

Beyond the

**Veil**

MUSLIM WOMEN IN SUB SAHARAN AFRICA

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## MUSLIM WOMEN AND DOMESTIC VIOLENCE IN NIGERIA: THE POSITION OF THE SHARI'AH

Ibrahim Olatunde Uthman

To many people, including Muslims, domestic violence is intrinsic to the teachings of Islam and has justification under the Islamic law or the *Shari'ah*. The manner in which the criminal aspects of the *Shari'ah* have been implemented since the *Shari'ah* initiative pioneered by the then Governor of Zamfara in 1999 has also contributed to the entrenchment of this view in the society as revealed by many leading Muslim women in Nigeria. It is therefore against this background that the problem of domestic violence is examined here as part of the larger issue of the state implementation of the *Shari'ah* in the Northern part of the country. The study is thus concerned with both the prevailing conditions of Muslim women in Nigeria, as they appear in practice and at the same time according to the teaching. In short, it contrasts the ideal with the actual condition as far as domestic violence and Muslim women are concerned in Nigeria. The purpose is not to pay tribute to the conditions of Muslim women in the areas of study or to denigrate any religious/socio-cultural practice, but to take a stand and be objective. The requirement to be fair and objective in this study is in accordance with the Qur'anic injunction to stand firmly for justice.<sup>1</sup> Hence, in contrasting the ideal with the actual practice, the study is based on interviews conducted by the author with Muslim men and women and the *Risâlah* of 'Abdallôh ibn Abû Zayd al-Qayrawânî (also known as *zubdat al-madhhab* or the cream of the *Mâlîkî* School) in order to analyze the teaching of Islam in regards to the prevailing conditions of domestic violence against Muslim women in Nigeria.

The *Risâlah* is one of the *Mâlîkî fiqh* books still widely in use and studied and in fact, forms part of the syllabus of Arabic colleges in Nigeria. Its author was acclaimed in his lifetime as "Maliki the younger" due to his original genius in grasping legal matters without slavishly conforming to the view of others as can be learned from his commentary on the *Mudawwana* of his teacher, Sahnun, which is a collection of the *Fatawa* (legal opinions) of Sahnun's teacher, 'Abd al-Rahman ibn al-Qasim, who was a direct student of Imam Malik ibn Anas. The *Risalah*, the third and early exposition of the *Maliki* School, followed by the *Muwatta'* and Sahnun's *Mudawwana*, has been selected for this study, due to his conciseness as well as continued relevance in Nigeria.<sup>2</sup> Numerous copies of the manuscript of the *Risalah* can be found in both public and private libraries in Nigeria in addition to the abundant Egyptian and locally printed Arabic editions in circulation, like the Arabic-English edition of Bello Muhammad Daura published by Gaskiya Corporation of Zaria in 1983.<sup>3</sup> In order to generate a balanced analysis, this research will also draw extensively from the sources of the scholarly feminist writers that deal with the conditions of Muslim women in Muslim societies.

### **Domestic Violence and the Nigerian Polity**

The term domestic violence is defined as any act of violence that occurs within the private sphere, especially between individuals who are related through intimacy, blood or law and perpetrated most often by men against women.<sup>4</sup> The private nature of this phenomenon does not however exclude it being brought to the public as it is possible for instance for members of a woman's family to physically assault her in public just as they may equally be aided by non-family members in inflicting violence on women within the private sphere. Therefore the private nature of this phenomenon lies in the origin and emergence within the private sphere, and championed and spearheaded by relations of the



victims. For this reason, it is exceedingly difficult to conduct a study and document the matter. Women are often psychologically and emotionally traumatized from seeking protection. They may also be deterred from taking any action due to their desire not to break up the family or rock the relative peace or relief within the family environment. This vulnerability is compounded by economic dependence of some women on their male family members. Hence, the situation in this matter in many countries is that there is little or no statistical information, indicating that domestic violence is a crime that is under-recorded and under-reported.<sup>5</sup> The problem of domestic violence is manifested in several forms, but feminists believe that all these forms serve the same end: the preservation of male control over resources and power.<sup>6</sup>

According to Human Rights Watch, it appears that domestic violence has been one of the principal causes of female injury in almost every country in the world.<sup>7</sup> Going by the above, many feminists assert that Nigeria represents an example of countries where domestic violence actually thrives with the collaboration of the government. The collaboration has been linked in the case of Nigeria to its multiple legal systems, the secular, customary and *Shariah* laws. Hence, feminists tend to lend their voices to the call in some quarters to further govern the country as a secular polity. Despite the move to secularize the country, the Nigerian nation is religiously diverse. The national political system is not secular in nature and it has a multiple non-secular constitutionally-based legal system.<sup>8</sup> In fact, the Nigerian constitution not only recognizes the rights of the citizens to freedom of belief and worship, it also permits them the rights to propagate their religious beliefs such as the operation of the *Shari'ah* law. The Constitution of the Federal Republic of Nigeria succinctly highlights these rights as fundamental human rights to which all citizens are entitled. It also provides that nobody shall be made subject to any religious law



by force in Nigeria that is not with the person's accord.<sup>2</sup> This informed the writings and works by many Muslim scholars in Nigeria that serve as evidence for the fact that the country is in reality a multi-religious and not a secular society.<sup>10</sup>

### The Shari'ah Angle

It is however precisely because the constitution provides every religious group with its own personal status laws; especially the Islamic law that is officially administered in the Northern states; that most feminists argue that Nigeria and its governments do not take actions against domestic violence in practice. It is held by these feminists that government officials generally tend to reinforce the permissibility of domestic and intra-family violence. They argue on the basis of Section 55 of the Northern Nigerian Penal Code which permits wife beating as long as it does not amount to grievous injury and that no ill-treatment of the wife which is done by a husband for the purpose of correcting her under the *shari'ah* is considered an offence. The implications are that such laws according to the feminists condone domestic violence and the legal impunity of its perpetrators.<sup>11</sup> This has been demonstrated by many feminist in Nigeria especially after the political transition in the country from military to civilian regime in 1999, and the reintroduction of the criminal aspects of *shari'ah*. Ayesha Imam, the feminist human rights prize winner, lawyer, and scholar, who carried the struggle to free female victims of the *shari'ah* Law in Northern Nigeria to the United Nations and gained the attention of the international community, has opposed and described how this development has led to increases in cases of assault against Muslim women in Nigeria, especially in domestic matters and the implementation of the *shari'ah* criminal provisions that violate women's rights to justice and security while protecting those, men who harass, molest and rape women and girls.<sup>12</sup>

