their property; their consent is required for marriage and they have the right to initiate the process of divorce; they can initiate legal proceedings and can grant or receive the power of attorney, they can even assume public office and serve in the capacity of judges. But on the other hand, one can also see that the historical prejudice against women in general has worked against them in the historical Muslim society, and that Muslim jurists managed to undermine their independent legal personality by a host of legal devices....<sup>95</sup>

<sup>89</sup> M.T. Ladan, “Women’s Rights, Access to and Administration of Justice under sharia in Nigeria”, in J.N. Ezeilo, M.T. Ladan & A. Afalabi – Akiyode (eds.), *Sharia Implementation in Nigeria: Issues & Challenges on Women’s Rights and Access to Justice* (Enugu: Women’s Aid Collective & others, 2003) pp. 19-43.

<sup>90</sup> H. Abdalati, H., *Islam in Focus*. (Great Britain: Richard Clay (The Chaucer Press) Ltd, 1985) p.184.

<sup>91</sup> A.E. Mayer, “An Exclusive Interview” in Ibrahim, D., *Human Rights and Islamic Law: Are they Compatible?* Retrieved from [http://www.geocities.com/CapitolHill/Parliament/3251/spring\\_99/Mayer?200618](http://www.geocities.com/CapitolHill/Parliament/3251/spring_99/Mayer?200618). Accessed on 13/04/10.

<sup>92</sup> A. Salman, *Human Rights and Islam: Some Points of Convergence and Divergence*. Retrieved on 08-07-10 from <http://www.renaissance.com.pk/octyipo2y1.html>.

<sup>93</sup> H. Dalacoura, *Islam, Liberalism and Human Rights: Implications for International Relations*, (London and New York: I. B. Tauris Publishers, 1998) p.30.

<sup>94</sup> Salman, *Op.cit.*

<sup>95</sup> L.M. Safi, *Human Rights and Islamic Legal Reform*. Retrieved on 12-08-10 from <http://www.witness-pioneer.org/vil/Articles/shaia/human3.pdf>.



The above complex relationship between women and Islam is defined by both Islamic texts and the history and culture of the Muslim world<sup>96</sup>. Surely, sharia provides for differences between women's and men's roles, rights, and obligations. Even as the Koran dedicates its chapter 4 to women issues, Muslim countries and communities give women varying degrees of right with regard to marriage, divorce, civil rights, legal status, dress code, and education. For instance in Pakistan, the law is silent on an adult Muslim woman's capacity to choose her own partner although there is a growing tendency of consulting young women about their choice in marriage. While this requirement of girls' consent is as a matter of law in Malaysia, the Islamic practice in Sudan, Gambia and Guinea readily dispenses with the consent provided the parents or the guardian agrees. As one of the Maliki Jurisdictions of Islamic law, Nigerian Islam permits a father to compel his virgin daughter to marry even without her consent<sup>97</sup>. This variation in Islamic perception of women is also manifest in the area of marriage age. In Nigeria there are no laws guarding against child marriages for which reason Sani Yerima recently married a thirteen-year old girl, just as can happen in Sudan, Iran, and Niger where by law a girl could get married as early as the age of nine. However, some other Islamic countries such as Tunisia, Malaysia, Pakistan, Sri Lanka, Senegal, Morocco, Jordan, Syria, Egypt and Guinea have laws or at least practices that prohibit child marriages<sup>98</sup>. These Islamo-legal differences exist also in matters of divorce, child custody, inheritance, equality between men and women, ownership of property, education, work and compensation, withholding of dowry, dress code, freedom of movement, political participation and leadership, legal status, religious freedom, and reproductive and sexual rights.

It is to be noted further that even when the above differences are acknowledged, scholars and other commentators vary as to whether they are just and correct interpretations of religious imperatives. Hence, while the conservatives argue that difference between men and women are due to different status and responsibilities, liberal Muslims and Muslim feminists argue in favour of more progressive interpretations<sup>99</sup>. In line with hermeneutical pluralism in Islam, the interpretations and applications of women right issues are shaped by the historical context of the Muslim world. Hence, whether or not a particular Muslim community tends to follow a particular rule is dependent on the prevailing culture which differed between social classes, local conditions and regions. It is claimed that Koranic reforms which improve the position of women relative to their situation prior to Islam, have often been undermined by the reaction of tribal customs, or the use of such customs under the name of Islamic law<sup>100</sup>. However, Moghadam argues that "the positions of women are mostly influenced by the extent of urbanization, industrialization, *proletarianization* and political ploys of the state managers rather than culture or intrinsic properties of Islam"<sup>101</sup>. He specifically refers to economic life.

Much of the economic modernization of women was based on income from oil, and some came from foreign investment and capital inflows. Economic development alters the status of women in different ways across nations and classes.

For Moghadam, this is evidence that status of women has always been influenced by the economy of the region and its development and not necessarily by Islam. No wonder views have been held that women before Islam were more liberated drawing most often on the first

<sup>96</sup> J. Exposito & Y.Y. Haddad, *Islam, Gender and Social Change*. (Oxford: Oxford University Press, 1997) p.56.

<sup>97</sup> Imam et al, *Op.cit.*, p.80.

<sup>98</sup> *Ibid.*

<sup>99</sup> [http://en.wikipedia.org/wiki/women\\_and\\_Islam](http://en.wikipedia.org/wiki/women_and_Islam) . Accessed on 05/09/09.

