

THE PERSPECTIVE OF SHARI'AH ON DOMESTIC VIOLENCE*

Abstract

Violence against women in the home has been part of human history. This issue has been a subject of fierce discourse around the globe owing to the persistent cruel or inhuman treatment meted out against women. It is as a result of this that various international instruments such as CEDAW, UNDHR, ACHR and other domestic laws have categorically and unequivocally prohibited inter-alia all forms of domestic violence; yet women continue to suffer different forms of violence at home. Although the notion is always that Islam supports and encourages domestic violence forgetting that it is not peculiar to only Muslims as many societies have lived without a feeling that it was nothing wrong. In the Muslim homes however, violence and coercion are erroneously used as a tool of control knowing fully that marriage in the Islamic context is a means of tranquility, protection, peace and comfort. The method adopted in this work is a doctrinal approach based mainly on works of both learned authors and other authors on papers and internet sources. In an attempt to do that, this paper discusses briefly the biblical and western view point on domestic violence within the human right framework. As the topic implies, the writer discusses the sharia'h view point on spousal abuse as a form of violence that was attributed to Islam and also explains the controversy surrounding Quran 4: 34 which is the verse that some Muslims rely on to justify their cruel conduct against women. This paper finally concludes that the practice of violence against women should be best attributed to a patriarchal or traditional belief and not to Islam. It is opined also that our criminal laws especially section 55 of the Penal Code seems to support and encourage this spousal abuse as they make provision justifying the infliction of grievous harm on a wife. In view of the aforesaid, the writer suggests, inter-alia, the expunging of the section to avoid giving license to men in chastising their wives.

Key words: *Domestic, perspective, Shari'ah, Violence.*

1. Introduction

Domestic violence means violence meted on a spouse by another spouse. Domestic violence is the intentional and persistent abuse of anyone in the home in a way that causes pain, distress or injury. It refers to any abusive treatment of one family by another, thus violating the law of basic human rights¹. It is a very serious social, economic and psychological problem that has no cultural or social group inhabitation. Beyond the absence of any unknown barrier not even legal, its occurrence catastrophically has profound and destructive consequences which range from physical, emotional, and financial effects on the inhabitants of the home where mostly women and children are the victims. Domestic violence can be expressed through threat of violence or the actual infliction of physical harm or attacks against women. This includes but not limited to sexual harassment, rape and female genital mutilation (FGM). However, some researchers considerably gave a little bit attention to sexual harassment, rape and some other offences under various' nations' domestic laws². In spite of this, domestic violence continues to be massive problem with enormous individual and societal consequences. It is an endemic ill that has no boundary. It is said that families in all social, racial, economic, educational and religious backgrounds experience domestic violence in different ways³. It was reported that in the United States of America, each year, women experience about 4.8 million intimate partner-related physical assaults and rapes while men are victims of about 2.9 million partner-related physical assaults. In parts of the third world generally, and in West Africa in particular, domestic violence is prevalent and patriarchally considered as acceptable customs or cultures. For example, survey shows that 56% of Indian women suffered spousal abuse on grounds of bad cooking, disrespect to in-laws, producing more girls, leaving home without informing, among others⁴.

* By **Mohammed Aminu UMAR**, Lecturer, Customary and Islamic Law Department, Nigeria Police Academy, Wudil-Kano. Farhanhanhanif99@gmail.com. 08137601629, 08080675542.

¹ ON Aihie, 'Prevalence of Domestic Violence in Nigeria: Implication for Counseling' (2007) African Journal Online. <http://www.ajol.info/.../41252>htm> accessed on 4th February, 2012.

² Criminal Code, s. 357; penal code, s.282

³ ON Aihie (n.1)

⁴ ON Aihie (n.3)

Nigeria being multi- ethnic nation, her women suffer different forms of cruelty due to the practice of various customs and traditions. For instance, the Idoma cultural exponent and singer described the situation Idoma women find themselves using the Idoma dialect that *ege lotu chanya geni,njegede nlotu che enochekwu gege*, meaning indeed women are never trusted. I do trust men. To some extent women are referred to as death and home destroyers and strive best in suffering⁵. In some communities in Nigeria, husband's relations do participate in meting out punishment against women especially when they are suspected of killing their husbands. In other communities, women are subjected to an ordeal to clear her name. She is for instance made to eat with broken plate; she is expected to wake everybody in the vicinity with cry, bemoaning her late husband; and she is finally given water used in washing the deceased husband to drink to prove to the relatives that she has no hand in her husband death⁶. What is most lamentable is that some perpetrators attributed this cruel conduct against women to religion (both Islam and Christianity).

In some countries, laws prohibiting violence against women were passed but all to no avail. For instance, in Senegal, report reveals that the country have enacted in their penal code punishment for domestic violence with prison sentence and fines but is poorly enforced due to religious and cultural resistance⁷. It is believed women have subjected to physical, sexual and psychological violence carried out primarily by husbands, partners and fathers while girls are forced to marrying husbands without their consent not minding the consequences thereof. Often, the consequences of forced marriage are that the victims flee and take refuge to brothels, bath with acid or even kill themselves or the husbands.