Though studies however, appear to support a general increase in cases of assault against women in Nigeria contrary to the feminist allegations. One study for instance found that 31 percent of Nigerian women have been subjected to physical abuse at least once in their lives and that domestic violence is common among all tribes, regions, social classes, and religions,<sup>13</sup> yet since the primary manifestation of the reintroduction of the criminal aspects of *shari'ah* has been the enforcement of the criminal aspects of *shari'ah* law that appear to target Muslim women specially, the above feminist concerns over increases in cases of assault against Muslim women is not totally unfounded. Some of the strongest predictors of violence against women have always been, according to a study the denial of easy divorce or restriction on women's ability to leave the family setting, sexual economic inequality; use of violence for conflict resolution; patriarchal authority and decision-making in the home.<sup>14</sup> Yet most of the Muslim women interviewed would however argue that the Islamic family is not patriarchal in nature, not with the *Shurah* decision-making process enjoined in all Muslim affairs including the home, the *Sulh* conflict resolution mechanism in the family and the economic rights granted women as reflected in the bride gift that could be as high as a treasure and right to work and be productive in addition to being reproductive. According to these women, divorce does not constitute an adequate form of protection or even an option for them and in fact, according to them, it is the manners in which some men indiscriminately divorce their wives that are a constraint. While Muslim women are impeded or prevented from seeking for divorce because they do not want to abandon their homes especially when children are involved unfortunately, most men according to the Muslim women interviewed do not experience the same restraints confronting these women, hence they seek divorce indiscriminately.<sup>15</sup> The ease with which marriages are being dissolved in Nigeria has according to most of the women interviewed, can be attributed to



the absence of *shari'ah* courts especially in Yoruba land. They also identify the source of this phenomenon as the patronage of customary courts by most Muslim women in Yoruba land. This is buttressed by Ibrahim Abikan Abdul Qadir, who lectures law at the University of Ilorin, the only Yoruba towns with area courts where the *shari'ah* laws are applied are found in Ilorin due to its location in the Northern part of Nigeria that is presumed under the Nigerian constitution to have customary laws that are Islamic in origin. He explains that in the remaining part of Yoruba land, there are only customary courts, where all family matters are adjudicated applying customary Yoruba practices. This indiscriminate seeking and proclamation of divorce by men has ironically compelled many women to bear various forms of domestic violence. According to Abdul Qadir above, the above inability of women to obtain appropriate redress over the recalcitrance of their husbands is either because of the absence of *shari'ah* courts in all parts of Yoruba land except Kwara state or because of the women's ignorance of their rights under the *shari'ah* courts, where all family matters are adjudicated applying *shari'ah* laws as seen in the Northern part of Nigeria.<sup>16</sup>

However, non-governmental *Shari'ah* courts were inaugurated by the Supreme Council for *shari'ah* in Nigeria on the 1<sup>st</sup> May 2000 in Ibadan. According to the then President of National Council of Muslim Youth Organization, Alhaj Ishaq Kunle Sanni, the initiative became necessary after many unguarded appeals to the Federal and state governments of Southwestern Yoruba states to inaugurate *shari'ah* courts in the area in line with the provisions of the Nigerian constitution failed.<sup>17</sup> Yet this development has not been of much assistance to Muslim women. The issue of divorce is particularly illuminating on women's limited rights and their vulnerability to violence in Nigeria, as is clear from the responses of the above Muslim women suggesting that most women are not even aware of the many options available to them under the



*shari'ah* law as practiced in Nigeria. Instead, they believe their only option is to continue to tolerate domestic violence and to bear various forms of deprivations to the level of being taking for granted instead of seeking relieves from a *shari'ah* court and that while pursuing this course they may be granted an interim injunction not to continue their obedience to their husbands and cohabiting with him in the marital home. Similarly, many women do not even avail themselves of this perceived option, due to the complexity in meeting burdens of proof and a perceived general reluctance on the part of judges to grant women these relieves. From the above, the conclusion of Dr. Sanusi is very instructive and telling and which is that there is a high degree of tolerance for domestic violence in Nigeria generally and among Muslim women in particular, to the level of being a culture among women.<sup>18</sup> This is because most of the above institutions in Islam to check the indicators of violence against women such as the denial of easy divorce or restriction on women's ability to leave the family setting, sexual economic inequality; use of violence for conflict resolution; patriarchal authority and decision-making are not upheld in most families.

This inability of women to obtain adequate relief from the *shari'ah* courts is often said to be in accordance with the *Maliki* School of Islamic law that is observed in Nigeria, but a practice, which unfortunately is not in line with legal treatises of the School. According to the *Risalah*,<sup>19</sup> for instance, both the man and woman possess divorce rights and if the repudiation (*Talaq*) is at the instance of the husband by three declarations, the wife has the right to half the bride gift if the marriage has not been consummated, if it has however the husband is encouraged to offer her a severance award (*Mut'a*). If however the divorce is at the instance of the wife (*Khul'*), she is to return her bride gift or a sum equal in size to her husband except in the event the separation is a result of some harm done to her. The wife may also

obtain a divorce by making three declarations if the husband has delegated his authority to her (*Tamlik*) or the option (*Takhyir*) as stipulated in the marriage contract. The divorced wife is only entitled to lodging if the divorce is irrevocable. She is however entitled to both lodging and maintenance if the husband's repudiation is revocable and if she is in the state of pregnancy, she has the right to both even if it is irrevocable repudiation. A woman divorced through (*Khul'*) however has no right to maintenance unless she is expecting a baby. The same is applicable to a widow though she is entitled to lodging and must not depart from the husband's house until she has completed her *iddah* (waiting period). Wives are also entitled to nurse their babies unless women of their status do not and even divorced women have the same right as well as to obtain wages for nursing these babies if they wish. Similarly, they have the right to custody of their children until puberty for sons and marriage with consummation for daughters. If the women remarry or pass away, the right of custody goes first to their relatives from maternal grandmother, aunt, to sisters. Finally, according to the *Risalah*, a man owes maintenance to his wife whether she is rich or poor and if he has the means, he should provide her with domestic assistance. He also owes maintenance to his daughters until they marry and the marriage is consummated. The above clarifications as contained in the *Risalah* and other *Maliki fiqh* books widely observed in Nigeria such as the *Mudawwana* and even the *Muwatta'* of Imam Malik himself, illustrate the manner in which many Muslim women are not aware of the *shari'ah* provisions. The sources also reveal the extent to which Muslim women are living in miseries as a result of an adulterated and distorted understanding of Islamic teachings regarding women in Nigeria.

Another factor which has caused domestic violence against women and the spate of divorce to degenerate further is inter-ethnic and tribal fighting over oil settlements and fertile farmlands



in several parts of Nigeria e.g. the Niger Delta, central state of Plateau, and until recently the Ile Ife-Modakeke war. Pogroms in different parts of the country against minorities, both Christian and Muslims, have spread as tribal and religious communities compete for wealth and political power amid economic stagnation. These tribal and religious wars have further militarized so many against women. These crises had been fuelled by long years of governments' disastrous economic policies. For instance between November 1999 and today, people have lost counts of the number of times the Obasanjo government announced hikes in petroleum prices, even on the eve of his departure from office in May 2007 following his unending petroleum market deregulation which has further impoverished Nigerians. Obasanjo's unending petroleum market deregulation economic policy must be viewed as a continuation of the 'Structural Adjustment Programme' and many other economic plans by notorious military rulers in Nigeria before him which include the removal of subsidies on staple food items and domestic fuel consumption, retrenchment of civil servants and reduction of subsidies on education, health and other social services. These economic plans, rather than alleviating the economic woes of the country, have inflicted more economic harms on the people especially the most vulnerable among the masses such as children, women, the disabled and the old. It was this economic recession that demoralized the citizens and led to an unprecedented increase in intolerance.<sup>20</sup> These negative economic conditions must have contributed to the upsurge in domestic violence when some men resort to beating up their women to cover up their inability to maintain the family. This has in turn pushed some women into prostitution as well as made women trafficking in Nigeria to be thriving. These practices have grown so notorious especially in Edo state that the governor of the state had to launch anti-prostitution and women trafficking programme.<sup>21</sup>



Another area of distress for these women is in the implementation of the *shari'ah* criminal provisions on Muslim women. In most cases death sentences passed on women since the re-introduction of these provisions, merely re-enforce the violence these women confront in the domestic domain. These women received their sentences under similar circumstances based on circumstantial evidences. In most cases these women's purported adulterous act was reported by their former husbands or somebody she refused to marry. In addition, the women were sentenced not because there were four witnesses to the act but because the women either confess to having sex with outside marriage or they became pregnant. The women also received their death sentences not because they were married at the time of the act which is a requirement by the *shari'ah* but because their former husbands testified that they had once being married.

