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Sharī‘ah Debates and Constitutional Development in Nigeria

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This study examines the Sharī‘ah debates and constitutional development in Nigeria. It briefly highlights the ongoing controversy and the history of the issue from the pre-colonial to post-colonial periods with the insight into various debates on the impact on various Nigerian constitutions since independence in 1960. The findings shows that all Nigerian constitutions have sufficient provisions to justify the constitutionality of Sharī‘ah. It also reveals that antagonism to the constitutionality of Sharī‘ah legal system has emanated from Islamophobia which is based on their perceived Islamisation of Nigeria. The study therefore recommends that adherents of other faiths should request the government to include their respective religious law into the constitution of the country, and that all confessional traditions should learn how to tolerate and accommodate one another in order to give room to national integration and restructuring.

Introduction

Debates over the *Sharī‘ah* have generated a lot of public controversy in Nigeria and polarized opinion, challenging the national unity and integration of Nigeria as a polity. Despite the fact that the *Sharī‘ah* legal system had a long history in Nigeria dating before the pre-colonial period, it was undermined during the colonial protectorate era by efforts to subjugate it to the Western legal system. As a result of this development, they opted for another option, namely the limitation of *Sharī‘ah* legal jurisdiction to the personal and private matters of the people (*Ahwalu’sh-Shakhsiyyah*). This development on the status of *Sharī‘ah* within the legal system of the country preoccupied the minds of Nigerian Muslims after the independence of the country in 1960. This development led to a lot of hotly debated constitutional debates

on the precise role of *Sharī'ah* legal system. Out of these debates, those of 1978 generated more tension as it attracted both commendable and condemnable responses from the adherents of various religious groups. In this paper we seek to study these various *Sharī'ah* debates and their impact on constitutional development in the legal system of Nigeria and the popular reactions of the differing faith communities.

Conceptual Clarification of Key Terms

The term “*Sharī'ah*” is an Arabic word emerged from the root verb “*Shara^ca*” which means he introduced, enacted, prescribed, made or legislated law.¹ Literally, *Sharī'ah* means a waterhole, drinking place, approach to a water hole or a path leading to water. Technically, it is a revealed and divine canonical law of Islam.² In the legal context of the term, *Sharī'ah* is a detailed code of conduct and canon regarding the ways and modes of worship and the rules to judge between right and wrong in all spheres of human life.³ The term “Islamization” is derived from the verb “Islamize” which means ‘to convert to Islam or ‘to bring the influence of Islam on something’. With this understanding, Islamization could be defined as a process through which the private and public affairs of the people in a particular geographical location be subjected to the principle of Islam or be brought under the influence of Islam.⁴

The Sharī'ah Legal System within the Nigerian Historical Perspective

The *Sharī'ah* legal system predates the advent of British colonial government in the geographical area now known as Nigeria. The administrations of Kanem-Bornu, Hausaland, the Sokoto Caliphate and some Yoruba kingdoms have all utilized the *Sharī'ah* in their both private and public affairs. The best example in this regard was

¹ Cowan, J.M. *The Hans Wehr Dictionary of Modern Written Arabic*, (New York: Spoken Language Services, 1976), p.465.

² Ibid, p. 466.

³ Moshood, A. “*Sharī'ah* and English Law: Some Basic Differences” in S.K. Rashid (ed.). *Sharī'ah Social Changes and Indiscipline in Nigeria*. (Lagos: Islamic Publication Bureau, 1987), p.66.