2. Domestic Violence and Human Right from the Western Thought

Human right activists and feminists perceive domestic violence as one of the gravest inhuman treatments meted out against women in their various homes. Various International Instruments like UNDHR, ACHR, CEDAW have seriously cautioned and prohibited all sorts of violence against women. These international instruments plainly contain some basic rights which women are entitled to enjoy like their male counterparts. However, the major problems of human rights in the world are the failure of the appropriate authorities to enforce them. Most of the laws on human rights appear to exist only in theory as most of the ratifying nations refuse to domesticate them. It is often asserted that human right is a slogan being used to propagate western imperialistic interest⁸. They perceive human right as a slogan that is being used for political domination, subjugation and economic abracadabra exported into developing country to suit Western imperialistic selfish aggrandizement⁹. This belief has caused deviation and non-domestication of the international instruments by some parties that ratified them. Thus, there is a Declaration on Human Rights¹⁰ passed by the Organization of Islamic Congress (OIC) and was born out of the idea that the International Human Right norms had a western or Judeo-Christian basis that precluded their acceptance in the Muslim environments. It serves as a counter to the International Bill of Right in amalgamation of international norms and Islamic principles. It is said that Islamic societies developed a compact system of preservation of man's fundamental rights over 150 years before Europe, United State of America and the United Nation. The Islamic Societies believed that the concept of human right derived its sources from the Holy Quran, *Mithl-al-Medina*, otherwise known as the Compact of Medina, the farewell speech of the Holy Prophet Muhammad (S.A.W) and others. Although the Cairo Declaration was enacted in 1990, it affirms the dignity of Mankind and by implication the document seeks to protect women from any act of exploitation and persecution by men either in the home or anywhere. So, any ill conduct against women amounts to a breach of their fundamental human rights. It reads thus: "in consideration to the efforts of mankind, to assert Human Rights, to protect man from exploitation and persecution and to affirm his freedom and right to a

⁵ AP Anyebe, *Customary Law: The War without Arms* (Enugu: fourth Dimension Publishers, 1985) P.34.

⁶ A. Aligba, 'Legal perspective on socio-cultural and environmental problems affecting women in Nigeria' Faculty of Law BSU P152

⁷ AP Anyebe (n.5) P.34

⁸ AF Raji *'Islam and Human Right in Broader perspective* (Lagos: Alashela Islamic production, 2001) P. XV

⁹ N Chidi, *The Politics of Human Right: A view from the Third World* (Kaduna: Klamadis Books Ltd, 1998

¹⁰ Cairo Declaration on Human Right in Islam (Entry into force in 1990).

dignified life in accordance with the Islamic Sharia”(italics mine).¹¹ It is also held that “Woman is equal to man in human dignity, and has her own rights to enjoy as duties to perform and has her civil entity and financial independence, and right to retain her name and lineage (italics mine).”¹²

Domestic violence has become a human right issue because the practice has violated a number of rights. Freedom from violence (whether sexual, mental, emotional, financial or physical) is fundamental human right issue¹³. The right to protection from violence and security and liberty of person is recognized in the major human rights agreements such as International Covenant on Civil and Political Rights (ICCPR), Convention on the Rights of the Child (CRC), Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Right of Persons with Disabilities (CRPD), and other international human right instruments.

Domestic and spousal abuse violates a wide range of human rights mostly enacted in various domestic laws¹⁴. This includes right to life, the highest attainable standard of physical and mental health¹⁵, the right to decent work¹⁶, freedom of expression and right to hold opinion without interference¹⁷, a child or young person’s right to leisure and play¹⁸, the right to education¹⁹ and most importantly the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment²⁰.

Domestic violence as a human right violation is treated as a private matter and the human right framework provides a tool to challenge this perception and reframe it as a collective problem that society as a whole must address. So where the domestic channel fails, the international human right system can be utilized to promote justice²¹. Thus, the story of Jessica Lenahan, formally Gonzales, clearly demonstrates how this international human right system can successfully be utilized to promote justice where domestic channels fail. Sometime in June, 1999, Jessica’s husband by named Simon Gonzales, abducted her three daughters in violation of domestic violence restraining Order. Jessica reported the case to Castle Rock, Colorado State Police; yet her pleas went unheeded. The police inaction led to the death of her daughters and the circumstances of their death were ineptly investigated. After all avenues of justice were closed to her, including the US Supreme Court, Jessica brought her case, *Jessica Gonzales v. United States* to the Inter-American Commission on Human Rights (IACHR) in 2005. She was the first domestic violence survivor to initiate an international legal action against the United States for violating her and her children’s human rights.²²

The international human rights protection systems offer alternative channels through which victims or people may advocate for their fundamental rights, social change and institutional reform. Under this system, the United States is obligated *vide* American Declaration of the Rights and Duties of Man to act with due diligence, which requires authorities to adopt reasonable measures to recognize and prevent any action that poses a real and immediate risk to the personal security of an individual. When such risk

¹¹ Cairo Declaration on Human Right in Islam (Entry in force in 1990), Preamble.

¹² Cairo (n.11)

¹³ Universal Declaration in Human Right, 1948, art. 5, International Covenant on Civil and Political Right, 1966 (Entry into force in 1976), art, child Right Convention, 1989, art, 19; Convention on the Elimination of All of forms Discrimination Against Women, 1989, General Recommendation No. 12 eight session <http://www.humanrights.gov.an/ourwork/fanhtml> accessed on 5th February, 2012.

