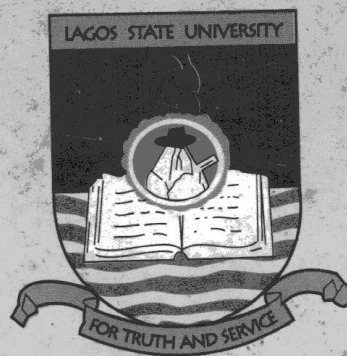


# LASU Law Journal



Vol. VI Issue 1 (2008) LASU LJ 1 - 213 ISSN - 1115837

## ARTICLES

- Legal Implications of "Software" in Sale of Goods Transactions  
*Olusegun Teriwo*
  - Perspectives on the Law of Manslaughter in Nigeria  
*Suleiman Alperhukwon Ojo*
  - Woman-To-Woman Marriage in the Currents of Contemporary Law  
*Adele Olayemi*
  - Combating the Spread of HIV/AIDS in sub-Saharan Africa: Beyond Intellectual Property Rights  
*Oluwote Aladeji*
  - Juvenile Justice Administration in Nigeria and Emerging International Standards  
*Heck Chima Oloro*
  - Leg. I and Regulatory Framework for Contributory State of Health Insurance in Nigeria  
*Izevora Kofowale Abiodun*
  - Jurisdiction of Courts and Tribunals in Tax Matters in Nigeria  
*Orifowoko Odunle*
  - Alienation of Family Property under the Yoruba Native Law and Custom: Suggestion for reforms  
*Olugbenga Ojo*
  - Using Statute to Improve Corporate Social Responsibility in Nigeria - A Viewpoint  
*Ako Babu Tomina Awelade Oluwani*
  - Recovery of Debt Procedure Under Nigerian Law and Alternative Dispute Resolution Centers  
*Amilagbe Oluwaseun Adesina Oloro*
  - The Shari'a Legal System and Democracy in Nigeria: An Unfinished Debate  
*Moganna Ghazali Ibrahim*
  - Real and Intellectual Property Transactions: Reflection on Common Law  
*Temiyo Yerokun-Oloro & Oluremi Savage Oyokunle*
  - Consent to Medical Research: The Locus in the Nigerian Legal System  
*Adeayo David Mojibola*
  - Emergent Evidentiary Issues in Electronic Banking Operations in Nigeria  
*Zubi Collins Eneshi*
- ## STATUTE REVIEW
- The Lagos State University Law 2004 - A Review  
*Olaoluwa Rufus*
- ## BOOK REVIEW
- The Imperatives of IS: 2005 Law of Commerce & Other General Transactions  
*Josiah Oluwapupo*

Published by the Faculty of Law, Lagos State University

# **LASU Law Journal**

## **EDITORIAL BOARD**

Professor Funso Adaramola, OON  
Dean Faculty of Law, Lagos State University

Professor John Morison  
Queens University of Belfast, Nthn. Ireland, UK

Professor Akin Oyeboode  
Faculty of Law, University of Lagos

Professor Ameze Guobadia  
Director - General, Nigerian Institute of Advanced Legal Studies

Professor Paul Torremans  
Faculty of Law, University of Leeds

Dr. Olanrewaju Fagbohun  
Faculty of Law, Lagos State University

Dr. Isah Ade - Bello  
Faculty of Law, Lagos State University

Dr. Rufus Olaoluwa  
Faculty of Law, Lagos State University

## **EDITORIAL COMMITTEE**

Professor Funso Adaramola, OON  
Editor - in - Chief

Professor Abdul - Qadri Zubair  
General Editor

Dr. Olanrewaju Fagbohun  
Deputy Editor - in - Chief

# LASU Law Journal

Vol. VI Issue 1 (2008) LASU LJ 1 - 213 ISSN - 1115837

## Contents

### ARTICLES

- Legal Liability in "Software" in Sale of Goods Transactions  
*Olusegun Yerokun* .....1-21
- Perspectives on the Law of Manslaughter in Nigeria  
*Sulaiman Ikpechukwu Oji* .....22-35
- Woman to Woman Marriage in the Currents  
of Contemporary Law  
*Adekile Oluwakemi* .....36-47
- Combating the Scourge of HIV/AIDS in Sub-Saharan  
Africa: Beyond Intellectual Property Rights  
*Oluwole Adedeji* .....48-58
- Juvenile Justice Administration in Nigeria and  
Emerging International Standards  
*Helen Chuma - Okoro* .....59-79
- Legal and Regulatory Framework for Combating Human  
Trafficking In Nigeria  
*Izevbuma Kehinde Ikhimiukor* .....80-95
- Jurisdiction of Courts and Tribunals in Tax Matters in Nigeria  
*Orifowomo Odunola* .....96-114
- Alienation of Family Property Under the Yoruba Native  
Law and Custom: Suggestion for Reforms  
*Olugbenga Ojo* .....115-132

Using Statute to Improve Corporate Social Responsibility in Nigeria: A Viewpoint <i>Ako Rhuks Temitope &amp; Oyelade Olutunji</i>	.....133-147
Recovery of Debt Procedure Under Nigerian Law and Alternative Disputes Resolution Options <i>Amokaye Oludayo &amp; Adesina Coker</i>	.....148-155
The Sharia Legal System and Democracy in Nigeria: An Unfinished Debate <i>Olagunju Gbadebo Anthony</i>	.....156-173
Real and Intellectual Property Transactions: Reflections on Common Threads <i>Temitope Yerokun Oloko &amp; Oluremi Savage Oyekunle</i>	.....174-183
Consent to Medical Research: The Lacunae in the Nigerian Legal System <i>Adebayo Serifat Mojisola</i>	.....184-192
Emergent Evidentiary Issues in Electronic Banking Litigation in Nigeria <i>Zubi Collins Enesha</i>	.....193-204
<b>STATUTE REVIEW</b> The Lagos State University Law 2004 - A Review <i>Olaoluwa Rufus</i>	.....205-209
<b>BOOK REVIEW</b> The Imperatives of Islamic Law of Commerce & other General Transactions <i>Hamzat Oladipupo Edu</i>	.....210-213

# THE SHARIA LEGAL SYSTEM AND DEMOCRACY IN NIGERIA: AN UNFINISHED DEBATE

**Olagunju Gbadebo Anthony\***

*LL.M(Hons), LL.M, B. L*

Lecturer, Faculty of Law, Lagos State University  
Ojo, Lagos.

