

Application of Shariah in Nigeria

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Abstract

The word Shariah is an Arabic word, which literally means path to a water place or path to be followed. It denotes the body of those institutions which Allah ordained in full or essence to guide individual but the path by all Muslims to be the path shown by Allah, the creator himself through his Messenger, Prophet Muhammad (SAW) in their relationship with Allah, and their fellow Muslim and the rest of the universe. Shariah therefore, in its broader sense is the totality of man of Allah's commandments covering all human aspect of life of a believer or collective believers and indeed entire universe, containing in all ability of guidance to ethics and fundamentally a code of conduct ordained to regulate human conduct to a successful result both here and in the hereafter. This paper discusses the application of Shariah in Nigeria. It was established and enforced in the Northern part of country and in the part of Yoruba land before the British colonized the whole country. Shariah has been part and parcel of Muslim life in the North.

Keywords: shariah, prophet muhammad, Nigeria

Introduction

Shariah was the first legal system applied in Nigeria. It was established and enforced in the Northern part of country and in the part of Yoruba land before the British colonized the whole country. Shariah has been part and parcel of Muslim life in the North. However, the application of Shariah in Nigeria is not new to the Nigerian most especially Muslims in the North. The enforcement of Shariah in this part of the country made life of the people easy, peaceful, to the extent that when British masters came they themselves found that there is super system of Government based on the Qur'anic law. This paper highlights the meaning, nature and application of shariah in Nigeria.

Meaning of Shariah

The word Shariah is an Arabic word, which literally mean path to a water place or path to be followed, it is path not only to Allah, Most High. Technically however, Shariah denotes the body of those institutions which Allah ordained in full or essence to guide individual but the path by all Muslims to be the path shown by Allah, the creator himself through his Messenger, Prophet Muhammad (SAW) in their relationship with Allah, and their fellow Muslim and the rest of the universe. Shariah therefore, in its broader sense is the totality of man of Allah's commandments covering all human aspect of life of a believer or collective believers and indeed entire universe, containing in all ability of guidance to ethics and fundamentally a code of conduct ordained to regulate human conduct to a successful result both here and in the hereafter. This connotation of Shariah could be seen to have portrayed Islam in it's entirety. Shariah, in its parochial legal impact may be seen to be those divine or ordained prescriptive legal rules contained in the Glorious Qur'an as explained and practiced by the Prophet of Allah (SAW). Thus, in this respect, Shariah may be easily understood to mean Islamic law ^[1].

However, in an analytical discourse and proper application of

the term shariah as Islamic law is but an aspect of Shariah. In fact, there is no stone on earth unturned under shariah legal system, because it encompasses everything, be it political, social or economical way of life. Shariah is therefore a complete way of life on a regulated divined order of Almighty Allah, the omniscience the omnipotent as stated in the following Qur'anic verse. The word Shariah appeared in the Glorious Qur'an where Allah (SWT) says: "Then we put there on the (right) way of religious so follow thou that (way) and follow not the desire of those who know not" ^[2].

This stated by Allah (SWT), is the way all prophets that came before Prophet Mohammad (SAW) follow, this has also being provided in the Glorious Qur'an:

The same religion as He established for you as that, which He enjoyed on Noah, which we have sent by inspiration to there and that which we enjoined on Abraham, Moses and Jesus namely, that ye should remain steadfast, in religion, and make no division there ^[3].

Therefore, Shariah is best translated as the right and legal provision.

The Nature of Shariah

Shariah has its origin from the divine being who is also the creator of mankind, and universe. Shariah unlike other legal system is not man-made law. It was revealed by Allah (SWT) who has the knowledge of certitude called *ilimul yaqeen*. According to Islamic law, man lacks the quality to poses the knowledge which could directs him to distinguish what is good or what is bad. This disqualifies man from laying down rules and regulations directing him to what is good for himself. This is therefore, exclusively within the jurisdiction of Allah the most high, who is omnipotent, omniscience and omnipresent as such He is the only one competent enough to enact laws and decree for man to follow and tell him what is good for him and ask him to refrain from what is bad ^[4].

Shariah is comprehensive, it spiritually provides detail rules governing the relationship between man and his creator,

shariah covers all individual attitude and conduct as well as social norms and values, be it political, social, economical, criminal or civil matters, shariah thus not purely legal in the strict sense of word, rather it encompasses all sphere of human life in its entirety^[5].