¹⁴ Constitution of the Federal Republic of Nigeria (as amended), 1999, chapter 4.

¹⁵ Universal Declaration on Human Right, art. 25; international Convention on Economic, Social and Cultural Rights, 1966, art. 12 (1)

¹⁶ UDHR (n.15)

¹⁷ UDHR (n.16) art, 19.

¹⁸ Child Right Act, 198 art. 31.

¹⁹ Art. 26

²⁰ International Convention on Civil and Political Right, art 7

²¹ ICCPR (n.20) art, 4 and 8.

²² GR Pola, ‘violence as a Human Rights violation’ (2011) <http://www.aclu.org/blog/speakeasy/domestic-violence.html> accessed on 4th February, 2012.

has been identified, whether posed by individual or by the State itself, the state has an obligation to provide effective protection.²³ This protection is heightened when the rights of vulnerable groups such as domestic violence victims are in issue. The due diligence standard requires the state to provide individual with access to court and to an adequate and effective remedy when their rights are violated. In the case of Jessica, the United States failed to take reasonable measures, failed to effectively prevent domestic violence, failed to protect Jessica and her children and failed to afford Jessica access to court or any remedy. This litigation helped in building coalition of domestic violence advocates within and outside United States to expand the scope of their traditional advocacy and cast their work in human rights terms. This case had spurred important law and policy development at the state, federal and international levels mainly because it allows women in the United States to bring domestic violence issues out in the open, where they can be publicly addressed on a global stage.²⁴

It is the writer's view that the bold steps taken by Jessica in ensuring justice is done to her is such that is worthy of emulation by women. The major problem surrounding human rights today is that of the failure of governments to back it up in line with the international instruments on human right. By these instruments, domestic violence is an international human right issue and that means that if any person's right is violated, he or she may use the international human right protection systems to seek redress in the event of the failure of the victim's country to take due diligence to effectively address the matter and brought the culprit to book. Jessica's courage is wise and should serve as eye opener to victims of human right violation particularly domestic violence victims to bring their case out up to a global level.

3. Domestic Violence from the Biblical Perspective

Christianity is one of the religions that regard women as special creature, although there are four main view points in the modern debate on the position of women in the New Testament bible. They are known respectively as Christian feminism, Christian egalitarianism, Complementarianism, and Biblical patriarchy. While the Christian feminism takes active feminist position from Christian perspective thereby challenging some traditional basic Christian interpretations of the scriptures with respect to the roles of women²⁵. Christian egalitarianism opines that both men and women were created equal by God and neither man nor woman was cursed by God at the fall of man but were warned by God in a prophetic sense on what would be the natural consequences of sin having entered human race²⁶. Complementarianism believes that God created men and women to be equal in personhood and value but have different roles. The proponents understand the bible as teaching that God created men and women to serve different roles in the church and in the home²⁷. Biblical patriarchy, on the other hand, affirmed the equality of men and women but goes further to express the different gender roles. It maintain that women do not have authority over men in the church and in the home, and also deny that women should rule in the civil sphere²⁸.

In the history of Christianity, the concept of feminism has been personified by Jesus Christ. Alluding to this, Swindler contended that Jesus neither said nor did anything which would indicate that He advocated treating women as intrinsically inferior but on the contrary, He said and did things which indicated that He thought of women as equals of men²⁹. Jesus always showed the greatest esteem and respect for women and in particular He was sensitive to female suffering. Going beyond the socio-religious barriers of the time, Jesus re-established woman in her full dignity as a human person before God and before men³⁰.

²³ GR Pola (n.22)

²⁴ GR Pola (n.23)

²⁵ About the Evangelical and Ecumenial Women Caucus < <http://www.eewc.com/about.html>> accessed on 11th January, 2012.

²⁶ Gen. 1:27; 3:16

²⁷ eewc (n.26)

²⁸ Women in Christianity <<http://www.womeninchristianity.com/en/html>> accessed 5th December, 2012.

²⁹ S. Leonard, Jesus was a feminist '(Catholic World, 1971) p. 177.

³⁰ S Leonard (n.29)

It is said that domestic violence is inconsistent with the general Christian duty to love others and to the scriptural relationship between husband and wife³¹. Men who abuse women often use some biblical verses to back their actions. The Conference of Catholic Bishops posits that “men who abuse often use Ephesians 5:22, taken out of context, to justify their behavior. The passage (v. 21-33) refers to the mutual submission of husband and wife out of love for Christ. Husbands should love their wives as they love their own body, as Christ loves the Church³².”

Some Christian theologians such as Rev. Marie Fortune and Mary Pellauer, have raised the question of a close connection between patriarchal Christianity and domestic violence and abuse³³. Alluding to this, Steve Tracy authored in a book titled “Patriarchy and domestic violence” that “while patriarchy may not be the overarching cause of all abuses, it is an enormously significant factor, because in traditional patriarchy, males have a disproportionate share of power... So while patriarchy is not the sole explanation for violence against women, we would expect that male headship would be distorted by insecure, unhealthy men, to justify their domination and abuse of women³⁴.”

