

SHARIA AND THE PLIGHT OF NON-MUSLIMS IN THE MULTI-RELIGIOUS NIGERIA

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Abstract

The multiplicity of religion in Nigeria ought to be a greater blessing for the nation because these religions are rich with spiritual and cultural heritage which can impact greatly on the socio-economic life of Nigeria. Sadly enough, this has not been the case because of the incessant rifts among the religions, especially Christianity and Islam. One of the causes of such rifts is the introduction of Sharia as a state legal code in Nigeria. The situation has wrecked so much havoc on the country and its people, and has created tension and mutual suspicion among members of varying faiths. This work takes a critical look at Sharia with respect to the plight of non-Muslims under it in a multi-religious setting like Nigeria. Phenomenological method is adopted in its critical descriptive and analytical forms to study and interpret the issue in focus. Data was collected through oral interview and bibliographical search. The purpose is to understand the condition of non-Muslims under Sharia in the multi-religious Nigeria with a view to ascertaining the suitability or otherwise of such law as a state legal code in a multi-religious society like Nigeria. Findings reveal that total implementation of Sharia negates the constitution of the Federal Republic of Nigeria as well as encourages abuse of human right. The paper concludes that since Sharia is a religious law, its application should be limited to the individual's will.

Introduction

Muslims' life at individual and societal level is governed by different sets of rules. The first set is the foundation that describes the relationship between man and God. This set is known as 'Iman' (faith). Islam teaches that a pure belief in One God is intuitive in human beings and thus fulfils the natural inclination of the soul. The second is Sharia. It consists of constitutive and regulative rules that deal with transforming and manifesting the faith into action. Sharia, being the practical aspect is the one that gives answers to every aspect of human life. It guides the practice of day-to-day life by defining the rules governing social, political, and economic activities.

Sharia regulates not only matters of religion and moral development but also economic, cultural and socio-political life treated by some religions as temporal and therefore distinct from the spiritual (Adekoya, 1998). Islam tries to integrate all these aspects of life into an encompassing religious world-view and governs it with the Sharia. Sharia is the concrete embodiment of the Divine will according to which man would live in both his private and social life. It is therefore the guide of human action and encompasses every facet of human life.

In a purely Islamic state, where every member is a Muslim, there is little or no problem about the practice of Sharia but when it is a multi-religious society like Nigeria with its constitutional prohibition of state religion, the case is different. Over the years, this has given rise to two opposing agitations between Muslims and non-Muslims in Nigeria where the former insists on the establishment of Sharia as a legal code since to them it is the purest form of law and specifically what Allah has provided for the governance of the society where

He is the Founder and head. To them, any allegiance to any other law other than the Sharia amounts to shirk (unpardonable sin). The latter, on the other hand complain of subjugation and subtle Islamization should Sharia be accepted as argued by Muslims. This is because an aspect of the Sharia presents a hostile outlook to non-Islamic religions.

The dilemma created by this situation has often resulted to serious controversies, agitations; and sometimes physical harm, death and destruction of properties. What actually is Sharia? Why do Muslims need it at all cost? Why do non-Muslims reject it at all cost? Is it suitable for a multi-religious society like Nigeria? What is its status in the eyes of the law? These and many other questions we shall grapple with in this paper.

Meaning and Scope of Sharia

Etymologically, Sharia is an Arabic word meaning “to begin, to prescribe, to enact, to make laws”. It can also mean, “to chalk out or mark out a clear road to water”. When it is used in the context of Islam, it is the path that Allah has ordained to be followed by every Muslim ‘to earn His pleasure and to avoid His wrath’ in this world and in the hereafter. According to Adekoya, Sharia literarily means “the path to be followed; the road to the watering place, a resort of drinkers, a place to which men come to drink and to draw water... To him, Sharia is a road leading to a goal (ie God). Sharia is the Islamic law which regulates the vertical (Man-God) and the horizontal (Man-Man) relationships. It encompasses every aspect of man’s life.

Sharia is the wide road that guides man towards the understanding of the Divine will by indicating which acts and objects are from the religious point of view, obligation (wajib), meritorious or recommended (mandub), forbidden (haram), reprehensible (Makruh), and indifferent (Mubah) (Adekoya, 1998).

Sharia therefore technically means the canon law of Islam and totality of Allah’s commandments. It embraces all human actions and contains an infallible guide to ethics. It is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself, the acceptance of which makes a person a Muslim. It is the ideal pattern for the individual’s life and the law which binds Muslims into a single community. It is the embodiment of the Divine will whose acceptance and application guarantees man a harmonious life in this world and in the hereafter. To use Byang’s words, “Sharia is the spirit that gives life to the religion of Islam”.