## Introduction

A very provoking topic. Shari 'ah and democracy both different and independent concepts have had to find their ways into the uterus of the same mother-Nigeria. And now they have become like Siamese. Who will separate them? What will separate them? Is there any need for separation? Can this twin survive in Nigeria, or will Nigeria outlive this Siamese? Our intention in this paper is to examine Shari 'ah first as a concept, and then as a system applicable to a people. What are its workings as a system? Its operational modalities etc. We will then examine democracy as a concept in the Nigerian setting with its peculiarities of diversities in ethno-religious and linguistic background. We will examine or rather attempt to see if Shari 'ah as a system is a practicable one within the Nigerian legal democratic setting or framework without tensions. From here, we will endeavor to proffer solutions and suggestions / recommendations in the hope that at the end of the day, this paper would have contributed positively to the on going debate on the issue.

## Islam as A Religion

It is important to point out at the beginning, that Islam and the Shari 'ah are twin aspects of the same subject. We cannot talk about one without referring to the other. Islam is a religion, which originated around the 7th century A.D with its founder as Muhammed (p b h) who is regarded in that faith as the last of all prophets.

Historical sources revealed that Mohammed (p b h) was born in Mecca (Arabic, Makkah), Saudi Arabia, around 570 C.E with his father as 'Abd Allah and mother Aminah. His father died before his birth, while his mother also died when he was about six years old. The predominant form of worship among the Arabs during this period was the worship of Allah, which was centered in the Mecca valley, the sacred site of the Ka 'bah.<sup>1</sup>

Islamic tradition reveals that "the Ka 'bah was originally built by Adam according to a celestial prototype and after the Deluge rebuilt by Abraham and Ishmael".<sup>2</sup> The place eventually grew to become the sanctuary for 360 idols, one for each day of the lunar year. As Muhammad (p b h) grew up he became contemptuous of these religious practices. According to John Noss:

“(Muhammad) was disturbed by incessant quarreling in the avowed interests of religion and honor among the Quraysh Chiefs (Muhammad belonged to that tribe). Stronger

\* Solicitor and Advocate of the Supreme Court of Nigeria. Formerly Visiting Research Fellow at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany, and Fellow, Salzburg Global Seminar, Austria.

1 This was (and still is) a simple cube like building where a black meteorite was revered.

2 See Philip K. Hitti, *History of the Arabs*, (Revised 10th ed.), (New York: Palgrave Macmillan, 2002), 266.

still was his dissatisfaction with the primitive survivals in Arabian religion, the idolatrous polytheism and animism, the immorality at religious convocations and fairs, the drinking, gambling, and dancing that were fashionable, and the burial alive of unwanted infant daughters practiced not only in Mecca but throughout Arabia.”<sup>3</sup>

Again, Islamic tradition reveals that Muhammad (p b h) got the call to be a prophet when he was about the age of 40 while he was on one of his usual visits to a nearby cave in a mountain called Ghar Hira' to meditate. On this occasion, an angel appeared to him and commanded him to recite in the name of Allah.<sup>4</sup> After trying unsuccessfully for two times, the angel succeeded at the third time to coerce Muhammad (p b h) into the recitation, which began the series of revelations that constitute the Qur'an. There is however another tradition, which states that divine inspiration was revealed to Muhammad (p b h) like the ringing of a bell.<sup>5</sup> The consensus of opinion among Islamic scholars, is that the first revelation as received by Muhammad (p b h) is contained in the first five verses of Surah 96 entitled Al-'Alaq, which reads”

“In the name of Allah, the beneficent, the merciful...”

These revelations took a period of between 20 to 23 years from about 610 C.E to his death in 632 C.E. The tradition had it that since Muhammad (p b h) was not literate, he had to commit all these revelations to memory which he in turn recited to those who happened to be near him to also commit to memory. And so the recitations were kept alive in these forms. Later Muhammad (p b h) had these revelations written down by scribes on the primitive materials then available such as shoulder blades of camels, palm leaves, wood, and parchment as paper was then unknown to the Arab world. The Qur 'an in its present form was said to have been put together after Muhammad's (p.b.h) death by his successors and companions during the reign of the first three caliphs.

### **The Expansion of Islam (The hijrah and the Jihad)**

After the revelation, it was by no means an easy task for Muhammad (p b h) to make people accept his new faith. In fact, the people of Mecca, and even of his own tribe rejected him. After 13 years of rejection and persecution, he moved northwards to Yathrib, which then became known as al-madinah (Medina), the city of the Prophet. This was the hijrah, which occurred around 622 C.E. The date marked a significant point in Islamic history as it was later adopted as the starting point for the Islamic calendar.<sup>6</sup>

Muhammad (p b h) was to later carry out a successful holy expedition or war (the jihad) against Mecca, with the latter surrendering to him in January 630 C.E. (8 A. H.). He became the ruler of Mecca, and with this, was able to do a total cleansing of the idolatrous images from the Ka 'bah and thereafter establish it as the focal point for pilgrimages to Mecca. A practice, which continues till today and has remained one of the five pillars of Islam.

<sup>3</sup> See John B. Noss, *Man's Religions*, (Revised 7th ed.), (New York: Macmillan Co., 1984), 216.

<sup>4</sup> This angel was later identified as angel Jubril (Gabriel).

<sup>5</sup> See generally, Sahih Al-Bukhari, *The Book of Revelation*, available at [http://www.searchtruth.com/book\\_display.php](http://www.searchtruth.com/book_display.php) (Last accessed 25.06.08).

<sup>6</sup> The Muslim year is recognized as A. H. (Latin of which is Anno Hegirae i.e. year of the flight) rather than A. D. (Anno Domini i.e. year of the Lord) or C.E. (Common Era).

It is an established fact, that within a few decades of Muhammad's (p b h) death in 632 C.E, Islam had spread far and wide. Most of the other Arab nations had embraced it with open hands, and it was making its inroads even into Europe. Specifically, it had spread to Afghanistan, Tunisia in North Africa, eastward to Pakistan, India and Bangladesh, and down to Indonesia. It penetrated into Spain and was already at the French border. All these between the 7th and the 8th centuries. No wonder professor Ninian Smart stated:

“Looked at from a human point of view, the achievement of an Arabian prophet living in the sixth and seventh centuries after Christ is staggering. Humanly, it was from him that a new civilization flowed. But of course for the Muslim the work was divine and the achievement that of Allah”.<sup>7</sup>

### The Spread of Islam to Nigeria

There are divergent opinions as to the exact date of the introduction of Islam into Nigeria. This is to be expected because of the heterogeneous nature of our subject of study Religion. The consensus however among writers, is that Islam had reached the geographical entity now known and called Nigeria a long time before the advent of the British colonialists. In fact, with regards to the North, the religion had been more than well established and settled among the people before British imperialism. According to Opeloye, referring to al-Bakri:

“Islam reached Kanem through the Kawaar-Fezzan route in A.D 666. Though there are various claims regarding the exact date of Islam's penetration to the Kingdom, what is certain is that by the 11th century, Islam was already made a state religion”.<sup>8</sup>

This was the same Kanem, which later became the Borno Empire in 1386 C.E. and together with the Hausa-Fulani constitute the major part of Northern Nigeria today. The records show that the first Mai (ruler) of this area to embrace Islam was Hume Jilme whose reign span from 1085 to 1097 C.E. He made Islam the official religion of the kingdom. Among his many successors was Mai Ali b. Dunama (1476 - 1503 C.E.) who established a new capital for the kingdom and appointed qadi to administer justice in Shari'ah court.

