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THE SHARI’AH: MISREADINGS AND MISREPRESENTATIONS

BY

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BEING A PAPER PRESENTED AT THE INTERNATIONAL CONFERENCE AND
HUMBOLDT KOLLEG CALABAR

Abstract
Almost the whole of the present Northern Nigeria was firmly entrenched in the Sokoto Caliphate and Shari'ah in its totality was the applicable law in all courts. Through hundreds of years of application, the Shari'ah supplanted the customary rules of part of Nigeria. The paper argues that if Shari'ah is a body of laws which Allah prescribed for His servants and explained by Muhammad, the Shari'ah is the life of Islam itself. And under democratic constitution, Shari'ah is both human and religious right of Muslim in the society. Paper shows that the Shari'ah govern the entire life of all Muslims, it is regarded as the embodiment of the will of Allah. Thus all Muslim wherever they are must have the same way of life. The Nigeria constitution gives the citizens to tailor their life according to their believes, therefore Muslims could implement the Zakat social security system to address the debilitating and humanizing social economic problem of the times without government intervention. Though Islam is a balance system of values, swaying neither to one extreme nor the other, unfortunately in some Muslim dominated areas, those teachings have been misinterpreted or been exploited for political purpose. The paper concludes that Shari'ah is not just an ordinary native law and custom, but a complete legal system which can be developed along with customary laws to produce a common and acceptable law for Nigeria. With this we can help the nation to contribute it own quota to world place.

Introduction

Before the advent of British colonial rule, shari'ah and customary laws alone applied in the territories which became Nigeria. After colonisation, the British introduced the English Law which, however, did not completely abrogate the existing legal system. Shari'ah already established as the dominant legal order under the Sokoto caliphate, continued to operate in Northern region subject only to certain limitations imposed by the British.¹

All the three systems of law applicable in Nigeria, English, shari'ah and customary are subject to having their provisions altered by legislation. In theory, the material for legislation may come from any of these system of law or indeed from outside. But practically only English law and its legal traditions have served as a source for legislation or legislative inspiration in Nigeria. Very little consideration was given to shari'ah or customary laws.²

Thus in attempting to discuss Shari'ah and Prospect for Islam in the Eastern part of Nigeria we must untangle murky perceptions regarding what the Shari'ah is all about. Because it's clear, from the content and method of debate of provision in both 1979 and 1989 constitutions that Shari'ah debate assume the character and dimension a political bone of contention. The very thick and
unfathomable dust generated within the arena of the affray, has beclouded the
issues. The simple yearning and aspiration of Muslims who would like to
submit totally to the will of Allah as decreed by their belief system is drowned
by the bolstering chorus of political contenders and mischief makers.
Discussing Shari’ah and prospect for Islam in Eastern will require a
clarification of issues and some frank talk.

Objectives of the paper

This paper intend to achieve the following objectives: stating and clarifying
what is Shari’ah, scope of Shari’ah, what it means in the life of Muslims,
Shari’ah and politics in Nigeria, prospect for Islam in the Eastern Nigeria and
conclusion.

What is Shari'ah?

The literal meaning of the word Shari’ah is water hole, drinking place;
approach to water hole; law; the Shari’ah, the revealed, or canonical, law of
Islam. The Arabic word hukm (pl. ahkam) means a "rule". This may be a
rule of any kind. Thus, when we wish to consider rule of Islamic law, we
qualify it with the term shari (legal), or a rule belonging to Islamic Shari’ah or
law. It’s the hukm shari that is define by Muslim jurist, when they attempt to
answer the Question; What is Islamic Law? They defined it as: "A
communication from Allah, the exalted, related to the act of the subject through a demand
or option or through a declaration". Thus, the Shari’ah is the command given by
Allah to its servant through any of the prophet. So the Islamic Shari’ah
according to this definition is a body of laws which Allah prescribed for its
servant through Prophet Muhammad. It's evident that the expression Shari’ah
in this sense is synonymous with the expression jurisprudence (fiqh) in the
sense used by the scholars in the beginning. Fiqh in this sense is absolutely
the knowledge of the rules of the Shari'ah. Or it is these rules themselves.
Over the years, some narrow scope has come to be assigned to Islamic
Shari’ah fiqh. This term as come to refer to what, in Western legal tradition, is
understood to mean law so properly called. It’s a body of identifiable rules
which are derivable from the main sources of the *Shari'ah* and which have legal force and are enforceable by the state. Muhammad Asad states:

