

**WOMEN AND PROPERTY RIGHTS UNDER ISLAMIC LAW IN
NIGERIA**

BEING A PAPER PRESENTED

BY

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Bismillahir Rahmanir Rahim

PREAMBLE:

All thanks and adorations are due to Allah, the Almighty. We beseech Him to shower His mercies and blessings unto the soul of the noblest of Mankind, Muhammad, his household and his companions and all those who follow his righteous path till the Day of reckoning.

I thank the National Judicial Institute, under the strategic leadership of its Administrator, My lord, Hon. Justice R.P.I Bozimo OFR, for finding me worthy to make a presentation on the topic: **“Women and Property Rights under Islamic Law in Nigeria”**. I consider this a special honour done to me and my court – the Kwara State Sharia Court of Appeal. I particularly note the worthwhile efforts of the Institute in developing the capacity of men and women on the bench. I therefore, on behalf of the Kwara State Judiciary, express my profound appreciation to his lordship and the entire staff of the Institute.

1.0 INTRODUCTION

An attempt to discuss women issues from the Islamic perspectives always raises the question of Islamic law’s special attention to women. For instance, a whole chapter in the Glorious Qur’an, known as *Surah an Nisa*, is named after women. Also *Maryam*¹ (the mother of Prophet ‘Isa), is made the title of yet another chapter. These are few instances to illustrate the unique status of women in the Sharia. In this presentation however, our primary focus is not on all aspects of women issues. Rather, our scope has been limited to women’s rights generally with particular reference to their property rights. Before delving into theme of this lecture, therefore, it may serve some benefits to shed some lights on the classical Islamic law perspective of rights, so that we do not interpret **rights** under Islamic law in the context of Western conception of human rights. The importance of this is underscored by the Eurocentric approach of Western human rights theories and its non-recognition of non-Western cultures in human rights discourse generally.²

¹ Surah Maryam is the Chapter 19 of the Glorious Qur’an. Maryam is one of the greatest women ever lived on the surface of the earth.

² Oba, A.A, *Human Rights and Beyond: Some Conceptual Differences Between the Islamic and Western Perspectives of Human Rights*, Journal of Islamic Thought and Civilization, Fall 2012, Vol. 2, Issue 2, p. 47.

On the concept of rights, the Islamic jurists did not make classification of some rights as either human rights or fundamental rights. In fact, the Arabic terminology for denoting human rights “*Huquq al Insan*” is a recent origin.³ Even when this and other terms like “*huriyyah*” are adopted in human rights discourse within an Islamic law context, they undoubtedly assumed Sharia-oriented meanings, not the meanings attached to them in Western human rights discourse. The danger inherent in uncritical acceptance of Western terminologies in an Islamic law context is that it, more often than not, renders Islamic concepts vulnerable to Westernization.⁴

Rights in the classical Islamic law literature are mainly categorized in twofold: the first is the rights of Allah, the Creator, over His creation. This set of rights includes right to acknowledge Allah as the Creator and the right to sole worship of Him. Without any doubt, no such rights as above exist in the history of Western human rights. The second is the rights the creatures of Allah have over one another. This also includes the right one has over oneself.⁵ The two category of rights are often interpreted in the lights of Overall Objectives of Islamic Law (*Maqasid ash Shari’ah*). Some human rights, including the rights of women, as introduced by the West, will find relevance in the later category. Having made this clarification, we can now proceed to the main issue by first putting in proper perspective what the expression “Islamic law in Nigeria” connotes.

2.0 ISLAMIC LAW IN NIGERIA: SOME OBSERVATIONS

Without putting the term “Islamic law in Nigeria” in proper perspective, our discussion may be problematic. It is common to hear some Nigerian lawyers and legal scholars say that the only recognized aspect of Islamic law in Nigeria is Islamic personal law. They rely on the provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which granted jurisdiction to the Sharia Court of Appeal in matters of Islamic personal law.⁶ Yet,

³ Al Mawdudi, A., “*Human Rights in Islam*”

⁴ Mohammad, *Rights and Duties in Shari’ah and Common Law*, p. 334

⁵ See generally, Abdul Rahman S., *The Rights of Allah and Human Rights*, Kazi Publications, Lahore, 1981.

