

## JUDICIAL REMEDIES OF DARAR IN ISLAMIC FAMILY LAW

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## Abstract

In both substantive and procedural rules, Islamic law enshrines a comprehensive legal framework that regulates the family system for the realisation of a sustainable justice for all parties to Islamic marriage institution. The basis of the philosophy of Islamic family law is that both husband and wife shall live together harmoniously, with mutual respect in order to produce an upright *ummah*, bearing rights and responsibilities towards one another. The husband, conferred with the privilege as head of the family and responsible for the wife, enjoys such favour within a limited sphere, to prevent *ultra vires* chances and abuses. The wife, ordained to bear the duty of followership and obedience towards the husband, is protected with judicial shield from *darar* which implies aggressive manners and ill treatment of irresponsible husbands. This paper critically examines these crucial issues pointing its sight on the classical texts, statutory provisions and the practical dispensation relating to the effect of *darar* on the wife and its judicial remedies with Bauchi state of Nigeria as case study. It is based on a qualitative research that employs both doctrinal and empirical research approach. The findings of the research reveal that the application of Islamic law in the Bauchi State Shari'ah Courts has a number of challenges questioning the consistency of its practical aspect with the theoretical aspect; namely, the classical textual provisions.

*Keywords:* Islamic law; procedure; *darar*; husband; wife; Bauchi state.

## 1.0 INTRODUCTION

Basically, the generally applicable classical law of procedure in the Sharī‘ah framework in Bauchi state and other Sharī‘ah implementing states in Nigeria is based on classical texts of Islamic law which consist both criminal and civil procedure rules. Since the advent of the current Sharī‘ah implementation in the states, statutes were promulgated by the states’ Houses of Assembly to regulate the administration of Sharī‘ah by the Courts. However, the statutes do not confine the judges within the statutory provisions in proceedings. In other words, a Sharī‘ah judge is at liberty to apply the statutory provisions or directly apply the provisions of the classical texts of Islamic jurisprudence being the actual source of the statutory provisions.<sup>1</sup> For this reason, this study examines the judicial aspect of the Sharī‘ah framework, particularly with respect to the effects and remedies of *darar* against the wife. The study looks at the classical texts, the statutory provisions, the case law and the substantive social issues relating to *darar* in Bauchi State of Nigeria. The study represents the picture of the facts in other Sharī‘ah implementing states of Nigeria.

Famous books used by judges and legal practitioners in the Sharī‘ah Courts in this respect include Ibn FārĪĒn’s *Ṭāblīrāh āl-×ūkkĒm*; book of al-Bahjah, a commentary literature on the book of al-Tuhfah, etc. The books are generally accepted and applied by the Sharī‘ah courts in Northern Nigeria in all matters. In this context, reference will be made to these books on the law of procedure especially as regards judicial remedies where there is complaint of deprivation of the wife’s rights in marriage. Issues involving *darar* are usually on maintenance, copulation, housing, clothing and other relevant suits by the wife against her husband on *darar* (injury, damage, harm etc.). *Darar* refers to any kind of harm inflicted on the wife whether it is physical, mental or otherwise. (Ahmad Mukhtar. 2008, II, 1357). This includes deprivation of any of her legal entitlements in marriage or the infringement of any of her rights or by inflicting physical violence on her person or property. *Darar* can as well occur in matters relating to the wives’ rights in their husband’s polygamous practices. Although Islam permits polygamy for men by virtue of Qur’anic provision, the Qur’an itself categorically states that its practice becomes impermissible where injustice is feared.<sup>2</sup> Injustice in polygamy is also an act of *darar* against the victim.

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<sup>1</sup> This is categorically mentioned by the provisions of the statutes. For instance, section 7 (i) of the Bauchi State Sharia Courts Law of 2001 states thus:

“The applicable laws and rules of procedure for the hearing and determination of all civil and criminal proceedings before the Sharia courts shall be as prescribed under Islamic Law. For the avoidance of doubt, the Islamic Law comprises the following sources: (a) The Holy Qur’an; (b) The *Hadith* and *Sunnah* of Prophet Muhammad (Allah’s peace and blessings be upon him) Sunnah; (c) *Ijma*’ d) *Qiyas*; and e) *Ijtihad*: any subsidiary source of Islamic law e.g. custom, *masalih al-mursalah* (public good); *istihsan*; *istidlal* etc.”