> The true *Shari'ah* is far more concise and very much smaller in volume than the legal structure evolved through the *fiqh* of various school of Islamic thought. Being a define law, the *Shari'ah* can not possibly have been made depend on scholarly deductions or inferences of a subjective nature, but must be considered to have been laid down in it's entirely in the definite ordinances of Qur'an and Sunnah. These ordinances are described technically as *nusus* (singular, *nass*). Text

**Scope of Shari'ah**

The text of Qur'an and Sunnah (tradition of Prophet Muhammad) denote the ordinances (*ahkam*) forthcoming from the self evident wording in which they are expressed. All such *nass* ordinances are so formulated that they can be applied to every stage of man social and intellectual development; though, greater part of Qur'an has no direct bearing on dogmatic, ritual, legal, political and social question. The general principles by which all these matters should be regulated are to be found in the Qur'an but not all of them are set out with clearness and detail. It is therefore, essential to interpret and elaborate the relevant text. The natural and indeed, the only possible interpreter whose judgement can be trust is the prophet through whom they were revealed.

A thorough study of all standard books of Islamic jurisprudence shows that, *shari'ah* is not simply 'Law' as generally understood. The *shari'ah* deals, among other things, with:

(a) Belief in Allah and relationship between man and Allah.

(b) Worship of Allah in all details.

(c) Man- his morals, manners, concepts, private and public life and his interrelations with others.

(d) Society and all that affects its existences, its politics, Law, social life, economy, religion, values, and concepts.

This is one of the reasons why Muslims in Nigeria feel that to confine the *Shari'ah* to personal status; is to mutilate it and create a fertile ground for its
eventual death as no legal system can operate successfully without its social, political, economical, and administrative arrangement supporting it $^{13}$. 

But we must agree to the fact that many of the subjective conclusions of the Muslim jurists are reflections of particular time and mentality and can not, therefore, lay claim to eternal validity. Hence not all laws which form the subject matter of conventional Islamic jurisprudence ($fiqh$) rest on injunction expressed in the clear cut terms of commands and prohibition in Qur'an and Sunnah. $^{14}$ We have no choice than to agree with Muhammad Asad that observed that larger part of Islamic jurisprudence rulings as contained in most of the conventional books are the outcome of various deductive method of reasoning, among which deduction through analogy figures most prominently. $^{15}$ Deduction through analogy ($Qiyas$), is a systematic form of reasoning in law, before it developed into a sophisticated doctrine, it was used simply to show a resemblance between two cases. $^{16}$ The great jurists of the past arrived at their legal finding on the basis of their study of Qur'an and sunna, and there is no doubt that the results of their studies were often highly subjective that is, they were determined by each scholar's personal approached to, and interpretation of, the legal source of Islam, as well as by the social and intellectual environment of his age $^{17}$. So, in matters of government, technology, economic legislation, and so forth, the Shari'ah does not stipulate any detail laws, but either lays down general principles only or refrains from making any legal enactment.

**Shari'ah in the life of Muslims**

*Shari'ah* is the life of Islam itself. It provides a complete system for regulating every aspect of human life. The rules, obligations, injunctions, and prohibitions lay down by, or derived from, the Qur'an and Sunna produce a complete picture of the Muslim community from which no part can be removed without the rest being damaged. Equally, no isolated part of this scheme can make any sense or be of any use. But in contemporary Muslim societies, one can hardly say that the Islamic way of life is adopted among them, or even well-understood. $^{18}$ Thus, we will not agree with those views that
say that any society in which Shari’ah is not applied in totaly can not be said to be truly Islamic even though all its members claim to be Muslim 19. This view will lead us to the conclusion that the test of the Islamicity of any society is the extent of its application of the Shari’ah. Ibrahim K. R. Sulaiman argues:

No amount of salat, Zakat, Saum or Hajj alone, can make a society truly Islamic, if the Shari’ah is not applied as a complete comprehensive legal system. This is because to submit to a law other than that prescribed by Allah is to submit to another God beside Allah which amount to rejection of Islam 20.