⁶ Section 262 (2) and 277 (2) of the 1999 Nigerian Constitution (as amended)

the same Constitution allows the expansion of jurisdiction of the Sharia Court of Appeal, for any state that aspires to do so.⁷

The above implies that there seems to be confusion among lawyers and legal scholars as to the type of Islamic law applicable in Nigeria. This has led some scholars to propound two classifications of Islamic law in Nigeria namely; Islamic Personal Law and General Islamic Law.⁸ While Islamic Personal Law relates to matters of personal status like marriage, divorce, custody of children, guardianship, will, waqf, succession etc., as contained in the Constitution, the General Islamic Law relates to other matters, outside Islamic personal law matters.⁹ The classification notwithstanding, it is important to emphasize that from the history of Islamic law in Nigeria, what is envisaged is the complete application of Islamic law.

The **Supreme Court Ordinance of 1943** provides:

*Nothing in this ordinance shall deprive the Supreme Court of the right to observe and enforce the observance, or shall deprive any person of the benefit existing under native law and custom **including Islamic law**, not being repugnant to natural justice, equity and good conscience, not incompatible either directly or by necessary implication with any law for the time being in force.¹⁰ (Emphasis Added)*

It should however be noted that the Supreme Court in the case of *Ila Alkamawa v. Hassan Bello*,¹¹ has stated in clear terms that Islamic law is not customary law. Also, in *Giwa Osagie v. Giwa Osagie*,¹² it was held that:

*The 1999 Constitution established three distinct legal systems operating concurrently in Nigeria, the English Common Law and statutes enacted by various legislative houses at various tiers of government, the native law and custom of the people (as long as it meets and satisfies the repugnancy test) and **Islamic law which by its nature is an absolute law.** (Emphasis Added)*

⁷ Section 262 (1) and 277 (1) of the Constitution (as amended)

⁸ Ishola A.S, Abdulkader S.Z., *The Jurisprudence of Islamic Endowment System (Al Waqf) in Nigeria: Concepts and Ingredients*, Awqaf Journal: Referred Biannual Journal Specialized in Waqf and Charitable Activities, 2018, p. 20

⁹ Ibid

¹⁰ Section 17 (1) (2), Supreme Court Ordinance 1943

¹¹ (1998) LPELR-424(SC)

¹² (2011) All FWLR (Pt. 363) @ 555

From the foregoing, it is clear that Islamic law in its entirety applies in Nigeria and same is the personal law of the Muslims as echoed in the case of *Khairie Zaidan v. Fatimah Khalil Mohssen*¹³ thus:

*The un-contradicted evidence throughout the whole case in the trial court is that Muslims Law that is applicable is the same everywhere, whether in Lebanon or in Nigeria or elsewhere. For Muslims in any part of the country to insist in any court of law on **Islamic law as his or her personal law is more a matter of law and right** than religious consideration. (Emphasis Added)*

3.0 STATUS OF WOMEN IN SELECTED CIVILIZATIONS

At the beginning of its civilizational rise, the Roman society achieved glory and greatness after the Greek civilization, but it was later to experience decline. In the Roman traditions, man is the recognized chief of the family unit and he could act as an overlord over his woman, exercising such authority as to inflict punishments including torture, selling off, exiling and even killing in some cases.¹⁴ The Roman society also became a haven of immodest life and widespread prostitution among women.¹⁵ Divorce became rampant in the society. Seneca, a famous Roman philosopher and statesman, lamented the high incidence of divorce:¹⁶

Now divorce is not regarded as something shameful in Rome. Women calculate their age by the number of husbands they have taken.

In the Jewish culture, the condition of women is not far from the narrative of Roman society given above. It is the common practice among the Jewish men that they neither stay indoor with their wives nor share same bed with them during their menstrual cycle. They also do not eat or drink with them. In short, they practiced total isolation from their wives until after the end of the cycle.¹⁷

¹³ (1973) LCN/1676 (SC)

¹⁴ Al Mawdudi, A., "Purdah and the Status of Woman in Islam", Islamic Publications (Pvt.) Ltd, Pakistan, p. 6-7. W. Durant, "the story of civilization" Vol 9, p.118-120

¹⁵ Ibid, p. 7

¹⁶ Al Mawdudi, A., *Purdah and the Status of Woman in Islam*, Islamic Publications (Pvt.) Ltd, Pakistan, p. 9

¹⁷ Abdul Rahman Al Sheha, *Woman in the Shade of Islam*, Riyadh, 2000, p. 25

In the Christian Europe, it was the basic doctrine that woman was the mother of sin and root cause of all evils.¹⁸ Explaining this doctrine, Tertullian, an early Father of the Christian Church, has this to say about woman:¹⁹

She opens the door to Satanic temptations: leads man to the forbidden tree, breaks the Law of God and corrupts man – the image of God.