According to the to the *Maliki* scholars in Nigeria, pregnancy is an evidence of having sexual relations outside marriage where a woman is either not married or divorced, confession once made by a woman cannot be retracted and being divorced or widowed does not lift the punishment for adultery of either sexes because one of the *shari'ah* principles is that "A person's protection from committing *zina* or *Ihsan* whether man or woman does not cease after divorce. This term *Ihsan* refers to the marital restricted person under the *shari'ah* and requires for chastity, freedom from slavery, Islam and protection which he/she acquires as a result of restriction imposed by marriage. According to the *shari'ah* Law, a *Muhsan* or *Muhsanah* (marital restricted person by marriage) guilty of *zina* should be stoned until he or she dies and *Ihsan* or marital restriction remains even after the dissolution of marriage or widowhood according to *Maliki fiqh*. In addition the state of pregnancy of an unmarried, divorced and widowed woman can also suffice as evidence to establish her guilt of *zina* (either fornication or adultery). Accordingly, the woman can only be

freed from punishment if she is able to provide four witnesses to her rape.<sup>22</sup> For instance, a 13-year-old girl was reportedly raped by a *Mallam* employed by the girl's mother to cure her daughter of an eye problem she had since she was a child. He had given them an appointment and a list of the items they were to procure for the cure. On the appointment day, the *Mallam* was reported to have requested to be left alone with the girl so as to cast away from her the evil spirits responsible for her eye problem. Later, the girl's cries allegedly attracted people who found the *Mallam* holding a knife and threatening any body who touched him. Though he was eventually arrested by the Police and taken to the Magistrate Court, he was later released because he was related to the wife of a big shot. Despite the intervention of the center for Women and Adolescent Empowerment in Yola, Adamawa State CWAE, it was claimed that the *Mallam* died in Kano where he had gone to look for a cure.<sup>23</sup>

Consequently, over time, Muslim women activists in Nigeria have found compelling reasons or needs to call for the rights and protections of women. The manner of implementing the *hudud* has in no small measure contributed to the vulnerability of women to abuses in many forms, by creating conditions in which this abuse can be perpetrated with relative impunity. The evidence of a woman is accepted when she confessed to committing an offence yet her evidence is not good enough for her fellow male culprits and when she retracts her confession, it is not accepted. The above misgivings regarding the *shari'ah* interpretations by the '*ulama*' have led to calls on the Nigerian authorities to reiterate their commitment to the international human rights legislations and to take all necessary steps to make sure that both at federal and states level, all penal judges in *Shari'ah* courts meet internationally recognized human rights standards and honor all the international human rights legal instruments signed and ratified by Nigeria. They have also been urged to guarantee the constitutional right of appeal for all those condemned under



*Shari'ah*-based penal codes ensuring that they are able to appeal to higher jurisdictions not only at state level but also at Federal level. Hajiya Bilkisu Yusuf (mni), a former National *Amirah* (President) of Federation of Muslim women Associations in Nigeria, FOMWAN, is one of the Muslim women clamoring for this justice to be done and also be seen to have been done in the implementation of the *Shari'ah* law in Nigeria. According to her, justice should be entrenched as part of an equitable society, where Islam and its intrinsic concept of justice are reflected in all aspects of life because women's hopes in this regard have however been dashed as *Shari'ah* has been reduced to a body of laws in 'the hands of poorly trained and incompetent judges, who abuse procedures and ill equipped supervisors, whose only pre-occupation is to fish out women who commit adultery'. In spite of their pretensions, according to Hajiya Bilkisu Yusuf, the flawed implementation of the *Shari'ah* by the authorities is underscored by the fact that only poor women and men seem to become the convicts of the *shari'ah* courts. The elites and the rich appear to have some inbuilt immunity from *shari'ah* laws.

This fact she asserts is a clear case of injustice, which cannot be rationalized in a Muslim community. She also condemned the divorce rate in *Shari'ah* states as too high as women are married and divorced at will by men. Hajiya Bilkisu therefore calls on the Supreme Council for *Shari'ah* in Nigeria (SCSN) to organize both intra and interfaith dialogues in order to promote an understanding of the *shari'ah* among Muslims and the various religious groups in the country, tolerance and respect for people's beliefs and make the *shari'ah* a functional, spiritually uplifting and sustainable path to development, especially of women and the poor, who, in this respect, are the most vulnerable. These groups, she argues further could do well being educated and protected from the miscarriage of justice that is witnessed in the implementation of the *shari'ah*. She also decries the debates in Nigeria over the imposition of beard growing, turbans and face-



veil, which to her, amounts to chasing shadows, while the real issues are not being addressed.

Alhajjah Lateefah Okunnu also describes how in many ways, the manner of implementing *Shari'ah* in Nigeria today has provided opportunities for feminists in the country to attack Islam, which negatively affects *Daw'ah* activities among women.<sup>24</sup> Even Muslim men have reservations on the implementation of *Shari'ah* in Nigeria. According to Lateef Sanni, an Associate Professor at the University of Abeokuta and his colleague Richardson Okechukwu, who responded to the initiative by the governor of Zamfara state to re-introduce the criminal aspects of the *Shari'ah*, saying that this action has been very risky for Muslim women and gender divisive.<sup>25</sup> Imam Taofeeq Azeez, a senior lecturer at the University of Abuja, prefers to withhold his comments on the *Shari'ah* operations in Nigeria since he has no valid means of assessing it.<sup>26</sup> Dr. Nosiru Onibon, a lecturer at the University of Lagos, is in the same vein not responsive to the *Shari'ah* operations in Nigeria because according to him he has no first hand information, as relying on the newspaper reports for his assessment would make it invalid. But he views the matter as a welcomed beginning for change.<sup>27</sup> Abdul-Waheed Badmus, a former staff of the University of Ibadan, argues that the ongoing experiment, as it has affected Muslim women is indefensible and bad for the image of Islam and Muslims in the country.<sup>28</sup> To Dhikrullah AbdulGaniyyu, a former *Amir* of Muslim Students Society of Nigeria (MSSN), Esa oke, the *Shari'ah* operations in Nigeria merely create awareness about the *Shari'ah*, but would not bring about serious changes in people's way of life. The situation according to him still has no resemblance to the Islamic teachings even though frantic efforts are been made by the youth to improve the situation. However, he sees the future as very hopeful if the current tempo by the youth is enhanced.<sup>29</sup>

For the operators of the *Shari'ah* courts however, the above objections by Muslim women are baseless, since the implementation of *Shari'ah* is based on classical and orthodox interpretations especially in the *Maliki* School. They explain that the evidence for *zina* in Islam is either the availability of four witnesses to the act or confession by either culprit in the act. This confession is however not regarded as evidence against the fellow culprit no matter the gender. According to the *Maliki* scholars in Nigeria, if a person confesses to committing *zina* and later retracts the confession, the retraction will not be accepted. In addition the state of pregnancy of an unmarried, divorced and widowed woman can also suffice as evidence to establish her guilt of *zina* (either fornication or adultery). This above rigid position of the *shari'ah* operators in Nigeria should be reviewed because it is a minority view. In cases where there are differences of opinions among scholars, it is not just the view of the majority but most importantly the least painful and harsh position that should be adopted and upheld. This would be in line with a major *shari'ah* principle of removing hardship from the people.

