

RELIGION AND MODERNITY

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MUSLIM WOMEN IN NIGERIA BETWEEN POSTMODERN FEMINISM AND RELIGIOUS FANATICISM: THE CASE OF THE ISLAMIC LAW

By

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Abstract

In this paper, the Islamic activism of Muslim women in contemporary Nigerian society has been analyzed. The paper examines the position of Muslim women and the reaction of these women to the re-introduction of the criminal aspects of the Shari'ah law in Nigeria. It begins by recapitulating the development of feminism in postmodern society and the position of Muslim women described as Islamic feminists. There are many philosophical definitions and perspectives in the feminist movement that show that it is not spurious or baseless to wish away the version known as Islamic Feminism but rather demands serious study. This article argues that despite the sheer diversity in the philosophical backgrounds of those who debate the role and empowerment of women, within the Islamic tradition, it is no longer possible to deny the feminist movement for women's emancipation which is ultimately focused on gaining for women in practical terms all the rights that they have been denied. The paper therefore focuses on the role of Muslim women in the development of shari'ah implementation in Nigeria as part of their feminist struggle for Muslim women political emancipation and how the feminist aspirations of these women in respect of what they perceive as a destructive and overzealous implementation of the shari'ah law can be realizable. This study reveals that Nigeria has failed in the state implementation of the shari'ah and submits that there is a need to adopt the use of forensic evidence to make the Islamic law gender compliant as envisaged by Allah-the lawmaker.

Introduction

Feminism was born to advocate for equal treatment of women with men in specific rights. Western Europe in general and Britain in particular, were very late in developing basic rights and equal status for women. In short, feminism originally referred to the struggle for equalities with men in specific areas such as education, voting and employment opportunities. The sordid conditions of women in the Victorian society however continued unabated well into the second half of this century. The feminists' campaign for property rights were only won in Britain with the married women's Property Act of 1870, amended in 1882 and 1887 and in France in 1938 when women were allowed to own property and possess bank accounts respectively. As for the struggle for suffrages, the women's right to vote and political franchise took longer to be won. In fact, Switzerland was the last European country to have given the right to vote to women in 1971 (Kausar 1996, 476, Boris, 1992, 21, 155 and Lietaer 2001, p 169 quoted in Uthman, 2005, pp. 131-150). Elizabeth Cady Stanton an exponent of this early equity feminism argues that it wants for everyone what it wants for women: fair treatment, without discrimination in the society. But more radical

second wave gender feminism later initiated women into an all out struggle against their perceived subordinate position in a patriarchal society as well as complete moral independence, sexual emancipation and total class/gender deconstruction (Sommers 1994, pp 22-23). It has therefore been making use of any piece of information whether reliable or not to fight a seemingly personal vendetta against men and now centers mostly round the deconstruction of women as gender feminists struggle for a non-male, patriarchal and phallic language. Gender feminists such as Gloria Steinem are ideologues helping no one and certainly not women because their methods are divisive and hurtful to legitimate feminism. Steinem an American journalist and feminist gave a great momentum to postmodern feminism. She worked assiduously with others to give feminism its concrete and postmodern shape, through outrageous, false and unfounded statistics and divisive methods (Sommers 12-73, 209-226 and 255-275). To radical gender feminism, no one is born a woman or with what the female sex represents in society but rather one becomes one. Annie Leclerc (1992, 362-365) asks women to reveal their sexuality not for the pleasures of men but for their own pleasures for this is the only way they can make their body satisfy their own pleasures only. These postmodern gender feminists insist that gender roles are not natural but learned through socialization and that the relationship between men and women are therefore based on socially defined constructs, roles and duties that uphold the concept of 'biology determines destiny' (Butler 1990, pp 6-12). Sandra Lee Bartky (1990, pp 105-118) opines that though people are born male and female but no one is born masculine or feminine because femininity is merely a social construct. On the basis of this, she welcomes the liberation movement, which is questioning the male inspired social construct of female gender and femininity. Luce Irigaray (1992, 372-376) pushes this call for radical liberation of sexuality by asking women to disrupt the patriarchal system, end phallic images of femininity and engage in anti heterosexual relationships like lesbianism and she called on women to work together to discover the feminine imaginary. Juliet Mitchell, a British social feminist, psychoanalyst and writer is another gender feminist that had tremendous influence on feminist thinking in the West. Today, one can still easily detect her influences as well as those of other Marxist feminists in a lot of feminist struggles against oppression and in the current debate on gender equity (Kausar 1996, pp 476-477).

