AN APPRAISAL OF THE IMPACT OF GENDER EQUALITY ON WOMEN'S RIGHT TO WORK OUTSIDE MATRIMONIAL HOME IN ISLAMIC LAW

BY

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DECLARATION

I declare that the work in this dissertation entitled *"An Appraisal of the Impact of Gender Equality on Women's Rights to Work Outside Matrimonial Home in Islamic Law"* 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 or diploma at this or any other institution.

_____ _____

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CERTIFICATION

This Dissertation entitled *"An Appraisal of the Impact of Gender Equality on Women's Rights to Work Outside Matrimonial Home in Islamic Law"* by Abubakar Aminu SHIRAWA meets the regulations governing the award of the degree of Master of Laws-LL.M of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

To Allah (S.W.T.) for the bounties of mercy He bestows on me; to my parents; and to all the people who in one way or the other contributed in seeing through my education at this level.

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ABSTRACT

This study entitled: "An Appraisal of the Impact of Gender Equality on Women's Rights to Work in Islamic Law" has examined the Islamic perspective on gender equality and it is argued that Islamic law has elevated women and gives them a very dignified position, and the western call of women's liberation is actually a misrepresentation of the true nature of women, and in fact it is a disguised form of exploitation of the women's body, deprivation of their virtuousness and deterioration of their origin. The research work is predicated upon the problems arising out of severe criticisms levelled against the Shariah that it negates gender equality, more so as women are not allowed every freelance to mingle with men and partake in all sorts of undertakings to earn a living. The main objective of this work therefore, is to provide an appraisal on the impact of gender equality on women's right to work in Islamic law with a view to highlight the correlation between gender justice and applicable limitations to women's right to work outside their matrimonial home under Islamic law. It is contended that the "permissibility" which is the legal position of the right to work shall not be allowed to overshadow the obligatory responsibility which is the primary duty of women, e.g., rearing children, tending the home, etc. It is therefore observed that there is abdication by women of their responsibilities to children by virtue of engaging in work outside their matrimonial homes. It is also observed that she loses her Feminity and Purdah orientation meant for the preservation of her physiology and morality. It is thereby recommended that in order to uphold the Islamic perspective of gender equality and bestow to women the permission to work, it is pertinent that employers of labour more particularly in places where Muslims are predominant, should endeavour to foster gender sensitive atmosphere in terms of providing gender segregated facilities like toilets, staff common rooms, female travelling buses, female nurses and doctors for women, etc. This would allow observance of the Islamic principles of purdah whereby seclusion and mingling of sexes are prohibited. Additionally, it is also recommended that a woman working outside home must respect her primary responsibility of rearing children and tending the home without having creating additional problem of requiring somebody to take care of them for her, because there is no more suitable person to discharge it than herself. Finally, it is suggested that Muslim women should desist from imitating the values and ideas propounded by western feminists to delude Islamic morality in the name of employment. This is because as against western society, Muslim women are guaranteed means of sustenance which is comparably unobtainable among women in the western society.

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CHAPTER ONE
GENERAL INTRODUCTION

1.1 Background of the Study

Islam regards all human beings as people from one family and of the same mother (*Hauwa'u*) and father (Adam) who should be accorded due respect and be given all the necessaries of life which Allah provides for them. All human beings are by nature equal before their Creator, Allah as belonging to the human race regardless of all sorts of differences be it sex, tribe, colour, and the best among all people is he who fears Allah most. The Almighty Allah declares in the Holy Qur'an:

> "O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes that ye may know one another (not that ye may despise (each other). Verily the most honoured of you in the sight of God, is (he who is) the most righteous of you. And God has full Knowledge and is well acquainted (with all things)."[1]

Thus, both men and women under Islamic law are accorded equal rights and opportunity, such as right to life, right to education, right to independent ownership, right to fair hearing, etc.

During the period of ignorance (*Jahiliyyah)* among the pre-Islamic Arab societies, women were extremely discriminated against. In fact, it was the Arab culture to bury female babies alive.*"....shall he retain it on (sufferance and) contempt, or bury it in the dust? Ah! What an evil (choice) they decide on?*"[2] Women were treated as properties and objects of sexual pleasure. In that era, the women were deprived of the most basic human right that are required for human existence such as right to liberty, property right, right to inheritance, etc.

But with the advent of Islam, the practice changed, and the foremost contribution that Islam made to elevate the social status of the women was to give them the right to life. On this

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[1] Qur'an 49:13 Ali, A.Y. *Translation of the Glorious Qur'an Translation and Commentary in English Language*, Islamic Foundation, London, 1975, p 1407

[2] Quran 16:59. Ibid p. 671

basis, Islam forbade many inhuman practices committed against the women gender, such as infanticide and the treatment of women as mere chattels. It was highly critical of the attitudes of parents of rejecting their female children. Islam viewed the practice as a crime and murder. Along with saving the lives of women, Islam uplifted the status of the women gender and made sure they were treated equally with men in terms of respect, kindness, justice, etc.

Islam upholds the concept of equality between men and women, but this concept as mentioned by Islam doesn't mean that men and women are identical. Islam noted their natural physical and emotional strengths and in this regard, the Shari'ah sets out their key roles in life. These roles are therefore, not a question of inferiority, but a question of natural capacity and proper functioning. "*If any do deeds of righteousness, be they male or female and have faith, they will enter heaven, and not the least injustice will be done to them.*[3] This also doesn't mean that women cannot work or serve the society, or that men have no responsibilities for the household[4]. Islamic law has been criticised that it doesn't give equal treatment to women gender by the Law of Inheritance but the critics failed to understand that what women do *not* get in succession, they get it from the responsibilities that men are obliged under the Sharia to provide for their maintenance.*"…because God has given the one more (strength) than the other, and because they support them from their means…"*[5]

With the coming of Islam to Nigeria in the eleventh century, women especially in the Northern part of the country were restricted to their matrimonial or parental homes. Women then concentrated on their primary duties only which is mainly domestic. While men at that time were fully ready to carry out their fundamental responsibilities of providing maintenance and protection to the entire family.[6]

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[3] Qur'an 4:124 Ibid 219

[4] Badamasiuy, J.B. *Status and Role of Women under the Shari'ah,* Zakara Publishing Co. Kaduna, 1998 p. 51

[5] Quran 4:34, Op.cit p. 190

[6] Adamu,A. Balancing the Home and Work: Tales of Working Women, *The Journal of the Islamization of Knowledge and Contemporary Issues* (The International Institute of Islamic Thought Nigeria Office), Vol. 1, No. 1, January 2010, pp. 88 – 89

As a result of proper religious education, these responsibilities were known and respected by men who conducted them with religious spirits, giving them full control of their families. Thus, the family system was moving smoothly with a kind of stability attained within the family.

For the same reason, women on their part knew their limits, they therefore try their best not to over-step their bounds through respect and care for their husbands, children, the parents and relatives of the husbands.[7] This restriction of women is made to avoid free interaction between the two sexes in view of the provisions of the Qur'an which states: "*And stay quietly in your houses. And make not a dazzling display, like that of the former times of ignorance…"*[8]

This issue brings about the movement calling for "women's liberation" and efforts towards liberation. This implies that there are certain limitations, restrictions and bonds in place. Women liberation indicates that women are enslaved, and they must be liberated; that is not the case, indeed under the Sharia.[9]

Men are naturally restricted and have many limitations due to their limited abilities and capabilities. Men in general, in any given society, primitive or civilized, live under certain laws, rules and regulations that normally govern their life and organise all the various affairs of life.[10]However, Gender Equality is a topical issue, genetically ascribed to religion where its causes are purely non-religious. It originates from economic, social, cultural or political affairs.[11]Men are responsible in connection with performance of the economic and social responsibilities; therefore, the maintenance of women is the basic obligation of men under Islamic law as per the provisions of the Holy Qur'an where the Almighty Allah states: *"Men*

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[7]Adamu, A. *Balancing the Home and Work: Tales of Working Women*, Ibid, pp. 88-89
[8] Qur'an 33:33 Op.cit p. 1115
[9] Abdurrahman Al-Sheha, *Women in the Shade of Islam,* (translated by Muhammad Sa'id Dabas), Riyadh, (2000, 4th ed.), pp. 6-7
[10]Adamu, A. *Balancing the Home and Work: Tales of Working Women ,Op.cit.*, p. 96
[11]Al-Qadri, T.M. *Gender Equality and Islam*, an online article available at www.yabani.com/index.php?/topic/415906-gender-equality-and-islam/ (visited on 30/04/2012 by 04:39 PM)

are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means…".[12] Similarly, the Holy Qur'an states:

> Let the women live [in 'iddat] in the same style as ye live, according to your means: Annoy them not, so as to restrict them. And if they carry [life in their wombs], then spend [your substance] on them until they deliver their burden: and if they suckle your [offspring], give them their recompense: and take mutual counsel together, according to what is just and reasonable. And if ye find yourselves in difficulties, let another woman suckle [the child] on the [father's] behalf. Let the man of means spend according to his means: and the man 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. After a difficulty, Allah will soon grant relief.[13]

On the other hand, there is no place in the Holy Qur'an or Hadith under which the responsibility of maintenance is placed on women either as a wife, daughter or mother. This is to say that, there is a recognition of the value of universal suffrage in Islam in the sense that both men and women are entitled to what they earn out of their own individual effort. But notwithstanding this, women are solely entitled to their own wealth without a financial obligation of providing for their maintenance or that of their family. In the Qur'an, it is stated that "*And in no wise covet those things in which God hath bestowed his gifts more freely on some of you than on others: to men is allotted what they earn, and to women what they earn: but ask God of His bounty. For! God hath full Knowledge of all things".*[14]This is because going by the Holy Qur'an, men are rewarded for what they earn, and women are equally rewarded for what they earn. The Holy Qur'an states: "*From what is left by parents and those nearest related, there is a share for men and a share for women whether the property be small or large, a determinate share."*[15] But by no token is financial responsibility is placed on women under the

[12]Qur'an 4:34, Op.cit p. 190
[13] Qur'an 65:6-7, Ibid pp. 1564 - 1565
[14] Qur'an 4:32 Ibid p. 189
[15]Qur'an 4:7 Ibid p. 180

Sharia. Thus, going by the Qur'anic provisions, one may conclude that the freedom and opportunity given to the women on social and economic spheres of life is more than that enjoined on men.

Moreover, the Qur'an provides that men and women are created from a single soul, *"... Lord, Who created you From a single Person,..."*[16] so that women are not lesser than the men, and they are not created for the purpose of men. Rather, they are both created for the mutual benefits of each other. In this regard, the Holy Qur'an states: "*O Mankind! Be dutiful to your Lord, Who created you from a single person (Adam) and from him (Adam), He created his wife (Hauwa [Eve]) and from them both he created many men and women ...*"[17] So also the Holy Qur'an provides: "*And among His Signs is this, that he created for you mates from among yourselves, that ye may dwell in tranquillity with them, And He has put love and mercy between your (hearts). Verily, in that are Signs for those who reflect*".[18]From these provisions of the Holy Qur'an, it may be understood that men and women have the same freedom to contribute to the society keeping with their own particular knowledge and skills, provided they do not jeopardize their personal dignity and modesty. In this context, Islamic law has the greatest respect for dignity of women.

And she is specifically granted the right of equality in status, right to education, right to buy and sell, right to manage her own movable and immovable properties, right to inheritance and dower, this dower belongs to her alone, neither husband nor parent will take any share from it.[19]

The issue of female employment is not left behind by the Shari'a, for the women to discharge their primary duties themselves, they should stay at home. This is in line with the provision of the Qur'an where Almighty Allah says:*"And stay in your houses and do not*

[16]Quran 4:1, Ibid p. 178
[17] Ibid
[18] Quran 30: 21, Ibid p. 1056
[19]Al-Siba'iee, M. *Al-Mar'atu Bainal Fiqh wal Qamun*, Dar Al-Warraq, Beirut, (2001, 8th ed), p. 137;
Aliyu, I. A. *Protection of Women's Rights under the Sharia*, Rukhsah Publishers, Kano (2008), pp. 18-35

display yourselves like that of the time of Jahiliyya (ignorance) …"[20] This can be said to be the general principle. However, in a situation where the need arises or where the circumstance warrants, women can go out for a job. The Holy Prophet (PBUH) said: "*Indeed, Allah has permitted you (i.e., women) to go out for your needs.*"[21] Thus, Muslim women can go out either when business calls her in connection with the fulfilment of her primary roles, or to earn a living under economic pressure and financial constraints, especially when there is no male to support her. These rights are all given to women including daughters. In a Hadith reported by Muslim in his book Sahih Muslim, the Prophet allowed a divorcee to go and work on her date palm trees, to harvest them and sell them for life sustenance and also give out as charity.[22]

It is clear that the claims of non-Muslim critics to prove that Islam denigrates women, and the arguments that women are religiously, intellectually and ethnically inferior to men, as Jewish and Christians literature had earlier maintained is not true. Thus, our argument in this research work will demonstrate that there is no legal system that elevates the status of women as Islam does.

1.2 Statement of the Research Problem

The question of equal opportunity between men and women is a topical issue, by ascribing or attributing gender inequality and its causes to religion. While for Islam, the teaching of equal opportunity between men and women is part of its jurisprudence and fundamental teachings.[23] People with western orientation have adopted and subscribed to the idea of attributing inequality to religion and particularly the Shari'a arguing that the Shari'a discriminates against women and that there is no gender equality between men and women in

[20] Qur'an 33:33, Op.cit

[21] Imam Muslim, *Sahih Muslim*, rendered into English by Abdulhamid Siddiqi, Dar al-Arabiyyah, Beirut, Lebanon (nd) Vol. 2, p. 1121, Hadith No. 1483

[22] Ibid Vol. 4, p. 1709, Hadith No. 2170; Also see Haroon, M. G. *An Explanatory Exposition on the Shari'a Principle on the Muslim Women's Roles in Nation Building*, *AL-IJTIHAD*, Vol. 5, No.1, January 2005, IIIT, Nigeria Office, p.32

[23] Al-Qadri, T.M. *Gender Equality and Islam*, Op.cit., p. 27

Islam. In addition to that, they maintained that Shari'a deprives women of their right of movement and in fact they are prisoners within the four walls of their houses. They made reference to the Islamic Law of Inheritance *"....to a male, a portion equal to that of two females..."*[24] and the provisions of the Shari'ah on purdah.[25] However, if this wrong conception continues to persist within the society, it will create a black image on the Shari'ah regarding women's rights in Islamic law. Thus, it is against this background that this research intends to look into and/or examine the legal position of gender equality and the way it affects women's right to work in Islamic Law. Whether in Islamic law women are allowed to work outside matrimonial home side by side with men? If so, is that as of right or privilege? Are there any conditions required to be fulfilled? Therefore, this research work will examine the impact of gender equality on the right of women to work outside home in Islamic Law.

1.3 Aim and Objectives of the Research

The principal aim of this research work is to examine the impact of gender equality on women's right to work and to highlight the correlation between gender justice and available limitations to the women's right to work outside home in Islamic law. The specific objectives of this research work are as follows:-

1. To examine the Islamic perspective on the concept of gender equality with a view to highlighting the established socio-economic rights of women under Islamic law.
2. To examine the concept of work and the right thereto in Islamic law.
3. To highlight the role of Islamic Law in the protection of women's right to work within and outside matrimonial home.
4. To examine and analyse the principles, precepts and pursuits of the Shari'a on women's economic rights and the socio-cultural practices of some Muslims which negates the enjoyment of these rights.

[24] Qur'an 4:11, Op.cit p. 181
[25] Qur'an 33:33, Ibid p. 1115

1.4 Scope of the Research

This research work focuses mainly on the discussion of gender equality as it relates to women's right to work under Islamic Law. However, the discussion was limited to an examination of the relationship between Islamic gender fairness and the applicable restrictions on women's right to work outside their matrimonial home.

1.5 Research Methodology

The writer primarily employed doctrinal method of legal research. Recourse was made to published legal documents and materials written on the subject be it text books, journals, conference and seminar papers, statutes, case law, etc.

1.6 Significance of the Research

The people or group of peoples who would benefit from this research work are many; with special interest by Law student in the University, Legal academics, Legal practitioners, and Judges, States and Human Right activists. Given the fact that many misconceptions and negative stereotypes exists about the meaning of the term gender equality and the status of women's rights to work in Islamic law, this research will thus prove and elaborate that there is no legal system that has elevated the status of women as the Islamic legal system. The research work is therefore necessary because it will demonstrate that the common contention that, women are somehow inferior to men, and Islam is a religion of men, is wrong.

1.7 Literature Review

Under this point, the documentary data such as textbooks, articles, seminar presentations, etc., is considered in this review. There are many writers in the area of Gender Equality and Women's Rights in Islam.

Abduhu, I. and Isma'il, A. [26] in their book titled "*al-Amal fil Islam*", they have examined the concept of work under Islamic law and they have highlighted its position in the Qur'an and Sunnah; more particularly, they have discussed women's work in Islam – whether it carries an outright prohibition or not and the legality of women going outside their matrimonial home for the purpose of work. They have prominently taken the view that women are allowed to work including outside the home provided they do not mingle with men especially in such kinds of jobs that specifically relate to women.

Abu Shuqqah, A.[27] in a book titled "*Tahrir al-Mar'ah fi Asri al-Resala*", this author discusses the legality of women's work within their matrimonial home, which he sees as a duty peculiar to women to tend the home. His discussion largely focuses on the role and obligation of married women towards the performance of domestic activities at home rather than undertaking a commercial venture.

Iqbal, S.[28] in a book titled "*Woman and Islamic Law*", have examined women's rights, their role and status in the society. The writer put forth the view that the problems of Muslim women of this time were not due to Islamic laws but wrong social norms and alien customs, ignorance of women's rights given by Islam, degeneration of moral standards as well as abandonment of Islamic law in practice.[29]While discussing gender equality, she states that "a fact often misunderstood to be a degradation of women, is the degree of superiority – *qawwamiyat* given to men over women by Islam. But this superiority is not related to any increased or exalted status of men but is connected to their increased responsibilities towards women."[30]

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[26]Isma'il, I. *Al-Amal fil Islam kitabun yabhasu fil amal wal amilina fishariatul islamiyyah wannazamul wadhaiyyah*, Dar al-Ma'arif, alqahirah, (nd) p. 239

[27]Abu Shuqqah, A. *Tahrir al-Mar'ah fi Asri al-Resalah dirasatun anilmraah, jamiatul linnususl quranul kareem wa saheehay albukhari wa muslim*, Dar al-Qalam, Cairo (2011, 7th ed.), vol. 5, p. 126

[28]Iqbal, S. *Woman and Islamic Law,* Adam Publishers, New Delhi India (2004) pp. 1-5

[29] Ibid, p. 6

[30] Ibid, p. 17

Uthman, M. B.[31] in a paper titled "*Safeguards for the Protection of Women's Rights in the Administration of Criminal Justice under Islamic Law",* he argues that the Sharia attaches gender roles to each sex wherein men are the ones to fend for women and it is for the women to manage the home by showing obedience to the husband, keeping their modesty and caring for the home.[32] He further argues that the Sharia does not discriminate between the sexes as Allah places His rules as He pleases and there is no oppression in His laws: men and women are all his subjects.[33]

Babaji, B. [34] in an article titled "*An Overview of Child Rights Act 2003 and Its Impact on Women in Nigeria,"* had offered an articulated critique on the Nigerian *Child Rights Act 2003* particularly in terms of: (a) its conflict with the socio-religious background of Muslims in Nigeria; (b) its unconstitutionality as regards the breach of the requisite procedure to be employed in its enactment, i.e., breach of the principles established under section 12(3) of the 1999 Constitution.

According to Sha'arawi[35] in his approach to the position of women under the Shari'a, he started with following questions: "Is there any authority under Islamic law permitting women to work in public domain? What are the kinds of jobs that women are allowed to do? In addressing these issues the learned author posits that, we ought to know that, if men and women were created for the same purpose, there would not have been the need of dividing the two genders (viz, male and female). Then to each of them, there are some roles which Allah created human beings in form of male and female just like day and night to each of them he

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[31] Uthman, M. B. *Safeguards for the Protection of Women's Rights in the Administration of Criminal Justice under Islamic Law*, A Paper Presented at the National Conference on the Rights of Women and Children under the Sharia, Organized by the Centre for Islamic Legal Studies, Institute of Administration, A.B.U. Zaria, held on 16th – 17th June 2008 at Arewa House Kaduna, pp. 292-317

[32] Ibid, p. 300

[33] Ibid, p. 304

[34] Babaji, B. *Overview of Child Rights Act 2003 and Its Impact on Women in Nigeria,* A Paper Presented at the National Conference on the Rights of Women and Children under the Sharia, Organized by the Centre for Islamic Legal Studies, Institute of Administration, A.B.U. Zaria, held on 16th – 17th June 2008 at Arewa House Kaduna, pp. 234-290

[35] Sha'arawi , M.M. *Al-FatawaKulluma Yuhummul Muslimu fi Hayatihi wa Yaumuhi wa Ghadihi*, Maktaba al-Qur'an, Cairo (nd), vol. 6, pp. 56–63, and vol. 8, pp. 24-25

assigned some roles and characteristics. There is no way you can convert the roles of male to be that of female or else you are confusing up the natural order of things.

In facts, Islam confers to women full civil rights which other religions do not give to them. For instance, a Jewish woman was always subservient to her father to the extent that she could not acquire or own any property and when married such control and subservices will transfer to her husband. Thereafter, an article of the French Law of 2008 which emerged in 18th century ruled that "a power to have financial control, is exclusive reserves of men, and cannot be made a condition to otherwise''. Therefore, if we look at this scenario, we will see that western civilization makes a woman to be subsumed under men and thereby losing their feminine character. Some men characteristics are his body structure, name etc. But in Europe the moment a woman marries, she will use her husband's name and family instead of her family for example *Huda Sha'arawi* will become *Huda Basha*, etc. This makes to forfeits the name of her entire family right from her name composition what equality or what right can a woman get from the system which seized the name of her father and her family to the advantage of her husband's family? With all these some misguided elements persist on saying that we must uphold the western values and culture to the detriment of Islamic ideals, the west did not give woman their rights even in their names and property.

In discussing "Gender Equality in the Field of Work,"[36], he states that if a woman has outburst in the field of work and this work make it demanding equality and compete with men in the field of work, and that makes her to claim gender equality in everything, this categorically contradicts the following verses:- *"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".*[37]So also, the Holy Qur'an provides: *"... and women shall have rights similar to the rights against them, according to what is equitable; but men have a*

[36] Sha'arawi , M.M. Ibid, vol. 6 pp. 56–63
[37] Qur'an 4:34, Op.cit p. 190

degree (of advantage) over them and Allah is exalted in power, Wise."[38] He continue saying, the women as a wife may claim that I will work even to assist my husband in his responsibilities, while in fact she reduces nothing for him and he remains responsible to maintain and protect them; therefore, if a woman want to elevate her position, she should maintain and discharge her role, if for example as a mother, she should feeds and train her children and discharge her primary roles as a wife. However, the women should know the type of work that they will take within the limits of their nature. And women must learn the type of work they should not go out for. The story of Prophet Moses with the daughter Prophet Shoaib determines the type of necessity that will warrant women to go out for the work.[39]

According to Albani,[40] on the subject of "Muslim Women's Employment", the author while addressing the following question viz: what is the position of Muslim woman's employment outside her home leaving her children under the care of a Muslim nanny? In answering this question, he posited that the basis of this question is the verse that addresses the wives of the Holy Prophet, but essentially refers to the generality of the women folk. It says:

> And stay quietly in your houses, -and make not a dazzling display, like that of the former times of ignorance; - and establish regular prayer and give regular charity; and obey Allah and his Messenger. And Allah only wishes to remove all abomination from you, ye members of the family, and make you pure and spotless.[41]

Where a woman goes out of her home decently dressed in veil without wearing perfume for necessity, this is allowed. But where there is violation of Shari'ah, and in conflict

[38] Qur'an 4:7, Ibid, p. 180
[39] Sha'arawi , M.M. Op.cit, vol. 8 pp. 24 - 25
[40] Al-Albani, M. N. *Jaami'i Masaa'ili al-Nisaa'I,* Maktaba al-Iman bil Mansurah Collected and Arranged by Abi Abdurrahaman Almisriy (2007) pp.187–192
[41] Qur'an 33:33, Op.cit p. 1115

with her primary duty, here the prohibition of going out as per the provisions of Qur'an 33:33 shall apply.

A Muslim woman is not allowed to go outside leaving her children under the care of a nanny, because it is the mother that knows the peculiarities of her children and what suits them in their educational training. However, it is also not permitted on a man who wants to engage services of a non-Muslim woman within the family simply because she may have access to see the *Aurah* (nakedness) of a Muslim woman. If she exposes or display her *Aurah* to such non-Muslim woman is just like she displays it to man. Therefore, is not permitted by Muslim woman to expose her *Aurah* to non-Muslim woman even if she works under her, except hands and face. Thus, to engage the services of a man is the worst and even if the man is Muslim is not allowed.[42] Moreover, as regard the employment of a woman as doctor or teacher, Sheikh Nasiruddeen Albani states that in a situation where there is no one to treat or teach our Muslim girls or women in the hospital or schools when the need arises, she can go out for that purpose on the following conditions; that she will dressed decently in accordance with Shari'a provisions, she will not wear perfume, she will teach or treat women only and there will be no comingling with men.[43]

Aliyu, I. A.[44] in his approach tries to lay emphasis on conceptual clarification on the concept of equality between men and women. The author has made extensive quotations from the Qur'an and Hadith to derive home this point and has concurrently established a confession by a western woman to the extent that, a western woman is indeed a victim of inequality, and the west is yet to come forward with a solution. He has equally conveyed that superiority does not lie with distinct role each sex plays or discharges, but on the individual's piety and closeness to Almighty Allah. The author proceeded and showed how women enjoy every conceivable freedom and rights, ranging from life, honour, privacy and expression. Of

[42] Al - Albani, M. N. Op.cit p. 187
[43] Ibid, p. 190
[44] Aliyu, I. A. Op.cit, pp. 18-35

particular importance was the case of *Khawlah bint Tha'alaba*, who as a result of predicament in which she found herself and for which there was no revelation received, she proceeded and lodged her complaint straight to Allah (S.W.T); what a supreme expression! Other rights which women enjoy include, equality before the Law, and to support it, he quoted extensively from the Qur'an and Hadith. Right to compulsory acquisition of knowledge is available to men and women on equal basis. Muslim women have, therefore, no justification to remain ignorant, particularly after Muslim scholars have opined that, if the search for knowledge compels a migration, be it.

The author discusses women's rights in two perspectives, general and specific rights. However, this author fails to include in his discussion the women's right to work under Islamic law as belonging to the category of either general or special rights of women.