By the time of Mai Idris Alooma (1571-1603 C.E), Islamic culture had been deeply entrenched in the kingdom with Islamic Law gaining some unparalleled prominence in the lives of the people. After Alooma, the religion suffered a set back for a while (adulteration) until around the 19th C. when Mohammad al-kanem became the Mai. The latter having studied in al-madina (Arabia), Cairo (Egypt) and Fez for about thirteen years successively tried to bring back the old glories of Islam to the kingdom until his death. He was then succeeded by his son Umar (1855-1880 C.E) who brought sweeping reforms to the religion. First, he changed the title from Mai to Shaykh thus becoming the first Shaykh of Borno. Second he made Arabic the official language. Third he founded a new capital in Kukawa (the spot he reached on completing the reading of the Qur'an). Fourth, he appointed a number of functionaries for the already established offices of the

<sup>7</sup> See Ninian Smart, *Background to the Long Search*, (London: BBC, 1977), 32.

<sup>8</sup> See Muhib O. Opeloye, *Building Bridges of understanding Between Islam and Christianity in Nigeria* (2001), Lagos State University, Inaugural Lecture Series, p.2. Opeloye is a Nigerian Islamic Scholar of repute, a Professor of Islamic Studies and former Dean, Faculty of Arts, Lagos State University, Nigeria.

kingdom among which were the office of a qadi.

With respect to Hausa-fulani empire the religion came much later around the early part of the 14th century C.E. Hitherto the inhabitants of this areas were mostly animists. The flourishing trans-Saharan trade however transformed most of the towns to trade centers where contact with Islamic traders / merchants became inevitable. According to Opeloye:

“The second wave of Islamic penetration to Nigeria was through Hausaland and this was during the first half of the 14th century C.E. By the 15th century, during the reign of Sarkin Kano Muhammad Rumfa between 1463 and 1499, the religion had been well established in the region.”<sup>9</sup>

This assertion was probably due to the fact that the first Hausa rulers to embrace Islam did so around that period. These were the first Muslim rulers of Kano and Kastina who were Ali (1349-1385 C.E) and Mohammad Korau (1320-1358 C.E) respectively. In Yauri, the first Muslim ruler was said to have emerged around 1578 C.E, while Zamfara had its own around the 17th century C.E. In Nupeland, the first Muslim Etsu emerged around the 18th century C.E. It may therefore be correct to say that the introduction of Islam to all these areas actually pre-dated the period stated above if we consider the fact that some of the people may actually have embraced the religion long before their rulers did.

The most significant ruler of this period was Muhammad Rumfa (1463-1499 C.E.) who brought unprecedented changes to Islamic Scholarship in Kano. During his rule, Islamic scholars from various parts of the Muslim world visited Kano. Among them was Muhammad b. Abdul'l-Karim al-maghili, a professor at the famous Sankore University in Timbuktu. History has it that the practice of women seclusion actually started during the time of Rumfa.

By the 18th century, Islam had penetrated almost every part of Hausaland and almost all the transactions governing the lives of the people had been Islamised. In fact Islam and its tenets had become the peoples way of life. It had become their tradition and culture. As Opeloye argues;

“It was in order that the Emir could be guided in the proper administration of his emirate in accordance with the dictates of the Shari 'ah that he commissioned Muhammad b. Abdul Karim al-maghili to write his famous book known as *The Growth Of Religion Concerning The Obligations of Princes*. By the 18th century, the entire Hausa States had been islamised and that meant islamisation of the people's way of life. The socio-economic system, the political system and even the educational system were all organized in consonance with Islamic principles”.<sup>10</sup>

9 Muhib O. Opeloye, Op. Ct., 2-3

10 Muhib O. Opeloye, Op. Ct., 3

Before the turn of the century however, the practice of the religion had deteriorated among the people and its fundamental principles degenerated to the extent that it became a shadow of itself. It was this factor that therefore necessitated the Jihad embarked upon by Uthman dan Fodio in early 19th century to resuscitate the lost glories of the religion. The Jihad was to reform (not introduce) the practices of Islam to conform with the dictates of Allah as dictated to Muhammad (p. b. h) in the Qur'an and the Sunnah. He succeeded in establishing an Islamic State where Shari 'ah was applied in full force.

As for the Southwest, the focal point of penetration of the religion was Yorubaland. Even though opinions are divided as to the exact period, a date around the 17th century seems more appropriate.<sup>11</sup> Unlike in Hausaland where the State (rulers) were the central point of the religion, it was more of a personal / private concern of individuals in this part. Most of its adherents having accepted it quietly and peacefully through contacts with itinerant scholars and traders.<sup>12</sup> There are also pockets of Yoruba kingdom where Islam was not only widespread, but the actual practice of the Shari 'ah was introduced. These were Ede (under Oba Abibu Lagunju 1900); Iwo (under Oba Momodu Lamuye 1906); and Ikirun (under Oba Aliyu Oyewole 1912).<sup>13</sup>

### **The Three Sources of Teaching and Guidance in Islam**

There are three authorities upon which life in Islam revolves. These are:

1. The Qur'an;
2. The Hadith; and
3. The Shari 'ah

The Holy Qur'an sometimes referred to as the Glorious Qur'an was revealed to Muhammad (p b h) by angel Jubril. The word means "recitation" in the English Language. It was originally written in Arabic and in this form it is viewed as been inspired. Today there are English translations of the Qur'an but there is no Universally accepted one. The Arabic form is regarded as the purest form of revelation since it is believed that, this was the language used by Allah in speaking through angel Jubril. In fact Surah 43:3 states:

"We have made it a Qur'an in Arabic, that ye may be able to understand (and learn wisdom)" (AYA)

The Hadith, or Sunnah are the records of the actions or sayings of Prophet Muhammad (p b h). In a Hadith, only the meaning is viewed as inspired.

