journals.unizik.edu.ng/index-php/jcpl ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

Interrogating the Condition Precedent to the Exercise of Women's Right to Work under Shari'ah in the Face of the Contemporary Challenges

Kamaldeen Olaita Salman*

Abstract

The popular notion and misconception is that women are disallowed to work under Shari'ah. The notion continues to infatuate the minds of many in view of the fragile nature of women and the protection offered them under Shari'ah. However, in the recent time, there exist many circumstances necessitating women to work like their male counterparts even outside their households. The cases of single motherhood syndromes and harsh economic condition have changed the narrative in most Muslim communities thereby necessitating women to fend for themselves and their dependents. In the face of the contemporary challenges in Islamic world, there is need to therefore interrogate the condition precedent for women to work under Shari'ah jurisprudence. In doing so, the study adopts doctrinal method of legal research. The study finds that freedom is very germane to ability to work; that right to work is subject to the overall commandment of Allah under Shari'ah; that the expected role of women in society ordinarily does not grant them freedom to work outside their home because their primary duty is to take care of their husbands and children; and that the freedom granted women to work outside their households is conditional with genuine case of Dharuurah (necessity). The study concludes that in the face of the contemporary challenges bedeviling some women, they can exercise right to work subject to the conditions stipulated under Shari'ah.

Keywords:*Shari'ah, Haqq, Hurriyah, Amal, Dharuurah*

1. Introduction

Shari'ah gives rights and privileges to the female gender which she has never enjoyed under any other religious or legal system.[1] Within the context of Shari'ah, the rights and duties of a man are equal to the rights and duties of a woman but not necessarily same or identical. Both genders are in two branches, i.e., two children from same father "Ādam" and same mother "Ḥawwa." With their different nature, the Almighty Allah places love, affection, etc., between them in order to have this world constructed the way we see it now.[2] The Almighty Allah had also branded man with power, strength and endurance in order to make them capable in discharging their responsibilities as maintainers and protectors of the entire family.[3] On the other hand, the Almighty Allah had granted woman with ability to conceive and reproduce the progeny of mankind and being possessed with the necessary apparatus to bear children, deliver them, nurse them and care for them.[4]

Consequently, it is natural for a man to seek and be prepared to work outdoors in order to discharge his duty of maintenance as required by the Shari'ah. Allah said: "*Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the*

* **Kamaldeen Olaita Salman** LL.M, (Unilorin, Nigeria); LL.B (Unilorin, Nigeria); Lecturer, Department of Islamic Law, College of Law, Kwara State University (KWASU), Malete, Nigeria. +2348034673505.Email: kamaldeen.salman@kwasu.edu.ng, konibajelaw@gmail.com.

[1] JB Badamasiuy, *Status and Role of Women under the Shari'ah* (Zakara Publishing Co. Kaduna, 1998) P49.

[2] Explanation of Al-Qur'ān 49:13

[3] A J Aliand A Azim, 'Work Ethic in the USA and Canada (1995) (14) (6), *Journal of Management Development*, 26-34.

[4] Ibid

other, and because they support them from their means".[5] It is natural for women to stay indoors and take care of the house needs in general, Allah states: "*And stay quietly in your houses and make not a dazzling display, like that of the former times of ignorance*."[6]

Under Shari'ah, the primary duty of a woman is to stay and discharge her family and religious responsibilities indoors, she is even encouraged to pray in her room, for which she gets greater reward than to go to the mosque unlike in the case of her male counterpart who is obliged to pray at mosque five times a day.[7] According to Sheikh Abdul Aziz bin Baaz, there is no sin in a woman praying in the mosque but it is better for her to pray in her room. This ruling is based on the Hadith in which the Prophet (S.A.W) was reported to have said: "*Do not prevent the female slaves of Allah from the mosques of Allah but their houses are better for them*".[8]

From the foregoing, the right to work generally is subject to different circumstances because Shari'ah assigns different roles by virtue of the different physiological nature of each gender. In western society, for a woman to be successful in her career, she must partially forget about marriage and her feminism and behave like a man. According to an American writer, Tarri Aptel on successful women in America: *"Some widows said that their career position had been an important factor in the breakdown of their marriages*".[9]

Therefore, the rights of women in this modern time were not granted voluntarily or out of kindness to the women gender, she reached her current position only by force, not by natural process, mutual consent or divine teaching. The pressure of economic needs forced her to get out of her home to work, to learn, to struggle for her livelihood, to appear as equal to the male gender, and to run her race in the course of life side by side with him. In the recent time, economic melt-down has dawned on many households thereby threatening the natural cause of things whereby women now prefer to go out to work to support their husbands' insufficient earnings. Single motherhood syndromes which came to the fore as a result of the incessant divorces amongst Muslim couples in the recent time is changing the nomenclature for women coupled with irresponsibility of most divorced husbands to maintain their children after dissolution of marriages. These menaces have indeed changed the mentality of Muslim women to now wanting to enforce their right to work under Shari'ah. In the light of the foregoing, it thus becomes imperative to legally a7nd jurisprudentially interrogate the right of women to work under Shari'ah taking cognizance of the condition precedent.

2. Understanding the Concept of *Ḥaqq* (Right) under Shari'ah

Haqq is an Arabic word which means right, it may also mean confirmation or compulsion. Technically, based on the back ground of its literal meaning, the jurist shave considered it to be anything that is confirmed based on the Shari'ah.[10] According to legal definition, the term right (*ḥaqq*) is a legal bond by which the law authorizes a person to possess something such as assets,

[5] Qur'an chapter 4 verse 34 Ali, A. Y. The Holy Qur'an - English translation of the meaning, Holy Quran Islamic foundation, London (1975), p 190

[6]Qur'an chapter 33 verse 33

[7]AA Saleem, 'Important Lessons for Muslim Women, (Darussalam, Riyadh, 2005) p. 185.

