A COMPARATIVE STUDY OF WIFES RIGHT TO MAINTENANCE IN ISLAMIC AND STATUTORY LAWS IN NIGERIA: A CASE STUDY OF ZARIA AND SABON-GARI COMMUNITIES OF KADUNA STATE.

BY

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DECLARATION

I declare that the work in this dissertation entitled: A Comparative Study of Wife's Right to Maintenance in Islamic and Statutory Laws in Nigeria: A Case Study of Zaria and Sabon Gari Communities of Kaduna State has been carried out by me in the Department of Islamic Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree at this or any other institution.

Maryam Ibrahim ABDULLAHI **Date**

CERTIFICATION

This dissertation entitled *A Comparative Study of Wifes Right to Maintenance in Islamic and Statutory Laws in Nigeria: A Case Study of Zaria and Sabon Gari Communities of Kaduna state"* by Maryam Ibrahim ABDULLAHI meets the regulations governing the award of master degree in law (LL.M) of Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This thesis is dedicated to my sweet mother, a mother like no other, a rare gem, the best mother in the whole world Hajiya Aisha I. Abdullahi and to my dear children Ibrahim Saleh Mohammed (Khalil), Muhammad Saleh Mohammed (Kamal) and Hauwa Saleh Mohammed (Kameela). May Allah's Rahama and blessings be with you throughout your life.Ameen.

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ABSTRACT

Majority of men in the society are ignorant of the wife's right of maintenance in Islamic and statutory laws. HoweverIslam has provided the wife with the right to maintenance as enshrined in the holy Quran and statutory law respectively. But certain factors are militating against the enjoyment of such rights. Husbands do not maintain their wives according to what the holy Quran and statutes stipulate. It was therefore, investigated whether the Muslim and Christian wives are aware of such right as enshrined in the Holy Quran and statutes respectively. Do the husbands allow their wives to freely enjoy these right if they are aware of them? This has been a serious problem for the welfare of the wives in the society and in fact it is infringement of their established right under the shariah and statutory laws. Lack of proper maintenance of a wife may lead to regular disputes between husband and wife and subsequently may lead to a broken home.This research was embarked upon to clarify a lot of misunderstanding among spouses as to the wife's right to maintenance and will serve as a guide to student who will like to research into similar problems in the near future. It will also serve as an educational material to married women who are ignorant of their conjugal rights. The researcher deemed it necessary to set up parameters for the work for clarity and easy approach. For the purpose of this research, statutory laws applicable in Nigeria are going to be given primary attention.However,where necessary, reference are going to be made to statutory laws applicable in England and under Islamic law, the four Sunni schools will be our guide.It was found that even though it is the husbands responsibility to provide maintenance to his family ,the prevailing economic hardship as indicated by the wife's in the research area has made them work hard in order to support the family.secoundly,There is cultural infiltration into the Islamic teachings on marriage and this has been allowed to supersede the religion teaching on marriage . It is therefore recommended that more publications on women's rights should be made available and the husbands must disregard cultural practices and follow the teachings of the holy Quran and sunnah of the Prophet PBUH.

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GLOSSARY

Nafaqah-Maintenance

Sunnah- The prophets' way of life and his tacit approvals.

Nikkah-Marriage Solemnisation

Zawaj- Marriage

Ibadah-Act of worship

Mithaq-Solemn covenant (agreement)

Khitbah-Proposal

Ijab-Offer

Qabul-Acceptance

WallayatunNikkah-Marriage guardian

Muhrim-Not engaged upon the ritual practices of pilgrimage or umrah

Wali –Guardian

Sadaq –Dowry

Makhrouh- Dislike

Majlis –Congregation

Kitabiya –People of the book

Iddah- Waiting period

Qadi - Judge

Qiyas- Analogy

Quru –A state of purity between two menstruations

Nushuz-Recalcitrant

ABBREVIATIONS

A.B.U- Ahmadu Bello University

CA – Court of Appeal

Cf–Compare

Ch - Chapter

Et al – And others

E.g – For example

KB- Kings Bench

LL.M – Master of Laws

LFN- Laws of the Federation of Nigeria

MA- Marriage Act

MCA- Matrimonial Causes Act

NLR – Nigerian Law Report

NMLR –Nigerian Monthly Law Report

NWLR – Nigerian Weekly Law Report

Op. Cit – Opere Citato

PBUH-Peace Be Upon Him

SAW-*SallallahuAlaihiWasallam*

SWT-*SubhanahuWataAla*

V – Versus

Vis – Namely

Vol. -Volume

WLR- Weekly Law Report

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CHAPTER ONE

1.0 GENERAL INTRODUCTION

1.1 Background to the Study

The Study falls under English and Islamic family law, which is the basis of a tranquil mutual existence in a society. Islamic law is defined as the code of law derived from the Quran and the teachings of Prophet Muhammad SAW[1].On the other hand, statutory law is the term used to define written laws, usually enacted by a legislative body[2].Statutory laws vary from regulatory or administrative law that are passed by executive agencies, and common law, or the law created by prior court decisions.[3] Maintenance is the core and kernel of a marriage because no marriage can survive well without maintenance. Therefore, it is the husband's legal obligation to maintain his wife during the subsistence of the marriage. This obligation of the husband towards his wife entails her incontestable right to lodging, clothing, feeding and general care. This is so under both Islamic and Statutory laws. Although there are some instances where the two laws differ.

Under Islamic law, the Arabic word for maintenance is "*Nafaqah*" which is defined as means of support or sustenance. Legally, it connotes all those things which are necessary to support life, such as food, clothes, healthcare, lodging and general care.[4] The responsibility for the maintenance of wife is a duty which the husband is enjoined to discharge cheerfully without reproach or injury.[5]

[1] http://www.thefreedictionary.com/islamiclaw accessed on 18/10/2015
[2] http://www.hg.org/statutory-lawlegalresources accessed on 18/1/2015
[3] ibid
[4] Hammuda. A.A. (1982) *The Family Structure in Islam*, Islamic Publication Bureau Lagos, Nigeria, pp.148-149
[5] Ibid

The Holy Prophet (S.A.W.) is reported to have said during his farewell sermon that "…then fear Allah regarding women, for you have taken them by the word of Allah and met their private parts lawfully by the word of Allah…And they have upon you, the right Of feeding and clothing in an equitable manner…"[6]It is also reported on the authority of Mu'awiyyah al-Qushairi (R.A.) who said "Oh the Apostle of Allah, what is the right of the wife, a man has upon him" to which the Prophet replied "to feed her when you feed yourself, clothe her when you clothe yourself and you should not beat her face, do not repulse her and do not desert her except inside the house".

In the same vain, The Holy Qur'an 65:7declares thus: "Let him who has abundance spend out of his abundance and whoever has his means of substance straitened to him, let him spend out of that which Allah has given him".[7]

The concept of maintenance under statutory law is different from the common law rule. Common law is based on precedent or case law, common law allow judges to decide cases based on rulings of prior cases with similar circumstances. Statutory law is written law as decided by the legislature or other government agency, the legislation will mainly be based on rules and regulations either mandating or prohibiting certain behaviours of the general public[8].Under the common law, maintenance of a wife can be seen as a one way traffic that is the husband is under the obligation to maintain his wife.However, under the statutory laws; it is a two way traffic.A spouse is required to maintain the other spouse depending on the circumstances of the case. Under the English Common Law, the incidence of marriage imposes on the spouses a number of obligations one of which is the wife's right and husbands duty for maintenance. This obligation

[6] As quoted by Doi.A.I.R(1984) *Sharia: The Islamic Law* ,London, Ta Ha Publications p. 207.
[7]Zayyid.M.Y (1980*) An English translation of the meaning of the Holy Quran*, Dar-Al Choura, Beirut, Lebanon. p.421
[8]http://m.wisegeek.com/what-is-the-difference-between-common-law-and-statutory-law.htmacessed on 18/10/2015

on the husband arose from the fact of cohabitation and the wife's management of the household. A husband and wife may enter into an agreement to live apart, such a separation release each spouse from obligation. In such a situation, if he fails to provide her maintenance and she has no adequate means of support, she becomes at common law his agent for the purpose of obtaining necessaries.The wife's agency of necessity is intended to enable her procure such necessaries for herself and her children as the case may be. Necessaries here include food, clothing, medical expenses and other basic needs but do not include luxuries. Similarly, a wife who has sufficient means of her own to purchase necessaries is not entitled to pledge her husband's credit as there is in fact no necessity. This is the case where for instance she earns sufficient income to sustain herself adequately. Where she is already adequately supplied with a particular necessity, the husband cannot be liable for any further supply of the same item. The husband will also avoid liability if he provides his wife with adequate maintenance.

Furthermore, under the Matrimonial Causes Act High court is vested with powers on appropriate application to make an order for the maintenance of a spouse or the children of the marriage. In the exercise of this function, the court has a free hand to make such order as it thinks fit, consequently, the discretion of the court in this respect is unfettered. But the decree directs that the courts should have regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

1.2 Statement of the Problem

Right to maintenance of a wife is very fundamental in both Islamic and statutory laws applicable in Nigeria. Several researches have been conducted and many books published on this topic in the two legal systems.

However, every now and then, you find cases of dispute between spouses arising from violation of such right to maintenance which in many instances leads to divorce. The question is do the husbands allow their wife's to freely enjoy these rights if they are aware of them? And to what extent Islamic and Statutory laws provide for wife's right to maintenance? If there are clear provisions then why is it that cases are repeatedly seen between spouses due to lack of maintenance? These and many other problems are going to be examined in this research.

1.3 Aims and Objectives

The main aim of this research is to find out whether the wife's right to maintenance is exercised as stated in the Quran and the statutes respectively with the view to achieve the following objectives:

i. To examine the provisions on the wife's right to maintenance under Islamic and statutory laws.

ii. To find out the differences and similarities of wife's right to maintenance under Islamic and statutory laws.

iii. To proffer solution whether there is non- compliance to such laws.

1.4 Justification

This research was embarked upon to clarify a lot of misunderstanding among spouses as to the wife's right to maintenance and also to provide additional material for students and other interested persons in the study of comparative law of wife's right to maintenance .

1.5 Research Methodology

The methodology adopted in this research is doctrinal as well as empirical. The Qur'an and Sunnah, being the primary sources are relied upon, even though references to some

secondary sources is made occasionally i.e. deductions from books, journals, and articles. And questionnaires were also administered and data analysed.

1.6 Literature Review

Some good literatures on the subject are available. Though they deal with only one aspect or the other of this topic and not particularly centred on this topic. So research has to be undertaken with recourse to various sources to bring about this work.

Hammuda Abdal Ati in his book titled: The family structure in Islam[9]made some contribution on this topic. Hetalked about maintenance and its component, where he made reference to residence only. He also brought the issue of other component of maintenance where he talked on the issue of maintenance of a sick wife, maintenance in recalcitrance and maintenance on poverty. The writer however did notemphasis on other issues such as, maintenance of a working wife, maintenance during absence of the husband.

In Sheikh M. T. El-Imairi's Personal status in Islamic law,[10] He discussed the issue of maintenance at length even though he left out some important aspect. He discussed the scale of maintenance of a wife, conditions of entitlement to maintenance but did not go into details in his discussion. He also discussed maintenance when due and when accumulated. However, the writer left out issues like maintenance of wife under special circumstances such as, maintenance of a wife in the absence of a husband, maintenance of wife during poverty of husband, and maintenance of a sick wife. Under this subtitle, the writer only discussed maintenance of a working wife and a disobedient wife.

[9]Hammuda.A.A.(1982) Op.cit pp. 149-160
[10]El-Imairi. M.T (1978) Personal Status in Islamic Law, Center for Islamic Legal Studies, A.B.U Zaria.pg 100-121

Muhammad Aminu Gurin in his book titled An introduction to Islamic family law[11] also contributed in this area of study. He also discussed the conditions of entitlement to maintenance, the incidence of maintenance, accumulation of maintenance. However, the writer also left out some issues regarding maintenance of a wife under special circumstances

Another good literature is the LL.M thesis of Muhammad Arsalan Muhammad titled: The Rights and Obligation of Spouses under Islamic Law.[12] Thewriter discussed maintenance of a wife under Islamic law at length. He discussed maintenance, condition that must be fulfilled before a wife is entitled to *Nafaqah*, wife's right to medication, wife's right to burial expenses and also her right to education.

Abdullahi,M.J in his book titled; Al- kawaakib ad-Darriyyah Fi Fiqh al Malikiyyah[13],also contributed to this literature. He classified wife's into two categories those whose marriage is consummated and those whose marriage is not consummated. The financial status of the spouses, and the circumstances in which the wife loses her right to maintenance. the writer did not discuss maintenance of a wife during the iddah period, maintenance where the wife is sick, and during absence of the husband. This literature will cover all these areas that the writer fails to cover.

Another writer that contributed to this literature is Abubakar Al Jaza'iri in his book titled: A book of greed, manners, character, act of worship and other deeds[14].The writer discussed those that are obliged to give maintenance and those that must give it. He discussed maintenance generally i.e. the wife from her husband either married or divorced revocably, a pregnant woman who is divorced irrevocably, and went further to discuss maintenance of parents by their adult

[11]Gurin. A. M, 2010 An introduction to family law, Alrauf press limited, Zaria
[12]Muhammad. A. M (2000),The rights and obligations of spouses under Islamic Law. LL.M thesis Faculty of law, A.B.U Zaria.p.17
[13]Abdullahi.M.J (2005) Al-kawaakib ad-Darriyyah Fi Fiqh al- Malikiyyah,Maktabat al-Azhariyyah Li at-Turath,vol.2 p.252
[14]Al-Jazai'ri .A (2001) Minhaj Al-Muslim,Darussalam global leaders in islamic books,vol.2 Ryadh

children. The writer also discussed the quality and quantity of maintenance of a wife which is based the financial status of the husband. He further discussed when maintenance is not required, a recalcitrant wife, a pregnant divorced wife when she gives birth, and an irrevocably divorced woman. The writer however did not discussed when maintenance becomes due to a wife, maintenance of a sick wife, maintenance of a working wife, maintenance of a wife when the husband is absent

Also, the LL.M thesis of I.N. Sada titled: Dissolution of Marriage in Islam[15] contributed to this literature. The writer discussed maintenance of a wife during iddah period and also what will be the consequences of lack of maintenance of a wife. Other aspect of maintenance of a wife under Islamic law that the writer left out are, conditions for entitlement to maintenance, when maintenance becomes due and maintenance of a wife under certain circumstance.

Jummai Audi also made some contributions to this literature in her LL.M thesis titled: The Rights of Spouses in Marriage under the Statutes and Islamic Law in Nigeria[16]. She discussed maintenance of wife under statutory law and Islamic law, the extent of maintenance i.e. the financial ability of the husband, the standard of living of the wife prior to the marriage and the prevailing customs and practices of the people of the community of the spouses. Also discussed are the conditions for entitlement to maintenance such as maintenance of a recalcitrant wife, maintenance during arrest, maintenance of a working class wife, maintenance due to poverty of husband and maintenance during the waiting period. The writer did not discuss some aspect of maintenance of wife under statutory law such as the criteria for consideration of the award of maintenance of wife and the common law duty to maintain a wife.

[15]Sada.I.N (1983) Dissolution of Marriage in Islam, Case Study of Concept and Practices in Northern Nigeria, Faculty of Law, A.B.U, Zaria, LL.M Thesis Unpublished

[16]Audi. J. A. M (2003) The Rights of Spouses in Marriage under the Statute and Islamic laws in Nigeria: An Appraisal. Faculty of Law A.B.U Zaria, Ph.D, Thesis Unpublished

In Nigerian Family Law by E. I. Nwogugu[17], the writer also contributed in this subject. He explained maintenance of wife at common law where he discussed a wife as an agent of necessity, he focuses on maintenance of a deserted wife and where the husband drives her out of the matrimonial home. He further discussed termination of the husbands liability, i.e. where the wife commits adultery, on desertion and on the death of the husband. Also discussed are the criteria for consideration of the award of maintenance under the Act i.e. means of the parties, earning capacity of the spouse, conduct of the parties and all the relevant circumstances. And lastly he talked on maintenance of a wife after divorce and maintenance of wife by agreement. The writer however failed to discussed in detail maintenance of a wife generally. i.e. at common law.

In Broomley's Family Law[18], the writer did not vividly explained maintenance of wife under statutory law. The writer discussed the duty to maintain a wife at common law and the current position of maintenance of a wife which the statutes entirely govern. He also discussed the enforcement of the duty to maintain a wife at common law briefly and went further to discuss the wife as an agent of necessity. The writer however left some loopholes by not discussingthe assessment of maintenance orders which shall bediscussed in this thesis.

Another author that contributed to this literature is Margaret C. Onokah in her book titled Family Law[19]. The writer briefly discussed maintenance under the statute. Also discussed is the spouse's agreement to maintenance and settlement, maintenance pending the disposal of proceedings, maintenance of the divorced spouse as contained in section 70 (1) of the matrimonial causes Act, and lastlythe assessment of maintenance orders. Thegap left by the writer is the common law duty to maintain a wife.

[17]Nwogugu. E. I (1974) Family Law in Nigeria, Heinemann Educational books (Nigeria)Ltd.Ibadan.PP197-201
[18]Bromley. P. M, and Lowe. N.V (1992) Family Law, Butterworth and Co. Publishers Ltd, London, 8th Edition. p 649
[19]Onokah. M.C (2003), Family Law, Spectrum Books Ltd, Ibadan. p 236

Chinwuba Obi in his book Modern Family Law in Southern Nigeria[20] made a discussion on maintenance of a wife though briefly. He discussed the duty of maintenance under the general law, maintenance orders under the general law, maintenance orders and enforcement of maintenance order. The wife's liability to maintain her husband under English law was also discussed in the book. The writer however did not discussed the criteria for consideration by the court to grant maintenance and agreement to maintain a wife.

