

JURISTIC STUDY ON CONDITIONALITY OF *AL-MAHRĀM* FOR NIGERIAN FEMALE *HAJJ* (PILGRIM): IMPLICATIONS AND SOLUTIONS

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ABSTRACT

The requirement for a female Muslim to have a mahṛām when traveling is not peculiar to ḥajj and ‘umrah alone. However, in the contemporary period, the Kingdom of Saudi Arabia has become very strict on such a condition, especially on ‘umrah and ḥajj. The legal implication of this system is that a female Muslim may not participate in ḥajj or ‘umrah if her mahṛām cannot perform ḥajj or ‘umrah with her for various reasons. However, this study reveals that the result of such a strict condition has led operators of the ḥajj and ‘umrah to falsify data by applying for their visa through another male pilgrim who is not their legal mahṛām. Eventually, such intending female pilgrims end up performing the ḥajj or ‘umrah with a group of trustworthy women or men, as has been rightly supported by a reasonable numbers of independent jurists. It is worthy of note that this practice of accompany with a mahṛām for a travelling female Muslim originates from the statement of the Messenger of Allāh (SAW) due to the prevailing circumstances of the ummah at his time. The practice of his noble companions after him support this understanding. This paper

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analyzes the legal precedent and reasoning behind this condition and offers reasonable, practical and meaningful solutions.

Keywords: *hajj in Islam, mahṛām, female travel, status of women in Islam, legal interpretation*

INTRODUCTION

Nigeria is a multi-religions country that has no established state religion. Section 10 of the 1999 Constitution of the Federal Republic of Nigeria, as amended, states thus:

“The Government of the Federation or of a State shall not adopt any religion as a State Religion...”

As a result, religious affiliation is not a selectable option provided as a requirement for the national census. This has made it difficult for somebody to give precise numbers for members of each religious group in Nigeria. However, considering that enrollment in schools, hospitals, and political parties show that the majority are Muslims, it could be said that this reflects the majority population of Nigeria as well. Further, it appears that the vast majority of Muslims are the Sunni and belong to the Mālikī School of Islamic Jurisprudence.

Among the non-Muslims, Christians and African Traditional Religion worshippers (ATR) make up the remaining population. However, it can be stressed that there are only two religions in Nigeria-Islam and Christianity. Those who claim to follow ATR are actually either Muslim or Christian; they also bear either Muslim or Christian names alongside their more traditional ones. Islam dominated the northern part of Nigeria and had a considerable number of adherents in the south Western Nigeria who are mostly Yoruba by tribe.² Nigeria accounts for the largest Muslim population in Sub-Saharan Africa.

Politically, the Sultan of Sokoto is the Leader of Nigerian Muslims. He is the non-elected President of the Nigerian Supreme Council for Islamic Affairs (NSCIA) under whose authority all Muslim organisations operate in Nigeria. Since there is no official mufti (an expert Muslim jurist qualified to

² A. M. J. Elesin, ‘An Examination of the Yoruba Concept and Belief in Spiritual Beings within the Context of Revealed Theological Beliefs,’ *Journal of Languages, Literatures and Communication Studies (JOLLACS)*, 1/1 (2013), 161.

give religious verdict) in Nigeria, the NSCIA issues fatawa on certain issues concerning all Nigerian Muslims through their affiliated bodies.

However, it should be noted that the administration of *hajj* in Nigeria is not directly part of the NSCIA's functions. Section 1 (1) (d) (iii) only requests a representative from the NSCIA for the Composition of the Commission.³

Hajj, or pilgrimage to Makkah, is the fifth pillar of Islam and an obligatory religious duty once in the lifetime for those Muslims who are physically and financially able. Prior to going on *hajj*, there are some major stipulations, one of which is the controversial issue of a *mahrām*, or a woman's unmarriageable kin that must accompany her in public at all times. In the Nigerian context, the chosen legal school is the Mālikī *madhhab*.⁴ This school allows a group of trusted men or women to serve as an alternative *mahrām* for Muslim women to travel to Makkah for *hajj*. Therefore, this paper calls on religious and government officials to analyse and review the *fiqh* rulings that are specific to the condition of *mahrām* in order to make *hajj* more accessible for female Muslims. Thus, some of the issues that will be discussed in this study include: Is *mahrām* a condition for the validity of a female's *hajj*? And, what are the challenges facing Nigerian Muslim females who intend to perform *hajj*?

HISTORY OF *HAJJ* OPERATION OF NIGERIA

Pilgrimage in Nigeria is as old as Islam itself and can be dated back to the Kanem-Borno in the 8th century and later in Hausa in the 15th century.⁵ From this period till the early 20th century, pilgrimage affairs were under the control of private agents. The means of transportation back then were limited and travel was usually done by foot, thus making it quite hazardous and challenging. Subsequently, this made pilgrimage a slow and long journey with only a few completing it in less than two years.⁶ However, this all changed in 1953 when Abubakar Imam made a motion during a session of the House of

³ National Hajj Commission of Nigeria (NAHCON) (Establishment) Act, 2006.

⁴ See e.g. s. 14 of the Sharia Court of Appeal Law (N. N. Laws 1963, Cap. 122) which empowers the Sharia Court of Appeal of each of the Northern States to administer Muslim Law of the Mālikī School.

⁵ Lawal Musa *et al.*, 'Challenges Facing Hajj Operation in Nigeria: A Way Forward', *Proceeding of A 2 Day National Conference on Pilgrimage in Islam and Nigerian Pilgrims* (Nigeria: Saudi Arabia Cultural Attache, Abuja and Ahmadu Bello University, Zaria, 1433), 166.

⁶ Lawal Musa *et al.*, 'Challenges Facing Hajj Operation in Nigeria: A Way Forward', 166.

Representative in Lagos for the establishment of a Nigerian Office in Jeddah which would be responsible for the welfare of Nigerian pilgrims in Saudi Arabia.⁷ The motion was supported and the terms of duties were subsequently approved by the Honorable House.⁸ Hence, every year a pilgrim commissioner was to be officially appointed to accompany Nigerian pilgrims and lead them throughout the *hajj*. Provisions for accommodation and foreign exchange procedures constituted part of their overall their duties.⁹ On becoming the Premier of the defunct Northern Region in 1954, the Late Sardauna of Sokoto became the first *Amīr al-Hajj* to lead the pilgrims to Mecca.¹⁰ In 1958, a Pilgrim Welfare Board was instituted by the Western Region government followed by another Pilgrim Board established by the Northern government. It should be noted that the activities of the Boards were limited to the provision of logistic support to the pilgrims.¹¹ However, the assassination of the Sardauna of Sokoto in 1966 created a void in managing the *hajj* affairs. Hence, private agents took advantage of the lack of government services to fill their own coffers.¹²

The number of pilgrims increased as *hajj* became more accessible, thus creating greater responsibilities for the government and private agents alike. It became apparent to the government that transporting thousands of pilgrims annually, accommodating them with provisions of welfare services in a foreign land etc., could no longer be left in the hand of private agents. The rise in the standard of living and travel, both locally and internationally, necessitated more extensive and efficient services for pilgrims. Therefore, the then Federal Government promulgated Decree No. 16 of 1975 and established the Nigerian Pilgrims Board under the Ministry of External Affairs.¹³ The body was given

⁷ M. Awolabli Junaid, 'Pilgrimage Tradition in Nigeria: A Historical Survey', *Proceeding of A 2 Day National Conference on Pilgrimage in Islam and Nigerian Pilgrims* (Nigeria: Saudi Arabia Cultural Attache, Abuja and Ahmadu Bello University, Zaria, 1433), 233.