In short, postmodern trends in feminism represent the total deconstruction of even nature. Michel Foucault is one of such postmodernists who reject the notions of absolute truth and reality. To him, social values have no intrinsic foundations and are rather promoted by those who wish to do so due to their self-interest (Racevskis 1993, pp 8-9). Other postmodernists include Lacan and Derrida who both analyzed the symbolic order- a series of interdependent signs, language and concepts, which they argue regulate the society using a male, imposed phallic language and thereby excluding women and concluded that the search for meanings is pointless and useless as reality is relative and symbolic. Meanings according to them differ but the male regulated phallic society striven to suppress differing and plural interpretations. Following the above, feminism now centres mostly round the deconstruction of women

that is ever expanding with no predetermined ends as gender feminists struggle for a non-male, patriarchal and phallic language and meaning that they might have been in existence before Adam was given the power of nomenclatures (Tong 1992, pp 233-238). Using Michel Foucault postmodern and poststructuralist psychoanalytic analyzes of sexuality that argues that many power relations can be located in the society such as body, family and kinship, Jana Sawicki (1991, 220-225) submits that the struggle for a power-free society is not a utopian vision. She tries to reconcile Foucault's pessimism that such a struggle is an illusion with her view by explaining that he was only skeptical about the possibilities a global transformation as propounded by the Enlightenment philosophers but this skepticism did not lead him to despair. Gender feminists approve of women liberal sexual attitudes and liberty to have sex like men on their own terms. Simone De Beavor argues that it is human civilization that produces the woman-creature between man and eunuch, thereafter, the institution of marriage further relegates this feminine creature and determines her status as child and mother in patriarchies such as Islam which smoothers all forms of sexual autonomy and permissive alliances (Kauthar 2003, pp 7-10). In an interview, Simone De Beavor argued that no woman should be permitted to stay at home to raise children because if such a choice is given, too many women will lead blighted conventional lives (Sommer, pp 256-257). In the United States where the postmodern feminist movement took shape, the number of separated families rose between 1975 and 1983 to about three million women and from 1983 to 1988 to about four million. An astonishing sixty-one percent of women with children under the age of ten suddenly left their families (Hewlett 1986). The increase in the rate of broken homes, abandoned and abused children as well married and un-married homosexual men and women, is not just an American or western phenomenon. It has rather become a global phenomenon and is today a visible feature of Muslim societies. Fatima Mernissi (1987, pp xxii-xxix) sees the fact that many young Muslim men and women in the Arab-world in particular are un-married today as a sign of women's empowerment and self-perception as actors in the society. To her, it is a sign of progress that women postpone marriage while concentrating on education so much that there is a staggering increase in the number of un-married urban men and women. Thus, for postmodern feminists, modern technology has opened many closed doors not only to make heterosexual marriage redundant but to also eliminate the need for either sex in human reproduction. Researchers at Monish University in Melbourne are now re-programming women's eggs to assist women to have their own genetic offspring without a man's sperm (New Strait Times, 12 March 2001).

Worst still, reproduction technology has opened the doors that turn women into more sophisticated and refined sex workers, mistresses and at best single mothers. Such women are reduced to mere playgrounds for men who abandon the women after sowing their wild oats and these women do bear alone, in most cases the socio-economic responsibility of what the two of them have enjoyed together. The men then become free to move on and hunt for other willing victims in their play-boyish games.