This provision suggests that in the absence of a codified statute that comprises detailed provisions for the application of these sources, this provision indicates that it refers the courts to administer the implementation of Islamic law principles by making reference to the classical texts of the sources enumerated. In addition, it has been the practice since the beginning of the introduction of Sharia implementation in Nigeria that the family law is regulated by the classical texts of Islamic jurisprudence, mostly from the *Maliki* School of Thought. See: (Ostien & Dekker. 2010, 584).

<sup>2</sup> The *locus classicus* authority in the context of polygamy in the light of the Qur’an is verse 3 of Chapter 4 (*Surah al-Nisa*) which reads:

“And if you fear that you shall not be able to deal justly with the orphan girls, then marry (other) women of your choice, two or three, or four but if you fear that you shall not be able to deal justly (with them), then only one or (the captives and the slaves) that your right hands possess. That is nearer to prevent you from doing injustice.”

This verse contains a number of salient legal issues that need to be pondered. First, it opens its authority on polygamy with the premise that the verse itself stands as a shield for the protection of destitute women’s right, that is the girl-

## 2.0 THE CLASSICAL LAW

The classical law provisions as contained in the classical Islamic law texts applicable in Nigeria are categorical in their provisions with respect to the protection of the wife against *darar* in all forms. Where it occurs, the texts provide remedies for the affected wife in the Shari‘ah Courts. All that is required for the wife involved is to file a suit before the court and make sure that she has evidence to establish her case before the court. The procedural rules relating to some of the crucial issues of *darar* in Islamic family law wife will be discussed here.

Principles of proceedings concerning wife’s complaint of *darar* against her husband were mentioned by Ibn Farhun in the following:

*Where there is multiple complaint by the wife in which she mentions darar by her husband against her person, and she files a suit before the judge, but she cannot prove her case, then the judge shall command her husband to dwell her among righteous people. He (the judge) shall task them to monitor her affairs and find out facts about her darar (case)... If it appears to them that he (the husband) was oppressive, then they shall report to him (judge). He (the judge) shall award him warning or discipline or imprisonment or (physical) punishment, according what he sees (as suitable). (Ibn Farhun. 1995, II, 155).*

Detailed discussion of this dictum as contained in al-Bahjah is that where a woman files a suit seeking for redress from *darar* by her husband; the judge shall issue a summons inviting him to appear before the court for hearing in a specified date. If he admits, then the judge can issue a verdict in her favor. If he denies, then she would be asked to produce evidence proving her plea. A *darar* that can be entertained by the court according to jurists is only a reasonable one. The proportion of its reasonability is examined by repetition or gravity. Thus, a minor *darar* is overlooked as is common in marriage. An illustration of this is where she complains that he left her thirsty and was late to bring water for one hour. A severe *darar* however, is considered even if inflicted once and can be sufficient to warrant divorce. (Al-Tasuli. 1998, I, 487.). *Darar* is established in this case by the testimony of witnesses who have seen the incident of *darar*: otherwise, the judge may rely on a popularly spread hearsay evidence. (Al-Ghirnati. 2011, 43; Al-Tasuli. 1998, I, 480). If there is no evidence to prove her case, the judge may order an injunction compelling the husband to transfer her residence to a place surrounded by upright neighbours who can overlook the affairs of the family to give testimony on her situation. (Al-Tasuli. 1998, 479). If she was made to stay in the same house with her co-wives and the husband is not satisfied with her safety or chastity to stay alone in a different place, he may refuse her demand to be separated; and the judge, if satisfied with his plea, shall not impose such order of separation (Al-Tasuli. 1998, 488). Where *darar* is established by any of the aforementioned means, the judge shall give her an option on whether or not she wants to continue with the marriage. If she opts for divorce the judge shall issue a judicial divorce relieving her from the marriage if such *darar* is severe or repeated to warrant divorce (Al-Tasuli. 1998, 487). However, divorce will not be granted if she was at fault by being guilty of the cause of such *darar* on her by either neglecting an obligation or committing an offence