Some verses in the Bible discourage the practice of violence and God’s attitude towards the perpetrators of violence. The following verses discourage domestic violence and regard the perpetrators as evildoers hated by Lord. It says thus: “The Lord trieth the righteous: but the wicked and him that loveth violence his soul hateth.”³⁵ “In the same day also will I punish all those that leap on the threshold, which fill their masters’ houses with violence and deceit...”³⁶ “For evildoers shall be cut off, but those that waited upon the Lord, they shall inherit the earth”³⁷. “I hate... a man covering his wife with violence, as well as with his garment...”³⁸. The Bible further sympathizes with the victims of violence in the following biblical wordings: “He shall redeem their soul from deceit and violence and precious shall their blood be in his sight...”³⁹. “For he hath not despised nor abhorred the affliction of the afflicted; neither hath he hid his face from him; but when he cried unto him, he heard...”⁴⁰.

4. The *Shari’ah* View Point on Domestic Violence

Prior to the advent of Islam, women suffered serious injustice in the pagan Arab society. They were exposed to diverse kinds of humiliation prior to the mission of the messenger of Allah, Muhammad Ibn Abdullah (S.A.W). The Pagan Arabs considered women as chattels to be inherited or disposed of at the whims of the male guardian. During that period, there was no system of laws and justice that would forbid a man from committing injustice against his wife or wives. It was a time of ignorance and anarchy in socio-religious life in the world. The social and political life developed by the people of the ancient world was shattered by barbarians⁴¹. The socio-religious order organized by the Christianity, Zoroastrianism and Judaism was disintegrated. The people had forgotten the ideal of their religion and morality had fallen to its lowest ebb⁴². These social evils have been the source of women suffering in the pre-Islamic Arabia. That was how women continue to suffer until the great prophet of Islam appeared with universal mission to salvage the whole world from the shackles of ignorance, anarchy, disintegration, injustice and female infanticide of *ayyam-i-jahiliya* (period of ignorance).

Prophet Muhammad (S.A.W) on arrival built a model society by giving *inter alia*, maximum attention to family affairs of the Muslims. Essentially, Islam protects the dignity of human being even the rights

³¹ S Leonard (n.30)

³² S Leonard (n. 31)

³³ Christian and Domestic Violence http://en.wikipedia.org/wiki/christianity_and_domesticviolence accessed on the 5th February, 2012.

³⁴ Christian and Domestic Violence (n.33).

³⁵ Psalms, 11:5

³⁶ Zephaniah, 1:9

³⁷ Psalms, 37:9

³⁸ Malachi, 2:16

³⁹ Psalms, 74.14,

⁴⁰ Psalms, 22: 24

⁴¹ A Rahim, *Islamic History* (Lagos: Islamic Publication Bureau, 2001) p.5

⁴² A Rahim (n.41) p.5

of the non-Muslims living in an Islamic State⁴³. It is as a result of this that Islam places special emphasis on the prevalence and maintenance of justice in whole human dealings and protection of the underprivileged. Thus, Islam has laid down universal fundamental human rights for humanity that are to be observed and respected under all circumstances whether at war or at peace. No one is to be deprived of his life, dignity and liberty except the due process laid down by shari'ah is followed. Within this context therefore, it is not permissible to oppress women, children, the old or the sick⁴⁴.

However, some Muslims deviated and violated the fundamental rights naturally given to women by God as they use violence and coercion as machineries to gain absolute control of women in the homes. Marriage under the shari'ah is a means of tranquility, protection, peace and comfort. Allah, the Most high says: "And among His signs is this that He created for you wives from among yourselves, that you may find repose in them and he has put between your affection and mercy. Verily, in that are indeed signs for people who reflect"⁴⁵.

If marriage is for these reasons then, that goes to show that abuse of any kind is in conflict with the principle of marriage. The prophet (S.A.W) in stressing the meaning of Quran 30:21, he said "the best among you are those who are best to their families and I am the best of my family"⁴⁶. He once exclaimed that, "it is only the evil ones that abuses women and the honoured one is he who honours them. These *ahadith* has given an impetus that family is the first and essential area in which women's rights shall be secured. But in our society today the institution of marriage has turned to an avenue where women's rights are violated. Some Muslim husbands violently beat or hit their wives as if they are slaves. They buy and keep canes to flog their wives to cure their misbehavior. Yet under that circumstance, the wives have no right to seek for redress in a court of law because the remedy for that has not been provided under the Nigerian law.

The Penal Code that punishes offenders seems to encourage and support spousal abuse as it was enacted that nothing is an offence which does not amount to infliction of grievous harm upon any person which is done by the husband for the purpose of correcting his wife⁴⁷. This situation left women in dilemma of either electing to stay for the worst or seek divorce in a court of competent jurisdiction. There is a view that some of provisions of the Penal Code were borrowed and somehow grounded on the basis of Islamic law. This has been the position because preparatory to the independence, it was thought necessary to have a criminal justice system modeled on a code of Sudan, a country similar to Northern Nigeria. This therefore necessitated the setting up of the Justice Abu Ranat's Committee which was given free hand to have a system of criminal justice that will suit the Northern region. The committee was however given preference either to adopt the western system, Islamic law or to recommend the hybrid of the two⁴⁸.

