SPRINGBOARD Journal

No. 1, Volume 10, 2018

جامعة الحكمة، إلورن - نيجيريا

AL-HIKMAH UNIVERSITY
ILORIN, KWARA STATE, NIGERIA

Contents

List of Contributors iv

Articles in English

1. A Metafunctional Analysis of Extremist Religious Discourse in Ahmed Yerima's *Heart of Stone* 1

2. Muslim Brotherhood Movement of Egypt and Partisan Politics: Lessons for Islamic Organisations in Nigeria 18

3. Assessment of Work Motivation and Staff Output among Library Personnel in Kwara State College of Education 34

4. Islamic Pedagogy and Entrepreneurial Skills for Youth Self-Reliance in Nigeria: Implication for Educational Managers 56

5. The Islamic Model of Poverty Alleviation: Lesson for Nigerian Muslims 73

6. Factors Influencing the Utilization of Electronic Resources in the University of Ilorin Library by Undergraduate Students 88

7. Challenges and Prospects of Sharia Courts in Nigeria 104

8. Islamic Solution to the Challenges of Security, Peace and Governance in Nigeria 122

Articles in Arabic

9. A Rhetorical Analysis of Simile Types in the Anthology of Bello Mustapha al-Mangaari "Shawaariqul Anwaar" 135

10. The Art of Public Speaking and its Educational and Security Value: A Case Study of Prophet Muhammad's Speeches on the Conquest of Makkah and the Battle of Hunein. 150

CamScanner

Challenges and Prospects of Shari'ah Courts in Nigeria

By
Muhammad Jumat Dasuki, Ph.D.

ABSTRACT

Before the advent of British colonial rule, Islamic law, in all its ramifications, was applied in the territories later to be known as Northern Nigeria after colonization. The Islamic law was the system through which Islamic civil and criminal laws were applied by the Alkali courts. The British introduced the English law, which, however, did not completely abrogate the existing and dominant Islamic legal system under the Sokoto Caliphate, but subjected it to some limitations by confining the application of the *Sharʿah* and jurisdictions of *Sharʿah* courts to personal status. The Commander of the faithful, *Amirul Mumineen* or *Emir*, had to wait for the approval of the Resident or District Commissioner in the appointment of *Sharʿah* judges and the latter was empowered to supervise the judges and review or transfer their cases. Against this background, this paper examines the position of *Sharʿah* Courts in Nigeria before and under the British colonialism. It also analyses the history and prospects of *Sharʿah* Courts as well as challenges presently facing the *Sharʿah* Courts in Nigeria. The methodology used for this study included analytical, critical and historical approaches, while library sources were extensively utilized as a tool of sourcing for information. The paper concludes with some suggestions as a way out of the nightmare.

Introduction

The history of *Shari'ah*, the Islamic legal system, in Nigeria is as old as the history of Islam in the country. *Shari'ah* is part of Islam. It is inseparable from it. Wherever Islam spreads, it goes along with its legal system. Islamic law, in all its ramifications, was applied in what later to be become known as Northern Nigeria before the advent of the British who tried to scrap it completely. Failure to achieve this target led to its reduction from a full-fledged legal system to ordinary law of personal matters called "Islamic personal law" while the criminal aspect of the legal system was totally expunged and replaced by the penal code. Muhammad Mustafa Ali Khan has captured the situation thus:

> Nigerian Muslims were totally governed by Islamic law until Nigeria became a British colony. The advent of colonial rule saw the gradual phasing out of Islamic law. The present truncated form of Islamic law applicable in Nigeria is the product of the colonial tyranny. Fortunately, Nigeria saw the end of this tyranny and got rid of this yoke. But the

> approach to legal education adopted by colonial masters is still continuing after more than two decades of independence. It is sheer indifference on the part of Muslims of this great nation and an irony that they have not seriously started to agitate against this situation. In conformity with their socio legal aspiration, they should press for gradual enlargement of the scope and extent of the application of Islamic law to them.[1]

It was the implementation of the *Sharicah* criminal code by Zamfara State that triggered a reform movement all over the Muslim states[2] of the country. The former Zamfara State Governor, Ahmed Sanni Yerima, after announcing its adoption of Islamic law as the basic source of law in the State in 1999, took further initiative by creating *Sharicah* Courts in place of the old Area Courts. The jurisdiction of the *Sharicah* Courts of the states was extended to cover all aspects of the Islamic civil and criminal causes amid criticism, blackmail and propaganda by the neo-colonial antagonists of *Sharicah*.[3] The *Sharicah*, to these people, is a threat to the legal system of post-colonial Nigeria, which is based on the English system with the High Court as the superior court of original jurisdiction and Supreme Court as the final appellate court. This paper, therefore, examines the position of *Sharicah* Courts before and under the British colonialism as well as challenges presently facing the *Sharicah* Courts in Nigeria. The paper concludes with some suggestions and recommendations as a way out of the problems.