However, this literature intends to cover the gaps bridged by authors of the books used. This literature will discuss issues like maintenance of wife under special circumstances which include; maintenance of a sick wife, maintenance of wife in the absence of the husband, maintenance of wife during poverty of the husband, maintenance of wife during *iddah* period. Other aspect which the writer intend to cover are: conditions for the entitlement to maintenance and maintenance of wife when due .Under the statutory Laws, this literature will cover up gaps left by other authors such as; Criteria for consideration of the award of maintenance, assessment of maintenance orders and common law duty to maintain a spouse.

1.7 Scope of the Research

For clarity and easy approach to the study, the researcher deemed it necessary to set up parameters for the work. For the purpose of this research, statutory laws applicable in Nigeria are going to be given primary attention. However, where necessary, reference are going to be made to statutory laws applicable in England and other common wealth countries as they relate to the topic. Under Islamic law, we have limited ourselves to Maliki School. Questionnaires were also administered. The research was conducted in Zaria and Sabon Gari Local Government Area. All the respondents were females because the research is about wife's right to maintenance. Out of the 100 respondents, 50 were Muslims and 40 were Christians. The ages between 20-25, 15

[20]Chinwuba. O. S. N (1996), Modern Family Law in Southern Nigeria. African University Press, Lagos

people responded, the ages 25-30, 25 people responded, the ages 30-35, 25 responded, the ages 35-40, 15 responded while the ages 40-45, 10 people responded. Out of the entire questionnaire, 10 got missing. Under the marital status 75 of the respondents were married, while 10 respondents were divorced and 5 respondents were widowed.

1.8 Organizational Layout

This writing has been divided into five chapters. The first chapter covers the general introduction i.e. background of the study , statement of the problem, aims, objectives, scope of the research, methodology, justification as well as organizational layout.

Chapter two discusses marriage under both Islamic and English laws, the purpose of marriage under both laws, and preliminaries of marriage under both Islamic and statutory laws.

Chapter three discusses the wife's right of maintenance under IslamicLaws, the basis of maintenance under Islamiclaws, the scale of maintenance under Islamic law, component of maintenance of wife, maintenance of wife under special circumstances, withholding maintenance under Islamic law and maintenance of a wife when due.

Chapter four discusses maintenance of wife under statutory laws, Basis of maintenance of wife under statutory laws, thedifference between maintenance and alimony, criteria for consideration of the award of maintenance of wife under statutory law, enforcement of the duty to maintain.

Chapter five is the comparative analysis of maintenance of wife under Islamic and Statutory laws. This chapter compares the component of maintenance of wife under both laws, obligation of the husband to maintain his wife, withholding of maintenance, scale of maintenance of wife, wife as an agent of necessity, maintenance of divorced wife and maintenance of a wife where the husband is poor.

Lastly, chapter six, being the last chapter draws the curtain on the entire work. It deals with the conclusion, summary, findings and recommendations.

CHAPTER TWO

2.0 MARRIAGE UNDER ISLAMIC AND STATUTORY LAWS

2.1 Introduction

Nikah in its primitive sense means carnal conjunction. Some have said that it signifies conjunction generally. Legally, it implies a particular contract used for the purpose of legalising generation.[21] It is also defined as an institution ordained for the procreation of society and in order that human being may guard themselves from foulness and unchastely.[22]

Marriage under Islamic Law is a divine institution which is both contract and covenant made between a man and a woman which once conducted give rise to certain rights and obligations. For these rights and obligations to accrue, certain conditions must be satisfied. Some of these conditions pertain to the contract itself and others to the contracting parties.Allah (S.W.T.) described marriage in the Qur'an as a solemn covenant between Allah and the human parties and between the parties themselves.[23]

The relationship of marriage is regarded to be based on strong bond and challenging commitment .It is a commitment to life itself, tosociety, and to meaningful survival of the human race. It is a commitment that marriage partners made to one another as well as to God. It is a kind of commitment in which they find mutual fulfilment and self –actualisation and realization, love and mercy, compassion and comfort. Allthese are because marriage is regarded in Islam first and foremost as righteous act and that of responsible devotion.[24]

[21]The Hedayas (1979) Commentary on Islamic Law, Hamilton, New Delhi. p. 25
[22]Ameer.A(1976) Mohammadan Law, 7th ed. p. 241
[23] Cited in Hamuda .A.A (1982) The Family Structure in Islam. Op.cit p.60
[24]Hamuda A.A,(1978) Islam in Focus, International Islamic Federation of Students Organisation. p 128

Marriage is an important means of protecting moral virtues of the society from deterioration and total collapse, this is based on the fact that sexual urge is naturally satisfied through marriage.

Marriage was instituted to ensure the permanence of the marriage relations by which foulness may be prevented thereby promoting a normal family life. It is also an institution by which procreation of children is allowed and the legitimacy of the children is established .The Holy Quran 30:20 states: "And among his signs is that he created for you mates from among yourselves that you may dwell in tranquillity with them, and he has put love and mercy between your hearts, verily in that are sings for those who reflect*"*[25].

The traditional principle upon which the institution of marriage is founded is that a husband has the obligation to support a wife, and that a wife has the duty to serve. This means that the husband has the duty to provide a safe house, to pay for necessities such as food and clothing, and to live in the house. A wife's obligation has traditionally entailed maintaining a home, living in the home, having sexual relations with her husband, and rearing the couple's children.

A statutory marriage may be celebrated either in a church duly licensed for the celebration of marriages or at a marriage registry or in any other place indicated as a special license where this is used.[26]A marriage may be celebrated in a church by a recognized minister of the denomination or body to which it belongs and in accordance with the marriage rites or usages of the said church, denomination or body.[27] The ceremony must take place with the doors open, and in daylight hours, to wit, between 8 o'clock in the morning and 6 o'clock in the evening, and in the presence of at least two witnesses apart from the officiating priest.

[25]Zayid,M.Y(1980) Op.cit p.297
[26]Chinwuba Obi S.N (1996) op.cit
[27] Sec 22 of the Marriage Act, Cap.M6 LFN 2004

The certificate must then be signed in duplicate by the officiating priest, the married couple and two or more witnesses to the marriage. The married couple must be given one of the certificates while the other is sent to the local registrar of marriage.[28]

2.2 The Purpose of Marriage under Islamic Law

The general purpose of marriage is that the couple can provide company to one another, love one another, procreate children and live in peace and tranquillity to the commandments of Allah.[29]Itserves as a means to emotional and sexual gratification and as a means of tension reduction mechanism. It is also a form of *ibadah* because it is obeying Allah and his messenger i.e. Marriage is seen as the only possible way for the sexes to unite.[30]

Marriage beinga strongcovenant[31], it is not a matter which can be taken lightly. It should be entered into with total commitment and full knowledge of what it involves, that is why Allah (SWT) says in the Holy Qur'an 30:20, the call is addressed entirely to mankind to be dutiful to Allah who created him from a single soul, and from it created its mate, and from the two of them scattered abroad, many men and woman[32] with the creation of men and women by Allah love for one another, procreation of children and living in peace and harmony with one another would have been a nightmare without marriage. Qur'an 16:72 provides thus: *"*Allah has given you wives from among yourselves, andthrough them He has provided you with good things: will they then believe in falsehood and deny his favours?"[33]

[28]Ibid Sec. 25.
[29]Concept of Marriage in Islam. http://www.islamawareness.net/marriage/marriage _article001.html retrieved on 18/4/2014
[30]ibid
[31]Gurin. A. M (1984) Prerequisites of Marriage under Islamic Law: Their Application in the Northern Nigeria. LL.M Thesis unpublished
[32]Zayid, M. Y. (1980) Op.cit p.297
[33] Ibid p.195

Apart from the above and many other Qur'an provisions on the purpose of marriage, there are also a lot of prophetic traditions further explained and buttressed the purpose of marriage institution. The Prophet (SAW) was reported to have advised in one tradition: "O you young men, whoever is able to marry should marry for that will make him to lower his gaze and guard his modesty*".*[34]

Marriage therefore can be regarded as the first cohesive force that makes civilization of man a practical reality without which there would have been no family, kinship, forces of unity, civilization, etc. It is through the institution of the family that humanity is united and civilization made possible. The home is, in fact, the first training ground for love and service. Marriage therefore apart from its role as a religious sacrament can as well regarded as a social contract.

2.3 Requirements of a Valid Islamic Law Marriage

Marriage as a contract under Islamic Law between two parties rest its validity on certain requirements without which there cannot be valid and lawful marriage. These requirements are: offer and acceptance, guardian, witnesses, dower and the parties.

2.3.1 Betrothal (*Khitbah*)

There are preliminary steps taken as soon as a man thinks of getting married. From the period that the man made up his mind that he would marry the proposed wife; some steps must be taken before the final conclusion of the marriage. These steps are referred to in Arabic as *Khitbah*. The man should acquire as much knowledge as possible about the woman he intends to marry. If however he is convinced that the woman he is proposing would be his suitable mate, then it is recommended that he should look at her in accordance with the stipulation of the Holy Quran. He should look at her face and her hands only so as to gain sufficient idea about her

[34]Al-Jaza'iri,A(1976).*Hadith of the Messenger of Allah (S.A.W)*, Minhajul Muslim, p. 372

personality and beauty.[35]It is forbidden for him to gaze at her in a passionate way as both sexes are ordered by the holy Quran to lower their gaze and guard their modesty and chastity. Quran 24:30 states: *"*Say to the believing men and women to turn away their eyes (from what is unlawful) and to restrain their sexual desires .This will make their lives purer. Allah has knowledge of all their actions."[36]

The suitor may be allowed to sit in a room with the proposed woman provided she is decently dressed and with a *mahram* i.e. near relative that is within the prohibited degrees of marriage, such as father, mother, brother, sister etc. needs to be present with them. The prophet (PBUH) has said: "A man and a woman should not be alone in a secluded place because the Satan will be theirthird.[37]

The man should also consider the quality of the woman he desired to marry. It is reported that the Prophet (SAW) said "A woman is married for her wealth, herfamily, herbeauty, and her piety.[38]Also, the lady to be betrothed must be lawful for the suitor to marry i.e. there should be no marriage impediments between them and she should not be betrothed to another man upon whom she has already inclined. This practice is peculiar to some ladies, most times a girl will have so many suitors at a time and all are willing and ready to marry her. This practice is prohibited as it will create enmity between the Muslim brother. The Prophet (SAW) was reported to have said: "*A believer is a brother to a believer; hence it is not lawful for him to bargain upon the bargain of his brother, nor propose the hand of a girl/woman upon the proposal of his brother, until the latter (voluntarily) withdraws the proposal".*[39]

[35]Dasuqi.M.(n.d) HashiyatadDasuqiAlasharh al-kabir,Dar al Fikir,Beirut,Lebanon.vol.2,p.215
[36]Zayid,M.Y(1980) Op.cit p.256
[37]Sabiq.S (1983) Fiqh as Sunnah,Dar al-Fikir,Beirut,Lebanon.Vol.3,p.27
[38] Ibid Vol.2 p.18
[39]Al-Sabunie ,M.A (1991)Azzawai al islamie almubakkirsa'adatanwahasanahDarulQalam, Dimashq. Cited in M.M Arsalan (2015) Islamic marriage rights and obligations,Ahmadu Bello University Press Ltd, Zaria, Kaduna State.

2.3.2 Offer (*Ijab*) and Acceptance (*Qabul*)

Offer and acceptance is the main and actual pillar of the marriage contract. It is essential to the validity of a marriage contract. They signify the mutual agreement and acceptance between two parties to the marriage bond.

Ijab and *Qabul* must be stated in clear, well defined words, in one and the same sitting. A proposal made at one meeting and acceptance made at another meeting does not constitute a valid Muslim marriage.[40]These have to be in the presence of witnesses. The marriage guardian may help the parties express the terms of the offer and acceptance as thus:

The *wali:* "I offer you the woman under my custody (so-and-so) according to Allah's (SWT) law and His messenger's (PBUH) *sunnah*, and for the *mahr* and conditions to which we have agreed",[41]and the wali of the bride groom will respond: "I accept marrying the woman under custody of (so-and-so) according to Allah's (SWT) law and His messenger (PBUH) *sunnah*, and for the *sadaq* and conditions to which we have agreed".[42]However, the expression of the terms may vary depending on the culture and traditions of people in a locality.

The offer and acceptance must coincide in content, forexample, if the *wali* says, " I give you so and so in marriage for a *sadaq* of one thousand "and the bride groom responds saying, "i accept marrying so and so for a *sadaq* of eight hundred", the contract becomes immediately invalid.[43]Any mistake either from the bride's representative or the bridegroom will render the contract invalid. So therefore, the expression of terms should be with caution.

[40]http;//www.islamiclaws.com/essentials-of-muslim-marriage-nikah-eligibility-for nikah. Accessed 10/2/2015
[41]http://www.halaloccations.com/article/27/islamic-wedding-series(part-2);thenikah ceremony.accesed15/2/2015
[42]ibid
[43]ibid

2.3.3 Marriage Guardian (*Walayatun Nikkah*)

Everything in this world which has value is safeguarded. In the same way the status of women in Islam is elevated and their honour and respect safeguarded to the highest standard and that is why a *wali*is very important and vital in marriage. It determines whether or not a certain marriage contract that has been performed is valid.

The word *Wali*is taken from the Arabic word *Al-wilayah* meaning the willingness to take responsibility to manage or to take up the authority to administer something such as managing the orphans by attending to their needs and to become a *wali* for a woman by performing a marriage contract for her.[44]

Marriage guardianship has therefore been defined as "the legal authority invested in a person to safeguard the interests and rights of another who is incapable of doing so independently. It is the authority of a father or nearest male relative over minors, insane or inexperienced persons who need protection and guardianship.[45]

However, for a marriage guardian to be qualified he has to be Adult, sane, Muslim, male and not *Muhrim* (not engaged upon the ritual practice of pilgrimage or *umrah).*The marriage guardian needs to be upright so as to help the ward in making a wise decision and the guardian is expected to participate in the decision making process.

Furthermore, the two categories of marriage guardian are *walimujbir* and*waliIkhtiar*. *Walimujbir* are those who impose their power regardless of the ward's wishes. They are regarded as the perfect *wali* because they have full power to endorse a marriage on behalf of everyone under their care. They are normally the nearest male agnate relative in whose absence; a community official may assume the responsibility. According to the Maliki School, it is the

[44] Retrieved from Wali(Guadian) in islam.www.islam.gov.my/…..wali in islam .pdf accessed on 12/4/2012
[45]Gibb,H.A.R(1961)Shorter encyclopedia of islam, London

father or his executor who has the power of Ijbar.under the malikilaw, power of *ijbar* is vested on the father only. The executor can also exercise the power on appointment by the father. The appointment may be by will or verbally authorising him to do so. The executor cannot impose his power unless the father has pointed out to him the bridegroom and whether the marriage may take place before or after puberty[46].

In the case of **Mairo Baba Nasidi v. Alhaji Sani**, power of *ijbar* was exercised by an uncle who was the brother of the girl's father. Mairo Baba Nasidi was a fourteen years old student of women teachers college Bajoga in Bauchi State. Herfather's senior brother went to her school to seek for her transfer letter to queen Amina School, the principal in good faith granted the application. Instead of taking her to the supposed school, he married her out to one Alhaji Sani, a business man in kano who is about seventy years old. She refused to go to the house and remained in her mother's home. It was reported that he chained the hands and feet of mairo while he beats her. The matter was taking to the court where the lower court upheld that the uncle did not have power of *Ijbar*.[47]

Under Maliki law, The father may impose his power of Ijbar on his virgin daughter, his young daughter who has lost her virginity either through marriage or other ways, his adult virgin daughter until she becomes somewhat old, his adult daughter who lost her virginity outside wedlock, whether by accident, illness, or by illicit relations, his adult daughter who is completely insane even if she gave birth or has been divorced[48].

Under Hannafi law, the power of *Ijbar* can be exercise only upon minor daughters whether virgin or not. Where a virgin daughter has attain the age of puberty, the power of *Ijbar* lapses .According to this school, the power of *Ijbar* is restricted to the father and agnatic

[46]El-Imairi.M.T, Personal status in Islamic law op.cit p.80
[47]Sharia Law Report a CILS, A.B.U Zaria Vol. 1 p. 38
[48]ibid

relations in order of priority. If the minor has been given in marriage by a guardian who is not the father or grandfather, the minor has the option, on attaining the age of puberty of repudiating the marriage.[49] This shows that even if the father gives out his daughter in marriage against her wishes and she is of age, the marriage must be repudiated if she so desires.

The Shafi' is maintain that the power of *ijbar* must belong to the father and fathers father only and not the executor or other agnate relations. They restrict the right of *ijbar* in case of virgin daughters whether adult or minors and also to insane daughters but not non- virgin daughters even if they are minors.[50]

The Hambali's agree with the Maliki in restricting the power of *ijbar* to the father alone. In exercising this power, it should be restrictedto minors only whether virgins or not.[51]

WaliIkthiar is the representative of the woman in making her marriage contract with her express authority. He is just an instrument for concluding the contract upon the consent of the woman. This guardianship is committed to several persons as such there is bound to be conflict in the order of priority. This makes the school have different views.

