

Gender equality or gender equity? A critique of CEDAW from Shari'ah perspective

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Abstract : Women activism and the feminist movement generally emerged as a reaction to the unfair and unjust treatment of womenfolk in the medieval era. This feminist movement, being a challenge to the *status quo ante*, left no stone unturned in its effort to actualizing equality between the two sexes. The feminists have succeeded, among others, in bringing about a legally binding international treaty as Convention on Elimination of all forms of Discrimination against Women (CEDAW). This paper examines the provisions of CEDAW vis-a-vis the position of Shari'ah and argues that gender equality in its raw sense as encapsulated by the CEDAW is another form of injustice against the womenfolk. It argues that since the biological make up, physiological construct and psychological needs of the two sexes differ, the role each sex plays should be different albeit complimentary to that of the other, if cohesion and stability is to be attained in society. Using doctrinal and comparative methods of analysis, this study arrives at the conclusion that gender equity as provided by Shari'ah rather than gender equality as encapsulated by the CEDAW best serves the interests of womenfolk. It is equally the finding of this study that the provisions of Shari'ah on gender issues stand tall among all other legal systems as they aim at achieving the most needed equity among the two sexes.

Keywords: Feminist movement, Gender equality, CEDAW, Shari'ah, Gender equity.

Introduction

Gender issues, as they affect women, were subjected to variety of negative perceptions throughout the history of humanity. This ranges from the absurd debates of whether women have spirit or not to the culture that holds women as object of abomination; hence the practice of burying girl-child alive (وأد البنات) which the Qur'an abhors.¹ Women in the Greek civilization were perceived and portrayed in the images of Pandora that symbolizes bad luck, hence the proverbial phrase: "Pandora's box". Status of women in the Roman civilization did not fare any better. The story is virtually the same in the ancient Jewish settlement and the basic doctrines of Christian Europe. Women were considered as mothers of sins, root causes of all evils, distress and anxiety.² Some cultures even went to the extent of considering women as devils personified, this was vividly captured by an Arabian Poet, as he states :

Women are nothing but devils created for us (males)

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We seek God's refuge from the evils of the devils.

However, gender, according to Islamic conception, is one of the signs of the wonderful creations of the Almighty Allah. The Qur'an is categorical in this respect:

And of His signs is that He created for you from yourselves mates that you find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.³

Islam, therefore, came with the prime objective of liberating the womenfolk from the bondage of servitude to men as was the case with the cultures preceding the advent of Islam.

However, in contemporary times, the Muslim nations and societies have adopted cultural practices that treat women in an unfair and unjust manner. An added problem is the fact that an average Muslim in the contemporary Muslim Communities can hardly distinguish between the real dictates of Islam and those apocryphal, unwarranted and, at times, harmful cultural practices against women. This is due to the fact that these practices are firmly and deeply entrenched and embedded within the local tradition to the extent that they have been accepted as norms. This singular fact pushed some Muslim women, particularly those without thorough grounding in the Islamic teachings, to the assumption that western arrangement for women is the best. Some of the Muslim women elites are even calling for the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in its totality in the Muslim nations without any reservation. They even go to the extent of calling for re-interpretation of Shari'ah in the light of this Convention and other human rights' instruments if the Law is to have any relevance in the twenty-first century. They, further, contend that the present Shari'ah provisions are not completely divine as the bulk of it remains mere juristic speculations and formulations which were made for the periods, places and circumstances of their makers; hence the juristic manuals are full of divergent opinions that are largely patriarchal in nature. The Muslim family laws, according to the proponents of this view, have been influenced considerably by the interpretations of the Muslim Jurists – who are mainly men – hence the need for reform that will meet the yearnings, aspirations and situations of the Muslim women of the twenty-first century.⁴ This and other similar problems pose serious threat to Islam as they challenge application of Shari'ah in the current era of globalization and information explosion.

This article, therefore, sets out to assess the provisions of the CEDAW against the Shari'ah principles and doctrines with a view to examining its compatibility with Shari'ah principles and provisions. This study also aims to argue that Shari'ah, the Islamic Law, being a quality controller of all the preceding scriptural laws⁵ shall be the yardstick of judging other systems and under no circumstances it should be judged by any other man-made contraptions. This study is divided into five separate but inter-related parts. After a brief introduction, the study examines the concept of gender equality in Islam and the brief history and general overview of the CEDAW. Part four is devoted to the critical examination of the provisions of CEDAW in the light of Shari'ah provisions and then it concludes with some observations.