A marriage in Christianity is a bond between a husband and wife and is meant to last forever with no room for divorce. Until 1850, women remained with no citizen-status and personal rights in England.²⁰ In the pre-Islamic Arab society, women were treated in most inhumane and degrading manner. They were subjected to various kinds of humiliation. Only male relatives held leadership position and were entitled to inheritance, as women were not regarded as lawful heirs. The claim of the Arabs of this period is that women can neither lead a battle nor defend the interest of her tribe.²¹ Female newborns were usually buried alive. The Qur'an attests to this evil practice:²²

And when one of them is informed of [the birth of] a female, his face becomes dark and he suppresses grief. He hides himself from the people because of the ill of which he has been informed. Should he keep it in humiliation or bury it in the ground? Unquestionably, evil is what they decide.

Gustave Le Bond attested to the degrading treatment of women in these societies when he said; “all religions and nations, prior to the advent of Islam, caused much harm and insult to women.”²³

4.0 WOMEN'S RIGHTS IN ISLAMIC LAW AS A DISTINCT GROUP OF RIGHTS

Women's rights are distinct group of rights. They exist in addition to the general rights women share with their male counterparts. Under the Sharia, the equality of men and

¹⁸ Ibid, p. 25 and Al Mawdudi, A., *Purdah and the Status of Woman in Islam*, Islamic Publications (Pvt.) Ltd, Pakistan, p. 9

¹⁹ Ibid, p. 9

²⁰ Ibid, *Woman in the Shade of Islam*, p. 27

²¹ Abdul Rahman Al Sheha, *Woman in the Shade of Islam*, Riyadh, 2000, p. 20

²² Qur'an 16 (An Nahl): 58-59

²³ Gustave Le Bond, *The Arab Civilization*, p. 488

women is with regard to acts of worship, righteous deed and divine rewards. Allah, the Supreme Law Giver says:

Whoever does righteousness, whether male or female, while he is a believer – We will surely cause him to live a good life, and We will surely give them their reward [in the Hereafter] according to the best of what they used to do.²⁴

The rights of women are distinct in that, they are not identical with the men in all ramifications. The reason for this is not far to seek; both men and women have different roles to play. While the men make efforts at feeding the family, the women complement that role through their duties at home. It is not out of place to claim in this circumstance that men are not like women. The emotional, psychological, physical make-up of the female gender is quite different from their male counterparts. Illustrating this point, Alaro²⁵ reflected thus;

{Imagine} you getting to a city and ask of your friend who they said has gone to his work in the maternity wing of a hospital where all staff are males. When you enquired about women, you were told they are all in various construction sites, because they are all Civil engineers. Male midwives and female civil engineers; that should make sense if we are really talking of gender equality

The honour done to women in Islam can be seen in the specific catalogue of rights it granted the women-folks. Women, through Islam, are now legal heirs in succession matters. They now have the freedom to keep the names of their father, as their surname, as against the Western practice prevalent in the Nigerian society, where married women are made to adopt their husband's name as their last name. In fact, her personality is fused with that of her husband in what is called doctrine of "unity of personality".²⁶ This is contrary to Islamic law rule pertaining to name adoption. Islam viewed woman as a person with distinct legal personality; hence, she retains her names before and after marriage, at the occurrence of

²⁴ Qur'an 16 (An Nahl) : 97

²⁵ Alaro, A.A, *Islam in the Eyes of the Non-Muslims and the Media: the Muslims' Concerns*, a paper delivered at the occasion of the Orientation programme organized by the Muslim Students Society of Nigeria, University of Ilorin branch in November, 2012.

²⁶ Alaro, A.A, *An Appraisal of Women's Proprietary Rights Under Islamic Law of Transactions (Fiqh al Mu'amalat)*, University of Maiduguri Law Journal, Vol. 13, 2015, p. 74

divorce and even in re-marriage that may follow. She can freely exercise her right to choose her marriage partner. In a like manner, her property rights are equally guaranteed as shall be elaborately discussed in the coming section.

