

**THE POLITICAL RIGHTS OF WOMEN UNDER THE CONVENTION ON  
THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST  
WOMEN: A CRITIQUE FROM ISLAMIC PERSPECTIVE**

**BY**

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**OCTOBER, 2016.**

## **DECLARATION**

I hereby declare that this work is the product of my research efforts undertaken under the supervision of Prof. Juwairiyya Badamasuiy and has not been presented anywhere for the award of a degree. All sources have been duly acknowledged.

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## **CERTIFICATION**

This is to certify that the research work for this dissertation and the subsequent write up (Sadiya Wada SPS/12/MLL/00012) were carried out under my supervision.

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## **List of Abbreviations**

Abbreviation	Meaning
CEDAW	Convention on the Elimination of Discrimination against Women
CSW	Committee on the Status of Women
HRC	Human Right Committee
IRLR	Ireland Law Report
ICCPR	International Convention on Civil and Political Rights
UDHR	Universal Declaration on Human Right

## **Table of Cases**

Peake V Automotive Product IRLR (1977) 480.

Van Oord V Netherlands HRC Communication No. 658/1995 (1997)

## **List of Statutes**

### **Local Statutes**

Constitution of the Federal Republic of Nigeria, 1999 (as amended)

Labour Act, CAP. L1. LFN 2004

### **Foreign Statute**

Family and Medical Leave Act, 1978

### **International Instruments**

Convention on the Political Rights of Women, 1953

Convention on the Nationality of Married Women, 1962

Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1962

Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951

Convention on the Elimination of all Forms of Discrimination against Women, 1979

## ABSTRACT

This research work examined the political rights of women, which is one of the several rights of women that were relegated upon in the past centuries. History has it that so many civilizations and religions do not recognize the concept of women's rights. They deny women such rights as economic rights, social rights, political rights, education rights among others. Women in some societies were treated and seen as 'an imbecile', 'a sex object', 'a property', 'the originator of sin' and so on. This attracted heated debates and arguments with the birth of the modern era ranging from the feminist's point of view, to that of the Muslim scholars. The CEDAW is an international instrument which came up with numerous rights in order to protect women from abuse of their human rights. Hence, Article 7-9 of CEDAW is concerned with the political rights of women. On the other hand, Islamic Law has also protected women's rights through the Qur'an and Sunnah. However, the political rights of women under CEDAW contradict the provision of the Shariah. This contradiction has brought a challenge to the Muslim society to observe the provision of CEDAW due to: (1) the issue of gender equality and (2) the extent of women's participation in politics. In addressing the above contradiction, the research work analyzed Article 7 and 8 of CEDAW only from the Sharia perspective. This analysis was conducted through the doctrinal research methodology. As such the analysis came to find out that the intent of CEDAW that is women should be given the right to vote and to be voted to any governmental office and the right to participate in governmental and non-governmental activities of their country, the right to participate in the affairs of the International organization. From the Sharia perspective, women are given such rights but not on equal basis with men. This is because the principle of equality is unknown to the Sharia and their participation is subject to some restrictions. It is therefore recommended that when women are to participate in politics, they should do it with strict sense of morality and conformity with the Sharia. Through the observance of hijab and in company of her guardian where required. Finally, women should not see politics as a do or die affair; they should rather uphold their natural responsibility of nursing and bringing up of children. This is because it is only if women give children a proper upbringing in life that the society will have good leaders of tomorrow, reduction of violence by the youth and a society which is full of respect for one another since charity is said to begin from home.

# CHAPTER ONE

## GENERAL INTRODUCTION

### 1.1 Background to the study

The minimal role played by women in the political activities of their countries is still persisting today, for instance in Nigeria, the number of female senators in the country's National Assembly is only eight in number<sup>1</sup>. This is compared to the number of male senators which is one hundred and one. This is despite all the political awareness and the continuous efforts of the United Nations to eliminate the discrimination of women and to foster equality in politics through various instruments. However, this problem may be related to some factors such as; religion and tradition. The religious factor is such that a religion restricts or denies women's participation in politics. Furthermore, the traditional factor contains certain inherent cultural practices which deny women their political rights.

Moreover, the importance of political right cannot be overemphasized. This is because political right is one of the several Human Rights that are seen as essential for human existence and that, man by nature is a political animal<sup>2</sup>. He cannot live in isolation. He needs a state to develop his talent, a leader to guide him and binding rules to regulate his norms. Since time immemorial, politics has always existed even among the perished nations such as ancient Greek, ancient Rome, ancient Egypt and the Jahiliyya Arabs<sup>3</sup> to mention but a few. However, with the coming of the modern era, politics change course from the state of ruling people by the royal family (monarchy) in the ancient time to

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<sup>1</sup>Daily Trust Newspaper, 6<sup>th</sup> June, 2015.

<sup>2</sup> Appadorai, A. (2003) *The Substance of Politics*, Oxford University Press, p.37

<sup>3</sup>Daniel, G. (1963) *The First Civilizations: The Archaeology of their Origins*, New York Phoenix Press, P. 9-11



rather a new system of what is now known as the activities of the executive, legislative and judiciary<sup>4</sup>. Furthermore, the politics of the modern era is more than the hitherto politics of the period of antiquity which involves territorial expansion, invasion, signing of treaty<sup>5</sup> and so on to franchise right, right to join a political party, right to participate in a demonstration, right to hold public office, right to work, right to fair wages or equal pay, to serve in military or to be conscripted<sup>6</sup> among others.

Furthermore, political rights are categorized as the First Generation rights. The First Generation Rights include among others, Franchise or universal suffrage. This is a key concept of politics in the present day. It is defined as the political rights of qualified adult (male/female) citizens of a given country to vote or to be voted for in a political election<sup>7</sup>. However, despite the fact that this right is very important in the political dispensation of the modern era, this right was hitherto denied to women and was only restricted to men alone<sup>8</sup>. As such with the rise of the feminist women in the nineteenth (19<sup>th</sup>) century, the agitations of the feminist serve as enlightenment to some countries to abolish the male adult suffrage<sup>9</sup>. This therefore serves as a pioneer to the United Nations (UN) which was formed after the World War II. One portion of the first instrument of the UN which is the Universal Declaration of Human Rights (1948) contains the political right<sup>10</sup>. The main ideology of the UN is to uphold the principle of

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<sup>4</sup> What is politics-<http://www.dictionary.Cambridge.org> last visited on 15/03/16

<sup>5</sup> Kaplan, D. and Jouni, H. (2002) *The Civilizational Roots of European National Boundary and Place: European Boarder in Geographic Context*, Rowman and Littlefield, P. 19

<sup>6</sup> Political rights-<http://www.merriam-webster.com> last visited on 17/03/16

<sup>7</sup> Felix, K. (2011) *Dynamics of Government in Nigeria*, University Press Plc, P.201

<sup>8</sup> Ellen, C. (1998) *Women Suffrage and Women's Rights*, NYU Press, 6 PP. 174-176

<sup>9</sup> *ibid*

<sup>10</sup> Parl, S. (1985) *An Introduction to the International Legal Code of Human Rights*, Oxford University Press, P.101

equality of the human race. As such, this made it to take the affairs of women into consideration for being one of the vulnerable groups. Therefore, the United Nations Assembly saddled the Committee on the Status of Women (CSW) with the responsibility of drafting a convention that will treat all those practices that discriminates against women<sup>11</sup>. The outcome of the committee after heat able debates was The Convention on the Elimination of all Forms of Discrimination against women (CEDAW) in 1979<sup>12</sup>. Part of what the Convention commits to address is the elimination of discrimination against women and the fostering of gender equality in politics. The political rights of women under part II Article 7, 8 and 9 stated that women should be given the right to vote and to be voted, the right to participate in the formulation and implementation of laws, the right to join political associations and the right to participate in the affairs of the international organizations.

On the other hand, Islam has also acknowledged the political rights of women, but not on the basis of equality of sex. This is because men and women in Islam are equal in Sharia but their roles, duties and rights differ due to their natural differences<sup>13</sup>. Allah (SWT) said;

*By him who created male and female certainly your efforts*

*And deeds are diverse (different in aim and purpose).*<sup>14</sup>

The view of the classical jurists which include Maliki and Hanafi with regard to the political rights of women is that, they are against the proposition of

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<sup>11</sup> Badamasuiy, J and Muhammad, U. (2009) Gender Equality or Gender Equity? A Critique of CEDAW from Sharia Perspective, being a paper presented at Conference Room, Faculty of Law Bayero University, Kano, P.10

<sup>12</sup>ibid

<sup>13</sup> Badawi, A. J. (1995) Gender Equity in Islam, World Assembly of Muslim Youth, P. 12

<sup>14</sup> Q92: 3-4 Khan, M. M. and al-Hilali, M.T (2007), Interpretation of the Meaning of the Noble Qur'an in English Language, Darussalm Publishers and Distributors, p. 827

allowing women to rule as Caliphs or head of state. They asserted that “women are not only physically weak, mentally emotional, tender, sensitive but also under great strain for a few days every month; during menstruation, then she has period of physiological as well as psychological strain during pregnancy, birth and suckling.”<sup>15</sup> They then added that the qualification necessary for leadership are possession of independent judgment, deep and penetrating vision of human treatment, full acquaintance with the strategies of war and peace, should be a person of great determination and courage so that no power can obstruct him in the fulfillment of his duties.

The contemporary jurists are of the view that women can rule. This is because women have ruled before like queen of Sheba whose rule was commended in the Quran<sup>16</sup>. As such women can rule.

Moreover, many Muslim states and Islamic states have entered reservations to Article 7 and 8 of CEDAW while others are reluctant to even rectify CEDAW. Furthermore, those Muslim and Islamic states that rectify CEDAW are finding it difficult to domesticate and implement Article 7 and 8. This is because of the principle of gender equality which is unknown to Islam and that they could only apply it to the extent of its conformity to Sharia. This research work therefore intends to critique CEDAW from the Islamic perspective in order to provide an answer to the Islamic States and Muslim states against the need to allow women participate in politics or not.

## **2.1 Statement of problem**

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<sup>15</sup> Rahman, A. (1986) Encyclopedia of Seerah, Seerah Foundation, University of Virginia. Vol v P. 166.

<sup>16</sup> Q 27: 29

Some Muslim and Islamic states are facing some challenges of implementing Article 7 and 8 of CEDAW. These challenges are;

1. The issue of gender equality.
2. The extent of women participation in politics.

This is because the principle of gender equality is unknown to Shariah, the religious belief that all the actions of Muslims are weighed according to Sharia otherwise such action is taken to be null and void. This has therefore made some Muslim and Islamic states reluctant to rectify CEDAW while some have entered reservation to Article 7 and 8, while those who rectify it wholly are finding it difficult domesticate or implement it.

The problem is not only worth researching but important at this period of time that the international organization and feminists have been calling for the participation of women in politics.

### **3.1 Research questions**

For the purpose of this research work, the following research questions are to be addressed:

1. What are the political rights of women under CEDAW?
2. What are the political rights of women in Islam and to what extent does Islam permit the participation of women in politics.
3. Do Muslims need the CEDAW in order to protect the political rights of women?

### **4.1 Aim and Objectives**

The aim of this research is to make a critique of some of the provisions of CEDAW pertaining to political rights of women from Islamic law perspective.

To this end, the research has the following objectives:

1. To examine the political rights of women under CEDAW.
2. To examine the relevance or otherwise of CEDAW to the Muslim community.
3. To examine the political rights of women under Islamic Law and the extent of participation of women in politics under Islamic Law.

## **5.1 Justification**

This research work is important in this 21<sup>st</sup> Century that has seen a massive and a continuous increase in the political participation of women. This brings about the need for the research work to enlighten women on their political rights and the extent of such rights from the Islamic perspective.

Furthermore, the importance of this research work at this point in time cannot be over emphasized because democracy as a political system is viewed as the best system of government and is believed to be achieved with the promotion of gender equality in political participation. This brings about the continuous agitations from the International Community on mostly the Islamic and Muslim states to allow the equal participation of men and women in politics. This prompted the need to critically analyze the provision of CEDAW relating to politics to help in understanding its position from Islamic Law perspective. The

research work is also very important for the benefit and contributions it will provide. Such contributions are as follows:

1. The outcome will be useful to future researchers in this field for it will identify and elaborate on the political rights of women from the CEDAW and the Shariah.
2. The outcome will be important to men in knowing what the political rights of women entails and in order to stop the abuse of the political rights of women.

## **6.1 Methodology**

The methodology used in this research is the doctrinal research methodology. The research of this kind involves only “theorizing” without necessarily looking into the practical aspects. Therefore, the research work was conducted through the use of primary and secondary sources such as the Qur’an, Hadith, text books, articles in journals, newspaper cuttings, and internet source.

## **7.1 Scope and Limitation**

The political right of women is enshrined under Article 7-9 of CEDAW. However, this research work is limited to Article 7 and 8. This is because these Articles are the only ones that go hand in hand with the concept of political rights. Furthermore the issues relating to the rights of women are too wide to be dealt with in such a research

work. Therefore in order to make an in-depth research, the scope of this research work is limited to the political rights of women as contained under Articles 7 and 8 of CEDAW.

### **8.1 Literature Review**

There are so many literatures written on this field as such the field is very rich in materials especially with reference to women's rights. However, there are gaps in their works when linked with this research. Some of these writers that the researcher came across are:

Baderin, M.A<sup>17</sup>: He is a human right activist whose works reflect discussions on International Human Rights, the points of intersection and divergence with the Islamic ideals. His work provides justifications to international human rights from the Islamic point of view. As such his work focuses on whether or not international human right can be effectively protected within the application of Islamic law. The gap which this work failed to address is providing justification to the political life of women from the Islamic perspective as such this research work tries to fill that gap.

Badamasuiy, J<sup>18</sup>. In her work discusses the status and role of women under the Sharia. In doing so, she gives a historical antecedent of the situation of women in the past centuries; she also gives an analysis of the rights of women under the Sharia. Her work is an answer to the contemporary world on the divergent views they hold on the status and role of women under the Sharia. The lacuna left by this work is that her

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<sup>17</sup> Baderin, M.A. (2003) International Human Right and Islamic Law, Oxford University Press, United States

<sup>18</sup> Badamasuiy, J. (2012) Status and Role of women Under the Sharia, ABU press, Zaria

work did not provide a detailed analysis of the political rights of women. This research work therefore addresses it.

Badamasuiy, J. and Muhammad, U.S<sup>19</sup>: the paper criticized gender equality under CEDAW from the Sharia perspectives. This is by using relevant provisions from the Qur'an and Sunnah. The significance of this research work is that it enlightens the reader on gender equality, the point of intersection and divergence in the rights of the two genders and also a highlight on the rights of women and men in Sharia and in CEDAW. The paper concluded that gender equality is unknown to Islam but rather what is known to Islam is gender equity. This paper criticizes gender equality in CEDAW but did not look at the rights contained in CEDAW. This research work therefore addressed one of those rights, the political rights of women.

Afza, N. and Ahmad, K<sup>20</sup>; made an elaborate analysis of the position of women in the past civilizations, ranging from the Greeks, Athens, Hindus, and Chinese to some other religions like Judaism, Christianity and Islam. The authors then made a comparative analysis of the Western trend of rights and position of women in the present day, with that of Islamic principles of the rights and position of women and conclude that the treatment of women under Islam is the best. However, their work did not treat the international law perception of women right. This research work therefore filled the gap.

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<sup>19</sup> Badamasuiy, J. and Muhammad, U.S. (2009) Gender Equality or Gender Equity: a critique of CEDAW from Sharia perspective, this is a paper presented at Conference Room Faculty of Law Bayero University, Kano

<sup>20</sup> Afza, N. and Ahmad, K. (1969) The position of woman in Islam. Islamic Foundation, Karachi.



Kassim, N<sup>21</sup>; is the author of *The Influence of Feminist Movement and Establishing of Women's Rights in Islam*, which is a chapter in an edited book. The author discusses on the various waves of feminist movements and their ideologies. The writer also gives an insight of how these feminist movements are influencing some Muslims, she then finally gave suggestions on what the Muslims scholars need to do and the areas which they need to address. This work did not provide a solution to the Muslim and Islamic state against the compliance with feminist ideologies and international instruments. This research work filled that gap.

Anwar, Z<sup>22</sup>. The book provides means on how “fiqh and Qur’anic verses on justice, compassion and equality can support reform towards an egalitarian family relationship”. The book contains a lot of criticisms on the fiqh of the classical jurists with a lot of suggestions toward reviewing it in order to be in conformity with the contemporary world. This work fails to see Shariah as a complete law that needs no correction. This work therefore addresses it.

Mernissi, F<sup>23</sup> discussed on women’s political independence and its legitimacy as rulers in the Muslim world. In her book, she gave a history of fifteen Queens who ruled in Asia and how they executed their powers as political heads. She is of the view that men are denying women the right to lead only because of sentiments and no more. She

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<sup>21</sup> Kassim, N . (2009) *the Influence of Feminist Movement and Establishing of Women's Rights in Islam*, in Ahmed, H. I and Kamaruddin, Z.(eds), IIUM Press, Malaysia.

<sup>22</sup> Anwar, Z . (ed) (2008) *Wanted: Equality and Justice in the Muslim Family*, Musawah Sisters Kuala Lumpo.

<sup>23</sup> Mernissi, F. (199) *The Forgotten Queens of Islam*, *International Journal of Middle East Studies*, vol. 31 No.3.

held the view that women have led before in the past centuries as such they could lead now, in the present century. Mernissi as a feminist is providing basis for the political participation of women under Islam. She further added that the insistence that the Muslim woman should be in veil is a restriction and denial of her political rights and that such a provision is only a patriarchal interpretation. However, her work did not suggest the political participation of women in accordance to the Sharia but rather in accordance to the western perception. Therefore this research work filled this gap by providing the Islamic perception of politics.

Writers mostly discuss the political rights of women under the Sharia and failed to discuss it under the CEDAW. Furthermore, none of the writers mentioned above critique the political rights of women under CEDAW from the Sharia perspective. The need is to show the importance or otherwise of CEDAW to the Muslim society.

## **9.0 ORGNIZATIONAL LAYOUT**

This contains the breakdown of the chapters of the research work.

Therefore, the research work is chaptered as follows:

1. Chapter One contains the introductory part of the research work. It commences by making a general introductory remark on the chosen area as a background to the study. Other issues discussed under the chapter are: statement of problem which gave the detail problem for embarking on this research, research question raised the questions

to be addressed in the course of writing the research, methodology gave an account of the type of research method to be adopted, aims and objectives the aims are the series of activities to undergo in making the research and the objectives are the process that will be followed in achieving the aims, justification brings out the benefit and importance of making this research work, scope and limitation states out the limits of the research that is the starting and end point, literature review give a summary of other writings that is related to this work and organizational layout gives the structure of the research work.

2. Chapter two contains the conceptual clarification. This chapter gave a clarification of some terms like; the theology of the political right, the western political thought, the Islamic political thought and political rights.
3. Chapter Three discussed the political rights of women under CEDAW. As such, the chapter gave an account of the history of CEDAW; an overview of the content of CEDAW, article 7 and 8 of CEDAW was also examined and criticized from the Islamic perspective. An elaborate analysis of discrimination and equality as principles was also made in this chapter.
4. Chapter four is the political rights of women under the Sharia. The chapter contains an in depth analysis of the political rights of women under the Sharia, rulings and principles with regards to the political rights of women based on Qur'an, Sunnah, Ijma' and

Qiyas was discussed in this chapter. The Secondary Sources of Sharia was also perused.

5. Chapter Five discusses on gender equality under the Shariah.

6. Chapter six: this contains the summary, findings, recommendations and conclusions of the research Work.

## **CHAPTER TWO**

### **THEORETICAL AND CONCEPTUAL CLARIFICATION**

#### **2.1 Introduction**

This chapter commits itself in giving an insight on the history of the political rights of women, what politics is all about that is the general perception of politics, the Western political thoughts, the Islamic political thoughts and what political rights is all about. This is in an attempt to acquaint the reader with what politics is all about from the Western and Islamic perspectives. Since the chapter aims at making conceptual clarification, all aspects are to be treated briefly. The chapter then concludes.

#### **2.2 Theory of the political rights of women**

Women in the past centuries received no or a little participation in the political activities of their state and this is as a result of physical, cultural and traditional factors among others. The little participation women made in politics of the past centuries was made mainly by women from the royal families. Example; Cleopatra of Egypt, Queen Victoria and Queen Elizabeth 1 of England, Catherine the great of Russia, Isabella of Spain, Queen Amina of Zaria and a host of others<sup>1</sup>. These women during their reigns participated a lot in the political activities of their states such as territorial expansions, signing of treaties, and enhancing diplomatic relations among others. While women from the poor families or less privileged homes were made to squalor in poverty and were maltreated or dehumanized.

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<sup>1</sup>Lamido, S. S. (2001) Women and Political Leadership in Muslim Thought, Being a Paper presented at the Niger Delta Congress Hall Abuja, organized by IHS Towers of Strength, P. 22

They neither participated in policy making, nor were they given the right to vote or to be voted. They also found it very difficult to enforce their rights by either instituting a legal action or through Alternative Dispute Resolution. They were not only looked down upon but are also tortured and exploited. They were also seen and treated as a property which can be dealt with at ones will. Women were considered to be akin to devil. They were also denied the opportunity to develop and realize their potentialities in life. However, it is the practices of so many past civilizations and religions to relegate women in politics and in other aspects of life to the lowest background. Such societies were seen as civilized societies. The practices of some of such societies and some religions are examined here;

The ancient Greek civilization existed between “800BC and 500BC – a highly sophisticated period in world history.”<sup>2</sup> The civilization was also termed as the origin of “modern Western culture.” The perception of women in this society was depicted, in the words of Michael Streich where she said that “Greek women were relegated to the household and the loom, Greek women enjoyed few rights, but found outlet in other areas like religion and festivals.”<sup>3</sup> The Greek women were confined to the walls of their houses, but the only outlet for women was the religion ground where they serve as priestesses and festivals such as *Athenian Thesmophoria*<sup>4</sup> also offers a reprieve for Greek women, especially that it is only attended by women alone.<sup>5</sup> Their only role was to nurture the children and to attend to their husbands. They also did not have any right regarding inheritance, politics,

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<sup>2</sup> Mark, C. (2013) Ancient History Encyclopedia-www.ancient.com last visited on 16/03/16

<sup>3</sup> The Greek Civilization, [http://suite.io/Micheal -Streich//2ga2nv](http://suite.io/Micheal-Streich//2ga2nv) last visited on 26/02/15

<sup>4</sup> ibid

<sup>5</sup> Ibid

military and civil matters.<sup>6</sup> The perception and portrayal of women in this society is one that denotes bad omen<sup>7</sup>. This is because she is being painted as images of the Pandora box<sup>8</sup>.

Socrates, one of the prominent Greek philosophers, pointed out his perception of women as follows:

*Women are the greatest source of chaos and disruption in the world. She is like the dafall tree which outwardly looks very beautiful but if sparrows eat it they die without fails.*<sup>9</sup>

Women are taken to be weak and inferior to man in this society. The next society that attended to might in the history of the world was the Romans. The perception of women in this society was concisely put by Oputa C. (Hon) where he said;

*In recent Rome, a woman's legal position was one of complete subordination; first to the power of her father or brother and later to that of her husband who had paternal power (patria protestas) over his wife. In the eyes of the Roman law, women were regarded as imbiciles... but it then rendered them unfit to sign a contract or a will or act as a witness, they could not also hold public office.*<sup>10</sup>

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<sup>6</sup> ibid

<sup>7</sup> Khan, M. W. Women Between Islam and Western Society, Mahmoodbad, Hafiz and sons (1994) pp.41-42.