The Shari 'ah or Islamic law is based on the principles of the Qur'an and it regulates a Muslim's entire life be it religious, social, political or economic. According to Hitti, under the law,

"All man's acts are classified under five legal categories:

<sup>11</sup> Opeloye, Op. Ct., 3

<sup>12</sup> See Gbadamosi, T.G.O., *The Growth of Islam among the Yorubas 1841-1908*, (London: Longman 1978), 172.

<sup>13</sup> C.F. Opeloye, Op. Ct., 3 and also Is-haq Akintola, *Shari 'ah in Nigeria: An Eschatological Desideratum*, (2001), 95

- (1) What is considered absolute duty (fard) (involving reward for acting or punishment for failing to act);
- (2) Comendable or meritorious actions (mfustahabb) (involving a reward but no punishment for omission);
- (3) Permissible actions (ja'iz, mubah), which are legally indifferent;
- (4) Reprehensible actions (makruh), which are disapproved but not punishable;
- (5) forbidden actions (haram), the doing of which calls for punishment.”<sup>14</sup>

### The Shari 'Ah As a Legal System

It might be well to state here again that the Shari 'ah cannot be divorced from Islam. In fact most Muslim scholars do not mince words to assert that Islam is Shari 'ah and Shari 'ah is Islam. Truly speaking, looking at the sources of the law, one finds it difficult to remove Islam as a religion from Shari 'ah and vice-versa. According to Akintola:

“There are four sources of Islamic legislation. These are the Glorious Quran, the sunnah (i.e. sayings, practices and tacit approvals of prophet Muhammad; peace be upon him), the Ijma' (i.e. consensus of the opinions of learned scholars of Islam), and Qiyas (i.e. analogical reasoning) also called Ijtihad or individual discretion”.<sup>15</sup>

It is clear from the above therefore, that the sources of the religion are also the basis for the law (Shari 'ah) and as Ambali pointed out:

“Muslims have neither apology nor explanation to offer any person(s) or organization for Qur'an and sunnah being the primary sources of Shari 'ah.”<sup>16</sup>

He argued further:

“This is not peculiar to Islamic law. Nigeria Native Laws and Customs are inextricably interwoven with the indigenous beliefs and culture and they vary from one group to another and from place to place”.<sup>17</sup>

He concluded that the same applies to both the Jewish and Christian faiths. Most other writers justified this stand by arguing that the basis of the common law which Nigeria inherited from Britain and which has dominated our legal system is the Christian Bible. To back this assertion they cited the case of *Bowman v Secular society Ltd*,<sup>18</sup> where Lord Sumner declared:

“Ours is, and always has been, a Christian State. The English family is built on Christian ideas, and if the national religion is not Christian there is none. English Law may well be called a Christian Law, but we apply many of its rules and most of its principles, with equal justice and equally good government, in heathen communities and its sections, even in courts of conscience...”

14 See Philip K. Hitti, *op. cit.*, 66

15 Is-haq Akintola, *op. cit.*, 6-7

16 Qadi Abdul Mutalib A. Ambali, “Shari 'ah and its relevance in the contemporary Nigeria”, in *Perspectives in Islamic Law and Jurisprudence: Essays in honor of Justice Dr Muri. Okunola (JCA) (2001)*, 73-74.

17 *Ibid.*

18 (1916 17) A. C., 406.

Also in the same case, Lord Finely the then Lord Chancellor equally stated:

“There is abundant authority for saying that Christianity is part and parcel of the laws of the Land-but the fact that Christianity is recognized by the law is the basis to a great extent for holding that the law will not help endeavours to undermine it”.<sup>19</sup>

There is no gainsaying repeating the fact that the Christian religion is of course based on the Bible.

The scope of Shari 'ah as a legal system extends as far as the following:

- (1) Ibadah (spiritual laws or laws which regulate the way Muslims worship). This embraces Tauhid (science of the unity of God), Salat (Islamic ritual prayers), Saum (fasting), Zakat (poor rate) and Hajj (pilgrimage).
- (2) Al-Ahwal al-Shakhisyah (Personal Laws) which include law of marriage, divorce, custody of children, issues bordering on paternity, inheritance and succession, will, bequest, endowment and disputes arising therefrom.
- (3) Mu'amalat (Law relating to transactions generally) which include property and title thereof, possession, contract, sales, hiring, pledge, bailment, trust, mortgage, partnership etc.
- (4) Uqubat (Law relating to crimes and punishment thereof), which embraces either crimes against God and their punishments and Hudud-crimes against fellow beings and their punishments.
- (5) Ahkam Sultaniyah (Law relating to the state and its administrative machineries) which include administrative laws, duties of rulers, responsibilities of citizens, constitutional law, rule of law, human rights etc.
- (6) Akhlaq (Law of morals), which include duties, which a person owes himself, his family, neighbors and extending to animals and other creatures.
- (7) Al-Adab and the al Qada (Law of Ethics), which include administration of the judiciary generally such as appointment of judges, their discipline and procedure in courts.
- (8) Siyar (international Law), which include international law generally, international diplomacy, law of treaties and conventions, arbitration etc.

Having considered the scope of the Shari 'ah as enumerated above, we cannot but conclude that the legal system has covered virtually all the aspects of life of the Muslim from personal, to his relationship with other individuals and the state. It appears therefore that nothing is left in the realm of secularity. Every aspect of his life is religious so to say. Thus Malik easily concluded that:

“To a non-Muslim nurtured on a traditional concept of religion, it is only a private relationship between man and his creator. But for a Muslim religion comprehends the whole of life. No sphere is left in which the thoughts and

<sup>19</sup> See S.H.A Malik, “Shari 'ah: a legal system and a way of life”, in *Perspectives in Islamic Law and Jurisprudence*, op. ct., 37; Opeloye, op. ct., 5; and also Akintola, op. ct., 151.

deeds of a Muslim-both in his personal and public life- are inconsequential to his fate in the hereafter. While in some other religious traditions there is a line of demarcation between religion and the State, in Islam, however, everything belongs to Allah including what Caesar possessed and Caesar himself (Qur'an 3 verse 109 and 10 verse 66). In short, in Islam one cannot find a no-man's land to which religion does not lay a claim".<sup>20</sup>

At this juncture, the question one may ask is, "what is a legal system?". This presupposes the sum total of all laws in a particular society or setting,<sup>21</sup> which must of necessity take into consideration the concept of validity / legality of the laws within that system and the institutional structure/framework for enforcement. We cannot therefore remove law from a legal system. What then is law? This has been a difficult concept to define since ages, but suffice to say, that it is a set of rules and/or regulations, which governs the affairs of men in a given society. From the Greeks (the Natural Law School) down to the British theories (the positivists) all appeared to recognize God (or at least a supreme being or an external force greater than man) as a legislative authority of some kind. For example, John Austin regarded as the 'father' of positivism,<sup>22</sup> in classifying laws, classified laws set by God (i.e. Divine Laws) and laws set by men to men as laws 'properly so called'. Even though he later argued that laws set by men to men are 'positive laws' and therefore formed only the province or the subject matter of jurisprudence.