Hannafi Law are of the view that agnatic relations takeprecedence over cognates, andamong the agnates the order of priority include: Thewoman's son and his descendants', thefather and the fathers father ,how high so ever, brother's germane and consanguine and their sons, paternal uncle's germane and consanguine and their descendants.[52]

Maliki school agrees with Hannafi according to the order of priority. In the absence of walimujbir, then the agnates in the order mentioned under Hannafi school. In case of the father, he must not only be the natural father but also legitimate father. Also in the case of *walad al-*

[49] Muhammad.A(1973)*The Religion of Islam*. Lahore.p522
[50] Al-Marghinani.Hedaya (1979) Translated by Hamilton, New Delhi
[51] ibid
[52] Al-Jaziriyi.A(n.d) FiqhalaMadhahib al-Arba'avol.iv,pp 26-27.In Gurin A.M(1984) Prerequisites of Marriage under Islamic Law op.cit. p 86

zina, (the illegitimate son) his guardianship for the marriage of the mother is only valid where the husband was not the mothers partner in the illicit sex relations by which the son was begotten.[53]

The same rule applies to the corresponding females' relations and cognates except that the mother of the bride takes precedence over her daughter.[54]

In Shafi'i school, the rule of priority is the same as the other two schools except that he does not approve of the son and his descendants as being wali (guardian).The priority to act as a guardian is so strict that in no case can a remoter guardian participate in a marriage when a nearer guardian is alive. The shafi'is observed that it is necessary to follow the order of priority and the right does not devolve to the person next in the order, unless the first person whose turn it was, is incapacitated through insanity, minority, difference of religion, or being engaged in pilgrimage otherwise, the order must be strictly followed.[55]

The Hambali's agree with the Shafi'is in so far as the rule of priority is concerned. They also agree with the Maliki's that where the *Walimujbir* refuses to give his ward in marriage for no just cause, the political ruler will step in and act in accordance to the interest of the ward.

In essence, Maliki, Shafi'i, and Hambali schools agree that failing the natural guardians, that is the agnatic male relations of the ward, the guardianship devolves on the political ruler which may well mean the *Qadi* (judge) .After him, then the responsibility is on any Muslim. i.e. a woman can appoint any one among the Muslim community to act as her marriage guardian.[56]

In conclusion, a*wali* is one of the wedding pillars that need to be properly identified and carried out according to the correct order. Failure to obey it will result in invalidating the

[53]Ibid
[54]Ibid
[55]Sabiq.S(1973) op.cit.p 134, In,Gurin A.M(1984)op.cit p 88
[56]Ibid

wedding and will leave a negative impact on the marrying couple and the society at large. Therefore, it is everybody's responsibility especially the closest family to be brave to uphold the truth in tackling the issues relating to guardianship in marriage.

2.3.4 Dowry (*Sadaq*)

Sadaq in Islamic law refers to the gift that must be given by the husband to the wife at the time of wedding. It is anything lawful and of value. It may be money, moveable property, crops, animals, etc. It may be a certain amount of money which is of cause the most common nowadays. Quran 4:4 provides: *"*Give women their dowry as a free gift; but if they choose to make over to you a part of it, you may regard it as lawfully yours".[57]Also Quran 4 v.24 states: "Except for those prohibited all women are lawful for you provided you seek them with your property and give them their dowers as appointed".[58]Quran 6 v.5 states "Lawful unto you in marriage are not only chaste women who are believers, but chaste women among the people of the Book revealed before your time when you give them their due dowers and desire chastity, not lewdness nor secret intrigues.... *"*[59]The Prophet (SAW) gave each of his wife's a payment of *sadaq*, ranging from token sums , the granting of freedom from slavery when being made a wife, to the payment of 400-500 dirhams. His wife Umm Habiba's *Sadaq* consisted of 4000 dirhams.[60]

From these verses and others and also from the prophetic traditions it is clear that marriage without dower is unlawful.

The giving of the dowry is a symbol of the husband's capability in marriage. Inaddition, it reflects the love and willingness of the husband to live with the wife and to sacrifice for the welfare of his family. It is also a sign of respect from the husband to the wife. The *sadaq* needs

[57]Zayid,M.Y(1980) Op.cit p.53
[58]Zayid,M.Y(1980) Op.cit p.57
[59]Ibid
[60]Cited in www.islamawareness.net/marriage/dowry/dowry_article001.htmlacessed on 20/10/2015

to be pure in nature, also it should be useful and capable of delivery it should not consist of a wine or a fruits liable to perish.[61]

However, the dowry is not included among the essential pillars of marriage or prerequisite for the validity of a marriage. It is not necessary to be mentioned in the marriage contract. If the couple agrees to marry without determining the amount of the dowry, the marriage is still valid but the husband is required to pay a commensurate dowry that befits her social status. AlsoQuran 2:23 states that "There is no blame on you if you divorce women before you have touched them, or appointed a dower".[62] It is based on a story that happened in the days of the Prophet (PBUH) in which a woman was married with no mention of a dowry, not long after, the husband died before the marriage was consummated so the prophet (PBUH) gave out an order for the women to receive a commensurate dowry[63].

The question of accepting services as *sadaq* is disputable. Imam Malik said it is *makrouh* and some Maliki jurists allow such services. Imam Shafi'i shares the same view with the former. Ibn Al Qasim, the great Maliki jurist didn't allow such services and imam Abu Hanifa agreed with him. They rely on Quranic provision which provides: "I intend to wed one of these my daughters to thee, on the condition that thou serve me for eight years....."[64]

By the above verse, services of the husband for a period of eight years were accepted in lieu of the *sadaq*. The verse related to something that happened before the advent of Islam. So the reason of their dispute was because whether Muslims were bound by the laws prior to the advent of Islam or not[65].

[61]Mahr from Islamic perspective retrieved from http://www.islam.gov.my/sites/default/file/mahr_from_islamic_perspective.file accessed on 18/5/2013
[62]Zayid.M. Op.cit p.
[63]Ibid
[64]Zayid,M.Y(1980) Op.cit p.284
[65]El-Imairi.M.T, Personal status in Islamic Law op. cit pg 34

Islam does not set rates on maximum or minimum limits for the dowry. There are no authentic hadith or reports explicitly stating a minimum or maximum amount of dowry. All hadith which explicitly state such things are weak narrations. However, some scholars rely on some reports to determine the question of minimum or maximum dowry. Allah SWT describes the dowry in Quran 4:19[66] as thus: "...And if you wish to replace a wife with another, do not take the dowry that you have given her even if it is a talent of gold". From this verse, it shows that there is no maximum or minimum limit to the amount one may give as dowryIt depends on the financial status of the husband, circumstances of the time, place and society. We cannot apply the *sadaq* of the 7th century in the 20thcentury. The Prophet (PBUH) has encouraged us to simplify the giving of the dowry. "The best woman is the one whose *sadaq* is the easiest to pay"[67].as the financial conditions of the people in different times and places changes, the amount of *sadaq* can be determined accordingly. A woman came to the Prophet (SAW) and offered herself to him. He declined, so a man who was present with him said: "O Messenger of Allah! Marry her to me." The Prophet asked him: "Do you have anything to give her?" He said: "No!" The Prophet (SAW) said: "Give her at least an iron ring." But he still could not afford it. The Prophet (SAW) then asked him: "Do you memorise any portion of the Qur'an?" He replied: "I have memorised such and such chapters." The Prophet (SAW) then said: "…I marry her to you for the portion of the Qur'an that you have memorised."[68] This means that he is expected to teach her some of what he has memorised, and treat her kindly based on this memorisation.

The practice now in our society is that the bride to be is hardly given the chance to determine her *sadaq*. And even after it is paid, she is not given the money, but rather the money

[66]Zayid,M.Y(1980) Op.cit p.56
[67]Sabiq.S (1983) Fiqh as sunnahOp.cit vol.2
[68]Bilal. A. A *The Marriage Contract: Its Basic Element.* Retrieved from http://www.missionislam.com/family/marriage-contract.htm accessed 18th may 2013

will be used to buy things needed for her wedding by her parents. It is the writers' view that since the *sadaq* is a gift from the groom to the bride, then it should solely be given to her. It is left for her to decide on what to do with the money.

2.3.5 Witnesses

The presence of two witnesses is needed for the validity of a marriage contract. The Prophet (PBUH) said: "There is no marriage without two witnesses."It was also reported in one narration that a marriage which was contracted in the presence of one male witness and one female witness was reported to caliph Umar, where upon he said "This is a secret marriage and i cannot approve of it, and had it been that the parties were brought before me, I would have decreed that they be stoned to death".[69]

The witnesses should be sane and mature. They should identify the two spouses and be aware of all the needed requirements of marriage, such as dower. Moreover, the imam or the person who handles the marriage contract could be counted as a witness. As long as the marriage is established on a mutual approval in front of the two witnesses, the marriage is valid[70].

There are divergent views among the Muslim jurists as to whether the presence of witnesses at the marriage contract is an essential element of marriage or not. Maliki jurist are of the view that presence of witnesses is not a necessary condition to the validity of the marriage contract. They are only essential to the marriage contract. Thewitness must not be present at the time of making the contract.[71]However, if the marriage is consummated without witnesses, such

[69]Sabiq.S.(1973)Op.cit p.57

[70] Anonymous (2004)*Conditions of witnesses to the marriage contract*. Retrieved from*http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503543242* accessed on 19/5/2013

[71]El-Imairi.M.TOp.cit p.

a marriage should be annulled before consummation, but it may be allowed to subsist after consummation provided it was given adequate publicity.[72]

While the majority of the sunni schools consider the presence of two witnesses at the formation of the marriage contract asnecessary condition for the validity of the marriage contract.[73]But in Shi'a law, no witnesses are necessary for the validity of a marriage. Thus, a marriage held in the absence of witnesses would be valid although the presence of the witnesses is required at the time of dissolution of the marriage.[74]

On the conditions requisite to the competency of witnesses, they must be adultMuslims, if both of the two spouses are Muslims, but if the wife is a *kitabia* then witnesses may be of any other revealed religion. The witnesses should be sane. Thus, if the witnesses or either of them is insane, or minor or dumb, ordrunkard then the marriage is void.[75]

The Shafi's and Hanbali scholars believe that the witnesses to a marriage contract must be male. According to them, if a man and two women attested to a marriage contract, it would not be valid. They cited as evidence in that regard a statement reported by Abu `Ubayd from Az-Zuhri who said:"It was regarded as *Sunnah* of the Prophet (peace and blessings be upon him) that women are not to bear witness in cases with regard to punishments, marriage, and divorce." They also give as reasoning for their opinion that the marriage contract is not like business contracts and is usually attended by men, so, the testimony of women would not be effective in proving it.

On the other hand, the Hanafi scholars believe that women's testifying to a marriage contract is valid. They say that it is valid that a man and two women bear witness to a marriage contract, as is the case of two men. They cite as evidence of their view Almighty Allah's words

[72] Ad-Dasuqi.M(n.d) Op.cit vol.2 p.216
[73]Ibid
[74]Bail(1974) Digest of Muhammadan law, Vol.1,Lahore.
[75]Ibid

in Q.2 v.282 which states: "And call two witnesses, from among your males, and if two men cannot be found, then a man and two women, from among those you accept as witnesses[76].They also say that a marriage contract is like a sale in that there is a mutual compensation for the contracting parties, and so, it may be proved by the testimony of two women with a man. As for it being a requirement that the witnesses be Muslims, there is no scholarly difference as to that when the contracting parties are both Muslims[77].

The scholars have differed when the groom is a Muslim and the bride is Christian or a Jew. According to Imam Hambali, Imam Ash-Shafi`i and Muhammad ibn Al-Hassan, if a non-Muslim bore witness to a marriage contract in which the groom is a Muslim, it would be invalid, for the testimony of a non-Muslim is not acceptable in the marriage of a Muslim.

Abu Hanifah and Abu Yusuf, however, view that the testimony of two Christian or Jewish men to the marriage contract of a Muslim man to a Christian or Jewish woman is acceptable.

According to the above fatwa, it does not matter whether the witnesses are relatives of the spouses or not. What matters is that they meet the above mentioned conditions[78].

A witness to a marriage contract is one of the easiest requirements of a valid Islamic law marriage because hardly will you see a marriage with less than two witnesses.

2.4 The Purpose of Marriage under Statutory Law

In the English common law, from which our legal doctrines and concept have developed, a marriage is a contract based upon a voluntary private agreement by a man and a woman to become husband and wife.[79]

[76]Zayid, M.Y. (1980) Op.cit p. 33
[77] Anonymous (2004)*Conditions of witnesses to the marriage contract*op.cit
[78] Ibid
[79]http://www.law.cornell.edu(2007) the purpose of marriage under Statutory Laws .accessed 12/6/2012

Marriage was reviewed as the basis of the family unit and vital to the preservation of morals and civilization. Traditionally, the husband have a duty to provide a safe house, pay for necessities such as food and clothing, and live in the home, having sexual relations with her husband and rearing of children.[80]

People marry for many reasons including one or more of the following: legal, social, emotional, economical, spiritual and religious. These might include arranged marriages, family obligations, and the legal protection of children and public declaration of commitment. The act of marriage usually creates normative or legal obligations between the individuals involved.

2.5 Requirement of a Valid Statutory Marriage

The non-compliance with the requirements of a valid statutory marriage will invalidate the marriage. Therefore for a statutory marriage to be valid, the following requirement must be met.

2.5.1 Majority (Marriageable Age)

Before contracting marriage under statutory law, parties have to reach certain age before they have the capacity to enter into a contract because marriage is a contract and before a contract can be valid, the parties to it must have a necessary legal capacity.

The Marriage Act and the Matrimonial Causes Decree (1970) do not lay any mandatory minimum age for marriage. But where a party is under the age of twenty one, there is need to obtain the written consent of either of the parents or the guardian unless if the party is a widow or widower.[81] It was thought that the gap should be filled up by resorting to the law and practice for the time being in force in England. However, with the coming of the Matrimonial Causes Act

[80] Ibid
[81] Onokah.M.C(2003) Op.citp.124

in 1970[82], any resort to English law was made inapplicable.[83] According to the Matrimonial Causes Act, a marriage is void ab initio where either of the parties is not of "marriageable age".

However, as it has been mentioned, even the decree did not fix any specific age of marriage. It only makes any marriage void where either of the parties is not of marriageable age.[84] Therefore in the absence of statutory definition of "marriageable age", common law rule may apply. And under the common law, the marriageable age is the age of puberty that is 14 years in the case of a boy and 12 years in the case of the girls.[85]

With regards to the child's rights Act which was domesticated in Nigeria by the National Assembly in 2003,It prohibits themarriage of a female child who is below 18 years old. The Act defines a child as somebody who is below the age of 18.[86]By necessary implication, anyone below the age of 18 years in Nigeria whether male or female is not of a marriageable age, and therefore, cannot conduct a valid marriage.

This Act is expected to be adopted and domesticated by all the 36 States of the Federation. However, only 18 states of the Federation have adopted or domesticated the Act. These states are in the Southern part of Nigeria.

However, the point must be made clear that the Act is a response to global call for better condition and treatment of children. Children have rights that must be protected by all and the welfare of children should be paramount to every civilised and decent society.

2.5.2 Consent of Parent

The consent required is that of the father, or if he is dead or of unsound mind or absent from Nigeria, that of the mother. If the consent of the parent cannot be obtained for any of the

[82]Sec. 18 MCA Cap M7 LFN 2004
[83] Sec 8 Ibid
[84] Sec 3(1)(e) Ibid
[85]Harrod v. Harrod (1854) 1 kb 469
[86]Section 13 1999 Constitution of Federal Republic of Nigeria

above reasons, the consent of the guardian must be obtained. The high court can only give its consent to the impending marriage of a minor if there is no parent or guardian capable of consenting to such a marriage[87].

Parental consent is not necessary to a marriage of a person under twenty-one years of age, if he or she is either a widower or a widow. The reason of this exception is not clear. It might well be that such a person is regarded as emancipated from the parents on marriage, and he or she does not revert back to this parental care after the death of the other spouse.[88]

The effect of marriage celebrated without parental consent is that such a marriage by virtue of section 33(3) of the Marriage Act is not invalid after the celebration of the marriage in **Agbo v. Udo,**[89]the petitioner alleged that the co- respondent had committed adultery with his wife. The respondent claimed that the marriage was invalid under the Act since it was contracted without the written consent of her father-since she is a minor and so contrary to the provisions of the Act. This contention was rejected by the court which held that even if such consent was not obtained, the marriage was not invalid after celebration because of the provision of section 33(3) of the Marriage Act.

2.5.3 Prohibited Degrees

Parties to a statutory law marriage must not be within the prohibited degree of consanguinity (relationship by blood), or affinity (relationship by marriage).[90]

Under the matrimonial Causes Act, a marriage is prohibited if the woman is, or has been, theman'sancestress,descendant,sister,father'ssister,mother'ssister,brother'sdaughter,sister'sdaughter.Marriage is also prohibited on the ground of affinity between a man and his wife's mother,

[87]Nwogugu.E.I.(1974) op.citpg 27
[88]Onokah.M.C (2003) Op.cit p128
[89] (1947) 18 NLR 152
[90] Sec 3(1)(b) MCA Op.cit

wife's grandmother, wife's daughter, wife's son's daughter, wife's daughter's daughter, father's wife, grandfather's wife, son's wife, son's, wife, daughter's son's wife.

For the purpose of this schedule, it is immaterial whether the relationship is of whole blood or half blood or whether it is traced through or to any person of illegitimate birth.

