

# The Introduction Of Sharia Law In Nigeria And The Nigerian Constitution: Challenges And Prospects

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*Abstract: This study objectively seeks to analyze the history of Nigerian amalgamation, her heterogeneous compositions, highlighting historical developments of Nigerian constitutions and sharia law. It tries to survey the detailed, overt and covert planned agitations of sharia law. It tries to unearth the paradoxes, the probability and challenges of enforcing sharia law in a multi religious and cultural Nigeria vis-à-vis the Nigerian constitution which tries to accommodate the plurality of Nigerian religio-cultural compositions. It justifies the importance Nigerian constitution to the multi religious and cultural Nigerian society. It notes that the repeated moves to implement sharia instead of Nigerian constitution exposes the qualities of Nigerian leadership's and followership's selfish economic, tribal and political agenda garbed in religion. Amidst this situation, the unity and future of the country are hanging in the balance.*

## I. INTRODUCTION

Right from the amalgamation of Nigeria till today, one of the challenges that has confronted the country has been how to formulate and accept a workable document for the country vis-à-vis its heterogeneous setting. This has also complicated the daunting challenges of how to incorporate the diverse religio-cultural interests of the components that make up the state. Amidst this quagmire, the country struggled to have a constitution that is currently in use and that is the 1999 Nigerian constitution. The preface of the constitution stipulates the Nigerian people affirm the supremacy of the 1999 constitution over everybody and any other law. It also affirms the indivisibility of Nigerian state.

If this is actually the resolution of Nigerians, then the agitations for the implementation of sharia Islamic code arguably can be aimed at countering the above affirmations. Moreso, the agitation for the Biafran Republic, other secessionist movements and resource control in a country that accepts to live in unity for common good is nothing but an invitation for war. Obviously, it is either the people are not carried along in making the law or that the law was not qualified to be a law. This is because if it is a national law, it expected to be at unparalleled enforcement with other sectional law. It must be respected. Hence this study seeks to

analyze the challenges of applying a sectional and religious law vis-à-vis a multi religious and cultural society like Nigeria.

## II. CLARIFICATION OF TERMS

*INTRODUCTION*: the noun form of the word "introduce" means to cause, present or announce something officially and formally. *Sharia* can be described as the law governing every aspect of life, belief and a detailed conduct of a Muslim. *Nigeria* according to Meek (1925), is a name given by Flora Shaw, who later became the wife of Lord Lugard, the first Nigerian Colonial Governor-General Nigeria can be briefly defined as the conglomerates of nations that were amalgamated into one country in 1914 but on 1st October, 1960, it gained political independence from Britain (p.59).

*CONSTITUTION*: the system of beliefs and laws by which a country, state or organization is governed. *Challenges*: implies a new difficult task that tests the ability and skill of somebody. It means also an invitation to compete in a fight, contest in a game and so on. *Prospects*-the plural form of "prospect" means the possibility of something to happen in the future, something that is likely to succeed or chosen.

Contextually, the introduction of sharia law in Nigeria vis-à-vis the Nigerian Constitution: Challenges and Prospects can be understood as the present problems and future reality of making sharia law official and national law in a heterogeneous Nigerian society. The formal adoption of Islamic law above the federal government constitution in a heterogeneous Nigerian society serves as the test of the reality, legitimacy, ability and aptness of the central government. It means the tests and proves of the unity of the country. It also analyses the motives and missions of those who formally, openly and officially planned to present the *hadd* (criminal) aspect of sharia law as the Nigerian official law knowing that the federal constitution promulgated into law because the heterogeneous nature of Nigeria has no provision for parallel religious and sectional laws.

### III. THEORETICAL FRAMEWORK

The Bentham's and Blackstorian theories are adopted in this study. For instance, Bentham theory is consistent with the Bentham's utility principle which according to Mautner (2017) entails the attainment of right or at least not wrong done to an individual in a given environment. Simply put, it is the attainment of the greatest happiness (p.4). Blackstorian theory is viewed by Schorr (2009) as the bogeyman of any community-oriented property law that seemingly must at least deny either the individual and exclusive (sole) or the absolute (despotic) aspect of property (p.23). Both of these theories advocate the fundamental rights of man and are considered the essential features of a Constitution. They aim at redressing the balance between the powers of an individual and the state on duties to ensure correlative respect for their rights. This theory is used because it implies that conflict is generated by the quests to protect one's identity and maximize one's interest. Arguably, the concept of equality, fairness, equity, justice and non-discrimination constitute the heart of Human Right. The theories are employed to highlight the dangers of using religious tenets in achieving political and other personal ends in a multi religious and cultural society like Nigerian state.

