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Uncovering Patriarchy in the Law:
The Feminists' Re-interpretation of Islamic Law in Focus

Professor Juwayriya Badamasiuy

Dip. Law; B.L (BUK); LL.B; LLM (BUK); PhD; PGDE

Faculty of Law

Bayero University, Kano

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Professor Juwayriya Badamasiuy

Dip. Law; B.L (BUK); LL.B; LLM (BUK); PhD; PGDE (BUK)

Department of Islamic Law

Bayero University, Kano.

SUMMARY OF PRESENTER'S BIO-DATA

Professor Juwayriya Badamasiuy was born into the family of Alhaji Ahmad Badamasuiy in Adavi Local Government Area of Kogi State. She attended Igbira Native Authority School, Okene and had her secondary school education at Lennon Memorial College, Ageva, Kogi State. She proceeded to Kwara College of Technology, Ilorin, where she obtained a Diploma in Law in 1982. She immediately proceeded to Bayero University Kano for her undergraduate studies in 1982 and obtained her LLB degree in 1986. She then went to the Nigerian Law School Lagos for her one-year professional legal training and obtained her BL and was finally called to bar in January 1988.

She did her National Youth Service in Bayero University Kano and joined the service of the University in the Faculty of Law as Assistant Lecturer in October, 1988. She enrolled for her Postgraduate studies immediately and obtained her Master's Degree (LLM) in 1992 and Doctor of Philosophy (PhD) in 2008. She continued her service in the Faculty and rose to become a Professor in 2015. She has taught several courses including Family Law at both undergraduate and postgraduate levels. Her areas of interest are Women and Children Rights, Family Law, Succession, Islamic Law of Transactions among others.

In the course of her career, she held various academic positions as Head of Department several times, and Faculty Examinations Officer. Other administrative responsibilities include Hall Adviser and Congregation Representative to Senate many times. She has also served in many committees and task forces, including: Task Force on Water and Sanitation, Gender Policy Committee, Student Disciplinary Committee, Student Welfare Committee, University Library Committee, among others. She coordinated levels and academic programmes (e.g. ADLS) in the Faculty and has represented the Faculty in various committees in the university.

She belongs to many professional bodies and held positions in some of them. The bodies include: National Association of Law Teachers (NALT), Nigerian Bar Association (NBA), International Federation of Women Lawyers (FIDA), Nigerian Bar Association Women Forum (NBAWF) and African Women Lawyers Association. As part of community service, she was a legal counsellor in FIDA Legal Aid Clinics, Financial Secretary of FIDA (2004-2006). She is the Faculty Representative and the Legal Officer of the Female Forum, Bayero University Kano, the chairperson of the Welfare Committee of the Muslim Forum and Leader (*Amira*) of Family

Advancement Forum, Kano. She is a Director in the International Institute of Islamic Thought, Kano, and a member of Fatwa Committee of Council of *Ulamah*, Kogi State. She is an editorial member and adviser in many international and local journals including *Ijtihad*, *Journal of Integration and Contemporary Knowledge*, *International Research Journal of Police Science, Criminal Law and Criminology*, *Online Social Science Research*. She is the Editor, *Bayero Journal of Private and Commercial Law*; and *Journal of Continuing Education*.

She has chaired the Organizing Committee of Conferences and Refresher Courses including 1st Kano Waqf International Conference (KWIC) with the theme, *Waqf Based Philanthropy in Northern Nigeria: Yesterday, Today and Tomorrow* (2016); Conference on Islam in Nigeria (COIN) 2016, with the theme *Islam, Muslim and the Fight against Corruption in Nigeria* by the IIITN and Islamic Welfare Association; Refresher course on Mustalha Al-hadith 2017, jointly organized by IIITN, Kano and Kwara State University, Malete. She has supervised and examined many postgraduate students both in and outside the university. She has made presentations in seminars and international conferences and workshops. She is currently the Head of Department of Private and Commercial Law.

Uncovering Patriarchy in the Law: The Feminists’ Re-interpretation of Islamic Law in Focus

Blessed is He who sent down the criterion to His servant, that it may be an admonition to all creatures; He to whom belongs the dominion of the heavens and the earth: no son has He begotten, nor has He a partner in His dominion: it is He who created all things, and ordered them in due proportions. Yet have they taken, besides him, gods that can create nothing but are themselves created; that have no control of hurt or good to themselves; nor can they control death nor life nor resurrection. (Surat (25) Al-Furqan, Verses 1-3)

By the Night as it conceals [the light]; By the Day as it appears in glory; By [the mystery of] the creation of male and female; Verily, [the ends] ye strive for are diverse (Surat Al-Lail (92), Verses 1-4).

1. Introduction

Since its birth and eventual triumph in the 7th Century AD, Islamic Law has faced constant attacks and criticisms from numerous quarters all over the world. The history and circumstances of its emergence as well as its continued universal application as a coherent, divinely inspired system of law have equally been subjected to constant attacks and criticisms. This is not unexpected and Islamic Law has valuable intellectual methods of engagement to counter these attacks and criticisms. One of the potent criticisms came from feminism - a philosophical and ideological movement that assumed a universal relevance especially with the emergence of international human rights law.

Generally, the feminists have tagged Islamic Law as an andro-centric, patriarchal system whose underlying philosophy is to subjugate women, dominate and control their personalities, diminish their worth and undermine their rights in order to maintain patriarchy. The overarching goal of feminists is to destroy patriarchy, remove all patriarchal elements in the law with the hope of creating a ‘gender-balance’ which would lead to overall social justice.

Among the feminists are Muslim women and few men whose interpretations of certain texts tend to stir controversies and sometimes question the inherent universalism and comprehensiveness of Islamic Law. Indeed, many of them have

sought to ‘reform’ Islamic Law by way of scriptural hermeneutics, intellectual re-interpretation or re-construction of the primary sources of the law to align them with the underlying philosophies of feminism largely by using the legal methodologies of analytical jurisprudence. This raises some jurisprudential questions:

- What amounts to a ‘re-interpretation’ of a divinely inspired legal system such as Islamic Law? What factors should influence these ‘re-interpretations’?
- Can a primary law be reformed through human re-interpretation? Can a law be reformed internally or externally?
- Can ‘gender justice’ be attained through textual re-interpretation of the primary sources of Islamic Law?
- Is there an alternative to the feminists’ re-interpretation of Islamic Law?

The overall argument in this presentation is that uncovering patriarchy is largely a subjective jurisprudential engagement and that while it is foolhardy to simply dismiss the feminists’ claims of patriarchal domination with a charge of heresy, it is equally not wise to alter the substance of a divine law on the basis of a subjective human conception of justice. In other words, feminism has kick-started a philosophical engagement based on perceived ills in the society; but human justice conceived by an incomplete human jurisprudence cannot undo or override divine justice, as the former must consistently seek to achieve the latter.

Islamic Law has intrinsic elements that facilitate the effective attainment of justice in all its facets. Gender justice cannot be achieved satisfactorily by doing violence to divine prescriptions or by subjective interpretations of divine texts on account of perceived ‘gender imbalance’ or destroying patriarchy to achieve fair treatment and justice. While achieving social justice is central to Islamic Law, destroying patriarchy as conceived by feminists is not a method of attaining societal balance, fairness and justice. Destroying patriarchy is neither the means of achieving justice nor the end of justice in Islamic Law; but destroying gender injustice is and has always been one of the focal objectives of Islamic Law. Uncovering patriarchy by advocating the institutionalization of matriarchy would simply create an endless circle of what I call ‘inter-gender philosophical battle’ and this misses our essential humanity.

The lecture is structured as follows: Section one introduces the lecture paper, section two analyses key terms; section three develops a distinction between human justice and the justice of Islam by looking at the nature of Islamic Law, sources of Islamic Law and ways of deriving legal rules and then it explores the idea of justice and the underlying philosophies of feminism; section four focuses on the feminist’s legal

methodology in scriptural hermeneutics and proceeds to identify specific feminists' criticisms of Islamic Law principles or areas and their re-interpretation of Islamic Law as answers to the perceived gender injustice. Building on this discussion, section five reflects on the feminist's re-interpretation of Q4:34 and then argues that feminism could confront any social injustice in the society but the locus of such injustice is in other normative elements but certainly not in Islamic Law. Section six concludes the lecture with some observations and suggestions.

2. Brief Conceptual Analysis of Key Terms

It is important at the outset, to give a conceptual analysis of some key terms used in this lecture.

2.1 Gender

Gender is different from sex, in that it is a social construct that relates to roles and responsibilities of women and men.¹ It is heavily influenced by attitudes and behaviours and is subject to change over time and according to the specific norms in societies. Sex is both a factual and a biological reality. Gender is a socio-cultural phenomenon that divides people into various categories such as male and female with each having associated dress, roles, stereotypes, etc.² Gender roles have gone through tremendous change over the centuries and at a faster pace from the 20th Century onwards. However, a strong gender divide has always persisted. According to Quasim Amin, one of the early founders of feminism in Egypt:

For him (man) education, and for them (women) ignorance. For him is sound reasoning and for them inferior reasoning. For him is light and open space, and for them darkness and imprisonment. For him are orders and for them obedience and patience. For him is everything in the universe, and for them part of the whole he has captured.³

However, gender, according to Islamic Law, is one of the signs of the wonderful creations of the Almighty Allah.⁴ Hence the Qur'anic declaration:

¹ Sattar, N. Verse 4:34 - A Comparative Analysis of Variant Interpretation' [www.exploring-islam.com>uploads](http://www.exploring-islam.com/uploads)

² Oxford Dictionary, <http://www.oxforddictionaries.com/definition/english/patriarchy>

³ Cited in Sattar, N. op. cit.

⁴ Badamasiuy, J. & Shuaib U. M *Gender Equality or Equity: A Critique of Convention on Elimination of all Forms of Discrimination Against Women from Islamic Law Perspective* School of Law, Universiti Utara, Malaysia November, 2011, pp 429-437

And of His signs is that He created for you from yourselves mates that you find tranquillity in them; and He placed between you, affection and mercy. Indeed in that are signs for a people who give thought.⁵

2.2 *Patriarchy*

This is defined as “a system of society or government in which men hold the power and women are largely excluded from it.”⁶ It is a social system in which the man is the head of the household, having authority over women or the dominance of men in social or cultural system. In other words, patriarchy is a social system in which males hold primary power in political leadership, moral authority, social privilege and control of property to the exclusion of the female. It is also defined as “A family or group or government controlled by a man or a group of men”⁷

2.3 *Feminism*

There is no clear-cut definition of feminism or of feminist. Feminist historians have demonstrated that since its initial appearance the term has been given many meanings and definitions. It has been put to diverse uses and inspired many movements.⁸ Thus, feminism has evolved into a complex ideology that encompasses a variety of different social, cultural and religious movements, all claiming to represent the true identity of a *woman*⁹. It is defined as the belief that men and women should have equal rights and opportunities and is an organised activity in support of women's rights and interests¹⁰

In general, it is described as a broad-based philosophical perspective on women's rights and their position and role in the society as a whole.¹¹ Rendall has described ‘feminists’ as women who claimed for themselves the right to define their own places in society and a few men who sympathized with that claim.¹²

The term *feminism* was coined in France in 1880 by Hubertine Auclert to criticize male predominance and make claims for women's right and emancipation as

⁵ Qur'an 30:21

⁶ <http://www.oxforddictionaries.com/definition/english/patriarchy>

⁷ <http://www.merriam-webster.com/dictionary/patriarchy>

⁸ Badran, M ‘Feminism in Islam, Secular and Religious Convergence’

⁹ Witcher, R.S Supra P.13

¹⁰ <http://www.merriam-webster.com/dictionary/feminism>

¹¹ Kausar, Z. (2001) *Women in Feminism and Politics: New Directions Towards Islamization*, Leeds Publications, Kuala Lumpur, P.30

¹² Rendall, J (1990) *The Origins of Modern Feminism: Women in Britain, France and the United States (1780-1860)* P.1 cited in Kausar, Z. Supra P.31

promised by French Revolution. By the mid-20th Century, it became a buzz term in the world. In early 1920s, it was used in Egypt using the Arabic equivalent of *nisa'iyya*.¹³

It is however noteworthy that Islam does not recognize anything feminism. The Islamic injunctions have universal undertones in that they address both sexes hence, the famous dictum: *An Nisau shaqaa 'iqur Rijaal*,

2.3.1 *Islamic Feminism*

This is also known as "Islamic gender activism" and "gender *jihad*" (struggle). It is a feminist discourse and practice that derives its understanding and mandate from the Quran, seeking rights and justice within the framework of gender equality for women and men in the totality of their existence. Islamic feminism 'explicates the idea of gender equality as part and parcel of the Quranic notion of equality of all human beings and calls for the implementation of gender equality in the state, civil institutions, and everyday activities'.¹⁴ It should be pointed out that the use of the word "Islamic" here is a misnomer in that they are using the word to denote their attempt to locate and find basis within the Islamic sources. However, "Islamic" as a word should be used to qualify and describe what complies with Islamic injunctions and dictates. Notwithstanding the foregoing explanation, I adopt that phraseology (I.e Islamic feminism) in order to engage their argument frontally.

2.4 *Scriptural Hermeneutics*

Hermeneutics has been defined as 'the classical discipline concerned with the art of understanding texts' and it deals 'with 1) nature of a text; 2) what it means to understand a text; and 3) how understanding and interpretation are determined by the presuppositions and beliefs (the horizon) of the audience to which the text is being interpreted.'¹⁵

3. **Islamic Law, Feminism and Gender Justice: Getting the Right Mix**

In this section, attempt is made to put the relevant concepts in a proper context in order to develop an analytical framework for our subsequent discussion. The essence here is to show that gender justice is intrinsic to Islamic Law.