Perspectives on *Sharicah* Courts

Sharicah is an Arabic word, which literally means:

a. The straight path to be followed as Almighty Allah puts it in the Holy Quran where He says:
Then, we put thee on the (right) way of religion so follow thou that (way). And follow not the desires of those who know not (Q45: 18).

b). The way leading to watering place or spring where drinking water is fetched. Technically, it means the path that Almighty Allah, in His wisdom, established and ordained as the only path through which man can be rightly guided towards Him. Therefore, the *Sharicah*, to a Muslim, represents his entire life, symbolizes his existence and gives him his identity[4]. It shapes his entire personality and character. *Sharicah* consists of two main divisions. The first division, known as

Ibadaat (acts of worship,) deals with a Muslim's relationship with his Creator and regulates the matters of unity of Allah (*Tauhid*), prayers (*Salat*), fasting (*sawm*), pilgrimage (*Hajj*) and payment of due tax to the needy (*Zakat*). The second division, known as *muamalat* (human acts), is further divided into rites and transactions that regulate acts between persons such as marriage, contracts and acts dealing with property as in sales and rents.[5] Man's various societal systems like legal (both civil and criminal), political and economic systems find a place in this latter division.

Muslims, therefore, have no other option than to strive for the implementation of that path, ordained for them by Allah through absolute obedience to His messenger, Muhammad (SAW). Allah clearly declared in the Quran as follows:

> It is not fitting for a believer, man or woman, when Allah and His Messenger have decided a matter, to have another option about their decision. If any one disobeys Allah and His Messenger, he is indeed on a clearly wrong path (Q33:36).

In view of the above verse, it is clear how relevant the *Shari'ah* legal system is to Muslims. To be a Muslim, one must totally and completely apply the *Shari'ah* to his daily and life activities. Allah says in the Quran:

> O you who believe! enter into Islam whole-heartedly; and follow not the footsteps of Satan for he is to you an avowed enemy (Q2:208).

In Nigeria today, especially in the Northern parts of Nigeria, the courts with jurisdiction in Islamic law matters, in terms of full hierarchy, are Area Courts and *Shari'ah* Courts of Appeal.

i. Area Court

Before the advent of colonial rule, this court was known as Alikali Court and, since the introduction of English legal system in Nigeria in 1876, it has been operating side by side with the Islamic law, according to section 20 of the Area Court Law. Thus, subject to the provisions of this Edict, and in particular of section 21, an area court shall be competent to decide in civil causes and matters.[6] The Islamic law however regarded as the native law and custom is predominantly applied in the north under the Native Courts

Ordinance (NCO) of 1918. These Native Courts later became Area Courts when states were created in 1967 by the then military dictatorship, General Yakubu Gowon. In addition, when the four regions that constituted the Nigerian Federation were broken up into twelve states, a new Area Court Law was enacted.[7] For the purpose of the Area Courts, sections 2 and 4 of the Area Court Law provide *inter alia*:

Section 2: (1) In this Edict, unless the context otherwise requires:
'Area court' means a Court established under or in pursuance of this Edict or deemed to have been so established and shall include an Upper Area Court.
Section 4: (1) An area court shall consist of the following member or members:

(a) An area judge sitting alone, or
(b) An area judge sitting with one or more members
(c) The upper area court shall consist of three judges, any two of whom sitting together to hear and determine appeals shall form a quorum.

(2) All questions of Moslem Personal Law shall be heard and determined by any Member of an area court learned in Moslem Law[8].

ii. *Shari'ah* Court of Appeal

The *Shari'ah* Court of Appeal is one of the constitutionally created courts, having its jurisdiction well rooted in the Nigeria constitution and its constitutional jurisdiction, mainly on Islamic person status [9], in addition to whatever jurisdiction that may be conferred on it by the law of the state where it is established. It was enacted as an appellate Court to hear and determine all appeals involving Muslims or Islamic Personal law matters from the Area Courts. The *Shari'ah* Court of Appeal is established by Section 275 of the 1999 Constitution of Federal Republic of Nigeria (CFRN) for any state that requires it but mandatory in the Federal Capital Territory. [10]

Section 262 of the 1999 Constitution of Federal Republic of Nigeria (CFRN) provides that the *Shari'ah* Court of Appeal shall exercise both appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law, which the Court is competent to decide in accordance with the Constitution. The Court comprises a Grand *Kadi* and other *Kadis* as the National Assembly or the State Houses of Assembly (as the case may be) may prescribe.[11]

Section 54 of the Area Court Edict vests the power of appeal in cases involving questions of Muslim personal law in the *Sharicah* Court of Appeal. The High Court on the other hand has jurisdiction to hear all cases of Islamic civil causes and criminal matters inclusive.[12] Yet, whenever a matter before the High Court is Islamic, the question often arises on what law is to be applied. No doubt, the High Court is empowered to apply principles of Islamic law treating it as a variety of native law and custom. These Islamic cases of appellate jurisdictions awarded to High Court, Court of Appeal and Supreme Court, which are not grounded in Islamic law, are, in my own observation, deliberate attempt to put the Islamic legal system in limbo in the country.