This opinion is traced to Al-Qaida concept of Shari’ah state. Though many people see Osama bin Ladin as a religious mentor, but the scriptural justification for his use of force traces its precedence to the writings of Ibn Taimiyyah, Abul a’la Maududi and Sayyid Qutb and their opinions are not final authority in Islam. Islam does not prescribe any particular form of government. Rather is merely provides guidance and prescription on the value of government should be conform with and seek to establish no where in the Qur'an or tradition is the concept of monarchy or totalitarian rule is expressly forbidden. However, both scripture indicate a clear preference for consultative and through representative administrations 21. Muhammad Asad states:

If we examine objectively the political ordinance of Qur'an and sunnah, we find that they did not lay down any specific form of state: that is to say, the Shari'ah does not prescribe any definite pattern to which Islamic state must conform, nor does it elaborate in detail a constitutional theory 22.

Hence Shari’ah, which is contained in principle in the Qur'an and elaborated and complemented by the practice of the prophet Muhammad, is a code which has no boundaries of time, place or nationality. Since the Shari’ah governs the entire life of all Muslims it is regard as the embodiment of the will of Allah 23. Thus all Muslim wherever they are must have the same way of life because Shari’ah is such a requirement of Islam that to deny a Muslim access to its broadest meaning is to infringe on his right to the freedom of religion. This is because Islam is not just a set of ritual but a complete way of life 24.
Shari'ah and politics in Nigeria

Though, the Muslim populations in black African proper is more widely distributed, but with exception of Sudan, no state on this regions regards itself as Islamic in the sense in which states in North African and middle East do. Until year 2000 when almost all Northern state of Nigeria made an attempt to return to Shari’ah. Their argument was that Shari’ah as legal system and people's way of life is as old in Northern Nigeria as Islam. Both are so interwoven that to separate one from the other is impossible hence it's safe to say that without Shari’ah there is no Islam.

By the time the colonial masters arrived, Shari’ah had been governing all spheres of lives of Muslim people of Northern Nigerian. But in the spirit of give and take that political concept of federalism demands the Muslims in North continue to painfully sacrifice the jurisdictional coverage of Shari’ah in the lives of their societies on the outer of federalism bit by bit to the point that it's reduced to mere family law. It can just as well be said that Christians have the legitimate rights not to submit to the Shari’ah courts. They are entitled to this. It would; however be a great mistake for Christians to adopt an attitude of obstructing or seeking to stand in Muslims path of realising this legitimate aspiration. Mutual understanding and respect for the religious beliefs and sensibilities of one another is what the multi religious setting of the country demands of all of us.

The lust for gaining political power under the guise of the reconstruction of the Islamic society has lured many politicians to the ranks of the so called fundamentalist in Nigeria. While the fact is that a believer of any religion can practise his belief even under a secular law. He can abide by truth without any state law interfering with his ability to speak the truth. He can observe his prayers and perform his act of worship without the need of a specific law been passed by the state to permit him to do so.

But honestly speaking Muslims in Nigeria actually do not require constitutional endorsement to do any of the following which the Shari’ah broadly understood, demands of all believers. Muslims could and should
emulate Shari’ah in regulating their family life without resulting to the court. Nigerian constitution gives citizens to tailor their educational system to conform to their beliefs. Thus Muslims in the country could and should implement the Zakat social security system to address the debilitating and dehumanizing social economic problems of the times. In market place, at home and community Muslims could and should apply Islamic rules of social relations to evolve a dynamic community.

The present political, social and economic problems of the country demand a patriotic approach through peaceful co-existence and selfless service. Allah says about the true Muslims: “You are the best of the people by virtue of being of service to and rose for the benefit of mankind; you enjoin good, and forbid evil and believe in Allah” (3: 111).

The Arabic word 'Khair' used in the above quoted verse, means both better and best, the Holy Prophet once said: “The upper hand is better is better than the lower hand: the upper hands gives and spends, the lower hand begs and receives.”

There are many things commanded by the Shari’ah that Muslims could do without submitting to the censorship of the government or the manipulation of politicians. For all these things, Muslims are not in need of constitutional backing. If Muslims any where heed this, the country will put the greedy politicians out of business and this will lead to peaceful co-existence between various religious groups in the country.

