

A COMPARATIVE ANALYSIS OF THE POLITICAL RIGHTS OF WOMEN UNDER CEDAW FROM A SHARIAH PERSPECTIVE

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Abstract

The feminist movement emerges because of unfair treatment unleashed on womenfolk during the medieval era. The agitation of the movement was heard by the United Nation and succeeded, in bringing about a legally binding international treaty known as the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW). The Convention often described as the bill of rights for women requires for equality for men and women in all spheres of life. Similarly, there are lot of misconceptions prevailing over women rights under

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Shariah, it is criticized for relegating and denying women their rights. Despite the misconceptions, there are esteemed women throughout the Islamic history who played certain roles in the socio and political development of the Islamic society. Therefore, this calls for a need to investigate, to compare and to analyze the right of women under CEDAW and Shariah. The paper adopts a doctrinal method of research to focus on a comparative analysis. It is the finding of this research that Shariah regards male and female as equal partners whose roles complement each other. The paper finds that Shariah encourages women to freely express their opinion and ideas. Thus, it does not deprive women their political right but rather, ensuring proper right, dignity and virtue of women in public participation.

Keywords: Right, Women, Political Right, Cedaw, Shariah

1.1. INTRODUCTION

Shariah has faced constant attacks and criticisms from numerous quarters all over the world. The history and circumstances of its emergence as well as its continued universal application as a coherent and divinely inspired system of law have equally been subjected to constant attacks and criticisms.¹ This is not unexpected as Muslim women has become the focal point of interest for the Western governments, institutions and media. Thus, conferences are held, lectures are given, and books have been written just

¹ Badamasiuy Juwairiyya, *Uncovering Patriarchy in the Law: The Feminists' Re-interpretation of Islamic Law in Focus* (Bayero University Press 2017)

to unravel the mysteries about Muslim women and her role in society.² Islamic Law has been tagged as a patriarchal system whose underlying philosophy is to subjugate, dominate and control women personalities, diminish their worth and undermine their rights. This misconception about Muslim women was first rooted in the West by the western feminist and later finds credence by the Muslim feminist who questioned the issues of women's veiling, sexuality and resultant segregation from public space.³ The proponent of this view also claims patriarchy in Islamic jurisprudence hence; the need for reform that will meet the twenty-first century.⁴ This and other similar problems pose serious threat to Islam as they challenge application of Shariah in the current era of globalization and information explosion. Therefore, this research work has chosen to analyze the political rights of women under CEDAW and Shariah because of the difference in content and context. Again, the writers were prompted to write on the topic because of realization that the Muslim women day by day are becoming influenced by exposure to different mode of ideologies and to enlighten the reader on the intendments of the international instrument and *Shari'ah* with regards to women rights. The discussion will attempt to clear these misconceptions and find areas of confluence and divergence between the two laws, and to uphold the principles of *Shari'ah* since Muslims are to be regulated according to the dictates of *Shari'ah*.

² Afaf Jamal, 'The Contemporary Saudi Arabian Woman; Leadership and Women's Issues' in Hassan Ahmed and Zaleda Kamaruddin (eds) *Muslim Women in the Contemporary Societies Reality and Opportunities* (IIUM Press 2009)

³ Norma Kassim, 'The Influence of Feminist Movement and Establishing of Women's Right in Islam' in Hassan Ahmed and Zaleda Kamaruddin (eds) *Muslim Women in the Contemporary Societies Reality and Opportunities* (IIUM Press 2009)

⁴ Juwairiyya, (n 1) 15

2.1. DISCUSSION ON HISTORY OF WOMEN AND THEIR STANDING

Gender issues were subjected to variety of negative perception throughout history of humanity. The women right activist view that women were taken as inferior to men.⁵ This is because women are the ones that suffer most in the society in enforcing their rights due to some of the following factors; their physical weakness, their softness, their vulnerability and so on. Furthermore, it was the practice of almost all the past civilization to relegate women. The fate of women was not significantly different all around the world irrespective of religion and location, their overall plight is much the same in early civilizations and religions until even recently, as the following research will highlight.