Tahir-ul-Qadri,[45] in his discussion on gender equality and Islam states that men and women enjoy equal right in all walks of life according to the teachings of Islam. Islam has given women a complete legal personality. Like man, it has given woman the right to vote and to be voted it has the right to participate in the legislative work and vote in the performance of state matters. But nowhere in his discussion does he buttress his argument with proof from the Qur'an or Hadith; he only cited that women have been heads of state in some Islamic countries.

Ladan, M.T.[46] in his book on public international law and his paper presented on the *Protocol on the Rights of Women in Africa and the Islamic Perspective on Gender Equality and Justice*[47] he discussed and emphasized that if we are to succeed as members of Islamic society in the coming decades and centuries, it must again determine our thinking and our

[45]Al- Qadri, T.M. *Spirit of Islam: Gender Equality and Islam* (2011) pp. 2-9, an online article available at www.yanabi.com last visited on the 30/04/2012

[46]Ladan, M.T. *Materials and Cases on Public International Law*, Ahmadu Bello University Printing Press, Zaria (2007), p. 937

[47] Ladan, M.T. *Protocol on the Rights of Women in Africa and the Islamic Perspective on Gender Equality and Justice*, A Paper Presented at a Seminar Organized by Solidarity for African Women Rights (SOAWR) at Ahfad University for Women, Sudan on the 16-24 January 2006, pp. 18-21

actions in an all-exclusive way. Islam (religion) is not limited to the five pillars of the shahadah, salat, siyam, zakat and hajj. Deen in fact defines simple question with English term "religion'', for the former's significance penetrates into every nook and cranny of human existence and behaviour. Surely it should be our goal to relate every action to our Deen. We can only do this by allowing the Holy Quran to inform and re-form every realm of lives.[48] Qur'an has recognized and supported women's right in particular to independent ownership of property, education, inheritance etc. However, none of the rights were enumerated and discussed in the book.

Likewise Mustafa Siba'ee in his book[49] states that women Right from the beginning i.e., as daughter to her age as wife or mother, all her responsibilities such as maintenance, guidance and protection are placed on men, however, where there is no man to take it, the bait al-mal will shoulder it under Islamic legal system. Now in our contemporary time there is no such *bait al-mal*. However, in the absence of any of the woman's guardian or the *Baital-mal* (Muslim public treasury), the women may go out to seek for a job or employment so far as she observe the rules and conditions laid down by the Sharia under the provision of Qur'an and prophetic traditions.[50]

Kawthar M. A.[51] is another author on human rights in Islam; He enumerated the most important human rights introduced by Islam. These rights include right to life, right to equality, right to justice, right of education, right to work et cetera. With regard to his discussion on right to equality he says: Islam is the religion of justice and equality in rights, duties, obligations, and in front of the justice, as well. Righteousness and goodness are the criterion of honour and dignity. Allah, the Almighty says:

> O mankind! We created you from a single (pair) of a male and female, and made you into nations and tribes, that ye may know

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49Al-Siba'iee, M. *Al-Mar'atu Baina al Fiqh wa al Qamun*, Dar Al-Warraq, Beirut, (2001, 8th ed), p. 137

50 Ibid

51Kawthar, M.A. *Human Rights in Islam*, Ammar Press, Riyadh, pp. 9-30

> each other (not that ye may despise (each other). Verily, the most honoured of you in sight of God is (he who is) the most righteous of you. And God has full knowledge and is well acquainted (with all things).[52]

Kawthar in his book mentioned that: the right of equality is a practical reality, as it represents the spirits of the Islamic law. Here we cite some historical incidents concerning equality before the law:

> During the Prophet's lifetime, a woman from the clan of Bani Makhzoom stole something. Her people knew what punishment was awaiting her. Being afraid to Speak directly to the prophet, (PBUH), they asked Usaamah Ibn Zaid, the prophet's love and the son of his love, to intercede for their woman. Usaamah's intercession exasperated the Prophet, (PBUH) until it appeared in his face. He said: 'do you intercede for a punishment of Allah's? By Allah, if Fatimah daughter of Muhammad stole, I would cut her hand. Those nations before were destroyed because they used not to punish the noble for his theft, but they punished only the poor.[53]

The approach made by him In this regard is a general, in the sense that, there is no privilege for any class of human beings. All human beings are equal in front of justice. No any attention is given to the women rights in particular; therefore this approach is not on gender equality alone, it is for the human beings equality in general.

On the issue of right to work, the author in his approach to this topic he said: Islam has decreed the right of work to all. Everyone has the right to choose the field of work he likes, other than unlawful or harmful fields. On the other hand, no one can force another to perform unwanted work, or to behave against his free choice. Freedom of work is an integral part of the human character. Free-chosen works are enjoined and lovely. When a person is forced, his work will be imperfect and defective. In Islam, anyone can refuse any work he doesn't like,

[52]Qur'an 49:13, Op.cit p. 1407
[53]Kawthar, M.A., op. cit. pp. 17 & 30

except when there is a higher benefit is for the whole nation. Because the general benefits is prior to the individual's benefit, especially in times of crises and war.

Our own approach to this topic is different from the approach of this author, this is because our intention is to find out whether or not, the right of women to work outside is a right or a privilege and whatever the case may, be this research will support the idea with authorities.

Muhammad Ahmad Isma'il Al-Muqaddam[54] in his book Audatul Hijaab his approach to woman as a gender categorized them in to three positions:

1. **Woman as mother:** The author appreciates the way Islam elevated women, always attach the respect of her with Allah's worshiping as it is provided in Qur'an"…*And that ye be kind To parents…"*[55] In this verse, the parent should be obeyed and respected by their children, and it also provides that when children addressing their parents, they should do it with due respect and they should be given whatever they requested from their children. He further said that this obedience and respect is not limited to Muslim women mothers only, but extends even to non-Muslim women as mothers.
2. **Woman as daughter:** Islam does not differentiate between female and male children in terms of parent emotional attitude towards both genders, he made reference to Qur'an 16 verse 90 and chapter 5 verse 8, these verses commended us to give equal treatment to both gender as children, no preferential treatment should be given to either one of them. It is not even allowed to make endowment for the benefit of the male children with exclusion of women gender, if that happens, the *waqf* (endowment) should be declared null and void even after the death of the testator.[56]

[54]Muqaddam, A.I.M. *Audatul Hijab Baina Takreemil Islam wa Ihanat Jahiliyya*, Darul Aqidah, Cairo (nd) pp. 156-228
[55]Qur'an 17:23, Op.cit p. 700
[56]Muqaddam, A.I.M. Op.cit., p. 214

3. **Woman as a wife:** the Islam blessed human beings with marriage and put it as way of getting legitimate children without which legal reproduction should not be made. "*We did send apostles Before thee, and appointed for them wives and children: And it was never the part of an apostle to bring a Sign Except as God permitted…"*[57] Similarly, Allah (S.W.A) appreciates the way good people ask him for family in general (wife and children). :*And these who pray, "Our :Lord! Grant unto us wives and offspring who will be the comport of our eyes,…"*[58] From the above verses, it is clear that male are blessed with women and it is for them to thank Allah for the *Ni'ima* (blessing) made to them and they should be responsible and questionable for that. It is this approach the author made to show that the position of women under Islamic legal system is highly recommended. In his discussion, he did not expressly mention the position or the right of women to work outside home under the Shari'a.

Finally, the totality of the above reviewed literatures indicates that previous writers considered in their work only the cases that has to do with married women (wives) limiting their discussion to only some categories of women. In that, they fail to consider the rights of other women such as widows, divorcees, infant girls, etc.; who may not necessarily be under any matrimonial bond. So also, the writers fail to expatiate on whether women's right to work out side matrimonial home is a right or a privilege.

1.8 Organizational Layout

This research work consists of the following chapters:

Chapter One: This chapter consists of Introduction, Statement of Problems, Aim and Objectives of the Research, Scope of the Research, Research Methodology, Justification, Literature Review and Organizational Layout.

[57]Qur'an 13:38, Op.cit p. 616
[58]Qur'an 25:74, Ibid p. 943

Chapter two: This chapter consists of nature and meaning of Gender Equality in Islamic law. The nature and meaning of gender equality under Islamic law has been discussed. It also contains discussion on the position of women in Islamic Law as well as in Greek, Roman, Jewish, Indian, and Christian civilizations. Gender Equality and Differences under Islamic Law in the Spiritual Aspect, Economic Aspect, Social Aspect and the Political Aspect were also highlighted in this chapter.

Chapter Three: Woman's right to work under Islamic law has been discussed in this chapter. The chapter specifically deals with the role of women in the society under the Shari'ah, the Position of Woman's Work outside the Home, Conditions under which a Woman is allowed to Work Outside the Home, The Necessity (*Al-Darurah*) of Women's Work Outside Home in the Shari'ah, Effect of Woman's Work Outside the Home, Women's Political Rights under the Shari'ah

Chapter Four: This chapter discusses the veiling of the Muslim woman (*Hijaab Al Mar'ah Al-Muslimah*). It dwell on issues of women's dress code in Islamic law, Requirement of Women's Dress in Islamic law, the advantages of Hijaab, the disadvantages of failing to wear Hijaab (*Sufoor*), the legal meaning of Ikhtilaat under Islamic law, free mingling under Islamic Law, etc.

Chapter Five: In this chapter, summary, suggestions and recommendations was provided.

CHAPTER TWO

NATURE AND MEANING OF GENDER EQUALITY IN ISLAMIC LAW

2.1 Introduction

This chapter discusses the concept of gender equality under Islamic law highlighting its nature and meaning, the position of women in Islamic Law, Greek Civilization, Roman Civilization, Women in India, Women in Jewish Society, Women in Christianity, Women in Pre-Islamic Arabia, Women in Islam, Women in Nigeria, etc. The chapter also encompasses discussion on the status of a woman as daughter, mother and wife.

2.2 Conceptual Meaning:

The conceptual meaning of some of the useful terminologies is discussed below.

2.2.1 Equality: refers to the act of being equal; a situation in which everyone is treated equally.[1] Equality according to Law Dictionary: is the Equality or state of being equal; especially likeness in power as political status.[2]

2.2.2 Gender Equality: connotes that women and men enjoy the same status and have equal opportunity to realize their full human rights and potential to contribute to national, political, economic, social and cultural development, and to benefits from the result. Originally, it was believed that equality could be achieved simply by giving women and men the same opportunities, same treatment. However, it was found not necessarily to yield equal result. Today, the concept of equality acknowledges that women and men sometimes require different treatment to achieve similar results, due to different life conditions or to compensate for the past discrimination. Gender equality, therefore, is the equal value by society of both the similarities and differences between women and men, and the varying roles they play.[3]

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[1] Oxford Advanced Learner's Dictionary (International Student's Dictionary), Oxford University Press (nd), 8th Ed., pp. 492-493

[2] Bryan A. Garner (ed.), Black's Law Dictionary, Thomson West Publishing Co., (2004), 8th Ed., pp. 616

[3] Ibid

According to the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,* inequality or discrimination against women means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedom in all spheres of life.[4]

According to the *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),* Discrimination means any distinction, exclusion or restriction made on basis of sex in political, economic, social, cultural, civil or any other field.[5] *Sex;* means the sum of the peculiarities of structure and function that distinguish a male from female organism.[6]

2.2.3 Sex Discrimination: is any distinction made on the basis of gender especially against women.[7] According to Ibrahim A. Aliyu, the definition of Gender Equality given above is not properly addressed, because according to those definitions Equality becomes a strange phenomenon for it advocates free intermingling of men and women free sex, even freedom of dress itself, free and uniform working conditions for both men and women regardless of their natural differences of physical structure and capacities.[8]

2.2.4 Society: means a collection of human individuals who have grown interlinked through special arrangements, manners, laws, beliefs and aspirations and have a collective life.[9]According to Al-Buti, M. S. *"Society"* hangs on large part, on the co-ordinate balance of these two elements, that is, rights and duties. Nevertheless, human societies differ with respect to specific factors and causes which characterize them. This in turn, is related to the system of

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[4] Article 17, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. Available at http://www.achr.org/English/_info/women_eni.html (accessed on the 20/04/13).
[5] Article 1, Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).
[6] Black's Law Dictionary, Op.cit., p. 1496
[7] Craig v. Boren (1976) 429 U.S 190, 97 S.et 451
[8] Aliyu, I. A. op cit., p. 1
[9] Benibe, A. *Coming Out Under Fire; the History of Gay Men and Women in World War II,* (New York: Free Press 1990), 291 in Haroun M.A.S. *Morality in Islam Sexual Issues in Modern Era & It's Solution in Islam* Adam Publishers, New Delhi, India (2006), p.45.

religious beliefs and concepts or social philosophy to which the society in question subscribes as well as the prevailing customs which hold sway over its members.[10]

In order for women to be successful in a modern society like the American society, they must forget about their womanhood, motherhood or even marriage and behave and live like men.[11] According to the Terri Apter, on Successful Women in America, the women who are financially successful were not married or childless because they saw it as odds with their career position. According to her some widows said that their career position had been an important factor in the breakdown of their marriage.[12]

In the understanding of Muffi Allie Haroun Sheikh on the definition of Gender Equality given by Western Society,[13] equality between the sexes, was taken to mean that men and women were not only equal in moral status and human rights, but that the women were also free to undertake the same sort of jobs as were done by the men and that the moral restrictions on her needed to be slackened as they were not on men. According to the author, this is misleading, because it led the women astray and made them unmindful of their natural function on the performance of which depends the very existence of the human race and civilization. Woman became wholly absorbed in their economic, political and social pursuit[14].

According to Berube A., he defines Western Society to mean society which does not respect divine but secular laws. Muslims are also included if they disrespect the divine law.[15] The reason for this is that, the western society does not, in the context of its prevailing reality, adhere to any written or stated system with respect to this issue; Gender Equality.[16]

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[10] Al-Buti, M.S.R. *Women Between the Tyranny of the Western System and the Mercy of the Islamic Law*, translated by Nancy Roberts, Darul Fikr, Dimashq (2009, 3rd ed), p.25
[11] Aliyu, I. A., Op.cit., p. 5
[12] Apter, T. *Working Women Don't Have Wives Professional and Success in the 1990's*, St. Martin's Press, New York, p. 206. In: Aliyu, I. A. Op. cit p.4
[13] Haroun, M.A.S. *Morality in Islam Sexual Issues in Modern Era & It's Solution in Islam*, Op.cit, p.83.
[14] Berube, A. *Coming Out Under Fire; The History of Gay Men and Women in World War II*, Op.cit., p. 291
[15] Ibid
[16] Al-Buti, M.S.R. *Women Between the Tyranny of the Western System and the Mercy of the Islamic Law*, Op.cit., p. 26

Some western writers such as John Stuart Mill, Thomas Hobbes, John Locke and James Mill, wrote on Women Rights and called for Gender Equality particularly John Stuart Mill who devoted most of his time to emancipation of women and equal treatment and same legal rights between males and females. As a political thinker, he posited that "The idea and institution by which the accident of sex is made the ground work of an equality of legal rights, dissimilarity of social function must long be recognized as the greatest hindrance to moral, social and even intellectual improvement".[17]

Islamic Society unlike Western Society recognizes and respect the whole issues including Gender Equality, under which the position of women at all levels, has been addressed.[18]

2.2.5 *Al-Hijaab* (The veil): literally means a thing that prevents, debars, conceals or hides, because it prevents seeing or beholding.[19] Technically, it means the dress which should cover the whole body of the woman including her face, hands and feet. It is a must that it should be with loose fitting garments which do not expose the contours of the body in volume nor show her physical qualities.[20] According to Sheikh Al-Bany, the dress must cover the whole body except face and hands.[21]*As-Sufoor*: means unveiling, this is the opposite of the term Hijaab. ***Juyoob*:** Is an Arabic word and is the plural of *jaiyb* which refers to the neck slit (of the woman's dress).*Al–Niqab* is an Arabic word which also means a veil. Technically, it is used with specific reference to the cloth used by Muslim woman for covering her face when abroad, for the purpose of hiding infatuating beauty of her face from lustful glances of men.[22]

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[17] Okin S.M. *Women in Western Political Thought*, London, (1980) pp. 197-210 in Badamasiuy. J, *Status & Role of Women Under the Sharia*, Zakara Publishers, Kaduna-Nigeria, (1998) p.7

[18] Badamasiuy, J. *Status And Role of Women Under the Sharia*, Ibid.

[19]*Islamic Dress Code for Women*, compiled by Darussalam Research Division, Darussalam, (edited by Abdul Rahman Abdullah) Riyadh. 1999, pp 7 – 8

[20] Abdallah, H.B. *A Comparison Between Veiling and Unveiling*, Op.cit., p. 17. Also see Ibn Baaz, A. A. *Hirazat al–Hijab*, Dar Ibn Al–Atheer, Riyadh, (2004) p. 9

[21]Al–Albani, M.N. *Jilbab al – Mar'ah al Muslimah Fil Kitab wa Sunnah*, Dar al–Salam, Dimashq, (2002), p. 32

[22] Tikumah, I.H. *The Abuses Of Islam And The Dormancy Of Islamic Scholars Eve Dome From The Misuse Of Niqab (Face – Veil) In The Nigerian Society*, Ahmadu Bello University Press Limited, Zaria, (2008) p. 11.

***2.2.6 Khumur*:** Is also an Arabic word and it is the plural of the word *Khimar* which means the head cover. Technically, the terms *Juyoob* and *Khumur* jointly mean that the head cover should be drawn to cover the neck and to be extended so as to cover the bosom.[23] On this point, Imam Al-Qurtubi in his commentary to the provision of *Surat* an-Noor (Qur'an 24:31) said women in that period used to cover their heads only with their head cover (*khimar*), throwing its ends on their backs, behind their ears leaving the neck and the upper part of the chest uncovered, later on, Allah enjoined them to cover the neck and the upper part of the chest as well.[24]

Al–Zeenah is an Arabic word which means adornment. According to the *Lisan-ul-Arab* (Arabic dictionary), the word *Zeenah* means all that which beautifies.[25]

Tabarruj is also an Arabic word which means a woman displaying her adornment and beauty and what she is supposed to cover of her body in a manner that negates the essence of hijaab.[26] *Muhram* is the nearby relative of a woman who is within the prohibited degrees of marriage such as her father, husband's father, son, brother, daughter's husband, brother's son, etc.

2.3 The Position of Women in Islamic Law

To appreciate how Islamic law places women, it is important to make reference to some civilizations and some religions that are prior to Islam. In early civilizations, women were considered to be the source of their failure and misfortune, and in fact they were placed at the position of evil in that society.[27] With enlightenment, their position reached a high level within such society to the extent that they deserve some respect and honour domestically, and their

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[23] Badawi, J.A. *Women Under the Shade of Islam*, Organization of Islamic Conference, 1998, p. 51

[23] Qurtabi, A.M. *Al-Jami'u Li Ahkam al-Qur'an*, vol. 12, p. 230, cited in Al-bani, M.N. *Jilbab al-Mar'ah al Muslimah*, Fil Kitab wa As - Sunnah, Dar al – Salam, Dimashq, 2002., p. 78

[24] Qurtabi, M. N. *Al-Jami'u Li Ahkam al Qur'an*, Ibid, cited in Al-bani, M.N. *Jilbab al – Mar'ah al Muslimah*, Ibid

[25] Badawi, J.A. *Woman under the Shade of Islam*, p. 49.

[26] Ahmad, Y.A. *Encyclopaedia of Islamic Jurisprudence Concerning Muslim Women*, Darussalam, Riyadh, 2010 vol. 3, p. 361.

[27] Okin, S. M. *Women in Western Political Thought*, London, 1980, p.197-210 in Badamasiuy, J.B. *Status & Role of Women Under the Sharia, Zakara Publishers*, Kaduna, 1998, p. 7 Ibid

role was restricted to the four walls of their houses. Moral life and their chastity were held in a very high esteem.[28] As a result of this attitude, corruption and fornication become rampant which immensely contributed toward the failure of those civilizations.[29]

2.2.1 Greek Civilization

Originally, the Greek ideal of the woman was a lofty one. Greek poetry such as Consandra, Helena, Penelope, etc., offered a wealth of impressive and imperishable types of womanhood both in the physical and the spiritual sense. With advancement, the freer forms of sexual intercourse replaced the marriage[30]. Greeks gradually become overwhelmed by sexual excitement to the extent that fornication became lawful and love making was soon enshrined into religious doctrine. In other words, the corruption and immorality became worse, so much that people stopped attaching any importance to marriage.[31] They degenerated to such an extent that even their philosophers and educators disregarded such practices[32]

2.2.2 Roman Civilization

According to this civilization, the Roman indigenous traditions and norms recognized men as the supreme heads of the family units to the extent that the women lived best under the control of men and their (women) capacity became irrelevant. In fact, according to this civilization, women were dependents and complete subordination was attached to them, they were not allowed to enter into a contract or make a will or even to hold public office, they were not even considered capable of making testimony, as it has been observed by Oputa thus:

> In recent Rome, a woman's legal position was one of complete subordination. First, to the power of her father or brother and later to that of her husband, who had the paternal power (patria protesters) over his wife. In the eyes of the Roman law, women

[28] Maududi, A. A. *Purdah and the Status of Women in Islam*, Lahore, (1976), p.5 in Badamasiuy J.B. *Status and Role of the Women under the Shari'ah*, Op.cit., p. 2
[29] Okin, S. M. Women in Western Political Thought, p. 210.
[30] Haroun, M.S. *Sexual Issues in Modern Era and It's Solution in Islam*, p. 13.
[31] Badamasiuy, J. B. *Status and Role of Women Under the Sharia*, p. 2.
[32] Ibid, p. 14

> were regarded as imbecile but it then also rendered them unfit to sign a contract or a will or act as a witness, they could not also hold public office[33].

With advancement of this civilization, women were given moderate consideration and cursory look. High moral standard was maintained and chastity was respected. The position of women underwent serious metamorphosis. The law made them free of the authority of their father and husband and gave them capacity to own property and control it by themselves. Since they were free to do anything they desired, adultery became a simple offence which attracted no punishment. However, women in that civilization were made to behave badly whereby nudity and promiscuity became rampant in that society[34].

Among the Romans, the status of the housewife was esteemed. The husband had only a mild superiority which constantly diminished. As they progressed, the position of women underwent a drastic change. Divorce became rampant and wedlock almost came to an end. On this, one Roman philosopher in the name of Seneca the famous Roman Philosopher says "Now divorce is not regarded as something shameful in Rome. Women calculate their age by the number of husbands they have taken[35]".

2.2.3 Women in India

In the Indian society, women were treated as maids or slaves to the extent that they had no will or desire to follow for their own[36]. They only followed the desire of their husbands without questioning them. In fact, they could easily be lost in the gambling game played by their husbands. They were never allowed to marry for the second time when they were left behind by their deceased husbands. They were not even entitled to remain alive after the death of their husbands as both were usually burned in the same pyre. In other words, the

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[33]Kalu, A. U. *Women and Children Under the Nigerian Law*, Ibadan, p.7 in Badamasiuy, J.B. Status and Role of the Women Under the Shari'ah, Op.cit

[34] Maududi, A. A. *Purdah and the Status of Women in Islam*, Op.cit., pp. 5-7

[35]Haroun, M. S. Op.cit., p. 16

[36] Bahnasl, S. *Woman in Islam and International Laws*, Dar al-Kalam, Kuwait, (1986), p. 14 in Al-Sheha, A. *Women in the Shade of Islam*, Riyadh, (2000), p. 19

widow had to be buried on the same day of the death of her husband[37]. This notorious subordination of Hindu women is believed by many authorities to be due to the lawgivers and these lawgivers, declared them to be inherently impure and hence unfit to receive sacred education. Women were lumped together with sinners, slaves and outcasts, to the extent that as a wife, she could not eat or walk side by side with her husband[38].

This practice remained until the 17th century when this custom was outlawed in spite of the dismay caused to the Hindu religious leaders[39]. In some cases, a woman may have had two or more husbands at particular times, which made her look like a prostitute in the society[40].

2.2.4 Women in Jewish Society

As far as the status of women was concerned, the women in Jewish society were not more fortunate than those previously discussed. In the Old Testament, Ecclesiastes (7: 25-26) women were described as follows: "I applied mine heart to know and to search, and to seek out wisdom, and the reason of things, and to know the wickedness of folly, even of foolishness as and madness: (7:26) And I Find more bitter than death the woman, whose heart is snares and nets, and her hand as bands" A father could sell his daughter to be a maid servant[41].

In the Book of Exodus (21:7-11), if a man sells his daughter to be maidservants, she shall not go out as the men servants do. If she were sold into bondage, the buyer or master has no power to resell her to another buyer, (Ex. 21: 8) if she pleases not her master, who has betrothed her to himself, then shall be let her redeemed: to sell her unto a strange nation he shall have no power, seeing he has dealt deceitfully with her. But if he betrothed on to his son,

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[37] Durant, W. *The Story of Civilization*, Vol. 3, translated by Mohammed Badran, pp. 177- 181 in Abdul Rahman Al-Sheha, *Women in the Shade of Islam*, Op.cit., p. 20

[38] Haroun, M. S. Op.cit., pp. 18-19.

[39] Al-Siba'iee, M. *Al-Mar'atu Baina al-Fiqh wa al-Qanun*, Dar al-Warraq, Beirut, (2001, 8th ed), p.17

[40] Al-Sheha, A. *Women in the Shade of Islam*, Riyadh, (2000), p 21

[41] Shaequee, A.K. *Islam in the Acquisition Cage*, in Al-Sheha, A. Ibid, pp. 23-24

he was to treat her as a daughter (Ex. 21:9) thus: and if he had betrothed her unto his son, he shall deal with her after the manners of daughter.[42]

In addition to this, the Jewish law provided for the exclusion of a daughter if the father had other male children. In the Old Testament, the book of numbers (Ex. 27:8): "And thou shall speak unto the children of Israel' if a woman dies, and has no son, then ye shall cause her inheritance to pass unto her daughters"[43]

Jewish society considered woman as cursed because of her implication to the man (Adam) as provided by the Old Testament thus: and I found the woman more bitter than the death and only one person escaped from her implication out of one thousand people or from the men folk, while nobody are escaped from woman folk[44]. Jewish men used to isolate themselves from women particularly menstruating woman. They never slept in the same bed with her, eat or drank with her[45].

2.2.5 Women in Christianity

The status of women according to Christian priests was just like that of the Jewish. According to them, woman was the mother of sins and the source of evils and corruption, from which the entire world suffered[46]. Since she led man to hell, by encouraging Adam to take the forbidden fruits, she was considered as a means recognized by the Devil (Satan) to penetrating into man's heart as she encouraged Adam to take with her the forbidden fruits. In this regard, Saint Trotolian who was the father of the early Christian church says: "The sentence God passed on that sex lives on in the present age; so it must be that the guilt for the sin lives on as well. You are the Devil's gateway. You are the violator of the free, you are the first deserter of the God's Law; you are the one who dumped him whom the Devil has no

[42] Al-Sheha, A. Op.cit., p. 24
[43] Ibid
[44] Al-Siba'iee, M. *Al-Mar'atu Baina al - Fiqh wa al - Qanun*, Op.cit., p.18
[45] Al-Sheha A. *Women in the Shade of Islam*, Op.cit., p.19
[46] Haroun M.A.S. Op.cit., p. 28

power for enough to assault. You shattered so easily God's image. And you still think of putting adornments over the animal skin that cover you[47].

