

**AN EXAMINATION OF DIVERGENT VIEWS OF MUSLIM SCHOLARS ON WOMEN'S
RIGHT TO WORK OUTSIDE THE HOME**

BY

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**BEING A THESIS SUBMITTED TO THE FACULTY OF LAW,
BAYERO UNIVERSITY, KANO NIGERIA, IN PARTIAL FULFILMENT
OF THE REQUIREMENT FOR THE AWARD OF THE DEGREE OF
MASTER OF LAW (LLM)**

DECEMBER, 2017

DECLARATION

I hereby declare that this work is the product of my research efforts undertaken under the supervision of Professor Juwayriya Badamasiuy and has not been presented anywhere for the award of degree or certificate. All sources have been duly acknowledged.

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CERTIFICATION

This is to certify that the research work for this thesis and the subsequent write-up by (Fatima Kabir SPS/13/MLL/00003) were carried out under my supervision.

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DEDICATION

This research work is dedicated to Muslim women, who suffer injustices.

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ABSTRACT

Using the provision of Qur'an and historical evidence from the time of Prophet (SAW) as bench mark; the research examined the various views of modern Muslim scholars. The aim of the research was to appraise the position of Islamic law regarding the permissibility of women in the public sphere as it relate to her right to employment outside the home. Specifically, the study examined both views for and against her right to work outside the home, in the light of Quran and hadith. Doctrinal research methodology was adopted and the research finds out that difference of opinions arises from the interpretations and extent of application of Islamic text the Quran and hadith. The scholars who are against women's right to work outside the home have interpreted some of the provision of the Quran such as Quran 33:33, Quran 33:53, as affirming the exclusion of the Muslim women from the public sphere and the provision of Q4:34 under which the obligation of a husband to maintain his wife/wives and children is enshrined is relied upon to further substantiate the woman's domestic role. Scholars in support also relied on the same and other provisions of the Quran to refute this argument; they contended that there is no textual legal and historical evidence against women's work outside the home: but rather against immodesty and free mixing with unrelated men. The research findings showed that the husband has power to grant the wife permission, when there is the need for the woman to work outside the home, the husband can abuse such power granted him under Islamic law and the result will be negative consequences on the part of the woman. To dispel the misconceptions surrounding the participation of women in the public sphere; the research strongly recommended that there should be an increase in the level of awareness the position of Islamic law should be widely disseminated, so that Muslim women become more aware of their rights and able to work and play an important role in the society; especially providing services that men may not be competent or appropriate in providing. It also recommended that women's right to work should be negotiated in the marriage contract since Marriage in Islam is a contract; this contractual nature of marriage allows the wife the liberty to insert clauses that will safeguard her right and if those conditions are violated, it would amount to breach of contract.

CHAPTER ONE

1.0 GENERAL INTRODUCTION

1.1 BACKGROUND TO THE STUDY

Gender issues are topical throughout the world as there seems to be an increasing demand for more equitable treatment of women in all human actions. The perception of many societies that women are inferior to men adversely affects women's rights.

Since the dawn of history, the female gender the world over, has been subjected to different forms of discriminatory tendencies.¹ They vary according to age, social status and the dominant prevailing ideology in the society at a given epoch. Each era, and each system saw a gradual but systematic institutionalization and entrenchment of a second class status for the female gender.

For too long women had been perceived in different societies and environs, as secondary citizens. They were never fully recognized as partners in the development processes, the society's reaction to women have been culturally biased.²

There is reluctance in official quarters to encourage women to play meaningful and effective roles in societal processes such as politics and governance in many parts of Africa including Nigeria. For many decades women were made to believe that their rightful place starts and ends in the home; as housewives, producers and makers of children while their husbands carried on with societal tasks such as politics and governance. Through the ages, men have been actively in control of the public sphere.³

¹Yusuf, H. E. (2014). *Purdah: A Religious Practice or an Instrument of Exclusion, Seclusion and Isolation of Women in a typical Islamic Setting of Northern Nigeria*, American International Journal of Contemporary Research, Vol. 4 No. 1 p. 238

²Al-Hibri, A. (1997). *Islam, Law and Custom: Redefining Muslim Women's Rights*. American University International Law Review 12, no.1. Retrieved from <http://www.digitalcommons.wcl.american.edu> pp1-44

³Sada I.N. *et al* (2005) *Promoting Women's Right Through Sharia in Northern Nigeria* Retrieved from <http://www.britishecouncil.org> P. 15

With the recent portrayal of Islam in negative light, the status of women under Islamic law has become a major topic of public scrutiny. Position of women under Islamic law is generally construed to be pitiful and suppressed; It is believed that women have no say in a Muslim society and that they are merely supposed to follow the instruction of the male members, also some societies in the name of Islam practice extreme form of seclusion which have resulted in the total exclusion of women from the public sphere.⁴

Depriving Muslim women of the opportunities to learn and work in public has resulted in women being denied the ability to fulfill roles related to collective societal obligations, where men may not be as competent or appropriate to provide.⁵

The consequence of all this is the widespread suffering of Muslims on so many socio-economic and political fronts such as the health care, judiciary and educational systems. This research therefore, examined the Islamic law perspective on the permissibility of Muslim woman in the public sphere particularly as it relate to her right to work outside the home.

1.2 Statement of the Problem

The role of women in society is neither a new issue nor is it a fully settled one. The position of Islamic law on this issue has been among the subject often shrouded in doubts, confusion and ambiguity. Despite clear and unequivocal support for male-female equity, Muslim women today are denied some rights such as education, health, employment, participation in politics and public life. These gaps between the actual teachings of Islamic law and live realities have emerged due to divergent interpretations of the Qur'an and Sunnah. This research work intend to examine the authorities relevant to the area of study in order to find out an Islamic law perspective in relation to women's right to work outside the home.

⁴ Thanvi, A. (2014). Status of Women in Muslim law. Retrieved from <http://www.ssm.com/abstract>. P.1

⁵ Yahya I, (2011). *Muslim women in the public space; an examination of "Purdah" or seclusion and, the permissibility of Muslim women in public places*. (DIN) Minna: Islamic Education Trust,. p.12

The principles of Islamic law are based essentially on the Qur'an (God's revelation) and *hadith* (elaboration by Prophet Muhammad). The Qur'an and the *hadith*, properly and un-biasedly understood, provide the basic source of authentication for any position or view which is attributed to Islam.

1.3 Research Questions

Going by the problem enunciated above: the study has the following major questions it seeks to answer.

- 1- What is the role of women under Islamic law?
- 2- What are the various arguments on the subject of Muslim women's right to work?
- 3- What is the position of Islamic law regarding the permissibility of woman to work in the public sphere?

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1.4 Aims

The main aim of this research work is to appraise the position of Islamic law regarding the permissibility of women in the public sphere as it relate to her right to employment outside the matrimonial home.

1.4.1 Objectives

1. The objective of the research is to present both the argument for and against the permissibility of Muslim woman's right to work outside the home.
2. Examine the various opinions in the light of the provision of Quran and *hadith* so as to find out an Islamic law perspective.

1.5 Justification

This research is highly significant and it is pertinent in order to provide the much needed guidance to human right activist interested in women issues, researchers, policy and lawmakers as well as students of Islamic law. This research will also provide the much needed clarity on the issue of Muslim women's societal role by presenting a clear perspective of Islamic law regarding the permissibility of women to take employment outside the home.

1.6 Research Methodology

In carrying out this research work, the doctrinal research method has been adopted. The relevant authorities for carrying out this research work will include both primary authorities (the Quran and hadith) and secondary authorities to be sourced from books, articles and journals.

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1.7 Scope

The research will dwell on the concept women's right under Islamic law and also present both the argument for and against on the subject Muslim women's right to work outside the home. Furthermore the research will examine the various opinions in the light of Quran and hadith in order to find out an Islamic law perspective.

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1.8 Literature Review

In the course of preparing this research proposal, the researcher came across certain materials that are either directly or indirectly relevant to the proposed topic at hand. Some of these materials are briefly reviewed as follows.

Elaborating on the traditional understanding of women rights in Islam, **Qutb Sayyid**, in his book, *Social Justice in Islam*⁶, points out that men and women have been created from a single *Nafs* (soul), which means that they share the same soul and nature.

⁶Qutb, S. (2000). *Social Justice in Islam*, trans. John. B Hardie New York: Islamic Publication International, p.45

Men and women are equal before God and the difference between them is due to their different roles in life. Men have been given more rights in inheritance because Islam has given men the role of protector of women and the family. Moreover, he asserts that Islam gives equal rights to women in ownership or maintenance of property, right to consent at the time of marriage, party to the marriage contract, to maintain their name after marriage, limited divorce rights, right to education, work and economic rights. He points out that Islam is not based on idealism but is a practical religion and all its injunctions are according to the realities of the world and negates idealist and inconceivable notions.⁷

Qutb's, S. book focuses generally on elaborating the traditional understanding of women rights in Islam and also a presentation of the rationale behind restrictions which Islam places on women's rights generally. Although he made mention of women's right to work as part of right granted to women in Islam there is no comprehensive discussion on the conditions attached to the exercise of such right.

In his book, titled *Qadaya Al-Mar'ah bin Al-Taqa'eed Al-Rakida Wal-Wafida-Women's Issues*.⁸ **Muhammad Al-Ghazali** criticized the traditions that exist in societies which inhibit women's mobility; those traditions are typically blamed on Islam, while in reality they have nothing to do with Islam. He indicated that Islam provided a significant sense of equity between the two genders. He maintained that there are certain traditions put by people and not by God which cripple women's development, keeping them in *Jahiliyya* (ignorance). This has resulted in degradation in the whole ummah (Muslim community)

Al-Ghazali severely attacked some of those in charge of religious affairs, indicating that they are mainly occupied in one thing, keeping women in prisons of ignorance and psychological defeat. He condemned the fact that women have no real political or cultural role in many societies and do

⁷Qutb, S. Op cit note 6 at p 4

⁸Al-Ghazali, M. (1992). *Qadaya Al-Mar'ah bin Al-Taqa'eed Al-Rakida Wal-Wafida – Women's Issues*, Cairo: Dar-al Shurook Publishing p.178-180

not even have a say in social affairs. He concludes that women have been cut from the affairs of their communities and have been restricted to domestic service and bodily instincts.⁹

In her PhD dissertation **Muslim Women & Public Space: the Debate between Conservative and Feminist thinkers**¹⁰ Nighat Parveen Saleem seeks to resolve the debate between conservative and feminist thinkers over Muslim women's participation in public space. Saleem examined the discourses of both partisans of the debate, taking Abu A'lā-Mawdudi as representative of conservative thinking and largely Barbara Stowasser as representative of feminist thinking. The work also examined the *hadith* in the collections of Bukhari and Muslim on the topics of women's participation in public space in comprehensive manner.

Saleem, in her work focuses on permissibility of women's mosque attendance, visitation of graves, joining funeral processions, travelling and jihad while this research is basically limited to the right of women to work outside the home also unlike saleem's work, this research will not be limited to Abu A'lā-Mawdudi and Barbara Stowasser's discourses on the topic rather the research will examine divergent views of scholars.

On the right to work for women, **Mohammed Hashim Kamali** in his book **The right to Education, Work and Welfare in Islam**¹¹ argued that it is legally permissible, if not legally recommended or required in certain situations, to help minimize oppression, injustice, and evil generally in those contexts in which effectuating positive change is possible. With respect to the latter, Kamali generally affirms that women have a right to work, to the wages they earn, and of financial independence. There may be instances in which a woman, as a mother, is obliged to devote more of her energies to motherhood and other instances in which she may be obliged or recommended to work for the welfare of community or her family depending on contextual

⁹Al-Ghazali, M. Ibid

¹⁰Saleem, N. P. (2014). *Muslim Women & Public Space: The Debate between Conservative and Feminist Thinkers* (unpublished doctoral thesis) University of Birmingham pp.42,52,74,77,176 &223

¹¹Kamali, M. H. (2011). *The Right to Education, Work and Welfare in Islam*. Cambridge: Islamic Text Society Publishers. UK. pp.139-141

particulars.

Kamali's work is an extensive discussion on education, work and welfare in Islam focusing on how each is treated in the Quran, the section on work elaborates on the value of work, work ethics, workers and employer's rights and responsibilities and the role and responsibility of governments. Although Kamali discussed women's right to work to a length however the book does not touches the arguments against her coming out to work outside the home or the domestic role attributed to the female gender.

Juwayriya bint Badamasiuy, in her book **Status and Role of Women under the Shariah**.¹² observed that the woman's primary role does not prevent her from taking a job outside the home, she is to struggle for the betterment of the Muslim community as part of her obligation to correct the evil in the society as enjoyed by Sharia, and that she's is equally liable in the failure to perform obligations which is collectively compulsory upon the Muslim society (*Fard Kifaya*) Badamasiuy, J. B. further emphasized that there is nothing under the Sharia which stand in the way of a woman contributing to the development of her community. Rather Islam came with the object of liberating the womenfolk from the bondage of servitude to men as was the case with cultures preceding the advent of Islam.¹³

Badamasiuy, J. B. presented overwhelming evidence from the Quran and *sunnah* in support of women's societal role and also extensively discussed the Islamic mode of dress required of the Muslim woman when in public. However the work is not a presentation of the divergent views on women's right to work outside the home.

Kausar, Zeenat in her book. **Woman as Head of State in Islam, A Study of a few Positive and Negative Arguments**¹⁴ discussed the permissibility of women in the public sphere to a

¹² Badamasiuy, J. B. (2012). *Status and Role of Women Under the Shariah*, 1st Ed, Zaria Nigeria, A.B.U Press, p.58

¹³ Badamasiuy, J. B. Ibid at p.54

¹⁴ Kausar, Z. (2002). *Woman as Head of State in Islam, A Study of a few Positive and Negative Arguments*. 1st Ed, Selangor: Malaysia, Ilmiah Publishers p.10

length, however unlike this work that focus on Kausar's discussion was not centered on the woman's general role in the society it was limited to her political participation the work deal on the heated controversy among Muslim scholars on the political participation of women, Kausar Zeenat presented the arguments of scholars who are for as well those against the political participation of women.

Frank Martela in his article **Sharia, Islamic Revival and Human Right: A case study of Malaysia**¹⁵ examined the position of women within Islamic societies and points out that; many forms of discrimination against women in Islamic countries are claimed to be based on Qur'an and *Sunnah*, therefore being unalterable will of God. This forms a major challenge for feminists and women working for equity since challenging the Sharia could be seen as rejecting the Islamic heritage and faith.

This fact effectively raises the question of cultural relativism and how much these practices should be tolerated as expressions of an authentic and unchangeable Islamic faith. At the same time it remains an open question which practices of discrimination are really essential parts of Islamic culture and teachings of Prophet and which are more or less forms of oppression whose maintenance is not directly based on Qur'an but serve the interests of patriarchy and are therefore validated as part of Islam

Frank Martela's work centers on the challenges *Sharia* the Islamic law creates for equality of women within the societies and also the proposal of a way forward which in his view seems to be in the interpretation of the Qur'an and Shariah in new ways since the interpretations dominating society now are often discriminatory to women.

¹⁵Martela, F. (2006). *Sharia, Islamic Revival and Human Rights of Women-A Case Study of Malaysia*
Retrieved from <https://www.frankmartela.fi/Martela2006-IslamicLawAndHumanRightsOfWomenI.pdf> p.3

In his book **Gender Equity in Islam: Basic Principles**¹⁶ **Badawi Jamal** pointed out that equity is a better term for dealing with the gender issue in Islam, rather than equality. Nevertheless, equity in Islam means justice and equality in rights possibilities of variation on the question of rights in specific terms within the framework of balance and equality. This will provide a better way of dealing with the question of women's right in public and private spheres.

Badawi Jamal's work is limited to the presentation of the position and role of woman in society from an Islamic perspective and argued extensively for the equality of both sexes in spiritual, economic, social, and political aspects. Badawi's work is only a presentation of one side of the argument while this research will be a presentation and examination of both the arguments for and against the right of women to participate in the public sphere.

Safi, Louy M. in his article **Towards an Islamic Tradition of Human Right**¹⁷ explains the concept of Qawwamun and considers that all limitation placed on women in public sphere are due to the faulty interpretation of classical jurists and limitations connected to the social and political structures operating within the historical society of seventh-century Arabia, he maintains that Allah has given equal rights to women in maintaining public order as the Qur'an verse 9:71 says:

"The believers, men and women, are *Auliya* (helpers, supporters, friends, protectors) of one another, they enjoin (on the people) *Al-Marooof* (i.e. Islamic Monotheism and all that Islam orders one to do), and forbid (people) from *Al-Munkar* (i.e. polytheism and disbelief of all kinds, and all that Islam has forbidden); they perform As-Salat (*Iqamat-as-Salat*) and give the Zakat, and obey Allah and His Messenger. Allah will have His Mercy on them. Surely Allah is All-Mighty, All-Wise. This verse gives equal responsibility to maintain public order and thus it can be deduced that both sexes have got equal rights to participate in the public sphere.