### IV. BRIEF HISTORY OF CONSTITUTION MAKING IN NIGERIA

Arguably, it is practicably difficult to discuss the historical development of Nigerian constitutions without glancing through the history of Nigeria as a country. Historically, Burn (1978) argues that the constitution making Nigeria began with the conquest of Lagos in 1861 by the British and the subsequent declaration of Lagos as a new 'Crown Colony' or Settlement a year later (pp.130-131). Olusanya (1980) said that a Legislative Council comprising a Chief Justice, Colonial Secretary and a senior military officer commanding the imperial forces was introduced (p.518). Coleman (1986) affirms that the legislative council was charged with the responsibility of advising the governor in formulating law for the colony (p.50). In 1922, the Clifford Constitution was promulgated into law having recognized the failure of both the Legislative Council and Tamuno (1967)

said that the constitution provided criticism of government policies and a check upon official extravagance. Sir Hugh Clifford proposed the substitution of Nigerian Council with a new Legislative Council whose jurisdictions would at least cover the whole South. However, the Northern Province was to be governed by the Governor's proclamations (pp.120-121).

Until about 1928, the Legislative Council was dominated by the colonials and this is because there were no indigenes with the requisite Western education being the prerequisite for effective participation. Between 1946 and 1947, according to Olusanya (1980), the Richard Constitution was introduced. Named after Governor Sir Arthur Richards, it was adopted after the Second World War and similar to previous ones, it sparked uproar in civil society and nationalist circles following non-consultations during its drafting (p.524). This led to a series of activities that culminated in the making of the Macpherson Constitution of 1951. Having learnt from the experience, the British ensured that the process was given due attention. Before it was promulgated into law, the draft was debated at village, district, provincial and regional levels. However, the Constitution ran into a crisis of implementation leading to the London and Lagos Conferences in 1953 and 1954 respectively. The conference culminated in the promulgation of the Lyttleton Constitution in October, 1954 which made Nigeria become a federation of three regions namely: Northern, Western and Eastern regions. Observably, it removed the elements of unitarism provided in the Macpherson 1951 Constitution.

Anyaele (1987) said that in preparation for Nigerian independence, the London Constitutional conferences of 1957 and 1958 were held, leading to the 1960 Independence Constitution. The independent constitution gave a quasi independence to Nigeria when it came to effect on 1st October 1960. Thus, Nigeria became a sovereign state however the Queen of England remained the head of state and was represented by Dr Nnamdi Azikiwe who was the Governor-General while Tafawa Balewa was the Prime minister. The republican constitution was passed into law by the Federal House of Representatives on September 19, 1963 and came into force on 1st October 1963 (p.86). It resolved the issues bordering on the real independence of Nigeria. At that point, the queen of England ceased to be the head of state. The head of state was the president who was to be chosen by secret ballot of a joint session of both houses of the national assembly. Dr. Nnamdi Azikiwe emerged the president and commander-in-chief of the armed forces.

Ademolekum (1985) affirms that the presidential constitution of 1979 was organized by the military when they said they would want to hand over the political power to the civilians. It comprised a forty nine (49) member constitutional drafting committee headed by F.R.A Williams that made a draft constitution. After they were done, a constituent assembly headed by Justice Udo Udoma made final adjustments to the constitution. The constitution was promulgated and it came into force on 1st, October 1979. The constitution jettisoned the parliamentary system of government. The president becomes both head of state, head of government and commander in chief of the armed forces. The president was chosen by the electorates through a general election. He did not appoint his ministers from the parliament

unlike the previous constitution. There was also an executive governor for each state who was the chief executive of the state. It was short-lived because of military coup (pp.35-67). A Conference was convened to discuss another Constitution in 1994 but the election into the conference was boycotted in the South-West because of protests against the annulment of the June 12, 1993 presidential election believed to have been won by late Chief M.K.O Abiola. More than one-third of the membership of the conference was appointed by the Gen. Sani Abacha regime. According to Ademolekun (1999), the 1999 Constitution was promulgated into law by the military regime of General Abdulsalami Abubakar after the Constitution Debate Co-ordinating Committee led by Justice Niki Tobi submitted its report. The Tobi Committee had barely two months to consult with Nigerians before submitting its report. The 1999 constitution is currently under review since its beginning in 1999 (p.24).