<sup>8</sup> Badamasuiy, J. (2012) Status and Role of Women under the Shariah. Ahmadu Bello University Press limited, Zaria, P.6 a Pandora box is an artifact in Greek myth. The box was given to Pandora which contained all the evils of the world. (www.Google.com last visited on 23/7/2014)

<sup>9</sup> Afza, N. and Ahmad, K. (1969) The Position of Woman in Islam. Islamic Foundation, Karachi, P.14

<sup>10</sup> Oputa, C. "Women And Children As Dis Empowered Groups" in Kalu A. U. Women And Children Under The Nigerian Law. Federal Ministry of Justice, Lagos. P7

Like the Greeks, women in Ancient Roman Empire have no political right; “*they could not vote or hold political office.*”<sup>11</sup> In this society, wives, daughters and sisters are subordinated to the power of their husbands, fathers or brothers; their ‘do’s’ and ‘don’ts’ are subjected to the head of the family called *patria poestas*.<sup>12</sup> Unlike the Greeks, women in Ancient Roman Empire enjoyed some rights such as;

1. Going to school with boys to study history, poetry, art and philosophy.
2. Participation in business.
3. Appearing in court as witnesses or to defend themselves.
4. Making will.<sup>13</sup>

These rights exist alongside from their usual role of nursing children and performing the home chores.

Some other society’s treatment of women in politics were no better than the above societies. Such societies included the Chinese who treated their women as property that can be sold at will<sup>14</sup>. To the Indians, the life of a woman always comes to an end with the death of her husband<sup>15</sup>. In the Egyptian civilization a woman is referred to as evil<sup>16</sup>. On another hand, the Jahiliyya Arabs also formed part of the societies that did not treat their women with respect and honor. It was in this

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<sup>11</sup> Bruce W. and Thomas A.J. (2004) Case Book on Roman Family Law, Oxford University Press PP. 31-32.

<sup>12</sup> Rights Enjoyed by Women in Ancient Rome. [http://Answers. Yahoo.com](http://Answers.Yahoo.com) last visited 27/02/2015

<sup>13</sup> *ibid*

<sup>14</sup> Oputa c, op cit. p.7

<sup>15</sup> *ibid*

<sup>16</sup> Micheal Streich, op cit. last visited on 26/02/15



society that female infanticide was practiced<sup>17</sup>, denial of inheritance to the women whose husbands or parents or siblings died<sup>18</sup>, the marriage of a widow to her late husband's son, the treatment of women with the oath of continence<sup>19</sup>.

The above are the conceptions of women by some major past civilizations in the world. It is however worthy now to consider the conception of women by some religions in the world;

In Judaism; according to the Hebrew Scriptures like the Talmud, the man who has a female child is said to always be in worries and grieves;

*A daughter is a vain treasure to her father, from anxiety about her. He does not sleep at night, during her early years lest she be seduced, In her adolescence lest she go astray, in her marriageable years, lest She does not find husbands, when she is married, lest she is childless And when she is old lest she be witchcraft.*<sup>20</sup>

This therefore is the basic conception of women by the Jews. In the same vein, the Christians regard women as the source of evil for she is the one responsible for bringing out Prophet Adam from heaven (paradise) down to earth. This can be seen from some statements made by some early Christian fathers. Example;

St. Tertullian said to women,

*... each of you is an Eve; the sentence of God on this sex of yours lives in this age the guilt must necessary live too; you are the devil's gateway, you are the first deserter of the divine law you are she who persuaded him when the devil was not valiant enough to attack. You destroyed so easily God's image in man.*

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<sup>17</sup> 16:58-59

<sup>18</sup> Badamasuiy, J (2012) Op Cit P. 15

<sup>19</sup> Q 2:226-227

<sup>20</sup> Oputa C. op cit, p. 7

*On account of your desert, that is, death even the son of God had to die<sup>21</sup>.*

According to St. John Chrysostom, a woman is

*A necessary evil, a desirable calamity, a deadly Fascinator and a painted ill<sup>22</sup>.*

In the words of St. Clement of Alexandria,

*Nothing disgraceful is proper for man, who is endowed with reason, much less for woman to whom it brings shame to reflect of what nature she is.<sup>23</sup>*

These and so many statements made by the Christian fathers show how women are conceived in the Christian religion. Furthermore, the institution of marriage is also detestable in the religion for “celibacy” and “spinsterhood” is taken as the condition for attaining nobility.

With the advent of Islam, there came a total diversion in the status of women as obtainable in all these societies and religions. Some of the changes brought by Islam to women are:

1. Islam recognizes woman as a full and equal partner of man<sup>24</sup>.
2. Woman is given equal rights with men in holding property, receiving knowledge and so on.
3. Woman is also equal to man in observing the religious obligations such as fasting, pilgrimage, the five daily prayers, payment of zakat and so on.

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<sup>21</sup> Afza N. and Ahmad K. op cit,(1969) p. 19

<sup>22</sup> ibid

<sup>23</sup> ibid

<sup>24</sup> Abulati, H. (1975) Islam in Focus, Diwan Press, p.184

Therefore, Islam has indeed totally changed the life, situation and condition of women by giving them political, economic, and social rights. In fact, women attained equal status of vicegerent of Allah with men. The status of women placed by Islam exceed any comparison to be made against the hitherto status of women in the above mentioned civilizations and religions whereby women were treated as the property of their husbands and were expected to only be “chaste, obedient, submissive and unless sweet spoken silent”<sup>25</sup> to their husbands. The education of women was also not important as they were “dissuaded” to seek for education<sup>26</sup>. They were also denied proprietary right and right to inheritance among others.

### **2.3 What is politics?**

The word politics is derived from the Greek word *polis*<sup>27</sup> which literally means ‘city state’. It is classically understood to mean the highest or the most desirable form of social organization. Politics has no specific definition. It has been defined by numerous authorities. Some scholars see it as an art of government while others see it as a public affair<sup>28</sup>.

### **2.4 Politics as an art of government**

David Easton defines politics as “the authoritative allocation of values”<sup>29</sup> by this it means that the various processes through which government respond to pressure from the large society in particular in allocating benefits. Politics is defined as

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<sup>25</sup>Kassim, N. (2009)The Influence of Feminist Movement and Establishing of Women’s Right in Islam, in Ahmed, H. I. and Kamaruddin Zaleha (eds.), IIUM Press, Malaysia, P. 44

<sup>26</sup> ibid

<sup>27</sup>Appadorai, A. (2003) The Substance of Politics, Oxford University Press, P.1

<sup>28</sup>ibid

<sup>29</sup>John, G. (2013) The Reconstitution of Political Theory, Journal of the History of Behavioural Sciences, P.190

what takes place within a polity<sup>30</sup>. It is a system of organization which is centered on the machinery of government. Politics is therefore what is practiced in cabinet rooms, legislative chambers, government department and the likes.

## **2.5 Politics as a Public Affair**

This moves beyond the narrow realm of government when politics is to be discussed as a public life or public affairs<sup>31</sup>. The famous Greek Philosopher, Aristotle said ‘man is a political animal’<sup>32</sup> by which he meant that it is within the political community that human being can live the ‘good life’<sup>33</sup>. However, Aristotle in his definition is referring to man alone, this is because he once argued that women were not full human beings<sup>34</sup>.

Therefore, politics deals with ethics and its main purpose is justice within the society. Politics as a public affair involves the institutions of state such as the apparatus of government, the court, the police, the army and so forth. They are all regarded as public because they are funded at the public expense.

Man by his nature does not live in isolation, no matter how little the population of a community might be, it consist of a number of women, men and children who interact with each other; socially, economically, religiously and a host of other activities. In doing so, they need a person who will guide and represent them, they need rules and regulations that will safeguard and justify their conduct, and they also need a territory to develop their talents and culture. This bring about the need for a leader who will give authority to them, laws that will define the right and the

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<sup>30</sup> ibid

<sup>31</sup>What is politics,<http://www.palgrave.com> last visited on 23/12/15

<sup>32</sup>ibid

<sup>33</sup>ibid

<sup>34</sup>Islam Elevation of women status-<http://www.Islambasics.com> last visited on 16/03/16

wrong and a state that will serve as their nationality respectively. Hence this brings about what is known as politics. Perhaps if not in a fiction there had never been an independent and self-reliant person who had lived on earth that has advanced economically, internationally to mention but a few. Appadorai rightly defines politics as when people are organized for law within a definite territory<sup>35</sup>.

According to him, the concept of politics has two main sub divisions;

- 1) Political theory
- 2) Political organization

Political theory is concerned with defining and setting out limits for state authority. While political organization is the forms and working of government. The former deals with such questions as what are the purposes of political organization and what are the best means of realizing them? What is the nature of authority of the state? The reconciliation of the authority of the state, the liberty of individuals and so on. The latter deals with the study of aristocracy and then to democracy on the first part and then the study of the modern politics there by bringing about the similarities, dissimilarities and the progress between the past and the present<sup>36</sup>.

## **2.6 The Western Political Thought**

The western political thought is the perception the western philosophers have on politics. The political thinking of the west is said to be divided into three namely; the polis, the modern political thought and the liberal democracy and its critique.

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<sup>35</sup> Appadorai. A A; (2003) op cit P.1

<sup>36</sup>ibid

### 2.6.1 The polis

This emanates from the thinking of the early philosophers who discussed on the good ideals of a “polis”<sup>37</sup>- *city states* and experimented on various forms of political organizations such as tyranny, aristocracy and oligarchy. Such philosophers included Plato who in his work “*the republic*”<sup>38</sup> stated that, to constitute the ideal polis, encompassing consideration of all aspects of governance, citizenship, social order, and personal virtue. The city-state should be governed by a ruler with philosophical training capable of comprehending the true nature of reality, justice and wisdom, and where one's place in society is determined by one's natural abilities. Aristotle who is a student to Plato said while responding to Plato's ideas said “it is evident that the state is a creation of nature, and that man is by nature a political animal. And he who by nature and not by mere accident is without a state, is either above humanity, or below it; he is the ‘Tribe less, lawless, heartless one,’ whom Homera denounces—the outcast who is a lover of war; he may be compared to a bird which flies alone.”<sup>39</sup> By this he means that a natural order between the individual and the community exists as both a power struggle and a distribution of resources, which has as its own end the good held both individually and in common. This political thought existed within the period of antiquity in the ancient Greek society<sup>40</sup>.

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<sup>37</sup> Mark, C. (2013) Ancient History Encyclopedia-www.ancient.com last visited 16/03/16

<sup>38</sup> Internet Encyclopedia of Philosophy-www.iep.etm.edu last visited on 17/03/16

<sup>39</sup> ibid

<sup>40</sup> ibid

### 2.6.2 The modern political thought

The modern political thought started from the medieval ages when political philosophy was influenced by Christian thinking of the Roman Catholics<sup>41</sup>. The modern political thought extended to the period of renaissance and it started when the modern political philosophers think that it was time to re-think politics according to a new more realistic way of human thinking. As such they thought that for politics to exist, powers should be pragmatized. Some of such scholars include the Italian political philosopher and civil servant Niccolò Machiavelli<sup>42</sup>. Machiavelli is credited with the distinctly modern notion of an artificial (rather than natural) state in which the leader should rule swiftly, effectively, and in a calculated manner. Thomas Hobbes adapted this Machiavellian approach on a much larger scale. For Hobbes, the state should be sovereign and secular; the citizens should give up both their allegiance to the Church and their rights in exchange for physical security. However, while modern political thought has been built upon the Machiavellian notion of the artificiality of the state, the moderns disagreed on how people behaved and on the degree of a government's strength and pervasiveness necessary to properly govern citizens. The age of enlightenment also falls into this category. In this period, a new theory about what the human was and is brought a new question and insight by such thinkers as John Locke, Montesquieu and Jack Rousseau. These thinkers responded to two basic questions,

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<sup>41</sup>Kelly, P. (2011) Introduction to Modern Political Thought, London School of Economics and Political Science, P.6

<sup>42</sup>ibid

one is sovereignty and the other is what the best state could be<sup>43</sup>. John Locke responded to a strict concept of sovereignty with the idea of constitutional government. Like Hobbes, Locke imagined a civil society capable of resolving conflicts in a civil way, with help from government. However, Locke also advocated the separation of powers and believed that revolution is not only a right but, at times, an obligation of citizenship. These three thinkers represent the foundation of modern state theory<sup>44</sup>.

### **2.6.3 Liberal democracy and its critique**

This started during the industrialization and modern era. The era deals with the early thinkers of democracy like Jean Jacques Rousseau who developed the notion of participatory democracy. His notion of participatory politics is characterized with the exercise of suffrage at periodic election. And that the realization of liberty and democracy requires participatory structure. Democracy is that system of government which people exercise the power either directly or through representatives. In order to have a working democracy, there is the need for state to provide; the freedom of expression through the media or any means of communication, the supremacy of the popular will in implementing the directive policy, there should also exist economic equality.

However some critiques like Karl Marx is against democracy due to its capitalist nature. Karl Marx is a socialist, who viewed democracy as the rule of *a propertied oligarchy*<sup>45</sup>. Some scholars like Voltaire are also against democracy. To him the equality of citizens which is sought to be achieved in a democratic setting is

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<sup>43</sup>ibid

<sup>44</sup>ibid

<sup>45</sup>A. Appadorai (2003) Op Cit P. 141



impossible, because ‘...it is as impossible for two professors in theology not to be jealous of each other’<sup>46</sup>. Burke from his side critique democracy from the popular democratic notion that the majority carries the vote, thereby saying that decision by a majority is not a law of nature. This is because the smaller number can have the strongest force to defeat the majority.

From the discussions made above on the Western political thoughts. It is observed that, the political rights of women were not recognized by the Western political thinkers. Example, Aristotle did not see women as humans.

## **2.7 The Islamic political thoughts**

Whenever one talk of political thought, he cannot escape from discussing the Islamic political thoughts and its influence over the Arabian Peninsula. Arabia before the advent of Islam did not have any standard political setting, they did not have a monarch as such they were decentralized. The Quraysh tribe has several clans which are Banu Hashim, Banu Makhzum, Banu Ummayy<sup>47</sup> which are all clans in Mecca and each has its own head. Whenever they intend to reach a consensus on an issue, they assemble for a meeting at the *Kaaba*. Each head representing his clan and then have a discussion on the issue before reaching a consensus. For instance, when the Meccan unbelievers intended to boycott from having any interactions with the Muslims, it was their Heads that gathered at the *Kaaba* and reached a consensus that Muslims should be boycotted; there should be no marriage between them, no buying and selling and the agreement was then pasted at the entrance of the *Kaaba*. Furthermore, when the unbelievers intended

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<sup>46</sup>ibid

<sup>47</sup>Tree of the Quraish <http://www.inlightofislam.com-family> last visited on 31/12/15

to kill the Prophet (SAW) all the heads of the clans gathered at the *Kaaba* and reached an agreement that each family should bring out a representative who will join together and stab the Prophet (SAW) at once<sup>48</sup>.

However, with the advent of Islam, the political life of the Arabs changed. While the Prophet (SAW) was in Mecca, the revelations to the Prophet (SAW) were much of installing faith rather than politics. It was when the Prophet (SAW) migrated to Medina that politics began in the nascent Islamic state. During the life time of the Prophet (SAW), the Islamic state was ruled in accordance with the Shariah<sup>49</sup>. Upon the demise of the Prophet (SAW), such questions as who should be elected as the leader of the Muslim community, why should the leaders be obeyed, what are the duties and obligations of the leader and so forth arose. It was therefore based on those issues that the Muslim political thinkers treated those issues and questions on the Caliphate. As such the field is today categorized into classical and contemporary. Scholars such as Imam Abu Hanifah, and Imam Al Ghazali among others belong to the classical category. The contemporary jurists emanated since the imposition of colonial rules on the Muslims. Scholars such as Sir Sayyid Khan and a host of others belong to the contemporary jurists.

## **2.8 The classical jurist**

Imam Abu Hanifa is of the view that in order to rule the Islamic state, certain principles are to be practiced such as:

- 1) Sovereignty belongs to God as such the state is to be ruled in accordance to the law revealed by Allah to His Prophet (SAW).

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<sup>48</sup>Bashirudeen, M. H; (2014) Life of Muhammad, Additional wakalat-e-tasnif, United Kingdom P. 37-38

<sup>49</sup>Ibid P. 51-52

*O you who believe! Obey Allah and obey the Messenger, and those of you who are in authority. If you differ in anything among yourselves, refer it to Allah and His Messenger, if you believe in Allah and in the Last Day. That is better and more suitable for final determination.*<sup>50</sup>

- 2) Equality of the rights of the citizens; no matter the color, the race, the tribe or clan a person belongs to, they are to be treated equally in Islam. The Prophet (SAW) was reported to have said “the Muslims are brothers to one another. None of them has any preference over another except on ground of piety”<sup>51</sup>. In another Hadith, the Prophet was reported to have said that “O men beware, your God is one, and an Arab has no preference over a non-Arab or neither a non-Arab over an Arab or a white over a black or a black over a white save on ground of piety”<sup>52</sup>.
- 3) The Shariah is the basis of judging every person; from the lowest ranking citizen to the highest. Aisha narrated that;

*The Quraish people became very worried about the Makhzumiya lady who had committed theft. They said, "Nobody can speak (in favour of the lady) to Allah's Messenger (saw) and nobody dares do that except Usama who is the favourite of Allah's Messenger (saw). When Usama spoke] to Allah's Messenger (saw) about that matter, Allah's Messenger (saw) said, "Do you intercede (with me) to violate one of the legal punishment of Allah?" Then he got up and addressed the people, saying, "O people! The nations before you went astray because if a noble person committed theft, they used to leave*

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<sup>50</sup>Q4:59 Shakir, M.H. (1990), Translation of The Holy Qur'an, Ansariyan Publications, Islamic Republic of Iran. P. 78

<sup>51</sup> Ibn Kathir, (1937) Tafsir al Qur'an al Azim, Matba'ah Mustafa Muhammad, Egypt, iv p. 217

<sup>52</sup> Alusi, R;(1926) Idarat al Taba'at al Muniriyyah. Egypt xxvi, p. 148

*him, but if a weak person among them committed theft, they used to inflict the legal punishment on him. By Allah, if Fatima, the daughter of Muhammad committed theft, Muhammad will cut off her hand.*<sup>53</sup>

- 4) The government, its authority and possessions are trust of God as such, no one has the right to exploit them except as sanctioned by Allah<sup>54</sup>. The Prophet (SAW) was reported to have said that “Mind, each one of you is a shepherd and each one is answerable in respect of his flock. The leader is answerable in respect of his subjects”<sup>55</sup>.
- 5) The head of state should be appointed out of mutual consultation and concurrence by the Muslims. The leader should perform the administrative work through consultation<sup>56</sup>. The Hadith of the Holy Prophet which said that “Ali reported that he asked the Prophet of God (PBUH) what shall we do if we are faced with a problem after you die about which there is no mention in the Qur’an nor have we heard anything concerning it from your lips? He answered. “Collect those of my people (ummah) that serve God truthfully and place the matter. Before them for mutual consultation. Let it not be decided by an individual’s opinion”<sup>57</sup>.
- 6) The Amir is to be obeyed whole heartedly in whatever is right and just, but he is not to be obeyed if he commands for sin. The Prophet (SAW) was reported to have said that “it is incumbent on a Muslim

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<sup>53</sup> Bukhari Op cit Kitab al Hudud Vol. 8, bk 81, Hadith 779

<sup>54</sup> Q 4:58 Shakir, M. H. Opcit P.78

<sup>55</sup> Bukhari Op cit Kitab al Ahkam, Ch. I; Kitab al-imarah, P.7

<sup>56</sup> Q13:38

<sup>57</sup> Alusi, Op cit xxv. P. 42

to listen to his Amir and obey whether he likes it or not, unless he is asked to do wrong, he should neither listen nor obey”<sup>58</sup>.

## 2.9 The Contemporary Jurists

The works of the contemporary Muslim jurists started as a result of colonialism of some Islamic and Muslim states which impacted a lot in the Muslims way of life. As such this resulted to the rise of some thinkers whose idea was to polish the Shariah so as to be in compliance with the colonial Ideology. One of such contemporary jurist was Sir Sayyid Ahmad Khan. He is of the view that the Glorious Qur'an and Sunnah are only for spiritual performance. Hence the political, social, economic aspects of the Shariah are not relevant any more in the enlightened contemporary age. That it “*reflected the primitive society in which the Prophet (SAW) lived*”<sup>59</sup>. Sir Sayyid has a strong passion for the Western culture that he once said in his visit to England; “*without flattering the English; I can truly say that the natives of India high and low, merchants and petty shop keepers, educated and illiterate, when contrasted with the English in education, manners and uprightness are as like them as dirty animal is...*”<sup>60</sup>. Therefore, the view of Sir Sayyid as an Islamic jurist is that the Shariah is applicable only to one's self and all other aspects like politics should be guided by the modern trend.

Another important contemporary jurist is Imam Sayyid Qutb. He was born in 1906 and died in 1966 in Egypt. His political thought barged him a death sentence. His view on Islamic political thought is centered on Islam as a complete system of

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<sup>58</sup> Bukhari, Op Cit. Kitab al Ahkam. Ch. iv

<sup>59</sup> Jameelah, M.(1977) Islam and Modernism, Lahore, P.17

<sup>60</sup> Ibid P.64

morality, justice and governance. According to him, Shariah should form the backbone of governance<sup>61</sup>. His first view concerning politics was his proposal to have a 'just dictatorship' that will aim at providing political rights only to the 'virtuous.'<sup>62</sup>His second view was his proposal of a rule with no government at all but based on Shariah<sup>63</sup>. However, Qutb's view differed from so many contemporary Muslim reformists like Sir Sayyid Khan who claimed democracy as a system of government to be Islamic. Thereby supporting their views with the Islamic principle of Shura (consultation) which they said is in agreement with elections and democracy. Qutb on his side criticizes this and pointed out that the Shura chapter of the Qur'an was revealed during the Meccan period and therefore does not deal with the problem of government and do not make reference to elections and only call upon the ruler to consult the ruled<sup>64</sup>.

In his book the *mualim fid tariq* (milestones) Qutb advocated the means to achieve his second view that:

1. That the Qur'an should be used as a means to make change in the life of man. This is because the Qur'an is a complete guidance to man<sup>65</sup>.
2. That Muslims should resist any form of government that put men into "servitude to other men". As such he sees it as Un- Islamic and violates the sovereignty of God<sup>66</sup>. Furthermore, a truly Islamic polity will be one that

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<sup>61</sup>"Sayyid Qutb" Encyclopaedia of World Biography (2004),<http://Encyclopaedia.com> last visited on 17/03/16

<sup>62</sup>Sivan, E. (1985) *Radical Islam: Medieval theology and Modern Politics*, Yale University Press P.73

<sup>63</sup>Irwin, R.(2001) *Is This Man Who Inspired Laden*, The Guardian, P.1

<sup>64</sup> "Sayyid Qutb" Encyclopaedia of World Biography (2004), <http://Encyclopaedia.com> last visited on 17/03/16

<sup>65</sup>Qu tb, S. (1964) *Milestones*, Kazi Publishers, Ch. 1 P. 7

<sup>66</sup>ibid

has no ruler not even a judge or a police because people will obey divine law<sup>67</sup>.

3. He also suggested that the means for achieving this polity is through the fighting of jahilliyya (un-islamic) with two fold approach; preaching and abolishing the organizations and authorities of jahiliyya. As such the realization of a true Islamic state is the elimination of non-muslims and true Muslims will be those who look forward to the life of poverty, difficulty, frustration, torment and sacrifice<sup>68</sup>. What Qutb mean here is that any none Muslim in an Islamic state should be thrown out of the state and true Muslims are those who persevere any kind of hardship in this life.

From the above it is clear that some scholars advocate for the observance of modern approach to politics through democracy like Sir Sayyid Khan while others advocate for the strict observance of the Islamic Principles like Sayyid Qutb.

Sayyid Qutb's view is on the right path. This is because he is calling for a system of government that will see no law as sovereign but that of Allah (SWA) and that of His Messenger. The system called democracy can never be compared with the Islamic system of government which is a complete and total way of life. Unlike democracy which is just a rule by the majority vote even if the majority are wrong.

Therefore, it was observed that Shariah has recognized the political rights of women since its inception in the 7<sup>th</sup> century. Example, the history of

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<sup>67</sup> Ibid P. 85

<sup>68</sup> ibid

Islam shows that the women participated in a lot of political activities during the life time of the Prophet (saw) like making Hijra (migration) and a host of other activities.