⁴ Kreski, J & Jordan, L.L., *Webster's New Universal Unabridged Dictionary*, (New Jersey: Barnes and Noble Incorporation, 1994), p.755.

the ruler of Kanem Borno, Mai Humme Jilm who reigned between 1075 and 1086 C.E and implemented *Sharī'ah* as an official legal system and Islam as a state religion. He formulated a legal framework predicated on the Shariah that was popularly called '*Mune*'. This ruler established the Islamic judiciary in his cabinet and then invited and appointed several Islamic clerics from the North Africa to serve as judges in *Sharī'ah* courts of law, teachers, secretaries and administrators. During the reign of another outstanding ruler in Kanem-Borno, Dunama II, who reigned between 1221 and 1259 C.E., Kanem-Borno established educational relations with Cairo and Tunisia where students were sent to learn *Sharī'ah* law.⁵ In the same way, Mai Idris Aloomo who reigned between 1570 and 1602 C.E. separated the administration of judiciary from the executive by taking legal decisions out of the hands of political chiefs and setting up of *Sharī'ah* courts of law to dispense justice.⁶ This functioned in Kanem-Borno empire before the advent of Royal Niger Company (RNC) in 1851 when the then Shehu of Borno, Umar Ibn Muhammad Al-Amin Al-Kanemi signed the diplomatic treaty with the British colonial government.⁷

Islam arrived in the Hausaland in the fourteenth century of Christian era through commercial activities of North Africa Berbers and Wangarawa traders. In Kano, during the reign of Muhammad Rumfa who reigned between 1463 and 1499 C.E, *Sharī'ah* legal system become firmly rooted as various Islamic disciplines in Islamic law were taught in different places in the city. Due to the zeal of this king for the *Sharī'ah* , al-Maghili, a famous itinerant Islamic scholar, was invited to write a book which would guide his Islamic government on *Sharī'ah* political framework.⁸ Ibn Batutta, another popular Islamic scholar, also confirmed that the *Sharī'ah* legal system had been practiced in some parts of western Sudan presently known as

⁵ Kani, A.M. *The Intellectual Origin of Sokoto Jihad*, (Ibadan: Iman Publications, 1984), p. 18.

⁶ Quadri, Y.A. "The Survival of *Sharī'ah* in Multi-Faith Nigeria" in Muhibbu-din, M.A (ed.), *Journal of the Nigeria Association of Teachers of Arabic and Islamic Studies*, Volume 7, (Lagos State University, 2004).

⁷ Imam, Y.O. "Application of *Sharī'ah* in Nigeria's Third Republic" (2005), p.9.

⁸ Abdullah, U.Y. *Islam in Africa*, (Ijebu-Ode: Shebiotimo Publications, 1998), pp.100-101.

Northern Nigeria. Despite the widespread implementation of the *Sharī'ah* in the Hausaland, some provincial rulers persisted in patronizing traditional religions for some time. This ended during the reign of Uthman Ibn Fudi around the 1800s, in a campaign that later led to the formation of Sokoto Caliphate. This regime, under the able leadership of Muhammad Bello in Sokoto and Abdullah Ibn Fudi in Gwandu, ushered in the full application of the *Sharī'ah* legal system across the whole Northern Nigeria until the colonial occupation of the caliphate in 1903 C.E.⁹

In the area presently known as South-Western Nigeria, (Yorubaland), the *Sharī'ah* legal system was applied under some Yoruba kings in Ede, Iwo and Ikirun during the reign of King Habib Olagunju in 1856, King Muhammad Lamuye in 1859 and King Oyewole in the late nineteenth century respectively until the advent of colonial government in 1920.¹⁰ Some Yoruba Muslims in towns such as Epe, Ibadan and Ijebu-Ode demanded the retention of *Sharī'ah* courts of law in their domain to cater for domestic issues such as marriage, divorce and inheritance. This request was ignored by the colonial government. The colonial government had *ab initio* given the impression to some rulers and subjects that they would not tamper with the *Sharī'ah* legal system in the area of their jurisdiction but the reverse was the case.¹¹ Before they left Nigeria in 1960, they reduced the *Sharī'ah* legal system to the penal code in the then would-be Nigerian constitution.