An exception to this general rule has however been provided by section 4 of the Matrimonial Causes Act which enables two persons within the prohibited degree of affinity who wish to marry each other to apply by writing to a High court judge for permission, which the judge may grant if he is satisfied that the case has circumstances so exceptional as to justify the grant of permission.[91] The exceptional circumstance require before a judge can grant permission for such a marriage means situations that are so serious and beyond the ordinary so as to permit the celebration of a marriage which will otherwise be void. An instance is where the parties met without knowledge of relationship and had a child or children. If they marry with the permission of the judge, their marriage will be valid. It may however be annulled on other grounds.[92]

2.5.4 Prior Customary or Statutory Marriage

A party to a subsisting customary or statutory marriage is denied capacity to enter into another statutory marriage if either of them is already married under the Act to another person and the marriage has not been dissolved by any court of law. Where a party default in the observation of this rule and goes on to contract a marriage under the Act, the subsequent marriage shall be void and such a person is guilty of an offence punishable with imprisonment.[93]The Registrar shall not issue a certificate to marry to the intending couples unless he is satisfied that there is no subsisting customary law marriage on the part of either of

[91]Ibid.Sec 4(1) and 4(2)
[92] Ibid. Sec 4(8)
[93] Sec 34 and 48 of the Marriage Act Op.cit

the parties wishing to marry under the Act.[94]In the case of **Spiers v. Hunt**,[95] it was held that the court must declare this type of agreement void because it is an encouragement to immorality.

Thus, by the provision of the Marriage Act, persons who may validly contract statutory marriage are;Person who are not married to a third party either under customary or statutory law;Persons who having been previously married under the Marriage Act have obtained valid degrees of divorce;Persons who have contracted a customary law marriage and then go ahead to contract a statutory law marriage, as long as it is between the same people. Furthermore, a man married to several wives under customary law can validly contract a statutory law marriage with one of his wives in as much as he first obtains dissolution of all other marriages.

2.5.5 Consent of the Parties

The silence of the Marriage Act in relation to the consents of the parties themselves was ameliorated by the M.C.A. 1970 which provides for the "real consent" of the parties, that is, consent obtained without "duress or fraud".[96]Where consent is obtained by mistake, misrepresentation, duress and undue influence, the element of consent stands negated and renders the marriage void for lack of consent.Thus were one party alleges that the consent he/she gave to the other was not 'real' by reason of its having been obtained by fraud or duress, the court will decide on the evidence before it whether a case for a void marriage has been made out.

[94]Sec.11(1)(d) Marriage Act Op.cit
[95] (1908) 1 kb 720, 724
[96] Sec.3(1)(d)i MCA Op.cit

CHAPTER THREE

3.0 MAINTENANCE OF WIFE UNDER ISLAMIC LAWS

3.1 Introduction

Islam is a religion that has laid down rights and responsibilities for its couples. These conditions help to achieve peace, love and harmony between the couples. In its general terms, maintenance connotes the act of maintaining or being maintained; the preservation or up keeping of a certain object in a particular state or conditions and to maintained means to preserve, support or to furnish sustenance for a particular object.[97]

Thus, the general concept of the word is that for one to maintain a particular object, one has to by all means provide for all the necessaries which conductively allow for a smooth existence of that object.

Under Islamic law, the correspondent Arabic word for maintenance is *"NAFAQAH*" which is defined as means of support or sustenance. In legal parlance however, it connotes all those things which are necessary to the support of life, such as food, clothes and lodging, although many jurist confine it solely to food. In Islamic law, the Holy Quran and *Sunnah* of the Prophet (SAW) have enjoined kindness to woman and that the husband is to consort his wife in an equitable and kind manner. The responsibility for the maintenance of the wife is a duty which the husband is enjoined to discharge without reproach or injury.[98]

In Islam, it is the duty of the husband to provide for the family's expense, including the personal expenses of the wife, and that the wife has no liability in this respect, the wife may have enormous wealth and may possess many times more wealth than the husband does, but still she has no obligation to contribute towards the family expense in money or in the form of work it is

[97] The Lexicon Webster Dictionary, Vol. 1
[98] Hammuda A. A. (1982), Op. cit pp. 148-149

optional and depends on her own will and inclination to contribute to the maintenance of the family.

3.2 Basis of Maintenance of Wife under Islamic Law

The wife's right to maintenance derives its authority from the Quran, *Sunnah, Ijma* and *Ijtihad* of the scholars or jurists.[99]According to the holy Quran, Allah says in chapter 2:233: ".....But the father of the child shall bear the cost of their food and clothing on equitable terms...."[100]This verse refers to the husband as the father of the child and is made responsible for the maintenance of both the child and the mother according to his means. It is required under *Sharia* for a husband to provide what is reasonably sufficient as guided by the ethics and teachings of Islamic law.

Allah (SWT) in Quran 65v.6 says; ".....Let them live in the same style as you live according to your means; annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend your (your substance) on them until they deliver their burden; and if they suckle your (offspring) give them their recompense and take mutual counsel to what is just and reasonable. And if ye find yourselves in difficulties, let another woman suckle the child on the father's behalf"[101]In addition, Quran 65 v.7 states: "Let the man of means spend according to his means; and the men whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him".[102]

Also, Quran 2:240 provides: "For divorced women, maintenance should be provided on a reasonable scale. This is a duty on the righteous".[103]

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[99]Qurut,N.H.(1995) *Mauqifulislam Min Nushuziz Zaujaini au Ahadihima,*Ummul –Qurahuniversity,Mecca p.157-158
[100]Zayid.M .Y.(1980) Op.cit p. 26
[101] Ibid p.420
[102]Ibid p.421
[103] Ibid p.27

Quran 4:34 states that: "Men are the protectors and maintainers of women because Allah has given the one more strength than the other and because they support them from their means".[104]

Quran 65:1 provides: "O Prophet! When you divorce women, divorce them at their prescribed periods, and count accurately their waiting periods. And fear Allah your Lord: andturn them not out of their houses, nor shall they themselves leave except in case they are guilty of some open lewdness...."[105]

It is to observe that from the above verses of the Holy Quran a husband has a duty to provide maintenance to his wife including the divorced wife who is observing the waiting period. He is however required to do that based on his means and ability.

Under the *Sunnah*, it was reported that the Holy Prophet (SAW) in his farewell sermon said; "Fear Allah in your affairs with women, verily; you have taken them under the covenant of Allah. You have indeed made lawful the intercourse with them by the word of Allah, verily, they have rights over you; to be fed and clothed generously".[106]

Again, it was reported that a companion came to the Holy Prophet (SAW) and asked him (i.e. the Holy Prophet): "What are the rights of a wife over her husband? The messenger of Allah (SWT) replied: Let him feed her whenever he feeds and cloths her whenever he cloths and never shall he abandon her except in the room nor shall he beat her face or disgrace her".[107]

It is also reported that the Holy Prophet (SAW) said to Hind bint Oqbah, the wife of Abu Sufyan, on her complaint as regards maintenance, "Take from his property what is required for

[104] Ibid p.58
[105] Ibid p.420
[106] Sabiq,S.(1983), *Op.cit*.vol.2 .p.148
[107] Ibid

your needs and needs of your children equitably".[108]The jurists have unanimously agreed that a wife is entitled to maintenance from her husband as a general rule.[109]Thus they formulated a maxim which states: "Whoever is confined because of another or for the benefit of another person, then the obligation of maintaining the confined person is on the beneficiary of the confinement.[110]Ibn Munzir on the above maxim observed that: It is important to note that the wife is confined at home for the purpose of marriage and she cannot go out to earn her living. For this reason, she must be necessarily maintained by the husband at whose instance and benefit she is confined. Consequently, IbnQudama said that; all jurists have agreed that an adult husband is responsible for maintaining his wife or wives except if such a wife or wives are recalcitrant or disobedient".[111]

3.3 Scale of Maintenance of Wife under Islamic Law

About the scale of maintenance, i.e. the quantity and quality of the maintenance to which a wife is entitled to, there have always been differences of opinion among the jurists. But from the totality of the juristic views, the calculation of maintenance of the wife may be done according to three considerations: 1.The financial ability of the husband, 2.The wife's standard of living prior to the marriage and 3.The customs and traditions prevailing in the society.[112]

Therefore, if a husband is rich, he has to maintain his wife according to her position. If she comes from a rich family, he has to maintain her similar to her equals. If the husband is poor and the wife is rich, he has to maintain her according to his ability. Thus, there is limit to either the quantity or quality of maintenance. It is estimated according to the circumstance of both

[108] Al-asqalani,A.A(nd)*Fathul –Bari,bisharhisahihil-Bukhari,*Almatbaatussalafiyyah,Cairo vol.9/507
[109]Qurut, N. H Op. cit p.38
[110]Sabiq,S. Op.cit p. 170-171
[111] Ibid
[112]Muhammad. A. M. (2001) *An appraisal of Nafaqah (Maintenance)As a Woman's Right under Shariah.* Journal of Islamic and comparative Law,Department of Islamic Law,Faculty of Law,A.B.U Zaria

husband and wife under the local condition as to the availability and prices of commodities and the tradition and customs prevailing in the locality.

Majority of the Hannafi jurists share same view with the maliki jurists. That the scale of maintenance should be according to the financial ability of the husband irrespective of the position of the wife. Sotherefore, if he is rich, he should give his wife the maintenance of rich woman even if she comes from poor family. If he is poor, he should give his wife maintenance according to his means. While few of the Hannafi jurists state that maintenance should be fixed according to the wife's position irrespective of her husband's ability. But the Shafi'is says that the position of the husband alone should be considered.

Scale of maintenance according to Sharia, should be determined with reference to the requirement of the wife regarding food, clothing, residence, and articles for adornment subject to the custom of her equals among her own people living in the same town.[113]

As to the exact or fixed period of providing maintenance, the jurists hold that maintenance may be fixed for different periods or intervals according to the nature of the husbands work. The amount of maintenance may be fixed daily, weekly, monthly, or even yearly. But as regards clothing, the amount may be fixed twice per annum. I.e. one apparel for winter and the other one for summer.[114]

To sum it up, the writer share the same view with majority of the Muslim jurists, that Maintenance of wife should be in conformity with her social status and dignity; dignity in the sense that she should be maintained on the same level of life as that she had before marriage.

[113]Ibid
[114]Ibid

3.4 Components of Maintenance

Components of maintenance of wife are the basic necessity a husband is expected to provide to his wife. The following are subject to juristic opinions:

3.4.1 Feeding: Feeding in whateverform which is lawful is accepted as a kind of *nafaqah* for a wife. Thehusband must feed his wife whether he is rich or poor for her sustenance. He is to do that in accordance with his means' ability and on equitable terms.[115]She should be fed by her husband three times daily or as may be agreed by the spouses or the prevailing custom.

3.4.2 Clothing: Clothing is part of the maintenance of wife which depends on the ability of the husband and the condition of the wife. She is usually given a complete set of dress twice in a year.[116]The data collected shows that 80 percent of husbands buy clothes for their wives when the need arises. i.e. during festive periods which can be between the ranges of 4-5 times a year. While few of the wives interviewed said their husband buy clothes for them only twice in a year.

It is quite unfortunate for husbands to feel free looking good wearing new clothes and their wives wearing clothes that are tattered or worn out. Out of the data collected, a woman claimed her husband bought her clothes only 3 times in seventeen years.

3.4.3 Lodging: The husband must arrange a reasonable lodging or accommodation for his wife. The lodging should be in a residential area and amidst reasonable and honest neighbours. However, the wife has the right to refuse to reside in the same house with co-wives or other members of the husband's family except if she relinquishes her right due to some circumstances. Thus, she may demand a separate and self contained house from other members of her husband's family. Where the husband have more than one wife, then any one of them may refuse to allow

[115]Zayyid .M.Y.Op.cit Q.65:7 p.421
[116]Ad-Dasuqi.M Op.cit.vol.2,p.513

the child of the other to remain in her house unless there is no alternative.[117]The co- wives however, may agree upon themselves to reside in one house with separate apartment. But is not permitted under the sharia to keep more than a wife in a room, even if they consent.[118]

3.4.4 Medication or Medical Treatment: There are divergent views concerning medical treatment of a wife. Some of the jurist are of the view that it is not obligatory for the husband to purchase drugs for his wife or pay the medical bills. The spouses are said to be like landlord and tenant. It is not for the tenant to put the house in a habitable condition except of course where he himself causes the condition without the consent and approval of the landlord.[119]While it is not obligatory for the husband to pay medical bills of the wife, it is obligatory for him to feed her during her sickness because she is detained by reason of him. But she may exchange or barter the provision of food for her medication etc.[120]

On the other hand, the minority hold that it is obligatory for the husband to take care of the wife's medical bill because it is also part of the general maintenance. They further argue that medicine is essential to the sustenance of life, just as food is.[121]The woman has no control over her sickness therefore the husband should be responsible for her medical care.

3.4.5 Domestic Services: There are divergent views on whether domestic services are obligatory on a wife or not. Domestic services include; cooking, sweeping, washing and other house chores. Majority of the jurists are of the view that it is not obligatory for a wife to cook for

[117]Al-Khirshir,M (n.d) Al KhirshiAlasharh Mukhtasar,Dar,Fikir,Beirut,Lebanon.vol.3 p.512
[118]Muhammad.A.M(2001).Op.cit p.122
[119]Al-asqalani,A.A(n.d).In Muhammad.A.M(2001). Op.cit.p.123
[120] Ibid p.124
[121]Ibid

her husband and to do other house chores. She can only do it if she consents. It is an obligation on the husband to provide a readymade food for her.[122]

Maliki School maintains that it is obligatory on the husband to provide or shoulder all the responsibility of the household if he can afford.[123]However, if he cannot afford, he will not be compelled to provide a cook even if the wife deserves that. Therefore, it has become mandatory for the wife to cook, sweep, and make his bed etc for him alone excluding his guest.[124]

Shafi'i and Hambali schools are of the view that it is not obligatory for a wife to serve her husband or his household members. They argue that marriage is contracted for the reason of enjoying her only. Therefore she should not be compelled to do otherwise.[125]According to HannafiSchool, if a husband supplies foodstuffs and the wife refuses to cook it, she should not be compelled because the husband is required to provide a cook for her.[126]

However, the minority are of the view that it is obligatory on a wife to serve her husband and his household. Ibn Tymiyyah, Abu-BakarIbn Abi-Shaibah and Abu-Ishaq Al-Jauzaini said that it is mandatory for a wife to serve her husband according to the custom. Imam Qur'tabi said, this issue goes in consonance with the custom of the society. Islam recognises the custom of a society as an aspect and in fact a source of *shariah* unless if it is contradicted by it. Forinstancethe custom of rural areas differs remarkably from that of the urban areas. The rural wife serves her husband; takes care of the house, fetches water and rears his animals.[127]

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[122]Al-haskafi,M.A(nd) *AddurulMukhtarSharhutanwiril-absar,*MustaphaAlhajiAlhalabi.Cairo 3:602. In Muhammad.A.M(2001) .Op.cit

[123]Ulamaul-Hind,U.A(1310AH)*Alfatawal –HindiyyahAlmatba'atulAmiriyyah, Egypt,1:548*

[124] Ibid

[125]Zaidan, A .K(2000) *Al-Mutassal fi ahkamilMar'ahwabaitil-Muslim Fish-shariatilIslamiyyah,*AlRisalah publishers vol.7 p 181 In Muhammad.A.M(2001).Op.cit

[126]Ibid

[127]Annawawi ,M.S *Almajmu'usharhulmuhazzab,*Matba'atul Asimah,Cairo,15:581

Tradition has shown that in the early Islamic period wives cooked and served their husbands although there is no *hadith* that categorically spelts out that. However, those who are of the view that a wife should serve her husband rely on the *hadith* where Fatima, Ali's wife (RA), went to the Prophet (SAW) and requested for a servant to assist her in domestic work. But the Prophet (SAW) said to her, "Should inform you of what is better than what you requested?"He said to her, "When you go to sleep, you should say "subhannallah33 times, Alhamdulillah 33 times and Allahu Akbar 33 times.....[128]

The writers view is that since marriage is supposed to be based on mutual cooperation and reciprocity with the high rate of working class wives, a husband should provide a domestic servant to his wife if he can afford. If the husband cannot afford to pay for the services of a domestic servant, the wife should pay for the services if she can afford to. A domestic servant in the home is very important as it will reduce the house chores for the wife and that will make her avail herself to her husband whenever he needs her around him. The domestic work in the home is part of *Ihsan* (good treatment) which should be exchanged between husband and wife. The Prophet (PBUH) himself, our best example in this regard, used to help his wives with the house chores.

3.5 Maintenance when Due

There are divergent views among the Muslim jurist on when maintenance becomes dueon the wife. Somejurists are of the opinion that maintenance becomes due immediately after the contract, while others are of the view that maintenance becomes due only when certain conditions have been met.

[128]Addimashqi,A.M(nd) *Al-ikhtiyaratul-fiqhiyyah min fatawashaikhilislamibnTaimiyyah,*DarulMa'rifa Littiba'a,Beirut,p.545-546 IN Muhammad.A.M(2001).Op.cit.p123

3.5.1 Immediately after Contract

All jurists agreed unanimously that once marriage contract has been concluded and the wife has put herself under the disposition and control of the husband, she will be entitled to maintenance. But they differ as to the time when maintenance becomes due. Imam Malik and Shafi'i are of the view that a wife accumulates areas of maintenance from the time it has become due until it is settle by payment. But Imam Abu Hanifa says she does not accumulate maintenance until and unless the quantity of maintenance has either been agreed upon by the spouses or decreed by the court.[129]

Thus, under the Maliki School, once maintenance become due and not paid, it accumulates and may be recovered anytime later except during the period the husband becomes destitute, then no maintenance during that period will accumulate. But arrears of maintenance are payable as ordinary and will not lapse except by payment.[130]

According to Hannafi school, no maintenance is recoverable unless the quantity of maintenance has been agreed upon by the spouses or decreed by the court and in the meantime, the husband or the court has authorize the wife to maintain herself on the husbands credit.[131]

In the writer'sopinion, maintenance becomes due only after consummation. Mere contract of marriage should not guarantee maintenance to a wife. There should be actual consummation of the marriage. An example is the Prophet (PBUH) when He married his wife Nana Aisha, she was nine years old then and she stayed in her parents' house and as such she was not receiving maintenance from her husband till when she moved to his house.