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¹⁶Badawi, J. (1995). *Gender Equity in Islam: Basic Principles* USA: American Trust Publications, p.11

¹⁷Safi, L. M. (2000), *Towards an Islamic Tradition of Human Rights*, American Journal of Islamic Social Sciences 18, no. 1 winter 34. no. 1.

Unlike Safi Louy M. work that is limited to the examination of the concept of Qawwamun: this research intends to examine the evidences being relied upon by scholars in their arguments for and against women's rights to participate in the public sphere

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In order to derive an understanding of the Quran that would be meaningful to women living in the modern era, **Wadud Amina** in her book **Qur'an and Woman, Rereading the Sacred Text from a Woman's Perspective**¹⁸ proposed a reading' of the Qur'an from within the female experience and without the stereotypes which have been the framework for many of the male interpretations, she argues further that the traditional *tafasir* were exclusively written by male and as a result women and women's experiences were either excluded or interpreted through the male vision, perspective, desire, or needs of woman.

Wadud A. observed that the redefinition of the word 'qawaam or protector' is crucial to define the space for women in private and public realm in the society. According to her the concept of male superiority is due to the fact that male-male experiences are looked upon as a norm while the female are looked upon in terms of their utility to men, which is primarily re-productive.¹⁹

On the interpretation of Quran 33:33, A. Wadud contends that the verse has been used to make the general rule that women are restricted from going out of their houses altogether. Instead of stressing the limitation of the 'going out' for the purpose of wanton display, it has been used to prohibit all going out. Women must remain indoors 'unless absolutely necessary, the specific characteristic of going out for wanton display that is prohibited is made into a general rule for all going out. While Wadud Amina's work is an analysis of the Qurānic text relevant to the issue of women generally this research work will only focus on the examination of the various interpretations given to the Qurānic verses relevant to the permissibility of women in the public sphere.

¹⁸Wadud, A. (1999). *Qur'an and Woman: Rereading Sacred Text from a Women's Perspective* New York: Oxford University Press, pp.70-71

¹⁹Wadud, A. Ibid at p.64

In Shahid Ayesha's article *The Socio-Legal Implications of Women's Work in the Informal Sector: A Case Study of Women Domestic Workers in Pakistan*²⁰ she is of the opinion that *hadith* literature and recorded stories of the life of the Prophet Muhammad (SAW) are replete with women leaders, jurists, scholars and women who participated in public life. Khadija, the first wife of the Prophet and the first convert to Islam, was a successful trader who helped the poor, freed slaves and spread the message of Islam. After her death, the Prophet married Ayesha Siddiqah, a formidable young woman who led a Muslim army into battle. She also contributed towards the collection of *hadith* as many of the *hadith* were reported by her.

Other women including Al-Shifa bint Abdullah was the chief inspector of the Medina market and Umm Waraqa bint Naulal was appointed as an Imam by the Prophet. These examples reflect that the wives of the Prophet and other Muslim women were dynamic, influential, and enterprising members of the community, and fully involved in Muslim public affairs. Shahid Ayesha extensively presented very solid historical evidence in support of Muslim women's participation in the public sphere however her work is one sided as it failed to present the argument against the involvement of Muslim women in the public sphere.

Orakzai Saira Bano in her journal write up **The rights of women in Islam: The question of 'public' and 'private' spheres for women's rights and empowerment in Muslim societies**²¹ takes the approach of understanding the dichotomy of 'public' and 'private' spheres in the lives of Muslim women and its impact on the question of women's rights and empowerment. In her view, the term 'private' sphere of life means the domestic sphere within the premises of house and family while the 'public' sphere is considered the social and political sphere for women in Muslim societies.

²⁰Shahid, A. (2009). '*The Socio-Legal Implications of Women's Work in the Informal Sector: A Case Study of Women Domestic Workers in Pakistan*', Law, Social Justice & Global Development Journal (LGD) retrieved from http://www.go.warwick.ac.uk/clj/lgd/2009_1/shahid p.18

²¹Orakzai S. B. (2014). *The rights of women in Islam: The question of 'public' and 'private' spheres for women's rights and empowerment in Muslim societies* Retrieved from [tps://islamhouse.com/en/books/896079/](https://islamhouse.com/en/books/896079/) pp42-51

This gendered division of society into public and private has a very serious influence on women's empowerment; it impacts their ability to participate in decision-making processes, to influence policymaking discriminating against them and to control the state institutions making decision about their role and life in the society. These divisions of spheres make human rights divisible, which they normally are not, the division of spheres not only stereotypes the role of women but also puts barriers and limits their ability in the society to perform as human beings. **Asghar Ali Engineer** in his book titled **The Right of Women in Islam**²² points that the word *Qawwam* should be understood in the proper social context, as in Arab society men were responsible for earning livelihoods and women handled domestic duties. Their particular social function in their own cultural contexts shows their functional superiority in that social order. He points out that in the verses revealed in Makkah, Allah has set universal criteria of 'piety' for superiority between men and women in the verse 49:13

He further stated that, the meaning of word *Qawwam* should be taken into the social context in which it was revealed. It was not a normative meaning that would have made it binding for all women for all ages and circumstances, he concludes by saying that women enjoy all their rights as individuals not merely by virtue of being mothers, wives or daughters, though such status would only be considered for the purpose of their inheritance and other legal matters. He asserts that the verse only shows functional superiority of men in that social order of Arabian society otherwise Allah would not have set criteria of superiority in the Qur'an as being pious. He points out that there is a tendency towards equality of sexes in the Qur'an, while biological differences do not mean unequal status for either sex. Biological functions must be distinguished from social functions.

When the Qur'an gives men preference over women, it clarifies that it is not due to any inherent physical weakness of female sex, but due to the social context of the Arabian society. He further

²²Engineer, A. A. (1992). *The Rights of Women in Islam*, London: C. Hurst, p.46

remarked that the Qur'anic injunction gives equal rights to women; it is the Muslim society which has suppressed these equal rights for women we must give these Qur'anic rights to women, for reasons of strategy, gradual process needs to be adopted. However the Qur'an has clearly given equal rights to women already which can play an important role in achieving the goal of empowerment Asghar's work is centered on the rights of women generally especially her right to equality and freedom from discrimination on the basis of gender, the work did not single out or present any discussion on women's right to work.

Whilst there is a large literature dealing with the concept women's right in the light of Islamic law and also the roles of women in Muslim societies, separates literature dedicated exclusively to the topic women's right to employment/work outside the home are not readily available, the subject is usually discussed not necessarily in detail under the theme women's right generally. This therefore leaves out literature gap calling academic research of this nature such that this gap may be bridged and literature enriched.

1.9 Organizational Layout

This research work consists of five chapters, chapter one is introductory in nature and it commence by introducing the chosen research area by way of background to the study. Other issues dealt with in chapter one are, statement of the problem, research questions, aims and objectives of the research, also the scope and limitation, justification as well as the methodology to be adopted in the course of this research work. The chapter concludes by reviewing some of the literatures consulted for the purpose of this research work.

The second chapter is devoted to an overview of the concept women's right under Islamic law focusing on the status and position which Islamic law places the woman, looking at how similar or different is that position from the spirit of the time which was dominant when Islam was revealed.

The chapter also discussed the status of women in ancient civilizations in comparison with the rights which were finally gained by women in recent decades.

Chapter three is basically on the presentation of the various arguments; the chapter highlights arguments for and against women's right to employment/work and also the basis for the various opinions. Chapter four analyzed the various opinions presented under chapter three in the light of Quran and *hadith* to find out the appropriate position under Islamic law, chapter five is the concluding chapter. Under this chapter the research work is summarized, observations made and finally the chapter is roundup with workable recommendations.

CHAPTER TWO

RIGHTS OF WOMEN UNDER ANCIENT CIVILIZATION AND ISLAM

2.0 Introduction

This chapter explores the position of women under Islamic law as it relates to women's right, with the objective of providing a fair evaluation of what Islamic law contributed toward the restoration of women's dignity and rights. In order to achieve this objective, it is relevant to review briefly how women were treated in general in previous civilizations and religions, especially those which preceded Islam. Thus, the chapter starts with a brief survey of the status of women in ancient civilizations, in order to draw a general picture regarding the way women were viewed by major religions and ideologies that have a great influence in the life of humanity. By doing so, we can have a historical as well as analytical framework through which we can have a better understanding of women's rights in Islam.

2.1 Women in Ancient Civilizations

2.1.1 Women in the Sumerian and Babylonian Societies

In the Sumerian society which was the southern-most region of ancient Mesopotamia (modern-day Iraq and Kuwait) and which is generally considered the cradle of civilization.¹ History reveals that women suffered greatly from injustice, oppression and from the loss of her simplest rights. The Sumerians regarded man as the ever to be obeyed master, and a woman could do nothing but submit to him and show absolute obedience to his orders and desires.² It was even his right under certain circumstances to kill his wife or to sell her as a slave in order to pay his debt, because according to the Sumerian philosophy, woman was regarded as one of the

¹Kramer, S. N. (1988). *History Begins at Sumer*, Pennsylvania: University of Pennsylvania Press,. Retrieved from <http://www.ancient.eu/sumer/pp.xix-xxi>

²Akef, M. (2004). *They Ask Thee About Women*, 1st Ed, Cairo: Egypt. Safeer International Publishing P.13

possessions of man,³ this impression explains the practice of the Sumerians whereby if a man murdered a woman, instead of punishing him as the culprit/offender: his wife was put to death⁴

2.1.2 Women in the Greek Society

The Athenian showed great injustice and regression in establishing the status of woman in Greek society,⁵ the Greek civilization has been regarded as the most glorious of all the ancient civilizations.⁶ Under this very glorious system, women were looked down upon morally as well as socially, and she had no legal or political rights.⁷ According to the Greek mythology, the first woman created on earth was Pandora, and she was the source of all human ills and misfortunes.⁸ Greeks regarded woman as a sub-human creature whose rank in society was in every way inferior to that of man.⁹

Women in Greek society remained incapacitated and were deprived of all her rights, she could not be educated, she could never conclude any contracts or borrow money except a trivial sum, she could not inherit or own land¹⁰ and she was not entitled to bring cases to court. The Greeks even considered the act done by man while being prompted by a woman as legally null. Her purpose in life was to serve and entertain man, and being a means for reproduction and giving birth to children.¹¹ If she was unable to get pregnant, she was considered to be cursed by the gods.¹²

³Akef, M. Opcit note 2 at p14

⁴Mohsin, S. H. (2014). *Islam facts vs. fiction tearing the veil of misconceptions*, Jayanagar: Bangalore Published by salaam centre P. 154

⁵Akef, M. Opcit note2 at p.14

⁶Maududi, A. A. (1939). *Purdah and The Status of Women in Islam* P.7

⁷Just, R. (1989). *Women in Athenian Law and Life*, London: Rutledge Publishers p.11

⁸Reeder, E. D. Ed. (1995). *Pandora: Women in Classical Antiquity*, Baltimore and Princeton: The Walters Art Gallery in association with Princeton University Press. P.49

⁹Kramer, S. N. Opcit note1 at p14

¹⁰Opcit note 7

¹¹Akef, M. Opcit Note 2 at p14

¹²Sealey, R. (1990). *Women and Law in Classical Greece*. Chapel Hill: University of North Carolina Press p.146

2.1.3 Women in the Roman Society

The Romans were greatly influenced by the attitude of the Greeks for they inherited the ancient Greek civilization and philosophy. Thus, a woman's status in the Roman society mirrored the common beliefs that prevailed amongst them that woman was inferior to man, based on her physiological structure and her innate nature. Thus, she has to be kept under man's authority and at his service.¹³ Their social traditions recognized man as the chief of the family unit, possessing full authority and power over the members of his family; so much so that he could take the life of his wife or daughter.¹⁴ Women in the Roman society were deprived of exercising all political rights. Even in the religious domain, the Romans believed that the masters of the family should observe religious acts on behalf of the whole family.¹⁵

Woman in Roman society was forced against her will to get married typically at a very young age¹⁶ and subsequent upon marriage, the guardianship of a woman transferred from her father to the hands of her husband, whereby all the ties that bonded her with her original family were severed. Legally, she acquired the status of her husband's daughter.¹⁷ And all her property became her husband's. When marriage is dissolved, women had no legal rights to their children.¹⁸

2.1.4 Women in the Indian Society

Women in the Indian society suffered severe discrimination. She was considered as the source of all evils and inferior to man in creation, since man had been created first. They claimed that when *Twashtry*¹⁹ intended to create woman, he discovered that all the substance of creation were exhausted while fashioning man and nothing remained of solid substance. Confronting this

¹³Akef, M. Opcit note 2 at p14

¹⁴ Shelton, J. (1988). *As the Romans Did*, New York: Oxford University Press, p.18

¹⁵Opcit Note 7 at p.15

¹⁶Shelton, J. (1988). *As the Romans Did*, New York: Oxford University Press, p.37

¹⁷Akef, M. Opcit note 2 at p14

¹⁸Lefkowitz, M. R. and Fant, M. B. (1992). *Women's Life in Greece and Rome*, Baltimore: USA. John Hopkins University Press, p.23

¹⁹The divine creator

problem, *Twashtry* had to create woman from the remnants and waste left over from the previous creation.²⁰

Women in Manu's teachings are even denied the right to worship Hindu gods in their own name, rather they must pray in their husbands' names, no sacrifice is allowed to women apart from their husbands, no religious rites, no fasting.²¹

In the law of Manu, three persons, a wife, a son and a slave are declared by law to have in general, no wealth of their own as this category of people are not entitled to possess, the wealth, which they may earn, is regularly acquired for the man to whom they belong,²²

The Indian women do not seem to have a personality of their own, they are just attached to man, it was their practice that woman should always be monitored by man; first by her father, then her husband, and lastly her son.²³ A wife should also address her husband with submission; she should glorify him and never call him by his name but by saying things like, my lord, my master, even more by saying, my god, if they were walking in public, she should maintain a distance behind him. Moreover she would eat only the leftovers of her husband and children. If her husband died, she should follow him.²⁴ Hence, the tradition of *sati* burning widows in the places where their husbands had been buried was established. The virtuous widow ought to not long for life after the death of her husband, but she ought to proudly step into the fire after him.²⁵

2.1.5 Women in the Judeo-Christian Tradition

The Judeo-Christian conception of women has been poisoned by the belief in the sinful nature of Eve and her female offspring women were regarded as mothers of all evils, by virtue of Genesis 2:4-3:24. The story of Adam and Eve was elucidated to mean that the wife made him sinned. Eve

²⁰ Akef, M. Opcit note 2 at p14

²¹ Wilkins, W. J. (1975). *Modern Hinduism*. London: p. 181

²² Buhlerg, G. (1982). *The Law of Manu. Motilal Banarsidass*: Delhi, p.326, Chapter VIII, verse 416.