Impact of Sharī'ah Debates on Constitutional Development in Nigeria

The first *Sharī'ah* debate on Nigerian Constitutional development was initiated by non-Muslims in Nigeria. This spirited dialogue took place during the 1957 London Constitutional Conference where some non-Muslims delegates moved a motion that the

⁹ Akintola, I.L. "Democracy, Secularism and *Sharī'ah*: A Crisis of Ideological cum legislative Identity in Nigeria," in Muhibbu-din, M.A, (ed.), *Journal of the Nigeria Association of Teachers of Arabic and Islamic Studies*, Volume 7, (Lagos: Lagos State University, 2004), p. 56.

¹⁰ Makinde, A.K. "A Study of *Sharī'ah* and its Application in Oyo and Osun States: Preliminary Findings," paper presented at the Postgraduate Seminar, Department of Arabic and Islamic Studies, Nigeria, University of Ibadan (2004), p.10.

¹¹ Oladimeji, L.F. "An Appraisal of the Place of *Sharī'ah* in the Nigerian Constitution". in Muhibbu-din, M.A (ed.) *Sharī'ah in a Multi-Faith Nigeria*. (Lagos: Lagos State University, 2005), p.26.

Sharī'ah legal system should be removed from the draft constitution of Nigeria. Their fear was that the non-Muslims would be subjugated and marginalized in the country if the *Sharī'ah* legal system continued to be in the constitution.¹² As a result of this development, the colonial government set up a panel of jurists of national and international repute to codify *Sharī'ah* legal system into the Penal Code of 1958. This Penal Code was passed into law by the Northern House of Assembly in 1959 and it came into force on Nigerian Independence Day: 1st October 1960.¹³

In 1963, there was a provision for a *Sharī'ah* Court of Appeal in the 1963 Republican Constitution in Nigeria. Its scope of jurisdiction was featured in Section 11 of the *Sharī'ah* Court of Appeal Law Cap 49, 78 and 122 law of Northern Regional part of Nigeria in which it is clearly stated that this law was meant for the Muslim citizens of that area only.¹⁴ This constitutional column was re-featured in Chapter VII, Section 261 of Amended Constitution of the Federal Republic of Nigeria of 2011 which postulates that there shall be *Sharī'ah* Court of Appeal for the hearing of appeal from native courts in respect of cases involving questions regarding Muslim personal law.

In 1972, a judicial conference was organized in Lagos, Nigeria, after which a communique was released. The seventeenth item of their communique stated that a Federal *Sharī'ah* Court of Appeal should be established as the final court of appeal with respect to Islamic law cases.¹⁵ The military government of the late General Murtala R. Muhammed took a cue from the resolution of the above-mentioned communique in 1975 when he directed that both Federal Court of Appeal and Federal *Sharī'ah* Court of Appeal be established at the federal level. This development was later left for the 1975/76

¹² Jamiu, S.M. "Colonial Impact on the Application of the *Sharī'ah* in Nigeria," (2001), p.27.

¹³ Abdul-Salam, H.A. "A Brief Appraisal of Islamic Law (*Sharī'ah*) in Nigeria," *Journal of the Nigerian Association of Teachers of Arabic and Islamic Studies*, Volume 6, Number 1, (Kano: Bayero University, 2001), p.37.

¹⁴ Rashid, S.K. *Islamic Law in Nigeria: Application and Teaching*, (Lagos: Islamic Publication Bureau, 1988), pp.224-233.

¹⁵ Adegoke, K.A. "*Sharī'ah* Issue in the Contemporary Nigeria 1979-2003," in Muhibu-ddin, M.A & Sanni, A.O (eds). *Transformation in Arabic and Islamic Studies. Studies in Memory Musa Ali Ajetunmobi*, (Nigeria: University of Ilorin, 2009 (Ijebu-Ode, Nigeria: Shebiotimo Publications), p.111.