The Re-Emerging Islamic Feminism

Today, however there are Muslim women and men who reject both the western oriental feminist and traditional representation of women. It is therefore only those Muslim women who hold tenaciously to the Islamic teachings and work within Islamic matrices in their struggle for a change in Muslim societies that benefit all, especially women that are referred to in this paper as Islamic feminists and it is to their struggle against injustice in all forms including gender injustice and oppression through their activities in the Islamic movement that Islamic feminism refers (Uthman, 2005, pp. 140-44). Cooke identifies both feminists working within secular and Islamic matrices as 'Islamic feminists'. She includes in her identification, women fighting gender injustice and oppression whether through or against religion and does not distinguish between women who support or subvert the activities of Islamic movement. She also put together feminists who uphold Islamic activism and those who do not and most importantly feminists who believe in the authenticity of the Islamic and those who do not (Cooke, 2001, pp. 55-64). However, her usage of the term, Islamic feminism raises some epistemological questions. It is not really possible to define the term, 'Islamic feminism' in the context of Muslim women and completely overlook or gloss over the ideological convictions of those lumped together; it is not really identical, the disgusting tossing away of seclusion and the harem's life with the conviction that this very harem's life is dignity and empowerment for some women and the belief that the egalitarian message of Islam was the mere product of a revolutionary visionary who finally submitted to a patriarchal cabal in a severe moment of stress and turmoil can never be the same with the conviction held by millions of Muslim women activists that the revolutionary, visionary and egalitarian message of Islam was not only divine but is also for all time and that it did achieve for women of all times justice, shelter and in fact resistance to male domination and oppression. It is for these reasons that Lamyā' al-Fārūqī, (1408/1988, pp. 28-30) has clarified what can be regarded as Islamic feminism when she argued that the feminist movement will not be compatible with an Islamic environment until it accept the goal of Muslim women to uphold the teachings of Islam which they regard as ideal and to which they want to return. This is no doubt in reference to only those women described as Islamic feminists by this author and is not referring to those feminists who though are Muslims yet are opposed to the teachings of all Islam and who like the mainstream feminists consider all religions including Islam as the chief enemies of feminist struggles. According to al-Fārūqī therefore, those women who are Islamic feminists must accept Islam as an ideology whose concept of religion or *Dīn* encompasses the entire spectrum of life as well the Islamic concept of justice that is in tandem with the wider justice for all human or non-human beings and not just women or men alone for that matter.

But at the same time, the research agrees with Cooke on the reality and the authenticity of Islamic feminism. As she has clarified, feminism is about how the expectations for men and women's conduct should lead to just situations particularly but not necessarily only for women. It seeks justice wherever it can find it in order to put an end to gender discrimination (Cooke, 2001, pp. ix-xx).

While Islamic feminism focuses on women activism and participation in the society, it does not restrict itself to justice for the female gender only. In fact as argued by many Muslim women, Islamic feminism upholds the Islamic tenet of justice for all human and even non human beings. In what follows, the roots of Islamic feminism in the revolutionary, visionary, egalitarian and divine message of Islam will be traced and how Muslim women activists in Nigeria are trying today to recapture this authentic Islamic feminism will be examined.

There abounds in the primary sources of Islam, the Qur'ān and *Sunnah* texts that affirm gender equity and complementarities. Contrary to the claim of many western and secular writers who try to show that it is Muslim men who construct and portray women's contributions in Muslim society, the case of 'Ā'ishah is perhaps the most vivid example of how Muslim women in the early days of Islam shaped the Muslim society and constructed its legacy in their own unique ways. In fact, 'Ā'ishah as she challenged leading companions of the Prophet on the narrations from the Prophet and corrected these narrations, was as a Muslim woman, taking active and leading part in constructing almost all the teachings of Islam. This is what most western and secular writers like Spellberg fail to acknowledge when they argue that all the Muslim women in the early days of Islam like 'Ā'ishah could not control the preservation or selection of their words as well as their applications in Muslim societies (Spellberg, 1994, pp. 57-58). This is the revolutionary, visionary, egalitarian and divine basis of Islamic feminism. The label shows the difference between the perception of Islam as a religion, which matches the egalitarian vision at the core of its teachings with realism and pragmatism and western secularism. Islam to him is a religion that is predicated on moderation and balance and therefore upholds gender equity but is opposed totally to the extremism of secular and gender feminism. Ishaq Olatuboşun Tijani, a Nigerian Muslim scholar and a former university of Ibadan lecturer therefore submits that Muslim women use Islamic matrices to eradicate women's oppression in the larger Nigerian society. By supporting their moves within Islam, they show clearly that Islamic tenets are not contradictory to issues of equity, equality, and justice for all races, groups, sexes etc. To him, their moves also reveal that these women differ from secular and western feminists in their attempts to eradicate women's oppression (Uthman, 2006, pp.). Hence, these Muslim women at the forefront of Islamic revival in Nigeria today can be described as a new brand of Islamic feminists.

