

***HIJAB* AND THE NIGERIAN MUSLIM WOMAN: AN APPRAISAL OF THE
CONSTITUTIONAL PERSPECTIVE OF FREEDOM OF RELIGION**

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SPS/11/PLW/0001

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APRIL, 2019

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SPS/11/PLW/0001

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APRIL, 2019

APPROVAL PAGE

This thesis titled “*Hijab* and the Nigerian Muslim Woman: An Appraisal of the Constitutional Perspective of Freedom of Religion” has been examined and approved by Board of Examiners for the award of the Degree of Doctor of Philosophy (Ph.D) in Law.

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Date

DECLARATION

I hereby declare that this thesis has been a product of my own research under the supervision of my supervisor and to the very best of my knowledge it has never been presented or produced in whole or part elsewhere for the award of higher degree. All references and sources are accordingly referred to, and adequately acknowledged.

DEDICATION

This research work is humbly dedicated to my late parents: Alhaji Yerima Iyawa AbdulSalam and Hajia Hadiza Jibril, whose affection, prayers, ethics, morals, patience and kindness have been the most invaluable treasure of my life. I also dedicate this work to my caring and loving husband, Prof. Abubakar Mustapha nni,OFR,FISN, whose unwavering support and companionship encourage me day and night. I would also like to dedicate this work to Asim Abubakar Mustapha, whose Autistic condition is a source of inspiration.

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- Convention on Freedom of Association, Information, Employment, Social Progress and Development.
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ABSTRACT

The wearing of *Hijab* by the Muslim woman has contributed to debates in the constitutional rights issue of freedom of religion. This study noted that the controversy over the right of the Nigerian Muslim woman to wear *Hijabis* greatly attaining the status of a legal issue and could no longer be ignored. The study noted a number of unresolved issues between the use of *Hijab* and the principle of secularism and the freedom of religion under the Nigerian constitution. Despite the clear provision of the constitution providing for the freedom to choose, observe and manifest religion of one's choice, *Hijab* being one of the legal requirement and fundamental practice of the religion of Islam, debates, even courts decision are abound on whether a Nigerian Muslim woman has the right to wear *Hijab* in certain circumstances. The critical importance of situating *Hijab* under the 1999 Nigerian constitution and to establish an institutionalized protection of the constitutional right of a Nigerian Muslim woman to use the *Hijab* motivated this study. It explored and analyzed how the constitutional provisions on religious freedom as well as other provisions would serve to strengthen Muslim woman's right to use *Hijab*. In so doing, the study adopted both doctrinal and comparative methods, based upon deductive, critical and descriptive presentations and analysis. Moreover, in order to get comprehensive perspective on the matter, the study examined the myriad problems and challenges that confront the use of *Hijab* in the contemporary democratic era. Particularly, the study identified that secularism, feminism and the media have opened up new vistas to the study of *Hijab* and introduced new challenges to the legality of *Hijab*. The study also found that some of the measures adopted by some government institutions and establishments violate and hinder the Muslim woman's freedom of religion, self expression, identity and freedom to work and study. It further argued that, Nigeria now lacks any features of secularism or a semblance of a secular nature, thus, it is high time to be precise that Nigeria is unsecular. The aim of the study is to develop a holistic understanding of the basis and the obligatory nature of the *Hijab* in the Shariah and to critically situate the discourse of *Hijab* under the 1999 constitution. The study argues that constitutionally speaking the Nigerian Muslim woman is privileged with ample rights and freedom to enjoy wearing the *Hijab* wherever she resides in Nigeria. There is also an identified need that the application of freedom of religion should not be restricted only to the secular perspective or the perspective of a person whose religion allows worship and practice of the religion once a week or a few times a year. Rather it should cover the perspective of those whose every single aspect of their life is governed by the dictate of their religion. A restricted application of freedom of religion may amount to coercion to practice another religion and hence denial of freedom. Based on the research findings, it can be concluded that Section 38 of the constitution guarantees not only freedom of thought, conscience and religion, but also practical manifestation of such in private or public, individual or collective. There is also a clear and unambiguous link with the freedoms of expression and non-discrimination on the basis of religion among others. Therefore, recommendations are made for effective implementation of section 38 of the constitution. Neither Law nor policy should be a yardstick for the denial of such right in public or private space.

Keywords: Hijab, Religion, Freedom, Secularism, Feminism, Media

CHAPTER ONE

GENERAL INTRODUCTION

1.0 Background of the Study

The *Hijab* of a Muslim woman has long been a topic of interest and the subject of the hour, with a global drive in heated debates, advocacy and adjudication. Playing a part in secularist, feminist, media and legal discourse.¹ Even in Nigeria, the debate and court decisions centered upon the acceptability of *Hijab* as form of religious manifestation, practice and observance.²

In the annals of human history, even prior to the advent of Islam, the idea of covering by women, its roots, and manifestation can be found within the ideology of many cultures, societies and religions including those in the west, though in varying degrees.³ For instance, in both the ancient empires of Greece and Rome there was evidence that points to various degrees of head covering worn by females⁴. Nuns throughout Christian history have been recognizable by their distinctive head covering many of which resemble Muslim women's *Hijab*.⁵ When Islam came it sanctions the use of *Hijab* as modest dress for female Muslim.⁶ The requirement for *Hijab* has been prescribed in the Holy Qur'an in chapters 24:31 and 33:59.⁷ The requirement for women to cover is also noted in the

¹ Vakulenko, A. "Islamic Headscarves" and the European convention on Human Rights: An Intersectional Perspective: Social and Legal Studies. At: <http://journal.sagepub.com> Retrieved April, 2018

² Kawu, S.A. 'Religious Rights in a Pluralistics World. The Nigerian Experience, Chief Judge Kwara State Nigeria. At the Symposium held at Brigham Young University Provo, UTAH. October 1-4, 2016. At <http://www.icirs.org>contnt?events>. Retrieved March 2017, P7

³ Women in World History Curriculum: Essays: "Historical Perspectives on Islam Dress" (1996-2013) at women in world history.com Visited Oct. 2014

⁴ Starcey, A. (2014) 'Hijab in the Bible and Torah (Part 1 of 2): Hijab in Christian Denominations. Available at islamreligion.com.pdf. visited Oct, 2014.

⁵ See Corinthians 11:5 (New International Version for details on the Biblical Provision on women's covering)

⁶ Headscarf, Veil, Jilbab, etc are also terms being used in the same context. It should not be confused with the *burqa* or *Niqab* which are forms of dress that covers a women's face.

⁷ Holy Qur'an chapter 24 An-Nur Verse 31 and Chapter 33 Al-Ahzab Verse 59

Prophetic ahadith and throughout Islamic literature and is a universally held view among Islamic scholars.⁸

However, the covering by women that attracted attention from most parts of the world for centuries and stand at the fore front of the current human rights discourse is the *Hijab* of the Muslim woman.⁹ *Hijab* was introduced in to western discourse in the early 19th century and was given teeth” during the colonial era. During the colonial period, *Hijab* was depicted as a sign of backwardness and barbarism of Muslim societies. The colonialists and missionarists went to great length to uncover the Muslim women.¹⁰ The *Hijab* has ever since become a central focus that it was oppressive, backward, degrading and an obstacle to progress.¹¹ By the second half of the nineteenth century reformers, secularists, orientalist, feminists and nationalists began to denounce the idea of covering by Muslim women. They saw the *Hijab* as a symbol of the exclusion of women from public life.¹² For instance, Qasim Amin a lawyer and Judge in Egypt (1865-1908) was among dominant groups who strongly opposed the use of *Hijab* and developed the Muslim feminist dimension. His work became an inspiration to later generation of Muslim feminists like Huda Sharawy¹³ . In 1924, Ataturk banned the *Hijab* in Turkey. In

⁸ Ad-Darsh, S.M. (2003) *Hijab or Niqab: An Islamic Critique of the Face Veil*, Kuala Lumpur Islamic Book Trust Pp39-60

⁹ Bullock, K. (2003) *Rethinking Muslim Women and the Veil: Challenging Historical and Modern Steriotypes*, IIIT, London Office Pp1-2

¹⁰ Ibid

¹¹ Keegan, K “Voices Behind the veil: using Anthropology, Feminism, and History to Account for why the French Banned Muslims girls from using head scarves” Franklin pierce university Available at [http /www franklin.pierce.edu/academics/ugrad/frograme.pdf](http://www.franklin.pierce.edu/academics/ugrad/frograme.pdf) visited November, 14, 2014,

¹² Esposito, J.L. (1992) *The Islamic Threat Myth or Reality*. New York, Oxford University Press. Pp5,8,4 and 122.

¹³ Abdul-Rauf, M. (1977) *The Islamic view of Women and the Family*, Robert Speller & Sons, New York P.143.

1935, the Shah Reza did the same in Iran. In 1962, Algerian women openly rejected the *Hijab*.¹⁴

However, in the 1970s a new covering movement emerged that appropriate the *Hijab* as sign of authentic Islamic Muslim women's dress, a positive kind of gender equality and a legitimate exercise of one's freedom of religion a treasured right in modern democratic societies.¹⁵ Later young and educated Muslim women started to dress more modesty with a manifestation of the desire to return to Islamic religious precepts, mores and values. They evoke anger from feminists for betraying the struggle for women's rights and succumbing to patriarchal religion and old fashion regression.¹⁶ Many feminists saw the return of the *Hijab* as part of a strategy to replace civil law with Shariah and as part of a repudiation of modern democratic values.¹⁷ An attempt was also made by the so-called Islamic feminists to cast doubt on the legality and the requirement that the wearing of the *Hijab* was an act of religious worship mandated by the Quran and Hadith. There were ambiguous suggestions that the *Hijab* was a requirement only to the wives of the Holy Prophet (SAW)..¹⁸

¹⁴ Teitelbaun, V. "The European Veil Debate" At Israilcfr.com visited 21st September, 2014

¹⁵ Woldesmait, M. "Unfolding modern Hijab: from the Colonial Veil to Pious Fashion" Duke University Durkhrm, North Carolina. April 15, 2013 at <http://dukespace/libduke.eduidspace/bitstream/handle/10161/7554/Mihret%20woldesemait%20unfolding%20the%20modern%20Hijabpdd?Sequencel.Misler>. visited November 14, 2014. See also Vakulenko, A. (2012) Islamic Veiling in Legal discourse, Routledge.

¹⁶ Cerone, P. 'Religious Freedom; Is it a Human Right to wear a Hjab or Headscarf as a Muslim Women' International Human Rights. Available at academic.edu/53.Amazonations.com, visited September, 8 2014

¹⁷ Vojdik, V.K. 'Politics of the Headscarf in Turkey: Masculinities, Feminism, and The Construction of Collective Identities' Harvard Journal of Law and Gender Vol. 33 2010 P.679 at: www.law.harvard.edu:lgvol332. Retrieved March, 2017

¹⁸ Bullock, K. (Supra) Pp130-136

The media as well try to portray the dangers of the *Hijab* and elevated the tensions and fears of the feminists and the secularists.¹⁹ Hence, the *Hijab* has become the symbol of Muslim women's identity which both feminists and secularists object. Though a Christian Nun wearing nun regalia is viewed as a symbol of sincere religious piety!²⁰

The historic and persistent efforts however, to uncover the Muslim woman and deny her the right to freedom of religion through persuasion or by law gained urgency after September 11, 2001. The *Hijab* has since become a profound and central focus not only for feminist discourse, but the entire global legal discourse. The secularists accordingly have continued to portray the *Hijab* as the embodiment of fanatical and political Islam committed to the establishment of an Islamic State and the elimination of secularism.²¹

They viewed the Muslim women in *Hijab* as Islamic political pawns.²²

refusing to engage on this topic (*Hijab*) as an attempt to avoid its becoming a bigger issue might be a cleaver way to take the wind out of the sails of the fundamentalists and traditionalists. But equally, it might strengthen them and harm the modernists forces. Similarly, endorsing the *Hijab* is aligning with the extreme end of the spectrum, with the fundamentalists and the conservative traditionalists against the reformists, the modernists and the secularists.²³

At the European Level, there was a call for a Europe-wide ban.²⁴ Several Laws have been introduced in parts of Europe to make it illegal to wear *Hijab* on the basis of the

¹⁹ Perkins, T 'unveiling Muslim women: The Constitutionality of Hijab Restrictions In Turkey, Tunisia and Kosovo' Boston University International Law Journal vol.30:529 (2012) Available at.

²⁰ Hashmi, H. "too much to Bare? A comparative Analysis of the Head scarf in France Turkey, and the United States" lou.md.L.J Race Relig. Gender and class Ho9 (2010). Available at: <http://digitalcommons.lawumaryland.edu/rrgc/vol9/iss2/8>. Retrieved September, 2014

²¹ Vojdik, V.K. (Supra) P.679

²² Ibid P.665

²³ Benard, C, (2003) Civil Democratic Islam: Partners, Resources and Strategies, Santa Monica, RAND Nc RD, P.22

²⁴ XIX (ARTICLE 19 (Supra).

argument that the *Hijab* infringe constitutional principle, such as secularism.²⁵ Proselytisms, gender inequality, intolerance are also among the key elements for banning *Hijab*.²⁶ A Muslim woman wearing *Hijab* can even be perceived as dangerous or as a supporter of terrorism.²⁷ The Western governments, especially the US was advised to refrain from making any reference to the right of women to wear the *Hijabas* being a simple democratic right. That it is more than this and the hidden message behind *Hijabis* very dangerous.²⁸ Today, in many other countries *Hijab* is increasingly being rejected. European regulations on *Hijab* are a noticeable trend in France, Switzerland, Italy, Belgium, Spain, Denmark, Germany, Canada (Quebec) and so on.²⁹ While predominate Muslim countries that have ban the use of *Hijab* are Turkey, Tunisia and Kosovo.³⁰

Clearly, the issue of *Hijabis* is not merely an international matter, this growing trend has now reached Nigeria. The *Hijab* has become a controversial issue which has led to some unrest, tension and litigation in the country.³¹ Hundreds of female Muslim students, professionals and teachers have been encountering confrontations over the *Hijab* at one

²⁵ Gozdecka, D and Jackson, A.R Caught Between Legal pluralisms: Women who wear Islamic Dress as the Religions other' in European Right Discourse' available At

²⁶ See the Cases of Dahlab V Switzerland, Application no 42393198, 15 February 2001 Leyla Sahih V Turkey, ECtHR Judgment of 29 June 2004, Application No. 44774198, November 2005, available at www.echrcoe.int/echr Dogru V .France, Application No. 27058105, 4 December 2008, available at <http://cmiskp.echr.coe.int/rkpl97/search.asp?skin=hudoc-en>. 2014 the applicants in the cases alleged violation of Articles 9 (right to religion expression), 10 (right to free expression) and 14 (right to non discrimination of the ECHR and Article 2 of protocol (right to education).

²⁷ Cerone, P (Supra).

²⁸ Benard, C. (Supra) P.22

²⁹ XIX ARTICLE 19 (Supra).

³⁰ Perkins, T 'unveiling Muslim women: The constitutionality of Hijab Restrictions In Turkey, Tunisia and Kosovo' Boston University international Law journal vol.30:529 (2012) Available at.

³¹ Kawu, S.D. (Supra)

time or another.³² Particularly, at some Universities, Polytechnics. Nigerian law Schools, NYSC Camps, colleges of education and some establishments. There are several cases of Muslim female lawyers and students who have been ordered to remove their *Hijab*, especially during Law dinner or call to bar.³³ Some students have infact been barred from attending government owned institutions because of the *Hijab*.³⁴ Some schools have made regulations indicating the dress code acceptable to them.³⁵ Students have however challenged the legality of these codes in court. The following recent cases demonstrate the ongoing legal debate surrounding the use of *Hijabin* Nigeria. For instance the unreported case of Bashirat Saliu; Aminat Murtala, Shakirat Olorugbegbe Vs The Provost Kwara State College of Education, Ilorin & 2 Ors. On the 8th May 2006, at the Kwara High Court of Justice, Ilorin, where it was held that the ban on the use of *Hijab* constituted an infringement of their right under section 38 of the constitution of the Federal Republic of Nigeria. An appeal against that decision was dismissed by the Court of Appeal in the unreported Appeal No. CA/IL/2006 on 18th day of June 2009.³⁶ In Miss Asiyat Abdulkareem (minor) & 20 Ors. Vs Lagos State Government & 3 Ors S/N” ID/ISIM/13. The trial court on 17th October, 2014, dismissed the suit on the ground that the ban did not violate sections 38 and 42 of the Nigerian constitution and that since

³² Uthman, I.B (2008) Muslim women of Nigeria and the feminist Discourse of Shaykh Al-bani Khuala Lumpur, ilium press, p118

³³ Badamasiuy, J. ‘Dress code in the Legal profession: issues and challenges for female Muslim lawyers ri Niger Kano Bar Journal; Vol 1, No 1, July, 2013, PP188-210. See also Abdulraheem, N.M the Hijab, Barrister’s Dress code and Religious freedom in the legal profession in Nigeria.

³⁴ Oba, A.A ‘the Hijab in Educational institutions and Human Rights. Perspective from Nigeria and Beyond identity, culture and politics’ an Afro-Asian Dialogue. Vol 10, November 1st July 2009. Pp 51-74 22 (2006)

³⁵ Fayokun, K. ‘Limits to the Camous Dress Codes’ in Journal of International and Comparative Law, Vol. Nos 1. 2003, Pp15-30 as cited in Abegunde, B. Gender Inequality: Nigerian and International Perspectives’ British Journal of Arts and Social Sciences Vol. 17 No1 (2014) P172. Available at:

³⁶ Kawu, S.D. (Supra) Pp7-8

section 10 of the same constitution made Nigeria a secular state. However,, the Lagos division of the Court of Appeal in an unanimous decision reversed the decision of the trial court and held that the ban on the use of *Hijab* by the appellant was discriminatory against Muslim pupils in the state.³⁷ Similarly, in the case of *Sheik Salaudeen Ade Olayiwola & 3 Ors Vs. The Government of Osun State & 8 Ors*, the applicants seek the court to declare the ban on the use of *Hijab* by the respondents to be discriminatory against Muslim female students and inconsistent with the provision of section 38 of the constitution.³⁸

Generally, freedom of religion has been one of the hottest topics of discussion on fundamental rights under contemporary constitutional law and Human Rights in International law.³⁹ Freedom of religion or belief is a fundamental right of every human being. It is a universal Human Right that applies to all persons equally everywhere, regardless of who they are, where they live, their age, gender, race or ethnicity and what they believe or do not believe in. Freedom of religion or belief is a wider ranging bundle of rights covering a broad spectrum of distinct yet interconnected issues. The right to freedom of religion or belief encompasses freedom of conscience and the commitment to religion or belief in all matters. The right to freedom of religion or belief is intrinsically and inextricably intertwined with other fundamental rights, including the right to freedom of expression and the universal principles of non-discrimination and equality for all.⁴⁰

³⁷ Ibid PP10-11

³⁸ Ibid

³⁹ Evans, C. (Supra)

⁴⁰ The Universal Declaration of Human Rights (1948) Article 18. In addition to UDHR, right to freedom of religion is also firmly recognized under regional and continental treaties. See African charter on Human and Peoples Rights (1981), Article 8, American Convention on Human Right (1969) Article 12, Arab Charter on Human Right (1944) Article 26 and 77 and European Convention on Human Right (1950) Article 9. There is also the global set forth Unified Freedom for Women and the Convention on the Elimination of All Forms of Discrimination Against Women

In Nigeria, Freedom of Religion has been guaranteed as a fundamental right under section 38 of the 1999 federal constitution, where by a citizen can enjoy the right to profess and practice his/her religion and also to propagate it within certain limits. The section is essentially a copy of Article 18 of the Universal Declaration of Human Rights. Similarly, the existence of Islam has long been recognized by the constitution of Nigeria. However, the most notable issue is the wearing of *Hijab* and the extent to which such could be practiced is still debatable.

The Nigerian Constitution does not embody separation of religion and State. It permits the state to participate in religious affairs and conduct activities associated with religious practices.⁴¹ The term secularism did not enter the Nigerian Constitution and at the same time it was a contested idea when the constitution was framed, provoking acrimonious debate in the discussion.⁴² However, one of the constitutional justifications being put forward against the use of *Hijab* by a Nigerian Muslim woman is to the effect that it impringes upon the provision of section 10, which reads; ‘the government of the Federation or of the state shall not adopt any religion as state religion’.⁴³ It is this section that gives some Judges and other proponents of secularism, the constitutional basis to make argument in favour of the secular nature of our nation. To give an example, Chris contended that by the purport and import of section 10, it means Nigeria is a secular state. He further argues that, we live in a country that should never, if it hopes to exist as a country permit any religion to enter into its body politics, economic activity, social fabric

(CEDAW) and the International Covenant on Civil and Political Right (ICCPR) among others, that emphasized on the rights of women in particular and freedom of religion and non-discrimination.

⁴¹ Kawu, S.D. (Supra) P.4

⁴² Yadudu, A.H. ‘The Separation of Church and State’, The Nigeria’s Constitutional Contrivance’ Lawyers Bi-Annual Journal of the Nigerian and Comparative Law, Vol. 1 No. 2 October, 1994. P23.

⁴³ The 1999 Constitution of the Federal Republic of Nigeria.

and most importantly but most delicately a disturbance of the educational equilibrium of the youths.⁴⁴

From the forgoing discussions, this research reveals that the discourse of *Hijab* revolve around many issues with intersecting perspectives and controversies among scholars that is still dragging researchers in the field. Even in Nigeria, researchers begin to turn their attention to the discourse of *Hijab*. The followings are some of the major issues involved:

- i. Controversy rages concerning the position and basis of *Hijab* under the Islamic law and whether it is obligatory upon the Muslim woman.
- ii. Controversy also rages over the legality of the use of *Hijab* as part of her fundamental human rights and religious freedom.
- iii. Discussion also arises concerning the compatibility of *Hijab* with gender equality and principles of secularism as profounded by the Euro/Christian culture.

In the light of these controversies the research attempt to examine three main perspectives. These perspectives are:

- i. The Islamic law perspective
- ii. Secularists perspective and
- iii. Feminists perspective

Both secularists and feminists seem to place an argument that the use of *Hijab* cannot be part of the exercise of freedom of religion of a Muslim woman because the wearing of *Hijab* is contrary to the values of western democratic societies such as principles of secularism and gender equality. They have both developed a number of theories to

⁴⁴ Chris, W. 'Judicial Idiosyncrasies and the Place of Religion in Judicial Law Makings British Journal of Advance Academic Research Vol. 5 No. 1 (2016) P.23 available t:

address the question of *Hijab*. Specifically, feminist tried to explain the *Hijab* of a Muslim woman within a theoretical context including hermeneutics approach. Meanwhile proponents of Islamic Law perspective on *Hijab* argued that, the wearing of *Hijab* is a principle sanctioned by the laws of Shariah exercisable as part of freedom of religion under the constitution.

However, it must be noted from the on set that the discourse of *Hijab* not only fits into secularists, feminists or religious discourse but also the discourse of History. It has undergone various phases and that still affects the present discourse of *Hijab*. Perhaps, then these perspectives needs to be more carefully characterized in order to create adequate familiarity of the issues and challenges involved thereof. Without examining the roots of the problem no adequate familiarity of the complexities of the issue can be achieved and for proper analysis and conclusions.

The research therefore, proposes to tackle the following issues:

Firstly, in order to situate the discourse of *Hijab* under the 1999 Nigerian Constitution as part of religious freedom, it has to be established that it is a basic requirement under the Islamic Law to wear the *Hijab*: The focus, therefore is on the legal basis of *Hijab* under the Islamic law by concentrating our analytical tools upon the divine command..

Secondly, rather than provide history of *Hijab* under the Islamic law, the study interrogates the complex history of *Hijab* through which the divine meaning and intent of *Hijab* was corrupted leading to the decline of the use of *Hijab* and it abolition in the past centuries. And thus, how these discursive controversies affect the fundamental human rights and religious freedom of Nigerian Muslim women in *Hijab* under the 1999

constitution as part of religious freedom. Finally, there is then the need to analyze the 1999 constitution of the Federal Republic of Nigeria on the right of religious freedom in order to situate the right of a Muslim woman to wear the *Hijab*.

1.1 Statement of Problem

Despite International and National Laws, Policies, Instruments and Resolutions on fundamental human rights and religious freedom, obligations of non-discrimination and the governing religious doctrine which mandates the wearing of *Hijab* in Islam, the use of *Hijab* has become controversial and target of litigation nationally and internationally. In many countries *Hijab* is increasingly being rejected. The debates and arguments centered on the alleged impingement of secularism, equality of persons or gender equality and security of a nation. Even in Nigeria the wearing of *Hijab* has contributed to debates in the constitutional rights issues of religious freedom. Some states like Lagos have issued regulations and restrictions banning the *Hijab* which has led to some unrest, tension and litigations in the country. Some students have in fact been barred from attending public institutions and educational functions because of the *Hijab*. Therefore, Nigerian Muslim Woman in *Hijab* continue to face challenges and discrimination due to the use of the *Hijab*. However, the wearing of the *Hijab* is a legal order mandated upon the Muslim woman under the Islamic law and refusal to wear the *Hijab* is a violation of a legal order under the Islamic law. As such, if a ban or restriction is placed on the use of the *Hijab*, the Nigerian Muslim woman in *Hijab* would be caught in between two intersecting legal orders. Similarly, conflicts are bound to erupt if and when secularism is used as a ground for restriction of religious manifestation and practice such as the use of *Hijab* by a Muslim woman particularly in Nigeria. This is due to the fact that the term secularism did

not appear in the Nigerian constitution and at the same time it was a contested idea when the constitution was framed. The secularity of Nigeria especially with the use of the *Hijab* has been contested and the case is still pending in the Supreme Court for final adjudication. However, one of the constitutional justification being put forward against the use of *Hijab* by a Nigerian Muslim woman is to the effect that it impringes upon the provision of section 10 of the constitution. It is this section that gives some judges and other proponents of secularism the constitutional basis to make argument in favour of the secular nature of our nation. For instance, in the case of Miss Asiyat AbdulKareem V. Lagos State Government, in which the trial court claimed as a product of her reading of section 10 of the 1999 Constitution. This is deeply problematic for all Nigerian Muslims, particularly Muslim woman in *Hijab*, since it is tantamount to elevation and imposition of secular norms and values over Islamic values and norms such as the *Hijab* of a Muslim woman. Moreover, the *Hijab* issue has become increasingly controversial as Nigerian Christians offer to join as active defendants against the use of *Hijab*. Likewise, it was claimed that wearing *Hijab* may worsen security situation in the land. That most of Boko Haram suicide bombers who carry and detonate Improvised Explosive Devices (EID) or bombs wear *Hijab*. This scenario raises the need to examine whether and how the discourse of the *Hijab* can be accommodated and adequately situated under the 1999 Nigerian constitution, particularly within the parameter of section 38 of the 1999 constitution notwithstanding and without contradicting section 10 of the constitution. So that Nigerian Muslim woman in *Hijab* can enjoy religious freedom and protection wherever she resides in Nigeria.

1.2 Research Questions

1. What is *Hijab* and its basis under Islamic law?
2. What should be the Nigerian legal standard for understanding of freedom of religion and to what extent can *Hijab* be accommodated and protected under the 1999 constitution?
3. What problems and challenges are we facing in the task of situating the discourse of *Hijab* under the 1999 Nigerian constitution, does the Nigerian experience reflect the description of secularism?
4. How is the non-recognition of *Hijab* as a religious practice and observance impact on the rights of the Nigerian Muslim woman?

1.3 Aim and Objectives of the Study

This study aims to create a holistic understanding of *Hijab* under the Islamic Law with a view to situating and establishing an institutionalized protection of the religious freedom of Nigerian Muslim woman within the constitutional framework of freedom of religion under the 1999 Nigerian constitution. To achieve this aim, the study has the following objectives.

1. To examine the legal basis and position of *Hijab* upon a Muslim woman in Islamic law
2. To explore and evaluate the freedom of religion as provided by the 1999 constitution
3. To ascertain whether the discourse of *Hijab* can be accommodated under the 1999 constitution and explore further avenue for situating *Hijab* within the constitutional perspective on religious freedom, to practice and manifest one's religion.
4. To critically examine and identify issues and challenges hindering the enjoyment and protection of religious freedom of Nigerian Muslim woman in *Hijab*.

5. To examine the impact of non-recognition of *Hijab* as a religious freedom on the Nigerian Muslim woman and to proffer solutions on the protection and enjoyment of *Hijab* by the Nigerian Muslim woman.

1.4 Justification/Significance of the Study

The first generation rights recognized the right to freedom of religion in several International human rights instruments as well as in the majority of world's constitutions as an essential part of the contemporary human rights discourse. It is admitted that one of the inherent elements of personal liberty of a person is the freedom of religion. It is to enable the person to profess, practice and propagate the religion of his or her own choice without any compulsion, fear and interference of the others. In Nigeria, such rights have been recognized by section 38 of the 1999 constitution and constitute the core principle of democratic and social justice of fundamental objectives and directive principles of state policy in Nigeria.

The wearing of *Hijab* is held to be an obligation imposed by Islamic law and religion on the Muslim woman by the injunctions of the Shari'ah. As such, any restrictions or ban on wearing *Hijab* may amount to infringement or violation and discrimination of Nigeria Muslim woman's autonomy and the free choice of religion and adherence to its laws as well as ability to participate in and within the society as a patriotic citizen of her nation. As such, discrimination against Nigerian Muslim women in *Hijab* have important religious, moral, intellectual, social, economic, political and legal consequences. Hence, can affect the social status of groups and justifying the oppression of women. Therefore, there is need to examine the provision of the 1999 constitution in order to determine to what extent it can accommodate *Hijab*. The research work is pertinent as it would

provide the basis for enjoyment of *Hijab* by Nigerian Muslim woman as of right. Therefore, by researching into the subject of *Hijab* and the constitutional perspective on religious freedom, it is hoped that among other things, the result of the research would be able to determine the extent to which *Hijab* can be accommodated within the 1999 constitution. In this vein, therefore, this study hopes to serve as a reference material on the subject.

1.5 Scope and Limitation of the Study

In a democratic set up, the rights which are so basic and applicable to all human beings are known as human rights under constitutional law of nation states. The right to freedom of religion is guaranteed in several constitutional laws as one of the most important aspects of fundamental human rights. Therefore, the focus of this research is on concept of freedom of religion under the 1999 Nigerian constitution as is relate to Nigeria Muslim woman's *Hijab* and the impact of non-recognition of *Hijab* as part of fundamental right to religious freedom. As such, the study also focuses on the position of *Hijab* from the Islamic law perspective. Though, this study is limited to Nigeria, however, discussions on related issues covered by the research from other jurisdictions are discussed in order to draw influence, comparisons and lessons.

Being a critical study that seeks to cover wide areas and variety of issues, it is not within the scope of the study to design new institutional settings of religious freedom and politics that claim to be more in line with the Islamic law teachings and understanding of religion and also to be more effective in capturing the obligatory nature of *Hijab*. This is clearly a huge task. It is plainly or clearly impossible to simultaneously conduct empirical research on individual Muslim women who have suffered degradation, inhuman

treatment and discrimination because of the use of *Hijab*-indeed this is also a serious limitation to the study.

1.6 Methodology

The systematic approach to this study is basically doctrinal and comparative methods based upon deductive, critical and descriptive presentations and analysis. The conduct of research is by reading materials in the library and archives on the subject of freedom of religion as well as *Hijab*. This includes primary sources, comparative and monographic essays both contemporary and historical in order to obtain data for the study. The study also greatly included the Quranic text, Prophetic ahadith and Islamic jurisprudential opinions relevant to the area of the study. The authorities would be analyzed in order to establish the obligatory nature of *Hijab* under Islamic law and the impact of non-recognition of *Hijab* as part of religious freedom of Nigerian Muslim woman. Also secondary data on relevant topics are collected from website (Google scholar; pdf form or otherwise) journals, Human Rights Watch reports, feminist papers, news report, court decisions, conference report, legal and policy analysis could be applied, scrutinized, assessed and compare with the primary data to ensure the effective protection of the Nigerian Muslim women rights to wear *Hijab* in the purview and concept of freedom of religion under the 1999 Nigerian constitution.

1.7 Literature Review

In the course of writing this thesis, we came across a great deal of literature on freedoms of religion and research on the Muslim woman's *Hijab*. But an extensive and comprehensive study with greater emphasis to elaborate upon its relevance to wearing

Hijab by Nigerian Muslim woman as an integral part of the manifestation of the religious freedom under the 1999 constitution of Nigeria is still needed.

The following are the literature review of the relevant materials:

Islam A.M⁴⁵ investigates various concepts, stages of development and dimensions of freedom of religion from Islamic and secular perspectives. He then made a critical analysis of the modern concept of freedom of religion and then comments that it is imperfect and devoid of universal approach. In addition, he made a comparative study between Malaysia and Bangladesh with regard to the practice of freedom of religion. However, his analysis did not focus on *Hijab* nor on the constitutional experience of Nigeria.

Ahmad, N.A⁴⁶ in chapters three and four of his book, traced the nature and development of Human Rights with detailed analysis of the concept of religious freedom under international, regional and particularly the Nigerian constitutional democracy. He stressed that understanding of the concept of secularism between western and European countries differs as well as in the context of Nigeria. Therefore, he made an interesting assertion that in Nigeria, there is no explicit constitutional declaration of secularism. Infact Nasir argues that the inclusion of the term 'God' in the preamble of Nigerians constitution signifies that Nigeria is a Godly nation which thus deals with religion therefore negating the contention that religion and state are completely separate. He further emphasized that issue of the religious manifestation could also fall under the

⁴⁵ Islam, A.M (2002) Freedom of Religion In Shari'ah: A Comparative Analysis, Kuala Lumpur, AS Noordeen

⁴⁶ Ahmad, N.A (2011) Administration of Islamic criminal Law under the Nigerian constitutional Democracy, Zaria, ABU press Ltd.

protection of freedom of expression. But there is no link with the discourse of *Hijab*, thus unlike this research Nasir's main focus is the administration of Islamic Criminal Law under the Nigerian Constitution. In addition, he did not link the exercise of the freedom of religion with other fundamental human rights and how both regional and international laws can be applied for the protection of freedom of religion in Nigeria.

However, Scott, J.W.⁴⁷ uniquely encapsulated the ways in which gender has figured in the discourse of secularism. That gender is at the very heart of the secularism discourse. In these debates, secularism is identified with western practices and beliefs that are said to contrast dramatically with Islam, gender equality is offered as one of the defining characteristics of this secularism. Scott, further stated that, gender equality is portrayed in terms of the difference between uncovered and covered societies. Scott was in fact struck by the way in which contrary to the stated terms of the religious/secular opposition- Christianity was included on the secular side. The association of Christianity and democracy is a persistent feature of the contemporary discourse of secularism. Scott insists that secularism is a discourse with a history in which tensions and contradictions abound. Scott's book is perhaps one of the most latest text that seems to acknowledge the evidence that the discourse of *Hijab* is highly linked with secularist's interest and that secularism seems to be the latest ethos of Christianity. However, there is no discussion on the freedom of religion and how this could be linked to the discussion of *Hijab*/secularism.

No wonder, researchers like Vishigh, I.R. openly stated that the Shariah system of Law is not for the modern states. The secular nature of our constitution should be pursued like

⁴⁷ Scott, J.W. (2018) *Sex and Secularism*, Princeton University Press, Princeton and Oxford, New Jersey

Turkey.⁴⁸ But Sambo, B⁴⁹ saw it as a sign of ignorance of the 1999 constitution to claimedthat Nigeria is secular. Moreover, Kawu, S.D.⁵⁰ in his discussion on the *Hijab* controversy in Nigeria, submitted that the provision of section 10 of the 1999 constitution does not qualify the country as a secular state. Exactly, Amadi, S⁵¹ reiterated, section 10 of the Nigerian Constitution does not seek to erect a wall of separation between religion and politics or state, rather it attempt to hold out a fair balance between religions. This means of course that everybody is at liberty to practice a religion of his/her own choice. However these articles seems to discussed secularism and how is or not related to the constitution of Nigeria by focusing their analysis on Section 10 of the Nigerian Constitution though not exhaustively discussed. Furthermore, without giving the historical perspectives, various models of secularism nor have they givenany hint on the contemporary views of secularism.

Tabiu, M.⁵² assessed the scope of the right to freedom of religion as enshrined under the 1979 Nigerian constitution. The paper therefore asks how qualitatively Muslim enjoy freedom of religion in Nigeria? He looks at the scope of religion and argues that the Islamic conception of religion differs markedly from the western conception which has deep implications on the interpretation of the right to freedom of religion. He also captures the fundamentals of Muslim religious freedom and layouts a framework for true religious freedom and finally outlined what he considers as challenges for Muslims. But

⁴⁸ Vishigh, I.R.

⁴⁹ Sambo, B.

⁵⁰ Kawu, S.D.

⁵¹ Amadi, S. 'Religion and Secular Constitution: Human Rights and the Challenges of Shariah

⁵² Tabiu, M. 'Realization of Freedom of Religion under the Nigerian Constitution; the Challenges before Muslims Al-Mujtahid, Vol. 1 No. 1(1997/98 section) Abuja, Muslim Ummah of the NLS.

there is no adequate linkage between the freedom of religion and the wearing of the *Hijab* or the challenges Muslim women face as a result of the *Hijab*.

Cerone, P.⁵³ examines whether there is right under religious freedom for Muslim women to wear *Hijab*, and analyzes the right under the European Convention on Human Rights (ECHR) using a freedom of religion perspective and analysis. Cerone also discusses how the International Covenant on Civil and Political Right (ICCPR) has been interpreted to ban the *Hijab* in France and compare the ECHR to the ICCPR. However, Cerone limited the discourse to only European legal perspectives without reference to the Muslim countries nor adequate discourse on freedom of religion in such countries.

In a similar fashion, Ahmad, N.M.⁵⁴ also examines the issue of *Hijab* by considering the Islamic and International Human Rights Law perspectives to identify whether the wearing of *Hijab* has any human rights basis. He made concluding remarks by affirming the profound significance that lies behind the controversial *Hijab* ban thus emphasizing on the essentiality of addressing the issue from multiple perspectives as the way forward. Yes, he pointed out that *Hijab* could be discussed in multiple perspective yet, failed to discuss and analyze the multiple perspective.

Hashmi, H.⁵⁵ briefly contextualizes the issue of *Hijab* and how it makes the wearer a subject of violent attacks and the target of legislation. He examined the religious text

⁵³ Cerone, P. Religious Freedom: Is it a Human Right to Wear a Hijab or Headscarf as a Muslim Woman? international Human Rights. Available at academic.edu/53. Amazonawa.com visited September 28, 2014

⁵⁴ Ahmad, N. M. The Islamic and International Human Rights Law Perspectives of Headscarf: the case of Europe' Inter-national Journal of Business and Social Science Vol. 2 No. 16 September 2011 PP I 6 I - 172.

⁵⁵ Hashmi, H 'Too Much to Bare? A Comparative 'Analysis of the Head Scarf in France, Turkey and the United State lou. Md. Li. Race Relig. Gender and class 409 (2010). Availale at <http://digitalcommons.Law> summary land Retrieved September 8, 2014.

used to justify the *Hijab* as a religious obligation and women motives for wearing it. He further analyses the treatment of the *Hijab* in France, Turkey and the United states with an emphasis on the history, legal text and major cases in each country. However, he limited the *Hijab* discourse to France, Turkey and USA where the wearing of the *Hijab* attracted violent attacks and also leading to restriction and ban. This was not contrasted with countries where the *Hijab* is legally accepted or free-choice best societies. Moreover, his work did not address the crucial importance of situating *Hijab* within constitutional perspective and framework.

Bullock, K.⁵⁶ explores the colonial roots of western perception about the *Hijab*. She points out that there are certain clear pointers that the discourse of the *Hijab* is tied to western national interest and power politics. The author also analysis the meaning of *Hijab* from the western context and Muslim women experience with *Hijab*. Bullock dedicated a whole chapter on Mernissi's two books in which the author expressed criticisms against perspectives on *Hijab* especially the connection she makes between *Hijab* and lack of democratic values. She further observed that, to date, apart from reviews, no extended critique of Mernissi, instead her books are widely cited as an authority by academic writers rather than subjecting her work to sustained criticism. Bullock finally emphasizes that any argument that advances the notion that the *Hijab* is a symbol of Muslim women's oppression draws, wittingly or un-writhingly, from orientalist and colonial discourse about the *Hijab*. The work did not however, comprehensively discuss freedom of religion as it relates to contemporary religious discourse on *Hijab* under the law. Thus, as a symbol and manifestation of once freedom.

⁵⁶ Bullock, K. (2003) *Rethinking Muslim Women and the Veil Challenging Historical and Modern Stereotypes*, HIL London office.

This work intends to discuss the need to situate the *Hijab* as part of the observance and practice of freedom of religion under the law.

According to Abdo, A⁵⁷ since the aftermath of September 11, 2001, Islam and manifestation of Islam, such as *Hijab* have been re-examined, scrutinized and further critiqued. This resulted from a combination of fear fed by the media and political agendas. Law enforcement practices, social and political influences, cultural practices and norms and outright religious and cultural ignorance of Islam and Muslims. The *Hijab* is often used to advance political agendas and facilitate and justify discrimination. But the work did not analyze the historical roots of *Hijab* contempt and how it was gradually became linked to the degradation of the political, social, economic and intellectual life of Muslim societies.

Teitelbaun, V.⁵⁸ raised a hypothetical analysis in the sense that it raises such question as to why this form of dress (i.e *Hijab*) is considered so controversial, and even dangerous and its effects on the cohesiveness of European society? This offers a discussion and gradually the debate is spreading. Intellectuals, philosophers, corporate lawyers, citizens, politicians, women and men are divided on the subject. He said, the press also plays an active role in this difficult debate. But that will sometimes lead to new laws. The writer further stated that many countries, even those with a historical secular past may support wearing of the *Hijab*. However, noted that the *Hijab* is an abnormality in western society, it symbolizes uniqueness and superiority over modernization and western values which

⁵⁷ Abdo, A. Legal Status of Hijab in the United States: A Look as the Socio Political Influence on the Legal Right to Wear the Muslim' Headscarf; Available at: heinonline.org/Hol/LandingPage?Hanle+heni.journal/hasrapos15EId-E page visited September, 2014.

⁵⁸ Teitel bun, V 'the European veil Debate' Available at: Israelcfr.com. visited 21st September2014

today is driving many European countries toward a ban. But the article is silenced on the deliberate distortion and misrepresentation of truth about the *Hijab*.

Ghadbian, N.⁵⁹ and Ali⁶⁰, in their respective studies have shown that media have consistently portrayed an image of the Muslim woman who wears *Hijab* as an oppressed and passive. The majority of articles about the *Hijab* in the print media suggest that this practice is a sign of Muslim woman's subjugation and therefore should be condemned. Media reports also claimed that *Hijab* is being enforced brutally and described the *Hijab* as a pernicious evil, anti feminist and symbol of backward patriarchal culture. Ghadbian however noted that many observers are simply unaware of the fact that most Muslim women cover their body out of their own volition and conviction with the absence of any kind of duress. And the significance of *Hijab* is more than just clothing. However, they failed to understand the changing role of the media and the *Hijab* as a fashion element today.

However, to the secularist *Hijab* symbolizes a lot. According to Reaboi failing to orient oneself on an enemy's self identified doctrines not only violates our own doctrine on threat analysis, but renders us unable to defeat the enemy.⁶¹ Similarly, in accordance with the American RAND cooperation group, plans and strategies, Bernad C⁶², saw the necessity of the western engagement with the issue of wearing of *Hijab*. He argues that refusing to engage on this topic (*Hijab*) as an attempt to avoid its becoming a bigger issue

⁵⁹ Ghadbian, N Islamic and women in the Arab World: from Reaction to Return? Sciences, Vol. 1211 (1995)

Washington, D.C Kuala Lumpur.

⁶⁰ Ali, lifting the veil on the life of Muslim woman in NZ' The New Zealand Herald, Thursday January 23, 2014 at mobile. Nzherald.conz/news/article.phplidobject=11190464-visited on 23nd January, 2014

⁶¹ Reaboi, P supra

⁶² Bernad, C (2003) Civil Democratic Islam Partners, Resources and Strategies, Santa Monica, RAND WSRD

might be a clever way to take the wind out of the sails of the fundamentalists and traditionalists. But equally it might strengthen them and harm the modernists forces. Similarly, endorsing the *Hijab* is aligning with the extreme end of the spectrum with the fundamentalists and the conservative traditionalists against the reformists, the modernists and the secularists. Bernad further emphasizes that western governments, especially the U.S should refrain from making any reference to the right of women to wear the *Hijab* as being a simple democratic right. It is more than this and the hidden message behind *Hijab* is very dangerous. He finally remarked that in the U.S context wearing *Hijab* is “seen as winning a battle against American culture. *Hijab* is minefield. In Europe, *Hijab* serves as the flag of the Islamic crusade, that *Hijab* is not a religious custom or personal matter but a highly political issue. For instance, according to a letter sent to the former secretary of state Powel in 2002 by Congressman Tom Lontos, in which he expressed his disappointment and dismay with some of the public diplomacy material that has been produced and transmitted abroad by the senate department i.e “Muslim life in America’s website”. This website is evidently designed to highlight to Muslims abroad the diversity of Muslim life in the United States. Unfortunately, it focuses almost exclusively on Muslim women in *Hijab*. It offers an image of America as a land where virtually every Muslim girl wears the *Hijab* or headscarf. Therefore, Lontos saw this as politically counterproductive because such is not the kind of message they wish to send to the women of Afghanistan, Iran or Turkey; Lontos questioned; ‘is this the message that we wish to send to the women of Afghanistan now free to choose not to wear the burqa? Is this the message we wish to send to Iranian women or Turkish women who have been at the vanguard of building a vibrant secular democracy in an overwhelmingly Muslim

state?’ I think not and hope you agree that it is precisely the wrong message to broadcast to our allies and supporters abroad. We should never resort to sycophancy or pandering as some of these outreach material do.⁶³ However, these perspectives evidently shows the historical struggle and continuous tactical concessions to deny the Muslim woman following the right path and how the secularists determine to portray the *Hijab* as a threat to European civilization and questioned the rationale of portraying that in America, that there are women wearing the *Hijab* as an ethical and moral way of life based upon religious perspectives. Furthermore, this also indicates the western/secularists dogmatism seeking also to force or by persuasion to make Muslim women conform with the mainstream western secular orientation. Thereby, eradicating religious identity and imposing cultural imperialism. However, the question that is always begging to be answered is that in all civilizations, the dress of male and female are different, and distinguishable, but why the debate centres and single out only the *Hijab* as an aspect of female dressing.

Ismail, M.A. however, reported that, as time goes, in order to diminish the essence of *Hijab* in Muslim women’s lives and abolish its comprehensive divine intent, the secularists, decided to deal with the *Hijab* in contradictory and hypocritical manner. They started propagating new types of *Hijab*. Fashion houses (industries) which felt the need to save their falling trade, came up with unlawful types of fashion clothing under the name of “modern *Hijab*”⁶⁴ Vojdik, V.K also lamented that contemporary variety of styles of covering emerged, featuring tighter, more form fitting gowns and stylish Long dresses that skim the body rather than hide it completely. (Though, long but too tight that makes

⁶³ Benard, C. Supra P.66

⁶⁴ Ismail, M.A. (2009) *Veil: Evidence of Niqaab*, Al-Firdous Ltd, London. P214.

even walking a difficult). Smaller and beautifully colored headscarves, and fabrics in a range of beautiful colors, often stylishly coordinated so that the entire outfit matches. Today, a fashion show featuring the various ways of covering can be found on mass media⁶⁵ thus, in the name of modern *Hijab*. However, they failed to acknowledge that this is a deliberate distortion intended to negate the legal essence of *Hijab* and conspiracy to detract the Muslim women from the use of the legal *Hijab*.

From a theoretical framework, Claussen, T⁶⁶ analysis the debates on *Hijab* through classical social science theory. He observed that the debates on the *Hijab* has many facets but the debates have not been linked thoroughly with more theoretical positions. Claussen, claimed that the debates express judgment that can be linked to theoretical positions and considerations in social science. However, this study seek to project that the discuss of *Hijab* is more than just a theoretical possibilities. Infact, all theories contradict each other.

Machado, J and Watson, A drawing support from the Standpoint and Identity Negotiation theories, seek to increase understanding on how the *Hijab* relates to the voice and liberation of Muslim women. The Identity Negotiation Theory identifies the process of establishing cultural identities, in the hopes of knowing what to expect from others. While Standpoint theory refers to the environment, social, and psychological realities unique to particular culture. These perspectives are further personalized by one's social location, sexual orientation and other personal identifiers. In conclusion, they argued that

⁶⁵ Vojdik, V.K. "Politics of the Headscarves in Turkey: Masculinities, Feminism and the Construction of Collective Identities" Harvard Journal of Law and Gender. Vol. 33 (2010) At: www.harvardeduji, Vol.332. retrieved March, 2017. Pp681-2

⁶⁶⁶ Claussen, T "The *Hijab* secularity and Beyond: Analyzing Debates on Cultural Debates on Cultural Diversity (*Hijab*) Through Classical Social Theory

whenever someone is dismissed as being a victim of their own culture or an unknowing participant in their own oppression, that person is being silenced. Not by their culture, but by the viewer who makes these assumptions without first engaging in dialogue, therefore they added that silencing an individual or group is a form of oppression, and so by viewing someone as oppressed without seeking out their standpoint, we oppress them. However, they fail to realize that *Hijab* is not an ethnic, cultural or personal choice based dress and failure to include religious standpoint and identity. This is because the objective is to investigate what the society requires from individual perspectives not religion.

Song, S.W, Akat, H.D and Chen, L.⁶⁷ used Encoding/Decoding theory developed by Stuart Hall to theoretically explain the perceptions of the rise of the fashion *Hijab*. Multiple meanings of the *Hijab* were revealed as different themes: religious practicing, in-group diversity, political symbol, women's rights, Fashion Icon, and market power. However, they saw the dilemma between the Islamically legal *Hijab* and the modern stylish *Hijab* that fashion industry demands. The legal *Hijab* suggests modesty as “righteousness” which is on the contrast to ostentatious current fashion requirement. In addition, they observed that a fashion factor means that the ‘symbolic Muslim clothes have been gradually involved in the Mainstream Modern Commercial Culture. Increasing media coverage of *Hijab* topic also strengthen this trend. They further noted that Lots of *Hijab* fashion bloggers want to advocate this trend. The theoretical positions on *Hijab* are deliberately and poorly linked to social considerations and aspirations of the society. Most importantly reduced the understanding of the nature and essence of *Hijab* under Islamic law.