According to early Greek civilization, a woman is nothing but a source of evil and chaos. In the word of the Greek philosopher Socrates: “*Woman is the greatest source of chaos and disruption in the world, she is like the befall tree which outwardly looks very beautiful but if sparrows eat it, they die without fail*”.⁶ The Roman civilization was also next that attended might in the history of the world. It was in this society around the seventeenth century that a meeting was convened by the council of wise men to see whether women had soul. The council concludes that women had no soul,⁷ except Mary the mother of Jesus.⁸

⁵ Ann Scale ‘The Emergence of Feminist Jurisprudence: An Essay’ (1986) *Yale Law Journal* 1373, Juwairiyya (n 1) 15

⁶ Nazhat Afza and Khurshid Ahmad, *Position of Women in Islam* (Islamic Foundation, Karachi 1969) 6

⁷ Naik Zakir, ‘Rights of Women in Islam: Modernizing or out dated?’ (2009) < <http://www.thepen.com/woman's-right-in-Islam-modernized-or-outdated-part-one> > access 28 January 2015.

⁸ Ibid

Another important civilization that existed in the history of the world was the Chinese civilization. In the scripture of the Chinese, women are called “the water of wore”⁹ that wash all good fortune.¹⁰ Moreover, the Chinese women had “no right what so ever”¹¹ This has gone to the extent that a husband can sell his wife if he wishes.¹² And if a woman husband died, she becomes the property of the husband’s family.¹³ Similarly, in Rome, a man ruled over his wife and children.¹⁴ He could whip or beat his children and divorce his wife for trivial reasons, such as no longer being attractive.¹⁵ Her role was to marry and bear sons and her consent in marriage was not generally thought to be necessary.¹⁶ Women in Scandinavian societies were not treated much better: “*Under perpetual tutelage, whether married or unmarried. As late as the Code of Christian V, at the end of the 17th century, it was enacted that if a woman married without the consent of her tutor he might have, if he wished, administration and usufruct of her goods during her life.*”¹⁷ The above are the conceptions of women in the world by some civilizations. It is however worthy of note to consider the conception of women by some religions in the world. In Judaism, according to the Hebrew scripture, woman is under the “curse” of God Almighty.¹⁸ To them: “*woman came the beginning sin and through her we all die.*”¹⁹ This belief

⁹ Afza and Ahmad (n 6) 15.

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ Colish Marcia *The Stoic Tradition from Antiquity to the Early Middle Ages: Stoicism in Classical Latin Literature* (Brill, Leiden 1990) 459.

¹⁵ Ibid

¹⁶ Ibid 445

¹⁷ Ibid

¹⁸ Afza and Ahmad (n 6) 18.

¹⁹ Ibid

has put the Jewish woman into the cruel treatment of man. The hatred men have for women are also depicted in Talmud where a man who has a female child is said to always be in distress and grief; *“A daughter is a vain treasure to her father, from anxiety about her, he does not sleep at night, during her early years lest she be seduced, in her adolescence lest she goes astray, in her marriageable years, lest she does not find husband, when she is married, lest she is childless, and when she is old lest she be witchcraft”*.²⁰

This therefore is the basic conception of women by the Jews. On the part of Christianity, they regard women as the source of evil for she is the one responsible for sending Prophet Adam down to earth. This can be seen from some statements made by some Christian fathers. Example, St. Tertullian said to women: *“That each of you is an Eve; the sentence of God on this sex of yours lives in this age, the guilt must necessary live too; you are the devil’s gateway, you are the first deserter of the divine law you are she who persuaded him when the devil was not valiant enough to attack. You destroy so easily God’s image in man. because of your desert, that is, death even the son of God had to die.”*²¹ According to St. John Chrysostom, a woman is, “a necessary evil, a desirable calamity, a deadly fascinator and a painted ill”.²² In the words of St. Clement of Alexandria: *“Nothing disgraceful is proper for man, who is endowed with reason, much less for woman to whom it brings shame to reflect of what nature she is.”*²³ These and so many statements made by some Christian Fathers show how women are conceived in the Christian religion. Furthermore, the institution of marriage is also detestable in the religion for “celibacy” and “spinsterhood”

²⁰ Badamasiuy Juwairiyya *Status and Role of Women Under Sharia* (ABU Press 2001) 9.

²¹ Afza and Ahmad (n 6) 20.

²² Ibid

²³ Ibid

are taken as the condition for attaining nobility.²⁴ Before the advent of Islam, during the Jahiliyya period, women were treated unfairly. It is indeed a stated fact in the Qur'an that even the birth of a female child is a shame, source of grief and sorrow to them, so they bury them alive at birth due to fear and stigmatization. Women during this period are objects that are not valued, they cannot inherit from their fathers and husband, they are otherwise subject to inheritance. They don't have the right to own, dispose or possess any thing in the reverse they are objects subject to possession, owning and disposing.