[8]AA Ibn Baaz,Fatawa Essential Ruling for Every Muslim Woman, translated by Ibn Maqbool Hussain, International Islamic Publishing House, Riyadh, (2005), p.128.

[9]T Apter, 'Working Women Don't Have Wives: Professional Success in the 1990's, pp. 13-15

[10]A Zaidan, Al Muffassal Fi ahkam al-mar'ahwa bait al Muslim fi al shariatu –al Islamiyyah, Al-Resalah Publishers, Beirut, (2000, 3rd Ed), vol 4, p.147

cash, property, etc.[11] According to Zamakhshary, the word *Haqq* (right, responsibility, truth, etc.) means an established matter that cannot be denied.[12] Many modern western writers on legal rights started with Human Rights thereby presupposing that Allah has no right on us. As far as legally and jurisprudentially is concerned, the right of Allah shall prevail over human rights since the purpose of creating all beings is to glorify and worship Allah who created everything in this world. Allah emphatically said in one of the verses of the Holy Qur'an thus:

> "*The seven heavens and earth, and all beings therein, declare His Majesty: there is not a thing but celebrates it praise; and yet understand not how they declare glory: Verily he is oft-forbear most forgiving!"*[13]He also said in another verse as follows: "*I have only created Jinn's and Mankind that they may serve me alone"*.[14]

Therefore, we are duty bound to worship Him as the first duty to be discharged. In corroboration of these verses, the Prophet (S.A.W) asked Mu'azu Ibn Jabal thus:

> *Do you knowAllah's right on his servants and servants' right on Him? He answered: I said Allah who is free from all imperfections, Exalted and His messenger know best. The Prophet (S.A.W) said, Allah's right on His servants is that, they should worship Him without associating anything with Him, and then the right of His servants on Him is that He will not punish those who do not ascribe partner to Him.*[15]

The term '*Ibadah* in this hadith means worship and under Shari'ah it connotes a much deeper meaning and covers a far wider field. It means complete submission to Allah in all aspects of life whether devotional or worldly. It includes the fundamental (five pillars) of Islam and all those laws which Allah has given to regulate the individual and collective life of Muslims. Therefore, in Islam, everything falls within the orbit of religion.

3. Shari'ah Perspective of *Hurriyah* (Freedom) and *Ā*mal (Work or Employment)

The term *Hurriyah* is an Arabic word which means the state of being free. It may also be defined as liberty embodied in the exercise of one's rights, which is known as freedom of choice.[16] Islam has given men and women the freedom that enables them to develop a balanced and upright personality that allows them to do anything that is good and beneficial, and guarantees them rights as prescribed in the Shari'ah. Hence, freedom in Shari'ah covers all aspects of life be it religious, economic, political, social, etc., subject to the condition that this is guided by human reason and applied for their own benefit in particular and for the benefit of the society in general.[17] Freedom in its Islamic perspective does not mean that one can attack or challenge the belief and basic teachings of the Shari'ah. The notion in which Islam is established must adhere to the Islamic belief (*aqeedah*) and other socio-economic system which is the basis on which the

[11]AA Al-Khyayyat, 'Human Right and Racial Discrimination, as translated by KhalifaEzzat and Heather Show, 2002 p. 4, cited in Abubakar, M. S. Concept of General Right in Islam, Journal of Islamic and Comparative Law, Center for Islamic Legal Studies, Institute of Administration A.B.U. Zaria, Vol. 25, 2005, p. 58

[12]Abubakar, M.S. Concept of General Right in Islam, Ibid, p. 57

[13] Qur'an chapter 17 verse 44

[14]Qur'an chapter 51 verse 56 p. 1429

[15] Narrated by Muslim in Kitabu Al-Imaan, hadith No. 48

[16]*Black's Law dictionary*, p. 688- 689

[17]Muhammad, A.A. The Ideal Muslim Society as Defined in the Qur'an and Sunnah, Translated by Nasiruddin Al-Khattab, International Islamic Publishing House, Riyadh, (2007) pp. 111

society built and developed. This *aqeedah* is based on belief in Allah and submission to Him alone, and to follow the provisions of the Qur'ān and authentic Sunnah.[18]

The term Ā̄mal, is an Arabic word which means physical and mental exertion; to attain an end especially as controlled by and for the benefit of an employer[19].The term employment means relationship between master and servant; it is a work for which one has been hired and being paid by an employer[20]. It can also be defined as an occupation, trade or profession carried on for the purpose of receiving compensation. Compensation may be informing of wages, salaries, commission, fees, or profit. Most compensation is in the form of money, but some may be in form of goods or services. For any work to be considered employment, it must before the purpose of receiving compensation[21]The term work, employment, labour, hire and services are synonymous and considered to be the same for the sake of this study because the end result is to be rewarded in cash or in-kind.[22]

It is therefore important to note that freedom and ability to work are inseparable. For one to be able to engage in with a work or employment, the person must enjoy freedom to do so. This is because, where one by virtue of his circumstance is restrained to a particular place, such person might not be able to engage with a work outside and beyond that place. Thus, there is great deal of relationship between freedom and exercise of right to work.

