



## SHARI'AH APPLICATION IN NORTHERN NIGERIA: AN ASSESSMENT.

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### Abstract

**N**orthern Nigeria is a region that Islam got into, about seven centuries ago, through Kanem Borno. It witnessed a revolutionary reform led by a re-known African Reformist- Sheikh Usman Bin Fodio that made the entire region under Islamic leadership, in 1804. About a century later (1900), the British colonialists arrived and eventually destroyed the remnants of 1804 reform revolution and replaced it with their secular system. After another century, some of the Northern Nigerian Political leaders began another move for the application of Shari'ah in the region. This time around, not through a revolution, but under the guise of constitutional provision of freedom of religion. Many Muslims welcomed the idea, while some few intellectuals have a contrary view. The objective of this research work is to assess the year '2000' "Gusau Declaration", compare it with '1804' revolution, conducted by Sheikh Usman Bin Fodio with a view to presenting Islam in its real picture as the only system capable of solving the compounding

problems of the world. Indeed, the world needs a system that is divine in nature, to give solution to these problems, and Islam has this solution.

### KEYWORDS:

Shariah,  
Application,  
Northern Nigeria,  
Reform.

Islamic revolution is never carried by sword; it is a change of attitude and behavior. Sword is only allowed to be taken in self defense. Islamic system, if applied accurately, it will be a source of blessing for all. It happened before, and it will be easier to happen again. The application of dual laws that are different in nature and content is the main hindrance that denies the successful implementation of Zamfara Shari'ah program. There are also

countless failures recorded within the two decades of its existence. However, few successes are also recorded. This research observes some vital issues that need to be addressed and/or amended for the full application of Shariah to be realized. The research uses the primary and secondary methods of research, employing the use of library, survey, and interview.

## INTRODUCTION

### BACKGROUND

The word Shari'ah appears only once in the Holy Qur'an, which technically means, a set of rules and regulations governing the lives of Muslims at all levels, in the sense that these rules and regulations cover their spiritual, religious, cultural, political, economic and other aspects of life. That is to say, We put you on a set of rules and regulations governing your lives in all ramifications and at all levels. The application of Shari'ah, therefore, means to govern people according to the divine rules of Allah in all their affairs; be it financial, economical, social, political, spiritual, cultural, legal systems, etc.

In what is now known as Nigeria (mostly northern part of the country), there was a Jihad led by Sheikh Usman Bin Fodio, which placed the entire area under the jurisdiction of Islamic state, with Shari'ah laws governing their affairs. This continued until the coming of the colonialists and the subsequent overthrow of the Islamic state. In 1959, there was a revolution against the Shari'ah laws, (Adegbite 27) which constitutionally set aside the adjudication of criminal offences by shari'ah courts and downgraded the Shari'ah to the position of native and customary laws. By this, the Shari'ah judges were only left to try civil cases. According to Justice Mohammed Bello,

The British found that the Emirates had [a] well-organized and efficient judicial system and administration of justice. Sharia law was the prevailing law in both civil and criminal matters administered by the Emirs' courts and Alkali Courts. Dogarai [royal guards] performed the functions of the police. The British did not interfere with civil law at all. However, with respect to criminal law, they substituted the following: death by hanging for the offence of homicide and for adultery, beheading and stoning to death, imprisonment as punishment for theft instead of amputation of hands, and payment of diya [compensation] in lieu of capital punishment was abolished. (Bello 63)

Juwayriyya Badamasuyi of Bayero University, Kano hurled some sharp accusations at the British:

Initially, the British, as part of their great design, accommodated the already-established system of judicial administration in northern Nigeria. The sharia was allowed to be applied in all cases appearing before the courts, as the colonial government claimed that it was not their desire to introduce any change which might possibly offend any emir or alkali. But gradually, the colonial government introduced the “repugnancy and incompatibility test” in order to overhaul and limit the application of sharia. Under this test, any provision or verdict of the sharia which, in their reasoning, is repugnant to “natural justice, equity and good conscience” or is incompatible with colonial laws, becomes null and void and is struck out. This set the pace for the gradual displacement of the sharia and its replacement with the English common law. In 1957, a panel of jurists was set up to study the judicial system as it operated in Pakistan and Sudan. The cover-up plan was to effect a reform which would not raise the sensitivity of the Muslims. That panel came up with the “Penal Code” and the “Criminal Procedure Code.” But the fact is clear that the two codes were not only drawn from sources other than the Qur’an and Sunna, but were deliberately planned to go against their provisions (Juwairiyya 63)

Suleiman Kumo of ABU added further: “The sharia not only ceased to be the ultimate legal basis and the sole test of legitimacy, but its very application became dependent on the laws introduced by the conquerors.” (Kumo 34n the year 2000, after the return of Nigeria to democratic rule, there were moves by some northern states’ governors (starting from Zamfara state under the governorship of Ahmed Sani Yariman Bakura) for the total application of Shari’ah laws. Many other governors followed Zamfara, as calls and pressures to emulate Zamfara state were intense by Muslims all over the Muslims’ predominant states. Majority of the Muslim scholars, in spite of their sectarian differences, supported Yarima Model Shari’ah program. However, some of the Muslim scholars are in total rejection of such calls, which was moved by political leaders. Crescent International reported Sheikh Ibrahim Zakzky- a Zaria based Islamic scholar as not supporting the program. The Christian community too, are opposed to it. (Crescent 1999) The former, in fear of misusing the Shariah to black-paint Islam, while according to the later, the program is nothing but conspiracy to disintegrate and Islamize the nation.

