

DOMESTIC VIOLENCE AND VIOLENCE AGAINST THE GIRL CHILD AND WOMEN: A COMPARATIVE PERSPECTIVE BETWEEN ISLAM AND NIGERIAN CUSTOM

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ABSTRACT

This paper examines the violation of the rights of a girl child and that of women in Islam vis-a-vis what is obtainable in the Nigerian custom. The paper provides a brief and authentic exposition of how custom views women and the girl-child before the advent of Islam. One major objective of this paper is to provide a fair evaluation of what Islam contributed towards the restoration of women's dignity rights before the birth of the Human Rights Instrument which have been adopted under the United Nations auspices for the protection of vulnerable groups, and women form part of the vulnerable groups and therefore need to be protected.² The paper finds that majority of the provisions set down for protection of these categories of people have not been fully explored as a result of societal and cultural influence on them. The paper suggests that these provisions should be considered so as to whittle down the high rate of domestic violence in our society and disabuse the minds of people from causing grievous harm on girl-child and women. The paper recommends that appropriate punishment should be meted out on person who violate the right to person of a girl-child and women.

Introduction

Women and the girl-child are human beings endowed with inalienable rights. By virtue of this, they possess certain basic rights which are referred to as human rights.³ Some of these rights are frequently violated by dominant section of their society as a result of being deeply rooted in custom in Nigeria.⁴ Islam has contributed immensely in the promotion of women's status and that of a girl-child through the universal message to humanity thus:

“O mankind, keep your duty to your Lord who created you from a single soul and from it created its mate of the same (kind) and spread from these two, many men and women; and be careful of (your duty to) Allah, by Whom you demand one of another (your rights), and (to) the ties of relationship; surely Allah ever watches over you.”⁵

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²These Instruments include Convention on the Elimination of all Forms of Discrimination Against Women Adopted by the United Nations, G. A. Ass. Res 34/180 December 1979. (came into force on Sept. 3, 1981); Optional Protocol to the Convention on the Elimination of Discrimination Against Women, UN G. A. Ass, Res A. /54/A Oct. 1999, (came into force on Dec. 22, 2000).

³Agarwal, H.O., *International Law and Human Rights*, 17th Edition (Darbhansa Castle, Allahabad Central Law Publications, Allahabad, 2010) p. 730.

⁴Olajobi. A., “Gender Discrimination” in Ezeilo, J. N., *The Law and Women in Nigeria* In Eliminating Discrimination Against Women (The Report of a Conference Organized by Constitutional Rights Project CRP and Friedrich Naumann Foundation (1995) P. 50; Ghosh B. and Choudhurit, “*Violence Against Wives*” A Case Against Patriarchy, in Hasett, V. B, *et al.*, (eds). *Handbook of Family Violence*, New York: Plenum Press (1979) p. 15.

⁵See Q 4 v 1.

A Scholar who reflected on the above verse of the holy Qur'an has this to say:

“It is believed that there is no text, old or new, that deals with the humanity of the woman from all aspects with such is amazing brevity, eloquent, depth and originality as this divine decree.”⁶

The movement of the under privileged and deprived section under the umbrella of the United Nations has strengthened the above provision by contributing a great deal in spreading message of human rights as well as the number of conventions held under the auspices of the United Nations to protect rights of women. In addition to the conventions, conferences were held under the United Nations Sponsored International Women Decade in Mexico City,⁷ Copenhagen,⁸ and Nairobi⁹ and the Fourth World Conference on Women held in Beijing, commonly known as *Beijing Conference*, 1995¹⁰ which have greatly enhanced international awareness of the concern of women and provided the ground work for invaluable links between the National Women and the girl-child Movement and the International community. Survey¹¹ indicates that women and girls globally often fall victims of this crime perpetrated mostly by male; either by husbands, intimate partners, relations or someone they know. Women are threatened, beaten, tortured, persecuted, mutilated, raped and even killed.¹²

Violence is the use of physical force, accompanied by fury, vehemence or outrage, unlawfully.¹³ It is also the use of physical force which causes damage or injury or the use of intense natural force or energy, an abusive use of force, passion, fury, disturbance and desecration.¹⁴ Domestic violence includes, but is not limited to violence perpetrated and occurring at home by known and identified perpetrators.¹⁵ The victims are physically or emotionally harmed. Domestic violence extends to threat or indecent assault, undue curtailment of freedom, and personal or economic intimidation. Indeed, any expression that demeans a person's dignity, any physical assaults, blows, beating, strangulations (complete

⁶El-Khouly, Al- Bahiy, Min Usus Kadiyat Almar'ah, “Al-Waa'y Al-Islami, Ministry of Wakf, Kuwait,” vol.3, no.27, 1967, pp.17.