The physical contact between the genders was in itself a dirty and an objectionable affair even where there was a formal or legitimate marriage. Consequently, married life was soon regarded as a necessary evil while celibacy and spinsterhood became the principle of nobility of character. Therefore, the celibacy became a symbol of piety and holiness which serves as a sign of good character[48]. With the attitude of woman, some Christian leaders confirmed that sex is dirty, and one should avoid it, since celibacy is more respected before God than married man. That brings the woman outside in the public to lay any game that she likes and move side by side with any man in the way she likes[49]. Women were considered to be at the second category to the men because not much attention was paid to them". Wieth Kmudesen, a Danish writer explained the women's position in the Middle Ages thus: "According to the catholic faith, which considered women as second class citizens, very little care and attention was given to her"[50].

In a conference held in France to find out whether women could be considered as human beings or not? The participants made a lengthy discussion and arrived at the conclusion that, yes, women can be recognized as human beings but certainly they were created to serve man, i.e., that the woman was a follower of and a maidservant to man without any personal right attached to her[51].

In this regard, the Bible provides for the basis for some of these Christian doctrines thus:

> And the rib which the Lord God had taken from man made a woman and brought her unto the man then the man said, this at

[47] Ferguson, H. *Studies in Early Christianity*, Garland Publishing Inc., New York, (1993) pp. 134-201.
[48] Haroun M.A.S. *Sexual Issues in Modern Era and It's Solution in Islam*, Op.cit., p. 29; Badamasiuy, J.B. *Status and Role of Women under the Sharia*, Op.cit., p. 6
[49] Al-Sibaiee, M. *Al Mar'atu Baina al - Fiqh wa al - Qanun*, Op.cit., p.18
[50] Al-Sheha, A. *Women In the Shade of Islam*, Op.cit., p. 25.
[51] Al-Sibaiee, M. *Al-Mar'atu Baina al-Fiqh wa al- Qanun*, Op.cit., p. 19.

> last is bone of my bone and flesh of my flesh. She shall be called woman the Lord God said, onto the woman: what is that thou hast done? And the woman said: the serpent bigoted me I ate To the woman he (the Lord) said I will greatly multiply your pain in child bearing in pain you shall bring children. Yet your desire shall be for your husband and he shall rule over you[52].

In illustrating this point, Cathorine Boddered Silver, a writer stated that:

The combination of Common Law and Christian ideology led to a view of the married woman as incapable, fragile, dangerous and sinful. Marriage was presented a debased form of association, a concession to flesh and an obstacle to sanctity. The family as an institution could only be tolerated on the basis of a principle of subordination, which was to regulate all family relationships. It is thus no surprise to learn that the wife no longer could replace her husband in the household or do anything without his authorization. She was incapacitated and treated as a minor[53].

This situation remains unchanged, i.e., she still is a second class citizen, she has no capacity to conduct her own financial affairs and the moment she marries, all her personal belongings became her husband's until 1938 when, for the first time, a decree was issued to abrogate all the laws that prohibited a woman from conducting her financial affairs[54]. In 1964, the Oxford University Decree was first issued to declare gender equality among its students[55].

Despite all amendments and modifications which occurred in the French laws we can still see how these laws are affecting the woman particularly married ones, which may amount to civilized slavery. A married French woman as soon as marriage contract is concluded by

[52] Genesis chapter 2:23; Genesis chapter 3:16. see father, Ephesians chapter 5:23; 1 Corinthians chapter 11:3; for doctrines on women including mailers relating to her creation and subordination to man. In Badamasiuy, J.B. *Status and Role of Women under the Shari'ah*, Op.cit., pp. 5-6.
[53] Silver, C.B. *France: Contrast in Family and Societal Roles*, in Badamasiuy J. B. *Status and Role of Women under the Shari'ah*, Ibid, p. 6
[54] Al-Sheha, A. *Al-Mar'atu Bainal Fiqh wal Qanun*, Op.cit., p. 25
[55] Ibid, p. 26.

the spouses, she loses her family's name and bears the family name of her husband[56]. With the new dispensation, the so-called women's liberation, modern western civilization or gender equality this civilization brought about social, political and economic independence of women and free mingling with the male gender. It also makes women to be object of pleasure to men. For them, to attract customers, they needed to display their nakedness for advertisement and other public places. The consequence of this, of course, is that women had been liberated from one form of degradation and slavery directly goes into another form of social enslavement and unspiritual rehabilitation[57].

Furthermore, according legal and religious teaching, the marriage bond is made to last forever, and the spouses have no right to divorce, they can only have physical separation from each other. This separation may have contributed to all sorts of social decay and corruption, such as having affairs, as well as possibly prostitution, and homosexual and lesbian relations[58].

2.2.6 Women in Nigeria

In some parts of Africa including some parts of Nigeria, women had no importance at all other than as an object of satisfying human desire.[59]The moment a man marries a woman under customary law, the woman is regarded by the husband's family as having been married not solely-to her husband but to the entire family and therefore, she herself assumed membership of the family[60]. However, this position of women before independence in Nigeria was because the Nigerian women participated effectively in developing the economy of the country. The Nigerian economy at that period was basically at subsistence level. Apart from being mothers who give birth to the men and assisted them in all stages of life as wives by

[56] Ibid
[57] Badamasiuy, J. B. *Status and Role of Women under the Shari'ah*, Op.cit., pp. 8-9
[58] Al-Sheha, A. *Women in the Shade of Islam*, Op.cit., p. 27
[59] Haroun, M.A.S. *Sexual Issues in Modern Era and It's Solution in Islam*, Op.cit., p. 34
[60] Onukah, M.C. *Family Law*, Spectrum Books Limited, Ibadan, (2007), p. 69.

discharging their primary role, women contributed substantially to the production and distribution of goods and services.[61]

In the agricultural sector, women farmed alongside with their husbands and children. In Eastern Nigeria, women were involved in salt production. In South Eastern Nigeria equally women, participated in the production of palm oil. In the coastal areas, women were fully involved in fish drying, garri processing, etc.; while in Northern Nigeria, though there were women in *purdah*, yet they fully participated in food processing and trade with the aid of their children. In some cases, these women provided the means of sustenance for entire households[62].

It is part of the principles of customary law in most Nigerian societies, that women were considered free adults subject to certain limitations which subordinated them to male authority.[63] Women were given access to income through communal land. Nevertheless, women in many societies could not inherit land. They were subjected to all kinds of humiliation and ill treatment. Under these societies, the husband and father had the authority over the wife and the daughter respectively. In this respect the wife was to obey the dictates of her husband and the daughter was to follow that of her father[64].

Under Igbo society, there is a custom that if a king dies and is survived by several wives, he was buried usually with some of his wives who were believed to minister to his needs in the hereafter, a widow who was not buried with the king was subjected to dehumanizing funeral rites. She was made to sleep on the bare floor and eat with broken plates. Notwithstanding, she counts herself lucky that she was not buried along with the king[65].

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[61] Ibid
[62] Attoe, S.A.E, *Women in the Development of Nigeria since Pre-Colonial Time*, p. 1. An online article available at www.rozanehmagazine.com/iulvaueusto (visited on 20:04/24-03-2013)
[63] Ibid p. 2
[64] Badamasiuy, J. B. *Status and Role of Women under the Shari'ah*, Op.cit., p. 11.
[65] Ibid, pp. 84-90.

In Northern Nigeria, women were in Purdah within the four wall of their home. In Hausa-Fulani society, the women's right to work, right to education and even right to freedom were controlled by males. Women were only to follow the dictates of the male as father, husband or guardian as the case may be. In other words, they were not given the opportunity to go outdoors even for educational purposes. This position of women remained unchanged until when Uthman bin Fodiyo started his campaign. With this campaign, women came out seeking for knowledge about their religious obligations and rights as granted to them by Islam[66]. With the encouragement to learn trade and profession, they were involved in food processing and trade with aid of their children to prepare themselves against eventualities such as sustenance for the entire households where necessary.[67]

In traditional Ebira custom, women were regarded as inferior and were not allowed to participate in lucrative professions. Women as wives under this society followed the instructions of their husbands. And men were given the right to make laws, orders, and directives, and once made; it became the duty of women to comply with it without question. Women were not considered in matters relating to inheritance and property sharing. In this society, the widow had no place in the intestate succession[68].

To liberate women in Nigeria, some Governmental and Nongovernmental Organizations were formed. For example, the *National Council for Women Societies (NCWS)*, *Women in Nigeria (WIN)*, *Federation of Muslim Women Association in Nigeria (FOMWAN)*, *Family Support Programme (FSP)*, *Family Economic Advancement Programme(FEAP)*, etc., all with the sole objective of making women equal to men under the idea of Gender Equality. Unfortunately, they failed to understand that, men and women have disparate nature and role,

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[66] Suleiman, I. A. *Revolution in History: The Jihad of Usman Dan Fodio*, London, (1986), in Badamasiuy, J. B. Op.cit., p. 12.
[67] Badamasiuy, J. Op.cit., p. 14; Attoe, S.A.E *Women in the Development of Nigeria since Pre-Colonial Time*, Op.cit., p.1.
[68] Omiyi, S. A *Critical Appraisal of the Legal Status of Widows under Nigeria Law*, in Badamasiuy, J. Op.cit., pp. 13 14.

because of their biological, physical and even psychological differences. This issue of natural differences between men and women shall be discussed later.

2.2.7 Women in Pre-Islamic Arabia

This period is simply referred to as period of *Jahiliyya* which means the period of ignorance. In that period the social and moral disorder prevailed, since there was no religion to control the behavior of the society[69]. It was the period when mankind was in a state of an intermission of Prophethood, and the disappearance of guidance. Women were generally living in oppression during that period particularly in Arabian society. In that society the status of women was low and degrading and as such women were subjected to all sorts of humiliation and ill treatment. They were considered as mere chattels which can be used and disposed of by men[70].

They could even be mortgaged in return of loan, as in the case of Bin Masalamah and Bin Asharaf whereby Mohammad bin Masalamah said: "I went to Ka'ab bin Ashraf and asked him to give me some grain as a loan, he was saying to him men give your women as a mortgage to me" the man replied "how can we trust women to you as a mortgage when we know fully well that you are the most handsome man in the Arabian peninsula"[71]. Women were also treated as mere sex objects. Female slaves were instructed in dancing and singing, and they were permitted to dispose of their favours, the price of which was being snatched by the owner[72].

The men in that period of Jahilliyah practiced infanticide whereby the birth of a baby girl for instance was an unwelcome event to the point that female children were buried alive at the birth in spite of their soul harrowing cries. Others left them to live in oppressed and miserable lives. If the girl was spared the fate of being buried alive and was allowed to live,

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[69] Haroun, M.A.S. *Sexual Issues in Modern Era and It's Solution in Islam*, Op.cit., p. 35.
[70] Badamasuiy, J. Status and Role of Women in the Shari'ah, Op.cit p. 10.
[71] Bukhari, *Sahih al-Bukhari*, Mukhtar and Co., India (1983) vol. 2, p. 903 cited in Haroun, M.A.S. *Sexual Issues in Modern Era and It's Solution in Islam,* Op.cit., p.38.
[72] Haroun, M.A.S. *Sexual Issues in Modern Era and It's Solution in Islam*, Ibid, p.37.

she lived an oppressed life since they were not regarded as a source of future income[73]. In the pre-Islamic period only males used to inherit and females were denied a share of the inheritance of their relatives, no matter how rich they were, or how poor or how needy the women might be. In fact, the property of a wife and herself was her husband's property and was inherited along with the rest of his property upon his death. So at that time, an unlimited number of women lived under one husband without regard to the effect of what this would have on the part of women or the oppression, problems and pressures placed on them[74].

Moreover, if a husband wished to punish his wife, he may abstain from marital relationship with her for an indefinite period of time without pronouncing divorce[75]. This practice is known as *I'la* (oath of continence). This oppression of women and various types of obnoxious practices continued till the Islamic period.

2.2.8 Women in Islamic Law

Does Islam honour or disgrace women? Islam honours women in the most excellent manner which is exemplified in the following circumstances. With the advent of Islam, the oppression and ill treatment of women was removed and women were accorded proper status of independence. Islam brought women a new life and placed them in their natural position and returned to them their dignity and humanity. It gave them the capacity to carry out the commands of Allah. It also regarded them as independent human beings with equal share in humanity to the male gender. Both genders are two branches from a single tree and two children from same mother (*Hauwa*), and same father (Adam)[76]. In this regard, the Holy Qur'an says:

> O you mankind: fear Allah who created you from a single soul, and He created from it, its mate, and out of the twain He spread abroad manifold men and women. And fear Allah by whom

[73] Ibid, p. 40
[74] Saleh, F. A. *Ruling Pertaining to Muslim Women*, Darussalam, Riyadh, (2002) pp. 9-11.
[75] Badamasiuy, J. *Status And Role of Women under the Sharia*, Op.cit., p. 11
[76] Al-Qardawiy, Y. *Markazul Mar'ah Fi Hayatul Islamiyya*, Maktabatul Islamiyya, Beirut (1998) p. 9

you importune one another and the wombs. Verily Allah is ever a watcher over you[77].

However, Islam considers women as worthy human beings. In that regard, the Prophet (blessing and peace be upon him) in speaking of women with praise and respect also says: "*The world and all things in it are precious, and the most precious thing in the world is a virtuous woman*[78]. In another Hadith, the Prophet (PBUH) says: "*Shall I not inform you about the best treasure a man can have? It is a virtuous woman who pleases him when he looks at her, and who obeys him when he commands her, and who guards herself when he is absent from her*[79].

Therefore, the relationship between man and woman is just like brother and sister and in fact they are germane, the Prophet (PBUH) also says: "*Women are the germane sisters of men*"[80]. With this position and relationship, men and women in Islam respect and love each other as supported by the Hadith where the Prophet (PBUH) says: "Made beloved to me from your world are women and perfume, and the "cooling" of my eyes is in prayer[81].

In Islam, women are given a very comprehensive way of life; the care of women is not limited to specific stage of life. Islam pays close attention to the women's rights and needs. In other words, it focuses on the various stages of her life as follows:

2.2.8.1 Woman as a Daughter:

Despite the social tolerance of female infanticide during the pre-Islamic era, the noble Qur'an extremely forbids such custom and categorizes it as a crime (murder) where Almighty

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[77] Daryabadi, A. M. Tafsir-ul-Qur'an - Translation and Commentary of the Holy Qur'an, Dar Ibn Kathir, Beruit, (2004) vol. I, pp. 299-300.

[78] Sahihu al-Jami al-Sagir, hadith no. 3297, cited in Abdulrahman, H. *Wajibat ul-Mar'ah al-Muslimah Fi Dhau 'e al-Kitabu Wassunna*, Dar al-Ma'arifa, Beirut, (2006, 5th ed.), p. 8

[79] Sahihu al-Jami al-Sagir, hadith no. 3299, cited in Abdulrahman, H. *Wajibat ul-Mar'ah al-Muslimah Fi Dhau 'e al-Kitabu Wassunna*, Ibid, p. 271. See also Jami'i An-Nasa'i, vol. 6, pp. 56-57; see also Sahih Al-Bukhari, hadith no. 893, cited in Ash-Shahawi, M.M. *Marital Discord Causes and Cures*, Darussalam, Riyadh, (2004), p.23

[80] Al-Qardawiy, Y. *Markazul Mar'ah Fi Hayatul lslamiyyah*, Op.cit., p. 10

[81] Reported by Ahmad and Nasa'I, cited Abdulrahman, H. *Wajibat ul-Mar'ah al-Muslimah Fi Dhau 'e al-Kitabu Wassunna*, Op.cit., p. 38

Allah says: *"When the female (infant), buried alive,is questioned - for what crime she was killed"*[82]. Islamic law went further to reject the attitude among some parents upon hearing the news of the birth of a baby girl during that period where the parent expressed displeasure. Allah in the Qur'an stated: *"And when there is announced unto any of them a female, his face remains darkened the whole day and is worth in wardly ... Sulking from the people because of the evil of what has been announced unto him: shall he keep her with ignominy or bury her in the dust? Lo! Vile is what they judge!"*[83]

Islam criticized the attitude of such parents and condemned the practice of this custom. Contrary to this, Islamic law made it as of right, and requires parents to take care of the female baby and all their needs in accordance with their capacity, and ensure a decent, respectful and honourable life for them, this is provided by the Holy Qur'an:*"Mothers shall give suck To their offspring for two whole years; If the father desires To complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have A burden laid on it greater than it can bear...."*[84]. It is also made a duty upon the parents to love, take care, show kindness and justice to their daughters in particular and children in general. On this point Ibn Abbas reported that the Prophet (PBUH) says:"Whoever has gotten a female child, and then does neither bury her alive, or treat her unjustly, nor prefer his male children over her, Allah will admit him in paradise[85]".

Similarly, another Hadith is also reported as saying: "Whoever supports two daughters till they mature, he and I will come on the Day of Judgment as this and he pointed with his two fingers held together"[86].

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[82] Qur'an 81:8-9.Ali, A.Y. *Translation of the Glorious Qur'an Translation and Commentary in English Language*, Islamic Foundation, London, 1975, p 1694

[83]Q 16:58-59 Ibid p. 670

[84]Q 2:233, Ibid p. 93

[85] Recorded by Ahmad Bin Hanbal, cited in Ahmad Y. Encyclopaedia of Islamic Jurisprudence Concerning Muslim Women, Darussalam, Riyadh, (2010), vol. I, p.36

[86] Ibn Hanbal, Hadith No. 2104 in Badawi, A.J. *Woman Under the Shade of Islam*, Organization of Islamic Conference, (1998) p. 15.

2.2.8.2 Woman as Wife:

Islam cares for the woman, as a wife, the women is to enjoy love and kindness from her husband. In essence, Husband and Wife derive comfort, satisfaction, help and assistance from each other and support one another[87]. The wife is the companion of her husband, she is a safe guard for him and vice-versa, she is also to complement him in terms of co-operation not in terms of compassion[88]. Marriage in Islam is based on mutual peace, love and composition not only to satisfy man's desire. In that wise, among the most impressive verses in the Qur'an about marriage is that which provides:"*And among His signs Is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): Verily in that are Signs for those who reflect."*[89]Islamic law urges husbands to be kind and considerate to their wives and warns them against harsh treatment on them. The Qur'an thus states:

> O you who believe! It is not allowed to you that you inherit women forcibly, nor shut them up that you may take away from them part of what you had given them, except when they are guilty of manifest indecency. And live with them honourably; if you dislike them, perhaps you detest a thing and yet Allah has placed abundant good therein[90].

According to Ibn Katheer, this means that you must be patient by keeping them, though you dislike that, they may do you a lot of good in this world and the hereafter. According to Ibn Abbas, the good may be in the form of abundantly blessed offspring that Allah may bless him with by that woman if he is patient with her and shows compassion to her[91]. The idea of kind treatment and companionship is strongly recommended by the Prophet

[87] Al-Sheha, A. *Woman in the Shade of Islam*, Op.cit., p. 37
[88] Badamasiuy, J. *Status and Role of Women under the Shari'ah*, Op.cit p. 25.
[89]Qur'an 30:21 Ali, A.Y. Op.cit, p. 1056
[90]Qur'an4:19, Daryabadi A. M. Tafsir Ul-Qur'an, translation and commentary of the Holy Qur'an, Dar Ibn Kathir, Beruit, 2004 vol. 1 pp. 389-390.
[91] Ibn Katheer, *al-Jaami;i li Ahkaam al-Qur'an*.

(PBUH) thus: *"The best of you is the best to his family and I am the best among you to my family*[92].

In another Hadith, the Prophet (PBUH) said:"The most perfect believers are the best in conduct and the best of you are who are best to their wives"[93]. Men as husbands are the maintainers and protectors of their wives and in fact the heads of the family unit. On the other hand, women as wives have been described as obedient and observers of the secret and the fact that they preserve secret, obey and respect their husbands, as head of the family unit does not make them slaves[94].Therefore, it is the husband's duty to provide maintenance and protection for his family. And it is the wife's duty to obey and respect him. In this regard, the Qur'an says:

> Men are overseers over women, by reason of that wherewith Allah has made one of them excel over another, and by reason of what they spend of their riches. So the righteous woman are obedient and watchers in the husband's absence by the aid and protection of Allah. And those wives whose refractoriness you fear, admonish them and avoid them in beds and beat them, if they obey you do not seek a way against them. Verily Allah is ever Lofty, Grand.[95]

The main wisdom behind marriage is reproduction, the moment the wife conceives and delivers; she becomes a mother with additional rights and responsibilities toward her new born child.

2.2.8.3 Woman as Mother

Generally, parents deserve kindness, care, good treatment, companionship and best services from their children. Islam considers kindness to parents next to worship Almighty Allah. In fact, the Holy Qur'an states:

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[92] Sunanu al-Tirmithee, vol. II, hadith No. 1172, p. 315 cited in Abdulrahman, H. *Wajibat al-Mar'ah al-Muslimah Fi Dhau'e al-Kitab Wassunah*, Op.cit., p. 265

[93] Ibn Hanbal, hadith no. 7396 cited in Badawi, A.J.*Women Under The Shade of Islam*, Op.cit., p. 18

[94] Badamasiuy, J. *Status and Role of Women in Shari'ah*, Op.cit., p. 25

[95] Qur'an4:34 Daryabadi, Tafsir ul Qur'an, Op.cit Vol. I, pp. 323-324.

> And thy Lord has decreed that you should worship none but Him, and show kindness to parents; and if either of them or both of them attain old age with thee, say not unto them; pooh! and browbeat them not, and speak to them respectful speech. And lower unto them the wing of meekness out of mercy, and say: Lord! Have mercy on them twain as they brought me up when young[96].

Moreover, Islam gives special consideration to the good treatment of mothers. In one famous incident, a man came to the Prophet (PBUH) and asked:

> O Messenger of God, who among the people is the most worthy of my good company? The Prophet (PBUH) said: 'your mother'. The man said, then who else? The Prophet (PBUH) said: 'your mother'. The man asked who else? The man asked, who else? The Prophet (PBUH) said your mother. The man asked, then who else? (Only then did) the Prophet (PBUH) say, your father[97].

The Holy Qur'an also discusses the immense honour and respect due to both parents, most especially to the mother. This is because she loves him in weakness and hardship upon weakness and hardship. In this respect, Allah says: "A*nd We have enjoined upon man concerning his parents-his mother bears him, in hardship upon hardship, and his weaning is in two years-give thanks to Me and to thy parents; unto Me is the goal[98]".* Unlike western cultures and other religions, Islam cares for the Women and indicates that, paradise is at the feet of the mother. A hadith has been reported thus:

> A man came to the Prophet (PBUH) and said: O Prophet of Allah! I intend to participate in the Islamic fighting for the cause of Allah. I came to consult you about it. The Prophet (PBUH) asked him: Do you have a (living) mother? He said. yes. Then the Prophet (PBUH) said: Do not depart her sight, paradise is at her feet[99].

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[96] Qur'an 17:23-24, Daryabadi, A. M. Tafsir ul Qur'an, Vol. III, pp. 22-23.
[97] Ahmad Z. *Mukhthar Sahih Al Bukhar*i, Islamic Inc., Cairo, (nd) Vol. II, hadith no. 81, p. 1095 and Khan, MM Sahihu Bkhari (Arabic - English), Beirut, (1985), vol 8, chapter 2, Hadith No. 2, p. 2, cited in Badawi, J.A. *Woman Under the Shade of Islam*, Op.cit., p. 20.
[98] Qur'an 31:14, Daryabadi, A. M. Tafsir-ul Qur'an, vol. III, Op.cit. p. 404
[99] Karim, F. *Mishkat Al-Masabih,* Op.cit., vol. I, p. 14.

Islam recommends and teaches kindness, care and respect for women. The Prophet (PBUH) said: *"It is the generous (in character) who is good to women, and it is wicked who insults them*[100]*"* In Islam, the criterion for superiority or status in the sight of Allah is one's righteous conduct, it treats both genders equally in that, whoever leads a pious life in accordance with divine guidance is entitled, in equal measure, to attain salvation and eternal success in the next life[101].

2.3 Gender Equality and Differences in Islamic Law

Rules and regulations can never be fully understood without being explained, we must first understand the fundamental issue that, men and women are two different sexes, simply because, they have different biological composition and temperament (character). Allah the Almighty who created them knows these biological differences better than we do, He then organized the role of each sex in accordance with its nature. No gender is superior nor inferior to the other. Instead, they complement each other. Let us cite an instance from one natural event which is "time" (*Zaman*). Time is the fountain upon which all events happen and can be divided into *Day* and *Night*; the day has its own role as well as night, just like sexes. This is because each one has been created with a sole purpose of playing some roles. If one says they are opposite, he has certainly misunderstood their nature. They are only complementary to each other[102]. In this respect, the Almighty Allah said: *"By the night when it envelops. (All things darkness). By the day when it appears in glory. By the One who created them male and the female. Verily your endeavors are diverse. (That is your aims in life are directed towards diverse ends*[103]. So also, Allah said in the Holy Qur'an:

> (O Prophet!) Say thou: think you, if Allah made night continuous for you till the day of resurrection, what god is there

[100] Badawi, J .A. *Woman under the Shade of Islam*, Op.cit., p. 21.
[101] *Women and Family in Islam*, A position paper highlighting the status, rights and role of Muslim women according to the basic source of Islam, presented on the occasion of the UN Conference on Women (unpublished), Beijing (1995), World Assembly of Muslim Youth, Jidda (1998), p. 9.
[102] Sha'arawi, M. M. *Kulluma Yahimmu al-Muslimu Fi-Hayatihi wa Yaumihi wa Ghadihi*, Vol. 6, p. 57
[103] Daryabadi, Tafsir ul Qur'an, Op.cit., vol. IV, p. 450.

> beside Allah, who would bring you light? Do you not hear?" say thou: think you, if Allah made for you day continuous till the day of resurrection what god is there beside Allah, who would bring you night in which you have repose? Do you not see?[104]

Men and women are members of human kind and companions of each other. As human beings, they are equal having the same human rights and obligations. In fact, they are two complementary parts of humanity and in the absence of one of them, humanity is not complete[105].

