

**DHIMMAH Contract in Sokoto Caliphate of Nigeria and Contemporary Challenges****KAZEEM ADEKUNLE ADEGOKE**Department of Religious Studies, University of Lagos, Nigeria  
akadegoke@unilag.edu.ng**Abstract**

*The Dhimmah contract as a Sharī'ah provision for the rights of non-Muslims residing in an Islamic state has become controversial in the contemporary period as a result of misconception that an Islamic state is monolithic from religious perspective and therefore, intolerable of non-Islamic faith and belief in her geographical boundary. The objective of this study is to look into the legal rights of non-Muslims in the contemporary period showcasing Sokoto caliphate for contextualization and the colonial and post-independence challenges. To achieve this objective, the paper cast a glance at the emergence of Sokoto caliphate and her religio-political power in nineteenth century, it examines Dhimmah contract in the Islamic legal system and different types of non-Muslims (Ahl Adh-Dhimmah) on which Dhimmah contract are applicable. It moves on to appraise the Dhimmah contract under Sokoto Caliphate during pre-colonial and periods and contemporary challenges. The research methods used in this study are analytical, descriptive and expository. The study concludes that Sokoto caliphate had been running perfect religio-political system and law guiding the rights of her non-Muslim minorities through Dhimmah contract before the advent of British colonial government, religio-political authority of Sokoto Caliphate has been weakened and reduced to mere spiritual and religions affairs in the face of contemporary and modern challenges from the government of the day. Sokoto Caliphate which was initially an Islamic State has now assumed the status of Muslim State due to the contemporary challenges from the Nigerian political system. At last, study recommends that the present Sokoto Caliphate should widen her horizon to cover more rights of Muslims in Nigeria and their relationship with non-Muslims on religious ground in Nigeria. Sokoto Caliphate should set up a jurisprudential and legal body through which the rights of the Muslims and non-Muslim minorities could be decided within the stipulation of constitutional provision in Nigeria.*

**Keywords:** Sokoto Caliphate, *Ahl Adh-Dhimmah*, Dhimmah Contract, Non-Muslims, Contemporary Challenges.

**Introduction**

Islam came to the area engulfed by the Sokoto Caliphate in modern day Nigeria in the eleventh century of Christian era, precisely in 1084 C.E. at old Kanem-Bornu empire during the regime of the eighth ruler of Sayfawa dynasty called Mai Humme Jilmi (1075-1086) who accepted Islam as his personal religion and state religion.<sup>1</sup> Thus, Islam, since the time of Mai Humme Jilmi, provided the Sayfawa rulers the ideological frame work of governance through the formulated constitution popularly, known as *Mune*, which was fashioned out *Sharī'ah* legal principles.<sup>2</sup> From Kanem-Borno, Islam spread to South-western and central parts of Hausaland in the fourteenth century of the Christian era, and by the fifteenth century of the same era, various rulers (*Sarakuna*) of the Hausa states had begun to apply *Sharī'ah* legal principles of governance in the administration of their towns. For instance, during the reign of Muḥammad Rumfa (1393-1399) in Kano, it became an Islamic state he in collaboration with an Islamic scholar, ʿAbdul-Karīm al-Maghīlī introduced Islamic reforms into Kano political administration in replacement of its previous pagan institution. Thus, Islam spread to the nook and cranny of the Hausaland, not only as a religion but also as a dominant factor in the affairs of the people. Up to the earlier part of the nineteenth century of the Christian era, the trend was that various Hausa rulers at different places and times had carried out reforms in line with the provisions of the Islamic political structure.<sup>3</sup> As time went on, some of the Hausa rulers started involving themselves in religious syncretism, that is the idea of mixing Islam with paganism. ʿUthmān Ibn Fūdī observed that there were

<sup>1</sup> . Y.A. "Quadri," *Sharī'ah: The Islamic Way of Life*", The seventh Ramadan Lecture Organized by the University of Ibadan Muslim Community, Ibadan, 2000, 8.

<sup>2</sup> . M.N. Alkali, "Kanem-Bornu Under the Sayfawa: A Study of Origin, Growth and Collapse of a Dynasty," An unpublished Ph.D. Thesis submitted to the Department of History, Ahmad Bello University, Zaria, 1978, 26-27.