The shari’ah application continued as programmed, with some inconsistencies; here and there. In the legal aspect of it, some Hudud punishments were implemented. In Katsina state, one person was executed on accusation of culpable homicide, without following due process of law. (Wikipedia ) while in some other places, the decision of Shari’ah judges were set aside by courts of appeal, on grounds of Inconsistency.

One of the important areas of the Shari'ah program is the department of Hisbah, which is shouldered with the observance of "Amru bil Ma'ruf wan Nahyu 'anil Munkar"- Enjoying good and forbidding wrong. (Muhd Muhd Bununu-A Hisbah judge in Bauchi Shari'ah Commision). Under this, the Hisbah department shoulders reconciliation of marital disputes, debts settlements, arbitration between warring parties, eradicating social vices, collection of Zakat proceeds and distributing same to its rightful sharers, etc.

### **THE MEANING OF SHARIAH**

*"Then We made you to follow a course in the affair, therefore follow it. And do not follow the desires of those who do not know. Surely they shall not avail you the least against Allah." (Surah al-Jathiyah, 18-19)*

The word 'shari'ah' literally means waterway that runs one single course leading to a main stream. It is also borrowed from here to refer literally to any way, road or path that leads to a goal, be it a village, city, or building. Technically it refers to a set of rules and regulations governing the lives of Muslims at all levels, in the sense that these rules and regulations cover their spiritual, religious, cultural, political, economic and other aspects of life. No part of Muslim endeavour can be outside the scope of the shari'ah. The shari'ah is a path set by Allah ta'ala for His Messenger and those who accept him to follow in order to attain success both here and in the hereafter, when we ultimately return to our Lord. (Zakzaky )

Sharia law is Islam's legal system. It is derived from both the Koran, Islam's central text, and fatwas - the rulings of Islamic scholars.

Sharia law acts as a code for living that all Muslims should adhere to, including prayers, fasting and donations to the poor.

It aims to help Muslims understand how they should lead every aspect of their lives according to God's wishes.

*"He has made plain to you of the religion what He enjoined upon Nuh and that which We have revealed to you and that which We enjoined upon Ibrahim and Musa and Isa: then keep the religion and be not divided therein" (S. ash-Shura 13).*

According to Sheikh Zakzaky, "The first principle of the deen, which is tawheed, remained unchanged from the time of Adam (as) to the Last Messenger, Muhammad (saw). Before Musa (as) the deen used to contain only the tawheed and a little shari'ah." This fact can be clearly seen in the story of Yusuf's brethren, where Allah the Exalted says:

*“So he began (the search) with their baggage before (he came to) the baggage of his brother; at length he brought it out of his brother’s baggage. Thus did We plan for Yusuf. He could not take his brother by the law of the king except that Allah willed it (so). We raise to wisdom whom we please: but over all imbued with knowledge is One, the All-knowing.” (S.Yusuf: 76).*

The deen of the king translated here as the law of the king refers not to the shari’ah but to the custom of the people of Egypt then. Similarly, Yusuf (as) was able to take his brother not by the shari’ah but by the then custom of the people of Palestine - where a thief when discovered became the captive of the owner of the property that he had stolen. Ibid.

From the time of Musa (as) to the last Messenger (saw), the deen of Allah was completed; law and worship. As Allah ta’ala, referring to Jews, Christian and Muslims, says in the Qur’an:

*“For everyone of you we appointed a law and a way” (S.al-Ma’idah: 48).*

#### **The shari’ah as law of governance**

*“Those who do not govern (judge) by that which Allah has sent down (revealed), such are:*

- 1. Rejecters of truth “Those who do not judge by what Allah has revealed are indeed the unbelievers.” Q 5: 44*
- 2. Oppressors. “Those who do not judge by what Allah has revealed are indeed the wrong-doers.” Q 5: 45*
- 3. Transgressors “and those who do not judge by what Allah has revealed are the transgressors.” Q 5: 47*

The root-words hukum and hakama mean to judge or to govern. Thus, judgment, law, authority and government interwovenly mean one and the same thing to the Muslims. The above ayaat do not simply refer to the laws applied in the courts of judges but refer to the entire system of government.