It is therefore against the unfair treatment unleashed on womenfolk in the West that brought about the feminist movements. This movement as defined by Miriam Cooke means the awareness which is centered against cultural, political and sociological injustices based on gender.²⁵ Generally, it includes both men and women calling for fair and just treatment of both sexes in all fields of human endeavors.²⁶ Therefore, the feminist agitation worldwide was to ensure that women are not only seen but are also heard, equality of gender, cancellation of stereotyped role based on sex and a more public participation of women in political life.²⁷

These yearnings of feminist were later heard by the UN, there by enacting CEDAW. This Convention basically addressed most of the rights of women agitated for by the feminist movement. However, the committee that was responsible for drafting the Convention was also the product of women activist movement. Moreover, to further enhance the status, living condition and uphold the notion of gender equality, the Beijing Plat form for Action

²⁴ Ibid

²⁵ Miriam Cooke *Women Claim Islam*, (Routledge, New York 2001)

²⁶ Feminist Movement Free Encyclopedia: <[http top://en.m.wikipedia/feminist-movement-accessed](http://en.m.wikipedia/feminist-movement-accessed)> accessed 8 February 2015.

²⁷ Ibid

(BPFA) was adopted as a result of fourth World Conference on women in Beijing in 1995.²⁸ The content of the agenda of the conference includes full and active participation of women in public and private life through full and equal status.²⁹ The Millennium Development Goals (MDGs) is another policy that addresses the elimination of gender discrimination on women.³⁰ Goal number three of the MDGs set forth to promote gender equality. Hence this and many other policies were made to encourage political participation of women in the society.

2.1.1. DISCUSSION OF POLITICAL RIGHT OF WOMEN

Political rights are part of the International Bill of Human Right and are provided under the Universal Declaration of Human Right.³¹ The political rights alongside with civil rights are the first generation right under the international human right law and are inalienable rights that the state must provide for its citizens. Politics which refers, in a sense, to a group of people organized for law within a definite territory, and the significance of such an assembly is that people or group known as government, are clothed with the obedience from members of the society whom they govern.³² Therefore, political right obtains from an organized state include right to vote and to be voted for. The political rights of women are the rights of women to join a political party, right to participate in a demonstration, right

²⁸ World Conference on Women in Beijing in 1995 in Beijing China
<<https://g.co/kgs/A2zbZPt>> accessed 25 June 2024

²⁹ Ibid

³⁰ <<https://www.un.org/millenniumgoals/>> accessed 5 June 2024

³¹ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

³² Stephen Ocheni and Basil Nwankwo 'Effectiveness of Anti-Corruption Agencies in Enhancing Good Governance and Sustainable Developmental Growth in Africa: The Nigerian Paradox under Obasanjo Administration 2003-2007' (2012) 16 *Canadian social science*, 8(3)

to hold public office, and so on.³³ History has it that women had participated in politics since time immemorial. Examples are the Queen of Sheba, Cleopatra and so on. Some females have led their countries to might while political participation of women in some societies has led to its downfall such as the late Greek civilization, the Athens and so on.³⁴

The first international instrument that seeks to protect the political right of women was the Covenant on Political Right of Women.³⁵ This Instrument seeks to protect the right of women from gender perspective. Relevant international instruments dealing with the political rights of women are the UN Charter, Universal Declaration of Human Rights³⁶, the International Covenant on Civil and Political Rights³⁷, the Convention on the Political Rights of Women³⁸, the Vienna Declaration,³⁹ and some general recommendations adopted to create gender balance in political decision-making.⁴⁰ Nonetheless, the Convention on Elimination of all forms of

³³ Ibid

³⁴ Juwairiyya (n 20)

³⁵ UN General Assembly Convention on Political Right of Women, A/RES/640, UN General Assembly, 20 December 1952

³⁶ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

³⁷ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976.

³⁸ UN General Assembly Convention on Political Right of Women, A/RES/640, UN General Assembly, 20 December 1952

³⁹ The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, and endorsed by GA Resolution 48/121.

⁴⁰ general recommendations and under the Convention, general comment No. 25 adopted by the Human Rights Committee, the recommendation adopted by the Council of the European Union on balanced participation of women and men in the decision-making process and the European Commission's "How to Create a Gender Balance in Political Decision-making".

Discrimination Against Women (CEDAW)⁴¹ is taken as the most comprehensive law addressing the rights of women because it covers a variety of rights such as political, economic, social, educational rights and so on. The Convention provides among others that women should be given equal right with men to vote and be voted for in any public office, to participate in policy making and implementation, and perform public functions at all levels of government.