⁶⁷⁶⁷⁶⁷ Song, S.W, Akat, H.D and Chen, L ‘Rethinking *Hijab*: Multiple Themes in Muslim Women’s Perception of the *Hijab* Fashion’ International Conference on Communication Media Technology and Design 24-26 April, 2014, Istanbul-Turkey. At:

Although, Al-Aldaros, A, Shamsudin, F.M. and Idris, K.M.D.⁶⁸ contended that theories such as relativism, utilitarianism, egoism, deontology, the divine Common Theory and the virtue ethics are all products of western understanding of what is right and what is wrong. These theories are the current theoretical framework that is applied by recent research to explain ethical phenomenon. Therefore, this theories would make little sense to understanding the Islamic ethics and values. Besides, in Islam, individuals have a very clear picture about what is right and wrong as enshrined in the Quran and Sunnah. Islam conceptualizes ethics based on the Islamic sources. Hence, the Islamic sources are the only standard for identifying what is right and what is wrong. In essence, none of the western theories appeared to be comprehensive, realistic and balanced.

However, within the context of feminism, different theories have been used to explain and address gender inequalities including the use of *Hijab*. These theories include the Liberal Feminism, Marxist Feminism, psychoanalytic feminism, Radical Feminism, Socialist Feminism, including Islamic Feminism. These different theories have been used to explain gender inequality. Although, feminism differ in some ways, but feminist frameworks do share certain theme. One such theme is the belief that *Hijab* is not a religious requirement. A second theme is the recognition of *Hijab* as patriarchal order and also largely agree on the *Hijab* hinders women participation in public life. The feminist critique of *Hijab* begins by arguing that *Hijab* is socially constructed and deeply shaped by patricidal context.

⁶⁸ Al-Aldaros, A; Shamsudin, F.M. and Idris, K.M.D. "Ethics and Ethical Theories from an Islamic Perspective" International Journal of Islamic Thought Vol. 4 (Dec.) 2013.

Some of the most popular academic writers on the subject who are commonly labeled as “Islamic feminists like Wadud, A.M,⁶⁹ Anwar, Z⁷⁰ and Mernissi, F⁷¹. Among others are all bent on proving that the *Hijab* is a constraint to the emancipation of Muslim women and claimed that the *Hijab* has no basis in Islam. For instance, Mernissi criticizes *Hijab* in the context of social, political and religious activism and claimed that all debates on democracy is tied to that piece of cloth (*Hijab*) which opponent of human right today claim to be the very essence of Muslim identity. She attacks the use of the *Hijab*, claiming that there is no Qur’anic evidence that the wearing of *Hijab* is an Islamic obligation. Mernissi in analyzing verse (24:31) concludes that the verse has no reference to the *Hijab* when it comes to the other primary verse (33:59), Mernissi tries hard to portray the *Hijab* as applicable exclusively to the Prophet’s wives. According to her, that particular verse is in which He (Allah) advised the wives to the prophet to make themselves recognized by pulling their Juyub over themselves.

In a similar fashion, active groups who are shaping the understanding of *Hijab* and status of women in Islamic context at the international level such as, the London-based Women Living Under Muslim Laws Network (WLUM), MUSAWAH and Sisters in Islam view the *Hijab* as a symbol of factors that reduce women to mere housewives and deny them political and civil rights status. They submit that *Hijab* is incompatible with International Human Rights Law. At a forum at AUT University in 2011, the Sisters in Islam’s executive director, Retna Osman said the *Hijab* was an affront to human dignity’.

⁶⁹ Wadud, A.W ‘Muslim woman in the 21’ century forward or backward’ (2007). Available at <http://theamafrican.org/tam.php/features/articles/0013984>; visited January 2013.

⁷⁰ Anwar, Z (2009) ed WANTED: equality and Justice in the Muslim family, Malaysia, Kuala Lumpur, Musawah

⁷¹ Mernissi, F (1999) women and Islam on Historical and theological Enquiry, Oxford, Blackwell.

Feminists, including the so-called Muslim feminists saw the *Hijab* as a tool of misogyny and rejected the interpretation of the verses dealing with *Hijab* given by the orthodox exegetists replacing them with their bizarre, idiosyncratic and anecdotal arguments which upheld that Islam has not prescribed any dress code to the generality of the females. In addition, creating fragmentation of Islamic authority and systematically dismantling truth and reality of Islamic values, ethos and precepts. It is at best misleading, bound to mislead and confused others. And at worst a deliberate distortion of the legal requirement of *Hijab*. Most importantly very reduced understanding of history and women's nature. As such, feminists theories do not even begin to address or even answer the challenges confronting Muslim women in *Hijab*. What feminists premises does is to free women from religious influence and then subject them to the approval and influence of feminism. In essence, feminists perspective will make no legal sense in understanding the nature and the legal requirement of *Hijab* for a Muslim woman. So also feminists premises cannot be suitable to the requirement of situating the discourse of *Hijab* within the context of constitutional framework of freedom of religion.

Maududi. S.A⁷² emphasized on the necessity of *Hijab* and considered Islamic law injunctions on *Hijab* as a rational and equitable law, he claims that the urge to clothe oneself is innate within man. He criticizes modern-day licentiousness and free intermingling of the sexes. But he did not capture the contemporary discourse of *Hijab* which focuses on the fundamental human rights of freedom of religion as this study intends to do.

⁷² Maududi, A . purdah and the status of women in Islam, AL-Ashari trans. Available at Islamforall.org.<http://jamaatwoman.org/images/Library/e-Librarypurdah.pdf> visited Nweber ii, 2014

Oba⁷³ also state that *Hijab* is a fundamental aspect of the Islamic Faith and a recognized religious tenet in Nigeria. He particularly examines the central issue in the *Hijab* and the dress code controversies in some educational institutions in Nigeria and elsewhere as relates to freedom of religion. However, he did not address the critical aspect of this study and the increasing misconception about the *Hijab* of a Muslim woman.

Both Abdulraheem, N.M⁷⁴ and Badamasiuy, J⁷⁵ in their various articles examined the legal professional ethics of etiquette of dressing and its impact on Muslim female lawyer as it relates to the Islamic requirement of *Hijab* with more emphasis on the pros and cons involved and the human right issues there in. The papers, however only focuses only on the challenges Muslim women face in law profession and neglected to discussed the issues and challenges confronted Nigerian Muslim women in *Hijab* in other public sectors and establishments in Nigeria.

Vakulenko, A in her article analyse the Legal Construction of Islamic headscarves' from the perspective of intersectionality, concentrating on the relevant jurisprudence under the European Convention on Human Rights (ECHR). She noted that, there is a noticeable tendency to overlook or underestimate the gender dimensions of the *Hijab* controversy. In other words, intersectionality aims to provide an account of a whole person whose subjectivity is shaped by different discourses always in a particular social historical context. The Islamic headscarf⁷ is obviously intersectional issue. The very term used by

⁷³ Oba, A.A the *Hijab* in educational institutions and Human perspective from Nigeria and beyond Identity, culture and politics; An Afro-Asian Dialogue. Vollo, November, July 2009

⁷⁴ Abdulraheem, N.M "The *Hijab*, Barristers dress code and religious freedom in the legal profession in Nigeria", available at nimahabdulraheem.com.

⁷⁵ Badamasiuy, J "Dress code in the legal profession: issues and challenges for female Muslims in Nigeria" Kano Bar Journal, Vol 1, No. 1, July, 2003.

the European Court of Human Rights suggest that the garment in question is religious in nature. It is also clearly gender-specific, as only Muslim women adopt the practice of wearing it. Therefore, intersectionality was fragmented in the judgment in *Sahin V. Turkey* and argue that this fragmentation is unsatisfactory. Vakulenko, suggested alternative more intersectionality friendly, legal basis.⁷⁶ However, according to Scott, J.W.,⁷⁷ those who call for analyses of “intersectionality” insist that all forms of otherness be taken into account, too often without asking how sex, race, or class established specific kinds of identities and what the actual intersections consist of.

Saxena, M⁷⁸ and Evans, C⁷⁹ in their various works observed the law banning *Hijab* as problematic in the light of fundamental human rights. These articles analyses the way in which the European court of Human Rights has dealt with claims by two women (a teacher and a student) who were denied the right to wear *Hijab* in their educational institutions. The articles analyses the way in which the court considered but failed to fully engage with three issues raised in those cases; proselytism, gender equality, and intolerance and secularism They criticized the court’s reliance on stereotypes and generalizations about Muslim women and Islam more generally. However, the analysis of the cases involved are restricted to the European judicial pronouncements and nor was there any analysis of the cases on *Hijab* in Nigeria.

⁷⁶ Vakulenko, A. ‘Islamic Headscarves’ and the European Convention on Human Rights: An Intersectionality Perspective’

⁷⁷ Scott, J.W. (Supra)

⁷⁸ Saxena, M ‘the French Headscarf law and the right to manifest Religious belief; Available at: <http://workbeexpress.com/mukul-Saxenal> 12 march 2007

⁷⁹ Evans, c the Islamic scarf in the European court of Human right, Melbourne Journal of international law vol. 7

Niewenhuys, A⁸⁰ analyses the margin of appreciation as used in the case of Leyla Sahin V Turkey. The articles try to account more substantially for this margin of appreciation by sketching the historical, legal and constitutional background of the various national regulations. The focus of the article is not only on the case-law of the European court on Human Rights, but also on the law of France, Germany, the Netherlands and Turkey.

Morini, C's⁸¹ article focuses also on the approach of European court of Human Rights concerning the relationship between secularism and freedom of religion and the application of the "doctrine of the margin appreciation". The author comments that court jurisprudence is moving from the application of principles of "pluralist secularism" toward a "fundamentalist approach" to secularism. Having evaluated the *modus operandi* of the court in the light of the competing interests at stake, Morini suggests that in deciding cases where secularism and freedom to manifest religion collide, the court should follow a case-by case approach. Primarily aimed at protecting individual liberties and has to consider the political and cultural background of each situation and the effective impact on the states life of the individual behavior.

Perkins, T⁸² aims to explore how and why political, legal, social and international pressures affect the *Hijab* of a Muslim woman. Specifically, examined recent court cases in Tunisia, Turkey and Kosovo regarding the constitutionality of *Hijab* bans in each

⁸⁰ Niewenhuys, A European court of Human Rights state and religious school and scaves, An analysis of the margin of appreciation as used in the case of Leyla Turkey, Decision of 29 June, application Number 447741198' European constitutional law review, 1:495-510,2005. Available at:[http://internationalhumanrightslaw.net/wpcontenterit/upload/201\(1/01/pdf](http://internationalhumanrightslaw.net/wpcontenterit/upload/201(1/01/pdf) visited November 11, 2014.

⁸¹ Morini, C. Secularism and Freedom of Religion: the Approach to the European Court of Human Rights7israel law Review vol. 43: 611(2010)pp 611-630 Available at: <http://Law.c.11/upload/Morini.pdf>visited November 11, 2014

⁸² Perkins, T un veiling Muslim women: The Constitutionality of Hijab Restrictions in Turkey, Tunisia and KOSOVO Boston University International Law Journal, vol. 30: 592 (2012)

respective state. Then, he recognizes the manipulability of universal human right and contended that the interpretation of constitutional Language by key political and judicial figures in Tunisia. Turkey and Kosovo has under-mined the notion of universal human rights under the guise of internationally accepted social protectionism.

Critical legal pluralist such as Gozdecka, D.A and Jackson. A.R.⁸³ state that what is omitted in the ECtHR's analysis in the cases such as Dahlab, Sahin. Setik Kose and Dogru are the normative perspectives of the legal subject (or right bearer) themselves. They analyzed how the diverse legal pluralist theory impacts upon the fact of the legal pluralism of rights, which they understand to be the fact of co-existence of diverse legal and normative orders regulating rights. For instance state law, International law. European religious law, custom, legal postulates and other forms of law distinguished in scholarship. They illustrate how certain types of rights pluralism are slowly acknowledged as acceptable while others are systematically discouraged.

They also examine what these developments mean for freedom of religion in particular. Human Right Watch,⁸⁴ XIX ARTICLE 19,⁸⁵ Howard,⁸⁶ E. Hoopes,⁸⁷ 'T.

⁸³ Gozdecka, D.A and Jackson, A.R 'caught between Different Legal pluralisms: who wear Islamic dress As the Religion other' in European Rights Discourse

⁸⁴ Human Rights Watch. "Discrimination in the name of Neutrality headscarf Bans for Teachers and civil servant in Germany" Available <http://m.hrw.org/sites/>

⁸⁵ XIX ARTICLE 19 Legal comment: "Bans on the full face veil and Human Rights freedom of expression perspective" Global campaign for free expression, Dec 2010. Available at <http://www.article19.org> retrieved November 11, 2014

⁸⁶ Howard, E law and the wearing of Religious symbols European bans on the wearing of Religious symbols sample chapters are available at: books.google.com.ng. visited November, 2014

⁸⁷ Hoopes, T Leyla sahin V Turkey case Become the European court E Human rights Chinese journal of international law (2006) volis, 3 pp 712-72 Down loaded from <http://chinesejil.Oxfordjournal.org/by> guest on April 17, 2013 Forwarded September 8, 2014

Henkel. M,⁸⁸ Marshall,⁸⁹ J, Nagamia⁹⁰, S, Kahn, R⁹¹, Plesner, T⁹², Sikondari. F⁹³. Sehssartzhaun⁹⁴. A. Ssenyonjo, M⁹⁵ Wolsdesemait, M⁹⁶ are among many groups and scholars that show the legal contradictions in banning religious clothing. Though their views and arguments were stated in their various works and articles but their analysis interlocked. They argued that revoking a human beings right to willingly express their religious identity is illegal and against the laws of human rights. In their respective views, they stated that such restrictions require detailed justifications, including why they are needed now, and why they are in practice only applied against Muslim women. They submitted that sufficient justification has not been provided. The current wide ranging and discriminatory restrictions therefore amount to unlawful discrimination under international human rights of religion and privacy of those affected.

⁸⁸ Henkel, M pulling Back the veil: The Hijab Ban and the Evoluton of French nationalism (201 2) Cme senior thesis paper 392. Available at <http://schlarshipclaremnt.edu/cm-c-theses/139>.retrived November, 2014

⁸⁹ Marshall. Z. freedom of religious expression and Gender Equality: sahih V Turkey department of law, Queenmary University of London. The modern law Review Lit 2006. Available at <http://international human righslaw.net/hp-content/uploads/2011/01.pdf>.Reviewed November 11, 2014 default/files/reports/Germany

⁹⁰ Nagamia, S Islamic feminism: Unveiling the western stigma at [heinonline.org/Ho/landing page? Handle=heinjournals/bufw/jll&id=E](http://heinonline.org/Ho/landing_page?Handle=heinjournals/bufw/jll&id=E) page: visited September, 2014.

⁹¹ Kahn, R ‘the headscarf as threat: A comparison of German and U.S Legal Discourse vander but journal of international law, vol. Ho: 17 (2007)pp 417-444. Available at: Vandecbit.edu-visited November, 2014

⁹² Plesuer, I.T ‘the European court on Human Rights between fundamentalists and Liberal secularism paper for the seminar on the Islamic headscarf controversy and that failure of freedom of Religion or Belief, Strasbourg F- ran± 28-30 July 2005. Available at: jus.uio.no. visited November, 2014.

⁹³ Sikondari, F Burk Ban: Why Muslim women cover up Available at: Mhuttpost.com/uk/eng/155851967 utni l.p retref=uk. Visited July 17, 2014.

⁹⁴ Schwartzbaun, P, ‘The Niqab in the countrom: Protecting free exercise of Religion in a past-smith World University of Pennsylvania law Review, vol. 159.No. 52011

⁹⁵ Ssenyonjo, M Islamic veil and freedom of Religion, th Rights to Education and work: A survey of Recent international and national cases. Hineze journal of internal law (2007) vol. 6 No. 3, pp6-53-710. Available at <http://politics of religious freedom. Barkely.edu/files/2011/06/>. Visited November 21, 2014

⁹⁶ Woldesmait, M unfolding the modern Hijab: from the colonial veil to pious fashion Duke University, Durkham, North caroling. April 15, 2013. Available at: <http://dukespacer.libduke.edu/duidspace/bitstream/handle/10161/7554/mohret>. Visited Nivember 14, 2014.

From the above literature review, the issue of *Hijab* has not been comprehensively discussed. Each author gave only the aspects that seem to them as the only issue in the *Hijab* discourse, making their presentation look like the proverbial elephant with the blind men-each giving contrary description about the elephant. For example, those who touched the ear of the elephant described the body of the elephant as soft, while those who touched its stomach, described the body of the elephant described it as very rough and those who touched the legs of the elephant as tree, while those who touched the trunk described it as rope. All these descriptions are partial and could not stand as the correct description of the whole elephant. This is exactly how the issue of *Hijab* has been tackled. Now by diverse factions and a genre of literature, not necessarily authored by legal scholars or legal in reasoning and arguments. This is where a great many scholars on the subject of the *Hijab* fall short. This thesis therefore gives a comprehensible meaning and holistic understanding of the essence and nature of the issue of *Hijab* – discussing all the varied and different views relating to the *Hijab*. In this discussion sentiments and motions are sipped out and rationale and legal views of the *Hijab* talking cognizance of the textual analysis on the *Hijab* is rendered, upholding that wearing of *Hijab* by the females is based on the Rights and Freedom of Religion enshrined and entrenched in all the International and Regional Conventions, Declarations and Charters. In essence, this research is pertinent.

This research is pertinent in the sense that none of the above referred authorities specifically deal with the use of *Hijab* by the Nigerian Muslim woman as a religious rights or freedom to express, manifest, practice and observe one's religion as enshrined in the 1999 Nigerian constitution. Numerous other critical issues related to Nigerian Muslim

woman are not addressed. The research therefore, attempts to bridge the literature gap in this area. Moreover, the study is inter-disciplinary, since it looks at texts from various angles.

1.8 Organizational Layout

The study is divided into six chapters.

Chapter one contains general introduction including a background to the study, its significance and the methodology employed. In addition, the chapter sets its scope and limitation as well as literature review among others. This is done with the intent to provide the thesis with justification and to expose the readers to the exiting gap which the thesis intends to fill.

The conceptual framework of the study was laid down in chapter two which introduced the concept of religion in both secular and Islamic perspective and gives an overview of the nature and concepts of feminism and secularism. The aim of the chapter is to investigate the concept of religion, feminism, secularism and their relationship with *Hijab*. As a result, the chapter examines the issues of definition of the terms, the development of the concepts, and features. This chapter also helps to capture the range of different approaches, perspectives and framework of these concepts. The chapter ends with the discussion on the nature of Nigerian State and the principle of secularism.

The foundation of the study was laid down in chapter three which introduced the subject of *Hijab*. The aim of this chapter is to provide a broad overview of the complexities of the discourse of *Hijab*. The central task was to give an overview of the basis of *Hijab* under the Islamic law. The chapter starts by examining the nature of the definition of

Hijab. Then it examines the Quranic provisions, Prophetic hadiths and the juristic opinions on the requirement of *Hijab* for a Muslim woman in the Shariah. The chapter also explains the components and features of the *Hijab* within the purview of Islamic injunctions. It also determines the scope and limitation of *Hijab* as well as its purpose and rationale in the Shariah. Meanwhile, the second part of the chapter is meant to signal that the discourse of *Hijab* is not a new discourse and need to be examined critically in their historical context. That is, it analyzes the way in which the *Hijab* has been abolished and declined in the previous centuries. In this section, we consider the root cause of *Hijab* contempt, first of all, during the colonial era and how the discourse of the *Hijab* provided the colonialist with the means and tools for the needs for civilizing the Muslim societies. In another section, the chapter demonstrated how nationalist and reformist felt as a challenge to continue with the colonial discourse of *Hijab* and how subsequently the use of the *Hijab* declined. Finally, in the last section, the chapter considers the return of the *Hijab*.

Chapter four deals with the freedom of religion under the 1999 Nigerian Constitution and the nature of the *Hijab* controversy in Nigeria. Firstly it traces the genesis and development of religious freedom under the Nigerian constitution. This is done in the context of the discussion of the development of the Universal Human Rights up to its entrenchment under the Nigerian constitution. The chapter also examines the regional and international declaration of freedom of religion. In the concluding section of the chapter, the thesis reconsidered the scope of the provision on religious freedom and its links with other rights.

Chapter five articulates the possibilities of situating the use of *Hijab* by a Nigerian Muslim woman as of right under the 1999 Nigerian Constitution. Most importantly it highlights the implications of the non-recognition of the *Hijab* under the perspective of religious freedom. The chapter also explores the major challenges and issues that cause or contribute to the *Hijab* controversies, misconceptions, tensions and hypocrisies.

Finally, chapter six is the concluding chapter of the study. It summarized and highlighted the major findings in each of the chapters and tried to reach some general conclusions as to the current legal status on the use of the *Hijab*. The chapter ended by identifying and recommending areas for further research on the subject.

CHAPTER TWO

HIJAB: THE CONCEPTUAL FRAMEWORK

2.0 Introduction

Heated Legal debate on religious issues are currently the characteristics of most democratic societies and the wearing of the *Hijab* is certainly the centre of the legal controversy over religious freedom-including Nigeria. All sorts of secularism regard religion as a matter of private decisions and practice protected by legally enforced freedom of religion. Meanwhile, feminism is based on the fundamental principle that all persons must be treated equally under the law irrespective of sex, race and religion. Therefore, discussion of certain key concepts relevant to the discourse of *Hijab* helps clarify that the discourse of *Hijab* is not an isolated discourse but a starting point for an understanding of the relevance of *Hijab* to a Muslim woman's right to freedom of thought, conscience and religion. Therefore, an awareness of relevant concepts is vital. The conceptual framework for this study is derived mainly from the concepts of religion, feminism and secularism. The starting point therefore, is to highlight the nature and concept of religion from the secular perspective and to also understand the concept of religion in Islamic thought that help to establish the obligatory nature of *Hijab* in the Shariah. This will be followed by discussion of feminist conceptualization in order to understand feminist theories and how the discourse of *Hijab* feature in feminist thought. Then finally, the chapter defines secularism and provides an overview of the emergence of secularism. This will therefore also necessitate discussion on the nature of the Nigerian State and the principle of secularism. Hence, following the introduction is an explanation of the concept of religion.

2.1 Concept of Religion

Freedom of religion or freedom of belief is a principle that supports the freedom of an individual or community in public or private, to manifest religion or belief in teaching, practice, worship and observance. It also includes the freedom to change one's religion or belief¹ Indeed, freedom of religion is identified as a significant human right in a landmark document of the last century; the Universal Declaration of Human Rights and many other International and regional human rights instruments which guaranteed rights related to freedom of religion or belief, however, made no attempts to define the term "religion".² The UN Human Rights Committee issued an important general comment on the scope of freedom of religion or belief within the International Covenant on Civil and Political Rights and there was one major international effort to explain the underlying rights protected under the concept of religion or belief. However, the term "religion" remains undefined as a matter of international law.³ The absence of a definition of "religion" is not peculiar to international human rights conventions, most national constitutions also include clauses on freedom of religion without defining "religion".⁴

The study of law and religion is a relatively new field, in most western societies, with several scholars involved in law and other academic departments including political science, religion and history since 1980. Scholars study religions as they are qualified through religious discourses or legal understanding of religious phenomena. Legal definition of 'religion' whether in status or court decisions thus follows this same general pattern. However, the legal definitions of "religion" generally appear in the complicating

¹ At en.m.wikipedia.org. visited

² Gunn, T. J "The Complexity of Religion and the Definition of "Religion" In International Law." Harvard Human Rights Journal/vol. 16 Pp189 – 190. At

³ Ibid p. 190

⁴ Ibid p. 190

contexts of either, protecting freedom of religion, or prohibiting discrimination of religion.⁵

Among non-legal scholars in philosophy and religion there is a very lively debate as to whether the word “religion” can or should be defined. It has been observed that the effort to define religion is as old as the academic study of religion itself.⁶ But it has proven difficult to formulate a definition of religion that command wide assent,⁷ and the debate over the very need for definitions, continue in full vigor.⁸ While, an increasing number of scholars have expressed reservations about ever defining the “essence” of religion. They observe that the way the concept is use today is a particular modern western construct that would not have been understood through much of history and in many cultures outside the west or even in the west until after the peace of Westphalia.⁹

As Joseph D. Bettis comments:

“The attempt to describe religion as a separate and independent sphere of human activity did not appear until the ninetieth century. Traditionally, religion referred to the basic guiding image and principles of an individual and a culture. Religion was identical with style of life.”¹⁰

As previous eras made no such distinction, they had no need of the concepts “religious” and “secular”; such concepts can be seen as a product of the modern impulse to separate “religion” from the rest of human activity, in order to under write the independent

⁵ Ibid, Gunn p.195 and Wikipedia (supra)

⁶ Ibid p.191

⁷ Harrison, V ‘The Pragmatics of Defining Religion in a Multi-Cultural World’ Published in the International Journal for Philosophy of Religion. 59(2006); 133-152. At <http://www.gla.ac.uk/0+4/humanities/files/mindmapping/Religion/files/docs/pragmatis.pdf>. retrieved December 18, 2016

⁸ Gunn, Supra p.191

⁹ Wikipedia (Supra)

¹⁰ Joseph D. Bettis as quoted in Harrison, V. Supra Pp18-19

autonomy of the “secular” realm of the social and political world.¹¹ According to Smith, there was no need for the term “religion” until the various cultures of the world began to have prolonged encounters with one another particularly during the colonial period. Smith further claims that the term “religion” is a concept created by modern western scholars and super imposed upon a variety of phenomena. The super imposition serving to create the impression that “religion” is a unified thing. This super imposition gradually began to take place, Smith believes, in the eighteenth century.¹² Hence, the term “religion” appears to some as a fictional entity created by modern intellectuals:

“The construction of ‘religion’ and ‘religions’ as global cross cultural objects of study has been part of a wider historical process of western imperialism, colonialism, and neo-colonialism. Part of this process has been to establish an ideologically loaded distinction between the realm of religion and the realm of non-religion or the secular”¹³

In the 19th and 20th centuries, the academic practice of comparative religion divided religious belief into philosophically defined categories called “World religions”. Some academics studying the subject have divided religions into three broad categories;

- i. World religions , a term which refers to trans-cultural, international faiths;
- ii. Indigenous religion , which refers to smaller, culture-specific or nation – specific religious group; and
- iii. New religious movements, which refers to recently developed faiths.¹⁴

Hence, there is widespread disagreement regarding what “religion” actually means and has been defined differently by scholars. According to Benson Saler, the task of identifying the essence or universal core of religion has largely been a failure considering

¹¹ Ibid p. 18

¹² Ibid Pp 9-10

¹³ Fitzgerald, T as quoted in Harrison V. at footnote no. 24. See also Pp18-24.

¹⁴ Wikipedia (Supra)

the lack of consensus among scholars.¹⁵ Lechner further observed that since scholars have failed for over a century to settle on a single definition of religion as a distinct phenomenon with a universal core, attempting to establish such a definition at this late date is bound to fail.¹⁶ Harrison also argued that given the definition, the suspicion arose that the attempt to define “religion” is futile.¹⁷ Smith also contend that the attempt was misguided and could not succeed, because the term “religion” does not pick out phenomena that are naturally grouped together. In other words, religions do not possess some common defining feature that the term “religion” picks out.¹⁸

Consequently, as observed by Gunn that we are presented, on the one hand, with important provisions guaranteeing fundamental rights pertaining to religion but on the other hand the term itself is left undefined. Of course, the absence of a definition of a critical term does not differentiate religion from most other rights identified in human rights instruments and constitutions. However, because religion is much more complex than other guaranteed rights, the difficulty of understanding what is and what is not protected is significantly greater. For example, what the adherents of some religions might perceived to be trivial issues, adherents of others may see as absolute commands worthy of martyrdom.¹⁹

Broadly speaking, definitions of religion that are too limited in scope can be a serious impediment to the success of efforts to claim, or to protect, this right. So the debate about

¹⁵ Lechner, F.J “Defining Religion: A Pluralistic Approach for the Global Age” At <http://sociology.emory.edu/faculty/flechner/religiondefined.pdf> ssr 2000. Retrieved December 18, 2016 p.2

¹⁶ Ibid p.2

¹⁷ Harrison, V. Supra p.9

¹⁸ Ibid p.9

¹⁹ Gunn, T. J. (Supra) p.190

the best way to define “religion” which at first sight may have appeared purely academic, turns out to have wide ramifications with respect to vitally important human concerns.

Therefore, we have seen that defining religion is a challenge. Definition of religion is profoundly complicated and highly contentious. The term has no single accepted definition with a universal core and none of them is in accord with Shariah concept of religion and this posed a challenge. For it encourages us to take seriously the real differences that exist between secular definition of religion and the Shariah definition.

The term in Arabic that corresponds most closely to religion is *al-Din*, but is not the same as the concept religion as interpreted and understood through western religious history or in the modern sense of the term as it has been re-defined in a secularized world which the religious life occupies at best a small part of the daily activities of most people. In the Islamic perspective, religion is not seen as part of life or a special kind of activity. Rather, it is the matrix and world view within which all human activities, efforts and thoughts take place or should take place. The term religion is an English translation of the word *Din* but not its equivalent in meaning. In Islam, *Din* encompasses life in its entirety.²⁰ The *din* denotes the faith, beliefs and practices and teachings adhered to by the Muslims, individually or collectively.²¹ The Shar’iah as revealed encompasses the whole range of human activity – politics, economics, social, educational, thought and arts²². There is not a single deed which is concerned exclusively with worldly life or with the Hereafter, its purpose is always two fold. The result is that this world and the Hereafter are

²⁰ Nasr, S.H. (2003) *Islam, Religion, History and Civilization*, Harper Collins e-books Australia. P51 See also Esposito, J.L. (2010) *Islam the Straight Path*, 11PH, Riyadh. Khan, N.A. & Randhawa, S. (2016) *Divine Speech Exploring the Quran as Literature*, Bayyinah Institute, Euless, Pp3-9

²¹ Ibid. p33, Esposito, J.L (Supra) Pp95-96

²² Qutb, M. “What Islam Can Give to Humanity Today”. *The Challenge of Islam*, Pp.325-326

interconnected in the awareness of the Muslim individual. In everything one does, one will commit oneself to act in accordance with the revealed Will of Allah. Islam thus, provides Muslims with guidance throughout life from cradle to grave²³. The duty of man on earth is to worship Allah *"I have only created Jinns and men, that they may worship me."*²⁴ The worship meant is the comprehensive worship, including not only specific acts of worship but everything that man or woman does. If fulfilled in accordance with Allah's purpose, every act becomes an act of worship.

Now the din of Islam, which deals with the whole field of human life, does not treat the different aspects of that life randomly, nor yet does it split up the field into a number of unrelated parts. That is to say, Islam has one universal and integrated theory which covers the universe, life and humanity. The treatment of all emanates from this one universal and comprehensive theory. Each question is not dealt with on an individual basis, nor is every problem with its needs treated in isolation from all other problems.²⁵ Islamic material is a material for life. It has not made laws for a certain age while ignoring the rest of the ages and the other generations. Therefore, it came with a general and eternal law to embrace all nations, all ages and all people. Moreover, Islamic membership is based on universal community of faith that knows no geographic boundaries or barriers of colour, race or language. Islam is neither of the East nor of the West. It is the message of Allah, the Lord of the Universe sent to the whole of mankind through all the prophets of Allah and finally through Prophet Muhammad (SAW)²⁶. And the Muslims are united by a bond which is

²³ Ibid Pp 327-329

²⁴ The Holy Qur'an chapter 50:56

²⁵ Hardie, J. B & Algar, H (2000) Sayyid Qutb Social Justice in Islam, Islamic Book Trust IBT. Kuala Lumpur p37.

²⁶ Al-Faisal, M (RHP) at the Inaugural Session of the International Islamic Conference at the Royal Albert Hall, London, Saturday 3rd April, 1976-in the Challenge of Islam Supra Pxxviii

stronger than any other bond discovered by any civilization in history. This bond is expressed in one word -‘Ummah’.²⁷

Religion of a Muslim is thus *Dinal* Islam which requires a person to surrender his will and wish before the will and wishes of Allah (SWT). It also requires a person to accept the supremacy, sovereignty and over Lordship of Allah (SWT), alone and to accept all His Guidance and Laws in all branches of his life. He must accept Muhammed (SAW), as one’s messenger and role model for all aspect of his life. And the dindemands total commitment²⁸. Hence, “***Enter into Islam in totality***” is the Islamic maxim.²⁹

In Islam therefore, there is no dichotomy of *Din* and secular’ affairs. Every single aspect of life is governed by the *Din*. The Qur’anic laws and values shall encompass all aspects of human life whether personal or public. It is, therefore, misleading to call Islam a religion in the sense Christians use the term for their faith. In Islam the meaning is wider. For being a din, Islam is several steps ahead of religion. Hence, there is no division between the Kingdom of God and the Kingdom of Caesar in the Islamic perspective. Rather, all belongs to God and must therefore be regulated by Divine Law and moral injunctions that come from Him and are religious in nature. The word Shari’ah comes from the root Shr’ which means “road” and the Shariah is the road that men and women must follow in this life.

The fundamental objective of ‘din’ is therefore to protect six elements.³⁰

1. *Protection of faith*

²⁷ Address given by Mr. Salem Azzau at the concluding Session of the International Islamic Conference at Appendix II in challenges of Islam Supra P.357

²⁸ Islam, A.B.M.M. (Supra) Pp102-103

²⁹ The Holy Qur’an chapter 2:208

³⁰ See Auda, J. (2010) Maqasid Al-Shariah As Philosophy of Islamic Law: A Systems Approach IIIT, Islamic Book Trust, Kuala Lumpur P.3

2. *Protection of life*
3. *Protection of intellect*
4. *Protection of lineage (Progeny)*
5. *Protection of dignity*
6. *Protection of property*

The Muslim's perception of religious freedom would thus, include the following basic elements:

- (a) Freedom of belief and worship
- (b) To live by Allah's law (dutifulness to Allah's commandments and laws – *Taqwa*)
- (c) To establish *Ma'ruf* virtue and eradicating of *Munkar* (all kinds of oppression and exploitation – political, economic, social, religious, legal and moral)³¹

Hence, the basic and most fundamental right of a Muslim is to surrender to the rules and regulations of Allah without any reservation. Muslims gain freedom by conforming to the Divine Law. In essence, the Islamic principles of observing *Hijab*, segregation of the sexes, maintaining modesty, morality and balance in speech, vision, even bodily gestures and movements are obligatory upon both male and female like other obligation, firmly based on the wordings of the Holy Quran and Sunnah.

Therefore, requirement for *Hijab* by Muslim women is more than just a theoretical possibilities. Infact, according to Diraz, theories are meant to remove away the term (obligatory) meaning.³² After all, *Hijab* is not an abstract entity. It centres around a hard corpus of Quranic and Sunnah texts. This will be discuss at length in chapter three.

³¹Tabiu, M. 'Realization of Freedom of Religion Under the Nigerian Constitution: The Challenges Before Muslims' Al-Mujtahid Vol.1, No1 1997/98 Session MUNLS P.60

³² Diraz, M.A. (2012) Islam and the Issues of the Age, Khalil, M.A.G. (trans) Dar-al-Manarah, Egypt.

2.2 Theory of Feminism

Feminism has a long history but with many varieties and they differed in their perspective. But feminist framework however, do largely believe that *Hijab* is a product of patriarchy and also largely agree on the *Hijab* hinders women participation in public life. The feminist critique of *Hijab* begins by arguing that *Hijab* is socially constructed and deeply shaped by patriarchal context. The critique then links this social constructionists insight to the commitment to end patriarchy by systematically and hermeneutically re-interpreting the verses of *Hijab*. Therefore, what is feminism and feminist conceptualization.

There is no clear-cut definition of feminism or of feminist. Historians of feminism have demonstrated that since its initial appearance the term has been given many meanings and definitions. It has been put to diverse uses and inspired many movements³³. Thus, feminism has evolved into a complex ideology that encompasses a variety of different social, cultural and religious movements, all claiming to represent the true identity of a woman³⁴. In general, it is described as a broad-based philosophical perspective on women's rights and their position and role in the society as a whole³⁵. While, Rendall has described the term 'feminist' as women who claimed for themselves the right to define their own places in society and a few men who sympathized with that claim³⁶.

The term feminism was coined in France in the Late 1880 by Hubertine Auclert, who introduced it in her journal, *La Citoyenne*, to criticize male predominance and make

³³ Badran, M 'Feminism in Islam, Secular and Religious Convergence'

³⁴ Witcher, R.S Supra P.13

³⁵ Kausar, Z. (2001) *Women in Feminism and Politics: New Directions Towards Islamization*, Leeds Publications, Kuala Lumpur, P.30

³⁶ Rendall, J (1990) *The Origins of Modern feminism: Women in Britain, France and the United States (1780-1860)* P.1 cited in Kausar, Z. Supra P.31

claims for women's right and emancipation promised by French Revolution. By the first decade of the 20th century the term had made its appearance in English-first in Britain and then by 1910, in the United States. By the early 1920s, it was in use in Egypt where it circulated both in French, and in Arabic as nisa'iyya³⁷.

Unlike the feminism of the 19th and early 20th centuries, the modern feminism began to draw up a new map of life, one of its features was to bring complete equality between men and women in all fields of life. It has centered mostly on gender equality³⁸. This objective of promoting gender equality has been augmented by the United Nations Intervention. In 1945, during the UN first General Assembly, held in San Francisco, female delegates demanded special attention for women's issues. The UN established a sub-commission on Human Rights on the status of women and the sub-commission becomes full commission, in 1946. Its mandate was to promote women's political, economic and social rights. By 1954, the UN General Assembly recognizes that women are "subject to ancient laws, customs and practices. Hence, feminists call on all governments to abolish such customs and practices and apply gender-mental law in consistent with the Universal Declaration on Human Rights³⁹.

The resurgence of feminism in the 1960s and 70s was based on a shared recognition that women were oppressed worldwide and that there was need to develop a theory and politics that would further women liberation from this oppression⁴⁰. As a result, in 1967, the UN General Assembly adopted the Declaration on the Elimination of Discrimination Against Women "to ensure the universal recognition, in law and infact, of the principle of

³⁷ Badran, M Supra P.24

³⁸ Uthman, I.O Supra P.26

³⁹ Unmilestones in the Advancement of Women P.viii Ical Longman

⁴⁰ Jackson, S et al (1993) Women's Studies: Essential Readings, New York, University Press , P.3

equality of men and women. In furtherance of the cause of gender equality, the UN organized World Conferences on women beginning in Mexico City 1975 marked the starting point on women issues internationally. This was followed by series of conferences held in Copenhagen 1980, Nairobi 1985 and Beijing 1995, the United Nations debated, passed resolutions, recommendations and adopted the platform for action to enhance gender equality. Hence, feminists demands were incorporated into the United Nations document for Women⁴¹. By the late 20th century, feminism had therefore assumed wide dimensions. In recent years, they seek total and complete moral independence, sexual emancipation and class and gender deconstruction. These dimensions are ever expanding as feminists' struggle for a non-male, non-patriarchal and non-phallic language and meaning⁴².

In this account, feminists since the 19th century have sought to free contemporaneous society from residual, pre-modern, patriarchal throwbacks in Law and culture. Investing in Legal, educational and media strategies as a form of feminist civilizing process as well as Lobbying the state formal equality within the public sphere⁴³.

Feminists are united by the idea that women's position in society is unequal to that of men, and that society is structured in such a way as to benefit men to the political, social

⁴¹ Treaty, based human rights laws, plans and strategies were put in place like the Convention, on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the major international treaty dealing with prohibition of discrimination against women. It defines what constitutes discrimination against women and setup an agenda for national action to end it. The Beijing Platform for Action (BPFA) is the agenda for women and empowerment which faster women's active participation in all spheres of public and private life through full and equal share in economic, social cultural, and political decision making. The goal of eliminating gender discrimination received heightened international propensity on September 18, 2000 when the United Nations general Assembly passed Resolution 55/2 the United Nations Millennium Declaration which set forth ambitious agenda of eight goals to be reached by 2015 and one of those goals is the promotion of gender equality worldwide. See Warren, C.S "lifting the veil: Women and Islamic Law" Cardozo Journal of Law and gender Vol. 15:33, 2008. At www.cardozolawandgender.com/upload/2/7/7/6/277688115-1-warrenpdf_P.59 Retrieved 15/1/2012

⁴² Uthman, I.O Supra P. 30

⁴³ See Interface: A Journal for an about Social Movements Vol 3 Issue 2 November 2, 2011. Feminism, Women's Movements and Women in Movement pdf. Motta, S et al (eds) At http://www.interfacejournal.net/2011/12/sisters_in_resistance-audio-file.download Fwd by A. Garba dated June, 2016

and economic detriment of women. However, feminists have used different theories to explain these inequalities and have advocated different ways of redressing inequalities, and there are marked geographic and historical variations in the nature of feminism.⁴⁴ Hence, feminists philosophy is a loose term for the many varieties of feminist philosophical discourse.

Feminist thought in general is often divided into categories of first wave, second wave, and third wave, though the borders overlaps. Today, feminism is based on the fundamental principle that all persons must be treated equally under the law, irrespective of individual and unique characteristics in particular. They demand sex or gender class revolution and elimination of all distinctions between the sexes⁴⁵. For the contemporary feminists, all institutions, including motherhood, is a political institution that causes the institutionalization of male control over women and children. To most contemporary feminists, marriage is enslavement, child-care a burden and economic dependency on men an obstacle to their liberation and freedom⁴⁶. They did not only consider heterosexuality, marriage and motherhood as results of a dominant patriarchal culture, but even consider biological differences between men and women as patriarchal assertions against natural facts. They insist that gender roles are not natural, but are inculcated in people through the process of socialization for this reason they are advocating for a radical and total deconstruction and liberation of woman from socio-religious and cultural perception⁴⁷. The only way to fight patriarchy therefore, is to

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⁴⁵ Kausar, Z. Supra P.477

⁴⁶ Ibid P.476

⁴⁷ Uthman, O.I. Supra Pp.31-32

deconstruct gender itself⁴⁸. Hence, the deconstruction of all previously existing structures and institutions and the establishment of new institutions having no gender differentiation⁴⁹.

The practice of wearing the *Hijab* is also viewed as a direct contradiction to feminist values.⁵⁰ That most Muslims girls and women are not given a choice about wearing the Chador, *burqa*, *abaya*, *niqab*, *Jilbal* or *Hijab*. They are actually socially conditioned to wear it, by immediate family and socio-religious organizations. The wearing of the *Hijab* also does not save a Muslim girl or woman from being battered, stalked or maritally raped nor does it stop her husband from taking multiple wives among others.⁵¹ Wearing the *Hijab* is thus a man's demarcation of his ownership of woman's body in public sphere.⁵² In essence, *Hijab* is a culture that is incompatible with contemporary standards of freedom and gender equality.

Initially feminists felt that the feminists movement should stick to politics and take no stand on religion. However, this ideology did not last long as more feminists began to see the link between challenging patriarchal religion and liberatory spirituality. They argued that, there can be no feminist transformation of culture without transformation in religious belief.⁵³ Fundamentalism thus, threatens progressive or moderate spirituality⁵⁴ feminists claimed that, fundamentalism not only encourages women to believe that inequality is 'natural', it perpetuates the notion that control of the female body is

⁴⁸ Ibid P.477

⁴⁹ Ibid P.490

⁵⁰ Haleem, A. (Supra) P.11

⁵¹ Phyllis, Chester, The Burqa: Ultimate feminist Choice? The PHYLLIS CHESLER ORGANIZATION (Aug. 31, 2009). At <http://www.phyllischester.com/612/burqa-ultimatefeminist-choice>

⁵² Haleem, A. (Supra) P.13

⁵³ Hooks, B. (2000) *Feminism is for Everybody Passionate Politics*, Hooks, Bell South End Press, Canada PP106-107

⁵⁴ Ibid PP107-108

necessary.⁵⁵ Therefore, feminists claimed that, their struggle to end patriarchy are divinely ordained. In recent decades, FSR has open up new vistas and radical engagement with Islamic law by creating a space for everyone to interrogate Islamic belief system and opening up the question who has the authority to interpret Islamic scripture. They argued that Shariah is ‘not’ really divine, it can be both criticized and reformed.⁵⁶ Therefore, from feminist theory, Muslim women are frequently demanded and suggested to change unfavorable religious practices that are products of patriarchal interpretations of religion. Feminist encourage Muslim women to adopt secular western values.⁵⁷

They further argued that assumptions and laws about gender in Islam as in any other religion are socially constructed and thus open to negotiation and changing⁵⁸. That is, in the modern democratic contexts, one interprets directly from the core of the Islamic primary sources and not from the cultural developments of Muslim people throughout history.⁵⁹

Infact, the so-called Islamic feminists are legitimizing the right of everyone to speak about women and Islam, encouraging debate between Muslim and non-Muslims and help the dialogue among different kinds of feminisms. Hence, everybody can venture into interpreting the sources of Islamic law and deriving rules without necessarily being an expert in the Islamic legal system. Thus, Islamic feminism is not a field of research restricted to Muslim women or men, but is open to all researchers who have this kind of

⁵⁵ Ibid

⁵⁶ See Phyllis, C (Supra) P.14

⁵⁷ Mejia, M.P. “Gender-Jihad: Muslim Women, Jurisprudence and Women’s Right, Kiritike, Vol. III, 2007. At: <http://www.Islamfortoday.com/women.htm> visited 2/12/2012. See also Mir-Hosseini, Z. Feminist Voices inIslam” at: <http://www.mazafilm.deldokupdf/mirhosseini.pdf> retrieved Feb. 24, 2015

⁵⁸ Mir-Hosseini, Z ‘Feminist Voices in Islam’ at <http://www.mazafilm.deldokupdf/mir-hosseini.pdf>. Retrieved February 24, 2015

⁵⁹ Wadud, A.M “Muslim Women in the 21st Century Forward or Backward’. At <http://www.theamericanmuslim.org/tam.php/features/articles/0013984>. Visited 05/01/2015

commitment. The adjective “Islamic” is maintained here not to describe an identity or faith position, but is retained to describe a scholarship committed towards the deconstruction/construction of Islamic thought or its re-activation through a secular critique.⁶⁰

The basic methodologies of the feminists are the classic Islamic methodologies of Ijtihad (independent investigation of religious sources) and Tafsir (interpretation of the Quran). Thus, their priority is to go straight to Islam’s fundamental text, the Qur’an. Used along with these methodologies are the methods and tools of linguistics, history, literary criticism, sociology, anthropology and so on. Together with their personal experiences and questions on women. And they devise many methods to make their views operatives.⁶¹

Ijtihad is a central issue for feminists hermeneutics because it structures both modes of relating to the foundational text as well as reframes and redefines what it means to be a Mujtahid. A Mujtahid is thus could be filled by any “believer” without the need for “specialized training”.⁶² Feminist hermeneutics has taken three approaches:

- i. revisiting verses of the Qur’an to correct so-called false stories as interpreted by male scholars
- ii. citing verses that unequivocally enunciate the equality of women and men;

⁶⁰ Peipicelli, R ‘Islamic Feminism: Identities and Positionalities; Why Keep Asking Me About My Identity? Thoughts of a Non-Muslim’ Islamic Feminism Current Perspectives, Kynsilehton, A (ed) Supra Pp.99-100

⁶¹ Badran, M Supra P247

⁶² Moll, Y Supra Pp45-46

- iii. deconstructing verses attentive to male and female differences that have been commonly interpreted in ways that justify male domination.⁶³

For the purpose of this study *Hijab* is taken as a particular example of feminist's hermeneutics. Generally, feminist have reaching alternative approach to counteract classical interpretations of texts. Particularly with regard to the *Hijab*, they argue that Muslim women are allowed the freedom to choose what they may wear, thus contradicting the Islamic scholars who maintain that the *Hijab* is obligatory.

Many secular feminists arguing that the re-emergence of *Hijab* is part of a strategy to replace civil law with Sharia and a repudiation of liberal values.⁶⁴ Infact, even in Nigeria, feminists claimed that Islamic fundamentalism with their male dominated textual interpretation of the Holy Quran has had a profound impact on the status of women. Women's right to employment and participation in public life, freedom of movement and freedom of organization are severely restricted through a combination of the Sharia principles of *Qawwam*, segregation between men and women and the *Hijab*.⁶⁵ *Hijab* is part of a strategy to replace civil law with Sharia and to require the total covering of women is part of a repudiation of liberal values. Therefore, granting women the civil right to have control over their bodies is a basic, feminist principle.

In a nutshell, feminism is not just a western phenomenon. It has become global, national and international including Nigeria. It has become pervasive and it has moved far beyond simplistic approach and began to engage in religious studies in order to advance their

⁶³ Badran, M Supra p248

⁶⁴ Vojdik, V.K. "Politics of the Headscarf in Turkey: Masculinities, Feminism and the construction of collective identities. www.law.harvard.edu. Retrieved March, 2017

⁶⁵ Nwaner, B. (Supra) Pp289-290

course, particularly in the Islamic context leading to a new scriptural hermeneutics. Relevant to this study is how feminist included a focus on the *Hijab*.