[129]Ad-Dasuqi, M(n.d) Op.cit vol.2 p.508 and 524
[130]Ibid
[131]Ibid

3.5.2 After Consummation

According to consensus of the Muslim jurist (minority) marriage contract does not automatically vest responsibility of maintenance on the husband. Maintenance only becomes due the moment the wife fulfils all the marriage condition as stipulated below:

3.5.2.1 Marriage must be Valid and Subsisting

The marriage conducted between the husband and wife must be valid. Thus if the marriage is void or irregular, the woman is not entitle to *Nafaqah* and the couple must be separated, so as to avoid spread of mischief in the society.[132]

3.5.2.2 Marriage must be consummated

Consummation could be actual or presumed. Actual consummation must occur between the spouses before the wife becomes entitled to maintenance. But, if the cause of non-consummation is not from the wife, then maintenance is incumbent on the husband. In other words, the wife is entitled to maintenance irrespective of whether the husband is a minor, impotent or too ill to be intimate with the wife. Jurists have agreed that where the husband suffers minority, then her maintenance shall be realized from his property (if he has any) or from his father if he has undertaken the liability of maintaining her.[133]

3.5.2.3 Wife must be Capable of Sexual Intercourse.

Where the wife is incapable of having sexual intercourse, then she is not entitled to maintenance. This is because the Prophet (SAW) married Aisha (RA) and did not maintain her until she settles in his house. The jurists also agree that if a minor wife submits herself to her husband, she still does not become entitled to maintenance. But Abu Yusuf of Hannafi school held the view that once a minor wife is restricted to the custody of the husband, she becomes

[132] Muhammad. A. M (2001).op.cit pg118
[133] El-Imari, M. T. (1978) Personal Status in Islamic Law, CILS, ABU, Zaria (unpublished)

entitled to maintenance; as the husband is the one who accepted to keep her custody even if the pleasure he may derive is incomplete.[134]

But where a major wife submits herself to a minor husband, the majority of the jurists hold that the husband must maintain the wife. This is because the wife has fulfilled all the conditions required from her and it is only the husband that is incapable of consummating the marriage.[135]In holding this view, they rely upon analogy *(qiyas*)by equating this case to that of a woman who submit herself to her major husband who deserts her,in which case it becomes obligatory on the husband to maintain her. This is the opinion of the jurists who hold that the right to maintenance is dependent on certain conditions.[136]

But Zahiri school holds that the only condition that must be fulfilled is a valid marriage, regardless of whether she is a minor or adult, free or slave, virgin or matron, rich or poor, orphan or not, recalcitrant or obedient, the husband has an obligation to maintain the wife according to his means. In holding this view they rely upon the tradition of the Prophet (SAW) which says: "And they(wives) possess the right to maintenance on equitable terms from you (Husband)".[137]

In the light of this, majority of the jurists relied on the tradition of the Prophet (SAW) which read;

> *Beware of your duty to Allah in the matter of your wives, for they are helpers unto you. You possess them as a trust from Allah and you are entitled to their private part by the word of Allah and they (wives) possess the right to maintenance on equitable terms from you (husbands).*[138]

[134] Ibid
[135]Muhammad. A. M (2001) op.cit p.119
[136] Ibid
[137] Ibid
[138] Ibid

The Zahiri jurists further rely on the report according to which Umar (RA) sent the commanders of his battalions who were abroad that the soldiers under their command should either send maintenance back home to their wives or divorce them. And if they resolve on divorcing them, they should send all arrears of maintenance to the wives. They argue that Umar did not in his message, distinguish between women that had submitted themselves to their husbands or not.[139]

The jurist responded to this saying that Umar must be aware that the prophet (SAW) married Aisha (RA) and did not maintain her until she settled into the matrimonial home and the marriage was consummated.[140]Therefore, for all the reasons mentioned, the view of the majority is more cogent.

3.5.2.4 Wife must be Accessible for Conjugal Relations

Maintenance will not be payable if the husband is unable to have sexual intercourse for any act or conduct attributable to the wife e.g. where she absconded. The right will not be available even if there is any other impediment to sexual intercourse, whether the wife is living at the place of her husband or her father, if she makes unjustified refusal to cohabit, she loses the right.Where the husband invites the wife to the conjugal roof, she has to comply. Where the wife, without valid reasons refuses to comply, she loses her right of maintenance. It is however immaterial here whether actual cohabitation takes place or not. The mere invitation to the conjugal roof and the wife's compliance or resistance is the yardstick.[141]

In the case of **Ndana Mohammed v. Mariam Ndana[142]**,Ndana Mohammed was the defendant and Mariam Ndana was the plaintiff. They are herein the appellant and the respondent

[139] Ibid
[140] Ibid
[141] Ibid
[142] Sharia Quarterly Law Report 2013 vol.1 part II at page

respectively. Both of them were husband and wife for couple of years blessed with six female children.

Mariam Ndana sued her former husband Ndana Mohammed for lack of maintenance of herself and the children of the marriage. At the course of hearing of the substantive matters, it was discovered that there were appeal and cross appeal concurrently filed on the same day by Ndana Mohammed and Mariam Ndana. For the purpose of appreciating the issue involved in the main appeal and cross appeal, the two appeals were consolidated .Therefore, Ndana Mohammed who is an appellant and cross respondent in these matter is called the appellant while Mariam Ndana who is also the respondent and cross-appellant subsequently be called the respondent.

The respondent instituted an action against the appellant before the trial upper area court claiming the sum of one hundred and sixty thousand naira as feeding allowance for herself and their children. The appellant denied the allegation and concluded that ".....It is now three years that i had sexual intercourse with her". The trial court adjourned the matter for reconciliation and continuation. On the adjourneddate, the court straight away asked the respondent to prove her claim and ordered her to produce receipt of school fees .The respondent then called two male and one female witnesses' .The first witness one Ndana Mohammed gave evidence which is summarised as follows:

That the appellant did not feed his wife and the five children. He concluded that he was the one that used to feed them since five years ago. The second respondent witness was by name Fatima Ndana who gave evidence as follows:

That the appellant did not provide food for the respondent and her five children for the previous five years and that she tried her best to reconcile them but the effort was in vein.

The third witness to the respondent was one Mohammed Tsado who gave evidence that the appellant did not feed the respondent and the five children of the marriage for five years. The respondent tendered receipt of school fees paid for the children and same was admitted as an exhibit. The appellant was afforded opportunity to call witnesses in defence but he informed the trial court that he had no witness to call.

The trial court reviewed the evidence and concluded that the respondent had lost her right to claim maintenance and feeding for the period of five years on the ground of refusing sexual intercourse with the appellant.

In respect of the claim of feeding and maintenance for the five children in question, the trial court awarded the sum of fifteen thousand naira only for compensation for six years for the five children and five thousand and five naira only for school fees as found on receipt tendered as exhibit. The court further ordered the appellant to be responsible for other necessary things for the up keep and schooling of the five children.

Being dissatisfied with the decision of the trial court, the appellant and the respondent simultaneously filed two grounds and three grounds of appeal. Upon going through both grounds of appeal and cross appeal, the appellant main complaint was that the trial court was wrong to have ordered him to pay fifteen thousand naira to the respondent as compensation stating that the allegation against him of not feeding the family was wrong.

While the respondent filed her appeal on the ground that the award of fifteen thousand five hundred naira against the appellant was inadequate. The respondent replied that she was staying in the appellants' house throughout in the absence of the appellant because the appellant had another wife whom he was staying with. And she is now requesting the sum of one hundred and sixty thousand naira only.

In his response, the appellant stated that he was the one paying school the fees of his children but he was not collecting the receipt which the respondent is capitalising on.

In reviewing the fact and evidence at the court and the submission of both parties before the court of appeal, two issues where found for determination.

1. Whether the respondent is entitled to claim of maintenance for herself as claimed?
2. Whether the appellant who is the father of six female children out of whom one had been married out in the circumstances of this appeal be relieved from the burden of their maintenance? The above two issue would be considered together.

The respondents' prayer for monetary claim of one hundred and sixty thousand naira only, being compensation for her feeding allowance and school fees of four children who were in both primary and secondary schools.

The defence of the appellant for refusal to feed the respondent and the children of the marriage was that the respondent refused him conjugal relationship. While the respondent further stated that the appellant abandoned her and the children of the marriage for the period of eleven years in the matrimonial home.

The court stated that maintenance of wife and children of Islamic marriage is the responsibility of the husband. This position is strengthened by Q.2:233 and Q 65 v.7.

However, if the wife refused conjugal relationship, the consensus opinion of Muslim jurists is that she loses her right to maintenance. But the appellant who alleged lack of conjugal relationship did not adduce evidence to substantiate this claim. What is alleged but not proved goes to no issue for the court determination.

Based on the foregoing, it is therefore not permissible for the appellant to refuse to maintain the respondent and the children of the marriage for unproven allegation of lack of

conjugal relationship. Also the respondent did not specify her claim which amounted to one hundred and sixty thousand naira only. It is the principle of Islamic law that claims must be unequivocal and specific.

It was held that the lower court was wrong when it held that the respondent was not entitled to maintenance for lack of conjugal relationship, even though there was no evidence as to the actual period in question when they both divorced, for the court to compute time.

The appellants appeal lacks merit and it was dismissed .while the respondents cross appeal is meritorious and was allowed in the above terms

However, if it can be established that the wife is accessible notwithstanding the fact the husband is a minor, sick or impotent, the wife would be entitled to receive maintenance. So, also where she goes to perform hajj in company of the husband or accredited *Muharim*, with the consent of the husband. She does not lose her right to maintenance. But if she goes without the husband permission, to perform the obligatory Hajj or Umar, then she loses such a right.

It should be noted that the right of maintenance will not be lost if the wife refuses to cohabit on the ground of non-payment of her prompt dower before consummation.

3.6 Maintenance of Wife under Special Circumstances

A husband is under the obligation to maintain his wife under some special circumstances. These circumstances are;

3.6.1 Maintenance where the Wife is a Worker

Islam does not prevent a woman from working provided that she guards her chastity, cast down her looks, covers her body properly and behaves herself decently. In the time of the prophet (PBUH), women went out to the market or their farms.

However, a woman is allowed to go out to work and earn a living even in *iddah* as reported during the time of the prophet that Jabir Ibn Abdullahi says that his aunt was divorced by her husband and she wanted to go out and harvest her date palm and sell it. Someone stopped her saying it was not lawful to go out of the house during the period of *iddah*. She went to the prophet to get his verdict, the prophet replied, "you go out and get the date trees harvested and sold so that you may be able to do some other good work.[143]

The example of Jabirs aunt above shows that women did farming and harvesting. In another tradition, Umar once saw Saudah going out of the house, he stopped her and criticised her. She returned home and told the prophet what happened. There upon the prophet had said "undoubtedly Allah has permitted you to go out to fulfil your needs.[144]

Where the wife or her guardian has stipulated during the contract that the wife would continue with her work outside the matrimonial home, such stipulation according to the Hannafi School is invalid which should be discarded. Thus the husband has the right to prevent the wife from the work. And if despite his prevention she continues, then she will be considered as recalcitrant and this will forfeit her right to maintenance.[145]

According to Maliki school, such stipulation is valid although it is detestable which is recommendable but not obligatory upon the husband to fulfil. Therefore, the husband has the right to prevent the wife from working, and if she refuses to stop, then she has become a recalcitrant wife and as such her right to maintenance is forfeited.[146]

But according to HambaliSchool, such a condition is valid which must be fulfilled. This is because; the full confinement of the wife in the matrimonial home is the right of the husband

[143]Abu Daud,KitabatTalaaq. Cited in DOI, A.R.I. (1984). Op.cit.P.141
[144]Al-Bukhari,KitabTafsirsurat al-ahzab Cited in Doi.A.I.R ibid
[145] El-Imairi .M.T Op.cit p120
[146] Ibid at pg. 161

which he can wave by accepting the continuation of the wife's work. Thus, the husband has no right to stop her from the work and if he prevents her but she refuses to stop, she cannot be considered as recalcitrant and as such her right to maintenance will not be forfeited. But this rule applies only if her work is not in conflict with the interest of the family. Thus, the husband has no right to prevent his wife from doing some work which does not interfere with the matrimonial duties inside the house.

It is the view of the writer that a wife should be allowed to work in order to earn a living and reduce the house hold responsibility of the husband. Among the data collected, about 90 percent of the working class wives said they are working in order to assist their husbands due to the economic hardship in the country. Which when left for the man alone cannot meet up with the demands of the family.

3.6.2 Maintenance during the *Iddah* Period

It is not every woman that is entitled to maintenance during the *iddah* period. However, there are two categories of women who are entitled to maintenance during the *iddah* period and two categories that is not entitled to maintenance.

Where divorce is revocable, the wife is entitled to *Nafaqah.* The husband is responsible for her full maintenance. Because the marriage is legally subsisting before the expiration of the *iddah*. She has the right to continue her occupation of a room she used to occupy before divorce, in her matrimonial home.[147]It is not permissible for her husband to send her out of the home until her *iddah*is over. As long as her *iddah* has not expired, she is entitled to *nafaqah* just as the wife on whom a divorce has not been effected. The entireMuslim jurists unanimously agree on this. As regards to maintenance of a revocable divorced wife, Quran 65:1 provides as follows:

[147]Hammuda.A.A. Op.cit p246

> *"O Prophet(SAW) when you divorce women, divorce them at their prescribed periods, and count accurately their iddah periods .And fear Allah your Lord (O Muslims) and turn them out not from their husbands home nor shall they (themselves)leave, except in case they are guilty of some open illegal sexual intercourse…..*[148]

However, Inpractice, there are men who are accused of maltreating their wives and making their lives miserable, after pronouncing first divorce while she is still in *iddah*which is forbidden. There should be reconciliation if possible. It is sad to see the husband ordering his divorced wife out and where he does not, she will be packing from her matrimonial home at her own instance voluntarily. Her voluntary parking from her matrimonial home may deny her right to maintenance.

Muslim jurists unanimously agree that a woman on whom an irrevocable *talaq* has been effected is entitle to *nafaqah* during her *iddah* period, provided she is pregnant. This is in accordance with the Quranic verse 65:6, which provides as follows:

> *Hence let the women who are undergoing a waiting period live in the same manner as you live yourselves, in accordance with your means. And do not harass them with a view to making their lives a misery. And if they happen to be with a child (i. e pregnant) spend freely on them until they deliver their burden….*[149]

The jurists however, differ on whether a non pregnant divorcee on whom an irrevocable *Talaq* has been effected is entitle to *Nafaqah* during her *Iddah* or not. Thus Hannafi jurist hold that she is entitled to full *Nafaqah* just as pregnant divorcee is entitled to. This is because *Nafaqah* is due to the wife before *Talaq* by virtue of the fact that she has been exclusively confined for the fulfilment of the husband's right which necessitates living in his house. And this

[148]Zayyid .M.Y. Op.cit p.420
[149]Zayid.M.YOp.cit p 420

confinement continues even after the irrevocable divorce but before the expiration of the *Iddah* whether the woman is pregnant or not. This is the view of Umar ibn al-Khattab.[150]

Hambali jurist are of the view that she is not entitle to any *Nafaqah*. This is also the view of ibn Abbas. In holding this view, they rely on the Hadith transmitted by Sha'abi that the husband of Fatimah bint Qais pronounce on her triple divorce. And the prophet (SAW) did not allow her maintenance and dwelling.[151]

However, Maliki and Shafi'i jurist are of the view that she is entitled to only accommodation. This they argue is in accordance with the Quranic verse 65:6 which provides as follows:

"Lodge them in your own homes, according to your means. Do not harass them so as to make life intolerable for them. If they are with child, maintain them until they deliver their burden; and if, after that, they give suck to their children, give them their pay…..[152]

The verse according to the jurist indicates that divorce woman is entitled to accommodation without stipulating a condition that she must be pregnant. This means that a woman on whom an irrevocable *talaq* has been effected must be provided with accommodation irrespective of whether she is pregnant or not.

Furthermore, where a husband dies, his spouse is required to observe a waiting period of four month and ten days as laid down in the Holy Quran 2:234 which provide that "….and if any of you die leaving wives behind, they shall undergo a waiting period of four months ten days".[153]

[150]Aliyu.I.A. (1996) *Termination of Marriage and its Legal Consequences under Islamic Law*, Faculty of law ABU Zaria.Ph.d thesis p.326
[151] Hassan .A. (1985) Sunnahabu Dawud (translated) Al Madina Publications (p) Ltd, vol. II pg 625; Nasa' I,ibn Majah, and Trimidhi all narrated the same hadith. Cited In Aliyu.I.A. (1996) Ibid.p 326
[152]Zayid .M. Y Op. cit p.420
[153]Zayid .M. Y Ibid p. 26

All the four imams of the *Sunni*school unanimously agree that a woman who is observing *Iddah* due to her husband's death is not entitle to any *Nafaqah* at all. This is because there is no way of imposing it on the deceased husband for immediately he died, his ownership to his property comes to an end.