Sharicah Courts in Nigeria before Colonization

According to history, Maliki School of Islamic law had been operating in Northern Nigeria for over one hundred years before the advent of the colonial rulers in 1901. The pioneer Islamic empire in the Northern Nigeria was Kanem Borno when the 12th king of the empire, Umm Jilmi Bin Sulaiman, embraced Islam and consequently declared his entire empire an Islamic state, with Arabic language as the medium of communication.[13] On the other hand, at the commencement of Shehu Usman Danfodio's Islamic reformation from 1804 to the beginning of the colonial era in Hausa land, *Sharicah* continued to grow in full- fledge and strength throughout the length and breadth of the Northern part of Nigeria without omission.[14] The followers of Danfodio in the *jihad* became the leaders of the principal towns like Kebbi, Gobir, Zamfara, Sokoto, Kastina, Zazzau (Zaria), Nupe, Ilorin, Kano, Gwandu, Adamawa and Bauchi. These towns patterned their administration along the Islamic legal system, and fully established Islamic system of government, under which *Sharicah* was the legal codes in practice at the Emirs` Palaces and Alkali courts, with unlimited jurisdictions. In exercising power over the entire citizenry guided by the dictates of the Qur`an and the *Sunnah* of the Prophet Muhammad (SAW), the system, through which Alkali courts applied Islamic civil and criminal laws, was kept intact by the colonial power. But these courts were subject to some limitations such as reduction in the power to impose punishment, functioning under supervision and control of colonial administrative officers and subscribing to the dictates of new courts established by the British.

According to Islam, the head of Islamic community must be an Imam, Caliph or Emir. His other assistants as laid down comprised of the following:

i. *Wazir*: advisor to the caliph.
ii. *Kadi*- judge who must be versed in *Shari'ah* and other aspects of Islamic knowledge.
iii. *Nazir al-Mazalim*- appeal court judges [15].

All these were established in Hausa land; to the extent that the Sokoto caliphate was claimed to be the next in rank after Saudi Arabia and Afghanistan [16]. In addition, it was also recorded that by 1840 Islam had been firmly established in Badagry, Igboho, Ikoyi, Iseyin, Ketu, Eko and Oyo; and by the time of colonial era 1860-1894, *Shari'ah* had been established in Iwo by Oba Momodu Lamuye who was enthroned in 1860. *Shari'ah* was the law applied in his domain and the administration of the town was done in line with Islam till he died in 1906. Similarly, Oba Oyewole of Ikirun established *Shari'ah* court in his domain which was presided over by one Bako from Ilorin as *Kadi*. There was also *Shari'ah* court in Ede established by Oba Habeeb Olagunju in an area called Agbeni. It was removed in 1914 to another area called Agbogbon and the first *Kadi* was Sindiku[17]. In Epe, *Shari'ah* was operational and ranked second to Ilorin in terms of Islam and its knowledge, and Maliki Fiqh was the School followed by the people [18].

It was also mentioned that the Lagos Muslim community demanded for *Shari'ah* as early as 1894 and the agitation for *Shari'ah* in Yoruba continued for more than one hundred years. In 1938, Ibadan Muslim community also asked for *Shari'ah* but its application was denied. Similarly, the Muslim congress of Nigeria, Ijebu Ode requested for *Shari'ah* with no result.[19] Historians pointed out that the Yoruba Muslims merely practised Islam as a religion and not as a way of life [20]. It is a fact that Islam got to Yoruba land and flourished well, ever before the advent of colonial administration, but it remained a private religion. Islamic law is practised in matters like *nikkah* (marriage), *talaq* (divorce), and *meerath* (succession), but only in a purely individual and private capacity[21]. It has been observed that the impact of *jihad* and its effect of establishing Muslim empires in the north for a period of one century accounted for why *Shari'ah* succeeded in displacing the customary law among the Muslims irrespective of their tribes. It is equally arguable that the absence of jihad or its effect accounted for the low level of the practice of *Shari'ah* among the Muslims in the southwest compared to the north.