¹³ Badran, M, op.

¹⁴ Sattar, N. op cit

¹⁵ Hans-Georg G., *Truth and Method*, 2nd rev. ed., trans. rev. Joel Weinsheimer and Donald G. Marshall (London: Continuum, 2004), 164 cited in Adis Duderija 'Toward a Scriptural Hermeneutics of Islamic Feminism' *Journal of Feminist Studies in Religion*, Vol. 31, No. 2 (Fall 2015), pp. 45-64

3.1 Nature, Sources and Development of Islamic Law

Unlike the ‘non-divine law’, Islamic Law is relatively uncontroversial in its nature. It is called *Shariah* which literally means a ‘path leading to a fountain wheredrinking water is fetched’.¹⁶ It may simply be defined as the laws of Islam. It is not the same as Islam which is a religion. Technically, however, from jurisprudential perspective, it is an all-encompassing term covering ideological, moral and interactional as well as transactional rules. The relevant aspect to Shariah scholars is *ahkan al-a’amaaliyya* (interactional and transactional rules). It means the revelation that the Prophet Muhammad (SAW) received from Almighty Allah constituting the message, mission and objective of his entire life (Quran and Sunnah) and extending to every known written pronouncement of qualified Muslim Jurists made in accordance with the dictates of the Quran and Sunnah throughout the centuries.¹⁷ Unlike most other systems of law, the divine element is clearly the most distinguishing feature of Islamic Law hence it is inseparable from religion, morality and politics. In other words, the separation thesis of the positivists has no place in this system of law. Prof Vesey-Fitzgerald observed that ‘to the Westerner, law is a system of commands enforced by the sanction of the state. This concept is wholly alien to Islamic theory...law is one of several inextricably combined elements’ of the Islamic system.¹⁸

Sharia is also used to convey the Divine Will which is only known to Allah, ‘an abstract divine law only perceived by’ Allah which mankind can only have a glimpse of through Revelation.¹⁹ It is important to point out that *Shariah* is different from *Fiqh* although some scholars use the two interchangeably.²⁰ *Fiqh* is the science used to derive the legal rules from their sources and, as a science, it is human, contestable and accommodates diversity but the *Shariah*, the actual body of law, is not contestable as it is rooted in the divine.²¹ *Fiqh* is divided into the science of methodology or the root of jurisprudence (*usul al fiqh*) and the science of the actual rules and legal fields or branches of the law (*furu’*). Thus, Islamic Law is holistic and comprehensive by its nature consisting both divine and human elements; and

¹⁶ Quran 45:18 “Then we put you on a straight path (Sharee’ah) in you affairs, so follow it and do not follow the desires of those who have no knowledge.”

¹⁷ Jasser A *Maqasid Al-Shariah as Philosophy of Islamic Law: A System Approach* (International Institute of Islamic Thoughts, 2008) at p.xxiii.

¹⁸ Vesey-Fitzgerald SG. ‘Nature and Sources of the Sharia’ in Majid Khadduri & Liebesney J (eds.) *Law in the Middle East* (Washington: Middle-East Institute, 1955) 85-86

¹⁹ Ibid, at p 2

²⁰ Phillips, B. *The Evolution of Fiqh* (International Islamic Publishing House, 1983) at 13

²¹ ibid.

arguably, analytical positivism could be said to have an incomplete picture of law for this reason.

Regrettably, positivist legal processes have been implicitly and explicitly accepted in Islamic countries around the world following colonial ‘contamination’ of the system. It can be argued that conceiving law as a product of a human process only is mechanistic, amounting to an unnecessary formalism. The perspective of positivism may only be accepted in Islamic Law if the Austinian Sovereign or the ‘uncommanded commander’ is viewed as the God almighty thereby dispensing with any separation between law properly so-called and religion and morality. Interestingly, the naturalists, especially the Stoic philosophers, came close to the nature of *Shariah* when they postulated that any non-divine law that violates God’s law is no law.²²

In a strict jurisprudential sense, the Will of the Law-giver is the substance of Islamic Law. But determining the Will of the Law-giver in unclear, vague and ambiguous situations is always problematic, requiring interpretations through acceptable legal methodologies. The root or sources from which the prescriptions of the Law-giver are derived are broadly divided into two: divine sources consisting of the Holy Quran and Sunnah; and the non-divine sources consisting of *Ijtihad* (independent reasoning or intellectual exertion) including *Ijma’* (consensus), *Qiyas* (analogy), *Maslahah* (public interest), *urf* (custom) others.

The Quran is the Holy Book containing the direct communications from the Almighty Allah (SWT) through Angel Jibril to the Prophet Muhammad (SAW) while the Sunnah consists of the sayings, conducts and tacit approvals of the Prophet (SAW) all of which have divine elements.²³ The divine or primary sources take precedence over the non-divine or secondary sources; the latter derive their existence and relevance from the former and must always be in accordance with the intendment and spirit of the primary sources. Interpretation of the texts of the primary sources is therefore necessary to extract the rules of law intended by the Law-giver.

Islamic Law evolved over a period of time. Scholars have divided this period into stages.²⁴ The first stage is the period of the revelation of the Qur’an or what is often

²² McCoubrey, H. *The Development of Naturalist Legal Theory* (New York: Croom Helm Ltd, 1987) at p.17

²³ See Q 33: 21 and Q53:3-4

²⁴ See for instance B Philips, *The Evolution of Fiqh* (International Islamic Publishing House, 1983) at p 14 where he divides the period into six stages; Viktor K. *Between God and the Sultan: A History of*

referred to as the *foundation* or *formative* period that is, the period of prophethood of Muhammad (SAW) (609-632 CE). The focus during this period was legislation that reflected the transition from *Jahiliyyah* to Islam and the various verses of the Qur'an were generally revealed to solve the problems confronting the Muslims especially in the areas of rituals and dealings amongst Muslims and non-Muslims.²⁵ As a period of transition, legislation was gradual with a retention of some pre-Islamic customs and total condemnation of others; the period is divided into the Meccan and the Medinan: the content of the former dealt with the oneness of Allah, rituals and history of earlier civilizations; the Medinan revelations focused on organizing an Islamic state and deepening the faith-based legal system with diverse rules dealing with social, political and economic aspects of the state and its citizens.

The second stage, called the *establishment* period, was the era of the Rightly Guided Caliphs which commenced immediately after the death of the Prophet.²⁶ It was the period when Islam expanded beyond the shores of Arabia and made contact with 'totally new systems, cultures, and patterns of behaviour'.²⁷ Legislation was based largely on *Ijma* (consensus) and *Ijtihad* (independent judgement/reasoning) guided by the Quran first, then Sunnah of the Prophet (SAW), unanimous decision of the *sahaba* (companions of the prophet), majority decision of *sahaba* or personal judgement where the preceding sources could not provide a solution.²⁸ The period was characterized by realism, unity, open-mindedness, cautious judgement and modification of some rules owing to 'the disappearance of the reason for the law's existence, or a change in social conditions.'²⁹

This was followed by the *building* stage represented by the Umayyad dynasty following the death of Caliph Ali (d 661). The period was marked by social and political unrest, fractionalization of the Ummah, increased *Ijtihad*, fabrication of hadiths and gradual evolution of schools of *fiqh*.³⁰ There was a division of the methodology between *ahl hadith* (those who focused on the available text only)³¹ and those who used *ra'y* (deductive reasoning).

Islamic Law (Hurst & Company, 2005); Schacht J. *Origins of Muhammadan Jurisprudence* (OUP, 1950)

²⁵ Philips, *The Evolution of Fiqh*, op cit, 15

²⁶ Ibid, 46

²⁷ Ibid.

²⁸ Ibid, 47

²⁹ Ibid, 48-50

³⁰ Ibid, 53

³¹ relying on Q17: 36 "Do not follow what you have no knowledge of."

The *flowering* stage is the fourth stage which saw the rise of the Abbasid dynasty (750-950 CE) in which Islamic Law became consolidated with the development of multiple *madhaabs* (schools of jurisprudence), diverse debates and resort to *urf* (custom) and *istihsan* (preference) as sources of Islamic Law after the Quran, Sunnah, *Ijma'* and *Qiyas*.

The fifth stage (950-1259 CE) was marked by the dominance of the followers of the four *Sunni* schools and *taqlid* (blind followership, signifying the decline of *ijtihad*). The stage, called the *consolidation* period, saw the collapse of the Abbasid dynasty.

The sixth stage is called the period of *stagnation* and *decline*. It was marked by *taqlid*, increased factionalization and the period saw the emergence of the Ottoman Empire and European colonialism. The latter brought a Eurocentric cultural supremacy leading to a systematic transformation and fragmented application of Islamic Law by confining its application to personal matters as examined later. This is the environment that Islamic Law finds itself today. Its growth is affected by the paucity of intellectual engagement. Perhaps an undiluted, holistic application of Islamic Law is now rare partly because of the increasing globalization of legal systems and the neo-colonial forces that continue to influence these systems.

In this contemporary period, the jurisdictions where Islamic Law is applicable are classified into six: countries that are officially Islamic but the legal system is secular (e.g. Iraq); countries with majority Muslims but the legal system is secular (e.g. Jordan and Syria); secular countries with Muslim majorities but having a secular legal system (e.g. Turkey); countries with Muslims as majorities and Islam is the basis of most laws (e.g. Pakistan and Sudan); countries where Islamic Law is only a part of the legal system (e.g. Nigeria); and countries with all or majority Muslim population and Islamic Law is the law of the land (e.g. Saudi Arabia).³² In all these countries the personal law aspects of *Shari'a* apply to Muslims.

The major feature of this last period beside the stagnation is the persistent supremacy struggle and competition for relevance foisted upon Islamic Law by external forces and actors in almost all jurisdictions. Muslims find themselves in a complex, competitive and pluralistic setting. However, the *stagnation* has rekindled consciousness and agitations for revival, re-introduction and holistic application of Islamic Law in Muslim societies where the law is not being applied holistically. It also contributed though indirectly to the feminists' quest for re-interpretation of Islamic scriptures with a view to uncovering perceived patriarchal elements that allegedly diminish women and undermine their worth.

³² Bhala, R. *Understanding Islamic Law (Sharia)* (LexisNexis, 2011) at pp xxix-xxx

Shari'a is universal and dynamic due to its flexibility, practical and humanistic approach to social, economic and political problems of the society. It is a divine law from the creator of the universe for the entire mankind taking care of the interest of all creations. It is all-encompassing. It caters for all mankind regardless of gender, creed or race. Allah, who is the creator of the universe has knowledge of all, makes rules that are appropriate to every segment of the society.³³ Every gender is assigned roles and responsibilities that are relevant and appropriate to it.³⁴ This is because it enables humanity to attain a level of civilized happiness in this world to pave way for an endless happiness in the hereafter. Happiness in this context entails living in accordance with the ordained prescriptions of the Law-maker, because human beings have inherent self-interests and subjectivity that can influence their law-making capacity and credentials to do justice. Justice is the ultimate goal of Islamic Law.

The Quran declares that “Allah has enjoined justice and righteousness.”³⁵ Therefore, any juristic endeavour must be informed by this imperative. In the words of Phillips, “Islamic principles do not contradict human reason nor are they unintelligible. Instead they free the human intellect from irrationality.”³⁶ However, history reveals that in various civilizations women have been subjected to various forms of subjugation, marginalization, oppression, discrimination and humiliation.³⁷ This has not been condoned by Islamic Law. Indeed, the idea of gender justice is deeply embedded in the objectives of Islamic Law such that any construction of the law must achieve this goal. According to Ibn al Qayyim:

Shariah is based on wisdom and achieving peoples’ welfare in this life and the hereafter. Shariah is all about justice, mercy, wisdom and goodness. Thus any ruling that replaces justice with injustice, mercy with cruelty, common good with mischief, or wisdom with foolishness, is a ruling that does not belong to the Shariah, even if it is claimed to be so according to some interpretation.³⁸

³³ Qur’an 25:2

³⁴ Qur’an 92:1-4

³⁵ Q 16: 90

³⁶ Phillips, B. op cit, at p. 24

³⁷ Badamasiyu J. ‘Treatment of Women under Shariah in Kano State: An Assessment of the Gap Between Law & Practice’ *Bayero Journal of Islamic Law* (2014) pp125-146 and Badamasiyu, J. *Status and Role of Women under the Shariah*, Ahmadu Bello University Press Ltd.

³⁸ Quoted in Jasser A, op cit, at p xxi

In essence, any interpretation of the Islamic texts that does not conform with the ideals of justice and fairness cannot fit into the objectives of Islamic Law. This raises the question of what is justice according to Islam.

3. 2 The Justice of Islam

The justice of Islam is divine and broad.³⁹ Justice in Islam refers to putting everything in its rightful position (*wada'us shy' fi mahallih*). It goes beyond the notion of gender justice. Thus, feminism as a social movement has a narrow conception of justice. Feminism seeks to achieve social justice by the 'elimination of institutionalized domination and oppression.'⁴⁰ Domination and oppression in their various manifestations are certainly 'unjust' phenomena which almost all systems of law abhor and, in particular, Islamic Law has fought and is still fighting from its formative years till date. The problem however, is not in the consensus around 'domination' and 'oppression'. It is about the nature of such oppression and whether they agree with 'justice' abstractly conceptualized. This too is problematic from a jurisprudential perspective.