Sources of Sharia

Traditionally, there are four main sources of Sharia which can be classified into primary and secondary sources.

Primary Sources

The Qur’an: This is the first and most important source of Islamic law. Any law that is directly derived from the Qur’an is permanent. The Qur’an is considered as the direct commandment of Allah, who is all-knowing, all-wise, and all-powerful. Therefore its jurisdiction is timeless. The Quran is considered the most sacred source of law.

The Sunnah: The Sunnah are the teachings, examples and practices of Muhammad. The sayings of Muhammad (Hadith) are the most important aspects of the Sunnah. They are followed by what Muhammad practiced himself and then what was done in his presence which he seemed to have sanctioned. Although the Ulema have used Sunnah and Hadith

almost interchangeably, they are however, not entirely the same. Hadith literarily means a narrative, communication or news consisting of the factual account of an event. It differs from Sunnah in the sense that while Hadith is a narration of the conduct of the prophet, Sunnah is the example or the law that is deduced from it. The Sunnah laws are also permanent and binding on all Muslim societies.

Secondary Sources

Ijma: Ijma refers to the consensus of Muslim jurists within the provisions of the Qur'an and Sunna on any particular legal question which is not clear from either the Qur'an or the Sunnah. In other words, it is the art or science of legal interpretation of problematic passages or issues from the Qur'an or Sunnah.

Qiyas: This is a deduction from a clear text of the Qur'an, Sunnah or Ijma to a problem that has no clear guidance from any of the aforementioned sources. But the deduction and application is guided by the general principle of Sharia. Qiyas is used to derive a ruling for a situation not addressed in the scripture by analogy with a scripturally based rule.

In scope, Sharia encompasses every aspect of life for the Muslim. This ranges from the rules of dietary, economy, social relation, family life etc. Traditionally, there are three major sections of Sharia.

Ibadat (Devotions): This includes the five pillars of Islam, namely; Iman (faith), Salat (prayer), Zakat (obligatory charity), Sawm (Fasting) and Hajj (Pilgrimage to Mecca)

Mu'amalat (Transactions): This has to do with interpersonal relationships. It contains the Islamic civil law covering areas like marriage, inheritance, economy etc.

Uqubat (Punishments): This embodies the criminal code in Islamic law and covers areas like murder, theft, adultery, wine drinking, apostasy, slander, etc., the violation of which invites punishments ranging from lashes, amputation to stoning to death.

Importance of Sharia to the Muslims

The Sharia is so interwoven with Islam in such a way that you cannot talk of one without relating it to the other. According to Islamic belief, the relationship between Islam and Sharia is that Islam is the house, which one has to enter to attain prosperity, salvation, protection and more importantly, the pleasure of Allah and Sharia is the only road to the house. Any other path leads one astray.

Many opinions abound as to the place of Sharia in Islam. To some, the importance of Sharia is also the importance of the Islamic religion itself (Anderson, 1959). Scholars of the principles of fiqh in view of the numerous verses of the Qur'an and hadith on the purpose of Sharia, have pointed out that even though it is true that God has nothing to gain for himself by promulgating laws for man, He does, however, visualize an end and purpose which man is to realize by following His laws. The purpose according to Wali-Allah and other philosophers of Islam is to enable man achieve his perfection and realize his happiness. In his word, "If one asks why man has been commanded to offer prayer and obey the prophet or why has he been forbidden adultery and theft, the answer is that he has been obliged to do this and avoid that to enable him achieve his distinctive perfection and thus realize his happiness". He went

further to say that while animals know their obligation through natural instinct, humans get their knowledge through learning and reflection, or through revelation and imitation (which is by constantly following the Sharia). According to Muslims' believe, Allah is the Creator of all. He is Omnipotent, Omniscient and Omnipresent. He is manifest and Imminent, Knower of all past, present and future. His law is therefore comprehensive, all prevailing, universal and natural. Every action in life must therefore be for God and according to His will. Expressing the same view, in a different way, Masood as quoted by Adekoya (1998) said, "Since every man's knowledge is limited and cannot tell him what in reality is good and what is in reality evil, Sharia, the code of life revealed by All-knowing and All-wise Allah is primarily concerned with providing guidance to every man to regulate his life such that it becomes most beneficial to him and least harmful to others and thus leads to social cohesion, peace and tranquility".