Under no circumstances is violence against women encouraged or allowed in Islam. There are many examples both in the Quran and Hadith that described the relationship between husband and wife. The relationship should be one of mutual love, respect, benevolence and kindness. The Quran says: "Hold on to them on equitable terms or separate with them on equitable terms. Do not hold them to hurt them and whoever does that, then he has wronged himself". (2:231). "Do you who believe! You are forbidden to inherit women against their will, and you should not treat women with harshness, that you may take away part of their Mahr you have given them, unless they commit open illegal sexual intercourse. And live with them honourably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good."⁴⁹

⁴³ AF Raji (n.7)

⁴⁴ AF Raji (n.43)

⁴⁵ Qur'an 30:21

⁴⁶ Hadith

⁴⁷ Penal Code, s. 55 (d).

⁴⁸ KS Chukkol, *The law of crimes in Nigeria* (Zaria ABU Press Limited, 1998) p. 13

⁴⁹ Qur'an 4:19

Far from being true that Quran allowed violence against women, the above quoted verse discourages treating women with harshness for the relationship between spouses is that of mutual love, respect and kindness. Abusive behavior does not reflect kindness and love for spouses. Still some men deviate from this teaching and justify their behavior knowing that they are disobeying Allah's guidance. Spousal abuse of whatever form is never allowed in shari'ah. The attitude of some Muslim husbands toward their wives is much to be worried. They use belt or cane to beat erring wives instead of expressing their displeasure in a peaceful manner. Some husbands resort to verbal abuse cursing their parents using their mothers' tongues. Condemning this practice, Sharif says, "how loathsome (ajeeb) it is that one of you should hit his wife as a slave and then sleep with her at the end of the day"⁵⁰. This view is in conformity with the hadith where Prophet Muhammad was reported to have said, "None of you must flog his wife as he flogs a slave and then have sexual intercourse with her in the last part of the day"⁵¹. Badawi, J also viewed that in event of family dispute, the Quran exhorts the husband to treat his wife kindly and never to overlook her positive aspect. If the problem relates to the wife's behavior, her husband may exhort her and appeal for reason. In cases where the problem continues, the husband may express his displeasure in another peaceful manner by sleeping in a separate bed from hers⁵². In event where the problem persists the husband may report to his or her guardian (arbiters). The Quran says, "if you fear a break between them, appoint two arbiters one from his family, and one from hers; if they wish for peace, Allah will cause them reconciliation..."⁵³

Islam always wants to build a healthy society devoid of inhumanity and injustice. It is in line with this that maximum attention is given to the family affairs of the Muslims. If the foundation of the family is strong, the foundation of the society will be strong⁵⁴. Islam has complementarily placed every Muslim in his or her rightful position and tasked him or her to carry out his or her responsibility with pious and utmost fear of God⁵⁵. The Quran says:

Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore, the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part fear disloyalty and ill-conduct, admonish them (first), (next) refuse to share beds and (last) beat them (lightly); but if they return to obedience, seek not against them means of annoyance.⁵⁶

Although, scholars interpreted this verse in various ways, it is natural that some squabbles and misunderstanding may occur in the family. Therefore, each member is obliged to have fear of Allah, to be patient and exercise self-restraint⁵⁷. The Quran has laid down procedures to be followed in settling dispute amongst spouses. Although the recalcitrant attitude of some women is what prompted their husbands to use ill-conduct against them, yet shari'ah has set and obliges the husbands on what to do to ameliorate their problems; to wit:

- (a) Admonition. Before taking any measure detrimental to the wife, she should be admonished in a polite manner. Once this proves effective, there is no need to resort to harsher measure.

⁵⁰ JM Aralandson, 'Domestic Violence in Slamic: The Qur'an on beating wives' <http://www.enthnomed.org/home>clinical topic>domestic.html> accessed on 5th December, 2012.

⁵¹ Hadith, Bukhari and Muslim

⁵² MD Bashir, 'Excerpt from Domestic Violence: Islamic perspective' http://www.enthnomed.org>home>clinical topic >domestic violence \html\>accessed on 5th December, 2012.

⁵³ Qur'an 4:35

⁵⁴ Al Doi Shariah: The Islamic Law (London: Taha Publishers, 1984) p.129

⁵⁵ Al Doi (n.54) p.129

⁵⁶ Qur'an 4:34

⁵⁷ Al Doi (n.55) p.129

- (b) Avoiding conjugal relations. If admonition fails to correct the wife, the husband may refuse to share bed with her and that should not be continued indefinitely.
- (c) Provision for light beating. Wife beating is generally discouraged in Islam. However, if the wife's attitude or behavior is against the injunction of Allah and the *Sunnah* of our Noble prophet, beating her in a light manner may become necessary. But the prophet (S.A.W) enjoined that she should not be beaten on the face or in such a way that may leave some mark on her body⁵⁸.
- (d)

However, the practice now is against the Islamic teaching. Under the Sharia, husband and wife's relationship is best described by the Quran as thus: "They are as a garment to you, and you as a garment to them"⁵⁹. Husband and wife are for mutual comfort, mutual support, mutual protection, fitting into each as garment fits the body.