Prospects for Islam in the Easter Nigeria

There are number of common misconceptions current in the South and Eastern part of Nigeria about certain part of Islamic teachings. It is the aim of this heading to clarifying briefly these misconceptions by setting down some of the fundamental teachings of Islam that can help spreading the message of Islam in Eastern Nigeria.
Firstly *Shari'ah* is the root of Muslim life. But we do not agree that without it in the limited sense as explained before, one is not a Muslim as claimed by Ibrahim K.S. Sulaiman:

The *Shari'ah* is the root of Muslim life, without it he is not a Muslim. This is because obedience to the *Shari'ah* is the only practical manifestation of the Muslim's declared beliefs in Allah and in Muhammad. This obedience symbolises also his love for Allah and his love for Islam. It is for this reasons that the only way that a Muslim can show his sincerity in his belief in Allah and Muhammad, is to struggle, wherever he is, for the supremacy of the *Shari'ah*, to the point of sacrificing his dear life. Death in the struggle of *Shari'ah* is the supreme achievement for which every Muslim aspires.  

Islam, it must kept in mind, established its *Shari'ah* by wining hearts through love, convincing minds by arguments and preaching. The concept of Islam being spread through force or being established by force is a totally false and foolish idea. No religion may be implemented by force. Thus, when we see a group enforces religion authoritatively an ugly picture is presented, totally unrelated to the sprit of Islam.

Secondly, Islam is neither a balance system of values, swaying neither to one extreme nor the other. It is unfortunate that in some Muslim dominated states these teachings have been misinterpreted or been exploited for political purposes.

Third, It is often alleged that the Holy Qur'an bring out only rougher qualities, paying scant attention to the most subtle strains of human nature. It is claimed that nowhere is there any mention of "love" in Islam. This is not true. The Holy Qur'an lays considerable stress on this virtue. Furthermore, while the English world 'love' has become somewhat ill-defined these days, the Holy Qur'an makes very clear what is meant by the word by pointing out those attributes and virtue which are the fruits of real love- selflessness, generosity and fairness, etc. for example Allah says: "Tell them: I ask of you no recompense in return for it except love as between kindred". (6:90)

Here love is a healing force that engenders forgiveness amongst people.
Some people adopt objects of worship other than God, and love them as they should love God, but those who believe love God most (2:165).

One should not love one's wealth, treasured objects and loyalties to other etc. more than God. There are many other examples that could be drawn from the Holy Qur'an defining the meaning of love in essence and in practice. The operation of love between God, the ultimate source of all love and man, is thus given considerable prominence.

Fourth, the question of Islamic punishments has attracted a disproportionate amount of attention in Nigeria. To a large degree this has been due to the political exploitation of Islam in certain Muslim dominated state. Politicians have sought, by boldly instituting flogging and the cutting off of hands to rally the support of ignorant or fanatical Muslim to their camp in the name of Islam without instituting true Islam first. The politicians, those that have nothing to offer have all the times to waste on Shari'ah.

Flogging is prescribed for two offences: adultery and falsely accusing innocent women of adultery (24:2-4). However, the Holy Qur'an make it clear that this drastic measure should be meted out only to habitual and totally incorrigible and unrepentant offenders.

What is often forgotten is the special prominence given to the quality of forgiveness in Islam. The Holy Qur'an says:

Let not those who are possessed of means and plenty among you, resolve to withhold their bounty…… because of some fault on the part of the recipient. Let them forgive and forbear (24:22).

If you forbear, pardon and forgive, then surely God is most forgiving, ever Merciful (64:14).

Justice should be tempered with mercy.

The recompense of an injury is a penalty in proportion thereto: but whosoever forgives and effect a reform thereby, has his reward from God (42:40).

The highest example of these teachings was given in the life of Prophet Muhammad himself throughout his life time. Though not hesitating to punish
cynical or brutal criminals appropriately, he was ever ready to forgive nobly and magnanimously. While in some community, even these days' women were treated as personnel chattels of their man folk. Islam however, gives women a position of dignity and honour. Women are given the rights of choice of marriage partners, divorce, inheritance, universal suffrage and equality of other rights under Shari’ah a situation which was not equalled in some society until resent.