2.3.1 Gender Equality

Gender equality is seen by the west as a question for human rights, obligation and a condition for social justice. It is also seen as a necessary and fundamental pre-requisite for equality, development and peace[106]. Islam upholds the concept of equality between men and women in terms of human status. Both sexes have a defined partnership with one another, and there is no difference between them as regards their respective rights[107]. In Islam, generally, a woman is accorded the status of an independent human being just like a man. She is virtually equal to man. She enjoys certain rights and just as she is responsible to duties under Islamic Law[108].

This concept of equality presented by Islam is totally different from the concept of equality under western civilization. In Islam, such equality does not mean men and women are duplicated of perfect sameness. Therefore, equality under Islamic Law does not mean absolute or unlimited identicalness. It notes their physical and emotional differences[109]. In other words, Islam does not grant the same rights to men and women in everything in the

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[104] Qur'an 28:71—72, Daryabadi, Tafsir ul Qur'an, Op.cit., p. 335.
[105] Haroun M.A.S. *Morality in Islam, Sexual Issues in Modern Era and its Solution in Islam*, Op.cit., p. 63
[106] Badawi, A. J. *Women and Family Life in Islam*, World Assembly of Muslim Youth, Op.cit., p. 8
[107] Aliyu, I.A. *Protection of Women Rights under the Shariah*, Op.cit., p. 4.
[108] Badamasiuy, J.*Status and Role of Women under the Shari'ah,* Op.cit., p. 20.
[109] Badamasiuy, J. and Shu'aibu, U. M. *Gender Equality or Gender Equity? A critique of CEDAW from Shari'ah Perspective*, International Journal of Islamic Thought, (2012), p. 26

same way as it has not imposed the same obligation to both genders on all occasions. However, the sum total of all rights granted to men is not higher in value than that of women. On this regard, Murtada Mutahhari in his book has this to say:

> Quantity is different from quality. Equality is different from being exactly the same. What is certain is that Islam has not considered there to be identicalness of exact similarity of rights between men and women, but it has never believed in preference and discrimination in favour of man as opposed to women. Islam also observed the principle of equality between men and women. Islam is not against the equality of man and woman but it does not agree with identicalness of their rights[110].

Therefore, Islam demonstrates gender equality in the following aspects:-

2.3.2 Gender Equality in the Spiritual Aspect

Muslim women are ordained to observe ritual acts of worship such as: prayer, charity, fasting, pilgrimage, etc. As a general rule, the beliefs, acts of worship, conduct and rulings that Allah has ordained apply to both genders on an equal basis. The Qur'an on its part treats this issue of gender equality from more than one perspective. In the words of the Qur'an, it provides:

> For the Muslim men and women, For believing men and women, For devout men and women, for true men and women, For men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), For men and women who guard their chastity, and For men and women who Engage much in God's praise, - For them has God prepared Forgiveness and great reward.[111].

On the basis of social and religious responsibilities, the Qur'an establishes gender equality by saying:

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[110] Mutahhari. M. *The Rights of Women in Islam*, World Organization of Islamic Services, Tehran, (1981), p.116 cited in Aliyu, I. A. *Gender Equality and the Rights of Women Under the Shari ah*, (Unpublished) International Institution of Islamic Thought, Kano, (2010) p. 18

[111] Qur'an 33:35 Ali, Y. A. Op.cit pp. 1116 - 1117

> The believers, men and women, are protectors, One of another: they enjoin what is just, forbid what is evil: they observe regular prayers, practice regular charity, and obey God and His Apostle. On them will God pour His mercy: for God Is Exalted in power, Wise.[112]

The Qur'an provides clear-cut evidence that women are completely equal with men in the sight of the Shari'ah. In terms of their rights and responsibilities, Allah says:

> And their Lord hath accepted Of them, and answered them: "Never will I suffer to be lost The work of any of you, Be he male or female: Ye are members, one of another: Those who have left their homes, Or been driven out therefrom, Or suffered harm in My cause, Or fought or been slain, - Verily, I will blot out From them their iniquities, And admit them into Gardens With rivers flowing beneath:- A reward from the Presence Of God, and from His Presence Is the best of rewards."[113]

Every soul will be held responsible for its deeds. The Almighty Allah states: *"Whosoever works righteousness, man or woman, and has Faith, Verily, to him will We give A new Life, a life That is good and pure, and We Will bestow on such their reward According to the best Of their actions"*[114].

From the above verses, women's obligation regarding Islamic principles and practices are the same as those of men.

2.3.4 Gender Equality in the Economic Aspect

On the economic aspect, Islam grants women the right of independent ownership. The provisions of Qur'an attests to this in clear terms: *"From what is left by parents and those nearest related There is a share for men and a share for women, whether the property be small or large-a determinate share"*[115]

[112]Qur'an 9:71, Ibid p. 461
[113]Qur'an 3:195 Ibid pp. 174 - 175
[114]Qur'an 16:97 Ibid p. 683
[115]Qur'an 4:7 Ibid p. 180

It recognizes the full property rights of women before and after marriage. Thus, as a woman in the exercise of this right, she can own, posses, acquire and dispose of her property independently of her father, husband or guardian. She retains her full right to buy, sell, mortgage or lease any part or all of her property[116]. Upon marriage, the husband is required to pay her *mahr* (dower) which then becomes her exclusive property, and upon death she can inherit at various capacities like daughter, wife, mother or sister, making it a requirement for women to get their determined share[117]. In a nutshell, both genders have equal rights to own property and dispose of their wealth in a way they deem fit as long as they possess sound judgment. To this effect, Allah says:

> And test the orphans till they attain the age of wedlock, then if you perceive in them a discretion, hand over to them their property and do not consume it extravagantly or hastily for fear that they may grow. And whoso is well-to-do, let him abstain, and who so is needy let him take from it honourrably. And when you hand over their property to them call witnesses in their presence and Allah suffices as a Reckoner[118].

According to the majority such as the Hanafis, Shafis, Ibn Mudhir and a narration from Imam Ahmad, women are at liberty to embark on commercial transactions without the need of their father or husband's consent, they also agreed that they can spend their wealth charitably.[119]

They relied on the following tradition where the Prophet (PBUH) said to womenfolk: "*O womenfolk give charity even if it is from your jewelry*", while according to the minority such as the Maliks and one narration from Ahmad bin Hanbal, women are not allowed to donate more than one third of their wealth without the consent of the husband[120].

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[116]Al - Qardawiy, Y. Op.cit., p. 14
[117] Haroun M.A.S. Op.cit., p. 65 and Badawi, A .J. Op.cit, p. 21
[118]Qur'an 4:6, Daryabadi, Tafsir ul Qur'an, Op.cit, Vol. I, p. 303.
[119] Haroun M.A.S. Op.cit.and Badawi, J. A. Op.cit
[120] Ahmad, Y.A. *Encyclopaedia of Islamic Jurisprudence Concerning Muslim Women*, Darussalam, Riyadh, (2010) p. 55

2.3.5 Gender Equality in the Social Aspect

Social Right is the right to engage in the various types of activities, professions and skills which bring spiritual or material benefit to the society[121]. As regard the participation in religious activities, there is no difference between men and women with respect to the divinely given opportunities to participate in such beneficial activities. For instance, if women wish to attend the mosque, no one is allowed to stop them. The Prophet (PBUH) has commanded: *"If your wives ask you permission to go out to the mosque, allow them to do so"*[122].

Another example is the case of women participating in academic and cultural pursuits. In this respect, Al-Bukhari records a tradition going back to Abu Sa'id Al-Khudri, who said:

> A woman once came to the Prophet (PBUH) and said: O Messenger of God, the men have been monopolizing your time! Please set aside a day on which we (women) can come to you and you can teach us from what God has taught you.' The Prophet (PBUH) replied, 'Meet on such-and such a day in such-and such a place.' They did as He had instructed them, and He (PBUH) came and taught them what He had learned from God[123].

In a nutshell, women enjoy many rights such as religious and educational activities, festivals and events after observing the rules of decency, modesty and proper dress.

2.3.6 Gender Equality in the Political Aspect

Women enjoy rights and obligations and as a woman, she enjoys full political rights except nomination to the post of a judge which is controversial among Muslim jurists[124]. Women as members of an Islamic state have got rights of mutual consultation and of being consulted as the men citizens have. In the history of Islamic civilization, we find that, the Prophet (PBUH) and the four pious Caliphs used to consult women in many matters.

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[121] Al-Butt, M. S. R. *Women Between the Tyranny of the Western System and the Mercy of the Islamic Law*, Dar Al-Fikr, Beirut, (2009 3rd ed.) p. 118

[122] Ibn Kathir, A.I. *Tafsir Ibn Kathir*, Dar Al-Fikr, Beirut, 1970, (nd) vol. 5, p. 401

[123] Recorded by Bukhari

[124] Badamasiuy, J. B. *Status and Role of Women*, Op.cit., p. 36

Enjoining good and forbidding wrong is an important political function of an Islamic state and women have also been enjoined to discharge this duty along with men[125]. To portray and sum up the role of men and women toward each other, the term *Awliya'a* (helpers) has been employed by the Qur'an. Both genders are duty bound to participate in extending cooperation for the promotion of all that Islam orders one to do and eliminating of all that Islam has forbidden. The Qur'an deals with this subject in clear terms: *''And the believing men and women are friends to one another: they bid each other what is reputable and prohibit what is disreputable, and establish prayer and pay the poor-rate and obey Allah and His Messenger. Those! Allah will surely show mercy to them; verily Allah is Mighty, Wise[126]".* These authorities cited from the primary sources set forth that men and women are equally responsible for reforming the society spiritually, socially, economically, politically, etc., and they are to discharge these duties in an atmosphere of security and protection towards each other[127].

As regard to the maintenance of the entire family, no woman is required to participate or spend a penny from her wealth. Therefore, greater financial security is assured for them. Simply because, women at all stages of their life are entitled to full financial support under the Islamic Law. Allah says:

> Men are overseers over women, by reason of that wherewith Allah has made one of them excel over another, and by reason of what they spend of their riches. So the righteous women are obedient and watchers in husband's absence by the aid and protection of Allah. And those wives whose refractoriness you fear, admonish them and avoid them in beds and beat them; but if they obey you, do not seek a way against them. Verily Allah is ever Lofty, Grand[128].

[125] Haroun M.A.S. Op.cit., p. 96
[126]Qur'an 9:71, Daryabadi, M.A. Tafsir ul Qur 'an, Op.cit., vol. II, p. 217
[127] Aliyu, I. A. *Protection of Women Rights Under the Shari'ah*, Op.cit., p. 9
[128]Qur'an 4:34 Daryabadi, M. A. Tafsir ul-Qur'an, Op.cit vol. I, pp. 323-326

Once again, gender equality in Islamic law does not mean absolute or unlimited equality, identically or sameness. It only means overall equality in the totality of rights and duties of the two genders, on this point, there must be some differences between the female gender and the male gender which are not limited to childbirth. Generally, women are part of the vulnerable group who can easily be sexually harassed at their various places of work which men rarely suffer[129].

2.3.7 Gender Differences

It is very important to note that, according to Islamic law, both genders have been created in different forms for different purposes. This stresses a difference in role and nature but not difference in status. To support this point, the reference can be made to the case of allegiance, where the Prophet (PBUH) accepted separate allegiance from women and not along with their men folk, upon the instruction from Allah in the Holy Qur'an thus:

> O Prophet! When believing women come to thee swearing fealty, that They shall not associate aught with Allah, nor shall they steal, nor shall they commit fornication, nor shall they slay their children; nor shall they produce any falsehood that they have fabricated between their hands and feet, nor shall they disobey thee in anything reputable, then accept thou their fealty, and pray to Allah for their forgiveness. Verily Allah is Forgiving, Merciful[130].

This authority clearly establishes the identity and individuality of Muslim women which distinguishes and separates them from men[131]. The distinction between the two genders is not due to any preference by Allah of one gender over the other on any account of being nobler or closer to God. According to Islamic teachings, the rule of piety is the only measure of ascendency, nobility and closeness to Allah. The Qur'an says:

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[129]Badamasuiy, J.B. and Shu'aibu, U.M. Gender Equality or Gender Equity? A Critique of CEDAW from Shari'ah Perspective, International Journal of Islamic Thought, Op.cit., p. 3.
[130]Qur'an 60:12, Daryabadi, M.A. *Tafsir ul Qur' an*, Op.cit., vol. IV, pp. 312-313
[131] Khan, M.M. *Women Between Islam and Western Society*, Op.cit., in Aliyu, I. A. *Gender Equality and the Right of Women Under the Shari'ah*, Op.cit., p. 20.

> Mankind! Verily We have created you of a male and a female and We have made you nations and tribes that you might know one another. Verily the noblest of you with Allah is the most pious of you. Verily Allah is Knowing, Wise[132].

The differences, however, are merely conditioned by the different roles assigned to each gender by virtue of their natural disposition[133]. To this effect, Shari'a declares rights and duties of women just like men, it also announces a certain degree of precedence of males over females and considers it necessary for balance in the society, because the burden of maintenance and protection for the family in general is borne by men folk, and because of their capabilities they are suitable to discharge all the responsibilities. The Almighty Allah selects men folk with a degree above women in the Qur'an which provides thus:

> And the divorced women shall keep themselves in waiting for three courses; nor is it allowed to them that they should conceal what Allah has created in their wombs, if they believe in Allah and the Last day. And their husbands are more entitled to their restoration during the same, if they desire rectification. And to women is due like what is due from women honourably. And for men there is a degree above them. And Allah is Mighty, Wise[134].

Women differ profoundly from men as in the idea of Dr. Alexis Carrel when she concludes with the following analysis:

> The difference existing between man and woman do not come from the particular form of the sexual organs, the presence of the uterus, from gestation or from mode of education. They are of a more fundamental impregnation of the entire organism with specific chemical substances secreted by ovary. Ignorance of these fundamental facts has led promoters of feminine to believe that both sexes should have the same responsibilities. In reality woman differs profoundly from man. Every one of the cells of her body bears the mark of her sex. The same is true of her organ and above all of her nervous system. Physiological Laws are as inexorable as those of the side real world. They cannot be replaced by human wishes; we are obliged to accept their aptitudes in accordance with their own nature, without trying to imitate the males. Their part in the progress of

[132] Qur'an 49:13, Daryabadi, M.A. Tafsir ul Quran, Op.cit., vol. IV, pp. 216-218
[133] Al-Qardawi, Y. *Markazul -Mar'ah Fi Hayati Islamiyyah*, Op.cit., p.16
[134]Qur'an 2:228, Daryabadi. M.A. Tafsir ul Quran Op.cit., pp. 167-169.

> civilization is higher than that of men. They should not abandon their specific functions[135].

Therefore, the main distinction between the two genders means that both do not duplicate each other, each fighting to fulfill the same roles and behaving in the same manner. Instead they complement each other exercising their own particular strengths and mitigating their partner's weakness[136].

The very nature of men and women is different in terms of physical, mental and psychological abilities. On this basis, though, men and women are equal in status, there are some issues in which they are treated as dissimilar such as hijaab, testimony, inheritance, *diyyah*(blood money), divorce, right to trade or to seek other employment, polygyny, etc. Now, there are some misconceptions about women on these issues that have been spread by westerners. These misconceptions were not meant for women individually, but rather an attack on Islam in particular[137]. This heading deals with some of the following issues which raise most of the criticisms:

2.3.7.1 Polygamy

The Islamic framework of polygamy has been a topical issue of concern to feminists thereby raising questions as to its gender implications for the womenfolk. While in Islam a man is allowed to marry more than one wife, it is a practice as old as the history of man previous religious practices, accepted and condoned such type of marriage. For example, the Old Testament, in particular, and New Testament in general, are at the top of the list of the religious Books that mentioned this practice and legalize it[138]. In Islamic law, a man is allowed to marry a maximum of four wives provided he treats them with equality and justice.

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[135] Carrel, A. *Men the Unknown*, New York, (I949) p. 91, cited in Hassan, A. *The Rights and Duties of Women in Islam*, Darussalam, Riyadh, (2003), p. 31.
[136] Hassan, A. *The Rights and Duties of Women in Islam*, Ibid, p. 32
[137] Al-Sheha, A. Women In the Shade of lslam, Op.cit., p. 64
[138] Badamasiuy, J.B.*Status And Role of Women Under the Sharia*, Op.cit., p. 32

If he fears he cannot do justice between the wives, he should maintain only one wife. The Almighty Allah stated in the Holy Qur'an:

> And if you apprehend that you will not be able to deal justly with the orphan-girls, then marry of other women such as please you, by two, or three, or four, but if you apprehend that you shall not be able to act equitably, then marry One only or what your right hands own. That will be more fit that you may not swerve[139].

The main wisdom behind polygamy is to provide the only decent solution for the widow and orphans. Thus women may not resort to a monastic life, which is unnatural, or to an immoral and sinful relationships, which strictly are forbidden. Allah has permitted polygamy and has stipulated certain conditions in order to avoid injustice and wrong practice against the wives. The main conditions for polygamy in Islam are justice and equality between the two, three, or four wives.

The Prophet (Pbuh) said: "He who has two wives and does not demonstrate justice, fairness and equality amongst them will appear on the Day of Resurrection with one of his sides paralyzed[140]". In this context, justice, fairness and equality apply to expenditure and visible emotional approach such as fair division of wealth, gift, time, love and inclination towards one side (wife) over the other. As human beings, there is no way one can deal with them equitably i.e. to hold the balance even in love and affection, which feelings are of involuntary nature and beyond human control.

In this regard, there are some authorities to support this point. The Almighty Allah stated thus: *"And you are not able to deal equitably between wives, even though you long to do so; but incline not an extreme inclining, so that leave her as it were suspended. And if you effect a reconciliation and fear Allah, then Allah is ever Forgiving, Merciful"*[141]. Another

[139]Qur'an 4:3, Dayabadi, M. A. Tafsir ul-Quran, Op.cit., vol. I, pp. 301-302
[140]Al - Albany, M.N. *Irwa'e al-Ghaleel Fi Takhreej Manar al-Sabil*, Makabah al-Islamy, Beirut, (1985), vol. 7, Hadith No. 2017, p. 80.
[141]Qur'an 4:129, Daryabadi, M. A. Tafsir ul- Quran, Op.cit., vol. I, p. 365

authority is the Prophetic tradition which Aishah (RA) the mother of the believers, and the wife of the Prophet (PBUH) was reported as saying: Allah's Prophet (PBUH) distributed everything justly amongst His wives. Nonetheless, He used to say: "O Allah! This is the fair way of dividing what I possess amongst my wives. O Allah blame me not for what you alone possess while I do not, i.e., the heart, feelings and emotion of a man[142]." Since feelings and emotion are involuntary, the husband is not to be blamed for them.

Finally, we conclude that the association of polygamy with Islam is not only unfair biased but based on serious misunderstanding. It is presently allowed by Christian's missionaries in Africa and other areas where polygamy is a social necessity[143].

2.3.7.2 Testimony of Women

It is when a person truly gives account of what she saw or heard on the issue in question. The Qur'an clearly provides that, the Testimony of one man is equivalent to that of two women, this is by virtue of the Qur'anic verse known as Ayat Al-Mudayanah (indebtedness verse) in which Allah prescribes writing debt contract as a pre-condition. Allah stated in the Glorious Qur'an:

> And call to witness two witnesses of your men. And if there be not men, then a man and two women of those you agree upon as witnesses, so that if one of the twain errs, then the other will remind her. And let not the witnesses refuse when they are called on.[144].

This Qur'anic verse makes the testimony to assure the rights of others, will not be valid unless two men or one man and two women offer them. Moreover, the majority of jurists including those of the Zahiri School are unanimous in not accepting the Testimony of

[142] Reported by Dawood, Nasaa'ee, Al-Tirmithee and Ibn Majah cited in Al-Sheha, A. *Women in the Shade of Islam*, Op.cit., p. 57
[143] Badawi, A. J. *Women Under the Shade of Islam*, Op.cit., p. 40
[144]Qur'an 2:280, Dayrabadi, M. A. Tafsir ul Quran, Op.cit., vol. 1, pp. 205-206

women in criminal cases. They reason that, in cases such as murder and rape, the woman will be emotional and may get confused[145].

Based on the emotional characteristics of the women, a divine precautionary measure was established to eliminate any emotional involvement of women in any case of testimony or witness in criminal offences. According to Yusuf Al-Qardawi, the exclusion of women's testimony in crimes and cases requiring retaliation is meant to protect women and make them away from the sites[146]. For instance, if women are present at the site where a murder is being committed, since there is no way out, they might close their eyes to avoid seeing such serious crime taking place. Women who witness such serious commitments are most likely to be emotionally affected and touched, which may result in loss of temper and composure. Therefore, it becomes difficult for such women to give reliable account of the crime[147]. According to Abdul Gaffar Hassan**,** there are some more situations in which Testimony is required:

a) Crimes related to penal ordinances and retaliation. If men and women are available, the men will be called to give witness. If only women are available, the Hanafi, Maliki, Shafi'i and Hanbali are unanimous in rejecting the Testimony of Women. Except Zahiri school is of the view that, women alone can testify in criminal cases, and such Testimony could be accepted in accordance with the principle of two women's Testimony is equal to that of one man. They argue that, to reject women's Testimony entirely in such cases will result in many crimes to go without being punished.[148]

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[145] Hassan A. *The Right and Duties of Women in Islam*, Op.cit., pp. 23 24.
[146] Al-Qardawi, Y. *The Status of Women in Islam*, Op.cit., p. 10.
[147] Al-Siba 'ee, M. *Al-Mar'ah Baina Al-Fiqh wa Al Qanun*, Darul-Warraq, Beirut, (2001, 8th ed.), pp. 27-28. Al-Qardawi, Y. *The Status of Women in Islam*, Islamic Home, Beirut, (1998, 3rd ed.) pp. 10-11; Al-Sheha, A. *Women in the Shade of Islam*, Op.cit., p. 76
[148] Hassan, A. *The Rights and Duties of Women in Islam*, Op.cit., p. 23

b) In affairs peculiar to women alone for example in cases of feminine affairs such as foster relationship, pregnancy and delivery, menstruation, genital defects, etc., the woman's testimony counts.[149]

c) In economic affairs related to wealth and property, which are usually the domain of man, the Testimony of two men is required, if two men are not available, then the Testimony of one man and two women will be admitted, in accordance with the provision of Qur'an which states: "And call to witness two witnesses of your men. And if there be not men, then a man and two women of those you agree upon as witnesses, so that if one of the twain errs, then the other will remind her"[150].

Shari'ah admits the testimony of a woman in affair peculiar to women such as examination of women's private parts due to a dispute. While on the other hand it rejects the testimony of a man even in affairs relating to the domain of men. However, the testimony in itself is not a privilege or an honor. It is a serious responsibility that both genders attempt to avoid in any society, due to the fact that there is a great burden involved in it. Therefore Islam aims at eliminating this burden from the women in matters involving testimony[151].

2.3.7.3 Inheritance (Al-Mirath)

Al-Mirath is derived from the verb *waratha*, meaning to inherit anything. Technically, it means the science of the rules of Shari'a which provide for who will inherit and who will not inherit and what shares will go to the right heirs from the property of the deceased[152]. The most oft-repeated criticisms against Islam in the context of a discussion of gender equality is that in which is based on the share of women in *mirath*. Misunderstanding the principles of Islam, the westerners claim that Islam does not do justice to women in the case of inheritance

[149] Ibid
[150] Hassan, A. *The Rights and Duties of Women in Islam*, Op.cit., pp. 23-24; Al-Siba'iee, M. *Al-Mar'atu Bainal Fiqh wal Qamun*, Op.cit., p.17
[151] Al-Sheha, A. *Women in the Shade of Islam*, Op.cit., pp. 77-78
[152] Sabiq, S. *Fiqh-us- Sunnah*, Dar Fikr, Kuwait, (1968) vol. 3, p. 498 in Haldar, S. *Al - mirath: Justice of the Islam in the Rules of Inheritance*, Al-Maktabah al-Muhammadia, Okara (2003) p. 16

(*mirath*). The difference between the man and woman in terms of their respective shares in *mirath* as established by Allah's statement the children's shares in *mirath* "to the male, a portion to that of two females "*God (thus) directs you as regards your children's (inheritance) : to the male, a portion equal to that of two females…"*[153].

The westerners and the opponents of Islam fail to understand that the existence of the difference is because of the responsibilities that each has to discharge in accordance with the Islamic teachings. For instance, if a father dies and is survived by a son and a daughter, in this case, the son shall take double share of female. Subsequently, the son shall pay dower in case he wants to marry and as soon as he gets it, he shall bear the maintenance of his wife. On the other hand, the daughter shall be paid the dower and be maintained by the husband even if she is among the richest women[154].

The maintenance of the wife shall not go beyond the financial capability of the husband.[155] The ruling of giving the man double share of woman, is based on the principle of "*Al-gurmu bil ghunimi*" meaning benefits in accordance with the scale of responsibility[156]. To illustrate more, Z, dies and is survived by X, a son and Y, a daughter. He leaves a wealth of N90,000, X gets N60,000 and Y gets N30,000.00. Then X married and paid a dower of N15,000.00. He now has a balance of N45,000.00 only. And on the other hand, Y receives N15,000.00 as her dower when her marriage is contracted. This makes it equal to that of Z, i.e., N45,000.00 each. But this is not the end. Z's responsibilities and expenditure increase as he provides for his small children, his parents, his small brothers and sisters who have no income of their own and who have no one else to provide it for them[157]. Y on the other hand does not carry a similar responsibility.

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[153] Qur'an 4:11, Ali Y. Op.cit p. 181
[154] Al- Qardawi, Y. *Markazu Al-Mar'ah*, Op.cit., p. 22
[155] Qur'an 65:7, Dayarbadi. M. A. Tafsir ul Qurwi, Op.cit., vol. IV, p. 335
[156] Al-Siba 'ee, M. *Al-Mar'atu Bainal Fiqh wal Qanun*, Op.cit., p. 29
[157] Al-Qardawi, Y. *Markazu Al-Mar'ah*, Op.cit., p. 23

The critics understood the half share of women to be an all-encompassing law of inheritance in Islam, while Allah (He is free from all imperfections, Exalted), offered a full and detailed method of women's share in the Qur'an as follows:-

1 A woman will have an equal share as that of the man[158]. In this instance, where a husband dies leaving behind children, a father and a mother, each of the parents inherits 1/6 of the estate, without any distinction based on gender. "*...for the parent a sixth share of the inheritance to each, If the deceased left children:....*" [159] In another situation, if a man or woman whose inheritance is in question left neither ascendants nor descendants, but has left a uterine brother and sister each one of them gets 1/6 of the estate, but if they are more than two, they inherit 1/3 of the estate to be distributed equally among them.[160].