²³ Al-Kahtany, A. H. (2012). *Women's Rights: A Historical Perspective*; Second Edition, P.6

²⁴ Maududi, A. A. Opcit note

²⁵ Maududi, A. A. Opcit note

was blamed as the one who persuaded Adam to eat from the forbidden tree with the result that Adam and his progeny were banished from paradise. This sin of disobeying the orders of God has resulted in what is known as the Original Sin and the Christian dogma of redemption through Christ, the savior.”²⁶

Furthermore Jewish laws and regulations concerning the education of women are extremely restrictive as according to the laws women were not allowed to study even the religious texts. The heart of Judaism is the Torah However, according to the Talmud; women are exempt from the study of the Torah.²⁷

In terms of marriage the Judeo-Christian tradition virtually extends the leadership of the husband over the family into ownership of his wife. The Jewish tradition regarding the husband's role towards his wife stems from the conception that he owns her as he owns his slave.²⁸ This conception has been responsible for denying the wife any control over her property or her earnings. As soon as a Jewish woman got married, she completely lost any control over her property and earnings to her husband. Hence, marriage caused the richest woman to become practically penniless.²⁹

On the issue of divorce, Christianity abhors divorce altogether. The New Testament unequivocally advocates the indissolubility of marriage. It is attributed to Jesus to have said, "But I tell you that anyone who divorces his wife, except for marital unfaithfulness, causes her to become adulteress, and anyone who marries the divorced woman commits adultery"³⁰. Judaism, on the other hand, allows divorce even without any cause. The Old Testament gives the husband

²⁶Al-Kahtany, A. H. (2012). *Women's Rights: A Historical Perspective* Second Edition, P.9

²⁷Denise L. C. (1987). "Judaism ,in Arvind Sharma, ed., *Women in World Religions* Albany: State University of New York Press, p.197

²⁸Epstein, L. M. (1973). *The Jewish Marriage Contract* New York: Arno Press, p. 149

²⁹Swidler, L. J. (1976). *Women in Judaism: the Status of Women in Formative Judaism*. Metuchen: New Jersey. Scarecrow Press, p. 142

³⁰ Matthew 5:32

the right to divorce his wife even if he just dislikes her. On the contrary, wives cannot initiate divorce under Jewish law.³¹

2.1.6 Women in the Arabian Peninsula Prior To Islam

The inferior view of women that characterized much of the world was also thriving in the pagan societies of Arabia prior to the advent of the Prophet Muhammad.³² The pre-Islamic Arabia was hard on women. Men never considered them as their equals not to talk of treating them well. The general atmosphere was that men dominated everything, women were not allowed in decision-making of the day. The hardheartedness of the Bedouin Arabs came to bare on female infanticide. Female children were regarded as liabilities; they were seen as not being beneficial in fighting wars. In fact, they considered it a disgrace for their wives to bear female children. The *Qur'an* narrates this thus:

“And when the news of (the birth of) a female (child) is brought to any of them, his face becomes dark, and he is filled with inward grief! He hides himself from the people because of the evil of that whereof he has been informed. Shall he keep her with dishonour or bury her in the earth? Certainly, evil is their decision”³³

There were different instances of how young female children were buried alive. This was a common practice during Jahiliyya. The Quran severely condemned this heinous practice in several verses.³⁴ In the realm of economic transactions, women were seen as economic burdens, they were not given rights to own properties, as they were themselves chattels to be possessed by men. They had no rights to inherit properties of their deceased parents let alone relations no matter how close. The pagan Arabs before Islam considered a widow as part of her husband's property to be inherited by his male heirs and she was, usually, given in marriage to the deceased

³¹ Abdel, A. S. (2015). *Women in Islam versus Women in the Judaeo-Christian Tradition. The Myth and the Reality* available at www.sultan.org/articles/women.html p.25

³² Mohsin, S. H. *Op cit* note 4 at p15

³³ (Q16:58-59)

³⁴ (Quran 16:59, 43:17, 81:8-9).

man's eldest son from another wife. The Quran scathingly attacked and abolished this degrading custom: "And marry not women whom your fathers married-Except what is past-it was shameful, odious, and abominable custom indeed"³⁵.

2.2 The Role and Rights of Women under Islamic Law

It is evident that civilizations earlier than Islamic civilization relegated women to a very low status. The rules that governed the rights of women were customs that were rarely challenged. In this context, the advent of Islam appears to confront such traditions in a dramatic way; one of the immediate tasks before the nascent Islam was to restore the original dignity and honour of woman in a world that had suppressed her for centuries.

Islamic law abolished female infanticide, conceived of the female an equal soul to a male, responsible only for her own beliefs and actions, rejected the idea of blaming the first woman for all human sins, gave her the legal and political rights of citizenship, legalized a daughter's share in her father's property, wives share in their husband's income, gave her the right of consent to a marriage, restricted polygamy, and made duties of husband towards wives addressable in courts.

The rest of this chapter outlines the position of Islam regarding the status of woman in society from its various aspects - spiritually, socially, economically and politically, in order to provide a fair evaluation of what Islamic law contributed toward the restoration of woman's dignity and rights.

2.2.1 Spiritual Rights of Woman

The Quran did emphasize the issue of faith and thereafter directed men to the equality of all people before God with superiority lying in piety and not in sex or nationality; as the first step, Islam calls on all mankind; men and women to worship their Lord, it establishes the fact that they all have the same origin.

³⁵ Quran 4:22

This is encapsulated in the following verse.

“O mankind! Be dutiful to your Lord, Who created you from a single person (Adam), and from him (Adam) He created his wife (Hawwa (Eve)), and from them both He created many men and women”³⁶

By this, a message is passed that men and women are from the same parents, thus it is not right to discriminate against each other. In another vein, the *Qur'an* explains the objects of the differences in sex and tribes thus:

“O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily, the most honourable of you with Allah is that (Believer) who has At-Taqwa”³⁷

These Qurānic verses call on all mankind to fear the Lord who created them from the same source without anybody having superiority over the other. Thereafter,

The Quran provides clear-cut evidence that a woman is on the same pedestal with a man in spiritual rights. She is enjoined to serve her Lord to the best of her ability. Her husband has no right to debar her from her religious obligations. They are both accountable to Allah (SWT) in this regard.³⁸ She is entitled (in full measures) to rewards for all good acts. There is no discrimination as to the amount of rewards due to a man or woman for carrying out good deeds.

The Qur'an states:

“Whoever works righteousness, whether male or female, while he (or she) is a true believer (of Islamic Monotheism) verily, to him We will give a good life (in this world with respect, contentment and lawful provision), and We shall pay them certainly a reward in proportion to the best of what they used to do (i.e. Paradise in the Hereafter)”³⁹

³⁶ Qur'an 4: 1

³⁷ Qur'an 49:13

³⁸ "Every soul will be (held) in pledge for its deeds" (Quran 74:38)

³⁹ Quran 16:97, and also Q 4:124

“Verily, the Muslims (those who submit to Allah in Islam) men and women, the believers men and women (who believe in Islamic Monotheism), the men and the women who are obedient (to Allah), the men and women who are truthful (in their speech and deeds), the men and the women who are patient (in performing all the duties which Allah has ordered and in abstaining from all that Allah has forbidden), the men and the women who are humble (before their Lord Allah), the men and the women who give Sadaqat (i.e. Zakat, and alms, etc.), the men and the women who observe Saum (fast) (the obligatory fasting during the month of Ramadan, and the optional Nawafil fasting), the men and the women who guard their chastity (from illegal sexual acts) and the men and the women who remember Allah much with their hearts and tongues (while sitting, standing, lying, etc. for more than 300 times extra over the remembrance of Allah during the five compulsory congregational prayers) or praying extra additional Nawafil prayers of night in the last part of night, etc.) Allah has prepared for them forgiveness and a great reward (i.e. Paradise)”⁴⁰

The verses make it clear that Muslim women stand on the same level with Muslim men and that they can attain to all those spiritual heights to which men can attain. At several places in the Quran, believing men and believing women are addressed in the same language and are made equally subject to the same commandments and entitled to the same rights and privileges. And again Allah SWT said in the Holy Quran: "And Allah will pardon (accept the repentance of) the true believers of the Islamic Monotheism, men and women. And Allah is Ever Oft Forgiving, Most Merciful"⁴¹

2.2.2 Economic Rights of Woman

According to Islamic law men and women are equal with regard to economic rights, unlike other civilizations under which women were deprived any economic right whatsoever simply because they were women, the woman under Islamic law is granted an independent legal personality, thus her right to own and keep property, This right undergoes no change whether she is single or married. Her wealth is her own belonging. Neither the husband nor the family can confiscate her property. It is also noteworthy that such right applies to her properties before marriage as well as to whatever she acquires thereafter.

⁴⁰Qur'an 33:35 see also Qur'an 3:195, Qur'an 4:124 and Qur'an 57:12

⁴¹ Qur'an 33:73

A woman is so dignified by Islam that contrary to the practice in other civilizations like the Indian and Jewish cultures, she does not need to present gifts in order to attract potential husbands. It is the groom who must present the bride with a marriage gift. This gift is considered her property. Upon marriage the woman is fully entitled to her dowry payable by the husband she is also at liberty to determine what will constitute her dowry and the dowry is to be in the possession of the woman. Unlike what was obtainable in the Jahiliyya period and other civilizations her father and her relatives have nothing to do with it and she has the right to dispense with such property as she deems fit.⁴² Furthermore; the Quran explicitly prohibits the divorcing husbands from taking back their marriage gifts no matter how expensive or valuable these gifts might be:

“But if you intend to replace a wife by another and you have given one of them a Cantar (of gold i.e. a great amount) as Mahr, take not the least bit of it back; would you take it wrongfully without a right and (with) a manifest sin?”⁴³

Under Islamic law the woman is also not bound to spend her wealth on the family. It is part of her financial right that husband provides food, clothing and shelter for her⁴⁴. Even if she is richer than the husband, she is not bound by Islamic law to spend on the family. However, she can out of her own volition participate in the financial maintenance of the home. Even in the event of divorce, the economic burden remains on the man, he is to pay the deferred dowry and the alimony during the prescribed waiting period and also take care of the children’s expenses.⁴⁵

Contrary to the cultural norms whereby the woman was prevented from inheriting and regarded as chattel also to be inherited, under Islamic law a Woman has the right of inheritance. She is allotted a specific share.

“There is a share for men and a share for women from what is left by parents and those nearest related, whether, the property be small or large a

⁴² Qur'an 4:4

⁴³ Quran 4:20

⁴⁴ Qur'an 4:34

⁴⁵ Qur'an 65:6

legal share”⁴⁶

2.2.3 Social Rights of woman in Islam

With regard to education, both women and men have the same rights and obligations; this is clear in Prophet Muhammad's saying: "Seeking for knowledge is mandatory on every believer"⁴⁷

Another golden right Islam grants a woman is that of spouse selection. Islam distinguishes between when she is a virgin and a widow. In the case of the former, due to her inexperience the parents have more active roles to play but must still seek her consent for final decision. She can reject the choice of her parents if she does not like the suitor. There is no compulsion in Islamic marriage. According to Islamic Law, women cannot be forced to marry anyone without their consent. Narrated Khansā' bint Khidam Al-Anariya that her father gave her in marriage when she was a matron and she disliked that marriage. So she went to Allah's Messenger and he declared that marriage invalid.⁴⁸

However, the parents may exercise the power of *ijbar* (judiciously compelling) on their daughter if she is immature as to know the right choice for herself. As for a widow or divorcee Islamic law does not allow anybody to choose her husband for her, her consent must be sought.

Furthermore Dowry is one of the basic obligations in any legitimate marriage under Islamic legislation. Contrary to what was obtainable under other civilizations discussed, it is the brides right as stipulated in Islamic law to demand for whatever she wants from her suitor as her dowry. A man cannot trap a woman as he would an animal. He has to follow due process, among of which is that he must give her the *Mahr* (nuptial gift or dowry). The Qur'an declares thus: " And

⁴⁶ Quran 4:7 see also Q4:11 -12

⁴⁷ Ibn Majah

⁴⁸Khan, M. M. (1997). *The Translation of the Meanings of Sahih Al-Bukhari Arabic-English*. Riyadh: Saudi Arabia Darussalam Publishers. Volume 7, Hadith no 5138 P.59

give to the women (whom you marry) their Mahr (obligatory bridal money given by the husband to his wife at the time of marriage).⁴⁹ Also the concept of *Mahr* in Islam is neither an actual or symbolic price for the woman, as was the case in certain cultures, but rather it is a gift symbolizing love and affection.

Subsequent upon marriage the woman is entitled to kind treatment by the husband as is emphasized by the Quran and is strongly recommended by the Prophet (peace and blessings be upon him) The Quran states: And live with them honourably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good." ⁵⁰

Prophet Muhammad (peace and blessings be upon him) said: ‘The best of you is the best to his family and I am the best among you to my family’ The most perfect believers are the best in conduct and best of you are those who are best to their wives.⁵¹

Another right she enjoys is to retain her maiden name. Marriage in Islam does not erode away the identity of the woman. She remains the daughter of her father as well as a wife to her husband. She has right to her husband as he has towards her. Where a man has more than one wife he must do justice amongst them.⁵² As the woman's right to decide about her marriage is recognized, so also her right to seek an end for an unsuccessful marriage is recognized, Islamic law also grants woman the right to seek for divorce from her husband, the woman cannot be forcibly kept in wedlock by the husband if he does not divorce her willingly, she can seek divorce by legal means.⁵³

The divorced woman during waiting period is entitled to the husband’s financial support. Prophet was clearly told in the Quran:

“O Prophet (SAW)! When you divorce women, divorce them at their Iddah (prescribed periods), and count (accurately) their Iddah (periods). And fear Allah

⁴⁹Qur'an 4:4

⁵⁰ Qur'an 4:19

⁵¹ Ibn-Hanbal, No.7396

⁵² Qur'an 4: 3

⁵³ Qur'an 2:229

your Lord (O Muslims), and turn them not out of their (husbands) homes, nor shall they (themselves) leave, except in case they are guilty of some open illegal sexual intercourse. And those are the set limits of Allah. And whosoever transgresses the set limits of Allah, then indeed he has wronged himself.”⁵⁴

Furthermore the divorced woman is not only entitled to maintenance but also child support.⁵⁵

The husband must pay for the breastfeeding of the child and other services rendered. The child will be in her custody till it attains the age of weaning and even beyond. This surely guarantees the right of the child to breastfeeding and proper growth. Even if the wife refuses to breastfeed, the husband has to look for a woman who will do that and pay accordingly.⁵⁶ Islamic law also grants the divorced woman access to her child, unlike what prevails in other cultures whereby the wife may be denied such access.

2.2.4 Political Rights of Women

Any fair investigation into the history of the Islamic civilization will surely find a clear evidence of woman's equality with man in what we call today "political rights".

This includes the right of election as well as the nomination to political offices. It allows her freedom of expression in a polite manner. She can express her views and also criticize. It also includes woman's right to participate in public affairs. Both in the Quran and in Islamic history we find examples of women who participated in serious discussions and argued even with the Prophet (peace and blessings be upon him) himself.

” Indeed Allah has heard the statement of her (Khawlah bint Tha'labah) that disputes with you (O Muhammad SAW) concerning her husband (Aus bin As-Samit), and complains to Allah. And Allah hears the argument between you both. Verily, Allah is All-Hearer, All-Seer”⁵⁷

Also during the Caliphate of 'Umar Ibn al-Khattab, a woman argued with him in the mosque,

⁵⁴ Quran 65:1

⁵⁵ See Qur'an 2:241 and Qur'an 2:233

⁵⁶ See Qur'an 2:233

⁵⁷ Qur'an 58:1

proved her point, and caused him to declare in the presence of people: "A woman is right and 'Umar is wrong."⁵⁸

Although not mentioned in the Quran, one Hadith of the Prophet is interpreted to make woman ineligible for the position of head of state. The Hadith referred to is roughly translated: "A people will not prosper if they let a woman be their leader."⁵⁹ This Hadith is contested by scholars, though the majority lean towards a ruling limiting Muslim women from being a Caliph. This limitation, however, has nothing to do with the dignity of a woman or with her rights, it is rather related to the natural differences in the biological make-up of men and women.

2.3 Conclusion

In conclusion it can be seen that the status of women in pre-Islamic Arabia and other parts of the world was very weak. The society was unfair to the plights of women as human beings and as a *bona fide* member of the society, they were at the mercy and caprice of the men-folk and were considered as no better than chattels or even slaves, with very few rights whatsoever. Islam served to correct some prior abuses and acknowledged the rights of women lifting them to a status previously unknown. Islamic law is a unique legal system in this respect to endow woman with equal rights and to put her on the same level with man in many respects.

Muslim women are conferred the economical, political and social rights, which man enjoys, and she is entitled to all the privileges bestowed upon man. Beside worldly matters, women are also equal to men in the spiritual sense, as according to the provisions of the Quran they are from the same origin as men and given the same reward and punishment for their acts and omission.

After the general discussion on women's right in Islam as presented under this chapter, the research in the next chapter will be streamlined to discuss the principal theme of this research

⁵⁸Cited in Reda, N. (2016). *Women in the Mosque: Historical Perspectives on Segregation* Retrieved from <https://www.inclusivemosqueinitiative.org/downloads/Reda-womeninmosques.pdf> p.94

⁵⁹Bukhari cited in Syed, M. A. (2004). *The Position of Women in Islam A Progressive View*. Albany: State University of New York Press, p.123

which is to present the contentions of both the groups, the rejectionists and the promoters of the economic participation of women specifically women's right to work outside the home, with a presentation of their interpretations of the concerned Islamic texts on those critical and popular issues which are dominant under this subject.

CHAPTER THREE

CONTROVERSY ON MUSLIM WOMEN AND RIGHT TO WORK OUTSIDE THE HOME

3.0 Introduction

Participation of Muslim women in the public sphere particularly her work outside the home constitutes one of the most controversial debates among Muslim scholars. In this chapter, the research will present the views of both the category of Muslim scholars who are against as well as those in favour of the right of the Muslim women to work outside the home.

3.1 Arguments against Muslim Women's Right to Work outside the Home

3.1.1 Total Exclusion of Women from Public Affairs: Some Muslim scholars argue that the Qur'an has categorically forbidden women to participate in public affairs and has enjoined them to stay in their homes¹. They quote the following Qur'anic verses in this connection:

“And stay in your houses, and do not display yourselves like that of the times of ignorance² And when you ask (his wives) for anything you want, ask them from behind a screen, that is purer for your hearts and for their hearts”³

This position was put forward by Sheikh Ibn Baz⁴ in a *fatwa* delivered by him in 1985 as a response to the possibility of employing women in the government offices as clerks and in support management staff positions, when he said:

“It is known that a woman's decision to work in the field of men leads to interaction (*lkhtilat*) which is a very dangerous matter that has its own grave results, bitter fruits, and dangerous consequences. It is also contrary to *shariah* (legal) clauses which order woman to stay in her home and perform the jobs which concern her in her home and the like where she is far from interaction with men. It is also contrary to plain, well, referenced legal (*shariah*) evidence which prohibits a man from being alone (*khalwah*) with a non-

¹ Maududi, A. A. (1980). *Human Rights in Islam* London: Islamic Foundation, p7.