This can be clearly seen in other ayaat related to this. For example:

*“Judge them (govern them) by that which Allah reveals” (Q 5: 48)*

*“And judge (govern) them by that which Allah reveals” (Q 5:47)*

*“Do they seek after a judgement of (the days of) ignorance? but who, for a people whose faith is assured, can give better judgement than Allah?” (Q 5: 50)*

*“Verily to Him belongs the authority and He is swift in taking account” (Q 5: 62)*

*“Verily the creation as well as (the management of) the affairs (thereof) belong to Him” (Q 7: 54)*

*Here, it is very clear that the management of creation is Allah's alone; no one has the authority to govern its affairs except by the authority of the Creator.*

*“O Dawud, We appointed thee as a viceroy (khalifah) in the land so govern by truth (and justice) between men and follow not desires that can mislead thee from the path of Allah.” (S. Saad 26)*

There is no dispute about the fact that the duty of any khalifah is not only to judge but to govern. In fact, governance is his principal duty.

*“Authority belongs to Allah alone. He hath commanded that you worship none except Him. That is the right religion, but most men understand not.” (S. Yusuf 40). “Say, for me, I (work) on a clear sign from my Lord, but ye reject him. What ye would see hastened, is not in my power. The command [authority, judgement] rests with none but Allah: He declares the truth, and He is the best of judges.” (Q 6: 57.)*

From the above ayaat and numerous similar ayaat, judgement (hukum) belongs to Allah, and that to judge and to govern mean the same thing. Authority and government also belong to Allah, and He has revealed laws in order to judge and to govern. This set of laws is simply called the shari'ah. Shari'ah is, therefore, not only a legal system but also a system of governance as well. A Muslim in a position of authority can only govern by the shari'ah. Similarly, Muslims cannot agree to be governed except by the shari'ah. For mankind to be just and to show gratitude he has to follow the deen of Allah. The relationship between man and God is the deen which ties man with his lord. By it, he pays the debt of being created and nourished by Allah ta'ala (of course he can never pay it completely), and for his gratitude, Allah Ta'ala rewards him here on earth, and in the hereafter by a better life than the earthly life. The deen of Allah to mankind remains unchanged: Islam, surrender to Allah. It has been the deen of all the Prophets from Adam (as) to the Seal of Messengers (saw).

Human beings, as servants of Allah, should observe their obligations towards their Lord. “If human beings cannot fulfill their obligations towards their Lord except by shari'ah, then we are without religion if we are without shari'ah. Islam and shari'ah are indeed inseparable; each is the practical manifestation of the other. One cannot have Islam without shari'ah or shari'ah without Islam.”( Zakzaky Op cit)

#### **Overtured and Narrowed meaning of shari'ah**

The normal books of Islamic fiqh, after brief introductions to the principles of faith, divide their text into two parts: ibadaat (acts of worship) and mu'aamalaat (transactions, dealings). The first part deals with rules and regulations for the performance of acts of worship such as prayer, fasting, pilgrimage and so on. The second part deals with rules and regulations on transactions between people. This part covers all interpersonal, communal and international relations such as marriage, trade, debts, partnership, and so on. It is also here that hudud (or prescribed limited punishments) are discussed. Whereas the shari'ah really covers all aspects of human life, the one part that attracts the attention of almost everyone, particularly the non-Muslims, is the hadd (the prescribed punishments in the Qur'an), so much so that shari'ah to them becomes synonymous with punishment. Zakzaky buttresses further: "This is to such an extent that almost every person, Muslim or non-Muslim, however ignorant, knows the prescribed punishments for theft and adultery. Sometimes they are even describing it with crude words like amputation or chopping off limbs (Zakzaky)

Of course, there are prescribed punishments for the offences of false witness, fornication, adultery and theft. There is also the qisas (retaliation), but all these things together constitute a small part of what the shari'ah is all about. Dr Mujtaba Abdulkadir during our interview, shows his concern on this, "It is unfortunate that even the Muslims are ignorant of what the Islamic Shariah is all about. They thought Sharia to be only the practice that begins and ends in courts" (mujtaba interview)

#### **THE REFORM OF SHEIKH BIN FODIO**

Islam was introduced into what is now Nigeria through Kanem Bornu Empire in the 11th century. At this time, Islam thrived as a court religion together with its Sharia while few commoners practiced it in their private lives. This was the situation of Islamic law in the enclave until 1804 when Uthman dan Fodio launched a revolutionary reform. According to Gwandu:

*"Syncretism was the order of the day and Islam was almost entirely confined to dry rituals. In the social, political and economic spheres, Islam was not allowed to interfere. The rulers and their cronies among the so-called ulama conspired to erect a thick wedge between the masses and the true Islamic teachings in these spheres of their lives. In the administration of justice, Islamic law was resorted to only where it happened to serve the interest of the rulers. The total picture, in the eyes of any serious-minded and dedicated Muslim, was very dark".*

Sheikh Usman Bin Fodio travelled far and wide in search of knowledge, before embarking on his reform mission.