Gender equality in Islam

Equality is defined as the act of being equal while equity is a situation in which everyone is treated equally.⁶ In Islam, man and woman are considered equal in their status but their roles, duties and rights differ due to their primordial, physiological differences. Thus man and

woman are not, in the eyes of Shari'ah, duplicate of, but rather complement, each other. The incontrovertible biological differences between male and female necessitate natural separation and division of duties and occupations. Thus, equality from the Shari'ah perspective does not mean absolute or unrestricted identicalness. Equality does not substantiate a claim for equivalence or perfect sameness.⁷ Shari'ah, therefore, does not grant the same rights to men and women in everything in the same way it has not impose the same duties on both of them at all times. However, the sum total of all rights granted to women is not less in value than the rights granted to men.⁸ It is clear that in terms of spirituality and humanness, both gender stand on equal footing before Allah (SWT). It is also clear that nowhere in the primary sources of Islam (i.e. the Quran and Sunnah) one finds any basis for superiority of one gender over the other. The only criterion of superiority in Islam is piety and fear of God (*taqwa*).⁹ Thus, equality should not be confused with role differentiation in the spirit of cooperation and complementarities.¹⁰ It is apposite to point out, here, that Islam is not against the equality of men and women but it does not accept the concept of identicalness of their rights and duties.¹¹

Shari'ah emphasizes the complementary nature of the roles of males and females but each is assigned a distinct and unique role commensurate with their nature and abilities. Consequently, each one has been endowed with physical and psychological gifts suitable for fulfilling their respective roles in society. It is against this backdrop that Islam rejects the western concept of women's liberation because it upsets the natural balance laid down by Allah (SWT).¹² The existence of differences in Allah's creation of man's and woman's structures and biology is an indication of differences not limited to childbirth alone. The much advocated sameness cannot be achieved. On the contrary, it will lead to enslavement of women as their vulnerability tends to be ignored in the process. Women are generally vulnerable and, therefore, susceptible to various forms of victimization including sexual harassment at work places which men rarely suffer.¹³ It is, therefore, unnatural and impossible to achieve sameness. On this point, Rukayyah Hill, an American Muslim woman, rightly observes that regardless of how many legislation may be passed to treat women the same as men, one fact will remain eternally unchanged: the female gender was created with different needs and capabilities from that of the male. Not less, not substandard, not lacking – just different.¹⁴

Appreciating the Islamic conception of gender from the above perspective enhances our understanding of many Islamic rulings on gender issues. The *tawhidi* paradigm emphasizes that the wisdom behind gender differentiation is to provide comfort, tranquility, peace of mind as well as preservation of human race.¹⁵ Resultantly, Allah (SWT) legalizes marriage and outlawed any other forms of intermingling, association or cohabitation of the two sexes outside the confines of matrimony.¹⁶

A number of traditions of the Prophet (SAAW) also lent credence to the above position, thus:

Once Asma' 'bint Yazid ibn As-Sakan came to the noble Prophet and said, "O Messenger of Allah: I stand for a group of women who are of my opinion. To proceed, Allah the Almighty has sent you to both men and women. Then we believed and followed you. We women are confined to homes, target to men's lusts, and bearers to their children. Yet, men have the privilege to attend Friday prayers,

funerals and fight in the cause of Allah. On the other hand, in case of fighting, we keep their property and rear their children. Would we share with them in Allah's reward? Then, the Prophet looked at his companions and asked, "Have you ever heard a good question from a woman about religion like that? They replied, "You are right, Messenger of Allah". He said. "Go back Asma' and tell all women you stand for that treating one's husband kindly, seeking his consent and obeying him, are equal to all what you have mentioned concerning men.¹⁷

Shari'ah, however, imposes stringent conditions whenever there is necessity of interactions between the two sexes. In this regard, the Qur'an enjoins:

And tell the believing men to reduce (some) of their vision and guard their private parts. That is purer for them. Indeed, Allah is acquainted with what they do. And tell the believing women to reduce (some) of their vision and guard their private parts and not expose their adornment except that which (necessarily) appears thereof and to wrap (a portion of) their head covers over their shirts and not expose their adornment (i.e. beauty) except to their husbands, their fathers, their husband's fathers, their sons, their husband's sons, their brothers, their brothers' sons, their sisters, their sisters' sons, their women, that which their right hands possess (i.e. slaves,) or those male attendants having no physical desire, or children who are not yet aware of the private aspects of women. And let them not stamp their feet to make known what they conceal of their adornment. And turn to Allah in repentance, all of you, O believers that you might succeed.¹⁸

All these provisions are made for a purpose, *to wit*: Blocking the means that will lead to the spread of any form of immoralities and vices (فواحش) among the believers. It is, therefore, apt to hold that Islamic law is for gender equity rather than gender equality and sameness of roles and duties between men and women as envisaged by the CEDAW.

Brief history of the CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international human rights document that promotes the principles of non-discrimination and complete equality between men and women. The Convention was adopted by the General Assembly (GA) of the United Nations (UN) on 18 December 1979 and came into force on the 3 September 1981. The text of the convention was prepared by working groups within the Commission on the Status of Women (CSW).

