

The Aftermath of 21st Century Sharia Implementation in Northern Nigeria

Muhammad Duku

Department of Islamic Studies, Faculty of Arts, Federal University Gashua, Yobe State, Nigeria
Corresponding author: muhammadduku1@gmail.com

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Abstract

Enforcement of Sharia legal system is a duty bound over every Muslim (Male or Female) on their day to day life and activities. The objective of this paper is to examine the consequences after the implementation of Sharia law in 21st Century in Northern part of Nigeria. Therefore, this study addresses the major area of negation and setback in the implementation of Sharia law in 21st Century in Northern Nigeria. The study posit out that inconsistency of Nigerian constitution with Sharia law, capital offence punishable by Sharia law, Hisbah institution, lack of qualified and experts judges, political problem and many others are the setback encountered by means of Sharia implementation in Northern Nigeria. Conclusively, the study concludes that 21st Century Sharia implementation in Northern Nigeria faced with many challenges.

Keywords : sharia implementation; northern Nigeria; twenty-first century

1. Introduction

Sharia is the soul and mind of Islamic religion, where every Muslim (male or female) were given the task of enforcing and ensuring *Sharia* in their day to day activities. Islam being the complete way of life and a religion based on the commandments of Allah (S.W.T) and His noble Prophet (pbuh) obliged every Muslim to fashion their entire life in accordance with the teaching of *Qur'an* and the *Sunnah* of His Messenger (pbuh). Therefore, *Sharia* is the sum total of the laws that guarantee mankind happiness, hope and ever-lasting bliss, it provides the basis for live and let live.¹

Yet, *Sharia* is an Arabic word meaning the path to be followed. Therefore, *Sharia* is the system of guidelines and rules which comprises family law, law of *Mu'amalat*, law of inheritance, and many other aspect of religion, cultural and social life of peoples. It's the fundamental goals of *Sharia* to preserve the five necessary rudiments to Muslim society, thus, religion, life, intellect, lineage and property. The *Sharia*, is essentially a "believer's law" in the sense that it is primarily binding on those who believe in it. It coherently combines ethical norms of virtue and vice, good and evil, and represents the

¹ Abdullah, Yunus Ustaz. *Priorities in the Establishment of the Sharia System in Nigeria*. Oseni, Z.I. (2004)

standard of judgment for all human actions.² The Almighty *Allah* (S.W.T) stated in the Glorious Qur'an;

"We made for you a law, so follow it, and not the fancies of those who have no knowledge." Q65:18

Therefore, the history of *Sharia* implementation can be traced back to the early days of Prophethood of Muhammad (pbuh) when he was given the task of spreading the religion of Islam; those who converted to Islam were being taught the aspect of the religion and *Sharia*. The *Qur'anic* revelations laid down the basic standards of conduct. The Prophet (pbuh) as a supreme judge of the community resolved legal problems as they arose by interpreting and expanding the general provision of the Qur'an, thereby establishing a legal tradition that was to continue after his death (Coulson and El-Shamsy, 2019).³ Connectedly, Islam was introduced in to Nigeria peacefully through the influence of traders across the trans-sahara trade routes. The *Kanembu* popularly known as *Kanuri* are the inhabitant people of the city of *Kanem Borno*. They reside close to the Lake Chad area. The people of the area actively participated in the trans-sahara trade activities between Tripoli in Libya through *Bilma* to *Kanem Borno* Empire. The ruling class of *Kanem* was among the first West African rulers to embrace Islam. Thus, the first *Kanem* ruler that embraced Islam was called *Mai Humme Julme* (d. 1097 C.E) and he was the 12th King of *Sefawa* family who ruled in (1086 C.E). His conversion to Islam made it to be the state religion and Muslim were freely allowed to practice their missionary activities. In Nigeria, *Sharia* has been instituted as a main body of civil and criminal law in 9 Muslim-majority and in some parts of 3 Muslim-plurality states since 1999, when then Zamfara State Governor Ahmad Sani Yerima began the push for the institution of *Sharia* at the state level of government.⁴ Even though, the Sokoto jihadist, under the leadership of Sheikh Usman bin Fudi have actively used machineries to see that Islam has been reformed from the state of committing social vices to its right way. But, still it has not been corrected.