5. The Interpretation of Quran 4:34

This verse has been a subject of controversy among Islamic scholars due to the use of the phrase "*daraba*" mostly translated as to "beat". However, for proper understanding of this verse and any other *Qur'anic* verse, it is important to understand the sources and means of *Qur'anic* interpretation used by scholars. The primary means of *Qur'anic* interpretation applied by scholars is to read the *Qur'an* intra-textually, known as *Tafsir al- Qur'an bil-Qur'an* (interpreting *Qur'an* with *Qur'an*). Thus, it is extremely important to understand the chapter 4:34 in the light of the gender paradigm of the *Qur'an* itself. From the countless verses governing marital relations in the *Qur'an*, it requires spouses to treat each other with respect, justice and mercy⁶⁰.

The second means of interpreting the *Qur'an* is by using the tradition of prophet Muhammad (S.A.W), whose life, words, and actions are regarded as living commentary on the *Qur'an* and provide the framework within which *tafsir* is to be exercised. This type of interpretation is known as *tafsir bil-mathur* (interpreting the *Qur'an* using prophetic traditions or *ahadith*)⁶¹. If this verse is measured alongside the examples of the prophet who condemned domestic violence in both deeds and words, it becomes clear that this verse does not encourage or allow domestic violence in whatever form. There are hosts of authentic traditions prohibiting domestic violence. For example, the prophet said: "Never beat God's handmaidens (female believers)"⁶². In another *hadith*, the prophet said: "could you beat your wife as you would beat slave, and then lie with her in the evening? In history, never we heard the prophet ever hit his wife or a child. His wife, Aisha was reported to have said that, the prophet never hit his wife or his servants. He did not strike anything with his hand except if he were to struggle in the cause of Allah. The prophet was a man described by his wife as having internalized the teaching of the *Qur'an* in his character and personality"⁶³. In an effort to interpret the verse in question, Abu Sulayman notes that most accurate understanding of the phrase *daraba* in *Qur'an* 4:34 is 'to separate'. After analyzing the verse within the *Qur'anic* framework, Abu Sulayman concludes that the Arabic word "*daraba*" does not mean to "beat" but rather the temporary separation of a husband and wife⁶⁴.

Abdel Haleem translated the word "*nushuz*" in the verse to mean high-handedness and *fa'izuhunna* means 'remind them of the teaching of God'. *Wahajuruhunna fi'l-madhaji'i* means 'ignore them when you go to bed', and *wadribuhunna* as 'hit them'. The translation goes thus: "husband should take full

⁵⁸ Al Doi (n.57) p.129

⁵⁹ Qur'an 2:187

⁶⁰ Z Alwani 'Domestic Violence: Islamic perspective ' (2011)<http://www.karama.org/wp-content/uploads/2012/domestic-violence-Islamic-perspective/html> accessed 21st January, 2012, p.4

⁶¹ Z Alwani (n.60) p.4

⁶² Z Albani (n.61) p.4

⁶³ Z Alwani (n.62) p. 4

⁶⁴ AA Abu Sulayman, Marital Discord: Recapturing the full Islamic Spirit of Human Dignity (London: the Islamic Institute of Islamic thought, 2006) p. 19.

care of their wives with the bounties God has given to some more than others and with what they spend out of their own money. Righteous wives are devout and guard what God would have them guard in the husband's absence. If you fear high-handedness from your wives, remind them (of the teaching of God), then ignore them when you go to bed, then hit them. If they obey you, you have no right to act against them. God is most high and great".⁶⁵

Abdullahi notes in parenthesis not original to the Arabic sequence of steps and implied soft meaning of beat them (lightly). His translation goes this: "...as to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first) (next), refuse to share their beds and (last) beat them (lightly)...."⁶⁶ Ahmed Ali translates the verse adding parenthetical glosses not originally found in Arabic, thus, "...As for women you feel are averse, talk to them successively; then leave them alone in bed (without molesting them) and go to bed with them (when they are willing)"⁶⁷.

Due to how men arbitrarily oppress women to get control in the home relying on this verse, Al- Hibri called the verse as chastisement passage⁶⁸. She translated the verse as follows: "...As those women whose part you fear, *nushuz*, (admonish them) (first), (then) *wahajuruhunnafi'lmadhaji'i* (abandon them in beds), (and last) *wadrubuhunna* (hit them lightly), and if they obey you, seek not against them (of annoyance or harm), for God is most high and great (above you all)"⁶⁹.

Given the plain meaning to the long sounding phrase *wahajuruhunnafi'lmadhaji'i*, it means abandon them in bed. This plain interpretation has also become a subject of different interpretations. Excessive discussions were conducted on whether 'abandoning them in bed' meant, turning one's back to them in bed, abandoning sexual activity in bed, abandoning the marital bed only, staying in the marital bed but abandoning sexual activity, engaging in sexual activity but abandoning communication, or engaging in sexual activity and communication but in a tough manner⁷⁰. The rationale behind the reasoning of some scholars is indicative of their own cultural and personal views of gender and marital relationship. This was exemplified by Al-Tabari using linguistic and patriarchal reasoning and argued that "abandonment in bed" could not be the actual meaning of the Qur'anic phrase. He noted that if the woman is *nushuz*⁷¹, then she would only be pleased by being abandoned in bed. He opined that the word *wahajuruhunna* must have a different meaning and combed it for another meaning of part of the word "h.j.r and related derived forms, focusing on the noun *hijar*. *Hijar* is the rope that is used to tie animals. His conclusion was that the better interpretation of the *wahajuruhunnafi'lmadhaji'i* is "tie them in bed". Some jurists like Ibn Arabi, however, criticized this interpretation having contradicted the *Qur'anic* model of affection and tranquility. On the rest of the phrases "*wadrubuhunna*", Al-Hibri viewed that it is difficult to square the passage with harmony principle. She explained the danger of separating a verse or part of a verse from its context to reach an isolated interpretation of its meaning⁷². This verse has been used by some patriarchal men to justify physical violence against women. By simple comment, *wadrubuhunna* has its plain meaning which is 'hit them' but that does not mean that the Qur'an advocated for wife beating.