## **2.10 Political rights**

Political rights are the rights exercised in the formation and administration of a government. They are given to citizens by the constitution. These rights give the citizen power to participate directly or indirectly in the administration of government<sup>69</sup>.

Political rights are the right to political participation. Political participation can take many forms; the most notable form is the right to vote. The right also covers the right to join a political party; the right to stand as a candidate in an election; the right to participate in a demonstration; and freedom of association<sup>70</sup>.

Political rights include natural justice (procedural fairness) in law, such as the rights of the accused, including the right to a fair trial; due process; the right to seek redress or a legal remedy; and rights of participation in civil society and politics such as freedom of association, the right to assemble, the right to petition, the right of self-defense, and the right to vote<sup>71</sup>.

The importance of the political rights cannot be over emphasized. This is because man by his nature is a political animal. He interacts with the individuals within his territory; be it in the market, in the school, in the working place and so on. As such, he needs guiding ethics and decorum to guard his conscience while he associates with people. Hence, this brings about political rights, so as to regulate

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<sup>69</sup> Webster, M. (1828) Political Rights>[http// www.questia.com](http://www.questia.com). Last visited on 17/03/16

<sup>70</sup>ibid

<sup>71</sup>ibid



the conduct of the rulers as they rule, not to deny the citizens their political rights and the ruled as they exercise their political right.

Political rights are so important that it comprises the first portion of the 1948 Universal Declaration of Human Rights (as the Civil and Political Rights). The civil and political rights are also termed as the first generation rights. They are so important that they find way into most modern Constitutions, example in the 1999 Nigerian Constitution, it is found in chapter two as Directive Principles of State Policy. Though they are not justifiable but they are set of ideals which aim at measuring the strength and weakness of a government.

Political rights are dealt with by various international instruments such as:

1. The International Covenant on Civil and Political Rights<sup>72</sup>.
2. The European Convention on Human Rights<sup>73</sup>.
3. The Convention on the Political Rights of Women<sup>74</sup>.
4. The Convention on the Elimination of Discrimination against Women<sup>75</sup>.

These instruments guarantee political rights in at least four ways;

*First, the protection of political freedom by means of the fundamental civil rights, especially in respect of expression, association and assembly. Second, the recognition of explicit rights to participate in the conduct of public affairs in particular by voting or being elected to public office but also more contentiously, by wider participative rights. Third, the recognition that individuals can lose the protection of civil and political rights if the effect, were they to enjoy those rights, would be the consequent oppression of others; and fourth, the subjection of political rights to the antidiscrimination measures of international law.*<sup>76</sup>

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<sup>72</sup>International Covenant on Civil and Political Rights Resolution 2200A (XXI) of 16<sup>th</sup> December, 1960.

<sup>73</sup>European Convention on Human Rights Resolution 4.XL, 1950.

<sup>74</sup>Convention on the Political Rights of Women, Ch.XVI, Vol.2, 1953.

<sup>75</sup>Convention on the Political Rights of Women, Resolution 34/180 of 18<sup>th</sup> December, 1979.

<sup>76</sup>Davis, H. (2000) Political Freedom, association, political purposes and the Law, London, P. 18

The general features of all laws relating to political rights are;

1. Participating directly or indirectly in the affairs of the state.
2. Right to vote and to be voted.

The procedure or means a state follows in ensuring that such rights are guaranteed varies, this is because of variance in the political systems; capitalists and sociologists alike. Furthermore, the right to participate in state affairs is considered to be 'programmatic' in the sense that they represent an ideal or aspiration to be achieved through developing practices and cultures.

Discussing political right in this premise is very important. Because it is one of the key concepts in this research work. Therefore providing a brief explanation is very vital as it will acquaint the reader with the general concept of political right, its purpose and its applicability.

## **2.11 Conclusion**

This chapter focuses in providing conceptual clarifications to the political rights of women. Therefore, the chapter observes that women were hitherto not given such right. They were only seen and not heard, they are seen as mere subjects to their husbands, they are expected to remain within the confines of the four walls of their houses and unless sweet spoken they are expected to remain silent.

The chapter also observes that the western political thinkers did not recognize the political rights of women and the right was not granted to women until the 19<sup>th</sup> century. On the other hand, it was observed that Shariah has recognizes the political rights of women since the 7<sup>th</sup> century. Furthermore, political rights and politics to the western societies are mere human perceptions of how the state should be governed and how state owned resources are to be shared. While politics

and political rights to the Muslims are divine rules and guidance to use in governing the state while sovereignty is to Allah alone.

## CHAPTER THREE

### CEDAW AND THE POLITICAL RIGHTS OF WOMEN

#### 3.1 Introduction

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>1</sup> is viewed as an international instrument that widely and comprehensively protects the rights of women because it protects such rights as social rights, economic rights, reproductive rights, political rights among others. The main purpose of drafting the Convention was to promote the principle of non-discrimination and complete equality between men and women<sup>2</sup>. This is because discrimination is one of the stigmas being suffered by women in their family, in their locality, and in their places of earnings. Discrimination against women is caused by traditional and cultural beliefs as well as the survival of stereotyped concept of what men and women are supposed to do<sup>3</sup>. On the other hand, equality is one of the essential elements of a democratic setting which is committed to justice and human rights<sup>4</sup>. Therefore, CEDAW is committed to protecting those rights of women which are susceptible to abuse and discrimination against women. As such, in order to protect and uphold these rights, the rights were codified and the need for equality between the two genders, male and female was addressed. This chapter analyzes the content of CEDAW with regard to the political rights of women. As such, the history of the Convention was examined first followed by an overview of

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<sup>1</sup>Convention on the Elimination of Discrimination against Women, Resolution 34/180 of 18<sup>th</sup> December, 1979

<sup>2</sup> Ladan, M.T. (2007) Material and cases on public International Law, Ahmadu Bello University Publishers Limited, Zaria P.263

<sup>3</sup> United Nation Committee on Human Right Fact Sheet Number 22. Geneva-UN 1994

<sup>4</sup> ibid

CEDAW provision, the political rights of women under CEDAW was also examined, the limitations to the political rights of women then ensued and finally there was a conclusion containing the findings of the chapter.

### **3.2 The History of the Convention**

One of the zeal of the United Nations was to foster gender equality among the human race as such, this was reflected in the International Bills of Human Rights and the United Nation's Charter where they both emphasizes on equality of sex and prohibit distinction of any kind on the basis of sex<sup>5</sup>. However, these Instruments proved to be insufficient to cover the internationally guaranteed rights of women that are prone to discrimination. This therefore necessitated the Commission on the Status of Women (CWS) to seek for an international law that will specifically guarantee and protect those rights of women that are easily prone to discrimination<sup>6</sup>.

The CSW was originally established in 1946 as a sub commission of the Commission on Human Rights presently called the Human Rights Council. It later gained the status of a full Commission as a result of the pressure mounted by the Human Rights Activists. After granting it the status of a full Commission, it was saddled with the responsibility of ascertaining those problems of women that need immediate attention and that equal rights between men and women should be promoted. As a result of this, the Commission started making some Conventions such as:

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<sup>5</sup> ibid

<sup>6</sup>Badamasuiy, J. and Muhammad, S (2009) Gender Equality or Gender Equity? A Critique of CEDAW from Sharia Perspective, being a paper presented at the Conference room, Bayero University, P.8

1. Convention on the Political Rights of Women, 1953<sup>7</sup>.
2. Convention on the Nationality of Married women, 1957<sup>8</sup>.
3. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1964<sup>9</sup>.
4. Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951<sup>10</sup>.

However, these laws prove to be insufficient because

*The approach they reflected was fragmentary as they fail to treat discrimination against women in a comprehensive way.*<sup>11</sup>

Therefore, this necessitated the General Assembly on 5th December, 1963 to request the Economic Social and Cultural Council to invite the CSW to draft a declaration that will combine in a single instrument of an international standard expressing the equal rights of men and women. The work of drafting the Convention (CEDAW) started in 1965 where a selected number of individuals from the CSW were saddled with the responsibility of drafting the text. By 1967, the Declaration on the Elimination of Discrimination against Women was adopted by the General Assembly. Five years after the drafting of the declaration, the CSW

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<sup>7</sup>Convention on the Political Rights of Women, Ch.XVI, Vol.2, (1953)

<sup>8</sup>Convention on the Nationality of Married Women, Ch. XVI, Vol.2 (1957)

<sup>9</sup>Convention on Consent to Marriage, Minimum Age For Marriage and Registration of Marriage, Ch. XVI, Vol.3 (1964)

<sup>10</sup>ILO Equal Remuneration Convention, (1951) No.100

<sup>11</sup> Short History of CEDAW, [http://: www.un.org](http://www.un.org) last visited on 18/03/16

considered the possibility of preparing a binding treaty and thereupon requested the Secretary General to call on the United Nation's members to give their views on the proposal. The subsequent year witnessed the appointment of the members of the committee to draft the convention. Finally, the convention was drafted in 1976 and deliberations were made by a working group of the third committee of the General Assembly from 1977-1979. The CEDAW was adopted by the General Assembly in 1979 by votes of 130 to none<sup>12</sup>.

### **3.3 An overview of CEDAW provisions**

The CEDAW is an international instrument which treated some peculiar rights of women such as economic rights, political rights, and social rights among others. These rights are those rights which the CSW understands to require immediate attention. This is because women are being marginalized to the lowest background; they are also stigmatized and discriminated on account of gender. As such in order to protect women from any discrimination and to stop the victimization of women, the United Nations adopted the CEDAW with the main objectives of protecting the rights of women against all forms of discrimination and abuses of their human rights. The Convention specifically spells out the basic rights and responsibilities of women. It also consolidates other Conventions which deal with the right of women into a single document.

The structure of the Convention is such that it has a preamble with six parts and thirty articles. The preamble stated that persistent discrimination against women

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<sup>12</sup> ibid

continues to exist and that such discrimination violates the principles of equality of rights and respect for human dignity.

### **3.3.1 Part 1**

This contains articles 1-16, the articles define and prohibit discrimination against women. It also set out measures for equality between men and women. Article 1 of the Convention defines what is meant by the term

*discrimination against women” to mean any “distinction, exclusion, restriction made on the basis of sex which has the effect or purpose of nullifying the recognition, enjoyment or exercise by women irrespective of their marital status on a basis of equality of men and women, of human rights and fundamental freedoms in politics, economic, social, cultural, civil or any other field.*

Furthermore, this part gives suggestions to party states on the modalities for the elimination of discrimination such as:

1. Incorporating the principles of equality in their national constitution
2. Legislative means and sanctioning discrimination on women
3. Refraining from any act of discrimination against women by state parties and institutions or authorities under it.
4. Ensuring that actions are taken to prevent discrimination against women among persons, organizations or enterprise
5. Modifying or abolishing existing laws, regulations, customs and practices which constitute discrimination against women

State parties were also encouraged to ensure the full development and advancement of women, elimination and modification of some cultural practices which



discriminates upon women and that measures aimed at protecting maternity will not be described as discrimination among others.

### **3.3.2 Part II**

This research work is centered on this part of the Convention. This part contains articles 7-9. The articles in this part treats the political rights of women such as; right to vote, right to be voted, equal participation of women with men in the activities of the International Organizations and to represent its government internationally. This research work limits itself to only Articles 7 and 8 of CEDAW only.

### **3.3.3 Part III**

This part contains articles 10-14. The articles in this part treats the educational rights of women; that women should not be restricted what so ever with regards to the school they attend, the curriculum they are being thought, scholarships, programs of continuing education and sports. State parties were also enjoined to eliminate discrimination against women in the field of employment including right to work, employment opportunities and free choice of profession among others. Furthermore, these rights shall be guaranteed to women on the basis of equality with men.

### **3.3.4 Part IV**

This part contains articles 15-16. The articles in this part treated the legal and social rights of women. On the face of legal rights, the Convention stated that women are to be given equal opportunity with men in all legal matters, ranging from entering

into and concluding contract, owning property, participating in court proceedings and so on. With regards to social rights of women, the Convention treats women equally with men on matrimonial rights such as entering into marriage contract, right to decide freely whether to have children or not in a marriage among the matrimonial rights.

### **3.3.5 Part V**

This part contains articles 17 – 22. These articles describes the procedure for the implementation of the Convention, establishment of a monitoring body as the committee on the elimination of discrimination against women, reporting mechanism by state parties, the rules of procedure by the committee and the term of office for officers, the period in which the committee shall meet report on the progress of the Convention and so on.

### **3.3.6 Part VI**

The last part of the Convention covers articles 23-30. The articles in this part takes care of the exception clause which says that where a state legislation or any other international instrument will provide more right to women, than the Convention, the former shall prevail, the signing, ratification and accession by the state parties, the option for the revision of the Convention, enforcement date, reservation, limitations and withdrawal, dispute resolution among state parties on the interpretation of the Convention and finally, the languages which the Convention shall be made available into.

### 3.4 An analysis of the political rights of women under articles 7 and 8 of CEDAW

The political right of women is enshrined under Article 7-9 of CEDAW. However, this research work is limited to Article 7 and eight. This is because only these Articles go in tandem with the concept of Political Science. Article seven and eight of CEDAW are on the political rights of women. Article 7 stated:

*States parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and in particular, shall ensure to women an equal terms with men, the right*

*A) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.*

*B) To participate in the formulation of government policy and the Implementation thereof and to hold public office and performs all public functions at all levels of government.*

*C) To participate in non-governmental organizations and association concerned with the public and political life of the country.*

The provision of article 7 was interpreted by the United Nation's Division for advancement of women (department of economic and social affairs) in CEDAW, General Recommendation number 23 (16<sup>th</sup> session, 1997)<sup>13</sup>. The department explained that it was due to the importance of the political rights of women that it is also contained in other conventions, declarations and international policies. Some of these conventions, declarations and international policies are:

1) Universal Declaration on Human and Peoples Rights<sup>14</sup>

2) International Convention on Civil and Political Rights<sup>15</sup>

3) The Convention on the Political Rights of women<sup>16</sup>

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<sup>13</sup> United Nation's General Recommendations [www.un.org](http://www.un.org) last visited on 23/3/2015

<sup>14</sup> Universal Declaration on Human and peoples' rights, General Assembly Resolution 217A, (1948)

<sup>15</sup> International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI), (1966).

4) The Vienna Declaration<sup>17</sup>

5) Paragraph 13 of the Beijing Declaration and platform for action<sup>18</sup>

6) General recommendation 5 and 8 under CEDAW<sup>19</sup>

Therefore, to have an elaborate and comprehensive international instrument, the political right of women was also provided for in CEDAW. The obligations on state parties provided under article 7 are;

1. Elimination of discrimination against women.
2. Equality in the enjoyment of the right with men and women.

However, these obligations on state parties are general to all other rights contained in the Convention. Therefore, for state parties to fulfill these obligations, appropriate measures need to be carried out. Such measures include; amending existing laws, regulations, customs and practices which discriminate against women and adopting gender sensitive laws and policies<sup>20</sup>. State parties have therefore derived means of eliminating discrimination and fostering gender equality through the above mentioned measures. Example of such state party is Nigeria which it included in chapter IV, section 42 of the 1999 Constitution, provision for equal treatment for all persons without consideration for their community, political opinion, race, gender, sex, ethnic or social origin, color, sexual orientation, disability, religion, conscience, belief or birth. There have also been so many policies and programs in Nigeria which have the purpose of motivating, uplifting

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<sup>16</sup>Convention on the Political Rights of Women, Ch.XVI, Vol.2 (1953)

<sup>17</sup>The Vienna Declaration and programme of Action, General Assembly Resolution 48/121, (1993).

<sup>18</sup> Fourth World Conference on Women Beijing Declaration and Platform for Action, 1995, [http://:www.un.org](http://www.un.org) last visited on 18/03/16

<sup>19</sup>General Recommendation made by the Committee on the Elimination of Discrimination against Women, [http://:www.un.org](http://www.un.org) last visited 18/03/16

<sup>20</sup>Article 3 of CEDAW

the status of women and eliminating discrimination against women. Some of these programs are “Better Life for Rural Women”, Family Support Program (FSP), Family Economic Advancement Program (FEAP) among others and some policies like the 30% Affirmative Action, provision for maternity leave among others.

### **3.5 Elimination of discrimination**

Discrimination as one of the important obligations contained in CEDAW was defined by the convention to *mean*

*“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status on the basis of equality of men and women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”<sup>21</sup>*

The key word used here is “*any distinction, exclusion or restriction on the basis of sex...*” to clarify this phrase, it refers to the “... biological distinctions between men and women, the most obvious differences being the reproductive organs. To use sex as a variable means to ask whether it makes a difference, whether the actor to or subject is (biological) male or (biological) female. In gender theory, this ought to mean asking whether biological differences alone (be they hormonal, muscular or variations on height, weight or body) make a difference”<sup>22</sup>.

The Oxford Advanced Learner’s Dictionary defines discrimination to mean

*The practice of treating somebody in favor of somebody or the practice of treating somebody or a particular group less fairly than others because of somebody’s age, sex or race*<sup>23</sup>

UNICEF defines discrimination to mean

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<sup>21</sup>Article 1 of CEDAW

<sup>22</sup>Ahmad, S. Gender Equality Under Article 8: Human Rights, Islam and Feminism, 13 Malaysian Law Conference, 16-18 November, 2005 p.2

<sup>23</sup> Oxford Advanced Learner’s Dictionary, 7<sup>th</sup> ed. P. 417

*“the unfair treatment of a person or group for any reason such as being a girl or a boy, belonging to a particular race or religion or having different abilities and so on. When people are discriminated against, they cannot enjoy their rights. Discrimination against girls and women means directly or indirectly treating girls and women differently from boys and men in a way which prevents them from enjoying their rights.”<sup>24</sup>*

Therefore, discrimination against women in this context is when women are denied or refused on equal basis with men to enjoy their political, economic, social, cultural, civil and any other right.

### **3.6 Equality in the enjoyment of right with men and women**

Another important obligation contained in CEDAW is equality. Equality must be achieved within the framework of a political system; equality of sex is being defined as “sameness” treating “Likes alike” or “similarly situated classes are treated similarly”. However, the principle of equality is one of the key aspects of human rights and was described as “the starting point of all liberties.”<sup>25</sup> Equality is also contained in the International Bills of Rights that is International Convention on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights. Both instruments obliged state parties to foster equality among men and women.

*The principle of discrimination is an extension of equality whereby the enjoyment of human rights shall be without distinction of any kind, such as race, color, language, political or other opinion, national or social origin, property, birth or other status<sup>26</sup>.*

However, the definition of equality has been given varying approaches which are:

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<sup>24</sup> Gender, Rights and Civic Engagement Policy and Practice UNICEF, 2011-<http://www.cedaw.in/brief-for-adolescence.com> last visited on 18/03/16

<sup>25</sup> Baderin, M.A. (2003). International Human Right and Islamic Law, Oxford University Press, United State p.58

<sup>26</sup> *ibid*

A) Formal Equality Approach<sup>27</sup>: This treats women to be the same with men in every condition. Example a male and a female doctor working who have the requisite qualifications to work as medical practitioners in a hospital. This approach stipulates that they are to be treated the same. Formal equality is the type of equality most critics of feminism believe in. In formal equality, the characteristics of the dominant group are the 'norm' and conformity of the norm is the price for equal treatment. The 'norm' here is the man against whom the treatment of women is being measured. It implies that women should be treated exactly like men and according to men standard. This approach has been criticized that "what if women and men are not similarly situated? For instance, in terms of employment which allows the dismissal of female airline stewardesses who are pregnant? Here males are not similarly situated because only females can get pregnant as that is a biological difference between males and females...treating women the same as men or different from men (men as the comparator) do not produce satisfying result for women's equality. To the extent the women are not like men or because the society has assigned them a subordinate status, they cannot achieve equality through the application of formal equality." This approach therefore proves to be inadequate to be sufficient and to ensure that women enjoy the same right with men as such; this led to the substantive equality model.

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<sup>27</sup> Ahmad, S. Op cit P. 16

B) Substantive Equality Model<sup>28</sup>: this model of equality acknowledges the differences of men and women and looks at “disadvantage” rather than “sameness”. It deals with the disadvantages or discrimination against women. It calls for the recognition of the inequality rooted in the political, social and economic divisions between men and women. Substantive equality takes into account the complexity of inequality, its systematic nature and the way it is entrenched in social values and behavior. Substantive Equality Model consist of:

1. Equality of opportunity (and access) to the resources of a country, to be secured by a framework of laws and policies and supported by institutions and mechanisms for their operation.
2. Equality of outcome /result toward achieving real change for women. State parties to CEDAW have a responsibility to ensure the practical realization of rights and are thus obliged to show results

In this approach, women are given the opportunity to realize and develop themselves thereby looking at their ability and capability to be different with men. Within this model of equality, differential treatment may be required not to perpetuate existing inequalities but to achieve and maintain a real state of effective equality. This model of equality is the type that is being recognized by CEDAW.

The main aims of this model of equality are:

1. Redressing stigma, stereotyping, humiliation and violence by promoting respect for the equal dignity and worth for all.
2. Positive affirmation and celebrity of identity.

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<sup>28</sup> ibid



### 3. Facilitation of full participation in society<sup>29</sup>.

However, the proponents of the substantive approach model opined that it will be very difficult to equalize between men and women that one may even ask

*...in what sense are men by nature equal”<sup>30</sup>again, “the most striking fact about human life is the inequality of men, not their equality. Men are unequal in bodily proportion. Physical strength, intellectual abilities, and moral capacity. This inequality springs from two sources, nature and nurture. Men are not born equal; some babies are born white, some black and very little can be done to alter the color of either. Provided a child is receiving an adequate diet, it is probably impossible to add an inch, let alone a cubit to its stature, though a few pound might be added to his weight by proper nutrition. In point of mental equipment, some are congenitally feeble-minded; others are not. The effects of physical and social environment enhance or reduce the inequalities present at birth. The statement that all men are equal is then, as erroneous as that the surface of earth is level<sup>31</sup>.*

The Human Rights Committee in its General Comment 28 on Article 3 observed that:

*Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture. Including religious attitudes. State parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s rights to equality before the law and to equal enjoyment of all Covenant rights. State parties should furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which may jeopardize or may jeopardize, compliance to Article 3 and indicate what measures they have taken or intend to take to overcome such factors.*

The law of some countries also shows significance of equality of the human person by incorporating equality into their state laws. Example; in the Declaration of the Rights of Man (1789) issued by the National Assembly of French, during the French revolution, the following categorical statement was made ‘Men are born and always

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<sup>29</sup> [www. Dhaka.tribune. Com/](http://www.Dhaka.tribune.Com/) substantive approach to gender equality. Last visited on 27/7/15

<sup>30</sup> Appadorai, A. The Substance of Politics. Oxford University Press, (2003) New Delhi. P.86

<sup>31</sup> *ibid*

continue free and equal in respect of their rights.’<sup>32</sup>In fact, the principle of equality in international human rights law cannot be over emphasized as it calls for total equality between the genders and requires affirmative action for women through legislations, enlightenment and education to effect the positive and equal enjoyment of the rights between men and women.

The Human Rights Committee has offered an explanation on equality of rights between men and women in its General Comment 28. The comment was made to interpret Article 3 of the International Covenant on Civil Cultural and Political Rights but, has connection with Articles 7 of CEDAW because the comment emphasizes on the principle of equality. The General Comment 28 stated as follows:

*State parties should provide information on any specific regulation of clothing to be worn by women in public. The Committee stresses that such regulations may involve violation of a number of rights guaranteed by the covenant, such as Article 26, on non-discrimination; Article 7, if corporal punishment is imposed in order to impose such a regulation; Article 9, when failure to comply with the regulation is punished by arrest; Article 12, if liberty of movement is subject to such a constraint; Article 17, which guarantees all persons the right to privacy without arbitrary or unlawful interference; Article 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their self-expression; and lastly, Article 27, when clothing requirement conflict with the culture to which the woman can lay a claim.*

*With regards to article 9 States parties should provide information on any laws or practices which may deprive women of their liberty on an arbitrary or unequal basis such as by confinement within the house*<sup>33</sup>.