Connectedly, the implementation of *Sharia* legal system in Nigeria has created a bicker condition that led to riot and protest in some states condemning the full implementation of *Sharia* in the country. For that, the general problems relates to the total condemnation of the *Sharia* legal system and clarion to call on the federal government to declare the activities of states applying *Sharia* in full, illegal and unconstitutional.⁵ Others argue that the socio-economic and political conditions of the nation and the state that

² Tawfiq, Muhammed Ladan. *The Development and Application of Sharia in Northern Nigeria: issues and Challenges. A Two-Day Expert Group Meeting on Women's Rights Under Sharia Law in Nigeria, Held at Women Development Center, Agege, Lagos under the Auspices of Women Advocates Research and Documentation Center (WARDC). A Publication of the Friedrich Ebert Stiftung, (March 6-7, 2002).*

³ Coulson, Noel James and Shamsy Ahmed El. (2019). "Sharia." *Encyclopedia Britannica*, 24 Jan, 2019/Accessed 13 March, 2022, <https://www.britannica.com/topic/Sharia>.

⁴ Wikipedia, the free Encyclopedia. "Sharia in Nigeria." *Islam in Nigeria*, last edited 7 Dec, 2021. https://en.wikipedia.org/wiki/islam_in_nigeria.

⁵ Yahya, Olewale Imam. *Application of Sharia in Nigeria Fourth Republic: Problems and Prospects*. Oseni, Z.I. (2004)

declare full implementation of the Sharia are un conducive for successful implementation of Sharia.⁶

This paper, therefore, examines the consequences of *Sharia* implementation of 21st century in northern Nigeria. The paper will address some major areas of negation and give suggestion to such setback.

1.1. The Scope of Islamic law

The scope of Islamic law is wider and broader than that of civil and common law. Its principles encompass family law, law of *Mu'amalat*, law of succession, religious rituals, cultural and social etiquette. In addition, according to Ahmed (2018), the following are the scope of Islamic law:

- a. *Qur'an*.
- b. *Sunnah* of Prophet Muhammad (pbuh).
- c. *Fiqh* (collection of juridical opinions given by various Jurists as they pondered over the day to day application of *Sharia*).
- d. Fatwa (legal opinion typically non-binding issued by qualified Jurists).

In this regard, a reputed Islamic scholar *Ibn al-Qayyum* (d. 1347) as cited in Ahmed (2018) said; "*Sharia* is based on wisdom and achieving people's welfare in this life and the afterlife. *Sharia* is all about justice, mercy, wisdom and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense is a ruling that does not belong to the *Sharia* even it is claimed to be so according to some interpretation."

1.2. The Establishment of *Sharia* of 21st Century in Northern Nigeria

A significant development came in 1999 when the Forth Republic came into being and the Governor of Zamfara State, Alhaji Ahmad Sani, indicated his intention of re-introducing the application of the *Sharia* legal system including its criminal justice system. The call was received with tremendous enthusiasm by Muslims all over the country and with bitter criticism by many non-Muslims within and without the country. The Muslims argued that the 1999 constitution gives powers to states, under section 6(5)(k), to establish "such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal matters with respect to which a House of Assembly may make laws". The Governor of Zamfara State argued that matters relating to crime fall under the residual powers of both the National and State Houses of Assembly. Therefore, he went ahead to submit to his House of Assembly two-draft Laws, the *Sharia* Penal Code bill and *Sharia* Criminal Procedure Code bill in the year 2000 which they passed into law. He also established *Sharia* Courts by a law, which gave them powers to try cases involving both civil and criminal jurisdiction. The proponents of *Sharia* legal system also argued that Nigeria is a federation, which necessarily must allow for unity in diversity thereby providing an atmosphere for 100% peace and harmony within our divergent backgrounds of culture and heritage. Since the successful take off of the *Sharia* legal system in Zamfara State, the overwhelming majority of States in the

⁶ Yahya, Olewale Imam. *Application of Sharia in Nigeria Fourth Republic: Problems and Prospects*. Oseni, Z.I. (2004)