⁸ M. Awolabli Junaid, 'Pilgrimage Tradition in Nigeria: A Historical Survey', 233.

⁹ Lawal Musa *et al.*, 'Challenges Facing Hajj Operation in Nigeria: A Way Forward', 166.

¹⁰ M. Awolabli Junaid, 'Pilgrimage Tradition in Nigeria: A Historical Survey', 233.

¹¹ M. Awolabli Junaid, 'Pilgrimage Tradition in Nigeria: A Historical Survey', 233.

¹² M. Awolabli Junaid, 'Pilgrimage Tradition in Nigeria: A Historical Survey', 233.

¹³ Abdulkarim Sulaiman, 'Toward Orienting Nigerian Pilgrims Guide', *Proceeding of A 2 Day National Conference on Pilgrimage in Islam and Nigerian Pilgrims* (Nigeria: Saudi Arabia Cultural Attache, Abuja and Ahmadu Bello University, Zaria, 1433), 94-95.

the sole power of organising pilgrimage affairs in Nigeria.¹⁴ The Board was mandated to provide such services that would make the performance of *hajj* less cumbersome.¹⁵ However, the fact that the Board was placed under the supervision of the Federal Bureaucracy crippled its performance.

By 1989, a new decree was put in place establishing the National *Hajj* Commission with wider powers to correct the ineffectiveness of the Nigeria Pilgrim Board. In place of the monopoly enjoyed by the national carrier to airlift the pilgrims, the Commission was given the mandate to appoint any capable airline of its choosing to undertake the process of the airlift of the pilgrims. Meanwhile, the supervision of the Commission has constantly changed from the Ministry of Foreign Affairs to the President.

Unfortunately, the new Commission Board did not fare better than the prescribed Board in terms of performance. The inability of over 10,000 pilgrims to travel for *hajj* in 2005, despite their full payment under the defunct Directorate of Pilgrim Affairs (DPA), was a classic case of policy-shift which should not be tolerated.¹⁶ Hence, National *Hajj* Commission of Nigeria (NAHCON) was established through a Parliamentary Act which was signed into law in October 2006.¹⁷

In all the thirty six states of the Federation and the Federal Capital Territory (FCT) Abuja, a structure has been put in place to oversee the smooth operation of *hajj* administration and protect the interest of pilgrims. In some states, local government officers were appointed specifically to facilitate *hajj* process.¹⁸ The intervention of NAHCON and its track-record of achievements is currently giving hope that *hajj* can be better organised in Nigeria with minimal discomfort.

Nevertheless, there are some juristic issues which pose another challenge to the NAHCON. In 2012, Nigerian female pilgrims on *hajj* were deported from Saudi Arabia, numbering 171 from Katsina and Taraba States. The returnees arrived in Medina Airport Tuesday night and landed in Nigeria again at about 5.30pm on Thursday. It was reported that the Saudi authorities denied them entry because they were not accompanied by their relatives (*mahrām*) as demanded by the rules of pilgrimage to the Holy Land. It was also reported

¹⁴ Lawal Musa *et al.*, 'Challenges Facing Hajj Operation in Nigeria: A Way Forward', 166.

¹⁵ M. Awolabli Junaid, 'Pilgrimage Tradition in Nigeria: A Historical Survey', 233.

¹⁶ M. Awolabli Junaid, 'Pilgrimage Tradition in Nigeria: A Historical Survey', 233.

¹⁷ National Hajj Commission of Nigeria (NAHCON), (Establishment) Act, 2006.

¹⁸ See Sec. 4 of the Commission Act.

that another batch of 1,000 Nigerian women were at the Saudi airport camp detention awaiting their deportation via the next available flight.¹⁹

Executive Secretary, Kano Pilgrim Board, Alhaji Laminu Rabi’u, who was at *Makia* to receive the Nigerians, confirmed that 1,000 female pilgrims were still being held in Jeddah on the order of the Saudi government. He condemned Saudi Arabia for the deportation “since the pilgrims were in Saudi Arabia for the *hajj* operation, which is a yearly event.”²⁰ Similarly, the then Nigerian President Goodluck Jonathan congratulated all Nigerians who successfully undertook the *hajj* that year despite the unforeseen difficulties which developed over the issue of male companions for some of the female pilgrims.²¹ Such an occurrence shows that the management of *hajj* affairs is multi-dimensional and requires serious attention.

REGISTRATION CHALLENGES FACING NIGERIAN FEMALE PILGRIMS

In the Kingdom of Saudi Arabia, the hosting country of *hajj*, the *Ḥanbalī madhhab* is the strictly adopted school. Since traveling for *hajj* requires an entry visa to the Kingdom of Saudi Arabia, the imposition of *mahrām* on every female intending to travel becomes an issue which has been generating different problems and challenges.

1. Registration Process²²

A female intending pilgrim must obtain a *hajj* form from a travel agency and submit it with relevant documents and the payment of prescribed fees. In the

¹⁹ Thewillnigeria.com, ‘Deported Nigerian Female Pilgrims Weep At Kano Airport’, <https://www.thenigerianvoice.com/movie/99086/23/deported-nigerian-female-pilgrims-weep-at-kano-air.html>, accessed on 28 February 2017.

²⁰ Thewillnigeria.com, ‘Deported Nigerian Female Pilgrims Weep At Kano Airport.’

²¹ Scan News Nigeria, ‘Jonathan Wants Deportation of Nigerian Pilgrims Probed’, <http://scannewsnigeria.com/news/jonathan-wants-deportation-of-nigerian-pilgrims-probed/>, accessed 28 February 2017.

