

Shariah and Social Justice in the North, Lessons for the South: The Experience of Shariah Practice in Nigeria (1999-2018)

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Abstract

The practice of 'full shariah' is as important to Muslims as the observation of the obligatory prayers and therefore, the struggle for its application by Muslims in Nigeria is as old as the advent of Islam in the country. This effort was crowned with success with the beginning of the fourth republic which saw the emergence of Olusegun Obasanjo as the President of the Federal Republic of Nigeria in 1999. Even though, with some challenges which are partially as a result of poor planning for the take-off of the legal system, some remarkable achievements of curtailment of social vices were recorded within the period of the re-application of the shariah in Nigeria. Using a historical research method, this work appraised some of the achievements made by the shariah-friendly states in the curtailment of social vices and improvement of the standard of living of people in the north with the objective of creating a frame work for the application of the law by Muslims in the south. The author of this work identified with some citizens in the shariah states that, against the blind criticism by some people, the implementation of shariah in some states in the north has curtailed social vices and improved the living standard of people in the region. This is a revelation of the efficacy of the law in finding lasting solution to the aging problem of corruption, nepotism, murder and poverty that are militating against the development of Nigeria. It is to this background that the author suggested Muslims in the south should follow suit in the application of the law and learn from the mistake of the past, the country would be moved to the next level

Keywords: Shariah; Social Justice; Welfare; Zakat; Niger State.

Introduction

Shariah in the northern Nigeria was considered a law of the land at a time before Nigeria got its name from the British Colonialists. Both the Emir and the Alkali courts were given the jurisdiction of trying criminal cases along side with the power to hear civil cases. This practice was not limited to the northern parts of the country as some towns in the south are also recorded to have applied Islamic Criminal and Civil Law around that period. With the coming of the Colonial Masters, the practice of Islamic Criminal Law was considered repugnant to social justice and retribution was painted mutilation. The shariah courts became toothless dogs that cannot exercise justice independent of the provision of the 'written law' of the white. The adoption of the Northern Nigeria Penal Code which came to effect after Independence watered down the practice of Islamic Criminal Law in Nigeria with the jurisdiction of the Shariah Courts of Appeal narrowed to the trial of civil cases such as marriage, divorce, will, gift and endowment. Other shariah institutions such as Zakat were crippled. The Penal Code and the legal institutions inherited from the British Colonial Administration were hitherto, considered incapable of curtailing the prevalence of vices like corruption, injustice, nepotism, prostitution, alcoholism, illegal drugs and gambling in the society. Muslims in northern Nigeria therefore, considered a re-introduction of the Sharī'ah as a way out of the stumbling block militating against the growth of the country. Zamfara State in the year 2000, took the bull by the horn by pioneering the re-introduction of shariah in the face of strong criticism by some non-Muslims and of course, some Muslims who are ignorant of the meaning and implication of shariah. Eleven other states that followed suit are; Kano, Kaduna, Katsina, Kebbi, Sokoto, Bauchi, Jigawa and Borno. Others are Niger, Gombe and Yobe. What is interesting in the practice of shariah by these states is the fact that, against the assumption of many Nigerians that the concern of shariah is the implementation of Islamic Criminal Laws, the social welfare of the citizens is given priority in the application of the law. There are institutions for social justice under the practice of the law from which many citizens have benefited. These institutions include the Zakat and Endowment Board and its activities in most of the shariah compliant states. This work is an attempt to appraise the theoretical and practical application of the law in Zamfara, Kano and Niger states and identify the lessons Muslims in the south could gain from the practice of the law in these states.