According to this view, the only way to know what God commands or forbids is to look at the Sharia. Thus, there is only one law for society – Sharia law which descends from above in the form of revelation to the Prophet. People only need to submit to God's rule; to do otherwise and make laws of their own is idolatry. Therefore, there is no separation of the spiritual and temporal orders and it is nonsensical according to Adekoya (1998), to say "Give to Caesar what is Caesars's and to God what is God's". It is clear from the above that to the Muslim, there cannot be any philosophical ethics; and no human legislation suffices but only the application of Sharia. Islam therefore implies the acceptance of God's authority to the exclusion of any other competing authority. It is in this way that Adekoya (1998) describes Sharia as all inclusive and all exclusive.

Closely related to the above is the fact that the Islamic concept of state does not permit the Muslims to practice any form of law different from Sharia. In the Islamic concept of state, according to Montgomery Watt (1973), the sovereign and God are one and the same. The supreme authority therefore rests in God Almighty who is the unchallenged ruler and Supreme Dispenser; and whose commands are obeyed by all. In this state, human rulers are the vicegerents and their orders are obeyed only when they are derived from His Divine commands or at least not repugnant to them. The government is therefore theocratic in that God is the only recognized authority and human leaders and institutions are only occasions through which God governs. Like the three organs of government in a federal system, the Islamic state is also composed of the legislative, executive and judicial arms of government. However, each of these exists in relation to the Sharia – The legislative enacts the Sharia, the executive implements the Sharia and the Judiciary punishes offenders of Sharia. Thus, the state according to Islam cannot exist without the Sharia.

Muslims also argue that Sharia is superior to the English Common Law and to Nigeria Customary Law. Those who hold this position, according to Byang (2017), present at least six areas in which they claim the superiority exists:

In Sovereignty: They argue that Sharia is superior to the common law in that, whereas in Sharia, sovereignty pertains to Allah, in other laws, sovereignty lies with persons (e.g. kings), culture (e.g. customs and traditions) or state (e.g. Constitution).

In Sources: Sharia takes its origin from the Qur'an which is a revealed scripture. The other laws were derived from human reasoning.

In Justice: Sharia is said to be more just than the English law because Allah, being the law giver, is the embodiment of justice.

In Judicial Procedure: The Sharia system is cheap, simple and quick while the English system is costly, technical and wastes time.

In Legal-Moral Dichotomy: In Sharia, both the legal and the moral aspects of cases are taken care of but in English system the moral aspect is totally neglected.

In Volition of Victim in Deciding the Fate of the Offender: In Sharia, a victim can decide to forgive an offender even if the court has tried and found him guilty but in the English system, once an offender is convicted, the victim has no say in the offender's sentence; thus, the court sentences the offender to the total disadvantage of the victim.

With these, they see Sharia as the best law and conclude that the whole of Nigerian legal system should be replaced with Sharia.

Commenting further on the indispensability of Sharia, Adekoya (1998) articulates three important features of an Islamic state under Sharia; these are: brotherhood of all Muslims, freedom of opinion and security of life and properties. Consequently, adherence to Sharia, opens access to these privileges.

Spiritual Satisfaction is another claim for practicing the Sharia. Many verses of the Qur'an emphasize the importance of the Shariah. Quranic passages such as Qur'an 45:18; 4:105; 5:44-47; 33:36; 4:65 etc specifically directed Muslims to practice Sharia; failure to do this is disobedience to Allah and such situation puts man in a jeopardized relationship with his Creator.

In summary, every society is governed by laws and principles set forth by the founder(s) of such society; and since Allah is the sole Creator and Sustainer of the world (according to Islamic belief), Muslims believe that He alone has the authority to make laws for man. Therefore, they believe that a community cannot exist without the Sharia.

HISTORICAL ORIGIN AND DEVELOPMENT OF THE SHARIA

Sharia, according to Muslim view, was passed down directly from Muhammad without historical development. In this view, his companions and followers took what he did and approved as a model and transmitted same to the succeeding generations in the form of hadith. These reports led first to informal discussion and then systematic legal thought, articulated with greatest success in the eighth and ninth centuries by the master jurists Abu Hanifah, Malik ibn Anas, Al-Shafi'i, and Ahmad ibn Hanbal, who are viewed as the founders of the Islamic legal schools of Sunni jurisprudence (Esposito, 2014).

Before Islam, the nomadic tribes inhabiting the Arabian Peninsula worshiped idols. These tribes frequently fought with one another. Each tribe had its own customs governing marriage, hospitality and revenge. Crimes against persons were answered with personal retribution or were sometimes resolved by an arbitrator. Muhammad introduced the Islamic

religion which demands that believers obey God's will and laws into this chaotic Arab world. During his lifetime, Muhammad helped clarify the law by interpreting provisions in the Qur'an and acting as a judge in legal cases. Thus, Islamic law, the Sharia, became an integral part of Islam.