Equality of rights for women is one of the basic principles of the United Nation.⁴² In the preamble of the UN Charter,⁴³ it sets the affirmation of faith in fundamental human rights, the dignity and worth of human person and equal rights of men and women' as one of the organization's central goals of the charter.⁴⁴ The International Bill of Human Rights⁴⁵ strengthens and extends the emphasis of the UN charter on the human rights of women.⁴⁶ The International Bill of Human Rights, combined with related human rights treaties, lay down a comprehensive set of rights to which all persons, including women, are entitled. These instruments prove insufficient to guarantee such women's human rights.⁴⁷ Since its establishment, the UN

⁴¹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981.

⁴² United Nation is a diplomatic political international organization whose purpose are to maintain international peace and security

⁴³ UNTS XVI; UKTS 67(1946); Cmnd 7015. The Charter is regarded as the constitution of the organized world community after World War II and is binding between member states of UN.

⁴⁴ Preamble to UN Charter (1945) 1 UNTS p. xvi.

⁴⁵ It consists of the UDHR GA Res 217A (III), UN Doc. A/810,1948, ICCPR, ICESCR and its two optional protocols.

⁴⁶ Article 2, 7, of UDHR, Article 2(1), 3, and 26 of ICCPR and ICESCR 2(2) and 3.

⁴⁷ Short history of CEDAW Convention- The United Nation <<http://www.un.org/women/watch/daw/cedaw/history.htm>> accessed 1 May 2015.

Commission on Status of Women (CSW) has sought to define and elaborate the general guarantees of non-discrimination in these instruments from a gender perspective. The work of CSW has resulted in several important declarations and conventions that protect and promote the human rights of women. Originally established in 1946 as a sub commission of the Commission on Human Rights, but quickly granted the status of full commission as a result of the pressure exerted by women's activist, the mandate of CSW include the preparation of recommendations relating to urgent problems requiring immediate attention in the field of women's right with the objection of implementation of the principle that men and women should have equal rights, and the development of proposals to give effect to such recommendations. Between 1949-1959 the commission has elaborated some human right instruments,⁴⁸ which protected and promoted the rights of women in areas in which the Commission considered such rights to be particularly vulnerable.⁴⁹ Thus, these instruments reflected the growing sophistication of the UN system with regard to the protection and promotion of women human rights, the approach they reflected was fragmentary, as they failed to deal with discrimination against women in a comprehensive way.⁵⁰ Thus, the General Assembly, on 5 December 1963, adopted its resolution 1921(xviii), in which it requested the Economic and Social Council to invite the CSW to prepare a draft declaration that would

⁴⁸ The Convention on the Political Right of Women, adopted by the general assembly on 20th December 1952, the Convention on the Nationality of Married Women, adopted by the Assembly on 29 January 1957, Convention on Consent of Marriage, Minimum Age of Marriage and Registration of Marriages adopted by the Assembly on 7 November 1962, and Recommendation on Consent of Marriage, Minimum Age of Marriage and Registration of Marriages adopted 1 November 1965.

⁴⁹ Short history of CEDAW Convention- The United Nation <<http://www.un.org/womenwatch/daw/cedaw/history.htm>> accessed 1 May 2015

⁵⁰ Ibid

combine in a single instrument international standard articulating the equal rights of men and women.⁵¹ This decision was supported throughout by women activists. Drafting of declaration, by the committee selected from within the CSW began in 1965, with the Declaration on Elimination of Discrimination against women ultimately being adopted by the General Assembly on 7 November 1967. This Declaration amounted only to a statement of moral and political intent, without the contractual force of a treaty. Nevertheless, they encounter series of difficulties in draft of the treaty due some provisions that seems to contradict certain cultural and religious believes⁵²

In 1974, at its twenty-fifth session and in the light of the report of this working group, the commission decided, in principle, to prepare a single, comprehensive and internationally binding instrument to eliminate discrimination against women. This instrument was to be prepared without prejudice to any future recommendations that might be made by the UN or its specialized agencies with respect to the preparation of legal instruments to eliminate discrimination in specific fields.⁵³ The text of the CEDAW was prepared by the working groups within the commission during 1976 and extensive deliberations by a working group of the third Committee of the General-Assembly from 1977 to 1979.⁵⁴ CEDAW was adopted by the General Assembly in 1979 by votes of 130 to none, with 10 abstentions.⁵⁵ In resolution 34/180, in which the General Assembly adopted the convention, the Assembly expressed the hope that the convention would come into force at an early date and requested the Secretary-General to

⁵¹ Ibid

⁵² Article 7 concerning equality in marriage and the family and Article 10 relating to employment