For instance, the view of majority of the jurists in all the Schools of *Fiqh* that a woman's retraction of her confession should be accepted because it raises the question of doubt and the matter should also be upheld in the *Maliki* School in Nigeria, which is currently not the case. Even Imam *Malik* subscribes to the view that one of the conditions of establishing the guilt of *zina* is the consistency in evidence till punishment is meted out and Ibn Qudamah provides as evidence for the position of the majority, the case of Ma'iz who was stoned at the time of the Prophet in spite of his retraction of his confession and the Prophet said "Perhaps if you had spared him, he would have repented and Allah would have forgiven him".<sup>30</sup> In the *Maliki* School, there is also the theory of the sleeping embryo whereby a child born to a woman up to seven years after divorce or widowhood is assumed to be the fruit



of woman's former marriage. Since the pregnancy can be attributed to the former husband, a doubt is thus created over the evidence of pregnancy and in every case of doubt; the Sunnah is to waive punishment.<sup>31</sup> At the same time, the economic and social conditions of the society should be considered in *shari'ah* implementation in order for the situations not to be conducive for crimes of *zina* for instance the prevalence of high number of unmarried women and high cost of living for marriageable couples should be eliminated.

Similarly, though rape is a punishable crime in a Muslim society, most still insist on the evidence of four witnesses before the culprits are convicted. Insisting, as stated in the *Risalah* that when a woman in the state of pregnancy, claims that she was raped, her word is not to be trusted and must be given the *hadd* punishment unless she provides a witness that the intercourse was forced on her, will only make a mockery of justice under the *shari'ah*.<sup>32</sup> Punishing the women alone also gives the impression that the *shari'ah* is gender-biased especially, when there are methods for confirming such allegation, as it is done for instance in Malaysia. Today in Malaysia, forensic evidence has performed many wonders in the apprehension of unknown perpetrators of many heinous crimes, especially where women are the victims such as rape and even stark murder. For instance, in a famous case of a six-year-old girl that was murdered, the perpetrator was eventually caught six years later due to his hair, skin and other materials, which were found under the fingernails of the victim, who had scratched her attacker. It was this evidence of the DNA used in the case that convicted him for the crime. The DNA profiling includes finger and toe prints identification and the laboratorial analysis of blood and semen that falls under pure medical, pathological and other sciences.<sup>33</sup> The adoption of such forensic evidence by *Shari'ah* courts in Nigeria, as rightly noted by a researcher would have prevented some of the most notable misjudgments in cases involving the rape of Muslim women such

as that of Bariya Ibrahim.<sup>34</sup> The polemics among the classical schools of *fiqh* to accept or not to accept forensic evidence, as proof do not make sense anymore. As argued by Shah Haneef above, the *shari'ah* is in support of the use of forensic evidence. Its use is supported by many Islamic texts. The Prophet for instance once accepted the evidence of an expert on facial comparison for Usamah's paternity. In addition, during Umar's time, a woman accused a man of raping her and brought an egg-stained cloth as evidence. Ali then soaked the stain in water and it turned out to be white solid yoke. These events could be said to be the beginning of the use of forensic evidence in Islamic history.<sup>35</sup>

In upholding the classical position on the provision of a witness to an act of rape, the *shari'ah* operators in Nigeria lose cognizance of the unfeasibility of rape occurring in the view of any normal human being, especially the God-fearing individual and such ineptitude will only allow rapists to always free themselves from the responsibility of their crime. Today, it is possible to apprehend criminals for many crimes including rape, as modern means of obtaining evidence for the crime are available, such as DNA tests to examine the sperm of the alleged rapists, examination of their fingers and palm prints on the body of the alleged rape victims as well as requesting the women to describe the nude body of such alleged rapists. The last suggestion is particularly applicable to men accused by women of committing *zina*. If the act was truly mutual, the women should be able to provide some bodily descriptions of these men in their nudity. It should not be unacceptable for the *Maliki* School in Nigeria and in fact, any school of *Fiqh* in Islam to adopt the above suggestions and even their extension. This is so as according to Mohammad Hashim Kamali, most of the *Fiqh* corpus consists of rulings derived from *Ijtihad* (reasoning) and deductive interpretation.<sup>36</sup> Hence these rulings do not hold the same sanctity, as the expressed injunctions of the Qur'an and *Sunnah*. The above also clearly points to the necessity to adopt the use of forensic evidence to determine



culprits of sexual offences under the *shari'ah*. This practice would serve well in protecting women's rights to justice and security, while punishing those men, who harass, molest and rape women and girls.

Another suggestion in this regard would be that the criminal sanction under the *Shari'ah* should be extended to forceful intercourse within marriage. Presently, harm is not perceived as an issue in marital life between married couples and therefore crime in this respect is not given consideration. Thus, marital rape is literally non-existent. Yet most of the Muslim women responding on this issue in the study are of the view that Islam does not necessarily sanction forceful marital intercourse, due to divine instructions, which forbid men from forcing themselves upon their wives. To these women a wife's rejection to intercourse with her husband can be a result of illness, tiredness and even more legalistic prohibition like during her *menstruation* and therefore should be upheld by *shari'ah* laws. This is supported by the Prophetic prohibition and annulment of forced marriage, forced marriage here can be similar to forced marital intercourse. The above therefore demonstrates that most provisions of the United Nations Convention on the eradication of all harmful practices against women (CEDAW) can be said to be in conformity with Islamic teachings. One may quarrel with the interpretations of one or two provisions such as the definition of reproductive rights embedded in the convention but certainly not the substance of the provisions. This assertion is supported by the fact that the convention for instance, which was adopted by the United Nations General Assembly in 1979 and came into force in 1981 was sponsored by many Muslim countries.<sup>37</sup> The CEDAW clearly establishes women's rights in public and private life<sup>38</sup> and makes state institutions responsible for the actions of individual partners privately violating these rights.<sup>39</sup> Hence, according to Jane Connors who writes on the attitudes of the Muslim world to the

convention, some Muslim countries made their reservations pertaining to some provisions of the convention,<sup>40</sup> yet none of them objected to the eradication of all harmful practices and any fundamental discrimination against women. It can therefore be concluded that there is no incompatibility between Islam and women's human rights. Muslim governments and scholars, who wage war against freedom and women's human rights, do not fulfill their Islamic duties in ensuring the rights that Islam has bestowed on women. Though they may speak in the name of Islam as observed by Najla Hamadeh, their discourse actually constitute "the authoritarian discourse of silence," which produces a sterile "juridical monologue" and exclude the voices of scholars, activists and jurists, especially women who engage them in dialogue about Islam.<sup>41</sup> Contrary to the submission of Najla Hamadeh however, it is erroneous and simplistic to regard Islam like other monotheistic religions that command patriarchy, as this contradicts the early practice of Islam that she points to and the illustrious role played by many Muslim women especially 'A'ishah, in the shaping of Islamic law and jurisprudence. As observed by Barbara Callaway and Lucy Creevey, these problems are universal and not unique to Islamic societies<sup>42</sup> and most importantly have no justification in the authentic teachings of Islam. Hence, this study agrees with Najla Hamadeh on the call for questioning some juristic rulings and restoring Islamic law according to its true sources.