3.1 General Overview of Right to Work

The individual right to work depends and connects to one's freedom of choice to do the work or not to do it. Of course, work is an individual right provided and encouraged by the Shari'ah and he cannot be deprived from working as he cannot be forced to do it. This is the extent of individual rights. In other words, he is at liberty to do a particular work or not to do it. The following authorities will attest to the above stated position. The Almighty Allah said in the holy Qur'an:

> *The Lord doth know that thou stand forth (to prayer) nigh two-third of the night, or half of the night, or a third of the night, and so doth a party of those with thee. But Allah doth appoint night and day in due measure He knoweth that ye are unable to keep count thereof. So He has turned to you (in mercy): read ye, therefore, of the Qur'an as much as may be easy for you. He knoweth that there may be (some) among you with ill-health; others travelling through the land, seeking ofAllah's bounty; yet others fighting in Allah's cause, read ye, therefore, as much of the Qur'an as may be easy (for you); and establish regular prayer and give regular charity; and loan to Allah a beautiful loan. And whatever good ye send forth for your souls ye shall find it in Allah's presence, yea, better and greater, in Reward and seek ye the Grace of Allah: for Allah is Oft-Forgiving, Most Merciful.*[23]

[18]Muhammad, A.A. The Ideal Muslim Society 112
[19]Black's Law dictionary, Op.cit p.1685.
[20]Ibid.
[21]The World Book Encyclopedia, Field Enterprises Education Corporation, United States of America, (1977) Vol. 6, p. 212.
[22]Y Y Bambale, *Acquisition and Transfer of Property in Islamic Law,* (Lagos: Malt house Press Limited, 2007) p17.
[23] Qur'an chapter 73 verse 1 – 4 Ali, A.Y.Op.cit p. 1633.

From these verses, it can be deduced that *Qiyām al-Layl* (night prayer) is only obligatory upon the Prophet (S.A.W) at every night, while on his Companions it is only supererogatory (optional) or *nāfil*, because some of them are not in good condition (they are inill-health), some travelling through the land seeking for Allah's bounty or fighting in Allah's cause in their days' time.[24]

In another verse, Allah said: "*And (have we not) created you in pairs, and made your sleep for rest, and made the night as a covering, and made the day as a means of subsistence."*[25]

In this verse, the day time is specified for struggle in order to earn a living. The best way for this is to use one's hands in performing a particular work or occupation. In a Prophetic tradition,

> *Prophet (S.A.W) said: "the best food one can take is the one he got through the work or service he rendered with his hands." Verily, the Prophet Daud (A.S) has eaten from the services he rendered with his hands.*[26]

From this Hadith, it can be understood that rendering services with one's hands is among the best way to earn a living under the Shari'ah. It also serves as an encouragement to the laborers as well as discouraging the beggars. Under the general rule, an individual has the right to freedom of work, if he likes he is at liberty to demonstrate it, and if he dislikes it he cannot be compelled to work by any person. But under Islamic Law, this right has certain limitations to the extent that an individual can be deprived from it or be compelled to do it under the following circumstances:

He can be deprived of his right to freedom of work where a third party is adversely affected by his activities in a situation whereby people around the environment are exposed to health and environmental hazards. This is by virtue of the Hadith which says "Do not harm and do not be harmed."[27]

Conversely, an individual can be compelled to work if it can assist him discharge his obligation of maintaining his defendants, such as his household, parents, etc.[28] The wisdom behind this compulsion is to pave way for a person to take care of his basic needs throughout his life. It can also be possible that as a Muslim, one works not only for worldly life but for the sake of reward from Allah, for instance a teacher that teaches religious affairs, or struggle in the cause of Allah, etc. All these examples of work are not meant for a fee only but for reward from Allah (SWT).[29] If an individual does not fall under any of the above mentioned conditions and the nature of work satisfies the requirements of the Shari'ah, one is at liberty to work or not to do it. What is required for a work under the Shari'ah is that it must be within the ambit of permissible supererogatory or obligatory legal rulings when put on the scale of Shari'ah. It does not matter whether the nature of the work is artisan, handwork, manual/laborer or machinery/mechanized be it farming, manufacturing or trading, etc.[30] Therefore, it makes no sense where an individual cannot demonstrate his freedom of choice to do a particular work or occupation or not to do it unless he/she takes permission or command from another party be it from State authorities or from an individual. An individual can be a man or woman, the question to be asked is "does that

[24]I Raazy, 'Tafsir al Qur'an, Vol. 30, p. 187, cited in Zaidan, A. *Al Muffassal Fi ahkam al-mar'ahwa bait al Muslim fi al shariatu –al Islamiyyah*' vol. 4, p. 261
[25]AY Ali, The Holy Qur'an-English Translation, p. 307
[26]IH Al-Asqalani. Sharh al Sahih al Bukhari, Vol. 4, p 303
[27] Ibid
[28] Al-Qur'an, Ali,
[29]A Zaidan, Al Muffassal Fi ahkam al-mar'ahwa bait al Muslim fi al shariatu –al Islamiyyah, Op.cit., p. 264
[30]A Zaidan, Al Muffassal Fi ahkam al-mar'ahwa bait al Muslim fi al shariatu –al Islamiyyah, Op.cit., p. 264

include the female gender or is it applicable only to the male gender?" Of course, a woman is not the same as man in all respects, there are some differences between them in the following respects:

A. Physical or Biological Nature

The skin of a woman is softer and smoother than that of man generally. The body hair of a woman is lesser, shorter and more pleasing than that of a man especially that of the face. This may be due to physician's perception that is referred as to as *Ghadad,* the gene that is special to women which assist in physical and emotional development which a man's body lacks.[31] There is wisdom in all the above mentioned facts as provided in the Holy Qur'ān where Allah said

> *And among His signs is this, He created for you mates from among yourselves, that ye may dwell in tranquility with them, and he has put love and mercy between your (hearts): verily in that are signs for those who reflect.*[32]

B. Psychology

A woman is more passionate than her male counterpart in relation with children, parents and siblings. Women are also introvert, generous, magnanimous, forgetful and forgiving.[33] The wisdom behind that is very clear considering her nature in life. Her relationship with husband is characterized by subordination and obedience and her relationship with children is that of love, affection and passion.