CamScanner

Sharī'ah Courts in Colonial Era

On arrival of the British as we earlier mentioned in January 1901, they met the Islamic legal system already established. In accordance with their indirect rule policy, they allowed the institution of state and machinery of government, including the judicial system, which were in existence especially in the N orthern part of Nigeria, to continue functioning within prescribed limits and subject to certain conditions. They contented themselves with the power of supervision, regulation and control of the native courts.

The main provisions of interest in relation to judicial matters are as follows:

1. The Resident[22] was empowered to establish in his province by warrant under his hand such native courts as he deemed fit.
2. The courts were to administer native law and customs prevailing in the area of jurisdiction of each court in both civil and criminal matters. In criminal matters, they might award any punishment, and in civil matters, they might make any order that native law and customs authorized subject to the condition that no inhuman treatment could be inflicted. In addition, they could not inflict the penalty of death.
3. The Emir or Chief was to appoint the judges, subject to the Resident's approval. Where there was no Emir or Chief, the resident appointed the judges.
4. The Resident had the power to enter the courts at any time and to inspect the records. He could transfer a case from one court to another, he could review the findings of a court and order a retrial or modify the sentence (or the order) of the courts.
5. The practice and procedure of the courts were to be governed by native law and custom subject to rules that might be made by the High Commissioner.[23]

From the above provisions, the intention of the British despot to reduce the power of *Sharī'ah* Courts is very clear and, the observation of Kumo, according to Ibrahim Ado Kurawa, is therefore correct when he suggested that:

> As far as the *Sharī'ah* was concerned, the provision introduced essentially fundamental changes. First, the fact that the courts were established by the British officers who also had the power of control

> and supervision, and secondly, the ouster of the application of *hadd* punishments for *zina* and burglary. [24]

In line with the British indirect rule policy, the Emir or Chief was given some powers by the proclamation in which the British encouraged Emirs and Chiefs to use *Siyasa* (politics) in legal judgment so that *Shari'ah* may be completely abrogated or undermined. However, some of the Emirs, to their eternal credit, refused to be cowed by the British. Sarkin Kano Abbas was particularly conscious of the Islamic obligation of his heritage. He refused to succumb to the overtures of using politics to get rid of Islamic law as planned by the British. [25]

The native courts had no jurisdiction over non-native cantonment areas (i.e. areas reserved by the British for Government offices and quarters). They also had no jurisdiction over non-native or those natives who were in the Government service, and they had no jurisdiction to try statutory offences or to hear civil cases governed by English law. To deal with all these matters, there were established English courts, which were in no way connected with the native courts [26]. The native courts only apply Islamic law in all civil matters and causes where Muslims are predominant. The law says:

Subject to provisions of this law and in particular its section 24, a Native Court shall in civil cases and matters administer:

> The native law and custom prevailing in the area of the jurisdiction of the court or binding between the parties, so far as it is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any written law for the time being in force. [27]

After the amalgamation of Northern and Southern Protectorates of Nigeria, the British despots graded the native courts into four according to the powers they were allowed to exercise, namely: Grade A, B, C and D Courts. Grade A Courts were given unlimited jurisdiction in both civil and criminal cases. The lowest court was the Grade D courts whose jurisdiction was limited to imprisonment of up to three months or fine of not more than ten pounds and in the civil matters of contracts and torts, where the subject matter of the litigation did not exceed 22 pounds. This ordinance also named the courts presided over by *Alikali* as "*Alikali* court", thus distinguishing them from other native courts[28]. Islamic law ceased to

govern criminal matters when the Native Courts Law came in to effect in 1957[29] and later was replaced by the penal Code Law of Northern Nigeria which says:

In criminal cases, a native court shall administer the provisions of:

a) The Penal Code Law, the Criminal Procedure Code Law, and any subsidiary legislation made there under,
b) Any written law, which the court may be authorized to enforce by any order made under Section 27;
c) All rules and orders made under the Native Authority Law or under any or superseded that Law and all rules, orders and by-laws made by legislation repealed a native authority under any other written law in the area of the jurisdiction of the court.[30]

By 1954, after fifty years of colonial rule in Northern Nigeria, a new constitution was promulgated under which High court was established for each of the regions. The regional legislative councils were empowered by the new constitution to establish or reform native/customary courts. Thus, the Northern legislative council in 1956 passed the native courts law and the Muslim Court of Appeal which was later renamed as *Shari'ah* Court of Appeal in 1960.[31] Appeals from Native Courts (now Area Courts) only on Civil matters particularly on family law go to Muslim Court of Appeal which is presently known as *Shari'ah* Court of Appeal while appeals on civil matters other than family law cases and criminal matters go to High Court for determination.[32]

Challenges Facing *Shari'ah* Courts in Nigeria

This section focuses on the challenges facing *Shari'ah* Courts in Nigeria. The challenges are multi-faceted, but we have, in this section, identified the sources of the challenges as four. These are vividly discussed as follows.