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

present the text of the convention to the mid-decade world conference of the UN Decade for women. On 17 July 1980, 64 States signed the Convention two states submitted their instruments of ratification.⁵⁶ On 3 September 1981, 30 days after the twentieth member had ratified it, the convention entered force-faster than any previous human rights convention had done - thus bringing to a climax UN effort to codify comprehensively international legal standards for women.⁵⁷

3.1. DISCUSSION OF POLITICAL RIGHT OF WOMEN UNDER CEDAW

The convention's content, more than simply defining women's human rights, but stresses two concepts; equality between the sexes as a basic objective; and the necessity of elimination of discrimination as a goal.⁵⁸ Hence, it provides a socio-legal tool within which a single and unified framework is intended to help women fit into the political modernization processes in all part of the world. According to Ali, CEDAW has been hailed as a breakthrough in international human right laws and use as a tool for women's empowerment.⁵⁹ Thus, it represents the culmination of efforts to develop the international legal norm of non-discrimination based on sex. Hellum believes that in adopting CEDAW the UN sought to lay the foundation for an international women's law of human rights that transcends the borders of national, religion and customary law.⁶⁰

⁵⁶ Ibid`

⁵⁷ Ibid

⁵⁸ A brief overview –UN Habitat <http://ww2.unhabitat.org/programmes/genderpolicies/cedaw.asp> accessed 1 May 2015.

⁵⁹ Shaheen Sardar, 'Conceptualizing Islamic law, CEDAW and women's Human Rights in plural legal setting: A Comparative Analysis of CEDAW in Bangladesh, India, and Pakistan' (2006) 71 *UNIFEM South Asia Reginal Office New Delhi*

⁶⁰ Anne Hellum, *Women's Human Right and Legal Pluralism in Africa* (Tano Aschehoug Oslo, Norway with Mond Books Zimbabwe 1999)

Women human rights as set out in CEDAW are based on a predominantly western liberal feminist discourse that insists individual rights of women to the exclusion of multiplicity of her identities. Indeed, one will notice the presence of conflicting human rights principles such as gender equality on one hand and the freedom of religion, culture, and custom on the other.⁶¹ It will be argued that recognition of cultural and religious identity is another fundamental right to which interference will constitute violation. Religious Tolerance Declaration of 1981, in conjunction with Article 18 of UDHR and Article 18, 26 and 27 of ICCPR also create an invisible hierarchy of human rights by placing freedom of religion at the highest level than right of equality irrespective of sex or gender. Also, to avoid further conflict of laws the Muslim countries should refrain from domestication of international laws such as CEDAW even after ratification. These two provisions of CEDAW are the only provisions that in a strict sense of word that contain political rights of women. They reflect the call for equality of right and opportunity of both men and women to participate directly or indirectly in the conduct of public affairs of State. To be sure, the CEDAW Committee has taken an active role in advancing women's equality within the political sphere, it provided specific guidance on women's political rights within the scope of its General Recommendations. Nevertheless, these recommendations do not constitute law, and therefore do not amount obligations that State sought to follow, but should rather be seen as contributions made by the committee members on guiding on translating CEDAW into domestic law and practice.⁶² The committee expresses concern over exclusion of women in top ranking position cabinet and

⁶¹ Sardar (n 5) 88.

⁶² CEDAW, General Recommendation 23, political and public life (16th session, 1997) <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>> accessed 10 October 2001

administrative position, civil service, and judicial officers and holding of other public offices.⁶³ It recommends the State parties to ensure that their constitution and legislation comply with the principle of the convention, and in particular article 7 & 8 and ensure that the organization such as political parties and trade union, which may not be subject directly with obligations under the convention, do not discriminate against women and respect the principles contained in same provision.⁶⁴ The committee also recommends that measure should be identified and implemented to achieve balance between men and women holding publicly elected position, equal representation, right to vote, equal right in hold in office. It also recommends the State parties to explain the reason for, and effect of, any reservations to Article 7 & 8 and indicate where the reservation reflect the traditional, cultural, stereotyped, attitude toward women's roles in societies, as well as the steps being taken by state parties to change such attitudes. In Nations where CEDAW has not been ratified, citizens and NGO's can identify and encourage leaders and representatives, to support the convention and act for ratification.⁶⁵ Ironically, some of the top western countries like United States of America are yet to ratify the convention despite strong advocate for women's right by the feminist. Hillary Clinton in her Remark as the UN Commission of the Status of Women 23, 2010 addressed her political view. *"The evidence is irrefutable when women are free to develop their talent, all people benefit women and men, girls and boys. When women are free to vote and run for public office, government are more effective and responsible to their people."*⁶⁶

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Fareda Banda 'United Nations Working Group on Issues of Discrimination against Women in Law and Practice' (Cambridge University Press 2013) 62

⁶⁶ Clinton Hillary 'Remark at the UN Commission on status of women' US Department. <<http://www.state.gov/secretary/rm/2010/03/138330.htm/>> accessed 1 May 2015

Therefore, according to CEDAW, all opportunities and privileges to be enjoyed by men are equally demanded for women, such as equal right and participate of women in all public sectors which include; heading a state as well as all other political affair of the state.