The next exposition of this paper therefore must follow that if the Shari 'ah is the Islamic law which derives its validity/legality from the Qur'an (revelations of God through angel Jubril to prophet Muhammad (p. b. h)), then it qualifies to be "Law properly so-called". Not only this, Islam having being accepted into Nigeria as a religion, or rather same having being embraced by persons in Nigeria as demonstrated earlier in this paper, Shari 'ah (one of the authorities upon which Islam is based) qualifies as part of the sum total of all laws in Nigeria and hence part of the Legal system in Nigeria.

### **The status of Shari 'ah in Nigeria Before 27th October 1999**

We have seen earlier in this paper that Shari 'ah had assumed the State Law in most parts of the Northern emirates prior to the advent of the British on colonization mission. There was indeed an efficient, effective and well-organized judicial system and administration of justice based on the Shari 'ah in both civil and criminal justice in those areas. There were the Emirs' courts and the Alkali courts. There was also the "Dogaris" (police) to help or assist in the enforcement of the law (especially in criminal cases) when judgments are handed down by the courts.

With the advent of the British however, it became a difficult task (or rather unacceptable) for the colonial masters to run common law (British law) alongside Shari'ah law especially in certain aspects. These areas concern mostly criminal law. For example death by hanging was substituted for beheading and stoning to death with respect to homicide and adultery respectively; and imprisonment for theft or stealing instead of amputation.

<sup>20</sup> S.H.A Malik, op. ct., 27.

<sup>21</sup> See generally, Bentham, *Of Laws in General* (edited by H.L.A. Hart) (1970) and also Austin, *Lectures on Jurisprudence* (edited by Campbell) (5th edition).

<sup>22</sup> Although this is contestable as later evidences have shown that the 'real father' of positivism is Jeremy Bentham whose work Austin probably improved upon. See Dias, *Jurisprudence*, (5th ed.) 1985, 109.

In the area of civil law, little or no changes were made especially in the areas of Muslim personal law except of course the re-designation of 'Alkali courts' as 'area courts'. Only a change in nomenclature without affecting the functions of the court i.e. Administration of Islamic (or Muslim) personal law the Shari 'ah in all its civil aspects. Thus as Honourable justice Muhammad Bello, C.J.N (retired) pointed out:

“For the avoidance of doubt, the common law of England was never imposed on an area court and an Alkali had no jurisdiction to apply it, except where the parties agree to have their case decided in accordance with the English Law”.<sup>23</sup>

He continued:

“Thus, in adjudication of cases concerning marriage, and its dissolution, family relations, guardianship of infants and all questions relating to Muslim personal laws, our area courts apply Shari 'ah according to the Maliki School...”<sup>24</sup> c

He concluded that:

“Business transactions in our markets, sale and pledge of land in our towns and villages, except land which is subject to right of occupancy granted by a Governor, are also regulated by Shari 'ah. Indeed, with the exception of matters which are within the exclusive jurisdictions of Federal and State High Court, our mode and conduct of life has always been governed by Shari 'ah”.<sup>25</sup>

### **The Codification of Shari 'ah Criminal Law in Nigeria- The Penal Code**

By the mid 1950's protests were beginning to rise against the adjudication of Shari 'ah by some of the Alkalis who were accused of arbitrariness in their dispensation of justice under the system. This was made possible because even though Shari 'ah criminal law was written in the Qur'an, Hadith and other learned books, punishments for many of the offences were not prescribed. These were thus at the discretion of the Kadis. As noted by Bello CJN (retired):

“By the mid 1950's it was apparent that this Lacuna resulted in abuses and miscarriage of justice by some Alkalis. Several leaders of political parties were imprisoned because of their political activities, under the guise of Shari 'ah”.<sup>26</sup>

It was in order to ensure justice, peace, stability and fair play that the political leaders at the pre-independence conference of 1957 decided that the 1960 constitution should embody a provision to the effect that:

“A person shall not be convicted of any offence unless the offence is defined and penalty therein prescribed in a written law”.

23 Hon. Justice Mohammed Bello, “Shari 'ah in the lights of Nigeria Constitution”, in *Perspectives in Islamic Law and Jurisprudence*, op. ct., 66  
 24 *Ibid*  
 25 *Ibid*  
 26 *Ibid*

This then laid the foundation for the codification of the Shari 'ah criminal law.

By 1958, the Northern Nigerian Government constituted a panel comprising of International jurists to recommend a code. The panel included: the Chief justice of the Sudan as chairman; a retired justice of Pakistan's supreme court; professor Anderson of the school of Oriental and African studies, University of London; Sir Kashim Ibrahim; Alkali Musa Bida and ; Mr. Peter Achimugu. It was this panel that recommended that there should be an enactment of a criminal law to apply uniformly to all persons living in the North, which would take cognizance of the Muslim majority in that area without conflict with the injunctions of the holy Qur'an and the Sunnah.

In 1959, a draft Bill based on the penal codes of India, Pakistan, Malaysia, Indonesia and the Sudan was drawn up and scrutinized by Shari'ah jurists headed by Wazirin of Sokoto-Malam Junaidu reputed to be the greatest jurist in Northern Nigeria at the time. This Bill was passed into law by the Northern House of Assembly with effect from 1st October 1960 after it had been confirmed that the code conformed to the tenets and injunctions of the Shari'ah. The code, known as the penal code applies to all courts in the Northern states be it High courts, Magistrates courts or Area courts whether or not it is presided over by an Alkali. Where there is an appeal from these courts, the Court of Appeal and the Supreme Court must rely on this code. As rightly noted by Bello C.J.N. (retired):

“None of the Courts (as mentioned above) are allowed by law to apply the common law of England. The code has been in operation for forty years and even now as an existing law, it has been adopted by the 1999 constitution.”<sup>27</sup>

### **Expansion of The Scope of The Application of Shari 'Ah**

On October 27th, 1999 five months after the 4th republic was ushered in, Zamfara one of the 36 states in the Federation made a pronouncement to the effect that it was adopting a full application of Shari 'ah in the state. The Shari 'ah penal code, Zamfara State Government, Gusau, 2000 was enacted. Not long after, the Shari 'ah fire started spreading through the northern states like a wild fire in harmattan. Within two years, several other states in the North joined Zamfara.<sup>28</sup> Naturally, controversy trailed the adoption of a full-blown Shari 'ah in these areas. How would such action affect non-Muslims living in those states? How would Shari 'ah run alongside common law in those state? And then what would be the implication of this to our nascent democracy? Was the action constitutional? These were some of the questions on the lips of people.

