

## The Legal Status and Politics of Shariah in Nigeria

### INTRODUCTION

Shariah in Islamic Law as known to any student of Islam is the ordained legal system by Allah for the Muslims to enable them enjoy the best of this world and be able to put the mercy of the Creator in the life hereafter.

It is of divine origin. Its principal sources are the Qur'an and **Shariah** (the practices and sayings of the Prophet (SAW)). These two principal sources are complemented by Ijtihad (intellectual exertion) of Muslim jurists, the principles embodied in the three sources have been further interpreted and expounded by Ijma (consensus), **qiyas** (analogy), **istihsan** (preference) and other methods of interpretation to cover all facets of human life and endeavour. In the process of **ijtihad** considerable regard is paid to **adah** (local or contemporary practices which do not contradict or violate the provisions of the **Qur'an** and **Sunnah**) and to **Maslaha** (public interest and convenience).

It should be noted that the Maliki School of Islamic Jurisprudence is the dominant school in Nigeria.

We should also state at the onset that Shariah like Islam covers all the facets

and the totality of the activities of the Muslims. Its provisions apply to anyone who professes the Khalimah Shaada that is a Muslim.

Its scope covers law of war, commerce, international trade, law of the seas, international relations, inheritance contract, penal laws and other areas.

In its minutest details, it makes provisions for how a new baby should be named, how a Muslim should be buried, how to put on shoes dresses and general appearance of the Muslim male and female. One can say that Shariah leaves no area of life untouched. It will not be an exaggeration to assert that unlike other forms of law that can be manipulated, Shariah is all involving and comprehensive, so much so, that only the extremely perverted will find a way to sidetrack its provision. In short, there is certainty in Islamic law.

It may be pertinent to point out at the on-set that the Islamic legal system had worked perfectly well in the past and is still working well in many parts of the world as at now. It is desirable that in all societies where they have met failure on some other systems, a trial of the

Islamic model of law may be a way out.

### **THE LEGAL STATUS OF SHARIAH**

In order to grapple with the complexity of this problem, a little historical discourse will be necessary. We will have to look at the period before the advent of colonialism, the pre-independence era and the post independence legal status of the Islamic legal system in Nigeria. This exercise will enable us to situate the discussion in a proper perspective.

Before the advent of the colonialists, Islam and its legal system in its full ramification had been with the Muslims in Nigeria for more than a thousand years. The application of **Shariah** fully blossomed in the areas that constitute the Northern States now and in some notable cities in the Western part of Nigeria like Epe, Iwo and Ede, shortly after the Sokoto Jihad of the 19<sup>th</sup> Century. In other words, **Shariah** in all its ramification both civil and criminal aspects was in vogue in these places. It is said that Qadis were holding regular Courts to administer the **Shariah** in the palaces of notable Yoruba Obas. It was even seen as a mark of civilization that an Oba had somebody learned in Islamic law presiding over his Court. The proximity in most Yoruba cities of the mosque to the

palaces of the Obas is a point in this direction.

When the Europeans came into Nigeria about the middle of the 19<sup>th</sup> Century, especially to the places now in the Western Nigeria, they did not tamper with the Islamic way of dispensation of justice. When they made in road into the North, they were very amazed at the level and sophistication of the legal system. When the Europeans became sure footed and well entrenched however, they realized early that they would have to subjugate the Islamic legal system to enable them fashion a society that will be amiable to the practice of capitalism. This realization by the colonialists had its historical antecedent in the bitter and **fratricidal** struggle for supremacy between the church and the state in the medieval period. The triumph of the state over the church at that period resulted in the overthrow of all the biblical rules against usury and other such vices. It is undoubted that without this triumph, modern usurious banking as known today will not have emerged.

The first step the colonialists took to checkmate the practice of Islamic law was to equate same with customary law. Having done that, laws were then enacted in the High Court Laws wherein the application of Islamic law

was subject to repugnancy and incompatibility tests. A good example of such a provision are the provisions of section 13 (1) of the Oyo State High Court Law Cap. 46 which provides as follows:

"13(1) The High Court shall observe and enforce the observance of every customary law which is applicable and is not repugnant to natural justice equity and good conscience nor incompatible either directly or by implication with any written law for the' time being in force and nothing in this law shall deprive any person of the benefit of any such customer law".

A look at Section 34(1) of the High Court Laws of Northern Nigeria reveals that it is an *ipsissima verba* of the above provisions of the Oyo State Law.

The advent of the Constitution of the Federation of Nigeria 1960 popularly called the Independence Constitution changed this position because in section 5 of that Constitution the three regions that made up Nigeria then were given powers to enact their own constitutions. In furtherance of that provision the Northern Region Government enacted its own Constitution.