Conceptual Clarifications

sharī'ah is a complete and comprehensive way of life that encompasses the belief, deeds and worship by mankind. Ajijola (nd) maintains that the body of those institutions which Allah has ordained in full or in essence to guide the individual in his relationship with God, his fellow Muslims, his fellow men and the rest of the universe.ⁱ *Sharī'ah* is a comprehensive, universal, eternal and immutable legal system that is divine in origin, religious in essence, and moral in scope (Shittu, 2013). Shariah is therefore, more than the rituals offered to Allah, the word envelops in itself, man's responsibilities to his fellow being and to his natural environment in addition to his responsibilities to his Lord. Similarly, Justice involves the concept of right and wrong. It is a situation where people are rewarded for their good deeds and sanctioned for their evil deeds. Justice in Islam is considered an attitude of behaving in a fair and just manner. The Qur'an enjoins fairness with people especially if one holds an office of authority irrespective of the bond that exists in between. Allah says:

O you who believe, stand up as a witness for Allah in all fairness, and do not let the hatred of people deviate you from justice ('*adl*). Be just, this is closest to piety (Q 5:8)

The rule with justice emphasizes that someone needs to set all his personal feelings and views aside and keep to what is right under all circumstances. Social justice in the understanding of the west refers to a situation where all people deserve and should have access to the same rights and resources. In the understanding of Islam, social justice has three basic elements; absolute freedom of conscience, complete equality of all men and social interdependence among members of the society.ⁱⁱ The absolute freedom of conscience deals with human understanding of Allah as the only one that has the power to provide and deny. Man must have the believe that whatever he achieves is by the will of Allah and what he could not is also by His sanction. The freedom of conscious will make one not to have the fear that a person can harm him or benefit him except by the will of Allah. This freedom of conscience makes man to be free from his being enslaved by his fellow being. Complete equality of all men is another element of social justice. This is an aspect of provision of social security. Islam enjoins that every man should be given equal treatment in both civil and criminal cases. The emphasis of Islamic Criminal Law is that, the weak should not be cheated and the oppressor should not go free. The Islamic law of retribution is more explicit about this when Allah says that "O ye who believe! the law of equality is prescribed to you in cases of murder ..." 2:178.

Social interdependence is man's sense of duty and responsibility towards his society. This is an aspect of equitable distribution of wealth. It deals with the instance of giving zakat to the needy in the society so that individual will live a life of comfort. It is an element that holds that the state economy should be evenly distributed and equally enjoined by all and sundry. In Nigeria, the agitations made by Muslim scholars for the implementation of all-encompassing shariah especially in the northern part of the country was with emphasis on the welfare of citizens of the states concerned. Following are some efforts made under the trending shariah issues in the northern Nigeria.

The Enactment of Sharī'ah Penal Codes in Nigeria

In a report by Shittu (2013), in June 1999, the Executive Governor of Zamfara State in the northwest of Nigeria appointed a committee to study the ways and means of "implementing *Sharī'ah*" in the State, including the full scope of Islamic Criminal Law. The Zamfara State's first *Sharī'ah* -related piece of legislation was its Sharī'ah Courts (Administration of Justice and Certain Consequential Charges) Law, No. 5 of 1999, assented to by the Governor on 8th October, 1999.ⁱⁱⁱ This law established *Sharī'ah* Courts for Zamfara State with the power to determine both civil and criminal proceedings "in Islamic law" (S 5(i)(a) and (b)). By section 5(i)(c) the House of Assembly was mandated to establish offences and their punishments, and the procedure for trials in criminal matters. The law also created a Council of ^cUlama for the State (SS9-13), with the power (among others) to "codify all the Islamic Penal Laws and their corresponding punishments, and the rules of criminal procedure and evidence as prescribed by the Qur'an, *sunnah* of the Prophet (SAW), *ijmah*, *qiyas* and some other sources of Islamic Law", and to advise on the enactment of the laws so codified (S7(vii) and (viii)).

Zamfara State House of Assembly proceeded to enact a Sharī'ah Penal Code for the State. A draft was made apparently by the Legal Drafting Department of the State Ministry of Justice working in conjunction with the

Council of Ulama. The draft bill was brought to the notice of the National Islamic Centre, Zaria (NIC), which was then mandated to go and make all the necessary consultations and come up with a final draft. The NIC worked in conjunction with the Centre for Islamic Legal Studies (CILS) and the Faculty of Law, Ahmadu Bello University, Zaria to produce the Zamfara State Shariah Penal Code that was subsequently enacted by the House of Assembly as Law No.10 of 2000 and signed into law by Governor Sani on 27th January 2000 (Ostiens, 2007).