According to Maliki School, from the time of death of the husband up to the expiry day of the *Iddah* period, the wife should be allowed to continue to reside in the matrimonial residence. This is irrespective of whether the residence belongs to the husband or it is on rental basis. If it is on rental basis, Maliki jurist submit that it is the duty of the deceased other heir to find out what the nature of the tenancy is and whether the rent for the remaining period up to the expiration of the widows waiting period has been settled after the husband's death or not. If still unpaid, payment or alternative arrangement in lieu thereof is effected from the deceased estate before distribution.[154]

If however the nature of the tenancy is such that by mere incidence, it expires just about the time the deceased died and the landlord agrees that the tenancy shall continue at the same rent and condition as before, the spouse shall be allowed to stay until the expiration of her *iddah* .This is applicable to a consummated wife of the deceased. A non consummated widow is not entitled to this.[155]

The waiting period is the act of worship; the period of mourning *(al-Ihdaad*) imposed on the widow is also the act of worship. Beside this, it may also have its primary objective, which is the ascertainment of womb as to the possibility or otherwise ofthe pregnancy.

[154]Gurin.A.M(2001)Op.cit p162
[155] Ibid

The data collected shows that majority of the divorced women that responded to the questionnaire did not observe the *iddah* period in their matrimonial home. This is as a result of anger at the time of pronouncing the divorce thereby losing their right to maintenance.

3.6.3 Maintenance during Sickness of Wife

Where the wife falls sick, it appears to be according to common sense, the responsibility of the husband to provide for her all she requires in terms of clothing, feeding, medical charges or any other thing considered essential to help in her recovery.

In law, however, the position is different, in many Maliki texts it is shown that the husband has to pay for the salaries of a midwife on occasion of his wife's delivery. He is also required to supply the wife with things considered essential by custom, but he is not however obliged to buy her medicine or pay the clinical charges nor even the doctor's fee.[156]

The Hannafi's are in total agreement with the Maliki School. The Shafi'i school however disagreed with the above two schools. They included medicine and other clinical charges as necessaries. A husband must not only supply his wife with necessary nourishment but he must also give her medicine when she is sick and pay the doctor's and surgeon's fee. She may also insist on having her ordinary nourishment during her illness.[157]They further argued that sickness is a natural cause over which the wife has no control, and has no hand. It is just like menstruation, there is no sense of honour, kindness and dignity if such things would deprive the wife of her right of maintenance.[158]

Maliki and Hannafi contended that it is a condition for the entitlement to maintenance of a wife, to tolerate conjugal relations with the husband, but as she is sick, she becomes obviously unable to discharge such a function. This therefore, disentitles her to be maintained during the

[156]Hammudah,A. A. Op.cit pg. 151,also see Ad-Dardiri,A(n.d)Ash-sharh al kabir,vol.2 p.509
[157] Ibid
[158] Ibid, pg. 152

period of sickness.[159]They further argued that it is also a condition that the wife must be accessible for conjugal relations when sick, she lies either at the hospital, the parent house or matrimonial home. She is by this fact indisposed and therefore, inaccessible for conjugal relations and thereby loose her right of maintenance.[160] The soundness of these reasons is subject of great debate. However, the view of Shafi'i jurist seems to be closer to the spirit of Shariah.

In the writer's opinion, the question of maintaining a sick wife is just a mere academic exercise. Among the data collected, all the respondents said they receive full maintenance from their husbands when ill.No reasonable man will ignore his sick wife financially.

3.6.4 Maintenance During Absence of the Husband

For our purpose here, absence means the state of being at a distant place or non-existence within a certain sphere. Here absence of the husband should not be confused with the case of a missing person. Where a husband absconded himself from his family, knowingly or unknowingly, the fact still remain that he has to cloth, feed and shelter his wife. The law requires from such a person embarking on such journey to provide adequately for the wife and well being of his family so as to cover the whole period of his absence. This is in order to safeguard the dignity of himself and his family.

But where the husband goes without making arrangements, every effort shall be made, on the petition of the wife before the court to have contract with him that he should provide for his wife's maintenance. If he fails to comply within a reasonable time, a judge has the power to order a sum of money to be awarded to the wife in proportion to the husbands known property. On the other hand, if the husband has no personal effect either in the nature of capital or loan, his immovable property such as a house or a farmland, etc. Can be sold taking an exact inventory of

[159] Ibid
[160] Ibid

the property sold. It is a precondition that a wife should make sworn declaration that the husband has left nothing for her maintenance.

In Nigeria, a number of cases have been decided by our courts on the issue of maintenance of a wife during the absence of the husband Daso Kobi v. Danlami Bauchi.[161]

The petitioner told the court that her husband went away for six months leaving her with nothing to feed on. The defendant however responded to feed on. The defendants however responded that when he was going away, he deposited her six *mudus* of rice and N13.000 for other things. He further asserted that when he went away, he became sick for four months that was why he was not in a position to render further supply of maintenance in spite of all these, the wife insisted on dissolution and that she no longer loved the defendant.

A period of respite was given to the husband to effect payment of what the wife had incurred even though she showed willingness to receive reimbursement and that the respondent should go to the petitioner's parent to get her convinced to go back to her matrimonial home. Both petitioner and the respondent went back to court after nine days in disagreement. One month of reconciliation was further granted. This time, the parties reached an agreement of settlement.

3.6.5 Maintenance of a Wife Where a Husband has no Means of Livelihood (During Poverty)

Where the financial position of the husband becomes so bad that he is not able to provide the wife with *Nafaqah* (maintenance), according to Hannafi School, the obligation remains upon him. And in such a case, the wife has the right to borrow on the husband's behalf what is sufficient for her equitably in other words, whatever she spend becomes a debt against the husband which he must pay whenever his financial position improves.

[161] Unreported Civil Case NO. 1149/33/from Doya Area Court, Bauchi,pg 111

The Zahiri School of thought are of the opinion that marriage must be preserved irrespective of the husbands' financial condition. If she has the means, the wife must support herself and her husband, who is not responsible of repaying anything of what she has expended. Butthe majority of the Muslim jurist grants the wife a right of choice .she may bear with him and keep the marital bonds; otherwise she may seek divorce from him.[162]

However, financial problems are involuntary, but not insurmountable. It is quite possible that after hardship or difficulties, relieffollows. The husband should be given a chance to solve his problems instead of a court confrontation ending in divorce.[163]Among the data collected,80 percent of the respondent are of the view that they will maintain the home in terms of hardship of the husband. While 10 percent are of the view that they rather seek for dissolution of the marriage than live with a husband who has no means of maintaining them.

In the case of **Abba Musa V. Jugudum[164]**, it is an appeal case to the then northern states shari'a court of Appeal from the Court of the Chief Alkali of Dikwa in which the wife Jugudum Sonsawa complained against her husband Abba Musa that he did not feed her or gives her cloth for six months. The court ordered the husband to supply his wife with five shillings and ten *mudus* of corn weekly. The husband said he could only give two shillings and five *mudus* of corn as he use to give to the rest of his three wives. The Alkali dissolve the marriage on the ground that what the husband agreed to give was inadequate maintenance and, therefore, legallyimproper. The husband then appealed to Shari'ah Court of Appeal. The Court investigated and found out that the trial court did not seek to know the financial condition of the husband but simply declared the marriage dissolved, which is contrary to Islamic law.

[162]Hammuda.A.A. Op.cit pg160
[163]Ibid
[164]Case no .N.N.C.N/24/1962 As cited in Aliyu. I. A. (1988) Op. cit

The lower court erred in law because it didn't investigate the financial position of the husband before dissolving the marriage. And where the financial status of a husband is low, she has an option of borrowing what will be sufficient for her and her children and divorce should be the last option where the first option failed.

3.7. Withholding Maintenance

Maintenance of a wife is incumbent upon the husband. However; below is the circumstances in which the wife loses her right to maintenance:

3.7.1 Recalcitrance (Disobedience)

Recalcitrance is known in Arabic as "*Nushuz*". Recalcitrance is manifested by the wife's aversion to her husband, hatred towards him, disinterest in his companionship, or attraction to another person.[165] All jurists unanimously agree that a recalcitrant wife is not entitled to maintenance. However, jurist opinions differ as to when a wife is said to be recalcitrant.

One group of jurists is of the view that a healthy wife who denies her husband lying with her under the conjugal roof is recalcitrant wife and thus, has no right of maintenance. Another group submitted that, maintenance is not based on sexual accessibility but is a marriage contract that confines her to her husband's home and thus, as long as she confines herself and does not leave the home without his consent, she is obedient and her right to maintenance stands valid. They further argue that Islam forbids a wife to deny her husband her bed but that does not affect her legal right to maintenance.[166]

The Holy Quran in 4 v.34 states the ways to solve a family problem as privately and peacefully as possible.

> *Men have authority over women because Allah has made the one superior to the others, and because they spend their wealth on*

[165] Hammudah, A. OP.cit pg. 158
[166] Ibid

> *them. Good women are obedient. They guard their unseen part because Allah has guarded them. As for those from whom you fear disobedience, admonish them.Then if they obey you, take no further action against them. Allah is High, Supreme.*[167]

In the case of family circle, four steps are maintained (i) perhaps verbal or admonition may be sufficient (ii) if not, sex relations may be suspended (iii) if this did not sufficed, same slight physical correction may be administered out. Imam Shafi'i considers this inadvisable, though permissible (iv) if all these fail, a family meeting is recommended to look into the dispute with the view to reconcile them.[168]

It should be noted that such discipline is justifiable only in the case of a wife who is not wronged, who heeds no advice, whose obstinate attitude is not changed by temporary separation in bed and whose husband is not difficult.[169]

[167]Zayid,M.Y(1980) Op.cit p.58
[168]Hammudah.A.A. Op.cit pg. 159
[169] Ibid

CHAPTER FOUR:

4.0 MAINTENANCE OF WIFE UNDER STATUTORY LAWS

4.1 Introduction

The word maintenance according to concise oxford Dictionary is derived from the term to 'maintain', which means to support.[170]The word maintenance itself means the process of maintaining or being maintained and the provision of the means to support life especially by work etc[171]According to Encyclopaedia Britannica; maintenance means maintaining or assisting a party with money or otherwise[172].Maintenance signifies all forms of provision that will assist a person to live properly and conveniently. As Harman J. said in Borthwick v. Beauvais[173] with respect to the maintenance of a wife, maintenance does not only mean food a wife puts in her mouth, the house in which she lives and the money which she has to have in her pocket.....maintenance cannot only mean mere subsistence''.

Under the common law, there was a distinction between husband and wife, it is one way traffic,and husband cannot claim maintenance from his wife and the wife has right to be maintained. The right of a wife against her husband is not contractual in nature.[174] A husband was entitled to maintenance from his wife only if she sought judicial separation on the ground of the husbands' insanity. But however, under the matrimonial causes Act the position of the husband and wife were assimilated and either is entitled to maintenance from the other provided conditions in section 70 are taken into consideration. The matrimonial causes Act has put the

[170]Allen,R.E (1990)The Concise Oxford Dictionary of Current English, 8th ed Oxford University Press, p. 715
[171]Ibid
[172]http://:www.gutenberg.org/ebooks/39632Encyclopedia Britannica vol.14,1768,p.692.accessed 14/4/2012
[173](1949)CH 395
[174]Sagay.I(1999)*op.cit p458*

husband and wife on the samescale. In*Adeyemi v. Adeyemi*[175] Fakayode, J. stated that at common law, a wife has a right to claim maintenance from her husband but that now by statutory provision, the question of maintenance is a matter within the discretion of the court to grant or to withhold.

Primarily, the husband's duty under the common law is to provide his wife with the necessities of life. This duty is prima facie complied with if he provide a home for her, and the wife has no right to separate maintenance in separate home unless she can justify living apart from her husband. This obligation remains if the spouses are obliged to live apart, for example owing to the illness of one of them provided that there is no desertion on the part of the wife.[176]In the case of Price V. Price[177]the wife had left the matrimonial home without justification but later made a genuine offer to return, which the husband refused. She then applied for an order of maintenance against him under the matrimonial Causes Act, 1950, s.23, and the judge made an order. The husband appealed but the appeal was dismissed.

There is no doubt that at common law if a wife chooses wilfully and without justification to live away from her husband, so long as she absents herself, she cannot renders him liable for necessaries supplied to her, or for her maintenance by the union, for the reason that she has of her own free will deprive herself of the opportunity which the husband was affording her of being maintained in the home. But the relief of the husband from the obligation of maintenance continues only so long as she voluntarily remains absent. Herabsence, although wrongful, does

[175]Suit no.1/198/70 as cited in Sagay. I (1999) Nigerian Family Law, Principled, Cases, Statutes and Commentaries. Malthouse Press Ltd, Lagos

[176]Bromly, Op.cit pg. 649, Summarizing Lord Hordson's Statement in MCGowan V McGwoan (1948)2 ALL ER pg. 1034

[177](1951)CA P.413

not affect the relationship of husband and wife. She is entitled after however long period of absence to return at any time.[178]

In the case of **Lilley v. Lilley**[179] Hodson L. J. ruled that the common law right to maintenance was, "not a right to an allowance, but to be supported by giving bed and board". If the husband deserted his wife or if his misconduct drove her away from the matrimonial home, the rule was modified to the extent that he was no longer sole judge of what was fit .He had to provide reasonable expenses for necessaries "according to the husband's degree".[180]

However, a wife does not have these limited rights if she were separated for some reasons other than his misconduct. If she commitsadultery, sheforfeits all her right to maintenance. Even if the husband remains unaware of the adultery for some considerable time, a husband has a right to refuse his wife further maintenance on subsequently discovering the offence.[181]

A man is also relieved of his duty to maintain his wife if she deserts him. But the obligation revives as soon as the desertion ends. A husband is under a duty to maintain if he deserts his wife. The combine effect of these last two rules is that if a wife deserts her husband but subsequently makes a genuine move to return to him and is refused, her right to be maintained revives provided the request to return to the matrimonial home was genuine when made.

The general rule under English law is that a wife is under no obligation to maintain her husband. There are however number of circumstances under which the courts may order that she

[178]Hall J. C. (1971) *Sources of Family Law. Cambridge University Press p. 85*
[179]196 PSC 261 pa .super. November 16,1961
[180]Per Blackburn J. Bazeley v. Forder (1868)L. R3 Q. B 559,562
[181]Obi. S. N. C (1966), Modern Family Law in Southern Nigeria, African Universities Press, Lagos. P. 251

shall do so or that her property, business profits or earnings shall be settled for his benefit. Orders of this kind may be for an interim period, for a specified term or on a permanent basis.[182]

If a decree of divorce or of judicial separation is granted against a wife by reason of her adultery, cruelty or desertion, the high court may order that any property to which she is entitled shall be settled in whole or in part for the benefit of her husband and/or children.[183]

4.2 Basis of Maintenance of Wife under Statutory Law

Maintenance of a wife under statutory law is established in the, matrimonial causes Act, and some previously decided cases.

Under Section 70(1) of the Matrimonial Causes Act 1970, the court may, in proceedings with respect to the maintenance of a spouse or of children of the marriage make such order as it considers proper having regards to the means, earning capacity, conduct of the parties to the marriage and all other relevant circumstances.

Section 70(2) of Matrimonial Causes Act, 1970 empowers the High Court in proceedings for an order of the maintenance pending suit of a spouse or the children of the marriage to make such order as it considers proper having regard to the means, earning capacity, conduct of the parties to the marriage and all other relevant circumstance.

Section 70(3) of the Matrimonial Causes Act states that the court may make an order for the maintenance of a party notwithstanding that a decree is or has been made against that party in the proceedings to which the proceedings with respect to maintenance are related.

More so, if the spouses separated by agreement, but the husband did not agree to maintain his wife, he cannot be found guilty of wilful neglect to maintain her. In **Pinnick v**

[182] Ibid pg252
[183] Ibid

Pinnick[184] after a consensual separation the wife complain to the justices that her husband had been guilty of wilful neglect to maintain her. They made an order against the husband without considering whether he had agreed to maintain her. The position then is that the parties had separated by mutual consent and the justices directed themselves that because the parting was originally a consensual one, and so remained, the husband was still under a liability to maintain the wife, and that having adequate means to do so, his failure was wilful. But they arrive at this conclusion without considering as a separate question whether there was an agreement on the part of the husband, expressed or implied, to maintain the wife in a state of separation.

If the wife is compelled to live apart the husband is guilty of wilful neglect if he does not maintain her, unless she has committed an offence. In **Lilley v Lilley**[185] the wife was living apart from the husband for medical reasons, though she had express her intention never to return to him anyway; the divisional court, on appeal from a stipendiary magistrate, held that she was not in desertion but that her husband was not guilty of wilful neglect to maintain. The wife appealed, it was held that the wife was in desertion. The husband was not therefore guilty of wilful neglect to maintain and the appeal was dismissed.

An agreement will not be altered unless it has become unjust. In **Gorman v Gorman**[186] the husband had eventually accepted his wife's suggestion that they should separate, but on the understanding that he will not be obliged to maintain her. On this basis, a deed was executed under which the husband paid her a lump sum of $250 and agreed to provide free accommodation for her and the children until they reached 21. She agreed to support herself and not to seek any maintenance from him.

[184] (1957)1 WLR 644
[185]1961) 196 PSC 262
[186](1964) 3 All ER739

Later, the wife who had been in business was obliged to give up work owing to a deteriorating in health. The husband's income increased $1000 to $4000 a year, and he made her an ex gratia allowance of $6 a week. She applied for a variation of the agreement, but her application was refused.