²² ‘Abdulwāsi’ Gabadeen (Ph.D, Director of Operations *Hajj Mabruur* Ventures LTD, and Secretary General, Association for *Hajj & ‘Umrah* Operators of Nigeria (AHUON), MNIM, he is also a Senior Lecturer & Consultant, Department of Educational Management, Faculty of Education, University of Abuja, Abuja, Nigeria), in a written document on 14 March 2012; Sirajudīn Al-‘Asrau Al-Bilal (Ph.D holder of Islamic Law, Director General, *Ināyatullah* Travel and Tourism Agent, and one time Lecturer, HOD, Department of Islamic Studies, *Al-Hikmah* University, Ilorin, Kwara State, Nigeria), in interview with author through a phone call, on 22 March 2012.

event that she has no legitimate *mahrām* within the group, the agent applies for a *hajj* visa electronically on her behalf, having no other option but to attach the woman's application to any available male within the group for visa processing. On the visa page of this woman, the name of the proclaimed *maḥaram* and his relationship with her shall appear on her passport. At the check-in counter, the airline will request to see her *mahrām* personally for further confirmation. If there is any error detected during this process, the airline may deny her from boarding the aircraft. This exercise shall be repeated when the pilgrims are in transit, with non-compliance leading to deportation. An event that can nullify the entire pre-*hajj* process shall result in a substantial loss of money and time: the pilgrim will suffer psychologically and emotionally, the agent's image will be damaged, the image of Nigeria as a country will be stained, and other numerous multi-faceted challenges.²³

2. Summary of the Challenges

- i) Falsification of data leading to lying (*al-kasib*) indirectly;
- ii) Promoting illicit conduct among the pilgrims on the premise of *mahrām*;
- iii) Cancellation of the female journey if the *mahrām* decided not to travel after the issuance of *hajj* visa;
- iv) Prolonged delay during transit due to cross examination by the airline of *mahrām*'s data on the visa page;
- v) Outright entry denial to the Kingdom of Saudi Arabia at Jeddah airport by immigration;
- vi) Congestion at Jeddah airport due to delay in passing through the immigration process;
- vii) Mix-up at the embassy during visa processing;
- viii) Non-performance of *hajj* in one's favourable time due to absence of a legitimate *mahrām*.

²³ See: Y. Usman & S. L. Bantaje, 'Problems Encountered by Pilgrims during the 2010 Hajj Exercise and Recommended Solutions', *Proceeding of A 2 Day National Conference on Pilgrimage in Islam and Nigerian Pilgrims* (Nigeria: Saudi Arabia Cultural Attache, Abuja and Ahmadu Bello University, Zaria, 1433), 21.

3. Implications

- i) Negative spiritual implications by falsifying data due to eagerness to perform the *hajj*;
- ii) Negative socio-economic implications due to unlawful interaction between a male and female pilgrim and loss of money and energy invested in the journey if the pilgrim is denied entrance at transit or port of entry to the Kingdom of Saudi Arabia;
- iii) Negative political implications due to it indirectly affecting the image of Nigeria when a bilateral agreement had been signed between the two countries;
- iv) Negative religious implications due to non-recognition of reasonable opinions of other schools of Islamic law being practiced in other Muslim majority countries;
- v) Negative technological implications affecting Airport logistics due to non-compliance of ICT-driven operations as a result of physical examination of *mahrām*.

STUDYING *AL-MAHRĀM* AS A NECESSARY CONDITION OR REQUIREMENT WARRANTING PERFORMANCE OF *HAJJ*

Among the questions that ordinarily come to mind here are: what is the concept of *al-mahrām*? Is it an obligatory condition on a female going on *hajj* that she must have a husband or a *dhu al-mahrām*?

1. Notion of *Dhu al-Mahrām* in Islamic Law?

Al-Mahrām in the Shariah refers to a woman's husband or any relative prohibited from marriage. Anyone who fits within this category may accompany her on a travel. The relatives forbidden for her to marry include immediate blood ties, family relationships, or relationship by lawful means like marriage. This includes her father, son, brothers, uncles, and brother by suckling from the same wet nurse.²⁴

²⁴ al-Tirmidhī, *al-Jāmi' al-Ṣaḥīḥ Sunan al-Tirmidhī*, vol. 3, ed. Aḥmad Muḥammad Shakir *et al.* (Beirut: Dār al-Ihyā al-Turāth al-‘Arabī, 1995), 472; Ibn Rushd, *The Distinguished Jurist's Primer: Bidāyah al-Mujtahid*, trans. Imran Ahsan Khan Nyazee, rev. Mohammad ‘Abdul Raūf (United Kingdom: Garnet Publishing, 2006), 378; Hāmid Saidq Qal‘ajī, *Mu‘jam Lughah al-Fuqahā*, 1st ed. (Beirut: Dār al-Nafā’is, 1996), 380.

2. Rulings Regarding Woman Performing *Ḥajj* without a *Mahrām*

Generally, there are five major conditions before *ḥajj* becomes compulsory upon someone: (1) That the person be Muslim, (2) That they have reached the age of discernment (*bulūgh*), (3) That they be mentally capable (*‘aql*), (4) That they are free and not a slave (*hurriyyah*), and (5) That they are financially and physically capable (*istiṭā‘ah*) of completing the journey to *ḥajj*. There is no difference of opinion among the independent jurists of Islamic law regarding these conditions.²⁵

Both males and females share these conditions. However, in the process of interpreting the concept of *istiṭā‘ah* (capability or ability), differences of opinion arose as regard to whether Muslim women have an extra condition before they can be held accountable for not performing *ḥajj*. This condition is that of an accompanying *mahrām*. The following positions of Islamic jurists clarify this matter in detail:²⁶

- i) In the Ḥanafī school of legal thought, *ḥajj* is not compulsory upon a woman who does not find a *mahrām* or husband to accompany her. Hence, the availability of a willing husband or a *mahrām* to accompany her to *ḥajj* is a condition for the obligation.²⁷
- ii) The Ḥanbalī school holds an opinion similar to that of the Ḥanafīyyah. To them, *ḥajj* is not obligatory upon a woman who does not find a *mahrām* or husband to travel with her. In fact, Imam Ahmad specifically commented on this issue, as Abū Dāwūd stated: “I said to Ahmad: ‘A wealthy woman, who does not find a *mahrām* to travel with her to perform *ḥajj*, is *Ḥajj al-Wājib* (obligatory) upon her?’ He said, ‘No’”²⁸

²⁵ For further explanation see: al-Kāsānī, *Baḍā‘i‘ al-Ṣanā‘i‘ fī Tartīb al-Sharā‘i‘*, vol. 2, 2nd ed. (Beirut, Lebanon: Dār al-Ihyā al-Turāth al-‘Arabī, 1998), 293; Ibn Rushd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, vol. 2, 1st ed. (Cairo: Maktabah Ibn Taymiyyah, 1415), 215-223; al-Shirāshī, *al-Muhadhdhab fī Fiqh Imām al-Shāfi‘ī*, vol. 1, 1st ed. (Beirut, Lebanon: Dār al-Ma‘rifah, 2003), 632; Ibn Qudāmah, *al-Mughnī*, vol. 5, 5th ed., ed. ‘Abd Allāh al-Turkī & ‘Abd al-Fattāḥ al-Halw (Beirut: Dār al-‘Alamī al-Kitāb, 2005), 6.