Council of Ulama was constituted to see to the possibility of implementation of Islamic law on criminal matters. The report of the Council of Ulama allowed for the passing of bill for the amendment of the *Sharī'ah* Court of Appeal Law on 8th day of October, 1999 after due consultation with citizens of the state, and on 26th January, 2000, another bill was passed for the repeal of the Area Courts Cap 1 laws of Northern Nigeria 1967. The basis for the amendment of the *Sharī'ah* Court of Appeal Law is section 277 and 278 of the 1999 constitution of Nigeria. The procedure adopted by most of the shariah-friendly states in the application of the law was not much different from that of Zamfara with the exemption of the Niger state that adopted a seemingly different style in the application of shariah. Niger State adopted the implementation of *sharī'ah* without drafting any law. On 22nd day of February 2000, the State House of Assembly passed a bill to amend the Penal Code Law cap 94 law of Niger State. The law, which is cited as the Penal Code (Amendment) Law 2000, came into force on the 4th day of May 2000. Section 68 of the Penal Code discusses punishments on various offences. The Penal Code is amended by adding immediately after section '68' the following section:

68A(1) if a person of the Muslim faith is convicted of an offence in the first column of subsection (2) of this section and the case against him was proved in accordance with subsection (3) of this section, his punishment shall be as specified in the second column of subsection (2) but if

- (i)The offence for which a Muslim was convicted is not in the first column;
- (ii)The punishment is not in the second column; and
- (iii)The offence was not proved in accordance with subsection (3).

The convicts' punishment shall be as specified in the section under which he was convicted or as specified elsewhere in the penal code. In section 68A (2) of the amended laws, amendment was made to punishment on theft, robbery, adultery, defamation, drinking or drunkenness, culpable homicide, rape, causing hurt or grievous hurt. Section 68A (3) provides for the condition for which a convict could be punished for offences under subsection (2) as amended. The following sections of the Penal Code are also amended; Section 201, 283, 287, 288, 289, 290, 298, 299, 300, 201, 304, 305 and 306. A bill for a law to amend the Liquor Law, Cap 71 of the Penal Code was passed in Niger State in 2001 and came to force on 5th day of January, 2004. The sections amended in this bill are; Sections 2, 3, 7, 11, 16, 20, 22, 26, 28, 63 (1), and 66.

Social Justice under the Shariah Penal Codes

With the adoption of shariah as a legal system in some of the shariah states, criminals have been tried for criminal offences. While some are convicted, others were tried and acquitted on appeal. The offences recognised by the Shariah Penal Codes are three; *Hudud* (offences of determined punishment), *Qisas* (offences of retaliatory punishment) and *Tazir* (offences of discretionary punishment). An example of such trials for the Hudud offence is the trial of shafiyatu Hussaini under the Shariah Penal Code of Sokoto State. Shafiyatu Hussaini was arraigned with Yakubu Abubakar for the offence of Zina when her baby girl who was assumed to be the product of the illicit sexual intercourse was six months old. Shafiyatu confessed to the offence and was sentenced to *rajm* (stoning to death). Shafiyatu retracted her confession but her retraction was not considered. It is observed in the trial after thorough examination that the trial has some procedural error (Shittu,2013). The accused appealed her case and she was eventually acquitted by the appeal court.

For a *Qisas* offence, one Shehu Usman was tried under the Shariah Penal Code of Kano State. Shehu Usman was accused for the offence of homicide for killing one Gali Muhammad in Malikawa town, Ajingi Local Government of Kano State on the 5th of February, 2004 in Shahushi Upper Shariah Court (Vanguard, 2011). The

accused filed an appeal with the Kano State Shariah Penal Code and based on the fact that evidences to convict Shehu Usman for the murder of Gali could not be established, the case was quashed by the Kano State Shariah Court of Appeal on 20th September, 2016 under S6(2)of the Shariah Court of Appeal Law,1960. Commenting on the trial, Shittu (2010) observed that the implementation of Islamic law of homicide in Nigeria does not in any way, violate the fundamental human rights but rather, ascertains that the innocent is not denied his right to life and living in the society coupled with the fact that the procedural rule for legal representation is duly obeyed.