The Commission (CSW) which originally was established in 1946 as a sub commission of the commission on human rights was quickly granted the status of full commission as a result of the pressure exerted by women activists. It is saddled with the mandate to prepare the recommendations relating to urgent problems requiring immediate attention in the field of women's right with the object of implementing principles that men and women should have equal rights, and the developments of proposals to give effect to such recommendation. This is mainly due to the realization that considering women's vulnerability, the existing International Bills of Rights are insufficient to guarantee to women's enjoyment of their internationally guaranteed rights.

Consequently, in 1974, the Commission (CSW) decided to prepare a single, comprehensive and internationally binding instrument to eliminate discrimination against women. This effort results in the text of the Convention on the Elimination of All Forms of

Discrimination against Women. The convention is a culmination of more than thirty years of work.¹⁹

An overview of the CEDAW provisions

The Convention (CEDAW) consists of 30 Articles and established both the international bill of rights for women and an agenda for action for countries to guarantee the enjoyment of the rights. Articles 1-16 define and prohibit discrimination against women and specify agendas for equality between men and women. Articles 17-30 deal with the implementation of convention and monitoring mechanism. The implementation of the Convention is monitored by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW). The Committee is composed of twenty three (23) experts nominated by their governments and elected by the state parties as individuals of high moral standing and competence in the field specified by the Convention. The Committee's mandate and the administration of the treaty are defined in Articles 17 – 30.

Article 1 defines discrimination as any distinction, exclusion or restriction made on the basis of sex in political, economic, social, cultural, civil or any other field. Article 2 provides for the policy measures to be undertaken by the state parties for the elimination of discrimination by the governments, organizations, enterprises and individuals against women. Article 3 enjoins the state parties to take all appropriate measures in all fields to ensure full development and advancement of women for the purpose of guaranteeing them the enjoyment of human rights and fundamental freedom on the basis of equality with men. Article 4, on the other hand, allows temporal special measures to be adopted by the state parties to accelerate practical equality between men and women, and such measures aimed at protecting maternity will not be considered as discriminatory. This is a “positive discrimination” clause of the CEDAW.

Article 5 obliges the states parties to work towards modification of social and cultural patterns of conduct of individual men and women to eliminate prejudices, customary and all other practices which are based on the idea of inferiority or superiority of either of sexes, or the stereotyped roles for men and women and to recognized the common responsibility of men and women in the upbringing and development of their children, considering the fact that the interest of children is a primordial consideration in all cases. Article 6 enjoins the state parties to suppress all forms of traffic in women and exploitation of their prostitution.

Articles 7, 8 & 9 specify measures which the state parties need to take to ensure equal opportunity and eliminate discrimination against women in political and public life of the nations, representing the government at the international level, and to participate in the work of international organizations, as well as the equal right with men to acquire, change or retain their nationalities regardless of marital status or the nationality of their husbands and equal right to the nationality of their children. In the same vein, Articles 10, 11, 12 & 13 affirm the right of women to non-discrimination in education, employment, health care, economic and social activities. Article 14 gives an especial emphasis to the situation of women in the rural areas and specifies measures the state parties shall take to ensure application of the provisions and benefits of the Convention to them.

The state parties are required, as in Article 15, to accord to women full equality with men in civil, business and procedural legal matters and law relating to the movement of person and freedom to choose their residence and domicile. The convention in this article demands that all instruments directed at restricting women's legal capacity shall be deemed null and void. In Article 16, the Convention asserts the equality of men and women on the issues relating to marriage and family relations and gives broad attention to legal status with regard to choice of spouse, rights and responsibilities during marriage and its dissolution, parenthood, family planning, personal rights and control over property. Articles 17-30, as pointed out earlier, deal with the monitoring of the implementation of the Convention by the Committee on the Elimination of All Forms of Discrimination. In these Articles the mandate and the administration of the treaty are explained.

Examining CEDAW from Islamic perspective

While Shari'ah may be in agreement with the spirit behind the objective of some of the CEDAW provisions, as Islamic civilization pioneered women's emancipation, Islam is, however, not in agreement with the approach adopted by CEDAW in achieving its objectives. Islam raises the status of women from servitude to complete humanity and as co-partners of men. The Shari'ah, nonetheless, is at variance with CEDAW on issues of complete equality of men and women, the changes in role of men and women in society and the legal status, rights and responsibilities of the spouses during marriage and its dissolution, among other issues. It is on these issues this article examines and critiques the CEDAW.

To begin with, the word "equality" is used more than twenty times in the CEDAW demanding from the state parties to take measures to eradicate any form of discrimination between men and women. Discrimination according to CEDAW includes any distinction, exclusion and restriction based on sex.²⁰ However, Islam, as a balanced religion, does not turn a blind eye to the natural differences between men and women and hence it apportions and assigns different roles to each sex suitable to its nature in addition to the general and common roles which both sexes perform equally.²¹ This is the first point of divergence between the provisions of the CEDAW that require absolute equality and sameness of men and women²² on one hand; and the Shari'ah focuses on gender-specific provisions that are more in line with nature of men and women, on the other.