To put it more clear, shariah could be seen to be universal in nature because, it is not restricted to a given class or people of a particular generation but for all time and for all people notwithstanding the fact that it has been like that centuries ago. This shows the miraculous nature of shariah in the sense that it remains relevant and pertinent to our present generation as it was applied by the time it was revealed and shall continue to remain the same and indispensable the younger generation to same. The miraculous nature of shariah is found in the Glorious Qur'an which is the prevital source of the shariah around all mother source revolve.

Shariah therefore, provides for anything, it encompasses every segment of life and regulates it in a systematic way. Shariah is indispensable especially in our modern generation, it is only through Shariah that this generation and subsequent generation (if there will be) can refine all other system are total fiasco because there is no divine guidance in them^[6].

Historical Background of Shariah Court

The administration of justice has been in existence in Nigeria since nineteenth century and of the shariah in particular. The practice of Shariah by the Muslims in the North is a highly priority to the Muslims in their daily activities. The school of law followed by Northerners is the Maliki School of law, thereby applied to cases between Muslims and non-Muslims who voluntarily submit himself to justice in the Alkali's court.

Alkali court has been in existence dispensing legal system. The intensiveness of Shariah was brought about by the Jihad of Shehu Usmanu Danfodiyo, this jihad was to reform the habeas societies in line with the teaching of Islam. Some learned Mallams were selected by Shehu Usmanu Danfodiyo and were sent to towns and villages to teach the people Glorious Qur'an and prophetic Sunnah. This led to reduction of social vices within the area controlled by Shehu Usmanu Danfodiyo Jihad movement^[7].

On the arrival of British colonist, they met a well-established system of government and law based on Shariah already in place. In their policy of indirect rule, they allow the Alkali court and Machinery of government already in existence in northern Nigeria to continue shariah was prevalent as the dominant legal order in the northern part of the country continued to flourish until the year 1947 when shariah was tempered with sequel upon this.

This British method of indirect ruling stated imposing sanction against shariah to the control and supervision by the super structure. Some limitations were placed on the shariah court on the implementation of some punishment which is laid down in the Glorious Qur'an, whereas they establish a new law court which was empowered with unlimited power^[8].

However, a native law court 1956^[9] established a native courts for four grade respectively and additional one grade was established in the Northern Region of Nigeria. The Native court has jurisdiction to try civil and criminal cases which are the Native Court Grade B, C and D but grade A has unlimited power to imposed death sentence with the consent of the government. Shariah Court of Appeal receives appeal

from all Native court.

The Shariah Court of Appeal concerning Muslims on Islamic personal law, it is on this point that a person who felt not contended with the judgment made appeal to the high court which is constituted by at least two judges with at least assessors. The assessors were persons who were learned in the Muslims personal law. The High Court also has no supervisory power over the Shariah Court of Appeal, the Muslim court of appeal in relation to the High Court.

A panel of jurist in 1958 was elected by the government of Northern Region of Nigeria to advise it on how the legal system in the North would be reformed in relation to the application of Muslim law and non-Muslim law. the panel recommended on the enactment of penal code law and criminal procedure code to be applicable throughout the Northern Region in replacing the applicable law regulating customary law in the region. It was based on the deliberation that Muslim court of appeal should be replaced by a new court which will hear appeal cases arising on Muslim personal law. It was on the recommendation that shariah court of appeal 1960 was established to hear appeals from native court on cases involving Muslim personal law.

The shariah court was to be constituted by two High Court judges and a judge from Shariah Court of Appeal. This led to dissatisfaction of Muslim community. This was on the discrepancies that led to the establishment of resolution of law 1960, it was set up in other to resolve the dispute on the jurisdiction between the High Court and Shariah Court of Appeal.

The criminal code ordinance and the criminal procedure ordinance in the North were replaced by the penal code law 1959 and criminal procedure code law 1960 and it came into operation on the 30th sept 1960.

The Muslim communities were dissatisfied with the resolution reached for the penal code which was to be used in relation to offences and punishments contain also the provision of Muslim law of crime. The fact that the most aspect of crimes contained in the Glorious Qur'an were contained in the penal code with some modification in terms of punishment such as the punishment of killing a murderer to imprisonment. The fact that they claim to find shariah principles to be repugnant to natural justice and humanity, such as cutting of the hand of thief.

Accordingly, the constitution was amended to permit a Shariah court judge to sit in the division (Shariah Court of Appeal) and dispense justice in the Court of Appeal^[10].