<sup>3</sup> . M.D. Suleiman, Political stability in Nigeria "in *Al-Ijtihad*, the Journal of contemporary Religious Issues, Beyero University Press, Kano, Vol. 2, No.1, 2001, 64.

number of corrupt and unscrupulous kings had fallen into religious syncretism at the expense of original Islam by either mixing or stepping down Islamic ideas and morals for local superstitions and practices. It was this struggle that culminated into revival movement spear-headed by ʿUthmān Ibn Fūdī which was popularly called Hausa-Fulani Jihad of 1804 which was finally led to the formal establishment of Sokoto caliphate in the beginning of nineteenth century of the Christian era.<sup>4</sup> The Sokoto caliphate took up Islamic reforms to some parts of Northern Nigeria and beyond. No wonder, some Islamic political titles are still in use, till the present, in the Northern parts of Nigeria for their political functionaries such as ʿAmīr (*Emir*), Wazīr (*Waziri*), Sulṭān (*Sulṭān*) *al-Qādī* (*Alkali*) *et.cetera*. For easier administration and management of the then newly established Sokoto caliphate, it was divided into two emirates namely Western emirate with its capital at Gwandu under the leadership of ʿAbdullah Ibn Fūdī and Eastern emirate with its capital at Sokoto under the leadership of Sulṭān Muḥammad Bello under the able leadership of ʿUthmān Ibn Fūdī, the Commander of the faithful (*ʿAmīru'l-Mu'minīn*).<sup>5</sup> In 1815 C.E., ʿUthmān Ibn Fūdī retired from the public service and the caliphate was passed to his son, Sulṭān Muḥammad Bello who turned Sokoto into a major religio-political centre of Islamic state in West African State (*Bilādu's-Sudān*) which was popularly known as Sokoto Caliphate. Sokoto caliphate was a loose confederation of emirates that recognized the spiritual and political leadership of the incumbent reigning Sulṭān as *Sarkīn Musulūmī* (King of Muslims) and ʿAmīr *Al-Mu'minīn* (Commander of the faithful) in the areas known today as North-Central, North-East, North-West, South-West and Middle Belt in Nigeria.<sup>6</sup> At the inception stage of Sokoto Caliphate in 1804, it was naturally a multi-cultural, multi-religious and pluralistic environment. Consequentially, her facing challenge was how to go about the status of the non-Muslim minorities in the geographical boundary covered by the caliphate. As an Islamic state, the prototype to be followed in successfully carrying out this public service is to consult *Shari'ah* provision on this in the Qur'ān and *Sunnah* which is known as *Dhimmah* contract.<sup>7</sup> It is on this line that this paper aims at appraising the legal status of *Dhimmah* contract in the Sokoto Caliphate of Nigeria and the contemporary challenges during colonial and post-independence period of caliphate in Nigeria. It is on this line that the paper aims at looking into the status of *Ahl Adh-Dhimmah* in the Sokoto Caliphate during the pre-colonial and post-colonial era and the contemporary challenges.

### ***Dhimmah* Contract in the Islamic Legal System**

The term “*Dhimmah*” literally means pledge (*Ahd*), guarantee (*Ḍaman*). Technically, it means protection, care, custody, covenant or compact. Therefore, the term is used to designate the sort of contract through which the Islamic or Muslim State accords hospitality and welfare to the non-Muslims in the state.<sup>8</sup> The term “*Dhimmah*” features twice in the Qur'ān 9 vs 8 and 10. In the Qur'ānic Exegesis of both Qur'ānic verses, Al-Mahālī and As-Suyyūfī define “*Dhimmah*” as mutual agreement.<sup>9</sup> As-Sa'd refers to the term as treaty<sup>10</sup> while Ibn Kathīr also refers to it as pledge or covenant.<sup>11</sup> In short, *Ahl Adh-Dhimmah* are the non-Muslim minorities residing in an Islamic or Muslim State on the agreement of guaranteeing the protection of their life, property and religion. The *Dhimmah* contract is accorded to these categories of non-Muslims from the adherents of divinely revealed religions such as Jews, Christians and Zoroastrians (*Majūs*) to the adherents of non-revealed religions such as Sabi'ans (*Ṣābi'ūn*) and Fetishists

<sup>4</sup> . I. Sulaiman, *A Revolution in History: The Jihad of Usman Dan Fodio*, London: Monsell Publishing Limited, 1986, 2.

<sup>5</sup> . A.A. Gwandu, “Aspect of the Administration of Justice in the Sokoto Caliphate and Shaykh Abdullahi Ibn Fodio's Contribution to it” in S.K. Rashid (ed.), *Islamic Law in Nigeria*, Lagos: Islamic Publication Bureau, 1988, 11-12.

<sup>6</sup> . Mashood Omotosho, “Conflict in the Sultanate Institution: Reflections on the Enthronement and Dethronement of the 18<sup>th</sup> Sulṭān of Sokoto” in Bahawala T. *et. al.* (eds), *The Chieftaincy Institution in Nigeria*, 2010, 382. Also see A.F. Olayiwola, *Islam in Nigeria: One Crescent, Many Focuses*, Nigeria: Sakirabe Publishers, 2007, 30-32.

<sup>7</sup> . See K.A. Adegoke, K.A., “*Ahl Adh-Dhimmah* Under Umayyad and Abbasid Caliphates” in Muhibbu-Din, M. A (ed.), *Ad-Dirāyah, the International Journal of Islamic Studies*, Department of Islamic Studies, Nasarawa State University, Keffi, Nigeria. Vol. 8, No. 1, 2017 119-133.