Sharī'ah debate at the Constituent Assembly where the draft of the Nigerian constitution was to be considered by the Constitution Drafting Committee (CDC) set up by the Murtala Muhammed military administration in 1975. The committee concluded their decision after the assassination of General Murtala R. Muhammed in a mutiny coup of 1976.¹⁶

Their report was submitted to the immediate military Head of State, General Olusegun Obasanjo, on 14th September 1976. This report gave room for the establishment of a Federal *Sharī'ah* Court of Appeal and a State *Sharī'ah* Court of Appeal which should consist of a Grand-*Mufti*, a Deputy Grand-*Mufti* and not less than three *Qadi* (*Sharī'ah* Court Judge) as may be described by or under the legislative arm of the government.¹⁷ It should be mentioned at this point that this Constitution Drafting Committee (CDC) was chaired by Chief F.R.A. Williams, a Senior Advocate of Nigeria and a Nigerian legal luminary of international repute. Apart from this, the committee was composed of Muslims and non-Muslims from different parts of the country.¹⁸

After the submission of the report of the Constitution Drafting Committee, the issue was passed to the Constituent Assembly for deliberation before passing it into law under the Nigerian Constitution. In the Constituent Assembly, the issue became a hot-debated topic as it divided the house into two groups, pro-*Sharī'ah* and anti-*Sharī'ah*. After this hullabaloo in the Constituent Assembly concerning the constitutional recognition of Federal and State *Sharī'ah* Courts of Appeal, the bill was later passed into law in order to avert the crisis between Muslims and people of other faiths in Nigeria.¹⁹ By this, both the Federal and State Courts of Appeal were given a column in the Constitution of Federal Republic of Nigeria of 1979 that a *Sharī'ah* Court of Appeal could be established by any

¹⁶ Abdul-Wahab, T.A. *Application of Shari'ah in Southern Nigeria: The Hoax, The Truth*. (Ibadan: Al-Furqaan Publishers, 2006), p.6.

¹⁷ Adegoke, K.A. "Sharī'ah Issue in the Contemporary Nigeria 1979-2003," (2009), p.112.

¹⁸ Jamiu, S.M. "Colonial Impact on the Application of the *Sharī'ah* in Nigeria," (2001), p.28.

¹⁹ Abdul-Wahab, T.A. *Application of Shari'ah in Southern Nigeria* (Shaki:Al Furqaan Publishers, 2006), p. 7.

State of the Federation which made a request for one or both of the Courts of Appeal. The Column of the 1979 Nigeria constitution concerning the establishment of both Federal and State *Sharī'ah* Courts of Appeal has featured in the successive Nigerian Constitutions of 1999 and 2011.

It was within this broad framework that some states of the federation in the three geo-political zones of Northern Nigeria decided, at the beginning of twenty-first century, to establish a State *Sharī'ah* Court and a State *Sharī'ah* Court of Appeal to replace the State Area and Magistrate Court and the State Court of Appeal respectively. This was initiated by the Zamfara State of Nigeria on 27th October 1999 under the governorship of Alhaj Ahmad Sani Yerima. This initiative measure of the Zamfara State served as a wake-up for other Northern States in the federation as they supported the decision of Zamfara State and also embarked on the same measure one after the other.²⁰ Out of the three geo-political zones in the Southern part of Nigeria, it was only south-western geo-political zone which voiced their support for the introduction of *Sharī'ah* jurisdiction in the Northern geo-political zones and also show their interest of embarking on the same measure, the intention which was turned down by south-western governors.

Presently the *Sharī'ah* Court of Appeal (Federal and State) has not been established in any part of South-Western geo-political zones - despite the constitutional provision of this right and the large Muslim population in the area. As the south-western governors ruled out the official adoption of the *Sharī'ah* legal system in their states, some Muslim organizations in those states set up an independent *Sharī'ah* Arbitration Panel in 2002 at Ibadan, Osogbo, Abeokuta, Akure and Lagos in which the private Islamic matters, such as land dispute, marriage, divorce, inheritance, imamship *et. cetera*, were mutually settled

²⁰ Adegoke, K.A. "Introduction of *Sharī'ah* in the Northern Nigeria: Religious and Political Dimensions. *Ilorin Researcher*, Volume 4, (Ilorin: University of Ilorin, 2003), p.15.

in accordance with *Sharī'ah* legal system.²¹ These courts were operated by some independent scholars of Islam who were graduates of *Sharī'ah* from the Arabic and Islamic nations. Several cases have been presented to some of these independent *Sharī'ah* Arbitration Panels by the Muslims and there are encouraging reports that some of these cases have been mutually and amicably settled.