*...State parties should provide information on any legal provision or any practice which restricts women’s right to freedom of movement as for example the exercise of marital powers over the*

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<sup>32</sup>Appadorai, A. Op cit. P. 86

<sup>33</sup>Para. 3.10 General Comment 28

*wife or parental powers over adult daughters, legal or de facto requirement which prevent women from travelling such as the requirement of consent of a third party to the issuance of a passport or other travelling type of travel documents to an adult woman. States parties should also report on measures taken to eliminate such laws and practices and to protect women against them including reference to available domestic remedies<sup>34</sup>.*

*States should inform the... committee...whether women may give evidence as witnesses on the same terms as men...<sup>35</sup>*

*...the right to choose one's spouse may be restricted by laws or practices that prevent the marriage of a woman of a particular religion with a man who professes no religion or a different religion. States should provide information on these laws and eradicate the practices...it should also be noted that equality of treatment with regards to the right to marry implies that polygamy is incompatible with this principle. Polygamy violates the dignity of women. It is an inadmissible discrimination against women. Consequently, it should be definitely abolished wherever it continues to exist<sup>36</sup>.*

*...equality during marriage implies that husband and wife should participate equally in responsibility and authority within the family<sup>37</sup>.*

*States must also ensure equality in regards to the dissolution of marriage...the grounds for divorce and annulment should be the same for men and women ... Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses<sup>38</sup>.*

*In giving effect to recognition of the family in the context of Article 23, it is important to accept the concept of the various forms of family including unmarried couples and their children<sup>39</sup>.*

It is apparent that some parts of this comments contradicts the Shariah.

Example, the saying that no regulation specifying the kind of cloth to be worn by women in public, because regulating the kind of cloth to be worn

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<sup>34</sup>Para. 3.13 General Comment 28

<sup>35</sup>Para. 3.15 General Comment 28

<sup>36</sup>Para. 3.24.1 and 3.24.2

<sup>37</sup>Para. 3.24.3 and 3,24.4

<sup>38</sup>Para. 3.24

<sup>39</sup>Para. 3.24 and 4.10 General Comment 28

by women amounts to the violation of a number of rights such as non-discrimination. This assertion conflict the teachings of the Sharia. Under the Sharia, both men and women are required to dress moderately and not to expose sensuous parts of their body seductively in public<sup>40</sup>. Women were directed to “*draw their veils over their bosoms*” and not to publicly display their beauty “*except for what must ordinarily appear.*”<sup>41</sup> This is because of the prohibition of adultery and fornication under the Sharia. Unlike the general perception of the west that veiling is a restriction of women’s rights,

*...women who often wear a long Islamic coat as well as head scarf, are not always uneducated peasants submitting to tradition. Some are well educated professional women who have made a conscious choice to embrace Islam*<sup>42</sup>

The perception of the west with regards to the veil is that the veil is seen as a

*Sign of inferiority in Islam and a blatant badge of female oppression forced on un-willing female by various methods- bribery, or threats of and actual violence*<sup>43</sup>.

Muslim women who wear the veil are subjected to amusing and upsetting comments. For instance,

*Nur, an undergraduate from South Asia, had a traumatic encounter in the library cafeteria one day, when she was approached by an older woman who demanded in a hostile manner why Nur was bringing the backwardness to Canada”. The woman emphasized that they had “worked really hard in Canada for women’s right “and wearing the hijab will destroy all that. “*<sup>44</sup>

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<sup>40</sup>Baderin, M. op cit. p. 64

<sup>41</sup>Q 24:30-31

<sup>42</sup>Pope, N. and Pope, H. (1997) Turkey unveiled Before and After, P. 328

<sup>43</sup>Bullock, K. (2010) Rethinking Muslim Women and the Veil-Challenging Historical & Modern Stereotypes, Islamic Institute of Islamic Thought, P. 13

<sup>44</sup>ibid

Furthermore, one of the Moroccan's female feminists, Fatima Mernissi wrote two books discussing on veils; *Beyond the Veil and The Veil and the Male Elite*. In both books, Mernissi argued that "*the veil is a symbol of unjust male authority over women.*"<sup>45</sup> Some feminist have gone to the extent of saying that

*the hijab is a symbol that Islam views women as sex object, that she must be covered up because she is thought of reductively as 'female' whose only important attribute is her sexuality that threatens the social order.*<sup>46</sup>

However, the wearing of veils by the Muslim women is attributed to piety; it also serves as a counter to the materialism of the capitalists whose perception of the concept of veil can be said to be as a result of ignorance of the importance of wearing veil and misinterpretation of the Sharia principles regarding wearing veils.

The wisdom behind stipulating hijab for women is because men are those who struggle for providing for the family, they are the ones who mostly participate in war and other activities of life that needs engaging in hard labor. It is therefore befitting for them to wear that which covers their private parts (from the navel to the knees). Anything beyond that is at their discretion. Women on the other hand were created with a "delicate and gentle nature" which easily attracts man and they are the ones who are sexually harassed. It therefore befitting for them to cover themselves in such a way that their chastity is protected and their beauty preserved.<sup>47</sup>

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<sup>45</sup>ibid

<sup>46</sup>ibid

<sup>47</sup>Al-Sawy, S. (2002), Post September 11: Americas' Questions About Islam, Umm al-Qura for Translation, Publishing and Distribution, al-Mansurah, Egypt.

Furthermore, the committee stated that any law or practice which may deprive women of their liberty such as confinement within the house amounts to inequality; this implies that women should be given the same liberty with men to walk or move freely as they so wish without any restriction or limitation to where they go or how they move and so on. This principle is in conflict with the Sharia. In Islam, women's movement is restricted, she is not allowed to embark on a journey without the companionship of her *maharam* (a guardian who cannot get married to the lady), and she must seek the permission of her husband or her father whenever she is going out of the house. Allah (SWT) said in the Holy Qur'an that you should not allow your women to be going out of the house like the women of *jahiliyya*.<sup>48</sup> The Prophet (SAW) was reported by Ibn Abbas to have said that: "a woman should not travel except with a Dhu-mahram (her husband or a man with whom that woman cannot marry at all according to Islamic jurisprudence), and no man may visit her except in the presence of a Dhumahram a man get up and said "O Allah's Apostle! I intend to go to such and such army and my wife wants to perform hajj." The Prophet (SAW) said to him; "go along with her (to hajj)".<sup>49</sup>

It was observed that the Human Rights Committee expresses its deep concern on some of the above issues on equality in its observations of some of the Muslim States<sup>50</sup>. For instance, in its observation of the Islamic Republic of Iran in 1993, it stated that "the punishment and harassment of women who do not conform with the strict dress code; the need for women to obtain husbands permission to leave home; their exclusion from the magistracy; discriminatory treatment in respect of the

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<sup>48</sup> 24:30

<sup>49</sup> Sahih Bukhari, Op cit Book 29, Hadith 85 [www.searchtruth.com](http://www.searchtruth.com) last visited on 25/11/2015

<sup>50</sup> Baderin, M. A Op Cit p. 63

payment of compensation to the families of murder victims, depending on the victim's gender and in respect of the inheritance rights of women; prohibition against the practice of sports in public; and segregation from men in public transport" are in compatible with the principle of equality<sup>51</sup>. Furthermore, in Sudan in 1997, the Committee expressed concern at the "official enforcement of strict dress requirements for women in public places, under the guise of public order and morality and in human punishment imposed for breaches of such requirements and that restriction on the liberty of women under the Personal Status of Muslims Act, 1992 are matters of concern..."<sup>52</sup>

One can observe here that Iran and Sudan are both Muslim countries that see Shariah as a complete guidance to them and free from need of any innovations. As such any principle of gender equality is not useful to them because Allah said;

*...this day I have perfected your religion for you, completed  
My favour upon you and have chosen for you Islam as your  
religion...*<sup>53</sup>

Therefore these societies don't need any law to tell them about equality while they have the Shariah which is a divine law.

### **3.7 The Implication of gender equality on today's women**

The implication of gender equality on today's women is such that left woman with no status. This is because even in the west she is not recognised to be equal with

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<sup>51</sup>Concluding Observations on Islamic Republic of Iran (1993) UN Doc. CCPR/C/79/Add. 25., para 13

<sup>52</sup>Concluding Observation on Sudan (1997) UN Doc. CCPR/C/79/Add.85, para.22

<sup>53</sup>Ali, A. Y. Roman Tranliteration of The Holy Qur'an, ASB Publishers, Kurmi Market, Kano. Q 5:3

man For instance, according to Susan Faduli<sup>54</sup>, 80% of (American) females are only given “dead end jobs” such as clerks, secretaries, receptionists or sales positions and almost 75% of full-time working women work under annual earnings of \$20,000<sup>55</sup>. Out of this amount, the woman is expected to pay whopping tax, car payment, day care expenses, gas, car maintenance, rent, food, phone and electricity bills<sup>56</sup>. Therefore, one can observe that women in the west are being discriminated against and experiencing hardship in life rather than elevating their status.

Another effect of the implication of gender equality is that, the working class woman also experiences the problem of sexual harassment at her working place. Example, in USA, Carl Sovenie, Director of Guidance and Advice Department, at the Working Women’s Institute said 71% of the women who are being sexually harassed by their bosses left the job, 58% were terminated 43% were transferred to other place where they experience more inconveniences that led them to resign. Furthermore, a study of 7000 college students from 32 different campuses revealed that one out of four women had been sexually assaulted.<sup>57</sup>

Gender equality has also impacted negatively on the family structure which is the building block of the society. Some American intellectuals have expressed their deep concern over this. Example, in an article titled “a letter to the year 2086” shows the negative effect of degrading the natural role and responsibility of a mother and wife has on the society, where it says;

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<sup>54</sup>Faduli, S. (1991), Backlash-The Undeclared War Against American Women. New York P. Xiii

<sup>55</sup>ibid

<sup>56</sup>ibid

<sup>57</sup>The Strategic Study Group on the Status of Women: Recommendation Package No. 4, December, 1987, The Pennsylvania State University (in) Violence Against Women- General Recommendation, p. 42



*The American family, not 50 years ago the rock on which the country built its church, has fractured into atoms with separate orbits. The American woman, having shunned motherhood and house and house-wifery 15 years ago to establish herself in the labour market, now seeks to balance all three lives like dinner plates on sticks. The American man and woman part company, as half the newly married couples are expected to do these days, the American child is suddenly stranded growing taller without a structure.<sup>58</sup>*

Maulana Wahiduddin Khan comments on the above that;

*As they near the close of the twentieth century the American intellectual classes are acknowledging that what they thought of as the ladder of progress, at the beginning of the 20<sup>th</sup> century, has turned to be the ladder of destruction. Taking women out of homes has only resulted in total disruption of the American family system. The rosy plan of liberating woman, has, in practice, resulted in so many social evils...how strange is this freedom which, in practice has turned into a new kind of bondage.<sup>59</sup>*

It is therefore observed that the concept of gender equality oppresses rather than liberates women. She is forced to do the work that she is not supposed to do by working and providing maintenance for the family. She is therefore saddled with double role, maintaining the family and doing the house chores. Furthermore, woman, in an attempt to put herself in men's shoes thereby dressing as she likes, falls prey into the men's nest, thereby being sexually assaulted and falling into servitude rather than liberation. Betty Fiedan has this to say concerning this;

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<sup>58</sup> Time, December, 29<sup>th</sup>, 1986. Abdussalam, R.H. (1998), Women Ideal Libration (1986)

<sup>59</sup> Khan, M. W. (2001) Woman between Islam and Western Society, Hafiz and sons Karachi, Pakistan, P. 55

*It is not an exaggeration to say that several generations of  
able American women have been reduced to sex creatures,  
sex seekers<sup>60</sup>*

Those women who favours materialism and stick to working rather than having a family and raising children does not realise how erroneous is their thought in favouring materialism until old age when they are left stranded at the middle of nowhere without children to take care of them. Betty Fiedan also has this to say on why materialism doesn't solve the problem of women:

*It is no longer possible to ignore that voice to dismiss the desperation of so many American women. This is not what being a woman means, no matter what the experts say...I do not accept the answer that there is no problem because American women have luxuries that women in other times and lands never dreamt of; part of the strange newness of the problem is that it cannot be understood in terms of age old material problem of man; poverty, sickness, hunger, old. The women who suffer this problem have a hunger that food cannot fill. It is not caused by material advantages; it may not even be felt by woman preoccupied with desperate problems of hunger, poverty or illness. And women who think it will be solved by more money, a bigger house, a second car, moving to a better suburb, often discover it gets worse<sup>61</sup>.*

A well-known English scholar Samuel Smiles, wrote on the implication of gender equality, where he says;

*The system that has required women to work in factories and industrial areas, regardless of the national wealth it brings, has destroyed the essential pillars of the family. It has cut and destroyed social ties as well as stripping the wife from her husband (by spending long hours working in factories) and*

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<sup>60</sup>Friedan, B. (1963) *The Feminine Mystique*, Penguin Books, Ltd. England, Pp 23-24.

<sup>61</sup>Ibid

*depriving children of their rights for proper tender and maternal care has resulted in lower moral values for the woman. The real job and profession of a woman is to raise a good, sound and moral family she is mainly required to take care of house responsibilities, home economics and other domestic needs. Working in factories has stripped the woman, as we pointed earlier, of all these responsibilities which change the looks of the realities of inside the home. Children as well, were often neglected and raised with no sound standards. The love and affection between husband and wife were somewhat extinguished. The woman no longer become the sought, wanted, admired and loved to man, after he got used to seeing her in the factory next to him doing the same thing he does. Woman become under many influences and pressure. It changed her mentality and thinking pattern on which moral values and virtues were established<sup>62</sup>.*

One can observe that gender equality will only put women into servitude rather than liberate them. It also has the capacity of only tearing apart the family. Therefore, the only solution to this problem is only by adhering to the Shariah.

### **3.8 Political Right under Article 7 and 8 of CEDAW**

The political right accorded to women under Article 7 extends to all areas of public and political life, such as legislative, executive, judicial and administrative powers. It also covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also covers all aspects of civil society, including public boards and local councils and the activities of organizations such as the political parties, trade unions, professional or industry associations, women's organizations, community

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<sup>62</sup>Al-ghalayenee, M. A Look at Women Purdah, (1346 AH), Published in Beirut, PP. 94-95

based organizations and other organizations concerned with public and political life.

Therefore, the content of Article 7 goes as thus;

I. The right to vote and to be voted (Article 7, paragraph (a))

The convention obliges state parties to ensure that the equality of sex is being reflected in their laws thereby providing the enjoyment of the right to vote in all elections and referenda and to be elected. History has shown that women were not given the right to vote or to be voted for<sup>63</sup>. Election was based only on male suffrage<sup>64</sup>. They neither vote nor are they voted for. This is because before the advent of democracy, countries were ruled by monarchs, a system which does not require election. But after the advent of democracy, voting right was restricted to only male adults. It was until the 19<sup>th</sup> century that women suffrage was gradually granted to women by some countries such as Sweden, Finland and Western US.<sup>65</sup> In Nigeria, women suffrage was not granted until 1954<sup>66</sup>. Women were relegated to the background as a result of “social construct that restrict women in society”.<sup>67</sup> This problem among others is what brought about the first wave of feminist movement to act in the 19<sup>th</sup> through the early 20<sup>th</sup> centuries<sup>68</sup>. This movement focused mainly on women’s suffrage. It therefore concentrated on equality of men and women under the law and suffrage rights for women<sup>69</sup>. The movement eventually brought the granting of women’s vote to some women in 1912 and to all in 1978. Later, the

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<sup>63</sup>Ellen, C. (1998) Women Suffrage and Women’s Rights. NYU P.174-6

<sup>64</sup>ibid

<sup>65</sup>ibid

<sup>66</sup> Felix, K. (2011) University Press PLC, Ibadan, P. 201

<sup>67</sup> ibid

<sup>68</sup>Humm, M. (1990) The Dictionary of Feminist Theory, Ohio State University Press, P.25

<sup>69</sup>Henry, A. (2004) Not My Mother’s Sister: Generational Conflict and Third Wave Feminism, Indiana University Press, P.58

second wave of feminist movement sprang up. The movement concentrated on the issue of equality and the bringing to an end of discrimination. These activities of the first wave and second wave feminist movement are what are reflected in this part of the CEDAW; equality, voting rights and elimination of discrimination<sup>70</sup>.

For article 7 (a) to be effective, the Convention envisages that:

1. Equality must be achieved, that is both men and women should be given equal right to cast their votes at the venue of the election.
2. The right to vote at periodic elections should be held on the basis of universal suffrage and by secret ballot.
3. The freedom of expression and the enjoyment of the right should not have any restriction or conditions that do not apply to men or that have disproportionate impact on women.

The political right of women under the CEDAW is a reinstatement of what was already contained in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The UDHR under article 21 provides:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will, shall be expressed in periodic and genuine elections which shall be by

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<sup>70</sup>ibid

universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedure<sup>71</sup>.

The ICCPR under Article 25 codifies the right requiring that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

1. To take part in the conduct of public affairs, directly or through freely chosen representatives;
2. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
3. To have access on general terms of equality, to public service in his country.

Furthermore, the right to vote is protected by several regional human rights instruments including Article 13 of the African Charter on Human and People's Rights, Article 23 of the American Convention on Human Right, Protocol to the European Convention among others. The Human Right Advocates asserted that the right to vote is a basic human right that empowers citizens to influence governmental decision making and to safeguard their other human rights. In Nigeria, both males and females have equal right to vote and to be voted for election without distinction or discrimination of any kind. The importance of conducting free and fair elections cannot be over emphasized because it helps to prevent war and bloodshed by allowing peaceful transfer of government. The derogation of this right

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<sup>71</sup>G.A Res. 217A(III) U N Doc. A/810 (1948)

provokes violence and civil unrest. This assertion can indeed be exemplified with the Nigeria's 2015 election which was conducted fairly and freely. Likewise the transfer of government was made peacefully without violence or civil unrest and this can be contrasted with the Nigeria's 2011 election which resulted to violence and massacre of innocent citizens. The conduct of a free and fair election in Nigeria resulted to a lot of comments both within and outside the country applauding the Nigerians, the Chief electoral officer and the electoral candidates for observing violent free and fair elections. Some of these remarks include that made by the United Nations Secretary General, Ban Ki-Moon who congratulated the citizens and the government for conducting a peaceful and orderly election. Furthermore, the African Union Election Observer Missions (AUEOM) concluded that the elections were conducted in a "peaceful atmosphere" and met the "continental and regional Principles of democratic election."<sup>72</sup>

### **3.9 Reservations to CEDAW**

Only few countries have entered reservations to Articles 7 and 8<sup>73</sup>. The few countries which reserved on those provisions related their reservation to conflict of CEDAW with their domestic laws, traditional practices of inheritance of the crown. Example, Belgium's reservation on article 7 is due to its constitution which reserves right for men the exercise of royal power and for the sons of the king or if there are none for Belgian princes of the branch of the royal family.<sup>74</sup> Likewise Luxemburg and Spain's reservation to Article 7 is based on traditional practices. There is also

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<sup>72</sup>Appraising the Success of 2015 Election, <http://www.Nigerianobserver.com> last visited on 27/7/15

<sup>73</sup>Declaration, reservation and objections to CEDAW, <http://www.un.org> last visited on 22/03/16

<sup>74</sup>ibid

reservation based on religion<sup>75</sup>. Example, Israel's reservation of article 7 was due to prohibition of appointment of female judges by some Jewish religious committees<sup>76</sup>. Malaysia's reservation was made subject to Islamic Law. As such Malaysia does consider itself bound by the provision of Article 7(b)<sup>77</sup>.

Furthermore, some states like America refused to rectify CEDAW. This is because it considers itself to be a civilized state that treats men and women equally without distinction or discrimination<sup>78</sup>.

### **3.10 Conclusion**

This chapter found out that in the past centuries, women were denied political rights. It was gradually with enlightenment movements by the feminist and several conventions that women started participating in politics. The present result is the increase participation of women in politics especially that women now hold top ranking offices of the United Nations. On the other hand, the hitherto right to vote and to be voted is now guaranteed to women in various laws and policies of state parties on equal basis with men. As such the aims and objectives of the rights proposed by Article 7 and 8 of CEDAW are now being realized.

Gender equality is also an issue that was identified by the chapter. The chapter came to find out that gender equality implies that women should be given equal opportunities as men. They should be encouraged to participate in politics, and all other state affairs. Therefore, the 35% Affirmative Action in Nigeria does nothing

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<sup>75</sup>ibid

<sup>76</sup>ibid

<sup>77</sup>ibid

<sup>78</sup>Why the United States Has Failed to Rectify CEDAW: A Look at the Purported Problems with Ratification, <http://www.law.msu.edu> last visited 22/03/16



but to encourage the participation of women in politics, promoting gender equality and elimination of discrimination in Nigeria. Furthermore, it was observed that gender equality is not solution to the problems of women but rather making their situation pathetic.

## CHAPTER FOUR

### POLITICAL RIGHTS OF WOMEN UNDER ISLAMIC LAW

#### 4.1 Introduction

In Islam, every concept has been given a solid background in Shariah (the Islamic Law). This is because of the dynamic nature of the society and in order to provide a guiding rule for the activities of the individuals. It is on this premise that this chapter views the historical background of the status of women, the political rights of women before the Sharia and with the coming of Sharia and round up at the end with the findings in the form of conclusion.

#### 4.2 Historical background of the status of women

History has shown that the life and the living conditions of women before the advent of Islam were in a state of degradation, dehumanization and immorality. This period before the coming of Islam is called the *jahiliyya* period. The *jahiliyya* period is literarily referred to as the period of ignorance<sup>1</sup>. It was a period when the economic life of the people was one in which might is right, the rich extort the poor, collection of usury was the order of the day, their social life was characterized with alcoholism, adultery, gambling, infanticide and so on, their religion was nothing but idol worshipping<sup>2</sup>. Women at this time generally lived oppressed and in a dehumanized condition. For instance, the birth of a girl child

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<sup>1</sup> The Family Tree of the Quraish, [http://: www.isladi.net-heritage](http://www.isladi.net-heritage) field last visited on 4/2/15

<sup>2</sup> *ibid*

was a disaster to this community as the news for the birth of a female child was unwanted and she is either buried alive or left alive to live an oppressed and miserable life<sup>3</sup>. The Holy Quran alludes to this:

*And when the news is brought to one of them of the birth of a female child, his face becomes dark and he is filled with inward grief. He hides himself from his people with shame, because of the bad news he has heard. Shall he keep her with honor and contempt or bury her in the dust? Certainly evil is their decision<sup>4</sup>.*

Concerning the condition of the girl child of the Jahilliyya Arabs, Hadarat Mirza said;

*“Women in this society had no status and no right among them. It was thought honorable to put baby girl to death...different methods were used for killing baby girls, among them burying alive and strangulation”<sup>5</sup>*

Furthermore, if the girl child was spared from being buried alive, she live an oppressed life; only male used to inherit and women were not allowed to inherit their father, or their mother or their brother, or their sister, or their daughter or their son or any other relative no matter their closeness and no matter how poor and needy she might herself be. In fact, she was regarded as a property and was inherited along with a man’s wealth upon his death<sup>6</sup>. The Qur’an banning this act says:

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<sup>3</sup> Saleh, F. (2001) Rulings Pertaining to Muslim Women, Riyadh Ministry of Islamic Affairs P. 1

<sup>4</sup> Ali. A.Y. (1975) The Qur’anic Text Translation and Commentary 3<sup>rd</sup> ed. 1<sup>st</sup> foundation Leicester, Q16:58-59

<sup>5</sup> Mirza, H. B. (2013) Life of Muhammad (SAW), Additional Wakalat-e-tasnif publishers, United Kingdom, P.13

<sup>6</sup> Badamasuiy, J. (2012) Status and Role of Women under the Sharia, Ahmadu Bello University Press Limited, Zaria, P.15

*And marry not women whom your fathers married, except what has already passed, indeed it was shameful and most hateful and an evil way.*<sup>7</sup>

Moreover, the marriage of a man to an unlimited number of women was practiced by the *jahiliyya* Arabs<sup>8</sup>. Women were also treated with *zihar*<sup>9</sup> and *ila*<sup>10</sup>.