² Qur'an 33:33

³ Qur'an 33:53

⁴ Bin Baz, A. A. (1994). The Danger of Woman's Participation in Man's Field of Occupation. <http://www.fatwaislam.com/fis/index.cfm>

related woman and from looking at her and which ban all means which lead to falling into what God has prohibited. God said, stay, Ye women, in your homes; do not exhibit like pre-Islamic women”⁵

Sheikh Bin Baz’s views reflect the notion that the engagement of women in employment outside the home amounts to involvement in the “male’s domains” furthermore he argues that such engagement separates the woman from their fitra (innate natures), which eventually leads to women’s misery. In his view, such an occurrence poses a danger to Muslim society as it leads to moral decay. He asserted that taking the woman out from her home, “her kingdom”, means taking her out from her innate nature and character which Allah has moulded her into. He viewed the involvement of women in men’s domains not only a major crime on her but also a crime against the young generation, males and females, who lose proper education, compassion, and kindness.⁶

Like Sheikh Bin Baz and Mohammad Imran also relied on the provision of Qur’an, 33:33 to support his argument for the exclusion of women from the public sphere. Based on his interpretation of the above ayah of the Quran; Imran forbids women not only from working outside but also forbids them from walking in streets, going to cafes and even going to mosques”⁷

Besides the above Quranic verse Imran also quotes certain Prophetic traditions to justify his position on the subject. Two such Prophetic traditions he cited are these: 1) Wine is the means of amassing offence, women are the snares of the devil, and love of the world is the beginning of every sin;

2). Put women in an inferior position since Allah has done so,⁸ commenting on the above *Ahadith*, Imran contended that in the interest of decency and maintenance of equilibrium in the

⁵Cited by Al-Dehailan, S. S. (2007). *The participation of women in Saudi Arabia's economy: obstacles and prospects*, Durham theses, Durham University. Retrieved from Durham E-Theses online: <http://etheses.dur.ac.uk/2597/> p.34

⁶ Bin Baz, A. (1985). “*Judgment about women’s work*”, cited in Yusuf, S.(2005) *Women, work, and Islam in Arab societies*. Women in Management Review Vol. 20 No.7 p.503

⁷Imran, M. (2000). *Ideal Woman in Islam*, Delhi: Markazi Maktaba Publishers, ,pp.110-111

⁸Imran, M. Ibid, p.85.

society women should not be allowed to have prominence in those spheres where Allah has assigned them an inferior position; otherwise there will be moral chaos, social imbalance and corruption as is being witnessed today because of the prominence of women in economic, political and social pursuits.⁹

Imran has thus closed all the avenues for the socio-economic participation of women degrading women as the “snares of the devil” the causes of attraction, temptation and seduction. Thus he takes an extreme stance against the participation of women in society.

Writing on the meaning of Qur’an 33:33, Mufti Muhammad Taqi Usmani is of the opinion that Allah Almighty addressed the wives of the Prophet and through them by extension, all the believing women. in his view the commandment “ And abide in your houses.” does not only mean that women should not move out of their homes unnecessarily, it also points towards a fundamental reality that Allah Almighty created woman to stay at home and take up responsibilities there.¹⁰

Mufti Muhammad Taqi Usmani argues further that women have been created for the most important task of maintaining and strengthening the family system. If both man and woman go outside and earn, then the home is not properly looked after and the family system weakens and even breaks.

Another scholar Sheikh Saleem al-Hilalee interpreted the provision of Quran 33:33 as affirming the categorical exclusion of the Muslim woman from the public space and consequently prohibiting her from working outside the home. The sheik emphasized that the Muslim woman has an important role in building a successful and healthy relationship in her home and that is the reason why Allah orders, the Muslim woman, in the verse to stay in her home.

⁹Imran, M. Opcit pp. 85-86.

¹⁰Usmani, M. M. T. (2014). *Women in Islam: Are they subservient to men?* Translation by Adeel Tariq Khan Retrieved from www.salafipublications.com p.28

He argued further that the verse implies that the best place and the place that the Muslim woman can reach the pinnacle of her relationship with Allah are by being a good Muslimah in her home because the Muslim woman is responsible for her home and she will be asked and questioned about what she has done in fulfilling her responsibility and duty in the home.¹¹

In cementing his argument for seclusion of women from the public space Sheikh Saleem al Hilalee opined that in the event a Muslim sister possesses certain skills and certain abilities, it is not compulsory for her to use these abilities, unless if she has the ability to work from the home, she can invite other sisters to her home, teach them and things like this. This would be best for her.¹² Also writing on the same point Abu Ala Moududi stressed that; Women are not considered equal to men and are not given right to be in public sphere, which is confined to men due to their inherent superiority over women¹³

3.1.2 Familial Responsibility of Women: one common argument of the scholars is that the most important responsibility of a woman is related to the institution of family; in order to perform her natural position which God has prepared her for and formed her for physically and mentally. If a woman leaves the home in pursuit of outside employment she would not be in position to perform her primary role in the family in an efficient manner.

This argument is on the premise that domestic services are incumbent upon women in marriage, writing on this point Abdur-rahman Abdul-Khaliq argued that charging women to work outside the home in addition to their natural duties of pregnancy, child birth, and breast feeding would be an obligation above what she could bear and it will amount to injustice to the women.

Furthermore the woman's work outside the home would defiantly be at the expense of her

¹¹Al-Hilalee, S. (2016). *The Woman's Role in Building the Successful Household* Transcribed by Abu and Umm Mariam Retrived from www.salafipublications.com p.2

¹²Al-Hilalee, S. ibid p.8

¹³Maududi, A. A. (1980). *Human Rights in Islam* London: Islamic Foundation,. p 7.see also Umri, S. J.(1996). *The Rights of Woman: An Appraisal* Delhi: Markazi Maktaba Islamic, p. 82

natural duties and a clear deviation from what Allah has made a natural state among His creation.¹⁴

Writing on the same point also, Abdul Ghaffar Hassan a scholar of Hadith and member of the Islamic Ideological Council in Pakistan contends woman's biological make-up has made her excel as the homemaker. She alone can be impregnated, carry and deliver the child, and then suckle the baby. Her gentle, caring and self-sacrificing temperament is best suited to bringing up children and looking after the home.

To say that she should also earn a living is an unacceptable injustice and implies that everything she does for her home and children is worthless and needs to be supplemented by an outside cover. A woman already has to play in society a great and noble role as mother of a new generation, a role for which no man can claim the honors.¹⁵

3.1.3 Maintenance is a husband's responsibility

Another common argument of the scholars is that Allah lifted from women the obligation of working to provide and support themselves and her family. He made this obligation particular for men alone. Allah commanded men to be responsible for the care of women during all stages of their life. While she is a child, she is under the care of her father¹⁶. This responsibility is not lifted except by her marriage or (his or her) death, nor does it cease after she reaches a certain age.

¹⁴Abdul-Khaliq, A. (1995). *The Wisdom behind The Islamic Laws Regarding Women*. Prepared for the United Nation Fourth World Conference on Women, Beijing: China. Retrieved from www.islamhouse.com p.18

¹⁵ Hassan, A. G. (1996). *The Rights & Duties of Women in Islam*. 1st Ed, Riyadh: Darussalam Publishers & Distributors Saudi Arabia. p.9

¹⁶ Qur'an 2:223

After she marries, the responsibility falls on her husband so long as she is under his care due to the contract of marriage,¹⁷ if she has neither father nor husband, the responsibility of her care falls on her brother who assumes the role of the father when he is not present; and if she has no brother then whoever is her closest male relative (from whom she would inherit and whom would inherit from her) would assume the role of her father. If she has no male relatives, the obligation of her maintenance falls upon the state treasury (*bait-ul-mal*). The responsibility of her care is a communal obligation; if none fulfills that, all have sinned.

Abdur-Rahman ‘Abdul-Khaliq, observed that even if the woman is wealthy Islam has dropped from her the obligation of assuming care of anyone. With the presence of her husband or for that matter her parents. It is not required that she spend upon her children unless she seeks to do such as an act of righteousness, kindness and observing ties of the womb. She is not obligated to work in order to take care of herself or her children.

This lifting of the obligation of working for the purpose of providing for herself was in order to preserve her from being degraded; as many jobs that are sought to gain livelihood entail humiliation and hardship. Likewise this responsibility was lifted to preserve her from temptation and mixing with men and because this is from the specialization that Allah has made as a law for His creation.¹⁸

3.1.4 Women are a cause in the spread of unemployment

There is also the argument that unlike what is claimed, women’s work has no real value boosting the economy. Rather by competing with men for jobs outside the home; women are a

¹⁷ Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means.(Surah Al-Nisā': 34).

¹⁸ Abdul-Khaliq, A. Opcit note 14 at p.33

cause in the spread of unemployment. This is the opinion of Abdur-Rahman ‘Abdul-Khaliq in his view every woman that works outside the home is in most occasions a cause for denying an opportunity for a man who could work in her place. Moreover the man who takes the place of a woman in the household cannot substitute her in her natural duties.¹⁹

Abdul-Khaliq contends further that there is no economic, moral, or social value for women working in factories, armies, cleaning streets and airports, repairing trains, cleaning public restrooms, as a security guard, driving taxis, and all other occupations that humiliate women.²⁰

3.2 Arguments in Favour of Muslim Women’s Right to Work outside the Home

3.2.1 Islamic Law Does Not Prescribe Seclusion of Women

Those who endorse seclusion as a means of piety trace their contention to the provision of Qur’an in Surah al-Ahzab, the verse in context reads: “And stay in your houses, and do not display yourselves like that of the times of ignorance,....”²¹

In clarifying the meaning of this verse scholars refute the argument which suggested that the above verse has categorically forbidden women from participating in public affairs and has enjoined them to stay in their homes.

They asserted that this Qur’anic verse contain commandments which are addressed specifically to the wives of the prophet (PBUH) this group of jurists (Zeenat Kausar²², Fathi Osman²³,) cited the preceding verse of the same chapter to elucidate their point:

“O wives of the Prophet! You are not like any other women. If you keep your duty (to Allah), then be not soft in speech, lest he in whose heart is a disease (of hypocrisy, or evil desire for adultery, etc.) should be moved with desire, but speak in an honourable manner”²⁴

¹⁹ Abdul-Khaliq, A. Opcit note 14 at p.33

²⁰ Abdul-Khaliq, A. Opcit note 14 at p.33

²¹ Qur’an 33:33

²² Kausar, Z. (2002). *Woman as Head of State in Islam, A Study of a few Positive and Negative Arguments*. 1st Ed, Selangor: Malaysia, Ilmiah Publishers p.10

²³ Osman, F. (2016). *Muslim Women In The Family And The Society*, California: Minaret Publications, pp. 30-31

²⁴ Qur’an 33:32

Writing on this point Zeenat Kausar in her book argues that the provision of Quran 33:33 and also the preceding verses were categorically addressed to the wives of the Prophet (PBUH). Kausar explains further that in their capacity as the blessed wives of the prophet (SAW) it was essential for them to be more conscious about their dress, speech and social interaction with men so that other people should not be misled²⁵.

Again Kausar contends that the verses in question never meant that the blessed wives of the prophet are exempted from the mission of promoting virtues and prohibiting vices. Because there is overwhelming historical evidence to prove that the blessed wives of the prophet actively participated in the Islamic mission both inside and outside the house.²⁶

Fathi Osman also referred to Qur'an, 33:33 which is often cited to disallow women from any public role he firmly refutes the argument and contended that the provision of Q33:33 was a special rule for the Prophet's wives because of their special situation, as suggested clearly in the previous verse. "O wives of the prophet! You are not like any of the (other) women." (Q33:32).

He further cements his argument by relaying on other relevant verses of the Quran that provides for the observance of special restrictions by the wives of the prophet that are not applied to others women (e.g. Q33:30, 53).²⁷

According to these verses the Prophet's wives should not marry after the Prophet and they will face double punishment should they indulge in any sexual laxity while other believing women would face the punishment only once.

Furthermore it is clear from a number of *Ahadith* on the issue of women's public contributions, that the understanding of the Prophet and his companions of these verses (Q33:32-33) was not one that in anyway implied the seclusion from or non involvement in public life.

Even after the revelation of these verses the wives of the prophet went out for their needs, sometimes with him and sometimes without him.²⁸ As scholars discuss, this verse did not

²⁵Kausar, Z. Opcit note 22 at P. 36

²⁶Kausar, Z. Ibid

²⁷Osman, F. Opcit note 23 at P. 36

prohibit them from going out but merely prescribed the way they should conduct themselves when out of the home.²⁹ Also writing on the same point Ibrahim Yahya observed that:

“The argument that Muslim women’s unconditional confinement to their home constitutes greater piety is a view not held by the Qur’an, or by the example of the prophet’s companions, who used to participate in the public life despite being most pious generation of predecessors of the ummah”³⁰

Relying on the provision of Qur’an 4:15-16, Yahya Ibrahim argued further that the Qur’an only mentions restraint in the houses or domestic seclusion or confinement as a punishment for those guilty of “*faahishah*” (roughly translated as gross lewdness) and not as a general practice for all women.³¹

3.2.2 Islamic Law Stipulates Modesty and Not Segregation

Some scholars such as al-Qurtubi³² mentioned that though verse 33 of surah al-Ahzab was revealed specifically for the prophet’s wives, the moral guidelines for behavior in the public are also applicable to other believing women as they are not excluded from the Islamic codes of dress and conduct.

In fact they argued that all believing women are not allowed to go outside without following the etiquettes of dress and certain codes of conduct which are outlined in the Qur’an, the following Quranic verses are cited in this connection:

"And tell the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts, etc.) and not to show off their adornment except only that which is apparent (like palms of hands or one eye or both eyes for necessity to see the way, or outer dress like veil, gloves, head-cover, apron, etc.), and to draw their veils all over Juyubihinna (i.e. their bodies, faces, necks and bosoms, etc.) and not to reveal their adornment except to their husbands, their fathers, their husbands fathers, their sons, their husbands sons, their brothers or their brothers sons, or their sisters sons, or their (Muslim) women (i.e. their sisters in Islam), or the (female) slaves whom their right hands possess, or old male servants who lack vigour, or small children who have no sense of the shame of sex. And let them not stamp their feet so as to

²⁸ Sahih al-Bukhari, vol 4, no.2879 p.91

²⁹Tafsir Ibn Kathir, vol.7, Darussalam publishers Riyadh. P.679

³⁰Yahya, I. (2011). *Muslim Women in The Public Space; An Examination of "Purdah" or Seclusion and the Permissibility of Muslim Women In Public Places* Islamic Education Trust, Minna p.8

³¹ Ibid

³²Tafsir al-Qurtubi, vol, 14 Dar al-ihya al-Turath al –Arabi, 1985, p.179

reveal what they hide of their adornment. And all of you beg Allah to forgive you all, O believers, that you may be successful"³³

Also in another verse of the Qur'an Allah says:

"O Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks (veils) all over their bodies (i.e., screen themselves completely except the eyes or one eye to see the way). That will be better that they should be known (as free respectable women) so as not to be annoyed. And Allah is Ever Oft-Forgiving, Most Merciful" ³⁴

From the above verses scholars concur that along with the wives of the Prophet all other believing women are also not allowed to display their beauty to non muharam (men they may be able to marry) and that they should cover themselves properly, lower their gaze and maintain modesty. But they also assert that these etiquettes of dress and code of behavior do not forbid women to go outside the home. Women can participate in the outside world while following the norms of behaviour and dress as outlined in the Qur'an.

In fact some scholars such as Badamasiuy J. B. and Muhammad Sharif,³⁵ argued that these verses presupposes that women would come outside their houses for participation in the society, for which reason both men and women are commanded to lower their gaze.