<sup>100</sup> [http://en.wikipedia.org/wiki/women\\_and\\_Islam](http://en.wikipedia.org/wiki/women_and_Islam) . Accessed on 27/03/12.

<sup>101</sup> V.M. Moghadam, *Modernizing Women: Gender and Social Change in the Middle East*. USA: Lynne Rienner Publishers, 1993) p.5.

marriage of Muhammad and that of his parents, but also on other points such as worship of female idols at Mecca<sup>102</sup>. Moghadam's view however does not square with some other opinions. Lewis holds that "while Islam sanctions a social inequality between man and woman, Muslim women have historically had property rights unparalleled in the modern West until comparatively recently"<sup>103</sup>. Similarly, Turner maintains that "women's status in pre-Islamic Arabia was poor"<sup>104</sup>, citing practices of female infanticide, unlimited polygyny and patrilineal marriage. Watt is in sympathy with this idea when he holds that Islam improved the status of women by "instituting right of property ownership, inheritance, education and divorce"<sup>105</sup>.

The disputations and complexities in relation to women's right in Islam can be articulated with uncountable instances. But the point made is that in Islam the issue of human rights generally and women's right particularly does not enjoy unanimity of perception. This has resulted to multifarious perspectives both in theory and practice in many an Islamic society, community, or state. These variations certainly challenge the claim to universal brotherhood in Islam as encapsulated in the concept of *Ummah*<sup>106</sup>.

## 5. SUGGESTIONS

In order to improve the lot of Muslim women whose human rights are constantly put in jeopardy, there is a genuine need for the rise of activists who will confront the forces that trample upon the dignity of women in the name of religion and its laws. These activists will among other things, work out a more feminist interpretation of the Islamic texts with a view to changing the vision of women in Islam. International associations and non-governmental organizations should be formed for more effective united front against male chauvinism. This must however be accompanied by proper education and creation of awareness on the part of women themselves who often are oblivious of their fundamental rights.

There is an urgent need to cultivate the attitude of respect for women's right and see to it that women are allowed access to justice system. But one greatest obstacle to this is poverty and illiteracy. It is therefore suggested that cultural and psychological barriers to access to justice should be removed. There should also be a review and adoption of macro-economic policies and development strategies that address the needs and efforts of women in poverty. Laws and administrative practices should also be revised to ensure women's equal rights and access to economic resources. It may also be necessary to promote the use of public interest litigation by advocacy groups, and paralegal schemes offering legal aid and advice to poor citizens like women who out of poverty may not be able to afford legal representation. This need may also be assuaged by encouraging the use of alternative dispute resolution methods such as mediation, conciliation and arbitration in the resolution of some family and commercial disputes.

Sharia and Islam generally are in urgent need of modernization and reform. Socio-historical change and evolutionary spirit make it inevitable for Sharia Islam to read the 'signs of the time'. Pursuant to this, Islam needs to reform its laws in line with the modern needs. An Egyptian writer and Judge, Muhammed Saidel-Ashnawi had since 1978 advised his fellow Muslims on Sharia. He claims that Sharia is more a spirit than a letter, a programme of social change aimed at progress and liberation, not at preserving the *status-quo*<sup>107</sup>. According to him, at the time of Prophet Muhammad, laws were made with regard to the circumstances of those

<sup>102</sup> [http://en.wikipedia.org/wiki/women\\_and\\_Islam](http://en.wikipedia.org/wiki/women_and_Islam). Accessed on 27/03/12.

<sup>103</sup> H. Lewis, *What Went Wrong?* (London: Prince Publishers, 2002) pp. 82-83

<sup>104</sup> B.S. Turner, *Islam*. (London: Routledge, 2003) pp.77-78.

<sup>105</sup> W.M. Watt, *The Whole House of Islam, and We Christian with Them. An Interview with the Last Orientalists*. Retrieved on 29/07/2008 from [http://www.alastaimcitosh.com/articles/2000\\_walt.htm](http://www.alastaimcitosh.com/articles/2000_walt.htm).

<sup>106</sup> Abdalati, *Op.cit.*, pp. 36-40.

<sup>107</sup> H.A. Adigwe, "The Rights of Muslims in Nigeria to Sharia" in *German Alumni News Letter*, vol. 7, Sept. 2000, p.26.

times. Today, different circumstances call for different legislations. For instance, at the time of the prophet, people knew one another and could lend money and share benefits without interest. In today's anonymous world, interest is a new way of sharing benefits and of compensating for inflation. It could be remembered that usury was formerly condemned by many religions including Christianity. But today modern developments have made them to re-examine their stands.

Islam has always claimed that Sharia is a divine law and hence immutable. But the extent of this divine origin of Sharia has been an object of controversy among scholars. It does seem that apart from the injunctions of the Koran and the Sunna, all other laws and interpretations made by Muslim jurists can rightly be described as merely human. It is these that give rise to different schools of Muslim jurisprudence. Therefore, if Sharia laws emanated from the social needs of the time, nothing prevents the modern day Islam from reinterpreting Islamic laws along democratic principles. It is either Islam does so or it faces the incident of being relegated as a religion of anachronisms. It is perhaps to avoid this that the Shi'ite sect still practises *ijithad* (personal reasoning) which was believed by Sunnic schools (traditional Islam) to have been closed since the 10<sup>th</sup> Century<sup>108</sup>. It may then be necessary for Nigerian Muslims to resurrect that legal flexibility rather than give blind obedience to an archaic law that seems to have today become inhuman.

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<sup>108</sup> *Ibid.*