²⁶ Usually, the applied method in mentioning the schools of legal thought academically is to arrange them in descending order, i.e. downwards from the senior one. But the method would be skipped here for consideration of common idea.

²⁷ al-Kāsānī, *Baḍā‘i‘ al-Ṣanā‘i‘ fī Tartīb al-Sharā‘i‘*, vol. 2, 299.

²⁸ Ibn Qudāmah, *al-Mughnī*, vol. 5, 30.

iii) The opinion of the Mālikī school is that a *maḥrām* or husband is recommended and compulsory, but that there may be an alternative condition. The alternative is that a Muslim woman who does not find a *maḥrām* is allowed to travel with a secure group. The Mālikiyyah add that this secure group may be a group of pious and devout men, or a group of trustworthy female companions, or a group made up of both men and women.²⁹ This same opinion is reported (*riwāyah*) from Imam Ahmad. It was reported by al-Athram, one of Imam Ahmad's famous disciples, that a *maḥrām* is not a condition for *Ḥajj al-Wājib* (first obligatory *ḥajj*). Al-Athram said: "I had Imam Ahmad being asked: 'Is a man valid as *maḥrām* for his mother-in-law (mother of his wife), so, he accompanies her to *ḥajj*? But for *al-Ḥajj al-Wājib* (first compulsory *ḥajj*), I do hope so, because she can even travel for compulsory *ḥajj* within the company of women alone, or with everyone she trusts, but for non-compulsory *ḥajj*, she cannot.' Imam Ahmad replied."³⁰ However, the previous opinion is the popular view of the Ḥanbalī *madhhab*.

iv) The Shāfi'ī school expresses a similar opinion to that of the Mālikiyyah. They also state that *ḥajj* is not obligatory upon a woman until she finds a *maḥrām* or her husband or a group of trusted women. If she finds any of these three, it is obligatory upon her to perform *ḥajj*. If she cannot find one of the three, she is not obliged to perform the *ḥajj*.

Furthermore, in the popular opinion of the Shāfi'ī school, it is permissible for a woman to perform *ḥajj* if she finds only one trusted woman to take on the journey. More so, they say it is permissible for her to travel alone if she is guaranteed to be safe and she fears nothing on the way. This is how they understand the *aḥādīth* which forbid a woman from traveling alone.

However, if she has already performed her first obligatory *ḥajj* and then intends a voluntary performance, then she is not permitted to travel alone - she must be accompanied by her husband or a *maḥrām*. In this case, traveling with a group of trusted women is not permitted; this is the more correct position in the Shāfi'ī *madhhab*.³¹

²⁹ al-Qāḍī 'Abd al-Wahāb, *al-Ma'ūnah 'ala Madhāhib ahl al-Madīnah*, vol. 1 (Beirūt: Dār al-Fikr, n.d.), 501; al-Qurṭubī, *al-Jāmi' li Aḥkām al-Qur'ān; Tafṣīr al-Qurṭubī*, vol. 4, 1st ed. (Beirūt: Dār al-Kitāb al-'Arabī, 1997), 145.

³⁰ Ibn Qudāmah, *al-Mughnī*, vol. 5, 30-31.

³¹ al-Nawawī, *al-Majmū' Sharḥ al-Muhadhdhab*, vol. 7 (Beirūt, Lebanon: Dār Ihyā al-Turāth al-'Arabī, 2001), 46; al-Nawawī, *al-Majmū' Sharḥ al-Muhadhdhab*, vol. 8, 187-190.

It should be noted that, the condition that the Mālikīyyah and Shāfi‘īyyah hold for a woman to perform *hajj* is that she must be able to perform the journey securely. This security can be found when a husband or a *mahrām* or a group of trusted men or women accompanies her.

A critical look at the above discussion on the jurists’ opinions regarding the ruling of women performing *hajj* without a *mahrām* relates specifically to the question of whether *istiṭā‘ah* (capability) should be restricted to her having a willing husband or *dhu al-mahrām* to accompany her to perform *hajj*? Two major opinions could be derived from this. The Ḥanafīyyah and Ḥanbalīyyah hold the same opinion that a *mahrām* is an obligatory condition for a females’ *hajj* with no alternative. On the other hand, the Mālikīyyah and Shāfi‘īyyah opine that, in addition to a *mahrām*, a trusted group of women or men is also a valid alternative. Their arguments and proofs are the following:³²

- 1) *Al-Istiṭā‘ah* (capability) for *hajj* includes the husband or *mahrām* in the case of a female’s *hajj*. Hence, an able female Muslim upon whom performing *hajj* is obligatory is one who has a *mahrām*. The Ḥanafīyyah also hold this view. It is also popular opinion in the Ḥanbalī school, supported by the likes of al-Ḥasan al-Basrī, Sufyān al-Thawrī, al-Tāwus, al-Nakha‘ī, Ishāq, and Ibn al-Munthīr. Some Nigerian writers also support this opinion.³³ It should be noted that none of the noble companions (RA) were reported to have supported this view.

The proponents of this view have advanced four proofs in support of it. The first is the proscription about a woman traveling alone without her husband or a *mahrām*. This is authentically established in *aḥādīth* reported by Abū Sa‘īd al-Khudrī, Abū Hurayrah, Ibn ‘Ibn, and Ibn ‘nd I (RA). The content of one narration is as follows:

³² al-Tirmidhī, *al-Jāmi‘ al-Ṣaḥīḥ Sunan al-Tirmidhī*, vol. 3, 472; al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘ fī Tartīb al-Sharā‘i‘*, vol. 2, 299-300; Ibn ‘Abd al-Barr, *al-Istidhkār*, vol. 3, 1st ed. (Beirūt, Lebanon: Dār Ihyā al-Turāth al-‘Arabī, 2001), 712; al-Qāḍī ‘Abd al-Wahāb, *al-Ma‘ūnah ‘ala Madhāhib ahl al-Madīnah*, vol. 1, 501; al-Shirāshī, *al-Muhadhdhab fī Fiqh Imām al-Shāfi‘ī*, vol. 1, 639; Ibn Qudāmah, *al-Mughnī*, vol. 5, 30-31; al-Albānī, *al-Silsila al-Ṣaḥīḥah*, vol. 8, 21.

³³ Abubakar Bako & Zayyanu Musa Daji, ‘Some Specific Rulings Pertaining to Women on Hajj and Umrah’, *Proceeding of A 2 Day National Conference on Pilgrimage in Islam and Nigerian Pilgrims* (Nigeria: Saudi Arabia Cultural Attache, Abuja and Ahmadu Bello University, Zaria, 1433), 29-30; Batulu Aminu Dantata, ‘Hajj and Hajjiya (Challenges of Nigerian Women during Pilgrimage)’, 89; Mohammed Samni Mahmud, ‘Some Important Guides on How to Plan and Prepare for Hajj and Umra Effectively’, *Proceeding of A 2 Day National Conference on Pilgrimage in Islam and Nigerian Pilgrims* (Nigeria: Saudi Arabia Cultural Attache, Abuja and Ahmadu Bello University, Zaria, 1433), 209.