Following Muhammad's death, companions of Muhammad ruled Arabia for about 30 years. These political-religious rulers, called caliphs, continued to develop Islamic law with their own pronouncements and decisions. The first caliphs also conquered territories outside Arabia including Iraq, Syria, Palestine, Persia, and Egypt. As a result, elements of Jewish, Greek, Roman, Persian, and Christian church law also influenced the development of the Sharia. The Umayyad caliphs, who took control of the empire in 661, extended Islam into India, Northwest Africa, and Spain. They appointed Qadis (Islamic judges) to decide cases involving Muslims.

Following a period of revolts and civil war, as Bria (2017) notes, the Umayyads were overthrown in 750 and replaced by the Abbasids. During the 500-year rule of the Abbasids, the Sharia reached its full development. Under their absolute rule, the Abbasids transferred substantial areas of criminal law from the Qadis to the government but the Qadis, however, continued to handle cases involving religious, family, property and commercial law.

History of Sharia in Nigeria

Sharia came simultaneously with Islam to Nigeria (Palmer, 1967). Islam itself penetrated the country through the Trans-Sahara Trade Routes by the activities of traders and wandering Muslim individuals and groups. Historical evidence reveals that Islam reached the Northern part of the country about the 9th Century AD and the general application of Islamic law appears to have begun to take firm roots and to supplant native customs that existed then as early as the 14th Century.

It is also on record that around the late 14th century, the Kanem rulers moved to Borno in Nigeria. Prior to this time, Sharia has been firmly established in Kanem Borno Empire even to the extent that Mai Biri (1150 – 1176) son of Mai Dunama I was said to have been imprisoned by his mother for executing some thieves instead of cutting off their hands. The Sharia though in use, was thoroughly mixed with "the doka law" (customary law) which outweighs the Sharia.

On arrival of the British, they found an established system of law and government, organized on the basis of Sharia in most parts of the North. When they established themselves as the new rulers, they brought a change of policy and direction, so that the Sharia became dependent on the laws introduced by the conquerors. The British, in accordance with the policy of "indirect rule", allowed the institutions of state and the machinery of government which were in existence in Northern Nigeria to continue to function but within limits. The British did not directly recognize Sharia as the law for the emirates they conquered but as native law and custom to cover the traditional norms in force in the Muslim and 'pagan' areas that comprised Nigeria.

Apart from the 1906 inauguration of the Native Courts Proclamation Act which was mainly to have a chief to build a court around, for the next thirty years, the major revolutions ranged from the proliferation of Alkali courts to the fact that the courts now had warrants issued by the Resident (Kumo, 1972). It was not until 1955 that the major changes were introduced through the Native Courts Ordinance which then marked the beginning of the integration of the judicial system through appeals.

The decision that a native court (which included Sharia courts) shall not impose a punishment in excess of the maximum punishment permitted by the criminal code or such other enactment was given a further legislative support by the 1956 Native courts Law. Thus, as Anderson notes, the Emirs were now shown to be completely powerless, and the limits of the Sharia shown to be subservient to British law of Justice. The Sharia status was more confused by further court decisions, leading the British to review the entire situation by establishing a Muslim court of appeal in 1956 which was welcomed by chiefs and Muslim Jurists.

In 1958, two panels were set up to first, visit countries that had faced similar problems regarding Islamic law as Nigeria; mainly Sudan, Libya and Pakistan; and to: (a) consider the system of law at present in force in Northern Region and (b) whether it is possible and how far it is desirable to avoid conflict... They were to make recommendations as to the means by which the re-organization of the courts and the judiciary may be accomplished in so far as this may be desirable. Notable among the panel's accepted recommendations are: (1) the application of Islamic Law should be confined to the law of personal status and family relations, and when applicable to civil cases, other civil litigation would be dealt with under state law, customary law or the law under which the parties concluded their contract. (2) The change in name of Muslim Court of Appeal to Sharia court of Appeal. (3) The confinement of Sharia Court of Appeal's Jurisdiction to only cases involving the personal status of the Muslims. As a result of these recommendations, a Sharia Court of Appeal was established in Kaduna on October 1, 1960.