5. 0 WOMEN'S RIGHTS UNDER ISLAMIC LAW IN FOCUS

In this section, we are primarily concerned about those rights that women are generally entitled to, other than women's property rights. The need to discuss these sets of rights separately has been necessitated by the issues disclosed in the title of this presentation. The general women's rights include the following:

5.1 Right to Education

This right is commonly shared between men and women under Islamic law. The significance of education in Islam is underscored by the fact that the first verses revealed in the Glorious Qur'an, came to emphasize the relevance of education in the life of Muslims. The Almighty says:

Read! In the Name of your Lord who has created (all that exists). He has created man from a clot (a piece of thick coagulated blood). Read! And your Lord is the Most Generous. Who has taught (the writing) by the pen. He has taught man that which he knew not.

The instruction to read clearly implies learning and seeking knowledge and this applies to all Muslims generally, with no specific gender in focus. There is however, a special consideration for the women in this regard. In the hadith narrated by Anas Ibn Malik, Allah's Messenger (PBUH) was reported to have said: "He who brought up two girls properly till they grew up, he and I would come (together) very closely on the Day of Judgment and he interlaced his fingers (for explaining the point of nearness between him and the person).²⁷

It is submitted that proper up-bringing, as mentioned in the Prophetic hadith, must necessarily imply giving the right education to Muslim girl-child. The emphasis on women's education is further strengthened by the encouragement given by the Prophet on the education of most vulnerable and marginalized people as is the case with the slave girl. He

²⁷ Reported by Muslim.

(PBUH) said: “He who has a slave-girl and teaches her good manners and improves her education and then manumits and marries her, will get a double reward.”²⁸

5.2 Right to marry and/or re-marry

In Islamic tradition, both men and women possess the right to marry. Marriage is enjoined on both parties as a legal institution sanctioned by textual authorities from the Qur’an and Sunnah. The dimension of right to marry being of particular importance here, is to explain the point that as with Muslim men, women are also free to marry whomever they choose among Muslim men. Marriages arranged or concluded without the consent of woman is void. Upon an occasion, a girl came to the Prophet complaining that her father had her married off against her wishes. The Prophet (PBUH) gave her the choice to either accept the marriage or invalidate it, due to the duress involved.²⁹ The concept of freedom to choose also applies in polygynous marriage. It is only that woman, can be made a second or a third wife, who is willing to be so.³⁰

Similarly, women have the right to remarry after the occurrence of marriage dissolution or at the death of husbands. The freedom to choose still applies to a case of re-marriage. It is in appreciation of this principle on freedom to choose that a previously married woman (*Thayyib*) is deemed to have more right to her person than her guardian.³¹

5.3 Right to Maintenance

It is the husband’s duty to fend for members of his family. Under Islamic law, the husband must fully cater for the financial and other material needs of his wife, even if the wife is very rich. However, this should be in accordance to the husband’s means. According to Muslim

²⁸ Narrated by Abu Musa Al-Ash’ari and reported by Bukhari.

²⁹ Reported by Abu Dawud.

³⁰ Maulana, W. K, *Woman between Islam and Western Society*, Goodword Books, Pvt. Ltd, New Delhi, 2007, p.189

³¹ Ibn Abbas (Allah be pleased with them) narrated Allah’s Messenger (may peace be upon him) as saying: “A woman who has been previously married (*Thayyib*) has more right to her person than her guardian. And a virgin should also be consulted, and her silence implies her consent.” Reported by Muslim.

jurists, it may as well be in accordance to the prevailing custom, as understood from the expression “*bil Ma’ruf*” in the verse of Surah al Baqarah,³² where Allah says:

Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing period. Upon the father is the mothers’ provision and their clothing according to what is acceptable (also according to custom).

There is no such arrangement as equal shouldering of financial responsibilities between the husband and wife in Islam.