2.3 Concept of Secularism

Banning *Hijab* in modern democratic dispensation with religious freedom has helped to reignite discussion about whether Nigeria is secular or not. Secularism, being one of the principal reasons behind *Hijab* ban, raises questions and provoke new research particularly legal research into the doctrine of secularism and secularization as a whole. Several laws have been introduced in some parts of Europe to make it illegal to wear the *Hijab* in public life based on secular consideration. Secular-countries, such as Turkey with a majority Muslim population, has also made it illegal to wear the *Hijab* by any woman in public offices or universities. However, confusion reigns regarding the definition and the place of secularism.⁶⁶ Secularism is a word which (has been associated with other terms, like ‘secular’, ‘secularization’, “neutrality” and “*Laicite*”. In Latin language the term “*Laicite*” (French), “*Laicidad*” (Spanish) ‘*laicita*” (Italian)) address the basic idea of separation between churches and state. In the legal and political imaginary the word “*Laicite*” means the strong and emphatic expression of strict separation. In Anglo Saxon languages, it seems to be “religious and ideological neutrality”.⁶⁷

The English term secular derives from the Latin word *saeculum* means “this age” or “the present time”, and it also means “contemporary events”. This spatial-temporal connotation conveyed in the concept of secular is derived historically out of the experience and consciousness born of the fusion of the Graeco-Roman and Judaic

⁶⁶ Weir, T. H “Secularism and Secularization: Post Colonial Genealogy and Historical Critique. Center for Religion and Modernity Queens University Belfast, 2015. 7, p. 1 At:

⁶⁷ Palomino, R. “Legal Dimensions of Secularism: Challenges and Problems.

traditions in western Christianity.⁶⁸ But even in the western context the term is not limpid and misleading.⁶⁹ The term “secular” has come to be synonymous with atheism. Groups with explicit atheist agendas are adopting the word “secular” in their names.⁷⁰ Hence, if something is secular, it merely means that its values are not derived from religion.⁷¹

The concept of ‘the secular’ today is part of the doctrine call secularism.⁷² According to the 2017, Merriam-Webster Dictionary, secularism is the belief that religion should not play a role in government, education or other public parts of society.⁷³ WorldNet Dictionary described secularism as a doctrine that rejects religion and religious considerations.⁷⁴ As a concept, as pointed out by Yadudu, secularism refers to the separation of public affairs from the realm of religion or the non-involvement of the church in the public affairs of the state. As it relates to a polity, secularism is built on the twin pillars that (a) there shall be separation between church and the state and (b) that religion shall and must of necessity be confined to the private life of citizens. Consequently, religious precepts shall in no way be invoked to influence public affairs.⁷⁵

From inception, the principles of secularism are aimed mainly at achieving the separation of the temporal order from religious influence. According to Shorter and Onyancha; Secularism refers to a situation in which religious faith, for one reason or another, is felt to be superfluous. It is a state in which religion loses its hold both at the level of social institutions and at the level of human consciousness. As such, it is a datum to modern

⁶⁸ Al-Attas, M. N. (1993). *Islam and Secularism*, ISTAC, Kuala Lumpur. P. 16. At: www.google.com retrieved January 2017

⁶⁹ Taylor, C. “The Meaning of Secularism” *The Hedgehog Review*/fall 2010, p. 25. At

⁷⁰ Winocur, L. “Competing Visions of the Modern Secular State in Law and Policy World Wide. *Research Gate*, p. 3. At <https://www.researchgate.net/publication/304930995>, retrieve 23/01/2017.

⁷¹ Ibid

⁷² Asad, T. ‘Secularism, Nation-State, Religion’. P. 192. At www.google.com.ng, retrieved January, 2107 pdf.

⁷³ 2017 Merriam-Webster Dictionary, Mobile Version

⁷⁴ WorldNet Dictionary

⁷⁵ Yadudu, H. A. (Supra).

society. Secularism is a world view which, in theory and/or practice denies the immanence of God.⁷⁶ As World view, Palomino also asserted that, secularism claims to provide a value system common to all citizens by expelling religion into private sphere. To put it simply, the term secularism describes an ideology that is, and has been since its inception, anti-religious.⁷⁷ According to Daniel Baril, secularism is in fact an expression of humanism. A humanism worthy of the name is consequently intrinsically secular⁷⁸. In line with this position, Shorter and Onyancha are of the view that, secularism may stem from explicit unbelief, the denial of the existence of God or of any religious dimension to human life.⁷⁹

In another meaning of secularism which deals with political and legal practices in many countries, secularism is a jurisdictional concept⁸⁰. In democratic countries governed by the rule of law, it is common at the constitutional level to recognize freedom of religion or belief and to declare some sort of separation between State and institutionalized beliefs, religion, and ideologies. In this sense, “separation of church and State means that non-secular bodies shall not exercise secular power, not even by the grace of the sovereign. Vice versa, secular bodies shall not exercise ecclesiastical power. And “neutrality designates impartiality of the state, a state attitude that avoids taking sides among competing beliefs or Worldviews.⁸¹ In secular States such as France and Turkey, for example, secularism (or *laïcisme*) has often represented a distinctly anti-religious or anti-clerical doctrine seeking to control all religious expression and symbols and abolish

⁷⁶ As quoted in Nweke, C.C. ‘Secularism, Secular State and Religious Freedom’ P.86 At: <http://www.ajol.info/inde/php/jrhr/article/download/1/9663>. retrieved 27-01-2017

⁷⁷ Palomino, R. (Supra) P3-4

⁷⁸ See Nweke, C.C. (Supra) P.87

⁷⁹ Ibid P.89

⁸⁰ Benson, I.T. ‘Notes Towards A (Re) Definition of the ‘Secular’ as quoted in Winocur, L. (Supra) P.4

⁸¹ Palomino, R. (Supra) Pp4-5

them from the public sphere. Under a regime of ‘strict secularism’, the mixing of religion and politics is regarded as necessarily abnormal, irrational, dangerous and extremist.⁸² In a 1997 decision, the Turkish constitutional court defined secularism as the separation of “social life, education, family, economy, manners, dress codes, among others, from religion”.⁸³ However, after a critical reflection on the term, Daniel Baril of the Quebec Secular Movement asserted that secularism goes beyond mere separation to church and state. Rather, for him; ‘secularism is the republican ideal embodied in the protection of fundamental human rights. All charters which recognize liberty of conscience and equality of individuals, without discrimination based on sex, race or religion, are expressions of the quintessence of secularism.’⁸⁴ While, from another view, secularism is a political doctrine that grew out of Christian Europe and has been inextricable linked with a history of foreign colonial invasion and occupation.⁸⁵ In a nutshell, as pointed by Bilgrami, the popular definition has been that, secularism is a stance to be taken about religion, because secularism, in some sense, defines itself against religion.⁸⁶

Secularization, as indicated by every dictionary of every European language, it refers to the transfer of persons, things, meaning, among others from ecclesiastical or religious to civil or lay use, possession, or control.⁸⁷ As a concept, “secularization” (*saecularisatio*) at first denoted a legal transition from monastic life (*regularis*) to the life of canons (*saecularis*) – and then, after the Reformation, it signified the transfer of ecclesiastical real property to laypersons, that is, to be the ‘freeing’ of property from church hands into

⁸² Esposito, L.J. “Rethinking Islam and Secularism” ARDA, Guiding Papers Series. At www.theARDA.com P3

⁸³ Kuru, A.T. ‘Secularism in Turkey: Myths and Realities’ At <http://file.insightturkey.com/files/pdf/insight-turkey> vol. 10 No 3 2008 Kuru Pdf. Retrieved 27th-01-2017

⁸⁴ See Nweke, E.C (supra)

⁸⁵ Esposito, I. Supra P.3

⁸⁶ Bilgrami, A. ‘Secularism: Its Content and Context SSRC Working Papers, Columbia University, Oct 2011

⁸⁷ Casanova, J. ‘Rethinking Secularism: A Global Comparative Perspective’ P7-8 at

the hands of private owners, and thence into market circulation⁸⁸. Al-Attas makes a profound observation that, secularization encompasses not only the political and social aspects of life, but also inevitably the cultural, for it denotes “the disappearance of religious determination of the symbols of cultural integration”. It implies “a historical process, almost certainly irreversible, in which society and culture are delivered from tutelage to religious control and closed metaphysical world views”. It is a “liberating development”.⁸⁹ The world is disenchanted, added Asad.⁹⁰ Al-Attas further stated that, the integral components in the dimensions of secularization are the disenchantment of nature, the desacralization of politics, and the deconsecrating of values.⁹¹ In the discourse of modernity, Casanova have identified three contemporary connotations of secularization that;⁹²

- i. The most recent but the most widespread usage of the term in contemporary academic debates on secularization is the decline of religious beliefs and practices in modern societies, often postulated as a universal, human, developmental process, although this definition remains unregistered in most dictionaries of most European languages;
- ii. Secularization is the privatization of religion, indeed as a precondition for modern liberal democratic politics’
- iii. Secularization is the differentiation of the secular spheres (state, economy, science usually understood as “emancipation” from religious institutions and

⁸⁸ Asad, T. (Supra) P.192

⁸⁹ Al-Attas, M.N. (Supra) P.17

⁹⁰ Asad, T. (Supra) P. 193

⁹¹ Al-Attas, M.N. (Supra) P.18

⁹² Asad, T. (Supra) P.193

norms. This is related to the original etymological – historical meaning of the term within mediaeval Christendom.

Casanova further point out that, American sociologists of religion tend to restrict the use of the term secularization to its narrower, more recent meaning of the decline of religious beliefs and practices among individuals. The United States, they assume, was already born as a modern secular society. But Europeans tend to switch back and forth between the traditional meaning of secularization and the more recent meaning.⁹³

Now as expressed by Al-Attas, we must take due notice of the fact that distinction was made between secularization and secularism, that whereas the former implies a continuing and open ended process in which values and worldviews are continually revised in accordance with ‘evolutionary’ change in history, the latter, like religion, projects a closed worldview and an absolute set of values in line with an ultimate historical process having a final significance for man. Secularism, thus, denotes an ideology.⁹⁴ In fact, according to Asad, the interesting thing about this view is that although religion is regarded as alien to the secular, the latter is also seen to have generated religion.⁹⁵ Now lets turn to the historical emergence of secularism in order to find out its origin and development.

2.3.1 Emergence of Secularism

Secularism originated at a point when religion and social and political life were not separated. It originated around the 14th century A.D when political, economic and

⁹³ Ibid P.8

⁹⁴ Al-Attas, M.N. (Supra) P.19

⁹⁵ Asad, T. (Supra) P.193

religious changes occurred within the Christian culture.⁹⁶ Although, it was claimed that the earliest expressions of what could be considered an articulation of secularisms comes from the Bible. “Render unto Caesar that which is Caesar’s, and unto God that which is God’s”⁹⁷. However, before 1648 the term secularism had been used to denote one side of Christian distinctions between sacred and mundane. In the Catholic Church secular priests were those serving society at large rather than a religious order. Secularization had referred to the dispersion of priests from their vows. After the 1648 Treaty of Westphalia ended the European wars of religion, secularization was used to described the transfer of territories held by the church to the control of political authorities.⁹⁸ Thus, secularism was not originally intended as a way to separate religion from society or religious consciousness from political action, but rather to isolate the State from the church structure and to separate religious and political authorities. The tone started to change, however, a century later among progressive European intellectuals who saw in religion a negative force whose elimination, they believed, was essential for further emancipation and progress.⁹⁹

Hence, according to Smith, the historical account of the emergence of secularism begins with the middle ages. The Middle Ages are seen as the golden era for Christianity, when all believed and went to Church. It is from this position that the Church has declined and society has become secular. The explanation for the decline of Christianity begins with the Enlightenment. During this period, atheism and anti-clericalism emerge as serious intellectual, social and cultural forces. The arrival of reason and science push religion out

⁹⁶ Nweke, C.C. (Supra) P.86

⁹⁷ Matt: 22:21, King James Version as quoted in Winocur, L. (Supra) P.4

⁹⁸ Lechner, F.J. (Supra) P.1

⁹⁹ Safi, L. (2003) Tensions and Transitions in the Muslim World, University Press of America, Inc. New York. Pp7-8

of the public square and into the realm of private opinion.¹⁰⁰ That way, in the 16th and 17th century, began the age-long process of separation of State and religion. Thus, since the European enlightenment, stretching from the 17th to the 19th centuries, and with the concomitant rise to reason and empiricism and scientific and technological advances in the west, the idea of secularism became widespread among intellectuals.¹⁰¹

However, secularism, like religion, has developed in various forms or models at different levels and in different realms.¹⁰² Many modern nations that are typically described as “secular” differ significantly in how they approach religion and its relationship to the public. The nature of a nation’s secularism is reflected in its public policy regarding discrete issues such as religious instruction in public schools, and restrictions on religious garb.¹⁰³ The different manifestations of secularism offers important insight into a country’s level of commitment to removing religious influence. Numerous scholars have offered frameworks for distinguishing among the various manifestations of the secularism. For example Kuru distinguishes manifestations of secularism into two.¹⁰⁴ Bhargava classified secularism into three¹⁰⁵, Singh divide secularism into Five¹⁰⁶, Morini¹⁰⁷ and Barry¹⁰⁸ founds two main dimensions although Barry recognizes in between the two dimensions an intermediate positions. While Berger describes three typologies of secularism.

¹⁰⁰ Smith, G. (Supra) Pp7-8

¹⁰¹ Nieuwenhuis, A. ‘European Court of Human Rights: State and Religion, Schools and Scarves, AN Analysis of the Margin of Appreciation as used in the Case of Leyla Sahin V. Turkey, Decision of 29 June 2004, Application Number 44774/98.’ *European Constitutional Law Review* 1 (2005) P. 499. At.

¹⁰² Kosmin, B.A. ‘Contemporary Secularity and Secularism’ at

¹⁰³ Winocur, L. (Supra) Pp6-7

¹⁰⁴ See Winocur, L Ibid P 7

¹⁰⁵ Bhargava, R. (Supra) Pp9-13

¹⁰⁶ Singh, B.P. ‘Comparative Study of Freedom of Religion under Various Constitutional Frame Works’ *National Monthly Referred Journal of Research in Arts & Education*. Vol. III, January, 14. At www.abninarjournal.com Pp2-8

¹⁰⁷ Morini, C. (Supra)

¹⁰⁸ Kosmin, B.A. ‘Contemporary Secularity and Secularism at:

For example, extreme secularism which is also understood as hard, hostile, assertive, radical, absolute or strict exclusion can be associated with Weber's transformation of consciousness. A precursor can be found in the writings of Hobbes, who claimed that those who followed the light of reason are bound to discard faith as intellectually unreliable and therefore morally dangerous. Following Hobbes and other like – Minded philosophers, Max suggested that faith was an ideology in contradistinction to knowledge, which was used by regimes for the purpose of political control. Weber saw the process of secularization as the culmination of the rationalization and as the ultimate disenchantment of the world by modern science.¹⁰⁹

Disenchantment refers to an emptying out of magic, mystery, hints or transcendence, or a faith in realities, entities, or forces unseen but intuited and believed to be essential to human welfare and flourishing. Today's spoke men include Richard Dawkins and Paul Kurtz, or California's activist doctor – lawyer, Michael Newdow. They all take strict/extreme secularism to its logical conclusion, atheism – the belief in the meaninglessness and irrationality of theism.¹¹⁰

Under this form of secularism, the state pursues an active social agenda with the objective of relegating religion to the private domain. It is an ideology unto itself, a “comprehensive doctrine” that permeates all aspects of political life.¹¹¹ The freedom to manifest religious belief is therefore highly restricted in the public realm, especially within public institutions. Also those whose religious identity requires certain manifestations – such as wearing particular clothing, jewel, or other symbols – to act

¹⁰⁹ Ibid P6

¹¹⁰ Ibid P.7

¹¹¹ Winocur, L. (Supra) Pp8-9

according to a secularist way of life every time they enter the public sphere.¹¹² Thus, disconnection may first be identified with strict exclusion. Secularism here becomes a doctrine of political taboo and prohibits contacts with religious activities. This radical secularism is typified by French and laicite and the Turkish model and more recently the ACLU, (such groups as the American Civil Liberties Union or Americans United for the Separation of Church and State).¹¹³ Such states exclude religion in order to control or regulate them and sometimes to even destroy them. They are anti-religious and may justify this disconnection on epistemological grounds, for example, that religion is false consciousness or obscurantist or superstitious. Or, they may do so in the name of a single value such as equality, because of the belief that important values can be realized only by controlling or eliminating religion.¹¹⁴

However, according to the moderate or neutral or value-based or the dominant western model or soft secularism, religion is neither a public responsibility nor the right to enforce a religious (or non-religious) doctrine or practice on citizens. Religion and belief pertain to personal conscience and identity. This approach to secularism also implies that the state should not take a position on the truth claims of various doctrines, nor discriminate persons or groups because of their religion or belief. Moreover, moderate secularism entails that religious groups could not as such have power over political institutions or influence on decision-making procedures in a way that restricts the rights of others to freedom of religion or belief and the participation in public life.¹¹⁵ The philosophical term for this condition of differentiation is pluralism. Its opposite is

¹¹² Morini, C. (Supra) P. 618

¹¹³ Berger, P. (Supra)

¹¹⁴ Bhargava, R. (Supra) Pp10-11

¹¹⁵ Morini, C. (Supra) Pp617-618

monism (i.e. theocracy and totalitarianism).¹¹⁶ Such a view proposes that religious and political institutions live as strangers to each other, at best with benign or respectful indifference. A ‘wall of separation’ has been erected between the two. On the wall of separation conception of secularism, religion must be outside the purview of the State, and in this sense, must be privatized. Such liberal-democratic states are not anti-religious but give religion a particular form and they protect equality of citizenship. In short, purely religious convictions or commitments have no role to play in democratic and pluralist polities.¹¹⁷ The mainstream consensus is that it is crucial to a free society to respect the religious convictions of its citizens; it is crucial to a pluralistic, differentiated, secular political order to carve out a sphere for freedom of religion and to let that sphere be autonomous, to the greatest extent possible, of pressures emanating from government.¹¹⁸

Kosmin further stated that, the existence of religion within its proper sphere, alongside the other differentiated spheres of a modern pluralistic society, is an exemplification of differentiation, not a rejection of it. This is why America can be said to subscribe to a moderate or soft secularism.¹¹⁹ The soft secularist is willing to take a live-and let-live attitude toward religion as long as it doesn’t impinge on his freedom of choice or seek control of American Public Institutions. For the soft secularist, religion is properly a private lifestyle option, which must not threaten liberty and social harmony in a differentiated and pluralistic society.¹²⁰

¹¹⁶ Kosmin, B.A. (Supra) P.5

¹¹⁷ Bhargava, R. (Supra) P.11

¹¹⁸ Kosmin, B.A. (Supra) P.6

¹¹⁹ Ibid P.6

¹²⁰ Ibid P.7

In short moderate secularism according to Kuru is a pragmatic political principle that tries to maintain state neutrality toward various religions.¹²¹ While Berger also pointed out that in a moderate or neutral secularism, the state is not hostile to religion but draws back from direct involvement in religious matters and recognizes the autonomy of religious institutions. This moderate attitude toward religion is then expressed in a moderate understanding of the separation of church and state.¹²²

Today, secularism is beginning to be challenged not only by the Muslims. Secularism is contested even by western researchers, academics and Christian theologians in the west! Thus, the general assumptions that modern societies are ‘secularized’ has recently started to show more serious cracks. This assumptions were never left unchallenged even in the so called secular states like Turkey, France, etc¹²³. It is clearly at odds with the continuing huge institutional diversity in other western countries and in the ‘rest’ of the world.¹²⁴

Infact, by the 1990s, this criticism of secularism was worldwide. Several western scholars claimed that by enjoining believers to leave behind religious convictions when they step into public life, secularism shows hostility to believers, inhibits diversity and homogenizes the public domain. Others claim thus secularism is a parochial doctrine with universalistic pretensions. Still others claim that it purports to fight religious hegemony but attempts to establish itself as the sole, authoritative basis of adjudication in public life¹²⁵. According to anthropologist Talal Asad, secularism became “entangled with

¹²¹ Winocur, L. (Supra) P.7

¹²² Berger, P. (Supra)

¹²³ Bhargava, R ‘Political Secularism’ Published in a. handbook of Political Theory, John Dryzek, B: Bonning and anne Philips (ed Oxford university Press, Oxford. 2006, Pp2-3)

¹²⁴ Bader, V Supra Pp17 - 18

¹²⁵ Bhargava, R Supra p3

projects of total social reconstruction by means of legislation¹²⁶ Bhargava also further stated that secularism (e.g in France and Turkey) becomes a doctrine of political taboo and prohibits contacts with religious activities.¹²⁷ By and large, social theorist, Ashis Nandy in 1990 badly dismissed secularism as a false ideology designed in the west.¹²⁸ Similarly, Esposito point out that even the notion that secularism is ‘neutral’ regarding religion is itself a contested issue today.¹²⁹ Even in Nigeria there is no such balance.

2.3.2 Nature of Nigerian State and the Concept of Secularism

Now one would like to turn to a critical discussion of secularism in Nigeria. Many authors, speakers, judges and others upheld the existence of secularism in Nigeria either do not comprehend secularism including the dimensions of secularism or knowingly overlook them. Confining ourselves to Nigeria, the following historical and structural arguments are important for debates on whether and if Nigeria is a secular state. The relevant provisions of the constitution and other applicable laws are examined in contrast with secularism.

2.3.2 (a) No Constitutional Affirmation of Secularism

Secularism is one of the key issues that usually attract constitutional force. Where a state is secular, the practice is for the constitution of the state to, in explicit terms, make a declaration of the state to be secular and/or even to go further by mandating the separation of religion from the state. In respects to the arguments of Ahmad¹³⁰,

¹²⁶ Weir, T. H ‘Secularism and secularization post-colonial genecology and historical critique p.3

¹²⁷ Bhargava, R Supra P.10

¹²⁸ As Quoted in Weir P.3

¹²⁹ Esposito, J.L/ ‘Rethinking Islam and secularism’ the ARDA Guiding Papers series www.theARDA.com Pp.26-27

¹³⁰ Ahmad, N. A (2011) Administration of Islamic Criminal Law under the Nigerian Constitutional Democracy, ABU Press Ltd, Zaria, Pp87 - 90

Sampson¹³¹, Oloyede¹³² and a lot of others, there was no time, constitutionally Nigeria was ever regarded as secular state. If one examines all the Nigerian constitutions of the past together with the laws, one cannot find any provision which says Nigeria is a secular state. Infact, Ahmad examined that a common feature of almost all the constitutions of the world is to make clear and explicit provisions on all issues that have been considered as fundamental. Ahmad further gave some instances of 15 African countries which have been characterized as secular states by the explicit proclamation of their constitutions, however with respect to Nigeria there is no such explicit constitutional declaration of secularism.¹³³ In a similar argument, Durham after studying the practice of constitutions of the nations of the world on secularism concludes that a state can only be characterized as secular by the express declaration of its constitution and therefore, categorically there is no provision in the Nigerian constitution specifying that Nigeria is a secular state.¹³⁴ Furthermore, Ahmad explained this core idea that in 1977 – 78, when the constitution drafting committee was inaugurated to produce a draft constitution for the nation, article 17 of the committee’s draft categorically prescribed that Nigeria was to be a secular state. This proclamation was however deleted during the debates of the Constituent Assembly. And in its place section 10 was introduced. Similarly, in 1998, another national constitutional debate was constituted to prepare a new constitution. At the end of the exercise, the committees report concluded that most Nigerians had opted for the 1979 modeled constitution. The 1999 constitution which came thereafter reproduced the

¹³¹ Sampson, I.T ‘Religion and the Nigerian State: Situating the de-facto and de-jure Frontiers of State-Religion Relations and its Implications for National Security, Oxford Journal of Law and Religion, Vol.3, No.2 (2014), Pp311-339

¹³² Oloyede, I. ‘Theories and Realities of Religious Liberty in Nigeria’

¹³³ Ahmad, N. A Ibid p87

¹³⁴ Durham W.C. Jr. Nigeria’s “State Religion” Question in comparative perspectives, Quoted in Ahmad, N. A p87 and p90 at footnote 260.

provisions of the 1979 constitution and it neither use the word secularism or its derivatives.¹³⁵ Thus, even the term ‘secular’ or ‘secularism’ did not appear in the early and existing constitutions. So, the designers of the Nigerian constitution were not ignorant of the term ‘secular’ or ‘secularism’ but still choose not to even use it.

However, due to the provisions of section 10 of the 1999 constitution which provide thus;

the government of the federation or the state shall not adopt a religion
as a state religion¹³⁶

Thus, the section is often wrongly interpreted to mean Nigeria is a secular state. For instance, as pointed out by Yadudu that this section since its adoption has come to acquire several strands of meanings and connotations. It has also been claimed that with its adoption, Nigeria’s polity has been thoroughly secularized by constitutional fiat.¹³⁷

However, the claim that section 10 of the 1999 constitution means secularism and thus separation between state and religion are contradicted by the constitutional reality. If we examine other provisions of the constitution in which such a provision of section 10 is made, we will find that they are contradicted by secularism, especially the following arguments;

2.3.2 (b) Explicit Recognition of God in the Preamble

Ahmad has lucidly explained this argument that the practice of constitutions of the overwhelming nations is to begin with a preamble. The preamble usually contains what a nation considers to be its fundamental objectives and ideas which are to be pursued. The Nigerian constitution in following this worldwide pattern, has a preamble wherein the

¹³⁵ Ahmad, N. A Ibid pp89-90

¹³⁶ Constitution of the Federal Republic of Nigeria, section 10.

¹³⁷Yadudu, A. H “The separation of church and state: Nigeria’s constitutional contrivance” Lawyers Bi – annual p15

fundamental goals of the nation are set out.¹³⁸ Of course, however, if one consulted the Nigerian constitutions past and present the preamble contains explicit reference to God.

We the people of the federal Republic of Nigeria, having firmly and solemnly resolved to live in unity and harmony as one indivisible and indissoluble sovereign nation under God.....¹³⁹

Having been included in the preamble that Nigeria is under God, this declaration by all necessary implications forms part of the fundamental objectives and ideals of the Nigerian nation, this therefore clearly rules out the contention that religion and State are completely separated. On the other hand, this same preamble positions Nigeria as a Godly nation, and by implication it has to deal with religions.¹⁴⁰ Thus, the preamble placed Nigeria and Nigerians under the authority and supremacy of God. This is the first and most important reason why Nigeria is unsecular.

2.3.2 (c) Affirmative Submission to God in the Oath of Allegiance, Oath of office, National Pledge and Anthem

It is a constitutional requirement that the oath of allegiance and oath of office should be administered on certain elected and/or appointed public officers including the president, vice president, governors, and deputy governors. Ministers, commissioners, special advisers, members of the national and state houses of assemblies, judicial officers and so on. The taking of these oaths is condition precedent to the assumption of office by these public officers. The format of each of these oaths has been provided by the seventh schedule to the constitution. Each of the prescribed format of this oath ends with the phrase and prayer;

¹³⁸ Ahmad, N. A Supra p91

¹³⁹ The Preamble of the Constitution of the federal republic of Nigeria

¹⁴⁰ Ahmad, N. A. Supra p91

so help me God¹⁴¹

Similarly, the last stanza of the national pledge invites God to direct the national cause. And no Nigerian has ever protested the religious allegiance pledged to God in all this circumstances mentioned above.¹⁴²

Other sections of the constitution which are contradicted by secularism are section 17(3)(b) on social objectives as the section has made it clear that government can promote religious affairs. Section 18 of the constitution and section 38 of the constitution are contradicted by secularism¹⁴³. There are indeed many other sections of the constitution which are contradicted by secularism.

2.3.2 (d) Trifurcation of the Nigerian Legal System

The second important reason why Nigeria is unsecular is that the source of law under the Nigerian legal system are three – pronged – the 1999 Nigerian constitution recognizes the common law , the Islamic law and customary law as the source of Nigerian law with judicial powers – all of which have something to do with religions of Christianity, Islam and Custom. These courts have been established by several sections of the constitution and have been practically institutionalized. Infacts, within chapter vii of judicature part 1 and 2 covering section 230 – 296 of 1999 constitution are the establishment, appointments, jurisdictions, constitutions, practices and procedures of these courts. The English law or the common law, therefore, runs concurrently with customary and Islamic

¹⁴¹ Constitution of the Federal Republic of Nigeria, 1999. Sections 26(1), 27(2), 52, 94, 135, 140, 142, 149, 180, 185, 187 and 290 as quoted in Ahmad, N. A Supra p92.

¹⁴²Oloyede, I Supra

¹⁴³ See the 1999, Nigerian Constitution, sections 17(3)b, 18, 38

laws and there is a strong religious influence on the Nigerian legal system generally as was further pointed out by Sampson.¹⁴⁴

In the same vein, some Nigerian laws are laden with religious substance. To give an example, the Penal code Act, has significant Shariah flavour, while the enactment of laws like Same Sex Marriage (prohibition) Act 2013 were influenced by religious arguments. Infact, the act under section 7 recognize marriage in Nigeria only in accordance with the marriage Act, Islamic law or customary law. And section 2 of the same Act state that same sex marriage shall not be solemnized in a church, mosque or any other place of worship in Nigeria.¹⁴⁵

Furthermore, there are laws establishing religious institutions which are wholly funded by government. The Muslim National Hajj commission of Nigeria is established by law and funded by federation account. By section 3 and 9 of the Act, members of the commission are appointed by the president and remunerated by the federal government. Similarly, the secretary and staff of the commission are remunerated by the federal government and also enjoy all privileges available to public servants. By section 12 & the NAHCON Act, the commission prepares and submits its budget for pilgrimage to Saudi Arabia directly to the president for funding.¹⁴⁶ So also, the Nigeria Christian Pilgrims Commission is established by an Act of the National Assembly. The Christian pilgrim commission established by an Act of the National Assembly. The Christian Pilgrims commission establishment Act has similar provisions and functions with its Muslim counterpart –

¹⁴⁴ Sampson, I.T. Supra

¹⁴⁵ Same Sex Marriage (Prohibition) Act 2013

¹⁴⁶ The National HAJ Commission of Nigerian (NAHCON) Establishment Act 2006.

except for the fact that it addresses the Christian faith – and also obtains its funding from the federal government.¹⁴⁷

Another point is the obvious Nigerian government's respect for religious inclusiveness, 'Muslim and Christian' holidays are observed. In addition, there is religious broadcasting in government owned print and electronic media and the unofficial tradition of making Christian and Muslim prayers at every official and state function in disregard to animists and other religious adherents.¹⁴⁸ Added to this is the fact that the government has been financing the national mosque and a national ecumenical centre, the office of the Chaplain and mosque in the armed forces and in the government institutions of higher learning. Infact, the president state house has a church and mosque in it, while states' government houses have either churches or mosques depending on the religious predominance of a religion in the state.¹⁴⁹ Therefore, the religious neutrality requisite for characterizing a state as secular is obviously lacking in Nigeria.

Alhaji Sa'ad Abubakar, Sultan of Sokoto and leader of the Islamic community in Nigeria make a categorical statement that;

anyone saying Nigeria is a secular nation does not understand the meaning of the word secular. There is nothing secular about the Nigerian nation since whatever we do will always put Islam and Christianity in the fore front¹⁵⁰ .

Moreover, legislative activity in the National Assembly and its outcomes demonstrate a strong difference to religious bias. For instance, the attempt by the senate to enact a law legalizing prostitution was condemned by legislators who cited religious reasons to

¹⁴⁷ The Nigerian Christian Pilgrims Commission (Establishment) Act, 2007 See also Sampson, I.T. Supra P.330

¹⁴⁸ Ahmad, N.A. Supra P.92

¹⁴⁹ Ibid Pp92-93

¹⁵⁰ As quoted by Sampson, I.T. Supra P.325

delegitimize it.¹⁵¹ So also, the gender equality bill has been rejected for the third time now by the national Assembly due to religious reasons and tradition.¹⁵² Infact, as tightly observed by Yadudu, that government officials have consciously eschewed describing Nigeria as secular.¹⁵³

One can argue, therefore that from the totality of the aforementioned analysis; the trifurcation of the Nigerian legal system and other positive inclusions of religious Acts and the religious character of the Nigerian people as demonstrated by the National Assembly do warrant a description of the Nigerian country as Unsecular.

At this point one is inclined to agree with the most important prudential approach and points of criticism raised by Nigerian Muslims particularly members of the Constituent Assembly that should the Nigerian government choose to be secular then the following issues that were entrenched in the Nation's public life and institutions must be done away with :-

- That the English common law, which is deeply rooted in Christianity, should and no longer be used in our courts.
- The high court of Justice which is Christian in origin, dispenses Christian laws and represents its ideals ought not enjoy any constitutional protection as well.
- The political system being rooted in western civilization is Christian, therefore must be abandoned.
- That there should be no work – free Sundays.

¹⁵¹ Prostitution Bill: "We will reject it" Yusuf Galambi" Sunday Tribune (9 October 2011). See Sampson P.331 at footnote No. 83

¹⁵² NTA 'Saraki Urges Women to re-introduce Gender equality Bill' 16 Mar. 2016

¹⁵³Yadudu, A.H. Supra P.23

- The use of the Gregorian calendar rooted in Christianity should be abolished
- The use of the Christian cross as a symbol of medical and health services in government – owned establishments must be removed and changed.
- The marriage Act which was entirely sourced from Christianity must be changed.¹⁵⁴

Despite the fact that section 10 of the 1979 and 1999 constitutions states that “the government of the Federation or of a state shall not adopt any religion as a state religion”, Christians have argued that the interpretation of this provision is that the country is secular, a position that Muslims have rejected. The Christian leadership in general strongly believes that the Multi-religious nature of Nigeria imposes the necessity of secular, non-religious laws. Hence, in their view the major instruments that need to be promoted are democracy and secularity.¹⁵⁵ That, we are obliged to accept a secular constitutional framework as our passport to a peaceful future.¹⁵⁶ No wonder, Gil Anidjar, notes that...’the discourse of secularism always already included Christianity on its side against an Islamic other.¹⁵⁷ In fact, Scott reports that the explicit linking of secularism to its Christian traditions has become ever more forceful in the twenty first century.’¹⁵⁸

However, religion has not only refused to disappear or limit itself to the private realm, it is effectively challenging the ideology that has sought to limit its operational space in many societies including Nigeria.¹⁵⁹ Infact, in Nigeria, even the Pentecostals within Christianity reject secularism. Today, as Nigerian Muslim Women in *Hijab* have become

¹⁵⁴ See both Yadudu, A. H and Grand QadiShehu Supra

¹⁵⁵ Ibid Pp81-83

¹⁵⁶ Ibid P.85

¹⁵⁷ See Scott, J.W. (Supra) P.20

¹⁵⁸

¹⁵⁹ Ibid P.71

more increasingly demanding their right to practice their religion by wearing *Hijab* as part of their fundamental human rights and religious freedom under the constitution, a major debate and political struggle over secularism has also grown. This controversy will be discussed at greater length in chapter five.

This chapter therefore presented a conceptual discussion of religion, feminism and secularism. How this discursive concepts became link with the discourse of *Hijab* is the task of the next chapter. The French and Turkish Constitutions explicitly state that their country is a secular nation. The constitution of Nigeria contains no such provision. Yet secularism has been used in Nigeria (court) to justify ban on *Hijab*.

CHAPTER THREE

HISTORICAL DISCOURSE AND LEGAL BASIS OF *HIJAB* UNDER ISLAMIC LAW

3.0 Introduction

The reality of course is that for one to understand the principle of *Hijab* one have to look at it within the context of the religion of Islam itself. This chapter therefore introduces the general conception of *Hijab* from the Shariah point of view. What the primary sources of Islamic law say about the *Hijab* especially these two verses; Quran 24 verse 31 and Quran 33 verse 59. It provides an over view of the circumstance of the revelation, commentaries on these texts, Prophetic Hadith as well as Juristic opinions. Also it describe the range of issues related to the *Hijab*; including the scope, rational, the general conditions of outing or participation in public life under the Shariah. However, to understand the nature of the contemporary discourse of *Hijab* and how it became significant even in the contemporary democratic societies, it is important to understand the historical root that shaped the *Hijab* discourse. The depiction of *Hijab* as a sign of backwardness has its roots since the colonial period and was used to justify colonialism. Following the colonial period, indigenous scholars and other elites called for rejection of *Hijab*, seeing the *Hijab* as an obstacle to “progress”. Leading to the declension of the use of *Hijab*. However, against all predictions, the return of *Hijab* in the last decades of the 20th century came as a great surprise to the world that pride itself with its modernity and secularism. It is within this context that this chapter also discusses the origin and constructive nature of the anti-*Hijab* discourse, particularly how it became significant project since the colonial period. Therefore, the chapter also look at the declensional periods of the use of *Hijab* and its reemergence in modern democratic era. The chapter will then finally, explore how France and Turkish’s secularism response to *Hijab*, along

with recent decisions from the European Court of Human Rights considering the *Hijab* laws in France and Turkey. This discussion will also include discussion on how the secularity of Nigeria especially with the use of the Hijab has been contested, even though the case is still pending awaiting final adjudication.

3.1 Definition, Connotations and Geographical Terminology of the Doctrine of *Hijab*

The word *Hijab* is used several times in the Quran, but only once does it refer to women. It occurs once in the context of male believers not to ask the wives of Prophet Mohammed (SAW) for anything except from behind a “*Hijab*”(screen)¹

The Arabic terms found in the Quran are *jilbab* and *khimar*.

Based on the command of Allah (SWT): “...they should draw their *Khumurihinna* (head-cover) over their *Juyubihinna* (over-garment)...”

An-Nur 24:31

and the command:

“O Prophet! Tell your wives and daughters and the believing women that they should cast their *Jalabeebihinna* all over their bodies...”

1Al-Ahzab 33:59

According to tafsir Ibn Kathir, the term *khumur* is the plural of *Khimaar* which means something that covers, and is what is used to cover the head, necks and chests so that nothing can be seen of them.² Also the dictionary of Islamic words and expressions defines *Khimaar* as head cover that is the cloth which covers the whole head, neck and may also be used to cover the bosom of a woman.³

Meanwhile, as to the definition of what *Jilbab* means, Ad-Darsh states that according to Alusi, the author of *Ruh al-Ma’ani*, *Jilbab* means an over-garment which a woman puts

¹ Saleh, M.I (2011) Dictionary and Islamic Words and Expression, Riyadh, Darussalam p.81

² Tafsir Ibn Kathir Vol. 7 Supra P.69

³ Saleh, M.I. Supra P.127

over her ordinary clothes. Ibn Abbas says Alusi, interpreted *Jilbab* to mean a long and loose gown which covered a woman body from neck to feet.⁴ *Jalaabiib* is the plural of *Jilbab*, literally means a thing that prevents, debar, conceals or hides, because it prevents seeing or beholding. With reference to clothing it means gown or loose garment. But in relation to women, this refers to a garment normally worn over regular garment.⁵

However, the term *Hijab* is a complete notion that has gradually developed a set of related meanings. The term had a well-defined meaning by the ninth century and it had become part of the Arabian Arabic vocabulary in early Islam.⁶ The word *Hijab* is today used to refer to a women's covering.⁷ Literally, *Hijab* is derived from the root h-j-b, its plural form *hajaba* translates as 'to veil, to seclude, to screen, to conceal, to form a separation, to mask'. *Hijab* translates as 'cover', wrap, curtain, veil, screen, partition.⁸ However, the term 'veil', has no exact referent in Arabic, some reject this term 'veil' because of its western origins or Western scholarly invention that tends to be over used, invariably out of or without context; (with its correlated seclusion-which signifies total confinement of women within the four walls of their houses). Others reject it because it implies face-veiling which does not describe the majority of Muslim covering practices.

There are other regional terms used to refer to specific forms of the Islamic mode of covering. For example *purdah* in *Indo-Persian* countries, *chador* in Iran, *burqa* in Afghanistan and *Abaya* in Arabic countries. Similarly, the terms *jilbab* and *khimar* have

⁴ Ad-Darsh, M. Supra P.39

⁵ See Baal baki, R. (2002) *Al-Mawrid: A Modern Arabic-English Dictionary* Beirut, Dar El-Ilm Lilmalayin, P.426. also, Saleh, M.I. (2011) *Dictionary of Islamic Words and expressions*, Supra P.116. see also, Murad, M.R. (1999) *Islamic Dress Code for Women*, Supra P.9 at footnote, No.1

⁶ EL-Guindi see Boulanour A.W 'The Notion of Modesty in Muslim Women's Clothing an Islamic Point and View, *New Zealand Journal and Asiah studies* and 8,2 (December,2006)P.144.At:

⁷ Mutahhari, M. (2012) *The Islamic Modest Dress*, Feedbooks, www.feedbooks.com

⁸ See Boulanour Supra p.144, Saleh supra p.81 and Baalbaki, R (2002)16th *Al Mawrid; A Modern Arabic-English Dictionary* Beirut Dar EL-Elm LIL Malayin

geographic variability in modern usage. For example, *khimar* refers in some regions to a face veil, in others, such as many Gulf states and North Africa, to a headscarf. Indonesians use *jilbab* to refer generally to a woman's Islamic dress, but in Algeria *jilbab* refers specifically to covering with one piece of cloth from head to toe. However, *niqab* and *burqa* are often used in the western media's coverage of the Islamic *Hijab*⁹. *Hijab* is probably the most popular, and certainly in British, America and Nigerian contexts is the most common term for Muslim women's dress especially in the academy which refers to the entire style of Islamic dress (often a head cover and over garments).

Yobe state has in fact enacted a law on how Muslim women are to dress, in its prohibition of un-Islamic Dressing Law 2000, for the definition of *Hijab*, section 2 provides: '*Hijab*' means that cloth which covers the entire body of a woman except her face and palm up to the wrist and which does not show the shape, or the body of a woman and includes lifaya'.¹⁰

Therefore, technically speaking, *Hijab* means the adherence to certain standards of modest dress for women. In other contexts it refers to a complete ensemble that conforms to modest dress, a set of behaviors and norms for women.¹¹ Within the frame work of the Islamic Legal parlance, the term *Hijab* is define as a mode of dressing prescribed by Islamic law in its primary sources (the Holy Quran and sunnah) that the Muslim woman must observe when going out abroad or in the presence of strangers or non-*mahram*

⁹ Bucar, E Supra P6-7

¹⁰ As quoted in Nasir, J.M. (Supra) Pp105-6

¹¹ Bucar, E (2012) the Islamic Veil A Beginners Guide, England one World Publications. p.6-7

men.¹² The term *mutahajjabah* is commonly used to refer to a Muslim female who observes the rules of Islamic “*Hijab*” the opposite of this word are *mutabarrijah*.¹³

3.2 The Legal Basis of *Hijab* in the Shariah

Relevant Quranic verses and authentic prophetic traditions as well as jurisprudential analysis laid the legal foundation of the basis of *Hijab* in the Shariah. Thus, the mandate for *Hijab* comes from the Quran, Sunnah and Juristic opinions. In this regard, it is noteworthy to refer to the Quranic sources, the authentic hadith and the Islamic legal opinions.

3.2.1 The Quranic Basis

The Holy Quran, the literal word of Allah (SWT) has decreed *Hijab* in two main verses:

وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَاءِ بُعُولَتِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنَاتِ أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّابِعِينَ غَيْرِ أُولِي الْإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوَاتِ النِّسَاءِ وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ وَتُوبُوا إِلَى اللَّهِ جَمِيعًا أَيُّهَا الْمُؤْمِنُونَ لَعَلَّكُمْ تُفْلِحُونَ ﴿٣١﴾

“And tell the believing women to lower their gaze and guard their *furuj* (private parts) and not to show off their adornment except that which is apparent and that they should draw their head covers over their *Juyub* and not to reveal their adornment except to their husbands, their fathers or their husband’s sons, or their brothers, or their brother’s son or their sister’s sons or their women or their right hand possessions or such of male attendants who have no sexual desire or young children who are not aware of the nakedness of women. And let them not stamp their feet so as to reveal what

¹²Badamasiuy, J. “Dress Code in the Legal Profession: Issues and Challenges for Female Muslims in Nigeria” KBJ a Journal of Kano Branch of the Nigerian Bar Association, Vol. 1 No.1 July, 2013, Maiden Editio, P.196

¹³ Saleh, supra, p.165

they hide of their adornment. And all of you beg Allah to forgive you all, O believers, that you maybe successful”

The above verse 31 quoted from Surah An-Nur (Q24:31), gives specific detailed information as to what a Muslim woman must wear to cover her body in the presence of strangers and non-*mahram* relatives, whether indoors or outdoors. This verse, commanded women to conceal the adornment without any exemption ‘except to a restricted circle of people’.

The second verse which commands the Muslim woman to wear *Hijabis* quoted from

يَا أَيُّهَا النَّبِيُّ قُلْ لِّأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءِ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ
مِنْ جَلَابِيبِهِنَّ ذَٰلِكَ أَدْفَعُ أَن يُعْرَفْنَ فَلَا يُؤْذَيْنَ وَكَانَ اللَّهُ غَفُورًا
رَّحِيمًا

“O Prophet! Tell your wives and your daughters and the women of the believers to draw their *Jalabib* over their bodies. That will be better that they should be known so as not to be molested. And Allah is ever off-forgiving, most merciful”¹⁴

These novel verses show that the obligation of *Hijab* like other obligations is firmly based on the very word of Allah (SWT) himself. Meaning, the contents as well as the directive of these verses shows that the injunctions were obligatory, explicitly and directly addressed to the Muslim women.

3.2.2 The Circumstances of the Revelation of the Verses of *Hijab*

In the midst of the wide spread social and moral chaos that engulfed the world, the Legal injunctions evolve for the promotion of decency among women, the improvement of the

¹⁴ Ibid Pp225-226

dress and demeanor and their protection from insult.¹⁵ Before the revelation, and during the period of *jahiliyyah* (ignorance) as well as in the beginning of the Islamic era, the practice of displaying beauty, included the uncovering of the bosom, and the dress of the respectable women was not any much different from that of the women of ignorant. Then they were enjoined to put on the outer garments and cover the head and the bosom. A difference was thus made between the dress of women within their houses and when they appeared in public, they had to be particular so that their very appearance should be indicative of modesty. On another occasion the Muslim women are required to wear a dress whose very appearance should distinguish them from such women as did not have a good reputation¹⁶. The Holy Quran in chapter 33 verse 60 provides adequate insight into the happenings during that period, it seems that this injunction was required by the special circumstances which then prevailed at Medina, where the hypocrites would molest a good Muslim woman who went out to transact her affairs and then offer the excuse that they thought her to be a women of ill repute.¹⁷ Imam Razi Says: In the days of ignorance, women of the Arab nobility and the slave girls moved about freely and they were teased by the evil doers. Allah enjoined on the respectable women to cover themselves up with the outer garment, and said, "...it is expected that they will thus be recognized and not molested". This may have two meanings; first, they will be recognized as respectable women from their dress, and will not be teased; secondly, it will be known that they are not promiscuous.¹⁸

¹⁵ Ali, S.A () the Spirit of Islam, Indiq, idarah 1 Adabiyat-L Dell1 p249-250

¹⁶ Ali, M.M () the Religion of Islam A Comprehensive Discussion of and the Sources, Principles and Publication and Printing House p656-661. Also, see the Statement of Allaman Neishapuri as recorded by Maududi, A.A (2006) Purda and the status and woman in Islam, new Delhi markazi Makataba Islamic publishers P.249

¹⁷ Ibid

¹⁸ As quoted by maududi;supra pp249-250

AL-Bukhari and Muslim recorded on the authority of Aishah (RA) who narrated, "the wives of the Prophet (S.A.W) used to go to AL-Manasi, a vast open place (near Baqia at Madinah) to answer the call of nature at night. Umar (RA) use to say to the prophet (S.A.W) Let your wives be covered; but Allah's Apostle (S.A.W) did not do so. One night Sawda bint Zam'a, the wife of the prophet (S.A.W) went out at 'isha' time and she was a tall lady. 'Umar' (RA) addressed her and said, I have recognized you, O Sawda. He said so, as he desired eagerly that the verses of *al-Hijab* (the observing of coverings by the Muslim women) may be revealed. Allah (S.A.W) revealed the verse of *Hijab* (A complete body cover excluding the eyes).¹⁹

Another occasion as recorded was that the houses of Madinah at that time did not contain toilet facilities. Men and women had to go out at dusk to relieve themselves. It seems that there facilities were located at well –known places. Thugs and rough elements in the society used to frequent those places to molest free women on the pretext that they were slaves or prostitutes. The women complained about this bad behavior and Verses 57 -59 of surah al Ahzab were revealed (Q33:57-59).²⁰

Narrated Umar (bin AL-Khattab (RA) my Lord agreed with me (accepted my invocation) in three things: As regards the (verse of) the covering of the women, I said, O Allah messenger! I wish you ordered your wives to cover themselves from the men because good and bad ones talk to them. So the verse of the covering of the women was revealed.²¹

¹⁹ Khan, M.M and AL- Hilahi, M.T (1995) Trans. interpretation of the meaning and the Noble Quran. A summarized version, and AL-Tabari, AL-Qurtubi, and Ibn kashir with comme-5 surah 21 to 28 Bombay, Taj-publisher and per murmersp.292

²⁰ AD. Darsh, S.M (2003) *Hijab or Niqab* An Islamic critique of the Face Veil, Kuala Lumper, Islamic Book Trust p.64.

²¹ Khan, M.M and AL-Hilali, M.T supra part6,p292

Another reason for the revelation and the rules of covering was mentioned by Muqatil bin Hayyan, when he said: “we heard and Allah (S.A.W) knows best that Jabir bin Abdullah Al-Ansar narrated that Asma bint Murshidah was in a house of hers in Bani Harithah, and the women started coming in to her without lower garments so that the anklets on their feet could be seen, along with their chests and forelock. Asma said: “How ugly this is! Then Allah (S.A.W) revealed: And tell the believing women to lower their gaze” Quran 24:31²²

It was also reported that Anas bin Malik narrated that he was a boy of ten at the time when the Prophet (S.A.W) emigrated to Al-Madina. He added: I served Allah messenger (S.A.W) for ten years (the last part of his life time) and I know more than the people about the occasion where upon the order of *al-Hijab* was revealed to the prophet (S.A.W). Ubai bin Ka'b used to ask me about it. It was revealed for the first time) during the marriage of Allah messenger (S.A.W) with Zainab bint Jahsh.²³

Surah al-Ahzab which was revealed after the battle of the ditch dealt with specific circumstance which needed specific treatment. Surah al-Nur may be regarded as the Surah which deals with decency, etiquette, public life, the appearance of Muslim men and women, social gatherings, and the permissibility of inviting and being invited for meals. This surah may be considered the final and universal Islamic statement about topics mentioned in particular, the covering of the Muslim women in public.²⁴

²² AL-Mubarak Puri, S.S.R(2000) Tafsir Ibn kathir (Abridged)Vol- 7, Riyadh ,Daru ssalam, p.67.see Also, AL-mahaly, A.5 and As –soyuty, A.J(2010)T Trasir AL-Jaklayn vol 2 wit added appendix of the book named: the essence and transmission on the reason for revelation. Transt.: Khakol, M.A G, Egypt, Dar AL-manarah p.1023

²³ Khan, M.M and AL- Hilali, M.T part.5 Supra P291

²⁴ Ad- Darsh supra p.66

3.3.0 Commentaries on the Verses of *Hijab*

Generally concerning surah/chapter An-nur(24) from the well regarded tafsirs of At – Tabari, AL-Qurtubi, Ibn Kathir and al- jalalayn based on the very statement of Allah (SWT) the contents of the chapter from beginning to end is obligatory:

“(this is) surah (chapter of the Quran) which we have sent down and which we have enjoined (ordained its laws); and in it we have revealed manifest *Ayat* (proofs, evidences , verses, lessons, signs, revelations – lawful and unlawful things, and set boundaries of Islamic Religion), that you may remember” Q24:1

This is the only surah in the Quran that begins this way, and it is universally agreed by the scholars that what is contained within the parameters of this surah is obligatory.²⁵

With respect to verse 31 of surah An-nur, Ibn Kathir stated that; this is a command from Allah to the believing women

“And tell the believing women to lower their gaze” meaning, from that which Allah has forbidden them to look at, apart from their husband. “And protect their private parts: which means protecting them from being seen by anybody.