لا يخلون رجل بامرأة إلا ومعها ذو محرم، ولا تسافر المرأة إلا مع ذي محرم،
فقام رجل، فقال: يا رسول الله، إن امرأتي خرجت حاجة، وإني اكتتبت
في غزوة كذا وكذا، قال: انطلق فحج مع امرأتك

*It is not permitted for a woman to travel except in accompany of her mahram. It is equally haram (forbidden) for a man to enter into her except in the presence of her mahram. A man hence enquired thus: "O Messenger of Allāh (SAW)! Can I intend to go out with so-and-so army, while my wife went for hajj?" The Messenger of Allāh (SAW) said: "Accompany her."*³⁴

However, the opponents of this opinion argue against the efficacy or relevance of using this *ḥadīth* to prohibit women from traveling for *hajj* alone. They argue that it is more relevant to support the validity of women traveling to *hajj* without their husband or *mahram*, because the Messenger of Allāh (SAW) did not rule that she should return nor did he fault, blame, or condemn her traveling alone. Thus, it is important to note that the Messenger of Allāh (SAW) did not declare her sinful nor pronounce her action as wrong.³⁵

The second proof advanced by the proponents is the *ḥadīth* reported by Ibn ‘Abbās RA which states:

جاء رجل إلى المدينة؛ فقال النبي صلى الله عليه وسلم: «أين نزلت؟»،
قال: على فلانة؛ قال: أغلقت عليك بابها لا تحجّ امرأة إلا ومعها ذو
محرم

*A man arrived to al-Madīnah, then the Messenger of Allāh (SAW) said to him: "Where did you stay in?". At so-and-so's (female) host, replied he. The Messenger of Allāh (SAW) now said: "She had closed her door against you. A woman cannot perform hajj except in the company of her mahram..."*³⁶

Furthermore, using *qiyas* (analogy),³⁷ the opposing scholars argue from this narration that the woman commenced a journey from within the Islamic

³⁴ al-Bukhārī, *Saḥīḥ al-Bukhārī*, 1st ed. (Cairo: Dār al-Sha‘b, 1987), no. *ḥadīth* 1862. See also 1086-1088, 1197, 1864 and 1995; Muslim, *Saḥīḥ Muslim* (Beirut: Dār al-Jayl, n.d.), no. *ḥadīth* 3322-3336.

³⁵ Ibn Ḥajar, *Fath al-Bārī*, vol. 4, 1st ed., ed. ‘Abd al-Qādir Shaybah al-Hamad, (Riyāḍ, Saudi Arabia: Ministry of Islamic Affairs, 2001), 92.

³⁶ al-Dāruquṭnī, *Sunan al-Dāruquṭnī* (Beirut, Lebanon: Mu’assasah al-Risālah, 2004), no. *ḥadīth* 2440; Abū ‘Awanah authenticated it. al-Albānī did same in his *al-Silsila al-Saḥīḥah*, vol. 8, 21.

³⁷ *Al-Qiyās* is juristic analogical or reasoning deduction.

state without fulfilling the condition of having a *mahrām*, hence, her *ḥajj* was invalid, just like voluntary *ḥajj* is invalid without a *mahrām*.

Another proof used is in regards to it being impermissible for a woman to ascend on a camel nor descend from it, rather she requires assistance, which can only be done by either her husband or a *mahrām*. This renders her to become disable, hence the Quranic verse 97 of Surah Āli-‘Imrān does not cover her.

Generally, the Mālikiyyah and Shāfi‘iyyah debated the above proofs in various ways, focusing on contentions evidences such as the *ḥadīth* forbidding women from traveling without *mahrām* and whether it was a general ruling or could be particularized by other authoritative texts. There were also discussions on whether or not it could be contextualized as lawful regarding non-obligatory journeys such as traveling for trading, visitation, voluntary *ḥajj* and anything else apart from the first obligatory *ḥajj*. That *ḥadīth* might also be restricted to periods of insecurity.³⁸

Ibn Ḥajar al-‘Asqalānī (d. 852 A.H), in his *Fatḥ al-Bārī*, stated that since it is the consensus of the independent jurists that the generality of the *aḥādīth* forbidding women from traveling without a *mahrām* is particularized (*makhsūs*), traveling for compulsory *ḥajj* must be excluded from forbidden forms of travel.³⁹

The second opinion expressed by the Mālikiyyah and the Shāfi‘iyyah is that *istiṭā‘ah* (capability) is a condition for *ḥajj* to become compulsory. However, it does not extend to include the condition of needing *mahrām* in the case of a woman’s *ḥajj*. Hence, a woman Muslim able to perform *ḥajj* is one who has her husband, a *mahrām*, or a group of trusted women or men. If she finds any of these, it is obligatory upon her to perform *ḥajj*. If she cannot find one of the aforementioned, she is not obliged to perform the *ḥajj*. This is the view of Ibn Sīrin and Al-Awsā‘iy. It is also the opinion of many companions like ‘Ā’ishah RA, ‘Umar Ibn al-Khaṭāb RA, ‘Uthmān Ibn ‘Affān RA, ‘Abd al-Raḥmān Ibn ‘Awf RA, etc.⁴⁰ Abubakar Umar Abubakar, a researcher at the Abdullahi ibn Fodi’s Library, Usmanu Dan Fodio University, Sokoto, Nigeria,

³⁸ al-Nawawī, *al-Majmū‘ Sharḥ al-Muḥadhdhab*, vol. 8, 191.

³⁹ Ibn Ḥajar, *Fatḥ al-Bārī*, vol. 4, 90.

⁴⁰ Ibn Ḥajar, *Fatḥ al-Bārī*, vol. 4, 90-91.

reports that this is the conventional practice of NAHCON.⁴¹ Some Nigerian writers support this opinion.⁴²

The proofs upon which these two schools of thought base their argument are where Allāh SWT says:

وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا

“And (due) to Allāh from the people is a pilgrimage to the house for whoever can afford the expenses...”

(Surah Āli-‘Imrān, 3: 97)

That is, who can afford for transport, provision, and residence. The word mankind (*al-nās*) covers both males and females with the same degree without disagreement among the scholars. Once a woman possesses means of transportation then she is considered able. And if she is with group of trusted women through which her dignity or nobility are secure and protected then she must perform compulsory *hajj*.⁴³

However, the opponents of this view argue that the generality of the verse is restricted by those *aḥādīth* (plural) forbidding females from traveling alone.