C. Spirituality

The code of conduct in prayer applicable to a woman equally applies to a man except in dress code. Surely, the whole of her body except face and palm is nudity.[34] Another difference is in congregational prayer in which if imam (leader) omits or commits, adds or reduces some steps in prayer, women are only permitted to clap their hands whereas a man is allowed to say it openly as provided in a Prophetic tradition which says: "Glorification is for men and clapping for women."[35] In terms of fasting, a man and a woman are on equal footing except that a woman has more circumstances in which she is allowed not to fast when observing her monthly period in the month of Ramadan. The same applies to post-natal bleeding. Though she is not required to expiate the lost prayers, but she is expected to expiate fasts. As narrated by Aisha (RA) in a tradition reported by Bukhari, she said: "We are commanded to expiate fasts but permitted not to expiate prayers."[36]

Based on the nature of the female gender, Shari'ah has considered what suits her nature, gives her full security and complete protection against disgraceful circumstances and uncertain channels of life. In view of this, Islam supports femininity for its relative weakness, placing it in the hands of men bearing the cost of living and the provision of her needs. Another protection is the protection of her morals and decency. Islam guards her reputation and dignity and defends her chastity against evil thoughts and tongues.[37]

---

[31]WS Gawujy'Al-Mar'ah Al-MuslimahwaLaisa Al-zakaruKal-untha, Dar al-Qalam, Dimashq' (1999) 8th Ed., p. 49
[32]Quran chapter 30 verse 21.
[33]The World Book Encyclopedia, *Field Enterprises Education Corporation*, United States of America, (1977) Vol. 6, p. 212.
[34]WS Gawujy, Al-Mar'ah Al-MuslimahwaLaisa Al-zakaruKal-untha, Op.cit., p.71
[35] Reported by Bukhari, cited in W S Gawuje, Al-Mar'ah Al-MuslimahwaLaisa Al-zakaruKal-untha, p. 72
[36] Gawuje, p73
[37]Y Qardawiy, Y. The Statute of Women in Islam, Op.cit., p. 24

In order to achieve these objectives, Shari'ah obliges the believing women to lower their gaze and preserve purity and chastity, decency, maintain staidness in gait and speech, avoid mingling and seclusion with men who are neither their husband nor *Maharam*. With these rules and directions, Shari'ah provides safety for the woman and her femininity from an uncertain channel of life.[38] The difference is clear, which can easily be noted, that is, a woman is different from a man but they complement each other. This emphasis was made by the provisions of the Holy Qur'ān where Allah says: "*And no wise is the male like the female*."[39]

With the above identified physical, psychological and many other differences between a man and a woman, it has been natural that the physical and psychological construction of women carries with it an element that enables her to attract and be attracted by the male gender. Allah's wisdom has also equipped her with an instinctive desire and a strong natural passion. However, Islam does not recognize any system that clashes with this instinctive nature or renders it ineffective, such as the system of monasticism, which means asceticism as a form of religious life; usually conducted in a community under a common rule and characterized by celibacy and poverty. These differences bring about different roles between men and women gender. Allah who created death and life, knows best which of you is best in discharging his responsibilities. Allah said: "It is He who created death and life, that He may test which of you is best in deed; and He is Exalted in Might, Oft-Forgiving."[40]

4. Expected Role of Women in Society under Shari'ah

Primarily, a Muslim woman is obliged to take care of the household and discharge her obligations in respect of her husband's rights. First of all, she should obey him as long as the instruction given is lawful which does not lead to disobeying Allah. Because a Muslim is not allowed to obey any creation to the disobedience of Allah, in a Prophetic tradition, the Prophet (S.A.W) said: "*Respect and obedience are rights as long as command does not lead to disobedience of Allah, if it leads to the disobedience of Allah's instructions, it will not be followed at all."*[41] A Muslim husband is entitled to be obeyed by his wife. In that, Allah says: "*But if they return to your obedience, seek not against them means (of annoyance): for Allah is Most High Great (above you all)."*[42] In a Hadith, the messenger of Allah (S.A.W) said: "*If I were to command anyone to prostrate to anyone, I would have commanded the woman to prostrate to her Husband*."[43]

She must preserve her husband's honor and her own and take care of his own property in his absence and all his domestic affairs. In this regard, she should not attend to any male stranger in her matrimonial home or accept gifts from him without the consent of her husband.[44] The Prophet (S.A.W) said: "*A woman is guardian of her husband's house and is responsible for it*."[45]

---

[38]Ibid

[39] Qur'an chapter 3 verse 36

[40] Qur'an chapter 67 verse 2

[41] Al-Bukhari, Quoted in Ibn Hazm, Al-MuhallaBil Athar, Dar al–Fikr, Beirut, Vol.5, Kitab al-Jihad, Mas'ala no.922, p. 342

[42]Ibid

[43] Recorded by Al-Tirmizee, in YA Ahmad. 'Encyclopedia of Islamic Jurisprudence Concerning Muslim Women' vol. 3, p. 268

