

CHAPTER 2

REVIEW OF RELATED LITERATURE

2.0. Conceptual framework

The researcher in this chapter examined various opinions and data on the subject matter. In this vein, the various concepts and variables were clearly identified and defined. Also the theoretical framework which the research was anchored upon will be explained in order to have a better understanding of the Gender equality and rights of Islamic women in Nigeria. Other primary and secondary data include statutes, publications and case laws which formed material contents of this chapter were also explained.

2.1. Overview of Muslim Women

The experiences of Muslim women vary widely between and within different societies (Siraj, 2011). At the same time, their adherence to Islam is a shared factor that affects their lives to a varying degree and gives them a common identity that

may serve to bridge the wide cultural, social, and economic differences between them.

The images of women under Shari'a law are more favourable when analysed against the background of the Jahiliyyah, "the age of ignorance", defined as the period immediately preceding Islam (Ali, 1998). A historical reading suggests that the basic teachings of the Quran focused on improving the conditions of weaker sectors in society in pre-Islamic Arabia (Mansour, 2014). During this time, women and girls were largely discriminated against, resulting in many of them being sold or buried alive. As such, "perhaps the most important piece of Qur'anic injunction is the prohibition on female infanticide and hence the right to life for the girl child (Ali, 1998)."

Women's rights under Shari'a law are nonetheless restricted, as exemplified by the following select verses in the Quran: Verse 4:34, highlighting that men are in charge of women; Verse 2:282, noting that the evidentiary value of a woman's testimony is half that of a man's; Verse 24:30 dictating that women remain inside their houses in seclusion, and veil themselves when venturing out of their houses. In addition, there are verses regulating the dissolution of marriage where, despite a number of safeguards for women, the inequality of men and women remains as the husband can repudiate his wife, whereas she cannot do the same.

Among the influences which have played an important role in defining the social, legal, spiritual, and cosmological status of women in the course of Islamic history are the sacred scriptures of Islam: the Quran; (Bouhdiba, 2008) the ḥadīth, which

are traditions relating to the deeds and aphorisms attributed to the Islamic prophet Muhammad and his companions; (Glassé, 1989) *ijmā'*, which is a scholarly consensus, expressed or tacit, on a question of law; *qiyās*, the principle by which the laws of the Quran and the *sunnah* or prophetic custom are applied to situations not explicitly covered by these two sources of legislation; (Glassé, 1989) and *fatwā*, non-binding published opinions or decisions regarding religious doctrine or points of law.

Additional influences include pre-Islamic cultural traditions; secular laws, which are fully accepted in Islam so long as they do not directly contradict Islamic precepts; (Nasr, 2004) religious authorities, including government-controlled agencies such as the Indonesian Ulema Council and Turkey's Diyanet; (Schleifer, 2015) and spiritual teachers, which are particularly prominent in Islamic mysticism or Sufism. Many of the latter, including the medieval Muslim philosopher Ibn Arabi, have themselves produced texts that have elucidated the metaphysical symbolism of the feminine principle in Islam (Murata, 1992).

2.2. Present Condition of Islamic Women in Nigeria

The fact that today, Muslim women in Nigeria are very active in *da'wah* work and the efforts to bring about Islamic revivalism have been traced to the Sokoto Jihad and *oufi* scholars.

Islam is often seen as restrictive in terms of women participation in social and economic activities outside their home. In western societies, the mere mention of “women and Islam” triggers a chain of thought, which includes buzzwords like

“veiling, oppression and subjection.” Islam appears to be a patriarchal, authoritarian system, which is endured by women, but in which they have no say. Barbara (1998) argue that “throughout West Africa, Islam has had the greatest impact on women’s lives among those who were converted earliest and who were relatively isolated for centuries thereafter from with other culture.” Suggesting that the longer Islam is present the more it will annihilate pre-Islamic customs favourable to women and the more subordinated women will become.