The above position was clearly explained by Al- Hibri who posits that *Qur'an* adopts a gradualist philosophy for social change. She viewed that gradualism is God's merciful recognition of the human condition and its limitation in the face of change. For this reason, Qur'an was revealed gradually in accordance with events, needs, and capabilities of Muslims, since it would have been impossible to end

⁶⁵ JM Aralandson (n.51)

⁶⁶ JM Aralandson (n.65)

⁶⁷ JM Aralandson (n.66)

⁶⁸ AY Al-Hibri, 'An Islamic Perspective on Domestic Violence' (2003) Fordham International Law Journal<[http://www.karamah.org/wp-content/uploads/2011/11/Alhibri Domestic Violence. pdf](http://www.karamah.org/wp-content/uploads/2011/11/Alhibri%20Domestic%20Violence.pdf)> accessed 21st January, 2006. p.204

⁶⁹ AY Al-Hibri (n.68) p.205

⁷⁰ AY Al-Hibri (n.69) p.205

⁷¹ Which is defined as one who acts superior to her husband and dislikes and disobeys him.

⁷² AY Al-Hibri (n.70) p.205

to introduce a perfect Islamic society all at once. For instance, during the *ayyam-i-Jahiliyyah* (days of ignorance or pre Islamic days), there was a habitual attitude of alcohol consumption by the Arabs but when Islam arrived the prohibition was imposed gradually. At first, the prohibition was only advisory, and then it applied only to prayers. In the final stage, the prohibition became unconditional and comprehensive⁷³. This was exactly how Qur'an 4: 34 was revealed in gradual form.

According to Al- Hibri, the passage which she called chastisement passage was revealed to ameliorate rough behavior or attitude of hitting their wives by the pagan Arabs particularly, the Meccans. They carried this practice to Islam until one night when a woman came to the prophet and complained about it. He chastised Muslim men who dared to hit their wives. The prophet acting on his own prohibited the practice by giving the woman the right of vengeance in equitable form. That very evening, the men complained strongly to the prophet who at his own mercy revisited the issue upon an argument that his ruling allowed their wives to gain upper hand. While in that situation, the prophet sought and received a revelation on Quran 4:34 reflecting the philosophy of gradualism. The verse appeared to have reversed the prophet's earlier ruling but in fact, it has severely limited both the act and concept of hitting so as to empty both from harmful content⁷⁴.

The gradualism reflected in the chastisement passage on hitting unlike the case of wine drinking. The prohibition was immediate, but the approach was quite complex. Thus the concept of hitting was radically transformed into a non-violent symbolic act. The Qur'an as provided in the verse in question made hitting an act of last resort. Thus, it prohibited the husband to hit his wife for any reason other than one specified in the verse (i.e. *nushuz*). In this light therefore, the husband is prohibited to hit his wife without first going through a series of peaceful steps. Simply put, the husband must first establish that the wife was *nashiz* (disobedient) in which the husband has to go through several stages of anger management and dispute resolutions before he can even think of beating his wife. It is only when this does not work that a husband is allowed to beat his wife in a non-violent symbolic form by using a handkerchief or any light or soft object that will not in any way cause any harm to the wife in order to express his anger and frustration. Any harm injurious or leaving mark on the woman's body is actionable as criminal offence as well as good ground for dissolution of the marriage in a court of law. Islamic law permits a wife to seek judicial separation where she is being harmed and cannot bear it. If she proves these by means of oral evidence or admission of the husband before a competent court and the judge tried all efforts to settle them but without success, the marriage should be dissolved⁷⁵. Thus in *Mohammed Wambai v Maryam Mohammed Wambai*⁷⁶, the petitioner/respondent filed a petition for divorce on ground of maltreatment (beating) among others against the Respondent/ Appellant. She was not able to prove the matter but the trial court dissolved the marriage without compensation (*khul'*)⁷⁷. The appellants being dissatisfied, he appealed and compensation was awarded in his favour.

Considering the ideal of marital relation under the Islamic law, the majority of Muslim scholars concluded that while the act of hitting is permissible in Islam, abandoning it is preferable and more graceful⁷⁸. They also concluded that a woman abused physically or verbally is entitled to divorce from her husband. These views have been adopted by some personal status codes such as the Jordanian Code of Personal Status.⁷⁹

⁷³ AY Al-Hibri (n.72) p.205

⁷⁴ AY Al-Hibri (n.73) p.206

⁷⁵ BA Mahmud, *Marriage Under Islamic Law in Marriage Law of Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies, 1981) p.75.

⁷⁶ Unreported NSJ/SCA/CV/3A/2002 delivered on 5/10/2002 by Hon. Z.Y Abdullahi.