### **Constitutionality of Shari 'ah**

Viewed from the point of the 1999 constitution, we make bold to say that Shari 'ah in its present application is constitutional. Section 38 (1) of the constitution provides:

27 Bello, op. ct., 68. Words in bracket mine.

28 Kano, Kaduna, Jigawa, Sokoto and Yobe states have since adopted the Islamic legal code.

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

It follows from the above, that if Shari 'ah is part and parcel of Islam and vice-versa, then it is constitutional. No doubt that a former attorney - General and Minister of justice, of the Federation (Mr. Kanu Godwin Agabi) declared so.<sup>29</sup> However, the issue now is, can a state within the federation enact its own Shari 'ah law, such as Zamfara and others have done in spite of the operation of the penal code? Again we must go back to the constitution. Section 4 makes a division of the legislative powers of Government between the Federal and the States. Subsection 1-4 of that section vests the legislative powers to make laws for the Federation on the national Assembly. In furtherance of this, two lists were created in the second schedule to the constitution. These are the exclusive legislative list and the concurrent legislative list. With respect to the exclusive list, only the National Assembly can make laws upon the matters listed therein. For the avoidance of doubt section 4(3) provides:

“The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the exclusive Legislative list shall, save as otherwise provided in this constitution, be to the exclusion of the Houses of Assembly of States.”

Now section 4(6) vests the legislative powers to make laws in a state on the House of Assembly of the state. As regards the concurrent list, both the National Assembly and the States Houses of Assembly are permitted to legislate upon the matters listed therein. But if any inconsistency arises upon any law as regards this list, the law made by the National Assembly shall prevail, and the law made by the State Assembly shall to the extent of the inconsistency be void.<sup>30</sup>

In addition to the above, section 4(7) (c) also provides that the House of Assembly of a State shall have power to make laws on:

“Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution”.

The question now is, does this provision create a residual list upon which issues not listed in the Exclusive and Concurrent list (such as Shari 'ah) fall. Bello C.J.N. (retired) argues that the provision:

“...empowers the States to make laws on any other matter not included in the two lists”.<sup>31</sup>

He argues further that Shari 'ah falls within the residue and consequently, a State has the constitutional power to legislate on Shari 'ah.<sup>32</sup> This appears to be the correct position since the

29 See the Post Express, 4th December, 1999, 1-2 under the caption “Shari 'ah is constitutional FG”.

30 See S.4 (5)

31 Bello, op. ct., 69

32 *Ibid.*

two lists cannot claim to be all-exhaustive. Besides the phrase "any other matter" contemplates something not listed in either the exclusive or the concurrent lists. If that be the case, Shari 'ah amongst others will fit into that something. This argument could further be justified if one views it against the background that even the penal code was not a Federal enactment. It was passed into law by the Northern Nigeria Government. What might be seen as the equivalent of the States today?

In furtherance of the above, section 6 of the constitution empowers the National Assembly or the House of Assembly of a State to establish courts to exercise jurisdiction on matters upon which they may make laws. By extension they may also abolish any such court, which they have power to create. The courts are listed in subsection 5 and the Shari 'ah court of Appeal of a State is mentioned in subsection 5 (g). The establishment of, appointment to, jurisdiction, constitution and rules of procedure to be adopted in this court are contained in sections 275-279 of the constitution. As for court of first instance, subsection 5(k) addresses this issue when it states that the State House of Assembly may establish:

"Such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws."

Now that this hurdle is cleared, how does the penal code apply vis-a-vis the Shari 'ah code? Unless repealed it appears that the penal code will continue to operate alongside the Shari 'ah penal code. While the penal code applies in the regular courts to non-Muslims, the Shari 'ah code will apply in Shari 'ah courts to Muslims. This is the case of a dual legal system, which of course is not peculiar to Nigeria.<sup>33</sup>

### **The Inviolability Of Nigeria's Position On State Religion**

At this juncture, it is pertinent to find out whether the adoption of Shari 'ah as a legal system violates the provision of section 10 of the 1999 constitution which States as follows:

"The Government of the Federation or of a State shall not adopt any religion as State religion."

It is humbly submitted, that the declaration of a particular legal system cannot automatically change the status of a State to that legal system. More so if other legal systems are still allowed to operate alongside it. It may be however that, that legal system is dominant over others. But this may just be reflective of the fact that the majority of the people want it to be so otherwise it would fail. An hypothetical case would be that if the Lagos State Government discovers that the number of African traditionalists far outnumber other religions and then decided to codify customary law and set up courts to administer it, would this qualify Lagos State as declaring African traditional religion as the State religion? I beg to disagree. To violate this constitutional provision, the State must make an unequivocal declaration that it is adopting such a religion as the State religion. Not only that, for a religion like Islam the Qur 'an, Hadith and other books of

33 The same applies in India, the world's biggest democracy.

Islam (not penal code) would be reverted to. This of course would be a violation of section 36(12) of the 1999 constitution, which states that:

“Subject as otherwise provided by this constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therein is prescribed in a written law, and in this subsections, a written law refers to an Act of the National Assembly or a law of a State, any subsidiary legislation or instrument under the provisions of a law”.

Besides, such a State would have violated the supremacy of the constitution as reinforced in section 1(1).

### **The Application Of Shari 'Ah in a Democratic Setting**

Having looked at Shari 'ah and its application elsewhere in this paper, it is pertinent to now turn to a discussion on the role of Shari 'ah in democratic governance. Democracy today has assumed various meanings to different peoples across the world. From its traditional elementary definition of Government of the people by the people and for the people, it has assumed the principle of majority rule with respect for minority views; planned economy; good governance; best practices in governance; improved social services; respect for workers rights; protection of the ruled by the rulers; protection and guaranteeing of Fundamental Human rights and a number of other freedoms etc.

These are all principles of democracy and more. The underlying factor in any definition however seem to be that it must guarantee certain freedoms: Freedom to choose the leaders; Freedom to choose the applicable law(s) in the society; Freedom to associate; Freedom of worship; Freedom of expression; Freedom to move freely; Freedom in fact of everything so far it is within the confines of the law since your own freedom ends where others start.

Does Shari 'ah as a system recognize or rather respect these Freedoms? Let us start with system of governance under Shari 'ah. A learned writer on the subject had this to say:

“Selection of leader by popular will is the generally approved method by Shari 'ah. How this process should be carried out is left to individuals. An authority to this could be found in Qur 'an and Hadith as well as the general practice of earlier rulers”.<sup>34</sup>

He cited the Qur 'an 17:71 which states:

“One day we shall call together all human beings with their respective leaders”.