In ordinary parlance, the word 'justice' could mean fairness, impartiality, uprightness, fair-mindedness, equity, objectivity, neutrality, righteousness, honesty and disinterestedness.⁴¹ Each of these terms is equally problematic in itself. From a classical jurisprudential angle, 'justice' is a provocative concept that has pre-occupied legal theorists for centuries. Rawls' *Theory of Justice* is commonly seen as representing the most prominent modern conception of justice and would suffice for the present purpose. To Rawls, Justice is about the following:

- a. The maximization of liberty, subject to such constraints as are essential for the protection of liberty itself;
- b. Equality for all, both in the basic liberties of social life and also in distribution of all other forms of social goods, subject only to the exception that inequalities may be permitted if they produce the greatest possible benefit for those least well off in a given scheme of inequality (called 'the difference principle'); and
- c. Fair equality of opportunities and the elimination of all inequalities of opportunities based on birth or wealth.⁴²

³⁹ Rosen L *The Justice of Islam: Comparative Perspectives on Islamic Law and Society* (London 2000)

⁴⁰ Young M *Justice and the Politics of Difference* (1990) 15 cited in Freeman, M.D.A. *Lloyd's Introduction to Jurisprudence*, 7th edn. (London: Sweet and Maxwell Ltd, 2001)

⁴¹ Wehmeier, S. (ed.) *Oxford Advanced Learner's Dictionary*, 6th edn (Oxford: Oxford University Press, 2001) at p. 648

⁴² Rawls J. *A Theory of Justice* (Harvard University Press, 1971)

Rawl's concept of justice is clearly based on the liberal ideology. But even within the libertarian jurisprudence, many feminists questioned this conception of justice. For example, Young dismisses the notion of distributive justice and advocates for 'procedural issues of participation in deliberation and decision-making'.

Unlike Rawl's theory, the concept of justice in Islam has divine elements. Stoic philosophers' conception also sees justice as divine, 'a constant and perpetual will of giving everyone his due', a natural attribute that is universal, everlasting and unchangeable.⁴³

It is appropriate to conclude the discussion on this segment on the justice of Islam with the statement of Cardinal Newman, where he rightly exposed the weakness of liberalism as a basis for analytical discourse in the following words:

Liberalism...is the mistake of subjecting to human judgement those revealed doctrines which are in their nature beyond and independent of it, and of claiming to determine on intrinsic grounds the truth and value of propositions which rest for their reception simply on the external authority of the Divine Word.⁴⁴

3.3 Gender Equality in Islam

Equality is defined as the act of being equal⁴⁵ while equity is a situation in which everyone is treated equally⁴⁶. In Islam men and women are considered equal in their status but their roles, duties and rights differ due to their natural differences. Thus, men and women are not, in the eyes of the Shari'ah, *duplicate of*, but rather *complement to*, each other. The incontrovertible biological differences between male and female necessitate the natural separation and division of duties and occupations.

Thus, equality from the Shari'ah perspective does not mean absolute or unrestricted identicalness. Equality does not substantiate a claim for equivalence or perfect sameness.⁴⁷ Shari'ah therefore, does not grant the same rights to men and women in

⁴³ *ibid.*

⁴⁴ Newman, J. H. (1864), *Apologia Pro Vita Sua* Note A- Liberalism, 493

⁴⁵ Oxford Advanced Learner Dictionary, 7th Edition, p. 492

⁴⁶ *Ibid.*, p. 493

⁴⁷ Abdullahi, A. F. *Ihtiyaadat hatta la yanharifal abnaa' Suwarun min asaleebin Nabiyyi (SAW) fit – Tarbiyyah*, (Alexandaria – Egypt: Darul Iymaan, 2004), 43 – 53; See also Muhammad Tawfiq Ladan.(2003), "Women's Right, Access to and Administration of Justice under Shariah in Nigeria": in, *Shariah Implementation in Nigeria*, Joy Ngozi Ezeilo et al (Abuja & Lagos: WARCOL, WARDC, 2003) 33

everything, the same way it has not imposed the same duties to both of them at all times. However, the sum total of all rights granted to women is not less in value than the rights granted to men.⁴⁸ It is clear that in terms of spirituality and humanness, both genders stand on equal footing before Allah. It is also clear that nowhere in the primary sources of Islam (i.e. the Quran and Sunnah) can one find any basis for superiority of one gender over the other. The only criterion of superiority in Islam is piety and fear of God (*taqwa*).⁴⁹ Thus, equality should not be confused with role differentiation in the spirit of cooperation and complementarities.⁵⁰ It is apposite to point out here, that Islamic Law supports the equality of men and women, but it does not accept the concept of identicalness of their rights and duties.⁵¹

The concept of equality in Islamic Law is peculiar and distinct from the western conception. *Shari'ah* emphasizes the complementary nature of the roles of males and females but each is assigned with distinct and unique role commensurate with their nature. Consequently, each one has been endowed with physical and psychological gift suitable for fulfilling their respective roles in the society. It is against this backdrop that Islamic Law rejects the western concept of women's liberation and the feminists' agitation for 'gender balance' and 'gender equality' because it upsets the natural balance laid down by Allah.⁵²

The existence of difference in Allah's creation of man and woman's structures and biology is an indication of difference not limited to childbirth alone. The much advocated sameness, no matter how much efforts are put, cannot be achieved. On the contrary, it will only lead to enslavement of women and put them in more problems as their vulnerability tends to be ignored in the process. Women are generally vulnerable and therefore susceptible to various forms of victimization including sexual harassment at work places.⁵³ It is therefore, unnatural and impossible to achieve sameness. Treating different genders equally in terms of responsibilities and

⁴⁸ Aliyu, I. A. (unpublished), "Gender Equality and the Rights of Women under the Shariah" (paper presented in seminar series by International Institute of Islamic Thought, Nigeria office, in Kano, Nigeria, March 7th, 2010, 18 – 21

⁴⁹ Q49:13

⁵⁰ Badawi, J. *Gender Equity in Islam*, (USA: Sellon Publication Co. IMC, 3rd print, 2004), 13-14

⁵¹ Mutahhari, M. *The Rights of Women in Islam*. 1st ed (Tehran, Iran: World Organisation of Islamic Services 1981), 116

⁵² Phillips, B. *Tafseer Soorat Al-Hujrat; A Commentary of 49th Surah of Quran*, (Riyadh: Tawheed Publications, 1988), 109-111

⁵³ Abdul-Khaliq, S. A-R. *The wisdom behind Islamic Law regarding women*, Al – Timimi, A, trans (Ann Arbor, USA: Islamic Assembly of North America, 1995), p. 35. Instances of this could be seen in: Kamala Chandrakirana, "Women Place and Displacement in the Muslim Family: Realities from the 21st Century" in *Wanted – Equality and Justice in the Muslim Family*, ed. Zainab Anwar (Kuala Lumpur – Malaysia: Musawa/Sister in Islam's Publication, 2009), 247-8

rights is a sweeping generalization that often leads to unjust and unfair results. On this point, Rukayyah Hill, an American Muslim activist, rightly observed that regardless of how many legislation may be passed to treat women the same as men, one fact will remain eternally unchanged: 'the female gender was created with different needs and capabilities from that of the male. Not less, not substandard, not lacking – just different.'⁵⁴

Appreciating the Islamic conception of gender from the above perspective enhances our understanding of many Islamic rulings on gender issues. There is another perspective, i.e. the *tawhidi* paradigm which emphasizes that the wisdom behind gender differentiation is to provide comfort, tranquillity, peace of mind as well as preservation of the human race.⁵⁵ Consequently, Allah (SWT) legalizes marriage⁵⁶ and outlawed any other form of intermingling, association or cohabitation of the two sexes outside the confines of matrimony.⁵⁷

Plethora of traditions of the Prophet (SAW) also lent credence to the above position of difference not amounting to inequality. For instance, when Nana Asma' (RA) asked the Prophet (SAW) why men participate in Jihad and other collective endeavours in Islam to the exclusion of womenfolk, the Prophet (SAW) responded by pointing out that any effort made by a woman towards kindly treating her husband is equivalent to all that. The hadith goes thus:

Once Asma' 'bint Yazid ibn As-Sakan came to the noble Prophet (SAW) and said, "O Messenger of Allah. I stand for a group of women who are of my opinion. Allah the Almighty has sent you to both men and women. Then we believed and followed you. We women are confined to homes, target to men's lusts, and bearers of their children. Yet, men have the privilege to attend Friday prayers, funerals and fight in the cause of Allah. On the other hand, in case of fighting, we keep their property and rear their children. Would we share with them in Allah's reward? Then, the Prophet looked at his companions and asked, "Have you ever heard a good question from a woman about religion like that? They replied, "You are right, Messenger of Allah." He said. "Go back Asma' and tell all women you stand for that

⁵⁴Abdulsalam, R. H. *Women's Ideal Liberation: Islamic Versus Western Understanding* (Jeddah-Saudi Arabia: Abul Qasim Publishing House, 1998) 10

⁵⁵ Q30:21

⁵⁶ Q4:3

⁵⁷ Q17:32

treating one's husband kindly, seeking his consent and obeying him are equal to all what you have mentioned concerning men.⁵⁸

Obviously, given the underlying philosophy of feminism (equality), the feminists have held this type of tradition of the Prophet (SAW) as patriarchal and some have rejected the interpretation of the verses of the Qur'an with reference to the tradition of the Prophet (SAW). The Prophet also emphasized kind treatment of wives by their husbands in several hadiths. It goes both ways.

4. Feminism and Islamic Law

According to Wishik, feminist's jurisprudence seeks to uncover 'the law's role in perpetuating patriarchal hegemony'.⁵⁹ Clare Dalton lucidly captures the essence of feminist jurisprudence in the following words:

Feminism is a range of committed inquiry and activity dedicated first, to describing women's subordination - exploring its nature and extent; dedicated second, to asking both how - through what mechanism, and why - for what complex and interwoven reasons - women continue to occupy that place; and dedicated third to change⁶⁰

Within feminism, there are variants although their ultimate goal is to fight patriarchy and ensure equality between genders. "Islamic" feminists emerged in the shadow of this ideology but there are variants of this as examined hereunder.

4.1 Suspecting the Law in Feminist Method and the Re-interpretation of Islamic Law

The re-interpretation of Islamic Law by feminists started with the underlying feminist binary assumption (*we* versus *them*) that the law is for men to use in dominating women. This makes feminists to adopt a confrontational approach that always questions the status quo and rejects any claim of neutrality or objectivity. According to Scale 'feminism does not claim to be objective because objectivity is the basis for inequality.'⁶¹ Thus, the first approach is to have a pre-conceived assumption of inequality entrenched by the state through the law. That is why feminists always question the claims for neutrality and objectivity. In the words of Scales:

⁵⁸ Khalid, M. K. & Eliwa, A. *Women and Men Around the Messenger*, trans. M.M. Gameiah ed. A.A Mischler(El-Mansura, Egypt: Dar-Al-Manarah, 2003), 622- 623.

⁵⁹ Wishik, R. *To Question Everything: The Inquiries of Feminist Jurisprudence*. Berkley Women LJ 64, 1985.

⁶⁰ Dalton, C. *Where we stand: Observing on the situation of Feminist Legal Theory*.

⁶¹ Scales, A.C. 'The Emergence of Feminist Jurisprudence: An Essay' (1986) 95 *Yale Law Journal* 1373

Feminist method stresses that the mechanisms of law - language, rules and categories - are all merely means for economy in thoughts and communication.... Feminism insists upon epistemological and psychological sophistication. Jurisprudence will forever be stuck in a post-realist battle of subjectivities until we confront the distinction between knowing subject and known object. Feminist method is exemplary of that confrontation. And because we do not separate the observer from the observed, feminism is the first theory to emerge from those whose interests it affirms.⁶²

Using this confrontational intellectual engagement, feminism developed a methodology with which its proponents hope to unmask the bias of 'maleness' in the law. Because feminist method proceeds first upon the assumption that the law is not gender-neutral, the Law cannot achieve gender justice in any way until what they want is done. Thus, unless the law is treated as a suspect, feminism as a movement would achieve nothing, so said Finley:

Feminist theory...tells us to...*distrust* abstractions and universal rules, because objectivity is really perspective and abstractions just hide the biases; *question everything*,...*question the content and try to redefine the boundaries*; *distrust the attributions of essential difference* and acknowledge that experiences of both men and women are multiple, diverse, overlapping...; break down hierarchies of race, gender or power; embrace diversity, complexity and contradiction - give up on the need to tell one true story because it is too likely that that story will be the story of the dominant group; listen to the voice of 'emotion' as well as the voice of reason...'⁶³. (Italics mine for emphasis).

This method of challenging the status quo is the same method being adopted to criticise Islamic Law or to seek a re-interpretation of its primary texts. However, as will be argued later, the second problem with feminism apart from its narrow conception of justice through the feminist lens, is its narrow conception of law as essentially state-based instrument with little or no divine elements that only exists in the presence of state machineries. Secondly, challenging the status quo cannot be achieved without the support of history. Viewed from this context, Islamic Law cannot suitably fit into the feminist analytical platform because it uprooted customs

⁶² *ibid.*

⁶³ Finley, L.M. 'Breaking the Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning' (1989) 64 *Notre Dame Law Rev* 886 at 886

where females had no rights and were buried and abused without compunction. Also, viewed from this perspective, it may be argued that the challenge of perceived gender inequality and injustice by feminism is simply a colonial legacy of exhibiting cultural supremacy and unrestrained acculturation.