Islamic teachings, as is the case with most traditional societies, assign gender-based social roles as a form of efficient means of division of Labour in society. Drawing inspiration from the animal kingdom, it is obvious that the termites are created differently with different functions. The soldier termites are created with mandibles to be able to protect and secure their kingdom while the workers are created to be able to source food and build shelter for the members. Their functions complement one another. Thus, acceptance of gender roles as a norm have been predominant for millennia until it was disputed by modern European secular culture. However, this culture has a lot of inconsistencies in its ideas about gender and equality.²³

Be that as it may, insistence on exactly the same roles for men and women is biologically and socially illogical. This is because there are clear natural and biological differences between the two sexes. To illustrate this point, it is incontestable that in terms of physical

strength men and women are not the same. Similarly, there are some exclusive natural functions assigned to a specific gender which cannot be changed at all, such as carrying pregnancy and suckling the baby by the woman. Hence, roles of men and women cannot be exactly the same because males and females are different in nature. Treating dissimilar persons in the same way sustains, rather than alleviates, inequality. It is based on this that Shari'ah apportions different social roles for men and women to suit their nature. Men are saddled with the responsibility of maintaining the family which requires them to go out of the home to source for the fund for the maintenance of the family;²⁴ while women are primarily responsible for homestead. Hence the Qur'anic statement: "And abide in your houses and do not display yourselves as [was] the display of the former times of ignorance".²⁵ The gender-specific roles are, further, clearly delineated in the hadith narrated by Abdullahi Ibn Umar (RA) that the Prophet (SAW) said:

All of you are guardians and are responsible for your wards. The ruler is a guardian and the man is a guardian of his family; the lady is a guardian and is responsible for husband's house and his offspring; and so all of you are guardians and are responsible for your wards.²⁶

In addition to the above textual authorities, there are number of verses of the Qur'an, Hadiths of the prophet (SAW) and the consensus of the jurists which clearly indicate these obligatory responsibilities of the man.

The practice of the women companions of the prophet (SAW) is very clear on the role of women. The beloved daughter of the Prophet (SAW), Fatimah, is a typical example in this regard as she used to carry out her domestic chores to the extent that her husband encouraged her to go and seek assistance from the Prophet (SAW) who instead placed them on daily *Dhikr* of prayers. The wives of the Prophet (SAW) were also reported to have been doing their domestic work at home in the process of which they had cause to compete and conflict with one another. In some cases, though, the Prophet (SAW) participated in domestic work.

Shari'ah may permit the changes in the performances but not redefining the role of women. There is no basis in Islam for changing the role which Allah (SWT) has stipulated because of the 21st century societal changes. The 21st century's conception of human rights will come and pass but Islamic law will continue forever. It should be pointed out that at the time of Prophet Muhammad (SAW), women worked to earn money and in some cases they were even richer than their husbands. Nana Khadija (RA) and the Prophet (SAW) is a case in point. Similarly, Nana Asma' Bint Abibakar used to go out and work on farm as she narrated thus:

When Az-zubair married me, he had no real property or any slave or anything else except a camel which drew water from the well, and his horse. I used to feed his horse with fodder and drew water and sew the bucket for drawing it, and prepare the dough, but I did not know how to bake bread. So our Ansari neighbors used to bake bread for me, and they were honorable ladies. I used to carry the date stones on my head from Zubair's land given to him by Allah's Apostle and this land was two-third Farsakh (about two miles) from my house. One day, while I was coming with date stones on my

head, I met Allah's Apostle along with some Ansari people. He called me and then, (directing his camel to kneel down) said, "Ikh!Ikh!" so as to make me ride behind him (on his camel). I felt shy to travel with men and remembered Az-Zubair and his sense of *Ghira* [jealousy], as he was one of those people who had great sense of *Ghira*. Allah's Apostle noticed that I felt shy, so he proceeded. I came to Az-Zubair and said, "I met Allah's Apostle while I was carrying a load of date stones on my head, and has some companions with him. He made his camel kneel down so that I might ride, but I felt shy in his presence and remembered your sense of *Ghira*. On that Az-Zubair said, "By Allah, your carrying the date stones (and you being seen by the Prophet in such a state) is more shameful to me than your riding with him." (I continued serving in this way) till Abu Bakr sent me a servant to look after the horse, whereupon I felt as if he had set me free.²⁷

This, however, has not changed their role of keeping the home front. This clearly evidences that there were ample examples of women who were working to earn money at the time of the prophet (SAAW), yet they did not abandon their role of home management. The women that work outside the home to earn a living are faced with the double responsibilities of working at home as well as outside. This poses the challenge of balancing home and work which drew the attention of the modern Muslim scholars who engaged in a series of discussions on the issue.²⁸ Thus, the call for change of roles between males and females in this century due to the women's new economic status is unnecessary. What is relevant is seeking the appropriate solutions within the principles of shari'ah to tackle emerging challenges of the dual role of today's Muslim woman.²⁹