Arguing along the same line Afzalur Rahman in his book³⁶ observed that Islam does not restrict the economic activity of women; what Islam restricts are those factors which might encourage or incite the spread of obscenity in the society and that if women take proper care of these things and observe shariah instructions they are not barred from engaging in any lawful activity outside their houses for Allah's messenger explicitly permitted these in the following words "O women you have been allowed by Allah to go out for your needs."³⁷

³³Qur'an 24:31

³⁴ Qur'an33:59

³⁵Badamasiuy, J. B. (2012). *Status and Role of Women Under the Shariah*, 1st Ed, Zaria: Nigeria, A.B.U Press, p.58

³⁶Rahman, A. (2013). *Role of Muslim Women in the Society*, 2nd Ed, Kuala Lumpur: Malaysia. Ilmiah publishers P.219-221

³⁷Sahih al-Bukhari, vol. 6 Hadith no. 318, cited in Yahya, I. (2011). *Muslim Women in The Public Space; An Examination of Purdah or Seclusion and the Permissibility of Muslim Women In Public Places* Islamic Education Trust, Minna p.2

Osman, M F. Also writing on the same topic opined that to meet up with the requirement of their social role women cannot avoid interaction with unrelated men and Islam does not permit any discrimination between men and women in the public sphere nor does it advocate segregation between them as it may be widely understood because of cultural practices or views. What Islam forbids actually is that a man and a woman cannot stay together in seclusion and privacy (khalwa), if they are not married to each other and a sexual relation between them is possible. But men and women as individual and groups can meet in public. Modesty is required in the outdoor dress of both Muslim women and men.³⁸

3.2.3 Historical Evidence of Women Working Outside the Home

Scholars in support of women's right to work outside the home offer several prophetic traditions and historical facts which reveal that in Islamic history there were no restrictions in women's full participation in the economic, political and social spheres of their society. The normal life of women engaged in professional fields continued undisturbed, women 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 Qur'an (24:30-31 and 33:59) and in the light of the practice of the prophet.

On the above point M. Akef observed that since the time of the prophet, women showed their presence in many fields. Women worked in the field of agriculture, commerce, manual manufacturing, and the likes and the Prophet did not reject such acts. For example Asma'bint Abi Bakar narrated:

"when Al-Zubair married me, I used to carry the dates stones on my head from Zubair's land which have been given to him by Allah's messenger and this land was two thirds of a *farsokh* (about two miles) from my house. One day, while I was coming back with the date stones on my head, I met Allah's messenger with some Ansari people. He called to me and then (directing his camel to kneel down) said; *Ikh'* so as to allow me to ride behind him (on his camel) I felt too shy to travel with the men and remembered Al Zubair and his feeling of *ghairat*

³⁸Osman, M. F. (2016), *Muslim women the family and the society*. Omar ibn al khattab foundation Retrieved from <https://www.usc.edu/schools/college/crcc/private/cmje/Muslim-Women.pdf> p.21

(jealousy); he was one of those people who has the greatest sense of *ghairat*. Allah's messenger noticed that I felt shy, so he proceeded...I continued working like this till Abu-Bakr sent me a servant whereupon I felt as if he had set me free."³⁹

Relying on the above *hadith* and also the provisions of Qur'an 28:22-24 Afzalur Rahman opined that the *hadith* clearly demonstrates that women at the time of the Prophet were not barred from engaging in lawful activity and that women of today can also engage in their normal economic pursuits of life provided they remain within the limits of Allah by fully observing the Qur'anic guidelines with regards to their activities outside their homes.⁴⁰

Furthermore there is available early Islamic precedents for Muslim women working outside their homes, women in early Islam even held formal posts of authority in the community such as al-Shafa' bint Abdullah who was appointed by the second Caliph, Umar as superintendent of markets in Medina⁴¹.

Shafa' also was asked by the Prophet Muhammad (peace and blessings be upon him) to teach other women how to read and provide treatments for illnesses⁴² In addition, Muslim women also proved their ability to play constructive roles in other activities of the community.

For example, they were involved in the political issues of the time and their opinions in political affairs were highly respected. They often took part in the process of choosing the Caliph.⁴³

In the field of medicine, the humanitarian duties were performed by women in all the battles fought in Islam. It was a custom that Muslim women accompanied the troops, so that they could bandage the wounded, fetch water, transport the casualties back to Medina and instill courage in the men whose spirits were flagging. For example Ibn Abbas narrated that the Prophet (S.A.W)

³⁹ Sahihul Bukhari Vol. 7 Hadith 5224. PP.103-104

⁴⁰ Rahman, A Opcit .note34 at p.39

⁴¹ Ibn Hajar, Al-Isabah, vol.4, p.333 cited in Ibrahim, Y. Muslim Women In The Public Space; An Examination of "Purdah" Or Seclusion And, The Permissibility of Muslim Women In Public Places .Islamic Education Trust Minna 2011 p.5

⁴² Sunnah Abu Dawud, Book 28: Hadith 3878

⁴³ Iqbal, J. J. (1986). *The Concept of State in Islam" State, Politics, and Islam* ed. Mumtaz Ahmed, American Trust Publications, p.43

took women with him to participate in *jihad* they would treat the wounded and were given a reward from the bounty.⁴⁴

In another narration, Ahmad and Al-Bukhari recounted on the authority of Al-Rubayyi' bint Muaawith of the Ansar who said, "We went to the battle with Allah's Messenger (blessings and peace be upon him) offering water to the men and doing them service and returning those killed and wounded to Medina".⁴⁵ Similarly, Ahmad and Muslim recounted on the authority of Um 'Ateyya, who said, "I went to the fighting with Allah's Messenger (blessings and peace be upon him) seven times, following them in their campaigns, preparing food, treating the wounded and helping the sick"⁴⁶

Also it is narrated that when the Muslim troops were preparing to conquer Khaiber, Umayyah bint Qays-al-Ghaffariyyah, with a group of women, asked to be allowed to accompany the army. The Prophet granted them his permission and they performed their duties well. In addition some Muslim women provided medical services outside the battle field.

For example there are *Ahadith* reports about a woman named Rufaidah, from the Aslam tribe who was a prominent physician and had her tent in the mosque of the Prophet (SAW).

When Sa'd ibn Muadh was injured in the battle of the Trenches, he was transferred by the Prophet (SAW) to Rufaida's tent so that he the Prophet (SAW) could easily visit him.⁴⁷

In terms of military Service, Muslim women proved to be good warriors and they fought side by side with men. Such participation was another indicator of women's full participation in public life sanctioned by the tradition of the Prophet as no prophetic sayings has been identified that would suggest a restriction for women to participate in *jihad* rather there exists a number of *Ahadith* in support of this practice for example the Prophet (SAW) explicitly prays for a woman to be part of a post prophetic naval expedition as clearly evident in one of the *Ahadith* narrations:

Narrated Anas bin Mālik: Um Haram said:

⁴⁴Sahihul al-Bukhari, vol.4, Hadith no 2883 P.93

⁴⁵Transmitted by Ahmad Cited in Jawad, H. A. (1998). *The Rights of Women in Islam An Authentic Approach*, London: Macmillan press ltd. P .22

⁴⁶Ibid H.A. Jawad

⁴⁷Cited by Al-Qaradawi, Y. (2013). *The Status of Women in Islam*. Retrieved from <http://www.iupui.edu>

"Once the Prophet (SAW) slept in my house near to me and got up smiling. I said, 'What makes you smile?' He replied, 'Some of my followers who (i.e. in a dream) were presented to me sailing on this green sea like kings on thrones.' I said, 'O Allah's Messenger! Invoke Allah to make me one of them.'" So the Prophet (SAW) invoked Allah for her and went to sleep again. He did the same (i.e. got up and told his dream) and Um Haran repeated her question and he gave the same reply. She said, "Invoke Allah to make me one of them." He said, "You are among the first batch." Later on it happened that she went out in the company of her husband 'Ubaida bin As-Samit who went for Jihad and it was the first time the Muslims undertook a naval expedition led by Mu'awiya⁴⁸

Had the Prophet (SAW) intended a restriction for women's participation in *jihad*, it would be highly unlikely that he would have responded in the affirmative to the woman's request in the aforementioned *Ahadith*.

Furthermore, Women's participation in Uḥud is testified by a number of *Ahadith*. A widely narrated *Ahadith* depicts 'Ā'ishah and Umm Sulaym carrying water skins to and fro from the battlefield and pouring water into the mouths of the people.⁴⁹ Umm Saliḥ is likewise depicted as undertaking the same duty in another Hadith⁵⁰ Fāṭimah is depicted nursing her father for a broken front tooth.⁵¹

Besides these *Ahadith* that provide explicit confirmation of women's participation in expeditions and battles, there are also a number of testimonies that strongly suggest Prophet Muhammad (SAW) took women along as a matter of routine. For example there is Ibn 'Abbas's *Hadith* who relates how Prophet Muhammad (SAW) would take Umm Sulaym and other Anṣārī women with him on his expeditions and that they would treat the wounded and provide water to the soldiers.⁵² In another longer narration he confirms that the women also fought along with Prophet Muhammad (SAW).⁵³ Similarly Rubayyi' bint Mu'awwidh confirms women used to take part in

⁴⁸ Bukhārī, vol 4 Hadith no. 2799-2800. p.53

⁴⁹ Bukhārī, vol.4 Hadith no. 2880. p. 91

⁵⁰ Bukhārī, vol.4:Hadith no. 2881. P. 92

⁵¹ Bukhārī, vol 4 Hadith no. 2903. p.103

⁵² Bukhārī, vol 4 Hadith no. 2882 P.92

⁵³ Bukhārī, vol 4 Hadith no. 2883. P.93

battles with the Prophet to provide water, tend to the wounded and bring them back from battle.⁵⁴

3.3.4 Collective social obligations:

Another important argument presented by scholars in support of women's right to work outside the home is the necessity of the cooperation and solidarity of man and woman for the sake of public interest. Scholars cite Qur'an chapter 9:71 and Qur'an 33:35 in support of this assertion.

"The believers, men and women, are Auliya (helpers, supporters, friends, protectors) of one another, they enjoin (on the people) Al-Marooof (i.e. Islamic Monotheism and all that Islam orders one to do), and forbid (people) from Al-Munkar (i.e. polytheism and disbelief of all kinds, and all that Islam has forbidden);"⁵⁵

Akef, M in his book is of the opinion that Islam stipulates for all Muslims, men and women the duty to enjoin all that is good and forbid polytheism, disbelief, and all that Islam has forbidden. As this is the only way to protect the society from all evils.⁵⁶

He emphasized further that there is no doubt that the political, legislative, and executive functions are nothing but enjoining *Al-Ma'ruf* and forbidden *Al-Munkar* which seek the welfare and goodness of the society and that it would be unfair to put all the responsibility in the hands of man since life could not continue except for the cooperation of man and woman; because woman is but the counterpart of man, so women have the right to occupy public post just like men.⁵⁷

Writing on the same point Qadri, G. H. observed that the woman is also under the same ethical obligations as man in respect of her social duties for society she must play an active role in her community by enjoining what is right and forbidding what is wrong.

Qadri, G. H. cites Qur'an chapter 9:71, chapter 16:97, and chapter, 4:124 in support of his assertion and stressed that in all these verses Allah Almighty saw it fit to mention women in particular; Allah could have addressed the believers as a whole, or the whole of mankind in

⁵⁴ Bukhārī, vol. 4 Hadith no.2883 p. 93

⁵⁵Qur'an 9:71

⁵⁶Akef, M. (2004). *They Ask Thee About Women*, 1st Ed, Cairo: Egypt. Safeer International Publishing P.123

⁵⁷Akef, M. Ibid

general which He does in other parts of the Qur'an but by specifically stating "whether male or female" denotes the importance of including women, and thereby emphasizing the need for their active involvement. It is thus apparent that women are highly regarded and esteemed in an Islamic society and encouraged to participate actively.⁵⁸

Also writing on the same point Badamasiuy J. B. observed that the woman's primary role does not prevent her from taking a job outside the home, she is to struggle for the betterment of the Muslim community as part of her obligation to correct the evil in the society as enjoined by shariah and in addition she is liable in the failure to perform obligations which is collectively compulsory upon the Muslim society (*Fard Kifaya*) if nobody undertakes it.⁵⁹

Finally on this point Yahya Ibrahim of DIN observed that deprivation of Muslim women of the opportunities to learn and work in public has resulted in women being denied the ability to fulfill roles related to collective societal obligations, where men may not be as competent or appropriate in providing the same services. For instance, a society needs female health workers and law enforcement officials, prison guards, educators and social workers. These roles are best suited for women when the clients are women.

The consequence of the absence of these female professionals in the work force is the widespread suffering of Muslims on so many socio-economic and political fronts such as social infrastructure health care and educational systems.⁶⁰

3.4 Muslim Islamic Feminist Discourse

It is the contention of the feminist that when the *fatwa* (Islamic legal opinion) prohibiting the Muslim woman from working outside the home are examined the findings reveal that the opinions are not based on clear evidence from the Qur'an or *Sunnah*, the two principle sources of Islamic legislation. Rather, they are based on interpretations colored by patriarchal bias, writing

⁵⁸Qadri, G. H. (2004). *The Status of Women in Islam*, , retrieved from <http://www.minhaj.org/english> pp.10-11

⁵⁹ Badamasiuy, J. B. Opcit Note 33 at p.38

⁶⁰ Yahya, I. Opcit note 28 at p.37

on this line. Leila Ahmed⁶¹ argues that the oppressive practices to which women in the Muslim world are subjected are caused by the prevalence of patriarchal interpretations of Islam rather than Islam itself.

Also Fatima Mernissi in her writings analyzes male-female dynamics, Islamic societies, women's liberation in Muslim countries, Islamic history and its impact on women's issues, and the role of the state in developing or impeding equality. She argued that there are those who have interests in blocking women's rights in Muslim societies.⁶²

Mernissi criticizes the frame of mind that denies women their full enjoyment of human rights labeling people of such mentality as being ignorant of their past, ignorant of their Islamic history, and ignorant of the scholarship of Islam. She remarks that "if women's rights are a problem for some modern Muslim men, it is neither because of the Koran nor the Prophet, nor the Islamic tradition, but simply because those rights conflict with the interests of a man"⁶³

Furthermore Mernissi⁶⁴ distinguishes between Islam *risala* (the divine message) and political Islam. While Islam *risala* represents the ideal recorded in the Qur'an, political Islam refers to the Islamic practice of those with vested interests. She questions the male mentality that is "dishonored" if a female member of their family works outside the home. In the male mind "space" is divided into an economic productive arena (public and male) and a domestic sphere (private and female) and these two areas cannot mix. Mernissi reported that it is carefully done in an effort to exploit working women. Even when a woman is able to get out of the private (female) arena into the public (male) sphere, she continues to be exploited.

Ra'uf acknowledges women's place in the public sphere, a place traditionally assigned to males in society. She challenges any separation between the public and private sphere.⁶⁵ While refusing the public-private dichotomy, she refuses the priority axiom advanced by the ulama i.e. priority

⁶¹Leila, A. (1992). *Women and Gender in Islam*. Yale University Press, p.66

⁶²Mernissi, F. (1991). *Women & Islam*, Oxford: Blackwell Publishers. P.19

⁶³Ibid F. Mernissi, p. ix

⁶⁴Mernissi, F. (1993). *The Forgotten Queens of Islam*, Cambridge: MA. Polity Press, P.37

⁶⁵El-Gawhary, K. (1994). *It is time to launch a new women's liberation movement – an Islamic one* (an interview with Heba Ra'uf)", Middle East Report, November-December, pp. 26-27..

given to the home. She emphasizes that women's work and role should encompass both the private and the public.

They are interrelated: "Breaking the dichotomy would give housewives more social esteem and would encourage working women to fulfill their psychological need to be good mothers and wives"⁶⁶ Ra'uf asserts that the Islamic values which govern the public sphere would govern the private sphere as well. For example, the concept of *shura* (consultation) which is mainly understood as a political (public) concept and tool in Islam is a value that also governs the private family relations. Accordingly, families and the relations within them should be based on *shura*.

Ra'uf asserted that while Islam gave men and women similar rights and responsibilities, any remaining differences relate to their nature. She asserts that women have a role to play in both the private and the public sphere. Each woman should be given the choice between different roles at different stages of her life. The role of social institutions is to provide the opportunity for her to contribute in all spheres of life whether at home with her family, or in the political and economic arenas.

Accordingly, she affirms that qualified women in a Muslim society should be allowed to public functions in the same manner that qualified men are allowed to such functions. Accordingly she stresses that women are entitled to occupy the positions of heads of states or judges.

Azizah Yahia al-Hibri, opined that laws prohibiting women from entering the work field under the guise of protecting women's morality or because of women's perceived physical limitations, are nothing but patriarchal bias inherited by Muslims from their cultures and these biases survived the clear injunctions of the Qur'an to the contrary. It prevented interpreters from seeing the simple truths of the Qur'an and seriously delayed the advent of the ideal Muslim family and society.⁶⁷

⁶⁶El-Gawhary, K. Ibid p.27

⁶⁷Al-Hibri, A .Y. (1999). Muslim Women's Rights in the Global Village: Challenges and Opportunities *Journal of Law & Religion* Vol. Xv P.119

Al-Hibri buttresses her argument with the provision of Q4:32 as evidence for the permission granted to the Muslim woman to work. She also relied on the precedent of Khadijah, the first wife of the Prophet, whom was a business woman and continues to serve to this day as a lofty ideal for Muslim women.