“And not to show off their adornment except that which is apparent
“means they should not show anything of their adornment to non-*mahram* men except for whatever it is impossible to hide.

“and to draw their *khumar* (head cover) all over their *Juyub*” mean that they should wear the outer garment in such a way as to cover their chests and ribs. ‘and to draw their *khaumur* all over their *Juyub*” means something that covers, and is what used to cover the head. “And to draw “means to pull it around and tie it securely on their necks and chests so that nothing can be seen of them. “And not to reveal their adornment except to their” And let them not stamp their feet to the end of it, this means that she can show her adornment to those relatives. And that

²⁵ See; Khan,M.M and AL- Hilali, M.T supra Riyadh, Darussalam p.628, Tafsir Ibn Kathir (Abridgege) vol.7 supra p.18 Tafsir AL jalalayn vol.2 supra p.1008 and Boulanouar, Suprap142

women are forbidden to make any movements that would reveal what is hidden is what is meant by ‘And let them not stamp their feet...’²⁶

Concerning Surah al-Ahzab (Quran 33 verse 59) “O Prophet! Tell your wives and your daughters and the women of the believers to draw their *jalabib* all over their bodies” means Allah tells His Messenger (S.A.W) to command the believing women especially his wives and daughter to cover themselves. The inclusion of the word say proves that the command is from Allah and not from the Prophet (S.A.W). The command is oriented first to the wives, then the daughters of the Holy Prophet (S.A.W), and then to the other female believers.²⁷ The word used for women here is *nisa* which is a plural form and there is no singular form from its root.²⁸

Similarly, according to the Tafsir Ash-sharawy ‘let down upon them their over-garment’ is an example of the jussive mood (which is a feature of the Arabic language), and is a command for the second person (i.e. wives, daughters and believing women). So, the first person command was ‘say’ (direct to the Prophet (SAW) and the command for the second group was ‘let down...’ the second part of this is a response to the first.²⁹

However, it must be noted that the wording of the verse, Quran 24:31; “except only that which is apparent”, give rise to the question of what it is, that has been exempted here from being covered. Literally, this phrase is ambiguous in Arabic. Recourse is commonly made to the Hadith, which uses the same verb *dhahara* in the sense of its being permissible for a woman to show only her face and her hands in front of strangers.³⁰

²⁶ Tafsir Ibn Kathir, vol 7 supra pp67-73

²⁷ Ibid Tafsir Ibn Kathir vol.8 p.45

²⁸ Baal baki, R (2002) AL Mawrid a Modern Arabic English Dictionary, Beirut, Dar el-Ilm LiL Malayan, P1169

²⁹ See Boulanouar Supra P.142

³⁰ Abdel Haleem, M.A.S (2004) The Quran A New Translation (Oxford Worlds Classic Great Britain Oxford University Pres. At footnote No.1 P.222

Ad-Darsh after analyzing the commentaries of both general tafsir and tafsir which deals specifically with Qur'anic juristic rules like the general tafsir of Al-Tabari, Al-Baghawi, Ibn-Kathir and al-Jalalayn; points out that from their commentaries, regarding the phrase “except only that which is apparent, it seems that they generally agreed upon the uncovering of the face and hands, but they disagreed upon whether non-*mahram* are allowed to look at them. Likewise the opinions employed by those commentators who were concerned with the rules and regulations of the Quran; like Al-Jasa's, Ibn al-Arabi, Al-Sabuni and Al-Qurtabi, after detailed scrutiny of their works, ad-Darsh came to a conclusion that majority of the commentators, infact, do not regard the face and hands as *awrah*.³¹

Khan, in his translation of Muhammad Nasiruddin Al-Albani, *Hijabal-Mar'ah al-Muslimah fil kitab was-sunnah*, points out that the theologians and the commentators (*Mufasssirun*) have two views on the subject. These two views are based on the fact that beauty is of two kinds – one natural (by birth) and the other artificial that is acquired by the use of make-up etc. One group says that the word ‘beauty’ here refers to both kinds of beauty, whereas the other group believes that it is artificial beauty which is referred to in this verse. According to Khan Ibn Mas'ud, Hassan, Ib Sirin and Abul Jawza have interpreted this phrase as referring to the kind of beauty which depends on clothes, ornaments etc. they are of the opinion that when a women goes out, she should not display these deliberately. However, if any part of such adornment is unintentionally exposed. For instance if a gust of wind displaces the covering sheet momentarily, this is deemed excusable. The other point of view finds support from Abdullah Ibn Abbas,

³¹ Ad-Darsh Supra Pp73-82

Abdullahi Ibn Umar, ‘Ata’ Ikrama, Sa’ib Ibn Jubayr, Abu ash-sha’tha, Dahhak, Ibrahim Nakh’I etc. They infer from the phrase “except only that which is apparent” the exemption of face and hands. This interpretation is based on the hadith recorded by Abu Dawud in his sunan: “Aisha says that once Asma bint Abu Bakr came wearing a thin garment. The Prophet (SAW) turned his face away from her and said: “Asma, it is not proper for a woman after having reached puberty to expose any part of her body except these”. Then he pointed to his hands and face”.³² There are then two opinions regarding the phrase “except only that which is apparent” , one is that of Ibn Mas’ud, the other is that of Ibn Abbas and A’isha.

3.3.1 The Sunnah Basis

Sunnah or Hadith is the second and undoubtedly source from which the principles, Laws or rulings of Islam are drawn.³³ In addition to the above Quranic verses, the authentic hadith which further elaborate on *Hijab* are in fact since its prescription, the prophet’s wives, daughters and other believing Muslim women have strictly observed it. This was evident in the following authentic hadith.

It is related that ‘Aisha said “may Allah have mercy on the women of the early immigrant women. When the verse “that they should draw their head-coverings over their bosomed was revealed they tore their thick outer garments and made head covers from them.”³⁴

Aisha narrated that Muslim women used to attend the Morning Prayer led by the Holy Prophet (SAW) wrapped in a sheet of cloth. After wards, when they returned home, it was so dark that they could not be recognized.³⁵

³² Khan, W Supra P13-16

³³ Ali, M.M. Supra P.58

³⁴ Hassan, A. (2001) Sunan Abu Dawud English Translation with Explanatory Notes, Vol. 3, New Delhi, Kitab Bhavan, P. 1144. See Aslo Khan, M.M. and Al-Hilali M.T. Supra P292.

³⁵ Hassan, A. Ibid P1144

Abu Dawud further reported that Aisha (RA) said: Asma daughter of Abu Bakr entered upon the messenger of Allah (SAW) wearing thin clothes. The Holy Prophet (SAW) turned his attention from her. He said, when a woman reaches the age of puberty, she should not reveal her body except this and this and he pointed to face and hands.³⁶

These hadith confirm that the above Quranic verses were meant to ask women to cover themselves and detail the manner of covering. According to Muhammad Nasiruddin al-Albani, a famous scholar and an authority in this field, it is clear from the Quran, the Hadith and the practice of the companions and *tabiun* (companions of the prophets companions) that, whenever a woman steps out of her home, it is incumbent upon her to cover herself completely so as not to show any part of her body except the face and the hands³⁷.

3.4.0 Jurisprudential Basis

The vast majority of Muslim scholars, jurists and commentators, past and present have determine that like performing other obligations such as five-time daily prayers, fasting in the month of Ramadan and so on, wearing of *Hijab* is a religious obligation for Muslim women who attained the age of puberty and the justification for this obligation was established in the Holy Quran, the Hadith, as well as unanimously agreed upon by Islamic scholars.³⁸

³⁶ Hassan, A. Abu Dawud, Supra P. 1144

³⁷ Khan, W. *Hijab in Islam Based on the Arabic Book titled Hisab al-Mar'ah al-Muslima fil kitab was-sunnah* by Muhammad Nasiruddin al-Albani, P.5. See also Khan W. *Good Woman between Islam and Western Society*, Karach, Hafis and Sons P.222

³⁸ Ssenyonjo, M. 'the Islamic veil and freedom of Religion, the Rights to Education and work: a survey of Recent International and National cases' *Chinese Journal of International Law* (2007), Vol. 6, No.3 653-710, P.655. at: <http://politics-of-religious-freedom.berkeley.edu/files/2011/06/ssenyonjointernationalveilcourtdecision>. retrieved November 21, 2014.

The four major Sunni schools of jurisprudence; Hanafi, Shafii, Hanbali and Maliki schools hold that the entire body of the woman except her face and hands must be covered during prayer and in public settings. And there appears to be no difference of opinion among all of the Islamic jurists, *Shiite* or *sunni*³⁹. The well-known Moroccan Islamic scholar, Professor Mustapha Benhamza, reiterated that the requirement for women to cover is noted throughout Islamic literature and is a universally held view among those who are qualified in Islamic scholarship⁴⁰. Also the grand mufti of Egypt Sheikh Ali Jumua of the Egyptian fatwa authority, gave the Islamic legal ruling on *Hijab* as an obligation for Muslim women.⁴¹

‘A Muslim woman is obliged to wear *Hijab* as soon as she reaches puberty--*Hijab* is known to be essential and necessary in religion, it is not merely a symbol that distinguishes Muslims from non-Muslims, it is an obligation that forms part and parcel of the Islamic religion’.

3.5.0 Conditions of *Hijab*

It is clear that *Hijab* under the Islamic law must meet a number of conditions; whose features have been clearly defined by the Quran and sunnah.

3.5.1 Features of *Hijab*

Hijab or the over-garment may be considered proper and Islamic if it meets the following requirements. The requirement is derived from the sources of the Shariah, especially the Hadith (Traditions of the Noble Prophet SAW).

- i. *Hijab* must be roomy, large enough to cover the whole body.
- ii. *Hijab* must not be transparent or semi-transparent

³⁹ Mutahhari, M. Supra P.83

⁴⁰ See Boulanour, A.W. Supra P.140

⁴¹ See Hashmi, H. ‘Too Much to bare? A comparative Analysis of the Headscarf in France, Turkey and the United States’ University of Maryland Law Journal of Race, Religion, Gender and Class Vol. 10/issue2 article 8 PP. 408-445. P414 at footnote No.38. see also Ssenyonso, M. Supra P.655

- iii. *Hijab* should not be tight fitting or thin
- iv. *Hijab* should not be an adornment in itself
- v. *Hijab* must not be scented or perfumed
- vi. *Hijab* should not in any way resemble men's clothes
- vii. *Hijab* must not resemble the garments of the disbelievers (*Kuffar*)
- viii. *Hijab* should not be a dress of fame or pride

Detail discussion of the above requirement is as follows:

3.5.1 (i) *Hijab* Must be Roomy, Large Enough to Cover the whole Body

The appropriate characteristics of *Hijab* according to the Islamic law is to cover the whole body except for the exempted parts. This rule has been derived from the passages of the Quran and hadith for instance, as understood from the following narration: Umm salama (RA) asked the Holy prophet (SAW), how long should the trail of women's cloaks be? He (SAW) said: let them drop it the length of a handspan. She said: their feet would be revealed. He (SAW) replied: then let them drop it the length of one cubit (Aprox. 13 inch) and no more.⁴² Thus, Muslim women are required to cover their bodies with long loose and wide garments that covered a woman's body from her neck to feet. In another terms, the *Jilbab* must be ample and flowing.

3.5.1 (ii) The *Hijab* Must not be Transparent or Semi-Transparent

The *Hijab* (over-garment) must conceal the clothes underneath. Covering cannot be achieved if the garment is transparent or flimsy and see through. The Holy Prophet (SAW) has warned the women who "will be naked inspite of their being dressed" who

⁴² .Sunan Abu Dawud, vol. 3 Supra chapter 1541 P1148

wear tight and see-through clothes in order to highlight their physical structure. Therefore, the *Jilbab* must be close in texture and opaque.⁴³

3.5.1 (iii) The *Hijab* Should not be Tight-Fitting or Thin

The purpose of *Hijab* is to conceal the details of the woman's body and her finery. If tight, the *Hijab* will suggest the shape of the body, highlights its femininity, suggest hidden charms and make the woman more desirable to the beholder. This clearly violates the purpose of the *Hijab*. Similarly, thin cloth can never provide cover (that is to wear scanty dresses keeping bare most of the body) and a diaphanous transparent garment only accentuates the attraction of a woman. Under such circumstances woman's personality and value lies in the exhibition of her body. She dresses as to 'fit' certain parts of her body and to place certain other parts in a 'frame'. A prophetic hadith makes two predictions: one of them relates to the appearance of a tyrannical class of people who will carry lashes and go about beating people (i.e. they will victimize the weak and helpless in the pride of power and will harass the public without rhyme or reason).

The second prediction is about women i.e. there shall appear such women in future who will wear transparent garments which will reveal their bodies or otherwise they shall wear tight garments which will make the curves of their limbs more prominent and visible to the eye and in both cases the wearing of the dress or going about with bare bodies will be one and the same. Then the Holy Prophet (SAW) observed, 'these women shall tempt men and be tempted by them' (*Kasiyatun Ariyatun, mailatun mumilatun*) which means that the purpose shall be to show off the body to men and to seduce and

⁴³ Murad, M.R. Supra, P.15, Ahmad, Y. A. (2009) Encyclopedia of Islamic Jurisprudence Concerning Women, Supra Pp361-362

entice them. These women shall adopt a second means of seduction i.e their heads (they will be wearing things) resembling camels humps. The comparison of the camels back also suggests that they shall wear their hair high like hives. Then, the Holy Prophet (SAW) said cursed them, they are accursed such women shall not enter paradise nor even shall they be able to smell the sweet fragrance of it, although the fragrance of *Jannah* can be smelt from such and such distance (meaning from extremely long distance). Therefore, the garment must be thick, loose and wide.⁴⁴

3.5.1 (iv) *Hijab* Should not be an Adornment in Itself

The *Hijab* itself must not be a display. Wahiduddin Khan in his translation of Albani's book state that, according to Muhammad Nasiruddin al-Albani's research, *Hijab* in itself should not be a source of attraction. It should not become a display of finery referred to in the Qur'an as *tabarruj*.⁴⁵ In fact, Sheik Al-Albani further stated that, the intended meaning from word '*Jilbab*' is to cover the adornment of a woman, so it is not logical to believe that *Hijab* can itself be an adornment.⁴⁶

“And stay in your houses and do not display yourselves like that of the times of ignorance”⁴⁷

“And not to show of their adornment except only that which is apparent”.⁴⁸
(Quran24:31)

The intention of these verses is that a woman should not display her beauty and attention in such a way as to produce carnal desires in the hearts of men. Since the purpose of the

⁴⁴ Samiullah, M Segregation of Sexes in Islam, Supra Pp11-13, Khan, W. Women between Islam and Western Society, Supra Pp224. Murad, M.R. Supra P.14. NASEEY, F.U. Supra Pp.112-113.

⁴⁵ Khan, W. (Supra) P.8

⁴⁶ Ismail, M.A (2009), The Veil: Evidence of Niqaab, Al-Firdous Ltd, London P.185

⁴⁷ The Holy Quran Chapter 33:33

⁴⁸ Ibid Quran 24:31

Hijab is to hide such attractions, it is, therefore, unimaginable that the gown itself should become a source of attraction.⁴⁹

Albani further stated that, in Islam the displaying of feminine attractions is a habit so important to avoid that it has been bracketed in the scriptures along with such unlawful things as polytheism, adultery and theft.⁵⁰

3.5.1 (v) *Hijab* Must Not Be Scented or Perfumed

A woman must avoid wearing perfume in public. There are many prophetic traditions that forbid women from wearing perfume outside their homes. Abu Musa Al-Ash'ari (RA) reported that the Holy Prophet (SAW) said:

“Any woman who wears perfume and passes by people who would smell her perfume, is a fornicator’. (Recorded by Abu Dawud and others)⁵¹

In another hadith the Holy Prophet (SAW) was reported to have said: ‘Any woman who goes to the mosque wearing perfume, Allah does not accept her salat unless she returns home and washes of the smell of her perfumes. So when it is forbidden for a woman to wear perfume if she wants to go to the mosque, it is certainly much more so to wear perfume when going to public places or for any other purpose. The sin of doing so would be much greater. Al-Haithami writes that going out wearing adornments and perfume is a major sin, even if her husband permits her to do so.⁵²

3.5.1 (vi) *Hijab* Should Not in Any Way Resemble Men’s Clothes

This is based on authentic hadiths in which the Holy Prophet (SAW) cursed women who dress like men and men who dress like women. Abu Hurayrah (RA) narrated, ‘the

⁴⁹ See Khan, M.W. (2001) *Woman Between Islam and Western Society*, Supra pp223-224. Or Khan, M.W. *Hijab in Islam*, Supra Pp8-9

⁵⁰ Ibid Pp223-224

⁵¹ Murad, A.R. Supra P.14

⁵² Murad, Ibid P.15

messenger of Allah (SWT) cursed a man who dresses like a woman and a woman who dresses like a man’⁵³

Abdullah bin Amr bin As (RA) said: “I heard Allah’s messenger (SAW) saying: “He is not one of us who imitates women, nor is she who imitates men”.⁵⁴

From the above traditions it can be deduce that a garment which in most parts resemble those of men is not permissible for women, even if it covers her adequately.⁵⁵

3.5.1 (vii) *Hijab* Must not Resemble the Garments of the Disbelievers (*Kuffar*)

The seventh rule of *Hijab* is that it should not resemble that worn by non-believers. Any similarity to non-believers must be avoided, in matters of worship, festivals and dress. There are many texts from the Quran and the Sunnah emphasizing this rule. The messenger of Allah (SAW) said ‘whoever copies a people has become one of them.’⁵⁶

Allah’s messenger (SAW) was very particular about commanding his followers to differ from the disbelievers, not only in social life, but also in acts of worship. Therefore, Muslim woman must heed to the words of Allah, and be mindful of his prohibitions.⁵⁷

⁵³ Related by Abu Dawud Ibn Majah, Al-Hakim and Imam Ahmed. Al-Hakim said: “it is an authentic hadith in accordance with the conditions of (Imam) Muslim and Ad-Dahab agreed. It was also authenticated by Imam Al-Nawawi

⁵⁴ Reported by Imam Ahmed and Abu Na’em. Al-Albani authenticated it in his book “Al-Hijab Pp66-67

⁵⁵ Al-bani in Khan, W. Supra P.225

⁵⁶ Recorded by Abu Dawud: 150b-4020 as quoted in Islamail, M. ‘The Hijab... Why? At <http://www.saaaid.net/p.35> Ibn Taymeeyah said that the hadeeth has a good chain of narration and that it is a good hadith”. As-siyouti said: it is Hassan: Good” and Ibn Hager reported in ‘faith Al-Bari and supported it with another evidence (a mursal) with a good chain and narration. 53. Murad, M.R. Supra Pp 17-18

⁵⁷ Murad, M.R. supra pp17-18

3.5.1(viii) *Hijab* should not be a Dress of Fame or Pride

Abdullahi bin Umar (RA) reported that Allah's messenger (SAW) said: "Whoever wears the dress of fame and vanity in this world, Allah will make him wear a dress of humiliation in the hereafter and he will then be burnt in hell".⁵⁸

A conspicuous or ostentatious garment is that which a person wears to be distinguished from others either because the garment is expensive, or simply to show it off. A person may also wear rags just to show his or her renunciation of worldly things or out of hypocrisy.⁵⁹

Ibn ul- Kthir said:

Ostentation applies also to colors when a person wears clothes of eye-catching colors so that he or she stands out or becomes the center of attention.⁶⁰

3.5.2 Features of *Khimaar*

The following are the features of *Khimaar* within the purview of Islamic injunctions;

‘And to draw their *khumurianna* all over *Juyubihinna*’

- i. The *khimaar* must cover the head, hair, ears neck and bosoms.”
- ii. The length must be below the chest
- iii. Not showing neck cleavage
- iv. *Khimaar* should not be see through or transparent
- v. *Khimaar* should be braided high like a camel hump
- vi. *Khimaar* should not be fashionable calculated to attract.⁶¹

⁵⁸ Abu Dawud Vol. 3 Supra 1506:4018-4019 at P1127

⁵⁹ See Murad, M.R. Supra P18

⁶⁰ Ibid P.18

⁶¹ Basiron, B. et al Supra P133

The Holy Prophet (S.A.W) referred to such women as cursed. He said “there will be in the latter days of my *ummah*, women who will be dressed and yet undressed. They will be wearing on their heads (thing) resembling camels humps curse them. They are accursed.”⁶²

The above conditions or rules indicates that for any dress to assumed the standard form of *Hijab* in accordance with Islamic injunction, the outer garment must be long loose and opaque. It should hide the entire body of the woman starting from her head, hair, hands, and bosom down to the toe and her feet. It must be plane and close in texture not to draw attention to the woman. It should not be decorated with ostentatious colors and designs. It should not resemble the clothing of non-Muslim women nor similar to men’s out fits. Also it must not be transparent that reveals the woman’s shape or her inner clothes

Furthermore, scholars explain the features of *Khimaar* that conforms with the requirements of Islamic law. The features of the (cloth used to cover the head of a woman) worn by women must also cover the head to below the chest to cover the *aurat* underneath. *Khimaar* must cover the entire hair, neck, cleavage, both earlobes and not revealing the accessories such as earrings and necklaces as well as not tying hair in a bun up high resembling the camels humps. Also *Khimaar* worn must not be made of thin fabric that will reveal their hair, neck and skin color.⁶³

3.6.0 Further Conditions of *Hijab*

An Islamic principle is that if something is prohibited, anything which leads to it is likewise prohibited. By this it means Islam intends to block all avenues to what is haram

⁶² At Tabarani as quoted by Murad, M.R. Supra P.14

⁶³ Basiron, B et al (Supra) Pp33-34

(prohibited). For example, as Islam has prohibited sex outside marriage, it has also prohibited anything which leads to it or makes it attractive, such as seductive clothing, private meetings and casual mixing between men and women, and so on.⁶⁴ Thus, Islam considers it as a necessity to put measures that can safeguard both men and women from falling into sin. Some of these measures are as follows:-

3.6.1 The Command to Lower their Gaze

Allah (SWT) says:

“And tell the believing women to lower their gaze and protect their private parts and not to show off their adornment except only that is apparent...”⁶⁵ An-Nur 24:31

The first command that the male and the females have been given is to retrain the eyes.

3.6.2 Prohibition of Display of Fineries/*Tabarruj*

Tabarruj is when a woman reveals her beauty by exposing her adornment to men, and everything that arouses or draws their lustful feelings.⁶⁶ And Allah (SWT) says:

Allah (SWT) says:

“And stay in your houses and do not display yourselves like that of the times of ignorance”⁶⁷ (Quran 33:33)

Muslim women are warned not to display their charms or expose their physical attractions before non-*mahrims* or strangers. She should retrain from all deeds and gestures that might stir the passions of people other than her legitimate husband or cause others to be stimulated or attracted towards her. That is, she does not invite men to herself. She does not wear clothes that speak out or walk in a way to draw attention to

⁶⁴ Al-Qaradawi, In Boulanouar, A.W. Supra, P.137

⁶⁵ An-Nur 24:34

⁶⁶ Ismail, M.A. (Supra) P185

⁶⁷ Quran 33:33

herself or does not speak in such a way to attract attention.⁶⁸ Islam makes it haram (prohibited) for women to wear clothes, that fail to cover the body, flashy, gaudy, eye-catching colours (which beautify the body in a particular way) and which are transparent, revealing what is underneath. It is likewise haram to wear tightly fitting clothes, closest to nakedness or tailored to size dress and gowns that make even walking a difficult task and which though can be long, even in the name of *Hijab*. Also creams and perfumes that have such strong and attention demanding odour has been prohibited.

Infact, scholars consider even certain kind of covering as a form of *taburruj*, if for example, the *Hijab* does not cover and conceal the whole of the female body or starts from the shoulder not from the head. It is also regarded as a form of *tabarruj* if the *Hijab* is decorated with stones or embroidery all over it.

3.6.3 Not to Stamp Their Feet

“...Nor let them stamp their feet...”⁶⁹ Quran 24:3

The shariah further requires a woman not to stamp on the ground while walking, lest her hidden decoration should be revealed by their jingle, and this attract the attention of passers-by.

3.6.4 Free mixing and Intermingling Between the sexes is disallowed

Islam disallows free and unbridled contact between man and woman in order to check undesirable impulses. It is the reason Muslims men or women observe gender boundaries, and will not exchange a handshake or hug, even with someone they like very much, if it crosses a gender boundary. It is also the reason for the lack of physical affection shown

⁶⁸ Mutahhari, M. Supra P.47

⁶⁹ Quran 24:31

between Muslim spouses in public. Affection is a private matter, and out of *haya!* Modesty is so central to Islam that the Holy Prophet (SAW) said: ‘every *deen* (way of life) has an innate character; the character of Islam is modesty”. (Al-Muwatta)

3.7.0 Scope and Limitation of *Hijab*

Clarifications of the rulings that can be derived from the evidences on *Hijab* are as follows:

3.7.1 The Nature of *Aurah* of women in the Shariah

The concept of modesty is addressed in Islamic teachings from many angles. In physical terms, is connected with *aurah*. *Aurah* (*Pl’awraat*) literally means private part, but legally the term means the part of the body that should not be seen by others.⁷⁰ Thus, according to Islamic law ‘*aurah*’ is all that must be covered and which is forbidden to be seen.⁷¹ Islam’s concern about covering different parts of the body can well be judged from the facts that it has specified certain parts of the body which can never be left naked. As far as what constitute women’s *aurat* is concerned, scholars and jurists hold that women have been ordained to cover their whole body from all non-*mahrams* person. Thus the women’s *aurat* as in prayer encompasses covering the entire body except the face and the hands till her wrist. In addition, it is mandatory that women who leave the house to run any matters pertaining to life must cover with *Hijab* as prescribed by the Islamic law.⁷² Despite the unanimous agreement among the scholars about the extent of

⁷⁰ Saleh, M.I. Dictionary of Islamic words and expressions, supra P.31

⁷¹ Basiron, B, et al Supra P134

⁷² Ibid, B et al PP 133-135

aurah for Muslim women which covers the whole body except face and the hands there has been a dispute on the requirement of covering the face or wearing the *niqab*.⁷³

3.7.2 Rulings on *Niqab* or Face Cover

There are two difference of opinions among the scholars as far as covering the face is concerned. One group believes that the face and hands are “*aurah*” and it is absolutely obligatory to cover them. The second group believes that face and hands are not part of women’s ‘*Aurah*’ and must not necessarily be covered. Each group has presented evidence from the Quran and the prophetic tradition.⁷⁴

Maududi contended that a person who consider carefully the words of the Quranic Verse, their well-known and generally accepted meaning and the practice during the time of the Holy Prophet, cannot dare deny the fact that the Islamic Shari’ah enjoins upon the woman to hide her face from the other people, and this has been the practice of the Muslim women ever since the time of the Holy Prophet (SAW) himself. Though the face cover has not been specified in the Quran, it is Quranic in spirit. The Muslim women living at the time of the Holy Prophet (SAW) had made it a regular part of their dress outside the house, and even at that time it was called *niqab*-the veil.⁷⁵ The person who understands the aims of the Islamic law and also has some common sense cannot fail to see that allowing women the freedom to move about with uncovered faces runs counter to the objectives held so dear by Islam.⁷⁶ But Maududi did mentioned that a woman who is required by circumstances to go out to work will have to uncover both her face and her hands at times. Such a women is allowed to do so as and when required by the occasion.

⁷³ Ahmad, N.M. Supra P.163

⁷⁴ Ahmad, Y.A. Supra P353

⁷⁵ Maududi, A. Supra Pp252-255

⁷⁶ Ibid, A. P255

On the contrary, the woman whose circumstances are different is not allowed to do so intentionally, without a genuine need.⁷⁷

On the other hand, Murtada al-Mutahhari opined that those points which are clear are that it is obligatory upon women to cover themselves except for their face and hands.⁷⁸ From the view point of traditions, and the external aspects of the verse, it is more or less certain that it is not necessary for women to cover the face and hands and it is not forbidden for men to look at woman's face or hands if his look is not one of lust or fear of deviation.⁷⁹ As to the fact that it is not obligatory to cover the face and hands, there appears to be no difference of opinion among all of the religious jurists, *shi'ite* or *sunni*. There was only one Sunni Jurist who disagreed. He was Abu-Bakr Ibn. Abdal Rahman Ibn Hisham and it is not clear if his opinion related solely to the ritual prayer or if it included those people who were not *mahram*, as well.⁸⁰ Mutahhari concludes that if a woman is told that she must cover her face as well, this prevents her from doing many things. It prevents her from freedom of action.⁸¹

Furthermore, according to the opinion of the majority of scholars, the obligation to cover women's *aurat* does not apply to face and hands up to the wrist. For instance according to Muhammad Nasiruddin al-Albani, woman's face and hands are not included in the parts of the body that need to be compulsorily covered.⁸² Similarly, Ad-Darsh emphasizes that it is clear from the historical background, the development of Islamic legislation, the views of the overwhelming majority of Muslim scholars and Ibn Abbas's Tafsir of surah

⁷⁷ Ibid, P.247

⁷⁸ Mutahhari, M. Supra P70

⁷⁹ Ibid Mutahhari, M. P84

⁸⁰ Ibid Mutahhari, M. P83

⁸¹ Ibid Mutahhari, M. P90

⁸² See Khan, W. Supra Pp. 221-222

al-Nur (24:31), that the consensus of all Muslim scholars is that the Muslim woman must cover her body. The overwhelming majority, however, are of the view that it is not an obligation or a strong recommendation to cover her face.⁸³ Moreover, Ahmad points that, Al-Imam Al-Nawawi, In his book, al-majmu said; verily, the *aurah* of Muslim women is the whole of her body except face and the palms (hands). This opinion also shared by al-Imam al Shafii, al-Imam Malik, al-Imam Abu Hanifah, al-Imam al-Auzai, al-Imam Abu Thaur and others.⁸⁴

Therefore, these views necessitate opening the face and the hands that defines the border which shall begin from where the hair grows until the bottom of the chin and from the right earlobe to the left earlobe, meanwhile, the limitation of the hand, is up to the wrist.

Never the less, after studying both opinions, Naseef concluded that;

- a) All the Imams agree that the face and hands should be covered if revealing them would cause '*fitnah*'
- b) In a situation where no '*Fitnah*' is to be feared for both the individual and the society, the face and hands can be uncovered,
- c) It is also allowed to do so for a compelling necessity, such as when buying, selling, presenting a testimony, or for medical reasons.
- d) Covering the face and hands when there is no risk of '*fitnah*' is a good deed and a pious act which will be rewarded on the Day of Judgment. It is an imitation of the

⁸³ Ad-Darsh, M. Supra P.104

⁸⁴ Ahmad N.M. supra P.164

mothers of the Believers (the Holy Prophet wives) and the virtuous female companion.⁸⁵

Hence, there is no clear evidence from the Quran and the sunnah that prohibits women from revealing their hands and face. However the evidence against revealing their beauty (i.e. bodies and adornment) is clear and strong in the Quran and the sunnah.

3.7.3 The Doctrine of *Mahram* in the Shariah

The rule of *Hijab* is subject to an exception as stated in the Holy Quran:

“...and not to reveal their adornment except to their husbands, or their fathers, or their husbands fathers, or their sons, or their husbands sons, or their brothers or their brothers sons, or their sisters sons, or their women or their right hand possessions, or the *Tabi'in* among men who do not have desire or children who are not aware of the nakedness of women...” (Quran24:31).

Ornamentation is not completely banned in the Shariah, meaning display of fineries or ornament by the women is not prohibited completely or totally but rather it is restricted to a specific settings and scenery. In Sharia Legal terminology, unmarriageable relation (A relative who cannot be married to a female such as a father, brother, uncle etc) is referred to as *mahram*. Thus, in relation to *Hijab*, *mahram* fall in exceptional category to whom fineries or ornamentations can be displayed by a woman.⁸⁶

A woman's *mahrams* in the shariah fall into four categories:

1. Affinity: *Mahram* by marriage

⁸⁵ Naseef, F.U. Supra P.114

⁸⁶ For the definition of mahram see Saleh, M.I. Dictionary of Islamic words and expressions, P.139. also see wiki

2. Permanent or blood *Mahrams*: With whom one is *mahram* by a blood relationship.
3. In law *mahrams*: with whom one becomes *mahram* by marrying someone
4. *Rada* or milk-sucking *mahrams*: with whom one becomes *mahram* because of being nursed by the same woman⁸⁷

Therefore, the following fall within restricted the circle of people to whom fineries can be displayed by a woman:

1. Her husband
2. Her father, including maternal and paternal grandfathers how high what so ever
3. Her husband's father
4. Her son, including grandsons from her son's side or her daughter's side how low whatsoever
5. Her husband's son by another woman
6. Her daughter's husband
7. Her brother, whether germane, consanguine or uterine
8. Her brother's son
9. Her sister's son
10. Muslim women folk
11. Her female slave or servants, however, some scholars even include male slaves or servant in the expected category
12. Men who have no sexual desire (e.g. eunuchs)

⁸⁷ When a woman acts as a wet nurse, that is she breast feeds an infant that is not her own child for a certain amount of time under certain conditions, child must be under two years old, and must have atleast five full satiated suckling. She becomes the Child's rada mother and everything concerning blood mahrams applies here, like rada father/mother and so on. See Wikipedia application created by Hyn, R. Supra

13. Children who have not yet developed sexual feelings

14. Male relative through *Rada*.

Beyond this limited circle, the woman is strictly prohibited to display her fineries. So also, it is important to note that permission to display *zinat* (finery) does not include permission to display those parts of the body such as the back, abdomen, thighs, private parts and so on before anyone, man or woman, excepting her husband. Thus, *zinat* covers decorations, ornaments, clothing, hair dos, ears, neck among others that women are by nature fond of displaying in their houses.

3.7.4 Hijab and the Private or Public Space under the Shariah

Unlike the Western point of view that generally understand public spaces as a space open to all, freely, an opposite kind of space to a 'private space', (which has restricted entry in some way, be it by membership or some other parameter). Public spaces are usually outside the home.⁸⁸ From the Islamic point of view, public space is defined not by the location of the space, but by who occupies it. Private space is delineated as 'anywhere there is no "non-mahram present (*Ghayr mahram* is anyone with whom marriage is permissible). Thus, the definition of the status public or private being mediated by who is there. For example, usually the home would be viewed as a private space, but as Islam has clothing and mixing guidelines (among others) for public and private spaces there are graduated guidelines on clothing appropriateness dependent on the people present, rather than the location of the space. The 'private' in Islam is the location for the display of beauty and for beautification, for both men and women, for example in the case of being at home with your family, women can wear anything they like, as can men. If a neighbor

⁸⁸ Boulanouar, A.W (Supra) Pp.5-6

comes over, the space immediately becomes public to some degree. Therefore, in Islam a two dimensional view of what constitute the private exists which concerns both people and places. So, there are three graduated public space for Muslim women; with family/women, with *mahram* and open public.⁸⁹

The location of these public can be anywhere including a friend's house, the mosque, the market or in her own home (thus, in presence of male strangers inside her home). Obviously it also includes spaces outside your home where these people are present.

Consequently, *Hijab* is not a public/private dress. It is related to the presence or absence of *mahrms* or non-*mahrms*. So, when a woman is with all women or men from her *mahrms*, she does not cover. Similarly, outside, if she is free of the gaze of non-*mahrms* she need not cover.⁹⁰

3.8.0 Purpose and Rationale of *Hijab*

Hijab in Islam is a sacred institution that involves a vast range of measures but the overall object underlying all these measures is to safeguard the chastity of the woman, the home and the society⁹¹. Thus, Islamic precepts aim at limiting all kinds of sexual enjoyment to the family and the marital environment within the bounds of marriage, so that society is only a place for work and activity. It is opposite of the western system which mixes work with sexual enjoyment. Islam separates these two environments completely⁹². Therefore, the main purposes for the *Hijab* are:

1. To cover the details of the woman's body and her finery

⁸⁹ Ibid Pp5-6

⁹⁰ Bullock, K. Supra P.20

⁹¹ Chaudhry, R.A. Supra P.235

⁹² Mutahhari, M. Supra P.7

“And they should not display of their beauty except that which ordinarily appears”
(Al-Nur, 24:31)

2. To negate wanton display

“...and do not display your finery like the display of the age of ignorance”
(al-Ahzab 33:33)

Hence, she is to leave her home serious, diligent and simply dressed in a manner not drawing the attention of everyone she passes.

3. To promote greater respect for women, preserve her dignity and save her from temptation

4. To prevent the interference of men who lacks morality and ethics

5. To refrain from all deeds and gestures that might stir the passions of people other than her legitimate husband or cause evil suspicion of her morality

6. To distinguish the Muslim woman and maintain her identity

The whole wisdom of this injunction of the Quran was to develop a sense of piety and goodness among Muslim men and women, create an atmosphere of goodness among men and women, create an atmosphere of purity and modesty in society and suppress all those elements that encourage the spread of obscenity, wickedness and licentiousness among the people.⁹³

Allah (SWT) has stressed the importance of such modesty in order to prevent ‘*fitnah*’ (temptation). Thus, Islam takes into consideration the needs of mankind. Whose rulings and regulations are adjusted accordingly. Its objective is to block all the ways that lead to “*fitnah*” without inhibiting our everyday tasks which are necessary to our survival as

⁹³ Afzular, R. Supra P.421

individual as well as communities.⁹⁴ The *Hijab* which she must put therefore, is one that can save her soul from weakness, her mind from indulgence, and her personality from demoralization. Islam is most concerned with the integrity of woman, with the safeguarding of her morals and morale and with the protection of her character and personality.⁹⁵ This protection is by no means intended to be a confinement or duress. It is on account of the difference between men and women in nature, temperament and social life, that a greater amount of covering is required for women than for men.⁹⁶

3.9.0 *Hijab* Sanction Participation of Women in Public Life

Islam has no doubt laid down certain norms of social behavior for men and women. It has provided for *Hijab* which set norms of dress, social get together, participation in reformative movements and going out of the four walls of one's house in the hour of need. This shows that the Divine injunction, 'stay in your houses' does not mean that women should not at all step out of the four walls of the house. Had this been the meaning, the question of *Hijab* and other Quranic commandments would not have arisen. Because women who always sit at home and never venture outside cannot be seen by men at all and there will be no occasion for the requirement of *Hijab* or fear of molestation, etc by men. Thus, if the Quran intended to prohibit the movement of women totally outside their houses, then there was the necessity of laying down restrictions on men and women regarding their behavior, modesty and dress, etc in detail?

⁹⁴ Naseef, F.U. Supra P.114

⁹⁵ Abdul Ati, H Supra P.191

⁹⁶ Doi, A.I supra P.14

It is not the intention of Islam to imprison women. It is a misconceived notion that *Hijab* in Islam is designed to keep the woman in bondage of man,⁹⁷ That she should have no right of association outside the home. This, does not relate to Islam. Islam does not state this. All that is needed is that liberty does not become a license or an act of libertine.⁹⁸

There is clear evidence in the social activities of the people in the time of the Prophet (SAW) and his companions that women were not prohibited after the commandment of *Hijab*, from doing the normal work which they had been doing in the days of ignorance (the pre-Islamic period). They carried on their work as usual at home, in the fields and in the markets without any interruption, but properly covering their adornments, as required by the commandments of the Quran (24:30-31 and 33:59). The normal life of women engaged in professional fields continued undisturbed in Madinah and parts of Arabia in the Islamic era as well, though women were now properly dressed in the light of the instructions of the Quran and the practice of the Holy Prophet (SAW).⁹⁹

So, in Islam, there is no question of the *Hijab* prohibiting a woman from participation in cultural, social or economic activities. Islam neither says that a woman cannot leave her home, nor seek knowledge. Thus, *Hijab* does not stand in her way, so long as Islamic proprieties are properly honored. Infact, Islam has never wanted women to be useless and unoccupied.¹⁰⁰ Therefore, it is a myth concerning Muslim women that they can live only as an idle part of the society.¹⁰¹

⁹⁷ Samiullahi, M. Supra P.9-10

⁹⁸ Mutahhari, M. P.47

⁹⁹ Afzular, R. Supra P.158

¹⁰⁰ Mutahhari. M. Supra P15

¹⁰¹ Samiullah, M. Supra P.9

Hence, women are allowed to go out or participate outside their domain. But this permission is neither unconditional, nor unlimited. The legislator, has thus made rules to regulate the movements of women in the normal circumstances of life and enjoined the observance of *Hijab* and allowed relation therein according to those circumstances.¹⁰²

3.10.0 Historical Discourse of *Hijab*

“The civilization mission was justified as a means of elevating Muslim women’s status, a status that was portrayed as degraded in contrast to white women’s even when white women did not enjoy citizenship or equal treatment under the law”.¹⁰³

The organized secularization with the objective of eliminating the basis of Islam and Islamic identity came about through western imperialism, nationalism, feminism and secularism. The colonial masters physically disestablished Islam and destroyed the public institutions. They established in place of sharia, colonial western laws – French, English and secular institutions – army, civil service, economic system and secular domination to Muslim thought and culture.¹⁰⁴ Even the constitution and laws of Muslim countries were largely based upon western secular models. The penal codes that we are practicing today are the products of the west.¹⁰⁵

Accordingly, countries that welcomed European trade missions in the 16th and 17th centuries found themselves transformed by the 19th century into European colonies or protectorates¹⁰⁶. From the 19th to the 20th century, European governments, especially Britain and France, established themselves as colonial powers in Muslim countries¹⁰⁷.

¹⁰² Maududi, A. Supra P.261

¹⁰³ Scott, J.W. (2018) *Sex and Secularism*, Princeton University Press, Princeton and Oxford, New Jersey. P21

¹⁰⁴ Jan, A. Supra P101

¹⁰⁵ Esposito, J. L (1983) *rd. Voices of Resurgent Islam*, New York, Oxford University press Pp. 6 - 7

¹⁰⁶ Esposito, J.L. (1992) *The Islamic Threat Myth or Reality*, Oxford University Press, New York. Pg53

¹⁰⁷ Woldesemait, M ‘Unfolding the Modern *Hijab*: from the Colonial Veil to Pious Fashion’ Duke University Durham, North Carolina, April 15, 2013 at P16

Colonialism quite literally altered the geographic and institutional map of the Muslim world. It drew boundaries, replaced and transformed indigenous political, social, economic, legal and educational institutions. This explicitly and implicitly challenged Muslim faith and culture¹⁰⁸. For many religious leaders, the alternative was simply to refuse to deal with their colonial masters. To shun their schools and institutions. The system of western education was condemned as alien, superfluous and a threat to Islamic religious believes¹⁰⁹.

The place of women however, came to play a central role in colonial discourse. The discourse of colonialism in the Muslim societies targeted Islam and attacked Muslim women's status. *Hijab* and seclusion (symbolized by the *harem*), assumed a central place in the discourse on women, Islam and progress¹¹⁰.

During the colonial era, Europeans, men and women, be they colonialists, travelers, artists, missionaries, scholars, politicians or feminists, were of one mind that Muslim women were oppressed by their religion, that the *Hijab* and seclusion epitomized that oppression, and that these customs were the fundamental reasons for the general and specific backwardness of Islamic societies¹¹¹. The *Hijab* according to them came to signify a wide variety of religious, social, economic, cultural etc oppressions of Muslim women, which was in turn seen as proof of the backwardness of Muslim societies¹¹².

¹⁰⁸ Esposito, Ibid P53 (Supra) P.53

¹⁰⁹ Ibid P53

¹¹⁰ Bullock, K. (2010) Rethinking Muslim Women and the Veil: Challenging Historical and Modern Stereotypes, IIIT, USA, P18

¹¹¹ Ahmed, L. (1992) Women and Gender in Islam: Historical Roots of a Modern Debate, Yale University Press, New Haven & London, P151-152

¹¹² Woldesemait, M supra P23

The image of Islam as both a potential threat and a retrogressive force as well as the symbolization of the oppression of the Muslim women and thus a source of Muslim backwardness and decline that dominated the world view of European colonialism was imbedded in and promoted through oriental studies and pictorial representation via travel diaries, literature, art and photography of the period produced for European audiences¹¹³. These images contributed to the colonial discourse, shaping the image and perception of the *Hijab* and related practices of covering and seclusion, such as the *harem*. Thus, through oriental studies, *harems* were represented as places where Muslim men imprisoned their women, who had nothing to do other than beautify themselves for the insatiable sexual appetites of their husbands¹¹⁴. In the colonial imagination, the *harem*, in reality a complete feminine sphere in the household, was degradingly associated only with sex. Fears, oppression, imprisonment, sexual and material indulgence were projected on this imaginative space¹¹⁵. The monotonous repetition of these images occupied the pages of early western literature. Consequently, all Muslim women were relegated to the role of the *harem*, though actual *harem* life was mostly unobserved, as contended by Witcher and a lot others, however, these images pervaded western thought about the status of women for centuries. Even when factual evidence proved that Muslim women were not that what they had been portrayed, the oriental images persisted¹¹⁶.

Even though, the *Hijab* gave women free access to the public sphere, colonial writers perceived it as an extension of the *harem's* imprisonment. The *Hijab* thus incited disgust from the west. The *Hijab* became a measure for civilization. Thus, the 19th century

¹¹³ Ibid Pp16-17

¹¹⁴ Hoodfar, 1994, as quoted in Woldesemait, M supra pp17-21

¹¹⁵ Ibid P17

¹¹⁶ Witcher, R.S "The Effects of Western Feminist Ideology on Muslim Feminists" NPS, March 2005, Monterrey, California, P12

discourse on hierarchy of civilizations, was the status of women which became the benchmark for ranking a civilization¹¹⁷. Infact, the *Hijab* the symbol for degraded status of women, and a sign of the primitiveness of the entire Muslims societies. Europeans felt a duty to bring their civilization to the other nations of the world¹¹⁸. Colonizers attempted to justify their actions by proving the inferiority of the colonized societies, whether African, Indian or the Middle Eastern. This linking of the status of women to the status of a society places the *Hijab*, as symbol of women's status in Muslim societies, at the center of the colonial discourse. Thus, it becomes the aim of colonialism to both symbolically and literally, to educate the Muslim women to civilize 'Muslim societies'¹¹⁹.

Lord Cromer was the Controller General for Egypt from 1877 to 1880 and British consul in Cairo from 1883 to 1907 who epitomized this outlook during Britain's occupation of Egypt. Europeans were needed, in Cromer's words, to introduce the 'light of western civilization' into the orient. Cromer argued, "The new generation of Egyptian has to be persuaded or forced into imbibing the true spirit of western civilization. Removing the *Hijab* was thus seen as a crucial part of the west's mission to civilize the Muslim women¹²⁰.

Cromer saw the status of Muslim women as the primary cause of the backwardness of Muslim countries and a fundamental challenge to the civilizing mission of colonial administration. Symbolically, as the *Hijab* was equated with oppression, the education of women would in Cromer's eyes lift off the *Hijab* and improve the status of women in the

¹¹⁷ Bullock, K. Supra P18

¹¹⁸ Ibid P24

¹¹⁹ Woldesemait, M Supra Pp23-24

¹²⁰ Bullock, K. Supra P24

society¹²¹. Thus, Cromer had quite decided views on Islam, women in Islam and the *Hijab*. He believed quite simply that Islamic religion and society were inferior to the Europeans¹²². Make the man monogamous, teach the women to inculcate western/Christian virtues in her children, and the society would advance, Cromer argued¹²³. It was essential that Muslims “be persuaded or forced into imbibing the true spirit of western civilization”. Cromer stated, that to achieve this, it was essential to change the position of women in Islam, for it was Islam’s degradation of women that was “fatal obstacle” to the Muslim attainment of that elevation of thought and character which should accompany the introduction of western civilization¹²⁴. According to Esposito, Cromer’s attitude was summarized as a “benevolent” imperialism¹²⁵.

Moreover, as stated by Bullock seeing the *Hijab* obstructed possession of the Muslim women. So, the attempts to render the uncovered women in pictorial terms were attempts to ‘own’ in perpetuity the ‘reality’ of covered women, to render them visible for the gaze always; thus to deny the *Hijab*¹²⁶. The *Hijab* was linked to the *harem* mentality when the woman was outside her home. However, what the Europeans really desired, was to subvert and destroy the Islamic cultures over which European colonialists wanted to rule¹²⁷.

Similarly, missionaries and others also in their conversion campaign targeted women and promoted the same ideology. They focused on working from inside, targeting women,

¹²¹ Woldesemait, m supra p24

¹²² Ahmed, L. Supra

¹²³ Cromer quoted in Bullock, K supra P21

¹²⁴ Ahmed, L Supra P.153

¹²⁵ Esposito, J.L. Supra P48

¹²⁶ Bullock, K Supra P.12 such as the Tales of the Arabian Nights was a common example to draw fantasies of the Muslim women

¹²⁷ Uthman, I.O. (2008) Muslim Women of Nigeria and the Feminist Discourse of Shaykh Al-Albani, Ilum Press, Kuala Lumpur, Pp63-64

because women moulded children as quoted in Ahmed and Bullock; Zwemer, a well known missionary in the middle East, argued “owing to the fact that the mother’s influence over the children, both boys and girls ... is paramount and that women are the conservative element in the defence of their faith, we believe that missionary bodies ought to lay far more emphasis in work for Muslim women as a means for hastening, the evangelization of Muslim lands”¹²⁸. Also, a speaker at a missionary conference held in London in 1888 observed that Muhammed... set out to preach a religion whose object was “to extinguish women altogether”, and he introduced the *Hijab*, which ‘has had the most terrible and injurious effect upon the mental, moral and spiritual history of all races’¹²⁹. Similarly, missionary school teachers actively attacked the *Hijab* and tried to persuade young Muslim girls to defy their parents and not wear the *Hijab*¹³⁰.

Others besides colonialists and missionaries were European feminist, earnestly inducted young Muslim women into the European understanding of the meaning of the *Hijab* and the need to cast it off as the essential first step in the struggle for women liberation¹³¹.

Precisely, as remarked by Ahmed, the debate over women in the Islamic world, has ever since the colonial period, was couched in terms of the need to abandon the religious practice and culture of the Muslim world in favor of the customs and beliefs of another culture-the European. This rhetoric became insistent and pronounced with colonial domination, and it was in this context that the links between the issue of women and the issues of nationalism and culture were permanently forged¹³². The debate over women

¹²⁸ See Bullock, K Supra P.22 and Ahmed, L Supra P154

¹²⁹ Quoted in Ahmed, L Supra Pp153-14

¹³⁰ See both Ahmed, L Supra 154 and Bullock, K supra Pp.22

¹³¹ Ibid Pp154-156

¹³² Ibid P.129

became a dominant mode through which these other profoundly divisive issues; political, economic, cultural, educational among others were contested. It was at this point that the *Hijab* emerged as a major constraint in the total emancipation of Muslim women and goes beyond a religious prescription but also matters of far broader political and cultural impact¹³³.