It should be pointed out that the role of child bearing and upbringing or home management in general is not in any way inferior to engagement in public life. The financial attachment to public life as opposed to private life rightly or wrongly does not make private life inferior. Women's role in development of the family is very vital to society as family is the bedrock of society. Islam holds transcendental values that are beyond worldly or material benefit, as life does not depend solely on material satisfaction but on psychological, emotional and more importantly spiritual satisfaction. Thus, a woman traditionally feels fulfilled in her matrimonial home with successful family. This fact has bearings upon the legal status of women in Islamic Law of evidence where the testimonies of two female witnesses are equated with that of a male witness in contractual dealings.³⁰

On the family front the rights and obligations of the spouses differ. There are rights which are given to wife but not given to the husband, and vice-versa. There are rights and obligations of spouses under the Shari'ah that are restrictive, exclusive and distinctive which may be tantamount to discrimination under the CEDAW (Article 1). They include guardianship in marriage, leadership/headship of husband, and custody of children after dissolution of marriage, different shares of inheritance, etc. Notwithstanding the above, some Muslim feminists still maintain that complete equality as envisaged by CEDAW is possible under the Shari'ah especially with the re-interpretation of the sources of Islamic Law to reflect the realities of 21st century.³¹

On the headship of family, it is true that a man as a husband and father is the head or leader of the family under the Islamic Law. This is because the man is, naturally, endowed with certain qualities to carry out the responsibility of protecting his family members and providing for them an atmosphere of security, love and harmony. It is well known and incontestable that men are generally stronger in physique than the womenfolk. Hence the need to struggle to be able to give physical and emotional protection to the wife, children and other members of his household and equally work hard to provide them with maintenance and other financial needs. This gives the man the guardianship position in the family under the Islamic law as opposed to the leadership of the woman.³² The guardianship of man in the family does not make him superior to the woman as this is in line with the general principle in Islam whereby the Prophet Muhammad (SAAW) enjoins the Muslims to always have a leader for a group (even of three people) when on journey. As men are enjoined to honour their wives and treat them as partners, the women are required to respect and obey their husbands. The Prophet (SAAW), has described a pious wife as the one who obeys the husband when he gives her command, he is pleased when he sees her and she guards her modesty in his absence. This is the picture of an ideal Muslim home in Islam as against equality or sameness envisaged by CEDAW.

However, upon the separation of the couple and termination of the marriage union, the woman as a mother was given preference with regard to the custody of the children till they reach certain stage in life when they can take care of themselves. This right is given to the woman because of the nature Allah (SWT) has endowed her with, of being tender hearted, loving and caring to children. Women do not share these rights equally or in common with men as against the absolute equality required by the CEDAW.³³

In the case of inheritance, for instance, heirs of a deceased person whether male or female have their fixed entitlements in the estate left behind by the deceased as prescribed by Allah (SWT).³⁴ The entitlement of female child is clearly half of the share of a male child which is completely contrary to the provisions of CEDAW.³⁵ It is clear also that polygamy which is permissible under Islamic law,³⁶ conditionally or otherwise, does not have a place under the provisions of CEDAW as it is considered "discriminatory" against women.

On the claim of patriarchy in Islamic Jurisprudence, it is not accidental that almost all world leaders in every civilization are men, all Prophets of Allah mentioned in the Qur'an are men, and that women are not leaders. Thus, it is only natural for men to interpret and develop the law and this will not necessarily make such interpretation patriarchal as some feminists are claiming. This also does not mean that women are inferior or that their various levels of participation and contribution to the development of their societies are disproportional with those of men. This is so, especially when one considers the role they play in the life of men and humanity generally as mothers, wives and daughters, as well as the status accorded to them under the Islamic Law. Ironically, the Muslims feminists clearly indicate that they are viewing Islam and interpreting the sources of Islamic law from the feminist perspective. The tendency is that their interpretation of the text is matriarchal which will not represent the true position of Islam.³⁷ The more disturbing aspect of their interpretation is their working along with the secularists and using them and their works as their yardstick for formulations and derivations of rules from Shari'ah sources. In their call for prohibition of polygamy in the

Muslim countries, for instance, the feminists relied heavily on the United Nation documents and data as their yardstick and point of references.³⁸