3.2 SUMMARY OF FINDINGS

Islam views the roles of both men and women in society as equal partners who complement each other. Thus, women's participation in political activities should not be considered as competing with, or interrupting, men's role in society, but complementing it.⁶⁷ To this, scholars express divergent view regarding the political rights of women under Shariah. Maihula⁶⁸ observe that since women are restricted from performing religious obligation, they should be restricted in attending politics, since it is scientifically proven that the women while in their monthly course are subjected to hormonal changes which make them aggressive and aggression is not a quality of a good ruler. He opined that both men and women are spiritually equal in the sight of Allah, they are biologically, physically and psychologically different. He argue that the difference is more of responsibility imposed on them than inferiority.⁶⁹ On the other hand, Mernissi an Islamic feminist providing basis for the public participation of women under Islam. She opined that insistence that Muslim women should be in veil is a restriction and denial of her political as well as her social right. She further argue that men are denying women to lead only because

⁶⁷ Mek Wok, Ghalia Bouhedda and Akhtarzaitie Abdul Aziz, 'Women and Development in the Islamic Legal Principles: A Case Study of Malaysia Muslim Women in Islam' in Hassan Ahmed and Zaleda Kamaruddin (eds) *Muslim Women in the Contemporary Societies Reality and Opportunities (IIUM Press 2009)* 143.

⁶⁸Jabir Maihula 'An Islamic Approach on Women and Public' (2020) *IAR Journal of Humanities and Social Science* 1-6

⁶⁹ Rabiul Olayiwola, 'Gender and Equality in Shariah' in Mansur Sa'id and other (eds), *Contemporary Issues in Islamic Jurisprudence* (Rawal Printing Press 2009) 399.

of sentiments and no more, similarly, since women have led before in the past centuries, they could lead now, in the present century.⁷⁰

On the political rights of women such as right to vote, right to participate in shura, the eligibility to hold public office, such as president and prime minister, judges, governor, offices in charge of commanding, head or public grievance and generally in the public affairs, the Islamic scholars held divergent views⁷¹. Majority of the Islamic scholars do not support the leadership of women as head of the state. The scholars against leadership of women often rely on the following Quranic verses to support their argument “*Men are the protectors and maintenance of women because God has given the one more strength than the other, and because they support them from their means*”⁷² “*And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree above them*”⁷³ From these provisions, they argued that the first verse declared men as Qawwam (in charge) over women. They argued that in marital relationship, man is the head of the family, so how can woman who cannot become even head of the family in present of a man be a head of a state or nation. They also argued that from the provision of the second verse, though women are like men, yet men are a degree above women. Hence men are superior to women and therefore they cannot rule over them.⁷⁴ Ibn Hazm opined that except for the office of the Caliph, women are eligible to hold public office.⁷⁵ He supports his view with the following verse: “*God*

⁷⁰ Mernissi Fatima ‘The Forgotten Queens of Islam’ (1999) 453 *International Journal of the Middle East Studies*, 31

⁷¹ Abdurrahman Doi *Women in Shariah* (ABU Press 1983) 212

⁷² Quran 4:34.

⁷³ Quran 2:228

⁷⁴ Islamic view of women leadership as Head of the State

⁷⁵ Hashim Kamali *Freedom, Equality and Justice in Islam* (Ilmaih Publisher, Malaysia 1999) 85.