It should be noted however that by clever constitutional

provisions under Section 21(10) of the 1960 Constitution which provides as follows:

"No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law"

took away the powers of the Courts administering Islamic law from implementing the criminal aspect of **Shariah**.

Due to the agitation in the North on the tactical abolition of the criminal jurisdiction of **Shariah** Courts, the Northern Regional Government about 1962 set up a commission of experts on Islamic Law. This committee examined the Sudanese and Pakistani penal codes and came out with the Penal Code Law which was enacted into law in 1963 by the Northern Nigeria parliament. The penal code enacted some provisions which accommodate some offences known in **Shariah** and prescribed punishments. Offences like drinking of alcohol by a Muslim, adultery, utterance of blasphemous statement against a religion were made criminal offences and punishment prescribed.

It is important to note that all constitutions made after 1960 namely, the 1963 constitution, 1979, 1989, 1995 and 1999 constitutions make provisions similar to

the provisions of section 21(10) of the 1960 constitution.

Furthermore, in the 1979 Constitution express provisions were made in Section 242 which effectively curtailed and delimited the application of **Shariah** law to only questions of Islamic personal law, for example marriage, Waaf (endowment), gift, will, succession, maintenance or guardianship of infants.

The antagonists of **Shariah** even succeeded in making the institution of illegitimacy lawful when they succeeded in inserting in section 39(2) the following provisions:

*"No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth"*

By virtue of the provisions of Section 240(1) of the same 1979 Constitution, the establishment of a **Shairah** Court of Appeal in a state is now made optional for any state that "requires it". The implication of this is that in states like Oyo, Osun and Ogun where the Muslims are in majority, they would have to wait at the mercy of the government of the day to be able to enjoy the provisions of section 35(1) of the same constitution which guarantees freedom of thought, conscience and religion. The question one

may ask is a Yoruba Muslim in Ibadan who got married under Islamic law but if he has to divorce have no Court commnded by **Shariah** experts to adjudicate has not have his right to religion guaranteed by the constitution infringed?

The above present the parlous state of the application of **Shariah** in Nigeria until the coming to effect of the 1999 constitution on the 29<sup>th</sup> of May, 1999. Before we move on we make bold to assert based on constitutional provisions especially sections 260 and 275 of the 1999 Constitution that **Shariah** is not only legal, it is constitutional. The existence of different legal systems in Nigeria only makes Nigerian legal system to be pluralistic. It is our humble view that having regard to the heterogeneous nature of Nigeria, this legal pluralism should be welcomed.

#### **THE SAMFARA INITIATIVE**

When the new Civilian Government came into being in May 1999, the young Governor of Zamfara State, Ahmed Sanni Yerima announced that his own state would be implementing full blown **Shariah** from about October of that year. In furtherance of that initiative, the Zamfara State House of Assembly by virtue of powers derivable under section 90 of the 1999 Constitution, passed the **Shariah** Courts

(Administration of Justice and Certain Consequential Changes) Law No. 5 of 1999. In furtherance of its resolve, another law known as **Shariah** Penal Code Law No. 10 of 2000 was also enacted. This is not the place to recount in details the provisions of these laws but this writer can confirm having been privileged to read the two laws that those who made the law were very careful in the provisions made therein and none of such provisions could be said to be in contravention of the provisions of the constitution.

It was this Zamfara initiative more than any other thing in the past that has exposed the under-belly of the opponents of Islam and **Shariah** as to their deep seated hatred for anything that has Islam as its basis. However, speaking for myself I congratulate the Muslims because for once in so many numbers of years in this country, they have promoted an issue of national discourse. In other words, they have dictated the issue to be discussed by all. It is this Zamfara initiative that opens the gate to our discussion on the politics of **Shariah** in Nigeria.

#### **THE POLITICS OF SHARIAH IN NIGERIA**

The antagonism of those who opposed **Shariah** did not start with the events of

Zamfara but came much earlier. Once wishes to recall with some level of misgiving the events that took place at the Constituent Assembly in 1978. For purposes of completeness, we shall dwell a bit on the events of that period.

The Constituent Assembly was set up by the then General Obasanjo regime made up of many Nigerians to come up with a draft of the constitution that will be acceptable to the generality of Nigerians. That body was set up by Constituent Assembly Decree No. 50 of 1977. During the course of the debate at the Assembly, the members who were Muslims presented a position in which they called for the creation in the constitution of a Federal **Shariah** Court of Appeal which was to be a Court that will deal exclusively with Islamic Law causes. The Non-Muslim members of the Assembly will not want to hear of any of sort and started the act of name calling and the threat of fire and brimstone should any word like "**Shariah**" appear anywhere in the constitution. The tension and the bad blood generated was so much that it was on the threat of withdrawal of further participation by the Muslim members that restored some sanity. The aftermath of that crisis was the deep seated suspicion that emerged between the pro and anti

**Shariah** members. This has snowballed into a national problem. At the end of all the hullabaloo in the Constituent Assembly, a compromise was struck and that compromise gave birth to the provisions made in section 240 of the 1979 constitution.