2 A woman may have a larger share than that of the man. If a woman dies and leaves husband, mother, two germane brothers and one uterine sister, in this case, the uterine sister alone gets 1/6 whereas the two germane brothers get 1/6 to share it equally[161]. Another example is where, she dies and left a husband, a germane sister and a consanguine brother, in this case the husband gets ½ and germane sister get ½ while the brother gets nothing being an agnate (Asib) but if the consanguine sister is in the position of consanguine brother, she will get 1/6 by way of Awl (increase).[162]

3 A woman will have half of the share of man, which is the common case.[163]

2.3.7.4 Blood Money (*Al-Diyyah*)

Diyyah means the money paid by the person who committed the offence or his nearest relatives to the person against whom the offence is committed or his guardians[164]. The payment of *Diyyah* is binding upon a person who directly or otherwise killed another, or his

[158] Al-Sheha, A. Op.cit., p. 84
[159] Qur'an 4:11 Ali A. Y. Op.cit p. 181
[160] Qur'an 2:12 Ibid p. 182
[161] Al-Qardawi, Y. *Markazu Mar'ah Fi Hayat al–Islamiyyah*, Op.cit., p. 24
[162] Ibn Hazm, A.A.S. *Al-Muhalla Bil A'thar*, Dar Fikr, Beirut, mas'alah no. 1715, vol. 9, pp. 317-319
[163] Al-Sheha, A. Op.cit., p. 84
[164] Sabiq, S. *Fiqh al-Sunnah*, Op.cit., p. 465

closest male relatives. This is according to the decision made by the Prophet (PBUH) in the case where two women fought with each other and one of them hit the other with a stone that killed her and what was in her womb. The Prophet (PBUH) judged that the *Diyyah* for fetus was a male or female slave, and the *diyyah* of the slain woman was to be paid by the '*Asaba* (paternal relatives).[165] Islam stipulates that blood money paid for a woman's murder as half of the sum paid for man's murder. This is of course, when a Muslim woman is killed unintentionally or by an accident (*Qatl Al-Khata'a*)[166].

Unlike in case of intentional killing (*Qatl al-Amd*) which requires capital punishment, both men and women gender are equal in terms of *Qisas* (retaliation in kind). Allah says: "*And we enjoined for them in it: life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and injuries is reprisal…*"[167] The Prophet (PBUH) said: "The blood money of a Muslim (man or woman) who swears that there is no god but Allah and that I am His messenger, cannot be spilled except in three cases. In retribution for murder, for adultery committed by a married person and for one who reneges from Islam and leaves the Muslims"[168]. As for unintentional killing, where the blood money is paid to the heirs of the deceased woman as half of that paid for a deceased man. It is important to note that the blood money is not the price for the soul of a murdered person, as there can be no such price. It is instead a small compensation for the damage done to the family of the deceased person after death[169].

Men are usually the breadwinners and the maintainers of their families, so the financial sufferings are greater if a man is killed; though a man's emotional care of the family

[165] Reported in Al-Bukhari and Muslim, recorded on the authority of Abu Hurairah may Allah be pleaded with Him, cited in Ahmed Y. Encyclopaedia of Islamic Jurisprudence Concerning Muslin Women, Op.cit., vol. 3, p. 80

[166] Al-sheha, A. Op.cit., p. 89

[167] Daryabadi M. A. Tafsir ul Quran, Op.cit., vol. I, p. 417

[168] Ahmad, Z. *Mukhtathar Sahih Al-Bukhari*, Text and Translation, Islamic INC., Publishing and Distribution, Cairo (nd) vol. II, p. 1162

[169] Al-Siba 'ee, M. *Al-Marah Baina Fiqh wal Qanun*, Op.cit., pp. 32-33.

is lesser to that of woman, thus the blood money set forth for a woman to be half is in accordance with the principle of *Al Gurmu Bil Ghunimi*.

On this point there are some Hadiths, which provide expressly that, the blood money paid for the deceased woman is half of that of deceased man[170]. Based on this, jurists differed on the amount to be paid if a woman killed unintentionally. Imam Al-Razi in the *Tafsir Al-Akbar* says the majority are of the view that, the blood money of the deceased woman is half of that of the deceased man. They cited the ruling of some Companions on this issue, such as the ruling of Aliyu bin Abi Talib, Umar bin al-Khattab and Abdullah bin Mas'ud and also cited the ruling of the share of woman in mirath and her testimony which equals only half those of the man. On the other hand, Ibn Ulayyah and Al-Asam make the sum paid the same. They cited the verse which states: "*It is not for a believer to kill a believer save by a mischance; and he who kills a believer by a mischance, on him is the setting free of a believing slave and blood wit to be delivered to his family…*"[171] According to this verse both women and men are equally addressed, therefore, the family of the deceased person in unintentional killing (whether man or woman) are entitled to receive diyyah as the least assessment of the damage caused to them. But the verse is silent on the specific amount to be paid for the woman if killed unintentionally unlike in the case of inheritance and the ease of Testimony.

The wisdom behind the set forth for a woman to be half of that determined for the man as is the case of *diyyah*, *mirath*, and testimony is based on the responsibility of men as maintainers and protectors of the entire family.

2.3.7.5 Guardianship

The Almighty Allah assigns the responsibility of guardianship to men as provided in Qur'an 4:34. In this provision, men are the protectors and maintainers of women because they

[170] Al-Nisaee, vol. 8 p. 24 cited in Qardawi, Y. *Al-Markazul Mar'ah Fi Hayatul lslamiyya*, p. 26
[171] Qur'an 4:92, Dayarbadi, M. A. Tafsir ul Qur-an, Op.cit., p. 350; see also Shaltut, M. *Al-Islam Aqidatan wa Shari 'ah*, pp. 208-209 cited in Al- Qardawi, Y. *Status of Women in lslam*, Op.cit., p. 18

spend to support them from their wealth. On this ground, for women to be righteous must obey their husbands and watch the honour and the property of these husbands. The Qur'an states: *"Men are overseers over women, by reason of that wherewith Allah has made one of them excel over another, and by reason of what they spend of their riches: so the righteous are obedient and watchers in husband's absence by the aid and protection of Allah*"[172].

In a nutshell, there are two reasons to be considered in assigning guardianship to the men gender; one has to do with natural quality i.e. Allah has delegated men with a quality of greater strength. On the other hand he equipped the women with a lighter and usually more delicate physique. While the other has to do with individual performance, Allah has delegated the men to be the family protectors and providers, if the family collapses the men must answer and bear the brunt of that collapse. This is by virtue of the following Hadith where the Prophet (PBUH) said:

> Every one of you is a shepherd, and every one of you is responsible for his flock The Imam is a shepherd, and he is responsible for his congregation, a man is a shepherd among his family and he is responsible for his flock (his family,). A woman is a shepherd in her husband's house and children, and she is responsible for them. A Servant is a shepherd over the wealth of his owner, and he is responsible for it. Lo! Every one of you is a shepherd and every one of you is responsible for his flock[173].

Both are shepherds and each is answerable for his flock, for the men to discharge their duty they shall try their best to see that they provide the full protection and maintenance, religiously, economically, socially and politically to their families. Whereas for women to maintain their nature, to serve the purpose for which they were created and to discharge their primary responsibilities must stay at home, they had indeed in the innermost part of the house their own apartment to which access was not permitted to men. Thus, Allah says:

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[172] Qur'an 4:34, Daryabadi, M. A. Op.cit., pp. 323 - 325

[173] Al-Bukhari, *Sahih Al-Bukhari*, Op.cit, hadith no. 893, cited in Ash-Shahawi, M.M. *Marital Discord Causes and Cures*, Op.cit., pp. 24-25

> And stay in your houses, and do not display yourselves as did the pagans of old And establish the prayer and pay the poor rate and obey Allah and His messenger. Allah only desires to remove uncleanliness from you, and to purify you with a thorough purification. O people of the household of the Prophet[174].

These are some of the major differences, but there are some many others such as issue of trade or employment, leadership, Hijjab, etc., some of which should be considered in the subsequent chapters in this work.

[174] Qur'an 33:33, translation from Dayrabadi, M. A, Tafsir ul Qur'an, Op.cit., vol. III, p. 430

CHAPTER THREE

WOMAN'S RIGHT TO WORK IN ISLAMIC LAW

3.1 Introduction

Islam has given rights and privileges to the female gender which she has never enjoyed under any other religious or constitutional system. Under Islamic law, the rights and duties of a man are equal to the rights and duties of a woman but not necessarily same or identical. Both genders are in two branches, i.e., two children from same father "Adam" and same mother "*Hawwa*". With their different nature, the Almighty Allah places love, affection, etc., between them in order to have this world constructed the way we see it now. The Almighty Allah had also branded man with power, strength and endurance in order to make them capable in discharging their responsibilities as maintainers and protectors of the entire family. On the other hand, the Almighty Allah had granted woman with ability to conceive and reproduce the progeny of mankind and being possessed with the necessary apparatus to bear children, deliver them, nurse them and care for them.

Consequently, it is natural for a man to seek and be prepared to work outdoors in order to discharge his duty of maintenance as required by the Shari'ah. Allah said, "*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*".[1] It is natural for women to stay indoors and take care of the house needs in general, Allah states: "*And stay quietly in your houses and make not a dazzling display, like that of the former times of ignorance*"[2]. In Islam, the primary duty of a woman is to stay and discharge her family and religious responsibilities indoors, she is even encouraged to pray in her room, for which she gets greater reward than to go to the mosque unlike in the case of her male counterpart who is obliged to pray at mosque

[1]Qur'an 4:34 Ali, A. Y. The Holy Qur'an - English translation of the meaning, Holy Quran Islamic foundation, Lodon (1975), p 190
[2]Qur'an 33:33 Ibid, p. 1115

five times a day[3]. According to *Sheikh Abdul Aziz bin Baaz,* there is no sin in a woman praying in the mosque but it is better for her to pray in her room. This ruling is based on the *Hadith* in which the Prophet (PBUH) said, "*Do not prevent the female slaves of Allah from the mosques of Allah … but their houses are better for them*"[4].

From the above discussion, the right to work outside the home is subject to different circumstances, because Islam assigns different roles by virtue of the different physiological nature of each gender.

In western society, for a woman to be successful in her career, she must partially forget about marriage and her feminism and behave like a man. According to an American writer, Tarri Aptel on successful women in America: "*Some widows said that their career position had been an important factor in the breakdown of their marriages…*"[5] Therefore, the rights of women in this modern time were not granted voluntarily or out of kindness to the women gender, she reached her current position only by force, not by natural process, mutual consent or divine teaching. The pressure of economic needs forced her to get out of her home to work, to learn, to struggle for her livelihood, to appear as equal to the male gender, and to run her race in the course of life side by side with him.

On the contrary, what is that thing that Islam has established or chosen for the female gender? Is that which suits her nature, gives her full security and protection against disgraceful circumstances and uncertain channels of life?[6] A discussion of these questions is what this chapter highlights.

3.2 Definition of the Term *Haqq* under the Shari'ah

Haqq: is an Arabic word which means right, it may also mean confirmation or compulsion. The Almighty Allah said:

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[3]Saleem, A.A. *Important Lessons for Muslim Women*, Darussalam, Riyadh, (2005) p. 185.
[4]Ibn Baaz, A.A. *Fatawa Essential Rulling for Every Muslim Woman*, translated by Ibn Maqbool Hussain, International Islamic Publishing House, Riyadh, (2005), p.128.
[5]Apter, T. *Working Women Don't Have Wives Professional Success in the 1990's*, Op.cit., pp. 13-15
[6]Abd al-Ati, H. *Islam in Focus*, International Islamic Federating Organization, India (1978) p.142

> The Unbelievers will be led to hell in rows: until, when they arrive, there, its gates will be opened. And its keepers will say, 'Did not messengers come to you from among yourselves, rehearsing to you the Signs of your Lord, and warning you of the Meeting of This Day of yours?' The answer will be "True: but the Decree of Punishment against the unbelievers.[7]

Technically, based on the background of its literal meaning, the jurists have considered it to be anything that is confirmed based on the *Shari'ah*.[8] According to legal definition, the term right (*haqq)* is a legal bond by which the law authorizes a person to possess something such as assets, cash, property, etc.[9]

According to *Zamakhshary*, the word *Haqq* (right, responsibility, truth, etc.) means an established matter that cannot be denied.[10]

Many modern western writers on legal rights, start with Human Rights, thereby presupposing that Allah has no right on us. In Islam, the right of Allah shall prevail over human rights since the purpose of creating all beings is to glorify and worship Allah who created everything in this world. Allah has said, *"The seven heavens and earth, and all beings therein, declare His Majesty: there is not a thing but celebrates it praise; and yet understand not how they declare glory: Verily he is oft-forbear most forgiving!".*[11] He also said*, "I have only created Jinns and Mankind that they may serve me alone.*"[12]

Therefore, we are duty bound to worship Him as the first duty to be discharged. In corroboration of these verses, the Prophet (PBUH) asked Mu'azu Ibn Jabal "Do you know Allah's right on his servants and servants' right on Him". He answered: I said Allah who is free from all imperfections, Exalted and His messenger know best. The Prophet (PBUH) said, "*Allah's right on His servants is that, they should worship Him without associating anything*

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[7]Ali, A.Y. the Holy Qur'an, Op.cit, p.235
[8]Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Al-Resalah Publishers, Beirut, (2000, 3rd Ed), vol 4, p.147
[9] Al-Khyayyat, A.A. *Human Right and Racial Discrimination*, as translated by Khalifa Ezzat and Heather Show, 2002 p. 4, cited in Abubakar, M. S. *Concept of General Right in Islam*, Journal of Islamic and Comparative Law, Center for Islamic Legal Studies, Institute of Administration A.B.U. Zaria, Vol. 25, 2005, p. 58
[10]Abubakar, M.S. *Concept of General Right in Islam*, Ibid, p. 57
[11]Qur'an, 17:44 Ali, A.Y. Op.cit, p.706
[12]Qur'an, 51:56 Ibid p. 1429

with Him, and then the right of His servants on Him is that He will not punish those who do not ascribe partner to Him" [13]. The term '*ibadah* in this *hadith* means worship and in Islam it connotes a much deeper meaning and covers a far wider field. It means complete submission to Allah in all aspects of life whether devotional or worldly. It includes the fundamental (five pillars) of Islam and all those laws which Allah has given to regulate the individual and collective life of Muslims. Therefore, in Islam, everything falls within the orbit of religion.

3.3 Concept of *Hurriyah* (Freedom)

The term *Hurriyah* is an Arabic word which means the state of being free. It may also be defined as liberty embodied in the exercise of one's rights, which is known as freedom of choice[14]. Islam has given men and women the freedom that enables them to develop a balanced and upright personality that allows them to do anything that is good and beneficial, and guarantees them rights as prescribed in the *Shari'ah*. Hence, freedom in *Shari'ah* covers all aspects of life be it religious, economic, political, social, etc., subject to the condition that this is guided by human reason and applied for their own benefit in particular and for the benefit of the society in general[15].

Freedom in its Islamic perspective does not mean that one can attack or challenge the belief and basic teachings of the *Shari'ah*. The notion in which Islam is established must adhere to the Islamic belief (*aqeedah*) and other socio-economic system which is the basis on which the society is built and developed. This *aqeedah* is based on belief in Allah and submission to Him alone, and to follow the provisions of the *Qur'an* and authentic *Sunnah*[16].

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[13] Narrated by Muslim in Kitabu Al-Imaan, hadith No. 48
[14] Black's Law dictionary, Op.cit. pp. 688- 689.
[15] Muhammad, A.A. The *Ideal Muslim Society as Defined in the Qur'an and Sunnah*, Translated by Nasiruddin Al-Khattab, International Islamic Publishing House, Riyadh, (2007) pp. 111 – 112
[16] Ibid

3.4 Concept of *Amal* (Work or Employment)

The term *Amal*, is an Arabic word which means physical and mental exertion; to attain an end especially as controlled by and for the benefit of an employer[17]. The term employment means relationship between master and servant; it is a work for which one has been hired and being paid by an employer[18]. It can also be defined as an occupation, trade or profession carried on for the purpose of receiving compensation. Compensation may be in form of wages, salaries, commission, fees, or profit. Most compensation is in the form of money, but some may be in form of goods or services. For any work to be considered employment, it must be for the purpose of receiving compensation[19]. The term work, employment, labour, hire and services are synonymous and considered to be the same for the sake of this work because the end result is to be rewarded in cash or in-kind[20].

3.5 Right to Work

The individual right to work depends and connects to ones freedom of choice to do the work or not to do it. Of course, work is an individual right provided and encouraged by the Shari'ah and he cannot be deprived from working as he cannot be forced to do it. This is the extent of individual rights. In other words, he is at liberty to do a particular work or not to do it. The following authorities will attest to the above stated position. The Almighty Allah said:

> The Lord doth know that thou standest forth (to prayer) nigh two-third of the night, or half of the night, or a third of the night, and so doth a party of those with thee. But Allah doth appoint night and day in due measure He knoweth that ye are unable to keep count thereof. So He has turned to you (in mercy): read ye, therefore, of the Qur'an as much as may be easy for you. He knoweth that there may be (some) among you with ill-health; others travelling through the land, seeking of Allah's bounty; yet others fighting in Allah's cause, read ye, therefore, as much of the Qur'an as may be easy (for you); and

[17] Black's Law dictionary, Op.cit p.1685
[18] Ibid p. 566
[19] The World Book Encyclopaedia, Field Enterprises Education Corporation, United States of America, (1977) Vol. 6, p. 212
[20] Bambale, Y.Y. *Acquisition and Transfer of Property in Islam Law*, Malthouse Press Limited, Lagos, (2007) p.17

> establish regular prayer and give regular charity; and loan to Allah a beautiful loan. And whatever good ye send forth for your souls ye shall find it in Allah's presence, yea, better and greater, in Reward and seek ye the Grace of Allah: for Allah is Oft-Forgiving, Most Merciful.[21]

From these verses, it can be deduced that *Qiyam al-Lail* (night prayer) is only obligatory upon the Prophet (PBUH) at every night, while on his Companions it is only supererogatory (optional) or *nafil*, because some of them are not in good condition (they are in ill-health), some travelling through the land seeking for Allah's bounty or fighting in Allah's cause in their days' time.[22]

In another verse, Allah said: "*And (have we not) created you in pairs, and made your sleep for rest, and made the night as a covering, and made the day as a means of subsistence*".[23] In this verse, the day time is specified for struggle in order to earn a living. The best way for this is to use one's hands in performing a particular work or occupation.

In a Prophetic tradition, Prophet (PBUH) said: "*the best food one can take is the one he got through the work or service he rendered with his hands. Verily, the Prophet Dawood (PBUH) has eaten from the services he rendered with his hands*".[24] From this Hadith, it can be understood that rendering services with one's hands is among the best way to earn a living under the *Shari'ah*. It also serves as an encouragement to the laborers as well as discouraging the beggars.

Under the general rule, an individual has the right to freedom of work, if he likes he is at liberty to demonstrate it, and if he dislikes it he cannot be compelled to work by any person. But under Islamic Law, this right has certain limitations to the extent that an individual can be deprived from it or be compelled to do it under the following circumstances:-

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[21] Qur'an 73:1 – 4 Ali, A.Y.Op.cit p. 1633
[22] Raazy, I. Tafsir al Qur'an, Vol. 30, p. 187, cited in Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Op.cit., vol. 4, p. 261
[23] Ali, A.Y. The Holy Qur'an-English Translation, Op.cit, p. 307
[24] Al-Asqalani, I. H. *Sharh al Sahih al Bukhari*, Vol. 4, p 303

a. He can be deprived of his right to freedom of work where a third party is adversely affected by his activities in a situation whereby people around the environment are exposed to health and environmental hazards. This is by virtue of the Hadith: "*Don't harm and don't be harmed*".[25]

b. Conversely, an individual can be compelled to work if it can assist him discharge his obligation of maintaining his dependants, such as his household, parents, etc.[26]

The wisdom behind this compulsion is to pave way for a person to take care of his basic needs throughout his life. It can also be possible that as a Muslim, one works not only for worldly life but for the sake of reward from Allah, for instance a teacher that teaches religious affairs, or struggle in the cause of Allah, etc. All these examples of work are not meant for a fee only but for reward from Allah (SWT).[27]

If an individual does not fall under any of the above mentioned conditions and the nature of work satisfies the requirements of the Shari'ah, one is at liberty to work or not to do it. What is required for a work under the Shari'ah is that it must be within the ambit of permissible, supererogatory or obligatory legal rulings when put on the scale of Shari'ah. It does not matter whether the nature of the work is artisan, handwork, manual/laborer or machinery/mechanized - be it farming, manufacturing or trading, etc.[28] Therefore, it makes no sense where an individual cannot demonstrate his freedom of choice to do a particular work or occupation or not to do it unless he/she takes permission or command from another party be it from State authorities or from an individual. An individual can be a man or woman, the question to be asked is "*does that include the female gender or is it applicable only to the male gender*?" Of course, a woman is not the same as man in all respects, there are some differences between them in the following respects:-

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[25] Ibid
[26] Qur'an, Ali, A.Y. Op.cit, p. 37
[27] Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Op.cit., p. 264
[28] Ibid, p. 265

1- **Physical or Biological Nature:** the skin of a woman is softer and smoother than that of man generally. The body hair of a woman is lesser, shorter and more pleasing than that of a man especially that of the face. This may be due to physician's perception that is referred to as '*Ghadad*', the gene that is special to women which assist in physical and emotional development which a man's body lacks.[29] There is wisdom in all the above mentioned facts as provided in the Holy Qur'an where Allah said: "*And among His signs is this, He created for you mates from among yourselves, that ye may dwell in tranquility with them, and he has put love and mercy between your (hearts): verily in that are signs for those who reflect"*.[30]

2- **Psychology**: a woman is more passionate than her male counterpart in relation with children, parents and siblings. Women are also introvert, generous, magnanimous, forgetful and forgiving.[31] The wisdom behind that is very clear considering her nature in life. Her relationship with husband is characterized by subordination and obedience and her relationship with children is that of love, affection and passion.

3- **Spirituality**: the code of conduct in prayer applicable to a woman equally applies to a man except in dress code. Surely, the whole of her body except face and palm is nudity[32]. Another difference is in congregational prayer in which if *imam* (leader) omits or commits, adds or reduces some steps in prayer, women are only permitted to clap their hands whereas a man is allowed to say it openly as provided in a Prophetic tradition which says: "*Glorification is for men and clapping for women.*"[33] In terms of fasting, a man and a woman are on equal footing except that a woman has more circumstances in which she is allowed not to fast when observing her monthly period

[29]Gawujy, W.S. *Al-Mar'ah Al-Muslimah wa Laisa Al-zakaru Kal-untha*, Dar al-Qalam, Dimashq, (1999) 8th Ed., p. 49
[30]Quran 30: 21, Ali, A. Y. Op.cit p. 1056
[31] The World Book Encyclopaedia, Field Enterprises Education Corporation, United States of America, (1977) Vol. 6, p. 212
[32]Gawujy, W.S. *Al-Mar'ah Al-Muslimah wa Laisa Al-zakaru Kal-untha*, Op.cit., p.71
[33] Reported by Bukhari, cited in Gawuje, W.S., *Al-Mar'ah Al-Muslimah wa Laisa Al-zakaru Kal-untha*, p. 72

in the month of Ramadan. The same applies to post-natal bleeding. Though she is not required to expiate the lost prayers, but she is expected to expiate fasts. As narrated by Aisha (RA) in a tradition reported by *Bukhari* she said: "*We are commanded to expiate fasts but permitted not to expiate prayers*"[34].

Based on the nature of the female gender, Islamic law has considered what suits her nature, gives her full security and complete protection against disgraceful circumstances and uncertain channels of life. In view of this, Islam supports femininity for its relative weakness, placing it in the hands of men bearing the cost of living and the provision of her needs.[35] Another protection is the protection of her morals and decency. Islam guards her reputation and dignity and defends her chastity against evil thoughts and tongues[36].

In order to achieve these objectives, Islamic law obliges believing women to lower their gaze and preserve purity and chastity, decency, maintain staidness in gait and speech, avoid comingling and seclusion with men who are neither their husband nor *Maharam*. With these rules and directions, Islamic law provides safety for the woman and her femininity from an uncertain channel of life[37]. The difference is clear, which can easily be noted, that is, a woman is different from a man but they complement each other. This emphasis was made by the provisions of the Holy Qur'an where Allah says: "*And no wise is the male like the female*".[38]

With the above identified physical, psychological and many other differences between a man and a woman, it has been natural that the physical and psychological construction of women carries with it an element that enables her to attract and be attracted by the male gender. Allah's wisdom has also equipped her with an instinctive desire and a strong natural passion. However, Islam does not recognize any system that clashes with this instinctive

[34]Ibid, p. 73
[35]Qur'an, 4:34 Ali, A.Y., op. cit., p. 190
[36]Qardawiy, Y. *The Statute of Women in Islam*, Op.cit., p. 24
[37] Ibid, pp. 25–27
[38] Qur'an, 3:36 Ali, A.Y. Op.cit. p 132

nature or renders it ineffective, such as the system of monasticism, which means asceticism as a form of religious life; usually conducted in a community under a common rule and characterized by celibacy and poverty.

These differences bring about different roles between men and women gender. Allah who created death and life, knows best which of you is best in discharging his responsibilities. Allah said: "*It is He who created death and life, that He may test which of you is best in deed; and He is Exalted in Might, Oft-Forgiving*".[39]

3.6 The Role of Women in the Society in the Shari'ah

A Muslim woman is obliged to take care of the household and discharge her obligations in respect of her husband's rights. First of all, she should obey him as long as the instruction given is lawful which does not lead to disobeying Allah. Because a Muslim is not allowed to obey any creation to the disobedience of Allah, in a Prophetic tradition, the Prophet (PBUH) said: "*respect and obedience are rights as long as command does not lead to disobedience of Allah, if it leads to the disobedience of Allah's instructions, it will not be followed at all*".[40] A Muslim husband is entitled to be obeyed by his wife. In that, Allah says "*... But if they return to your obedience, seek not against them means (of annoyance): for Allah is Most High Great (above you all*).[41]

In a *Hadith*, the messenger of Allah (PBUH) said: "*if I were to command anyone to prostrate to anyone, I would have commanded the woman to prostrate to her Husband".*[42]She must preserve her husband's honor and her own and take care of his own property in his absence and all his domestic affairs. In this regard, she should not attend to any male stranger

[39] Qur'an, 67:2 Ali, A.Y. Op.cit. p 1576
[40] Al-Bukhari, Quoted in Ibn Hazm, *Al-Muhalla Bil Athar*, Dar al–Fikr, Beirut, Vol.5, Kitab al-Jihad, Mas'ala no.922, p. 342
[41] Ibid, p. 37
[42] Recorded by Al-Tirmizee, in Ahmad, Y.A. *Encyclopaedia of Islamic Jurisprudence Concerning Muslim Women*, Op.cit., vol. 3, p. 268

in her matrimonial home or accept gifts from him without the consent of her husband.[43] The Prophet (PBUH) said: "*A woman is guardian of her husband's house and is responsible for it".*[44]

As regard attending to strangers to the house, the Prophet (PBUH) said: "*Your right upon them (your wives) is that they should not allow to sit on your beds those you dislike nor let into your house those you do not like".*[45] According to As-Sa'ady in his Book *Sharh Bin Majah*, this includes a *Mahram*, a woman or any other person as stranger, except with the husband's consent.[46]

Moreover, a woman should allow her husband sexual intercourse whenever he desires expect under reasonable excuse which must be acknowledged by him. The *Shari'ah* seriously warns against such refusal where the Prophet (PBUH) said: "*when a woman who has been called to her husband's bed refuses and he spends the night angry, the angels curse her until the morning"*[47].