These *jahiliyya* practices were practiced in the Arabian Peninsula before the advent of Islam. However, other societies/cultures and religions have their own peculiar ill treatment unleashed to their women folk. These societies included Babylonians, Romans, Athens, Greeks, Egyptians, Hindus, Chinese, and English among others. While on the other hand Judaism and Christianity were the two major religions with their own mode of treating women. As such these societies and religions treat women not more than a property, an imbecile, a source of chaos, the mother of evil, an accomplice of devil, a traitor and so on.

Therefore, it is clear that before the advent of Islam, woman has virtually little or no rights at all for she is dehumanized, subjugated, ill-treated and harassed. All the past civilizations and religions see no good in her. They either accuse her as the originator of the original sin, or treat her as a property or see her as the associate of devil or evil itself.

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<sup>7</sup> Q4: 22 Shakir, M. H., Translation of the Holy Qur'an, (1990), Ansariyan Publications, P. 72

<sup>8</sup> Badamasuiy, J. Op cit P.15

<sup>9</sup> This is when a husband describes or associates his wife with the back of his mother which impliedly means that his wife is like his mother to him. The implication of a husband uttering *zihar* upon his wife during the *jahiliyya* period is bringing to an end any marital relationship with the wife but without sending her away from the matrimonial home.

<sup>10</sup> This means an oath of continence made by husbands during the *jahiliyya* period not to have any sexual relationship with their wives without limit as to duration of time

### 4.3 The status of woman in Islam

Islam is a divine religion sent by Allah through his Prophet, Muhammad (SAW). It is a complete and total way of life. Therefore, the status and treatment of women in Islam and consequently the Islamic law can best be understood from the Qur'an and Sunnah of the Holy Prophet (SAW).

In the sight of Allah (SWT) men and women are equal, though they are assigned different roles, but they will earn equal reward for any good deed. Furthermore, religious obligation such as hajj, fasting, prayer and zakat are being observed both by men and women for Allah (SWT) did not prescribe a separate code and religious obligation for male and for female. Allah (SWT) says:

*Whosoever works righteously, 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).<sup>11</sup>*

*And whoever does righteous good deeds, male or female and is a true believer in the oneness of Allah (muslim), such will enter paradise and not the least injustice, even to the size of a Naqira (speck on the back of a date stone) will be done to them.<sup>12</sup>*

*Verily the Muslims men and women, the believers men and women, the men and women who are obedient to Allah, the men and women who are truthful, the men and women who are patient, the men and women who are humble, the men and women who give sadaqa (zakat and alms), the men and women who observe fast, the men and women who guard their chastity and men and women who remember*

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<sup>11</sup> Q16:97 Shakir, M. H. Op cit P.256

<sup>12</sup> Q4:124 ibid P. 87

*Allah much with their hearts and tongues. Allah has prepared for them forgiveness and a great reward.<sup>13</sup>*

Therefore, it is apparent that whenever Allah calls upon the believers, He calls upon both sexes; “believing men and women”, “patient men and women”, “humble men and women”, “truthful men and women”, “patient men and women”, “adulterous women and men”, “male and female thieves” and so on. This is crystal clear that the Qur’an is a code for both men and women and all the religious obligations such as Salat ( prayer), Zakkat ( giving of alms), Sawm (fasting), Hajj (pilgrimage) are the responsibilities of both men and women to observe and the failure to observe by either of the sexes will hold them liable. Hassan Turabi explains that;

*Under the Shariah women are to observe the general religious standards relating to personals conduct, social dealings and moral behavior<sup>14</sup>.*

Juwairiyya Badamasuiy also observed that

*Islam as a universal and global way of life though sees women as physically different from men declares and indeed decrees the equality of men and women in terms of morality, social responsibility and personality<sup>15</sup>*

Because of the recognition Islam has on women one can easily tell how the Qur’an dedicated a whole chapter of the Qur’an for women (suratul Nisa’i). The Surah

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<sup>13</sup> Q33:35 ibid P. 410

<sup>14</sup> Turabi, H. (1993) Women in Islam and the Muslim Society (IET), Minna

<sup>15</sup> Badamasuiy, J. op cit. p.27

treated so many aspects of women's life such as marriage, polygamy, *nushooz*, reconciliation of couples and so on. It recognized all the aspects of human endeavor and that is why the biological, physical and psychological dispositions of both men and women were taken into cognizance. For instance, woman is exempted from salat and from observing the fasting of the month of Ramadan while she menstruates. However, she is to compensate for the fast she has missed but not for salat.

Furthermore, to eradicate the hatred of female children, Allah said:

*To Allah belongs the Kingdom of the Heavens and the earth: He creates what he wills. He bestows female (offspring) upon whom He wills, and bestows male (offspring) upon whom he wills<sup>16</sup>*

Again, the Prophet (PBUH) in order to elevate the status of women and to abolish the abominable treatment of girl child encouraged people to give proper upbringing to their daughters and to treat them well. The Prophet (PBUH) said:

*Whoever supports two daughters until they reach the age of puberty, he will come on the day of resurrection with me (like this) and he joined his fingers.<sup>17</sup>*

*Whoever has three daughters or sisters or two daughters or sisters and treat them well, and keeps to Allah's order in their regard will enter jannah.<sup>18</sup>*

The Qur'anic and Sunnah provisions brought to an end the deep rooted hatred on women. This is because they both acknowledged the economic rights, political

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<sup>16</sup> Q42:49-50 Shakir, M. H. Op cit p.483

<sup>17</sup> Sunan Ibn Majah, Bk 33, hadith 14 (3670)

<sup>18</sup> Jami'at Thirmithi, Darrussalam (1912) vol 4, Bk 1 Hadith 1912

rights, legal rights, educational rights, social rights and religious rights of women.<sup>19</sup>

It is therefore worthy to note that Islam has completely shield women from ill-treatment which they suffered during the age of ignorance and that Islam made it clear concerning women's right. It has clearly provided it to them and has added some as their exclusive rights. As such the status of women in the eyes of the Shariah is nothing but that of a full human being who is accountable for her actions or inactions.

#### **4.4 The political rights of women**

Politics in Arabic is called “*al siyasad*” and it is said to include the following:

1. Right to vote
2. Right to be voted
3. Participation in Policy making and other affairs that affect the state

##### **4.4.1 The right to vote**

Islam gives women the right to vote. This can be seen in the verse which

Allah (SWT) says:

*O prophet, when the believing women come to you to give you the Bai'a (pledge), that they will not associate anything in worship with Allah, that they will not steal, that they will not commit illegal sexual intercourse, that they will not kill their children, that they will not utter slander, intentionally forging falsehood (i.e by making illegal, children that belongs to their husbands) and that they will not disobey you in any ma'aruf (Islamic Monotheism and all that which Islam ordains then accept*

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<sup>19</sup> Naik, Z. (2009) Rights of Women in Islam: Modern or Outdated, Adam publishers and Distributors, India. P. 20



*their Bai'a (pledge) and ask Allah to forgive them. Verily, Allah is oft-forgiving, most Merciful*<sup>20</sup>

Here the Arabic word “bai'a” is much more than the present day election, because the Prophet (SAW) was not only a messenger of Allah but he is also the head of the state and the chief judge<sup>21</sup>. Women came to the Prophet (SAW) and agreed with him as being the head of state. Thus Islam gives women the right to vote.<sup>22</sup> Therefore, whosoever from the believing women accepted all that is contained in Q60:12, then they have formally declared their resolve to do so. With regards to the way the Prophet accept the fealty of women; it was narrated on the authority of Urwa that Aisha described to him the way the Prophet (PBUH) took the oath of fealty from women. She said: The Messenger of Allah (PBUH) never touched a woman with his hand. He would only take a vow from her, and when he had taken the (verbal) vow, he would say: You may go I have accepted your fealty.<sup>23</sup>

Furthermore, women can be said to have the right to vote because of the general rule in social and political life of a Muslim is participation and collaboration of males and females in enjoining what is good and forbidding what is bad in public affairs<sup>24</sup>;

*The believers men and women are protectors one of another; they enjoin what is just and forbid what is evil; they observe regular prayers, practice regular charity and obey Allah and His Apostle. On them Allah pour His Mercy: for Allah is exalted in power and Wise*<sup>25</sup>.

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<sup>20</sup> Q60:12 Shakir, M. H., Op cit P. 557

<sup>21</sup> Naik, Z. Op cit P. 30

<sup>22</sup> ibid

<sup>23</sup> Muslim

<sup>24</sup> Badawi, A. (1995) Gender Equity in Islam, World Assembly of Muslim Youth (WAMY) Studies on Islam

<sup>25</sup> Q9:71 Shakir, M. H., Op cit P.178

The verse which allows women to give evidence in favor of any transactions shows that women do have right to participate in public affairs as well as voting. The verse said;

*...and get two witnesses out of your own men and if there are not two men then a man and two women such as you choose for witnesses...*<sup>26</sup>

Moreover, the historical evidences of participation by Muslim women in public affairs during the life time of the Prophet, was done without losing sight of the complementary priorities of both genders and without violating Islamic guidelines of modesty<sup>27</sup>. Example, during the life time of the Prophet one of the female companions of the Prophet (SAW) accorded certain relatives of hers protection that they would not be harmed. Her brother Ali Ibn Abi Talib , wanted to execute two of these men who were known for harming the Muslims and fighting against them. So Umm Hanni went to the Prophet Muhammad (SAW) and complained that she had accorded two of her relatives' protection and the Prophet (SAW) recognized her giving protection to those two individuals<sup>28</sup>. This therefore shows that women can also participate in politics by voting.

#### **4.4.2 Right to be voted**

The right of women to be voted for leadership can either be:

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<sup>26</sup>Q2:282 ibid P.42

<sup>27</sup>Tamim, A. Islam-Elevation of Women's Status, [http://: www.islambasics.com](http://www.islambasics.com) last visited 22/03/16

<sup>28</sup>ibid

- (a) As a representative (in the parliament of a state, in an association) or
- (b) As a head of state.

#### **(a) Women as representatives**

This issue is however very controversial. Some scholars oppose the proposition while others support it. Some scholars pointed out their views on why women should be allowed to contest for election as representatives. One of such scholars is Mustafa Siba'i who based his argument on the principle of "*the basis in everything is its validity*"<sup>29</sup>. He pointed out that there is no any prohibition regarding this in either the Qur'an or the Hadith of the Holy Prophet (SAW). Rather Q9:71 establishes the fact that the women are counterparts of men in playing the role of *Al-Amr bil Ma'aruf and Nahi 'anil Munkar (observing the good and preventing the bad)*<sup>30</sup>.

On the other hand, the argument of the scholars who oppose the women's leadership in parliament, such as Imam Malik among others is of the opinion that women should be barred from representation due to *sadh adh-dhariah* (blocking the part to evil)<sup>31</sup>.

Therefore, these views of the scholars cover other positions requiring representation such as ambassador, minister among others.

#### **(b) Women as the heads of state**

Most of the early Muslim scholars like Imam Malik, Abu Hanifa among others agree that women are exempted from this huge responsibility of being the head of state. They opined that the responsibility of being the head of state by its nature

<sup>29</sup>Mustapha Sibai [http://: www.Islamicencyclopaedia.org](http://www.Islamicencyclopaedia.org)last visited 22/03/16

<sup>30</sup>Observing the good and preventing the bad

<sup>31</sup>Ibn Arabi, A. Ahkam al-Qur'an, Beirut, Dal Kutb Al illmiyyah, 1<sup>st</sup> ed. P.482-483

and quality requires men. While most of the scholars that supported women leaders are the contemporary scholars. They include Muhammad Al-Ghazali among others;

### **(1) The opponent of the leadership of women**

The following is a list of the classical scholars who prohibit women's leadership:

1. Abu Hanifah: He is against women's leadership but allowed her to be the Chief justice <sup>32</sup>(Qadi) of a state.
2. Malik Ibn Anas: he also allowed women to hold the position of Chief justice but not the office of the head of state<sup>33</sup>.
3. Ibn Hazm of Zahiri: he said that women cannot assume the position of a president. He is also of the view that a woman other than that of Quraysh tribe could hold the office of the Chief justice<sup>34</sup>.
4. Imam Ghazali did not allow woman to hold the post of Khalifah or that of the Chief justice of the state<sup>35</sup>.
5. Ibn Al Arabi Al Maliki did not only stop at prohibiting woman from holding the top most office of the state but also go further to condemned the authenticity of the reports that that are attributed to Abu Hanifah and Tabari that they allowed women to hold the office of Chief Justice. To him these are fabrications of innovators in Hadith<sup>36</sup>.

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<sup>32</sup>Al-Asqalani,8/482

<sup>33</sup>ibid

<sup>34</sup>Zahiri. H; Al-andalusi. A.A; Al Muhalla bil al Aathar, ed. Bindari. A; Beirut Dar al kuttub al ilmiyya, 1988, p. 421-422

<sup>35</sup>Al Ghazali, Muhammad. A; Fada ihal Bataniyya, ed. Badawi. A; Egypt,Al dar Al Qaw miyya (1964) p. 180

<sup>36</sup>Ibn Al Arabi. Abubakar; Ahkamul Qur'an, Beirut, Darul kuttub al Ilmiyyah, (1988) 1<sup>st</sup> ed. P.482-483

6. Ibn Kathir opined that from a historical perspective, women are not qualified to run the state affairs. He also added that she should be barred from holding posts in a Court of justice<sup>37</sup>.
7. Shawkani says that it is not valid for a nation to charge woman with the state premiership. According to him, it is compulsory to avoid things that carry failure and collapse of a nation<sup>38</sup>.
8. Abul A'ala Mawdudi: His view is that the women's engagement in politics is a catastrophe to the family institution. Family is the natural domain for woman's activities. Likewise, the political affairs of the state (such as leadership), state affairs and military services etc are exclusively meant for men<sup>39</sup>.
9. Imam Al Baqillani: He is opposed to women's leadership. He described the attribute of the Imam to include, experience about war strategy, management of the army and the administration, protecting the oppressed and who will not be soft and emotional in practicing the *Hudud* punishments<sup>40</sup>.

## **(2) Justification to the views of opponents of women leadership**

The scholars rely on the following Qur'an and Sunnah provisions to support their argument:

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<sup>37</sup> Ibn Khasir. Al bidayah wal nihayah, Beirut, Dar al Fikr, (1410 AH), P. 492.

<sup>38</sup> Al Shawkani. M; Nayl Al Awtar, Egypt, Matba'ah al Bab al Halabiyya, p.298

<sup>39</sup> Al Maududi. A; Al Islam fi Mawajjahat al Tahadiyyat al Mu'asirah, Beirut, dar al Qlalam, 4<sup>th</sup> ed. (1980), p. 264

<sup>40</sup> Muhammad, T. (1998) Al wilayah al Ammah lil Mar ah fi al fiqh al Islami, Jordan, Dar al nafais p. 93-97

- 1) That it was Adam, the man and not the woman whom Allah has placed as vicegerent on earth;

*Remember when Your Lord said to the angels: I have to place a trustee on the earth. They said: Will you place one there who will create disorder and shed blood while we intone Your litanies and sanctify Your name? And God said: I know what you do not know<sup>41</sup>.*

- 2) Furthermore, the verse which says:

*Women who are divorced have to wait for three monthly periods, and if they believe in God and the last day they must not hide unlawfully what God has formed within their wombs. Their husbands will do well if they take them back in that case, if they wish to be reconciled. Women also have recognized rights as men have, though men have an edge over them. But God is Almighty and all-wise.<sup>42</sup>*

Therefore the scholars held that since men have a degree over the women, she cannot rule over him. The interpretation of the phrase “...*though men have an edge over them*” was made by Ibn Kathir to mean that men are superior to women in respect to their physical structure (“figure”), character, position, compliance with religious obligations (such as fasting, prayer and hajj since they do not menstruate), spending, undertaking the affairs of life.<sup>43</sup>

- 3) The evidence of two women being equal to one man also shows that the man has a degree above the woman in reasoning. The Qur'an said;

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<sup>41</sup>Q2:30 Shakir, M. H., Op cit P. 5

<sup>42</sup> Q2:228 ibid P. 32

<sup>43</sup> Ibn Kathir, H. op cit. p. 366

*...and have two of your men to act as witness but if two men are not available then a man and two women you approved, so that in case one of them is confused the other may prompt her...*<sup>44</sup>

Ibn Kathir also interpreted this phrase to mean deficiency of the women's mind is what resulted to the requirement of two females in giving evidence. He relied on the prophetic Hadith narrated by Muslim on the authority of Abu Hurairah, (Ibn Umar and Abu Said Al-Khudri) that the Messenger of Allah (PBUH) said:

*O community of women! Give alms, of the dwellers of hellfire were (from amongst) you (women)". A wise lady asked: "O Allah's Apostle! What is the reason for it?" He replied "you curse frequently and are ungrateful to your husbands. I have not seen anyone more deficient in brain and religion than you, who can lead a cautious wise man astray". She asked: "what is deficient in our brains and religion, O Messenger of Allah?" the Messenger of Allah (PBUH) answered "as for the deficiency of brains is that the two women witness is considered to be equal to the witness of a single man; and that is the women deficiency of brain. As for the deficiency in religion, the menstruating woman will spend many nights without offering even a single prayer and she would not fast for many days in the month of Ramadan and that is the shortage of religion."*<sup>45</sup>

4) They also argued that Allah said;

*Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their property...*<sup>46</sup>

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<sup>44</sup>Q2:282 Shakir, M. H., Op cit P. 42

<sup>45</sup>Ibn Kathir, H. op cit. Vol.1 P. 452

<sup>46</sup>Q4:34 Shakir, M. H., Op cit P. 75

The scholars interpreted this verse that men are taken as “*Qawwama*” (maintainers) of women. As such men are the heads of the family, while woman enjoys secondary position. Therefore, it is argued that, a woman who cannot even become the head of the family how can she rule over a nation. The saying of Allah (SWT) that men are the support of women was interpreted by Ibn Kathir to mean that men are the custodians, caretakers and guardians of the woman (should she be his wife, sister or daughter). He has the responsibility of instructing her if she makes mistakes depending upon the fact that man is excellent and better in (power, responsibility and enduring). “For this reason, the Prophet Hood was particular to men and so should be the position of leadership and ruling, in view of a correct narration transmitted by Al-Bukhari, in which the Messenger of Allah (PBUH) said: “not successful are a people, whose ruler is a woman”. Furthermore, the office of judge should also be confined to men and not women<sup>47</sup>.

5) Allah said in the Qur'an:

*It is he who created you from a single cell and from it created its mate that you may live as companions. When the man covered the woman she conceived a light burden and carried it about. And when she was heavy (with child) they prayed together to their lord: “if you bestow a healthy son on us we shall truly be grateful.”*<sup>48</sup>

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<sup>47</sup> Ibn Kathir, H. op cit. Vol.2 P. 59

<sup>48</sup> Q7:189 Shakir, M. H., Op cit P. 158



The scholars interpreted this verse that the function of a woman is to console the man and to produce and bring up children and not to aspire for political offices<sup>49</sup>.

6) By the provision of the Qur'an, women were instructed to stay in their houses, Allah said;

*Stay at home, and do not deck yourselves with ostentation as in the days of paganism; fulfill your devotional obligations, pay the zakat and obey God and His Apostle. God desires to remove impurities from you, O inmates of this house, and to cleanse and bring out the best in you.*<sup>50</sup>

The scholars in interpreting this verse said that women are to stay indoors in their houses and are not permitted to go out except in fulfillment of their essential needs like going to hospital, visitation to relatives among others. As such one who is not allowed to go out except in needs, then how can she be permitted to assume the responsibility of a head of state which requires full time engagement out of the house?

7) Furthermore, the Prophet (SAW) when he heard that the Persians had made the daughter of Kisra ruler over them said; "Never shall a people prosper who make a woman ruler"<sup>51</sup>

*After providing justifications from the Qur'an and Sunnah on the reasons why women should not be allowed to rule, the classical scholars succinctly put their views as follows; "That a woman is not only physically weak and mentally emotional, tender, sensitive and delicate, but is also under strain for a few days every month during*

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<sup>49</sup>Chaudry, M. op cit. P.100

<sup>50</sup> Q33:33 Shakir, M. H. Op cit. P. 410

<sup>51</sup>Sahih- Al- Bukhari Kitab al Magazi, Bab kitab al Nabiyy ila Kisra wa Kaiser, Hadith no. 4073 Vol. 13, pp337.

*menstruation. Then she has periods of physiological strain during pregnancy, birth and suckling. She is naturally most suited for the job of child bearing, their nursing, training and education. The chief office of the state needs qualifications and qualities quite opposed to the natural endowments of women. Islam has therefore advised against entrusting the chief executive post of the leadership (imamat) of the nation to women for these very reasons and not because of any reason of contempt or hatred for her*<sup>52</sup>.

The scholars have also summed up the qualities of a leader in these words; “he has independent judgment of a (mujtahid) in the fundamentals and details of *deen* (religion) so as to satisfy people of every opinion. He has a deep and penetrating vision of human problems and is fully acquainted with the strategies of war and peace as otherwise he will not be able to solve the multifarious problems facing *deen* and the *millat* and he should be a man of great determination and courage so that no power can obstruct him in the fulfillment of his duties. Obviously, these qualities are more often found in men than in women and even then in very few men”,<sup>53</sup>.

Furthermore, the head of state is saddled with the responsibility of leading the congregational prayer, making negotiations with officials of other states, involving in confidential meetings, traveling to other states to sign treaties or agreements and many more activities. Therefore such onerous responsibilities which involve seclusion of women with men contradict the Shariah rulings on interactions between genders.

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<sup>52</sup> Al Ghazali, M. (1989) *Al Sunnah al Nabawiyah bayna Ahlal Fiqh wa ahlal Hadith*, Beirut, Dar al Shuruq, 1<sup>st</sup> ed. pp 48-49.

<sup>53</sup> Izzat, H. (1966) *Al mar’ah wa al amal al siyasi, Ru’yah Islamiyyah*, Herdon, al Ma’ahad al ‘alamiy li al fikr al Islamiy, 1<sup>st</sup> ed. pp.132-134.

It can therefore be observed that the prohibition of women leadership is not categorically stated in either the Qur'an or Sunnah. All the justifications provided by the jurist prohibiting women leadership are their own interpretation.

### **(3) The proponent of the leadership of women**

Only a few number of scholars are in support of women's leadership, The following scholars are in support of women leadership:

- 1) Muhammad Al Ghazali: he believes that the Hadith reported by Abu Bakarah refers to only a certain community as such it cannot be generalized to have effect on all the Muslim women<sup>54</sup>.
- 2) Hibah al Ra'uf Izzat also emphasized on the same reason that the Hadith is restricted to the Persians. It is a glad tiding for the victory of the Muslims<sup>55</sup>.
- 3) Al-Khamlishiy maintains that there exist no religious text in Shariah that prevent women from holding top most political post<sup>56</sup>.

### **(4) Justifications to the views of the proponents of women's leadership**

Those who support the proposition that a woman can rule support their argument with the following<sup>57</sup>;

1. The Qur'an has not prohibited in clear-cut words the rule of woman anywhere and that since the Qur'an has not overlooked even minor

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<sup>54</sup> Al Khamlishiy, A. (1988) *Wijhat Nazr*, Dar al Bayda', Matba'ah al Najah al Jadidah, 1<sup>st</sup> ed. p. 179

<sup>55</sup> Izzat, H. (1996), *Al-Mar'ah wa al-Amal al Siyasi*, Ru'yah Islamiyyah, Herndon: Al Ma'ahad al 'Alamiy li al fikr al Islamiyy, 1<sup>st</sup> ed. pp. 132-134.

<sup>56</sup> Al Khamlishi, A. (1988) *wijhat Nazr Dar al Bayda*, Matba'h al-Najah al-jadidah, 1<sup>st</sup> ed. P. 179.