5.4 Right to have Children

One of the goals of marriage is procreation. Through marriage, the human race increases in population. The right to have children emanates from the right to marry; hence, it will be harmful to the woman and on the part of the husband, to prevent the realization of this noble goal by practicing *coitus interruptus (al azl)* without the consent of the wife. This practice prevents the wife from fully enjoying her husband. Such is contrary to two legal injunctions. The first is the commandment: “Live with them in kindness”³³ and the second is “there should be no harm and no reciprocal harm.”³⁴

5.5 Right to Housing and Maintenance during ‘Iddah (Waiting period)

The law of Islam permits reconciliatory moves initiated by either the husband or wife. But in the event where all efforts proved abortive and everyone would have to try his or her luck elsewhere, then the law requires the husband to provide the housing and maintenance for his wife during the waiting period of three months. This type of waiting period is for a divorced woman.³⁵ If the divorced woman is pregnant, her waiting period is until she puts to bed. The instruction of Allah³⁶ guaranteeing this right is provided thus:

Lodge the divorced women during the prescribed period in the house wherein you dwell according to your means and harass them not that you may create hardship for them and thus force them to leave; and if they are pregnant, spend on them until they lay down their burden; then if they suckle for you, give them

³² Qur’an 2 (Al Baqarah): 233

³³ Qur’an 4 (An Nisaa): 19

³⁴ Reported by Ahmad and Ibn Majah

³⁵ There is another type of waiting period for a Muslim widow.

³⁶ Qur’an 65 (At Talaq): 6

their recompense and enjoin one another among you to do good; and if you disagree, another (woman) shall suckle for him.

5.6 Right to Custody of Children

Following the dissolution of marriage between husband and wife, the next phase usually is to determine the question of right to custody of children, provided the broken marriage had produced child(ren). The Sharia considers the wife or mother as the most deserving of custody right of the children and this is based on two conditions: that she is mentally and physically capable of taking care of the child and she is not of bad character. Even in cases where the mother is incapable of taking care of the child, the right of custody moves to other female relations of the child in preferential order.³⁷

5.7 Right to Repudiation of Marriage (Khul')

Khul' is a type of dissolution of marriage that is exclusive to the women. It is an annulment of marriage at the instance of the wife. To have right to repudiate a marriage, a woman must rely on one or more of the legitimate grounds for dissolution of marriage.³⁸ *Khul'* is enforced through the court and the wife must be ready to refund the dowry (*Mahr*) paid by the husband at the time of marriage, as a condition for her freedom.³⁹

6.0 WOMEN'S PROPERTY RIGHTS UNDER ISLAMIC LAW

There are two major types of property rights that women under Islamic law are entitled to. They include; right to own and right to work outside home. Each shall be examined under separate headings as follows:

³⁷ Priority is given to female relations of the child, before male relations. The female relations, in their preferential order, include; mother, mother's mother (grandmother), father's mother, mother's grandmother, father's grandmother, full sister, uterine sister, daughter of full sister, daughter of uterine sister, full maternal aunt, uterine maternal aunt and full paternal aunt. Assuming the above listed persons are not capable to take good care of the child, for one reason or the other, then the custody moves to the male relations of the child in the following order: father, nearest paternal grandfather, full brother, consanguine brother or any other paternal relatives. See Bello, I.A, *Dissolution of Marriage and Its Aftermath in Islamic Law*, Oace Publishing Co., 1998, p. 31

³⁸ Ibid, p. 20

³⁹ Qur'an 2 (Al Baqarah): 229

6.1 RIGHT TO OWN

Under Islamic law, the term ownership can be described as a relationship between a person and a property, established by the Sharia, through which he or she exercises exclusive control over the property, in default of any Sharia restraint.⁴⁰ According to the Maliki Jurisprudence of Islamic law, ownership must confer on the owner, the right to dispose of the property in question with or without consideration.⁴¹ There may, however, be some legally sanctioned restraints that can stand in the way of exercising full right of ownership over one's property such as where another party has a superior and valid claim over the property or the property is encumbered in pursuance of an existing interest, in the form of usufruct (*manfa'at*) or utility (*intifa'*).