Another proof is the authoritative *ḥadīth* of Umm al-Mu’minīn ‘Ā’ishah RA, which states that:

عن عائشة أم المؤمنين رضي الله عنها، قالت: قلت يا رسول الله، ألا نغزو ونجاهد معكم؟ فقال: «لكن أحسن الجهاد وأجمله الحج، حج مبرور»، فقالت عائشة «فلا أدع الحج بعد إذ سمعت هذا من رسول الله صلى الله عليه وسلم

⁴¹ Abubakar Umar Abubakar, ‘al-Shurūṭ wa al-Istiṭā’ah fī Wujūbi Ada’i Manāsik al-Ḥajj (Conditions and Capabilities for Mandatory of Hajj)’, *Proceeding of A 2 Day National Conference on Pilgrimage in Islam and Nigerian Pilgrims* (Nigeria: Saudi Arabia Cultural Attache, Abuja and Ahmadu Bello University, Zaria, 1433), 29.

⁴² Sani Musa, ‘Pilgrimage (Hajj) and It’s Position in Islam’, *Proceeding of A 2 Day National Conference on Pilgrimage in Islam and Nigerian Pilgrims* (Nigeria: Saudi Arabia Cultural Attache, Abuja and Ahmadu Bello University, Zaria, 1433), 291.

⁴³ al-Qurṭubī, *al-Jāmi’ li Ahkām al-Qur’ān*; *Tafsīr al-Qurṭubī*, vol. 4, 142; al-Kāsānī, *Baḍā’i’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’*, vol. 2, 299; Ibn ‘Abd al-Barr, *al-Istidhkār*, vol. 3, 711-712.

*Umm al-Mu'minīn 'Ā'ishah RA said: I said: "O Messenger of Allāh (SAW) shall we (women) participate in ghazw (strike) and jihād (struggle) with you (plural, i.e. with men warriors)?" He replied: "For you (women) the best and preferable jihād is ḥajj; a genuine ḥajj. On that account, Umm al-Mu'minīn 'Ā'ishah RA said: "I shall never desist from performing ḥajj after I heard this from the Messenger of Allāh (SAW)..."*⁴⁴

The *ḥadīth* infers that *ḥajj* is the more preferred, indeed the more correct version if *jihad* for women. For this reason Umm al-Mu'minīn 'Ā'ishah RA vowed never to cease going for *ḥajj*. Also, she traveled without a *mahrām*, as reported in the above *ḥadīth*, which serves as another proof advanced by the proponents.

Imam al-Bukhārī reported that Amīr al-Mu'minīn (the Leader and Commander of Believers) 'Umar Ibn al-Khaṭṭāb RA had given permission to the wives of the Messenger of Allāh (SAW) during the last *ḥajj* he performed, delegating both 'Uthmān Ibn 'Affān and 'Abd al-Raḥmān Ibn 'Awf RA to accompany them.⁴⁵ It is important to note that this permission was acceded after many years of 'Umar's reservation over the issue, but later he became convinced by strong evidences that it was permissible.⁴⁶ Also, this permission was given in the presence of other companions (RA) yet not one objection was reported. In addition to this fact, their silence should neither be doubtful nor be suspicious.⁴⁷ It is equally noteworthy that neither 'Uthmān nor 'Abd al-Raḥmān were considered *maḥārim* to the wives.

However, this fact remains questionable, because though they may not be their *maḥārim*, the concept of *mahrām* still remains, due to the fact that marriage to any of the Messenger's wives is permanently prohibited. This argument was therefore dismissed because no one regards a male Muslim as a *mahrām* to the wives of the Messenger of Allāh (SAW). Had they be considered *mahrām*, 'Uthmān Ibn 'Affān RA who was reported saying: "No one shall come closer to them nor look unto them", would not have said this whenever he traveled with them.

⁴⁴ al-Bukhārī, *Saḥīḥ al-Bukhārī*, 1st ed. (Cairo: Dār al-Sha'b, 1407-1987), no. *ḥadīth* 1861.

⁴⁵ al-Bukhārī, *Saḥīḥ al-Bukhārī*, 1st edition (Cairo: Dār al-Sha'b, 1407-1987), no. *ḥadīth* 1860.

⁴⁶ Ibn Ḥajar, *Fath al-Bārī*, vol. 4, 88, 89; al-'Azīm 'Abādī, *'Awn al-Ma'būd Sharḥ Sunan Abī Dāwūd*, vol. 5, 2nd ed., ed. 'Abd al-Raḥmān Muḥammad 'Uthmān (al-Maḍīnah al-Munawwarah: al-Maktabah al-Salafiyah, 1388-1968), 147.

⁴⁷ al-Qurṭubī, *al-Jāmi' li Ahkām al-Qur'an; Tafsi'r al-Qurṭubī*, vol. 4, 143.

The above narrations could simply denote that the essence of the company of a *mahrām* with a woman traveler is for maximum care, protection, attention, etc. This without doubt, can only be adequately ensured by a husband or a *mahrām*. Nevertheless, where the company of husband or a *mahrām* becomes unfeasible or impracticable, a group of trusted women or men is the only other alternative. This is exactly what ‘Umar Ibn al-Khaṭṭāb did by delegating the two notable companions - ‘Uthmān Ibn ‘Affān and ‘Abd al-Raḥmān Ibn ‘Awf RA - to accompany the wives of the Messenger of Allāh (SAW) to *hajj*.

Similarly, it was reported by ‘Ā’ishah RA that the wives of the Messenger of Allāh (SAW) sought permission from ‘Uthmān Ibn ‘Affān RA during his tenure to travel for *hajj*. It was granted, and he himself accompanied them all except Zaynab RA who had died, and Sa‘udah RA who never left her house since the death of the Messenger of Allāh (SAW).⁴⁸

Ibn Sa‘d also reported with sound *isnād* (chain of narration) that the wives of the Messenger of Allāh (SAW) went for *hajj* in the year 50 AH during the tenure of al-Mughīrah, who was the governor of al-Kūfah for al-Mu‘āwīyah RA.⁴⁹ Abū Hurayrah RA confirmed that the wives of the Messenger of Allāh (SAW) went for *hajj*.⁵⁰ Ibn Ḥajar commented that all these narrations are strong proofs supporting the legality of a woman going for *hajj* in the company of whom she trusts, even if it is not her husband or a *mahrām*.⁵¹

Another proof is the *ḥadīth* of ‘Abd Allāh Ibn ‘Abbās RA which states:

قال رسول الله صلى الله عليه وسلم لامرأة من الأنصار، سألها ابن عباس
فنسيت اسمها : « ما منعك أن تحجّين معنا؟ » ، قالت: كان لنا ناضح،
فركبه أبو فلان وابنه، لزوجها وابنها، وترك ناضحا ننضح عليه، قال:
« فإذا كان رمضان اعتمري فيه، فإن عمرة في رمضان حجة »

*When the Messenger of Allāh (SAW) came back from his hajj, he said to Umm Sinān al-Ansāriyyah RA: “What stopped you from performing hajj?!” She replied: “Father of so-and-so (to mean her husband) had two camels, he rode on one to hajj while the second one was wetting our farm land”. The Messenger of Allāh (SAW) then said: “Surely, performing ‘umrah during Ramaḍān is equivalent to a hajj with me...”*⁵²

⁴⁸ Ibn Ḥajar, *Fath al-Bārī*, vol. 4, 88, 91. Ibn Ḥajar authenticated the *ḥadīth*.