Since the most important factor in the spread and development of Islam is education, Usman preoccupied himself with teaching and preaching. In this, he remained indefatigable, moving from one place to another. He started from Kebbi and Zamfara and then to other parts of Hausa land. Before he finally settled at Degel. (Yusuf)

The leaders of the reform, having being equipped with knowledge, they began their reform agenda with educating the mass populace with religious knowledge.

Therefore, right from the beginning of his preaching tours, Usman focused his attention on the problems of mass ignorance of Islam in the society, the rigidity and venality of Ulama'u, the issue of syncretism, and the question of belief and unbelief. The ideological orientation of the [reform] leaders were then shaped based on the problems in the society. Tauhid, eradication of injustice and establishment of pristine Sunnah served as their main focus. (Yusuf ).

The Sheikh made use of mosques as the main center of learning. Scholars in different towns were instructed to be conducting lessons in their various mosques, teaching people the true ideals and values of Islam. The sheikh himself opened such centers at Degel.

Part of his strategy was that, in every Mosque, there must be a scholar engaged in teaching and preaching. By the time that Shaykh settled at Degel, the town then developed to be a kind of University of its time. Scholars all over Hausaland and Bornu were finding their ways to Degel and becoming a student of Shaykh Usman, became not only a prestige, but a qualification. This therefore helped tremendously to get educative people who afterwards helped in the running of the administration of the Caliphate. A. Smith further said: "Shaykh Usman was a great teacher, and his students became Emirs, Governors of provinces, directing the lives of millions of peoples in the effort to build a reformed society. (ibid).

The reformer was able to establish a pious community with a refined mind and a government that was so concerned with the development of political, social, cultural and economic life of the people. Omar Bello comments: "The establishment of religion, justice and the welfare of the people was the main objective of the Sakkwato Caliphate." Muhammad Bello, the brother and successor to Danfodio established various agencies to promote justice and accountability at various fronts, including even the emirs and the Sultan himself.

There were controls on arbitrary levying of taxes, inadequate remuneration for workers, confiscation of property and deviations from the sharia. Non-compliant officials could be dismissed. One agency was designed to stop the exploitation of people by traders and craftsmen. He protected public paths and property from being grafted on to the private properties of greedy people. That same office was also responsible for preventing immoral acts in public. <http://www.socialtheology.com/docs/vol6-ch3.pdf#page=3&zoom=auto,-207,350>

A good testimony was given by A British explorer, Clapperton, while travelling through the area. He commented on the strict enforcement of Islamic laws “that the whole country, when not in a state of war, was so well-regulated that it is a common saying that a woman might travel with a basket of gold upon her head from one end of the...dominion to the other.” (ibid)

Ahmed also observes that “the reform of Uthman dan Fodio “put in place a highly centralized system of criminal justice administration and a distinct legal system” (ibid)

#### **THE COMING OF THE COLONIALISTS**

The scenario, however, changed with the advent of the British colonialists in 1900, who, after the overthrow of the Sokoto caliphate, gradually set aside the shari’ah laws. Certainly, this colonial measure curtailed drastically the jurisdictional scope of Sharia, but it was in 1959 that full application of Sharia, including Islamic criminal law was finally legislated out of existence. The supplanting Penal Code 1959 despite its Sharia bias was a fruit of the British colonial effort to set aside the shari’ah. Although the code retains most of the Sharia offences, the punishments thereof were radically altered. In addition, the gradual setting aside of Sharia criminal justice system was quickened by the provision of section 3(2) of Northern Nigeria Penal Code Law, which states that “no person is to be liable to punishment under any native law and custom”. Further restriction was also made with the constitutional abolition of unwritten customary law. Thus, section 22 (10) of the Republican Constitution 1963 states that: “no person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore, prescribed in a written law.” This provision was retained in section 33 (12) and section 36 (12) of 1979 and 1999 Constitutions respectively.

#### **YEAR 2000 RE-APPLICATION OF SHARI’AH IN NORTHERN NIGERIA**

Nigeria is one of the fastest growing economies in Africa, yet more than half of its population are below the poverty line of \$1,90 per day. And the poorest

state is Sokoto in the north Western Region. According to the Emmanuel Mayah

Poverty in Nigeria is particularly outrageous because it has been growing in the context of an expanding economy where the benefits have been reaped by a minority of people, and have bypassed the majority of the population. Annual economic growth averaged over 7% in the 2000s, and yet Nigeria is one of the few African countries where both the number and the share of people living below the national poverty line over that period, increased from 69 million in 2004 to 112 in 2010, equivalent to 69% of the population. In the same period the number of millionaires increased by approximately 44%. Income inequality, as measured by the Gini Index, grew from 40% in 2003 to 43% in 2009. Regional inequality is high in Nigeria, and it translates into higher rates of poverty in the north-western states of the country. For example, in Sokoto State, 81% of the population is poor, while poverty incidence is much lower, at 34%, in Niger. (Emmanuel et al 5)