In 2002, negative light was brought to Sharia in northern Nigeria when Amina Lawal, a single mother in Katsina State, was accused of adultery and sentenced to death by stoning by a state Sharia court for conceiving a child out of wedlock; the father was released without conviction for lack of evidence. Lawal's conviction provoked outrage both in southern Nigeria and the West, with many national and international NGOs lobbying the federal government to overturn her conviction. In 2004, the conviction was overturned by the Sharia court of appeal, it ruled that pregnancy was insufficient evidence for the sentence to be carried out and Lawal returned to private life (Koinange, 2014).

Today; however there are Muslim women and men who reject both the western oriental feminist and traditional representation of women. It is therefore only those Muslim women who hold tenaciously to the Islamic teachings and work within Islamic matrices in their struggle for a change in Muslim societies that benefit all, and it is to their struggle against injustice in all forms including gender injustice

and oppression through their activities in the Islamic movement that Islamic feminism refers (Uthman, 2005, pp.140-44).

2.3. Human Rights

Human rights are rights inherent to all human beings, no matter their race, sex, ethnicity or any other status according to the United Nations. Human rights include the right to life and liberty, freedom from enslavement and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is free to choose what rights they have. The international human rights law lays down obligations for governments to act in a certain way or not in a certain way in order to promote and protect human rights and fundamental freedoms.

Human right is universal (Shiij, 1959). In other words, it is seen as that which is accruable to all human beings irrespective of sex, race, religion and colour (Henkin, 1985; Rosebaum, 1981). Human rights dignify man and some school of thought postulates that human rights are issued from natural law (Cranston, 1973). They inhere in all human beings by virtue of their humanity alone. Ezejiofor (1994) sees human rights as what is traditionally known as natural rights and these may be defined as moral rights which every human being at all times ought to have because of the fact that he is rational and moral as distinct from other beings. Eze (1984) defines human rights in terms of group rights and states that human rights are demands or claims which individuals or groups make on society, some of which are protected by law and have become part of law. Human rights have also

been defined as those claims made by men, for themselves or on behalf of other men, supported by some theories, which concentrate on the humanity of man, on man as a member of the human kind (Dowrick, 1979). The Black's Law Dictionary defines it as the freedoms, immunities and benefits that, according to modern values (especially at an international level), all human beings should be able to claim as a matter of right in the society in which they live (Garner, 2004).

Nsirimovu (1994) illustrates human rights as follows: The term human right means the conditions of life which men have right to expect by virtue of being a human being. The concept involves not a statement of fact but rather yardstick against which conditions in practice may be measured. Nor does the supposed existence of rights necessarily imply the existence or even possibility of laws to enforce or protect rights though in practice this may sometimes be the case. Rights are the ideals and distinguishing marks of a civilized society. The fundamental concept embraced in over-arching concept of rights may be identified as justice, equality, freedom and self-determination.

Upon coming into being of the Universal Declaration of Human Rights in 1948, human rights have been reinforced almost globally. Every human being in every society is entitled to have basic autonomy and freedom (Henkin, 1985). Hence they can make a fundamental claim that a constituted authority observe or refrain from the doing of certain things that may be against their human dignity (Forsythe, 1991). These rights are ineffective until they are enforced legally. Human rights impose duties both on the individual and the government. However the main

responsibility to observe and protect human rights lies on the government (Nickel, 1987). Some of the human rights recognized under the Constitution of the Federal Republic of Nigeria are (i) right to life (s.33), (ii) right to the dignity of the human person (s.34), (iii) right to personal liberty (s.35), (iv) right to fair hearing (s.36), (v) right to private and family life (s.37), (vi) right to freedom of thought, conscience and religion (s.38), (vii) right to freedom of expression and the press (s.39), (viii) right to peaceful assembly and association (s.40), (ix) right to freedom of movement (s.41), (x) right to freedom from discrimination (s.42), (xi) right to acquire and own immovable property anywhere in Nigeria (s.43), and (xii) compulsory compensation for acquisition of property (s.44).

Human rights is a cross-cutting theme in all UN policies and programmes in the key areas of peace and security, development, Humanitarian assistance, and economic and social affairs.