[44]JB Badamasiy, Status and Role of Women under the Shari'ah, Op.cit., p. 42–43

[45]Sahih al-Bukhari and Muslim, cited in YA Ahmad, Encyclopedia of Islamic Jurisprudence Concerning Muslim Women, Op.cit., p. 269

As regard attending to strangers to the house, the Prophet (S.A.W) said: "*Your right upon them (your wives) is that they should not allow to sit on your beds those you dislike nor let into your house those you do not like*."[46]

Moreover, a woman should allow her husband sexual intercourse whenever he desires except under reasonable excuse which must be acknowledged by him. The Shari'ah seriously warns against such refusal where the Prophet (S.A.W) said: "*When a woman who has been called to her husband's bed refuses and he spends the night angry, the angels curse her until the morning."*[47]

Likewise, she should stay in her house and not leave the house without the permission of her husband except where necessity warrants. If she goes out under permission or necessity, she should lower her gaze and voice, she should guard her tongue from immoral utterances. In respect of her staying at home, Allah says: "*And stay quietly in your houses and make not a dazzling display like that of former times of ignorance*."[48]

With regard to guarding the tongue, Allah states:

> *O Consorts of the Prophet! Ye are not like any of the (other) women: if ye do fear (Allah) be not too complacent of speech, lest one in whose heart is a disease should be moved with desire: but speak ye a speech (that is) just*.[49]

Another obligation is the duty to the children, it is important for a woman to raise her child herself without leaving it under the care of servants. She is also duty bound to take proper care of her child and upbringing in the Islamic way and manner, i.e., by giving him Islamic knowledge and training. If this role is well discharged, she raises her child as a good. While the woman discharges these duties, the father is responsible for providing financial aspect for it. This is by virtue of the Prophetic tradition which says:

> *Behold each one of you is shepherd and you will be asked about your flocks a man is a shepherd to the members of his household and shall be asked about the flocks; a woman is a shepherd over the member of the household of her husband and his children and she will be asked about them …*[50]

The love and affection between husband and wife were somewhat extinguished. The woman was no longer the sought, wanted, admired and loved by man. After he got used to seeing her in the factory next to him doing the same thing he does, women came under many influences and pressures that changed their mentality and thinking pattern on which moral values and virtues were disestablished.[51] Work in factories has stripped the woman as we pointed out earlier, of all these responsibilities which changed the looks and realities of the inner home. Children as in this regard, the First lady of South Africa in her address to a women conference in Johannesburg said:

---

[46]Sunan At-Tirmizee, hadith no. 1163, vol. 3, p. 467
[47]Sahih Muslim, vol. 2, chapter 1058, hadith No. 3368, cited in Badamasiuy, J.B. op. cit., p.
[48]Qur'an chapter 33 verse 33 Ali, A.Y. Op.cit. p 1115
[49]Ibid
[50]Mishkat al Masabih, Op.cit, vol 2, p. 581, cited in Badamasiyu, J.B. Op.cit p. 41.
[51] M Al-Gajeny, M. A Look at Women Purdah, Beirut, (1346 A. H.) pp. 94 – 95, Quoted in Al-Sheha, A. Women in the Shade of Islam, op. cit., p.91

> *The main task and responsibility for a woman must be to care for her husband and attend to the needs of her children. This is our duty in the society. It is a duty in which we should take special pride as it produces successful men and sound generations.*[52]

Islam has allocated the management of the house as primary duty or role to women in which she takes care of the household, raises and educates her children and caters for the needs of her husband. Regardless of her own financial position, her maintenance is the responsibility of her husband if married or her father if not, without any obligation on her to apply for any job outside. Men are the protectors and maintainers of women because Allah has given the one more (strength) then the other and because they support them from their means … [53]

In a nutshell, a woman's primary place of work under the general rule is the home except where *Dharurah* (necessity) dictates otherwise. According to the Sheikh al-Islam Ibn Taimiyya, the nature of men is to struggle outside while women are to stay indoors by her nature except where necessity warrants otherwise.[54]

5. Shari'ah Perspective of Women's Right to Work

Right of women to work under Shari'ah is heavily guided. This is because women are forbidden to travel alone without her husband or somebody within the prohibited degree (*non-Mahram*), they were also equally required to remain indoor without coming out except where there is a need, and on this point, Allah says:" *And stay quietly in your houses and make not a dazzling display like that of the time of ignorance."*[55]

Therefore, the struggle for survival does not fall within women's responsibilities and hence, not a necessity to them because they are always under the care of men such as her father, husband and sons or any other close relations. Therefore, the wisdom behind the permissibility to work is connected with means of livelihood, concerning food, drink, clothing, shelter, etc. He may just work to be more affluent or buoyant and if he likes, one may not work because he can afford all his basic needs. But on the other hand, a woman is guaranteed right to maintenance, because her maintenance is on her husband if married even if she is rich; if not married and she is poor, here her maintenance is upon her father; where she is an orphan, her maintenance lies on whoever is responsible for her maintenance such as son, brother, the Islamic state, etc.; in the absence of all such protectors, the issue of necessity may allow her to work.[56]

It is observed that by virtue of the forgoing discussion, the basic position of a woman working outside her home is that of prohibition. This is because the very work she does outside is in conflict with her matrimonial duties which are more binding on her. One may opine that unmarried women do not owe anybody any responsibility; hence, the original position of prohibition should be relaxed on her. Or if she is married with children but intends to work outside and engages the services of a house maid to discharge all the responsibilities meant for her, which includes breast feeding and training of children, does that change the legal position of her work? This opinion is not tenable, in that, the law considers the majority rather than