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orphans. This means, where one is not certain as to his ability to deal fairly if he marries among the orphans by giving them their due rights, he should marry from among other women. Secondly, it restricted the allowed number of wives in polygamy to four. This is in confrontation of the pervasive unlimited polygamous practices that dominated the Arab world at the time of its revelation. Thirdly, it restricted men to monogamy as the general rule, except for those who are certain on their ability to polygamy. The verse is considered by experts as the only textual authority that says “marry one” among the entire world’s religious scriptures. Fourth, the verse further restricts men who cannot afford the marriage of one to go for a lawful concubinage if any. This means marrying one wife itself is subject to the condition of capability and fairness to her. Thus, where a man is not certain on his capability to marry and to be fair to one, he should restrict himself to a slave-girl, if he gets any. Otherwise, he should remain single until he gets the capability to marry and is certain to be fair. Fifthly, the verse concludes with a remark that its provision guides men to justice and prevents them from injustice to women. This further means that the Qur’an is the leading religious textual authority that guides man to justice and fairness to women in the protection of their rights in polygamy. (Suyuti. 202, II, 503; Qutub. 1982, I, 583; Fathi. 1997, 843).

(Al-Tasuli. 1998, 488). In addition to the divorce, the judge may inflict a suitable penalty on the guilty husband which may be caning or imprisonment, depending on the degree of the *darar* he committed. Where she cannot prove her allegations or the case is complicated due to lack of reliable evidence, then, the judge may appoint *hakamain* (two persons from the families of both couples as required by the Qur'an) as mediators to decide on a possible solution (Al-Tasuli. 1998).

Al-Tasuli cited Ibn Rushd's suggestion to the judge who handles the case of a woman who complains of severe *darar* of violence, demanding divorce and expresses fear of physical violence from the husband in case he is allowed to take her back.

*I suggest that the fleeing wife from her husband (on the ground of severe darar) should not be made accessible for the husband again, in case she flees to a hideout in villages or mountains... a similar case of this fact has occurred, and when the judge returned her to the husband, he killed her! (Al-Tasuli. 1998).*

This opinion is crucial in that it does not only protect the right of the aggrieved wife to lodge a legitimate complaint against her husband's violence, but protects her life as well. It means that in such cases, the judge is strongly cautioned not to be negligent in matters involving violent husbands against women who have reasons that might have prevented them from filing a suit in the court earlier. Negligence here may be in the form of opening the door for reconciliation where the judge believes that dissolution becomes necessary or by compelling the wife to go back and stay with the husband from whom she ran away for her safety or her life to a safer hideout (Al-Tasuli. 1998).

In cases where *darar* is inflicted against a *bona fide* wife by her husband's impermissible practice of polygamy, such as where a man is accused of marrying a fifth wife, a secret marriage or *nikah mut'ah* (temporary marriage); Ibn Farhun says:

*Secret marriage is void. The couple and the witnesses shall be liable to punishment for concealing (the marriage)... As for the one who conducts nikah mut'ah, or marries a woman together with her paternal or maternal aunt or the like, or marries a woman during her iddah, whether he knows its prohibition or not, he shall not be liable to capital punishment (hadd), but shall be sentenced to a severe punishment. And the one who knows the prohibition (of his act) shall face more severe and greater punishment than the one who is ignorant (of its prohibition) (Ibn Farhun. 1995, 155).*

This statement is relevant and its provisions are suitable for the Nigerian Sharī'ah dispensation where cases of such facts are reported. Although such cases are rarely taken to courts, all the states that implement Sharī'ah have a parastatal tasked with handling issues like these. This parastatal in most states is called the Sharī'ah Commission. Under the Commission, the Hisbah Command is normally charged with the responsibility of prosecuting such cases involving the violation of Sharī'ah rules or bringing them to the Commission for necessary action. The essence of existence of the Hisbah in the Sharī'ah states is to enforce Sharī'ah and to maintain law and public order according to Islamic norms (Fatima. 2006).

In the Nigerian context, whereas the Sharī'ah Courts are supposed to apply the classical procedural law accordingly, a notable problem in the courts proceedings is that in many cases, women are deprived of justice due to inconsistency in the application of the appropriate procedure. For instance, in many cases involving allegations of injustice on a wife by the husband or cruelty against co-wives, a woman is compelled by circumstances to alter the face of the proceeding from an ordinary plead of *darar* which may lead to judicial divorce to a plead of *khul'* due to the victim's fear of inconsistency. In *Amina Abubakar v Alh. Shuaibu*<sup>3</sup> before the Doya Sharī'ah court of Bauchi, the plaintiff applied for divorce on the ground of cruelty by both the husband and her co-wives. However, she voluntarily altered the trial to apply for *khul'* (marriage dissolution *in lieu* of a price paid by the applying wife to the husband) for the fear that she could not produce sufficient evidence establishing *darar*. *Khul'* was granted after she paid the husband the sum