2.4. Gender Inequality

Nmah (2003) is of the view that the resultant weakness of gender inequality has deprived women of the strength to rise up and insist on a change in their environment for the sake of their families and children. Women fear the difficulties of living without a male companion in a man's world. The socio-economic, socio-cultural, socio-religious and socio-political aspects of the underdevelopment of women will be discussed with possible remedies to them.

Gender inequality in our society today, is among the most prevalent forms of social inequality which exists all over the world, with different effects in different

regions. These differences are primarily due to cultural legacies, historical development, geographical location and religious norms which pre-dominate the society. Religion plays a vital role in the cultural life of different spaces. It is deeply rooted in peoples' experiences and influences the socio-economic and political direction of the society. The status of women in the society is an outcome of the interpretation of religious text and the cultural and the institutional set-up of religious communities. The role of religion is obviously complex and it varies across time and space. However it is pertinent for societal development that gender equality and the emancipation of women should be considered as important factors for the economic, social and democratic progress of Nigerian women. This process can be influenced by institutional norms, as well as culture and tradition, which are both determined by religion. As the relationship between religion and society is reciprocal, religious system in Nigeria are expected to advocate for women liberation and freedom. It is apparently, that the status of the study of women in religion also reflects the status of women in the society as a whole, while considering this fact; this study will x-ray the social status of women in Nigeria, feminism and women development, gender inequality in Nigeria under socio impacts and the under development of women. It went further to view the committee on the Elimination of Discrimination Against Women and how religion is remedying the situation.

It is clear that gender roles are primarily constructed through religion, culture, lifestyle and upbringing. The status of women within Nigerian religions is of serious concern to so many in Nigeria and beyond. Aitchison (2007) posits "All

world religions today maintain male social dominance within a social structure” (p.10). On the other hand, women are more inclined to participate in religious life. The role of God, or a creator of a religion, is always taken by a male and the woman is primarily valued as a mother, especially as a mother to a son. Her place is in the household, less so at religious ceremonies or in public positions. The real status of women in religion is more complicated however religions in Nigeria have encouraged certain women who have risen to significant positions. In the history of religions, the voice of women is rarely heard, due to the patriarchal disposition of the societies in which these religions emerged, and which eventually stifled some of the changes in the status of women triggered by new religions. The world religions all agreed on the respect for women and their crucial role in family life, especially with emphasis on women as mothers and wives. They do not, however, advocate emancipation in the sense of total equality with men.

According to Holm (1994): The most severe restriction apply to women during their menstruation and pregnancy, when, for example, they cannot enter the temple or touch the Quran. Male and female roles are therefore much differentiated and also unbalanced in Nigerian religions. The influence of women on the formation of religious norms and traditions is small, even though in certain doctrines, it is clear that women who succeeded in having their normative views accepted, or, men who advocated equal integration of women into religious ceremonies (p. 34).

It needs to be stated that there exists a certain discrepancy between normative conditionality, which refers to what the given religion proclaims (equality of men and women before God) and practical conditionality, which involves the role of

women in the religious communities and states societies in terms of everyday life. The Nigerian societies have come of age where women are intellectually capable as men. Butler (1990) opines that woman had numerical parity with men in profession, where educational achievements are so important. In Nigeria today, professions doctor, lawyers, accountant, teachers, research scientist and others about half are women. Andrew (2013) states the statistical abstract of United States.

Norms regarding gender are closely linked to the life course established by society. Thus Aries (2015) states that the emergence of childhood revealed the ideals about the appropriate forms of play and educations for boys indeed the very concept of boyhood developed at least a century before the concept of girlhood emerged. In the eighteenth century, African more especially in Nigeria and European societies, the male (boyhood) was conceived at a time when male children could play among themselves and receive education in the skills key would need as adult. The politics in our Nigeria society as it relates a gender places a serious discrepancy. Where male are given prominence and priority over the females (girl) in contrast, were treated as miniature women who were expected work alongside their mothers and sisters.