### **Muslim Women, Polygamy, Wife Beating and the Family**

One major problematic area for feminists in regards to Muslim marriage is polygamy. It is argued that the right given to a man in Islam to marry up to four wives is to the detriment of women, but according to B. Aisha Lemu, a leading foundation member of FOMWAN, what obtains in the west is hypocritical and unrealistic. Most men according to her engage in polygamy, but without the



legal obligation towards the second, third or fourth mistresses and their children unlike the Muslim husband, who maintains his complete obligations to these people.<sup>43</sup> Annie Besant adds that men in the West are not yet wholesome for monogamy, but rather practice polygamy in the guise of extramarital affairs where they are pardoned of all legal responsibilities. She concludes that this situation is far worse than the polygamy of the East whereby the man guards, shelters, feeds and clothes all his wives thus eliminating the prostitution of the West that makes women satiate the desire of men on the street.<sup>44</sup> In addition, the polygamy of the Muslim societies contribute to the economic independence of Muslim women as seen in pre-colonial indigenous Nigerian societies, where as a result of polygamy, apart from the mother, many members of the extended family were thus in the position to assist in raising the children and such arrangement provided mothers extra time to attend to socio-religious and even political activities. Common vocations among women generally in Nigeria before colonialism included working side by side with their husbands mostly on farms, manufacturing or craft making and trading. Women enjoyed these opportunities, as they grew older, especially in polygamous homes; they gained assistance from younger co-wives, thus allowing them to spend less time in domestic chores at home and more time in economic activities outside the house. Hence, one of the areas in which Islam was better adapted to the Yoruba way of life than Christianity is polygamy, because it is permitted in Islam though under stringent conditions.<sup>45</sup>

'Abdur Rahman Doi also notes this sociological significance of polygamy in Africa as a whole and Yoruba land in particular. According to him, the possession of many wives and children was a sign of wealth and nobility. This fact was confirmed in a sample survey that was made in Ile-Ife, one of the towns under study in this book. The survey interestingly, revealed that the family life of non-Muslims including Christians were apparently more

polygamous than Muslims. In fact, the rate at which many churches approved polygamy in Africa made Doi to conclude that polygamy is an established attitude in Africa.<sup>46</sup> Thus, polygamy contributed in no small measure to the economic independence of women. Hence the Islamic extended family system due to its similarity to the African family system therefore also contributed to women's economic activities outside the house. This is so, as even in the absence of co-wives, the presence of other generations of women such as mothers and grandmothers must have been meaningful in raising the children.<sup>47</sup> This possibility of polygamy contributing immensely to the economic independence of women is the reason behind some of the Muslim women to be in support polygamy, as it assists them in their household chores. Women in polygamous families find it convenient to manage outside chores, as their co-wives would be looking after their children when they are not around. The younger co-wives in particular according to Dr. Mrs. Durosimi, the National *Amirah* (President) of FOMWAN should shoulder many of the household chores and responsibilities.<sup>48</sup> Since according to her, the first wife had shouldered these responsibilities, before the younger wife arrived, justice demands that as first wives get older they should have the comfort of knowing that the burden of their matrimonial and domestic chores does not fall solely on their shoulders.

What most women however resent is that most men do not even respect them after taking younger wives. These women further say they would have preferred the men to be inclined to select for wife their fellow Muslim sisters, who are widows or divorced ladies of no burden of theirs so as to assist them emotionally, physically and financially with the maintenance of their children. Alas! In most cases, these Muslim sisters are abandoned. A particular sad case was told of an active Muslim brother in one of the Islamic societies, who, while in life used to attend all the functions of his society with his wife and children. Following his death however, nobody was willing to take his young widow, as a wife until she



eventually married a Christian man and she and her children embraced Christianity.<sup>49</sup> This must have been necessitated by Yoruba system of inheritance, which reflects lack of adequate provisions for widowed and in the event of a husband's death, the woman usually, receives nothing as a person but is only entitled to a share through her children. If she has no children, she is not eligible to inherit. Since property can only be passed between the male gender, women can never inherit their fathers.

Another indicator of domestic violence is wife beating. This is particularly true of Islam because of the verse of beating a wife in the Qur'an. Muslim women like Mrs Olorode argue that the verse of beating a wife in the Qur'an is not problematic as it is symbolic in nature as seen in the precedent of the Prophet, who never beat his wives, but requested his followers to use pieces of clothes, when choosing to beat their wives. These women cited the example of a man who beat his wife seriously in Nigeria and was compelled by the Islamic courts to pay her compensation. According to them in the view of the Prophet's advice to his people, a man is only allowed to strike his wife playfully. Mrs. Olorode therefore concludes that wife beating is in reality un-Islamic and animalistic.<sup>50</sup> Lateef Sanni sees this action as barbaric, but unavoidable in some marriages.<sup>51</sup> Taofeeq Azeez says it is an abhorrent and barbaric action and should be declared *Makruh* or detestable.<sup>52</sup> In fact, Nosiru Onibon cannot understand a man, who can beat a person he calls his wife, his 'second half' and still cohabit with her.<sup>53</sup> For Abdul-waheed Badmus, wife beating is indefensible and bad for the image of Islam and Muslims in the country.<sup>54</sup> To Dhikrullah AbdulGaniyyu, it should be banned out rightly since some men take pleasure in battering their wives in the name of correcting them.<sup>55</sup> According to Mrs. Adesina-Uthman, it is however most unfortunate that even some married women would agree to justification of their husbands in beating their wives due to cultural beliefs on one hand or due to the wife's refusal of her husband's request for sexual intimacy with her on

the other hand. She opines that many married women have been beaten by their husbands at one time or the other. She also explains that the frequency of wife beating depends on the social and economic circumstances of the couple. She explains for example that wife beating appears less frequent among older men and women than those below the age of thirty five to forty, and in much higher frequency among poor men, who use wife beating as a substitute for their financial incapacity. The state of pregnancy, according to her has not deterred some men from beating their wives, as she has heard of experiences of some women, who have been beaten, while in this condition.

### **Muslim Women, Genital Mutilation, and Vesico-vaginal fistula (VVF)**

One of the coming of age rituals in almost all communities of the world is circumcision of both male and female children. Today female circumcision, which is termed Genital Mutilation (GM), is a form of domestic violence against women as it is usually carried out on young girls by members of their families. Even in countries such as Egypt, where female circumcision has been banned and criminalized by governments, it is still being carried out in many families. Circumcision could be defined as the surgical removal of the skin or hood surrounding the head of the male's penis called prepuce and the tip of the extra skin above the female's clitoris or vagina.<sup>56</sup> This procedure is, to some degree, similar to the circumcision that is sanctioned by the *Sunnah*. In the *Sunnah*, the Prophet actually used the term *Sunnah* only in the context of male circumcision when he declared that circumcision was *Sunnah* or recommended for men and *Mukarramah* or an honorable act for women (*Makarramah*). This shows that the Prophet perceived male circumcision to be more important than that of the female hence he used the term *Sunnah* for it. He however depicted female circumcision as (*Makarramah*), to clarify that it is not a religious obligation that is required like that of the male. This is



supported by an authentic narration on female circumcision, in which the Prophet is reported to have passed by Umm 'Atiyyah, a female companion who used to serve as one of the female medical experts who performed circumcision on young girls and he instructed her saying: "Cut off only the foreskin but do not cut deeply, for this is brighter for the face of the woman and more favorable with the husband".<sup>57</sup> This last tradition explains why female circumcision is not viewed by the Prophet as important as that of male because of the susceptibility to cut too deeply leading to mutilation. This happens in medical terms when the *clitoridectomy* which refers to the removal of the entire clitoris along with part of the adjacent *labia minora*, is carried out in the name of female circumcision.