#### V. SURVEY OF SHARIA DEBATES, AGITATIONS AND IMPLEMENTATION IN NIGERIA

Arguably, the agitations and debates about sharia in Nigeria are as old as Islamic history, not only in Nigeria but also virtually throughout the world. The differences in the legal principles derived from the Quran can be traced to the sectarian divisions in Islam. Islamic jurists have however developed elaborate methodologies in interpreting the Quran. Clarke (1982) and Olupona (1991) agree that many schools arose in relation to the debates and agitations of sharia. The schools were the Hanafi School, the Shafii School and the Maliki School. Nigerian sharia courts are patterned after the Maliki School which had existed in pre-colonial northern Nigeria and it is the oldest of the classical Sunni schools. He alluded that the Mais in Kanem-Bornu Empire, had to tolerate a good deal of traditional religious practice in their domains and to a certain extent even in their courts.

However, Nwanaju (2008) notes that the first agitation and attempt to incorporate Sharia in Kanem Empire led to the dethronement of Mai Biri Dunami (1163-1190) after being accused of causing the death of a thief through the process of amputation (p.200). Kenny (1996) said that at the beginning of the century, after the Usman dan Fodio's jihad in Hausa land, sharia had replaced completely whatever was left of the pagan legal practices in the areas. Before the arrival of the British, sharia was said to have applied in all its ramifications both to civil and criminal matters in Hausa land. But the colonialists super-imposed the English law on it and progressively confined its jurisdiction to personal matters (p.223). By the Northern Nigerian Order in Council of 1899, Northern Nigeria was to be ruled by proclamation. Oloyede (2000) affirms that in 1900, the Native Courts Proclamation allowed the application of sharia in criminal cases in northern Nigeria. At the amalgamation of the southern and northern Nigeria, Native Court Ordinance of 1916 was proclaimed with the permission to apply the sharia in the north while the south applied the British laws. The criminal code was introduced but native courts in northern Nigeria still applied the sharia to both criminal and civil cases. However, an amendment to the code in 1933, removed exemption granted to the native court so that

appeals from the sharia courts were to lie to the British courts except on laws of personal status (pp.129-154).

In view of the above, Kenny (1996) notes of a case between Tsofo Gubba and Gwandu Native Authority in which the West African Court of Appeal overturned its judgment. It was a case where an appealed trial prevented the imposition of death penalty for homicide as provided by sharia but disallowed by the British Criminal Code. The judgment was unpleasant to the northern Muslims who alleged undue interference in the application of sharia. It was not until 1956 that sharia was formally written into the northern regional constitution (p.222). Kukah (1993) posits that sharia was one of the main issues in the northern Nigeria during this period as it was concerned with the conditions under which non-Muslims lived. It also related to the issue of the minority ethnic groups in the region. In that case, the British responded by setting up the Willink Commission which was officially called the "Commission to Enquire into the Fears of Minorities and the Means of Allaying Them". This Commission sat in different parts of Nigeria. In the north, the minorities expressed their bitterness at the discrimination meted against them by the Muslim ruling class. After traversing the country, the Commission essentially recommended that the issue of the security of non-Muslims in the north should be decided by a policy drawn up by the regional government. The Premier of Northern Nigeria, Alhaji Ahmadu Bello and the colonial government sent an official delegation in 1958 to Sudan and India to study how English and Islamic laws were accommodated. The panel report led to setting up of a Sharia Court of Appeal in Kaduna and the promulgation of a combination of laws known as the Penal Code in the region. Significantly, their recommendations resulted in the Penal Code and Criminal Procedure Code which replaced the Maliki law that had been entrenched for generations in the emirates (pp.117-118).