4.2 The Development of Feminists' Ideology in Muslim Societies

As noted above, the feminist ideology started during the colonial days.⁶⁴ The injustice of the colonial ideology prompted series of misgivings and agitations across all social spectra. Colonized societies suffered all manner of inequality and shared these misgivings. Not surprisingly, the colonized peoples were considered to be culturally backward as demonstrated by the policies and actions of the colonialists towards indigenous laws and cultures.⁶⁵ They were inferior in the way they treated women. Their laws were inhuman, horrific, obnoxious and contrary to natural justice, equity and good conscience in the eyes of the colonialists.

Thus, feminist agitations within Muslim communities reflected this quest to uproot obnoxious laws that maltreated women, confining them to the 'prison' called home. Thus, feminist ideology was used against other cultures in the service of colonialism and it was shaped to fit the particular culture that was the immediate target of domination - the Islamic world and Sub-Saharan Africa. Till date, Muslim countries are characterized by this imperial, cultural contamination. This is visible even in Nigeria, where Islamic Law has not only been relegated to private, personal domain but totally denied in some parts of the country.⁶⁶ Indeed, since the era of the crusade, the Islamic world was regarded as an enemy to be conquered and subdued.

Feminism was therefore a ready tool in the hands of the colonialists and their apologists. It was accordingly deployed to serve the imperial interests. It was in this atmosphere that feminist theory in the Muslim context was created.⁶⁷ Historically, the first stage of feminist movement in the Muslim societies emerged between the 19th and early 20th Century, under the auspices of colonial and post-colonial state formations. It started in Egypt and Lebanon and soon spread to all parts of the Muslim world.⁶⁸

⁶⁴ Ahmed, L. *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press, 1992) 150

⁶⁵ Yadudu A.H. 'Colonialism and the Transformation of the Substance and Form of Islamic Law in Northern States of Nigeria' 9 (1991) *Journal of Law and Religion* 17-47

⁶⁶ See for instance 1999 Constitution, section 277.

⁶⁷ Ahmed, L. op cit, at pp 150-155

⁶⁸ Uthman, I.O. (2008) *Muslim Women of Nigeria and the Feminist Discourse of Shaykh Al-Albani*, Ilum Press, Kuala Lumpur at.39

In Egypt, feminism received an intellectual support from men who sought to reform Islamic Law to reflect the contemporary demands.⁶⁹ First, Muhammad Abduh (1849-1905 CE) was the developer of the intellectual movement for the establishment of a modernist Islamic society. Interestingly, Muhammad Abdu was a renowned social activist with in-depth intellectual clout and his modernist interpretation of Islamic texts was arguably the precursor to the feminists' re-interpretation of the Quran. In fact, his methodology was adopted by many Islamic reformers and provided the philosophical impetus for many governments' Muslim family-law reforms.⁷⁰

However, although Abdu himself was not a feminist, his associate Qasim Amin (1863-1908 CE), a lawyer and judge, was a feminist sympathizer as he developed the feminists' dimension of Islamic modernism. He advocated for the equality of the sexes in Islam, stigmatized Hijab and seclusion as un-Islamic.⁷¹ Indeed, Amin's work is regarded as the beginning of feminism in Muslim society and he became an inspiration to later generation of feminists like Huda Sha'rawi.⁷² It was not a surprise therefore that cultural inferiority brought by colonialism played a crucial role in deepening the ideology of feminism as the so-called reformers saw the European encroachment as positive to their cause because the social institutions and mechanisms for the control and seclusion of women from the major domains of activity were gradually dismantled.⁷³

In the 20th Century, feminists from different parts of the world made significant inroads into Muslim societies following series of international meetings and conferences to strengthen the cause of women at home and abroad.⁷⁴ Western feminists' thoughts influenced Muslim feminism.⁷⁵ Secularism became the in-thing because of the diversity forced upon Muslim societies by colonialism. Feminists like Sha'arawi championed the gradual reform toward total political emancipation from British control and the adoption of Western political institutions and a secular state. By a lecture series for women held at the Egyptian University, Huda Sha'rawi sought to compare the 'lives of oriental and Western women and talk about Muslim practices' and they founded organizations for the intellectual improvement of women,

⁶⁹ Abdul-Rauf, M *The Islamic View of Women and the Family* (Robert Speller & Sons, 1977) pp.141-142

⁷⁰ Ibid, pp.140-143

⁷¹ Esposito, J.L. *The Islamic Threat Myth or Reality* (Oxford University Press, 1992) p58

⁷² Abdul-Rauf, M op cit, p 143; Witcher, R.S "The Effects of Western Feminist Ideology on Muslim Feminists" (NPS, Monterrey, California March 2005) p 15.

⁷³ Ahmed, L op cit, p 121-128

⁷⁴ Badran, M 'Feminism in Islam, Secular and Religious Convergence', pp. 25-26

⁷⁵ Ahmed, L. op cit, at p 172

the Society for the Advancement of Women, established in 1908.⁷⁶ A Feminist Conference was convened in Cairo in 1938 and was attended by delegates from seven Muslim countries. In 1944, at a second Arab women's conference, an Arab feminist union was founded, and Sha'rawi was elected its president. Upon her death in 1947, Ibtihaj Qaddus of Lebanon succeeded her as president.⁷⁷

However, there were discordant tunes within the feminist movement in the Muslim world leading to a division: the dominant voice of feminism in the Muslim world especially the Middle-East and the alternative, marginal voice. The former was a Western apologist with a passionate appeal towards multi-culturalism and secularism in order to transform Muslim societies into 'progressive' western-type societies. The alternative voice on the other hand embraced reforms through cultural and religious revival.⁷⁸

In short, it was the feeling of cultural inferiority that pushed them towards feminism and secularism.⁷⁹ The internalization of colonialism and of notions of the innate superiority of the European over the religious culture - the colonization of consciousness - was a major impetus to the feminist movement in the Muslim world.⁸⁰

Colonization equally brought and nourished a new Western education system in which religious thoughts were divorced from governance. This education system became the purveyor of feminist thoughts, showing that a spread of this system of education helped to create a new stratum of women who could actively better their lives through employment and political representation. Western trained Muslim feminists were therefore the root of the modern quest to re-interpret Islamic Law.⁸¹ It also provided different theories which were later incorporated into feminist studies in the Muslim context.⁸²

At the end of the 20th Century, the debate became a broader one i.e. feminist discourse tends to focus on the patriarchal explanations of gender relations. Some feminists believed that the study of gender is best undertaken through the deconstruction of the male-centric positivist law. This was extended to Islamic Law

⁷⁶ Ibid

⁷⁷ Ibid, pp.177-178

⁷⁸ Ibid, pp. 174-175

⁷⁹ Ibid, p 178

⁸⁰ Ibid pp. 162-163

⁸¹ Whitcher, R.S op cit, at pp.18-19

⁸² Ibid pp.19-20

despite its peculiarities.⁸³ This forced them to engage in *Ijtihad* and to conduct their own *tafsir* (Qur'anic interpretation) to counteract Islamic revivalism and present a gender-sensitive Islamic discourse.⁸⁴ During this period, questions were raised and comparisons were made with the uncontrolled acculturation in the Western societies. Human rights were drawn into the discourse upon the assumption of grave gender imbalance and injustice within Muslim societies.⁸⁵ Consequently, many Muslim women's right groups and several international and regional organizations were established to advocate and promote full equality between the sexes in both public and private lives. These organizations include Sisters in Islam, Women Living under Muslim Laws (WLUML) and Women Aid Collective.⁸⁶ This was led by the dominant feminist voice which espoused secular-liberal understanding of key values such as equality, pluralism and human rights.⁸⁷

As observed earlier, there are variants of feminism within Muslim societies. They are Muslim feminism, "Islamists" and "Islamic" feminism. Muslim feminists consist of a composite of Islamic modernist, secular nationalists and humanists. Muslim feminists used secular, modernist and humanists' arguments to promote women's rights. They argued for full gender equality in the public sphere and actively support a stronger separation of politics and religion and the superiority of the public space over the private space.⁸⁸ They see Islam as an obstacle to the advancement of women and urged Muslim women to disown Islamic regulations on women in marital, social, legal, economic and political arenas.⁸⁹

The "Islamists" seek to challenge "Islamic" feminist thinking by calling for a gender equality in the secular part of public sphere with the exception of the religious domain and uphold the notion of differential gender roles or gender equality in the private sphere or under the Islamic family system.⁹⁰

Like other forms of feminism, at the core of "Islamic" feminism is a stringent push for gender equality or the full equality between women and men across the public-private spectra. Their formulation of gender equality is more radical than that of the Muslim feminism as they seek to use the tools of Islamic jurisprudence together with

⁸³ Ibid, pp. 20-23

⁸⁴ Badran, M, op cit, at p 30

⁸⁵ Ibid, p.30

⁸⁶ Warren, C.S "Lifting the Veil: Women and Islamic Law" 15 (2008) *Cardozo Journal of Law and Gender* 33, 57

⁸⁷ Badran, M, op cit

⁸⁸ ibid, pp.33-34

⁸⁹ Uthman, O.I op cit, at p 40

⁹⁰ Badran, M. op cit, at pp. 35-36

those of modern social sciences to forcefully demonstrate that gender inequality in family, as well as in society was un-Islamic.⁹¹ “Islamic” feminism claimed that their approach is predicated upon the view that such gender equality was an integral part of Islam from inception.⁹² They argued that laws on gender in Islam as in any other religion are socially constructed and thus open to deconstruction, negotiation and change.⁹³ “Islamic” feminists are legitimizing the right of everyone to speak about women and Islam, encouraging debate between Muslim and non-Muslims and help the dialogue among different kinds of feminists.⁹⁴ Thus, Islamic feminism is not restricted to Muslim women or men, but is open to all researchers who have this kind of commitment. The adjective “Islamic” is maintained here not to describe an identity or faith position, but to describe a scholarship committed towards the deconstruction and re-construction of Islamic thoughts or its re-activation through a secular critique.⁹⁵

Its most prominent advocates are Amina Wadud, Riffat Hassan and Asma Barlas who focused on the re-interpretation of the Quran. Others are Aziza Al-Hibri, Shaheen Sardar Ali who scrutinized the various formulations of the Shariah, and Fatima Mernissi and Hiyayet Tuksal who focused on re-examining the Hadiths. They have made radical analysis of some texts using scriptural hermeneutics to carry out Quranic interpretation or re-interpretation of texts such as those on inheritance, divorce, evidence, the age of marriage, marriage to non-Muslim, polygamy, women’s leadership, giving of sermon, gender mixed prayers, female-led prayers, etc.⁹⁶

5. Feminists’ Re-interpretation of Islamic Law

The word re-interpretation presupposes re-thinking and re-considering an established state of the law as popularly interpreted by qualified interpreters. It is natural to expect diverse interpretations of the text conveying legal prescriptions or proscriptions. This is because a text, especially a religious text with implications not

⁹¹ Ibid, p.33

⁹² Mirza, Q “Islamic Feminism & Gender Equality” ISIM Review 21/spring2008. At <http://openaccess.eidenuniv.ni/bitstream/handle/1887/17220//sim21islamicfeminismandgenderequality> (viewed February 24, 2015)

⁹³ Mir-Hosseini, Z ‘Feminist Voices in Islam’ at <http://www.mazafilm.deldokupdf/mir-hosseini.pdf> (viewed February 24, 2015)

⁹⁴ Wadud, A.M “Muslim Women in the 21st Century: Forward or Backward’. At <http://www.theamericanmuslim.org/tam.php/features/articules/0013984> (visited 05/01/2015)

⁹⁵ Peipicelli, R ‘Islamic Feminism: Identities and Positionalities: Why Keep Asking Me About My Identity? Thoughts of a Non-Muslim’ Islamic Feminism Current Perspectives, Kynsilehton, A (ed) pp.99-100

⁹⁶ Uthman, I.O op cit, at 56.

limited to this world is susceptible to ambiguity and vagueness. According to Raj Bhala “every religious or legal text contains terms that are ambiguous or vague, and every such text requires interpretation and construction.”⁹⁷ This, in Islamic Law, is with a view to determining the Will of Allah.

Therefore, interpretation is a process of developing an understanding of a text but there are diverse approaches with some scholars like Ibn Taimiyyah insisting on strict adherence to the Quran and Hadith in any interpretation of the texts. This in essence confines the meaning of the Divine Revelation to the divine sources. But construction is about filling gaps when words or their originally intended meanings are unclear or means deciding what to do with the words in a text. This means that in constructing a text, logical defences must be advanced to support a position. Thus, both interpretation and construction require deep knowledge of not just the *usul al fiqh* but an unalloyed faith in the divine elements of the religion. It is now important to examine this in a greater detail.

5.1 Orthodox Interpretation versus Feminists’ Re-interpretation

It is important to point out that the *Tafsir* (exegesis) of Qur’anic verses from the early years of Islam up to the 20th Century was mostly done by male scholars. These scholars were highly competent and qualified for this herculean endeavour and they developed methodologies, requirements and approaches to the interpretation of the verses of the Qur’an. The main methodological approaches include but not limited to: *tafsir Qur’an, bil Qur’an, tafsir bi’l math’ur* (traditions), *tafsir bi’l riwayat* (transmission) and *tafsir bi’l ra’y* (logical reasoning), *tafsir ul Ishary, tafsir ilmi, etc.* The former two are roughly similar while the latter uses philosophical understanding, *hadith* and reason.⁹⁸ These require certain pre-conditions which are basically unquestionable faith, knowledge and expertise. This is because the Quran is the word of Allah which, to a large extent, surpasses human logic. It is a metaphysical message that only Allah and His messenger can fathom accurately but men can only have a glimpse.