There is also what is referred to as pharaohnic circumcision or *Infibulation* which is the removal of the entire clitoris, adjacent *labia minora* and medial part of the *labia majora*, with both sides of the female organ or *vulva* stitched together leaving only a small opening. This procedure requires tying together the victim's legs for nearly three weeks. It is called the Pharaohnic procedure but may as well be called total mutilation. It is usually followed by bleeding and scars, which are so painful especially during intercourse, causing difficulty to achieve sexual fulfillment. This difficulty may eventually lead to chronic pain, reduce chances of pregnancy, cause infertility in some instances, and induce chronic pelvic infection, urinary tract infection as well as lead to many psychological problems.<sup>58</sup> Since the clitoris of the woman is quite tiny, even tinier in younger girls, it is very difficult to perform even the first form of circumcision properly except by a specialist. Hence, female circumcision is illegal in many countries including Egypt, which banned it through a landmark judgment of the Supreme Court.<sup>59</sup>

Unfortunately, many of those, who practice female circumcision, do so based on the belief that that an uncircumcised woman is

likely to be promiscuous, sexually insatiable and flirting. That this reason is baseless is confirmed by the above Prophetic commandment that not cutting deeply or in other words not mutilating circumcised girls and women would not only be "brighter for the face of the woman" but also "more favorable with the husband." It is therefore baseless to employ female circumcision to impede female sexual enjoyment. It is due to this similar baseless reason behind genital mutilation that the prominent Egyptian Doctor and feminist, Nawal El- Sadawi argues that it seems most men fear that such sexually insatiable women would expose their unreal masculinity. Hence according to her, such men would prefer to marry a young virgin, inexperienced, childish and simple girl or in other words "a naive pussy cat with no notion of her rights and sexual desires as a woman".<sup>60</sup> To Nawal El- Sadawi, women are still slaves and oppressed throughout the world by men not because they are living in Eastern, Arab or Muslim societies but because of the patriarchal system that has dominated the world, which afforded men special privileges especially in the sexual sphere. In this respect, the Arab societies could be viewed as in better position since men's promiscuity is openly admitted and legalized thereby making them responsible and accountable legally in comparison to western societies, where the practice by men is the same in secret and in a disguise of puritan morality.<sup>61</sup>

It should be noted that many women, most of who are in the Muslim dominated Northern region of Nigeria have suffered from the predicament of Vesico Vaginal Fistula (VVF), another form of violence associated with the private sphere that has turned its female victims into outcasts, once they become mothers. Though VVF has always been associated with early marriage, it is caused by a girl becoming pregnant before she becomes physiological and biologically ready. At a tender age, is difficult for her pelvis to allow passage of a baby and may lead to obstructed labour that resulted in the death of the baby and the vagina of the child



mother continuous leak urine. VVF should therefore be associated with early sex whether inside or outside marriage. It may also be associated with Genital Mutilation (GM), as the pelvises of many women are sown during circumcision into small size that delivering babies becomes practically impossible. They are rather left with dead babies, while *draining urine* and stool continuously. They develop sores on their skins and emit a terrible odour from their constant flow of urine and stool. It is estimated by a Christian evangelical group, which is converting most of these women through medical assistance that more than 200,000 women in northern Nigeria alone suffer from VVF. Since 1992, many of these women have undergone operation at Evangel, the hospital of this Christian evangelical group. These women received much more than a restorative surgical procedure, as they are also presented with Christianity.<sup>62</sup> For instance, the Centre for Women and Adolescent Empowerment in Yola, Adamawa State CWAE was called upon to take up the case of a 14-year-old girl married off to a 56-year-old man and even though the marriage was annulled by the court, the parents refused to abide by the judgment until the 56-year-old man got fed up and decided to get married to another young woman of 18.<sup>63</sup> A second, taken up by the CWAE was that of another 14-year-old girl brought up by her father's childless Aunt whose husband promised a man her hand in marriage. However, when to his chagrin, the girl refused, he threatened to divorce his wife who is the girl's grand Aunt, in order to protect what he considers his fundamental right to give away any female under his care. The girl's grand Aunt then prevailed on her father and they finally married her off to the man. The girl later escaped and the husband sued her grand Aunt for encouraging her to run away. The court again became her solace through CWAE.<sup>64</sup> With the considerable number of Muslim women in Northern Nigeria that have suffered from the predicament of Female Genital Mutilation and Vesico-Vaginal Fistula, to examine the malaise in this research work is therefore proper. As one of the

reasons, provided above for the circumcision of women and indeed early marriage, is to curb women's promiscuity, respondents were questioned about their views on this claim of women's promiscuity.

According to all the respondents and participants, the claim that women are more sexually promiscuous, sexually insatiable and flirting freely than men is based on mere whimsical superstitions and therefore baseless. Lateef Sanni while responding notes that the deliberate genital mutilation of anybody whether male or female is barbaric, dehumanizing and baseless.<sup>65</sup> He does not observe any correlation between this practice and other similar practices such as the segregation of women and the sexual norms of Muslim women in Nigeria since the practice would not stop any sexually promiscuous and insatiable person whether a woman or man for that matter. Similarly, Imam Taofeeq Azeez does not take stand against circumcision, but rejects genital mutilation.<sup>66</sup> According to him, this form of practice and equally others, such as segregation of women, meant to curb women sexual behavior are idle, miserable, and cowardly, as they have never served any progressive interest in the Muslim community. In Mrs. Olorode's opinion, genital mutilation and absolute segregation of women should be condemned, as the Prophet was completely against any harmful practice against Muslim women. In regards to moderate circumcision in line with the *Sunnah*, there is no predicament in Yoruba land. Nosiru Onibon also shares the same view as above.<sup>67</sup> Dhikrullah AbdulGaniyyu brings the matter further by insisting that genital mutilation and any other such practices like the segregation of Muslim women that are harmful to women should be totally discouraged if not outrightly forbidden.<sup>68</sup> These men and women who responded are of the view that women are not necessarily more promiscuous than men are. Hence, they all oppose holding Muslim women responsible for promiscuity in the society. All such practices that are meant to



curb the sexual enjoyment of women have therefore been condemned as un-Islamic and perhaps cultural in nature. Nosiru Onobon mentioned above stressed this particular point. However, all of them believed that the real issue is not who is more promiscuous than the other is, but rather whether female circumcision is harmful or not. They believe that the ordinary form of circumcision is not damaging though it may be painful and traumatic to the individual especially if and when performed by a non-specialist and in an unhygienic setting perhaps leading to infections and other related problems.

In the light of the above submission, it is understandable if some people oppose female circumcision and early marriage as part of their opposition to a tradition that has been harmful to millions of women. This perspective is highly appropriate, as simply by being part of Yoruba, Hausa, Fulani, Nigerian or any other tradition, practicing female circumcision and early marriage should not be upheld. Instead, the conformity of female circumcision with the basic objectives of Islam, which include reduction, as well as removal of hardship should be evaluated. While however female circumcision has been legally banned in some Muslim countries such as Egypt, mentioned above, this would not serve well or be a viable option in societies and cultures where the practice of female circumcision is well entrenched. Outlawing of female circumcision would not stop the practice. It would therefore appear that the best option in this respect is to allow only specialists to carry out the treatment in government owned designated centers. The situation is serious enough that this approach would be the only way to stop female genital mutilation. This solution can be inferred from the above two Prophetic sayings on female circumcision. According to the first Prophetic saying, female circumcision is recognized by the Prophet. This is supported by another narration that, if the two areas of circumcision (of a male and female) touch one another, then *Ghusl* (ritual bath) is required.<sup>62</sup> This is clear evidence that

women at the time of the Prophet used to be circumcised. Though this tradition has been authenticated by Al-Albani,<sup>70</sup> it must however be understood in the light of the second Prophetic saying, mentioned above, that female circumcision was carried out by female medical specialists under specific instructions not to cut deeply or in other words mutilate female genitals. Thus the second and third forms of female circumcision violate the prohibition of deep cutting and in fact the cutting of an entire vital sexual organ of the female body and should therefore not be allowed in Muslim societies under any guise. It is therefore, in order to stop female genital mutilation that the Prophet made female "Circumcision an honorable act (*Makarramah*)<sup>71</sup> that is merely permitted and even then must be carried out by one of the female medical experts to avoid mutilation "for this is brighter for the face of the woman and more favorable with the husband."<sup>72</sup>