Debates on the Constitutionality of the Sharī'ah Among Non-Muslims in Nigeria

Non-Muslims, represented under the umbrella of various faith associations and other religious bodies, vehemently articulated against the *Sharī'ah* as a result of their impressions that:

- (i) *Sharī'ah* debates would eventually pave way to the Islamization of Nigeria in order to become Islamic State,
- (ii) accommodation of *Sharī'ah* debates in the Constituent Assembly is an act of giving preferential treatment and undue favouritism to the side of Muslims in Nigeria at the expense of other religious bodies, and this is in contrary to the multi-religious and pluralistic status of the country.
- (iii) Nigerian Muslims can hide under this *Sharī'ah* Debates to oppress and marginalize the non-Muslims in Nigeria.
- (iv) *Sharī'ah* debates in the Constituent Assembly would lead to a dual legal system in Nigeria and this development would strain the economy.
- (v) Islam is merely a religion like Christianity or any other traditional religion, and therefore should not be made to have a say in the public life of the people which the *Sharī'ah* debates want to bring up.²²

The reaction of non-Muslims towards the *Sharī'ah* debates threatened national unity and integration. This was showcased in the *Sharī'ah* debate which took place between 1975 and 1978 in the Constituent Assembly in preparation for 1979 Nigerian Constitution. Non-Muslims did not hide their feelings in attacking any attempt to institute the *Sharī'ah* legal system in Nigerian constitution. A series of lectures, seminars and symposia were

²¹ Ismaila, B.R. "A Preliminary Study on the Independent *Sharī'ah* Arbitration Panel, Ibadan, Oyo State (2002-2009)," in Adesewo, M.A, *et. al* (eds) *National Association for the Study of Religions and Education*. (Oyo: Federal College of Education, 2009), pp.506-507.

²² Opeloye, M.O. "Religious Factor in Nigerian Politics: Implication for Christian-Muslim Relations in Nigeria". *Journal of Institute of Muslim Minority Affairs*, Volume 10, Number 2 (1989), pp.357-358.

organized by the various associations of some religious bodies in Nigeria in which the Non-Muslims voiced out their opposition to the institution of *Sharī'ah* legal system in Nigerian constitution.²³

Such efforts revealed the full extent of the genuine fears of non-Muslims and also their intentions to physically resist government decisions even when they contradicted the basic premises of democracy (one man, one vote). This position was behind the employment of religious violence in the opposition to the institution of the *Sharī'ah* legal system in the Nigerian 1979 and 1999 constitutions. It is not out of tune to assert that all civil and tribal violence in Nigeria up till 1999 are insignificant if compared to the nature, scope, sophistication and globalised character of the violence that followed the signing into the law the Bill establishing the penal aspect of *Sharī'ah* in Zamfara State of Nigeria. The series of inter-religious violence that followed the declaration of *Sharī'ah* law in Zamfara States of Nigeria is highly remarkable in Nigerian societies in terms of human and material losses.²⁴ Opeloye, a renowned scholar and professor of Islamic Studies at Lagos State University, reacted that this negative development might have been averted if the Non-Muslims could have tried to understand the view points of the Muslims on *Sharī'ah* debates²⁵

Debates on the Constitutionality of the Sharī'ah Among Muslims in Nigeria

The *Sharī'ah* debates between 1957 and 1978 had a wider territorial appeal among the Nigerian Muslims as they attested the fact that Islamic law is part and parcel of Muslim communal identity and applied to Muslims only. As a result of this development, the Nigerian Muslims stressed that there was no amount of politicization and misrepresentation of the *Sharī'ah* debates by the Non-Muslims in Nigeria that would deter

²³ Abdul-Salam, H.A. "A Brief Appraisal of Islamic Law (*Sharī'ah*) in Nigeria," (2001), p.37.