History of Muslim Women's Activism and Islamic Feminism in Nigeria

Historically, Islamic feminism in Nigeria finds a support in the reforming movement of the *Jihādī Shaykh* 'Uthmān ibn Fūdī popularly known as Usman Dan Fodio. The fact that today, Muslim women in Nigeria are very active in *da'wah* work and the efforts to bring about Islamic revivalism have been traced to the Sokoto *Jihād* and *Øūfī* scholars. These nineteenth century *Jihād* scholars fought vigorously against all the harmful and oppressive practices women were subjected to in the name of Islam and called for their emancipation (Al- Ālūrī, 1985, pp. 123-143). During the above Sokoto *Jihād*, Muslim women played prominent and significant roles and

rendered many unique contributions. They took care of wounded combatants and transported the wounded soldiers from the battlefields to where they were nursed and given medical care. They organized numerous women's education groups and ensured that all the women were incorporated into these groups as well as the life of the community. Even Nana Asmau, the *Shaykh's* daughter also attained the status of a senior fakir in the *Sūfi* orders. Nana Asmau was in charge of the organization of itinerant women teachers during both pre and post revolution periods. She also served as the *Shaykh's* scribe and facilitated the writing of all his works. She equally mediated in all the communal activities of the post revolution Islamic state that was founded. In fact, she has been described as the modern day Asmā' bint Abū Bakr who protected the Prophet during the *Hijrah*, (Last 1988, pp. 183-204). but since she was also a revered scholar and leader, Asmau may even be referred to as the modern day 'A'ishah who was a great Muslim jurist and teacher. Muslim women continued to play the above respected roles till the demise of the caliphate at the hands of the British colonial masters. Right from the onset of the Sokoto *Jihād*, *Shaykh* Uthmān ibn Fūdī was seriously concerned over the ignorance and decadence of the society, particularly the deplorable conditions of women. He accused the scholars of dereliction of their religious duty for condoning the poor conditions of Muslim women and ignoring their education. Against the norms and traditions of Hausa society, the *Shaykh*, following the Prophet's step earmarked a special time for women's education, and often directed them not to listen to the words of those misguided men who talk about the duty of obedience to husbands but do not mention anything about obedience to God and his messenger. His brother Abdullāh also urged Muslim women to go out in search of knowledge where their husbands had failed to provide adequately for their education. By so doing, he put the education of women over and above marriage and consequently, Abdullāh, not only restored the emergence of women scholars as in earlier generations but also brought a complete revolution into gender relationship in Hausa land (Bugaje, 1995).

The Use of Forensic Evidence in Islamic Law

The replacement of military leaders with civilians in the national government in 1999 inspired the Muslim efforts to enforce the criminal aspects of *sharī'ah*. By 2004, according to an Amnesty International report for February, 2004, over ten people had been sentenced to death since the re-introduction of *sharī'ah* criminal provisions in Nigerian *sharī'ah* courts. In all these cases, women were sentenced in similar circumstances based on circumstantial evidences for *zinā* which is defined by the Zamfara *sharī'ah* penal code that came out in 2000 as sexual intercourse by a man or woman through the genital of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act. Consequently, over time, Muslim women activists have found compelling reasons or needs to call for the rights and protections of women. According to them, the manner of implementing the *hudūd* has contributed in no small measure to the vulnerability of women to abuse in many forms, by creating conditions in which this abuse can be perpetrated with relative impunity. They wondered why the evidence of a woman should be accepted when she confessed to committing an offence yet her evidence is not good enough

for her fellow male culprits and when she retracts her confession, it is not accepted. It baffles them how this can suffice to establish her guilt of fornication or adultery in a religion that has set very high and impeccable standards for the procedure of establishing the commission of *zinā*. They therefore call for total overhaul of the operation of the *sharīah* law especially in respect of the *hudūd* application to Muslim women. According to Hajiya Bilkisu Yusuf (mni) editor, Citizen Communications, Kaduna and a leading member of FOMWAN in Nigeria, the *sharīah* law in Nigeria has been reduced to a body of laws to fish out women who commit adultery. Currently, she reveals that only poor women and men seem to be the convicts of the *sharīah* courts while the elites and the rich appear to have some inbuilt immunity from *sharīah* laws. Denial of education to women in *sharīah* states is also a glaring flaw as female children are sent to hawk (*talla*), thus making them vulnerable to sexual abuse. She also explained that the divorce rate in *sharīah* states is too high as women are married and divorced at will by men. Hajiya Bilkisu therefore calls for an end to the miscarriage of justice that is witnessed in the implementation of the *sharīah* (Yusuf, 2002).