Feminism first appeared during the heyday of colonialism. To create the new centrality of the position of women in the colonial discourse of Islam was the language of feminism, which also developed with particular vigor during this period.¹³⁴

Colonial feminism, or feminism as used against other cultures in the service of colonialism, was shaped in to a variety of similar constructs each tailored to fit the particular culture that was the immediate target of domination. Particularly, the Islamic world, sub-Saharan Africa among others. With respect to the Islamic world, regarded as an enemy since the crusades, colonialism had a rich vein of bigotry and misinformation to draw on. Feminism came together in harmonious and actually entirely logical accord in the service of the imperial idea. It was here and in the combining of the languages of colonialism and feminism that feminist theory in the Muslim context was created. Feminism or the ideas of feminism, served as a handmaid to colonialism.¹³⁵ Thus, the first stage of feminist movement in the Muslim societies emerged between the 19th and early 20th century, under the auspices of colonial and post-colonial state formation. It has its origin in Egypt and Lebanon and soon spread to all parts of the Muslim world.¹³⁶

¹³³ Ibid P.129

¹³⁴ Ahmed, L. Supra P.150

¹³⁵ Ibid Pp.150-155

¹³⁶ Uthman, O.I. Supra P.39

The earliest call for the feminist movement, as remarked earlier, came from men who sought to reform the general life style of Muslim societies in such a way as to suit the demands of the modern climate.¹³⁷ Muhammad Abduh (1849-1905) was the developer of the intellectual and social reformist dimensions of Islamic modernism. Abdu's Quranic interpretation was adopted by most Islamic reformers and provided the modernist rationale for many governments' Muslim family-law reforms.¹³⁸

However, it was Abduh's associate Qasim Amin (1863-1908), a lawyer and judge, who developed the feminist dimension of Islamic modernism. He argued for the equality of the sexes in Islam, stigmatized *Hijab* and seclusion as unislamic and so on.¹³⁹ Amin's work has traditionally been regarded as marking the beginning of feminism in Muslim society-whose work became an inspiration to later generation of feminists like Huda *Sha'rawi*.¹⁴⁰ Feminists and reformers saw the European encroachment as a positive, because the social institutions and mechanisms for the control and seclusion of women from the major domains of activity in their society were gradually dismantled.¹⁴¹

The Lebanese Nazire Zayn al-Din was one feminist who at the beginning of the 20th century scrutinized the interpretations of the Quranic passages from both surah al-Nur and surah Al-Ahzab that are usually cited as verses of *Hijab* by Islamic scholars and argued that almost all the male exegetes imposed the *Hijab* on women. According to Nazirah, women are more worthy of the Quranic exegesis of the relevant passages in the two surahs, since they are the ones addressed by them. To her, *Hijab* was meant

¹³⁷ Abdul-Rauf, M (1977) *The Islamic View of Women and the Family*, Robert Speller & Sons, New York, Pp.141-142

¹³⁸ Ibid, Pp.140-143

¹³⁹ Esposito, J.L Supra P.58

¹⁴⁰ Abdul-Rauf, M Supra P.143. note according to Whitcher, R.S. at P.15, Deniz Kandiyoti Identifies four distinct phases dividing the feminist movement in the Muslim context

¹⁴¹ Ahmed, L Supra Pp.121-128

exclusively for the wives of the Prophet (SAW) and those who choose to imitate them are disobeying Allah's command because the Quran very clearly says that Allah does not wish Muslim women to attempt to measure themselves up to the standard of the wives of the Prophet (SAW) in their apparel. She explains further that *Hijab*, as a symbol of status, was a custom and tradition of rich families in oriental societies and therefore *Hijab* as it is known today is just an aristocratic habit to distinguish the Muslim women of the rich and prestigious families from ordinary women and this discrimination is prohibited by the Islamic Shariah. She concluded that unless Muslim women were made to abandon the *Hijab*, Muslim nations would not be able to advance intellectually and materially and would find solace only in singing of a glorious past and ancient tradition.¹⁴²

3.10.1 Declension of the Use of *Hijab*

By the late 19th to mid-20th century most of the Muslim world witnessed both the end of European colonialism and concomitant efforts to become independent and modernize. Muslim views of the west and responses to its power and ideas varied from rejection and confrontation to admiration and imitation. If some reject and withdraw, however, others were eager to emulate and to modernize. Nationalist and Reformists sought to emulate the west. European teachers and schools were imported. Educational missions were sent to Europe, where Muslims studied languages and politics. Translation bureaus and printing presses were established to translate and publish western works. A new intellectual elite was born that is modern educated and western-oriented. Implicit in this process was the gradual acceptance of a secular outlook that restricted religion to

¹⁴² Uthman, O.I Supra Pp40-41

personal life while turning to the west for development models in public life¹⁴³. The result was a series of military, administrative, educational, economic, legal and social reforms, strongly influenced and inspired by the west, to “modernize” Muslim societies. The traditional Islamic basis were slowly altered as the ideology, law and institutions of the state, indebted to imported models from the west, were increasingly secularized¹⁴⁴.

A major result of modernization was the emergence of new intellectual elites, (educated in western-type secular schools, whether trained in the west or in the western-type institutions established in the native society) and a growing bifurcation of Muslim society, epitomized in its legal and educational systems. The process also eroded the Islamic basis of power and authority of religious leaders. New classes of western trained elites assumed positions of importance in government, education, and law, positions which had always been the province of the Ulama¹⁴⁵. For this new ‘modern’ elites, changing roles of women in society were important ways to convince the overseas colonial rulers that their subject nations were ready to govern themselves. Women were encouraged to be symbols of the new state. Those who resisted these ideas of “social progress” were mocked¹⁴⁶. Religious knowledge itself became devalued as antiquated, mired in the old “backward” ways¹⁴⁷.

Native elites in their modernizing efforts also focused on the issues identified by the colonizers as the most important problems holding their countries back; *Hijab*, seclusion and polygamy¹⁴⁸. Qasim Amin was among the dominant groups who strongly supported

¹⁴³ Ibid Pp54-109

¹⁴⁴ Ibid P109

¹⁴⁵ Ibid P.63

¹⁴⁶ Women in World History

¹⁴⁷ Ahmed, L Supra P.121-128

¹⁴⁸ Bullock, K Supra P.26

the British administration and advocated the adoption of an “European outlook”¹⁴⁹. Women were encouraged to join men and appear more freely in public. Both upper class and middle-class women slowly started to uncover and to wear western dress. While for middle class women western dress was a sign of their middle-class status for lower-class women this movement was essentially foreign. Over time, however, fewer women covered and in modernizing states such as Egypt, Algeria, Morocco, Lebanon, Iraq and Jordan, covered women became a rare sight. From 1900 to 1920 was the era of declension of *Hijab* and from 1920 to 1960 taking off of *Hijab* became the norm in most Muslim countries¹⁵⁰.

Broadly then, ample references to the uncovering movement from the late 19th and early 20th centuries in the Muslim world has drastically changed which was under-taken not by colonialists or foreigners, but indigenous elites. That it was Egyptian and Iranian upper-class women who first condemned native customs as backward proclaimed the superiority of the west, and uncompromisingly equated taking off of *Hijab* with liberation¹⁵¹. Women such as Aisha al-Taimurya, an Egyptian aristocrat in her 1887 autobiography, wrote about the obstacles of *Hijab*. She viewed it not only as a physical covering but a mental covering. Other women such as Zaynab Fawwaz saw the *Hijab* as an impediment to education. Thus, *Hijab* was seen as an obstacle to education and education was believed to be the key to progress.

While these women provide examples of early calls for denouncement of *Hijab* and many 19th century reforms addressed the issue of the *Hijab*. However, many claim it was the

¹⁴⁹ Ahmed, L Supra P.148

¹⁵⁰ Ahmed, L in Woldeemait, M Supra Pp.41-42

¹⁵¹ Majid, A ‘The Politics of Feminism in Islam’ STOR VOL. 22 No.2 (Winter, 1998) Pp.321-361 at <http://www.jstororg/sun oct 22 19:44> 2006

writing of Qasim Amin in 1899 that brought the “*Hijab* question” to the forefront. Amin’s argument like the discourse of the colonizers, are grounded in the presumption that *Hijab* and seclusion were customs that, in Cromer’s words “exercised a baneful effect on Muslim society”. The *Hijab* constituted, according to Amin, “a huge barrier between woman and her elevation and subsequently a barrier between the nation and its advance”¹⁵². In his two controversial books (*The Emancipation of Women* and *The New Woman*) Amin denounced *Hijab* and seclusion as unislamic¹⁵³. First, he advocated the abolition of the *Hijab* and urged the reforms in culture and society as a whole and that he contended it was essential for the Egyptian nation and Muslim countries in general to make¹⁵⁴.

The ideas to which Cromer and the missionaries gave expression formed the basis of Amin’s book. The rationale in which Amin, a French-educated upper-middle-class lawyer and a judge, grounded his call for abolishing the *Hijab* was essentially the same as that of the colonizers. Amin’s text also assumed and declared the inherent superiority of western civilization and the inherent backwardness of Muslim societies. He declared that to make Muslim society abandon its backward ways and follow the western path to success and civilization required changing the women¹⁵⁵.

Although, criticized and attacked by religious leaders who accused him of aping the west, Amin became an inspiration for some Egyptian women like Huda Sha’arawi a generation later. In May 1923 Huda Sha’arawi and Saiza Nabarawi, two Egyptian feminists and activists, took symbolic action that was internationally acclaimed and shocked the world,

¹⁵² Ahmed, L Supra Pp156-159

¹⁵³ Espositor, J.L Supra P58

¹⁵⁴ Ahmed, L Supra Pp144-145

¹⁵⁵ Ibid Pp155-156

by removing their *Hijab*, upon their return from the international Women's Alliance Conference in Rome¹⁵⁶. Following suit were Ibtihaj Kaddura in Lebanon, Adila Abdal-Qudir al Jazairi in Syria, and much later Habibah Manshari in Tunis. Also Queen Suraya of Afghanistan appeared uncovered in public in 1928¹⁵⁷. Lebanese writer Nazira Zain al-Din published a book in 1928, discussing amongst other things the issue of the *Hijab*. She concluded that she has noticed that the nations that have advanced in intellectual and material life, their advancement is not equaled in the covered nations¹⁵⁸. Thus the writing of Amin and Zain al-Din among others and those following them deeply influenced broad discourses and public attitudes on the *Hijab*.

Women's organizations also played an important role in transforming dress although it should be stressed that for many women the *Hijab* symbolized the relegation of women to a secluded world that did not allow them to participate in public affairs¹⁵⁹.

Similarly, during this time period, a number of women's magazines, specifically aimed at women, were published both in Egypt and Iran. One of them was women's language which was published by Sedigheh Doulati. A number of other magazines directed toward women and published by women emerged around the same period in Egypt or Iran. Thus, most of the magazine published a number of articles that discussed not only gender roles but the harm of seclusion and *Hijab*. It used literature, poetry, and theoretical discussions to campaign for the so-called improvement of women's right¹⁶⁰.

¹⁵⁶ Woldesemait, M. Pp41-42

¹⁵⁷ Bullock, K. Supra Pp28-29

¹⁵⁸ Women in World History Supra Pp4-5

¹⁵⁹ Bullock, K Supra P.27

¹⁶⁰ Witcher, R. Supra Pp55-56

In essence, the Liberal School of thought advocate absolute quality and full participation of women in the public life without heading to the moral and legal limits of the Shariah. Bashier reported that, the Liberal Progressive thinkers, so-called, is literately, by design and not by accident, bent on uprooting the Islamic values that far so long have acted as the cement and cohesive force in our society. It maliciously directed concerted efforts to weaken and destroy the family institution¹⁶¹.

Underlying the concern and anxiety over the changing role of Muslim women is a profound suspicion of the new ideas emanating mainly from secular world-view. Concerned Muslims believe that secular western attitudes towards the status of women are not only harmful and incorrect in themselves, but are actually undermining the very foundation of Muslim society. Muslim social thinkers concerned with the question of women adopt various stances in connection with participation of women in public life generally and Hijab in particular.¹⁶² Such as, for instance, the naïve inflexible school of thought believe that complete confinement of women within the four walls of their houses is inconformity with Islamic teachings. Her domestic role was thought to be rigidly fixed not to allow any modification. To this end, any attempt to venture outside is an “abomination”.

However, the two Quranic verses which deal with *Hijab* (Q33:59) and (Q24:31) do not indicate that. And the Quranic verse: ‘And stay in your homes and do not go about displaying yourselves like the display of the days of ignorance’ i.e (Q33:33). To say that Islam means to keep woman totally and completely confined to their houses is a wrong

¹⁶¹ Bashier, Z (1983) Muslim Woman in the Midst of Change Seminar Papers: 5, The Islamic Foundation, Leicester, England P12

¹⁶² Ibid P9

interpretation. In fact if the Quran intended to prohibit the movement of women totally outside their houses, then where, was the necessity of laying down restrictions on men and women regarding their behavior modesty and dress etc in details?¹⁶³

In fact, according to Mutahhari, Islam is against both inflexible conservation and liberality. The danger which threatens Islam comes from these two groups. The former view every old things as belonging to Islam even though it may not have any connection with the original teachings of Islam and regards every new thing as an abomination as if Islam in its true sense is against development. While the latter sees everything in the west as new and part of development and progress which in fact, it may sometimes be repugnant to the general out look of the Shariah and which may contravene its basic precepts.¹⁶⁴

3.10.2 Abolition of *Hijab* in some Muslim Countries

This debate over *Hijab*, however, was not just a scholarly but also a national one. In many parts of the Muslim world, Islamic reformism and nationalism joined together to form a potent force¹⁶⁵. The influence and continued attraction of the west was in the more secular path chosen by most rulers and modern elites. With few exceptions the general trend, expectation and goal of governments and their western-educated elites was to create modern states modeled upon western paradigms. Thus, the new generation that came to power opted for a more secular orientation¹⁶⁶.

¹⁶³ Siddiqi, M.M. (1975) Women in Islam, Lahore Pp152-154

¹⁶⁴ Mutahhari, M. (1981) The Rights of Women in Islam Pp77-110

¹⁶⁵ Espositor, J.L Supra P63

¹⁶⁶ Ibid Pp75-78

Most looked to the west for the basis of their systems of modern constitutional government, law and education. When colonial discourse introduced ideas about oriental inferiority and the focus on women's status as the bench mark for progress, reformists, secularists and rulers with varying degrees of relentlessness focused on denouncement of *Hijab*, seclusion and polygamy. As one looked across the Muslim world, particularly, Turkey, Iran and Tunisia, the state actually outlawed wearing the *Hijab*. However, in many other Muslim countries, such as Egypt, Syria, Lebanon and Jordan among others, rejection of *Hijab* occurred without state intervention. For instance, as discussed below

(i) Turkey

Turkey under the leadership of Kemal Ataturk (1920-38) provides one of the most ferocious examples, as he embarked upon a comprehensive process of Turkification and westernization, and secularization that transformed language and history as well as religion and politics. Western script replaced Arabic script. Ataturk autocratically oversaw a series of reforms which deposed the sultan, abolished the caliphate, disestablished Islam, closed seminaries and replaced traditional institutions (law, education, government) with modern western inspired alternatives¹⁶⁷. Ataturk proscribed the wearing of clerical garb and *Hijab*. Men had to stop wearing the fez and other traditional Turkish clothing; he mocked Turkish men who continued to wear Turkish clothes; “would a civilized man put on this preposterous garb and go out and hold himself up to universal ridicule”. He declared “we will wear boots and shoes, trousers, waist coats, collars, ties... we will dress in morning coats and lounge suits, in smoking jackets and

¹⁶⁷ Ibid P78

tail coats. And if there are persons who hesitate and draw back, I will tell them they are fools”¹⁶⁸.

Similarly, Turkish elites mocked women covered in black, calling them “beetles”. Atatürk denounced the *Hijab*, calling it demeaning and a hindrance to civilized nation¹⁶⁹. Atatürk encouraged women to adopt European dress, and his wife Latife Hanim was uncovered at their wedding and continued to be without *Hijab* at public appearances. Also “inquisitional committee was formed, called the Tribunal of independence, which went from village to village punishing those who did not conform to the new dress regulations.

Atatürk also attempted to reform his citizen’s customs and manners, for instance, he had them learn ballroom dancing¹⁷⁰.

(ii) Iran

Similarly, in Iran during the Pahlavi rule, both Reza Sha Pahlevi (1925-41) and his son, Muhammad Reza Shah (1941-78), initiated the creation of a modern secular state by implementing a number of severely repressive reforms. Under this rule, religion was carefully controlled, for instance, the creation of a modern secular school system and western-based legal codes, as well as the control of many Islamic institutions by government ministries¹⁷¹. Which removed control of education and the judicial system from the Ulama and banned the teaching of the Quran and Shariah in schools¹⁷². Ulamas

¹⁶⁸ Jayawardena, feminism and nationalism Pp38-39 as quoted in Bullock, K. Supra, P.28

¹⁶⁹ Women in World History Supra P.5

¹⁷⁰ Bullock, K Supra P.28

¹⁷¹ Esposito, J.L Supra Pp.101-103

¹⁷² Witcher, R. Supra Pp.54-5

were replaced by modern educated judges, lawyers, and civil servants¹⁷³. Additionally, in 1936 Reza Shah passed legislation that outlawed the use of Chadors or *Hijab* in public spaces. The Shah issued a decree known as *Kashf- Hijab* banning all Islamic veils, an edict that was swiftly and forcefully implemented. Iran became the first Muslim-Majority country to ban the *Hijab*. This dress code also mandated western dress for men and restricted the wearing of clerical attire¹⁷⁴. Government employees were forbidden to enter a cinema if their wives wore a *Hijab*, and taxi driver could be fined if they accepted covered women passengers¹⁷⁵. The ban was vigorously enforced by the police who were instructed to forcibly remove or shred a woman's *Hijab* with scissors if she was caught wearing it in public. Thus, to deal harshly with any woman wearing other than European dress¹⁷⁶. The Shah also, emphasized in his speeches that women should take up the banner of modern civilization for they were to be “the educators of the coming generation”¹⁷⁷, a move which had the support of some upper-class women as well as upper-class men. Most of the women in the upper and middle classes embraced this new found freedom and took it a step further. They began to adopt western dress¹⁷⁸. On the other hand, those women who refused to uncover were insulted even more when they were attacked in the streets by the police, who forcibly removed their *Hijabs*¹⁷⁹.

The ban, which symbolized the westerly direction in which the ruling class intended to lead the society and signaled the eagerness of the upper classes to show themselves to be ‘civilized’ was quite differently received by the popular classes. For most Iranians,

¹⁷³ Esposito, J.L Supra Pp.101-103

¹⁷⁴ Ibid, Pp101-103

¹⁷⁵ Bullock, K Supra Pp.28-29

¹⁷⁶ Ibid, Pp. 28-29, Ahmed, L. Supra Pp. 164-165

¹⁷⁷ Ibid Pp.28-29

¹⁷⁸ Witcher, R P.57

¹⁷⁹ Ibid P.57

women as well as men, the *Hijab* was not, as a ‘symbol of backwardness’, which members of the upper class maintained it was, but a sign of prosperity and a means of protection against the menacing eyes of male strangers¹⁸⁰. This legislation, was not seen by many women as a true step toward the emancipation of women, as a result, many women chose to stay at home rather than venture out doors and risk having their *Hijabs* pulled off by the police¹⁸¹. Both the traditional merchant classes and the religious classes suffered as a result of the western-oriented Pahlavi’s modernization program, which affected their lives from dress, education and law. Thus, most Iranians, found Iran’s tilt towards and dependence upon the west a threat to their status, economic interest, and religio-cultural values¹⁸².

(iii) Tunisia

Tunisia under Habib Bourguiba who ruled the nation from its independence in 1956 to 1987 was modern and western oriented. In his pursuit of modernization, Bourguiba established a totally secular state, becoming a valued friend of both France and the United States. Tunisia’s Islamic heritage was overshadowed by an official and elite Francophile culture. French rather than Arabic was the official language of government, higher education, and elite culture and society. Bourguiba carefully circumscribed the presence and influence of Islam. Shortly after independence, Tunisia passed a personal status law (1957) which went further than any other Muslim country except secular Turkey in banning rather than simply restricting polygamy. Bourguiba’s approach to religion and modernization and his whole hearted acceptance of western values, was the

¹⁸⁰ Ahmed, L. Supra Pp.164-165

¹⁸¹ Ibid P.165

¹⁸² Espino, J.L Supra Pp101-103

abolition of Sharia courts. So also the ban on the wearing of the *Hijab* by women, and his attempt to get civil servants to ignore the fast of Ramadan, during which he had publicly broken the fast of Ramadan which he drank a glass of orange juice on national television. He decried the deleterious effects of fasting during day light hours, claiming that it affected national productivity and economic development. The Zaytouna, a famous center of Islamic learning in North Africa and the Muslim world, was closed down. The Ulama were debilitated. For Bourguiba, Islam represented the past, the West was Tunisia's only hope for a modern future¹⁸³.

(iv) Egypt

In Egypt the denouncement of *Hijab* occurred without state intervention, however reformists and modernists promoted these ideas. Modern elite like Taha Husayn, Muhammad Abdu's disciple's who believed that the modern needs of society would best be served by the separation of religion and politics. He wrote that future strength was best achieved not by a return to an Islamic past or the path of Islamic modernism, but rather by aggressive pursuit of western-oriented liberal, secular reform. Hussayn asserted that secularism had long been part of Egypt's tradition. Thus, he concluded, it was only natural that modern Egyptians should adopt European customs and institutions from table manners to political, legal, and educational systems¹⁸⁴. Also individual resident in Egypt promoted similarly ideas, for example Euge'nie Le Brun who took the young Huda Shar'rawi under her wing¹⁸⁵. Over time, however, uncovering was distinctly on the increase and variations and styles in the *Hijab*, from thick to flimsily light, were the most

¹⁸³ Ibid Pp. 152-153

¹⁸⁴ Ibid Pp. 60-61

¹⁸⁵ Ahmed, L Supra P.154

obvious to the extent that visitors from other Muslim countries were struck by the prevalence of the phenomenon¹⁸⁶.

Generally, as outlined by Ahmed whether such proselytizers from the west were colonial patriarchs, then, or missionaries or feminists or modernist or reformists, all essentially insisted that Muslims had to give up their native religion, customs, and dress, or at least reform their religion and habits along the recommended lines, and for all of them the *Hijab* and customs regarding women were the prime matters requiring reform. And all assumed their right to denounced native ways and in particular the *Hijab* and to set about undermining the culture in the name of whatever cause they claimed to be serving-civilizing the society, or Christianizing it, or saving women from the odious culture and religion in which they had the misfortune to find themselves¹⁸⁷.

3.10.3 Gradual Erosion of Islamic Values in Nigeria

“Conversion to Christianity was offered as a way of civilizing so-called backward peoples-for this reason missionaries were often dispatched to the colonies by the otherwise secular leaders of nations. But religions were also ranked by their treatment of women.¹⁸⁸

The Expansion of Western Powers to Africa and Asia throughout the 19th and early 20th centuries was a crucial step toward the globalization of European cultures. The colonial era allowed the west to recreate the non-western world in its own image.¹⁸⁹ The creations of African continent were drawn by European colonial powers. The maps used to carve up the African continent were mostly inaccurate; hundreds of diverse and independent groups with no common history, culture, language or religion were placed under common

¹⁸⁶ Ibid P. 172

¹⁸⁷ Ibid P.154

¹⁸⁸ Scott, J.W. (Supra) P.22

¹⁸⁹ Safi, L. (Supra) P.158

rule. Throwing together Muslim and non-Muslim peoples in latent hostility. By the time the scramble for Africa was over, some 10,000 African polities had been amalgamated into forty European colonies and protectorates.¹⁹⁰

Before the British Colonialists clobbered together the different nationalities that make up Nigeria in the 1900s, Islam was already established in most part of what became Northern Nigeria. The British met a well-established caliphate with institutionalized state religion. Thus, Shariah was both a religion and legal code.¹⁹¹

Through the agency of itinerary Muslim scholars and merchants, Islam had reached what was then known as Bilad al Sudan as far back as the 11th century A.D. The commoners and rulers alike had embraced it and were practicing it with varying degrees of the understanding of its precepts and attachment to its ideals. Certain rulers were known to have attempted fashioning their administration as closely as possible to the prophetic model and had requested some visiting Muslim scholars to write political treaties to guide them.¹⁹²

This revolutionary movement, which took place at the dawn of this century transformed the social, political and the entire geo-political terrain of the Northern part of Nigeria. Throughout the vast territory which came under the Sokoto caliphate, the Shehu Usmanu Dan Fodio established a state founded on the principles of the Shariah, Islamic law. The sole object of the state was to promote and defend the Islamic faith and determine issues of politics, law and the very manner the entire society was to be organized. Indeed

¹⁹⁰ Meredith, M. (2006) *The State of Africa: A History of Fifty Years of Independence*, Simon & Schuster UK Ltd. Britain PP1-2.

¹⁹¹ Amadi, S. (Supra) Pp7-8

¹⁹² Yadudu, A.H. (Supra) Pp19-20

looking into the manifesto of its founders, the Sokoto caliphate was established precisely so as to establish a polity and government which derived its legitimacy from the Shariah.¹⁹³

The colonization of Nigeria changed all this. The appearance of Europeans on the Northern scene and their control over the area have left their effects upon the Muslims. Initially, the colonialists agreed not to interfere with the religious arrangement in the caliphate. Indirectly began a process of transformation and subordination.¹⁹⁴ With assuming political sovereignty over the entire country new political ideas and governmental structures were gradually introduced. More and more, Nigeria's social and political institutions were secularized. New political institutions and ideas with their roots in the Judeo-Christian traditions were incrementally being introduced and getting firmly entrenched while the Sharia, the bed-rock and legitimating agency of an Islamic polity, was similarly being phased out and replaced with English Common law notions and judicial institutions.¹⁹⁵

However, the impact of colonization on other African traditional institutions and politics was more thorough in that it made efforts to and in several respects has succeeded in, transforming and submerging them completely. Many non-Muslim communities were converted to Christianity, not only in religious faith but also in outlook and culture. For some time, being a Christian was almost synonymous with adopting European culture, especially in dress, outlook and values.¹⁹⁶ For example, according Daniel the Westerners introduced Nigerians to the art of wearing foreign clothes, they have also through their

¹⁹³ Ibid P.20

¹⁹⁴ Amadi, S. (Supra) Pp7-8

¹⁹⁵ Yadudu, A.H. (Supra). P.20

¹⁹⁶ Ibid P.21

media affected the Nigerian society into a state of almost accepting female near nude dressing as a norm.¹⁹⁷ So also, western colonization of Nigeria did not only provide Nigeria with a physical clothing to a great extent it offered her a brainwashing that decade after independence, some Nigerians are still bound by western cultural imperialism.¹⁹⁸

Infact, the coming of British colonialism as well as the imposition of western culture certainly seem to have interrupted and retarded the Islamic legal system practices and values. This was generally effected by the control of religious administration and thereby the religion itself. At the same time, the system of education has neglected the teaching of Islam. For instance, according to Abdulrahman and Canham, there is no doubt that the educational system which we have today in Nigeria is basically one 'eyed', this one eye is the vision brought to us by the early Christian Missionaries in the Middle of the 19th century. Islamic education is still often thought backward, it is backward in the sense that it is not in the forefront of the Nigerian educational system.¹⁹⁹

The Nigerian Muslim Women, before the colonial rule, played major roles in promoting Islamic moves through political, educational and social activities in the society. For instance in the Northern Nigeria, the daughters of Sheikh Usmanu Dan Fodio, Khadija and Nana Asma'u are known to have made scholarly contributions to the religion of Islam. Even the practice of *Hijab* in Northern Nigeria does not imply that women are inferior or reduce the contributions made by Muslim women to the households and the

¹⁹⁷ Daniel, I.P.C 'Audince's Perception of Womn in Selected Contemporary Nigerian Home Videos' in Feminist-Womanist Dialects: A critical source Book-a feshchris in honor of Prof. Mrs. Akachi Adimora-Ezeigbo (n.d) A Afrique, Porto-Novu. P248

¹⁹⁸ Ibid P.251

¹⁹⁹ Abdulrahman, A.M. and Canham (1978) The Ink of th Scholar MAcMillian Nigerian Publishers Ltd, Ibadan P2

society at large. Thus, research shows the tremendous scholarly contributions of women, however, it was colonial rule that truncated the evolution.²⁰⁰

When western education was introduced to Nigeria, the main objective was to use the school as a means for converting animists and Muslims (especially children and young adults) to the Christians faith). Muslim especially in the north saw this as a detriment to their own faith, therefore refused to send their children to the missionary schools. This is how it aroused the impression that Islam was opposed to modern education. Even when western education came to be tolerated, non-Islamic uniforms for girls in schools and Christian melody in the National Anthem among others were imposed upon Muslims.²⁰¹

Muslims themselves have taken their religion for granted. They become deluded, lazy, stagnant, relaxed, and submissively comfortable with the impositions. Even those who are highly educated, the so-called Muslim elites, majority are almost entirely or totally ‘zero’ in Islamic education. Highly educated but ignorant of their religious mores and precepts. For instance, according to Ostien, ‘after 1960 the courts and their judges become ever less Islamically Muslim and more “Western” and the judicial powers of the emirs were first curtailed and then eliminated completely.’²⁰² Similarly, former Grand Kadi Alhaji Abubakar Mahmud further testifies that, displacement of Shariah has two phases; colonial legislations and the imbibing into Muslim youths, culture and social regalia that are foreign to Islam.²⁰³ For example, according to Ejiofor, some progressive thinkers even in Nigeria believed that Muslim women should be liberated. Women

²⁰⁰ Algrande, B ‘Reuben Abati: We-Men, women and the transition, Friday-January 22, 1999 in Guardian, Pp171-172.

²⁰¹ Democracy in Nigeria: Continuing Dialogue(s) for Nation-Building (2000) capacity Building Series No. 10 International IDAR IIIDE, Sweden P.81

²⁰² Ostien, P. (Supra) P.3

²⁰³ Mahmud, A. (Supra) P.20

should be encouraged to shake hands with guests and look straight into their eyes. Calling for institutional changes and considered some Islamic ethos and values as old fashion regression such as the institutions of Purdah and polygamy²⁰⁴

3.11.0 The Re-Emergence of *Hijab* in Modern Democratic Era

When the question of Islam arose in the Late 20th Century, along with a polemic about the “Clash of civilizations” gender equality became a primary concern for secularism. And even now, what counts as that equality is difficult to define because its meaning is secured largely by a negative contrast to Islam.²⁰⁵

By the middle of the 20th century, western scholars and statesmen thought that modern transformations of Muslim societies had already out stripped Islam and relegated Islamic ethos to the annals of history. Against all predictions, the late 20th century witnessed a worldwide Islamic resurgence.²⁰⁶ The Islamic resurgence has challenged and discredited, the belief indeed dogma, of the supremacy of modernity. The secular trend and continued attraction of the west began to change almost imperceptibly in the 60s and became more pronounced in the 70s and 80s especially at the onset of the new century in the Islamic calendar i.e 1400A.H.-1980s. There is a renewed awareness and concern about leading a more Islamically informed way of life.²⁰⁷ Starting with a completely unexpected turn with the ousting of the US-backed government of the Shah during 1979 Iranian Revolution, this revival came as a great surprise to most secularists and modernists, particularly the re-emergence of *Hijab*. The discrediting of secular paradigms however, has been thus particularly vivid in the re-emergence of *Hijab*. An emerging number of young women especially among university students and professionals turning away from

²⁰⁴ Ejiofor, G.E (2002) Mallam Aminu Kano a Political Phenomenon Umuoka-Ogali-oba. Pp7-8

²⁰⁵ Scott, J.W. (Supra) P.

²⁰⁶ Safi, L. (Supra)

²⁰⁷ Esposito, J.L Supra Pp.79-152

western ideas of modernization and embracing Islamic identities. They felt that they should not have to give up their religious identities to be modern and have rights.²⁰⁸ For them embracing *Hijab* is to conform to their Islamic requirement of dress and modesty. Unlike the 1979 Iranian revolution where newly installed state powers forced covering. They are covering by their own volition. To this day, it is the idea of conviction that plays a major role in covering by *Hijab*.²⁰⁹

In addition, they are quite selective vis-à-vis “the modernity bag”. They take out of it science, technology and commitment to professional careers and leave out the rest. They feel and firmly belief that what they have selected is consistent with their “heritage” “Islamic traditions and authenticity.”²¹⁰ These women in *Hijab* were not secluded from the rest of the society, but were dispersed transnationally among secular and religious schools and university. Their Islamic way of life guided their conduct and interaction in a secular world.²¹¹ Today women have continued to take up the *Hijab*. (Hence, the wearing of *Hijab* has become part and parcel of moderate main stream life and society, rather than a marginal phenomenon limited to small groups or organizations).²¹² In fact, wearing of *Hijab* came to symbolize not the inferiority of the culture in comparison to western ways, but its uniqueness and superiority.²¹³ This was further observed by some writers that the Islamic dress is ‘the uniform of arrival,’ the latest stage in a long struggle against colonialism, secularism, imperialism and post-colonial elites.²¹⁴

²⁰⁸ Witcher, R Supra Pp16-24

²⁰⁹ Woldesemait, Supra Pp43-44

²¹⁰ Ibrahim, S.E. (1982) *The New Arab Social Order: A Study of the Social Impact of Oil Wealth*, West view, US Pp19-24

²¹¹ Woldesemait, Supra P146

²¹² Esposito, J.L Supra P100

²¹³ *Women in World History*, Supra P6

²¹⁴ Majid, A. Supra P336

In Nigeria in particular, Muslims began to pursue with vigor the ideal of establishing an Islamic society and State. The powerful resurgence of Islamic ideas and practices were felt at all levels of society and took various forms, including intellectual, political and legal. Certainly by the mid-1970s it had started; by the mid-1980s the idea that Muslim consent to the settlement of 1960 had been a terrible mistake which ought if possible to be corrected was wide-spread and firmly entrenched in Nigeria.²¹⁵ In fact the dramatic reassertion of the Shariah took place in the 1990s where majority of the States in Northern Nigeria formally declared Islamic Criminal law as their basic and official law. The idea is equally strong in the southwest even though there, Islam is grudgingly accorded official recognition only as a personal law.²¹⁶

The most visible expression of this reassertion is perhaps the adoption of the *Hijab*.²¹⁷ From the later part of 1970s, the urge to wear the *Hijab* became strong among students in institutions of higher education in Nigeria. By the late 1980s, its use had spread to other part of the society both in the urban and rural areas. By the 1990s, the idea of *Hijab* has become visually louder in the Nigerian public life.²¹⁸ Today, teaming numbers of women in *Hijab* are present in educational institutions and public sectors in the north and southwest. Even in institutions, market places, public sectors in the southeast and South-South, Muslim women and girls in *Hijab* are seen.²¹⁹ However, it should be noted that not all Muslim women in the country comply with the requirement of the *Hijab*. Some do not comply at all and there is no difference at all between these Muslim women and non-

²¹⁵ Ostien, P. (Supra) P.3

²¹⁶ Oba, A.A. 'The Hijab in Educational Institutions and Human Rights: Perspective from Nigeria and Beyond'. Identify, Culture and Politics. An Afro-Asian Dialogue Vol. 10, No1, July 2009. P.54

²¹⁷ Ibid P.54

²¹⁸ Nasir, J.M. 'Shariah Implementation and Female Muslims in Nigeria's Sharia States' Sharia Implementation in Northern Nigeria 1999-2006. A Source Book Vol. III Sanitizing Society, Com & ed by Ostien, P. Spectrum Book Ltd, Ibadan (2007) P.91

²¹⁹ Oba, A.A. (Supra) P.154

Muslim women in terms of dressing. Occasionally, the old fashion traditional-style clothing, is also seen though this is rarer. Thus, many Muslim women in *Hijab* are seen in addition to the cultural, western clothing that some still wear. While those covering themselves with *Hijab* are mostly covering on their own volition, though with varying degrees of covering.²²⁰

With the introduction of Islamic law in 1999 (i.e. Sharia implementation), some of the northern states introduced the *Hijab* as part of the requirement of schools uniforms and proper Islamic dressing in public in general. Yobe state has in fact enacted a law on how Muslim women are to dress, in its prohibition of un-Islamic Dressing Law 2000, “A Law to provide for the prohibition of un-Islamic Dressing in the State and make provision for proper Dressing to Be Used by Female Muslims throughout Yobe State”. The provisions are interesting enough to quote here:

For the application it provides in section 3(1) that: This law shall apply to all female Muslims of 10 years and above throughout the state.

S3(2) ‘This law shall not apply to such female Muslims when they are within their homes or when exclusively among females away from the view of men’.

S4 ‘As from the commencement of this law, un-Islamic dressing is prohibited in the state’

S6(1) ‘Any person who contravenes the provision of this law shall be guilty of an offence and liable on conviction to a fine of one thousand naira or one month imprisonment’.

S6(2) ‘Where the convict is a minor his parent or guardian shall be liable for the penalty provided by this section’.

²²⁰ Ibid P.53

S7(1) ‘As from the commencement of this law all authorities in charge of schools in the state shall ensure that the schools uniform substantially conforms with the provisions of this law’.

S7(2) ‘Students who fail to comply with the decision of the school authority in respect of this law shall be given appropriate punishment by the school authority’.

S8 ‘Trial of offenders under this law shall be carried out by area court’ S10.

S11(1) ‘For purposes of decency, it is required that non-Muslims should dress decently’.

(2) ‘Non-Muslims shall not be liable for punishment under this law’.

Fika local government council in Yobe State also, in its 2002 Bye-law on miscellaneous Un-Islamic Practices enacted a *Hijab* requirement included as follows: Section II provides:

It shall be an offence for any Muslim female above the age of ten to move round within the Local Government Area at any time without wearing a *Hijab* adequate to cover head down to her toes.

In Kano State July 2005, heads of tertiary institutions of learning have been directed by Governor Shekarau to enforce the appropriate dress code on their students to save them from being visited by Hisbah. This directive was given as Shekarau inaugurated the state Hisbah Committee. “The Kano State Government will not condone any act of indecent dressing that exposes the nudity of any person. Right now, the 9,000 Hisbah members have been given the powers to monitor all parts of the state and arrest Shariah violators”. Shekarau said that neither Islam nor Christianity condoned indecent dressing, drunkenness, womanizing, prostitution or gambling²²¹.

Similarly, the State Government in August 2007, in its response to news reports that the Northern Chapter of the Christian Association of Nigeria (CAN) is accusing the Kano State Government of ‘planning to announce a policy to force *Hijab*, among others’ in a

²²¹ The Guardian, 5th July, 2005, P3 as quoted in Nasir, J.M. (supra) at P.108

full page advertorial, the Government expresses sadness that CAN makes such statements based on rumours, without bothering to check with the Government first. In fact it has long been the rule that all female students in public schools must wear the *Hijab*. But the rule does not apply to non-Muslims. They are only directed to extend the *Hijab* rule beyond the public schools, to the private schools in which increasing numbers of Muslim students are enrolling. At least the proprietors of private schools will be required to allow female Muslims to wear the *Hijab*. Requesting students to dress decently is not exclusive to Kano State. “Even universities and other tertiary institutions including those located in non-Muslim communities as well as religious organizations now impose dress codes for their female students, emphasizing decency and self-respect... Education is all about discipline and morality, and the purpose of sending our children and wards to schools will surely be defeated if we cannot instill into their young minds the discipline of decent dressing and general good conduct.

The Kano State Government is committed to instilling a morally right dress code among its students and therefore expects Northern CAN and indeed all well-meaning organizations to join hands to stamp out immorality and indiscipline in our schools and society. Acting on rumour will not help us in our struggle for a United Nigeria.²²²

In fact, it must be noted that even where no law requires the wearing of the *Hijab*, its wearing is often becoming a ‘norm’ voluntarily assumed by most Muslim girls and women.²²³

²²² Daily Trust, 13th August 2007, 25. See Nasir, J.M. (Supra) P.108

²²³

Despite the bold movement by some states in Nigeria to allow Muslim women and girls to wear their *Hijabs* in educational institutions and public life generally the wearing of *Hijab* in some institutions and states has become a controversial issue. Muslim women in *Hijab* are being stereotyped, excluded and discriminated against.

Indeed, the increasingly antagonistic tone toward the *Hijab* does not stop at the level of debate and discourse, but it frequently translated into actions and policies that profoundly affect the life and religion of Muslim women. We, therefore turn in the next section to examine the bans on *Hijab* in some secular states and how the court interpreted the *Hijab*. Infact, part of the rationale underlying the 2010 parliamentary assembly of the council of Europe on Islam, Islamism and islamophobia in Europe was to advocate that member states take all necessary measures to stamp out Islamic fundamentalism especially the wearing of *Hijab* because it threatens women's dignity and freedom.²²⁴

3.11.1 The Ban on *Hijab* in Some Secular Democracies

This return of *Hijab* is most paradoxical as it flies in the face of a world that prides itself with its modernity and secularism. This development came as a shock because of the wide spread acceptance of the secularization and modernization theses. And to many western scholars and policy makers, who declared, in the late 1950s, the triumph of western liberalism and the demise of Islam in the Muslim world.²²⁵ In such a context, the return of *Hijab* from exile could not have been predicted. And it posed a major challenge to the west's secular vision of the international order.

²²⁴Haleem, A. Supra P.23

²²⁵ Ibid

An issue that has become increasingly prominent in the beginning of the twenty-first century in most secular states is the wearing of *Hijab*, particularly in the areas of education and employment. Some states have undertaken measures to ban the wearing of religious clothing (or symbols) generally in the state primary and secondary schools, as well as in the universities. Although the relevant legislation in some states applies to both sexes, male and female, it disproportionately affects Muslim women who observe the wearing of the *Hijab* as a religious obligation.²²⁶

At the European level, there was a call for a Europe – wide ban on *Hijab*. A variety of national laws banning *Hijab* in the public sphere have been proposed and some of them have been adopted.²²⁷ The wearing of *Hijab* is considered to conflict with secular democratic values. The presence of *Hijab* (including any feature such as the head cover (*Khimar*), face veil (*niqab*) and the head-to-toe all enveloping garment (*jilbab*) is construed as threatening the supposed secularity of the public sphere, the norm of gender equality and, potentially, the security of the nation.²²⁸ Women wearing *Hijab* in Europe have been prohibited from doing so on the basis of the argument that the *Hijab* infringe constitutional principles, such as secularism.²²⁹

In other countries, in some cases after a protracted legal debate, the state education authorities permit Muslim pupils and students to wear the *Hijab*. Nevertheless, the legal position is not uniform. In certain German states, pupils can wear it, but not teachers. In

²²⁶ Ssenyonjo, M 'The Islamic Veil and Freedom of Religion, the Rights to Education and Work: a Survey of Recent International and National Cases' Chinese Journal of International Law (2007), Vol. 6 No. 3 Published by Oxford University Press, Pp 653-654. at

²²⁷ XIV Article 19 Global Campaign for Free Expression 'Legal Comment-Bans on the Full Face Veil and Human Rights a Freedom of Expression Perspective, Dec. 2010. At <http://www.article19.com> P.6

²²⁸ Reilly, N. 'Rethinking the Interplay of Feminism and Secularism in a Neo-Secular Age' Feminist Review 97 2011. At: www.feminist-review.com P.6

²²⁹ Gozotecka, D.A. and Jackson, A.R. 'Caught Between Different Legal Pluralisms: Women who wear Islamic Dress as the Religious 'Other' in European Rights Discourses' Journal of Legal Pluralism 2011. P92.

the United Kingdom and other countries, there is no general interdiction, but the individual schools can decide. However, in a number of other countries, the use of the *Hijab* has yet to give rise to any detailed legal debate.²³⁰

According to Bullock if there is one author who is widely consulted contemporarily in the west about the meaning of the *Hijab*, it is Moroccan feminist, Fatima Mernissi. In all her works, Mernissi argues that the *Hijab* is a symbol of unjust male authority over women.²³¹ And that all debates on democracy get tied up in the woman question and that piece of cloth that opponents of human rights today claim to be the very essence of Muslim identity.²³² In her argument, Mernissi attempt to return to the sources of Islam to reinterpret *Hijab*, using the traditional methods of Islamic scholarship. The science of hadith, and Quranic interpretation focusing on the circumstances of the revelation and the linguistic dimensions of the word *Hijab*. She contended that from the beginning *Hijab* had such a strongly negative connotation in the *Koran*.²³³ After considering the circumstances that led to the revelation of the *Hijab*, she argued that, the unusual rapidity of the revelation does not tally with the normal psychological rhythm of revelations and especially with the character of the Prophet (SAW). She asked how can it be explain that such a minor irritation so precipitated a draconian decision like that of the *Hijab*, which split Muslim space in two?²³⁴ Thus, she concluded that the Prophet (SAW) was not under any divine spiritual guidance on the matter of *Hijab* and seclusion of his wives. On the contrary, he capitulated to the whims and caprices of a “petty cabal” of followers, the

²³⁰ Taylor, C. ‘The Meaning of Secularism’, The Hedgehop Review/Fall 2010 P. 28. See also Evans, C. The Islamic Scarf’. In the European Court of Human Rights’. Melbourne Journal of International Law Vol. 7 200.

²³¹ Bullock, K Supra P.136

²³² Mernissi, F (1991) Women and Islam: An Historical and Theological Enquiry, Blackwell, Uk & US Pp.188

²³³ Ibid Pp 85-101

²³⁴ Ibid Pp85-101

male elite.²³⁵ Furthermore, Mernissi links her understanding of *Hijab* and space. Thus, for Mernissi, requiring women to put on *Hijab* when outside the home is to ensure that the male and female universe is not transgressed. *Hijab* is a “symbolic form of seclusion” and “an expression of the invisibility of women on the street, a male space per excellence”. The *Hijab* means that the woman is present in the men’s world, but invisible, she has no right to be in the street’. The *Hijab* protects men against the woman’s power to create social chaos. For Mernissi, as for many other feminists, this is a backward step.²³⁶

Zayn Kassan another feminist explains how Islamic scholars appropriated biblical patriarchal models and byzantine and Persian practices before Islam for gender construction. In following the byzantine and Persian upper-class examples, the exegetes disregard the obvious Quranic injunction on ordinary women who were not the Prophet’s wives and instead promoted the model of the prophet’s wives seclusion and *Hijab* as pertinent to all Muslim women.²³⁷

Using the theory of hermeneutics profounded by Rahman, Wadud also raises in her thesis the notion that when it comes to the question of attire, the Quran only teaches the importance of decency and modesty in both men and women, and does not give specific commands on the form and the style of dressing. Forms and style, according to her, depends on the space –temporal culture and context.²³⁸ Similarly, Nawal El- Sadawi rejects the use of *Hijab* according to her is a symbol of sexuality that calls attention to the

²³⁵ Uthman, I.O Supra P.51

²³⁶ Mernissi in Veil and the Male Elite cited I Bullock, K Supra PP146-151

²³⁷ Uthman, O.I Supra P.45

²³⁸ Ibid P.56

bodies of women in the same manner as a nude body may do.²³⁹ Moreover, Mahnaz Afkhami, argues that only the prophet (SAW) had full comprehension of the divine message he bore and the rest of humanity can only interpret Islam with its limited ability. Thus, by extension, the development of Islamic law is man-made and reflects the biases of those who interpret the sources. It therefore should be understood in terms of context and culture, rather than as a doctrine of immutability. And she concludes that since the Quran specifically forbids force in religious matters, all social prescriptions in Islam are to be considered as contextually and timely bound rather than eternally unchangeable.²⁴⁰

In fact for both the feminists and secularists, the issue is settled, *Hijab* is symbol of backwardness and women should not want to wear it, let alone be pressured or forced into doing so.²⁴¹

In fact, Bullock garnered a list of differences in judgment over *Hijab* during her reading in the women and Islamic field, that those who criticize the *Hijab* as oppressive claimed that *Hijab*:

- i. Is a tool of misogyny
- ii. Is apparently linked to essentialized male female difference i.e. male is superior, female is inferior
- iii. Is linked to women's subjugation i.e. a particular view of women's place
- iv. Is linked to a package of oppressive notion of morality and female purity due to the Islamic emphasis on chastity, marriage and prohibition of pre-and extra marital sexual relations.²⁴²

²³⁹ Ibid P.44

²⁴⁰ Ibid P.54

²⁴¹ Ibid P182

3.11.2 The Modern *Hijab* and Media Conspiracy

By turning to media conspiracy, especially in the post 9/11 global environment, the media hypedub many justified activities of the Muslims as wrong and images of oppressed Muslim women are a common place. Media reports claimed that *Hijab* is being forced brutally²⁴³ the media described the *Hijab* as ‘pernicious’, ‘evil’, ‘anti-feminist’ and symbolic of backward patriarchal culture.²⁴⁴ To further complicate the misconception, feminists organization’s main strategy to gain global support for its projects was disseminating visual representations of the oppression of Muslim women. These images were exported to the world, printed in newspapers and shown on television as part of a campaign to raise awareness and get support. This representation standing alone deeply reinscribed the prevailing stereotype of degradation and victimization that the world had come to accept about most Muslim women.²⁴⁵ For instance, the shocking video clip of the burqa clad woman being executed that was filmed in the late 1990s, but did not appear in western media until after 9/11 was shown over and over again to underscore the helplessness of Muslim women. In substantial part, these images and representation are coopted for political use.²⁴⁶ However, to say that women who wear the *Hijab* only do so because they are forced to by religious leaders and relatives is an over simplification and a fundamental falsehood.²⁴⁷

Ironically, in a different scenarios the *Hijab* is being presented as an element of fashion or beauty. Undoubtedly, the media is a politically run and motivated entity. The secularist

²⁴² Bullock, K Supra Ppxxx-xxxii

²⁴³ Ghadbian, N

²⁴⁴ The New Zealand Herald

²⁴⁵ Choudhury, C. A Supra P163

²⁴⁶ Ibid P.165

²⁴⁷ Perkins, T. Unveiling Muslim Women: The Constitutionality of Hijab Restrictions in Turkey, Tunisia and Kosovo’ P.533

as well as the feminists successfully uses the media to propagandize their views. They attack traditional religion and morality as a means of promoting permissiveness, especially sexual permissiveness.²⁴⁸ The media is being used because the media has the power to change and manipulate the inner belief, moral conviction and personal opinions of the public at large. Most people get the image of the world from their newspapers, magazines, radio, television and movies.²⁴⁹ Infact, minds are currently being programmed by media like youtube, facebook, twitter, whatsapp and the like. In actual sense, the case of media is well known, the market determines the content by the scientific principle of what will sell. Infact, the so-called modern *Hijab* has become a profitable part of the fashion consumer market throughout the world via internet and global retail market. Hence, it is international and fashion forward.²⁵⁰

Today's fashion magazines, youtube, are bombarding its readers with images of covered young women representing the modern *Hijabas* beauty and desirability. Numerous youtube videos and applications instruct young women about the latest styles, colors and pattern most suitable for various skin colors and face shapes, many online stores and blogs offer fashion tips to aid women in finding their 'style'. These social media also stage debates around right and wrong styles and makeup. Infact, images of young women in the so-called modern *Hijab* have become the norm. It is often presented by mass media as the way. Some of the characteristics of the so-called modern *Hijab* includes:

- i. Striking multicoloured clothes

²⁴⁸ Mardens, S. G. M (1986) "Are secularist the Threat? Is Religion the Solution" unsecular American, encounter essays series, 2, Neuhaus, R. T (ed), Michigan, wmbEardmans, Publishing co. p.24

²⁴⁹ Abdulsalam, H. A "the Declaration of Human Rights and the Aftermath of 11th September 2001. An Islamic perspective" Al – Ijtihad, the Journal of the Islamization of Knowledge and Contemporary Issues, vol. 611 & 2, (2006), Kano iiiI Pp64 - 83

²⁵⁰ Vojdik, V.K. (Supra) P682

- ii. Display some hair style or park in a bun
- iii. The face is splash with all types of makeup and some with neatly done eyebrows.
- iv. Usually performed.²⁵¹

However, the development of these, newer styles of covering contradicts the conditions of *Hijabin* the Shariah. The purpose of the *Hijabis* to preserve modesty and to avoid drawing attention to the female body. Therefore, such ‘so-assumed *Hijab*’ goes contrary to the Legal conditions of Islamically prescribed *Hijab*. Due to the fact that it is an adornment in itself, transparent and usually performed among others. Hence, transforming the *Hijab* from a symbol of religious identity to a symbol of high fashion as “Islamic haute couture.”²⁵²

Women who observe this type of clothing compete with each other as if they are in a fashion field who stay up-to-date with the new fashions.²⁵³ The confusing message is most damaging to those young Muslim women who aspire to wear the *Hijab* but have no adequate knowledge and understanding of the features and conditions of *Hijab* from the Islamic perspective. Apart from that, Denise Riley writes of “the increasing sexualization, in which female persons become held to be virtually saturated with their sex which then invades their rational and spiritual faculties.”²⁵⁴

Such vilifications, rhetoric, objurgations and the advertisement of fashionable and glamorous *Hijab* indicates nothing but a sinister attempt to malign and destroy the

²⁵¹ Ismail, M.A. (2009) *The Veil: Evidence of Niqaab*, Al-Firdous Ltd, London P.15

²⁵² Vojdik, V.K. “Politics of the Headscarf in Turkey: Masculinities, Feminism and the Construction of collective identities’ *Harvard Journal of Law and Gender* Vol. 33 (2010). At www.harvard.edu/jilg, Vol332. Retrieved March, 2017 pp682-683

²⁵³ Ismail, M.A. (Supra) P217

²⁵⁴ Scott, J.W. (Supra) P26

identity, meaning and intent of *Hijab*. It is also a malevolent stratagem or conspiracy to detract Muslims women from the straight path.