I. Categorization of Islamic Law as Customary Law

One of the legacies of the colonial rule is that Islamic law is tagged as a customary law and thereby treats Islamic law as a species of native law and custom. Consequently, no separate provision was made for the application of Islamic law.[33] In the courts where the bulk of Islamic law is applied, namely, the Area Courts and the High Courts of the Northern States, it is still regarded as such and it is governed by the same rules, which provide for the application of customary law. There are many

theoretical distinctions between Islamic Law and customary law. Aside the statutory provision, Islamic law has nothing in common with customary law [34]. The customary law has been described as body of law that evolved from the custom of the native people, while the *Shari'ah* is a complete system of universal law and more universal than manmade law [35].

II. Colonial Mentality

According to Ibrahim Adokurawa, *Ibn Khaldun* was reported to have said that: "the vanquished will always want to imitate the victor in his distinctive characteristics, his dress, his occupation and all his other conditions and customs" [36]. The reason for this is that the soul always sees the perfection in the person who is superior to it; it considers him perfect because it is impressed by respect it reserves for him.

Thus, the white man in the perception of the colonized people was a sort of perfect man who must be emulated at all cost, for he represents the peak of civilization. This is the main reason the colonized people, most of the time, totally neglect their own religion and civilization, in spite of the fact that the adventure of the white man on the African continent was that of exploitation and victimization. This mentality has had adverse effect on the application of the Islamic law in Nigeria. The most painful aspect is that some nominal Muslims, for their love for the English law and European way of life, had been westernized and found amongst the most prominent in the war against the implementation of Islamic law on the ground that the punishments are too severe, without considering all the advantages contained therein.

The fact remains that *Shari'ah* is the life of Islam itself. Therefore, any Muslim society in which the *Shari'ah* is not applied in its totality cannot be said to be truly Islamic even though all its members might claim to be Muslims. The test of the Islamicity of any society is the extent of its application of the *Shari'ah*. No amount of *salat*, *zakat*, *saum* or *Hajj* alone can make a society truly Islamic, if the *Shari'ah* is not applied as a comprehensive legal system. This is because to submit to a law other than that prescribed by Allah is to submit to another god beside Allah, which amounts to rejection of Islam. The Qur`an in three different verses calls those who reject *Shari'ah* 'unbeliever', 'wrong-doer' and 'rebel' against the authority of Allah. It says:

> Those who judge not by the law revealed by Allah are unbelievers. (Q 5:47).
> It also adds:

CamScanner

Those who refuse to judge with the law which revealed by Allah
Are wrongdoers. (Q 5:48).

The Qur'an concludes that:

Those who judge not by the law revealed by Allah are rebels. (Q 5:50).

III. Position of *Shari'ah* in the Nigerian Constitution

The position of *Shari'ah* in the Nigerian constitution can be summarized as follows:

a. It is recognized as one of the laws of Nigeria the others being the English law and customary law.
b. It is reduced to the narrow confines of personal status. This can be seen from the jurisdictions of the *Shari'ah* courts. According to the constitution, the *Shari'ah* courts shall be competent to decide any question of Islamic personal law regarding marriage, divorce, endowment, gift, will and child custody and any other questions to which the parties consent. Thus, all the other aspects of the *Shari'ah* have no relevance as far as those who drafted and those who ratified the constitution were concerned [37].

By confining the application of the *Shari'ah* to personal status, the constitution overlooks the nature of the *Shari'ah* itself as well as the position of the *Shari'ah* in the life of the Muslims.

The *Shari'ah* legal system relates to every aspect of human life be it religious, legal, moral, personal, social, economic, political, educational and national or international relationships. In other words, the *Shari'ah* is the totality of Allah's commandments and directives which included all *Ahakam* (judgments) that are contained in the *Quran*; Muslims must totally observe and practise the *Shari'ah* otherwise, they should be held responsible for defiance towards the divine laws of Allah (S.W.T.). The *Quran* says: "Do you believe in some part of the book and disbelieve in the other part?" (Q2:85)

Restricting the jurisdictions of the *Shari'ah* courts to civil matters means denying Muslims their fundamental human rights in order to make the life of Muslims of this country more meaningful to them religious-wise; The jurisdiction of *Shari'ah* courts in our constitution needs to be expanded to cover all aspects of the Muslim life.

CamScanner

There is no gainsaying that Islamic law is a system that can control crimes and brings a greater degree of peace and security to citizens than any other Law. *Shari'ah* law focuses on the individual as well as the good of the community. Islam pursues its social objectives through reforming the individual in the first place. The individual is thus seen as a morally autonomous agent who plays a distinctive role in shaping the community's sense of direction and purpose. *Shari'ah* law has a role for individual rights, but those individual rights are exercised within a system that is primarily concerned with human relations[38]. Saudi Arabia, which applies the *Shari'ah* intoto, has the lowest rate of recorded crime in the world that indicates that criminal law of Islam aims at creating peaceful society where the people will live in security [39].