Thus, scholars agree that interpreting the Quran is not a matter of logic or simple comprehension. As-Suyuti listed fifteen qualifications which a person must possess before he or she is qualified to interpret the Qur’an.⁹⁹ According to Abu Hatim, the following are however the summary, though not exhaustive, qualities that are

⁹⁷ Bhala,R, op cit, at p. 290

⁹⁸ See Abu Jafar Muhammed ibn Jarir al-Tabari *Jami-al-bayan ‘an ta’wil ay al-quran* (923AH)

⁹⁹As-Suyuti, A. cited in Abu Hatim, The Qualification of a *Mufassir*, found at <https://abuhatim.wordpress.com/> (viewed 2008/11/15)

essential in a *Mufasssir* (commentator or interpreter) of the Qur'an. The first four are inherent and the others are external and acquired:

- Intention to please Allah and to guide people to the straight path to the best of one's ability; *aqidah* (an unquestionable Islamic belief);
- Non-indulgence in innovations and deep respect for the Qur'an;
- A repentant and pious heart;
- Thorough and proper understanding of the fundamentals of the religion; Proper methodology of *Tafsir*; knowledge of Arabic and its literature and vocabulary on a scholarly level;
- *Nahw* (knowledge of Arabic grammar);
- *Sarf* (knowledge of Arabic morphology);
- *Ishtiqaq* (knowledge of the basis of Arabic words and word structures);
- Knowledge of Arabic rhetoric, eloquence and manner of oratory;
- Knowledge of the *sahih*, *daif*, *shadh* and *qira'atus-shahah*;
- Knowledge of the principles of *fiqh* (*usul-ul-fiqh*);
- Knowledge of *fiqh* itself;
- Knowledge of *asbab an-nuzul* (basis/history of revelation) and related sciences;
- Knowledge of *nashi* from its *mansukh* and related sciences;
- Knowledge of the *Hadith* of the Prophet (SAW), in particular those related to the interpretation of the Qur'an;
- Knowledge of all other branches of *ulum al Qur'an* including *makki and madani*, *muhkam and mutashabih* and the type of *I'jaz* of the Qur'an;
- A God-given intellectual endowment similar or close to the intellect of Abdullahi Ibn Abbas who the Prophet (SAW) specifically prayed that, "O Allah, grant an understanding of interpretation" to him.¹⁰⁰

However, from the late 20th to early 21st centuries, many self-proclaimed exegetes including feminists emerged on the scene and began to give interpretations without necessarily meeting these requirements especially because of the increasing Islamic revivalism and the quest to stop the stagnation of this period. They mostly focus on a few verses, not the whole Quran. Their argument is that exegesis is only a human interpretation of the Quran, not the Quran itself. The Quran is God's Word, and humankind's understanding of it is necessarily limited due to limitations of the human intellect, language and social and individual prejudices. This indicates that there can be several readings or interpretations of the Quran, and to insist that only one's own reading is the right one is to deny the diversity of human beings and their inherent

¹⁰⁰ Abu Hatim, The Qualification of a *Mufasssir*, found at <https://abuhatim.wordpress.com/> (viewed 2008/11/15)

search for truth.¹⁰¹ Thus, many scholars began to incorporate science, logic and rational thinking and democratic values in the interpretation of the Quran with a view to reconciling “modern” view with its universal teachings. This major change occurred after the colonial era because of the rise of nationalism and national identity to confront Western challenges.¹⁰² But where there is consensus on a given interpretation, it is wrong to distort such consensus. Under Islamic Law, distorting a settled consensus is unacceptable and has its consequences.

Sattar, classified the interpreters/commentators into four with regard to the interpretation of the Qur’an, namely: male traditional interpreters; male rational interpreters; male modernist interpreters; and the women exegetes.¹⁰³ The traditional male interpreters are involved in traditional readings of the Quran and they occupy the majority over the centuries. They include renowned interpreters such as Abd Allah Ibn Abbas, Abu Hanifa, Ibn Taymiyah, Al-Tabari, Zamakhshiri, Ghazali, Razi, Suyuti, Qurtubi, Syed Qutub and Ibn Kathir.

The contemporary scholars of this group include Israr Ahmed, Maududi and Shabbir Ahmed Usmani. Sattar claimed that the common feature of their *tafsirs* is the rigidity with which they interpret Quranic verses in terms of the responsibility of Muslims to wage war to establish global supremacy, definition of *Shari’ah* and Sunnah, and the status of women as “inferior” to men.

The male rational interpreters include Hamiduddin Farahi, Wahiduddin Khan, Amin Ahsan Islahi and Javed Ahmed Ghamidi. They seek to interpret the Quran from within itself, rather than using traditional *ahadith*. Farahi developed the concept of *nazm* (coherence) within the Quran.

The male modernist interpreters derive principles of guidance for human beings from the Quran and seek to read it both inter- and intra- textually. They argue that specific Quranic instructions were meant for the Arabs of that time and that each instruction needs to be analysed within the changing context of time. They include Tariq Ramadan, Abdullahi Saeed and Fazl ur Rahman who proposed that the Quran should be looked at as a source of guidance, not as a book of law or instructions. The final group is the feminist interpreters.

¹⁰¹ Sattar, Nikhtar, Verse 4:34: A Comparative Analysis of Variant Interpretation. www.exploring-islam.com

¹⁰² *ibid*

¹⁰³ *ibid*

However, it may be observed that over the years, women exegetes were not totally out of the picture. For example, Aisha (RA) was the first woman to give interpretations of various verses of the Quran. Aisha (RA) was taught directly by the Prophet (SAW) and she passed these interpretations to other companions and the wider Muslim society. However, her interpretations came in the form of traditions of the prophet. She was equally among the orthodox interpreters of the Quran. Her gender is immaterial and she was not a feminist. There are other women who were reported to have been involved in the interpretation of the Qur'an during the formative years of Islamic Law.

In the contemporary period, there are self-proclaimed exegetes who in reality are only translators and some of them brought the feminist's methodology in their interpretation of specific Quranic verses to achieve equality between the sexes. They include Ziyb An-Nisa (1702), Shah Sultan Alamgir Al-Hindī (associated with the translation of Al Razi's *tafsir*), Nusret Begüm Emin of Iran (1983), Aisha Abd-ur Rahman (1998) of Egypt, Zaynab Al Ghazali (2005) of Egypt, Nâile Hâşim Sabrî of Palestine, Amina Wadud (an African-American convert) and Asma Barlas (a Pakistani American), Karimah Hamza Bint al Shati, Ziba al-Hosseini Ahmed, Bakhtiar (the first woman American translator of the Quran into English) and Fatima Mernissi. Some of the women adopted the approach of the traditional interpreters while most of them took a feminist approach or a 'feministic reading' of the Qur'an.

The feminists at various stages centred their efforts in the reformation of Islamic Law in a number of subjects relating to women, especially in the area of family law and leadership in public spaces. Some of these include issues of authority in the matrimonial home, rights and duties of the spouses, polygamy, and role of parents, divorce and the right of women during and after divorce, inheritance, leading of prayers by women in mixed congregation, dress code (*Hijab*), giving of evidence by the women and other subjects. This led some of the feminists to re-interpret, by way of logical reasoning, the primary texts or verses of the Qur'an relating to the above issues. The verses include Qur'an 2:231, 282, 4: 3, 11, 12, 34 and 128, 176, 24:31, 30:21, 33:59, 49:13, 66:5, etc. The most contested of the classical traditional interpretation is that of Qur'an 4:34 which deals with family relations and it relates to a number of topics under family law. The lecture now focuses on the exegesis of this verse by both the orthodox scholars and the feminists.

5.2 Interpretations of Quran 4:34

This is a key verse which feminists often cite to portray Islamic Law as androcentric. It is important to examine it in order to illustrate the engagement of the feminists in

the re-interpretation of the Qur'an. The verse's main words were translated in different ways. The following are samples of various translation of the verse.

Abu ala Al Maudoodi's meaning of the Qu'an translated thus:

Men are the *managers* of the affairs of women because Allah has made the one superior to the others and because men spend of their wealth on women. Virtuous women are, therefore, obedient; they guard their rights carefully in their absences under the care and watch of Allah. As for those women whose defiance you have cause to fear, admonish them and keep them apart from your beds and beat them. Then, if they submit to you, do not look for excuses to punish them: note it well that there is Allah above you, Who is Supreme and Great.¹⁰⁴

In the translation of Sayyid Qutb's commentary of the Qur'an, "In the shade of the Qur'an (*fi zilalil Qur'an*) the verse translated thus:

Men shall *take full care* of women with the bounties with which God has favoured some of them more abundantly than others, and with what they may spend of their own wealth. The righteous women are devout, guarding the intimacy which God has ordained to be guarded. As for those women from whom you have reason to fear rebellion, admonish them [first]; then leave them alone in bed; then beat them. Then, if they pay you heed, do not seek any pretext to harm them. God is indeed Most High, Great.¹⁰⁵

Yusuf Ali rendered it as follows:

Men are the *protectors and maintainers* of women because Allah has given the one more (strength) than the other and because they support them from their means. Therefore, the righteous women are devoutly obedient and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct admonish them (first) (next) refuse to share their beds (and last) beat them (lightly); but if they return to obedience seek not against them means (of annoyance): for Allah is Most High Great (above you all).¹⁰⁶

¹⁰⁴ Maudoodi; www.englishtafsir.com/quran/4/index.html

¹⁰⁵ Syed Qutub; www.islamawakened.com/Quran/4/34/

¹⁰⁶ Yousuf, A; <http://www.quranonline.net/html/trans/option/yali/4.html>

Islahi and Javed Ahmed Ghamidi translated the verse thus:

Men are *managers* of women, the reason being that God has made one superior to the other, and because they spend their wealth on them. Hence, the pious wives are those who obey and guard secrets, because God also guards secrets. And if you suspect rebellion from them, counsel them; leave them alone in their beds and punish them. But if they obey you, do not find ways against them. Verily, God is all Knowing and Great.¹⁰⁷

Wadud translated the verse thus:

Men are [*qawwamuna*] women, [on the basis] of what Allah has [preferred] (*faddala*) some of them over others, and [on the basis] of what they spend of their property (for the support of women). So good women are [*qanitat*], guarding in secret that which Allah has guarded. As for those from whom you fear [*nushuz*], admonish them, banish them to beds apart, and scourge them. Then, if they obey you, seek not a way against them.”¹⁰⁸

The key words in the verse over which controversy and variant interpretations are made, are: *qawwamuna*, *faddala*, *qanitat*, *nushuz*, *adribuhunna* and to some extent, *hafizat*. The orthodox classical jurists are divided on the meaning of the word *qawwamuna*. They have interpreted it to mean that men are “protectors”, “maintainers”, “managers”, “the managers of the affairs” and “care providers” of women. Generally, there is consensus among the jurists that the verse concerns the legal responsibility of men over women in a matrimonial setting, i.e. under the Islamic family system. It means that men have an authority or power to exercise or manage the affairs of women or exercise guardianship over women within the home because Allah has given them strength over women as men spend their wealth and property to support women within the family. What this indicates according to the orthodox jurists, is that a husband can exercise authority over his wife on account of his legal obligation to spend his wealth to ensure her well-being.

According to Imam Ibn Kathir, *qawwamuna* means “Men are the protectors and maintainers of women” and this means that “the man is responsible for the woman, and he is her maintainer, caretaker and leader who disciplines her if she deviates

¹⁰⁷ Islahi, A.A (1975) by Amin Ahsan Islahi and Javed Ahmed Ghamidi

¹⁰⁸ Wadud, A. *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*. (1999) New York: Oxford University Press

because Allah has made one of them to excel the other (*fadala*) as men are better than them for certain tasks.¹⁰⁹

Also Sayyid Qutb explains “man’s qualities make him more able and better equipped to take charge of the family. Similarly, his duty to support his family, as part of that general distribution of functions, makes him more suited to overall authority. That is because earning his family’s living is part of being in charge. Moreover, looking after the finances of the family is closer to his family duties.”¹¹⁰ Thus, by interpreting the verse in this manner, the orthodox jurists suggest that in Islamic families men are required to look after women. It is an assignment of duties on the basis of natural abilities and the fair distribution of responsibilities. It is a matter of physical and structural difference as argued above. Each party is assigned the duties most suited to its physical, physiological and biological nature. The man has the abilities to take “charge of the family affairs, a role essential for the proper progress of human life”.¹¹¹ This, it is submitted is not a patriarchal interpretation; it is an interpretation that reflects our essential humanity and accords with common practices across religions and legal systems even in the contemporary world. It accords with the practice of the Prophet (SAW) which makes it a divine interpretation. In the words of Sayyid Qutb:

Both men and women are the creation of God, who does not wish to do injustice to anyone He has created. Indeed, He gives each of His creatures the abilities and talents that befit the duties assigned to them. God has created human beings as males and females, following the “dual” rule which is central to the system of creation. He has given the woman the great tasks of childbearing, breast-feeding and looking after her children. These are not tasks which can be fulfilled without careful preparation, physically, psychologically and mentally. It is only just, therefore, that the other part, i.e. the man, should be assigned the task of providing the essential needs and the protection required for the woman to fulfil her highly important duties.¹¹²

Abul ‘Ala Maududi asserts that the Arabic word *qawam* stands for a person who is responsible for the right conduct, safeguard and maintenance of the affairs of an individual, an institution or an organization. Thus, man is governor, director,

¹⁰⁹Ibn Kathir, A. H. *The Exegesis of the Grand Holy Qur’an*. Muhammad Mahdi al-Sharif (Trans.). Dar Al-Kotob Al-Ilmiyyah (2006). 1st ed. Vol II, pp 58-61

¹¹⁰ Qutb, S. *In the shade of Qur’an*. Vol 3, pp 109-117; <http://www.holybooks.com/shade-quran-sayyid-qutb>

¹¹¹ *ibid*

¹¹² *ibid* p. 110

protector and manager of the affairs of women. Men are superior to women in the sense that they have been endowed with certain natural qualities and powers that have not been given to women or have been given in a less degree, and not in the sense that they are above them in honour and excellence. Man has been made qawam (governor) of the family because of his natural qualities and woman has been made his dependent for her own safety and protection because of her natural drawbacks.¹¹³

Islamic feminists view the verses differently. For instance, Wadud says that the Quran does not define women or men by their biology.¹¹⁴ There is no role specifically defined for women. The roles for both genders are in terms of their deeds, albeit the values of these deeds are not defined. It is society that places this value, and more often, the deeds of men are valued higher in society. The Quran acknowledges the need for the human race to grow and develop, and even encourages it to do so: dividing the world “into nations and tribes that you might know one another” (49:13). “It allows and encourages each individual social context to determine its functional distinctions between members, but applies a single system of equitable recompense which can be adopted in every social context.”¹¹⁵

Siel Devos¹¹⁶ succinctly articulates the reaction of the feminists that: “the feminists have... demonstrated that men’s perceived superiority and excellence – for reasons such as intellect, strength or their ability to pray – does not find any justification in the Qur’an, but is a product of the historical and societal context classical exegetes found themselves in.”¹¹⁷ Wadud asserts that, the only reference in the Qur’an to any ‘preference’ or ‘favour’ given to men over women by Allah is with regard to material preference, more specifically, in matters of inheritance.¹¹⁸ The Qur’an specifies in Q4:11 that men’s share of inheritance is double the share of women’s.