Al-Hibri further emphasized that ordinarily in an ideal Muslim family and society domestic or housework should not in any way prevent the woman from enjoying her Qurānic right to work, because of the Qur'anic view of marital relationships, she explained that scholars viewed the marriage contract as a contract for companionship and not as a service contract.

3.3 Conclusion,

In conclusion, it is clear from arguments presented under this chapter that the difference of opinions arises from the interpretations and extent of application of Islamic text the Quran and *Ahadith* relevant to the subject of debate, while on the one hand scholars who are against women's right to work outside the home have interpreted the Quran and *hadith* in affirming the categorical exclusion of the Muslim women from the public sphere and consequently prohibiting her from working outside the home.

Scholars in support of the Muslim women's right to work outside the home refute this argument; they contend that there is no textual legal and historical evidence against women's work outside her home but rather against immodesty and free mixing with unrelated men.

CHAPTER FOUR

THE POSITION OF ISLAMIC LAW ON WOMEN'S RIGHT TO WORK OUTSIDE THE HOME

4.0 Introduction

The focus of the research work under this chapter is to analyze the various opinions presented under chapter three above in the light of Quran and Hadith with the aim of finding out an Islamic law perspective on the permissibility of the Muslim woman's work outside the home.

4.1 Examination of the Arguments Against–As Well As Those in Favor of the Muslim Women's Right to Work outside the Home.

From the arguments presented in chapter three above it is clear that the group of scholars who are against women's right to work outside the home have interpreted the Quran and *Hadith* in affirming the categorical exclusion of Muslim women from the public sphere and consequently prohibiting her from working outside the home, while the group of scholars in support of the Muslim woman's right to work outside the home contend that there is no textual legal evidence against women's work outside her home but rather against immodesty and free mixing with unrelated men.

The question now is whether it is the teaching under Islamic law to seclude women from the public sphere and by extension prohibiting her from working outside the home?

In an attempt to answer the question it seems appropriate to first give a brief explanation of what constitutes the Islamic injunctions and as such can be declared categorically as the teaching of Islam. The focal point in this connection is that Allah is the law-giver; who makes and abrogates laws because all sovereignty and authority belong to Allah.¹

¹ Quran 12:40

No other person except Allah is the source of Islamic law.² Furthermore; Islamic law as laid down in clear and explicit words in the Quran is also explained by authentic Hadith of the Prophet (SAW), efforts were be made on these lines to address the question raised above i.e. whether it is the teaching under Islamic law to seclude women from the public sphere and thereby prohibit them from working outside the home.

The group of scholars opposing the right of women to work outside the home stress that working outside the home requires public display and constant contacts with people. This would inevitably facilitate mingling between the two sexes; an issue which is clearly prohibited in Islam. According to the proponent of this view, the Quran explicitly orders women to stay at home and avoid any public exposure; therefore, it is not appropriate for them to take on public duties, because this would expose them to all forms of public immorality.

This group of scholars restricts the presence of women in public life; citing varied reasons-moral vulnerability of women and in their view women's tendency to be a source of (*fitna*) temptation and social discord. For these reasons, scholars do not permit women to work outside the home and call for strict segregation between the sexes.

According to this group of scholars; principally, in Islam a woman is religiously required to remain in her house and to undertake the important task of taking care of her home and her offspring. The most common evidence cited in support of the above opinion is Qur'an 33:33 which reads: "And stay in your houses, and do not display yourselves like that of the times of ignorance." To start with, the commencement of the above verse with the Arabic word '*waw*' and even its English translation to 'And' shows that it is only part of a wider address and is grammatically incomplete, a citation of the full text of this verse and the preceding verse makes the object of address clear, for it continues.

² Quran 66:1

“And perform As-Salat (*Iqamat-asSalat*), and give Zakat and obey Allah and His Messenger. Allah wishes only to remove *ArRijs* (evil deeds and sins, etc.) from you, O members of the family (of the Prophet SAW), and to purify you with a thorough purification”³

Thus the full text of this verse makes it clear that it is the Prophet's household (wives) that is being addressed specifically. This rendering is in fact not contentious and is actually apparent from the provision of the preceding verse (Q 33:32) which makes a clear distinction between the Prophet's Wives and believing women in general.

“O wives of the Prophet! You are not like any other women. If you keep your duty (to Allah), then be not soft in speech, lest he in whose heart is a disease (of hypocrisy, or evil desire for adultery, etc.) should be moved with desire, but speak in an honourable manner”⁴

Verse 33:32 is inextricably linked to 33:33 with the use of *waw* as the first word in the latter verse; the address is very specifically directed to the wives of the Prophet and not to all Muslim women. The verse, ordered (solely) the Prophet's wives to stay at home and not to display any public appearance, because they were regarded as the mothers of the believers; other women were not included, for they used to take part in public worship, seek knowledge and education, participate in Jihad, and enjoy wider social interactions.

So the verse deals with a specific case namely the status of the Prophet's wives and therefore it is not right to generalize it to include other Muslim women; in doing so they reject the practical Sunnah of the Prophet and this cannot be right.

Moreover it is not alien that a ruling in the Quran is strictly referred to the wives of the prophet evidence of this fact is that apart from the verses above a few other commandments of the Quran are particularly addressed to the blessed wives of the prophet.

³ Quran 33:33

⁴ Quran 33:32

For instance the blessed wives of the prophet were forbidden to remarry after the demise of the prophet Muhammad while other women are allowed to go for a second marriage after the death of their husbands.⁵

It was also made very clear to the blessed wives of the prophet that if they indulge in any sexual laxity, they would be doubly punished while other believing women would face the punishment only once.⁶

Furthermore the case for confinement of Muslim women does not stop with the use of one fragmented verse, another pertinent verse that is been debated is known as the *hijab* verse. To Qur'an 33:33 is added what has generally come to be termed by the scholars as the 'descent of the *hijab*' in Qur'an 33:53 which reads as follows:

“O you who believe! Enter not the Prophets houses, except when leave is given to you for a meal, (and then) not (so early as) to wait for its preparation. But when you are invited, enter, and when you have taken your meal, disperse, without sitting for a talk. Verily, such (behaviour) annoys the Prophet, and he is shy of (asking) you (to go), but Allah is not shy of (telling you) the truth. And when you ask (his wives) for anything you want, ask them from behind a screen that is purer for your hearts and for their hearts. And it is not (right) for you that you should annoy Allaahs Messenger, nor that you should ever marry his wives after him (his death). Verily! With Allah that shall be an enormity..”⁷

Also the *hijab* in this verse has been extended to mean a required partition between all women and men despite the single concern of the verse from beginning to end with the etiquette of entering the Prophet's dwellings and interaction with his wives.

However, legislations applicable to believing women in general on the *hijab* directives are found in Q 33:59 and in 24:30-31 under which the Quran lay down the general rules of chaste and modest conduct in public and not seclusion of women from the public space.

⁵Quran 33:53

⁶ Quran 33:30

⁷ Quran 33:53

“O Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks (veils) all over their bodies (i.e. screen themselves completely except the eyes or one eye to see the way). That will be better, that they should be known (as free respectable women) so as not to be annoyed. And Allah is Ever Of-Forgiving, Most Merciful”⁸

Q 24:31 reads,

And tell the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts, etc.) and not to show off their adornment except only that which is apparent (like palms of hands or one eye or both eyes for necessity to see the way, or outer dress like veil, gloves, head-cover, apron, etc.), and to draw their veils all over Juyubihinna (i.e. their bodies, faces, necks and bosoms, etc.) and not to reveal their adornment except to their husbands, their fathers, their husbands fathers, their sons, their husbands sons, their brothers or their brothers sons, or their sisters sons, or their (Muslim) women (i.e. their sisters in Islam), or the (female) slaves whom their right hands possess, or old male servants who lack vigour, or small children who have no sense of the shame of sex. And let them not stamp their feet so as to reveal what they hide of their adornment. And all of you beg Allah to forgive you all, O believers, that you may be successful.”

From the interpretations of commentators of the Holy Quran, the above verses (Q 33:59 and 24:30-31) do not indicate that there was any intentions to restrict the liberty of women rather the injunctions contain in the verses are related to modesty.

For example, Al-Tabari, in his *Tafsir* interpreted the above verses as meaning that the injunction was to tell the wives of the believers not to go out of the doors like female slaves in their *garb* leaving their hair and face uncovered; but to let down part of their robes so that no miscreant might expose them to harmful comments.⁹

On the whole though jurists see a link between the specific command to the Prophet's wives and the general command to veil in this later verse but does not suggest that the commands of Qur'an 33:33 and 33:53 should be extended to all Muslim women.

This is because there are important differences between the commandments of Q33:33 & 53 on the one hand and Q33:59 and Q24:31 on the other. While Qur'an 33:33 and Qur'an 33: 53 make

⁸ Quran 33:59

⁹ Cited in Rahman, A. (2013). *Role of Muslim Women in the Society*, 2nd Ed, Kuala Lumpur: Malaysia. Ilmiah publishers, P.467

explicit what ought to be the ideal behavior of the Prophet's wives, and their exceptional standing in the Muslim community. The text of Qur'an 33:59 and Qur'an 24:31 are explicitly addressed to all Muslim women.

Moreover the verses of the holy Qur'an generally quoted in support of modesty and the related institution of seclusion for Muslim women all put together does not in any way support the argument which sanctions the categorical exclusion of the Muslim woman from the public sphere and consequently prohibiting her from working outside the home.

This is because the provision of Qur'an 33: 33 as observed by Ibn Kathair¹⁰ is seen as permitting the Prophet's wives to leave their homes when this was necessary while the provision of Quran 33:53 relates to the etiquette of entering the Prophet house.¹¹ On the other hand, the instructions in Q.24:31 above and in Q.33:59 relate to all other Muslim women and their appropriate behavior in public which in turn indicates that their presence outside the home is conceivable and acceptable within Islamic dictates. Islam does not prohibit women from entering public sphere for it is only in the event of this interaction between male and female in that sphere that both are commanded to 'lower their gaze' in Qur'an 24:30-31.

Strong evidence in support of public participation for women is the provision of Q2:282 where Allah permits women to give testimony; certainly to testify the woman will have to appear before the court which is a public place.

Furthermore despite the revelation of the verses cited in favor of the argument for seclusion, historical evidence shows that the wives of the prophet went out for their needs, sometimes in company of the prophet and sometimes without him.¹² As discussed earlier, this verse did not prohibit them from going out but merely prescribe the way they should conduct themselves when out of the home or in the presence of non muharam.¹³

¹⁰ Abdul-Fidai Ismail bn Umar bn Kathir. (1999). *Tafsir al-Qur'an al Azim*, Dar taiba publication., Vol. 6 p.409

¹¹ Ibn Kathir Ibid vol. 6 p.454

¹² Sahih al-Bukhari, vol.4 Hadith no.2879 P.91

¹³ Tafsir Ibn Kathir, vol.7, Darussalam publishers Riyadh. P.679

Also an examination of the *hadith* of the Prophet (blessings and peace be upon him) reveals that women were not caged or isolated, Many Arab women used to work and be active both economically and socially before Islam; No directives of the Qur'an and no instructions of the Prophet (PBUH) forbade them from continuing to do so.

Historical records show that women participated in public life with the early Muslims, for example women worked in various fields outside the home, such as trade, agriculture, attended gatherings, pray the congregational prayers at the Prophet's mosque, including the night (*Al-Esha*) and dawn (*Al-Fajr*) prayers, travel in caravans, and even fight battles alongside men ¹⁴ all outside their homes. Later caliph Umar appointed a woman, Shafa bint Abdullah bin Abdush-shams, as chief administrator of the market place in Madina.¹⁵

Proof that none of this participation by women in public life was contrary to Islamic injunctions is indicated by the fact that the Prophet prayed for a woman, at her request to be among the Muslims who would eventually embark on great sea expeditions, as indicated by the Hadith narrated by Anas Bin Malik,¹⁶

Further exploration of the Qur'an's discourse on women's affairs and by looking onto the lives of the early Prophets, we hardly find such an iron curtain drawn between men and women for example in the prime of his youth, Prophet Moses (peace be upon him) is depicted in the Quran talking to the two daughters of the old man of Madyan. He asks them questions and gets their answers without any particular feeling of guilt or embarrassment and magnanimously helps them.

¹⁴Sahihul al –Bukhari Vol. 4 Hadith no.2881-2883 PP. 92-93

¹⁵Ibn Hajar, Al-Isabah, vol.4 p.333 cited in Ibrahim,Y. (2011). *Muslim women in the public space; an examination of Purdah or seclusion and the permissibility of Muslim women in public places* . Minna: Islamic Education Trust p.4

¹⁶Sahih al –Bukhari vol. 4 Hadith no.2877&2878 P.90

One of them returns soon after with an invitation from her father for Moses to come to their house. One of them even suggests her father hire Moses, as he is a strong and honest man. This is how the Quran puts it:

“And when he arrived at the water of Madyan (Midian) he found there a group of men watering (their flocks), and besides them he found two women who were keeping back (their flocks). He said: "What is the matter with you?" They said: "We cannot water (our flocks) until the shepherds take (their flocks). And our father is a very old man." So he watered (their flocks) for them, then he turned back to shade, and said: "My Lord! Truly, I am in need of whatever good that you bestow on me!" Then there came to him one of the two women, walking shyly. She said: "Verily, my father calls you that he may reward you for having watered (our flocks) for us." So when he came to him and narrated the story, he said: "Fear you not. You have escaped from the people who are Zalimoon (polytheists, disbelievers, and wrong-doers)." And said one of them (the two women): "O my father! Hire him! Verily, the best of men for you to hire is the strong, the trustworthy”¹⁷

Again the Quran, in Sura 27, speaks highly of the Queen of Sheba, Bilqis, who ruled over her people with wisdom and insight and led them to success and prosperity. This is further evidence in support of women employment and taking up leadership position.

“I found a woman ruling over them, and she has been given all things that could be possessed by any ruler of the earth, and she has a great throne.”I found her and her people worshipping the sun instead of Allah, and Shaitan (Satan) has made their deeds fair-seeming to them, and has barred them from (Allah’s) Way, so they have no guidance,”¹⁸

The only fault found with her was not her position and authority as a woman but her false faith she and her subjects worship the sun instead of Allah.¹⁹

Later the wise woman met Solomon admitted her sin (for not worshipping God) and along with her people accepted Islam: ‘Lord’, she said,

¹⁷ Quran 28:23- 26

¹⁸ Quran 27:23-24

¹⁹ Quran 27:24

“My Lord! Verily, I have wronged myself, and I submit (in Islam, together with Sulaiman (Solomon), to Allah, the Lord of the Alamin (mankind, jinns and all that exists).”²⁰

Furthermore women always attended the teaching sessions of the Prophet (blessings and peace be upon him) and during battles women served in the army with the *mujahedeen* (warriors who struggle to keep Islam alive) by attending to the wounded, giving medical aid, nursing the injured fighters, in addition to cooking, procuring water and the like. Um-Ateyya asserted, "I went on seven military expeditions with the Prophet (greetings and peace be upon him); I would guard the fighters, provisions, make their food, treat the injured and nurse the ill ones".²¹

It must be made clear, moreover, that of all social interactions only *Khulwa* (seclusion), promiscuity, lustfulness, and extravagance or excessiveness is prohibited in Islam. Other societal activities, which are needed for the conduct of normal and respectable social life, are allowed. So, to use *fitna* (temptation) as an excuse in order to change a religious ruling is indeed unjustifiable. Also, it must be remembered that God, who is the legislator, knows better what the state of his creatures is in terms of their piety or corruption.

When Islam encouraged women to take part in public life, it did so by laying down certain rules of conduct, so as to curb any tendency towards *fitna* or corruption. It did not show any inclination to seclude women for the reason of preventing *fitna*.

Finally on this point, the position of Islam on women's employment outside the home, and so many other issues, aims at a balance, a 'middle way. That is, recognizing that women are in principle wives and mothers whilst not allowing this recognition to block avenues of self-development for women as individuals in their own right and conversely, the dignity and value of being a wife and a mother should not be diminished by the concept of equality of economical opportunity.

²⁰ Quran27:44

²¹ Transmitted by Ahmad Cited in Jawad, H. A. (1998). *The Rights of Women in Islam An Authentic Approach*, London: Macmillan press ltd. p.22

In Islam, the choice is not an 'either-or' one; there is no necessary contradiction between affirming the sacred role of women in the home and respecting the right of women to participate in economical, social and political activities outside the home.

Furthermore there is also the argument which is premised on the provision of Q 4:34 according to some scholars²² that a woman in Islam has got no financial obligations, the financial obligation is laid on the shoulders of the man in the family, therefore she need not work for her livelihood and they draw the conclusion that it makes it very clear that the most appropriate place for her according to Islamic law is her home.

Although it is true that the Muslim woman is not burdened with having to work to support herself and even if she is rich the burden still falls on the man. However, It is important to stress that this verse (4:34) operates exclusively inside the nuclear family affairs and has nothing to do with the relationships between men and women in public, socio-political sphere which according to the Quran must be managed by both men and women according to the criteria of fairness and justice in the spirit of *wilaya*.