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<sup>3</sup> (Unreported Case) CV/128/12.

of N80,000. Similarly, in *Munira Ali v Husaini Bakoji* (BAS/SCA/CVA/27/BH/2011), the appellant had filed a suit against her husband before the Shari'ah Court, Tudun Alkali, Bauchi; alleging *inter alia* that her husband beat her severally and was not fair to her as he leaned towards her co-wife. The court dissolved the marriage. The husband appealed to the Upper Shari'ah Court 1, Bauchi, which ordered for retrial. Unfortunately, on her appeal to the Shari'ah Court of Appeal, she succumbed to khul' for the sum of N40,000 before the marriage was dissolved. In *A'ishatu Aliyu Gachi v Aliyu Gachi* (Unreported. CV/134/12), before the Upper Shari'ah Court of Doya, Bauchi, the Court affirmed the decision of the lower court applying khul'. In this case, the first wife alleged that unlike her co-wife, she faced humiliation and persecution from her husband, including deprivation of her right of maintenance and good shelter, on the ground that their marriage lasted for eight years without an issue. The lower court in this case erred by not granting judicial divorce, rather, the case was turned to application for khul' for the sum of N80,000. The upper court affirmed the decision but merely minimized the sum requested by the husband to N40,000.

The remedy for the affected wife in such circumstances according to al-Bahjah is the following:

*Where the wife makes khul' with the husband upon something she paid to him and subsequently proves his darar against her by evidence of absolute testimony or hearsay, then she can claim the return of what she paid him for the khul'. (Al-Ghirnati. 2011, 481).*

This means the remedy for such women who fall victims of judicial errors is for them to file a fresh suit after getting their divorce, claiming for repay of what they paid their husbands earlier in lieu of their divorce, whether it happened in previous suits or outside the court. Once they can establish their case by evidence, then they can retrieve their lost right by applying for reimbursement. However, this depends on whether the concerned woman or her counsel is ready for this judicial process.

### **3.0 THE STATUTORY PROCEDURAL LAW**

The procedural law in relation to family law matters in Bauchi State is regulated by the Bauchi State Shari'ah Courts (Civil Procedure) Rules, 2001. Except for some minor differences, the provisions of the statute are like a replica of the classical texts of procedure principles in al-Bahjah. With respect to commencement of action, the statute provides that civil proceedings can be instituted in the court by oral or written complaint. However, the Court must make sure that it has the jurisdiction to hear the case. In lodging such complaint, the plaintiff may appear directly or through his counsel as representative. Such complaint must be precise and detailed containing sufficient detail to identify the cause of action, the parties involved and their addresses and the remedy sought. Certain amount shall be paid to the court by the complainant as litigation fees. For the purpose of hearing, the statute provides thus:

The Registrar may in consultation with the Judge fix any date appropriate for the commencement of hearing and notify all parties involved for attendance and the Registrar shall issue writ of summons.

It means where a complaint is lodged to the Shari'ah Court, the Registrar should register the complaint together with full information of both the plaintiff and the defendant. After that, he should consult the judge in order to fix appropriate date of hearing. The case information and date of hearing must be communicated to the defendant through the issue of summons.

For the commencement of the litigation, the Court sitting for trial is generally open and accessible to the public, within the official working days and hours except in cases of cogent urgency subject to application by any party to the case. However, in the interest of the parties, public morality or public peace, the statute grants the Court order for closed proceeding in the court chambers and thus accessible only to the parties, their representatives and relatives. If on the fixed day for hearing, the parties or their representatives fail to appear without any cogent reason satisfied by the court, the court shall strike out the case. Similarly, if only the defendant appears and the plaintiff fails, the court may strike out the cause as well and discharge the plaintiff. Order 6 of the statute grants the court order to issue interlocutory

applications by any of the parties. In the context of this topic, this order may serve as a shield protecting the interest of an aggrieved wife in case of fear darar as discussed above.

When both parties appear before the court, the statute provides for the hearing proceeding. When the court begins its sitting, the Al-Qadi shall record the attendance of the parties and / or their representatives.