The clear implication of the above in cases of rape is that men would violate and rape girls and women with impunity as long as they make sure that there are no witnesses to their crime. On the other hand, women and girls who are victims of rape or coercion also have their situations further compounded when they are subjected to charges of both *zinā* and *Qadf* (false sexual accusation against their molesters). This clearly violates women's rights, justice and security while protecting those men who harass, molest and rape women and girls. This last point agrees with the submission of Prof. D.O.S. Noibi on the sentence of Amina Lawal who was sentenced to stoning that the sentence would be overturned at the *sharīah* court of Appeal. This to him is because the *sharīah*-based penal codes already possess provisions for justice to be done and if the various criteria are applied, then justice would not only be done but would also be seen to have been done (Noibi, 2004).

As established in some of the above cases, though rape is a punishable crime in every Muslim society, most still insist on the evidence of four witnesses before the culprits are convicted. Insisting as it is stated in the *Risālah* that a pregnant woman who says she was raped is not to be believed and must be given the *hadd* punishment unless she provides four witnesses that the intercourse was forced on her will only make a mockery of justice under the *sharīah* (Kenny, 1992, p. 176). Punishing the women alone also gives the impression that the *sharīah* is gender-biased especially when there are ways of confirming this allegation as it is done for instance in Malaysia. In upholding the classical position on the provision of four witnesses to the act of rape, the *sharīah* operators lose cognizance of the impossibility of rape occurring in the view of any normal human being especially the God-fearing one and this ineptitude will only allow rapists to always get away with their crime. Today, it is possible to apprehend criminals for many crimes including rape because there are modern forensic means of obtaining evidence for the crime such as DNA tests to examine the sperm of the alleged rapists, examining their fingers and palms' prints on the body of the alleged rape victims as well as asking the women to describe

the naked body of such alleged rapists. The last suggestion is particularly applicable to men accused by women of committing *zinā* with them. If it was truly mutual, the women should be able to give some bodily descriptions of these men when they are naked.

Yet, the *sharī'ah* is not against the use of forensic evidence which includes finger and toe prints identification and the laboratorial analysis of blood and semen and is therefore pure medical, pathological and other sciences to determine culprits of sexual offences under the *sharī'ah*. Its use is supported by many Islamic texts. The Prophet once accepted the evidence of an expert on facial comparison for Usamah's paternity. In addition, during Umar's time, a woman accused a man of raping her and came with an egg-stained cloth as evidence. Ali then soaked the stain in water and it turned out to be white solid yoke. This indeed could be said to be the beginning of the use of forensic evidence in Islamic history. This would be in line with a major *sharī'ah* principle of removing hardship from the people as well as establishing proof beyond reasonable doubt. Hence Ibn Qayyim argues that whatever establishes justice is an integral part of Islamic law because Allah the just when specifying ways of establishing justice would not overrule other emerging more reliable and strong evidence (Haneef, 2005, pp. 118-127). The same goes for the view of majority of the jurists that a woman's retraction of her confession should be accepted because it raises the problem of doubt. This view should also be upheld in Nigeria where it is currently not the case. Even Imām *Mālik* as recorded in the *Al-mawsu'ah* (1993), pp.72-73), subscribes to the view that one of the conditions of establishing the guilt of *zinā* is the consistency of the evidence till punishment is meted out and ibn Qudāmah gives as evidence for the position of the majority, the case of Mu'iz who was stone at the time of the Prophet in spite of his retraction of his confession and the Prophet said "Perhaps if you had spared him, he would have repented and Allāh would have forgiven him".

Conclusion

In this paper, the prevailing conditions of Muslim women under the Islamic law in Nigeria are bad as to justify condemnations by feminists. One of the socio-political cum religious impediments confronting Muslim women in contemporary Nigerian society is identified in the way the haphazard implementation of *sharī'ah* laws give women limited choices to defend themselves in the face of women's rape by men. Yet Muslim women are convinced the lacunas in the *sharī'ah* implementations in Nigeria lie in the system and not the *sharī'ah* laws. Consequently, the research welcomes the activism of these women and their brand of Islamic feminism. It also calls for a reformation in the application of *sharī'ah* especially as far as Muslim women are concerned and it recommends the use of forensic evidence to determine culprits of sexual offences under the *sharī'ah*. At the same time, the economic and social conditions of the society should be considered in *sharī'ah* implementation so that the situations that are conducive for crimes e.g. *zinā* like high number of un-married women and high marriage costs are eliminated.

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