

Shariah and Social Justice in the North; Lessons for the South.

The Experience of Shariah Practice in Nigeria

By

Dr. Abdulwahab Danladi Shittu

Department of Religions

University of Ilorin

08061235260

[shittudanladi@gmail.com/shittu.ad@unilorin.edu.ng](mailto:shittudanladi@gmail.com/shittu.ad@unilorin.edu.ng)

## **Abstract**

The practice of 'full shariah' by Muslims is as important to Muslims as the establishment of the obligatory prayers. This is why the struggle for its application in Nigeria is as old as 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 in the curtailment of social vices were recorded. Using a historical research method, this work appraised some of the achievements made by the shariah-friendly states in the application of shariah in the north with the objective of creating a frame work for the application of the law by Muslims in the south. 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. This is a revelation of the efficacy of the law in finding lasting solution to the aging problem of corruption, nepotism, murder and other vices that are militating against the growth of Nigeria. It is suggested that if the Muslims in the south should follow suit, the country would be moving to the promised land of success

## Introduction

Shariah in the northern Nigeria was considered a law of the land ever before Nigeria got its name from the hand of the colonial masters. Both the Emir and the Alkali courts have the jurisdiction of trying criminal cases along side with their 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 of having practiced shariah criminal law around that period. With the coming of the Colonial masters, the practice of Islamic criminal law was considered repugnant to social justice and the law of retribution was painted mutilation. The shariah courts became toothless dogs that cannot exercise justice independence of the written law of the white. The adoption of the Northern Nigeria Penal Code 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 and endowment. Other shariah institutions such as Zakat were not given strength and the situation remained like that until when the Muslims were tricked to the acceptance of the Penal Code in the place of Islamic criminal law and the life of Muslims was left to the control of the colonial administrator both their social and spiritual affairs. The Penal Code and the legal institutions inherited from the British Colonial Administration were hitherto, considered incapable of curtailing the prevalence of vices such as 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 2000, took the bull by the horn and pioneered the re-introduction of shariah in the face of strong criticism by some Muslims and of course, some none Muslims who are ignorant of the meaning and the content of shariah. Eleven other states followed suit and they are; Kano, Kaduna, Katsina, Kebbi, Sokoto, Bauchi, Jigawa and Borno. Other are Niger, Gombe and Yobe. What is interesting in the practice of shariah by this states is the fact that, against the assumption of many Nigerians that the concern of shariah is the application of Islamic criminal laws, the welfare of the citizens is given priority in the application of the law. There are institutions for economic justice under the practice of the law from which many citizens have benefited. These institutions include the Zakat and Endowment Boards 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 benefit from the practice of the law in the north.

### **3.2 Procedures in the Enactment of *Sharī'ah* Penal Codes in Zamfara, Kano and Niger States of Nigeria**

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 Changes) Law, No. 5 of 1999, assented to by the Governor on 8th October, 1999.<sup>1</sup> 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 *ʿulama* 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, and *sunnah* of the Prophet (SAW), *ijmah*, *qiyas* and other sources of Islamic Law”, and to advise on the enactment of the laws so codified (S7(vii) and (viii)).<sup>2</sup>

Zamfara State’s House of Assembly proceeded to enact a *Shariʿah* 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 *ʿulama*. 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.<sup>3</sup>

Council of *ʿulama* was formed to see to the possibility of implementation of Islamic law on criminal matters. The report of the Council of *ʿulama* allowed for the passing of bill for the amendment of the *Sharīʿah* Court of Appeal Law on 8<sup>th</sup> day of October, 1999 after due consultation with citizens of the state, and on 26<sup>th</sup> 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 is contained in the bill as follows;

WHEREAS the State House of Assembly is vested with power under sections 277 and 278 of the 1999 constitution of Nigeria to confer additional jurisdiction to the Sharīʿah Court of Appeal of the State and WHEREAS the State desires to establish Sharīʿah Courts in the state with civil and criminal jurisdiction and from which appeal shall lie to the Sharīʿah Courts of Appeal of the state. BE IT ENACTED by the House of Assembly of Zamfara State as follows;

1. This law may be cited as the *Sharīʿah* Court of Appeal Cap 133 (Amendment) law and shall come into operation on 27<sup>th</sup> day of January 2000...

Another style in the application of the law is that of the Niger state. Niger State adopted the implementation of *sharīʿah* without drafting any codified law. On 22<sup>nd</sup> 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 4<sup>th</sup> day of May 2000. The amendments made include: Section 68 (1) of the penal code is amended by deleting “after caning” in paragraph (f) and substituting “and thereafter by adding (g) amputation. 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 else where in the penal code.<sup>4</sup>

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 the condition for which a convict could be punished for offences under subsection two 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 5<sup>th</sup> 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<sup>5</sup>

### **Shariah in Northern Nigeria and Criminal Cases**

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 vindicated on appeal. The offences in 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 the baby girl who was assumed to be the product of the illicit sexual intercourse was six months old. Shafiyya confessed to the offence

and was sentenced to *rajm*<sup>6</sup>(stoning to death). Shafiyyatu 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<sup>7</sup>. The accused appealed her case and she was eventually vindicated.