The Al-Qadi shall thereafter call upon the Mudda'i to state his case and claims and such a claim shall clearly state the subject matter (mudda'a fihi), the parties involved, the relevant period and the remedy sought from the court.

By mentioning these classical terminologies, this provision indicates that the proceeding shall be in accordance with the provisions of the Islamic law classical style of trial procedures. After the plaintiff's statement, the Al-Qadi shall call upon the defendant to reply the claims. If in his reply, the defendant admits the plaintiff's claims or part thereof, the Al-Qadi shall pass judgment in respect of the admitted part and proceed to hearing in respect of the un-admitted part. Conversely, if the defendant denies the plaintiff's claims, the Judge shall require the plaintiff to establish his case in accordance with Islamic law of evidence. If either party brings forth witnesses as evidence to prove his case, the court shall grant an opportunity for opponent party to cross examine the witnesses called before or after their testimony. Upon conclusion of the hearings and trials, the Judge shall deliver the verdict of the Court.

At the conclusion, the Judge shall review the case and evidence adduced and addresses of the parties or legal practitioners as the case may be and deliver his judgment. No Court shall deliver its judgment in the absence of the parties or their authorized agents.

For the purpose of fairness, this provision requires that the pronouncement of judgment shall be in the presence of the parties, except otherwise necessary. The verdict of the Court should reflect the nature of evidences presented by the parties to the Court and should be accompanied by evidences of authorities relied upon by the Judge in arriving at his verdict. For the purpose of proper record and reference, the statute requires thus:

Every judgment of the Court must contain the names of the parties, number of the case and date of delivery, the verdict of the Court and must be signed by the judge and shall indicate the number of days available for appeal against the judgment.

In order to make the judgment effective, the verdict must contain the information about the parties and the record number of the case as well as the Judge's authorization signature. The judgment must also make a provision for the parties' right to appeal within a stipulated number of days.

#### **4.0 THE LAW IN PRACTICE**

Qualitative legal research approach was applied in this research through conducting structured interviews with selected experts and stakeholders in policy making, legal practice and women affairs. From the legal practice sector, interviews were conducted with judges from both superior and inferior courts as well as practicing lawyers. This is in line with their vast experience regarding legal issues in the field of study both theoretically and practically. Among the policy makers, the Attorney General and Commissioner of Justice as well as the Permanent Secretary in the Ministry of Justice were consulted. Their significance to the study relates to their crucial role in the government on legal policy and their knowledge as to the possibilities and prospects of regulation. For women affairs sector, officials in non-governmental women organizations whose dealings relate to issues of women rights and their welfare were patronized. These NGOs were targeted due to their significant role in the society as regards women affairs and their insight information about problems that affect women as well as the women's yearnings and aspirations. Sufficient information was gathered from these interviews and it was analyzed based on legal research analysis to suit the field study information. Some of the interviewed respondents gave maximum cooperation and moral support and encouragement to the researcher, providing sufficient information, not only verbally but also in detailed and written forms. Some of them provided a special and official report for the purpose of the research.

Others conducted a mini research study in order to come out with facts that would make their information more authentic and reliable for the researcher.

#### 4.1 Profile of the Experts Interviewed

S/N	Name	Institution	Designation	Date Interviewed
1	Justice Ibrahim Tanko Muhammad	Supreme Court of Nigeria	Justice of the Supreme Court	February 13, 2013
2	Justice Abdullahi Marafa	Sharī'ah Court of Appeal Bauchi State	Grand Khadi	February 24, 2013
3	Muhammad Salisu Zakariyya	Upper Sharī'ah Court, Kirfi, Bauchi State	Judge	August 3, 2012
4	Bar. Almustafa Sulaiman Hasan	Ministry of Justice, Bauchi State	Commissioner and Attorney General	September 10, 2012
5	Bar. Muazu Kanawa	Ministry of Justice, Bauchi State	Permanent Secretary	September 10, 2012
6	Haj. Maryam Garba	FOWOYDI Bauchi State Chapter	Executive Director	July 22, 2012
7	Haj. Fatima Yahya Abba	Jami'iyat al-Birr Women Association	Deputy President	August 15, 2012
8	Haj. Halima Ibrahim	Women in Da'awa Organisation, Bauchi	Coordinator	August 13, 2012
9	Haj. Hashiya Abubakar	Muslim Sisters Organisation, Bauchi	Ameerah	August 8, 2012