<sup>57</sup> Chaudry, S. M. Op cit P. 167

issues while laying the rules and regulations concerning the society and family, this shows that the Qur'an has left it open for the Muslim Ummah to decide in accordance with the circumstance and situation of the society<sup>58</sup>.

2. *And when his lord tried Ibrahim with certain words which he fulfilled them. He said: "I will make you an Imam of men." Ibrahim said "and of my off spring? My covenant does not include the unjust, said He."*<sup>59</sup>

The scholars interpreted this verse that God was pleased with prophet Ibrahim (AS) and he appointed him a leader of mankind. In response to the question of the prophet whether there would be *leaders* from his offspring also, God said that there would be leaders from his offspring but the wrongdoers among them would not be appointed leaders. The argument is that; had the leadership of women been unlawful, God would have certainly said, "*My promise includes not women*"<sup>60</sup>.

3. They further contended that the verse which says "...*women have right similar to those of men...*"<sup>61</sup>(Q2:228) was interpreted by the scholars that since men have the right to become the heads of state, why can't women aspire for this office<sup>62</sup>.

However, it can be observed that only a part of the verse was made reference to. The continuation of the verse goes as thus; "...*and the men are a degree above them...*" Therefore, the continuation of the verse clarifies the part of the verse quoted. It means that even though

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<sup>58</sup>ibid

<sup>59</sup> 2:124 Shakir, M. H., Op cit P. 17

<sup>60</sup>Chaudry, S. M. Op cit P. 167

<sup>61</sup>Q2:228 Shakir, M. H. Op cit P. 31

<sup>62</sup>Supra

women have similar rights to those of men, the rights of men are greater to the rights of women.

4. There is almost a consensus among the jurists and the scholars of Islam that the functions of an Islamic state have been outlined in Q22:41. These functions include establishing of prayer, paying zakat and enjoining good and forbidding wrong. These functions have again been mentioned in Q9:71 and the responsibility of discharging these functions have been laid on both Muslim men and women<sup>63</sup>.

However, it can be observed that these functions are individual functions.

5. It was held unanimously that Q42:38 provides the ground for democracy when it lays down “*and whose affairs are a matter of counsel*” if this verse is considered with the verse preceding it, Q42:37 and the verse subsequent to it Q42:39, we understand that the Qur’an is mentioning the virtues of the believers both men and women. One of these virtues is that they decide their affairs by mutual consultation. History has shown that there are so many incidents when the prophet consulted women for advice. One of such incidence was during Hudaibiyya when the companions refused to adhere to the words of the prophet when he asked them to sacrifice their animals and should abide by the treaty. The Prophet (SAW) consulted his wife Ummu Salmah. Therefore from this one can understand that a woman can lead. Since she can counsel. The ruler is one of the counsels and conducts his

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<sup>63</sup>ibid

affairs by consultation. As such the scholars including Al Kamishly infer that a woman can become a ruler<sup>64</sup>.

Moreover, it has been observed that the verse relied upon by the scholars is on counsel and not on leadership. Furthermore, when the Prophet (SAW) consulted Umm Salma, he did so to seek her counsel as his wife and not as a leader.

6. Those who advocate for women's rule like Fatima Mirnisi in her 'ground breaking book' *the veil and the male elite: A feminist Interpretation of women Rights in Islam*. Disagree with the prophetic Hadith of the daughter of Kisra and said the narrator of the Hadith Abu Bakra was once punished for giving false evidence during caliph Umar. They also suggests that Abu Bakrah was former slave who joined Islam because of the promise of manumission and "prevaricated" between joining Ali and joining Aisha in the civil war and then after Aisha lost the battle he opportunistically 'remembered' a hadith spoken 25 years earlier to curry favor with the winning side<sup>65</sup>.

Another group with a different line of agreement anchored by Justice Aftab Hussain in his book *status of women in Islam* stated that Abu Bakrah did not understand the content of the Hadith himself. This is because, had it been he understands the injunction of the hadith against the leadership of women, he wouldn't have followed Aisha and fights among her troops and returned after her defeat to narrate the Hadith. It

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<sup>64</sup>ibid

<sup>65</sup> Lamido, S. S. Op Cit P. 12

is therefore not possible that a true companion would remember an injunction of the Holy Prophet to and proceed in disobeying it<sup>66</sup>.

Furthermore, there is also a group which stated that the Hadith narrated by Abu Bakrah is a prophecy relating to the Kingdom of Persia and had no legal implication beyond that. This argument was best presented by HibaRa'uf 'Izzat in her book *al Marah wa 'I'Amal as siyasi*<sup>67</sup>. The group also added that Al Bukhari reported three traditions. Two Hadith that is Hadith number 4424 and 4425 were on the same chapter "letter of the Prophet to Chosroe and Caesar" while the third hadith which is Hadith number 6639 in the chapter on "how the oath of the Prophet was". These are the Hadith reported by Bukhari on Chosroe and the Persians. The first Hadith (4424) was narrated by Ibn Abbas which said that the Prophet sent a letter to the Chosroe. When the Chosroe received it, he tore it. The Prophet (SAW) prayed that "may Allah tear them up completely". The second (4425) predicts that there will be no Chosroe after him and the Ummah will inherit the kingdoms treasures. The third (6639) is that reported by Abu Bakrah which says that the Persians (who were still ruled by Chosroe's dynasty) would not prosper. Therefore according to this group the hadith must be read along with related ones (that is Hadith 4424, 4425 and 6639 all of Al Bukhari) because the Hadith reported by Ibn Bakrah merely

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<sup>66</sup>Ibid P. 14

<sup>67</sup>ibid

complements the story of the Chosroe who tore the Prophet's (SAW) letter<sup>68</sup>.

One can observe that all that is being said against Abu Bakrah is not correct. This is because the Hadith is one of the Hadith narrated in Sahih Bukhari which is one of the most authentic collections of Hadith.

#### **4.4.3 Right to participate in policy making and other affairs of state policy**

The participation in policy making and other affairs of state policy by women started since the life time of the Prophet (PBUH). For instance, during the Sulh Hudaibiyyah after the apparent unfavorable treaty with the Mushrikin, the Companions were very much upset and Umar (R.A) asked the Prophet (PBUH) some tough questions which he later repented. The treaty was made. Muslims were unhappy due to the humiliating conditions contained in the treaty. The Prophet (SAW) then asked them to rise, slaughter their animals and shave their heads. They did not move. Even the Prophet (SAW) repeatedly asked them thrice to do so. He came to Umm Salmah and told her about the incident. Upset with the incident, the Prophet (SAW) listened to Umm Salmah's advice that he should go out to slaughter his own camel, shave his head and he did so without saying a word to any. Seeing that, the Companions quickly rose and did the same as commanded by the Prophet<sup>69</sup>. This Hadith shows that she acted wonderfully as an intelligent advisor to the Prophet (PBUH) at that particular point in time.

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<sup>68</sup>ibid

<sup>69</sup>Ibn Khathir, As Sirah An Nabawiyyah. Vol.1 P.386



In another famous Hadith that shows the participation of women in policy making was the Hadith of Caliph Umar (RA). The caliph during a Jumaat sermon put of a limit on “mahar” (dowry), a lady objected to it and said, when the Qur’an said in Suratul An-Nisaa’I;

*If you want to take another wife in place of the one you are married to, then even if you have given her a talent of gold, do not take back a thing. Would you take it away by slandering and using unjust means?*<sup>70</sup>

This verse was interpreted that you can give a heap of treasure, a heap of gold in mahar. As such while the Qur’an puts no limit on mahar why Umar should put a limit? And immediately Caliph Umar (RA) said, “Umar is wrong and the lady is right”.<sup>71</sup> From the Hadith, one can understand that the lady is a common lady because her name was not even mentioned and had she been a famous lady, her name would have been mentioned.<sup>72</sup> This means even a common lady could object to the Chaliph.<sup>73</sup> Caliph Umar also employed Shifa bint Abdullahi as superintendent of markets in Medina<sup>74</sup>.

Women were reported to have participated in some affairs of the state; among them is participation in the battle field. Sahih Bukhari dedicated a full chapter mentioning women in the battle field. The main function that women perform on the battle field was giving first aid to wounded soldiers as well as water and food. There are some Hadith that shows this;

*Narrated Tha’alaba bin Abi malik, that Umar bin Khattab distributed some garments amongst the women of Al-madina. One good garment remained and one of those present with him*

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<sup>70</sup> Q4:22 Shakir, M. H., P. 72

<sup>71</sup> Al Baihaqi, as sunan al kubra al adab (fath al bari) 10/329-330.

<sup>72</sup> Naik.Z Op Cit p.27

<sup>73</sup> ibid

<sup>74</sup> ibid

*said “o chief the believers give this garment to your wife the granddaughter of Allah’s Messenger (PBUH). They meant Umm kulthum the daughter of Ali. Umar said Umm Salit has more right over it. Umm Salit was among those Ansari women who had given the Bai’a (pledge) to Allah’s Messenger (PBUH). Umar said she (i.e Umm Salit) used to carry the water skin to water us on the day of Uhud.”*<sup>75</sup>

In another narration,

*Narrated Arrubai’I bint Mu’awidh (RA) we used to take part in holy battles with the Prophet (PBUH) by providing the people with water and serving them and bringing the killed and wounded back to Madinah.*<sup>76</sup>

These two traditions show how women had contributed their quota during the building of the nascent Islamic state. They serve as what is today known as the Red Cross during the wars fought by the Prophet (SAW). The mother of the Faithfull, Aisha (R.A) together with Talha and Zubair (R.A) led the army of the Muslims in the battle of Camel to demand the Qisas for the killing of Usman (R.A). This shows courage of the mother of the Faithfull not to only attend the battle but to also lead the battle.

#### **4.5 The implication of Sharia provisions on women of today’s society**

From the discussions so far, it is understood that women have participatory right in politics. This is through the giving of advice and views on relevant issue. Example, the hadith cited above, gave a narration of how Umm Salma (RA) advised the Prophet (SAW)<sup>77</sup>.

In another hadith, it was shown that, one of the Prophet’s female Companions rejected the views of Caliph Umar and how Umar agreed with her views<sup>78</sup>.

The participation of the female Companions of the Prophet (SAW) in battles

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<sup>75</sup> Sahih Bukhari Op Cit. Cap 30, 1244

<sup>76</sup> Sahih Bukhari Op Cit cap.31 hadith 1245

<sup>77</sup> Ibn Khathir As Sirah an nabawiyyah. Vol 1 P. 386

<sup>78</sup> Sahih Bukhari op cit as sunan al kubra kitab al sudaq. Vol. 7 P.533

to provide first aid treatment to casualties of war and to provide food and water to soldiers is another example in women participation of public affairs. However, when these Hadiths are analyzed, one will understand that; there are limitations as to the political participation of women. This is because, in none of the Hadith mentioned earlier, we see women performing strenuous activities; it is just a mere giving of advice and a humanitarian service. The Prophet was reported to have said, “Treat women well for they have been created from the bones of the ribs”<sup>79</sup> in another narration, the Prophet was reported to have said, “A woman is like a bent rib, if you try to straighten it, it will break”<sup>80</sup>. While interpreting this Hadith, the metaphorical meaning should be considered. This will show us that women are not strong; they are so fragile that if you try to straighten them, they can easily break. This shows how weak women are to handle state affairs, which involves talents, endurance and strength. Perhaps this can be said to be the reason why the Prophet (SAW) did not appoint any woman as a governor during his life time. Even the modern research has shown that “men are characterized by greater aggressiveness, dominance, achievement and motivation; women have a greater dependency, a stronger social orientation and the tendency to be more easily discouraged by failure than men.”<sup>81</sup>

Therefore, any work that will remove or deny women from discharging their natural responsibility of looking after the family is not appropriate for them.

Such works include leadership, consulate and so on. This is because

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<sup>79</sup> Al Bukhari op cit. Sahih, kitab an nikah (fath al Bari) vol. 9 p. 207

<sup>80</sup> ibid

<sup>81</sup> Encyclopedia Britannica (1984), 19 P. 907

whenever women keep away from their natural responsibility, the implications are the upbringing of children with no motherly care and with lack of respect for elders. Furthermore, when women shun away from their natural responsibility, the implication is that, she is heaping a lot of responsibility for herself thereby playing double responsibilities; her home responsibility and that of office.

#### **4.6 A Critique of Article 7 and 8 of CEDAW from Islamic Law Perspective**

Allowing women to cast their votes on equal basis with men (Article 7)<sup>82</sup> reflects a democratic process that calls for the right and opportunity of every citizen to participate directly or indirectly in the conduct of public affairs. The provision of the Article implies that women should be allowed just like men to cast their votes. Therefore, since this involves gender equality, the need to have a separate queue for men and women does not arise. This will therefore result to the intermingling of both sexes.

From the explanation made earlier, to achieve equality that the mode of dressing should not be restricted, it means that women can dress as they like, and also be given freedom of movement which means that any restriction to her movement amounts to inequality and discrimination. However, if women will be given the opportunity to cast their vote on a separate queue from men, then it is acceptable in Sharia.

Looking at the right to vote from the Sharia perspective, Sharia is not against the right of women to vote. During the life time of the Prophet (SAW), women

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<sup>82</sup>Article 7(a) CEDAW

came out in mass to give their oath of allegiance to the Prophet (SAW)<sup>83</sup> which nowadays is equivalent to casting vote.

As to the way the Prophet (SAW) takes the oath of allegiance, it was reported on the Authority of Urwah: who said Aisha told me that the Messenger of Allah (PBUH) used to examine these believing women who came to him as emigrants to him according to this verse (Q60:12). Aisha said: “When any of them agreed to that condition, the Messenger of Allah (PBUH) will only say I have accepted your Oath of fealty. He will only say that but by Allah he never touched the hand of any woman (by shaking hands with her) while taking the oath of allegiance. He, moreover, never took their oath of allegiance except by word”<sup>84</sup>.

This verse and Hadith show that Islam gives women voting right. But, it has to be done with decency as it can be seen; the prophet never touched any woman in accepting her oath of allegiance.

Furthermore, Article 7(a) emphasizes that there should be equality in political participation and as explained earlier, for equality to exist; there should be no restriction as to the mode of dressing, no restriction as to their movement, no restriction as to speech and so on. Therefore, political equality in this context is not known to Islam. Sharia is said to have permitted women to vote but it should be done in a decent manner. It should perhaps be done by allowing a separate queue for men and women. Women should also be in their full hijab,

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<sup>83</sup> 60:12 Shakir, M. Tafsir of The Holy Qur'an, (1990), Ansariyan Publications, Islamic Republic of Iran, P. 557

<sup>84</sup> Tafsir Ibn Khathir, Op cit P.

this is because the dressing sanctified by Islam took cognizance of the principle of modesty, decency and chastity in dressing. The Qur'an says:

*Say to the believing men that they should lower their gaze and guard their modesty; that will make for greater purity for them. And God is well acquainted with all that they do. And say to believing women that they should lower their gaze and guard their modesty; they should not display their beauty and except (what must ordinarily) appear thereof, that they should draw their veils over their bosoms and not display their beauty except before their husbands, their fathers... (And certain other members of the house hold) and they should not strike their feet in order to draw attention to their hidden ornaments<sup>85</sup>.*

The occasion to which this verse was revealed was that Asma Bint Marshadah has a dwelling place in the locality of Banu Harithah, women used to visit her in her place "with no waist sheet which result that whatever ornament in their feet would be visible and their breast and braids appeared thereof. On that Asma said "How shameful this is!" on that Allah revealed the verse Q24:31. The injunction outlined in the very beginning of this verse is that of lowering the gaze for both men and women. "It is therefore imperative upon Muslims to avoid such places and situations where this law (of Allah) may be compromised and broken. The free intermingling and mixing of the sexes brings about such difficulty upon the believers that they are unable to adhere to the above-mentioned command which is compulsory upon them".<sup>86</sup>

Furthermore, the intermingling of male and female is not allowed in Sharia. The Quran said:

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<sup>85</sup>Q24:30, Shakir, M. H. Op cit P. 337

<sup>86</sup>intermingling-free-mixing-muslim-men-women-http://www.rashsdifoundation.org last visited on 10/10/2015

*And when you ask (the Prophet's wives) for anything, ask them from behind a screen, that makes a greater purity for your heart and theirs*<sup>87</sup>.

There is consensus among the scholars of the Holy Quran that although the wives of the Prophet (S.A) were particularly addressed in this verse, the commandment is meant for all Muslim women.

Commenting on this verse Hafiz Ibn Kathir writes, “Allah chose modesty and honour for this community and commanded them to observe Hijaab. Undoubtedly, this commandment is in respect and honour of this ummah<sup>88</sup>. Similarly, Allaamah Ibn Arabi writes in his commentary, “Although this commandment along with the other two (mentioned in the entire verse) were revealed specifically for the houses of the Prophet (S.A) and his wives, these are binding on all Muslims as we are required to follow the guidance and the tradition of the Prophet (S.A)<sup>89</sup>. The famous and authentic scholar of Tafseer, Allama Qurtubi has also written on this verse, “This verse provides the permission to ask, from behind a screen, the wives of the Prophet (S.A) and all Muslim women would be bound by the same rule<sup>90</sup>.

The teaching which is established here is that, even in cases of necessity Allah has ordered that there should be no free mixing and intermingling of the sexes. Even while observing the religious obligations such as prayer, Eid

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<sup>87</sup> 33:53 Shakir, M. H. Op cit P.413

<sup>88</sup> Tafsir by ibn kathir/the etiquette of entering the houses of the Prophet (SAW) and the command of hijab. P.6793-<http://www.qtafsir.com-Qur'an> last visited 10/10/2015

<sup>89</sup> intermingling-free-mixing-muslim-men-women-<http://www.rashsdifoundation.org> last visited on 10/10/2015

<sup>90</sup> ibid

and Hajj, there was restriction as to the free mingling of the sexes. For instance; it has been narrated that Umm Humaid Sa'idiyya (R.A) once said to the Prophet (S.A), "O Prophet of Allah, I desire to offer prayers under your leadership". The Holy Prophet (S.A) said, " I know that, but your offering the prayer in the inner corner is better than your offering it in your private room and your offering it in your private room is better than offering it in your courtyard and your offering it in your courtyard is better than offering it in the neighbouring mosque"<sup>91</sup>.

However, although he pointed out to women the best place for their prayer; he did not outrightly prohibit them from going to the mosque. Those who wished to attend the mosque were allowed, even though they were encouraged to remain at home. Salim narrated it from his father Abdullahi Ibn Umar (R.A) that the Messenger of Allah (S.A) said, "When the wife of one of you seeks permission to go to the mosque, he must not prevent her"<sup>92</sup>.

It should be understood that the discouragement from going to the mosque (for women) was that it was more private and purer for them as well as for the men, seeing that it eliminated the possibility of intermingling and free mixing of the sexes.

In order to maintain this standard of segregation, he issued many guidelines to women who wished to attend the mosque. Some of these were: –

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<sup>91</sup> Assalmy, I. S. (1986) Dar Alfikr, Lebanon. Hadith 1685 & 1686

<sup>92</sup> Sahih Muslim Book 4, hadith 884-<http://www.sunnah.com> last visited on 18/11/2015



Women were allowed to attend the mosque for those Salah that were offered in the dark. According to Abdullah bin Umar (R.A), the Holy Prophet (S.A) said, “Let the women come to the mosque at night”<sup>93</sup>.

Similarly, on the authority of Aisha may Allah be pleased with her, who said “The believing women used to perform subh prayer with the Prophet (SAW), then they would go back to their families and no one would recognize them, (meaning) because of the darkness”<sup>94</sup>

It is reported in a tradition recorded by Imam Bukhari that upon the completion of the salaah the Prophet and his companions would remain on their places until the women had left the mosque<sup>95</sup>.

Similarly it is narrated that these women used to stand in rows that were behind the men and the young male children and thus occupied the last rows for salaah. On this, the Prophet was reported to have said that the best rows for men are the front rows and the worst rows are the back rows and the best rows for women are the back rows and the worst are the front rows<sup>96</sup>. As such, occupying themselves in the last rows behind the men and children and then returning home immediately after the prayer before the men stood up from their places, ensured that there was absolutely no chance of free movements and interaction with the men.

The voting method in Kano state can however be said to be in compliance with the Shariah principles. This is because throughout the process, women

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<sup>93</sup> Ibid hadith 156

<sup>94</sup> Sunan Ibn Majah no. 669-<http://www.ahadith.co.uk>

<sup>95</sup> Ibid. 670

<sup>96</sup> Ibn Hajjaj, M. Sahih Muslim (1403AH) Dar Aljeel, Beirut. Hadith 1018

are given a separate queue and female officials are assigned in some polling units to attend to the female needs.

The Islamic provisions restricting the women's dressing, interactions and movement of women are not meant to deny women their rights but to guard their chastity and protect them from being the object of indecency. The effect of indecency and improper interaction can be seen when since 1901, women in the US were not allowed to participate fully in battles, and they only play the role of nurses. Later on, due to feminist movement, the feminist demanded for full participation of women in the army. The government does grant it to them. Subsequently, upon the report made on the 23<sup>rd</sup> of April, 1993, it showed that '90 people were sexually assaulted out of which 83 were women...they made the women run and they snatched away their clothes. They made them parade absolutely nude without even covering the genital parts and they were made to have sex in public'.<sup>97</sup> This example depicts the harm that is contained in the unrestricted intermingling of both men and women.

Article 7(a) of CEDAW further calls for equal right to be given to women to be voted for at all levels of government and administrative body. The Article relates to the exercise of political powers and in particular the exercise of legislative, executive and administrative powers. The allocation of powers and means by which individual citizens exercise the right to participate in the conduct of public affairs provided by Article 7 should be established by the

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<sup>97</sup> Naik, Z., Op cit P.29

Constitution and other laws<sup>98</sup>. However, both the right to vote and to be voted is not applicable to all individuals but to the citizens of a particular country<sup>99</sup> that is unless if a person is a citizen to a particular country, he or she cannot vote or to be voted.