Through these childhood experience, girls and boys learned the norms of gender; the society's definition of what is "masculine" and "feminine".

2.5. Sharia Law and Gender Equality

The term “Shari’a” is an Arabic word translating to “path” or “pathway to be followed”. As stated by Mashhour (2005) Shari’a constitutes legal commands that are identified as Islamic law. The main sources of Islamic law are: the Quran, which is believed to be “God’s word”; the Sunna, which consists of the oral teachings or practical tradition based on the behaviour of Prophet Muhammad; and the Qiyas (analogy), through which juridical human reasoning can interpret the Quran and apply precedence. The differences in the implementation of Islamic law are due to the varied interpretations of the above-mentioned sources, which can be influenced by culture, customs, history and politics of the region and local interests.

Gender equality is not a new concept, although secular societies have given the impression that the phrase has just been invented little less than a century ago. Despite the contemporary negative portrayals, Islam has advocated the concept since the revelation of the Qur’an, even emphasizing it in its most important scripture—the Holy Qur’an. Some of the major evidences taken directly from the text are those verses (ayahs), which reference both men and women in an equitable light. For instance, the most famous of which is in Surah al-Ahzab: Surely those who submit [to God], men and women, those who believe, men and women, those who obey, men and women, those who are truthful, men and women, those who are patient, men and women, those who are modest, men and women, those who are charitable, men and women, those who fast, men and women, those who guard

their modesty, men and women, and those who remember their Creator, men and women—God has prepared for them forgiveness and great reward.

This verse clearly states that people who are devout to Islam—regardless of gender—are given the same amount of forgiveness and reward; the fact that men and women are clearly distinguished in every part of this verse is a definite indication of this. It was as though The Creator wanted to make a point in mentioning both, so as to make sure that it was properly understood that women have a share in the same rewards as men. This is not surprising since prior to the advent of Islam, the pagan Arabs had treated their women as little less than property devoid of any rights, inheritance, or even the allowance to engage in civic duties—what now that they were being told that their women now had equal access to Divine guidance and rewards? The Qur'an also mentions: "So He created him [man] and made him of two kinds, the male and the female" (Al-Qiyamah, 75:39) and "We have bestowed dignity on the progeny of Adam" (Al-Isra, 17:70). As for this "dignity", Dr. Hashim Kamali points out that it is not exclusive to men: The 'progeny of Adam' includes both men and women, who are equal in the way they are created and in their inherent dignity. The divine grace from which they emanated does not discriminate between the male and the female (Johnson and Aly Sergie, 2014).

This startling change in society is emphasised further in the following verses and Prophetic sayings:

In terms of moral practices: “Whoever does good, whether male or female, and is a believer, We shall certainly make them live a good life, and We shall certainly give them their reward for the best they have done”. (Surah al-Nahl, 16:97)

In terms of employment: “Then their Lord accepted their prayer and answered them: Never will I suffer the work of any worker among you to be lost, whether male or female, the one of you being from the other”. (Surah al-Imran, 3:195) This is further emphasised in another ayah of the Qur’an, Surah Al-Nisa’, 32: “For men is a share of what they have earned, and for women is a share of what they have earned”.

In terms of civic duty: “And the believers, men and women, are protectors of one another. They enjoin good and forbid evil, and keep up the prayer and pay the zakah (charity tax)”. (Surah al-Tawbah, 9:71) Both the genders are included here in regards to “enjoining good and forbidding evil”, which serves to exemplify both their participation in manners of governance and nation building—neither can be excluded at the expense of the other, and both have equal right to decision making and the vision and goals of the nations in which they live.