²⁴ Sanni, A.O. "Terror in the Name of God and the Society: The Nigerian Youth and the Economy of Violence". *Journal of Oriental and African Studies*, Volume 17, Number 2 (2008), p.94.

²⁵ Opeloye, M.O. "Religious Factor in Nigerian Politics," (1989), p.359.

them from the pursuit of their constitutional right and religious freedom in the country as stated in Section 38 (1) of 1999 Nigeria Constitution which says:

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom (either alone, or in community, with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance. (Amended Constitution, 2011)

They, therefore, suspected the hullabaloo of the non-Muslim members of the Nigerian Constituent Assembly on *Sharī'ah* to be a symptom of unnecessary islamophobia and religious intolerance so as to pave way for the Christianisation of people. Opeloye reacted that the establishment of *Sharī'ah* courts cannot change a country into Islamic state as alleged by critics. It should be pointed that there are *Sharī'ah* courts in some African countries like Kenya, Uganda, Tanzania, Ethiopia and Gambia, still, they are not Islamic states.²⁶ The Islamisation of the country through *Sharī'ah* courts is unfeasible due to the constitutional provision of Nigeria that no government shall adopt a state religion. Opeloye further stressed further that operating *Sharī'ah* and common law legal systems in Nigeria need not cause economic wastefulness as this has become a universal practice in some parts of the world such as in Britain where English and Scot laws are operating *parri-passu*, in Egypt where the Coptic, *Sharī'ah* and common law courts are also in operation simultaneously. It is the heterogeneous nature of the country concerned that demands this arrangement.

The Muslim Students' Society of Nigeria in the Northern Zone reacted to the opposition of non-Muslims in Nigeria to the success of the *Sharī'ah* debates when they staged the first public peaceful demonstration under the leadership of Ibrahim Zakzaky of Ahmadu Bello University, Zaria and Aminuddin Abubakar of Bayero University, Kano outside the campus on 4th and 20th August, 1980 respectively. Ibrahim Al-Zakyzaky was the Amir of Muslim Students' Society of Nigeria of

²⁶ Opeloye, M.O. "Religious Factor in Nigerian Politics" (1989), p.360.

Ahmadu Bello University, Zaria, Kaduna State, Nigeria. Presently, he is the leader of the Twelver Shi'ite movement in Nigeria popularly known as The Islamic Movement of Nigeria which has been outlawed by Buhari government administration. The main objective of this demonstration was to express the Muslim opinion and to launch a more robust campaign for the recognition of *Sharī'ah* as a national law.²⁷

Conclusion

In this study I examined the various debates on the *Sharī'ah* legal system and its implications on constitutional development in Nigeria, vis-à-vis the reactions of non-Muslims and Muslims in Nigeria. The findings of this study show that all Nigerian constitutions contain sufficient provisions to justify the constitutionality of the *Sharī'ah* in Nigeria for the Muslims. Furthermore, non-Muslim antagonism to the constitutionality of *Sharī'ah* legal system emanated from Islamophobia which was predicated on a perceived Islamisation of Nigeria. As a result of these findings, the study recommends that the misconception of some non-Muslims on the constitutionality of the *Sharī'ah* should be addressed by the Nigerian government. Adherents of other faiths in Nigeria should request the government to include their respective religious law into the constitution of the country; the regime could establish the religious-based courts where the legal system of other non-Islamic faiths would be represented. Finally, all faith groups in Nigeria should learn how to tolerate and accommodate one another in order to promote national integration and restructuring.

²⁷ Sanni, A.O. "Terror in the Name of God and the Society" (2008), p.95.

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