The Shariah do allow the right to be voted. It allows for representation of the community by a chosen head. This can be seen from the Prophet's companions who after the demise of the Prophet (SAW) continued to choose a representative from among the caliphs such as Abu-Bakr (RA), Umar (RA), Usman (RA) and Ali (RA). Representation in Islam is one of the purposes of sending man down to earth as Allah (SWT) said;

*Behold, thy Lord said to the angels: "I will create a vicegerent on earth" they said: "wilt thou place therein one who will make mischief therein and shed blood? - whilst we do celebrate thy praises and glorify thy holy (name)?" He said: "I know what ye know not"*<sup>100</sup>

In another verse, Allah said:

*It is He who has made you his agents, inheritors of the earth*<sup>101</sup>

The above verses establish representation of Allah by man on earth. However, representation on earth concerns leadership. The Prophet (SAW) is reported to have said that all of you are shepherd; the king is a shepherd over his subjects likewise the husband over his family and the wife over the family in the

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<sup>98</sup> Baderin, M. Op cit P. 156

<sup>99</sup> ibid

<sup>100</sup> Q2:30 Shakir, M. H. Op cit P. 5

<sup>101</sup> 6:165 Shakir, M. H. Op cit P. 135

absence of her husband<sup>102</sup>. Leadership in Islam has certain guidelines such as the qualities of being a leader, procedures of leading the people and so on. With regards to whether a woman can lead, both the Quran and Sunnah are silent on the issue. However, despite the fact that it is not certain whether women can rule or they cannot rule as debated by the scholars, women cannot rule equally as men do. This is because equality is unknown to Islam. The modern Muslim scholars like Zakir Naik did not believe in gender equality, while the classical Muslim jurists did not discuss the issue of gender equality, this is because there wasn't such issue during their time. The issue of gender equality arose only in the 20<sup>th</sup> century. The equality of women with men in the right to be voted signifies that women will assume double roles; her inherent role of bearing and nursing children and that of politics. Just like the termites who are created "differently and are assigned different functions. The soldier termites are created with mandibles to be able to protect and secure their kingdom while the workers are created to be able to source food and build shelter for the members. Their functions complement one another."<sup>103</sup> The human race is also characterized with such attributes. Men are created to struggle outside the house to seek for maintenance, while women are to be confined at home. The Qur'an said;

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<sup>102</sup> Muhammad, K., The Translation of The Meaning of Sahih Al Bukhari, Lebanon: Dar al Arabia publishers, vol. 7, no. 128, 88

<sup>103</sup> Badamasuiy, J. and Shu'aib, U.M. op cit P. 11

*And abide in your houses and do not display yourselves  
as (was) the display of the former times of ignorance<sup>104</sup>*

However, Shariah may allow alterations in the “performances” but not in restructuring the roles of women<sup>105</sup>. Women can be allowed to be voted to certain selected offices which will not hinder their roles as wives and mothers. During the life time of the Prophet (SAW) women were engaged in some economic activities which do not hinders their home responsibilities. For example Nana Asma’ Bint Abubakar narrated that;

*When Az Zubair married me, he had no real property or any slave or anything else except a camel which drew water from the well, and his horse I used to feed his horse with fodder and drew water and sew the bucket for drawing it, and prepare the dough, but I did not know how to bake bread. So our Ansari neighbors used to bake bread for me, they were honorable ladies. I used to carry the dates stones on my head from Zubair’s land given to him by Allah’s Apostle and this land was two-third Farsakh (about two miles) from my house. One day, while I was coming with some Ansari people. He called me and then, (directing his camel to kneel down) said, “Ikh!Ikh” so as to make me ride behind him (on his camel). I felt shy to travel with men and remembered Az Zubair and his sense of Ghaira (jealousy), as he was one of those people who had great sense of ghaira. Allah’s Apostle noticed that I felt shy, so he proceeded. I came to Az Zubair and said “I met Allah’s Apostle while I was carrying a load of date stones on my head, and has some companions with him. He made his camel kneel down so that I might ride, but I felt shy in his presence and remembered your great sense of ghira. On that Zubair said, “By Allah, your carrying the date stones (and you being seen by the prophet in such a state) is more shameful to me than your riding with him” (I continued serving in this way) till Abubakar sent me a servant to*

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<sup>104</sup> Q33:33 Shakir, M. H. Op cit P. 410

<sup>105</sup> Badamasuiy, J. and Shu’aib, U. M. Op cit P. 12

*look after the horse, whereupon I felt as if he had set me free”<sup>106</sup>*

Though the above Hadith narrates how one of the female companions of the Prophet (SAW) combines both her home chores with her economic way of living, it can also be applicable to the political life of women.

Moreover, the role played by women in the upbringing of children and home management is in no way inferior to public life as assumed by the feminists. In fact it is one of the most honored responsibilities assigned to women by God Almighty. The virtue of such responsibility has been stated categorically by the prophet that; Salmah the nurse of the Prophet’s son said:

*“O Messenger of Allah, you brought tidings of all the good things to men but not to women.” “Did your women friends put you up to asking me this question?” “Did your women friends put you up to asking me this question?” he asked. She said “yes, they did.” He said: does it not please anyone of you that if she is pregnant by her husband and he is satisfied with her that she receives the reward of one who fasts and prays for the sake of Allah? And when the labor pains and prays for the sake of Allah? And when the labor pains came no one in heaven and earth knows what is concealed in her womb to sooth her (to cool eyes) and when she delivers, not a mouthful of the child’s suck, but she receives for mouthful and every suck, the reward of one good deed, and if she is kept awake by her child at night, she receives the reward of one who frees seventy slaves for the sake of Allah.”<sup>107</sup>*

However, neither the Qur’an nor Sunnah has stated the virtue of women’s participation in politics or rather the virtue of women’s leadership.

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<sup>106</sup> Muhammad Muhsin Khan, the translation of the meanings of Sahih Al-Bukhari (Lebanon: Dar Al-Arabia Publishers, vol 7, no 151

<sup>107</sup> Narrated by Anas Al Tabarani. Quoted by Lemu, B.A., The Ideal Muslim Wife, Minna. (1994) p.28

Therefore, from the discussions made so far, women do not have same right with men, as such they cannot be voted as leaders as stated in CEDAW. The reason being that Allah (SWA) said that;

*...women also have recognized rights as men have, though men have an edge over them...*<sup>108</sup>

*...and have two of your men to act as witness but if two men are not available then a man and two women you approved, so that in case one of them is confused the other may prompt her...*<sup>109</sup>

*Men are the support of women as God gives more means than others....*<sup>110</sup>

The prophet's saying that "*never shall a people prosper who make a woman ruler*"<sup>111</sup>

Scientific research has shown that;

*The male-female differences are entirely genetic in nature. The passivity found in women is due to a particular nature of the female hormones. Differences between male and female hormones exist from birth. They are not acquired later*<sup>112</sup>.

CEDAW also provides that state parties should ensure that women participate in the activities of non-governmental organizations and associations concerned with public and political life of the country (Article 7c) as well as representation of their government at the international level and to participate in the work of the international organization (Article 8) on equal basis with men. In doing this, women will be required to go on frequent journeys

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<sup>108</sup>2;228 Shakir, M. H Op cit P. 32

<sup>109</sup>Q2:282 ibid P. 42

<sup>110</sup>Q4:34 ibid P. 75

<sup>111</sup>Bukhari Op Cit Vol. 13, P.337

<sup>112</sup>Khan, M. W. Op cit p. 217

representing their associations or their countries. This is however not allowed under Islamic law. Under Islamic law, when a woman is travelling, she is to be accompanied by her guardian<sup>113</sup> or maharam. Furthermore, participating in the activities of the non-governmental organizations and in the work of the international organizations will subject women to unrestricted mingling with men, this is also not allowed under Islamic law as explained earlier.

Therefore, complete equality of men and women in politics as contained in CEDAW is not acceptable to Islam. This is because Allah (SWT) is He who apportions and assigns different roles to each sex suitable to its nature in addition to the general and common roles which both sexes perform equally<sup>114</sup>.

However, a rational thinking person will come to understand that there are various forms of transportation each independent of the other, the ship acting its peculiar role different from that of a car, so also a plane serving its role different from that of a train. This is because each has its own maximum capacity distinct from the other. This simple example can also be compared here. A man and a woman each have his/her distinct role which is peculiar to him/her. The men have the responsibility of maintaining the family<sup>115</sup>. This requires them to go out and source for food and other resources to be able to feed, shelter and cloth the family. The women vested with the responsibility of staying at home. The Quran said;

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<sup>114</sup>Badamasuiy, j. and Shuaib, U. op cit P. 11

<sup>115</sup>Q4:34 Shakir, M. H. Op cit P. 75



*And abide in your houses and do not display yourselves as (was) the display of the former times of ignorance<sup>116</sup>.*

The Hadith narrated by Ibn Umar also clarify on the roles of both men and women in the society. The Prophet (SAW) said

*All of you are guardians and are responsible for your wards. The ruler is a guardian and the man is a guardian of his family; the lady is a guardian and is responsible for husband's house and his offspring; and so all of you are guardians and are responsible for your wards<sup>117</sup>*

Therefore, one will observe that CEDAW contains almost all those views of the feminist. As such Article 7 and 8 of CEDAW can be said to contain the feminist view of eradicating patriarchy so that female will also assume leadership. However, the feminist fail to understand that patriarchy is inevitable in every society. Example, Professor Steven Goldberg of New York in his book titled "The Inevitability of Patriarchy" was quoted saying;

*The feminist hate me. I like to think (that) their intense wrath stems from my inherent rightness. Putting simply, I believe the universality of male dominance in*

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<sup>116</sup> Q 33:33 ibid P. 410

<sup>117</sup> Sahih Bukhari op cit vol 7, P 128

*all societies cannot be explained by social conditioning<sup>118</sup>.*

Again, Margaret Mead who is commonly assumed to be on the feminist side after researching on the diverse societies of the world said;

*All the claims so glibly made about societies ruled by women are nonsense. We have no reason to believe that they ever existed. Men have always been the leaders in public affairs and the final authorities at home.*

However, Sharia may allow alignments or enhancement in the “performances” but not in restructuring the role of women<sup>119</sup>. This is because the stipulated rights and roles of both men and women were stipulated by the Shariah. Changing it is tantamount to changing what Allah and His Prophet (SAW) have decreed.

Moreover, Badawi, J. explained why it is inappropriate for women to lead;

*The head of state in Islam is not a ceremonial head. He leads public prayers in some occasions, constantly travels and negotiates with officials of other states (who are mostly males). He may be involved in confidential meetings with them. Such heavy involvement as is necessary formal may not be consistent with Islamic guidelines related to the*

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<sup>118</sup> Aliyu, I. A., Gender Equality and The Rights of Women under Western Secular System Vis a Vis Equality Between Sexes According to The Shariah: A Critique of The Socio-Economic Tension in The Western World, a paper presented at the National Conference on The Rights of Women and Children under the Sharia on 16<sup>th</sup> and 17<sup>th</sup> June, 2008 at Arewa House, Kaduna, P. 62

<sup>119</sup> Badamasuiy, J. and Shuaib, U. op cit p.12

*interaction between the genders and the priority of feminine functions and their value to the society*<sup>120</sup>.

II. The right to participate in formulation of government policy (Article 7, paragraph (b))

The participation of women in policy making of their government was very poor all over the world.<sup>121</sup> This necessitated the United Nations General Assembly to include the right of women to participate in policy making of their state in many international instruments<sup>122</sup>.

The above is in an attempt to solve the problem of women which according to the United Nations and the Feminist is believed to be caused by inequality. However, this cannot solve the problem of women because;

*In spite of the loud shout about this equality between men and women, and in an attempt to provide women with an equal status, Western civilization has just been able to provide her with serious inequality. This is because in whatever sector of the Western economy a woman may be working, she is considered as second rate status a woman has to pay a certain price, i.e. becoming the plaything of men which means she must allow herself to be subjected to masculine cruelty and lasciviousness*<sup>123</sup>.

Article 7 (b) calls upon state parties to ensure that women have the right to participate fully in public policy formation in all sectors and at all levels.

Therefore, state parties are obliged to appoint women to senior decision making roles and to consult and incorporate the advice of groups which are

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<sup>120</sup>Badawi, A. (1995) Gender Equity in Islam, World Assembly of Muslim Youth (WAMY) Studies on Islam

<sup>121</sup>The political participation of women, <http://www.boundless.com> last visited 26/4/16

<sup>122</sup>Article 21 of the Universal Declaration of Human Rights, 1948

Article 2 of the International Covenant on Civil and Political Rights, 1966

The Convention on the Political Rights of Women, 1953

<sup>123</sup> Aliyu, I. A. Op cit. P.129

broadly representative of women's view and interests. Furthermore, state parties are encouraged to investigate and analyze the factors that are serving as barriers to women's participation in politics, such as cultural beliefs.

Furthermore, this can be observed that the thought of the United Nations and the Feminist that cultural belief is one of the factors that hinders women participation in politics, but they fail to understand that the natural differences of men and women created by Allah (swa) has its purpose. Allah (swa) said;

*By Him who created male and female. Certainly,  
your efforts and deeds are diverse (different in  
aims and purpose)<sup>124</sup>*

The participation of women in decision making was reiterated in the preamble of the convention (CEDAW) where it says "convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields."

However, one can observe that the equal participation of women in all fields is not a pre requisite in the complete development of a country. This is because it can be seen that America as one of the developed countries in the

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<sup>124</sup>Q92:3-4 Khan, M. M. and al-Hilali, M. T. (2007), Interpretation of the Meaning of The Noble Qur'an in English Language, Darrussalam Publishers and Distributors, P. 827

world is still yet to achieve equality of participation of women in all fields<sup>125</sup>.

Furthermore, as a means of fulfilling this obligation by state parties, some countries have drafted some policies and laws that will encourage the participation of women in policy making. For instance South Africa drafted the South African Development Community Declaration (SADC Declaration) which unlike some instruments whose intendments with regards to equality means satisfactory representation. This declaration made a specific numerical reference of 50%.<sup>126</sup> In Nigeria, there is a policy called the 35% affirmative action for women-a policy that demands 35% involvement of women in all governance process<sup>127</sup>.

### III. The right to hold public office and to perform all public functions (article 7, paragraph (b))

This paragraph is encouraging state parties to assign public offices to women. This also forms part of the agendas of the feminist movement that women should be allowed to have a say in the affairs that affect them and that of the state. However, some of the factors that hinder the work of women in public offices include pregnancy and nursing babies. This indeed resulted to the discrimination of women in their working places by their employers. Working women were denied leave, or granted leave without pay

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<sup>125</sup> Aliyu, I. A Op cit P.129

<sup>126</sup> Ibid

<sup>127</sup> Achieving 35% Affirmative Action for Women in Nigeria (I), [http://:www.thetidenewsonline.com](http://www.thetidenewsonline.com) last visited on 21/3/16

or even if granted leave there is no certainty of returning to the job<sup>128</sup>. Therefore, in order to encourage women to hold public offices and to participate in public functions fully, so many countries have drafted laws which entitle working women the right to maternity leave. For instance In Nigeria, there is the Labor Act, 1990<sup>129</sup> which entitles pregnant women the right to maternity leave and lactating mothers some minutes within their working hours to breast feed their children<sup>130</sup>. In America, there is the Family and Medical Leave Act 1993<sup>131</sup>. The Act entitles pregnant women to maternity leave of up to twelve weeks and security to pregnant women against being sacked from work on the account of pregnancy.

However, in spite all the laws that protect women against discrimination and to encourage the participation of women in politics, the problems of women were not solved. In fact;

*The condition of American female is pathetic in spite of laws passed assigning equal status to both genders. There are even laws prohibiting harassment of female workers by men, but this has not prevented them from being victimized by their morally bankrupt colleagues and supervisors. This has become so serious and complex a matter that no law or regulation can do much in dealing with the situation*<sup>132</sup>.

The history of Islam shows that women participated in the political administration of the state. For instance, it was reported by Imam Hasan

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<sup>128</sup>Maternity and Paternity leave and Pay, Arts and Humanities Research Council, University of Leeds. [http://: www.strikingwomen.org](http://www.strikingwomen.org).

<sup>129</sup> Labour Act CAP. 198 LFN 1990 Act, CAP. L1 LFN 2004

<sup>130</sup>S. 54 Labour Act CAP. 198 LFN 1990 Act CAP. L1. LFN 2004

<sup>131</sup>PUL. 103-3; 29 USC. Sec 2601; Family and Medical Leave Act, 1993

<sup>132</sup>Aliyu, I. A. Op cit P. 129

Balsi that the Prophet (SAW) used to seek advice from women and when they gave good counsel, he adopted it<sup>133</sup>. Furthermore, during the treaty of Hudaibiyya, in which the companions refused to abide by the commandment of the Prophet (SAW) “over the weak terms of the treaty”, it was Umm Salma who advises the Prophet (SAW) and the matter was resolved<sup>134</sup>. Moreover, it was said by Ibn Hajr that Caliph Umar entrusted Shifa’a bint Abdallah with the administration of the market and he even used to visit her and consult her and even rest in her house<sup>135</sup>. However, with all the participation of women in state affairs during the time of the Prophet, the women of the Muslim society did not lost their virtue. This is because the society abides by the teaching of Allah and His Prophet (SAW). This is in contrast with the present day society (America in particular) who tries to equate women with men as such resulting to a society that lacks modesty.

Helen Stansbery, is an American female reporter who worked in the area of journalism and newspapers for over twenty years and has visited numerous Islamic countries. During one of her visits to an Islamic country made the following statement;

*The Arab-Islamic society is wholesome and healthy. This society must continue to protect its traditions that restrict both its males and females to a certain degree. This society definitely differs from European and American societies.*

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<sup>133</sup> Ibn Qutaib, (n.d) Uyunul-Akhbar, Vol. 1, P.27 in Afzalur Rahman (1997) Encyclopedia of Seerah, P. 486

<sup>134</sup> Ibid

<sup>135</sup> Iqbal, S. , Woman and Islamic Law (2004), Adam Publishers and Distributors, New Delhi, India,P.

*The Arab-Islamic society has its own tradition that impose certain restrictions and limitations on women, respect and obedience to parents, and imposes most restrictions. First and foremost, the most strict restrictions and limitations are on absolute sexual freedom that truly threatens both the society and the family in Europe and the United States of America. Therefore, the restrictions that are imposed by the Arab-Islamic society are valid and beneficial as well. I strongly recommend that you adhere to your traditions and code of ethics. Forbid coeducation. Restrict female freedom, or rather return back to full 'purdah'. Truly, this is better for you than the sexual freedom of Europe and the United States of America. Forbid coeducation because we have suffered from it in the United States of America. The America society has become sophisticated full of all forms of and terms of sexual freedom. The victims of the sexual freedom and coeducation are filling the prisons, sidewalks, bars, taverns and whore houses. The false (freedom) that we granted to our young females and daughters has turned them to drugs, crimes and white slavery. Coeducation, sexual freedom and all other types of "freedom" in the European and American societies have threatened the family and shaken moral values and ethnic.<sup>136</sup>*

IV. The right to participate in non-governmental and in public and political life of the country (Article 7, paragraph c)

This paragraph commits states parties to encourage women to participate in the activities of non-governmental organizations such as Trade unions and political parties thereby ensuring gender equality, providing all necessary means to women to participate in non-governmental organization and in public participation. This right has necessitated the coming into existence of so many women's non-governmental organizations in so many countries.<sup>137</sup>

For instance in Egypt there is the Egyptian feminist Union, in India there is

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<sup>136</sup> Al-sheha, A. Woman in the Shade of Islam, (2000), 2<sup>nd</sup> ed. Published in Riyadh, P. 7

<sup>137</sup> Strengthening Women's Rights and Political Participation, [http://: www.usaid.gov](http://www.usaid.gov) last visited 21/3/16



the all India Women's Conference and so many more. To further strengthen the political participation of women, USAID is providing;

1. Training for female members of political parties and parliaments
2. Skill building and leadership training for women<sup>138</sup>.

However, it is observed that the participation of women in non-governmental and in public and political life of their country is not as useful as her family. As such the woman who finds herself participating in government needs to strike a balance between the two otherwise the family institution will lose its base and the woman will lose her honor, dignity and pride. Abul a'ala Al Maududi said;

*I advise you to create a balanced moderation in yourself, something that is a distinct characteristic of a momin's (i.e believer's) temperament. The real responsibility of a Muslim woman is that concerning herself, her children (and husband), her house and her family. She should first attend to them and try to make them Muslims. To work outside this circle there are certain limits*<sup>139</sup>.

He further stressed the role of the housewife by saying;

*Human life (and culture) needs good mothers, good wives and good house conductors as much as it needs thinkers and able administrators. If any of the two are eliminated, culture will suffer...*<sup>140</sup>

Article 8 of CEDAW stated that;

*State parties shall take all appropriate measures to ensure to women, on equal terms with men and without discrimination, the opportunity to represent their governments at the international level and to participate in the work of the international organizations.*

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<sup>138</sup>ibid

<sup>139</sup>Iqbal, S. Woman and Islamic Law, (2004), Adam Publishers and Distributors, New Delhi, India, P.86

<sup>140</sup>ibid

This shows that women should not only be given the chance to participate in politics at the local level but also internationally. The Article obliges state parties to encourage women's participation at the international level. This include among others economic and military matters, multilateral and bilateral diplomacy and in official delegations to international and regional conferences. State parties are also obliged to take measures of appointing women into major offices of the country and on equal basis with men. This has brought to the giving of women the opportunity to participate in the activities of the international organizations such as the activities of the United Nation's Committees in reporting, meetings and receiving complaints among others.

#### **4.7 Conclusion**

The chapter analyses the political rights of women under the Shari'ah as such came to find out that, women also have equal right to vote with men. This is because history has it that during the life time of the Prophet (SAW), women used to go to him to give their pledge and he will accept it. Furthermore, it is not certain as to whether women can lead or they cannot. This is because there is no explicit provision from the Shari'ah on the leadership of women. However, so many scholars like Maliki, Shafi'I, Hambali among others are against women leadership. They supported their views with Qur'anic verses and Sunnah. Moreover, one will find their views to be more acceptable than the views of those who support women leadership. This is because the verses used by those jurists who are against

women leadership depict the true nature and responsibilities of women. She is by nature not strong to withstand hardship and her natural responsibility is to take good care of her family.

Those scholars that supported women leadership like Imam Tabari also justified their views with Qur'an and Sunnah. However, one will find out that the justifications for their views are not strong enough. Example, this group denounces the Hadith reported by Abu Bakr. This is despite the fact the hadith was narrated in Sahih Bukhari which is one of the most authentic Hadith.

Furthermore, Shari'ah allows women to hold public offices or become a member of the parliament.

## CHAPTER FIVE

### EQUALITY BETWEEN SEXES UNDER THE SHARIAH

#### 5.1 Introduction

This chapter discusses on the equality of sexes from the Shari'ah perspective. This is in order to acquaint the reader with the general knowledge of what Islam has provided for women as mothers, as wives and as daughters. Therefore the chapter will discuss the spiritual rights of women, economic rights and social rights. The chapter will also discuss discrimination from the Shari'ah perspective as well as answering the question, do Muslims need CEDAW? There will also be a conclusion at the end.

#### 5.2 The Principle of Gender Equality under the Shari'ah

In the eyes of the Sharia, men and women are said to be equal spiritually<sup>1</sup> and in some other aspects (like in giving testimony in *lian*)<sup>2</sup>. In some other aspect they are not equal; they are not duplicate in the terms of roles, duties and rights, but rather they complement each other. This is due their natural differences<sup>3</sup> (that is the biological, psychological and physical differences). "Equality from the Sharia perspective does not mean absolute or unrestricted identicalness. Equality does not

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<sup>1</sup>Badamasuiy, J. (2012) Status and role of Women under the Shariah, Ahmadu Bello University Press, Zaria, P. 24

<sup>2</sup> Badawi, J. (1995) Gender Equity in Islam, World Assembly of Muslim Youth (WAMY) Studies in Islam, P.16

<sup>3</sup> Badamasuiy, J and Muhammad, U. S. Gender Equality or Gender Equity: A Critique of CEDAW from Islamic Perspective, being a Paper Presented at Conference Room, Faculty of Law, Bayero University, Kano, p. 5

substantiate a claim or perfect sameness”<sup>4</sup>. Therefore, the Sharia did not provide the same rights and duties for both men and women but rather each sex has his own peculiar rights which suit his/her nature. Hence this does not imply that the rights granted to women are inferior than the rights granted to men<sup>5</sup>. They are equal in status but their rights, duties and roles differ.