[52]AW Al-Sheikh, 'Women Work on the Scale, in Al-Sheha A. Woman in the Shade of Islam' p. 93 – 94.
[53]Quran Chapter 4 verse 34 Ali, A.Y. Op.cit p 190
[54]AA Almisriy, JamiuMasa'ilNisa'a li-Imam al Asri al-Albany, (2007), p. 187.
[55]Qur'an chapter 33 verse 33 Ali, A.Y. Op.cit., p 1115
[56]A Zaidan, Al Muffassal Fi ahkam al-mar'ahwa bait al Muslim fi al shariatu –al Islamiyyah, Op.cit p. 265

minority. The position remains the same so long as there is no compelling and pressing need on her to work outside the home. Engaging the services of a house maid will only amount to abdication of responsibilities which is not allowed by the Shari'ah. The reason being that training, compassion and affection cannot be achieved through a house maid. This is the general rule applicable to all categories of women employed and the employer as well.[57]

However, for unmarried women, the legal position remains intact because her maintenance is still on her father or legal guardian where she is poor or is under any other person who is saddled with her maintenance. Therefore, she needs no work. This gives her honor, peace, security and protection. The Shari'ah prefers her remaining indoors to her working.[58] According to Jamal A. Badawi,[59] there is no decree in Islamic law which forbids a woman from seeking employment whenever there is necessity for it, especially in the position which suits her nature and in which society needs her most, for example, medicine, nursing, teaching, etc. In case of a married woman, she is permitted to work although her husband has the right to prevent her. However, the husband cannot exercise this right if he is unable to provide for her daily needs.[60] In fact, Shari'ah allows her to personally conduct her own business, contract and financial transactions. All such contracts and transactions are sound and valid in the view of Shari'ah and there is no need for the permission of her husband, father or guardian. Shari'ah equally permits a woman to invest her finances in partnership with others in whatever means she desires without husband, father or guardian's approval.[61]

According to Maliki Jurists, women can either lend or invest money without being prevented since it is a form of trade according to the consensus of the scholars.[62] However, Abdurrahman Al-Sheha states that Shari'ah reconciles these transactions and sets rules and conditions for that purpose. In case she fails to observe one or more conditions, the permission given to her will be declared null and void.

5.1 Shari'ah Condition Precedent to the Exercise of Women's Right to Work

It has been established and consented by the jurist that woman has a right to work like man. However, there are stipulated conditions that a woman must observe in the type of works she want to engage in. The following are some of the conditions which a woman must observe before she can work. These are**:-**

(A). The work in question must not conflict with her responsibilities to her husband and children. The right of spouses is reciprocal. Thus, the wife is responsible for discharging certain duties toward her husband and vice versa. The Qur'an says in this regard: "*And women shall have rights similar to the rights against them, according to what is equitable*."[63] Therefore, both parents owe their children certain specific rights that must not be infringed by either.

(B) Her work must be in women's institutions only. She must not work in a co-environment where she comes into physical contact with her male counterpart. In this regard, Lady Cook, the well-known English writer says:

[57]Ibid .
[58]Ibid.
[59]AB Jamal,*Women Under the Shade of Islam, Organization of Islamic* Conference, (1998) p.
[60]AA Yusuf, *Encyclopedia of Islamic Jurisprudence Concerning Muslim Women*, p. 57
[61]Ibid
[62]Zaidan, A. *Al Muffassal Fi ahkam al-mar'ahwa bait al Muslim fi al shariatu –al Islamiyyah,*Op.cit p. 264
[63]Quran chapter 2 verse 228 p 90

> *Man like (and prefer) the co- environment. Thus woman is lured to something that conflicts with her human nature. The greater the co-environment (between male and female) the more illegitimate children the society will have and produce. There is the greatest disaster …*[64]

Sayed Qutab in his book As-Salam al-Alameewal Islam says:

> *It is the right of both man and woman, to feel satisfied with each other as companions, neither one of them should be subjected to temptation by the other in such a way that one would be emotionally (and physically) deviated, if not dragged fully into sin and drift towards immoral decay In fact, there will be no room for trust and confidence in one another As women walk freely wearing all kind of attractive, short, tempting clothing that do not modestly cover her body but rather show her attractions, wicked minded men, people with low moral values and people with weak faith abuse women and attack her chastity …*[65]

(C) The job in question must not be sinful in nature, such as music. Rather, it must be in the first place a lawful job that suits the nature of women. They must not be involved in jobs which men are more inclined to, such as heavy industrial jobs, road construction, street cleaning, etc.[66]

(D) The job must not involve being in seclusion with a non-*Mahram* man (a man who is not a close relative). Abu Hanifa, Muhammad and Abu Yusuf disliked employing women with whom he would inevitably end up being secluded as it could easily lead to temptation. Seclusion with her is a sinful act. As for employing her, there can be no assurance that she will not see her and as a result, do something that Allah has forbidden with her.[67]

(E) A woman shall not travel on a journey which lasts more than a day and night unless she is accompanied by a close male relative (Mahram). Some places of work require some workers to travel inland and abroad in order to discharge their responsibilities. It is not easy for a Muslim woman when assigned to travel to look for a *Mahram* who is not working at the same place with her.[68] If one of these conditions is not fulfilled, the woman will be restrained from working outside her home. It is worth noting that all the above mentioned legal principles are binding to be observed in addition to the existence of necessity as an exceptional situation because necessity permits the impermissible.