IV. Unqualified judges

The appointment of Judges who are also unlettered in Islamic Law and are empowered to administer Islamic civil causes is another challenge that confront *Shari'ah* Court in our country. On the competence of the High Court Judges, for instance, to handle Islamic civil causes, he/she only needs to qualify to practise as a legal practitioner in Nigeria (being called to the Nigerian Bar) and must have been so qualified for a period not less than 10 years. With this qualification, he/she is presumed to be versatile in the knowledge of the law on which he is to adjudicate. Obviously, the above does not cover the knowledge of Islamic law required of a Judge to adjudicate on Islamic civil causes. The jurists posited in their books regarding a Judge of Islamic law thus:

> It is stipulated that for a man to be appointed a judge, he should be a Muslim, free person, male and matured person. He should possess the capacities to hear and see. He should be literate, conscious and should be capable to make independent research and interpretation of the Quran and the Sunnah or at least possess the capacity to interpret what an exponent of Islamic law has interpreted based on the Quran and Sunnah.[40]

The implication of the foregoing requirements is that we now have Judges to administer Islamic civil causes who are not just non-Muslims but who cannot also identify any alphabet of the law they apply. What can be more repugnant to natural justice, equity and good conscience? [41] The appearance of unlettered legal practitioners in Islamic law in the *Shari'ah* courts also has its adverse effect and attendant challenges. The most serious problem is the assumption of those lawyers that English legal system is the standard after which other legal systems have to follow [42].

Their appearance can only be meaningful and fruitful if they take the pains to be conversant with the knowledge of Islamic law.

V. Validity Test

It was noted earlier that colonialists abrogated the capital punishment *hudud* provision of the *Sharicah* such as those on adultery and theft and introduced 'validity test',[43] which directs the native courts to observe and enforce the observance of every rule of Islamic law that is not repugnant to natural justice, equity and good conscience. Moreover, they deliberately brought in review of the capital punishments in Islamic law in order to weaken or reduce its potency. Few examples of such reviews are summarized below:

i. Retribution was replaced by hanging contrary to the Qur'anic or Islamic provision as contained in the Glorious Qur`an thus:.

> O you who believed, prescribed for you is legal retribution for those murdered the free for the free, the slave for the slave, and the female, but whoever overlooks from his brother (i.e. the killer anything, then there should be a suitable follow-up and payment to him (i.e. the deceased's heir or legal representative) with good conduct. This is alleviation from your lord and a mercy. However, whoever transgresses after that will have a painful punishment. In addition, there is for you in legal retribution (saving of) life, o you (people) of understanding, that you may become righteous. (Q 2: 178-9).

Still on the issue of retribution and on the authority of Bukhari and Muslim: The Holy prophet was reported to have decreed during his lifetime that a Jew be killed by having his head smashed between two heavy stones because he killed a woman in the same manner[44].

ii. Stoning adulterer(s) and adulteress to death was also replaced by jail terms, a punishment which Islamic law does not compromise because it was reported that the Holy Prophet said that "stoning adulterer (s) and adulteress to death is a law in divine revelation in as much as strong evidences are established either through pregnancy or true confession"[45]. Without doubt, the Holy Prophet was to have established this act by stoning Maaizan and a woman of

CamScanner

Ghamid'yya [46]. In addition, the rightly guided Caliphs according to Islamic history established the same [47].

iii. Amputation: Almighty Allah revealed and decreed in His divine book thus:

> (As for) the thief, the male and female, amputate their hand in recompose for what they earned (i.e. committed) as a deterrent (punishment) for Allah. Moreover, Allah is exalted in Might and Wise. Nevertheless, whosoever repents after his wrongdoing and reforms, indeed, Allah will turn to him in forgiveness. Indeed, Allah is forgiving and merciful. (5: 38).

As found in the practice of the Holy Prophet (SAW) and accepted by the consensus of Islamic scholars that whosoever steals anything worth and above a quarter of dinar or three dirham should have one of his/her arms amputated.[48] Notable among those whose arms were amputated was Khiyar Ibn Addi and Marrat Ibn Sufiyan during the time of the Holy Prophet (SAW).[49] The colonial masters replaced this act with jail terms.