⁷⁷ *Khul'* Means divorce by mutual agreement where a wife seeks her freedom from the marital bond upon payment of compensation to the husband.

⁷⁸ AY Al-Hibri (n.74) p.222

⁷⁹ AY Al-Hibri (n.78) p.222. See Provision Law No. 61 (1976), Cap 12, art. 132; Kuwaiti Code of Personal Status Pt. 1 tit 3 Cap. 1 art. 126

As we have noted earlier, the only ground upon which a husband is allowed to symbolically beat his wife is in a situation of *nushuz* i.e. disobedience. This *nushuz* is subjective, because what is regarded as *nushuz* by one may not be necessarily regarded by another as *nushuz*. What then is this *nushuz*? *Nushuz* means disobedience to the husband's instructions while *nashiza* means disobedient wife. Under shari'ah, it is used to refer to a wife who fails to carry out her duties⁸⁰. It could also mean misbehavior of a wife towards her husband. According to al-Hibri, *nushuz* has different meanings in Arabic, but not all of them fit within the context of the verse. Literally *nushuz* means to rise above, or act superior to. She further opined that a *nashiz* wife is the opposite of a righteous wife. She also viewed that the prophet appears to have interpreted the word *nushuz* to mean two things, namely, bringing some one the husband dislikes in bed or committing *fahishah mubayyinah*⁸¹. Jurists interpreted this *fahishah mubayyinah* broadly to include disobeying one's husband even in such matters like leaving marital home without the permission of the husband. Others disagreed, stating that *fahishah mubayyinah* means adultery⁸². The proponents buttressed their views on the Qur'anic injunction that ends the practice of *Jahiliyya* era which permitted men to inherit women as chattel and the patriarchal practice of oppressing women until they give up their rights. It says:

You who believe, you are forbidden to inherit women against their will and you should not treat them with harshness, that you may take away part of the mahr you have given them, unless they commit open illegal sexual intercourse. And live with them honourably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good⁸³.

6. Conclusion and Recommendations

It is evident that the concept of hitting or beating permitted under the Islamic law entails hitting a wife in a symbolic non-violent form. Any beating that is injurious or leaves a mark on the woman's body is actionable as a criminal offence. If the husband reaches the unfortunate stage of beating, he must use something soft like a handkerchief. The law permitted light beating in event of the wife's disobedience but does not encourage or support violence in whatever form. Good Muslims know that violence and coercion used in the Muslims' matrimonial homes to gain control of women is oppression and not acceptable in Islam. It is a practice that should be attributed to patriarchy or customs. And these patriarchal or traditional practices are mostly the cause of a high rate of divorce in the Muslim homes especially in the illiterate homes. Thus, where a woman complained that she has been battered, her parent will not bother to listen or investigate the crux of the matter instead she would be sent back to the husband not minding the consequences thereof. If she refused to return to her husband in that battered situation, she may be cursed by her parent or be subjected to yet another harsh treatment. A woman in this situation may feel shy to seek legal redress and may take refuge in a brothel. In the light of this therefore, the writer opines that parents should create an enabling room where they will listen and share ideas with their married daughters especially on issues bothering on their matrimonial homes.

To have a free violent home in Nigeria, government, community, non-governmental organizations (NGOs) and individuals have different roles to play. The government at all levels should prohibit and discourage all forms of patriarchal or traditional practices that encourage or support domestic violence. The provision of section 55 of the Penal Code (applicable to the Northern States) which encourages women chastisement should be removed from the code so as to have an equal stand with the Criminal Code (applicable to the South) where no such provision is made. Most victims of domestic violence in Nigeria suffered in silence due to the way and manner the issue is handled by government in Nigeria. Domestic violence as a human rights issue is mostly treated as private matters. National Human Rights Commission (NHRC) being government machinery saddled with responsibility of protecting the fundamental rights of Nigerians should spread its arms to help in fighting the menace of domestic violence. The

⁸⁰ AY Al-Hibri (n. 79) p.219

⁸¹ AY Al-Hibri (n.80) p.219

⁸² AY Al-Hibri (n.81) p.219

⁸³ Qur'an 4:19.

Commission should device a means of fighting this menace by introducing an effective women right framework that will aid the victims of domestic violence to channel and/or ventilate their grievances or enforce their rights before it. It shall also introduce programs to enlighten the public on the psycho-legal consequences of domestic violence through seminar, workshop and others.

All women groups operating as NGOs should work vigorously towards the promotion of women's education and enlighten women on the need to be obedience to their husbands. Husbands too should be enlightened through seminars or media that marriage is a solemn covenant in which their wives are given them on trust and therefore, any breach or harm on them is the breach of this covenant. They should be made to understand that women are source of comfort and happiness.

Muslim patriarchs should avoid interpreting the primary sources of shari'ah to suit their patriarchal or traditional interests. There is nowhere in the Islamic texts where violence against women is allowed. Some husbands in their homes bought skin cane (known in Hausa language as *koboko* or *tsumagiya*) to beat their wives as if they are beating their slaves. The prophet is reported to have said emphatically in his farewell pilgrimage that Muslim men should treat women kindly and with respect and to remember that they (women) are a trust in their hands from Allah.