⁴⁹ Ibn Ḥajar, *Fath al-Bārī*, vol. 4, 87.

⁵⁰ Ibn Ḥajar, *Fath al-Bārī*, vol. 4, 88.

⁵¹ Ibn Ḥajar, *Fath al-Bārī*, vol. 4, 88-91.

⁵² al-Bukhārī, *Saḥīḥ al-Bukhārī*, 1st ed. (Cairo: Dār al-Sha‘b, 1987), no. *ḥadīth* 1863.

The relevance of the above narration to the issue at hand is that the Messenger of Allāh (SAW) accepted her excuse of lacking a riding camel as genuine. He then went further to encourage her to perform *ḥajj* for the subsequent *Ramaḍān*. The implication is that doing so will lead to her travel alone, riding the camel without her husband, since the second camel will be busy in their farm.

Another proof advanced is the sound *ḥadīth* of ‘Abd Allāh Ibn ‘Umar RA, which states:

جاء رجل إلى النبي صلى الله عليه وسلم فقال: يا رسول الله، ما يوجب الحج؟ قال: «الزاد والراحلة» وفي رواية: فقام رجل آخر فقال: ما السبيل يا رسول الله؟ قال: «الزاد والراحلة»

A man stood up before the Messenger of Allāh (SAW) and enquired him about what makes ḥajj to become compulsory (upon someone). He (SAW) replied: “It is the provision (al-zād) and a riding camel (al-rāhlah).” [That is, any means of transport in the modern age]. In another version the man asked: “What is al-sabīl (course or means)?” And the Messenger of Allāh’s response was the same.⁵³

This *ḥadīth* implies that only provision and transport make *ḥajj* compulsory and nothing else. However, opponents have argued against the authenticity of this *ḥadīth*. In another authentic *ḥadīth* reported by ‘Adī Ibn Hātim RA, it states:

فقال: «يا عدي، هل رأيت الحيرة؟» قلت: لم أرها، وقد أنبتت عنها، قال «فإن طالت بك حياة، لترين الظعينة ترتحل من الحيرة، حتى تطوف بالكعبة لا تخاف أحدا إلا الله»

⁵³ al-Tirmidhī, *al-Jāmi‘ al-Ṣaḥīḥ Sunan al-Tirmidhī*, vol. 3, 177, no. *ḥadīth* 813; Ibn Mājah, *Sunan Ibn Mājah* (Beirut, Lebanon: Maktabah Abū al-Mu‘āṭī, n.d.), no. *ḥadīth* 2896. Imam al-Tirmidhī said it is not only a sound *ḥadīth* but also accepted by the Jurists, they applied its content, that once one possesses provision and transport he is due for *ḥajj*. Sheikh al-Albānī also perfected it in his *Ṣaḥīḥ al-Targhīb wa al-Tarhīb*, 5th ed. (Riyāḍ: Maktabah al-Ma‘ārif, n.d.), no. *ḥadīth* 1131. Also did ‘Abd al-Razāq al-Mahdī in his work on *al-Jāmi‘ li Aḥkām al-Qur‘ān; Tafṣīr al-Qurṭubī*, vol. 4, 144.

“The Messenger of Allāh (SAW) said: O ‘Adī! If your life lasts, you shall surely witness *al-ẓa‘īnah* travelling from *al-Hirah*⁵⁴ all the way until she (reaches Mecca) performs *tawāf* (revolves) around the Ka‘bah, fearing no one except Allāh...”⁵⁵

This *ḥadīth* also infers that a Muslim woman can go for *ḥajj* without a *maḥrām*.

The Ḥanafiyah and the Ḥanābilah rejected these proofs with the authentic *aḥādīth* that forbade a woman from traveling alone. It is true, they say, that the *ḥadīth* of ‘Adī is authentic, but it was a statement of the Messenger of Allāh (SAW) that does not amount to him sanctioning the act. Rather, it was an account to ‘Adī of what would happen in the future, just as he had informed us about the coming out of *al-dajjāl* (liars), which does not denote a permission to lie. As Imam al-Shawkānī said, it is more befitting to take the *ḥadīth* to mean that such a thing would happen not that it is permissible. This is necessary, so that there would be no contradiction between it and the *aḥādīth* that forbid women from traveling alone.⁵⁶

However, Imam al-Nawawī has debunked this debate in the following manner: there is no comparison between the two, because the *ḥadīth al-dajjāl* was mentioned in sequence of condemning innovations while the *ḥadīth ‘Adī* in its own case is mentioned relating to the praise, nobility, and power of Islam, hence it cannot be an unlawful act. Ibn Ḥajar supported this view.⁵⁷

Furthermore, the *athār* of Umm al-Mu‘minīn ‘Ā’ishah RA states: “not every woman has a *maḥrām*”⁵⁸ is another proof.

They also cited and supported their position by *qiyās*, comparing a woman traveling alone for *ḥajj* to a woman who reverts to Islam in the

⁵⁴ *al-Ẓa‘īnah* is an ordinary woman or a woman in a special sedan. *al-Hirah* is an ancient city in *Kūfa* (in ‘Iraq), also called: *Naysābūrī*. See for meaning of (*al-dha‘īnah*) and (*al-Hirah*) in Ibn al-Athīr, *al-Nihāyah fī Gharīb al-Aḥādīth wa al-Athār*, vol. 3, ed. Ṭahīr Aḥmad al-Zāwī (Beirut: al-Maktabah al-‘Ilmiyyah, 1979), 350, and vol. 1, 1095, respectively.

⁵⁵ al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, no. *ḥadīth* 3595.

⁵⁶ al-Shawkānī, *Nayl al-Awtār*; vol. 5 (Beirut: Idārah al-Tibā‘ah al-Munīriyyah, 1996), 4. See also, Ibn Qudāmah, *al-Mughnī*, vol. 5, 32.

⁵⁷ al-Nawawī, *al-Majmū‘ Sharḥ al-Muḥadhdhab*, vol. 7, 45-46; al-Nawawī, *al-Majmū‘ Sharḥ al-Muḥadhdhab*, vol. 8, 191; al-Nawawī, *al-Minhāj Sharḥ Ṣaḥīḥ Muslim*, 5th ed. (Beirut: Bayt al-Afkār al-Dawliyyah, n.d.), 838-839; Ibn Ḥajar, *Fath al-Bārī*, vol. 4, 91.