As for *tazir*, the trial of Alhaji Aliyu (Saurin Keta) for bribery under the Shariah Penal Code of Zamfara State could be relevant. Alhaji Aliyu was charged for the offence of accepting gratification of N3,950 from one Shuaibu Danmusa. The Zamfara State Higher Shariah Court of Tsafe sentenced him to three months imprisonment or a payment of N6,000 as provided for in section 291 of Zamfara State Shariah Penal Code Law 2000 on 18th November, 2000. The accused appealed to the Zamfara State Upper Shariah Court (USC) where the decision of the Higher Shariah Court was quashed and all what the accused had paid as fine were refunded. Examining the case in study, Shittu observed that it was appropriate for the appeal court to quash the decision of the trial court in this case because the offence for which the victim was charged was inappropriate. He recommended that, for the purpose of social justice, judges in the shariah courts need to be exposed to constant re-training and government should not be retarded by religious bigotry of some people in adopting a legal system that is capable of reforming the country (Shittu, 2015).

Several other cases tried under the shariah penal codes are captured in the Nigerian news papers, some with objectivity and many others with traces of biasness. Few of these are;

- 1- Lawali Garba (Sok.) sentenced in July 2001 to amputation of the hand for stealing car spare parts worth 17,000 Naira (This Day, 2001).
- 2- Danladi Dahiru (Kan.), sentenced in August 2001 to amputation of the hand for stealing several sewing machines worth up to 23,000 Naira (This Day, 2001).
- 3-Dahiru Sule (Zam.), sentenced in February 2000 to 80 lashes for drinking alcohol (The Guardian, 2000).
- 4- Lawali Bello and Sani Muhammed (Sok.), sentenced in April 2001 to forty strokes of the cane and three months imprisonment for stealing two goats and their kids worth 2,600 Naira (This Day, 2001).
- 5- Adamu Jugga (Bau.), charged with rape in October 2003 (Weekly Trust, 2003).

By and large, it is clear that penal law is applied in the shariah compliant states and offences for which criminals are charged are those offences that can cause crisis and disharmony in the society. The application of the law for the offence of theft for example, cannot be compounded by the judge except if the offence is not established. Legal representation in shariah is to establish an offence or to prove otherwise.

Shariah and the welfare of citizens in Northern Nigeria

Contrary to the belief of some people that shariah is all about punishment, shariah is a complete and comprehensive way of life that takes care of all human affairs. The scope of shariah covers the welfare of the citizen in the state. All the shariah compliant states have a board for zakat where the less privileges are being cared for. The Niger State Zakat and Endowment Board was established on 3rd September, 2001 to perform the functions of collecting, administrating and distributing zakah. The board was equally given the following powers:

- a) To organize the administrative and financial affairs of the state and to manage all other activities of the Board.
- b) To collect up to 60% of the Zakah due, leaving 40% to the payee to be distributed to his close relations who are entitled.
- c) To require, accept and approve Zakah declarations from persons eligible to pay Zakah.
- d) To constitute such number of committees as may be necessary through which complaints of non-payment of Zakah can be referred and determined.

- e) To make policies, plan rules and regulations necessary for the conduct of its affairs and the realization of its objectives.
- f) To invest Zakah funds surplus in ways that will meet the objectives of the Board and serve the purposes of Zakah.
- g) To prosecute, through the office of the Attorney General such persons who are eligible but refused to pay Zakah.
- h) To maintain account(s) with Bank(s) into which Zakah funds and resources of the Bank shall be kept and run.