5.2 *Al-Dharurah* (Necessity) as Inevitable Condition to Women's Right to Work

Dharurah is Arabic word which means necessity or precarious situation.[69]Technically, it means a situation in which the impermissible thing or act becomes permissible by the Shari'ah or which could otherwise lead a person to death or serious difficulties.[70] The first leg of the definition is all encompassing because it covers all aspects of life such as she desperately needs sustenance; she

---

[64] Al-Sheha, A. Women in the Shade of Islam, p.91

[65] S Qutub,'*Assalam al-Alamee was Salam, Dar Al-Shuruq, Beirut',* (1979, 8thed), pp.72 – 73

[66] Al-sheha, A. Op.cit. p.92

[67] AA Yusuf, .'*Encyclopedia of Islamic Jurisprudence*, p. 60

[68] AG Hasan the Right and Duties of Women in Islam, p. 30

[69] A Zaidan, Al-Mufasal Fil Ahkam al-ahkam al-marahwabartu Muslim fi Shari'ah al-Islamiyyah, Al Risalah Publishers, Beirut, (2000, 3rd Ed.) Vol. 3, p.

[70] HA Aliyu, .*SharhuMujallat al-Ahkam al-Adliya, vol-1, p. 34, cited in Zaidan, A. Al Muffassal Fi ahkam al-mar'ahwa bait al Muslim fi al shariatu –al Islamiyyah*, P, 75

cannot resort to impermissibility to survive. A woman's desperation does not allow her to commit *Zina* (adultery/fornication). According to Al-Muhibu Al-Tabery of the Shafi'i school, when a woman is in dire need of lawful food or drink to take and the owner of such food or drink disallow her to take either on term or freely except if she concedes to commit *Zina*, and she cannot find another source of food or drink to take at that particular moment, even if she fears death she is not allowed to submit herself.[71] It may be observed that there are so many circumstances in which women's right to work is provided in the Qur'an and Hadith, but all those instances fall under the '*Tubih al-mahzuraat*', meaning necessity warrant the impermissible to be permissible under Islamic law.[72] To this end, where a woman is under necessity within the Shari'ah doctrine of necessity, she is permitted to work outside her household provided the Shari'ah guiding principles are complied with. For example, when Moses came to the city of Madyan, he found two women within the community, keeping back her flocks and waiting for the men shepherd to finish watering their flocks. In this regard, Allah said:

> *And when he arrived at the watering (place in) Madyan, he found there a group of men (watering flocks) and besides them he found two women who were keeping back (their flocks). He said "What is the matter with you? They said "We cannot water (our flock) until the shepherds take back (their flock): and our father is a very old man. So he watered (their flock) for them; then he turned back to the shade and said "O my Lord! I am in (desperate) need of any good that thou dost send me: Afterwards one of the (damsels) came (back) to him walking bashfully. She said "My father invites thee that he may reward thee for having watered (our flock) for us" so when he came to him and narrated the story, he said "fear thou not: (well) thou hast escaped from the unjust people." Said one of the (damsels) "O my (dear) father! Engage him on wage: truly the best of men for thee to employ is the (man) who is strong and trustworthy.*[73]

The point of concern here is that, Moses found two women who appeared to work as shepherds because of necessity (i.e. their father was very old). On that basis, Moses watered their flocks for them, for this reason and on the ground of the information received by the old man, he agreed to engage the services of Moses because that would relieve the two women of that responsibility.[74] There is also a Prophetic tradition narrated by al-Bukhari to the effect that, Asama'u (the wife al-Zubair) came out of her matrimonial home to run errands for herself, her husband or children in the market place. She said: "*I used to carry dates pits on my head from Al-Zubair's land (my husband) while I lived in Madina and it was about two-third of league from Madina*."

What necessitated her to work was the need of her husband at that time, Zubair was highly engaged in Jihad and he was not able to engage the services of another person. However, she did

[71]*Mughni al Muhtaj*, vol. 4, p 307
[72] Ibid
[73]Qur'an chapter 28 verse 22
[74]Uthman, MB Safeguards *for the Protection of Women's Rights in the Administration of Criminal Justice under Islamic Law*, National Conference on the Rights of Women and Children under the Shari'ah, Center for Islamic Legal Studies, Institute of Administration, A.B.U. Zaria, 16th and 17th June, 2008, p. 299

all the work under the command of her husband and that work did not prevent her from fulfilling the needs of her husband and the household in general.[75]

5.3 Potential Effects of Women's Right to Work

The following are the likely consequences of a woman's right to work:

(1) Abdication of her responsibilities towards her children. There is no doubt that the responsibility of training is based on affection, honesty, foresight and long period of togetherness without which moral training would be an illusion.[76] Can the wages women receive periodically be compared in value with what the children lose morally? The answer is certainly in the negative.

(2) Definitely, every woman that works usually mingles with her male counterpart at the working place, and sometimes secludes with men which is a categorical violation of the provisions of the Shari'ah. The Prophet (S.A.W) said: "*No man secludes himself with a woman without Satan accompanying them*."[77]

(3) A woman working end-up neglecting her primary responsibilities, without having somebody to take care of them for her, because there is no more suitable person to discharge it than herself. As Jole Simon says:

A woman who spend her time outside rendering services as a worker while neglecting her primary duties at home, what is therefore, the wisdom behind her competition with man outside while she forsakes her role at home.[78]

(4) A Muslim woman that works outside loses her feminine posture. Islamic law protects femininity to keep the stream of tenderness and beauty running. It is also supported by Islam in view of its relative weakness placing it in the hands of a supporting man, securing the cost of living and the provision of her needs. Unlike in the case of the western woman who is under severe necessity in which neither father, brother, husband, son or uncle look after her. The result is that she has to accept any kind of work for whatever payment in order to survive.[79]