A lot of politics had been read by some people into the Zamfara initiative. It was and it is still being alleged that Zamfara and other Northern States like Kano, Sokoto, Niger that have embraced the total application of **Shariah** were/are doing so to destabilize the government of Chief Olusegun Obasanjo. It is also being canvassed that if the initiative was not politically motivated, there would have been no need for all the fanfare that attended the launching at Zamfara and other places. As for the first allegation, this writer believes that events in various parts of Nigeria since May 1999 have given a lie to the allegation. All the events that have tended to shaken the stability of this country since the return of democratic governance in May 1999 except for the unfortunate events of Kaduna have all taken place in states where full blown **Shariah** has not been introduced or practiced. The ethnic problem in Shagamu, the scourge of the OPC the war in the Niger Delta, the

activities of the Egbesu and Bakassi Boys, all have nothing to do with the full blown introduction of **Shariah**. Some public commentators have rightly stated and this writer agrees with them that the Yorubas as represented by the OPC are of the greatest threat to the stability of the polity under the present dispensation.

As to the second allegation, the writer is of the view that since the issue of practice of **Shariah** is strictly a matter of legal interest, there was no need for fanfare or ceremony.

We may then go on to briefly examine some of the reasons why non-Muslims and some ill-informed Muslims are antagonistic to the introduction of full blown **Shariah**.

Firstly, one could see politics at the bottom of the unnecessary crisis. Nigerians would politicize any issue. My suspicion is that there are those whose livelihood depends on the existence of crisis between Muslims and Christians in Nigeria. To such persons, absence of crisis means loss of income and lack of livelihood. Such persons would look for any excuse to extricate misunderstanding and what better opportunity than the introduction of full blown **Shariah** in order to reap bounties.

Some of the opponents of **Shariah** take umbrage under

the provisions of section 10 of the 1999 Constitution to assert that the adoption of **Shariah** amounts to the adoption of a state Religion. For ease of reference section 10 of the constitution provides as follows:

*"The Government of the Federation or of a state shall not adopt any religion as state religion".*

It is the view of this writer that those who canvass this view are insincere and wrong. What the constitution envisages is the declaration of a theocratic state and not the adoption of a legal system which the **Shariah** is. We also state that, that provision of the Constitution that is section 10 does not make Nigeria secular state but a multi-religious state. It may interest the listeners that even though England is a secular country, no catholic has ever been elected Prime Minister in its history, in the State of Israel all their Prime Ministers has always been Jews not Christians and in the United States of America, Late J.F. Kennedy was the only and last Catholic ever elected as US President.

Prior to 1986, Nigeria had been an observer-member of the Organisation of Islamic Countries (OIC) from the time of General Yakubu Gowon (1966-1975). In 1986, Babangida took the initiative and Nigeria became a full-

fledged member. The sing-song then by opponents of Islam was that Nigeria was becoming an Islamic state. This was in spite of the fact that Countries like Cote de Ivoire and Gabon whose percentage of Muslim population are lower than that of Nigeria had been full time members of that body for years. At any rate, Nigerian has not become an Islamic State since 1986 though it has become a full time member of the OIC since then.

Another reason for the antagonism for the introduction of **Shariah** is the general but genuine misunderstanding of Islam by some non-Muslims. This vast majority of non-Muslims are the ones being manipulated and brainwashed by their leaders to oppose **Shariah** and the Muslims.

We should also mention that suspicion and mistrust of the Muslims by non-Muslims especially since after the events of the Constituent Assembly and the OIC full membership by Nigeria in 1986 have contributed to their opposition.

The Nigerian media unfortunately has not been of much assistance in diffusing tension, suspicion, mistrust and antagonism between the Muslims and non - Muslims on the issue of **Shariah** in Nigeria. The sensational and tendentious banner headlines concerning the issue and the inaccurate representation of

events on the matter are veritable points in this direction. It is quite instructive to recollect that when a group of non-Muslims led by Olisa Agbakoba (SAN) visited Zamfara on an assessment tour and came back with a report that the events in Zamfara State have been misrepresented by the media, only one Newspaper carried the report. The others suppressed it.

One last point on this aspect of the paper is the pervasive, all embracing and disgraceful ignorance of a vast majority of Muslims on the issue of **Shariah**. It is an altruism that a man who does not know how to cook cannot impart knowledge about culinary. In the view of this writer, an ignorant Muslim is by far a worse enemy to Islam than a non-Muslim. How else do you classify a person who professes Islam but goes to public forum to say that he is opposed to **Shariah**?