For a *Qisas* offence, one Shehu Usman was tried for the offence of Homicide under the Shariah Penal Code of Kano State. Shehu Usman was accused for the offence of homicide for killing on Gali Muhammad in Malikawa town, Ajingi Local Government of Kano State on the 5<sup>th</sup> of February, 2004 in Shahushi Upper Shariah Court.<sup>8</sup> 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 20<sup>th</sup> September, 2016 under S6(2)of the Shariah Court of Appeal Law,1960.<sup>9</sup> Commenting on the trial, shittu 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<sup>10</sup>

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 18<sup>th</sup> November, 2000.<sup>11</sup> The accused appealed to the Zamfara State Upper Shariah Court (USC) where the decision of the Higher Shariah Court was quashed and all what he had paid as fine



was refunded back to him. 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<sup>12</sup>

Several other cases tried under the shariah penal codes are captured in the Nigerian newspapers 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.<sup>13</sup>
- 2- Danladi Dahiru (Kan.), sentenced in August 2001 to amputation of the hand for stealing several sewing machines worth up to 23,000 Naira.<sup>14</sup>
- 3-Dahiru Sule (Zam.), sentenced in February 2000 to 80 lashes for drinking alcohol.<sup>15</sup>
- 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.<sup>16</sup>
- 5- Adamu Jugga (Bau.), charged with rape in October 2003.<sup>17</sup>

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 bring crisis and disharmony to the society. The application of the law for the offence of theft 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 in Northern Nigeria and Welfare**

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 privileged will be cared for.

The Niger State Zakat and Endowment Board was established on 3 September, 2001 to perform the functions collecting, administering 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<sup>18</sup>

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 between 2001 when the board took off and 2003.<sup>19</sup>

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
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With over fifteen million naira 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 imperative of shariah practice in the north to the south muslims**

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. The concern of a researcher is making shariah a state legal system and implementing the law in its fullest. 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.

### **Conclusion**

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 quickly 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 northern 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.

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.

## Endnotes

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<sup>1</sup>The Governor assented to it after due consultation with various stake holders and religious leaders of the state

<sup>2</sup>A.D. Shittu. An Appraisal of Shariah Related Criminal Enactments in Northern Nigeria(1999-2006) . A Ph.D Thesis Submitted to the Department of Religions, University of Ilorin. 2013

<sup>3</sup> P. Ostiens, (ed) *Shari<sup>C</sup>ah Implementation in Northern Nigeria(1999-2006) A Source Book*, Ibadan: Spectrum Books Ltd., 2007, Vol IV, p 24.

<sup>4</sup> Penal Code (Amendment) Law 2000. The Law of Niger State of Nigeria

<sup>5</sup> Penal Code (Amendment) Law 2000...

<sup>6</sup> A.D. Shittu, The Application of Islamic Legal Maxims in Nigeria: The Case of the Trial of Shafiyatu Hussaini” *ALLAWH Journal of Arabic and Islamic Studies*, (University of Maiduguri: Department of Arabic and Islamic Studies, Vol III, NO1,2013,) 245

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<sup>7</sup> A.D. Shittu, *The Application of Islamic Legal Maxims in Nigeria*

<sup>8</sup> See vanguard News Paper of November 15<sup>th</sup> and December 1<sup>st</sup>, 2001 for details

<sup>9</sup> See Kano State Shariah Court of Appeal Record Book Suit:SCA/KN/CR/13/05

<sup>10</sup> A.D. Shittu, "A Critique of the Trial of Shehu Usman for Homicide Under the Sharia Penal Code of Kano State" *Journal of the Nigeria association of teachers of Arabic and Islamic studies* . Ado Ekiti: Department of Religious Studeis. Vol. XIII. 2010. P29-40

<sup>11</sup> See Higher Shariah Court (HSC) of Tsafe in Zamfara State Record Book Suit CR/TR/187/2000

<sup>12</sup> A.D. Shittu, A Study of the Enforcement of Ta'zir under the Shariah Penal Code of Zamfara State. *Journal of Islam in Nigeria*. Ilorin: Islamic Welfare Foundation in Collaboration with Centre for Ilorin Studies, University of Ilorin. Ilorin , Nigerian. Vol. I, NO 1, 2015. P156-166

<sup>13</sup> This Day, 13/07/2001. "Sharia Claims another Victim in Sokoto"

<sup>14</sup> This Day, 11/04/2002 "Two to be Amputated in Kano,".

<sup>15</sup> The Guardia 12/02/2000. "Sharia: Alcoholic Gets 80 Lashes." And BBN News 11/02/2000. "Nigerian Man Flogged for Drinking."

<sup>16</sup> This Day, 25/04/2001. "Two kids Share 40 Lashes for Goat Theft."

<sup>17</sup> Weekly Trust, 04/10/2003 "Alleged Rape Victim, 35, offers to swear by Qur'an."

<sup>18</sup> Niger State of Nigeria Gazette. Niger State Law of Nigeria No 10. Vol. 26. Published on the 3<sup>rd</sup> of September, 2001 . A Law to provide for the establishment of Zakah Collections, Distribution and Endowment Board and for the matters connected therewith. B39

<sup>19</sup> This table was retrieved from the office of the executive secretary, Zakat and Endowment Board, Minna, Niger State on the 30<sup>th</sup> of May, 2018.