This has been the situation in Nigeria and particularly the Northern part, when Nigeria was returned to civil rule in 1999, after about 16 years of military rule. Months later, there were calls for the re-application of full Shari'ah laws in some of the Northern States of Nigeria that are pre-dominantly Muslims. Zamfara state under the governorship of Ahmed Sani Yariman Bakura took the lead and launched the Shariah in October 1999, which came to effect in January 2000. By the end of 2001, the following 8 states, Bauchi, Borno, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, and a number of local governments within them, had joined Zamfara in enacting wide-ranging legislations, aimed at making their jurisdictions more 'sharia compliant', incorporating both civil and criminal matters, (Wikipedia sharia) than they had formerly been. In sum:

- All Sharia States reinstated Islamic criminal law in their jurisdictions.
- 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. (Vincent 731).
- 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.
- 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. (Galadima 97)

Unlike the reform revolution of Sheikh Usman Bin Fodio, the Zamfara Shari'ah application did not concern itself with educating the people, the need for soul refinement, which is the basis of Islamic revolution, such would not be expected from the sponsors of the program, as they are only political leaders in a secular society, whose main concern is getting popularity and support of the electorates. Their Shari'ah application is mainly witnessed in legal aspect, which constitutes very little percentage of Islamic Shari'ah. Shariah laws regulate every sector of human life; economic, political, cultural, social as well as legal aspects.

The welfare of the people has never been their concern. Ahmad Mafara, A citizen of Zamfara state and a senior lecturer with Bauchi State University, Gadau commented on this:

“Our people are living in abject poverty, that is why we are educationally backward. This is clearly portrayed in our work force, as most of our employees are citizens of other states. There is no access road, no portable water supply, no stable power supply, no adequate health facilities etc. it is in such situation that the politicians declared what they call: “full application of Shariah. This is disastrous.” (Ahmad interview)

In essence, Zamfara Shari'ah introduced nothing more than giving the Shari'ah courts the jurisdiction to try criminal cases under Shariah laws, the permission that is not granted by the Nigerian constitution. Lateef Adegbite denied that Zamfara has introduced a new sharia. “No, sharia has always been part and parcel of the legal system of Zamfara State and also the legal system of nineteen states in the northern part of the country. What the State government has done is to extend the application.”(Adegbite sharia dev). But according to Prof Dahiru Yahaya of BUK (The oldest serving Professor), the Zamfara Shariah model has recorded successes in some areas. In his words:

One of the achievements of the 2000 shariah application is reviving the courage in the minds of the Muslims, looking at how they massively supported the program. Secondly, the institution of Hisbah, especially in Kano State, records tremendous achievements in discharging their main duty of ‘Amru bil Ma’ruuf wal Nahyu ‘anil Munkar. (Yahaya Interview)

Furthermore, the sponsors of Shariah application extended its application from civil to criminal laws and this is what brought about the constitutional conflicts that the Shari'a application is confronted with.

### Constitutional Conflicts

Looking at the provisions of the Nigerian Constitution and the divinity of the Holy Qur'an, there is no how to join the two laws without disagreement. Allah says: The total application of Shari'ah is only possible, where the system of government is purely Islamic. In such a situation, the Shari'ah, as a legal system, is seen as part of a complete whole, the whole being the Islamic system, which encompasses all aspects of life, political, economic, social, cultural, legal and so on. Allah says in the Holy Qur'an:

Allah has ordained for you that religion which He commanded unto Noah, and that which We inspire in thee (Muhammad), and that which He commanded unto Abraham and Moses and Jesus, saying: Establish the religion, and be not divided therein. Dreadful for the idolaters is that unto which you calls them. Allah chooses for Himself whom He wills and guides unto Himself him who turns (towards Him). (Q 42:13)

The application of Shariah as one of the legal system in Nigeria, under the Nigerian Constitution, can be possible, but not without two conflicts. One conflict will be with the constitution, which will claim priority over the Shariah and will therefore place it under its control and regulations. The other conflict will be with the Shariah itself, which, as a law of Almighty God claims superiority over all laws, and, therefore, cannot accept the supremacy of the Nigerian constitution. In the Holy Qur'an, Allah says: "Shall I seek a source of law and a Judge other than God? When it is He Who revealed to you the Book fully detailed..." (Q 6: 114)

These conflicts and discontentment will continue until Muslims arrive at a desired equilibrium. And that is when the Shariah reigns supreme over their lives; that is when the Shari'ah is the overall law governing their entire lives; when the Shariah is not only a legal system, but a system of their government as well. Indeed, it was the system governing the lives of the Muslims here before the advent of colonialists. . In the Holy Qur'an, Allah says: "Shall I seek a source of law and a Judge other than God? When it is He Who revealed to you the Book fully detailed..." (6: 144)

Placing the right to practice the Shari'ah under the constitutional provision of the right of the citizens to practice the religion of their choice as individuals or in association with others, including the right to change from one religion to another is absurd, to say the least. Man has been given free will as a gift from Allah (SWT). He is given the chance to surrender that free gift voluntarily back to Allah and act according to the will of Allah. While he cannot be compelled to surrender that free will, he has no right , once he surrendered it and, therefore become a Muslim, to change and claim it back. Thus, a Muslim has no right to

change his religion-a right which the Nigerian Constitution accords him. .” The Prophet (SWA) was reported saying “Whoever changes his religion, kill him” (Sahih al Bukhari: 6922). (section 38(1) of the Constitution of the Federal Republic of Nigeria 1999 (1999 Constitution). The constitution, being man made law can also be changed, amended or modified. The whole constitution can be set aside, as this has always been the order whenever the military takes over.