Meanwhile, Oloyede (2000) maintains that the protest of the minorities led to the enactment of the Penal Code for the North in 1960 and the Criminal Procedure Code for the South. The heat was so hot that a measure was adopted to placate the north. He notes that Karibe Whyte said that some Islamic criminal laws were introduced in the Penal code in order to appease the North. The Penal code is a product of the conflict between the operation of the Islamic criminal law and the criminal code (p.133). Nwanaju (2008) notes that at the Nigerian independence, the Northern People's Congress (NPC) leadership led by Ahmadu Bello, had made a dramatic u-turn in its initial position on the application of Islamic law in Nigeria having seen the departure of the colonial government as the best awaited opportunity. The government had written to the Muslims in Pakistan stating that the next "phase of the struggle" in Nigeria would be the full implementation of sharia as a state law and a means of consolidating unity among Muslims with the transformation of the educational system to reflect Islamic ideas and ideals. This was in contradiction to their earlier position when it sent a group of experts in Islamic laws on an international tour to re-evaluate the relationship between Sharia and modern Nigerian state. The government's moderate position was to replace the entire Sharia system with secular and comprehensive criminal code. Thus, the court of appeal became limited to civil cases between Muslim litigants.

The reason for this no doubt was because of the pressure mounted by the colonialists when they threatened not to assent to the Nigerian independence if Sharia was not modified. However, the leadership of Ahmadu Bello later succumbed to the Northern and other personal pressures after independence and renamed the old Alkali and other Muslim courts that were created during the Colonial Indirect Rule as the Sharia Court of Appeal (pp.206-208). The issue resurfaced again during the Constituent Assembly convened by the military government between 1977 and 1978 to prepare a Constitution for the restoration of democracy in Nigeria.

Furthermore, Clarke (1982) observes that when the proposals of establishing a Federal Sharia Court could not go through in that prolonged and heated committee, the Muslims' political leaders including Shehu Shagari, who later became the Nigerian President, staged a walkout. But a sub-committee was set up by Justice Udo Udoma and headed by Chief Simeon Adebo and they arrived at a consensus that, "whenever there was a Sharia case on appeal, the Federal Court of Appeal would be constituted by three judges learned in Islamic law (who may not necessarily be Muslims) to handle the case" (p.91). It seems that the boycott-strategy bore the needed fruits as the Federal Sharia court of appeal was established. Somehow, it was expected to bring solution but the agitation has continued. Perhaps sensing the danger the agitations portended to the country, Kenny (1996) affirms that General Ibrahim Babangida removed from the Assembly's jurisdiction to handle the issue of sharia and decreed the maintenance of the status-quo. However, the Sharia debate was allowed to quiet down but it paved way for the Nigerian membership of ever-controversial Organization of Islamic Community debate (OIC) (pp.348-349).

However, Babangida unilaterally smuggled Nigeria into the Controversial OIC and Eme (2010) notes that when his second-in command, Commodore Ebiti Ukiwe acknowledged that the Nigerian membership of OIC was never discussed in the Armed Forces Ruling Council, he was sacked (p.96). Paradoxically, it was the same administration that bastardized the sharia debate by detaching the prefix "personal" from the Islamic law by the decree 26 of 1987. Some Christians and some progressive Muslims who were in opposition to Sharia in Nigeria received unexpected support among the Muslims. According to Clarke (1982), they formed Muslim committee for a progressive Nigeria, (MCPN) and other socialist associations which described Sharia as the most backward Muslim religious law. They argued that sharia was customary instruments in the hands of minority feudal and emirs who use it to cage the poor masses, the oppressed and the peasants of the society, deceived the people and then have the freedom to continue with their exploitation of the poor masses (p.88).