(5) She loses her Purdah (modesty) orientation meant for the preservation of her physiology and morality. On this point, Mustafa Al-Sibaee who travelled to Europe and met with a lady that is an Italian National and Student of Oxford University studying Human Rights. He said thus:

We had some discussion on Muslim women position, her style of life, her right and what Islam has in stock for her regarding sustenance. In the course of our discussion, we made comparison between the status of woman in Islam and that of western civilization. At the end of the discussion, she said: of course Islam has elevated the status of Muslim woman, she said how I wish I was born in your society he said I seized this opportunity to ask thus: can you try to convince a

[75]A Zaidan,*Al Muffassal Fi ahkam al-mar'ahwa bait al Muslim fi al shariatu –al Islamiyyah*, Vol. 4, p. 271.
[76]A Al-Sheha, '*Women in Islam & Refutation of Some Common Misconceptions'*, Riyadh, (nd) p. 123

[77]A Al-Sheha,'*Women in Islam & Refutation of Some Common Misconceptions'*, Riyadh, (nd) p. 123
[78]HS Gawujy, Al *Marah Al Muslim*,Op.cit, p. 221
[79]HS Gawujy,'Al Marah Al Muslim' p. 222

> *western woman to stay indoors for a man to take care of her? She replied never, not at all, time has elapsed because a western woman is accustomed to going out for work. It is difficult for her to get adapted to staying at home. Even if I see reason or consider it as good practice others may not see it as such.*[80]

(6) A woman is fond of adornment and interested in gorgeous dressing. In this regard, Allah said: *Is then one brought up among trinkets, and unable to give a clear account in dispute (to be associated with Allah)*".[81]

Malouna Abdul Majid Daryabadi, in his commentary to this verse, says it refers to the almost universal customs of the softer sex being brought up among jewelry and ornament and to her innate love of display. With this nature, when she goes out for work on her way, she attracts and pleases gazers with her earnings.[82]

However, every Muslim, man or woman is fully aware that Allah has created human being to worship Him and commanded them to follow the right path. The concept of worship under Shari'ah is very comprehensive. It is not restricted to the purely devotional practices only but extends over the whole of mankind's practical life which includes economic, political and social aspect etc.[83] In other words, the purpose of creating both Jinn and Mankind is nothing but to worship Allah and follow His command. Allah says: "*I have only created Jinn and man that they may serve Me. No sustenance do I require of them nor do I require they should feed me*."[84]

In Allah's command, a believing man or woman has no choice except to follow such commands. Allah says:

> *It is not fitting for a believer, man or woman, when a matter has been decided by Allah and His messenger to have any option about their decision; if any one disobeys Allah and His Messenger, he is indeed on a clearly wrong path.*[85]

Therefore, the exercise of women's right to work under Shari'ah is not achieved as a matter of course. It must as a matter compulsion conform to the law and the guiding principles of *Dharuurah* (necessity) such as when their circumstances or situations ideally call for it. It is must therefore be noted that the new normal has created the situation of necessity. There exists recent incessant economic melt-down dawning on many households thereby necessitating women to go out to work to support their husbands' insufficient earnings. In some situations, husbands abandoned their financial duties on their wives and children thereby forcing the wives out to fend for themselves and the children. In the same vein, the single motherhood syndromes cannot be left out. This usually comes to the fore as a result of many uncontrollable cases of divorces amongst Muslim couples in the recent time coupled with irresponsibility on the part of their ex-husbands to maintain children after dissolution of marriages. However, notwithstanding the recent cases of *Dharuurah* (necessity), affecting Muslim women, Shari'ah guiding principles must never be compromised as women genuinely exercise their right to work outside their households.

---

[80] M As Siba'ee, . 'Al-Mar'ah Bain al-Fiqhwa al-Qanoon,' p. 145
[81] AY Ali, The Holy Qur'an, Op.cit., p. 247
[82] MT Daryabadi.'Tafsir–ul–Qur'an,' vol. 4, p. 147
[83] Ibid
[84] Qur'anchapter 51 verse 56
[85] Qur'an 33 verse 36

6. Conclusion

Shari'ah jurisprudence is all out to protect the interest of women owing to their fragile nature. Little wonder the Law Giver placed responsibility to maintain women and their children on their husbands or fathers/guardians prior to their *Nikah* (marriage). So, Shari'ah does not expect women to work outside their homes because they already have obligation to maintain their homes as divine duties and responsibilities placed upon them.

This shows that right to work is dependent on the freedom to do so. Within the context of Shari'ah, exercise of right to work cannot be interpreted outside the commandments of Allah and the primary purpose for which Allah created mankind. The study thus found that the nature of men and women determined their assigned nature of work. While Shari'ah restricted to work only within their households. By implication, women generally do not enjoy freedom to exercise right to work outside their homes. On the contrary, men enjoy freedom to work at where within the observance of Shari'ah principles of *halal* and *haram*.

The door is therefore not closed completely to the exercise of women's right to work their outside homes. This is because Shari'ah stipulated certain conditions precedent within the principles of women dignity and the real case of (*dharuurah*) necessity. The contemporary challenges facing womanhood such as the recent incessant economic melt-down necessitating women to work with a view to supporting their husbands' meager earnings, abandonment of financial duties on wives and children by some husbands, and most commonly, the single motherhood syndromes are considered some of the real case of (*dharuurah*) necessity to permit women to work outside their homes. Despite the challenges however, the stipulated conditions under Shari'ah cannot therefore be compromised being Allah's commandment.