Since then, Muslims have been calling for complete implementation of Sharia in Nigeria. The opportunity came in 1999 when the then governor of Zamfara state, Ahmed Sani Yerima, in fulfillment of his electioneering campaign, signed into law the implementation of Sharia as a state law in the state. He was subsequently followed by other Northern states. The Sharia law adopted by northern states extended the jurisdiction of Islamic civil law courts into criminal matters, created Islamic criminal codes and implemented a wide-range set of "Islamic" social policies intended to govern the social and economic lives of Muslims. This was greeted by dangerous interreligious violence in many parts of the country. Christians protested against the Sharia move claiming that Muslims have adopted it as a means to subjugate the Christian minority in the North. Thus, protests for and against Sharia generated communal riots, particularly in religiously divided Kaduna and Plateau States in the early and mid 2000s.

The Plight of Non-Muslims under Sharia

The status of non-Muslims in an Islamic state under Islamic Sharia has been one of the most controversial subjects of interreligious discourse in recent times. Khadduri (1955) observes that on one side, there are Western scholars like Richard C. Martins who opine that non-Muslims as subjects of Muslim state suffered certain disabilities which reduced them to the status of a second class citizen. Some Muslim scholars like Ghunaimi, on the other hand, try to present the position of non-Muslims in Islamic state as the equivalent to contemporary concepts of citizenship and nationality. In this case, the idea is that non-Muslims in Muslim states are viewed as members of the society in which they live, having acquired citizenship as against Muslims who are regarded as the nationals. Thus, the Muslims' conception is that non-Muslims in Muslim dominated territories occupy the status of 'acquired citizenship'. Therefore, the obligation to live according to the Sharia does not in any way suggest subjugation, oppression or Islamization (as non-Muslims define the situation) but simply as an application of 'Do in Rome as the Romans do'.

This idea, however, does not seem to incorporate the modern idea of a state because classical Islamic states as Ghunaimi (1968) points out are delineated by common creed and spiritual ideas contrary to modern states which are delineated by defined territorial boundaries; so that when Muslims in Zamfara or Borno state see non-Muslim Nigerians in the same area as non-nationals, the latter see everyone as equal citizens of the state as defined by the constitution of the Federal Republic of Nigeria. This controversy generates some salient questions, "Should the non-Muslim live as an acquired citizen in his own country?" "Will it be fair to him to obey laws which are against his freedom and fundamental human rights guaranteed by the constitution of his own country simply because he wants to live in a certain geographical area of the country?"

As we ponder on this, let us look at the Quran to see some hostile passages against non-Muslims. Notable among such passages is Q. 9:1-35 as identified by Kenny and quoted by Adekoya (1998) who points out about ten key verses in the chapter to show the horrible nature of the perception of non-Muslims in an Islamic state. These key verses include verses 3, 4, 5, 11, 12, 13, 14, 17, 23 and 29. (For want of space, we may not be able to quote them here but you can check them out in the Quran). Many other Quranic verses warn Muslims from taking non-Muslims as friends, especially Jews and Christians. One of such is Q 5:51 which says, ***"O you who believe, do not take the Jews and Christians as allies. They are (in fact) allies of one another; And whoever is an ally to them among you – then indeed, he is one of them"***.

Considering these hostile passages, non-Muslims are thus apprehensive about the principles and laws of the Islamic state. In a bid to allay this fear, Muslim scholars formulated two explanations: (1) That many of these passages were abrogated by later revelations; and (2) That their applications referred to a particular clan of Jews, Christians and non-Muslims in Medina at the time of the prophet (Hussain, 1993). But in my own opinion, I see the above explanations as merely the 'ostrich approach'. This is because, firstly, on the principle of abrogation, the later verses which are purported to have abrogated the former are even more

hostile. For instance, the verse, “There is no compulsion in religion” (Q. 2:256) is abrogated by the verse, “O prophet, fight the unbelievers and the hypocrites and deal with them severely” (Q. 9:73) as commented by as-Zamakhshari and al-Baydawi. Secondly, even when Muslims claim that their application has nothing to do with the term, ‘non-Muslims’ as it applies today, sadly and worrisome enough, there has been a continuous, deceptive and systematic application of these principles against non-Muslims especially in the Northern parts of Nigeria. The recent events in Southern Kaduna where Christians are killed in their tens and hundreds and their land taken over by Muslims, and many instances of deprivation and marginalization faced by non-Muslims in the North bear undeniable credence to this assertion.