This is in spite of the fact that Allah has stated in the **Qur'an** that whoever applies justice other than in the way prescribed by Islam is a **Kافر**. The Holy Prophet (SAW) graphically described an ignorant person and likened him to a camel on which big books are loaded; books are useless to the camel. Having regard to the exhortation of Islam for knowledge, a Muslim has no excuse to be ignorance

especially about Islam at this age and time.

## **CONSTITUTIONALITY OF THE SHARIAH**

Having regard to the pervasive ignorance about **Shariah** and its status in our jurisprudence, it is not out of place to re-emphasise the fact that the application of the **Shariah** in all its plenitude is not only accorded legal recognition but it is also in accord with the highest law of the country, the Constitution.

For anyone that may labour any lingering doubt about the assertion, we shall refer to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 which support our stand on the issue.

Section 6 of the Constitution which vests the judicial powers of the Federation in the Courts in sub-section 5 paragraphs (f) and (g) makes express provisions for the existence of the **Shariah** Court of Appeal of the Federal Capital Territory, Abuja and a **Shariah** Court of Appeal of a state. Subsection 3 of the same section makes the **Shariah** Court one of the recognized superior Courts of record in Nigeria.

Section 244 of the same constitution creates rights of appeal from the decisions of the **Shariah** Court of Appeal to Court of Appeal of the Federation. Provisions



are made in sections 260 to 264 of the constitution for the establishment, appointment of Grand **Khadi, Khadis,** jurisdiction, constitution and procedure of the **Shariah** Court of Appeal of the Federal Capital Territory, Abuja.

In the same vein, sections 275 to 279 of the Constitution make analogous provisions for the **Shariah** Court of Appeal of a state.

The method of removal and the modalities are uniform for all the Courts created by the Constitution including the **Shariah** Court as provided in Section 292 of the Constitution.

There is no doubt that from all the above, any enlightened person will no doubt agree that the legality or constitutionality of the **Shariah** legal system is not in doubt. In concluding this paper, one cannot but proffer some prognosis to end the intermittent antagonism against the **Shariah** by non-Muslims and the ill-informed Muslims.

#### **SOLUTIONS/SUGGESTIONS**

The first thing the Muslims should do is to embark on extensive education of the people especially the fringe Muslims about the merits in the **Shariah**. The education of the non-Muslims on the same score must also be pursued with vigour. Let one warn that in carrying out the task, only those who are

knowledgeable on the subject will be assets. It is not all who claim to be Islamic scholars that are capable and able in that respect.

The Muslims should as a matter of religious duty order, live and arrange their affairs in accordance with the dictates of the **Shariah**. Equity, justice, fair-play, kindness are all part of the **Shariah**. Let us all imbibe and practice these in our families, our places of work and clubs. It will be a disservice to Islam for anyone who wants to teach others about **Shariah** to be a drunkard, wife batterer and adulterer. In other words, the way we live our lives and conduct ourselves is the best way of selling the **Shariah** to its antagonists.

It is strongly suggested that the discretion given in section 275 of the Constitution to a state to set up or decide not to set up a **Shariah** Court of Appeal should be amended to reflect the fact that any state in which Muslims account for at least 25% of the population must set up such courts. The rights of the Minority in any place must be fully protected including right to practice his religion without let or hindrance.

Given the pluralistic nature of our legal system, the teaching of **Shariah** and Customary law in our law faculties should be urgently re-visited. Any lawyer

called to the Nigerian Bar should be an all round Nigerian lawyer that can handle any matter in any area of the legal systems that we practise in the country.

The mutual mistrust and distrust between the various religious groups and ethnic nationalities in the country should be down played. We should learn to live together not to tolerant each other. We should know our differences but master the understanding of such differences.

The media has a crucial role to play in promoting brotherhood, friendliness and understanding among the various interest groups in the country. The media should pay particular attention to its obligation as provided for in Section 22 of the Constitution of Nigeria 1999.

Above all, let all of us be true to our faith in action and deed. If we can undertake some of these suggestions, a new vista might be opened for better understanding and harmonious relationship between the non-Muslims, Muslims and the different ethnic nationalities in Nigeria.

#### **CONCLUSION**

We have tried in this paper to periscope the legal and political status of **Shariah** in Nigeria. We have demonstrated that the **Shariah** is not only legal but a

constitutional legal system in Nigeria. We have also shown that most of the misunderstanding and antagonism toward the **Shariah** are borne out of ignorance, mistrust misinformation, envy and the suspicious nature of Nigerian politics.

Furthermore, we proffered education, understanding, and positive dissemination of information as some of the elixir necessary for better understanding of the **Shariah** imperative. We also call on states with sizeable Muslim population especially in Yoruba-land to endeavour to respect and restore the religious rights of the Muslims of these states by establishing **Shariah** Courts in these states to cater for their Muslim citizens. In all these lie the continued peace, progress and oneness of Nigeria.

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