In terms of education: “Seeking knowledge is compulsory for each and every Muslim (i.e. both male and female)”. Likewise to the above mentioned privileges for both genders, each must have equal access to education in Islam. Many

historical examples of women scholars—including the archetype, the wife of the Prophet and “Mother of the Believers, Aisha binti Abu Bakr (ra)—prove that Islam not only encourages education for women, but mandates it as well. However, despite these very explicit verses of the Qur’an detailing the equitability between genders, many are shocked and marvel at the treatment of women in the Muslim world, whom appear to be little less than second class citizens. The most recent international legislation in regards to gender equality is the United Nations Convention on the Elimination of All Forms of Discrimination

Against Women (CEDAW) adopted in 1979 and is now considered equivalent to a bill of human rights exclusively for women. This convention has been ratified by 189 states, with few giving gender equality, islam, and law 7them their reward for the best they have done”. (Surah al-Nahl, 1:97)

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exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (Glaze, 2018).

Given the above, when verses of Qur'an are taken within the context that they were revealed, alongside the historical practices of the early Muslim community—who are taken as the standard of religious behavior and interpretation for contemporary Muslims—it is evident that Islam does not classify one gender as generally 'better' than another, but takes into consideration very specific socio-economic conditions which affect both men and women. Under ideal conditions, men and women are assigned to roles which help foster a balanced community model and societal progress. When exceptions to the rule are present, such as in the case of Umar's (ra) female assistant in the market place, then those exceptions are granted without concern of the individuals gender.

Likewise, in the case of polygamy, the conditions to be met are that a man must be in a financially capable position and be equitable to each one of his partners in every aspect of life, be it financially, spiritually, emotionally, and even intimacy. Given that women are not ideally supposed to fit this role, they are excluded from the allowance of polygamy all-together as they must also be accustomed to taking care of children and cannot possibly be caretakers in other ways (such as having more than one husband to support); this would shake the entire fabric of society otherwise while being a much added burden to the mother.

However, the allowance for men is limited to the prior noted qualifications, and if

he cannot meet even one of those equity-standards then he is not allowed to marry more than one wife at a time; securing not only the stability and balance of the family unit, but protecting women from being exploited or neglected. As such, polygamy is more a responsibility than a privilege which few men can consider much less meet the conditions for. Despite this, polygamy has been misused to suit the corrupted desires of men—particularly in Islam—which may have triggered much of the misunderstanding and opposition to this practice in Muslim majority countries. However, these mispractices have not been ignored by the very countries in which they are performed. Malaysia serves as an excellent example of the attempt to implement the equitable treatment of women in the wider social context of Muslim identity and values within its borders—especially in regards to the controversial issue of polygamy.

According to Glaze (2018) Saudi men have unilateral power in decision making and can thus divorce their wives without consent from a judge and without legal grounds. Women are unable to obtain a divorce without consent from both their husband and the court. If the divorce is approved, the woman must forfeit all her assets and money she has accumulated before she is able to legally divorce.

Throughout the duration of the divorce, her husband maintains his legal guardianship. If she is granted custody of the children, this is only the case until the child reaches the age of nine, after which the custody is given back to the husband. These are the legal barriers for women, in addition to the social exclusion and stigma associated with divorce. Libya has similar laws, which dictate that a man is

able to divorce unilaterally. If a woman seeks divorce, she must meet certain criteria, such as the following: “if the husband is deemed unable to maintain his wife, is absent without justification, or is impotent (Mansour, 2014).” If she is granted the divorce, she is denied any outstanding dowry payment (mahar) and in some cases she must pay compensation. The custody of the children is given to the husband. If the wife is given custody, the husband can choose not to pay child support without the fear of legal ramifications (Glaze, 2018).

In Afghanistan, under Shari’a law, a man can divorce unilaterally. A woman, however, must first have the approval of her husband, in addition to witnesses who can testify in court that the divorce is justified. A woman can file for divorce on grounds of long-term absence, a husband’s inability to provide for the family either financially or physically, a husband’s impotence, or life-threatening abuse.