3.11.3 The *Hijab* Law in France

In France, new legislation based on the so called stasi-report forbids pupils in primary and secondary state schools to wear visible religious symbols. The reasons behind this act were problems allegedly caused by the wearing of *Hijab*.²⁵⁵

However, historians attributes the conflict with the *Hijab* to France's colonial past, particularly in Algeria and the history of laicite.²⁵⁶ Historically, French arrived in Algeria in 1830. France justified ruling Algeria to civilize the Algerians and bring them secular values. France depicted Arabs, Muslims, and North Africans in racist ways to legitimize its colonial rule. Algerian movements of resistance led to war in 1954. During this seven year war, the *Hijab* acquired political significance. The French tried to 'liberate' Muslims in Algeria, and banning the *Hijab* became the symbol to show this liberation.²⁵⁷

By 1958, France saw the *Hijab* as a way of resisting colonial domination, claiming its removal was necessary for security. The French saw the *Hijab* as symbol of backwardness of Algeria, though it use negates the French civilizing mission.²⁵⁸ For the Algerians, the *Hijab* represented a refusal to give into western values and the integrity of Algerian history and religion. The war concluded, but the discourse of the *Hijab* was still unresolved. This tension arising from the *Hijab* carried into the present day.²⁵⁹

²⁵⁵ Niewenhuis, A. (Supra) P. 496

²⁵⁶ Hashmi, H. 'Too Much to Bare? A Comparative Analysis of the Headscarf in France, Turkey and the United States' University of Maryland Law Journal of Race, Religion, Gender and Class. Vol 10/issue 2 article 8 P. 418. At: digitalcommons.law.umaryland.edu/rrgc

²⁵⁷ Ibid Pp419-420

²⁵⁸ Ibid

²⁵⁹ Ibid P 420

After the war, millions of immigrants arrived in France from former colonies including Algeria, Tunisia and Morocco. The immigrants did not assimilate and thus became a constant reminder of the failed civilizing missions.²⁶⁰ The media portrayed the “dangers of Islam” and elevated the fears of the French.²⁶¹ Hence, intellectuals have debated on how it is possible for religious Muslims to be integrated into secular French society. It is felt that the secular character of the republic is under threat by aspects of Islam that they see as being symbolized by the *Hijab*.²⁶² The *Hijab* has become the symbol of many aspects of social and religious life among the Muslim immigrants, to which the secularists objected. Therefore, the *Hijab* was held to be a religious sign conflicting with the secular personality of the French Republic.²⁶³

The eventual outcome of such debates about the *Hijab* was the appointment of a commission in July 2003, by President Jacques Chirac to conduct “an analysis of the application of the principle of laicite in the Republic”. The commission was named after its chair-Ex-Minister Bernard Stasi.²⁶⁴ The Stasi commission released its report in December 2003 and recommended, among others, a ban on clothing and signs manifesting religious or political affiliation” from public schools.²⁶⁵ One of the commission’s justifications for its recommendations was its perception that Muslim girls were being coerced by “families and communities.... to wear *Hijab* against their will, which in turn aggravated religious polarization and sexual discrimination.²⁶⁶ Despite this broad allegation, the commission did not provide any rigorous evidence and did not

²⁶⁰ Ibid

²⁶¹ Ibid

²⁶² Asad, T. ‘French Secularism and the Islamic Veil Affair’ The Hedgehog Review/Spring & Summer 06 P. 94 at

²⁶³ Ibid pp94-95

²⁶⁴ Ssenyonjo, M. (Supra) P683

²⁶⁵ Ibid

²⁶⁶ Ibid

conduct any social scientific research to support this claim. The commission simply concluded that “the question.... is no longer liberty of conscience, but the maintenance of public order”. This view was based on the premise that all Muslims girls who wear *Hijab* are oppressed and wear the *Hijab* involuntarily because of social pressure by their family or even harassment by their peer group. It did not take into account the *Hijab* out of choice, in adherence to Islamic religious obligations/convictions, or as an assertion of Muslim identity or as a culturally defined display of modesty or that some women and girls who choose to wear *Hijab* understand women’s human rights.²⁶⁷

Following this report, on 10 February 2004, the French parliament, without providing any further evidence to support the commission claims, enacted the law on secularity and conspicuous religious symbols in schools (The Act of 15 March 2004) which banned students from wearing “conspicuous” or “ostensible” religious symbols in French public primary and secondary schools. The law provided that “in state primary and secondary schools, the wearing of signs or dress by which pupils overtly manifest a religious affiliation is prohibited”. The ban on “overtly” religious symbols was enacted on the basis of the recommendation of the Stasi Commission to “safeguard public order”²⁶⁸

3.11.4 The Ban on *Hijab* in Turkey

Until 1923, the Republic of Turkey was under the Ottoman Empire, when the empire fell, the new republic embarked on a series of reforms to remove Islamic religion from the public, as an effort by the administration to promote modernization and secularization.²⁶⁹

In pursuit of this goal, the *Hijab* was banned in the 1930s other than in places of worship

²⁶⁷ Ibid

²⁶⁸ Ibid P. 684

²⁶⁹ Hashimi, H. (Supra). P. 426

or at religious ceremonies. Secularism was later enshrined in the 1937 constitution and the ban on *Hijab* was extended to educational institutions including universities. The Turkish government has sporadically enforced a ban on *Hijab* for students and teachers in universities since the 1960s.²⁷⁰

Turkey's constitution, amended and ratified in 1982, enshrines and protects the concept of secularism at the expenses of certain human rights that could frustrate the viability of secularism in the state.²⁷¹ However, a law enacted in 1989 actually permitted the *Hijab* in colleges on the basis of religious liberty, but the constitutional court struck it down stating that wearing *Hijab* in public areas violated constitutional secularism.²⁷² The Turkish government enacted another law in 1991 allowing for freedom of dress in universities as long as it did not contradict the laws in force.²⁷³ This new law, however, did not put the issue to rest. In response to increasing tension regarding *Hijab* in classes at Istanbul University in 1994, the University drafted a resolution regarding dress in school.²⁷⁴ However, in 1997, implementation of the ban intensified when the Turkish Army compelled the government to implement the ban without exception and since that time, thousands of women are barred from higher education in Turkey each year because of the *Hijab* ban.²⁷⁵ That the constitutional court has delivered a judgment which prevents religious attire being worn in universities. This judgment applies to all students and the academic staff, both administrative and otherwise, at all levels. The university adopted another resolution regarding religious attire in 1998, stating that students should comply

²⁷⁰ Ssenyonjo, M. (Supra) P.660

²⁷¹ Perkins, T. 'Unveiling Muslim Women: The Constitutionality of *Hijab* Restrictions in Turkey , Tunisia and Kosoro" Boston University International and Journal Vol. 30:529, P439. At

²⁷² Hashimi, H. (Supra) P. 428

²⁷³ Ibid

²⁷⁴ Love Joy, C.D. 'A Glimpse into the Future: What Sahin V. Turkey Means to Frances Ban on Ostensibly Religious Symbols in Public Schools, Wisconsin International Law Journal, Vol. 24, No. 2 P. 677. At

²⁷⁵ Ssenyonjo, M. (Supra) P.660

with the rules on dress as set forth by the constitutional court, and that students could not wear clothing that “symbolized or manifested any religion, faith, race, or political or ideological persuasion in any institution or department of the university or on any of its premises.”²⁷⁶

Currently, there is no national law banning *Hijab* in Turkey, instead the bans are based on the interpretation of the 1989 and 1991 decisions of the constitutional court which upheld the *Hijab* ban on the basis of secularism. The court’s decisions generalized *Hijab* wearing women as anti-secular militants and the *Hijab* as a symbol of radical Islam. It was assumed that permitting the *Hijab* would be coercive to female students who do not wear it, creating disputes about religious beliefs and threatening public order. The constitutional court found that freedom of religion did not include the right to wear religious attire.²⁷⁷ For example, in 1999, Merve Kavakci, a computer scientist who was elected a member of the Turkish parliament, was prevented from taking oath and was subsequently stripped of her Turkish citizenship because she entered parliament with her *Hijab*. Earlier, her father, Yusuf Ziya Kavakci, had to resign as Dean of the Faculty of Islamic Studies at Ataturk University on account of supporting Muslim women’s right to wear the *Hijab*. Her mother lost her teaching position at the same University for wearing the *Hijab*.²⁷⁸ Furthermore, the Turkish constitutional court ruled in 2008 that the legislature’s attempt to lift the *Hijab* ban was unconstitutional. The court based its ruling on five constructions of constitutional language and purposes: (1) permitting women to wear the *Hijab* undermines “the concepts of public peace, and ‘national solidarity’ (2) the *Hijab* contradicts respect for human rights, (3) the *Hijab* undermines the ‘nationalism of

²⁷⁶ Ibid Pp666-667

²⁷⁷ Hashimi, H. (Supra) Pp.428-429

²⁷⁸

Ataturk”, (4) the *Hijab* undermines the constitutional purposes expounded in the preamble and (5) the democratic secular government is defined by the rule of law.²⁷⁹

Turning to the issue of public order and unity, the court focused on the oppression of women forced to wear the *Hijab* and the power of *Hijab* as a symbol that influences others. The court presumed that permitting *Hijab* in public will cause conflicts between those who choose to wear the *Hijab* and those who do not. Hence, the wearing of the *Hijab* will cause conflicts between Muslims and non-Muslims, and will lead to tension and clashes. The court further relied that the *Hijab* is a symbol of female oppression. The court further contended that religious clothing obstructs collaboration, cooperation and affiliation.²⁸⁰

3.11.5 *Hijab* in the European Court of Human Rights

The ECtHR has adjudicated cases concerning limitations on freedom to manifest religion due to the clash of this protected right with the principle of secularism.²⁸¹ The two most important cases were *Dahlab V Switzerland*,²⁸² and *Leyla Sahin V. Turkey*.²⁸³ The first important case was the aforementioned *Dahlab V. Switzerland*. The applicant, a Swiss national born in 1965, was a primary school teacher, who lived in Geneva, Switzerland. She began wearing the *Hijab* in class toward the end of the 1990-91 school year. In July 11, 1996, the Director General requested that the applicant stop wearing the *Hijab* when performing her professional duties, claiming it was incompatible with section 6 of the Public Education Act and constituted a means of identification imposed by a teacher on

²⁷⁹ Perkins, T. (Supra) P.552

²⁸⁰ Ibid

²⁸¹ Morini, C. (Supra) P. 618

²⁸² *Dahlab V Switzerland* (2001) V Eur Court HR 449

²⁸³ *Leyla Sahin V. Turkey* Application No 44774/98 (unreported, European Court of Human Rights, Grand Chamber, 10 November 2005).

her pupils, especially in a public, secular system.²⁸⁴ She refused and challenged this decision in the Swiss Courts, where she lost.²⁸⁵

The applicant appealed to the ECtHR and submitted that the measure prohibiting her from wearing a *Hijab* in the performance of her teaching duties infringed upon her freedom to manifest religion as guaranteed by Article 9 of the European convention. She further argued that the Swiss Courts had erred in accepting that the measure had a sufficient basis in law and in considering that there was a threat to public safety and to the protection of public order. She observed that the fact that she was wearing *Hijab* had gone unnoticed for four years and did not appear to have caused any disturbance within the school.²⁸⁶

The applicant noted that the secular nature of state schools meant that teaching should be independent of all religious faiths, but did not prevent teachers from holding beliefs or from wearing any religious symbols whatever. She argued that the measure prohibiting her from wearing a *Hijab* amounted to a manifest interference with her right to freedom of conscience and religion.²⁸⁷

In the Swiss Government's view, when an applicant was bound to the state by a special status, national authorities enjoyed a wider margin of appreciation in restricting the exercise of a freedom. As a teacher in a state school, the applicant had freely accepted the requirements deriving from the principle of denominational neutrality in schools. As a civil servant she represented the state and thus, her conduct should not suggest that the

²⁸⁴ Dahlab V. Switzerland, (Supra) Morini, C. Pp618-619, Evans, C (supra)

²⁸⁵ Evans, C. Supra

²⁸⁶ As cited in Morini, C. and Evans, C (Supra)

²⁸⁷ Ibid

state identified itself with one religion rather than another. That was especially valid where allegiance to a particular religion was manifested by a “powerful” religious symbol, such as the *Hijab*.²⁸⁸

The court accepts that it is very difficult to assess the impact that a powerful external symbol such as the wearing of a *Hijab* may have on the freedom of conscience and religion of very young children. The applicant’s pupils were aged between four and eight, an age at which children wonder about many things and are also more easily influenced than older pupils. In those circumstances, it cannot be denied out right that the wearing of a *Hijab* might have some kind of proselytizing effect. Seeing that it appears to be imposed on women by a precept which is laid down in the Qur’an and which, (as the federal court noted), is hard to square with the principle of gender equality. It therefore appears difficult to reconcile the wearing of *Hijab* with the message of tolerance, respect for others, and above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils..²⁸⁹

Another case of paramount importance in the debate on clashes between secularism and freedom to manifest religion is *Leyla Sahin V. Turkey*.²⁹⁰ This case was first decided by a chamber of the court (fourth section) and then by the Grand Chamber on appeal.²⁹¹ Leyla Sahin was a fifth year medical student who had studied for four years at Bursa University in Turkey before transferring to the medical faculty at Istanbul University. She claims to have worn the *Hijab* for the four years at Bursa and the first few months at Istanbul. After that time the Vice-Chancellor issued a circular that instructed lecturers to refuse access to

²⁸⁸ See Morini, C (Supra) P619

²⁸⁹ *Dahlab V Switzerland* (Supra)

²⁹⁰ *Leyla Sahin V Turkey* Application no 44774198, Nov. 2005

²⁹¹ Morini, C. (Supra) P.620

lectures, tutorials and examinations to students ‘with a beard or wearing the *Hijab*’. Ms Sahin was refused permission to sit for certain examinations and was excluded from other subjects because she refused to remove her *Hijab*. She attempted to continue to attend lectures and was issued with a warning by the Dean of Medicine. She participated in what the court described as an ‘unauthorized assembly’ outside the deanery of the faculty of medicine, protesting against the rules on dress, and as a consequence, was suspended for a semester.²⁹²

Sahin petitioned the Istanbul Administrative Court to set aside her suspension, but her application was dismissed. In 1999, Sahin left Turkey, and enrolled at Vienna University to finish her education. She filed an application with the ECtHR alleging that the Turkish government had violated her freedoms under the ECtHR most notably her freedom of religion by preventing her from wearing *Hijab* in school.²⁹³

The ECtHR reviewed the history of religious dress and secularism in Turkey, and upheld the ban. The court said that Article 9 "does not protect every act motivated or inspired by a religion or belief".²⁹⁴ The court stated that the *Hijab* is a symbol contrary to the freedom of women, and symbolizes the imposition of a tenant of Islam.²⁹⁵ The court further found the ban justified because it allows women's freedom of expression while religion only forces women to obey. The court claimed that wearing the *Hijab* has an inherently coercive effect, even if women wear it of free will.²⁹⁶

²⁹² Sahin, application No 44774/98 (Supra)

²⁹³ Love Joy (Supra)

²⁹⁴ Hashmi, H. Supra P430

²⁹⁵ Ibid

²⁹⁶ ibid

Judge Tulkens was the only dissenting opinion in *Sahin*. Tulkens questioned the general appeal to secularism and the proportionality and necessity of the *Hijab* ban. Her dissent expressed concern with the court's characterization of the *Hijab* and Islam. She stated that without concrete examples showing gender inequality, the state cannot act on paternalism, contravening past court decisions which respect personal autonomy. Tulken's rejected the assumption that the *Hijab* clashes with equality, and further noted that the majority ignored the significance the *Hijab* has for the women who wear it.²⁹⁷

By upholding Turkey's *Hijab* ban, the ECtHR denied thousands of women access to education and careers in Turkey. France, Turkey, and the ECtHR failed to consider the meaning of the *Hijab* as a religious practice and its importance in Muslim women's live before imposing severe restrictions on the use of the *Hijab*.²⁹⁸ Instead, these courts held that the *Hijab* is incompatible with secularism and gender equality. Other key elements of reasoning referred to are proselytism and extremism.²⁹⁹ However, according to Hashimi the reasons given for banning the *Hijab* do not meet the requirements for restricting fundamental religious rights.³⁰⁰ Exactly, said Haleem, the court has actively avoided Frank and substantive discussions on the class between religious freedom and women's rights in its jurisprudence. To truly give meaning to religious freedom, the court must discuss the *Hijab's* implications on women's human rights and other contested considerations, such as state neutrality, equality and secularism and confront all aspects involving these cases and develop a legal methodology as well as legal tests to unveil the

²⁹⁷ Ibid Pp 430-431

²⁹⁸ Ibid P. 444

²⁹⁹ Evans, C. (Supra)

³⁰⁰ Hashimi, H. (Supra) P. 444

true story of women's liberties and religion.³⁰¹ The bans on the *Hijab* are spreading and encompassing many aspects of life and the invasive effects have gone far beyond the secular societies.³⁰² Even in Nigeria as the *Hijab* become an increasingly common sight in all areas of the Nigerian public life, various version of human rights violation against Muslim women in *Hijab* has become prominent despite the provisions of religious freedom granted unto them in the constitution.

3.12Hijab Case in Lagos State High Court

In Miss Asiyat Abdulkareem (Minor) & 20 Ors V. Lagos State Government & 3 Ors S/N:ID/ISIM/13, two 12 year old girls who are students of Aturase Junior high School, Surulere Lagos under the aegis of the Muslim Students Society of Nigeria (MSSN) Instituted an action against the Lagos State Government before an Ikeja High Court for banning the use of *Hijab* not being part of the approved school uniform for pupils, asking for a declaration that the ban was a violation of their rights to freedom of thought, religion and education.³⁰³

The trial court on 17th October, 2014, dismissed the suit of the pupils against the Lagos State Government on the ground that the ban did not violate sections 38 and 42 of the Nigerian Constitution and that since section 10 of the same constitution made Nigeria a secular state, the ban on the use of *Hijab* by female Muslim students was in maintenance of neutrality by the State Government in a public school maintained by it.³⁰⁴

³⁰¹ Haleem, A (Supra) P.28

³⁰² Ibid Pp 444-445

³⁰³ Miss AsiyatAbdulKareem (Minor) & 20 Ors V. Lagos State Government& 3 Ors, CA/1/135/2015.

³⁰⁴See Kawu, S.D. 'Religious Rights in a Pluralistic World: The Nigerian Experience'. at the Symposium Held at Brigham Young University Provo, UTAH from October 1-4, 2016. P. 9

In her judgment, Justice Grace Onyeabo held that, the logical conclusion therefore also is that such a refusal is not discriminatory against the applicants. Indeed, to the contrary, were they to be allowed to wear *Hijab* over the school's uniform, the uniformity sought to be achieved by the state will be destroyed, and non-*Hijab* wearing student will rightfully feel inferior and discriminated against because they will no longer be equal. Moreso, the values of pluralism, respect for the rights of others and equality before the law dictate that no deviation from the regulation should be allowed.³⁰⁵ She further held that, the exercise of a person's right stops where another's begin that because state school is distinct from a mission or faith based school student should expect the neutrality engendered by the state policy and the secularism intended by the framers of the constitution.³⁰⁶

Justice Onyeabo also refused to be bind by the Nigerian Court of Appeal decision in the Bashirat Saliu and 2 Ors V. The Provost Kwara State College of Education Ilorin & 2 Ors. (CA/IL/49/2006), to the effect that the parties in the instant suit are minors of twelve (12) years old as distinct from the Ilorin case.³⁰⁷

However, Justice Onyeabo found the decision of the ECtHR in the Leyla Sahin's case (above) very relevant and more persuasive. She noted that Turkey though reportedly predominantly Muslim is by its constitution, a secular state like Nigeria. Arguing further, she adopted the dicta of ECtHR that the freedom to manifest one's religion could be restricted to defend the principle of secularism. And that irrespective of whether the *Hijab* was a precept of Islam, granting legal recognition...was not compatible with the

³⁰⁵ CA/L/135/2015 Pp 6-7

³⁰⁶ Ibid

³⁰⁷ Ibid

principle of neutrality as it would be liable to generate conflicts between students with different religious convictions or beliefs. Religious freedom is primarily a matter of individual conscience.³⁰⁸

Dissatisfied with the dismissal of their suit, the pupils appealed to the Court of Appeal, Lagos Division for the setting aside of the decision of the trial court and protection of their constitutional rights.³⁰⁹

The Lagos division of the Court of Appeal in a unanimous decision reversed the decision of the trial court and held that the ban on the use of *Hijab* by the appellant was discriminatory against Muslim Pupils in the state. In the judgment delivered by A.B. Gumel, JCA the court held inter-alia “the use of *Hijab* is an Islamic injunction and also an act of worship hence it will constitute a violation of the appellants’ right to stop them from wearing *Hijab* in public schools.”³¹⁰ However, the debates continuous, Nigerians are anxiously waiting for the verdict of the Supreme Court on the case.

The foregoing chapter looks at the meaning and connotations of *Hijab*. It discusses the circumstances of the revelation of the verses of *Hijabas* well as the commentaries of those verses. Perhaps the most central is the textual basis of the *Hijab* as laid down in the Holy Quran, and Hadith. Hence, *Hijab* is the distinctive Islamic dress whose features have been clearly defined by the Quran and sunnah. *Hijab* is necessary an act of worship. It must be long, loose and opaque, should be plane and not ostentatious. It should not resemble men’s cloths and transparent. Therefore, we come to the conclusion that the command to wear the *Hijab* came from Allah (SWT) based upon clear verses in the Holy

³⁰⁸ Ibid

³⁰⁹ Kawu, S.D. (Supra) P.9

³¹⁰ Ibid Pp9-10

Quran, Sunnah and the Jurisprudential certification of its obligatory nature. And its abandonment have serious consequences for Muslim women. Therefore, necessitating situating the discourse of *Hijab* within the context of constitutional perspective on religious freedom.

From the foregoing, it is also clear that the root cause of *Hijab* discourse gained genealogy in colonialism. Colonialist and missionaries first advocated the need to eradicate the *Hijab* for the Muslim societies to advance. With decolonization and the beginning of independence, modernist's, reformist and secularists as well as rulers like the colonialist became determined to eradicate *Hijab*. This era was the era of the declension and abolition of *Hijab*. Thus, from the colonial era to the 1960s in various phases. Similarly, it's within these phases the discourse of *Hijab* became linked with language and philosophy of feminism. The next chapter therefore, seeks to examine the legal standard of religious freedom under the 1999 constitution.

CHAPTER FOUR

FREEDOM OF RELIGION UNDER THE NIGERIAN CONSTITUTION

4.0 Introduction

The central issue in the *Hijab* controversy is religious freedom, although other fundamental rights are also included. Several recent cases concerning wearing of *Hijab* (including any of its features) focuses on the right to manifest one's religion. Religious freedom in Nigeria is protected under the most current 1999 constitution and other laws and policies. Since its independence, Nigeria has been active in signing and ratifying international and regional human rights treaties. For example African Charter also expand protection to religious freedom. Therefore, an adequate understanding of the contemporary significance of religious freedom requires a grasp of its history and institutionalization over time. In essence, this chapter revolves around the historical development of the human rights of religious freedom and its subsequent entrenchment under Nigerian constitutional law. The initial focus will be the major historical development pertaining to religious freedom. The discussion will consist the position taken by international and regional bodies through various declarations, treaties and conventions of the United Nations and regional human rights standards. After this, we will turn to how Nigerian constitution adopt and implement the principle of freedom of religion in particular and fundamental human rights in general. This chapter focuses its analysis on these and other related issues. The result of the discussions will provide the basis for determining the manner and extent to which the discourse of *Hijab* can be accommodated (situated) within the context of constitutional perspective of religious freedom in particular and that of other rights in general.

4.1.0 The Constitutional Development and its Entrenchment of Human Rights under the Constitutional Framework of Nigeria

The development of Human Rights is traceable to the revolutionary ideas, and concerted struggles to overthrow feudalism, autocracy, and dictatorship in England which led to the institution of Magna Carta in 1215. After about four centuries later, the political and legal authorities again bowed to pressure to introduce the bills of Rights. In America similar revolutionary struggle led to the American Declaration of Independence in 1776, while in France it led to the Declaration of Right of Man and the citizen in 1789- In the Far East, revolutionary struggle in Russia led to Bolshevik Revolution in 1905, and 1917. Thus, it was claimed that Manga Carta (MC) played a decisive role in the development of constitutional government in Europe. In some countries; it became a model for those who wanted a democratic system of government and influenced the declaration on Fundamental Human Rights and freedom of many countries of the world.¹

However, by the end of the First World War, the league of the Nation was established as the first global organization. But it was at the aftermath of the devastation of world war II, the attention of the international community started to focus on the universality and the internalization of Human right,² World War II put an end to the League of Nations but gave birth to another international organization, the United Nations was established in April 1945 by fifty States led by the victors of the Second World War; The United State, Britain,-France, The

¹Islam A.B.M.M (2002). Freedom of Religion in Shari'ah; A ComparativeAnalysis, A.S. Noordeen, Kuala Lumpur, Pp 48-50

²Ahmad, N.A (2011) (Supra)

Soviet Union, and the republic of China. The membership in the United Nation continued to grow over the years as more colonies achieved independence.³

These declaration, conventions and charters led to the following developments:

- i. Adoption of the UDHR (International Magna Carta) applicable to every human person without distinction as to race, sex, language or Religion.
- ii. International covenant of civil and Political Rights (1966)
 - a. International covenant on civil and Political Right (1966)
 - b. Convention on the Political Rights of women (1952)
 - c. Declaration on the elimination of discrimination Against Women (1967)
 - d. Convention on the Elimination of all form of Discrimination Against Women (1979)
 - e. Declaration on the protection of women in taking appropriate measure to abolished exiting laws, practices, customs and regulations which discriminate against women.
- iii. International convention on the suppression and punishment of crimes of Apartheid (1973), Declaration on the elimination of all forms of Intolerance and Discrimination Based on Religion or Belief (1981). All these conventions (on human rights) have become international instrument in respect to human right. They are binding on all State and States are under legal obligation to promote, respect and oversee the observance of all such human rights and freedom as provided by these instruments.

³ Safi, L (2003) Tension and Transition in the Muslim World, University Press of American, New York. P. 158-159

- iv. Regional and continental Declarations in line with the UDHR like the European Declaration of Human Right and freedom (EDHR) in (1950). It under took to preserve the right to life, liberty and security of reason, right to freedom of thought conscience and religion. This include the right to freedom of expression and peaceful assembly as expressed in the following instrument:
 - 1. The European Commission of Human Right (ECHR) and the European Court of Human Right (EC+HR)
 - 2. The American convention on Human Right (ACHR) (1969) and the American Declaration of Right and Duties of Man (ADRM)
 - 3. The African Charter on Human and People's Right (ACHPR) adopted 1981 but entered into force, 1986. This charter aimed at the total elimination of all forms of colonialism, neo-colonies, apartheid, Zionism, and to dismantle the aggressive foreign military buses. It aimed to eliminate all forms of discrimination, particularly; those based on race, ethnic, groups, colour, sex, language, religion or political opinions. It also aimed at the promotion and protection of human rights.
- v. Article 18 of the Universal Declaration on Human Right of 1948 provided that:
 - a. Everyone has the right to freedom of thought, conscience and religion. This right include freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief

in teaching, practice, worship and observance.

b. A further formulation (which includes a reference to education, but excluded explicit recognition of the right to change religion belief) is found in Articles 18 of the International Covenant on Civil and Political Rights of 1966.

c. Everyone shall have the right to freedom of thought, conscience and religion. This right includes freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observed, practice and teaching.

- “no one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice”
- Freedom to manifest one religion or beliefs may be subject only to such limitations as are prescribe by law and are necessary to protect public safety, order, health or moral or the fundamental right and freedom of others.
- The States’ parties to the present covenant under take to have respect for the liberty of parents and children applicable, legal guardians to ensure the religious and moral education of their children are in conformity with their own convictions.

d. Such are guarantee are found in other instrument at a regional level. For example, Article 12 of American Convention on Human Rights provides that freedom of conscience and religion include the;

“Freedom to maintain or to change one’s religion or beliefs, and freedom to progress or disseminate one’s religion or beliefs, either individual or together with others, in public or in private.”

While in the European convention on Human Right, the key guarantees providing

protection for freedom of thought, -conscience and religion or belief are found in two provisions.

First Article 9 provides that:

- Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- Freedom to manifest one's religion or beliefs shall be subjected only to such limitations are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others.

Secondly, Article 2 of protocol No. 1 the European Convention on Human Rights in the context of the right to education provides that:

- e. No Person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Moreover, Article 8 of the African Charter on Human and peoples' rights specifies that, "freedom of conscience, the profession and free practice of religion shall be guaranteed, and further that no one may, subject to law and order be submitted to measures restricting the exercise of these freedoms".

The Charter guarantees not only freedom of conscience and practice of religion but also the promotion and protection of morals and traditional values recognized by the community as well as the physical health and moral values of the family.

- f. Article 17 (3) stated that “the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

Article 18 also provides:

- The Family shall be natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
- The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
- In fact, according to Alstone, due to the broad recognition accorded to the rights to freedom of religion together with the other key human rights by so many countries of the world, it has acquired the status of customary international law. However, despite these guarantees provided by Human rights conventions and provisions, religious freedom has emerged as a highly contentious and charged issue in the international human rights community.

It can be seen, therefore, from the above that human rights today are those rights contained in International laws and Instruments as well as other regional and continental human rights treaties and conventions. The religious freedom which is the focus of this research forms a major part of the human rights discussed here. Hence further discussion on the status of religious freedom under the Nigerian Constitutional law follows here.

4.2 Right to Freedom of Religion under the 1999 Constitution

Having gone through the history of the constitution of Nigeria, the chapter proceeds to appraise the right to freedom of Religion under the 1999 constitution. The constitutional law of almost all nations of the world including Nigeria guarantees religious freedom as

provided by both the international and regional human right instruments. Here is the legal position of the 1999 Nigerian constitution. Section 38 of the constitution provides:

- i. Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- ii. No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own or a religion not approved by his parent or guardian.
- iii. No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.
- iv. Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

By the constitutional right to freedom of religion, it guarantees the right of everyone to belong to any religion or faith of his choice. In the same manner, the freedom of religion abhors compulsion in religion by guaranteeing everyone the freedom to change his religion or belief and not to be compelled to attend or take part in any religious instructions, ceremony or observance of any religion or faith other than that of his own.

Apart from the specific section of the constitution on freedom of religions, other sections (on human rights) strongly support and facilitate the realization and enjoyment of

freedom of religion. The right of peaceful assembly⁴ helps a person to enjoy his religious freedom where such person decides to manifest his religion through worship, teaching, practice or observance in community with others. The right to propagate our religion is enhanced by the right to freedom of expression,⁵ which guarantees everyone the freedom to hold opinion and impart ideas and information without interference. Similarly, discrimination on account of religion (among other grounds) is prohibited.⁶

So by the reason of religious affiliation no person is allowed to be subjected to disabilities or restriction or that certain privileges or advantages are to be accorded to other persons by virtue of the religious belief they hold.

4.2.3 Scope and Dimensions of Freedom of Religion

In its ordinary sense, freedom of religion means to have the right to perform religious obligation in its all rounded meaning by the followers of a respective religion. For its constitutional meaning, it was held in *Jenubu V Ojeriye*⁷ that such right entails everyone to manifest and propagate his faith or belief through worship, practice, teaching and the observance of the tenets of his religion in the forms of religious rights and ceremonies. The right to manifest and propagate one's religious belief in the manner stated above is exerciseable by every individual either alone or in community with others and in private or in public. By the constitutional right to freedom of religion, it guarantees the right of everyone to belong to any religion or faith of his choices. In the same manner, the freedom of religion abhors compulsion in religion by guaranteeing everyone the freedom to change his religion or belief and not to be compelled to attend or take part in any

⁴ Section 40

⁵ Section 38

⁶ Ibid section 42

⁷ (1983) 4 NCLR 492 as cited in Ahmad, N. A. (supra) Pp 69-70

religious instructions, ceremony or observance of any religion or faith other than that of his own. Accordingly, there are three basic dimensions to religious freedom. It includes the right of individuals, the right of religious communities and to practice, propagate or manifest the religion in public or in private, through “worship, observance, practice and teaching”.⁸

4.2.3 (i) Manifestations of Religion

The freedom to manifest religion or belief through worship, observance, practice and teaching encompasses a broad and diverse range of acts that are protected for both individuals and religious communities. The following manifestations of religion represent religious acts that have been recognised as falling under the ambit and protection of religious freedom. Such acts include, but are not limited to the following freedoms:⁹

- To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes.
- To establish and maintain religious, charitable or humanitarian institutions,
- To make, acquire and use to an adequate extent the necessary articles and materials related to the rights or customs of a religion or belief;
- to write, issue and disseminate relevant publications;
- to teach a religion or belief in places suitable for these purposes;
- to solicit and receive voluntary financial and other contributions;
- to train, appoint or elect leaders, clergy and teachers called for by the requirements and standards of any religion or belief;
- to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or beliefs,

⁸ Section 38 1999 Constitution

⁹Church of Scientology International 2017 edition (supra) P 15

- to freely communicate with individuals and communities in matters of religion and belief at the national and international levels.

It should be noted that the concept of worship extends to ritual and ceremonial acts giving direct expression to belief as well as various practices essential to such acts, including the building of places of worship, the use of ritual procedures, religious artifacts and objects, and the display of symbols.¹⁰

4.2.3 (ii) Practice and Observance

Practice literally means to do something regularly or constantly as an ordinary part of your life, to live according to the customs and teachings of a religion or to put the theoretical knowledge into practical use; a repeated mental or physical action for the purpose of, going on with an activity, and to observe or pursue actively the teachings and duties of a religion.¹¹ The term practice defined in Indian Supreme Court's Case is as follows:

“Practice of religion is such freedom whereby a citizen can expose or disclose a thing which he believes in his heart, through his speech action and religious rituals.”¹²

Practice as an integral part of religion was held in the following statements that:

“Religious practice or performance of acts in pursuance of religious beliefs are so much a part of religion as faith or belief in a particular doctrine, no matter such practice is individualistic or collective”.¹³

The observance and practice of religion or belief may include not only ceremonial acts, but also customs and norms of religion. Such as dietary requirement, wearing distinctive

¹⁰ Ibid P 15

¹¹ See 2017 Merriam-Webster Dictionary (Supra) and New Oxford Dictionary. Cited in Islam, A.B.M (Supra) P.110

¹² As cited in Islam, A.B.M (Supra) P.110

¹³ See Sardar Syed Tahir Saifuddin Sahib V. State of Bombay (1962) AIR. Sc. 853, Para 3V; Ratilal Panchand Ghandi V. The State of Bombay (1954) Sc. 388, Para 13 cited in Islam, A.B.M. (Supra) P.110

clothing or coverings, participation in rituals activities among others. This surely indicates that *Hijab* falls within this descriptive context.

4.2.3 (iii) Propagation and Teaching

Propagation is the third essential dimension of religion. Literally, it means to call, preach, breed, produce from one to another generation, pass on to one's descendants to grow in numbers or amount, extend or spread especially an ideology, practice from place to place. It also means to increase and transmit.¹⁴ Legally, propagation is a call in order to explain principles of religion with the objectives of explanation, extension and recruitment of new members. A Judicial definition in *Institute of C.A. V B. Mukerjee*.¹⁵ Was held that "it is an endeavour or persistent attempt to create a religious desire or sentiment to others. In *Rev. Stainislaus V State of Madhya Pradesh*,¹⁶ the Supreme Court of India held that, propagation means:

"To transmit or spread from person to person or from place to place, to disseminate, diffuse a statement, belief practice etc".

In addition, the propagation and teaching of religion or belief is to be materialized not only by mouth but also by all other available means. Such as freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications. Preaching positive values and forbidding negative actions are also within the scope of propagation of religion.¹⁷

4.3.0 Rights of Parents on the Religious Practice of their Children

It is also appropriate to discuss parental right which have arisen under provisions of section 38(2). The essence of the guarantee is the safe guarding of pluralism and

¹⁴ New Oxford Dictionary (Supra)

¹⁵ (1958) AIR Sc. 73, cited in *Islam, A.B.M. (Supra)* P.114

¹⁶ (1977) AIR. SCR 611, cited in *Islam, A.B.M. (Supra)* P.114.

¹⁷ Ibid P. 117

tolerance in public education and the prohibition of indoctrination. Similarly, the parental right now established beyond debate as an enduring universal right.

International Human Rights law is unequivocal on the right of parents to raise their children in accordance with their religion or belief. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Right, require states to have respect for the liberty of parents, and when applicable, legal guidance, to ensure the religious and moral education of their children in conformity with their own convictions.¹⁸

Children enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of their parents or guardians. Conversely they can not be compelled to receive teaching on religion or belief against the wishes of their parents or guardians.¹⁹

In exercising any functions that it assumes in relation to education and teaching, the state must respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions. Forced participation of children in religious education ceremony or in courses that are designed to indoctrinate them against their particular religion or belief is prohibited.²⁰

Under International Human Rights law and African Charter, states are obliged not merely to respect freedom of religion or belief, but also to protect such freedom against undue interference from third parties. In addition, states should promote an atmosphere of

¹⁸ Article 18 ICCPR, Art 13(3), ICESCR, Art, ACHPR

¹⁹ UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Art 5, Convention on the Rights of child, Art 14(2)

²⁰Ibid P. 19

tolerance and appreciation of religious diversity in schools. School education can and should contribute to the elimination of negative stereotypes that frequently poison the relationship between communities and have particularly detrimental effects on the religion of others.²¹

4.3.1 Limitation of Freedom of Religion

Contrary to the unconditional and absolute right to hold a religion or belief, the freedom to manifest one's religion or belief through worship, observance, practice and teaching may be subject to limitations by law, but "only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedom of others".²² Meaning the freedom of religion as given in the constitution is not absolute but conditional or restricted. In other word, to enjoy this right an action of a right bearer must not be contrary to other existing law, public order, public health or morality. Thus, the government is empowered to promulgate any law to restrict any forms of unlimited or unethical or unacceptable practices of an individual or community in the name of religions. For example with respect to 'secret society' the constitution of Nigeria is categorical about it that, 'Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society'.²³

Public order is another ground for restricting freedom of religion. Maintenance of public order is one of the functions of government. Therefore, for the preservation of order in a society a government can even restrict the given freedom of religion. For instance, the

²¹ Report of the UN Special Rapporteur on Freedom of Religion or Belief, Pp27-29, HRC 16/53, 15 December, 2010.

²² Section 45 of 1999 Nigerian constitution

²³ Ibid Section 38 subsection 4

laws prohibiting breach of peace,²⁴ unlawful procession,²⁵ laws regulating religious disturbance and riots²⁶ and laws controlling some religious activities²⁷ are deemed to be valid limitations within the meaning of ‘reasonably justifiable in a democratic society. Other instances for restrictions are ‘subject to health and morality’. It means whatever the religious law is, if it contradicts morality or health, the government is entitled to restrict such practices.

Precisely, this chapter has been a survey of historical development of religious freedom and how it has been subsequently entrenched under Nigerian constitutions, from the 1960 constitution. Logically and deductively speaking, Section 38 of the 1999 Constitution guarantees not only freedom of thought, conscience and religion, but also the practical or physical manifestation of such. The primary focus of the guarantee is thus private and personal belief and its individual and collective manifestation. There is also a clear link with the right of parents to have their philosophical and religious convictions respected in the provisions of their children’s education. It also has a close link with the freedoms of expression and nondiscrimination on the basis of religion. These rights or guarantees are important in helping to protect the religious right freedom of Nigerian Muslim Woman in *Hijab*. The next chapter seek to critically analyze such rights falling within the wider ambit of freedom of religion in conjunction with provision against discriminatory treatment.

²⁴ For Instance sections 111-114 of the Penal Code, Cap 105 laws of Kano State of Nigeria 1991, cited in Ahmed, N.A (Supra) P.71

²⁵ Public Order Act, Cap 382, Law of the Federation of Nigeria, 1990

²⁶ The Civil Disturbance (special Tribunal) Act CAP 53, Laws of the Federation of Nigeria, 1990

²⁷ For Instance Koranic (Schools Registration and Movement) CAP 74, Laws of Kano State, 1991. Religious Preaching CAP 124 Laws of Kano State, 1991 See Ahmed, N.A. (Supra) P.71

CHAPTER FIVE

THE USE OF *HIJAB* AS PART OF FREEDOM OF RELIGION UNDER THE 1999 NIGERIAN CONSTITUTION: CRITICAL ANALYSIS OF ISSUES AND CHALLENGES

5.0 Introduction

This chapter aims to critically analyze the significant, practical, relevant and existing issues and challenges revolving around situating the *Hijab* under the 1999 Nigerian Constitution. It also assesses the impact of non-recognition of *Hijabas* religious practice under the constitution. Nigerian Muslim Women, like all people in Nigeria, have the right to be treated equally and the right not to be discriminated against because of their religion or belief and convictions. The wearing of *Hijab* by Muslim women is not a matter of choice, but a fundamental, mandatory and obligatory act of worship and practice of the religion. Similarly, a number of constitutional provisions and court verdicts have demonstrated that it is possible to recognize, situate and accommodate the right to wear *Hijab* under the constitution. However, the appearance of Muslim women in *Hijab* has become controversial with legal connotations. Notwithstanding the legal protections, Muslim women who wear *Hijab* continuously face challenges and infringements to their rights particularly, in public institutions such as schools, universities and public offices. The presence of Muslim women in *Hijab* is construed as threatening the assumed secularity of the public life. Proponents of secularism continuously insist that Nigeria has under-gone secularization. For instance, despite the fact that the ruling in *AbdulKareem V LASG* by the lower court was overturned, the judgment raises a number of important questions and issues which sought to be critically analyses. Firstly, there has been a

resurrection of the old argument that by virtue of section 10 of the 1999 Constitution, Nigeria is secular. An argument contradicted by the constitutional reality and public policy. The second assumption was that Nigeria is like Turkey. Despite the fact that Nigerian public life includes many outstanding examples of legal and governmental practices that show the Nigerian nation is not a secular country. Therefore, such reasoning in Lagos State trial Court on *Hijab* reflects part of the broader debate about Muslim women's *Hijab* in secular democratic societies. Another critical issue is the Nigerian Christian sensitivity towards the use of *Hijab* which raises important implications for the discourse on *Hijab* in Nigeria. An example of this aversion was illustrated in both the cases of Miss Asiyat AbdulKareem V. LASG and that of the Osun State case on *Hijab*. Particularly, the Nigeria Christian Leadership showed an aversion of *Hijab* in Nigeria and seek to complicate the religious freedom and protection of the Nigerian Muslim woman in *Hijab* and supported the continuation of an inappropriate restriction on religious freedom.

Similarly, to give feminists much more legitimacy to intrude, *Hijab* was claimed to signify gender inequality heavily saturated with patriarchal interpretations. Feminists glossed in an Islamic frame of reference tried to foster phoney interpretations and impose certain meanings to the *Hijab*. These interpretations have posed fresh challenges and added wider perspectives to the legality of wearing the *Hijab* by the Muslim women. In fact these challenges confronting the use of *Hijab* by Muslim women are not mere rhetorics but have important policy implications as they have been used to justify restrictions on the use of the *Hijab*. In this regard, the deconstruction of these challenges through the analysis of secularism, and feminists' perspective on the *Hijab* among others

are expedient in order to have a new and constructive discussion on the use of the *Hijab* in Nigeria.

Therefore, these issues needs adequate analysis from both constitutional and jurisprudential point of view. The objective therefore is to identify and bring out the issues and challenges hacking the observance of the rights of the Muslim woman in *Hijab* to manifest her religious believes among others as envisaged under the constitution. This is with a view to pointing out areas where secularist perspectives and feminist re-interpretations among others are at variances with the Islamic law perspective on *Hijab* and that enshrined by the fundamental human rights and religious freedom under the constitution. In an attempt to address these issues and challenges, it is crucial to find out how the Nigerian Christian have reacted to the discourse of *Hijab*. The starting point therefore, is to highlight the nature of the *Hijab* controversy and restrictions in Nigeria. Secondly, to critically situate the discourse of *Hijab* within the 1999 Nigerian constitution through the analysis of the Laws and Provisions protecting Muslim Women in *Hijab*. This discussion will also be placed within broader contexts, regional and international human rights standards. The following section makes a close examination and analysis of the various issues and challenges. First, it addresses secularism and explores the realities on the ground-the actual relationship between religion and the Nigerian State and determine whether Nigerian legal and public policy is influenced by secularism. This section goes on to examine the corresponding feminist interpretation in aggravating the misconception surrounding the understanding of the legal basis of *Hijab* in the Shariah and then lastly, it reviews the media hypocrisy and conspiracy and the religious implications of the modern *Hijab*. The final section looks at the implication of

non-recognition of *Hijab*s religious practice and observance under the 1999 Nigerian Constitution.

5.1.0 Restrictions and Controversies on the Use of *Hijab* in Nigeria

Nigeria is a multi-ethnic and religious class society which is situated on the west coast of Africa. It is a heterogeneous society with over 250 ethnic groups and has population of approximately one hundred and seventy eight (178) million people. A mixed population of Muslims, Christians and animists. Although, Muslims constitute a substantial part of the Nigerian population with a heavy concentration in the Northern parts of the country. Nigerian Muslim women are divided into three groups; Northern, Southern Western and Coastal Muslim women. Unlike in the 50s, with an increased enrolment of girls in education more Muslim girls and women are spread in all levels of education and public sectors. Today, Nigerian Muslim women are contributing members of the Nigerian public life. Muslim females are very visible in this country: in schools, colleges, universities, hospitals, stores, banks, law firms, accounting firms, businesses and virtually ...everywhere throughout the Nation.

As the *Hijab* has become an increasingly common sight in all areas of the Nigerian public life, the subject of the *Hijab* became an important matter of debate in Nigeria as elsewhere in the world. Muslim women have been prohibited from wearing their *Hijab* in a number of contexts. They have been harassed, fired from jobs, denied access to public places, and otherwise discriminated against because they wear *Hijab*. Particularly, in some states and public institutions in Nigeria. However, the reactions and restrictions varies. For instance in some educational institutions, many simply ignored the development. However, in some institutions the authorities have attempted to subvert the

Hijab by introducing dress codes for their students. Many of these dress codes even though ostensibly directed against immoral dressing clearly targeted the *Hijab*. While some institutions prohibit only the *niqab*, others prohibit both the *niqab* and the *Khimar* and a few prohibit both and even the *Jilbab*.¹ The dress codes and the *Hijab* prohibition have caused many frictions, discriminations and so on. More particularly in the legal profession the issue of restriction of *Hijab* has become a prominent one in the country. So also at the NYSC Camps, and other educational institutions in the country.