However, the foundation of equality in Sharia stems from the fact that all human beings were created from one eternal God, all human beings are said to be the upspring of Adam and Eve, all human beings are born equal and die equal. Allah (SWT) has also conferred honor and dignity on mankind above all other creatures. This title of honor and dignity conferred to mankind is to both men and women thus this signifies their equality. Allah said:

*We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great portion of Our Creation.*<sup>6</sup>

Ibn Kathir offered the exegesis of this verse that

*Allah the Almighty tells here how He honored man over almost the majority of His creatures: He has created man in the best form and stature, made him walk on two legs instead of four legs and given him such favors and blessings as He has never conferred upon any of His creatures, when He endowed him with the faculties of hearing, seeing, feeling and thinking with which he knows what is good as distinct from what is evil, and understand how to benefit from that; He has also provided him with all kinds of sources of life and sustenance: in short, man has been given preference by Allah over most of His creatures.*

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<sup>4</sup> ibid

<sup>5</sup> ibid

<sup>6</sup> Q 17: 70 Shakir, M. H., 267

*However, this Holy verse is quoted as a proof of superiority of mankind over angels<sup>7</sup>*

Furthermore, in the sight of Allah (SWT) all creatures are equal. The only criterion

for superiority in the sight of Allah (SWT) is that of *piety*. Allah said:

*O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily, the most honored of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full Knowledge and is well-acquainted (with all things).*

Ibn Khathir explained the verse to mean that

*Allah Almighty shows here how He created all of mankind from a single soul i.e Adam (PBUH) from whom He created Eve and from both, He created all peoples whom he divided into many nations, tribes, sects, clans, groups, factions and so on. They are all equal in the matter of their belonging to Adam and Eve, and being created from clay; but they are different in the degree of superiority some have over others in relation to religion, righteousness and piety<sup>8</sup>*

From the Sunnah of the Holy Prophet (PBUH), it was reported by Abu Dharr that the Messenger of Allah (PBUH) said to him: “look you are not better than a red-complexioned man, or a black-complexioned one, except you have superiority over them by being more righteous and God fearing.”<sup>9</sup> Women under the Sharia enjoy various types of equality. Some of them are:

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<sup>7</sup>Ibn Kathir Op cit vol. 3 p.310

<sup>8</sup>Ibn Khasir Op cit. vol. 4 p. 316

<sup>9</sup>ibid

### 5.2.1 Spiritual equality

This emanates from the fact that all human beings in the sight of Allah are equal. It also rejects all claims of favoritism of Allah to a particular sex, race or tribe. Hence, that is why most religious commandments such as observing prayer, paying of zakat, observing fast, obeying God and His Prophet and a host of others are directed to both believing men and women. For instance,

*For Muslim men and women, for believing men and women, for the true men and women, for men and women who are patient and constant, for men and women who are humble themselves, for men and women who give charity and for men and women who fast, for men and women who guard their chastity and for men and women who engage much in Allah's praise for them has Allah prepared forgiveness and great reward<sup>10</sup>.*

Furthermore in complement of the above Quranic verse, the Prophet (SAW) is reported to have said:

*Allah does not look at your bodies and your colours but at your acts and your hearts and your outward deeds and inward intentions and sincerity.<sup>11</sup>*

Therefore, while men and women have some physical differences, spiritually they enjoy absolute equality, for they shall be rewarded accordingly in the hereafter.

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<sup>10</sup>33:35 Shakir, M. H.Op cit P. 410

<sup>11</sup>Sahih Muslim no. 2564

### 5.2.2. Economic equality

This is rooted from the fact that Allah the owner of the universe has endowed on the earth resources and has bestowed onto man the knowledge and means of tapping those resources through manufacturing, cultivating, buying and selling and many other means. Enjoying economic resources is bestowed onto men and women under the Shariah. Allah says:

*To Allah belongs all that is in the heavens and on earth  
and He has subjected to you, as from Him, all that is in the  
heavens and on earth; behold, in that are signs indeed for  
those who reflects*<sup>12</sup>

The Sharia acknowledges equal right for all human beings to acquire property through buying, selling or leasing, but by lawful means <sup>13</sup>(i.e. the selling of lawful things, selling without usury and so on). However, Islam grants equal rights to men and women alike to contract, to enterprise, to earn and to possess independently. This is because Islam discourages begging, idleness and over dependence. In order to protect people while they make contracts involving future obligations, the Quran gave the procedure on how it should be done.<sup>14</sup> In addition to the above equal economic rights of genders, women under the Sharia enjoy other sets of rights, which no religion provides her with it. Women are entitled to receive marital gifts without limit. The woman is also entitled to full financial

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<sup>12</sup>Q 45:13 Shakir, M. H. Op cit 496

<sup>13</sup>Abulati, H. Op cit p.126

<sup>14</sup>Q 2 :282 Shakir, M. H. Op cit 42



support during marriage and during the waiting period in the case of divorce or widowhood<sup>15</sup>.

### **5.2.3. Social equality**

A woman throughout her life is under the care of her father, her brother, her husband or her son<sup>16</sup>. She enjoys equal social status with a man in some situations and even a dignified position better than that of a man in some cases for being a daughter, a sister, a wife or a mother. The Shariah has given women a dignified position in the society. The Prophet (PBUH) is reported to have said “*women are but sisters or twin halves of men*”<sup>17</sup>.

#### *As a daughter*

Woman as a daughter enjoy equal right with that of a son. She is entitled to all the needs of life such as clothing, feeding, education and shelter among others. In Shariah, the upbringing of a female child is full of bounties in the hereafter. The Prophet (SAW) is reported to have said that;

*Whoever has got a female child, and then does  
neither bury her alive, nor treats her unjustly,  
nor prefer his children (meaning male) to her,  
Allah will admit him in paradise*<sup>18</sup>

#### *As a mother*

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<sup>15</sup>Jamal op cit P. 14-15

<sup>16</sup>Oba. A, A (2003) Improving Women’s Access to Justice, in Ezeilo and Ladan (eds) Shariah Implementation in Nigeria: Issues and Challenges Women Aid Collective, p. 45

<sup>17</sup>Narrated by Aishat (RA), ibn Askir in Silsilat Khumzal Sunnah Al Jami Al Asghar, 1<sup>st</sup> ed 1410 AH

<sup>18</sup>Mishkat al Masabih vol 1, p. 162

A woman as a mother is entitled to all the respect which a male parent is entitled to. This is because of the trouble she underwent through bearing and rearing of children. She is to be taken good and proper care of at all times, particularly when she reaches the old age<sup>19</sup>. Allah says:

*And We have enjoined on man (to be dutiful and good) to his parents. His mother bore him in weakness and hardship upon weakness and hardship, and his weaning is in two years give thanks to Me and to your parent, unto Me is the final destination.*

The virtuousness of being a mother is so great that when a Companion asked the Prophet (SAW) “O Messenger of Allah, who among the people is the most worthy of my good care. The Prophet (SAW) answered “your mother” the man asked again “then who else” the Prophet (SAW) said: “your mother” then the man asked “then who else” the Prophet (SAW) said your mother, then father, then your nearest relatives<sup>20</sup>. Therefore, in this situation, the mother enjoys a dignified position better than the father.

*As a wife*

A woman as a wife enjoys equal companionship with that of her husband and not a “mere mistress to be used and dumped.”<sup>21</sup> The wife serves as a shield to her husband just like he serves as a shield to his wife against “sins, evil and devil”<sup>22</sup>.Allah said<sup>23</sup>;

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<sup>19</sup>Badamasuiy. J, op cit p. 28

<sup>20</sup>Khan M. M. Sahih Bukhari (Arabic-English), 1985, Beirut, Vol 8, Chapter 2, No. 2 p.2

<sup>21</sup>Badamasuiy. J, op cit P.29

<sup>22</sup>ibid

<sup>23</sup>Q 30:21 Shakir, M. H., Op cit P. 393

*“And among his signs is this that He created for you wives from among yourselves, that you may find repose in them. And He has put between you affection and mercy. Verily in that are indeed signs for a people who reflect”*

“The wife has equal rights and claim on her husband just as her husband has on her. Every spouse is given rights according to his responsibilities he or she is to shoulder”<sup>24</sup>. Allah said;

*And they (women) have rights (over their husbands as regards living expenses, etc.) similar (to those of their (husbands) over them (as regards to obedience and respect, etc.) to what is reasonable, but men have a degree (of responsibility) over them. And Allah is Al-Mighty, All-Wise*<sup>25</sup>

Therefore, from the above, it is clear that men and women are equal to some certain extent and not equal to a great extent. For instance, both genders are equal in the sight of Allah in terms of “spirituality and humanness”, but are not equal in terms of roles they play in the society, their rights and their status. Furthermore, there is nowhere in the Qur’an or in the Sunnah of the Holy Prophet (SAW) mentioned the superiority of one gender over the other. The only condition for superiority in Islam is *taqwa* (piety)<sup>26</sup>. However, equality should not be misunderstood with role differentiation meant for cooperation and complementariness.<sup>27</sup> It is however important to note that Islam is not against gender equality of men and women but rather is against the concept of identicalness of their rights and duties.<sup>28</sup> Treating men and women equally is

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<sup>24</sup>Badamasuiy. J, p.30

<sup>25</sup>Q2:228 Shakir, M. H. Op cit. P. 32

<sup>26</sup> Q49:13 Ibid P. 514

<sup>27</sup>Jamal, B. (2004) Gender Equality in Islam, USA: Sellon Publication co. IMC, 3<sup>rd</sup> print, p. 13-14

<sup>28</sup>Mutaharri, M. (1981) The Rights of Women in Islam 1<sup>st</sup> ed. Tehran, Iran: World Organization of Islamic Services (1981), 116

against the Sharia because it violates the rights and roles assigned for both male and female by Allah (SWT). This is because the nature of the roles of males and females is assigned with distinct and unique role to commensurate with their nature. Furthermore, the difference in the structural and biological creation of both men and women is an instance of difference between the two which no matter the advocacy or the legislations can never be the same. Thus the unique nature of the Sharia made it to provide no distinction between men and women in respect to worldly material. In fact Islam decreed a right which a woman was deprived of both before Islam and after Islam. Likewise, Sharia prescribes no limitation as regards to woman in business.

### **5.3 Discrimination from the Sharia Perspective**

Sharia does not in any way support discrimination of any kind for any reason such as sex, color or any other reason. The Sharia in itself came to abolish discrimination. This is because during the Jahiliyya period discrimination especially of sex was at its height. The male discriminates against the female, and were denied so many rights such as inheritance. Muslim scholars argued that Islamic law had over fourteen centuries ago, addressed the problem of gender discrimination and established the woman's part in almost all spheres of life<sup>29</sup>. However, due to factors such as patriarchal conservatism, illiteracy, and poverty, women in most parts of the Muslim world still suffer one form of gender discrimination or the other.

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<sup>29</sup> Doi, A. R. Woman in Shariah (1989)

## 5.4 Do Muslims Need The CEDAW?

From the discussions made so far, one can observe that, the Muslims do not need the CEDAW to guide them rather, they need the Shariah. Shariah is the;

*The disciplines and principles that govern the behavior of a Muslim individual towards his or her family, neighbor, community, city, nation and the Muslim polity as a whole, the ummah. Similarly, Shariah governs the interactions between communities, groups and economic organizations. Shariah establishes the criteria by which all social actions are classified, categorized and administered within the overall governance of the state.<sup>30</sup>*

The divine nature of the Shariah also makes it perfect and free from the need of any correction. Allah (SWA) said;

*...Today I have perfected your religion for you and completed my blessing on you and approved Islam as a way of life for you...<sup>31</sup>*

Abul Aala Al Maududi provided the tafsir of this verse as;

*“I have perfected your religion for you as” to mean I have provided it all the essential elements of a permanent way of life which comprises a complete system of thought and practice and civilization and have laid down principles and given detailed instructions for the solution of all human problems. Hence, there is no need for you to seek guidance and instructions from any other source.*

*The completion of “the Blessing” is the completion of the blessing of guidance.*

*“I have approved Islam as the way of life for you” because you have practically proved by your obedience*

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<sup>30</sup>What is Shariah- [www.islamicsupremecouncil.org](http://www.islamicsupremecouncil.org) last visited on 31/10/16

<sup>31</sup>Q5:3 Sayyid Abul Aala Al Maududi-Tafhimul Qur’an-[www.EnglishTafsir.com](http://www.EnglishTafsir.com) last visited on 31/10/16

*and devotion to it that you sincerely believe in Islam which you have accepted as gratitude for these blessings of mine, you should show no negligence in the observance of the prescribed limits.*<sup>32</sup>

## **5.5 Conclusion**

The chapter came to find out that both male and female are equal under Shari'ah, they are equal spiritually. This is because in the sight of Allah all human beings are equal spiritually. This is because in the sight of Allah all human beings are equal and both men and women will earn equal reward for every good deed. Furthermore, both sexes are equal economically. They both have the right to enter into any lawful business. Women also enjoy social rights. As a mother she is entitled to three times the respect to be given to a father. As a wife, she is entitled to dowry and maintenance which is not given to the husband. As a daughter, she is entitled maintenance as well as inheritance.

The chapter also came to find out that Islam did not discriminate on anybody but rather abhors any discriminatory acts on the basis color, gender or of any kind. The chapter also found that the Muslims do not need the CEDAW. This is because the Muslims have a complete guidance which is the Shariah.

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<sup>32</sup>ibid

## **CHAPTER SIX**

### **CONCLUSION**

#### **6.1 Introduction**

This chapter is the brief summary of the entire research work, the findings of the research, the final conclusion and the possible and workable recommendations.

#### **6.2 Summary of the research work**

The main purpose of this research work was to critique the political rights of women under CEDAW from the Sharia perspective. Therefore in trying to achieve this aim, the research work was divided into six chapters in an effort to answer the research questions raised.

The first chapter which was the introductory part of the dissertation centered on bringing out the preliminary issues of the dissertation, by giving a general background on what inspired the writer to write and the manner in which the writer intended to go about writing the research work. The background of the research gave an elaborate discussion on the status of women among various communities that perished like the ancient Roman and Greek societies and in some religions like Judaism and Christianity. The background to the study also explains the status and rights of women in Islam. The International Organization's perception of women's rights was also analyzed in the background to the study. Furthermore, the political right of women under CEDAW was discussed. The research work also stated in the background to the study that the persistent neglect of the political rights of women

by people is one of the factors that prompted this study in order to address the issue. The chapter also provided the statement of problem which brought about the research work. The statement of problem provided us with the main problems that require such study to be conducted and raised some questions which the study addresses. One of the problem questions was the question of whether women are equal with men, The aims and objectives of the research work was to analyze the political rights of women from the Islamic perspective and from CEDAW, to critique CEDAW from the Sharia perspective. The scope or limitations of the research work was also stated in this chapter. The scope of this research work was only the political rights of women under the Sharia and under CEDAW. The methodology adopted in making this research work is the arm chair method as well as a review of various literatures was also stated in this chapter. The chapter ended with an outline of the research work which form the organizational layout used in the course of the research.

Chapter two discussed the Western political thoughts and the Islamic political thoughts. The chapter started with the introduction that discussed the manner in which the research work is presented. It then follows with the definition of politics which is described as “*the authoritative allocation of values*” The Western political thought is believed to be philosophical views of the philosophers such as Plato, Aristotle, Socrates and many more. The Western political thought is divided into the polis, the modern political thought and the liberal democracy. On the other hand, the Islamic political thought is the political thinking of the Islamic philosophers. The Islamic political thoughts is divided into the classical and modern thinkers. The main



purpose of this chapter is to provide an insight to the reader on the general perception of politics from the Western and Islamic point of view.

Chapter three contains the political rights of women under CEDAW. This chapter contains a historical background of CEDAW, and overview of the whole provision of CEDAW as well as an elaborate discussion and analysis of the political rights of women as contained in Article 7 and 8 of CEDAW. The Articles stated that women on equal basis with men and without discrimination should be given the right to vote and to be voted, the right to participate the decision process of the state as well as involving in the affairs of the local and international organizations. The concept of the basic principles of the Articles 7 and 8 which are, equality and non-discrimination were discussed in details. Equality is said to involve the issue of providing women with all the rights given to men. While discrimination, is said to occur when women are not given these rights on equal basis with men. Cases were also sighted to provide an elaboration to the two principles as well as the classifications of discrimination as direct and indirect discrimination. The chapter ends with a conclusion.

Chapter four contains an analysis of the political rights of women under the Sharia. The chapter provided us with an insight on the status of women before Islam and with the advent of Islam through reference to Qur'an and Sunnah. It was discovered that women were living in a degraded condition, with no moral values and ideals. Their birth is seen as a calamity. The chapter also discussed the political rights of women under the Sharia. Such rights are, the right to vote, the right to be voted and the right to participate in policy making. The views of the scholars was also

appraised to prove the legality or otherwise of the rights in Sharia. The research finds that there is no any provision from the Qur'an which neither prevented women from being leaders nor encouraged to be leaders. However, the majority of the classical Muslim scholars are against the leadership of women except Imam Tabari, though among the classical Muslim scholars supported the leadership of women.

In chapter five, the research work critique the political rights of women as contained in CEDAW through the provisions of the Qur'an, Sunnah and the views of the Muslim scholars. Therefore, the research gave an analysis of the principle of gender equality as a concept which is against Islam, on the other hand, the principle of non-discrimination can be said to be in compliance with Sharia. This is because Sharia is also against the discrimination of sex. In critiquing the rights to vote under CEDAW, the research work explained that unless women exercise such rights in accordance with the principles of Sharia, it would be unacceptable under Islamic law.

### **6.3 Findings**

The following are the observations/findings of this research

1. The research work came to find out that CEDAW is an international treaty that translates the anti-family agenda of the radical feminist into international law. Senator Jessie Helms who later chaired the Senate Foreign Relations Committee from 1995 to 2001 during the International women's day in 2000 said, "CEDAW is terrible treaty negotiated by radical feminist with the intent of enshrining their radical anti-family agenda into international law. I will

have no part of that”<sup>33</sup>. Furthermore, the entire attempt made to equalize women with men is in futility. This is because for instance in the West women are experiencing more hardship even with the notion of gender equality. They are taken as sex object in their working place, at school, on the street and even at home. As such it was observed that equality will not solve the problem of women, but rather aggravate it. It was further observed that the rationale behind letting women participate in politics on the basis of equality is to break the back bone of the family. Women who are to stay at home to nurse and train the children are now told that these natural responsibilities is inferior and degrading as such women are being encouraged to come out and work equally with men. This indeed has led to raising children with no standard training and morals. This is because charity is said to begin at home. The research work finds out that women’s rights which includes; economic rights, political rights and social rights were first provided to women by Islam since the 7th century. The west did not provide this right to women until in the 19th century.

2. The research work also came to find that both Muslim and Islamic states do not need CEDAW. This is because they have the Shari’ah which has provided to them all the guidance that they need. It was therefore observed that women under the Shari’ah can vote, this we see how women during the life time of the Prophet went to the Prophet (SAW) to give him their pledge. Women also have the right to be voted to head certain offices for instance we see how Caliph Umar appointed a woman as the market head.

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<sup>33</sup>The cedaw issues/<http://www.acrowinghen.com>

However, vesting women with the overall leadership of the state is subject to juristic views. Some jurists are against women leadership (as the head of state) while some supports it. This research work finds the views of those who are against women's leadership (as the head of state) to be more acceptable because they use the verses of the Qur'an and Hadith to support their views rather than reasoning example.

3. The research also finds out that the participation of women in politics under the Sharia should be done in accordance to its principles. This is because in Islam any new affair which goes contradictory to Sharia is rejected.

4. The research also observed that Sharia did not recognize gender equality. This is because according to divine law the relationship between men and women was set up on the principle of division of labor. That is women take care of the home affairs while men take care of the outside. The research came to find out that the concept of unnatural equality is certainly a myth which cannot be achieved. This is because the creation of men and women in such a way is to serve separate purpose, and if placed in their field, they will produce a successful result in their field. But if placed in the same field women will fail to excel, the men will do better due to their natural abilities.

## 6.4 RECOMMENDATIONS

1. It is recommended that women should be allowed to participate in politics. Therefore, they should be allowed to vote during the periodic elections. However, when women are to vote, they should be in their full hijab and a separate queue should be assigned for them with female election officials in accordance with the principle of Sharia. This will give the women more confidence in the electoral process and afford them full participation. The research work also recommends that whenever women are participating in politics, they should be in their full hijab and they should not talk in such a way that will attract people. This is because a woman is an *aura*. The Prophet (SAW) said; “the woman is awrah, so when she goes out, the Shaitan seeks to tempt her.”<sup>34</sup>

2. Women should not be voted as head of states. This is because the Prophet (SAW) was reported in Sahih Bukhari to have said that, a nation whose ruler is a woman will never progress. However, women can be voted as leaders in some agencies, or government paratats.

3. Women should be allowed to participate in policy making and other affairs of the state. This is because from the research work we see woman during Caliph Umar correcting him when he wanted to fix the dowry. Furthermore, women should also be allowed to participate in the activities of their local organizations. This is in order to give them the room of expressing their views and channeling their complaints to the appropriate

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<sup>34</sup>Jami'at thirmithi, the book of suckling, Vol 1,

authority. Women should also be allowed to participate in the affairs of the International Organizations, but with restriction that if a woman is travelling outside her state or country, it has to be with her *muharram* (guardian).

## GLOSSORY

*Bai'a* A pledge given by the citizens to their *imam* (muslim ruler) to be obedient to him according to the Islamic Religion.

*Jahiliyya* The period of ignorance, which is a period before the coming of Islam.

*Muharram* A woman's close relative. To whom marriage with her is permanently prohibited by virtue of the relationship.

*Nushuz* *Recalcitrance* (serious disloyalty and disobedience) of a wife to her husband.

*Nafaqah* Maintenance

## **BIBLIOGRAPHY**

### **Books**

Afza, N and Ahmad, K. (1969) *The Position of Women in Islam*, Islamic Foundation Karachi.

Appadorai, A. A. (2003) *The Substance of Politics*, Oxford University Press, India.

Anwar, Z. (2009) *Wanted-Equality and Justice in the Muslim Family*, Kuala Lumpur, Musawah.

Aliyu, A. Y. (1979) *The Qur'anic Text Translation and Commentary*, Leicester foundation.

Badamasuiy, J. (2012) *Status and Role of Women under the Shariah*, Ahmadu Bello University Press, Zaria.

Bruce, W. and Thomas, A. j. (2004) *Case Book on Roman Family, Law*, Oxford University Press.

Baderin, M. A. (2003) *International Human Right and Islamic Law*, Oxford University Press.

Cooke, M. (2001) *Women Claim Islam*, Routledge publishers, New York.

Chaudry, S.M. (2006) *Women Right in Islam*, Adam Publishers and Distributors, New Delhi.



Kassim, N. (2009) The Influence of Feminist Movement and the Establishing of Women's Right in Islam, In Ahmad, H. I. and Kamaruddin, Z. (eds.), IIUM Press, Malaysia.

Ladan, M. T. (2007) Material and Cases of Public International Law, Ahmadu Bello University Publishers limited, Zaria.

Lemu, A. (1994) The Ideal Muslim Wife, Islamic Education Trust, Minna.

Ladan, M. T. (eds.) (2003) Shariah Implementation in Nigeria: Issues and Challenges, Women Aid Collective.

Mutaharri, M. (1981) The Right of Women in Islam, 1<sup>st</sup> ed. Tehran, Iran: World Organization of Islamic Services.

Naik, Z. (2009) Rights of Women in Islam, Adam Publishers and Distributors, New Delhi.

Saleh, F. (2001) Rulings pertaining to Muslim Women, Ministry of Islamic Affairs, Riyadh.

## Journals

Ahmad, S. (2005) Gender Equality under Article 8: Human Rights, Islam and Feminism, 13 Malaysia law Conference.

Bayefsky, A. F. (1990) The Principle of Equality and non-Discrimination on International Law, 11 Human Right Law Journal.

Callaway, J. B. (1987) Women and Political Participation in Kano City, Journal of Comparative Politics.

Mernissi, F. (1999) The Forgotten Queens of Islam, International Journal of Marcus, J. A. (1995) World of Difference: Islam and Gender Hierarchy in Turkey, International Journal of Middle East.

Mclean, C. and Anderson, E. (2009) Brave Men and Timid Women: A Review of Gender Differences in Fear and Anxiety, Clinical Psychology review. Middle East Studies, Vol. 31 No. 3.

## **Paper Presentations**

Badamasuiy, J and Muhammad, U. S. (2010) Gender Equality or Gender Equity? A Critique from Shari'ah Perspective, being a paper presented at Confrence Room Faculty of Law, Bayero University, Kano.

Lamido, S. S. (2001) Women and Political Leadership in Muslim Thought, being a paper presented at the Niger Delta Congress, HIS Towers of Strength.

## **Internet Sources**

[www.google.com](http://www.google.com)

[http//answers.yahoo.com](http://answers.yahoo.com)

[www.un.org/mellinnuim](http://www.un.org/mellinnuim)

[www.debriefingunited nations.com](http://www.debriefingunitednations.com)

[www.palgrave.com](http://www.palgrave.com)

[www.files.libertyfund.org](http://www.files.libertyfund.org)

[www.un.org/womenwatch/daw/cedaw/history](http://www.un.org/womenwatch/daw/cedaw/history)

[www.cedaw in brief for adolescence.com](http://www.cedawinbriefforadolescence.com)

[www.dhaka tribune.com](http://www.dhaka.tribune.com)

[www.academicroom.com/topics](http://www.academicroom.com/topics)

[www.uneca.org](http://www.uneca.org)