Following the divorce, the husband is given guardianship of children after the age of 9 for girls and 7 for boys. The case of inheritance in Saudi Arabia is illustrative example of how certain interpretations of Shari’a negatively impact women’s rights. Inheritance rights in Saudi Arabia are governed by Shari’a law, which allows women to inherit half what a similarly situated male relative would receive. Original Islamic law states that women are entitled to at least a portion of inheritance; however, “misinterpretations of Shari’a are preventing Saudi women from benefiting from their legal inheritance. Many women today are robbed of their endowment rights because of cultural norms and tribal customs that go against the teachings of the Holy Qur’an. Sadly, there are many cases today of

women living in poverty after their fathers die because only the men in the family enjoy inheritance and endowment rights” (Al Arabiya, 2013).

Officially, the inheritance law in Libya grants more entitlements to women than the laws of Saudi Arabia described above. However, the implementation of this law does not consistently respect these women’s rights in practice. As noted in a US State Department report on Libya, while “civil law mandates equal rights in inheritance, women often received less due to interpretations of Sharia that favor males (US Department of State, 2015). While there are laws that penalize those that withhold inheritance, this law is rarely enforced. As such, much like Saudi Arabia, where women are also legally entitled to inheritance, the application of these legal rights is not implemented consistently and securely. Much like the restrictive rights laws for divorce and inheritance, Saudi Arabia employs the strictest laws in our comparative analysis regarding punishment for adultery. The traditional punishment for adultery in Saudi Arabia is death by stoning (Cornell, 2015). However, decisions around this punishment are in the hands of judges, who are free to interpret Shari’a as they wish. Therefore, adultery can result in fines, detention, imprisonment, and until recently, flogging. In extreme cases, the death penalty can be invoked (Evans, 2015). Victims of rape are often accused and charged with adultery, rather than the rapists themselves, as men are favoured under both the social and legal settings (Glaze, 2018).

In Libya’s social and legal systems according to Sharia Law, if a woman is suspected of adultery, she can be criminally charged and sent to a social

rehabilitation facility. If a victim of sexual violence decides to pursue charges, she is often accused of adultery or fornication. This, in addition to the high levels of evidence required for rape convictions, discourages women socially and legally from pursuing charges. In fact, the judge might suggest that a rape victim marry her offender as a “social remedy” (Glaze, 2018).

In Nigeria, Sharia has been instituted as a main body of civil and criminal law in twelve Muslim-majority states since 1999, when then-Zamfara State governor Ahmad Sani Yerima began the push for the institution of Sharia at the state level of government. A "declaration of full Sharia law" was made in the twelve states in that year, and the states created Islamic legal institutions such as a Sharia Commission, and Zakat Commission, and a hisbah, i.e. "a group expected to promote Islamic virtue, whilst discouraging vice (Mustapha and Ismail, 2016)". According to some critics (Leo Igwe, chair of the board of trustees for the Humanist Association of Nigeria), the adoption of Sharia law violates Article 10 of the Nigerian constitution guaranteeing religious freedom.

2.6. Theoretical Framework

- **Feminist Theory**

The core concepts in feminist theory are sex, gender, race, discrimination, equality, difference, and choice. There are systems and structures in place that work against individuals based on these qualities and against equality and equity. Research in critical paradigms requires the belief that, through the exploration of these existing

conditions in the current social order, truths can be revealed. More important, however, this exploration can simultaneously build awareness of oppressive systems and create spaces for diverse voices to speak for themselves (Egbert & Sanden, 2019). Feminist theory proposes that when power and oppression are acknowledged and disrupted, understanding, advocacy, and change can occur.

Feminism is concerned with the constructs of intersectionality, dimensions of social life, social inequality, and social transformation. Through feminist research, lasting contributions have been made to understanding the complexities and changes in the gendered division of labor. Men and women should be politically, economically, and socially equal and this theory does not subscribe to differences or similarities between men, nor does it refer to excluding men or only furthering women's causes. Feminist theory works to support change and understanding through acknowledging and disrupting power and oppression. Feminist theory often focuses on analyzing gender inequality. Themes often explored in feminist theory include discrimination, objectification (especially sexual objectification), oppression, patriarchy, stereotyping, art history and contemporary art, and aesthetics (Gilligan, 1977).

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