<sup>8</sup> . A.I. Doi, *Non-Muslims Under Sharī'ah*, New York: International Graphic, 1981, 21.

<sup>9</sup> . J.M.A. Al-Mahali & J.A.A. As-Suyyuti, *Tafsīr al-Qur'ān al-'Azīm* Bayrut: Dar al-Fikr, 1991, 139.

<sup>10</sup> . A.N. As-Sa'di, *Taysīr al-Karīm ar-Rahman fī Tafsīr Kalam al-Manan*, Bayrut: Taba'ah ar-Risālah, 2000, 230.

<sup>11</sup> . A.H. Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, Bayrut: Dar al-Fikr, 1997, Vol. 2, 380-381.

(*‘Abadatu Al-‘Awthān*).<sup>12</sup> By this understanding, the concerned non-Muslims are expected to pay token amount of *Jizyah* (poll tax) on annual basis.<sup>13</sup> This *Dhimma* contract was *ab.initio* designed to cover only *Ahl Al-Kitāb* (People of the Book) who were mainly the Jews and the Christians, later it was extended to capture the *Majūsiyyūn* (Zoroastrians) on the excuse that they were given divinely-revealed scripture popularly called *Avesta*. And that was the reason why Prophet Muḥammad (S.A.W.) and the rightly guided Caliphs (*Khulafā’ Ar-Rāshidīn*) extended the *Dhimma* contract to them by collecting *Jizyah* from them. During the caliphate periods of Umayyad and Abbasid, the *Dhimma* contract was extended to various categories of non-Muslims residing in an Islamic state without considering their faith and belief as a result of wide expansion of Islamic empire. It was through this channel that various polytheistic religions belonging to *Ahl Al-‘Awthān* or *‘Abadat Al-‘Awthān* (idolators) found their way into *Dhimma* contract in the Islamic empire<sup>14</sup>

### **Dhimma Contract and Non-Muslim Minorities**

The non-Muslim minorities under *Dhimma* contract could be classified into three categories as regard their status, condition and the circumstance surrounding their residing in an Islamic state. They are *Dhimmī* (Contractee), *Maghlūb* (Conquered) and *Musta’min* (Trustee).

#### **i. Dhimmī (Contractee)**

The *Dhimmī* are the non-Muslim minorities residing in an Islamic state on the basis of their treaty or covenant with the government of the Islamic state on mutual agreement that the state would guarantee the security, safety and protection of their life, property and religion. This is the reason why they are referred to as *Ahl al-Mu‘āhidah* (Covenanted People). As a result of this service, they are liable to pay the annual tribute of *Jizyah* to the treasury of the Islamic state. According to the Shāfi‘ī school of legal thought (*Madh-hab*), the *Dhimmī* legal status should be accorded and limited to only *Ahl Al-Kitāb* (People of the Book) who are no other people than *Yahudiyyūn* (Jews), *Naṣraniyyūn* (Christians) and *Majūsiyyūn* (Zoroastrians).<sup>15</sup> The schools (*Madhāhib*) of legal thought of Ḥanafī, Malikī and Ḥanbalī disagree with the jurisprudence opinion of Shāfi‘ī school of legal thought, they argue that Qur’anic directive does not limit *Dhimma* contract to *Ahl Al-Kitāb* alone but extending it to other non-Muslim minorities irrespective of their faith as soon as they agree to submit themselves to the authority of Islamic state as pointed out in Qur’ān 9:29 which goes thus;

*Fight those who believe not in Allah, nor in the last Day, nor forbid that which Allah and His Messenger have forbidden, nor follow the religion of truth, out of those who have been given the book, until they pay the tax in acknowledgement of superiority and they are in a state of subjection.*

Ḥanafī school of legal thought added that the *Dhimmī* legal status should not be accorded to a fetishist in the Arabian land because the whole peninsula had embraced Islam during the first century of Islam, which means that such a fetishist might be an apostate (*Murtad*) who left Islam for other faith.<sup>16</sup>

#### **ii. Maghlūb (Conquered)**

These are the conquered or defeated group of non-Muslims after their engagement in war or battle with an Islamic state and they are eventually being overpowered and subdued. As a result of the conquest, the

<sup>12</sup> . This view of Hanafī is supported by Ibn Kathīr in his *Tafsir* of the Qur’ān 9 vs 8 & 10. For more information on this, see S.S. Hussain, “Status of non-Muslims in an Islamic State” in *Hamdard Islamicus* Vol. XVI, Spring 1993, No. 1, 68.