5.1.1 *Hijab* in the Legal Profession in Nigeria

The Legal Profession in Nigeria, like some other profession all over the world has its formal or regulation dress which is compulsory for the legal practitioners on training as well as in practices.² A Muslim woman in all stages of her legal profession is always faced with the challenges of the dress code. This challenges begins in some cases at universities during the academic pursuit for the LL.B Degree. One of the striking features in some law faculties in Nigeria is the introduction of dress code for law students that this is to enable the students get themselves acquainted with the acceptable modes of dressing expected of legal practitioners in Nigerian courts. This continues during their internship period in Nigerian law schools in order to become Barristers, solicitor and Advocate of the Supreme Court of Nigeria. It is part of the call to Bar requirements that the students must attend at least three mandatory dinners organized in the school. Students are expected to attend the dinners wearing “regulation dress”. The challenge or problem for the female Muslim students is that the “regulation dress” forces them to expose their hair, neck and some part of their bodies. This challenge experienced not only

¹ Oba, A.A (Supra) P.54 Also Abdulraheem, N.M. (Supra). P4

² Badamasiuy, J. (Supra) P.2

during the compulsory law dinners but including during court attachment, law office attachment, lectures and other official/mandatory outings.³

Infact, even after law school, the Muslim female legal practitioner in practice continuous to face this challenges despite the fact that there seems to be no specific statutory provision prescribing this particular requirement of the dress code. Similarly, the Muslim female lecturer in law may sometimes not be spared from facing the dilemma and challenges especially where she needs to meet with Accreditation Panel from the Council for Legal Education. The Muslim female Judges equally face the same experience in the discharge of their responsibility.⁴

In a nut shell the female lawyers dress have posed many serious problems and practical challenges to the female Muslim in the Nigerian legal profession. Appearing in the regulation dress especially in the court of law is part of the professional ethics of lawyers. For instance in practice, the non-compliance with the dress code has consequences that raise some fundamental constitutional right issues. These issues include denial of the right of audience in court and the denial of litigant the right to legal representation of his/her choice. There are judges who will refuse lawyers so dress in *Hijab* an appearance or audience in his/her court. This problem is not limited to lawyers but extended even at the bench such incidents have started emerging with the increasing number of Muslim women appointed to the bench.⁵

³ Ibid P.3

⁴ Ibid P.5

⁵ Ibid P. 8 See also Abdulraheem, N.M. (supra) P.11

5.1.2 *Hijab* in Educational Sphere in Nigeria

All secondary and primary schools in the country have dress guidelines for their students. Mandatory school uniform is standard in all schools. However, majority of the dress regulations conflict with the Islamic requirement of *Hijab*. In the North, for most schools there has been a considerable reduction in the tension in relation to the wearing of *Hijab* in secondary, primary and tertiary institutions due to the acceptance of the *Hijab* as an optional part of their school uniforms, modesty and decency in public life. Even in the North however this position was attained in some schools only after much controversy.⁶ In the south, the controversy was more heated. There is a wave of discrimination and maltreatment of Muslim students in different schools. There are cases of over-zealous teachers, school heads and principals who try to taunt and victimize female Muslim students as witnessed recently. For instance in Itire Community Senior Secondary School, Mushin, the principal ordered a ban on the use of *Hijab* in and out of the school premises and stopped the students from observing Zuhr (Noon) and Jum'ah (Friday) prayers in the school premises and after closing respectively. Even in a school bus, Muslim students were ordered to put off the *Hijab*.⁷ However, it came as a shock to the Nigerian Muslims particularly those in Lagos. The former Commissioner for Education Mrs. Olayinka Oladunjoye was reported in a section of the media to have said on Tuesday 14th of May 2013 at a press briefing in Ikeja that "Usage of *Hijab* and other religious materials in public schools was against government's policy".⁸ In fact, the banning of *Hijab* in Lagos State and the subsequent High Court ruling provided the

⁶ Oba, A.A. (Supra) P.62

⁷ Hijab Issues "Lagos State Government: Discrimination Against Muslim Students at <http://www.mpac-ng.org/hijab-issues/71-test-article-for-hijab-issues.pdf> Revisited December 23, 2016 at 7:20am

⁸ MPAC Express Shock Over Lagos State Commissioner for Education's Comments. At <http://www.mpac-ng.org/mpac-posiyions/705-mpac-expresses-shock-over-lagos-state-commissioner-for-education-comments.pdf> retrieved Dec. 23 2016

critical example of the acrimonious nature of the opposition to the *Hijab* in public schools in some states in Nigeria.

It is apt to point out that in Nigeria, the *Hijab* and even *purdah* are well known even in the pre-colonial era. This is not only in parts of northern Nigeria but also among Yoruba Muslims in the South-Western part of the country.⁹ Even some non-Muslims in Nigeria for various reasons have adopted the Muslims mode of dressing and sometimes with the full *Hijab* without becoming Muslims.¹⁰

However, Muslim women in *Hijab* continue to face challenges and issues of concern in some universities, colleges and places of work across the nation especially where there is a dress regulation. Some institutions and establishments have accommodated the *Khimar* but the acceptance of the *Niqab* and *Jilbab* is still a matter of deliberation.¹¹ In fact, some Marxist group of lecturers who continue to be under the strong influence of western culture and secularism, tend to look down upon Islamic values such as *Hijab* and often make Muslim women in *Hijab* a target of ridicule, derision and victimizations. Opponents of the *Hijab* argue that the *Hijab* is not smart but constitute a form of hindrance. The most current and typical example is the Amasa's case with the Nigerian Law School.

5.1.3 *Hijab* at the NYSC Camps and Nigerian Embassies

Individual cases dealing with instances of discrimination, harassment and public humiliation of Muslim women wearing *Hijab* at NYSC Camps and Nigerian embassies are frequent. At the NYSC Camps Muslim women have been experiencing hardship,

⁹ Ibid P.69

¹⁰ Oba, A.A. (Supra) P.65

¹¹ Ibid P.69

trauma and stereotyped as with cases of authoritarian NYSC Officials at NYSC Camps across many states in Nigeria.¹² Similarly, discrimination and public humiliation was meted against Muslim women in *Hijab* at the Nigerian embassies in the United States and Jamaica. The Nigerian embassy in Washington D.C on October 28, 2013 denied a Muslim woman in *Hijab* who had gone for a biometrics appointment necessary to replace her international passport, any service on the condition that she had to expose her ears.¹³ It is a common knowledge that the need for exposure of ears has also started in the issuance of driving license in Nigeria and has since become a constraint to Muslim women in *Hijab*.

In a related but more bizarre incident a week earlier, Ambassador Olatokunbo Kamson of the Nigerian High Commission publicly humiliated a Muslim woman who was attending a monthly meeting of Nigerians resident in Jamaica under the aegis of Association of Nigerians in Jamaica (ANJ). During normal introductory session at the meeting, Ambassador Kamson openly called the Muslim woman in *Hijab* “egungun” (meaning, Masquerade) as she stood up to introduce herself as others were doing.¹⁴ Similar experience also take place in most of the foreign country embassies in Nigeria, for example at the US embassy in Nigeria, in the bid to obtain visa for journey to their country.

5.1.4 *Hijab* at the Work Place

Despite the fact that the use of *Hijab* has been approved by Nursing and midwifery Council of Nigeria, still Muslim women in nursing profession continue to face challenges

¹² Hijab on Campus: at <http://www.mpac-ng.org/hijab.issues/108-hijab-on-campus.pdf> Retrieved Dec. 23, 2016

¹³ Hijab Discrimination: Letter to the Minister at <http://www.mpac-ng.org/mpac-positions/712-hijab-discrimination-letter-to-the-minister.pdf>

¹⁴ Ibid

and discrimination because of the *Hijab*. For instance according to a report by Muslim Medical Practitioners, Islamic Medical Association of Nigeria, IMAN, and Muslim Public Affairs Centre, MPAC, two female Nursing Staff Members of National Orthopedic Hospital (NOH) Igbori and the Lagos University Teaching Hospital (LUTH, Idiaraba) are prevented from carrying their official (public) duties. They were accused of not dressing properly as a result of their wearing of shoulder Length *Hijab*.¹⁵

In the case of LUTH, the female Nursing staff was intimidated and “arrested” by the police briefly on the 12th of April 2014. She was subsequently released with an advice by the police that the LUTH authorities should handle the matter, administratively. On the other hand, after series of verbal assaults and intimidation, the two Nursing Staff at NOH were issued queries on the 15th April, 2014. The staff stated in their responses to the query that they were only in compliance with the nursing council directive on nurse’s uniform which allows the use of a cap or shoulder length *Hijab*. All efforts to convey the directive of the Nursing and Midwifery Council of Nigeria Circular titled “Nurses Uniform” Ref. No: NEMCN/CMF/721/13 dated 11th February, 2001 that stated that a ‘female nurse should wear either a nurse cap or a shoulder length *Hijab*’ fell on deaf ears. They were further intimidated and made to face a disciplinary committee on Monday 14th April, 2014.¹⁶ So they have petitioned the Federal Government against the injustice, violation of fundamental human rights, harassment and victimization meted on some Muslim Nurses at the Lagos University Teaching Hospital, National Orthopedic Hospital

¹⁵ Iman “Hijab Victimization in Federal Institutions in Lagos, Nigeria” at imanalagos.org. visited 25th March, 2017

¹⁶ Ibid

due to their use of *Hijab* despite its prior approval by Nursing and Midwifery Council of Nigeria.¹⁷

In essence, Muslim women in *Hijab* are faced with a host of problems and challenges including institutional policies, lack of legal protection, discrimination, exclusion and marginalization. In a nutshell, laws, policies and procedures in many institutions and establishment discriminate against Muslim women in *Hijab*.

As a result of this exclusion and discrimination, some Muslim women in *Hijab* are forced to challenge some professional practices, school policies and job requiring incompatible dress code with Islamic ethics and decorum. For instance, recently some Nigerian Muslim female students began challenging the legality of some of the dress codes in courts, arguing that it violated their right to religious freedom. In particular, the female Muslim students of Kwara State College of Education, Ilorin, Kwara State, won landmark victory on Monday, 08 May, 2006 in their case against the board of the college which had approved a dress code for students banning *niqab* (a form of *Hijab*). The High Court in Kwara State, presided over by Justice Durosinlorun Kawu, ruled in favour of the students and declared that the content of the Article “J” of the schools new dress code” is unlawful, unfair, discriminatory, unconstitutional, null and void and of no effect whatsoever”.

In another landmark judgment on Thursday, November 18th 2008, Judge Olununmi Oyewole of the Lagos State High Court ruled that ban on *Hijab* was a breach of article 38 and 42 of the Nigerian constitution. However, in the case of Miss Asiyat AbdulKareem V. Lagos State, the Lagos State Government had appealed to the Supreme Court after

¹⁷ Hijab Issues. At <http://www.mpac-ng.org/hijab-issues/71-test-article-forhijabissues.pdf> Dec. 23, 2016

being dissatisfied with judgment of the Court of Appeal delivered on Thursday July 21, 2016 which gave approval to Muslim students to wear the *Hijab* with their school uniforms. The Court of Appeal held that such religious expressions are protected by the Nigerian Constitutions, which protects the free exercise of religion. Section 38(1) of the 1999 Nigerian Constitution Guarantees this right to practice one religion. Resolving all the five issues raised in favour of the appellants, the appellate court further held that the lower court erred in law when it held that the ban on *Hijab* was a policy of the respondent (Lagos State Government). Other justices in the five man panel were Justice M. Fasanmi, Justice A. Jauro, Justice Ikyegh and Justice I. Jombo-oyo.

However, despite ample evidences of the obligatory requirement of the *Hijab* upon the Muslim woman and the subsequent ruling by the Court of Appeal allowing the use of the *Hijab*, there is further and continuous harassment of Muslim women for wearing the *Hijab* to schools in particular and public sectors generally and the vast majority of instances of *Hijab* discrimination in Nigerian public life particularly in workplaces, educational institutions, NYSC Camps and in the legal profession escapes the scrutiny of the law altogether, as the general attitudes towards *Hijab* allows for imperfect implementation of legislation and most Muslim women are ignorant of their Legal rights coupled with discouragement from even the fellow Muslim which heightens the threshold for legal action. These have posed many serious problems and practical challenges to the Nigerian Muslim women who aspire to leave their lives in accordance with the injunctions of the Shariah.

5.2.0 Provisions Protecting the Right to Wear *Hijab* under the 1999 Constitution

The requirement of *Hijab* is clearly prescribed in the Holy Quran and many of the narrations of the Holy Prophet (SAW). As it has been discussed in some detail in chapter three. First and foremost, the *Hijab* is *fard* (obligatory) upon every living Muslim woman who has reached the age of puberty. Secondly, that she must keep herself covered when going out and in front of non-mahram men. Thus, Allah and His messenger have given us very clear and unmistakable instructions as to the way and when a Muslim woman must wear the *Hijab*. The Muslim woman cannot go against the rules set for her, especially when the punishment for the disobedience to Allah's law has been clearly put in front of her.

It is not for a believer, man or woman, when Allah and His Messenger (SAW), have decreed a matter that they should have any option in their decision. And whoever disobey Allah and His Messenger (SAW), he has indeed strayed into a plain error.¹⁸

Hijab is an identity to be recognized as a Muslim woman. Hence, the wearing of the *Hijab* is an Islamic legal injunctions which cannot be revised, modified, repealed, revoked or nullified.¹⁹ This is a legal injunction, based on religious authority of Divine Command. The fact that the use of *Hijab* is an act of worship intimately linked to the Islamic belief and practice, necessitates the recognition of *Hijab* as part of religious practice and observance under the law. In addition, Nigerian Constitutions provides sufficient grounds and legal protection for the use of *Hijab* as part of the fundamental human rights and religious freedom.

¹⁸ Holy Quraan chapter 33:36

¹⁹ Ahmed, A & Sajjad, M. (1983) Muslim Women and Higher Education, I.I.F.S.O, Beirut P.47

Generally, freedom, equality and justice pervades throughout the constitution, and defines the very ethos upon which the Nigerian constitution is founded. This is evident in the constitutional preamble.²⁰ Similarly, the following provisions stipulate that the constitution is founded for the purpose of promoting the good government and welfare of all persons on the principles of freedom, equality and justice.²¹ The constitution contains an equal protection clause which recognize that every citizen is equal before the law and that everyone has the right to equal protection and benefit of the law.²² It also contains an antidiscrimination provision, which prohibits unfair discrimination on any grounds whatsoever.²³ Any limitation on constitutional rights would have to be ‘reasonable and justifiable’ in a democratic society. In essence, unity, faith, peace and diversity is a key message of the constitution.

Therefore, to situate, protect and promote the fundamental rights of the Muslim woman to wear *Hijab*, particularly in public institutions such as Schools, Universities and public offices and so forth in Nigeria (as an act of worship whose fundamental requirements was so clearly spelled out without any ambiguity) could be analyzed from different dimensions of rights. In fact, a number of Court verdicts have demonstrated that the wearing of *Hijab* constitutes an observance of Muslim women to a religious duty which is mandatory for them and, in consonant with the relevant provisions of the constitution and other human rights obligations in relation to freedom of religion (as showed and discussed in chapter four).

²⁰ See the Preamble of the 1999 constitution

²¹ The 1999 Nigerian Constitution, Section 17

²² *bid*

²³ See the 1999 constitution, section 15

Therefore, the laws or provisions protecting the rights to wear *Hijab* could be analyzed from the following dimensions of rights, namely:

- i. Freedom of thought, conscience and religion
- ii. Freedom from discrimination
- iii. The right to education and work
- iv. Freedom of expression and other rights

5.2.1 The Right to Wear *Hijab* on the Basis of Freedom of Thought, Conscience and Religion

Despite persistent controversies, the core of freedom of religion is not disputed. It is largely explicit from the text of the major international human rights instruments, regional and constitutional laws.²⁴ As duly noted and discussed in chapter four, freedom of religion is strongly formulated in the 1999 Nigerian Constitution. Section 38(1) protects the acts of personal belief. The specific textual reference to the ‘freedom, either alone or in community with others and in public or in private, to manifest and propagate (one’s) religion or belief, in worship, teaching, practice and observance, underlines that manifestation of belief is an integral part of the protection accorded by the constitution.

This approach was confirmed by the Court of Appeal with a plethora of excellent illustrations, that against the provisions of section 38, it is taken that each individual has the basic right to believe what he chooses to worship, whom he pleases and how he pleases, always provided that he does not impermissibly interfere with the rights of others. Moreover, the freedom to manifest one’s religion is not exercisable in community with others, in public and within the circle of those whose faith one shares, but can also be asserted alone or in private. Furthermore, it includes in the principle the right to try to

²⁴ Ahmad, N.M. Supra P.167

convince others about their religions through preaching and propagation of religious ideas. The court further recognized that Nigerians are deeply religious and the faithful across the religious divides do not fail to assert their religious identities at the slightest opportunity. It is not unusual to see some Nigerian insisting on being identified with religious titles, badges or other means of identifying with one religion or another. More specifically in Nigeria the dominant religious beliefs are Islam and Christianity. Other forms of religious beliefs enjoy minority status. In other words, Nigeria is a multi-cultural and multi-religious society. In essence, the constitution recognizes the collective right of persons belonging to a religious community to practice their religion. The importance of this right can also be ascertained by the protection offered in other part of the constitution. For example, freedom of association is entrenched, which includes the right of religious bodies to function freely as part of civil society. It also facilitates the development of a legally pluralistic society by permitting the enactment of Islamic legal system and courts to recognize Islamic law of personal status among others that are adhered by those who profess Islamic religion. Hence, the refusal to allow Muslim women to wear their *Hijabis* a clear infraction of their constitutionally guaranteed right.

Accordingly, freedom to manifest religion or belief through worship, observance, practice and teaching encompasses a broad and diverse range of acts that are protected for both individuals and religious communities. Hence, the observance and practice of religion may include all the commandments of a religion. The wearing of the *Hijabis* a manifestation and observance of the commandment of the religion of Islam. Therefore, the use of the *Hijab* by a Nigerian Muslim woman falls under the ambit and protection of religious freedom as enshrined under the 1999 constitution.

Besides, what constitute manifestation of beliefs in observance and practice has been evaluated in interpreting sub-section 1 of section 38 of the 1999 constitution in the case of *Bashirat & Ors V the Provost, Kwara State College of Education, Ilorin and Ors*, particularly as it relates to the questions of wearing of *Hijab* as a form of practice and observance of religion.²⁵

Similarly, the Qur'anic injunction (Chapter 24 verse 30-31) which makes its compulsory for female Muslims to wear *Hijab* has been given judicial interpretation by the Court of Appeal Ilorin Division in the unreported case of the *Provost, Kwara State College of Education, Ilorin & 2ors Vs Bashirat Saliu & 2 Ors Appeal No CA/IL/49/2009* where it was held, per Hussein Mukhtar, JCA at page 15-16 of lead judgment:

...the foregoing verses of the Glorious Quran and Hadiths have left no room for doubt on the Islamic injunction on women's mode of dress, which is clearly in conformity with not only the respondents veiled dress but also the controversial articles J of the 3rd applicants dress code-the use of veil by the respondents, therefore qualifies as a fundamental right under section 38(1) of the constitution.²⁶

The Court of Appeal further held per Massoud AbdulRahman Oredola JCA at page 2 of the concurrent judgment;

the right of the Respondents to wear their Hijab, veil within the school's campus and indeed anywhere else is adequately protected under our laws. The human right recognizes and protects religious rights. Section 38 of the 1999 constitution of the Federal Republic of Nigeria guaranteed freedom of religion to all and sundry. Thus, things that lawfully constitute open manifestation, propagation worship, teaching, practice and observance of the said religion are equally and by extension similarly guaranteed and protected by the constitution. Indeed the Hijab, Niqab or Burqa being part and parcel of Islamic code of dressing and by whatever standard a

²⁵ (Unreported) Suit No KWS/28M/2006 delivered by Kawu J on 8 May 2006, as cited in Oba, A.A and BadamasiUY, J. P16 respectively. P58 (Supra)

²⁶ See the recent judgment by His Lordship Honorable Justice S.O Falola of the High Court of Justice, Osun State of Nigeria at Osogbo in the suit No HOS/M.17/2013 Pp.37-39

dignified or vividly decent one cannot be taken away by any other law other than the constitution.²⁷

5.2.2 The Right to wear *Hijab* on the Basis of Freedom of Expression

Additionally, issues of the religious manifestations could also be challenged from the perspective of freedom of expression. The wearing of *Hijab* is clearly a form of religious expression as well as a manifestation of one's religious beliefs.²⁸ In Nigeria, freedom of expression is part of the fundamental rights provisions of the constitution which constitutes the bill of right, embodied in the constitution. The use of *Hijab* is practically a matter of freedom of choice of a Muslim woman as a matter of freedom of religious expression.²⁹

5.2.3 *Hijab* and Protection of the Right from Discrimination on the Basis of Religion

Unfair discrimination on the basis of religion that cannot be limited justifiably is expressly prohibited. By virtue of section 42(1) of the 1999 constitution as amended, no citizen of Nigeria shall be subjected to discrimination on the ground of belonging to a particular religion, community, ethnic group, place of origin, sex or political opinion. Thus, no discrimination on the grounds can be made either by law or by executive action. A full panel of the court of Appeal held in the case of Abdulkareem V. LAGOS (Supra) that the refusal to allow the appellants wear *Hijab*, will amount to discrimination against female Muslims on ground of their religion.

Now what is the effect of section 45 on the Rights guaranteed in section 38 of the 1999 constitution. It was further observed that according to section 45 the right in section 38 is not meant to invalidate any law that is reasonably justifiable in a democratic society.

²⁷ Ibid Pp37-39

²⁸ Article 19 Global campaign for free Expression Supra ib

²⁹ Abdulraheem, N. M. supra p12

However, any such law contemplated under section 45(1) must have been a duly enacted law that was meant to safeguard the defence of the country, public safety of its people or people health and morality. Also such a law could invalidate section 38 if it was meant to protect the rights and freedoms of other persons. The enjoyment of the right under section 38 may also be curtailed or restricted during on duly proclaimed and approved period of emergency. Justice Gumel cited the Boko Haram menace as a typical example where many restrictions were placed in certain parts of the country to the extent that Muslims could not perform some of the 5 daily prayers in congregations which was due to the defence, security, public safety etc. Thus, such laws, regulations curfews etc were duly observed and enforced.

However, with respect to the use of *Hijab*, it was maintained that there is no law, legislation or policy instrument in existence that restricts the rights to wear *Hijab* in accordance with the mandatory prescription of the religion of Islam. In fact, even if the circumstances have arisen to warrant a restriction of individual right under section 45 of the constitution, which is not conceded, such power is vested in the Legislative or Executive arms of the Government in the form of an appropriate legislation or other valid legal instruments which the courts are by law empowered to enforce.

In the *Provost Kwara State College of Education, Ilorin V. Bashirat Saliu*, the Court of Appeal held that ‘The Provision of Section 45 of the constitution is defined to save laws that are reasonably justifiable in a democratic society, notwithstanding their apparent inconsistency with any provisions in sections 37, 38, 39, 40 and 41 of the constitution, either;

(a) In the interest of the defence of public safety, public order, public morality or public health or;

(b) For the purpose of protecting the rights and freedom of other persons

The laws saved by section 45 of the Constitution are enactments made by the State Legislature. For the avoidance of doubt section 318 of the constitution has defined 'law' as follows: "law mean a law enacted by the House of Assembly of a State". The court also held in *Abdulkareem V. Lagos* that a law contemplated under section 45(1) must be one duly enacted to safeguard the defence of the country, public safety of its people or public health and morality or meant to protect the rights and freedom of other persons.

In conclusion the provision of section 45 is not applicable in the case of any female Muslim who choose to wear the *Hijab* because there is no law enacted by the National Assembly validly curtailing such rights as guaranteed under section 38 of the constitution. In fact, according to Gumel JCA when he recall what he said in the case of *INCORPORATED TRUSTEES IN NIGERIA BAPTIST CONVENTION Vs. KOLAWOLE* (2015) 13 WRN 113. *"Each regulation, rule or any normative prescription in the society derives its validity from the constitution. Any laws, rules, regulations etc that are in conflict with the provisions of the constitution must give way or abate...for example, in Nigeria nothing in the constitution of a social Club, Association, Religious Organization Charity, Political Association of Political Party can override or be superior to the laws validly enacted on its authority"*.³⁰

Other legal rights which forms part of the core of international, regional and national human rights standards are fundamental right to dignity of human person and right

³⁰ Supra P50

against torture, inhuman and degrading treatment, right to personal liberty and right to freedom of movement. For example Per Justice Falola, Muslim female students in some public schools are subjected to molestation,, torture, embarrassment and humiliation which constitute a clear infringement on the fundamental right of the said Muslim female students to religion conscience and thought as well as their fundamental right to dignity of human person and right against torture, and degrading treatments.³¹

5.2.4 The Right to Wear *Hijab* and the Rights to Education and Work

The right to education consists of a variety of rights and freedoms for parents, children or students and of different obligations for states. States are obliged to make education available, accessible, acceptable and adaptable. Educational institutions and programmes have to be accessible to everyone without discrimination. In order to make education accessible, states are obliged, among others to eliminate discrimination against women in order to ensure equal rights with men in the field of education and employment. In addition, states are obliged to ensure that education is accepted both to parents and children. This requires a guaranteed quality education and respect for parental freedom, to have their children educated in conformity with parents' religious, moral or philosophical convictions. Since "everyone" is guaranteed the right to freedom of thought, conscience and religion, educational institutions must respect this right.³² Consequently, any restriction on the right of the female student to wear *Hijab* may interfere with her right to access public education so also restriction on wearing *Hijab*

³¹ Sheikh Salauden, (Supra)

³² ICCPR, Article 18(1); UDHR, Article 18 (4) ACHPR, Article 8, ECHR, Article 9, ACHR Article 12. For a discussion of freedom of religion and right to education, see Ssenyanjo, M. Supra HRW, Discrimination in the Name of Neutrality, Article 19; Global Campaign for free Expression and CEDAW, Article 10.

would fail to respect the liberty of parents to ensure the religious and moral education of their children in conformity with their conviction.

Moreover, educational objectives is part of the fundamental objectives and directive principles of state policy that is enshrined in section 18(1) of the constitution which states that “government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.” While section 38(2) seek to protect the religious conviction of a student in educational institutions that ‘No person attending any place of education shall be required to receive religious instructions or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relate to a religion other than his own or a religion not approved by his parent or guardian.’³³

Nigerian’s constitution guarantees the right to free choice of occupation. Section 17(3) states that all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment. Moreover, part of the Nigerian national ethics is religious tolerance.³⁴

In essence the constitution permits religious observance to be conducted at governmental institutions and that all religions be allowed to manifest and instruct regarding their beliefs. Therefore, the commitment to equality, justice and freedom justifies the constitutional guarantee entrancing every student or worker’s right to freedom of religion at educational or work place to practice one’s religion including practice such as the

³³ 199 Nigeria constitution

³⁴ Nigerian constitution section, 23

wearing of *Hijab*. Thus, qualifies as a right to be protected as envisaged under the constitution. In fact, the court of Appeal decision is a locus classicus – especially the holding of Hussein Muktar, JCA to the effect that it is fundamental right of Muslim female students to observe and practice their religious injunction in any part of Nigeria.³⁵

Therefore, as it was asserted by Adetola – Kazeem, SAN, the denial to use *Hijab* within or outside the premises of educational institution at any time is wrongful and unconstitutional as same constitutes a violation of Muslim female rights to freedom from discrimination and right to the dignity of the human persons and right to education as guaranteed by section 38 1(a) and (b) and 42(a) & (b) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 2,5,8,10,17 and 19 of the African Charter of Human and Peoples’ Right (Ratification and Enforcement Act CAP A9, Laws of the Federation, (2004).

5.2.5 *Hijab* and Respect for the Rights of Parents under the Constitution

The issue of *Hijab* has also raises the issues of the parents’ rights with regard to the conformity of the education and the parents convictions or belief.

The learned counsel, Chief Adetola Kazeem argued that it is part of the training and education of females of younger age to wear the *Hijab* so as to get used to it before attaining the age of puberty when the practice becomes mandatory and which varies between the age of 9 and 13 years.³⁶

The constitution also made provision for parents’ rights to choose their children’s education according to their own religious or philosophical conviction. This right can be

³⁵ Provost, Kwara (Supra) P11

³⁶ Miss Asiyat (Supra) P.21

understood either as a component of freedom of religion or within the framework of the right to education. Thus, parents have been granted primary authority to make decision for their children and the state obligation to respect parental religious conviction falls within the scope of state functions. According to Saxena, the duty to respect the rights of the parents means that governments are forbidden from trying to indoctrinate their people.³⁷ And the word 'respect' implies more than just tolerance and understanding. It means acknowledging the equal worth of people of all cultures without condescension.³⁸

Therefore, as duly contended by the learned Adetola-Kazeem, SAN to say that Muslim women or female should not wear the *Hijabor* refusal to allow them to wear the *Hijabor* should not wear the *Hijabin* certain public circumstance constitutes a flagrant violation of the Muslim women constitutionally guaranteed right and clear infraction or encroachment into the religious sphere of the parents. In essence, it amounts denying young Muslim females (especially those in Nursery, Primary, and Secondary Schools) the opportunity to receive religious approved by their guaranteed right to receive proper Islamic education as desired by their parents or guardians. This, therefore may amount to indoctrination of other beliefs other than the one agreed or in accordance with parents beliefs and convictions.³⁹

If some mode of dressing like wearing wigs, gowns, cardigans, barrets, caps, ties among others that are apparently derive from other cultures not even from any of the indigenous cultures of Nigeria then the prohibition of *Hijab*(including any of its features) is

³⁷ Saxena, M Pp58-60

³⁸ Ibid

³⁹ Miss Asiyat (Supra) P22

discriminatory against Muslim females and therefore offending the provision of section 42(1)a of the constitution as amended.⁴⁰

5.2.6 Applying Regional and International Standards to the Protection of the Right to Wear *Hijab*

From an International Human Rights Perspective, it has been accepted that the wearing of distinctive clothing or head-covering” constitutes part of the observance and practice of religion or belief, in public including in schools and in universities or in private, as protected by several international human rights instruments such as Article 18 of the International Covenant on civil and Political Rights (ICCPR).⁴¹.

The UN special rapporteur on freedom of religion or belief has developed a set of general criteria in order to evaluate from a human rights law perspective-restrictions and prohibitions on wearing religious symbols.⁴² The aim of these general criteria is to assist ‘national and international bodies in their analyses and reviews of laws and draft legislation pertaining to freedom of religion or belief. These criteria are clearly extremely relevant for evaluating *Hijab* bans from an international human rights legal perspective.⁴³ According to the special rapporteur, a prohibition on wearing religious symbols that is based on mere speculation or presumption rather than on demonstrable facts is regarded as a violation of the individual’s religious freedom.⁴⁴

The importance of these provisions is specifically acknowledged in an international legal instrument “discrimination between human beings on grounds of religion or belief

⁴⁰ Ibid P23

⁴¹ See Sseyanjo, M. Supra P.657

⁴² Human Rights Watch ‘Discrimination in the Name of Neutrality: Headscarf Bans for Teachers and Civil Servants in Germany’ February, 2009. At <http://www.grw.org>

⁴³ Article 19 Supra P.27

⁴⁴ HRW Supra P.19

constitutes an affront to human dignity and a disavowal of the principles of the charter of the United Nations”⁴⁵

In addition, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, to which Nigeria is signatory, provides that the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of impairing or nullifying the recognition, enjoyment or exercise by women. . . . on a basis of equality of men and women, of human rights and fundamental freedoms. . . .⁴⁶

The UN Human Rights Committee has also emphasized that any specific regulation of clothing to be worn by women in public may involve a violation of a number of rights guaranteed by the (ICCPR), such as: article 26, on non-discrimination; article 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression and lastly article 27. When the clothing requirements conflict with the culture to which the women can lay a claim.”⁴⁷

The ICCPR also provides for protection against the effect of any laws and practices that may interfere with women’s right to enjoy privacy and other rights under article 17 on the basis of equality with men.⁴⁸

In its general comment on religious freedom, the UN Human Right Committee has clarified, “Restrictions may not be imposed for discriminatory purposes or applied in a

⁴⁵ United Nations Declaration on the elimination of All forms of Intolerance and Discrimination based on Religion or Belief of 1981, Article 3

⁴⁶ Article 1

⁴⁷

⁴⁸

discriminatory manner.⁴⁹ The committee also observed that since the concept of morality derives from many social, philosophical and religious traditions, any limitations on religious freedom justified for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.⁵⁰

The right to education is guaranteed in several international human rights instruments, including the convention on the Rights of Child 1989 (Article 28) and CEDAW, as an essential part of the contemporary human rights discourse and considered as one of the “most complex human right in international laws.”⁵¹ At the regional level, the right to education is also firmly recognized in regional human right treaties in African, American and Europe. Nigeria has further obligations in this area through its membership and domestication of the African charter in Article 17 which links between the right to education and the promotion and protection of morals and traditional values recognized by the community which shall be the duty of the State and that every individual may freely take part in cultural life of his community.⁵²

Furthermore, discrimination in employment on the ground of gender or religion is widely prohibited under human right treaties, including CEDAW, the ICCPR and the regional conventions on Human Rights.⁵³ Under CEDAW, all signatory states must take all appropriate measures to eliminate employment discrimination against women in order to ensure the right to the same employment opportunities, including the right to free choice of profession and employment.

⁴⁹ Human Right Committee General Comment no. 22

⁵⁰ Ibid.

⁵¹ Sscenyanjo, M. Supra p658

⁵² ACHPR, Article 17 (1-3)

⁵³ HRW Supra p15

Protection for thought, conscience and religion is also buttressed by African charter. Article 2 of the African charter makes explicit reference to religious belief as an example of a prohibited ground for discriminatory treatment:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

The African charter being the only human right treaty that has been so domesticated and has become part of Nigerian law, provides under Article 18(2) that the state shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community. And article 18(3) emphasizes that the state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declaration and conventions.⁵⁴

5.3.0 Issues and Challenges

The discourse of *Hijab* has helped to reignite the old discussion about whether Nigeria is secular or not. Proponents of secularism continuously insist that Nigeria has undergone secularization. Section 10 of the 1999 Constitution means to them that Nigeria is secular to the extent of equating Nigeria to Turkey. Another critical issue is the Nigerian Christian sensitivity towards the use of *Hijab*. Similarly, the feminist re-interpretation of the verses of *Hijab* and the media conspiracy also posed fresh challenges to the discourse of *Hijab*. Therefore, critical analysis of these issues and challenges are expedient in order to have a new and constructive discussion on the use of the *Hijab* in Nigeria. We must

⁵⁴ African Charter on Human and People Rights.

face this questions in assessing Nigerian public and constitutional reality among others. These are as follow:

5.3.1 The Lagos State High Court Judgment on *Hijab*: Critical Reflection

According to retired Grand Khadi Shehu, the misconception of giving Nigeria a secular status has adversely affected even the judiciary.⁵⁵ For instance as demonstrated by the recent *Hijab* case ruling by Justice Onyeabo's discretion to terminate the legal proceeding against the Lagos State Government in a suit filed by the Muslim Student Society of Nigeria over the use of *Hijab* in public schools in Lagos state. Delivering her judgment, Justice Grace Onyeabo at the Lagos High Court sitting in Ikeja, Lagos held that the restriction placed on the use of the *Hijab* in primary and secondary public schools in the state was not discriminatory and did not breach section 38 and 42 of the 1999 constitution as claimed by the students. In her judgment, Justice Grace Onyeabo declared that the policy of the state government on a uniform code enables the state maintain a neutrality provided and guaranteed to all by S10 of the 1999 constitution. That because state school is distinct from a mission or faith based school student should expect the neutrality engendered by the state policy and the secularism intended by the framers of the constitution. More so, the values of pluralism, respect for the rights of others and equality before the law dictate that no deviation from the regulation should be allowed.⁵⁶ Justice Onyeabo also refused to follow the rulings of Court of Appeal but makes a distinction between the case of Bashirat of Kwara state and the instant case to the effect that the parties in the instant suit are minors of twelve (12) years old as distinct from the Ilorin

⁵⁵ Justice Shehu, M. (Former Grandkadi, FCT, Abuja in his paper 'A memorandum on the 1999 Constitution to the Government and National Assembly Abuja.

⁵⁶ Miss Asiyat (Supra) Pp6-8

case. According to the solicitor General for the respondent; Mr. Lawal Pedro SAN said there were age limits and a female not above eighteen (18) years is a child and not a woman for whom the Holy Quran prescribed the compulsory use of *Hijab*.⁵⁷

However, ironically, justice Onyeabo finds the decision of the ECtHR in the Leyla Sahin's case very relevant and more persuasive. She noted that Turkey though reportedly predominantly Muslim is by its constitution, a secular state like Nigeria. Arguing further, she adopted the dicta of ECtHR which is as follows; that the freedom to manifest one's religion could be restricted to defend the principle of secularism. And that irrespective of whether the Islamic headscarf was a precept of Islam, granting legal recognition...was not compatible with the principle of neutrality as it would be liable to generate conflicts between students with different religious convictions or beliefs. Religious freedom is primarily a matter of individual conscience.⁵⁸

On later appeal, the Court of Appeal over turned the lower court findings on a number of points. After reviewing the main criticisms directed at the *Hijab*, Gumel, JCA for the majority was more openly critical of what he saw as the basis for disallowing the wearing of the *Hijab* in public schools. Observing that "in what appeared to be a double somersault, totally naïve, grossly lacking in substance and bereft of any merit and confusion; 'the arguments that *Hijab* is not mandatory for ages 9-11 females' this is erroneous, baseless and totally unsupportable both under our laws and the Quran."⁵⁹

The appeal was interesting for its careful discussion of the principles relating to freedom of religion, that it is not restricted to adults only. He went on to say that the position of

⁵⁷ Ibid P.8

⁵⁸ Ibid P.26

⁵⁹ Miss Asiyat Abdulkareem (Supra) P27

the law was well established in a plethora of cases. Decisions have undoubtedly been made in the court of Appeal which have after giving examples of such decisions he quoted that, the use of *Hijab*, therefore qualifies as a fundamental right under section 38(1) of the constitution. It is immaterial whether it is compulsory or otherwise (minor or adult). The emphasis is on the respondents' right to manifest and even propagate their religion or belief in worship, teaching, practice and observance... in any part of Nigeria including school premises and workplaces.⁶⁰ After giving examples of such decisions, therefore, Justice Gumel insisted that judges have no authority to adopt arbitrary departures from basic doctrine. He added that, 'it is not within the vires of a court of law to read into the provision of our constitution a meaning that it ordinary cannot bear in any given circumstances.'⁶¹

But it is interesting to note the further comments of Gumel JCA that, cases are never to be decided on the basis of judicial whims or caprices but on judicial judgment upon facts established by evidence. The courts must do that while fully guided by the law or equitable principles. Fundamental human rights are not ordinary rights. They are elevated rights some of them have their origin in international conventions or treaties. They are special class of rights and no person shall be deprived of the enjoyment of any such rights except by the proper observance of the due process of law.⁶²

Similarly, as it was held in a decided case that it was not for the judges to become theologians. If there is any area where the law has no business in intruding, it is in the enforcement of judicial interpretations of scripture. For instance, the determination of the

⁶⁰ Ibid P35

⁶¹ Ibid P37

⁶² Ibid P50-51

age at which a Muslim woman must start to observe the *Hijab* may be assumed to have reached puberty. Naturally, puberty in girls is not determined by age. The onset of puberty in girls differs from one individual to another. However, the American academy of family physicians testified that puberty may begin as early as age nine in some girls or even earlier than that and thus it signals that the girl is physically capable of even becoming pregnant.⁶³ Therefore, the claims of Justice Onyeabo and solicitor – general Lawal Pedro that the applicants are minors because they have not reached the age of eighteen (18) years is not concrete both Islamically and medically. Therefore, even a primary school female student may be obliged to cover with *Hijab* because they may have attain puberty.

5.3.2 Can the Nigerian Situation Be Compared to Turkey: Unsecular Nigeria

The question of an analogy between the Nigerian and Turkish situations is incomparable and it also requires some comments on the principle of secularism. In chapter two, we elaborated the concept of secularism in some detail. To put it simply, the term secularism describes an ideology that is, anti-religions.⁶⁴ Bhargava also argued that in a secular regime, no official status is given to religion. No religious community in such a state can say that the state belongs exclusively to it. No one is compelled to receive religious instruction. No grants to religious institutions are available. A secular state has free standing ends, substantially, if not always completely, disconnected from the ends of religion. They break away completely, refusing to establish religions or if already

⁶³ Kelly, R.B. et al (2010) Family Health and Medical Guide. The American Academy of Family Physicians, USA, Word Publishing Pp.373-382

⁶⁴ Palmino, R. 'Legal Dimensions of Secularism: Challenges and Problems.

established, formally disestablishing them by withdrawing privileges.⁶⁵ In secular states such as France and Turkey, for example, according to Exposito secularism (or laïcisme) has often represented a distinctly anti-religious seeking to control all religious expressions and symbols and abolish them from the public sphere. Thus, the mixing of religion and politics is regarded as necessarily abnormal, irrational, dangerous and extremist.⁶⁶ According to Bilgrami; *“The argument is that if one finds any of the features of secularism missing, then it has changed the subject from secularism to something else that deserves another name”*. Here, it can be disagreed conceptually and theoretically that Nigeria is a secular state. If one calls Nigeria secular, one has to justify this or one has to explain why. Indeed, is not a self-explanatory value, justifications have to refer to the values promoted by legal institutions and policies. This comparison is contradictory to the Nigerian constitutional reality as highlighted earlier in chapter two of this study and it is not only unjust, it is also uncritical and ironic. Firstly, Durham who compared the Nigerian constitution and those of French and Turkish with respect to the practices of secularism, concludes that there is nothing in the Nigerian constitution calling for the harsh separation of French and Turkish secularism. The reason for this difference is certain, while the constitutions of French and Turkey have explicitly declared their states as secular, there is no such express declaration in the Nigerian constitution and that the Nigerian approach to religious freedom radically differs from that of the Turkey or any secular states.⁶⁷ Secularism as has been one of the ideological pillars of the Turkish republic since its foundation and Turkey fierce protection of secularism can be traced to a

⁶⁵ Bhargava, R. ‘Political Secularism’ Published in a Handbook of Political Theory. John Dryzek, B. Honning and Anne Philips (ed). Oxford University Press, Oxford 2006, Pp636-655. At:

⁶⁶ Exposito, L.J. ‘Rethinking Islam and Secularism’ ARDA, Guiding Papers Series. At www.theARDA.com P.3

⁶⁷ Ahmad, N.A. Supra P

total rejection of the Islamic religion not only in the government but also sought to rule out religion not just in the polity, but in a much more general way, intruding into the cultural life and the intellectual and artistic productions of their citizens. In doing so, they were not merely enforcing secularism in authoritarian fashion, they were enforcing secularization as a broader social process.⁶⁸

In other words, as it was previously outlined in this study, despite the fact that Turkey is principally a Muslim dominated country, the State sought to create a religiousless state⁶⁹ Unlike Nigeria, issues of religious dress have been at the fore front of Turkish politics since the fall of the Ottoman Empire. Upon its independence, Turkey made secularism the official ideology of the state and enshrined secularism in Article 2 of its constitution. The framers of Turkey's original constitution saw secularism as the hallmark of Turkey's status as a modern nation and as a way to abolish the empire governed by Sharia. Several early laws dealing with clothing in Turkey, including the law on the wearing of the fez, and a law prohibiting religious officials from wearing religious garments in the public sphere. Hence, by contrast to the Nigerian Law, the constitutional court in Turkey held that wearing Head scarves is unconstitutional under Turkish constitution Article 2 (secularism), Article 10 (equality before the law) and Article 24 (freedom of religion). It also found that the headscarf could not be reconciled with the principle of gender equality. This is contrary to what has happen and is still happening in Nigeria. Thus, there is no denying that Nigeria makes a difference to secularism. All the features of secularism are not obtainable in Nigeria.

⁶⁸ Lovejoy, C.D 'A Glimpse into the Future: What Sahin V. Turkey means to France's ban on Ostensibly Religious Symbols in Public Schools' *Winconsin International Law Journal* Vol. 24. No.2 Pp553-664

⁶⁹ Saxena, M (Supra) P61

Furthermore, as pointed out by Amadi, section 10 of the Nigerian constitution does not seek to erect a wall of separation between religion and politics or state, rather it attempt to hold out a fair balance between religions. This means of course that everybody is at liberty to practice a religion of his/her own choice with government assistance where necessary without showing a favour to any particular religion.⁷⁰ In fact, the 50 “Wise Men” who drew up the constitution gave no hint at all as to their rational(s) for introducing the section. Hence, they have not mentioned that section 10 means secularism as claimed by justice Onyeabo.⁷¹

The other point is that when one critically observed how far the state governments affirmatively promote religion in the public sphere, freedom of religion in Nigeria is not merely exercised individually or privately but with collective dimensions including group and the state. So also, the constitution allows religious instruction in public schools but no person is obliged to receive religious ceremony or observance other than his/her own religion not approved by his/her parent or guardian.⁷² Basically, in Nigeria, there is no clear constitutional attributes of the concept of secularism. Above all, this argument is more convincing particularly as long as Nigeria do not categorically endorse secularism and its continuously engagement with religion. Infact, according to Bader it turned out to be misleading to call principles of values of decent democratic politics ‘secular’ and,

⁷⁰Amadi, S. ‘Religion and Secular Constitution: Human Rights and the Challenges of Sharia’.

⁷¹ See Professor Yadudu, A.H. Supra P.23

⁷²Bilgrami, A. ‘Secularism: Its Content and Context’ Columbia University, October 2011 SSRC Working papers, NY 11201/wwsrc.org

most importantly, to call these states and their constitutions ‘secular’ instead of indifferent.⁷³

5.3.3 The Conundrum and Moral Distress of the Nigerian Christians over the Use of *Hijab*: Critical View

we appear to be scared of diversity in ethnicities, in religious faith, in politics and ideological points of view. We have an impatience with anything and anyone that suggests there might just be another perspective, another way of looking at something, another answer worth exploring.⁷⁴

Central to Christian concerns is the *Hijab* of the Muslim woman. The Nigerian Christians especially its leadership show aversion to the use of *Hijab* and are active defendants in the cases of *Hijab*, on the basis of Nigeria being a secular state. That the wearing of *Hijab* is also offensive to Christian worshippers and it is such a practice that is alien to Christian faith. They also claimed that wearing *Hijab* may worsen security situation in the country.⁷⁵

Now the issue of Nigerian Christian sensibilities over the use of the *Hijab*, raises the question as to whether moral distress is sufficient to justify the curtailment of other’s liberty? Morrison, S defines moral distress as what arises when “one group find the views, the tastes, or the lifestyle of others in the community disturbing” as it contradicts or clashes with their more or less deeply held moral opinions.⁷⁶ To answer this, the Court of Appeal held in the case of *Abdulkareem V. LASG* that: the enjoyment of section 38

⁷³ Bader, V. ‘Secularism or Democracy? Associational Governance of Religious Diversity’ IMISCOE Research Amsterdam University Press 2007, Electronic book at P.18

⁷⁴ Desmond Tutu ‘Notable Quote’ at en.m.wikiquote.org/wiki/desmond_tutu. Visited 2nd May 2014.

⁷⁵ See *Sheik Salaudeen Ade Olayiwola & 3 Ors Vs The Government of Osun State & 8 Ors* Unreported Suit No. HOS/M.17/2013

⁷⁶ Morrison, S (2013) *Secularism Revised: Arab Islam Religious Freedom and Equi-distance the other* press, (TOP) Kuala Lumpur. P117

cannot be wish away just because some other persons feel uncomfortable with it.⁷⁷ It was further held that every citizen is imbued with the right to practice, manifest and even propagate their religious beliefs without restrictions in any community they found themselves within the prescient of Nigeria. Such religious practice, manifestation or propagation shall not be disturbed or hindered either expressly or by the practical application of any 'Law' in force in Nigeria. Such a document cannot fly at all in the face of the supremacy of the constitution.

Similarly, Oredola, JCA held that:

I am of the firm but respectful viewpoint that sticking to the fundamentals of one's religion does not and cannot make or transform someone into either an extremist or a fanatic. Let it be reiterated, that either a right or duty conferred or imposed by the constitution, cannot be taken away or removed by any other legislation, statutory or otherwise which seeks to abrogate such a right or grant relief from such a duty as conferred or exacted by the constitution will be void to the extent of its inconsistency.⁷⁸

In Nigeria, wearing *Hijab* does not affect Christian especially Christian students. Infact the *Hijab* wearing Muslim women are found in all part of the country and in some state where Christians are the majority still Muslim women with *Hijab* exist side by side without any hindrance or proselytizing effect. Infact, *Hijab* wearing Muslim women mingle with Christian women in a number of places and occasions without any problem nationwide.⁷⁹ Indisputably, even in Muslim majority schools where the use of *Hijab* is permitted female Christian students were never forced to wear *Hijab* be it even in the northern part of Nigeria where it is predominantly Muslims.

⁷⁷ Se Abdulkareem V. LASG (Supra)

⁷⁸ Suit no Hos/m.17/2013 supra Pp39 - 40

⁷⁹ See suit No Hos/m. 17/2013 Supra p. 16

It must be reiterated, no one was forced to wear the *Hijab*. No one was demeaned, merely due to lack of wearing the *Hijab*. Indeed, Islam is universal but sensitive to particularity and that there is no compulsion in religion.

At this juncture, there is need for non-Muslims especially Nigerian Christians particularly their leadership to educate themselves with regard to their customs and religious belief. Women covering was not an unknown practice. This age-old practice is not exclusive to Islamic culture but in varying degrees, historically and contemporarily can be found within the ideology of many cultures, including those of Christianity and Judaism. The Bible and the Torah.⁸⁰

The first recorded instance of covering by women is recorded in Assyrian legal texts from the 13th century BCE. Its use was restricted to noble women. In both the ancient empires of Greece and Rome there is evidence that points to various degrees of head coverings worn by females. Particularly in Rome, it seems that women's covering were associated with prayer and devotion. While in Greece, there was evidence respectable women covered themselves outside the home.⁸¹ Thus, the historical roots of covering in western Europe go back to the Byzantine empire, where covering codes attributed high social rank to families whose women were covered. In the middle ages, it was customary for married women to cover their hair with various kinds of coverings. Painting of urban women in Western Europe often depicts everything covered except the face and hands.⁸²

Now to set the record straight, the early Christian women covered their heads in church and anytime they were in public and Christian women continued to maintain this practice

⁸⁰ Stacey, A 'Hijab in the Bible and Torah. Hijab in Christian Denominations' supra p.1

⁸¹ Ibid p1

⁸² Ibid p.2

to some degree throughout the centuries until the 19th and 20th centuries when the practice rapidly declined. Nuns throughout Christian history have been recognizable by their distinctive head coverings many of which resemble Muslim woman's *Hijab*. Interestingly enough, the bible contained some verses on women covering, for example in 1 Corinthians 11:5, says that

Every woman who prays or prophesies with her head uncovered dishonors her head, for that is one and the same as if her head were shaved.

Some individuals choose to practice head covering according to their understanding of 1 Corinthians 11.⁸³ Although, the use of coverings and scarves has diminished there are some Christians denominations where the practice has maintained its high status and in some cases mandatory. Among the canon laws of the Catholic Church today, there is a law that requires women to cover their heads in church. Some Christian denominations, such as the Amish and the Mennonites for example, keep their women covered to the present day.⁸⁴ Infact, many catholic women choose to cover their heads to emulate the virgin Mary.⁸⁵ Indeed, Mary the holy mother of Jesus Christ (AS) always appear in pictures wearing head cover on her head⁸⁶ - a picture not drew by Muslims.