Let me also mention here some of the “Umar’s covenant” which provide the basis for Islam’s oppression of non-Muslims in an Islamic state as translated by Kenny (1997). The covenant is said to be made by Syrian Christians to Umar and they are stated as follows:

1. We will not build in our cities or in their neighbourhood any new monastery, Church, monk’s cell or hermitage.
2. We will not restore any such buildings which fall into ruin, neither by night nor by day, especially when the building is surrounded by Muslim compounds.
3. We will not display our religion or invite anyone to join it.
4. We will not prevent any of our relatives from joining Islam if he wishes.
5. We will respect Muslims and give them our seats, if they wish to sit down.
6. We will not in any way imitate their way of dressing, such as wearing a cap, a turban or sandals or parting the hair.
7. We will not wear swords or possess or carry any arms.
8. We will not display our crosses or books in any way in the roadways or markets
9. We will play the naqus (wooden musical instrument) only very lightly in our Churches.
10. We will in no way read the lessons loudly in our Churches when Muslims are around.
11. We will not have processions on Palm Sunday and Easter
12. We will not pray loudly while bringing our dead to the grave.
13. We will not at all display processional lights in the road-ways or markets.
14. We will not bury our dead near the Muslims.
15. We shall not have places where we can look down into Muslim house etc.

Although it was reported that the editor of the 1935 edition of the at-Turtushi expressed the view that no Muslim country of our time recognizes this dhimma system as part of its constitution; and we also know that efforts are being made by OIC members to improve on their human right laws, yet, in Nigeria, all these are still being systematically carried out to the letter, even at times, using the instrumentality of government. For instance, the burning of Churches in the Northern part of Nigeria, numerous unprovoked riots against non-Muslims, refusal of government to allow Christians build places of worship, discrimination and many more are all testaments to this fact and they are the injustices that non-Muslims according to Adekoya (1998) understand to be Sharia and would spend all their lives to resist.

Another issue that promotes the fear of Sharia among non-Muslims is their claim that Muslims cannot be trusted by virtue of their use of the principle of ‘Taqiyyah’. Taqiyyah is an Arabic word translated to mean ‘prudent fear’. It is a term developed by one of the classical Islamic sects, Najdites. It means that a Muslim is at liberty to conceal his faith or identity when he feels insecure among non-Muslims. This includes that a Muslim can say what non-Muslims want to hear about his religion (even when he does not mean it) in order to escape persecution or danger. Over the years, Muslims have used this principle to cunningly push Islamic principles and practices into the national sphere with purported claims that such elements are meant for only Muslims, only to force non-Muslim minority to adopt it later on. One of such issues is the argument for the establishment of Sharia courts. According to Byang (2017), Muslims had argued that Sharia is for Muslims alone, and will not necessarily affect non-Muslims. He cited the statement credited to Nigeria’s Chief Justice, Honorable Justice Mohammed Bello who told the Washington correspondent of News Agency of Nigeria (NAN), and reported in ‘*New Nigerian*’ of August 18, 1987, that, “the application of Islamic law need not cause any trouble in Nigeria since it will apply to only those subject to it”. The only exception to this fact, he says, is if and only if non-Muslims so wish, as provided for in the jurisdiction of the Sharia Court of Appeal in Section 242 (2) (e) “Where all the parties to the proceedings (whether or not they are Muslims) have requested the court that hears the case in the first instance to determine the case in accordance with Islamic personal law...” The agitators for Sharia argue therefore that they see no reason why non-Muslims, particularly Christians, should oppose a system that does not affect them.

Contrary to this claim, let me present here few out of the numerous cases where Christians have been forcefully tried in Sharia courts. These include; the Case of Keturah vs. Matthew, the Case of Daniel Ndakotsu vs. Yakafa, the Case of Jonathan vs. Mallam Mohammed Gana and the case of Matthew Sheman Vs Fulani (Byang, 2017). We specifically note that in some of these cases, the Christians were arrested for offences they never committed, summoned before the Judge on Sunday, victimized and persecuted, unjustly detained etc.

In essence, many agitations run through the mind of non-Muslims whenever the issue of Sharia is raised. They feared that they would be forced into Sharia courts and harassed by sharia police (hisbah), or that social regulations mandating new school uniforms (as it is currently happening in Kwara state where Christian schools are forced to adopt the use of hijab), mandatory prayer time for state employees, bans on alcohol sales and consumption, and restrictions on women’s access to public facilities would be forced on them and many others. Many reports have indicated that it is difficult for Christian organizations to receive land allocations for churches, or to place their advertisements on state-owned television and radio stations in the Northern part of the country. Greater still is the fear that general insecurity, negative market interactions, or even simple misunderstandings, could turn into targeted violence against non-Muslim communities.