Likewise, she should stay in her house and not leave the house without the permission of her husband except where necessity warrants. If she goes out under permission or necessity, she should lower her gaze and voice, she should guard her tongue from immoral utterances. In respect of her staying at home, Allah says: "*And stay quietly in your houses and make not a dazzling display like that of former times of ignorance*".[48] With regard to guarding the tongue, Allah states: "*O Consorts of the Prophet! Ye are not like any of the (other) women: if ye do fear (Allah) be not too complacent of speech, lest one in whose heart is a disease should be moved with desire: but speak ye a speech (that is) just*".[49]

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[43]Badamasiy, J.B. *Status and Role of Women under the Shari'ah*, Op.cit., p. 42–43
[44]Sahih al-Bukhari and Muslim, cited in Ahmad, Y.A. *Encyclopaedia of Islamic Jurisprudence Concerning Muslim Women*, Op.cit., p. 269
[45]Sunan At-Tirmizee, hadith no. 1163, vol. 3, p. 467
[46]Alhamdu, A.H.Y. *Dauru al-Mar'ah Fi Ri'aya al-usrah*, Al-Jam'iyya al-Khairiyah Li Musaadatu al-Shabab, Jidda, (2010), p. 259
[47]Sahih Muslim, vol. 2, chapter 1058, hadith No. 3368, cited in Badamasiny, J.B. op. cit., p. 43
[48] Qur'an, 33:33 Ali, A.Y. Op.cit. p 1115
[49] Ibid

Another obligation is the duty to the children, it is important for a woman to raise her child herself without leaving it under the care of servants. She is also duty bound to take proper care of her child and upbringing in the Islamic way and manner, i.e., by giving it Islamic knowledge and training. If this role is well discharged, she raises her child as a good practicing Muslim in the society. Therefore, she shall be accountable for discharging this role in particular and the management of the household in general.

While the woman discharges these duties, the father is responsible for providing financial aspect for it. This is by virtue of the Prophetic tradition which says: "*Behold each one of you is shepherd and you will be asked about your flocks … a man is a shepherd to the members of his household and shall be asked about the flocks; a woman is a shepherd over the member of the household of her husband and his children and she will be asked about them …*"[50]. In other words, a Muslim woman is duty bound to take care of the matrimonial home and to discharge her duties in respect of her husband's rights, taking care of, nursing and training of her children. These matrimonial obligations are manifold and time consuming.

A well-known English scholar Samuel Smiles says the system that has required woman to work in factories and industrial areas, regardless of the national wealth it brings, has destroyed the family life. It has attacked, in fact, the basic structure and foundation of the home and destroyed the essential pillars of the family. It has cut and destroyed society as well, stripping the wife from her husband and depriving children of their rights to proper, tender and maternal care, and has resulted in lower moral values for the woman.

The real job and profession of a woman is to raise a good, sound and moral family. She is mainly required to take care of the household responsibilities, home economics and other domestic needs. Work in factories has stripped the woman as we pointed out earlier, of all these responsibilities which changed the looks and realities of the inner home. Children as

[50]Mishkat al Masabih, Op.cit, vol 2, p. 581, cited in Badamasiyu, J.B. Op.cit p. 41.

well, were often neglected and raised with no sound standard. The love and affection between husband and wife were somewhat extinguished. The woman was no longer the sought, wanted, admired and loved by man. After he got used to seeing her in the factory next to him doing the same thing he does women came under many influences and pressures that changed their mentality and thinking pattern on which moral values and virtues were disestablished[51].

In this regard, the First lady of South Africa in her address to a women conference in Johannesburg said: "*The main task and responsibility for a woman must be to care for her husband and attend to the needs of her children … This is our duty in the society. It is a duty in which we should take special pride as it produces successful men and sound generations"*[52].

Islam has allocated the management of the house as primary duty or role to women in which she takes care of the household, raises and educates her children and caters for the needs of her husband. Regardless of her own financial position, her maintenance is the responsibility of her husband if married or her father if not, without any obligation on her to apply for any job outside. Men are the protectors and maintainers of women because "*… Allah has given the one more (strength) then the other and because they support them from their means …* "[53].In a nutshell, a woman's primary place of work under the general rule is the home except where *Dharurah* (necessity) dictates otherwise. According to the Sheikh al-Islam Ibn Taimiyya, the nature of men is to struggle outside while women are to stay indoors by her nature except where necessity warrants otherwise[54].

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[51]Al-Gajeny, M. *A Look at Women Purdah*, Beirut, (1346 A. H.) pp. 94 – 95, Quoted in Al-Sheha, A. *Women in the Shade of Islam*, op. cit., p.91

[52] Al-Sheikh, A.W. Women Work on the Scale, in Al-Sheha A. Woman in the Shade of Islam, Op.cit., p. 93 – 94. See also Al-Sheha A. *Women in Islam and Refutation of Some Common Misconception*, Islam land, Riyadh (nd) pp. 126 - 127

[53] Qur'an, 4:34 Ali, A.Y. Op.cit p 190

[54]Almisry, A.A. *Jamiu Masa'il Nisa'a li-Imam al Asri al-Albany*, (2007), p. 187. See also Yusuf, A.A. *Encyclopaedia of Islamic Jurisprudence Concerning Muslim Women*, Op.cit., p. 56

3.7 The Position of Women's Work Outside Home in the Shari'ah

While women were forbidden to travel alone without her husband or somebody within the prohibited degree (*Muhram*), they were also equally required to remain indoor without coming out except where there is a need, and on this point, Allah says: "*And stay quietly in your houses and make not a dazzling display like that of the time of ignorance*".[55] Therefore, the struggle for survival does not fall within women's responsibilities and hence, not a necessity to them because they are always under the care of men such as her father, husband and sons or any other close relations.

Therefore, the wisdom behind the permissibility to work is connected with means of livelihood, concerning food, drink, clothing, shelter, etc. He may just work to be more affluent or buoyant and if he likes, one may not work because he can afford all his basic needs. But on the other hand, a woman is guaranteed right to maintenance, because her maintenance is on her husband if married even if she is rich; if not married and she is poor, here her maintenance is upon her father; where she is an orphan, her maintenance lies on whoever is responsible for her maintenance such as son, brother, the Islamic state, etc.; in the absence of all such protectors, the issue of necessity may allow her to work[56].

It is observed that by virtue of the forgoing discussion, the basic position of a woman working outside her home is that of prohibition. This is because the very work she does outside is in conflict with her matrimonial duties which is more binding on her. This is predicated on the legal position that where permissibility collides with obligation, the former shall not be allowed to over shadow the latter. In other words, what is permissible shall not out-weigh the supererogatory not to talk of obligation because performing what is *mandub* (supererogatory) or *Wajib* (Obligatory) is more binding than *Mubah* (permissible)[57].

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[55]Qur'an, 33:33 Ali, A.Y. Op.cit., p 1115
[56]Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Op.cit p. 265
[57] Ibid

One may opine that unmarried women does not owe anybody any responsibility; hence, the original position of prohibition should be relaxed on her. Or if she is married with children but intends to work outside and engages the services of a house maid to discharge all the responsibilities meant for her, which includes breast feeding and training of children, does that change the legal position of her work outside home? This opinion is not tenable, in that, the law considers the majority rather than minority. The position remains the same so long as there is no compelling and pressing need on her to work outside the home. Engaging the services of a house maid will only amount to abdication of responsibilities which is not allowed by the Shari'ah. The reason being that training, compassion and affection cannot be achieved through a house maid. This is the general rule applicable to all categories of women employed and the employer as well.

However, for unmarried women, the legal position remains intact because her maintenance is still on her father or legal guardian where she is poor or is under any other person who is saddled with her maintenance. Therefore, she needs no work outside. This gives her honor, peace, security and protection. The Shari'ah prefers her remaining indoors to her working outside the home.[58]

According to Jamal A. Badawi,[59]there is no decree in Islamic law which forbids a woman from seeking employment whenever there is necessity for it, especially in the position which suits her nature and in which society needs her most, for example, medicine, nursing, teaching, etc. In case of a married woman, she is permitted to work although her husband has the right to prevent her. However, the husband cannot exercise this right if he is unable to provide for her daily needs[60]. In fact, Islam allows her to personally conduct her own business, contract and financial transactions. All such contract and transactions are sound and valid in the view of Shari'ah and there is no need for the permission of her husband, father or

[58] Ibid
[59]Jamal, A. B. *Women Under the Shade of Islam*, Organization of Islamic Conference, (1998) p.22
[60] Yusuf, A.A. *Encyclopaedia of Islamic Jurisprudence Concerning Muslim Women*, Op.cit., p. 57

guardian. Islam permits a woman to invest her finances in partnership with others in whatever means she desires without husband, father or guardian's approval[61].

According to Maliki Jurists, women can either lend or invest money without being prevented since it is a form of trade according to the consensus of the scholars[62]. According to *Abdurrahman Al-sheha,* Islam organizes these transactions and sets rules and conditions for that purpose. In case she fails to observe one or more conditions, the permission given to her will be declared null and void.

3.8 Conditions under which a Woman is Allowed to Work Outside the Home

The following are some of the conditions which a woman must observe before she can work outside matrimonial home. These are:

(a) The work in question must not conflict with her responsibilities to her husband and children. The right of spouses is reciprocal, the wife is responsible for discharging certain duties toward her husband and vice versa. The Qur'an says in this regard: "*And women shall have rights similar to the rights against them, according to what is equitable*"[63]. Both parents owe their children certain specific rights that must not be infringed by either.

(b) Her work must be in women's institutions only. She must not work in a co-ed environment where she comes into physical contact with her male counterpart. In this regard, Lady Cook, the well-known English writer says:

> Man like (and prefer) the co-ed environment. Thus woman is lured to something that conflicts with her human nature. The greater the co-ed environment (between male and female) the more illegitimate children the society will have and produce. There is the greatest disaster …[64]

[61] Ibid, p. 58
[62] Ibid
[63] Quraan 2:228 Ali, A.Y. The Holy Qur'an, Op.cit. p 90
[64] Al-Sheha, A. *Women in the Shade of Islam,* Op.cit., p.91

Sayed Qutab in his book *As-Salam al-Alameewal Islam* says:

> It is the right of both man and woman, to feel satisfied with each other as companions, neither one of them should be subjected to temptation by the other in such a way that one would be emotionally (and physically) deviated, if not dragged fully into sin and drift towards immoral decay … In fact, there will be no room for trust and confidence in one another … As women walk freely wearing all kind of attractive, short, tempting clothing that do not modestly cover her body but rather show her attractions, wicked minded men, people with low moral values and people with weak faith abuse women and attack her chastity …[65]

(c) The job in question must not be sinful in nature, such as music. Rather, it must be in the first place a lawful job that suits the nature of women. They must not be involved in jobs which men are more inclined to, such as heavy industrial jobs, road construction, street cleaning, etc.[66]

(d) The job must not involve being in seclusion with a non-*Mahram* man (a man who is not a close relative). Abu Hanifa, Muhammad and Abu Yusuf disliked employing women with whom he would inevitably end up being secluded as it could easily lead to temptation. Seclusion with her is a sinful act. As for employing her, there can be no assurance that he will not see her and as a result, do something that Allah has forbidden with her[67].

(e) A woman shall not travel on a journey which lasts more than a day and night unless she is accompanied by a close male relative (*Mahram*).Some places of work require some workers to travel inland and abroad in order to discharge their responsibilities. It is not easy for a Muslim woman when assigned to travel to look for a *Mahram* who is not working at the same place with her[68]. If one of these conditions is not fulfilled, the woman will be restrained from working outside her home.

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[65] Qutub, S. *Assalam al-Alamee was Salam*, Dar Al-Shuruq, Beirut, (1979, 8th ed), pp.72 – 73
[66] Al-sheha, A. Op.cit. p.92
[67] Yusuf, A.A. *Encyclopaedia of Islamic Jurisprudence*, Op.cit, p. 60
[68] Hasan, A.G. *The Right and Duties of Women in Islam*, Op.cit., p. 30

It is worth noting that all the above mentioned legal principles are binding to be observed in addition to the existence of necessity as an exceptional situation because necessity permits the impermissible.

3.9 The Necessity (*Al-Darurah*) of Women's Work Outside Home in the Shari'ah

Dharurah is an Arabic word which means necessity or precarious situation[69]. Technically, it means a situation in which the impermissible thing or act becomes permissible by the Shari'ah or which could otherwise lead a person to death or serious difficulties[70]. The first leg of the definition is all encompassing because it covers all aspects of life such as oneself, wealth and dignity. The rule of necessity applicable to men equally applies to women.

Necessity is a principle of the Sharia echoed under the legal maxim "*al-Dharurat Tubih al-mahzuraat",* meaning necessity warrant the impermissible to be permissible under Islamic law. This is the general rule. There are some exceptions under it by the exposition of jurists. For example, nobody is allowed to kill another in order to save his own life or to survive. Another example is where a woman is under necessity to the extent that she desperately needs sustenance, she cannot resort to impermissibility to survive. A woman's desperation does not allow her to commit *Zina* (adultery/fornication).

According to *Al-Muhibu Al-Tabery* of the Shafi'i school, when a woman is in dire need of lawful food or drink to take and the owner of such food or drink disallow her to take either on term or freely except if she concedes to commit *Zina*, and she cannot find another source of food or drink to take at that particular moment, even if she fears death she is not allowed to submit herself[71].

It may be observed that there are so many circumstances in which women's work outside the home is provided in the Qur'an and Hadith, but all those instances fall under the

[69]Ibn Munthir, *Lisani Al Arab*, Vol IV, p. 483, cited in Zaidan, A. *Al-Mufasal Fil Ahkam al-akam al-marahwabartu Muslim fi Shari'ah al-Islamiyya*, Al Risalah Publishers, Beirut, (2000, 3rd Ed.) Vol. 3, p.73
[70] Aliyu, H.A. *Sharhu Mujallat al-Ahkam al-Adliya*, vol-1, p. 34, cited in Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Op.cit., 75
[71] Mughni al Muhtaj, vol. 4, p 307, cited in Zaidan, A. Op.cit., vol. 3, p. 80

doctrine of necessity. For example, when Moses came to the city of *Madyan*, he found two women within the community, keeping back her flocks and waiting for the men shepherd to finish watering their flocks. In this regard, Allah said:

> And when he arrived at the watering (place in) Madyan, he found there a group of men (watering flocks) and besides them he found two women who were keeping back (their flocks). He said "What is the matter with you? They said "We cannot water (our flock) until the shepherds take back (their flock): and our father is a very old man. So he watered (their flock) for them; then he turned back to the shade and said "O my Lord! I am in (desperate) need of any good that thou dost send me: Afterwards one of the (damsels) came (back) to him walking bashfully. She said "My father invites thee that he may reward thee for having watered (our flock) for us" so when he came to him and narrated the story, he said "fear thou not: (well) thou hast escaped from the unjust people." Said one of the (damsels) "O my (dear) father! Engage him on wage: truly the best of men for thee to employ is the (man) who is strong and trustworthy.[72]

The point of concern here is that, Moses found two women who appeared to work outside as shepherds because of necessity (i.e., their father was very old). On that basis, Moses watered their flocks for them, for this reason and on the ground of the information received by the old man, he agreed to engage the services of Moses because that would relieve the two women of that responsibility.[73]

There is also a Prophetic tradition narrated by al-Bukhari to the effect that, Asama'u(the wife al-Zubair)came out of her matrimonial home to run errands for herself, her husband or children in the market place. She said "*I used to carry dates pits on my head from Al-Zubair's land (my husband) while I lived in Madina and it was about two-third of league from Madina".* What necessitated her to work was the need of her husband at that time, Zubair was highly engaged in Jihad and he was not able to engage the services of another person. However, she did all the work under the command of her husband and that work

[72]Qur'an 28:22 Ali, A. Y. The Holy Qur'an, Op.cit, p1007

[73]Uthman, M.B. *Safeguards for the Protection of Women's Rights in the Administration of Criminal Justice under Islamic Law*, National Conference on the Rights of Women and Children under the Shari'ah, Center for Islamic Legal Studies, Institute of Administration, A.B.U. Zaria, 16th and 17th June, 2008, p. 299

outside did not prevent her from fulfilling the needs of her husband and the household in general.[74]

3.10 Effect of Women's Work Outside the Home

The following are the likely consequences of a woman's work outside the matrimonial home:

(1) Abdication of her responsibilities towards her children. There is no doubt that the responsibility of training is based on affection, honesty, foresight and long period of togetherness without which moral training would be an illusion. Can the wages they receive periodically be compared in value with what the children lose morally? Certainly it cannot.

(2) Definitely, the very woman that works outside her home usually comingles with her male counterpart at the working place, and sometimes secludes with men which is a categorical violation of the provisions of the Shari'ah. The Prophet (PBUH) said: "*No man secludes himself with a woman without Satan accompanying them*"[75].

(3) A woman working outside end-up neglecting her primary responsibilities, without having somebody to take care of them for her, because there is no more suitable person to discharge it than herself. As Jole Simon says: "*A woman who spend her time outside rendering services as a worker while neglecting her primary duties at home, what is therefore, the wisdom behind her competition with man outside while she forsake her role at home*."[76]

(4) A Muslim woman that works outside loses her feminine posture. Islamic law protects femininity to keep the stream of tenderness and beauty running. It is also supported by Islam in view of its relative weakness placing it in the hands of a supporting man,

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[74]Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Op.cit, Vol. 4, p. 271. See also Al-Qardawi, Y. *Markaz Al Marah fi Hayat al Islamiyyah*, Op.cit., p. 132

[75]Tirmizee, Quoted in Al-Sheha, A. *Women in Islam & Refutation of Some Common Misconceptions*, Riyadh, (nd) p. 123

[76] Gawujy, H.S. *Al Marah Al Muslim*, Op.cit, p. 221

securing the cost of living and the provision of her needs. Unlike in the case of the western woman who is under severe necessity in which neither father, brother, husband, son or uncle look after her. The result is that she has to accept any kind of work for whatever payment in order to survive[77].

(5) She loses her *Purdah* (modesty) orientation meant for the preservation of her physiology and morality. On this point, *Mustafa Al-Sibaee* who travelled to Europe and met with a lady that is an Italian National and Student of Oxford University studying Human Rights. He said thus:

> We had some discussion on Muslim women position, her style of life, her right and what Islam has in stock for her regarding sustenance. In the course of our discussion, we made comparison between the status of woman in Islam and that of western civilization. At the end of the discussion, she said: "of course Islam has elevated the status of Muslim woman, she said how I wish I was born in your society" he said I seized this opportunity to ask thus: can you try to convince a western woman to stay indoors for a man to take care of her? She replied never, not at all, time has elapsed because a western woman is accustomed to going out for work. It is difficult for her to get adapted to staying at home. Even if I see reason or consider it as good practice others may not see it as such[78].

(6) A woman is fond of adornment and interested in gorgeous dressing. In this regard, Allah (SWT) said: "*Is then one brought up among trinkets, and unable to give a clear account in dispute (to be associated with Allah)*"[79] Malouna Abdulmajid Daryabadi in his commentary to this verse says it refers to the almost universal customs of the softer sex being brought up among jewelry and ornament and to her innate love of display. With this nature, when she goes out for work on her way, she attracts and pleases gazers with her earnings.[80]

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[77] Ibid
[78] As Siba'ee, M. *Al-Mar'ah Bain al-Fiqh wa al-Qanoon,* Op.cit., p. 145
[79] Ali, A.Y. The Holy Qur'an, Op.cit., p. 247
[80] Daryabadi, M.A. Tafisr–ul–Qur'an, Op.cit., vol. 4, p. 147

(7) A woman's work is less compared to that of a man in most cases, because as a man, he exhibits more interest in his work than her and he is more inventive. Woman observes her monthly period, she conceives, nurses pregnancy, pays attention and thinks of her children and her feminine outlook. Therefore, man's dedication to work cannot be compared with that of a woman. All these are a set back to her own career progression.

However, no Muslim man or woman is deceived that Allah has created human being to worship Him and commanded them to follow the right path. The concept of worship in Islam is very comprehensive; it is not restricted to the purely devotional practices only but extends over the whole of mankind's practical life which includes economic, political and social aspect.[81]. In other words, the purpose of creating both Jinn and Mankind is nothing but to worship Allah and follow His command. Allah says: "*I have only created Jinn and man that they may serve Me.No sustenance do I require of them nor do I require they should feed Me.*"[82]

In Allah's command, a believing man or woman has no choice except to follow such commands. Allah says: "*It is not fitting for a believer, man or woman, when a matter has been decided by Allah and His messenger to have any option about their decision; if any one disobeys Allah and His Messenger, he is indeed on a clearly wrong path*"[83].

3.11 Women's Political Rights under the Shari'ah

Definition of the term: political rights means, rights that an individual can claim, being part and parcel of the political affairs; a person has the right to participate in political activities. One is also entitled to exercise his franchise.[84] According to Jabir Abdurhaman, political rights are rights that give an individual opportunity to partake in political leadership

[81] Ibid p. 235
[82] Qur'an 51:56 Ali, A.Y. Op.cit., p 1429
[83] Qur'an 33:36 Ibid p. 1117
[84] Al Sanhory, A. *Usul al-Qanoon*, p. 268, cited in Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Op.cit, p. 299

or decision making process.[85] The nature of the right in the opinion of Abdulkarim Zaidan is that, the term *Haqq* in this context does not mean *Wajib* or *Lazim,* i.e., compulsion but *Mubah* meaning that it is permissible for him to partake in the political leadership. To buttress this position, the following Hadith can be cited in which Abu Musa Al-Ash'ary and two others from his people met the Prophet (PBUH), one of them asked the Prophet to appoint him as a leader and the other applied for the same thing. Then, the Prophet (PBUH) said: "*We do not assign authority of ruling to those who ask for it and those who are keen to have it*"[86].

If leadership were a right (*Wajib*) due to an individual Muslim, it would have been granted to both of them out rightly. Therefore, whether it is sought for or not, it would still be granted if it were a right in ordinary meaning.

According to Yusuf Al-Hajj Ahmed, any person who asks to be appointed a judge or who is keen in getting the position should not be appointed, because judicial position is a heavy burden and a great responsibility. It is only sought by someone who is ignorant of its importance, is likely to betray its trust and not ready to fulfil its obligations, thereby causing an indescribably great corruption in religion, in the community and among the people within such community.[87]

The leader in an Islamic state does not only administer the affairs of government but has to fulfil a much wider and strenuous duty. As a leader he has to be able to face the public day and night, meet ministers and foreign dignitaries. He shall also lead the country in political crises and war, and be able to lead the people in congregational prayers.[88] Can a woman fulfil all these duties while having primary responsibilities at home? According to Abdul Ghaffar Hassan, she cannot fulfil most of these duties anyway such as leading the

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[85]Al-Jabir, J.A. *Al-Qanoon Al-Duwaly Al-Khas*, Vol. 1, p. 278, cited in Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, p, 301

[86]Bukhari and Muslim, cited in Ahmed, A. Y. *Encyclopaedia of Islamic Jurisprudence Concerning Muslim Women*, Op.cit., vol. 3, p.138

[87] Ahmad, Y.A. Encyclopaedia of Islam Jurisprudence, Op.cit., p. 138

[88] Hasan, A. *The Rights and Duties of Women in Islam*, Op.cit., p. 28

people in congregational prayers or in battle, avoiding comingling and seclusion with the non-*Mahram*. A woman is under the protection and maintenance of a man, she is not expected to maintain her own home, how can she be expected to maintain and protect the interest of government of a state?[89]

With regard to the eligibility of a Muslim woman to be a leader or judge in an Islamic state, the majority are of the view that a judge must be a male. A female can never be appointed as such. This is the view of Malik, Shafi'i, Hanbali and some from Hanafi jurists (i.e., majority view). This view is supported by Ibn Qadamah and Qarafi.[90] They supported this view with the following authorities from the Qur'an and Sunnah:

(1) Allah Says: *"Men are the protectors and sustainers of women, because Allah has made one of them to excel the other and because they spend (to support them) from their means …"*[91] In this verse, Islam gives the leadership to men as maintainers and protectors of women in its various levels; this is because of their nature.

(2) The second reason is that, two women stand as one man in bearing testimony because of their weakness. On this point, Allah said: "*And call to witness two witnesses of your men, and if the two be not men, then a man and two women of those you agree upon as witness, so that if one of the twains errs, then the other will remind her*".[92] This is the nature of a woman in bearing testimony. For that, the other women stand to remind her on the issue.[93] With regard to the Queen of Sheba, there was no reason to doubt that she was a historical person who ruled a prosperous and well-organized kingdom. Thus, Allah narrates: "*I have found a woman ruling over them, and she has been vouchsafed of everything, and she's a mighty throne*".[94] Had it been that she was eligible to that position, Suleiman (AS) would have authorized her to

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[89] Ibid, p. 29

[90] Al-Dasuqi, M.A. *Hashiyat al-Dasuqee*, Dar al-Fikr, (nd) vol. 1, p.129, Ibn Qudama, Al-Mughni, vol. 9, p. 39; Al-Qarafi, S.A. *Al-Zakhirah*, Dar al-Garb, (nd) vol. 10, p. 116

[91] Qur'an 4:34 Ali, A.Y. The Holy Qur'an, Op.cit, p 190

[92] Qur'an 2:282 Ali, A.Y. The Holy Qur'an, Op.cit, pp 113 - 114

[93] Daryadarbi, A. Tafsir-ul-Quran, Op.cit, vol.1, p 205

[94] Ibid vol.3 p. 295

continue ruling over the nation with her diligence. In another verse, Allah said: "*And stay in your houses, and do not display yourselves as did the pagans of old…*"[95] According to Ibn Kathir in his *Tafsir* to this verse, they should remain indoors and should not go out except under necessity.[96] The Prophet's statement on this issue was very clear, thus: "*the people who hand their rule over to a woman will never be prosperous*." This is because of their nature. In another tradition narrated by Imam al-Bukhari in his *Sahih-al-Bukhari* regarding the weakness of women in both psychological and religious aspects:

> The Prophet (PBUH) went out on the festival day to the prayers ground he bypassed a group of women, and He said "Oh! women folk, I enjoin you to be giving alms, because I witnessed that, most of the dwellers of Hellfire are women. They (women) asked why was it so? The Holy Prophet answered, it was because they are fond of scolding and for their being ingrate. He added that, women are naturally created spiritually and mentally weak. They further inquired, what is it that negates us mentally and spiritually? He answered that, is the testimony of women not half of that of a man? They replied in the affirmative. He then said, that is an indication of her mental weakness. He further continued, is she not relieved to pray and fast while observing her monthly period? They answered in the affirmative. He said that, this is also an indication of her spiritual weakness.[97]

The statement of the Prophet on the issue of women's leadership was very clear when he received the information that the people of Persia had appointed the daughter of Khosrau their ruler. He said: "*Never will such a nation succeed that makes a woman their ruler*".[98] Ibrahim Ahmad Aliyu said this Hadith is not categorical on prohibiting women from occupying the position of headship of state, that is, even where the system is Islamic, that the hadith is in the nature of observation made by the Prophet (PBUH) when he received the news of a Persian Princess's ascension to the throne. He then concludes by saying:

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[95] Qur'an 33:33 Ali, A.Y. The Holy Qur'an, Op.cit, p 1115

[96] Ibn Kathir, A.I.*Tafsir al-Qur'an al-Azim*, Dar-al-Fikr, Beirut, (1970, 2nd ed) vol. 5, p. 51

[97] Al-Bukhari, Sahih al-Bukhari, Dar Ibn Kathir, (nd) vol.1, p. 116

[98] Khan, M.M. Sahih al-Bukhari, (nd) vol.9, pp. 170-171, Quoted in Aliyu, I.A. *Protection of Women's Rights Under the Shari'ah*, Op.cit., p. 106.