⁷1975.

⁸1980

⁹1985

¹⁰1995 (4th – 15th September, 1995)

¹¹Medical Professionals Survey Conducted on Violence against Women in Lagos State in 2008. The Survey was Conducted Project Alert on Violence against Women 2008.

¹²Arinze, U.C., *Domestic Violence against Women in Nigeria: A Legal Anatomy*, (FOLEMECH Printing & Pub. Co. Ltd. Onitsha, 2008) 1; Bazza, H. I., *Domestic Violence and Women's Rights in Nigeria – The Need for Professional Counselling*. In *International Journal of Law and Contemporary Studies*, Vol. 3, No. 1 & 2, (2008) p. 45; Bryan A. G., *Blacks' Law Dictionary* (USA) Thomson West, 8th Edition 2004) p. 1178. Donald, O. B., James E. Churchill, Ronald B. B. (eds) *The New Lexicon West's Edition USA*, Lexicon Publication Inc. (1990) P. 125.

¹³Donald O.B., (eds) *The New Lexicon West's Encyclopaedia Dictionary of the English Language* Deluxe Edition USA, Lexicon Publication Inc (1990) 125.

¹⁴This includes any aggressive behaviour or maltreatment between intimate partner which occurs in the privacy of a home or family.

¹⁵Partners (both intimate and peripheral), boyfriends (current and ex-boyfriend), husband, former partners or former husband, father, step father, father-in-law, brothers or son and other relatives. See also Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, July 11, 2003 which has carefully included the extended family members such as cousins, uncles and in-laws in Africa as exhibit enormous influence in families, and who may commit acts of violence in efforts to control wives and children of their relations as such controls and influence can be graphically traced to the cultures in their communities.

or not), jabs with sharp or blunt objects, slaps, kicks and sexual abuse of any kind, including inordinate demand and/or refusal, are manifestations of violence within the household and family.¹⁶

In determining the full and comprehensive understanding of the term ‘domestic violence against women; the United Nations¹⁷ defines violence against women broadly in its Article I to mean:

Any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm, or suffering of women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.¹⁸

This act is rampant and becoming daily occurrence in Nigeria. The violence against women has become part of everyday life, as patriarchy made man the center of society from the level of family unit to the public sphere. This is worrisome, particularly, in a society where women issue when raised attract disdainful reaction by the men who regards such discussion on women issue as slowing the development process of the country.¹⁹ The effect of domestic violence against women and girls is far reaching. It harms families across generations, stops victims from fulfilling their potentials, impoverishes communities, reinforces other forms of violence throughout societies, restricts economic growth and undermines human development goals, causing untold misery, cutting lives short and leaving countless women living in pain and fear in every country of the world.

There are human rights instruments which have been adopted under the United Nations auspices for the protection of vulnerable groups, and women form part of the vulnerable groups and therefore need to be protected.²⁰

As earlier pointed out, the United Nations affirmed in its Charter, one of its purposes as being promotion of respect for human rights for all persons without discrimination as to race, religion or sex. The UDHR also affirmed the equality of all human beings and equal enjoyment of all persons to enjoyment of all human rights with a clear statement on non-discrimination on the basis of sex. Subsequently human rights instruments reaffirm this equality and the equal entitlement to enjoyment of human rights. Therefore, all women are

¹⁶ Howard, R., *Women's Right in English Speaking Sub-Saharan*, in Welch, C., Jr., Meltzer, R (eds), *Human Rights and Development in Africa*, Boston Pearson Education Inc. 1984, 59. Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; UN General Assembly Resolution 48: 1104, "Declaration on the Elimination of Violence Against Women", December 20, 1993.

¹⁷ The United Nations in 1993 at the General Assembly adopted a Declaration on the Elimination of Violence Against Women. Available at <http://www.undoc.org/referword/docid/3600f25dchtm>/accessed November 10, 2014

¹⁸ Resolution 48 1104 of December 20th 1993. Aloy, O., Domestic Violence and the Law in Nigeria, *Journal of Gender Studies* Maiden Edition Vol. 1, No. 1, 2001, p. 75.