In the view of Oloyede (2000), right from the period of the return of civilian rule in 1999, Nigeria has witnessed a dramatic turn of events in the enforcement of Islamic code. Following the new interpretation of the Nigerian 1999 constitution by most northern states led by Zamfara state, they made certain laws, repealed some and amended others. By these, they established Sharia courts and vested them with not only the entirety of civil but also criminal jurisdictions (p.133). The other eleven northern states followed suit and Nigeria went aflame. Subsequently, cases of sharia

implementation were reported but the final outcomes of almost all these cases remain unknown. Weimann (2010) said that in three states of Borno, Gombe and Yobe, no court case under Islamic criminal law was reported during this period. From Niger, Kaduna and Kebbi about two, three and eight cases respectively were reported that time. In Bauchi, Jigawa, Kano, Katsina, Sokoto and Zamfara account for 60% of all cases. Over time, the number of cases reported decreases. However, in Katsina state, two cases attracted widespread attention. The first was the death sentence against Sani Yakubu Rodi for homicide in November 2001. Rodi was convicted of brutally stabbing to death the wife of a high-ranking security officer and their two children while attempting to rob their house. The victims' next of kin demanded retaliation (qisās) and the court therefore ruled that Rodi should be stabbed to death with the same knife used in his crime. The method of execution was later changed, probably to avert riots and he was hanged on 3<sup>rd</sup> January, 2001. This is the only publicly acknowledged execution courtesy of Sharia court in Nigeria since the transition to a civilian government in May 1999. The second internationally known case was the one of Amina Lawal Kurami, who after giving birth to an illegitimate baby in November 2001, was sentenced to death by stoning for *zinā* in March 2002 (pp.34-65).

Reportedly, only Muslims have been subjected to the jurisdiction of Sharia courts, yet experiences have shown that there are potentials for extending the judicial practice and coverage to adherents of other religions. For instance, Awoyokun (2015) notes that fatwa was declared on Isioma Daniel by the Zamfara state government. Mamuda Aliyu Shinkafi, the government spokesperson argued that like Salman Rushdie "the blood of Isioma Daniel would be shed" (p.23). By that law, it is abiding on all Muslims wherever they are to consider the killing of the writer a religious duty. Probably, that accounts for why Ogbeche (2016) said that Methodus Chimaije Emmanuel, a 24-year-old Igbo Christian trader based in Padongari, Niger State was on Sunday 29th may, 2016 butchered with three other persons including one personnel of the Nigeria Security and Civil Defence Corps and about thirty shops looted by Hausa Muslims over the allegations of blasphemy (p.3). Muhammad (2016) concurs that a 74-year old Igbo Christian woman, Bridget Agbahime was on Thursday 2nd June, 2016 gruesomely slaughtered by Hausa Muslims at Kofar Wambai market Kano in presence of her husband over alleged blasphemy (p.6). The debates and agitations for sharia still go on.

## VI. NIGERIAN CONSTITUTION AND SHARIA LAW: THE PRAXIS

Oraegbunam (2010) notes that these states, especially Zamfara, claimed that the 1999 Constitution of the Federal Republic of Nigeria laid the foundation of their rights to implement Sharia. They aver that section 38(1) states that, "every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief 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.” Meanwhile, section 275(1) stipulates that “there shall be for any state that requires it a Sharia court of Appeal for that state” From these provisions, it is obvious that terms regarding the rights and freedom to manifest and propagate one’s religion were outlined. The Sharia Governors and most of their supporters usually argue that the same constitution grants any state the exclusive discretion to establish Sharia Court of Appeal. But it seems that they did not accept the fact that the same constitution ensures the rights of the other fellow thirty six states. Section (1) Subsection 1 of the constitution declares the supremacy of the 1999 Constitution, stating in no equivocal terms that the Constitution is supreme over and above all persons and authorities. In subsection 3 of the same section, the constitution emphasizes that any law found to be inconsistent with the provisions of the Constitution, warning ... that other law shall to the extent of the “inconsistency be void” (p.23). This questions the legality of Sharia Implementation in Nigeria (pp.10-12).

Unarguably, Amanambu (2012) notes that the Constitution did give Sharia some levels recognition. For instance, CFRN (2011) stipulates that section 6, subsection 1 to 5 stipulates the levels of Sharia courts among other judicial roles of these courts (p.23). By this provision, it implies that there cannot be a Sharia Court of Appeal (an appellate court) without Sharia Courts at the State level from which the appeal can rise to the Federal level. Admittedly, the Constitution by creating the Sharia Court of Appeal has, though not explicitly, reserved discretion of states to create their own Sharia Courts since the appellate Court lacks original jurisdiction to hear most of the cases to be brought before it. It is also because the cases are of such a nature that they cannot be entertained by a regular court (Magistrate court or High court) (p.45). It could be on this ground that Okwe (2000) notes that legal luminaries like late Bola Ige argues that none of the states which have passed what they call Sharia law has directly violated any part of the federal government right (p.16).