This is because as explained by scholars²³ the verse is mentioned solely within the context of married life, in which one party the husband is charged with the responsibility of being the head and caretaker of the family. It is not right to generalize the ruling of this verse (which handles only marital matters) to encompass the relationships between men and women in public life, so as to deny women the opportunity to hold public offices or engage in economic activity outside the home.

Furthermore, the fact that she is not burdened with having to work to support herself does not in any way affect the financial independence of a woman, neither is she prohibited from participating in seeking income, she has the right to earn and dispose off her property as she

²²Maududi, A. A. (1988). *Purdah and the Status of Woman in Islam*, 16th edition Lahore: Pakistan. Islamic Publications Ltd p.148.

²³Jawad, H.A. *Op cit* note 21 at p.58

deems fit. Accordingly, based on the provision of Qur'an 4:32, Muslims both men and women are encouraged to participate in economic activities,

"For men there is reward for what they have earned, (and likewise) for women there is reward for what they have earned, and ask Allah of His Bounty. Surely, Allah is Ever All Knower of everything."²⁴

The next argument of the scholars is that the most important responsibility of woman is related to the institution of family, If women leave the home in pursuit of outside employment she would not be in position to perform her primary role in the family in an efficient manner and negligence of the family responsibility of the woman would give rise to various problems in the society because children becomes victims of social ills, when they are neglected by parents.

To start with, it is worth noting that no Qurānic verse allocates specific household task or function to either of the sexes, as pointed out by Asma Lamrabet²⁵ despite what Muslims believe, not a single verse in the Quran mentions domestic work solely as a task for women rather evidence from a number of Hadith records men undertaking domestic responsibilities as clearly evident in the following, nor depicts prophet Muhammad undertaking domestic chores but clearly suggests other men did too: Hisham said,

"I asked 'A'isha, 'What did the Prophet, may Allah bless him and grant him peace, do in his house?' She replied, 'He did what one of you would do in his house. He mended sandals and patched garments and sewed'"²⁶.

There are other such *hadith* depicting the Prophet as undertaking household chores, these *hadith* depict Prophet Muhammad as removing fleas from his garments, milking sheep and other household chores in the house that are not specified.²⁷

²⁴Quran 4:32

²⁵Lamrabet, A. (2015). *An Egalitarian Reading of the Concepts of Khilafah, Wilayah and Qiwwamah*, in. Mir-Hosseini, Z. (eds) *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, London: England. One world Publications. pp.84-85

²⁶Adab Al-Mufrad, 540 cited in Lamrabet, A. *ibid*

²⁷Al-Adab Al-Mufrad, 538 & 541 cited in Lamrabet, A. *ibid*

Also a narration in sahihul-Bukhari depicts a man as preparing a meal for his visitor despite his wife's presence²⁸.

Equally the Hadith literature also records women working for an income, one such example being a *hadith* in which Zaynab, the wife of Abdullah bin Masud, one of the companions, comes to the prophet and ask whether she is allowed to pay her *zakat* to her husband and children. Abdullah bin Masud had, according to the Hadith, dedicated his life to the prophet and had no income, Zaynab use to earn a good living from spinning and weaving. The prophet not only allowed her to support her husband and children with *zakat*, but also said she would be doubly rewarded: once on account of paying her *zakat* and twice on account of looking after her next of kin²⁹

On the whole although the importance of the responsibility of women as it relates to the family cannot be disputed as motherhood is given particular attention in both *Ahadith* and *Qur'an* but this is not the solitary role of women, nor are men absolved of nurturing responsibilities as household duties are responsibilities of both partners as such the entire management of the house affairs, children's up-bringing and the wife's work outside the home can be discussed by both husband and wife together and decided mutually in the spirit of *shura* (mutual consultation) as the above Hadith implies. There can be flexibility in marital roles and spouses are at liberty to make their own arrangements regarding their roles.

In a family that is properly organized the mothers work outside the home would not lead to the neglect of the children of such families. Furthermore non involvement of the mothers in public life cannot be seen as a condition for the proper upbringing and moral development of children rather through proper education and Islamic orientation the parent, husband and wife can organize their time and work inside and outside the house and they can take proper care of their

²⁸Sahihul-Bukhārī Vol. 8 Hadith no.6139 P.93

²⁹ Bukhārī vol 2 Hadith no.1466 PP.317-318

children even if both work outside the home. Children are neglected mainly when the parents lack the proper perspective of Islam and do not perceive the housework and outside work as service to Allah (SWT).

Women's work is a fulfillment of religious obligation, women as good Muslims must utilize their potentials for the benefit of society as a whole. Several verses can be cited to support this argument. For example Qur'an 3: 104 is seen to obligate Muslims to steer the community in a positive direction.

“Let there arise out of you a group of people inviting to all that is good (Islam), enjoining *Al-Marooif* (i.e. Islamic Monotheism and all that Islam orders one to do) and forbidding *Al-Munkar* (polytheism and disbelief and all that Islam has forbidden). And it is they who are the successful.”³⁰

Qur'an 9:71 conveys a similar message.

“The believers, men and women, are *Auliya* (helpers, supporters, friends, protectors) of one another, they enjoin (on the people) *Al-Marooif* (i.e. Islamic Monotheism and all that Islam orders one to do), and forbid (people) from *Al-Munkar* (i.e. polytheism and disbelief of all kinds, and all that Islam has forbidden); they perform *As-Salat* (*Iqamat-as-Salat*) and give the Zakat, and obey Allah and His Messenger. Allah will have His Mercy on them. Surely Allah is All-Mighty, All-Wise!”

This verse makes a point of inviting women as well as men to enjoin good and forbid evil actions, Allah categorically and deliberately mentioned women in this verse in order to insist on their effective participation, knowing that the term “*mu'minin*” believers, conventionally includes women. Again this is taken as not only permission for women to engage in the public sphere, protecting and enjoining good alongside men but as giving such engagement an obligatory standing.

Relying on the provision of Qur'an 4:15-16, it can be concluded that the Qur'an initially only mentions restraint in the houses or domestic seclusion or confinement as a punishment for those

³⁰ Qur'an 3: 104

guilty of “*faahishah*” (roughly translated as “gross lewdness”) and not as a general practice or the desired state of all believing women.

It is however important to emphasize the fact that most of the Islamic legal opinions (*fatwa*) given by scholars are influenced by local customs (*urf*) or the time and place that the scholar is surrounded by. This naturally makes the relevance and appropriateness of the Islamic legal opinion (*fatwa*) very much dependent on the social context and the priorities of the society in which the question or issue is raised.

Considering the local context and custom is so important to the attainment of the objectives (*maqasid*) shariah that they are among the necessary tools of *ijtihad*. Since the scholar cannot reach a correct prescription without sufficient diagnosis of the social context in which the prescription will be applied, it follows therefore that many prescriptions given by qualified scholars in their own context may not apply in every society.³¹ In Saudi culture, for example the Sharia is interpreted according to a strict Sunni form known as the way of the *Salaf* (righteous predecessors) or *Wahhabism*. Sex segregation, justified under the Sharia legal notion of 'shielding from corruption' (*dar al-fasaad*), also customs of the Arabian Peninsula play a part in women's place in Saudi society. The peninsula is the ancestral home of patriarchal, nomadic tribes, in which separation of women and men are considered central.

4.2 Evidence in Support of Women’s Right to Work outside the Home

It is evident that the Qur’an is affirmative on women’s right to work and their right to what they earn as a result of it. There is in principle, no distinction in this being a basic right of every individual without consideration of gender. Women are therefore entitled to take up all lawful

³¹ Ibrahim, A. Y. (2015). Shariah Intelligence The Basic Principles and Objectives of Islamic Jurisprudence, Kaula Lumpur, Interactive Dawah Training p.223

occupation that they are capable of doing. The Qur'an thus declared in general and unqualified terms that "men have a right to what they earn and women have a right to what they earn"³²

Commenting on the above verse of the Qur'an Kamali M. H. noted that this verse is a declaration of equality between men and women in regard to their basic right to work and also entitled to all the benefit of the work they do, this is further endorsed by the fact that marriage does not affect the financial independence of a woman since the norm in Sharia concerning matrimonial assets is separation of property which enables the spouses to their own property before and after marriage unless they choose otherwise.³³

Furthermore in another verse of the Qur'an, Allah the most high declared in an address to both men and women that "Never will I allow to be lost the work of any of you, be he male or female. You are (members) one of another....."³⁴

Kamali, M. H. citing Sheikh Mahmoud Shaltut's commentary on the above verse draws attention to the Qur'anic phrase *badukum min bad* which eliminates distinction between men and women and suggests substantive equality between them.

The Qur'anic phrase also signifies partnership and cooperation between men and women in family and also society in the sense that both play equally important roles and there is no superiority of one over the other.³⁵

Relaying on the provision of Qur'an 9:71; Kamali M. H. re-emphasized the fact that the Qur'an entitles men and women equality in the exercise of *wilayah* (protection and authority) in respect of one another and also in the sphere of public affairs and government.

³²Qur'an 4:32

³³Kamali, M. H. (2011). *The Right to Education, Work and Welfare in Islam*, Cambridge: Islamic Text Society publishers, UK. p.139

³⁴ Qur'an 3:195

³⁵ Kamali, M. H. Opcit note 32 at p.140

Kamali, M H. observed further that In addition to validating *wilayah*; cooperation and support between men and women, the above verse entitles them both to the most comprehensive of all *wilayah* which is to promote good and prevent evil also known as *hisbah*.

Government itself partakes in *hisbah*, which means that women are entitled to participation in government and leadership in political affairs. Women are therefore entitled to take up positions that may involve exercise of authority and *wilayah*. While making this observation, M.H Kamali quoted in support, a number of other commentators including Muhammad Rashid Rida, Sheikh Mahmoud Shaltut, and Abd al-Hamid Mutawali, all of whom have concurred on this conclusion and upheld women's equal right to work in all spheres of government.³⁶

4.3 Conditions for Women Working outside the Home

It is true that under Islamic law women are allowed to work outside the home and in fact under certain circumstances the society itself might be in need of the woman's work: as in giving medical treatment to women and such work that concerns women since it is more proper for a woman to deal with another woman like herself, instead of with a man.

However the Muslim woman when working outside the home must comply with the requirement of modesty that is why the traditional Islamic teaching conditioned the permission granted to women to engage in activities outside her home and the following are some of such conditions:

4.3.1 First; The work must be permissible under Islamic law, the work must not be unlawful that results in sins. Islamically lawful are in the sense that it should not be forbidden (haram) or lead to what is forbidden. For instance as a maid working in the house of a bachelor, or as a private secretary for a manager, whose position requires her to stay with

³⁶ Supra note 32 at p.63

him alone, or as a dancer who excites physical instincts and lusts, or as a worker in a restaurant serving alcohol.

- 4.3.2 The permission of the husband or the guardian of the woman must be obtained before going outside her home to work. Scholars supported their opinion of stipulating the husband's or guardian's permission by the verse in which Allah the Almighty Says "O you who believe! Ward off from yourselves and your families a Fire (Hell) whose fuel is men and stones"³⁷

Scholars further supported their opinion with evidence from the Sunnah (Prophetic tradition). Ibn 'Umar, may Allah be pleased with him, said that the Messenger of Allah, *Sallallahu 'alayhi-wa-Sallam*, said:

"Surely! Everyone of you is a guardian and is responsible for his charges: The Imaam (ruler) of the people is a guardian and is responsible for his charges; the man is a guardian of his family (household) and is responsible for his charges; the woman is a guardian in her husband's home and is responsible for her charges; and the slave is a guardian of his master's property and is responsible for his charges. Surely, every one of you is a guardian and responsible for his charges"³⁸

In this *hadith* the Prophet, clarified that Allah, the Almighty will ask every guardian about what He charged him with, whether he preserved his charges or wasted them. Accordingly, the guardian has rights and duties. Some of his rights are to be obeyed as long as he does not order disobedience to Allah. Hence, if the woman wants to work outside the home, she has to seek the permission of her husband or guardian because he is responsible for her before Allah the Almighty.

However the husband must not abuse his power to grant his wife permission, because the Prophet is reported to have said "women are allowed to go out for their needs."³⁹ The needs of a woman may involve going out to work as exemplified in the narration were the prophet

³⁷ Quran 66:6

³⁸ Al-Bukhari, Muslim, Abu Daawood, At-Tirmithi and Ahmad

³⁹ Sahihul Bukhari vol.6 Hadith no318.cited in Yahya, I. (2011). *Muslim Women in The Public Space; An Examination of "Purdah" or Seclusion and the Permissibility of Muslim Women In Public Places* Islamic Education Trust, Minna p.2

considered the need of Jabir's aunt to cut her fruits to be good enough reason to allow her to go into her garden even during her period of waiting(*iddah*).⁴⁰

Furthermore, as mentioned earlier in the previous chapter, restraint or domestic seclusion of the women only amount to punishment, and not piety.

“And those of your women, who commit illegal sexual intercourse, take the evidence of four witnesses from amongst you against them; and if they testify, confine them (i.e. women) to houses until death comes to them or Allah ordains for them some (other) way”⁴¹

Again, the trend whereby some husbands permits their wives to work outside the home and in return refuse to pay maintenance. In fact, research has shown that it is rather common today that one finds some husbands looking for Jobs for their wives at the same time; these husbands refuse to give maintenance to their wives. In other words, they drop the wife's right in getting the maintenance that each wife deserves to get, what is worse is that they even stop paying the children's maintenance if they have any.

The husband's argument for this behavior is that the wife has a salary; therefore, she should pay the costs of living for both herself and her children. No doubt, what the husband does to his wife in the way presented above does not conform to the rules and regulations 'of the Islamic Law. This is because the husband is infringing on his wife's right to her own money and he is at the same time, dropping his duty to be her protector and maintainer.⁴²

This behavior contradicts Allah's commandment that men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means.⁴³

⁴⁰ Muslim

⁴¹ Quran 4:15-16

⁴² Al-Mutairi, M. R. H. (2004). *A Study of The Wife's Rights in Islamic Fiqh*: A thesis submitted to the University of Birmingham for the degree of Doctor of Philosophy P.168

⁴³ Quran 4: 34

Fulfilling the rights of the husband and children the work of the woman should not hinder her from her commitments as a wife and a mother. Scholars stated that one of the conditions of women's work is that it does not involve negligence of the rights of her husband and children. They used a great deal of evidence to support this condition, including the following Hadith: 'Abdullah bin 'Amr bin Al-'Aas, may Allah be pleased with him, said: The Messenger of Allah, *Sallallahu 'alayhi wa Sallam*, said to me:

"I have been informed that you pray all night and observe fast every day; is this true?" I replied, 'Yes.' He said: 'If you do so, your eyes will become weak and you will get bored. Your body has a right over you and your wife has a right over you. So, fast and break your fast, pray at night and sleep'" ⁴⁴

This *hadith* indicates that there are rights upon the Muslim toward himself and his family, he has to fulfill these rights otherwise, he would be considered negligent. Accordingly, when the woman works outside her home, she should not neglect the rights of her husband and children. As the *hadith* illustrates, neglect should also be avoided by a husband.

4.3.3 Adhering to the Shari'ah-approved dress mode; This is one of the conditions for a woman to works outside the home she must adhere to the dress node approved by the Shari'ah (Islamic legislation) as stated in the Qur'an:

"And tell the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts, etc.) and not to show off their adornment except only that which is apparent (like palms of hands or one eye or both eyes for necessity to see the way, or outer dress like veil, gloves, head-cover, apron, etc.), and to draw their veils all over Juyubihinna (i.e. their bodies, faces, necks and bosoms, etc.) and not to reveal their adornment except to their husbands, their fathers, their husbands fathers, their sons, their husbands sons, their brothers or their brothers sons, or their sisters sons, or their (Muslim) women (i.e. their sisters in Islam), or the (female) slaves whom their right hands possess, or old male servants who lack vigour, or small children who have no sense of the shame of sex. And let them not stamp their feet so as to

⁴⁴Al-Bukhari, Muslim, Abu Daawood, At-Tirmithi, An-Nasaa'i, Ibn Maajah and Ahmad

reveal what they hide of their adornment. And all of you beg Allah to forgive you all, O believers, that you may be successful”⁴⁵

“O Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks (veils) all over their bodies (i.e., screen themselves completely except the eyes or one eye to see the way). That will be better that they should be known (as free respectable women) so as not to be annoyed. And Allah is ever Oft-Forgiving, Most Merciful”⁴⁶

From the above verses of the Qur’an are conditions required for a valid hijab (Islamic dress) for the Muslim woman in public:

- i. The extent of covering, the cloth must cover all part of the body except areas specifically exempted i.e. the hands and face as indicated by the Hadith of the prophet thus; Aisha (RA) reported that Asma’ daughter of Abu-Bakr, came to the messenger of Allah while there were thin clothes on her. He reproached her and said: “O Asma! When a girl reaches the menstrual age, it is not proper that any part of her body should remain exposed except this and this. He pointed at his face and palm”⁴⁷
- ii. Looseness. The dress must be loose enough so as not to describe the shape of a woman's body. This is consistent with the intent of the 'ayahs cited above (24: 30-31) Prophet Muhammad (PBUH) once received a garment as a gift. He gave it to Osamah Ibn Zayd, who in turn gave it to his wife. When asked by the Prophet why he did not wear it, Osamah indicated that he gave it to his wife. The Prophet then said to Osamah "ask her to use a *gholab* under it (the garment) for I fear that it (the garment) may describe the size of her bones." The word *gholab* in Arabic means a thick fabric worn under the dress to prevent it from describing the shape of the body.