The question that may be posed in this respect is why the Prophet did not explicitly ban this female circumcision when he recognized that the practice could be harmful to women if the cut was too severe. The answer is that the Prophet's command to Umm 'Atiyyah not to cut deeply demonstrates a great deal of wisdom. It in fact, reveals to the Muslims, the biological differences between women and men and what may engender their matrimonial happiness and legitimate sexual enjoyment, as married couples. In both male and female circumcision in Islam, no part of the sexual organ is to be cut off; it is only the foreskin, or outer fold of the skin, which is cut off. Properly done, it is not going to cause any medical problem, not to mention mutilation. It further implies that in some cases, circumcision may be necessary when a foreskin or extra skin covers the clitoris. It is perhaps because this excess skin is rarely found in women that the practice is not regarded by the Prophet as commendable like circumcision in men. Thus, as has been argued in this research it is preferable for medical experts to conduct this, as they would have the knowledge whether it is



required or not. The Prophet's statement also contradicts the arguments that female circumcision "controls" the woman's sexual appetite. It rather demonstrates that the Prophet wishes both men and women to derive gratification and enjoyment from the sexual act as long as it is carried out between wives and their husbands. It is correct that Islam requires both genders to be chaste but there is no textual evidence that requires selective curtailment or control of the sexual desire of one specific gender. In the same vein, it is highly appropriate, to oppose forced marriage since there are many Prophetic traditions that show clearly that it is an infringement on the rights of daughters. Thus when a divorcee, Khansa bint Khidam reported to the Prophet that her father had married her off, the Prophet annulled the marriage. Similarly, a virgin girl came to the Prophet and protested against the decision of her father to marry her off to a man she did not like; the Prophet gave her the right to choose.<sup>73</sup> This demonstrates that the Prophet gave daughters whether as young girls or women the rights to accept or reject the marriage contracted by even their fathers not to talk of uncles and other lesser male relations.

### **Veiling of Muslim women**

*Niqab* or face-veil may also be identified as one the factors militating against the human rights of Muslim women as it infringes on the multiple socio-economic roles Muslim women are expected to play in reforming the society. A few Islamic organizations in Nigeria in fact argue that Islam obliges Muslim women to cover their faces. The practices of veiling the face of a Muslim woman, and her segregation from public life have always been upheld by these few Islamic organizations. Foremost among these organizations is the Muslim Students' Society of Nigeria, (MSSN) which used to be in the forefront of a dynamic movement for change in Nigeria. Alhajah Lateefah Okunnu also elaborates on the positive role of the Muslim Students Society of Nigeria

(MSSN) in "insulating" Muslim adolescents from the negative aspects of secular education under the grip of Christian Missionaries and it effectively served as a veritable training ground for *Daw'ah* work. So vibrant was the MSSN movement in secondary and tertiary institutions that it gave impetus to other post-secondary school and postgraduate movements to meet the challenges of the time. It is to a large extent true to state that the MSSN provided the launching pad for the Islamic re-awakening in Nigeria witnessed in the last four decades. Islamic education is within the reach of many Muslim children.<sup>74</sup> In fact, it was the only true national Islamic organization in Nigeria for many decades until it became divided in the late eighties over the main features of an Islamic movement.

A major cause of disagreement among its members today especially in the Southwestern part of Nigeria is female dressing; some of its members even rebuke Muslim women who fail to wear the face-veil that they consider to be the only acceptable proper Islamic dress. They opine that such women are either not Muslims at all or are at best weak Muslims. The belief, which was vigorously propagated by these members but not officially upheld by the MSSN, gradually crept into the society and has caused a very serious intra religious conflict among the Muslim community of the Southwestern parts of Nigeria and is spreading to other parts of the country. The MSSN which used to be the most virile and largest Muslim organization in Nigeria has however been torn apart by sectarian differences especially regarding the use of *niqab* by its female members. All the details about the issue of veiling a woman's face and other sectarian differences that are considered as fundamental creeds by some members of the society can be found in a publication of one of its chapters.<sup>75</sup> Others include the *Zumuratu Islamiyyah*, *Islahudeen*, *Lanase*, *Bamidele* and Saudi affiliated Islamic organizations. To these few Islamic organizations, veiling the face by a Muslim woman is not



only an Islamic norm but also a compulsory creed whose neglect is a sin that may even take a person out of Islam. Some members of these few Islamic organizations even hold on to the outrageous practice that a Muslim woman wearing the face-veil can only uncover her face on three occasions, in her youthful age before she reaches puberty, on the day of her marriage and when she dies. This is similar to the practice found in some Pakistani and other Muslim regions.<sup>76</sup>

One of the consequences of the problem of imposing a practice on Muslim women that is a matter of choice is the violence that some family members especially husbands employment on Muslim women to enforce the practice of veiling. It is the choice given to Muslim women to use or not to use *niqab* that is being asserted by most Muslim women activists. They all appear to support the need for Muslim women to dress modestly and decently but are opposed to imposing a form of uniform or *niqab* on them. It seems therefore that on the one hand, while some seek to impose the *veil* on Muslim women, it is scaring some western secularists on the other hand. Perhaps this is because these brands of *hijab* wearing sisters are not only articulate, well-dressed, intelligent, and professional Muslim sisters and women but more importantly, because these women present the alternative to western women who make their looks and sexuality tools for what they can attain. The anti *hijab* wearing postures are contrary to the mainstream western secularists' attitudes to Christian nuns all over the world. While nuns, like their male catholic fathers, are set up materially to direct their attention to services to the Church, getting grants from universities, local governments and even feminist organizations to study Christian theology and other disciplines that can contribute to the growth of Christendom, Muslim women are intimidated to drop the *hijab* which remove attention from their looks and sexuality to their articulation, intelligence, and professional qualifications. These western secularists are averse completely to *hijab* wearing sisters and therefore promote anti- *hijab* wearing

values in the minds of the Muslim women in the guise of secularism, westernization and modernization. They argue that all the *hijab* wearing sisters have to do is to remove the *hijab* by wearing completely naked or half naked tight and see-through attires like mini-skirts, tight-jeans and jumpers for them to become modern, western and maybe secular in some cases. Some Muslim women however choose to oppose the two groups.