<sup>13</sup> . Ibn al-Qayyim al-Jawziyyah, *Ahkam Ahl adh-Dhimma* Libnan: Dar al-Kutub ‘Ilmiyyah, Juz 1, 25-28 and R.L. Nettler *Dhimmi*” in J.L. Esposito (ed.), in *The Encyclopedia of the Modern Islamic World*, New York: Oxford University Press, 1995, Vol. 1, 374.

<sup>14</sup> . A.D. Muztar, “Dhimmi in an Islamic State” in *Islamic Studies*, the Journal of Islamic Research Institute, Vol. XVIII, No. 1, Pakistan Spring, 1979, 68. See C.L. Cahan “Dhimma” in B. Lewis *et. al.* (eds), *The Encyclopedia of Islam*, Neitherland, n.p., 1920, 223-228.

<sup>15</sup> . M.A. Muhibbu-Din, “*Ahl Al-Kitab* and Religious Minorities in the Islamic State: Historical Context and Contemporary Challenges, in *Journal of Muslim Minority Affairs*, Vol. 20, No. 1, 2000, 121-122. Also see R.L. Nettler, “*Dhimmi*” in J.L. Esposito (ed.) *The Encyclopedia of the Modern Islamic World*, New York: Oxford University Press, 1995, Vol. 1, 374.

<sup>16</sup> . Ibn Al-Qayyim Al-Jawziyyah, *Ahkam Ahl Adh-Dhimma*, Libnan: Dar al-Kutub ‘Ilmiyyah, Juzi, pp.25-28.

boundary of Islamic state would be extended to their boundary and they automatically become people of *Dhimmah* contract who will be paying the annual tribute of *Jizyah* (poll tax) into the purse of the Islamic state and their lives, property and places of worship will be protected under Islamic state. Having being covenanted under *Dhimmah* contract, *Maghlūb* should neither be treated as war captives or prisoners of war nor be subjected to undue harassment and harsh treatment in the Islamic state.<sup>17</sup>

### iii. *Musta'min* (Entrusted)

These are non-Muslim minorities who purposely reside in an Islamic state for a short period of time. Such non-Muslims may be ambassadors, consulates, tourists, expatriates, foreigners, temporary sojourners, resident aliens opted voluntarily to live in an Islamic state or be granted the right of residing in an Islamic state for a certain period of time. This kind of non-Muslim minorities has to enter into a treaty with an Islamic state to maintain peace and abide with the constitution of Islamic state. Their life, property and faith are well protected under the treaty known as '*Aman* (trusteeship). The annual tribute of *Jizyah* or land tax of *Kharaj* are not levied on the *Musta'min* since their stay in an Islamic state is temporary, but the trade tax may be levied on them if they engage in business or they solely come to the Islamic state for business.<sup>18</sup>

### ***Dhimmah* Contract under Sokoto Caliphate during Pre-Colonial Period**

Sokoto caliphate, though a Hausa-Fulani aristocracy, was a revolutionary Islamic state operating *Sharī'ah* law as the supreme law of the land and Islam as a state religion. Thus, social justice, public welfare, human freedom and dignity became the cornerstone of the principles and philosophies of the caliphate in all spheres of her religio-political activities.<sup>19</sup> Some parts of Sokoto caliphate were occupied by both Muslims and non-Muslim minorities (*Ahl-adh-Dhimmah*) who were mainly Fetishists (cults) popularly referred to as *Harne* (*ʿAbadatu'l-Awthān*). These non-Muslims were loosely found around the places like Kafancha, Jos, Zango, Kataf, Adamawa, Taraba, Kashashen, Okenne, Bauchi and some Yoruba towns like Ilorin, Offa, Osogbo, Ibadan, Ijebu, Epe, Ikorodu, Eko and Badagry. These non-Muslim communities were living peacefully with Muslims under the Islamic administration of the Sokoto caliphate.<sup>20</sup> The people of authority in the Sokoto caliphate (Hausa-Fulani), in their own thought, saw the above-mentioned non-Muslim areas as an abode of people who were not civilized as they were neither attached with any particular religion nor law guiding their way of life. The caliphate interacted with these non-Muslims on social, economic, religious and political affairs in their respective environments. Having accessed to the *Dhimmah* legal contract, some of these non-Muslims under Sokoto caliphate accepted Islam out of their self-conviction while others who still clung firmly to their faith were not socially, economically, religiously and politically intimidated. In some of the subdued non-Muslim dominated areas which were later annexed to the Sokoto caliphate, the non-Muslims in those areas were given the free hand to practise their faith and appoint their rulers among themselves. Some of the traditional rulers in these areas such as Kafancha, Zango, Kataf, Jos, Kashashen, Bauchi, Taraba, Adamawa *et.cetera*, are non-Muslims up till the present time.<sup>21</sup> In 1824, the then Shehu of Borno, Muḥammad Al-Amīn Al-Kanemī wrote a letter to Sultan of Sokoto caliphate, Sulṭān Muḥammad Bello asking the latter to allow and guarantee the security of the British tourists who wanted to visit Sokoto as part of place of tourism in the lands of black African (*Bilād As-Sūdān*). According to the letter,<sup>22</sup> those travelers were requested to be

<sup>17</sup> .P.K. Hitti, *History of the Arabs*, United Kingdom: Macmillan Publishers, 1984, p.234.