Understandably, Amanambu (2012) argues that the Nigerian Constitution upholds the application of Islamic code for states in Nigeria but to some extent. For instance, according to CFRN (2011), section 6(5) (f) and (g) which is replicated in Sections 260, 275, 262 and 277 of the same constitution state in clear terms the jurisdiction of Sharia Court of Appeal which by implication applies to all states. A close look at section 277 (2) (a)-(e), for the purpose of section (1) of this section, the Sharia Court of Appeal shall be competent to decide matters only on the question of Islamic personal law. These cases were extensively outlined in paragraph (a) through (e) to include among other things: marriage, guardianship of infants and persons of unsound mind, *wakf*, gift, will and succession. Section 277 (2) (e) requires that for that provision to apply, the parties must be Muslims and they must have requested the Court at first instance to determine their case based on Islamic personal law.

## VII. SOME THE SCHEMES OF SHARIA IN NIGERIA: THE ZAMFARA EXPERIENCE

Arguably the introduction of sharia using the experience of the Zamfara state has some economic and structural benefits to the people. In that case, Kukah (2003) notes that an initiative undertaken by the sharia proponents in Zamfara targeted the people’s welfare. In this area, money was given to rehabilitate prostitutes, provision of public transportation and housing (p.56). Keffi (2003) affirms that the implementation of the socio-economic aspect of Sharia has improved the quality of lives of Muslims in Zamfara State (p.217). Ostien (2010) concurs that the states implementing sharia established the Zakat Board which comprises some eminent personalities. They were charged with the collection and distribution of Zakat-almsgiving (p.67). CLO’s report (2000) quotes the Chairman Nigeria Labour Congress (NLC) Zamfara State, Comrade Abdulahi Danda Bungudu as affirming that workers were not discriminated against by the sharia law. He said that arrears of salaries owed by previous administration before the sharia had been paid by the sharia administration. Initially, by January 2000, the minimum wage was increased by five thousand (N5,000). The transport situation was addressed by purchasing buses and taxis for workers at a subsidized paltry fare of five naira. Messengers were provided with a bicycle to help ease the transportation problem (p.3). The pertinent question demanding critical answers is why should such laudable cause become upheavals among some people? Hence, the paradoxes in the agitations shall briefly be analyzed.

## VIII. SHARIA LAW AND THE NIGERIAN CONSTITUTION: THE PARADOX

To actually understand the paradoxes of implementing sharia law above the Nigerian constitution it is necessary to go memory lane to highlight historical dimensions and changes of sharia law. In that case, Amanambu (2012) states that in the pre Islamic Arabia, bonds of common ancestry were the foundation for tribal associations. The advent of Islam brought these tribes together under one religion owing to the fact that Islam implies not only a religion but also a culture, a fresh common basis of law and personal behaviour. Therefore, Sharia hitherto began to take shape and it continued to undergo fundamental changes, beginning with the reigns of Caliphs Abu Bakr (632–34) and Umar (634–44). During this time, many questions were brought to the attention of Muhammad’s closest acquaintances for consultation and advice. When Muawiya AbuSufyan ibn Harb in 662 CE came to power, Islam undertook an urban transformation, raising questions not originally covered by the Islamic law. Since then, changes in Islamic society have played an ongoing role in developing the application of Sharia. These developments twig out into the expanded and thorough understanding of Islamic code (fiqh) and promulgated law (*Qanun*) (pp.56-62). Raji (1993) avers that one of the litmus tests to Sharia was the relationship between Muslims and non Muslims like when the eminent companion of the Prophet- Salman, a Persian was quoted as saying that if a Muslim accompanied a non Muslim,

they should eat one another's food and ride on one another's mule. It is also reported that the second Caliph Umar saw a blind man begging at the door of another man. He touched the blind man's shoulder and asked him,

Which of the people of the Book are you? the beggar answered, "a Jew" then Umar said "what has compelled you to do this?" The Jew replied "the poll tax, need and old age". The Caliph then took his hand and led him to his own house where he offered him something. Then he wrote to the Exchequer: Look after this man and those like him. By God, we have not done him justice by wasting his youth and then forsaking him in his old age...this is one of the poor of the people of the Book and he exempted him and those alike from paying tax (pp.65-70)