North have gone ahead to pass similar laws. The non-Muslims have argued that the Sharia legal system is unconstitutional and that Nigeria is a secular state that does not accommodate religion in matters of state, they have also expressed fear that the application of the Sharia will affect them (Bello, 2002).⁷

The re-introduction of ‘full’ Sharia in northern Nigeria was launched in Gusau, the capital of Zamfara State, on 27 October 1999. Prior to that, Sharia law in northern Nigeria was limited to civil matters and excluded criminal matters. By the end of 2001, 11 other states (Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe), and a number of local governments within them, had joined Zamfara in enacting wide-ranging legislation aimed at making their jurisdictions more ‘sharia compliant’, incorporating both civil and criminal matters, than they had formerly been. In sum:

- a. All Sharia States reinstated Islamic criminal law in their jurisdictions.
- b. All Sharia States also enacted Sharia Courts Laws, establishing new inferior Sharia Courts, with original jurisdiction to apply the full range of Islamic law, civil and criminal, to Muslims.
- c. A wide range of other legislation was enacted aimed at particular ‘social vices’ and ‘un-Islamic behaviour’, such as the consumption of alcohol, gambling, prostitution, unedifying media, and the excessive mixing together of unrelated males and females.
- d. A range of other ‘*ulama* institutions’ were established – Sharia Commissions and Councils of Ulama with advisory and executive functions; Zakat and Endowment Boards and Committees for the collection and distribution of *zakat* and the administration of *wakfs*; *hisbah* organisations to monitor and try to enforce Sharia compliance; and others.

1.3. The Merits of Sharia Implementation in Northern Nigeria

The following merits are achieved by implementation of Sharia legal system in Northern part of Nigeria:

- a. General teachings and orientation of the act of Ibadat (prayer, Zakah, fasting, pilgrimage) were taught by Sharia committee and scholars more especially in the villages where there is much ignorance.
- b. Equitable wealth distribution for expenditure and other revenues collected such as Zakah, Awqaf etc
- c. Criminal activities were drastically reduced
- d. Closure of unwanted centers, place like beer parlous, cinema, night clubs and many other places.
- e. Capital offences were reduced and punished (alcoholism, adultery and fornication, bravery and corruption, gambling and many other things).

⁷ Bello, Muhammed Uthman. *A General Overview of the Implementation of the Sharia in Nigeria Before 2000 and Beyond. A Two-Day Expert Group Meeting on Women’s Rights Under Sharia Law in Nigeria, Held at Women Development Center, Agege, Lagos, under the Auspices of Women Advocates Research and Documentation Center (WARDC). A Publication of the Friedrich Ebert Stiftung, March 6-7, 2002*

- f. Facilitate in reducing the spread of diseases such as HIV as a result Zinah, Tuberculoses for those who taking alcohol.
- g. People engaged and earned their means for sustenance through Halal way and avoid involving in Haram activities.
- h. People are living in peace and harmony in the society and they keep their relationship with others.

Therefore, Several researches has been done in relation to *Sharia* implementation in Nigeria⁸ examined the status of *Sharia* in the Nigerian constitution and discussing the demand of Muslim of south-western Nigeria for the establishment of *Sharia* court and *Sharia* court of appeal at different period. The study posit that *Sharia* did not receive proper recognition in the pre-independence or colonial oriented constitution of Nigeria, it received recognition in the independence and post-independence constitution which make the provision of *Sharia* optional for any state. The paper recommended that to allowed different legal system to operate in all part of the country. The current criminal and civil justice system in the south-western part of Nigeria should be expanded to take care of the legitimate and constitutional right and interest of Muslim faithful⁹, examined the role of FOMWAN in challenging the patriarchal ideology that is deeply rooted in the society and argued that the activism of the organization was instrumental in the enlightens and education of women especially on their rights. The paper played the significant role in improving the lives of Muslim women during the re-introduction of *Sharia* in northern Nigeria.¹⁰, analyses the judicial practice of modern Sharia courts with regards to crimes against life, limb and property, a major concern for Northern Nigerian Muslim in the past and present. The paper concluded that both the Emirs and Governors have been unable to find lasting solutions to the problem of reconciling the two legal systems¹¹, examines the socio-ethnic and religious configuration of Nigeria and the nature of Sharia debates in the Nigerian constitutions of 1977/19778, 1988/1989 debates and constitutional conference of 1994/1995. The paper argues that the genesis of the Sharia debates can be traced to 1956. The constitutional conference of 1994/1995 was not bedeviled by a serious acrimonious debate over the Sharia. The study concluded that the constitutionalization of the Sharia has subjected it to the vagaries of the political wind and made it easy prey to political fortune-Seekers¹², examines socio-economic and political implications of the extended Sharia on human rights of Muslim and Non-Muslim citizens. The paper also juxtaposes the adoption of Islamic criminal laws with a role religion and its law should