⁵⁸ Ibn ‘Abd al-Bārr, *al-Istidhkār*, vol. 3, 712.

land of the disbelievers, or a Muslim woman who may have escaped from their imprisonment. In both cases, there is unanimous agreement that she is permitted to travel alone. So they said: she is embarking on a compulsory journey hence, a *mahrām* is not a condition like a female Muslim who gets freedom from the custody of disbelievers.⁵⁹

It is understood from the above that the jurists agreed that *istiṭā'ah* (capability) is conditioned for *ḥajj* to become compulsory upon someone. Their disagreement arose only in the process of understanding the concept and scope of the capability which Allāh mentioned as condition for *ḥajj* to become compulsory.

The reason for the differences in their opinion generates from what seems to be a conflict between the unqualified command for *ḥajj* together with generic noun of people (*al-nās*) in the verse of Surah Āli-‘Imrān (3: 97) which includes both male and female to the same degree, and taking up travel for *ḥajj* with the proscription about a woman’s travelling alone without her husband or a *mahrām*. Those who upheld the generality of the word people (*al-nās*) and the unlimited command gave predominance to it and said that a woman may travel for *ḥajj* even when she is not accompanied by husband or a *mahrām*, but with a trustworthy group of women or men for her assistance. Meanwhile, those who restricted the general implication with the Prophetic traditions, or held that it is an elaboration of ‘ability’, said that she is not allowed to travel for *ḥajj*, unless she is accompanied by her husband or a *mahrām*.⁶⁰

3. Preferred Opinion

Without giving preference to one opinion, this discussion is incomplete. Hence, after an intensive study of the different views of jurists, and thorough extermination of their proofs, it is clear that the proofs of both parties are mostly genuine, but generic. This necessitates searching for external proofs to validate one over the other. Thus, followings are qualifying proofs for minimising the conclusions drawn from the *aḥādīth* forbidding female from voluntary travel alone:

- 1) The permission later granted by ‘Umar al-Khaṭṭāb (RA) after his long reservation;

⁵⁹ Ibn Qudāmah, *al-Mughnī*, vol. 5, 31; Ṣāliḥ Ibn Fawzān, *al-Mulakhkhas al-Fiqhī*, 1st ed., ed. Ṣalāḥ al-Dīn al-Sa‘īd (Cairo: Dār al-Gadī al-Jadīd, 2007), 230.

⁶⁰ Ibn Rushd, *The Distinguished Jurist’s Primer: Bidāyah al-Mujtahid*, 378.

- 2) The approval of ‘Uthmān Ibn ‘Affān, ‘Abd al-Rahmān Ibn ‘Awf, and other companions (RA) that were present to review ‘Umar’s decision;
- 3) The practice of Umm al-Mu’minīn ‘Ā’ishah RA and the remaining wives of the Messenger of Allāh (SAW) who kept on going to *ḥajj* after his death.

The above summary denotes that forbidding female from traveling without a husband or a *mahrām* is not *al-ta‘abbudī* (devoutness or godliness), but rather it is *ma‘qul al-ma‘na* (reasonable or logical). It was proscribed due to Islamic law’s recognition of gender roles. Women are generally by nature the weaker sex and below males physically, and perhaps men are in better control of their emotions.⁶¹ Hence, the Shariah aims at protecting her while traveling by making it obligatory for her husband or a *mahrām* to accompany her. It is also helpful so as to block out any possible immorality that may result if she travels alone.⁶² Where such is not possible, then a trustworthy group of women or pious men is the most obvious alternative.

CONCLUSION

The ultimate objective of this paper is to provide legal and legitimate alternative solution to the process of women traveling for *ḥajj*. No doubt, a woman traveling for *ḥajj* in the company of her husband or a *mahrām* is the preference. However, where that is not possible, the alternative should be a group of trusted women or men, rather than trickery and deception by personal agents. All stakeholders, including the authorities, decision-makers, travel agencies, etc. are guilty and responsible for allowing Muslim women to travel through trickery. But traveling with a trusted group of people attracts no illegality, and thus it is not sinful.

Al-Mahrām however, is a condition only for the performance of *ḥajj* and not as an obligation. This implies that, if a woman is physically and financially able, she is obliged to perform *ḥajj* and needs to be accompanied by her husband or a *mahrām* before she can travel. However, if she decides to travel in company of trusted group of women or men for *ḥajj*, her *ḥajj* is valid and sound.⁶³ Equally, her act is not sinful according to the preferred legal opinion.

⁶¹ Abubakar Bako & Zayyanu Musa Daji, ‘Some Specific Rulings Pertaining to Women on Hajj and Umrah’, 30.

⁶² Batulu Aminu Dantata, ‘Hajj and Hajiya (Challenges of Nigerian Women during Pilgrimage)’ *Proceeding of A 2 Day National Conference on Pilgrimage in Islam and Nigerian Pilgrims* (Nigeria: Saudi Arabia Cultural Attache, Abuja and Ahmadu Bello University, Zaria, 1433), 89.

⁶³ Ibn ‘Uthaymīn, *Fatāwa Arkānī al-Islām*, ed. Fahd Ibn Nāsir Sulaymān, 1st ed. (Riyāḍ: Dār al-Thuriyya, 1421), 507.

The researcher is aware of the great desire and aspiration of many Nigerian female Muslims to perform *ḥajj* in the nearest time before the under-listed conditions are applied. Thus, the application of the principle of *al-ḍarūrah* (necessity) on them may be suggested, pending the time in which a final solution may be achieved.

RECOMMENDATIONS

- 1) The Kingdom of Saudi-Arabia should generously sponsor the World Conference of *Fuqahāhu* to deliberate on the issue of the condition of *maḥrām* in line with contemporary challenges and technological advances;
- 2) The Nigerian Supreme Council for Islamic Affairs on its own part should also humbly do the same as above;
- 3) The government of Nigeria through the National *Ḥajj* Commission of Nigeria (NAHCON) should explore the bilateral agreement between Nigeria and Saudi Arabia in proffering legitimate solutions to the challenges of *maḥrām* for Nigerian female pilgrims;
- 4) Groups of female Muslims to the Kingdom of Saudi Arabia for the performance of *ḥajj* or *‘umrah* should be promoted as a solution to this problem;
- 5) Islamic scholars should educate intending pilgrims on the danger of illicit behaviours during *ḥajj* and promote the Islamic culture of relationships between opposite sexes;
- 6) The concerned pilgrim boards, travel agencies, and other related bodies should carry out their duties and responsibilities to the satisfaction of Islamic law;
- 7) Respect for the sanctity of *al-Ḥarām al-Makkī wa al-Madanī* is a collective responsibility, hence we should promote Islamic options that we can easily implement in any situation with more than one option based on the statement of ‘Ā’ishah Umm al-Mu’minīn (RA), “not every woman has a *maḥrām*”.

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- Sirajudīn Al-'Asrau Al-Bilal (Ph.D holder of Islamic Law, Director General, *Ināyatullah* Travel and Tourism Agent, and one time Lecturer, HOD, Department of Islamic Studies, *Al-Hikmah* University, Ilorin, Kwara State, Nigeria), in interview with author through a phone call, on 22 March 2012.