*commands you to hand over the status to whom they belong.*⁷⁶ Abdurrahman Doi,⁷⁷ in his work opined that the hadith of the prophet which says that: ‘Any nation that leaves its affairs in the hand of a woman would not prosper.’⁷⁸ He argues against the election of woman as a Head of State. He views that the above hadith emphasized on the word ‘prosperity’ of a nation simply because most of the responsibilities of a woman head of state will require her a lot of traveling outside in addition to directing warfare and observing the battle fields which are beyond a normal woman’s power and capability. He concludes that women are forbidden by *Shari’ah*. Although the wording of the traditions does not specifically contain a prohibition on a woman being elected as a head or leader of an Islamic state, jurists are against such appointment. Scholars that support the leadership of women criticize this view and considered the above tradition cited by Doi to be an isolated tradition (*ahad*).⁷⁹ They express doubts to the authenticity of the tradition on the grounds, that the tradition was reported by Abu bakratah during the ‘battle of camel’ in which Aishah the widow of prophet Muhammad (PBUH) led and command an army against Ali Ibn AbiTalib , the fourth caliph.⁸⁰ Similarly, Abu Bakrata was once found guilty of false evidence and was punished by Umar the second caliph as such the tradition he narrated cannot be relied on.⁸¹ Additionally, Usmani⁸² argued that despite its report on the said occasion many of the illustrious companions

Quran 4:58

⁷⁶ Quran 4:58

⁷⁷ Doi (n 72) 212.

⁷⁸Reported by al Bukhari (Muhsin Khan translation) at Vol.IX hadith no. 219

⁷⁹ Hadith not fulfilling all the conditions of necessary to be deemed mutawatir (successive) or it is narrated by only one narrator.

⁸⁰ Choudhury Sharif *Women’s Right in Islam* (Adam Publishers and distributors Delhi:1997)

⁸¹ Ibid

⁸² Usmani. U.A fiqhu al Quran vol III pp 286-287 cited in Mashood Baderin (2003). 161.

of the prophet still participate in the battle under the leadership of Aisha without anyone disclaiming her leadership. He concluded that the tradition did not connote a prohibition of the appointment of a woman as Head of State, but it is generally an advice indicating that it may not be advisable to appoint a woman as Head of state.

On appointment of women as judges, jurists differ. The majority of *Islamic* scholars believe that females are not fit and proper to be appointed as *Qāḍi* of the *Shari'ah* Court. The proponents of this view are Maliki, Shafi'i, and Hanbali scholars. They based their opinion on the *Qur'an* verse discussed earlier that men are protectors of women.⁸³ and the hadith of Abu bakarta. Abu Hanifa, the founder of the Hanafi school of jurisprudence says that a woman can be appointed to a judicial position where she is supported to adjudicate the civil and commercial aspects but he too says that it will not be proper to appoint her in a position where she will adjudicate in Hadd punishment and equitable retaliation and cases involving Nikah.⁸⁴ It is also the view of the Hanafi School that a female can be appointed as Mufti and other top positions in the *Shari'ah* Court, like Registrar, being at the helm of affairs in the adjudication using *Sulh* (settlement of disputes).⁸⁵ The appointment of a female as *Qāḍi* is allowed based on the interpretation of one of the verses of the *Qur'an* which says: "and call in to witness from among your men get two witnesses; but if there are not two men, then one man and two women from among those whom you choose to be witnesses..."⁸⁶ Similarly, 'Umar Ibn al-Khattab (RA) appointed a woman

⁸³ Q 4:34

⁸⁴ Abolaji Taofeeq 'Appointment of Female as a Qadi (Judge) of Shari'ah Court of Appeal in Nigeria:

A Gender Battle or Religious Stance' (2023) *Jurnal Syariah; Shariah Journal*, Jil. 31, Bil. 1 102-121 Print ISSN: 0128-6730e-ISSN: 0127-1237

⁸⁵ Taofeeq (n 85)

⁸⁶ Q 2 v 282

named Umm al-Shifa' bint 'Abd Allah al-Hasbah as the overseer of the market. Hence, it is permissible for women to hold positions in the judiciary because both roles fall under general authority, and if it were not permissible, 'Umar Ibn al-Khattab (RA) would not have allowed a woman to oversee the market.⁸⁷ Hence base on analogy and reasons, scholars like Ibn Hazim, Ibn Jarir al-Tarabari opined that a woman could be appointed in a judicial position to adjudicate in all affairs. Similarly, a Federal *Shari'ah* Court of Pakistan in 1982 also based its decision on this view. A petition was brought before the Court challenging the appointment of women judges as being violative of *Islamic* law. In his judgement, the CJ of the Court, Afrab Husain CJ, extensively examined the different opinions of *Islamic* jurists on the tradition. The learned judge cited a list of classical and contemporary *Islamic* legal works (e.g *Durr al Muhtar*, *Sharh al-waqaya*, *Fath al Bari* e.t.c) to establish that Imam ibn Jarir al Tahari, for instance supported the appointment of a women both as judge and as a Head of State and a similar view was attributed to Imam Malik, which was favored by the Maliki jurist as well. The appeal was dismissed.⁸⁸