34 Hon. Justice Abdulkadir Orire (rt), “The role of Shari 'ah in democratic rule,” in *Perspectives in Islamic Law and Jurisprudence* op. ct., 44 particularly at 53.

He then went further to say that:

“It is in the light of the above that prophet Muhammad (S.A..S) Commanded all believers as follows:

“It will be unethical (unconstitutional) for any (group of people) starting from three in number on the surface of the earth not to elect one of them to lead them (in their affairs)”.<sup>35</sup>

He argued further that such a leader once elected or appointed must work towards achieving the goals and objectives of democracy the overall good of the people. If he fails, then he has no more justification to lead them.

History reveals that the first caliph after prophet Mohammad (p. b. h), Abu Bakar (Muhammad's father-in-law) was elected. According to Hitti:

“Abu-Bakr... was designated (June 8, 632) Muhammad's successor by some form of election in which those leaders present at the Capital, al-Madinah, took part”.<sup>36</sup>

Of course this mode of succession was contested by some who felt that true leadership must come through the prophet's blood line. These were the bulk of the Shi 'ite Muslims who constitute just about 200 percent of the world's Muslim population. The majority being the sunni Muslims. The latter accept the principle of elective office rather than blood descent from the prophet. Therefore:

“They believe that the first three caliphs, Abu Bakr (Muhammad's father-in-law), 'Umar (the Prophet's adviser), and 'Uthman (the prophet's Son-in-law), were the legitimate successor to Muhammad”.<sup>37</sup>

One of the fundamental areas of disagreement or rather friction with full implementation of Shari 'ah in a democracy, is Human rights. Does Shari 'ah respect human rights?

After reviewing the whole of chapter iv of the 1999 Constitution dealing with human rights in Nigeria and also the fundamental objectives and directive principles of State Policy as enunciated in chapter II of the Constitution, the Honourable Justice M. M. A Akanbi (rtd.) argued that:

“Beginning from Magna Carta (1215) to the universal declaration of Human Rights (1948), to the Africa Charter on Human and peoples' Right which Nigeria has incorporated as part of its domestic laws, the under-pinning philosophy is the growing realization of the need to protect the honour and dignity of man and free him from the tyranny of the oppressor”.<sup>38</sup>

35 Ibid, at 54.

36 Philp K. Hitti, op. ct., 318

37 See Mankind's *Search for God*, a publication of watchtower bible and tract society of Pennsylvania, (1990), 293

38 Hon. Justice M.M.A. Akanbi, “Dispensation of Justice and Human rights: The Islamic views”, in *Perspectives in Islamic Law and Jurisprudence*, op. ct., 1 esp. at 15.

He argued further:

“If that is the case, Islam has always been in the vanguard of this struggle for the protection of these rights.”<sup>39</sup>

There are a lot of verses in the Qur'an which lends support to this view. Let us briefly look at some:

**Right to life**

Take not life which Allah has made sacred except for just cause (Q: 17:33)

**Right to dignity of the Human person**

We honoured the children of Adam (Q: 17:70)

The Islamic interpretation of this, is that if Allah the creator honoured the children of Adam, then his creations must honour their fellow human beings.

**Right to privacy**

O ye who believe! Avoid suspicion, as much as you can, for behold, suspicion is sometimes a sin, and do not spy on another, and do not defame one another behind your backs (Q: 49:12).

O ye who believe! Do not enter houses other than your own unless you obtained permission and saluted their inmates (Q: 24:27)

**Freedom of thought, conscience and religion**

Let there be not compulsion in religion, truth stands not clear from error (Q: 2:256).

There are other verses in the Qur'an touching on freedom of association, freedom from non-discrimination etc. What is obvious is that Shari'ah supports human rights. But there are obvious areas of contradictions, which we may examine straight away. For example the Qur'an advocates freedom of religion but under Shari'ah, riddah (apostasy-changing or denial of ones previous religion) is a capital offence.

Again, on dignity of the human person, how dignifying is it to behead people in the public even when they are convicted offenders. The same question may be asked of amputation and flogging publicly or stoning to death. Much as the Islamic legal system is good in as much as it helps in dealing with societal problems through adjudication and dispensation of justice, it may end up compounding the problem. For example a person whose hands have been amputated from stealing may lose that right of reform and consequent rehabilitation into the society. Even where he is readmitted into the society, with what hands will he now eke out a living for himself? He must continue to be a dependant on the society the State.<sup>40</sup> That is not fair enough. It appears the aim of punishment in Shari'ah is mostly deterrent and retribution combined. Deterrent and also retribution to the offender, and deterrent to the society at large. There seems to be no room for rehabilitation and reformation since the offender has been decapitated in the first instance especially with regards to offences, which carry the punishment of disablement.<sup>41</sup>

39 Ibid.

40 Such as the case of Bello jandegge in Zamfara State.

41 See generally Okonkwo and Naish, *Criminal Law in Nigeria*, (2nd ed.) (London: Sweet and Maxwell, 1980), 28 where the authors discussed the object of criminal law and the aims of criminal punishment.

This is not surprising since it is a divine law. By comparative analysis, these set of laws are also found in the first five books of the Christian Bible. These are the Torah (Arabic, Taurat) as written by Moses (Arabic, Musa). They are contained in the Old Testament. And God as depicted therein is that which dispenses justice without fear or favour. No equity is involved as depicted in the very first judgment He handed down to Adam and Eve except that there was a right of defense after the charges had been read out to them. God as depicted therein was a ruthless God. Then came the period of grace with the atonement for mankind's transgressions with the blood of Jesus. These are mostly the accounts found in the New Testament. God became liberal. Once man could confess his sins and accept Jesus, he is forgiven and can be pardoned. But these are purely religious views and they are rather subjective.

Let us go back to the main issue. After having argued that democracy is about freedom of choices provided such choice(s) does not encroach on the freedom of others, it is imperative that we now look at those areas in which Shari 'ah is in full operation in Nigeria. Taking Zamfara and Sokoto States as case studies, these are predominantly Muslim States, which as earlier mentioned in this paper had been practicing and in fact used to the Shari 'ah even before the advent of colonialism in Nigeria. Now if the majority of the people in these areas want full Shari 'ah today because they want to express their freedom of choice as a result of return to democracy in Nigeria, it is our contention that they have a right to do so. We must not forget that democracy, apart from freedom to choose, is also the Government of the majority. It has been reported that the official launching of the expansion of the system in Zamfara State witnessed an unprecedented crowd of about two million people.<sup>42</sup> So if the majority of a people want Shari 'ah (as expressed by their representatives in parliament through the passage of the Shari 'ah code), who then are the majority (or in fact minority) outside that community to decide what is best for them? The truth is that, it is the people who must choose for themselves. It is they who must determine what is barbaric, dehumanizing or undignifying. And if the majority does that or support it, then that is democracy. But if the majority (or even minority) either within or outside that society tries to speak otherwise, then that will be autocracy.