4.3 Criteria for Consideration of the Award of Maintenance of Spouse under Statutory Laws

The high court has power under section 70(1) of the matrimonial causes Decree 1970 on appropriate application, to make an order for the maintenance of a spouse or the children of the marriage. Having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances. In the case of **Ibeabuchi v. Ibeabuchi**[187] Olatawura, J. C. A, giving the lead judgement at the Federal Court of Appeal at Enugu, held that before a court makes an order of maintenance, it must take some factors into consideration. These include the parties income, earning capacity and by implication, properties owned by each party, financialresources, financial needs and responsibilities, standard of life of the parties before the dissolution of the marriage ,their respective ages, and the length of time they were husband and wife.[188]

4.3.1 Means of the Parties

The means of the parties is a relevant factor in determining whether in fact that spouse deserved to be maintained by the other. Maintenance will not normally be granted if the spouse claiming maintenance has sufficient means and income to maintain him or herself.[189] The 'means' according to black laws dictionary is defined as available resources especially for the

[187]FCA/E5/82
[188]Sagay.I(1999) Op.cit.p.467
[189]Ibid

payment of debt.[190]However, the means could also include the party's income. Where a party possesses all these mentioned above, he cannot run away from the obligation to maintain his spouse. On the other hand, where a party has no assets or monthly income, the court would not hold him liable to maintain his spouse.[191]It is therefore essential that the petitioner should show the means and/or actual earnings of the respondent. If a wife has been in the habit of working, the court will be more likely to take her actual means into account than in a case where she has only been forced to go to work because of the breakup of her marriage.[192]But a wife will not be expected to use up or divest herself of capital assets, particularly if these represent a necessary requirement (e.g. home, furniture, clothes, stock-in-trade) in order to provide her temporarily with means of support. This was the decision in **PLOOG v. PLOOG**[193]**.**

4.3.2 Earning Capacity of the Parties

Earning is defined according to black's law dictionary[194]as revenue gained from labour or services or from the investment of capital or assets. The earning capacity of the parties is another important factor to be put into consideration by the court before awarding maintenance. The earning capacity also includes the potential earning capacity of a spouse.

However, the earning capacity of a wife should not be put into consideration in some instances. Because as a general rule, a wife is not obliged to work in order to reduce the maintenance her husband should pay. If a wife had worked regularly during the married life, she is expected to work after divorce. So in this case her potential earnings need to be taken into consideration[195].But where on the other hand, the wife has young children to look after, she

[190]Garner. B. A.(2004)Black's Law Dictionary 8th Edition, West Publishing Company, Boston page 1002
[191]Sagay. I. Op.cit
[192]Rose v. Rose(1987)481 U.S 311
[193] (1947)V.L.R 12
[194]Garner .B.A. Op. cit p. 548
[195]Ibid

should not be expected to work and her earning capacity should not be put into consideration. The supreme court considered the meaning of the term 'earning capacity, income and assets' in the case of **Negbenebor v. Negbenebor**[196]**.**The lower court from whose judgement the husband appealed in this case, had added the value of a house, owned by the husband ,and money he had in a bank to the regular earning of the husband to constitute his income. The court then added the wife's earning to this total sum, divided it by three and held that the wife was entitled to one - third of the total sum as her maintenance.

The Supreme Court held that the learned judge was in error. The latter had confused the basis of assessment, which should have been the respondent's income, as distinct from his assets. In this case, the lower court had wrongly based the assessment of maintenance on the respondent's assets. The income of the husband in this case was his salary, which was $1,260 per annum, and his earnings of $300 per annum from private practice. His total income was therefore $1,560 and not $4,910 (which included half the value of the respondent's house plus $350 savings).Using the correct figures, the supreme court found that the correct amount of maintenance which the respondent ought to have been ordered to pay per annum was $218 instead of $1,332 which the lower court calculated as the correct amount.

In the case of Griffith v. Griffith[197]the husband aged fifty one had been in remunerative employment as a consulting engineer. But for three years up to the hearing, he had been unemployed. On the basis of the evidence adduced in respect of his earnings while in employment, the court held that it was reasonable to attribute to him a potential earning capacity of five thousand pounds per annum.

[196](1971) 1 ALL N.L.R 210
[197](1974)1 WLR 1350

Moreover, the question whether the wife's earning capacity will be taken into account in the award of maintenance is regulated by some basic principles. In**ROSE V. ROSE**[198]the parties had been married for twenty years, there were two children, one of whom was about four years old. The wife was aged 41, had not had to work during the marriage, and had no normal trade or calling. As to the general principle to be applied, Denning,L.J (as he then was) said

> *After the divorce the wife claimed maintenance, and the question is whether she ought to go out to work, I agree that no general rule can be laid down on the matter, but this wife is certainly under no legal duty to go out to work in order to reduce the maintenance that her husband should pay.It would be quite unreasonable to expect her to do so when she has to look after young child.If a wife does earn, then her earning must be taken into account: or if she is a young woman with no children, and obviously ought to go out to work in her own interest, but does not, then her potential earning capacity ought to be taken into account or if she has worked regularly during the married life and might reasonably be expected to work after divorce, the potential earnings ought to be taken into account*

4.3.3 Conduct of the Parties to the Marriage

The conduct of the parties to the marriage is one of the factors to be taken into account in determining whether or not to award maintenance as enshrined in section 70(1) of the matrimonial causes Act. Thus if the applicant is the guilty party, the size of the maintenance awarded, and in fact the question whether maintenance will be awarded at all, will depend on the gravity of the applicant's misconduct. In the English case of **Trestain v. Trestain**[199]a decree *nisi* was granted by the court of first instance to the husband on the ground of the wife's cruelty .On appeal the court of appeal found that the husbands conduct was in fact responsible for the break-up of the marriage. It therefore held that the decree was not a bar to the wife's obtaining an

[198]1987 481 U.S 619
[199]1950 WLR pg 198

award of maintenance. In the case of Cunningham v. Cunningham[200]the wife committed adultery with a stranger who came for a weekend visit. Thejudge granted a decree of divorce to the husband and refuses to award maintenance to the wife because her conduct was the main cause of the breakup of the marriage.[201]

More so, in**Wachtel v.Wachtel**[202], Denning M.R, observed that,

> *It is no longer appropriate to talk about an innocent or guilty spouse. A court in considering the conduct of the parties is not required to carry out a post mortem or to hear the mutual recrimination of the parties and go into their petty squabble for days on end as was the case under the old law".*

The learned judge also rejected the suggestion that there should be a discount or reduction in what the wife is to receive because of her supposed misconduct. Some of the grievous conduct which English courts have taken into account in dealing with application for maintenance includes the wife who had fired a short-gun at her husband[203], the husband who inflicted serious and lasting injuries on his wife[204], and the husband who committed adultery in the matrimonial home with his daughter-in-law.[205]

However, it is safe to conclude that, conduct would only be relevant in determining financial provision if gross and 'obvious or if 'common justice' requires that a party should be given less than what normally would accrue to that party.

4.3.4 All other Relevant Circumstances

Other circumstances that are so relevant in determining whether a spouse is entitle to maintenance by a court is also to be put into consideration. There are other circumstances which

[200] (19572)Q.B. 396
[201]Nwogugu. E. I. Op.cit pg199
[202](1973)FAM 72
[203]Armstrong v. Armstrong (1874) 118 sj 579
[204]Jones v. Jones (1976) FAM 8
[205]Dixton v. Dixton (1974) FAM 58

will not allow the husband to discharge his obligation effectively apart from the three factors discussed above. Forexample, the acceptance of the extended family responsibility is a common feature of most communities in Nigeria. It is therefore highly plausible that the extended family responsibility of either spouse is a 'relevant circumstance'. In **Dawodu v. Dawodu**[206], The wife applied to the court for an order to increase the sum of 25 naira which the husband respondent was already paying as maintenance to her for herself and the only child of the marriage. The court found that while the husband was paying a monthly rent for his unemployed mother, and all from his monthly salary of #56,the wife only paid #12 for her accommodation out of her monthly salary of #35+83.The wife's application was dismissed. Sotherefore, Section 70(1) of the MCA gives the court wide latitude in dealing with applications for maintenance.[207]It was opined that the extended family responsibilities may constitute one of the other relevant circumstances. It should be noted however that "all other relevant circumstances" as a factor in maintenance proceedings cannot be exhaustive but will depend on the circumstances of each case.

4.4 Enforcement of Maintenance Order

Where a husband against whom a maintenance order is made fails to comply; the wife may seek a court order for the attachment of the respondent's property [208]If such order remained un discharged within six weeks, it renders the respondent liable to being regarded as insolvent and may thereafter be detained in custody for a period not exceeding six months from the expiration of the initial six weeks, and following this imposes certain disabilities on him, e.g. he is disqualified from contesting elections into legislative or any elective executive positions.[209]

[206]C.C.H.C /5/74 p 617
[207]E. I. Sagay Op. cit p. 245
[208]Sec. 70(4) MCD Op. cit
[209]Ibid s.5

She may also recover the arrears of maintenance due to her as a judgement debt in a court depending on the amount.[210]If he fails to pay after a specific court judgement to that effect, the processes discussed above may follow.

4.4.1 Maintenance Agreement

For a maintenance agreement to be valid and enforceable, it has to constitute a contract between the parties. However, if it is not made by deed the party seeking to enforce a promise to pay maintenance must show that she (he) has furnished consideration. If there is no consideration at all, a promise not made by deed will be unenforceable.[211]

By virtue of Section 34 of Matrimonial Causes Act, an agreement has to be in writing and made between spouses or former spouses. It must also be an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or a separation agreement in writing between the same parties containing such agreements. An agreement containing no such arrangement can come within the statutes only if it is a separation agreement made whilst the parties are still married to each other.[212] An agreement must be in writing and made between spouses. Under section 34(2) of Matrimonial Causes Act 1970, financial arrangement are defined as "provisions governing the rights and liabilities towards one another when living separately of the parties to the marriage (including a marriage which has been dissolved or annulled in respect of the making or securing of payment or the disposition or use of any property: including such rights and liabilities with respect to the maintenance of education of any children of the family".

[210]Ibid s.7
[211] Bromley Op.citpg 656
[212] Ibid

What is the position of an agreement that comes within the section with someone other than the spouse? In Young V Young[213] the spouses and the husband's brother had entered into an agreement in which the husband had covenanted to pay the wife $8 a week and the wife had been given the use of a house (which was the joint property of the husband and this brother) on her undertaking to keep it in reasonable repair. On the husband's application to have the agreement altered, it was held that it was not a maintenance agreement for the purpose of the Act because the brother was a party to it and the Act contemplated only agreement between husband and wife. Takenliterally, this statement can scarcely be true: if the husband agrees to settle periodical payments on the wife, the agreement cannot fail to be a maintenance agreement solely because trustees are parties to it.

4.4.2 Maintenance Pending the Disposal of Proceedings

Maintenance pending suit was known as alimony 'pendent lite'. The word Alimony was used traditionally to refer to an allowance made to a wife out of her husband's estate for her support.The power to order the husband to pay maintenance pending suit (or alimony pendent lite as it was formally called) goes back to the ecclesiatral courts. It was based on the fact that the wife as such was entitled to be maintained by her husband so long as the marriage was still in existence, and the purpose of interim orders of this sort was to ensure that she and any children of the marriage living with her obtain a sufficient allowance until the outcome of the proceedings.[214]Consequently, she was entitled to an order even though she was alleged to have been guilty of adultery or desertion or the marriage was alleged to be void; so long as the issue was subjudiced.[215]

[213] (1993) 4 SCR 3
[214]BroomleyOp.cit p.727
[215]Ibid

However, matters which are extraneous to the spouses will not be considered in the assessment of maintenance pending the disposal of proceedings. In **Ikipi v. Ikipi**,[216] the husband petition for the annulment of his marriage on the ground that during its celebration, a marriage subsisted between the respondent wife and another man. The respondent applied to the court for maintenance pending the disposal of proceedings. Contesting her application, the petitioner averred that he made monthly allowances for his aged aunt, the education and upkeep of four of his uncle's children and other monthly disbursements. The court made it clear that while it will give consideration to established family obligations in the light of contemporary culture and societal values such consideration will be subject to the spouses in fitting cases. After all, a husband must be fair before being generous. Such fairness translates to respondent's duty to provide maintenance for applicant before meeting the upkeep of uncle's children and aged aunties.

In the assessment of maintenance pending suit, the court will take into consideration the parties' station in life, their financial position and their conduct, but not the fact alleged to evidence the irretrievable breakdown of the marriage. Where the spouse applying for the maintenance has indulged in any act of the forms of misconduct, this must be disclosed to the court to enable it to make an order which is just in the circumstances.[217] Once the petition for the principal relief is dismissed, the court will not make an order for maintenance pending suit.[218]

In conclusion, it is very clear that our law on maintenance is foreign in the sense that it does not reflect our social and cultural background. At common law, maintenance of a wife is a duty imposed on the husband alone. While under the statutory law, the matrimonial causes Act talked about maintenance of a wife as an ancillary relief and it imposes maintenance on both

[216] Suit No. HD/88/83 of 13/4/84 (unreported) High Court of Lagos
[217] Section 73(1)(i)MCA Op.cit
[218] Section 75MCA Op.cit

spouses depending on the circumstance of the case. However, with the coming of the statues, it modified the position of the common law. In Nigeria today, most women go out to work and they have independent means of earning their living and are not completely dependent on their husbands.

CHAPTER FIVE

5.0 COMPARATIVE ANALYSIS

5.1 Introduction: Islamic Law differs from English law in several aspects. Every system of marriage in Nigeria has its abiding laws, even though the duty of maintenance stems from the root of marriage. This therefore brings about a lot of difference and similarities in Islamic and Statutory Law.

5.2 Obligation of the Husband to Maintain his Wife:

At common law, a husband is under a duty to maintain his wife while the marriage is still subsisting. The liability of the husband to maintain the wife normally depends on their living together, though he may still be liable even when they are living apart. The wife has no corresponding liability in respect of her husband under the common law.[219] The position of the common law changed with the coming of the statutes. Under the statutes, both spouses have the right to maintenance and other financial relief either during or after the marriage.

Similarly, under Islamic law, every husband has the obligation to provide for the sustenance of his wife. She should be provided with food, home, clothes and other basic amenities of life. It is the duty of the husband to provide for the family's expense, including the expenses of the wife, and that the wife has no liability in this respect, the wife may have enormous wealth and may possess many times more wealth than the husband does, but still she has no obligation to contribute towards the family expense in money or in the form of work, and if she works to help the family, it is optional and depends on her own will and inclination.

Both Islamic and statutory law agreed upon the fundamental necessities, food, clothing and matrimony residence. For instance, where the English law takes into consideration, the financial status of the wife before awarding maintenance, Islamic law considers the financial

[219] Broomley Op.cit p 195

position of the husband along vis-à-vis his wife's entitlement to maintenance, also taking into consideration of the conditions of entitlement to maintenance.[220]

Under both Islamic and statutory laws, the obligation of the husband to maintain his wife arose from the fact of cohabitation and the wife's management of the household; it is therefore suspended when they are living apart as a result of a dispute[221]

5.3 Scale of Maintenance of Wife

Under Islamic law, three basic elements must be taken into consideration while calculating the quality and quantity of maintenance to which a wife is entitled, they are: the financial position or ability of the husband; the standard of living of the wife prior to the marriage; and the custom and traditions prevailing in the locality. While under the statutory law, generally, the determining factor of the scale of maintenance is nothing short of the husband in life. Thus, as long as the spouses live together, the standard of living of the family is entirely a matter of concern to the husband i.e. it is for him to fix it.

5.4 Wife as an Agent of Necessity

Under statutory laws, were a husband fails to provide the wife with adequate maintenance and she has no adequate means to support herself, she becomes at common law, his agent for the purpose of obtaining necessaries i.e. an agent of necessity. She can provide such necessaries for herself and her children as are suitable to her position and status of her husband. Buthowever, a wife who has sufficient means of her own to purchase necessaries is not entitle to pledge her husband's credit as there is in fact no necessity.[222]

But under Islamic Law, a husband is under the obligation to maintain his wife however rich she may be, she is entitle to maintenance by her husband.She can take out of his money to

[220]Hammuda. A.A. Op.cit p.148
[221]Nwogugu. E. I. Op.cit p.197
[222]Ibid p.197

maintain herself and her children where the husband fails to provide the wife with adequate maintenance or where the husbands financial position does not allow him to discharge his duty.[223]In a Hadith recorded in Bukhari and Muslim, the prophet (PBUH) told Hind bint Utbah, after she complained that her husband, Abu Sufyan, was stingy and was not maintaining her and she ask if she could take from his property without his knowledge; "Take what is sufficient for you and your child according to what is customary"[224]

Another point of difference between English and Islamic Law is that an English wife was not considered entitled to save anything out of the maintenance paid to her by her husband. If she saved any amount and purchased anything with it, it was held to belong to the husband.[225]This involved hardship to the wife and to save her from it, section 1 of the Married Women Property Act provided that the savings shall belong to both the husband and wife in equal shares while Islamic law considers that the maintenance paid to the wife becomes her absolute property and she can do whatever she likes with it.[226]Hence, the savings out of her maintenance shall belong to her. The only restriction on her right to save anything out of the maintenance paid to her is that she cannot resort to such saving at the cost of her health.

5.5 With-holding Maintenance

Under statutory laws, the commission of adultery is a ground for termination/with-holding maintenance. A wife who commits adultery even on one occasion loses her right of maintenance. A husband has the right to refuse his wife maintenance on discovering the offence.[227]In the case of Govierv. Hancock[228], the husband was held to be under no duty to

[223]Hamuda. A. A Op cit p. 159
[224]Buhkari and Muslim cited in http://www.islamswomen.com/marriage/fiqh_of_marriage_8.php on 5/3/2015
[225]Blackwell v. Blackwell,(1943) 2 ALL E.R 597
[226]Ibn Abidin, Op. cit, vol.II,P.905
[227]Obi. S. N. C Modern Family Law in southern Nigeria.p247
[228](1796) 6 Term Rep .603 Cited in Obi. S. N. C Ibid

maintain his wife who had committedadultery. Under the statutes even if the wife is not caught of the offence but her conduct reasonably made the husband to believe that she has committed adultery, he will be relieved of his obligation to maintain her, for the duration of such belief. But wherethe man has condoned or connived at the wife'sadultery, he will not be relieved of his duty to maintain his wife.[229]Also in the case of H.S Wright and Webb V. Annandale[230], a firm of solicitors who had acted for the wife in proceedings against her husband sued the husband for their fees, relying on the wife's agency of necessity. The husband denied liability on the ground that the wife had committed adultery; and judgement was given for him. The solicitors appealed, and the appeal was dismissed.