Sharia, as a legal document, notwithstanding all that has been said, is not an entirely negative document but from our discussion so far, we realize there are both friendly and hostile aspects in Sharia. However, one of the main apprehensions of non-Muslims towards the

Sharia is tied to the questionable attitude of the majority Muslims which was inherited from the Abassid Caliphs who divided the world into two parts – Darl-al-Islam (abode of peace) and Darl-al-Harb (abode of war). To them, the Muslims belong to the first part while non-Muslims occupy the second. Sequel to this, those in the Dar-al-Islam have direct access to the privileges of the Islamic society while those in the Dar-al-Harb are exposed to the opposite. This has again aggravated the fear of non-Muslims that should Sharia be accepted as a general legal code, its freedom and privileges will be for the Muslims while its hostile and restrictive aspects will go for non-Muslims.

Considering all issues raised above, let me say categorically here that it will be impossible for Christians to willingly accept Sharia as a legal code. Ishak Ibrahim, an Egyptian national once said about the global operation of the Sharia with regard to non-Muslims: “There are only three alternatives for dealing with the non-Muslims under the Islamic legal system: (1) They must be converted; (2) They must be subjugated; or (3) They must be eliminated!” (Ishaq, 1983) Who then, will accept such position in his sane status?

Should Sharia be Accepted as a Religious or Civil Law?

Sharia has been instituted as a civil and criminal law in all the Muslim-majority states in Nigeria since 1999. Eventhough the constitution of the Federal Republic of Nigeria does not recognize Sharia as a state legal code, it is noteworthy that Sharia has already assumed this status in most of the Northern states and this has generated serious public disturbances in the area. From what has been said so far, let us now look at the Sharia through the eyes of the Constitution of the Federal Republic of Nigeria with a view to determining its suitability or otherwise as a legal code for all Nigerians.

First, most of the Sharia provisions contravene the constitution. Recently, Sharia court sentenced a minor (thirteen year old boy), Omar Farouq to 120-month imprisonment. Also, Yahaya Sharif who shared his song on social media was sentenced to death for blasphemy; and Mubarak Bala who declared himself as an atheist was arrested in defiance to the freedom of expression and thought provided for in the Constitution. Secondly, the inhumane punishments in the Sharia such as flogging, amputations, stoning, etc clearly contravene the constitution of the Federal Republic of Nigeria which guarantees the right to dignity of the human person enshrined in Section 34 of the Constitution. Likewise, the inequality between men and women under Sharia violates the right to freedom from discrimination provided for in Section 42 of the constitution. Recall that in 2002, Amina Lawal, a single mother in Katsina State was accused of adultery and sentenced to death by stoning by a Sharia court for conceiving a child out of wedlock but the man involved was released without conviction.

According to the constitution, Nigeria is a secular state; as such, it prohibits the patronage of state religion. But in most of the predominantly Muslim states in the Northern part of Nigeria, Sharia operates in both the criminal and the religious domains. Therefore, the adoption of Sharia contradicts article 10 which proscribes any State religion. The Constitution not only declares the secularity of the Nigerian state but in Section 1 (3) also affirms the supremacy of the federal Constitution over “any other law that is inconsistent...” with it. Hence, the

introduction of Sharia law into the Nigerian legal system and the provision made for the Sharia Court of Appeal at the State and Federal level in the Constitution has raised the issue of state patronage or preferential treatment for a particular religion contrary to the constitutional provision. Freedom of conscience presupposes that the practice of Sharia and the observance of the moral precepts and injunctions in the Quran is a personal matter for the individual; and not enforcement through the coercive machinery of government.

It has also been argued that the enforcement of Sharia infringes on the rights and freedoms of Nigerians, including the right to move about freely and to be treated equally in their chosen place of residence. Given that the Constitution envisages the application of Sharia only to Muslims, a vivid example of such infringement is subjecting non-Muslims to Sharia law in the affected Northern states. For instance, there are reports of Christians who have been punished for such otherwise lawful activities as consuming alcohol due to the prohibition under Sharia.

Since Section 275 of our Constitution allows for the creation of state Sharia Court of Appeal, it can be argued that the Constitution has implicitly reserved discretion to the states to create their own Sharia courts to act as courts of first instance. Therefore, the desire to extend Sharia into the sphere of criminal justice for all citizens remains questionable and provocative.

Conclusion

Nigeria is a multi-religious country in which every citizen should be allowed to practice his or her faith. Although Sharia is claimed to be essential to Islam; and Muslims have a right to it, yet the operation of Sharia law must stop where the right of non Muslims begins. What obtains during the golden age of Islam should not necessarily be the yardstick for our country today with all its constitutional provisions of human rights. The infringement of Sharia law on the rights and privileges of non-Muslims has caused serious harm to the citizens of Nigeria and the country at large. Uncountable lives and properties have been touched to various degrees and it is only essential that this issue is resolved as soon as possible to avoid a civil or religious war which is already brewing in the country. We must note that some Muslims who have been penalized for disobeying Sharia law take the punishments willingly because of their faith. This situation therefore, should not be used as a yardstick for everybody.