As the table above shows, five experts in the legal sector were selected for the interview. The objective is to analyze the problems affecting the legal system in the Northern states of Nigeria and the lacuna in the administration of Islamic law in the region. It shows that the substantive law is not the problem, but rather its application and implementation. These problems relate to the statutes in application in the region, the Sharī'ah courts, the judges and the administration of Sharī'ah in general. The experts interviewed were asked whether there is any law in Nigeria that regulates the Sharī'ah framework. The first respondent indicates that the classical texts which are applicable in the Sharī'ah system of Northern Nigeria contain general rules for a successful regulation (Justice I. T. Muhammad. Interview by Author, Feb. 13, 2013).

The respondents concurred that the legal framework and practice of family law in the Nigerian Sharī'ah application may be summarized in the following:

First, problem in application: This problem illustrates the effect of using a general system of Sharī'ah application whereby each judge is at liberty to apply any Sharī'ah principle of his choice from the classical texts available. This has rendered the application of the Sharī'ah principles in an un-standardized manner. If those principles had been drafted in a comprehensive code, it would assist the system in standardizing the application process. The remedy here according to them is simply to lift the principles provided by Islamic law from the jurisprudence books and apply them as the principles of a codified status. The respondents elaborated that what is available in application now is a general code of Sharī'ah implementation which has no adequate provisions for family law matter. What is available now is only the Sharī'ah Code and procedure which contain although issues relating to family law, but they are not specific and comprehensive.

Second, problem in the Sharī'ah Courts management: The role of Sharī'ah Courts in settling family issues is quite relevant. The second respondent asserts that about half (50%) of marriage cases before the

Shari'ah Courts are on family law issues. The most challenging issue in court proceedings is testimony. Some women bring genuine cases of *darar* to the court but have no witnesses to establish their cases; hence, they lose because of their inability to produce witness and due to their weakness in advocacy. The judge passes his judgment based on the evidence available in the particular case before him. (Justice A. Y. Marafa. Interviewed by Author, Feb. 24, 2013.). The Shari'ah courts being the heart-beat of Shari'ah implementation and which ought to be given due consideration by the Government have their problems as well. The respondents ascribe the problems in the courts system to *inter alia*, their neglect by the Government in terms of maintenance and adequate funding. For instance, some of the problems identified in relation to the courts include the condition of the court room itself is not convenient for Shari'ah compliant dispensation. This neglect has paved the way for corruption to dominate the courts system to the extent of influencing the courts verdicts. According to one of the respondents, corruption is apparent in the courts, thus being influential in courts' rulings. A party at fault can use money to divert the court verdict from natural justice (Judge M. S. Zakariyya. Interviewed by Author, Aug. 3, 2012.).

Third, problem with the Shari'ah judges as regards their incompetency whereby some or many among them are not learned in the Shari'ah itself. Similarly, although the courts apply the classical texts of the sources of Islamic law, some of the judges cannot read, understand and apply the texts from their original Arabic form (Bar. A. S. Hasan; Bar. M. Kanawa. Interviewed by Author, Sep. 10, 2012). The experts interviewed here unanimously lamented that this problem has a great impact of jeopardy in the application of Shari'ah in Nigeria especially in the lower courts.

Finally, intellectual problems pertaining to the litigants. It is lamented that low level of women's knowledge of Shari'ah provisions on family law and the low level of their exposures to matters relating to rights and remedies sought in courts of law are among the factors that hinder the success of the Nigerian family legal framework. Intellectual factor in this context refers to the men's ignorance of Shari'ah provisions on the rights of women and family law principles in general. This factor is found to be a fundamental problem that affects the practice of polygamy in Nigeria. In their responses, almost all the interviewed experts dealing with women affairs mentioned ignorance as the main factor affecting the rights of women in polygamous practices in Nigeria. To suggest this contention, the respondents mentioned that most women cannot express their grievances in the court due to their deficiencies in eloquence and self-expression. This doubles the effect of this factor compared to the ideology of most women respondents who consider it a taboo to file a suit against their husbands in the court in relation to their conjugal rights (Haj. M. Garba. Interviewed by Author, July 22, 2012.).