Similarly, under Islamic law, a wife will not be entitled to maintenance when she is recalcitrant. But jurists differ on the details of what constitute recalcitrant. Some jurists hold that a fit and healthy wife who denies her bed to her husband is refractory and thus loses her right to maintenance.[231]

5.6 Maintenance of a Divorced Wife

Where divorce is revocable, the wife is entitled to *Nafaqah.* The husband is responsible for her full maintenance. She has the right to continue her occupation of a room she used to occupy before divorce, in her matrimonial home.[232]It is not permissible for her husband to throw her out until her *iddah* is over. As long as her *iddah* has not expired; she is entitled to *nafaqah* just as the wife on whom a divorce has not been effected. The entire Muslim jurist unanimously agrees on this. As regards to maintenance of a revocable divorced wife, Quran 65:1 provides as follows:

[229]Broomley. P. M and Lowe. N. V (1992) Family Law ,Butterworth and co. Publishers Ltd, London, 8th Edition. P.197
[230](1930) 2 K.B 8
[231]AbdalAti. H. Family Structure in Islam op. cit p. 158
[232] Ibid p.246

> *"O Prophet(SAW) when you divorce women, divorce them at their prescribed periods, and count accurately their iddah periods .And fear Allah your Lord (O Muslims) and turn them out not from their husbands home nor shall they (themselves)leave, except in case they are guilty of some open illegal sexual intercourse…..*[233]

Muslim jurists unanimously agree that a woman on whom an irrevocable *talaq* has been effected is entitle to *nafaqah* during her *iddah* period, provided she is pregnant. This is in accordance with the Quranic verse 65:6, which provides as follows:

> *Hence let the woman who are undergoing a waiting period live in the same manner as you live yourselves ,in accordance with your means. And do not harass them with a view to making their lives a misery. And if they happen to be with a child (i. e pregnant) spend freely on them until they deliver their burden….*[234]

The jurists however, differ on whether a non pregnant divorcee on whom an irrevocable *talaq* has been effected is entitle to *nafaqah* during her *iddah* or not. Thus Hannafi jurist hold that she is entitled to full *nafaqah* just as pregnant divorcee is entitled to that. This is because *nafaqah* is due to the wife before *talaq* by virtue of the fact that she has been exclusively confined for the fulfilment of the husband's right which necessitates living in his house. And this confinement continues even after the irrevocable divorce but before the expiration of the *iddah* whether the woman is pregnant or not. This is the view of Umar ibn al-Khattab.[235]

Hambali jurist are of the view that she is not entitle to any *nafaqah*. This is also the view of ibn Abbas. In holding this view, they rely on the hadith transmitted by Sha'abi that the

[233]Zayyid .M. Y. Op. Cit p. 420
[234]Zayid .M. Y. Op.cit p 420
[235]Aliyu.I.A. (1996) *Op. cit* p. 326

husband of Fatimah bint Qais pronounce on her triple divorce. And the prophet (SAW) did not allow her maintenance and dwelling.[236]

However, Maliki and Shafi'i jurist are of the view that she is entitled to only accommodation. This they argue is in accordance with the Quranic verse 65:6 which provides as follows:

"Lodge them in your own homes, according to your means. Do not harass them so as to make life intolerable for them. If they are with child, maintain them until they deliver their burden; and if, after that, they give suck to their children, give them their pay…..[237]

The verse according to the jurist indicates that divorce woman is entitled to accommodation without stipulating a condition that she must be pregnant. This means that a woman on whom an irrevocable *talaq* has been effected must be provided with accommodation irrespective of whether she is pregnant or not.

Under statutory law, a wife is not entitled to maintenance after divorce. But either of the spouse can make an application to a court for such maintenance. Under section 70(1) of the matrimonial causes Act, the court may in proceedings with respect to maintenance of a spouse or children of the marriage make such order as it considers proper having regard to the means, earning capacity ,conduct of the parties and all other relevant circumstances.[238]

There are some similarities under both laws. under Islamic law, a husbands means and earning capacity is also taken into consideration when making an order of maintenance to the wife as stated in Quran 65:7 which states that a man of vast means should spend according to his means.....going by this Quranic verse, both laws takes the 'means' into consideration.

[236] Hassan .A.(1985) ibid pg 625;Nasa'I,ibn Majah, and Trimidhi all narrated the same hadith. In Aliyu. I. A. (1996) *ibid* .p 326
[237] Zayid .M.Y Op.cit p.420
[238] Nwogugu. E. I (1974) Family Law in Nigeria. Heinemann Educational Books Nig Plc Ibadan.p242

Under Islamic law, the husband's responsibility to maintain his wife terminates, when the wife's *iddah* expires. While Under the English law, a court may order the husband on the dissolution of marriage to make a lump sum or a weekly, monthly, yearly or other periodic sum to be paid to the wife for her life.[239]

Under statutory law, if a wife petitions for divorce on the ground of her husband insanity, the high court may make an interim order against her for the payment of alimony to her husband.[240]If the divorce asked for is granted, the wife may be order to secure to her husband such "such gross sum of money or annual sum of money for any term not exceeding his like" as the court thinks fit. In addition to or in place of this secured sum, the wife may by order be directed to pay her husband a monthly or weekly sum of money for the rest of their joint lives.[241]

However, this is not the position under Islamic law. A wife can only pay return part of her dowry or the dowry in full to her husband when she seeks for a divorce.

Under English law, a wife who wants a separation from her husband on the ground of his insanity may be ordered by the court to make provision for the maintenance of her husband.[242]While under Islamic law, a wife is not responsible for the maintenance of her husband in any way.

[239]Section 73 (1)(a) MCA Op.cit.
[240]Section 16(3) MCA Op.cit
[241]Ibid
[242]Section 20(1) MCA Op.cit

CHAPTER SIX

6.0 CONCLUSION

6.1 Summary

The husband is bound to maintain his wife so long as she is faithful to him and obeys his reasonable orders. The husbands are clearly directed by the Quran 65 v.7 to provide maintenance on equitable terms to their wives. So that the wives could live in the same style as they live[1].buthowever, the husband will be discharged of his duty of providing maintenance to his spouse if she is disobedient *(nashiza*).instances of such behaviour on the part of the wife include: imprisonment, apostasy, and living the matrimonial home without the husbands consent. However the liability is restored when she becomes obedient. The refusal or disobedience is justified by non-payment of prompt dower or she leaves her husband's house because of his cruelty or any other valid reason.

This writing has been divided into six chapters. The first chapter covers the general introduction i.e. background of the study , statement of the problem, aims, objectives, scope of the research, methodology, justification as well as organizational layout.

The second chapter discusses marriage under both Islamic and English laws, the purpose of marriage under both laws, and preliminaries of marriage under both Islamic and statutory laws.

The third chapter focuses on the wife's right of maintenance under Islamic Law, the basis of maintenance under Islamic law, the scale of maintenance under Islamic law, component of maintenance of wife such as food ,clothing, shelter and medical care has been discussed under this chapter, also discussed is maintenance of wife under special circumstances. Where she is a worker, she is entitled to maintenance so far as she did not go out without her husband'sconsent.

[1]Zayid,M.Y(1980) Op.cit p.420

Butwhere the husband does not consent to the wife's working outside the matrimonial home and she refuses to stop, then the right of maintenance is forfeited.

During the *iddah* period, a divorced woman is entitled to maintenance by her husband until the *iddah* period expires. Where a wife is sick, Maliki and Hannafi jurist are of the opinion that she is not entitle to maintenance since she cannot tolerate conjugal relations. Likewise, where the husbands financial status is poor. i.e. when the husband is in poverty, some school of thought argue that the wife has right to borrow on her husband's behalf what will be sufficient for her. Others are of the opinion that if the wife has the means she should support herself and her husband.

Furthermore, the chapter also discusses withholding maintenance under Islamic law and maintenance of a wife when due. Maintenance of a wife becomes due the moment the wife fulfils all the marriage conditions i.e. the marriage must be valid and subsisting, marriage must be consummated, wife must be able to tolerate conjugal relations, wife must be accessible for conjugal relations. Moreso, the wife must also obey all reasonable orders of the husband but such order should not violate the rights of God.

Chapter four discusses maintenance of wife under statutory laws.Under this law, a husband is under a duty to maintain his wife. This duty emanates from the fact of living together and cohabitation[2]. And the wife's management of the household,whichthe wife handles and oversees in the matrimony. If the wife is not provided with maintenance, and does not have adequate means to cater for herself, she then at common law becomes her husband's agent for the purpose of obtaining necessaries for herself and her children in conformity to her status and the position of her husband.

[2]Bromley, P. M (1966),Op.cit.pg 157

However, there are circumstances that will terminate a wife's agency of necessity. If the wife commits adultery she loses her right to maintenance .so also on the death of her husband and decree of divorce.Also discussed are the Basis of maintenance of wife under statutory laws, the difference between maintenance and alimony, criteria for consideration of the award of maintenance of wife under statutory law, enforcement of the duty to maintain.

Chapter five is the comparative analysis of maintenance of wife under Islamic and Statutory laws. This chapter compares the component of maintenance of wife under both laws, obligation of the husband to maintain his wife, withholding of maintenance, scale of maintenance of wife, wife as an agent of necessity, maintenance of divorced wife and maintenance of a wife where the husband is poor.

Lastly, chapter six being the last chapter draws the curtain on the entire work. It deals with the conclusion, summary, findings and finally recommendation.

6.2 Findings

1. It was found that even though it is the husband's responsibility to provide the wife and family with maintenance, the prevailing economic hardship as indicated by the wife's in the research area has made them work hard outside the matrimonial home to earn a living so as to help in the maintenance of the family.
2. A large number of women do not stay in their matrimonial home any longer to observe their *iddah* period. Thereby forfeits their right to maintenance.
3. It has been observed that there is no post -divorce maintenance for a woman married under statutory law.
4. The juristic view that states that a wife forfeits her right to maintenance when sick sounds to be harsh.

6.3 Recommendations

1. Even though the wifes may help their husbands in difficult situations, husband should not neglect their duties towards providing maintenance to the family.
2. Divorced wife's should endeavour to observe the *iddah* period in their matrimonial home so as not to forfeit their right to maintenance. There is a need to educate women on the Quranic provisions regarding marital rights. This is because the violation of these provisions resultstoo many problems affecting the family in particular and the society in genera
3. There should be post- divorce maintenance under statutory law for maintenance of a woman after divorce at least for a specified period of time before she settles.
4. The question of a sick wife also needs to be reviewed. She should be fully maintained by the husband. Becausesickness is a natural cause over which the wife has no control; as such there is no sense of honour and dignity to deprive the wife of her right to maintenance for the reason of being sick.

BIBLIOGRAPHY

Islamic Sources

1. Ad-Dasuqi. M (n.d) Hashiyatad Dasuqialasharh al-Kabir,dar al fikr,Beirut.Lebanon.vol.2
2. Al-Jazairi A. (1976) Hadith of the Messenger of Allah (SAW), Minhajul, Muslim.
3. Al-Jazairi. A (n.d) Fiqhalamadhahib al-Ara'avol.iv
4. Al-Asqalani, A. A (nd) Fathul-Bari, Bisharhi, Sahihil-Buhari Almat Bahatus Salafiyyah, Cairo Vol.9
5. Al-Khirshir .M (nd) Al khirshia Lasharh Mukhtasar,Dar al fikh, Beirut,Lebanon.vol.3
6. Audi. J. A. M (2003) The Rights of Spouses in Marriage under the Statues and Islamic Laws in Nigeria: An Appraisal. Faculty of Law Ahmadu Bello University, Zaria Ph.D Thesis
7. Ameer A.(1976) Mohammadan law, 7thed
8. Bail (1974) Digest of Muhammadan Law, Vol. 1 Lahore
9. Doi. A. I. R (1984) Shariah The Islamic law. Ta Ha Publications ,London
10. El-Imairi, M .T (1978) Personal Status in Islamic Law, Centre for Islamic Legal Studies, A.B.U Zaria.
11. Gurin. A. M (2010) An Introduction to Family Law, Alrauf Press Limited, Zaria.
12. Gurin. A. M (1984) Prerequisites of Marriage under Islamic Law: Their Application in the Northern States of Nigeria. LL.M Thesis, Faculty of Law, A.B.U Zaria
13. Hammuda. A. A. (1982) The family Structure in Islam, Islamic Public Bureau Lagos, Nigeria.
14. Muhammad A. M. (2000)The Rights and Obligation of Spouses under Islamic Law. LL.M Thesis, Faculty of Law, A.B.U Zaria.

15. Sabiq. S. (1983) Fiqh as Sunnah, Dar al-fikr, Beirut, Lebanon Vol.3
16. Sabiq. S (1983) Fiqh as Sunnah, Dar al-fikr, Beirut, Lebanon vol.3
17. The Hedayas (1979) Commentary on Islamic Law, Hamilton, New Delhi.
18. Qurut, N. H (1995) Mauqifulislam min Nushuzizzaujaini au Ahadihima, Ummul –Qurat University Mecca
19. Zayyid M. Y. (1980) An English Translation of the Meaning of the Holy Quran, Dar-al-Choura, Beirut, Lebanon

English Sources

1. Allen. R. E. (ND) The Concise Oxford Dictionary of Current English, 8th Edition, University Press Ltd
2. Broomley. P.M and Lowey N.V (1992) Family Law, Butterworth and Co. Publishers Limited London.
3. Chinwuba Obi. S. N. (1996) Modern Family Law in Southern Nigeria. African University Press Lagos.
4. Onokah. M. C (2003), Family Law, Spectrum Books Ltd, Ibadan.
5. Garner. B. A. (2004) Black's Law Dictionary 8th Edition, West Publishing Company Boston.
6. Nwogugu. E. I (1974) Family Law in Nigeria, Heinemann Educational Books Nigerian Limited, Ibadan.
7. The Lexicon Webster Dictionary, vol 1
8. The Concise Oxford Dictionary of current English. 8th Edition. Oxford 1990

Internet Sources

1. http://www.thefreedictionary.com/islamiclaw acessed on 18/10/2015
2. http://www.hg.org/statutory-lawlegalresources acessed on 18/1/2015

3. Anonymous (2004) Conditions of Witnesses to the Marriage Contract. Retrieved from http://www.islamonline.net/servlet/satellite?pagename=islamonline.english-Askscholar /fatwae/fatwae&cid=111950354342
4. Olanike.S.O (2011) Requirement of a Valid Islamic Law Marriage vis-a-vis Customary Marriage. Retrieved from http://works.bepress.com/olanikeodewale/contact/html
5. Bilal. A. A (n.d) The Marriage Contract: its basic element. Retrieved from http://www.missionislam.com/family/marriagecontract
6. www.islamawareness.net/marriage/dowry/dowry_article001.html acessed on 20/10/2015
7. Mahr from Islamic perspective retrieved from http://www.islam.gov.my/sites/default/file/mahr_from_islamic _perspective.file accessed on 18/5/2013
8. http://:www.gutenberg.org/ebooks/39632 Encyclopedia Britannica vol. 14, 1768, p. 692. Accessed 14/4/2012
9. http://www.islamswomen.com/marriage/fiqh_of_marriage_8.php on 5/3/2015
10. www.islamawareness.net/marriage/dowry/dowry_article001.html Accessed on 20/10/2015

APPENDIX

QUESTIONNAIRE

Topic: A Comparative Study of Wifes Right to Maintenance in Islamic and Statutory Laws in Nigeria: A Case Study of Zaria and Sabon Gari Communities of Kaduna State

Introduction:

Am a Post-Graduate Student of Faculty of Law, A.B.U Zaria undertaking a research on the above topic.

Please kindly assist in responding to this questionnaire by answering the questions provided. The information will be kept confidential and used only for the purpose of this research.

PERSONAL DATA

Name: ----------

Age: 20-25 ( ) 25-30 ( ) 30-35 ( ) 35-40 ( ) 40-45 ( )

Sex: Male ( ) Female ( )

Educational Level: Primary ( ) Secondary ( ) Tertiary ( ) Post graduate degree ( )

Marital Status: ----------

Religion: ----------

1. Are you aware that you have a right to receive maintenance from your husband? Yes/No
2. Do you receive such maintenance from your husband? Yes/No
3. Are you working? Yes /No
4. Did your husband give his consent before you started working? Yes /No
5. What is the nature of your work if any? ----------

6. Why are you working? ----------

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7. Do you contribute to the maintenance of the home? Yes/ No
8. If yes, why? ----------

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9. Who is responsible for the domestic work in the house? ----------
10. Do you have a house help? Yes/No
11. How often does your husband buy clothes for you? ----------
12. Have you ever been divorced? Yes/No
13. If yes did you observed the *iddah* (waiting period)in your matrimonial home? Yes/No
14. Did you receive any form of maintenance from your husband during *iddah(waiting period)*? Yes? No
15. Do you receive any form of maintenance from your husband when ill? Yes /No
16. When your husband has no means of livelihood, will you maintain the home or you rather seek for dissolution of the marriage? ----------
17. Have you ever sued your husband due to lack of maintenance? Yes/No

Appreciation

Thank you for the time spent in answering the questions. By this kind gesture, you have left a legacy for women generally both now and in the future. All the useful information you made in response to the questions will be cited when eventually the result of this research is published.

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