Aims and Objectives of Shariah

The Shariah originated directly from commandment of Allah, there is the provision or power given to man to interpret and expand divine commandment by means of analogical deduction through other process^[11]. Unlike the Roman law which developed from the acton nor English common law which developed from the writs, the very first source of Shariah is the Glorious Qur'an, the second source is the practice of the Noble Prophet Mohammad (SAW) who was rightly quoted to have said: "I leave two things for you, you will never go astray while holding them firmly the book of God and the Sunnah of the Prophet^[12]."

The aim of shariah is to regulate the relationship of man with Allah and man with man. The objective of Shariah is to regulate human life on the basis of Ma'aruf (virtues) and to cleanse it from the Munkar (vice). Shariah does not however,

limit its functions to provide us with an inventory of virtues and vices, it lays down the entire scheme of life in such a manner that virtue may flourish and vices may not contaminate human life to achieve this end. Shariah has embraced on its scheme all the factors that encourage the growth of good and has recommend steps for the removal of impediment that may prevent its growth and development.

Shariah shapes the Islamic society in a way conducive to the unfiltered growth of good virtue and truth in every sphere of human activity it gives full play to the forces of good in all directions and at the same time it removes all impediments in the path of virtue, along with it, this attempt to eradicate from its social scheme by prohibiting vice and obviating the causes of its appearance and growth which by means of closing the inlets through which it creeps to the society and by adopting measure to check its occurrence [13].

Moreover, shariah aims at providing complete guidance in order for person leave their lives according to the will and plan of Allah, right from the beginning, Allah sent his Prophet three gift which aims at ensuring justice and guidance for the whole human society to the path of peace. They are the book of Allah, the balance and iron which stand for three things which help the entire human society, viz relation which command good and forbid evil, justice which gives each person his due and strong arm of the law which maintains sanctions for evil doers.

However, there are five things which the shariah aim at achieving (Maqasidul Shariah) they are as follow:

1. Shariah aims at protecting human life, and according to shariah, human life is sacred and shall not be taken or tempered with unjustly the Glorious Qur'an says: "We ordained there for them life for life, eye for eye, nose for nose, tooth for tooth, and wound equal for equal [14]."

And Allah says again in the same Qur'an that: "In the law of equality, there is saving of life to you. O ye men of understanding [15]."

The Glorious Qur'an explained in detail and in clear terms where there is taken away of human life by mistake, then compensation is ordained by freeing a believing slave and pay compensation to the deceased's family [16].

2. Shariah also aims at protection of properties; here it means lawful and recognized properties by the shariah, both in kind and in cash [17].
3. Shariah aimed at the protection of religion. Religion means Islam, this protection is clearly stated in the Glorious Qur'an as pervaded where Allah the Most High says: "Truly the religion before God is Islam [18]."

and also, "But if they fight you, slay them [19]."

Allah cursed those who deny the revelation which provides as follows: "Thus, racial arrogance made the Jew averse to the reception truth, simply because it came through the servant of God [20]."

Also Allah made it clear on how the religion of Islam will be protected in the Glorious Qur'an.

4. Shariah equally aims at protection of human intellect and wisdom, so that human would be able to think on what is good and distinguish it from what is bad. That is why Allah prohibits drinking alcoholic liquid in order to protect the human intellect. Allah says:

O ye who believe intoxicants and Gambling (dedication of stones and (divination) arrows are abomination of Satan's handiwork, eschew such (abomination) that ye may prosper [21].

Islamic law intends to prohibit drinking of wine in order to protect human intellect, because anything that can intoxicate man; there is tendency of it to discharge the human brain. Therefore, man has to abstain from such thing because the brain is the engine to the human body, the moment it is corrupted and destroyed, the whole body of human being would be automatically spoiled and become useless. Therefore, it is more important to shariah to protect such organ of the human body i.e the brain, which without it, a man cannot function as a sound human being.

Shariah also aims at protection of human dignity by protecting character and reputation of human being against defamation. Allah the Most High makes defamation as a crime in Islamic law and those who commit it are called wicked transgressors as pointed out in the Glorious Qur'an. Allah says:

And those who launch a charge against chaste women, and produce not four witnesses (to support their allegation). Flog them with eighty stripes; and reject their evidence ever after, for such men are wicked transgressors [22]. This is to guard the honour and protect human dignity as well as purify partially our offspring for being illegitimate children.

Conclusion

This is the nature of shariah legal system and any law that does not protect the above five mentioned is not a good law. From the above explanation, one can clearly distinguish between common law and Islamic law. Because, our presence situation in the country shows that the law of the land fails to take care and protect life and properties of the citizens. Our security agencies in the country now are in the state of dilemma, they do not know where to start, because the law is at fluty so the result is tantamount to be negative instead of positive.

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