¹⁹ Steiner H.J and Alston, P., *International Human Rights in Context, Politics, Morals* Oxford Clarendon Press 1999 p. 887

²⁰ These Instruments include Convention on the Elimination of all Forms of Discrimination Against Women adopted by the United Nations, G. A. Ass. Res 34/180 December 1979. (came into force on Sept. 3, 1981); Optional Protocol to the Convention on the Elimination of Discrimination Against Women, UN G. A. Ass, Res A. /54/A Oct. 1999, (came into force on Dec. 22, 2000).

entitled to the enjoyment of these rights as entrenched in the instruments; hence gender, custom or law cannot be used to deny them these rights.²¹

Similarly, the African Charter²² also makes provisions for the protection of the rights and dignity of women and their right to equality before the law. It provides that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex or other status.²³ The Charter states further that, every individual shall have the right to respect the dignity inherent in a human being and to avoid the exploitation of his legal status.²⁴

However, Right to life and person of a woman and that of a girl-child is highly promoted in Islam while violation of these rights is considered a crime like any other murder. Before the advent of Islam, the Arabs used to bury their girl-child alive because she was considered an ill-luck and a sign of bad omen. Criticizing this attitude of burying a female child alive, the Holy Qur'an has this to say:

“When news is brought to one of them, of a female, his face darkens and he is filled with inward grief! With shame does he hide himself from his people because of the bad news he has had! Shall he retain her on and contempt, or bury her in the dust? Ah! What an evil choice they decide on?”²⁵

They were far from sparing the girl-child thinking that she may subsequently suffer injustice and inequality. The Prophet of Islam has this to say pertaining to sparing and preserving the lives of girl-child, “whoever has a daughter and does not bury her alive, does not insult and favour his son over her, God will admit him into paradise.”²⁶

The above assertion was further strengthened with the following statement:

“Whoever supports two daughters till they attain maturity and get married, he will come on the day of judgement as this, pointing with his two fingers held together.”²⁷

As a woman, the rules for married life in Islam are clear and in harmony with upright human nature, the Qur'an emphatically stated that marriage is sharing between the two halves of the society, she has the right to be treated kindly. On this, the Qur'an has this to say,

²¹Ibidapo-Obe, A. *Policing Response to Vulnerable Groups: A Review of Strategies for Tackling Crimes against Women and Children*, Oluduro O., et al., (eds) *Trends in Nigerian Law: Essays in Honour of Oba DVF Olateru Olagbegi III, Olowo of Owo Kingdom*, Ibadan, Constellation (Nig. Publishers 2007) at 84 stating that: “This may explain why the term “minorities” under which they were formally subsumed in Human Rights Lexicon has now been restricted to ethnic and religious minorities”.

²² Articles 2 & 5

²³ Article 2

²⁴ Article 5 of the African Charter 1981

²⁵ See Q 16 v 58-59

²⁶ This hadith is contained in the book of Ibn Hanbal, No.1957. See also Jamal Badawi, “The Status of Woman in Islam” *Quarterly Journal of Al-Itihad*, 1971, vol.8, no.2, 10-28.

²⁷ See Ibn Hanbal, No.2104.

“...But consort with them in kindness, for if you hate them it might be that you a thing wherein God has placed much good.”²⁸ Even where continuation of the marriage relationship can no longer work for whatever reason, man is still encouraged to seek a gracious end and should not resort to beating or harming the wife. The Holy Qur’an has this to say concerning this, “When you are separated from one another, and they reach their prescribed term, then retain them in kindness and retain them not for injury so that you do not exceed limit sets by God.”²⁹ This verse was supported with hadith of the Prophet (SAW) which says that: “The best of you is he who is best to his family and I am the best among you to my family.” The most perfect believers are the best in conduct and best of you are those who are best to their wives.” “Behold, many women came to the Prophet’s wives and complained against their husbands (because they beat them) ... those (husbands) are not the best of you.”