⁸ Makinde, Abdulfatah Kola. "The entanglement of Sharia Application in South-Western Nigeria." *Journal of Pan-African Studies* 10, no. 5 (2017).

⁹ Bawa, Aisha Balarabe. "Muslim Women and Sharia Implementation in Northern Nigeria: An Overview of FOMWAN." *UJAH* 18, no. 1 (2017). <http://dx.doi.org/10.4314/ujah.v18i1.8>

¹⁰ Weimann, G.J. *Islamic Criminal Law in Northern Nigeria: Politics, Religion, Judicial Practice*. Netherlands, Vossiuspers-Amsterdam University Press, (2010). <http://nl.aup.nl/books/9789056296551-islamic-criminal-law-in-northern-nigeria.html>

¹¹ Hassan, Abdulmajeed Bello. "Sharia in the Nigerian Constitution: Examining the Constitutional Conference and Sharia Debates in the Drafts." *Al-Ahkam Jurnal Pemikiran Hukum Islam* 29, no. 1, (2019): pp. 1-26. <http://dx.doi.org/10.21580/ahkam.2019.29.1.3158>

¹² Ikenga, Oraegbunam, K.F. "Sharia Criminal Law, Islam and Democracy in Nigeria Today." *OGIRISI: a New Journal of African Studies* 8, (2010): pp. 181-209. <http://dx.doi.org/10.4341/og.v8i1.10>

play for national integration and social cohesion. The study suggest way by which Nigerian Islamic law and religion will be made to join in winding the wheel of progress of Nigerian democracy.

2. Method

The study uses survey and discussion method to gathered data from the respondents. Based on the survey and discussion with some scholars, members of Hisbah committee, traditional rulers, members of Sharia implementation committee and politicians, the study posit the problems that bring about setback in the implementation of Sharia in Northern part of Nigeria.

3. Result and Discussion

3.1. The Consequences of *Sharia* Implementation of 21st Century in Northern Nigeria

As Nigeria embark to political epoch in the early 21st century led to the revival of *Sharia* law in some states in northern part of the country as the governing law of Muslim in all aspect of life. The major problems that the *Sharia* implementation of 21st century is facing include;

3.1.1. Inconsistence of Nigerian Constitution with *Sharia* Law

It is generally accepted that Islamic religious activities is geared toward strict adherent to *Sharia* that covers every aspect of human life, educationally, economically, socially, politically, morally, emotionally and spiritually. Therefore, *Sharia* derived its sources from the book of Allah (*Qur'an*), tradition of Allah's Prophet (pbuh) and other sources such as *Ijmah*, *Qiyas*, *Urf*, etc. However, when these states started reviving and re-enforcing *Sharia* law from its original source, they have face with constitutional problem in respect of the application of *Sharia* these sources as the penal law of the state. The first problem is legal supremacy of the 1999 constitution over *Sharia* legal system, section 1 of the constitution says;

“this constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria; if any other law is inconsistent with the provisions of this constitution shall prevail and that other law shall, to the extent of the inconsistency, be void”.

So also, section 36(12) of the Nigerian constitution is another problem that crippled complete *Sharia* implementation in northern Nigeria, which provided as follows:

“Subject as otherwise provided by this constitution, a person shall not be convicted of any criminal offence unless that offence is defined and the penalty therein is prescribed in a written law”.