From the above argument averred by both sides, which are based on the *Qur'an* and *hadith*, there is nowhere in the holy *Qur'an* where God disapproves of appointment of woman as a Head of State. Also, the tradition of the prophet that was reported by Abu Bakarta is unreliable. Therefore, the choice is open to *Muslim* Community to choose on the prevailing circumstance as to who should rule over them. The only type of government favored by *Islam* is one by consultation, *Muslim* should consult among themselves as to who deserve the seat the most. Under normal circumstance, the woman should not rule. It is the duty of the man, because

⁸⁷ Taofeeq (n 85)

⁸⁸ Baderin ()161

of the *Qur'anic* verse; “*Men are protectors of women*”, except if she deserves the seat the most, then she should not be prevented from ruling. A woman can equally participate in voting, law making and other public offices. A woman should guide her chastity when appearing in the public.

3.3 CONCLUSION

1. The contemporary debate of gender equality in the Muslim world is a singular reason of international concerns for women's rights as well the defensive response of religious groups. The women activist and religious groups appear to be an opposite directional thought. While the religious groups insist on women rights within dictate of *Shari'ah*, the women activist on the other hand call for re-interpretation of *Shari'ah* provisions especially regarding women rights considering CEDAW and other human right instrument to accommodate the changing societal needs of the 21st century.
2. Despite *Shari'ah* emphasis on Justice, fairness, equity, respect for women and complementary role of men and women, injustice is being meted out to woman folk in *Muslim* societies. Some *Muslim* societies deny women the rights they were recognized by *Islam*. This led to the frequent aired view of the opponent of *Shari'ah*, which form an important niche in this arena of controversy that *Shari'ah* is biased against women, it violates their rights and it is unjust to them. Even though the *Qur'an* declares both men and women sharing the same human nature, vests both with the same inherent dignity, and recognizes both jointly as the trustees of God on Earth. The factors among others that lead to these injustices include lack of educational opportunity to the women and masses at large to the teachings of *Islam*, poverty and at times lack of proper implementation of *Shari'ah*.

3. Another finding is that even though signatory States to CEDAW are required to incorporate all principles of equality of men and women in their legal system. Effort is afoot in these countries to abide by the idea of gender equality in every walk of life this include the Muslim countries to meet the women participation in politics as target set under the UN millennium Development Goal (MDGs).
4. Also, with respect to reservation by *Muslims* countries on more specifically article 2, 5, 7 and 16, many Western countries have entered objections, whereas the CEDAW monitoring committee also suggests for their withdrawal claiming equality without reservations. Though the intentional laws, charters or conventions are flexibly designed to adjust to indigenous laws and norms of various countries, yet the major theme is to be implemented in the body of laws once a State signs and ratifies it. It therefore, becomes essential to comprehend that the western concept of gender equality in its philosophy, forms and content is at times inconsistent or rather in conflict with the *Islamic* values. Hence, Islamic teaches shall prevail in such areas of conflict.

3.4 RECOMMENDATIONS

In view of the observations made, it is hereby recommended as follows:

1. Opening of meaningful dialogues between religious scholars and women activist. That aims at understanding their difference to respect each other's ideas rather than trying to impose one group's idea or culture into the other group. *Muslims* should be granted the right in the international world to keep their own *Islamic* identity. The *Muslims* sisters that engage in feminist movement need to be caution otherwise, they are heading to destruction.
2. The *Muslim* countries like Nigeria that ratified CEDAW, although not generally bound by its provisions should refrain from

domesticating it into our national laws to defeat the object purpose of the convention for complete equality between men and women in all walk of life.

3. Establishing effective mechanism for communicating women interest, concern and will also play a vital role in designing a strategy for giving women rights as prescribed by *Shari'ah*. Also, enlightenment programs are necessary. This is because owing to their illiteracy or ignorance, some women are not aware of their rights as provided by *Shari'ah*. Even the educated once that have some knowledge of *Shari'ah* do not know the content and access the *Shari'ah* law.
4. Preservation and continues protection of women's rights should be regularly monitored and methodically analyzed for betterment. Women's respect should be emphasized and reflected to government's initiatives and advocated through an effective media policy.
5. Muslim societies need to be addressed by the Muslim Scholars, effect of injustice on women so as not leave room for mischief makers to exploit the situation.
6. Only trained and qualified experts are entitled to interpret the *Shari'ah* sources and apply them to contemporary emerging issues.
7. Muslim women should be given more opportunities in political participation especially in respect of women affairs and their representation in the larger society. But while they appear in public, they do that with modesty, self-respect and protect their chastity.