> Moreover, some scholars are of the view that the Persian ruler… showed enmity towards the prophet (PBUH) and toward his messengers to them. The prophet's response to this news may have been a statement about the impending doom of that unjust empire, which did take place later and, not about the issue of gender as it relates to the headship of the state in itself. Thus to interpret the hadith so as to exclude women from the leadership of a state may not be acceptable.[99]

However, this of course, may be the cause of this hadith but the principle under Islamic law in this respct is that: "*Al-Ibratu bi umumin nassi la bi khususi as-sabab*" meaning that the content and the general meaning of a text is what is to be considered not the cause of the revelation of text. Therefore, this Hadith is not limited to the daughter of Khosrau as leader it is rather applicable to the generality of women folk as leaders.[100] In a nutshell, as per the view of the majority, a woman cannot be appointed as a judge and she may not be elected to the office of headship of a state, regardless of her eligibility to take care of the household as wife and expected to give training to the children as a mother.[101]

According to Abu Hanifa, a woman can be appointed to the office of judge regarding matters in which she can testify as witness, which is in civil cases only with exception to criminal cases (*Qisas* and *Hudud*). While according Ibn Jarir Al-Tabaree, a woman can be a judge in both civil and criminal cases without limitation. His reason being that, the office of a judge is like that of a Mufti (Jurist). It is not a condition that a Mufti must be male, same thing applies to a judge.[102]

These reasons may not stand, because in the case of testimony, she is not even a party to the suit, she is only to testify and be discharged while as *Qadhi*, she is expected to settle disputes between two or more parties through binding judicial decision. That is to say, the judgment made by *Qadhi* in a case has a binding nature unlike in the case of *Mufti*. She is also

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[99]Aliyu, I.A. *Protection of Women's Rights Under the Shari'ah*, Op.cit., pp. 106-107
[100] Al-Kattanee, A. *At-Tarteeb al-Adaliyah wa Nizam al-Hukuma al-Nabawiyya*, vol.1, pp. 285–286, in Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Op.cit, p.301.
[101]Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Op.cit, p.301.
[102]Ibid

expected to implement the prescribed punishment in a given judgment concerning criminal cases (*Qisas* and *Hudud*). Before a judgment can be passed, the litigants and/or their representatives must appear and try to establish their case. All these and many other characteristics are not expected from the *Mufti*. As Mufti can even pronounce his Fatwa, i.e., rule of law, through any means for example, Telephone, Radio and Television.

However, according to Abdulkarim Zaidan, before a woman enjoys the political right under Islamic law she must fulfil the following conditions:-

(1) The exercise of this right shall not be in conflict with her primary duty (*Wajib*). This condition entails that her primary duty such as managing the house, training her children, remaining indoors and the general observance of her husband's rights must not all be in conflict with that political right which is only permissible. In other words, the exercise of permissibility should not be at the expense of an obligation. In plain language, the two cannot be exercised without relegating her primary duty to the background.[103]

(2) It shall be a legal means for sustenance and maintenance; the aim of enjoying this political right is to sustain oneself legally. This is hinged on his diligence and commitment to the office of headship. The woman's natural and primary career is her home, husband and children. This is in itself an extremely demanding role.[104] On the other hand, as a woman (mother, wife or daughter) her maintenance which includes food, clothes, shelter and even medical treatment is upon her husband, father, male relative or *Bait al-Mal* (Islamic Public Treasury).

With this, a woman is secured, maintained and protected by men who are responsible to discharge such duties.[105] Therefore, a woman with this right, need not go out for whatever type of work. But with *darurah* she is allowed to go out for permissible work under the

[103]Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, p. 303
[104] Hasan, A. *The Rights and Duties of Women in Islam*, Op.cit p.29
[105]Iqbal, S. *Woman and Islamic Law*, Adam Publishers and Distributors, New Delhi, (2004), p. 204

Shari'ah. In going out of the house, she shall observe the Islamic code of dressing, the rules concerning *mukhalatah* (commingling between men and women) and the rules governing the issue of *Khalwah* (seclusion with men) who are not her *Mahram*. All these rules and many others must be observed in order to enjoy the permission of going outside the home under the provisions of Islamic Law.

CHAPTER FOUR

VEILING OF THE MUSLIM WOMAN (*HIJAAB AL MAR'AH AL-MUSLIMAH*)

4.1 Introduction

In this era, there is confusion concerning the problem of sexual abuses and perversion, many people have given up on how to end such problems. According to Islam, a woman as daughter, wife, mother or sister has many rights to enjoy and many duties to discharge. She is the source of happiness to her husband and the tender (loving) mother to her children. Islam pays attention to her as a woman generally. In such a way, Allah has revealed unto His Prophet (PBUH) several verses in the Qur'an dealing specifically with women. In fact, there is a chapter in the Qur'an named *"The Women"*.

These verses provide for the specific rules relevant to the woman and state the principles which save her from the darkness of ignorance and from abominations of the people of pleasure, whims and sensuality. Therefore, Islam provides for dress code for the woman as a solution to one of the most difficult problems in the world.

Certainly, there is no doubt that women are an object of beauty, and this beauty is a very powerful force, by virtue of which Islam orders her to observe the principles of *purdah* (seclusion) and to cover the whole of her body when away from her home and in the presence of people other than her *mahram*.[1] In other words, Islam prescribes how this beauty shall be dealt with so that it becomes a source of good not a source of evil. This principle is designed to prevent the social evil whereby a woman presents herself as a mere sex object for the satisfaction of the base instincts of men. It is only by observing the dress etiquette, avoiding mingling and seclusion with her male counterpart and applying the rules of *purdah* that a woman is secured, protected and respected, and modesty from the Islamic point of view can be maintained.

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[1] *Islamic Dress Code for Women*, Compiled by Darussalam Research Division, Darussalam, Riyadh (1999) pp. 7–8.

When Western society realized this sign of respect, reverence and eminence which the Muslim woman enjoy, they envied her for this status, and they started plotting against her and watched for her disaster by setting traps everywhere and they introduced several toxic movements such as movement for the emancipation of women under the guise of gender equality as well as the under the platform of feminism in which they tend to show mercy and sympathy for the womenfolk whereas in reality they only plunged women into wrath, disaster and promiscuity in the society rather than empowerment or equality of any kind.[2]

All efforts are being made to undermine values, morals and exposed her to sexual affairs publically and openly and making use of the latest models and modes of display and exhibition. They removed her out of the home and placed her into the hold of men using beauty as her dirtiest weapon of allurement. Conversely, if she maintains the practice of covering whole of her body within the Islamic lawful dress code, they will consider her backward.[3]

The struggle to be chaste is a responsibility of both genders, and they have to co-operate in discharging these responsibilities by way of following directions and guidelines that Allah (the Exalted) and His Messenger (PBUH) have set for this purpose. Precisely, Islamic law condemns *Zina* (fornication) and all the ways and means that lead to it, and forbids the woman to present herself as a mere sex object for the satisfaction of the base instincts of men. She is required to maintain her respectable status rather than falling prey to man's craft of lustfulness in the name of the so-called "emancipation or women's rights movements.[4]

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[2] Abdallah, A.B. *A Comparison Between Veiling and Unveiling*, Darussalam, Riyadh, (2000), p. 12

[3] Ibid

[4] *Woman and Family Life in Islam*, A position paper highlighting the status, rights and roles of the Muslim woman according to the basic sources of Islam, presented on the occasion of the UN Conference on women, Beijing, 1995, World Assembly of Muslim Youth, Jidda (1998), p. 40.

4.2 Women's Dress Code in Islamic Law

Relevant authorities from both the Qur'an and Hadith lay great emphasis on the observance of dress code by Muslim women in which modesty can be maintained. According to Yusuf al-Qardawi, these authorities have not prescribed any particular type of dress for the woman, they only establish a standard/code of dress for her, and so she can use or wear any type of dress that does not contradict the Islamic code of dress.[5] In other words, there is no special design of clothes that has been prescribed for that purpose. Any design of clothing (outer garment) which satisfies the requirements of legal *hijaab* would be accepted.

According to Abd al-Rahman Abdullah Aal-Sheikh in his book *Nizam al-Hijaab*, he said: "The veil (*Hijaab*) means, a group of rules for women when they relate or deal with men and for men when they relate or deal with women, in the fields of work, study and in life as a whole, (except only that which is apparent)". In this regard, *Hijaab* is not a symbol, by which the woman announces her identity or her religion in so-called civilized societies. Rather, the wisdom behind *Hijaab* is purity for the hearts of both believing men and women.[6] It also serves as a strong and purified tool or shield for the hearts against deviation or inclination towards the prohibited desire.[7]

Both of them (men and women) are required by the Sharia to fulfil certain conditions and requirements of decency of appearance by way of observing the dress code. They are generally ordained to wear clean clothes, to cover themselves and to screen their private parts. Therefore, they can wear any type of dress that does not breach the Islamic code of dress.[8] This can best be understood by considering what Islam defines as *aurah* (private part) which generally refers to the part of the body that should be covered at all times.[9] According to

[5] Ibid, p. 9
[6] Qur'an 33:35
[7] Al-Shaikh, A.A. *Nizam al-Hijab Fi Maisaratu Tareekh al-Bashariyah*, Dar Al-Sabom, Egypt, (2006), p. 21
[8] Tikumah, I.H. *The Abuse of Islam and the Dormancy of Islamic Scholars Evidence from the misuse of Niqab (Face-veil) in the Nigerian Society*, A.B.U Press Limited, Zaria, (2008), Op.cit., p. 9
[9] Badawi, J.A. *Woman under the Shade of Islam*, Op.cit., p. 55

Badawi, the woman's *aurah* is defined as the whole body with the exclusion of her face and hands.[10] While according to Hilal Bint Abdullah, Islamic *Hijaab* should have certain characteristics through which the Muslim woman can easily be identified and recognized amongst others. The best type of *Hijaab* is the garment (cloak) which covers the whole body of the woman starting from the head down to the toes of her feet.[11] Thus, a hijab should cover the whole body of a woman especially every attractive and adornment part of her body.

4.3 Requirement of Women's Dress in Islamic Law

A Muslim woman is required by the provisions of the Holy Qur'an to fulfil certain conditions of decency of appearance by way of observing dress etiquette. The jurists have prescribed the following requirements for the woman's dress if she must satisfy the Islamic dress etiquette biz:-

a) The first requirement pertains to the extent of covering: the Muslim woman's dress must cover her entire body except for the areas specifically exempted.[12] On this point, there are differences among the jurists as to what type of dress must be worn by her to satisfy the conditions and comply with the requirement of dress code under Islam. The Islamic standard of dress is enshrined in the following authorities. The holy Qur'an states as follows:

> (O Prophet) Say thou to the faithful that they shall lower their sights and guard their private parts; that is purer for them. Verily Allah is aware of what they perform. And say to the believing woman that they shall lower their sights and guard their private parts and they shall not display their adornment except what appears of it: and they shall draw their scarves over their bosoms, and shall not disclose their adornment save to their husbands, fathers, husband's fathers, sons, husband's sons, brothers, brother's sons, sister's sons women or what their right hands own or male followers their in sex desire or children not acquainted with the private parts of women. And they shall not strike their feet so that there be known what they

[10] Ibid
[11] Abdullah, H.B. *Al-Muqaranah Baina al-Hijab wa al-Sufur*, Darussalam, Riyadh, (2000), p. 21
[12] Jamal Badawi, *Woman under the Shade of Islam*, Op.cit., p. 48

hide of their adornment. And turn potentially to Allah you all,
O you faithful happily you may thrive.[13]

As a command which is supposed to be obeyed in every circumstance, the two main injunctions among other things from the provisions of the above Qur'anic verses must be explained in order to have a good understanding of proper veiling under Islamic law. These two injunctions are:

i. A Muslim woman should not disclose her natural or bodily beauty as well as her *zeenah* (adornment such as bracelets, rings or clothes) except for that which (must ordinarily) appear thereof. According to Dr. Jamal Ahmad Badawi, the exemption was interpreted in two different ways:

   a. A Muslim woman is not allowed to display her beauty except her hands and face. This is the interpretation of Imam ibn Hazm, Abdulkareem Zaidan,[14] Yusuf al-Qardawi and Muhammad Nasiruddeen al-Albany.[15] This opinion is based on the Hadith in which the Prophet (PBUH) says: "if the woman reaches the age of puberty, no (part of her body) should be seen but this '… ' and He pointed to His face and hands".[16] Whatever appears of the woman's body owing to uncontrollable factors such as the bracelets or even the outer clothes themselves is thus forgiven.[17]

   b. The entire body including face and hands but whatever appears of the woman's body (under necessity) or owing to uncontrollable factors such as the bracelets or even the outer clothe, is thus forgiven.[18] According to Wahaby Suleiman Ghawujy, this second view which includes the face and hands is the view of the majority of Muslim jurists, because the jurists on this point were divided into two groups. The first group is of the

[13] Qur'an 24:30-31, Daryabadi, M.A. Tafsir Al-Qur'an, Op.cit., vol. 3, pp. 226–228.
[14] Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Op.cit., p.320.
[15] Albany, N.M. *Hijab almar'ah al Muslimah*, Op.cit., pp. 41–42 cited in Badawi, J.A. *Women under the Shade of Islam*, Op.cit., pp. 49–50
[16] Ibid
[17] Bin Baaz, A. A. *Hirasat al-Hijab*, Dar Bin al-Katheer, Riyadh, (2004), p. 13
[18] Badawi, J.A. *Woman under the Shade of Islam*, Op.cit., p. 50; Bin Baaz, A.A. *Hirasat al-Hijab*, Dar Bin Al-Atheer, Riyadh, (2003) p. 13.

view that the face and hands are excluded if there is no fear of temptation (*amnulfitna*) and this is the interpretation of Imam Abu Hanifa while the majority which includes Malik, Shafi'i and Ahmad Bin Hanbal are of the view that the face and hands are included except out of necessity.[19] This view is supported by Al-Qadi Abubakar Bin Al-Arabi, ibn Muzir Al-Maliki from the Maliki School, Al-Imam al-Nawawi from the Shafi'i school, and Al-Sheikh Mar'ee Bin Yusuf from the Hanbali school respectively.[20]

ii. The second injunction is that the *Khumur* (head cover) must cover the *jayoob* (neck slits) which should be drawn so as to cover not only the hair, but should also be drawn over the neck and to be extended so as to cover the bosom. According to Abdul'aziz Bin Abdullahi Bin Baaz, the Hadith of Asma'u Bint Abubakar as cited by the first group considered above is not authentic as in the chain of that Hadith, there is one called Khalid Bin Dareek who narrated the Hadith direct from Aisha (RA) while in real sense, he did not hear it from her directly because he did not meet her alive. So also, there is another issue in this chain concerning Sa'id Bin Bashir who is also Dha'eef (not trustworthy) as per the view of Abu Dawood.[21] Nevertheless, a Muslim woman is allowed to uncover her face and hands during spiritual acts such as pilgrimage and prayer as per the view of Imam Abu Hanifa, Imam Malik, Imam Shafi'i and one report of Ahmad Bin Hanbal. But the rest of her body is regarded as *aurah* which must be covered.[22] Therefore, if a woman put on scarves that does not cover her hair style and do not cover the neck or that expose some of her hair, or if she put on a blouse or skirt that does not cover the knees, the body cannot be said to be properly covered in a garment like this because the legs are not covered. In case of an elderly woman, it is

[19] Ghawujy, W.S. *Al-Mar'ah al Muslimah "Walaisa al-zakr kal untha"*, Dar al-Qur'an, Dimashq, (nd) p. 198
[20] Al-Shaukani, M.A. *Nail al-Autaar Sharh Muntaqa al-Akhabar min Ahadith Sayyad al-Khyar*, Dar Al-Fikr, vol. 2, p. 112
[21] Bin Baaz, A. A. *Hirasat al Hijab*, Op.cit., p. 14
[22] Al-Albani, M.N. Op.cit., pp. 41 – 42 in Badawi, J.A. Women under the Shade of Islam, Op.cit., p. 50.

allowed for her to uncover her face in front of her non-*mahram* and this is by virtue of the verse which says: "*And as for women past child bearing who do not expect marriage, it is no sin upon them if they discard their (outer) clothing in such a way as not to show their adornment. But to refrain is better for them. And Allah is All-Hearer, All-Knower.*"[23] So, there is no harm for a woman advanced in age, for example, if she is above seventy years old to uncover her face and display her adornment in front of non-related man. But for them to remain covered is still the better option preferred by the Shari'ah. This is because, some of them, when they are seen, there may be a source of temptation due to their beautiful face even though they are elderly and not displaying their adornment.

b) The second requirement of hijaab is that it must not be transparent. A transparent hijaab increases the likelihood of temptation because the body shape is exposed. That is why as a matter of decency, the hijaab be thick enough so as to hide the color of the skin it covers, and not to show shape of the body which is not supposed to be displayed by Muslim woman. It is obvious that this covering cannot be achieved if the dress is transparent. This has been explained by the Prophet (PBUH) in one Hadith which says: "*In later (generations) of my ummah, there will be women who will be dressed but naked. On top of their heads (what looks) like camel humps. Curse them for they are truly cursed*". In another version of this hadith, the Prophet added, "*they will not enter paradise or (even) get a smell of it*".[24] In another Hadith, the Prophet (PBUH) saw a woman in a thin dress and said: "*She is not a woman who believes in Qur'anic chapter 24 who appears in such a manner"*.[25] This chapter is the *surah* where the main requirements of the Muslim woman's dress are outlined. In another occasion, some women came to visit Aishah (RA) in thin clothes, upon seeing them,

[23] Qur'an 24:60.
[24] Imam Muslim, Sahih Muslim, hadith no. 2128, cited in Al-Albani, Op.cit., p. 56.
[25] Qardawi, Op.cit., p. 160

the Prophet (PBUH) said: "*if you are believers, then these are not believer's clothing*."[26] Therefore, the garment should not be transparent it has to be thick enough so as not to show the color of skin of a particular woman.

c) The third requirement of *hijaab* is that it should be wide enough so as not to show the shape of a woman's body. Since the purpose of wearing garment for a woman is to prevent temptation, that purpose cannot be served if the garment is tight. As a tight-fitting dress, even if it does not show color of the skin, it still describes the shape of the body or a part thereof. In other words, wide dress is in line with the intent of the provisions of the Holy Qur'an.[27] Thus, even as regard moderately tight clothes that cover the whole body but describes the sharp lining of such attractive parts of the body is not allowed as this entails obvious corruption.[28] The Messenger of Allah (PBUH) once received a thin Coptic garment as a gift from *Dihyah-ul-Kalbi*, but he gave it to Osamah bin Zayd may Allah be pleased with him, who in return gave it to his wife. When the Prophet (PBUH) asked Osamah bin Zayd why didn't you put on the Coptic garment? Osamah said: O Messenger of Allah, I have clothed my wife with it. He then said, "Tell her to put on a shirt under it. For I fear that it (garment) may describe the size of her bones."[29] On the authority of this Hadith, the Maliki School, emphasizes on this point that the *hijaab* must not show colour and must not describe the shape of the body.[30] Also, according to Sayyid Sabiq, the most desirable means of concealing the shape of the woman's body is to add a cloak over the

[26] Ibid.
[27] Qur'an 24:30 – 31 Ali, Y.A. Op.cit
[28] Ahmad, Y.A. *Encyclopaedia of Islamic Jurisprudence Concerning Muslim Women*, Op.cit., vol. III, p. 362.
[29] Ibid.
[30] Bahhu, M. *Hijab al-Mar'ah Fi Maz hab al Maliky*, Dar Al-Kitab wa Al-Sunnah, Riyadh, (2012, 2nd ed.), p. 65

garment. The Messenger of Allah (PBUH) indicated that if the woman's dress meets the Islamic standards, it suffices even for the validity of prayer.[31]

d) The fourth requirement of *Hijaab* is that it should not be an adornment in itself; it should not be such that attracts men's attention.[32] According to Jamal Ahmad Badawi, the main purpose of Islamic *Hijaab* is to conceal the woman's *zeenah* (beauty and adornment). How could such *zeenah* be concealed if the *Hijaab* is designed in a way that it attracts men's attention. That is why the Qur'an while addressing the wives of the Messenger of Allah as an example, Allah (SWT) says: "*And stay in your houses, and do not display yourselves like that of the times of ignorance*".[33] Since the *Hijaab* is supposed to cover and hide the beauty of women, then it is not reasonable that it should be an adornment in itself. Imam Ahmad recorded on the authority of Abdullah bin Amr (RA) who narrated:

> Umaymah bint Ruqyqah came to Allah's Messenger (PBUH) to give the pledge of allegiance upon Islam. The Messenger of Allah (PBUH) told her, I take your pledge that you should not associate anything with Allah in worship, that you should not steal, that you should not commit adultery, that you should not kill your child, that you should not utter slander intentionally forging falsehood (i.e., by falsely attributing an illegal child to your husband), that you should not engage in loud wailing for the dead and that you should not display yourself like that of the time of ignorance.[34]

In a nutshell, the *Hijaab* should be plain not to be decorated with ostentatious colour and designs in order not to draw men's attention to her.

e) The fifth requirement of *Hijaab* is that it should not be perfumed. This condition extends beyond *Hijaab* and it includes also the woman's body. There are many Hadith

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[31] Sabiq, S. *Fiqh-us-Sunnah*, Dar-ul-Kitab-il-Arabi, Beruit, (1969), vol. 1, p. 127, cited in Badawi, J.A. *Woman under the Shade of Islam*, Op.cit., p. 52.
[32] Ibid
[33] Ibid
[34] Musnad Imam Ahmad, vol. 2, p.169 cited in Albany, M.N. *Jilbab al-mar'ah mulimah*, Op.cit., p. 121. See also Ahmad, Y.A. *Encyclopaedia of Islamic Jurisprudence*, Op.cit., p. 361.

that forbid Muslim women from using perfume when she goes out of her home even if she is going to the mosque for prayer. In a Hadith recorded by Hakim, Abu Dawud and Ahmad bin Hanbal on the authority of Abu Musa Al-Ash'ari (RA) said: "*if a woman uses perfume and passes through the people (that includes at least a man) so that they may get its odour, she commits adultery*."[35] The Messenger of Allah (PBUH) said: "*When one of them (women) goes to the mosque, she should not wear perfume*".[36] In another Hadith, the Prophet said: "*Any woman that wears 'Bukhur' (a quality type of perfume) shall not attend our congregational Isha'i prayer (the last prayer of the night)*."[37] These authorities indicates the prohibition of wearing perfume even when going to the mosque, for doing so may arouse men's desire in her. Therefore, the prohibition of using it when going to the markets, office or school is greater and more sinful. According to Al-Haytami, if a woman goes out of her home while perfumed and beautified, she commits a major sin even if the permission of her husband is given.[38]

f) The sixth requirement of *hijaab* is that it should not be a dress of fame, pride and vanity. A Muslim should not put on any dress worn for the purpose of attaining fame among people regardless of its being an expensive one, so as to show off how wealthy you are, or a cheap one to show off how averse you are to the materials of this world.[39] Both motives are improper by Islamic standards. The Hadith recorded by Ibn Maja'a on the authority of Abdullahi Bin Umar (RA) that the Messenger of Allah (PBUH) said: "*Whoever wears a dress of fame and vanity in this world, Allah will*

[35]Ibid
[36]Ibid
[37]Ibid
[38]Ibid, p. 139
[39] Ahmad, Y.A. *Encyclopedia of Islamic Jurisprudence*, Op.cit., p. 365.

cloth him with a dress of humiliation on the day of resurrection and he will be burnt in hell."[40]

g) The seventh requirement is that the dress of a Muslim woman should not be similar to the dress of a man. This is due to the authentic Hadith recorded by Abu Dawud on the authority of Abu Hurairah (RA) in which the Prophet (PBUH) cursed the woman who dresses like a man and cursed the man who dresses like a woman. In this respect, Abu Hurairah said: "*The Messenger of Allah cursed a man who dresses like a woman and a woman who dresses like a man*."[41] In another Hadith recorded by Ahmad Bin Hanbal on the authority of Ibn Umar that the Messenger of Allah (PBUH) said: "*she is not among us who behaves or acts like a man and he is not among us who behaves or acts like a woman*."[42] On this point, though both men and women are all Muslims, yet Islam forbids one to act like the other based on their natural differences.

h) The eighth requirement of *Hijaab* is that it should not be similar to what is known as the costume or fashion of the unbelievers (i.e., non-Muslim women). Islam forbids Muslim men and women from copying non-Muslims in their worship, ceremonies and costumes. This requirement is derived from the general rule of the Sharia that Muslims should have their distinct personality of one's selflessness. Ahmad bin Hanbal recorded on the authority of Abu Umamah (RA)who narrated that the Messenger of Allah (PBUH) came out to meet a group of elderly Ansar men who were sporting white breads and addressed them thus:

> O Ansar folks! Dye your hair with red or yellow (*Henna*) and be different from the people of the scripture. I said Messenger of Allah, the people of the scripture neither wear pants nor lower their wrappers. He said wear pants and put on wrappers and be different from the people of the scripture. We said

[40] *Sunan Ibn Maja'a*, vol. 2, pp. 288 – 289 cited in Albany, M.N. Op.cit., p. 213.
[40] Albany, M.N. *Jilbab al-mar'ah mulimah*, Op.cit., p. 141
[41] *Sunan Ibn Maja'a*, vol. 2, pp. 288 – 289 cited in Albany, M.N. Op.cit., p. 213.
[41] Albany, M.N. *Jilbab al-mar'ah mulimah*, Op.cit., p. 141
[42] Albany, M.N. *Jilbab al-mar'ah mulimah*, Op.cit., p. 142

> Messenger of Allah, the people of the scripture trim their beards and let their moustaches grows. He said trim your moustaches and let your beards grow and be different from the people of the scripture.[43]

In another authentic Hadith recorded by Abu Dawood on the authority of Abdullahi bin Umar who said the Messenger of Allah (PBUH) said: "… Whoever imitates a people, he will be one of them."[44] By the good chain of narration of this Hadith, Ahmad, Ibn Hajar, Ibn Taimiyyah, Al-Hafiz al-Iraqy and Muhammad Nasiruddeen al-Albani have declared it to be authentic.[45]

4.4 The Advantages of Hijaab:

Its practice and wisdom contains a lot of advantages and its lack of practice entails disadvantages especially in the society where rape, sexual molestation and disrespect to the woman have become rampant. The main advantages of wearing *Hijaab* include the following:-

1. It protects the Muslim woman against the behavior of the wicked people.
2. It gives honor to the woman in the society.
3. It acts as a barrier between man and woman to keep them away from sins.
4. It is a means of observing chastity for women.