⁴⁵Qur'an24:31

⁴⁶Qur'an33:59

⁴⁷Mishkatul al-masabih, cited in Badamasiuy, J. (2012). *Status and Role of Women Under the Shariah*, 1st Ed, Zaria: Nigeria, A.B.U. Press, p.61

iii. Thickness the dress should be thick enough so as not to show the color of the skin it covers, or the shape of the body which it is supposed to hide. The purpose of 'ayah (24:31) is to hide the Muslim women's body except *madhahar minha* (what ordinarily appear i.e. the face and hands). It is obvious that this purpose cannot be served if the dress is thin enough so as to reveal the color of the skin or the shape or beauty of the body. This is eloquently explained by Prophet Muhammad (PBUH):

In later (generations) of my ummah there will be women who will be dressed but naked. On top of their heads (what looks) like camel humps. Curse them for they are truly cursed." In another version he added that they "will not enter into paradise or (even) get a smell of it"⁴⁸

iv. The overall Appearance The dress should not be such that it attracts men's attention to the woman's beauty. The Quran clearly prescribes the requirements of the woman's dress for the purpose of concealing *zeenah* (adornment). If the dress is designed in a way that it attracts men's eyes to the woman then it will not serve its purpose of concealing the *zeenah*. This is why the Quran addressing the Prophet's wives as the examples for Muslim women says: "do not display yourselves like that of the time of ignorance"⁴⁹

v. The dress should not be similar to what is known as a male costume. Ibn 'Abbas narrated that "The Prophet cursed the men who act like women and the women who act like men."⁵⁰

vi. It should not be similar to what is known as the costume of unbelievers. This requirement is derived from the general rule of Shari'ah that Muslims should have their distinct personality and should differentiate their practices and appearance from unbelievers.

4.3.4 Furthermore, when the woman works outside the home, she must not wear perfume or be scented with incense. This ruling is supported with the following evidence:

⁴⁸ Sahih Muslim. Hadith No 1000

⁴⁹ Qur'an 33:33

⁵⁰ Sahihul Bukhari Vol.7 Hadith no. 5886 P.418

Abu Hurayrah, may Allah be pleased with him, said that the Prophet, *Sallallaahu 'alayhi wa Sallam*, said: Any woman who has scented herself with incense, let her not attend 'Ishaa' (night) prayer with us.⁵¹ Another narration states that Abu Hurayrah, may Allah be pleased with him, met a woman and he found the scent of perfume on her. Her clothes were fluttering in the breeze. He said, 'O servant of The Almighty, are you coming from the mosque?' She replied, 'Yes.' He said, 'did you use perfume?' She replied, 'Yes.' He said, 'I heard my beloved; Abul-Qasim, *Sallallaahu 'alayhi wa Sallam*, saying:

"The prayer of a woman who uses perfume for this mosque is not accepted until she returns and makes Ghusl (ritual bath) like that of Janaabah (sexual impurity)."

This *hadith* indicates that it is not permissible for the woman to wear perfume or to scent herself with incense when she goes out. If she does so, then, she is disobedient even if she is going to the mosque. Her prayer in such a state is not accepted until she returns home and performs Ghusl. So, what about wearing perfume when the woman goes to any other place which would be beneath the mosque in rank? Undoubtedly, it is more prohibited, and the prohibition of wearing perfume and exposure to incense is established explicitly in the aforementioned Hadith. Abu Moosa Al-Ash'ari, may Allah be pleased with him, said that the Messenger of Allah, *Sallallaahu 'alayhi wa Sallam*, said: "Any woman who wears perfume, goes out and passes by people so that they can smell her fragrance, is an adulteress"⁵²

This *hadith* clarifies that the woman should not wear perfume and then go out before men. The Prophet, *Sallallaahu 'alayhi wa Sallam*, strongly warned of this act by describing her as an adulteress because she is a reason for drawing men's attention to her and leading them to commit the *Zina* (adultery) of the eye. She is described with adultery because she is the motive behind it by leading men to look at her. This Hadith expresses severe prohibition of

⁵¹ Muslim, Ahmad and An-Nasaa'i

⁵² (Al-Albaani: Saheeh)

the woman's going outside her home while she is wearing perfume. Ibn 'Umar, may Allaah be pleased with him, said that the Messenger of Allah, *Sallallaahu 'alayhi wa Sallam*, said: "Do not prevent the female servants of Allah from the mosques of Allah, and they are to go out unperfumed" ⁵³

This *hadith* prohibits the woman from doing anything that arouses desire whether it is perfume or anything else like it. Since the woman is prohibited from wearing perfume when she wants to go to the mosque which is a place of worship and obedience, then, it is worthier to avoid this act when she goes out for any other reason.

4.3.5 No meeting in seclusion or intermixing with men .When the woman goes outside the home for work or any other purpose there should be no seclusion with non-Mahram men or intermixing with men. Scholars stated that intermixing between the sexes is unlawful, and that the woman, when she works outside her home, should not crowd with men. Scholars⁵⁴ support the impermissibility of intermixing between the sexes by the *hadith* of Ibn 'Abbas, may Allah be pleased with him, where the Prophet, *Sallallaahu 'alayhi wa Sallam*, said: "*Let there be no (non-Mahram) man in seclusion with a woman.*"⁵⁵

This *hadith* points out that it is impermissible for the non-Mahram man to be in seclusion with a woman because this gives way to the devil. Further evidence in this regard is the *Ahadeeth* of Usayd bin Hudhayr, may Allah be pleased with him. He heard the Messenger of Allah, *Sallallaahu 'alayhi wa Sallam*, saying to women when he was coming out of the mosque, and men and women were mingling in the road: "Draw- back, for you must not walk in the middle of

⁵³Reported by Imam Ahmad cited in Al-Fauzaan, S. F. (2006). *Advice to the Muslim Woman* a publication of Al-ibaaanah E-Books retrieved from www.al-ibaaanah.com p.15

⁵⁴Al-Fawzaan, S.F. Ibid

⁵⁵Al-Bukhari, Vol 7, Hadith no.5232 P.108

the road; keep to the sides of the road.” After that, women kept so close to the wall that their garments were rubbing against it.⁵⁶

In this *hadith*, the Prophet, *Sallallaahu ‘alayhi wa Sallam*, forbade women from walking in the middle of the road so that they would not intermix with men, women should walk on the sides of the road. This is an explicit evidence of prohibiting intermixing between the sexes.

4.4 Conclusion

From the above arguments and the authorities in support it is clear that a woman’s work outside the home is permissible as a form of partnership and cooperation between the sexes in building society and evidence reveals that women have been working outside her home, throughout Islamic history along with men, and there is no textual legal evidence against women's work outside their homes but rather instructions against immodesty and free mixing with unrelated men. The emphasis in the Quran and Sunnah regarding women's work is thus not on total segregation but on minimizing factors that promote physical attraction and intimacy, which may lead to the unlawful.

⁵⁶ [Abu Daawood (Al-Albaani: Saheeh

CHAPTER FIVE

5.0 SUMMARY, CONCLUSION AND RECOMMENDATION

5.1 Summary

On a few issues concerning women, there is a heated debate evoking a range of responses among Muslim scholars. One such issue is the feasibility and extent of Muslim women's participation in public space particularly her employment outside the home.

Hence, in this research work, an attempt was made to present the arguments of both the category of Muslim scholars who are against as well as those in favor of the Muslim women's right to work outside the home, and equally the evidence in support of the arguments were presented and analyzed with a view of finding out an Islamic law perspective on the subject Muslim women's right to work outside the home.

A careful analysis of the arguments and evidence in support thereof reveals that the arguments of the scholars opposing women's work outside the home rests decisively on the conceptualization of hijab as an instrument to maintain gender segregation and so the consequent restriction of women from public space. These groups of scholars quote the provisions of Q 33:33 and 53 in this connection.

Also of particular interest to the scholars who oppose women working in any occupation outside the home and call for strict segregation between the sexes is the provision of Q4:34 under which the obligation of a husband to maintain his wife/wives and children is enshrined. Scholars use Q4:34 to further substantiate the woman's domestic role by reasoning that since the woman is exempted from participation in the financial obligations of the family, it makes it very clear "the most appropriate place for her according to Islamic law is her home.

This group of scholars defined the woman's most important role as the family caretaker and argues that if a woman leaves the home in pursuit of outside employment she would not be in position to perform her primary role in the family in an efficient manner.

On the other hand scholars in favor of the Muslim women's right to work outside the home refute the argument which suggests that the hijab verses has categorically forbidden women from participating in public affairs and has enjoined them to stay in their homes.

They argue that these verses (Quran 33:33, 53 and 59 together are seen as permitting the Prophet's wives to leave their homes when this was necessary. while the instructions in 24:31 and in 33:59 relate to all other Muslim women) presupposes that women would come outside their houses for participation in the society as a form of partnership and cooperation between the sexes in building society, but that the conditions of appropriate dress and behavior regulate this permissibility, for which reason both men and women are commanded to lower their gaze in 24:30-31 .

This group of scholars in support argued further that it is clear from a number of *hadith* on the issue of women's public contributions, that the understanding of the Prophet and his companions of these verses was not one that in anyway implied the seclusion from or non-involvement in public life. For women, especially during the Prophet's time, were very active socially and politically. They were allowed and even encouraged to participate in the process of building up the society,

Furthermore, relying on the provision of Qur'an 9:71 they concluded that a woman's work outside the home is not only permissible but it is also a form of partnership and cooperation between the sexes in building society based on the concept of vicegerency or human representation of Allah on earth (*Khilafa*), which includes both men and women and entails personal as well as corporate responsibility to fulfill God's commands on earth.

Both then, as equal partners, share the onus or duty of running the affairs of their society for they 'are friends (*awliya'*) to each other enjoin what is just and forbid what is evil, And, moreover, all the works of the Judiciary, Executive and Legislative powers are there to enjoin good and forbid evil.

The Muslim women therefore, like her counterpart the man has a broad responsibility and an important role to play in public life.

Finally the research work presented an Islamic law perspective on the permissibility of the Muslim woman's right to work outside the home in the light of Quran and *hadith* of the Prophet as well as the conditions attached to such permission.

5.2 Major Findings

1. One of the major finding of this research is that after an era of being second-class citizens in all spheres of life, with the advent of Islam, the position of women was radically redefined. Firstly Islamic law came, establishing their rights and equality with men, as partners and helpers, women throughout Islamic civilization, were granted many rights of which they were previously deprived in other civilizations. Islamic law elevated women to the noble status that she deserved.
2. On the right of Muslim women to work outside the home, the research finds out that there are basically two opinions, the category of scholars who are against as well as those in favor of the Muslim women's right to work outside the home and on each of the opinion there is evidence in support from various scholars.
3. The research further reveals that the difference of opinions arises from the interpretations of Islamic text of the Quran and *hadith*, it is observed that the group of scholars who are against women's right to work outside the home have interpreted the Quran in affirming the categorical exclusion of the Muslim women from the public space and consequently prohibiting her from working outside the home, while the group of scholars in support of the Muslim women's right

to work outside the home refute this argument and contend that there is no textual legal evidence against women's work outside her home but rather against immodesty and free mixing with unrelated men.

4. Finally another very important finding of this research is the effect of the husband's power to grant the wife permission, when there is the need for the woman to work outside the home. As observed earlier in this research work, there is high possibility that the husband can abuse such power granted him under Islamic law and the result will be negative consequences on the part of the woman. For example a wife's right to maintenance may be lost if she is disobedient (*nashiza/nushuuz*) to her husband.¹

Disobedience means that she contravenes her duties as a wife and refuses to comply or be cooperative with her husband. For instance, if she leaves the marital home without her husband's permission or refuses to travel with her husband, these are considered examples of wifely acts of disobedience that could lead to her husband refusing to maintain her on legal grounds. It is thus a growing concern for a woman's right to work because her right to work may be negated if the husband refuses to grant her permission to leave the marital home or attaches stringent conditions to the granting of permission such as asking the woman to waive her right to maintenance and in some cases even the maintenance of the children of the marriage is shouldered by the woman in return for the husband's permission, the research as part of its recommendation proffers suggestion to solve this problem.

5.3 Conclusions

It has become apparent from this research that contrary to the general misconceptions, women in Islam are entitled to full rights as citizens. These rights were put into practice during the Prophet's time and in the period of the early Caliphate, during which women enjoyed the

¹ Pearl, D. and Menski, W. (1998). *Muslim Family Law*, London: Sweet and Maxwell p. 182.

privilege of fulfilling their private as well as their public duties; early Muslim society never embraced the concept of social division of labor between the two sexes.

It entertained no such ideas as the differentiation between public and private roles, as far as women were concerned, or the subordination, as is the case today, of public life to the private one. Indeed, both roles were equally valued, and women were expected to enjoy and excel in them.

Whilst performing their public duties, women were not encouraged to be secluded, confined or constrained, nor were they forced to form a world of their own, separate, invisible and totally cut off from the so-called men's world. Both sexes worked together within the rules of conduct laid down by Islam in order to build up their society.

On this bases, it is the conclusion of this research that the *hijab* cannot by virtue of the *Qur 'anic* text itself, be seen as an instrument restricting the physical mobility of women for, on the contrary, it is an instruction on how to behave in the public realm and in the company of unrelated men. Crude segregation on gender lines is inconsistent with available evidence, because according to the Qur'an and *hadith* literature there are no texts that support the prohibition of women from working outside the home,

Legislative evidence should be based on definite prohibition of Holy Qur'an and the Sunnah of the prophet, jurists cannot point out explicit text in the Quran or Sunnah that excludes women from any lawful type of employment. No one has the right to forbid her without an authentic text, which is clear in meaning, as such since there is neither a prohibition nor a text in this regard, and then it will be safe to conclude that women are permitted to work outside the home under the condition of her adherence to the rules of behavior in public. She is however requires

to dress modestly and put on *Hijab* while going out and meeting adult males beyond her close relatives.²

5.4 Recommendations

In view of the findings from this research work, the following recommendations are advanced with respect to resolve the debate between Muslim scholars over Muslim women's right to work outside the home and also to dispel the misconceptions surrounding the true position of Islam regarding women, on the above issue.

1. To dispel the misconceptions surrounding the participation of women in the public domain, there is the need to increase the level of awareness, the true position of Islamic law amongst Muslims should be widely disseminated, in this note Muslim women become more aware of their rights and duties, they will have the right to affect social change and question juristic opinions. Historical evidence shows that early Muslim women participated actively in public domain and also initiated reforms, questioning not just the Prophet but also equally juristic opinions. Had it not been for their intervention in this manner, a certain number of reforms or rulings particular to women may not have been promulgated.
2. To enable women work and play an important role in the society especially providing services that man may not be competent or appropriate in providing. For example, Women doctors, teachers, nurses, judges, police officers are all necessary for the society to function smoothly. The research recommends that Government, Islamic scholars and other relevant stakeholders should design policies specifically for women in the areas of improving job environment and facilities.
3. Another issue that is of growing concern for a woman's right to work outside the home, is the husband's power to grant her permission to leave the home, because her right to work outside

² Quran 33:59 & 24:30-31

the home may be negated if a husband refuses to grant her permission to leave the marital home. This research strongly recommends that in order to avoid a situation whereby the husband abuses his power to grant the wife such permission the wife's right to work should be negotiated in the marriage contract since marriage after all is a contract, this contractual nature of marriage allows the wife the liberty to insert clauses that will safeguard her right provided such conditions does not legitimize illegality..

4. This research also suggest that women with in depth knowledge of Islamic law and Islamic jurisprudence be appointed in Shura committees of Supreme council of Islamic affairs and other relevant decision making bodies regarding women in all ramifications, collaborating with council of Ulamas at all levels.

6. From the findings of this research, it is apparent that confusion still exists between Islamic teaching and custom, especially on issues related to women's status and roles in the society. It is suggested further that Islamic scholars must take responsibility for explaining to the Muslim ummah in lectures, writings, on television and radio, the respected position and importance of the role of women at home or at work, and the importance of education for women. The Muslim women should seek to promote moderation and tolerance and reject gender discrimination.

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