<sup>18</sup> . A.I. Doi, *Non-Muslims Under Sharī'ah*, U.S.A: International Graphics, 1981, p.23.

<sup>19</sup> . K.A. Adegoke, "Islam and Chieftaincy Institution in the Sokoto Caliphate" in Babawale, T. *et. al.*, *The Chieftaincy Institution in Nigeria*, 2010, p.318.

<sup>20</sup> . S. Banfā, "Aspect of Religious Conflict and co-Existence of between Muslims and Non-Muslims in Pre-colonial Northern Nigeria, a paper presented at the 32<sup>nd</sup> Annual Congress of the Historical Society of Nigeria, Jos, 1987, p.13.

<sup>21</sup> . Suleiman, p.65.

<sup>22</sup> . For more information of this letter, see the content of the letter from the then Shehu of Borno, Muḥammad Al-Amīn Al-Kanemī to Sulṭān Muḥammad Bello, the then leader of Sokoto Caliphate;

Letter from Shehu of Borno to Sulṭān Muḥammad Bello dated 23<sup>RD</sup> RABI'UL-THĀNI, 1238 AH / JANUARY, 1824.

Praise be to God, and prayers and peace be unto the Apostle of God (Muḥammad).

accorded the *Dhimmah* contract of *Musta'minūn* (Entrusted). This development ushered in a new type of an era of non-Muslim minorities who are Christians into the Sokoto caliphate.

### ***Dhimmah* Contract under Sokoto Caliphate during Colonial Period**

The advent of Royal Niger Company (RNC) in 1891 in Bornu, one of the Islamic provinces un Sokoto caliphate, brought up agreement between the son and successor of Shehu Muḥammad Al-Amīn Al-Kanemī in person of ʿUmar Ibn Muḥammad Al-Amīn Al-Kanemī and the British agent of Royal Niger Company was that they should be granted the *Dhimmah* contract of *Musta'minūn* since they are Christian expatriates in Sokoto caliphate.<sup>23</sup> The advent of colonial imperialists in the Sokoto caliphate towards the end of nineteenth century gave way to the conversion of some Fetishists into Christianity as a result of moral and financial supports that the colonial government gave to the evangelization of Christian missionary and western education in all of her colonies in Africa. Some non-Muslims in Bauchi, Jos, Adamawa, Taraba, Zango, Kataf Lokoja, Kataf, Igala *et.cetera* got converted into Christianity through the missionary activities and inordinate ambition of some of the people in those areas to acquire western education.<sup>24</sup> Despite this development, Sokoto caliphate still maintained the *Dhimmah* contract of these convertees (into Christianity) as they were recognised as non-Muslims residing under the authority of an Islamic state.<sup>25</sup> In the Sokoto caliphate, the non-Muslim minorities (*Ahl adh-Dhimmah*) are classified into three namely:<sup>26</sup>

- (i)The non-Muslims who are residing in a *Dāru'l-'Islām* (Abode of Islam) that is Islamic state (*Dhimmī*).
- (ii)The non-Muslims who are residing in a *Dāru's-Salām* (Abode of peace) that is submissive or conquered state (*Maghlūb*).
- (iii)The non-Muslims who are residing in a *Dāru'l-Harb* (Abode of war) that is antagonist non-Islamic state (*Kuffār*).

In *Sharī'ah*, those non-Muslims who are residing in both *Dāru'l-'Islām* and *Dāru's-Salām* are eligible to be accorded with *Dhimmah* contract while those non-Muslims in *Dāru'l-Harb* should not be accorded at

To the honoured and accomplished, the virtuous, and munificent, the pattern of goodness and the standard of benevolence, head of the Sudanic kingdom, and ruler of the country of Hausa, our friend, the learned Muḥammad Bello, son of the intelligent, Shehu Uthmān Ibn Fūdī, whose soul may God shelter with the clouds of mercy and peace.

Our salutation, accompanied with affection as strong as the odour of musk, and as perpetual as the movement of the globe, and with the mercy and blessing of God, be unto you.

Hence, the cause of this writing this letter and the purpose of its lines, is to acquaint you that the bearer are English travelers; whose nation, out of all the other Christians, has maintained with the Muslimīn uninterrupted treaties of religious amity and friendship, established since ancient periods, which they inherited from their forefathers and ancestors; and on this account, they penetrate into Muslim countries whenever they please, and transverse all provinces and lands in confidence and trust, without fear. They came to our country, sent to us by our virtuous and accomplished friend, the Lord, Yusuf Pasha, master of Tripoli, to see and delight themselves the wonders of the land of Sudan, and to become acquainted with its rarities, as lakes, rivers and forest; equal to to which are seldom seen in other countries.