Since the meaning of Sharia in its etymological form is the 'broad way' through which one must follow in order to get to heaven, following such way should not be by compulsion; rather, it should be left as a matter of individual's choice because you don't force somebody to go to heaven. I therefore submit that nobody, I mean nobody; not even the Muslims should be forced to adopt the Sharia.

Reference

- Abdulkadir, M.S. (2011). Islam in the Non-Muslim Areas of Northern Nigeria in *Ilorin Journal of Religious Studies*, (IJOURELS) Vol.1 No.1,
- Abulala, M. (1960). *Islamic Law And Constitution*, Lahore : Islamic Publications Ltd, pp. 46 and 53
- Adekoya, J.S. (1998). Sharia in Yoruba Society: Public Opinion and Desire Compared with Theoretical Demands, *M.A. Dissertation in the Department of Religious Studies*, University of Ibadan
- 'Awa, M. S. (1982). *Punishment in Islamic Law: A Comparative Study*. Indianapolis: American Trust Publications
- Bassiouni, M.C. (Ed.) (1982). *The Islamic Criminal Justice System*. London: Oceana
- Bria, B. (2021). The Origin of Islamic Law, *Encyclopædia Britannica*, accessed 10/02/21 from <https://encyclopaediabritannica.org>
- Byang, D. (2017). *Sharia in Nigeria: A Christian Perspective*, Jos: Shekinah Prophetic Rhema Publications
- Esposito, J.L. (2014). Islamic Law. *The Oxford Dictionary of Islam*, Oxford: Oxford University Press, retrieved from <https://www.en.m.wikipedia.org> on 22/02/21
- Ezzati, A. (1979). *An Introduction to the History of the Spread of Islam*. Lagos: Academy Press Limited,
- Ghunaimi, M.T. (1968). *Muslim Conception of International Law and the Western Approach*, The Hague: Springer, pp.186
- Hussain, S. (1993). Status of Non-Muslims in Islamic State, *Hamdard Islamicus*, Karachi: Hamdard International Foundation, Vol. xvi No. 1, pp.74
- Ikenga, K.E. Sharia Criminal Law, Islam and Democracy in Nigeria Today, accessed from <http://dx.doi.org/10.4314/og.v8i1.10> on 15/02/21
- Ishak, I. (1983). *Black Gold And Holy War*, Hants: Marshall Morgan & Scott, pp. 18.
- Kenny, J. (1997). *The Christian, Sharia and Nigeria*, Ibadan: NYC, pp. 9-10
- Khadduri, M. (1955). *War and Peace in the Law of Islam*, Baltimore: John Hopkins Press, pp.198
- Kumo, S. (1972). The Organization and Procedure of Sharia Courts in Northern Nigeria, Ph.D Thesis, SOAS, London, pp. 42
- Martins, R.C. (1982). *Islam*, New Jersey: Prentice-Hall. pp.47
- Margit, C. (2002). Acceptance of Sharia Law in Nigeria in Paul, M. (Ed.) *The Talibanization of Nigeria: Sharia Law and Religious Freedom*, Washington, D.C: Center for Religious Freedom, pp. 95–96.
- Oba, A.A. (2002). Islamic Law as Customary Law: The Changing Perspective in Nigeria in *The International and Comparative Law Quarterly Magazine*, 51 (4): 817–850.
- Palmer, H.R. (1967). *Sudanese Memoirs*, London: New Impression, pp. 133, 134
- Rotimi, S. (2009). Religion and Institutions: Federalism and the Management of Conflicts over Sharia in Nigeria in *Journal of International Development*, May, 21, 547–560.

Shah, W.A. (1987). Philosophy of the Islamic Sharia in Muhammad, A.A. (Ed) *Hamdard Islamicus*, Kerachi: Hamdard International Foundation, Vol. X/No. 4, pp. 25

Shehu, M. (1987). *The New Nigerian Newspaper*, Kaduna, January 3, pp 7.

Watt, W.M. (1973). *The Formative Period of Islamic Thought*, Edinburg: Winton House, pp. 46 http://www.hrw.org/report/2004/09/21/political-sharia/human-right-and-islamic-law-northern-nigeria#_ftnref18 Accessed 10/02/21