Aluko (1999) argues that so long as the early Islamic community remained small and its expansion was limited to the Arabian Peninsula with the economic activities limited to the subsistence level, it was possible to control the entire behaviour of the Muslims along the lines laid down by Prophet Muhammad in the Quran, the Sunna and the Sharia. But as the Muslim empire expanded and its interactions with the world increased, some of the functions concentrated on the religious leaders by these Muslim revelations got separated. This is because neither the caliphs nor the Bahs, the Sultans and the kings were capable of wielding complete religious and political power on their own. It became essential and imperative to hand over the administrative functions to a Prime Minister, Minister, Governor or President. The military functions handed to a Commander-in-Chief, spiritual or religious issues given to the Imams, the Ulama and the theologians while the judicial matters are directed at the Islamic legal officers, many of whom had to apply norms other than those provided only in the Sharia (pp.5-7). Therefore, as a result of the above, the binding and obligatory interpretation of the Quran and the Sunna along already established principles is no longer tenable. Hence, their re-introduction in the *Ijma* remains only an idealistic but impracticable notion.

Meanwhile, in the Nigerian situation, Amanambu (2013) argues that the purpose of sustaining the Nigerian amalgamation was to have a nation state where like other progressive nations of the world, opportunities shall be exploited in making it an economically strong, reliable and virile nation. To make it a nation where like the Independence National Anthem acknowledged and reflected; though in diversity, yearned for a united country where tribes and tongues may naturally differ, yet live in secure, peace and harmony as one united and indivisible country. A country where people can stand in brotherhood and be proud to serve their sovereign motherland as symbolized in the Green-White-Green of the Nigerian national flag which is synonymous with Peace, Justice and Prosperity. This was echoed by the preface of the Nigerian 1999 Constitution (p.122). In order to ensure that this lofty dream is sacrosanct, the section 1 and subsection 2-4 of the 1999 constitution state,

This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria. The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part

thereof, except in accordance with the provisions of this Constitution. If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void. Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria.

But Kendhammer (2013) submits that the former governor of Zamfara state and one of the leading figures in the implementation of sharia, Ahmed Sani Yerima responded at the heat of the imbroglio in 2000 by saying that his Islamic faith is of paramount importance to him and that if there was a law that would inhibit his administration from propagating Islam or that would declare Sharia unconstitutional, he would resign and go back to his family. He concluded by saying that Sharia is superior to the Constitution of Nigeria (p.301). Similarly, according to Agbibo (2015), the current Nigerian ruler, Buhari said at the heat of the sharia said, "I will continue to show openly and inside me the total commitment to the Sharia movement that is sweeping all over Nigeria...God willing we will not stop the agitation for the total implementation of Sharia in the country." Buhari added that the spread of Sharia is "a legal responsibility which God has given us, within the context of one Nigeria to continue to uphold the practice of Sharia wholeheartedly..."(p.6). Paradoxically, both of them are currently occupying national offices in Abuja, sworn into offices by the 1999 constitution, receiving their salaries and allowances within the purview of the 1999 constitution and they have not initiated any other reported concrete move in promulgating sharia as Nigerian law. They are still being guarded by security agencies constituted and empowered by the 1999 constitution. Mazrui (2012) affirms that "the Sharia movement was a cultural assertion by Northern elite at the state level to compensate for their political decline at the federal level".

Similarly, Brown (1997) argues that there is an important distinction between Sharia and Islamic law. While Sharia literally means the path to the waterhole and constitutes the totality of the normative system for Muslims, Islamic law is the legal system inspired by those principles (p.363). According to Abou El Fadl (2012), sharia is a "human endeavour to understand the divine". Thus, there is no such thing as Sharia law rather it is only law inspired by Sharia which per definition is man-made. Consequently, Islamic law is suppositional and not divine. As soon as Islamic law is enacted by the state, it ceases to be the will of God and becomes the political will of the state (p.55). The paradox of introducing sharia law above the Nigerian constitution can be objectively viewed as selfish economic and political agenda garbed with religious tenets.