After having accomplished their wishes, in seeing all the things that the land of Borno and its environs contained, they felt anxious to visit your country from what they heard of the innumerable wonders therein. I have, therefore, permitted to proceed on their journey, accompanying them with letters which explain their object.

You are well aware of what is stated in Al-Quran saying upon the subject of the observance of honour, dictated by our Lord, the Apostle of God, and that the true Muslims have always avoided the shedding of the blood of Christians, and assisted and protected them with their honour. Be then attentive to these travelers, and cast them not into the corners of neglect; let no one hurt them, either by words or deeds, nor interrupt them with any injurious behaviour; but let them return to us, safe and may the high God bestow upon you the best reward for your treatment to them, and insure to us and to you the path of righteousness for conduct in this life.

Our salutation may be given to allwho are about you, and to those who are related to you in general. And peace be unto you.

Sealed

Muhammad Al-Amin Al-Kanemi.

<sup>23</sup> . Quadri, p.8.

<sup>24</sup> . S.W. Junaidu, Resistance to Western Culture in the Sakkwato Caliphate: A lesson to Generations yet unborn” in A.M. Kani & K.A. Gandhi, (eds.), *State and Society in the Sokoto Caliphate*, Sokoto: Usman Danfodiyo University Press, 1960, p.239.

<sup>25</sup> . *Ibid*.

<sup>26</sup> . Sulaiman, p.111.

all since they do not subdue themselves to the hegemony of an Islamic state. Such antagonist non-Islamic state (*Dāru'l-Harb*) should be fought by an Islamic state until they either submit themselves to the authority of Islamic State or pay *Jizyah*, a token fee of submission to the purse of State.<sup>27</sup>

### **Sokoto Caliphate and *Dhimma* Contract: Colonial and Post-Independence Challenges**

British colonial government came in contact with Sokoto Caliphate in 1891 when they set up a consulate under Consul-General and Vice-Consul. They raised military force popularly known as the Niger Constabulary and put it under the Trading Company under the name of Royal Niger Company. In 1894, Sir Frederick Lord Lugard was sent to the Sokoto caliphate as Consul-General by the office of the British Colony in London. His coming to the Sokoto caliphate paved way to the revocation of the charter of the Royal Niger Company on 1<sup>st</sup> January, 1900 which led to the re-naming of boundary of Sokoto caliphate with new name 'Northern Protectorate'. With the proclamation of the Northern Protectorate, the Royal Niger Company's Charter was revoked. Sir Lord Lugard was promoted to become the High Commissioner for the Northern Protectorate (formerly Sokoto caliphate).<sup>28</sup> On his resumption to the office of High Commissioner of the Northern Protectorate, Sir Lord Lugard discovered that the Sokoto caliphate had already had her own well-organised system of political administration under the authority of a formidable political leader (Sultān of Sokoto) with the state capital in Sokoto city. Having observed the efficiency and well-established machinery of the caliphate system of governmental administration, Lord Lugard decided to make use of this system through the principle of Indirect Rule. Principle of Indirect rule was the system of government through which British colonial government was ruling the Northern Nigerians through the indigenous authority (Emirate local council). Therefore, the Emirs could make laws and punish offenders within the legal jurisdiction recognized by the British colonial administration. By this, the main duty of the colonial officers in the principle of Indirect Rule would be limited to mere general monitoring and supervision of the administration of the caliphate.<sup>29</sup> Due to this development, the ideological conflict would be inevitable because of the different legal and religious background of the colonial officers and indigenous leaders in the caliphate. This was the reason for the challenges encountered by the colonial officers in their earlier penetration into Sokoto caliphate in the nineteenth century. The resistance mounted by Sokoto caliphate against colonial government was instigated by the legal and religious factors. The leaders or rulers of towns and cities under Sokoto caliphate were seen as spiritual and political heads in their geo-political emirates in which Islam and *Sharī'ah* were the only recognized state religion and state legal system respectively.<sup>30</sup> As a result of this, these indigenous rulers refused to recognize and co-operate with the colonial officers whom, to them, were infidels (*Kāfirūn/Kuffār*) and they should be treated as *Musta'minūn* (Entrusted) in an Islamic state. That was the reason why the Sultan of Sokoto caliphate refused to sign treaty of friendship with them. Consequentially, Lord Lugard had no other option rather than launching systematic attack on the Sokoto caliphate which led to the death of Sultān Attahiru in 1903. Every successful military expedition of Lord Lugard brought the appointment of a colonial officer whose duty was to set up principle of Indirect rule for the monitoring and supervision of the administration of Emirs and Sultāns. Most of the incumbent Emirs who did not co-operate with British colonial officers were deposed and exiled to Lokoja at the time of the conquest of their respective cities which were previously under the authority of Sokoto caliphate.<sup>31</sup>

<sup>27</sup> . Ibid p.121. The assertion is supported by M.A. Ajetunmobi in his comment on Abdul Hamid Abu Sulyman "Article: "Al-Dhimman and Related Concepts in Historical Perspective, Vol. ix: No.1. in *Journal Institute of Muslim Minority Affairs*, Vol. 10, No. 2, July, 1989, p.371.