In this regard, the written law in this sub-section refers to the act of national assembly or a law of a state. Therefore, this section 36(12) clearly indicate that any law that is not enacted by national assembly or state house of assembly can be considered as unconstitutional and is regarded as void.

Another constitutional obstacle as cited by Bello¹³, he asserted that constitution ensures for every person the right to freedom of thought, conscience and religion including freedom to change religion or belief, whereas under *Sharia* is *Riddah* (change of religion) is a capital offence. Consequently, the offence of *Riddah* is inconsistent with section 38(1) and by virtue of section 1 is unconstitutional.

3.1.2. Capital Offence Punishable by Sharia Law

Categorically, *Sharia* has legislated the punishment in respect of social vices such as prostitution, alcoholism, gambling, theft and many others. But, with the introduction of *Sharia* in some state in northern part of the country prostitution is been curtailed. Some prostitutes were married, others leave the state went to the state where there is no *Sharia* and some undertakes another economic activities. However, with get rid of prostitution the men who were adulterers and fornicators they now turn to house girls and married wives. As result of this change many house girls and wives ended with having unwanted pregnancy, H.I.V virus and high rate of criminals in the society increased. A typical example is the case of Amina Lawal of Katsina state an adulterer who was sentenced to death by stoning by a state *Sharia* court for conceiving a child out of wedlock and in addition film producing industries which now turn to be prostitute ground. At the same time, Islamic law state the punishment of the one who drink alcohol by flogging him/her with 80 lashes (*haddi*), amputation of hand as punishment for theft, 100 lashes for the punishment of fornicators and stoning to death for adulterers, which is also inconsistent with the Nigerian constitution. This legislation according to the constitution is degrading or inhuman based on the section 34(1). To link it up, all the cases that led to harshest punishment are not executed, the doers were kept in prison.

3.1.3. Hisbah Institution

Hisbah is an organization that regulates, monitor, evaluate, protect and try to enforce *Sharia* compliance and other duties within the limit of *Sharia*. However, with the introduction of *Sharia* legal system of 21st century in northern Nigeria, those who were employed to regulate the activities of *hisbah* are ignorant about the knowledge of *Sharia*. In some places politicians, criminals were employed to undertake the *hisbah* activities. In which most of them act beyond the limit of *Sharia* and the enforcement of *Sharia* law is skeptical to have and those in political power.

3.2. Lack of Qualified and Expert Judges

The majority of the judges in the *Sharia* court are not competent to undertake the act. They have no enough knowledge of *Sharia*. They rely or use classical rulings of *Malikiyyah* to rule on certain cases. Whereas, with passage in time and period a lot of issues were brought which they need immediate answers and only a *Mujtahid* (jury consult) is capable of giving Fatwa on some issues. This is also another barrier that crippled the smoothness of 21st century *Sharia* implementation in northern Nigeria. There is no fair trials, judges collect bribe and well to do people, politician influence judges and court decision.

3.3. The Political Problem

Involvement of politician to manage the activities of *Sharia* is another barrier that causes detrimental effect to the success of the *Sharia*. Almost in all the *Sharia* states the

¹³ Bello, Mohammed. *The Sharia Issue: Working Papers for Dialogue: Sharia and the Constitution*. Published by A Committee of Concerned Citizens, 2000.

management of *Sharia* is chaired by politician, this resulted in rejecting some aspect of *Sharia* which contradicts their interest and the *Sharia* is even skeptical to some politician and some places.

Therefore, these and many other are the consequences of 21st century *Sharia* implementation in northern Nigeria.

4. Conclusion

In conclusion, therefore, this paper concentrates on the virtue of full *Sharia* implementation in northern Nigeria and its benefits to *Muslim* life and society. So, the 21st century *Sharia* implementation in northern Nigeria is faced with challenges of constitutional inconsistency, problem of competent judges and jurist who will proceed over cases and many other problems.

The study recommend, that state legislative councils should enforce a state law that would provision *Sharia* legal system to be compatible, qualified and competent judges to be appointed as *Sharia* court judges, politicians should not be involve in the activities of *Sharia* and *Hisbah* custodian should be well train and educated.

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