For a better appreciation of the Islamic law conception of ownership and more importantly within the context of this paper, it will be a good adventure to take a quick look at the classifications of ownership. The Muslim jurists have classified ownership interest into four and Ibn Rajab, a renowned jurist of the Hanbali jurisprudence of Islamic law, made a fantastic elaboration on this classification to include:⁴²

- i. Ownership of the corpus and the usufruct of an entity (*milk al raqabah wal manfa'at*)
- ii. Ownership of the corpus alone (*milk al raqabah*)
- iii. Ownership of the usufruct alone (*milk al manfa'at*)
- iv. Ownership of mere utility (*milk al intifaa'*)

It is only in the first classification above that one becomes entitled as an owner to a complete title of the property. In the other three, ownership right is incomplete.⁴³ In this connection therefore, our reference to women's right to own property under Islamic law, is strictly construed in the sense of the first classification. The legal authority establishing the

⁴⁰ Alaro, A.A, *An Appraisal of Women's Proprietary Rights Under Islamic Law of Transactions (Fiqh al Mu'amalat)*, University of Maiduguri Law Journal, Vol. 13, 2015, p. 71

⁴¹ Ibid and Al Qarafi, S., *Al Furuuq*, Beirut, Alam Kutub, Vol. 3, p. 209

⁴² Ibn Rajab, *Al Qawaaid*, Beirut, Darul Fikr, p. 195

⁴³ Az Zakarshi, M.B, *Al Manthur fil Qawaaid*, Kuwait, Ministry of Endowment, Vol. 3, p.198-238.

right of ownership or property right of women is contained in the Glorious Qur'an. Allah, the Almighty, says:⁴⁴

For the men there is a share of what they have earned and for the women there is a share of what they have earned.

Finally, it is worth mentioning at this juncture that the revelation of the above verse predates the advocacy on women's property rights in the West. By historical record, Islam had granted women's right to own property long ago before the West enacted the Married Women's Property Act in 1882.⁴⁵ The following rights are subsumed under the right to own in Islamic law.

6.1.1 Right to Original Acquisition

The right to original acquisition of property is achieved by being the first to take possession. It is similar to ownership by original occupation under the Nigerian land law and first settlement under the customary law. In the Sharia parlance, the concept is known as *Ihraz*. The condition applicable to original acquisition is simply that it must not be property of anyone. In the Prophetic tradition, it is documented that whoever cultivates land which is not the property of anyone has a better claim over it.⁴⁶

6.1.2 Right to own through Sale or Gift

The right to own through sale or gift is an expression of transfer of ownership. As discussed earlier, part of the demands of ownership is the right it confers on the owner to dispose of his property with consideration (i.e sale) or without consideration (i.e gift). If ownership can be transferred to another, it follows too that it can as well be acquired through the same process. Women's right to engage in contractual dealings, as in the case of sale or gift, is guaranteed provided their capacity to contract is not deficient.

6.1.3 Right to Dowry

⁴⁴ Qur'an 4 (An Nisaa): 32

⁴⁵ See Married Women's Property Act 1882, United Kingdom

⁴⁶ Imam Malik, *Al Muwata*, Diwan Press, England, 1982, p. 346

Payment of dowry is an essential condition for the validity of marriage in Islamic law. It is obligatory on the husband to pay dowry to his wife, except if she waives her right. Since ownership is the basis of any right to waive, it then becomes obvious that right to dowry establishes property rights for the Muslim women. There is no limited value for a dowry. The Qur'an, in one verse, illustrates the size of a dowry with *Qintar* (i.e a heap of gold); "And if you wish to replace a wife by another and you have given one of them a heap of gold (as Dowry) then do not take from it anything; would you take it (what you promised) by slandering and manifest sin?"⁴⁷

6.1.4 Right to Inheritance

As against the offensive practice in some African customary law where widows are inherited by male relatives of their deceased husband, Islamic law not only recognized the right of woman to remarry and in the process freely choose her partner, but further makes her a legal heir in the distribution of estates of her deceased relatives. The Qur'an states:

*Of what the parents and near relatives leave (heritage), there is a portion for the men. And of what the parents and near relatives leave (heritage), there is a portion for the women. Be it little or much, an obligatory share.*⁴⁸

Accordingly, there are about eleven standard female heirs with their prescribed shares of varying degrees. They include; daughter, son's daughter and further grand-daughters by male lineage, mother, maternal grandmother and greater grandmothers by female lineage, paternal grandmother and greater grandmothers by female lineage, paternal great grandmother and greater grandmothers by female lineage, full sister, paternal sister, maternal sister, wife and female emancipator (of a slave).⁴⁹ Inheritance, therefore, creates a legitimate means through which women can also claim property or wealth ownership.