To exercise such other powers necessary for the due discharge of its functions in accordance with the provisions of the Shari'ah. This Zakat Board has been functional in the alleviation of poverty among citizens of the state. Below is a table of the Zakat collected from the eight emirates of the state between 2001 and 2003.

S/No.	Name of Emirates	No. of Districts	Zakat Items Collected and Distributed (Cash)	No. of Beneficiaeies
1	Agaie	11	N 1,300,000	52
2	Bida	22	N 2,675,000	107
3	Borgu	13	N 1,525,000	61
4	Kagara	7	N 1,525,000	61
5	Kontagora	20	N 2,950,000	118
6	Lapai	10	N 1,175,000	47
7	Minna	18	N 2,125,000	85
8	Suleja	16	N 2,050,000	82
	Total	117	N 15,325,000	613

With over Fifteen Million Naira being realised between the first two years, there is the hope that if the project is well managed in the subsequent years, the life designed by Allah for muslims will be achieved. The commission for the welfare of the citizens in the state is not restricted to the Zakat Commissions which are found in all the Shariah States. In Kano State, the Adaidaita Sahu Commission is a subsidiary of the Zakat Commission and its function among others is the empowerment of citizens of the state.

The Relevance of Shariah Practice in the North to Muslims in the South

That shariah was practiced in the south before the colonial administrators or that it is being practiced up till this moment in some parts of the north is not contestable. Makinde observed that the practice of shariah in yorubaland which is in Southern Nigeria, is as old as the advent of Islam in the land (Makinde, 2017). Gbadamasi (1978) was precise to have suggested that Islam and shariah had been in practice in the yorubaland in the 17th century even though the practice of the law was at individual and not at state level. The concern of the researcher is making shariah a state legal sytem and implementing the law in its fullest because in Islam, an act of worship which happens unconsciously is not good enough. It is in the light of this that muslim scholars will always agitate for a full shariah. It is possible for the muslims in the south to exploit the constitutional advantage to understudy the practice of the law in the north and work on its implementation in the south. However, the application of the law and the agitation for its adoption as a state legal system must go along with its peculiarity and Muslims must be conscious of the north as being a peculiar region that is predominantly dominated by non Muslims.

Conclusions

Having studied the procedures in the implementation of shariah in the north and the application of the law, it is pertinent to submit that shariah is the most appropriate legal system that could curtail the moral vices that have eaten the country to the marrow. It is relevant to further submit here that crime and punishment are not the main target of islamic law. It is only a propaganda that those who are narrow minded criticise shariah on the ground that punishments of shariah are harsh. The punishments are majorly deterrent in nature. The concern of the law is mostly public welfare and not hurting an individual. Shariah is a law of fair treatment. The perpetration of insurgence in the nothern part of the country should not be seen as a negative effect of the practice of shariah in the region rather, it should be considered as a reason why the law must be practiced in the region and be spread

to other parts of the country. In final conclusion, the practice of shariah is viable in the south as found in the northern part of Nigeria considering the history of the origin of the law in the region and the number of Muslims dwelling in the region and agitating for the law.

Recommendations

Be that as it may, the shariah-friendly states need to do more in the area of public welfare to show the world that the law is relevant in the curtailment of social vices and provision for the basic needs of the citizens. It is however suggested that Muslims in the south should learn from the mistakes of those in the north in applying shariah in the following instances:

- (i) Enough awareness on the relevance of the application of the law needs to be created
- (ii) The criminal aspect of the law should not be of paramount concern of the implementation committee. Citizens should be made to see the beauty of the law through its care for the well being of the masses
- (iii) There is the need for the adoption of a harmonised shariah penal code in the north for legislative uniformity and such should be adopted in the south
- (iv) One would suggest that a committee should be constituted in the south for the application of shariah in the region and this committee should meet with various committees on shariah implementation in the north to deliberate on a better way of adopting shariah in the south.
- (v) For a better draft, experts in the field should not be left out. Specialists on shariah in various institutions of higher learnings in the south should be fully engaged in the planning stage

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