The feminists claim that the Shari'ah as expounded by the Prophet (SAAW) was at its embryonic stage during his life time hence the needs for its continuous development to suit the social context of the modern times. The development in this context goes beyond the normal *ijtihad* as the feminists can go beyond and at times even contrary to the texts to make rules as long as that is what is in vogue in society and neglect the application of the rules of interpretation of Shari'ah sources. This is contrary to the Qur'anic dictates where Allah (SWT) says: "Today, I have perfected your religion for you, completed my favors upon you and have chosen Islam for you as religion".³⁹ While commenting on this verse Ibn Katheer narrated that Abdullahi Bn Abbas said: "In this holy statement Allah Almighty told the Prophet (SAW) and the believers that they will never be in need of anymore and since Allah Almighty perfected it, He will never reduce it and since Almighty Allah has become pleased with it will never be displeased with it."⁴⁰ Allah has also instructed the Muslims in no uncertain terms not to make unlawful that which He has made lawful.⁴¹

It should be pointed out at this juncture that derivation of rules from the sources of Shari'ah is a field of its own and only experts in that field can competently delve into it. This is not peculiar to Shari'ah as every field has its own intricacies that are best handled by their experts. This could further be illustrated by the fact that reading a lot of newspaper or watching too much of television programs would not make one an expert in journalism capable of indulging into it. Likewise an experience in medical care alone cannot qualify a person to practice medicine. Thus, although a Muslim may have the right to ponder over the provisions of the primary sources of Shari'ah and may even draw a conclusion as to what is correct and what is wrong, he or she is, however, not in any way permitted to delve into derivation of rules or giving rulings (*fatwa*) in Shari'ah except he or she is a qualified jurist and an expert in the field. Another illustration in support of this point is the fact that although everyone is governed by the laws of his/her society which s/he has to learn and abide by, the only eligible persons that could authoritatively interpret the laws are the lawyers and judges who are experts in the field of law and not every member of the society governed by the law.

Religion is a fundamental right of the individual which is private, involvement and interference of international law on private and religious life of individuals is a violation of the fundamental human right. There is no justification for Muslims to adopt women's human rights from the CEDAW provisions and from so-called international standards. For the Muslims, the law of Allah is supreme.⁴² There is, thus, a clash between the Western civilization through which international human rights emerge and Islamic civilization. It is a clash between spiritualism and materialism. Presently, United State of American is yet to sign and ratify CEDAW. It asserted that USA do not need CEDAW as the women in USA are already treated the same way as men.⁴³ The question for the Muslims, now, is: Is the American society in treatment of their women a model society for the Muslims? If America can be excused from ratifying CEDAW, the Muslim countries are more entitled to such excuse.

Islam is a balanced religion which stands out for justice for all creations including men and women. A situation where one goes to the extreme in redressing a wrong may result into

another wrong (positive discrimination as provided in and permitted by the CEDAW).⁴⁴ Human beings are interdependent, and what affects the man affects the woman and vice versa, as woman is the mother, wife, sister, and daughter of man.

Insisting on complete equality between men and women and changing women's traditional roles by imposing upon them performance of additional roles in the public sector and participation in the maintenance of the family put a woman to a greater disadvantage and unfair position making her vulnerable and susceptible to humiliation, abasement and harassment and a violation of her human rights. Consequently, this leads to serious injustice to the womenfolk.⁴⁵ This is because the current position of a modern woman, in addition to the trouble it puts her through, violated women religious rights and freedom that have taken care of their natural needs. The natural role of child-bearing and up-bringing assigned to the women cannot be taken away from them, why then should additional role which is not supposed to be theirs be added to modern women? It is a well known fact that woman unlike man, by virtue of her nature is susceptible to sexual abuses, harassment and physical, psychological and even emotional torture in the public sector.⁴⁶ CEDAW insistence on the international standard is, thus, another violation which is not sensitive to differences in the other people's values. Some communities are secular while others are highly religious and these differences need to be respected.

Concluding remarks

The conclusions that can be arrived at from the foregoing analyses could be summarized as follows:

- Whereas Shari'ah assigned different roles for male and female each in accordance and commensurate with his/her nature, CEDAW laid undue emphasis on absolute equality and sameness of the two sexes.
- Whereas, in keeping with the natural disposition of each gender, Shari'ah laid emphasis on gender equity, CEDAW, on the other hand, accentuates gender equality regardless of the fact that such unbridled equality may do more harm to the womenfolk and therefore heightened their vulnerability.
- In spite of Shari'ah emphasis on gender equity, injustice is being meted out to womenfolk in Muslim societies. This needs to be addressed by the Muslim scholars, so as not leave room for mischief makers to exploit the situation.
- The women engaged in feminist movements, particularly the Muslim sisters among them, need to be cautious; otherwise they may be heading towards self destruction.
- Since Shari'ah, being a divinely ordained legal system revealed to humanity through the Prophet Muhammad, is superior to any other previously divinely ordained scriptural laws, it cannot be subjected to any hermeneutic tools devised or invented by man.
- Considering the above points, only trained and qualified experts are entitled to interpret the Shari'ah sources and apply them to contemporary emerging issues.