Fifth, another common misconception is that Islam lays emphasis on the need to declare 'holy war' against unbelievers. This is not the case and stems from a misunderstanding of the word 'Jihad' and a lack of knowledge of the strict and comprehensive laws laid down in the Holy Qur'an concerning war and fighting. The word 'Jihad' merely means struggle or striving and can be applied to mental or physical struggle of any kind. The Holy prophet once made it clear that he considered lawful fighting as the lesser jihad, while the struggle to purify oneself and attain the forgiveness of God was the greater 'jihad'. Islam stands for the freedom of conscience. Man is the only object of creation that has been given the freedom of choice. No compulsion or Coercion is permissible. Indeed nothing could be clearer than the verse:

There shall be no compulsion in religion; for guidance and error have been clearly distinguished (2:256).

Proclaim O prophet; the truth is from your Lord; therefore let him who will believe and let him who will disbelieve (18:29)

The permission is to fight if attacked and to make peace when the enemy desists in fighting. No aggressive wars of any kind are permissible. Where fighting is initiated for the purpose of self defence, it must be pursued within the strict limit defined by the Holy Qur'an. Allah says:

And fight in the cause of Allah against those who fight against you but do not transgress. Surely, Allah loves not the transgressors. (2:191).

Permission to take up arms is given to those against whom war is made, because they have been wrong and Allah, indeed, has power to help them. Those who have
From the above quoted verses of the holy Qur'an, jihad is permitted when Muslims are persecuted and denied their religious freedom, or in defence of one's liberty, honour and country. Thus, aggression against any peace loving person or country, fighting that occurs as a result of enmities is not *jehad* as defined by the Holy Qur'an.

The word 'Islam' means the act of submitting or resigning oneself to God. The Holy Book of Islam interprets it to be the religion whose teachings are in consonance with human nature. A study of true understanding of Islam reveals the promotion of peace of individual and society. Islamic concept of peace means adjustment and orientation of the individual towards, on the one side with his creator and, on the other side his fellow human beings. This applies to the entire relationship between individual and individual, individual and community, community and community, between nation and nation.  

Islam does not support or justify any acts of violence, be they committed by an individual, a group or a government. Instead, it emphasises the desirability of tolerance and freedom of conscience. Prophet Muhammed did not emphasise tolerance in religious matters but set a very high standard in this respect. though there still exist religious intolerance arising from bigotry, ignorance, blind fanaticism and imagined fear of one religious system dominating the other.

This is not because the religions are different, but because the instigators use differences to create an unjust hierarchy in society, and to deny rights and opportunities to certain elements within the societies. Thus, it appears that Christians and Muslims are at war with each other but actually the perpetrators have used religions to create divisions in society, and religion has become a convenient tool in their hands.

The worst tragedy of Nigeria has been that some corrupt and unsuccessful politicians became religious leaders of innocent and uninformed masses. They exploited their emotions rather than giving them the needed guidance for
spiritual development or social welfare. Unsuccessful and corrupt leaders have brought nothing but a bad name to Islam and misery to people in the name of religion. Their slogan will come to an end as soon as people become informed about the truth.

Thus the essence of religion of Islam is faith in the Divine and that faith is responsible for the adjustment and coordination that brings about peace and harmony. With these explanations, we submit that Islam provides the theoretical as well as practical answer to contemporary issues. It is the need of the time, provided we stick to its true teachings as contained in the Holy Qur'an and practically demonstrated by the Prophet Muhammad.

**Conclusion**

Islam is not a religion in the limited sense of the word. Rather it is a complete way of life having within its framework a comprehensive legal system. *Shari'ah* is not just an ordinary native law and custom but a complete legal system. And we can develop it along with our customary laws to produce a common and acceptable law for Nigeria. But in order to be able to do this we must give up our sterile reliance on what to previous generations of Muslim scholars appeared to be "final" verdicts on socio-political laws of Islam, and must begin to think about them anew, in creative manner, on the basis of our on study of the original sources. The Holy Qur'an and the example set by the prophet Muhammad and their application in the various phases of his life is the standard every Muslim should try to achieve. This is the only way by which we can help the good people of the Eastern part of Nigeria to understand the through teachings of Islam and contribute their quota to the spread of Islam in the reign.
References

40. J.M Cowan (1960), p.142