Objectively therefore, for democracy to survive in Nigeria, the wishes of the majority must prevail whether in the application of Shari 'ah, resource control or the much touted sovereign national conference. The risk in the suppression of majority views either within a locality, or nationally is that such views become bottled up and ready for eruption/explosion at the slightest opportunity such as we have witnessed in the Shari 'ah issue. Such as we keep witnessing in the Niger-Delta, and such as we keep witnessing in the formation of ethnic militia and/or groupings/associations such as Egbesu, Oodua, Bakassi, Arewa, Ohaneze, Afenifere and a host of others.

### **The application of Shari 'ah and the rights of Non-Muslim**

One of the fundamental objectives of democracy is that the ruling majority must also accommodate and respect the views of the minority. This is so, in order to avoid chaos and crisis. It therefore behoves on those States where Shari 'ah is practiced fully to limit its application to Muslims only. Any attempt to the contrary will run counter to the provisions of the Constitution, which is challengeable under the violation of human rights provisions.

<sup>42</sup> See Osa Director, "Sharia Akbar! Sharia Ak-bomb!!" in Tell (Magazine) No. 46 November 15, 1999, 12.

It is on record that even prophet Muhammad (p. b. h.) in a particular treaty he signed with the Jews contained in the first constitution of medina agreed as follows:

“To Muslims their religion and to the Jews their religion and to the Jew are a community in alliance with the Muslims”.<sup>43</sup>

The same source also reported that he signed a treaty with the Christian of Najran as follows:

“For Najran and its dependants, they have God's enjoined protection and the pledge of His Prophet and messenger, Muhammad (for the same) this equality applying to their property, life, religion, the absent and the present Kith and Kin, churches, and that they have in hand, little or much. No Bishop in his bishopric can be changed (by Muslims), nor a monk in his monastery... never will they be humiliated. Military service is not compulsory on them between them only justice shall prevail”.<sup>44</sup>

It is also reported elsewhere that during the time of Prophet Mohammad (p. b. h) a Muslim killed a non-Muslim and the Prophet ordered the former's execution on the ground that he is responsible for obtaining redress for the weak.<sup>45</sup> It is also on record that during the reign of Ali Bn Abi Talib, the fourth Caliph, a Muslim was made to face trial for the murder of a non-Muslim. After his conviction, the Caliph ordered his execution and stated as follows:

“Whosoever is our Dhimmi (i.e. Somebody who is under Islamic Government protection but who is not a Muslim) his blood is as sacred as our own and his property is as inviolable as our won property”.<sup>46</sup>

The deduction to be made form all the above is that the rights of non-Muslims must be guaranteed at all times even in States where the full Shari 'ah legal system is applicable and they must be protected. Failure to do this will not only violate the wishes of Allah as laid down by the Prophet (p.b. h), it will also contravene the Nigerian Supreme Constitution. Dr. Lateef Adegbite, a lawyer and Secretary-General of Nigerian Supreme Council for Islamic Affairs rightly amplified this position when he said:

“The Zamafara State government cannot extend the domain of Shari 'ah to non-Muslims. It is a very, very clear provision. Every person is entitled to freedom of religion and therefore if you apply the laws of a religion to somebody who does not believe in it, you are infringing on his rights. The Qur'an is very clear on this. It says there should be no compulsion in religion. That is the principle of Shari 'ah....”<sup>47</sup>

43 See Hon. Justice Abdulkadir Orire (rtd), “The role of Shari 'ah in democratic rule”, op. ct., 52. cf. Said Ramadan, *Islamic law, its scope and Equity* (2nd ed.), (P. R. Macmillan, 1961), 125.

44 Ibid.

45 See Hon. Justice S. O. Muhammad, “Shari 'ah in a multi-religious Society”, in *Perspectives in Islamic Law and Jurisprudence*, op. ct., 244.

46 Ibid.

47 In an interview with Tell magazine, under the Caption “Zamfara State cannot extend Sharia to non-Muslims”, No.46, November 15, 1999, 16 esp. at 17.

### Conclusion

So far, we have examined the development of Islam as a religion, its spread into the geographical entity called Nigeria. We have also looked at the sources of Islam which includes the Shari 'ah. We then tried to look at Shari 'ah as a legal system, its introduction into Nigerian legal system and expansion/extension of its application in the Northern part of Nigeria which is predominantly Muslim. We also tried to look at the constitutionality of Shari 'ah. Since the paper is almost is two parts, we then moved on to discuss Shari 'ah in a democratic setting with Nigeria as a case in point and its application only to non-Muslims within the area of States in which it is applicable.

Finally, it is important before ending this paper to argue that the only panacea for the survival of democracy is to go back to its basics. What are those basics? They are contained in the various definitions and discourses on the subject of democracy itself. Some of them as already highlighted in this paper include freedom of choice(s); Honesty and transparency in governance; Respect for other peoples opinions even if they are in the minority; Economic empowerment for the governed through creation of jobs and opportunities; Respect for rule of law, amongst others.

Talking about freedom of choices, Nigerians must be able to determine which type of Government they want and how they wish it to be run. Not only this, they must be able to determine other number of issues within the geopolity by consensus and through democratic means. It is on this basis that we join our voice for a Sovereign National Conference where all issues concerning stakeholders in the geopolity will be ironed out once and for all. We must not forget, Nigeria as it is presently, was put up by the British and "Kept together" by the Military. The Nigerian people themselves have never had the opportunity of how they want to exist as a people. Perhaps we should end this paper with the words of Gbolabo Ogunsanwo, a seasoned journalist and former editor of Sunday Times when he said.

"The answer is not in forgetting our differences, but in understanding them. We need to sit down and understand that while it is the case that perhaps for those of us in the South, our social objectives are to erect a society that is akin to those in Europe and North America, we need to recognize that our fellow Nigerians up North may not be impressed by an American type standard of living and may genuinely desire a society that is akin to either Iran, Pakistan or even the Mullah Omar's Afghanistan. It is their legitimate right to desire such society. We have to concede to this".<sup>48</sup>

48 See *The Tell*, No.9, March 3, 2003 under the caption "the way out of war", page 64.