6.1.5 Right to Alimony

⁴⁷ Qur'an 4 (An Nisaa'): 20

⁴⁸ Qur'an 4 (An Nisaa'): 7

⁴⁹ Al Jibaly, M., *The Inevitable Journey: Inheritance Regulations and Exhortations*, Al Kitaab & as Sunnah Publishing, Texas, 2005, 2nd edition, p. 34

A woman whose marriage has not yet been consummated and her dowry is also not yet specified, before the occurrence of divorce is entitled to alimony. It is only in this case that it is mandatory. In other divorce cases, it is recommended.⁵⁰

6.2 RIGHT TO WORK OUTSIDE HOME

The right to work outside home for the women is often a matter of serious debate among Muslim scholars. In view of this, it may be difficult to hold that it is permissible in all cases. More so, the determining factor in deciding right of woman to work outside home, is her status, as a girl-child, married woman and widow. These three separate statuses may present different rules pertaining to women. Another factor is in the type of work; what type of work are we actually discussing?

The first thing to note is that any job or work that tends to bring harm unto woman such as any strenuous job that almost changed her gender from being a woman to be being a man, or where the job affects her husband companionship to an extent that her job is of more priority than her husband or the children no longer enjoy motherly care and proper upbringing expected of her, as the home now suffers on account of her job etc., is discouraged and harmful for the Muslim women.⁵¹

The above notwithstanding, Islamic law recognizes the right to work outside home for the Muslim women subject to the following conditions:⁵²

- i. The work in itself should be legally sanctioned and permissible: In other words, it must not be an unlawful work or job that leads to the unlawful (haram), such as working in as a bar attendant or working at a far distance without a *Mahram*.
- ii. To always imbibe the Islamic ethics and morals in her mode of dressing, walking and actions. On these three, Allah the Almighty says: “They should not display their ornaments except what is visible (hands, face and feet)...and let them not

⁵⁰ Qur’an 33 (Al Ahzab): 49

⁵¹ Qardawiy, Y., *Markaz al Mar’ah fi Hayatil Islamiyyah*, Maktabah Wahbah, 1st edition, 1996, p. 157-158

⁵² Ibid, 162-163

- strike their feet so that what they hide of their ornaments may be known”⁵³ and “do not speak to men appealingly, lest he in whose heart is disease should covet, but speak with appropriate speech.”⁵⁴
- iii. Her job must not be at the expense of her primary duties towards her immediate family (her husband and children).
 - iv. The working environment must be conducive for the peculiarities of the female gender and Muslim women in particular.
 - v. It is also recommended that her job should be one that suits her gender, such as working as a teacher, nurse or medical doctor for female patients, as the best is for her to work with people of her gender.

Factors that may require a woman to work include:⁵⁵

- I. Being a widow who has to fend for herself.
- II. She is of marriageable age, yet she remains unmarried.
- III. She has no family and no certain source of income.
- IV. She is capable of earning a livelihood to protect her against begging.
- V. From her own will, she chooses to support her immediate family or her children’s education or for the purpose of supporting her younger ones or her aged father as can be seen in the story of Prophet Shu’ayb (upon him be Allah’s peace and blessings).⁵⁶

The earnings from her work, either as a girl child, married woman or widow is her legitimate property and she exercises ownership right over it. This is line with the legal authority earlier cited, “For the men there is a share of what they have earned and for the women there is a share of what they have earned.”⁵⁷

⁵³ Qur’an 24 (An Nur): 31

⁵⁴ Qur’an 33 (Al Ahzab): 32

⁵⁵ Ibid, 160-161

⁵⁶ Qur’an 23 (Al Qasas): 23

⁵⁷ Qur’an 4 (An Nisaa): 32

7.0 CONCLUSION

This paper discussed two sets of rights pertaining to women under Islamic law in Nigeria, namely; women's rights generally and women's property rights. Considering the relevance of Islamic law to the Nigerian society, reference was made to the fact that Islamic law that operates in Nigeria goes beyond the boundary of Islamic personal law. It was also firmly established that issues of rights and freedoms under Islamic law must be discussed within the context of Sharia or Islamic law, as any attempt to discuss them from the Western perspective may lead to westernization of Sharia or Islamic concepts. In order to appreciate the status of women in Islam, the status of women in selected civilizations was briefly examined.

It is my hope that this brief exposition on the Islamic law perspective on women's rights will be a unique addition in the series of our collective human rights education and/or awareness, especially as it relates to rights of women under Islamic law.

Thank you for your rapt attention.