The other condition of Verse 4:34, “and with what they spend of their wealth” refers to men’s responsibility to provide for women.¹¹⁹ Similarly, Riffaqa Hassan translates *qawwamuna* as ‘breadwinners’¹²⁰ Furthermore, Hassan and Wadud argue that, as the

¹¹³ Maududi, S. A. A. *Tahfīm al-Qur’an – The Meaning of The Qur’an*; <http://www.quran411.com>

¹¹⁴ Wadud, A. M. (1999)

¹¹⁵ *ibid*

¹¹⁶ Siel, D. *The Feminist Challenge of Qur’an Verse 4:34: An Analysis of Progressive and Reformist Approaches and Their Impact in British Muslim Communities*

¹¹⁷ Shaikh, S. *Exegetical Violence: Nushuz in Quranic Gender Ideology*. *Journal for Islamic Studies*, 1997; and Mahmoud, M. *To Beat or not to Beat: On the Exegetical Dilemmas over Qur’an 4:34*. *Journal of the American Oriental Society*, 2004, Vol 4, pp 537-550

¹¹⁸ Wadud (1999)

¹¹⁹ *ibid*.

¹²⁰ Hassan, R. *Are Women and Men equal Before Allah? The issue of Gender Justice in Islam*; 1996.

Qur'an does imply that "there are at least some men who do not provide for women"¹²¹ by using "some" over "others" – no gender specified – and therefore this part of the verse should be seen as a "normative" or idealistic statement, describing how the ideal Muslim family should function rather than descriptive of the social context of 7th Century Arabia.¹²²

Both Wadud and Ali emphasized that there is reciprocity of privilege and responsibility: because men receive a bigger share of inheritance, they are responsible for paying out of their wealth for the support of women.¹²³ In other words, men who do not support women financially do not enjoy this degree of *qiwamah*.

Similarly, Al-Hibri maintains that a man is *qawwamun* over a woman only when two conditions are fulfilled: that he has a certain ability or knowledge over a woman on a particular subject, and that he is maintaining her.¹²⁴ The feminist have argued that interpreting *qawwamuna* over women does not imply men's superiority over women, as this implies a power relationship between two people, which is contradicting the Islamic principle of *tawhid* (the oneness of Allah).¹²⁵ They maintain that *faddila*, unlike *daraja*, cannot be earned; it has to be given by God.

In the translation given by Wadud, she inserts the words: "on the basis of" for the Arabic '*bi*'. Thus, husbands have *faddila* only if two conditions are met: one, if God has given preference, and two, if the husband is the supporter of the woman from his means. If either condition is not present, then the man is not "*qawwam*" over the woman.¹²⁶ The verse says that the *qawammah* condition is dependent on what God has preferred men over women with. In the Quran, the only material preference is that of inheritance. Men have been given an inheritance which is twice as large as that of women, but not always. The other condition for *qawammah* is that "they spend of their property". In other words, there is a situation of reciprocity between benefits and responsibilities. The larger share in inheritance has been given so that the men can support women. Wadud goes on to say that *faddila* here cannot be unconditional. Because the verse includes the word *ba'd* (some) of them over *b'ad* (others), God has

¹²¹ *ibid* and Wadud (1999)

¹²² *ibid*

¹²³ Wadud (1999) and Ali, K. *The Best of you will not strike: Al-Shafi'i on Qur'an, Sunnah, and Wife-Beating*. Comparative Islamic Studies, December, 2006. Vol. 2(2), pp. 143-155

¹²⁴ Al-Hibri. *Islam, Law and Custom: Redefining Muslim Women's Right*. American University Journal of International Law & Policy; 12(2), pp. 1-44

¹²⁵ *ibid*

¹²⁶ Wadud (1999)

preferred some of the men over some of the women. Likewise, He has preferred some women over some men.¹²⁷

It is submitted that in between the two contending views is the argument that the fact that Allah has favoured men more than women in some ways does not lead to the conclusion that Islam views men as superiors over women. This verse does not exclude the possibility that in some other ways women may be favoured more than men. Indeed, social scientists have shown that women are in general more patient, caring and have a more developed intuition than men. Moreover, the Holy Qur'an makes it clear that while there are many favours of God that He bestows on His creatures in different measures, there is only one favour which determines the superiority of one member of the human species over another and that is *taqwa* or God consciousness.¹²⁸

Thus wealth, strength, health, intelligence, position, education, et cetera. are all favours of God but we cannot say that a wealthier person is superior to a poorer person; a stronger person is superior to a physically weaker person and so on. These are not attributes of status in Islamic Law; they do not determine gender superiority as they are not gender-based or segregated on ground of gender. A superiority is only material if it is so in the sight of the Law-giver otherwise it goes to nothing. Thus, a more *muttaqi* (pious/righteous) person is superior to a less *muttaqi* (pious/righteous) person. In the words of the Allah (SWT) "the nobler among you in the sight of God is the more *muttaqi* (righteous) among you."¹²⁹

Qānitāt which has been used to describe virtuous, righteous or pious women (*al-salihāt*) is interpreted to mean obedient women, devout, or devoutly obedient. This meaning given by the classical jurists is also accepted by some feminists. They however differ as to whom the obedience should be rendered to. The classical jurists were of the opinion that it should be rendered to the husband on the condition that such obedience to the husband must not be in contravention to the law of Allah or to His displeasure. Ibn Kathir said "the righteous (women), are *Qānitāt* obedient to their husbands, as Ibn Abbas and others stated."¹³⁰

Sayyid Qutb explained that it is, then, in the nature of the righteous, believing woman and part of her essential characteristics to be devoted and obedient. Devotion means

¹²⁷ *ibid*

¹²⁸ Ahmad, S. *Tafseer of Surah An-Nisa, Ayah 34*; <http://www.themodernreligion.com/women/dv-4.34-shafaat.html>

¹²⁹ Q49:13

¹³⁰ Ibn Kathir, *op. cit*

willing obedience, motivated by love, not the sort of obedience enforced against one's will. Hence, the Qur'an uses the term "devout", or *qānitāt* to stress its pleasant, psychological connotations, which fit perfectly with the sort of affectionate and compassionate relationship which exists between husband and wife. Islamic Law stresses that this relationship is essential in the family home where young ones are reared.¹³¹

Maududi cited a tradition of the Holy Prophet in support of obedience to the husband as a commentary on this: "the best wife is the one who pleases you when you see her; who obeys your orders and who guards your property and her own honour when you are not at home."¹³² He is quick to caution that obedience to Allah is of far greater importance than obedience to the husband and has precedence over it.¹³³ Therefore, it is the duty of the wife to refuse to obey her husband, if and when he orders her to do a thing which amounts to disobedience to Allah. In that case it is a sin to obey him. On the contrary, if the husband orders her not to observe a certain voluntary religious devotion, she must obey him, otherwise her devotion will not be accepted.

The feminists on the other hand, are of the opinion that the obedience is to Allah and not the husband or any human being for that matter, as this contradicts *tawhid* (unity of God) principle.¹³⁴ Aziza Hibri argued that dictated hierarchy and obedience of one group of human being by another is arrogance and arrogance is satanic in nature.¹³⁵ Riffat Hassan opined that *qānitāt* describe good women and not obedience.¹³⁶ Amina Wudud further stated that *qānitāt* has been used in other places in the Qur'an to mean both men and women who obey Allah.¹³⁷ Regrettably, their interpretations were not supported by the traditions of the prophet or even the consensus of jurists although feminists almost always reject the consensus of men jurists.

Another word the feminists vehemently contest in the interpretation of the classical jurist is *nushuz*. The Arabic word *nushuz* is said to literally means "protuberance."¹³⁸ The classical jurists generally view *nushuz* as ill-conduct or rebellion of the wife against the husband or marital disharmony or marital discord. Ibn Kathir stated that, "as to those women on whose part you see ill conduct", means the woman from

¹³¹ Qutb, S. op. cit.

¹³² Maududi, S. A. A. op. cit, Note 57

¹³³ *ibid*

¹³⁴ Al-Hibri, op. cit.

¹³⁵ *ibid*

¹³⁶ Hassan, R. (1996), op. cit.

¹³⁷ Wadud (1999), op. cit.

¹³⁸ Abdel-Halim, A. M. *A Home of Obedience: Masculinity in Person Status for Muslim Law, 2011*; Hawwa, 9(1), pp. 194-214

whom you see ill conduct as her husband, such as when she acts as if she is above her husband, disobeys him, ignores him, dislikes him and so forth, then such husband should advise her and remind her of Allah's torment for her disobedience.¹³⁹

Indeed, Allah orders the wife to obey her husband and prohibits her from disobeying her husband because of the enormity of his rights and all that he does for her.¹⁴⁰ Maududi, for example, said, "if the wife is defiant and does not obey her husband or does not guard his rights, three measures have been mentioned, but it does not mean that all the three are to be taken at one and the same time."¹⁴¹ Sayyid Qutb notes that 'it is a responsibility of the one who is in charge of the family to admonish against untoward tendencies.'¹⁴²

The feminist scholars challenge the traditional interpretation of *nushuz*. To Wudud, *nushuz* means a general state of marital disharmony, not of wifely disobedience and remarked that *nushuz* is used in the Qur'an for both men¹⁴³ and women¹⁴⁴ although it is defined differently. Wadud sees *nushuz* to be a situation that is initiated by the husband too, as per verse 4:128 that, "If a woman fears *nushuz* by or desertion on the part of her husband, there is no fault in the two reconciling with each other." Thus, she argued, *nushuz* is marital disharmony that may be caused either by the wife or husband, rather than a result of disobedience of the wife.¹⁴⁵ For Ahmad Shafaat, *nushuz* is something that can be feared by the husband on the wife's part or by the wife on her husband's part. It cannot therefore be understood in terms of the ruler-ruled relationship.¹⁴⁶

To correctly understand the meaning of the word, it must be noted that both in the verse under consideration and in verse 128, the reference to *nushuz* is followed by a reference to the break-up of the marriage.¹⁴⁷ If this context is kept in mind, then it becomes evident that *nushuz* means the type of behaviour on the part of either the husband or the wife which is so disturbing for the other that their living together becomes difficult.¹⁴⁸ She further remarked that *nushuz* in the eyes of one person may

¹³⁹ Ibn Kathir, op. cit.

¹⁴⁰ ibid

¹⁴¹ Maudud, S.A.A. op. cit. Note 58

¹⁴² Qutb, S. op. cit.

¹⁴³ (4:128)

¹⁴⁴ (4:34)

¹⁴⁵ Wadud (1999), op. cit.

¹⁴⁶ Ahmad, S. op. cit.

¹⁴⁷ (see vv. 35, 130)

¹⁴⁸ Ahmad, S. op. cit.

not be so viewed by another. For this reason, the judgement that one's spouse has been guilty of *nushuz* is partly a subjective and personal one. That is why the verse says: "If you fear *nushuz* ..." instead of, for example, "if you find *nushuz* ...". In the Holy Qur'an "fearing" signifies subjective knowledge or judgement about something. In short, *nushuz* is a behaviour on the part of one marriage partner which comes out of ill-will and seriously disturbs the other partner.¹⁴⁹ Regrettably, there is no prophetic tradition or consensus to back up their interpretation of 'marital disharmony' which has been addressed elsewhere in the Quran and Sunnah. In a nutshell, *nushuz* is ill conduct of the wife against the husband according to traditional classical jurists, while to the feminists it is marital disharmony, an ill conduct by either spouse.