This also brings the question of which of the two shall surrender its supremacy in the event of clash – Shari’ah or the constitution? Placing the Shari’ah under the constitutional provisions made the answer obvious, but no Muslim can configure the law of Allah bowing to the law of man. The argument that the two cannot contradict does not hold. Muslim scholars of all ages did not hesitate to declare that if a Hadith (saying of the prophet) contradicts any verse of the Qur’an, the former is rejected. (Sahihul Bukhariy <http://quranic.org/82/> )

Another conflict that is bound to arise is who has a final say in the interpretation of the Shari’ah? Shall it be the constitutional courts, because the Shari’ah is placed under the constitution or the unofficial council of Ulama’ which is unknown in the constitution? Certainly, whoever has the final say must also be in authority to enforce that final say.(Zakzaky 14)

There is also the question of who is the custodian of the Shari’ah? Shall he be the custodian of the constitution as well, who is the Commander-in-Chief of the Armed Forces? This is an office that can be occupied by a non-Muslim. Can the divine law be placed under the care of such an office, or so to speak, anybody, including a non-Muslim? (Tsoho interview)

Some of the proponents of Zamfara Shariah do give example of plurality of laws during the time of the prophet (SAW). On this, Zakzaky gives comments: Those who cite the example of plurality of systems of law during the prophet (SWA) and the time of Sheikh Usman Bin Fodio fail to realize that equality was not given to all the laws, talk less of implying superiority of another law over the Shari’ah. In these cases, it was the Shari’ah that made provision for other laws to be practiced under it. All laws were also applied under the authority of the Islamic leader. (Zakzaky 15)

Another point of conflict is the idea that the Shariah applies only to the Muslims. Of course certain provisions of Shariah do not apply to Non-Muslims, Allah says: “There is no compulsion in religion” (2: 256), but Shariah governs the entire society. When adopted, it is supposed to be the law of the land. Where also some of its provisions are not applicable to the Non-Muslims, it is superior to any law that applies to them.

Ibrahim Zakzaky talks on another conflicting view, when he says:

Of similar nature is the conflicting view regarding the adoption of state religion, which the Nigerian Constitution prohibits and the idea of Islamic state. While the idea of state religion is much known to the West, the idea of Islamic state looks similar to the Islamic concept of Darul Hijra and Darul Harb. Shari'ah is not meant to be applied in Darul harb. Saying neither the country nor the state applying the Shari'ah is Islamic is like having a non Muslim performing the five daily salat or fasting the month of Ramadan. The idea that a state can adopt the Islamic legal system without adopting Islamic religion is contradictory. It is like accepting a part of a whole and at the same rejecting that whole. If you are not interested in Islamic religion (the whole), you have no business adopting its legal system (the part). Shariah is part and parcel of Islam. (Zakzaky 15)

Prof Ibrahim Sulaiman buttresses further:

*“to confine the sharia to a particular area is to mutilate it and create a fertile ground for its eventual death, as no legal system can operate successfully without its social, political, economic and administrative arrangements supporting it.” The secular ideal is not only to subordinate sharia to common law, but to have the latter replace sharia altogether. Such fading away would, of course, be consistent with the classic expectation of secularism that religion as a whole will wilt away as “enlightenment” conquers hearts and minds of more people. If sharia will be allowed to continue at all, it will be in a restricted sense that the secular mind does not consider repugnant. However, a legal system cannot operate successfully where the culture does not support it. “How then do we expect the sharia to operate in a society which is totally subjected to English customs and values? And how can the sharia operate successfully when it is imprisoned in the narrow cell of personal status?” It was never meant to be so marginalized; it will shrivel up. This arrangement amounts to paving “the way for its eventual elimination in favor of the English system (Suleiman)*

These are some of the conflicts that are anticipated to arise after “Gusau Declaration ‘99”, since the Shari'ah is placed under the Nigerian Constitution that believes in secularism. The Shari'ah, as a course meant to be followed in Islam, shall be seen as a part of a complete Islamic framework. There can be no Shariah without Islam and no Islam without Shariah. Shari'ah is meant to be

applied only within an Islamic system. Applying Shariah under any governmental system, other than Islam, will subject the Shari'ah to restrictions, manipulations and further abuse. Sheikh Ibrahim Zakzaky, in his response to a question posed by American Journalist about his reservations on what is going on in 13 northern states of Nigeria in regards to Shari'ah application, has this to say:

“The Shari'a law has governed this society before the coming of the colonialists and certainly it didn't come about spontaneously. First of all, people converted to Islam in large numbers and of course large number of people migrated with their faith and settled in this area, then came a sort of reformist movement which seeks to change the laws from the old traditional system to the Islamic one and then came at the beginning of this century, the British Colonialists who also changed the law from what it used to be to what it is now, call it anything but it is not Islamic. So it is my view that when next you change to Islamic system, you need to make similar changes as well. One has to see that now it is the Islamic system governing the society then you can apply the law but to apply an Islamic law in a system, which is generally accepted, as un-Islamic is like taking a different system of law to work with a different system of government. (Zakzaky IM.org)

Those thinking of applying Shari'ah in any society, should think first of making the state or government of the society Islamic. The shari'ah is meant to be applied by an Islamic government in an Islamic environment. The adoption of Sharia'ah in an Un-Islamic system of government is not a step towards realization of that goal. This fact is clearly demonstrated in procedure followed by the Prophet (SWA). Most verses containing laws were revealed in Madinah, where the Messenger had full authority. In Makkah, when the Quraish had the authority, verses of the Qur'an were mainly around establishment of faith. The Shari'ah is meant to guide and guard the Islamic system and preserve its purity. Where punishment has been prescribed, the wisdom behind that was to guard the purity of the society, where evils are the order of the day. Islam must come first as a system then the Shari'ah, as a guard, guide and protector, last.

#### **SUCCESSSES AND FAILURES OF THE SHARI'AH APPLICATION IN N/N**

The Nigeria research Network conducted a research project, which aimed at exploring the trajectories and consequences of shari'ah implementation in Northern Nigeria between 2000 and 2015 (15 years). This research work found their research very rich with no significant change five years after, and therefore, worth mentioning. They focused on five key areas: the consequences of gender relation; the courts; the Hisbah department; the Zakat

and Waqf department (alms and endowment); the impact on the Ulama (scholars) and wider public perception of the Shari'ah implementation. One vital area, their research did not touch is the attitude of the leaders towards the Shari'ah application. The followings are their findings:

*“Firstly, we found that some of the more alarming expectations around Sharia implementation do not appear to have been realized.*

*We found that Islamic criminal law was not being imposed on non-Muslims against their will, and serious punishments such as amputations and stoning to death were rarely being imposed – and where they were imposed, were not being executed.*

*The Sharia courts were generally working to the satisfaction of the people they served, although there were clearly problems – notably, defendants often did not know their basic rights and no one was required by law to inform them, nor was there any requirement to provide legal representation for those who could not afford it. Poor administration, record-keeping and data collection were also an issue.*

*Equally, while the hisbah were carrying out the controversial coercive activities related to public morality with which they are often negatively associated – such as enforcing dress codes, preventing the performance of music and films etc – and remain a source of some anxiety for some Muslims and non-Muslims, they also perform an important social welfare function for those neglected by the state.*

*Hisbah carried out a surprisingly wide range of religious and social activities, from the more expected, such as evangelical functions, the repair of mosques and the protection of people at religious events etc to the less obvious, such as traffic control, promoting science exhibitions, organising workshops on drug addiction etc – among many other activities. In fact in some states – for example Kano – hisbah legislation had no particular focus on Sharia implementation at all.*

*Overall, we found hisbah varied in character significantly across states and were highly adapted to different local contexts. Attitudes towards the institution were quite mixed across states too: in Niger, only 19.7% felt hisbah were more trustworthy than the police, compared with 84.3% in Kano; only 18.8% of respondents in Niger felt they treated women fairly, compared*

with 88.4% in Kano. However few respondents felt they should be disbanded (1.3% in Niger vs 4.7% in Kano).

We found that the collection of zakat and waqf also varied widely across states – with significant differences in the legislative framework and collection and distribution processes.

Efficiency was frequently hampered by an absence of information or agreement about some of the basic parameters of collection, such as the level of zakat, the amount of “zakatable” wealth in a community, or the level of poverty that needed alleviating. We also found that collection from waqf – which has been used effectively in many Muslim countries to fund the construction of schools, hospitals and universities – was negligible. As a result, one of our recommendations is for the establishment of proper university training programmes in zakat and waqf administration and management in Nigeria.

Turning to gender dimension, we found that women were major users of Sharia courts, mainly to resolve interpersonal, marital and family disputes: they constituted over 70% of the complainants at some courts. The courts were thus an important forum of access to justice for Muslim women, who we found benefitted from the speedy, familiar, non-technical, and comparatively user-friendly processes of the Sharia courts. The limited surveys that have been conducted in relation to some Sharia courts showed women’s user satisfaction levels ranging from 52% to 89% over a period of five years.