4.5 The Disadvantages of Failing to Wear Hijaab (*Sufoor*):

It has many disadvantages some of them are as follows:-

1. It is a violation of the Qur'an and Sunnah.
2. It shows the woman's weakness in belief.
3. It is a cause of temptation between men and women.
4. It subjects women to sexual harassment.[46]

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[43] Ibid, pp. 184-185
[44] *Sunan Abu Dawood*, Op.cit., p. 203 – 204.
[45] Ibid
[46] Abdullah, A.R. *Islamic Dress Code for Women*, Maktaba Dar–us–Salam, Riyadh, (2006, 3rd ed), pp. 33–34.

Hijaab is the tradition of Muslim women, since the revelation of verses concerning it. The wives and the daughters of the Prophet (PBUH) and the other believing women have strictly observed it. Furthermore, Muslim women must reflect on the advantages and disadvantages of wearing *Hijaab*, and accordingly keep it and fulfill its requirements.

Moreover, it is a distinguishing feature of Islamic law that men and women should remain separated and perform their duties in a most obliging manner. It is natural that men and women are attracted to each other. In this regard, Islam provides the legal way for them to marry and maintain the family by raising their children. It also imposed some rights and duties between them. In this respect, it has commanded women to remain indoors in order to avoid *Ikhtilaat* (mingling) with men in and out of their homes.

4.6 The Legal Meaning of *Ikhtilaat* under Islamic Law

There are different approaches by scholars regarding the meaning of the term *ikhtilaat* (free mingling) even though the approaches may meet at a point. According to Ibn Baaz, it means the mixing of males and females outside the prohibited degree of marriage in one place and in the name of work, business, travelling, etc.[47] According to another scholar Ukashatu Al-Tibee in his book Al-Tabarruj, *Ikhtilaat* means the mixing up of the two sexes in different ways; for example, in a western oriented university, work place, market place or company.[48] In the view of Muhammad Abu Yahya in his book *Ahammu Qadaya al-Mar'ahal-Muslimah*, it is said: "The mixing of women and men that are prohibited to one another be it within a private or public place."[49] Sheikh Abdullahi bin Jarillah posited that it means the meeting between a man and a woman or men and women who are not prohibited to marry in one place that makes it possible for them to communicate orally or by way of body contact or by gesture

[47] Ibn Baaz, A.A. *Fatawa wa muqalattun mutanawwi'ah khataru masharakat ul-mar'ah Lil-Rajul fi maidaan al-amal*, vol. 1, p. 420 cited in Al-Azraq, I.A. *Ikhtilaat fi al-Ta'aleem al-Nash'ah wal-Athar*, Maktabah al-Malik Fahd, Riyadh, (2008), p. 13.
[48] Al-Baddaah, A.A. *Tahreen at Ikhtilaat wa al-Raddu Ala man Abahahu*, (2010, 1st ed.), p. 9.
[49] Ibid, p. 10

intentionally. He further said the seclusion of a woman with a man who is not her relative or husband is also considered as free mingling under Islamic law.[50]

From these foregoing definitions, it is clear that the prohibition of mingling between men and women is based on two points:

a) Togetherness between two sexes;
b) Deliberate free mingling or seclusion (that can stimulate sexual feelings) especially by display of beauty or adornment.

4.7 The Legal Position of Free Mingling in Islamic Law

Free mingling between men and women is unlawful. The position of the holy Qur'an in the matter of prohibition of such mingling is very clear. In Qur'an 24:31, Allah (the Exalted) has decreed that the holy Prophet (PBUH) shall prescribe to both sexes that they should lower their gaze and guard their modesty against *zina* (adultery or fornication). The essence of being chaste from committing abomination is to distance oneself from what would lead to abominable act. Really, the free mingling between men and women in workplaces, educational pursuits, etc., is the common cause that mostly results in sexual immoralities.[51]

There are many Prophetic traditions showing the prohibition of free mingling between men and women. In a Hadith recorded by Bukhari and Muslim on the authority of Uqubah bin Amir (RA) who said the Messenger of Allah (PBUH) said: "*beware of private audiences with women*". Aman from Al-Ansar asked, "O Messenger of Allah! What about *Al-hamwu* (in-laws)?" The Messenger of Allah (PBUH) answered, "the *Hamwu* are death."[52] The word *hamwu* in this Hadith refers to the relatives of the husband with exclusion of those mentioned in surah al-Noor.[53]

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[50] Al-Azraq, I.A. *Ikhtilaat fi al-Ta'aleem al-Nash'ah wal-Athar,* Op.cit., p. 14
[51] Haroun M.A.S. Op.cit., p. 65
[52] Sahih Al-Bukhari, hadith no. 5232 and Sahih al-Muslim, hadith no. 2172 cited in Al-Tarity, A.M. *Al-Ikhtilaat Tahrir wa Taqarir wa Ta'aqib*, Op.cit., p. 28.
[53] Qur'an 24:31.Daryabadi, M.A. Tafsir Al-Qur'an, Op.cit., vol. 3, p 228.

In another Hadith recorded by Muslim on the authority of Abu Hurairah (RA) reported that the Messenger of Allah (PBUH) said: "The best of rows for men are the first ones and the worst of them are the last ones, while the best of rows for women are the last ones and the worst of them are the first ones."[54] In this respect, it is clear that the first of women's rows are nearer to the last of men's rows, so that is the worst of rows for women. If this is the case, what would become of a situation outside the common acts of worship? It would not be surprising if *fitnah* (affliction or temptation) and great evil ensued from such type of free mingling.

In the Hadith recorded by Ahmad and Tirmithi on the authority of Umar Bin al-Khattab (RA) that the Messenger of Allah (PBUH) said: "*No man should be alone in private with a woman (non mahram) for verily Satan will be the third one*."[55] The apparent meaning of all these authorities is a warning against free mingling with *ajanabiyyat* (persons outside the prohibited degrees of marriage). On this point, Abu Bakar Al-Amry said, there is consensus of the scholars that whoever said that the free mingling of women with (non-mahram) men is permitted, he has taken himself out of Islam and he is liable to be executed. But if he believes that it is forbidden, yet he does it, or approves it, he is a sinner and his testimony shall not be admissible in court.[56] Al-Sheikh Salih bin Fauzan al-Fauzan also said the free mingling of men and women in a situation where promiscuity may be generated is forbidden by the Qur'an, Sunnah and consensus of Islamic jurists.[57] Therefore, free mingling of men and women in the workplace is forbidden, whether in the service of the government or a private establishment, and whether in a government school or in a private school. This is because free mingling causes many great evils, even if it is only the loss of modesty.

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[54] Sahih Muslim, hadith no. 440.
[55] Bin Baaz, A.A. *Hirasat-ul-Ahijaab*, Dar Ibn Al-Athir, Riyadh, (2004) p. 43.
[56] Al-Baddaah, A. A. (2010)*Tahrim al-Ikhtilaat wa-Al-Radd Ala man abahahu*, 1st ed p. 32
[57] Ibid pp. 32 – 33

The term "Ajanabi" (non-mahram men) refers to any person who is not a woman's *mahram* or her husband. *Mahram* refers to the ascendants (i.e., father how high so ever), and descendants (the son how low so ever), and the brothers, the husband's father, the daughter's husband, the maternal uncle, the paternal uncle, the husband's sons, the sons of the brothers and sisters and whoever is similar to them due to suckling. It is also permissible for them to be in the presence of their slaves, or elderly male servants who have no sexual power and the children who are unaware of the woman's sexuality.[58] Al-Sheikh Muhammad al-Khatiby said, any sensible person cannot dispute the bad effect and the danger that *Ikhtilaat* (mingling) and *Khalwa* (seclusion) may generate. However, from the foregoing, two fundamental issues can be understood:-

a) That Islamic jurists have all agreed on the prohibition of free mingling.
b) That there is no renown Islamic jurist that has approve free mingling.[59]

Based on that, it can be understood that encouraging women to work together with men which may be translated into free-mingling in the name of modernization and civilization is a dangerous trend and has devastating consequences.

[58] Al-Uthaimeen, M.S. (2011), *A Treatise on Hijaab*, Maktaba Dar-ul-Salam, Riyadh, p. 104.
[59] Al-Baddaah, A.A. Op.cit., p. 33.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Introduction

In this chapter, the summary, findings, and recommendations or suggestion of the entire research work are provided.

5.2 Summary

This research work has examined the concept of gender equality and women's right to work in Islamic law. We have explained the nature and meaning of gender equality under Islamic Law. Going by the Holy Qur'an, men are rewarded for what they earn, and women are equally rewarded for what they earn.[1] Moreover, the Qur'an provides that men and women are created from a single soul,[2] so that women are not lesser than the men, and they are not created for the purpose of men. Rather, they are both created for the mutual benefits of each other.[3] In this regard, men and women have the same freedom to contribute to the society keeping with their own particular knowledge and skills, provided they do not jeopardize their personal dignity and modesty. In this context, Islamic law has the greatest respect for dignity of women.[4]

Furthermore, women under Islamic law were specifically granted the right of equality in status, right to education, right to buy and sell, right to manage her movable and immovable properties, right to inheritance and dower, etc.[5] Thus, it is clear that the claims of non-Muslim critics to prove that Islam denigrates women and the arguments that women are religiously, intellectually and ethnically inferior to men, as Jewish and Christians literature had earlier

[1]Qur'an 4:7 Ali, Y.A. Op.cit p 180
[2]Quran 4:1 Ali, Y.A. Ibid p 178
[3]Quran 30:21 Ali, Y.A. Ibid p 1056
[4]Quran16:97; 33:35 Ali, Y.A. Ibid p 1116 & Qur'an 49:13 Ali, Y.A. Ibid p 1407
[5]Quran 2: 229 Ali, Y.A. Ibid p 92 &Qur'an 4: 19 Ali, Y.A. Ibid pp 184 - 185

maintained is not true.[6]Consequently, our argument in this research work demonstrates that there is no legal system that elevates the status of women as Islamic law does.

Likewise, in our discussion of right to work in general and women's right to work in particular, it is argued that in Islamic law, the primary duty of a woman is to stay and discharge her family and religious responsibilities indoors.[7]Under the general rule, an individual has the right to freedom of work, if he likes he is at liberty to demonstrate it, and if he dislikes it, he cannot be compelled to work by any person. But under Islamic Law, this right has certain limitations to the extent that an individual can be deprived from it or be compelled to do it under the following circumstances:-

a. He can be deprived of his right to freedom of work where a third party is adversely affected by his activities in a situation whereby people around the environment are exposed to health and environmental hazards. This is by virtue of the Hadith: "*Don't harm and don't be harmed*".[8]
b. Conversely, an individual can be compelled to work if it can assist him discharge his obligation of maintaining his dependants, such as his household, parents, etc.[9]

Moreover, the wisdom behind this compulsion is to pave way for a person to take care of his basic needs throughout his life. It can also be possible that as a Muslim, one works not only for worldly life but for the sake of reward from Allah, for instance a teacher that teaches religious affairs, or struggle in the cause of Allah, etc. All these examples of work are not meant for a fee only but for reward from Allah (SWT).[10] Thus, if an individual does not fall under any of the above mentioned conditions and the nature of work satisfies the requirements of the Shari'ah, one is at liberty to work or not to do it. What is required for a work under the Shari'ah is that it must be within the ambit of permissible, supererogatory or obligatory legal

[6]SAHIH Muslim vol. 4 pg. 400
[7]Saleem, A.A. Important lessons for Muslim women, Darussalam, Riyadh, 2005, p.185.
[8]Sahih al-Bukhari in Zaidan, Ibid p.
[9] Ali, A.Y. The Holy Qur'an, Op.cit, p. 37
[10]Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Op.cit., p. 264

rulings when put on the scale of Shari'ah. It does not matter whether the nature of the work is artisan, handwork, manual/laborer or machinery/mechanized farming, manufacturing or trading, etc.[11]

Therefore, as the struggle for survival does not fall within women's responsibilities, hence, it is not a necessity to them that they must work because they are always under the care of men such as her father, husband and sons or any other close relations. This is because, a woman is guaranteed right to maintenance, because her maintenance is on her husband if married even if she is rich; if not married and she is poor, here her maintenance is upon her father; where she is an orphan, her maintenance lies on whoever is responsible for her maintenance such as son, brother, etc.; in the absence of all such protectors, the issue of necessity may allow her to work[12].

5.3 Findings

The following are the findings of this study:

(1) It is found in the course of this study that there is abdication by women of their responsibilities to children by virtue of engaging in work outside their matrimonial homes. There is no doubt that the responsibility of training children is based on affection, honesty, foresight and long period of togetherness without which moral training would be an illusion. Can the wages she receives periodically be compared in value with what the children lose morally? Never.

(2) It is also found that definitely, the very woman that works outside her home usually mingles with male co-workers at her working place, and sometimes secludes with him which is a categorical taboo (violation) of the provision of Shari'ah. The Prophet (PBUH) said "*No man secludes himself with a woman without Satan accompanying*

[11] Ibid, p. 265
[12] Zaidan, A. *Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu –al Islamiyyah*, Op.cit., p. 265

them"[13].Additionally, women are fond of adornment and interested in gorgeous dressing. In this regard, if she goes out for work, on her way she attracts and pleases gazers with her earnings.

(3) It is also found that a Muslim woman that works outside loses her feminine posture; Islam protects femininity to keep the stream of tenderness and beauty running. It is also supported by Islam in view of its relative weakness placing it in the hands of a supporting man, securing the cost of living and the provision of her needs. Unlike in the case of western woman who is under severe necessity in which neither father, brother, husband, son or uncle look after her. The result is that she has to accept any kind of work for whatever payment in order to survive. Moreover, she loses her Purdah orientation meant for the preservation of her physiology and morality.

(4) It is also found that with the foregoing, the question of women's right to work is irrelevant under Islamic Law because what is supposed to be asked is whether Islamic Law permits women to work outside home or not. This is because they are naturally assigned with indoor responsibility as their primary duties. The writer therefore take the view that the "permissibility" which is the legal position of women's right to work outside matrimonial home shall not be allowed to overshadow her obligatory responsibilities which is the primary duty under Islamic Law.

(5) It is found that Islamic law has elevated women and gives them a very dignified position, therefore, to the writer's view, the western call of women's liberation is actually a misrepresentation of the true nature of women, and in fact it is a disguised form of exploitation of the women's body, deprivation of her virtuousness and deterioration of her origin.

[13]Tirmizee, Quoted in Al-Sheha, A. *Women in Islam & Refutation of Some Common Misconceptions*, Riyadh, (nd) p. 123

5.4 Recommendations

Following the above findings of this study, it is recommended thus:

1. It is recommended that as the struggle for sustenance is not the responsibility of women under Islamic law, it is thereby suggested that although women are permitted to work in accordance with Islamic Law principles, such permission would only be tenable as an exception in cases of necessity and under genuine circumstances that cannot detract a woman from discharging her primary responsibility at home. Thus, it is contended that as far as Islamic law is concerned, the different role assigned to the female gender other than those of men is a balance that suits women's natural disposition and for Muslim women to accept anything of the kind advocated by the west under the pretext of gender equality is nothing but a sheer illusion which Muslim women are hereby called upon to shun away from and accordingly respect Islamic teachings as the ideal regulation that befits their human nature.
2. It is recommended that in order to uphold the Islamic perspective of gender equality and accordingly sustain women's permission to work outside, it is pertinent that employers of labour more particularly in places where Muslims are predominant, should endeavour to create gender friendly environment in terms of providing gender segregated facilities like toilets, staff common rooms, female travelling buses, female nurses and doctors for women, etc. This would allow observance of the Islamic principles of purdah whereby seclusion and mingling of sexes are prohibited.
3. It is recommended that a woman working outside home must respect her primary responsibility of rearing children and tending the home without having creating additional problem of requiring somebody to take care of them for her, because there is no more suitable person to discharge it than herself. This is because, it is of no use for a woman to spent her time outside rendering services as a worker while neglecting

her primary duties at home. If that is the case, what is therefore the wisdom behind her competition with man outside while she forsake her role at home? It is on this basis that we suggest to Muslim women to only engage in such undertakings that would not deprive them of their primary responsibility.

4. It is suggested that the so-called "gender equality" and women's right to work should be judged in accordance with the primary and secondary sources of Islamic Law, i.e., the Holy Qur'an, Sunnah, Qiyas, Ijma', e.tc. and not on what an individual Muslim does or what Muslim society does. Therefore, Muslim women should desist from imitating the values and ideas propounded by western feminists to delude Islamic morality in the name of employment. This is because as against western society, Muslim women are guaranteed means of sustenance which is comparably unobtainable among women in the western society.
5. To the writers view, Islamic law promotes "gender equity" as against "gender equality" obtainable in the west and it is thus suggested that in matters in which both men and women are on equal footing such as basic humanity, application of obligations, reward and punishment, ownership and financial transactions, mandatory education, preservation of honor and nobility, etc, these serve as gender equity rather than equality as far as Islamic law is concerned.

BIBLIOGRAPHY

Books

Abd al-ati, H. (1978) Islam in Focus, International Islamic Federating organization, India

Abdallah, A.B. (2000) A Comparison between Veiling and Unveiling, Darussalam, Riyadh,

Abdulhalim, A. S. (2011) Tahrir al-Mar'ah fi Asri al-Resala, Dar al-Qalam, Cairo, 7th ed., vol. 5, p. 126

Abdullah, A. R. (2006) Islamic Dress Code for Women, Maktaba Darussalam, Riyadh, 3rd ed.

Abdurrahman, al-Sheha, (2000) *Women in the Shade of Islam*, (translated by Muhammad Sa'id Dabas, Riyadh, 4th ed.), pp. 6-7

Ahmad, Y. A. (2010) Encyclopaedia of Islamic Jurisprudence Concerning Muslim Women, Maktaba Darussalam, Riyadh, Vol. III p. 362.

Al-Baddaah, A. A. (2010) Tahreen at Ikhtilaat wa al-Raddu Ala man Abahahu, 1st ed.

Albani, M. N. (2002) Jilbab al-Mar'ah al Muslimah Fil Kitab wa Sunnah, Dar al–Salam, Dimashq

Al-Dasuqi, M. A. Hashiyat al-Addasuqee, Dar al-Fikr, (nd) vol. 1

Alhamdu, A. H. Y. (2010) Dauru al-Mar'ah Fi Ri'aya al-usrah, Al-Jamiyya al-Khairiyah Li Musaadatu al-Shabab, Jidda

Ali, A. Y. (1987) The Holy Qur'an (Koran) English translation of the meaning, King Fahd Holy Quran Printing Complex, p 37

Aliyu, H.A. Sherhu mujallat al Ahkam al Adliya, Vol-1 p. 34

Aliyu, I. A. (2008) Protection of Women's Rights under the Sharia, Rukhsah Publishers, Kano

Al-khyayyat, A. A. (2002) Human Right and Racial discrimination, as translated by Khalifa Ezzat and heather Show

Almisry, A. A. (2007) Jamiumasa el – Nisa'a li-imam al asri al-Albany, p. 187

Al-Qarafee, Al-Zakhirah, Dar –al-Garb, (nd) vol. 10

Al-Shaikh, A. A. (2006) Nizam al-Hijaab Fi Maisaratu Tareekh al-Bashariyah, Dar Al-Sabom, Egypt, p. 21

Al-Shaukani, M.A. Nail al-Autaar Sharh Muntaqa al-Akhabar min Ahadith Sayyad al-Khyar, Dar Al-Fikr, Vol. 2 p. 112

Al-Sheha, A. Women in Islam & Refutation of Some Common Misconcepts, Riyadh, p. 123,

Bahhu, M. Hijaab al-Mar'ah Fi Maz hab al Maliky, Dar Al-Kitab wa Al-Sunnah, Riyadh, 2012 2nd e, p. 65

Bambale, Y. Y. (2007), Acquisition and Transfer of Property in Islamic Law, Malthouse Press Ltd., Lagos, Nigeria

Bambale, Y. Y. (2007), Islamic Law of Commercial and Industrial Transactions, Malthouse Press Ltd., Lagos, Nigeria,

Gawuje, W. S. (1999) Al-mariah Al MuslimahwalaisaAlzakarukaluntha, Dar al-Qalam, Dimashqa, 8th Ed., Pp. 49

Ibn Baz, A. A. (2005) Fatawa Essential Ruling for Every Muslim Woman (translated by Ibn Maqbool Hussain) international113Islamic Publishing house, Riyadh, P.128.

Ibn Baz, A. A. (2008) Fatawa wa muqalattun mutanawwi'ah khataru masharakat ul-mar'ah Lil-Rajul fi maidaan al-amal, vol. 1 p. 420 in Al-Azraq, I.A. Ikhtilaat fi al-Ta'aleem al-Nash'ah wal-Athar, maktabah al-Malik Fahd, Riyadh

Ibn Baz, A. A. (2004) Hirazat al – Hijaab, Dar ibn al – Atheer, Riyardh, p.9

Ibn Hazm, A. A. S. Al-Muhalla Bil Athar, Daral–Fikr, Beirut, Vol.5

Iqbal, S. (2004) Woman and Islamic Law, Adam publishers and distributors, New Delhi, p.204

Isah Abduhu and Ahmad Isma'il, al-Amal fil Islam, Dar al-Ma'arif (nd) p. 239

Islamic Dress Code for Women (1999) Compiled by Darussalam Research Division, Darussalam, Riyadh

Jamal, A. B. (1998) Women under the Shade of Islam, Organization of Islamic Conference, p.22

Kawthar, M.A. Human Rights in Islam, Ammar Press, Riyadh, (nd) p. 9-30

Ladan, M. T. (2007) Materials and Cases on Public International Law, Ahmadu Bello University Zaria Printing Press

Muhammad, A. A. (2007) The ideal Muslim society as defined in the Qur'an and Sunnah, Translated by Nasiruddin Al-Khattab, International Islamic publishing House, Riyadh, pp. 111-112

Muhammad, A. I. M., Audatul Hijaab Baina Takreemil Islam waIhanat Jahiliyya, Darul Aqidah, pg. 156 – 228

Qurtabi, A.M. Al-Jami'u Li Ahkam al Qur'an, Vol 12 p. 230

Qutub, S. (1979) Assalam al-Alamee was salam, Dar Al-Shuruq, Beirut, 8thed, pp.72 – 73

Sabiq, S. (1969) Fiqh-us-Sunnah, Dar-ul-Kitab-il-Arabi, Beruit, vol. 1 p. 127

Iqbal, S. (2004) Woman and Islamic Law, Adam Publishers, New Delhi India, pp. 1-5
Saleem, A. A. (2005) Important lessons for Muslim women, Darussalam, Riyadh, p.185.

Tikumah, I. H. (2008) The Abuses of Islam and the Dormancy of Islamic Scholars Eve dome from the Misuse of Niqab (Face-Veil) In the Nigerian society, Ahmadu Bello University Press limited, Zaria, p. 11.

Wasil, A. Youth sexual and Emotional problems under the right of the Islamic Jurisprudence, Dar-ul-sharooq Beirut, 1406 H.

Zaidan, A. (2000) Al mufasal Fil Ahkam al-akam al-marahwabartu Muslim fi Shari'ah al-Islamiyya, Al Risalah Publisher Beirut, 3rd Edition,Vol 3, p. 73

Zaidan, A. (2000) Al Muffassal Fi ahkam al-mar'ah wa bait al Muslim fi al shariatu al Islamiyyah, Al-Resalah Publishers, Beirut, 3rd Ed, vol-4 p.147

Journals

Abubakar, M. S. (2005) Concept of general right in Islam, Journal of Islam and Comparative Law, Center for Islamic Legal Studies Institute of Administration A.B.U, Zaria, Vol. 25

Adamu, A. (2010) Balancing the Home and Work: Tales of Working Women, *The Journal of the Islamization of Knowledge and Contemporary Issues*, Vol. 1, No. 1, January 2010, p. 88 – 89 (The International Institute of Islamic Thought Nigeria Office).

Haroon, M. G. (2005) An Explanatory Exposition on the Shari'a Principle on the Muslim Women's Roles in Nation Building, Published in *AL-IJTIHAD*, Vol. 5, No.1, January 2005, IIIT, Nigeria Office, p.32

Ibn Uthman, M. (2008) The Right of Women and Children: Issues and Challenge from Human Right and Islamic Law perspective, National Conference on the Right of

Women and Children under the Shari'ah, Centre for Islamic Legal Studies Institute of Administration A.B.U, Zaria, 16th – 17th June, pp. 5 – 6

Ladan, M. T. (2006) Protocol on the Rights of Women in Africa and the Islamic Perspective on Gender Equality and Justice, A paper presented at a Seminar Organized by Solidarity for African Woem Rights (SOAWR) at Ahfad University for Women, Sudan on the 16-24 January 2006

Tahir-ul-Qadri, Muhammad *Gender Equality and Islam*, an online article available at www.yabani.com/index.php?/topic/415906-gender-equality-and-islam/ (visited on 30/04/2012 by 04:39 PM)

Uthman, M. B. (2008) *Safeguards for the Protection of Women's Rights in the Administration of Criminal Justice under Islamic Law*, A Paper Presented at the National Conference on the Rights of Women and Children under the Sharia, Organized by the Centre for Islamic Legal Studies, Institute of Administration, A.B.U. Zaria, held on 16th – 17th June 2008 at Arewa House Kaduna, pp. 292-317