A woman retains her full rights in Islam either to buy sell, mortgage or lease any or all her properties. It is noteworthy that this right applies to her properties before marriage and whatever she owns thereafter. With regard to her right to seek employment, Islam has not forbidden her to seek for employment whenever the need arises especially where her attention is required. Moreover, there is no restriction on benefitting from woman’s exceptional talent in any field. Even for the position of a judge, where there may be a tendency to doubt the woman’s fitness for the post due to her more emotional nature.³⁰ A woman is far more secured financially and is far less burdened with any claims on her properties. Her properties is not transferred to her husband and she is allowed to keep her maiden name if she so wishes.

An investigation into causes of domestic violence against a girl- child and woman revealed that these categories of people in our society have been deprived of their rights which has resulted in the abuse of such rights. These rights have been abused for the following reasons:

- (i) Economic dependence
- (ii) Physical abuse
- (iii) Sexual abuse
- (iv) Emotional abuse
- (v) Abuse of Authority

(i) Economic dependence

Unequal right to employment among others has exposed women not to be economically empowered and are financially dependent on men and this has led many of them living in extreme poverty and estimates showed that women constitute seventy percent of those in this category.³¹ Generally, women and children are regarded as subordinate (second class citizens) belonging to the private sphere in Nigeria and any abused committed against their

²⁸ See Qur’an 4 v 19.

²⁹ See Qur’an 2 v 231 and Q2v 229, q33

³⁰ This opinion is strongly upheld by Scholars of Islam such as Imam Abu Hanifa among others.

³¹ USAID: Gender Assessment for USAID/ Nigeria; August 2003, Dev Tech, Systems Inc. and World Learning Inc. USAID contract #: GEW-1-01-02-00019-00, The Women in Development (WID) IQC

persons is always shielded from outside scrutiny.³² A culture of silence instilled in them reinforces the stigma attached to the victim rather than condemning the perpetrator of such crimes.³³ This was evident in the campaign against women and children staged at one Baboko Market by the women lawyers Association, Ilorin, Kwara state chapter to educate women on how they can protect their rights when it is abused. The campaign revealed that women had been abused in the presence of their children due to economic reason among others. When these women were asked to give their correspondence addresses to enable the organization to visit and educate their husband on how to treat their wives and children, majority of them were reluctant while few gave fictitious addresses for fear of being divorced.

(ii) Physical abuse

Many women had lost their lives as a result of physical beating from their husbands on trivial issues such as envy and jealousy. Some men are sceptical about their women's social interaction with their counterparts which sometimes prompt them into beating and maiming their partners. This act is sometime done in the presence of their wards. The child sometimes sustain injury in the course of her father trying to beat her mother. However, Islam encourages a man to abstain himself from suspicion because suspicion in some cases is a sin. A man is also warned against spying on his wife.³⁴ No matter the situation, a man has been exhorted to treat his wife with kindness. Where a woman is found wanting in her responsibility or house core, she is to be called to order through admonition and not to be beating nor injured.

(iii) Sexual abuse

Many women and female children have been sexually abused. A woman is said to be sexually abused when her husband makes a body contact with her without consenting to it. Although, this may be strange culturally, but psychologically wrong to have a sexual intercourse without the consent of either sex. This act is frowned at in Islam. This is because a woman has right to her person including having a body contact with her person. Cases of sexual abuse against girl-child has been on increase daily in our schools Nigeria.³⁵ This act is totally condemned in Islam because a girl is to be married before sexually relationship comes into play. This is regarded as an offence to which punishment should be meted out against the committer so as to serve as deterrent to others.

(iv) Emotional abuse

Some men are temperamental and sensitive to issues. They sometimes react to trivial issue thereby taking vengeance on their partners. Some even prefer their relations over and above

³²Funmilola Bosede, Alokun, "Domestic Violence against Women: A Family Menace", (A Paper Presented at the 1st Annual International Interdisciplinary Conference, AIIC, 2013), 24-26.

³³Adebayo Anthony Abayomi, "Sociological implications of domestic violence on children's development in Nigeria", *Journal of African Studies and Development*, (January, 2014): Vol. 6(1), 8-13.

³⁴ See Q 49 v 12.