The other contending word in the verse that this lecture finally wishes to address is *adribuhunna*. The verse had given three steps to be taken in correcting the *nushuz* of the wife; firstly, admonition, separation in bed and lastly *adribuhunna*. There is no apparent contention among the classical jurists and the feminist scholars on the first two steps but the third. *Adribuhunna* has been interpreted to mean that the husband can beat the wife, although at various levels, mostly lightly as a last resort. Ibn Kathir translates the word as "beat them" and contended that "if advice and ignoring her in the bed do not produce the desired results, you are allowed to discipline the wife, without severe beating" and supported the contention with a tradition of the Prophet (SAW) recorded by Muslims that Jabir said that during the Farewell Hajj, the Prophet said "Fear Allah regarding women, for they are your assistants. You have the right on them that they do not allow any person whom you dislike to step on your mat. However, if they do that, you are allowed to discipline them lightly. They have a right on you that you provide them with their provision and clothes, in a reasonable manner."¹⁵⁰

In agreeing with translating the *adribuhuna* to mean "beating", Maududi reiterated that if a mere light admonition proves effective, "there is no need to resort to a severer step. As to a beating, the Holy Prophet allowed it very reluctantly and even then did not like it. But the fact is that there are certain women who do not mend their ways without a beating. In such a case, the Holy Prophet has instructed that she would not be beaten on the face, or cruelly, or with anything which might leave a mark on the body".¹⁵¹

Sayyid Qutb on his part interpreted the word to mean "beat them," but quick to state that "when we remember the aim behind all these measures, we realize that this

¹⁴⁹ ibid

¹⁵⁰ Ibn Kathir, op. cit.

¹⁵¹ Maudud, S. A. A. op. cit. Note 60

beating is not a form of torture motivated by seeking revenge or humiliating an opponent. Nor is it aimed at forcing the wife to accept life under all unsatisfactory conditions. It is rather a disciplinary measure akin to the punishment a father or a teacher may impose on wayward children.”¹⁵²

Yusuf Ali however, interpreted the word to mean “chastise them”.¹⁵³ He cited Imam Fakhr Razi in his *Tafsir Kabir* as saying that it is a permission discouraged by the practice and traditions of the Prophet as indicated when certain women complained of ill-treatment by their husbands and he said ‘you will not find these men as the best among you’.¹⁵⁴ He further cited Imam Shafi’ noting that the wide scope of options provided and the practice of the Prophet including the statement that “the best of you is he who is best to his wife” shows that the word does not mean violence.¹⁵⁵

Obviously, the feminist scholars are vehement against interpreting this word as allowing beating of the wife by the husband. First, they asserted that the *daraba* in imperative form or the verb form, *idribu* has up to 25 meanings of which some have been used in the Qur’an. Among these meanings are “to travel the earth, to beat, to set up, to give examples, to take away, to condemn, to seal, to cover, to explain, to have sex, and others”¹⁵⁶ Mernissi refers to the prophetic example to interpret the word as “stay away” or “divorce”.¹⁵⁷ Other meanings of *idribuhunna* based on Qur’anic precedence or prophetic examples include: “set an example”¹⁵⁸, “create an effect upon her” (through counselling and sexual abandonment),¹⁵⁹ “hold in confinement”,¹⁶⁰ “separate or move away”,¹⁶¹ “have sex with them, mingle with them or turn away from them”,¹⁶² “go away from them”.¹⁶³ The feminist scholars find the choosing of

¹⁵² Qutb, S. op. cit.

¹⁵³ Ali, K. op. cit.

¹⁵⁴ *ibid*

¹⁵⁵ *ibid*.

¹⁵⁶ Ammar, N. H. *Wife Battery in Islam: A Comprehensive Understanding of Interpretations- Violence against Women*. 13(5), pp. 516-526

¹⁵⁷ Mernissi, F. (1991)

¹⁵⁸ Wadud (1999) op. cit.

¹⁵⁹ Mubarak, H. *Breaking the Interpretation Monopoly: A Re-examination of Q4:34*. Hawwa, 2(3), pp. 261-289.

¹⁶⁰ Hassan, R. *Feminism in Islam*, 1999, in Sharma, A. & Young, K. K. (eds), *Feminism and World Religion*. Albany State University of New York Press :265; and Barlas, A. *Believing Women in Islam; Unreading Patriarchal Reading in the Qur’an*, 2002

¹⁶¹ Abu-Sulayman, A. A. *Chastising Women: A mean to resolve marital problems?*2003. <http://www.theamericanmuslim.org/tam.php/features/articles/>

¹⁶² Kabbani, M. H. & Ziad, H. *The Prohibition of Domestic Violence in Islam*,2011; <http://www.worde.org/wp-content/uploads/2011/r2/DV-fatwa-online-versionPDF> in Chaudhry, A. S.

beating here among several meanings of the word by the classical jurists as inappropriate and contradictory going by the other verses of the Qur'an regulating family relationship.

Argument has been put forward that interpreting "beat them" to mean *idribuhuna* is a misinterpretation.

Now we get to the heart of the main reason why the word "beat" is a misinterpretation. We read in Chapter 2, Verse 231: "When you divorce wives, and they are back honourably or set them free honourably; but hold them not back by injuring them..." In other words, the Quran is telling husbands not to harm their wives who want to be set free, not to hold them back by injuring them. The word "injuring" (*dirar*) also means hurt, harm, use force or commit aggression. Let's take an example. A Muslim wife, after many attempts to help her husband manage his inappropriate anger, anger that most often is taken out against her, tells her husband that she wants a divorce. He, in his anger, does not at that moment remember that according to 2:231 he is not to hold back by injuring a wife who wants to be set free, and instead, being both judge and jury, beats her as allowed in 4:34. The battered wife, becoming the victim of his anger, is then afraid to speak out again as this last instance has caused her to seek refuge in a shelter for battered women. Therefore, we see a disconnect between 4:34 and 2:231. Jurists have created a contradiction that is not in the Qur'an by encouraging divorce and discouraging marriage so that we can conclude, a Muslim woman who wants a divorce must be set free without injuring, hurting, or using force against her, but a Muslim woman who wants to remain married does so under the threat of being beaten!¹⁶⁴

Feminist scholars claim to justify these alternative interpretations by relying on authentic prophetic hadiths which demonstrate that firstly, the Prophet (SAW) experienced a "struggle of conscience"¹⁶⁵ with regard to wife-beating and actually

Domestic Violence and Islamic Tradition: Ethics, Law and the Muslim Discourse in Gender, 2013, Oxford University Press.

¹⁶³ Bakhtiar, L. *The Sublime Qur'an: The Misinterpretation of Chapter 4 Verse 34*, European Journal of Women's Studies, 18(4), pp. 431-439

¹⁶⁴ Bakhtiar, L. *Part 1: The Misinterpretation of "Idribu" in 4:34 of the Qur'an*, 2009; <http://www.altmuslimah.com/2009/07>

¹⁶⁵ Silvers, L. *In Book, we have left out Nothing: The Ethical Problem of Existence of Verse 4-34 in the Qur'an*, 2006. Comparative Islamic Studies, 2(2), pp. 171-180.

discouraged husbands from practising wife-beating, and secondly, the prophet never hit any of his wives. Bakhtiar claims that if *idribuhunna* was intended to mean ‘beat them’, this would imply that the Prophet did not follow God’s command to beat his wives. Rather, his actions confirm that *idribuhunna* means “go away from them” rather than “beat”.¹⁶⁶ Feminists maintained that the fact that he himself never practised it suffices to virtually abrogate the literal implementation of verse 4:34.¹⁶⁷ It should however be pointed out here that permission is not a command or an obligation upon the Muslim.

5.3 Implication on Islamic Family Law

It is significant to make a brief mention of the implication of interpretation of Q4:V34 by the classical jurists and the feminists on family law and relations. Classical Jurists are of the opinion that the most important right of a husband as the head of the family is obedience from the wife. He has the authority to control the affairs of the wife. Hence:

- She should abide by his lawful instructions; she can only disobey him if the demand goes contrary to the will of Allah or she has lawful excuse to refuse obeying him;
- She should remain in the matrimonial home and goes out only with his permission;
- She should not refuse his sexual demand; and
- She is to serve the husband in accordance with the prevailing custom and traditions acceptable to Islam coupled with the financial ability of the husband and take care of his children.¹⁶⁸

The husband has the right to correct the misbehaviour of the wife. Refusal of the wife to do any of the above makes her a *Nashiz* (disobedient) which gives the man the right to correct her misbehaviours and discipline her using the three steps provided in the verse. The disobedience may also give the husband the right to refuse her rightful maintenance. These are factors to be considered by the court in marital disputes.

For the feminists however, the right to obedience is very limited and it is conditioned to only where the husband has the *fadaala*, and he is spending his wealth on her. The relationship should be on a mutual agreement rather than a dictate from the husband. Sexual relationship should also be on mutual understanding between the spouses.

¹⁶⁶ Bakhtiar, L. (2011), op. cit.

¹⁶⁷ Silvers, L. (2006) op. cit. and Dunn, S. & Kellison, R. B. *At the Intersection of Scripture and Law: Qur’an 4:34 and Violence against Women*, 2010. *Journal of Feminist Studies in Religion*, 26(2), pp. 11-36

¹⁶⁸ See Al-Kharshi

Both the classical jurists and the feminists are in agreement that the wife is entitled to maintenance from the husband. It is a fundamental right of the wife which she can undeniably claim. The husband is duty bound to spend his wealth on feeding, clothing, providing shelter and the necessities for the wife. As part of maintenance, he is to cater for her psychological and emotional needs.

The classical jurists are of the belief that the husband can discipline a wife by giving a light beating when she is disobedient. Contrarily, the feminists assert that the husband can only stay away from the wife in a bid to correct, reconcile and settle the marital disharmony.

It should be noted that there are other rights of husband and wife not mentioned here, derived from other verses of Qur'an, Sunnah and other sources of Islamic Law.

5.4 Feminists' Re-interpretation and the Gender Exclusion Argument

Feminist scholars react generally to the interpretation by classical jurists of the verses of the Qur'an, especially Q4:34 as undermining the female gender and furthering the dominance of men over women, thereby further entrenching patriarchy. It is submitted that there is no element of gender injustice in the interpretation of the verse by the classical jurists to warrant any misgivings by the feminists. Riffat Hasan emphasizes that "the intent of this verse is not to give men power over women but rather to ensure that while women are performing the important tasks of childbearing and child-raising, they do not have the additional responsibility of being breadwinners as well."¹⁶⁹

Wadud explained how the exclusion of women from religious interpretation and independent thinking in Muslim societies has been developed. Because women were primarily excluded from public debate and discussions on Muslims and Islamic teachings, except possibly in the period of the Prophet (PBUH), their roles were confined to being subjects, rather than as passive participants in defining what

¹⁶⁹ Hassan, R.(1996) op. cit. She further suggests that "the reading of the Qur'an through the lens of the Hadith is a major reason for the misinterpretation of many passages which have been used to deny women equality and justice." She further held that "the following *hadith* is often cited to elevate man to the status of *majazi khuda* ("god in earthly form"): A man came ... with his daughter and said, "This, my daughter refuses to get married." The Prophet said, "Obey your father." She said, "By the name of Him Who sent you in truth, I will not marry until you inform me what the right of the husband is over his wife." He said, "If it were permitted for one human being to bow down [*sajada*] to another I would have ordered the woman to bow down to her husband when he enters into her, because of God's grace on her." The daughter answered, "By the name of Him Who sent you, with truth, I would never marry!" (Hasan: 1996). This is, again, an unauthenticated *hadith*.

Muslim societies should look like and how they would function with the Quran as their guide.¹⁷⁰ Men were considered to be the normal, while women were the “other”, the secondary. Men defined the standards and hence they were full human beings. Women were taken to be without agency; men were the ones given *khilafah* in the world, while women were their subjects.¹⁷¹

She argued that this belief has been so deeply entrenched in Muslim thought and practice that most Muslims, be they men or women, would not place men and women as being equal. Wadud proposed a hermeneutics of *tauhid* to Quranic exegesis: developing a framework emphasizing the unity between the verses and applying principles to explain the relationship between what is universal and what is particular within the text.¹⁷² She suggested that “in the social, political, and moral arena, a reciprocal relationship must be made between particular historical or cultural practices during the time of the Qur’anic revelation as reflections of the underlying principles and the diverse reflections of those principles in other historical and cultural contexts. This is one reasonable proposal for the continual following of textual guidance.”¹⁷³

One is compelled to argue that the feminist binary of the sexes or their methodology cannot justifiably account for any perceived exclusion of women in the interpretation of the Quran. Indeed, it was noted earlier that Aisha (RA) and many prominent Muslim women were competent exegetes that provided meanings to numerous Quranic verses. Thus, history does not support the feminists’ claim for exclusion in the interpretation of the Quran. It all comes down to competence and qualifications. It is worth arguing that the cultural practices of Muslim societies in most cases are elevated to and confused with, the substance of Islamic Law.¹⁷⁴ The fact that certain customs of Muslim societies relegated women to the background does not mean it is the position of Islamic Law or such relegation is endorsed or sanctioned by Islamic Law. Most Muslim countries have pluralistic legal orderings and Islamic Law is forced to operate in this setting. Yet, most accusations are directed towards Islamic Law and not the other systems co-existing with it. Moreso, the headship of family and family structure has existed and accepted in various societies without complain but it is being raised by the feminists due to the influence of some foreign cultures and

¹⁷⁰ Wadud (1999) op. cit.

¹⁷¹ ibid

¹⁷² ibid

¹⁷³ ibid

¹⁷⁴ Badamasiuy, J. *Treatment of Women Under Shariah in Kano State*, op cit.

civilizations¹⁷⁵. Eurocentrism and acculturation of the colonialists. For a genuine Muslim, Islamic Law is the supreme law which every custom must comply with.

It is understandable that Islam allows significant, unrestrained intellectual freedom for its adherents to think and reflect on their purpose in this life and their relationships with their Creator and their fellow human beings. This alone makes its system of law to be a constant reference point and a beacon for intellectual exertion. But this freedom is not meant to test the will of the Law-maker because doing that will make one out of the fold of Islam and therefore incompetent to interpret or even re-interpret the texts.