<sup>28</sup> . Leo Dare & Anthony Oyewole, *A Textbook of Government for Senior Secondary School*, Ibadan: Omobonoje Press Book Industries Nigeria Ltd, 1995, p.89.

<sup>29</sup> . Ahmed Rufai Mohammed, "The Exiled Emirs and their Activities in Lokoja (1900-1949)" in *Journal of the Historical Society of Nigeria*, vol. xii, Nos 1 & 2, December 1995 & June 1996, p.179.

<sup>30</sup> . Kazeem A. Adegoke, "Islam and Chieftaincy Institution in the Sokoto Caliphate" in Tunde Babawale, Akin Alao & Bimbo Adesoji (eds.), *The Chieftaincy Institution in Nigeria*, Nigeria: Centre for Black and African Arts and Civilization (CBAAC), 2010, 318-319.

<sup>31</sup> . Sulaiman M. Jamui, "Colonial Impact on the Application of *Sharī'ah* in Nigeria: in *Journal of Nigerian Association of Teachers of Arabic and Islamic Studies*, Vol. 6, No.1, Sept. 2001, 27.

As if this was enough, British colonial administration penetrated into the legal system of the Sokoto caliphate. They subjugated the Islamic law (*Sharī'ah*) to the British repugnancy clause which vividly revealed the incompatibility of the *Sharī'ah* law and British common law. This British Repugnancy clause accommodated the validity of *Sharī'ah* law on the provision that it would neither contradict the British Common law nor be repugnant to the British conception of natural justice. In order to achieve this aim, British colonial administration established the Supreme Court of Ordinance which would exercise all the jurisdictions and which its powers is vested in the Queen's High Court of Justice in England which is to administer the common law, doctrine of equity and statutes of general application which were in force in England. From 1903, the Sokoto caliphate which was re-named Northern Protectorate was subjugated to the British Rule of Law till the 1<sup>st</sup> October, 1960 when the whole country of Nigeria got her independence.<sup>32</sup>

The attainment of independence of Nigeria in 1960 from the British Colonial administration could not restore the Sokoto Caliphate's sovereignty and supremacy of *Sharī'ah* law over British common law which is recognized as constitution of the country. This development consequently caused a great havoc to the *Dhimmah* contract as granted by the *Sharī'ah* law and sovereignty of Islamic state as the Penal Code and Criminal Procedure Code which are in contradiction with common law which is adopted in place of Islamic Criminal Law (*Hudūd*).<sup>33</sup> As at present, Sokoto Caliphate has lost her sovereignty to the government of the day which is proto-type of western democratic political system, a blue print of British colonial administration. The religio-political authority of Sokoto caliphate has been drastically reduced to ceremonial and religions affairs. The spiritual authority of Sokoto caliphate is merely retained and given recognition among the Nigerian Muslims as the reigning Sulṭān of Sokoto becomes the life President of Nigerian Supreme Council for Islamic Affairs (NSCIA) since 1946 with the duty of notifying the Nigerian Muslims of the day of commencement of annual obligatory fasting of Ramadan, the day of its termination and the days of the two festival days of *‘Id al-Fiṭr* and *‘Id Al-Adhā*.<sup>34</sup> Therefore, the Sokoto Caliphate has little or nothing to say about the affairs of the contemporary non-Muslims under her jurisdiction as the western stereo-typed government of the day has taken care of this service. Apart from this fact, these non-Muslims are not even seen themselves as People of *Dhimmah* contract (*Ahl Adh-Dhimmah*) under the religio-political authority of the Sokoto caliphate. Those non-Muslims, more or less, see themselves as Nigerian citizens under the federation of a sovereign nation of Nigeria. The incessant division of Nigeria into several states in 1967, 1975, 1991 and 1996 gradually broke-up the territorial boundary of the Sokoto caliphate into several independent states. Some of original emirates which were previously under the caliphate are presently found themselves in different states within the federation of Nigeria. Presently, territorial boundary of the Sokoto caliphate has been drastically reduced to cover only the geographical boundary of Sokoto State of Nigeria which comprises Sokoto city and few emirate local councils within the state. Hence, the national motto of the Sokoto State reads "Seat of the Caliphate". This development weakened the authority of the Sulṭān of the Sokoto caliphate over the various emirates which were previously under her.<sup>35</sup> By this development, Sokoto caliphate has now assumed the status of Muslim State since the areas presently covered by the caliphate are Muslim-dominated environment. Non-Muslims in those areas have no religio-political allegiance with the caliphate since they are sharing Islamic belief and there is constitutional provision for them that they have right to live or reside in any

<sup>32</sup> . Sulaiman M. Jamiu, "Colonial Impact on the Application of *Sharī'ah* in Nigeria, .....27-28.