From the above, it can be concluded that what will best serve the interest of womenfolk generally and Muslim women in particular is the gender equity prescribed by Shari'ah and not the mirage of absolute equality encapsulated by CEDAW and being advocated by feminist movements globally. The Muslim women should rather insist on full implementation of the rights granted to them by the Shari'ah.

Endnotes

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- 1 Holy Qur'an, 81: 8 – 9.
 - 2 Juwayriya Badamasuiy, *Status and Role of Women under the Shari'ah*, (Kaduna: Zakara Publishing Company, 1998), 2–5.
 - 3 Holy Qur'an, 30 : 21.
 - 4 See Musawah, "Musawah Framework of Action", (Malaysia Musawah: An initiative of Sisters in Islam [Sis Forum] 2009).
 - 5 In Suratul Ma'idah, Allah (SWT) Says: "And We have revealed to you, [O Muhammad], the Book [i.e., the Qur'an] in truth, confirming that which preceded it of the scripture and is a criterion over it. So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth. To each of you We prescribed a law and a method...." Holy Qur'an, 5:48; See also Holy Qur'an, 2:41, 91-97; 3:3; 4:47; 5:15; 6:92; 10:37; 12:111; 46:12 & 30 for similar provisions.
 - 6 Oxford Advanced Learner Dictionary, 7th Edition, 492- 493
 - 7 A. F. Abdullahi, *Ihtiyaadat hatta la yanharifal abnaa' Suwarun min asaleebin Nabiyyi (SAW) fit – Tarbiyyah*, (Alexandaria – Egypt: Darul Iymaan, 2004), 43 – 53; See also Muhammad Tawfiq Ladan, "Women's Right, Access to and Administration of Justice under Shariah in Nigeria" in *Shariah Implementation in Nigeria*, Joy Ngozi Ezeilo et al (Abuja & Lagos: WARCOL, WARDC, 2003), 33.
 - 8 Ibrahim A. Aliyu, "Gender Equality and the Rights of Women under the Shariah", Paper Presented in a Seminar by International Institute of Islamic Thought, Nigeria office, Kano, Nigeria, March 7th, 2010.
 - 9 Holy Qur'an, 49:13.
 - 10 Jamal Badawi, *Gender Equity in Islam*, 3rd print., (USA:Sellon Publication Co. IMC, 2004), 13-14.
 - 11 M. Mutahhari, *The Rights of Women in Islam*, 1st ed., (Tehran, Iran: World Organisation of Islamic Services, 1981), 116.
 - 12 Bilal Phillips, *Tafseer Soorat Al-Hujrat; A Commentary of 49th Surah of Quran*, (Riyadh: Tawheed Publications, 1988), 109-111.
 - 13 S. A. R. Abdul-Khaliq, *The wisdom behind Islamic Law Regarding Women*, trans., A. Al – Timimi, (Ann Arbor, USA: Islamic Assembly of North America, 1995), p. 35. Instances of this could be seen in: Kamala Chandrakirana, "Women Place and Displacement in the Muslim Family: Realities from the 21st Century" in *Wanted – Equality and Justice in the Muslim Family*, edited by Zainah Anwar, (Kuala Lumpur, Malaysia: Musawa/Sister in Islam's Publication, 2009), 247-8.
 - 14 Rukayyah Hill Abdulsalam, *Women's Ideal Liberation: Islamic Versus Western Understanding*, (Jeddah-Saudi Arabia: Abul Qasim Publishing House, 1998), 10.