It is submitted that gender injustice cannot be found within Islamic Law. Gender injustice can be found in Muslim societies and patriarchy may continue to subjugate and exclude women in the scheme of things. However, this can be eradicated using Islamic Law but not by second-guessing established norms of Islamic Law. In other words, women can use Islamic Law to agitate for gender balance, rather than accusing Islamic Law of gender imbalance. Unqualified women should not seek to determine the will of the Law-maker, Allah.

It is interesting to note that the so-called “Islamic” and the Muslim feminists direct their efforts not only to intellectual exertion but translate in practice the result of their interpretation on the day to day activities, especially as they relate to women’s dress code and mixed men and women congregation prayers. By virtue of Qur’an 33:59, 24:31 and several traditions of the Prophet (SAW), all adult female Muslims are required to cover the whole of their body except their hand and their face when they are in “public” and not to display their beauty as understood by the classical and orthodox jurists and scholars. The feminists, especially Fatima Mernissi argued that the verses were not revealed for the generality of the Muslim women but to the wives of the Prophet (SAW) and the noble women of the time.¹⁷⁶ They also contested the import of the verse.

The “Islamic” feminists claim that there is nothing in Islam that opposes the leadership of women in private and public spaces including leading of prayers and mixed congregation, opposing the claim of the classical and traditional jurists that a

¹⁷⁵ Habib, A. (2016). Critiquing the Muslim Feminists Re-interpretation of Some Quranic Teaching: The Case of “Headship” of Islamic Family System. In Northwest University Multi-Disciplinary Journal. Vol. 1, No.1

¹⁷⁶ Mernissi, F., *Beyond the Veil: Male-Female Dynamics in Modern Society*, Revised Edition, Indiana University Press (1987)

woman can only lead the women in prayer under certain circumstances. The feminists argued that the spirit of the Qur'an and undisputed Hadith indicate that women should in fact be able to lead mixed prayers as opposed to sex-segregated congregation.¹⁷⁷ The practice at the time of the Prophet (SAW) is that there were situations where women, including Aisha, the wife of the Prophet (SAW) led women only in prayers especially during *Ramadhan*. The feminists claim of the legality of women leading mixed congregation is gaining momentum and progressing in recent times. It is becoming fashionable especially in European countries. Examples of the practice are shown in the pictures below.

While some of them believe that the women should cover their bodies in prayers, others do not see it as a requirement as seen in the imam in the last picture (Fig.4) who did not cover some parts of her body. One wonders what will be the future practice of the feminists especially in line with their method of aligning Islamic Law with modernity as some Islamic "reformers" believe that the Qur'an should continually be re-interpreted every now and then to accommodate the changing circumstances of modern times that will bring about gender balance in the society.

¹⁷⁷ See Taylor, P.K. "Score One More for Women Imam" www.beliefnet.com/faiths/islam/2006/03/

Some Photographs of Women Imam in Mixed Congregation



Fig 1: *Jamilah leading Eid prayer at Los Angeles on 18th Aug 2012 and reciting the Surahs in both Arabic and English languages*



Fig. 2: *Raheel Raza, first woman to lead mixed prayer in the UK in 2010*



Another example



Fig. 3: *First mixed prayer led by a woman (Seyran Ates) in Germany*



Fig. 4: *Barrister Seyran Ates calling prayer at Ibn Rushd Mosque in Germany.*

6. Concluding Remarks

There are various practices in Muslim communities that undermine womanhood and negate the ideal of gender justice as conceived in Islamic Law. The appropriate thing is to attack these practices and not Islamic Law which in most cases condemn these practices. It may be observed that many feminists that engage in the re-interpretation of the Shariah sources have neither the qualities nor the requirements of *mufasssirun/mujtahidun*. They have often put up the argument that the Qur'an is revealed to the whole of mankind and the Qur'an encourages people to seek guidance from it; read and reflect on its meaning; hence everyone can read, understand and derive rules therefrom. The feminists need to have a rethink on this view because a person must be an expert or possess the requirements before engaging in this herculean endeavour. It is often said that a professor of English language cannot effectively and correctly interpret a law written in English. He has to acquire the art of interpretation and possess the required skills to be able to engage in interpretation. He definitely has to be a lawyer first. There is no doubt that the dominance of men in the interpretation endeavour may leave out the women. It is therefore important for female scholars to engage in interpretation, but only after possessing the required qualifications and competence.

One of the requirements of interpreting the Qur'an is the intention to please Allah with the interpretation which is the purpose of our existence in this world. It is the way of understanding the message sent by Him and therefore must be devoid of the subjectivities of the interpreter. Some feminists question clear verses of the Qur'an because of what I call *feminist exuberance*. The implication is clear. The methodology adopted by feminists in their re-interpretation venture raises fundamental questions of subjectivity and fallibility.

On the question of gender justice, one may ask: Is the present struggle for equality of males and females in all ramifications (including their roles, rights and obligations) presenting the desired remedies to the present injustice and marginalization suffered by women in our societies? Will the struggle assist in the development of the society and the individuals in this world and the next? Is feminism not pushing for the impossible? Is it not a further polarization of two extremes? Do we often reflect on the rationale behind the difference in the creation of the male and female? Does feminism not reflect on the purposes for which Allah created the similarities and the differences between the genders?

In any given civilized group or society, the convention is to have a leader, as encouraged in the religion of Islam. Could there be situations where women are endowed with the responsibility to take charge of the affairs of the family including

the husband? Are women normally charged with the *fadala* to rule the home? There may be rare or exceptional situations where the woman is endowed with such qualities and responsibilities. Laws however, are usually not based on exceptions.

It may be argued that feminists' unfounded suspicion of the law (and probably the revelation) and their subjectivity cannot allow them to reflect on the purpose of binary in creation. Humanity would have seized to exist without this binary. Shifting nature on the basis of preconceived inequality is not gender justice. Treating the unequal equally is in itself, unfair, unjust and constitutes inequality. It is essential to stress, as pointed out by Ruqayya Hill, that the female gender was created with different needs and capabilities from that of the male, not less, not substandard, not lacking – just different, no matter the legislation to make the female be the same with male, they will eternally remain different. The feminists' struggle should rather be geared towards getting the natural position and rights of the female gender, and to occupy their rightful places and status in the society in a dignified manner instead of the struggle for the females to be the same as men.

The Islamic feminists should rather insist on the men spending their wealth on the women, and similar issues. The present struggle is detrimental to the female gender. In trying to attain the same position with men, the female may neglect their natural role of child bearing and rearing. This can affect the society as the bearing, rearing, training of and caring for the future generation will suffer and hence affect negatively societal development. The female also suffers in trying to occupy dual roles giving rise to role conflict. Biologically, only the female gender can bear children and up till this present time, the men have not accepted to take the role of child rearing. Ironically, feminists do not value the natural roles of the female. Society and the feminists do not give considerable value to them, despite their importance in the development of the society.

I should point out here that Islamic Law is a balanced law that caters for all the creations and seeks justice for all, not for women alone. Where injustice is perpetrated, it seeks to redress it without causing injustice to anybody. While Islamic Law recognizes the responsibilities of every gender according to its nature, feminism seeks to reverse this by looking to the Western and focusing on what the men do. To them, a woman is liberated and equal to man when she has opportunity to and actually behave as man, even in dressing. There is little wonder then that the feminists do not see anything wrong with bearing the husband's name as her surname. It is interesting to note that even in the professional (non-Islamic) legal circle, female gender is not recognized. Women are addressed as men. It has reached an extent in our society today that female lawyers are addressed as "gentlemen in skirt". Is the

female gender not worth recognition in the legal profession? That form of address is odd and degrading. Despite the various observations on the loopholes of the feminist scholars and notwithstanding the origin of feminist movement, it is quite obvious that the feminist's movement is a response to negative attitude towards women in the societies including the Muslim societies.

It is natural to expect diverse interpretations of the text conveying legal prescriptions or proscriptions. This is because a text especially a religious text with implications not limited to this world, is susceptible to ambiguity and vague understanding. There is therefore, the need for the contemporary scholars to have a reading of the text and come up with positive interpretation and application of the law. This must be done by following laid down guidelines.

On the re-interpretation of Q4:34, the following question is germane: In a situation where the husband does not possess the *fadala* or/and deliberately refuses to spend his wealth or has no wealth to spend on the wife, by neglecting maintenance, does he retain *qawwama* upon the wife? It is interpreted that men are *qawwama* because of the *fadala* and because they spend their wealth on the women. There is no doubt that where the woman is more endowed with wealth and she voluntarily spends on the household, the husband may still retain the *qawwama* as exemplified by some companions of the Prophet (SAW). What about the situation where she is forced to fend for herself against her choice?

In practice, emphasis is given to the role of the wife as against that of the husband. This is cultural. The care and maintenance issue which is prominent in the verse is not given much attention in our societies, but obedience of the wife. Emphasis is laid upon the woman's responsibility as against that of the man. When the female fails in her responsibility, she is condemned for failing; no complements for those responsibilities she discharged effectively. Some men, in maintaining women (especially their wives) behave as if they are doing them a favour, not minding the fact that it is a responsibility he imposed upon himself by marriage according to the law of Allah, hence his duty towards Allah too. Consequently, the society views it as favour. The society does not value her obedience and other roles in the home and outside the home, but is often quick to blame her for neglect (some judges are not spared from this attitude). The call here is that scholars and policy makers have a huge responsibility in reversing this trend which has nothing to do with Islamic Law. More importantly, this point should be reflected in the reform of personal status involving family relations in Muslim societies.

Other disrespectful practices appear deeply embedded. There are some practices condoned in the Muslim society which easily support patriarchy. Although the spirit of the Qur'an is that the women should remain in the home and go out of the house when there is good reason to do so, the practices and claim that a woman should remain in the husband's house completely and cannot go out for any reason require attention of contemporary scholars. The claim that she should be outside her house three times only: at birth, when going to her husband's house from the parents' house and when going to the grave, is ridiculous.

Another popular statement in some parts of the Muslims society is that woman's voice should not be heard as it is part of her *aura* (nakedness that should be concealed). Women spoke in the public during the time of the Prophet (SAW) and Rightly-Guided Caliphs. They asked questions and challenged, in accordance with *Shari'ah*, the decisions and policies made by the leaders. There is the need for the *ulama* and policy makers to make efforts towards eradicating these practices.

Finally, there is the need to consult women in policy making and law reform, particularly in matters concerning them, and of course, the affairs of the state. This is in accordance with the Sunnah of the Prophet (SAW) and the Rightly-Guided Caliphs. The Prophet (SAW), consulted Ummusalma, his wife on the affairs of the state at Hudaibiyya. Caliph Umar (RA) similarly sought advice from his daughter Hafsa on issue of the woman that complained of the absence of her husband.

It may be concluded that while patriarchy is visible in human law, it has no basis in Islamic Law. Feminists' conception and analysis of positive law has no place in a divinely-ordained system as Islamic Law. The feminists' methodologies of suspecting foul in the male-stream law cannot fit into the Islamic legal setting. Islamic law-making, even in contemporary times, is divinely inspired. Contemporary scholars have used *Maqasid-ul-Shariah* (objectives of the shariah) to formulate rules and regulations on contemporary problems. Tools that assist in arriving at the intent of the Law-giver are being employed. One of the goals of Islamic Law is to fight gender injustice and any patriarchal culture or practice that nourishes such injustice. One cannot claim to be reforming divine law using human tools. One cannot guess the intent of Allah by claiming to re-align the genders through limited, human intellectual exertion. The Quran is timeless as a source of Islamic Law and its rules are everlasting. The Muslim women should rather explore the tools of *Maqasid ul Shariah* in deriving the law that will fight gender injustice in the society. It is safe to conclude with Bowen's observation thus:

One cannot simply say that with changing times we throw out particular verses of the Qur'an or valid reports of Muhammad's Sunna.

Gender justice cannot be achieved by scriptural re-interpretation of the divine message. Re-interpretation of the texts will lead to nothing but injustice. An interpretation that generates consensus among Muslim Ummah must not be distorted or re-interpreted on account of perceived gender injustice. The Law-giver is simply the perfect justice and His words convey the best form of justice beyond human logic and manipulation, hence patriarchy has no place in such divinely-ordained legal system - Islamic Law. Therefore, there is no patriarchy to uncover in Islamic Law.

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- ii. Badamasiuy, J., *Parental Obligations and Rights under the Child’s Rights Act: A Shariah Perspective* by Lambert Academic Publications, Germany, 2012. Reviewed and published as *Protection of the Rights of the Child in Northern Nigeria*, by Ahmadu Bello University Press Ltd, Zaria 2015.

On-going Research

1. We have on-going research work titled: “Family Life in Northern Nigeria: An Assessment of Traditional Practices from Shariah Perspective” being hosted by Islamic Law Department. The research team comprises the Head of Department, Islamic Law, Dr U. M. Shuaib, Dr Lubabatu Bello Dankaddai, Muhammad Bello and my humble self, leading the research team.
2. I am also on a joint research work with one of my colleagues in the Faculty of Law on Iddah (Waiting Period) and Contemporary Issues.
3. A research on compiling feminist re-interpretation efforts is also on-going. The documents on exegesis done by women are mainly by the feminists and easily accessible. They have access to funding and their research results are readily available and accessible online. The tendency is that researchers on women and the Islamic Law are going to use their works as sources and references. Therefore, I am carrying out a research to document and compile the exegesis and the works of the female scholars that are not necessarily feminists.
4. My other research is also on compilation of the profiles of the Muslim and Islamic feminists and all those engaged in the re-interpretation of the Qur’an and reformation of Islamic Law.



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