Hajiya Bilkisu decries the debates in Nigeria over the imposition of beard growing, turbans and face-veil, which to her, amounts to chasing shadows while the real issues are not being addressed. The real issues to her include the injustice in the implementation of the *shari'ah* law that has been reduced to a body of laws in 'the hands of poorly trained and incompetent judges who abuse procedure and ill equipped supervisors whose only pre-occupation is to fish out women who commit adultery'.<sup>27</sup> Mrs. G.Y. Akinyemi, a member of the MSSN and a senior high school teacher, believes in the need for Muslim women to be properly adorned especially when they are at work. She explains that Muslim women are seeking to be humble but dignified, self-controlled but assertive, and spiritually upright but politically and economically thriving at the same time. They do not want to be intimidated, as they are not in Islam characterized by the inferior feeling of shame or being rotten and unclean because of a purported sin of the first woman.<sup>28</sup> Mrs. Adesina-Uthman, a former *Amirah* of the MSSN, Oyo state chapter, asserts that it is obvious from experience in modern Nigerian and other similar societies that the wearing of outer garments that cover a woman's body is essential for modesty. She supports the face-veil for this reason but she just does not view it as obligatory. A Muslim woman who wears *hijab* to her is not better than one who wears the face-veil and vice versa. Nobody is better than the other except in piety or the fear of Allah; the Most High who alone knows what is in the heart and the intention behind all human deeds.<sup>29</sup>



Some of these women who choose to wear the *modest hijab* by conviction have even witnessed many violent confrontations from their supposedly loved ones and relations. There was the case of some parents at the University of Ibadan who tore their daughter's *modest hijab* to pieces in public all because they saw wearing the *modest hijab* as "uncivilized". Hundreds of Muslim female students at the Universities, Polytechnics and Colleges of education in Nigeria are facing or have faced the confrontations over the *modest hijab* at one time or the other. Some students in fact witness opposition from government owned institutions where they have been barred from attendance at classes because of their *modest hijab*. One such incident took place at the College of Education staff school in Ikere Ekiti where a female Muslim student was asked to remove her *modest hijab* if she wanted to continue schooling there. As a matter of fact, the guardian of the *modest hijab* wearing student was summoned at the College when his ward refused to remove the *modest hijab*.<sup>80</sup> Yet in the same college, there are Christian students who were nuns wearing head-covering similar to *modest hijab* wearing sisters. Even, a principal lecturer at the college claimed *modest hijab* would disturb students' studies especially in the laboratories. However, one unbiased non-Muslim lecturer at one of the universities in the Southwestern part of Nigeria insisted that *modest hijab* seems not to have affected the performance of Muslim female students who even top their classes in fields like engineering and accounting.

*Hijab* is a complex notion that can encompass covering the face or not, lowering the gaze with the opposite sex and even recently the ordinary headscarf.<sup>81</sup> The definitions usually given to the terms and concepts regarding female dressing are most often contrary to the basic meanings of these words as used in the Qur'an, *Sunnah* and even classical Arabic and therefore encourage either of the above extreme positions as revealed by al-Albani. For instance, *Jilbab* has been translated by many

people as face-veil. However, it refers to a big and flowing garment. In fact, while *hijab* connotes the face-veil, the *Jilbab* does not as it refers to an outer garment. Another term closely related to *Jilbab* and which is mentioned is *Idna'* and can be defined as "to come close". This definition is supported by ibn 'Abbas who while commenting on the verse of *Jilbab* says, "A woman is to drape her *Jilbab* close to her face not over it". This is also similar to the statement of Qatadah that "Women have been commanded to drape their *Jilbab* close to their eyebrows and not over their faces." *khimar*, which is the singular of *khumur* linguistically, means a covering used by women over the heads or headscarves and this is simply the meaning as it is used technically too. In fact, according to Ibn Kathir, *khimar* is like a man's turban and that whenever the term *khimar* is mentioned in general terms; this is what is intended though it has also been defined as *Jilbab* by some companions of the Prophet such as ibn Mas'ud and ibn 'Abbas. There is a term closely related to *khimar*, which is *'Intijar* which means *Iktimar* or using headgears. Another term is *Jayb*, which means bosom, chest, and neck. This shows that what women are required to cover their bosoms, chests, necks and not their faces. Hence, according to ibn Hazm *al-Zahiri*, the verse of *khimar* in the Qur'an is a clear text that women are only to draw their headgears over their bosoms, necks and chests. It therefore only calls for the covering of the *awrah* or nakedness of a woman and does not require covering the face.

Despite the prohibition of extremism in Islam—a religion of moderacy and balance, some Muslim scholars have departed from this noble teaching especially when dealing with Muslim women. This extremism according to al-Albani has infected even some Muslim women making them to flagrantly disobey the Prophetic injunction that the face-veil (*niqab*) and gloves are not to be worn in the state of *Ihram* (when the pilgrim begins the *hajj* and enters its rituals wearing the *hajj* garment) and they say "we



will use *niqab* and then atone by paying *fidyah* (Compensation)”. To al-Albani, this is the peak of extremism on the use of the face-veil and is really only one of the many instances of such extremism which cannot bear positive fruits nor produce the caliber of noble women produced in the early days of Islam as such women who flagrantly disobeyed the Prophetic injunctions cannot be bearers of the moderate, balanced and intellectual message of Islam.<sup>82</sup> A dilemma such women find themselves is therefore the problem of self-identification. There is a funny story narrated by Shaykh al-Albani above to demonstrate this problem. A woman sued her husband to the *Shari'ah* court during the time of the *Salaf Salih* (the righteous Muslim generations) and accused him of not paying her *mahr* or bride gift but the husband claimed he had paid it. So the Judge requested him to produce his witnesses and he called two of his companions as witnesses. Then the Judge asked if they bore witness that the husband had paid his wife's *mahr* and they both replied that they bore witness that the man paid a woman her *mahr* but they were not sure if it is the same woman in court as the one in court was using *niqab*. The Judge therefore ordered the woman to remove her *niqab* so that she could be identified and she replied that she preferred to forego her *mahr* than to remove her *niqab* and on hearing this, the husband offered to pay the *mahr*.<sup>83</sup> This is one of the clearest testimony in the *Sunnah* that a woman is required in Islam to remove her *niqab* so that she could be identified and it is not required that it is only women that can identify her. So any Muslim woman who opts to use the *niqab* must be willing to remove her *niqab* so that she could be identified or forego her rights. This is why even at the International Islamic University Malaysia; all female students are obliged to submit themselves to identification when required by any university official.

## Conclusion

This paper has traced the problem of domestic violence as it affects Muslim women in Nigeria. Perhaps the first step and in fact the most important one towards the task of the reformation of the prevailing conditions of Muslim women as this research suggests, is to separate socio-cultural practices based on views of Muslim scholars from the authentic Islamic teachings. This requires good and sound knowledge of Islam. Perhaps needless to add that seeking knowledge today has become more urgent for Muslim women because of their more complex and complicated multiple roles in postmodern society as mothers, wives, and as government, social and public workers. Muslim women should even be more concerned about the kind of education they receive more than they are concerned with their ignorance because they need to produce scholars in the Islamic sciences as the early Muslim women mentioned in the research. If Muslim women are to play the role Islam expects of them especially in the field of Islamic work, the Islamic sciences must be targeted by them just as they target the other professions mentioned in this research. This is in total agreement with the views of *Shaykh* al-Albani. On the above basis, al-Albani's intellectual contribution can be regarded as a kind of reenactment of that lofty legacy left by the Sokoto *Jihadi Shaykh* Uthman ibn Fudi. What all this should mean to Muslim women as a whole is that there is the need for Muslim women to revive the defunct commitment of the Sokoto Caliphate to women's education. This should form their priority in order to reform the prevailing decadent status of Muslim women in the society. According to Ibraheem Sulaiman's *Women in Society* and other works, the Sokoto Caliphate not only advanced women's education, it also gave women the status of pilgrims who could traverse the length and breadth of the Caliphate in pursuance of knowledge without any hindrance or impediment.<sup>84</sup>



This is the submission of an illustrious student of *Shaykh* al-Albani, who wants Muslim women to know their rights in order to pursue Islamic goals using only Islamic methods.<sup>85</sup>

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