Furthermore, there were many cases in which the *Shari'ah* provisions applied were found to be repugnant to natural justice as interpreted by the British colonialists. One of such was that of M. Abba vs. Mary T. Baikic. In that case the Kano Chief Alkali's court ruled that Mary who was a Christian could not inherit her father who was a Muslim because Islamic law of inheritance prohibits a Muslim from inheriting a non-Muslim and vice-versa. One of the provisions of this law is the injunction based on the *Hadith* of the Prophet (SAW) which was reported to have said, "Neither does a Muslim inherit a non-Muslim nor does a non-believer inherits a Muslim".[5] Mary appealed to the Supreme Court, which ruled that the provision of Islamic law of inheritance that barred her from inheriting "is repugnant to natural Justice, equity and good conscience[51]. Does it mean that the *Shari'ah* court that ruled in the first instance was ignorant of Islamic law of inheritance?

The Supreme Court's ruling had nothing to do with logic or universal sense of justice. The purpose of the judgment was to present *Shari'ah* in bad light since the court's objection was to fulfill the colonial objective of promoting western civilization. Had the Islamic law provision been that a Muslim could inherit a non-Muslim but the later cannot inherit the former then the court may be justified in declaring the law as repugnant to its notion of natural justice and equity. It is clear that the intention of the English law courts was the promotion of western civilization as against Islamic

CamScanner

civilization. For example, if there was any conflict between customary law and English law, the customary law was promoted. But in a similar case, if there is a conflict between Islamic law and English law, the English law is promoted. An apt instance is the case of Dawudu Vs Danmole (1962)[52] in which the deceased person was survived by nine male and four female children and the estate was shared according to Yoruba custom of maternal affiliation of the heirs known as (*idi-igi*).[53] Dawud went up for highest appeal to challenge this ruling but he was not successful [54]. All the courts decided that since that was their custom it has to be complied with, in other words it was considered not repugnant to natural justice and equity.

Conclusion

From the foregoing, it may be concluded that the position of *Shari'ah* and *Shari'ah* court in Nigeria has not been favourable. The colonial rulers pursued a policy, which aimed at curtailing the application of Islamic law. The legal system they set up and institutions they established were governed by rules, which were designed to achieve their objective. The legislatures of the country and the courts ensured that the English law was promoted at the expense of the Islamic law.

The following suggestions should be examined in order to improve the status of *Shari'ah* and the *Shari'ah ah* courts in Nigeria.

1. *Shari'ah* should be given its proper place in the Nigerian legal system: it should function as a complete legal system. *Shari'ah* deserves such treatment, not simply because it belongs to Muslims but because it is a system that elevates and purifies human conduct, brings peace and harmony among the people and gives unity to human life.
2. *Shari'ah* courts should be given full jurisdictions in both civil and criminal matters. Its position should be elevated to the level of Federal Appeal Court and Supreme Court of Federation.
3. All the Universities that have Common Law Departments must establish Islamic Law Department too, so that prospective students wishing to read law can decide to read common law, Islamic law or combined law.
4. Considering the major challenges - that of unqualified judges - the Judiciary must be reformed: the Islamic criteria of evaluation of people to be appointed to the bench must be revived because the success of *Shari'ah* is solidly based on a thorough understanding of the Islamic Law and the ability to make decisions within the framework of the Federal constitution.

CamScanner

Notes and References

1. Muhammad Mustapha Ali khan, "A case for Teaching *Mirath* as independent courses in Islamic law" in *Nigeria Application and teaching*, Islamic Publications Bureau, Lagos, 1988, p.181.
2. The term Muslim States usually refers collectively to Muslim majority states, districts or towns. In Nigeria, such states include Sokoto, Kano, Katsina Jigawa and others.
3. *Shari'ah* Courts Law, No 5 of 1999 (Zamfara State) and see Abdul-Qadir Ibrahim Abikan, "The Application of Islamic law in Civil Causes in Courts" in *Journal of International and Comparative Law* (June 2002) 6 JICL p.18.
4. M.A. Shiqeety, *Altashee'il Islamy wa hikimatihi*, Madina, Saudi Arabia, 1972 p. 6
5. Abdul-Qadir Ibrahim Abikan, "The Application of Islamic law in Civil Causes in Courts" p.7.
6. See section 19, Supreme Court Ordinance, 1876.
7. S.O.Muhammad,*Shari'ah in Nigeri (A Brief History)* Ilorin, Olalomi printers, 2011 p. 30. And C:\Users\DR DAS\Desktop\MATERIALS\Law Nigeria + Kwara State Legal System, Law Firms, Laws and Justice Administration.mht. Assessed on 30/11/2019.
8. See section 2 and 4,Area Court Edict, 1967.
9. *Shari'ah* Court of Appeal Law, 30th September, 1960 Session 10
10. *Ibid* Section 4. See also Nigerian 1999 Constitution of the Federal Republic of Nigeria
11. *Ibid*
12. Abdul-Qadir Ibrahim Abikan, "The Application of Islamic law in Civil Causes in Courts" (Abikan Supra p. 18)
13. Galandanci Ahmad Saeed, *Harakatul Lugatil-Arabiyyah wal Adaabiyyah fi Nijiriyah, 1804-1922*, Riyadh, Aikan Publications, 1992, p.143.
14. *Ibid.*
15. Muri Okunola: "The Relevance of *shari'ah* to Nigeria" in *Islam in Africa* Ibadan, Spectrum Books Limited, Sunshine house, 1993, p. 23.
16. *Ibid*, P. 23.
17. *Ibid*, p.25.
18. *Shari'ah* Court of Appeal Law, 30th September, 1960
19. Ibrahim Ado Kurawa, *Shari'ah and the Press in Nigeria*, Kano, Kurawa Holding Limited, 2000, p. 282.23456
20. *Ibid*, p. 283.
21. M. A. Ambali, *The Practice of Muslim Family Law in Nigeria*, Zaria, Tamaza Publishing Company Ltd, 2003, p.21.