³⁵ Adeyemi, B. A., and P. A. Amosun. "Perception of Social Studies Teachers on Home Factors Contributing to Violent Behaviour among Teenagers in Osun State, Nigeria." *International Journal of Social Science Studies* 4.5 (2016): 38-49. See also Dorcas O. Fareo, "Domestic Violence against Women in Nigeria", *European Journal of Psychological Research* Vol 2.1 (2015).

their wives and children, living at the mercy of the extended family members who influence and dictate the relationship and sometime cause chaos among the couple. However, this is not allowed in Islam. Islam commands a man to treat his wife kindly thus: “And live with them honourably.”³⁶ Islam enjoins a man to deal with his wife and children (regardless of sex) mildly, speak with them softly his actions towards them to be as kind as possible. Prophet of Islam (SAW) was reported to have said, “The best among you is the best one in treatment of his family and I am the best of you to my family. This assertion was supported in one of the verses of the Holy Qur’an thus:

“Certainly, you have in the Apostle of Allah an excellent exemplary for him who hopes in Allah and the last day and remembers Allah much.”³⁷

There was never a time when the Prophet was reported of ever maltreated any his wives. A man is enjoined to deal with his wife in patience at the time of anger. Qur’an says, “If you dislike them, it may be that that you dislike a thing that Allah bring through it a great deal of good.”³⁸

The prophet’s words in support of the above verse goes thus:

“No believing man should hate a believing woman.”³⁹

(v) Abuse of Authority

It has become part of man to misapply the degree of authority bestow on him when he establishes his family. A man is tempted by the power he has over his wife such that the woman would have no say in the affairs concerning both of them. However, Islam encourages mutual understanding and courtesy among couples. The Qur’an says, “And they have rights similar over them to what is reasonable however man has a degree over her.”⁴⁰ Spouses should respect each other’s views, maintain the mutual love and trust between them.

Effects of Domestic violence on girl-child

Children brought up in violent homes are known to assimilate violent tendencies as they grow up.⁴¹ The study reveals that domestic violence makes children who grow in violent homes social misfits, prone to psychological imbalance and violent criminal tendencies. The study reveals that domestic violence makes children who grow in violent homes social misfits, prone to psychological imbalance and violent criminal tendencies.

The specific effects may differ depending on a host of variables, such as the children’s ages, the nature and severity of the violence, the existence of other risk factors in the children’s lives (for example, poverty, parental substance abuse), and whether the children are also directly physically abused.⁴² In general, childhood who is a witness to domestic violence can be associated with increased display of aggressive behaviour, increased emotional problems

³⁶See Q42 v 49.

³⁷ See Q33 v 21. See also Sunnah At-Tirmidhi 3895

³⁸ Q 4 v 19.

³⁹This hadith was reported in Sohih Muslim Page 1469

⁴⁰ See Q 2 V 228.

⁴¹ Adebayo Anthony Abayomi, “Sociological implications of domestic violence on children’s development in Nigeria,” *Journal of African Studies and Development*, 2014, Vol. 6(1), pp. 8-13.

⁴²John W. Fantuzzo and Wanda K. Mohr, “The Future of Children Domestic Violence and Children “, Vol. 9, No. 3 – Winter 1999

such as depression and/or anxiety, lower levels of social competence, and poorer academic responses and performance.⁴³ The study suggests solutions towards eliminating domestic violence as a way of reducing juvenile delinquency and nurturing a more stable psychological growth of children in the society.

Girl-child is always at the receiving end especially where such a girl has been abused sexually either by her biological father, uncle, brother or from her neighbourhood. It is heart shocking to hear that the fundamental rights and freedoms expressly guaranteed in chapter IV of the same constitution, the gender-equality and non-discrimination provisions of the African Charter on Human and Peoples' Rights, 1981 and the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which have come to support or strengthened the position of Islam on the protection of rights of women and the girl-child are yet to be fully implemented in Nigeria.

Therefore, this paper recommends that the position of women and the girl-child should be revisited and elevated through the Islamic provision as well as the other legal instruments adopted by the Nigerian legislations for fair treatment of both the women the girl-child in Nigeria. Victims of domestic violence should be given proper attention that will restore their hope and position in life. The offender should be made to face the wrath of the law in accordance with Islamic law or as provided for in other legal instruments. There should be constant awareness programmes of which attendance should be made compulsory for the victims to enable them regain their confidence and feel belong and not rejected. Confidential letters should be written to the employers of the offenders for purpose of meting out the required punishment on their persons.

⁴³Chalk, R., and King, P.A., eds. Violence in families. Washington, DC: National Academy Press, 1998.

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