<sup>33</sup> . K.K. Oloso, "Moonsighting or Astronomical Calculation: Towards Uniformity of Muslim Festivals in Nigeria" in Olusegun Oladipo, *Ibadan Journal of Humanistic Studies*, Nos 9 & 10, 1999-2000, 98. Also see O. Vaughan, "War on the Savannah: The Military Collapse of the Sokoto Caliphate under the Invasion of the British Empire, 1897-1903", in *Canadian Journal of History*, 2000, 55.

<sup>34</sup> . Kazeem A. Adegoke, "*Ikhtilāfon* Moon Sighting Among Nigerian Muslims Within the Framework of *Sharī'ah*" in Jimoh, S. L (ed.), *Contemporary Muslims' Beliefs and Practices: Between Orthodoxy and Syncretism*, *Al-Hadara LASU Journal of Arabic and Islamic Studies* (Special Edition), Department of Religions and Peace Studies, Lagos State University, 2013, 144-145.

<sup>35</sup> . Omotosho, "Conflict in the Sultanate Institution ... p.384.

part of the federation of Nigeria without religious and political discrimination for any reason whatsoever. This religio-political decline of Sokoto caliphate has been partially counter-balanced by the present increased emphasis of religious leadership in Nigeria at national level. Sultān of Sokoto caliphate has been, most of the time, engaged in spiritual and administrative national concern in the country.

Sokoto caliphate moved a giant step in the year 2000 despite the fact that her religio-political role of leadership has been seriously curtailed to only religious and spiritual aspects. Some Northern states which recognized the religious and spiritual leadership of Sokoto caliphate came out with the aim of expansion of the *Sharī'ah* legal system to cover both private and criminal matters as well as the rights and freedom of non-Muslims under their jurisdiction.<sup>36</sup> The bill concerning this development was passed into law by the legislative houses of Assembly of some Northern states of the federation. Amidst a lot of controversy surrounding this development from various non-Muslims in Nigeria as regard the rights and freedom of their fellow members in some of these Northern states, the Sokoto caliphate under the Sultānate of the immediate-past Sultān Muḥammad Maccido came out openly as the voice of Muslim Communities in Nigeria and the life President of Supreme Council for Islamic Affairs of Nigeria (SCIAN), made it known that expansion of *Sharī'ah* in any state of federation would not in any way infringe on the rights and freedom of the non-Muslims.<sup>37</sup> He added that *Sharī'ah* legal system is not a new system as well as African communities concerned because it had been in operation since the inception of Islam in West Africa in the tenth century of Christian era and there is no a single reference in the history where *Sharī'ah* jeopardize the rights, freedom and peace of non-Muslims.<sup>38</sup> Coming to Nigeria, the constitutional provisions, since the independence, also recognized this fact as there are *Sharī'ah* columns in these constitutions which can facilitate the smooth dispensation of justice for both Muslims and non-Muslims in the country.

### Conclusions

The paper finds out that:

- (i) Sokoto caliphate had been running perfect religio-political system and law safeguarding the social and religious life of her non-Muslim minorities through *Dhimma* contract before the advent of British colonial government.
- (ii) religio-political authority of Sokoto Caliphate has been weakened and reduced to mere spiritual and religions rights in the face of contemporary and modern challenges from the government of the day.
- (iii) Sokoto Caliphate which was *ab initio* an Islamic State has now assumed the status of Muslim State due to the contemporary challenges from the Nigerian political system.

### Recommendations

Based on these findings, the paper recommends that:

- (i) The present Sokoto Caliphate as a Muslim pressure group in Nigeria should widen her horizon to cover Muslims - non-Muslims relations in order to avoid religious crisis in the country.
- (ii) Sokoto Caliphate should set up a jurisprudential and legal body through which would look into and codify some of the *Shari'ah* columns in the constitutional provision of Nigeria.

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<sup>36</sup> . *The News*, "Keg of Gunpowder: Sharia comes into effects at last in Zamfara State Amidst Fears by Nigerians" 8<sup>th</sup> November, 1999, p.3.

<sup>37</sup> . K.A. Adegoke, Rights of *Ahl Adh-Dhimma* in Islamic State, an Unpublished Ph.D. Thesis submitted to the Department of Religions, University of Ilorin, 2006, p.170.

<sup>38</sup> . *Ibid*, p. 171.

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