CamScanner

22. The Resident: was the political agent of the British colonial Administration.
23. Suleiman Kumo, "The Application of Islamic law in Northern Nigeria: Problems and Prospects" *In Islamic law in Nigeria (Application & Teaching)* Lagos, Islamic Publications Bureau, 1988, p. 44
24. Ibrahim Ado Kurawa: *Shariʿah and the press in Nigeria*, p.292.
25. Suleiman Kumo, "The Application of Islamic law in Northern Nigeria, p.45.
26. Ibrahim Ado Kurawa: *Shariʿah and the press in Nigeria*, p.296.
27. Section 25 Native Courts Law[Cap 78],vol.2, The Laws of Northern Nigeria,1963
28. Ibrahim Ado Kurawa: *Shariʿah and the press in Nigeria*, p.296.
29. *Ibid.*
30. Section 25 Native Courts Law[Cap 78],vol.2, The Laws of Northern
31. *Ibid.*
32. M. A. Ambali, *The practice of Muslim Family Law in Nigeria*, p.21
33. Muhammad Tabiu, constraints in the application of Islamic law in Nigeria, in *Islamic law in Nigeria (application and teaching)* p 81
34. A. E. W. Park, *The Sources of Nigeria Law* (London: Sweet and Maxwell, 1963) p. 65. See also T. A Aguda. "Towards a Nigerian Common Law' in M. A. Ajomo (ed.), *Fundamentals of Nigerian Law* (Lagos: Nigerian Institute of Advanced Legal Studies, 1989), p. 260.
35. *Ibid*, p. 82
36. Ibrahim Ado Kurawa, *Shariʿah and the press in Nigeria*, p. 292.
37. *Ibid.*
38. Ibrahim K. R. Sulaiman "The *Shariʿah* and the 1979 Constitution" In *Islamic law in Nigeria (Application & Teaching)*, p. 59.
39. Abdulateef Adekilekun *Muslims and Islamic law in southern Nigeria 1899-1999*, Ede, Moyanjuola Publishers, 2001, p.3.
40. Muhammad Bikir Ismail *al-Fiqhul-wadih minalkitab was-sunnah* (vol. 2) Cairo Darul-manar 1997, pp.321-323
41. Abdul-Qadir Ibrahim Abikan, "The Application of Islamic law in Civil Causes in Courts" p.15
42. M. A. Ambali, *The Practice of Muslim Family Law in Nigeria*, p.21.
43. Ibrahim Ado Kurawa, *Shariʿah and the press in Nigeria*, p. 312
44. Al-Bukhari, Muhammad Abu Abdullahi, *Sahihul-Bukhari* Darul-Fiqr Bairut, (Vol 12), 1401 AH, p. 204-205.
45. Ibid P. 144-145.
46. *Ibid.*
47. Muhammad Jumat Dasuki: *Shariʿah and its comprehensiveness in the aspect of Human life*, Ilorin,Aloba Prints, 2010, p. 45.
48. Al-Qushairy: Muslim ibn Hajjaj, *Sahihu Muslim*, Cairo, (Vol.10), 1346AH p.196.

CamScanner

49. *Ibid.*
50. Sahihu Bukhari (Babu al-Miraath) (Vol. 10), p. 260.
51. Sulaiman Muhammad Jamiu, "Colonial impact in the Application of *Shari'ah* in Nigeria" in *journal of the Nigerian Association of teacher of Arabic and Islamic Studies*, (Vol. 6) No 1, 2001, p. 26.
52. Ibrahim Ado Kurawa; *Shari'ah and press*, p. 314.
53. In Yoruba land, distribution of an estate of a deceased person, who dies without a valid Will, is per stripe; i.e. by the number of Wives that the deceased had and not by the number of children.
54. Ibrahim Ado Kurawa; *Shari'ah and press*, p. 314.

CamScanner