## 5.0 CONCLUSION

From the context of this paper, we have seen an awesome comprehensive provision for the protection of the wife's rights in Islamic family law against all kinds of injustice and ill-treatment from the husband. Similarly, it has detailed the provisions for judicial remedies for the wife in case of infringement of any of the rights she deserves from both the classical texts and statutory provisions, as applicable in Nigeria. As a case study to examine its implementation, the study conducted and presented a brief data of an empirical survey of the subject matter of the topic in Bauchi state of Nigeria. The results found indicate that though the Shari'ah Courts apply the principles of Islamic law, there are a number of challenges in their consistency with the actual provisions of the law as provided in the classical texts. These challenges gave birth to a number of problems affecting the Shari'ah framework, its administration in the Courts' management and in the competency of the Shari'ah Judges.

## 6.0 RECOMMENDATIONS / SUGGESTIONS

This research recommends the consideration of promoting relevant mechanism through which the people and the system would be considered, with a view to checking the problems affecting family law in Nigeria, especially with respect to protection of marital rights and provision of remedies where such rights are infringed.



### **i. The Need for Public Awareness Initiatives**

There is a need to educate the people on the Islamic rulings on marriage as well as on the need for a hitch-free conjugal relations. For this purpose, the following aspects need be the prime targets in the enlightenment process.

First, there is a need to educate men on marriage and their responsibilities therein. Every intending man for marriage needs to be educated on its rulings, guidelines and responsibilities. For this reason, it is a responsibility of the religious instructors to boost the people's awareness on marriage in Islam. There is also a need for the introduction of private Islamic educational centers in mosques and Islamic schools for educating intending men on marriage similar to what is done for intending pilgrims. Furthermore, the Shari'ah courts need to have panels of Shari'ah advisory councils that will assist the judges in screening people's applications for marriages. The panel's duty in this regard is to conduct assessment on every marriage applicant to ascertain his capability and his awareness about his responsibilities and the rights of his wife.

Secondly, women should also be educated on their rights and duties. Just as their men counterparts, women also need to be educated on their rights as first or subsequent wives in polygamy. They also need to know the duties imposed on them for the realization of a harmonious family well-being which cannot be achieved without their cooperation. For this purpose, the proposed educational centers for men should contain a special section for women awareness as well.

Thirdly, the general public needs awareness initiatives about the objectives of Shari'ah in relation to marriage. There is also a need to improve their awareness on the Shari'ah itself and its general objectives in order to moderate their overzealous and blind ebulliences towards its implementation. The scholars need to intensify efforts towards this objective in their sermons and teachings through the media, mosques and educational institutions. This will assist, not only in family matters, but also in curbing incumbent menaces affecting the Northern Nigeria such as the menaces of religious fanaticism and insurgency in the name of religion as well as in preventing the emergence of similar heretical ideologies.

### **ii. The Need for Reforms in the Judicial System**

In order to reverse the current uncertain situation in the problems attached to this topic, it is suggested that certain reforms need to be carried out. As far as this research is concerned, reforms are emphatically required in the judicial sector.

In order to restore people's confidence in the judiciary, especially for it to become a shield and an umbrella for the oppressed and the less privileged, there is a need to reform the sector. First, as the third tier of government, present dilapidated structures of the court rooms and judicial complexes need to be upgraded to a required standard in order to demonstrate its prestige to the people. This also includes facilitating the courts with all necessary advanced equipment for easy dispensation of and free access to justice for all. Second, the judges' intellectual abilities must be boosted to make them well acquainted with the laws they apply to face the judicial challenges of the contemporary world. This can be done through giving them more scholarship opportunities and organizing seminars and workshops for them at the state, national and international levels. Third, the judges' welfare and remunerations need to be improved to check the menace of corruption in the judiciary. Fourth, the role of the judiciary should be revived in order to make it the authorized body not only in charge of marriage litigations, but also on its formalization, registration and mediation. It is a serious misfortune in the Nigerian family system that there is no mandatory formal system of registration of marriages. No reliable record of marriages is available for the ascertainment of the number of marriages and divorces in Nigeria. This is due to the non-imposition of the mandatory requirement of the courts' order for marriage formalizations and its dissolutions. There is an obligatory need for this problem to be curbed by giving the courts the powers to screen applications for marriages and register them upon conclusion or dissolution. This will reverse the current cases of

imbalances between spouses in relation issues of social status, health, *kafa'ah* (suitability of spouses in marriage) and so on.

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