However, we also found that women were poorly represented in the Sharia judiciaries. In Jigawa and Kano States, for example, women formed less than 3% of the staff and no women have been appointed as Sharia court judges in any of the Sharia states. [this is not a point of failure, as in Islam, women lack the quality to judge.] Women also faced a number of obstacles to using the courts, including the cost, and cultural attitudes that discourage the use of litigation to claim rights.

We also found that women turned to hisbah for dispute resolution: in Kano, it is estimated that 70% of the disputes being mediated by hisbah were family and matrimonial cases brought by women. Representation of women among hisbah personnel was also greater than in the court system.”

In addition, women appear to be particular beneficiaries of the zakat and waqf institutions – especially widows – although this had only limited impact on generally high levels of female poverty. (Sharia Impl)

Among the failures of the Yarima model Shariah program observed by this research is that the leaders are not sincere and serious about the application of the Shari'ah Law. Most of them are living in affluence and abundance, while the led are left in abject poverty. Corruption, indiscipline and insincerity have gained ground in the circle of our leaders and some of them are even above the law. In such a situation, Shariah can not be adequately implemented.

Many people have the belief that there has not been much improvement as to the welfare and security of the citizens:

*However, nothing much has improved in northern Nigeria's security situation, education system and infrastructure over the past 20 years. In the states of Zamfara, Katsina and Kaduna, locals are in great danger of falling victim to bandits. And nowhere else in Nigeria do children spend less time in school than here. Moreover, the introduction of Sharia law neither prevented [radical Islamic groups like Boko Haram](#) gaining influence, nor help reduce the region's rampant corruption. (Katrin 2019)*

*The Nigerian Christians society, being afraid of what is going on in the Northern Shari'ah states, which they look as a step to Islamize the country, issued threats and warning against the adoption of the Shari'ah: The Anglican Church has issued the sensational warning that the adoption of Shari'ah by Zamfara state is the first step towards turning the whole of Nigeria into an 'orthodox Islamic state'. The Pentecostal Church has resorted to taking newspaper adverts (the Nigerian press is largely controlled by Southern Christians) denouncing "Sharriah on the attack".*

The Roman Catholic Archbishop of Lagos, Anthony Achage, as if not to be outdone, has warned gravely that: "failure to nip Islamic law in the bud would lead to the dismemberment of the country. If it is not halted now it would have a multiplier effect, particularly in the northern states of the country, and engineer far-reaching consequences," he said. (Widespread Concern)

The Christians have cause to worry, looking at how the Islam is being portrayed by some ignorant or paid adherents, massacring innocent lives in the name of Islam. The true Islam on the other hand has great respect to human life and other religions as seen in the life history of the Holy prophet of Islam (saw).

Many Muslims scholars have vehemently rejected the issue of Shariah applications on different grounds, due to experiences.

The reservations of some Islamic movement leaders have been on other grounds: that the partial and incomplete application of the Shar'iah by politicians rather than by ulama or an Islamic political order is unlikely to bring positive results overall, as experiences in other countries have repeatedly shown.”

*“Most of the Islamic movement leaders preferred not to speak out at this time, but privately many have let their feelings be known. They have warned that the effects of the experiment could prove negative in the long run, as a result of both the fuel that it gives to Islam’s enemies, and because its limitations and shortcomings are likely to distort people’s understanding of how an Islamic legal system - and by extension, an Islamic state and social order - would really operate. (Crescent )*

## **CONCLUSION**

1. Based on the foregoing, it will be concluded that, Zamfara Shari’ah program records more failures than successes, within the two decades of its existence, and this is not unconnected with the following:
  - a. the sponsors of the program did not make an intellectual study of relationship between the Shari’ah and the Nigerian Constitution. Had they done, they wouldn’t have claimed to make a total application of Shari’ah. They would have called for legal reform, instead.
  - b. The leaders are never sincere about the whole program, as majority of them appear not to be pious, leaving their subjects in abject poverty, despite abundant natural resources the country is endowed with. Furthermore, the Shari’ah punishments are only inflicted on the less privileged sector of the community, while the leaders, their families and friends are almost above the law. C, The only area of success, as observed, is the Hisbah command of Shariah commission that is shouldered with the observance of Amr bil Ma’ruf and Nahyi anil Munkar as a basis of their duties. They, too, can only admonish and give advice in their arbitration exercise, as they lack constitutional power to enforce their decision.
2. The total application of Shari’ah laws is only possible after the conduct of Islamic revolution, under an Islamic government as conducted by the prophet (SAW) in Madinah and in Hausa land by Sheikh Usman Bin Fodio. This is not done by sword, it is a revolution against bad attitudes and behaviors to return people to the right path. Sword is only taken and used for self defense.

3. Finally, the burden is now rest on the scholars -NOT POLITICIANS- of Islamic law to work out ways and modalities through which a non-violent Islamic revolution could one day take place in Nigeria, which will pave way for the full application of Shariah legal system. It is indeed possible and simple at the same time.

Alhamdu lilLaah Rabbil ‘aalameen!

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