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- 15 Holy Qur'an, 30:21.
 - 16 Holy Qur'an, 17:32.
 - 17 Khalid M. Khalid, & Abdel-Hamid Eliwa, *Women and Men around the Messenger*, (El-Mansura, Egypt: Dar-Al-Manarah, 2003), 622- 623.
 - 18 Holy Qur'an, 24: 30 – 31.
 - 19 Division for the Advancement of Women, *Short History of CEDAW Convention*, United Nation Department of Public Information www.un.org/womenwatch/dev/cedaw/history (accessed on 27/02/2012).
 - 20 Article 1, Convention of Elimination All Form of Discrimination against Women.
 - 21 Badamasiuy, *Status and role...*, 2.
 - 22 Save of course in few situations where positive discrimination in favor of women, as in Article 4 of the CEDAW is allowed.
 - 23 There are other numerous literatures on the controversies between the Biological Determinists and Standard Social Scientists. The theory of biological determinism, also called genetic determinism, is in essence the exact opposite of the Standard Social Science Model described in *Evolution and Human Nature*. Whereas the Standard Social Science Model assumes that no part of human nature is inherited and all human attributes are fixed by cultural forces, Biological Determinism assumes that all or virtually all human behavior is innate and cannot be changed or altered. Both these two contradictory theories emanate from the same Modern European Secular Culture. See R. C. Lewontin, "Biological Determinism" The Tanner Lectures on Human Values Delivered at The University of Utah March 31 and April 1, 1982, www.stormwind.com/common/genetic.htm (accessed on 5th, October, 2012); Claude S Fischer *et al.*, *Inequality by Design: Cracking Bell Curve Myth*: www.amazon.com/exec/obidos/asin/0691028982 (accessed on 5th, October, 2012).
 - 24 Holy Qur'an, 4:34.
 - 25 Holy Qur'an, 33:33.
 - 26 Muhammad Muhsin Khan, *The Translation of the Meanings of Sahih Al-Bukhari*. (Lebanon: Dar Al-Arabia Publishers), vol. 7, no. 128, 88.
 - 27 *Ibid.*, vol. 7, no. 151, 93.
 - 28 Seminars have been organized by the International Institute of Islamic Thought, Nigeria Office in 2008 and 2009 to discuss the plight of working Muslim women in their effort to balance the home and work. Papers including *Women, Work & Home Management: The Dilemma of a Muslim Working Class Woman*, *Balancing Home and Work : Tales of Working Women*, *Balancing Home and Work : Problem, Priorities and Policy*, *Balancing Home and Work and Stress Management* were presented.
 - 29 The detail discussion of this calls for a separate paper and cannot be accommodated in this article.
 - 30 See Holy Qur'an, 2:282.
 - 31 Zainah Anwar, "Introduction: Why Equality and Justice", in *Wanted: Equality and Justice in the Muslim Family*, edited by Zainah Anwar, (Kuala Lumpur – Malaysia : Musawa/Sister in Islam's Publication, 2009), 1-9.

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- 32 Holy Qur'an, 4:34. See also Encyclopedia Britannica, vol. 7, (1984), pp. 163-180: Muhammad Ali note 7.
- 33 Article 16 of the CEDAW.
- 34 Holy Qur'an, 4-7.
- 35 Article 1 and 16 of the CEDAW.
- 36 Holy Qur'an, 4:3-4. The Qur'an, in these verses, clearly permits a man conditionally or otherwise to marry more wives than one. The practice of the Prophet (SAW) illustrates the practical implementation of the Qur'anic provisions on polygamy. Polygamy was also practiced by the Prophet's companions (may Allah be pleased with them). The woman under the Shari'ah has not been given the same authority as man. This may be due to differences in the biological construct of each of the gender. CEDAW idea of sameness goes contrary to this provision of the primary sources of Shari'ah. See also A. A. B. Phillips, *The Rationale and Law behind Polygamy in Islam*, (Riyadh, Saudi Arabia: International Islamic Publishing House, 1985), 33-35.
- 37 *Women Living Under Muslim Laws, For Ourselves Women Reading the Qur'an*, (1997), 17 – 32.
- 38 For instance, one of such writers argued thus: "According to the UNDP Arab Human Development Report, 2005, many Muslims no longer see polygamy as acceptable. A public opinion survey for this report conducted in 4 Arab countries: Egypt, Jordan, Lebanon & Morocco showed that at least half of the men and nearly all the women disagree with the practice of polygamy. And among those who agreed with the practice link their approval to the agreement of the wife concerned". UNDP Development Report, 2005, 136; Chandrakirana, *Women place...*, 249 – 250, cited and relied on the above data from UNDP report to arrive at such conclusion.
- 39 Holy Qur'an, 5:4.
- 40 Ibn Katheer, *The Exegesis of the Grand Holy Qur'an*; trans. M. M. Al – Sharif, (Beirut – Lebanon: Dar Al – Kotob Al – Ilmiyyah, 2006), vol. 2, 237.
- 41 Holy Qur'an, 16:116.
- 42 Holy Qur'an, Q5:50.
- 43 See Holy Qur'an, 16: 116.
- 44 See Article 4, CEDAW.
- 45 S. A. R. Abdul-Khaliq, *The Wisdom behind Islamic Law Relating to Women*, trans. A. Al-Tunami, (Ann Arbor, USA: Islamic Assembly of North America, 1995), 17, 18 & 35.
- 46 For instance, Chandrakirana quoting Human Rights Watch, painted the dilemma of a Filipina domestic worker from the Muslim community of Mindanao who explained the slavery-like conditions of her employment, thus: "They took me to an agency [in Saudi Arabia] where they trick people. I stayed in the agency for one week. I had to work in five houses in one week. One day the agent told me he was taking me to his sibling's house. He was the only one there. He started holding me, kissing me ... I was crying, "Don't do this to me, I am a Muslim." When we went back to the agency, my true employer ... brought me to the house. He said, "Be good so I don't send you back [to the agency]." ... After a while, [my] employer started showing some affection for me. He called me into his bedroom. He said, "I want to tell you how I got you from the agency." He said, "I bought you for 10,000 riyals." That is when I found out I had been sold ...", "As if I am not Human", Human Rights Watch, 42, cited in Chandrakirana, *Women place...*, 248. This happened because that Filipina was a woman.