#### IX. THE CHALLENGES AND PROSPECTS OF IMPLEMENTING A RELIGIOUS LAW IN A HETEROGENEOUS NIGERIAN STATE

Higgins (2004) argues that a law is legitimate only if its claims to obedience get assent amongst its subjects (p.6). In other words, a situation where laws are flagrantly disobeyed portends danger to human existence. According to Onaiyekan

(2000), in the heat of the sharia debates in the Fourth Republic, many Christians moved for the legalization of Christian law by the Nigerian constitution while others called for separate Christian courts. However, he argues that there are the challenges of implementing the law knowing that catholic canon law does not bind any other Christian groups (p.81). Subsequently, Krishi (2016) affirms that the House of Representatives has passed for a second reading a bill seeking to establish an appeal court to handle matters related to the Christian faith. The bill sought to amend the 1999 Constitution with a view to establishing the Ecclesiastical Court of Appeal of the Federal Capital Territory (FCT) and other thirty six states (p.7). Therefore, Nigerian constitution can only be legitimate if the citizens obey it. The lack of such assent is exactly why Muslims or other denominations in today's nation-states-demand Sharia and pledge obedience to it, as opposed to national state law.

Legitimate laws stem from the general will of the people. It is dangerous if the people are divided by having multiple wills and perceiving different laws as legitimate in a multi-religious society. A nation-state can only have one general will and one legal system for it to be legitimate. A nation-state with multiple general wills is not a state but it is a contradiction. Understandably, obedience to more than one legal system is to put oneself above the law. The bottleneck of Sharia controversies on Nigerian constitution today is the possibility of trying non-Muslims in Sharia Courts. For instance, there are some families across the country even in Kano and Sokoto where Muslims and Christians share the same parental origin, family, house and office. The possibility of having different market place, different schools, banks, hospitals, high ways and motor parks for sharia men and non sharia agitators is impracticable considering the multi-religious and cultural composition of Nigeria. The Nigerian Constitution is referred to as the Constitution of the Federal Republic of Nigeria 1999. By virtue of its section 1, subsection 3, it is "supreme and its provisions shall have binding force on all authorities and persons throughout the federation." The constitution warns that "if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other laws shall, to the extent of the inconsistency be void" (pp.19-20). Sharia is an Islamic legal system that can only apply in an Islamic government. In the Nigerian system, the constitution is supreme and if the constitution is supreme to Sharia, the possibility of Sharia working can only end in wanton destruction of lives and property unless Nigeria is turning into the Islamic Republic. The multiplier effect will be disastrous to national harmony, peace and general economic development because nothing meaningful takes place in an atmosphere of rancour and crises.

## CONCLUSION

The importance of a constitution in any given society cannot be overemphasized. In Nigeria's situation, the constitution is supposed to be supreme which implies that all acts of individuals and government must not contravene. The law of every land is the fundamental and soul of a nation or state. This is because it establishes the modes of operations of

individual, institutions and apparatus of government. Constitution defines the scope of governmental sovereign powers and guarantees individual civil rights and civil liberties. The concept of *hadd* aspect of sharia law to the multi religious and cultural Nigerian state has been a highly controversial issue. The challenge of these agitations is a test of the reality of the Nigerian existence as one country. It is an invitation from a section of religious and cultural Nigerians for a showdown. It is a test to prove whether Nigeria understands the concept of national government. Since politics and leadership are arts, it demands skills of rulers in piloting and applying these principles. Therefore, the introduction of sharia in Nigeria is meant to test the reality of the existence of Nigeria as a nation state governed under one constitution and one government. Nigeria being a multi- religious belief, it is better with the provisions of Section 10 of the 1999 Constitution. Therefore, if a state chooses to adopt one religion it as the state religion, it will sow the seeds of future disunity and conflict. Part of the major existential needs of a constitution to human beings and the social milieu are that it ensures the rights of Human persons and fundamental freedoms from threats and guarantees general security. All these are codified in the Nigerian constitution for the purpose of attaining social cohesion. One thing certain is that Sharia law is an Islamic law that can be implemented in an Islamic country. It is either Nigerian turns into Islamic republic or allows every other ethnic and religious to return to the pre-amalgamation situation in 1914 or adjust to be subsumed under the national law.

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