Therefore, from the above evidences its ironic and shallow understanding of their religion and culture for any Christian to say that such covering by *Hijab* is alien to Christians or to create any kind of hue and cry against the Muslim woman's *Hijab*.

⁸³ Ibid p2

⁸⁴ Abdel Azeez, S (1998). Women in Islam versus women in the Judeo-Christian tradition; the myth of the Reality, El-FALAH, Egypt p83. Note for a detailed discussion on the Jewish women's covering – see Pp80 - 82.

⁸⁵ Starcey, A Supra p.3

⁸⁶ Suit no. Hos/m. 17

With respect to the Christian defence of a secular society, Muslims contend that secularism, is not only a doctrine to Christendom, but also one that presuppose a Christian conception of religion.⁸⁷

Despite the clear and unambiguous both constitutional and non-constitutional unsecular nature of the Nigerian state, the Nigerian Christian community, particularly its leadership has consistently held the view that Nigeria is a secular state. For instance, a statement by Bishop Ayo Oritsejafor, Former President Christian Association of Nigeria, represents the Christian perception on the relationship between the state and religion;

Nigeria is a secular nation somebody say it is a multi-religious nation.
It is a secular nation..... ours is a secular nation. That's what our
constitution stands for⁸⁸

Moreover, if Nigerian Christians insist further for secularism, definitely Muslims will be inclined to agree with smith's testification that, secularism is a new manifestation of Christianity, but one that is not immediately obvious. Thus, secularism is the latest expression of the Christian religion because Christianity has always been a religion with a fluid, evolving identity, it has a history of changing shape⁸⁹. Similarly, Bhargava emphasized that secularism is not just a western idea, but it is certainly a Christian doctrine.⁹⁰ Therefore, seeking to be imposed upon Muslim directly or indirectly. Indeed, as pointed out by Esposito that too often, discussions on secularism are "about them", failing to sufficiently listen to, consider or reflect diverse Muslim voices. Exactly, said Sambo, the Christians insist on calling Nigeria a secular state not because of ignorance but simply because they have pitched their tents in the secular camp in order to prevent

⁸⁷ Morrison, S. (Supra) P.114

⁸⁸ As quoted by Sampson, I.T. Supra P.326

⁸⁹ Smith, G 'A Short History of secularism', I. B TARIS, London. New York pp2 - 9

⁹⁰ Bhargava, P Supra P. 23

the Muslims from getting their full fundamental rights as Muslims.⁹¹ This is evident ever in the following quoted statements:

Of all existing ideologies and religions, Islam remains the greatest danger for humanity. It is time to abandon the idea that anyone in the religion should live under Shariah. More than ever before, people need a secular state that respects freedom from and of religion, it is crucial to oppose the Islamic Shariah law and to subordinate Islam to secularism and secular states. Islamic Shariah should be opposed by everyone who believes in Universal Human Rights, Women's Civil Rights. oppression, lack of freedom etc, are the undeniable facts of all countries designated Islamic, including some states in Northern Nigeria. ”⁹²

5.3.4 Critical Analysis of Feminists Interpretation of the verses of *Hijab*

“Like a sixth pillar, we cannot discuss Islam and gender without discussing the *Hijab*.⁹³

Feminism also plays a role in the creation of law and policy that marginalizes *Hijab* as an unfavourable and incompatible religious practice.⁹⁴

it is not just patriarchy's legal and political structures that must be overturned on the way to women's liberation. Its social and cultural institutions (especially the family and organized religion) must also be uprooted.⁹⁵

Under the feminist theory, states must create and apply gender – neutral laws, thus a state is a neutral actor, free from gender bias and able to enforce the law equally to both men and women. Feminist believe that efforts to reconcile religious freedom and secularism will compromise significant advances of gender equality as a state priority. Under this theory, the *Hijab* contradicts the essence of gender equality because it is a marker of

⁹¹ Sambo, B (2002) “Shariah Secularism and the Nigerian Constitution” Perspectives in Shariah, edited by Mu'azu, M.A. & Olayiwola, A, Sakirabe, Maiduguri. P.44

⁹²Kamguian, A. Why Islamic Law Should Be Opposed.” Adapted from a speech given at the discussion panel and debate 10 October 2002 organized by University Philosophical Society of Trinity College, Dublin Ireland. Available are: www.butterfliesandwheels.com; retrieved November, 2012.

⁹³ Wadud, A (2008) Inside the Gender. Jihad: Woman's Reform in Islam, One world, Oxford: P219

⁹⁴Haleem, A. Supra p.10

⁹⁵ Tong, R (2009) Feminist Thought: A More Comprehensive Introduction West View Press, University of North California, Charlotte, p.2

patriarchal control, female subordination, and sexual repression.⁹⁶ In essence, the religious aspect of the *Hijab* is acutely brushed under the rug by a feminist understanding of Islam. It is not viewed as a belief system or a devout life-style with contemporary standards of freedom and gender equality. Even the restrictive dress policies of some secular states perpetuated the feminist presumption that the *Hijab*, and its meaning in western society, are fundamentally incompatible with secular democracy and modern gender equality.⁹⁷ The foundational argument against the *Hijab*, is rooted in the belief that the *Hijab* is “inevitably damaging for women and for the causes of gender equality as a whole.”⁹⁸ Hence, feminists believe that living without the *Hijab* is greater freedom. A Muslim woman in *Hijab* is by the very fact that she wears a *Hijab* oppressed. In order to be free, the Muslim woman must progress out of the *Hijab*.

Consequently, Muslim feminists themselves have launched a number of criticisms against wearing of *Hijab* by Muslim women that it lacks any basis in the Shariah. For instance according to Anne Roald who did a concrete analysis of some of the Muslim Feminists interpretations on *Hijab* stated that, El-Saadawi, in her many lectures in Scandinavia, particularly at the end of the 1980s, used the idea of ‘veiling the brain’, building on a sort of simple fieldwork methodology. Her main argument drew on the account of a young relative who had been intelligent and brave until she put on the *Hijab*. After that, according to El-Saadawi, it was impossible to conduct a normal discussion

⁹⁶Haleem, A. Supra p.12

⁹⁷ Ibid Pp5 - 6

⁹⁸ Ibid p. 14 - 15

with her. This story was presented as evidence of how covering not only comes to mean covering the hair but also covering the brain'.⁹⁹

Another Muslim feminist recorded by Roald is Maha Azzam who discusses *Hijab* in an academic context from the perspective of social researchers describing Muslim social realities. Azzam explores the Quran looking for texts on *Hijab* and she quotes verses 33:59 and 33:32-33. In quoting these verses, Azzam states that, 'Literally, these verses are directed to the wives of the prophet'. Although she is right with regard to verse 33:32-33, however, it should be noted that she has overlooked the fact that verse 33:59 explicitly states 'O Prophet tell your wives and daughters and the women of the believers' which means that covering is not just an injunction of the Prophet's family members but is directed towards the believing women in general. Moreover, Azzam also quotes verse 24:30-1 which contains a reference to women wearing 'covering' (Khumur). However, Azzam does not mention the term Khumur but interprets these verses in terms of their references to proper Islamic modesty which requires both men and women to lower their eyes. Azzam's selectivity indicates her intention to render Islam compatible with a secular world-view. Her feminist approach situates her within the 'western cultural base pattern' since her interpretations are in line with a western notion of gender-equality.¹⁰⁰

Another prominent Muslim feminist who argued that the classical scholars' interpretations on *Hijab* were based on faulty interpretations of Islamic texts and practical limitations associated with the social and political structures of historical society is Asma Barlas, particularly in her book, 'Believing Women' In Islam: Unreading Patriarchal

⁹⁹ Roald, A.S. Supra P.256

¹⁰⁰ Ibid P.259

Interpretations of the Quran'. In her strictures, she claimed that even the words veil and *Hijab* do not occur in the Quran. That the two sets of Ayaat on the basis of which classical Islamic scholars interpret as giving Muslim males the right to force women to don everything from the *Hijab* to the burqa on the grounds that women's bodies are pudendal is not derived from the Quranic teachings. Yet, she said she believes that there are two models of the notion of the veil in the Quran. One specific and the other general in the Quran. The first set of Ayat suggest the specific model and the second the general. By even this very statement Barlas contradict herself. However, she went ahead contradicting the whole premises by stating that both sets of Ayats are addressed only to the Prophet. That is, they are not a universal mandate for all Muslim men to force women to comply with them.¹⁰¹ She argues that, not only can one not force moral praxis upon a person as the Quran (2:256) says, "let there be no compulsion in religion"... No one, not even the Prophet (SAW), was given the right to force compliance upon his wives with any of the Quranic injunctions. Besides, she cynically claimed that the form, purpose and content of the idea of "the veil" in these two Ayaat is not the same and it is also completely different from the one suggested by classical Islamic scholars. She said, to begin with, the Quran uses the words Jilbab (cloak) and Khumur both of which, in ordinary usage, cover the bosom and neck, not the face, head, hands or feet. The Quran does not mandate such a form of veiling in any Ayat. And it is meant not to hide free Muslim women from Muslim men but to render them visible, hence recognizable, by Jahili men, as a way to protect the women. In mandating the Jilbab, then, the Quran explicitly connects it to a slave-owning society in which sexual abuse by non-Muslim

¹⁰¹Barlas, A (2002) "Believing Women" in Islam Unreading Patriarchal Interpretations of the Quran, University of Texas Press. Austin USA Pp.53-55

men was normative, and its purpose was to distinguish free, believing women from slaves, who were presumed by Jahili men to be non-believers and thus fair game. Consequently, even though worn by Muslim women, the *Jilbab* served as a marker of *Jahili* male sexual promiscuity and abuse at a time when women had no legal recourse against such abuse and had to rely on themselves for their own protection.

In a nut shell, Barlas tried to stressed that the requirement of *Jilbab* then was just because of the *Jahili* society and consequently not of universal application. She fines it disturbing that the issues is currently framed in most Muslim societies in a way that results in misrepresenting the Qur'an's form, purpose, and intend in formulating a specific dress code.¹⁰²

Another typical example of a Muslim feminists who is particularly vexed by the *Hijab* and so widely consulted in the west is Fatima Mernissi. Both Bullock and Roald made an extensive analysis of Mernissi's articulation of *Hijab*. Particularly Bullock dedicated a whole chapter on Mernissi's two books. According to Roald Mernissi discusses the concept of *Hijab* not from a contemporary perspective but from the perspective of the Qur'an. So she fails to acknowledge the important point that the term *Hijab* might be explained by the fact that today it is often used to denote the female head-cover, but in Qur'anic Language it refers not to female clothing but to the curtain which was ordered to be set up between the prophet's wives and men in Madina. Mernissi's analysis wants to portray the discussion of *Hijab* as pertaining specifically to the Prophet's wives is indicated by her reference to verse 33: 59 in which the term *jilbab* is used. Since she twists the meaning in such a way that readers without sufficient knowledge of the text

¹⁰² Ibid Pp56-58

might be misled. She fails to give the full meaning of verse 33:59 that says: O prophet, tell your wives and your daughters and the women of the believers to draw their cloaks around them.¹⁰³

Mernissi either has misunderstood or chosen to misunderstand the terminology in the debate in either case. Her discussion is marked by a lack of specific terminology with regard to female cover and a certain selectivity from the source material. Mernissi further indicates that the *Hijab* was a direct consequence of the situation in Madina where the Prophet lived with his wives close to the mosque which was the public space in Madina. In her view the Prophet (SAW) had created a space which was not divided into a dichotomous public private sphere, but it was Umar, the second caliph, who insisted on such a division of Islamic space. By saying this, Mernissi creates an element of doubt as to whether this verse is reliable or not. Also suggesting to the reader that this Qur'anic verse needs to be understood only in the context of the Prophet's time, thus allowing her to dismiss its significance for today. It is , however, important to remember that she does not even mention verse 24:31 which puts female covering in a wider context, and moreover it is the verse which many contemporary scholars see as the most essential in matters for female covering.¹⁰⁴

This is an example of a deliberate selection from 'the basket'. Mernissi's discussion of the *Hijab* indicates that she selects Qur'anic paragraphs with a predisposition towards a certain point of view. Thus she disregards those Qur'anic passages which more obviously advocate a form of covering.¹⁰⁵ Moreover, Bullock is also of the view that Mernissi's

¹⁰³ Roald, A.S. Supra P.260

¹⁰⁴ Ibid P.261

¹⁰⁵ Ibid Pp229-300

analysis of the *Hijab* is based on an idiosyncratic reading of Islam. Her interpretations are based on her own negative personal experiences with *Hijab*, but she argues that all Muslim women suffer because of *Hijab*¹⁰⁶ Ghabbian, also expressed similar criticism against Mernissi especially the connection she makes between *Hijab* and lack of democratic values.¹⁰⁷

Another very good example of mistranslation and misrepresentation is the logic that those verses of *Hijab* are specific to the wives of the Holy Prophet (SAW), if followed, would be that the ethical behavior of the Holy Prophet's (SAW) wives are not consequently exemplary for other women or that not a sunnah for others. Then it could be justified in inferring that a common Muslim lady is not expected to abstain from the ways of ignorance. Absolutely, this is sheer politization of the issue and it does not help the debate. Even Penny (who is writing outside the Islamic faith) observed that, the people making these arguments don't care about women. They care about stoking controversy.¹⁰⁸ In fact, the most current and amazing revelation was made by Scott, J.W. That ...glass ceilings still prevent elite women's rise to the top in corporations and bureaucracies, domestic violence against women in all classes continuous at alarming rates, misogynistic attacks seem to be increasing, sexual harassment is a fact of life for many women at work, at school, and on the street. The list could go on and on. Therefore, the idea that inequality exists solely for Muslim women is simply not true.¹⁰⁹

Another point is that the feminists and others involved in the debate fail to define clearly what comprises a *Hijab* and often used the term 'veil', which causes confusion especially

¹⁰⁶ Bullock, K. Supra P.

¹⁰⁷ Ghabbian, W. Supra P24

¹⁰⁸ Penny, L Supra

¹⁰⁹ Scott, J.W (2018) Sex and Secularism Princeton University Press, Princeton and Oxford, New Jersey. P17

with regard to the interpretation of Quranic verses. They confuses the concepts and manifests a strong desire to discredit the use of the *Hijab*.¹¹⁰ This confusion of concepts in the discussion about *Hijab* is a problem which has created misunderstandings. At least among western educated researchers, there is a failure to distinguish between the face-veil, which covers either the whole face or parts of it, and covering which covers the entire female body with the exception of face and hands and the institution of segregation of the sexes.¹¹¹

Understanding how this is (i.e. the feminist's praxes) so helps us to see that how secularist regime employ Muslim feminist's interpretation that *Hijab* has nothing whatsoever to do with real religion. This is in order thus to successfully restrict the use of the *Hijab*, while ignoring the other interpretation that *Hijab* is a divinely required accoutrement for women. A positive argument was made by Scott, that the contemporary discourse of secularism with its insistence on the importance of "uncovered" Women's bodies equates public visibility with emancipation as if that visibility were the only way to confirm women as sexually autonomous beings (exercising the same rights in this domain as men). The contrast with "covered" Muslim women not only perpetuates the confusion between women as subjects and objects of desire, it also distracts attention from (or flatly ignores) persisting gender inequalities in markets, politics, jobs and law. We fail to see the difficulties that sexual differences poses in many contexts, and we then

¹¹⁰ Ibid P.259

¹¹¹ Ibid P.262 furthermore, Boulanour, Observed that, the western word 'veil' is 'sexy' and marketable in the west'. It this tends to be overused, invariably out of context in titles of books, articles, conferences, press, films and popular literature-irrespective of the quality of knowledge about the veil-the veil as come to replace the earlier obsession with 'harem' and hammans. In the west harem/veil polygamy/segregation toke Islam and are synonymous with hijab and thus weakness and oppression. P144-145

under estimate or mischaracterize the challenge these difficulties present to the achievement of the (perhaps ultimate utopian) goal of gender equality.

Besides, Pipes is of the view that the whole reformist enterprise is designed to disguise the adoption of western principles and confining the Shariah to the Qur'an has distinct advantages for them, thus by reducing the Shariah to the Quran allows feminists to interpret the Quran however they wish meaning by dropping the other three sources of the Shariah, they free themselves to have the Quran endorse secular ideals.¹¹² Infact, according to Esposito and Mogahed, some feminists sentiment echoes 19th Century British Colonialist rhetoric, such as that of Lord Cromer.¹¹³ Moreover, Professor Imara loudly stated that contemporary Muslim feminists are modeled in accordance with American RAND Corporation group plans and strategies.¹¹⁴

Even within feminism, some feminists began to reject some of the feminist premises. For example, Bell Hooks explains the importance of mutuality rather than equality. In her view, the word 'equality' seems to trigger problems because it is not realistic because men and women are not equal to each other. The focus on men being the problem only causes more problems and feminism has resolved this issue by redefining the word and its purpose.¹¹⁵ Infact, Valulenko, A argues that the Muslim woman's *Hijab* has not been adequately considered or analyzed. She suggested that intersectionality is conducive to a re-reading or reformulation of *Hijab* claims in ways compatible with the feminist legal and political project, broadly defined as a commitment to the social transformation of

¹¹² Pipes, D Supra Pp117-118

¹¹³ Esposito, J.L and Mogahed, D. (2007) Who Speaks for Islam? What A Billion Muslims Really Think, Based on Gallup's World Poll The Largest Study of its Kind, Gallup Press, New York. P106

¹¹⁴ Professor Imara. M 'Answering False Allegation Against Islam' At Iqra TV on Wednesday 12th June, 2013

¹¹⁵

women.¹¹⁶ In addition, Woodlock, R started that modern Muslim feminists believe that ultimately the importance lies in a woman's freedom of choice-her choice to wear the *Hijab* or not to and not have her right to do so threatened. Muslim women should be able to also defined dress codes for themselves and what they deem to be morally right.

Critically speaking, the Muslim feminist approach is mired with confusion of concepts and ideas, over simplification, doubt, uncritical assessment of truth and realities of the Shariah injunctions. Often reducing contradictory or implicated legal arguments to a self-explanatory premises or reductionism strategies. Hence, despite its pervasiveness, feminism has not been a clear progression by any means. There are divergence as well as sharp debates among the different feminisms, and yet to develop universal core, but each feminists perspective has limitation. Feminism continue to apply non-Islamic, and in fact purely secularist concepts drawn from various current of western philosophy and social sciences. Even the so-called Islamic feminist are political ideologies. They are joined in this chorus by secular feminist voices. In a nutshell, feminist perspectives would make no legal sense in understanding the nature and requirement of *Hijab* for a Muslim woman. Islamic law perspective conceptualizes *Hijab* based on the Islamic sources. In essence, the Islamic law perspective appeared to be comprehensive, realistic, balanced and suitable to the requirement of situating the discourse of *Hijab* within the context of constitutional perspective on religious freedom and rights.

¹¹⁶ Vakulenko, A. "Islamic Headscarves' and the European Convention on Human Rights: An Intersectional Perspective.

CHAPTER SIX

CONCLUSION

6.1 Summary

This thesis has been a study on *Hijab* and fundamental human rights which seek to be part of the contemporary discourse on *Hijab* that focuses on the right to freedom of religion of Muslim women. The central theme explored has been situating the discourse of *Hijab* within the context of the constitutional perspective of freedom of religion and how Nigerian Muslim women in *Hijab* can effectively enjoy protection under the 1999 constitution. However, in order to get a comprehensive perspective on the subject, the study also examined varied and connected issues and challenges that confront the Legality of the use of *Hijab* in contemporary democratic era. Then it finally, examined the impact of non-recognition of *Hijab* under the 1999 Nigerian constitution. So, in essence, the study was able to contribute to the fact that the denial of the rights to wear *Hijab* is in sharp contrast with the principle of Fundamental Human Rights, particularly, dignity, equality and religious freedom upon which edification of the UNHR was founded and the constitutions of the various countries of the world, including Nigeria. Thus, the implications is not a simple matter of banning or restricting the use of *Hijab*. The reality is that some women will no longer be able to pursue their education or their careers in public places.¹ Indeed, forcing Muslim women to take off their *Hijab* in the name of defence of gender equality or secularism or terrorism may amount to a form of coercion that would impair freedom to have or to adopt a religion or belief of one's free

¹ See Evans, C. *supra*

choice. Therefore, any restriction, regulation or ban on *Hijab* may constitute a violation of the Muslim women's right to manifest freedom of religion.²

Similarly, any restrictions on wearing *Hijab* by Muslim women are likely to impede Muslim women's human rights such as their freedom of movement and association and rights to education and work. Consequently any restrictions on the *Hijab* risk increasing intolerance towards Muslims, at time when greater intercultural and interfaith understanding is needed. It may lead to further discontent and alienation amongst Muslim women. Such restriction or bans may well put Muslim women in *Hijab* at risk of threats or actual physical attacks from individuals who view sanctioning of the *Hijab* as justification for violence against Muslim women in *Hijab*. This is deeply problematic for all Nigerian Muslims since it is tantamount to elevating unislamic values against the Islamic law values.

So in essence, the understanding of the obligatory nature of *Hijab* is made based on Islamic requirement according to the Quran and Sunnah. *Hijab* cannot be reductively explain. Freedom of thought, conscience and religion is also a vital human right. The 1999 Nigerian Constitution undertake to secure to everyone their rights and freedom set out in chapter II and chapter IV of the constitution permitting due recognition of religious practices. All the relevant sections discussed form part of the fundamental human rights which constitute the bills of rights embodied in the constitution. With this (*Hijab*) now situated as a legal and legitimate object of religious rights, the act of wearing *Hijab* therefore, can be considered as a manifestation of religion protected by national, regional and international human rights laws. *Hijab* is therefore not antithetical to democratic

² See generally the dissenting opinion of Judge Tulkens in Sahin case, supra

society or against community values and gender equality. Wearing of *Hijab* is compatible with general public good-Modesty, decency and fidelity is a natural requirement of a civilized society. *Hijab* is not an act of defiance, confrontation or protest against non-Muslims. It is not something new, it has been practiced by many righteous women of other faith historically and contemporary. *Hijab* has never been a hindrance to the participation of Muslim women in public life, rather it enhances integration, liberation and equality of Muslim women. Research analysis indicated that the wearing of *Hijab* is a practical involvement of Muslim women to a duty which is compulsory and its denial is a practical problem that affects the general life of a Muslim woman in *Hijab*.

However, the analysis is the evidence that secularism, feminism combined with the vested interest of some Nigerian Christians have been so challenging to the rights of a Muslim woman to wear *Hijab* as of right under the constitution, leading to various forms of issues and challenges.

The point that must be made clear and loud is that fundamental freedoms particularly religious freedom should not be based on common claims of commonality. Even within unity there is variety and diversity. Despite the fact that women are all women that does not make them one and the same. A Muslim woman is a Muslim woman, she should not be expected or force to act politically, socially and legally like a Christian woman or an anamists. A Muslim woman is govern by a law which encompasses all aspects of her life from cradle to grave. Hence, the application of freedom of religion should not be restricted only to the secular perspective or the perspective of a person whose religion allows worship and practice of the religion once a weak or few times a year. In other words a restricted application of freedom of religion may amount to coercion to practice

another religion or lead to adherence to another philosophy of life out of duress-and thus denial of freedom and independence.

Any prohibition or restriction on the wearing of *Hijab* by a Muslim woman in Nigeria in performing her public duties amount to religious and gender discrimination including denials of her constitutional legal rights as well as abridgements and violation of international, regional and national human right laws. This would lead to the freezing of identities of Muslim women in *Hijab* and the building of unreachable walls between Muslim women in *Hijab* and other citizens. Therefore, protection of Muslim women's right to wear *Hijab* as of right under the 1999 Nigerian constitutional religious perspective must be promoted rather than discourage. And this would lead to the enhancement of mutual respect and religious tolerance in a heterogeneous society like Nigeria. The discourse on the *Hijab* therefore, cannot be merely treated as an isolated matter. It has assumed a legal discourse begging for adequate interpretation and enforcement of the law.

The whole work is prepared in six chapters. Chapter one, deals with a conceptual framework which lays the foundation to the study focusing on the colossal events that led to the undertaking of the research. It began with the historical conception of the idea of covering by women in the annals of history. The overall scenario of the study reveals that the idea of covering by women have existed within so many cultures, societies and religions of the world even prior to the advent of Islam as well as after it. But the one that attracted most part of the world for centuries and stand at the forefront of current human rights discourse is the *Hijab* of the Muslim woman. Much of this debate however, is centered on the right and freedom of the Muslim woman to wear the *Hijab* as part of her

fundamental right to religious freedom. To address this, the study tried to understand the legal status of *Hijab* under the Islamic law and whether and how the constitutional provisions on the rights to freedom of religions serve to strengthen the Nigerian Muslim woman's right to wear *Hijab* and to address the issues and challenges thereof. Therefore, the rest of the chapters is an enlargement or expansion of this picture and the final conclusions. However, the central aim of chapter two was to develop a conceptual framework that can provide the thesis with the analytical tools and vocabulary necessary for the development of our understanding of the *Hijab* discourse. In the first part of the chapter, the study analyzed the concept of religion as the driving force for freedom of belief, thought and conscience. The study then turn to theory of feminism as a unique contribution of gender issues and particularly how feminism links its conceptualization with the discourse of *Hijab*. Finally, the study re-focuses on the concept of secularism. In essence, the study connect all the different elements of the framework together by and draw connections between religion, feminism, secularism and the subject of *Hijab*. However, definition of religion is profoundly complicated and highly contentious. The term has no single acceptable definition with a universal core. Also, none of the definition is in accord with Shariah concept of religion. Moreover, the term "religion" and its scope are not formally defined constitutionally and by human rights instruments, they also fail to enumerate accepted religious practices and methods of worship. This gives some judges or states the capability to regulate manifestation of religion like the wearing of the *Hijab* as demonstrated in the trial case of Miss Asiyat Abdulakareem V. Lagos State Government. Therefore, limited definition of the term religion is a challenge and it encourages one to take seriously the real differences that exist between western

definition of religion and the Islamic law definition. Hence, the analysis is that the Islamic law approach seems most holistic.

Chapter three, being the foundational chapter expounded the meaning of *Hijab* (including Legal, technical and geographic connotations), its basis, circumstances of the revelation of the verses, commentaries on them, juristic opinions as well as the legal conditions and elements of *Hijab*. Therefore, this chapter reveals that, firstly it is textually evidence that Islam has pragmatically legislated a dress code for women. The requirement for the use of the *Hijab* is prescribed in the Islamic religious text, the Holy Quran and Sunnah. As regards its signaling effect, *Hijab* signifies mandatory religious observance. All the schools of thoughts and jurisprudence are united on the obligatory nature of the *Hijab* upon the Muslim woman. The wearing of the *Hijab* is *fard* (obligatory) upon every Muslim woman who has reached the age of puberty. The Muslim woman must keep herself covered when going out and in front of non-Mahram. The Muslim woman is thus prohibited from revealing her adornment except to a restricted circle of people. Hence, the study observes that, *Hijab* constitutes a basic principle and practice of the religion of Islam which cannot be repealed, revised or nullified-meaning upon which there should not be the issue of Ijtihad in preventing it. It form part and parcel of act of worship as other obligatory acts of worship of the religion of Islam. It shows that, if the command is divine or ordained by Allah (SWT) either in His Book or through the Sunnah, then abandoning it or not to wear the *Hijab* holds serious consequences for the Muslim woman. This means that if a Muslim woman wants to go outside her domain, or in front of non-Mahram and/or participate in public life, it is an obligation upon her to cover all

part of her body with a garment (clothing) that meets the following conditions: The *Hijab* must be-

- i. Roomy – wide enough not tight
- ii. Opaque – thick enough not transparent
- iii. Clear of perfume, fragrance or make up
- iv. Not similar to male garment
- v. Not similar to non-Muslim clothing
- vi. It must not be a garment of fame, celebrity or an adornment in itself or dazzling display

It can be further deduced that:

- (a) *Hijab* in Islam falls within a vast range of measures taken to safeguard the chastity of the woman, the home and the society
- (b) *Hijab* does not limit woman's ability to participate in public life or society
- (c) *Hijab* is thus, by no means intended to be a confinement or duress.
- (d) *Hijab* is one of the principles of protection and identification and not a principle of oppression
- (e) *Hijab* gives women more not less access to public life

In addition, the study also indicated that, contrary to the popular view, particularly of the feminists and secularists views:

- *Hijab* is not something that is required only by the wives of the holy Prophet (SAW),

- *Hijab* is not a public or private dress. It is related to the presence or absence of mahrams or non-mahrams,
- *Hijab* is not something which a man has imposed upon the woman and exempted himself. The rulings on clothing extend to both men and women but the rulings differs due to their differences in their natural make up.
- *Hijab* raises the honor of the Muslim woman. It does not lower her dignity
- *Hijab* has no effect on the fundamental rights and freedom of others

However, with respect to the term *Hijab* and its concept there are confusion of concept leading to a greater misunderstanding of the focus of the *Hijab*. There is a failure of majority of researchers to distinguish between the English term veil (sexy and transparent) the face veil (niqab), headscarf, the institution of segregation of the sexes (purdah) and the *Hijab*. Therefore, mixing the critical distinction between these concepts also posed a challenge to the adequate understanding of the requirements and significance of *Hijab* to the Muslim woman.

The chapter also dealt with causes of the issues and challenges hampering the enjoyment and protection of the fundamental rights of religious freedom of a Nigerian Muslim woman in *Hijab*. The chapter attempted to provide adequate familiarity with root causes of the *Hijab* discourse through various phases and it is within these phases the discourse of *Hijab* became linked with language and philosophy of secularism and feminism. The overall scenario revealed that since the colonial period there was a persistent efforts to delegitimized the rights of Muslim woman to wear the *Hijab*, either through persuasion or by force. Even with decolonization and the beginning of independence, modernists, reformists and secularists as well as feminists like the colonialist became determined to

eradicate the use of *Hijab*. The eradication of the *Hijab* became the assumed yardstick for civilization, modernity and progress. In some states the use of *Hijab* was actually outlawed such as in Iran, Turkey and Tunisia. However, in countries such as Egypt, Libya and Nigeria, *Hijab* was technically and gradually phase out. Therefore, the study revealed that, the discourse of *Hijab* is not a new discourse it has undergone various phases. Broadly speaking it is the product of colonialism. However, the same idea survived, sustained and promoted by the secularists and feminists with a global political and legal interest even in modern democratic era. It is within this context that the study discusses the return of *Hijab* and how specifically secularism affected the rights of the Muslim woman and how secularism is used as a legal tool to ban and restrict the use of *Hijab* even in Nigeria. Another finding of this study is that before the colonial rule, Islam and its legal system were fully enforced in Northern Nigeria. With the establishment of colonial rule, some Islamic practices, norms, values and legal system which were not in consonant with the colonial masters worldviews were technically phase out. The *Hijab* also suffered the same fate. However, the issue of the *Hijab* resurfaced with the demand of the implementation of the Shariah in some Northern States, making laws for the application of *Hijab*.

Chapter four is an examination of the legal basis of religious freedom under the Nigerian constitution. First, it highlights the major historical development pertaining to religious freedom and how it evolved and developed under the Nigerian constitution. The study also considers both regional and international standards that govern religious freedom. The most significant findings here is that freedom of religion under section 38 of the 1999 Nigerian constitution is consciously worded in order to embrace wide and diverse

issues encompassing thought, conscience and religion to be manifested clearly and evidently in worship, observance, practice and teaching. From the wordings of the constitution, the study identified dimensions and scope of freedom of religion. Thus, freedom of religion can be manifested individually or collectively in private or in public. In an attempt to comprehend this notion fully, the study observes that the right to freedom of religion is directly connected with other fundamental rights such as the right to freedom of expression, right to non-discrimination and right to dignity among others. This is further linked with the right to practice religion in the educational system.

With a view to situating the *Hijab* under the 1999 Nigeria constitution, chapter five being the apex of the thesis, knitted together the discussion particularly the imperativeness of situating the *Hijab* within the human rights discourse that focuses on the rights of Nigerian Muslim women to religious freedom under the 1999 constitution. The study also mapped out and linked discussion on the significant issues, problems and challenges posed by secularism, and the media to the legality of wearing the *Hijab* by the Muslim woman. Likewise, the Nigerian Christian Conundrum. Similarly. The chapter five tried to understand the basic connection between feminist interest and engagement in *Hijab* discourse and specifically their emphasis for the reinterpretation of the Quranic verses on the *Hijab* and critically analyzed all the issues involved.

Notwithstanding the ample evidences for the enjoyment and protection of the fundamental rights of Nigerian Muslim woman in *Hijab* referred to, challenges hindering the enjoyment or permeating the violation of the Muslim woman's right to wear *Hijab* are rampant. For example, there has been the dominance and continuing imposition of non-Islamic uniforms for girls in schools and regulating dresses for female lawyers, judges,

Armed-forces, police, Nursing, Bankers and NYSC among others which hinders and constraints the participation of Nigerian Muslim woman in such public life. In addition, it also emerged that the vast majority of instances of *Hijab* discrimination escapes the scrutiny of the law altogether. The general attitudes towards *Hijab* allows for imperfect implementation of legislation and most Muslim women are ignorant of their legal rights. This is coupled with discouragement from even the fellow Muslims which heightens the threshold for legal action.

The study also noted that despite the recent adjudication on *Hijab* which allows the Muslim women in some states to wear the *Hijab* in public primary and secondary schools, Muslim women in *Hijab* continue to face challenges and concerns in some universities, colleges and places of work across the nation. Particularly where there is a dress code regulation. These have posed many serious challenges to the Nigerian Muslim women who aspire to leave their lives in accordance with their faith. Indeed, this is a very important finding of this study. Infact, the findings of this study indicates that the major issues and challenges confronting the task of situating the discourse of *Hijab* under the 1999 Nigerian constitution largely remained unresolved.

Therefore, the findings of this study indicate that the concept and interpretation of secularism was the most serious problem facing the use of *Hijab* by Nigerian Muslim Women. The study found out that there has been constant repetition of the argument that section 10 means Nigeria is a secular state even unfortunately in the judiciary. The suggestions seem to have been inspired by a misreading of section 10 of the constitution. However, the analysis indicate that this imagined secularity of our nation failed to reconciled with the Nigerian constitutional reality and public policy.

Secondly, the weak dialogue applied especially in the case of Miss Asiyat Abdulakareem V. Lagos State Government is the assumption that Nigeria is like Turkey. However, the findings indicate that the constitution of Turkey have explicitly declared its state as secular, there is no such express declaration in the Nigerian constitution and that the Nigerian approach to religious freedom radically differs from that of Turkey or any secular states.

- Infact, secularists generally saw the return of *Hijab* as a direct threat to the future of secularism and modernism as a whole.
- That the return of *Hijab* represents a return to primitive societies and way of life. That the *Hijab* hinders women's participation in public life and equality of persons before the law.

Thirdly, another challenge is that Nigerian Christians showed a strong preference to secularism. They also make noise and showed opposition to the use of *Hijab* by Nigerian Muslim students in public schools. Particularly its leadership alledged that the use of the *Hijab* by the Nigerian Muslim women is a violation of the Nigerian constitution. They affirmatively promote agitation against the *Hijab* of a Muslim woman and they are active defendants in the cases against the use of *Hijab*. As can be critically observed, such reactions creates more issues and problems than it solves. To avoid unnecessary tensions and noise, the wise course for Nigerian Christians, particularly its leadership would be to leave Muslim women in *Hijab* abide by the rules and mandates of their religion. The freedom to live according to one's choice, one's value and one's belief and freedom.

Another major and significant challenge to using the *Hijab* as revealed by this study is feminism. The findings of this study found that, feminism is based on the fundamental principle that all persons must be treated equally under the law irrespective of sex, race and religion. They have introduced new re-interpretation of the verses of *Hijab* and alleged that the use of the *Hijab* lacks any basis in the Quran and Sunnah. Therefore, analysis showed that, the feminist basic conclusion was that:

- *Hijab* has no basis under the Islamic Law
- *Hijab* is a direct contradiction to feminist values and incompatible with contemporary standards of freedom and gender equality

In another scenario, feminist tried:

- i. To create an impression that the *Hijab* is forced upon the woman by patriarchal men, based on the alledgd erroneous interpretation of the verses of *Hijab* and mis-translation of some of the Hadiths of the Holy Prophet (SAW)
- ii. That the use of the *Hijab* is not of universal application but specifically applied to the wives of the Holy Prophet (SAW)
- iii. That even those Muslim women who are covering are covering out of false consciousness. Muslim girls and women are not given a choice about the *Hijab*

Hence, the analysis here is that, the feminists misinterpretations of the verses of *Hijab* creates a division in religious authority and prevents a comprehensive understanding of the basis and position of *Hijab* upon the Muslim woman under the Islamic law.

Another major challenge is that the media also have devised subtle methods of changing the meaning and legal intent of *Hijab*. For example, in the recent past the media often distort and misrepresent *Hijab*, re-enforcing negative stereotypes about *Hijab* and which implicitly suggested that Muslim women in *Hijab* are terrorists, extremist or fundamentalists of patriarchal order. It described the *Hijab* as minefield and lack conformity with modern democratic values. However, today the media tried to project the *Hijab* as an element of fashion.

Generally, the analysis of the issues and challenges raised in this study reveals that, the fact that Muslim women continue to value the use of *Hijab* cannot be reductively explained as: product of ignorance, patriarchal interpretations, suppression of gender equality, lack of modern civilization, an element of fashion or any kind of imposition upon the Muslim woman. Muslim women in *Hijab* do not see a conflict between *Hijab* and women's participation in contemporary democratic era. Particularly in the areas of; intellectual pursuit, gainful employment (Public or Private), economic endeavors, political participation, and social interaction. It is worth nothing that the Nigerian Muslim women have high degree of culture of gregariousness which deserves to be mentioned and emulated in a heterogeneous society like ours.

Consequently, if those understandings turnout to be limited to the particular understanding of the secularists, feminists or the media conception of *Hijab*, for one thing – those understandings are clouded with bias and prejudices. For another, the free choice of religion and adherence to its laws are seemingly neglected as fundamental rights of human beings. For yet another, there is mixed up between right, freedom and justice under the constitution and fundamental rights to freedom. In essence, the findings further

indicates that; any Limitations on a Nigerian Muslim woman's ability to manifest her religious beliefs through observance and practice of *Hijab*, directly affect the choices of Nigerian Muslim women under section 38 of the 1999 constitution to adopt and practice the beliefs or religion of their choice and in contradiction with recently decided cases. So also, some states, institutional regulations, public and private sectors, as well as idiosyncratic judges that restrict the use of *Hijab* particularly in order to protect the presumed rights of others, demonstrate that, the rights of Nigerian Muslim women in *Hijab* are not equally prioritized and protected. As a result, the Muslim woman in *Hijab* would be force to directly or indirectly practice another philosophy of life imposed upon her in lieu of her religion. Furthermore, this will lead to; partial belief, religious invasion, identity eradication, and compartmentalizing Islamic religion and doctrines. Hence, opening such a space implies a Christian tone or connotation or at least one that is foreign to the spirit of Islam. At the same time will impact negatively Muslim woman's life. This is deeply problematic for Nigerian Muslim women.

6.2 General Findings and Conclusion

The first basic research question in this thesis is what is *Hijab*, its basis and position under the Islamic law? The second basic question is what should be the Nigerian Legal Standard for understanding religious freedom and to what extent *Hijabis* accommodated and protected as part of religious freedom under the 1999 constitution (as amended)?. However, in order to arrive at some conclusions on these basic questions, the thesis raised a number of subsidiary questions, which include the question as to what issues and challenges exist in the task of situating the discourse of *Hijab* under the 1999 Nigerian constitution, does the Nigerian polity reflect the description of secular state or

secularism? So also, what are the impacts of non-recognition of *Hijab* as religious practice and observance under the 1999 Nigerian Constitution? These are the questions to which this study intends to answer. Discussions on the issues that follow form the significant findings of this thesis:

- The first major findings of the study seems to indicate that firstly, the requirement for *Hijab* is a divine commandment based on the clear, explicit and unambiguous wordings of Allah (SWT) in Surahs An-Nur, Ayah 31 and Al-Ahzab, Ayah 59, respectively. Secondly, there are explicit collaborative narrations from the Holy Prophet (SAW) which indicated that *Hijab* is a mandatory requirement in Islam. Thirdly, there are wide and vast majority of agreement from the commentators, jurists and Islamic scholars past and present that what is contained within the parameters of these verses (Q24V:31 and Q33:59) are obligatory. Therefore, the conclusion of this chapter is that there is an imperative commandment that is imposed on the Muslim woman to wear the *Hijab*, primarily in the Quran and Sunnah.

This shows that, the wearing of the *Hijab* by the Muslim woman is not a matter of choice, but an observance to the duty which is mandatory for them. This is also in consonant with the relevant provisions of the constitution and other human rights obligations in relation to freedom of religion. Hence, it is necessary to situate the discourse of *Hijab* within the context of constitutional perspective on religious freedom as the following subsequent findings indicates.

- The second major findings of this study indicates that;

- Generally, fundamental human rights are not ordinary rights. They are most important rights. Some of them have their origin in international or regional laws or treaties.
- That specifically freedom of religion is strongly formulated in the 1999 constitution. Section 38(I) of the Nigerian Constitution provides enough space for her citizens to choose, practice, change and propagate their beliefs or choice without let or hindrance.

Accordingly freedom to manifest religion or belief through worship, observance, practice and teaching is formulated under the 1999 constitution in such a way that it encompasses a broad and diverse range of acts that are protected for both individuals and groups. Hence, the observance and practice of religion may include all the commandment of a religion and therefore suited to the requirement of situating the discourse of *Hijab* under the 1999 constitution. Therefore, the wearing of *Hijab* by Nigerian Muslim woman constitute an integral part of her manifestation and expression of the laws of Islamic religion that is in consonant with the provisions of the 1999 Nigerian constitution.

- Furthermore, freedom of religion and equality of religions are expressly enshrined in the constitution, there is no state religion but religion and state are not separated. There are strong connections between the Nigerian public life and religion. In sum, the main finding here is that, there are sufficient constitutionality and ample new legal cases and evidences for allowing a Nigerian Muslim woman in *Hijab* to profess and practice her religion to the fullest where ever she reside in Nigeria. The ample new evidences and cases decided by the court of Appeal re-

enforced these findings. Moreover, from the analysis of the dimensions of freedom of religion and the focus on *Hijab* leads one to understand that an individual or collective rights of Nigeria Muslim woman in *Hijab* in private or public is necessarily protected under the 1999 constitution.

- Another major findings of this study is that wearing *Hijab* by Muslim woman can be situated under various other fundamental rights under the 1999 constitution (as amended), particularly, discrimination on the basis of religion. Firstly, section 15 of the 1999 constitution makes explicit reference to the prohibition of discriminatory treatment on the basis of religious belief. Secondly, Section 42(1) establishes a more general prohibition of discrimination by providing that the enjoyment of any right set forth by the law shall be secured without discrimination on any ground such as sex, origin or religion. Further convincing argument in support of this claim, can stand on the ground that the wearing of the *Hijab* by the Nigerian Muslim woman doesn't fall within the constitutionally defined circumstances that may warrant the derogation or restriction of the realization of the freedom of religion of Nigerian Muslim woman to wear the *Hijab*. So to deny Nigerian Muslim woman in *Hijab* the full right to wear the *Hijab* at anytime, anywhere in Nigeria other than for the limitation under section 45 is tantamount to violation of her fundamental human rights and full practice of her religion. Therefore, denial of the right to wear the *Hijab* can amount to a practical violation and discrimination that affects the Nigerian Muslim woman's participation in public life, particularly in the spheres of education and work places among others.

Other legal grounds that can promote and guarantee protection of the religious freedom of the Nigerian Muslim woman in *Hijabas* found by this study includes:-

- Freedom of expression: The wearing of *Hijab* is religious expression. Thus, protecting religious freedom is intimately linked to the protection of freedom of expression.
- Equality for all in terms of education and work.
- Freedom of movement.
- Discrimination against torture, inhumane and degrading treatment.

This finding is further substantiated by the ruling of the Court of Appeal. Therefore, the wearing of *Hijab* is firmly related to matters of her right to education, work, movement and participation in public life generally. Conclusively, there are ample constitutional justifications for allowing the use of *Hijab* (including its various features) by Nigerian Muslim woman within rights and freedom of religions, particularly in public institutions (such as schools, universities and public service offices) and private sectors in Nigeria as a way of exercising her fundamental right to freedom of religion and expression.

From the above findings, it is clear that, the wearing of the *Hijab* is a manifestation, practice and observation of the commandment of the religion of Islam that is in accord with the constitutional framework of religious freedom. Therefore, the use of the *Hijab* by a Nigerian Muslim woman falls under the ambit and protection of religious freedom as enshrined under the 1999 constitution (as amended) and other legal rights. Finally, any laws, rules, regulations or policy that are in conflict with or restrict the use of *Hijab* by the Nigerian Muslim woman conflicts with the provisions of the constitution and as such

null and void. This is in line with the ruling established by the Court of Appeal in the case of *Asiyat V. Lagos /State Government* with respect to the use of *Hijab* in Nigeria, that nothing in the constitution of a social club, association, religious organization, charity among others can override the provisions of the constitution. Moreover, the subsequent court of Appeal Judgment opens up a way for a new understanding and new perspectives in the rights of a Muslim woman in Nigeria to wear the *Hijab* as of right under the 1999 constitution. Observance and inclusion under the constitution is imperative even for the sake of upholding peace and security in the country. As the discourse of *Hijab* is a continuous dialogues, Nigerians await the Supreme Court verdict.

All along, the discussion we have established the fact that the use of *Hijab* by a Muslim woman is obligatory. The injunction is stated in the Holy Quran and the hadiths confirmed and clarified which parts of her body a woman should cover. So, the outcome of this research work has shown the scope and extent to which *Hijab* can be situated under the 1999 constitution.

Consequently any restrictions on the use of *Hijab* are likely to impede Muslim women's human rights. Indeed, the findings of this studies further indicates that non-recognition of *Hijab* as fundamental practice of Islam would affects the enjoyment of not only religious freedom but would affects other fundamental legal rights of a Nigerian Muslim woman in *Hijab* such as their;

- i. Right to education,
- ii. Right to work,
- iii. Freedom of movement and association,

- iv. Right to dignity,
- v. Right to gender equality,
- vi. Freedom of expression, etc.

6.3 Recommendations

Analytically and essentially speaking freedom of religion is qualified under all International Human Rights treaties as well as other continental and regional conventions. Thus, all these treaties and the constitution of Nigeria under section 38 give significant protection to both private and public manifestation of religious belief. So also, section 10 of the 1999 Nigeria Constitution does not forbid Nigerian citizens from expressing their convictions in practical ways and the wearing of *Hijab* does not implicate the doctrine of public order. Moreover, the exercise of freedom of religion necessarily carried with it other fundamental rights. Similarly, Nigeria is not only characterized by ethno-religious diversity but also it has legal pluralism. As such the best means to maintain such unity in diversity is to distance itself from secularism as a heterogeneous society. The debate over the intent and meanings of sections 10 and 38 of the 1999 Nigerian constitution as amended seems as an exercise in futility. Sections 10 and 38 of the constitution are crystal clear, unambiguously and carefully worded by the wisdom of the statemen and framers of the constitution. There is no need to put any extra meanings or ulterior intent which were not intended by them into the constitution through manipulative legal, political, religious, sectional and ethnic chauvinism and jingoism. Any step taken to introduce any change of meaning to these sections, should only be ratified through a nation-wide referendum. As a society, unbalanced protection of the freedom of religion is religiously, politically,

socially, economically and intellectually harmful. Therefore, this study recommend the following:

1. Proper and Effective Implementation of the Provision of the 1999 Constitution

There must be effective enforcement of existing and relevant laws directed at the protection of religious freedom, the implementation should be very clear. Parents' right of their children's belief under the constitution must also be protected. Schools and establishments should be cautious about religious sensibility of others. Therefore, higher penalty be provided for the acts of religious infringement and discrimination, including ridicule or mock of religious garment. Similarly, there should be concrete steps binding all signatory states to enforce, promote, respect and oversee the observance of these obligations/declarations contained in International, continental and regional laws. That adequate legal enforcement regime should be put in place with penalties for contraventions.

2. Review of the Dress Code

Nigeria being a federation, does not require its citizens to mortgage their religious obligations to belong to it. As such the review of Dress Code in all professions is imperatively indispensable to allow female Muslims to use the *Hijab* in the performance of their duties without discrimination and intimidation. The *Hijab* is not known to hinder the practice of any profession nor obstruct the performance of any duty and therefore the exposure of any part of the female body does not enhance the performance of their duties either.

3. Holistic Campaign and Awareness Raising

Workshops and seminars should be conducted to consider issues and challenges in order to remove the causes of misunderstanding and controversy on the scope, meaning and intent of sections 10 and 38 and other sections relating to the right and freedom of the citizens. Section 38 guarantee not only freedom of thought, conscience and religion but at the same time also embraces some of the values associated with dignity, equality and fairness. Similarly, it is hoped that creating awareness will benefit society by providing valuable information concerning, attitudes toward students and working Muslim women who wear the *Hijab* and provide awareness about any discrimination that they may experience.

Furthermore, consideration should be given to how media can become involved in enhancing the public understanding of religious rights and freedoms of all Nigerians. It is hope that the implementation of these suggestions and recommendations would be the way of solving the problems, issues and challenges relating to religious freedom. It can

also be the way of protecting, promoting, and saving the belief and identity of all religious groups in Nigeria.

Hence, knowledge of the facts in this study can help to guide and be a source of legislative reform and policy making. Human rights activists and concerned groups or non-governmental organizations against the violations of these rights could assist in promoting and protecting such right. This study would be able to also eliminate some of the misconceptions and distortions generated against the use of religious attire by women. It will thus, create adequate awareness and counter the challenges and issues posed by some secularist, feminist and media practitioners. The study would also be useful to individuals who wish to acquaint themselves with the proper, adequate and legally acceptable *Hijab* under the Islamic law. Moreover, this study would serve as a source of reference to other researchers in related topics. Therefore, this study will contribute to materials in the exercise of fundamental human rights and freedom of religion, principles of secularism, gender studies and the discourse on *Hijab*.

Further Studies

In the light of this research further study could be conducted for the protection of the religious rights freedom of Muslim women in *Hijab* in terms of conflicts or crisis. Future work could also examine individual Muslim women who have suffered isolation, torture or discrimination, due to the use of *Hijab*. Particularly empirical research would give researchers in this area a chance to meet Muslim women who have been denied chances to participate in and within the society and contributes their quotas as a result of victimization, denials and discrimination they either experienced or feared because of their *Hijab*.

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